Enterprise Foundations. A Review. Law, Taxation, Governance, and Performance. [1] [2]

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Working Paper published as
Steen Thomsen and Nikolaos Kavadis (2022),
"Enterprise Foundations. Law, Taxation, Governance, and Performance",
Annals of Corporate Governance: Vol. 6, No. 4, pp 227–333.
DOI: http://dx.doi.org/10.1561/109.00000031.

Abstract

Enterprise foundations are foundations that own companies. While this structure is little known outside Northern Europe, a number of leading global companies, such as Robert Bosch, Rolex, Carlsberg, Hershey, Ikea, the Wallenberg sphere, or the Tata Group, are ultimately owned by foundations. Aside from their economic significance, enterprise foundations have interesting governance characteristics including long-term ownership, the absence of a personal profit motive, and the combination of business and philanthropy. Recently, they have attracted attention as a safeguard for a company purpose. In this paper, we review the limited, but growing, literature on the topic focusing on law, taxation, governance, and performance. We conclude by considering policy implications and avenues for research.

Keywords: *enterprise foundations, economic performance, law, sustainability, corporate governance.*

[1] Support from the Research Project on Long-Term Ownership and Value Creations in Enterprise Foundations is gratefully acknowledged. The project is funded by Copenhagen Business School, the Augustinus Foundation, the Carlsberg Foundation, the COWI Foundation, the Interogo Foundation, the Lauritzen Fonden, Leo Holding, the Lundbeck Foundation, the Ramboll Foundation, and the William Demant Foundation.
[2] The paper builds on and extends a previous book, "The Danish Industrial Foundations" (Thomsen 2017).
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1. Introduction

Enterprise foundations are foundations that own companies. The foundations are independent self-governing entities without owners. The companies may be active in any private business activity. Other terms used to describe the same phenomenon are "industrial foundations", "corporate foundations", "commercial foundations", "business foundations", "commercial non-profits", "foundations with corporate interests", "Unternehmensträgerstiftungen" (Germany), "Unternehmensstiftungen" (Liechtenstein), "fondation actionnaires" (France), erhvervsfonde (Denmark). We use here what we believe to be the most generic term: "enterprise foundations" (Hopt and von Hippel 2010) with the same meaning as the term "industrial foundations (Thomsen 2017).

The owners are foundations or functionally equivalent entities – Stiftungen, trusts, fonde, Stichtingen, fondazioni, fondaciones etc. – whose names reflect their legal and national origins. The defining feature is that the foundation owns and controls the company and not vice versa. This means that the vast majority of corporate foundations around the world – who do philanthropy on behalf of a company – are not enterprise foundations. Moreover, enterprise foundations are private entities, not governmental or quasi-governmental institutions. We provide more detail in section 2.

Around the world, some very big companies are owned by private foundations, including the Indian Tata Group, the Swedish Wallenberg businesses, US Hershey, German Robert Bosch, and Swiss Rolex. However, nowhere are they as common as in Denmark, where they account for about half of domestic stock market capitalization. Foundations own three of the four largest Danish companies – A.P. Moller – Maersk, Novo-Nordisk, and Carlsberg. Below, we provide a list of 20 large foundation-owned companies around the world.

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20 Foundation-Owned Companies around the World

A.P. Moller – Maersk – Denmark
Anheuser Busch Inbev – Belgium
Bertelsmann – Germany
Robert Bosch – Germany
CaixaBank – Spain
Carl Zeiss – Germany
Carlsberg – Denmark
The Guardian – UK
Hershey – USA
InterIKEA – Switzerland
Investor (Wallenberg) – Sweden
Kavli – Norway
Kuehne + Nagel – Switzerland
Lloyds Register – UK
Mahle – Germany
Norske Veritas (DNV GL) – Norway
Novo Nordisk – Denmark
Pierre Fabre – France
Rolex – Switzerland
Tata Sons – India

In addition to their economic and social significance as owners of large companies, enterprise foundations are interesting because their unique corporate governance structure challenges conventional corporate governance principles. This gives rise to a number of interesting research questions, which we list below.

1. Enterprise foundations have no residual claimants and thus in a certain sense do away with the profit motive, which features so prominently in microeconomics and agency theory. On the other hand, the foundations themselves are residual claimants in the companies that they own and from which they get their income. How does that effect the efficiency and economic performance of foundation-owned companies? Is it possible to have efficient firms without a

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conventional profit motive? Could it even be advantageous under some circumstances? The answer we give in this paper is “yes”.

2. As perpetuities, enterprise foundations are very long-term owners whose companies are not for sale. Is it possible to have efficient firms without a market for corporate control? Perhaps there are competitive advantages to long-term ownership under some circumstances? Again, the answer that we give to this question is “yes”.

3. Enterprise foundations often concentrate their investments in a single firm or a single business group. Can they compete efficiently without the risk diversification benefits of public listing? Here our answer is a bit more guarded, “yes, maybe”. We observe that many of the best-known foundation-owned companies are publicly listed, while the foundation retains a controlling ownership position.

4. Enterprise foundation boards tend to be self-appointed. Doesn’t this lack of checks and balances lead to passivity, self-dealing or other agency problems? If not, what are the mechanisms that keep it in check? Here we argue that passivity and self-dealing are a latent risk, which may be mitigated by regulation and foundation governance rules concerning nomination, independence, competencies, and other structures.

5. Enterprise foundations generally have philanthropic as well as business purposes. How do these two goals coexist and interact? How does the philanthropy influence the operating companies?

The observation that many successful world-class companies are owned by enterprise foundations presents a paradox to conventional corporate governance models. Does the anecdotal evidence hold out in statistical testing? Do foundation-owned firms overperform or underperform? If they perform well, does this mean that we have to rethink corporate governance and de-emphasize the profit motive, aka shareholder value? Or perhaps their

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apparent success is attributable to other factors? In any case, it seems interesting to inquire how enterprise foundations are governed and whether governance makes a difference between a more or less successful foundation ownership.

In this paper, we review the emerging literature on enterprise foundations in an attempt to address these important questions. After this introduction (section 1), we begin by defining an enterprise foundation and its essential characteristics (section 2). We then discuss relevant theoretical perspectives on foundation ownership including agency theory, contract failure, and game theory (section 3). Sections 4 and 5 examine enterprise foundation law and tax law, respectively. Section 6 reviews the financial and social performance of foundation-owned companies. Section 7 addresses enterprise foundation governance. Section 8 concludes with a summary of findings and some ideas for future research.

Why Denmark?[5]

Before proceeding, we briefly digress to address a frequently asked question. Why are there so relatively many enterprise foundations in Denmark and more generally in Northern Europe? Thomsen (2016a) tries to throw some light on this question.

One explanation is taxation. The Nordic countries are welfare states with high levels of taxation including high wealth taxes in international comparison (Thomsen 1999). This creates a greater financial incentive to donate wealth to foundations, which would (historically) avoid wealth taxes while retaining control of a business company. Secondly, the Nordic countries score very high on the World Bank's governance indicators including the rule of law and corruption control (Thomsen 2016a, 2016b). This means that foundation ownership in the Nordic countries may be less susceptible to expropriation of private benefits than elsewhere.

[5] We are grateful to an anonymous reviewer for raising this question head on.

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Foundations in particular have to rely on the rule of law since they lack outside owners who can protect their property rights. Thirdly, as we will explain in sections 4 and 5, Denmark in particular adopted a liberal enterprise foundation law, which allows foundations to own companies with very few exceptions, while other countries – including the US – opted to prohibit or restrain them from doing so.

Nordic culture may be a related explanation. For example, the Nordics routinely rank highly on international comparisons of social trust (Holmberg and Rothstein 2017, Svendsen and Svendsen 2016, Brandl 2020). It is conceivable that a high level of trust and trustworthiness facilitates the formation and governance of enterprise foundations with more limited self-dealing and private benefitting than in other countries. However, it is noteworthy that the frequency of enterprise foundations varies among the Nordic countries between Finland (low), Norway (medium), Sweden (high), and Denmark (very high). So, there are other important determinants.

Schrøder (2021) and Thomsen (2022) document that enterprise foundations are found around the world in countries as different as India, Brazil, Taiwan, and the US. However, they are particularly common in the Nordic countries (1/3 of listed foundation-owned firms globally) and Europe (3/4 of listed foundation-owned firms). In some countries they constitute a sizeable share of the domestic stock market – e.g., in Denmark (63%), Austria (26.1%), Sweden (18.9%), Norway (7.9%), India (6.1%), and Switzerland (5%) (Thomsen 2022). Typically, there are very few of them outside Europe (the Indian Tata trusts being an exception), which is no doubt attributable to the large loss of personal wealth that founders must incur when they donate their shares in a company to an enterprise foundation (see section 5). Thus, enterprise foundations are found around the world, albeit most often in small numbers. Although they are particularly abundant in Denmark and the other Nordic countries, they are not just a Danish or Nordic story.

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2. What is an enterprise foundation?[6]

The term "enterprise foundations" would in principle encompass all foundations that have business activity (e.g., sales) that is in some sense significant. However, the majority of such foundations do not own firms but have some limited commercial activity at the foundation level. Most are quite small. Many are NGOs or government-linked entities. Examples include a museum that sells tickets and operates a cafeteria and a museum shop; a dormitory that charges a low rent for resident students, or a university bookstore. Without underestimating the social significance of these entities, this paper is concerned with private foundations that own significant private business companies.

By a foundation we mean an independent non-profit entity without owners or members. Self-ownership means that it has no residual claimants. The foundation may choose to donate, but nobody has a claim on donations.

By foundation ownership we mean that one or more foundations have controlling influence in a business company. The foundations do not have to own 100%. Many of the largest foundation-owned companies are publicly listed. But to qualify as enterprise foundations, they have to have controlling influence. Note that controlling influence is focused on voting rights rather than capital shares or dividend rights. Note also that the definition is functional regardless of the purpose stated in the foundation charter, whether it is philanthropic or not. If a foundation has controlling influence in a business company, it is an enterprise foundation. If not, we call it an ordinary foundation. It may be practical for empirical analysis to set a minimum voting share (say 50%), but in most cases the foundation can exercise effective control with less than that, for example with 20%.

[6] This section is a reworked version of Thomsen (2017) Chapter 1.

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The literature has identified the following key characteristics of enterprise foundations (cf. Kronke 1988, Thomsen 1995).

- Creation by donation (i.e., an irrevocable separation from the founder).
- Independence (a separate legal personality for the foundation).
- A non-selfish purpose (which goes beyond benefitting the founder).
- A foundation endowment (shares in a company plus, in most cases, other financial assets).
- A foundation organization (i.e., a board of directors or trustees, possibly a managing director and other employees).
- A foundation charter (including foundation purpose and governance rules).
- Ownership (voting) control of a business company.
- Outside supervision (for example by a regulator to ensure that the charter and the law are respected).

Creation by donation. An enterprise foundation is created when somebody (the founder) entrusts the foundation with an endowment consisting of ownership rights to a business company. The existence of foundations presupposes a gift, or a renunciation on the part of the donor/founder. This transaction is irreversible. Once given, the founder cannot take it back. Irreversibility separates enterprise foundations from the family trusts that are used in the USA and other common law countries. US-style family trusts. By a foundation, we mean an independent self-owned legal entity. Thus, most family trusts are not foundations in the sense we are interested in here because they can be dissolved, and ownership can revert to the founding family. However, we consider irrevocable trusts as equivalent to foundations.

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The motivations for establishing an enterprise foundation differ. The owner(s) may want to secure stable ownership for the company. It may be a way to save inheritance and wealth taxes while maintaining control of the company. Or there may be no immediate heirs. There may also be a philanthropic desire to "give back to society". These objectives can be more or less clearly expressed in the foundation charter (see below).

Independence. The foundation is a private (non-government) institution. It has no owners and no members. Enterprise foundations are therefore sometimes referred to as "self-owning institutions". The irreversibility of the decision to establish a foundation is underlined by its effective legal personality. The decisive factor is a clear separation between the personal economic affairs of the founder and those of the foundation. The separation transforms the foundation into a non-profit entity, which, as emphasized by Hansmann (1980, 1987), may make profits but cannot distribute those profits to the organization's members, directors, officers, or other persons who exercise control over the organization. In principle, no external party has a claim on profits or control. Founding family members can sit on the foundation board, but they no longer own the company, and the law or the charter may require that they do not constitute a majority. Family foundations (see below) can donate to members of the extended founding family, but usually not to the founder, her close family or to foundation officers and directors. In many cases, the founder and founding family are no longer active in the foundation, so enterprise foundations are not a subset of a family business. Moreover, even if the founding family is still active, it does not exercise unfettered control, but it is bound by the charter and the law.

A non-selfish purpose. An enterprise foundation may have philanthropic goals such as donating to charity or running a hospital. Ownership of a business may also be considered a

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non-selfish goal if it benefits customers, employees, or other stakeholders, although this is not charitable in the conventional sense of the word. A third non-selfish goal may be a concern for future generations of the founder's family. However, the foundation purpose cannot be to benefit the founder or her immediate relatives.

Most enterprise foundations engage in both business and philanthropy, for example they may own a business and use part of the dividend income for a charitable purpose. There may of course be many kinds of charity. A particularly troublesome kind from a definitional viewpoint is when a foundation supports the commercial activities of a company that it owns through donations or cheap loans. This is tantamount to providing a subsidy and blurs the distinction between commerce and charity. As far as we know, this is rarely the case in normal situations, but many enterprise foundations do come to the assistance of their companies in case of financial distress (as would many other owners).

In some cases, it is clear that the activities of the business contain charitable, or at least non-profit, elements. This would be the case for a newspaper with the noble aim of informing the general public or ensuring that the views of a particular political party were voiced. As one newspaperman put it, *"we make money to sell newspapers, not the other way round"*.

Endowment. Independence presupposes a certain initial wealth, an endowment, or at least privileged access to a source of future income (such as the right to future profits from a company owned by the foundation). Once created, however, foundations are in principle self-perpetuating bodies, provided that they are financially viable. In principle, they will continue to carry out the will of the founder for all eternity.

Governance by charter. Like other foundations, the enterprise foundation is formally governed by a charter, which defines its purpose and organization. The foundation is obliged

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to own and manage the company according to the charter, which represents the will of the founder (although behavioural rules are often informal rather than formal). For example, the charter may prescribe that certain worthy causes (such as research, art, or charity) should be supported by any revenues beyond those that are considered necessary to reinvest in the business. The foundation charter may also specify that the foundation should act for the benefit of the company, the employees, or the national interest. Moreover, the charter may oblige the foundation to maintain majority ownership of the company. The charter may furthermore include specific rules on the composition of the foundation's board, for example, whether it is self-elective, or whether the founder's descendants are entitled to a seat. Under the constraints set by the charter (which may be subject to government approval and supervision), the board acts under its own discretion.

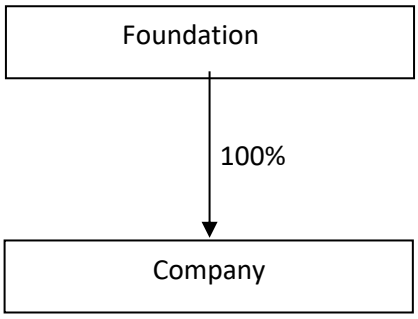
Outside supervision by government or courts**.** Unlike business companies, foundations are not be monitored by shareholders. Enterprise foundations are supervised by government offices (e.g., a foundation regulator, a charity commission, courts, or the local tax authorities), which monitor whether they are run lawfully and in accordance with their charter (Kronke 1988). In some jurisdictions, foundations must submit audited annual reports subject to the same rules as those for joint stock companies. These reports may be publicly available or submitted only to the regulator. The foundation regulator may intervene and in extreme cases replace the board in case of neglect or abuse, for example, if the foundation board decides to overpay its own members or to embezzle foundation funds by donating to friends and family. However, supervision is normally limited to "legality issues" (compliance with the law and the foundation charter). Regulators do not have a mandate to challenge business decisions.

Ownership of a private business company. A foundation will be termed an "enterprise foundation" whenever it owns a business, no matter whether its purpose is wholly charitable.

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Thus, there is no dichotomy between "enterprise" and "charitable". Most enterprise foundations are both. Ownership could be full (100%) or just a controlling influence. The clearest example is a single foundation, which owns a single business company 100% as drawn below. The company will, in principle, act like any other joint stock company and be subject to the same company and tax laws.

Figure 1. Basic foundation ownership



However, there are several variations on this. For example, a foundation may own more companies through a holding company. Or a number of related foundations may own stock in the same company. Moreover, the companies may be 100% owned, majority-owned, or the foundation may just have a controlling influence.

Occasionally a minority of the company's shares are held by other shareholders – for example, if they are listed on the stock exchange as in the example of A.P. Moller – Maersk (a large shipping company) below. In this case, the operating company has a fiduciary duty to all its shareholders, and, at the annual general meetings, those shareholders will elect a board to represent their interests. However, as a majority owner, the foundation possesses a controlling influence, which it may exercise to elect board members.

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Sometimes voting and dividend rights are split so the foundation retains a voting majority by having the company issue shares with limited voting rights (B shares) to the general public, while the foundation owns shares with full voting rights (A shares). This is the case in the largest Danish foundation-owned companies Carlsberg, A.P. Moller – Maersk, and Novo Nordisk. Another variation is that the founding family keeps the voting rights but donates the dividends/cash flow rights to a foundation. This is the case in German Robert Bosch, for example.

Business ownership separates enterprise foundations from ordinary (purely charitable) foundations. By business ownership, we mean that the foundation has a controlling influence in a business company that sells goods and services to the public on a commercial basis (i.e., in a competitive market). We will not be concerned with the exact delimitation of commercial versus charitable activity here, except to say that the commercial activity must be in some sense significant (for example, in terms of magnitude of sales). For example, we will not be concerned with the bookstore or restaurant owned by a non-profit museum unless they develop into sizeable businesses of their own.

