

# SUSTAINABLE CAPITALISM AND THE CORPORATION

## MONASH PRATO CENTRE

21-22 JULY 2023

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This conference is convened jointly by Bocconi University; The Dickson Poon School of Law, King's College London; Monash Law's Centre for Commercial Law & Regulatory Studies (CLARS); University of Auckland's Inclusive Capitalism Centre; and Vanderbilt University Law School. The hosting institutions are also grateful to the Monash University Sustainable Development Institute (MSDI) for its support.

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## BIOGRAPHIES- CONFERENCE PARTICIPANTS

### Gaia Balp

Bocconi University



Gaia Balp is an Associate Professor of Business Law at Bocconi University, Milan. Her scholarship mainly focuses on corporate law and securities regulation and includes articles published in EU and US law reviews, and leading Italian law journals, as well as book chapters published by leading international and national publishers. She has also authored a book on Proxy Advisors. Some representative projects include retail investor engagement in the US and the EU, high-frequency trading in the equity markets, institutional investors' collective engagement, shareholder activism at controlled companies, and early warning tools in preventive restructuring frameworks. Gaia is a member of the Faculty of the PhD in Legal Studies at Bocconi University, and the coordinator of the Business and Social Law curriculum in the same PhD program.

### George Barker

University of Auckland and Australian National University



Professor George Barker is currently Director of the Centre for Inclusive Capitalism at Auckland University and Honorary Associate Professor at the Australian National University ANU in Canberra. He has a PhD in Economics from the University of Oxford, a Master of Economics (Hons), and a Bachelor of Laws. He is also a member of Wolfson College, University of Oxford, and Visiting Fellow at the British Institute of International and Comparative Law (BIICL). George was Director of the Centre for Law and Economics at Australian National University (ANU) from 1997-2017; and a Visiting Fellow at the London School of Economics (LSE) from 2016-2018, the Centre for Law and Economics at University College London from 2011-2015, and University of Oxford in 2008; and an Olin Fellow in Law and Economics at Cornell University in 2000. He is a founding Member of the Editorial Board of the European Journal of Law and Economics. George's work has been cited in the UK House of Lords, by the High Court of England and Wales and by the European Commission. He is a Past President of the Australian Law and Economics Association, a Founder, Past President and Honorary Fellow of the Law and Economics Association of New Zealand.



### Roberto Barontini

Sant'Anna School of Advanced Studies

Roberto Barontini is Full Professor of Corporate Finance at Scuola Superiore Sant'Anna in Pisa (Italy). He is member of the editorial Board of the Journal of Management and Governance and Sustainability. Roberto's current research focuses on corporate governance, capital budgeting, risk management, and innovation financing. In particular, within the corporate governance area, his

research activity is primarily concentrated on family firms, executive compensation, board dynamics and ownership structure.

Roberto has recently been developing a new research area, which focuses on the relationship between finance, corporate governance and sustainability management. More specifically, it explores the impact of green practices and their disclosure on the performance of a large sample of listed firms. Other working papers consider the corporate governance determinants of environmental practices, in particular, those regarding board characteristics and the ownership structure.

## Tim Bowley

Monash University



Dr Tim Bowley is a corporate law researcher, lecturer and corporate lawyer. His research interests focus on contemporary regulatory debates in corporate and securities law, with a particular focus on the role of shareholders in corporate governance. His recently published book, *Activist Shareholders in Corporate Governance* (Hart/Bloomsbury, 2023) explores Australian shareholder activism and its international significance. Tim researches and teaches at Monash University's Faculty of Law and is a member of Monash's Centre for Commercial Law and Regulatory Studies (CLARS). Tim has also taught at University of Sydney Law School and the University of Auckland Business School and was a visiting

doctoral researcher at Harvard Law School. Prior to commencing his academic career, Tim was a partner in a national Australian law firm.

## Megan Bowman

The Dickson Poon School of Law, King's College London



Dr Megan Bowman is an Associate Professor in Law and Founding Director of the Centre for Climate Law and Governance at King's College London. She leads the King's/UNEP research-impact partnership on *Legal Readiness for Climate Finance*, consults to national governments and NGOs on implementing the Paris Agreement, and has been Principal Investigator on several research grants including a prestigious Leverhulme Fellowship for work on climate-related financial and corporate regulation in Europe and the UK. Megan is a qualified barrister and solicitor of the High Court of Australia and Supreme Court of Victoria with an LLM in Comparative Law (McGill) and a PhD in regulatory theory (ANU).

## Brian Broughman

Vanderbilt University



Brian Broughman is Professor of Law and the Robert S. and Theresa L. Reder Faculty Fellow at Vanderbilt Law School in Nashville, Tennessee. Brian's research focuses on corporate governance and financial contracting, particularly in startup firms financed by venture capital. He entered the legal academy after earning his PhD in jurisprudence and social policy at the University of California, Berkeley, where his dissertation examined how governance arrangements mitigate the risk of opportunistic conduct between business founders and venture capital investors. His research also includes empirical studies related to mergers and acquisitions, shareholder voting, founder control rights, and the dominance of Delaware corporate law nationwide.

## Lynn Buckley

University of Auckland



Dr Lynn Buckley researches and teaches in the Department of Commercial Law at the University of Auckland Business School, He Manga Tauhokohoko. Lynn's research interests are in the field of company law, corporate governance, and sustainability. Her scholarship focuses on directors' duties, director decision-making, corporate environmental sustainability, and corporate legal theory. Lynn has recently completed her doctoral thesis with the Faculty of Law at Waipapa Taumata Rau, University of Auckland. Her thesis explored the scope of directors' duty to act in good faith and in the best interests of the company in Aotearoa New Zealand, with a view to understanding the implications of the duty for environmental consideration in director decision-making.

## David Cabrelli

University of Edinburgh



David Cabrelli is a Professor of Labour Law at the University of Edinburgh Law School. His research focuses on employment, labour, corporate and company law and has been cited with approval by the Hong Kong High Court and the UK Supreme Court, as well as the Federal Court of Australia. His work is also frequently cited by the Law Commission and the Scottish Law Commission, as well as the UK House of Commons Library and the ILO.

