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**Abstract:** In the aftermath of George Floyd's murder, public companies swiftly pledged sweeping equity commitments—only to abandon them under political and market pressure. These reversals were not aberrations. They were opportunistic, performative, and reactionary marketing responses. They expose a governance regime in which stakeholder interests are structurally reversible because they remain doctrinally optional, lacking the institutional interlock needed to create binding accountability across stakeholder roles.

This Article explores how stakeholder power is already embedded in corporate governance through interlocking initiatives grounded in shared values. Stakeholder activism—boycotts, proxy votes, viral campaigns—is not merely expressive; it is an overlooked form of governance. Drawing on fiduciary doctrine, collective action theory, law and political economy, and governance models, this Article blurs the boundary between private enterprise and public governance. It shows how Total Governance enables ordinary individuals to coordinate across roles. Employees, consumers, investors, community members are able to exert influence regardless of whether they contribute capital.

Taken seriously, Total Governance challenges the assumption that governance power belongs only to capital. When stakeholders identify and act on shared values and superordinate goals, a governance paradigm that we dub *values primacy*, they exert real institutional power. This power is exerted through coordinated civic action. Total Governance is not an aspiration; it is a structural fact. What appears to be reputational noise is, in fact, governance at work.

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Through case studies of Target, Tesla, and Meta, we show how activism shapes corporate outcomes in real time—and how cross-role coordination can impose binding constraints on firm identity. The structural geometries of the corporate form—ownership concentration, platform embeddedness, and transition costs—condition how Total Governance emerges, fragments, or consolidates. Total Governance helps explain how civic accountability endures even as legal structures—via charter competition, private equity opacity, and shareholder disenfranchisement—increasingly insulate corporate power from constraint.

This Article argues that legitimacy no longer stems from boardroom deliberation alone, but from civic accountability forged in public struggle. By exposing the porous boundary between public pressure and private governance, it redefines the power of everyday individuals to govern corporate enterprise—especially consumer-facing firms operating at public scale.

## INTRODUCTION

In January 2025, Target Corporation quietly abandoned its diversity, equity, and inclusion (DEI) infrastructure. The move came with no press release, no acknowledgment of retreat, and no apology.[1] The announcement marked a sharp and silent retreat from the company's $2 billion racial equity commitments made in the aftermath of George Floyd's murder.[2] Now, in the wake of intensified legal scrutiny and political attacks on "wokeness," Target's DEI apparatus was dismantled.[3] The announcement came days after Donald

[1] *See Statements*, TARGET CORP., https://corporate.target.com/press/statements [perma.cc/J879-7UH2] (providing official company statements on corporate initiatives, responses to public events, and policy changes).

[2] *See Inside Target's $100 Million Investment in Black Communities, Our Latest Effort in Our Commitment to Advancing Racial Equity*, TARGET CORP. (Oct. 12, 2021), https://corporate.target.com/news-features/article/2021/10/reach-pensole [perma.cc/W996-5FPL] (detailing Target's investment of $100 million in black communities); *Target's Racial Equity, Action and Change Progress*, TARGET CORP. (May 18, 2021), https://corporate.target.com/news-features/article/2021/05/reach-update [perma.cc/3RWX-J9SA] (explaining Target's progress toward its equity goals); *We're Enhancing Our Target Scholars Program, with Scholarship Extensions *and* New Resources—Take a Look*, TARGET CORP. (May 12, 2022), https://corporate.target.com/news-features/article/2022/05/target-scholars [perma.cc/36W3-QENU] (describing Target's increased scholarship support for Target Scholars at HBCUs).

[3] *See* Press Release, Am. First Legal, America First Legal Puts Woke Corporations, Law Firms, and Hospitals on Notice (Feb. 9, 2024), https://aflegal.org/america-first-legal-puts-woke-corporations-law-firms-and-hospitals-on-notice-all-dei-programs-and-workplace-balancing-based-on-race-national-origin-and-sex-violate-the-law [perma.cc/U57Q-VFGW] (announcing intent to file legal complaints challenging DEI programs in law firms and corporations as violations of civil rights laws); *Woke Corporations We've Exposed*, AM. FIRST LEGAL, https://aflegal.org/woke-corporations/ [perma.cc/4DZD-RJ79] (detailing legal actions against major companies—including Apple and William Sonoma—for race- and gender-based DEI hiring practices). For an analysis of the political and legislative interventions that prompted the "vibe shift," see Angela N. Aneiros & Mandy Van Tassell, *The Political Turn That Made* Total Governance *Impossible to Ignore*, 50 J. CORP. L. 101, 102 (2026), https://jcl.law.uiowa.edu/articles/2026/01/political-turn-made-total-governance-impossible-ignore [perma.cc/RXP8-FHUC] (detailing initiatives and political actions to dismantle DEI principles and commitments).

Trump's second inauguration and the formal rollout of Project 2025—a sweeping political blueprint to eradicate civil rights enforcement across federal agencies.[4] It introduced not just a new regulatory agenda, but a political reality in which corporate allegiance to social justice was penalized—economically, rhetorically, and ideologically.[5] But Target's reversal was not an isolated event; it was a bellwether.

Within weeks, other public companies followed suit. Across the private sector, companies that had once heralded their social justice commitments began disavowing them with suspect indifference.[6] DEI teams were dissolved, racial equity goals were suspended, and social justice language was scrubbed from corporate websites.[7] The speed and uniformity of these reversals raise a fundamental question: Why are public corporations able to abandon high-profile equity commitments with such impunity?[8] This Article argues that

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[4] *See* Adam Candeub, *Federal Trade Commission* (calling for rolling back DEI policies in federal contracts and programs), *in* MANDATE FOR LEADERSHIP: THE CONSERVATIVE PROMISE (PROJECT 2025) 869, 873 (Paul Dans & Steven Groves eds., 2023). President Trump has implemented these and other Project 2025 policies across executive orders. *See, e.g.*, Exec. Order No. 14,151, 90 Fed. Reg. 8339 (Jan. 29, 2025) (abolishing DEI offices and personnel across federal agencies and mandating removal of DEI terminology from official materials); Exec. Order No. 14,173, 90 Fed. Reg. 8633 (Jan. 31, 2025) (prohibiting federal contractors and grantees from maintaining DEI-related programs deemed discriminatory and directing DOJ to investigate DEI practices in the private sector); Exec. Order No. 13,950, 85 Fed. Reg. 60683 (Sep. 28, 2020) (prohibiting federal contractors and agencies from providing training on so-called "divisive concepts" related to race or sex: a precursor to later anti-DEI initiatives).

[5] *See supra* note 4 and accompanying text (cataloging the rollback of civil rights and the removal of equity from the federal government); *see also* Courtney Gilligan Saleski et al., *Enforcement of President Trump's DEI Executive Order: A Strategic Roadmap for Companies*, DLA PIPER (Mar. 21, 2025), https://knowledge.dlapiper.com/dlapiperknowledge/globalemploymentlatestdevelopments/2025/enforcement-of-president-trumps-dei-executive-order-a-strategic-roadmap-for-companies [perma.cc/KGJ8-LUYG] (outlining expected EEOC and DOJ enforcement mechanisms beyond executive orders targeting DEI in private sector contracting).

