

## GIFT HORSES, CHOOSY BEGGARS, AND OTHER REFLECTIONS ON THE ROLE AND UTILITY OF SOCIAL ENTERPRISE LAW<sup>1</sup>

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### Introduction: a Personal Perspective on Philanthropy

When I was a young child, new “store-bought” clothes were a luxury reserved for church, picture-day at school, and other special occasions. Most days I wore hand-me-down clothes from older cousins. I wore hand-me-down shirts, pants, socks, shoes, gloves, and hats. If my hand-me-down pants were too long, I had to roll them up. If they were too big, I had to cinch them with my hand-me-down belt. If my hand-me-down clothes came with holes, then Mom upgraded me to hand-me-down clothes with patches. About the only article of hand-me-down clothing I never had to endure was underwear.

Like any self-respecting child, I hated my hand-me-downs. They never fit. They were uncomfortable and unsightly. Alteration did not help because the clothes were always years out of style. Some stains never go away no matter how many times you wash them.

Ultimately, though, I came to accept my reality of hand-me-down clothes. After all, hand-me-down clothes are better than going naked, right? And, there is no denying that hand-me-downs are economical. Plus, I really had no say in the matter. Being a child, I had no bargaining power. In fact, whenever I complained to my parents about my hand-me-downs, I almost always heard one of two answers: “Don’t look a gift horse in the mouth” or another classic, “Beggars can’t be choosers.”

At the time, I had no clue what Mom or Dad meant, especially how gift horses or choosy beggars had anything to do with me and new clothes, but I nevertheless got the general idea that I should stop whining and wear my hand-me-downs . . . which I did.

As a parent, I now fully understand and appreciate exactly what Mom and Dad meant, especially if we are talking about hand-me-downs and a whining child: “Don’t look a gift horse in the mouth” and “Beggars can’t be choosers”??? Amen!

If, however, we are talking about helping less fortunate adults or saving the planet, I think these ancient clichés<sup>2</sup> are wrong. Instead, I think “social enterprise” is the answer -- or at least part of it. Let me explain.

### A Brief Background on Social Enterprise

Once confined primarily to the nonprofit sector,<sup>3</sup> the topic of social enterprise is now chic. A recent internet search for the term “social enterprise” returned about 255 million hits. Wikipedia defines it as follows: “A *social enterprise* is an organization that applies commercial strategies to maximize improvements in human and environmental well-being, rather than maximizing profits for external shareholders. Social enterprises can be structured as a for-profit or non-profit, and may take the form of a co-operative, mutual organization, a social business, or a charity organization.”<sup>4</sup> This is a pretty good definition, and it certainly suffices for purposes of this essay.

When it comes to *nonprofit* social enterprise, Goodwill Industries is a prime example. Goodwill sells quality, used goods at a discount to individuals who generally cannot afford to pay retail. Goodwill thus engages in normal commerce, but it does so in a manner that benefits humanity and the environment. Goodwill also conducts job training and employment placement programs for economically disadvantaged individuals.<sup>5</sup>

A fascinating example of a *for-profit* social enterprise is Adlens.<sup>6</sup> Adlens develops and sells variable focus eyewear. Variable focus eyewear allows the wearer to self-adjust the refraction of his or her glasses, thus correcting one's vision without prescription lenses. Because they are both affordable and self-adjusting, Adlens's glasses allow individuals to improve their vision even though they may not have access to an eye care professional. A short video available on the internet provides a helpful explanation and demonstration of Adlens's glasses.<sup>7</sup>

Adlens describes itself as "a commercial business with a social soul."<sup>8</sup> According to its website, Adlens was founded with a dual mission: (i) meet the need for refractive vision correction in the developing world and (ii) generate revenue from commercial applications of variable focus lens technology. Adlens fulfills this dual mission through its "Buy One Give One" initiative. The "Buy One Give One" initiative is exactly as one might suspect: for every pair of self-adjusting glasses sold commercially, Adlens donates a pair to an individual in the developing world. Coincidentally, a colleague recently purchased a pair of Adlens's glasses as a temporary measure to correct his vision after cataract surgery. My colleague paid approximately \$135 for his new, variable focus glasses, and he confirmed that Adlens promised to provide a free pair to someone in Rwanda.