## Elena Calsamiglia

European University Institute (EUI)



Elena Calsamiglia is a first-year PhD researcher at the European University Institute, Department of Law. Her research focuses on the limited enforcement strength of the emerging EU regulation of sustainable corporate law and governance. Elena holds a five-year combined bachelor/master's degree in Law from the University of Trento. She graduated in 2017, defending a thesis on the role of investors' activism in public corporations in the light of the recent revision of the Shareholders' Rights Directive as regards the encouragement of long-term shareholder engagement. Before starting her PhD, Elena worked as junior associate in the Corporate M&A team of the international law firm Clifford Chance, Milan office, advising corporate clients and financial investors on extraordinary transactions (including mergers, acquisitions, joint ventures, capital increases, IPOs) and corporate governance issues.

## Fa Chen

The Dickson Poon School of Law, King's College London



Dr Fa Chen is a Lecturer in Corporate and Commercial Law at King's College London. He has previously taught corporate law and has served as an Undergraduate Law Admissions Interviewer at the University of Cambridge, in which he has also completed his PhD study under Cambridge Law Faculty Scholarship. Fa has also been a Harvard Law School –Cambridge Law Faculty Exchange Scholar. Before joining academia, Fa practised corporate and commercial law in different legal professions for a decade, including as a Judge in Beijing, a senior in-house lawyer in Alibaba, and a partner lawyer in a leading Beijing law firm.

## Blanaid Clarke

Trinity College Dublin



Professor Blanaid Clarke is the McCann FitzGerald Chair in Corporate Law at Trinity College Dublin. Blanaid's research interests include corporate, central banking and fund governance; takeover regulation; corporate law; and financial services law. She is Deputy Chairman of the Irish Banking Culture Board and the Irish representative on the OECD's Corporate Governance Committee. She is a member of ESMA's Takeover Bids Network and the European Model Company Act Group (EMCA). Blanaid is currently a Vice President of the Academic Board of the European Banking Institute. Previously, she was a member of the IMF's Safeguards Assessments – 2022 External Expert Panel, the Irish Central Bank Commission, ESMA's Securities Markets Stakeholder Group, the European Commission's Informal Expert Group on Company Law and its Reflection Group on the Future of EU Company Law.

## Pierre-Henri Conac

Max Planck Institute Luxembourg for Procedural Law



Professor Pierre-Henri Conac is Max Planck Fellow at the MPI Luxembourg at the University of Luxembourg. He is the author of 'The regulation of securities markets by the French Commission des opérations de bourse (COB) and the US Securities and Exchange Commission (SEC)'. He has written numerous articles on corporate and securities law and co-edited several books. He has been member of many academic and official working groups. Pierre-Henri is also the chair of the European Model Company Act (EMCA) Group. He is managing editor of the *Revue des Sociétés* (Dalloz) and co-chief managing editor of the *European Company and Financial Law Review* (De Gruyter).

## Jacek Dybinski

Max Planck Institute Luxembourg for Procedural Law



Dr Jacek Dybinski is a Senior Research Fellow at the Max Planck Institute Luxembourg and an Assistant Professor at the Jagiellonian University in Krakow. His research focuses on the EU and comparative financial markets regulation, capital markets and financial instruments law, company law and corporate governance. Jacek is the editor of a series of commentaries on Financial Markets Law, including Market Abuse Regulation, Prospectus Regulation, Banking Act, Payment Services Act and Investment Funds Act.

Jacek graduated from Harvard Law School (LLM) and obtained his PhD at the Jagiellonian University in Krakow. He studied and researched at Yale Law School, Max Planck Institute for Comparative and International Private Law in Hamburg, Harvard Law School, and Tilburg University. Jacek is a Lecturer of European banking and financial markets law at the University of Luxembourg, a guest lecturer on the EU capital market law at the LUISS Guido Carli University in Rome and taught company and capital markets laws in Krakow. He is an academic member of the European Corporate Governance Institute, a fellow of the European Law Institute, and a member of an international research group on the Codification of European Capital Markets Law.

## Jonathan Hardman

University of Edinburgh



Dr Jonathan Hardman is a senior lecturer in company and commercial law at the University of Edinburgh. Jonny is currently on sabbatical, but will become Director of External Relations at Edinburgh Law School in 2024. His research focuses mostly on conceptual approaches to corporate law and exploring different argumentation structures available. He deploys a variety of methodologies to do so. Prior to becoming an academic, Jonny was a corporate finance lawyer for 10 years. He is a proud pawrent (and no, that is not a typo!), keen lawn bowler, and is currently determined not to regret his recent move from the city to the countryside.

## Jennifer Hill

Monash University



Professor Jennifer Hill is the Bob Baxt AO Chair of Corporate and Commercial Law and Director of the Centre for Commercial Law and Regulatory Studies (CLARS) at Monash University Faculty of Law. She has held visiting research and teaching positions at several international law schools including Cambridge University; Cornell; NYU and Vanderbilt University. Jennifer is the Chair of the ECGI Research Committee and an Academic Fellow of the Jean Monnet Centre of Excellence on Sustainable Finance and EU Law (EUSFiL) at the University of Genoa. She is Director of the Corporate Purpose section of the ECGI's Responsible Capitalism Project and Director and Vice Chair of the Global Corporate Governance Colloquia (GCGC).

## Dionysia Katelouzou

The Dickson Poon School of Law, King's College London



Dr Dionysia Katelouzou is a Reader (Associate Professor) of Corporate Law at the Dickson Poon School of Law, King's College London and a Research Associate at the Centre of Business Research at the University of Cambridge. Dionysia writes and teaches comparative and transnational corporate law and governance and the regulation of financial institutions. She has earned a reputation for her interdisciplinary legal research (incl. econometric analysis, network analysis, interviews and natural language processing). Her current work focuses on how institutional investors express and practice stewardship on a domestic, regional and transnational scale, and she is leading the ECGI-supported *Global Investor Stewardship* project (see [here](#)). Dionysia has been involved in policy-related projects and is the recipient of multiple teaching awards, conference/paper prizes and research grants, including the British Academy Mid-Career Fellowship Award 2022.

## Anat Keller

The Dickson Poon School of Law, King's College London



Dr Anat Keller is a Senior Lecturer in Financial Law. She joined The Dickson Poon School of Law in April 2016 and has previously taught at UCL (2007-2016). Anat holds a PhD from the Centre for Commercial Law Studies at Queen Mary University of London, an LLM from the London School of Economics and first-class degrees in Management and Law (*magna cum laude*).

## Michael Lishman

Monash University



Michael Lishman is a PhD student in Law at Monash University having recently retired from full-time legal practice. Over a 40 year career, Michael has practised mainly in M&A and corporate finance. His career includes partnerships at the firm now known as King & Wood Mallesons, Cochrane Lishman Carson Luscombe, Clifford Chance and Jones Day. Michael was also a Managing Director at boutique investment bank, Gresham Partners. Michael is a member of Australia's Takeovers Panel and a part-time Partner of Hamilton Locke.