[6] *See* Aneiros & Tassell, *supra* note 3, at 102 (discussing how public companies realigned their ethos to prioritize sheer shareholder value maximization); *see also* Lisa M. Fairfax, *ESG Hypocrisy and Voluntary Disclosure*, 26 N.Y.U. J. LEGIS. & PUB. 127, 129–31 (2024) (defining "corporate hypocrisy" and explaining that backlash is often worse when companies fail to follow through on public commitments); *Which U.S. Companies Are Pulling Back on Diversity Initiatives?*, AP NEWS (Mar. 7, 2025), https://apnews.com/article/dei-diversity-equity-inclusioncompanielawsuits2193ef0a864db968e-6934f971f78e8f2 [perma.cc/2F8D-AJEU] (reporting that many DEI programs initiated after George Floyd's murder have been scaled back amid political and legal pressure).

[7] *See DEI Task Force Update (July 1, 2025)*, GIBSON DUNN (July 1, 2025), https://www.gibsondunn.com/dei-task-force-update-july-1-2025/ [perma.cc/8M7P-QEEG] (reporting the surge in legal, regulatory, and ideological pressure on DEI initiatives and documenting corporate rollbacks across sectors in response); Carliss N. Chatman, *DEI Rollbacks Create Legal, Governance Risks Under Section 1981*, BLOOMBERG L. (May 22, 2025), https://news.bloomberglaw.com/us-law-week/dei-rollbacks-create-legal-governance-risks-under-section-1981 [perma.cc/S8PH-B4MX] (arguing that the political backlash against DEI—including pressures from Project 2025—exposes firms to legal risk and governance instability).

[8] *See* Stavros Gadinis & Amelia Miazad, *Corporate Law and Social Risk*, 73 VAND. L. REV. 1401, 1407–08, 1462 (2020) (arguing that corporate governance often underestimates or ignores social

these reversals are not the product of reputational fragility or political polarization alone. They are the result of a legal architecture that treats stakeholder interests as optional—invoked when convenient, abandoned when contested.[9]

Notably, not all firms responded with retreat.[10] In the 2025 proxy season, shareholders at a broad range of major companies—including Apple,[11] Levi Strauss,[12] Costco,[13] and Procter & Gamble[14] overwhelmingly rejected coordi-

risks, making companies susceptible to abrupt reversals in policy under political and market pressures).

[9] *See* Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247, 250–51 (1999) (arguing that boards play a critical role as mediating hierarchies in order to assure that stakeholders who provide firm-specific investments in an incomplete contract framework can be adequately protected); Lisa M. Fairfax, *For Corporate Hypocrisy*, 50 J. CORP. L. 287, 304 (2025) (noting that "if a corporation makes altruistic or laudable statements followed by behavior inconsistent with those statements, that corporation is subject to significantly more criticism than a corporation that simply engages in problematic behavior"); Ann M. Lipton, *Will the Real Shareholder Primacy Please Stand Up?*, 137 HARV. L. REV. 1584, 1588–90, 1595–98 (2024) (arguing that the Business Roundtable's stakeholderist rhetoric has not substantively shifted the legal infrastructure of shareholder primacy); Dorothy S. Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUM. L. REV. 2563, 2570–78 (2021) (explaining how an interconnected set of institutional actors entrenches shareholder primacy and inhibits meaningful governance reform despite public support for stakeholder engagement).

[10] *See* Lisa M. Fairfax, *Racial Rhetoric or Reality? Cautious Optimism on the Link Between Corporate #BLM Speech and Behavior*, 2022 COLUM. BUS. L. REV. 118, 134–36 (presenting empirical data on post-2020 corporate actions and arguing that some firms meaningfully linked public racial justice statements to measurable internal changes).

[11] *See* Apple Inc., Definitive Proxy Statement (Form DEF 14A) 85–87 (Jan. 10, 2025), https://www.sec.gov/Archives/edgar/data/320193/000130817925000008/aapl4359751-def14a.htm [perma.cc/H299-BQ74] (detailing a "Request to Cease DEI Efforts" proposed by the National Center for Public Policy Research (NCPPR), a conservative think tank). Apple's board recommended shareholders vote against it, stating that the proposal inappropriately attempted to restrict Apple's ability to manage its own ordinary business operations, people and teams, and business strategies. *Id.* at 75, 87. Over ninety-seven percent of shareholders voted against the proposal. Michael Liedtke, *Apple Shareholders Reject Proposal to Scrap Company's Diversity Programs*, AP NEWS (Feb. 26, 2025), https://apnews.com/article/apple-dei-shareholder-proposal-annual-meeting-96637c8d4fa3d5e2a73dc59a59c2485b [perma.cc/CXM6-9VYS].

[12] *See* Levi Strauss & Co., Definitive Proxy Statement (Form DEF 14A) 69–70 (Mar. 12, 2025), https://www.sec.gov/Archives/edgar/data/94845/000130817925000101/levi013375_def14a.htm [perma.cc/2FEY-NL4T] (describing a proposal from the NCPPR to "consider abolishing its DEI program, policies, department, and goals"). Levi Strauss's board recommended shareholders vote against the proposal, emphasizing the company's longstanding commitment to diversity and inclusion. *Id.* at 70. More than ninety-nine percent of shareholders voted against the proposal. *Levi Strauss Shareholders Vote Against Proposal to End Diversity Programs*, REUTERS (Apr. 28, 2025), https://www.reuters.com/sustainability/society-equity/levi-strauss-shareholders-vote-against-proposal-end-diversity-programs-2025-04-28/ [perma.cc/9JYV-6V46].

[13] *See* Costco Wholesale Corp., Definitive Proxy Statement (Form DEF 14A) 31–32 (Dec. 11, 2024), https://www.sec.gov/Archives/edgar/data/909832/000090983224000072/0000909832-24-000072-index.htm [perma.cc/98X7-KNTE] (describing a proposal by NCPPR, requesting a report on the risks of maintaining Costco's DEI initiatives). Costco's board recommended shareholders vote against the proposal, stating that the requested report would not provide meaningful additional information to shareholders. *Id.* at 33. Ninety-eight percent of shareholders voted against the proposal. Juveria Tabassum & Ross Kerber, *Costco Shareholders Reject Call for Review of Diversity Programs*,

nated anti-DEI proposals advanced by conservative shareholder activists.[15] These shareholder votes signal that shareholders' values and superordinate goals do not have to stand in contrast with values and superordinate goals of stakeholders.[16] The results of these votes were often driven by values-aligned institutional investors.[17] We term this corporate governance paradigm *values primacy*. The contrasting paths taken by Target and these firms illustrate the core inquiry of this Article: Are we witnessing the erosion of stakeholder influence, or the emergence of a new paradigm—Total Governance—where legitimacy stems not from compliance with political orthodoxy, but from participatory, cross-stakeholder engagement?

At the heart of these responses is reversibility: the capacity of firms to retract stakeholder commitments without institutional cost or legal constraint.[18] Reversibility is not simply a political vulnerability—it is a structural design feature of modern corporate law rooted in short-termism.[19] Short-termism

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REUTERS (Jan. 23, 2025), https://www.reuters.com/business/retail-consumer/costco-shareholders-vote-against-proposal-report-diversity-programs-2025-01-23/ [perma.cc/EQ9L-RG7V].

[14] *See* Letter from Kerry Shannon Burke on behalf of Procter & Gamble to Div. of Corp. Fin., Sec. & Exch. Comm'n (June 10, 2025), https://www.sec.gov/files/corpfin/no-action/14a-8/nlpc procter61025-14a8inc.pdf [perma.cc/3944-VWY3] (inquiring into consequences of excluding a proposal from the National Legal and Policy Center to "[e]liminate DEI and ESG" goals).

