An Organizational Theory of Corporate Law

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Corporate law is in a moment of vibrant and contentious discussions about potential reforms. As firms exit Delaware, passive investment predominates, private equity expands, and public markets decline, corporate law faces a growing set of challenges that threaten its stability and efficacy. At the same time, the world faces pressing crises, including climate change, social and economic inequalities, and threats to democracy, though corporate law scholars typically consider these crises to be outside corporate law's remit.

In this Article, we argue that to understand and address the multidimensional crises that face both corporate law and society, we must address shortcomings in corporate law doctrine. We show how modern corporate law, shaped by neoclassical economic theories, provides an incomplete picture of the firm, and we propose an expanded theoretical perspective that draws from organization theory, a field long dedicated to understanding the complexities of the firm. This updated perspective demonstrates how firms actually consist of multiple constituents, including workers, the environment, and shareholders, who invest different forms of capital in the firm: labor capital, natural capital, and financial capital. It further shows that modern corporate law entrenches problematic power imbalances, privileging boards and insider shareholders over workers, the environment, and minority shareholders. Moreover, building on organization theory, we explain how corporate law fundamentally shapes and constrains firm behavior, leading these entrenched power imbalances to generate far-reaching negative consequences.

To address these shortcomings, we propose redesigning board representation, fiduciary duties, and executive compensation to empower workers, the environment, and minority shareholders in relation to boards and insider shareholders. Integrating the organizational and economic perspectives can help address problematic power imbalances and ultimately provide a more effective corporate law framework to govern firms and serve society.

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INTRODUCTION

Corporate law is in a moment of vibrant—and contentious—discussions about potential reforms.[1] As firms exit Delaware for more permissive jurisdictions, passive investment predominates, private equity gains in prominence, public markets decline, and globalization surges, corporate law faces a growing set of challenges that threaten its stability and efficacy.[2]

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1. Sarah Mueller, *Delaware Gov. Meyer Signs Corporate Law Overhaul Legislation Over Fears of a 'DExit' of Franchise Dollars*, WHYY (Mar. 26, 2025), https://whyy.org/articles/delaware-corporate-law-overhaul-signed/ [https://perma.cc/WL6X-DQK5]; Ann Lipton, *RIP American Shareholder Capitalism*, FIN. TIMES (Feb. 24, 2025), https://www.ft.com/content/85eccee4-3890-4c25-bd89-eb522b95efb9 [https://perma.cc/LK2G-6YWW]; Sarah Petrowich, *Delaware Lawmakers Propose Corporate Law Changes Amid Ongoing Departure Threats and Musk Litigation*, DEL. PUB. MEDIA (Feb. 18, 2025), https://www.delawarepublic.org/politics-government/2025-02-18/del-lawmakers-propose-corporate-law-changes-amid-ongoing-departure-threats-and-musk-litigation [https://perma.cc/K7SD-RF3W] (arguing that the impact of recent changes to Delaware corporate law could be fundamental, and quoting Professor Brian Quinn that the legal changes would "dissolve crucial protections for [] minority stockholders").

2. John C. Coates, *The Future of Corporate Governance Part I: The Problem of Twelve* 2, 19 (Harvard Law Working Paper No. 19-07, 2019) ("Three ongoing mega-trends are reshaping corporate governance: indexing, private equity, and globalization" and that "[a] small number of unelected agents, operating largely behind closed doors, are increasingly important to the lives of millions who barely know of the existence much less the identity or inclinations of those agents."); Jill Fisch, Assaf Hamdani & Steven Davidoff Solomon, *The New Titans of Wall Street: A Theoretical Framework for Passive Investors*, 168 U. PA. L. REV. 17, 27 (2019) (arguing that

Legal scholars have written extensively about the problems facing corporate law. They have documented how concentrating unprecedented power in just a handful of financial institutions allows these institutions to exercise indirect control over the entire market and undercut the legal guardrails put in place to curb undesirable corporate behavior,[3] generating serious legitimacy and accountability problems for corporate law.[4] They have explained how the decline in public markets reduces corporate disclosure requirements, not only shielding individual firms from public scrutiny, but also threatening the quality and utility of information available to the market as a whole, creating an unstable status quo that undermines corporate and securities laws.[5] Others have explained how evolutions in corporate law over the past several decades that highly favor directors and officers create doctrinal distortions by disenfranchising shareholders and threatening firm financial value.[6] And others have pointed out the problems that arise from shareholder primacy and assuming that corporate law exists primarily to solve a principal-agent problem, proposing alternative frameworks that would maximize the collective welfare of all the firm's stakeholders.[7] Against this backdrop, the door has opened for more expansive conversations—and novel considerations—about what is possible in reforming corporate law.

At the same time, the world faces pressing crises in a context of extremes.[8] Modern society is the wealthiest per capita it has ever been,[9] yet people around the world face staggering levels of inequality and precarious working conditions, which harm human health and well-being, threaten social cohesion, and even imperil the functioning and

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index investing places "an increased concentration of publicly traded stock in the hands of a small group of sponsors who can potentially use their immense influence over these companies to pursue pecuniary or nonpecuniary private benefits of control"); Lucian Arye Bebchuk, Alma Cohen & Scott Hirst, *The Agency Problems of Institutional Investors*, 31 J. ECON. PERSPS. 89, 90 (2017) (arguing that passive investing has "systemwide adverse consequences on governance"); Dorothy S. Lund, *The Case Against Passive Shareholder Voting*, 43 J. CORP. L. 493, 495 (2018) (arguing that passive investors do not have sufficient incentives to become informed shareholders); Elisabeth de Fontenay, *The Deregulation of Private Capital and the Decline of the Public Company*, 68 HASTINGS L.J. 445, 447 (2017) (explaining that "[a]larms are sounding over the decline in U.S. public companies"); JOHN COATES, THE PROBLEM OF TWELVE 13–15 (2023) (on the problematic decline of public markets and rise of private equity); Lucian Arye Bebchuk, *The Case for Increasing Shareholder Power*, 118 HARV. L. REV. 833, 865–70 (2005) [hereinafter Bebchuk, *Increasing Shareholder Power*] (on the problems facing corporate law); Petrowich, *supra* note 1 (on firms exiting Delaware for Nevada).

3. COATES, *supra* note 2, at 13–15.

4. Coates, *supra* note 2, at 2.

5. de Fontenay, *supra* note 2, at 451 (explaining how "the status quo is inherently unstable" and "our regulatory choices over the last three decades are puzzling, as they threaten the quality and usefulness of [investment] information"); COATES, *supra* note 2, at 69–70.

6. Bebchuk, *Increasing Shareholder Power, supra* note 2, at 865–70.

7. *See, e.g.*, Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247 (1999) (arguing for a team production theory approach to corporate law that centers the joint welfare of stakeholders rather than shareholder wealth); Grant M. Hayden & Matthew T. Bodie, *The Corporation Reborn: From Shareholder Primacy to Shared Governance*, 61 B.C. L. REV. 2419 (2020) (claiming shareholder primacy is declining and calling for a new approach to corporate governance that includes workers); *infra* Part I.C.

8. PAUL S. ADLER, THE 99 PERCENT ECONOMY: HOW DEMOCRATIC SOCIALISM CAN OVERCOME THE CRISES OF CAPITALISM 1 (2019) ("[W]e face multiple and deepening crises—in the economy, our workplaces, the natural environment, the social fabric of our communities, and our international relations.").

9. MARK KOYAMA & JARED RUBIN, HOW THE WORLD BECAME RICH: THE HISTORICAL ORIGINS OF ECONOMIC GROWTH 1–2 (2022) ("[T]he world is richer than it has ever been, and it continues to grow richer with each passing day . . . . Even in many of the poorest parts of the world, we have luxuries that our ancestors could only have dreamed of.").

stability of democracy.[10] Our legal and economic system has produced incredible prosperity,[11] generated extensive public works,[12] and created economic growth and technological innovation.[13] Yet it has also produced untenable levels of climate change, biodiversity loss, and environmental degradation that threaten human existence.[14] Corporate law scholars typically consider these crises to be outside the remit of corporate law.[15]

In this Article, we argue that to understand and address the multidimensional crises facing both corporate law and society, it is necessary to understand and address shortcomings in corporate law doctrine. Far from distinct, the crises that face corporate law and the world are intimately bound up in corporate behavior—and, we argue, in corporate law.

Understanding this argument first requires understanding the genesis of modern corporate law and the influence of a set of theories known as neoclassical economic theories of the firm. Neoclassical economic theories seek to explain why firms exist and how they function. They generally assume that the firm is a nexus of contracts, that an agency relationship exists between shareholders and directors, and that markets typically allocate resources efficiently.[16] Modern corporate law reflects these basic assumptions, treating shareholders as the firm's only investors and proper beneficiaries of managerial behavior, governing the relationship between boards and shareholders, assigning boards and senior management significant discretion in running the firm, and leaving the protection and

10. KATHARINA PISTOR, THE CODE OF CAPITAL: HOW THE LAW CREATES WEALTH AND INEQUALITY 1 (2019) (explaining that extreme income inequality was not the intended outcome of this economic and legal system and that instead "[t]he idea was to create conditions by which everyone would prosper"); TROND UNDHEIM & DANIEL ZIMMER, EXPANDING THE FIELD OF EXISTENTIAL RISK STUDIES 7 (2023) ("The past century has seen human beings multiply the means of jeopardizing earthly human survival."); David Ciepley, *Democracy and the Corporation: The Long View*, 26 ANN. REV. POL. SIC. 489, 504–07 (2023) (reviewing how corporations have shaped the functioning of constitutional democracy); JEFFREY PFEFFER, DYING FOR A PAYCHECK: HOW MODERN MANAGEMENT HARMS EMPLOYEE HEALTH AND COMPANY PERFORMANCE—AND WHAT WE CAN DO ABOUT IT 1–4 (2018) (explaining how modern work and management practices are damaging to physical and mental health).

11. KOYAMA & RUBIN, *supra* note 9, at 8, 10 ("Sustained economic growth has been accompanied by a dramatic reorganization of society and production.").

12. David Millon, *Theories of the Corporation*, 1990 DUKE L.J. 201, 207 (explaining that in the nineteenth century, "the typical corporation was chartered to pursue some sort of public function . . . . the state conferred the privileges of incorporation not simply for the private benefit of the incorporators, but also to further the general welfare").

13. KOYAMA & RUBIN, *supra* note 9, at 9.

14. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS 8 (2021) ("Human-induced climate change is already affecting many weather and climate extremes in every region across the globe," and scientists have documented "[e]vidence of observed changes in extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones," all of which pose a threat to human life.).

15. Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L.J. 439, 442 (2001) ("[T]he most efficacious legal mechanisms for protecting the interests of nonshareholder constituencies . . . lie outside of corporate law."); Lucian Arye Bebchuk & Roberto Tallarita, *The Illusory Promise of Stakeholder Governance*, 106 CORNELL L. REV. 91, 96 n.13 (2020) [hereinafter Bebchuk & Tallarita, *Illusory Promise*] (explaining how such issues are better left to other areas of law to regulate and that the most effective way to ensure capitalism works well for all corporate stakeholders is to adopt laws, regulations, and government policies outside of corporate law that specifically target protecting these parties).

16. *Infra* Part I.B.

regulation of additional firm parties to other areas of law, including environmental law, labor law, and employment law.[17]

Yet the modern approach to corporate law provides a descriptively incomplete picture of how firms and markets function. The firm is not just a nexus of contracts but also a complex and adaptive social structure.[18] Shareholders do not relate to directors as true principals do to agents, lacking, for example, the ability to compel directors to act, initiate corporate actions, or even enter onto corporate property.[19] Other firm parties like workers and the environment share critical characteristics in common with shareholders, providing indispensable resources to the firm and experiencing just as much, if not more, susceptibility to managerial misconduct.[20] Markets often inefficiently allocate resources, as illustrated by rampant corporate rent seeking,[21] declining public disclosure and oversight,[22] staggering levels of corporate climate emissions,[23] extreme pay differentials,[24] and the erosion of worker protections,[25] all in the face of well-developed legal regimes outside of corporate law.

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17. *Infra* Part I.B; Milton Friedman, *A Friedman Doctrine—The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES (Sept. 13, 1970), https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html (on file with the *Journal of Corporation Law*); Bebchuk & Tallarita, *Illusory Promise*, *supra* note 15; Hansmann & Kraakman, *supra* note 15.

18. Eric W. Orts, *The Complexity and Legitimacy of Corporate Law*, 50 WASH. & LEE L. REV. 1565, 1621–23 (1993); Giovanni Gavetti, Daniel Levinthal & William Ocasio, *Neo-Carnegie: The Carnegie School's Past, Present, and Reconstructing for the Future*, 18 ORG. SCI. 523, 527–28 (2007).

19. Stephen M. Bainbridge, *Director Primacy: The Means and Ends of Corporate Governance*, 97 NW. U. L. REV. 547, 559, 565 (2003).

20. *Infra* Part III.A.

21. Coates, *supra* note 2, at 3 ("Business interests continue to build significant government relations programs aimed at furthering regulation-based rent-seeking strategies and defending their ability to profit from externalities against economic, political and regulatory threats."); *see generally* Marianne Bertrand et al., *Tax-Exempt Lobbying: Corporate Philanthropy as a Tool for Political Influence* 2066 (Nat'l Bureau of Econ. Rsch., Working Paper 24451, 2018).

22. For example, private equity funds control nearly twenty percent of the economy. Bill Ainsworth, *'Most Americans are not Aware of How Concentrated the Financial Sector Has Gotten,' Harvard Law Professor Says*, HARV. BUS. SCH. (Aug. 13, 2024), https://www.hbs.edu/bigs/john-coates-harvard-law-professor-on-the-financial-sector [https://perma.cc/QFX2-KU5A]; de Fontenay, *supra* note 2, at 448.

23. PAUL GRIFFIN, RICHARD HEEDE, IAN VAN DER VLUGT, THE CARBON MAJORS DATABASE: CDP MAJORS REPORT 8 (2017), https://cdn.cdp.net/cdp-production/cms/reports/documents/000/002/327/original/Carbon-Majors-Report-2017.pdf [https://perma.cc/J9H9-DCWX] (documenting that "25 corporate and state producing entities account for 51% of global industrial GHG emissions" and 100 major fossil fuel producers "account for 71% of global industrial GHG emissions").

24. Press Release, Econ. Pol. Inst., Despite Slight Decline, CEOs Made 344 Times as much as the Typical Worker in 2022 (Sept. 21, 2023), https://www.epi.org/press/despite-slight-decline-ceos-made-344-times-as-much-as-the-typical-worker-in-2022-ceo-pay-has-soared-1209-2-since-1978 [https://perma.cc/S9SY-MGL2]; Dean Baker, Josh Bivens & Jessica Schieder, *Reining in CEO Compensation and Curbing the Rise of Inequality*, ECON. POL'Y INST. (June 4, 2019), https://www.epi.org/publication/reining-in-ceo-compensation-and-curbing-the-rise-of-inequality [https://perma.cc/VW27-VTDX].

25. *See, e.g.*, Jennifer Sherer & Nina Mast, *Child Labor Laws are Under Attack in States Across the Country*, ECON. POL'Y INST. (Dec. 21, 2023), https://www.epi.org/publication/child-labor-laws-under-attack [https://perma.cc/QB54-24R2] ("Attempts to weaken state-level child labor standards are part of a coordinated campaign backed by industry groups intent on eventually diluting federal standards that cover the whole country."); Lawrence Mishel, Lynn Rhinehart & Lane Windham, *Explaining the Erosion of Private-Sector Unions*, ECON. POL'Y INST. (Nov. 18, 2020), https://www.epi.org/unequalpower/publications/private-sector-unions-

We argue that resolving this incomplete account of the firm in corporate law requires a more nuanced theoretical conception of the firm to complement the neoclassical paradigm. We advance an expanded theoretical perspective that draws from organization theory, a field which for over a century has been dedicated to investigating the complexities of how firms function and how humans behave in organizations.[26] Leveraging this organizational perspective, we make three main arguments. First, we draw from organization theory to show how shareholders are not the only capital investors in the firm, with workers and the environment also investing labor capital and natural capital that are vital to the firm's existence. Second, foundational scholarship in organization theory underscores the profound role that power dynamics play in the firm. We show how the current corporate law regime entrenches problematic power imbalances that privilege boards and shareholders over workers and the environment, and that privilege boards and insider shareholders in relation to minority shareholders. Third, a fundamental aspect of organization theory emphasizes the critical role that corporate law plays in shaping firm behavior, providing a theoretical basis for understanding the link between corporate law and societal crises. These entrenched power imbalances shape firms' behaviors in ways that have far-reaching implications, not only for firms themselves but also for their stakeholders, for corporate law, and for society more broadly.

To address these shortcomings in corporate law will require fundamental reforms that reflect this more nuanced theoretical perspective. We advocate accounting for the role of workers and the environment as investors alongside shareholders, and more meaningfully empowering all three investors *vis-à-vis* directors and senior officers. To achieve these outcomes and distribute power more effectively in the firm, we propose redesigning board representation, fiduciary duties, and executive compensation in ways that leverage theoretical insights and empirical findings from organization theory. We show how combining the organizational and economic perspectives can help address problematic power imbalances and ultimately deliver a more effective corporate law framework to govern firms and serve society.

Admittedly, our proposed approach and accompanying reforms will result in a meaningful departure from the current corporate law model. Some may even call the proposals radical. But it is important to situate our proposals in their proper context. First, corporate law has not always functioned in the modern way, originally following a public-oriented and regulatory approach in the nineteenth century that sought to serve public welfare and a wider range of firm constituencies, including employees.[27] Although the premises and values underlying modern corporate law are now largely taken for granted, the design of corporate law responds to changing values and reflects a set of normative choices rather than an inevitability.[28] Second, corporate law is in a moment of rapid change and drastic

corporate-legal-erosion [https://perma.cc/UNA7-PQ24] (explaining the erosion of private-sector unions). *See* PFEFFER, *supra* note 4 (on how work practices threaten human health and well-being); Arne L. Kalleberg & Steven P. Vallas, *Probing Precarious Work: Theory, Research, and Politics*, *in* 31 PRECARIOUS WORK 1, 1 (Steven Vallas & Arne L. Kalleberg eds., 2018) (on the growing precarity of work and its negative effects).

26. *Infra* Part III.

27. *Infra* Part I.A.

28. *Infra* Part I.C.; Millon, *supra* note 12, at 201–02 (stating that the neoclassicist "viewpoint portrays corporate law as governing little more than the private relations between the shareholders of the corporation and

reform. A shifting incorporation landscape places less emphasis on long-dominant Delaware, while various state legislatures are enacting sweeping changes to corporate law that indicate a climate of potential receptiveness to fundamental reforms.[29] Third, we offer these proposals against the backdrop of modern crises that are bound up with corporate behavior. Collectively, the historical roots and evolution of corporate law, the presence of rapid change and sweeping reform, and the urgency of modern crises linked to corporate behavior illuminate a present moment amenable to—and indeed, even inviting—reconsideration of the role and design of corporate law.

Our approach builds on a growing body of work in corporate law that critiques the limits of the modern theoretical conception of the firm and aims to create a system of more effective and inclusive governance. This foundational scholarship includes the team production theory of corporate law, which seeks to shift away from shareholder wealth maximization;[30] a shared governance model of the firm, which calls for more democratic participation from employees alongside shareholders;[31] and the progressive corporate law model, which advocates for stakeholder governance,[32] among other work.[33]

Building upon these scholars and complementing their work, our approach seeks to expand beyond economic theory by drawing insights from organization theory. We emphasize in particular the seminal importance of worker and environmental participation in firm governance,[34] the role power dynamics play in the firm,[35] and the theoretical link between corporate law and modern crises.[36] Leveraging theoretical and empirical work in

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management . . . . This view would leave to other bodies of law (e.g., labor, antitrust, debtor-creditor law) the task of regulating the corporation's external relationships"); Hansmann & Kraakman, *supra* note 15, at 442 ("[T]he most efficacious legal mechanisms for protecting the interests of nonshareholder constituencies . . . lie outside of corporate law."); Hayden & Bodie, *supra* note 7, at 2449 (arguing that "[t]he corporate form, and its systematic exclusion of employees from governance, is not endemic to economic organization"). Others have argued that corporate law does not treat stakeholders as incidental, but rather that it is ill-equipped to solve such problems. In either formulation, non-shareholders are intentionally excluded from the corporate law calculus. Bebchuk & Tallarita, *Illusory Promise, supra* note 15, at 94–96.

29. These reforms include meaningful, insider-protective changes in Delaware and Nevada. Lora Kolodny, *Meta's Potential Exit from Delaware had Governor Worried Enough to Call Special Weekend Meetings*, CNBC (Mar. 19, 2025), https://www.cnbc.com/2025/03/19/meta-billions-of-dollars-at-stake-in-overhaul-delaware-corporate-law.html [https://perma.cc/MFV6-2AWF]; Matt Shell, *The Appeal of Nevada: Why Corporations are Heading West*, HOLLAND & HART (May 10, 2024), https://www.hollandhart.com/the-appeal-of-nevada-why-corporations-are-heading-west [https://perma.cc/7M3Y-MA33]. They have also included reforms in the other direction in other jurisdictions, such as constituency statutes and public benefit corporations. *Infra* Part I.C.

30. Blair & Stout, *supra* note 7, at 249.

31. Hayden & Bodie, *supra* note 7, at 2420.

32. Kent Greenfield & D. Gordon Smith, *Debate: Saving the World with Corporate Law?*, 57 EMORY L.J. 947, 947–49 (2008).

33. *Infra* Part II.A.

