ESSAY

PURPOSE AND NONPROFIT ENTERPRISE

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Nonprofit enterprise is responsible for a large share of economic activity across the globe. And yet, leading theories fail to explain why nonprofit business survives and even thrives across a vast number of industries, ranging from artificial intelligence to beer brewing, despite an absence of shareholder control. Indeed, as shareholder ownership and intervention rights have become the core component of successful corporate governance, this success is all the more surprising.

This Essay offers a novel "purposeful enterprise" theory to explain the puzzling success of nonprofit enterprises. Drawing on research in behavioral economics and organizational science, it argues that organizational purpose can serve as a substitute for shareholder control and monitoring by mitigating managerial agency costs and aligning employee incentives. Nonprofit enterprise may also promote value creation by improving the stability of the entity. This theory clarifies why nonprofit businesses and other related purposeful enterprises have thrived in certain industries and not others. It also sheds light on fundamental debates in corporate law, including that of the corporation's purpose in society. In particular, it suggests that shareholder ownership and control are not the only means of addressing agency costs and improving organizational efficiency.

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INTRODUCTION

Anthropic—the artificial intelligence (AI) company that created Claude—was founded in 2021 by former OpenAI employees concerned about AI safety.[1] With purpose in mind, the founders chose an innovative governance structure: They formed Anthropic as a benefit corporation and gave control of the business to a charitable long-term benefit trust.[2] The founders populated the trust with independent trustees with experience in "AI safety, national security, public policy, and social

1. Billy Perrigo, Inside Anthropic, the AI Company Betting that Safety Can Be a Winning Strategy, Time (May 30, 2024), https://time.com/6980000/anthropic/ [https://perma.cc/XR8U-MMBV] [hereinafter Perrigo, Inside Anthropic].

2. Id.

enterprise," all of whom were duty-bound to advance the company's purpose of "responsible development and maintenance of advanced AI for the long-term benefit of humanity."[3]

Anthropic is one of many modern examples of "nonprofit enterprise."[4] Nonprofit enterprise—which this Essay defines as a nonprofit (or related charitable organization such as a trust, foundation, or enterprise foundation) that generates revenue primarily through business operations—looks and feels like a for-profit business. Nonprofit enterprises are typically managed by high-powered and highly compensated managers and are not primarily engaged in charitable causes. And yet, they are organized as, or primarily controlled by, nonprofits.

Danish beermaker Carlsberg is another example: It is controlled by a nonprofit foundation.[5] British newspaper the *Guardian* is organized similarly: It has only one shareholder, which is a nonprofit charity.[6] Luxury retail conglomerate Rolex is owned by a Swiss charitable trust,[7] and iconic American candymaker Hershey is controlled by the Hershey Trust Company, which also manages the endowment of a private school for low-income children.[8] Taking a look beneath the hood of Swedish furniture giant IKEA reveals that within its labyrinthian corporate organization, it,

3. The Long-Term Benefit Trust, Anthropic (Sep. 19, 2023), https://www.anthropic.com/news/the-long-term-benefit-trust (on file with the *Columbia Law Review*).

4. We include within the term "nonprofit enterprise" both enterprise foundations (in which a nonprofit owns and controls a for-profit subsidiary), as well as pure nonprofit business, because both entities use governance to ensure that the nonprofit (and specifically, its self-perpetuating board) controls the business. Of course, there are important differences between these two organizational forms that we discuss in section II.C.

5. See The Carlsberg Foundation, Carlsberg Grp., https://www.carlsberggroup.com/who-we-are/the-carlsberg-family/the-carlsberg-foundation/ [https://perma.cc/S8R8-SRCM] (last visited Aug. 18, 2025) ("The Carlsberg Foundation still holds the controlling interest in Carlsberg A/S . . . . [T]he Carlsberg Foundation gives back the dividends from the shares in Carlsberg A/S to society by supporting excellent basic research within the fields of natural science, social science, and the humanities.").

6. See Guardian Media Group, The Guardian, https://www.theguardian.com/about/organisation [https://perma.cc/59QG-YDHW] (last visited Aug. 18, 2025) ("Guardian Media Group has only one shareholder—The Scott Trust. The Trust forms part of a unique ownership structure for the Guardian that ensures editorial interests remain free of commercial pressures.").

7. See Antonio Fumagalli, Rolex Earns Billions Every Year. Where Does the Money Go?, Neue Zürcher Zeitung (Nov. 21, 2024), https://www.nzz.ch/english/rolex-earns-billions-every-year-where-does-the-money-go-ld.1754264 [https://perma.cc/6N9M-ZU7N] (discussing the Hans Wilsdorf Foundation and describing it as "the sole owner of . . . Rolex").

8. See Over 120 Years of Strength, Heritage, and Stability., Hershey Tr. Co., https://www.hersheytrust.com/ [https://perma.cc/C7T9-9D29] (last visited Aug. 18, 2025) ("Hershey Trust Company serves as the Trustee of the Milton Hershey School Trust, The M.S. Hershey Foundation and the Hershey Cemetery Perpetual Care Maintenance Trust . . . .").

too, is owned by a set of nonprofits.[9] Civica, the generic drug maker, is organized as a nonprofit,[10] alongside AAA, the national motoring association that funds its activities via its roadside assistance business,[11] and *ProPublica*, the investigative news organization.[12]

Why does nonprofit enterprise exist? Fifty years ago, Henry Hansmann proposed the leading economic theory: contract failure.[13] In certain industries—such as hospitals, nursing homes, and education—consumers cannot easily evaluate or bargain with service producers. For

9. See Our Funding and Governance, IKEA Found., https://ikeafoundation.org/our-funding-and-governance/ [https://perma.cc/GHD6-8YZM] (last visited Sep. 12, 2025) (describing the ownership structure of IKEA and noting that "[a]ll three foundations [that exercise control of IKEA] share a charitable purpose, which is to create a better everyday life for the many people").

10. See Civica, https://civicarx.org/ [https://perma.cc/HW8S-GT7H] (last visited Aug. 18, 2025) (describing the Civica Foundation as "[a] 501(c)(3) organization that fosters philanthropic support for Civica's work to manufacture and distribute affordable medications").

11. See About AAA, AAA Exch., https://exchange.aaa.com/about-aaa/ [https://perma.cc/HN7L-LSPY] (last visited Aug. 18, 2025) ("AAA is a not-for-profit organization of motor clubs serving more than 59 million members in the United States and Canada.").

12. See About Us, ProPublica, https://www.propublica.org/about/ [https://perma.cc/6HTW-H3Q9] (last visited Aug. 18, 2025) [hereinafter About Us, ProPublica] ("ProPublica is an independent, nonprofit newsroom that produces investigative journalism with moral force.").

13. Henry B. Hansmann, The Role of Nonprofit Enterprise, 89 Yale L.J. 835 (1980) [hereinafter Hansmann, Nonprofit Enterprise]. It is one of the most cited law review articles in history. Fred R. Shapiro & Michelle Pearse, The Most-Cited Law Review Articles of All Time, 110 Mich. L. Rev. 1483, 1489, 1492 tbl.1 (2012). Note that a deep theoretical literature considers the question of why nonprofits exist. For example, some scholars posit that the nonprofit sector responds to deficiencies in the private market and government when providing collective goods (the "market failure" theory); others contend that the government responds to the limits of the nonprofit sector by subsidizing it with grants and other funding (the "voluntary failure" theory). See generally Burton A. Weisbrod, Toward a Theory of the Voluntary Nonprofit Sector in a Three-Sector Economy, *in* The Voluntary Nonprofit Sector: An Economic Analysis 51 (1977) (advancing the voluntary failure theory of nonprofit activity); Lester M. Salamon, Of Market Failure, Voluntary Failure, and Third-Party Government: Toward a Theory of Government–Nonprofit Relations in the Modern Welfare State, 16 Nonprofit & Voluntary Sector Q. 29 (1987) (comparing the market failure and voluntary theories). Our question is different: This Essay considers why some businesses organize as nonprofits and whether that business would be better run if it had shareholders. Indeed, given the central role that shareholders play in theories about corporate governance, this question is all the more interesting. Simply put, this Essay does not focus on differences between business nonprofits and donative nonprofits and instead considers the choice between nonprofit enterprise and for-profit enterprise. As such, Hansmann's contract failure theory is our starting point—it explains how nonprofit business can offer a competitive advantage relative to for-profit business. But others have also offered compelling accounts. See generally Albert H. Choi, Nonprofit Status and Relational Sanctions: Commitment to Quality Through Repeat Interactions and Organizational Choice, 58 J.L. & Econ. 969 (2015) (theorizing that the nondistribution constraint subjects nonprofit enterprises to shorter relational sanctions, making the organizational form appealing to profit-driven entrepreneurs).

example, consumers often find themselves seeking hospital services during an emergency, making it hard for them to shop around for the best deal. This contract failure is ameliorated when the producer organizes as a nonprofit: The nonprofit form assures the consumer that they are purchasing services from a business that cares about healthcare, for example, rather than one that is primarily motivated by generating profits for shareholders.[14]

Hansmann's elegant theory anchors an important literature on nonprofit enterprise.[15] And yet, in the years that followed Hansmann's

14. Hansmann, Nonprofit Enterprise, supra note 13, at 845, 866–67. Note that enterprise foundations, in particular, make up a sizeable amount of economic activity in Nordic countries. For example, in Denmark, roughly 1,400 enterprise foundations account for 5–10% of the economic activity, more than 70% of stock market capitalization, and roughly 50% of Danish research and development. Likewise, in Germany, over 50% of stock market value comes from companies in which foundations are the majority shareholders. Rasmus Kristian Feldthusen, Denmark: Enterprise Foundations (Mar. 6, 2023), https://www.intersentiaonline.com/publication/enterprise-foundation-law-in-a-comparative-perspective/8 [https://perma.cc/V2KN-ZPVZ].

15. See generally Avner Ben-Ner, Who Benefits From the Nonprofit Sector? Reforming Law and Public Policy Towards Nonprofit Organizations, 104 Yale L.J. 731 (1994) (highlighting the misconception that nonprofits mainly service the poor and needy); Ira Mark Ellman, Another Theory of Nonprofit Corporations, 80 Mich. L. Rev. 999 (1982) (arguing that the contract failure theory fails to account for the distinction between donors and customers); Brian Galle & David I. Walker, Nonprofit Executive Pay as an Agency Problem: Evidence From U.S. Colleges and Universities, 94 B.U. L. Rev. 1881 (2014) (exploring the implications for nonprofit governance if managerial power affects nonprofit pay setting); Henry Hansmann & Steen Thomsen, The Governance of Foundation-Owned Firms, 13 J. Legal Analysis 172 (2021) (exploring how the governance structures of industrial foundations—nonprofits controlling for-profit firms—drive strong corporate performance despite lacking traditional incentives, using data from Danish firms and highlighting the implications of recent U.S. legal reforms); M. Todd Henderson & Anup Malani, Corporate Philanthropy and the Market for Altruism, 109 Colum. L. Rev. 571 (2009) (describing the state of the "market for altruism" as requiring corporations to engage in philanthropy only when they have a competitive advantage over nonprofits and the government); James R. Hines Jr., Jill R. Horwitz & Austin Nichols, The Attack on Nonprofit Status: A Charitable Assessment, 108 Mich. L. Rev. 1179 (2010) (arguing that extending nonprofit-style tax benefits to socially motivated for-profit entities offers limited advantages over the nonprofit market and risks eroding nonprofit sector vitality and tax integrity); Robert A. Katz, Can Principal-Agent Models Help Explain Charitable Gifts and Organizations?, 2000 Wis. L. Rev. 1 (holding that principal–agent models are incomplete without viewing charities and their managers as agents of the charities' intended beneficiaries rather than only of donors); Jonathan Klick & Robert H. Sitkoff, Agency Costs, Charitable Trusts, and Corporate Control: Evidence From Hershey's Kiss-Off, 108 Colum. L. Rev. 749 (2008) (arguing that state intervention blocking the sale of Hershey Company stock by the Milton Hershey School Trust preserved agency costs and impeded diversification, ultimately reducing social welfare and shareholder value); Anup Malani & Eric A. Posner, The Case for For-Profit Charities, 93 Va. L. Rev. 2017 (2007) (arguing that tax benefits and corporate form should be unlinked so that for-profit firms could enjoy them for their charitable activities); Anup Malani & Guy David, Does Nonprofit Status Signal Quality?, 37 J. Legal Stud. 551 (2008) (arguing against the hypothesis that nonprofit status is a signal of quality through an empirical analysis of nonprofits that indicate their nonprofit status in their advertising); Peter Molk & D. Daniel Sokol, The Challenges of Nonprofit

article, it has become clear that contract failure is not the whole story. Today, nonprofit enterprise proliferates across a broad spectrum of industries, beyond those with severe consumer information asymmetries. Nonprofits successfully run clothing manufacturers,[16] insurance companies,[17] beer breweries,[18] candy manufacturers,[19] furniture makers,[20] and more[21]—that is, industries in which consumers can easily evaluate goods and services. Changes in the information environment also undermine the existence of contract failure in Hansmann's paradigmatic examples. Hansmann theorized, for example, that parents sending their children to college might not be able to evaluate such a "complex and subtle service," preferring to rely on nonprofit status as an indication of quality.[22] Of course, modern college rankings and college advisory services offer detailed descriptions of colleges;[23] therefore, it is difficult to attribute the success of nonprofit colleges to contract failure alone.

This Essay therefore offers a new "purposeful enterprise" theory to explain the existence and persistence of nonprofit enterprise. It posits that corporate purpose can play an important role in both the selection of the

Governance, 62 B.C. L. Rev. 1497 (2021) (discussing the challenges of nonprofit governance); Steen Thomsen & Henry Hansmann, The Performance of Foundation-Owned Companies (Oct. 11, 2013) (unpublished manuscript), https://papers.ssrn.com/abstract=2406055 [https://perma.cc/3NVA-84SA] (observing that foundation-owned companies perform as well as investor-owned companies). See Edward L. Glaeser & Andrei Shleifer, Not-for-Profit Entrepreneurs, 81 J. Pub. Econ. 99, 103–08 (2001) (modeling the conditions under which entrepreneurs would choose the nonprofit form as a bonding mechanism).

16. See, e.g., Yvon Chouinard. Earth Is Now Our Only Shareholder, Patagonia (Sep. 14, 2022), https://www.patagonia.com/ownership/ [https://perma.cc/X6AK-J25A].

17. See, e.g., Press Release, Det Norske Veritas, The Foundation Det Norske Veritas Assumes Full Ownership of DNV GL and Remains Committed to Maritime Headquarters in Hamburg (Dec. 14, 2017), https://www.dnv.com/news/the-foundation-det-norske-veritas-assumes-full-ownership-of-dnv-gl-and-remains-committed-to-maritime-headquarters-in-hamburg-105746/ [https://perma.cc/VPM2-EEMY].

18. See, e.g., Who Owns Carlsberg?, Carlsberg, https://www.carlsberg.com/en-be/better-answers/who-owns-carlsberg/ [https://perma.cc/BBF8-FYJU] (last visited Aug. 18, 2025).

19. See, e.g., Hershey Tr., History of Hershey Trust Company, https://www.hersheytrust.com/press-releases/History%20of%20Hershey%20Trust%20Company.pdf [https://perma.cc/XFT7-UVCQ] (last visited Aug. 18, 2025).

20. See, e.g., About Us, IKEA, https://www.ikea.com/us/en/this-is-ikea/about-us/ [https://perma.cc/M5TB-AHRK] (last visited Aug. 18, 2025).

21. See Erik Friesenhahn, Nonprofits: A Look at National Trends in Establishment Size and Employment tbl. A-3, U.S. Bureau of Lab. Stats.: Monthly Lab. Rev. (Jan. 2024), https://www.bls.gov/opub/mlr/2024/article/nonprofits-a-look-at-national-trends-in-establishment-size-and-employment.htm#top [https://perma.cc/MJU8-WHGB] (showing that nonprofits exist in the following industries: laundry services, repair and maintenance, waste management, retail trade, finance and insurance, construction, and wholesale trade).

22. Hansmann, Nonprofit Enterprise, supra note 13, at 866.

23. See, e.g., 2025 Best Law Schools, U.S. News & World Rep., https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings (on file with the *Columbia Law Review*) (last visited Aug. 18, 2025).

nonprofit form at the outset and the success of the entity over time.[24] In particular, our theory explains how nonprofit enterprise can flourish despite departing substantially from "good governance" practices thought to be responsive to the central problem in corporate law and governance—that of managerial agency costs.

Agency costs are inherent in many business entities—when the owners of an entity are not the managers of the business, managers have an incentive to behave self-interestedly and to the detriment of the business.[25] A complex corporate governance machine has risen to combat agency costs in for-profit business, with shareholder monitoring and control at its core.[26] Through the power to elect directors, make shareholder proposals, and review books and records (among other rights), shareholder monitoring and control is thought to ameliorate managerial agency costs.[27]

An enduring puzzle of the nonprofit form is that nonprofits are, by definition, entities without shareholders.[28] As such, they should suffer

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24. A note on what this Essay means by success. Of course, profit is an important component, but a successful nonprofit enterprise might offer higher quality products, a better working environment, or survive for longer. Quantifying success in this way is difficult, but anecdotal evidence suggests that nonprofit enterprise may better succeed in these dimensions relative to for-profit enterprises in certain industries. See, e.g., Katharina Lewellen, Gordon M. Phillips & Giorgo Sertsios, Control Without Ownership: Governance of Nonprofit Hospitals 22 (Nat'l Bureau of Econ. Rsch., Working Paper No. 34132, 2025), https://www.nber.org/system/files/working_papers/w34132/w34132.pdf [https://perma.cc/9KN8-SYC3] ("Hospital closures are substantially more likely for for-profits, particularly after poor financial performance. On average, 0.9% of for-profit hospitals close each year . . . and this frequency is 0.7 percentage points lower for nonprofits . . . ."); Maya Brownstein, Private Equity's Appetite for Hospitals May Put Patients at Risk, Harv. Sch. Pub. Health (Dec. 16, 2024), https://hsph.harvard.edu/news/private-equitys-appetite-for-hospitals-may-put-patients-at-risk/ [https://perma.cc/8ZSU-6847] (discussing examples of private equity funds converting nonprofit hospitals to for-profit and documenting how patient care suffered as a result).

25. Adolf A. Berle, Jr. & Gardiner C. Means, The Modern Corporation and Private Property 3–112 (1932) ("Where ownership is sufficiently sub-divided, the management can thus become a self-perpetuating body even though its share in the ownership is negligible.").

26. Dorothy S. Lund & Elizabeth Pollman, The Corporate Governance Machine, 121 Colum. L. Rev. 2563, 2565 (2021) (providing "an original descriptive account of the 'corporate governance machine'—a complex governance system in the United States composed of law, institutions, and culture that orients corporate decisionmaking toward shareholders"); see also Lucian Arye Bebchuk, The Case for Increasing Shareholder Power, 118 Harv. L. Rev. 833, 899–901 (2005) (discussing the benefits and drawbacks of a regime that would further increase shareholder control).

27. See, e.g., John Armour, Luca Enriques, Henry Hansmann & Reinier Kraakman, The Basic Governance Structure: The Interests of Shareholders as a Class, *in* The Anatomy of Corporate Law: A Comparative and Functional Approach 49, 51–62 (3d ed. 2017) (explaining that shareholder appointment and decision rights reduce information and coordination costs, improving managerial oversight and reducing managerial agency costs).

28. Seong J. Kim, Hiding Behind the Corporate Veil: A Guide for Non-Profit Corporations With For-Profit Subsidiaries, 5 Hastings Bus. L.J. 189, 205 (2009).

from pronounced agency costs.[29] Without shareholder monitoring, who will monitor management and ensure that they pursue the organization's mission and not extract undue private benefits?

And yet, nonprofit enterprises not only exist, but thrive. Certain industries—such as hospitals and higher education—are dominated by nonprofit businesses, which outcompete their for-profit rivals.[30] Other industries, including technology,[31] retail trade,[32] and pharmaceuticals,[33] are seeing more and more productive activity conducted by nonprofits. What explains this expansion and success?

Purposeful enterprise theory provides an answer. It argues that nonprofit enterprises can harness corporate purpose as a substitute for shareholder monitoring and intervention rights, mitigating agency costs in the process. In particular, our theory draws on insights from behavioral economics and organizational science to describe how an authentically communicated purpose can provide direction for management, serve as a powerful source of motivation across the organization, and empower stakeholders as enforcers. Indeed, because authenticity of purpose depends on the sacrifice of profits, nonprofits have a head start relative to for-profit enterprise, as nonprofits are defined in part by their nondistribution constraint.[34] This Essay further explains how purposeful enterprise can generate organizational efficiencies by eliminating an expensive stakeholder with powerful control rights that may undermine

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29. Hansmann & Thomsen, supra note 15, at 173; Geoffrey A. Manne, Agency Costs and the Oversight of Charitable Organizations, 1999 Wis. L. Rev. 227, 227.

30. Danielle Ofri, Opinion, Why Are Nonprofit Hospitals So Highly Profitable?, N.Y. Times (Feb. 20, 2020), https://www.nytimes.com/2020/02/20/opinion/nonprofit-hospitals.html (on file with the *Columbia Law Review*); see also Friesenhahn, supra note 21, at tbl. A-3 (showing that nonprofit hospitals and educational institutions are larger and employ more people than their for-profit counterparts).

31. Notably, two of the largest AI companies in the world have chosen to use an enterprise foundation structure. They join other household names like Mozilla and Wikipedia, which operate as pure nonprofits. See generally Joanna Glasner, Nonprofit Tech Startups Are Neither Strange nor Destined to Flame Out, Crunchbase News (Nov. 22, 2023), https://news.crunchbase.com/startups/openai-nonprofit-tech-accelerators-yc-fast-forward/ [https://perma.cc/4BGL-26EC] (explaining that tech nonprofits can be successful—as exemplified by Mozilla, Wikipedia, and, more recently, OpenAI—while placing mission over profit).

32. See Friesenhahn, supra note 21, at tbl. A-4 (listing an 80% increase in industry sector employment for retail trade nonprofits from 2007 to 2017).

33. See Oluwarantimi Adetunji, Jon F. Oliver, Sonal Parasrampuria, Grace Singson & Trinidad Beleche, HHS, The Potential Role of the Nonprofit Pharmaceutical Industry in Addressing Shortages and Increasing Access to Essential Medicines and Low-Cost Medicines 2 (2024), https://aspe.hhs.gov/sites/default/files/documents/485fcc11d2440ddede2e455079ad9922/nonprofit-pharma-report.pdf [https://perma.cc/KXY7-PN3B] ("Researchers have proposed alternative business models [to for-profit companies] to promote growth in the nonprofit pharmaceutical sector and address some of the existing market gaps. These alternative business models include nonprofit collaborations with for-profit companies . . . ." (footnotes omitted)).

34. See infra section III.B.

the organization's mission, thus increasing the resilience and stability of the organization over time.

Moreover, purposeful enterprise theory extends beyond nonprofits and sheds light on blended entities that pursue both purpose and profit—including insulated benefit corporations, which cut off shareholder intervention rights using dual-class structuring and antitakeover provisions.[35] Our analysis shows that these blended entities resemble nonprofit businesses when they use corporate governance to elevate purpose and cut off shareholder control.[36] Therefore, insulated benefit corporations offer similar advantages to enterprise foundations, which can use nonprofit ownership of a for-profit subsidiary to cut off shareholder intervention and elevate purpose.[37] Moreover, our theory sheds light on the success of each of these three entity types and helps us understand the trade-offs presented by each form of social enterprise.