[15] *See supra* notes 11–13 and accompanying text (discussing how the shareholders of several notable corporations rejected anti-DEI proposals); *see also* Atinuke O. Adediran, *Risky Business*, 106 B.U. L. REV. 101, 112 (2026) (discussing how activists use shareholder proposals).

[16] *See* Andrew M. Carton & Basima A. Tewfik, *A New Look at Conflict Management in Work Groups*, 27 ORG. SCI. 1125, 1126–27 (2016) (describing superordinate goals as effective conflict management strategies that reduce relational conflict by fostering inclusive categorization and common identity); Sergio Alberto Gramitto Ricci & Daniel Greenwood, *Total Governance*, 50 J. CORP. L. 353, 388, 391 (2025) (challenging the assumption that shareholders always desire to prioritize profits, seek goals that contrast with the goals of other stakeholders, and overlook values shared across all categories of stakeholders such as environmental and social justice); Muzafer Sherif, *Superordinate Goals in the Reduction of Intergroup Conflict*, 63 AM. J. SOC. 349, 349–50 (1958) (defining superordinate goals as objectives "compelling and highly appealing to members of two or more groups in conflict but which cannot be attained by the resources and energies of the groups separately").

[17] *See* Lisa M. Fairfax, *From Apathy to Activism: The Emergence, Impact, and Future of Shareholder Activism as the New Corporate Governance Norm*, 99 B.U. L. REV. 1301, 1318–19 (2019) (explaining that shareholders are now much more willing to reject directors and more willing to withhold votes, resulting in more directors who do not get a majority of the vote; many shareholder proposals have been receiving majority votes despite directors and the board advising them to vote against it); Jill Fisch, *Promoting Corporate Diversity: The Uncertain Role of Institutional Investors*, 46 SEATTLE U. L. REV. 367, 378–85 (2023) (arguing that institutional investors increasingly engage on DEI issues but face structural and accountability limitations); Jill Fisch & Jeff Schwartz, *Corporate Democracy and the Intermediary Voting Dilemma*, 102 TEX. L. REV. 1, 1 (2023) (arguing that fiduciary obligations require fund managers to account for the ESG preferences of their investors, especially in the context of shareholder engagement).

[18] *See* Stavros Gadinis & Amelia Miazad, *A Test of Stakeholder Capitalism*, 47 J. CORP. L. 47, 51–55 (2021) (arguing that stakeholder capitalism initiatives frequently collapse under financial and political pressures—illustrating structural weaknesses in corporate governance frameworks).

[19] *See* Afra Afsharipour, *ESG Dealmaking*, 26 U. PA. J. BUS. L. 985, 1006–07, 1014–17 (2024) (explaining that ESG commitments in M&A transactions are often undermined by short-term financial

finds its justification in the shareholder value maximization mantra.[20] Stakeholder voice operates through informal channels: consumer pressure, employee activism, or reputational threat.[21] In a governance regime defined by managerial discretion and fiduciary minimalism, corporate promises to workers, communities, or consumers are inherently unstable. When the ideological winds shift, the law provides no anchor.[22] If equity was never truly part of the corporate mission, then its disappearance under political pressure is not cowardice—it is consistency.[23] Short-termism, including ideological short-termism, is by design.

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incentives, weak enforcement mechanisms, and reputational pressures that treat sustainability and equity as transactional risks rather than governance obligations, and noting that parties frequently dilute ESG clauses in deal negotiations to preserve managerial discretion and appease short-termist investors); Carliss N. Chatman, *The Corporate Personhood Two-Step*, 18 NEV. L.J. 811, 830–36 (2018) (arguing that doctrines of corporate personhood exacerbate managerial autonomy and short term decision making); Lynn A. Stout, *The Toxic Side Effects of Shareholder Primacy*, 161 U. PA. L. REV. 2003, 2015–16 (2013) (critiquing shareholder primacy norms for incentivizing short-termism at the expense of long term corporate health); Leo E. Strine, Jr., *Can We Do Better by Ordinary Investors? A Pragmatic Reaction to the Dueling Ideological Mythologists of Corporate Law*, 114 COLUM. L. REV. 449, 488–93 (2014) (arguing that short horizon investor pressure distorts managerial strategy away from sustainable value).

[20] *See* KENT GREENFIELD, THE FAILURE OF CORPORATE LAW: FUNDAMENTAL FLAWS AND PROGRESSIVE POSSIBILITIES 39–44 (2006) (arguing that shareholder primacy lacks a doctrinal basis and undermines democratic accountability); Blair & Stout, *supra* note 9, at 280–87 (portraying boards as mediating hierarchies); Stout, *supra* note 19, at 2015–16 (asserting that shareholder primacy fuels short-termism and causes social harms); Strine, *supra* note 19, at 481–85 (criticizing institutional investor short-termism and advocating for structural reforms).

[21] *See* Fairfax, *supra* note 10, at 193 (finding that some corporations took genuine steps aligned with their BLM statements, but most lacked structural safeguards, making their commitments vulnerable to reversal); Gina-Gail S. Fletcher & H. Timothy Lovelace Jr., *Corporate Racial Responsibility*, 124 COLUM. L. REV. 361, 408–09 (2024) (arguing that corporate racial justice statements following George Floyd's murder were often symbolic and rarely embedded in enforceable governance mechanisms); Kishanthi Parella, *Reputational Regulation*, 67 DUKE L.J. 907, 913–16 (2018) (arguing that in the absence of binding legal obligations, reputational mechanisms serve as informal tools of discipline, but their effectiveness depends on institutional context and structural constraints); Stephanie J. Creary, Janet Foutty & Kwasi Mitchell, *How Diversity Can Boost Board Effectiveness*, MIT SLOAN MGMT. REV. (Apr. 3, 2023), https://sloanreview.mit.edu/article/how-diversity-can-boost-board-effectiveness/ [perma.cc/U7DS-WZHK] (arguing that DEI becomes durable only when embedded at the board and leadership levels, and that board composition and governance processes must evolve to recognize stakeholder pluralism as a feature of institutional legitimacy—not a reputational afterthought).

[22] *See* Lucian A. Bebchuk & Roberto Tallarita, *Will Corporations Deliver Value to All Stakeholders?*, 75 VAND. L. REV. 1031, 1086 (2022) (finding that companies making public stakeholder commitments—such as signatories to the Business Roundtable pledge—made no binding governance changes, reinforcing that stakeholder rhetoric is often decoupled from structural reform); Fairfax, *supra* note 10, at 183–203 (finding some follow-through on racial justice commitments at the board level, but cautioning against long-term impact absent structural reform); Cary Martin Shelby, *Profiting from Our Pain: Privileged Access to Social Impact Investing*, 109 CALIF. L. REV. 1261, 1275–82 (2021) (critiquing the monetization of racial justice language without substantive governance transformation).

