

INDEX

- absolute delegation rule, 131
 - Arrow's theorem argument
 - distinguished from, 108–109
- access model, of firms, 149–150
- Administrative Procedure Act, proxy
 - access ballots and, 42–43
- AFSCME v. AIG*, on SEC Rule 14a-8, 41–42
- agency costs
 - Coase on, 213
 - Jensen and Meckling on, 53, 64
- Agency Costs and a Theory of the Firm* (Jensen and Meckling), 53
- aggregative function of decision-making, 123–124
- Alchian, Armen, 64
 - on disengaged shareholders, 96
 - on joint production theory of the firm, 93–94, 148, 155
 - on theory of the firm, 148
 - on uninformed investors, 94
- argument from politics, 106–108
 - Arrow's theorem argument
 - distinguished from, 106–108
- Arrovian intransitivities, 107, 109, 110–112, 118–119
- Arrow, Kenneth
 - Bainbridge on, 6, 65, 66, 107
 - McDonnell on, 66, 134–135
- Arrow's theorem, 5, 9, 12, 33
 - absolute delegation rule
 - distinguished from, 108–109, 131
 - choices among conditions of, 112–113
 - Dow on, 105–106, 227
 - Easterbrook and Fischel on, 104, 108
 - fairness conditions of, 112, 104–105
 - Hansmann on, 105
 - intransitive results consequences, 117–121
 - intransitive results likelihood, 114–117
 - shareholder heterogeneity and, 109–110
 - on shareholder preferences over candidates, 110–112
 - social choice theory and, 104, 112
- Arrow's theorem argument, 103–121
 - argument for absolute delegation
 - distinguished from, 108–109
 - argument from politics distinguished from, 106–108
- Bainbridge, Stephen, 142–143, 192
 - on Arrow, 6, 65, 66, 107
 - on board homogeneity, 134
 - on board of directors as Platonic guardians, 6–7, 44, 65, 124, 145
 - on Coase market and firm differentiation, 65
 - on codetermination, 175
 - director primacy theory, 3, 6, 47, 65–66, 124, 125, 130–131
 - on exclusive shareholder franchise, 66
 - hypothetical bargain and, 66
 - on limited shareholder votes, 92–93, 222
 - McDonnell on, 66, 134–135
 - on shareholder homogeneity, 132–133

- on shareholder wealth maximization, 65
 - as wise ruler theorist, 124, 125
- ballot access, 16, 18. *See also* proxy access rule; shareholder votes in political institutions, 25–26
- qualitative vote dilution and laws of, 26
- voter interest and, 25–26
- ballot casting
 - politics, weight of vote, and right of, 23
 - as voting right, 11, 15–16, 23
- Bebchuk, Lucian, 3, 47
- Belinfanti, Tamara, 66–67
- Berle, Adolf, 32–33, 96, 143–144
- Blair, Margaret
 - on board of directors as mediating hierarchs, 6–7, 124–125, 131–132, 141, 145
 - on shareholder homogeneity, 132–133
 - on shareholder wealth maximization, 125–126
- team production theory, 3, 6–7, 106, 124, 131–132, 155, 227
- on transaction-costs model, 240
- as wise ruler theorist, 124–126
- board of directors
 - Berle and Means on, 143–144
 - CEO and, 1, 30
 - homogeneity of, 134, 235
 - intransitive results of election manipulation, 120–121
 - limited liability for, 198
 - as mediating hierarchs, 6–7, 124–125, 131–132, 141, 145
 - officer selection by, 51
 - as Platonic guardians, 6–7, 44, 65, 124, 145
 - SEC on proxy access and, 41, 202
 - shareholder meetings for election of, 33, 51
 - shareholder election of, 1, 30, 32–33, 51
 - up-or-down vote for, 34, 45
- board primacy. *See also* director primacy theory
 - corporate good and, 139–144
 - electorate responsiveness in, 129–132
 - shareholder democracy movement and, 122
 - shareholder franchise and, 122–144
 - shareholder heterogeneity and, 128–129
 - shareholder homogeneity and, 12–13, 132–139
 - shareholder wealth maximization and, 12–13
- Boilermakers Local 154 Retirement Fund v. Chevron Corp.*, 62
- Bratton, William, 246
- Burwell v. Hobby Lobby Stores, Inc.*, 1
- Business Roundtable, ix, x, 186–187
- Business Roundtable v. SEC.* court ruling on proxy access, 43–44, 203, 204
- business trusts, 31
- CalPERS government employees pension funds, 78–79, 217, 218, 219
- candidates, shareholder preferences over, 110–112
- capital investment and employees, 100–101, 225
- CEO. *See* chief executive officer
- CFIUS. *See* Committee on Foreign Investment in the United States
- chief executive officer (CEO), 1, 30
- Citizens United v. FEC*, 1
- civic republicanism, decision-making and, 12–13, 123–124
- closely held corporations, 31, 198–199, 241–242
 - doctrine of minority oppression and, 71–72
 - shareholder concerns in, 91
 - shareholder votes in, 32–33, 93
- Coase, Ronald, 64
 - on agency costs, 213
 - on firm's employment relationship, 150–151, 155, 239
 - on firm's purpose and internal workings, 147, 150–151

