

NEW YORK UNIVERSITY
JOURNAL OF LAW & BUSINESS

VOLUME 21

SPRING 2025

NUMBER 2

CHARTING NEW FRONTIERS: A LEGAL LITERATURE
REVIEW OF SOCIAL ENTREPRENEURSHIP AND
IMPACT INVESTING 2018–2023

ANNE M. TUCKER* & DEBORAH BURAND**

This Article surveys 177 articles published in U.S. law reviews and journals between 2018–2023 that contribute to the fields of social enterprise, social finance and impact investing. The Article extends our earlier legal literature review of the same fields from 2007-2017. Our collective 17-year review of this span of legal literature documents the legal issues examined by scholars with respect to the development of sophisticated alternative business forms, like the Delaware Public Benefit Corporation; the growth in impact investing; the enduring academic interest in corporate purpose; and the effects that developments related to ESG and corporate sustainability are having on the fields of social entrepreneurship, social finance and impact investing. The findings of this literary review can serve as a consolidated introduction point for students and practitioners new to the fields, and an inspiration for future work for those already writing and practicing in these areas. We conclude the Article with a road map for future research and steps to continue growing the fields of social entrepreneurship, social finance and impact investing.

* Anne M. Tucker: Robert Cotten Alston Chair in Corporate Law, Professor of Law, University of Georgia School of Law.

** Deborah Burand is a law professor at NYU School of Law where she also is the faculty director of the Grunin Center for Law and Social Entrepreneurship. The authors are grateful for the assistance of Zvia Schoenberg (executive director of the Grunin Center) and Youna Kim (former director of case study development, research and publishing at the Grunin Center), and also for the NYU Law students who ably supported this literature review with their research – 2023-2024 Tepper Fellows: Walla Elshekh, Andy Guan, Matt Kuhlik, and Christelle Mazloum, and research assistants Megha Bansal, Richmond Brautigan, and Noah Dobin.

INTRODUCTION	184
I. CHANGING WORLD & EVOLVING FIELDS	185
A. <i>Increased Investor Appetite</i>	188
B. <i>Durable Interest in Corporate Purpose</i>	189
C. <i>Structural Changes: Alternative Business Forms</i>	191
D. <i>Countervailing Forces</i>	193
1. <i>Proxy Votes</i>	194
2. <i>Litigation</i>	195
3. <i>State Legislative and Regulatory Action</i>	198
II. LEGAL LITERATURE REVIEW METHODOLOGY	200
III. STATE OF LEGAL SCHOLARSHIP 2018–2023	203
A. <i>Social Enterprise & Impact Investing Articles</i>	203
1. <i>Number of Articles</i>	203
2. <i>Types of Articles</i>	204
3. <i>Social Enterprise and Impact Investing Themes</i>	205
4. <i>Article Contribution</i>	210
B. <i>Authors, Publications, & Impact</i>	211
IV. THE LEGAL LITERATURE LANDSCAPE	214
A. <i>1000-Foot View</i>	215
B. <i>Data-driven examinations</i>	217
C. <i>Translating Practice & Regulatory Developments</i>	218
D. <i>Identifying Best Practices</i>	221
E. <i>Sandbox to Experiment</i>	222
V. ROOM TO GROW: IMAGINING THE FUTURE LEGAL LANDSCAPE	222
A. <i>Evolving Fields and White Spaces</i>	222
B. <i>Growing the Field</i>	224
CONCLUSION	229
APPENDIX A: SEARCH TERMS	230
APPENDIX B: BIBLIOGRAPHY OF ARTICLES	231

INTRODUCTION

In this Article, we synthesize 177 academic articles published in U.S. law reviews and journals from 2018 through 2023 that address social enterprise, social finance, and impact investing.¹

1. The full list of articles is available in Appendix B.

This article continues the research of our original legal literature survey, *Legal Literature Review of Social Entrepreneurship and Impact Investing: Doing Good by Doing Business*,² canvassing these fields from 2007 through 2017.³ We find that impact investing articles are on the rise in law reviews and journals published in the United States. We also observe that, while there is declining academic interest among legal scholars in examining certain alternative business forms like the low-profit, limited liability company (“L3C”), there continues to be strong scholarly interest in developments of the benefit corporation, notably Delaware’s Public Benefit Corporation (“PBC”). We also see strong academic interest in examining how the mainstreaming of Environmental, Social, and Governance (“ESG”) initiatives (and adjacent concepts of sustainability and corporate social responsibility (“CSR”)) is shaping the political, legal, and regulatory landscapes where the fields of social entrepreneurship, social finance, and impact investing also operate.

This Article proceeds as follows: Part I establishes the legal literature review’s impetus and purpose. Part II outlines the methodology, and Part III reports our findings. Part IV imagines the future of legal scholarship and identifies future research areas.

I.

CHANGING WORLD & EVOLVING FIELDS

Three forces prompted this update of our legal literature review: 1) a changing world that presents increasing societal and environmental challenges, 2) the rapidly evolving and growing fields of social entrepreneurship, social finance, and impact investing, and, relatedly, 3) the expanding opportunities for field-advancing, legal scholarship to inform the behavior of

2. Deborah Burand & Anne Tucker, *Legal Literature Review of Social Entrepreneurship and Impact Investing (2007–2017): Doing Good by Doing Business*, 11 WM. & MARY BUS. L. REV. 1 (2019) [hereinafter Burand & Tucker, *Legal Lit. Review 1*].

3. The 2017 legal literature survey was modeled after a 2016 report of finance literature in the field of impact investing conducted by JASS DAGGERS & ALEX NICHOLLS, *THE LANDSCAPE OF SOCIAL IMPACT INVESTMENT RESEARCH: TRENDS AND OPPORTUNITIES* 1, 4 (2016). Our 2017 survey covers a decade of publications, beginning with legal literature published in 2007 because that is the year when the term “impact investing” was first introduced. Burand & Tucker, *Legal Lit. Review 1*, *supra* note 2, at 4.

practitioners, the decisions of policy-makers, and the education of the next generation of lawyers as they respond to our changing world while engaging in these fields. We address the first two forces in this Part and turn to the third in Part IV.

Since we published our first legal literature review, the world has changed in big and small ways. In the United States, this has taken many twists and turns. A few key events include deepening political divides as evidenced in local and national elections, the shock and challenges of responding to a global pandemic and its continued aftermath, increasing public attention to significant racial disparities in the administration of justice and access to educational and economic opportunities, rapidly shifting climates and related rising incidents of catastrophic climate events, and wide pendulum swings in public appetites for the advancement of ESG and sustainability initiatives.⁴ More globally, in 2023, the world experienced the warmest year on record.⁵

Since the last legal literature review, there also has been stunted progress toward achieving the United Nations' Sustainable Development Goals (SDGs) by the target year of 2030. According to the United Nations' own progress assessment, many of the assessable SDGs are "severely off-track."⁶ There are many reasons contributing to this underwhelming performance. As observed by António Guterres, Secretary-General of the United Nations:

[t]he scarring effects of the COVID-19 pandemic, escalating conflicts, geopolitical tensions, and growing climate chaos are hitting SDG progress hard. Furthermore, systemic deficiencies and inequities

4. Anne Tucker, Dana Brakman Reiser & Yusen Xia, *Is 2024 Past Peak ESG?*, HARV. L. SCH. F. CORP. GOVERNANCE (Sept. 16, 2024), www.corpgov.law.harvard.edu/2024/09/16/is-2024-past-peak-esg/.

5. Roxana Bardan, *NASA Analysis Confirms 2023 as Warmest Year on Record*, NASA (Jan. 12, 2024), www.nasa.gov/news-release/nasa-analysis-confirms-2023-as-warmest-year-on-record/ (average surface temperature in 2023 was the warmest on record, with global temperatures in 2023 around 2.1 degrees Fahrenheit (1.2 degrees Celsius) above the average for NASA's baseline period (1951-1980)).

6. According to the United Nations, only 17% of the assessable SDGs are on track to realize their development targets by 2030. Troublingly, nearly half are showing minimal or moderate progress. And more concerning still, progress on over one third has stalled or even regressed—with 18% stagnating and 17% regressing from 2015 baseline levels. U.N., *THE SUSTAINABLE DEVELOPMENT GOALS REPORT 2024* 4 (2024) [hereinafter *SDG 2024 PROGRESS REP.*].

in the global economic and financial system leave developing countries to tackle enormous and growing challenges with only a fraction of the international support they need and deserve.⁷

While changes in the United States and abroad present increased societal and environmental challenges, there is evidence of interest among private and public actors in addressing these challenges with business-oriented solutions.⁸ This is where those engaged in the fields of social entrepreneurship, social finance, and impact investing are taking action. Legal innovators and scholars documenting legal innovations can play a significant part here. Our Article tracks progress to date and charts a course for future work in the academy and legal practice.

Legal systems and the scholarship that documents and translates changes to those systems reflect the evolution of and priority shifts in lawmaking and regulation, private ordering, institutional leadership, behavioral norms, and community commitment. As these inputs to legal systems change, so do the conversations of those of us in academia who aim to analyze and reflect on these developments. In that spirit, our survey work of legal literature attempts to offer a summary of what scholars are examining in their research about changes in social entrepreneurship, social finance, and impact investing over nearly two decades of legal scholarship.

7. António Guterres, *Foreword to U.N., THE SUSTAINABLE DEVELOPMENT GOALS REPORT 2024 2* (2024).

8. The sustained commitment of the public sector to tackling these challenges can shift abruptly as new leaders are elected, as evident in President Trump's executive order issued on his first day in office to withdraw the United States from the Paris Climate Accords. Maxine Joselow, Chico Harlan, Evan Halper, *Trump Just Declared an 'Energy Emergency.' Here's What It Means*, WASH. POST (Jan. 20, 2025), <https://www.washingtonpost.com/climate-environment/2025/01/20/trump-day-one-executive-orders-energy/>. Whether these shifting political winds in the United States and elsewhere will reduce or spur the contributions of the private sector to business-oriented solutions to societal and environmental challenges remains to be seen. Some argue that as the public sector steps back, the private sector will need to step forward. See Amit Bouri, *Seven Things to Watch in Impact Investing in 2025*, GLOBAL IMPACT INVESTING NETWORK (Jan. 8, 2025), <https://www.thegiin.org/publication/opinion/seven-things-to-watch-in-impact-investing-in-2025/>. The sheer growth in impact investing and social enterprises, and financial resources being allocated to these fields in recent years as described below, suggest that this may occur.

A. Increased Investor Appetite

Investor appetite for making impact investments has grown dramatically over the last five years. According to the Global Impact Investment Network (GIIN), impact investment assets under management (“AUM”) globally climbed to over \$1.57 trillion in 2024⁹ and are expected to continue growing rapidly in the United States and beyond.¹⁰

While many factors fuel the increased investor appetite for making a positive difference through investments, the current generational wealth transfer continues to be a major driver.¹¹ As tens of trillions of dollars transfer hands,¹² the demographics of who controls this wealth are also changing, particularly in terms of age and gender.¹³ Consequently, this generational wealth transfer is expected to bring new investor perspectives and values to the table, shaping views on the importance of sustainable investing and the need for longer-term investment horizons.¹⁴

This shift also has implications for how that wealth will be managed. Since the last legal literature review, the AUM of family offices—the private wealth management firms serving high-net-worth individuals and families—had been expanding

9. In a 2024 report, the GIIN estimates that over 3,900 organizations manage \$1.571 trillion in impact investing assets under management (AUM) worldwide. DEAN HAND, MADDIE ULANOW, HONGYU PAN & KELLY XIAO, *SIZING THE IMPACT INVESTING MARKET 3* (Oct. 2024).

To give context to this increase in the size of the impact investment market, at the end of the period covered by our first legal literature review (end December 2017), the GIIN estimated that impact AUM totaled \$228 billion. Burand & Tucker, *Legal Lit. Review 1*, *supra* note 2, at 5.

10. The U.S. impact investing market is projected to experience 17% annual growth, on average, between 2023 and 2030. *Impact Investing Market Size, Share Trends Analysis Report By Asset Class, By Offerings, By Investment Style, By Investor Type, By Region, and Segment Forecasts, 2023-2030*, GRAND REV. RSCH., <https://www.grandviewresearch.com/industry-analysis/impact-investing-market-report#> (last visited Nov. 19, 2024). While the U.S. sustainable investment market lagged beginning in 2022, sustainable investment assets under management (AUM) have increased by 20% since 2023 in non-U.S. markets. Anne Tucker, et al., *supra* note 4; GLOBAL SUSTAINABLE INV. ALL., *GLOBAL SUSTAINABLE INVESTMENT REVIEW 2022 5* (2022).

11. See Burand & Tucker, *Legal Lit. Review 1*, *supra* note 2, at 5.

12. It is estimated that between \$12 trillion and \$30 trillion will be transferred intergenerationally over the next several decades. See David H. Webber, Michal Barzuza & Quinn Curtis, *Shareholder Value(s): Index Fund ESG Activism and the New Millennial Corporate Governance*, 93 S. CAL. L. REV. 1243, 1286 (2020).

13. See generally *id.* (discussing the demographic and related value shifts resulting from this intergenerational wealth transfer).

14. *Id.* at 1291.

rapidly. A 2024 article in *Forbes* recently called family offices a “powerful new force in the financial landscape” that soon will overtake hedge funds as a key source of private capital.¹⁵ Projections estimate that the AUM of family offices, totaling \$3.1 trillion in 2023, is expected to reach as high as \$9.5 trillion by 2030,¹⁶ with growth concentrated in North America and Asia Pacific.¹⁷

Our 2023 legal literature review reflects the increase in investor appetite to generate positive impact returns alongside financial returns. Scholarship addressing impact investing more than doubled in this survey as compared to the articles identified in our 2017 survey. In our 2023 survey, 100 articles (56%) discussed this topic, and 40 articles discussed the secondary theme of socially responsible investing (22.5%).¹⁸

B. *Durable Interest in Corporate Purpose*

Between 2018–2023, major players joined the chorus calling for renewed attention to the debate around corporate purpose. In 2019, the Business Roundtable issued a new Statement on the Purpose of a Corporation, signed by 181 CEOs, that embraced “stakeholder capitalism” by declaring that businesses “share a fundamental commitment to all of our stakeholders.”¹⁹ BlackRock CEO Larry Fink’s annual letters made headlines in the three years that followed the Business Roundtable Statement as he declared that sustainability is the new investing

15. Josipa Majic Predin, *Rise of Family Offices: Trillion-Dollar Shadows in Global Finance*, FORBES (Sept. 9, 2024), <https://www.forbes.com/sites/josipamajic/2024/09/09/rise-of-family-offices-trillion-dollar-shadows-in-global-finance/>.

16. DELOITTE PRIV., THE FAMILY OFFICE INSIGHT SERIES—GLOBAL EDITION: DEFINING THE FAMILY OFFICE LANDSCAPE, 2024 5 (2024), <https://www.deloitte.com/global/en/services/deloitte-private/research/defining-the-family-office-landscape.html>.

17. *Id.*

18. For current survey numbers, see *infra* pp. 203–04. The number of impact investing articles rose compared to the first survey where 51 articles (21%) discussed it. Burand & Tucker, *Legal Lit. Review 1*, *supra* note 2, at 18.

19. *Business Roundtable Redefines the Purpose of a Corporation to Promote ‘An Economy That Serves All Americans’*, BUS. ROUNDTABLE (Aug. 19, 2019), www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans.

standard,²⁰ called for stakeholder capitalism,²¹ and specifically drew attention to employee needs.²² A joint report published by Deloitte and World Economic Forum emphasized many of these same points based on surveys Deloitte conducted in 2023.²³ More than half of all global business respondents surveyed by Deloitte for this report indicated that “all stakeholders, including the communities they serve and the collective society...” are a part of the business’s purpose.²⁴

Our literature review findings reflect the trend of looking beyond shareholder bottom lines to consider broader stakeholder interests. For example, our findings show widespread academic interest in ESG and corporate social responsibility (CSR) as two prevalent themes in our 2023 survey. Articles examining these themes also had the highest citation counts (as of the date of this article’s publication), demonstrating current relevance.²⁵

20. *BlackRock’s 2020 Letter to Clients: Sustainability as BlackRock’s New Standard for Investing*, BLACKROCK (Jan. 14, 2020), <https://www.blackrock.com/corporate/investor-relations/2020-blackrock-client-letter> (“We believe that sustainability should be our new standard for investing.”).

21. “In today’s globally interconnected world, a company must create value for and be valued by its full range of stakeholders in order to deliver long-term value for its shareholders.” Larry Fink, *Blackrock CEO Larry Fink’s Annual Chairman’s 2022 Letter to Shareholders*, BLACKROCK (Jan. 19, 2022), <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>.

22. “BlackRock research shows a strong correlation between companies with better culture and values ratings compared to industry peers and their stock returns. More than a year later this imperative is even more essential. In a world where companies’ ability to attract the best talent can mean the difference between success and failure, building bonds that go beyond just a paycheck has never mattered more.” Larry Fink, *Larry Fink’s Annual Chairman’s Letter to Investors*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Mar. 17, 2023), www.corpgov.law.harvard.edu/2023/03/17/larry-finks-annual-chairmans-letter-to-investors/.

The changing nature of the workforce is an issue that is subject to demographic shifts too as millennials grow to 75% of the workforce by 2025. More than three-quarters (77%) of this group of employees, when surveyed in 2013, said that their “company’s purpose was part of the reason they chose to work there.” See PETER LIU ET AL., *BIG DEMANDS AND HIGH EXPECTATIONS: THE DELOITTE MILLENNIAL SURVEY 2–3* (2014).

23. WORLD ECON. F. IN COLLABORATION WITH DELOITTE, *THE CORPORATE SOCIAL INNOVATION COMPASS: ACCELERATING IMPACT THROUGH SOCIAL ENTERPRISE PARTNERSHIPS 5* (2024) [hereinafter 2024 WEF/DELOITTE REPORT].

24. *Id.*

25. See *infra* pp. 209–10 and accompanying text.

C. *Structural Changes: Alternative Business Forms*

While the definition of what constitutes a social enterprise is subject to varying interpretations, the increasing presence of social enterprises in the economy is, as noted in the above-referenced 2024 WEF/Deloitte Report, “a rapidly growing force for good, transforming business and communities worldwide and accounting for 7% of global GDP.”²⁶ As social enterprises grow in number, size, and impact, decisions are being made about the best alternative business forms for housing and, therefore, governing their social entrepreneurial activities.²⁷ Since our 2017 survey, we have witnessed a growing coalescence around preferred alternative business forms for for-profit businesses, as well as a repurposing of existing legal forms²⁸ for housing social entrepreneurial activities.

