

TOWARDS 'ACCOUNTABLE CAPITALISM': REMAKING CORPORATE LAW THROUGH STAKEHOLDER GOVERNANCE

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THE IMPORTANCE OF REPLACING SHAREHOLDER PRIMACY WITH STAKEHOLDER CORPORATE GOVERNANCE

Corporations today operate according to a model of corporate governance known as “shareholder primacy.” This theory claims that the purpose of a corporation is to generate returns for shareholders, and that decision-making should be focused on a singular goal: maximizing shareholder value. This single-minded focus—which often comes at the expense of investments in workers, innovation, and long-term growth—has contributed to today’s high-profit, low wage economy.

Many business leaders, policymakers, and average Americans accept this doctrine of corporate governance as “natural” law—the unshakeable reality of business. However, shareholder-focused corporations are not natural market creations, and the idea of “maximizing shareholder value” is relatively recent. This misguided focus, driven by the neoliberal conception of shareholders as the only actor within the firm who is critical to corporate success, is the result of decades of flawed theory in corporate law and policy. Increasing economic evidence suggests that shareholder primacy is not benefiting other corporate stakeholders, including workers, suppliers, consumers, or communities.

With corporate rights should come societal responsibilities, but the rules of corporate America today do not guarantee that firms advance the public interest. Corporations are legal entities that exist only once a state government approves their incorporation, which grants them tremendous privileges to operate apart from the natural persons who form them and run them. These privileges—as currently exercised—have allowed corporations to organize trillions of dollars of capital and create wealth beyond what most countries possess, ultimately exacerbating economic inequality by building incredible wealth for shareholders while contributing to decades of wage stagnation.

It is time to change corporate governance law, reflected in a new framework, to ensure that the wealth created at the behest of public charters benefits the stakeholders who, collectively, generate prosperity. The changes to corporate governance that we



recommend are intended to fundamentally rebalance power among stakeholders. Most notably, the rules that mandate the sole, shortsighted focus on stock price must be rewritten. Corporate decision-making must also consider every stakeholder who contributes to corporate success and ensure that all key stakeholders have a voice in governance of the firm.

This issue brief explores policy reforms that can replace shareholder primacy with a new stakeholder corporate governance model. Specifically, we propose four legislative reforms:

1. Boards of directors should be accountable to all stakeholders, not just shareholders. Specifically, board “fiduciary duty” should run to all stakeholders;
2. Corporate purpose statements should include a requirement that corporations positively benefit society;
3. Multiple stakeholders should be represented on corporate boards; and
4. Large corporations should be required to charter federally, in order to enable the reforms above.

Section 1 briefly examines the problems of shareholder primacy and the current state of corporate law. Section 2 defines stakeholder governance and describes why it is a more useful model for corporate governance. In Section 3, we outline the key elements of the stakeholder corporate governance model: re-defining corporate purpose; ensuring stakeholder power on boards of directors; re-defining board responsibilities to all stakeholders; and federalizing the corporate charter. Sections 4 and 5 explore the history of corporate law and policy in the United States, as well as the international context. Section 6 previews possible objections to these proposals and provides preliminary responses.

We acknowledge that remaking corporate governance alone is not enough to ensure a sustainable and collectively prosperous economy. Boards would still grapple with difficult decisions, and balancing power among stakeholders would not automatically lead to different choices. Other substantive policy areas that shape corporate activity, including the right to organize and collectively bargain, mandatory living wages and benefits, along with restrictions on speculative corporate practices like stock buybacks and excessive executive compensation, should complement such a rethinking of corporate governance.



However, stakeholder corporate governance is necessary for the kind of economic future we all want—and need. It is our hope that this issue brief will give context to why stakeholder corporate governance is an achievable and powerful model to strengthen economic prosperity.

SECTION ONE

THE SHORTCOMINGS OF SHAREHOLDER PRIMACY

The dominant framework of corporate governance is “shareholder primacy,” or “shareholder value maximization.” Under shareholder primacy, the end goal of all corporate decision-making by boards and executives is to raise share prices. A corporation’s board owes its “fiduciary duties” exclusively to shareholders, meaning that the board, as it makes decisions, is solely accountable to shareholders. Crucially, if corporate leaders’ decisions are driven by other priorities, they can be challenged either by “activist” investors threatening to take over boards, or by legal action; these threats work to disincentivize any deviation from the shareholder primacy norm ([eBay v. Craigslist](#) 2010). What’s more, corporate insiders have been further incentivized to run companies with share price maximization as their north star because company executives receive increasing amounts of their compensation in ways that tie it to rising share value, ultimately uniting their interests with shareholders.