Adlens, as a for-profit social enterprise, cannot be categorized as purely capitalistic, socialistic, or philanthropic. Pure capitalism would entail Adlens maximizing profits from each pair of glasses its sells, not giving away an equal number. Socialism presumably would involve government-controlled pricing and distribution of Adlens's entire inventory of glasses. Traditional philanthropy typically would have Adlens focusing<sup>9</sup> entirely on the eyecare needs of individuals in the developing world, not simultaneously marketing and selling glasses to someone like my colleague. So, social enterprise lies somewhere in the midst of our normal understanding of pure capitalism, socialism, and philanthropy.

### The Law and Social Enterprise

Unlike social enterprise itself, the *law* of social enterprise is just now emerging. The first U.S. law enacted in response to the social enterprise movement was Vermont's low-profit limited liability company ("L3C") act passed in 2008.<sup>10</sup> Since that time, however, the emergence of the *law* of social enterprise has accelerated. As of September, 2013, twenty-five states had authorized new, specialized legal entities ostensibly designed for social enterprise organizations.<sup>11</sup>

Nevertheless, despite the creation of new legal entities in response to the social enterprise movement, the actual term "social enterprise"<sup>12</sup> remains undefined in U.S. law.<sup>13</sup> Thus, we are left with a somewhat puzzling, but not necessarily problematic, legal result: the *law* of social enterprise is evolving rapidly as it relates to the authorization of new, specialized legal entities, but the actual concept of social enterprise remains undefined.

Meanwhile, the legal debate about the proper role and utility of these newly-authorized social enterprise entities is growing and becoming increasingly differentiated. As with past legal debates, there are two primary battle fronts: the academic and the practical.<sup>14</sup>

Generally speaking, the debate among legal academics revolves around whether the new, for-profit social enterprise entities, at least as currently conceived, really will be better than traditional nonprofit or for-profit

entities at remedying social and environmental ills. There are numerous knowledgeable, well-respected academics on either side of this ongoing debate.<sup>15</sup>

Practitioners have taken sides too. Many practitioners believe that the new legal forms for social enterprise are beneficial and useful, and some practitioners argue that these new forms ultimately will change the way U.S. businesses are organized and operated.<sup>16</sup> Others, however, maintain that existing legal forms are more than adequate to accommodate social enterprise, and that all these new business forms are a nuisance if not downright dangerous.<sup>17</sup> Interestingly, many nonprofits, perhaps feeling threatened by the new social enterprise forms, have sided with practitioners in this latter regard, suggesting that the new legal forms for social enterprise are just “[wolves] in sheep’s clothing.”<sup>18</sup>

It is not the purpose of this essay to rehash or evaluate the legal debates surrounding the merits of the law of social enterprise. I am indifferent as to whether social enterprise is conducted through traditional for-profit or nonprofit legal entities, or whether it is conducted through one of the new specialized legal forms mentioned above. Instead, I am more interested in examining whether social enterprise is better in some circumstances than traditional philanthropy at remedying social and environmental ills.

My personal perspective is that social enterprise indeed is better in certain narrow but not uncommon situations. I therefore believe and argue herein that the development of specialized legal entities is important to allow us to experiment with the concept of for-profit social enterprise. Through experimentation with specialized legal forms, we can learn more about social enterprise’s effectiveness, and to the extent we find it effective, we can begin to discern which form (i.e., nonprofit, for-profit, or specialized) is optimal in any given situation.

I suspect we ultimately will conclude that no one legal form fits every situation and that having an array of choices<sup>19</sup> is beneficial. Only time will tell. Meanwhile, let’s return to my childhood story.

#### My Childhood Story and the Negative Side-Effects of Philanthropy

The story I recounted at the beginning of this essay demonstrates that as a child, I was the beneficiary of traditional philanthropy. It also demonstrates the shortcomings of charity. Passing along the clothes to me was a gift. There was no reciprocal, bargained-for, mutually beneficial exchange. It was a kind and generous act, but one which carried with it certain expectations that I had to fulfill regardless of whether the clothes truly met my needs. I received a gift for which I was expected to feel grateful and that I was supposed to accept unconditionally, even though the hand-me-down clothes served as a constant reminder of my status as a child who was not quite worthy of receiving new clothes except on special occasions.

Philanthropy, no matter how well-intentioned, carries with it the not-so-subtle message that the needy should accept whatever is given to them without complaint—just like me and my hand-me-down clothes. The recipient feels voiceless. Meanwhile, the donor feels kind and generous, but occasionally a little sanctimonious too. This side effect of philanthropy is counterproductive<sup>20</sup> and can be avoided if social enterprise is deployed to solve the same problem.