As of the end of 2023, forty-one states plus the District of Columbia have enacted laws authorizing the benefit corporation form—a topic that dominated the 2017 survey—albeit with varying obligations and accountability measures.²⁹ This growth in legislation, however, does not necessarily translate into an increase in the number of businesses adopting these alternative forms.

It is hard to estimate the number of social enterprises organized in an alternative form because most are privately owned, but Prof. Michael Dorff sees growth in the number of companies that have adopted the benefit corporation form.³⁰ He estimates that, as of 2023, more than 10,000 benefit corporations were operating in the United States, which, if he is correct, represents a two-fold increase from the slightly more than 5,000 benefit corporations estimated to have been operating when we conducted our last legal literature survey in 2018.³¹

26. 2024 WEF/DELOITTE REPORT, *supra* note 23, at 9.

27. *Id.* at 21–22.

28. An example of this is the use of the purpose trust by Patagonia to ensure its mission beyond the lifetimes of its founders. Matthew F. Erskine, *Yvon Chouinard And The Patagonia Purpose Trust—What Is It And Will It Work?*, FORBES (Sept. 16, 2022), <https://forbes.com/sites/matthewerskine/2022/09/16/yvon-chouinard-and-the-patagonia-purpose-trust-what-is-it-and-will-it-work/>; see also Yvon Chouinard, *Earth is Now Our Only Shareholder*, PATAGONIA (September 14, 2022), <https://www.patagonia.com/ownership/>.

29. Burand & Tucker, *Legal Lit. Review* 1, *supra* note 2, at 18.

30. MICHAEL B. DORFF, BECOMING A PUBLIC BENEFIT CORPORATION (2023).

31. *Id.*; Ellen Berrey, *Social Enterprise Law in Action: Organizational Characteristics of U.S. Benefit Corporations*, 20 TENN. J. BUS. L. 21, 25 (2018).

The growing interest in adopting the benefit corporation form for publicly held corporations is not unrelated. As of August 2023, there were twenty publicly held Delaware PBCs compared to just three in 2020.³² Most often these Delaware companies adopted the PBC form before or while they conducted their first initial public offering. A few examples exist of publicly held companies in Delaware converting from a traditional C Corp into a publicly-held PBC.³³ This is likely a consequence of statutory changes made in the PBC law in Delaware in 2020 that made it easier for companies to convert into (or out of) a PBC form.³⁴

While Delaware's PBC star rises among privately held and even some publicly held companies, other alternative business forms, like the L3Cs, have fallen out of favor among state

32. *IPO Breaks Drought for New Publicly Traded Public Benefit Corporations*, DEAL POINT DATA 1 (Aug. 31, 2023), https://www.dealpointdata.com/res/dpd_ipo_breaks_drought_for_pbc_20230831.pdf. Some of the first companies that went public as PBCs include Laureate Education, Lemonade, Vital Farms, Coursera, Broadway Financial Corporation and Zymergen. See Christopher Marquis, *Public Benefit Corporations Flourish in the Public Markets*, FORBES (June 14, 2021), www.forbes.com/sites/christophermarquis/2021/06/14/public-benefit-corporations-flourish-in-the-public-markets/.

33. See Press Release, Veeva Sys. Inc., Veeva Becomes First Public Company to Convert to a Public Benefit Corporation, (Jan. 13, 2021), <https://www.veeva.com/resources/veeva-becomes-first-public-company-to-convert-to-a-public-benefit-corporation/> ("Veeva Systems announced that in an overwhelming majority vote today, 99% of voting shareholders support the company's proposal to become a public benefit corporation (PBC)... making it the first publicly traded company and largest-ever to convert into a PBC."). Amalgamated Bank also converted into a PBC when publicly held. See also Press Release, Amalgamated Fin. Corp., Amalgamated Financial Becomes the First Publicly Traded Financial Services Company to Incorporate as a Public Benefit Corporation (Mar. 1, 2021), <https://www.amalgamatedbank.com/news/amalgamated-financial-becomes-first-publicly-traded-financial-services-company-to-incorporate-as-a-public-benefit-company>.

34. In 2020, Delaware amended its PBC legislation to make it easier for publicly held corporations to convert into the PBC form. See SYDNEY FORREST ET AL., GRUNIN CTR. FOR L. AND SOC. ENTREPRENEURSHIP, *THE STATE OF SOCIAL ENTERPRISE AND THE LAW, 2020–2021* 14–15 (2021). Colorado followed Delaware's lead in 2022 by amending its benefit corporation law to reduce the conversion voting threshold and to eliminate appraisal rights of shareholders. See ELISE VAN DEN HOEK, MATT KUHLIK & WALLA ELSHEKH, GRUNIN CTR. FOR L. AND SOC. ENTREPRENEURSHIP, *THE STATE OF SOCIAL ENTERPRISE AND THE LAW, 2022–2023* 6 (2023). Note, however, that not all benefit corporation legislation is taking the same direction as Delaware to ease conversion to or from benefit corporations across publicly held and privately held companies. Taking a notably different approach is Ohio, which does not allow publicly held companies to incorporate in Ohio as benefit corporations.

legislators (and possibly among those considering using these different forms).³⁵ No new legislation has been enacted authorizing L3Cs since 2012. One state, North Carolina, acted in 2014 to repeal its L3C legislation, and Rhode Island, nearly a decade later, is considering doing away with its L3C legislation as part of a broader legislative initiative to revamp its authorizing legislation for LLCs.³⁶

Our 2023 survey findings mirror these trends with the continued dominance of the benefit corporation and alternative forms as top article themes but with declining interest in the L3C form as a topic deserving of scholarly attention.³⁷

D. *Countervailing Forces*

Since our last survey, some of the above developments have been buffeted by countervailing forces in the United States aimed at slowing or reversing more progressive initiatives. This has been seen most obviously in proxy vote disputes, litigation, and state regulatory action—proving once again that change doesn't always move forward in a straight line.

35. The number of existing L3Cs is also hard to calculate. One source has estimated that, as of February 2022, there were 2000 active L3Cs in the United States (a nearly two-fold increase since a 2014 estimate). See *LC3 Info and Latest L3C Tally*, INTERSECTOR PARTNERS (May 25, 2022), <https://www.intersectorl3c.com/l3c>; see also VAN DEN HOEK ET AL., *supra* note 34, at 4 n.9.

More anecdotally, some companies have shifted out of the L3C form to respond to actual or anticipated investor demands. See *Maternal Health Startup Makes History as First “Do-It-Yourself” Benefit Corporation in Michigan*, FORBES (May 28, 2013), <https://www.forbes.com/sites/ashoka/2013/05/28/maternal-health-startup-makes-history-as-first-do-it-yourself-benefit-corporation-in-michigan/>. (DIIME decided to change from L3C to C-Corp to respond to investor demands); see also ANDY GUAN ET AL., GRUNIN CTR. FOR L. AND SOC. ENTREPRENEURSHIP, *THE STATE OF SOCIAL ENTERPRISE AND THE LAW, 2023–2024 10–11* (2024) (providing a case study about Jibu's evolution from North Carolina L3C to Delaware C-Corp).

36. In 2014, North Carolina repealed its L3C legislation four years after enacting that legislation. *Id.* at 10. Then, in 2023, Rhode Island considered repealing its legislation authorizing the L3C, which was originally enacted in 2011. S.B. 916, 2023 Gen. Assemb., Reg. Sess. (R.I. 2023); see generally GUAN ET AL., *supra* note 35, at 10.

37. For survey results, see *infra* Part IV. Many recent articles are providing a deeper discussion of the operational challenges of a benefit corporation and why some companies are choosing this form or bypassing it for a more traditional C-Corp form, compared to earlier articles from the first literature review that provided a comparative analysis of the legislation being passed and the necessity of an alternative form.

1. *Proxy Votes*

The debate over corporate purpose was brought into the boardroom in 2021 and 2022 when shareholders in the United States introduced proxy votes to convert traditional corporations into Delaware PBCs. Notably, in 2021, shareholders introduced 18 proposals, primarily aimed at Delaware companies whose CEOs signed the Business Roundtable Statement, to convert into Delaware PBCs.³⁸ This proxy vote initiative, however, was short-lived as management of those companies successfully argued against the value of converting into the PBC form,³⁹ causing the number of similar proxy votes introduced in subsequent years to drop.⁴⁰

The debate over corporate purpose in proxy contests also extended to ESG and anti-ESG shareholder proposals. In 2022, shareholders in the United States introduced 562 proxy votes containing ESG-related proposals.⁴¹ Of these, nearly 10% (52) were anti-ESG proposals that targeted topics like DEI (diversity, equity, and inclusion) policies, climate resolutions, and corporate transparency. However, these anti-ESG proposals received far less support in these proxy contests than pro-ESG proposals.⁴²

38. See Brigid Rosati et al., *A Look Back at the 2022 Proxy Season*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Oct. 23, 2022), <https://corpgov.law.harvard.edu/2022/10/23/a-look-back-at-the-2022-proxy-season/>. All but one of these proxy vote proposals received less than 4% of the votes cast in support of conversion. *Id.* Yelp was the outlier, with nearly 12% of the votes cast supporting a conversion. Elizabeth K. Lange & Jennifer M. Lucas, *Shareholder Proposals Requesting Conversion to Public Benefit Corporations: A Fleeting Trend or the Future?*, FAEGRE DRINKER BIDDLE & REATH LLP (Aug. 11, 2021), <https://www.faegredrinker.com/en/insights/publications/2021/8/shareholder-proposals-requesting-conversion-to-public-benefit-corporations>.

39. Many of those companies, when making statements opposing PBC conversion proposals, argued that a change in corporate form was unnecessary because broader stakeholder interests were already being considered under their current corporate form. Other arguments against a conversion were made on grounds that there was too much uncertainty over the PBC form and that a conversion would be too costly to implement. See Lange & Lucas, *supra* note 38. These arguments against converting into a PBC also have been made by legal scholars. See, e.g., Jill E. Fisch, *Purpose Proposals* (Eur. Corp. Governance Inst., Law Working Paper No. 638/2022, 2022).

40. In 2022, only three proxy votes were held on PBC conversion proposals—for Apple, JPMorgan and Walgreens. All lost.

41. ROSATI ET AL., *supra* note 38, at 4.

42. Anti-ESG proposals received, on average, less than 3% of the votes cast, whereas pro-ESG proposals received greater than 30% of the votes cast. Clara Hudson, *Conservative Shareholder Proposals Arise Amid Anti-ESG Rumbles*,

2. *Litigation*

The debate over corporate purpose and how that purpose manifests in the policies and operations of private sector actors migrated to the courtroom in recent years. These litigations have included, among others, cases that led to landmark Supreme Court decisions that effectively limited the authority of federal agencies in regulating corporate behaviors by limiting the deference accorded to these agencies when interpreting ambiguous statutes⁴³ and overturned race-based affirmative action programs in college admissions.⁴⁴ Lower federal and state courts are also examining the extent to which actionable corporate purpose can be defined to include broader societal goals as a general matter and, more specifically, how private actors can engage in DEI and other ESG-related activities.⁴⁵ These judge-made laws, even when not aimed at social enterprises, social finance or impact investing, are shaping how these

BLOOMBERG L. (Aug. 31, 2022), <https://news.bloomberglaw.com/securities-law/conservative-shareholder-proposals-rise-amid-anti-esg-rumbles>; Martha Carter et al., *ESG and the Bear: What to Make of the 2022 Proxy Season?*, at 6–10, TENE0 (Aug. 15, 2022), <https://www.teneo.com/app/uploads/2022/08/ESG-and-The-Bear-What-to-Make-of-the-2022-Proxy-Season.pdf>.

43. *West Virginia v. Env't Prot. Agency*, 597 U.S. 697 (2022); *Loper Bright Enter. v. Raimondo*, 603 U.S. 369 (2024).

44. *Students for Fair Admissions v. President and Fellows of Harv. Coll.*, 600 U.S. 181 (2023).

45. *See Am. All. for Equal Rts. v. Fearless Fund Mgmt., LLC*, 103 F.4th 765 (11th Cir. 2024). This case presented one of the first challenges to DEI initiatives in the private sector after the Supreme Court, in *Students for Fair Admissions*, overturned race-conscious admissions at Harvard and the University of North Carolina. At issue was the Fearless Fund's program that aimed to provide grant funding to Black entrepreneurs. Fearless Fund settled this case and ceased its grant program to avoid prompting further litigation.

Fearless Fund's effort to forestall future litigation may not have succeeded. The Fearless Fund litigation, while the first, is not the only fund to face litigation over its diversity goals. *See* Christopher Marr, *Venture Capital Firms Caught in the Middle of DEI Legal Fights*, BLOOMBERG L. (Sept. 5, 2024), <https://news.bloomberglaw.com/daily-labor-report/venture-capital-firms-caught-in-the-middle-of-dei-legal-fights> (statement of Prof. William Jacobson, Cornell Law School) ("*Fearless Fund* [decision by the Eleventh Circuit] opens up grant-making foundations or entities who have explicit racial criteria for eligibility to suit."). A similar case resulting in a similar decision to that of the Fearless Fund litigation was brought in Texas against Founders First Community Development Corp. Pending appeal in the Sixth Circuit is a case that failed on procedural grounds against Progress Preferred Insurance Co.

fields evolve.⁴⁶ In the coming years, litigation over these issues will likely increase, not diminish, in the United States.⁴⁷

Here, we focus on one 2024 case in particular—a lawsuit involving Meta, in which the Delaware Court of Chancery explored the limits of corporate purpose and directors’ abilities to address societal issues.

In April 2024, the Chancellor of the Delaware Court of Chancery dismissed a Meta shareholder’s lawsuit against the directors, officers, and controller of Meta Platform, Inc. (“Meta”). In *McRitchie v. Zuckerberg*, a Meta stockholder filed a class action on behalf of other diversified stockholders, claiming that, under Delaware law, the fiduciary duties owed to a corporation and its stockholders run to the corporation and its stockholders as diversified equity investors.⁴⁸ The Plaintiff’s claim implied that Meta should, therefore, be managed based on what is best for the economy as a whole rather than on what is best for Meta as a firm. According to the plaintiff, managing Meta under a firm-specific rather than diversified investor model was a breach of fiduciary duties.⁴⁹

In its motion to dismiss, Meta primarily argued that the fiduciary duties owed to stockholders concerned their interests in *Meta*, not their interests in *other* companies.⁵⁰ Meta then pointed to its legal form to argue that because Meta was not organized as a Delaware PBC, there was no legal obligation

46. The increasing litigation and other regulatory challenges to DEI policies are causing consternation in many sectors in the United States. *See* Marr, *supra* note 45 (statement of Robin M. Bergen of Cleary Gottlieb Steen & Hamilton, an attorney who advises investment firms including venture capital firms) (“My clients are worried about backlash, whether reputationally, public criticism, or lawsuit or investigations. You can imagine it now coming from either direction.”).

For a review of litigation developments in 2024, see MORGAN LEWIS, DEI AND BEST PRACTICES IN CORPORATE AMERICA: HARVARD UNC ONE YEAR LATER (June 2024), <https://www.morganlewis.com/pubs/2024/06/dei-and-best-practices-in-corporate-america-harvard-unc-one-year-later>.

47. The Meltzer Center for Diversity, Inclusion, and Belonging at New York University School of Law reports that 114 lawsuits challenging DEI training have been filed in the U.S. nationwide since 2021. For a description of those lawsuits, see *Advancing DEI Initiative*, MELTZER CTR. FOR DIVERSITY, INCLUSION, AND BELONGING, advancingdei.meltzercenter.org/ (last visited Feb. 7, 2025).

48. *McRitchie v. Zuckerberg*, 315 A.3d 218 (Del. Ch. 2024).

49. *Id.* at 526–28.

50. Defendant’s Brief in Support of their Motion to Dismiss Plaintiff’s Verified Complaint at 10, *McRitchie v. Zuckerberg*, 315 A.3d 218 (Del. Ch. 2024), No. 2022=0890.

to consider the broader interests of its diversified stockholder investors in other companies.⁵¹

The Court of Chancery's decision to dismiss this lawsuit was not surprising. As noted in the *McRitchie* decision, Delaware has rejected previous arguments that directors owe fiduciary duties to corporations' shareholders beyond promoting the long-term value of their firm-specific ownership interests (as evidenced by the shares they hold of a corporation).⁵² Delaware also has rejected arguments that directors owe fiduciary duties to other stakeholders.⁵³ In doing so, the Court observes that "[s]tate-based corporate law in general, and Delaware law in particular, is a poor vehicle for addressing externalities."⁵⁴

But, after making this point, the Court, in its *McRitchie* decision, then engages in a thought experiment where it points to other avenues that a company like Meta could have taken through private ordering to shift its corporate purpose and the related fiduciary duties and authorities of its directors, observing that "[t]he Delaware General Corporate Law (the 'DGCL') authorizes private ordering and empowers corporate planners to tailor director duties through provisions in the certificate of incorporation."⁵⁵ Meta, the Court notes, could have modified its corporate purpose, narrowing it from the more common, general corporate purpose to "engage in any lawful act or activity for which corporations may be organized under the General Corporate Law of Delaware."⁵⁶ Meta could also include in its charter provisions the definition of the powers of its directors.⁵⁷

51. *Id.* It should be noted that Meta was one of the corporations that was targeted in the PBC conversion proxy proposals of 2021. Meta easily defeated that proxy proposal to convert into a PBC, which received only 1% of support of the votes cast. There was no further proxy vote brought on this issue in 2022. See VAN DEN HOEK ET AL., *supra* note 34, at 11 n.44.

52. *McRitchie*, 315 A.3d at 528.

53. *Id.* at 537. See Delaware case law involving distinctions made between stockholders and stakeholders, such as *Unocal v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985), *Revlon Inc. v. Macandrews and Forbes Holdings*, 506 A.2d 173 (Del. 1985), and *N. Am. Catholic Educ. Programming Found., Inc. v. Gheewalla*, 930 A.2d 92 (Del. 2007); see also Delaware case law cited by the Court of Chancery in the *McRitchie* decision involving stockholders acting in other capacities, such as preferred stockholders or employees. *McRitchie*, 315 A.3d at 537 n.24.

54. *Id.* at 573.

55. *Id.* at 574.

56. DEL. CODE ANN. tit. 8, § 102(a)(3); see also *McRitchie*, 315 A.3d at 576 (citing § 102(a)(3)).

57. See *id.* at 576–77.

Meta also could have reoriented its directors' duties to the extent permitted by Delaware law⁵⁸ or, relatedly, as if it were incorporated as a PBC.⁵⁹

The implications of the *McRitchie* decision are at least twofold. First, it indicates Delaware's continued reluctance to expand the fiduciary duties expected of directors sitting on the boards of traditional companies, private or public, that incorporate in Delaware. But it also indicates a willingness to defer to private ordering solutions that deliberately shift those fiduciary duties and/or narrow corporate purpose.

