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# **THE BLIND SPOT OF CORPORATE SOCIAL RESPONSIBILITY: CHANGING THE LEGAL FRAMEWORK OF THE FIRM**

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## ***Abstract***

CSR research is generally based on the assumption that responsible behaviour is compatible with the legal framework of the firm and its standard strategic approaches. Could this hypothesis be misleading? This paper exhibits some recent practical innovations in the USA that have had to move away from the CSR research framework to provide a more constructive approach to social and environmental impacts. The new legal provisions in question revise the legal framework of firms and their corporate purposes. Such innovations suggest that management science research should study how to improve interactions between the well-acknowledged ‘strategic attention’ and often overlooked legal contracts, with a view to imagining new forms of collective action.

## ***Keywords***

Corporate Social Responsibility; Corporate Purpose; Legal Framework; Flexible Purpose Corporation

# **The Blind Spot of Corporate Social Responsibility:**

## **Changing the Legal Framework of the Firm**

### ***Introduction***

For several decades now, the stream of research on corporate social responsibility (CSR) has worked to incorporate social and environmental objectives into management practices. Although a specific definition, including its implementation and practice, has still not met general consensus, a shared common core can be found to describe CSR (Dahlsrud 2008). It encompasses, whether in a broad or narrow sense, the potential responsibilities incumbent on firms to take into account the impacts of their activities upon their stakeholders, be it social, economic or environmental impacts, and the voluntary initiatives that these firms take to have a better impact on society whilst remaining economically sustainable (Carroll 1999, Dahlsrud 2008).

As such, one might have relied on this research current to explore innovative theoretical and practical approaches, influence practices, or develop new models to account for and even achieve change. And corporate practices are indeed changing and offering new paths for research, as CSR has now extensively spread in the business communication and inspired widely advertised initiatives. However, certain empirical innovations seem to have emerged apart from this current, and are now deeply challenging its theoretical frameworks by focusing on the legal side of corporations. In recent years, legislation establishing new forms of corporate contracts has been introduced in several American states. Legal entities such as Benefit Corporations and Flexible Purpose Corporations (FPC) allow any firms that wish, to change their articles of incorporation in order to explicitly include social and environmental objectives in their corporate purpose. They were created to make up for the fact that the

traditional legal provisions of corporate law tend to inhibit firms seeking to achieve a strong societal impact.

Contrary to the voluntary approach of CSR, the promoters of these forms did not hesitate to change the legal framework itself. They gave up the idea of finding compatibility between societal aims and the “standard” firm, taking the opposite path to traditional management research proposals. These corporations have attracted only limited attention yet in management literature, showing a difficulty to account for the impacts of a legal innovation on management models, and their effects are mainly studied from a jurisprudential viewpoint in American law reviews (Munch 2012, Murray 2012, Plerhoples 2012), with the notable exception of (Hiller 2012).

‘Practical’ innovations of this sort naturally raise questions in research circles. How come research on CSR did not lead to, or at least help anticipate innovations of this sort? Are there scientific biases that explain why this new empirical system was not detected by the theory? And which wider theoretical framework could be used to account for these new movements?

In this article, we aim to show that the new practices reveal a blind spot of CSR research and perhaps, more generally speaking, of management research. We suggest that in reaction to the contractual/legal view of the firm, CSR adopted what we will call a ‘strategic attention’ view of the firm by conceptualizing a social and environmental ‘scope of attention’. This new management object was novel in that it went beyond economic, regulatory and statutory obligations. Research strived to show that extending this scope of attention had strategic value and that this attention to various stakeholders could therefore be managed *within the normal strategic and legal framework of firms*. However, this reasoning failed to note that another path was possible, both in theory and in practice. Instead of taking the legal framework for granted, the new forms of corporation show that it was possible to revisit the content of

contractual commitments, in order to include the scope of attention in the form of socially oriented corporate purposes.

These innovations have major implications for research. We will show that they demonstrate the need a) to incorporate the legal framework into the field of management research; b) to re-think the notion of corporate purpose so that it is not limited to profit-making and c) to redefine the content and the perimeter of the actors ‘committed’ to the firm. More fundamentally, if CSR research did not think of revising the legal framework it was probably because management research as a whole had not questioned it. In the face of the current challenges, we therefore believe that management research must study the dynamics of strategic attention and of legal contracts with a view to building collective action.