The courts, policymakers, and academics have justified shareholder primacy using several different theories. One theory—the “nexus of contracts” theory—is the notion that because all other corporate stakeholders, such as employees or suppliers, have a contractual relationship with the firm, and shareholders do not, shareholders require heightened protections and must be due all profit that is not contractually accounted for, in order to incentivize their investment. A second, property theory is that shareholders are the legal “owners” of the corporation, because they own corporate shares. This view suggests that management must respond only to the interests of shareholders because they are the “agents” to shareholders’ “principal” ownership of the firm. Both theories depend on an incorrect notion that because shareholders make the critical contribution to corporate success, boards should be solely accountable to them.

Both of these theories, however, ignore the reality that other groups of stakeholders beyond shareholders—employees, customers, suppliers, creditors, and taxpayers—have a stake in corporate productivity and are deeply impacted by the decisions made by the boards of directors (Yosifon 2018). Under shareholder primacy, these stakeholders have no voice inside an institution. When considering the question of shareholders as owners, legal scholar Lynn Stout (2012) established that shareholders own their shares, not the



corporation itself. And as legal scholar Kent Greenfield (2005) argues, “bondholders own their bonds, suppliers own their inventory, and employees own their labor.” The shortcomings of shareholder primacy can be seen when thinking about the ramifications of major corporate decisions. The decision by corporate executives to cut costs or merge with another company, for example, has a much greater impact on that company’s employees than it does on shareholders, who usually own a company’s stock in a broad portfolio. (It is much easier to sell shares than it is to be laid off.) When examining the nexus of contracts theory, which says that everyone is protected by contracts except shareholders, it is critical to understand that most employees do not have contracts, but rather at-will employment arrangements, in which bargaining power is entirely on the side of the company. Additionally, customers and the public do not have contracts in any meaningful sense—it is only those with financial interests, like bondholders, who have legally binding contracts. Therefore, a governance model that privileges shareholders based on the faulty assumption about contractual coverage ends up neglecting the interests of other stakeholders. Overall, proponents of shareholder primacy overstate the needs and wants of shareholders, who are neither solely entitled to firm profit nor disadvantaged by their lack of contract, at the expense of productive contributors to the firm.

This sole focus on shareholder value is not only destructive to neglected stakeholders—it also contributes to widespread economic inequality and the stagnation of wages (while executive compensation soars). First, it places intense pressure on companies to drive down all other costs, at the expense of better compensation and stronger investments that are important for long-term productivity (Mason 2016). This creates a culture of short-termism—focus on quick fixes and increases in stock value—that pressures firms to show shareholders consistent growth on a quarterly basis and distracts from the investments needed for sustained growth and innovation. It has also been a major driver in the fissuring of the workplace (Weil 2014), applying massive pressure to bust unions and downward pressure on non-executive wages (Davis 2009). It has justified corporations externalizing costs of the climate crisis and other societal externalities. Stock buybacks—the repurchase of a corporation’s own shares on the open market meant to drive up share prices—are on track to reach \$1 trillion this year, artificially [driving up the stock market](#) and enriching those who sell shares at the expense of worker compensation and long-term corporate prosperity (Palladino 2018).

In order to end shareholder primacy, corporate governance law must explicitly define board accountability to multiple stakeholders, and those stakeholders should have a place on corporate boards. In the next section, we further detail the benefits of a shift to a stakeholder corporate governance system.



SECTION TWO

THE BENEFITS OF STAKEHOLDER GOVERNANCE

Multiple stakeholders, including employees, management, shareholders, customers, suppliers, creditors, and the public, contribute to and are affected by corporations and corporate decision-making. Given that corporations are business entities that have enormous privileges and public charters, the public has a right to establish rules for corporate governance that work in the best interest of the society at large. The rules should foster corporate accountability to all who contribute to corporate success and ensure that the interests of key stakeholders are fairly reflected in the company's governance. Stakeholder governance—as proposed by Senator Elizabeth Warren (D-MA) in the Accountable Capitalism Act—will help to solve economic inequality, as non-shareholders gain bargaining power over the allocation of the corporate profits that they helped to create.