Finally, we are concerned with private businesses. An enterprise foundation is a private institution. Foundations established by government organizations may be considered parts of the public sector. Examples could be a museum, a housing agency, or a theatre, which are set up as independent foundation-owned entities but founded, governed, and often financed or otherwise subsidized by the government. The main object will be not to do business but to supply the public with social services at a low price. Quasi-cooperatives or foundations with close links to associations are also excluded. For example, a housing cooperative may legally be owned by a foundation whose board is elected by the tenants, who try to keep rents as low as possible. Or the Federation of Architects may set up a foundation-owned publishing

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company intended to produce affordable, high quality architecture publications. In both cases, business profitability is a secondary goal.

An Example: A.P. Moller – Maersk[7]

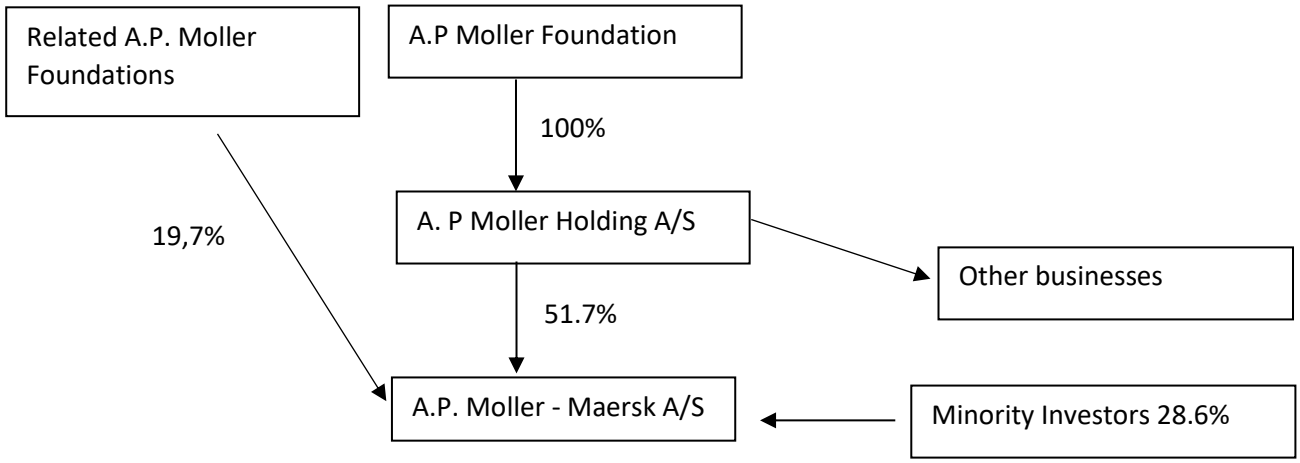
Below, we use the Danish shipping company A.P. Moller – Maersk as an example of a foundation-owned company. It is an integrated multi-business transport and logistics company and a global leader in container shipping and ports. The company employs about 76,000 employees in 130 countries around the world.

The A.P. Moller foundation[8] is an enterprise foundation created in 1953 by the Danish shipping magnate A.P. Moller (with the consent of his son and heir Maersk Mc-Kinney Moller) to "safeguard the long-term viability of the Group and control by the Maersk family". In 2013 the foundation transferred all its shareholdings to A.P. Moller Holding (100% owned), which holds 51.7% of the votes of the operating shipping company A.P. Moller – Maersk. See figure 2 for an illustration. The holding company also has a controlling influence in a range of other companies including Danske Bank, the largest Danish bank, in which it holds 21%.

[7] We are grateful to an anonymous referee for suggesting this illustrative example.
[8] The official name (in translation) is A.P. Moller and Spouse Chastine Mc-Kinney Moller's Foundation for General Purposes.

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Figure 2. A.P. Moller – Maersk as a foundation-owned company (voting shares).



Related A.P. Moller foundations hold another 19.7% of the votes in A.P. Moller – Maersk, which leaves 28.6% for minority investors. Its share of equity capital is less, but altogether the A.P. Moller foundations hold a majority (55%) of the share capital in the company.

The founding Moller family is represented by 2 of 5 board members in the foundation and 2 of 10 board members in the operating company. A great grandchild of the founder, Robert Maersk Uggla, is CEO of the holding company, and his mother, Ane Maersk Mc-Kinney Uggla, is chairman of the board, which has 4 non-family board members (5 in total). Family presence on the board does not mean that the family is a beneficiary of donations from the foundation, which are strictly charitable in accordance with the foundation purpose.

A continuing presence of the founding family is observed in about half of all Danish enterprise foundations, but it's worth noting that the family plays no role in many of the large Danish enterprise foundations like the Novo Nordisk Foundation, the Carlsberg Foundation, and the Lundbeck Foundation.

For more detailed case studies of enterprise foundations around the world see

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- Tata https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1976958

- Ikea https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3243347

- Novo Nordisk http://www.tifp.dk/wp-content/uploads/2011/11/Novo-Nordisk-09.pdf

- Ramboll https://www.enterprisefoundations.dk/wp-content/uploads/2021/06/Ramboll-Case.pdf

- Kavli http://www.tifp.dk/wp-content/uploads/2011/11/Kavli042.pdf

Types of enterprise foundations

Based on the classification above we can distinguish between different types of enterprise foundations.

Charitable enterprise foundations – such as the Tata foundations – have a charitable goal but happen to own a controlling interest in one or more business companies. Not all jurisdictions accept that running a business is a legitimate goal for a foundation, so, to make use of the foundation structure for business ownership, it may be necessary to register as a charitable foundation and fulfil the sometimes restrictive condition authorities put on such entities. These problems may, however, be mitigated with holding companies, which act as intermediaries between the foundation and the operating businesses. Reserves can be accumulated in the holding companies, and dividend payments can be adjusted to suit business conditions as well as charitable goals. Note that the founding family may or may not be active on the board but cannot be a beneficiary in a charitable foundation.

Pure enterprise foundations – such as the Interogo Foundation – are created with the explicit goal of running a business, that is, the business activity is the goal in and of itself. The Interogo Foundation's main purpose is to secure the longevity and independence of the IKEA

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businesses, although it may also engage in philanthropy. The idea in pure enterprise foundations is that the business activity may be useful in its own right and not just a means to make money. It may provide vital products or services; it may be a valued employer or an indispensable part of a local community.

Such entities, which are allowed in Denmark, for example, face no obligation to distribute dividends for charity, but can accumulate or invest funds to suit the needs of their businesses. The risk is, of course, that this goal loses its meaning if it is translated into doing whatever the company is doing at any particular point in time. However, additional limitations may be placed on the foundation through its charter. For example, it could be required to continue running a company with a certain name, in a certain industry, headquartered in the country of origin, etc.

Combinations of charitable and business goals appear to be the norm, but in many cases the business goals are regarded as primary while the charitable goals are regarded as secondary. A large company may generate salaries for hundreds or thousands of employees, and the social utility of these jobs will very often dwarf relatively small annual charitable contributions.

However, from a pure charity viewpoint it may not make much sense for a foundation to concentrate its investments on a single business company given the idiosyncratic risks such companies run. A safe investment in government bonds or a diversified portfolio may be preferable since it would reduce idiosyncratic risks and lead to more predictable revenue streams, which can be an advantage for allocating charitable donations to maximum effect. Thus, a certain tension and trade-off are present between charitable and business goals.

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Family enterprise foundations are foundations created to secure and promote the wealth of the descendants and other family members of the founder(s). Family foundations may or may not own business companies, but here we are interested in those that do. Depending on inheritance and tax law, the foundation structure may allow the founders to avoid succession and wealth taxes, albeit at the cost of giving away private wealth.

Donations paid out to family members will then typically be income-taxed so as to neutralize the tax benefits, since tax authorities around the world resent the creation of tax loopholes. Since income taxes are typically higher than capital gains taxes, this tends to make family foundations tax inefficient. Thus, it seems likely that family foundations are created for other reasons, for example to secure the longevity of the business, continuity of family control, and alleviation of family conflicts. Altogether, the family foundation appears to be a kind of organized family business with the important caveat that the family no longer owns the company, although it may continue to exercise control. Unlike some family trusts, family foundations defined in this way usually cannot be dissolved, and foundation board members have a fiduciary duty towards the foundation rather than towards the current family members. The structure seems likely to further encourage the long-termism and financial conservatism observed in many family businesses.

Enterprise foundations with multiple goals. Combinations of purposes are the rule rather than the exception, so that a foundation's charter may oblige it to own a business *and* to contribute to charity. Even when a company purpose is not formally recognized in the charter, the foundation board will almost always be conscious of its role as a business owner and wish to exercise the role in a responsible way. A formal justification may be that the foundation has

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most of its funds invested in a company and therefore has an obvious interest in its long-term success.

Types of founders. A final distinction concerns the identity of founders. An owner-created enterprise foundation is created by an entrepreneur, who owns a business and decides to donate it to a foundation, rather than selling out or letting descendants inherit it. These entities presuppose a personal renunciation on the part of the founder. In contrast, some foundations are formed by managers rather than owners, for example when a savings and loans association or another financial institution wishes to convert to a corporate form. This may be the case if the foundation wants to list its shares or merge with another entity. In this case, the equity of the association may be donated to a foundation, which then holds a proportionate amount of stock in the new listed or merged entity. This transaction, typical of converted financial mutuals, does not involve a personal renunciation on the part of the founder, but rather a gift made by the incumbent management on behalf of the members of the association. Although these two entities may be formally similar, they differ with regard to the level of managerial capture involved, and this seems likely to influence the governance and efficiency of the entities created.

A third founder type is the government, which may decide to donate shares in government-owned companies to private foundations in what has become known as "Privatization to Foundations" (Salamon 2014). Here foundation boards may be composed of politicians and other figures of authority who continue to serve public or communitarian objectives so that the borderline between public and private is blurred despite the formal privatization.

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3. Theory

In this chapter we examine the theory of enterprise foundations, which is still in its infancy. What is their theoretical rationale, their "raison d'être? What are the costs and benefits of foundation ownership? Under what circumstances would we expect to see more of it and when would we expect to see less? What can theory tell us about the behaviour of enterprise foundations and foundation-owned companies? We argue that enterprise foundations are difficult to explain with standard economic theory. It seems necessary to introduce alternative theoretical concepts, such as altruism, identification, and commitment, to understand them properly. This makes them a fertile testing group for new economic thinking.

As mentioned, foundation ownership is a combination of non-profit (the foundation) with for-profit (the business company). As such, they are a bit of a puzzle in economic theory, which has emphasized selfishness and the profit motive since Adam Smith (1776).[9] It is difficult to explain why a selfish homo economicus would give away his wealth to a foundation rather than consuming it. And once established it is difficult to explain how foundation-owned companies could compete successfully with companies owned by profit-seeking shareholders. The key idea in neoclassical economics is that firms are driven by the personal interests of the owners. But foundations have no owners, and foundation board members do not have a personal profit motive.

Agency theory

It is easy to provide agency theoretical reasons as to why foundation-owned companies would underperform as originally hypothesized for commercial non-profit enterprises by Fama and

[9] To make matters even more interesting, enterprise foundations are no less of a puzzle to the theory of philanthropy, which tends to regard business activity as an unwelcome distraction.

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Jensen (1983, 1985). They lack a personal profit motive that can incentivize managers and board members. They are not subject to the discipline of the market for corporate control since the foundation will be reluctant to sell its shares. They cannot diversify risk to the same extent as investor-owned companies and have a built-in preference for survival and against bankruptcy. Dulled incentives and the trade-off between risk and return should thus lead them to lower returns. But if foundation-ownership is so inefficient, why does it even exist?

Fama and Jensen (1983) introduce the donor agency problem to explain the existence of donative non-profits (non-profits that get their income from donations). Donors to charitable organizations need to be reassured that their donations are not simply redistributed as dividends to shareholders (Hansmann 1980). Therefore, charitable organizations find it easier to attract funding if they are organized as non-profits where such redistribution is impossible.

While enterprise foundations get their income from a company rather than from donations, donor-agency theory may be reinterpreted to cover donor-agency problems of inheritance (Thomsen 1996). An entrepreneur, who wants to secure the survival of his company, could, in principle, donate his shares to the company. If there were minority shareholders, this would effectively be a gift to them, which would serve no purpose. If not, the donation would effectively create a self-owning company (a non-profit organization) where all control rights would be vested in the incumbent board of directors, who might, for example, expropriate the company by excessive board fees or related party transactions. A preferable alternative solution might be to donate a controlling share in the company to a foundation, which cannot redistribute funds to external owners, and which can be bound by a charter according to the will of the founder.

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Thus, agency theory arguments can help explain the choice of the enterprise foundation structure for a one-off donation by the founder, who cares about the welfare and survival of her company. But it still predicts that foundation-owned companies are inefficient and would tend to be outcompeted by their more efficient for-profit competitors (Fama and Jensen 1983a). A richer theory may be needed, and in the next sections we suggest some possible avenues.

Nevertheless, it seems premature to reject agency theory – or basic economics – altogether. Incentives matter. For example, a business owner will weigh the costs and benefits of alternative ownership succession modes, including selling the company (and letting descendants inherit the money), taking the company public (and spending the revenue or letting the descendants inherit the money), letting family members inherit the company, or finally, establishing an enterprise foundation and how much it costs. Presumably, the choice of ownership succession will depend on the balance of costs and benefits, including expected sales and IPO stock price, whether founding family members are able and willing to continue family ownership, inheritance taxes, and succession taxes, whether it is possible to establish an enterprise foundation in that country, and so on. Thus enterprise foundations should be more likely to be established when succession to a foundation can reduce inheritance taxes, when private wealth taxes are high and in the absence of a well-developed secondary (stock) market for the type of company in question.

Moreover, after an enterprise foundation is established, the foundation's incentives to monitor the company will presumably be less strong than those of founding families or financial investors, who have "skin in the game". This need not be a financial disadvantage, however, if it enables the foundation to take a longer term of the business and pay more attention to stakeholder interests.

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Non-profit theories

To compensate for the agency costs identified by Fama and Jensen (1983), the survival and performance of foundation-owned companies must arguably be explained by efficiency advantages that are sufficiently large. We turn to the theory of commercial non-profits for inspiration. According to Malani, Philipson, and David (2003) there are 3 main theories in this literature; 1) the altruism model, 2) the worker cooperative model, and 3) the non-contractible quality model.

The altruism model (Newhouse 1970) assumes that non-profits differ from for-profits by having preferences with regard to the quantity and quality of output (e.g., helping patients by running a hospital is a goal in itself). Standard examples include non-profit hospitals, universities, or churches. Altruism – or a selfish desire to advertise a family name and make it famous into posterity by an altruistic deed (Glaeser 2002) – could be a motive for establishing an industrial foundation if the provision of the product is believed to contribute to social welfare. Instead of maximizing profits, a non-profit would maximize the volume of goods sold (what non-profits sometimes call "reach"). This prediction is supported by studies that find that US non-profits tend to be bigger than their for-profit competitors (Malani, Philipson, and David, 2003).

Altruism is inconsistent with standard economics, which assumes rational selfish behaviour. Why would a selfish donor voluntarily give away most of her wealth to a foundation? Why would foundations donate to charity even in the absence of regulatory obligations? Why would a foundation board work hard to improve the performance of a foundation-owned company? Why would founders of enterprise foundations care about the welfare and survival of their companies? However, the arguments against altruism have been undermined by research in

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biology (Wilson 2015). It seems that altruism does in fact exist among animals, which makes it untenable to maintain that it does not exist among humans. At the same time evolutionary biology has made clear that altruistic and selfish behaviour can coexist. Evolutionarily, groups with altruistic members outcompete groups with selfish members, but selfish individuals outcompete altruistic individuals (Wilson 2015). The net effect is that altruism will be selected when the gains from altruism are high, but deselected when they are not. If there are both unselfish and selfish individuals in the population, it seems likely that the unselfish individuals will be more attracted to altruistic organizations, i.e., organizations with an unselfish, not-for profit purpose, such as enterprise foundations and foundation-owned companies. This could be an important competitive advantage.

To be sure, many foundation-owned companies – like breweries, tobacco, and shipping or property companies – are found in industries that are not normally regarded as charitable. So, it is less clear why such entities are owned by foundations. One view is that running a business – providing jobs, creating value for users and customers, and paying taxes and so on – is beneficial to society and can be charitable in this sense. However, this would mean all business activity is essentially charitable so the word charity would lose its meaning. Alternatively, there may be value in running a business within a particular industry in a particularly responsible way.

An alternative interpretation is that the altruism of the foundation is directed not so much at society at large as at the company that the entrepreneur founded. In a metaphorical sense, the company may take on the role of an extended family, clan, or tribe, to which the founder feels attached. Many entrepreneurs see their company as their unique contribution to society, and through growing the company they may have developed an affinity for loyal employees. By

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trial and error, they may also have arrived at management and governance principles that they would want to see maintained in order to secure the future survival and growth of the company. Having the company carry on the name and legacy of the founder or the founding family no doubt also conveys a modest sense of immortality.

Altruism may therefore explain why founders choose to establish enterprise foundations, but it is perhaps more difficult to explain why professional managers and board members in the foundations and their firms would want to do a good job. To accomplish that, it seems necessary that they identify with the foundation or the company and voluntarily act in its best interest. Work on "identity economics" by Nobel laureates George Akerlof and Jean Tirole building on early work by a third Nobel laureate, Herbert Simon, indicates that this may in fact be possible under certain conditions (Akerlof and Kranton 2000, 2005, 2008, 2010; Benabou and Tirole 2011, Simon 1947). For example, individuals with a need for self-fulfilment and social status will presumably find it easier to identify with prestigious organizations. Similarly, it is possible that some individuals find it easier to identify more with an organization that has a charitable owner.