### ***I. CSR: a ‘strategic attention’ model with no change in the legal framework***

The Corporate Social Responsibility movement (CSR hereafter) has historically strived to study how the interests of the firm match with those of society. The widely accepted period of time to study what Carroll names “Modern CSR” usually begins with Bowen and Drucker, theorizing the social responsibilities of the businessman and progressively of the “corporation” (Bowen 1953, Drucker 1954)<sup>1</sup>. Up to this day, the CSR research current has been a very prolific one, and even though the research stream covers a very wide range of heterogeneous works (Garriga and Melé 2004), they all have a few points in common:

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<sup>1</sup> The concept of CSR has different origins, but many authors trace them back to a conception of business tinged with religious ethics in the United States at the end of the 19<sup>th</sup> century (Acquier 2007). For example, the term ‘stewardship’ referred to the moral obligation of all ‘entrepreneurs’ towards the society in which they worked and which they helped to enrich (Capron & Quairel 2010; Acquier 2007). With the emergence of the modern corporation at the beginning of the 20<sup>th</sup> century (Berle & Means 1932), entrepreneurs appeared to have more and more power, thus creating the need for greater controls on their relationships with society. Expectations regarding businessmen (cf. Bowen 1953) gradually turned towards the firm and the legal entity it represented. For example, the notion of ‘trusteeship’ emerged: managers were entrusted with considerable powers, which could be withdrawn (Davis 1973) by society. They were therefore obliged to live up to the confidence placed in them by society, legitimizing the modern corporation in the process.

- CSR focuses on what is expected of firms beyond their strict contractual obligations, i.e. beyond demands for economic performance and compliance with the law. This corresponds to the “voluntariness dimension” described by Dahlsrud (2008), and to the main stages of Carroll’s pyramid (Carroll 1999). We will use the notion of ‘scope of attention’ to cover this series of challenges that come in addition to those resulting from the contracts (entered into with shareholders, employees, the State, etc.), which CSR is trying to make into a new management object.

- CSR research has striven to show that firms are able to pursue social and environmental objectives using a standard legal and economic framework. To demonstrate the compatibility of traditional economic reasoning and social responsibility, CSR was keen to adopt approaches underlining the strategic value of responsible behaviour, and highlighting a clear “business case” for social responsibility. From this angle, CSR consists in a mutual understanding of what is in the best interests of the corporation (and its shareholders).

- Finally, CSR research studied the practical means available to firms for identifying and managing these new areas of attention and converting them into areas of responsibility. It then showed that the concept of ‘stakeholders’ (Freeman 1984) helped to operationalize the area of attention, especially by targeting the most affected, most influential and most ‘critical’ actors.

In this first part, we will progressively lay the building blocks of this common core of the CSR, before demonstrating in a second part that another theoretical path was possible.

*a) Beyond the sphere of contractual obligations, the sphere of attention*

As outlined very early by (Votaw 1972) and still discussed today (see for example (Lorenzo-Molo and Udani 2012)), the notion of “responsibility” for the firm is imprecise: it is unclear whether it includes the idea of legal liability, of responsibility in the ethical sense, or merely the idea of logical causality. In legal terms though, the firm is effectively committed to several parties, particularly through the agreements it has signed (with the shareholders, employees, etc.). But CSR focuses on so-called voluntary options, i.e. precisely those that go beyond compliance with the law and contractual obligations.

For example, in 1963 McGuire wrote:

“The idea of social responsibilities supposes that the corporation has not only economic and legal obligations but also certain responsibilities to society which extend beyond these obligations.” (McGuire 1963)

Davis (1973) also proposed that CSR be defined as the attention and answers provided by the ‘firm’ to questions that go further than its strict economic, technical and legal obligations:

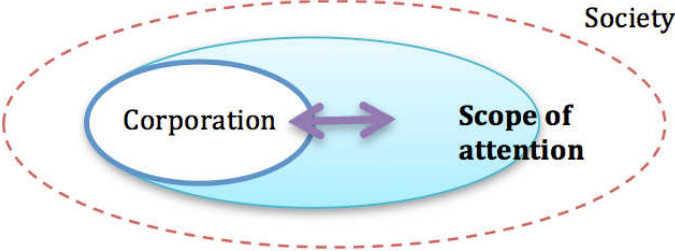
“It means that social responsibility begins where the law ends. A firm is not being socially responsible if it merely complies with the minimum requirements of the law, because this is what any good citizen would do.”