What this means for adoption by others of Delaware's PBC form remains to be seen. Post-*McRitchie*, will social enterprises that incorporate in Delaware continue to consider making use of the PBC form or will they opt for more traditional legal forms but then tailor their constituent documents to reflect their social and environmental goals? The answer to that question is likely to turn on judgments about which path is likely to pose more legal risk and, thus, uncertainty—the relatively untested PBC or the bespoke, privately ordered corporation. The *McRitchie* decision, while not opening any new doors, highlights the various means by which businesses incorporated in Delaware can pursue more varied goals than simply profit maximization.

3. *State Legislative and Regulatory Action*

The anti-ESG backlash in the last several years has also prompted and reflected legislative and regulatory actions taken at the state level to slow or thwart ESG initiatives in the United States.⁶⁰ These actions have created yet another significant headwind for social entrepreneurs and those engaged in impact investing. As discussed briefly below, we are beginning to observe court challenges to these state actions so that any summary will be necessarily incomplete. The confluence of

58. See tit. 8, § 141(a); see also *McRitchie*, 315 A.3d at 576–77.

59. See *id.* at 577.

60. With the advent of the Trump Administration, federal programs aimed at advancing diversity initiatives are being cut pursuant to an Executive Order issued on President Trump's first day in office. See Conor Murray & Molly Bohannon, *Google Ends Diversity Hiring Goals—Here Are All the Companies Rolling Back DEI*, FORBES (Jan. 21, 2025), <https://www.forbes.com/sites/conormurray/2025/02/07/amtrak-cuts-diversity-programs-here-are-all-the-companies-rolling-back-dei/>.

these actions and other anti-ESG efforts may be having their intended effect, as we witness significant outflows from ESG funds.⁶¹

The early 2020s saw a raft of state laws seeking to block ESG investments and procurement contracts.⁶² After a surge in anti-ESG legislative activity in 2023 in certain states, legislative action appears to have significantly slowed in 2024, halving the number of bills proposed and dropping to a quarter of the number of bills enacted compared to 2023.⁶³ This may not reflect a decline in anti-ESG sentiment but rather, as an analysis by the law firm Ropes & Gray explains, a shift in the battleground "... from the statehouse to the courtroom as more of these laws have been challenged for their enforceability."⁶⁴ The results of these challenges are likely to be shaped by ongoing litigation taking place in the Northern District of Texas where a coalition of state attorneys general filed suit in 2023 against the

61. In 2024, the U.S. ESG market experienced net outflows of \$19.6 billion, on the heels of a \$13.3 billion outflow in 2023. MORNINGSTAR, GLOBAL SUSTAINABLE FUND FLOWS: Q4 2024 IN REVIEW 25 (2025), https://assets.contentstack.io/v3/assets/blt4eb669caa7dc65b2/bltc57b1fd22d77810c/67aa0775f178486d772b9c49/Global_ESG_Q4_2024_Flow_Report_FINAL.pdf.

62. A multi-state alliance was formed led by Florida Gov. Ron Desantis in 2023 to "protect individuals from ESG movement" with actions including banning the use of ESG considerations in state and local pension funds. States participating in the alliance include Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Iowa, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Dakota, Tennessee, Utah, West Virginia, and Wyoming. *DeSantis Launches 18-State Alliance to Ban ESG Investing*, ESG INVESTING (Mar. 16, 2023), <http://esg-investing.com/2023/03/16/desantis-launches-18-state-alliance-to-ban-esg-investing/>.

Some states are using their procurement power to stop working with asset managers that they think have a pro-ESG bias (contrast with other states are considering legislation that would give social enterprises opportunities to secure financing/procurement contracts if organized as benefit corporations). See GUAN ET AL., *supra* note 35, at 5; *see also* VAN DEN HOEK ET AL., *supra* note 34, at 9 n.24.

63. For a deep dive into the status of anti-ESG legislation in the United States on a state-by-state level, see JOSHUA A. LICHTENSTEIN ET AL., ROPES & GRAY, STATE ESG UPDATE AND ANALYSIS FOR ASSET MANAGERS AND FINANCIAL INSTITUTIONS (2024), https://www.ropesgray.com/-/media/files/alerts/2024/11/20241120_2_esg_whitepaper.pdf (summarizing and commenting on certain state developments tracked this year and addressing what has happened in each state in 2024).

64. *Id.* at 1; *see also* Chloe Field & Cynthia Hanawalt, *The Anti-ESG Movement Has Not Fared Well in Court, but Critical Decisions Are Pending*, COLUM. UNIV. L. SCH.'S SABIN CTR. FOR CLIMATE CHANGE L. (Oct. 25, 2024), blogs.law.columbia.edu/climatechange/2024/10/25/the-anti-esg-movement-has-not-fared-well-in-court-but-critical-decisions-are-pending/.

Department of Labor's rule ("2022 Investment Duties Rule")⁶⁵ that allows ERISA plan fiduciaries to consider ESG factors to act as a tiebreaker when choosing between two otherwise equal investments.⁶⁶

As the world changes, academic scholarship evolves in tandem. Scholarship synthesizes rising concerns, tracks legal developments in public law (i.e., the introduction of anti-ESG investment laws) and private ordering (i.e., the use of charter provisions and contractual devices), analyzes the impacts (intended and unintended) of court decisions, proposes solutions to new problems, and forecasts new threats on the horizon. Ideally, scholarship complements events happening on the ground, providing a big-picture view of the changes, translating regulation and practice developments to a broader audience, and grounding legal questions in data. We turn to literature developments next.

II.

LEGAL LITERATURE REVIEW METHODOLOGY

This survey continues our earlier efforts⁶⁷ and those of earlier scholars such as Dagers and Nicholls,⁶⁸ Hochstädter and Scheck,⁶⁹ Haskell Murray,⁷⁰ John Tyler III, Evan Absher,

65. Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights, 87 Fed. Reg. 73, 822 (Jan. 30, 2023) (to be codified at 29 C.F.R. pt. 2550).

66. Complaint for Declaratory and Injunctive Relief, *Utah v. Walsh*, No. 2:23-CV-016-Z, 2023 U.S. Dist. LEXIS 168696 (N.D. Tex. Jan. 16, 2023).

In September 2023, the district court granted the DOL's motion for summary judgment, finding that the DOL was entitled to *Chevron* deference. (*Chevron v. Nat. Res. Def. Council*, 467 U.S. 837, 866 (1984)) gave rise to the so-called *Chevron* doctrine, which required courts to defer to federal agencies' interpretations of ambiguous statutes). However, after the Supreme Court overturned the *Chevron* doctrine in *Loper Bright Enter. v. Raimondo*, 603 U.S. 369 (2024), the Fifth Circuit vacated the district court's original decision and remanded the case for further consideration on the merits.

67. Burand & Tucker, *Legal Lit. Review 1*, *supra* note 2.

68. DAGGERS & NICHOLLS, *supra* note 3.

69. Anna Katharina Höchstädter & Barbara Scheck, *What's in a Name: An Analysis of Impact Investing Understandings by Academics and Practitioners*, 132 J. BUS. ETHICS 449, 452 (2014).

70. In 2014, J. Haskell Murray compiled and made available exclusively on SSRN social enterprise law review articles (fifteen); benefit and public benefit corporations (eleven); flexible and social purpose corporations (three); and L3Cs (eight). J. HASKELL MURRAY, SOCIAL ENTERPRISE LAW BIBLIOGRAPHY (2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2427710.

Kathleen Garman and Anthony Luppino,⁷¹ and the scholars at the Grunin Center for Law & Social Entrepreneurship at NYU.⁷²

Based on the original survey, we constructed a set of primary keywords (see Appendix A for the complete list) that are representative of social enterprise and impact investing.⁷³ We closely followed the process used in the original survey, with a few key exceptions. Like with the first survey, we searched the primary legal databases of Westlaw, Lexis, SSRN, and general search engines such as Google Scholar to identify potentially relevant articles. We restricted our search to publication within 2018–2023 in a U.S. law review or journal.⁷⁴

71. John Tyler III, Evan Absher, Kathleen Garman & Anthony Luppino compiled the bibliography (on file with authors) in tandem with the following article: Anthony Luppino & John Tyler, *Producing Better Mileage: Advancing the Design and Usefulness of Hybrid Vehicles for Social Business Ventures*, 33 QUINNIPIAC L. REV. 235, 237 (2015).

72. Grunin Center for Law and Social Entrepreneurship at NYU School of Law in connection with the annual conference it cohosts with the Impact Investing Legal Working Group (“IILWG”). See *Bibliography and Resources Organized by Conference Theme*, N.Y.U. SCH. OF L. (2018), www.law.nyu.edu/centers/grunin-social-entrepreneurship/events/2018conference/program-bibliography. See also *Bibliography*, N.Y.U. SCH. OF L. (2017), www.law.nyu.edu/centers/grunin-social-entrepreneurship/events/program-bibliography.

73. The original search terms were derived from the 2016 Landscape Report, and we added “social enterprise” to reflect the legal language of our literature review. See DAGGERS & NICHOLLS, *supra* note 3.

74. Our search criteria exclude important voices from the landscape survey, such as authors publishing in other academic journals like finance. See, e.g., Christopher Geczy et al., *Contracts with (Social) Benefits: The Implementation of Impact Investing*, 142 J. FIN. ECON. 697 (2021). It also excludes authors publishing outside of the U.S. and publications in non-academic settings like white papers. See, e.g., AUNNIE PATTON POWER ET AL., *IMPACT LINKED COMPENSATION* (2024), <https://impactlinked.co/>. It also excludes important student scholarship, such as the annual publication, *The State of Social Enterprise and the Law*, published by NYU Law. See *Mapping the State of Social Enterprise and the Law*, N.Y.U. SCH. OF L., www.law.nyu.edu/centers/grunin-social-entrepreneurship/resources/publications. It also excludes those publishing or contributing to books in these fields, such as *INVESTING FOR SOCIAL IMPACT, ECONOMIC JUSTICE, AND RACIAL EQUITY* (Dorcas Raejeana Gilmore et al. eds., ABA Book Publ'g 2023); *IMPACT INVESTING AND SOCIAL ENTERPRISES: GLOBAL PROGRESS AND CHALLENGES* (Alan S. Gutterman & Robert L. Brown eds., ABA Book Publ'g 2022); *A RESEARCH AGENDA FOR SOCIAL ENTREPRENEURSHIP* 59 (Anne de Bruin & Simon Teasdale eds., Edward Elgar Publ'g 2019); *DANA BRAKMAN REISER & STEVEN A. DEAN, FOR-PROFIT PHILANTHROPY: ELITE POWER AND THE THREAT OF LIMITED LIABILITY COMPANIES, DONOR-ADVISED FUNDS, AND STRATEGIC CORPORATE GIVING* (Oxford Univ. Press 2023).

A new procedure for this survey involved writing a simple text-based computer program to search for and count the keywords in the pool of relevant articles.⁷⁵ With the support of trained and supervised law students, we reviewed each article to confirm that the article was sufficiently related to legal scholarship. Our review also confirmed that all articles featured in the survey engage in a substantive discussion⁷⁶ of one or more primary keywords.⁷⁷

With our list of 177 relevant articles, we conducted a second keyword search for secondary terms. Again, we used the same list of secondary terms from 2017.⁷⁸

We collected additional data from all articles, including author information, institutions, and publication sources.⁷⁹ We categorized articles based on their intended audience,⁸⁰ geographic and subject matter focus,⁸¹ and whether the article focused on for-profit, nonprofit, or blended entities.⁸² Following the original study design, we also categorized articles as focused on the legal framework (whether the article fits into existing theory), legal policy (whether the article fits into existing statutory structures), private law (whether the article addresses contracting issues), and empirical (whether the article offers original quantitative evidence).⁸³

75. We used regular expressions in python to identify keywords in the text of articles. The program returned a count of keywords for each article. See SUNIL KUMAR, PYTHON FOR ACCOUNTING AND FINANCE 31–57 (Palgrave Macmillan 2024).

76. Burand & Tucker, *Legal Lit. Review 1*, *supra* note 2, at 15. Our inclusion criteria means that we excluded mere mentions—a single use in passing, a footnote, or a keyword in a cited article—of a keyword that does explore the keyword topic in detail.

77. We exclude articles that contain secondary keywords but no primary keywords.

78. See Appendix A for the full set of secondary terms.

79. This article information allows us to map the legal literature published over the last five years.

80. Mutually exclusively categories for audience are: (1) Academic, and (2) Practitioner. Coding notes on file with authors.

81. We coded articles as having a substantive focus of academic, practitioner, or policy, and a subject matter focus of corporate law, tax law, or international law. While articles can have multiple foci, coders selected the primary focus in the coding exercise. Coding notes on file with authors.

82. The three profit categories are mutually exclusive. Coding notes on file with authors.

83. See *also infra* Part IV.B. for a detailed discussion.

This study, combined with our first survey,⁸⁴ gives us a view of 17 years of scholarship on social enterprise and impact investing. The resulting story provides three different lenses. One is a story of continued growth, maturation, and momentum. Another story concerns the shifting landscape of scholarly attention focused on new areas such as impact investing and ESG-related themes. Yet another story is one of persistent white spaces, unmet needs, and opportunities right for the next generation of scholars. We address the first two stories—growth and shifting attentions—in the following Section. We address the unmet needs in Part IV’s discussion of room for growth.

III.

STATE OF LEGAL SCHOLARSHIP 2018–2023

The fields of impact investing and social enterprise are thriving and evolving fields. While the production pace of article publication has slowed in recent years, impact factors like journal placements and citation counts have climbed compared to those placements and counts identified in the first survey. In our second survey, we see a sustained interest in social enterprise alternative business forms like the benefit corporation and a cooling of interest in other alternative forms like the L3C. Other findings include the rise of interest in impact investing, the mainstreaming of ESG, and related topics like CSR and corporate purpose.

A. *Social Enterprise & Impact Investing Articles*

1. *Number of Articles*

Our survey includes fewer articles (177) compared to the 2017 survey (260), but this survey covers fewer years (6 years compared to 11). On average, scholars published 30 articles each year, with a range spanning from 22 in 2022 to 38 in 2021.⁸⁵ Our results suggest a relatively steady scholarship stream with some tapering in 2022–2023.⁸⁶ Figure 1 below shows our results.

84. See Burand & Tucker, *Legal Lit. Review 1*, *supra* note 2.

85. The 2017 survey reported greater year by year variation with a low of two articles in 2007 and a peak of 46 in 2017. Burand & Tucker, *Legal Lit. Review 1*, *supra* note 2, at 17.

86. Open question if the tapering continues or spikes again. Symposia focused on social enterprise, impact investing, and related topics boost the

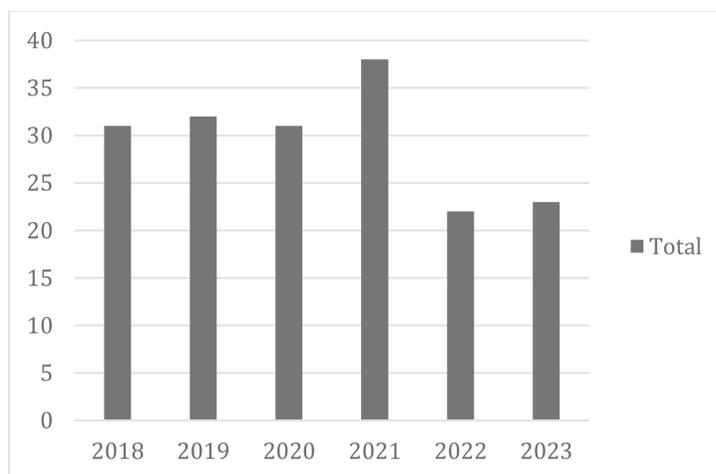


FIGURE 1: ARTICLE COUNTS BY YEAR

2. *Types of Articles*

In many ways, the types of social enterprise and impact investing articles published during the second survey mirror attributes from the 2017 survey. For example, most articles are written for an academic audience (173 out of 177)⁸⁷ and are focused on corporate law (as opposed to a related field of tax or international law).⁸⁸ Consistent with our search parameters, U.S. law reviews or journals, most articles in this survey are focused on U.S. law (144 articles or 81%), although nearly 19% (33 articles) discuss other jurisdictions either exclusively or in conjunction with the U.S.⁸⁹

Recent social enterprise and impact investing articles also engage with other areas of the law, as we found in the first survey. 33 articles (18%) discussed “other” areas of the law,

article counts in a given year, but notably no law schools hosted relevant symposia in 2021.

87. High representation of academic articles reflects the search criteria for publication in a law review or journal which excludes white papers and law firm reports—important sources of field building information with a practice-orientation. See, e.g., POWER ET AL., *supra* note 74 (reporting survey and interview data on impact-linked compensation used by funds and accepted by LPs).

88. Results are consistent with 2017 findings where corporate law was heavily represented in the sample (259 out of 260 articles). Burand & Tucker, *Legal Lit. Review 1*, *supra* note 2, at 19.

89. Other jurisdictions include the UK, China, Australia, the EU, Asia, and “international.”

including civil rights, mergers & acquisitions, environmental law, banking, and charitable trusts.

Another similarity is that most social enterprise and impact investing articles focus on for-profit or blended organizations (160 articles or 90% compared to 87% in 2017) instead of non-profit organizations.⁹⁰

3. *Social Enterprise and Impact Investing Themes*

Here, we see a shift in scholarly conversations with the rise of impact investing and the waning of interest in some alternative corporate forms, as the Delaware PBCs emerged as the primary alternative form. We also observe the mainstreaming of ESG and its implications for adjacent (and at times overlapping) fields like impact investing and the rise of soft law as a means for shaping investor or corporate behavior in the absence of (or to forestall) regulation.⁹¹

90. See Burand & Tucker, *Legal Lit. Review* 1, *supra* note 2, at 20.

91. The distinction between “hard” and “soft” law rests, for the most part, in how legally binding the “law” is and the source of authority for enforcing that legal obligation. European Center for Constitutional and Human Rights, Glossary: “Hard Law/Soft Law”, (available at: <https://www.ecchr.eu/en/glossary/hard-law-soft-law/>). While some blurring can occur between hard law and soft law, hard law generally describes legally binding obligations that can be enforced before a court of law; whereas soft law consists of a range of standards, principles and norms that, although not legally binding and enforceable by a court of law, carry weight in shaping behaviors within a market or group of private actors. These private actors may, or may not, impose sanctions or apply other tools to discipline or reprimand those who act in violation of soft law norms.

