



Promoting corporate citizenship through clinical legal education

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ABSTRACT

With the conversation regarding corporations and their role in society becoming mainstay in the public discourse, the broad consensus appears to be that the corporation does in fact owe a duty to more than its investor constituency, even though there remains to be a similar agreement regarding the extent of the aforementioned duty. Corporate citizenship had been devised as a prism by which one might evaluate the role of business in society. However, the perceived voluntarism that often underpins pervasive notions of corporate citizenship and its interchangeability with the parallel concept of corporate social responsibility meant that it had been widely considered to be merely an extension of the latter in its base state. In this article, I argue for an expansion of the concept of corporate citizenship, a paradigm of consideration of the rights and obligations of corporations similar to those of natural citizens. Furthermore, the article considers what role clinical legal education, particularly business law clinics who work with start-ups, might play in ushering corporations along the path to true citizenship.

Keywords: corporate citizenship; clinical legal education; corporate governance; business ethics; business law clinics.

INTRODUCTION

Most observers of trends within corporate governance might have become accustomed to having corporations talk about becoming better corporate citizens. However, the term corporate citizenship (CC) has quite a nebulous affect, in that sense that there is yet to be a broadly accepted description of what it means to be a ‘corporate citizen’, much less a good one.¹ The nagging question remains regarding the capacity for corporations to be aptly described as citizens and whether this connotes a citizenship replete with the rights and corresponding obligations enjoyed by natural persons.

The question as to what the notional CC connotes furthers the debate regarding the ultimate objective of the corporation and what that

1 Carmen Valor, ‘Corporate social responsibility and corporate citizenship: towards corporate accountability’ (2005) 110(2) *Business and Society Review* 191–212,195.

should be. The focus of the latter has oscillated between the current emphasis on investors and their interests and a more pluralistic view of the firm, which pays attention to a host of other constituencies including employees, customers, the host communities and indeed the physical environment. A society's approach to corporate governance is a natural consequence of its view of the firm and how businesses should participate in and interact with their immediate environment. Therefore, a society which views the firm as a privately ordered vehicle for private wealth enhancement may consequently require the company to do no more than fulfil its core objective. This approach would inevitably differ in societies that view corporations as a means to attain a greater social good.

The view of a corporate citizen is variedly interpreted; with viewpoints ranging from CC involving a voluntaristic, philanthropic ethos to the conceptualisation of citizenship which is mimetic of the obligations and rights of the natural citizen. In this article, I adopt a view of citizenship which mimics the latter but is formulated on the back of the notion of a *pro-social* corporation – a corporation which prizes the collective interest above individual profitability. Here, corporate actors go beyond the mere rhetoric that espouses the values of so-called 'stakeholder capitalism'² but involves a corporate system where each constituent is conditioned to function as the natural citizen is, enjoying rights (which corporations do) and corresponding obligations (which corporations do not always have). I argue that there is a need for a pivot in our view of how companies participate in society and whether the firm has a role beyond profit maximisation. Especially as the volatility of our present-day circumstances – in regard to the environment and other socio-political unrests – bears witness to the excesses of a profit-centred approach to corporate governance.³ On the other hand, a society where corporations work pro-socially might very well lead to sustainably better living standards for all within,

2 The influential Business Roundtable, a conglomeration of CEOs of the largest corporations, released a statement in favour of what it termed 'Stakeholder Capitalism'. This was a major shift from its previous position that the corporation should be run to benefit shareholders mainly and all other competing interests were to be merely ancillary to this overarching objective. This statement represented a tectonic shift in the Anglo-American approach to corporate governance and adds further fuel to the decades-long debate on the corporate objective and the primacy of shareholder interests: Business Roundtable, 'Statement on the purpose of the corporation' (*Business Roundtable* 19 August 2019).

3 Martin Wolff, 'Milton Friedman was wrong on the corporation' *Financial Times* (London 8 December 2020).

entrenched worker rights etc.⁴ The challenge, however, in the absence of the requisite political will, extends beyond mere conceptualisation of a true corporate citizen to its attainment. How, therefore, could corporations become true citizens? In this article, I extend clinical legal education (CLE) – particularly business law clinics – as a useful instrument for the promotion of citizenship values through its work with infant corporations.

CLE is generally considered a social good; whose initial conception was as a vehicle for attainment of social justice objectives by ‘educating students about economic disparities, unequal application of the law, and abuses of power’.⁵ As such, a law clinic should service those least able to afford legal costs and most in need of it. Thus, clinics step into a figurative void, left by decades of divestment from a threadbare social welfare infrastructure.⁶ It is therefore not surprising, considering the initial bent of these clinics, how some might view the notion of a clinic established to service the business community as undermining their core mission.⁷ Here, however, I argue that the utilisation of law clinics in this manner not only has valuable educational benefits for participating students but, by helping to instil citizenship values in infant corporations, they also embody the socially oriented value systems that clinics are meant to promote. To further this, I highlight what CLE as a methodology for true CC could entail, showing some of the work that clinics could do, both with and through their student participants, to help build responsible and socially conscious corporations from the ground up. It is important to stress at this point that the discussions within this article are theoretical and are focused on the participants of business law clinics, and how they could support the businesses they engage with in their clinical practice.

The article is outlined as follows: the next section will consider the traditional/mainstream Anglo-American view of the firm and whether it should have a social function. I have chosen to focus on this model of corporate governance due to the growth of shareholder-centred governance – and the attendant consequences – even in jurisdictions

4 CROWE, ‘Socialism, social democracy, and capitalism: a debate on which is right for America’ (University of Wisconsin 11 March 2020)

5 Praveen Kosuri, ‘Losing my religion: the place of social justice in clinical legal education’ (2012) 32(2) *Boston College Journal of Law and Social Justice* 331, 342; Donald Nicolson, ‘Legal education, ethics and access to justice: forging warriors for justice in a neo-liberal world’ (2015) 22(1) *International Journal of the Legal Profession* 51–69, 52.

6 Nicolson (n 5 above) 52.

7 Elaine Campbell, ‘A dangerous method? Defending the rise of business law clinics in the UK’ (2015) 49(2) *The Law Teacher* 165–175, 166.

that had previously adopted different governance approaches.⁸ Section two will explore the concept and debates about CC, whilst section three will outline the author's views on how corporations could become better citizens. The final section will examine a possible role for law clinics in attaining the aforementioned objective and will address the practical ways the latter could be achieved. The article concludes thereafter.

THE PARADOX OF THE SOCIALLY RESPONSIBLE CORPORATION

Milton Friedman, in considering the concept of a socially responsible corporation, stated unequivocally that the only responsibility of a business was to increase its profits.⁹ It is fair to say that, whilst this view might have been slightly outside of the mainstream at the time the article was published in 1970, the pervasion of the neo-liberal ideology in the decades since has ensured its acceptance as the norm.¹⁰ It is, therefore, the popular view that the corporation should prioritise profits and that shareholder interests should be at the fore of the corporate agenda.¹¹

Despite its popularity in boardrooms across Anglo-American jurisdictions, the shareholder primacy doctrine¹² has received pushback from those who insist that the corporation should have

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- 8 Henry Hansmann and Reinier Kraakman argued that there was a convergence towards the Anglo-American shareholder governance model even within jurisdictions that had shown some reticence or hostility towards the model. They attributed this to several factors including the perceived success of British and American firms compared to their global counterparts and the failure of the other models of corporate governance and the growth of the shareholder class across the globe, as well as the legislative framework that tends to the latter: Henry Hansmann and Reinier Kraakman, 'The end of history of corporate law' (2000).
 - 9 Milton Friedman, 'The social responsibility of business is to increase its profits' *New York Times Magazine* (New York 13 September 1970).
 - 10 Neoliberalism is an extreme form of free market economics: 'It champions economic liberalisation, privatisation, free trade and deregulated markets, and seeks to reduce government spending as far as possible. Neo-liberalists believe that leaving matters to private enterprise is far more efficient than collective action, and consequently seek to replace the state with private enterprise, and notions of social justice and the public good with profit-making and self-interest.' Nicolson (n above 5) 52.
 - 11 In *Peoples Department Stores v Wise* (2003) 244 DLR, the Canadian court declared 'the interests of the corporation as coinciding with the interests of all of the shareholders in the pursuit of the objectives of the creation of the corporation'.
 - 12 This is the view that the corporate objective should be the maximisation of shareholder wealth. See D Gordon Smith, 'The shareholder primacy norm' (1998) 23 *Journal of Corporation Law* 277.

responsibilities that extend beyond profit maximisation.¹³ The resistance to this ingrained value system has only intensified in the wake of devastating financial crises, extreme levels of income and wealth inequalities, not to mention the adverse effects of corporate activity on environmental prospects in the long term. These increased agitations have not been without response, however, as corporations have voluntarily shown an openness to broaden the corporate objective, displaying a willingness to countenance the needs of the firm's other stakeholders and become good corporate citizens.¹⁴ Hence, CC has become a fashionable and important weapon in the public relations arsenal of the largest corporations.