This focus on ‘voluntary’ measures does not mean that the law has no part to play in the social movement, and that it has not changed. On the contrary, many works have shown how the law has evolved on social and environmental issues since the 1960s (law on minority groups, the environment, etc.). Importantly, research has shown that firms’ pioneering decisions regarding social and environmental questions can come before new norms and have

sometimes been the source of regulatory changes (Ackerman and Bauer 1976, Rivoli and Waddock 2011)<sup>2</sup>.

Yet, analysing these expansions in the normative field as *ex post* effects, CSR fundamentally refers to a non-codified space of interaction between the firm and the society in which it belongs. This space is neither that of legal constraints nor that of contractual obligations, although CSR includes voluntary societal norms. In the following pages, we use the term **‘scope of attention’** to cover the elements that the firm must take into consideration, beyond its economic and contractual relationships. This ‘scope’ or ‘field’ corresponds to what certain authors call the ‘implicit’ norms that society expresses regarding the long-term, informal power of the firm (Davis 1973, Donaldson and Dunfee 1994). The notion of ‘attention’ is found in the works of many authors, including seminal papers such as those of Donaldson & Preston (1995), Freeman (1984) and Mitchell et al. (1997). We also find the term ‘consideration’ in the works of Davis (1973) and (Donaldson and Preston 1995):

*“Each group of stakeholders merits consideration for its own sake and not merely because of its ability to further the interests of some other group.”*



**Fig. 1 - A reference model for the 'scope of attention' of the corporation**

<sup>2</sup> It has also been shown that regulatory and legislative interventions can have a limited impact due to the dynamics of innovation and to 'shared uncertainties' (Aggeri 1998).



b) The assumption of compatibility and the strategic value of attention

The reasons urging firms to act in a responsible way have changed greatly over the years. Although managerial ethics are sometimes mentioned, the reason the most often used to justify the rationality of firms' responsible behaviour is the notion of 'strategic approach' (Acquier 2007, Marens 2008). This approach was strengthened in the period from 1965 to 1975 with the deep change in the socio-political context in the United States and the development of NGOs (increase in concern for social, environmental issues, etc.). It covers two partially overlapping arguments.

**Recognizing pressure from civil society**

The first premise imagines the firm's relationship with society as a form of implicit contract. Davis believed that the firm has power, granted to it by society; it can lose this power in the long term if society is not satisfied with it (Davis 1973). In this way, the firm is committed by an implicit social contract (Donaldson and Dunfee 1994), which guarantees its acceptability or legitimacy as long as it complies with its terms, i.e. that it adopts what is considered to be sufficiently responsible behaviour. This social contract is sometimes strongly backed up by institutional mechanisms (Mullenbach and Gond 2004) (world-scale normative organizations such as the ILO and ISO, non-government organizations, public authorities, etc.), which put *de facto* constraints on firms. The mechanisms do not challenge the legal framework of the firm but give weight to society's expectations. They build systems of reference, which, although proposed for adoption on a voluntary basis, should in fact be seen by firms as essential to their activities, granting them their 'licence to operate' (Visser, Matten et al. 2010), or too threatening to ignore.

### **A mutual understanding of best strategic interest**

The second premise does not assume that there is an implicit social contract but tends to bring social responsibility back into the traditional field of strategy. Since the 1970s, many works have sought to link social performance and financial performance (Carroll 1999, Margolis and Walsh 2003, Wood 2010). This research theme is still a major issue for business ethics, and authors have demonstrated that it is one of the most discussed topic in this field since 2006 (Robertson, Blevins et al. 2012). Using other words, the literature on CSR has emphasized the term of ‘business case for CSR’, aiming at demonstrating that CSR should indeed be part of conventional strategic business cases because it is mostly profitable (for instance (Crane, McWilliams et al. 2008, chap. 4, Carroll and Shabana 2010, Wood 2010). Finally, more generally speaking, stakeholder theory makes no *a priori* assumptions on corporate purpose, but simply invites firms to extend their traditional strategic reasoning based on the needs of the clients and shareholders to include all the groups, i.e. the stakeholders, that might have an impact on the future of the firm (Freeman 1984; Mitchell et al. 1997).