Although our theory explains why certain nonprofit enterprises may succeed over time and even outcompete for-profit competitors,[38] it is largely descriptive. It does not suggest that all companies should become nonprofits or use purpose as a substitute for shareholder control—indeed, it suggests that calls for a mandatory corporate purpose[39] are misguided because they undermine the authenticity of purpose that is necessary to secure the benefits that we observe.[40] Instead, our analysis helps us understand why purposeful enterprise has emerged and thrived in certain areas. In particular, it explains why companies ranging from AI developers[41] to pasture-raised egg farmers[42] choose—and succeed under—a purposeful enterprise form.[43]

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35. Cf. Paul B. Miller & Andrew S. Gold, Fiduciary Governance, 57 Wm. & Mary L. Rev. 513, 579 (2015) (discussing how benefit corporations "occupy a middle ground between a non-profit entity and the classic for-profit corporation").

36. Of course, there are important differences as well. In particular, benefit corporations have shareholders, while nonprofits do not. This Essay discusses these differences and their effects throughout Part II and again in section III.A.3.

37. Nonprofits may use for-profit subsidiaries for nonpurpose reasons as well, such as insulating themselves from liability or protecting their tax exemption. See Jeffrey S. Tenenbaum, Forming and Operating Subsidiaries and Related Entities, Am. Soc'y Ass'n Execs. (Dec. 21, 2015), https://www.asaecenter.org/resources/articles/an_plus/2015/december/forming-and-operating-subsidiaries-and-related-entities [https://perma.cc/5CSJ-DWUL] (discussing nonprofits' uses of for-profit subsidiaries).

38. See, e.g., Hansmann & Thomsen, supra note 15, at 173 (describing the success of nonprofit entities that possess a controlling interest in for-profit companies).

39. See, e.g., Colin Mayer, Prosperity: Better Business Makes the Greater Good 22, 24 (2018) [hereinafter Mayer, Prosperity].

40. See infra section III.B.

41. Company, Anthropic, https://www.anthropic.com/company [https://perma.cc/K8M4-NRGC] (last visited Aug. 18, 2025); OpenAI LP, OpenAI (Mar. 11, 2019), https://openai.com/index/openai-lp/ (on file with the *Columbia Law Review*).

42. About Us, Vital Farms, https://vitalfarms.com/about-us/ [https://perma.cc/A4CX-4A99] (last visited Aug. 18, 2025) [hereinafter About Us, Vital Farms].

43. See infra section II.C.

All in all, purposeful enterprise theory represents an important development in how scholars and practitioners currently think about nonprofit and other purposeful enterprises. Specifically, it offers a serious critique of the economic disaggregation of purpose and profit. Common economic and legal understanding asserts that embracing a corporate purpose other than shareholder wealth maximization is inefficient and undermines profit incentives.[44] Our analysis of nonprofit enterprise demonstrates that this assertion is incorrect: Corporate purpose may actually enhance the profitability of certain organizations.

This Essay also sheds light on fundamental debates in corporate law and governance, including that of a corporation's purpose in society. Conventional wisdom posits that corporations should be managed for the benefit of their shareholders, although advocates of alternative stakeholder governance theories have been gaining ground.[45] Shareholder primacy proponents have greeted this interest in "stakeholderism" with dismay, arguing that directing management to pursue a purpose other than profit will undermine discipline and lead to runaway agency costs, to the detriment of all.[46] Our analysis of nonprofit enterprise shows a different picture in many places—one not of rampant organizational inefficiency, but of prolonged economic success.[47] As such, our analysis provides an important counterweight to scholars who contend that accountability to shareholders is the only or best way to respond to agency costs and promote efficient business.[48]

44. Jonathan R. Macey, Corporate Governance: Promises Kept, Promises Broken 2 (2008) ("Corporations are almost universally conceived as economic entities that strive to maximize value for shareholders."); Milton Friedman, A Friedman Doctrine—The Social Responsibility of Business Is to Increase Its Profits, N.Y. Times, Sep. 13, 1970, at 32, https://timesmachine.nytimes.com/timesmachine/1970/09/13/issue.html (on file with the *Columbia Law Review*) (questioning the additional costs of "imposing [social responsibilities] on [a corporation's] stockholders, customers and employe[e]s").

45. See, e.g., Lucian A. Bebchuk & Roberto Tallarita, The Illusory Promise of Stakeholder Governance, 106 Corn. L. Rev. 91, 176 (2020) ("Stakeholderism . . . offers an inadequate and counterproductive approach to the goal of stakeholder protection; its illusory promise should not be allowed to distract from the critical needs for external laws, regulations, and policies designed to provide such protection."); Cathy Hwang & Yaron Nili, Shareholder-Driven Stakeholderism, U. Chi. L. Rev. Online (Apr. 15, 2020), https://lawreviewblog.uchicago.edu/2020/04/15/shareholder-driven-stakeholderism-hwang-nili/ [https://perma.cc/3P29-EJ3F].

46. See Bebchuk & Tallarita, supra note 45, at 101 ("Increased insulation and reduced accountability would increase managerial slack and agency costs, thus undermining economic performance and thereby damaging both shareholders and stakeholders.").

47. See Susan Rose-Ackerman, Altruism, Nonprofits, and Economic Theory, 34 J. Econ. Literature, 701, 715–25 (1996) [hereinafter Rose-Ackerman, Altruism, Nonprofits, and Economic Theory] (summarizing a number of empirical studies on cost and quality differentials); see also Hansmann & Thomsen, supra note 15, at 173 (showing the sustained profitability of enterprise foundations); Ofri, supra note 30 (discussing the profitability of nonprofit hospitals).

48. See Zohar Goshen & Richard Squire, Principal Costs: A New Theory for Corporate Law and Governance, 117 Colum. L. Rev. 767, 769 (2017) ("Many scholars . . .

Our analysis further provides practical guidance for entrepreneurs who wish to engage in purposeful enterprise. It describes how founders can elevate purpose and use it to provide discipline for motivation across the organization. Although not all companies will be able to secure the benefits of purposeful enterprise, certain firms—and dual-class firms in particular—could potentially benefit from using purpose to respond to agency cost problems created by the governance structure, improving efficiency and profitability.

The remainder of this Essay proceeds as follows. Part I begins with an overview of the existing literature on the nonprofit business form. It focuses on Hansmann's pathbreaking contract failure theory—the leading economic explanation for the existence of nonprofit enterprise. Although this lens helps explain an important advantage of nonprofit enterprise, we show that it is imperfectly explanatory. Part II introduces and elucidates purposeful enterprise theory. This Part centers on two major claims. First, by elevating corporate purpose, the business can mitigate agency problems by motivating management and lower-level employees, providing direction and promoting stakeholder enforcement. Second, the nonprofit form can create business value by eliminating an expensive stakeholder that can redirect the entity's mission over time. Importantly, this Part also explains that our theory is not universally applicable. Some businesses would benefit from a purposeful form of business, while others would not. Instead of offering a normative account, this Part concludes by explaining which types of business might be a good fit for purposeful enterprise. It further shows how our theory has descriptive purchase over the types of businesses that have become nonprofits and related purposeful businesses. Part III then turns to implications for theory and practice, including implications for the ongoing debate about corporate purpose.

I. THE PUZZLE OF NONPROFIT ENTERPRISE

This Part first defines nonprofits, as well as our subcategory of interest—nonprofit enterprise. It then discusses existing theories about why nonprofit enterprise survives—and in some cases proliferates—despite a lack of shareholders. The leading theory of nonprofit enterprise, for instance, posits that such businesses exist when arm's-length bargaining between consumers and businesses fails due to information asymmetries.[49] But many nonprofit businesses exist outside of those circumstances, presenting a puzzle that we address in Part II.

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treat the reduction of agency costs as the essential function of corporate law . . . . To reduce agency costs, the essentialists would mandate corporate-governance arrangements, such as proxy access, that allocate more control rights to shareholders. And they would ban arrangements that disempower shareholders, such as staggered boards . . . ." (footnote omitted)).

49. Hansmann, Nonprofit Enterprise, supra note 13, at 843–44.

A. *Nonprofit Enterprise*

This section defines nonprofits and their critical attributes, highlighting the potential for managerial agency costs. It then turns to nonprofit enterprise, which we define as nonprofits that primarily derive their revenues from business operations, rather than donations.

1. *Nonprofits.* — In the United States, there are approximately 1.3 million "nonprofits": a big-tent category that includes nonprofit organizations like Humane World for Animals and the American Red Cross, as well as many universities, religious organizations, charities, social clubs, and more.[50] But while many organizations call themselves nonprofits, there is a great deal of diversity within that name. Some of the organizations in that grouping are legally formed—at the outset—under various state nonprofit incorporation statutes. In Virginia, for example, one can incorporate a "nonstock corporation," which the state notes is usually "formed for non-profit purposes, such as clubs, rescue squads, and religious and charitable organizations."[51] Others might use the nonprofit moniker to mean that they have received tax-exempt status from the IRS and state-level tax authorities.[52]

A few common threads run through all nonprofits, however. First, nonprofits are, at their core, entities that are "barred from distributing [their] net earnings, if any, to individuals who exercise control over [them], such as members, officers, directors, or trustees."[53] Of note, nonprofits are not barred from *generating* profit—they can and often do make more money than they spend.[54] But they simply cannot distribute those profits to shareholders (indeed, because they cannot have any shareholders) or to managers.[55]

This "nondistribution constraint" has two major related consequences that bear emphasis: a lack of shareholders and an attendant potential for agency problems. Because there are no shareholders to

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50. What Is a "Nonprofit"?, Nat'l Council of Nonprofits, https://www.councilofnonprofits.org/what-nonprofit (on file with the *Columbia Law Review*) (last visited Aug. 18, 2025); see also Hansmann, Nonprofit Enterprise, supra note 13, at 842 (discussing nonprofit organizations and their attributes).

51. Virginia Nonstock Corporations (Including Nonprofits), St. Corp. Comm'n, https://scc.virginia.gov/pages/Virginia-Nonstock-Corporations-FAQs [https://perma.cc/R46R-3E7U] (last visited Aug. 18, 2025).

52. George E. Constantine, Robert L. Waldman, Janice M. Ryan & Yosef Ziffer, The Difference Between Nonprofit and Tax-Exempt Status, Venable LLP (1999), https://www.venable.com/insights/publications/1999/10/the-difference-between-nonprofit-and-taxexempt-sta [https://perma.cc/3NZ6-6REL].

53. Hansmann, Nonprofit Enterprise, supra note 13, at 838.

54. Id.

55. Nonprofit managers can only receive salaries, benefits, and limited forms of performance-based compensation. See Compensation for Nonprofit Employees, Nat'l Council of Nonprofits, https://www.councilofnonprofits.org/running-nonprofit/employment-hr/compensation-nonprofit-employees (on file with the *Columbia Law Review*) (last visited Aug. 18, 2025).

whom the organization can distribute profits, nonprofits generally plough their profits back into the business.[56] In theory, this can help the entity's growth and survival because money is being put back into the nonprofit's mission—caring for shelter animals, running blood drives, or other activities.

And yet, as others have noted, there are many problems inherent to the nonprofit form, such as difficulties in securing investment and potentially higher costs of goods and services.[57] But perhaps the largest potential problem is that of agency costs: Because an entity without shareholders does not benefit from shareholder monitoring, management can use its control of the organization to secure private benefits or otherwise operate the entity inefficiently.[58]

Agency costs represent a major problem for all organizations, not just nonprofits. Indeed, for decades, corporate scholars have worried about the "separation of 'ownership' and 'control'"—a phrase coined in 1983 by economists Eugene Fama and Michael Jensen to describe how corporate shareholders (the owners) do not control the company they own.[59] While this separation has advantages, it also leads to agency problems: Corporate managers, who are acting as the shareholders' agents in managing the corporation, may be motivated to act in their own interests rather than in the interests of the shareholders and the corporation.[60]

A rich web of corporate law, policy, and practice has arisen to address agency costs that arise from the corporate form.[61] Perhaps the most

56. See, e.g., OpenAI LP, supra note 41 (noting that after investors receive their capped returns, all additional profits go to the nonprofit and warning investors that it has no obligation to generate a profit for them); see also Hansmann, Nonprofit Enterprise, supra note 13, at 838 ("Net earnings, if any, must be retained and devoted in their entirety to financing further production of the services that the organization was formed to provide.").

57. See Armen A. Alchian & Harold Demsetz, Production, Information Costs, and Economic Organization, 62 Am. Econ. Rev. 777, 789–90 (1972) (explaining that, in nonprofit corporations, the future benefits of improved management are not capitalized into the present value of stock); Manne, supra note 29, at 227–28 (detailing the agency problems that nonprofits face, such as improperly defined ownership, questionable or nonexistent voting rights, ambiguous charitable goals, a lack of significant second-order markets, and insufficient monitoring by residual claimants).

58. See Molk & Sokol, supra note 15, at 1513 (describing the agency cost problem facing nonprofits).

59. Eugene F. Fama & Michael C. Jensen, Separation of Ownership and Control, 26 J.L. & Econ. 301, 301 (1983). But the concept goes back to Adolf Berle and Gardiner Means. See Berle & Means, supra note 25, at 3–112 (describing the phenomenon of separated ownership and control).

60. See Molk & Sokol, supra note 15, at 1513 ("Managers may invest firm resources in ways that maximize the returns of the manager, instead of those of the firm, such as by having a nicer office or by undertaking an acquisition for purposes of empire building value." (footnote omitted)).

61. See, e.g., Lund & Pollman, supra note 26, at 2563–65 (describing the corporate governance machine, which safeguards shareholders via law, culture, and institutions).

important guardrail against agency costs, however, is shareholder control. Shareholders have a variety of rights, including the right to elect directors, to sue directors and officers on behalf of the corporation, and to make and vote on shareholder proposals, for instance.[62] They are motivated to use those rights because their own money is on the line—if an executive is paid too much, that means less for the shareholders to enjoy as dividends.

Nonprofit governance is different. When management misbehaves, there are no shareholders to vote for their removal or to withhold approval in the next election.[63] Although nonprofit directors and officers owe fiduciary duties to the organization, there are few people with incentives to enforce them.[64] In lieu of shareholder monitoring, nonprofits are officially monitored by state attorneys general, but these offices generally lack the resources and incentives to monitor nonprofits carefully.[65] In theory, donor-supported nonprofits are also monitored by their donors, but donors may fail to devote sufficient attention to the business to control managerial self-dealing.[66]

Therefore, we might expect that an organization without shareholders would be run inefficiently. Instead of investing in the business, management could pay themselves high salaries without reprisal.[67]

62. See Julian Velasco, The Fundamental Rights of the Shareholder, 40 U.C. Davis L. Rev. 407, 413–24 (2006).

63. Molk & Sokol, supra note 15, at 1509.

64. See id. at 1514 ("Although the [fiduciary] duties carry over to the nonprofit context, the effectiveness of boards, shareholders, and outside monitors in enforcing those duties does not."); see also Galle & Walker, supra note 15, at 1887 (arguing that president pay in higher education rises when there are fewer external constraints); Brian Galle, Valuing the Right to Sue: An Empirical Examination of Nonprofit Agency Costs, 60 J.L. & Econ. 413, 413 (2017) [hereinafter Galle, Right to Sue] ("By guaranteeing that the firm will not distribute profits, nonprofit status assures donors that managers will not skimp on charitable goals to enrich themselves. . . . [E]ven with this guarantee, other forms of agency slack are still possible . . . ."). The IRS also polices nonprofits, but its focus is on enforcing the code provisions that relate to an organization's tax-exempt status. See Henry B. Hansmann, Reforming Nonprofit Corporation Law, 129 U. Pa. L. Rev. 497, 601–06 (1981) (describing how the IRS pursues enforcement against nonprofits); Molk & Sokol, supra note 15, at 1525–26 ("Theoretically, although state attorneys general are charged with protecting the general public interest, the IRS's interest is narrower, focusing only on ensuring that assets with preferential tax treatment are not funneled into private, non-preferenced uses.").

65. See Susan N. Gary, Regulating the Management of Charities: Trust Law, Corporate Law, and Tax Law, 21 U. Haw. L. Rev. 593, 622–24 (1999) (describing the limitations of state attorneys general); Regulating Nonprofit Health Care: Insights From State Attorneys General, McDermott Will & Emery (Aug. 29, 2018), https://www.healthlifesciencesnews.com/2018/08/regulating-nonprofit-health-care-insights-state-attorneys-general/ [https://perma.cc/KMS2-CMBQ] (discussing "the interplay between State Attorneys General enforcement authority and nonprofit Board of Directors responsibility in the governance and operation of health systems"). The same limitations plague the IRS, which monitors tax-exempt entities to ensure compliance with the tax code. Molk & Sokol, supra note 15, at 1525–26.

66. Donor influence may also present its own costs. See infra section II.A.3.

67. Many nonprofit executives do indeed pay themselves large salaries. See, e.g., Nonprofit Compensation Packages of $1 Million or More, Charity Watch,

The organization might be slower at meeting consumer demand, or it may use inputs less efficiently.[68] Over time, we might predict that for-profit enterprise would outcompete nonprofit rivals. Yet, as the next section highlights, nonprofit enterprise exists, and even flourishes, across the globe. And therefore, the puzzle as to how nonprofits manage these agency problems remains.

2. *Nonprofit Enterprise*. — Nestled within the big-tent definition of nonprofit entities is the *nonprofit enterprise*—the type of nonprofit with which this Essay is concerned.[69] Nonprofit enterprises include nonprofits that primarily derive their revenues from business operations, rather than from donations.

Here, this Essay draws on Hansmann's seminal 1980 article on nonprofit enterprise, which differentiates between "donative" and "commercial" nonprofits.[70] The former are "[n]on-profits that receive most or all of their income in the form of grants or donations."[71] Commercial nonprofits, by contrast, "are those that receive the bulk of their income from prices charged for their services."[72]

This Essay's definition of nonprofit enterprise encompasses commercial nonprofits, but with two further wrinkles. First, like Hansmann, it recognizes that enterprises may not be fully donative or commercial.[73] Rather, these definitions exist on a continuum. Hansmann notes that the Salvation Army, known for its holiday-time bell-ringing donation drives, would be an example of a donative nonprofit.[74] And yet, it surely derives income from its many thrift stores, too. The Salvation Army is mostly donative, but a bit commercial. Hospitals, on the other hand, might generate

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https://www.charitywatch.org/nonprofit-compensation-packages-of-1-million-or-more (on file with the *Columbia Law Review*) (last visited Aug. 18, 2025).

68. Hansmann, Nonprofit Enterprise, supra note 13, at 844.

69. In this way, this Essay differs from those that focus on the effectiveness of purely donative organizations, such as NGOs. See, e.g., Mary Kay Gugerty & Dean Karlan, The Goldilocks Challenge: Right-Fit Evidence for the Social Sector 8 (2018) (explaining how technological advancement has "increase[d] the supply of information available to both organizations and donors"); Ofer Eldar, The Role of Social Enterprise and Hybrid Organizations, 2017 Colum. Bus. L. Rev. 92, 100 (focusing on "social enterprises," defined as "organizations . . . that . . . have a commitment to transacting with their beneficiaries, who are either purchasers of the firm's goods or services or suppliers of inputs . . . to the firm" (internal quotation marks omitted)); Burton A. Weisbrod, An Agenda for Quantitative Evaluation of the Nonprofit Sector: Need, Obstacles, and Approaches, *in* Measuring the Impact of the Nonprofit Sector 273, 273 (Patrice Flynn & Virginia A. Hodgkinson eds., 2001) (focusing on "501(c)(3) nonprofits that receive the principal public subsidies"); Ofer Eldar, The Organization of Social Enterprise 4 (Eur. Corp. Governance Inst., Fin. Working Paper No. 987/2024, 2025), https://ssrn.com/abstract=3217663 [https://perma.cc/4EH9-GHLX] (focusing on social enterprises' "transactional relationships with beneficiaries").

70. Hansmann, Nonprofit Enterprise, supra note 13, at 840.

71. Id.

72. Id.

73. Id. at 841.

74. Id. at 840.

most of their income from services rendered—but, as the portraits that line hospital hallways attest, they are not above accepting the largesse of the wealthy, either. As a result, hospitals are mostly commercial, but a bit donative. Again, our analysis encompasses entities like hospitals that generate revenue primarily from operations, rather than donations (and excludes the Salvation Army, for which the business is less central to the entity's operations).

Second, unlike Hansmann, our analytical scope sweeps in enterprise foundations.[75] Enterprise foundations are nonprofits (or equivalent entities, such as trusts or foundations) that own and control for-profit businesses.[76] As a result, the nonprofit is required to exercise its control of the entity pursuant to the nonprofit's purpose. Of course, the for-profit businesses that it controls can (and often do) have shareholders that take profits out of the business. But the enterprise foundation structure ensures that those shareholders have limited influence.[77]

An enterprise foundation's key characteristic is that the nonprofit controls the business, under the watchful eye of a self-perpetuating board that is duty-bound to promote the nonprofit purpose.[78] This control can

75. Although Hansmann's 1980 article did not include enterprise foundations, in a later coauthored work, Hansmann stated that his theory offered descriptive purchase in the context of enterprise foundations as well. See Hansmann & Thomsen, supra note 15, at 179–82 (applying Hansmann's previous framework for analyzing nonprofits to nonprofit enterprises).

76. See Steen Thomsen & Nikolaos Kavadis, Enterprise Foundations: Law, Taxation, Governance, and Performance, 6 Annals Corp. Governance 227, 228 (2022) ("Enterprise foundations are foundations that own companies. The foundations are independent self-governing entities without owners. The companies may be active in any private business activity.").

77. Enterprise foundations are essentially the upside-down version of the traditional structure involving a for-profit corporation with a charitable arm that is controlled by the corporation. Oil and gas giant ExxonMobil Corporation, for instance, has a "philanthropic arm," the ExxonMobil Foundation, which "has a strategic focus supporting education with an emphasis on math and science in the United States, promoting women as catalysts for economic development and ending deaths from malaria." ExxonMobil Foundation, Devex, https://www.devex.com/organizations/exxonmobil-foundation-37750 [https://perma.cc/JA3E-RPL6] (last visited Aug. 18, 2025); see also Worldwide Giving Report, ExxonMobil, https://corporate.exxonmobil.com/who-we-are/corporate-giving/worldwide-giving [https://perma.cc/XY8L-GJWT] (last visited Aug. 18, 2025) (illustrating the breakdown of ExxonMobil's contributions and community investments). In these organizations, the for-profit is often intimately engaged with the nonprofit's activities, and the nonprofit engages in activities that help the for-profit, such as improving the for-profit's public image. See Michael E. Porter & Mark R. Kramer, The Competitive Advantage of Corporate Philanthropy, Harv. Bus. Rev., Dec. 2002, at 57, 57.

78. The level of effective control exercised by the nonprofit over the business varies, however. Some nonprofits, like Anthropic's Long Term Benefit Trust, exhibit substantial control over the business (and, indeed, this is the point of the structure). See Perrigo, Inside Anthropic, supra note 1 (detailing the power of the Long Term Benefit Trust). Others take a stance of zero interference in the business—for example, the Pierre Fabre Foundation (which controls the for-profit French consumer goods company) states that it "does not get directly involved in the operational management of the company,"

manifest because the nonprofit is the sole owner of the business (as is true of Det Norske Veritas, a Norwegian company[79]). In the alternative, the nonprofit may own a minority stake in the business but exercise control via a dual-class voting structure (as is true of Hershey, the American candy company,[80] and Novo Nordisk, the most profitable pharmaceutical company in Europe[81]). The punchline, however, is that the enterprise foundation blends both nonprofit and for-profit elements but gives the nonprofit entity control over the for-profit one.

