Economic Policies for Innovative Enterprises:

Implementing Multi-Stakeholder Corporate Governance

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Abstract:

Large corporations dominate economic and social life in the United States and around the globe. The mainstream corporate governance ideology of "shareholder primacy" claims that the exclusive purpose of a corporation is to generate returns for shareholders, which means that governance decisions should be exclusively in their hands. However, shareholder primacy lacks a theory of how companies innovate, and instead focuses solely on allocation of corporate profits, misunderstanding the relationship of shareholders to the 21st century corporation. The theory of the corporation as an innovative enterprise—engaged in productive innovation by producing higher-quality goods and services for lower unit costs—is an accurate way to understand what makes corporations successful producers. Stakeholder theory from progressive legal scholarship illustrates specific corporate governance institutions that can assist innovation, including fiduciary duty, stakeholder participation in decision-making, and equity ownership. This article contributes to the growing literature refuting shareholder primacy by utilizing the theories of the innovative enterprise and multi-stakeholder governance to propose reshaping US corporate governance to better to serve innovation in production and a balance of power in distributional decision-making.

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Section 1. Introduction

Large corporations dominate economic and social life in the United States and around the globe. The mainstream corporate governance ideology of "shareholder primacy" claims that the exclusive purpose of a corporation is to generate returns for shareholders, which means that governance decisions should be exclusively in the hands of shareholders (Friedman 1970; Jensen and Meckling 1976; Lazonick and Shin 2020). This means that corporate leadership prioritizes shareholder wealth maximization over all other interests, including the long-term productivity and innovative potential of the company and the interests of other key corporate stakeholders. However, shareholder primacy lacks a theory of how companies innovate, and instead focuses solely on allocation of corporate profits, misunderstanding the relationship of shareholders to the 21st century corporation (M O'Sullivan 2000; Lazonick and Shin 2020). The theory of the corporation as an innovative enterprise—engaged in productive innovation by producing higher-quality goods and services for lower unit costs—is a superior way to understand what makes corporations successful producers (Lazonick and Shin 2020; M O'Sullivan 2000). Stakeholder theory as developed by progressive legal scholars reformulates how allocation of successful production should be governed by offering clarity on how different corporate governance institutions can be shaped, including fiduciary duty, stakeholder participation in decision-making, and equity ownership. This article contributes to the growing literature refuting shareholder primacy by utilizing the theories of the innovative enterprise and multi-stakeholder governance to propose reshaping US corporate governance to better to serve innovation in production and a balance of power in distributional decision-making.

Modern US corporate governance laws and practices are shaped to maximize shareholder wealth, especially in Delaware corporate law, the site of incorporation for the majority of large corporations (Alexander 2016; Greenfield 2006). Corporate governance is defined in this article as "the institutions that influence how business corporations allocate resources and returns. Specifically, a system of corporate governance shapes who makes investment decisions in corporations, what types of investments they make, and how returns from investments are distributed," (M O'Sullivan 2000: 3). Corporate governance should support *innovation* in the production process and a balanced approach to *allocation* of the value created. Instead, today's boardroom allegiance to shareholder primacy allows for short-term extractive practices by shareholders and aligned management. In the 21st century, corporate governance must also contend with the negative externalities created by business activity, because the era of climate change demands consideration of business decision-making on the natural world and broader society.

This article builds on an extensive literature refuting shareholder primacy by offering a specific set of reforms that can institutionalize the theory of the innovative enterprise and legal theories

of stakeholder governance into practice for large corporations in the United States (Lazonick 2003; Biondi, Canziani, and Kirat 2007; Gindis 2009; Lazonick and Shin 2020; M O'Sullivan 2000; Greenfield 2006, 2014; Ferreras 2017). Changes to corporate governance matter both to production—how corporations innovate—and distribution—the balance of power when decisions about allocation of profits are made. Specifically, new policies for board decision-making—changes to board representation and fiduciary duty—should be paired with policies for remuneration—instituting employee equity trusts—along with prohibitory policies on current extractive practices. Multiple legislative proposals in recent years put these policies into legislative text, though to date none of them have become federal law (a list of active legislative proposals is in appendix 1). The policy proposals must consider the differences between stakeholder groups, because employees play a unique role in production; however, other stakeholder groups —customers, suppliers, the public, and the natural world—can be incorporated in certain ways into corporate governance, though not to the same extent as employees. Adoption of this policy framework by US corporations would improve the potential for innovation inside the firm, lessen income and wealth inequality, and slow down the devastating effects of climate change.

As the American public conversation revisits the role of business in society, it is necessary to complement theoretical exploration of theories of the firm with concrete proposals to move beyond shareholder primacy in corporate law and practice. Evidence for the impact of shareholder primacy on economic inequality is clear: ownership of corporate shares is extremely concentrated among the wealthy; the top 10 percent of the population by wealth own over 85 percent of corporate equities and mutual funds (excluding pensions), while white households held 92 percent of corporate equity (Batty et al. 2019). Non-financial corporations spent roughly one hundred percent of net income on shareholder payments—stock buybacks and dividends—over the last decade. This means that large corporations focus on increasing the wealth of a small elite, rather than expanding prosperity for the much broader set of corporate stakeholders—employees, [1] suppliers, customers, and the broader public—who create corporate wealth in the first place.

While for many economists that the shareholder primacy model is, and always has been, a "natural law" of the market, in its current form its dominance in American corporate governance is only decades old. In order to see why multi-stakeholder governance and ownership of corporate equity are justified, we must first identify the flaws in the underlying economic theory of shareholder primacy and summarize several strands of the literature that offer a more compelling model of the business corporation: the theory of the innovative enterprise and progressive legal stakeholder corporate governance theories. This article focuses on the strand of

[1] Though it is critical to consider workers whose legal status, due to the fissuring of the workplace, is outside the though there are legal differences between employees and other types of workers that matter in the implementation of stakeholder policies. Further research should consider the scope for considering non-employee workers as stakeholders.

literature on financialization that explores the impact of the shift in corporate governance of non-financial corporations to an exclusive purpose of maximizing shareholder value (Zwan 2014). Numerous studies have explored the fallacies of shareholder primacy (Lazonick and O'Sullivan 2000) and the substantive harms of prioritization of shareholder claims on labor (Fligstein and Shin 2007; Lin 2016) (Barradas 2019), investment (Ö. Orhangazi 2008, 2018; L. Davis 2018), and the macroeconomy (Hein 2019). **This article proposes new corporate governance institutions to to enable innovation rather than shareholder wealth maximization** (M O'Sullivan 2000; Lazonick and Shin 2020; Greenfield 2006; Talbot 2013; Yosifon 2018).

