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New Approaches To Corporate Law

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NEW APPROACHES TO CORPORATE LAW

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The late cultural anthropologist Ernest Becker, in his Pulitzer prize-winning book *The Denial of Death*, asserted that each human being has a deep-seated longing to "justify himself as an object of primary value in the universe [and to] make the biggest possible contribution to world life."[1] In other words, we all want to do something important and meaningful. For those who work in corporate law, whether in the academy or the law office, when we pause as we do today to consider the future of corporate law, we really are reflecting on the following question: "Will corporate law be an important subject of intellectual inquiry in the years ahead, or will it be a kind of academic sideshow?"

By "important" I do not simply mean prominent and highly regarded in the academic or larger social sphere, although that is an integral part of what I mean. I also mean whether the subject of corporate law is important to those of us who do corporate law, in the sense of dealing not just with intriguing intellectual ideas but with matters that we personally value and even cherish. Another way to ask whether the field of corporate law will be important to us is to ask whether corporate law issues somehow implicate an inner core of ultimate personal values; and whether what we do in our own work (which is to write about the work of others) is connected to what we care about throughout the rest of our lives. In short, if discourse in corporate law does not reflect matters of deep *personal* significance—that is, if it is not carried on with our moral voice—I wonder if that discourse will be important in the larger *collective* sphere.

This "will" question—*will* corporate law be a significant field of inquiry—prompts a "can" question: "Can corporate law be important if shareholder primacy remains the exclusive focus; alternatively, can corporate law be effective if it takes a substantially different focus?"

The first aspect of this question raises a challenge for those taking a more orthodox approach to corporate law. They must attend more elaborately and convincingly to the task of stating why in this society at this time under the current (and varying) circumstances it is a meaningful social good for corporations (and corporate law) to dwell on shareholder welfare. The case cannot be pre-supposed or made by dropping a few standardized footnotes to the writings of such persons as Adam Smith, Milton Friedman, or Michael Jensen. Those who wonder "What crisis in corporate law?"[2] increasingly must appreciate—whether they like it or not is another matter—

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1. ERNEST BECKER, THE DENIAL OF DEATH 4 (1973).

2. David Millon, *Communitarians, Contractarians, and the Crisis in Corporate Law*, 50 WASH. & LEE L. REV. 1373 (1993).

that, as an anthropological fact, many people do not, to use a corporate law term, regard shareholder primacy as the "default" norm, the norm that governs until displaced. Rather, more people are insisting that the case for an unbridled version of shareholder primacy be made anew, that the burden of persuasion for it be affirmatively carried. Failure to do so may exacerbate a perception that contemporary corporate law scholarship is engaged in a solipsistic conversation, and that, insofar as advancing an understanding of what truly plagues business organizations in the late twentieth century, such scholarship is doodling in the margins.

The second aspect of the "can" question presents a challenge to those dissatisfied with the conventional approach and who therefore pursue more heterodox lines of inquiry. Many of those attending this symposium already have answered, for themselves at least, the first aspect of the question in the negative. The second aspect, however, presents a greater hurdle, and invites consideration of whether a more capacious conception of corporate law, one that makes it *important*, can also be *effective* and influential. I will briefly address these two aspects.

There is a natural tendency for any individual or group facing a predicament to think that no one else ever has experienced the problem before or, at a minimum, ever has experienced it quite so deeply. In short, trouble creates a sense of isolation. But the plight of corporate law today is but one example of the intellectual or moral antinomies that occasionally (and usefully) arise in a branch of knowledge. These antinomies, or deep conflicts in a discipline's principles or aspirations, appear because a discipline's overly narrow focus of inquiry eventually leads to the production of what Eugene Schwartz calls "quasi-solutions and residue problems."[3] Limiting the context or scope of a problem so as to make that problem easier to solve means that other considerations and other inter-relationships impinging on that problem are ignored. The "solution" to a problem that results from an artificial bracketing of these other considerations and relationships often is incomplete and creates undesirable secondary effects, thereby generating yet a new set of problems, which Schwartz calls "residue problems." This leads Schwartz to conclude that the effort to seek enduring solutions in a too-restricted context is fanciful, and that a techno-social solution in such a framework is never complete and hence is a "quasi-solution."[4]