## Billie Lythberg

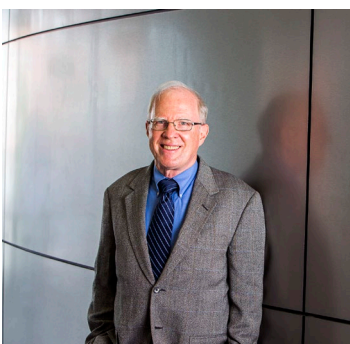
University of Auckland



Dr Billie Lythberg is a senior lecturer at the University of Auckland Business School in the disciplinary area of Critical Māori and Pacific Island Organisation Studies, and Associate Director (Research) of Faculty Research Centre Juncture: Dialogues on inclusive capitalism. Her scholarship focuses on Te Mana o te Taiao—environmental and human systems of organisation in generative balance—and the development and application of Pacific Research Methods.

## Ronald Masulis

University of New South Wales



Scientia Professor Ronald Masulis received his MBA and PhD from the University of Chicago and is a recognised authority in the areas of empirical corporate finance and corporate governance. His published research spans a range of areas, including investment banking, financial institutions, international finance, private equity and corporate governance.

Ron served as the President of the Financial Management Association in 2021. He has also served on the Board of Directors/Executive Committee of the American Finance Association, the Western Finance Association and the Financial Management Association (FMA) and the Financial Intermediation Research Society (FIRS). Ron is a research member of the European Corporate Governance Institute (ECGI) and senior academic fellow at the Asia Bureau of Finance and Economic Research and a fellow of the Academy of the Social Sciences in Australia.

## Morgan Ricks

Vanderbilt University



Professor Morgan Ricks is the Herman O. Loewenstein Chair in Law at the Vanderbilt Law School and studies financial regulation. He is the author of *The Money Problem: Rethinking Financial Regulation* (University of Chicago Press, 2016), and a co-author of *Networks, Platforms, and Utilities: Law and Policy* (2022). Morgan joined the Vanderbilt Law faculty in 2012 and was the 2019-21 Enterprise Scholar. Before he entered the legal academy, he was a senior policy advisor and financial restructuring expert at the U.S. Treasury Department from 2009 to 2010, where he focused primarily on financial stability initiatives and capital markets policy. Before joining the Treasury Department, he was a risk-arbitrage trader at Citadel Investment Group, a Chicago-based hedge fund. He

previously served as a vice president in the investment banking division of Merrill Lynch & Co., where he specialized in strategic and capital-raising transactions for financial services companies. Morgan began his career as a mergers and acquisitions attorney at Wachtell Lipton Rosen & Katz.

## Sara Pietra Rossi

Bocconi University



Dr Sara Pietra Rossi earned her PhD in Legal Studies from Bocconi University in Milan with a dissertation on fiduciary duties of institutional investors. She is a Lecturer in the Corporate Law and Financial Markets Regulation course at Bocconi, where she is also a Teaching Assistant for the courses of Company and Business Law (advanced course), Company and Business Law, Comparative Business and European Law and Tax and Accounting Law. During her PhD, she was a junior academic visitor at the Commercial Law Centre based at Harris Manchester College in Oxford. Her interests focus mainly on business law, European financial markets law and sustainable finance. She is author of various publications in leading Italian

journals and a member of the Editorial Board of *Rivista delle società*, the leading journal on business law in Italy.

## Rowan Russell

Monash University



Rowan Russell is an Affiliate of the Centre for Commercial Law and Regulatory Studies (CLARS) at Monash Law School. He was a partner for more than 25 years at a major Australian law firm, where he was a leading specialist in banking and finance law and capital markets. He has practised as a lawyer in Melbourne, Sydney, and London. Upon retiring, Rowan became an Adjunct Professor of Law and a Sessional lecturer for the Monash Faculty. Rowan has taught several courses in both Melbourne and Prato, and published papers and book chapters, on the topics of corporate finance, debt capital markets, banking regulation and securities law. He has been a member of the Securities Committee of the

International Bar Association and the Academic Committee of the Banking & Financial Services Law Association.

## Alexander Sajnovits

Johannes Gutenberg-University



Dr Alexander Sajnovits is *Akademischer Rat* (Assistant Professor equivalent) and Post-Doctoral Fellow at the Johannes Gutenberg-University, Mainz, Germany. He is a Member of the Associated Researchers Group of the European Banking Institute and an Academic Member of the European Corporate Governance Institute. Alexander's principal areas of research are German, European and international company law and financial market regulation. He is the author of one monograph on the regulation of financial benchmarks, several contributions to commentaries and handbooks and some 25 academic papers and articles in both German and English volumes, law reviews and journals. He will be a Visiting Researcher at Harvard Law School in the Fall Term 2023/2024.

## Michael Schillig

The Dickson Poon School of Law, King's College London



Professor Michael Schillig is a Professor at King's College London, which he joined in 2007, following three years as the DAAD Lecturer in Law at the University of Sheffield. Michael read law at the University of Erlangen-Nuremberg, obtained his LLM from King's College London and his PhD from Humboldt University Berlin. He was a Visiting Scholar at the University of California, Berkeley, and at the University of California, Los Angeles. Michael's research and teaching generally focus on financial law from both a regulatory and transactional perspective, as well as on corporate law, corporate insolvency law and European contract law. He is currently working on a book on comparative company law with Carsten Gerner-Beuerle) for

Oxford University Press.

## Tanjina Sharmin

Monash University



Dr Tanjina Sharmin is a lecturer at Monash Law School and a Member of the Centre for Commercial Law & Regulatory Studies (CLARS). Her research broadly concerns international economic law and commercial laws. Her work explores the interconnection of international investment law and domestic corporation law. She has undertaken research on the jurisdiction and admissibility of cases in investor-state arbitration, rule of law in international investment law, and regulation of foreign investment during the COVID-19 pandemic. Tanjina is currently developing new projects on human rights, sustainable development, and international investment law. Prior to joining the Monash law faculty, she practised law at the

Supreme Court of Bangladesh and lectured at a Bangladeshi

law school for several years. She has also undertaken research work for the United Nations Development Programme and United Nations Conference on Trade and Development.