- Coase, Ronald (cont.)
 market and firm differentiation
 by, 65
- codetermination
 in American corporate governance,
 174–177
 German experience of, 172–183, 253
 social, 173–174
 supervisory, 174, 253
 U.S. legal scholars on, 175
- Committee on Foreign Investment in
 the United States (CFIUS), 80
- communitarian model, 7, 159, 192, 193
- competency of voter, 196
- concession theory, contractarian
 arguments on, 54, 209
- constitutional amendments on voting
 rights, 194
- contract, xi
 decision-making and, 8
 Easterbrook and Fischel on
 corporate law and, 4
- contractarian argument, 50–67. *See also*
 nexus of contracts theory
 on concession theory, 54, 209
 on constituents, 52
 on corporate law and, 54, 208
 on corporate law mandatory
 noncontractual terms, 56–57,
 210
 on corporate voluntary
 agreements, 54
 on hypothetical bargain, 58
 on shareholder franchise, 55
 shareholder franchise and, 11
- contractual payment of employees, 244
- control group
 benefit of control, 70
 information relationship with, 94
 majority rule and minority
 oppression, 70
 shareholder homogeneity and, 70–72
- corporate bylaws
 amendments to, 211
 corporate charter on, 60–61
 as corporate contract, 60–62, 211
 SEC on amendments to, 41–42, 203
 shareholder vote for, 35, 199
 shareholder amendment of, 56,
 209–210, 212
 Strine on, 62–63
- corporate charter, 1, 30
- corporate contract on, 60–61
 shareholder vote for, 35, 199
- corporate contract, 60–63. *See also*
 nexus of contracts theory
 on charter and bylaws, 60–61
 as corporation governance
 system, 63
- courts on corporate bylaws and,
 61, 211
- exclusive shareholder franchise
 and, 63
 as metaphor, 61–62
 the new, 60–63
 shareholder disenfranchisement and,
 62, 63
- corporate franchise rights of
 constituents, 13
- corporate governance, *passim*
 Blair and Stout on team production
 model of, 106, 227
 codetermination in American,
 174–177
 Delaware's role in, 2, 6, 47–48,
 60–63, 74–76, 153
 of democracy in, 44
 fundamentals, 51
 new start for, 187–188
 power and weight of votes, 36
 Stout and Belinfanti systems theory
 and, 66–67
 wealth inequality and, 13, 184–185
- corporate governance structure
 board election by shareholders, 1, 30,
 32–33, 51
 choice of officers, 51
 nexus of contracts theory and,
 54
 of shareholder franchise, 2
 uniformity of, 2, 51, 152
 voting power and, 31
- corporate governance theory, x, 3
 economic and democratic
 participation theory in support
 of, xi

- Corporate Irresponsibility* (Mitchell), 142
- corporate law, *passim*
- Blair and Stout on team production model of, 106, 227
 - contractarian argument and, 54, 208
 - Delaware's role in, 2, 6, 47–48, 60–63, 74–76, 153
 - Easterbrook and Fischel on, 52, 208
 - on limited liability, 55
 - on mandatory noncontractual terms, 56–57, 210
 - nexus of contracts theory and, 52, 54
- corporate profits, employee interest in, 5–6
- corporate social responsibility (CSR) commitments to, 7, 192
- Disney shareholders and, 84, 220
 - ESG funds, 84
 - Hart and Zingales on, 84–85
 - shareholder democracy movement, 85
 - shareholder homogeneity and, 83–85
- corporate stakeholders. *See also* stakeholder theory
- decision-making interest of, 162
- corporate structure
- basics, 31–37
 - characteristics, 198
 - compared to other business organizations, 31
 - key factors, 31–32
 - proxy ballots, 33–34
 - separation of ownership from control, 32
- corporate voting, voting cycles and, 33, 131, 135–136
- corporate voting rights, *passim*
- basics, 47–49, 50
 - firm-based approach to, 145–160
- corporation as contract, 50–67. *See also* nexus of contracts theory
- contractarian argument, 53–57
 - corporation as firm, 64–67
 - hypothetical bargain and, 57–60
 - new corporate contract, 60–63
 - nexus of contracts theory of, 2, 51–53
 - corporation as firm, 64–67. *See also* theory of the firm
 - Coase on agency costs, 213
 - economics and, 64
 - Jensen and Meckling on agency costs, 53, 64
 - nexus of contracts theory and, 64, 65
- corporations
- joint production participation in, 11.220, 302.10, 153–156
 - organizational tax revenues from, 190
 - profits of, 1
 - roles in, 68
 - SEC on shareholder proposals, 45
 - state law on, 1, 2, 30, 190–191
- court cases (notable)
- AFSCME v. AIG*, 41–42
 - Boilermakers Local 154 Retirement Fund v. Chevron Corp.*, 62
 - Burwell v. Hobby Lobby Stores, Inc.*, 1
 - Business Roundtable v. SEC*, 43–44, 203, 204
 - Citizens United v. FEC*, 1
 - Dodge v. Ford Motor Co.*, 72
 - eBay Domestic Holdings, Inc. v. Newmark*, 47–48
 - Holt Civic Club v. Tuscaloosa*, 22–23
 - Kramer v. Union Free School District*, 21–22
 - Paramount Communications, Inc. v. Time Inc.*, 47–48
 - Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 47–48
 - Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 24
 - Schreiber v. Carney*, 75
- critical resource theory of the firm, 149–150
- CSR. *See* corporate social responsibility
- cumulative voting system, 34–35
- minority shareholders and, 70
- decision-making, corporate
- active investor involvement in, 222
 - aggregative function of, 123–124