Notwithstanding the laudability of this leftward shift – if one were to disregard the patent self-promotive intent – it remains the case that CC continues to be voluntary. In the sense that corporate acts of social responsibility continue under an incentivized self-imposed system, rather than from an innate acceptance of the firm's responsibility to all its stakeholders. However, to fully critique the current position, one must first consider two key questions: whether firms have social responsibility and, if so, what the basis for said responsibility should be.

The traditional view of the corporation: the view of the firm as amoral

As living standards have improved in the developed world, people in the West have begun to consider the 'social cost of their own enrichment'.¹⁵ This has caused us to question our purchasing habits, as well as the environmental and social impact of the industrial and productive processes which afford our leisured lifestyles. These questions are invariably put towards the corporation which is the prime vehicle of the technological advancements which have made all these possible. In so doing, we project the burdens of our own moral consciences unto the corporate form, hence: if our individual or collective consternation about the costs of our lifestyle ignites a sense of responsibility towards society at large, there, therefore, must be a corresponding sense of corporate responsibility.

As mentioned above, until recently the consensus on corporate responsibility – at least within Anglo-America and other like-minded jurisdictions – was a singular focus on shareholder wealth

13 R Edward Freeman, Andrew Wicks and Bidhan Parmar, 'Stakeholder theory and the corporate objective revisited' (2004) 15(3) *Organization Science* 364–369.

14 Susan McPherson, 'Corporate responsibility: what to expect in 2019' *Forbes* (New Jersey 14 January 2019)

15 Thomas Kempner, Kevin Hawkins and Keith Macmillan, 'The role of business in society' (1970) 2(4) *Long Range Planning* 3.

maximisation.¹⁶ Corporations were focused on the interests of their owners for a myriad of reasons¹⁷ and were urged to pay some consideration to the interests of their other stakeholders. This is known as the enlightened shareholder value approach.¹⁸ There is no evidence to suggest that the drafters chose this approach to corporate governance due to a recognition of the corporation's responsibility to all its stakeholders, as much as from the need to balance corporate interests effectively.¹⁹

Corporate social responsibility (CSR) could be understood to consist not only of corporations engaging in business activities that benefit society but also of avoiding activities that impose significant social costs or harms.²⁰ To this point, Friedman believes that the notion of CSR is antithetical to the interests of shareholders.²¹ He argues that

16 Michael Jensen echoed this position when he said that 'multiple objectives, was no objective'. See Michael Jensen, 'Value maximization, stakeholder theory and the corporate objective function' (2002) 12(2) *Business Ethics Quarterly* 235–256, 238.

17 One of the common reasons proffered to justify the maximisation of shareholder interests is that shareholders are a vulnerable class, a consequence of their position as residual claimants. This argument ignores the fact that shareholders are entitled to dividend payments and are also able to potentially earn significant returns on their initial investments when there are price increases: Kenneth Goodpaster, 'Business, ethics and stakeholder analysis' (1991) 1(1) *Business Ethics Quarterly* 53–73, 69. Furthermore, Jensen and Meckling, amongst others, argue that prioritising shareholder interests is the most efficient way to govern the corporation and reduce agency costs: see Michael Jensen and William Meckling, 'Theory of the firm: managerial behaviour, agency costs and ownership structure' (1976) 3(4) *Journal of Financial Economics* 305–360.

18 The Companies Act 2006, s 172, encouraged directors to prioritise the interests of their members, whilst paying consideration to the needs of other stakeholders including employees, customers, suppliers and the environment. This position has been branded the enhanced shareholder value, one which still subscribes to the notion of shareholder primacy, but also considers the needs of the other stakeholders, albeit as having a secondary status. See Andrew Keay, 'Having regard for stakeholders in practising enlightened shareholder value' (2019) 19(1) *Oxford University Commonwealth Law Journal* 118–138.

19 The Company Law Reform Steering Group was tasked with identifying the best approach to corporate governance. The committee was also charged with the codification of director's duties, which was previously grounded in common law. The group's objective was to maintain the common law approach of shareholder primacy. But sought to 'strike a balance' between the competing stake-holding interests, to achieve the stated goal. This approach was deemed necessary to encourage the cultivation of long-term relationships, which would help corporations to avoid being overly focused on the short-term. See, John Armour, 'Shareholder primacy and the trajectory of UK corporate governance' (2003) 41(3) *British Journal of Industrial Relations* 531, 531–555.

20 Valor (n 1 above) 194.

21 Friedman (n 9 above).

if managers were to undertake policies aimed at advancing social interests, the opportunity costs would be to forego opportunities to enhance the wealth of their owners. As such, he states:

What does it mean to say that the corporate executive has a ‘social responsibility’ in his capacity as businessman? If this statement is not pure rhetoric, it must mean that he is to act in some way that is not in the interest of his employers. For example, that he is to refrain from increasing the price of the product in order to contribute to the social objective of preventing inflation, even though a price increase would be in the best interests of the corporation. Or that he is to make expenditures on reducing pollution beyond the amount that is in the best interests of the corporation.²²

It appears that Friedman looks beyond the charade of corporate personality and views the corporation as a legal fiction, meant to facilitate the business activities of the private actor.²³ This view considers the corporation as a mere platform for the transactional, principal–agent relationship between managers and investors, with the former being the only entity capable of exercising responsibility. A responsibility, which is owed – as far as the corporation is concerned – solely to shareholders. Mirroring Friedman’s position on CSR is the view which holds the firm as having some responsibility but agrees that focusing the corporate objective on shareholder interests is the most efficient way to govern.²⁴ Adolf Berle believed that it was to the wider interest that the corporate objective be narrowed sufficiently to enhance the interests of its members.²⁵ Arguing that prioritising investor interests was the best way to curb managerial powers and control for managerial abuse.²⁶ Although, Berle’s middling view avoids the ostentation and brashness of Friedman’s opinion, he essentially arrives at the same conservative conclusion, at best his views represent a form of progressive conservatism.

It is important to note that, in times past, the view within Anglo-America of the role of business was very different. Nineteenth-century entrepreneurs took a more active role in the wellbeing of their employees and immediate community and, in many ways, were

22 Ibid.

23 Here Friedman echoed the contractarian view of the firm, which views the latter as a nexus of contracts, basically a platform upon which private actors can contract. Marc Moore, ‘Private ordering and public policy: the paradoxical foundations of corporate contractarianism’ (2014) 34(4) *Oxford Journal of Legal Studies* 693–728.

24 Friedman (n 9 above).

25 Adolf Berle Jr, ‘For whom corporate managers are trustees: a note’ (1932) 45 *Harvard Law Review* 1365–1372, 1367.

26 Ibid.

forced to do so.²⁷ A notable example is Henry Ford of the Ford Motor Company, who believed that paying a good wage to his employees was ultimately to the company's economic benefit.²⁸ Kemper and colleagues note, however, that this sense of responsibility began to weaken with the expansion of the welfare state²⁹ as the government began to play a more active role in the provision of services that companies previously undertook.

One could argue that the firm does in fact owe an unconditioned social responsibility and this responsibility is to all constituencies touched by corporate activity.³⁰ This responsibility extends to its employees, customers, creditors and the environment. One could also argue that the corporation has a responsibility to treat its employees fairly and pay a fair wage, deal with its creditors in an ethical manner, provide the best service to its customers and be responsible about its environmental impact.³¹ The preceding is not optional, but imperative.

If we, therefore, agree that corporations do owe some responsibility to a broad and more expansive constituent base, an appropriate justification must be provided. In the following section, I proffer an argument that ascribes a citizen-like status to the corporation and argue that the latter provides an appropriate platform to situate the corporation's social responsibility.

CORPORATE CITIZENSHIP: COULD CORPORATIONS BE TRUE CITIZENS?

As ubiquitous as the term CC has been recently, what is not often clear upon casual observance, is the true meaning of the term and how this differs from the notion of CSR?

27 Due to the indifference of the state to public welfare in the nineteenth century, entrepreneurs stepped in to fill the void and provide amenities for their employees that would today fall within the remit of national and local governments, such as housing and education. Whilst this level of involvement was in line with the paternalism with which these entrepreneurs dealt with their employees, it did, however, arise from a sense of responsibility or *noblesse oblige*: see Kempner et al (n 15 above) 4.

28 Tim Worstall, 'The story of Henry Ford's \$5 a day wages: it's not what you think' *Forbes* (New Jersey 14 March 2012).

29 Kempner et al (n 15 above); also, see Norman Bowie, 'A Kantian approach to business ethics' in Thomas Donaldson, Patricia Werhane and Margaret Cording, *Ethical Issues in Business: A Philosophical Approach* (Prentice Hall 2002) 61, 69.

30 R Edward Freeman, 'The politics of stakeholder theory: some future directions' (1994) 4(4) *Business Ethics Quarterly* 409–421, 419.