Worker cooperatives. An alternative is to model non-profits as worker cooperatives (Pauly and Redisch, 1973). Glaeser (2002) models US non-profits as employee cooperatives that are captured by elite employees (doctors, university professors, or priests). Non-profit ownership is common in private hospitals (such as the Mayo clinic), and many engineering companies are foundation-owned. Alternatively, enterprise foundations probably could be said to be captured by top managers in the companies that they own. This would then imply that there is considerably more latitude for variations in the ownership and governance of business firms than is normally implied by corporate governance literature.

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At face value, the worker cooperative model would seem to imply high salaries per worker and lower levels of employment relative to output. However, if the capturing agents are top managers rather than elite employees, the model seems consistent with preference for size and growth. Glaeser (2002) describes how there can be conflicts of interests between donors and professional managers in US non-profits, and how over time the professional managers tend to become more powerful as organizations grow, gain control of their own resources, and so become less dependent on the donors. Similar trends and conflicts can be observed in enterprise foundations between founding families and professional managers. Thus, over long time periods the founding families may tend to lose their control of the foundations and their boards. With regard to performance, the worker cooperative model appears to be most consistent with constrained managerialism, i.e., the interests of managers or key employees are maximized subject to capital and product market constraints. This is very similar to the managerialism that agency theory predicts for companies with atomistic ownership, i.e., weak owners and strong managers (Roe 1994).

Non-contractible quality. A third body of non-profit theory is based on quality uncertainty (Hansmann 1980, Glaeser and Shleifer 2001). Hansmann (1980) explains the survival of non-profit institutions by a contract-failure argument: when the buyer is uncertain about the quality of a service provided to her, a market failure occurs since the producer has the capacity to reduce quality of the good in ways that she cannot detect. To facilitate contracting under these circumstances the supplier may organize as a non-profit enterprise, which is free of profit-incentive to exploit customers. Non-profit enterprise can therefore be seen as a binding commitment not to maximize profits opportunistically at the expense of buyers, and in principle the argument can be generalized to include safeguarding of other economic relationships in which a company has decisive information advantages, e.g., relations with suppliers, bank

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relationships, interfirm alliances, employee relations etc. All else being equal, a non-profit firm could be less likely to renege on implicit contracts with third parties because they value the extra profits less.

Glaeser and Shleifer (2001) develop this perspective formally in an incomplete contracts framework. Here, the problem is not asymmetric information per se, but rather that quality or certain aspects of it are unverifiable and cannot be contracted on. They conclude that there is scope for non-profit enterprise in sectors of the economy where there are opportunities for severe ex post expropriation of consumers, employees, and donors. In their model a firm has the opportunity to reduce cost at the expense of non-verifiable product quality to the buyer. The owner/manager of a for-profit firm will do this as long as the marginal cost reduction exceeds the marginal expense/effort involved (i.e., until marginal effort costs equal marginal cost reduction and profit increase). On the assumption that the manager of a not-for-profit firm will value a marginal increase in profits by less than the owner-manager of a for profit firm, she will have less of an incentive to reduce costs and lower quality. Therefore, not-for-profit firms will invest less in cost reduction that reduces non-verifiable product quality and hurts the buyer. Buyers will recognize this and prefer to deal with the not-for-profit firm. Over time a more consistent pattern of honouring implicit contracts with customers and other stakeholders would of course be expected to result in a better reputation.

While unobserved and unverifiable aspects of quality are present to some degree in all economic relationships, their importance is likely to vary by nature of the product, the institutional environment, and other characteristics. It may be that certain industries are characterized by greater information asymmetries, but it may also be that a non-profit structure can support business strategies that rely on product quality differentiation, even in relatively transparent industries. Obviously, these possible benefits of non-profit ownership related to limiting the profit motive have to be weighed against the disadvantages of not being able to

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attract outside equity and lower cost efficiency because of less intense monitoring (Fama and Jensen 1983a).

With regard to performance, the non-contractible quality model is particularly interesting because it entails the possibility that foundation-owned companies may overperform in some sectors and perhaps even generally if non-contractible quality problems are widespread.

Foundation ownership as a commitment mechanism

In this section we outline a theoretical rationale for enterprise foundations based on previous work by Hansmann (1980), Schelling (1960, 1985), Kreps (1990), Mayer (2013, 2018, 2021), Thomsen et al. (2018), Hulgaard and Thomsen (2020), and Poulsen, Børsting, and Thomsen (2021). We propose to regard foundation ownership as a commitment mechanism (Schelling 1960, Elster 2000).

They key idea is that founders make a set of interconnected commitments when they establish an enterprise foundation.

First, by establishing a non-profit (the foundation) and transferring a substantial share of their wealth to it, they curtail the profit motive (Hansmann 1980), since the transfer is irrevocable and can never go back to the founder. As argued by Hansmann, this enables the foundation – and by implication (we claim), its subsidiaries – to engage more favourably with customers under asymmetric information, when for-profit companies would have an incentive to cut costs and reduce quality. Presumably, customers are more likely to buy from a company that has less of an incentive to abuse their trust (Hansmann 1980). The same argument can be applied to employees, suppliers, and other stakeholders. More generally, because the foundation has little or no incentive to break implicit contracts, foundation-owned companies can more credibly

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negotiate such contracts with their stakeholders. For example, we propose that employees are more likely to be loyal if they trust that they will be rewarded by stable future employment, even if the company could increase its short-run profitability by laying off employees (Kreps 1986). This can be a source of competitive advantage, since both the foundation and their stakeholders may benefit ex ante from the absence of incentives to breach such implicit contracts, even when doing so would maximize profits ex post (Uhlaner, Floren, and Geerling 2007, Cremers, Masconale, and Sepe 2016).

Poulsen, Børsting, and Thomsen (2021) seek to advance this perspective further by proposing "the mutual commitment hypothesis" that ownership commitment by enterprise foundations facilitates organizational commitment by employees in foundation-owned firms. They argue that firm commitment to employee welfare is both stronger and more credible in foundation-owned firms because of the long-term and philanthropic nature of foundation ownership. As a result, they hypothesize that employees in foundation-owned firms are more likely to reciprocate with organizational commitment. Greater organizational commitment is in turn hypothesized to be associated with higher employee retention, effort, and productivity growth.

Since the key decision makers in enterprise foundations – the foundation board members – are not rewarded by economic incentives, other motives become more important. For example, they may identify with the foundation and its purpose (Akerlof and Kranton 2010). Employees may also find it easier to identify with foundation-owned firms, knowing that profits that they help generate will be reinvested or donated to charity. An idealistic purpose can help motivate not only customers, but also employees and other stakeholders to identify with the firm (Henderson, R., and Van den Steen 2015).

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Secondly, the founder commits the foundation to act according to the purposes stipulated in the foundation charter, chief of which are the longevity and independence of the company (Thomsen et al. 2018). In other words, the enterprise foundation is legally committed to the long-term ownership of the enterprise. Alternative charter provisions – also legally binding – can include special attention to product quality, employee welfare, and contributions to research, education, culture, social projects, and general charity. In addition to the formal charter provisions, the foundation board will usually be guided by a more informal perception of the founder's will based on recollection and historical evidence (Thomsen 2017).

As long-term owners (Thomsen et al. 2018), enterprise foundations are less pressured by stock market fluctuations, earnings expectations, or corporate raiders. They are able to make long-term decisions that avoid economic short-termism that may influence investor-owned companies. Foundation ownership also avoids or mitigates the succession challenges and internal conflicts, which are known to be costly in family-owned firms (Bennedsen et al. 2007, Mehrotra et al. 2011, Bertrand and Schoar 2006).

Thirdly, an unwavering commitment to continue the company's operations in a particular industry may be a valuable deterrent in competition with other firms (Ghemawat 1991). For example, as in a "chicken game" a non-negotiable commitment to a particular industry may convince competitors to give up rather than face cutthroat price competition (Fudenberg and Tirole 1985).

Finally, almost all enterprise foundations have a philanthropic purpose in addition to the business purpose (Thomsen 2017). Since philanthropy is usually paid for by dividends from the company, the philanthropic purpose implies an incentive to generate profits, albeit less

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strong than in companies where investors or managers have an ownership stake. However, unlike shareholders, recipients of philanthropy have no claim on profits. Nevertheless, the foundation has to trade off reinvestments in the business against philanthropic activities, which helps put a brake on unproductive reinvestment.

To be sure, there are costs as well as benefits to making these commitments. In addition to the founder's substantial loss of personal wealth, a strong preference for survival and retaining the foundation may for example prevent the company from taking part in socially beneficial restructuring or from issuing equity to finance growth. The founder's administrative heritage may lead to excessive conservatism and may impede flexible adaption to new circumstances. The lack of a personal profit motive may conceivably make companies less agile and so on. The point we wish to make is not that the strong commitment implied by foundation ownership is a panacea to solve all problems, but rather that it is an ownership model that may be competitive under some circumstances.

Commitment and purpose

Mayer (2021) explains how commitment to a corporate purpose can be a source of competitive advantage. He argues that a corporate purpose – which provides "profitable solutions to the problems of people and planet" – can earn the trust and goodwill of customers, suppliers, employees, and other stakeholders. Greater trust in the company can result in greater customer loyalty, more engaged employees, more reliable suppliers, more supportive societies and more stable shareholders, which in turn generate greater revenue, lower costs, more profits, and higher shareholder returns. The necessary condition for this to happen is sufficient clarity about corporate purpose and a credible commitment to fulfilling it, which requires that the company purpose is rooted in corporate governance.

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The British Academy (2019) has issued eight principles to guide the transition to purposeful business.

1. Company law should require firms to specify and implement a company purpose. This is the case in enterprise foundations, in which purpose is the guiding principle.

2. Regulation should ensure that the purpose is socially useful. This is the case in enterprise foundations, which must have a well-defined social purpose.

3. Corporate ownership that promotes and supports fulfilment of the purpose. This is clearly the case in foundation-owned companies, in which the foundation signs on the company's strategy.

4. A company board which ensures that the company's values and strategy are aligned with the purpose. Since enterprises have controlling influence, they can do this by electing directors considered up to the task.

5. Monitoring whether the purpose is fulfilled. This is a legal obligation of the enterprise foundation board.

6. Monitoring how management performs with regard to purpose fulfilment. This also follows from the foundation purpose.

7. Obtaining suitable long-term financing for the purpose. Patient capital provided by enterprise foundations is a clear case in point.

8. Engaging in public private partnerships, which enterprise foundations regularly do, and where they have a unique credibility because of their non-profit status.

All together it is understandable that foundation-owned companies are regarded as prominent real-life examples of purposeful businesses.

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Why are enterprise foundations so rare?

Given the potential social benefits of enterprise foundations, it is perhaps surprising that the enterprise foundation model is not more widely used around the world. Why is foundation ownership so rare?[10]

The first and most obvious explanation is that transition to foundation ownership usually requires a founder – the owner of a company – to give away a company to a foundation that she has established for this purpose. This normally implies a substantial loss of wealth on behalf of the founder and her offspring, which in itself is a huge disincentive to establish foundations. Even if enterprise foundations are under some circumstances a socially useful institution, they are likely to be in short supply. In economic jargon, this constitutes a market failure. As we have argued in the section on "Why Denmark" in the introduction, it took a rather special tax regime of high wealth taxes and particularly efficient legal institutions to foster a relatively high number of enterprise foundations in Denmark and to some extent in other Northern European countries as well.

Another reason may be institutional conservatism. There may be a certain fear among the non-profit managers and their regulators that combining non-profits and business (by foundation ownership) may compromise the charitable mission and integrity of non-profit institutions – for example that they will engage in self-dealing, divert resources from the non-profit objective to business activity, give the founding family too much power (Fleishman 2001, Simon 1995, House of Representatives 1969). Likewise, the tax benefits that non-profits are said to enjoy (House of Representatives 1969), may be seen as creating unfair competition if foundation-owned companies compete with for-profit companies whose shareholders need to pay taxes

[10] We are grateful to an anonymous reviewer for raising this question.

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(House of Representatives 1969). This argument ignores the funds that foundations need to service their charitable purposes.

Finally, although foundation-owned companies appear to be competitive with conventional for-profit companies, they do not always outcompete them. In fact, there are most likely costs as well as benefits to foundation ownership as we suggest below. Although foundation-owned companies fare well in comparison, they do not systematically outcompete other ownership structures.

Conclusion

As might be expected, we find that there are both advantages and disadvantages to enterprise foundations and foundation ownership. We try to summarize hypothetical advantages and disadvantages in the table below. The disadvantages include muted incentives (Fama and Jensen 1983), the absence of a market for corporate control, risk aversion, limited diversification and capital rationing (Fama and Jensen 1985) and the absence of a well-defined objective function (Jensen 2001).The hypothetical advantages include ownership commitment, long-termism (Thomsen et al. 2018), social responsibility (Børsting and Thomsen 2017, Schrøder and Thomsen 2021b), philanthropy (Thomsen 2017) and (particularly compared to family businesses) succession.

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Hypothetical benefits (strengths) and costs (weaknesses) of foundation ownership

Advantages (benefits, strengths)	**Disadvantages (costs, weaknesses)**
Long-term horizon	Muted incentives
Ownership commitment	Risk aversion
Social responsibility	Financial constraints
Philanthropy	No market for corporate control
Succession	Multiple objectives (business, philanthropy)
Company survival	Company growth

As for the advantages, foundations are in principle perpetuities, hence the long-term horizon. They are conservatively managed to ensure that they can continue to serve the purpose.

In enterprise foundations, owning a company is often part of the formal purpose. Even when it is not, the board will often feel that it has an obligation to maintain ownership. Hence the ownership commitment.

Social responsibility may be mandated by the foundation charter and is well aligned with the philanthropy goals, which most enterprise foundations have.

Enterprise foundations avoid the problems of ownership succession in family businesses. For example, ownership is not diluted as a result of inheritance by new generations.

Enterprise foundations value the survival of the company over short-term profits.

As for disadvantages, enterprise foundations are not motivated or energized by the profit motive to the same extent as individual entrepreneurs. Muted incentives may tend to make foundation-owned firms less agile.

They are risk adverse, which implies that they sometimes trade off lower expected risks for lower expected returns.

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Since they are reluctant to dilute ownership or risk their financial independence by aggressive borrowing, foundation-owned companies may be more financially constrained.

Managers in foundation-owned companies are not disciplined by the market for corporate control and may therefore be less motivated to create shareholder value.

Because of multiple objectives, managers in foundation-owned firms may be less focused on creating shareholder value.

Finally, foundation-owned companies tend to grow slower because they are more reluctant to borrow and dilute ownership.

All told, just as with any other ownership structure, there are both costs and benefits to enterprise foundations and foundation ownership.

4. Foundation Law[11]

Regulation plays an important role for foundations since they have no owners to control them (Thomsen 2014). The checks and balances on the board that owners exercise in other companies have to be vested in the foundation charter and foundation law. Monitoring compliance with the charter and the law must instead be exercised by a regulator (the foundation authority) or the courts.

In this section, we review what we believe to be the salient aspects of enterprise foundation law. First, we consider some general issues facing legislators in this area and some of the policy choices at their disposal. Secondly, we describe the key elements of enterprise foundation law using Danish foundation law as an example since Denmark has a particularly well-developed body of law in this area. For example, Denmark is one of the very few countries in the world

[11] This section is an updated version of Thomsen (2017) chapter 3.

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that has a distinct body of enterprise foundation law, a distinct enterprise foundation tax law, and soft law best practice recommendations for enterprise foundation governance.

Since foundations have no owners, regulation plays an important role in monitoring foundation boards to ensure that they respect the law and the foundation charter. Over time, regulators around the world appear to have stepped up their supervision of ordinary foundations. They have started to require independent audits, independent audit committees, public access to financial statements, increased board responsibility for issues like CEO pay, limitations on related party transactions, and mandatory policies addressing conflicts of interest, travel, and whistleblowing (Edie 2010, Hansmann 2010, Thomsen 2014). Below, we identify some important design parameters that legislators have used (Thomsen 2014).

1. Legality. When – if ever – is an entity recognized as a foundation or an enterprise foundation? This question turns on legality and secondly on the definition of what constitutes a foundation and an enterprise foundation.
2. Codification. Is case law sufficient, should enterprise foundations be regulated under general foundation law or are they sufficiently special to warrant an independent body of law?
3. Limitations on purpose. What kind of limitations should be put on foundation purposes? Do they have to have a charitable goal? What is charity by the way? Is owning a company an acceptable goal? Is support for family members an acceptable goal?
4. Autonomy. To what extent should third parties such as founders or beneficiaries be allowed to engage in foundation governance? To what extent can foundations be beholden to third parties like beneficiaries or other stakeholders?

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5. Related party transactions. How should related party transaction be regulated? Should they be prohibited altogether? Approved by the regulator? Disclosed in the annual report?
6. Transparency. Should private foundations be obligated to disclose information such as annual reports? To whom should it be disclosed? To the regulator or to the general public?
7. Preservation of capital. Should preservation of capital and longevity be an absolute goal, or should enterprise foundations be allowed to close down?
8. Charter accountability. Should foundation boards be held to the letter of their charters or be allowed to interpret them more freely?
9. Choice of foundation authority. Who should supervise enterprise foundations? The Courts, ministries, or local tax offices?
10. Regulatory style: Hard or soft law? Can enterprise foundations be regulated by best practice recommendations?

Foundation regulators use these instruments to different degrees so that foundation law varies enormously across countries (Hopt and von Hippel 2010 p. xliv) in contrast to company law, where legal scholars have identified a range of generic legal attributes that are common to most jurisdictions (Hopt and von Hippel 2010). In some countries enterprise foundations are not allowed at all. In others, such as France, they are strictly regulated (Deckert 2010). Some countries require foundations to have charitable goals (Germany), whereas others are much more liberal and allow a business purpose (Norway). In some countries (Sweden) it is acceptable, for example, that the founding family occupies a majority of the board, in others (Denmark) it is not. In some countries (Denmark) charters can be changed (by so-called permutation), in other countries this is virtually impossible. In some countries, foundations are

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mainly regulated by the tax authorities (the US), in others they are regulated by a government agency (Denmark) or by the courts (The Netherlands).

