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Between purpose and profit

How the legal framework of profit distribution can promote corporate purpose

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Chapter 1

Introduction

1. Introduction to the research

1.1 From shareholder primacy to corporate purpose – or ‘purpose-washing’?

Academics¹ as well as broader society² are increasingly criticising the way companies are managed. Much of this critique centres on the idea that companies are too narrowly focused on creating (short-term) value for their shareholders. This **shareholder primacy model**, as it is often referred to, has dominated corporate governance globally since approximately the 1980s.³

Prioritising shareholder value creation may have several implications for corporate decision-making that are potentially negative for society. First of all, companies may end up pursuing profitable but unsustainable business models as a result of a focus on short-term stock price increases. Oil and gas companies

¹ The criticism is widely shared across disciplines. From the business administration literature, see for example Jeroen Veldman, Filip Gregor and Paige Morrow, ‘Corporate Governance for a Changing World: Final Report of a Global Roundtable Series’ (Frank Bold and Cass Business School 2016) <<https://ssrn.com/abstract=2805497>> accessed 18 March 2025; The British Academy, ‘Principles for Purposeful Business’ (The British Academy 2021) 10 <<https://www.thebritishacademy.ac.uk/publications/future-of-the-corporation-principles-for-purposeful-business/>> accessed 18 March 2025. From the perspective of business ethics, see for example Waheed Hussain, ‘Corporations, Profit Maximization and the Personal Sphere’ (2012) 28 *Economics and Philosophy* 311; Abraham Singer, ‘What Is the Best Way to Argue Against the Profit-Maximization Principle?’ [2013] *Business Ethics Journal Review* 76. Finally, from the corporate law world see for example Paddy Ireland, ‘Financialization and Corporate Governance’ (2009) 60 *Northern Ireland Legal Quarterly* 15; Lynn A Stout, ‘The Toxic Side Effects of Shareholder Primacy’ (2013) 161 *University of Pennsylvania Law Review* 2003; Beate Sjøfjell and others, ‘Shareholder Primacy: The Main Barrier to Sustainable Companies’ in Beate Sjøfjell and Benjamin J Richardson (eds), *Company Law and Sustainability: Legal Barriers and Opportunities* (Cambridge University Press 2015).

² A large amount of newspaper articles criticised the shareholder primacy model. See for instance Andrew Ross Sorkin, ‘How Shareholder Democracy Failed the People’ *The New York Times* (20 August 2019) <<https://www.nytimes.com/2019/08/20/business/dealbook/business-roundtable-corporate-responsibility.html>> accessed 28 August 2025; Joost Dobber, ‘Klimaatwetenschapper: “Winst maken is oké, winstmaximalisatie niet”’ *Het Financieele Dagblad* (16 April 2025) <<https://fd.nl/economie/1552217/klimaatwetenschapper-winst-maken-is-oke-winstmaximalisatie-niet>> accessed 28 August 2025; Anne Lafarre, ‘Naar een nieuw bedrijfsmodel om vooruit te komen’ *Het Financieele Dagblad* (20 January 2025) <<https://fd.nl/opinie/1541828/naar-een-nieuw-bedrijfsmodel-om-vooruit-te-komen>> accessed 3 August 2025. In addition, surveys show that the general public’s perception of businesses is getting worse. In the US, the percentage of people who believe that capitalism is working for the average American has dropped from 42% in 2021 to 34% in 2024. See ‘2024 Americans’ Views on Business Survey’ (JUST Capital) <<https://justcapital.com/reports/2024-americans-views-on-business-survey/>> accessed 28 August 2025. Similarly, in the Netherlands the trust in big companies has dropped from 45% in 2012 to 36% in 2022. See Centraal Bureau voor de Statistiek, ‘Vertrouwen in mensen en in organisaties; persoonskenmerken’ (*Centraal Bureau voor de Statistiek*, 7 May 2025) <<https://www.cbs.nl/nl-nl/cijfers/detail/85533NED?dl=8EE9C>> accessed 28 August 2025.

³ Stout, ‘The Toxic Side Effects of Shareholder Primacy’ (n 1); Sjøfjell and others, ‘Shareholder Primacy’ (n 1).

such as Shell and BP are burning the world's fossil fuel reserves while still actively looking for new gas and oil projects. For example, Shell's planned emissions from 2018 to 2030 alone are estimated to take up 1.6% of the global carbon budget.⁴ Meanwhile, in the retail industry, in the search for revenue growth, fast fashion and other consumer companies stimulate overconsumption, deliberately producing products of poor quality so that they have to be replaced sooner than necessary. The average number of times that garments are worn has decreased by 36% in the last 15 years alone.⁵

Moreover, as a result of focusing on short-term shareholder value, companies may cut costs to increase their profits. Here, labour costs are a frequent target. Multinational corporations regularly outsource their operations to low-income countries where working conditions are often worse than those in high-income countries and human rights are more likely to be violated.⁶ More generally, in corporate procurement, cheaper options are still often selected over more sustainable ones.⁷ Another popular cost-cutting strategy is profit shifting to reduce tax expenses.⁸ Finally, companies may even cut costs on innovation by reducing research and development (R&D) costs.⁹ In his recent report about the future of European competitiveness, Mario Draghi, former Prime Minister of Italy and former President of the European Central Bank, has emphasised the importance of (investment in) innovation for competitiveness.¹⁰

What is more, through this emphasis on unsustainable business models and cost-cutting, the focus on shareholder value maximisation has been argued to

⁴ Jonathan Watts, Jillian Ambrose and Adam Vaughan, 'Oil Firms to Pour Extra 7m Barrels per Day into Markets, Data Shows' *The Guardian* (10 October 2019) <<https://www.theguardian.com/environment/2019/oct/10/oil-firms-barrels-markets>> accessed 18 March 2025.

⁵ UN Environment, 'Putting the Brakes on Fast Fashion' (*United Nations Environment Programme*, 28 June 2021) <<https://www.unep.org/news-and-stories/story/putting-brakes-fast-fashion>> accessed 20 June 2025.

⁶ Subhan Ullah and others, 'Multinational Corporations and Human Rights Violations in Emerging Economies: Does Commitment to Social and Environmental Responsibility Matter?' (2021) 280 *Journal of Environmental Management* 111689.

⁷ Sajad Fayezi, Maryam Zomorodi and Lydia Bals, 'Procurement Sustainability Tensions: An Integrative Perspective' (2018) 48 *International Journal of Physical Distribution & Logistics Management* 586.

⁸ Globally, estimated revenue losses due to corporate tax avoidance are between 200 and 600 billion US dollars per year. See Alex Cobham and Petr Janský, 'International Corporate Tax Avoidance' in Alex Cobham and Petr Janský (eds), *Estimating Illicit Financial Flows: A Critical Guide to the Data, Methodologies, and Findings* (Oxford University Press 2020).

⁹ Anne Marie Knott, 'The Trillion-Dollar R&D Fix' *Harvard Business Review* <<https://hbr.org/2012/05/the-trillion-dollar-rd-fix>> accessed 14 October 2025; Rodrigo Fernandez, Tobias J Klinge and Bart-Jaap Verbeek, 'Aandeelhouders Eerst: Hoe Bedrijven Dividend-Machines Werden' (SOMO 2022) 4 <<https://www.fnv.nl/getmedia/a37352aa-9be9-4060-8a70-ce9e39213e32/SOMO-Aandeelhouders-eerst.pdf>> accessed 23 March 2025.

¹⁰ Mario Draghi, 'The Future of European Competitiveness' (2024) <https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en> accessed 18 March 2025.

‘dehumanise’ companies.¹¹ Namely, if companies are so focused on cost optimisation and efficiency, employees are seen as cost factors. This approach often comes with tight control systems that limit employees’ decision-making autonomy.¹² In such systems, employees often lack a sense of ‘higher purpose’ in their work beyond meeting targets.¹³ Moreover, the absence of a higher purpose is particularly evident among employees in what Graeber describes as ‘bullshit jobs’ – positions that primarily serve to enhance a company’s financial value but, from the employees’ perspective, fail to contribute meaningfully to society.¹⁴ The lack of a higher purpose may lead to a decrease in employee engagement. Indeed, from research by analytics and advisory company Gallup, it follows that only 21% of employees and 27% of managers globally feel engaged at work, partly due to the lack of a sense of meaning.¹⁵

Shareholder primacy is certainly not a legal principle, as company law professors have rightly pointed out.¹⁶ It is, however, one of the main principles in mainstream economic theory, as promoted most prominently by Milton Friedman.¹⁷ This economic theory has also influenced company law systems globally, for example in the form of more control rights for shareholders.¹⁸ Even more importantly, shareholder primacy is the current reality in many companies. In these companies, shareholder primacy as a social norm is embedded in the whole character or culture of the organisation.¹⁹ In this thesis, shareholder primacy is thus not understood as the formal ‘purpose’ of companies, but as a more implicit narrative that drives understandings and motivation of workers, decision-making, and eventually the impact the company has on society.