### **Mathias Siems**

European University Institute (EUI)



Professor Mathias Siems graduated from the Universities of Munich and Edinburgh. He has held visiting appointments at the European University Institute, Harvard Law School and the University of Cambridge. He has taught at the Riga Graduate School of Law, the University of Edinburgh, the University of East Anglia and Durham University before joining the European University Institute in January 2019.

Mathias graduated from the Universities of Munich and Edinburgh. He has held visiting appointments at the European University Institute, Harvard Law School and the University of Cambridge. He has taught at the Riga Graduate School of Law, the University of Edinburgh, the University of East Anglia and Durham University before joining the European University Institute in January 2019.

### **Liam Smith**

Monash Sustainable Development Institute (MSDI)



Professor Liam Smith is the Director of BehaviourWorks Australia (BWA), based in Monash University's Sustainable Development Institute. Since establishing BWA in 2011, he has overseen significant growth and the research group now has over 35 staff and a portfolio of over 700 behaviour change projects, all of which have been conducted in collaboration with government and industry partners. Liam has published close to 100 research papers, and well over 200 research reports and public discussion pieces. He has several current roles including as a Lead Councillor on the newly-formed Biodiversity Council, a Director on the Board of Inclusive Australia, on South East Water's Customer Engagement Council and Monash Sustainable Development

Institute's executive.

### **Giovanni Strampelli**

Bocconi University



Giovanni Strampelli is Full Professor of Business Law and Director of the PhD in Legal Studies at Bocconi University, Milan. He teaches and writes in the areas of corporate law, accounting law, bankruptcy law and securities regulation. His scholarship has been published in the Journal of Corporation Law, the Virginia Law & Business Review, the Harvard Business Law Review, the University of Illinois Journal of Law, Technology & Policy, the European Business Organization Law Review, and the European Company Financial Law Review, as well as in Italian leading journals (e.g. Rivista delle Società, Banca Borsa e Titoli di Credito, Rivista di

Diritto Civile). Giovanni has also authored several book chapters and two books. He has been a visiting scholar in many research institutes and Universities, such as the Max Planck Institute for Tax Law and Public Finance in Munich, the Max Planck Institute for Comparative and International Private Law in Hamburg, and the University of Oxford. He is a member of the editorial board of the following Italian academic journals: *Orizzonti del Diritto commerciale* and *Rivista delle società*. He is a member of the board of directors of the Italian Association of Business Law Professors.

## Randall S. Thomas

Vanderbilt University



Professor Randall S. Thomas is a leading international corporate and securities law scholar. His recent work addresses issues such as executive compensation, corporate voting, corporate litigation and the structure of firms. He joined the Vanderbilt law faculty in 2000, having served previously on the law faculties of the University of Iowa, the University of Michigan, Duke University, Boston University, and the University of Washington. Prior to teaching law, Randall was in private practice for four years, and clerked for U.S. District Judge Charles Joiner of the Eastern District of Michigan. An acclaimed teacher, Randall teaches a variety of courses in the area of corporate law, including corporations and securities regulation.

## Frederico Urbani

Bocconi University



Dr Federico earned a PhD in Legal Studies at Bocconi University in Milan. His final thesis was on corporate governance and supervision of banks and other financial institutions, with a focus on outsourcing and other third-party arrangements. He is a lecturer in Corporate Law (advanced course) and Private and Business Law at Bocconi University, where he is also a Teaching Assistant in Company and Business Law, Tax and Accounting Law, and Financial Institutions and Markets Law. Federico is currently holding a research grant at the University of Turin and starting the upcoming fall he will lecture in Contract and Business Law at ESCP Business School. His interests focus mainly on business and corporate law, as well as financial institutions and markets law, at both supranational and national levels. Federico is the author of several publications in leading Italian journals and is a member of the Editorial Board of *Rivista delle Società*, the leading journal on business law in Italy.

## Geert Van Calster

Leuven Centre for Global Governance Studies



An alumnus of the College of Europe, Bruges (promotion Stefan Zweig), Geert van Calster is Full Professor (professor ordinarius) in the University of Leuven and Head of Leuven Law's department of European and international law. Geert is also senior fellow at Leuven's Centre for Global Governance Studies. Geert is on the indicative list of WTO Panelists, and a board member of Academische Stichting Leuven, an academic charity. He is an independent legal practitioner at the Brussels Bar. His practice, teaching and research focus is on conflict of laws (private international law), EU and international regulatory law (especially environment), and international and EU economic law. Geert is a visiting professor and senior fellow at Monash University's Law faculty in Melbourne, visiting professor at the China-EU School of Law in Beijing, visiting professor at

King's College, London, and adjunct professor at the Brussels Campus of American University. He was previously a visiting lecturer at Oxford University. Geert was called to the Bar in 1999 after having worked as of counsel to a City law firm since 1995.

## Susan Watson

University of Auckland



Professor Susan Watson is Dean of the Faculty of Business and Economics at the University of Auckland. She also holds a chair in the Faculty of Law at Auckland. Her research focus is on the company/corporation including how the form evolved, its key features, its impact as an entity and a *persona ficta*, theories of the company and corporate governance. Her 2022 monograph *The Making of the Modern Company* focusses on the evolution of the modern corporate form, in particular identifying the key features of the modern company that contribute to its economic success.

Susan's work has been cited by the UK and New Zealand Supreme Courts. She was a winner of the Legal Research Foundation Award best article prize in 2016. She is a Research Member of the European Corporate Governance Institute (ECGI) and was President of the Society of Corporate Law Academics (SCoLa) (previously CLTA) from 2020- 2022.

## Cynthia A. Williams

University of Indiana Maurer School of Law



Professor Cynthia A. Williams is the newly-appointed Roscoe C. O'Byrne Professor of Law at Indiana University's Maurer School of Law, and is a part-time Professor of U.S. Corporate and Securities Law at the Vrije Universiteit (VU), Amsterdam. She is the *emerita* Osler Chair in Business Law at Osgoode Hall Law School, York University, Toronto, and *emerita* at the University of Illinois College of Law. Her current work is at the intersection of corporate and securities law and climate change, with emphases on expanded environmental, social and governance (ESG)



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data and the obligations of directors and officers under U.S. and Canadian law to incorporate climate change into their strategies, oversight, and disclosure.