31 Bowie (n 29 above) 9.

CSR as a concept is relatively self-explanatory and could be articulated simply as the desire to secure the non-mandated adherence to hyper-norms, that is, universally accepted principles of the human rights to life, liberty and personal dignity. Perhaps it could be defined more diminutively as corporations taking responsibility for their societal impact or adopting a strategy of harm prevention.³² The overarching idea is corporate responsibility for the (negative) externalities that result from corporate activity. CSR as a concept, advertently or not, portrays a penchant for *post hoc* redress of the negative impact on those touched by corporate activity. Its reactive nature, therefore, essentially ensures that CSR, with its focus on the amelioration of corporate harm, remains constantly behind the curve.

To put this into context, a firm which is responsive to its environmental impact takes steps to mitigate the impact of this to its neighbours, which, though laudable, could only happen after the fact and the negative effect of the harm has been felt. Whilst mitigation may take the form of clean-up measures and compensation payments, these do no more than repair injury caused (which might be impossible in some cases) and the law only requires that the individual be restored to their pre-harm status, with appropriate compensation required where the latter would be infeasible. This is even worse where full restoration cannot be had.

However, true CC concerns itself not simply with the mitigation of harm, but rather its prevention or, dare I say, a situation where harm causation is beyond the limits of foreseeability. It is the ordering of corporate activity in such a way as to ensure that the causation of harm becomes most unlikely. The latter is what a citizen-like corporation should be about. This is a contemplation of the notion of CC that draws clear parallels between the rights and obligations of the natural citizen. On this note, a corporate citizen is one which eschews its instinct to act in self-interest solely or even primarily, in favour of an approach to its objective that places the collective well-being at par with profitability. A citizen-like corporation assesses the risks its actions could present to its stakeholders and refrains, should the risks to the latter outweigh the benefits or present significant harm to another. A citizen-like corporation does not press on with ventures which are profitable but environmentally risky; relocate production to off-shore locations; or treat legal penalties as an operational cost. In short, profitability – though an undeniable necessity for corporations – lags behind the collective well-being.

32 J Longsdon and D Wood, 'Business citizenship: from the domestic to global level of analysis' (2002) 2(2) *Business Ethics Quarterly* 155–187, 162; Alejo Jose G Sison, 'From CSR to corporate citizenship: Anglo-American and continental European perspectives' (2009) 89 *Journal of Business Ethics* 235–246, 237.

It is perhaps beneficial at this juncture to outline the environmental understanding of citizenship in this context and the value of the concept to this discourse. I consider CC here to include both citizenship in a narrow and more localised sense, on the one hand, as well as a globalised view of citizenship, on the other. The reach and spread of the large transnational corporations inform the necessity of the aforementioned view. As such, corporations are both local and global citizens, perhaps much like the average person could, at least theoretically, be both a citizen in a local and globalised sense, at the same time. The latter point being less so in the case of transnational corporations whose operations span the globe, being resident and incorporated within multiple jurisdictions at the same time. This brings me to the value of citizenship and why this might be a useful lens through which we may view corporate responsibility. Citizenship is valuable in the sense that it helps to foster a sense of belonging within a community; this sense of belonging allows the community to define the goals that it intends to pursue purposefully. Viewing corporations as citizens allows them to work within the confines of these shared goals in achieving the corporate objective.³³ Furthermore, a community of citizens is one that creates an environment where all are treated as equals. Simon Duffy argues that citizenship goes beyond a means to protect the common interests but is an end in itself, if that end goal is a community of equals,³⁴ as citizenship allows the community to reconcile their distinctive characteristics and desires whilst pushing towards a shared goal. Citizenship thinking, therefore, allows corporations to situate their purposes and policies within the larger narrative and could create a shared prosperity. It also presents a viable alternative to the shareholder primacy approach to corporate governance that we considered earlier. Having an approach that views all corporate stakeholders as equals could also help resolve some of the familiar issues that result from a shareholder, profit-oriented approach.

It is fair to note that the aforementioned is in some contrast to the current understanding of CC. Duane Windsor notes that the extant understanding of CC invokes notions of the firm as a 'good neighbour':³⁵ a watered-down version of citizenship, which aims to position the firm as an ultimately altruistic entity, whose objectives are geared towards the common good. This contemplation of CC frames it as a sequence of largely voluntary actions undertaken by the

33 Simon Duffy, 'The value of citizenship' (2017) 4(1) *Research and Practice in Intellectual and Developmental Disabilities* 26–34, 27.

34 *Ibid* 29.

35 Duane Windsor, 'Corporate citizenship evolution and interpretation' in Jorg Andriof and Malcolm McIntosh (eds), *Perspectives on Corporate Citizenship* (Taylor & Francis 2001) 39.

corporation, which cater to the needs of its immediate environment.³⁶ In this sense, CC becomes – and is in fact – interchangeable with CSR, which, as previously mentioned, is concerned with harm mitigation and ‘random acts of corporate kindness’. Moon and colleagues argue that this contemplation of CC fails to define a new role for the firm and leaves CC with no political significance.³⁷

The ascription of citizen-like status to corporate entities

A major obstacle to the placing of the firm within the traditional understanding of citizenship is the overwhelming view of citizenship as something attributed to natural persons.³⁸ On this point, Windsor highlights the ways corporations have been endowed with some of the status and entitlements enjoyed by natural persons. For instance, the fact that corporations are considered in law to be persons, albeit of an artificial nature.³⁹ Also, the fact that, for instance in the United States (US), companies are entitled to some of the same constitutional protections as natural persons, like the right to speak freely,⁴⁰ be conscientious objectors to government mandates,⁴¹ make political contributions⁴² and vote in elections.⁴³

Windsor acknowledges that the *de jure* status of firms delineates them from natural persons, but that their *de facto* treatment under the law justifies the metaphorical use of the term ‘citizenship’ with regard

36 David Logan, *Corporate Citizenship: The Role of Companies as Citizens of the World* (Panorama Press 2018).

37 A Crane, D Matten and J Moon, *Corporations and Citizenship* (Cambridge University Press 2008) 22.

38 J Moon, A Crane and D Matten, ‘Can corporations be citizens? Corporate citizenship as a metaphor for business participation in society’ (2005) 15(3) *Business Ethics Quarterly* 429–453, 432.

39 The US Supreme court initially recognised the legal personality of the private corporation in *Dartmouth College v Woodward* (1819) 17 US 481; the courts stated that by establishing a corporation the founders had created ‘an artificial being, invisible, intangible and existing only in contemplation of law’. This view was furthered by the decision in *Salomon v Salomon & Co Ltd* (1897) AC 22, where the firm’s legal personality was deemed to be separate from that of its founders.

40 Amy J Sepinwall, ‘Citizens united and the ineluctable question of corporate citizenship’ (2012) 44 *Connecticut Law Review* 575, 583.

41 The US Supreme Court in *Burwell v Hobby Lobby* 573 US 682 (2014) ruled that closely held corporations may refuse to provide contraceptive coverage to their employees under the then recently enacted Affordable Care Act, if said requirement contravened the religious beliefs of the corporation’s owners.

42 *Citizens United v Federal Election Commission* 130 S Ct 876 (2010).

43 Some municipalities in the US state of Delaware allow all property owners including limited liability corporations to vote in local elections. See Hal Weitzman, ‘Delaware: the state where companies can vote’ (*Promarket* 23 May 2022).

to them.⁴⁴ On this point, Moon and colleagues critiqued the rigid definitions of citizenship which limited the notion to the traditional (liberal and communitarian) conceptions, thus ignoring the range of ‘potential citizenship roles’.⁴⁵ They argue that ‘citizenship thinking’ should be able to add a fresh perspective to our understanding of the way corporations can participate in society,⁴⁶ believing that the notional CC should not be constrained in any way, but should have a bold normative trajectory that goes beyond a narrow set of obligations, enabling corporations to be situated within a definition of citizenship, and that these should extend beyond the normal business activities to aspects of corporate political engagement, including lobbying, campaign financing and other types of legislative involvement.⁴⁷

With regard to corporations behaving like citizens, Moon and colleagues state that ‘alluding to corporations in terms of citizenship does not literally mean that corporations are citizens or have citizenship but that their substance or their actions can be understood as being in some meaningful way similar to that of citizens or citizenship’⁴⁸ and that a new way of theorising CC was necessary, in order to forge a distinction between ‘that which can acknowledge and conceptualize the distinction between corporations having the legal identity “of” citizens, and of them participating in society “like” citizens do’.⁴⁹ It is factually true that corporations can participate in society similarly to citizens in a lot of ways – albeit with aforementioned limitations.⁵⁰ The question, however, is whether that provides ample justification for the notion that society should have similar expectations of corporations as they do of natural citizens.