¹¹ Jaap Winter, ‘Ontmenselijkjng van de grote onderneming’ [2019] *Ondernemingsrecht* 3. For an English version of this paper see Jaap Winter, ‘Dehumanisation of the Large Corporation’ (2020) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3517492> accessed 29 August 2025.

¹² Winter, ‘Ontmenselijkjng van de grote onderneming’ (n 11).

¹³ *ibid.* See further chapter 2, section 2.5.

¹⁴ David Graeber, *Bullshit Jobs* (Penguin Books Limited 2019).

¹⁵ ‘State of the Global Workplace: 2025 Report’ (Gallup 2025) 6–7

<<https://www.gallup.com/workplace/349484/state-of-the-global-workplace.aspx>> accessed 29 August 2025.

¹⁶ Lynn A Stout, *The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations, and the Public* (Berrett-Koehler Publishers 2012); Beate Sjøfjell, ‘Dismantling the Legal Myth of Shareholder Primacy: The Corporation as a Sustainable Market Actor’ in Nina Boeger and Charlotte Villiers (eds), *Shaping the Corporate Landscape Towards Corporate Reform and Enterprise Diversity* (Hart Publishing 2018).

¹⁷ Milton Friedman, ‘A Friedman Doctrine-- The Social Responsibility Of Business Is to Increase Its Profits’ *The New York Times* (New York, 13 September 1970) <<https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html>> accessed 13 April 2021.

¹⁸ For a description of this development in the Netherlands see Johan Matthijs De Jongh, *Tussen Societas En Universitas. De Beursvennootschap En Haar Aandeelhouders in Historisch Perspectief* (Instituut voor Ondernemingsrecht no. 94, Kluwer 2014).

¹⁹ Sjøfjell, Johnston, Anker-Sørensen and Millon argue that shareholder primacy is a social norm. See Sjøfjell and others, ‘Shareholder Primacy’ (n 1). On Winter, I base the point that shareholder primacy is embedded throughout the entire organisation. See Winter, ‘Ontmenselijkjng van de grote onderneming’ (n 11).

A promising solution to the problem of the focus on shareholder primacy seems to be to replace it with a focus on an firm-specific purpose that explains how the company aims to create long-term value through its products and/or services.²⁰ Indeed, more and more companies are explicitly adopting such a **corporate purpose**.²¹ Many definitions of corporate purpose exist in the literature,²² but in this thesis the term refers to **the higher goal of a company, related to firm-specific products and/or services, that guides the creation of long-term value**. Shareholder value cannot act as a higher purpose because it is an *outcome* of productive activity, not a source. At the same time, corporate purpose as used in this thesis does not need to have an explicit prosocial focus. This means that a corporate purpose can also be aimed at creating particular products or services that only benefit certain people or communities but not society in general.²³

This idea of corporate purpose is nothing new: indeed, the idea that companies should exist to produce products or services and thereby create long-term value is timeless.²⁴ In the 19th century for instance, many companies were founded with the specific purpose of developing railways or other infrastructure, to produce steel, or to extract natural resources such as oil and gas. Nowadays, many corporate purposes aim to contribute to current societal challenges such as health and environmental sustainability. Famous examples of purpose-driven companies include, for instance, the Dutch health technology company Philips and the US outdoor clothing company, Patagonia, which sees the climate crisis as ‘our business’.²⁵ Reasons for adopting corporate purpose range from intrinsic motivation to pressure from stakeholders.²⁶

A core idea behind corporate purpose is that pursuing a firm-specific purpose strategy successfully should be profitable in the long term.²⁷ Even though profit should not be the main driver for firms to exist, profit remains an important

²⁰ Kevin Levillain and Blanche Segrestin, ‘From Primacy to Purpose Commitment: How Emerging Profit-with-Purpose Corporations Open New Corporate Governance Avenues’ (2019) 37 *European Management Journal* 637, 642.

²¹ These include so-called social enterprises, defined often in first instance on the basis of their purpose, but also on the basis of other elements, including their profit distribution structure and their decision-making structure. See further chapter 2, section 3.3. Moreover, companies adopting corporate purposes also include (large) mainstream companies formulating a ‘reason for being’ as the basis for their strategy. For examples see further in this introduction and Colin Mayer and Bruno Roche, *Putting Purpose Into Practice: The Economics of Mutuality* (Oxford University Press 2021).

²² These definitions are discussed in chapter 2, section 3.2.

²³ For more elaboration on the definition of corporate purpose as used in this thesis see chapter 2, section 3.2.

²⁴ Colin Mayer, ‘Reflections on Corporate Purpose and Performance’ (2023) 20 *European Management Review* 719, 719.

²⁵ ‘Over ons’ (*Philips*) <<https://www.philips.nl/a-w/about.html>> accessed 8 October 2025; ‘Climate Goals | Patagonia NL’ <<https://eu.patagonia.com/nl/en/climate-goals/>> accessed 29 August 2025.

²⁶ Colin Mayer, ‘The Future of the Corporation and the Economics of Purpose’ (2021) 58 *Journal of Management Studies* 887, 890.

²⁷ Alex Edmans, *Grow the Pie: How Great Companies Deliver Both Purpose and Profit* (Cambridge University Press 2020); *ibid.*

element of business, according to this mainstream understanding of corporate purpose. This reflects the idea of the ‘triple bottom line’, which is a framework according to which a firm’s performance is measured against the dimensions of people, planet and profit. In the triple bottom line framework these three dimensions should go together.²⁸ In the corporate purpose approach, these three dimensions should be put into synergy by focusing on corporate purpose. Corporate purpose thereby implies a corporate governance theory that deviates from both the shareholder and the stakeholder model: in order to optimise societal welfare, management boards (and, by extension, employees) should in the first instance focus on the productive activities of the firm rather than on the interests of particular constituencies.²⁹

Much has been written in recent years about the societal benefits of companies pursuing corporate purposes.³⁰ Primarily, corporate purpose makes companies more ‘human’ again by creating a sense of purpose for employees in their work.³¹ In addition, a corporate purpose can help companies focus on the long term rather than the short term, mitigating practices such as cost-cutting.³²

In practice, however, shareholder interests often continue to take precedence over corporate purpose. In the early 20th century Veblen showed that ‘businessmen’ often aim to make profit rather than to produce goods, and that this focus of business on making profit may obstruct production. After all, production costs money. As such, if businessmen could make money by producing nothing, this would be their ‘highest achievement’, in the words of Veblen.³³ Currently, many companies present themselves as purpose-driven, but certainly not all of them actually prioritize their purpose over profit. In the most extreme scenario, companies use their corporate purpose statement only as marketing. In other

²⁸ John Elkington, ‘Towards the Sustainable Corporation: Win-Win-Win Business Strategies for Sustainable Development’ (1994) 36 *California Management Review* 90.

²⁹ See further chapter 2, sections 3.2 and 3.3.

³⁰ See e.g. Claudine Gartenberg, Andrea Prat and George Serafeim, ‘Corporate Purpose and Financial Performance’ (2019) 30 *Organization Science* 1; Bidhan L Parmar, Adrian Keevil and Andrew C Wicks, ‘People and Profits: The Impact of Corporate Objectives on Employees’ Need Satisfaction at Work’ (2019) 154 *Journal of Business Ethics* 13; Guido Ferrarini, ‘Corporate Purpose and Sustainability’ (2020) *European Corporate Governance Institute - Law Working Paper 559/2020* <<https://papers.ssrn.com/abstract=3753594>> accessed 13 April 2021; Edward B Rock, ‘For Whom Is the Corporation Managed in 2020?: The Debate over Corporate Purpose’ (2020) *Law Working Paper 515/2020* <<https://papers.ssrn.com/abstract=3589951>> accessed 8 June 2022; Claudine Gartenberg and George Serafeim, ‘Corporate Purpose in Public and Private Firms’ (2023) 69 *Management Science* 5087.

³¹ Christopher A Bartlett and Sumantra Ghoshal, ‘Changing the Role of Top Management: Beyond Strategy to Purpose’ (1994) 72 *Harvard Business Review* 79; Elaine Hollensbe and others, ‘From the Editors: Organizations with Purpose’ (2014) 57 *The Academy of Management Journal* 1227.

³² Colin Mayer, *Prosperity: Better Business Makes the Greater Good* (Oxford University Press 2018).