Soft law often is used in self-regulatory regimes, sometimes to forestall or slow the emergence of hard law requirements. This can be very useful in nascent markets with lots of experimentation taking place or in jurisdictions with limited governmental supervisory/regulatory resources. See Alexandra Guttman, *It's Not Easy Being Green: Are There Lessons from Green Bonds that Apply to Impact Investing* (work in progress on file with author Burand) (citing Oren Perez, *Private Environmental Governance as Ensemble Regulation: A Critical Exploration of Sustainability Indexes and the New Ensemble Politics*, 12 THEORETICAL INQUIRIES IN L. 543, 559–60 (2011) and Stephen Kim Park, *Investors as Regulators: Green Bonds and the Governance Challenges of the Sustainable Finance Revolution*, 41 STAN. J. INT'L L. 1, 21 (2018) (describing how soft law has shaped behaviors of private actors in the green bond market)); see also Min Yan, *Corporate Social Responsibility Versus Shareholder Value Maximization Through the Lens of Hard and Soft Law*, 40 NW. J. INT'L L. & BUS. 47, 67 (2019).

In the 2023 survey, the top 5 primary keywords⁹² are (1) benefit corporations, with 157 articles discussing the term (89%); (2) social enterprise, with 137 articles (77%); Impact investing, with 100 articles (56%); Hybrid entities, with 87 articles (49%); and (5) double/triple bottom line, with 47 articles (27%). Impact investing and double/triple bottom line are newcomers to the top 5 list while not making the cut in the 2017 survey.⁹³

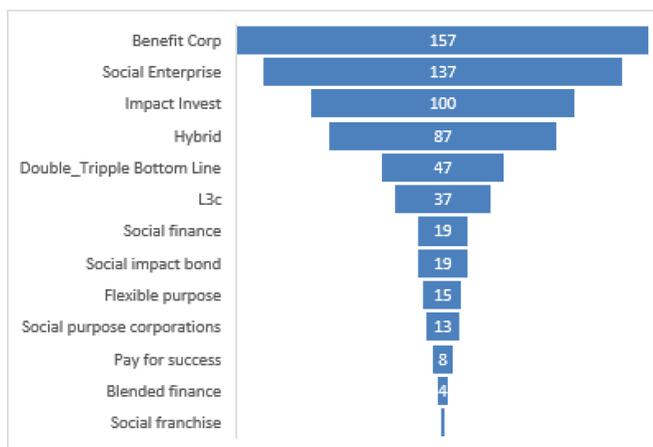


FIGURE 2: PRIMARY SEARCH TERMS—THEMES IN THE 2023 SURVEY

Rising Stars. We also observe a mainstreaming of ESG and related themes of sustainability and corporate purpose.⁹⁴ The top 5 terms in the secondary themes include ESG (42%), CSR and Sustainability (37%), Socially Responsible Investing

92. Not being mutually exclusive, articles can have more than one keyword present. We changed one approach to counting themes by combining “social enterprise” and “social entrepreneur” in the 2023 survey results, but not in the 2017 survey.

Even if we employed the same counting mechanism in 2017, neither term would have made the top five keywords and the percentage of articles discussing either term was 20%. In other words, there is real growth in the number and percentage of articles engaging with impact investments and concepts of double or triple bottom lines in the last five years.

93. Burand & Tucker, *Legal Lit. Review 1*, *supra* note 2, at 18.

94. The biggest jump is with ESG, from the fourth most frequent secondary term in 2017 with 21% of articles discussing it, to the top secondary term with 42% of articles discussing it in the 2023 survey. *Id.* at 67. In 2017, we documented an interest in corporate purpose. *Id.* at 34.

“SRI”) (22%), and public/private partnerships and impact measurements are tied at 16%. ESG articles experienced the most significant increase: 20% discussed ESG in the 2017 survey, whereas 43% discussed it in the 2023 survey. The mainstreaming of ESG is also evident in the readership of these articles. The survey’s top 5 most cited articles discuss ESG and related themes.⁹⁵

Ethical banking is another theme that appears on the rise.⁹⁶ In 2017, no articles discussed it, but nine articles (5%) in the 2023 survey discussed ethical banking.⁹⁷

Falling Stars. L3Cs, a top keyword in 2017, garnered less attention in this survey (the percentage of articles discussing L3Cs decreased from 45% to 21%).⁹⁸ This finding reflects the reality on the ground. As discussed above, since 2012, no new legislation has been enacted authorizing the L3C form,⁹⁹ with North Carolina repealing its L3C legislation in 2014 and Rhode Island now possibly looking to follow suit.¹⁰⁰

Other terms like crowdfunding have virtually disappeared in this survey.¹⁰¹ Microfinance is another example.¹⁰²

95. For a list of the most cited articles, see *infra* Table 5.

96. Ethical banking encompasses any bank, financial institution, or system that operates based on values driven by environmental and social responsibility. Just as with ethical or responsible investment, ethical banking can rely on negative screening (avoiding investment in companies that cause harm to the planet or people) or positive screening (actively investing in companies that do good for the planet or people). Coding notes on file with authors.

97. Five articles were published in 2022 and 2023, two in 2021, and one in 2018, suggesting that the term is gaining traction and academic attention.

98. The top five keywords in 2017 were: (1) Benefit corporations (156 or 60%); (2) Social enterprise (132 or 50%); (3) L3C (117 or 45%); (4) Social entrepreneurs (103 or 39%); and (5) hybrids (102 or 39%). Burand & Tucker, *Legal Lit. Review 1*, *supra* note 2, at 18.

99. See discussion of alternative forms *supra* notes 33–35 and accompanying text.

100. See discussion of Rhode Island’s consideration of repealing its L3C authorizing statute *supra* note 36.

101. We define “crowdfunding” as the use of small amounts of capital from a large number of individuals to finance a new business venture. Crowdfunding makes use of the easy accessibility of vast networks of people through social media and crowdfunding websites to bring investors and entrepreneurs together. In the 2017 survey, twenty articles discussed crowdfunding compared to zero in the 2023 survey. Burand & Tucker, *Legal Lit. Review 1*, *supra* note 2, at 20.

102. In part, this may be due to the fact that the term “inclusive finance” is now more widely used, often displacing the term “microfinance.” See, for example, how the Consultative Working Group for the Poor (CGAP) at the

Microfinance, a theme prevalent in the early-mid 2000s, particularly after the Nobel Peace Prize was awarded in 2006 to Dr. Yunus and the Grameen Bank in Bangladesh, appeared in nearly 15% of articles in the 2017 survey, but only two articles or 1% in the current survey.¹⁰³ The term “alternative finance” is another falling star. Over 100 articles (39%) discussed alternative finance in the 2017 survey, but only 16 articles (9%) did in the 2023 survey.

Changing Language. Nomenclature changes over time. During our data collection, we held open the possibility of adding new keyword terms—primary or secondary—to reflect the field’s evolution. Our process of identifying new terms based on research reviews and searching for and reviewing relevant articles yielded no new results. We hold open the possibility that our keyword list will expand in the future, but for now, the original list captured the articles of substantive interest.¹⁰⁴ In future iterations, the keyword list will likely shrink due to some phrases falling out of fashion, as noted above, or never receiving sustained academic attention. For example, cooperative finance and community finance had two articles each discussing it in 2017 and 2023 suggesting we could eliminate this term in future surveys or refine our keyword approach to better capture the theme.¹⁰⁵

World Bank now frequently uses the language of “inclusive finance” rather than “microfinance” when talking about extending financial services to the poor and underserved.

103. Zamir Iqbal & Friedemann Roy, *Innovative Islamic Social Finance for Housing Microfinance*, 26 ISLAMIC ECON. STUD. 87 (2018); Amelia Miazad, *Pro-social Antitrust*, 73 HASTINGS L.J. 1637 (2022).

104. One term of potential interest in future rounds will focus on business human rights. See, e.g. *OHCHR and Business and Human Rights*, U.N. OHCHR, <https://www.ohchr.org/en/business-and-human-rights>; see also BUS. & HUM. RTS. RES. CTR. <https://www.business-humanrights.org/en/>. Another feature of a future survey should include tracking soft law contributions and the role of comparative models.

105. Cooperative finance represents a financial institution that is owned and operated by its members. The goal of a financial cooperative is to act on behalf of a unified group as a traditional banking service. Coding notes on file with authors.

TABLE 1: PRIMARY SEARCH TERMS

Keyword	count	%
Benefit corp	157	89%
Social enterprise	137	77%
Impact invest	100	56%
Hybrid	87	49%
Double_triple bottom line	47	27%
L3C	37	21%
Social finance	19	11%
Social impact bond	19	11%
Flexible purpose	15	8%
Social purpose corporations	13	7%
Pay for success	8	5%
Blended finance	4	2%
Social franchise	2	1%
Crowdfunding	0	0%

TABLE 2: SECONDARY SEARCH TERMS

Keyword	count	%
Environmental Social Governance (ESG)	76	43%
Corporate Social Responsibility (CSR) & Sustainability	65	37%
Socially Responsible Investments (SRI)	40	23%
Green investments	27	15%
Public - private partnerships	28	16%
Impact measurement & management	29	16%
Alternative finance	16	9%
Ethical banking	9	5%
Community finance	3	2%
Crowd funding	1	1%
Development finance	6	3%
Cooperative finance	2	1%
Microfinance	3	2%

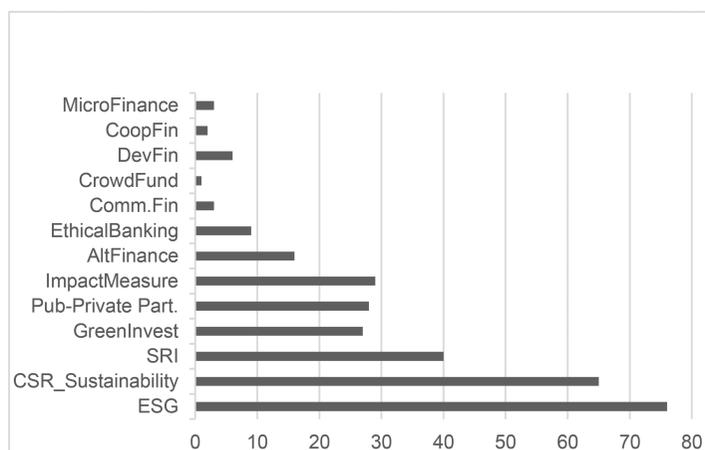


FIGURE 3: SECONDARY SEARCH TERMS

4. *Article Contribution*

Shifts in the legal scholarship landscape are evident in the primary and secondary keywords/themes and in the article contributions.¹⁰⁶ We label each article as focused on legal framework,¹⁰⁷ public policy,¹⁰⁸ private law,¹⁰⁹ or empirical research.¹¹⁰ We saw only modest gains in the 2023 survey in private law and empirical research contributions.¹¹¹ The slight dip in the legal framework scholarship likely reflects the social enterprise

106. For article contribution, each classification is mutually exclusive (meaning each article can only be assigned to one category). Coding notes on file with authors.

107. Coders select this option if the article is focused on articulating a legal framework for organizing, understanding, or theorizing about impact investment and social entrepreneurship. Coding notes on file with authors.

108. Coders select this option if the article primarily offers readers insights into policy or the existing set of positive (enacted) law and regulations in impact investment and/or social entrepreneurship. Coding notes on file with authors.

109. Coders select this option if the article primarily offers readers tools related to private ordering (contractual provisions, transactional solutions, etc.) working within the existing legal framework. Coding notes on file with authors.

110. Coders select this option if the article offers readers new empirical evidence related to impact investor and/or social entrepreneurship. Coding notes on file with authors.

111. Burand & Tucker, *Legal Lit. Review 1*, *supra* note 2, at 39 (noting the reluctance of law reviews and journals to publish empirical scholarship); *id.* at 41 (calling for more empirical research).

field's maturation and the benefit corporation's dominance as the legal form of choice.

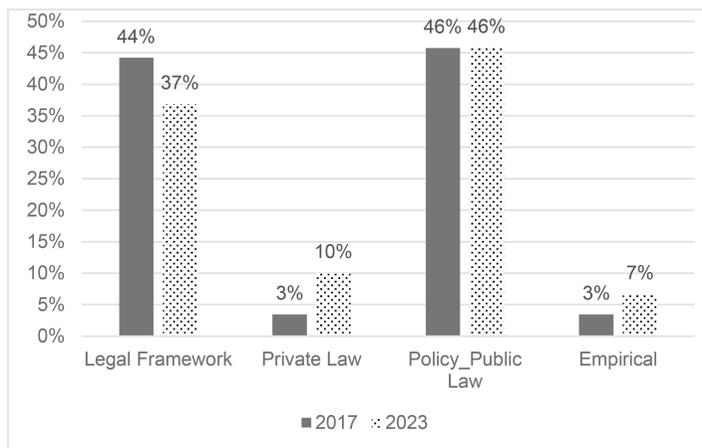


FIGURE 4: ARTICLE CONTRIBUTION

B. *Authors, Publications, & Impact*

Next, we turn to who is populating the legal literature landscape. For example, in 2017, most articles were written by single authors (115 or 65%), with 35% having two or more co-authors.¹¹² In the 2023 survey, authors hail from 115 different academic institutions, mostly, but not exclusively, law schools. The top represented institutions (by author works) are listed below, and Appendix B lists the full results.

¹¹² *Id.* at 22 (noting that 35% of the articles had two or more co-authors (91 out 260)).

TABLE 3: SURVEY ARTICLE AUTHOR INSTITUTIONS ARTICLES

Institution	Count of Authors
Elisabeth Haub School of Law at Pace University	8
University of Oregon School of Law	8
New York University School of Law	6
University of Virginia School of Law	6
Georgia State University College of Law	6
Duke University	5
University of Oxford	5
Albany Law School	4
Brooklyn Law School	4
Central Michigan University	4
Harvard Law School	4
Yale Law School	4

Articles appear in 134 different journals.¹¹³ Thirty-six articles appear in the top 50 journals,¹¹⁴ another 24 in the top 100 journals,¹¹⁵ and 32 in the top 10 specialty journals.¹¹⁶ Table 4 below shows the journals publishing multiple articles in our survey.¹¹⁷

113. WASH. & LEE L. J. RANKINGS, <https://managementtools4.wlu.edu/LawJournals/>.

114. Coding notes on file with authors, see Appendix B for the full list of published articles.

115. Coding notes on file with authors, see Appendix B for the full list of published articles.

116. Coding notes on file with authors, see Appendix B for the full list of published articles.

117. In the 2017 survey, we noted 150 different journals and several repeat players in the field, indicating symposia or dedicated journal editions. In this survey, we found four different symposia that published relevant articles (although not exclusively) on our topics of interest. In 2017, thirty journals ranked in the top 100 journals published fifty-eight articles, and twenty-two specialty journals published fifty-six articles (or 20%). Burand & Tucker, *Legal Lit. Review 1*, *supra* note 2, at 22.

TABLE 4: JOURNALS PUBLISHING SURVEY ARTICLES

Journal	Count of Articles
UMKC Law Review	7
Boston College Law Review	5
Transactions: The Tennessee Journal of Business Law	5
American Business Law Journal	4
University of Pennsylvania Journal of Business Law	4
Harvard Business Law Review	3
Journal of Corporation Law	3
North Carolina Law Review	3
University of Cincinnati Law Review	3
American University Business Law Review	2
Annual Review of Law and Social Science	2
Berkeley Business Law Journal	2
Boston University Law Review	2
Columbia Law Review	2
Florida Law Review	2
Fordham Urban Law Journal	2
Hastings Law Journal	2
Journal of Health Care Law and Policy	2
Law and Contemporary Problems	2
Ohio State Business Law Journal	2
Oklahoma Law Review	2
Stanford Law Review	2
UC Davis Law Review	2
Washington and Lee Law Review	2
Wisconsin Law Review	2

Of the 177 articles, we found 1955 citations.¹¹⁸ The top five most cited articles are listed below in Table 5. These articles focus on ESG and corporate purpose themes, which supports

¹¹⁸ In 2017, we found 5,206 citations, but note that the window for citation for counts to grow was nearly twice as long in the 2017 study compared to the 2023 results. *Id.* at 22–23.

the mainstreaming of ESG point made earlier. In total, we have 14 articles with 30 or more citations—an impressive feat given the recent publication dates of the articles in this survey. The rise in placements and readership bolsters our larger observation that, in addition to ESG and corporate purpose, social enterprise and impact investing have become mainstream corporate law topics.

TABLE 5: MOST CITED ARTICLES

Article	Count of Citations
Lucian A. Bebchuk & Roberto Tallarita, <i>The Illusory Promise of Stakeholder Governance</i> , 106 CORNELL L. REV. 91 (2020)	178
Max M. Schanzenbach & Robert H. Sitkoff, <i>Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee</i> , 72 STAN. L. REV. 381 (2020).	150
Michal Baruza, Curtis Quinn et al., <i>Shareholder Value(s): Index Fund ESG Activism and the New Millennial Corporate Governance</i> , 93 S. CAL. L. REV. 1243 (2020)	130
Dorothy S. Lund & Elizabeth Pollman, <i>The Corporate Governance Machine</i> , 121 COLUM. L. REV. 2563 (2021)	96
Stavros Gadinis & Amelia Miazad, <i>Corporate Law and Social Risk</i> , 73 VAND. L. REV. 1401 (2020)	93

IV.

THE LEGAL LITERATURE LANDSCAPE

We seek to encourage field-building scholarship on topics involving social enterprise and impact investing, connecting academic work to the innovation happening on the ground as new forms of social enterprise, financing models, and private ordering emerge.

Scholars can uniquely contribute to the fields by contributing work that (1) provides a 1000-foot view, (2) translates practice and regulatory developments, (3) grounds questions in data, (4) supplements best practices unburdened by the time and resource demands of a given client, (5) provides a sandbox to experiment with novel solutions, and (6) offers comparative

perspectives from which one jurisdiction can learn from the successes (and challenges) of other regulatory frameworks.

A. 1000-Foot View

Scholarship provides a high-level overview necessary to track development, make projections about the future, and educate new participants. This survey, when combined with the prior 2017 survey, is an example of the 1000-foot view¹¹⁹ providing an accounting of social enterprise and impact investing scholarship from 2007-2023.

Collectively, our two literature reviews highlight the evolving language of these fields.¹²⁰ In 2017, we noted that limited consensus around boundaries and lexicon of impact investment and social enterprise was a barrier to the development of these fields, contributing to confusion, miscounting, and talking past one another.¹²¹ In this survey we see a tightening of language, although the lexicon of social enterprises continues to be confusing, and more work is needed here.¹²²

119. The common business phrase is 30,000 foot view, but that is, in reality, too high up to see anything on the ground. *The 1,000 Foot View*, STRATEGIC THINKING INST. (Oct. 9, 2014), <https://www.strategyskills.com/1000-foot-view/> (stating “The reality is you’re too high up to see much of anything with any precision.”)