34. *Cf.* Hayden & Bodie, *supra* note 7, at 2422 (advocating for labor representation in corporate governance, but not the environment); Greenfield & Smith, *supra* note 32, at 972, 980 (arguing for broad stakeholder representation, including from employees, the environment, local communities, creditors, customers, long-term business partners, and so on).

35. *Cf.* Blair & Stout, *supra* note 7, at 250–55 (arguing that the board is a "neutral decisionmaker" that effectively mediates amongst all stakeholders to the firm).

36. Some previous work has pointed out the coexistence between modern crises and corporate behavior. Our work moves this observation to provide a theoretical framework for understanding the link between corporate law and pressing societal problems. *See, e.g.*, Greenfield & Smith, *supra* note 32, at 951 (describing the failures of the corporation and its negative societal consequences); *Infra* Part III.C.

organization theory can also help formulate more impactful and realistic proposals for reform, for example by accounting for limits to human cognition and the inevitable tensions and tradeoffs that arise when serving multiple constituents.[37] Importantly, we do not argue for organization theory to displace economic theory in corporate law. We illustrate instead how combining the organizational and economic perspectives can deliver a more descriptively complete view of the firm and an improved corporate law framework to govern firms and serve society.

In this Article, we use the terms "boards" and "directors" interchangeably to refer to the directors and senior officers (i.e. top executives) who shape decisions of the board of directors.[38] We recognize that directors and senior officers can hold multiple overlapping roles at once. For example, some directors or senior officers may also be shareholders in the firm, or workers employed by the firm, or both. When we use the terms "board" and "directors," we refer to the relevant directors and officers in their capacities as members of the board of directors.[39]

The Article proceeds as follows. Part I illustrates the public, regulatory origins of corporate law and the profound influence of neoclassical economic theories in creating the privately oriented modern doctrine. It describes subsequent critiques of neoclassical corporate law and the persistent dominance of the neoclassical perspective nevertheless. Part II describes five key assumptions in modern corporate law that provide a descriptively incomplete picture of the firm. Part III proposes a new organizational theory of corporate law, making three primary arguments. First, it shows how workers and the environment are key investors in the firm in addition to shareholders. Second, it explains the profound role power dynamics play in the firm and the ways in which corporate law entrenches power imbalances that privilege boards and insider shareholders at the expense of workers, the environment, and minority shareholders. Third, it explains how corporate law fundamentally shapes and constrains firm behavior, leading these entrenched power imbalances to generate far-reaching negative consequences for firms, their constituents, and society more broadly. Building on these insights, Part IV offers proposals for reform. It advocates redesigning board representation, fiduciary duties, and executive compensation in ways that more effectively combine the organizational and economic perspectives.

I. THE HISTORICAL EVOLUTION OF CORPORATE LAW

Corporate law has evolved over time in ways that reflect shifting theoretical conceptions of the firm. This Part shows how corporate law began as a public, regulatory body of law in the nineteenth century and evolved into a privately oriented body of law over the course of the twentieth century. It illustrates how this marked shift in corporate law reflects

37. *Infra* Part IV.

38. *See* Bebchuk, *Increasing Shareholder Power*, *supra* note 2, at 842 ("I shall refer by 'management' to the team of directors and officers who shape board decisions. . . . My focus, however, is on the allocation of decision-making power between the team of directors and officers as a whole—that is, between management as I define it—and shareholders.").

39. To the extent these parties are also shareholders and workers, the proposals that apply to workers and shareholders would also apply to them in this capacity. We also recognize that directors and officers may have variable levels of power, with some directors and officers enjoying more power than other directors and officers. We refer here to the relative power that directors and officers have *vis-à-vis* other parties to the firm, including especially workers, the environment, and shareholders.

the influence of emergent, and later dominant, economic theories of the firm, and in particular of the neoclassical economic perspective. Despite the emergence of scholarship critiquing the modern conception of the firm and offering competing visions for corporate law, the neoclassical perspective has nevertheless continued to dominate.

A. Corporate Law's Public Origins

Although today corporate law is privately oriented, this model has not always prevailed. In the nineteenth century, corporate law first developed as a highly regulated body of law concerned with achieving public welfare and serving multiple firm constituents, including workers.[40] Corporations could only form with a special state-granted charter, which was considered a privilege and was restricted to corporations with a clear nexus to public welfare, such as canal, railroad, bank, insurance, and public utility ventures.[41] The Supreme Court declared that the objectives of the corporation were limited only to those purposes the government sought to achieve for the good of the country.[42] The state's fundamental role in granting corporations power undergirded the public orientation of corporate law at this time.[43]

Corporate law also imposed several public-facing requirements on corporations in exchange for the privilege of state-conferred powers to operate.[44] Many states specially protected employees within corporate law, for example by imposing personal liability on

40. Millon, *supra* note 12, at 207 ("Particularly indicative of the public aspect of corporate legal theory were the extensive efforts to regulate the corporation's relationship to the rest of society.").

41. *Id.* at 206 ("[T]he corporation owed its existence to the positive law of the state rather than to the private initiative of individual incorporators."); Frank Dobbin & Jiwook Jung, *The Misapplication of Mr. Michael Jensen: How Agency Theory Brought Down the Economy and Why It Might Again*, *in* MARKETS ON TRIAL: THE ECONOMIC SOCIOLOGY OF THE U.S. FINANCIAL CRISIS: PART B RESEARCH IN THE SOCIOLOGY OF ORGANIZATIONS, 30B, 29, 34–35 (Michael Lounsbury & Paul M. Hirsch ed., 2010) ("When governments chartered banks, canals, and railroads as public corporations early in the 1800s, charters stipulated that the benefits of incorporation (limited liability, the right to issue stock) were granted in return for the performance of a public duty."). Although today banks and insurance companies may not carry a reputation of public orientation, in the nineteenth century, these industries were considered to serve important public functions. Millon, *supra* note 12, at 207 ("At least through the mid-19th century . . . the typical corporation was chartered to pursue some sort of public function. These corporations included charitable and municipal corporations as well as privately-owned banking, insurance, and public utility enterprises."); William W. Bratton, Jr., *The New Economic Theory of the Firm: Critical Perspectives from History*, 41 STAN. L. REV. 1471, 1484 (1989) ("The American states tended to confer charters on businesses that received state franchises—e.g., public utilities, transport concerns, bank insurers, and water works—and thus were perceived to require regulation outside of the market system.").

42. Dartmouth College v. Woodward, 17 U.S. 518, 637 (1819) ("The objects for which a corporation is created are universally such as the government wishes to promote. They are deemed beneficial to the country; and this benefit constitutes the consideration, and, in most cases, the sole consideration of the grant."); Gregory A. Mark, *The Personification of the Business Corporation in American Law*, 54 U. CHI. L. REV. 1441, 1441 (1987) (explaining that the *Dartmouth College* "decision defined the corporation for the American bar for much of the nineteenth century").

43. Millon, *supra* note 12, at 202 (this view "emphasized the state's constitutive role . . . [which] was interpreted to justify a public law approach to corporate law").

44. *Id.* at 202, 207 (explaining that "corporate law imposed various regulations designed to address important public concerns relating to the economic privilege and power that incorporation implied" and that "the state conferred the privileges of incorporation not simply for the private benefit of the incorporators, but also to further the general welfare"); Bratton, *supra* note 41, at 1485 (stating that during this period, corporate law "doctrine instantiated group values").

shareholders for outstanding employee pay.[45] Corporate laws restricted limited liability,[46] did not grant the corporation perpetual life, and imposed limits on firm capitalization and assets.[47] They prohibited holding companies and subsidiary acquisitions,[48] and required unanimous shareholder consent for fundamental corporate actions like mergers, sales of corporate assets, or changes to corporate purpose.[49] The ultra vires doctrine prohibited corporations from entering contracts outside the specific provisions of their charters, even with unanimous shareholder support, because these actions were seen to exceed the powers awarded by the state.[50]

The implementation of this approach was not without problems. By the end of the nineteenth century, the practice of requiring special state-conferred charters led to corruption due to its susceptibility to bribery and regulatory capture.[51] Yet even as states replaced special charters with general incorporation laws, the ongoing commitment to a regulatory and public orientation for corporate law remained, with many states continuing to impose public-facing requirements and restrictions on corporate financing, corporate structure, and corporate purpose.[52] The nineteenth century thus reflected a desire to design corporate law in a way that prioritized public welfare and avoided the concentration of corporate wealth and power.[53]

The twentieth century saw a massive shift in the conception of the firm and in corporate law. Influenced by emerging economic theories, corporate law scholars came to see

45. Millon, *supra* note 12, at 210 ("Many states provided special protection for employees, a class of persons deemed particularly vulnerable to financial manipulation or irresponsibility."). For example, New York corporate law imposed personal liability on shareholders for "all debts due and owing to any of [the corporation's] . . . employees." *Id.* at 210 (citing N.Y. STOCK CORP. LAW § 57 (consol. 1909)). Massachusetts corporate law also held shareholders personally liable for pay due employees. E. Merrick Dodd, Jr., *Statutory Developments in Business Corporation Law, 1886-1936*, 50 HARV. L. REV. 27, 32 (1936) (citing 15 MASS. PUB. STAT. ch. 106, § 61 (1882)).

46. Morton J. Horwitz, Santa Clara *Revisited: The Development of Corporate Theory*, 88 W. VA. L. REV. 173, 208 (1986) ("It is not usually appreciated that truly limited shareholder liability was far from the norm in America even as late as 1900 . . . most states . . . h[eld] shareholders of an insolvent corporation liable for more than the value of their shares.").

47. *Id.* at 209–10.

48. *Id.* at 209 ("Of particular importance were prohibitions on ownership of stock of other corporations—restrictions that directly addressed concerns about corporate consolidation and concentration of wealth. As a result, holding companies and parent-subsidiary acquisitions were precluded."); Horwitz, *supra* note 46, at 191 (explaining the "prohibition under state corporation laws of one corporation holding the stock of another").

49. Horwitz, *supra* note 46, at 200 (stating that through the 1880s, there was a requirement of shareholder unanimity for fundamental corporate transactions including the "sale of corporate assets or, indeed, for any 'fundamental' changes in corporate purposes" as well as for "corporate consolidations").

50. Millon, *supra* note 12, at 209 ("The ultra vires doctrine provided that a corporation could not bind itself contractually concerning a matter that was beyond the objectives defined in its charter. Even unanimous shareholder approval could not validate an ultra vires act because the shareholders could not create powers not conferred by the state.").

51. Horwitz, *supra* note 46, at 181 ("By the late nineteenth century in America, fundamental changes had already taken place in the legal treatment of the corporation. . . . During the Jacksonian period, special charters were denounced for their encouragement of legislative bribery, political favoritism, and, above all, monopoly.").

52. Millon, *supra* note 12, at 208–09 (explaining that "[s]ome states continued to insist that corporate charters include specific limitations on corporate purposes and powers" and that others "were willing to allow incorporation only for a single purpose."); Horwitz, *supra* note 46, at 187 (stating that "the first general incorporation laws . . . continued to impose many restrictions on corporate financing and structure.").

53. Horwitz, *supra* note 46, at 187.

the corporation not as a vehicle for achieving public welfare, but instead as "fundamentally private in nature."[54] Under this view, corporate law should concern itself not with achieving the goals of the state, but with achieving private wealth and serving the private purposes of the individuals who formed the corporation.[55] Indeed, invocation of economic theories successfully defeated efforts to revive the public conception of the corporation at this time. When E. Merrick Dodd prominently argued for an affirmative duty of corporate social responsibility in 1932,[56] Adolph Berle and Gardiner Means famously drew from institutional economic theory to reject his appeal for a return to a public and regulatory corporate law.[57] Berle and Means cast corporate law as properly protecting shareholder private property rights and thus strictly prohibiting corporate social responsibility, which they claimed would unequivocally damage shareholders.[58]

Against this new theoretical backdrop, corporate law changed dramatically via both courts and legislatures. Free incorporation entirely replaced state-conferred charters, eliminating the need for a special privilege bestowed by the state.[59] Legislatures established perpetual corporate lives rather than limited ones[60] and removed restrictions on corporate consolidation that had previously been central to corporate law.[61] Both courts and

54. *Id.* at 196–97 (explaining how economic principles came to be seen as inevitable and the natural order of the universe, and asserting that "[t]he laws of trade are stronger than the laws of men" (quoting WILLIAM W. COOK, TREATISE ON THE LAW OF CORPORATIONS HAVING A CAPITAL STOCK vii (4th ed. 1898))); Millon, *supra* note 12, at 213 (explaining that shifts in theoretical conceptions "eliminat[ed] the many special limitations on corporate freedom of action that the states had imposed in the past" and that "[w]ith this change in theory came a new willingness to treat corporate activity as fundamentally private in nature . . . and therefore free from special legal regulations designed to protect public welfare").

55. Dobbin & Jung, *supra* note 41, at 35 ("This changed the view of what incorporation meant, and of who the corporation was working for."); Millon, *supra* note 12, at 213 ("Corporate law thus lost much of its public character and instead took on a private law aspect as its focus turned from external concerns to the internal problem of corporate governance."); Horwitz, *supra* note 46, at 187, 195 (explaining that "the passage of the New Jersey Corporation Act, followed by a rapid capitulation of many other states, marked the end of all serious efforts to use corporation law to regulate").

56. E. Merrick Dodd, Jr., *For Whom Are Corporate Managers Trustees?,* 45 HARV. L. REV. 1145, 1161 (1932) (arguing for the natural entity theory of the firm as a theoretical basis for a public orientation for the corporation).

57. ADOLPH A. BERLE & GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY 121, 355 (rev. ed. 1968).

58. Bratton, *supra* note 41, at 1493 (stating that Berle and Means adopted an institutional economics approach that "marked the beginning of a new era" and "offered a substitute concept of shareholder/corporate relations"); Millon, *supra* note 12, at 220–24 (explaining that "Dodd's competing solicitude for such non-shareholder constituencies as employees and consumers was rejected by this new conception as illegitimate"). Notably, both Dodd and Berle later equivocated, with Dodd switching his position a decade later and Berle conceding that Dodd had been correct ten years after that. *See* William W. Bratton, Jr., *Collected Lectures and Talks on Corporate Law, Legal Theory, History, Finance, And Governance*, 42 SEATTLE U. L. REV. 755, 772–73 (2019).

59. ERNST FREUND, THE LEGAL NATURE OF CORPORATIONS 181 (1897) (stating that in the late nineteenth century, the corporation became "the dominant form of economic enterprise" and that "[g]radually, by making the corporate form universally available. . . [i]ncorporation eventually came to be regarded not as a special state-conferred privilege but as a normal and regular mode of doing business"); Bratton, *supra* note 41, at 1493 ("The model of state corporate law originated by New Jersey and Delaware at the turn of the century became the national norm.").

60. FREUND, *supra* note 59, at 22–23; George F. Canfield, *The Scope and Limits of the Corporate Entity Theory*, 17 COLUM. L. REV. 128, 128–30 (1917); Arthur W. Machen, Jr., *Corporate Personality (Part 1)*, 24 HARV. L. REV. 253, 258–62 (1911).

61. Horwitz, *supra* note 46, at 197.

legislatures abolished shareholder unanimity requirements for fundamental corporate decisions.[62] They also did away with the ultra vires doctrine, allowing corporations to engage in nearly any transaction, rather than only those state-granted powers explicitly enumerated in their charters.[63] By the mid-1900s, protections for employees, including shareholder liability for unpaid wages, had largely disappeared from corporate law.[64]

Courts also articulated fiduciary duties of care and loyalty, now bedrock principles in corporate law.[65] These fiduciary duties established the responsibilities that boards owe to shareholders, which courts articulated out of necessity to place equitable limits on the sweeping powers that the new corporate statutes granted to directors and executives.[66] These fiduciary duties centered the shareholder-director relationship in corporate law, underscoring the doctrine's private shift. They also shed light on the outsized power directors and executives now enjoyed in this era of the "managerialist corporation." Managerialism remained entrenched in corporate law until the 1970s, when a new set of economic theories of the firm emerged and triggered another sea change in corporate law.[67]

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62. *Id.* at 201; Millon, *supra* note 12, at 215 (explaining that "[a]lthough a unanimity requirement traditionally had protected the shareholders' right to veto important questions of corporate policy . . . during the early years of the 20th century state courts gradually abandoned [it]" and showing that "state legislatures began to condition outright mergers and other fundamental corporate changes merely on majority shareholders approval").

63. Horwitz, *supra* note 46, at 186–87 ("By 1930, the ultra vires doctrine was, if not dead, substantially eroded in practice, reflecting the triumphant view that corporate organization was a normal and natural form of business activity."); Mark, *supra* note 42, at 1455 ("The transformation of the private law of corporations from 1819 to the 1920s is best described as a move from a circumstance in which a corporation could do only those things specifically allowed by its charter to one in which a corporation could do anything not specifically prohibited by it."); John E. Kennedy, *Corporations: Powers—Ultra Vires—Problems Remaining after Legislative and Judicial Modification of the Doctrine*, 34 NOTRE DAME L. REV. 99, 104 (1958).

64. Robert S. Stevens, *New York Business Corporation Law of 1961*, 47 CORNELL L. REV. 141, 160 (1962) (noting that "the liability of shareholders for wages due employees . . . is modified" and explaining the broad exemptions for shareholders).

65. ALAN PALMITER, FRANK PARTNOY & ELIZABETH POLLMAN, BUSINESS ORGANIZATIONS: A CONTEMPORARY APPROACH 13, 59 (4th ed. 2023) (Fiduciary duties are "the implicit duties that the participants in a firm owe each other" and that "[t] he basic fiduciary duties owed by directors and officers to the corporation are the duty of care and the duty of loyalty."); Joseph T. Walsh, *The Fiduciary Foundation of Corporate Law*, 27 J. CORP. L. 333, 334 (2002) (using the court's reasoning that "[c]orporate officers and directors are not permitted to use their position of trust and confidence to further their private interests" to highlight "a bedrock principle of corporate law" (quoting Guth v. Loft, Inc., 5 A.2d 503, 510 (Del. 1939))).

66. Millon, *supra* note 12, at 221–22 ("Corporate statutes defined management's powers so broadly and so vaguely that courts necessarily had been called on to define their limits. Like any other trustee, the corporate manager's powers therefore were subject to substantive equitable limitations."). For example, the corporate opportunity doctrine within the fiduciary duty of loyalty required directors to maintain unwavering fidelity to the corporation and prohibited them from pursuing any opportunity that conflicted with the corporation's interest. Guth v. Loft, Inc., 5 A.2d 503, 511–12 (Del. 1939); Yifat Naftali Ben Zion, *Cleaning Up the Corporate Opportunity Doctrine Mess: A First Principles Approach*, 80 WASH. & LEE L. REV. 1609, 1612 (2023) (the corporate opportunity doctrine expresses that "[c]orporate fiduciaries are not permitted to use their position of trust and confidence to further their private interests") (citing *In re* Pattern Energy Grp. Inc. S'holders Litig., No. 2020-0357, 2021 WL 1812674, at *47 (Del. Ch. May 6, 2021)).

67. Bratton, *supra* note 41, at 1471, 1494 ("Economists and legal academics shared [Berle and Means's] managerialist conception of corporate structure" and "a conception of the firm as a management power structure prevailed unchallenged in legal theory.").

B. The Neoclassical Economic Influence

In the 1970s, a sub-field in economics known as the neoclassical economic theories of the firm rapidly gained traction, including in corporate law.[68] Generally speaking, the neoclassical perspective views the corporation as a nexus of contracts and a bundle of property rights.[69] Shareholders are simply one of many contracting parties who supply inputs and negotiate contracts to set out their rights and duties with respect to the firm.[70] But, neoclassicists argue, shareholders are special because they are residual claimants to the firm who receive payouts only after all other claims to the firm have been satisfied.[71] The neoclassical perspective is premised on an agency relationship existing between shareholders and the directors they hire to run the firm on their behalf.[72] Drawing from transaction cost economics, it also assumes firms exist to reduce transaction costs, and that firm actors are generally rational and profit-maximizing, with a tendency toward self-dealing.[73] As a result, from this perspective, the proper role of corporate law is narrowly limited to reducing agency and transaction costs.[74] It leaves out consideration of non-shareholder firm

68. *See* Bratton, *supra* note 41, at 1477 ("We can precisely date the advent of the neoclassical variant with the publication of a paper by Alchian and Demsetz in 1972. The watershed year was 1976, when Jensen and Meckling's well-known analysis the firm appeared."); Millon, *supra* note 12, at 229 ("Since around 1980, legal academics have developed a new theory of the corporation explicitly grounded on neoclassical economics."). Although neoclassical economics existed as a field prior to the 1970s, at its inception it mostly did not inquire into corporate governance.

69. Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305, 310 (1976); Millon, *supra* note 12, at 229 (this new theory "conceives of the corporation as a 'nexus of contracts'"); Armen A. Alchian & Harold Demsetz, *Production, Information Costs, and Economic Organization*, 62 AM. ECON. REV. 777, 777 (1972) (stating a property rights theory of the firm, in which all stakeholders to the firm do not "differ in the slightest degree from ordinary market contracting between any two people").

70. Millon, *supra* note 12, at 229 (explaining that neoclassical theorists "reject the utility of the conception of shareholders as 'owners' of the corporation" and "instead [] describe shareholders as only one among the various suppliers of 'inputs,' whose rights are determined by the interrelation of the various contracts that define and constitute the corporate enterprise").