CORPORATE CITIZENSHIP SHOULD BE ABOUT CORPORATIONS AS CITIZENS

As noted earlier, the concept of citizenship proves especially useful when proffering a paradigmatic shift in the ways corporations relate to wider society. Citizenship provides us with the tools to navigate

44 Crane et al (n 37 above).

45 Moon et al (n 38 above) 431.

46 Ibid 432.

47 Ibid.

48 Ibid.

49 Crane et al (n 37 above) 44.

50 As highlighted previously, whilst corporations may not vote or participate in the electoral process, they may, however, make contributions to preferable candidates or actively support beneficial policy proposals. Corporations also have political speech rights and are allowed to participate in the polity in ways that mimic the rights of natural citizens: ie pay taxes, obey laws etc. Moon et al (n 38 above) 432.

the often quite severe power asymmetries that exist in the said relationship between firms and the communities they inhabit, as well as the individuals within those communities. These imbalances are more pronounced within the lower-wage, capital-needy but resource-rich communities where a healthy amount of corporate activity by large multinational corporations is conducted. The fact that a lot of these activities take place within social contexts where the basic legal protections are often absent or lacking in effectiveness, reinforces the need for corporations to behave in ways that portray a citizen-like dynamic in how they interact and conduct their activities within the community. Furthermore, viewing the corporation as a citizen (in the same vein as natural citizens) opens the door for the state to adopt a more paternalistic approach to regulating corporate activity.

This issue, however, is not isolated to the developing world and is also evident in wealthier countries in the Global North, where the consistent roll-back of the statist infrastructures has provided a platform for corporations to increase their influence in society. This trend is most evident in places like the United Kingdom (UK), where privatisation⁵¹ has allowed corporations increasingly to take on responsibilities – like public security and other social services – which had hitherto been within the sole purview of the state.⁵² This power dynamic furthers the case for good global CC.

Moon and colleagues highlight various institutional pressures which force even the most inordinately powerful corporations to adopt a socially responsible stance or even take on social causes which extend beyond their brief⁵³ – institutional pressures driven by contemporary phenomena like market, social or government regulation, as well as other market drivers which force companies to value sustainability in supply chains and factor important issues like employee wellbeing into their business practices. It could be argued that this infatuation with fostering responsible, citizen-like corporations arises from the unease with the current levels of corporate power and the wielding of this power in relation to the more vulnerable in social

51 The Thatcher Government began selling off key assets in sectors that had been under the control of the Government, including transportation, communications and utilities. This spate of privatisations was carried further throughout the following decades, culminating in the recent privatisation in the previously sacrosanct sectors of healthcare, law enforcement and the wholesale of Royal Mail in 2012. See Richard Seymour 'A short history of privatisation in the UK: 1979–2012' *The Guardian* (19 March 2012).

52 J Moon, A Crane and D Matten, 'Corporate power and responsibility: a citizenship perspective' in Jesus Conill, Reinhard Mohn and Tatjana Schonwalder-Kuntze (eds), *Corporate Citizenship, Contractarianism and Ethical Theory* (Taylor & Francis 2006).

53 Ibid 14.

settings⁵⁴ and that this power dynamic between corporations and other societal stakeholders necessitates a greater requirement that corporations act responsibly. Moon and colleagues believe that corporations could be considered citizens due to the close relatedness to the concepts of power and responsibility. Adding that the consideration of power and citizenship should be contextualised by the themes of power and responsibility.⁵⁵

As highlighted previously, one could argue against corporations being ascribed citizenship status, based on the fact that corporations are unable to fully avail themselves of the benefits of citizenship, like natural persons. Whilst this point is not without merit, the fact is that corporations have been accorded with enough benefits to validate a citizen-like status. For example, Moon and colleagues outline the three dimensions of citizenship, *à la*:

- citizen status (which constitutes passive rights, ie free speech and property rights);⁵⁶
- citizen processes (which extend beyond base rights to the right to participate fully in the public polity, ie to vote and hold office);⁵⁷ and
- freedom to participate in society (which includes various citizens' entitlements, ie education etc).⁵⁸

Although, currently, the rights ascribed to corporations only fall within one of these dimensions (citizen status), corporations are, however, accorded further benefits, which mimic those of ordinary citizens. For instance, corporations seek and often receive various forms of 'corporate welfare', for example state-funded subsidies to support innovation and expansion, as well as bailouts and other forms of economic stimuli. Furthermore, corporations enjoy a proximal closeness to the rights they do not enjoy. For instance, although corporations are unable to vote,⁵⁹ they are able to influence the outcome of democratic elections in ways that outstrip the capacity of the average citizen.⁶⁰ Corporations are unable to hold office, but corporate lobbying ensures they significantly influence the legislative and regulatory processes and are able to

54 Ibid 18.

55 Ibid 16.

56 Moon et al (n 52 above) 19.

57 Ibid

58 Ibid.

59 As noted earlier (n 43 above), there have been some unsuccessful efforts by local municipalities in the state of Delaware to grant limited liability corporations the right to vote in local elections.

60 The *Citizens United* decision established corporations' capacity to exceed previously determined campaign contribution limits, on the basis that this was an expression of political speech (n 42 above).

help craft the domestic and foreign policy frameworks in ways the democratic processes in which natural citizens partake could not.

The aforementioned rights stem from the separate legal personality accorded to incorporated firms under the law.⁶¹ Corporations are consequently thought to possess a moral personhood⁶² which forms the basis for the increased expectations that companies eschew morally reprehensible behaviours.⁶³ Windsor goes further to argue that although the *de jure* status of companies differs from that of natural persons, the former are effectively considered human in law. This assertion is supported by the attitude governments sometimes adopt in relation to companies, often granting some national identities.⁶⁴

Not all, however, agree with the above. Amy Sepinwall, in response to the *Citizen's United* decision, argues that the tenor of the court's decision does not suggest that the law views corporations as being in nature similar to natural citizens.⁶⁵ Sepinwall posits that the *Citizen's United* decision 'does not rest on a conception of the corporation as a citizen; instead, the majority opinion grounds corporate free speech rights largely on the right of listeners to hear a speech from as many different voices as possible'.⁶⁶ In doing this, she distinguishes between legal and normative citizens, arguing that, whilst corporations are considered legal citizens by virtue of legal instruments (ie their corporate charter), they are not normative citizens. Accordingly, corporations are unable to participate in any of the three central mediums of active citizenship, which are the jury, the ballot and the armed forces.⁶⁷ Her argument raises questions as to whether corporations could even attain normative citizenship and whether they should even be allowed to align their interests with society's. With regard to the first, she firmly believes that corporations, whilst legal, are not accorded a pathway to normative citizenship according to our current conceptualization, stating that: 'What matters then is not the corporation's metaphysical or ontological status, but instead the plain social fact that corporations are not expected to participate in the central institutions of citizenship, just as foreigners are not expected to do so.' If expectations were changed (and some way for corporations to vote, sit on a jury, and serve in the military were developed), corporations would count as normative citizens. But these

61 Sepinwall (n 40 above) 589; Crane et al (n 37 above).

62 Kenneth Silver, 'Can corporations be worthy of moral consideration?' (2019) 159 *Journal of Business Ethics* 253–265, 255.

63 Crane et al (n 37) 26.

64 *Ibid* 27.

65 Sepinwall (n 40 above) 581.

66 *Ibid*.

67 *Ibid* 594.

things are not currently expected of corporations.⁶⁸ As for the second issue, she argues that corporations are generally prohibited via the tenets of shareholder value from fulfilling associative obligations in relation to the communities they inhabit.⁶⁹

Whilst it is important to caveat the preceding by stating that Sepinwall's argument related to the issue of whether corporations should be granted political speech rights, these arguments, however, are inherently relatable to the context of obligative citizenship. Normative citizenship as we know involves the submissiveness to a sovereign in return for physical, economic and social protections. This unwritten social contract between the citizen and the state obligates the former to defend the state when needed, engage in the polity, as well as contribute to the treasury by way of taxes, where possible.⁷⁰ Citizens are also expected to be good neighbours and act with due care whilst dealing with their neighbours. Basically, citizenship involves a juxtaposition of the needs of the collective against the rights and obligations of the individual and how the conflicts that inevitably arise are resolved. In fact, there is the age-old idea that good citizenship prioritises the needs of the community or at the very least places the latter at par with one's own interests, effectively creating a sort of 'dual responsibility' which burdens the individual with a sense of duty towards public affairs;⁷¹ the absence of the latter, according to Pericles, makes the individual a 'useless character' and one unentitled to citizenship.⁷²

As noted earlier, our current view of CC has little to do with 'citizenship' in the traditional sense; often having voluntary and philanthropic undertones.⁷³ It is the view of this author that the latter ignores the realities of the corporate's existence and place within society. In fact, one might argue that obligations on the corporation fall somewhat below the expectations the state places on the natural citizens. One could argue further that corporations mostly enjoy the benefits of citizenship, without the corresponding obligations: Corporations are granted a number of significant benefits including, limited liability and corporate welfare (ie tax subsidies and grants etc), whilst being mainly encouraged to do the bare minimum (ie ensuring their activities fall within legal boundaries). So, therefore, what should CC look like?

68 Ibid 605.

69 Ibid 606.

70 Jan W van Deth, 'Norms of citizenship' in Russell J Dalton and Hans-Dieter Klingemann (eds), *The Oxford Handbook of Political Behaviour* (2007 Oxford University Press; online edn, Oxford Academic, 2 September 2009).