## CONFERENCE PAPER ABSTRACTS

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### ***Banks as Public Utilities: A Blueprint for Financial Reform***

(Morgan Ricks)

**Abstract:** This paper proposes a New National Banking (NNB) system. The goal is part restoration, part innovation. We aim both to renew the framework that undergirded American prosperity in the twentieth century and to refine it by expanding access and carrying through on its public utility vision where previous policymakers came up short. In doing so, we have a further objective: to better explain the law we already have. There is a logic immanent in the longstanding statutory framework. The pieces do fit together, if imperfectly at points. By focusing on these misshapen joints, and tying each aspect of the NNB system to an aspect of the existing framework, we offer a roadmap for studying money and banking law more generally.

### ***Can Ordoliberalism Save the World? CSR/ESG and the 'Right' Boundary between Public Good and Private Interest***

(Mathias Siems, co-authored by Gerhard Schnyder)

**Abstract:** The debate about corporations' social and environmental responsibility is fundamentally a debate about the right place for the boundary between the public and the private domains. Prior research on this topic has started paying attention to the diversity in relationships between the state and corporations. Yet, this literature does not provide any normative criterion on what may be the societally most desirable configuration for tools of CSR and ESG. Drawing on ordoliberalism, we seek to remedy this shortcoming. We discuss the main tenets of ordoliberalism and investigate what implications these have for the role of private interests in the economy and the responsibility of corporations toward the public good. We find that ordoliberalism provides some support for responsibility beyond the profit motive, but also that it would argue in favour of a configuration where companies only take on social and environmental roles that the state cannot otherwise fulfil ('reverse subsidiarity').

### ***Capitalism's Monstrous Engine: The Essential Nature of Corporations Reconsidered***

(Susan Watson)

**Abstract:** Corporations are the primary engine of capitalism driving economies forward as they extract, transact for, aggregate, and generate value. Amazing therefore that the essential nature of corporations remains contested or ignored.

This paper aims to bring the corporation into focus. The primary argument is that the corporation is its most economically effective when it is an entity separate from all other persons that is itself an artificial legal person. Through an examination of the emergence of the key features of the corporation, the paper will demonstrate that the modern corporation correctly understood is an artificial legal person based on a

corporate fund initially contributed by shareholders. That form first emerged in England in 1657 when the East India Company was granted a charter with permanent capital. Property rights in that corporate fund have shifted over time and remain contested. More recently the corporation has been regarded as primarily contractual. But its essential nature remains the same meaning in different iterations it has realized its potential both of generating enormous value and also through its impact on the world causing great harm.

***Convergence and Persistence in Corporate Law Theory: What to Expect in the ESG Era.  
Conceptual Differences and Potential Recent Lines of Convergence between German and US  
Stock Corporation Law and Theory***

(Alexander Sajnovits)

**Abstract:** Since the end of the nineteenth century at the latest, US and German stock corporation law (theory) have developed very differently with regard to the concept of the corporation, and these differences are still reflected today in fundamental conceptual and practical differences, some of which have received too little attention. The aim of my paper is first to identify these differences in the concept of the corporation by means of a historical and interdisciplinary approach and, by way of example, to point out, classify and explain some of the resulting further differences between German and US stock corporation law that can be explained and better understood on the basis of these conceptual divergences.

My analysis does not stop at the identification and explanation of these differences. Rather, I highlight more recent lines of convergence and measure their potential impact against the backdrop of the conceptual differences that have been identified. These developments are first and foremost: (i) the question of corporate social responsibility against the backdrop of the emerging ESG era and the recent and in some case significant shift in investor preferences and (ii) the significant concentration of share ownership among large institutional investors. These developments will have a significant impact on the role, purpose and conduct of the corporation in society and will therefore shape corporate law (theory) in both Germany and the US. Most likely, we will see 'The Emergence of Welfarist Corporate Governance' (*Kahan/Rock*). However, I expect that corporate law theory will develop in a path-dependent manner and that divergent conceptions will persist. Nevertheless, we may see further functional convergence, at least in some respects.

***Culture in Financial Firms and Sustainable Capitalism***

(Anat Keller)

**Abstract:** The UK Financial Conduct Authority (FCA) encourages regulated financial firms to develop a healthy purposeful culture. The common elements of such culture, to be differentiated from a prescriptive definition, include a meaningful purpose, an inclusive environment where it is safe to speak up, effective leadership and governance, and a workforce with the necessary capabilities and motivated by appropriate incentives. A purposeful culture means 'putting a clear, meaningful purpose, at the centre of a firm's business model, strategy and culture'. But how far does the reach of a healthy, purposeful culture go? Does it require financial firms to demonstrate a broader social purpose, for instance, with consideration of environmental, social and governance factors? This is based on research as part of a British Academy-funded project.

## ***Does the Dual-class Share Structure Help Stock Markets Attract Issuers? Empirical Lessons from Global Financial Centres***

(Fa Chen)

**Abstract:** Financial globalisation has given issuers more freedom to carry out jurisdiction shopping. As a policy response, a growing number of stock markets have introduced the dual-class share structure to enhance global competitiveness. However, does the dual-class share structure help stock markets attract issuers? It is a question rarely examined empirically in existing scholarly work. My work explores the practices of three jurisdictions with global financial centres, ie the US, China and Hong Kong, to narrow the research gap. Based on hand-collected data, it explains the infrequent listings with the dual-class share structure in China and Hong Kong in the post-reform era in two ways: low demand due to the use of substitutes; and limited allowance caused by the harsh ex ante regulation. Drawing on the empirical lessons, my work recommends that China relax its ex ante regulation and suggests the wider community consider the necessity of introducing the dual-class share structure and the balance they aim to achieve between market openness and investor protection.

## ***Driving Corporate Change Through Senior Executive Regulation***

(Tim Bowley, co-authored with Steve Kourabas)

**Abstract:** The Global Financial Crisis and subsequent major corporate scandals highlighted the significant implications of a company's corporate culture and management failures below the level of the board of directors. Although a board can seek to influence organisational behaviour through appropriate oversight and setting 'the tone at the top', commentators, law makers and regulators have also focused on regulatory intervention targeting the conduct of management below board level.

Australia provides a fascinating case study of corporate governance regulation below board level, having experienced what one commentator has described as a 'rising tide of individual accountability as a regulatory strategy for averting or addressing corporate compliance failures'. The tide has been rising for well over 50 years. Law reform has progressively subjected senior corporate executives to the same mandatory legal duties that apply to directors and established a regime which enables public enforcement of those duties. In recent years, executives in Australian banks have been subjected to a senior manager accountability regime. Draft legislation is currently before the Australian parliament which, if passed, would extend that regime to other financial services organisations and give the government the power to make further extensions through ministerial decree.