B. *The Puzzle of Proliferation*

With the definitional elements squared away, this Part now turns to our core question: How does nonprofit enterprise survive, and in some cases flourish, despite having no shareholders to monitor management and intervene when problems arise?

"Private nonprofit institutions account for a sizable and growing share of our nation's economic activity."[82] So begins Hansmann's *The Role of Nonprofit Enterprise*. Hansmann's article was not only area-defining but also prescient. In 1980, nonprofit business was growing in economic importance.[83] Nonprofit activity continues to be significant, accounting for "over a trillion dollars . . . of [the] U.S. gross domestic product[] [and] employ[ing] twelve million people."[84] And given heightened interest from consumers, employees, and even shareholders in business as a force for good, we expect that an increasing amount of economic activity will be undertaken by nonprofit or blended enterprise in the coming years.

While nonprofit enterprises can exist in just about any industry, they dominate several. Of the United States' 6,093 hospitals, for instance, only 1,214 are for-profit.[85] Nonprofits also dominate in the post-secondary

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despite holding a majority stake in the company. The Foundation, Fondation Pierre Fabre, https://www.fondationpierrefabre.org/en/the-foundation/dna/ [https://perma.cc/7BX5-NM7B] (last visited Aug. 18, 2025).

79. See About Det Norske Veritas, Det Norske Veritas, https://www.detnorskeveritas.com/about/#:~:text=Stiftelsen%20Det%20Norske%20Veritas%20is [https://perma.cc/T673-ZLLK] (last visited Aug. 19, 2025) (describing the ownership structure of Det Norske Veritas); see also Det Norske Veritas, Annual Reports 2017 for Stiftelsen Det Norske Veritas 2 (2017), https://share.google/I94nd7enlICOOLlIe (on file with the *Columbia Law Review*) (describing the ownership structure of the company).

80. Hershey, Notice of 2024 Annual Meeting and Proxy Statement: 2023 Annual Report 8 (2024), https://hershey.gcs-web.com/static-files/db1ce4c6-2737-42ee-94bf-b011f50a69cf (on file with the *Columbia Law Review*).

81. Ownership, Novo Nordisk Found., https://novonordiskfonden.dk/en/who-we-are/ownership/ [https://perma.cc/X4LJ-LVEV] (last visited Aug. 18, 2025).

82. Hansmann, Nonprofit Enterprise, supra note 13, at 835.

83. Id.

84. Molk & Sokol, supra note 15, at 1498 (footnote omitted).

85. Fast Facts on U.S. Hospitals, 2025, Am. Hosp. Ass'n, https://www.aha.org/statistics/fast-facts-us-hospitals [https://perma.cc/UT7T-G2Q5] (last updated Jan. 2025)

education sector. Of the nearly four thousand post-secondary institutions listed by the National Center for Education Statistics, only about seven hundred are for-profit; the rest are not-for-profit or government-run.[86] For many nonprofit hospitals and nonprofit schools—and numerous other nonprofit enterprises like these, which generate much or most of their revenue from business operations—the nonprofit form is a choice.

This section first discusses the leading answer to the puzzle of why nonprofit enterprise exists—an answer provided by Hansmann's 1980 article. It then evaluates how Hansmann's theory has fared in the subsequent years. Although his theory remains an important part of the nonprofit enterprise puzzle, it does not explain why nonprofits exist and proliferate in certain areas. And this lack of explanatory power leaves room for new theories to explain why nonprofit business can survive and even thrive.

1. *Contract Failure Theory.* — Hansmann's theory focuses on the idea of "contract failure."[87] At the core of Hansmann's theory is that old economic chestnut of supply and demand and the consumer's ability (or inability) to accurately gauge the quality of goods and services being sold. As Hansmann noted, "Economic theory tells us that, when certain conditions are satisfied, profit-seeking firms will supply goods and services at the quantity and price that represent maximum social efficiency."[88] Among the most important of those conditions is consumers' ability to compare market products, negotiate clearly for products and prices, and figure out if the producer has held up its end of the bargain in supplying the goods or services.[89] In other words, consumers must have enough information to contract effectively.

When consumers are unable to contract effectively for certain goods and services—that is, when there is a contract failure—consumers can turn to nonprofits. Nursing care is one of Hansmann's paradigmatic examples: "The patients who receive the services often are too enfeebled to be able to judge effectively the quality of care they receive, or to press complaints against managers or seek out an alternative institution."[90] Moreover, the payer of the services is often an insurer—not the recipient of the services—and has less stake in the quality of the care provided.[91] A similar story applies to hospital care and, to a lesser extent, daycare.[92]

(noting that about 1,100 are federal, state, and local government hospitals, and almost all of the rest are organized as nonprofits).

86. Josh Moody, A Guide to the Changing Number of U.S. Universities, U.S. News & World Rep. (Apr. 27, 2021), https://www.usnews.com/education/best-colleges/articles/how-many-universities-are-in-the-us-and-why-that-number-is-changing (on file with the *Columbia Law Review*).

87. Hansmann, Nonprofit Enterprise, supra note 13, at 845.

88. Id. at 843.

89. Id.

90. Id. at 864.

91. Id.

92. Id.

In these situations, "the advantage of a nonprofit producer is that the discipline of the market is supplemented by the additional protection given the consumer by another, broader 'contract,' the organization's legal commitment to devote its entire earnings to the production of services."[93] Because nonprofits have no shareholders to cater to, consumers are assured that the nonprofit is less likely to cut corners in service of a profit-maximizing goal.

And yet, Hansmann does not challenge the classic view that without a profit motive, nonprofit businesses may operate inefficiently. Hansmann argues, however, that in some circumstances, the advantages that the nonprofit form provides in assuring consumers of product quality will outweigh these shortcomings.[94]

2. *The Limits of Contract Failure.* — In the almost half-century since Hansmann's article was published, much of his contract failure theory remains relevant. And yet, as Hansmann himself has since recognized,[95] the theory has proven imperfectly descriptive.[96]

One imperfection that has become especially apparent is that nonprofits now flourish in industries where Hansmann's theory predicted they would not, such as those producing standardized goods that are easy to compare.[97]

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93. Id. at 844.

94. Id. Although this theory was initially developed in the context of a pure nonprofit, Hansmann and Thomsen subsequently recognized that "[t]he theory [of nonprofit organizations] helps to explain why entrepreneurs might desire to pass control of their companies to industrial foundations." Hansmann & Thomsen, supra note 15, at 180. The authors explain that the enterprise foundation structure allows the founder to ensure that control of their company will perpetuate "beyond the grave." Id. In other words, the contract failure narrative changes to respond to a founder's inability to secure perpetual control via contract. However, this theory does not explain the ongoing success of these entities, as the authors recognize. Id. at 181 (arguing that this structure should result in agency costs but does not seem to).

95. See, e.g., Hansmann & Thomsen, supra note 15, at 181 (discussing how Hansmann's contract failure theory does not capture the puzzling success of foundation-owned firms).

96. See id. at 180 ("[T]he goods and services that Danish FOFs typically produce . . . are not characterized by unusual degrees of asymmetric information between the company and its customers. . . . [R]eassurance to consumers can have little to do with the motives for putting these companies under the control of nonprofit foundations."); see also Vladislav L. Valentinov, Explaining Nonprofit Organisation: The Social Value Approach, J. Co-operative Stud., Sep. 2005, at 22, 23 (arguing that "the major existing economic theories of nonprofits, in spite of their important complementarities, still do not offer equally convincing explanations for every possible structural and organisational types of these organisations").

97. Hansmann, Nonprofit Enterprise, supra note 13, at 843. A related theory is that nonprofits allow stronger consumer control over firms, which may be necessary to guarantee product quality. See Ellman, supra note 15, at 1000 (advancing this theory). But this consumer control theory has limited empirical and explanatory support. Valentinov, supra note 96, at 24.

Consider the following examples. German automotive supplier Mahle is 99.9% owned by the Mahle Foundation, a nonprofit foundation formed in the 1960s by the founders of the company.[98] Automotive supplies are a quintessential example of standardized goods—consumers have no trouble evaluating and comparing them before purchasing, rendering Hansmann's theory irrelevant in this context. Likewise, furniture giant IKEA is owned by a complex web of for-profit and nonprofit companies, with the result being that all of its profits flow to the nonprofits.[99] Again, given the ease by which consumers can evaluate and compare furniture, contract failure does not explain why this structure has worked for the company. And in the United States, the Hershey Trust Company, a Pennsylvania chartered trust, has the explicit goal of "advanc[ing] the legacy and vision of Milton and Catherine Hershey in perpetuity through excellence in asset management and trust administration."[100] Although it is the minority owner of Hershey—a publicly traded company—the trust owns the majority of the company's voting stock.[101] This structure means that although Hershey is a for-profit company, it is controlled by an entity that has the explicit purpose of preserving the Hershey family's legacy. Given the nature of the business—producing candy for consumer consumption—contract failure cannot help us understand why the business has persisted for decades in spite of this structure that has all of the hallmarks of bad corporate governance.[102]

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98. Engagement of the MAHLE Foundation, MAHLE, https://www.us.mahle.com/en/sustainability/mahle-foundation/ [https://perma.cc/YDC8-JQB4] (last visited Aug. 19, 2025).

99. Jules Gray, Does IKEA Truly Deserve Its Non-Profit Status?, World Fin., https://www.worldfinance.com/markets/does-ikea-truly-deserve-its-non-profit-status [https://perma.cc/M4PR-3ZKS] (last visited Aug. 19, 2025).

100. Our Vision and Mission, Hershey Tr. Co., https://www.hersheytrust.com/vision-and-mission.html [https://perma.cc/SS8U-7YHH] (last visited Aug. 19, 2025).

101. Masaaki Yoshimori, Looking a Gift Horse in the Mouth: A Reassessment of the Impact of the Hershey Trust, 6 SocioEcon. Challenges 87, 96 (2022).

102. Note that the Hershey example shows one complication of nonprofit enterprise: State attorney general enforcement, though rare, can threaten economic value. In 2001, the trust announced that it was contemplating a sale of its controlling interest in the company "to protect the financing for its main beneficiary, the Milton Hershey School." Andrew Ross Sorkin, Hershey Trust Halts Auction Despite Offer of $12 Billion, N.Y. Times (Sep. 18, 2002), https://www.nytimes.com/2002/09/18/business/hershey-trust-halts-auction-despite-offer-of-12-billion.html (on file with the *Columbia Law Review*). On the day of the announcement, the company's stock price rose 25% in a day. Sean Carr, Gustavo Rodriguez, Kenneth M. Eades, Chris Muscarella & Sam Weaver, Hershey Foods Corporation: Bitter Times in a Sweet Place (May 4, 2018) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=909738 (on file with the *Columbia Law Review*). Eventually, the trust negotiated a $12.5 billion offer for the trust's stake (representing a 42% premium for shareholders) from Wrigley, which promised to keep local factories open after the sale. Sorkin, supra. Although shareholders welcomed this news, the community was outraged and began putting pressure on the company to abandon the sale. Mark Tran, Town Saved as Hershey Sale Called Off, The Guardian (Sep. 18, 2002), https://www.theguardian.com/business/2002/sep/18/money1 [https://perma.cc/563V-DTVA]. Eventually, Pennsylvania's

Many more examples of nonprofit enterprise exist across the globe, in industries that produce standardized goods in competitive markets in which consumers can compare products and ensure that the manufacturer abides by their deal. Moreover, nonprofits have begun to proliferate in industries that Hansmann's theory did not contemplate or anticipate—such as the pharmaceutical and technology sectors. Indeed, in his 1980 article, Hansmann suggested that even though consumer information asymmetries are present in the pharmaceutical industry, these "small and discrete" transactions with low switching costs reduced the hazards of any given transaction and thus explained why pharmaceutical nonprofits did not exist.[103] Today, however, there are several successful pharmaceutical companies that operate as nonprofits or enterprise foundations, again suggesting weaknesses in Hansmann's theory.

More fundamentally, changes in the search and information technology environments have further undermined Hansmann's claim. Consider education, one of Hansmann's paradigmatic examples. When choosing a school, a child's parents may struggle to evaluate the "complex and subtle service."[104] Moreover, the parents may not get a fair and thorough evaluation from the child.[105] As such, the nonprofit school provides an additional layer of assurance about quality to the parent.[106] In modern times, however, schools are evaluated in a number of ways, on online ranking and review sites, in guidebooks, and in consultation with educational professionals.[107] This abundance of information undermines the argument that nonprofit status is necessary to convince parents of educational quality. A similar level of information exists about nursing homes and hospitals—they are evaluated by nonprofit and for-profit ratings providers, as well as third-party accreditation agencies.[108] More importantly, we doubt that individuals searching for a nursing home or hospital pay much attention to nonprofit versus for-profit status: Far more

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Attorney General sought to block the sale in the Dauphin County Orphans Court, contending that the "sale could devastate the town, where about 6,200 people work for the company." Sorkin, supra. A judge eventually granted a temporary injunction in a sharp opinion that criticized the trustees. Id. Eventually, Hershey abandoned the plan, and the board was overhauled after the Orphans Court judge criticized it for becoming too detached from its philanthropic mission. Id.

103. Hansmann, Nonprofit Enterprise, supra note 13, at 869.

104. Id. at 866.

105. Id. ("[I]n many cases a parent or a student may not feel competent to make adequate judgments about the quality of the teaching and facilities that an institution offers.").

106. Id. at 865 (describing that, for services like day care, "it is natural for a parent to turn to a nonprofit provider on the assumption that such an institution will be less likely to abuse the trust that must necessarily be placed in it").

107. See, e.g, 2025 Best Law Schools, supra note 23.

108. See, e.g., Best Hospitals Rankings & Ratings, U.S. News & World Rep., https://health.usnews.com/best-hospitals (on file with the *Columbia Law Review*) (last visited Nov. 7, 2025).

important are factors such as proximity to the customer's home, the facility's affiliation with familiar doctors, and accepted insurance.[109]

Therefore, the ensuing years have begun to tug the weave of Hansmann's contract failure theory.[110] As such, we return to the original question and ask: Are there additional considerations that can explain why businesses survive and even flourish as nonprofits?[111]

II. A THEORY OF PURPOSEFUL ENTERPRISE

This Part describes purposeful enterprise theory and argues that it helps to explain the existence and persistence of nonprofit enterprise. Drawing on insights from organizational science and behavioral economics, it posits that organizational purpose can play a role in not just the selection of the nonprofit form but also the success of the business.[112] This Part first shows how purpose can help the nonprofit enterprise address agency costs. Specifically, purpose can act as a substitute for shareholder monitoring enforcement by creating a clear directive for management, aligning incentives across the organization, and promoting enforcement. Second, the nonprofit form can also promote value creation

109. See, e.g., Choosing a Hospital, N.Y. St. Dep't Health, https://profiles.health.ny.gov/hospital/pages/choosing_a_hospital [https://perma.cc/4R46-LXBJ] (last visited Aug. 24, 2025) (describing the factors to consider when choosing a hospital, including the hospital's location); see also Evelyn Brody, Agents Without Principals: The Economic Convergence of the Nonprofit and For-Profit Organizational Forms, 40 N.Y. L. Sch. L. Rev. 457, 526 (1996) ("Patients cannot simply check into their local trustworthy nonprofit hospital; rather, they must have a doctor with staff privileges admit them.").

110. See Brody, supra note 109, at 462–71 (providing additional arguments about the limits of the contract failure theory); Salamon, supra note 13, at 36 (arguing that if contract failure was the explanation for nonprofit goods, we would "expect more reliance on government agencies than nonprofit ones").

111. As previously discussed, other theoretical accounts also provide explanations for the existence of nonprofits. See supra note 13. In particular, Burton Weisbrod theorized that nonprofits exist to deal not with contract failure, but government failure—this became known as the "public goods" theory. A. James Lee & Burton A. Weisbrod, Collective Goods and the Voluntary Sector: The Case of the Hospital Industry, *in* The Voluntary Nonprofit Sector: An Economic Analysis, supra note 13, at 77, 77 ("We have posited that the demands by some consumers for collective goods will be undersatisfied by governments, and that some of the excess demand will spill over into the voluntary sector."). As discussed, this Essay's scope is narrower and simply considers why people who wish to do good in the world choose to do so through a business and whether that business would be better run if it had shareholders. As such, Hansmann's contract failure theory is this Essay's lodestar—it not only explains why nonprofits exist, but also why nonprofit business can offer a competitive advantage relative to for-profit business.

112. This account relates to work by Valentinov, who posits that donative nonprofits allow people to realize their social values, which cannot be done under the for-profit form. See Valentinov, supra note 96, at 24 (explaining that nonprofits must use donations for their intended purpose, whereas for-profits are incentivized to use donations to turn a profit). This Essay sharpens and deepens this point by showing how the realization of social values can improve organizational efficiency and respond to agency costs in enterprise nonprofits.

by eliminating an expensive stakeholder and better ensuring long-term stability.

Purposeful enterprise theory helps us understand the aspects of nonprofit governance that can help an organization survive and thrive. Importantly, it does not contend that nonprofits are more efficient than for-profit businesses. Examples of inefficient business and managerial misconduct exist in the nonprofit world,[113] just as they do in the for-profit world.[114] Instead, as discussed in section II.D, this analytical framework helps us understand why nonprofits have emerged and thrived in certain industries and not others.[115]

A. *Purpose and Agency Costs*

Agency costs plague both for-profit and nonprofit enterprise: Corporate management may slack off, make misguided choices, or pursue their own self-interest, all at the expense of business value.[116] In for-profit enterprise, corporate governance scholars generally offer two solutions, both rooted in financial rewards (or punishments) for managers. Ex ante,

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113. For a recent example, see Emily Steel, A Pattern of Lavish Spending at a Leading L.G.B.T.Q. Nonprofit, N.Y. Times (Aug. 1, 2024), https://www.nytimes.com/2024/08/01/business/glaad-ceo-spending.html (on file with the *Columbia Law Review*) ("[E]mployees voiced concerns about whether the organization raised funds for one purpose and then spent the money on over-the-top pay packages and other extravagances for executives.").

114. See, e.g., Michael Peregrine & Charles Elson, Twenty Years Later: The Lasting Lessons of Enron, Harv. L. Sch. F. on Corp. Governance (Apr. 5, 2021), https://corpgov.law.harvard.edu/2021/04/05/twenty-years-later-the-lasting-lessons-of-enron/ [https://perma.cc/4NCN-H65B] ("[Board oversight failures] included inadequate and poorly implemented internal controls; the failure to exercise sufficient vigilance; . . . failure to respond adequately when issues arose[;] . . . cursory review of critical matters by the audit and compliance committee; [and] the failure to insist on a proper information flow . . . .").

115. Like Hansmann, this Essay does not suggest that tax benefits offer a full explanation for the success of nonprofit enterprise. This is because not all nonprofits secure tax-exempt status, and even those that do may not be exempt from income taxation. Nonprofit businesses, like for-profit businesses, are also subject to a host of other taxes, including payroll, local, real estate, property, and sales taxes. See Constantine et al., supra note 52 (describing how tax-exempt organizations are subject to various taxes). As such, while tax law may encourage the creation of nonprofits in some jurisdictions (because it allows the donor to escape wealth taxes), these exemptions should not materially improve the ongoing performance of nonprofit enterprise and therefore explain their success. See also Hansmann & Thomsen, supra note 15, at 184 ("Danish law permitted the founder's initial gift of stock to escape inheritance, wealth, and capital gains taxes. But this exemption should not affect the subsequent relative performance of [foundation-owned firms], which are taxed like their proprietary counterparts.").

116. This recognition goes back to Berle and Means, who observed that top corporate executives, "while in office, have almost complete discretion in management." See Berle & Means, supra note 25, at 139–40. Since Michael C. Jensen and William H. Meckling's seminal article, the problem of managerial power and discretion has been analyzed in modern finance as an "agency problem." See Michael C. Jensen & William H. Meckling, Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure, 3 J. Fin. Econ. 305, 309 (1976).

companies can tie management's compensation to performance of the company. Specifically, stock options, bonuses, and other incentive-based compensation structures help align management's incentives with those of shareholders.[117] Ex post, shareholders can be expected to monitor management, ousting inept directors through regular elections or proxy fights.[118]

Of course, these incentives are not available in the nonprofit context due to a lack of shareholders. And we posit that for many nonprofit businesses, purpose can fill the gap left by a lack of shareholders, financial incentives, and other agency cost-curbing mechanisms. This section highlights three specific ways that purpose can serve as a substitute for shareholder monitoring and enforcement: providing direction for management, serving as an incentive alignment device, and promoting stakeholder enforcement.

1. *Purpose as Direction.* — A higher organizational purpose can reduce agency costs by inverting the purpose–profit relationship, providing direction to corporate management about the organization's goals in the process.

In a typical for-profit organization, management maximizes value for shareholders by pursuing profit. In practical terms, this means that in for-profit enterprises, profit drives purpose. Even companies that take steps to delineate a higher purpose will find it subsumed by the pursuit of profit due to legal and institutional realities. It is black-letter Delaware corporate law that fiduciaries must manage the corporation "in the best interests of the company."[119] Perhaps more important, as one of us has written elsewhere, there is a "corporate governance machine" that puts extralegal pressure on corporate management to pursue shareholder gains.[120]

The legal and cultural ascendance of shareholder primacy is based on the belief that without the directive to pursue profit, management would be lost. Corporate management chosen for their business acumen lack the expertise needed to promote social responsibility or some other goal; faced with the broad discretion that travels with purpose, management

117. See Lucian Bebchuk & Jesse Fried, Pay Without Performance: The Unfulfilled Promise of Executive Compensation 6 (2004) ("Those applauding the rise in executive compensation have stressed the benefits to shareholders from strengthening managers' incentives to increase shareholder value. . . . Higher compensation has been presented as essential for improving managers' incentives . . . .").

118. See, e.g., Marcel Kahan & Edward B. Rock, Hedge Funds in Corporate Governance and Corporate Control, 155 U. Pa. L. Rev. 1021, 1028–29 (2007) (describing how hedge fund activists confront managers and, in so doing, may "help overcome the classic agency problem of publicly held corporations").

119. See Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173, 180 (Del. 1986) (internal quotation marks omitted) (quoting Aronson v. Lewis, 473 A.2d 805, 812 (Del. 1984)); eBay Domestic Holdings, Inc. v. Newmark, 16 A.3d 1, 36 (Del. Ch. 2010) (internal quotation marks omitted) (quoting *Aronson*, 473 A.2d at 812).

120. Lund & Pollman, supra note 26, at 2565–66.

would fail or use their discretion to benefit themselves.[121] And yet, note that the directive to maximize shareholder value is not terribly clear either. For example, any business decision has trade-offs—between long-term value and short-term value, between risk and reward, between different values that different shareholders hold.[122]

Unlike a for-profit business, the nonprofit form tends to elevate purpose over profit. If a nonprofit enterprise incorporates under a nonprofit statute, for example, founders in most states are required to identify a charitable purpose.[123] If the entity seeks federal tax-exempt status (as most do), the IRS will also require the specification of a distinct charitable purpose.[124]

Moreover, the legal and institutional environment facing nonprofits facilitates a focus on the entity's social purpose. Nonprofit directors and officers owe fiduciary duties, but these duties are viewed through the prism of the entity's mission. Like directors of for-profits, nonprofit directors owe a duty of care and a duty of loyalty to the organization.[125] Unlike corporate directors, however, nonprofit fiduciaries owe a duty of obedience to carry out the nonprofit's mission.[126] In addition, the lack of shareholders means

121. See Friedman, supra note 44, at 32 (describing the discretion afforded to managers and the problems this discretion causes); N. Gregory Mankiw, C.E.O.s Are Qualified to Make Profits, Not Lead Society, N.Y. Times (July 24, 2020), https://www.nytimes.com/2020/07/24/business/ceos-profits-shareholders.html (on file with the *Columbia Law Review*) ("[T]he world needs people to look out for the broad well-being of society. But those people are not corporate executives. They are elected leaders who are competent and trustworthy.").