The article proceeds as follows: In section 2, I describe the economic and legal theory that gave rise to shareholder primacy. In section 3, I discuss the necessity to replace shareholder primacy with the economic theory of the innovative enterprise, complemented by the progressive corporate law approach to governance. In section 4, I propose policy reforms needed to put a model in place in the United States. Section 5 offers a conclusion.

Section 2. The Flawed Theory of Shareholder Primacy

Corporations are legal entities that exist in the United States once a state government approves their incorporation; they have tremendous privileges to operate apart from the natural persons who form them and run them. These privileges make the extra requirements of incorporation worthwhile: perpetual existence, limited liability, and the ability to take out debt in the corporate name. Corporations are different from other forms of businesses, such as sole proprietorships or limited liability companies (LLCs), where there is no formal legal separation between the founders that profit and run a business and the business itself. The very purpose of incorporating a business is to create an entity that lives on its own; in other words, as not just as an extension of those who provide its capital (Stout 2012; Pistor 2019). Thus, the laws and policies that shape corporate governance must take into account the benefits granted to corporate entities, and the impacts, in turn, that corporations have on the broader society.

Corporate governance models and norms have changed multiple times since the beginning of business incorporation, and perhaps "the beliefs and circumstances that produced the current round of corporate governance are waning, setting the stage for far-reaching changes," (Dallas 2017: 494). Since the late 1800s, economists, lawyers, social movements leaders, and policymakers have debated the contours of corporate power. At the turn of the twentieth century, in response to the rise of powerful trusts, the progressive movement pushed for trust-busting. The postwar years saw the rise of "managerialism" and the large conglomerates. In the 1970s, neoliberal economists and lawyers argued for shareholder primacy, while Ralph Nader pushed for a federal corporate charter (Nader and Green 1973). Every new wave of structural change in the economy brings about a new set of questions of who should have power in corporate governance. As there is a broad literature on the history, multiple theoretical variations, and policy implications of shareholder primacy, this section sketches the origins and impacts of modern shareholder primacy. section 3 delves into alternative approaches to the theory of the corporation, and section 4 discusses the corporate governance institutions required to put the new approach to corporations into practice in the United States. [2]

The Historical Development of Shareholder Primacy

The earliest American private corporations were granted public charters to operate because of their contribution to the broad project of economic development as well as the political and

[2] Internal corporate governance is certainly not the only means of checking corporate power: external countervailing power is also necessary. Countervailing power, as developed by John Kenneth Galbraith, referred to blocs of powerful actors that developed in response to strong corporations (J. Galbraith 1952). This article considers what types of countervailing power should be put into place *inside* the corporation, leaving for other discussions the necessity for the development of external institutions of countervailing power, such as proper governmental regulation and broad-based social organizations, such as unions.

economic capital accruing to the elites that authorized and ran them (Hockett and Omarova 2015; Gindis 2009). As the US industrialized, the small proprietor was replaced by publicly-traded corporations, which could now be chartered for any lawful purpose. The corporate governance debates of the 20th century became focused on how corporations with diffuse equity ownership differed from small, owner-managed firms and who should be in control of these new powerful entities. Early scholars of the new industrial corporations were grappling with the rise of concentrated capital and the concurrent spread of "shareholder democracy" with the birth and subsequent crash of the stock market in 1929 (Ott 2011). Adolf Berle and Gardiner Means' *The Modern Corporation*, published in 1932, laid out for the first time the problem of "the separation of ownership and control"—how to analyze the best approach to governance when the shareholders were not also the managers and did not have the day-to-day authority over the activities of the business (A. Berle and Means 1932). A debate ensued between Berle and Means and legal scholar Merrick Dodd, who countered that managers were in fact trustees of the corporation itself, with a mandate to balance the interests of multiple groups of stakeholders, including shareholders, employees, consumers, and the public (Dodd 1932). Contemporaneously, Ronald Coase asked why there was something called a "firm" in the first place, instead of all transactions occurring efficiently in the market (Coase 1937). The "transaction cost" argument claims that firms exist because they provide a more efficient mechanism to reduce transaction costs in certain cases, because direct authority can reduce the costs of making decisions over and over again. The suppression of the price mechanism allowed resource allocation to take place under a central control (Coase 1937). This theory of firms as their own kind of efficient markets was the intellectual antecedent of the "nexus of contracts" theory that developed later in the century.

Post- World War II, corporations were largely run by powerful managers, counterbalanced by strong labor unions, who exerted power over the terms and conditions of employment throughout the industrial economy (Pressman 2008; J. Galbraith 1952; Wartzman 2017). Managers considered themselves to be responsible to four key stakeholder groups: customers, employees, stockholders, and the general public (G. F. Davis 2008; Jacoby 2001). Shareholders earned dividends but exercised little daily control over the corporation. John Kenneth Galbraith's *New Industrial State* (1967) argued that the modern corporation existed because of the need to plan and organize highly complex processes far into the future, without constant reference to market prices (J. K. Galbraith 2007).[3] Management and corporate success was found in growing market share and profits, while many employees of large corporations had lifetime employment and steadily rising wages due to union bargaining power. Ireland (2001) points out that ironically

[3] The word 'planning' became tainted with a Soviet brush, and a good capitalist could no longer accept that a firm is a sphere of planning.

(due to what followed), prominent economists of the 1950s and 1960s assumed that shareholder dominance had ended because of their dispersed nature and the power of managers and unions.[4]

The rise of the law-and-economics scholarly movement in the 1970s and the rising power of institutional investors replaced "managerialism" in corporate governance with a sole focus on maximizing shareholder wealth, which became entrenched in public policy in the 1980s through legislative and judicial action (Admati 2017). The corporation was re-defined as a marketplace where different contracts are freely made, not an entity in and of itself. Henry Manne was one of the first to laud the resurgent power of the shareholder class by pointing attention to the power that the threat of hostile takeovers had on corporate management, claiming that this was key to true corporate democracy (Manne 1965). Manne (1965) contested the managerial idea that shareholders are tenuously connected to the firm and instead claimed that their ability to quickly sell shares is an important form of discipline on management—the "market for corporate control," in which managers were mere agents to shareholders, and the efficiency of the firm was based on this ability of shareholders to discipline management who strayed from the goal of maximizing shareholder value. In 1970, Milton Friedman argued for the primacy of profit-making, arguing against Ralph Nader's "Campaign GM" to place public representatives on GM's corporate board that:

> "Few trends could so thoroughly undermine the very foundation of our free society as the acceptance by corporate officials of a social responsibility other than to make as much money for their stockholders as possible." (Friedman 1970)

Economists and legal scholars built upon and formalized Friedman and Manne's arguments throughout the 1970s with differing approaches, developing what continues to be the mainstream economic analysis of the corporation today (Fama and Jensen 1983; Alchian and Demsetz 1975; Grossman and Hart 1986). This new cohort of financial economists argued that corporations are "simply legal fictions which serve as a nexus for a set of contracting relationships among individuals," ((Jensen and Meckling 1976: 8).[5] All non-shareholders are in theory able to manage their firm-specific risks through freely-negotiated contract design while shareholders part with their assets and cannot contract for all contingencies. Grossman and Hart (1986) argued that as contracts are incomplete, in that all contingencies cannot be specified, shareholders will only invest if they have control rights; they are conceived of as bearing a different type of risk than other individuals that interact with the corporation (Kay 2018). Equity ownership grants them residual contract rights over their assets, which they use indirectly by their control over

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[4] According to Ireland (2001), "In the U.S., Berle began referring to the modern American business system as one of "People's Capitalism" or "Collectivism", while J.K. Galbraith talked of shareholders as vestigial, of the subservience of the corporation to society and the state, and of the supersession of the market."

[5] As Armen Alchian and Harold Demsetz (1972) put it, "the firm has no power of fiat, no authority, no disciplinary action any different in the slightest degree from ordinary market contracting between two people," (Alchian and Demsetz: 777).

management (Grossman and Hart 1986). As neoliberal economists recharacterized corporations as efficient markets that optimizes outcomes, firms were theorized to be disciplined by competition in the product markets that simply combined inputs and output in a technologically feasible manner in order to maximize profits. Because the production process was essentially mechanical, where value was efficiently communicated through prices, the messiness of power dynamics among stakeholder groups was erased (Ireland, Grigg-Spall, and Kelly 1987; M O'Sullivan 2000).

As everyone but shareholders are protected by contract, so shareholders, by virtue of the fact that they are the "residual claimants" of corporate profits, must have exclusive control rights in order to induce them to put capital into the corporation (Easterbrook and Fischel 1991). Shareholders must control governance in order to discipline management into serving the interests of the shareholders, the principals, since otherwise management may have other interests, such that "his failure to maximize the value of the firm is perfectly consistent with efficiency" (Jensen and Meckling 1976: 2). As properly functioning markets are *a priori* assumed to be efficient—allocating resources to those who desire them through the perfect response of supply and demand to the price mechanism—the power of shareholders to elect boards, or to throw them out, was assumed tautologically to be the most efficient structure for corporate governance. (Easterbrook and Fischel 1991). Because employees and other stakeholders have, under neoclassical theory, fixed claims on the firm, in the form of a wage, or an interest payment for a bondholder, or taxes for the government, shareholders have the only "variable" claim that is left unfixed by corporate law; once corporate manager remuneration became tied to stock prices, their incentive to maximize shareholder wealth was complete (Greenfield 2006).

The rise of the law-and-economics movement meant that the corporation was thus bleached of politics. The power of turning the corporation into something that is just like a market means that "conflicting objectives of individuals are brought into equilibrium within a framework of contractual relations," because markets always efficiently tend towards equilibrium (Jensen and Meckling 1976). This move replaces the corporation as a site of contribution and contestation by many stakeholders but that has some content itself with a market-based view: corporations do not exist and so all relations among corporate stakeholders are determined purely by market relationships (Millon 1990). The interests of other constituencies are better protected by contractual and regulatory means rather than through a voice in corporate governance (Hansmann and Kraakman 2000). The economic efficiency of shareholder primacy was said to justify the "end of history" of corporate law, as shareholder primacy "naturally" came to dominate all other corporate governance models (Hansmann and Kraakman 2000).

Shareholder Primacy: Misunderstanding the Shareholders

In order to move on from shareholder primacy, it is first important to be clear about the modern relationship of shareholders to the corporation. Corporate law took the form it did not because shareholder primacy leads to the most efficient market-based outcomes, but because of the political, economic and social dominance of the shareholder class (Ireland 2001). As Paddy Ireland (2010) has argued, "the triumph of the corporate legal form was more the product of the growing political power and needs of *rentier* investors than it was of economic imperatives," (Ireland 2010). As the corporate form developed in the 20th century, shareholders were "no longer .. conceptualized as industrial capitalists, as active asset-owning partnership; they were, rather, conceptualized as passive, money-providing "investors, as money capitalists, owners of income rights external to the company and the process of production" (Ireland 2010). The explanation for the introduction of free incorporation and general limited liability and the gradual development of the modern corporate legal form is to be found not in the needs of industry but in the needs of finance and, later in the 20th century, the rising power of the institutional investor (Lazonick 2017).

Over the course of the 20th century, shareholding evolved from retail holdings to concentrated institutional investing along a long financial intermediation chain. Today, holding of legal title to shares is dominated by large asset managers, who manage portfolios for institutional investors who in turn hold the shares for underlying economic beneficiaries (Braun 2021). The paradox of shareholders is that they are the corporate stakeholders with both the most and the least power. The shareholders who do have power today are the minority shareholder "activists," who have leveraged the massive holdings of institutional investors to exercise actual power over boards and corporations, and the private equity funds that take over companies to extract wealth regardless of the impact on future productivity—the opposite of what an owner is supposed to do. Notwithstanding these two groups, retail shareholders—middle-class families invested through 401(k)s or mutual funds—do not actually exercise control over corporations, nor do they know which corporations they invest in. The fact that ownership of corporate shares is intermediated through a very long chain of financial investors, whose interest is often to earn fees through trading volume rather than sustainable growth of corporate wealth, means that retail shareholders are completely cut off from corporate decisions.

The justification for shareholder primacy is further undermined by the reality that only shareholders who actually contribute capital to a firm are those who purchase its shares when the company first go public; all subsequent shareholders are trading on the secondary markets (except for new public issuances, which are historically low compared to outstanding equity) (Lazonick and Shin 2020). Second, risk is managed through diversification, not through exercising ultimate control over the board of directors and its decision-making. The claim that shareholders have the most risk lumps together diversifiable and undiversifiable risk (Greenfield 2006). A shareholder of a large public corporation today is not generally taking a risk on the profitability of a given firm. Instead, they are a diversified investor, who scarcely notices the

rising and falling particular share price of a given company, because they have reduced their risk by holding a broad cross-section of the market. Of course, they still take a risk that the entire market will fall (as happened in 2009 and early 2020), and that they will not be able to sell their investment when they need to. Concluding that their risk is different in kind from the risk an employee or bond holder takes no longer makes sense. For all of these reasons, as well as the economic impacts of extractive shareholder practices (discussed below), shareholder primacy should no longer be the modus operandi of corporate governance.