71 Ibid 403.

72 Ibid.

73 Longsdon and Wood (n 32 above) 158; Logan (n 36 above) 64.

I posit that the concept should mean that the citizenship status attributed to corporations should mirror natural citizenship in as close a sense as possible. That is, corporations should be deemed citizens, just as any natural born citizen. I argue that this is justified by the aforementioned points, namely that corporations are a creation of the state, that they enjoy rights and privileges that mirror those of natural born citizens – and may even exceed the influence of natural persons in some respects. Also, there currently exists an asymmetry between the rights enjoyed and the obligations imposed – which are often the bare minimum. But perhaps the most significant reason for the imposition of the citizenship status is the outsized impact corporations have on local communities: everything we can see and touch is produced, marketed or owned by corporations. I posit that CC is not only a way to keep said power in check, but also a means to ultimately ensure that the benefits of this power and influence are shared widely. In this case, attributing citizenship-like values to corporations benefits society more than it does corporations because it opens the door for the state to exercise a level of control over corporate activity that the current model does not allow. It is true that our view of capitalism has placed limits on the ways the state is allowed to regulate corporations and corporate activity. However, a CC model like this allows the state greater leeway in providing a much-needed legal framework to check corporate power. For example, granting citizenship status to corporations could help prevent the quite common practice of corporations being domiciled in friendlier jurisdictions (for tax benefits etc) whilst maintaining operations within their home jurisdictions. A model of CC like this could open the door for legislation that could allow the state to treat such corporations as alien entities, thereby stripping them of all prior financial benefits and state subsidies and imposing stiff tax penalties on these firms.

This conceptual model of citizenship would need legislative backing that, admittedly, is most unlikely within the current economic climate. This leaves a vacuum that educating business leaders is a viable option,⁷⁴ which I will consider later in the paper.

Facilitating a regime of good corporate citizenship

Bridging the legislative gap between corporations and natural citizens

As alluded to in the preceding section, establishing a model of true CC might well require a corporate law regime that sets the standard of corporate behaviour at levels higher than we have become

74 Paul Prinsloo, Cecilia Beulkes and Derick de Jongh, 'Corporate citizenship education for responsible business leaders' (2006) 23(2) *Development Southern Africa* 197–211, 198.

accustomed to. Here, the expectations go beyond the bare minimum and regulations are accompanied by an assortment of penalties which guarantee consequences for failures to adhere, as is the case for natural citizens. However, unlike natural citizens, corporations today have the capacity to influence the law-making process and ameliorate the impact of laws made far better than the natural citizen. That in itself creates a conundrum on two parts: what to do to limit the influence of powerful corporations on the legislative process and how to ensure that corporations which fall afoul of existing laws are held accountable.

The first is perhaps the most straightforward, albeit with significant challenges of its own. The influence gained by corporate political activity is no secret,⁷⁵ it is far less clear as to how we might strive to limit said activities and even more difficult to gauge the breadth of the political will to do so. The latter point is important, considering the influx of corporate cash in the democratic process through activities ‘to shape government policy in ways favourable to the firm’.⁷⁶ Alex Neron highlights the fact that good CC would ultimately require corporations to ensure that their political activism works to the ‘common good’ and is not self-interested in nature.⁷⁷ He admits that the inherent difficulty in making sure that firms that use their behind-closed-doors access to policymakers are expected to promote this common good provides ample justification for laws that aim to constrain the ability of these corporations to engage with the political system.⁷⁸ It is, therefore, the case that we might very well need laws in place to prevent corporations from being able to influence the political process.

The focus then shifts to how you ensure that corporations that fall short of the legal standards are held accountable for their actions. The difficulty to do the preceding lies on two fronts: the presence of ‘loopholes’ that allow corporations to legally avoid compliance or the underenforcement of existing laws which makes breaching said laws the more economically viable option and the difficulty in identifying a responsible party or appropriate penalties for each breach. In regard to the first, there is evidence showing that the presence of these loopholes

75 Dorothy Lund and Leo Stine Jr, ‘Corporate political spending is bad for business’ (2022) 100(1) *Harvard Business Review*.

76 A Scherer, D Baumann-Pauly and A Schneider, ‘Democratizing corporate governance: compensating for the democratic deficit of corporate political activity and corporate citizenship’ (2012) 52(3) *Business and Society* 473–514, 477.

77 Pierre-Yves Neron, ‘Rethinking the ethics of corporate political activities in a post-Citizens United era: political equality, corporate citizenship, and market failures’ (2016) 136 *Journal of Business Ethics* 715–728, 717.

78 *Ibid* 721.

is a direct consequence of corporate political activism,⁷⁹ further emphasising the need to have these constraints on corporate political activism. The second issue has to do with the difficulty in identifying the party or parties responsible for the corporate wrong, as evidenced by the difficulties in determining corporate criminal liability.⁸⁰ Often punitive measures for violations have taken the form of fines, which are mostly ineffective in preventing corporate malfeasance, as companies often consider these to be the cost of doing business.⁸¹ These are all serious considerations that must be reckoned with if one were to ensure the efficacy of future legislation.

THE REORIENTATION OF CORPORATE SOCIAL VALUES

What a citizen-like corporation could look like

Besides regulating corporate behaviour to ensure corporations adopt citizen-like traits, an arguably more effective method – considering the aforementioned prevalent socio-political factors that inhibit legislative effectiveness – could be the reorientation of corporate social value systems to allow corporations to view themselves as citizens and thus factor citizenship into their operating model.

This aforementioned would inevitably require a re-evaluation of the corporate's value system and would require a shift from one which prioritises profits and profitability to one which is pluralistic and places the needs of the community at its core. This will require a shift from the current shareholder-centred governance model to a citizenship model of corporate governance – one that emphasises the citizenship responsibilities of the corporation. However, the issue then becomes the method by which this may be accomplished.

In this article, I hypothesise on the role law clinics could play in ushering a new era of progressive corporate governance founded on a

79 Lee Drutman, 'How corporate lobbyists conquered American democracy' (*The Atlantic* 20 April 2015).

80 The foundational common law requirement that a person must possess a guilty mind for criminal liability to exist had made it extremely awkward to prosecute cases involving criminal culpability by corporations. Ensuring that liability is often contained to individual actors, unless the said actor was of sufficient seniority to be deemed to be the organisation's controlling mind, the corporation may subsequently be liable by virtue of the 'identification doctrine'. The latter scenario is more likely to occur in small private companies as against the larger multinational corporations, making successful prosecutions of large corporations utilising the aforementioned doctrine an often-rare prospect.

81 Daniel T Ostas, 'Legal loopholes and underenforced laws: examining the ethical dimensions of corporate legal strategy' (2009) 46(4) *American Business Law Journal* 487–529, 501.

model of CC, which I will discuss the specifics of in the next section. The aim here is simply to lay the groundwork for the theoretical formulations I will be detailing. The key is precipitating a reorientation of the corporate's system of values, particularly in relation to how it sees its role or lack thereof in the wider community. One's social value orientation is their preference for an outcome in relation to theirs or the interests of others in interdependent situations.⁸² It is widely accepted that there are three types of these social value orientations, namely *prosocial* (which seeks desirable outcomes for everyone), *individualist* (concerned with themselves) and *competitor* (desiring progress at others expense). The current corporate governance model ensures that corporate social orientation falls within the latter two categories (known as *proself*) whilst a fair few could be reliably described as having a 'competitor' orientation. The *proself*, as the name suggests, rejects any suggestions of a responsibility which extends beyond the need to maximise one's own interests, including at the expense of another. This view embodies the previously discussed mainstream view of the corporate objective, that social responsibility was but a secondary undertaking and, when undertaken, should be merely a means to a predetermined, profit-oriented end.⁸³ It is important to add that even this latter view was not always the norm, and even Friedman admits that corporations may choose to adopt a socially responsible stance within reason.⁸⁴ Friedman, however, argued against the notion of a socially responsible corporation, stating that a corporation's engagement with social causes effectively placed costs on its stakeholders.⁸⁵ These costs could be in the form of higher rates for customers, as well as lower profits and wages for investors and employees, respectively. He posits that utilising corporate resources for the advancement of social causes is effectively akin to managers spending other people's money and that the decision to utilise firm resources to advance social causes should be left to the people whose resources they are, and people should do good 'at their own expense'.⁸⁶ In other words, to be successful, the corporation must be *proself*.

In a nutshell, the *proself* corporation is free to engage in the form of winner-takes-all capitalism we have become accustomed to. The consequences of which are well documented and have been mentioned

82 W Anderson and M Patterson, 'Effects of social value orientations on fairness judgments' (2008) 148(2) *Journal of Social Psychology* 223–246, 224.

83 Friedman (n 9 above).

84 *Ibid.*

85 *Ibid.*

86 *Ibid.*

previously.⁸⁷ However, growing social movements strive to necessitate an urgent rethink of the way corporations interact with wider society, with a new generation of global citizens demanding greater accountability for the externalities of corporate activity, particularly in relation to the environment and falling living standards, in other words, asking corporations to be more *prosocial*. The largest businesses have begun to take note.⁸⁸ But, so far, the efforts to effect a change could be described as little more than corporate virtue signalling, that is, essentially maintaining the *status quo*, as they cosplay social activism.

