Promise and Limits of Total Governance: A Response to Professors Gramitto Ricci and Greenwood

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INTRODUCTION

Imagine an American adult, Joanna. Joanna owns stocks in a large retail company, shops at that same retail company, works for the same company, and lives in the community where the company has one of its major production plants. Because of Joanna's proximity to the company as a shareholder, customer, employee, and community stakeholder, Joanna has the power to influence and maybe even help determine the company's direction. Joanna can vote as a shareholder to oust directors, threaten to leave her job, boycott the firm's products, and join community initiatives to influence the corporation's actions. Even if Joanna does not have multiple roles in the company, she can, as a human shareholder, employee, customer, or a resident near the company's operations, use social media to coordinate with other stakeholders across categories, including other customers, employees, and community groups, to pressure the corporation to act towards certain ethical or moral goals.

Joanna is a hypothetical human shareholder that Sergio Alberto Gramitto Ricci and Daniel Greenwood describe in their article, *Total Governance*.[1] The goal of the article is to theorize about how to increase the power and influence of ordinary individual shareholders who do not have a lot of wealth.[2] The total governance framework has some promise for increasing the influence of ordinary people in corporate governance. It also raises questions about treating corporate actors as monoliths: managers, boards of directors, shareholders, and stakeholders.

This brief response, however, takes the position of a skeptic who recognizes the theoretical potential of the total governance framework while highlighting the shortcomings of the concept for corporate governance.

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1. Sergio Alberto Gramitto Ricci & Daniel Greenwood, *Total Governance*, J. CORP. L. 353, 355 (2025). The terms human, individual, and retail investors are used interchangeably throughout this response.

2. *Id.* at 394–95.

I. THE PROMISE OF TOTAL GOVERNANCE

Corporate law generally treats shareholders and stakeholders—customers, employees, and community groups—as separate groups of actors. Shareholders—often institutions—wield the most power. Stakeholders generally have little to no power—they cannot vote and generally have limited say in corporate decision-making. The law generally instructs managers and boards of directors to largely consider the interests of shareholders in their decision-making.[3] Even when an issue concerns the interests of stakeholders, and a court seems sympathetic to those interests, the prevailing corporate law view is that the interests of shareholders are paramount. In 2023, the Delaware Chancery Court declared in *Simeone v. The Walt Disney Co.*, that boards of directors have "significant discretion" to make decisions concerning social and political issues.[4] However, even in those circumstances, the court reiterated that corporate managers' consideration of stakeholders, such as the workforce that drives a company's profits, should be "rationally related" to building value for shareholders.[5]

Consider *McRitchie v. Zuckerberg*, a 2024 Delaware Chancery Court case where the plaintiff contended that Meta allows its platforms to be used as vectors that cause societal harm, which Meta should address for the benefit of stakeholders.[6] The court concluded that corporate managers have "expansive discretion to take risks and pursue profit, while at the same time protecting the legitimate rights and expectations of investors."[7]

The total governance paradigm seeks to disrupt this standard paradigm. It invites a different way of thinking about corporate governance than the law currently affords. If we examine *McRitchie* from a total governance standpoint, Joanna will work for Meta, use one of Meta's online platforms,[8] invest in Meta, and therefore be able to use her total power as a shareholder and stakeholder to have a say in Meta's decision-making. Joanna could exercise influence by perhaps selling her Meta shares, threatening to quit her job, and shutting down her Meta platforms.

Alternatively, and even if Joanna does not have multiple Meta roles, she could use her Meta platforms to coordinate with other stakeholders, including other Meta users and employees, to draw attention to these issues, which could potentially force Meta to change how its platforms function so that they are less harmful to the public. Total governance is therefore a theory of stakeholder interdependence.[9] Total governance describes how stakeholders can maximize their collective action.

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3. Dalia Tsuk, *Corporations Without Labor: The Politics of Progressive Corporate Law*, 151 U. PA. L. REV. 1861, 1867 (2003); Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247, 290–92 (1999). Many legal scholars also share this view, arguing that corporate action should always focus on shareholder wealth. *See, e.g.*, STEPHEN M. BAINBRIDGE, THE PROFIT MOTIVE: DEFENDING SHAREHOLDER VALUE MAXIMIZATION 101–04 (2023).

4. Simeone v. The Walt Disney Co., 302 A.3d 956, 958 (Del. Ch. 2023).

5. *Id.* at 971.

6. McRitchie v. Zuckerberg, 315 A.3d 518, 531–32 (Del. Ch. 2024). This concept dates back to cases that command a shareholder-wealth-maximization norm. *E.g.*, Dodge v. Ford Motor Co., 170 N.W. 668, 685 (Mich. 1919) (holding that Ford had to operate the Ford Motor Company in the interests of its shareholders).