Botanist David Ehrenfeld has offered many examples of a too-compartmentalized human approach to problems in the natural world.[5] One poignant example provided by Professor Ehrenfeld is the effort years ago of the Chinese to rid themselves of most of their birds, reasoning that birds eat fruits and grains and are therefore bad. But this quasi-solution created

3. EUGENE SCHWARTZ, OVERSKILL 62-77 (1971).
4. DAVID EHRENFELD, THE ARROGANCE OF HUMANISM 107 (1978).
5. *Id.* at 105-13.

a new problem: insect pests proliferated and became hard to control, predictably leading the Chinese to want their birds back again.[6]

It may be easier in the richly inter-connected web of natural ecosystems to see the dire consequences of tackling problems in a too-restricted milieu. But I believe difficulties with the approach are present in the human cultural world as well. I believe, for example, that the sixty-year quest for directorial accountability in corporate law, along with its stalwart companion shareholder primacy, runs the risk of being the pursuit of a quasi-solution.

This is not evidently so in the realm of legal theory, where the value of simplifying assumptions in order to achieve greater focus and analytical rigor is well-known. In Economics 101 we all studied the model of perfect competition, but we were continually reminded that only rarely would we see a perfectly competitive market at work in our social world. (Or, as one of my economics professors used to say, *ceteris* is not *paribus*). This does not detract from the value of such a model or theory as a beginning point, so long as—and this is even truer in the manifold world of law than in economics—we are willing (and see the need) to relax our simplifying assumptions as we introduce more variables into our search for acceptable pragmatic solutions. Theory is not law; law is not theory. Each informs the other, but is not identical with it.

Even in the bulk of corporate law doctrine, a more or less primary (but not exclusive) focus on shareholder welfare has proven analytically helpful. But, ironically, it is precisely when the norm of shareholder primacy comes closest to realization, as with hostile takeovers in the 1980s, and possibly with institutional shareholder activism in the 1990s, that the foundational normative premise of corporate law is drawn into question. Only then, when the driving internal norm actually approaches fulfillment, does its collision with other norms, norms kept less visible and prominent to that point precisely because corporate law bracketed them to heighten focus and rigor, finally even become a concern in corporate law. And as the normative prey is closed in on, the issue becomes whether to press on and finish the arduous quest or to shy away because those non-academics like judges and legislators who possess the power to decide such matters—and to whose attention, not coincidentally, the matter is brought when the consequences become grave—believe that the attempted closure within corporate law's modest boundaries truly is a quasi-solution generating socially unacceptable residue problems. When this happens, corporate law's situatedness in the larger society is starkly revealed,[7] just as genetic breakthroughs like splicing and cloning raise moral issues that remind physical scientists that they too

6. *Id.* at 111.

7. *See* Lyman Johnson, *Individual And Collective Sovereignty In The Corporate Enterprise*, 92 COLUM. L. REV. 2215, 2247 (1992) (noting that legislative and judicial responses to hostile takeovers reveal concern for broader societal implications of corporate law); David Millon, *Theories of the Corporation*, 1990 DUKE L.J. 201, 232 (same).

labor in a larger social-moral sphere, where scientific "can" does not imply moral "ought."[8]

What we see here is a larger phenomenon at work in intellectual inquiry. A particular discipline's preoccupation with its own inner set of concerns may, precisely as internal breakthrough is approached, generate a normative momentum incapable of accommodating broader considerations.[9] At the point of normative collision, a discipline's dogged insistence that *its* set of concerns are *so* important that they must prevail is met with a blank stare. We saw this recently in the heated debate over "free trade" with Mexico. Having made the theoretical case for free trade, economists did not know how to respond to mounting skepticism. To then speak louder and more adamantly in the same terms is about as effective as speaking louder and more adamantly to one who speaks only a foreign language. Instead, the internal norm must be reformulated so as to be seen as consistent with values held more widely. This means that the normative concerns of the proponents and the objectors—whether to unfettered trade, genetic research, or shareholder primacy—must be spoken to in a more *comprehensive* and *comprehensible* language. If not, stalemate rather than dialogue results. And that greatly heightens the risk that the dispute will be resolved on a basis other than the merits of any particular viewpoint.