122. Dorothy S. Lund, Enlightened Shareholder Value, Stakeholderism, and the Quest for Managerial Accountability, *in* Research Handbook on Corporate Purpose & Personhood 91, 97–98 (Elizabeth Pollman & Robert B. Thompson eds., 2021). It can also lead to agency cost issues. Id. at 101.

123. Drake Forester, Nonprofit Purpose and Tax-Exempt Status, Score (Mar. 7, 2019), https://www.score.org/resource/blog-post/nonprofit-purpose-and-tax-exempt-status [https://perma.cc/DR5K-GHAX]. A few states depart from this requirement. See, e.g., Iowa Code § 504.301 (2025).

124. See Charitable Hospitals—General Requirements for Tax-Exemption Under Section 501(c)(3), IRS, https://www.irs.gov/charities-non-profits/charitable-hospitals-general-requirements-for-tax-exemption-under-section-501c3 [https://perma.cc/4MLU-VUS6] (last updated July 1, 2025) (describing the specific requirements for hospitals); see also Daniel J. Hemel, Tangled Up in Tax: The Nonprofit Sector and the Federal Tax System 14 (Univ. of Chi. L. Sch., Coase-Sandor Inst. for L. & Econ. Research Paper No. 871, 2019); Social Welfare Organizations, IRS, https://www.irs.gov/charities-non-profits/other-non-profits/social-welfare-organizations [https://perma.cc/E8FF-DVPA] (last updated Apr. 17, 2025).

125. Ryan T. Murphy, Fiduciary Duties of the Ultimate Fiduciaries—Directors and Officers of Nonprofits, Fredrikson (Feb. 12, 2024), https://www.fredlaw.com/the-restructuring-report/fiduciary-duties-of-the-ultimate-fiduciaries-directors-and-officers-of-nonprofits [https://perma.cc/J59E-W57M].

126. See id. (noting that while both directors of for-profits and nonprofits have fiduciary duties, a nonprofit director's "duties are viewed through the prism of the nonprofit's purpose or mission").

that nonprofit fiduciaries will not be subject to shareholder intervention or annual referendums on the organization's conduct.

In other words, for nonprofit enterprise, the purpose–profit relationship is inverted: Purpose drives profit, rather than profit driving purpose. And this purpose not only dictates the organization's activity, but it also helps management resolve trade-offs.[127]

Enterprise foundation Patagonia provides one example of the purpose–profit inversion. The company espouses the purpose of "sav[ing] our home planet."[128] But the company's growth and expansion began to jeopardize this core value. As the head of the company's sportswear division put it, "Making products creates a huge mess, with horrible impacts around carbon waste, water, biodiversity, social justice—what can we do to try to address that?"[129]

Patagonia's business faced a classic tradeoff between growth (and profit) and environmental harm. Contrary to conventional wisdom, a shareholder value maximization directive did not necessarily give a clear answer: Pursuit of growth would generate revenue but could undermine the brand and therefore create unforeseen risks. It might also disappoint shareholders who increasingly invest as a manifestation of their values.[130]

By contrast, through the lens of purpose, management had a clear directive. As CEO Ryan Gellert stated, "I want us . . . taking responsibility for [our] product and ultimately creat[ing] as closed of a loop as possible for the materials that we use."[131] The company is now looking at regenerative agriculture for its products and growing its used and repair programs, with full awareness that this would "cannibalize . . . product sales."[132]

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127. Note that disagreements over purpose can lead to bitter clashes. See David M. Schizer, Enhancing Efficiency at Nonprofits With Analysis and Disclosure, 11 Colum. J. Tax L. 76, 90 (2020) [hereinafter Schizer, Enhancing Efficiency at Nonprofits] ("Even when nonprofit stakeholders agree on the mission, they still might disagree on how to advance it. These disputes can be hard to resolve . . . ."). Specificity of purpose (which this Essay discusses in section II.A), as well as more rigorous analysis and disclosure, can help provide clarity and minimize these inefficiencies. See id. at 110–27.

128. Patagonia Shows How Turning a Profit Doesn't Have to Cost the Earth, McKinsey & Co. (Apr. 20, 2023), https://www.mckinsey.com/industries/agriculture/our-insights/patagonia-shows-how-turning-a-profit-doesnt-have-to-cost-the-earth (on file with the *Columbia Law Review*) [hereinafter Turning a Profit] (internal quotation marks omitted).

129. Lauren Aratani, 'We've Lost the Right to Be Pessimistic': Patagonia Treads Fine Line Tackling Climate Crisis as For-Profit Company, The Guardian (Mar. 12, 2023), https://www.theguardian.com/business/2023/mar/12/patagonia-climate-crisis-for-profit-company [https://perma.cc/M3ER-R9VF] (internal quotation marks omitted) (quoting Helena Barbour, Head of Sportswear Div., Patagonia).

130. Michal Barzuza, Quinn Curtis & David H. Webber, The Millennial Corporation: Strong Stakeholders, Weak Managers, 28 Stan. J.L. Bus. & Fin. 225, 287 (2023) (detailing "the coming generational shift in wealth to millennials and . . . the unique preferences of this generation to prioritize values in their investments").

131. Aratani, supra note 129 (first and second alterations in original) (internal quotation marks omitted) (quoting Ryan Gellert, Chief Exec. Officer, Patagonia).

132. Id. (internal quotation marks omitted) (quoting Gellert); see also Turning a Profit, supra note 128 ("Building the best product while causing the least harm is at the

Purpose can provide direction and guidance to management forced to confront difficult decisions. At the same time, elevation of purpose does not necessarily neuter the nonprofit's profit motive, as Hansmann and others have claimed.[133] Managers of nonprofit enterprises, just like managers of for-profits, seek to run a profitable business.[134] But in nonprofit enterprises, management seeks to generate profits to advance the organization's mission, not to satisfy shareholders' need for profits.

2. *Purpose as Motivation.* — Research in behavioral and identity economics suggests that purposeful enterprise offers another advantage: motivating employees to work hard to advance the organization's mission. This advantage can serve as a substitute for stock-based compensation. Indeed, the existence of shareholder control and performance-based pay can actually undermine this positive incentive effect.

The core attribute of a nonprofit is its lack of shareholders. Law and economics scholars view this feature skeptically because the lack of shareholders (and shares) means that the company cannot award performance-based compensation to its employees.[135]

But management—and employees—are not homo economicus, as evidenced by decades of research in behavioral economics and organizational science.[136] And focusing on motivation from a behavioral standpoint leads to many insights. First, managerial motivation is complex and can actually be undermined by contingent monetary rewards.[137] Motivation consists of both intrinsic motivation, or the desire to work hard because it is inherently satisfying, and extrinsic motivation, which is the desire to

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heart of what we do." (internal quotation marks omitted) (quoting Yvon Chouinard, Founder, Patagonia)).

133. Nonprofits are generally evaluated based on the assets they accumulate and the amount they spend in relation to them. See, e.g., Kaitlin Cashwell, Paul Copley & Michael Dugan, Using Ratio Analysis to Manage Not-for-Profit Organizations, CPA J. (June 2019), https://www.cpajournal.com/2019/06/05/using-ratio-analysis-to-manage-not-for-profit-organizations/ [https://perma.cc/GW6D-YGAD] ("Financial ratios can help determine if a not-for-profit has sufficient resources and determine if it is using those resources efficiently to support its mission.").

134. But see Hansmann, Nonprofit Enterprise, supra note 13, at 844 (positing that nonprofit managers lack a profit motive).

135. See, e.g., Manne, supra note 29, at 227–28 (comparing for-profit and nonprofit management structures and enforcement mechanisms).

136. See Alexander Pepper & Julie Gore, Behavioral Agency Theory: New Foundations for Theorizing About Executive Compensation, 41 J. Mgmt. 1045, 1048 (2015) ("[T]he model of economic man that forms the micro-foundations of agency theory is too simplistic."); Richard H. Thaler, The Evolution of Economics and Homo Economicus, Chi. Booth Rev. (June 17, 2015), https://www.chicagobooth.edu/review/the-evolution-of-economics-and-homo-economicus [https://perma.cc/QJ9M-NBH4] ("[T]he premises on which economic theory rests are flawed. . . . [T]he beliefs upon which people make their choices are not unbiased.").

137. See Hansmann & Thomsen, supra note 15, at 187 ("It is the distortion of this intrinsic motivation by over-incentivizing certain tasks, and thereby inducing neglect of other important tasks, that renders incentive compensation inefficient in these models.").

work to gain a reward or avoid punishment.[138] Indeed, external rewards can actually "crowd-out intrinsic motivation," leading to detrimental effects on overall effort.[139] This is especially true if the benchmarks are perceived to be set by outside individuals,[140] such as activist shareholders. And because nonprofits face fewer forms of extrinsic motivation—they do not worry about shareholder activists or performance-based compensation—nonprofit managers may actually reap the rewards of intrinsic motivation more readily.

Moreover, the lack of shareholders may also increase nonprofit employee motivation for another reason: Nonprofit status provides a commitment that the employee's work will go toward advancing the organization's purpose, rather than being converted by the firm into profit that can be drained by shareholders.[141] By contrast, workers in a for-profit firm may work less hard knowing that their effort will go toward profit and not the mission.[142]

The second insight is related to the first, but it is more fundamental: Research shows that that setting a "higher purpose" for a firm or nonprofit

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138. See Anjan Thakor & Robert E. Quinn, Higher Purpose, Incentives and Economic Performance 4, 8 (Eur. Corp. Governance Inst., Fin. Working Paper No. 706/2020, 2020), https://papers.ssrn.com/sol3/abstract_id=3350085 [https://perma.cc/Y87Y-GCNN] (finding that organizations working toward a higher purpose have lower agency costs, lower wage costs, and higher employee effort). But see Glaeser & Shleifer, supra note 15, at 101 (positing that "[e]mployees may invest more in specific human capital at not-for-profit firms because these firms have less financial incentive to cut wages or prerequisites ex post"). In other words, nonprofits are likely to treat workers better, causing them to work harder. Our argument is different. It is not that nonprofit employees work harder because they are paid more (in fact, the opposite is true)—they work harder because furthering the purpose is highly motivating.

139. See Bruno S. Frey & Reto Jegen, Motivation Crowding Theory: A Survey of Empirical Evidence (Univ. of Zurich Inst. for Empirical Rsch. in Econ., Working Paper No. 26, 1999), https://clivespash.org/speer/iewwp026.pdf [https://perma.cc/79H3-TBFG] ("[M]any laboratory experiments support this motivational effect . . . ."); see also Richard Koestner, Nancy Otis, Theodore A. Powers, Luc Pelletier & Hugo Gagnon, Autonomous Motivation, Controlled Motivation, and Goal Progress, 76 J. Personality 1201, 1221 (2008) (presenting three studies that show intrinsic motivation to be more closely related to goal progress than extrinsic motivation).

140. See Bruno Frey, Policy Consequences of Pay-for-Performance and Crowding-Out, 1 J. Behav. Econ. 55, 56 (2017) (describing how goals set by extrinsic sources can inhibit internal motivation).

141. Cf. Brian Galle, Keep Charity Charitable, 88 Tex. L. Rev. 1213, 1223 (2010) ("Warm glow changes the incentives of a charity's employees. Just as giving to charity produces a warm glow, so too may working for one."); Usha Rodrigues, Entity and Identity, 60 Emory L.J. 1257, 1285 (2011) (discussing how nonprofits offer workers the prestige of "not being part of the for-profit world").

142. See Patrick Francois, Not-for-Profit Provision of Public Services, 113 Econ. J. C53, C53 (2003) ("The paper demonstrates that nonprofit firms are more effective than for-profit firms in obtaining care motivated effort, in addition to pecuniarily motivated effort, from workers.").

can be motivating and lead to economic benefits.[143] A higher purpose differs from a corporate vision and strategy, which exist across all companies. The typical corporation will generally have a vision for where it would like to go and a strategy for how it would like to get there. The higher purpose does something different—it explains *why the business exists.*[144] And theoretical and empirical research suggests that a credible higher purpose encourages employee effort and dissipates managerial agency costs.[145] One study—which used a sample of nearly 500,000 people across 429 firms—found that a clear and authentic higher purpose improved operating financial performance and stock performance.[146] Another interview-based study found that when company leaders embrace an authentic higher purpose, employees work harder and more creatively.[147] Other studies have similarly concluded that organizations feature better performance when they identify a higher purpose and appear to pursue it authentically.[148]

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143. See Hansmann & Thomsen, supra note 15, at 190 ("[I]dentity economics assumes that participants in an organization can, through appropriate experiences and framing, be induced to identify their personal goals more closely with those of the organization, and hence to serve the organization more effectively.").

144. Thakor & Quinn, supra note 138, at 9; see also Rebecca Henderson & Eric Van den Steen, Why Do Firms Have "Purpose"? The Firm's Role as a Carrier of Identity and Reputation, 105 Am. Econ. Rev. 326, 327 (2015) (defining purpose as a "concrete goal or objective for the firm that reaches beyond profit maximization").

145. See Beiting Cheng, Ioannis Ioannou & George Serafeim, Corporate Social Responsibility and Access to Finance, 35 Strategic Mgmt. J. 1, 16 (2014) ("[B]etter CSR performance is associated with superior stakeholder engagement that . . . reduces potential agency costs [by fostering] . . . higher quality relationships . . . among employees." (citation omitted)); Thakor & Quinn, supra note 138, at 38; see also Rose-Ackerman, Altruism, Nonprofits, and Economic Theory, supra note 47, at 719 ("Ideological founders will seek to hire managers and employees who share their vision. Because these employees want the services they provide to reflect these values, they will need little monitoring. Committed employees may be easier to attract if the firm is a nonprofit.").

146. See Claudine Gartenberg, Andrea Prat & George Serafeim, Corporate Purpose and Financial Performance, 30 Org. Sci. 1, 2, 5 (2019) ("When we replace our aggregate measure of purpose with these two factors, we find that the high purpose–clarity organizations exhibit superior accounting and stock market performance.").

147. Robert E. Quinn & Anjan V. Thakor, Creating a Purpose-Driven Organization, Harv. Bus. Rev., July–Aug. 2018, at 78, 81 ("By connecting people with a sense of higher purpose, leaders can inspire them to bring more energy and creativity to their jobs. When employees feel that their work has meaning, they become more committed and engaged. They take risks, learn, and raise their game.").

148. See Adam M. Grant, Elizabeth M. Campbell, Grace Chen, Keenan Cottone, David Lapedis & Karen Lee, Impact and the Art of Motivation Maintenance: The Effects of Contact With Beneficiaries on Persistence Behavior, 103 Organizational Behav. & Hum. Decision Processes 53, 63–64 (2007) (conducting a field experiment in which call center employees performed significantly better in fundraising when given a higher purpose); Daniel Hedblom, Brent R. Hickman & John A. List, Toward an Understanding of Corporate Social Responsibility: Theory and Field Experimental Evidence 16 (Nat'l Bureau of Econ. Rsch., Working Paper No. 26222, 2019), https://www.nber.org/system/files/working_papers/w26222/w26222.pdf [https://perma.cc/67WS-SUT8] (conducting a field experiment and finding that "[i]f the worker values the feeling of contributing to the firm's efforts to make

Although for-profit businesses can also reap the rewards of higher purpose, it is a more difficult task. Behavioral research on for-profit enterprise suggests that higher purpose does the best job of bringing about positive effects if it is perceived as authentic, which depends on the extent to which the firm uses profits to implement its purpose.[149] Of course, nonprofits cannot distribute profits, meaning that authenticity is easier to come by. In other words, the importance of the nondistribution constraint goes beyond consumer signaling—it assures employees that their efforts are furthering the business's mission.

Taken together, these insights suggest that the nonprofit form may actually reduce managerial agency costs by elevating the entity's purpose. Specifically, crowding out theory suggests that paying management for the company's stock performance, as is common in many for-profit corporations, may diminish motivation and lead to the very issue it seeks to address—managerial slack and self-dealing.[150] Instead, by authentically elevating a purpose other than profit, the nonprofit may provide a substitute for pay-for-performance compensation that is highly motivating and can actually increase the company's profitability over time.[151] The channel for these economic benefits is unclear but has something to do with the increased effort and creativity of management, as well as a reduction in wage costs.[152] This leads to another documented efficiency inherent in purpose-driven firms: Because individuals tend to work for purpose-driven firms that align with their values, the firm can pay employees less—an insight that we return to in the next section.[153]

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the world a better place, it may partially offset the costs of cognitive exertion and/or labor supply," thereby increasing output and decreasing wage costs).

149. Thakor & Quinn, supra note 138, at 2, 10.

150. See Adam J. Wowak, Luis R. Gomez-Mejia & Adam L. Steinbach, Inducements and Motives at the Top: A Holistic Perspective on the Drivers of Executive Behavior, 11 Acad. Mgmt. Annals 669, 675 (2017) (surveying executive compensation studies that "underscore the idea that executive pay-performance sensitivity can come at a cost").

151. See supra section II.A.2. Note that organizational success can be harder to measure if the company lacks equity, complicating efforts to measure an individual's success in an organization. See Schizer, Enhancing Efficiency at Nonprofits, supra note 127, at 84–87 ("[N]onprofits cannot use profitability or share prices to measure success, since the main role of nonprofits is to address market failures."). Therefore, a business with a market for shares may offer some advantages to a nonprofit in terms of accountability and external monitoring.

152. See Cait Brumme & Brian Trelstad, Should Your Start-Up Be For-Profit or Nonprofit?, Harv. Bus. Rev., May–June 2023, at 136, 143 (describing nonprofits as potentially able to have a "mission [that] is compelling enough to attract passionate and hardworking people at below-market salaries").

153. See David M. Schizer, How to Save the World in Six (Not So Easy) Steps: Bringing Out the Best in Nonprofits 13 (2023) [hereinafter, Schizer, Save the World] ("[E]mployees usually earn less at nonprofits than at for-profit firms, while volunteers work for free. Usually, both groups are there because of their passion for the cause."); George A. Akerlof & Rachel E. Kranton, Identity and the Economics of Organizations, J. Econ. Persps., Winter 2005, at 9, 27–29 (arguing that organizations can shape the self-images of their workers, leading to lower labor and agency costs); Susan Rose-Ackerman, Altruism, Ideological Entrepreneurs

The efficiency benefits that come from purpose extend beyond the C-suite and across the entire organization: Several studies have found that an authentic higher purpose leads to greater employee motivation and engagement in their work.[154] This is especially true in circumstances in which work becomes a place for self-expression and self-realization.[155] When employees identify with the organization's mission (and, indeed, find that their sense of self and identity is strengthened by their work[156]), motivation can increase, along with productivity and efficiency.[157]

3. *Purpose and Stakeholder Enforcement.* — Purpose can also reduce agency costs by promoting stakeholder enforcement. Previous scholarship has focused on a lack of third-party enforcement as a reason to doubt that nonprofits will be run efficiently or further their mission.[158] But stakeholder commitment to the mission and engagement in the business can also lead to internal enforcement that can operate as a substitute for shareholder enforcement.[159]

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and the Non-Profit Firm, 8 Int'l J. Voluntary & Nonprofit Orgs. 120, 126 (1997) ("High level professional employees may accept lower levels of pay in return for greater certainty that their efforts are actually helping to achieve their altruistic goals."); Thakor & Quinn, supra note 138, at 37 ("[A]uthentic higher purpose reduces the firm's wage cost and increases employee effort . . . .").

154. See, e.g., Lars van Tuin, Wilmar B. Schaufeli, Anja Van den Broeck & Willem van Rhenen, A Corporate Purpose as an Antecedent to Employee Motivation and Work Engagement, 11 Frontiers Psych., Sep. 2020, at 1, 10 ("The present study confirmed the widespread assumption that a higher corporate purpose leads to engagement. . . . Autonomously motivated employees may find inspiration and further enhancement in an appealing, broader purse . . . ."); cf. Schizer, Save the World, supra note 153, at 24 ("At nonprofits, the mission is a key motivation, which can impel professionals and volunteers to go the extra mile."); Oege Dijk & Martin Holmén, Charity, Incentives, and Performance, 66 J. Behav. & Experimental Econ. 119, 124 (2012) (finding various gains in effort and efficiency for firms that donate their profits to charity); Hedblom et al., supra note 148, at 1–2 (using a field experiment to document that CSR increases employee effort and output).

155. Joanne B. Ciulla, The Working Life: The Promise and Betrayal of Modern Work, at xii (2000) (explaining that work shapes our status and social interactions).

156. See Christopher P. Niemiec & Gordon B. Spence, Optimal Motivation at Work, *in* The Wiley Blackwell Handbook of the Psychology of Positivity and Strengths-Based Approaches at Work 82, 82 (Lindsay G. Oades, Michael F. Steger, Antonella Delle Fave & Jonathan Passmore eds., 2017) ("Work is an integral part of the lives of most adults."); see also Akerlof & Kranton, supra note 153, at 10 ("[E]mployees may have identities that lead them to behave more or less in concert with the goals of their organizations.").

157. See Henderson & Van den Steen, supra note 144, at 132–33 (developing a model of higher organizational purpose and arguing that purpose creates value when it contributes to employee identity and reputation); van Tuin et al., supra note 154, at 2 ("An appealing corporate purpose serving a broader interest in the pursuit of a greater good may thus support individuals to identify with that purpose and integrate it with their sense of self, which then nourishes high-quality motivation.").

158. See, e.g., Manne, supra note 29, at 227–30; Molk & Sokol, supra note 15, at 1512–32.

159. See Jill E. Fisch & Steven Davidoff Solomon, Should Corporations Have a Purpose?, 99 Tex. L. Rev. 1309, 1312 (2021) ("Critically and distinctively, under our framing, purpose is a means not an end; a means that allows corporate participants to signal, monitor,

Consider, for example, the boardroom coup at OpenAI. OpenAI was founded as a nonprofit in December 2015 by a group of entrepreneurs, including Sam Altman and Elon Musk. The company was able to recruit top employees away from higher-paying Silicon Valley stalwarts like Facebook and Google because of the company's lofty mission:[160] to "build general-purpose artificial intelligence ('AI') that safely benefits humanity" and "develop and responsibly deploy safe AI technology."[161]

By 2019, the company's need for capital warranted a rethinking of the organization's structure. It created a for-profit subsidiary but warned investors that they should not count on returns at all and that any eventual profits would be capped at one hundred times their investment.[162] The company partnered with Microsoft, which invested $1 billion in the for-profit company.[163] And yet, the enterprise foundation model limited Microsoft's influence: The nonprofit board (composed of mostly independent directors without equity in the for-profit entity) would govern and oversee the company's activities, pursuant to its mission, and Microsoft had no formal power to change that.[164]

A few years later, the capital infusion had paid off. In December 2022, OpenAI previewed ChatGPT, an AI chatbot that received over a million signups in the first five days.[165] The model became "the talk of the AI community within days and a global cultural phenomenon within

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and manage their expectancy interests. Purpose identifies the metrics by which managers are to be held accountable.").

160. See Cade Metz, Inside OpenAI, Elon Musk's Wild Plan to Set Artificial Intelligence Free, Wired (Apr. 27, 2016), https://www.wired.com/2016/04/openai-elon-musk-sam-altman-plan-to-set-artificial-intelligence-free/ [https://perma.cc/RG2B-SQ5W] (highlighting that one former Google employee joined OpenAI partly because of its mission).