As such it is very difficult to talk about enterprise foundation law as an abstraction, so in the following we will use Danish foundation law as a point of departure for a discussion of key elements of enterprise foundation law.

Principles of enterprise foundation law – with Danish law as an example. Most countries around the world appear to permit enterprise foundations (Hopt and von Hippel 2010, Erhvervsudvalget 2012). But Danish law is unique in allowing foundations to undertake almost any kind of business activity and for having passed a special law to regulate such entities (LU 2012). Since foundations are both allowed to do business in much the same way as companies, a guiding principle in Danish foundation law has been neutrality between companies and foundations in the sense that it should be equally attractive to do business in either form. This equivalence is an explicit goal of the Danish enterprise foundation law (Erhvervsfondsloven – hereafter EFL – p. 23). Compared to ordinary foundations, the law therefore subjects Danish enterprise foundations to greater public scrutiny. They have to publish annual reports just like companies, they are regulated by a special foundation authority, and they must comply with a range of governance requirements. They are even subject to a best practice (comply or explain) code as publicly listed companies are. However, compared to ordinary foundations, they have greater flexibility in their investment policies.

Definition. A first and crucial step in any kind of regulation is to define the entity being regulated. While the legal definition may at first seem rather innocuous, it is in fact an important kind of regulation since entities that do not conform to the established definition can be denied

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legal personality and thus cannot enter into legally binding transactions (EFL § 30). Below we provide the official Danish definition in the law on Enterprise foundations (Erhvervsfondsloven, EFL, to which future references refer unless otherwise stated).

EFL § 1. 2. An enterprise foundation is a legal person in possession of an endowment which has been irrevocably separated from the funds of the founder in order to fulfil one or more purposes stated in the charter over a period of years, under a management independent of the founder, with business activity, and where no physical or legal person outside the foundation has claims on the foundation's endowment.

EFL § 2. A foundation is regarded as undertaking business activity if it 1) sells products, immaterial assets, services etc. on a regular basis, 2) sells or rents out property, 3) has control of a business company.

The way we define them in this paper, enterprise foundations are a subclass of business foundations defined by being in control of a business company. Control is defined in the Danish Company Act as de facto influence (Companies Act § 7.2). An owner has both formal and effective control of a company if the owner directly or indirectly owns more than 50% of the votes, but a foundation (or another owner) may also have effective control with a smaller ownership share, for example 20%, depending on shareholder structure and shareholder agreements.

The legal personality of the foundation sets it formally apart from common law US or UK trusts. **Irrevocability** is a defining characteristic of foundations in general (Kronke 1988). Irrevocability creates a distinct, self-owning entity and sets foundations apart from family trusts

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where stock is temporarily held in bond but may under certain circumstances revert back to the founding family. Thus, foundations are different from corporations, which have shareholders with residual claims on profits as well as control rights (i.e., to elect the board). Foundations are also different from associations (such as cooperatives), which have members that appoint a board of directors and may at a later point decide to dissolve the association and pay out its capital to the members. The charter is the constitution of a foundation and there are specific legal requirements for what it must contain (more on this below).

The **purpose** is another defining characteristic of foundations. In most countries, foundations must have an exclusively charitable goal (Hopt and von Hippel 2010). However, Danish law is surprisingly flexible as to what purposes are allowed. The comments to the Enterprise Foundations Act allows, *"free access to establish enterprise foundations with any kind of purpose"* provided that the purpose is sufficiently well-defined, legal, and not contrary to common decency. In particular, running a particular kind of business or *"owning and ensuring the survival"* of a company are legitimate purposes[12]. It is customary to distinguish between the activity goal (sustaining the company) and the donation goal (philanthropy) (EFL p. 68).

Duration. Furthermore, the foundation must exist *"over a period of years"*. This is a pragmatic version of the idea of the foundation as a perpetuity, which permeates much of European foundation law (Hopt and von Hippel 2010). It means that the purpose must, in principle, be able to be fulfilled indefinitely (EFL p. 38). In practice a time span of 4-5 years has been deemed too short, while a duration of 10 years has been accepted.

[12] However, because of the strict separation between founder and foundation, the main purpose cannot be to benefit the founder or his close relatives (EFL p. 37).

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Management that is independent of the founder appears to be a rather special requirement in Danish law. In practice this is interpreted to mean that approximately 1/3 of the board members are independent of the founder.[13]

The charter. The constitution of a foundation (enterprise or not) is given by its charter document, which describes the foundation's purpose and how it is to be governed (i.e., who sits on the board and how future board members are to be appointed).

> *§ 27. An enterprise foundation must have a charter, which (among other things) contains information on 1) its name, 2) its founder, 3) its purpose(s), 4) its core capital… 6) special rights or advantages attributed to the founders or others… 7) the number of board members and how they are appointed … 10) use of surplus and reserves.*

Empirically, enterprise foundations are not only founded by wealthy owner-managers, but also by companies, associations or even government organizations. However, many of these would not fit into our definition of enterprise foundations as owners of business companies.

The concept of "core capital" is an old-fashioned accounting concept, which continues to play a role in foundation law. It assumes a stock of principal assets like land, bank deposits or bonds, which generate an income flow (dividends) that can be used for consolidation (reserves) or distribution (donations). This echoes a German tradition according to which preserving the value of the principal capital is regarded as paramount because the foundation is a perpetuity (Carstensen 2010).

[13] Feldthusen and Poulsen (2015) criticize this requirement as being overly restrictive since the economic separation between founder and foundation is already secured by law.

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A critical question is what will happen to remaining funds if the foundation needs to be dissolved. What happens if the subsidiary company is sold or closed, for example? Usually, remaining funds must be donated or otherwise contribute as well as possible to the original purpose, which may not be easy if the sole purpose was to run a company. In keeping with the fundamental dogma of foundation law, the money can never go back to the founder.

Charter changes. Foundation charters are not written in stone. They may be changed with the approval of the foundation authority (§ 89, see the discussion of "regulation" below). Danish foundations are in fact revised rather frequently, on average every 5 years or so (Thomsen 2017, chapter 9), but this is unusual in international comparison. However, it is regarded as next to impossible to revise foundation purposes, and purpose changes require special approval by the Ministry of Justice. Charter changes may be justified by changes in the economic environment if it can be argued that charter provisions impair the ability of the foundation to fulfil its purposes (EFL p. 123).

Foundation governance. The foundation board may be self-elected, so that new board members are appointed by the incumbent board members. Alternatively, outside organizations such as the Ministry of Justice may elect board members. Below we summarize some of the most important legal requirements.

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A foundation is governed by a board of 3 or more directors not counting employee representatives (§ 37). It may choose to employ one or more executives (§ 37.2). The board of directors and the executives together constitute "the management" of the foundation. Foundation executives may be members of the board but cannot constitute the majority and cannot be chairs or vice chairs (§ 37.3). Likewise subsidiary company managers cannot be chairs or vice chairs of the foundation (§ 37.5). Company management cannot appoint members to the foundation board (§ 37.4). A member of the board may leave at any time (§ 44).

Note that Danish enterprise foundations do not have to appoint a CEO. They can let the foundation board handle everything, perhaps with administrative assistance by an administrator. The foundation board may delegate certain specific tasks to an administrator but remains responsible (§ 43).

The idea that executives may sit on the board but cannot constitute a majority echoes Danish company law and is similar to the concept of board independence in corporate governance. The same applies to a ban on combining the positions of chair and CEO, which is thought to be an excessive concentration of power with a single individual. There is also a ban (§ 37.4) on subsidiary companies appointing members to the foundation board[14]. The idea is to avoid that the foundation is taken hostage by company management. Board members may be self-elected (as is typical, EFL p. 84) or they may be appointed from the outside, for example a minority of the board may be appointed by a board of representatives (§ 37.1).

[14] However, a grandfather rule applies so that pre-2014 charter provisions mandating appointment of a minority of company officers to the foundation board can be maintained (§ 132.7).

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Foundation board members cannot be voted out by a majority of the (other) board members, and they can only be replaced or reappointed after their term period expires (§ 45). The tasks of the foundation board are quite similar to what would be expected of a company board (cf. § 38 below).

§ 38. The tasks of the board. The enterprise foundation board must exclusively take care of the purposes and interests of the foundation. It must take charge of overall and strategic management and ensure an adequate organization of the foundation's activities. In addition, it shall ensure adequate bookkeeping, risk management, and internal controls, adequate financial reporting, monitoring of executive performance, liquidity and solvency. In foundations without executives the board is in charge of day-to-day management.

It is interesting that the legislator emphasizes that the foundation board must focus on the interests of the foundation. Even in cases where its sole purpose as stated in the charter is to ensure the survival of the company the board's first concern must be the survival of the foundation. § 38 emphasizes that the foundation board is responsible (and liable) for such excessive risk taking. Foundation directors that intentionally or unintentionally cause damage to the foundation are personally liable (§ 126).

Donations are treated on par with dividends in companies, which implies that the board must take special care not to weaken the company's capital base in order to protect its future.

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The foundation board is responsible for capital disposals (including donations and capital reductions) that do not exceed what is defensible with regard to the finances of the foundation and its subsidiaries and that the core capital and legally required reserves are in place (§ 76). The board must ensure that the foundation donates to the purposes stated in the charter, but the foundation is permitted to retain a reasonable amount for consolidation (§ 77). The foundation can only donate from its free reserves (which are not bound by the charter or the law) (§ 78).

The need to ensure an adequate capital base is understandable in view of the need for creditor protection and to ensure the future ability of the foundation to fulfil its purpose.

There is no requirement of a minimum level of donations in Danish foundation law similar to the minimum requirement in US foundation law (§ 77). This is mainly because the activity goal of running a business conflicts with such requirements. However, the foundation authority may intervene and require the foundation to donate more or less if its donations are disproportionally large or small considering its charter (§ 42.2).

Instead of the annual general meeting held by corporations, enterprise foundation boards are obliged to hold an annual "accounting meeting" to discuss the annual report, and the auditor is obligated to attend (§ 59), unless both parties agree otherwise.

The role of the founding family. In accordance with the strict separation between founder and foundation, Danish law sets strict limitations on founding family entitlements and board representation.

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§ 28. Charter clauses which provide special rights to donations are not legally valid for longer than the current generation and the generation yet unborn. Neither are special rights for positions or income from the foundation or its subsidiaries (§ 28.2) except board positions.

§ 40. The founding family cannot constitute a majority of the board without the consent of the foundation authority.[15]

§ 87. Neither founders, directors, or executives nor their spouses or children can receive remuneration other than fees that exceed what is regarded as normal according to the nature and extent of the tasks involved.

Thus, the founding family can retain the right to minority representation on the foundation board, but nothing else (and they are, for example, not entitled to board seats in subsidiary companies). The rule is that entitlements are valid for "the yet unborn generation" – i.e., the offspring of the currently living, but no longer. Beyond this, descendants may continue to receive donations, but they do not have any special rights or priority over other purposes (EFL p. 69).

Employee representation. Employees of Danish companies with more than 35 employees have a right to elect members to the company board (typically 1/3 of the members). This right is extended to the boards of enterprise foundations as indicated below.

[15]Similarly, if the foundation is founded by a company, owners or managers of the company cannot constitute a majority of the foundation board (§ 40.2).

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§ 64. Employees of subsidiary companies are entitled to representation on foundation boards according to the same rules as in the Danish Companies Act. However, employee representatives only participate in questions related to the subsidiary company unless otherwise stated in the charter and they do not participate in the nomination of non-employee elected board members.

In practice, the employees of many companies choose not to exercise their right to representation on the foundation board.

Board remuneration. A potential weakness in foundation governance is that board members decide their own fees, and this might, in principle, lead to excessive fees. Hypothetically, such practices could even introduce personal profit incentive through the back door. However, in practice, foundation board fees are limited by the law and closely monitored by the foundation authority (§ 49).

§ 49. Compensation for board members (directors) should not exceed what is regarded as usual according to the nature of the assignment and what can be considered defensible in view of the financial situation of the foundation and its subsidiary companies. The Foundation Authority can lower board fees which are deemed to be too high (§ 49. 2).

Incentive-based pay is regarded as inappropriate in a foundation (EFL p. 85). This echoes considerable international scepticism towards explicit economic incentives in the non-profit sector. For example, UK charitable trusts were apparently only fairly recently (in 1994) allowed to pay their board members (Hopt 2010 p. 550). Moreover, pay for performance in terms of profit-sharing is often prohibited by law (Steinberg 2010 p. 106). Board members are often

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expected to donate to rather than to receive payment from non-profit organizations. The purpose seems to be to ensure low-powered incentives that in some cases are arguably a better way to organize economic activity. Empirically, even non-profit employees have been found to earn somewhat lower wages than their colleagues in for-profit businesses (Steinberg 2010).

In considering what an appropriate board fee is, the foundation authority may examine fee levels in foundations and companies of similar size (EFL p 86) but has also been known to count the number of hours spent in board meetings and preparation. A few board members have even been asked to pay back part of their fees (EFL p. 121).

For documentation and to clarify liability, minutes of foundation board meetings are required to be comprehensive "negotiation protocols" rather than mere decision records (EFL p. 89). The foundation authority may request a copy if it sees fit.

Supervision

The Danish law on enterprise foundations (and enterprise foundations) is administered by the Danish Business Authority under the Ministry of Business and Economy (§ 24). The expenses are partly funded by a fee to the foundations themselves, which the Business Authority is entitled to charge (§ 19.4.).

The role of the foundation authority is limited to "legality supervision", i.e., to ensure that foundation law and other laws are upheld, and that foundations are governed in accordance with their charters. The foundation authority is not entitled to question the foundation boards' judgments and decisions as long as they comply with the rules.

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To fill this function the authority has numerous sources of information. Enterprise foundations must prepare annual reports audited by authorized accountants (§ 69) and submit them to the foundation authority as well as to a publicly available register. According to the Danish Financial Statements Act (DFSA § 77b) the annual report must disclose their donation policy and a breakdown of their donations by main category. And enterprise foundations must submit a list of all donations to the authority if they do not disclose it in the report. The annual report must also disclose all transactions between the foundation and related parties (DFSA § 69.3) as well as board and other fees in the foundation and its subsidiary companies (DFSA § 69.2) that have been paid to executives and non-executive directors of the foundation.

The foundation authority can request any additional information that it deems necessary to fulfil its function including an audit at the foundation's expense (§ 25). It can even appoint an extra co-auditor on behalf of the foundation (§ 70). Moreover, auditors must inform the foundation authority directly in case of transgressions against foundation law or the foundation charter (§ 69.2). The foundation authority may even, if necessary, require the auditor to disclose additional information concerning the foundation.

In case of transgressions against the law or the charter, the foundation authority can issue injunctions to foundation directors and foundation executives. It may at any time dismiss a member of the foundation board or a foundation executive who does not fulfil the founding requirements, is in personal bankruptcy, is incapacitated, or acts in a way unworthy of a board member (§ 45). It may also in special cases require that the board dismisses a CEO who clearly does not fulfil the requirements necessary for daily management (§ 46). However, in practice these extensive powers are rarely used.

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Instead, the foundation authority mainly assumes a passive role in collecting the annual reports submitted by the foundations and periodically sampling some for further inspection. However, it may become more active if possible transgressions are brought to its attention, for example by the media. In such cases it may more actively ask for additional information and intervene if necessary.

Moreover, the authority becomes actively involved when it is approached by the foundation in cases involving charter changes, dissolution, disagreements among board members, and interpretation of existing rules. The foundation authority must approve charter changes including the dissolution of the foundation (§ 89). However, with regard to changes of purpose to allow dissolution it must obtain approval by the Department of Civil Affairs under the Danish Ministry of Justice (§ 89 2). After negotiations with the foundation board, the foundation authority may annul or change a charter provision that has proved to be obviously inappropriate.

The foundation authority's approval is also required for any extraordinary (for example risky) decisions that may impair its ability to fulfil its purpose.

The foundation authority allows enterprise foundations to merge with other enterprise or non-enterprise foundations (§ 91) a) if the purpose of the combined entity is similar to their own (§ 89.2), b) if their purposes will be better handled after the merger, c) if the merger must be deemed to be in the interest of the foundation, and d) the merger is not prohibited by its charter.

Decisions by the foundation authority may be appealed to the Danish Business Appeals Board (a court of business experts) or to the normal Danish courts (§ 130). In practice, however, few

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decisions are appealed, in part because the appeals procedure may drag on for years, and business issues typically need to be resolved faster than that.

Soft Law: Comply or Explain

According to Danish foundation law, all enterprise foundation boards must explain how they respond to the Recommendations on Good Foundation Governance issued by the Committee on Good Foundation Governance (§ 60). They must disclose whether the foundation complies or not with the individual recommendations. In case of non-compliance, the board is obligated to explain why and what steps it has alternatively taken to address the issues in question. The comply-or-explain approach is well known for listed companies, but almost revolutionary in the context of foundations.

As from 2016, Danish enterprise foundations are required to disclose whether they comply with 16 (now 17) specific recommendations (see below) and to explain why, if they choose not to comply. It is acceptable and legal not to comply provided that the foundation board can provide a suitable explanation.

In listed companies, investors can sanction non-compliance by selling their stock or engaging in various kinds of shareholder activism if they are not satisfied with the explanations provided. No such sanction is possible for enterprise foundations, which means that the rationale for "comply or explain" is much less clear. However, it seems possible that non-compliance can attract the attention of the foundation authority and possibly lead to increased scrutiny and interventions. Moreover, judges may also consider non-compliance when they decide in cases concerning the foundation, for example concerning the liability of foundation board members. Stakeholders, like banks or suppliers, may take compliance into consideration, and compliance

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may also affect the general reputation of the foundation and its board members. However, whether such mechanisms will work adequately in the case of enterprise foundations remains to be seen.