- decision-making, corporate (cont.)
 civic republican model of, 12–13,
 123–124
 contracts and, 8
 corporate stakeholder interest in, 162
 deliberation in, 123–124
 public choice theory and, 8, 123–124
 representative, 130
 shareholder wealth maximization
 and, 205
 shareholder votes for, 36, 37
 social choice functions, 15, 103, 104,
 112, 194
 voting mechanisms for, 8
 deliberation in decision-making,
 123–124
 democracy, corporate governance and
 role of, 44, 47
 democratic participation theory, 36,
 161–171
 constituents, 145–146, 169–171
 corporate governance theory
 supported by, xi
 employees, 146, 167–169
 interest and participation rights,
 161–165
 shared governance and,
 161–171, 173
 shareholders, 165–167
 Demsetz, Harold
 on disengaged shareholders, 96
 on joint production theory of the
 firm, 93–94, 148, 155
 on theory of the firm, 148
 on uninformed investors, 94
 differential voting powers among
 shares, 73–74
 direct vs. representative voting
 system, 15
 director primacy theory
 of Bainbridge, 3, 6, 47, 65–66, 124,
 125, 130–131
 electorate responsiveness and,
 130–131
 McDonnell on, 6
 Disney shareholders, CSR and, 84, 220
 disproportionate voting power,
 200–201
 Easterbrook and Fischel on, 38–39
 diversified portfolios, shareholder
 wealth maximization and, 82–83
 doctrine of minority oppression,
 71–72, 214
 closely held corporations and, 71–72
 control group and, 70
 Smith on shareholder primacy
 and, 92
 Dodd-Frank Wall Street Reform and
 Consumer Protection Act
 (2010), 45
 say-on-pay provisions of, 45, 206
 on SEC proxy access reforms, 42, 203
Dodge v. Ford Motor Co., 72
 Dow, Gregory, 105–106, 227
 dual-class shares, 38, 73–74, 200
 duty, in majority rule
 of care, 71
 of loyalty, 71, 214
 Easterbrook, Frank, 3, 118
 Arrow's theorem argument by,
 104, 108
 on corporate law and contracts,
 4, 208
 on disproportionate voting power,
 38–39
 hypothetical bargain of, 52–53,
 57–59
 on nexus of contracts theory, 52
 on one share, one vote, 73
 on residual control, 98
 on residual maximization, 4–5, 92
 on shareholder franchise, 91–92
 on shareholder homogeneity, 69, 89
 on shareholder primacy theory, 3, 33
 on shareholders as residual
 claimants, 88–89, 97–98
eBay Domestic Holdings, Inc.
v. Newmark, 47–48
The Economic Structure of Corporate
Law (Easterbrook and Fischel),
 3, 33
 economic theory, shareholder franchise
 and, 8–10
 economic theory of the firm, 64, 165
 corporate governance and, 146–151

- corporate governance theory
 - supported by, xi
 - Jensen and Meckling on, 208
 - shareholder franchise and, 8–9, 145–160
- Edelman, Paul, 69, 214
- Eisner, Michael, 84, 220
- election
 - voter interest and outcome stake in, 19–21
 - voting rights and procedures in, 16–17, 195
- electorate responsiveness, board
 - primacy and, 129–132
 - representative decision-making and, 130
 - tyranny of the majority and, 131
 - voting cycles and, 131
- Ely, John Hart, 29
- employee corporate board
 - representation, codetermination system for, 13
- employees
 - as capital investment, 100–101, 225
 - contractual payment of, 244
 - democratic participation theory and, 146, 167–169
 - firm information and, 156–157
 - inability to diversify, 99
 - interest in corporate profits, 5–6
 - as residual claimants, 99–100
 - residual interests of, 78, 96–101
 - shareholder homogeneity and, 77–79
 - shareholder alliance with, 158
 - theory of human capital and, 99, 225
- employment relationship
 - in theory of the firm, 147, 150–151, 239
 - worker role in, 245
- empty voting, 76
- environmental, social, and governance. *See also* corporate social responsibility
 - shareholder primacy and, 47–48
- environmental, social, and governance (ESG) funds, 84
- equiproportional standard, 24, 197
- error correction theory of Thompson and Edelman, 69, 214
- ESG. *See* environmental, social, and governance
- exchange-traded funds, ix. *See also* index funds
- exclusive shareholder franchise, 137–138, 145
 - alternative arguments for, 172–173
 - Bainbridge on, 66
 - corporate contract and, 63
 - differences between shareholders and other constituents, 68
 - flawed system of, 145–146
 - Hansmann and Kraakman on, 107
 - hypothetical bargain and, 60, 68
- executive compensations
 - excessive, 46–47
 - up-or-down vote on, 45
- fairness conditions, in Arrow's theory, 104–105, 112
- firm governance
 - joint production participation and, 154
 - legal construction of, 151–153
 - partnerships and, 151–152
 - stakeholder theory and community interest, 160
- firm-based approach to corporate voting rights, 145–160
 - information within firm, 156–158
 - joint production participation, 153–156
 - legal construction of firm governance, 151–153
 - stakeholder theory, 158–160
 - theory of the firm and corporate governance, 146–151
- firms. *See also* theory of the firm
 - access model of, 149–150
 - Coase on employment relationship in, 150–151, 155, 239
 - Coase on purpose and inner workings of, 147, 150–151
 - information within, 156–158
 - joint production model, 148