From this standpoint, the attention is guided by a mutual understanding of the best strategic interest and socially responsible behaviour is not incompatible with the traditional notion of generating profit. As summarized by (Munilla & Miles 2005), social responsibility is either an answer to pressure from society or a profitable strategy for the firm.

#### *c) Operationalization of CSR: identifying the strategic stakeholders*

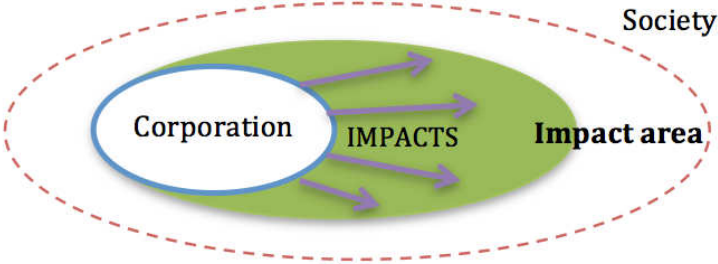
Apart from justifying the socially responsible behaviour of firms, CSR research has also studied the practical means of managing the scope of attention (Mullenbach & Gond 2004; Carroll & Shabana 2010). The managerial focus was introduced in two stages, with the

identification first, of the impacts of the firms' activities and second, of the strategic stakeholders firms should draw their attention to.

**First restriction: the scope of attention as a set of impacts to be analyzed**

From Eilbert & Parker's notion of 'good neighborliness' (1973, cited by Carroll, 1999) to the definition of CSR in the ISO 26000 norm published in 2010, we find the idea that the firm should manage the "impacts of its decisions and activities on society and the environment" (ISO 26 000).

The managerial approach was really developed and adopted from 1975 onwards (see Ackerman & Bauer, 1976), changing the theoretical idea of 'responsibility' into the more experience-based notion of 'responsiveness', whereby a firm's sensitivity makes it respond to its impacts on society. More precisely, the Corporate Social Performance (CSP) approach of the period from 1980 to 1990 worked particularly on measuring these impacts and the results of actions taken by firms to reduce the negative or improve the positive ones. The 'social performance' framework (Wood 2010), which grouped a number of theoretical streams that had previously been developed separately (Garriga & Melé 2004), provided managers with the first set of coherent instruments for measuring the firm's potential 'impact area' and the effectiveness of strategies implemented by the managers to deal with it.



**Fig. 2 - Instrumenting an "Impact area" to deal with CSR**

## Second restriction: from impacts to strategic stakeholders

However, the key strategic and instrumental reference for CSR was the so-called stakeholder view (Clarkson 1995, Dahlsrud 2008, Freeman et al. 2010). In the terms used by (Carroll 1991), the approach helps put ‘names’ and ‘faces’ to the affected components.

Under stakeholder theory (Freeman 1984; Post et al. 2002), stakeholder management is vital to a firm’s successful performance. The idea is to balance the expectations of any stakeholders that might be affected by the firm’s activities. The theory therefore puts shareholders, employees and all the stakeholders on the same level, the shareholders being one party among others (Freeman & McVea 2001; Phillips et al. 2003). The theory is not only descriptive (Donaldson & Preston 1995) but also provides CSR with a analytical framework and a strategic aim. It is a question of measuring and managing the firm’s impacts, especially the impacts on the *critical stakeholders* (see classifications of stakeholders according to their importance (Mitchell et al. 1997; Phillips et al. 2003)), which have the highest influence back on the firm’s potential performance. More recently, an approach combining strategic relevance and stakeholders’ prominence has been developed (Bundy, Shropshire et al. 2012) to specify the level of firms’ responsiveness by classifying raising issues according to their ‘salience’. Although sophisticating the description of the scope of attention and reaching predictability on firms’ responses, this work does not fundamentally question the understanding of CSR as a response at a strategic level to issues raised by more or less critical stakeholders.