For example, when I became an older child and expressed my dissatisfaction with hand-me-down clothes, my parents would strike a bargain with me. If I was willing to perform extra chores or otherwise create some value to justify the additional expense, then I could earn the right to new, casual clothes. In entrepreneurial terms, I had to contribute some “sweat equity.” I was incapable of contributing enough sweat equity to earn a market rate of pay that would allow me to purchase new clothes on my own, but my parents recognized that I was capable of contributing *something*. That ever so subtle change in the dynamic between the provider (my parents) and the

consumer (me) is better for everyone because it creates return value for the provider and respects the consumer's expressed needs. As it turns out, I chose to take on the added responsibility of mowing my grandmother's yard and performing additional chores for her in exchange for a larger allowance from my parents. (Not to ruin the story, but with that larger allowance, I decided to buy fishing tackle instead of new clothes, thus making me even happier.) My grandmother benefitted as well. My parents and I were practicing social enterprise without even knowing it!

#### The Side-Effect of Donor Dependency and Relationship Costs

Philanthropy has another side-effect: donor dependency and relationship costs.

To generate funds for operations, most charities spend significant time and energy on fundraising (i.e., identifying and cultivating donors). Fundraising is an inefficient but necessary diversion from a charity's humanitarian or environmental mission. Then, once a charity finds and secures a donor base, the charity must be ultra-sensitive to its donors' sometimes fragile egos. Donors often expect special treatment or status in exchange for their financial contributions. Donors also economically "bully"<sup>21</sup> nonprofits into paying their employees less than a market rate. In addition, as we all know, a large donation can force a charitable organization into catering to the donor's peculiar wishes (e.g., naming a building) at the expense of time spent fulfilling the needs of the organization's beneficiaries (e.g., providing scholarships). Donors also can stop contributing at any time with no strings attached, requiring the charity to start the whole fundraising process over again in order to find replacement donors.

As compared to donors, the expectations of for-profit investors usually are clearer and more predictable. Investors normally seek financial returns upon business terms that are well understood in advance by all parties.<sup>22</sup> Put differently, the required level of care and maintenance of an investor is largely standardized (e.g., earnings driven, growth driven, etc.) and objectively quantifiable, whereas the required level of care and maintenance of a donor is highly subjective and variable. Further, once invested in an organization, a typical investor cannot walk away without financial penalty. That financial commitment generally motivates an investor to work with an organization to achieve success rather than simply abandoning the organization.

#### The Side-Effect of Irrational Economic Behavior

For-profit businesses ordinarily make highly rationale economic decisions, even if those decisions do not please some customers. Charities, however, sometimes make highly irrational economic decisions solely to avoid dissatisfying donors.

For example, in my experience charitable organizations rarely if ever decline even the smallest donation (e.g., \$5 or \$10) despite the fact that the associated cost (e.g., processing a small check or credit card and mailing the donor an acknowledgement letter) may exceed the value of the contribution. I acknowledge that sophisticated, well-run nonprofits (e.g., successful hospitals, schools, national charities, foundations, etc.) are less likely to engage in such irrational economic behavior, but many others would never refuse a donation no matter how small. On the other hand, my local convenience store will not let me write a check or use a credit card for less than a \$5 purchase. My convenience store has made a rationale economic decision that the profit margin on a \$5 sale is too small to incur the added costs associated with handling checks and credit card transactions. I may be slightly annoyed that my local convenience store will not take a check or a credit card for less than \$5, but I am not going to change convenience stores as a result. I will use cash for small purchases. If, however, I sent a \$5 check to a charity and the charity returned the check to me due to associated transaction costs, I (along with most donors) probably would be offended.

In addition, charities and donors sometimes make other decisions that are irregular from an economic standpoint. For instance, charitable organizations establish elaborate programs to accommodate “in-kind” contributions of property that will never be used by the charity. The sequence usually goes something like this: (i) donor contributes property at an inflated value to get a higher charitable contribution deduction; then (ii) charity promptly sells the donated property for cash, often at a price less than the donor claims for tax purposes. Prior to recent amendments to the Internal Revenue Code, this was a regular area of tax abuse with respect to donations of used cars, boats, and airplanes.<sup>23</sup> Such economic shenanigans generally are not tolerated outside the philanthropic world.