These developments blur the public/private divide by increasingly treating a company's internal governance as a domain of public interest and regulation. They also resonate with the prevailing zeitgeist in corporate governance discourse which is focused on the broader social and environmental context of corporate activity, through issues such as 'social licence' and stakeholder and ESG considerations. Yet, the Australian experience highlights the challenges of this regulatory strategy. This includes difficulties in defining the appropriate reach of mandatory conduct regulation below board level, compliance costs for public companies, and enforcement challenges for the corporate regulator. This paper explores these challenges. While accepting the overall orientation of the Australian approach, it identifies areas that require re-evaluation and calls for the consideration of some alternative regulatory mechanisms.

## ***Fixing Corporate Law's Incentive for Externality***

(Jonathan Hardman)

**Abstract:** This paper explores the economic incentives provided by the institutional design of corporate law. It follows economic arguments that sustainability challenges are primarily externality challenges and argues that core features of corporate law create an incentive for externality. Resolving this incentive is key to resolving corporate approaches to sustainability. This paper identifies that limited liability on its own provides no incentive - it only does so when coupled with shareholders enjoying a residual claim and voting rights over the corporate form. The paper then explores the nature of incentive so created. Despite arguments to the contrary, the paper identifies that this incentive is for externality, and not for moral hazard or agency cost. To achieve this, clearer delineation of these concepts is required than exists in most current economic literature. This analysis helps identify why companies cause specific and acute sustainability challenges and situates any response to this incentive within corporate law.

The paper then explores how best to deal with this incentive to boost sustainability. It argues that limited liability does not provide a universal benefit, instead being mostly advantageous when the company's shares are listed on a capital market. Thus, reducing the ubiquity of limited liability resolves the incentive within group structures and for private companies. The paper then explores how best to mitigate the incentive for externality in publicly traded companies: adjusting the residual claim and adjusting shareholder voting, and argues that any response to corporate sustainability challenges must, in some way, act to mitigate this incentive.

## ***How Does Board-Shareholder Engagement Really Work? Evidence from a Survey of Corporate Officers and from Disclosure Data***

(Giovanni Strampelli, co-authored with Matteo Gatti and Matteo Tonello)

**Abstract:** Shareholder engagement plays an important role in corporate governance. In the last decade, investors have increasingly influenced business decisions and their activities have extended beyond the formal submission of shareholder resolutions for voting at annual meetings. On their part, directors and managers have kept an open channel of communication. Yet, much of board-shareholder engagement consists of private interactions and, as a result, very few details about it are reported.

This paper sheds light on closed-door board-shareholder engagement with a survey of SEC-registered corporations. The survey was circulated among corporate secretaries, general counsel, and investor relations officers, and prompted 171 responses. We also review and analyze data on corporate-shareholder engagement from disclosures by Russell 3000 and S&P 500 companies. Among other things, our investigation found that shareholder engagement is more commonly practiced at large and mid-sized companies than smaller organizations. While engagement primarily occurs with large asset managers (including the Big Three) at large corporations, it is frequently used in somewhat confrontational ways, especially by hedge funds at smaller corporations. Engagement pertains to a wide array of topics, with emphasis on executives' incentive plan design (including the use of ESG performance metrics), GHG emission and energy consumption reduction strategies, workforce diversity and pay equity, and political spending. We found that engagement is consequential, often leading to changes in corporate practices, withdrawal of shareholder proposals, changes in the proxy vote previously announced, and inclusion in the management slate of a director nominee proposed by the engaged shareholder.

## ***Institutional Investors as the Primary Users of Sustainability Reporting***

(Gaia Balp, co-authored with Giovanni Strampelli)

**Abstract:** Harmonized sustainability reporting is a fundamental pillar of the European Commission's Strategy for Financing the Transition to a Sustainable Economy. Harmonized sustainability reporting contributes to giving substance to a company's sustainability endeavours, to identifying a shared classification system for sustainable activities, to tackling greenwashing, and to helping institutional investors meet the obligations imposed by the Sustainable Finance Disclosure Regulation (SFDR). Institutional investors remain the main users of corporate sustainability disclosures. Yet, sustainability reporting also facilitates interaction between investors and other stakeholders, such as NGOs, as a lever to enhance stakeholders' voice and overcome the limited ability of broadly diversified institutions, especially passive fund managers, to actively monitor portfolio firms and reduce systematic portfolio risk.

In order for EU sustainability reporting to deliver on its promises, two factors are crucial. First, the current fragmentation of non-financial reporting standards based on different frameworks and, particularly, on diverging notions of materiality, needs to be overcome. Second, an adequate balance between the narrative and quantitative dimensions of sustainability reporting should be struck to make sustainability disclosures not only meaningful for users, but also to achieve coordination between, financial and non-financial information.

## ***Investor Stewardship: The State of the Art and Future Prospects***

(Dionysia Katelouzou)

**Abstract:** Investor stewardship is the shibboleth of the age. It deals with questions of power, responsibility and trust that are as old as the corporate form itself. Within less than fifteen years more than fifty, soft-law stewardship codes have been developed across 22 jurisdictions on six continents and investor stewardship became the standard term of reference for the role of institutional investors in addressing not only corporate governance but also environmental and social issues. Policy-driven investor stewardship has drawn considerable academic attention. Nevertheless, there is still a continuing lack of clarity or consensus over what regulators and investors deem to be a good investor steward.

In this paper, I present a state-of-art understanding of the nature of investor stewardship and its worldwide codification. I elaborate three key subcomponents of the investor steward construct and emphasize that it is the intermediary nature of institutional investors that gave rise to the construct of investor stewardship. Institutional investors acting as stewards are expected to exercise *power* and influence over their assets, *on behalf of others*, and *for others*. I then turn to the policy development of stewardship and map its evolutionary dynamism in the UK. I showcase a transition from a corporate-governance-focused, micro-level shareholder stewardship to a multi-level, multi-theme and multi-asset investor stewardship, as opposed to a case of stasis or close to stasis outside the UK. Finally, I look at the future of investor stewardship, focusing specifically on two ongoing trends, that of *green stewardship* and *disintermediated stewardship*. I conclude that even though it is unlikely that green or disintermediated stewardship will supplant current approaches, they may well supplement them enabling the transition to enlightened investor stewardship.