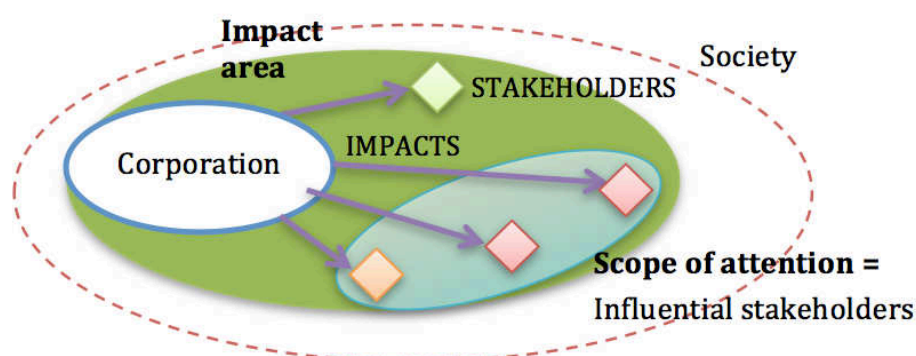


Fig. 3 - Scope of attention according to the stakeholder view

To summarize, we can identify several hypotheses that have guided CSR research:

- **A scope of attention beyond the contracts.** CSR conceptualizes a firm's 'scope of attention', referring to elements that exceed the perimeter of its contractual and legal obligations.
- **An assumption of compatibility.** CSR research tries to show that the scope of attention can be managed within the standard contractual framework. It is compatible with the current legal and strategic framework.
- **Managing attention via the stakeholders** The identification of the strategic stakeholders helps manage the scope of attention more effectively.

The above options are all the easier to understand when we remember that shareholder doctrines began to put heavy constraints on managers at the end of the 1970s. This context partially explains why the believers in voluntary ethics won the battle against those in favour of stricter controls on managerial behaviour. As Marens wrote, researchers specialised in CSR turned towards ethical paradigms, discarding the idea that "laws or regulations were necessary to constrain or channel corporate behaviour in the interest of social justice" (Marens, 2008). There can be no denying that CSR has been widely implemented since then, with firms adopting its principles and its tools. Nonetheless, it was impossible to imagine certain alternatives within the CSR framework, as shown by several recent legal innovations.

## ***II. Practice renews theory with "multi-purpose corporations".***

In its search to encourage firms to have a positive social and environmental impact, CSR research could clearly have taken a different option, which is now emerging in the form of a practical invention. New legal forms of commercial companies were introduced in the United States at the end of the 2000s, based on hypotheses and reasoning that had not been foreseen, let alone put forward by CSR research. Among these new forms, in this article we will

particularly study Flexible Purpose Corporations (2012, California) and Benefit Corporations (2010, in Vermont and then around twenty other states).

In this section, we describe the rationale behind their creation. Our work is based on the legal documents published by California's Senate (discussions and their preparatory work, suggested proposals and amendments, letters of support and the texts adopted). We also studied the texts (white papers) used to promote the new forms with potential sponsors and the general public by explaining the reasoning behind their conception and their specific characteristics<sup>3</sup>. Finally, we completed our study with a series of interviews with the key actors responsible for drafting the bills in California. We were able to retrace with them all the alternatives that were rejected, the obstacles, and the reasoning that led to the current texts, and thereby check that our modelling was well-grounded.

#### *a) Changing a firm's corporate purpose*

Although the new forms of company appear to be identical to traditional corporations, a highly original provision is included in the legal specifications: a social and environmental purpose is stated in the firm's articles of incorporation. This purpose, which is as equally legally binding as profit goals, must be approved by at least two-thirds of the shareholders.

The aim of these new forms of corporation is therefore similar to that sought by CSR. But, to ensure that the corporation's interests are compatible with those of society, the new companies make amendments to the law. When the corporate purpose is added to the articles of incorporation, it transforms the managers' obligations (or 'fiduciary duties' in American law) with respect to the contracting parties, in this case the shareholders. **This conception is**

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<sup>3</sup> For further details of these new forms, see <http://benefitcorp.net/for-attorneys/benefit-corp-white-paper> and <http://www.lawforchange.org/NewsBot.asp?MODE=VIEW&ID=4149> (consulted on September 2012).