#### Social Enterprise Promotes Relationships That Are Mutually Beneficial and Self-Sustaining

In a social enterprise, the less fortunate become *customers*, not beggars. Sometimes, such as in the case of Goodwill, the needy become direct customers providing immediate feedback on desired products and services. In other cases, such as Adlens, normal commercial customers serve as proxies for the less fortunate. Those proxies drive demand and innovation so that the less fortunate obtain products and services (e.g., eyewear) suitable to their particular needs rather than products and services that suffice but are ill-fitting (e.g., used prescription lenses).

Thus, either directly or indirectly through their proxies, the beneficiaries of social enterprise *do* get to look into the “gift horse’s” mouth, and they *can* choose. Social enterprise therefore completely changes the dynamic of the relationship between the benefactor and the beneficiary. It empowers the beneficiary, and within reason, requires the benefactor to accommodate the particular needs of the beneficiary – *from the beneficiary’s perspective*. This changed dynamic encourages the development and delivery of better yet less costly products and services, and encourages other innovations and efficiencies. Furthermore, unlike some charitable organizations, a social enterprise risks survival if it engages in economically irrational behavior. Social enterprise thus produces bilateral transactions that economically benefit both parties and that are mutually reinforcing and thereby self-sustaining.

#### One Organization’s Experience with the Nonprofit/For-Profit Decision

The *New York Times* recently published a two-part story<sup>24</sup> that illustrates my point. According to the *Times*, Saul Garlick originally founded *ThinkImpact* in 2002 as a nonprofit, tax-exempt organization. *ThinkImpact* contracts with universities to send students to developing nations to live for brief periods of time and to work with locals to create social businesses. After accepting donations and operating *ThinkImpact* as a nonprofit from 2002 to 2009, Mr. Garlick converted *ThinkImpact* into a for-profit social enterprise in 2010. As a social enterprise, *ThinkImpact* took on investors and generated revenue by requiring participating universities to pay fees to *ThinkImpact* for placing students in appropriate communities.

When asked why he converted *ThinkImpact* into a for-profit social enterprise, Mr. Garlick said that he determined it would be easier to deal with economically-driven investors rather than emotionally-driven donors. In addition, Mr. Garlick said that although he values the nonprofit form, he was skeptical of using nonprofits in situations that are “perpetuated by a broken feedback loop. If your beneficiary is not a customer, they may never tell you what you are providing is unhelpful.” Mr. Garlick also said. “The notion that nonprofits are the right—or even, better—vehicle for doing good in the world is no longer true.”

### Admittedly, Sometimes Traditional Philanthropy Is Best

Obviously, there are circumstances where traditional philanthropy is the only viable solution. For instance, in the aftermath of a disaster or an epidemic, traditional philanthropy undoubtedly is the only way to provide much needed water, food, shelter, healthcare, and other basic necessities on an expedited basis. In a crisis, all involved understand that forces beyond anyone's control have caused the temporary imbalance between the benefactor and beneficiary. Put differently, there is no shame in accepting help and generosity in a crisis.

Traditional philanthropy likewise is necessary to fund scientific and other research that requires decades of non-revenue producing study and analysis in order to develop a solution (e.g., finding a cure for cancer, or effective treatments for mental illness). Similarly, traditional philanthropy works well if the purpose is to permanently endow an organization with funds that will be invested to generate earnings to sustain or at least help sustain charitable endeavors. The Kauffman Foundation is a great example.<sup>25</sup>

Moreover, traditional philanthropy often works as the catalyst for market-based solutions—such as where a founding gift establishes a hospital, school, museum, or arts center that sustains itself through future earned revenue.

### A Closing Comment

I am not contending that traditional philanthropy should be confined to the foregoing limited circumstances and that social enterprise should be used for all other circumstances. My contention is more nuanced. I submit that social enterprise should be the first choice to solve humanitarian or environmental problems, with traditional philanthropy serving either (i) as a partner to social enterprise or (ii) as the second choice if social enterprise fails or is impossible.

One day we may fully understand and appreciate that traditional philanthropy is in fact a value-for-value exchange. In traditional philanthropy, the donor is “buying” a better world for himself or herself through donations to a charitable organization that delivers goods and services to the less fortunate. This exchange is not unlike when my parents paid me to help my grandmother. Until that enlightened day comes, however, social enterprise is appealing as a more recognizable market-based approach to alleviating human suffering and protecting the environment. This approach should be encouraged and supported by the law.