³³ Thorstein Veblen, *The Vested Interests and the Common Man: The Modern Point of View and the New Order* (2nd edn, BW Huebsch, Incorporated 1920) 92–93. The Vested Interest p. 92–93. For a more elaborated version of these arguments see Thorstein Veblen, *The Theory of Business Enterprise* (C Scribner’s Sons 1904).

scenarios, companies try to integrate it into their corporate strategy, but either do not integrate it seriously enough or fail in practice to act in line with the defined strategy. In his book ‘Deep Purpose’ Gulati describes how many companies implement their corporate purpose as secondary to their core business, and thereby fail to actually commit to it.³⁴ An illustrative example of this, described in Gulati’s book, is the American aerospace company Boeing. Gulati describes how Boeing lost focus on its purpose: technological progress in aviation. Instead, Boeing became increasingly focused on short-term shareholder value maximisation. The result of this is made painfully visible in the documentary ‘Downfall: the case against Boeing’. The documentary shows how Boeing reduced its ‘expenditures’ on training and safety, which eventually led to the crashes of two 737 MAX airplanes.³⁵

Closer to home, Unilever presents another example of a company that does not manage to prioritise their corporate purpose over short-term financial performance. Under former Chief Executive Officer (CEO) Paul Polman, the British company Unilever pursued the purpose to make a ‘net positive’ impact on society and was seen as one of the most prominent frontrunners on environmental and social sustainability globally.³⁶ Recently however, Unilever has downgraded its sustainability ambitions. According to the current CEO, Hein Schumacher, it turned out that some of the targets set by his predecessor were unrealistic.³⁷ While downgrading its sustainability ambitions, Unilever has become increasingly focused on improving its financial performance after Polman had left.³⁸

At the same time as many large companies are failing to commit to their corporate purposes, corporate profits are rising at an unprecedented rate.³⁹ Even with the best intentions, pursuing corporate purpose may thus end up in ‘purpose-washing’.

³⁴ Ranjay Gulati, *Deep Purpose: The Heart and Soul of High-Performance Companies* (Penguin Books, Limited 2022) 5.

³⁵ *Downfall: The Case Against Boeing* (Directed by Rory Kennedy, Netflix 2022).

³⁶ Paul Polman and Andrew Winston, *Net Positive: How Courageous Companies Thrive by Giving More Than They Take* (Harvard Business Press 2021).

³⁷ Madeleine Speed, ‘Unilever Says New Laxer Environmental Targets Aim for “Realism”’ *Financial Times* (25 April 2024) <<https://www.ft.com/content/f5a6b26a-c66c-465d-8751-36b8894d1020>> accessed 13 March 2025.

³⁸ Julia Kollewe, ‘Unilever Ousts CEO Hein Schumacher to Speed Turnaround’ *The Guardian* (25 February 2025) <<https://www.theguardian.com/business/2025/feb/25/unilever-ceo-hein-schumacher-steps-down-fernando-fernandez>> accessed 13 March 2025.

³⁹ For the Netherlands, see Centraal Bureau voor de Statistiek, ‘Winsten stijgen harder dan lonen’ (*Centraal Bureau voor de Statistiek*, 25 September 2024) <<https://www.cbs.nl/nl-nl/nieuws/2024/39/winsten-stijgen-harder-dan-lonen>> accessed 13 March 2025.

1.2 Profit distribution law as an overlooked factor in the corporate purpose debate

Why is it so difficult for companies to focus on their corporate purpose? This thesis theoretically and empirically demonstrates that **profit distribution law** is a critical but understudied factor as a legal constraint on corporate purpose. With profit distribution, I refer to the distribution of (part of) the company's net income of the past financial year (dividends) as well as distributions of reserves. Profits are generally distributed to shareholders⁴⁰ but they can also be distributed to others.⁴¹ In this thesis I focus on profit distribution to shareholders. Other outflows of equity capital to shareholders such as share buybacks and capital reductions are generally also understood as forms of profit distribution.⁴² In this thesis, I mostly focus on profit distribution and share buybacks as these are the common options that companies choose from when they want to distribute profits to shareholders.⁴³ Indeed, when deciding how to allocate their profits, companies generally choose between two options: to distribute profits (in the form of direct profit distribution or by buying back shares) or to reserve them.⁴⁴ Reserving profits means that part of the profits is retained and redirected into the business. On the balance sheet, profits are added to the reserves, which are part of the company's equity capital.⁴⁵

⁴⁰ In some Dutch companies, investors hold depository receipts of shares instead of the shares themselves. This means that the company has issued or transferred its shares to a special foundation linked to the company. This foundation issues depository receipts that provide the depository receipt holder – the eventual investor – with the right to receive the dividends. The foundation holds the control rights – although these can usually, on request, also be exercised by the depository receipt holders themselves. See further G van Solinge and MP Nieuwe Weme, '6.8 Certificering van Aandelen', *Mr. C. Assers Handleiding tot de beoefening van het Nederlands burgerlijk recht. 2. Rechtspersonenrecht. Deel Iib. NV en BV. Corporate Governance* (Wolters Kluwer 2019).

⁴¹ Those 'others' must be included in the company's articles of association in order to be entitled to profit distributions. For example, holders of profit certificates are sometimes included in the articles of association as recipients of profit distributions.

⁴² See further chapter 4, section 2.3.

⁴³ See for example Robert A Weigand and H Kent Baker, 'Changing Perspectives on Distribution Policy: The Evolution from Dividends to Share Repurchase' (2009) 35 *Managerial Finance* 479.

⁴⁴ In Dutch company law, there is officially another, third option for the allocation of profits: the *tantième* – a profit distribution to the management board as a form of variable pay. The *tantième* is no longer commonly used because it has been replaced by bonuses that are accounted for as costs rather than profit distribution. See for a discussion of the *tantième* in Belgian law Sofie Cools, 'Variabele Remuneratie: De Rol van Tantièmes Uitgespeeld of Onderschat?' (2012) 2012 *Tijdschrift voor Rechtspersoon en Venootschap* 153.

⁴⁵ Equity capital or simply equity (in Dutch: *eigen vermogen*) represents the company's net worth, or the total amount that would be distributed to shareholders in case of a liquidation after all the company's debts are paid. See Donald E Kieso, Jerry J Weygandt and Terry D Warfield, *Intermediate Accounting IFRS* (John Wiley & Sons 2020) 15–5. It consists of issued share capital, retained earnings, undistributed profits, and (other) reserves. See *ibid* and article 2:373 Dutch Civil Code. The company's equity capital can be calculated by deducting total liabilities from total assets.

Profit distribution rights are a core part of the legal structure of limited liability companies.⁴⁶ These profit distribution rights are a compensation for the risk that shareholders take when they invest in a company. As equity providers they are last in line when the company goes bankrupt.⁴⁷ In return, they have a ‘residual claim’ to the company’s profits if it is doing well. This implies that profit distribution serves an important function: to attract shareholders to invest in the company.⁴⁸ These equity capital investments may also be important for the pursuit of corporate purposes.

At the same time, profit distributions regularly seem to stand in the way of the pursuit of corporate purpose. For example, large companies around the world have been heavily criticised for paying out large dividends to their shareholders, while at the same time reducing their investments in their self-stated sustainability ambitions which are part of their corporate purpose strategy. An excellent example is Shell, a company with a major sustainability transition challenge. In 2025 Shell announced an increase in its dividend pay-out ratio from 30-40% to 40-50%.⁴⁹ This was possible because Shell’s cash flow had increased as a result of reductions of costs and reductions in investment.⁵⁰ One of these ‘cost reductions’ was a cut of 200 jobs in Shell’s sustainability department.⁵¹ Ironically, in a Dutch newspaper, the news article about these job cuts appeared right next to a full-page Shell advertisement showcasing its wind energy initiatives.

This example suggests two tensions in the relationship between profit distributions and corporate purpose. First, even though profit distribution is vital for attracting equity capital, that equity capital is also reduced by profit distributions. Thereby, large profit distributions can stand in the way of the corporate purpose of the company, in particular if they are not compensated by

⁴⁶ John Armour and others, ‘What Is Corporate Law?’ in Reinier Kraakman and others (eds), *The Anatomy of Corporate Law: A Comparative and Functional Approach* (3rd edn, Oxford University Press 2017) 13.

⁴⁷ In current financial structures, shareholders often strengthen their position by turning themselves into creditors of the company. See Rolef de Weijs and Roelf Jakob, ‘Harmonization of European Insolvency Law: Preventing Insolvency Law from Turning Against Creditors by Upholding the Debt-Equity Divide’ (2017) Amsterdam Law School Research Paper No. 2017-21 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2932097> accessed 19 March 2025.

