

I propose to discuss the basic question of what is the essential function of partnership law. The discussion will continue an exploration I've pursued in a number of papers over the years, including, *Accountability and Responsibility in Corporate Governance*, forthcoming Notre Dame Law Review; *Should History Lock in Lock-in* (draft of February 13, 2006), forthcoming Tulsa Law Review, *Why Corporations?*, 1 Berk. Bus. L. J. 183 (2004), *Important Role of Non-Organization Law*, 40 Wake Forest L. Rev. 751 (2005), *Reverse Limited Liability and the Design of Business Associations*, 30 Del. J. Corp. L. 199 (2005), *Making Sense of Entity Rationalization*, 58 Business Lawyer 1023 (2003), *The Evolving Partnership*, 26 J. Corp. L. 819 (2001), Choice of Form and Network Externalities (with Kobayashi), 43 William & Mary Law Review 79 (2001), *Limited Liability Unlimited*, 24 Delaware Journal of Corporate Law 407 (1999), *Changing Statutory Forms*, 1 Journal of Small and Emerging Business Law 11 (1997), *Linking Statutory Forms*, 58 J. Law & Contemp. Prob. 187 (Spring, 1995), *Statutory Forms for Closely Held Firms: Theories and Evidence from LLCs*, 73 Wash. U. L. Q. 369 (1995), *Unlimited Contracting in the Delaware Limited Partnership and its Implications for Corporate Law*, 17 Journal of Corporation Law 299 (1991), and *An Applied Theory of Limited Partnership*, 37 Emory Law Journal 837 (1988).

I see two basic questions: (1) what are the functions of any statutory business form? and (2) what is the function of a partnership-type business form? The functions of a standard form include providing a coherent set of rules (what I refer to as the "substantive" functions) and providing a basis for government regulation (the "formal" functions). Ideally the two functions should interrelate in order to minimize secondary or avoidance costs of regulation.

This places the ultimate focus on the special aspects of partnership. As developed in several articles, and consistent with work by Blair and Stout, Hansmann & Kraakman, and others, I see capital lock-in as a significant feature. In general, this feature raises issues concerning the appropriate tradeoffs in minimizing total agency costs between, on the one hand, monitoring inputs in the form of managerial judgments and, on the other hand, controlling outputs by mandating distributions. As discussed in a couple of recent articles (*Accountability and Responsibility* and *Why Corporations?*) I see an increasing role for partnership law as an output control device. This increased role is attributable to fundamental changes in markets that reduce the need for firm-type contracts, and therefore the need to protect managers' control over earnings. However, the dominant role of the corporate form has been protected by tax and regulatory rules favored by corporate managers.