161. OpenAI, Inc., Return of Organization Exempt From Income Tax (Form 990), Schedule O (2022) (on file with the *Columbia Law Review*) [hereinafter OpenAI, Form 990]. This structure had the added benefit of allowing employees to receive equity awards and thus share in the company's gains over time (but again, potentially at a lower level than they could expect from a for-profit competitor, given the capped profit structure).

162. For Microsoft's $13 billion investment, the actual cap was lower than ten times the investment—below the goal of the typical venture capitalist investment. See OpenAI Overview, Sacra, https://sacra.com/c/openai/ [https://perma.cc/L23N-CA9R] (last visited Aug. 19, 2025) (explaining that Microsoft would recoup its principal and then get $92 billion in profits before hitting its cap); see also Jerry Vance, 12 Things Venture Capitalists Look for in an Investment Opportunity, Preferred CFO (July 2020), https://preferredcfo.com/12-things-venture-capitalists-look-for [https://perma.cc/9BHF-MM6S] (last updated Jan. 6, 2025) ("Since venture capitalists are investing in companies that are higher risk, they're usually looking for 10X exit multiples.").

163. Darrell Etherington, Microsoft Invests $1 Billion in OpenAI in New Multiyear Partnership, TechCrunch (July 22, 2019), https://techcrunch.com/2019/07/22/microsoft-invests-1-billion-in-openai-in-new-multiyear-partnership/ [https://perma.cc/9TXG-NK3c].

164. OpenAI, Form 990, supra note 161.

165. Kevin Roose, The Brilliance and Weirdness of ChatGPT, N.Y. Times (Dec. 5, 2022), https://www.nytimes.com/2022/12/05/technology/chatgpt-ai-twitter.html (on file with the *Columbia Law Review*).

weeks."[166] The success of the chatbot was a boon for the company, which predicted that revenue would exceed $1 billion by 2024.[167] And this early success ultimately paved the way for a high-stakes boardroom dispute about the company and its leadership, leading to the board's surprise ouster of CEO and cofounder Sam Altman a few years later.

The media generally described the coup as a crisis over the entity's mission: Altman prioritized profits and the rollout of ChatGPT over safety, and the board was the last bastion to protect the company's goals.[168] But a closer look revealed that personality dynamics were responsible for the rift and that the board's actions may have been self-interested and not necessarily aligned with the company's mission.

In the weeks leading to the boardroom ouster, tensions were simmering across the organization. The board felt that it had been cut out of key discussions after Altman held a meeting with investors in the Middle East.[169] One of the directors, AI pioneer Ilya Sutskever, viewed the promotion of another OpenAI employee to his same level as a slight and threatened to quit.[170] Another director published an academic paper that praised OpenAI rival Anthropic for avoiding the "frantic corner-cutting that the release of ChatGPT appeared to spur."[171] Beyond the propriety of a fiduciary taking a dig at her own company in an academic work, there was another issue: Altman was concerned that the statement could have negative antitrust implications for the company.[172] Altman sought an

166. Sharon Goldman, ChatGPT Launched Six Months Ago. Its Impact—And Fallout—Is Just the Beginning, VentureBeat (May 30, 2023), https://venturebeat.com/ai/chatgpt-launched-six-months-ago-its-impact-and-fallout-is-just-beginning-the-ai-beat/ [https://perma.cc/8F7R-CHAT].

167. Jeffrey Dastin, Krystal Hu & Paresh Dave, Exclusive: ChatGPT Owner OpenAI Projects $1 Billion in Revenue by 2024, Reuters (Dec. 15, 2022), https://www.reuters.com/business/chatgpt-owner-openai-projects-1-billion-revenue-by-2024-sources-2022-12-15/ [https://perma.cc/AF6P-H29L].

168. There is some truth to this narrative: In 2021, a group of employees left OpenAI out of concern that the company had gotten too commercial and founded Anthropic, a rival "A.I. safety lab." Kevin Roose, Inside the White-Hot Center of A.I. Doomerism, N.Y. Times (July 11, 2023), https://www.nytimes.com/2023/07/11/technology/anthropic-ai-claude-chatbot.html (on file with the *Columbia Law Review*) (internal quotation marks omitted).

169. Tripp Mickle, Cade Metz, Mike Isaac & Karen Weise, Inside OpenAI's Crisis Over the Future of Artificial Intelligence, N.Y. Times (Dec. 9, 2023), https://www.nytimes.com/2023/12/09/technology/openai-altman-inside-crisis.html (on file with the *Columbia Law Review*) ("The board was concerned that [Altman] wasn't sharing all his plans with it . . . .").

170. Cade Metz, OpenAI's Chief Scientist and Co-Founder Is Leaving the Company, N.Y. Times (May 14, 2024), https://www.nytimes.com/2024/05/14/technology/ilya-sutskever-leaving-openai.html (on file with the *Columbia Law Review*).

171. Andrew Imbrie, Owen J. Daniels & Helen Toner, Ctr. for Sec. & Emerging Tech., Decoding Intentions: Artificial Intelligence and Costly Signals 30 (2023), https://cset.georgetown.edu/publication/decoding-intentions [https://perma.cc/YME9-V2JE].

172. Mickle et al., supra note 169 ("Mr. Altman was displeased, especially since the Federal Trade Commission had begun investigating OpenAI's data collection. He called Ms. Toner, saying her paper 'could cause problems.'"); see also Cecilia Kang & Cade Metz, F.T.C. Opens Investigation Into ChatGPT Maker Over Technology's Potential Harms, N.Y. Times

apology; the board believed that he was pitting directors against each other.[173]

In a stunning move, the board of directors determined that the best course of action for the company—which, by all accounts, was on a positive trajectory—was to fire Altman.[174] The idea of a group of directors firing an innovative and productive CEO for a lack of candor (the only explanation they offered[175]) is unthinkable in a typical corporation. And yet, the entity's governance structure allowed them to act unilaterally to take a move justified by little more than their bruised egos.

As the chips fell, the world panned the misguided decision, but the board stuck to its guns. In a board call with OpenAI executives, Jason Kwon, the company's chief strategy officer, accused the board of violating their fiduciary duties, stating: "It cannot be your duty to allow the company to die . . . ."[176] One of the directors responded that "[t]he destruction of the company could be consistent with the board's mission."[177] The executives insisted that the board resign, threatening to quit if they remained.[178]

By Monday, 730 employees (out of a total of 770) had signed an open letter threatening to leave unless the board resigned and Altman was reinstated as CEO.[179] The letter stated: "The process through which you terminated Sam Altman and removed Greg Brockman from the board has jeopardized all of this work and undermined our mission and company . . . ."[180] It accused the board of "negotiating in bad faith" and not carrying out their fiduciary duties.[181]

(July 13, 2023), https://www.nytimes.com/2023/07/13/technology/chatgpt-investigation-ftc-openai.html (on file with the *Columbia Law Review*) (detailing the FTC investigation).

173. Mickle et al., supra note 169.

174. See id. (detailing the firing of Sam Altman).

175. See OpenAI Announces Leadership Transition, OpenAI (Nov. 17, 2023), https://openai.com/index/openai-announces-leadership-transition/ (on file with the *Columbia Law Review*) ("Mr. Altman's departure follows a deliberative review process by the board, which concluded that he was not consistently candid in his communications with the board, hindering its ability to exercise its responsibilities.").

176. Mickle et al., supra note 169 (internal quotation marks omitted) (quoting Jason Kwon, Chief Strategy Officer, OpenAI).

177. Id. (internal quotation marks omitted) (quoting Helen Toner, Bd. Member, OpenAI).

178. See Nitasha Tiku, Pranshu Verma & Gerrit de Vynck, OpenAI Future in Chaos as Most Workers Threaten to Leave for Microsoft, Wash. Post, https://www.washingtonpost.com/technology/2023/11/20/microsoft-openai-sam-saltman-fired/ (on file with the *Columbia Law Review*) (last updated Nov. 20, 2023).

179. Will Knight & Steven Levy, OpenAI Staff Threaten to Quit Unless Board Resigns, Wired (Nov. 20, 2023), https://www.wired.com/story/openai-staff-walk-protest-sam-altman/ [https://perma.cc/ADL6-NBYX].

180. Id. (internal quotation marks omitted) (quoting the open letter).

181. Id. (emphasis omitted) (quoting the open letter).

On the same day, director Ilya Sutskever, who had initially spearheaded the coup, posted, "I deeply regret my participation in the board's actions."[182] Hours later, Microsoft announced that it would be hiring Altman, as well as any OpenAI employees who wanted to join him.[183]

Faced with the prospect of losing most of its staff, the board regrouped and brought Altman back.[184] The board was then reconstituted after several of the dissident directors quit.[185] Microsoft was given a nonvoting board observer seat.[186] After the dust settled, the company was saved and went on to continue to develop innovative AI models, under the supervision of a mostly independent board.

In the case of OpenAI, employee engagement and motivation not only made the company successful but also served as a check against misguided board action. Specifically, employee alignment with the company's mission and purpose encouraged them to take action to prevent an outcome that could potentially jeopardize the business's mission.

This example also reveals that although a company's mission and purpose are subject to many different interpretations[187]—indeed, the board justified its destruction of the company as potentially consistent with the mission—employees are positioned to play an important role in interpreting the mission and promoting alignment in purposeful companies. Moreover, it is an important counterargument to scholars who believe that a purpose other than profit will leave executives with too much discretion.[188] As this example reveals, when mission drift occurs in purposeful enterprises, a company's employees will have powerful incentives and tools to rein in management. Of course, employee enforcement can be beneficial, or it can represent a form of principal cost—a point this Essay returns to later on. But the important point

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182. Ilya Sutskever (@ilyasut), X (Nov. 20, 2023), https://x.com/ilyasut/status/1726590052392956028 [https://perma.cc/5P9Z-DSAJ].

183. See Knight & Levy, supra note 179.

184. Cade Metz, Mike Isaac, Tripp Mickle, Karen Weise & Kevin Roose, Sam Altman Is Reinstated as OpenAI's Chief Executive, N.Y. Times (Nov. 22, 2023), https://www.nytimes.com/2023/11/22/technology/openai-sam-altman-returns.html (on file with the *Columbia Law Review*).

185. See id.

186. Microsoft eventually gave the board seat up due to antitrust concerns. Microsoft Gives Up OpenAI Board Seat Amid Regulator Scrutiny, Barron's (July 10, 2024), https://www.barrons.com/news/microsoft-gives-up-openai-board-seat-amid-regulator-scrutiny-c63d6cd3 (on file with the *Columbia Law Review*).

187. See Schizer, Save the World, supra note 153, at 89 (describing how nonprofit managers can clash over the mission).

188. See Manne, supra note 29, at 233–36 (explaining the various "ambiguous" motivations driving nonprofit managers, directors, and founders); see also Bebchuk & Tallarita, supra note 45, at 101 (arguing that the pursuit of stakeholderism will lead to increased agency costs).

remains that management of nonprofit enterprise need not be bereft of accountability.

Moreover, although employee enforcement is possible in for-profit organizations, it can achieve only limited effect when it is inconsistent with profit maximization. Consider what happened at Amazon after employees responded negatively to the company's sale of its facial recognition software to law enforcement agencies in 2018.[189] In the aftermath of the sale, "over 450 Amazon employees signed an open letter to CEO Jeff Bezos and other Amazon executives on a mailing list called 'We Won't Build It.'"[190] The letter demanded that Amazon cease selling the software to law enforcement and "implement employee oversight for ethical decisions."[191] Amazon refused to meet these demands, noting that "[t]here's a lot of value being enjoyed from Amazon Rekognition."[192] Because nonprofits elevate purpose and lack shareholder influence, they may better preserve pathways to employee enforcement of the entity's mission.

But employees are not the only stakeholders of interest in nonprofits: Members and donors can also play a monitoring role.[193] In some nonprofits, for example, members can elect directors and vote on significant organizational decisions.[194] These nonprofit members—who may or may

189. See Jennifer S. Fan, Employees as Regulators: The New Private Ordering in High Technology Companies, 5 Utah L. Rev. 973, 1002–03 (2019) ("Amazon addressed its relationship with law enforcement at an all-staff meeting that was live-streamed, but none of the employee demands were met." (footnote omitted)).

190. Id. at 1002 (citing Alexa Lardieri, Amazon Employees Protesting Sale of Facial Recognition Software, U.S. News & World Rep. (Oct. 18, 2018), https://www.usnews.com/news/politics/articles/2018-10-18/amazon-employees-protesting-sale-of-facial-recognition-software (on file with the *Columbia Law Review*)).

191. Id. (citing Alexa Lardieri, Amazon Employees Protesting Sale of Facial Recognition Software, U.S. News & World Rep. (Oct. 18, 2018), https://www.usnews.com/news/politics/articles/2018-10-18/amazon-employees-protesting-sale-of-facial-recognition-software (on file with the *Columbia Law Review*)).

192. Id. at 1003 n.149 (quoting Savia Lobo, Amazon Addresses Employees Dissent Regarding the Company's Law Enforcement Policies at an All-Staff Meeting, in a First, Packt (Nov. 9, 2018), https://www.packtpub.com/sa-ca/learning/tech-news/amazon-addresses-employees-dissent-regarding-the-companys-law-enforcement-policies-at-an-all-staff-meeting-in-a-first [https://perma.cc/G77H-9MNQ]).

193. In addition, employees can also serve as enforcers. Consider Kiva, a nonprofit microfinance platform through which donors provide loans to entrepreneurs in underserved communities. The nonprofit faced a strike from its lenders in 2021 after they noted a concerning lack of transparency in Kiva's loan interest rates and executive compensation, as well as an increasing focus within Kiva on making positive returns on loans. See Mara Kardas-Nelson, What Happened to the Microfinance Organization Kiva?, MIT Tech. Rev. (Aug. 14, 2023), https://www.technologyreview.com/2023/08/14/1077351/microfinance-money-making/ [https://perma.cc/3RAQ-HYNT]. The lenders saw this focus as antithetical to Kiva's founding principles. Id. They particularly opposed the profit focus that the involvement of outside investors such as Google had introduced to the nonprofit organization. Id. Kiva has made changes to its website and implemented more detailed reporting practices in an attempt to address the lenders' concerns. Id.

194. See, e.g., Laws. All. for N.Y., FAQs: Understanding Membership Structure for New York Not-for-Profits 1 (2022), https://lawyersalliance.org/userFiles/uploads/legal_alerts/

not be donors—serve a similar role as shareholders in a for-profit enterprise, without receiving any right to the residual.[195] In other nonprofits, donors can also potentially mitigate agency costs.[196] Ex ante, the organization will need to prepare financial reports that disclose financial details, including the organization's income and spending.[197] Moreover, establishing that the nonprofit is succeeding in advancing its mission will likely help it attract future donor funding.[198] Ex post, donors may monitor the organization to ensure that the funds are being used appropriately.[199]

Although donor monitoring can help reduce agency costs, donor engagement, like employee or member engagement, can be a double-edged sword.[200] Donors may have a competing view of how the entity advances its mission that can undermine employee morale and productivity if it causes the entity to veer too far from its initial mission. As just one example, consider how the University of Pennsylvania's Faculty Senate Tri-Chairs issued a statement arguing that the University's commitment to freedom of thought, inquiry, and speech were being undermined by a donor campaign against the administration and faculty.[201] Therefore, although donor funding can help a low-margin

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Understanding_Membership_Structure_FAQs_Legal_Alert.pdf [https://perma.cc/EF7D-VKHF] ("Members vote to elect the directors of the nonprofit at the annual member meeting and also vote on other significant organizational decisions and changes . . . .").

195. Id.

196. See Schizer, Enhancing Efficiency at Nonprofits, supra note 127, at 101–07 (describing donors' ability to provide oversight of nonprofit management).

197. See id. at 121–23 (detailing how program analysis disclosure helps donors better combat agency costs). Note that the need to appeal to donors may also change the business's investment priorities. For example, many nonprofits underinvest in infrastructure because donors are wary to donate to support IT, HR systems, facilities, and other forms of critical infrastructure. See Brian Galle, The Quick (Spending) and the Dead: The Agency Costs of Forever Philanthropy, 74 Vand. L. Rev. 757, 778 (2021) (noting donors' distaste for overhead spending).

198. See Erica Harris, Christine M. Petrovits & Michelle H. Yetman, The Effect of Nonprofit Governance on Donations: Evidence From the Revised Form 990, 90 Acct. Rev. 579, 607 (2015) (concluding that positive governance mechanisms and their disclosure are associated with increased subsequent donations); see also Schizer, Enhancing Efficiency at Nonprofits, supra note 127, at 85 ("Attracting donations is a more dependable measure of quality when donors are well informed about the nonprofit's work.").

199. But see Manne, supra note 29, at 231–32 (arguing that donor monitoring is expensive and cannot be depended on).

200. See Brody, supra note 109, at 470 ("A nonprofit organization dependent on a concentrated or organized donor base might be forced to make poor choices. . . . Because donors often do not consume the services they donate, donor control can lead to inefficient overproduction of what particular donors want to support.").

201. Jared G. Mitovich (@jaredmitovich), X (Oct. 19, 2023), https://x.com/jmitovich/status/1715177700321558816 [https://perma.cc/DD2J-Q2E9] ("Values of free speech 'are being threatened by individuals outside of the University who are surveilling both faculty and students in an effort to intimidate them and inhibit their academic freedom,' @Penn's Faculty Senate tri-chairs say as the donor retaliation continues." (quoting Univ. of Pa. Faculty Senate Tri-Chairs statement)).

nonprofit business survive over the long term, it can lead to organizational inefficiencies if donor influence undermines the entity's purpose and mission. The next Part develops both of these points in further detail.

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This section formalizes within the legal academic literature what organizational scientists have been saying for years: that a genuine higher purpose can respond to managerial agency costs and otherwise improve productive efficiency by providing direction for management, motivating employees, and securing stakeholder enforcement.[202] Moreover, this analysis suggests that certain firms will be better positioned to take advantage of these benefits. In particular, nonprofits, by virtue of the nondistribution constraint, will be ahead of the game in demonstrating the authenticity of purpose. Of course, this authenticity is not guaranteed—for example, in some enterprise foundations, the nonprofit form is used to keep control with a founder's family, rather than to elevate purpose.[203] Likewise, many for-profit firms (and even enterprise foundations) will struggle to communicate a credible and authentic higher purpose because of shareholder influence; by the same token, paying management for stock performance may actually undermine the engagement benefits that come from purpose.[204] For purpose to motivate effectively, employees must identify with the purpose—which is often the case for nonprofits, whose employees typically select the organization (and take a lower salary) because of the entity's purpose.[205] As a result, the nonprofit form may promote efficient business operations and overall profitability simply because it has elevated and guarded a higher purpose other than profit.

B. *Value Creation*

Thus far, this Essay has shown how the nonprofit form can mitigate agency cost issues despite its lack of shareholders. This section describes additional efficiencies created by the nonprofit form. It focuses on two paths: thrift and stability.[206]

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202. See supra notes 132–149 and accompanying text.

203. For example, Rolex is controlled by the Hans Wildorf Foundation, which has as its purpose "the continuation of Rolex." Fumagalli, supra note 7; see also Alexander A. Bove, Jr. & Melissa Langa, The Perpetual Business Purpose Trust: The Business Planning Vehicle for the Future, Starting Now, 47 ACTEC L.J. 3, 6 (2021) (remarking on the use of purpose trusts to keep control of family businesses within the family).

204. See, e.g., supra notes 150–151 and accompanying text.

205. This could be one reason why forcing banks to become nonprofits failed in the 1900s and early 2000s. Hansmann & Thomsen, supra note 15, at 191–92 ("[T]he resulting foundation-owned banks have not been conspicuously successful. Of the seventeen savings associations that were converted to stock corporations after 1988, only six survived to 2009.").

206. This Essay excludes tax savings from its analysis, despite the fact that many nonprofits (but not all) have federal and/or state tax-exempt status. For those nonprofits

1. *Cost Savings.* — It is a common saying in finance that "equity is expensive."[207] This phrase comes from the fact that entrepreneurs can fund corporate activity two different ways: through debt or through equity. Debtholders bear minimal risk—barring corporate bankruptcy, they will be paid back even if the borrowing company has a poor financial performance.[208] Shareholders who provide equity are different. Because shareholders bear greater financial risk when the company does poorly, they also demand a higher return than debtholders. As a result, shareholders will soak up capital from the business over time in the form of dividends or share repurchases.[209] Shareholders also expect that the company will make decisions—such as cost cutting and continued dividend payments[210]—that will increase the value of the stock price over time. Indeed, shareholder intervention rights are often used to push companies to undertake these decisions—a point that we return to in the next section.

Nonprofits, of course, lack shareholders. And while much has been written about how the lack of shareholders can lead to inefficiencies in nonprofits, we identify an overlooked benefit: Nonprofit businesses do not have to periodically pay out to a class of investors hungry for returns.[211]

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that do have tax-exempt status, tax is another (and obvious) source of savings for companies, but it is smaller than one might think given the low (and sometimes negative) tax rate borne by many for-profit companies. See, e.g., Ryan Koronowski, Jessica Vela, Zahir Rasheed & Seth Hanlon, These 19 Fortune 100 Companies Paid Next to Nothing—Or Nothing at All—In Taxes in 2021, Ctr. for Am. Progress (Apr. 26, 2022), https://www.americanprogress.org/article/these-19-fortune-100-companies-paid-next-to-nothing-or-nothing-at-all-in-taxes-in-2021 (on file with the *Columbia Law Review*).

207. Anat R. Admati, Peter M. DeMarzo, Martin F. Hellwig & Paul Pfleiderer, Fallacies, Irrelevant Facts, and Myths in the Discussion of Capital Regulation: Why Bank Equity Is Not Expensive, at i (Stanford Graduate Sch. of Bus., Working Paper No. 2065, 2013), https://www.gsb.stanford.edu/faculty-research/working-papers/fallacies-irrelevant-facts-myths-discussion-capital-regulation-why (on file with the *Columbia Law Review*).

208. For more on debt financing, see Cathy Hwang, Yaron Nili & Jeremy McClane, The Lost Promise of Private Ordering, 109 Corn. L. Rev. 1 (2023).

209. Amarjit Gill, Nahum Biger & Rajendra Tibrewala, Determinants of Dividend Payout Ratios: Evidence From United States, 3 Open Bus. J. 8, 8 (2010).

210. Id. Empirical evidence has generally contradicted the Modigliani–Miller theorem's view that dividend decisions do not affect firm value—instead, companies that declare dividends are generally viewed favorably by the market. See, e.g., Victor Brudney, Dividends, Discretion, and Disclosure, 66 Va. L. Rev. 85, 90–91 (1980) ("Studies indicate that stocks with lower proportionate dividend payouts do not sell at higher prices than do stocks of equivalent enterprises with higher proportionate payouts, and that in some slight degree the reverse is true." (footnote omitted)); Tibor Neugebauer, Jason Shachat & Wiebke Szymczak, A Test of the Modigliani-Miller Theorem, Dividend Policy and Algorithmic Arbitrage in Experimental Asset Markets, 154 J. Banking & Fin., Sep. 2023, at 1, 2 (evaluating conditions under which the Modigliani–Miller "theorem holds and when it fails"); Joseph P. Ogden, A Dividend Payment Effect in Stock Returns, 29 Fin. Rev. 345, 365 (1994) (arguing that dividends positively affect a company's performance "because stockholders tend to reinvest dividend income into the stock of the paying firm thereby increasing demand for the stock and raising its price").

211. Note that nonprofits generally experience a higher cost of capital than for-profits, leading to substantial fundraising costs. For this reason, businesses with large capital needs

Instead, profits can be reinvested in the business, leading potentially to higher product quality, employee benefits, product development, research and development, resilience, and growth.[212] This benefit supplements another cost savings discussed in the previous section—the fact that the entity can pay employees less when it becomes a nonprofit.