If this collision of "internal" and "external" norms will occur eventually, why not anticipate it? That is, perhaps a discipline—whether genetics, economics or corporate law—should ponder the possible objections that might arise if the discipline's internal quest actually is accomplished. Why not, for example, with respect to institutional shareholder activism in the 1990s, contemplate in advance what might happen *outside* corporate law if activism succeeds. Would a political backlash set in?[10] Nobody knows the answer, but drawing on recent experience with anti-takeover legislation and appreciating this country's longstanding political tradition of antipathy toward concentrated financial power offers some guidance. Possibly—and this is the key point—a different and richer approach to the issue of activism will result by at least considering and assessing the possibility of a backlash, at least for those seeking realistic rather than purely theoretical approaches to legal problems. Notice how if this is done, the focus of inquiry has broadened beyond shareholder primacy. Why not acknowledge that broad-

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8. The noted English embryologist Lewis Wolpert, Professor at University College (Oxford) and the Middlesex School of Medicine in London, insists that "scientists have nothing more to say about ethical dilemmas than any other citizen. It was for the scientists to advise, the public to debate, and parliaments to legislate." Christian Tyler, *Doctor On Call For Science*, FIN. TIMES, Nov. 20-21, 1993, at XXII.

9. I think one of the most instructive descriptions of unstoppable momentum once a journey is set out on is George Orwell's essay "Shooting An Elephant." GEORGE ORWELL, *Shooting An Elephant*, *in* A COLLECTION OF ESSAYS BY GEORGE ORWELL 154 (1954).

10. The fact that shareholder activism could lead to political backlash is just now being seen as a distinct possibility. David Vise, *Calif. Pension Fund Plans An Investment in Power*, WASH. POST, Nov. 7, 1993, at H1.

ening, thereby taking a more encompassingly dynamic, rather than narrowly static, approach to corporate law issues? This point, of course, extends to issues other than shareholder activism.

With the law of hostile takeovers, we all know, there was a visible backing away, or perhaps a hauling away, from a too disruptively narrow ambit in corporate law discourse. This late 1980s legal development is not the restoration of an earlier (only temporarily submerged in the early and mid-1980s) socially responsible aspect of corporate law, as Professor William Simon argues.[11] Rather, those legal developments, coming so soon after positive law and theory had joined (briefly) to embrace robust shareholder primacy,[12] mark a historic full-fledged consideration and decisive rejection of that norm, and this notwithstanding Delaware's continued grappling with the doctrinal aftershocks.[13] Truly the norm of shareholder primacy undergirds in almost unspoken fashion virtually all of twentieth century corporate law discourse, however imperfectly that norm was or is achieved under a legal regime conferring broad managerial discretion. But historically that internal norm was an intellectual premise, useful to be sure for impelling and guiding discourse; never before the 1980s, however, had the social validity of that internal norm actually been tested or even been testable. The political atmosphere and financial techniques of the 1980s created unique and unprecedented conditions for either warmly welcoming corporate law's driving norm into the larger social sphere or plainly spurning it. As a singular determinant of corporate endeavor the norm was spurned. This is not to say we have "licked" the different problem of managerial discretion—which always has been the most disturbing problem for corporate law in a democratic society and one for which shareholder primacy is most properly viewed as an attempted cure rather than an independent end; it remains pronounced and we in corporate law need still to address it.

The pursuit of unfettered shareholder primacy within corporate law will, I believe, always be just that, a quest and not an achievement, unless and until success in that quest demonstrably resonates with more broadly held concerns; that is, unless and until corporate law's self-described concerns are regarded as *important* in a larger sphere. Whatever scholars operating within the orthodox framework may believe, I do not think their fascination is widely thought to be important.[14] Maybe these scholars think this state of affairs is bad and unfortunate, but then they must help mold

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11. William H. Simon, *What Difference Does It Make Whether Corporate Managers Have Public Responsibilities?*, 50 WASH. & LEE L. REV. 1697, 1697-98 (1993).