## ***Mutual Fund Governance: A Purposive and Values-Based Approach***

(Blanaid Clarke)

**Abstract:** Whilst there has been much academic debate on the subject of corporate purpose and the role played by sustainability, the question of the purpose of corporate funds has received less attention. A key question in this context is the extent to which the fund of the board has flexibility to engage with sustainability impact objectives if this is not specifically provided for in the strategy or product terms. The relationships between the sponsors, investment managers (if different), fund managers and investors tend to be riven with conflicts of interest. Clarity of view on purpose and values in this context can also assist the board of the fund in responding to certain of the unique fund governance challenges which arise.

## ***Private Climate Governance of Finance: Politics and Prospects***

(Cynthia A. Williams)

**Abstract:** In December 2021, as part of the COP 26 climate negotiations in Glasgow, the Glasgow Financial Alliance for Net Zero, GFANZ, was announced. This Alliance of banks, asset managers, and insurance companies, with more than \$130 trillion of assets under management as of 2022, was based on a pledge by the participating companies to work towards net-zero status in their businesses by 2050 or sooner. Led by former UK Bank of England Governor Mark Carney, who is now the U.N.'s Special Envoy on Climate, it seemed to have some promise as a 'soft law' governance mechanism to develop voluntary industry standards for the constituent entities in reducing the carbon emissions of their businesses and their 'financed emissions.'

By 2023, the Alliance is in disarray. Efforts to align GFANZ with the substantive standards of the U.N.'s Race to Zero, which include limiting financing to new oil and gas and excluding new coal financing, have collapsed. Members of GFANZ such as banks, asset managers, and insurers, have been targeted with requests for information from 19 state Attorneys General in the U.S. for their participation, with claims of antitrust violations, and breaches of fiduciary duty. These state anti-ESG initiatives are starting to have their intended effects, with asset manager Vanguard and insurance companies Zurich Insurance Company and Munich Re, amongst others, leaving GFANZ affiliated initiatives, citing anti-trust concerns.

In this paper, I explore two sets of questions. First, why are Republican-dominated legal organizations and legislators targeting banks, asset managers, and insurance companies now for their participation in GFANZ and its constituent alliances, and their incorporation of ESG risk analyses into their business models? Corporate social responsibility (CSR) initiatives have been part of business rhetoric and some operations since the late 1990s, and ESG as a term to describe data and investment strategies has been prominent since the early 2000's. So why now?

## ***Signalling Corporate Sustainability Through Membership in ESG Indices: The Financial Market Effects of the Rebalancing of ESG-themed Indices***

(Roberto Barontini, co-authored with Luigi Gioja)

**Abstract:** ESG firm performance is a multi-faceted concept, inherently difficult to measure and to monitor. Consequently, ESG-themed, 'best-in-class' financial indexes have emerged as an authoritative intermediary signalling above-average CSR performance of their constituents. In this paper, we examine the market reaction to listed firms' inclusion in and exclusion from 11 MSCI ESG indexes in the period 2010-2021, with the aim to test if ESG index rebalancing conveys new relevant information to market participants.

Our results show that on the day of the implementation of the index review, abnormal returns of admitted (excluded) firms' stocks are positive (negative) and statistically significant; moreover, the increase (decrease) in value is maintained also in the medium term, confirming the hypothesis that shareholders do value ESG characteristics. We also show that the market reacts more strongly for firms active in polluting sectors. We also detect a positive and significant abnormal trading volumes on the day of the event, showing a strong portfolio rebalancing across different investor types.

## ***Some Reflections on the Nature of Decentralized (Autonomous) Organizations***

(Michael Schillig)

**Abstract:** Blockchain technology allows the creation of software-based organizations that can interact with third parties by deterministically executing software code with limited human input. These 'decentralized (autonomous) organizations' consist of an interconnected system of 'smart contracts:' computer programmes stored and executed automatically on a decentralized network of participating computers. DAOs replicate to some extent the features traditionally reserved for corporate-type entities. This raises the question of whether and to what extent the law should accommodate these phenomena, by opening up general incorporation laws or providing new organizational forms. The paper seeks to contribute to answering this question by taking a critical look at the debate on the nature of the corporation from a historical and comparative perspective with a view to evaluating its relevance for the technological innovations of the 21st century.

## ***Supervisory Approaches to Sustainable Finance: Beyond Disclosure, Beyond Mandate?***

(Megan Bowman)

**Abstract:** Financing the transition to net zero will require fundamental change to business-as-usual globally and commensurate systemic institutional coordination and support. This in turn requires examination of the potential and challenges for legal and regulatory actors and institutions that create, structure, regulate and govern markets to achieve public interest objectives such as financial stability and addressing climate change. Beginning with Julia Black's unorthodox premise that financial markets and legal institutions are 'inextricably interwoven', this work examines the legal mandate of central banks and financial regulators in the EU and UK in the context of the climate crisis and presents new empirical evidence that takes us beyond disclosure regimes into novel regulatory realms of experimentalism and (eco)systems change.

## ***Sustainability and Company Law***

(Pierre-Henri Conac)

**Abstract:** Companies have been called to be sustainable and contribute to a sustainable economy. This call has been particularly strong in some countries in Europe and internationally. The European Union (EU) has endorsed this approach. This has led in the area of company law to the adoption in 2022 of a Directive on Corporate Sustainability (CSRD) amending the 2014 Non-financial Reporting Directive and the introduction of a proposal of directive on Corporate Sustainability Due Diligence in 2022 (CSDD).

Several scholars have also argued that companies should be run in a way which takes more into account the interest of stakeholders and not just workers like with co-determination in German-minded countries. The stakeholders should be much wider and include up to the interests of society at large. Another movement calls for companies to go even beyond and to promote sustainability, for instance by contributing actively to the reduction of global warming or acting within the 'planetary boundaries'. The proponents of these approaches invoke the concept of environmental, social and governance (ESG) as the model to be applied to create sustainable companies. Some companies have embraced this approach by becoming B-Corporation or equivalent.

Sustainability in Company Law is to be reached through non-financial reporting where the EU started to intervene as soon as 2003 and became more active after the 2008 Global Financial Crisis. As part of this effort towards sustainability, the CSRD requires the disclosure of non-financial information and the developments of EU Sustainability Reporting Standards (ESRS). Those standards are very encompassing and are designed to have an impact on the way companies are managed. From a substantive point of view, there have been efforts in several jurisdictions to amend companies' legislation to require directors to take more into account sustainability requirements. Those efforts have led to reforms in some countries and debates in many regarding for instance 'say on climate', duties of directors and the establishment of stakeholders' committees.