- firms (cont.)
 market transactions and, 146,
 147, 154
 roles within, 150
- Fischel, Daniel, 3, 118
 Arrow's theorem argument by,
 104, 108
 on corporate law and contracts,
 4, 208
 on disproportionate voting power,
 38–39
 hypothetical bargain of, 52–53,
 57–59
 on nexus of contracts theory, 52
 on one share, one vote, 73
 on residual control, 98
 on residual maximization, 4–5, 92
 on shareholder franchise, 91–92
 on shareholder homogeneity, 69, 89
 on shareholder primacy theory, 3,
 33
 on shareholders as residual
 claimants, 88–89, 97–98
- freehold requirements as voter interest
 marker, 21
- Friedman, Milton, 84–85
- German codetermination, 172–183
 codetermination in American
 corporate governance, 174–177
 evaluation of, 177–182
 McGaughey on, 175–176
 social codetermination, 173–174
 supervisory codetermination,
 174, 253
- gerrymandering, 17–18, 195
- Gibbard-Satterthwaite theorem, 108
- Gordon, Jeffrey, 108–109, 131
- Grossman, Sanford, 149
- Hamilton, Alexander, 37–38
- Hansmann, Henry, 81–82
 on Arrow's theorem, 105
 on board homogeneity, 235
 on exclusive shareholder
 franchise, 107
 on intransitive results, 108
- Hart, Oliver, ix, 64, 84–85
 on property rights theory of the
 firm, 149
 on shareholder homogeneity, 5
- heterogenous interests of shareholders,
 11–12, 59, 87
 board primacy and, 128–129
 Hart and Zingales on, 5
 preferences and, 90–93
 residual maximization and, 4–5, 12,
 90, 91
- Holt Civic Club v. Tuscaloosa*, 22–23
- homogeneity of board of directors
 Bainbridge on, 134
 Hansmann on, 235
- homogeneous interests of shareholders,
 5, 33, 39, 68–87
 board primacy and, 12–13, 132–139
 control group problem, 70–72
 CSR problem, 83–85
 differential voting powers among
 shares problem, 73–74
 Easterbrook and Fischel on, 69,
 89
 management, employee, and pension
 fund problem and, 77–79
 market hegemony problem, 85–87
 Martin and Partnoy on, 69
 residual interest hedges problem,
 76–77
 shareholder vote-buying and voting
 trusts problems, 74–76
 sovereign wealth funds problem,
 84
 Thompson and Edelman on, 69
 wealth maximization definition
 problem, 81–83
- human capital
 knowledge as, 150
 Smith's critical resource theory of the
 firm and, 149–150
 theory of, 99, 225
 transaction-costs model and, 149
- hypothetical bargain
 Bainbridge and, 65
 contractarian argument on, 58
 corporate constituents' interests and,
 59–60
 corporation as contract and, 57–60

- Easterbrook and Fischel on, 52–53, 57–59
 exclusive shareholder franchise and, 60, 68
 rhetoric moves of, 58, 60, 211
- IMF. *See* International Monetary Fund
- income inequality, x, 184
- index funds, 165–167, 219
 investor apathy and, 95
 passive, ix
 shareholder wealth maximization and, 219
- information
 disengaged shareholders and, 96, 156
 within firm, 156–158
 heterogeneity of, 93–101
 merger and, 95, 157–158, 223–224
 relationship between control and, 94
 secrecy and, 95–96, 157, 223
- Institutional Shareholder Services (ISS), 38
- interest in corporation. *See also* heterogenous interests of shareholders; homogeneous interests of shareholders
 corporate stakeholders and, 162
 corporation preference aggregation, 161
 participation rights and, 161–165
- International Monetary Fund (IMF)
 voting and, 17
 voting and member contribution, 197
 on wealth inequality, 184
- intransitive results
 Arrovian intransitivities, 107, 109, 110–112, 118–119
 board election manipulation, 120–121
 consequences of, 117–121
 Hansmann on, 108
 likelihood of, 114–117
- investors, *passim*
 active involvement in decision-making, 222
- Alchian and Demsetz on
 uninformed, 94
 governance, ix
 index funds and apathy of, 95
- ISS. *See* Institutional Shareholder Services
- Jensen, Michael, ix
 on agency costs, 53, 64
 on codetermination, 175
 on economic theory of the firm, 208
 on firm as legal fiction, 53
 on nexus of contracts theory, 52, 53–54
- joint production participation, xi, 153–156
 Alchian and Demsetz on theory of the firm and, 148, 155
 firm governance and, 154
- knowledge as human capital, 150
 knowledge-based theory of the firm, 150, 240
- Kraakman, Reinier, 81–82, 107
- Kramer v. Union Free School District*, 21–22
- law and economics theory, 3, 4, 9–10
Business Roundtable decision and, 43–44
 one share, one vote system and, 38–39
- legal fiction, firm as, 52, 53, 207
- limited liability
 board of directors for, 198
 corporate law on, 55
 Ribstein on, 55–56, 209
- limited liability companies (LLCs), 31, 151–152, 210
- limited liability partnerships (LLPs), 31, 151–152, 198, 210, 241
- limited partnerships (LPs), 31, 56–57, 151–152
- The Limits of Organization* (Arrow), 6, 65
- Lipton, Martin
 as long-term interest theorist, 124, 126, 127–128, 141–142