7. *Zuckerberg*, 315 A.3d at 573.

8. Includes Facebook, Instagram, and others.

9. Carliss N. Chatman & Sergio Alberto Gramitto Ricci, Values Primacy and Total Governance Through Activism, B.C.L. REV. (forthcoming 2026), https://ssrn.com/abstract=5409822.

Therefore, as a theoretical concept, total governance appears to establish avenues for human beings to have a say in how corporations are run—an important goal in corporate decision-making. However, the total governance concept raises many concerns about its practicality.

II. LIMITS OF TOTAL GOVERNANCE

This section raises three primary concerns that would make the total governance framework difficult to implement. The first is that a large portion of shares in public companies, particularly large ones, are held by institutional investors like mutual funds, pension funds, and hedge funds, rather than individuals. Because the total governance concept applies to only individuals, the concept's reach is therefore limited. Second, an individual with an all-encompassing relationship with a corporation is a rarity in the United States. Third, the total governance concept assumes that the ability to coordinate among stakeholders means that stakeholders are engaged in corporate governance. To be sure, stakeholders raising concerns about issues within a company is part of corporate governance's system of practices and processes by which a corporation is directed and controlled. However, the authors do not describe how stakeholder coordination would result in stakeholders collectively raising concerns about issues in a manner that corporate managers and boards of directors would recognize, and which may result in change in corporations.

A. Individual Shareholders are Limited

In publicly traded companies, shareholders can vote at annual meetings to elect boards of directors, appoint outside auditors, create equity-based compensation plans, amend the corporate charter or bylaws, approve major mergers and acquisitions, and make decisions on proposals submitted by other shareholders.[10]

However, those shareholders are often not human shareholders. Institutional shareholders, particularly large asset managers, now dominate the investment landscape in public companies, constituting about 78% of all shareholders in Russell 3000 companies, and an even larger share of those in the S&P 1500 index.[11] The growth in institutional shareholders has raised the profile of shareholders because they control large assets and can wield control over a corporation.

10. David Yermack, *Shareholder Voting and Corporate Governance*, 2 ANN. REV. FIN. ECON. 103, 105 (2010).

11. Ari I. Weinberg, *Institutions Not Afraid to Move Beyond Biggest*, *Pensions & Investments*, 45 PENSIONS & INVS. 0019 (Apr. 3, 2017) (on file with the *Journal of Corporation Law*); Jeremy Salvucci, *Institutional Investors: Who They Are & What They Do*, THE STREET (Apr. 8, 2024), https://www.thestreet.com/dictionary/institutional-investors [https://perma.cc/T3Z3-7WHD]; Michael J. Mauboussin & Dan Callahan, *Stock Market Concentration How Much Is Too Much?*, MORGAN STANLEY INV. MGMT. (June 4, 2024), https://www.morganstanley.com/im/publication/insights/articles/article_stockmarketconcentration.pdf [https://perma.cc/YHK8-FTNQ]; Jennifer G. Hill, *Images of the Shareholder—Shareholder Power and Shareholder Powerlessness*, *in* RESEARCH HANDBOOK ON SHAREHOLDER POWER 53, 56 (2015).

Institutional investors differ from individual investors in their incentives and behavior.[12] Institutional shareholders can form alliances and make demands on corporations behind the scenes and through their votes.[13] In one survey, 59% of institutional shareholders indicated that they regularly contact a corporation's management prior to shareholder meetings to discuss how they intend to vote, which prompts behind-the-scenes negotiations with management to change terms in proposals with which shareholders disagree.[14] Through these meetings, institutional shareholders try to sway managers to come up with terms that work in favor of those shareholders by informing them of their policies, their perception of management and how they perceive management to be responding to corporate challenges.[15] Management tends to make changes and these institutional shareholders then vote in favor of those favorable modifications.[16]

Individual shareholders, who made up about 23% of investors in 2023, can potentially boycott investments in companies they are morally, ethically, or otherwise opposed.[17] However, individual or retail investors often do not have the power to engage in behind-the-scenes negotiations with the corporations they invest in, unless they own significant stakes in those corporations.

The average adult in the United States is financially illiterate, and that reality has remained steady for many years.[18] A majority—62%—of adults in the United States still own stocks in companies, but they do so through institutions like pension funds and retirement programs. This means that the 23%, which represents individual shareholders, are unlikely to increase significantly in the next few years.[19] This limitation means that the total governance concept would apply to only a small fraction of shareholders who are financially literate and interested in corporate activism.[20]

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12. *See generally* Hill, *supra* note 11 (discussing institutional investors and their role in corporate governance).

13. *Id.*

14. Efrat Dressler & Yevgeny Mugerman, *Doing the Right Thing? The Voting Power Effect and Institutional Shareholder Voting*, 183 J. BUS. ETHICS 1089, 1109 (2023).