71. *Id.* at 230 (Unlike creditors and fixed claimants, "it is the shareholders as residual claimants who ultimately bear these agency costs. If the web of contracts that makes up the firm fails to minimize agency costs, shareholders pay these costs because buyers will pay less for their stock and distributions or liquidation proceeds will be lower."); Eugene F. Fama & Michael C. Jensen, *Organizational Forms and Investment Decisions*, 14. J. FIN. ECON. 101, 102–03 (1985) (arguing that shareholders are residual claimants and prefer maximizing the financial value of their claim); OLIVER E. WILLIAMSON, THE MECHANISMS OF GOVERNANCE 184 (1996) (arguing that shareholders are residual claimants for both earnings and asset liquidation).

72. Millon, *supra* note 12, at 230 ("Forced by practical necessity to rely on agents, shareholders face the ever-present risk that managers will fail to act in ways that maximize shareholder financial interests. The costs associated with this risk are called 'agency costs.'").

73. R. H. Coase, *The Nature of the Firm*, 4 ECONOMICA 386, 395 (1937) (explaining the concept of transaction costs); Oliver E. Williamson, *Transaction-Cost Economics: The Governance of Contractual Relations*, 22 J.L. & ECON. 233 (1979) (explaining the centrality of transaction costs to economics).

74. Jensen & Meckling, *supra* note 69, at 308–09; Dobbin & Jung, *supra* note 41, at 35 (In the 1970s, "Jensen and Meckling proposed that the managers of firms should rightly be working for shareholders."); Millon, *supra* note 12, at 229 (stating that the neoclassical economic "roots can be traced to Ronald Coase's 1937 article"); Bratton, *supra* note 41, at 1477 (explaining that Coase published *The Nature of the Firm* in 1937, but the paper had no impact on neoclassical economists until after 1970); Millon, *supra* note 12, at 230 (explaining that under the neoclassical perspective, "reduction of agency costs is the only justification for corporate law"); Bainbridge, *supra* note 19, at 566.

actors,[75] and relies heavily on the assumption that markets will efficiently allocate resources to effectively discipline firm behavior.[76]

Neoclassical economic theories quickly came to achieve a near hegemony in corporate law.[77] Indeed, neoclassical economics arguably has influenced corporate law doctrine more quickly and comprehensively than any other academic theory.[78] In response to the neoclassical perspective, corporate law shifted from decades of managerialism to a new approach that prioritized both shareholder primacy and deregulation—two values that often conflicted. While certain shareholder powers arguably increased, allowing shareholders to more effectively rein in managerialist boards run rampant, courts and legislatures also simultaneously loosened fiduciary duties and deregulated corporate law to the benefit of directors.[79]

For example, in service of shareholders, Delaware courts unequivocally established that directors must prioritize shareholder welfare to the exclusion of all other parties to the firm.[80] They also laid out stricter pro-shareholder requirements in certain contexts,

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75. Millon, *supra* note 12, at 201–02; Hansmann & Kraakman, *supra* note 15, at 442 ("[T]he most efficacious legal mechanisms for protecting the interests of nonshareholder constituencies . . . lie outside of corporate law."); Bebchuk & Tallarita, *Illusory Promise*, *supra* note 15, at 96.

76. Neoclassical corporate law also assumes that competition for state charters and the existence of rational, profit-maximizing actors reduce the need for shareholder protections, which the market would provide if demanded. Bratton, *supra* note 41, at 1499, 1500 (explaining that "[s]ince [market contracts] are priced to take management self-interest into account, extant custom managerial self-dealing therefore must be all right, or cost competition would have caused them to disappear long ago" and that "[b]y stripping the content from the firm entity and introducing the self-interested rational economic actor, the new theory also rebuts the concept of fiduciary duties." Bratton also states that this perspective factored heavily into corporate governance debates in the 1970s and 1980s); Millon, *supra* note 12, at 231 (stating that state competition creates a "a built-in skepticism about the need for legal regulation designed to protect shareholder interests").

77. Indeed, law school courses on corporate law frequently begin with an overview of agency law, reflecting its centrality to the field. Bratton, *supra* note 41, at 1471–72 (stating that "[l]aw and economics writers restated corporate law in the new [neoclassical] theory's terms and successfully reoriented legal discourse on corporations. The new theory already has sunk into the fabric of academic corporate law"). *See generally* Frank H. Easterbrook & Daniel R. Fischel, *Voting in Corporate Law*, 26 J.L. & ECON. 395 (1983) (demonstrating that corporate law has deep roots in neoclassical economic theories of the firm).

78. Dobbin & Jung, *supra* note 41, at 36 ("Agency theory had a more rapid, and more thorough, effect on corporate managers than any other theory hatched in academia."); Bratton, *supra* note 41, at 1499 (The neoclassicists' "operative assumptions gave the theory a normative aspect."). Several other economic theories have arisen to explain the firm, many of which have arguably had greater influence in the field of economics than these neoclassical theories. For example, incomplete contracting and relational contracts are important and prize-winning fields in economics. Yet none of these other theories has dominated corporate law to nearly the same degree as the neoclassical theories. *See, e.g.*, Sanford J. Grossman & Oliver D. Hart, *The Costs and Benefits of Ownership: A Theory of Vertical and Lateral Integration*, 94 J. POL. ECON. 691, 716 – 18 (1986) (on incomplete contracting); Ian R. MacNeil, *Reflections on Relational Contract,* 141 J. INST'L. & THEORETICAL ECON. 541, 542 (1985) (noting "the continued scholarly dominance" of neoclassical economic theories "which analyze exchange, rather than relations in which exchange occurs.").

79. Victor Brudney, *Corporate Governance, Agency Costs, and the Rhetoric of Contract*, 85 COLUM. L. REV. 1403, 1410 (1985); Bratton, *supra* note 41, at 1500 ("[T]he new economic theory completes the twentieth century trend toward loosened fiduciary restraints and enhanced management discretion.").

80. Leo E. Strine, Jr., *The Dangers of Denial: The Need for A Clear-Eyed Understanding of The Power and Accountability Structure Established by the Delaware General Corporation Law*, 50 WAKE FOREST L. REV. 761, 768 (2015) (stating that Delaware law requires that "directors must make stockholder welfare their sole end, and that other interests may be taken into consideration only as a means of promoting stockholder welfare").

including mergers and squeeze outs,[81] corporate sales,[82] and shareholder voting.[83] At the same time, Delaware courts and the legislature also loosened director oversight, including through fiduciary duties and takeover defenses. The legislature introduced exculpation clauses that effectively removed director liability for violations of the fiduciary duty of care in most situations.[84] Both the legislature and courts diminished aspects of the fiduciary duty of loyalty—a duty previously considered sacrosanct. For example, in 1996, the judiciary relaxed the duty of oversight, establishing that violating this aspect of the duty of loyalty would now require an "utter failure" on the part of the board, protecting shareholders only from the most egregious director behaviors.[85] In the same year, the judiciary relaxed the corporate opportunities doctrine, part of the duty of loyalty, which it had previously established in 1939.[86] Just four years later, the legislature went even further, effectively permitting corporations to waive the corporate opportunities doctrine entirely.[87] Delaware courts softened some of their jurisprudence reining in directors, for example loosening board requirements in the context of takeover defenses even over the objections of shareholders.[88] Corporate law thus disciplined director behavior in some key ways, while simultaneously increasing director discretion in others. This approach reflects the underlying neoclassical influence in corporate law by simultaneously prioritizing shareholder primacy and assuming that markets efficiently allocate resources.

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81. *See* Weinberger v. UOP, 457 A.2d 701, 713–14 (Del. 1983) (establishing a strict "entire fairness" standard of review applied to boards in the context of mergers and squeeze outs).

82. Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173, 182 (Del. 1986) (establishing a duty of the board of directors to maximize shareholder value during a sale or auction).

83. Blasius Indus., Inc. v. Atlas Corp., 564 A.2d 651, 661–62 (Del. Ch. 1988) (creating a higher standard of review when the board behaves in any way "for the primary purpose of interfering with the effectiveness of a corporate vote").

84. DEL. CODE ANN. tit. 8, § 102(b)(7) (2001). Firms cannot waive liability for violations of the duty of good faith, loyalty, illegality, and improper dividends. *Id.* This amendment was adopted in the wake of the Delaware Supreme Court's ruling in *Smith v. Van Gorkom* that directors had violated their duty of care despite engaging in industry standard practice of the time. Other states followed suit with enacting exculpation clauses shortly after. Jonathan R. Macey, Smith v. Van Gorkom*: Insights about C.E.O.s, Corporate Law Rules, and the Jurisdictional Competition for Corporate Charters*, 96 NW. U. L. REV. 607, 607–08, 638 (2002). In 2022, the Delaware legislature extended these exculpation clauses to senior officers as well. DEL. CODE ANN. tit. 8, § 102(b)(7) (2022).

85. *In re* Caremark Int'l Inc. Derivative Litig., 698 A.2d 959, 967, 970–71 (Del. Ch. 1996) (stating that the duty of oversight is "possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment"). It is important to note that in a later line of cases, the Delaware Supreme Court clarified that the duty of oversight in *Caremark* indeed implicated the fiduciary duty of loyalty (rather than the duty of care). Brehm v. Eisner, 746 A.2d 244, 253–54 (2000); Stone v. Ritter, 911 A.2d 362, 370 (2006).

86. Broz v. Cellular Info. Sys., 673 A.2d 148, 154–58 (Del. 1996) ("[P]resenting the opportunity to the board creates a kind of 'safe harbor' for the director" but "[i]t is not the law of Delaware that presentation to the board is a necessary prerequisite to a finding that a corporate opportunity has not been usurped.").

87. This amendment permitted corporations to set parameters for corporate opportunities in their articles of incorporation. DEL. CODE ANN. tit. 8, § 122(17) (2000); Gabriel Rauterberg & Eric Talley, *Contracting Out of the Fiduciary Duty of Loyalty: An Empirical Analysis of Corporate Opportunity Waivers*, 117 COLUM. L. REV 1075, 1077 (2017) ("[T]he duty of loyalty is widely perceived as 'immutable'—immune to private efforts to dilute, tailor, or eliminate it. That perception is no longer true. Beginning in 2000, Delaware dramatically departed from tradition, amending its statutes to enable corporations to waive a critical component of loyalty.").

88. Moran v. Household Int'l, Inc., 500 A.2d 1346, 1357 (Del. 1985) (allowing boards to unilaterally adopt poison pills); Zohar Goshen & Sharon Hannes, *The Death of Corporate Law*, 94 N.Y.U. L. REV. 263, 266 (2019).

Modern corporate law has also fluctuated over the past several decades, at times affording more or fewer rights to shareholders versus directors. This fluctuation reflects changing market conditions and policy priorities. For example, since the 1970s, as many shareholders gained significant power due to the rise of institutional investment, private equity, and activist investment,[89] corporate law shifted in many ways to become more shareholder friendly.[90] But as directors made significant gains over the last twenty years, particularly through the proliferation of multiclass share structures,[91] corporate law shifted once again to provide increased director protections.[92] Importantly, these shifts underscore how modern corporate law remains fundamentally oriented around the principal-agent relationship and around striking the proper balance of rights between shareholders and directors, again reflecting the underlying neoclassical influence.

C. Competing Visions for Corporate Law

Neoclassical modern corporate law has not gone uncontested. An increasing number of legal scholars have critiqued its approach over the past few decades, offering their own competing visions for corporate law.[93] For example, in their seminal work, Professors Blair and Stout set forth a team production theory of corporate law, drawing from an alternative analysis in economics to replace the principal-agent model.[94] They argue that the vertical hierarchy of the principal-agent model inaccurately captures how corporations function, in particular by overlooking the critical role that horizontal firm relationships play in accomplishing the many corporate tasks that require the joint effort of multiple people.[95] Professors Blair and Stout view the board not as agents receiving top-down directives from principal shareholders, but instead as a horizontal coordinator—what they call a "mediating hierarch"—which as a descriptive matter manages relationships, allocates resources, and mediates conflict among *all* firm stakeholders to protect *all* firm-specific investments.[96] These stakeholders include not just shareholders but also managers, other employees, and even parties like creditors and local communities.[97] Under this view, the board's mandate is to maximize the collective welfare of all firm stakeholders, which corporate law facilitates.[98] Successfully coordinating a diverse set of parties requires significant discretion, explaining why corporate law grants board members wide latitude in carrying out their

89. Goshen & Hannes, *supra* note 88, at 265, 267–68.

90. *Id.* at 266–68 (showing how rises in shareholder power have coincided with fewer director protections in corporate law); S.B. 21, 153d Gen. Assemb., Reg. Sess. (Del. 2025) (seeking to rein in shareholder power in favor of directors); S.B. 313, 152d Gen. Assemb., Reg. Sess. (Del. 2024) (same).

91. *See* Emilie Aguirre, *The Social Benefits of Control*, 74 DUKE L.J. 681, 684–85 (2024).

92. *Supra* notes 84–88.

93. Greenfield & Smith, *supra* note 32, at 949 ("While the mainstream, neoclassical view of corporations and corporate law continues to hold sway in most court opinions and in the legal academy, a growing number of scholars contest some of that dominant school's basic tenets.").

94. Blair & Stout, *supra* note 7.

95. *Id.* at 264 ("Our break with previous work is to stress the importance of the coordination that happens not from the top down, but in the lateral interaction among team members.").

96. *Id.* at 250, 253.

97. *Id.* at 250–55.

98. *Id.* at 250, 271.

duties.[99] Importantly, this model argues that shareholder primacy is a norm rather than a legal requirement, and that neither shareholders nor other stakeholders should have the legal right to control directors.[100]

Other scholars have argued for an expanded role for corporate constituencies beyond shareholders. For example, Professor Kent Greenfield champions a "progressive corporate law," advocating for stakeholder governance to better protect workers, local communities, customers, creditors, and other parties to the firm to maximize the benefits and reduce the costs to society of the corporate form.[101] Professors Grant M. Hayden and Matthew T. Bodie have done groundbreaking work on employees and corporate governance, arguing that the end is nigh for shareholder primacy. They advance a shared governance model of the firm, developing a new theory of democratic participation that would feature prominent employee representation in corporate law.[102] Professor Lisa M. Fairfax has advocated the importance of increasing corporate social responsibility, corporate practices oriented toward stakeholders, and diverse board representation.[103] Professor Eric W. Orts has argued that corporate law cannot be reduced to one normative economic objective, but instead also serves non-economic values that may often conflict with each other.[104]

This scholarship has paved the way for rethinking shareholder primacy and reforming corporate law. It has contributed to changes in corporate law in many jurisdictions, including most notably the advent of the benefit corporation, a legal form that requires directors to account not only for shareholders, but also for materially affected stakeholders, the general public welfare, and the firm's stated social goals.[105] Many jurisdictions (though notably not Delaware) have also adopted constituency statutes, which purport to counter the shareholder primacy perspective by explicitly allowing directors to consider the interests of other stakeholders beyond shareholders.[106] Some jurisdictions have made available

99. *Id.* at 253 ("The team production model provides an alternative answer to the question of why corporate law grants directors of public corporations so much leeway.").

100. Blair & Stout, *supra* note 7, at 254, 257 (arguing that "the mediating hierarchy approach suggests that directors should not be under direct control of either shareholders *or* other stakeholders"). Blair and Stout also argue that the "rise of the shareholder primacy norm" is the product of "broad shifts in the underlying economy" and that "corporate law itself has so far rejected the shareholder primacy norm." *Id.* at 256–57.

101. Greenfield & Smith, *supra* note 32, at 947, 952, 961; KENT GREENFIELD, THE FAILURE OF CORPORATE LAW: FUNDAMENTAL FLAW AND PROGRESSIVE POSSIBILITIES 149 (2006) ("The specifics will be difficult but not impossible: employees could elect a proportion of the board; communities in which the company employs a significant percentage of the workforce could be asked to propose a representative to the board; long-term business partners and creditors could be represented as well."); *see also* Steven Schwarcz, *Misalignment: Corporate Risk-Taking and Public Duty*, 92 NOTRE DAME L. REV. 1, 2 (2016) (arguing that shareholder primacy ignores firms' negative externalities and advocating for a "public governance duty" to address unacceptable levels of systemic risk).

102. Hayden & Bodie, *supra* note 7, at 2421–22, 2424, 2426.

103. Lisa M. Fairfax, *Easier Said Than Done? A Corporate Law Theory for Actualizing Social Responsibility Rhetoric*, 59 FLA. L. REV. 771, 774, 778 (2007); Lisa M. Fairfax, *Some Reflections on the Diversity of Corporate Boards: Women, People of Color, and the Unique Issues Associated with Women of Color,* 79 ST. JOHN'S L. REV. 1105, 1106 (2005) ("[T]his Article compares and contrasts the experiences of women and people of color on corporate boards and discusses how the differences in those experiences might impact their ultimate success in achieving greater representation on corporate boards.").

104. Orts, *supra* note 18, at 1566–67.

105. DEL. GEN. CORP. L. §§ 361–68; CAL. CORP. CODE §§ 14600–31; N.Y. BUS. CORP. L. §§ 1701–09.

106. Eric W. Orts, *Beyond Shareholders: Interpreting Corporate Constituency Statutes*, 61 GEO. WASH. L. REV. 14, 16, 28 (1992).

various forms of social enterprises, such as the low-profit limited liability company ("L3C"), the flexible purpose corporation, the benefit LLC, and the social-purpose corporation, each of which seeks in its own way to permit for-profit firms to conduct charitable activities or account for stakeholders.[107]

Despite their availability across many jurisdictions, these forms have had relatively little uptake.[108] They have perhaps achieved change at the margins of corporate law while leaving the neoclassical core largely intact.[109] Indeed, the "corporate governance machine" and shareholder primacy perspective remain exceedingly difficult to dislodge despite the growing scholarship critiquing neoclassical corporate law and these doctrinal changes achieved over the past few decades.[110] The neoclassical perspective in corporate law has led to a widespread conception that the private, shareholder primacist approach is inevitable and idealized, rather than the product of its historical and cultural context,[111] even though examining the history of corporate law uncovers the doctrine's roots as a public, regulatory body of law that for many decades sought to serve a wider range of firm constituents and the public welfare.

II. AN INCOMPLETE DEPICTION OF THE FIRM IN MODERN CORPORATE LAW

Building upon prior scholarship, in this Part we argue that neoclassical corporate law provides an incomplete depiction of the firm in five key ways. First, the firm is not just a nexus of contracts but also a complex and adaptive social structure. Second, shareholders do not relate to directors as true principals do to agents in significant ways. Third, the emphasis on residual claimant status overly favors shareholders to the exclusion of other similarly situated firm actors. Fourth, neoclassical corporate law may have limited applicability to key types of modern firms, including the publicly traded corporation and private equity-owned firm, two of the most prevalent and significant modern entities. Finally, the reliance on markets to efficiently allocate resources overlooks persistent evidence that markets may not be as effective as assumed or desired. We take each in turn.

107. *See* Robert Lang & Elizabeth Carrott Minnigh, *The L3C, History, Basic Construct, and Legal Framework*, 35 VT. L. REV. 15, 15–17 (2010); Dana Brakman Reiser, *Theorizing Forms for Social Enterprise*, 62 EMORY L.J. 681, 683 (2013); Dana Brakman Reiser & Steven A. Dean, *Hunting Stag with Fly Paper: A Hybrid Financial Instrument for Social Enterprise*, 54 B.C. L. REV. 1495, 1507–13 (2013); Alicia E. Plerhoples, *Social Enterprise as Commitment: A Roadmap*, 48 WASH. U. J. L. & POL'Y 89, 89 (2015); Rachel Culley & Jill R. Horwitz, *Profits v. Purpose: Hybrid Companies and the Charitable Dollar* 4–7 (Law & Econ., Working Paper No. 48, 2014).

108. Emilie Aguirre, *Beyond Profit*, 54 U.C. DAVIS L. REV. 2077, 2098 n.81 (2021).

109. Dorothy S. Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUM. L. REV. 2563, 2568 (2021).

110. *Id.* at 2567–68 (arguing that "absent a large shock to the system, . . . the corporate governance machine will likely impede a true paradigm shift away from shareholderism" but that their "account reveals how incremental change could take place").

111. Horwitz, *supra* note 46, at 175–76; Millon, *supra* note 12, at 244 (explaining "that legal theories, like legal rules, exist in concrete social and historical contexts").

A. Beyond a Nexus of Contracts

First, the firm is not just a nexus of contracts but also a complex and adaptive social structure.[112] Firms consist of real people who relate to one another as human beings.[113] These people experience a range of emotions, interests, and motivations beyond profit.[114] The human beings who comprise firms also experience limitations to their cognition, making them not purely rational actors but instead boundedly rational ones.[115] Although Professor Stout has written about the complexity and multidimensionality of human motivation and behavior,[116] she and Professor Blair maintain that their conception of the firm and of team production still aligns squarely with the nexus of contracts approach.[117] Yet as Professors Hayden and Bodie have pointed out, "even the most die-hard contractarians" no longer hold a literal view of the corporation as a nexus of contracts, and a metaphorical view presents its own challenges, relying on an unrealistic conception of shareholders and other firm actors.[118]

B. The Limits of the Principal-Agent Model

Second, shareholders do not relate to directors as true principals do to agents in significant ways. Indeed, directors are not agents of shareholders in a legal sense. Shareholders cannot command the board to action as principals can to true agents.[119] Shareholders cannot physically enter firm property at will.[120] They lack meaningful monitoring capabilities, with voting rights that are "so weak that they scarcely qualify as part of corporate

112. Orts, *supra* note 18, at 1565, 1621–23 ("[T]he influence of economic theories of the firm, and translations of these theories into a slogan that defines 'the corporation' as merely 'a nexus of contracts,' threaten to extend a reductionist mode of thinking to areas of corporate law where such models are often not only unhelpful, but destructive.").

113. James G. March, *The Business Firm as a Political Coalition*, 24 J. POL. 662, 662–63 (1962) (explaining firms as socially, politically, and behaviorally complex).