- Lipton, Martin (cont.)
 quinquennial election model, 124, 127–128
 on shareholder primacy, 126, 127
 LLC. *See* limited liability companies
 LLP. *See* limited liability partnerships
 long-term interest theorists
 Lipton and Rosenblum as, 124, 126, 127–128, 141–142
 Mitchell as, 124, 126, 127–128, 142
 shareholder franchise and, 126–128, 132
 LP. *See* limited partnerships
- majority rule, 215
 of control group, 70
 corporation's system of, 70
 cumulative voting and, 70
 doctrine of minority oppression and, 70, 71–72, 92, 214
 duty of care and, 71
 duty of loyalty and, 71, 214
 tyranny of the majority and, 131, 138
- majority-voting movement, 118–119, 231
- manageability
 of one person, one vote standard, 29
 of voter interest markers, 28, 197
- market for corporate control
 de jure and de facto control, 199
 shareholder votes and, 35
- market hegemony, shareholder homogeneity and, 85–87
- market transactions
 Coase on firm differentiation from, 65
 firms and, 146, 147, 154
- Martin, Shaun, 69
- McDonnell, Brett, 6
 on Bainbridge and Arrow, 66, 134–135
- McGaughey, Ewan, 175–176
- Means, Gardiner, 32–33, 96, 143–144
- Meckling, William
 on agency costs, 53, 64
 on codetermination, 175
 on economic theory of the firm, 208
 on firm as legal fiction, 53
 on nexus of contracts theory, 52, 53–54
- mediating hierarchs, board of directors as, 6–7, 124–125, 131–132, 141, 145
- merger
 differing interests between shareholder and employee, 77–78
 information and, 95, 157–158, 223–224
 between Mylan Labs and King Pharmaceuticals, 76
 shareholder voting on, 35, 48
- minority groups, voting rights of, 194
- minority oppression. *See* doctrine of minority oppression
- minority shareholders
 closely held corporations and doctrine of oppression, 71–72
 control group and, 70
 cumulative voting and, 70
- Mitchell, Lawrence
 as long-term interest theorist, 124, 126, 127–128, 142
 quinquennial election proposal support by, 127
 self-perpetuating board, 124, 126–128, 142
 on shareholder primacy, 126, 127
- Moore, John, 149
- multifiduciary model. *See* communitarian model
- mutual funds, 99
- national security concerns about sovereign wealth funds, 80, 218
- The Nature of the Firm* (Coase), 147
- nexus of contracts theory, 2, 3, 11, 51–53, 191, 207, 208
 contract insufficiency and, 4, 191
 corporate governance structure and, 54
 corporate law and, 52, 54
 Easterbrook and Fischel on, 52
 on firm as legal fiction, 52, 207
 focus of, 2
 Jensen and Meckling on, 52, 53–54