These cost savings help to explain why many low-margin businesses, including educational institutions,[213] restaurants,[214] and generic drug manufacturers,[215] operate as nonprofits. Hospitals can also fall into this category—although there are a handful of profitable hospitals that operate with healthy margins, the vast majority are low-margin (or zero-margin) businesses.[216] By eliminating shareholders' need for returns, low-margin businesses can survive and grow over time. Therefore, the lack of shareholders may partially explain why so many hospitals have maintained their nonprofit form over time.[217]

This insight further suggests that capital-intensive, high-risk businesses with low marginal costs of production (such as technology, news, or pharmaceutical companies) may see an advantage in forming as nonprofits because profits could be invested back in the business rather than squeezed out by shareholders.[218] And yet, nonprofits also struggle to fund growth, as lenders can be irrationally hesitant to lend to the business.[219] As a result, capital-intensive businesses have typically employed

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will likely choose a blended structure. But businesses that can accomplish their fundraising via debt and donor financing will benefit from the nonprofit structure over time, as the absence of shareholders will allow the business to invest a greater share of profit back into the business.

212. Of course, nonprofits may also inefficiently squander these profits, rather than reinvest them. See Brody, supra note 109, at 535 ("The absence of shareholders demanding profits enables the organization to relax into productive inefficiencies, or to cross-subsidize activities the patron would not want to pay for (could she only observe them).").

213. See Jono Landon, How to Increase Your Profit Margin Per Child, Hubbli (Dec. 11, 2017), https://hubbli.com/how-to-increase-your-profit-margin-per-child [https://perma.cc/42XB-L7K5].

214. See Non-Profit Restaurants Across America, USA Today (Mar. 3, 2017), https://www.usatoday.com/picture-gallery/travel/experience/food-and-wine/2017/03/02/non-profit-restaurants-across-america/98658096/ [https://perma.cc/2ZBY-QMRY].

215. See, e.g., Civica, supra note 10.

216. Madeline Ashley & Alan Condon, From -6.8% to 12.2%: 43 Health Systems Ranked by Operating Margins, Becker's Hosp. Rev. (Mar. 8, 2024), https://www.beckershospitalreview.com/finance/from-6-8-to-12-2-34-health-systems-ranked-by-operating-margins.html [https://perma.cc/7PWM-K3UD].

217. Hansmann also provides an important historical explanation for the persistence of the nonprofit form in the hospital industry. Hansmann, Nonprofit Enterprise, supra note 13, at 867–68.

218. Some news outlets also benefit from this structure. See, e.g., About Us, ProPublica, supra note 12 ("ProPublica is an independent, nonprofit newsroom that produces investigative journalism with moral force.").

219. William Foster & Gail Fine, How Nonprofits Get Really Big, Stan. Soc. Innovation Rev., Spring 2007, at 46, 48; cf. Emilie Aguirre, Pairing Purpose With Profit 69–70 (Apr. 30, 2021) (Ph.D. dissertation, Harvard University), https://dash.harvard.edu/server/

a blended enterprise foundation model in which the nonprofit controls a for-profit subsidiary. For example, Novo Nordisk, the most profitable pharmaceutical company in Europe, employs this structure—the for-profit business is wholly owned by the Novo Nordisk Foundation, a Danish foundation primarily engaged in grantmaking.[220] Recall further that OpenAI employs an enterprise foundation model that allows it to raise capital within the for-profit subsidiary of the non-profit parent company. OpenAI goes even further than Novo Nordisk by informing its investors that any profits will be capped, and that they should expect that most will be reinvested into the business.[221]

As a result of the blended structure, OpenAI and Novo Nordisk investors can invest in the for-profit business, but they do so with the knowledge that the business is controlled by a nonprofit entity with lofty goals—from sustainability to increased innovation—that will require reinvestment of profits.[222] All in all, these entities are able to raise money from equity shareholders while also dampening investor expectations for outsized profits, adopting attributes of the nonprofit form in ways that are advantageous. In particular, the nonprofit form offers founders a fundamental efficiency: Profits can be invested back into the business, rather than simply paid out to shareholders.

2. *Resilience and Long-Term Focus.* — The nonprofit form can sometimes offer greater stability than for-profit business forms. There are two ways that this can happen: The nonprofit form can enhance financial resilience, and it can promote a long-term focus.

Financial resilience. As the previous section explained, many nonprofits retain unrestricted net assets. As a result, they may be better equipped to weather a bad month of sales or a spike in inflation.[223] Nonprofits also have multiple streams of income; donations can cover a period of negative operational revenue, enhancing a nonprofit entity's resilience. And, of

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api/core/bitstreams/edf3ca8d-b186-462b-8e14-2f5a1b038812/content [https://perma.cc/GX8Q-R3E5] (noting how for-profit startups that also pursue objectives beyond profit may struggle to appeal to traditional investors).

220. Ownership, supra note 81; What Do We Support?, Novo Nordisk Found., https://novonordiskfonden.dk/en/what-we-support/ [https://perma.cc/FJQ7-BESR] (last visited Aug. 19, 2025).

221. Our Structure, OpenAI, https://openai.com/our-structure/ (on file with the *Columbia Law Review*) (last visited Nov. 5, 2025).

222. See Andrew Jack, A Model for Healthier Profits, Fin. Times (Dec. 5, 2011), https://www.ft.com/content/658bcbea-1f33-11e1-ab49-00144feabdc0 (on file with the *Columbia Law Review*) ("It's an ideal model for the pharmaceutical industry, where there will be ups and downs, and you need to be left in peace to do the development work." (internal quotation marks omitted) (quoting Poul Rasmussen, Chairman, Leo Found.)).

223. See Lewellen et al., supra note 24, at 22 (finding that "[h]ospital closures are substantially more likely for for-profits"); cf. Thad D. Calabrese, The Accumulation of Nonprofit Profits: A Dynamic Analysis, 41 Nonprofit & Voluntary Sector Q. 300, 315 (2012) (showing that nonprofits tend to retain unrestricted net assets to reduce financial vulnerability).

course, nonprofit businesses that satisfy § 501(c)3–6 of the tax code are exempt from paying federal and state corporate tax on income that is generated.[224]

Long-term focus. Under some circumstances, nonprofits may also benefit from the freedom to focus on their missions over the long term. For example, nonprofits lack a market for corporate control, one of the longest-standing tugs-of-war in corporate governance.[225] When shareholders of for-profit firms believe that management is responsible for the business's poor performance or that assets are not being well utilized, shareholders can attempt to take over the company to unlock value. Management, however, has long argued that these actions by shareholders—especially in modern times, when they are spearheaded by activist shareholders or private equity firms—disrupt the company's long-term trajectory.[226] Today, even as the threat of hostile takeovers has largely abated, for-profit firms face the ever-present threat of shareholder proxy fights.

Unlike directors of a for-profit company, the nonprofit board is typically self-perpetuating, meaning that the typical mechanisms for outside influence via proxy fights or takeovers do not exist. State attorneys general may be able to affect the board, but they are typically underfunded and lack the resources needed to provide genuine oversight.[227] As such, nonprofits generally police themselves, under the direction of self-governing boards. This structure can allow management to focus on their long-term strategy without much fear of external interventions. And nonprofit management argue that this is a chief benefit of their governance structure—the entity is free from short-term market pressure.[228] In sum, the absence of shareholder ownership can enhance organizational stability and allow managers to focus on their business's long-term vision, promoting value creation under the right circumstances.

And yet, this freedom from takeover markets and shareholder activism can also lead to inefficiencies. Shareholders' ability to force

224. I.R.C. § 501(c)(3)–(6) (2018). Again, this Essay does not claim that this tax benefit fully explains the persistence and success of nonprofit enterprise. See supra note 206.

225. See Hwang & Nili, supra note 45 ("Perhaps the most important and most long-standing question in corporate governance law, theory, and policy has been the question of who should control the corporation.").

226. See John C. Coffee, Jr. & Darius Palia, The Wolf at the Door: The Impact of Hedge Fund Activism on Corporate Governance, 41 J. Corp. L. 545, 592 (2016) (explaining that shareholders may defy "managerial defensive tactics" by coalescing as a "wolf pack" and detailing the implications of such "wolf pack" activism (internal quotation marks omitted)).

227. Molk & Sokol, supra note 15, at 1509, 1522–23.

228. See Jack, supra note 222 (providing examples of nonprofits that are able to "move very fast" as a result of their ownership structure (internal quotation marks omitted) (quoting Gitte Aabo, CEO, Leo Pharma); see also Emilie Aguirre, Beyond Profit, 54 U.C. Davis L. Rev. 2077, 2084 (2021) [hereinafter Aguirre, Beyond Profit] (arguing that the corporate form does not allow stability of purpose).

changes over the objections of entrenched management is often thought to be highly desirable and a necessary means of limiting agency costs.[229] As a result, not all businesses would benefit from an absence of shareholder discipline. But for some companies—and in particular businesses with high fixed costs for research and development over long time periods, such as pharmaceutical companies and early-stage technology companies—reduced shareholder pressure to provide returns may provide a benefit.[230] This reality is especially true for purpose-driven businesses, for the reasons discussed in the previous Part. Likewise, nonprofit businesses that experience robust product and labor market competition may suffer less from agency cost problems because those market forces will further motivate and discipline management for inefficient operations.

And yet, the financing limitations that nonprofits experience render the form an unattractive choice for businesses that need substantial capital infusions to launch or grow. Such businesses might consider opting for a blended governance form (an enterprise foundation or even an insulated benefit corporation) in an attempt to have the best of both worlds—a mission-driven business with equity investment. But blended entities come with their own challenges. In particular, the presence of shareholders, even with limited control rights, can undermine the stability that may be necessary to see the mission through.[231] We return to this point in Part III.

Likewise, although nonprofits are not subject to a market for corporate control or influence, they may be vulnerable to pressure from another class of stakeholders: their donors. As the previous section discussed, donor influence can mitigate managerial agency costs because nonprofits must compete for donor dollars;[232] however, this influence can also serve to redirect the nonprofit entity's mission in ways that undermine management's focus on the mission over the long term.

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229. Zohar Goshen & Reilly S. Steel, Barbarians Inside the Gates: Raiders, Activists, and the Risk of Mistargeting, 132 Yale L.J. 411, 422 & n.38 (2022).

230. This may be why such firms often choose to go public with dual-class structures or other insulation from shareholders—because such insulation provides benefits. See Zohar Goshen & Assaf Hamdani, Corporate Control and Idiosyncratic Vision, 125 Yale L.J. 560, 590 (2016) (explaining the benefits of the dual-class structure). Note that these benefits may recede over time. See Robert J. Jackson Jr., Perpetual Dual-Class Stock: The Case Against Corporate Royalty, SEC (Feb. 15, 2018), https://www.sec.gov/news/speech/perpetual-dual-class-stock-case-againstcorporate-royalty [https://perma.cc/F8XC-T6X6] (arguing against the use of perpetual dual-class stock and claiming that the benefits of dual-class stock "eventually disappear[]"); see also Lucian A. Bebchuk & Kobi Kastiel, The Untenable Case for Perpetual Dual-Class Stock, 103 Va. L. Rev. 585, 630 (2017) (showing that the benefits of dual-class stock decrease over time).

231. See Kobi Kastiel, Against All Odds: Hedge Fund Activism in Controlled Companies, 2016 Colum. Bus. L. Rev. 60, 130–31 (2016) (documenting shareholder engagements within controlled firms).

232. See, e.g., Galle, Right to Sue, supra note 64, at 428–29 ("[U]s[ing] overhead ratio as one measure of agency costs[,] . . . [d]onor standing significantly reduces both overhead ratio and compensation.").

Donor influence has been a live issue in higher education recently. Many colleges and universities rely on a combination of donations and operations for income. But donor influence can undermine the very conditions that are necessary for a university to function. Indeed, the protection of faculty tenure came about after the eponymous donor to Stanford University, Jane Stanford, forced out a socialist economist who had made a variety of political statements with which she did not agree.[233] This event led to the departure of 10% of Stanford's faculty and a full-blown university crisis.[234] When the chips fell, some of the dissenting faculty authored the founding document for academic freedom in the United States, the *Declaration of Principles on Academic Freedom and Academic Tenure*, which stated, among other things, that faculty scholarship and opinions should not be constrained by political pressure.[235]

And yet, despite the protection of tenure, universities are subject to considerable donor pressure—to admit their relatives' or friends' children as students, or, as recent events have illustrated, to change their administrations. Harvard University president Claudine Gay was recently ousted from her role after powerful donors threatened to withhold money.[236] The same result befell Liz Magill, the University of Pennsylvania president, who resigned in the face of hefty donor pressure and in the wake of congressional testimony.[237] This donor influence threatens academic freedom, one of the critical pillars of higher education in the United States. For another example, consider how in 2019, the University of Alabama School of Law engaged in a very public tango with the

233. Brian Eule, Watch Your Words, Professor, Stan. Mag. (Jan./Feb. 2015), https://stanfordmag.org/contents/watch-your-words-professor [https://perma.cc/E8V2-RW7V] ("More broadly, [the termination of Edward Alsworth Ross] galvanized efforts to codify protection of academic freedom and indirectly led to the establishment of tenure.").

234. Melissa De Witte, Academic Freedom's Origin Story, Stan. Graduate Sch. Educ. (May 1, 2023), https://ed.stanford.edu/news/academic-freedom-s-origin-story?print=all [https://perma.cc/A7JZ-36CM] (explaining that "[a]fter much quarreling between [members of the administration], Ross eventually resigned, along with seven other professors in protest (representing about 10 percent of the Stanford faculty)").

235. Nicholas Dirks, Higher Education's Donor Problem, Time (Jan. 11, 2024), https://time.com/6554359/university-donor-problem-essay/ [https://perma.cc/QW36-2Y8G] (describing the creation of the 1915 *Declaration of Principles on Academic Freedom*, the third principle of which is "that in the domain of developing expertise in technical domains, there should be no constraint from social or political pressure standing in the way of the scholar's honest opinions"); see also AAUP's 1915 *Declaration of Principles*, Middle E. F.: Campus Watch, https://www.meforum.org/campus-watch/aaup-1915-declaration-of-principles [https://perma.cc/8D3h-AT3A] (last visited Sep. 14, 2025) ("In the institutions of higher education the board of trustees is the body on whose discretion, good feeling, and experience the securing of academic freedom now depends." (quoting Charles William Elliot, Academic Freedom: An Address Delivered Before the New York Theta Chapter of the Phi Beta Kappa Society (May 29, 1907), at 7)).

236. Eileen McNamara, Ousting Claudine Gay From Harvard Was Always About the Money, WBUR (Jan. 3, 2024), https://www.wbur.org/cognoscenti/2024/01/03/harvard-claudine-gay-resigns-president-eileen-mcnamara [https://perma.cc/YXY5-K55P].

237. Id.; Dirks, supra note 235.

University's largest donor, Hugh Culverhouse.[238] Culverhouse had committed over $20 million in donations to the law school, gaining naming rights to the law school in the process.[239] Soon after, however, Culverhouse apparently wrote testy emails to the dean about hiring decisions and asked to be allowed to wander the halls and sit in on classes.[240] Eventually, the University returned the money and removed Culverhouse's name from the law school.[241]

In sum, although nonprofits are protected from shareholder influence, they must navigate a different set of concerns that come from the potential for donor interference. The next Part returns to this issue.

C. *The Descriptive Power of Purposeful Enterprise Theory*

The previous sections described our purposeful enterprise theory, which reveals how nonprofits and other blended entities can offer genuine efficiency advantages relative to for-profit businesses. We do not suggest that all business should be conducted through nonprofits, nor do we predict that nonprofits will outcompete for-profit business across all industries. Instead, purposeful enterprise theory provides an explanation for why certain nonprofit enterprises and blended entities manage to succeed and thrive without shareholder intervention and control.

Purposeful enterprise theory also sheds light on the different categories of nonprofit enterprise that exist and the types of companies that might thrive under each variation. On one end of the spectrum, we have the *pure nonprofit enterprise*—a business that is incorporated as a nonprofit and thus lacks shareholders. This entity structure may best fit low-margin businesses without major upfront capital needs (or capital needs that can be tackled by philanthropic or debt financing). By requiring the business to specify a charitable purpose, the nonprofit structure can mitigate agency cost issues, so long as the purpose is viewed by employees as worthy and authentic. Moreover, because the company lacks shareholders, the business will be able to invest any profits that it generates back into the business, which helps it survive and thrive over the long term. Although management need not navigate the risk of shareholder

238. Bill Chappell, Univ. of Alabama Returns $21.5 Million Gift; Donor Urged Boycott Over Abortion Law, NPR (June 7, 2019), https://www.npr.org/2019/06/07/730671823/univ-of-alabama-rejects-21-5-million-gift-donor-urged-boycott-over-abortion-law [https://perma.cc/4MCM-7RXC].

239. Id.

240. See Todd Stacey & Caroline Beck, Culverhouse Emails Tell a Different Story on University of Alabama Feud, BirminghamWatch (June 10, 2019), https://birminghamwatch.org/2019/06/10/culverhouse-emails-tell-different-story-university-alabama-feud/ [https://perma.cc/2D99-T5XH] (discussing how a series of emails uncover a slew of demands Culverhouse made to the University regarding his donations).

241. See Chappell, supra note 238 ("The University of Alabama's board of trustees has voted to return a $21.5 million gift from Hugh Culverhouse Jr.—the school's biggest donor—and take his name off its law school.").

intervention, it faces "donor principal costs," a term we use to describe the misalignment that can come from donor influence that is inconsistent with the organizational mission.[242]

Schools and hospitals, to take two examples, are a good fit for this category. They are low-margin businesses that can typically fund upfront expenditures using donations or debt financing. It is no surprise, therefore, that these businesses typically choose a pure nonprofit structure. Moreover, these pure nonprofit businesses typically outcompete their for-profit rivals,[243] and purposeful enterprise theory explains why: Without shareholders, any profits that accrue to the business can be plowed back into it. Moreover, the business has an obvious higher purpose—education or patient care—that is highly motivating for employees, so long as it is protected from donor principal costs. Shareholder involvement, therefore, is not needed to provide motivation or enforcement. Indeed, shareholder intervention can actually undermine the stability and long-term focus of the business—the decrease in hospital quality as the private equity industry has taken hold of the healthcare industry provides an example of this effect.[244]

Likewise, generic drug manufacturers—low-margin businesses that are typically funded by hospital systems that benefit from the availability of low-cost drugs[245]—are often pure nonprofits.[246] Because generic manufacturers can secure upfront financing from their hospital customers, they need not take shareholder equity that would drain the company's resources over time. And by advancing a higher purpose—securing the availability of lifesaving drugs for all patients—the organization bolsters its ongoing operations. In addition, many news

242. See Katz, supra note 15, at 27 (discussing the complex relationship between donors and charities); cf. Goshen & Squire, supra note 48, at 770 (defining principal costs as coming from principal control). Of course, any type of stakeholder influence—including that of employees—can lead to principal costs. This Essay focuses on donor principal costs because of the unique issues they present in nonprofits, but the Essay's framework applies to other types of stakeholders as well.

243. See, e.g., Derek Jenkins & Vivian Ho, Nonprofit Hospitals: Profits and Cash Reserves Grow, Charity Care Does Not, 42 Health Affs. 866, 868 (2023).

244. See, e.g., Jake Miller, What Happens When Private Equity Takes Over a Hospital, Harv. Med. Sch. (Dec. 26, 2023), https://hms.harvard.edu/news/what-happens-when-private-equity-takes-over-hospital [https://perma.cc/P7KW-E8SM] (reporting on a new study showing that patients are more likely to suffer various harms after a hospital is purchased by private equity).

245. See Carter Dredge & Stefan Scholtes, Commentary, The Health Care Utility Model: A Novel Approach to Doing Business, NEJM Catalyst, July 8, 2021, at 1, 3, https://catalyst.nejm.org/doi/full/10.1056/CAT.21.0189 (on file with the *Columbia Law Review*) (discussing how low-cost pricing has helped the growth of the Civica Rx healthcare utility model).

246. See, e.g., Not-for-Profit Generic Drug Company Officially Established, Attracts Interest of More Than 120 Health Organizations, SSM Health (Sep. 6, 2018), https://www.ssmhealth.com/newsroom/2018/9/generic-drug-company-officially-established [https://perma.cc/L4WQ-4FJB].

organizations are converting to pure nonprofits as their margins plummet from falling subscription and advertising sales.[247] By becoming nonprofits, the news organizations can better protect their missions (and assets) over the long term and unlock donor funding to help improve resilience. In turn, the mission encourages journalists to take risks and develop long-form articles that might not secure a place in the typical for-profit news outlets, potentially bolstering the business.[248]

Although many businesses would benefit from promoting purpose as an incentive alignment device for management and lower-level employees alike, the trouble is that many businesses need equity funding for growth. And as the previous Parts noted, shareholders typically expect the pursuit of profit in exchange for their investments, and they have the tools to push for it. For companies that require shareholder investment, entrepreneurs have a spectrum of choices. At one extreme, they can choose the typical "good governance"[249] corporation, with a single class of equity and a unified board, which promotes maximal accountability to shareholders. In the middle is the "good governance" benefit corporation, which elevates a higher purpose but provides control rights to shareholders. And the furthest along the spectrum toward the nonprofit pole is the "blended entity"—either an enterprise foundation (which uses nonprofit ownership to deprive shareholders of control of the business) or an "insulated" benefit corporation (which deprives shareholders of key intervention rights over the purposeful business).

The next Part explicitly discusses how our theory applies to benefit corporations. For now, it is worth noting that purposeful enterprise theory suggests that capital-intensive, high-margin businesses that espouse an authentic higher purpose would be the best fit for a blended entity structure. Those businesses may be able to harness purpose as a substitute for dampened shareholder intervention rights. Moreover, we predict that a subset of these businesses would be especially likely to survive and thrive over the long term—those that experience robust product and labor market competition. Those market forces can supplement purpose by

247. See David Westphal, USC Annenberg Sch. for Commc'n, Philanthropic Foundations: Growing Funders of the News 1 (2009), https://communicationleadership.usc.edu/files/2015/07/PhilanthropicFoundations.pdf [https://perma.cc/R3WJ-FN73] (detailing the troublesome financial situation that many newspapers face and explaining that "[t]he collapse of the traditional economic model has increased both the need for nonprofit journalism, but also the receptivity toward it" (internal quotation marks omitted) (quoting Geoffrey Cowan, Professor, USC Annenberg Sch. for Commc'n)).

248. See Richard J. Tofel, What I Learned From the Nonprofit News Revolution, Colum. Journalism Rev.: First Person (June 25, 2021), https://www.cjr.org/first_person/propublica-tofel-nonprofit-news.php [https://perma.cc/27ME-LKNG] (describing the different issues that motivate donors to contribute to newspapers and explaining how the mission helps people envision what the "finished product will look like").

249. Dorothy S. Lund, In Search of Good Corporate Governance, 131 Yale L.J. Forum 854, 855 (2022), https://yalelawjournal.org/pdf/F7.LundFinalDraftWEB_mup4ggbi.pdf [https://perma.cc/7GRP-TVAM] (internal quotation marks omitted).

motivating and disciplining management for inefficient operations, making the need for shareholder control even less important.