Effective change would require a complete top-down reorientation of the corporate ethos and the widespread adoption of prosocial values. The question becomes whether corporations, which have reaped significant rewards from the current state of affairs, could prioritise the well-being of a wide berth of stakeholders, possibly at the expense of profitability. A corporation that views itself as a vehicle for shareholder wealth creation might not, but one which views itself as a citizen of the social environment it inhabits (a prosocial corporation) may very well do so.

To conclude this section, a citizen corporation imbued with prosocial values at its core would look and operate very much like the portrait painted by Martin Wolff, that is, one that does not deny climate change but embraces it and works towards limiting its contribution to the phenomenon, or does not lobby for tax systems that benefit itself to the detriment of society as a whole, one which treats its employees and customers fairly and does not strive to be anti-competitive in its approach to business.⁸⁹

It is fair to note that the above would require a significant amount of divestment from the *status quo* to facilitate a pivot from the current corporate parasitism to a symbiosis more akin to a citizen-like co-existence. Whether corporations could exercise the requisite willingness and capacity to behave like citizens remains to be seen, especially with little chance that this could be necessitated by legislative intervention.

Therefore, institutions of higher education represent a viable option for corporations to be reorientated to act like citizens. In the following section, I argue that, in theory, business law clinics might have a role in helping infant corporations adopt the citizenship governance model and that the latter sits well within the clinics' implicit social justice function that underpins the activities that assume there could be an opportunity for business law clinics to take on a major role in these efforts.

87 Martin Wolf, 'There is a direct line from Milton Friedman to Donald Trump's assault on democracy' in Luigi Zingales, Jana Kasperkevic and Asher Schechter (eds), *Milton Friedman 50 Years Later* (Promarket 2020) 114.

88 Business Roundtable (n 2 above).

89 Wolf (n 87 above).

A ROLE FOR CLINICAL LEGAL EDUCATION IN FACILITATING THE CORPORATE CITIZEN

Law clinics have traditionally been viewed as existing to provide access to justice to those who otherwise would be excluded. The consensus is that the promotion of a socially just cause should steer the activities of the law clinic.⁹⁰ The reason for this is that the first law clinics were inextricably linked to the civil rights movement and were established to train future lawyers in 'client-centred lawyering'.⁹¹ There is some debate as to the ultimate purpose of the law clinic, as some have argued that these clinics could and perhaps should have a purpose that transcends a purely social justice function, while others have resisted this view and maintain that clinics are meant to serve the least in society.⁹² CLE is defined as a:

legal teaching method based on experiential learning, fosters the growth of knowledge, personal skills and values as well as promoting social justice at the same time. As a broad term, it encompasses varieties of formal, non-formal and informal educational programs and projects, which use practical-oriented, student-centred, problem-based, interactive learning methods, including, but not limited to, the practical work of students on real cases and social issues.⁹³

Rose Voyvodic further describes CLE as 'a curriculum-based learning experience, requiring students in role, interacting with others in the role, to take responsibility for the resolution of a potentially dynamic problem'.⁹⁴ She views it as the 'most effective pedagogic device for forcing students to address a whole range of intellectual and social issues' by offering what is essentially the best of both worlds: 'practical experience on the one hand and the intellectual inquiry and enhanced sensibility on the other'.⁹⁵

Clinics aim to impart the students with these skills by exposing them to real clients with real issues and allowing the students to gain knowledge and skills along with an awareness of the intricacies of legal

90 Kosuri (n 5 above) 332.

91 Ibid 333.

92 Campbell (n 7 above) 170.

93 European Network for Clinical Legal Education, 'ENCLE defines Clinical Legal Education as follows'.

94 Rose Voyvodic, 'Considerable promise and troublesome aspects: theory and methodology of clinical legal education' (2001) 20 Windsor Yearbook of Access Justice 111–140.

95 Ibid 111.

practice, under the supervision of qualified lawyers.⁹⁶ Clinics generally aim to service low-income and indigent clients who typically would be unable to afford legal fees. Kosuri states that clinicians justify the social justice function of law clinics on the grounds that most students might otherwise never encounter these issues over the course of their professional lives.⁹⁷ Voyvodic argues that clinics provide a medium by which otherwise privileged students might encounter the ‘culture shock’ of issues they may never have cause to engage with otherwise, like the struggles of low-income people or those from marginalised and other underserved communities,⁹⁸ stating that this is further enhanced with the inclusion of professional responsibility and ethics as a pedagogical goal.⁹⁹

The bias in favour of social justice stems from the origins of CLE, which came about in response to the inadequacies of the case method of legal education.¹⁰⁰ Although, clinics were not meant to replace the case method in its entirety, but to work conjunctionally with the latter in providing a holistic form of legal training. The function of these clinics began to evolve in the 1960s, with the dawn of the civil rights movement in the US, when a number of clinics began to take on social

96 Ibijoke Patricia Byron, ‘The relationship between social justice and clinical legal education: a case study of the Women’s Law Clinic, Faculty of Law, University of Ibadan, Nigeria’ (2014) 20(2) *International Journal of Clinical Legal Education* 563, 565–577.

97 Kosuri (n 5 above) 339.

98 Voyvodic (n 94 above) 119.

99 Ibid.

100 The development of the case method of legal education is credited to Christopher Langdell, a former Dean of Harvard Law School. It is the predominant method of teaching in US law schools and focuses on the analysis of legal and judicial opinions as against the provision of lectures and reading of textbooks. Pioneers of CLE, like Karl Llewellyn and Jerome Frank, were part of a group of legal realists who decried the emptiness of the case method, with its emphasis on interpretation of legal rules, calling instead for a fact-based educational method which focused on the conversion of legal knowledge into action. Frank likened a rule-based legal education to ‘architects who study pictures of buildings and nothing else’ and his proposed remedy was the establishment of ‘legal clinics’ in law schools that would help to deepen the students’ understanding of legal theory, with the aim that these clinics would service legal-aid groups, but also government agencies and quasi-public bodies. Accordingly, this method was not meant to replace the case method in its entirety, but to work conjunctionally with the latter in providing a wholesome legal training. See Jerome Frank, ‘Why not a clinical law school?’ (1933) 81 *University of Pennsylvania Law Review* 907–923, 908; Karl Llewellyn, ‘On what’s wrong with so-called legal education’ (1935) 35 *Columbia Law Review* 651, 658.

justice causes.¹⁰¹ There has been quite a significant growth in the number of these clinics in UK institutions of higher learning over the last few decades,¹⁰² largely driven by the increasing demand for access to justice by communities effectively left behind by reforms to legal aid and other social provisions that have heightened the need for the services that law clinics provide.¹⁰³ Although the core responsibility for clinics could still be considered to be servicing the legal advice needs of marginalised communities, there is a growing number of clinics which have chosen to not restrict themselves to these core/traditional social issues, choosing to provide services to some within the business community.¹⁰⁴ It would be a mistake, however, to suggest that the choice to work with non-traditional clients, like fledgling businesses, is a deviation from the previously mentioned social justice remit that these clinics are meant to have. I argue in this article that there could be a social benefit to working with these businesses. CLE provides an important platform for law students to acquire the much-needed skills that may very well serve them in their professional lives and could be an instrumental medium by which citizenship values may be impacted upon these businesses.

The perception of an inherent social justice mandate for law clinics

As stated previously, law clinics have traditionally had a social justice function. By social justice, I mean a redistributive function that focuses in providing access to indigent and other marginalised communities. There is also a significant view within the CLE community that the latter should be the primary function of law clinics.¹⁰⁵ To this point, Kosuri argues that this narrow conception of the value and function of

101 Stephen Wizner, 'The law school clinic: legal education in the interests of justice' (2002) 70(5) *Fordham Law Review* 1929–1937, 1933; Stephen Wizner, 'Is social justice still relevant?' (2012) 32 *Boston College Journal of Law and Social Justice*, 345–355, 346–348.

102 James Sandbach and Clare Johnson, 'Impacting justice: the contribution of clinical legal education and law school clinics to pro bono and access to justice in England and Wales' (European Network for Clinical Legal Education and International Journal of Clinical Legal Education Conference, Bratislava, July 2019) 4.

103 The passing of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 led to severe cuts to public funding for legal services, leading to an 80 per cent loss of available legal aid resources and services in the UK, and also leading to an increase in the demand for the services provided by law clinics. Joanna Clarke and David Raeburn, *Law Clinics Network Report 2013–2014* (LawWorks and the Law Society September 2014) 3.