114. Gavetti, Levinthal & Ocasio, *supra* note 18, at 527–28 (how organizations unite members with multiple and conflicting goals and interests beyond profit); Louis A. Penner et al., *Prosocial Behavior: Multilevel Perspectives*, 56 ANN. REV. PSYCH. 365, 367, 382–83 (2005); Brent Simpson & Robb Willer, *Beyond Altruism: Sociological Foundations of Cooperation and Prosocial Behavior*, 41 ANN. REV. SOCIO. 43, 44 (2015).

115. Herbert A. Simon, *Administrative Behavior: A Study of Decision-Making Processes*, *in* ADMINISTRATIVE ORGANIZATIONS 92–117 (4th ed. 1997) [hereinafter Simon, *Administrative Behavior*] (exploring the limits of rationality in decision-making); Herbert A. Simon, *Rational Choice and the Structure of the Environment*, 63 PSYCH. REV. 129, 129 (1956) [hereinafter Simon, *Rational Choice*] ("[H]owever adaptive the behavior of organisms in learning and choice situations, this adaptiveness falls far short of the ideal of 'maximizing' postulated in economic theory. Evidently, organisms adapt well enough to 'satisfice'; they do not, in general, 'optimize.'").

116. LYNN STOUT, THE SHAREHOLDER VALUE MYTH: HOW PUTTING SHAREHOLDERS FIRST HARMS INVESTORS, CORPORATIONS, AND THE PUBLIC vi, 96 (2012) ("Most people are not psychopaths.").

117. Blair & Stout, *supra* note 7, at 254 ("[O]ur mediating hierarchy approach, which views public corporation law as a mechanism for filling in the gaps where team members have found explicit contracting difficult or impossible, is consistent with the 'nexus of contracts' approach to understanding corporate law.").

118. Hayden & Bodie, *supra* note 7, at 2431–32 (arguing that "[a]s corporate governance theorists shifted to using the nexus of contracts more metaphorically, their reliance on contract theory becomes somewhat self-defeating" and the "contractarian theory of the corporation turns out to be based on idealized, fictionalized versions of shareholders and other corporate constituents").

119. Bainbridge, *supra* note 19, at 559 (explaining that "[s]hareholders essentially have no power to initiate corporate action" and are allowed to "approve or disapprove only a very few board actions").

120. *Id.* at 565.

governance" and limited enforcement rights that only apply in somewhat extreme circumstances.[121] Professors Blair and Stout also point out analytical shortcomings of the principal-agent conception,[122] explaining how it narrowly depicts the firm as a vertical hierarchy between principals and agents, and ignores the critical horizontal interactions and contributions that occur among and from additional firm team members.[123] As both a legal and a practical matter, there are thus many ways that shareholders do not relate to directors as principals do to agents.

C. Reevaluating Residual Claimant Status

Third, neoclassical corporate law places great emphasis on the importance of shareholders as residual claimants to justify shareholder primacy. Modern corporate law treats shareholders as the proper beneficiaries of director behavior because they hold a residual claim on the firm's earnings and assets.[124] As Professors Blair and Stout have argued, viewing shareholders (and no other parties) as residual claimants "seriously misstates the nature of shareholders' interest in public corporations," given their distinct lack of control over the firm.[125] They claim it also puzzlingly draws a distinction between financial and intellectual firm assets, given the firm relies just as much as on labor capital (what they call "intellectual capital") as financial capital.[126] Indeed, Professor Blair has also argued elsewhere that where other parties make firm-specific investments with limited (or no) ability to explicitly contract to protect them, they too share a residual claim on the firm.[127] These other parties, such as employees who provide labor capital or the environment which provides natural capital, may be just as, if not more, susceptible to managerial misconduct, subject to the consequences of firm actions with little control over decision-making.[128] Employees may also receive not only a fixed claim to salary or wages, but also a residual claim to bonuses and pensions as a standard part of their compensation, while the environment is perhaps the firm's most residual claimant of all, truly receiving whatever resources remain after all others have satisfied their claims on firm assets, with no ability to contract

121. *Id.* at 568–69 ("Unfortunately, this elegant theory breaks down precisely where it would be most useful to us. . . . As the corporation's residual claimants, the shareholders should act as the firm's ultimate monitors. But while the law provides shareholders with some enforcement and electoral rights, they are reserved for fairly extraordinary situations.").

122. Blair & Stout, *supra* note 7, at 259.

123. *Id.* at 265–71. They also point out how the principal-agent model inadequately accounts for the ambiguity of firm relationships and the autonomy many agents must exercise as part of their jobs. *Id.* at 259.

124. Bainbridge, *supra* note 19, at 565; Easterbrook & Fischel, *supra* note 77, at 403–06 (arguing that corporate law grants shareholders voting rights because they "are the residual claimants to the firm's income").

125. Blair & Stout, *supra* note 7, at 252, 260–61 ("Shareholders' rights and powers over directors in publicly held companies are remarkably limited both in theory and in practice, and as a result directors of public firms enjoy an extraordinary degree of discretion to pursue other agendas and to favor other constituencies, especially management, at shareholders' expense.").

126. *Id.* at 260–61 (The perspective of "the firm as a bundle of assets owned by shareholders also seems odd once we recognize that one of the key assets a corporation uses in production is 'intellectual capital'—that is, the knowledge and experience residing in the minds of its employees, rather than the hands of its shareholders").

127. MARGARET M. BLAIR, OWNERSHIP AND CONTROL: RETHINKING CORPORATE GOVERNANCE FOR THE TWENTY-FIRST CENTURY 235–74 (1995) (discussing the contributions made and risks assumed by employees in creating value for corporations, and suggesting alternative models of governance to account for this reality).

128. *See supra* Part III.A.

to protect its investments in the firm. It is thus not clear why shareholders should eclipse these other parties.

D. Limited Applicability to Many Modern Firms

Fourth, neoclassical corporate law may also have limited applicability to several important types of modern corporations. Perhaps most importantly, neoclassical economic theories were not originally developed to apply to modern publicly traded corporations, private equity-owned firms, or venture-backed startups.[129] Yet these are some of the most significant and prevalent firms that modern corporate law regulates today. Jensen and Meckling's famous model assumes a privately held firm in which the manager has a controlling stake and all outside equity shares are non-voting, thus insulating the manager from shareholder removal.[130] The authors note in a footnote that one of their model's most serious limitations is that it may not apply to companies without controlling shareholders who also serve in managerial positions at the firm, which includes most publicly traded firms.[131] As Professor Stephen Bainbridge has noted, "[u]nfortunately, this elegant [neoclassical] theory breaks down precisely where it would be most useful to us. Because of the separation of ownership and control, it simply does not describe the modern publicly held corporation."[132] Professors Blair and Stout also take great issue with the theory's lack of applicability to the public corporation, an observation that underpins their basic argument.[133] In addition to public corporations, most venture-backed startups and nearly all private equity-owned companies do not have controlling shareholders who are also managers, and most of these firms issue voting shares. These factors may limit modern corporate law's utility for some of the most important and common modern firms to which it applies.

E. Over-Reliance on Market Efficiency

Finally, relying on markets to efficiently allocate resources overlooks evidence suggesting markets may not be as effective as assumed or desired. In reality, directors and

129. Jensen & Meckling, *supra* note 69, at 314.

130. They also assume away the existence of taxes or other outside forces on the firm. *Id*.

131. *Id*. (explaining that the model may not apply to "the very large modern corporation whose managers own little or no equity"). The authors do note that they "believe their approach can be applied" to the large modern corporation. *Id.* at 356. Most publicly traded companies have single-class share structures (even with the rise in multiclass share arrangements over the past twenty years) that ensure outside shareholders have collective voting control over the firm. Dhruv Aggarwal et al., *The Rise of Dual-Class Stock IPOs*, 144 J. FIN. ECON. 122, 124 (2022) (showing that over seventy percent of initial public offerings from 2017 to 2019 had single-class structures). Most venture-backed startups' founder-managers dilute their stakes in the company when taking on venture capital, and venture capitalists certainly receive voting shares. Elizabeth Pollman, *Startup Governance*, 168 U. PA. L. REV. 155, 174 (2019) ("As the company takes on additional capital, the founders' and other earlier investors' ownership percentage in the company is diluted."). Almost all private equity-backed companies result in a controlling stake for the private equity firm, eliminating the controlling manager-shareholder. LUDOVIC PHALIPPOU, PRIVATE EQUITY LAID BARE 6–7 (2021).

132. Bainbridge, *supra* note 19, at 565.

133. Blair & Stout, *supra* note 7, at 255 ("[P]ublic corporations . . . are difficult to reconcile with the principal-agent approach.").

senior officers often engage in misconduct, frequently with few consequences.[134] To take one example, there has been a sharp rise since the 1980s in incentive-based compensation that links executive pay to firm financial performance.[135] Despite neoclassical corporate law predictions that linking executive pay to firm financial performance would discipline directors and executives and improve firm performance, it has instead frequently distorted executive behavior, arguably leading to more unethical activity and worse firm financial outcomes.[136] Relatedly, the Advisory Vote on Executive Compensation provision (also known as "Say on Pay") in the Dodd-Frank Act aimed to curb exorbitant executive compensation by requiring publicly traded companies to conduct non-binding shareholder votes on their executive compensation schemes at least every three years.[137] The provision did not grant shareholders meaningful enforcement power, assuming markets would efficiently discipline firm behavior as needed. Despite these predictions, Say on Pay did not curb executive compensation.[138] Providing firms with public benchmarks against which to compare their payment schemes actually generated upward competition, increasing excessive pay.[139] Rather than effectively disciplining boards and ensuring efficient firm

134. Veronica Root Martinez, *Complex Compliance Investigations*, 120 COLUM. L. REV. 249, 255 (2020) (noting that "despite spending a great deal of time, effort, and money to enact structural reforms and improvements within organizations' compliance programs, every year brings a new, more stunning example of how organizations' attempts to reign in misconduct often fail to prevent even the most extensive compliance failures within industries and firms"); Rachelle C. Sampson & Yuan Shi, *Are U.S. Firms Becoming More Oriented? Evidence of Shifting Firm Time Horizons from Implied Discount Rates, 1980-2013*, 44 STRATEGIC MGMT. J. 231, 233, 249, 260 (2023).

135. JEFFREY PFEFFER, WHAT WERE THEY THINKING?: UNCONVENTIONAL WISDOM ABOUT MANAGEMENT 75–76 (2007).

136. *Id.* (finding that incentives that are too large begin to drive, and thereby distort, behavior, leading them to backfire).

137. 17 C.F.R. § 240.14a-21 (2022). Although technically a securities law provision, executive compensation traditionally falls squarely within the purview of corporate law and so is worth examining here. Federal laws have, in recent years, increasingly taken up areas traditionally covered under state corporate law, reflecting the close relationship between corporate and securities laws. PALMITER, PARTNOY & POLLMAN, *supra* note 65, at 70 ("[F]ederal regulation of public corporations has increased in recent years as Congress has reacted to corporate and financial scandals by federalizing many areas traditionally covered by state law."); James J. Park, *Reassessing the Distinction Between Corporate and Securities Law*, 64 UCLA L. REV. 116, 118 (2017); Jill Fisch, Darius Palia & Steven Davidoff Solomon, *Is Say on Pay All About Pay? The Impact of Firm Performance*, 8 HARV. BUS. L. REV. 101, 101 (2018) ("The 'say on pay' vote was designed to rein in excessive levels of executive compensation.").

138. Fisch, Palia & Solomon, *supra* note 137, at 101 ("Say on pay has limited effectiveness."); Stephen F. O'Byrne, *Say on Pay: Is It Needed? Does It Work?*, HARV. L. SCH. F. CORP. GOV. (Jan. 25, 2018), https://corpgov.law.harvard.edu/2018/01/25/say-on-pay-is-it-needed-does-it-work [https://perma.cc/JWL7-8ZZQ] ("Operating companies universally embrace a pay policy, i.e., competitive target compensation regardless of past performance, that leads to low alignment of pay and performance."). Ira Kay & John Sinkular, *The Unintended Consequences of Say on Pay Votes*, HARV. L. SCH. F. CORP. GOV. (July 8, 2013), https://corpgov.law.harvard.edu/2013/07/08/the-unintended-consequences-of-say-on-pay-votes [https://perma.cc/F9HY-HM9D] ("[M]any companies are changing their pay practices based more on potential external views than business/talent needs.").

139. *See supra* note 138 and accompanying text. On this dimension, our account departs from Professors Blair and Stout, who do not outwardly critique the effectiveness of markets and instead cite examples of market forces behaving in economically efficient ways. *See, e.g.*, Blair & Stout, *supra* note 7, at 326–27 (explaining that "corporate boards' recent focus on shareholder wealth be an appropriate and economically efficient response to changes in the underlying markets for capital and labor").

behavior, market mechanisms have often failed to constrain executive excess, contributing to distorted incentives and unintended consequences.

Markets also have not addressed negative societal externalities, even in the face of robust extra-corporate legal regimes such as in environmental law, employment law, labor law, antitrust law, and so on. For example, corporations are among the highest greenhouse gas emitters.[140] They have generated extreme pay differentials between executives and workers, eroded worker protections, and brought unionization under serious threat.[141] Markets are more highly concentrated than ever, with negative consequences for consumers.[142] In many ways these outcomes occur by design, with corporations investing vigorously in lobbying to shape legislation and regulations that allow them to rent-seek and profit from externalities, further undermining the efficacy of markets.[143] As a result, corporate law has enabled the privatization of profit while socializing its costs.[144]

Several leading economists have also written about the flaws of the current system, which they argue threaten the environment, generate untenable inequalities, fundamentally weaken democracy, and imperil human flourishing.[145] These scholars have asserted the need for reforming corporate regulation to better address negative externalities, prioritize value creation over value extraction, and account for the public interest and for values beyond shareholder wealth.[146] Building on this scholarship, we argue that addressing this

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140. GRIFFIN, HEEDE & VAN DER VLUGT, *supra* note 23, at 8.

141. Executives now make 344 times the average worker and many workers struggle to make a living wage. JOSH BIVENS & JORI KANDRA, CEO PAY SLIGHTLY DECLINED IN 2022 ECON. POL'Y INST. 1 (2023), https://files.epi.org/uploads/273381.pdf [https://perma.cc/94SL-A66M]; PISTOR, *supra* note 10, at 1–2 (describing severe income inequality experienced since the economic and legal reforms of the 1980s"); Kalleberg & Vallas, *supra* note 25, at 1; Mishel, Rhinehart & Windham, *supra* note 25 (describing erosion of unions).

142. Einer Elhauge, Sumit K. Majumdar & Martin C. Schmalz, *Confronting Horizontal Ownership Concentration*, 66 ANTITRUST BULL. 3, 6 (2021) ("Firm ownership is now concentrated among a relatively small set of investors, and the concentration of ownership promises to increase even further in the future.").

143. Coates, *supra* note 2, at 3 ("Business interests continue to build significant government relations programs aimed at furthering regulation-based rent-seeking strategies and defending their ability to profit from externalities against economic, political and regulatory threats.").

144. CHRIS MARQUIS, THE PROFITEERS: HOW BUSINESS PRIVATIZES PROFITS AND SOCIALIZES COSTS 3 (2024) ("While corporate leaders frequently talk about the sanctity of free market capitalism, what they really believe in is the privatization of profits and the socialization of costs.").

145. REBECCA HENDERSON, REIMAGINING CAPITALISM IN A WORLD ON FIRE 8 (2020) (starkly stating that "the world is on fire"); THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY 1 (2014) (stating that corporations produce "arbitrary and unsustainable inequalities" that fundamentally weaken democracy); MARIANA MAZZUCATO, THE VALUE OF EVERYTHING 2, 4 (2018) (stating the current economic system favors corporate value extraction over value creation, with huge negative societal consequences); AMARTYA SEN, DEVELOPMENT AS FREEDOM 15–17 (2000) (on the serious problems of inequality, abysmal living conditions, and deprivations of freedom in both developed and developing contexts); JOSEPH STIGLITZ, THE PRICE OF INEQUALITY: HOW TODAY'S DIVIDED SOCIETY ENDANGERS OUR FUTURE 5–8 (2012) (arguing that the current form of capitalism is dysfunctional, leading to staggering inequality and pernicious loss of opportunity for the vast majority of Americans); ABHIJIT V. BANERJEE & ESTHER DUFLO, GOOD ECONOMICS FOR HARD TIMES 2–3 (2019); Oliver Hart & Luigi Zingales, *Companies Should Maximize Shareholder Welfare Not Market Value*, 2 J.L. FIN. & ACCT. 247, 258 (2017) (stating that "without any restrictions publicly traded companies will naturally drift towards social indifference, i.e., they will tend to put little weight on the externalities they produce").

146. STIGLITZ, *supra* note 145, at 36–39 (explicitly identifying weak regulation, including insufficient corporate law, as a main cause of untenable inequality and diminishing opportunity); Rebecca Henderson, *Moral Firms?*, 152 DAEDALUS 198, 198, 203–05 (2023) (stating that "significant shifts in law, policy, and in the social

incomplete description of the firm in modern corporate law will require an expanded theoretical perspective that looks outside of economic theory to complement the neoclassical paradigm.

III. ADVANCING AN ORGANIZATIONAL PERSPECTIVE

In this Part, we advance an expanded theoretical perspective that draws from organization theory to provide a more complete descriptive account of the corporation. Leveraging the organizational perspective, we make three main arguments. First, we argue that workers and the environment ought to be viewed as key investors in the firm alongside shareholders. Shareholders invest financial capital, and workers and the environment invest vital labor capital and natural capital, respectively, without which the firm will fail. Second, we show how the current corporate law regime falls short because it entrenches power imbalances that privilege boards and insider shareholders over workers, the environment, and minority shareholders. Third, we discuss the fundamental role corporate law plays in shaping and constraining firm behavior, such that power imbalances entrenched in corporate law have far-reaching implications not only for firm outcomes, but also for firm constituents and society more broadly.

A. Accounting for All Three Types of Capital Investors in the Firm

Organization theory is a vibrant field of research dedicated for over a century to investigating the complexities of how firms function as a specific type of organization. It seeks to understand organizational dynamics and account for the factors that shape and constrain firm behavior.[147] The field emerged in the early twentieth century and developed partly in response to the rise of neoclassical economic theory, which was perceived to rely on overly simplified models and did not look inside the "black box" of the firm.[148]

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and normative context are almost certainly essential if this new model is to become the norm" and explaining potential reforms to corporate law); PIKETTY, *supra* note 145, at 1 (arguing that we must reform the system to prioritize public good over private interests while still promoting open and robust markets); MARIANA MAZZUCATO, MISSION ECONOMY: A MOONSHOT GUIDE TO CHANGING CAPITALISM 7–8 (2021) (arguing that solving capitalism in crisis will require government intervention and a reinvention of public-private partnerships that center public purpose); SEN, *supra* note 145, at 14–15, 25–26 (addressing these problems will require a new system specifically designed to pursue more than just wealth, which recognizes that markets are fallible and implements appropriate regulation); BANERJEE & DUFLO, *supra* note 145, at 3 (emphasizing the need for new economic policies to address inequality, poverty, and global challenges like climate change); Hart & Zingales, *supra* note 145, at 260–61.

147. Organization theory formalized as a field in the mid-twentieth century and is grounded in the work of seminal social scientists such as Max Weber and Robert Merton, as well as early management theorists such as Frederick Taylor, Henri Fayol, Mary Parker Follett, and Luther Gulick and Lyndall Urwick. It challenges neoclassical assumptions that underpin modern corporate law in several key ways, showing how in reality the nature of the firm is far more complex than neoclassical economic theory assumes. W. RICHARD SCOTT & GERALD F. DAVIS, ORGANIZATIONS AND ORGANIZING: RATIONAL, NATURAL, AND OPEN SYSTEM PERSPECTIVES 8–9 (2007) (reviewing the emergence of organizations as an area of study); MARY PARKER FOLLETT, DYNAMIC ADMINISTRATION: THE COLLECTED PAPERS OF MARY PARKER FOLLETT (Elliot M. Fox & Lyndall F. Urwick eds., 2d ed. 1942).

148. SCOTT & DAVIS, *supra* note 147, at 8 (explaining the study of organizations as a "specialized field of inquiry within the discipline of sociology and increasingly recognized focus of multidisciplinary research and training").

Foundational work in organization theory shows how the firm is a complex and adaptive social and political structure consisting of diverse coalitions of members—rather than a black box, a mere nexus of contracts, or a monolith.[149]

A seminal stream of research known as the behavioral theory of the firm represents foundational work in organization theory. For more than half a century, the behavioral theory of the firm has been instrumental to organization and management scholars' understanding of how firms behave, though these insights have yet to shape legal scholars' understanding of corporate behavior and corporate law.[150] The behavioral theory of the firm conceptualizes firms as a "socio-political conflict system" comprised of diverse coalitions of organizational members.[151] It shows how each coalition has specific needs and interests, how coalitions' needs and interests may at times conflict, and how organizational members must negotiate these conflicts in relationship with one another.[152] A key insight here is that how organizational members negotiate the distribution of resources—such as money, labor, and other key inputs—is critical to understanding firm behavior. This organization theory-informed perspective of the internal workings of firms is fundamental to understanding how firms operate in reality and to developing a more descriptively complete theory of the firm in corporate law.