- theory of the firm and, 64, 65
- nonbinding votes, 45
- nonvoting shares, ix, 38, 200, 216
- officers, selection by board of directors, 51
- one person, one vote standard in politics, 23
 - default weight of vote and, 23, 25
 - Ely on, 29
 - manageability of, 29
 - preference strength and, 24, 29
 - Supreme Court on, 24
- one share, one vote system in corporations, 11, 215
 - changes in, 152–153
 - Easterbrook and Fischel on, 73
 - principle of, 37–39
 - “prudent mean” system compared to, 37–38
 - residual argument and, 89–90
 - residual maximization and, 89
 - SEC Rule 19 c-4 on, 38, 73
 - vote selling and, 39, 201
- ownership
 - bargaining advantage of, 101
 - separation from control in corporate structure, 32
 - shareholder primacy and, 50–51, 145
- Paramount Communications, Inc. v. Time Inc.*, 47–48
- participation rights, 161–165
- partnerships, 31, 151–152. *See also*
 - limited liability partnerships;
 - limited partnerships
- Partnoy, Frank, 69
- passive index funds, ix. *See also* index funds
- pension fund shareholder
 - CalPERS, 78–79, 217, 218, 219
 - residual interest of, 78
 - shareholder homogeneity and, 77–79
- Platonic guardians, board of directors as, 6–7, 44, 65, 124, 145
- plurality voting systems, 16, 17–18, 196
 - minority interests and, 17–18
- preference aggregation in corporations, 30–37, 68–69, 165. *See also* one share, one vote system
 - constituent preferences and, 59–60, 145–146, 162–163
 - corporate structure basics, 31–37
 - corporate voting rights, 47–49, 50
 - history of, 11
 - interest and, 161
 - preference strength and, 162–163
 - proxy access rule, 39–44
 - say-on-pay and nonbinding votes, 45–47
 - voting in, 10–11, 12–13
- preference aggregation in political institutions, 15–29
 - group choices in, 26
 - interest, combining votes, and ballot access, 25–26
 - interest and weight of votes, 23–25
 - prevention of, 25
 - qualitative vote dilution and, 25
 - voter interest markers, 26–29
 - voting rights, 16–19
 - voting rights theory and, 19–23
- preference strength in corporations, 162–163
- preference strength in politics, 162–163
 - one person, one vote standard and, 24, 29
 - testing problems, 20–21
 - voting interest and, 20–21, 163
- preferred shares, 74, 216, 242
- principal costs, ix
- Production, Information Costs, and Economic Organization* (Alchian and Demsetz), 93–94
- property rights theory of the firm, 149, 240
- property-holding requirements as underinclusive voting interest marker, 27–28
- proportional voting systems, 17
- proxy access rule, 39–44
 - Administrative Procedure Act on, 42–43
 - Business Roundtable v. SEC* court ruling on, 43–44, 203, 204

- proxy access rule (cont.)
 Dodd-Frank Act on SEC reforms to, 42, 203
 SEC proposal on, 41–43, 202–203
 proxy ballots, 33–34
 cost of, 40, 201
 SEC history on, 40–41
 SEC Rule 14a-4 on short-slate, 41
 SEC Rule 14a-8 on, 41–42, 56, 202, 210
 SEC Rule 14a-11 on, 40, 44, 201
 at shareholder meetings, 40
 triggering event and, 41
 “prudent mean” system, one share, one vote compared to, 37–38
 public choice theory, decision-making and, 8, 123–124
 public shareholders, 32–33
- qualitative vote dilution
 assessment of, 26
 ballot access laws and, 26
 laws to prevent, 25
 preference aggregation neglect and, 25
 quantitative vote dilution, 24
 quinquennial election model of Lipton and Rosenblum, 124, 127–128
- Rajan, Raghuram, 149–150, 241
 representative decision-making, 130
 representative vs. direct voting systems, 15
 residency requirements as voter interest marker, 21, 27–28
 residual argument, 88–102
 contractual creation of, 97
 employee interest in, 77–78, 96–101
 heterogeneity of preferences, 90–93
 information heterogeneity, 93–101
 one share, one vote and, 89–90
 residual types, 96–97
 residual claimants
 Easterbrook and Fischel on, 88–89, 97–98
 employees as, 99–100
 shareholders as, 32, 33, 88–89, 97–98
 residual interest hedges
 shareholder homogeneity and, 76–77
 stock shorting and, 76
 vote buying around record date, 77
 residual maximization, 39, 43–44
 constituents’ interest in, 12
 Easterbrook and Fischel on, 4–5, 92
 one share, one vote rule and, 89
 shareholder heterogeneity and, 90
 shareholder voting and control rights, 4–5, 12, 90, 91
Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 47–48
 Ribstein, Larry, 55–56, 209
Rise of the Uncorporation, The (Ribstein), 55
 risk preferences, 90
 Rosenblum, Steven
 as long-term interest theorist, 124, 141–142
 quinquennial election model, 124, 127–128
 on shareholder primacy, 126, 127
 Rule 14a-4 on short-slate proxy ballots, of SEC, 41
 Rule 14a-8 on proxy ballots, of SEC, 41–42, 56, 202, 210
 Rule 14a-11 on proxy ballots, of SEC, 40, 42–43, 44, 201
 Rule 19 c-4 on one share, one vote, of SEC, 38, 73
- Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 24
 Sarbanes-Oxley on shareholder meetings, 56, 210
 say-on-pay votes, 45–47, 205
 arguments in support of, 46
 Bebchuk on corporate pay package reforms and, 47
 Consumer Protection Act on, 45
 criticisms of, 46
 Dodd-Frank Wall Street Reform and Consumer Protection Act on, 45
Schreiber v. Carney, 75
 SEC. *See* Securities and Exchange Commission