104 Campbell (n 7 above) 168.

105 Deborah Rhode, *Access to Justice* (Oxford University Press 2004) 193.

law clinics has resulted in a form of intellectual homogeneity¹⁰⁶ and cite the danger that law students may very well adopt this view from clinicians:¹⁰⁷ a view that makes it unsurprising that some question the legitimacy of business law clinics in particular and clinics that do not, on their face, naturally fit within the initial social justice conceptualisation of CLE.¹⁰⁸ They see this drift towards the social justice mission as a natural consequence, considering CLE traces its origins to the civil rights movement.¹⁰⁹

It has been said that it is becoming more difficult to maintain this social justice function of law clinics due to a multiplicity of factors, including the drive to make students employable which has helped steer students towards placements outside of law clinics and the foray of law clinics into the private sector.¹¹⁰ Weinberg highlights this fact by stating that law schools have created the aforementioned issues by fostering an ultra-competitive environment that rewards the best students with the best grades, a fact which often leads to significant rewards in the job market.¹¹¹ The implication being that students no longer consider the clinical work in its original contemplation – serving the underserved – but rather as a way to acquire the skills and experience that could make them attractive to future employers.

However, Julia Lawton does question whether a new perspective concerning the function of clinics is needed and cautions clinicians with social justice leanings from striving to impose their values on students.¹¹² She highlights that law schools in general strive to impose a social justice morality on their students and they do this through the imposition of *pro bono* requirements, experiential learning opportunities, as well as funding support,¹¹³ and calls instead for students to be exposed to social justice morality rather than for said morality to be imposed upon students.¹¹⁴ Kosuri echoes Lawton in calling for a more expansive and inclusive view of law clinics; one that caters to the needs of the student body and ensures there are opportunities for all students interested in clinical work regardless of

106 Kosuri (n 5 above) 336.

107 Ibid.

108 Ibid 340.

109 Ibid 333.

110 Jacqueline Weinberg, 'Preparing students for the 21st century practice: enhancing social justice teaching in clinical legal education' (2021) 28(1) *International Journal of Clinical Legal Education* 5–67, 7.

111 Ibid 17.

112 Julia Lawton, 'The imposition of social justice morality in legal education' (2016) 4 *Indiana Journal of Law and Social Equality* 57–75, 67.

113 Ibid 68.

114 Ibid 73.

their interests.¹¹⁵ This introduces the argument for law clinics to be opened up to a broader slate of clientele, which could include fledgling start-ups or infant corporations seeking legal guidance. In theory, working with these corporations at a pivotal point in their operational history could present an opportunity for them to embody the value systems that could very well help them become good corporate citizens. Law clinics present a unique opportunity to guide the next generations of corporations along that path.

Clinical legal education as a methodology

The work done within the law clinics places these entities in a uniquely effective position when it comes to addressing and tackling social issues. As discussed in the previous section, clinics are a medium by which students learn the vagaries of legal practice, whilst providing a much-needed public service, allowing the participants to develop a range of hard and soft skills¹¹⁶ even as they help those most in need of the services they help provide.

Voyvodic highlights the unique methodology that CLE presents for the impacting of legal skills and by extension social values in the student participant. In that it allows the student to not just learn a skill by ‘doing’, clinical work further provides ‘an insight into the meaning and content of what is done’, outlining the rationale and importance of the skill being taught.¹¹⁷ She states further that ‘clinical programs aim to teach analytical methods of planning to [help the students] deal with unstructured situations’.¹¹⁸ Exposing law students to this level of training could be beneficial in a number of ways: the relative youth and inexperience of the average university student privileges them with an idealism that is not often present the older people get. That idealism along with the socio-political awareness that they may very well gain from exposure to the social challenges of their clients, coupled with an understanding of the important role corporations play within society as a whole, might inject them with the vigour and vibrancy needed to impact the practice of the businesses they deal with. Furthermore, the absence of the cynicism that often accompanies life experience could make believers out of these students in the possibility of a good corporate citizen. This fervour could allow them to adopt a ‘no holds barred’ approach when working with fledgling businesses in advising

115 Kosuri (n 5 above) 336.

116 Rachel Dunn, Lyndsey Bengtsson and Siobhan McConnell, ‘The policy clinic at Northumbria University: influencing policy/law reform as an effective educational tool for students’ (2020) 27(2) *International Journal of Clinical Legal Education* 68–102, 74.

117 Voyvodic (n 94 above) 116.

118 *Ibid.*

the latter on the notions of CC. On the other hand, the aforementioned youth and relative inexperience could also make the students more open to viewing the theoretical notions of citizenship discussed in this article as attainable. This belief is in line with research showing Generation Z (born between 1995 and 2010) as more socially and environmentally engaged at a young age than older generations.¹¹⁹ This level of engagement with these pivotal issues could allow them to better see the possibilities for change and make them more open to solutions that fall outside the norm. The perceived responsiveness of corporations to the whims of this generation, coupled with their ethical approach to consumption,¹²⁰ in my view, places them in a unique position to steer these businesses towards citizenship-like behaviours.

On a separate note, clinical education provides a platform for students to both engage with and consider the policy reasons behind the situations that their clients deal with.¹²¹ This exposure could allow the students to understand the impact that laws have on the welfare of citizens in general. It could also help them see the benefits a people-centred policy framework could have on the welfare of everyone, including policies that regulate the behaviours of corporations and prioritise their relationships with employees, consumers and the environment. There is evidence that students within law clinics involved in policy work (eg conducting empirical research with the aim of influencing policy) develop a greater social justice ethos as a result of the work done within the clinics.¹²² Engaging in policy work allowed the student participants to understand the impact policies have on the people subject to said policies and the contributions they could make to society via policy work, with the participants reporting a range of benefits particularly in relation to their understanding of the social and ethical implications of policy decisions, especially on those who are most likely to require the clinic's services.¹²³ Additionally, working with clients could also provide a platform by which students could witness the implications their professional choices and decisions could have on those impacted by them, both in the far and near term.

119 A survey conducted by the consulting firm McKinsey & Company in 2019 found that Gen Z is more likely than previous generations to prioritise environmental sustainability, with 90 per cent of respondents saying that they would pay more for products that are environmentally friendly. The survey also found that Gen Z is more likely to prioritise social causes such as racial justice and income inequality. Taylor Francis and Fernanda Hoefel, 'True Gen: Generation Z and its implications for companies' (McKinsey & Co Report 2018).

120 Johnny Wood, 'Gen Z cares about sustainability more than anyone else – and is starting to make others feel the same' (*World Economic Forum* 18 March 2022).

121 Dunn et al (n 116 above) 101.

122 Ibid 100.

123 Ibid.

Such exposure might help students begin to develop an awareness of the consequences of their actions at a much earlier stage than usual.

Finally, and perhaps more relevant to the discussion here, is that clinics provide needed services to the business community. Whilst this might seem out of step with the core functionality of CLE as a methodology, the point that needs to be emphasised here is that business law clinics do not represent a compromise of the social justice ethos that has always underpinned CLE. If anything, it may very well represent an extension of this core function: by providing legal services to economically challenged entrepreneurs, on the one hand, but also working with these businesses in the early stages in a bid to imbue them with progressive values that may allow them to establish sustainable business models and entrench them as citizens within their host communities.

How business law clinics can help corporations become better citizens

As discussed above, one of the major arguments against business law clinics is that they fail to fulfil the social justice mandate – by servicing the needs of the indigent – that clinics are thought to have.¹²⁴ This view, I believe, stems from a misconception of the nature and scope of transactional law clinics. It is fair to admit that advising clients on intellectual property or investment issues does not appear to have the same weighting on the altruistic scale as the work traditionally done within law clinics. That said, this section aims to highlight the potential of business law clinics from a social justice perspective and reveal how fulfilling this potential could help alter the current view of the effectiveness of these clinics. In this section I argue that business law clinics could work with start-ups, helping educate the directors on the values of progressive, socially conscious CC and highlighting the wider social benefits this approach could have.

First, and most importantly, business law clinics that have a commitment to progressive values – a commitment to environmental preservation, economic justice and true equality of opportunity – could have the effect of instilling these values within the students. This could have wider benefits in the future as the students go on to careers in business and legal practice. Students who have participated in a business law clinic with social justice at its core and who imbibe these values in their practice could carry these on into careers in business, legal practice, politics and other forms of public service. This could lead to more responsible corporate governance, socially and

124 Kosuri (n 5 above) 341.

environmentally friendly public policy mandates and possibly lead to a more informed electorate and spur greater socially conscious activism.

In furthering greater CC, these clinics could help educate start-up corporations on their responsibilities to their immediate environment, emphasising the fact that these responsibilities are concomitant with their licence to operate within the host community, as is the case with individuals. As has been discussed quite extensively in this article, a citizen-like corporation recognises its responsibility to a wide berth of stakeholders. The aim is to have clinics equip young corporations with the progressive values that could broadly impact the corporate objective and enable the company to pivot from the profit-centred mindset discussed earlier in the article. The latter could be attained in a number of ways.

For a start, clinics could educate start-ups on employee rights and the right approach to employee management. Companies could be encouraged to view their workers as prime assets and not an easily dispensable factor of production. They could be encouraged to set policies in place that ensure the statutory rights for employees are upheld, particularly in the areas of compensation. Companies could be advised to ensure all workers are compensated fairly and not the least allowed by law, that they should refrain from harmful practices like wage theft¹²⁵ and the utilisation of casualised, unsecure labour.