15. *Id.*; JOHN COATES, THE PROBLEM OF TWELVE: WHEN A FEW FINANCIAL INSTITUTIONS CONTROL EVERYTHING 47 (2023).

16. Dressler & Mugerman, *supra* note 14, at 1109.

17. Atish Davda, *The Power of The Retail Investor*, FORBES (Mar. 18, 2024), https://www.forbes.com/councils/forbesfinancecouncil/2024/03/18/the-power-of-the-retail-investor/ [https://perma.cc/MK3Y-DFPB]. The GameStop frenzy in 2021 was an example of how retail investors used social media to control the director of the sale of GameStop stocks. Jill E. Fisch, *GameStop and the Reemergence of the Retail Investor*, 102 B.U.L. REV. 1799, 1806–09 (2022). But it is unclear whether retail investors can use social media to push the narrative around moral or other ethical issues to result in financial consequences for firms.

18. Michelle Meineke, *Can You Answer These 3 Questions About Your Finances? The Majority of US Adults Cannot*, WORLD ECON. F. (Apr. 24, 2024), https://www.weforum.org/stories/2024/04/financial-literacy-money-education/ [https://perma.cc/G5TA-PXL5].

19. The authors note that even among individuals who invest, corporate governance education is also vital. Gramitto Ricci & Greenwood, *supra* note 1, at 394. Research suggests that retail investors are eager to learn more about the market. WORLD ECON. F., THE FUTURE OF CAPITAL MARKETS: DEMOCRATIZATION OF RETAIL INVESTING 18 (2022), https://www3.weforum.org/docs/WEF_Future_of_Capital_Markets_2022.pdf [https://perma.cc/W7QZ-WYKC].

20. Shareholder and stakeholder activists are interested in pushing social agendas in the corporate context. *See* Atinuke O. Adediran, *Disclosing Corporate Diversity*, 109 VA. L. REV. 307, 360–64 (2023) (describing shareholder and employee activism).

B. Joanna is Likely a Rarity

Another limitation of the total governance concept is that the hypothetical Joanna is likely a rare phenomenon. In the American context, an individual with an all-encompassing relationship with a corporation is difficult to imagine. Even if an individual had the knowledge and education to invest directly in a corporation, and the same individual uses goods and services produced by the corporation, and works for the corporation, it is unlikely that the individual also lives near any of the corporation's sites of production.

Extensive research since the 1970s has shown that industrial pollution and hazardous waste that are likely to result in our hypothetical Joanna joining initiatives to address environmental pollution are likely to be found in communities of color or poor communities.[21] Indeed, half the people who live within a mile of federal Superfund sites—some of the nation's most contaminated lands—are racial and ethnic groups, even though racial minorities make up only 40% of the overall U.S. population.[22]

This is due largely to issues like zoning, redlining, other forms of racial discrimination, and economic inequality.[23] We also know from research that the U.S. stock market benefits white families more than families from other racial and ethnic groups. White families are more likely to invest in companies through vehicles like pension funds or individually.[24] In 2022, nearly two-thirds of white families—66%—owned stocks directly or indirectly, compared with only 39% of Black families and 28% of Latino families.[25] And even when families of other racial and ethnic backgrounds own stocks, they own much less than white families, which is likely to have considerable influence on the amount of power they can wield on a corporation.[26]

This, in addition to the limited number of individual shareholders, suggests that it is highly unlikely that Joanna is a real individual, or that there are many Joannas who can wield their investment and stakeholder powers at the same time.

C. Coordination is Not Governance

There seem to be two mechanisms by which the total governance concept takes shape. The first is to have a human investor with multiple roles, like the Joanna example. The other mechanism is through collective action by different kinds of human stakeholders who work together to pressure corporations to act, regardless of whether they also occupy other roles within a company.

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21. Christopher Dunagan, *Why is So Much Pollution Found in Disadvantaged Communities?*, ENCYCLOPEDIA OF PUGET SOUND (Apr. 12, 2021), https://www.eopugetsound.org/magazine/IS/pollution-disadvantaged-communities [https://perma.cc/J9JG-ABQ4].

22. *Id.* Research suggests that as an area becomes more populated by racial and ethnic minorities, corporations tend to move their operations there. *Id.* ("Not only did [the researchers] find more facilities being placed in disadvantaged communities, they found that the facility owners were choosing to locate in communities that were already transitioning to a population with fewer white residents and more low-income families and people of color.").

23. *Id.*

24. Drew Desilver, *A Booming U.S. Stock Market Doesn't Benefit All Racial and Ethnic Groups Equally*, PEW RSCH. CTR. (Mar. 6, 2024), https://www.pewresearch.org/short-reads/2024/03/06/a-booming-us-stock-market-doesnt-benefit-all-racial-and-ethnic-groups-equally/ [https://perma.cc/37AG-N2AH].