Another seminal stream of research in organization theory that informs our approach is stakeholder theory, which emphasizes the importance of firm constituents beyond shareholders and directors.[153] Stakeholder theory was formalized in the 1980s through the work of Professor R. Edward Freeman, who argued that firms depend on multiple stakeholders, including not only shareholders, customers, and suppliers but also employees and the environment.[154] He has pointed out how traditionally, firm leaders primarily focused on shareholders, customers, and suppliers, but as economic, technological, and social conditions evolved in the twentieth century, businesses increasingly had to align firm strategy with the interests of a broader set of stakeholders who play a significant role in firm

149. Gavetti, Levinthal & Ocasio, *supra* note 18, at 527–28 (organizations are complex social systems comprised of diverse coalitions of members); JAMES MARCH & HERBERT SIMON, ORGANIZATIONS 2, 21–23 (1958) (on the complexity of organizations and describing the firm as a social institution); March, *supra* note 113, at 663 (stating the "business organization is properly viewed as a political system" and that the firm is a "socio-political conflict system"); RICHARD M. CYERT & JAMES G. MARCH, A BEHAVIORAL THEORY OF THE FIRM 26–43, 164 (2d ed. 1992) (emphasizing that a core set of "relational concepts" drive firms) and explaining the firm as "a coalition of diverse individuals and groups"); SCOTT & DAVIS, *supra* note 147, at 33–34 (explaining how firms consist of "coalitions of participants with varying interests").

150. The behavioral theory of the firm developed in the mid-twentieth century in an attempt to provide a more accurate characterization of how firms behave. Also known as the Carnegie School, it is a theoretical tradition grounded in the seminal work of Herbert Simon, James March, Richard Cyert, and others at the Carnegie Institute of Technology, which today is Carnegie Mellon University. SCOTT & DAVIS, *supra* note 147, at 9–10 (on the emergence of the behavioral theory of the firm). For seminal works in this tradition, see generally MARCH & SIMON, *supra* note 149; CYERT & MARCH, *supra* note 149.

151. March, *supra* note 113, at 663; CYERT & MARCH, *supra* note 149, at 26–43; Gavetti, Levinthal & Ocasio, *supra* note 18, at 527–28.

152. SCOTT & DAVIS, *supra* note 147, at 33–34; CYERT & MARCH, *supra* note 149, at 164.

153. Bidhan L. Parmar, R. Edward Freeman, Jeffrey S. Harrison, Andrew C. Wicks, Lauren Purnell & Simone De Colle, *Stakeholder Theory: The State of the Art*, 4 ACAD. MGMT. ANNALS, 403, 405–06 (2010).

154. ROBERT EDWARD FREEMAN, STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH 5 (1984).

success.[155] Stakeholder theory serves as the theoretical basis for research in organization theory that considers how to adapt organizational governance to better account for the influence and interests of multiple stakeholder groups.[156] Scholars have argued that such adaptations can help foster responsible innovation and more fairly distribute value across stakeholders.[157]

We draw on these bodies of organizational research to argue that firms have not one but multiple types of primary investors—namely, workers and the environment in addition to shareholders.[158] As neoclassical economic theory emphasizes, shareholders invest financial capital the firm needs to exist and succeed. Analogously, organization theory sheds light on the position of workers and the environment as primary investors that also provide basic capital needed to sustain the firm: workers provide labor capital, and the environment provides natural capital. Without all three forms of capital, the firm cannot exist, and the entities that control or produce this capital—namely, shareholders, workers, and the environment—are necessarily implicated in the organizational processes through which the distribution of these resources is negotiated.

More recent research building on these theoretical traditions supports the view that workers and the environment ought to be understood as critical investors in firms and recognized accordingly in firm governance. The political theory of the firm, developed by Professor Isabelle Ferreras, focuses on workers' critical importance as labor investors.[159] This stream of research shows how workers' investments of labor capital are critical for firm survival, placing workers on equal footing with shareholders in their relationship to the firm.[160] Similarly, research in organization theory has also characterized the environment not merely as a resource for firms to exploit, but instead as a vital firm participant

155. *Id.* at 5–6 (explaining that "'workers' or non-family members began to dominate the firm and were the rule rather than the exception").

156. Peter G. Klein et al., *Organizational Governance Adaptation: Who Is In, Who Is Out, and Who Gets What*, 44 ACAD. MGMT. REV. 6, 8 (2019); F. Bridoux & J.W. Stoelhorst, *Stakeholder Governance: Solving the Collective Action Problems in Joint Value Creation*, 47 ACAD. MGMT. REV. 214, 219 (2022); R.V. Aguilera & M. Ruiz Castillo, *Toward an Updated Corporate Governance Framework: Fundamentals, Disruptions, and Future Research*, 2020 BUS. RSCH. Q. 1, 3 (2025).

157. Sophie Bacq & R. V. Aguilera*, Stakeholder Governance for Responsible Innovation: A Theory of Value Creation, Appropriation, and Distribution*, 59 J. MGMT. STUD. 29, 29 (2022).

158. ERIN LENNOX, JONATHAN M. HARRIS & ANNE-MARIE CODUR, MACROECONOMICS AND THE ENVIRONMENT 4 (2019), https://www.bu.edu/eci/files/2019/06/Macroeconomics_and_the_Environment_Feb2019.pdf [https://perma.cc/G8G8-SYQ3] (describing how natural capital, labor capital, and financial capital are the three critical inputs into firms).

159. ISABELLE FERRERAS, FIRMS AS POLITICAL ENTITIES: SAVING DEMOCRACY THROUGH ECONOMIC BICAMERALISM 24, 109 (2017).

160. *Id.* A growing area of research in law also argues for employees as labor investors in the firm on equal footing with shareholders. *See* Hayden & Bodie, *supra* note 7, at 2454–55 ("[S]hareholders and employees are invested in the firm in such a way that they need firm governance to protect against opportunism."). Legal scholars have also argued for a role for employees in corporate governance. *Id.* at 2461 ("[E]mployees are ideally situated to join with shareholders in an effort to police management."); Brett H. McDonnell, *Employee Primacy, or Economics Meets Civic Republicanism at Work*, 13 STAN. J.L. BUS. & FIN. 334, 334 (2008) (arguing "for employee primacy in corporate governance. 'Employee primacy' has two elements: ultimate employee control over the corporation, and an objective of maximizing employee welfare.").

with inherent rather than instrumental value.[161] In particular, a sub-stream within stakeholder theory has developed to understand the critical role the environment plays in the firm by providing both the natural resources and the ecosystem within which the firm operates—in other words, providing the firm's natural capital.[162] This research demonstrates the essential role of the environment to the firm's existence and success and points out the descriptive incompleteness of a theory of the firm that does not account for the environment.[163] It also directly tackles the challenges associated with theorizing a nonhuman entity, seeking to counter the anthropocentric bias that has pervaded theories of the firm.[164]

Corporate law overlooks workers and the environment as investors despite their critical capital investments and the characteristics they share with shareholders. It relies on the assumption that only shareholders depend on firm leaders to manage their investments and provide them with a return.[165] Yet workers rely on firm leaders to manage their labor investments, and the environment relies on firm leaders to manage the investment of natural resources. It is not clear on what grounds shareholders are privileged as the only category

161. Cathy Driscoll & Mark Starik, *The Primordial Stakeholder: Advancing the Conceptual Consideration of Stakeholder Status for the Natural Environment*, 49 J. BUS. ETHICS 55, 56 (2004) ("[A]rgu[ing] that the natural environment can be identified as the primary stakeholder of the firm in its own right and that it should have salience for all managers."); Teea Kortetmäki, Anna Heikkinen & Ari Jokinen, *Particularizing Nonhuman Nature in Stakeholder Theory: The Recognition Approach*, 185 J. BUS. ETHICS 17, 17–18 (2023); *see also* Robert A. Phillips & Joel Reichart, *The Environment as Stakeholder? A Fairness Approach*, 23 J. BUS. ETHICS 185, 194 (2000) (arguing for an alternative approach for considering the environment in a stakeholder framework).

162. Jacob Hörisch & Stefan Schaltegger, *Business, the Natural Environment, and Sustainability: A Stakeholder Theory Perspective, in* THE CAMBRIDGE HANDBOOK OF STAKEHOLDER THEORY 132, 132–144 (Robert A. Phillips, Jay B. Barney, R. Edward Freeman, Jeffrey S. Harrison, eds., 2019) (explaining the environment is "essential to secure existence and for achieving goals of a company"); Kortetmäki, Heikkinen & Jokinen, *supra* note 161, at 17. Natural capital theorists within the field of economics have also emphasized the importance of the environment to firms. They have pointed out its status as a limited resource, provision of critical natural capital to the firm, and its powerlessness against misappropriation by managers. Antoine Missemer, *Natural Capital as an Economic Concept, History and Contemporary Issues*, 143 ECOLOGICAL ECON. 90 (2018); Maria Åkerman, *What Does 'Natural Capital' Do? The Role of Metaphor in Economic Understanding of the Environment*, 11 ENV'T. EDUC. RES. 37 (2005); David Pearce, *Economics, Equity, and Sustainable Development*, 20 FUTURES 598, 599 (1988).

163. *See* Mark Starik, *Should Trees Have Managerial Standing? Toward Stakeholder Status for Non-Human Nature*, 14 J. BUS. ETHICS 207, 207 (1995) (arguing the critical importance of the environment to the firm, for its inclusion as a primary firm stakeholder, and the descriptive inaccuracy of a theorization that does not include the environment); Driscoll & Starik, *supra* note 161, at 55 (reconceptualizing the stakeholder theory of the firm to argue for the environment as a primary stakeholder, drawing from concepts of power, legitimacy, urgency, and proximity); Nardia Haigh & Andrew Griffith, *The Natural Environment as a Primary Stakeholder: The Case of Climate Change*, 18 BUS. STRATEGY ENV'T 347, 350 (2009) (arguing that the environment is a primary stakeholder in the firm).

164. Kortetmäki, Heikkinen & Jokinen, *supra* note 161, at 17–18 (explaining "the predominantly anthropocentric, normatively instrumentalizing orientation that depicts nonhuman nature primarily as a resource to enhance human and organizational well-being"); Driscoll & Starik, *supra* note 161, at 58 (seeking to overcome the anthropocentric approach of theories of the firm that view the environment instrumentally, as merely a resource to improve human and organizational well-being); Starik, *supra* note 163, at 216; Linda Tallberg, José-Carlos García-Rosell & Minni Haanpää, *Human–Animal Relations in Business and Society: Advancing the Feminist Interpretation of Stakeholder Theory*, 180 J. BUS. ETHICS 1, 1 (2022) (explaining the anthropocentrism of stakeholder theory and its incomplete understanding of how firms function).

165. *See supra* Part I.C.

of investors recognized by corporate law, while workers and the environment are excluded.[166]

Some have argued for shareholder primacy because of shareholders' position as residual claimants. This designation means shareholders hold the remaining claim on the firm's cash flow after other claimants have been paid.[167] As discussed, it is not obvious why beneficiary status in corporate law should turn on residual status.[168] Some claim it is because residual status confers ultimate control in the firm on shareholders.[169] But as we have seen, in practice shareholders do not actually exercise ultimate control in the firm.[170] Others have argued it is because residual status leaves shareholders particularly vulnerable to managerial misconduct.[171] Yet workers and the environment are at least as vulnerable to misconduct as shareholders. Workers and the environment also rely on firm leaders to manage their capital investments and provide them with meaningful returns,[172] but unlike shareholders who can generally diversify their investments, workers almost always make firm-specific investments that further heighten their vulnerability.[173] These firm-specific investments, along with diminished competition in labor markets, mean workers also generally experience fewer exit options than shareholders.[174] While shareholders can usually exit the firm relatively easily by selling their shares, in practice it is generally much harder to change jobs than sell stock. As a nonhuman entity, the environment is perhaps even worse off. It has no ability to exit the firm and generally lacks a human representative to articulate and protect its interests against mismanagement.[175] These constraints on workers and the environment leave them especially vulnerable to misconduct.[176]

The critical capital inputs that shareholders, workers and the environment invest in the firm undergird the theoretical foundation for recognizing them as the firm's primary investors in corporate law. Other stakeholders, such as customers, local communities, creditors, suppliers, and governments, are also important parties that may contribute

166. Hayden & Bodie, *supra* note 7, at 2432–35 (on workers); Greenfield & Smith, *supra* note 32, at 972 (on workers and the environment, among others).

167. *See supra* Part I.C.

168. *See* Hayden & Bodie, *supra* note 7, at 2432–35 (questioning the ongoing value of using residual status as the benchmark for determining control rights at the firm).

169. Fama & Jensen, *supra* note 71, at 102–03.

170. *Supra* Part II.

171. Millon, *supra* note 12, at 230.

172. FERRERAS, *supra* note 159, at 24, 109.

173. Hayden & Bodie, *supra* note 7, at 2454–55 (stating that employes "have invested their labor, reputations, and firm-specific individual capital in the firm and cannot pull these investments out").

174. This trend generally holds true although in some cases some workers may have an easier time switching employment than some shareholders have in exiting their position, particularly with regard to shareholders in privately held firms. Hayden & Bodie, *supra* note 7, at 2454–55; ERIC POSNER, HOW ANTITRUST FAILED WORKERS 32 (2021) ("[T]he consolidation of employers . . . has resulted in limited competition in labor markets."); Benjamin Campbell, Russell Coff & David Kryscynski, *Re-thinking Competitive Advantage from Human Capital*, 37 ACAD. MGMT. REV. 376, 376 (2012) (high levels of firm-specific investment reduce employee mobility). Workers also generally detrimentally rely on the firm to provide ongoing benefits, particularly in the United States, a country without a significant social safety net. Millon, *supra* note 12, at 237.

175. LENNOX, HARRIS & CODUR, *supra* note 158, at 4; Kortetmäki, Heikkinen & Jokinen, *supra* note 161, at 21 (explaining the "socio-cultural patterns that perpetuate the exploitation of nature and deny nonhuman integrity").

176. FERRERAS, *supra* note 159, at 24, 109.

meaningfully to the firm and be impacted by its behavior.[177] Yet contributing to and being impacted by firm behavior do not rise to the same level as being a primary investor of critical capital. Financial, labor, and natural capital are necessary preconditions for every firm in existence. Shareholders, workers, and the environment require sustainable returns to maintain their own existence, they make firm-specific investments, they engage in repeat transactions with the firm, and they are not public (i.e. government) entities. These characteristics thus distinguish shareholders, workers, and the environment as primary investors in every firm, as theoretically supported by insights from organization theory.

B. Correcting Entrenched Power Imbalances in Corporate Law

Organization theory also sheds light on the ways in which the current corporate law regime entrenches two problematic power imbalances. The first power imbalance privileges boards and shareholders over workers and the environment. Boards and shareholders receive protections within corporate law while workers and the environment do not, which has resulted in doctrinal distortions and unintended negative consequences.[178] The second power imbalance privileges boards and insider shareholders in relation to minority shareholders. Although modern corporate law affords minority shareholders some special oversight rights,[179] these powers often prove insufficient at reining in misconduct. Furthermore, these special powers appear to be on the decline.[180]

Leveraging insights from organization theory illustrates the significance of these entrenched power imbalances. Questions of control, accountability, and the distribution of resources are fundamentally questions of power, but neoclassical corporate law does not adequately consider firm power dynamics or account for their important effects on firm outcomes, markets, and society more broadly. Power, simply defined, is the ability of an individual or group to influence another's behavior.[181] Yet this definition does not explain where power comes from and how power dynamics work in organizations. It is critical to draw on a deeper theoretical understanding of power to understand the shortcomings of contemporary corporate law and formulate potential solutions.

A seminal theory of power known as power-dependence theory can provide this understanding. This theory has been widely applied in organizational research to understand how power dynamics unfold in firms. Power-dependence theory states that power resides in an actor's control over valued resources. Specifically, Actor A has power over Actor B to the extent that Actor A controls access to resources that Actor B wants and needs. And conversely, Actor B has power over Actor A to the extent that Actor B controls access to resources that Actor A wants and needs. This conceptual framework, which emphasizes that power is a relational concept rather than an absolute one, can be used to understand

177. To the extent that local communities also encompass the environment or a firm's workers, they would also already be covered in those ways by our formulation.

178. *Supra* Part III.A.

179. For example, entire fairness review. *See* Weinberger v. UOP, 457 A.2d 701, 713–14 (Del. 1983).

180. Mueller, *supra* note 1; Tiffani Amber, *Delaware Senate Passes Controversial Senate Bill 21*, WBOC (Mar. 13, 2025), https://www.wboc.com/news/delaware-senate-passes-controversial-senate-bill-21/article_ef04de94-0056-11f0-a96c-63ef09a4a391.html [https://perma.cc/3RT7-8GEA].

181. JULIE BATTILANA & TIZIANA CASCIARO, POWER FOR ALL: HOW IT REALLY WORKS AND WHY IT'S EVERYONE'S BUSINESS 1 (2021) ("Power as we've defined it is the ability to influence others' behavior, be it through persuasion or coercion.").

the patterns of dependency and control that shape how power is distributed in a firm.[182] These patterns empower those parties that control access to coveted resources and disempower those that do not.[183]

Workers, the environment, different types of shareholders, and directors have differing levels of control over valued firm resources, leading to varying levels of empowerment for these parties. Furthermore, the rules established in corporate law help shape the extent to which these parties control valued resources, and therefore, shape how much power they have relative to each other.[184] The environment enjoys perhaps the least control over firm resources. As a nonhuman entity in an anthropocentric system, it rarely has a dedicated advocate protecting its interests or exercising control over resources on its behalf, leaving it with little power and vulnerable to exploitation.[185]

While workers may typically have a higher degree of control over firm resources than the environment, their scope of control is mostly limited. For example, workers may control their own production and can organize collectively to exercise market power, such as when they unionize or go on strike.[186] But they have almost no control over critical firm decisions that may affect them deeply, including hiring and termination, health and safety provisions, how they spend their workdays, and core firm strategic decisions.[187] Furthermore, workers are usually highly dependent on resources that directors and insider shareholders control, such as wages, access to benefits like health insurance, and employment itself. These patterns of control and dependency leave workers with little power relative to the parties that control the resources they value and on which they depend.

Shareholders experience greater control over firm resources than workers and the environment, though the extent of shareholder power varies significantly depending on the type of shareholder, type of corporation, and broader context. Controlling shareholders enjoy high amounts of power in the firm due to their large equity stakes or, increasingly, to negotiated contractual rights that grant them effective control with only small equity

182. *See* Richard M. Emerson, *Power-Dependence Relations*, 27 AM. SOCIO. REV. 31, 32 (1962); JEFFERY PFEFFER & GERALD R. SALANCIK, THE EXTERNAL CONTROL OF ORGANIZATIONS: A RESOURCE DEPENDENCE PERSPECTIVE 1 (1978); BATTILANA & CASCIARO, *supra* note 181, at 165–92; Julie Battilana, Fundamental Assumptions in Organization Theory 7 (2024) (unpublished manuscript) (on file with authors) ("[P]ower derives from an actor's dependence on another" and is "inherently relational, always depending on the interaction with others, and dependent on the context."). Because power is context specific, people are not wholly "powerful" or "powerless"—their degree of power exists only in relation to other social actors in a specific social relationship, and "depends on the extent to which they control access to resources the other party values." BATTILANA & CASCIARO, *supra* note 181, at 7.

183. *See* BATTILANA & CASCIARO, *supra* note 181, at 165–92.

184. Corporate law is of course not the only factor that shapes the extent to which parties control valued resources. For example, firm policies and procedures, and other areas of law can also play a role. *See generally id.*

185. LENNOX HARRIS & CODUR, *supra* note 158, at 4; Kortetmäki Heikkinen & Jokinen, *supra* note 161, at 21. It could also be argued that the environment receives protection from other avenues, such as impact litigation or activist investor advocacy.

186. Hayden & Bodie, *supra* note 7, at 2434–35.

187. Hélène Landemore & Isabelle Ferreras, *In Defense of Workplace Democracy: Towards a Justification of the Firm–State Analogy*, 44 POL. THEORY 53, 54 (2016) ("[E]mployees have little to no influence on almost any kind of decisions made in or about the firm, whether they concern hiring and firing of personnel, safety or work hour regulations, or business matters such as strategic investment decisions or the distribution and use of profits.").

stakes.[188] Institutional investors enjoy greater power due to their horizontal stakes across many firms.[189] An activist investor may exert power without owning a large financial stake, wielding control over reputational and other financial and non-financial resources to successfully oust a CEO or achieve another desired outcome at a given firm.[190] At most venture-backed startups and nearly all private equity-owned firms, shareholders often control access to vital firm resources including money, prestigious networks, and managerial knowhow, affording them significant amounts of power.[191]

But a minority shareholder or a modal shareholder of a publicly traded firm generally controls just their modest financial stake. They are vulnerable to extractive behavior of controlling shareholders. As controllers' equity stakes become smaller, this vulnerability worsens, as small-minority controllers have greater incentives to extract private benefits of control at the expense of minority shareholders.[192] Minority shareholders are also susceptible to more dominant institutional investors and activist investors, who hold greater power at both the market and firm levels. Minority shareholders thus control fewer firm resources, resulting in relatively less power in the firm.

In contrast, boards generally exercise significant control over vital firm resources, particularly in a typical publicly traded firm. Boards usually have the ability to shape decisions about large amounts of deployed financial capital (from shareholders), labor capital (from workers), and natural capital (from the environment). Moreover, directors frequently control significant social and political capital due to the prestigious societal positions they occupy by virtue of their leadership positions in the firm.[193] Boards therefore exercise control over a broad scope of coveted resources, leaving them with substantial power over workers, the environment, and minority shareholders. Understanding the organizational

188. *See* Lucian Arye Bebchuk & Kobi Kastiel, *The Perils of Small-Minority Controllers*, 107 GEO. L.J. 1453 (2017) (explaining how shareholders with only small equity stakes can nevertheless exercise control over the corporation); Gladriel Shobe & Jarrod Shobe, *Contractual Control in Dual-Class Corporations*, 42 YALE J. REG. 332 (2025) (explaining the increasing phenomenon of shareholders gaining control over firms not via voting rights but via contractual provisions).