In this way, our theory contradicts Hansmann's theory by suggesting that producers of "standardized industrial goods and farm produce" may actually benefit from nonprofit or blended forms of business.[250] Those businesses will experience the discipline and motivation that come not only from purpose but also from product market competition. Moreover, consumers can also receive a "warm glow" from purchasing goods from a purposeful business, providing a way for the business to differentiate itself and even raise prices.[251]

It is, therefore, no surprise that blended consumer products companies exist and, in some cases, outperform their for-profit rivals. Consider, as just a few examples, the Carlsberg Group (a Danish enterprise foundation brewery that uses a share of profits to fund scientific research[252]); Patagonia (an American enterprise foundation clothing retailer that donates a percentage of the company's profits to support the environment[253]); Warby Parker (a dual-class benefit corporation that manufactures glasses and distributes a pair to a person in need for every pair that is purchased[254]); and Allbirds (a dual-class benefit corporation that manufactures sustainable shoes[255]). In the category of farm products is Vital Farms, a successful dual-class benefit corporation that sells pasture-raised eggs.[256] For these firms, purpose is not necessary to convince consumers to trust their products—consumers can easily evaluate them and switch if needed. Instead, purpose may offer a competitive advantage for a different reason: The genuine embrace of purpose provides warm glow for the consumer who wishes to use their purchasing power as a force for good. That same embrace of purpose can lead to improved employee motivation and stakeholder enforcement, mitigating inefficiencies that arise from the company's decision to eliminate shareholder control rights.

In addition, we further posit that a blended form may best fit high-margin businesses with substantial research and development costs. Such businesses can afford shareholders (and benefit from their investment) and may improve stability by depriving those investors of key intervention

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250. Hansmann, Nonprofit Enterprise, supra note 13, at 843.

251. Sarah Iweala, Achim Spiller, Rodolfo M. Nayga, Jr. & Dominic Lemken, Warm Glow and Consumers' Valuation of Ethically Certified Products, Q Open, July 13, 2022, at 1, 2, https://academic.oup.com/qopen/article/2/2/qoac020/6643343 (on file with the *Columbia Law Review*).

252. See The Carlsberg Foundation, supra note 5.

253. Environmental Activism, Patagonia, https://www.patagonia.com/activism/ [https://perma.cc/8HWA-S5A9] (last visited Aug. 18, 2025).

254. Buy a Pair, Give a Pair, Warby Parker, https://www.warbyparker.com/buy-a-pair-give-a-pair (on file with the *Columbia Law Review*) (last visited Nov. 5, 2025).

255. Sustainability, Allbirds, https://www.allbirds.com/pages/sustainability [https://perma.cc/A9AV-4W8S] (last visited Aug. 18, 2025).

256. About Us, Vital Farms, supra note 42.

rights. As such, it is not surprising that some successful pharmaceutical companies, which must wait years before reaping profits from drug development, are enterprise foundations. Likewise, blended governance has become more popular in the United States among early-stage technology companies, with the two leading AI companies—Anthropic and OpenAI—adopting an enterprise foundation model (although OpenAI has since announced its intention to abandon the model due to its enormous capital needs[257]).[258] And although these companies have taken steps to identify and promote a higher organizational purpose, not all technology companies have made this choice. Instead, the vast majority of technology companies have chosen a dual-class C corporation structure with a conventional purpose.[259] For these companies, the decision to dampen shareholder involvement is the goal, not the elevation of purpose. And yet, as the next Part discusses, that purpose could also help these entities unlock operational efficiencies.

In sum, purposeful enterprise theory helps explain why nonprofit and blended enterprise exist and even thrive in various industries across the globe. The next Part describes some of the implications that can be gleaned from this analysis.

III. IMPLICATIONS FOR CORPORATE LAW AND CORPORATE GOVERNANCE

Purposeful enterprise theory posits that purpose can substitute for shareholder monitoring and control in combating agency costs in certain organizations. It also suggests that nonprofits may provide unique value-creating advantages. These characteristics help make nonprofit enterprise possible, and potentially successful, even relative to for-profit business.

This Part turns to implications. The first set of implications is theoretical. Section III.A considers how our theory affects longstanding debates in corporate law, including those about corporate purpose and the role of benefit corporations in society. The second set of implications is practical. Specifically, section III.B describes how our theory can be implemented by founders, managers, and shareholders who seek to harness the benefits of purposeful enterprise.

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257. OpenAI is now contemplating transitioning to a for-profit benefit corporation structure to appeal to a greater number of investors. Krystal Hu & Kenrick Cai, Exclusive: OpenAI to Remove Non-Profit Control and Give Sam Altman Equity, Reuters (Sep. 26, 2024), https://www.reuters.com/technology/artificial-intelligence/openai-remove-non-profit-control-give-sam-altman-equity-sources-say-2024-09-25 (on file with the *Columbia Law Review*).

258. See Brumme & Trelstad, supra note 152 (providing examples of technology start-ups established as nonprofits); Perrigo, Inside Anthropic, supra note 1 (detailing the structure of Anthropic); OpenAI, Form 990, supra note 161 (detailing the structure of OpenAI).

259. See Gregory H. Shill, The Social Costs (and Benefits) of Dual-Class Stock, 75 Ala. L. Rev. 221, 250 (2023) ("[D]ual-class firms are presumed to prioritize the profits of the firm or firm agents over any public purpose[].").

A. *Theoretical Implications*

1. *Corporate Purpose Debate.* — One of the most fundamental and contentious debates in corporate law is over the purpose of corporations in society.[260] For nearly half a century, shareholder primacy theory has provided the answer, and in so doing, has shaped corporate law, policy, and practice.[261] This theory argues that the role of a corporation and its managers is to maximize value for the corporation's shareholders, which will render the firm most profitable and capable of helping others.[262] Indeed, shareholder primacy advocates argue that pursuing a broader purpose, such as stakeholder value, would undermine the firm's functioning over time. This is because stakeholder governance leaves management with too much discretion and therefore provides ample room for bad behavior, increasing agency costs in the process.[263]

And yet, stakeholder governance is experiencing a "renaissance" of interest.[264] Consider a 2019 announcement by the Business Roundtable, a group of CEOs of major American companies.[265] In its Statement on the Purpose of a Corporation, the Business Roundtable announced that the statement's signatories were committed to running their businesses "for the benefit of all stakeholders—customers, employees, communities and shareholders."[266] It noted, "Each of our stakeholders is essential. We commit to deliver value to all of them, for the future success of our companies, our communities and our

260. See, e.g., Gabriel Rauterberg, The Corporation's Place in Society, 114 Mich. L. Rev. 913, 913 (2016) (discussing questions related to the "increasing convergence on the shareholder-owned corporation as the primary vehicle for creating wealth").

261. See Lund & Pollman, supra note 26, at 2569 (revealing how shareholder primacy has become enmeshed by a "corporate governance machine"); Dorothy S. Lund, Toward a Dynamic View of Corporate Purpose 5 (Eur. Corp. Governance Inst., L. Working Paper No. 746/2023, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4665040 [https://perma.cc/Z6LZ-4Y6D] [hereinafter Lund, Toward a Dynamic View] ("These ideas laid the foundation for a return to shareholderism, a shift that was locked in by the hostile takeover wave of the 1980s and that has shaped the path of corporate law and governance ever since.").

262. See Frank H. Easterbrook & Daniel R. Fischel, The Economic Structure of Corporate Law 38 (1991) ("[M]aximizing profits for equity investors assists the other 'constituencies' automatically.").

263. Id.

264. Elizabeth Pollman, The History and Revival of the Corporate Purpose Clause, 99 Tex. L. Rev 1423, 1426–35 (2021) (tracing the history of the corporate purpose clause in charters); Lund, Toward a Dynamic View, supra note 261, at 29–35 (discussing the modern purpose debate and enthusiasm for a broadened sense of purpose).

265. Press Release, Bus. Roundtable, Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy that Serves All Americans' (Aug. 19, 2019), https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans [https://perma.cc/9LG5-75HX].

266. Id.

country."[267] In response to this renewed interest in stakeholder governance, many corporate law scholars have responded with dismay, arguing that stakeholderism would only harm companies and their stakeholders by increasing management insulation, reducing their accountability, and hurting economic performance.[268]

Purposeful enterprise theory provides a reason to be more hopeful, at least for a subset of businesses that take steps to elevate and guard an authentic organizational purpose. For those businesses, purpose can serve as an incentive-alignment device, encouraging employees across the organization to work hard to pursue the entity's mission. It may allow the business to recruit talented employees and save on employee compensation. If management veers from its purpose, employees and other stakeholders can intervene. In sum, shareholder ownership and control are not the only ways to achieve management accountability and focus or economic performance, which provides a powerful counterargument to advocates of shareholder primacy.

Purposeful enterprise theory further sheds light on the persistence and success of entities that not only eschew shareholder ownership and control but also engage in "pluralistic stakeholderism," which Lucian Bebchuk and Roberto Tallarita define as governance that views stakeholder interests as ends in themselves.[269] According to Bebchuk and Tallarita, pluralistic stakeholderism is more likely to harm stakeholder interests than to advance them because it fails to anticipate and respond to the ubiquity of trade-offs between stakeholders' interests and leaves management with far too much discretion.[270] And yet, as our analysis reveals, blended entities need not leave everything to management—instead, purpose can help limit discretion and promote enforcement. More drastically, businesses can take steps to incorporate stakeholders into a company's governance structure via nonprofit governance.

Enterprise foundation Det Norske Veritas—a Norwegian conglomerate with over fifteen thousand employees and an annual operating revenue of over $3 billion[271]—has taken steps to ensure stakeholder representation in its governing foundation. The nonprofit foundation Stiftelsen Det

267. Statement on the Purpose of a Corporation, Bus. Roundtable, https://www.businessroundtable.org/opportunity-commitment [https://perma.cc/QRP9-EQZH] (last visited Aug. 19, 2025).

268. See, e.g., Bebchuk & Tallarita, supra note 45, at 164 ("[S]takeholderism would produce adverse effects on economic performance and society[] by increasing the insulation of corporate leaders, their lack of accountability, and managerial slack.").

269. Id. at 114–15.

270. Id. at 98 (analyzing the "conceptual problems and difficulties with pluralistic stakeholderism and its implementation").

271. DNV's Growth Continues, Det Norske Veritas (Mar. 26, 2025), https://www.dnv.com/news/2025/growth-continues/ [https://perma.cc/U3W2-6HWF]. The $3 billion figure was calculated by converting 34,966 million Norwegian krone to U.S. dollars with Google Finance, using the rate from March 26, 2025.

Norske Veritas (which is the sole owner of the business) is governed by a board with members chosen and compensated by a council.[272] The council has forty-five members, with seven spots reserved for employee directors, nineteen members elected by the council, and nineteen appointed by seven different Norwegian stakeholder organizations (including the Norwegian Shipowners' Association, the Confederation of Norwegian Enterprise, and the Nordic Association of Marine Insurers).[273] As such, the managers of the business are not accountable to shareholders, nor are they bereft of monitoring—instead, they are supervised by a board composed of important business stakeholders.

Det Norske Veritas's structure illustrates one way that careful nonprofit governance can help companies achieve something that corporate law scholars have viewed as impossible—pluralistic stakeholderism without runaway management agency costs. Specifically, Det Norske Veritas appears to have responded to agency costs not just by elevating its organizational mission of "safeguard[ing] life, property, and the environment" but also by directly empowering its "customers and their stakeholders" in governance.[274] Rather than collapsing under the weight of agency costs, the company has survived for nearly two hundred years under this model[275] and currently operates 350 offices across one hundred countries[276]—representing a 21% share of the global shipping market.[277]

2. *The Spectrum of Purposeful Enterprise.* — Although purposeful enterprise theory emerged out of our analysis of nonprofits, it can also apply to other organizations. Indeed, this theory applies (to lesser and greater degrees) to purposeful business across the spectrum and provides insights about the benefits and challenges these organizations face.

Benefit corporations are a good example of how entities can have feet planted in both camps: They are for-profit businesses designed to allow founders to pursue "social enterprise," which is a business aimed at advancing a social purpose beyond profit maximization.[278] Forty-one states

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272. Det Norske Veritas, Annual Report 2023 for Stiftelsen Det Norske Veritas 14–15 (2024), https://www.detnorskeveritas.com/wp-content/uploads/2024/05/DNV-Stiftelsen-Annual-Report-2023.pdf [https://perma.cc/V988-UVXX].

273. Id. at 20–21.

274. About Us, Det Norske Veritas, https://www.dnv.us/about/ [https://perma.cc/74JX-UL52] (last visited Aug. 19, 2025).

275. Id. (noting that since 1864, DNV's purpose "has been to safeguard life, property, and the environment" (emphasis omitted)).

276. About DNV—Maritime, Det Norske Veritas, https://www.dnv.com/about/maritime/ [https://perma.cc/2MB6-YJ5X] (last visited Aug. 19, 2025).

277. DNV GL to Unveil Rules This Year, TankerOperator (Jan. 30, 2015), https://www.tankeroperator.com/news/dnv-gl-to-unveil-rules-this-year/6356.aspx (on file with the *Columbia Law Review*).

278. For further analysis of social enterprise and benefit corporations, see J. Haskell Murray, Social Enterprise Innovation: Delaware's Public Benefit Corporation Law, 4 Harv. Bus. L. Rev. 345, 347–49 (2014) (defining "social enterprise" and analyzing the phenomenon of the benefit corporation).

and Washington, D.C., have benefit corporation statutes.[279] Although states differ in their requirements, all benefit corporations require the founder to specify a public-oriented purpose in their business's charter and report periodically on how the company is fulfilling these goals. The benefit corporation also provides shareholders the right to bring a "benefit enforcement proceeding" in which a court will review whether the company is doing enough to advance the public benefit.[280]

Benefit corporations lack the nondistribution constraint that characterizes nonprofits. But like many nonprofits, benefit corporations must specify a public benefit other than profit.[281] And benefit corporations that take steps to insulate the firm from shareholder influence (such as by using a dual-class structure or by otherwise limiting shareholder voting and intervention rights) are functionally equivalent to enterprise foundations—the governance structure helps protect the mission from shareholder influence. For this reason, this Essay has used the term "blended entity" to refer to both insulated benefit corporations and enterprise foundations.

Therefore, purposeful enterprise exists on a spectrum. At one end are nonprofits that are bound by the nondistribution constraint and lack shareholders. On the other are traditional for-profit corporations. Along the continuum are the blended organizations—enterprise foundations and insulated benefit corporations—both of which use governance to insulate management from their shareholders and enshrine a higher purpose in the organization's DNA. Although nonprofits are often more intentional about identifying a purpose and often have a head start at establishing authenticity, that is not always true. For-profit entities can and do harness the benefits of purposeful enterprise, just as certain blended entities do.

3. *Donor Principal Costs.* — Purposeful enterprise theory also sheds light on another form of agency cost: donor principal costs. Previous economic analyses of nonprofits argue that nonprofit management may fail to pursue the interests of their principals—their donors—due to the donors' inadequate incentives to monitor management.[282] But donors

279. Blaine Townsend, The Rise of B Corps and Benefit Corporations, Bailard (Jan. 12, 2024), https://bailard.com/beyond-profits-the-rise-of-b-corps-and-benefit-corporations/ [https://perma.cc/W9UW-9DSX].

280. Jaime Lee, Note, Benefit Corporations: A Proposal for Assessing Liability in Benefit Enforcement Proceedings, 103 Corn. L. Rev. 1075, 1078–83 (2018).

281. See, e.g., Del. Code tit. 8, § 362 (2025) (requiring the public benefit corporation to "[i]dentify within its statement of business or purpose . . . one or more specific public benefits to be promoted by the corporation"); Forester, supra note 123 ("The IRS will be concerned with three aspects of your nonprofit's purpose: that it's exclusively charitable; that no part of the earnings will benefit an individual; and that upon dissolution the nonprofit's assets will not benefit an individual.").

282. See, e.g., Manne, supra note 29, at 231–32 ("[B]ecause of the information asymmetry occasioned by the customary separation between a nonprofit's patrons and its beneficiaries . . . and because of the lack of residual claimants with an incentive to overcome

often depart from their passive stance and exercise substantial influence over organizations, which can lead to the mitigation of managerial agency costs.[283] At the same time, donor influence can create principal costs, which Zohar Goshen and Richard Squire define as "*competence costs*, which arise from honest mistakes attributable to a lack of expertise, information, or talent, and *conflict costs*, which arise from the skewed incentives produced by the separation of ownership and control."[284]

As an illustrative example of donor principal costs, consider how Elon Musk, one of OpenAI's founders and largest early investors, exerted influence over the company. From the start, Musk (who donated approximately $45 million) emphasized that OpenAI would need to raise billions of dollars to be taken seriously.[285] In 2015, he promised to cover whatever the company was not able to raise.[286] By 2018, he clarified his meaning: He stated that the best path forward for OpenAI was to sell itself to Tesla.[287] After the company refused his offer, Musk left the OpenAI board.[288] Musk eventually sued the company, accusing it of betrayal and a failure to safeguard its mission.[289]

The Musk example illustrates how donor influence can be a double-edged sword. Musk's participation in the early venture and even his later lawsuit could have represented beneficial donor engagement aimed at encouraging managerial focus on the company's mission. Another view, however, is that his views about the path forward for the company represented obvious conflict costs—he sought to use the technology to benefit other companies that he controlled.

Donor influence remains an area ripe for further research.[290] Practically speaking, founders that seek to unlock the benefits of

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agency costs, monitoring of a nonprofit by a donor or a philanthropist is prohibitively expensive."). But cf. Katz, supra note 15, at 3, 19–27 ("Manne overstates the severity and intractability of the donor's agency problems . . . . [C]haritable organizations can actually *help* [donors] control the agency problem . . . .").

283. See Schizer, Save the World, supra note 153, at 48 (discussing how nonprofits are subject to the control of donors, affecting what risks a nonprofit can take).

284. Goshen & Squire, supra note 48, at 770.

285. Greg Brockman, Ilya Sutskever, John Schulman, Sam Altman & Wojciech Zaremba, OpenAI and Elon Musk, OpenAI (Mar. 5, 2024), https://openai.com/index/openai-elon-musk/ (on file with the *Columbia Law Review*).

286. Id.

287. David Goldman, OpenAI Publishes Elon Musk's Emails. 'We're Sad that It's Come to This', CNN, https://www.cnn.com/2024/03/06/tech/openai-elon-musk-emails/index.html [https://perma.cc/8NAT-JE4Z] (last updated Mar. 6, 2024).

288. Id.

289. Oluwapelumi Adejumo, Elon Musk Files New Lawsuit Accusing OpenAI Co-Founders of Profit-Driven Betrayal, CryptoSlate (Aug. 5, 2024), https://cryptoslate.com/elon-musk-files-new-lawsuit-accusing-openai-cofounders-of-profit-driven-betrayal/ [https://perma.cc/86V2-NFRS] (last updated Apr. 10, 2025).

290. For an early analysis of the problems that come from donor influence, see Brody, supra note 109, at 470.

purposeful enterprise via a nonprofit that is financed by donors will need to think carefully about donor principal costs and how to mitigate them.

4. *Tax.* — Although this Essay has largely sidestepped tax law to focus on organizational form, its analysis raises questions in another core debate in business law—that of the wisdom of the nonprofit tax exemption.[291] The tax rules governing nonprofits are sufficiently complex that a leading scholar has argued that they should be conceived of as "entanglement rather than exemption."[292]

Nonetheless, a few basic principles emerge. Both federal and state governments can support nonprofit organizations by exempting them from entity-level taxes and giving deductions to their donors under certain circumstances. Two conditions are particularly relevant here. First, the organization must be operated for a specific purpose—for § 501(c)(3) entities, "religious, charitable, scientific, testing for public safety, literary, educational, fostering national or international amateur sports competition, prevention of cruelty to children, and prevention of cruelty to animals" and for § 501(c)(4) entities, "organizations not organized for profit but operated exclusively for the promotion of social welfare."[293] Further, the nonprofit organization is taxed on business income that is unrelated to its specified purpose.[294] Second, the organization must adhere to the nondistribution constraint by not distributing profits to shareholders.[295]

In other words, the U.S. tax code subsidizes the two features of purposeful enterprise that mitigate agency costs and lead to thrift and stability. Specifically, the tax code sensibly (and perhaps unintentionally) rewards nonprofit businesses that articulate a higher purpose and fashion their business activities to further it. The code also forces the entity to put

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291. See, e.g., Boris I. Bittker & George K. Rahdert, The Exemption of Nonprofit Organizations From Federal Income Taxation, 85 Yale L.J. 299, 301–05 (1976) (calling for a reexamination of the nonprofit exemption); Victor Fleischer, Response, "For-Profit Charity": Not Quite Ready for Prime Time, 93 Va. L. Rev. in Brief 231, 231 (2008), https://virginialawreview.org/wp-content/uploads/2020/12/fleischer.pdf [https://perma.cc/MSC3-QSMJ] (arguing against exempting certain "for-profit charit[ies]" from taxation (internal quotation marks omitted)); Henry B. Hansmann, Unfair Competition and the Unrelated Business Income Tax, 75 Va. L. Rev. 605, 605–06 (1989) (reexamining the unrelated business income tax and calling for reforms that define the scope of nonprofit exemptions); Susan Rose-Ackerman, Unfair Competition and Corporate Income Taxation, 34 Stan. L. Rev. 1017, 1019 (1982) (discussing the for-profit firm's competition with tax-favored nonprofits).

292. Hemel, supra note 124, at 1 (emphasis omitted).

293. Id. at 14 (internal quotation marks omitted) (quoting I.R.C. § 501(c)(4) (2018)). Donors to 501(c)(4) organizations do not get a tax deduction. Id.

294. See id. at 20–24 (explaining the application of the unrelated business income tax).

295. See id. at 24–26 ("A defining feature of nonprofit organizations—and a central concern of the federal tax regime for nonprofit entities—is the nondistribution constraint: the rule that nonprofit organizations cannot distribute their assets to directors, officers, or others who control the organization.").

profits back into the business.[296] Although the scope of the debate over the nonprofit exemption extends beyond this project, we note that by encouraging the use of purposeful enterprise, the tax subsidy can create value.

B. *Implementation*

1. *Authentic and Specific Higher Purpose.* — As discussed in Part II, an authentic higher organizational purpose can lead to economic benefits for for-profit and nonprofit firms alike.[297] A higher purpose differs from a corporate vision and strategy—it provides the raison d'etre for the business. Moreover, purposeful enterprise theory is agnostic about what the organizational purpose entails. Rather than wading into the debate on whether purpose should promote environmental, social, and governance (ESG) or other prosocial values, this Essay simply argues that corporate purpose can play a variety of functional roles.[298] For purpose to be useful, however, it must be compelling enough to enhance the intrinsic motivation of the business's employees.

This analysis further reveals why nonprofits have a distinct advantage relative to for-profit firms in defining and adhering to an organizational purpose: For-profit firms will have trouble moving away from the belief that the company exists to drive shareholder profits. As Jill Fisch and Steven Davidoff Solomon observed, vague and aspirational statements of purpose that are typically used by for-profit incorporators "provide neither direction nor legal cover to corporate decision makers, particularly if purpose is understood as constraining the pursuit of shareholder value."[299]

For-profit businesses can demonstrate that they are authentically committed to a higher purpose in several ways, such as by choosing a profit-sacrificing course of action or otherwise spending money on actions that align with the company's purpose. For instance, iconic Michigan gourmet food company Zingerman's chooses to shut down operations several times per year to train employees on managing the company,

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296. The entity can also make additional donations that further its purpose. For (c)(3) organizations, the Code provides only that "no part of the net earnings" of the organization may "inure[] to the benefit of any private shareholder or individual." I.R.C. § 501(c)(3). For (c)(4) organizations, the Code provides only that "the net earnings of [the organization]" must be "devoted exclusively to charitable, educational, or recreational purposes." Id. § 501(c)(4).