120. See Elizabeth Pollman, *The Making and Meaning of ESG*, 14 HARV. BUS. L. REV. 403, 424 (2024) (including an artful synthesis of the lineage and lexicon on ESG).

121. Burand & Tucker, *Legal Lit. Review 1*, *supra* note 2, at 27.

122. See *id.* at 26 (describing confusion arising from terms of art in the field). This language confusion even has infected states’ bar examinations. An essay question about the “benefit corporation” was included in the Multistate Essay Examination (MEE) portion of New York State’s and other jurisdictions’ bar examinations in July 2021. The bar examiners who framed that question and then provided a model answer revealed, by unwitting example, how challenging it is to keep up with swiftly evolving changes in corporate law in the United States and elsewhere. They stumbled in their use of terminology, using the terms “benefit corporation” and “B Corporation” interchangeably in their model answer. (Model answer on file with author Burand).

The bar examiners also described an outdated picture of what the ABA’s Model Business Corporation Act has to say about benefit corporations. In their hypothetical question, they suggested that a state adopting legislation that tracks the MBCA does not provide opportunities for companies to incorporate in that jurisdiction as benefit corporations. While once true, all of that changed in 2020 when the MBCA was revised to include a chapter authorizing the benefit corporation as another possible corporate form. See MODEL BUS. CORP. ACT § 17 (AM. BAR ASS’N 2024).

The 1000-foot view also reveals shifting foci and areas of growth. For example, scholars like Dana Brakman Reiser¹²³ and Linsey McGoey¹²⁴ track the evolving blends of corporate forms with philanthropic missions through their work. Other scholarship documents emerging practices, such as Naveen Thomas's 2022 article on golden shares and social enterprise.¹²⁵ Others propose new models such as green pills¹²⁶ or social franchising¹²⁷ to leverage corporate assets for social and environmental good. Recent scholarships also tracks the advancing battlefield for disputes as conflicts move from contracts¹²⁸ to boardrooms,¹²⁹ and, more recently, the courts.¹³⁰

123. Dana Brakman Reiser, *Disruptive Philanthropy: Chan-Zuckerberg, the Limited Liability Company, and the Millionaire Next Door*, 70 FLA. L. REV. 921, 921 (2018) (arguing that the philanthropic LLC structure offers donors flexibility to control the organization with a low tax burden).

124. Linsey McGoey, *Philanthrocapitalism and the Separation of Powers*, 17 ANN. REV. L. & SOC. SCI. 391, 391 (2021) (exploring the compatibility and tensions of corporate mission and philanthropy).

125. Naveen Thomas, *Golden Shares and Social Enterprise*, 12 HARV. BUS. L. REV. 157, 161–62 (2022).

126. John Armour, Luca Enriques & Thom Wetzler, *Green Pills: Making Corporate Climate Commitments Credible*, 65 ARIZ. L. REV. 285, 292 (2023) (introducing green pills as a way to hold corporations accountable to environmental sustainability claims); see also Beck Groff & Susan N. Gary, *Patagonia, Purpose Trusts, and Stewardship Trusts: Business With a Purpose*, PROB. & PROP., Jan.–Feb. 2023, at 36, 36 (reporting on the noncharitable perpetual purpose trust used by Patagonia).

127. Deborah Burand, David Koch & Katy Yang, *Scaling Social Enterprises Through Franchise Models: Rethinking Social Franchise Agreements*, 88 UMKC L. REV. 827, 827–28 (2020) (comparing the drafting approaches taken to the terms of franchise agreements used in social franchising to those more common to commercial franchising).

128. See e.g., Jessica S. Jeffers & Anne M. Tucker, *Shadow Contracts*, 1 U. CHI. BUS. L. REV. 259, 265 (2022) (cataloging the use of side letter agreements in impact investment contracts and suggesting standardized terms to reduce the transactional costs).

129. Mark J. Loewenstein & Jay Geyer, *Shareholder Primacy and the Moral Obligation of Directors*, 26 FORDHAM J. CORP. & FIN. L. 105 (2021); Max M. Schanzenbach & Robert H. Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee*, 72 STAN. L. REV. 381, 385–86 (2020).

130. See e.g., Aisha I. Saad & Diane Strauss, *The New “Reasonable Investor” and Changing Frontiers of Materiality: Increasing Investor Reliance on ESG Disclosures and Implications for Securities Litigation*, 17 BERKELEY BUS. L.J. 397, 402 (2020); Susan N. Gary, *Best Interests in the Long Term: Fiduciary Duties and ESG Integration*, 90 U. COLO. L. REV. 731, 790 (2019). We expect future scholarship will address the recent Meta and State Street litigation, see *supra* notes 49–50 and accompanying text.

B. *Data-driven examinations*

Grounding legal questions in data is another way that scholarship chronicles developments in practice. Descriptive empirics—ones that define the size and shape of a given practice or problem—are most useful in emerging fields.¹³¹ Here, we highlight a limitation of our survey. By only focusing on law reviews and journals, we exclude the empirical works that are more likely to be published in finance and accounting journals.¹³² That limitation aside, several articles in the current survey illustrate our point. For example, in 2020, Professors Michael Dorff, James Hicks and Steven Davidoff Salomon published an empirical study of venture capital money in public benefit corporations.¹³³ In 2021, Professors Quinn Curtis, Jill Fisch and Adriana Z. Robertson published an empirical study quantifying portfolio differences between ESG and non-ESG funds.¹³⁴ Professor Curtis also published an analysis of green bonds with Professors Mark C. Weidemaier and Mitu Gulati in 2023, evaluating the strength of green commitments and consequences for default.¹³⁵

131. Descriptive data is a necessary precursor to causal analysis. *See, e.g.*, Charlotte S. Alexander & Mohammad Javad Feizollahi, *On Dragons, Caves, Teeth, and Claws: Legal Analytics and the Problem of Court Data Access*, in COMPUTATIONAL LEGAL STUDIES: THE PROMISE AND CHALLENGE OF DATA-DRIVEN LEGAL RESCH. 95, 96 (Ryan Whalen, ed., Edward Elgar Publishing Ltd. 2019).

132. *See e.g.*, Christopher Geczy, Jessica S. Jeffers, David K. Musto & Anne M. Tucker, *Contracts with (Social) Benefits: The Implementation of Impact Investing*, 142 J. FIN. ECON. 697, 697-8 (2021) (reporting on contract terms in impact investment agreements); *See also* Brad M. Barber, Adair Morse & Ayako Yasuda, *Impact Investing*, 139 J. FIN. ECON. 162, 183 (2021) (providing an empirical account of investors' nonpecuniary utility from investing in impact funds).

133. Michael Dorff et al., *The Future or Fancy? An Empirical Study of Public Benefit Corporations*, 11 HARV. BUS. L. REV. 113, 116 (2021) (providing data on early-stage in public benefit corporations by traditional, profit-seeking venture capital firms).

134. Quinn Curtis, Jill Fisch & Adriana Z. Robertson, *Do ESG Mutual Funds Deliver on Their Promises?*, 120 MICH. L. REV. 393, 398 (2021) (using a measure of ESG tilt to provide an empirical account of ESG funds' portfolio differences compared to non-ESG funds).

135. Quinn Curtis et al., *Green Bonds, Empty Promises*, 102 N.C. L. REV. 131, 137-8 (2023) (providing an empirical account of the green bond market, questioning the credibility commitments, and suggesting reforms).

C. *Translating Practice & Regulatory Developments*

Scholars are crucial intermediaries, especially in rapidly evolving fields. Scholars document new practice trends, translate regulatory developments, and forecast future policy pitfalls and needs that inform practitioners and regulators. For example, Professors Joan Heminway and Alina Ball write about lawyering that is tailored to the needs of social enterprises and entrepreneurs.¹³⁶ Others urge for uniform disclosures for benefit corporations in different jurisdictions.¹³⁷ Professor Ofer Eldar writes about designing the appropriate business forms for blended purpose.¹³⁸ Others write about the role of ESG ratings, their effect on financial markets, and the resulting investment products built on them.¹³⁹

In the first survey, we called for more integration between scholarship and practice, noting that scholarship significantly lagged behind innovations in the field.¹⁴⁰ In this survey, we note a stronger link between scholarship, practice, and policy, but there is room to grow. We observe examples of practitioners contributing to legal scholarship. For example, Rick Alexander—former Delaware partner and founder of the Shareholder Commons, wrote two articles addressing the long-term portfolio interests of shareholders and social enterprise forms.¹⁴¹ Practitioners also contributed scholarship on

136. Alina Ball, *Social Enterprise Lawyering*, 88 UMKC L. REV. 803, 805 (2020); Joan MacLeod Heminway, *Lawyering for Social Enterprise*, 20 TENN. J. BUS. L. 797, 801 (2019).

137. Brent J. Horton, *Rising to Their Full Potential: How a Uniform Disclosure Regime Will Empower Benefit Corporations*, 9 HARV. BUS. L. REV. 101, 104 (2019).

138. Ofer Eldar, *Designing Business Forms to Pursue Social Goals*, 106 VA. L. REV. 937, 976, 1002 (2020) (urging the creation of community development financial institutions (CDFIs) and European legal forms for work-integration social enterprises (WISEs) to certify the social impact mission but avoid the costly measurement steps).

139. Dana Brakman Reiser & Anne Tucker, *Buyer Beware: Variation and Opacity in ESG and ESG Index Funds*, 41 CARDOZO L. REV. 1921, 1926 (2020) (describing the investment landscape of ESG funds—active and passive—and the lack of regulation).

140. Burand & Tucker, *Legal Lit. Review 1*, *supra* note 2, at 28.

141. Frederick H. Alexander, *Whose Portfolio is it, Anyway?* 47 STETSON L. REV. 311, 327–28 (2018); Frederick H. Alexander, *Putting Benefit Corporation Statutes into Context by Putting Context into the Statutes*, 76 BUS. LAW. 109, 112; see also Christopher D. Hampson, *Bankruptcy & the Benefit Corporation*, 96 AM. BANKR. L.J. 93, 134 (2022) (analyzing benefit corporations in financial distress and how to map the unique alternative business entities to the bankruptcy code).

impact investing,¹⁴² healthcare benefit corporations,¹⁴³ blended forms,¹⁴⁴ shareholder interest,¹⁴⁵ and innovative financial models.¹⁴⁶ We also observe examples in this survey of practitioners co-authoring articles with legal academics.¹⁴⁷

This current survey reflects a related development of the growing role that clinical law professors are playing in creating field-advancing legal scholarship as they bring experiences and insights from overseeing the transactional fieldwork of their transactional law clinics to their legal scholarship.¹⁴⁸ As clinical law programs have increasingly embraced a transactional focus,

142. Susan L. Abbott, Keirsa K. Johnson & Sean M. Doran, *Impact Investing for Section 501(c)(3) Organizations*, TAX'N EXEMPTS, Jan.–Feb. 2018, at 17 (discussing the tax implications for tax-exempt organizations to invest in impact funds).

143. Terry L. Corbett, *The Case for a Health Care Benefit Corporation*, 47 CAP. U. L. REV. 183, 188 (2019) (describing the fit between health care companies and benefit corporations and providing an implementation plan).

144. Alexander C. Campbell, *Social Enterprise for Tax-Exempt Organizations*, 19 TAX'N EXEMPTS 20 (2018) (describing the legal and tax implications for a public charity's social enterprise).

145. Joseph Manning, *Myopic Madness: Breaking the Stranglehold of Shareholder Short-Termism to Address Climate Change and Build a Sustainable Economy*, 10 ARIZ. J. ENVTL. L. & POL'Y 425, 430–31 (2020) (arguing that shareholder short-termism is a major impediment to building a sustainable economy and recommending three changes to corporate and securities laws).

146. Trevor Kirby, *An Evolution in The Business of Banking the Neobank Partnership*, 11 LOY. U. CHI. J. REG. COMPL. 28, 32, 46 (2023) (describing the rise of neobanks—banks without physical locations that serve affinity groups—and the unique micro and macro risks that result.); see also Iqbal & Roy, *supra* note 103 at 94 (describing Islamic social finance instructions as a tool to enhance access to finance at a lower cost and improve accessibility to address issues of access to housing).

147. See, e.g., Jehan El-Jourbagy & Philip P. Gura, *In Space No One Can Hear You're Green: Standardization of Environmental Reporting, the SEC's Proposed Climate Change Disclosure Rules, and Remote Sensing Technology*, 59 AM. BUS. L.J. 773 (2022); Burand, Koch & Yang, *supra* note 127, at 827–28 (comparing the drafting approaches taken to the terms of franchise agreements used in social franchising to those more common to commercial franchising); Ranajoy Basu & Priya Taneja, *Social Impact Investing: Market Trends and Risks*, 1 J. INT'L BANKING & FIN. L. 61 (2020); Alon Brav & J. B. Heaton, *Brown Assets for the Prudent Investor*, 12 HARV. BUS. L. REV. ONLINE 1, 5 (2021) (suggesting investment in the opposite of green assets—brown assets—for portfolio diversification).

148. Paul R. Tremblay, *The Emergence and Influence of Transactional Practice within Clinical Scholarship*, 26 CLINICAL L. REV. 375, 376 (2020) (reviewing the published issues of Clinical Law Review (around 50) and finding that writing about transactional practice in that journal increased demonstrably between 1994 and 2019; Also observing that the substance of that transactional-focused scholarship often focused on the “development or the understanding

in contrast to the more traditional litigation focus of law clinics,¹⁴⁹ we also observe in this survey a growing body of legal scholarship by professors who teach in these clinics as they examine developments in the fields of social entrepreneurship and impact investing. This should not be a surprising development as many of these transactional law clinics have begun to represent social entrepreneurs or impact investors, and so are seeing firsthand the legal and policy issues confronting their clinics' clients.¹⁵⁰ Some of those current or past clinical law professors whose work is included in our recent legal literature survey include Alina Ball,¹⁵¹ Anne Choike¹⁵² Jennifer Li,¹⁵³ David Guenther,¹⁵⁴ Naveen Thomas,¹⁵⁵ Etienne Toussaint,¹⁵⁶ and Paul Tremblay.¹⁵⁷

of the substance of ...[the lawyering process as advocacy, negotiation, and resolution of disputes].”

149. Robert R. Kuehn, David A. Santacroce, Margaret Reuter, June T. Tai & G.S. Hans, 2022-23 SURVEY OF APPLIED LEGAL EDUCATION tbl. 4 (Ctr. for the Study of Applied Legal Educ., 2023) & (describing the percentage of U.S. law schools offering clinics in 2022-2023 that focus on Entrepreneur/Start-Up/Small Business—42%, Transactional—25%, and Community/Economic Development—22%); see generally Susan R. Jones and Jacqueline Lainez, *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools*, 43 WASH. U. J. L. POL'Y 85, 92–93 (2013).

150. Burand & Tucker, *Legal Lit. Review 1*, *supra* note 2, at 44 (citing Grunin Center survey that found that, as of spring 2018, at least 27 U.S. law schools offered transactional clinics that served social enterprises and impact investors as clients).

151. Alina Ball, *Social Enterprise Lawyering*, 88 UMKC L. REV. 803 (2020).

152. Anne Choike, *A New Urban Front for Shareholder Primacy*, 9 MICH. BUS. & ENTREPRENEURIAL L. REV. 79 (2019)

153. Jennifer Li, *Teamwork Makes the Dream Work: Improving Community Lawyering through a Policy and Transactional Law Clinic Partnership*, 30 CLINICAL L. REV. 187 (2023).

154. David B. Guenther, *The Strange Case of the Missing Doctrine and the “Odd Exercise” of eBay: Why Exactly Must Corporations Maximize Profit to Shareholders?*, 12 VA. L. & BUS. REV. 427 (2018)

155. Thomas, *supra* note 125.

156. Etienne C. Toussaint, *Dismantling the Master's House: Toward a Justice-Based Theory of Community Economic Development*, 53 U. MICH. J. L. REFORM 337 (2019); Etienne C. Toussaint, *The New Gospel of Wealth: On Social Impact Bonds and the Privatization of Public Good*, 56 HOUS. L. REV. 153 (2018).

157. Paul R. Tremblay, *Surrogate Lawyering: Legal Guidance Sans Lawyers*, 31 GEO. J. LEGAL ETHICS 377 (2018).

D. Identifying Best Practices

Scholars also document practices across deals, jurisdictions, and timelines, summarizing the current state of play. This type of work can amplify and proliferate best practices drawn from other jurisdictions,¹⁵⁸ lessons learned across deals,¹⁵⁹ and propose solutions to current policy conundrums.¹⁶⁰ The current survey is rife with comparative scholarship—works look across jurisdictional boundaries for insights on impact investing and social enterprise, examining the success and limitations of solutions in the EU,¹⁶¹ Asia,¹⁶² and the Global South, and borrowing from their understanding of the role of soft law to govern an increasingly global world.¹⁶³

158. Felix E. Mezzanotte, *Recent Law Reforms in EU Sustainable Finance: Regulating Sustainability Risk and Sustainable Investments*, 11 AM. U. BUS. L. REV. 215 (2023) (offering best practices drawn from the EU Corporate Sustainability Reporting Directive, the Sustainable Finance Disclosure Regulation, and the EU Taxonomy Regulation, Markets in Financial Instruments Directive (MiFID II), evolving prudent person rule contained in the Institutions for Occupational Retirement Provision Directive); see also Paco Mengual, *Determining an Effective Regulatory Framework for Businesses to Report on the Environment, Climate, and Human Rights*, 35 PACE INT'L L. REV. 224 (2023) (proposing a reporting framework that features mandatory disclosures, guided reporting rules, and definitions tailored to enhance transparency based on exemplars provided by drawing from EU SFDR, Taxonomy, and Corporate Sustainability Reporting Directive).

159. Jessica Jeffers & Anne Tucker, *Shadow Contracts*, 1 U. CHI. BUS. L. REV. 269, 300–06 (2022) (proposing best practices to minimize side letters in impact investment agreements and standardize investment agreement terms).

160. Professor Stephen Park argues for a modernization of firm value that incorporates climate change resiliency. Stephen K. Park, *Legal Strategy Disrupted: Managing Climate Change and Regulatory Transformation*, 58 AM. BUS. L.J. 711, 740 (2021) (leveraging the field of legal strategy to discuss how firms that protect and enhance value).