Shareholder Primacy as a Facet of Financialization

The idea that the sole purpose of the corporation is to increase its stock price was one facet of the broader financialization of the economy, in which the goods- and services-producing sectors of the economy were transformed to serve primarily financial goals, thus enriching financial interests and expanding the financial sector (along with financial sector pay) (Epstein 2015; G. F. Davis 2008; Krippner 2011). The 1970s marks a structural shift in the economy and in economics, as the crisis in profits prompted the rise of neoliberal economic ideology and policy-making power (Kotz 2015). Financialization is defined by Epstein (2005) as "the increasing role of financial motives, financial markets, financial actors and financial institutions in the operation of the domestic and international economies," (Epstein 2005). A broad literature over the last two decades has mapped out the intertwined strands of financialization, defined by Zwan (2014) as containing three approaches: financialization as a new regime of accumulation; the shift to shareholder primacy, primarily in non-financial corporations; and the "financialization of the everyday" (Zwan 2014: 102).

Scholars have focused on two bi-directional channels of impact between the rising power of finance and the non-financial corporate sector: financial receipts and financial payments (Barradas 2017). The first channel claims that corporations shifted their strategies for earning income to financial income sources and away from real income (Krippner 2005); though the validity of this channel has recently been contested as being more an artifact of how "financial" income is tracked at the corporate level, and what looks to be increasing financial income may in fact reflect macroeconomic trends, tax avoidance, mergers and acquisitions, and globalization. (Rabinovich 2019). Still, increased investment in financial assets, posited as a solution for increased pressures for quick returns, reduces the capacity of non-financial corporations for productive investment (Crotty 2003; Ö. Orhangazi 2008).

The second channel concerns the subject of this article, namely, the rising orientation towards financial payments, including returns for shareholders through increasing stock prices and dividends and interest payments on corporate debt, which replaced an orientation by corporate management towards operational improvement (Froud 2000; Lazonick and O'Sullivan 2000; G. Davis 2009). The cost of higher financial payments has been a decline in funds available for

innovation, including in R&D- intensive industries in both the US and European economies (Tulum and Lazonick 2018; O. Orhangazi 2008; Hein 2019; Barradas 2017; Stockhammer 2006). Evidence for the rise of shareholder payments can be found in the rise of shareholder payments in the form of stock buybacks, which totaled $6.3 trillion from 2010-2019 (Palladino and Lala 2020). A specific strand of the literature has focused on the relationship between rising financialization and the falling labor share, showing a negative relationship between both rising financial receipts and rising financial payments and labor in the United States and Europe (Barradas 2019; Lin and Tomaskovic-Devey 2013; Lin 2016; Palladino 2020; Fligstein and Shin 2007; Cushen and Thompson 2016). In contrast, as shareholder primacy tied the remuneration of corporate executives to share prices, pay for corporate elites skyrocketed; the pressure coming from institutional shareholders to maximize shareholder value aligned with managers' own self-interests (Hopkins and Lazonick 2016; Lazonick and Shin 2020).

Section 3. Theories of Innovative Enterprises and Stakeholder Corporate Governance

Shareholder primacy should be replaced with a multi-stakeholder set of institutions for corporate governance based on the theory of the corporation as an innovative enterprise (Lazonick and Shin 2020; M O'Sullivan 2000). A useful theory of the corporation must address both the best structures to support innovation in production and balance the bargaining power among stakeholders in the profit allocation process. In this section, the theory of the innovative enterprise and several strands of stakeholder theory are described and contrasted. The theory of the innovative enterprise proposes the necessary elements of innovation, which is collective, cumulative, and uncertain, as requiring conditions inside the corporation for strategic decision-making, organizational capabilities, and financial commitment (Lazonick 2018). This institutional theory is related to a century-long history of scholarship on the corporation as a "real entity," as opposed to an aggregate or fictional entity (Gindis 2020; Gindis, Veldman, and Willmott 2020). Though legal stakeholder theory, grounded in progressive corporate law, lacks a theory of the economics of production, it provides useful elements for policy development to balance power among stakeholders in the process of allocating rewards from value-creation (as opposed to the "stakeholder theory" that flows from business and management scholarship) (M O'Sullivan 2000).

The Theory of the Innovative Enterprise

Early institutionalists distinguished their theory of the corporation as a "real entity" from "legal fiction" and "aggregationist" views of the corporation, both early precursors of shareholder primacy. Post- World War II, business economists and historians like Schumpeter, Chandler, Penrose, and later O'Sullivan and Lazonick developed arguments about the importance of productive innovation for economic prosperity, which required a broader focus than shareholder gains. Institutional economics literature claims that the early 20th century work to develop a

theory of the firm as a real entity should still provide the framework for the theory of the firm today (Biondi, Canziani, and Kirat 2007; Gindis 2009) In his famous exchange with Berle and Means, Dodd viewed the corporation as a distinct legal entity, and corporate managers as trustees with the responsibility to "administer wisely and fairly in the interest of all," (Dodd 1932)By mid-century, Alolf Berle wrote that the corporation is an economic entity given legal individuality through the charter but does not come to life solely through that process. Mere creation of a legal entity is not enough—it has to have enough economic assets to actually function to be recognized as an economic entity by the courts (A. A. Berle 1947).

As explained by economists William Lazonick and Mary O'Sullivan's *"*theory of the innovative enterprise," shareholder primacy lacks a theory of how corporations actually produce: what causes them to engage in innovation by coming up with new ideas for products, new marketing strategies, or new means of using resources. No corporation develops new goods and services simply because shareholders buy its equity on the secondary markets. Corporations require strategy, organization, and finance, which depends on a multitude of stakeholders interacting over time to innovate, which is defined as producing higher-quality goods and services at lower costs (Lazonick 2017; Lazonick and Shin 2020; Kay 2018; Mary O'Sullivan 2000; M O'Sullivan 2000). In contrast to the neoclassical firm, innovative enterprises shift their cost structure and expand their market share in order to spread fixed costs over higher quantities of product supplied. Rather than accepting a market price and creating a homogenous product—the assumptions that underlie competitive equilibrium microeconomic models—innovative enterprises create non-homogenous goods to hold onto market share.