189. Einer Elhauge, *Horizontal Shareholding*, 129 HARV. L. REV. 1267, 1267–69 (2016) (explaining how institutional shareholders can exercise significant power with anti-competitive effects); COATES, *supra* note 2, at 13–14.

190. Yifat Aran & Elizabeth Pollman, *Ousted*, 25 THEORETICAL INQUIRIES L. 231, 245–46 (2024) (explaining how activist investors without voting control can nonetheless leverage power in various ways to oust executives); Yaron Nili, Peer Group Governance 15 n.118 (Aug. 31, 2023) (unpublished manuscript) (on file with author) (explaining that "hedge funds may apply public pressure to convince a designated company to change its governance"). Fully investigating the power dynamics between shareholders and directors is a complex topic beyond the scope of this paper and an important area for future study. These examples underscore the importance of accounting for power in theoretical conceptions of the firm and modern corporate law.

191. Pollman, *supra* note 131, at 167–68, 219; Kobi Kastiel & Yaron Nili, *The Rise of Private Equity Continuation Funds*, 172 U. PA. L. REV. 1601, 1608–10 (2024).

192. For example, to take excessive compensation or otherwise divert cash flow. *See* Bebchuk & Kastiel, *supra* note 188 (arguing that controllers with small equity stakes increase risks of extracting private benefits of control).

193. Coates, *supra* note 2, at 18 ("CEOs enjoy significant – likely outsized – success in politics after having been CEOs of S&P 500 companies."). Economist Professor Luigi Zingales has argued that the modern firm increasingly wields political power with little accountability and oversight and is in need of reformed regulation that recognizes this reality. Luigi Zingales, *Towards a Political Theory of the Firm*, 31 J. ECON. PERSPS. 113, 113–14 (2017) ("The largest modern corporations facilitated a massive concentration of economic (and political) power in the hands of a few people, who are hardly accountable to anyone.").

perspective—specifically, drawing on power-dependence theory—helps clarify how the marginalization of workers and the environment relative to shareholders, and the disempowerment of minority shareholders relative to boards and insider shareholders, occur not because these arrangements are pre-ordained, but because of how modern conditions, including corporate law, have shaped control over access to valued resources within the firm.[194]

Indeed, corporate law reinforces the power of boards and shareholders over workers and the environment. Corporate law assigns rights and duties to boards and shareholders, while workers and the environment receive little to no recognition in corporate law at all. Despite investing critical capital into the firm and remaining vulnerable to managerial exploitation, corporate law does not afford workers and the environment any enforcement or voting rights.[195] These parties cannot elect representatives to the board, do not receive the protection of fiduciary duties, and have no rights to litigate to safeguard their interests. Firm leaders have no obligation to consider or steward the investments of workers and the environment, which receive legal protection only through other areas of law, such as labor and employment law and environmental law. These areas of law provide important protections for these parties, but they do not recognize them in their capacity as investors in the firm and, as a result, fail to adequately address the power imbalances they suffer in this context.[196]

There are also many ways corporate law reinforces the power of boards and insider shareholders *vis-à-vis* minority shareholders. In general, shareholders receive enforcement rights in corporate law that "are reserved for fairly extraordinary situations."[197] For example, shareholders have rights to bring derivative suits and proxy contests, which purport to rein in managerial misconduct.[198] But in design and practice, these avenues are difficult and expensive to pursue, making them less accessible to shareholders with fewer resources.[199] Minority shareholders do receive some specific protections—for example, they enjoy a more rigorous entire fairness standard of review in certain controlling shareholder contexts.[200] However, the circumstances where this strict standard of review applies are narrow and may be shrinking even further, particularly in light of recent changes to

194. Driscoll & Starik, *supra* note 161, at 58 ("[T]he influence of nature . . . is overlooked in most conceptualizations of stakeholder power.").

195. Workers receive little to no recognition in corporate law in their capacity as workers. Some workers may separately be shareholders or directors and receive protections in those capacities. FERRERAS, *supra* note 159, at 109; Millon, *supra* note 12, at 201–02.

196. In addition, these other areas of law occupy an increasingly precarious position as federal administrative law undergoes significant weakening, leaving these parties even more vulnerable to exploitation. *See, e.g.*, Loper Bright Enterprises v. Raimondo, 603 U.S. 369, 369 (2024) (overruling *Chevron* deference).

197. Bainbridge, *supra* note 19, at 568–69 (on shareholders' lack of meaningful control and enforcement rights).

198. *Id.* at 568 n. 101.

199. *Id.* ("[T]hese remedies are so costly and their outcome so uncertain that they are invoked only episodically. Moreover, many aspects of the legal rules governing these devices . . . seem calculated to discourage frequent recourse to those devices.").

200. For example, entire fairness review in the context of a merger or squeeze out. Weinberger v. UOP 457 A.2d 701, 713–14 (Del. 1983).

Delaware corporate law.[201] More commonly, corporate law favors boards with a deferential standard of review[202] and a limited set of shareholder rights.[203] These rules disproportionately disadvantage minority shareholders, who have even fewer avenues to monitor, control, and enforce. In addition, the rise of small-minority controllers not only incentivizes the extraction of private benefits of control at the expense of minority shareholders, it also increases incentives to rewrite the law to reduce existing restrictions on controllers' ability to extract private benefits of control. We see these regulatory incentives playing out in real time in Delaware's SB21, which was drafted with significant influence from controlling shareholders seeking to reduce restrictions on their ability to self-deal.[204] These controllers' swift success in significantly changing Delaware law in their favor underscores their substantial power not only in relation to minority shareholders and the firm, but to society more broadly.

Corporate law provides boards with wide latitude and only limited oversight and accountability. It also frequently favors insider shareholders. Boards and insider shareholders thus control not only deployed financial capital, labor capital, and natural capital, plus social and political capital, but also *legal* capital—meaning control over the firm's actions within the corporate legal system. This broad control leaves boards and insider shareholders with outsized power over workers and the environment in nearly every corporate context, and over minority shareholders in many corporate contexts.[205] Creating and reinforcing these power imbalances in corporate law generates systematic vulnerability for workers, the environment, and minority shareholders.

C. The Institutional Influence of Corporate Law

Research in organization theory also emphasizes the critical role that corporate law plays in shaping and constraining firm behavior, such that entrenched power imbalances generate far-reaching consequences not only for firms and their stakeholders but also for society more broadly. This research thus provides a theoretical basis for understanding the link between corporate law and societal crises. An influential stream of research known as institutional theory explains how organizations are dependent on and influenced by the

201. Even this limited mechanism of control is under threat with Delaware's recently passed SB 21 law, which changed the definition of controlling shareholders and decreased minority shareholder rights. Amber, *supra* note 180

202. Via the business judgment rule. Lawrence A. Cunningham, *Commonalities and Prescriptions in the Vertical Dimension of Global Corporate Governance,* 84 CORNELL L. REV. 1133, 1183 (1999) (arguing the business judgment rule creates a "lack of accountability"); David Millon, *New Game Plan or Business as Usual? A Critique of the Team Production Model of Corporate Law,* 86 VA. L. REV. 1001, 1021 (2000) (arguing the business judgment rule is "ineffective when it comes to rendering management accountable to the shareholders"); Mark J. Roe, *Corporate Law's Limits,* 31 J. LEGAL STUD. 233, 233 (2002) (explaining the business judgment rules' insulating effect for boards with regards to critical corporate behaviors).

203. Bainbridge, *supra* note 19, at 568 ("In general, shareholders of public corporations [do not] have . . . the legal right . . . to exercise the kind of control necessary for meaningful monitoring of the corporation's agents.").

204. Lora Kolodny, *Tesla's Law Firm Drafts Delaware Bill That Could Salvage Musk Pay Package*, CNBC (Feb. 18, 2025), https://www.cnbc.com/2025/02/18/firm-representing-musk-tesla-drafts-bill-for-delaware-corporate-law.html [https://perma.cc/7R87-ELHB]. This phenomenon further poses a significant political economy problem of legislatures responding to pressure from controlling shareholders.

205. *See also* PISTOR, *supra* note 10, at 2–3 (arguing that the cause of negative unintended consequences of the economic and legal reforms of the 1980s "lies in capital's legal code," including corporate and contract law).

environments in which they operate. Firms are embedded within a legal, social, political, economic, and normative landscape—known as the institutional environment—that shapes and constrains their behavior.[206] Institutional theory thus accounts for a much broader set of forces that shape firm behavior beyond the set of rational actors who comprise firms.[207]

The legal landscape forms a critical component of the institutional environment. It is a particularly important factor shaping firm behavior, with law defining the scope of not only what is legal but also what is legitimate conduct in society.[208] Within law, corporate law sets the specific rules that order the relationships in the firm, establishing who controls access to critical firm resources and deployed capital, and the extent to which those parties will be held accountable or subject to external oversight.[209] An institutional theory lens underscores how corporate law matters deeply to firm behavior, establishing boundaries and norms for firm conduct.

This strong influence of corporate law on firm behavior helps explain the profound implications of entrenching power imbalances in corporate law, not only for firms and their stakeholders but also for society.[210] When corporate law considers non-shareholder parties to be outside its purview, it sets up inevitable tensions between corporate law and the other areas of law that develop to protect these parties. The risk is that corporate law doctrine then creates a formal mandate for the powerful decision-makers in the firm to disregard non-shareholder parties like workers and the environment.[211] We see such dynamics play out when firm leaders justify practices that harm workers and the environment—harms

206. John W. Meyer & Brian Rowan, *Institutionalized Organizations: Formal Structure as Myth and Ceremony*, 83 AM. J. SOCIO. 340, 341, 343, 346–47 (1977) (explaining that "organizations are structured by phenomena in their environments" and that they "inevitably involve normative obligations" as well as "public opinion . . . the views of important constituents . . . knowledge legitimated through the educational system . . . social prestige . . . the laws, and . . . the definitions of negligence and prudence used by the courts"); Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOCIO. REV. 147, 148 (1983).

207. *See, e.g.*, Jensen & Meckling, *supra* note 69, at 314, 351–52 (assuming limited outside influences on firms).

208. Lauren B. Edelman & Mark C. Suchman, *The Legal Environments of Organizations*, 23 ANN. REV. SOCIO. 479, 507 (1997) ("Law and, more broadly, legal environments create, constrain, shape, enable, define, and empower organizations. Law and legal environments, moreover, provide forums and templates for interactions among organizations.").

209. Meyer & Rowan, *supra* note 206, at 341, 343, 346–47; Edelman & Suchman, *supra* note 208, at 507; DiMaggio & Powell, *supra* note 206, at 150 ("[L]egal and technical requirements of the state—the vicissitudes of the budget cycle, the ubiquity of certain fiscal years, annual reports, and financial reporting requirements . . . shape organizations in similar ways."). For another related perspective in organization theory (resource dependence theory), see generally PFEFFER & SALANCIK, *supra* note 182, at 1 ("Organizations are inescapably bound up with the conditions of their environment.").

210. These consequences manifest in various ways, including extreme levels of income inequality, decline in worker mental and physical health and well-being, climate change, pollution, and environmental degradation. It can have ramifications for the success and stability of firms, financial security of shareholders, and broader stability of markets. *See supra* Part II; FERRERAS, *supra* note 159, at 109, 111.

211. Each of these scenarios requires directors to pay particular attention to shareholder welfare and explicitly disregard non-shareholder parties. Blasius Indus., Inc. v. Atlas Corp., 564 A.2d 651, 661–62 (Del. Ch. 1988) (voting); eBay Domestic Holdings, Inc. v. Newmark, 16 A.3d 1, 34 (Del. Ch. 2010) (disallowing majority shareholders from using their position to achieve non-pecuniary objectives); Weinberger v. UOP 457 A.2d 701, 713–14 (Del. 1983) (mergers and squeeze outs); Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173, 182 (Del. 1986) (sale or change of control).

which other areas of the law do not adequately mitigate—by citing their fiduciary duties, which today privilege shareholders and exclude workers and the environment.

Furthermore, institutional theory emphasizes how challenging it is for firms to depart from the dominant paradigm in corporate law because of the powerful role the doctrine plays in setting norms.[212] These challenges help explain why for-profit firms have struggled to systemically sustain the pursuit of non-financial goals alongside financial ones, even in scenarios where there is significant management research on how to succeed, novel corporate law statutes meant to enable such a joint pursuit, and high demand from consumers, employees, suppliers, governments, and even many funders.[213] At present, firms remain subject to the dominant corporate law framework, which makes it difficult to pursue goals aligned with non-shareholder interests, such as those pertaining to workers and the environment.[214] It is thus not enough to rely on other areas of law—employment law, labor law, environmental law, and so on—to address problematic power imbalances in corporate law or to rein in corporate behavior.[215]

Instead, addressing problematic power imbalances in the firm will require reforming the corporate law framework that governs them.[216] Such reforms will enable corporate law

212. *See* BATTILANA & CASCIARO, *supra* note 181, at 165–92. This theoretical explanation also bolsters the arguments for recent work in corporate law identifying the challenges of operating outside the dominant corporate law paradigm. Lund & Pollman, *supra* note 109, at 2563, 2567–68. It may also help explain why the mounting scholarship arguing for a different paradigm has failed to dislodge shareholder primacy. *See* STOUT, *supra* note 116, at 95–96 (challenging the ideology of shareholder value and characterizing it as a myth or ideology, rather than doctrine). *See, e.g.*, Blair & Stout, *supra* note 7 (arguing against shareholder primacy and advancing a new theoretical perspective); Greenfield & Smith, *supra* note 32 (arguing for a progressive corporate law that accounts for all stakeholders); Hayden & Bodie, *supra* note 7 (arguing for worker representation in corporate governance).

213. Julie Battilana & Matthew Lee, *Advancing Research on Hybrid Organizing–Insights from the Study of Social Enterprises*, 8 ACAD. MGMT. ANNALS 397, 398 (2014) ("[Over the last three decades . . . the boundaries between [commercial and charitable organizations] have become increasingly blurred."); HENDERSON, *supra* note 145, at 9–12 (on the increasing pursuit of social and environmental goals in business and significant associated challenges); MARQUIS, *supra* note 144, at 3 (on the rising number of certified B Corps and public benefit corporations); Orts, *supra* note 106, at 16, 31–32 (on the underwhelming impact of constituency statues that explicitly enable corporations to account for non-shareholder interests); Infographic, Virtuous Capital, Growth with Purpose (unpublished manuscript) (on file with authors) (showing how the public benefit corporation has attracted only about 3000 companies and just eleven publicly traded firms); Magali A. Delmas & Vanessa Cuerel Burbano, *The Drivers of Greenwashing*, 54 CAL. MGMT. REV. 64, 64 (2011) (explaining prevalence of greenwashing).

214. *See* Julie Battilana et al., *Beyond Shareholder Value Maximization: Accounting for Financial/Social Trade-Offs in Dual-Purpose Companies*, 47 ACAD. MGMT. REV 237, 240 (2022) (explaining that firms do not operate in a legal context that is updated to accommodate multiple stakeholders and objectives, creating discrepancies and tradeoffs) [hereinafter Battilana et al., *Beyond Shareholder Value*]; FERRERAS, *supra* note 159, at 109, 111 (emphasizing the need for a reformed corporate governance framework to address these realities).

215. Schwarcz, *supra* note 101, at 16 ("Regulation cannot, realistically, control all corporate externalities."); Millon, *supra* note 12, at 226 (citing Chayes, *The Modern Corporation and the Rule of Law, in* THE CORPORATION AND MODERN SOCIETY 25, 26–27 (E. Mason ed. 1959)) (explaining that a more accurate conception of the corporation would account for all parties with "a relation of sufficient intimacy with the corporation or subject to its power in a sufficiently specialized way. Their rightful share in decisions on the exercise of corporate power would be exercised through an institutional arrangement appropriately designed to represent the[ir] interests."); Hayden & Bodie, *supra* note 7, at 2452 (corporate law "needs to reexamine the premise that corporate governance is only about shareholders, directors, and officers").

216. These changes must occur in mainstream modern corporate law and not at the margins of corporate law, as has been attempted to date with movements such as public benefit corporate law, constituency statutes, and

to complement other areas of law, rather than operating in tension with them. We turn next to understanding how a reformed corporate law can function in practice.

IV. PROPOSALS FOR CORPORATE LAW REFORMS

To address entrenched power imbalances and their detrimental consequences, it is critical to reform corporate law to account for workers, the environment, and shareholders as primary investors in the firm, and to meaningfully empower all three investors *vis-à-vis* boards and insider shareholders. To do so, in this Part, we propose drawing from organization theory to reform board representation, fiduciary duties, and executive compensation to create accountability to workers and the environment as investors, while also strengthening accountability to minority shareholders. This proposed corporate law regime will result in a meaningful departure from the current system. But integrating an organizational perspective with the economic perspective can help better address the problematic power imbalances, ultimately providing a more effective corporate law framework to govern firms and serve society. We close by addressing potential criticisms and objections.

A. Redesign Board Representation

We first propose redesigning board representation to provide workers and the environment with voting rights to elect board representatives alongside shareholders. We draw from research in organization theory to inform our proposals. Scholars have engaged in significant research around potential avenues for worker representation on the board. In addition, multiple European countries have long required codetermination as the standard model of corporate governance, providing important experiences from which to learn.[217] The German codetermination system is perhaps the most well-known example of a jurisdiction with worker representation,[218] giving worker representatives fifty percent board-level representation in firms with 2000 or more workers.[219] This approach ensures workers are empowered to represent their own interests in firm decision-making, helping avoid the problematic power imbalances of neoclassical corporate law.[220]

L3C laws. These movements, and particularly public benefit corporation law, may inadvertently contribute to further institutionalizing the neoclassical perspective in mainstream modern corporate law. Institutional theory helps explain why these movements have a hard time gaining traction. *See also* Lund & Pollman, *supra* note 109, at 2567–68 (arguing that "absent a large shock to the system . . . the corporate governance machine will likely impede a true paradigm shift away from shareholderism" but that their "account reveals how incremental change could take place").

217. These countries include Germany, Austria, Denmark, Norway, and Sweden, among others. ALINE CONCHON, BOARD-LEVEL EMPLOYEE REPRESENTATION RIGHTS IN EUROPE: FACTS AND TRENDS, EUR. TRADE UNION INST. 10–13 (2011) (reviewing board-level representation at the national level across Europe).

218. Simon Jäger, Shakked Noy & Benjamin Schoefer, *Codetermination and Power in the Workplace*, ECON. POL'Y INST. (Mar. 23, 2022), https://www.epi.org/unequalpower/publications/codetermination-and-power-in-the-workplace [https://perma.cc/CFK8-J93N].

219. *Id.*

220. In most industries in the German system, shareholders receive a tie-break vote, such that they can outvote workers with a unanimous decision, which we do not advocate. Instead, we advocate the promulgation of a deliberative culture, which we develop below in our description of the proposed duty of deliberation. *See Infra* Part IV.B; Jäger, Noy & Schoefer, *supra* note 218 (explaining the tie-break vote and that workers "hence would only enjoy 'quasi'-parity representation").

The specific details of worker representation could take several forms. Some scholars have proposed a bicameral system of representation that would create two chambers of representatives in the corporation: one for worker representatives and one for shareholder representatives.[221] Others have shown how workers could either elect board representatives through their own electoral system, separate from the shareholder vote,[222] or vote in the same pool as shareholders to elect one single set of board representatives.[223] These systems would need to pay careful attention to whether to assign veto rights, how to address tie-break rights, and when to require supermajority votes for certain firm decisions.[224] It will also be important to determine the proportion of worker representation, whether one-third or some other amount.[225] A key consideration in devising these rules is to recognize workers as core investors that merit meaningful representation in firm decision-making.

Determining the specific voting rights granted to each employee is also an important area for determination. The system could simply grant one vote per employee, or it could seek somehow to link voting rights to an individual employee's interest in the firm.[226] For example, it might require a vesting period (such as a certain number of months of employment), could grant an employee additional votes with each subsequent year of service up until a cap, or the design could vary across different firms depending on their characteristics. These approaches would seek to provide greater voice to employees with more firm-specific investments, parallelling the increased voting rights shareholders receive according to the number of shares owned.[227] However, they would also require careful attention to concerns about fairness, the relative size of each employee's investment, and avoiding the concentration of power amongst a small group of individuals.

The environment, of course, raises the trickier issue of how to represent a non-human entity on the board. Scholars and practitioners are already doing work in this area that can provide helpful guidance.[228] For example, U.K. beauty company Faith in Nature has "appointed nature" to its board, formally empowering the environment with a vote on

221. FERRERAS, *supra* note 159, at 13–16. A system integrating Ferreras's proposal with ours would be tricameral, including a chamber for environmental representatives.

222. Hayden & Bodie, *supra* note 7, at 2475 (explaining that the German codetermination system follows this approach).

223. *Id.*

224. Julie Battilana & Isabelle Ferreras, *From Shareholder Primacy to a Dual Majority Board, in* WORKER VOICE AND THE NEW CORPORATE BOARD ROOM 29 (2021), https://www.aspeninstitute.org/wp-content/uploads/2021/08/Worker-Voice-and-the-Corporate-Boardroom.pdf [https://perma.cc/BY4C-7R43] ("A supermajority vote should be required on any decision that directly and significantly affects workers, requiring support from the Board's labor representatives."); Hayden & Bodie, *supra* note 7, at 2474; FERRERAS, *supra* note 159, at 127–55.