161. See e.g., Roberto Randazzo & Fabio G. Perozzi, *EU Sustainable Finance and Greenwashing: Where Are We and What Lies Ahead?*, 24 BUS. L. INT'L 37 (2023) (describing the evolution of environmental assessment finance and charting a course for a future role for impact investing); Felix E. Mezzanotte, *The EU Policy on Sustainable Finance: A Discussion on the Design of ESG-Fit Suitability Requirements*, 40 REV. BANKING & FIN. L. 249 (2020) (describing the suitability requirements (SRs) regulated in the Markets in Financial Instruments Directive in the EU).

162. Ernest Lim, *A New Legal Form for Social Enterprises in Asia*, 70 AM. J. COMPAR. L. 3 (2022) (arguing for a new social enterprise form specific to Asia).

163. See, e.g., Amy Lehr, *Fiduciary Duties for a Globalized World: Stakeholder Theory Reconceived*, 27 GEO. MASON L. REV. 81 (2019) (using international law to reconceive of fiduciary duties and stakeholder theory); see also Scott Shackelford et al., *Unpacking the Rise of Benefit Corporations: A Transatlantic Comparative*

E. *Sandbox to Experiment*

Proposing solutions is a unique role of scholarship. Unburdened by the constraints of a given client, deal, or regulatory landscape, scholars describe what is, and what should be.¹⁶⁴ Survey articles propose creative new solutions such as using purpose trusts,¹⁶⁵ green pills,¹⁶⁶ and portfolio diversification.¹⁶⁷

V.

ROOM TO GROW: IMAGINING THE FUTURE LEGAL LANDSCAPE

A. *Evolving Fields and White Spaces*

We see the following issues on the horizon for legal scholarship that will advance the fields of social enterprise, social finance and impact investing. In addition to calling for more legal research on specific topics like the intersection of human rights and business or the adequacy of alternative dispute resolution mechanisms in impact investing, there are also broad cross-cutting areas that could benefit from more intentional consideration by legal scholars. Here are five examples of “white spaces” that could benefit richly from more attention by legal scholars.

Case, 60 VA. J. INT’L L. 697 (2020) (comparing US benefit corporations to the EU’s regulation of social enterprise focusing on the UK). *See also* discussion of soft law, *supra* note 91, citing *Glossary: “Hard Law/Soft Law”*, EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS, <https://www.ecchr.eu/en/glossary/hard-law-soft-law/> (stating “Soft law instruments are predominantly found in the international sphere. UN General Assembly resolutions are an example of soft law”).

164. *See e.g.*, Anne M. Tucker, *Green Dividends: A Case Study in Green Dividends and the Conditions for Private Ordering Solutions*, 48 SEATTLE U. L. REV. 519 (2025) (mapping a legal path for shareholders to forgo a fraction of cash dividends to support corporate investments in pro social and environmental projects that leverages securities law truth telling and enforcement mechanisms).

165. Susan Gary, *The Oregon Stewardship Trust: A New Type of Purpose Trust that enables Steward-Ownership of a Business*, 88 U. CIN. L. REV. 707, 723–31 (2019) (describing the 2019 Oregon stewardship trust statute).

166. John Armour et al, *Green Pills Making Corporate Climate Commitments Credible*, 65 ARIZ. L. REV. 285, 325–26 (2023) (proposing green pills, like a poison pill, where a company suffers a consequence if it doesn’t keep its climate commitments).

167. *See e.g.*, Brav & Heaton, *supra* note 147 at 16 (arguing for investment approaches that incorporate brown as opposed to green assets to hedge the climate transition economy).

Comparative Scholarship. First, as disputes over how companies and investors are expected to conduct themselves become increasingly more public—in the halls of government (through changes in regulation), and in the courtroom (through the development of legal precedents), legal scholars will have ample opportunity to analyze and document why and how the fields of social entrepreneurship, social finance, and impact investing are evolving, in a single jurisdiction and comparatively across jurisdictions. These comparative analyses can be drawn at the municipal level, state level, national level, and even regional levels around the globe. Lessons about the outcomes resulting from widely varying policy and legal frameworks can be developed. And, for those legal scholars foresighted or foolhardy enough to dare peer into the future, recommendations can be forged to guide future decision makers.

Soft Law. Second, systems that have relied heavily on the cultivation of norms to guide markets and the behavior of private actors (or what we call “soft law” in this article) in the fields of social entrepreneurship and impact investing will likely be tested in coming years. These “tests” will present legal scholars with the opportunity to evaluate which, if any, of these norms hold in the face of increased legal scrutiny and regulation. Will these norms be supplanted by, or will they co-exist with new legal and regulatory regimes? With what effect? And, perhaps most important from a practical point of view, legal scholars can state the necessary conditions for norms in these fields to have a lasting effect on actors’ behavior.

Contracting for Impact. Third, in a complex world where lines often blur—between private sector and public sector, between for-profit and not-for-profit, between financial and impact expectations, to name but a few—how do traditional contracting approaches fare? As experimentation around contracting for positive impact continues, legal scholars will have opportunities to consider alternative approaches to contracting for impact. This vein of legal scholarship can begin to answer questions like can a transactional approach to contracting achieve enduring impact? What contracting provisions encourage impact? Or what might a more relational or principle-based approach to contracting achieve?

Contracting for Resiliency. Fourth, in a world facing radical political and environmental uncertainty, how can attorneys draft for transactional stability? How can lawyers structure transactions and relationships to maintain an alignment of parties’

interests when confronting unforeseen, catastrophic events or regulatory shifts? What contractual incentives facilitate alignment of interests and expectations over time among parties to a deal? Which contract provisions undermine alignment and erode relationships? Legal scholarship can contribute to the development of both empirical and theoretical analyses of what likely works and what doesn't.

Scaling Impact. Fifth, when innovative financial instruments or business models succeed in achieving financial and impact goals, how can they be brought to scale? What safeguards are necessary to protect vulnerable populations? What monitoring is effective to avoid impact washing? What level of standardization is appropriate or necessary? Which regulatory regimes encourage scaling and which discourage it? The theoretical and practice-oriented tools of legal scholars are well-suited to answering these challenging questions.

B. *Growing the Field*

In 2017, we called for a more robust intellectual architecture to foment legal scholarship that advances the fields of social entrepreneurship and impact investing. At that time, we identified six steps that could be taken to ensure that legal scholarship evolves apace with developments in the field by fostering a practice and policy orientation. To create scholarship that is relevant and field-advancing, we advocated for: (1) improving legal scholars' access to data and outlets for publication of empirically grounded and/or interdisciplinary research; (2) developing communities where legal scholars can create and share research agendas that are groundbreaking and field-advancing; (3) promoting knowledge dissemination and research between law professors and their students; (4) encouraging more interdisciplinary research, writing and teaching with other academic disciplines; (5) promoting pioneering legal scholarship agendas that address white spaces; and (6) engaging with mainstream corporate law, capital market regulation and finance scholars.¹⁶⁸

We also set out an agenda for how law schools could support this call for action. Among other things, we encouraged

168. Burand & Tucker, *Legal Lit. Review* 1, *supra* note 2, at 41.

law schools to invest in research centers,¹⁶⁹ host convenings and symposia on social enterprise and impact investing,¹⁷⁰ and develop classes and related course curricula that transfer knowledge and produce law school graduates who are knowledgeable about, and, through clinics and other experiential learning opportunities, practiced in serving clients from the fields of social entrepreneurship and impact investing.¹⁷¹

We see signs of progress on all of these fronts, although law schools generally still lag behind business schools in the study of and advancement of the fields of social entrepreneurship and impact investing. For example, the Grunin Center for Law and Social Entrepreneurship at New York University's School of Law (the "Grunin Center"), which was founded in the spring of 2017, remains the only center of its kind in the United States to be hosted by a law school.¹⁷²

169. *Id.* at 36.

170. *Id.* at 42.

171. *Id.* at 43–44.

172. Business schools are also creating centers, developing curricula, and engaging in social enterprise and impact investing research. For example, the Impact Finance Database—a collaboration of the Wharton School, Harvard Business School, and Chicago Booth was launched in 2020 to advance empirical research on impact investing. *Here's Why Three Top Business Schools Are Partnering in Impact Investing Research*, THE WHARTON SCH. (Oct. 28, 2020), <https://www.wharton.upenn.edu/story/heres-why-three-top-business-schools-are-partnering-in-impact-investing-research/>. The following is an incomplete list of centers and programs at top business schools in the US that are engaged with social enterprise and impact investing: Wharton Social Impact Initiative, <https://esg.wharton.upenn.edu/>; UCLA Anderson School of Management, Center for Impact, <https://www.anderson.ucla.edu/about/centers/impactanderson/>; Chicago Booth School of Business, Rustandy Center for Impact Investing, <https://www.chicagobooth.edu/research/rustandy/what-we-do/impact-investing/>; George Washington School of Business Impact Investing Initiative, <https://business.gwu.edu/impact-investing-initiative/>; Stanford Graduate School of Business, Center for Social Innovation, <https://www.gsb.stanford.edu/experience/about/centers-institutes/csi/>; Yale School of Management Program on Social Enterprise, Innovation, and Impact, <https://som.yale.edu/centers/program-on-social-enterprise-innovation-impact/>; NYU Stern Center for Sustainable Business, <https://www.stern.nyu.edu/experience-stern/about/departments-centers-initiatives/centers-of-research/center-sustainable-business/>; Georgetown Business for Impact, <https://businessforimpact.georgetown.edu/>; Duke Fuqua Business School CASE Social Impact Program, <https://centers.fuqua.duke.edu/yyyyyyy/students/social-impact-program/>; and Tufts University Fletcher Graduate School, Business for a Better World, https://fletchergraduates.tufts.edu/business/?gad_source=1&gclid=Cj0KC-Qjwqlm_BhDnARIsAKBYcmsPWRjgu2vP5CZaXL1E1oqbd7-thrfVBUBM-9qL-5FYhVdCfb0Dfl0waAibEEALw_wcB&utm_source=googleutm_medium=cp-c&utm_campaign=business_US. *Environmental, Social and Governance (ESG)*

We highlight here several noteworthy developments since the 2017 survey: the growing communities of legal practice in these fields, new awards highlighting the accomplishments of lawyers working in these fields, the catalytic effect on legal scholarship of publication opportunities sponsored by law schools, and the role law school courses and related curricula can play in generating practice-oriented forms of legal scholarship.

Communities of legal practice in these fields are growing. Notably, the Grunin Center has invested in the growth of a global legal community of practice that includes legal practitioners, law professors, and law students. By hosting annual conferences that attract 400 or more registrants to explore burning legal issues in the fields of social entrepreneurship and impact investing,¹⁷³ adjacent legal scholar convenings at NYU Law,¹⁷⁴

Initiative, UNIV. OF PA. WHARTON SCH. OF BUS., <https://esg.wharton.upenn.edu/> (last visited May 14, 2025); *Center for Impact*, UCLA ANDERSON SCH. OF MGMT., <https://www.anderson.ucla.edu/about/centers/impactanderson> (last visited May 14, 2025); *Impact Investing*, RUSTANDY CTR. FOR SOC. SECTOR INNOVATION, UNIV. OF CHI. BOOTH SCH. OF BUS., <https://www.chicagobooth.edu/research/rustandy/what-we-do/impact-investing> (last visited May 14, 2025); *Impact Investing Initiative*, GEORGE WASHINGTON UNIV. SCH. OF BUS., <https://business.gwu.edu/impact-investing-initiative> (last visited May 14, 2025); *Center for Social Innovation*, STANFORD GRADUATE SCH. OF BUS., <https://www.gsb.stanford.edu/experience/about/centers-institutes/csi> (last visited May 14, 2025); *Program on Social Enterprise, Innovation, and Impact*, YALE SCH. OF MGMT., <https://som.yale.edu/centers/program-on-social-enterprise-innovation-impact> (last visited May 14, 2025); *Center for Sustainable Business*, N.Y.U. STERN SCH. OF BUS., <https://www.stern.nyu.edu/experience-stern/about/departments-centers-initiatives/centers-of-research/center-sustainable-business> (last visited May 14, 2025); *Business for Impact*, GEORGETOWN UNIV., <https://businessforimpact.georgetown.edu/> (last visited May 14, 2025); *Social Impact Program*, FUQUA SCH. OF BUS., DUKE UNIV., <https://centers.fuqua.duke.edu/yyyyyyy/students/social-impact-program/> (last visited May 14, 2025); THE FLETCHER SCH., TUFTS UNIV., https://fletchergraduates.tufts.edu/business/?gad_source=1&gclid=Cj0KCQjwqIm_BhDnARIsAKBYcmsP-WRjgu2vP5CZaXL1E1oqbd7-thrfVBUBM-9ql5FYhVdCfb0Dfl0waAibEEALw-wcB&utm_source=googl_eutm_medium=cpc&utm_campaign=business_US (last visited May 14, 2025).

173. Before the Grunin Center began hosting this annual conference in 2017, the maximum number of attendees registering to attend this annual conference reached a high of 140 (author Burand's files).

174. There is a purposeful and direct overlap between attendees to the annual conference and the Legal Scholars Convening. The original goal of attaching the Legal Scholars Convening to the conference was to introduce legal scholars to the legal and policy issues that are actually confronting legal practitioners in the fields of social entrepreneurship and impact investing in hopes that this awareness might fuel more relevant and field-building legal scholarship than what had been observed in the first survey. Another goal was

and ongoing series of webinars on topics related to social entrepreneurship and impact investing, the Grunin Center aims to build bridges between and among practitioners and legal academics. Another vibrant, global community of practice that has emerged in recent years is The Global Alliance of Impact Lawyers (GAIL) that was created in 2022 by three networks of lawyers from Europe, the United States, and Latin America.¹⁷⁵

There also has been an uptick in opportunities to celebrate the creativity and commitment of lawyers working in these fields. With its annual Grunin prizes, first awarded in 2018, the Grunin Center shines a light on some of the most innovative legal work taking place around the world in the fields of social entrepreneurship and impact investing.¹⁷⁶ More recently, in 2025 the Chambers and Partners, a legal ranking institution, began ranking, for the first time, the impact investing law practices of U.S. law firms.¹⁷⁷

Law school journal-sponsored symposia also are continuing to provide valuable publication outlets for legal scholarship.¹⁷⁸

to help build a community that would support the research and publication goals of legal scholars interested in examining the fields of social entrepreneurship and impact investing. After three years of hosting the Legal Scholars Convening, the authors have seen the fruits of this gathering of scholars and can point to scholarship collaborations that have their roots in this Convening. See, e.g., Dana Brakman Reiser & Anne Tucker, *Buyer Beware: Variation and Opacity in ESG and ESG Index Funds*, 41 *CARDOZO L. REV.* 1921 (2020).

175. GAIL was formed in 2022 as a collaboration among ESELA (originally called the European Social Enterprise Law Association and then ESELA - The Legal Network for Social Impact), Benefit Company Bar Association (BCBA) and Red Latinoamericana de Abogados de Impacto (RLAI). For more information about GAIL, see <https://gailnet.org/about/>.

176. See Grunin Center website at: <https://www.law.nyu.edu/centers/grunin-social-entrepreneurship/grunin-prize/previous> to learn about previous winners of the Grunin Prize since its inception in 2018.

In 2023, the Grunin Center began offering a second prize, the Sustained Commitment Prize, recognizing the lifetime achievements of single lawyers that have dedicated themselves to the fields of social entrepreneurship and impact investing.

The Grunin Center now is focusing on developing a new prize that will celebrate field-advancing legal scholarship on topics related to social entrepreneurship, impact investing and sustainable development. That prize is expected to launch in 2026. See *Grunin Prize Honors the Impact of Lawyers in Social Entrepreneurship*, N.Y.U. (January 8, 2025) <https://www.law.nyu.edu/news/ideas/grunin-prize-social-entrepreneurship>

177. See Kush Cheema, *New Submission Areas for Chambers USA 2025*, CHAMBERS & PARTNERS (April 18, 2024), <https://chambers.com/topics/new-submission-areas-for-chambers-usa-2025>.

178. Burand & Tucker, *Legal Lit. Review* 1, *supra* note 2, at 42–43

One recent example is the issue of the NYU Journal of Law and Business in which this article appears. The symposia sponsored by University of Missouri - Kansas City (UMKC)'s law journal in 2018 (that focused on the green economy) and 2020 (that focused on scaling social enterprises), which together account for seven of the articles in this recent survey, provide an example of how specialized or themed issues of law journals can attract and catalyze legal scholarship, and, in the personal experience of one of these authors (Burand), even spur legal scholarship that might not have been created otherwise.

The law school classroom continues to be a wellspring for legal scholarship and, related, the development of new course curricula in these fields. As noted above, this often takes place in clinical law courses that have a transactional or business orientation. It is not unusual for the work product of these transactional clinics to take the form of broader legal analyses or toolkits that are made available to the general public, not just to individual clients of these clinics.¹⁷⁹

The broader growth in experiential education in law schools, however, also is fueling a valuable, but different, type of scholarship than is typically recognized for tenure promotion purposes—the development of case studies for use in the law school classroom. To put this into perspective, although case studies now are widely used in business school classrooms,¹⁸⁰ the use of case studies as a teaching tool originated in law schools.¹⁸¹ A recent example of this type of scholarship, which is deliberately multi-disciplinary, is the development of

179. See, for example, these publicly-available examples of toolkits and analyses created with clients of the International Transactions Clinic at NYU School of Law. *Gender Lens Investing: Legal Perspectives*, N.Y.U. INT'L TRANSACTIONS CLINIC & CALVERT IMPACT CAPITAL (2021) <https://calvertimpact.org/resources/gender-lens-investing-legal-perspectives>; and Deborah Drake, *Mergers and Acquisitions in Pandemic Recovery: What MFI Leadership Should Know*, CTR. FOR FIN. INCLUSION (2022) <https://www.centerforfinancialinclusion.org/wp-content/uploads/2024/02/Mergers-and-Acquisitions-in-Pandemic-Recovery.pdf>.

180. Some have estimated that a typical MBA student at Harvard is likely to have analyzed 500 cases. See Deborah Burand, *Building the Case” for the Business Lawyer of Tomorrow: Putting Impact into Practice*, 56 WILLAMETTE L. REV. 425, 437–39 (Summer 2020).

181. In 1871, a Harvard Law Professor Christopher Columbus Langdell created the first law school casebook, entitled *A Selection of Cases on the Law of Contracts*. His case method, called by some the Langdellian case method, is still used in law schools. The Langdellian case method, however, is very different from that used in business schools. *Id.* at 437–39.

a series of five case studies created over the life of an impact investment fund sponsored by Habitat for Humanity International, called the MicroBuild Fund. These case studies, which highlight important decision points that shaped the evolution of the MicroBuild Fund during its dozen or so years of operation, were integrated into a simulation course on launching and managing impact investment funds that was offered for the first time in the fall of 2024 at NYU Law.¹⁸²

CONCLUSION

This Article catalogues 177 articles on social enterprise and impact investing that were published in U.S. law reviews and journals between 2018 and 2023—as impact investing moved into its second decade. This extends our initial legal literature review of these fields during the decade running from 2007 through 2017. Our collective review of this span of legal literature, which covers over 430 law review articles published in the United States during the last 17 years, documents the main contributions that legal scholarship has made to these fields since the term “impact investing” was first coined in 2007.¹⁸³ We also identify white spaces where future research could be helpful to advance these fields.