⁴⁸ See further chapter 3, in particular section 3.1.

⁴⁹ Ruxandra Iordache, ‘Oil Major Shell Vows to Boost Shareholder Returns, Doubles down on LNG Push’ *CNBC* (25 March 2025) <<https://www.cnbc.com/2025/03/25/oil-major-shell-bolsters-shareholder-distributions-cuts-spend.html>> accessed 29 August 2025.

⁵⁰ ‘Alleen in Gitzwart Oliecrashscenario Is Dividend van Shell Onhoudbaar’ (*VEB*, 8 January 2025) <<https://www.veb.net/artikel/10009/alleen-in-gitzwart-oliecrashscenario-is-dividend-van-shell-onhoudbaar>> accessed 3 October 2025.

⁵¹ Ron Bousso, ‘Shell Cuts Low-Carbon Jobs, Scales Back Hydrogen in Overhaul by CEO’ *Reuters* (25 October 2023) <<https://www.reuters.com/sustainability/climate-energy/shell-cuts-low-carbon-jobs-scales-back-hydrogen-ceo-overhaul-sources-2023-10-25/>> accessed 29 August 2025.

additional capital attracted from the capital markets. As the thesis will demonstrate, such large profit distributions are often allowed by company law.

Second, more implicitly, the entire concept of a for-profit legal structure – in which the company can distribute profits for its shareholders – has been under scrutiny in the context of corporate purpose. It has been argued that the financial incentives that are inherent in these structures may stand in the way of the pursuit of long-term value creation. For example, Hinton and Maclurcan state that ‘environmental health and wellbeing are an afterthought in for-profit business, not built into the fabric of the legal structure, even in “conscious capitalist” models’.⁵² The risk they point at is that companies remain ‘stuck’ in the shareholder primacy model if profit distribution law remains unchanged. This means that shareholder value maximisation remains prominent in the company as a social norm, value and driver of decision-making, as the example of Shell illustrated.⁵³

However, in the literature on corporate purpose, profit distribution only plays a minor role. Implied in the idea that purpose should be profitable is that all stakeholders of the firm can and should benefit from the extra profits that a purpose-driven company generates, including the shareholders.⁵⁴ However, here, a distinction can be made between two questions. First, how much profit does the company make and can this be increased by pursuing a corporate purpose rather than profit directly? And second, how much of this profit is distributed to shareholders? While the first question is at the centre of the corporate purpose literature,⁵⁵ the latter question has received scant attention. Although several scholars, including notably professors of management studies Colin Mayer and Nien-hê Hsieh, have emphasised the relationship between ownership and purpose,⁵⁶ in the corporate purpose literature in general ownership and purpose are not explicitly linked.⁵⁷ Indeed, the corporate purpose literature often takes for

⁵² Jennifer Hinton and Donnie Maclurcan, ‘A Not-for-Profit World beyond Capitalism and Economic Growth?’ (2017) 17 *Ephemera: theory and politics in organization* 147, 150–151.

⁵³ Madeleine Speed, ‘Ben & Jerry’s Says Chief Ousted by Unilever over Political Activism’ *Financial Times* (19 March 2025).

⁵⁴ Edmans, *Grow the Pie* (n 27).

⁵⁵ See e.g. Gartenberg, Prat and Serafeim (n 30); Edmans, *Grow the Pie* (n 27); Claudine Gartenberg, ‘The Contingent Relationship Between Purpose and Profits’ (2023) 8 *Strategy Science* 256. This literature is discussed in chapter 2, section 3.2.

⁵⁶ In his book *Prosperity* Colin Mayer already dedicated one chapter to ownership. See Mayer, *Prosperity* (n 32) ch 4. Moreover, in 2024, professor of business administration Nien-hê Hsieh initiated the ‘Ownership Project’ at Harvard Business School which studies the relation between corporate ownership structures and purpose. See ‘The Ownership Project’ (*Harvard Business School*) <<https://www.hbs.edu/bigs/about/research/the-ownership-project>> accessed 15 October 2025.

⁵⁷ For example, the two main projects with regard to corporate purpose, which will be discussed further in chapter 2, section 3.1, did not put emphasis on corporate ownership as a main factor in enabling corporate purpose. See Beate Sjøfjell and others, ‘Securing the Future of European Business: SMART Reform

granted the corporate form in which, by default, the primary persons who hold the board accountable have the rights to receive the company's profits. This neutral stance to the profit distribution structure in the mainstream corporation is illustrated in a quote by Sjøfjell et al. in one of the main legal proposals for corporate purpose. In the explanation of this proposal, it is stated that corporate purpose does not 'take away profit as an intrinsic element of the nature of business or of their value creation' or change 'how profit is used and distributed in them'.⁵⁸

This is hardly surprising, given that the question of profit distribution is often approached as a binary choice between for-profit and not-for-profit ownership structures: the for-profit company – with profit distribution at its core – is aimed at making profit for shareholders, while not-for-profit legal forms are aimed at charitable or community-oriented activities.⁵⁹ If this for-profit corporate ownership structure is taken for granted, the only relevant question that remains is how we can combine profit with purpose. As the examples of Rituals and Shell show, this is not always easy, exactly because the legal for-profit form may stand in the way of purpose. The question is thus whether the corporate purpose approach does not overlook the legal institution of profit distribution.⁶⁰

A closer examination of profit distribution law reveals that the law governing profit distribution is not a binary distinction between not-for-profit and for-profit, but rather a construct made up of multiple elements, each of which can be altered if desired. Indeed, a **legal profit distribution structure** consists of rules with regard to (1) who is entitled to receive profit distributions; (2) to what part of the profits they are exactly entitled, (3) who decides about the allocation of profit and profit distributions, and (4) which limitations there are on profit distribution.

Here, it must be acknowledged that the relationship between profit distribution law and corporate purpose is complicated and influenced by other (market, legal and social) factors. For example, the extent to which profit distributions stand in the way of corporate purpose depends on the investments that are required and the extent to which the purpose is profitable. These depend on market- and

Proposals' (2020) University of Oslo Faculty of Law Research Paper 2020/11 <<https://papers.ssrn.com/abstract=3595048>> accessed 11 April 2021; The British Academy, 'Policy & Practice for Purposeful Business' (The British Academy 2021) <<https://www.thebritishacademy.ac.uk/publications/policy-and-practice-for-purposeful-business/>> accessed 19 March 2025.

⁵⁸ Sjøfjell and others, 'Securing the Future of European Business' (n 57) 57.

⁵⁹ Jonathan Levy, 'Accounting for Profit and the History of Capital' (2014) 1 *Critical Historical Studies* 171, 190.

⁶⁰ This critique is coming from various discourses. See for instance Paddy Ireland, 'Corporate Schizophrenia: The Institutional Origins of Corporate Social Irresponsibility' in Nina Boeger and Charlotte Villiers (eds), *Shaping the Corporate Landscape* (Hart Publishing 2018); Rock (n 30); Michael Bennett and Rutger Claassen, 'Taming the Corporate Leviathan: How to Properly Politicise Corporate Purpose?' in Michael Bennett, Huub Brouwer and Rutger Claassen (eds), *Wealth and Power* (Routledge 2022).

company-specific circumstances. Moreover, another question is to what extent the for-profit structure actually affects the incentives in the organisation, and if other profit distribution structures have the potential of improving these incentives. Some empirical evidence touching upon the relationship between legal profit distribution structures and corporate purpose exists, but it is fragmented and mostly quantitative in nature. For example, empirical research in the early 21st century has studied the extent to which ‘strategy’ or investment in long-term goals are taken into account in corporate dividend policies.⁶¹ Moreover, some research has been done into the long-term orientation of companies that distribute their profits to foundations rather than traditional shareholders.⁶² To my knowledge, there is no empirical research yet investigating the impact of various profit distribution structures on corporate purpose integration broadly understood.

2. Research goal, question and subquestions

The goal of this research project is to investigate how (the transition of companies to) corporate purpose-driven business models can be supported by rethinking the company law framework on profit distribution. In order to do so, this dissertation performs a critical reflection of the legal framework on profit distribution in limited liability companies in the context of corporate purpose. The focus is on the Netherlands as a case study. The main research question is therefore as follows: **How should the rules on profit distribution, with specific focus on Dutch law, be changed to promote successful corporate purpose integration by limited liability companies?**

The research question is answered on the basis of the following subquestions:

1. What is corporate purpose and why is it relevant in the context of the ‘crisis of the corporation’?
2. How can and do profit distribution policies and decisions enable or hamper corporate purpose?
3. What is the role of (Dutch) profit distribution law in enabling and obstructing corporate purpose?
4. How do choices regarding the legal profit distribution structure influence the integration of corporate purpose by companies?