[23] *See* Carliss N. Chatman, *1981*, 82 WASH. & LEE L. REV. 1655, 1729–30 (2026) (arguing that post-Floyd DEI initiatives often reflected reputational rather than structural commitments, and that

This moment demands more than critique. It demands a rethinking of corporate governance and stakeholder engagement.[24] Today's corporate governance framework also relies on a flawed distinction between "public" and "private" companies—one that fails to capture how firms wield power over public life.[25] Historically, corporations have been understood not merely as aggregations of capital, but as institutions constituted through language, legal architecture, and public purpose—entities that derive their legitimacy from the social functions they perform and the publics they affect.[26] In practice, publicness arises not only from exchange listing, but also from a company's market dominance, stakeholder interdependence, and infrastructural role.[27] Institutions that appear technocratic or market-driven often perform profoundly civic functions, shaping norms of legitimacy, accountability, and citizenship beyond traditional democratic channels.[28] Leading corporate governance scholars have

reversibility was embedded in corporate design); Cary Martin Shelby, *Racism as a Threat to Financial Stability*, 118 NW. U. L. REV. 755, 760–61 (2023) (contending that racialized financial practices like redlining and discriminatory lending function as systemic financial risks and should be formally recognized by regulators).

[24] *See* Sergio Alberto Gramitto Ricci & Christina M. Sautter, *Corporate Governance Gaming: The Collective Power of Retail Investors*, 22 NEV. L.J. 51, 92–94 (2021) (highlighting the inadequacy of traditional shareholder primacy models in light of digitally coordinated investor activism and proposing a rethinking of participatory corporate power); Fisch, *supra* note 17, at 1344 (exploring the limits of institutional investor influence and calling for new legal frameworks to institutionalize stakeholder diversity goals); Fletcher & Lovelace, *supra* note 21, at 425–27 (calling for a structural shift from performative racial justice to enforceable corporate racial responsibility embedded in law and governance); Tom C.W. Lin, *The New Corporate Political Governance*, 65 B.C. L. REV. 833, 839–45 (2024) (arguing that modern corporations are politically entangled actors whose governance includes active participation in partisan, ideological, and cultural debates).

[25] *See* FIN. REPORTING COUNCIL, THE WATES CORPORATE GOVERNANCE PRINCIPLES FOR LARGE PRIVATE COMPANIES 3 (2018), https://www.frc.org.uk/library/standards-codes-policy/corporate-governance/the-wates-corporate-governance-principles-for-large-private-companies/ [perma.cc/H5W7-Z822] (emphasizing the public responsibilities of large private firms based on societal impact, not legal form); Gramitto Ricci & Greenwood, *supra* note 16, at 358–59 (proposing a stakeholder-driven model in which corporate legitimacy derives from infrastructural reach and cross-role stakeholder engagement); George S. Georgiev, *The Breakdown of the Public–Private Divide in Securities Law: Causes, Consequences, and Reforms*, 18 N.Y.U. J.L. & BUS. 221, 228–29 (2021) (noting that recent deregulatory shifts have rendered the public–private distinction descriptively incoherent); Hillary A. Sale, *Public Governance*, 81 GEO. WASH. L. REV. 1012, 1013 (2013) (observing that the boundary between "private" corporate decision-making and public accountability has eroded as media, stakeholders, and political actors now scrutinize corporate behavior and demand changes in the distribution of corporate power).

[26] *See* Sergio Alberto Gramitto Ricci, *Archeology, Language, and Nature of Business Corporations*, 89 MISS. L.J. 43, 78–81 (2019) (tracing the origins of business corporations from Roman cities and detailing the archetype that characterizes the corporate form).

[27] Gramitto Ricci & Greenwood, *supra* note 16, at 378–79, 394–95; *see also* Kishanthi Parella, *International Law in the Boardroom*, 108 CORN. L. REV. 839, 884–85 (2023) (explaining that reputational risk from stakeholders often exceeds formal regulatory exposure and compels firms to internalize norms across borders and functions).

[28] *See* JULIE E. COHEN, BETWEEN TRUTH AND POWER: THE LEGAL CONSTRUCTIONS OF INFORMATIONAL CAPITALISM 26–29 (2019) (examining how digital infrastructures operate as legally con-

similarly argued that a reorientation toward sustainable, long-term governance is necessary to ensure fair gainsharing and institutional resilience.[29] This Article explores Total Governance as a structural and jurisprudential response. [30] Drawing from corporate law, liberal republican theory, and law and political economy, Total Governance—as conceptualized by Sergio Alberto Gramitto Ricci and Daniel Greenwood—reimagines the public corporation as a civic institution—one whose legitimacy derives not solely from capital formation, but from sustained engagement with the communities it governs.[31] Stakeholder power, in this view, is not external to corporate governance but constitutive of it. Activism—boycotts, proxy votes, digital campaigns—is not noise; it is governance in action.[32]

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structed governance regimes that perform state-like functions in knowledge production, visibility, and accountability); ANNELISE RILES, FINANCIAL CITIZENSHIP: EXPERTS, PUBLICS, AND THE POLITICS OF CENTRAL BANKING 3–5 (2018) (arguing that central banks, though formally technocratic, function as civic institutions that shape norms of legitimacy, inclusion, and accountability beyond electoral structures).

[29] *See* LUCIAN BEBCHUK & JESSE FRIED, PAY WITHOUT PERFORMANCE: THE UNFULFILLED PROMISE OF EXECUTIVE COMPENSATION 63–66 (2004) (arguing that executive pay structures often encourage value extraction over long-term firm health); LYNN STOUT, THE SHAREHOLDER VALUE MYTH: HOW PUTTING SHAREHOLDERS FIRST HARMS INVESTORS, CORPORATIONS, AND THE PUBLIC 2–5 (2012) (arguing that corporate law does not require maximizing shareholder value and that doing so can produce systemic harms).

[30] *See* Gramitto Ricci & Greenwood, *supra* note 16, at 358–59 (introducing "total governance" as a stakeholder-driven model inspired by liberal republicanism, in which individuals influence corporate governance across multiple roles—shareholders, employees, consumers, and community members—through digital tools and coordinated activism).

[31] *Id.*; *see also* JÜRGEN HABERMAS, THE STRUCTURAL TRANSFORMATION OF THE PUBLIC SPHERE: AN INQUIRY INTO A CATEGORY OF BOURGEOIS SOCIETY 178–85 (Thomas Burger trans., MIT Press 1989) (1962) (emphasizing the importance of communicative action and public reasoning to institutional legitimacy in complex societies); BERNARD MANIN, THE PRINCIPLES OF REPRESENTATIVE GOVERNMENT 228–38 (1997) (arguing that modern legitimacy depends on contestability and responsiveness rather than electoral consent); RILES, *supra* note 28, at 10–11 (discussing the problem of legitimacy for central banks owing to their undemocratic structures); Gramitto Ricci, *supra* note 26, at 78–81 (noting that corporate legitimacy as a legal entity with legal capacity can be traced to its role in pursuing goals considered important for the public and government, as at the creation of business corporation in Ancient Rome).

[32] *See* SARAH A. SOULE, CONTENTION AND CORPORATE SOCIAL RESPONSIBILITY 9–10, 29–30 (2009) (describing "private politics" as collective efforts to influence firms directly outside formal state processes and distinguishing insider tactics such as shareholder activism from outsider tactics such as boycotts and reputational campaigns); Lisa M. Fairfax, *Social Activism Through Shareholder Activism*, 76 WASH. & LEE L. REV. 1129, 1152–53 (2019) [hereinafter Fairfax, *Social Activism*] (describing shareholder activism as a mechanism through which activists have advanced social change and enforced legal norms through formal governance tools); Lisa M. Fairfax, *The O.G.: Unmasking Why Governance Is the Most Important Component of ESG*, 14 HARV. BUS. L. REV. 153, 180–81 (2024) [hereinafter Fairfax, *The O.G.*] (contending that shareholder power and governance mechanisms are essential for translating environmental and social commitments into enforceable corporate action); Omari Scott Simmons, *Chancery's Greatest Decision: Historical Insights on Civil Rights and the Future of Shareholder Activism*, 76 WASH. & LEE L. REV. 1259, 1295–96 (2019) (arguing that shareholder activism has historically been a tool for civil rights advancement).