225. Battilana & Ferreras, *supra* note 224, at 29 ("Total membership of a firm's Board of Directors or equivalent governing body should be comprised of between 30% and 50% labor representatives, elected by the firm's workers.").

226. Of course, any employee voting rights would redeem (be forfeited) upon departing the firm.

227. *See* Hayden & Bodie*, supra* note 7, at 2474 ("The company could design a system of voting rights based on the relative importance of employee voice to the company.").

228. James E. Austin & Herman B. "Dutch" Leonard, *Can the Virtuous Mouse and the Wealthy Elephant Live Happily Ever After?*, 51 CAL. MGMT. REV. 77, 90–94 (2008) (describing Ben and Jerry's social impact board).

corporate decisions.[229] It did so by appointing to the board of directors an academic environmental expert as a guardian of nature.[230] The company separates the guardian's pay from the rest of the board to maintain the guardian's independence.[231] It also transparently publishes even board decisions that go against the nature guardian's recommendations.[232] Since then, at least five additional firms have followed suit by appointing nature to their boards.[233]

In addition, looking to environmental law and examples of environmental representation both within and outside the United States provides important insights and sheds light on the feasibility of environmental board representation.[234] In New Zealand, legislators have granted legal personhood to several environmental entities, including a forest, river, and most recently, a mountain.[235] This legislation created a new entity that consists of four Indigenous members of a local tribe and four members appointed by the government Conservation Minister to be the non-human entity's "face and voice," giving insight into ways to effectively integrate environmental representation in an anthropocentric legal system.[236]

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229. Isabella Kaminski, *Eco Beauty Company 'Appoints Nature' to its Board of Directors*, GUARDIAN (Sept. 22, 2022), https://amp.theguardian.com/environment/2022/sep/22/eco-beauty-company-faith-in-nature-board-directors [https://perma.cc/DL4S-QN8B] (stating Faith in Nature was "the first company in the world to give nature a formal vote on corporate decisions that might affect it").

230. *Id.*

231. *Id.*

232. *Id.*

233. Simeon Rose, *Nature on Five Boards (and Counting…) Who's Next?*, MEDIUM (Feb. 5, 2024), https://natureontheboard.com/nature-on-five-boards-and-counting-whos-next-b00e523f7bd5 [https://perma.cc/N4SK-FQAH] (stating that after Faith in Nature, at least five additional firms, both corporate and nonprofit, have appointed nature to their boards). This approach improves upon the experience of companies that have merely appointed directors with environmental expertise to their boards without further protections for those directors. For example, oil and gas company ConocoPhilips previously appointed a Harvard professor of environmental law to its board to champion the transition to low carbon at the firm, with mixed success. The professor earned $350,000 per year for eleven years before resigning in the face of public pressure after ConocoPhillips moved forward with a controversial Alaska drilling project. This experience suggests the importance of implementing additional guardrails for environmental representatives on boards. Neil H. Shah, *Harvard Law Professor Jody Freeman Resigns from ConocoPhillips Board*, HARV. CRIMSON (Aug. 5, 2023), https://www.thecrimson.com/article/2023/8/6/freeman-steps-down-conocophillips [https;//perma.cc/GFX2-T7NN].

234. *See, e.g.*, Christopher D. Stone, *Should Trees Have Standing?–Towards Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450, 453–57 (1972) (on the challenges and imperative of assigning rights to the environment); Strahan v. Linnon, 967 F. Supp. 581, 617 (D. Mass. 1995) (ruling that plaintiff does not have standing "solely because he has a sincere and passionate interest in the well-being of the whales. . . . [He] must show not only that the named whales are harmed by the Coast Guard's actions, but also that he will thereby be 'directly affected' by the harm to the whales." (endorsed by the First Circuit in Strahan v. Coxe, 127 F.3d 155 (1st Cir. 1997))); Jan G. Laitos, *Standing and Environmental Harm: The Double Paradox*, 31 VA. ENVT'L. L.J. 55, 64 (2013) (arguing that "carefully vetted nongovernmental organizations ('NGOs') should be able to bring lawsuits to protect the environmental interest. . . . For years, commentators, appellate judges, and even Supreme Court justices have suggested organizations should be able to litigate statutorily protected injuries to nature if the organizations possess the commitment, expertise, and resources."); Michelle P. Bassi, *La Naturaleza O Pacha Mama De Ecuador: What Doctrine Should Grant Trees Standing?*, 11 OR. REV. INT'L. L. 461, 473–74 (2009) (explaining other jurisdictions' approaches to organizational standing for environmental harms, including the *actio popularis* doctrine in Great Britain).

235. Te Pire Whakatupua mō Te Kāhui Tupua/Taranaki Maunga Collective Redress Bill 2023 (293-2).

236. *Id.* Other jurisdictions like Ecuador have enshrined rights for nature in their constitutions. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DEL ECUADOR, Sept. 28, 2008, arts. 71–73.

In other jurisdictions, environmental law scholars have argued in the context of standing that "carefully vetted" nongovernmental organizations (NGOs) should be able to represent environmental interests as long as their interest is "non-frivolous" and "sufficient," and the NGO has "the professional, experiential, and economic ability" to act as a representative.[237] These standards could be used as guidance for establishing environmental board representatives. Members of professional organizations of environmental scientists—such as the National Association of Environmental Professionals, an organization responsible for conducting environmental impact statements pursuant to the National Environmental Policy Act (NEPA)—would also be good candidates to serve as board representatives.[238] Environmental board representatives could be selected by a combination of public institutions, such as government agencies, nonprofit charities, and professional organizations with a demonstrated history of environmental representation. These representatives could be term-limited and, as with worker representatives, should comprise a meaningful proportion of the board to ensure effectual, rather than token, representation.

Changes to voting rights may also be a tool to more adequately empower minority shareholders. For example, legal scholars have proposed solutions for improving voting rights to reallocate power from directors to shareholders.[239] These changes could include increasing shareholder power to remove directors,[240] intervene on basic corporate governance arrangements such as charter amendments and reincorporation,[241] or preside over certain business decisions including mergers, dissolutions, and distributions of dividends.[242] These reforms could also apply to workers and the environment. Improving electoral rights to hold boards and insider shareholders meaningfully accountable without impeding corporate decision-making remains an important area for future study, which organization theory can help inform by grounding proposed reforms in the realities of human and organizational behavior.

Redesigning board representation is not without challenges. Some may worry that it is not feasible in the American context, that it will lead to a drop in financial performance, or that it is not possible in large firms in general. It is true that the European cultural context is different, and that expanding board representation in the United States would require adaptations and a period of transition. Yet multiple European jurisdictions across a range of contexts have managed to succeed under codetermination systems, suggesting the

237. Laitos, *supra* note 234, at 64 (arguing that an NGO should be able to represent the environment as long as it "has a non-frivolous sufficient interest in the environmental interest at stake, as well as the professional, experiential, and economic ability to seek redress in court to prevent the environmental injury").

238. NAT'L ASSOC. ENV'T PROS., https://www.naep.org [https://perma.cc/KW2Q-QSYC].

239. Bebchuk, *Increasing Shareholder Power*, *supra* note 2, at 836 ("While I support making shareholder power to replace directors more viable, I argue that it is important to increase shareholder power with respect to other issues as well.").

240. Lucian Arye Bebchuk, *The Myth of the Shareholder Franchise*, 93 VA. L. REV. 675, 676, 679 (2007) [hereinafter Bebchuk, *Myth of Shareholder Franchise*] (arguing that shareholders do not have significant democratic powers at their disposal and to expand shareholder voting power).

241. Bebchuk, *Increasing Shareholder Power*, *supra* note 2, at 836–37.

242. *Id.* Bebchuk has noted that he supports these proposals not because he values shareholder voice or corporate democracy as ends in themselves, but because he believes such reforms will increase financial returns to shareholders. Bebchuk, *Myth of Shareholder Franchise*, *supra* note 240, at 678–79 ("If the absence of viable shareholder power to replace directors were expected to produce better corporate performance and higher shareholder value, I would fully support a corporate governance system lacking such power.").

potential for adaptability across settings.[243] In addition, empirical evidence from organization theory and economics has shown how boards that represent broader interests than just shareholders' do not necessarily lead to drops in productivity or intractable conflict.[244] A recent review of research on the economic impacts of codetermination found that, despite fears that worker representation would be detrimental to firm financial outcomes, it had no negative effects and even some modest positive impacts on productivity, efficiency, and profits.[245]

With the right leadership, boards that are structured to account for the interests of multiple stakeholders may actually help proactively manage conflict and tensions at the firm. Empirical findings in organization theory have shown how formally incorporating key firm constituents—rather than just shareholder representatives—into firm governance structures and decision-making processes can help the organization more effectively sustain the pursuit of multiple objectives that align with the interests of various constituents over time.[246] This scholarship has also found that ensuring that both financial and social perspectives are continuously represented on the board can reduce opportunities for "cognitive and emotional conflicts" and improve the ability of not only the board but also of senior managers to more effectively serve multiple constituents at once.[247] This research thus shows how expanding board representation can even have positive effects if executed thoughtfully and with attention to research-informed best practices.[248] Important details

243. CONCHON, *supra* note 217, at 10–13.

244. Jäger, Noy & Schoefer, *supra* note 218 (finding that codetermination "has zero or small positive effects on productivity, capital intensity, and profitability").

245. *Id*.

246. Wendy K. Smith & Marya L. Besharov, *Bowing Before Dual Gods: How Structured Flexibility Sustains Organizational Hybridity*, 64 ADMIN. SCI. Q. 1, 13–24 (2017) (showing how formally incorporating multiple stakeholders into an organization's governance structure forms an important "guardrail" that can help the organization sustain the pursuit of objectives aligned with the interests of those stakeholders over time); Julie Battilana et al., *Harnessing Productive Tensions in Hybrid Organizations: The Case of Work Integration Social Enterprises*, 58 ACAD. MGMT. J. 1658, 1676–78 (2015) [hereinafter Battilana et al., *Harnessing Productive Tensions*] (on how engaging employees was critical for managing tensions between social and financial goals); Julie Battilana et al., *The Dual-Purpose Playbook: What It Takes to Do Well and Do Good at the Same Time*, 97 HARV. BUS. REV. 124, 129 (2019) ("These mechanisms don't make the tensions disappear—rather, they bring them into the open by letting employees actively discuss trade-offs between creating economic value and creating social value. Such deliberation provides a powerful safety valve and can speed up effective resolution."); Anne-Claire Pache, Julie Battilana, & Channing Spencer, *An Integrative Model of Hybrid Governance: The Role of Boards in Helping Sustain Organizational Hybridity*, 67 ACAD. MGMT. J. 437, 461 (2024) (showing how a protective board structure can help maintain board attention to multiple conflicting goals); Alnoor Ebrahim, Julie Battilana & Johanna Mair, *The Governance of Social Enterprises: Mission Drift and Accountability Challenges in Hybrid Organizations*, 34 RSCH. ORG. BEHAV., 81, 84–85 (2014) (discussing the importance of boards in addressing challenges of accountability to dual goals and multiple principal stakeholders in hybrid organizations).

247. Pache, Battilana, & Spencer, *supra* note 246, at 437 (finding that representing social and financial perspectives on the board can "prevent distracting cognitive and emotional conflicts and foster attentional engagement of both the board and senior managers to multiple goals").

248. This research also provides helpful evidence on best practices and pitfalls to avoid that can provide a basis for further development. Julie Battilana, Marya Besharov & Bjoern Mitzinneck, *On Hybrids and Hybrid Organizing: A Review and Roadmap for Future Research*, *in* THE SAGE HANDBOOK OF ORGANIZATIONAL INSTITUTIONALISM 128–29 (2d ed. 2017) ("The purpose of this chapter . . . is to advance identifying common themes in the antecedents, challenges, opportunities and management strategies associated with hybridity"); Julie Battilana, *Cracking the Organizational Challenge of Pursuing Joint Social and Financial Goals: Social*

remain to be developed and cultural adaptations accomplished, but drawing from existing research, other legal doctrines, and foreign jurisdictions illustrates the potential feasibility and benefits of this approach.

Finally, another key consideration is where these reforms will take place. There are benefits to enacting these reforms at the federal level, including uniformity across states, though it may be challenging at present to achieve bipartisan support. In addition, corporate law has historically been the purview of states, suggesting suitability at the state level. At least one state already has voluntary codetermination laws enacted.[249] Some states, such as California, may seek to fill gaps left at the federal level and establish themselves as more progressive and investor-protective jurisdictions. There may be more appetite for reform in these states. Indeed, California's board diversity requirement rule (though now overturned) indicates the state's willingness to experiment with novel corporate governance provisions that serve a broader set of interests.[250] In addition, with Delaware moving in a more insider-protective direction to avoid losing market share for incorporations to jurisdictions like Nevada and Texas,[251] the demand for investor-protective jurisdictions with more predictable rules may increase, particularly from widely held companies. Overall, the current context points to multiple possible avenues for reforming board representation.

B. Redesign Fiduciary Duties

We also propose redesigning fiduciary duties to extend to workers and the environment and more comprehensively serve minority shareholders. This proposal follows naturally from extending board representation to all three investor groups, as each group must have a way to keep its representatives accountable.[252]

Drawing from research in organization theory, we propose a new "duty of deliberation" that would require directors to explain how they accounted for all three primary investors—workers, the environment, shareholders, and where relevant, minority shareholders—in their decision-making processes. Proving compliance with a duty of deliberation could involve, for example, showing a simple cost-benefit analysis for each investor group,

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Enterprise as a Laboratory to Understand Hybrid Organizing, 21 M@N@GEMENT 1278, 1288 (2018) (identifying four pillars for organizational success in sustaining social and financial goals over time); Wendy K. Smith, Michael Gonin & Marya L. Besharov, *Managing Social-Business Tensions: A Review and Research Agenda for Social Enterprise*, 23 BUS. ETHICS Q. 407, 427–32 (2013) (providing a review of best practices).

249. Grant M. Hayden & Matthew T. Bodie, *Codetermination in Theory and Practice*, 73 FLA. L. REV. 321, 325 (2021) (explaining "a 1919 Massachusetts statute that expressly allows a corporation to have employee representatives on its boards" but which is optional and has not had much uptake since its enactment); MASS. GEN. LAWS ch. 156, § 23 (2018); Ewan McGaughey, *Democracy in America at Work: The History of Labor's Vote in Corporate Governance*, 42 SEATTLE U. L. REV. 697, 718 (2019).

250. The California legislature recently enacted a requirement for more diverse representation on boards, though this requirement was ultimately invalidated by the court. A.B. 979, 116th Reg. Sess. (Cal. 2020).

251. *See supra* note 29 and accompanying text.

252. Legal scholars have also written about the importance of expanding fiduciary duties to better serve firm constituencies. *See* Greenfield & Smith, *supra* note 32, at 949, 975–76 (arguing that "directors should be held to a fiduciary obligation to all of the firm's stakeholders"); Marleen A. O'Connor, *Restructuring the Corporation's Nexus of Contracts: Recognizing a Fiduciary Duty to Protect Displaced Workers*, 69 N.C. L. REV. 1189, 1194 (1991) (developing a "model [that] expands directorial fiduciary duties to encompass actions that shield workers from disruptions brought about by plant closings and other corporate changes. Such fiduciary duties toward workers would require directors to provide adequate severance payments, job retraining, and other appropriate relief to displaced workers."); Schwarcz, *supra* note 101, at 28–31 (advocating a "public governance duty" for boards).

demonstrating consideration of alternative decisions and analyses of associated outcomes, and proving inclusion of representatives of each investor group in decision-making. Scholarship in both organization theory and democratic theory has demonstrated the importance of representing pluralistic viewpoints in decision-making processes and establishing a deliberative culture to facilitate the integration of diverse perspectives and interests into a coherent agenda.[253] The duty of deliberation is thus a critical component of our proposal's success. It accounts for all primary investors in decision-making processes and can encourage firms to develop a deliberative culture, which research suggests may be vital to improve the quality of collective decision-making.

Even if directors simply engaged in an *ex post* rationalization process *vis-à-vis* workers and the environment—likely not unlike their current approach to shareholders—reconceptualizing fiduciary duties is important. First, it would require managers to at least contemplate how their decision-making affects all three investors in the firm. It would also protect workers and the environment from "utter failures" by the board, as shareholders currently are.[254] Perhaps even more importantly, this reconceptualization has significant norm-creating and legitimizing power. Given the power of corporate law to shape and constrain firm behavior, reconceptualizing the basic fiduciary duties of the firm to reflect a new understanding of what constitutes proper firm behavior sends a powerful signal.

A commonly expressed objection to the expansion of fiduciary duties to parties beyond shareholders is its potential intractability. This objection claims it is simply too difficult, if not impossible, to expect directors to prioritize multiple constituents in their decision-making and to expect judges to assess decision-making processes *ex post*. Research in organization theory, however, provides both theoretical and empirical evidence that in reality, firm leaders can and do manage multiple competing objectives and prioritize the interests of multiple key groups simultaneously.[255] As discussed, the behavioral theory of the firm conceptualizes firms as coalitions of actors that pursue multiple, at times conflicting, goals.[256] Indeed, a robust body of research building on this theory illustrates the reality that "most organizations most of the time exist and thrive with considerable latent conflict of goals."[257] Far from impossible, the research shows that it is already the descriptive reality for firm leaders to manage multiple goals existing in potential tension with each other.

253. See Julie Battilana, Michael Fuerstein, & Michael Lee, *New Prospects for Organizational Democracy?: How the Joint Pursuit of Social and Financial Goals Challenges Traditional Organizational Designs, in* CAPITALISM BEYOND MUTUALITY?: PERSPECTIVES INTEGRATING PHILOSOPHY AND SOCIAL SCIENCE 256–288 (S. Rangan ed., 2018) (on the potential for democratic participation of workers to improve firms' ability to simultaneously pursue social and financial goals and improve decision-making, and on the importance of a deliberative culture). Political theorists have also written on the benefits of democratic deliberation for decision-making. *See* John S. Dryzek et al., *The Crisis of Democracy and the Science of Deliberation*, 363 SCIENCE 1144 (2019) (on the potential for democratic deliberation to help avoid polarization and yield sound decisions); HÉLÈNE LANDEMORE, DEMOCRATIC REASON: POLITICS, COLLECTIVE INTELLIGENCE, AND THE RULE OF THE MANY (2012) (on the potential of pluralistic democratic participation and deliberation to positively contribute to decision-making).

254. *See, e.g.*, *In re* Caremark Int'l Inc. Derivative Litig., 698 A.2d 959, 967, 971 (Del. Ch. 1996).

255. *Supra* Part III.A.

256. *Id*.

257. CYERT & MARCH, *supra* note 149, at 117 (explaining how "[t]he procedures for 'resolving' such conflict do not reduce all goals to a common dimension or even make them obviously internally consistent").

These firms need an updated corporate law framework of duties to better match and support their descriptive realities.

A body of research in organization theory known as hybrid organizing demonstrates how firms can successfully embrace multiple core objectives at once and is instructive in formulating this proposal.[258] This research investigates how these firms manage the challenges and potential conflicts associated with pursuing more than one central organizational aim, including social and environmental goals alongside financial ones.[259] It shows how it is indeed possible for boards and those who manage firm operations to sustain multiple organizational aims—suggesting the feasibility for directors to consider the interests of multiple constituents in exercising their fiduciary duties. This research also provides key insights into best practices.[260] For example, it emphasizes the importance of creating rituals and structured spaces that facilitate productive deliberation and debate about seemingly competing aims,[261] of establishing relational practices that help board members and managers engage effectively with each other to achieve the organization's multiple aims,[262] and of implementing organizational structures and practices that keep multiple stakeholder perspectives salient.[263] These findings can help inform the design of an effective and efficient fiduciary duty of deliberation. Firms could, for example, establish regular meetings to convene members or representatives of each investor group to deliberate about important decisions, help individuals learn about the perspectives and priorities of other investor groups through training and shadowing opportunities, and seek out officers and directors that have cross-sectoral training and experiences that enable them to collaborate across investor groups and participate in complex decision-making.

Reforming fiduciary duties in this way is likely even more feasible at the state level than reforming board representation. The Delaware Supreme Court has indicated a willingness to expand fiduciary duties, with perhaps only three more votes needed to achieve this outcome.[264] This concept also has prominent allies in the legal bar.[265] As with board

258. *See supra* note 246; Battilana & Lee, *supra* note 213, at 398.

259. Battilana & Lee, *supra* note 213, at 398. On the increasing pursuit of social and environmental goals in business, see generally HENDERSON, *supra* note 145; SARAH KAPLAN, THE 360° CORPORATION: FROM STAKEHOLDER TRADE-OFFS TO TRANSFORMATION (2019); CHRISTOPHER MARQUIS, BETTER BUSINESS: HOW THE B CORP MOVEMENT IS REMAKING CAPITALISM xi, 8, 44, 70, 192 (2020) (on the growing number of certified B Corps, which proactively seek to generate social and environmental alongside financial value).

260. Battilana et al., *Beyond Shareholder Value*, *supra* note 214, at 239; KAPLAN, *supra* note 259, at 4.

261. Battilana et al., *Harnessing Productive Tensions*, *supra* note 246, at 1660 (on spaces of negotiation that facilitate discussion and problem-solving related to the pursuit of multiple goals); Blake E. Ashforth & Peter H. Reingen, *Functions of Dysfunction: Managing the Dynamics of an Organizational Duality in a Natural Food Cooperative*, 59 ADMIN. SCI. Q. 474, 482 (2014) (discussing the importance of rituals and crucibles for conflict and cooperation).

262. Pache, Battilana & Spencer, *supra* note 246, at 459.

263. *See* Smith & Besharov, *supra* note 246, at 30–31 (on the importance of implementing organizational guardrails).