**therefore different from the previous hypothesis of a scope of attention extending beyond the sphere of the contracts.**

The promoters of these forms of company reasoned in a very different way from CSR researchers as, rather than asking why certain firms implement CSR policies, they tried to understand why willing entrepreneurs were unable to do so. Some lawyers (e.g. Mac Cormac and Haney 2012) describe the experiences of company managers and future entrepreneurs who are keen to make a positive contribution to society but who are unable to commit themselves because of the prohibitively high personal legal risks involved. The law is in fact asymmetrical: although the managers can implement ambitious CSR policy as long as they have the shareholders' support, they can be suddenly prevented from doing so by a change in shareholders or in the economic context. From this angle, it is impossible to say that all the stakeholders have the same relationship with the company since, in the current state of corporate law, the shareholders can ask the managers at any time to refocus the strategy on their financial interests. From the entrepreneurs' point of view, implementing 'responsible' strategy can lead to the legal risk of failing to fulfill their obligations towards the shareholders. And this risk is enough to discourage them.

When a corporate purpose is included in the companies' articles of incorporation, this changes these companies' governance. Although the broad lines of the shareholder model are retained, the articles of incorporation provide legal guarantees for managers, who are protected from derivative suits brought by dissatisfied shareholders, as long as the disputed decisions are in line with the stated corporate purpose. This corporate purpose forms an integral part of the articles of incorporation unless a two-thirds majority of shareholders vote to change it. It further prevents any mergers and acquisitions that are not in line with the

stated purpose<sup>4</sup>. In this way, it provides managers with a safe harbour for striking a balance between the corporation's different targets.

However, the corporate purpose does not give managers a blank cheque. A number of different management tools are used to assess its performance (third-party standards, compulsory reports, shareholders' obligation to implement, etc.). This potentially revises the entire system for assessing managers' performance.

*b) Giving up the notion of compatibility*

The notion of compatibility posited by CSR is no longer necessary in this case since, instead of trying to make responsible behaviour fit into standard economic reasoning, the companies explicitly pursue several corporate purposes. In this way, firms can adopt responsible behaviour without having to justify that it is compatible with traditional economic rationality.

It should be noted that this does not mean that they have to give up profit objectives. Several previous legal innovations already enabled firms to explicitly pursue a social goal<sup>5</sup>. However, these forms were designed with the opposite reasoning: the idea was to give charitable associations the means of carrying out commercial activities and having access to private funds by allowing them to have a certain level of remuneration. But to guarantee the social purpose of these undertakings, the law chose to limit this remuneration (using the term 'low-profit') as if the two goals were to a great extent mutually exclusive. Flexible Purpose

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<sup>4</sup> In practice, there is a limit of two-thirds for each class of subscribed shares. A group of shareholders (e.g. the founders) can therefore prevent the corporate purpose from being abandoned if it represents two-thirds of a particular, expressly defined class of shares. In California, shareholders who disagree with the result of a vote benefit from dissenters' rights, which guarantee that their shares are bought back at a fair price.

<sup>5</sup> For further information, see the UK's Community Interest Company (2004), the American Low-profit Limited Liability Company (2007) and the Belgian Social Purpose Company (1995).



Corporations and Benefit Corporations, on the opposite, do not fit into this ‘charity’ model and, for that matter, do not have tax incentives.

*c) Extending the scope of attention beyond the strategic stakeholders*

These new forms of company also break with the idea that the scope of attention should be limited to the strategic stakeholders. The definition of their social responsibility is broader than a simple 'correction' of the possible negative impacts of their activities. On the contrary, it opens up a wider reflection on how companies fit into society, by moving away from the fundamental dichotomy between profit goals and social goals. In particular, such companies are allowed to target a special positive impact or benefit (e.g. culture), for a public not expressly identified as stakeholders and not included in its ‘impact area’.

The Flexible Purpose Corporation can define its scope of attention freely and independently and revise it with a two-thirds shareholder vote. As for the Benefit Corporation, its corporate purpose is contingent on choosing an independent standard to assess its social and environmental impact. The details of the said purpose (to create a general public benefit) then depend on these standards, which provide a range of alternative forms of instruments for the area of attention.

The new companies demonstrate several shifts from the three milestone proposals in CSR research:

- Rather than intervening ‘beyond the contractual sphere’, they amend the contracts;
- Rather than accepting the notion that CSR is compatible with the traditional strategic rationale, they recognize that there can be several goals;
- Rather than managing stakeholders, they manage the corporate purpose.