Before explaining the policies that encompass stakeholder governance, it is important to explain how corporations actually produce and innovate. William Lazonick's "innovative enterprise" model outlines how value creation is dependent on the mobilization of skill, efforts, and finance—which requires dedicated labor, management, and capital (Lazonick 2017). The theory puts forward both a view of how firms actually produce higher-quality, lower-cost goods over time and why the distribution of profits among various stakeholder groups is necessary for productivity. He argues that, by contrast, public shareholders do not actually invest in the productive assets of corporations, because most purchase shares from other shareholders, and the capital "invested" never actually reaches the corporation.

Shareholders are not the only stakeholders who invest in corporations. Employees and customers make investments in corporate success too, taking on varying levels of risk necessary to improve productivity (Greenfield 2005). For example, workers face the risk that their firm-specific skillset won't be rewarded if companies lay them off or fail to be profitable, so they are deeply dependent upon corporate success. Similarly, taxpayers indirectly invest in companies through the provisioning of public goods that companies use, including investments in research and development that drive innovation in many industries.

Reshaping Corporate Behavior through a Stakeholder Governance Model

Implementing a stakeholder governance model is a necessary step towards accountable capitalism, which entails rebalancing power within firms to drive inclusive decision-making and ultimately incentivizes firms to act in ways that benefit the economy as a whole, not the select few. Under stakeholder corporate governance, previously excluded perspectives



would be able to weigh in on executive performance and the allocation of corporate funds. Workers, for example, would have decision-making power to set executive compensation and advocate for their own raises. Decisions to spend billions on stock buybacks and dividends versus employee compensation and productive investment could be checked by employees themselves. The most consequential corporate decisions, including bankruptcy, mergers and acquisitions, and outsourcing, would unlikely be made without considering how such changes would affect workers and communities, in addition to stock price.

The policies we describe in Section 3 build on models of stakeholder corporate governance that have been successful both domestically and abroad. For example, worker representation on boards is an effective model in Germany and throughout much of Europe (Holmberg 2017). In the U.S., the benefit corporation movement has passed legislation in 34 states that gives corporations the option to choose to assign fiduciary duties to multiple stakeholders, as well as for corporate purpose statements to include a requirement that corporations positively benefit society. Though benefit corporations (B Corporations) are still a new type of entity, anecdotal evidence shows that they are productive companies and beneficial for multiple stakeholders.¹

Though stakeholder governance alone does not proscribe any particular business decision or behavior, it promotes a rebalancing of power among stakeholders. Implementing the stakeholder governance model requires straightforward policy changes. In the next section, we outline the specific policies and process changes that are necessary for stakeholder governance.

SECTION THREE

POLICIES FOR STAKEHOLDER CORPORATE GOVERNANCE

Stakeholder corporate governance requires four main components: 1) a revision of companies' purpose statements—the foundational statement contained in all corporate charters against which a corporation's decisions are measured—to require that corporations create a materially positive benefit for society; 2) a redefinition of board fiduciary duty, so that boards are required to consider the interests of all stakeholders who are meaningfully affected by the board's decisions; 3) stakeholder representation on the corporation's main governing body, the board; and 4) the creation of a federal charter for large corporations. Below, we explain how each of these elements would change the status quo, as well as the policies needed to enact them. These policies are reflected in the [Accountable Capitalism Act](#), recently introduced by Senator Elizabeth Warren. Senator Warren's bill is the first proposal in decades to propose rewriting corporate governance at the federal level.

¹ For more information on B Corporations, see B Lab's website, <https://bcorporation.net>.



Redefining Corporate Purpose

The first substantive policy change required for stakeholder governance is to rewrite corporate purpose statements, so that corporations are committed by law to act in the public's best interests. Corporations are privileged business entities that shield individuals from liability if things go bust, are able to raise huge amounts of capital, and become enormously profitable. As a result, they stand to make a large impact, positive or negative, in the communities they occupy and in the economy overall. Currently, the large majority of corporations simply state in charter documents that their purpose is to engage in all lawful activity.² This is not enough. In exchange for the benefits that corporations receive and the public's permission to exist, they should be legally committed to not externalize the harms resulting from business decisions onto society.