12. *See* Lyman Johnson, *The Delaware Judiciary and the Meaning of Corporate Life and Corporate Law*, 68 TEX. L. REV. 865-902 (1990) (noting brief ascendancy in corporate law doctrine of robust form of shareholder primacy).

13. *See* Paramount Communications Inc. v. QVC Network Inc. (Del. 1993), 1993 WL 503202, *aff'g* QVC Network Inc. v. Paramount Inc. (Del. Ch. 1993), 1993 WL 485280.

14. *See* Johnson, *supra* note 12, at 899-900 (noting that despite efforts of those in pursuit of achieving unfettered shareholder primacy in corporate activity and corporate law, such efforts remain unsuccessful).

public sentiment,[15] and must convincingly make their case to those whose job is to mediate social norms and legal doctrine,[16] not pre-suppose it. If that is not done, I strongly suspect the unfolding institutional shareholder story, and the as yet unknown (but no doubt internally promising) corporate law episodes sure to come after that, will end the same way as hostile takeovers. Corporate law scholars need to come to grips with the fact—and wonder why it is—that when their quest fails, others ignore them; but when their quest starts to succeed, others make it fail.

The social antipathy to corporate law theory's central norm of shareholder primacy is not simply a product of the perceived disruptive effects of full attainment of that uninspiring norm. I think it stems from a deeper source. I think it reflects an unwillingness to accept—perhaps even a revulsion at—the core value in corporate law because of how that value itself *devalues* the energies and efforts of those who work in business. This is an area where some useful anthropological field work might be done, patterned perhaps on the study of the culture of institutional investors.[17] Specifically, we should ascertain what various groups today believe to be the purpose(s) of work and economic endeavor. For now, we must be mindful of what, remembering the words of Ernest Becker,[18] we as a culture and we as a discipline are saying about the nature and value of work in an individual's life, and in our communal life, if it reduces to striving for (in the case of workers) or advocating (in the case of scholars) shareholder primacy. With Peggy Lee we can mournfully ask, "Is that all there is [to corporate law]?" If it is, many will not consider the field of corporate law to be important.

At this point the usual rejoinder is to assert that the unattractive secondary effects and the incompleteness of the shareholder primacy norm should be addressed in ways outside corporate law. Perhaps, it is suggested, other regulatory regimes such as labor law or environmental law are more appropriate systems than corporate law for taking up these matters. This argument assumes that those other regimes robustly and successfully address non-shareholder interests and are devoid of any "accommodation" of shareholder interests. This is naive and at odds with critiques of legislation as almost always representing compromises, not victory for one group in one statutory regime and another group in another regime. It also assumes—postulates is not too strong—that corporate law itself is a residuary or "default" intellectual field, taking up only (and all of) what is not dealt with elsewhere.

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15. *See* Joe Loconte, *The Battle to Define America Turns Violent*, CHRISTIANITY TODAY, Oct. 25, 1993, at 77 (quoting Abraham Lincoln: "whoever molds public sentiment goes deeper than he who enacts statutes, or pronounces judicial decisions").

16. *See* Johnson, *supra* note 12, at 936 (suggesting that shareholder primacy must find clearer, more broad-based support); *see also* William T. Allen, *Contracts and Communities in Corporation Law*, 50 WASH. & LEE L. REV. 1395, 1405 (1993).

17. *See generally* John M. Conley & William M. O'Barr, *The Culture of Capital: An Anthropological Investigation of Institutional Investment*, 70 N.C. L. REV. 823 (1992) (discussing anthropological study of institutional investment).

18. *See* BECKER, *supra* note 1.