Innovation is "uncertain, collective and cumulative," and each requirement for innovation necessitates social conditions to enable it (Lazonick and Shin 2020: chap. 2). Uncertainty requires strategy; collectivity requires organizational integration; and the cumulative nature of innovation—the fact that it occurs over time—-requires financial commitment. Strategic control refers to the ability of decision-makers to control how internal resources are allocated, with an eye towards improving the actual production of goods and services, rather than increasing share prices. Organizational integration refers to "a set of relations that creates incentives for people with different hierarchical responsibilities and functional capabilities to apply their skills and efforts to strategic objectives," (Lazonick and Shin 2020: 22). In other words, organizational integration allows all employees to best participate in the strategic process and motivate them to engage in collective learning. For example, if the workforce is so contingent and fissured that there is no channel to management for how things are actually going with customers inside a large retail store, then management will not know how to design innovation that responds to the evolving needs of their customer base. Finally, because the learning process takes place over time, there must be sustained financial commitment to enable innovation to proceed; strategic control over internal revenues is critical. Central to all three social conditions for innovation—**strategy, organizational integration, and financial commitment**—is how the skill base grows

over time, which managers must condition on the particular learning requirements for the industrial process and the alternative employment opportunities available to the workforce. This means that, "strategic decision-makers must be able to mobilize committed finance to sustain investment in productive capabilities of the skills base until it can generate higher-quality, lower-cost products than previously available," (Lazonick and Shin 2020: 23).

Stakeholder Theories in Progressive Corporate Law and Business & Management

There are two strands of "stakeholder" theory, in progressive corporate legal scholarship (Greenfield 2006; Stout 2012; Talbot 2013, and in the business and management literature (Donaldson and Preston 1995; Freeman 1998). Each recognizes the corporation as its own entity and argues that stakeholders should have a role in corporate decision-making. Both strands maintain a focus on the distribution of corporate value- creation and lack the theory of production that the theory of the innovative enterprise describes (M O'Sullivan 2000). Despite this flaw, progressive corporate stakeholder theory offers specific proposals for corporate governance that can complement the economic theory of innovative enterprises, while stakeholder theory from business and management remains tied to the flawed theory of shareholder primacy in its emphasis on stakeholder engagement for the benefit of shareholder wealth (Freeman 1998).

The importance of progressive corporate law scholarship to the theory of the innovative enterprise is found in its emphasis on the incorrect understanding of shareholders in corporate law and how it roots corporate governance in the public permission that corporations need to operate legally, giving legitimacy to democratic determination of corporate law. Progressive corporate legal scholarship starts from the recognitions that the "nexus of contracts" argument ignores the reality that the corporation is its own institution, separate from the stakeholders who contract with each other for various economic transactions, which operates with public permission (Bratton 1989; Blair 1998). The corporation is not just a "legal fiction," it is a legal *person*, with its own rights (Greenfield 2006; Talbot 2013). As legal scholar Lynn Stout describes it, "corporations own themselves" (Stout 2012). The very fact that investors part with their hard-earned money and buy corporate shares is because they are protected from taking on the larger risks that come along with running a complex business: those risks and liability for problems created stay within the corporation itself. The history of corporate charters as special grants of authorization from state legislatures to general incorporation means that corporations should be considered creatures of law, rather than the natural product of private initiative (Millon 1990; Blair 1998).

Legal stakeholder theory breaks with shareholder primacy in that it explicitly recognizes the variable risks taken by different categories of firm stakeholders and claims that the distribution of corporate profits should take into account the variable investments, rather than simply

accruing to shareholders as a unique stakeholder. Despite these advantages over shareholder primacy, stakeholder theory largely still lacks a theory of production (M O'Sullivan 2000). Much of progressive corporate law scholarship argues that a wide range of stakeholders "should be recognized and represented in corporate legal and managerial structures," (Ireland 2001: 2). Greenfield (2006) argues that the notion that all stakeholders besides shareholders have fixed claims is false, and that employees have more variable interest in the corporation than shareholders, as they typically have just one job and face significant consequences if they leave it. Progressive corporate law scholars also focus on Dodd's claim that management is a trustee of the corporation, who has a duty to enhance the wealth of the firm and fairly distribute returns, and on expanding the board's fiduciary duties to multiple stakeholders. Leading legal scholar Kent Greenfield notes that a "crucial objective of corporate governance is to create methods of decision-making that offer procedural fairness among the various stakeholders….the board has the obligation to balance various goals and interests of stakeholders so that each of them has the incentive to maintain their own investment in the firm over time," (Greenfield 2006: 147).

In the business and management literature, stakeholder theory has an instrumental meaning: managers should pay attention to stakeholders because it is good for business (Freeman, Martin, and Parmar 2007). Stakeholders are central to value creation, but still views the corporation through the lens of how individuals voluntarily work together to create sustainable relationships in the pursuit of value creation (Freeman 1998). The management scholarship on stakeholders has an instrumentalist view, in which empirical tests purport to show that stakeholder-focused management can benefit, or at least not harm, stockholders (Agle et al. 2008). According to Freeman "profit maximization is viewed as the outcome of a well-managed company, and stakeholder theory describes what effective management looks like," (Freeman 1998: 134). However, despite its purported focus on stakeholders, the purpose of their engagement is still grounded in shareholder primacy, and the theory does not suggest useful reforms to US corporate governance.

Section 4. Stakeholder Governance Policies for Innovative Enterprises

Innovative enterprises require corporate governance institutions that directly engage key stakeholders in production and shift the balance of power in bargaining over distribution away from being vested wholly in shareholders. Policymakers should dispense with the individualistic nexus of contracts view and instead, with a clear view of what drives innovation in mind, set conditions for collective and strategic relations between stakeholders in corporate governance. Policymakers should adopt a suite of reforms that would, together, produce the right conditions for innovation and sustainable prosperity. This requires the collective and cumulative contribution of key stakeholder groups in production and a reduction of extractive policies that

reduce the potential for sustained financial commitment, and balanced bargaining power over allocation decisions.

In order to implement the innovative enterprise model with stakeholder corporate governance, several areas of positive reform are needed: instituting a stakeholder corporate governance model, through a reorientation of board fiduciary duty towards multiple stakeholder groups and employee representation on the board of directors; and creating employee equity trusts to ensure that employees benefit the profits that they create. Corporate leadership must be oriented towards innovation and able to resist pressures from powerful shareholder groups seeking to extract value from the business. Large corporations should be required to charter federally, in order to enable the substantive reforms.[6] Limits must also be put on extractive policies, such as the practice of stock buybacks, extremely low taxation of corporate profits, and stock-based executive compensation. In this section I discuss specific policy reforms for the United States in each area.