One model for how to codify new corporate purpose language comes again from public benefit corporations. In these statutes, public benefit is defined as a “materially positive effect (or the reduction of negative effects) on persons, entities, communities or interests” (Model Benefit Corporation Legislation 2017). While the language of these statements presents enforcement challenges, a pledge to serve the public good is a necessary first step. Other efforts to revise corporate purpose statements are underway globally. In France, for example, a governmental commission published a report recommending that corporate law be revised so that corporations are committed to a positive public purpose.

Extending Board Fiduciary Duty to All Stakeholders

Currently, board “fiduciary duty”—the legal standards of care and loyalty that directors owe—runs only to shareholders, which means that directors are only accountable to shareholders for their decisions. Instead, corporate boards should be required to consider the effects of their decisions on all corporate stakeholders. The rationale for this is twofold. First, corporate stakeholders are invested in corporations just as shareholders are, and the decisions that boards make are extremely consequential for stakeholders beyond shareholders. Currently, labor laws govern some elements of corporate responsibility to employees, but beyond minimum wage laws, there are no legal requirements that mandate employees share in corporate success. Responsibility to the workforce, the economy, and society more broadly should not be absent from the benefits of incorporation. A second rationale for stakeholder fiduciary duty is that it would benefit corporate prosperity at large. The pressure to only consider shareholder outcomes has led to a shorter and shorter time horizon. The massive spending on stock buybacks and underinvestment in research and development have been justified by board fiduciary duty to shareholders, but these decisions deprive corporations of a forward-thinking, long-game mindset that promotes

² For example, the sample language provided by the state of Delaware in its sample corporate certificate of incorporation is that “the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.” See: <https://corpfiles.delaware.gov/incstk09.pdf>.



prosperity, including retained earnings, and benefits long-term corporate growth. Thus, long-term shareholders themselves can be hurt by the drive to constantly increase shareholder wealth. A more balanced view of fiduciary duty—towards stakeholders, but also towards the corporation as a whole—can encourage the economic health of companies for the long term.

Importantly, board decisions will still be legally judged according to the “business judgment” rule. This means that courts do not question the *outcome* of board and management decisions, but instead courts consider the *process* that decision-makers take. Extending fiduciary duty to all stakeholders simply alters the process that decision-makers take. Today, boards are required to show that in their decision-making process, they took only the interests of shareholders into account. This policy would require that boards have to show that they considered the interests of all other corporate stakeholders as well. It does not, however, proscribe any certain outcomes of their decision-making.

Guaranteeing Stakeholder Representation on Corporate Boards of Directors

Stakeholders should be represented on the company’s main decision-making body, the corporate board. Currently, large corporations have boards that are elected solely by shareholders.³ For companies with publicly traded stock, this means, in practice, that institutional investors are voting for board members, and the company itself proposes new board members when turnover occurs through its control of the voting process. These appointment mechanisms ensure that board members are serving the interests of the investment community and corporate executives, and that there can be no significant buy-in from employees. Such a system is undemocratic, and it increasingly steers decision-making to prioritize short-term gains at the expense of investment in capital and labor. Worker representation is a necessary first step to more inclusive behavior.

This shift can be enacted in several ways. Most directly, firms could be required to reserve 40 percent of board seats for worker representatives, as the Accountable Capitalism Act proposes. These seats could be nominated by the workforce or union members. On a broader level, employees can be brought “inside” corporate governance through other mechanisms. For example, employees could have non-binding votes or could be surveyed regularly. There are many options for legislation that, to a varying degree, integrate employee input into corporate governance, “one can classify possible laws along three axes: the level within a corporation at which employees have a voice, the scope of decisions over which they have a voice, and the degree or kind of voice they have over a particular matter” (McDonnell 2011, p. 108). Along these axes, a policy to include workers on boards would boost workers’ voices to the highest level within a corporation, expose them to the greatest scope of decision-making, and grant them voting power on par with senior executives.

³ The main exception to this rule is in cooperatives, where employees elect some or all of the board members.