Below we comment on each of the 17 recommendations.

1. It is recommended that the foundation board adopts guidelines for external communication, including who can and should address the public on behalf of the foundation and on what topics. The guidelines should accommodate the need for transparency and stakeholder needs for relevant updated information.

Typically, the CEO or chair of the foundation board will assume this role. It may be unfortunate if the communication department or the CEO of a subsidiary company speaks up on behalf of the foundation, particularly if there are potential divergences of opinion between the foundation and the company.

2. It is recommended that the foundation board reviews the foundation's strategy at least annually and reviews its strategy and donation policy.

The idea is not to revise the strategy every year but to regularly check that it is still appropriate given the situation of the foundation and the subsidiary companies.

3. It is recommended that the foundation board of directors regularly assesses whether the foundation's asset management is in line with the purpose of the foundation and its long-term and short-term needs.

The intention here is that the foundation should actively monitor its asset management and financial risk exposure given its current financial conditions.

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4. It is recommended that the chairman of the board convenes, organizes, and leads the board meetings with a view to creating the best possible conditions for the individual and collective contributions of the board members.

While this may seem rather self-evident and superfluous, the message appears to be that the chairman should empower other board members to participate rather than running the show herself.

5. It is recommended that the foundation board keeps control if it (as an exception) delegates specific operational tasks to the chairman. An adequate division of labour should be ensured between the chair, the vice chair, the rest of the board, and the executives (if any).

Because there usually is no foundation CEO the chair very often assumes a powerful role in both leadership and operations. However, this recommendation implies that the foundation board should insist that he or she is acting on its behalf and that the board should retain overall control.

6. It is recommended that the foundation board continuously evaluates and determines what competencies it needs to function as well as possible.

This emphasizes recruiting and retaining board members who have the competencies most needed to fulfil the foundation's purpose. Even for listed companies it is a fairly new practice to match specialized board competencies with the current needs of the organization. In fact, some hold that a close match is not desirable since it is difficult to predict what the relevant future issues will be and that it is therefore better to recruit board members with general competencies.

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7. It is recommended that the board ensures a structured, thorough, and transparent process for nomination and selection of new board members.

The objective is to avoid relying exclusively on recruitment through personal connections (the old boys' network) without sufficient quality control. A formal process will presumably make it easier to elect board members that best contribute to the purpose of the foundation.

8. It is recommended that board members are appointed based on their personal characteristics and competencies. In nominating new members, the board should weigh the need for renewal against the need for continuity. The board should also consider the need for diversity in relation to experience and philanthropy as well as age and gender. While this may seem evident according to modern governance practices, the intention is to ensure that foundation board members are elected according to their qualifications rather than through personal connections or automatic reappointment.

9. It is recommended that the foundation annually explains the composition of the board in the annual report and on its home page, including the level of diversity. The following information should be provided for each individual board member:

- *Name and position*
- *Age and gender*
- *Date for entry into the board, whether the person has been re-elected and when the present term expires*
- *Special competencies*
- *Other positions including executive and non-executive positions in company boards, committees, foundations, and organizations*
- *Whether the member is appointed by authorities or donors*

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- *Whether or not the member is regarded as independent*

Disclosing this information follows recent practices in publicly listed companies.

10. It is recommended that a majority of board members in an enterprise foundation are not at the same time executive or non-executive directors in a subsidiary company except in wholly owned holding companies.

This rule is designed to create some managerial distance between foundation and company boards as recommended by Hansmann and Thomsen (2021). The idea is that the ownership role of the foundation is strengthened if it is not captured by company managers or board members.

11. It is recommended that a suitable number of foundation board members are independent, i.e., 1 of 3-4, 2 of 5-8, 3 of 9-11 members and so on. A board member is not regarded as independent if he or she

- *is or has been an executive of the foundation or a subsidiary company within the last 3 years*
- *has received substantial remuneration or donations from the foundation or its companies within the last 5 years*
- *has had an important business relation to the foundation or subsidiary within the last year (e.g., personally or as an employee, partner, shareholder, customer supplier, director, or executive in a company) within the last 3 years*
- *is or has within the last 3 years been employed by the external auditor*
- *has been a member of the foundation board for more than 12 years*

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- *is next of kin to or in other ways closely associated with persons that are not regarded as independent*
- *is a founder or large donor if the foundation aims to support their family or other closely related parties*
- *is a manager or board member in an organization that receives or has repeatedly received substantial donations from the foundation within the last 5 years.*

The definition of independence here mirrors corporate governance standards in listed companies, but the motivation is different since there are usually no managers and never any outside owners, of which board members can be dependent or independent. The rationale in foundations is rather to avoid that foundation boards become "cliquey", which could reinforce groupthink and resistance to change. Note that the requirement is not that a majority of the board members should be independent (as is the rule in listed companies), but only around 1/3. One reason is that foundation board members should in fact be expected to have longer tenure than board members in listed companies because of the long-term perspective of enterprise foundations.

12. It is recommended that board members are appointed for 2-4 years. This recommendation involves a trade-off between independence and renewal. On the one hand, the foundation board needs renewal. On the other hand, regulators are afraid that annual re-election would mean that critical board members could be replaced too quickly and would therefore lose their independence.

13. It is recommended that the board sets an age limit for its members, which is published in the annual report or on the home page.

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The age limit is intended to limit senescent board membership, but it has been heavily criticized for age discrimination.

14. It is recommended that the board decides on an evaluation procedure according to which the board, the chair, and the individual members are evaluated annually, and the evaluation is discussed by the board.

This again echoes similar requirements in listed companies. Since foundation boards are usually self-elected it is particularly important that they are able to evaluate their performance and to appoint new board members if necessary.

15. It is recommended that the board annually evaluates the work of executives or administrators according to clear predefined criteria.

Annual board evaluations are intended to ensure that the board is continuously up to date.

16. It is recommended that members of the board are compensated by a fixed fee, possibly combined with a bonus, which should not depend on accounting results. The fee should reflect the workload and responsibility of the task in question.

For board members this again follows corporate governance practices in listed companies. A characteristic of foundations is that no outside party has a residual claim on its income, so it is understandable that performance-based pay is not encouraged. It is, in any case, highly unusual.

17. It is recommended that the annual report discloses the total compensation that executive and non-executive directors receive from the foundation and subsidiary companies. Other kinds of compensation that they receive should also be disclosed.

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Disclosure at the individual level follows listed company governance standards where it is intended to put downward pressure on fees.

Summary on enterprise foundation law. In most countries around the world, enterprise foundations are not a legal category and there is no unified body of enterprise foundation law. Denmark – with an abundance of enterprise foundations, a law on enterprise foundation, and a law on the taxation of enterprise foundation and a code of best practice for enterprise foundation – is an outlier. Instead, in most countries such law has to be inferred from general foundation law, trust law company law, and tax law. However, the law does play a crucial role in shaping the frequency and structure of enterprise foundations. For example, it determines whether enterprise foundations are permitted at all, and if so, how they are governed and regulated.

5. Taxation

The taxation of enterprise foundations has received little attention in academic literature, although foundations are sometimes seen as tax shelters in popular discussions. A google search for "enterprise foundation" and "tax shelter" generated 386 hits.

This section makes a first attempt at filling this gap. We focus on taxation at ownership succession to enterprise foundations compared to taxation at succession to other ownership forms like family business or investor ownership. After formation, enterprise foundations are, in many cases, effectively tax exempt (Hopt et al. 2008, Danish Tax Ministry 2018). However, as we shall see, countries vary widely with regard to taxation when enterprise foundations are created.

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Tax Regimes. In this section we discuss differences in taxation that encourage or deter the creation of enterprise foundations[16]. We begin by defining the attractiveness of the fiscal regime towards enterprise foundations on a scale ranging from low to high on the assumption that there will be more enterprise foundations in nations or areas of the economy where the tax regime is attractive. The higher the tax rate, the less attractive the tax regime. Since governments can influence attractiveness by subsidies and mandates as well as taxation, we talk more generally of "fiscal regimes", which include subsidies and civil law constraints.

By fiscal regime we mean the tax rules modified by subsidies, civil law provisions and other factors that influence relative incentives of enterprise foundations compared to other ownership forms, such as family or investor ownership. We employ the term "relative attractiveness" with the intention of indicating that taxation of enterprise foundations needs to be assessed in comparison to taxation of alternative ownership structures, such as family or investor ownership. For example, high wealth taxes on private individuals make it relatively more attractive to avoid these taxes by establishing an enterprise foundation. Such wealth taxes would include inheritance taxes, capital gains taxes, and direct wealth taxation. Similarly, tax deductions for pension funds savings could make investor ownership more attractive, which would indirectly make foundation ownership less attractive.

We rank fiscal regimes concerning enterprise foundations as ranging from the unattractive to the attractive. **Prohibition** – when governments prohibit enterprise foundations – is the least attractive fiscal regime, in which enterprise foundations cannot exist at all. Discouraging the formation of enterprise foundations by **taxation** is another (somewhat milder) way to make them unattractive. **Tax neutrality** corresponds to a midpoint of indifference, where enterprise foundations are neither promoted nor discouraged by taxation or subsidies. Governments may

[16] This section draws on a survey-based empirical overview (in Danish) by Feldthusen and Nørgaard (2016).

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also make it more attractive to establish foundations by allowing **tax deductions** or by means of subsidies. Finally, governments may set up private foundations[17] of their own accord.

We now proceed to examine how these different legal regimes are implemented in practice. The objective is not to provide a comprehensive overview but to show that the different regimes are empirically relevant by using examples from different countries. Table 1 provides an overview.

Table 1. Tax and regulation regimes for enterprise foundations (tentative examples)

Regimes	Prohibition	Taxation	Tax neutrality	Tax deductions	Government mandate
Examples	Lithuania Slovenia Czech Republic (with a few exceptions) Canada private foundations Austria public foundations	Fines (USA) Capital gains tax Austria Denmark 1998-2020 Dividend tax Belgium Bulgaria Italy Malta Slovakia Sweden	Capital gains tax exemption Norway Sweden Denmark before 1998 and as of 2021	Income tax deductions on donations to charitable enterprise foundations: Germany The Netherlands Switzerland	Italian banking foundations

Source: Hopt et al. (2008), Danish Tax Ministry (2018).

Prohibition. Some countries – e.g., Lithuania, Slovenia – do not allow enterprise foundations at all (Hopt et al. 2008 p. 90-91). Others (the Czech Republic) allow them only in exceptional circumstances (Hopt et al. 2008 p. 90). The legality of business ownership may also depend on foundation type. For example, Canadian private foundations and Austrian public benefit foundations are not allowed to own business companies (Canada Revenue Agency 2018, Hopt et al. 2008 p. 90).

[17] We focus on private foundations and exclude government non-profits even if they own business companies (as do for example some public sector energy companies). However, we include fully privatized foundations – such as the Italian banking foundations.

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High taxation may also reduce the frequency of enterprise foundations depending on the tax rate. The US tax authorities fine foundations for controlling share ownership. The 1969 US Foundation Law (House of Representatives 1969) taxes excess business holdings of above 20% of the stock in a single company (including the holdings of related persons like officers and directors or members of the founding family). The penalty is, in the first instance, a tax imposed on the foundation equal to 10% of the value of such holdings (Thomsen 2017). But if the foundation still has excess business holdings at the close of the next taxable period, the tax increases to 200% of excess business holdings. With very few exceptions, such as Hershey, this rule has done away with enterprise foundations in the USA.

Some countries (Denmark and Austria) have imposed capital gains tax on founders.[18] Until recently, founders in Denmark had to pay up to 42% of the company's value in taxes when donating their shares to a foundation, i.e., a total wealth loss of 100% (the donation) + 42% (the Danish capital gains tax) or 142%[19]. The formation of new enterprise foundations stalled when this tax regime was instituted, which led to a proposal for a new tax model (Danish Tax Ministry 2018) that was enacted in 2021. The new law allows foundations to succeed in (take over) the capital gains tax and to pay it down by charitable donations.

In addition, some countries – Belgium, Italy, and Sweden included – tax dividend payments from foundation-owned companies to the foundations. Others – such as France and Germany – tax dividends if the foundation actively influences the company. Still others – Austria, the UK, Denmark, and Spain – do not tax dividends from controlled entities.

[18] Danish Tax Ministry (2018) p. 27.

[19] It was possible to lower the capital gains tax by paying out extraordinary dividends to pay the taxes and at the same time reducing the value of the company. But this would unavoidably weaken the company's balance sheet and would be inconsistent with the desire to ensure its long-term future. Moreover, paying out dividends would incur additional (dividend) taxes.

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Tax neutrality corresponds to a midpoint of indifference, where enterprise foundations are neither promoted nor discouraged by taxation or subsidies. We tentatively suggest the current Danish tax model as a golden mean: no wealth taxes on founders and no dividend tax on foundations. However, as we shall see later, tax neutrality may be interpreted in different ways.

Tax deductions. Governments may make it more attractive to establish foundations by tax deductions or subsidies for enterprise foundations. Germany, the Netherlands, and Switzerland all allow income tax deductions for donations to foundations to some extent (Danish Tax Ministry 2018 p. 26). Moreover, some countries – such as Germany, Switzerland, and Denmark – allow foundations to deduct donations from their taxable income (Danish Tax Mistry 2018 p. 26), which means that they can eliminate their taxes by donating.

Government mandate. Finally, governments may themselves establish private foundations, which was the case in 1990, when the Italian government transferred more than 80 public and semi-public savings banks and credit institutions to newly established charitable foundations by the Amato act (Leardini, Rossi, and Moggi 2014). The banks became publicly listed, but the foundations maintained significant and, in many cases, controlling share positions. The Italian banking foundations are examples of privatization to foundations (Salamon 2014, Megginson, and Salamon 2018). Salamon (2014) documented more than 500 such examples, including for example the privatization of the Italian La Scala Opera.

Taxation principles. Given the range of possible fiscal regimes towards enterprise foundations, it is reasonable to ask which regime policymakers should choose. In this section we discuss 5 basic principles that are relevant for the design of an efficient tax system: tax revenue, economic efficiency, tax neutrality, diversity, and equity (see OECD/G20 2015 for an exposition of tax principles).

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Tax revenue. The most important element in a tax system is probably its ability to generate tax revenues to finance public expenditures, and at first glance foundations and in particular enterprise foundations seem to breach this principle, because they are tax exempt non-profits and therefore remove a source of tax revenue that would otherwise be taxable. For example, a founder-entrepreneur who donates her company to a foundation will in many (but, as we have seen, not all) jurisdictions avoid paying capital gains and inheritance/death taxes. The result is a revenue shortfall, which has to be financed from other sources with associated distribution and distortion effects, which would for example result from marginally higher income or value added taxes.[20] This may be what gives rise to the popular perception of enterprise foundations as "tax shelters"[21] – particularly since the founder and the founding family often continue to influence the company through membership of the foundation board.

However, this popular perception overlooks the sacrifice of consumption possibilities, which the founder-entrepreneur and her successors make in establishing the foundation. In societies governed by the rule of law and reasonably efficient foundation supervision, founders will be unable to recuperate this wealth loss by diverting funds for personal use although the situation may be less clear in so-called tax havens like the Cayman Islands or Panama.

Moreover, the taxes saved by ownership succession to enterprise foundations are not consumed but are either retained in the company (and thus generating business activity and taxes) or paid out at a later point in time as donations (which will also increase tax payments). The maxim that *"only people pay taxes"*[22] (e.g., Schurz 1986) implies that compensating tax revenues will

[20] An additional concern is that enterprise foundations are also exempt from all subsequent inheritance and capital gains taxes, which private individuals have to pay in each generation as they sell shares or pass ownership to new generations.

[21] An example is Stephen Moore in the Wall Street Journal Nov. 23, 2017, 2:24 p.m. ET: "*The wealthy have tucked billions into private non-profits—where the IRS can't touch it… Congress is still scrambling to find ways to pay for its tax cut, so perhaps it should pay closer attention to last month's news that George Soros had transferred $18 billion of his fortune to a private charity that he controls. There it will be sheltered from the Internal Revenue Service forever. This may be the single biggest tax dodge in U.S. history, yet no one on the right or left seems to have raised an eyebrow."*

[22] Applied to corporations, this principle means that taxes levied on a company will ultimately be paid by people – either its ultimate customers or its ultimate shareholders, since foundations do not consume. In the same way, since foundations do not consume resources, taxing them must ultimately be a tax on its beneficiaries. This contrasts with Nielsen (2015).

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be created when foundations or their companies spend, for example when foundation-owned companies create more jobs or when foundation donations increase employment and thereby income tax payments.

Efficiency. Arguably, the tax system should (if possible) incentivize economic decision makers to maximize social welfare (e.g., Stiglitz 1987, Auerbach and Hines 2002) including efficient ownership structures. The classical example would be so-called Pigovian taxes on activities with negative economic externalities (like pollution, which harms the welfare of others) and tax breaks for activities with positive economic externalities (like vaccination, which improves the welfare of others). In general, Pigovian taxes presuppose the existence of a market failure (a deviation between private and social costs or benefits), which the tax system can address by tax incentives or disincentives (Pigou 1932).

In the case of enterprise foundations, the donation of a majority ownership position to an enterprise foundation involves a wealth loss for the founder and the founding family, which implies a disincentive to establish foundations. Thus, it seems likely that business owners may choose not to establish enterprise foundations even if this would be the best solution in terms of social value creation. In other words, enterprise foundations are likely to be in short supply, and it may be optimal to provide some tax incentives to counteract the wealth loss required to establish foundations. In this sense the economic disincentive to establish enterprise foundations can be seen as a market failure.