264. Several cases have suggested openness to more expansive fiduciary duties. Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946, 955 (Del. 1985) (permitting consideration of stakeholders beyond shareholders); Credit Lyonnais Bank Nederland, N.V. v. Pathe Commc'ns Corp., C.A. No. 12150, 1991 WL 277613 (Del. Ch. Dec. 30, 1991) (permitting boards to look beyond shareholders once a firm is in the zone of insolvency).

265. Prominent potential allies include Martin Lipton and Wachtell, Lipton, Rosen & Katz. Martin Lipton, Wachtell, Lipton, Rosen & Katz, *ESG, Stakeholder Governance, and the Duty of the Corporation*, HARVARD L. SCH. F. CORP. GOVERNANCE (Sept. 18, 2022), https://corpgov.law.harvard.edu/2022/09/18/esg-stakeholder-governance-and-the-duty-of-the-corporation [https://perma.cc/DNR2-HB9T].

representation, this sort of proposal could also be ripe for adoption in a jurisdiction like California, which has previously demonstrated an interest in being a trailblazer in corporate governance and which may now have an increased interest in adopting more investor friendly provisions and protections for minority shareholders to fill a gap for widely held firms left by Delaware. Grounding our proposal in organizational research underscores its tractability, reflecting the descriptive reality that most firms today already grapple with multiple competing objectives, especially as an increasing number embrace social and environmental responsibilities as core organizational aims.[266] Providing an effective and empirically informed duty could thus actually help improve firms' deliberation and decision-making processes.

C. Redesign Executive Compensation

Finally, we also propose redesigning executive compensation schemes. Research in both organization theory and economics gives insight into the importance of setting organizational goals and creating incentive structures aligned with the desired outcomes to facilitate success. We propose linking executive compensation in corporate law not just to firm financial performance, but also to firm performance *vis-à-vis* workers, the environment, and perhaps even minority shareholders.

Redesigning executive compensation in this way will require linking a meaningful proportion of compensation to each investor group. For employees, this proposal could require executives to achieve a certain standard of worker well-being. Various third-party certifiers have developed assessments of worker well-being, including organizations like B Lab, International Financial Reporting Standards, and the Global Reporting Initiative (GRI).[267] Their metrics include items such as frequency of job-related accidents, availability of paid family leave, retention of workers twelve months after using leave, percentage of workers receiving a living wage, and availability of benefits like retirement plans and life insurance, among many others.[268] These items could be measured as a composite, and perhaps could also include demonstrated compliance with employment and labor laws. This proposal should also consider capping pay ratio—the differential between the highest- and lowest-paid workers in a firm—to help more fairly distribute financial resources among firm constituents.[269]

A second meaningful proportion of compensation would depend on environmental performance. There has been significant research into quantifying environmental

266. More remains to develop *vis-à-vis* the precise details of these proposed duties, including the specifics of how to extend duties to a non-human entity. Enforcement powers could run to a public agency, an independent NGO or nonprofit, or another representative party to be determined. *See supra* Part IV.A.

267. *English*, GLOBAL REPORTING, https://www.globalreporting.org/how-to-use-the-gri-standards/gri-standards-english-language [https://perma.cc/2BSX-MNCE]; SASB Standards, *Welcome to the SASB Standards Navigator*, IFRS, https://navigator.sasb.ifrs.org/pdf-collections [https://perma.cc/7EGD-Y769]; B Lab, *B Impact Assessment*, B CORP., https://www.bcorporation.net/en-us/programs-and-tools/b-impact-assessment [https://perma.cc/6WQ2-TVJ3]. Many thanks to Leszek Krol in developing this concept.

268. *See* sources cited *id.*

269. *Company Pay Ratios*, AFL-CIO, https://aflcio.org/paywatch/company-pay-ratios [https://perma.cc/ZB55-T9CJ] (defining pay ratio). A pay ratio would help rebalance power dynamics not just for workers but also for the environment and minority shareholders by reducing excessive accumulation of wealth by one party to the firm.

performance, from which these proposals should draw.[270] This performance could be measured by a composite of compliance with environmental law, progress toward carbon neutrality (or negativity), improvement of performance over time, or ranking among industry peers. It could draw from research in environmental economics, national accounting, ecosystem services, and cost-benefit analysis, robust areas that have developed to quantify environmental damage, tradeoffs, costs, and benefits.[271]

The third meaningful proportion of performance-based executive compensation would depend on financial returns earned for shareholders, as is already common practice today. This prong could also include some metric of success for minority shareholders, such as performance on third-party metrics for good governance.[272] It could also include a measure for compliance with securities regulation. This prong should also consider compensating executives with greater amounts of equity, rather than stock options, to link pay to financial performance over time, rather than over the short term, and reduce incentives to game the system.

Redesigning executive compensation in ways that leverage organization theory will create metrics to guide, without distorting, executive behavior. Research in organization theory reinforces the importance and effectiveness of adjusting compensation to improve firm performance for all three primary investors.[273] It shows how redesigning compensation can help executives manage the tradeoffs they experience in running the firm, improve governance and long-term value creation, and enhance social and environmental performance.[274] This proposal will require executives to structure firm goals and allocate adequate firm resources to serve all three primary investors. In this way, our proposal addresses agency costs by aligning executive incentives with desired firm outcomes. It also addresses problematic power imbalances by formally empowering all three primary investors *vis-à-vis* executives, and it better accounts for limits to human rationality and cognition by creating clear, achievable, and minimally distortive metrics for executives to follow.[275]

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270. *Id.*; OFF. INFO. REGUL. AFFS. & OFF. MGMT. BUDGET, GUIDANCE FOR ASSESSING CHANGES IN ENVIRONMENTAL AND ECOSYSTEM SERVICES IN BENEFIT-COST ANALYSIS 5–7 (Feb. 28, 2024), https://bidenwhitehouse.archives.gov/wp-content/uploads/2024/02/ESGuidance.pdf [https://perma.cc/9UHN-5NA5] (on analyzing ecosystem services in cost-benefit analyses).

271. Nicholas Z. Muller, Robert Mendelsohn & William Nordhaus, *Environmental Accounting for Pollution in the United States Economy*, 101 AMER. ECON. REV. 1649, 1649–51 (2011); OFF. INFO. REGUL. AFFS. & OFF. MGMT. BUDGET, *supra* note 270, at 2.

272. *B Impact Assessment*, *supra* note 267.

273. Battilana et al., *Beyond Shareholder Value*, *supra* note 214, at 248–49 (on how compensation and incentives of organizational members can improve governance and mitigate trade-offs); Caroline Flammer, Bryan Hong & Dylan Minor, *Corporate Governance and the Rise of Integrating Corporate Social Responsibility Criteria in Executive Compensation: Effectiveness and Implications for Firm Outcomes*, 40 STRATEGIC MGMT. J. 1097, 1098–99 (2019) (explaining how "'CSR contracting' or 'pay for social and environmental performance'" enhances "the governance of a company by incentivizing managers to adopt a longer time horizon and shift their attention toward stakeholders that are less salient, but contribute to long-term value creation"); Seymour Burchman & Blair Jones, *5 Steps for Tying Executive Compensation to Sustainability*, HARV. BUS. REV. (July 19, 2019), https://hbr.org/2019/07/5-steps-for-tying-executive-compensation-to-sustainability [https://perma.cc/EWG4-SBNG] (explaining that incentives for executives tied to sustainability or ESG can help advance these goals).

274. *See* sources cited *id.*

275. Simon, *Administrative Behavior*, *supra* note 115, at 92–117; Simon, *Rational Choice*, *supra* note 115, at 129.

In addition, accounting for workers and the environment in executive compensation has precedent. For example, Mastercard announced in 2021 that it would begin tying executive compensation to three of the firm's ESG priorities (carbon neutrality, financial inclusion, and gender pay parity).[276] Danone has linked CEO compensation to achieving climate goals and employee engagement.[277] Some jurisdictions around the world have instituted pay ratio caps, from France to Portland, Oregon.[278] These examples provide important insights to inform development of these proposals and pitfalls to avoid. In designing these schemes, it is critical to draw from past experience and leverage insights from both organization theory and economics to create effective policy and avoid the distortive effects of previous attempts to link executive compensation to executive performance.[279] These examples and prior research underscore the feasibility and value of better aligning executive compensation with shareholder, employee, and environmental well-being.

These reforms could take place at either the federal or state level. Legislating executive compensation at the federal level has precedent, for example in the Dodd-Frank Act's Say on Pay provision.[280] Even so, executive compensation has historically been the purview of states, and states may also present a more attractive option in light of current trends in corporate law reforms. For example, a more investor-protective jurisdiction such as California may be most receptive to this type of reform, particularly if it incorporates

276. Michael Miebach, *Why We're Tying Executive Compensation to Our Sustainability Priorities*, MASTERCARD (Mar. 24, 2021), https://www.mastercard.com/news/press/2021/march/why-we-re-tying-executive-compensation-to-our-sustainability-priorities (on file with the *Journal of Corporation Law*).

277. Press Release, Danone, 2020 Compensation for the Chairman and Chief Executive Officer (Feb. 28, 2020), https://web.archive.org/web/20220818103624/https://www.danone.com/content/dam/danone-corp/danone-com/investors/en-remuneration/2020/remuneration/Publication_VA_28022020_Vf.pdf. Danone has also instituted a carbon-adjusted share price to better account for the financial cost of its carbon emissions. This approach illustrates other ways a company could consider the environment in its accounting and pay schemes. Vivienne Walt, *A Top CEO Was Ousted After Making His Company More Environmentally Conscious. Now He's Speaking Out*, TIME (Nov. 21, 2021), https://time.com/6121684/emmanuel-faber-danone-interview [https://perma.cc/SS8J-E5PS].

278. Notably, most rely on tax policy rather than corporate law to institute the cap. Scholars have shown the importance of changing corporate law in addition to tax policy. *See, e.g.*, News Wires, *France To Cap Executive Pay at 450,000 Euros for State Firms*, FRANCE24 (June 13, 2012), https://www.france24.com/en/20120613-france-moscovici-hollande-ceo-executive-pay-cap-euros-state-firms (on file with the *Journal of Corporation Law*) (reporting France's pay ratio cap for state firms); Gretchen Morgenson, *Portland Adopts Surcharge on C.E.O. Pay in Move vs. Income Inequality*, N.Y. TIMES (Dec. 7, 2016), https://www.nytimes.com/2016/12/07/business/economy/portland-oregon-tax-executive-pay.html (on file with the *Journal of Corporation Law*) (reporting that Portland, Oregon was the first jurisdiction in the United States to tax CEO pay that exceeds 100x the typical employee); Baker, Bivens & Schieder, *supra* note 24 (explaining that "[t]ax policy that penalizes corporations for excess CEO-to-worker pay ratios can boost incentives for shareholders to restrain excess pay," but, "to boost the power of shareholders [to restrain pay], fundamental changes to corporate governance have to be made" including worker representation on boards).

279. *Supra* Part II.

280. *Id.* Congress has also enacted board representation measures in Sarbanes-Oxley, indicating some willingness in recent decades to act in areas traditionally reserved for state corporate law. 17 C.F.R. § 240.14a-21(b) (2022); Christine Jolls & Cass R. Sunstein, *Debiasing Through Law*, 35 J. LEGAL STUD. 199, 218–19 (2006). The SEC has also contemplated requiring ESG and climate disclosures, while Elizabeth Warren has advocated for the Accountable Capitalism Act. Jäger, Noy & Schoefer, *supra* note 218. It is important to note that many of these reforms (Dodd-Frank and Sarbanes-Oxley) occurred only after severe financial crises and that the others remain hotly contested, complicating feasibility at the federal level. *See* Bebchuk & Tallarita, *Illusory Promise*, *supra* note 15, at 94.

compensation incentives for minority shareholders, in this moment when Delaware is moving toward more insider protections and the gap in investor protective states widens. Jurisdictions that wish to attract widely held companies or the growing number of companies with social and environmental goals may consider how to formulate corporate law reforms to make them more attractive and provide greater predictability.

D. Addressing Potential Criticisms

We also address potential concerns these proposals may raise, including the threat of managerialism, proper scope of corporate law, tractability, and political feasibility. First, some may worry that these proposals will increase managerialism by giving firm leaders more discretion in performing their duties, further reducing accountability to shareholders.[281] We share the desire for greater managerial accountability, including to shareholders. Indeed, our proposals seek to make boards *more* accountable by increasing board responsibility, strengthening the content of director duties, and clarifying executive compensation. Creating more pathways of accountability does not lessen accountability as long as it includes meaningful enforcement mechanisms. Addressing the limits of the current system requires reimagining the possibilities of what corporate law can achieve and experimenting to improve accountability, rather than retaining an undesirable status quo. In addition, many shareholders suffer from power imbalances currently entrenched in corporate law, such that these reforms are important for serving shareholder interests as well.

Second, some may raise concerns about the proper scope of corporate law. Corporate law scholars generally maintain that corporate law should only deal with the shareholder-director relationship, while other areas of law rightly govern other firm constituents.[282] Yet we have shown how in practice, delegating these constituents to other areas of law functionally relegates these constituents to the periphery, creating serious power imbalances that corporate law entrenches.[283] We do not suggest that corporate law should displace labor, employment, or environmental law, which are critically important and merit robust development in their own rights. Instead, we argue that corporate law should seek to work in tandem with these other areas of law rather than coming into conflict with them. Rather than relying on other legal schemes to rein in corporate law, our approach helps these legal schemes to work harmoniously.

A third potential objection may raise concerns about the tractability of these proposals. It may question whether firm leaders can reasonably attend to multiple constituents at once and whether these proposals will deadlock boards or generate undesirable liability that deters directors and senior officers from serving in companies. Of course, there will be a learning period associated with significantly reforming corporate law. Training for board members and executives—in the board room and in business schools—will need to adapt.

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281. Bebchuk & Tallarita, *Illusory Promise supra* note 15, at 97 ("[S]ome of the corporate support for stakeholderism might be partly motivated by the prospects that acceptance of stakeholderism would advance a managerialist agenda and/or deflect the demand for stakeholder-protecting external interventions."); Bainbridge, *supra* note 19, at 580–82 ("[D]irectors who are responsible to everyone are accountable to no one.").

282. Bebchuk & Tallarita, *Illusory Promise*, *supra* note 15, at 94; Friedman, *supra* note 17; Mariana Pargendler, *The Rise of International Corporate Law*, 98 WASH. U. L. REV. 1765, 1769 (2021) ("In the orthodox law and economics view, these externalities should be addressed through regulations from legal fields other than corporate law, such as financial regulation, environmental law, labor law, and tort law, among others.").

283. *See supra* Part III; Schwarcz, *supra* note 101, at 16.

The transition will also require experimentation with how best to implement these measures in local contexts. But empirical research in organization theory illustrates that while managing multiple constituencies and sustaining multiple objectives can be challenging,[284] it is also feasible with a supportive institutional context and adequate firm governance structures.[285] If, as we argue, firms face challenges departing from the dominant paradigm in part because of an unsupportive corporate law context, then adapting corporate law is a critical prerequisite to driving meaningful change in the long run and can actually assist directors and executives in doing their jobs more effectively.[286] In this way, devising corporate law rules to reflect the complex realities of firms may actually make corporate law rules more tractable and effective rather than less, especially over the long term.

Finally, some may also question the political feasibility of enacting these changes to corporate law. It may be difficult to secure bipartisan support at the federal level at present. It also seems unlikely to occur in Delaware in light of its recent movement toward insider-protectiveness.[287] Even so, Delaware courts have expressed openness to a more expansive view of human and organizational behavior. For example, then Vice-Chancellor Strine expressed in *In re Oracle Derivative Litigation* that Delaware corporate law "should not be based on a reductionist view of human nature that simplifies human motivations on the lines of the least sophisticated notions of the law and economics movement"[288] and should not "ignore the social nature of humans" nor the corporation's nature as a social institution.[289] The Chancery Court in *Marchand v. Barnhill* cited the *Oracle* court when considering director independence in light of the "social nature of humans" and being "motivated by things other than money, such as 'love, friendship, and collegiality.'"[290] Perhaps integrating an organizational perspective may resonate with this court moving forward.

As discussed above, other jurisdictions like California may also take interest in these reform efforts, particularly as many states seek novel ways to protect their citizens and the environment in light of political gridlock and the decline of federal administrative law.[291]

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284. Ebrahim, Battilana & Mair, *supra* note 246, at 82 (explaining that organizations pursuing core social objectives "are at risk of losing sight of their social missions in their efforts to generate revenue, a risk referred to as mission drift").

285. For example, it is critical to structure organizational goals, activities, and hiring and socialization to support the pursuit of multiple objectives. *See supra* Part IV.A–B.

286. *See supra* Part III.

287. Jane Trueper, *Significant Amendments Proposed to DGCL to Stem Business Defections to Other States*, JD SUPRA (Feb. 21, 2025), https://www.jdsupra.com/legalnews/significant-amendments-proposed-to-the-9220644/ [https://perma.cc/B7UY-WAB6].

288. *In re* Oracle Corp. Derivative Litigation, 824 A.2d 917, 938 (Del. Ch. 2003) ("[A]n array of other motivations exist that influence human behavior; not all are any better than greed or avarice . . . [but] think of those among us who direct their behavior as best they can on a guiding creed or set of moral values.").

289. *Id.* at 938 ("Institutions have norms, expectations that, explicitly and implicitly, influence and channel the behavior of those who participate in their operation. Some things are 'just not done,' or only at a cost, which might not be so severe as a loss of position, but may involve a loss of standing.").

290. Marchand v. Barnhill, 212 A.3d 805, 818 (Del. 2019) (citing *In re Oracle*); *see also* Zapata Corp. v. Maldonado, 430 A.2d 779, 787 (1981) (confirming skepticism of director independence and structural bias factors with regard to special litigation committees, and explaining the court's concern over directors being motivated by a "'there but for the grace of God go I' empathy"); James D. Cox & Harry L. Munsinger, *Bias in the Boardroom: Psychological Foundations and Legal Implications of Corporate Cohesion*, 48 L. & CONTEMP. PROBS. 83 (1985).

291. *See* Emilie Aguirre & Gabriela Nagle Alverio, Environmental Corporate Law (2025) (unpublished manuscript) (draft on file with author).

Of course, there is a big difference between enacting investor friendly provisions to attract widely held companies, and integrating workers and the environment into corporate law, which is admittedly a more significant conceptual change. Yet being at the forefront of reform could aid such states in developing jurisdictional expertise in multi-constituent corporate law and, in the longer term, help these states attract the growing number of firms interested in serving multiple constituents, which seek more supportive corporate governance frameworks for their endeavors.

Our proposed framework can help begin to reimagine corporate law to account for workers, the environment, and shareholders (including minority shareholders) as the primary investors in the firm. By changing the way firm leaders remain accountable, make decisions, and set goals, corporate law can help address the problematic power imbalances it currently perpetuates. These proposals admittedly entail a significant paradigm shift—one we argue corporate law urgently needs to better reflect the descriptive realities of the firm and more effectively serve its own constituents and broader society.

CONCLUSION

In this Article, we show how modern corporate law depicts an incomplete picture of the firm in several important ways, which entrench power imbalances and contribute to negative societal consequences, including income inequality, climate change and environmental degradation, market instability, and threats to democracy. We show how, far from being pre-determined, modern corporate law has evolved over time from its public, regulatory origins in the nineteenth century to its current private, shareholder primacist orientation. This evolution reflects the growing influence of economic, and especially neoclassical, theories of the firm over the course of the twentieth century.

We argue that addressing these power imbalances in corporate law and their far-reaching consequences requires an expanded theoretical perspective that better accounts for the descriptive realities of how firms function. Drawing from organization theory, a field long devoted to understanding the complexities of the firm as a specific type of organization, we advance a new theoretical approach for corporate law. We make three main arguments. First, we show how the firm consists of multiple investors, including workers, the environment, and shareholders, who provide critical labor, natural, and financial capital. Second, we show how modern corporate law entrenches problematic power imbalances that privilege boards and shareholders over workers and the environment, and privilege boards and insider shareholders in relation to minority shareholders. Third, we show how corporate law fundamentally shapes and constrains firm behavior, such that these entrenched power imbalances generate far-reaching negative societal consequences that threaten both corporate law and broader society.

We argue that to address these shortcomings requires reorienting corporate law to elevate workers and the environment as investors alongside shareholders, and to meaningfully empower all three investors *vis-à-vis* boards and insider shareholders. Reforming the law in this way can help reshape corporate behavior by addressing the power imbalances currently entrenched in corporate law and their broader negative consequences.

Importantly, we advocate for organization theory to complement, and not displace, economic theory. We show how together, the organizational and economic perspectives can provide a more effective approach for corporate law to the benefit of shareholders

(including minority shareholders), workers, and the environment. Drawing from both the organizational and economic perspectives, the Article offers a preliminary framework for redesigning corporate law to this end, proposing to redesign board representation, fiduciary duties, and executive compensation.

In making these arguments, this Article contributes to scholarly conversations in corporate law in the following three ways. First, the Article proposes a new organizational theory of corporate law, generating a novel theoretical perspective that includes all of the firm's primary investors, better accounts for firm power dynamics, and provides a theoretical basis for understanding the link between corporate law and multidimensional societal crises. Second, this Article leverages the organizational perspective to devise novel proposals for corporate law reform, grounding these proposals in theoretical and empirical understanding that looks beyond economics. Third, this approach reorients a centuries-old normative debate about the function of corporate law. Namely, by combining the organizational and economic perspectives, we propose to re-root the doctrine in a more complete descriptive reality of the firm. Reorienting the corporate law paradigm takes an important step toward addressing crises and meaningfully reconsidering what corporate law can accomplish for firms and for society.