Gramitto Ricci and Greenwood's Total Governance framework draws inspiration from Johan Cruyff's Total Football philosophy, in which roles are fluid, and responsibility is shared across the field.[33] In the corporate context, this means individuals—who might simultaneously be a consumer, employee, shareholder, and community member—engage with firms from multiple touchpoints.[34] It also acknowledges the rise of online coordination and generational shifts, particularly the increasing influence of Millennials and Gen Z, who are reshaping norms around investing, employment, and consumption based on social and environmental values.[35] Where prior models treat stakeholder voice as reputational noise or a branding strategy, Total Governance treats it as a constitutive mode of corporate power and identity.[36] Total Governance does not abandon economic rationality; it reimagines it through the lens of democratic inclusion and institutional integrity.[37]

Total Governance is not simply a theory of stakeholder inclusion; it is a theory of stakeholder interdependence.[38] When stakeholders institutionalize shared values and interlock their actions across roles—consumer, investor, employee, and community member—they magnify their collective power and

[33] *See* JONATHAN WILSON, INVERTING THE PYRAMID: THE HISTORY OF FOOTBALL TACTICS 244–61 (Seven Dials 2023) (2008) (detailing the tactical evolution of Total Football under Rinus Michels and Johan Cruyff, including its emphasis on positional interchangeability, pressing, and collective spatial awareness); Gramitto Ricci & Greenwood, *supra* note 16, at 358 (explaining briefly Cruyff's "total football" approach and how it can be repurposed for corporate "total governance").

[34] Gramitto Ricci & Greenwood, *supra* note 16, at 358 (linking Cruyff's "total football" with corporate "total governance"); *see also* Gramitto Ricci & Sautter, *supra* note 24, at 92–94 (introducing the analysis of retail investors' values-driven online coordinated efforts); Christina M. Sautter, *Corporate Governance Through Social Media*, 75 FLA. L. REV. F. 89, 93–97 (2024), https://www.floridalawreview.com/article/123346-corporate-governance-through-social-media [perma.cc/6AFE-Y6YK] (describing how digitally engaged retail investors leverage values-based investing and social media to participate in governance discourse and apply reputational pressure).

[35] Gramitto Ricci & Sautter, *supra* note 24, at 52–54; *see also* Carla L. Reyes, *(Un)Corporate Crypto-Governance*, 88 FORDHAM L. REV. 1875, 1880–84, 1097–99 (2020) (discussing governance challenges in decentralized systems and proposing private law-inspired tools—such as contractual fiduciary regimes—to structure participatory legitimacy in the absence of formal corporate governance).

[36] *See* Gramitto Ricci & Greenwood, *supra* note 16, at 358 (explaining how stakeholders can influence firms—especially consumer-facing public companies—and increase the quantum of humanity in corporate governance).

[37] *Id.*; *see also* Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski & K. Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784, 1791–1803 (2020) (arguing that legal structures encode market logic and must be reoriented to serve democratic ends and calling for a reconstruction of institutions to reflect inclusive and public-regarding rationality).

[38] *See* GREENFIELD, *supra* note 20, at 63–67 (arguing for an interdependent conception of stakeholders as co-owners of the firm's purpose); Blair & Stout, *supra* note 9, at 772–78 (advancing a model of firm governance based on the appropriate retribution of specific investments); Fairfax, *The O.G.*, *supra* note 32, at 180–81 (arguing that meaningful ESG governance requires recognizing stakeholder interdependence and embedding accountability in formal governance structures).

embed those values within the corporation itself.[39] These coalitions do more than signal discontent; they create durable identity and value anchors that tether firms to civic commitments.[40] Even when such coalitions appear to lose—through policy rollbacks, electoral losses, or legal defeats—they often win in the long run by transforming reputational crises into identity formation and institutional memory.[41] This interlocking dynamic is what distinguishes Total Governance from reputation management. It is not expressive performance; it is constitutive power.

This Article builds on the insight that modern stakeholders—employees, consumers, investors, and community members—do not occupy discrete roles.[42] They are fluid participants in a complex corporate ecosystem, one whose boundaries are shaped as much by political context and digital activism as by legal doctrine.[43] This cross-stakeholder engagement plays a constitutive role in shaping corporate identity—and sustaining that identity requires a governance model grounded in ongoing, institutional participation.

Total Governance rejects the idea that corporate power should be cabined within boardrooms or measured solely by quarterly earnings.[44] Instead, it conceptualizes governance as a civic process—participatory, iterative, and inescapably public.[45] This Article contends that what appear to be isolated market failures—reversals of DEI, the opacity of unicorns and private equity firms, Delaware's retrenchment of shareholder rights, and the jurisdictional race to the bottom in charter competition—are in fact symptoms of a deeper discon-

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[39] *See* Zohar Goshen & Doron Levit, *Agents of Inequality: Common Ownership and the Decline of the American Worker*, 72 DUKE L.J. 1, 3–7 (2022) (illustrating how cross-firm investor coordination shapes corporate identity and suppresses or magnifies stakeholder power); Gramitto Ricci & Sautter, *supra* note 24, at 92–94 (discussing how digitally organized investors coordinate across roles to embed values in corporate governance).

[40] *See* COHEN, *supra* note 28, at 69–74 (explaining how institutional identity is formed through repeated interaction with values-driven publics); Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 HARV. L. REV. 1598, 1655–58 (2018) (showing how governance is constituted through iterative public action and institutional response).

[41] *See supra* note 32 and accompanying text (noting how shareholder activism has led to real change).

[42] *See supra* note 39 and accompanying text (describing how institutions perform functions relating to governance and legitimacy).

[43] *See* Gramitto Ricci & Greenwood, *supra* note 16, at 358–59 (articulating the many ways that stakeholders can influence modern corporate governance); Klonick, *supra* note 40 (describing third party influence on corporate policy).

[44] *See* Gramitto Ricci & Greenwood, *supra* note 16, at 391–92 (recognizing the power of coordinated stakeholders); COHEN, *supra* note 28, at 60–65 (explaining how informational capitalism displaces formal governance structures); HABERMAS, *supra* note 31, at 27–56 (arguing that legitimacy arises from public discourse, not elite deliberation).

[45] *See* Sergio Alberto Gramitto Ricci, *Corporate Governance & Public Opinion*, 79 SMU L. REV. (forthcoming 2026) (arguing that public opinion plays a critical role in assessing the consistency of corporate actions, policies, and practices with the behavioral models that society deems virtuous).

nect: the law's refusal to recognize stakeholder activism as governance.[46] Total Governance offers an integrated account of how stakeholder power already operates across these structural fissures, even as formal legal doctrine increasingly sidelines traditional checks on corporate behavior. In today's governance landscape, consumers, workers, investors, and communities increasingly engage the firm from overlapping roles that demand institutional recognition, not merely performative appeasement.[47]

This Article proceeds in five Parts. Part I situates public opinion and digital activism as emergent governance forces, tracing their historical evolution and showing how stakeholder sentiment now functions as a real-time constraint on corporate behavior. Part II introduces the concept of reversible governance, using Target as a case study to illustrate how political volatility and the absence of structural reinforcement enable firms to abandon transient values without institutional consequence. Part III examines reversibility as a design failure, analyzing how firm structure, market incentives, and stakeholder fragmentation—exemplified by Tesla and Meta—undermine accountability and entrench performative governance. Part IV articulates Total Governance as a strategic and structural framework. Part V argues that values are not merely rhetorical commitments but infrastructure: when shared across stakeholder roles and institutionalized through sustained engagement, they supply the normative coherence and civic accountability that Total Governance demands.