### ***III. Discussion and conclusion. A new agenda for management research: coordinating attention and contracts in collective action***

It is interesting to compare CSR research and the legal innovations in America, since it shows how very different paths can be taken from the same starting point, i.e. the goal of favouring companies' positive impact on society. It is obviously too early to say what impact the new companies will have and whether they will help meet the goal, in a better or a different way than the CSR approaches. In our view, it is more important to know how to avoid using theoretical frameworks that are restrictive and fail to either account for or favour different corporate strategies.

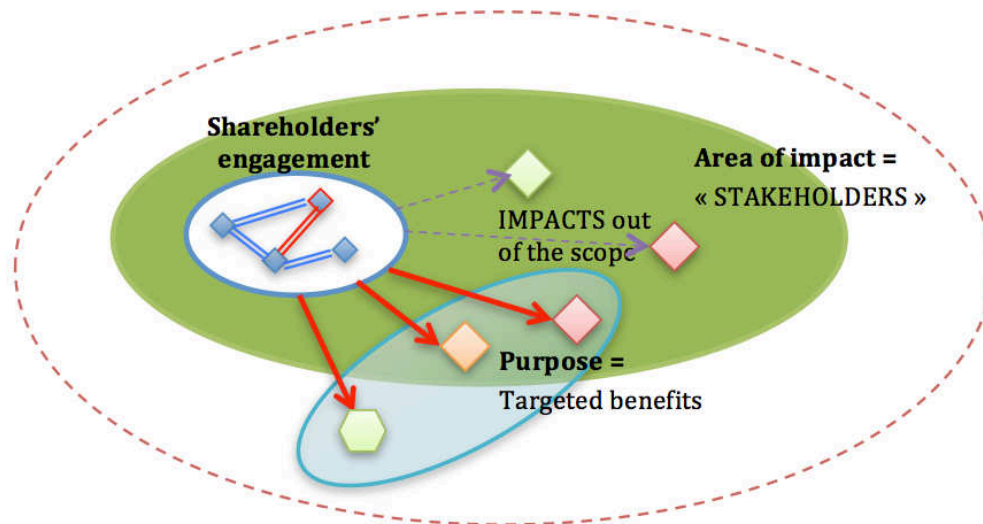
FPCs and Benefit Corporations are an opportunity to question the analytical frameworks used in management research. By reopening discussion on the legal framework of the firm, they reveal an option that has clearly been neglected by CSR, as its scope did not include changes in law. These innovations are an invitation for research to view legal options as managerial choices that should be included in their remit. Studying the legal frameworks can serve for new thinking on the interactions between contracts and strategic attention. We can illustrate this with two examples.

#### *Corporate purpose: a forgotten dimension*

If CSR was built on an attention-based model, it was doubtless as a reaction to purely contractarian economic interpretations, which sum up the company as a nexus of contracts. This interpretation reduced corporate purpose *de facto* to shareholder profit maximisation (Jensen 2001, Canals 2011). In order to lend new weight to society's expectations, various institutional devices were imagined to organize an area of attention providing counter-pressure.

However, by focusing on the area of attention, CSR research denied itself the option of revising the existing legal and contractual framework. As a result, instead of moving on from the contractarian view, until these recent innovations the research seems to have remained a prisoner of a contingent representation of the firm: companies were thought of within a given legal framework. The exclusive control rights granted to the shareholders led to the idea that it was quite natural for a company's aim to be profit maximisation (in the short or long term). Consequently, although there was general agreement that the company could be a driving force for creating value and fighting against poverty, firms were primarily thought of in terms of the creation of value for *shareholders*. For many years, research was completely caught up in the question of knowing whether or not social and environmental performance had a positive correlation with financial performance (Margolis & Walsh 2003).

In Margolis and Walsh's view, it was therefore essential to work on the theory with a view to understanding the role of the firm when confronted with what they called 'dueling expectations'. At present, it can be said that this work on the theory inevitably consists in bringing the legal framework back into the field of management research. At first sight, it might appear to be a minor issue to amend the corporate purpose in corporate law. But in fact it helps to change the representation of the firm and to consider that a corporate purpose is not necessarily limited to profit, but is an endogenous variable of corporate management. This is consistent with previous research that has shown that the 'purpose' or 'essence' of the firm should be reinstated and thought in line with an appropriate governance system (Pitelis and Teece 2009, Canals 2011).