The preceding is important for the following reasons: first, it could have a positive impact on employee morale, which translates to better individual and collective performance. Research has shown that firms whose employees believe they are treated fairly tend to outperform their peers.¹²⁶ Second, there are also the practical implications of having well-compensated and motivated employees, in the sense that they are more likely to form part of the company's customer base. The latter fact was recognised by the pioneer Henry Ford over a century ago.¹²⁷ On a final note, firms should be discouraged from the mainstream perception of employees as expendable and refrain from the knee-jerk reaction of effectuating job losses upon an economic downturn. At an early stage, start-ups could be encouraged to countenance the broader social and economic impact of every lost

125 Victoria Noble, 'How Britain's online retailers are profiting from wage theft' (*Open Democracy* 30 September 2020).

126 Clement Bellet, Jan-Emmanuel De Neve and George Ward, 'Does employee happiness have an impact on productivity?' (Saïd Business School WP 2019-13 2019).

127 Henry Ford advocated for higher wages and better working conditions for his workers not out of charity but based on the conviction that this would improve worker productivity and benefit the business in the long-term. See Sarah Cwiek, 'The middle class took off 100 years ago ... thanks to Henry Ford?' (*NPR* 27 January 2014).

job and explore other cost-cutting measures, resorting to workforce reduction only as a last resort.

Furthermore, law clinics could further advise start-up corporations with an appreciation of the value of situating and maintaining their activities within their local communities. Rapid globalisation has made it easier for corporations to situate their core business activities in offshore locations, due to the cost-saving benefits.¹²⁸ As such, the last four decades have borne witness to a gradual but sustained erosion of our manufacturing and productive capabilities, with the largest corporations choosing to outsource these to low-wage countries, spurred on by the enormous savings on wages and tax liabilities.¹²⁹ The consequences to the communities impacted have been devastating. The apparent lack of political will to address these issues has left a vacuum that law clinics could help fill, by helping enlighten founders of these start-ups of the benefits of a citizen-oriented approach to corporate governance rather than being profit-centred at all costs. In sum, a good corporate citizen sees itself as part of the community and makes decisions that work to the benefit of all who inhabit it. Furthermore, on a more practical point, the students could be trained to advise start-ups on various tax and investment reliefs provided by the central and local governments. It could be argued that, if infant businesses are made aware of the various reliefs available whilst in their infancy and are able to properly take advantage of these, it could help reduce the likelihood that they seek the benefits offered elsewhere.

Business law clinics could further prove useful in advising the businesses they work with on the benefits of being mindful of their environmental impact. Climate change, as we know, is poised to be one of the challenges – if not the greatest challenge – of the twenty-first century and corporate activity has been a major contributor to the phenomenon to date.¹³⁰ The reversal of the current trend towards a complete environmental meltdown would depend to a huge extent on whether companies choose to address the way they do business. Business law clinics, I believe, could aid them along those lines, by encouraging fledgling corporations/start-ups to consider the environmental impact of their chosen businesses and perhaps persuade them to adopt the least environmentally destructive path towards achieving the corporate objective. Furthermore, they could help these start-ups affirm a commitment to limiting their environmental impact, by having such a

128 Mojtaba Kheryian, 'Where would globalisation be without outsourcing' (Centre for Geopolitics and Security in Realism Studies Research Paper 2015) 4.

129 Andrew Barber and David Riker, 'The effects of offshoring on domestic workers' (USITC Office of Economics Working Paper 2017-10-A 2017) 3.

130 Elliot Hyman, 'Who's really responsible for climate change?' Harvard Political Review (Cambridge 2 January 2020).

commitment drafted into the company's articles either at inception or post-formation.

Furthermore, with the growing reliance on environment, social and governance (ESG) metrics to guide investment decisions by the largest investors, start-ups would do well to develop and entrench these progressive values within their governance approach. A genuine commitment to ESG as a guiding principle in their interactions with those directly or indirectly impacted by their activities could give these capital-needy start-ups the opportunity to showcase how investable they are.

The limitations of CLE as a method for impartation of citizenship values in corporations

That said, this author recognises that, whilst these ideas may seem sound in theory, the practical application might present its own challenges. For one, whilst start-up corporations might be receptive to some of these ideas in their infancy and whilst privately owned, this may very well change as the company grows and its priorities inevitably evolve – a familiar dilemma when companies decide to become publicly owned.¹³¹ In that case, the realities of corporate governance and the weight of shareholder expectation might cause a deviation from a citizenship governance approach to the more conventional profit-centredness that has come to define the modern public corporation.

There is also the likelihood that start-ups might be unwilling to adopt this approach and reject it for the more traditional profit-oriented approach, which is understandable considering the fact that start-ups are often backed by investors looking for a return on their investments. As such, the pressures to not only provide a return to current investors, but also to signal profitability to potential investors, might cause the company to adhere to conventional wisdom to attain profitability in the short term.

Furthermore, whilst citizenship-centred governance might be good in the various ways we have already explored, there is the salient question as to how it sits within the common ideation of what a company should be. I have already discussed the view that the company should prioritise shareholder interests, which is a euphemistic for a profits-first approach. There is also evidence that the latter view has generally

131 This dilemma was the driving force behind Elon Musk's attempt to take electric car-maker Tesla private in 2018. He alleged that the weight of shareholder expectation and the drive towards attaining and maintaining profitability was stifling the company's creative capacities and limiting its ability to invest in R&D initiatives. Musk argued that the inordinate focus on share price fluctuations had been a major distraction for the company and its employees. See Arash Massoudi, Richard Waters and James Fontanella-Khan, 'Elon Musk declares plan to take Tesla private' *Financial Times* (London 7 August 2018).

been good for both companies and shareholders.¹³² Governing according to principles that deprioritise profits may very well place the company at a strategic disadvantage in comparison to its peers, as investors may choose to invest in companies that guarantee a healthy return on their investment. As such, those companies that prioritise good CC may well struggle to fulfil their core objectives, which, in turn, could hinder the attractiveness of this approach to corporate governance.

There may also be the issue of how impactful the clinics could be considering the relatively limited time they would otherwise have to work with the companies. In working with companies to formulate their initial approach to governance, clinics may initially be able to impart this citizenship mindset on start-ups. However, the question then shifts to the longevity of these efforts: could the pressures to grow and expand eventually outweigh the desire to be a wholesome corporation? These are legitimate questions that are worthy of consideration.

There are further limitations that are inherent to CLE as a means to disseminate the citizenship model discussed here. Access may prove to be a barrier in terms of the number of available clients willing to engage with the services provided by the clinics and the number of opportunities available to students to take up the work of the clinics. Regarding the former, there might be a dearth of start-ups needing the *pro bono* services provided by clinics or they may be unaware of the availability of these provisions even if willing to use them. That could severely limit the impact clinics could have. On the other hand, most clinics only have a limited number of spaces available to students, further limiting the number of students that may benefit from the work with start-ups. While this may yet prove to be of immense value to those able to engage in the work with start-ups, it does present a challenge of scale. The efficacy of CLE as a methodology in this sense largely rests on the capacity to involve as many of the so-called future leaders as possible. The current provision within clinical programmes makes this a significant challenge.

CONCLUSION

In this article, I have sought to outline my conceptualisation of a good or true corporate citizen and the values I anticipate a citizen-like corporation should uphold and ultimately embody. I argue that the responsibilities and society's expectations of a corporate citizen should mimic those of the natural citizen. I base this argument on the fact

132 William Lazonick, 'Profits without prosperity' (Harvard Business Review September 2014).

that the corporation's social standing is one replete with the privileges of citizenship (free speech, various forms of civic participation), often without the corresponding responsibilities. It is my belief that according this level of responsibility to corporations would not only be appropriate, but precipitate a slew of benefits that could encompass a range of concerns including those involving a rapidly changing climate, employee rights and other social causes. However, I recognise that in the absence of the legislative will to enact laws to reflect the aforementioned, this leaves room only for alternative paths to true CC. As such, I proposed a role for law clinics and business law clinics in particular. The choice of these clinics is strategic based on their proximal nearness to small start-ups and the impact they could have on participating students.

Working with small start-ups could help clinics to guide these corporations in more progressive directions, helping them formulate policies that take the 'triple bottom-line' approach, placing the welfare of their environment, workers and host communities at par with the need to achieve and sustain profitability. Furthermore, the work with the student participants is also crucial in enlightening and equipping a generation of students who appear to possess greater levels of awareness than their forebears and may very well be in positions to influence policy in both the public and private sectors.

On a final note, what this article has tried to do is differentiate true CC – replete with rights, privileges and wider social responsibilities – from its current understanding which entails a more voluntaristic/philanthropic approach to doing well by doing good: a CC that goes beyond mere virtue-signalling but understands the breadth of its impact on the communities it inhabits and is required to work for the collective good, very much in the vein of the expectations we place on natural citizens.