More generally, this form of "division of intellectual labor" argument has been made in the technological sphere, where in rejecting more holistic approaches it is argued that environmental and other damage caused by technological innovation can best be remedied through ever-refined countertechnologies. René Dubos called this response a "policy of despair" and observed that "[i]f we follow this course we shall increasingly behave like hunted creatures, fleeing from one protective device to another, each more costly, more complex, and more undependable than the one before; we shall be concerned chiefly with sheltering ourselves from environmental dangers while sacrificing the values that make life worth living."[19]

To the objection raised by Dubos and to my earlier objection that unbridled shareholder primacy does not comport with the image that many people have of their working lives and of our social ethos, I would add another protest. Who says that shareholder primacy should now and in all settings be the central norm in corporate law, and by what authority do they speak and on what historical evidence do they rely? Other notions in our collective lives, for example, what it meant a hundred years ago when someone spoke about "transportation" or "communication," change over time. Likewise, perhaps it is appropriate that shareholder primacy was regarded as the guiding norm for much of the twentieth century and remains an important norm even now, but corporate law no more than other notions such as transportation or communication has a pre-formed, unalterable and acontextual character. The very image that comes to mind when we speak of corporate law in the years ahead may change as surely as our image of transportation and communication today brings to mind automobiles, airplanes and fax machines, not horses, steamboats or the telegraph. Those who insist that corporations—and corporate law—exist singularly and timelessly to figure out ways to make shareholders wealthy are like those who believe that the force of gravity exists to make it easier for us to sit down. It has that effect, and we can be thankful for it, but that is not the reason for it.

With others, I believe the narrow, ingrained and unwholesome focus and vocabulary of corporate law must continually be challenged by a more encompassing understanding of where and why we work. This is so not simply because a narrow focus results in quasi-solutions or is badly out of step with our social ethos, but also because new understandings may eventually chart more flexible and practical solutions to those vexing corporate problems facing our free society at the end of this century. And attention to practicalities takes me to the second aspect of the "can" question I posed earlier. Can corporate law be *effective* if it takes a broader or different focus than shareholder primacy?

My first response to that question is to say that I do not know the answer. That is why I changed the title of my remarks from New *Directions* In Corporate Law to New *Approaches* To Corporate Law. I am less sure

19. EHRENFELD, *supra* note 4.

about where we are going than about how we might approach figuring that out. I will make several brief points, the first being that I wish to emphasize the plural in the word 'approaches." Again, drawing from the natural world, Professor David Ehrenfeld reminds us that the "great strength of species that engage in sexual reproduction is the genetic recombination that results, the near-infinite variety of offspring that are produced. Variety is a species' best way of coping with an ever-changing environment."[20]

I am not suggesting that we in corporate law engage in (or necessarily refrain from) sexual reproduction, although, as usual, Judge Richard Posner beat us to the subject.[21] Instead, I am stressing Professor Ehrenfeld's point that variety is a way of coping with an ever-changing environment. We who seek greater heterodoxy in corporate law ought not all walk out of here with precisely the same mindset or research agenda. The multi-constituency fiduciary duty approach, for example, is only one approach.[22] It had temporary success in the 1980s in halting the momentum of an unhealthy unfettered shareholder primacy, but it has a fundamental problem; namely, it accepts a management-centered conception of governance when management discretion is the very base problem at which various critiques, including the antidote of shareholder primacy itself, take aim. It is imperative that other creative governance models taking a less management-centered approach to decisionmaking, as well as the restructuring of the very scale on which business activity takes place, must be explored, along with further imaginative (but as yet unimagined) ideas. We ought to be very reluctant to congeal around one view or one approach, however keenly we all share a mutual dissatisfaction and crave company in our scholarly pursuits.

Another critical matter that we must attend to if a broader focus in corporate law is to be effective is a clearer and fuller articulation of the norms and values that animate the desire for a different vision of corporate law. Dissatisfaction with a prevailing norm is the beginning point but is not sufficient. A stronger, more detailed case on both the normative and operational detail levels is required. As to the former, one aspect of this is more consciously to identify those matters—both positive and negative—that serve as a moral impetus for us as individuals and then to link those matters to moral arrangements and outcomes we seek in business organizations. As to the latter, one facet of this includes addressing the *source* of action in a given area, whether a greater role for government is contemplated (and if so, whether at the state, national, or international level) or whether altered forms of interaction in the "private" sphere will be central. This whole clarifying effort will be vital for the chore of eliciting the interest of those now in corporate law who pooh-pooh current efforts to enrich

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20. *Id.* at 94.