### Conclusion

Traditional philanthropy, like my hand-me-down clothes, is not necessarily the best solution to long-term economic, health, educational, natural resource, or other imbalances that adversely impact humanity and the environment. Except in times of crisis, or for endowment or seeding purposes, perhaps traditional philanthropy is best avoided (but not discarded) due to its counterproductive side-effects. Instead, whether conducted by nonprofits or for-profits, in the right circumstances social enterprise may be a better, more productive way to solve humanitarian and environmental problems.

Obviously, neither social enterprise nor the law of social enterprise has been perfected. After all, the legal forms for social enterprise are only five years old. The law authorizing and governing these new legal forms undoubtedly has flaws. Imperfection, however, has never been a good argument against innovation. Without innovation and its inherent risks and failures, we cannot learn and improve.

Entrepreneurship, including social entrepreneurship, also is not about perfection or guaranteed success. Entrepreneurship is all about innovation and risk-taking with the goal of finding a better solution. U.S. business law therefore should continue to evolve to facilitate social enterprise.

For the remaining skeptics, I offer another cliché: “Don’t let the perfect be the enemy of the good.”<sup>26</sup>

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<sup>2</sup> For an entertaining discussion of the origin of these phrases, see the following websites: <http://www.phrases.org.uk/meanings/dont-look-a-gift-horse-in-the-mouth.html> (don't look a gift horse in the mouth) and <http://www.phrases.org.uk/meanings/beggars-cant-be-choosers.html> (beggars can't be choosers).

<sup>3</sup> Professor Dennis Young was writing about social enterprise and the nonprofit sector thirty years ago. See DENNIS R. YOUNG, *IF NOT FOR PROFIT, FOR WHAT?* (Lexington Books 1983) ([available online here](#)).

<sup>4</sup> For the Wikipedia definition, see [http://en.wikipedia.org/wiki/Social\\_enterprise](http://en.wikipedia.org/wiki/Social_enterprise).

<sup>5</sup> See the following website describing Goodwill's programs: <http://www.goodwill.org/about-us/>.

<sup>6</sup> See the following website for general information about Adlens: <http://www.adlens.com/about/>.

<sup>7</sup> See the following YouTube video about Adlens and its glasses: <http://www.youtube.com/watch?v=9BE09y9Utqk>.

<sup>8</sup> Further background information regarding Adlens may be found here: [http://www.adlens.com/press\\_releases/adlens-a-commercial-business-with-a-social-soul/](http://www.adlens.com/press_releases/adlens-a-commercial-business-with-a-social-soul/).

<sup>9</sup> Pun intended.

<sup>10</sup> See [VT. STAT. ANN. TIT. 11, § 3001\(27\)](#) (WESTLAW 2013).

<sup>11</sup> For a high-level listing and comparison of all the various types of social enterprise entities that have been authorized by twenty-five states, see my chart posted on SSRN here: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2304892](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2304892). For a detailed listing and comparison of benefit corporation legislation, see Professor Haskell Murray's chart on SSRN here: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1988556](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1988556). For a thorough bibliography of legal and other resources concerning social enterprise, see Professor Alicia Plerhoples' social innovation guide posted on SSRN here: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2198396](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2198396).

<sup>12</sup> None of the variants of the term “social enterprise” (e.g., social entrepreneurship, social entrepreneur, etc.) has been defined either.

<sup>13</sup> If enacted, the “Social Enterprise Ecosystem and Economic Development (‘SEED’) Commission Act of 2013,” H.R. 2043, 113<sup>th</sup> Congress (2013-14), would establish a Commission to (1) establish criteria for identifying social enterprises for purposes of federal programs, and (2) identify opportunities for the federal government to engage social enterprises in creating jobs and strengthening local economies. The proposed federal legislation is available here: <http://thomas.loc.gov/cgi-bin/query/z?c113:H.R.2043.IH>. Internationally, the U.K. is the leading jurisdiction that, for regulatory reasons, has promulgated a definition of social enterprise; however, the U.K.'s definition limits social enterprise to for-profit organizations. The U.K.'s definition of social enterprise thus would exclude U.S. nonprofits like Goodwill Industries. For more information, see the following website: <https://www.gov.uk/set-up-a-social-enterprise>.