Federalizing Corporate Governance

Shareholder primacy in the U.S. is enabled by a state-driven incorporation model, which exploits states' pursuit of incorporation revenue and has driven a "race to the bottom" for shareholder-friendly incorporation laws. In order to advance stakeholder governance as the main framework, the U.S. should establish federal chartering for our large corporations. Even though, in theory, states could certainly rewrite their own corporate governance rules, absent some other pressure, the competition among jurisdictions for the most business-friendly corporate law is likely to continue (Greenfield 2004). Today, 66 percent of Fortune 500 corporations are established in Delaware due to its lax corporate laws.

State corporate governance was established at a time when companies were much more likely to conduct activities within a single state. But corporations in today's economy need not have any meaningful contact with the state where they are incorporated; they are still allowed to incorporate in any state, no matter where they do business, employ people, or spend money. This is profoundly undemocratic and made possible due to the "internal affairs doctrine," which allows companies to use the state governance laws of the state where they incorporate. Stakeholders of corporations chartered in Delaware, such as employees or creditors, have no political voice in the creation of Delaware corporate law.

In today's multinational economy, where corporations employ workers across the nation and the world, federalizing incorporation, along with regulation of our financial and securities markets, is a sensible, modern reform. A federal corporate charter for large corporations would bring corporate law into the 21st century and make it subject to the political will of all of us, rather than the voters of Delaware alone—who, at 960,000, are fewer in people than the total number of hourly employees at Walmart. It is also the most straightforward political mechanism for stakeholder governance to be instituted and enforced.

SECTION FOUR THE HISTORY OF CORPORATE GOVERNANCE

In this section, in order to demonstrate that corporate governance has always been defined by politics and policy, we outline the development of corporate governance models over time. Shareholder primacy is a relatively recent innovation. Though the effects of this ideology are acute, it has dominated corporate governance only since the 1980s, preceded by a managerial model and a much more proscribed vision of corporate purpose before that. The corporate model originated in the United States at a time when capital was scarce and the need to organize scarce capital for capital-intensive projects was great.⁴ During this

⁴ For a concise but rich summary of this history, see Hockett (2018).



Progressive era of the late 19th century, the idea of federalizing incorporation rules became central to economic policy debates. Various bills focused on granting the commissioner of corporations—at that time, a federal regulator within the then-existing Bureau of Corporations—the power to approve applications for corporate charters, in large part as a trust-busting mechanism.⁵

One bill, 1912's H.R. 26415, sought to establish a bipartisan "United States Corporation Commission" to mandate that all corporations whose business exceeded a certain dollar volume were required to become corporations under the laws of the United States. Like today's Securities and Exchange Commission (SEC) commissioners, the corporations' commissioners would have been appointed by the president and confirmed by the Senate. Only after a satisfactory statement was submitted would the commission grant the corporate charter, allowing the corporation to function and, essentially, exist. No stock could be issued without the approval of the commission, and it would not allow companies to issue new stocks and bonds that exceeded the company's "true value of its physical assets and the good will of its business." Mergers would also have to be approved by the commission. The bill also limited officers and directors from serving in multiple roles in other companies without commission consent. All of these rules would have given the commission substantial power over corporate decisions, and thus tamed the harmful outcomes of unchecked corporate power.

Another bill, 1911's S. 232, was specifically established to curb the outsized influence of the financial sector within the nonfinancial corporate sector. It would have prevented corporations from issuing stock except "for the purpose of enlarging or extending the business of such corporation or for improvement or betterments," and would have required explicit permission from the secretaries of commerce and labor. This would have dramatically tamed the power of the rising financial sector by limiting stock issuance to the actual industrial needs of the firm. If the corporation's amount of outstanding stock exceeded the value of its real assets, the government would require the company to recall its stock, and issue new stock such that the value of the stock was equal to the company's actual assets.

Various bills gave the commissioner of corporations the ability to choose whether or not to grant corporate existence. In one bill, corporate existence was not perpetual; rather, it was limited to 30 years before a new application was required. Other bills placed substantive requirements on shareholder distributions; for example, one mandated that shareholder dividends should only come from the corporation's surplus or net profits, not from debt. Penalties for failing to obtain a federal license ranged from forced closure to penalties on directors for any fraudulent or negligent acts in the application for a charter. None of these bills became law. Since then, states continue to govern incorporation, and Delaware became

⁵ The legislation from that time is documented in detail in Professor Marc I. Steinberg's *Federalization of Corporate Governance*.



the dominant provider of business-friendly incorporation laws.