297. See Hansmann & Thomsen, supra note 15, at 190 ("[I]dentity economics assumes that participants in an organization can, through appropriate experiences and framing, be induced to identify their personal goals more closely with those of the organization, and hence to serve the organization more effectively.").

298. For more on these functional roles, see Gerard George, Martine R. Haas, Anita M. McGahan, Simon J.D. Schillebeeckx & Paul Tracey, Purpose in the For-Profit Firm: A Review and Framework for Management Research, 49 J. Mgmt. 1841, 1851–62 (2023).

299. Fisch & Solomon, supra note 159, at 1339.

pursuant to its purpose of developing its employees as entrepreneurs.[300] Benefit corporation Warby Parker gives a pair of glasses away to someone in need with every purchase, pursuant to its mission of "inspir[ing] and impact[ing] the world with vision, purpose, and style."[301] These actions communicate to employees that the business exists to promote a higher goal other than profits.

In sum, a business that wishes to use purpose as a substitute for shareholder control must convince employees that its purpose is both central to the business and authentic—not just a mere attempt at marketing.[302] Moreover, the purpose must also be sufficiently specific to provide direction and promote stakeholder trust.[303] As Fisch and Solomon noted, the vast majority of corporate purpose clauses in for-profit corporations are nonspecific.[304] Vagueness, we expect, does little to provide direction, motivation, and monitoring.

Moreover, organizations that announce a specific purpose that is merely tangential to, or even undermined by, the business's operations (for example, ExxonMobil's mission statement indicating a commitment to sustainability[305]) will harness fewer of the benefits of purposeful enterprise. In addition, the purpose must be one that employees care about, which is often the case for nonprofit employees who select the organization because of its purpose.[306]

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300. Thakor & Quinn, supra note 138, at 11; see also Henderson & Van den Steen, supra note 144, at 329 (developing a theory of how firms' prosocial purposes can lead to higher profitability).

301. Warby Parker, Impact Report: Executive Summary 3 (2022), https://www.warbyparker.com/assets/img/impact-report/Impact-Report-2022-Executive-Summary.pdf [https://perma.cc/5UJW-2BT2].

302. On this point, this Essay differs from Fisch and Solomon, who argue that purpose enables corporations to formalize their objectives and priorities, and should thus "be used to direct and manage the expectancy interests of the corporation's stakeholders." Fisch & Solomon, supra note 159, at 1339. Although this is one function of purpose, this Essay argues that the more important role is to inform employees—and management in particular—why the business exists as a means of motivating them and helping them resolve trade-offs.

303. Colin Mayer, The Future of the Corporation and the Economics of Purpose, 58 J. Mgmt. Stud. 887, 890 (2021) ("A purpose is precise about what problems it is seeking to solve, whose problems, how it will solve them, when and why the company in question is particularly well suited to solving those problems.").

304. Fisch & Solomon, supra note 159, at 1312.

305. About, ExxonMobil, https://www.exxonmobilchemical.com/en/exxonmobil-chemical [https://perma.cc/3ZQ3-HNZN] (last visited Nov. 5, 2025).

306. See Lise Anne Slatten, Joshua S. Bendickson, Meagan Diamond & William C. McDowell, Staffing of Small Nonprofit Organizations: A Model for Retaining Employees, 6 J. Innovation & Knowledge 50, 53 (2021) ("More than in other types of organizations, employees in [nonprofits] are actually attracted and motivated by a belief in the organization's values and mission and the opportunity that the work offers to them to connect to their own values." (citation omitted)).

Accordingly, founders of purposeful enterprises will have a head start when it comes to communicating an authentic purpose. Those businesses have chosen their organizational form to elevate a purpose other than shareholder wealth maximization. For-profit entities can do the same, but the success of the purpose will depend not only on the centrality of purpose but also its authenticity.

As a result, we are skeptical of proposals to legally require corporations to articulate a purpose.[307] The benefits of purposeful enterprise appear to accrue mostly to businesses that pursue something other than shareholder gain and that take steps to elevate and promote that purpose in the face of strong market pressures to do otherwise. Requiring conventional for-profit businesses to identify a higher purpose will not help them secure the benefits of purposeful enterprise; they are likely to adopt the vague purposes that Fisch and Solomon observe. Moreover, the requirement could eliminate the signaling benefits that accrue to the purposeful businesses that voluntarily select it.

2. *Dual-Class Companies.* — Some of the benefits created by purposeful enterprise could be harnessed by a broader set of entities, such as by the recent spate of technology companies that have opted for a dual-class equity structure to preserve founder control.[308] Much ink has been spilled about the potential agency costs inherent in dual-class companies,[309] as well as the benefits that may offset these costs.[310] Purposeful enterprise theory suggests that these businesses could use purpose to ameliorate the risks inherent in a dual-class structure. More specifically, a dual-class company that elevates purpose—in an authentic and specific way—may better direct and motivate employees and secure internal enforcement, reducing the risk of agency cost issues.

Meta is an example of a dual-class company that may have benefited from a more specific and authentic purpose. Meta's mission statement is to "[b]uild the future of human connection and the technology that

307. See Mayer, Prosperity, supra note 39, at 22, 24 (proposing that corporations be legally required to articulate a purpose).

308. Many technology companies choose this structure. See Shill, supra note 259, at 227 (discussing how a large number of technology companies have employed a dual-class structure in recent years); see also Goshen & Hamdani, supra note 230, at 563 (same).

309. See, e.g., Paul Gompers, Joy Ishii & Andrew Metrick, Incentives vs. Control: An Analysis of U.S. Dual-Class Companies 3 (Nat'l Bureau of Econ. Rsch., Working Paper No. 10240, 2004), https://www.nber.org/system/files/working_papers/w10240/w10240.pdf [https://perma.cc/6LMJ-8BDG] ("Previous studies of dual-class firms suggest that the separation of voting and cash flow ownership may have significant negative implications for firm valuation."); see also Lucian Arye Bebchuk, Reinier Kraakman & George G. Triantis, Stock Pyramids, Cross-Ownership, and Dual Class Equity: The Mechanisms and Agency Costs of Separating Control From Cash-Flow Rights, *in* Concentrated Corporate Ownership 295, 298–301 (Randall K. Morck ed., 2000) (describing how dual-class ownership leads to distorted incentives and agency costs).

310. See Goshen & Hamdani, supra note 230, at 590 (describing how dual-class companies can benefit both the entrepreneur and investors).

makes it possible."[311] But for many, this mission statement rings inauthentic: The company has been the frequent target of litigation and regulatory scrutiny on the grounds that it developed addictive products[312] and promotes misinformation.[313] It is no surprise, therefore, that employee morale has suffered in recent years[314]: Employees report that they feel that they are working for a company that does more harm than good[315] and that is moving in the wrong direction.[316]

A specific and authentic purpose might have mitigated some of these issues. A specific purpose could have provided guidance for business decisions—including the derided decision to expand into virtual reality (which appears only tangentially related to the broadest interpretation of the company's mission).[317] The company could have demonstrated authenticity of purpose by elevating purpose above profits. Indeed, the company's dual-class nature would have made this course of action

311. Our Mission, Meta, https://about.meta.com/company-info/ [https://perma.cc/Z7MD-4RJA] (last visited Aug. 28, 2025).

312. See, e.g., Complaint and Jury Demand at 1, Commonwealth v. Meta Platforms, Inc., No. 2384CV (Mass. Super. Ct. filed Oct. 24, 2023), https://www.mass.gov/doc/2023-10-24-meta-complaint-redacted/download [https://perma.cc/3XTT-V2DU] ("Over the past decade, [Meta] has intentionally designed its flagship social media platforms . . . to be addictive to youth . . . ."); see also Emma Woollacott, European Commission Probes Meta Over Youth Social Media Addiction, Forbes (May 16, 2024), https://www.forbes.com/sites/emmawoollacott/2024/05/16/european-commission-investigates-facebook-and-instagram-rabbit-hole/ [https://perma.cc/T2KM-P7KW] ("[The European Commission] believes that the sites' interfaces may exploit the weaknesses and inexperience of minors to cause addictive behavior . . . .").

313. See Vera Bergengruen & Billy Perrigo, Facebook Acted Too Late to Tackle Misinformation on 2020 Election, Report Finds, Time (Mar. 23, 2021), https://time.com/5949210/facebook-misinformation-2020-election-report/ [https://perma.cc/43ZH-LS7K] (describing Facebook's inaction in addressing pages spreading misinformation). Meta has also been fined on data privacy grounds. See Press Release, FTC, FTC Imposes $5 Billion Penalty and Sweeping New Privacy Restrictions on Facebook (July 24, 2019), https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions [https://perma.cc/X58Q-GPCF]; see also Cathy Hwang & Matthew Jennejohn, Contractual Depth, 106 Minn. L. Rev. 1267, 1268 (2022) (discussing Meta's fine).

314. Sheera Frenkel & Mike Isaac, Mass Layoffs and Absentee Bosses Create a Morale Crisis at Meta, N.Y. Times, https://www.nytimes.com/2023/04/12/technology/meta-layoffs-employees-management.html (on file with the *Columbia Law Review*) (last updated Apr. 12, 2023); Naomi Nix, Meta Employee Morale Is Low. Mark Zuckerberg is Touting AI to Fix That., Wash. Post (June 9, 2023), https://www.washingtonpost.com/technology/2023/06/09/meta-morale-artificial-intelligence/ (on file with the *Columbia Law Review*).

315. Shirin Ghaffary, What Meta Employees Really Think About Their Company's Brutal Year, Vox (Jan. 11, 2023), https://www.vox.com/recode/2023/1/11/23547490/meta-facebook-mark-zuckerberg-stock-employees-morale-survey-2022-year (on file with the *Columbia Law Review*).

316. Frenkel & Isaac, supra note 314.

317. See Ryan Mac, Sheera Frenkel & Kevin Roose, Skepticism, Confusion, Frustration: Inside Mark Zuckerberg's Metaverse Struggles, N.Y. Times (Oct. 9, 2022) https://www.nytimes.com/2022/10/09/technology/meta-zuckerberg-metaverse.html (on file with the *Columbia Law Review*) (detailing the "rocky start" to the launch of the metaverse).

achievable, as Mark Zuckerberg controlled the outcome of all voting contests.

3. *Blended Entities.* — As discussed, purposeful enterprise theory has application for organizations beyond nonprofits, including blended entities. But blended entities such as benefit corporations face challenges: They may fail to secure both managerial accountability and the benefits that come from elevating purpose.

Danone, the global food manufacturer of yogurt fame, provides one cautionary tale. The company incorporated in France as a *société à mission*, which is the French equivalent of a benefit corporation.[318] As such, Danone was required by law to "articulate social and environmental goals, memorialize them in their bylaws, create a Mission Committee to monitor progress, and appoint a third party to verify the mission is achieved."[319] Danone had also taken steps to protect management from shareholder influence: The company granted double voting rights to shareholders who had held stock for more than two years[320] and adopted a bylaw provision that limited shareholder voting authority to 6% of the outstanding shares[321] in order to "avoid having a shareholder exercise undue influence or even realize a 'stealth' takeover of the Company."[322]

Nonetheless, an activist hedge fund acquired a small stake in Danone and pushed the company to remove its pro-ESG CEO, Emmanuel Faber, in 2021.[323] The activist contended that Faber "did not manage to strike the

318. Our Société à Mission Status, Danone, https://www.danone.com/about-danone/sustainable-value-creation/danone-societe-a-mission.html [https://perma.cc/JCP9-RGTD] (last visited Aug. 19, 2025). Further, Danone's U.S subsidiary is a public benefit corporation. Michael B. Dorff, James Hicks & Steven Davidoff Solomon, The Future or Fancy? An Empirical Study of Public Benefit Corporations 59–60 (Eur. Corp. Governance Inst., L. Working Paper No. 495/2020, 2020), https://www.ecgi.global/sites/default/files/working_papers/documents/dorfhickssolomonfinal.pdf [https://perma.cc/CV6Y-7HJ2].

319. Emilie Aguirre, The Social Benefits of Control, 74 Duke L.J. 680, 711 (2024) [hereinafter Aguirre, Social Benefits of Control] (citing Brands, Danone, https://danone.com/brands.html [https://perma.cc/S5PF-Z7EU] (last visited Nov. 7, 2025)).

320. Danone, Universal Registration Document: Annual Financial Report 2020, at 299 (2021), https://www.danone.com/content/dam/corp/global/danonecom/investors/en-all-publications/2020/registrationdocuments/Danone_URD2020_EN.pdf [https://perma.cc/XK4Q-8CEB].

321. Id.

322. Id.

323. Aguirre, Social Benefits of Control, supra note 319, at 709–10 ("The multinational company Danone, which owns brands such as Activia, Oikos, and evian, invested in 'best-in-class soil health programs' and expensive product reformulations to improve the health profile of its product portfolio in furtherance of its goals to promote environmental and human sustainability." (quoting Frank Van Gansbeke, Sustainability and the Downfall of Danone CEO Faber (1/2), Forbes (Mar. 20, 2021), https://www.forbes.com/sites/frankvangansbeke/2021/03/20/sustainability-and-the-downfall-of-danone-ceo-faber-12/?sh=576ac5d35b16) [https://perma.cc/TNM5-JSSA] (last updated Mar. 25, 2021) (footnote omitted))); Dean Best, Danone Activist Investor Bluebell 'Says Emmanuel Faber Should Quit as Chairman', JustFood (Mar. 3, 2021), https://www.just-food.com/news/danone-activist-investor-bluebell-says-emmanuel-faber-should-quit-as-chairman/

right balance between shareholder value creation and sustainability."[324] Faber eventually stepped down and was replaced by an executive who emphasized profits and shareholder gain.[325]

American ice cream giant Ben & Jerry's provides another salient example. Founders Ben Cohen and Jerry Greenfield viewed their ice cream business as "an experiment to see if it was possible to use the tools of business to repair society."[326] They were committed to their home state of Vermont and relied heavily on local suppliers to make their products.[327] They also cultivated their investor base carefully, refusing venture capitalist financing and instead selling stock to Vermont residents.[328] In 1985, they created the Ben & Jerry's Foundation and agreed to contribute 7.5% of its pretax profits each year.[329]

In 2000, Ben & Jerry's agreed to an acquisition by Unilever.[330] Unilever allowed Ben & Jerry's to become an "autonomous subsidiary," with Unilever controlling the financial and operational aspects of the ice cream maker and Ben and Jerry's retaining an independent and self-perpetuating board "to help provide leadership for the social mission and the brand's integrity."[331] Unilever also agreed to continue making annual charitable donations to the foundation and maintain a presence in Vermont.[332]

Over time, however, the combination was viewed as a poor fit for both entities. Ben & Jerry's founders expressed concern that the company had drifted from its original mission, a sentiment shared by many observers.[333] For Unilever, the business dragged down its margins.[334] In 2022, after

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[https://perma.cc/ZQ68-BVPZ]; Laurence Fletcher & Leila Abboud, The Little-Known Activist Fund that Helped Topple Danone's CEO, Fin. Times (Mar. 24, 2021), https://www.ft.com/content/dd369552-8491-40a2-b83b-9a1b2e32407a (on file with the *Columbia Law Review*).

324. Aguirre, Social Benefits of Control, supra note 319, at 711 (internal quotation marks omitted) (quoting Activist Investor Bluebell Takes Aim at Danone, CNBC, at 2:30 (Jan. 19, 2021), https://www.cnbc.com/video/2021/01/19/activist-investor-bluebell-takes-aim-at-danone.html [https://perma.cc/XN9k-YWD9]).

325. See Fletcher & Abboud, supra note 323 (discussing Faber's decision to step down and noting that "the issue was governance[] and financial performance").

326. Antony Page & Robert A. Katz, The Truth About Ben and Jerry's, 2012 Stan. Soc. Inn. Rev. 39, 40, https://ssir.org/articles/entry/the_truth_about_ben_and_jerrys# [https://perma.cc/9L9F-3QDX] (internal quotation marks omitted) (quoting Ben Cohen, On Becoming an Ecopreneur, *in* The Green Festival Reader: Fresh Ideas From Agents of Change 50, 51 (Kevin Danaher & Alisa Gravitz eds., 2008)).

327. Id.

328. Id.

329. Id.

330. Id.

331. Id. (internal quotation marks omitted).

332. Id.

333. Id.

334. Aimee Picchi, Unilever Bought Ben & Jerry's 24 Years Ago. Now It's Exiting the Ice Cream Business., CBS News, https://www.cbsnews.com/news/unilever-ben-jerrys-spinning-off-ice-cream/ [https://perma.cc/4UAQ-H54C] (last updated Mar. 19, 2024).

Unilever refused the independent board's request to stop selling ice cream in Israel, the board sued its parent company.[335] Disputes over ethics and geopolitics further dampened employee morale.[336] Eventually, Unilever spun off Ben and Jerry's.[337]

Two lessons can be gleaned from these examples. First, shareholders and mission-driven businesses can be a poor fit, as the groups may joust over the surplus. Second, the pursuit of profit can undermine the benefits that come from a higher organizational purpose.

Companies have tried different approaches to help mitigate this kind of tug-of-war between shareholders and purpose. Anthropic, for example, layers several mission-oriented governance structures on top of each other. Anthropic's for-profit subsidiary (of the parent nonprofit) is an insulated benefit corporation, controlled by a long-term benefit trust (also known as a "purpose trust"[338]). The organization lauded this structure as capable of aligning the company's business with its mission of "developing and maintaining advanced AI for the long-term benefit of humanity."[339]

Two issues make us skeptical that this governance structure will safeguard the company's purpose to the extent that it is incompatible with shareholder interests. Anthropic's benefit corporation has large, sophisticated equity investors—including Amazon and Google[340]—that wield important governance rights. Under Delaware's public benefit corporation statute, shareholders are the only stakeholders that can bring a "benefit enforcement proceeding" if the company veers from its purpose; they are also the only stakeholders that can sue for breaches of fiduciary duty or elect trustees to the purpose trust.[341] Moreover, currently only a single trustee seat (out of five) is held by a nonshareholder stakeholder representative.[342] Shareholders also have a key bargaining

335. Judith Evans, Ben & Jerry's vs Unilever: How a Star Acquisition Became a Legal Nightmare, Fin. Times (Oct. 11, 2022), https://www.ft.com/content/30efd993-8c23-4f1b-9385-132bbba3d863 (on file with the *Columbia Law Review*).

336. See The Comms Implications of the Ben & Jerry's-Unilever CEO Ouster Saga, Montieth & Co. (Mar. 21, 2025), https://montiethco.com/news/ben-jerrys-unilever-ceo [https://perma.cc/8G3S-ZNVW] ("Stever's ouster challenges the status quo of Ben & Jerry's organizational culture. Removing him stands to erode Unilever's standing with employees as the parent of Ben & Jerry's.").

337. Courtney Bonnell, Unilever to Cut 7,500 Jobs and Spin Off Its Ice Cream Business, Which Includes Ben & Jerry's, AP News, https://apnews.com/article/unilever-job-cuts-ice-cream-business-e43ecfd917e7102d86f5f0978013426c (on file with the *Columbia Law Review*) (last updated Mar. 19, 2024).

338. The Long-Term Benefit Trust, supra note 3.

339. Id.

340. Billy Perrigo, How Anthropic Designed Itself to Avoid OpenAI's Mistakes, Time (May 30, 2024), https://time.com/6983420/anthropic-structure-openai-incentives/ (on file with the *Columbia Law Review*) [hereinafter Perrigo, How Anthropic Designed Itself].

341. Del. Code Ann. tit. 8, §§ 365–367 (2025).

342. Perrigo, How Anthropic Designed Itself, supra note 340. This number will eventually creep to three out of five, leaving some shareholders—who cannot be subject to

chip: A supermajority of shareholders can vote to rewrite the rules of the purpose trust at any time, without the trustees' consent.[343]

Forged in the wake of the boardroom coup at OpenAI, this structure was likely developed in response to concerns that the OpenAI board failed to appropriately consider shareholder interests. And the result is that shareholders have a whole lot of say over the direction of the business.[344] Ironically, a company founded out of concerns that profit would trump safety adopted a governance structure less capable of mitigating that risk than the company it sought to distance itself from.[345]

This example therefore showcases the difficulties facing entrepreneurs who seek to harness the purposeful enterprise theory discussed in this Essay. As the previous section explored, benefit corporation status and enterprise foundation ownership might not be enough to safeguard the business from mission drift over time.[346] Pure nonprofits, which eliminate shareholders entirely, may better promote stability of purpose, although the financing challenges that they face make them a poor fit for capital-intensive business. What other options remain for blended entities?

In a thoughtful paper, Emilie Aguirre considers this problem—the fact that "business law lacks a durable commitment mechanism to enable long-term pursuit of multiple objectives beyond profit."[347] Aguirre proposes (among other things) that benefit corporations that go public or exceed a certain size should be required to include stakeholder representatives on the board.[348]

Although stakeholder representatives could help mitigate mission drift, any efforts in this direction should be voluntary, which would enable differentiation between entities and their purpose. Moreover, a minority or even a majority of stakeholder board representatives may not be able to withstand coordinated pressure from shareholders.

All in all, the inability to devise a long-term commitment mechanism for entities with shareholders is both a feature and a bug. Proponents will

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termination by the Long-Term Benefit Trust—still with strong representation in management. See id.

343. Id.

344. For more on shareholder-driven governance and its limits, see generally Cathy Hwang & Emily Winston, The Limits of Corporate Governance, 47 Seattle U. L. Rev. 679 (2024) (arguing that "legislators and regulators are better than corporations themselves at figuring out what is good for society, and at effectively improving corporations' social outcomes"); Yaron Nili & Cathy Hwang, Shadow Governance, 108 Calif. L. Rev. 1097 (2020) (using public filings and interviews to examine the uses and implications of shadow governance).

345. Perrigo, Inside Anthropic, supra note 1 ("[W]hile the structure is different from OpenAI's, power ultimately lies with a small, unaccountable group.").

346. See supra section III.B.2.

347. Aguirre, Beyond Profit, supra note 228, at 2084; see also Hwang & Winston, supra note 344, at 687–89 (discussing the challenges faced by companies that answer to both shareholders and stakeholders).

348. Aguirre, Beyond Profit, supra note 228, at 2085.

argue that shareholder pressure can help respond to agency costs and redirect the business when entrenched management would prefer to dig in their heels.[349] But a consequence is that profit-seeking shareholders may push the business away from its founding purpose.

For now, the best bet for blended entities is to weigh these two considerations and attempt to balance them as best they can, using the tools of governance to anticipate conflict over purpose and profit and allocate control rights accordingly. For companies that need a substantial capital infusion to grow, those founders may be limited by their investors in how much insulation they can secure. And yet, this Essay provides another reason for all stakeholders—including investors—to embrace insulation in service of purpose under certain circumstances: A genuine attempt to do so may mitigate agency cost problems and promote long-term stability.

CONCLUSION

Drawing on research in behavioral economics and organizational science, this Essay advances a novel purposeful enterprise theory that shows how nonprofit enterprise can offer efficiency advantages relative to for-profit business due to the elevation of purpose and the elimination of shareholders. Our theory modernizes Hansmann's classic contract failure theory, which argued that nonprofit enterprise ameliorates information asymmetries between consumers and producers. Specifically, it explains why businesses ranging from apparel vendors to artificial intelligence developers have successfully operated as nonprofits or enterprise foundations. Moreover, purposeful enterprise theory explains why nonprofit enterprises survive and even thrive without shareholder intervention and control, shedding light on debates at the core of corporate law and governance.

349. See Schizer, Enhancing Efficiency at Nonprofits, supra note 127, at 90 ("At for-profit firms, when managers and board members have outdated confidence in the status quo, declining profits and stock prices can force them to face reality. Yet at nonprofits, there are no comparably clear 'wakeup calls.'").