21. *See* RICHARD POSNER, SEX AND REASON (1992).

22. Efforts to make meaningful for corporate law the multi-constituency statutes enacted during the 1980s are found in David Millon, *Redefining Corporate Law*, 24 IND. L. REV. 223 (1991) and Lawrence E. Mitchell, *A Theoretical and Practical Framework for Enforcing Corporate Constituency Statutes*, 70 TEX. L. REV. 579 (1992).

corporate law. This project will not be easy, and in fact will require immense thought and effort.

My next point is to ask *who* will participate in the task of devising new approaches to corporate law? Who will labor in redefining the very province of corporate law and in reshaping its research agenda and direction in the years ahead? Isn't this task too important to be left to those who already work in corporate law? I believe the answer to this last question is both "yes" and "no."

First, the "yes" part of my answer. There is within the legal academy a tendency to view corporate law as being a lesser subject, a subject with a fairly defined and somewhat distasteful ambit, a subject (and here I have to be careful) almost like tax law, where we in teaching are relieved to have a colleague who is willing to teach such a subject so that most of us on the faculty do not. Why isn't corporate law flocked to, begged for by new law teachers the way the subject of constitutional law is? I think in part it is because constitutional law teachers and scholars are more honest in saying they are dealing with political, economic, and social power, and how that power is exercised and controlled in a democracy. Of course it is interesting.

In corporate law, the sphere of which is, after all, the governance of immensely influential business organizations, the power dimension of our subject is not confessed but is submerged, and so our area is regarded by our own colleagues (wrongly) as being of a rather limited scope, something like income taxation or commercial transactions in goods. Somehow this must change, and this too might be hastened by a little field work aimed at learning what our noncorporate law colleagues think corporate law is (something to do with the stock market, isn't it?). Those within the legal academy—especially those *not* now involved with corporate law—must rediscover corporate law and its central place not only in the law school curriculum but in our social lives. Law faculties and deans who are interested in the larger but less visible issues that corporate law touches on—which is to say a fairly sizeable portion of the social terrain—should link corporate law's exploration of those issues to those other legal discourses that explicitly probe those issues. Perhaps this means asking experienced law teachers not otherwise interested in corporate law to teach and write in the area; perhaps it means recruiting into the corporate law area those new professors who otherwise would go to what they consider to be the "jazzier" areas of constitutional law and other avowedly "public law" courses. Perhaps it just means that the old hands in corporate law need to be careful that their horizons are not too narrow. My point here is that if we expect corporate law to change we need to think about changing how we in the academy are doing corporate law. As Felix Frankfurter wrote in 1927: "In the last analysis, the law is what the lawyers are. And . . . the lawyers are what the law schools make them."[23] And I add to Justice Frankfurter's sentiments

23. Symposium, *The Distance Between Legal Education and the Practice of Law—Proceedings of the Fifty-Third Judicial Conference of District of Columbia Circuit*, Remarks of Judge Harry T. Edwards, 145 F.R.D. 201, 202 (1992).

that the law schools are what the law professors make them. If law professors redefine what corporate law is, corporate law itself may change.

Now for the "no" part of my answer. This conference points up the value in lawyers' asking nonlawyers to speak to our concerns. We need to do more of this and to do it in more sustained ways. We need, in short, to search for insights in the fields of anthropology, sociology, political science, ethics and theology, psychology, and industrial organization. But we lawyers should not naively expect magical and pre-formed answers lying about in those disciplines patiently awaiting discovery by us. Dissatisfaction with the stronghold of neo-classical economics in much of today's corporate law theory should not impel us simply to thrash about looking for a different field to embrace.