The rest of the 20th century saw a prolonged debate between scholars of corporate law, beginning with Adolf Berle and Gardiner Means versus E. Merrick Dodd: Berle and Means championed shareholder primacy as the way to rein in the excesses of self-interested management, while Dodd advocated for a managerial model. In practice, the managerial model dominated in the postwar era, in which strong unions and corporate culture ensured consideration of employees through labor-management bargaining (Wartzman 2017). The groundwork for the rise of shareholder primacy and neoliberalism, laid by academics, came to prominence in the 1970s with Milton Friedman and Michael Jensen leading the charge to claim that the purpose of corporations was to create shareholder wealth. The election of Ronald Reagan ushered in a series of policy changes that further exacerbated the rise of corporate power: union-busting; allowing unfettered stock buybacks; and a shift in antitrust jurisprudence. Additionally, a Supreme Court case that struck down anti-takeover statutes at the state level, alongside the above-mentioned policy changes, deepened the political commitment to neoliberalism. The rise of the corporate takeover movement solidified shareholder primacy as standard business practice (Davis 2009). At the same time, executive compensation became linked to shareholder value, effectively cementing the link between executive and shareholders.⁶

Competitor nations have moved forward with more balanced corporate governance models; in the next section we explore models from Europe.

SECTION FIVE

MAKING THE CASE FOR STAKEHOLDER CORPORATE GOVERNANCE: INTERNATIONAL MODELS

In other advanced industrialized economies, balanced models of corporate governance are the norm. In two-thirds of Europe, workers have a role on the corporate board, and in 13 countries, including Germany and France, worker governance rights are extensive across much of the private sector. Germany's stakeholder model, comprised of workers on boards and works councils, alongside sectoral bargaining—or the power to bargain with all companies in an industrial sector at once, rather than at the level of the individual worksite—has been covered by Susan R. Holmberg (2018). It is worth noting that various worker-board models exist across Europe, including how workers are elected, who can be a board representative, and what workers' composition and structure are on the board.

Typically, among the European countries with a worker representation requirement, the

⁶ Opponents of shareholder primacy developed state “constituency statutes” that allowed corporations to choose the stakeholder model and include employees in selecting board members. Though such statutes gave corporate boards the option to choose the stakeholder model, they were not obligated to do so.



standard is to mandate that one-third of board members be worker representatives. In Germany, worker representatives must make up half of the board for companies with over 2,000 employees. These representatives are typically elected by the workforce or nominated by their unions. Most countries require that representatives be company employees, as they are most deeply invested in the company, while the Netherlands imposes the opposite: Representatives cannot be employees or union members, instead they must be a step removed. In both cases, the individual is intended to speak on behalf of the interests of workers.

There are, of course, limitations to these mandates. Most countries employ a minimum number of employees before a company is required to elect worker representatives. These minimums range from 25 to 5,000 employees, ranges that determine the frequency of worker-friendly boards. Also, even in Germany where there can be up to 50 percent worker representation, they do not have the power to block or override a vote by the rest of the board. In the German case, the chair of the board is always a shareholder and holds the tie-breaking vote.

In these examples, shareholders still maintain a substantial and powerful presence, but workers are also able to participate in corporate decision-making. Europe shows us that there are many ways a stakeholder model can be implemented, and a U.S model does not need to duplicate any one existing framework.

SECTION SIX

COMMON CRITIQUES & AREAS FOR FUTURE RESEARCH

The policies proposed above are roadmaps to major reforms that would give rise to stakeholder governance. Clearly, many questions of design and implementation remain, which should be subject to great deliberation in legislative and administrative rule-making processes. Big questions include: Which stakeholder groups should be ensured a place on boards, and in what proportion? Who should have power to bring derivative suits, standing in the shoes of the corporation to hold the board itself accountable for violating its new fiduciary duties? Which corporations should be subject to federal chartering?

Though we will continue to explore these questions in further research, we examine below the critiques of stakeholder governance that we have an answer to today.