At issue for any given policy proposal is exactly which stakeholders should be the focus. Though multiple stakeholder groups contribute to corporations generally, they play very different roles in its innovative production processes and therefore should have different roles in the allocation process. The ability of employees to engage in collective and cumulative learning is central to whether a corporation will innovate, and their unique experience and engagement in the learning process necessitates greater and specific involvement in corporate governance. In contrast to the neoliberal firm, in which employees are theorized to make no investments that are specific to their employer, employees make firm-specific investments in the corporation, in which their undiversified risk makes them more deserving of a role of governance than shareholders, not less. Workers—both legal employees and, in many cases, independent contractors—make a deep investment in the corporation that is not diversified and depend on the profitability of the corporation (Greenfield 2006). Employees must make firm-specific investments to be successful at work, which involves learning firm-specific production processes collaborating with colleagues (Bodie 2016). Employees have highly undiversified risk in the corporation where they work and face significant hardship if their employer shuts down or leaves the country. Even more, as health care and retirement benefits are structured often as employment benefits, employees' dependence on the success of the firm runs even deeper than income compensation

[6] In the United States, corporate law is state law: incorporation is accomplished at the state level, and the "internal affairs doctrine" allows corporations to choose a state for incorporation that is not otherwise tied to their business activities, and to have their corporate internal affairs governed by that state's rules. Practically, this has meant that for large corporations, Delaware has become the state of choice, due to its historical offerings of very business-friendly corporate law (Greenfield 2005). This means it would be politically very difficult to reform corporate law at the state level, as all it would take is one state to stick with shareholder primacy and corporations could in theory all shift their incorporation to that state in order to avoid stakeholder governance requirements. An alternative would be to abolish the "internal affairs" doctrine and institute a "real seat" doctrine in which corporations are governed by the laws of the state where they are headquartered or conduct their business affairs, and then work to change law state-by-state.

(Kelly, Kelly, and Gamble 1997). Given economic inequality and declining unionization, it is clear that worker bargaining power in the profit allocation process has fallen.

There are many other groups of stakeholders that can be thought of as contributing to corporate success, including customers, suppliers, communities where businesses are located, and the natural world. The question is how to properly draw lines around different groups, and how to fairly ensure representation of groups that are more amorphous than either employees or shareholders. Further research must be devoted to analyzing the specific role of customers and community in stakeholder corporate governance. Certain proposed policies thus include reference to all stakeholders, whereas others focus on employees, given their unique contribution to innovation; a final set are prohibitory in nature, and aim to restrict certain behavior by corporate leadership and powerful shareholder blocs.

The argument for multi-stakeholder corporate governance still includes shareholders as one key corporate constituency—the one who provides liquidity for the corporation's shares in the capital markets, or who owns a share and the economic and governance rights that come along with it in a privately-held company. The key is that their control is no longer total.

Fiduciary Duty to All Stakeholders – or the Corporation

The first substantive reform to enable innovation is to require boards of directors to be accountable to all corporate stakeholders instead of exclusively shareholders; or, in the alternate, to be accountable to the corporation itself (Alexander 2016, 2019; Greenfield 2006, 2014). This policy does not proscribe a certain kind of decision or outcome, nor does it specify how boards should balance the different interests of stakeholders. However, it is a necessary change in the responsibilities of directors, because it takes away the ability of directors to justify extractive practices by claiming that they are required to exclusively maximize shareholder wealth. This reform can benefit all the conditions for innovation, as it reduces the financial pressures to increase share prices rapidly and increases the financial commitment for long-term innovation; and enables management to put in place strategic and organizational structures that can benefit innovation by investing in employees, considering the effects of decisions on customers and suppliers, and reducing externalities by considering the impacts of decisions on the society and natural world.

Requiring directors to consider the interests of all stakeholders in their decision-making is currently the standard for benefit corporations, a new optional corporate form in which the directors explicitly reject shareholder primacy (Alexander 2017). The new standard incentivizes boards made up of individuals from multiple stakeholder groups to weight the impacts of major corporate decisions on all groups at the table. Specific stakeholders are enumerated in benefit corporation charters, including shareholders; the employees and workforce of the benefit

corporation, its subsidiaries and suppliers; customers; community and society, the natural world, and the short and long-term interests of the corporation itself (Alexander 2020) Courts still adjudicate board decisions using the business judgment rule, meaning that judges do not rule on the substance of decisions (in the absence of fraud or malfeasance), but do look to see if the board followed proper procedural consideration. Critically, boards would therefore need to show evidence that they had taken the interests of multiple groups of stakeholders into account. A related but different approach is to re-define board fiduciary duty as running directly to the corporation itself. This has the effect of focusing less on balancing the interests of different stakeholder groups and more on maximization of the entity's overall value (not just as expressed by share prices) and sustainability (Keay 2011). However, what does and does not maximize the entity needs clearer definition, especially given the scope of the business judgment rule; for this reason, balancing the interests of stakeholders may be an appropriate proxy.

A final question is who would have the legal right, or "standing", to bring a claim for the breach of fiduciary duty. If the ability to bring a claim remains solely in the hands of shareholders, as it is even in current benefit corporation law, then it is unlikely that boards would be held accountable were they to continue to prioritize shareholder wealth in contravention of the new standard. However, expanding the universe of claimants necessitates defining who exactly should be considered stakeholders with the "standing" necessary to bring a claim for breach of fiduciary duty when their interests are not properly considered (Greenfield 2006; Keay 2011). In Canadian business law, it is left to the court to determine who has sufficient standing to bring a derivative claim.[7] Though this model would increase judicial discretion, it would also widen the scope of who is able to bring a claim for breach of fiduciary duty.

Employee Participation on Corporate Boards by Right of Employment

Employees should participate in the election of corporate directors and be allocated a meaningful number of seats on the corporate board to have a voice in decision-making (Ferreras 2017). The board of directors is the ultimate decision-making authority, acting by hiring and firing the chief executive, making major financial decisions, and bearing legal responsibility for the affairs of the corporation. For employees to see that they are part of a strategic process, they must have representation inside the room where the strategic decisions are being made. In contrast to reforms of fiduciary duty, employee board participation will have more of a substantively positive effect on corporate decision-making, bringing the experience of employees in the actual production decision-making process into the boardroom. The board crucially determines the parameters for long-term financial commitments, as it acts to authorize shareholder payments, new equity issuances, and taking on credit.