**Fig. 4 - A model of the purpose beyond the scope of attention**

Challenging the boundaries of commitment

Rather than thinking of attention as independent from the contracts, the new companies therefore propose a coupling model that changes the legal framework; by revising the contracts, they *make strategic attention possible*. This innovation reverses the traditional functioning of CSR: rather than seeking to widen the firm’s commitment to its stakeholders (e.g. to NGOs) and to make sure that their interests are represented better, FPC and Benefit Corporations revise the content of the commitments to parties with which they *already* have contracts. This reversal highlights the fact that the impasse for ‘responsible’ firms was not so much due to an absence of commitment on the outside as to a lack of commitment on the inside.

In the new firms, the shareholders commit to a series of goals, other than profit-making, that the company intends to pursue. In practical terms, this means that they authorize the managers to make decisions that serve these goals even if this might go against their immediate financial interests. Basically, this evolution may seem highly paradoxical, as it amounts to individuals agreeing to decisions being taken in their name although they might not serve their interests.

This paradox calls for several remarks:

- First, it does not mean that all shareholders should be militants, seeking an impact on society rather than their own profits. In our view, it simply shows that up until now, the law could prevent people from being involved in a social or environmental process. In practice, they could initiate this process but they always ran the risk that, following a change of shareholders for instance, the managers would be asked to maximise shareholders' profits. There was a great lack of legal security simply due to the fact that, because traditional corporate contracts do not specify a variety of purposes, they do not prevent shareholders from only retaining one corporate purpose. The partners' lack of commitment could therefore be paralysing.

- The second remark is that the parties' commitment, or engagement, to the firm is doubtless a key foundation stone of the firm. It characterises the employment contract and the relationship of subordination: by accepting a relationship of subordination, employees accept the fact that management decisions affecting them can be taken in the collective interests, which do not necessarily match their own. R. Freeland gave a remarkable demonstration of this point: the law enables employees to make commitments and thus adopt behaviour that would be impossible to understand in a standard economic environment (Freeland 2010). Employees owe obedience to their employers and are required to act in the employers' interests and not in their own.

- Finally, there is a key challenge in terms of research. At this stage, the relationship of commitment is not very well understood and has not been theorised about. The challenge consists in characterizing it. What relationship do the contracting parties have with the firm? How can this relationship of commitment be controlled? How can guarantees be given to the people making the commitments and what are their rights?

*A new research path: the dynamics of contracts and strategic attention in collective action*

As we have shown, with an innovative coordination between the spheres of contracts and of strategic attention, via a commitment to a common purpose, these new forms of company challenge management research and invite it to adopt a new position. Somewhere between the two extremes of a purely contractarian view and a view focused solely on attention, a new research space is now opening up to study the interactions between contract- and attention-oriented stances for building collective action. It is true that the innovative proposals leave a large number of questions unanswered.

For instance, it is clear that if managers are authorized to take any decision they like in the name of social interests, there may be abuses. In fact, this was the major criticism lodged against the proposal to set up Corporate Constituency Statutes, a legal provision that was the forerunner of the FPC. In the 1980s, a wave of mergers and acquisitions in the United States led to considerable social damage, whilst leaving the states powerless to act. The Constituency Statutes were designed to authorize company managers to assess the impact of their decisions on an open list of constituencies (i.e. potential parties). It was severely criticized because there was a risk of it cancelling out the provisions of contractual agreements between the shareholders and the managers, giving the latter what was feared to be too much latitude with too few controls.

Contrary to Constituency Statutes, corporate purposes delimit a framework. They also provide the basis for a tool for assessing managers' performance. What scope should they have and how should the assessment criteria be defined? Who should control them? The different legal options provide different answers to these questions. FPCs leave it to the partners to define the corporate purpose and simply demand regular reports explaining the

strategy, resources and targets reached by the said purpose. On the contrary, Benefit Corporations cater for a very general social impact. They demand multi-criteria assessments, specifying that the latter should be carried out by independent third parties, but without describing the process.

These are the different questions that management research should try to answer. How can the strategic attention dimension be included in the contracts so that it can be taken into account in practice? What is the potential and what are the difficulties involved in the different forms of company? Also, building on the American examples, what other legal forms can be imagined for firms?

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