These efforts to promote a stakeholders' capitalism face challenges in terms of their effectiveness. Although, more sustainability in company law should be embraced, the question also remains if not too much which is expected from company law?

## ***Sustainable Capitalism and the Corporation as an Entity: Lessons from Aotearoa New Zealand***

(Lynn Buckley and Billie Lythberg, co-authored with Jamie Newth and Susan Watson)

**Abstract:** A key characteristic of the corporation is that it can exist in perpetuity; potentially forever. It can exist as an entity, separately from its constituents. Can that be realised? Aotearoa New Zealand offers a unique perspective from which to consider the corporate form and its resulting implications for the shift towards sustainable capitalism. It is a bicultural jurisdiction founded on a bilateral relationship based on Te Tiriti o Waitangi (1840). Te Tiriti upholds Māori rights to expression of economic values that manifest, shape, and determine Māori business practices. These include, inter alia:

- mauri (life principle, vitality of a being or entity), kānohi ki te kānohi (accountability via face-to-face communication),
- whakapapa (connection, lineage, or genealogy between humans, other entities and ecosystems), and,

- kaitiakitanga (guardianship or management). In this context sits the New Zealand Companies Act 1993, the long title of which includes a focus on reaffirming ‘the value of the company as a means of achieving economic and social benefits through the aggregation of capital’. Māori businesses operate within this legal framework while incorporating Māori values into their strategic goals, management, and operations, demonstrating a deep commitment to cultural identity above profit and to the potential perpetual existence of the corporation – one of the most curious and unique characteristics of corporate entities.

This paper’s presenters are working with an understanding of the company as an entity distinct from its corporate constituents. This framing allows for a view of the corporation beyond a narrow focus on the short-term maximisation of wealth for shareholders to one which seeks to enhance all the forms of value in the corporate entity in and for the long term.

### ***The Law and Economics Environmental Financial Assurance and its Wider Application***

(George Barker)

**Abstract:** This report provides a review of the law and economics of environmental finance assurance (EFA), and a cross-jurisdictional review of financial assurance requirements for foreseen environmental cleanup and site reclamation in 21 jurisdictions for mines and pulp mills. Environmental financial assurance measures are important tools to pursue environmental objectives. Their most common use is to ensure that funds will be available to guarantee effective mine closure and foreseen environmental cleanup and reclamation requirements, so that private incentives and public capabilities are enhanced to better prevent environmental degradation, and mitigate its adverse effects. The paper focuses on the current status and trends related to financial assurance requirements, lessons learnt from the application of EFA to terrestrial environmental degradation (such as mines and pulp mills) over the past 50 years, and the potential application of EFA mechanisms, to other non-terrestrial forms of environmental degradation, including atmospheric (greenhouse gas emissions), and oceanic (deep sea mining) pollution.

### ***The Lex Incorporationis as a Corporation’s Insurance Against Forum and Applicable Law Shopping in Climate Litigation***

(Geert van Calster)

**Abstract:** Climate litigation against corporations takes on many forms. Some claims are straightforward (mass) tort claims; others are contractual; still others engage directors’ liability or imputability to mother corporations. This paper addresses the impact the lex incorporationis, the body of law which a corporation’s passport so to speak brings with it, can, may, must and/or must not have on the exercise to determine the law that applies to climate litigation.

### ***The Promise and Challenges of Shareholder Engagement in Promoting Sustainable Capitalism and Addressing Climate Change***

(Tim Bowley and Jennifer Hill, co-authored with Steve Kourabas)

**Abstract:** Important capital market, regulatory and technological developments have created greater investor appetite and capacity for engagement with public companies. Nowhere is this development more

striking than in the context of investors' current efforts to engage with companies in various markets on material environmental, social and governance ('ESG') issues, such as climate change. Our paper explores the key engagement mechanisms and techniques employed today by public company shareholders, highlighting the promise and challenges of shareholder engagement in promoting sustainable capitalism and addressing climate change.

The paper shows that contemporary shareholder-company engagement is a multi-dimensional and evolving phenomenon. First, shareholders use, to varying degrees, a wide range of engagement techniques. These include the shareholder meeting, behind-the-scenes interactions, public campaigns, and online technologies such as discussion boards and messaging apps to put pressure on companies. The latter technologies are particularly favoured by younger retail investors and have been used with remarkable effect to marshal the governance influence of such investors in recent high-profile cases. Second, shareholders often mix and match different engagement techniques in a synergistic manner to leverage their governance influence. Third, shareholders increasingly undertake their engagement activities collectively, highlighting the growing capacity of public company shareholders to overcome traditional collective action challenges. Finally, despite the engagement alternatives available to shareholders, the shareholder meeting remains an important engagement mechanism, with an increasing number of resolutions focused on ESG and climate change related matters.

These insights have important implications for understanding — and regulating — the governance of public companies. In particular, the multidimensional and evolving nature of contemporary shareholder-company engagement practices means that the processes which shape corporate decisions are becoming more diffuse and potentially less transparent. Ensuring accountability is a more complex issue in these circumstances and requires a careful focus on the various channels of influence-wielding, including influence-wielding that is designed to promote sustainable capitalism and address climate change.

### ***Using Behavioural Science for Sustainable Development: A Complementary Approach for Regulatory and Financial Levers***

(Liam Smith)

**Abstract:** Much needs to change if we are to meet the agenda set out in the Sustainable Development Goals including changes to markets, policies and laws. These changes are designed to influence the way actors in both the private and public sectors conduct their business and ultimately influence the behaviour of individual actors. Behaviour change approaches play a crucial role in complementing these more structural changes to achieve sustainable development. While laws and incentives provide the necessary framework and motivation, behaviour change approaches focus on influencing individual and collective actions towards more sustainable practices. Particular behaviour change tools and approaches range from nudging or encouraging people to behave in particular ways within existing structures to more deeply engaging actors in the change needed (including to structures). This paper will provide a snapshot of a suite of behaviour change approaches that can accompany laws and incentives to hasten progress on the SDG agenda.



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## ***Whistleblowing in Silicon Valley***

(Brian Broughman)

**Abstract:** Currently in the early stages of exploration, this project aims to explore how misconduct/fraud is brought to light (or not) in large private Venture-backed companies. Many actors who are important to detecting misconduct in public companies -- analysts, short sellers, the SEC, auditors, etc. -- are largely absent in the private firm context. We have already collected data on a variety of legal claims - securities fraud, agency enforcement actions, state-AG suits, and consumer protection lawsuits - brought against a sample of large private firms and a control group of public companies.