Since it is known in welfare economics (from the fundamental welfare theorem, Debreu 1959) that competitive markets with profit-seeking firms maximize aggregate economic welfare under certain assumptions (no externalities, complete information, no transaction costs etc.), efficiency arguments for enterprise foundations must theoretically be found when these conditions do not hold. This may for example be the case if private business owners are unable

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to commit credibly to mutually beneficial strategies (Kreps, Milgrom, Roberts, and Wilson 1982, Faíña-Medín, García-Jurado, Méndez-Naya, and Méndez-Naya 1998) in the absence of foundation ownership. Alternatively, asymmetric information may involve a suboptimal allocation of resources, which enterprise foundations can improve on (Hansmann 1980). It is not our purpose here to reconstruct a theory of enterprise foundations, but rather to argue that foundations will probably be in short supply because of the wealth loss implied by donations even if there is a strong efficiency case for them.

Thus, if an ownership structure like enterprise foundations leads to superior value creation, but is not supplied by private initiative, there is an argument for promoting it by low taxes or tax subsidies. If it leads to inferior value creation it should be taxed to discourage the formation of enterprise foundations in the future.

Given its unique characteristics, it seems likely that foundation ownership will be well suited for some types of companies (for example those with a long time horizon) and unsuited for others (for example those who require greater short-term agility). The emerging literature on the topic has found that foundation-owned companies do relatively better if they are large, research-intensive and well consolidated (Hansmann and Thomsen 2013, Kuhn and Thomsen 2015). In contrast, small foundation-owned companies in highly competitive industries do worse. However, the costs and benefits of foundation ownership are likely to depend on firm-specific factors that are not known to the tax authorities. In the absence of a universal performance advantage, the standard solution would therefore be to avoid tax bias and let decision makers choose foundation ownership, when they believe this to be the best solution for the company. Previous research has found that foundation-owned companies perform as well as investor or family-owned businesses (Thomsen 1996, Herman & Franke 2002, Thomsen & Rose 2004, Dzansi 2012), although Achleiter et al. (2018), Draheim and Franke (2018), and Franke and Draheim (2019) find some evidence of lower financial performance

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among foundation-owned firms in Germany. Thomsen (2018) surveys the limited literature and concludes that foundation-owned companies perform on a par with other ownership forms with regard to accounting profitability, shareholder returns and firm value.

Tax neutrality. If ownership structures are assumed to be equally efficient as a first cut approximation, the consensus view is that policymakers should choose tax systems that are neutral on the assumption that they want decision makers to choose ownership structures that maximize value creation broadly defined to include economic efficiency and private utility (e.g., OECD 2015). In particular, we assume that policymakers do not want to create incentives for inefficient ownership structures that destroy value and make society worse off even though they are privately optimal because of tax benefits. The tax system (or more broadly the fiscal system) should therefore be neutral as far as corporate ownership structures are concerned.

The next step is to determine what is meant by neutrality in the context of enterprise foundations. As argued by Formby, Smith, and Thistle (1992) in another context there are two ways to define tax neutrality: 1) equality of taxes paid and 2) equality of after-tax income shares: "*It is important to recognize that a proportionate increase or decrease in tax burdens is only one possible definition of tax neutrality and not necessarily the best one from society's viewpoint. An equally compelling and defensible definition is based on preservation of the distribution of after-tax income shares."* (Formby, Smith, and Thistle, 1992).

The question is which definition to apply to enterprise foundations. We propose to analyse this problem by imagining a business owner who considers alternative forms of ownership succession: direct inheritance by a family member, divesting the company to outside investors and subsequent family inheritance, or establishing an enterprise foundation (figure 2).

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Figure 2. Succession alternatives for private business owners

1. Inheritance by a family member (succession within the family)
2. Selling the company by going public or a "trade sale" to another company – and letting family members inherit the proceeds
3. 3. Donating the company shares to a foundation established by the owner (an enterprise foundation)

Theoretically, the founder's descendants might be expected to be indifferent between inheriting the proceeds from selling the company and succession within the family (inheriting the company shares directly), but this is not necessarily the case since the tax regime may favour succession within the family. However, in this paper we are more concerned with the taxation of enterprise foundations relative to other ownership forms.

According to the first definition of tax neutrality (1), the business owner should pay the same amount in taxes if he chooses alternatives 1, 2, and 3. But this leads to the rather absurd conclusion that the business owner should pay both capital gains and inheritance tax of x% of firm value in addition to donating 100% to a foundation. In a realistic example based on previous Danish tax rules the effective wealth loss for descendants would be about 142% of the value of the firm in question (Danish Tax Ministry 2018, minority statement, p. 53). Not surprisingly, this high tax pressure proved an effective deterrence against the creation of new enterprise foundations, and the rules were changed in 2021 to allow foundations to succeed the founder in taking over the capital gains tax.

According to the second (2) definition of tax neutrality, we need to take into consideration the wealth and income loss for the founder and her offspring, which results from the creation of an enterprise foundation so that descendants' income and wealth would be the same as in other types of succession. This would essentially involve a tax deduction equivalent to the value of the firm while the inheritance taxes remain unchanged. In practice it is unlikely that any

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business owner would be able to make use of such a large deduction, and it means that the taxpayers would finance the entire foundation so that even a small utility gain from having the foundation named after the founder would seem worthwhile.

The compromise used in many European countries (Germany, Norway, Sweden etc.) is to let the founder-owner avoid capital gains and estate taxes when she donates the company to the foundation. This still leaves the founder's descendants with a wealth loss of 100% of firm value so the incentive not to establish enterprise foundations remains quite strong.

Diversity. Arguably, an efficient distribution of ownership structures in an economy requires some diversity so that different ownership structures – such as family business, investor ownership, cooperative ownership, and foundation ownership – are able to compete against each other. Over time, more cost-efficient ownership structures will be more successful in this competition and will become more common, while less successful ownership structures will diminish in importance. For example, Ferri, Kalmi, and Kerola (2015) make this point as an argument for cooperative banks. A diversity of ownership forms will arguably make the economy more resilient to external shocks and unforeseen developments, since different ownership forms have different characteristics including different risk preferences, different time horizons, and different personal incentives.[23]

These considerations seem to call for tax systems that promote competition between different ownership forms, and where market mechanisms rather than regulators determine which ownership structures prevail in the economy. Fiscal regimes that allow ownership structures to coexist and compete therefore seem preferable to regimes that mandate or prohibit certain ownership structures, including tax regimes that effectively ensure or rule out certain

[23] A Norwegian government white paper makes the same point by arguing that, "*What constitutes a good composition of enterprises and owners will vary in line with market trends, with an enterprise's development and nature, and with the owners' prerequisites and attitudes to risk. A diversity of owners, owner types and owner communities will therefore be able to enhance the combination of enterprises and owners, prompt desirable restructuring and innovation, and hence increase competitiveness*." (Norwegian Ministry of Trade, Industry and Fisheries 2013).

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ownership forms. Diversity therefore provides an additional argument for tax neutrality with the additional implication that homogeneous ownership structures may be caused by taxation or other regulatory distortions that rule out diversity. In the case of enterprise foundations, the coexistence of foundation-ownership and other ownership structures may be more likely to produce an efficient allocation of ownership structures in the economy.

Equity. A fifth principle for an optimal tax system is that it contributes to economic equality. In fact, "giving back" is often mentioned as a motive for private philanthropy (Journal of Financial Planning 2007). In the case of enterprise foundations, a relatively wealthy person (a business owner) donates his wealth to a foundation, which is intended to benefit the rest of society by business activity (e.g., jobs, wages in a company) and/or charitable donations. While the founder loses financially by the donation, the rest of society gains. Thus, enterprise foundations can be said to counteract a tendency to increasing wealth inequality documented by, among others, Picketty (2014). However, a counterargument to this general observation is that although wealth is distributed for public purposes through the foundation structure, control of that wealth often continues to rest with the members of the corporate elite and founding families (Moore, Sobieraj, Mayorova, and Beaulieu 2002, Domhoff 2009).

Economic effects

In this section we discuss the economic effects of lowering taxes in high-tax regimes like the USA or Denmark to make enterprise foundations more attractive. We focus on issues like efficiency, innovation, and economic growth, employment, equality, and the supply of public goods.

We begin with a few observations about the appropriate framework for such assessments. Most importantly, it is necessary to think in terms of what economists call "alternative equilibria". For example, if foundation-owned companies account for 5% of domestic employment (as they

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currently do in Denmark), it does not follow that domestic employment would permanently be 5% lower if there were no enterprise foundations. Countries such as the US with few enterprise foundations do not appear to experience chronic unemployment. In an alternative equilibrium the unemployed would seek new jobs, and firms with other ownership structures would step in to fill the gap. So, a good first-cut approximation may be to assume that the overall level of employment is determined by macroeconomic conditions (such as supply and demand for labour) rather than corporate ownership structures. Therefore (as a first-cut approximation), foundation ownership will only be able to influence the level of employment insofar as it influences the structure of the economy and in the context of employment in particular the demand for labour. In the absence of structural changes, greater employment in foundation-owned companies will mean less employment in other ownership forms, such as family businesses.

With these considerations in mind, we proceed to try to assess the economic effects of lower taxes and an assumed increase in the extent of foundation ownership.

Efficiency. As previously noted, it is not evident from the literature whether foundation-owned companies are more or less efficient than investor-owned companies, family businesses or companies with other owner types. Therefore, we cannot tell if a greater number of foundation-owned companies would make the economy more or less profitable and (perhaps) in this way more efficient. However, we can say with justification in the empirical research that foundation ownership is not equally appropriate for all companies. For example, according to Thomsen (2017) foundation-owned companies tend to do better financially if they are large, R&D intensive, human-capital intensive, and well-consolidated, while small foundation-owned companies in standardized competitive businesses tend to do worse than other ownership forms.

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These findings raise the general point that corporate ownership structures may be more or less suited to a particular company. In the case of foundation ownership, some companies with other ownership structures might have been better off with foundation ownership, while other foundation-owned companies might have been better off with another ownership structure. Obviously, it is also possible that companies have the optimal ownership structure, be it either foundation ownership or something else. We illustrate these possibilities in figure 3.

Figure 3 Actual and optimal ownership structure

Actual ownership structure	**Optimal ownership structure**	
	Foundation ownership	**Other ownership structure**
Foundation ownership	Actual ownership structure is optimal	Too much foundation ownership (Type 2 error)
Other ownership structure	Too little foundation ownership (Type 1 error)	Actual ownership structure is optimal

Less taxation of foundation ownership will presumably increase the volume of foundation ownership, which will at the same time be beneficial for some firms (because it reduces type 1 error), and reduce value creation in others (because of increasing type 2 error) because more owners adopt foundation ownership even when this is sub optimal. The question is how to balance these risks.

In most tax systems, the wealth loss involved in donating a substantial part of personal wealth to an enterprise foundation implies a strong disincentive for potential founders, which will tend to keep the number of new foundations at a low level. In other words, type 1 error is more likely than type 2 error. As taxation of private wealth increases, enterprise foundations become a more attractive alternative, and the risk of type 2 error increases. But with moderate or low

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wealth taxes, the economic incentives to establish enterprise foundations are so low that marginal tax changes will not have much of an effect on the number of new foundations being created. In economic terms, the tax elasticity – the percentage increase in the number of enterprise foundations by a one percent lowering of the tax rate – is presumably low. This means that even relatively large reductions in the taxation of enterprise foundations are likely to have a limited effect on the formation of new foundations.

Economic growth. We would normally expect national economic growth to be independent of corporate ownership, but the higher research intensity of foundation-owned companies provides a potential caveat. As argued in endogenous growth theory, investment in knowledge may under some circumstances be subject to increasing returns (Romer 1990). It seems likely that the long-termism in foundation-owned companies will lead to more R&D, which may have a positive effect on economic growth. The gains are not necessarily captured by the foundation-owned firms themselves but may take the form of spill-over effects, which benefit start-up firms or parts of the economy. The effects are not limited to R&D, since foundation-owned firms have been found to invest more in long-term assets and human capital (Børsting and Thomsen 2017, Thomsen et al. 2018). However, much depends on the productivity of the R&D investments. There is nothing particularly "long-term" (in the sense of a long-time horizon) about overinvestments in loss-making businesses.

Equity. As previously mentioned, donations to foundations will tend to decrease wealth inequality by a transfer of wealth from wealthy individuals to charitable donations. Private wealth inequality is therefore reduced. Many researchers (for example McAdams 2010) have pointed to economic costs of inequality, such as crime, corruption, or populism. However, efficient business operation may require a certain level of ownership concentration to exercise effective control. Foundation ownership seems to be one way to maintain concentrated ownership without a similar concentration of private wealth. Economic redistribution is not

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necessarily matched by a redistribution of control (Moore, Sobieraj, Mayorova, and Beaulieu 2002, Domhoff 2009), but the economic inequality argument continues to hold.

Public goods. Since donations from enterprise foundations are directed at charitable goals such as research, education, culture, and social purposes, they will help increase the provision of public goods with positive externalities, which should theoretically increase social welfare. In fact, this constitutes the classical rationale for tax deductions for donations to charitable foundations even if the donations are motivated by a warm glow (Andreoni 1989, 1990).

Private foundations have been criticized for being inefficient providers of public goods, most recently by Reich (2018), who points out that foundations are neither subject to the democratic checks and balances of the public sector nor to governance mechanisms such as owner control or competition, which discipline private companies. Although donations are formally voluntary, only very few recipients refuse a grant. Reich argues that this absence of checks and balances is only justified for discovery activities that require a particularly long-time horizon.

Another important objection is that foundations do not necessarily provide public goods. Some are private family foundations that aim to benefit the descendants of a particular family. Others have objectives that are at best quasi-public like donations for religious purposes (List, John A. 2011).

Both of these objections serve as qualifications of the public goods argument for enterprise foundations. One response may be to set legal limitations on foundation purposes as a condition for tax exemption.[24] Thus, the public goods argument for enterprise foundations relies on appropriate civil law regulation (i.e., charter regulations) that directs donations to public purposes.

[24] This was the approach taken in the recent proposal by the Danish Tax Ministry (2018), which excluded family foundations from lower taxation. The proposal was enacted in 2021.

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Altogether, there are many positive arguments for a tax regime that allows enterprise foundations, including equity, public goods provision, efficiency, R&D, and long-termism. One counterargument is a loss of revenues from wealth taxes, but this argument is moderated by the realization that *"only people pay taxes"* and that corresponding tax revenue will, in fact, be generated when foundations spend money in the form of donations or business activity. In other words, tax revenue is not lost, but deferred.

A more serious counterargument is the loss of efficiency that may occur if too many enterprise foundations are created in areas of the economy, for which they are not suitable. This seems to call for a balanced approach that allows foundation ownership to coexist with other ownership forms, but does not create an avalanche of new foundations.

Conclusion. Taxation of enterprise foundations differs widely across countries. Some countries do not allow foundation ownership of business companies (Lithuania) or penalize it with large fines (the US). Others encourage it with tax deductions (Germany) or use it as a privatization strategy (Italy). Over time, the tax regime may change as it did in Denmark from wealth tax exemption up to 1988 to capital gains taxation at formation after 1998 and back to a less onerous regime after 2020. Similarly, France has more recently allowed foundation ownership and now has a number of foundation-owned companies.

The tax regimes no doubt reflect the different political and economic views of enterprise foundations. The classical Anglo-American viewpoint is that foundations should only serve charitable purposes and not be allowed to engage in business activity. However, Scandinavian and German law have taken a different stance allowing and to some extent encouraging enterprise foundations. This Nordic approach seems to reflect an alternative view of business ownership as a socially useful activity and perhaps also a willingness to uphold the integrity of

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the company as such (das Unternehmen an sich) associated historically with Walter Rathenau (Laux 1998). In recent years, the pendulum seems to have swung in favour of enterprise foundations, which have caused public interest in the UK and US, for example with Professor Mayer's advocacy of firm commitment and purposeful corporations (Mayer 2013, 2018).

There are arguments both for and against enterprise foundations. The literature seems to indicate that foundation-owned companies perform similarly in terms of profitability to companies with other ownership structures, while maintaining low risk and good employee relations as well as contributing to social goals like wealth equality and provision of public goods. Enterprise foundations appear to be a particularly successful vehicle for the continuation of knowledge-intensive companies, but less effective at Schumpeterian creative destruction such as establishing and closing down businesses. Therefore, the consensus policy advice is to avoid promoting or discouraging enterprise foundations, but to maintain tax neutrality and let business owners choose for themselves.

It is more complicated to say what tax neutrality means. Neutrality can either mean that business owners pay the same tax at ownership succession to a foundation as when family members inherit. This provides a strong disincentive to establish foundations since potential founders have to accept a wealth loss equivalent to the donation plus capital gains and inheritance taxes. Alternatively, neutrality could mean that the consumption possibilities of founders remain unchanged, which would require substantial tax deductions for the donation, which could be seen as a tax subsidy for foundation ownership. A middle way – which many European countries adopt – is to waive wealth taxes but give no tax deductions when founders donate their shares in a company to a foundation.

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6. Foundation ownership and firm performance

As the chapter on the theories relative to enterprise foundations points out, there are well-founded reasons that make empirical examinations of the economic performance of foundation-owned firms an important issue. On the one hand, enterprise foundations seem to challenge economic orthodoxy as they have no residual claimants and thus do away with the profit motive (see also Thomsen, 2017). In relation to this, some financial economists, in particular agency theorists, underscore some disadvantages that are supposed to come with enterprise foundations, particularly muted incentives (Fama and Jensen 1983a) and capital rationing (Fama and Jensen 1985), which may lead foundation-owned firms to underperform. On the other hand, advantages are thought to include altruism, commitment, long-termism, trust, and better stakeholder relations, which may all contribute to offset disadvantages and provide a performance advantage (sustainable in the long run). Is it possible to have economically efficient firms without a conventional profit motive? Put differently, how important are these rationales, and what is the role of different contingencies, including industry? To answer these questions, we now turn to existing empirical evidence on the linkage between foundation ownership and economic performance.