- secrecy, information and, 95–96,
 157, 223
 Securities and Exchange
 Commission (SEC)
 on board of directors and security
 holder nominees, 41, 202
 on bylaw amendments, 41–42, 203
 Rule 14a-4 on short-slate proxy
 ballots, 41
 Rule 14a-8 on proxy ballots, 41–42,
 56, 202, 210
 Rule 14a-11 on proxy ballots, 40,
 42–43, 44, 201
 Rule 19 c-4 on one share, one vote,
 38, 73
 shareholder access proposal of,
 41–43, 202–203
 on shareholder proposals, 45
 status quo proposal of, 41–42
 Securities Exchange Act (1934), 40–41
 self-perpetuating board, Mitchell on,
 124, 126–128, 142
 shared governance
 Bratton on, 246
 democratic participation theory and,
 161–171, 173
 shareholder access proposal of SEC,
 41–43, 202–203
 shareholder democracy movement, 85,
 122, 124
 shareholder franchise, *x. See also*
 exclusive shareholder franchise
 board primacy and, 122–144
 civic republican decision-making
 approach, 123–124
 contractarian argument and, 11, 55
 Easterbrook and Fischel on, 91–92
 economic theory of the firm, 8–9
 economics and, 8–9
 foundation principles reevaluated, 4
 governance structure of, 2
 long-term interest theorists on,
 126–128, 132
 public choice decision-making
 approach, 123–124
 social choice theory and, 8–9
 standard economics theory
 and, 9–10
 state corporate law and, 55–56
 Strine on, 48, 153
 wise ruler theorists, 124–126
 shareholder meetings, 199
 election of board of directors at,
 33, 51
 proxy ballot and, 40
 Sarbanes-Oxley on, 56, 210
 shareholder preferences, 90–93,
 110–112
 shareholder primacy, *ix*, 3, 36, 187, 190
 Business Roundtable on, 186–187
 demise of, 185–187
Dodge v. Ford Motor Co. on, 72
 Easterbrook and Fischel on, 3, 33
 focus of, 2
 Mitchell, Lipton, and Rosenblum on,
 126, 127
 ownership justification for,
 50–51, 145
 shareholder wealth maximization
 and, 2, 89
 shift away from, *x*
 Smith on, 72
 Smith on minority oppression
 and, 92
 stakeholder theory and, 7, 47–48,
 159–160, 206
 Strine on, 187
 voting restrictions for, 11, 39
 shareholder proposals, SEC on, 45
 shareholder utility maximization, 5. *See*
also shareholder wealth
 maximization
 shareholder votes, 34
 ability to amass, 35, 199
 Bainbridge on, 92–93, 222
 Berle and Means on, 32–33
 for bylaw amendments, 35, 199
 for charter amendments, 35, 199
 in closely held corporations,
 32–33, 93
 cumulative voting system, 34–35
 decision-making and, 36, 37
 market for corporate control and,
 35
 proxy votes, 33–34
 tender offer for, 35

- shareholder wealth maximization, ix, x, 3, 5, 189
 Bainbridge on, 65
 Blair and Stout on, 125–126
 board primacy theory and, 12–13
 corporate decision-making and, 205
 diversified portfolios and, 82–83
 Hansmann and Kraakman on, 81–82
 index funds and, 219
 shareholder homogeneity and, 81–83
 shareholder primacy and, 2, 89
 short-term time horizons for, 82
 stakeholder theory and, 7
 time horizons for, 82, 90
- shareholders, xi. *See also* heterogenous interests of shareholders; homogeneous interests of shareholders
 Bebchuk on legal powers of, 3
 closely held corporations and concerns of, 91
 corporate bylaw amendments by, 56, 62, 209–210
 corporate contract
 disenfranchisement of, 62, 63
 democratic participation theory and, 165–167
 distinction from other constituents, 12–13, 68
 election of board of directors by, 1, 30, 32–33, 51
 employee alliance with, 158
 governance protection of, 156
 homogeneity of, 12–13, 33, 39, 77–79
 lack of information and disengagement, 96, 156
 minority, 70, 71–72
 public, 32–33
 as residual claimants, 32, 33, 88–89, 97–98
 residual maximization and, 4–5, 12, 90, 91
 stakeholder theory on weakened power of, 7
 vulnerability, 98–99, 101
- shares
 creation of, 36–37
 differential voting powers among, 73–74
 dual-class, 38, 73–74, 200
 nonvoting, ix, 38, 200, 216
 preferred, 74, 216, 242
 short-slate proxy ballots, SEC Rule 14a-4 on, 41
 short-term time horizons for wealth maximization, 82
 slating process, 18, 39, 196
 Smith, Gordon, 72
 on critical resource theory of the firm, 149–150
 on shareholder primacy norm and minority oppression, 92
 social choice function, 15, 103, 104, 112, 194
 social choice theory, 12, 103, 193
 Arrow's theorem and, 104, 112
 shareholder franchise and, 8–9
 transitive outcomes and, 115–116
 social codetermination, 173–174
 sole proprietorships, 31
 sovereign wealth funds (SWFs), 218
 CFIUS review of, 80
 foreign countries' investments in, 80
 national security concerns, 80, 218
 shareholder homogeneity and, 84
 ulterior motives of, 80–81
- spectrum agreement
 indicia of, 115
 transitive outcomes and, 114, 115, 230
- stakeholder theory, x, 158–160, 193
 communitarian or multifiduciary model, 7, 159, 192, 193
 CSR commitments and, 7, 193, 249
 firm governance and community interest, 160
 shareholder primacy and, 7, 47–48, 159–160, 206
 on weakened shareholder power, 7
 state corporate law, 1, 2, 30, 190–191
 shareholder franchise and, 55–56
 status quo proposal of SEC on proxy access, 41–42
 statutory trusts, 198