As we noted in our initial legal literature review, we see great value in tracking the development of legal scholarship in these fields. One key contribution resulting from repeated surveys of legal scholarship in a particular field or, as in this case, adjacent fields, is to establish a baseline from which future scholarship can be evaluated over time. This is particularly valuable at time like now when the world is experiencing dramatic increases in societal and environmental challenges and, at the same time, equally dramatic shifts in public policy as policymakers at all levels of government around the globe decide how to respond to these challenges.

182. These cases are available at Case Studies | NYU School of Law (<https://www.law.nyu.edu/centers/grunin-social-entrepreneurship/resources/case-studies>). Created in collaboration with the Wagner School of Public Policy at NYU, these cases, which include deal documentation and other interactive collateral materials, provide a multi-disciplinary approach to bringing impact investing into the classroom. Alternatively, these cases can be taught as a standalone course in a law school as was done in the fall of 2024 at NYU Law. A copy of the syllabus for this class is available to other law professors upon request by contacting Prof. Burand at Deborah.burand@nyu.edu.

183. Burand & Tucker, *Legal Lit. Review* 1, *supra* note 2, at 14.

While not to dismiss the value of any single scholar's contributions, we stand at a time in history when it is important to have a picture of how legal scholars collectively are responding to these policy shifts. At stake is the advancement and ultimately resilience of the fields of social entrepreneurship and impact investing.

We stand by our original rationale for focusing on the legal literature about these fields—namely, “there is much to be gained by tracking the ways in which legal scholarship is supporting the maturation, proliferation and advancement of the fields of social entrepreneurship and impact investing,”¹⁸⁴ Today, however, there also is much to be gained by tracking the ways in which legal scholarship, or the lack thereof, contributes to the efforts of those who hope to *curb* the maturation, proliferation and advancement of these fields. When future generations look back at this moment in history to question what happened and why, the voices of legal scholars should not go quiet. The stakes are too high to let today's lessons go unrecorded and unexamined.

APPENDIX A: SEARCH TERMS

Primary Search Terms	Secondary Search Terms
<ul style="list-style-type: none"> • Benefit Corp • Social Enterprise • Impact Invest • Hybrid • Double_Triple Bottom Line • L3c • Social finance • Social impact bond • Flexible purpose • Social purpose corporations • Pay for success • Blended finance • Social franchise 	<ul style="list-style-type: none"> • Alt. Finance • Comm. Fin • CoopFin • CrowdFund • CSR_Sustainability • DevFin • ESG • Ethical Banking • GreenInvest • Impact Measure • MicroFinance • Pub-Private Part. • SRI

184. *Id.* at 49.

APPENDIX B: BIBLIOGRAPHY OF ARTICLES

1.	Susan L. Abbott, Keirsa K. Johnson & Sean M. Doran, <i>Impact Investing for Section 501(c)(3) Organizations</i> , 29 TAX'N EXEMPTS 17 (2018)
2.	Emilie Aguirre, <i>Beyond Profit</i> , 54 U.C. DAVIS L. REV. 2077 (2021)
3.	Frederick H. Alexander, <i>Putting Benefit Corporation Statutes into Context by Putting Context into the Statutes</i> , 76 THE BUS. LAW. 109 (2020)
4.	Frederick H. Alexander, <i>Whose Portfolio is it, Anyway?</i> 47 STETSON L. REV. 311 (2018)
5.	Anat Alon-Beck, <i>The Law of Social Entrepreneurship: Creating Shared Value through the Lens of Sandra Day O'Connor's iCivics</i> , 20 U. PA. J. BUS. L. 520 (2018)
6.	Leon Anidjar, <i>The Debate Surrounding the Company Purpose in the Post-Pandemic Age</i> , 6 CARDOZO INT'L & COMPAR. L. REV. 1 (2022)
7.	John Armour, Luca Enriques & Thom Wetzer, <i>Green Pills: Making Corporate Climate Commitments Credible</i> , 65 ARIZ. L. REV. 285 (2023)
8.	Alina Ball, <i>Social Enterprise Lawyering</i> , 88 UMKC L. REV. 803 (2020)
9.	Michal Barzusa, Quinn Curtis & David H. Webber, <i>Shareholder Value(s): Index Fund ESG Activism and the New Millennial Corporate Governance</i> , 93 S. CAL. L. REV. 1243 (2020)
10.	Priya Baskaran, <i>Respect the Hustle: Necessity Entrepreneurship, Returning Citizens, and Social Enterprise Strategies</i> , 78 MD. L. REV. 323 (2019)
11.	Ranajoy Basu, Priya Taneja & Reed Smith, <i>Social Impact Investing: Market Trends and Risks</i> , 1 J. INT'L. BANKING & FIN. L. 61 (2020)
12.	Lucian A. Bebchuk & Roberto Tallarita, <i>The Illusory Promise of Stakeholder Governance</i> , 106 CORNELL L. REV. 91 (2020)
13.	Brad Bedingfield & Nancy Dempze, <i>The Disappearing 60% Deduction— New Charitable Limits Are Not as Generous as They Appear</i> , 30 TAX'N EXEMPTS 36 (2018)
14.	Brad J. Bernthal, <i>The Evolution of Entrepreneurial Finance: A New Typology</i> , 2018 BYU L. REV. 773 (2019).

15.	Ellen Berrey, <i>Social Enterprise Law in Action: Organizational Characteristics of U.S. Benefit Corporations</i> , 20 <i>TRANSACTIONS</i> 21 (2018)
16.	Norman D. Bishara, <i>Hybrid Entities and the Psychological Contract with Employee-Stakeholders</i> , 22 <i>U. PA. J. BUS. L.</i> 303 (2020)
17.	Mark Blodgett, Jason Peterson & Lydia Segal, <i>Benefit Corporation Governance: A Decade of Debating Best Practices</i> , 17 <i>N.Y.U. J. L. & BUS.</i> 233 (2021)
18.	Rado Bohinc & Jeff Schwartz, <i>Social Enterprise Law: A Theoretical and Comparative Perspective</i> , 15 <i>OHIO STATE BUS. L.J.</i> 1 (2021)
19.	Richard C. Boldt & Eleanor T. Chung, <i>Community Health Workers and Behavioral Healthcare</i> , 23 <i>J. HEALTH CARE L. & POL'Y</i> 1 (2020)
20.	Alon Brav & J.B. Heaton, <i>Brown Assets for the Prudent Investor</i> , 12 <i>HARV. BUS. L. REV. ONLINE</i> 1 (2021).
21.	Ryan Brennan, <i>Whom is Corporate ESG Integration For?</i> , 49 <i>BROOK. J. INT'L L.</i> 171 (2023)
22.	Raymond H. Brescia, Alexandria Decatur & Julia Kosinecki, <i>Civil Society and Civil Justice: Teaching with Technology to Help Close the Justice Gap for Non-Profit Organizations</i> , 29 <i>ALB. L.J. SCI. & TECH.</i> 16 (2019)
23.	Kelly Breslauer, <i>Wall Street's Enormous Net: How Scaling Back Statutory Disqualifications Would Better Harmonize Statutes and Practices with the Times</i> , 38 <i>HOFSTRA LAB. & EMP. L.J.</i> 357 (2021)
24.	Paul Brest, Ronald J. Gilson & Mark A. Wolfson, <i>Investors Can (and Can't) Create Social Value</i> , 44 <i>Iowa J. CORP. L.</i> 205 (2018)
25.	Deborah Burand, <i>"Building the Case" for the Business Lawyer of Tomorrow: Putting Impact Into Practice</i> , 56 <i>WILLAMETTE L. REV.</i> 425 (2020)
26.	Deborah Burand, <i>Contracting (Incompletely) for Success: Designing Pay for Success Contracts for Social Impact Bonds (Sibs)</i> , 29 <i>CORNELL J.L. & PUB. POL'Y</i> 1 (2019)
27.	Deborah Burand & Anne Tucker, <i>Legal Literature Review of Social Entrepreneurship and Impact Investing</i> , 11 <i>WM. & MARY BUS. L. REV.</i> 1 (2019)

28.	Deborah Burand, David Koch & Katy Yang, <i>Scaling Social Enterprises Through Franchise Models: Rethinking Social Franchise Agreements</i> , 88 UMKC L. REV. 827 (2020)
29.	Alexander C. Campbell, <i>Social Enterprise for Tax-Exempt Organizations</i> , 29 TAX'N EXEMPTS 20 (2018)
30.	Miriam A. Cherry, <i>A Global System of Work, a Global System of Regulation?: Crowdwork and Conflicts of Law</i> , 94 TUL. L. REV. 183 (2020)
31.	Anne Choike, <i>A New Urban Front for Shareholder Primacy</i> , 9 MICH. BUS. & ENTREPRENEURIAL L. REV. 79 (2019)
32.	Anna Christie, <i>The Agency Costs of Sustainable Capitalism</i> , 55 U.C. DAVIS L. REV. 875 (2021)
33.	Ronald J. Colombo, <i>Taking Stock of the Benefit Corporation</i> , 7 TEX. A&M L. REV. 73 (2019)
34.	Terry L. Corbett, <i>Operationalizing the Health Care Benefit Corporation</i> , 24 J. HEALTH CARE L. & POL'Y 267 (2021)
35.	Terry L. Corbett, <i>The Case for a Health Care Benefit Corporation</i> , 47 CAP. U. L. REV. 183 (2019)
36.	Quinn Curtis, W. Mark C. Weidemaier & Mitu Gulati, <i>Green Bonds Empty Promises</i> , 102 N.C. L. REV. 131 (2023)
37.	Quinn Curtis, Jill Fisch & Adriana Z. Robertson, <i>Do ESG Mutual Funds Deliver on Their Promises?</i> , 120 MICH. L. REV. 393 (2021)
38.	Jason J. Czarnezki, Joshua Ulan Galperin & Brianna M. Grimes, <i>Teaching Sustainable Business Law & the Role of ESG Lawyers</i> , 31 N.Y.U. ENVTL. L.J. 285 (2023)
39.	Sarah Davis, Marsha Mansfield, Kelsey Mullins, Sachin Gupte & Mitch, <i>LIFT as "the Fourth Moment" in Wisconsin Clinical Legal Education for Social Justice</i> , 2021 WIS. L. REV. 417 (2021)
40.	Marco Dell'Erba & Michele Doronzo, <i>Sustainability Gatekeepers: ESG Ratings and Data Providers</i> , 25 U. PA. J. BUS. L. 355 (2023)
41.	Michael B. Dorff, James Hicks & Steven Davidoff Solomon, <i>The Future or Fancy? An Empirical Study of Public Benefit Corporations</i> , 11 HARV. BUS. L. REV. 113 (2021)
42.	Edward De Barbieri, <i>Community-Based Tax Incentives</i> , 19 PITT. TAX REV. 61 (2021)

43.	Ofer Eldar, <i>Designing Business Forms to Pursue Social Goals</i> , 106 VA. L. REV. 937 (2020)
44.	Jehan El-Jourbagy & Philip P. Gura, <i>In Space No One Can Hear You're Green: Standardization of Environmental Reporting, the SEC's Proposed Climate Change Disclosure Rules, and Remote Sensing Technology</i> , 59 AM. BUS. L.J. 773 (2022)
45.	Daniel C. Esty & Quentin Karpilow, <i>Harnessing Investor Interest in Sustainability: The Next Front in Environmental Information Regulation</i> , 36 YALE J. ON REGUL. 625 (2019)
46.	Katherine Fiedler, Steven Lord & Jason J. Czarnezki, <i>Life Cycle Costing, and Food Systems: Concepts, Trends, and Challenges of Impact Valuation</i> , 8 MICH. J. ENV'T. ADMIN. 1 (2018)
47.	Dov Fisher, <i>For the Public Benefit: Why Purpose Driven Companies Should Adopt Pursue and Disclose Locally Supportive Tax Strategies</i> , 21 ATLANTIC L.J. 159 (2019)
48.	Franziska Arnold-Dwyer, <i>A Legal Framework for Net Zero Aligned Insurance Products</i> , 29 CONN. INS. L.J. 1 (2023)
49.	John A. Fraser & Randy S. Fisher, <i>The Emerging Role of University TTOs in Facilitating Social Enterprises: Identifying New Sources of Creativity and Mobilizing Knowledge and Resources to Address Societal and Community Problems</i> , 57 LES NOUVELLES 228 (2022)
50.	Stavros Gadinis & Amelia Miazad, <i>Corporate Law and Social Risk</i> , 73 VAND. L. REV. 1401 (2020)
51.	Susan N. Gary, <i>The Oregon Stewardship Trust: A New Type of Purpose Trust that Enables Steward-Ownership of a Business</i> , 88 U. CIN. L. REV. 707 (2020)
52.	Susan N. Gary, <i>The Changing Landscape of Business Succession: How and Why Purpose Trusts Matter</i> , 18 OHIO STATE BUS. L.J. 41 (2023)
53.	Susan N. Gary, <i>Conflicts and Opportunities for Pension Fiduciaries in the ESG Environment</i> , 74 OKLA. L. REV. 607 (2022)
54.	Susan N. Gary, <i>Best Interests in the Long Term: Fiduciary Duties and ESG Integration</i> , 90 U. COLO. L. REV. 733 (2019)
55.	Matteo Gatti & Chrystin D. Ondersma, <i>Can a Broader Corporate Purpose Redress Inequality? The Stakeholder Approach Chimera</i> , 46 J. CORP. L. 1 (2020)

56.	Erika George, <i>Shareholder Activism and Stakeholder Engagement Strategies: Promoting Environmental Justice, Human Rights, and Sustainable Development Goals</i> , 36 WIS. INT'L L.J. 298 (2019)
57.	Allison Goh, <i>Sustainable Green Finance Towards a Green Belt and Road</i> , 11 ASIAN J. INT'L L. 245 (2021)
58.	Jennifer B. Goode & Andrea L. Kushner, <i>Fiduciary ESG Investing: Navigating the New Frontier</i> , 57 REAL PROP. TR. & EST. L.J. 199 (2022)
59.	Tom Gosling & Iain MacNeil, <i>Can Investors Save the Planet? NZAMI and Fiduciary Duty</i> , 18 CAP. MKT. L.J. 172 (2023)
60.	Marc A. Greendorfer, <i>Discrimination as a Business Policy: The Misuse and Abuse of Corporate Social Responsibility Programs</i> , 8 AM. U. BUS. L. REV. 307 (2020)
61.	Caleb N. Griffin, <i>The Hidden Cost of M&A</i> , 2018 COLUMBIA BUS. L. REV. 70 (2018)
62.	Caleb N. Griffin, <i>Humanizing Corporate Governance</i> , 75 FLA. L. REV. 689 (2023)
63.	Beck Groff & Susan N. Gray, <i>Patagonia, Purpose Trusts and Stewardship Trusts Business with a Purpose</i> , 37 PROB. & PROP. 36 (2023)
64.	Sue S. Guan, <i>Meme Investors and Retail Risk</i> , 63 B.C. L. REV. 2051 (2022)
65.	David B. Guenther, <i>The Strange Case of the Missing Doctrine and the "Odd Exercise" of eBay: Why Exactly Must Corporations Maximize Profit to Shareholders</i> , 12 VA. L. & BUS. REV. 427 (2018)
66.	Christopher P. Guzelian & Jeff Todd, <i>Sustainable Money</i> , 94 TEMP. L. REV. 453 (2022)
67.	Hajin Kim, <i>Can Mandating Corporate Social Responsibility Backfire?</i> , 18 J. EMPIRICAL LEGAL STUD. 189 (2021)
68.	Christopher D. Hampson, <i>Bankruptcy & the Benefit Corporation</i> , 96 AM. BANKR. L.J. 93 (2022)
69.	Grant M. Hayden & Matthew T. Bodie, <i>The Corporation Reborn: From Shareholder Primacy to Shared Governance</i> , 61 B.C. L. REV. 2419 (2020).
70.	Yaniv Heled, Liza Vertinsky & Cass Brewer, <i>Why Healthcare Companies Should Be(come) Benefit Corporations</i> , 60 B.C. L. REV. 73 (2019)

71.	Joan MacLeod Heminway, <i>Lawyering for Social Enterprise</i> , 20 TENN. J. BUS. L. 797 (2019)
72.	Joan MacLeod Heminway, <i>Let's Not Give Up on Traditional For-Profit Corporations for Sustainable Enterprise</i> , 86 UMKC L. REV. 779 (2018)
73.	Janine Hiller & Scott J. Shackelford, <i>The Firm and Common Pool Resource Theory: Understanding the Rise of Benefit Corporations</i> , 55 AM. BUS. L.J. 5 (2018)
74.	Scott Hirst, Kobi Kastiel & Tamar Kricheli-Katz, <i>How Much Do Investors Care About Social Responsibility?</i> , 2023 WIS. L. REV. 977 (2023)
75.	Virginia Harper Ho, <i>From Public Policy to Materiality: Non-Financial Reporting, Shareholder Engagement, and Rule 14a-8's Ordinary Business Exception</i> , 76 WASH. & LEE L. REV. 1231 (2019)
76.	Robert C. Hockett & Saule T. Omarova, <i>Private Wealth and Public Goods: A Case for a National Investment Authority</i> , 43 J. CORP. L. 437 (2018)
77.	Brent J. Horton, <i>Rising to Their Full Potential: How a Uniform Disclosure Regime Will Empower Benefit Corporations</i> , 9 HARV. BUS. L. REV. 101 (2019)
78.	Brent J. Horton, <i>Terra Incognita: Applying the Entire Fairness Standard of Review to Benefit Corporations</i> , 22 U. PA. J. BUS. L. 842 (2020)
79.	Zamir Iqbal & Friedmann Roy, <i>Innovative Islamic Social Finance for Housing Microfinance</i> , 26 ISLAMIC ECON. STUD. 87 (2018)
80.	Jessica S. Jeffers & Anne M. Tucker, <i>Shadow Contracts</i> , 1 U. CHI. BUS. L. REV. 259 (2022)
81.	Lindsay Sain Jones, <i>Aligning National Bank Priorities with the Public Interest: National Benefit Banks and a New Stakeholder Approach</i> , 58 AM. BUS. L.J. 5 (2021)
82.	Ann Juergens & Diane Galatowitsch, <i>Fostering Client Altruism and the Common Good in the Practice of Law: Learning from Emerging Movements in Business and Economics</i> , 44 MITCHELL HAMLIN L. REV. 1 (2018)
83.	Amelia Miazad, <i>Prosocial Antitrust</i> , 73 HASTINGS L.J. 1637 (2022)