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[46] *See* S. 21, 153d Gen. Assemb., Reg. Sess. § 1 (Del. 2025) (amending DEL. CODE ANN. tit. 8, § 144 to expand safe harbor for conflicted transactions—permitting either board or stockholder approval and loosening independence requirements); *id.* at § 2 (amending DEL. CODE ANN. tit. 8, § 220 to limit "books and records" available for inspection and require stockholders to show good faith, reasonable particularity, and a clear and convincing need for access); Lucian A. Bebchuk & Assaf Hamdani, *Federal Corporate Law: Lessons from History*, 106 COLUM. L. REV. 1793, 1805–12 (2006) (discussing states' incentives to weaken fiduciary standards via charter competition); Elizabeth Pollman, *Private Company Lies*, 109 GEO. L.J. 353, 402–03 (2020) (arguing that large private firms operate with minimal fraud scrutiny and recommending enhanced SEC oversight and gatekeeper accountability); Gramitto Ricci & Greenwood, *supra* note 16, at 355–58 (noting how value is not identical for all shareholders). *See generally* Sergio Alberto Gramitto Ricci & Christina M. Sautter, *Corporate Disenfranchisement*, 17 U.C. IRVINE L. REV. (forthcoming 2027) (manuscript at 7–9), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6280419 [perma.cc/3UQF-LLLM] (theorizing a "Leopard Paradigm" of elite adaptation in which formal governance reforms preserve elites' substantive control while maintaining democratic appearances).

[47] *See* Sarah E. Light, *The Law of the Corporation as Environmental Law*, 71 STAN. L. REV. 137, 173–76 (2019) (arguing that corporate law increasingly functions as environmental law by regulating firm behavior through overlapping interactions with multiple stakeholder groups, including consumers, investors, and communities); Gramitto Ricci & Greenwood, *supra* note 16, at 394–95 (explaining the power of stakeholders in the era of global online communication).

## I. Public Opinion as a Governance Force of the Digitized Era

Total Governance originates from the interplay of public opinion and interlocked stakeholder initiatives.[48] Public opinion has long served as a barometer of legitimacy, a cultural mirror that reflects and shapes institutional authority.[49] In democracies, it holds elected officials accountable; in markets, it influences choices and brand value.[50] But in today's hyper-networked information ecosystem, public opinion has undergone a fundamental transformation. Once a background condition for legitimacy, it has become a real-time instrument of governance—capable of imposing consequences on political leaders, corporations, and even social movements with unprecedented speed and scale.[51]

This transformation is both structural and strategic.[52] Social media platforms have enabled individuals to bypass traditional gatekeepers, allowing sentiment to form and circulate. What begins as an isolated grievance can become a viral campaign, shifting the behavior of individuals who interact with issuers in different capacities.[53] As a result, public opinion has evolved from a

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[48] *See* Gramitto Ricci & Greenwood, *supra* note 16, at 358–59 (detailing the mechanics of total governance).

[49] *See* Walter Lippmann, Public Opinion 10–20 (1922) (arguing that public opinion functions as a constructed reality that confers legitimacy on institutions through symbolic mediation and media framing); Vincent Price, *The Public and Public Opinion in Political Theories* (explaining that public opinion shapes institutional credibility by operating both as a normative ideal and an empirical tool of legitimacy), *in* The SAGE Handbook of Public Opinion Research 11, 11–13 (Wolfgang Donsbach & Michael W. Traugott eds., 2008); Hans Speier, *Historical Development of Public Opinion*, 55 Am. J. Soc. 376, 376–78 (1950) (describing public opinion as a legitimating force that integrates and stabilizes institutional authority in modern mass societies).

[50] *See* Duncan J. Watts & Peter Sheridan Dodds, *Influentials, Networks, and Public Opinion*, 34 J. Consumer Res. 441, 441–42 (2007) (analyzing how network-based opinion dynamics influence consumer preferences and brand perceptions in market settings).

[51] *See* Cohen *supra* note 28, at 58–61 (explaining how networked information systems enable rapid, distributed forms of power that shape social, political, and economic outcomes in real time); Habermas, *supra* note 31, at 1–26 (describing the evolution of public opinion as a legitimating force in modern governance); Klonick, *supra* note 40, at 1610–11 (describing how platform governance systems exercise quasi-sovereign authority over speech with immediate, large-scale effects); Brishen Rogers, *The Law and Political Economy of Workplace Technological Change*, 55 Harv. C.R.-C.L. L. Rev. 531, 562–69 (2020) (arguing that labor and employment laws enable employers to gather and use worker data through algorithmic systems to influence workplace governance).

[52] *See* David Vogel, The Market for Virtue: The Potential and Limits of Corporate Social Responsibility 16–19 (2005) (noting that companies with prominent public visibility are more vulnerable to activist pressure); Brayden G. King, *A Political Mediation Model of Corporate Response to Social Movement Activism*, 53 Admin. Sci. Q. 395, 396–402 (2008) (discussing how consumer-facing firms are particularly susceptible to reputational pressure from public campaigns); Michael J. Phillips, *Corporate Moral Responsibility: When It Might Matter*, 5 Bus. Ethics Q. 555, 555–56 (1995) (examining whether corporate moral responsibility has practical implications for controlling corporate misconduct and distinguishing between corporate and individual blame).

[53] *See, e.g.*, Tiffany Hsu, *Gillette Ad with a #MeToo Edge Attracts Support and Outrage*, N.Y. Times (Jan. 15, 2019), https://www.nytimes.com/2019/01/15/style/gillette-commercial-toxic-masculinity.html [perma.cc/275F-9R53] (noting the damaging backlash to a progressive ad campaign); Mike Isaac, *Uber C.E.O. to Leave Trump Advisory Council After Criticism*, N.Y. Times

diffuse cultural influence into a form of governance—one that can drive executive turnover, collapse sales, or recast corporate priorities entirely.[54]

Public companies, especially consumer-facing issuers, are especially exposed to this shift.[55] Although elected officials may face scheduled elections or legal checks, consumer-facing issuers operate in a reputational marketplace where stakeholder sentiment can trigger immediate consequences.[56] For these companies, crowd-led governance now operates analogously to market forces—constraining behavior, shaping risk, and compelling change.[57]

Corporate governance in the twenty-first century is increasingly shaped not only by canonical mechanics like boards and shareholder votes, but by dynamic, real-time interactions with parties whose legitimacy arises outside tra-

(Feb. 2, 2017), https://www.nytimes.com/2017/02/02/business/uber-travis-kalanick-trump.html [perma.cc/6YYT-K3CX] (describing backlash to Uber that led to the CEO leaving an advisory council); Chris Kempczinski, *A New Year to Reimagine McDonald's Future*, LINKEDIN (Jan. 4, 2024), https://www.linkedin.com/pulse/new-year-reimagine-mcdonalds-future-chris-kempczinski-oaauc/ [perma.cc/TY6H-Q754] (reporting the impact of a boycott on McDonalds sales).