- Stout, Lynn
 on board of directors as mediating hierarchs, 6–7, 124–125, 131–132, 141, 145
 on shareholder homogeneity, 132–133
 on shareholder wealth maximization, 125–126
 systems theory use by, 66–67
 team production theory of, 3, 6–7, 106, 124, 131–132, 155, 227
 as wise ruler theorist, 124–126
- Strine, Leo, ix
 on corporate bylaws, 62–63
 on shareholder franchise, 48, 153
 on worker voice, 187
- supervisory codetermination, 174, 253
- Supreme Court, United States
 on one person, one vote standard, 24
 on voter interest and voting rights, 21–23
- SWFs. *See* sovereign wealth funds
- systems theory, Stout and Belinfanti's use of, 66–67
- Tax Cuts and Jobs Act (2017), 1
- tax revenues from corporations, 190
- taxpaying requirements as voter interest marker, 21
- team production theory of Blair and Stout, 3, 6–7, 106, 227
 theory of the firm and, 124, 131–132, 155
- tender offer and shareholder votes, 35
- theory of the firm. *See also* economic theory of the firm
 Alchian and Demsetz on, 93–94, 148, 239
 applied to corporate governance, 146–151
 Blair and Stout team production theory and, 124, 131–132, 155
 critical resource, 149–150
 employee voting rights and, 13
 employment relationship in, 147, 150–151, 239
 knowledge-based, 150, 240
 nexus of contracts theory and, 64, 65
 property rights, 149, 240
 shareholder governance protection and, 156
 Williamson's transaction-costs model and, 148–149, 239
- Thompson, Robert, 69, 214
- time horizons for shareholder wealth maximization, 82, 90
- transaction-costs model, 147
 Blair on, 240
 human capital in, 149
 Williamson and, 148–149, 239
- transitive outcomes
 social choice theory and, 115–116
 spectrum agreement for, 114, 115, 230
- trusts
 business, 31
 statutory, 198
 voting, 74–76
- tyranny of majority, 131, 138
- Uniform Limited Partnership Act, 198
- up-or-down vote
 for board of directors, 34, 45
 on executive compensations, 45
- vote bribery, 74, 76
- vote buying, 74–76
 around record date, 77
Schreiber v. Carney and, 75
- voter interest, 196
 election outcome stake and, 19–21
 preference strength and, 20–21, 163
 Supreme Court on voting right and, 21–23
 vote nominations and ballot access, 25–26
 weight and, 23–25
- voter interest markers, 23, 26–29, 136, 137, 163–165
 features of, 27
 freehold requirements, 21
 manageability of, 28, 197
 overinclusive, 27
 residency requirements, 21, 27–28

- voter interest markers (cont.)
 - taxpaying requirements, 21
 - underinclusive, 27
- votes. *See also* shareholder votes; weight of vote in corporations
 - nonbinding, 45
 - say-on-pay, 45, 46, 47, 205
 - up-or-down, 34, 45
- vote selling, 39, 201
- voting, xi
 - corporate preference aggregation in, 10–11, 12–13
 - decision-making and, 8
 - gerrymandering and, 17–18, 195
 - shareholder primacy and restrictions to, 11, 39
 - slating process and, 18, 39, 196
- voting cycles
 - in corporate voting, 33, 131, 135–136
 - manipulation through, 17–18, 196
- voting rights in corporations, 47–49, 50
 - firm-based approach to, 145–160
 - shareholder primacy theory and, 50, 145
- voting rights in politics, 11. *See also* ballot access
 - ballot casting as, 11, 15–16, 23
 - binary approach to, 23
 - constitutional amendments and, 194
 - election procedures and, 16–17, 195
 - facets of, 16–19
 - interest, combining votes, and ballot access, 25–26
 - interest and weight of vote, 23–25
 - of minority groups, 194
 - Supreme Court on voter interest and, 21–23
 - theory on, 19–23
 - weight of vote and, 15–16
- Voting Rights Act (1965), 26, 194, 229
- voting systems
 - plurality, 16, 17–18
 - proportional, 17
 - representative, 15
- voting trusts, 74–76
- vulnerability of shareholders, 98–99, 101
- wealth inequality, 184
 - corporate governance and, 13, 184–185
 - IMF on, 184
- wealth maximization. *See* shareholder wealth maximization
- weight of vote in corporations. *See also* one share, one vote system
 - corporate governance power and, 36
- weight of vote in politics, 17, 197
 - ballot casting right and, 23
 - one person, one vote standard, 23, 24, 25
 - voter interest and, 23–25
 - voting rights and, 15–16
- Williamson, Oliver, 64, 148–149, 239
- wise ruler theorists
 - Bainbridge as, 124, 125
 - Blair and Stout as, 124–126
 - shareholder franchise and, 124–126
- Zingales, Luigi, 5, 84–85, 149–150, 241