84.	Tracy A. Kaye, <i>Ogden Commons Case Study: A Comparative Look at the Low-Income Housing Tax Credit and Opportunity Zone Tax Incentive Programs</i> , 48 FORDHAM URB. L.J. 1067 (2021)
85.	Thomas A. Kelly & Christopher B. McLaughlin, <i>North Carolina's Nonprofit Property Tax Exemption Conundrum</i> , 96 N.C. L. REV. 1769 (2018)
86.	Sung Eun (Summer) Kim, <i>The Duality of Variance Among ESG Assessments</i> , 88 MO. L. REV. 409 (2023)
87.	Tyler J. Kalachnik, <i>The Greenhouse Effect: ESG Labeling in Housing Finance</i> , 30 J. AFFORDABLE HOUS. & CMTY. DEV. L. 217 (2021)
88.	Trevor Kirby, <i>An Evolution in The Business of Banking the Neobank Partnership</i> , 11 LOY. U. CHI. J. REG. COMPLIANCE 28 (2023)
89.	Michelle M. Kwon, <i>To Tax or Not to Tax Social Enterprises</i> , 20 TENN. J. BUS. L. 815 (2019)
90.	Michelle D. Layser, <i>Nonprofit Participation in Place-Based Tax Incentive Transactions</i> , 48 FORDHAM URB. L.J. 1131 (2021)
91.	Thomas Lee Hazen, <i>Corporate and Securities Law Impact on Social Responsibility and Corporate Purpose</i> , 62 B.C. L. REV. 851 (2021)
92.	Amy K. Lehr, <i>Fiduciary Duties for a Globalized World: Stakeholder Theory Reconceived</i> , 27 GEO. MASON L. REV. 81 (2019)
93.	Margaret H. Lemos & Guy-Uriel Charles, <i>Public Programs, Private Financing</i> , 81 LAW & CONTEMP. PROBS. 137 (2018)
94.	Louis G. Leonard III, <i>Under the Radar: A Coherent System of Climate Governance, Driven by Business</i> , 50 ENV'T. L. REP. 10546 (2020)
95.	Ariana R. Levinson, Sue Eng Ly, Ryan Fenwick, Thomas E. Rutledge & Andrew Klump, <i>Alleviating Food Insecurity Via Cooperative Bylaws</i> , 26 GEO. J. ON POVERTY L. & POL'Y 227 (2019)
96.	Jennifer Li, <i>Teamwork Makes the Dreamwork: Improving Community Lawyering through a Policy and Transactional Law Clinic Partnership</i> , 30 CLINICAL L. REV. 187 (2023)

97.	Carol Liao, Elsir U. Tawfik & Pat Teichreb, <i>The Global Social Enterprise Lawmaking Phenomenon: State Initiatives on Purpose, Capital, and Taxation</i> , 36 WINDSOR Y.B. ACCESS TO JUST. 84 (2019)
98.	Sarah E. Light, <i>The Law of the Corporation as Environmental Law</i> , 71 STAN. L. REV. 137 (2019)
99.	Ernest Lim, <i>A New Legal Form for Social Enterprises in Asia</i> , 70 AM. J. COMPAR. L. 510 (2022)
100.	Tom C.W. Lin, <i>Incorporating Social Activism</i> , 98 B.U. L. REV. 1535 (2018)
101.	Mark J. Loewenstein & Jay Geyer, <i>Shareholder Primacy and the Moral Obligation of Directors</i> , 26 FORDHAM J. CORP. & FIN. L. 105 (2021)
102.	Dorothy S. Lund & Elizabeth Pollman, <i>The Corporate Governance Machine</i> , 121 COLUM. L. REV. 2563 (2021)
103.	Dorothy S. Lund, <i>Corporate Finance for Social Good</i> , 121 COLUM. L. REV. 1617 (2021).
104.	Mohsen Manesh, <i>Introducing the Totally Unnecessary Benefit LLC</i> , 97 N.C. L. REV. 603 (2019)
105.	Roberta Mann, Fiona Martin & Bill Butcher, <i>Saving the Planet by Cutting Corporate Taxes: A Comparative Case Study Analysis</i> , 23 U. Fla. Tax Rev. 238 (2019).
106.	Joseph Manning, <i>Myopic Madness: Breaking the Stranglehold of Shareholder Short-Termism to Address Climate Change and Build a Sustainable Economy</i> , 10 ARIZ. J. ENV'T. L. & POL'Y 425 (2020)
107.	Tanya M. Marcum & Eden S. Blair, <i>The Value of Values: An Update on the L3C Entity, Its Uses and Possibilities</i> , 88 UMKC L. REV. 927 (2020)
108.	Colin Mayer, <i>What is Wrong with Corporate Law: The Purpose of Law and the Law of Purpose</i> , 18 ANN. REV. L. & SOC. SCI. 283 (2022)
109.	Brett H. McDonnell, <i>From Duty and Disclosure to Power and Participation in Social Enterprise</i> , 70 ALA. L. REV. 77 (2018)
110.	Brett McDonnell, <i>The Corrosion Critique of Benefit Corporations</i> , 101 B.U. L. REV. 1421 (2021)
111.	Linsey McGoey, <i>Philanthrocapitalism and the Separation of Powers</i> , 17 ANN. REV. L. & SOC. SCI. 391 (2021).

112.	Paco Mengual, <i>Determining an Effective Regulatory Framework for Businesses to Report on the Environment, Climate, and Human Rights</i> , 35 <i>PAGE INT'L L. REV.</i> 224 (2023)
113.	Felix E. Mezzanotte, <i>Recent Law Reforms in EU Sustainable Finance: Regulating Sustainability Risk and Sustainable Investments</i> , 11 <i>AM. U. BUS. L. REV.</i> 215 (2023)
114.	Felix E. Mezzanotte, <i>The EU Policy on Sustainable Finance: A Discussion on the Design of ESG-Fit Suitability Requirements</i> , 40 <i>REV. BANKING & FIN. L.</i> 249 (2020)
115.	Micah S. McNeil, <i>Traditional Tlingit Law & Governance and Contemporary Sealaska Corporate Governance: 4 Core Values and Jurisprudence of Transformation</i> , 22 <i>TRIBAL L.J.</i> 168 (2023)
116.	Peter Molk & D. Daniel Sokol, <i>The Challenges of Nonprofit Governance</i> , 62 <i>B.C. L. REV.</i> 1497 (2021)
117.	Reginald Mombrun, <i>Let's Take the Fight to Big Pharma by Embracing a New Paradigm and Taking Out the Profit Motive from the U.S. Pharmaceutical Industry: Less Profits Will Lead to Greater National Health</i> , 43 <i>U. LA VERNE L. REV.</i> 1 (2021)
118.	Brownen Morgan, Sophia Bai & Jyotsana Bhasker, <i>Competitive Neutrality and the Challenge of Social Enterprise</i> , 25 <i>COMPETITION & CONSUMER L.J.</i> 249 (2018)
119.	Andrew P. Morriss, Roger Meiners & Bruce Yandle, <i>Finding Better Words: Markets, Property Rights, and Resources</i> , 11 <i>WASH. J. ENV'T L. & POL'Y</i> 245 (2021)
120.	J. Haskell Murray, <i>Enforcing Benefit Corporation Reporting</i> , 23 <i>TENN. J. BUS. L.</i> 505 (2022)
121.	J. Haskell Murray, <i>The History and Hope of Social Enterprise Forms</i> , 22 <i>TENN. J. BUS. L.</i> 207 (2021)
122.	Colin Myers & Jason J. Czarnezki, <i>Sustainable Business Law? The Key Role of Corporate Governance and Finance</i> , 51 <i>ENV'T L.</i> 991 (2021)
123.	John J. Nay, <i>Climate Contingent Finance</i> , 19 <i>BERKELEY BUS. L.J.</i> 336 (2022)
124.	Nicholas A. Muñoz, <i>All Public, No Benefit: Holding Oklahoma Public Benefit Corporations Accountable</i> , 73 <i>OKLA. L. REV.</i> 775 (2021)
125.	David Nows, <i>Corporate Innovation: One Path to More Sustainable Big Business</i> , 91 <i>U. CIN. L. REV.</i> 437 (2022)

126.	David Nows & Jeff Thomas, <i>Delaware's Public Benefit Corporation: The Traditional VC-Backed Company's Mission-Driven Twin</i> , 88 UMKC L. REV. 873 (2020)
127.	David Nows, <i>Corporate Innovation: One Path to More Sustainable Big Business</i> , 91 U. CIN. L. REV. 437 (2022)
128.	Daniel G. Orenstein, <i>Preventing Industry Abuse of Cannabis Equity Programs</i> , 45 S. ILL. U. L.J. 69 (2020)
129.	Hari M. Osofsk, Jacqueline Peel, Brett McDonnell & Anita Foerster, <i>Energy Re-Investment</i> , 94 IND. L.J. 595 (2019)
130.	Stefan J. Padfield, <i>Corporate Governance and the Omnipresent Specter of Political Bias</i> , 104 MARQ. L. REV. 47 (2020)
131.	Stephen Kim Park, <i>Investors as Regulators: Green Bonds and the Governance Challenges of the Sustainable Finance Revolution</i> , 54 STAN. J. INT'L L. 1 (2018)
132.	Stephen Kim Park, <i>Legal Strategy Disrupted: Managing Climate Change and Regulatory Transformation</i> , 58 AM. BUS. L.J. 711 (2021)
133.	Stephen Kim Park, <i>Social Responsibility Regulation and Its Challenges to Corporate Compliance</i> , 14 BROOK J. CORP. FIN. & COM. L. 39 (2019)
134.	Nicolas Pascal, Angeliqe Brathwaite, Maxime Philip & Melissa Walsh, <i>Rethinking Ocean Conservation: Technology and Law in Action: Contents Related to DELPF's Fall 2017 Symposium: Impact Investment in Marine Conservation</i> , 28 DUKE ENV'T L. & POL'Y F. 199 (2018)
135.	Y. Melinda Pasquini & Robert M. Munroe, <i>Building Healthy Communities Through Health Care and Affordable Housing Synergies</i> , 48-DEC COLO. LAW. 40 (2019)
136.	Joseph Pileri, <i>Democratizing the Fourth Sector: B Corps and Beneficiary Participation</i> , 72 S.C. L. REV. 83 (2020)
137.	Elizabeth Pollman, <i>The History and Revival of the Corporate Purpose Clause</i> , 99 TEX. L. REV. 1423 (2021)
138.	Roberto Randazzo & Fabio Gallo Perozzi, <i>EU Sustainable Finance and Greenwashing: Where Are We and What Lies Ahead?</i> , 24 BUS. L. INT'L 37 (2023)
139.	Ethan Randecker, <i>Reaching the Opportunity End-Zone: Using Sec. 1400Z to Finance Modern Stadiums</i> , 12 ARIZ. ST. U. SPORTS & ENT. L.J. 59 (2023)

140.	Dana Brakman Reiser & Steven A. Dean, <i>Social Enterprise Law: Trust, Public Benefit and Capital Markets</i> , STANFORD SOCIAL INNOVATION REV. (2017)
141.	Dana Brakman Reiser & Anne Tucker, <i>Buyer Beware: Variation and Opacity in ESG and ESG Index Funds</i> , 41 CARDOZO L. REV. 1921 (2020)
142.	Dana Brakman Reiser, <i>Disruptive Philanthropy: Chan-Zuckerberg, The Limited Liability Company, and the Millionaire Next Door</i> , 70 FLA. L. REV. 921 (2018)
143.	Paul Rose, <i>Catalyzing Sustainable Investment</i> , 51 ENV'T L. 1221 (2021)
144.	Paul Rose, <i>Public Wealth Maximization: A New Framework for Fiduciary Duties in Public Funds</i> , 2018 U. ILL. L. REV. 891 (2018)
145.	Aisha I. Saad & Diane Strauss, <i>A New "Reasonable Investor" and Changing Frontiers of Materiality: Increasing Investor Reliance on ESG Disclosures and Implications for Securities Litigation</i> , 17 BERKELEY BUS. L.J. 391 (2020)
146.	Alberto R. Salazar V, <i>Implementing the New Purpose of the Corporation: The Duty of Directors to Tie Executive Pay to Employees' Interests</i> , 20 BERKELEY BUS. L.J. 149 (2023)
147.	Max M. Schanzenbach & Robert H. Sitkoff, <i>Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee</i> , 72 STAN. L. REV. 381 (2020)
148.	Elizabeth Schmidt, <i>New Legal Structures for Social Enterprises: Designed for One Role but Playing Another</i> , 43 VT. L. REV. 675 (2019)
149.	Steven L. Schwarcz & Theodore L. Leonhardt, <i>Scoping and Defining Financial Inclusion, Access to Credit, and Sustainable Finance</i> , 84 LAW & CONTEMP. PROBS. 1 (2021)
150.	Scott J. Shackelford, Jannie Hiller & Xiao Ma, <i>Unpacking the Rise of Benefit Corporations: A Transatlantic Comparative Case Study</i> , 60 VA. J. INT'L L. 697 (2020)
151.	Scott J. Shackelford, Angie Raymond, Martin A. McCrory & Andrea Bonime-Blanc, <i>Cyber Silent Spring: Leveraging ESG+T Frameworks and Trustmarks to Better Inform Investors and Consumers About the Sustainability, Cybersecurity, and Privacy of Internet-Connected Devices</i> , 25 U. PA. J. BUS. L. 505 (2023)

152.	Amanda Shanor & Sarah E. Light, <i>Anti-Woke Capitalism, the First Amendment, and the Decline of Libertarianism</i> , 118 NW. U. L. REV. 347 (2023)
153.	Cary Martin Shelby, <i>Profiting From Our Pain: Privileged Access to Social Impact Investing</i> , 109 CAL. L. REV. 1261 (2021)
154.	Andrew Shepard, Marsha Kline Pruett, and Rebecca Love Kourlis, <i>If We Build It, They Might Come: Bridging the Implementation Gap Between ADR Services and Separating and Divorcing Families</i> , 24 HARV. NEGOT. L. REV. 25 (2018)
155.	George Shepherd, <i>Not Just Profits: The Duty of Corporate Leaders to the Public, Not Just Shareholders</i> , 23 U. PA. J. BUS. L. 823 (2021)
156.	Michelle L. Sidle, <i>An "Opportunity" to Invest in a "Rat-Infested" City: The Effects of President Trump's Economic Development Plan in Baltimore</i> , 16 J. BUS. & TECH. L. 143 (2021)
157.	Laughlin Silvestri, <i>The Climate Crisis Impact Investing and Corporate Accountability: Amplifying Shareholder Concerns About Corporate Sustainability Measures and Tackling Transparency Surrounding Corporate Contributions to the Climate Crisis</i> , 14 GOLDEN GATE U. ENV'T. L.J. 83 (2022)
158.	Omari Scott Simmons, <i>Chancery's Greatest Decision: Historical Insights on Civil Rights and the Future of Shareholder Activism</i> , 76 WASH. & LEE L. REV. 1259 (2019)
159.	Omari Scott Simmons, <i>The Federal Option: Delaware as a De Facto Agency</i> , 96 WASH. L. REV. 935 (2021)
160.	Roberto Tallarita, <i>Stockholder Politics</i> , 73 HASTINGS L.J. 1697 (2022)
161.	Naveen Thomas, <i>Golden Shares and Social Enterprise</i> , 12 HARV. BUS. L. REV. 157 (2022)
162.	Bryce C. Tingle, <i>What is Corporate Governance? Can We Measure It? Can Investment Fiduciaries Rely on it?</i> 43 QUEEN'S L.J. 223 (2018)
163.	Jeff Todd, <i>A Rhetoric of Sustainable Development</i> , 42 PACE L. REV. 417 (2022)
164.	Etienne C. Toussaint, <i>Dismantling the Master's House: Toward a Justice-Based Theory of Community Economic Development</i> , 53 U. MICH. J.L. REFORM 337 (2019)

165.	Etienne C. Toussaint, <i>The New Gospel of Wealth: On Social Impact Bonds and the Privatization of Public Good</i> , 56 HOUS. L. REV. 153 (2018)
166.	Kenneth L. Townsend, <i>Why Liberalism Persists: The Neglected Life of the Law in the Story of Liberalism's Decline</i> , 94 ST. JOHN'S L. REV. 457 (2020)
167.	Lawrence J. Trautman & Neal F. Newman, <i>The Environmental, Social, Governance (ESG) Debate Emerges from the Soil of Climate Denial</i> , 53 U. MEMPHIS L. REV. 67 (2022)
168.	Paul R. Tremblay, <i>Surrogate Lawyering: Legal Guidance Sans Lawyers</i> , 31 Geo. J. Legal Ethics 377 (2018)
169.	Lee-Ford Tritt & Ryan Scott Teschner, <i>Re-Imagining the Business Trust as a Sustainable Business Form</i> , 97 WASH. U. L. REV. 1 (2019)
170.	John E. Tyler III, <i>Giving Priority to Social Good and Public Benefit with Meaningful Accountability Thereto: "Differentiated Social Good" and the Social Primacy Company</i> , 88 UMKC L. REV. 955 (2020)
171.	John E. Tyler III, <i>Structuring for Action and Longevity in the Green Economy: Being Intentional About Committing to Social/Green Purposes, Connecting Effort and Impact, and Addressing Harm and Accountability</i> , 86 UMKC L. REV. 937 (2018)
172.	Lécia Vicente, <i>The Social Enterprise: A New Form of Enterprise?</i> , 70 AM. J. COMPAR. L. i155 (2022)
173.	Constance Z. Wagner, <i>Evolving Norms of Corporate Social Responsibility: Lessons Learned from the European Union Directive on Non-Financial Reporting</i> , 19 TENN. J. BUS. L. 619 (2018)
174.	Kasey Wang, <i>Why Institutional Investors Support ESG Issues</i> , 22 U.C. DAVIS BUS. L.J. 129 (2021)
175.	Pianpian Wang, <i>From Polluters to Protectors: The Potential of Unilateral, Environmental Commitments Made by Companies in the U.S. and China</i> , 24 VT. J. ENV'T L. 348 (2023)
176.	Emily Winston, <i>Managerial Fixation and the Limitations of Shareholder Oversight</i> , 71 HASTINGS L.J. 699 (2020)
177.	Min Yan, <i>Corporate Social Responsibility Versus Shareholder Value Maximization Through the Lens of Hard and Soft Law</i> , 40 NW. J. INT'L L. & BUS. 47 (2019)