The concern of corporate law scholars—pointedly the rules concerning the governance of and participation in business organizations—is not centrally the concern of other disciplines. If we wish to profit from their endeavors, we need to prompt them to give more attention to those matters that we care about. In other words, one aim of this conference is to alert nonlawyers to those matters important to us so that nonlawyers will speak to them and possibly go to work on them. Until they do, making rules for corporate governance remains our problem.

It is important that those who work in non-law disciplines appreciate that the concern of corporate law with the issue of governance of, and participation in, corporate decisionmaking should not be regarded as a concern to be addressed *after* organizational design is arrived at on some other basis. Effective governance of business organizations, along with the issues of who will participate in such governance and the scale and manner on which it will be done, ought to be an advance specification in the design of organizations and the structure of work. If certain patterns or practices are inefficient, or create meaningless work or alienation or other problems in and out of the workplace, they ought to be reformed or discarded, not adopted with the attitude that the unattractive features falling out of them can be addressed by somebody else (in another discipline) later on. In other words, the things lawyers worry about—thé things that we here today want corporate law broadly to worry about—ought to be factored in by those nonlawyers who write about and actually construct the workplace. This is not to say that every issue touching business organizations must somehow factor corporate law issues into its scope, or vice versa, but that just as lawyers look outside the law for guidance, those outside the law should appreciate what we focus on and anticipate those concerns in their own scholarly and organizational efforts. I also think, incidentally, that before we in corporate law preach to those in business about how they should alter their governance and participation affairs, we practicing lawyers and we in the academy ought to examine what we do in our own workplace. We need to look at our law offices and our universities to see whether they foster the kind of atmosphere of trust, mutual support, mentoring, and the creation of meaningful work and sense of genuine contribution so necessary to a flourishing endeavor. Like charity, reform of the workplace begins at home.

It is important too that new approaches to corporate law not operate wholly at the level of theory. We must deal with concrete contemporary corporate law issues in ways that reveal our professed normative goals for corporate law. Many of us did this on the issue of hostile takeovers in the 1980s. I think it will be important to continue to do so on the issues that emerge in the 1990s and beyond, be they institutional shareholders or other corporate law subjects that implicate what we hold dear. It is on an issue-by-issue basis, ultimately involving particular practices and legal principles and doctrines, that changes in sensibility take place. It is not done globally with one fell theoretical swoop.

I believe that if corporate law scholarship is going to avoid a rift of the sort that will lead to the conduct of two almost completely unrelated discourses, we who are disenchanted with shareholder primacy must find ways to become engaged and stay engaged in serious, respectful dialogue with those in corporate law who may share neither our sense that there is a crisis in corporate law nor other of our aspirations. I think we should consciously strive to find shared ground and to create opportunities for constructive interaction, rather than too quickly to conclude there are just two "camps." We should circulate a bit more, read and comment on papers written by those with whom we do not fully agree, become more involved in the Association of American Law Schools section on business associations,[24] and attend each others' symposiums (and invite each other). We do, after all, have a shared subject matter—corporate law.

Follow-through on the ideas and concerns raised at this conference and on the dialogue begun here is essential. Concrete actions must be taken. As we all return to teach our courses, the scope of those courses ought to be rethought, traditional casebooks must be supplemented, a new reader or readers to serve as a companion to those casebooks must be developed, papers and talks extending what now are just the germs of ideas must be written and delivered, and conferences in a year and two years should be organized. The key is some conscious attention to follow-through.

Finally, frustration in reforming outlook is to be expected. Here again, this is not unique to corporate law reform. I believe the tenor of conversation is shifting a bit in corporate law. Shareholder primacy is not a deeply ingrained canon, only apparently so. The social, public, and moral side of corporate activity is rather easily reclaimed *outside* corporate law, as I think our three principal presenters demonstrated today from quite different disciplinary perspectives. This is because, at bottom, corporate law, like other dimensions of our lives, touches that larger world. To be *important* corporate law's concerns must *effectively* mirror concerns in the larger social arena. This conference is just an acknowledgement of the ongoing nature of that task, and a plea to be more candid about it.

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24. Professor Jayne Barnard made this point to the author.