Impacts on Investment

One common critique of stakeholder corporate governance is that a departure from the shareholder model will drastically reduce investors' investment. Regardless of the validity



of this concern, the stakeholder model we are proposing explicitly includes shareholders as key stakeholders. Our stakeholder model does not reduce investors' role in corporate governance; it only broadens the table to other stakeholders, as well. It can be argued that the main beneficiaries of shareholder primacy are share *sellers*—the traders who constantly buy and sell shares, looking for gains. True investors who look to hold companies in portfolios for the long term are negatively affected by the short-term focus of shareholder primacy, as corporate funds are spent on pushing up stock price at the expense of long-term investments in true innovation.

Moreover, the rate of newly issued stocks has been negative in the nonfinancial corporate world for nearly two decades—meaning investors are not providing corporations directly with fresh capital, and such investment is currently not a major source of corporate funds, which come from retained earnings and debt. Instead, investors are buying and selling existing shares to each other on the secondary market. Though such trading does indirectly benefit corporations by showing that investors believe their stock has value, secondary market trading does not directly give corporations any capital to make new investments in future productivity.

Another concern often raised is that stakeholder corporate governance will hurt “everyday” investors, whose retirement security is bound up in the stock market. For most investors, long-term wealth appreciation is more important than short-term fluctuations. What's more, majority stock ownership is a myth. Only half of American households own stock at all, and the value of ownership is often quite small. The middle class owns 8 percent of all stocks; while the top 1 percent of households owns almost 40 percent (Wolff 2017). However, these are not the investors—or traders—who drive corporate decision-making. Traders who profit off of rises in price are the most invested in shareholder primacy. For those investing for the long term, stakeholder governance can create the potential for innovation that will create a sustainable rise in stock prices over decades.

Consolidation of Power by Management

Another concern is that the stakeholder model would lead to more power in the hands of central management because management, in an effort to consolidate their own power, will be able to play stakeholders off of each other. The main benefit of the stakeholder model, however, is to rebalance power among different types of stakeholders, so that all stakeholders have the ability to at least attempt to claim some of the value they've created. Meaningful stakeholder representation on the board would go a long way to ensuring a balance of power. Nevertheless, management's consolidation of power is a real concern that thoughtful policy design should strive to prevent. This concern is why it's not enough to simply make the board's duties of loyalty and care apply to all stakeholders; they must also



be in decision-making positions in order to exercise some accountability over management decisions. That is why it is crucial that employees, beyond management, have meaningful representation on the board of directors.

Competing Interests

A final critique regarding the extension of boards' fiduciary duties to all stakeholders is that boards and management will then face competing interests and have difficulty choosing between them. This logic is based on the idea that decision-making should follow mathematical models, in which one cannot maximize more than one variable. However, humans are adept at balancing competing claims, as any parent of two children can explain. Such a balance will require that boards weigh the trade-offs between increasing stock buybacks versus utilizing corporate funds to increase wages or simply retain earnings. It does not proscribe a certain outcome of such decision-making, or codify that each stakeholder receives a certain percentage of the corporate pie. Instead, the balance provided by stakeholder governance acts to ensure that each group of stakeholders receives due consideration when it comes to how major corporate decisions will affect them.

CONCLUSION

Corporate governance law, as an important area for reform, has been “hiding in plain sight” for too long (Yosifon 2018). There is a groundswell of support for challenging corporate power: Even business and investment leaders have been calling for a shift to a long-term focus on business prosperity (Fink 2018). Stakeholder corporate governance is also [politically popular](#): In a recent poll by Data for Progress, in which Senator Tammy Baldwin (D-WI) made the case for stakeholder governance, 52 percent of likely 2018 voters supported “establishing worker representation on companies’ boards of directors,” while an additional 25 percent were undecided.

Corporations have incredible influence over what we buy as consumers, how much we earn as workers, and the overall health of our economy and society. For too long, corporate decision-making has been bound by the flawed and false ideas that shareholders are the most important group of contributors to corporate success and that all decisions must be made with the goal of increasing their wealth. It is time to recognize that many stakeholders are necessary for business and economic success, and that corporate governance law must be revised to reflect this reality. Implementing a stakeholder corporate governance model is necessary for reversing decades of increasing inequality and ensuring a balance of power inside corporations. Overall, stakeholder governance is workable, popular, and a necessary step towards rewriting the rules of the economy—one that works for the many.



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