[7] See the Canadian Business Corporation Act of 1985, §238 (d).

Employee representation on the board of directors will bring the perspective of *how* to allocate resources (especially employee capacities) to improve innovation. In order to enable collective and cumulative learning that enables innovation to actually inform board decision-making, such learning must be given voice inside the corporate boardroom. For employee representation on corporate boards to fully serve the innovation process, there must be a robust representation mechanism, so that there is a clear flow of information between employees and their representative. While models for effective representation will differ in unionized and non-unionized contexts, given US labor law, a structure akin to a works council inside large US corporations can enable effective representation, though this may require reforms to labor law (Summers 1982; Palladino 2019)

Since employee participation on corporate boards is common in other OECD nations besides the United States, the experience should inform US policymaking. Co-determination systems are common in Europe, and there is a broad literature documenting their positive impact on firm outcomes (Jäger, Schoefer, and Heining 2019). There is a small literature on the history of worker participation on boards in the United States (Hammer, Currall, and Stern 1991; McGaughey 2019; Summers 1982). It is critical here that employee participation in the board of directors is not a substitute for employee bargaining power over the terms and conditions of employment. Instead, "reform of corporate governance and employee representation are best conceived of as complements" (Jacoby 2001: 489).

One common argument for restricting board representation to shareholders is that employees' relation to the corporation is best handled outside of corporate law, and instead through the National Labor Relations Act. Unions play a separate role, and an important one, in allowing employees to collectively bargain for the terms and conditions of their employment, which would not be the role of employee representatives on the board of directors. Under labor law, unions do not bargain over how the business conducts its affairs—the "core of entrepreneurial control" is limited to management (Bodie 2016).[8] Bargaining is focused on the all-important questions of dignity and respect at work, expressed through wages, benefits, and working conditions. Even with a strong union, employees do not have a collective means to weigh in on business decisions that do not directly touch the terms and conditions of employment, even though they may have a majority of the knowledge that should go into such decisions. Thus, even in an economy with much more significant labor union density, worker representation on boards plays a separate and critical role. Current practice is for boards of directors and corporate executives to nominate new directors exclusively. This leads to compensation negotiations

[8] Bodie (2016) describes the limits of collective bargaining clearly: "Bigger issues such as product development, executive compensation, financial structuring, and internal firm governance are not within the ambit of the union's responsibilities or concerns, and the employer has no duty to discuss such issues. The idea that the "core of entrepreneurial control" is reserved to the employer itself is central to the federal system of collective bargaining...Plus, the union may not insist on talking about these issues, either; to do so would be a failure to bargain in good faith."

between executives and hand-picked board members, which is at leas in part responsible for rising executive compensation (Hopkins and Lazonick 2016). Employee representation on boards could change the norms towards the consideration of the contributions and the interests of shareholders, management, and employees (Bodie 2016).

Employee Equity Funds

Employee compensation that is tied to the success of the strategic process will maximize worker engagement in the innovative process, though care must be taken to not put workers unduly at risk. Another area for policy reform is to broaden share ownership through the establishments of mandatory employee equity trusts. Employee ownership of corporate equity creates an economic right to a share of profits when businesses do well, as well as a voice in making the major decisions of the corporation as shareholders (which can be complementary to worker participation on boards by right of employment). There is a large literature establishing the benefits of employee ownership to firm outcomes and stability (O'Boyle, Patel, and Gonzalez-Mulé 2016), economic security for workers (Markowitz, Blasi, and Kruse 2009), macroeconomic stability (Kurtulus and Kruse 2017), and its deep roots in American history (Kruse et al. 2010). However, to date it has been constituted as optional for corporations, rather than mandatory for large corporations. Recently, the U.K. Labour Party has proposed a policy of "Inclusive Ownership Funds," and Senator Bernie Sanders proposed a similar structure to be enacted for large US corporations (see appendix 1).

Corporate law should require that corporations grant equity shares of the corporation to their employees in a collectively-held trust in order to recognize employees as crucial stakeholders in the creation of value. Granting employees equity shares would mean that when corporate executives decide on the level of dividends paid out to investors, the workforce shares in the rewards. Employee ownership gives workers the ability to vote for the company's board of directors collectively and participate in other major decisions that the company's shareholders traditionally make. Once funds are in a trust, then the shares are not available to be resold. The stakes are not a wealth asset that is freely transferable by the employee, and the employee does not have to purchase the stake. Rather, they are granted an ownership stake in the employee collective trust, and their stake remains in the trust when they move to a different job. What they have as a result of the ownership stake is the right to receive economic dividends—a share of profits- and the right to engage in the governance of the firm. This would complement representation on the board and the shift in the board's fiduciary duty described above.

The collective power of employees in governance is crucial for a company to move away from shareholder primacy. The workers' assets would vote in a bloc, not as fragmented share. This would require the development of democratic mechanisms within the trust to ensure that the trustees do not blindly promote their own agenda to the detriment of the goals of the entire

workforce. Acting together, the trust would serve as a way for employees to directly engage in the business affairs of the corporation as a stakeholder, participating in the big decisions that determine their futures. By engaging as owners of shares, employees will have the same rights (proportionate to their share ownership) to weigh in as investors do today- in mergers and acquisitions, liquidation, and electing the individuals who make the other major decisions—the board of directors.

Prohibitory Policies: Ending Stock Buybacks, Corporate Tax, and Reforming Executive Compensation

Innovative enterprises require financial commitment. There are a range of prohibitory policies that can limit the extractive nature of current corporate transactions, including bans or limits on stock buybacks; changes to historically low levels of corporate taxation, and reform of executive compensation (each of these policies has its own broad literature and is merely summarized here). Stock buybacks current operate in the United States under the "safe harbor" of Rule 10b-18, allowing companies to spend high proportions of profits on this manipulative practice (Lazonick 2014). Stock buybacks can be banned entirely as market manipulation or limited to certain levels of activity, in accordance with the norms of other advanced capital markets (Palladino 2018). Proposals on corporate taxation involve raising the federal corporate tax rate to historical normal levels, instituting or raising state corporate taxes, and reforming the corporate tax code to properly tax multinational corporations and end tax avoidance (Avi-Yonah and Clausing 2019; Clausing 2020). Finally, there are many proposals on addressing executive compensation, including moving away from stock-based pay, requiring shareholder votes on pay packages, and prohibiting "golden parachutes" and other rewards for low performance (Hopkins and Lazonick 2016).