<sup>14</sup> For a brief but helpful introduction to these debates, see the following website: <http://www.theconglomerate.org/2012/05/benefit-corporations-corporate-purpose.html#comment-520994363>. Essentially, many legal scholars and practitioners firmly believe that the existing for-profit and nonprofit forms are sufficient; that business will never “save the world” regardless; and that, even if business could save the world, changes in U.S. business law are not required for a company to pursue both profits and a humanitarian or environmental (or both) mission. On the other hand, many scholars and practitioners, including me, believe that business might “save the world” (or at least help); that the existing legal forms, if not inadequate, can be improved; and that changes in the law to facilitate (but not mandate) social enterprise should be encouraged. See, e.g., Robert A. Wexler, *Social Enterprise: A Legal Context*, 54 EXEMPT ORG. TAX REV. 233 (2006); Anup Malani & Eric A. Posner, *The Case For For-Profit Charities*, 93 VA. L. REV. 2017 (2007); Kent Greenfield & D. Gordon Smith, *Debate: Saving the World with Corporate Law*, 57 EMORY L.J. 947 (2008); Dana Brakman Reiser, *Blended Enterprise and the Dual Mission Dilemma*, 35 VT. L. REV. 105 (2010); William Callison & Allan W. Vestal, *The L3C Illusion: Why Low-Profit Limited Liability Companies Will Not Stimulate Socially Optimal Private Foundation Investment in Entrepreneurial Ventures*, 35 VT. L. REV. 273 (2010); Brian Galle, *Keep Charity Charitable*, 88 TEX. L. REV. 1213 (2010); James Hines Jr. et al., *The Attack on Nonprofit Status: A Charitable Assessment*, 108 MICH. L. REV. 1179 (2010); Robert A. Katz & Antony Page, *The Role of Social Enterprise*, 35 VT. L. REV. 59 (2010); Allen R. Bromberger, *A New Type of Hybrid*, 9 STAN. SOC. INNOVATION REV. 48 (2011); Cassidy V. Brewer, *A Novel Approach to Using LLCs for Quasi-Charitable Endeavors (A/K/A “Social Enterprise”)*, 38 WM. MITCHELL L. REV. 678 (2012); Lyman Johnson, *Pluralism in Corporate Form: Corporate Law and B Corps*, 25 REGENT L. REV. 269 (2013).

<sup>15</sup> See, e.g., Cassidy V. Brewer, *How to Strengthen and Improve the L3C*, 25 REGENT UNIV. L. REV. 329 (2013); Robert T. Esposito, *The Social Enterprise Revolution in Corporate Law: A Primer on Emerging Corporate Entities in Europe and the United States and the Case for the Benefit Corporation*, 4 WM. & MARY BUS. L. REV. 639 (2013); Brian Galle, *Social Enterprise: Who Needs It?*, 54 B.C. L. REV. \_\_\_ ([forthcoming 2013](#)); Thomas Kelley, *Law and Choice of Entity on the Social Enterprise Frontier*, 84 TUL. L. REV. 337, 370–71 (2009); J. Haskell Murray, *Defending Patagonia: Mergers & Acquisitions with Benefit Corporations*, 9 HASTINGS BUS. L.J. 485 (2013); J. Haskell Murray, *Choose Your Own Master: Social Enterprise, Certifications and Benefit Corporation Statutes*, 2 AM. U. BUS. L. REV. 1 (2012); J. Haskell Murray and Edward I. Hwang, *Purpose with Profit: Governance, Enforcement, Capital-Raising and Capital-Locking in Low-Profit Limited Liability Companies*, 66 U. MIAMI L. REV. 1 (2011); Alicia E. Plerhoples, *Representing Social Enterprise*, 20 CLINICAL L. REV. \_\_\_ ([forthcoming 2013](#)); Alicia E. Plerhoples, *Can an Old Dog Learn New Tricks? Applying Traditional Corporate Law Principles to New Social Enterprise Legislation*, 13 TRANSACTIONS: TENN. J. BUS. L. 221 (2012); Dana Brakman Reiser & Steven A. Dean, *Hunting Stag with FLY Paper: A Hybrid Financial Instrument for Social Enterprise*, 54 B.C. L. REV. \_\_\_

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([forthcoming 2013](#)); Dana Brakman Reiser, [Theorizing Forms for Social Enterprise](#), 62 EMORY L.J. 681 (2013); Dana Brakman Reiser, [The Next Big Thing: Flexible-Purpose Corporations](#), 2 AM. U. BUS. L. REV. 55 (2012); Dana Brakman Reiser, [Benefit Corporations – A Sustainable Form of Organization?](#), 48 WAKE FOREST L. REV. 591 (2011); Dana Brakman Reiser, [Governing and Financing Blended Enterprise](#), 85 CHI.-KENT LAW REV. 619 (2010).