Empirical evidence as to the effects of enterprise foundations on economic performance comes mainly from three European countries: Denmark, Sweden, and Germany. Most studies examine effects on profitability, growth, and productivity. One study focuses on stock market reactions and one on product price.

Profitability and productivity. In what seems to be the first published study on the performance of firms owned by enterprise foundations, Thomsen (1996) compares foundation-owned firms to firms with personal or family ownership and firms with dispersed ownership.

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Based on a sample of 157 companies in Denmark from 1982 to 1992, he finds no significant differences between foundation-owned firms and the two other types of firms in terms of return on assets (ROA) and return on equity (ROE). However, foundation-owned companies "were found to incur less risk as measured by systematically higher equity ratios and lower volatility of equity returns" (1996: 219-220).

Based on the same empirical base as Thomsen (1996), Thomsen (1999), after controlling for profit volatility and capital structure, confirms the non-significant differences between foundation-owned firms and other firms with different ownership. In addition, he finds that the empirical evidence points to the "particular commitment" that foundation-owned companies have to their businesses, which, under some circumstances, can be an advantage, also in terms of profitability. He also finds that the relative performance of foundation-owned firms deteriorates with company age. Moreover, with this study, he is able to rule out explanations regarding the existence of this ownership form based on market power (monopoly rents), tax advantages, or monitoring by minority investors and creditors.

Using data from Danish firms as well, i.e., a balanced panel sample of 171 firms listed on the Copenhagen Stock Exchange during 1996-1999, 20 of which were controlled by a foundation, Thomsen and Rose (2004) examine the stock-market valuation of those foundation-owned firms. In line with Thomsen (1996; 1999), they find that listed foundation-owned firms do not differ from (are as efficient as) other listed firms regarding risk-adjusted stock returns, accounting returns, and Tobin's Q.

Børsting et al. (2014a) study the relative performance of all Danish foundation-owned firms during 2000-2012, including a number of smaller, unlisted companies that were not covered by previous research on enterprise foundations. They find that foundation-owned companies have lower accounting returns (ROA) and lower sales growth than other firms, but higher factor productivity (i.e., higher levels of total factor productivity than other firms) and similar rates

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of productivity growth. However, as regards returns, the authors find that the results depend on firm size. Large foundation-owned firms outperform other large firms in terms of ROA, while small foundation-owned firms underperform relative to other small firms. Given that the large firms account for the bulk of the economic activity, foundation-owned companies outperform in terms of size-weighted averages. The authors also find that foundation-owned firms tend to have lower risk (volatility of earnings) and they find no differences in risk-adjusted accounting returns. Furthermore, as regards productivity, Kuhn (2015) finds evidence of higher labour productivity (i.e., value added per employee) in foundation-owned firms.

Using data from Danish firms during the same period (2000-2012), Kuhn and Thomsen (2015a) study what factors make some foundation-owned companies perform better than others, and to what extent these factors are unique to foundation-owned firms or apply to other (non-foundation-owned) firms as well. They find that the performance of foundation-owned firms is driven by firm size, equity share, R&D activity, board independence, and industry effects. Of these, the positive effect of firm size and R&D activity appears to be unique to foundation-owned firms. That is, these two factors do not drive performance in other companies.

Kuhn and Thomsen (2015b) study the effects of changes to foundation ownership using a difference-in-differences methodological approach where firms changing to foundation ownership are compared to matching firms that do not. They find no significant effects on firm performance after change to foundation ownership. That is, firm performance remains statistically indistinguishable from that of the control group.

In a study based in Norway, Bøhren and Josefsen (2013) study the performance of a foundation variant form. It consists in ownerless Norwegian savings and loans associations (sparbanker) and insurance companies (such as Gjensidiga), many of which have recently been reorganized to mainstream foundation ownership form. These authors study the ownerless banks compared to for-profit shareholder-owned banks and a hybrid non-profit form that issues securities to the

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market, during the 1985-2002 period. They find that the ownerless banks have the highest performance over the period as a whole, with an ROA of 0.88% compared to 0.32% regarding for-profit commercial banks and 0.42% regarding hybrid banks. The differences were significant during the Norwegian banking crisis (1988-92), when the ownerless banks outperformed commercial banks, as they were financially more conservative. The authors report those differences as being robust to various kinds of statistical control including bank size effects.

In a study based in Sweden, Dzansi (2011) compares the investment performance of 26 listed Swedish companies having more than 20% ownership by enterprise foundations to that of other listed companies. He measures investment performance with the marginal firm value (marginal Q), defined by growth in market value relative to growth in the stock of invested capital. He finds that firms with blockholders (whether foundations or other majority owners) perform better than firms with dispersed ownership, and that the performance difference between foundation-owned firms and the ones owned by other types of blockholders (e.g., institutional investors or family owners) is not significant.

In a follow-up study, Dzansi (2012) draws on Stockholm Stock Exchange data of 182 firms for the 1999-2005 period to compare the performance of foundation-owned firms with other firms. He finds no effect of foundation ownership on Tobin's Q. He notes that, "the results suggest that even though foundations largely lack the residual claimants and, hence, the personal financial interest, they are as efficient as other large shareholders in curbing managerial opportunism".

In a rare study on enterprise foundations drawing upon data from more than a single country, Hansmann and Thomsen (2013a) examine the performance of different groups of Danish and Swedish foundation-owned firms for the 2003-2009 period. They find that listed foundation-

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owned firms outperform the unlisted foundation-owned firms in terms of accounting performance (ROA) and firm value, accounting for industry and firm size.

In a study comparing foundation-owned firms to publicly listed firms in Germany, during the 1990-1992 period, Herrmann and Franke (2002) find that foundation-owned firms have a slightly higher accounting performance than listed firms, though statistical significance tends to disappear when controlling for other relevant factors.

Focusing on the German context as well, Draheim and Franke (2014) examine the performance of German foundation-owned firms in terms of return on assets (ROA) and return on equity (ROE), relative to control firms matched by size and industry. Regarding ROA, they find that although it tends to be smaller in foundation-owned companies relative to matching firms, the difference is not significant. Regarding ROE, however, it tends to be significantly lower for foundation-owned companies. This may partly be a result of foundation-owned companies having more employees (given their greater attention to stakeholders) and partly because they pursue a more conservative financing policy with lower leverage and less risk. Franke and Draheim (2015) report similar results. Based on a sample of 164 firms, they compare foundation-owned firms to family firms during the 2003-2012 period. They find that foundation-owned firms (1) are larger than matched firms regarding employees, operating revenues, and total assets; (2) pursue a more conservative financing policy, which helps them stabilize their long-term orientation; (3) perform slightly weaker than comparable matched firms.

Nevertheless, in a follow-up study, Draheim (2016) finds a positive effect of foundation ownership on “firm success” (see Block et al., 2020), presumably due to the long-term orientation of foundations, allowing them to invest continuously in innovation and other long-term projects.

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One recent study extends the empirical evidence regarding the foundation ownership-performance linkage beyond Northern Europe. Schröder and Thomsen (2021a) study an unbalanced panel of 338 publicly listed firms from 26 countries around the world during the 2000-2019 period, 109 of which are foundation-owned firms (i.e., in which a foundation holds at least 20% of the voting rights). Among them, 75 are owned by a charitable foundation, while the remaining 34 firms are owned by a private foundation. Control groups consist of family-owned and shareholder-owned firms in the same industry and size category. In terms of both accounting performance (ROA, sales growth) and market performance (firm value and stock returns), the authors show that foundation-owned firms perform at least as well as matched family firms and investor-owned firms.

Stock market reactions. In contrast to most previous studies focusing on the accounting performance of foundation-owned firms, Achleitner et al. (2020) study the effects of foundation ownership on shareholder value, using an event study method. Their empirical context is 81 announcements (events) from 29 listed foundation-owned firms for the 1993-2016 period in Germany, Austria, and Switzerland (listed in the DAX, MDAX, SDAX, and TecDAX in Germany; ATX, IATX in Austria; SMI, SPI, SLI in Switzerland). 41 events are related to announcements by foundations of increases in their equity stakes, and 40 events refer to announcements about decreases in equity stakes. They find that, "equity markets show a positive reaction following the announcement by a foundation that it intends to decrease its ownership share", whereas they find, "no reaction when a foundation announces that it intends to increase its ownership share. The positive reaction to an announcement of an ownership share decrease is particularly strong when a foundation holds an equity stake of less than 25%" (2020: 459). In further analysing the announcements of non-foundation blockholders in foundation-owned firms, they find strong differences between foundation and non-foundation

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blockholders in the shareholder value effects of ownership share-related announcements, hence supporting the view that equity markets view foundations as a special group of blockholders. In interpreting their results, Achleitner et al. (2020) argue that specificities related to the governance form of a foundation, together with the absence of any legal obligation for foundations to make the foundation charter publicly accessible, creates a lack of transparency. This lack of transparency and the resulting uncertainty for investors may make investors reluctant to invest in them.

Focusing on acquisition announcements, Schröder and Thomsen (2021a) find that, foundation-owned firms realize positive abnormal returns of 0.4% when testing for an 11-day [-5,5] event window. In contrast, when testing for other event windows, foundation-owned firms realize positive but insignificantly different abnormal returns from their non-foundation-owned counterparts.

Product price. Focusing on product price, in a study of 305 wineries in Germany during 1996-1999, constituting an unbalanced panel, Frick (2004) finds that estates run by an employee manager can – all other things being equal – charge significantly higher prices for their products than other wineries, including foundation-owned. In particular, he notes that the coefficient of the dichotomous variable representing firms owned by foundations and public authorities is significant in only one of the estimates (the coefficient of the dichotomous variable for cooperatives failing to reach significance). He also notes that wineries owned by public authorities or foundations as well as cooperatives are less efficient than owner-managed firms. For example, estates that are owned by a public authority or belong to a foundation benefit less from the superior knowledge of their managing directors.

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Volatility and growth. Hansmann and Thomsen (2013a, see also Hansmann and Thomsen, 2013c) examine the effects of enterprise foundations as owners on volatility and growth. They find that, regardless of control group, the foundation-owned firms have less volatile earnings and slower growth than other listed firms. In interpreting their results, they note that one reason for lower sales growth may be that foundation-owned companies are less likely to dilute their ownership by M&A, given that foundations desire to maintain their controlling influence. They also note that foundations tend to prefer lower, more conservative financing, and to resist borrowing to pay for acquisitions. Their risk-averse character, their tendency to eschew debt to not endanger the long-term survival of the firms has been also underscored by Thomsen et al. (2018) (see also Hansen and Block 2020). The findings of Hansmann and Thomsen (2013a) are confirmed by Børsting et al. (2014a): They find that Danish foundation-owned firms had a yearly growth of 4.8% over the period 2000-2012, while other firms grew by 6.7% on average. In this line of research, Achleitner et al. (2020) report that foundation-owned firms have a lower probability of being acquired and that equity markets expect lower acquisition premiums. In line with this finding, they note that they have greater difficulty in selling their stake and also in raising additional equity capital. This reduces growth possibilities for the firm and can have a negative effect on shareholder value (e.g., Agrawal and Knoeber 1996), which, as discussed, is the main finding in their study.

Overall, the evidence suggests that foundation-owned firms tend to perform at least as well as non-foundation-owned firms, accounting for firm characteristics such as firm size (with some differentiation between different foundation types in Germany), but stock market reactions to ownership change announcements are less positive for foundation-owned firms, while their growth potential seems more limited, too (however, reactions to acquisition announcements are either slightly more positive for foundation-owned firms or do not differ significantly

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compared to non-foundation-owned firms). This nevertheless seems to be a conscious choice and an outcome of the objectives and governance of foundation-owned firms.

Social Performance. Next to examining the linkage between foundation ownership and economic performance, the theoretical explanations that underlie the advantages that enterprise foundations may have naturally point to attention to non-economic, social performance outcomes. Specifically, if altruism, commitment, long-termism, trust, and better stakeholder relations are key characteristics of foundation-owned firms, one may expect that those firms will perform well along any dimension of social performance, such as employee relations, compared to non-foundation-owned firms. Adopting a contrasting theoretical rationale, Achleitner et al. (2020) note that because of the absence of a residual claimant in the case of foundations, there may be a reduction in monitoring incentives, which can lead to situations in which a firm's management or other stakeholders pursue interests, possibly to the detriment of what would have otherwise been considered as the economic interests of shareholders.

Nevertheless, despite the fact that theoretical rationales suggest that the specific governance form of enterprise foundations may be associated with good non-financial, social performance, thus making that linkage interesting for investigation, empirical evidence as to the effects of foundation-owned firms on performance in its non-financial dimensions is rare. One study in this direction is the study of Børsting and Thomsen (2017). They have examined the reputation of foundation-owned firms and, in relation to this, effects on the domain of employee relations. Using image ratings from 140 Danish firms for the 2002-2011 period, they find that foundation-owned firms have better reputations and are regarded as more socially responsible in corporate image ratings (i.e., reputation ratings are published by the Danish business press, and ratings are generated by surveying businesspeople who report knowing the firm in question). Furthermore, using matched employer-employee data (i.e., a panel dataset of approximately 9

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billion employer-employee observations over the time period 2000-2012), they show that foundation-owned companies are more stable employers, pay their employees better, and keep them for longer. At the same time, however, foundation-owned firms can be seen as sometimes overstaffed and paying above average wages (besides Achleitner et al., 2020, see also Block et al., 2020, from this critical standpoint).

A subsequent study by Poulsen, Børsting, and Thomsen (2021) uses a difference-in-differences design to identify a causal effect of foundation ownership on work-life balance (parental leave). After an unexpected policy change – a drastic extension of opportunities for voluntary parental leave – they study a matched sample of Danish foundation-owned companies. They find that employees in foundation-owned companies take longer parental leave, which results in greater employee retention and higher wage growth without lowering profit rates. They find that these effects pertain to all employees even if they do not take parental leave.

A more recent study by Schröder and Thomsen (2021b) draws on a broader spectrum of social performance indicators, namely ESG (i.e., Environmental, Social, and Governance) criteria as provided from Asset4 and S&P Global to test foundation ownership effects. In particular, they hypothesize that ownership by enterprise foundations will have a positive effect on the firm's ESG performance, such that foundation-owned firms will display more socially responsible behaviour, as shown by the firm's scores along the ESG dimensions, compared to other comparable firms. Drawing from an unbalanced panel of 192 publicly listed firms in 28 countries around the world covering the 2003-2019 period, they find that foundation-owned firms exhibit higher sustainability (Asset4 ESG) ratings than comparable matched family firms, and they do no worse than equivalent investor-owned firms.

Overall, whereas some research has been recently conducted on the non-economic, social performance of foundation-owned firms, it is evident that this is an under-researched area of knowledge. Given the increasing emphasis on sustainability and the previously discussed

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characteristics of enterprise foundations as owners, such as their long-term orientation being conducive for related activities, the development of a stream of research examining the different aspects of the social performance of foundation-owned firms seems not only relevant, but also timely and important.

7. Foundation governance

Given their special characteristics, particularly the absence of owners and their typically dual objective of business ownership and philanthropy (Thomsen 2017), enterprise foundations face unique governance challenges that research has only started to examine. Challenges also derive from the observed structural duality (that is, governance of foundations and governance of foundation-owned firms) and include the relationships between the foundation and the foundation-owned firm at the board level as well as board composition: How much and how does the foundation get involved in the firm? Who should sit on the firm's board, who appoints directors and top managers, and based on what criteria? Furthermore, foundation boards tend to be self-appointed. Doesn't this apparent lack of checks and balances put foundations and foundation-owned firms at a disadvantage? What ought to be the relative importance of the two typical objectives, business and charity? These are some of the questions that research on the governance of foundations and foundation-owned firms has started to investigate empirically.

Below, we review a small number of studies that have already delved into some of the questions and issues that come with foundation governance.

Managerial distance. Hansmann and Thomsen (2013b) and in a follow-up study (Hansmann and Thomsen, 2018), based on a dataset of 113 foundation-owned Danish companies over the period 2003-2008, examine performance effects of a particular aspect of foundations as owners, what they label as "managerial distance". This reflects a measure of the extent to which

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a foundation establishes an identity that is distinct from that of the company it owns. They operationalize the construct by observing the following: (1) whether the boards of the foundation and the foundation-owned firm are separated; (2) whether the foundation holds less than 100% of ownership or not; (3) whether the firm has listed shares; (4) whether the foundation owns more than one company or not; (5) whether the offices of the two entities are physically separated; (6) whether the foundation charter expresses a general charitable purpose. Through these six dimensions, they identify two polar situations in a continuum and several intermediate ones: At one extreme, the foundation and the firm it controls are essentially a single organization. The board of directors of the foundation is comprised of precisely the same individuals as those who serve on the firm's board of directors, and the foundation has no officers or staff of its own, nor its own office space. At the other extreme of the continuum, the foundation is effectively a non-profit holding company, controlling several operating firms, hence it is quite distinct from the focal operating firm and the other operating firms in which it holds a controlling share. For instance, both the foundation and the focal operating firm have their own distinct board of directors, with no overlap in membership between them. The foundation has its own staff and occupies offices of its own that are well removed from the operating firm's facilities. The stock in the operating firm is only partially held by the foundation, with the remainder listed and traded on the stock exchange.

The authors hypothesize that the foundation's board of directors will prioritize financial profitability as managerial distance increases. They argue that the more managerial distance increases, the more the foundation's board of directors – which holds ultimate control of a foundation-owned company – will perceive themselves as owners ("virtual owners") of the foundation-owned firms, who are detached from direct involvement in the affairs of the operating firm, which leads them to frame information and decisions in a way that is similar to what outside profit-seeking owners would aim for. That is, the operating firm's performance

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will be framed in a fashion that encourages objective assessment and focus on the financial profitability objective of the firm. The empirical results show a positive, significant, and robust association between managerial distance and operating firm economic performance.