Section 5. Conclusion

The law-and-economics theory of shareholder primacy is rooted in an incorrect notion of how shareholders and other stakeholders interact with the corporation and what makes a corporation a successful producer (Kelly, Kelly, and Gamble 1997; M O'Sullivan 2000; Lazonick and Shin 2020). It posits that only shareholders take risks and have incomplete contracts, such that they should be granted exclusive control rights. Other stakeholders like employees and lenders are thought to have complete contracts that guarantee them certain set returns—wages, or a fixed rate of interest on a bond. Their lack of power in governance is predicated on the false idea that only shareholders make variable, or risky, investments in the corporation, and that they therefore are the only group who should discipline corporate management. Although the intellectual justifications for shareholder primacy were broad, the resurgence of their power can also be read simply as a re-assertion by the class who could afford to own shares of their right to capture the profits of the firm (Ireland 2001). As the economy entered the 1980s, the coalition of scholars

and policymakers who shaped the neoliberal era put considerable emphasis on remaking the corporation to justify shareholder primacy. At issue was to whom the profits of the corporate would flow.

The reality of how corporations actually produce goods and services and become innovative enterprises, the disconnection of shareholders from the corporations that they supposedly govern, and the societal power of wealthy shareholders to create theories and rules that guarantee them a disproportionate share of wealth, are all erased from the justifications for shareholder primacy. This false theory should be replaced by a stakeholder corporate model of governance and ownership, grounded in the concept of corporations as real entities that require certain attributes to become "innovative enterprises" (Mary O'Sullivan 2000; M O'Sullivan 2000; Lazonick and Shin 2020).

To enable innovation, policy reforms should be made to the way that corporate governance is currently practiced in the United States. This article outlines several areas for reform, taking into account though multiple stakeholder groups play a role in corporate success, their contributions to innovation are distinct, with employees having a unique impact on innovation. Proposed policies include altering the fiduciary duties of corporate boards so that they are required to consider the impacts of their decisions on all stakeholders; employee representation on corporate boards of directors and the establishment of employee equity trusts to increase incentives for the collective and cumulative learning required for innovation as well as another channel for employee voice in corporate governance. The article also proposes prohibitory policies that would limit extractive behavior by corporate leadership that reduces the potential for innovation. Though such reforms would represent a major change in US corporate governance, all of the reforms are grounded in established organizational practices and some are common in other advanced industrialized economies.

Certainty is elusive: a transition to stakeholder corporate governance in service of innovative enterprises does not guarantee that corporations would automatically innovate and share the gains of innovation with multiple stakeholder groups. However, a change in the balance of power among the main decision-making body, and a change in the requirements for what corporate leaders must consider when making decisions, allows us to project the kinds of decisions that could turn out differently and draws initial conclusions about how society could be impacted. The analysis of the corporation as a "nexus of contracts" must be replaced with a theory of innovative enterprises to truly reflect how corporations operate and how they create value. Only then can economic and legal theory support the functioning of a productive and prosperous economy and society.

APPENDIX: CURRENT LEGISLATIVE PROPOSALS TO REFORM CORPORATE LAW

Name & Year	Sponsors & Co-Sponsors	Details
Reward Work Act (2019)	Authors: Tammy Baldwin Cosponsors: Kirstin Gillibrand, Bernie Sanders, Elizabeth Warren	Repeal SEC Rule 10b-18 to end stock buybacks by removing immunity from manipulation charges Institutes rule: no issuer may register securities on a national exchange unless ⅓ of the firm's directors are chosen by employees through a one-employee-one-vote process.
Temporary Federal ESOP Grant Program Act of 2020: S4236 (2020)	Authors: Ron Johnson and Tammy Baldwin	Firms with a market value over $75 million and that receive Federal assistance to deal with the Covid-19 pandemic, S4236 provides cash grants to cover $20,000 per employee in shares. The shares would be purchased by and held in a trust.
HR 6851 (2020)	Authors: Alexandria Occasio-Cortez	Firms with a market value over $75 million and that receive Federal assistance to deal with the Covid-19 pandemic, HR 6851 requires that employees receive an annual equity grant in whole shares - which may be paid for from the Federal assistance. This aid will continue until the Covid-19 aid concludes. The grant of equity to employees must conform to the highest class of shares in terms of voting and dividend rights.
Schumer and Sanders NYT Op-Ed (2020)	Authors: Chuck Schumer and Bernie Sanders	They plan to introduce a bill that would ban stock repurchases unless a firm meets conditions: providing a $15 minimum wage, providing 7 days of paid sick leave, offering decent pensions and reliable health benefits
Corporate Accountability and Democracy Plan	Authors: Bernie Sanders	Firms with over $100 million in revenue and with $100 million balance sheet total will have to:

		• Build up to 20% stock ownership by employees • Require 45% of the board of directors to be chosen by employees • Must obtain a Federal Charter that requires boards to consider the interests of all stakeholders Repeal SEC rule 10b-18 to end stock buybacks Establish a $500 million Employee Ownership Bank that will assist workers with loans, guarantees, and technical assistance to purchase their own businesses via ESOPs or Eligible Worker-Owned Cooperatives. Require firms that displace labor for automation or outsourcing to share gains with workers via conveyed shares Guarantee a Right of First Refusal via the Employee Ownership Bank Create Worker Ownership Centers to assist retiring small business owners in selling their firms to their employees Require a significant proportion of corporate boards to be composed of people from historically underrepresented groups Shareholder Democracy Component • Every employee should have a right to vote in the firm and have a voice in setting their wages • Ban actions by asset managers without explicit instructions from those whose money they manage • Savers should be able to elect representatives who set voting policy in

		corporations, multi-employer pensions, single-employer pensions, and 401K funds • Organize sectoral pensions
Stock Buyback Reform and Worker Dividend Act of 2019: S. 2391 (2019)	Author: Sherrod Brown	Requires public companies to pay workers $1 for every $1 million they spend on dividends, special dividends, or stock buybacks Lowers the permissible level of stock buybacks and imposes new reporting requirements Converts the safe harbor rule to a mandatory prohibition on excessive buybacks If employers fail to meet worker dividend requirements, there will be a 5 year moratorium on new buybacks and a private right of action for employees
Worker Dividend Act of 2019; S 2514 (2019)	Authors: Cory Booker, Bob Casey, and Joe Kennedy (House version)	All publicly traded companies with at least $250 million in earnings in a given year. A total obligation to employees would be calculated as the lessor of the total in profits above $250 million or 50% of the firm's buybacks

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