<sup>16</sup> See William H. Clark, Jr. & Elizabeth K. Babson, [How Benefit Corporations are Redefining the Purpose of Business Corporations](#), 38 WM. MITCHELL L. REV. 817 (2012). See also, e.g., John Tyler, [Negating the Problem of Having “Two Masters”: A Framework for L3C Fiduciary Duties and Accountability](#), 35 VT. L. REV. 117 (2010); Robert A. Wexler, [Effective Social Enterprise—A Menu of Legal Structures](#), 63 EXEMPT ORG. TAX REV. 565, 565 (2009); Cassidy V. Brewer, [A Novel Approach to Using LLCs for Quasi-Charitable Endeavors \(A/K/A “Social Enterprise”\)](#), 38 WM. MITCHELL L. REV. 678 (2012).

<sup>17</sup> See, e.g., J. William Callison, [Putting New Sheets on a Procrustean Bed: How Benefit Corporations Address Fiduciary Duties, the Dangers Created and Suggestions for Change](#), 2 AM. U. BUS. L. REV. 85 (2012); J. William Callison, [Benefit Corporations, Innovation and Statutory Design](#) \_\_ REGENT L. REV. \_\_\_\_ ([forthcoming 2013](#)); Daniel S. Kleinberger, [A Myth Deconstructed: The “Emperor’s New Clothes” on the Low-Profit Limited Liability Company](#), 35 DEL. J. CORP. L. 879 (2010); Carter G. Bishop, [The Low-Profit LLC \(L3C\): Program Related Investment By Proxy or Perversion?](#), 63 ARK. L. REV. 243 (2010).

<sup>18</sup> See Gordon Bloom, [The Social Entrepreneurship Collaboratory \(SE Lab\): A University Incubator for a Rising Generation of Leading Social Entrepreneurs](#), The Hauser Center for Nonprofit Organizations and The John F. Kennedy School of Government Harvard University, Working Paper Number 31 (Sept. 2006), available at [http://www.hks.harvard.edu/hauser/PDF\\_XLS/workingpapers/workingpaper\\_31.pdf](http://www.hks.harvard.edu/hauser/PDF_XLS/workingpapers/workingpaper_31.pdf).

<sup>19</sup> Another way to phrase this observation, as others before me have done, is that having a diverse “zoo” of social enterprise organizations actually is best for the sector. See Remarks and Materials Presented by Professor Dennis Young and others at the EMES Conference on Social Enterprise in Liege, Belgium, on July 4, 2013 (on file with author).

<sup>20</sup> It even causes problems between social and economic equals. I once received the ugliest tie on the planet as a holiday gift from a co-worker. What did I do? Give the tie back? Throw it away? Re-gift it? No, I pretended to like the tie, effusively said “Thank You,” and then felt an obligation to wear the ugly thing to work someday. I was being nice, of course, but the outcome was undeniably dysfunctional. My co-worker must have sensed that I actually did not like the tie—especially since I never once wore it to work—and yet at the same time I felt guilty for never wearing it.

<sup>21</sup> See the following article in the Chronicle of Philanthropy: <http://philanthropy.com/blogs/money-and-mission/inequitable-salaries-at-nonprofits-are-a-kind-of-bullying/28125>.

<sup>22</sup> Admittedly, investors can and do make challenging demands and extract concessions from for-profit entrepreneurs, similar to donors with respect to charitable organization. But, at least in the author’s experience, the give and take process is more standardized and predictable with investors than with donors.

<sup>23</sup> See I.R.C. § 170(f)(12).

<sup>24</sup> The New York Times story is republished here: <http://www.nonprofitquarterly.org/policysocial-context/22618-social-enterprise-making-the-choice-between-for-profit-and-nonprofit.html>.

<sup>25</sup> The Kauffman Foundation’s mission is economic independence through entrepreneurship, including social entrepreneurship. See <http://www.kauffman.org/>.

<sup>26</sup> See [http://en.wikipedia.org/wiki/Perfect\\_is\\_the\\_enemy\\_of\\_good](http://en.wikipedia.org/wiki/Perfect_is_the_enemy_of_good).