Board composition, director, and executive turnover. Thomsen (2017) provides a detailed description of what foundation boards tend to look like. Focusing on foundations in Denmark in particular, Thomsen (2017), based on evidence from Hansmann and Thomsen (2013a) and Hansmann and Thomsen (2021), highlights their board-level high demographic homogeneity. Most Danish foundation board members are Danish men, but while the fraction of international board members is lower than in companies, the fraction of women is higher. There are also differences in terms of director age (that is, older directors in foundations) and director compensation (that is, lower compensation in foundations) compared to the directors serving in listed corporations, with few exceptions when it comes to very large foundation-owned listed firms (see Hansmann and Thomsen 2021). These compensation differences might point to a difference in incentives to join a foundation board, in that those directors joining a foundation board may be less driven by financial rewards compared to the directors joining other listed corporations. Age differences are also observed in the boards of foundation-owned firms compared to the boards of other listed corporations, along with other differences in terms of gender, education, and director siblings in the firm, in that they observe fewer women directors, with longer tertiary education, and with fewer siblings in the firm – although gender differences are reversed and siblings' data differences are becoming non-significant when we observe exclusively large firms with more than 1,000 employees. Descriptive evidence also points to a higher overall income for directors in foundation-owned firms compared to non-foundation-owned firms (Kuhn and Thomsen 2014). Since foundation board remuneration is lower

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(Hansmann and Thomsen 2021) than in companies, this could mean that enterprise foundations benefit from attracting particularly capable board members.

As regards director and executive turnover, drawing from the Danish empirical context, too, Børsting et al. (2014b) examined foundation effects on board director and executive turnover. During the 2003-2011 period, they analyse 50,000 observations, ranging from about 4,200 to 6,200 observations per year. Their sample contains between 230 (2011) and 319 (2004) Danish corporations that are entirely or partly owned by Danish foundations and have at least 20 employees. They find that both director and executive turnover is lower in foundation-owned firms, but that foundation-owned firms are more likely to replace directors, but not executives, under conditions of low performance (negative profits).

At the board of directors' level, a number of questions call for further investigation. Hosseini (2018), based on his doctoral dissertation research, provides some recommendations for foundation governance at the board level, based on the distinction between charitable and private foundations. In the case of a charitable foundation, it may be beneficial to ensure a mix of directors with expertise in the non-profit sector and directors with expertise to ensure adequate monitoring/control of management. In the case of a private foundation, given that charitable purposes are typically absent, board staffing ought to primarily include directors with expertise in monitoring management. The author highlights the importance of including family members on the boards of family foundations, because they have an incentive to monitor management. However, he argues for a balance in the influence of the family (as this is reflected in ownership rights' division) as a means to ensure the pursuit of both foundation and firm purposes, and a clear, ex-ante regulation of who from the family will get board seats, as a means to avoid or minimize conflicts. As regards interdependence between foundation and firm directors, he stresses the possibly negative ramifications in terms of inadequate monitoring and

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opportunism. This is in line with the benefits of "managerial distance" described above from the empirical results of Hansmann and Thomsen (2013b; 2018).

Long-term survival and behaviour. Using a unique dataset of 394 Danish firms owned by enterprise foundations for the 2003-2012 period and comparing them to other limited liability firms subject to the same minimum size criterion (including a comparison with similar family firms, being defined as such if there is at least 5% ownership by a family), Thomsen et al. (2018) study foundation effects on the extent to which foundation-owned firms have a long-term behaviour. They find support for the hypothesis that corporate time horizons are influenced by ownership structures, especially that enterprise foundations possess characteristics that promote long-termism. In particular, they find that (1) foundation ownership is highly stable compared to other ownership structures (measured as standard deviation of the largest owner's ownership stake over the sample period). (2) Foundation-owned firms replace managers less frequently (i.e., fewer exits in terms of number of managers leaving in a given year). (3) They have conservative capital structures with low financial leverage. (4) They score higher on an index of long-termism in finance, investment, and employment. (5) They survive longer (as estimated by survival probability at the end of the sample period as a function of firm age using the Kaplan-Meier method). In terms of survival, specifically, the probability of surviving beyond the age of 40, for example, is 65% for foundation-owned firms and 10% for non-foundation-owned firms (Thomsen 2017).

In the same vein, as regards financing policy behaviour, in their comparison study of foundation-owned firms and publicly listed corporations in Germany during the 1990-1992 period, Herrmann and Franke (2002) report some interesting differences. Specifically, in terms of pay-out ratio (dividends over earnings), differences seem highly significant, with foundation-owned firms paying less dividend. On average, whereas foundation-owned firms

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pay out about 40% of their profits, corporations pay out about 55%. In terms of cash flow over debt ratio, differences between foundation-owned firms and publicly listed corporations are not significant, but the differences in terms of short-term debt (over total capital) become increasingly more important throughout those three years of study, foundation-owned firms having increasingly less short-term debt, and thus using more long-term debt. Note that the last observation year, 1992, is reported in the study as a recession year.

Family involvement. Another interesting source of variation in enterprise foundation governance is whether the founding family is represented on the foundation board or in foundation management. Thomsen (1999) found this to be the case in about half of the Danish enterprise foundations studied and furthermore that family involvement was associated with a small but significant positive difference in the profitability of the foundation-owned firms. In other words, family involvement appeared to be an advantage rather than a disadvantage from a business viewpoint.

Block et al. (2020) also find a positive effect of family involvement in a study of 136 foundation-owned firms in Germany over the 2006-2016 period. Among them, 30 firms were classified as (partly) owned by a family foundation, 106 firms as (partly) owned by a charitable foundation. 23 firms were listed on a stock exchange, and 28 firms had family involvement in management. They studied the economic effects of these governance differences including foundation purpose (family versus charitable foundation), stock market listing, and family involvement. They find that firms owned by a family foundation have better accounting performance than firms owned by a charitable foundation (ostensibly because of the greater difficulties in charitable foundations to monitor management due to a lack of director expertise). Moreover, they find that family involvement in the firm's management or supervisory board has a performance-enhancing effect, but they do not find significant

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performance differences between private and stock market-listed foundation-owned firms. To measure performance, they focus on accounting performance metrics (i.e., Return on Sales, Return on Investments, and Return on Assets – see also Draheim and Franke, 2018; Herrmann and Franke, 2002; Thomsen, 1996).

In their studies of foundation ownership around the world described above, Schröder and Thomsen (2021a, 2021b) examine differences between family foundations and charitable foundations. The distinction is often somewhat uncertain, but the authors classify 75 listed companies as owned by charitable foundations and 34 firms as owned by private foundations. The distinction between charitable and private foundations is theoretically an important one, as they may differ in their purpose. On the one hand, the purpose of a charitable foundation is to serve a societal goal; for example, to contribute to the achievement of social, ecological, or scientific objectives. On the other hand, private foundations are sometimes used as structures to solve family conflicts and to ensure continuity of ownership (Thomsen 2017). In private foundations, family members are presumably likely to be involved in the governance and management of the foundation and, as such, there may be potential conflicts of interest with other stakeholders, as family members might attempt to expropriate (otherwise non accordable) value. However, the authors find no significant differences in financial performance or sustainability ratings between charitable and private foundations, which may in part be attributable to the limited number of firms owned by family foundations in their sample, thus pointing to a possible area of investigation, regarding potential social performance heterogeneity among firms owned by different types of foundations.

Compensation. In their study, Herrmann and Franke (2002) additionally investigate potential differences between foundation-owned firms and publicly listed corporations in terms of board member income. Whereas board member income may vary depending on the firm's profit or

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size, the authors do not find any systematic differences between foundation-owned firms and publicly listed corporations in profit or size sensitivities of board member income. They mention that their findings "are similar to those of Baker et al. (1988) and Jensen and Murphy (1990) for the USA" (2002: 274).

CEO compensation is the object of investigation by Nguyen and Moursli (2014). In particular, they study whether "foundation-controlled firms resort to the use of executive compensation as an alternative disciplining mechanism", that is, whether incentive contracts "can serve as a substitute for large shareholder monitoring". They define a shareholder as controlling if their direct and indirect voting rights sum up to at least 10% based on the measures used by La Porta, Lopez-de Silanes, Shleifer, and Vishny (2000). When more than one shareholder have more than 10% of the voting rights, control is assigned to the one with the largest voting stake. Drawing from a sample of 179 family firms listed on the Stockholm Stock Exchange (Sweden) during the 2001-2009 period, they report that the use of performance-based compensation schemes is significantly higher in foundation-controlled firms compared to non-foundation-controlled firms. They also report a higher sensitivity of pay to performance in foundation-controlled firms. They mention that their results are robust to multiple control variables for ownership structure, supplementary monitoring, managerial ownership, CEO family ties, and board structure.

Overall, foundation-owned firms show some notable differences from non-foundation-owned firms in terms of governance. Among them, a more pronounced long-term orientation, including in terms of lower director and managerial turnover, ownership stability, and longer survival. It may well be the case, though, that distance between foundation and operating firm boards affects governance, as the greater that distance the more foundation-owned firms seem to behave like outsider investors (that is, showing better monitoring), but also leads to better performance for the foundation-owned firm.

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8. Conclusion, policy implications and research agenda

Enterprise foundations – foundations that own business companies – are a little known and under-researched topic. The subject is interesting and important in practice, because a number of highly successful companies around the world are owned by foundations. In some countries (Denmark, Austria, Sweden) they are sufficiently large and numerous to matter to the national economy. The topic is also interesting theoretically because enterprise foundations appear to overturn basic corporate governance principles, such as for-profit incentives, risk diversification, and the market for corporate control. The emerging realization that they are nevertheless relatively successful is a challenge to mainstream corporate governance theories including in particular standard agency theory. Finally, enterprise foundations are important because they are regarded as a role model for purposeful companies that are advocated in proposals to reform contemporary capitalism (Mayer 2018, Edmans 2019). The stewardship – responsible, long-term ownership – associated with enterprise foundations may be an inspiration for other long-term owners such as family businesses, cooperatives, or financial mutuals, which have other objectives than financial value creation.

Foundation-owned companies tend to perform well, albeit not significantly better than family businesses, investor-owned companies, or other alternative ownership forms. However, they appear to take fewer risks, have higher survival rates and have good reputations for social responsibility. They tend to treat their employees better and invest more in R&D. Altogether, foundation ownership appears to be an attractive ownership form although better suited for some companies than for others depending, for example, on firm size, knowledge intensity, external financing needs, and founder motivation.

Nevertheless, enterprise foundations remain a rarity at the global level. One reason is that creating enterprise foundations requires founders to donate most of their wealth to a foundation

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without getting anything tangible in return. Foundation ownership is therefore likely to be in short supply for structural reasons even where it would be an optimal ownership form. Another reason is legal and regulatory barriers. In most countries, foundation law is exclusively focused on philanthropy whilst regarding business ownership with suspicion. Charity and company law in many countries – such as Germany or the UK – explicitly or implicitly discourages enterprise foundations. The tax system may also effectively block foundation ownership as it does in the US.

Policy. The policy implication is that legal reforms are necessary if more countries were to encourage enterprise foundations. Foundation (or charity) law needs to include responsible business ownership as a legitimate and socially useful goal for foundations. At the same time national tax systems need to find a middle ground that preserves tax neutrality in the sense that founders choose foundation ownership where they believe that it makes sense from a business perspective, but do not adopt it purely for tax reasons. The enterprise foundation model also calls for efficient regulation including transparency (e.g., disclosure of annual reports), regulatory oversight (e.g., to insure against private wealth extraction), and good governance rules (e.g., board independence). However, regulators need to accept that enterprise foundations are essentially private institutions and avoid government interference in business decisions.

Research agenda. Since enterprise foundation research is still in its infancy, there is a wide range of topics to pursue in future research.

Above all, it seems fruitful for future research to focus more on enterprise foundations outside Scandinavia and Germany, where most of the existing work has been done. This will add more data and allow a deeper understanding of the phenomenon in different legal settings. We cannot

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take it for granted that the foundation model will work equally well outside Northern Europe, which is characterized by a high level of trust and strong social governance.

While some initial work has already been done on foundation ownership among listed companies (Schroeder and Thomsen 2021), future research should also cover the more numerous unlisted private companies, which including some very large ones, such as IKEA. We estimate that there are about 200 listed companies with significant foundation ownership around the world, but several thousand private foundation-owned companies.

Moreover, it seems highly desirable to broaden the research agenda to include a wider range of foundation-like structures and ownership models. Financial mutuals, cooperatives, family businesses, state-owned enterprises, and other blockholders have many commonalities with enterprise foundations, including a strong corporate purpose, non-financial objectives, stakeholder engagement, and long-term ownership. We can summarize these characteristics under the heading "stewardship" defined as "responsible, long-term ownership", while recognizing the large heterogeneity within ownership categories. For example, not all family businesses treat their employees well, and indeed there is some evidence that family businesses have lower ESG ratings than comparable investor-owned companies (Schroeder and Thomsen 2021b). However, many business families are similar to enterprise foundations in focusing on what is good for the company taking the broader interests of society into consideration, i.e. they exercise what we would call "steward ownership".

Steward ownership is in turn closely connected to *"sustainable governance",* which takes into consideration climate and other sustainability issues, for example through by a long-term perspective on business development and green transition, integrating sustainability into business strategy, focusing on corporate purpose rather than short-term profitability, ensuring sustainability competencies on the board and so on. Given the benevolent long-term nature of foundation ownership it seems natural to examine how foundation and other kinds of long-term

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ownership are associated with corporate social responsibility and sustainability, for example ESG ratings. Structural factors (such as a long-time horizon and charitable foundation objectives) as well as anecdotal evidence indicate that foundation-owned companies could have more socially responsible and sustainable business practices. However, this hypothesis still needs to be tested more carefully in controlled studies.

In addition to extending the breadth of enterprise foundation research, more can and should be done to increase our knowledge about how enterprise foundations work, in particular foundation governance. More research is called for on how foundation ownership and foundation governance influence board decisions on corporate strategy, executive succession, financial supervision, and other important issues in order to gain a better appreciation of the mechanisms by which foundation ownership influences company behaviour and performance. This may invite more qualitative research designs, including interviews and case studies.

Finally, while most research on enterprise foundations is focused on their business activities, it is equally interesting to examine the extent to which enterprise foundations create value through their philanthropic activities. Rigorous, controlled impact studies can help guide future philanthropy and help clarify whether business ownership enhances or detracts from the philanthropic activities. In the short term, enterprise foundations are likely to donate less as a proportion of their endowment, but over a longer time period, foundation assets are likely to grow faster as a consequence of reinvestments, which will increase the base for future donations. Moreover, business experience with operating companies may help direct donations to particularly productive activities, e.g., particular research areas or particularly pressing social concerns.

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Econometric challenges. The most important econometric challenge for enterprise foundation research is that it is hard to unambiguously identify the causal effects of foundation ownership from other sources of variance in company behaviour and performance. Foundation ownership is by nature very stable, which means that we observe few changes from foundation ownership to other ownership forms and those that we do observe are very unlikely to be random. For example, founders seem unlikely to donate a failing business to a foundation, and foundations are unlikely to relinquish ownership as long as the company performs well. We therefore expect that unsuccessful companies are much more likely to give up foundation ownership. Nor are many new enterprise foundations being created, and the few examples that we observe are presumably carefully chosen by the founders, partly based on the company's economic prospects, although a lack of suitable heirs in the founding family may in some cases be a source of variation that is exogenous to company performance. All this makes difference-in-differences estimation difficult.

Moreover, the long-termism associated with foundation ownership is likely to manifest over decades rather than in the year-on-year changes studied in most experimental research designs such a difference-in-differences. The long-term nature of foundation ownership arguably makes selection less of a problem in studies of long-run success. For example, it seems unreasonable to attribute Carlsberg's current performance to a selection effect that took place 134 years ago, in 1887. The relevant performance measures should also go beyond financial performance, which are a means to an end for enterprise foundations rather than the ultimate goal. As of now, the most promising solution may be to rely on unpredicted changes in the economic environment – such as the Corona crisis in 2020 or the financial crisis in 2021 – to discern differences in behaviour and performance as a function of foundation ownership. For example, preliminary anecdotal evidence indicates that enterprise foundations played an important role in the Corona crisis response, including both philanthropic support of testing

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facilities and protective gear and a stabilizing influence on employment and suppliers despite fluctuations in demand. So, going forward, the crisis could provide interesting opportunities for enterprise foundation research.

The future. We conclude by a few remarks about the future. We think it is possible that we will see more enterprise foundations around the world going forward.

Enterprise foundations seem well suited to help address contemporary global challenges such as climate change, inequality, and sustainable development. They are characterized by a strong purpose commitment, which is broader than profit maximization. They reduce wealth inequality by the transfer from wealthy individuals to non-profit entities. They promote sustainable development by philanthropy and responsible business management. Moreover, the research surveyed in this paper indicates that enterprise foundations and foundation ownership have beneficial economic and social effects.

We are already observing some signs in this direction. Around the world, an increasing number of wealthy individuals are giving back by engaging in philanthropy. Many create foundations. Moreover, we see an increasing formation of social enterprises, some in non-profit or foundation form, particularly in areas like climate action, ecology, and sustainability (EU 2020b). In the US, enterprise foundations are still uncommon, but the tax regime has already changed to permit them (Reiser 2020), albeit under relatively restrictive conditions, and France now has about 20 foundation-owned companies. In Germany, a new government has announced that it intends to promote "Verantwortungseigentum" (foundation-like businesses). While it is too early to speak of a trend, enterprise foundations appear to have a future.

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