⁶¹ This empirical research is discussed in chapter 3, section 3.

⁶² This and other empirical research is discussed in chapter 4, section 5.3.

5. How can (Dutch) profit distribution law be changed to better enable corporate purposes?

3. A case study: Dutch profit distribution law

In this thesis the Dutch company law framework (with regard to both corporate purpose and profit distribution) is used as a case study. Moreover, when studying profit distribution in practice, the research also focuses on Dutch companies.

A first reason for the choice for Dutch company law as the case study is that a significant number of large multinationals are located in the Netherlands and have to apply Dutch law.⁶³ My background in Dutch company law is a second, practical reason for the choice for this legal system as the case study. Finally, the third reason is that Dutch profit distribution law – which is the core subject of analysis in this thesis – is to some extent representative of the legal profit distribution systems of other countries. This is due to the fact that Dutch law and society are highly integrated in and dependent on the international markets and thus often reflect broader international trends.⁶⁴ In general, the Dutch company law system is commonly characterised by the ‘stakeholder model’ or ‘Rhineland model’ of corporate governance. Elements of the Rhineland model include a stakeholder-orientated conception of directors’ duties, a long-term strategic orientation, and comparatively strong employee representation in corporate governance.⁶⁵ This model is shared by several continental European jurisdictions and is generally understood as standing in contrast to the US shareholder primacy model. At the same time, as this thesis will show, shareholder-orientated thinking has also influenced Dutch company law.

With regard to profit distribution specifically, Dutch law and companies have to align with broader international trends to make themselves attractive on the global financial markets. Furthermore, due to European harmonisation of company law, some of the rules for Dutch limited liability companies regarding

⁶³ In 2024, Netherlands was number 10 on the list of countries in which the highest number of ‘Fortune Global 500’ companies was based. See ‘Fortune Global 500’ (*Fortune*) <<https://fortune.com/ranking/global500/>> accessed 14 October 2025. The Fortune Global 500 is a list of the 500 largest companies in the world based on their annual revenue. Examples of large multinational companies in the Netherlands are food retail company Ahold Delhaize, chipmaker ASML and HR services company Randstad.

⁶⁴ Abe de Jong, Philip Fliers and Henry van Beusichem, ‘Catering and Dividend Policy: Evidence from the Netherlands over the Twentieth Century’ (2019) 26 *Financial History Review* 321.

⁶⁵ Ilir Haxhi, ‘Comparative Corporate Governance’, *Comparative International Management* (3rd edn, Routledge 2023).

profit distribution are also applicable to companies in other EU countries.⁶⁶ Finally, beyond harmonisation, similarities exist between the profit distribution laws of European countries. Namely, the right to the company's profits is a fundamental aspect of company law systems.⁶⁷ Therefore, although the conclusions and recommendations resulting from this thesis are particularly targeted towards the Netherlands, they are to some extent also relevant for other European countries.

Because of the focus on Dutch law, a note on terminology is in order. Throughout this thesis, I will use the terms 'management board' and 'board' interchangeably to refer to the statutory managing directors.⁶⁸ In the Netherlands, the two-tier board structure is more common, so that there is a separate management board and a separate supervisory board. This is opposed to the one-tier board structure which is also legally allowed in the Netherlands but less common than in, for instance, the US, in which the management board includes both executive and non-executive directors.⁶⁹ Moreover, the term 'management board' or 'board' does not include individuals who may hold the title of 'director' or 'manager' in their job title but are not appointed as statutory board members in the company's articles of association.

4. The scope of the research

Two boundary conditions limit the scope and generalizability of this research. The first boundary condition is methodological. The research focuses on (public and private) limited liability companies that say they are pursuing a corporate purpose. The limited liability company structure is the most common, and this is also the case for companies with a corporate purpose.⁷⁰ Generally, most countries' legal frameworks offer two forms of limited liability companies: the public limited liability company (in the Netherlands: Naamloze Vennootschap or NV) and the private limited liability company (in the Netherlands: Besloten

⁶⁶ European profit distribution law for public limited liability companies is to a large extent harmonised with Directive 2017/1132/EU of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification) [2017] OJ L 169/46. See further chapter 4.

⁶⁷ See further chapter 4, section 2.1. For example, European systems generally grant decision-making powers with regard to profit distribution to the general meeting of shareholders. See for instance section 58 of the German Stock Corporation Act/section 29 of the German Limited Liability Companies Act and art. 5:141 of the Belgian Companies and Associations Code.

⁶⁸ See art. 2:129/239 Dutch Civil Code (DCC).

⁶⁹ Art. 2:129a/239a Dutch Civil Code (DCC).

⁷⁰ Aikaterini Argyrou, Pjotr Anthoni and Tineke Lambooy, 'Legal Forms for Social Enterprises in the Dutch Legal Framework: An Empirical Analysis of Social Entrepreneurs' Attitudes on the Needs of Social Enterprises in the Netherlands' (2017) 12 *International and Comparative Corporate Law Journal* 1.

Vennootschap or **BV**). In this thesis, I will refer to limited liability companies as ‘companies’ or ‘corporations’. These terms will be used interchangeably. Other legal forms (including partnerships, cooperatives, foundations and associations) fall outside the scope of the thesis.⁷¹ Moreover, the European legal forms (European Economic Interest Grouping, Societas Europaea, and European Cooperative Society) are also not explicitly discussed.⁷²

At two points in the thesis, empirical research is conducted.⁷³ The empirical research focuses mostly on larger and in most cases publicly listed companies. Profit distribution practices are likely to differ in smaller companies or companies with a more concentrated shareholder base, such as family-owned businesses. The thesis takes these differences in mind when drawing conclusions on the basis of the empirical research.

In principle, all companies that somehow state that they pursue a corporate purpose, for example on their website, are included in the scope of the thesis. This wide scope allows me to perform a critical assessment of the extent to which companies successfully integrate a corporate purpose (see further section 5.1). However, semipublic organisations fall outside the scope of this thesis. Semipublic organisations include, at least in the Netherlands, healthcare organisations, cultural organisations, educational organisations and housing associations.⁷⁴ These organisations are regularly structured as public or private limited liability companies.⁷⁵ In Dutch law particular corporate governance rules

⁷¹ Normally cooperatives can also distribute profits to their members (for Dutch law see art. 2:53a Dutch Civil Code). Other than this, the legal framework for cooperatives provides no rules on profit distribution. The assessment of the legal framework for cooperatives can thus not be applied to cooperatives. The proposals may to some extent be also relevant for cooperatives. However, the question is whether it is desirable to regulate profit distribution in cooperative law. Indeed, as will be briefly touched upon in chapter 4, profit distributions are often less important for members of a cooperative than they are for shareholders of a corporation. Therefore, the problems with profit distribution are likely to be less prominent in the context of cooperatives. For an elaboration of the legal framework of profit distribution in cooperatives under Dutch law see for instance Ger JH van der Sangen, *Rechtskarakter En Financiering van de Cooperatie : Een Onderzoek Naar de Civielrechtelijke Kenmerken van de Cooperatie in Het Licht van de Vraag of Daaruit Beperkingen Voortvloeiën Voor de Financiering van Haar Ondernemingsactiviteiten* (WEJ Tjeenk Willink 1999); Günther JC Rensen, *Mr. C. Assers Handleiding Tot de Beoefening van Het Nederlands Burgerlijk Recht. 2. Rechtspersonenrecht. Deel III. Overige Rechtspersonen. Vereniging, Coöperatie, Onderlinge Waarborgmaatschappij, Stichting, Kerkgenootschap En Europese Rechtsvormen* (11th edn, Wolters Kluwer 2022) no 248.

⁷² For the Societas Europaea that are established in the Netherlands, the same profit distribution rules apply as for Dutch NVs and BVs.

⁷³ See further section 5.3.

⁷⁴ The term association seems to refer to a particular legal form. However, in the Netherlands, housing associations are normally structured as public or private limited liability companies.

⁷⁵ Marleen J van Uchelen-Schipper, ‘Rechtsvorm’ in Louis Houwen, Charlotte F Perquin-Deelen and Robert M Andes (eds), *Handboek Semipubliek Ondernemingsrecht* (Wolters Kluwer 2023).

apply for semipublic organisations, also with regard to profit distribution.⁷⁶ This is the main reason why semipublic organisations are excluded in this thesis.