25. *Id.*

26. *See id.* (discussing the stock ownership rates in white families compared to non-white families).

This second mechanism of the total governance concept is similar to the "multi-institutional" approach of corporate regulation described in my book, *Disclosureland*, where I argue that multiple actors and institutions can regulate corporate action simultaneously.[27] However, Gramitto Ricci and Greenwood do not distinguish between the ability of human shareholders and stakeholders to work together and coordinate by relying on technology and social media, and the ability of human shareholders and stakeholders to participate in corporate governance.

Assuming that a sizable number of the 23% of human shareholders harness technology to connect with other stakeholders, and this coordination is fruitful, the total governance framework seems to assume that their coordination alone means that they are engaged in corporate governance. The question is whether this kind of "soft power" is sufficient.[28]

Corporate governance defines the relationships among a company's management, board of directors, shareholders, and stakeholders. Governance is generally not just about who makes decisions, but also about how those decisions are made, how power is exercised, and how resources are allocated.[29]

Ultimately, managers and boards of directors determine whose interests are prioritized in corporate decision-making. To get prioritized, stakeholders would need to take specific steps so that managers and boards of directors can consider their interests. While coordinating with other groups is a helpful step, it does not guarantee that stakeholder interests will be prioritized unless shareholders and stakeholders engage in specific action that would grant them influence. As the authors state, "[t]he degree to which they succeed in this endeavor depends on whether they can exert consequential influence on corporations."[30] The total governance framework stops short of expanding on how a coordinated group of human shareholders and stakeholders can exert consequential influence on corporations.

The authors focus on the "who" in governance while leaving questions about how power is exercised and how resources are allocated unanswered. Collaboration between shareholders and stakeholders does not necessarily amount to the ability to wield power and obtain corporate resources. As Dorothy Lund and Elizabeth Pollman have argued, institutional shareholder interests guide corporate governance and command orientation of stakeholder-focused paradigms towards the interests of shareholders.[31]

The authors could have used the total governance framework to propose how online coordination might result in sustained influence among human shareholders and stakeholders, so that corporate managers and board members can prioritize stakeholder interests in decision-making.[32] For example, how might coordinating through social media

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27. ATINUKE O. ADEDIRAN, DISCLOSURELAND: HOW CORPORATE WORDS CONSTRAIN RACIAL PROGRESS (Cambridge Univ. Press ed., forthcoming 2026). Regulation can be separate or simultaneous.

28. Gramitto Ricci & Greenwood, *supra* note 1, at 378.

29. *See* Dorothy S. Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUM. L. REV. 2563, 2633–34 (2021).

30. Gramitto Ricci & Greenwood, *supra* note 1, at 377.

31. Lund & Pollman, *supra* note 29, at 2567.

32. The authors could have also made clearer whether the Joanna type of total governance, where one individual assumes multiple roles, or the dispersed stakeholder coordination framework, where many different stakeholders coordinate, might yield the most influence, or whether one is preferable to the other.

help as shareholders sell their shares, employees threaten to quit their jobs, or boycott certain brands?

The authors could have also raised issues around the precarity of total governance for stakeholders. Quitting one's job and engaging in grassroots activism to address local environmental hazards caused by corporate operations can be challenging for certain individuals, particularly under less competitive conditions. The authors do note that total governance would function best under competitive conditions—employees can easily find other jobs, customers have alternatives, community members can move to less polluted neighborhoods, etc. However, stakeholders often function under less competitive conditions, which raises many questions. What other challenges might shareholders and stakeholders experience within the total governance framework? Does the total governance framework establish guardrails of protection for stakeholders who choose to engage in governance in less competitive markets? Addressing these and other questions would clarify the parameters of the total governance concept.

CONCLUSION

The total governance framework, which Gramitto Ricci and Greenwood developed from the total football concept, provides a framework for thinking about corporate governance actors as fluid actors with possible expanded influence on corporate decision-making. Total governance describes how a human being could be a shareholder in a corporation, and at the same time, also be an employee, customer, or other stakeholder of the same corporation. It also includes a multi-stakeholder approach that relies on the internet and social media to coordinate among a range of stakeholders, affording them more power than when they function individually.

This brief response acknowledges the promise of the total governance framework but raises practical questions about how to implement it. The response focuses on three limitations: a large portion of shares in public companies are held by institutional investors like mutual funds, pension funds, and hedge funds, rather than individuals, which limits the concept's reach; an individual with an all-encompassing relationship with a corporation as a shareholder, employee, customer, and community member all at once, is likely a rarity in the United States; and the total governance concept seems to assume that the ability for stakeholders to use technology and social media to coordinate among themselves means that stakeholders are engaged in corporate governance.