[54] *See, e.g.*, Bernard Condon, *Telsa Sales Plunge Again as Anti-Musk Boycott Shows Staying Power and Rivals Pounce on the Weakness*, AP NEWS (July 2, 2025), https://apnews.com/article/trump-musk-tesla-sales-model-y-boycott-doge-deliveries-976a467eca5a179db58cbe4318f54a52 [perma.cc/S2LZ-WMDQ] (reporting on a boycott of Tesla cars caused by Elon Musk's support for far-right Europeans candidates and his work for the Department of Government Efficiency); Jura Liaukonyte, Anna Tuchman & Xinrong Zhu, *Lessons from the Bud Light Boycott, One Year Later*, HARV. BUS. REV. (Mar. 20, 2024), https://hbr.org/2024/03/lessons-from-the-bud-light-boycott-one-year-later [perma.cc/M3CT-QL69] (describing the economic impact and reputational backlash to a Bud Light advertising campaign featuring a transgender influencer).

[55] *See* SOULE, *supra* note 32, at 37–38 (finding that activism targeting firms produces measurable financial and reputational effects, including stock price declines and policy responses); Sergio Alberto Gramitto Ricci, *The Vitruvian Shareholder*, 75 FLA. L. REV. F. 113, 120–21 (2024), https://www.floridalawreview.com/article/123626-the-vitruvian-shareholder [perma.cc/D9Q4-E6V7] (arguing that retail shareholders combine interests as investors with interests as human beings who inhabit a shared planet and interact with each other as members of society, integrating superordinate human values and investing goals); *supra* note 25 and accompanying text (describing the blurry distinction between public and private).

[56] *See* Parella, *supra* note 21, at 930–31 (discussing how stakeholders exert influence through reputational sanctions); Roy Shapira, *A Reputational Theory of Corporate Law*, 26 STAN. L. & POL'Y REV. 1, 44–49 (2015) (arguing that reputation-based mechanisms—amplified by litigation and publicity—create real-time accountability for firms absent direct regulatory oversight); Jose Miguel Abito, Daniel Garrett & David Primo, *Corporate Reputational Dynamics, Private Regulation, and Activist Pressure* 3–18 (Wharton Sch., Working Paper, 2015), https://faculty.wharton.upenn.edu/wp-content/uploads/2018/07/abdcrd.pdf [perma.cc/HL8E-KZZE] (modeling how activist threats and reputational concerns can trigger immediate corporate reform to avoid financial losses); Maxime L.D. Nicolas, Adrien Desroziers, Fabio Caccioli & Tomaso Aste, ESG Reputation Risk Matters: An Event Study Based on Social Media Data 7–11 (July 21, 2023) (unpublished manuscript), https://arxiv.org/abs/2307.11571 [perma.cc/FS5H-HGQ2] (showing that social media–amplified ESG controversies result in statistically significant negative stock returns within days).

[57] *See supra* notes 51–52 and accompanying text (showing how public opinion operates as a governance tool); *see also* SOULE, *supra* note 32, at 37–38 (reviewing empirical studies showing that protest, boycotts, and activism are associated with negative stock price returns, reputational harm, and firm policy change).

ditional governance frameworks.[58] To fully understand this governance paradigm, we must reimagine public opinion through a theoretical lens that combines democratic theory, legal realism, and contemporary critiques of informational capitalism.[59]

This Part explores how public opinion has emerged as a central force in corporate governance. It begins by tracing its philosophical foundations, with a focus on Enlightenment thinkers like Locke and Hume and the role of media in shaping collective sentiment. It then examines the evolution from mass media to social media, emphasizing how platforms have transformed opinion from passive reflection to active mobilization. This Part then analyzes the governance implications of this shift, highlighting both the risks of algorithmic distortion and the strategic value of stakeholder legitimacy. Finally, it considers how Total Governance offers a structural framework for transforming ideological volatility into institutional resilience.

### *A. The Media and the Evolution of Public Opinion*

Public opinion has always been intertwined with the communication technologies of its time.[60] During the Enlightenment, thinkers like John Locke and David Hume described public opinion as a form of social regulation more immediate than law.[61] Locke emphasized the "law of opinion and reputation," suggesting that individuals conform to prevailing social norms to maintain standing within their community.[62] David Hume extended this idea by assert-

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[58] *See supra* notes 16–17 and accompanying text (discussing shareholder involvement in corporate governance).

[59] *See* COHEN, *supra* note 28, at 58–65 (analyzing how informational capitalism structures the production and circulation of knowledge and power through networked information systems); HABERMAS, *supra* note 31, at 206–10 (analyzing how public opinion is formed through discourse and serves as a foundation for legitimacy in modern democratic societies); Karl N. Llewellyn, *Some Realism About Realism—Responding to Dean Pound*, 44 HARV. L. REV. 1222, 1222–23 (1931) (defining legal realism as attention to law's real-world operation over abstract doctrine); Roscoe Pound, *Law in Books and Law in Action*, 44 AM. L. REV. 12, 14–17 (1910) (highlighting the social gap between written law and lived practice).

[60] *See supra* note 49 and accompanying text (discussing public opinion and its interaction with democracy and legitimacy).

[61] *See* DAVID HUME, A TREATISE OF HUMAN NATURE bk. III, pt. II, § 2, at 552 (Ernest C. Mossner ed., Penguin Books 1987) (1739–40) (describing reputation as an essential component of participation in society); JOHN LOCKE, AN ESSAY CONCERNING HUMAN UNDERSTANDING bk. II, Ch. XXVIII, § 11, at 314–318 (Roger Woolhouse ed., Penguin Books 2004) (1690) (placing the law of public opinion alongside divine law and civil law); Price, *supra* note 49, at 11–12 (summarizing Enlightenment accounts of public opinion—including Locke and Hume—as a mechanism of social regulation operating alongside and sometimes more immediately than formal law); Speier, *supra* note 49, at 376–78 (relating John Locke and Thomas Hobbes' understandings of public opinion).

[62] *See* LOCKE *supra* note 61, at 315–16 (explaining that public opinion enforces conformity with the public sentiment); *see also* LIPPMANN, *supra* note 49, at 11–17 (arguing that public opinion boosts legitimacy).

ing that public consensus forms the bedrock of legitimate government.[63] Carl Neumann later identified public opinion's integrative and legitimating functions: fostering cohesion, stabilizing norms, setting agendas, and conferring authority.[64] As literacy expanded and print journalism flourished, media began shaping not just information access but collective sentiment.[65] By the early twentieth century, mass media—newspapers, radio, and television—was seen as a dominant force capable of influencing public consciousness and catalyzing institutional reform, as seen in the public response to Upton Sinclair's *The Jungle* and the creation of the FDA.[66]

In contrast to the civic forums of ancient Athens, today's information ecosystem—shaped by press and social media—disseminates content at unprecedented speed and scale, facilitating both the formation and the rapid evolution of public opinion.[67] For large publicly held corporations with dispersed ownership and reputational exposure, this presents a profound governance challenge.[68] Public opinion now functions analogously to market forces, exerting

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[63] HUME, *supra* note 61, at 541–49.