The second limitation to the scope of the research relates to the substantive topic of profit distribution that is central to this thesis. Several related discussions exist in various disciplines on the concept of profit that are related to, but not central to, my research question.⁷⁷ These discussions focus mostly on the question regarding to what extent profit-making is justified.⁷⁸ The discussions focus on the tension between *profit-making* for shareholders and the pursuit of the interests of other stakeholders. Traditionally, emphasis has been put on the labour share: the percentage of national income allocated to wages. The counterpart of the labour share is the capital share. Here, the argument is that profits suppress wages to the benefit of shareholders and thereby increase inequalities.⁷⁹ As Piketty shows, these inequalities are inherent in capitalism because the rate of return tends to exceed the rate of economic growth.⁸⁰ Moreover, Eeckhout demonstrates that an important cause of high profits is market power. Indeed, a related discussion exists in competition law in which concerns exist about firms making excessive profits due to market concentration or anticompetitive practices. Eeckhout argues that a small number of companies have enormous market power allowing them to charge higher prices than they could in a competitive market. Effects of this include not only inequality and stagnating wages, but also unnecessarily high prices for customers.⁸¹

These debates about the causes, effects and morality of profit-making are relevant in the context of corporate purpose. However, the subject of my dissertation differs from these discussions in two ways. First, my thesis only studies one element of the question of profit: the *distribution* of profit to shareholders. Thus, it studies the extent to which the allocation of the company's net income matters. Whereas I focus thus on the legal distribution right, I argue that this is an

⁷⁶ KJ Bakker and AJ Snoei, 'Positie algemene vergadering en aandeelhouders of leden' in Louis Houwen, Charlotte F Perquin-Deelen and Robert M Andes (eds), *Handboek Semipubliek Ondernemingsrecht* (Wolters Kluwer 2023) para 3. For profit distribution in healthcare organisations see Emke Plomp, *Winst in de Zorg: Juridische Aspecten van Winstuitkering Door Zorginstellingen* (SDU 2011). Moreover, see also the recent legislative proposal which aims to strengthen the rules for profit distribution in healthcare organisations: Tweede Kamer (Dutch House of Representatives), 2024/25, 36686, no 2 (draft law)

⁷⁷ Meghnad Desai, 'Profit and Profit Theory', *The New Palgrave Dictionary of Economics* (Palgrave Macmillan UK 2018).

⁷⁸ See e.g. James W Child, 'Profit: The Concept and Its Moral Features' (1998) 15 *Social Philosophy and Policy* 243; Edward Nell, 'On Deserving Profits' (1987) 97 *Ethics* 403; Daniel Shapiro, 'On N. Scott Arnold's "Why Profits Are Deserved"' (2015) 125 *Ethics* 1168.

⁷⁹ See e.g. David Ricardo, *Principles of Political Economy and Taxation* (John Murray 1817); Karl Marx, *Wage-Labor & Capital* (Charles H Kerr 1986); Loukas Karabarbounis and Brent Neiman, 'The Global Decline of the Labor Share' (2014) 129 *The Quarterly Journal of Economics* 61.

⁸⁰ Thomas Piketty, *Capital in the Twenty-First Century* (Harvard University Press 2014).

⁸¹ Jan Eeckhout, *The Profit Paradox: How Thriving Firms Threaten the Future of Work* (Princeton University Press 2021).

important element in the discussion on profit-making. Indeed, I will argue that the shareholders' interest in financial gain, which is constituted by the right to receive profit distributions, is the main cause for the profit maximisation drive of companies. Second, the thesis does not study the discussion of profit distribution law from an ethical fairness or morality perspective, but from a functional perspective: it assesses how profit distribution law can facilitate corporate purpose.

5. Approach and methodology

5.1 Analytical framework: corporate purpose integration

This thesis aims to assess the success of corporate purpose in a particular company. This requires an analytical framework that describes what a successful corporate purpose entails. Because corporate purpose goes beyond the corporate purpose statement on paper, in this thesis, the success of corporate purpose in a particular company is determined by the extent to which corporate purpose is successfully **integrated** in the organisation.

Much has been written about how to put a corporate purpose into practice in an organisation.⁸² From this literature, it becomes clear that the corporate purpose must be integrated into everything that the company is and does. A corporate purpose should be the reason for being for the organisation and should be integrated in the organisational culture.⁸³ The analytical framework of corporate purpose integration, which is derived from Rey and Bastons, that is used in this thesis is based on this idea. The framework is operationalised in chapter 2.⁸⁴ It has three dimensions which entail that the corporate purpose is understood by the management board and by employees (*understanding*); that they find the corporate purpose important (*motivation*); and that the corporate purpose is

⁸² See e.g. Veldman, Gregor and Morrow (n 1); Robert E Quinn and Anjan V Thakor, 'Creating a Purpose-Driven Organization' (*Harvard Business Review*, 2018) <<https://hbr.org/2018/07/creating-a-purpose-driven-organization>> accessed 14 October 2021; Carlos Rey, Miquel Bastons and Phil Sotok (eds), *Purpose-Driven Organizations: Management Ideas for a Better World* (Springer International Publishing 2019); The British Academy (n 1); Mayer and Roche (n 21).

⁸³ Carlos Rey and Miquel Bastons, 'Three Dimensions of Purpose: Knowledge, Motivation, and Action' in Carlos Rey, Miquel Bastons and Phil Sotok (eds), *Purpose-driven Organizations: Management Ideas for a Better World* (Springer International Publishing 2019) 38–39.

⁸⁴ See chapter 2, section 3.5.

prioritised in (strategic) decisions by the management board and employees (*action*).⁸⁵

In chapter 3 of this thesis I argue that profit distribution structures can influence corporate purpose integration via two mechanisms. The first mechanism relates to the financing structure of the company: profit distributions reduce the company's space for investment in corporate purposes. Here, the integration of corporate purpose can be studied by looking at the extent to which the corporate purpose is taken into account in profit distribution decisions. The *action* dimension is thus central in this first mechanism through which profit distribution structures can influence corporate purpose integration. The second mechanism relates to the influence of the profit distribution structure on the people and the dynamics in the organisation: the legal profit distribution structure not only creates particular incentives which may influence people's actions, but also constitutes how people see the world. Here, all three dimensions of corporate purpose are relevant.

In the first section of this introduction, it was emphasised that shareholder primacy is not a formal purpose that companies pursue, but a value, norm and way of doing business that is ingrained in the entire organisation.⁸⁶ The same applies thus to corporate purpose. It is therefore also on this deeper level that this thesis studies the role of the profit distribution structure. To summarise, this thesis focuses both on the structural constraints imposed by the profit distribution structure and on its more subtle, 'softer' influences on the organisation.

5.2 Law's constitutive function

This thesis starts from the notion that law is co-constitutive of (power) relations between persons and of people's consciousness and social norms. From this perspective law is part of an ecosystem of other (social) norms, values and market constraints. As part of this ecosystem, the law is internal to society. This is an important lens through which the role of profit distribution law is perceived in this thesis.

Institutional scholars such as Pistor and Deakin have argued that law plays a constitutive role in shaping economic institutions such as ownership. Here, the

⁸⁵ Rey and Bastons (n 83).

⁸⁶ See section 1.1.

law functions as a central mechanism through which power is exercised.⁸⁷ This is possible because, unlike customary norms, legal rules carry the possibility of state enforcement. This enforceability gives the law normative force through which economic institutions and power relations, that the law gives rise to, are not only maintained but amplified.⁸⁸

Moreover, as Gordon argues, the law can influence people's consciousness on an individual level as well as social norms on a collective level. Firstly, the law can be internal to people's identities. This means that people's identities are sometimes co-created by their legal constitution, in this case the set of rights and duties that company law grants.⁸⁹ This implies that the legal profit distribution structure can play a role in shaping how, for instance, shareholders but also employees perceive themselves and their role in the organisation. Secondly, as a state-backed set of rules, the law also plays a function in signalling to people what is good or bad, what is normal and what is not. The options provided by the law and the way they are distinguished from each other (e.g. 'for profit' vs. 'not for profit') can shape our imagination of the range of practical options. As Bartl argues, law also has future-shaping properties: it not only normalizes the present, but it also presents constraints on what may be considered as 'non-radical' proposals in the future.⁹⁰ In this way, the law can shape our perceived possibilities, desires and plans.⁹¹ Building on this, changes in the law may not only affect the legal relationships between individuals and legal entities, but may also contribute to shifts in social norms and thereby, to cultural shifts.

Because the law is part of an ecosystem of other norms, values, and market constraints, the influence of the law on societal practices is dependent on and mediated by these other factors.⁹² Therefore, this thesis also places emphasis on the way in which boards and employees understand and relate to the profit distribution structure, namely, the understandings and actions of people influence how the law works out in practice. The interpretive approach that is used in the qualitative empirical research, which will be introduced in the next section, enables a focus on the interplay between actors and their context. In this thesis, this refers to people's interpretations and perceptions of legal profit distribution

⁸⁷ Simon Deakin and others, 'Legal Institutionalism: Capitalism and the Constitutive Role of Law' (2017) 45 *Journal of Comparative Economics* 188; Katharina Pistor, *The Law of Capitalism and How to Transform It* (Yale University Press 2025).

⁸⁸ Deakin and others (n 87); Pistor (n 87) ch 4.

⁸⁹ Robert W Gordon, 'Critical Legal Histories' (1984) 36 *Stanford Law Review* 57, 106. An example Gordon mentions is the identity of the employee that is co-constituted by the employee's legal status.

⁹⁰ Marija Bartl, *Reimagining Prosperity: Toward a New Imaginary of Law and Political Economy in the EU* (Cambridge University Press 2024) 43.

⁹¹ Gordon (n 89) 111–112.

⁹² See e.g. Beate Sjøfjell and Mark B Taylor, 'Planetary Boundaries and Company Law: Towards a Regulatory Ecology of Corporate Sustainability' (2015) University of Oslo Faculty of Law Research Paper 2015/11 3–9 <<https://papers.ssrn.com/abstract=2610583>> accessed 5 January 2021.

structures and the way in which these legal profit distribution structures affect their (decision-making) practices.⁹³

5.3 Methodology

Adopting a sociolegal methodology, this thesis addresses a legal question through an interdisciplinary approach. Concretely, the main methods used in this thesis are normative legal research and (quantitative and qualitative) empirical research. By combining these methods, the thesis studies profit distribution law both as a ‘black letter’ as well as ‘in action’.

Normative legal research evaluates a given legal framework and/or proposes solutions to a legal problem.⁹⁴ This thesis examines Dutch profit distribution law through the lens of corporate purpose. The aim is to explore how the law shapes practices of profit distribution and the obstacles it may create for integrating corporate purpose into an organisation. As such, chapter 4 studies Dutch profit distribution law, asking to what extent corporate purpose is considered in the relevant provisions. The analysis critically engages with legislation, its underlying principles and the application of these rules in case law, using corporate purpose as the normative benchmark. At the same time, it is acknowledged that profit distribution law mediates between multiple interests. Accordingly, the analysis considers how corporate purpose is reflected in the law, while also taking into account the interests of shareholders, creditors and other stakeholders.

The normative-legal research can only provide conclusions on the extent to which corporate purpose is taken into account in profit distribution law. This alone does not provide all the necessary insights, because it does not tell us whether it *matters* if corporate purpose is taken into account in profit distribution law. To assess this, the evaluation of the ‘law-in-the-books’ is complemented with a study of the ‘law-in-action’.⁹⁵ The thesis uses a combination of **quantitative and in-depth qualitative empirical research**. The quantitative component of the research, presented in chapter 3, assesses the current state of dividend policies among Dutch listed companies following a review of their development since the 17th

⁹³ Dvora Yanow, Sierk Ybema and Merlijn Hulst, ‘Practising Organizational Ethnography’ in Gillian Symon and Catherine Cassel (eds), *The Practice of Qualitative Organizational Research: Core Methods and Current Challenges* (SAGE 2012) 337.

⁹⁴ Sanne Taekema, ‘Theoretical and Normative Frameworks for Legal Research: Putting Theory into Practice’ [2018] *Law and Method* 1, 2.

⁹⁵ Mike McConville and Wing Hong (Eric) Chui, *Research Methods for Law* (Edinburgh University Press 2024) 14–15.

century, based on existing literature. This analysis is based on two sources: the companies' annual reports for 2023 and a longitudinal assessment of actual profit distributions over the period 2015–2023. From these quantitative findings, I draw conclusions regarding the factors that Dutch listed companies currently prioritise in their dividend policies, and the extent to which these priorities align with or diverge from patterns identified in previous periods as documented in the literature. The methodology and limitations of the quantitative empirical research are explained in more detail in chapter 3.

In-depth qualitative research methods are applied in chapter 5 to unpack the importance of the legal profit distribution structure for corporate purpose integration at the level of the organisation. As discussed, corporate purpose integration requires purpose to be embedded in the norms and motivations of employees and the organisational culture. It is necessary to study this because the criticism of for-profit company structures in the context of corporate purpose suggests that the profit distribution structure may have an impact on the incentives in the organisation. Moreover, some literature suggests that profit distribution structures may also affect the motivation of employees. All these 'soft' aspects are embedded in broader organisational dynamics that cannot be studied by only looking at the law or the company's quantitative performance. Rather, they require in-depth qualitative research.

I have undertaken two empirical case studies of companies in the Dutch construction sector.⁹⁶ Both companies pursue a corporate purpose, but they have different profit distribution structures. The first case study is of a private limited liability company that distributes profits to a foundation. The foundation pursues collective goals with the received dividends. The second case study is of a listed public limited liability company that distributes profits to private investors, via a Share Administration Trust ('Stichting Administratiekantoor'). The investors are allowed to pursue private goals with the received profits.

The case study research is approached from an interpretive perspective. This means that the impact of the law on the organisation are studied via the interpretations of the people working in the organisation. The data are collected via a multi-method approach including document-analysis, interviews and observations. In this way, I have aimed to gain an insight in the interpretations of people and get a sense of the tensions within the organisation. The methodology

⁹⁶ It is important to note that the term *case study* is used in two distinct ways in this thesis. First, the doctrinal-legal research in the thesis takes Dutch profit distribution law as its main focus, treating it as a case through which broader legal questions are examined. This also means that throughout the thesis the focus is mostly on Dutch companies. Second, in chapter 5, the term case study refers to a specific empirical research method, in which two Dutch construction companies are examined qualitatively within the broader context of Dutch profit distribution law.

and limitations of the qualitative empirical research are explained in more detail in chapter 5.⁹⁷

Eventually, the combination of the normative legal research ('the analysis of profit distribution law through the lens of corporate purpose') and the empirical research ('why it matters') results in legal proposals for profit distribution law, in particular in the Netherlands. Importantly, the empirical research does not generate normative conclusions by itself. The empirical findings presented in this thesis only demonstrate that profit distribution restrictions can effectively facilitate the integration of corporate purpose. These findings are descriptive rather than normative. The normative conclusion that profit distribution law should impose more restrictions on profit distribution to facilitate corporate purpose better does not follow from the empirical results alone, but from the combination of a normative argument made in chapter 2 – that corporate purpose is a desirable legal objective; the observation in chapter 4 that profit distribution law does not create sufficient safeguards for corporate purpose; and the empirical evidence of chapters 3 and 5 showing that profit distribution restrictions can help achieve corporate purpose integration.⁹⁸

6. Academic and societal relevance

According to company lawyers, the mainstream legal corporate ownership structure may be standing in the way of a serious integration of corporate purpose in the organisation.⁹⁹ Companies can play a crucial role in solving societal challenges and in creating inspiring workplaces. The idea of corporate purpose has gained significant attention from businesses, investors, and academics as a means of enabling companies to fulfil these roles.¹⁰⁰ However, if corporate ownership is not taken seriously, there is a risk that such efforts will amount to purpose-washing. As this thesis demonstrates, profit distribution law plays a crucial role in the debate on corporate purpose and in its implementation within companies as well as in national and European policy.

⁹⁷ See chapter 5, section 2.

⁹⁸ With the combination of empirical and normative research, it is important to be mindful not to draw conclusions about 'what should be' based on 'what is'. However, when using empirical research only as supportive of normative legal research in the way described here, this problem does not exist. See also Georg Spielthener, 'The Is-Ought Problem in Practical Ethics' (2017) 29 HEC forum 277, 283. The usage of the empirical research in my thesis falls under category 1 of 'straightforward uses of empirical data' as mentioned by Spielthener.

⁹⁹ See further chapter 2, section 3.4.

¹⁰⁰ See chapter 2, section 3.1.

This thesis brings together the corporate purpose discourse with the discourse on ownership. As discussed, the corporate purpose discourse takes for granted the mainstream corporate ownership structure in which the people who primarily hold the management board to account have a right to receive the company's profits. Therefore, the corporate purpose discourse largely ignores two important questions: first, what happens with these profits? Second, which incentives are created by the way in which the company distributes its profits? The first contribution of this dissertation is that it emphasises the importance of the legal profit distribution structure with regard to (difficulties in) the pursuit of corporate purpose.

To arrive at this finding, this thesis studies profit distribution law in the books and in action. On the basis of this, the thesis shows that limiting profit distribution is precisely what makes a company purpose-driven. Namely, the two questions that were just raised – what the company does with its profits, and what incentives this legal profit distribution structure creates – turn out to be crucial, and the answers to the questions are for a large part determined by the law. Indeed, the thesis also unpacks the relation of the legal profit distribution structure to other (economic, social and legal) factors. It thereby shows that profit distribution law not only leaves companies a wide discretionary space regarding profit distributions, but also constitutes the very reason why profit maximisation incentives exist in the first place. At the same time, both the company's profit distribution policy and the incentives for the management board are influenced by many other factors. This implies that other (legal or other) interventions may be relevant, but potentially cannot solve the problems identified in this thesis altogether. This places emphasis on the legal profit distribution structure, and makes the proposals made in the final chapter even more important.

In addition to this core contribution, the thesis also makes two other contributions. First, this thesis strengthens the case for seeing corporate purpose as an alternative **corporate governance theory** next to existing corporate governance theories such as agency theory and team production theory. In this theory, the management board focuses on the purpose directly rather than on the interests of particular constituencies. This thesis shows that in organisations in which profit distribution rights are limited, corporate purpose as a governance theory may become more viable. Here, it shows that the law already allows for the creation of various modalities between the traditional for-profit versus not-for-profit distinction. These modalities may combine a commercial focus with decreased profit-incentives and thereby enable corporate purpose better than mainstream ownership structures. As such, the corporate purpose discourse should not take the for-profit corporate structure for granted but open up much more to alternative profit distribution structures.

Finally, the thesis contributes to recent company law debates by making concrete proposals for the legislator for general corporate law and for specific legal frameworks for purpose-driven companies. Until now, profit distribution law has mainly been designed to protect creditor interests. This thesis adds the interest of the company in pursuing its purpose to the considerations in profit distribution law. By emphasising that we should see profit distribution not as a shareholder-centric practice but as a tool for channelling capital toward purpose-driven strategies, the thesis develops further the normative understanding of profit distribution law.

7. The (structure of the) argument

The central argument of the thesis is that the (Dutch) legal structure of profit distribution in limited liability companies does not sufficiently take into account corporate purpose and thereby stands in the way of successful corporate purpose integration. The structure of the argument is as follows. **Chapter 2** sets the stage for the thesis by first explaining where corporate purpose comes from and to which problems it aims to respond. Moreover, chapter 2 sets out how corporate purpose may be defined and how it is or can be implemented in corporate law and in the organisation in practice. Corporate purpose is defined as the higher goal of a company, related to firm-specific products and/or services, that guides the creation of long-term value. As such, it can act as a governance model directing the efforts of the management board to the collective purpose rather than individual constituencies. It is argued that this already aligns with how corporate law is structured in some stakeholder-driven countries. Whether this applies depends on the interpretation of the interest of the company in a particular legal system. In Dutch law it is argued that the interest of the company is generally defined as the continued success of the company, which is coloured by, among other things, the company's objectives. However, to make the corporate purpose even more central, it can be integrated in the articles of association and the duties of the board. With regard to organisational corporate purpose integration, chapter 2 develops an analytical framework which shows 'where to look for corporate purpose' in the organisation. This analytical framework constitutes the lens through which the success of corporate purpose is perceived in this thesis. In this framework, corporate purpose is operationalised on the basis of the three dimensions that were mentioned before: knowledge, motivation and action.

Chapter 3 sets out the problem with profit distributions in the context of corporate purpose. The chapter first gives a general overview of the relevant considerations with regard to financing companies, of which profit distribution is

an important part. Then the chapter draws on existing literature to give an overview of how profit distributions have enabled and obstructed corporate purpose throughout history. To do so, it looks at both economic theories of profit distribution as well as reports about profit distribution policies in practice. Moreover, to provide an overview of recent profit distribution practices, the chapter also includes quantitative research into dividend policies of Dutch listed companies between 2015 and 2023. With regard to dividend policies in the past and today the findings demonstrate that, over the course of the 20th century, profit distribution theories and practices have reflected the shifting priorities between corporate purpose and shareholder primacy: while the early focus was on retaining profits to serve broader corporate aims, the emphasis has increasingly shifted toward catering to shareholder preferences. As such, they nowadays often stand in the way of corporate purpose. More concretely, two tensions are found. First, profit distributions reduce the company's equity capital, which may become problematic if this comes at the expense of investments in the corporate purpose or even the company's financial stability. Second, the legal profit distribution structure may affect the (people in the) organisation on a deeper level, for instance by creating profit maximisation incentives for the board and, by extension, the employees. These profit maximisation incentives may on the one hand enable risk-taking and economic efficiency. On the other hand, they also have been found to distract from the focus on corporate purpose.

Chapter 4 sets out the role of profit distribution *law* in the problems described in chapter 3. It studies the rights of shareholders to profit distribution, the decision-making rules with regard to profit distribution, and the possibilities for reserving profits. In short, the chapter shows that the legal framework of profit distribution only to a very limited extent takes into account the interests of the company in the rules regarding profit distributions. Therefore, it does not sufficiently safeguard the pursuit of corporate purpose. By default, shareholders have the right to receive profit distributions, to use them for their private goals, and to decide about when these profits are paid out or reserved. Boards have limited means to enforce the retention of profits for the pursuit of specific (corporate purpose-related) objectives. The chapter also shows that there are possibilities to limit shareholder's profit distribution rights, which are often used in practice. The chapter provides an overview of the ways in which companies can limit shareholder distribution rights. It is also emphasised, however, that these options always require the consent of the general meeting of shareholders, and often from shareholders whose rights are impaired by the proposed change. Finally, chapter 4 shows that next to this mainstream legal profit distribution structure in the corporate form there are also alternative profit distribution structures. First, there are other legal forms in which profit distribution is less central or prohibited, such as cooperatives, foundations and associations. Second, the steward-ownership

model is discussed as a hybrid form between for-profit and not-for-profit structures, that is suitable for limited liability companies.

Chapter 5 conducts qualitative empirical research, addressing the need for a deeper understanding of how legal profit distribution structures shape the organisational dynamics – the incentives, motivations and shared understandings in which corporate purpose should be embedded, according to the literature. As such, this chapter focuses on the second mechanism as identified in chapter 3 through which profit distribution influences corporate purpose integration: its impact on the organisation. The discussion centres on two case studies from the construction sector: StewardBuild and PublicBuild. While PublicBuild, a publicly listed NV, follows a traditional profit distribution structure, StewardBuild is characterised by a steward-ownership structure in which a foundation – whose primary aim is to ensure the company’s continuity – acts as its sole shareholder. In these two companies, multi-method case studies are conducted. This means that findings are derived from interviews, observations and document analysis. Based on a comparison of the two cases, the chapter argues that steward-ownership structures are more likely to foster employee belief in the company’s purpose and enhance their intrinsic motivation compared to traditional ownership structures. The case studies suggest that this is the case because in a steward-ownership structure the profits that are distributed are used (by the foundation-shareholder) for collective goals. This is different from mainstream corporate ownership structures in which profits are used for individual goals. This shows that a profit distribution structure directly influences the way in which employees perceive the purpose of their organisation. The case studies provide more nuanced insights regarding the role of profit maximisation incentives in decision-making by boards and employees. First, the case studies show that profit maximisation incentives can lead to an increased willingness to make large investments in the corporate purpose, whereas a steward-ownership structure with lower pressure from the financial markets may reduce the willingness to take such risks. At the same time, the reduced pressure from the financial markets does not eliminate the focus on profit altogether: the steward-owned company in my research is still profit-orientated and operating in a competitive market and as such, efficiency is still important. Moreover, the case studies show that reducing pressure from the financial markets may also increase the space for employees to also prioritise the corporate purpose when there is no expected purpose-profit synergy.

Based on the finding that mainstream profit distribution law, both in the books as well as in action, does not sufficiently enable the pursuit of corporate purpose, **chapter 6** argues that the law should be changed. The first proposal in this chapter therefore aims to create more space for corporate purpose integration in mainstream profit distribution law, while leaving the possibility intact to

distribute profits. To do so, it argues that the interests of the company (in pursuing the corporate purpose) should be made more central in decisions about profit distribution. Therefore, for general company law, it is proposed that the board is given a larger role in profit distributions, because the board has a legal duty to pursue the interest of the company. In doing so, the board has to balance the continued success of the firm against the interest of the shareholders and other stakeholders. The extent to which the corporate purpose has to be taken into account in profit distribution decisions then depends on the extent to which the firm's *strategy* is based on a corporate purpose. In addition, chapter 6 also argues that alternatives to mainstream profit distribution law must be created. As such, a second proposal is put forward for companies that voluntarily want to put their corporate purpose more central by limiting their profit distributions. Such companies include social enterprises and steward-owned companies. To facilitate such alternative profit distribution structures, the legislator is considering creating new legal frameworks for them. The chapter considers this to be desirable and argues that profit distribution should play an important role in these frameworks.