[64] *See* HABERMAS, *supra* note 31, at 183–88 (explaining how rational-critical debate in the bourgeois public sphere once served to legitimate authority through consensus rather than coercion); Elisabeth Noelle-Neumann, *Public Opinion and the Classical Tradition: A Re-evaluation*, 43 PUB. OP. Q. 143, 144–46 (1979) (arguing that public opinion historically functioned as a means of enforcing conformity and maintaining social integration across political systems); Speier, *supra* note 49, at 379–81 (describing public opinion as a legitimating force that integrates and stabilizes institutional authority in modern mass societies).

[65] *See* HABERMAS, *supra* note 31, at 182–85 (describing the emergence of print media and a reading public, and explaining how the expansion of journalism shaped the formation of public opinion); PAUL F. LAZARSFELD, BERNARD BERELSON & HAZEL GAUDET, THE PEOPLE'S CHOICE: HOW THE VOTER MAKES UP HIS MIND IN A PRESIDENTIAL CAMPAIGN 151–66 (3d ed. 1968) (introducing the two-step flow theory of media influence, in which opinion leaders mediate between mass media and broader public sentiment); LIPPMANN, *supra* note 49, at 10–14 (arguing that public opinion boosts legitimacy); Elihu Katz, *The Two-Step Flow of Communication: An Up-to-Date Report on an Hypothesis*, 21 PUB. OP. Q. 61, 63–65 (1957) (refining the model by identifying the interpersonal dynamics that shape media effects).

[66] *See generally* UPTON SINCLAIR, THE JUNGLE (1906) (depicting unsanitary and exploitative conditions in the meatpacking industry); *see also* DANIEL P. CARPENTER, REPUTATION AND POWER: ORGANIZATIONAL IMAGE AND PHARMACEUTICAL REGULATION AT THE FDA 47–52 (2010) (explaining how early twentieth-century media coverage and public outcry helped shape the FDA's institutional authority); NANCY TOMES, THE GOSPEL OF GERMS: MEN, WOMEN, AND THE MICROBE IN AMERICAN LIFE 194–200 (1998) (analyzing how Progressive Era media campaigns influenced public health reform and institutional trust); James Harvey Young, *The Pig That Fell into the Privy: Upton Sinclair's* The Jungle *and the Meat Inspection Amendments of 1906*, 59 BULL. HIST. MED. 467, 468–75 (1985) (detailing how public reaction to *The Jungle* spurred federal legislative reform).

[67] *See* Paul Cartledge, *Ostracism: Selection and De-Selection in Ancient Greece*, HIST. & POL'Y (July 20, 2006), https://www.historyandpolicy.org/policy-papers/papers/ostracism-selection-and-de-selection-in-ancient-greece [perma.cc/6Z3G-28EJ] (illustrating the ancient Athenian practice of ostracism).

[68] *See* Gramitto Ricci, *supra* note 45 (introducing a new corporate governance paradigm that recognizes how public companies respond to a system that merges shame-culture principles with guilt culture features); *see also* COHEN, *supra* note 28 at 129, 133–36 (analyzing how networked infor-

pressure on firms through mechanisms that affect valuation, consumer behavior, and labor relations.[69]

One of the enduring functions of public opinion, amplified by media, is its role in holding elected officials accountable.[70] Investigative journalism, televised debates, and now social media platforms all serve as checks on political power, forcing responsiveness to citizen concerns.[71] Public outrage, when sustained and visible, can drive resignations, policy reversals, and election outcomes.[72] This function of accountability—central to democratic governance—has spilled over into the corporate realm.[73] As corporations increasingly engage in political discourse and adopt public-facing values, they too are held

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mation systems amplify reputational and informational pressures on institutions); HABERMAS, *supra* note 31, at 200–01 (explaining how public opinion functions as a source of legitimacy and accountability in modern societies); ZEYNEP TUFEKCI, TWITTER AND TEAR GAS: THE POWER AND FRAGILITY OF NETWORKED PROTEST 28–33, 216–19 (2017) (same); *supra* notes 25–27 and accompanying text (describing the problematic distinction between "public" and "private" in this context).

[69] *See supra* note 16 and accompanying text (explaining that shareholders and stakeholders do not necessarily have to be understood to be at odds with one another).

[70] *See* W. LANCE BENNETT, NEWS: THE POLITICS OF ILLUSION 118–23 (Univ. of Chi. Press 10th ed. 2016) (describing media as a core accountability mechanism in democratic politics); BERNARD C. COHEN, THE PRESS AND FOREIGN POLICY 13 (1963) (noting that the press may not tell people what to think, but it tells them "what to think about"); HABERMAS, *supra* note 31, at 72–76 (tracing the rise of public opinion as a constraint on political authority).

[71] *See* BENNETT, *supra* note 70, at 124–30 (explaining that journalism in some cases acts as a check on political action and actors); JAMES T. HAMILTON, ALL THE NEWS THAT'S FIT TO SELL: HOW THE MARKET TRANSFORMS INFORMATION INTO NEWS 97–103 (2004) (explaining how market incentives shape the production and dissemination of news in ways that can influence political accountability and responsiveness); TIM WU, THE ATTENTION MERCHANTS: THE EPIC SCRAMBLE TO GET INSIDE OUR HEADS 209–12, 314–19 (2016) (describing how media-driven attention and outrage can discipline political actors).

[72] *See* TUFEKCI, *supra* note 68, at 28–31 (describing how social media enables rapid mobilization and amplification of public attention that can pressure institutions to respond); WU, *supra* note 71, at 108–122 (explaining how the capture and concentration of public attention shapes social and political outcomes); *see also, e.g.*, Rishika Dugyala, *NYT Opinion Editor Resigns After Outrage Over Tom Cotton Op-Ed*, POLITICO (June 7, 2020), https://www.politico.com/news/2020/06/07/nyt-opinion-bennet-resigns-cotton-op-ed-306317 [perma.cc/LRA6-3L4P] (showing a resignation caused by public backlash); Aresu Eqbali & Sune Engel Rasmussen, *Iran Suspends Execution of 3 Antigovernment Protesters*, WALL ST. J. (July 20, 2020), https://www.wsj.com/articles/iran-suspends-death-sentences-of-antigovernment-protesters-executes-alleged-cia-spy-11595270196 [perma.cc/K5G9-57W7] (reporting how domestic pressure led to the Iranian regime halting three executions); Nash Jenkins, *Al Franken Resigns from the Senate Amid Sexual Misconduct Allegations*, TIME (Dec. 7, 2017), https://time.com/5053958/al-franken-resigns/ [perma.cc/59CZ-SXPJ] (telling the story of Senator Al Franken's resignation under public pressure over his conduct).

[73] *See* COHEN, *supra* note 28 at 129, 133–36 (analyzing how networked information systems amplify and structure the circulation of information in ways that shape institutional accountability); HABERMAS, *supra* note 31, at 57–60 (describing the role of public opinion in holding authority accountable within the public sphere); HUME, *supra* note 61, at 32–36 (arguing that government ultimately rests on opinion and that public sentiment constrains political authority); Klonick, *supra* note 40, at 1640–52 (examining how online platforms respond to public pressure and evolving norms to establish legitimacy and accountability in their governance of speech).

accountable by the same forces that discipline elected officials.[74] The reputational costs once confined to politicians are now exacted on corporate actors whose policies, statements, or silences conflict with expectations of the public.[75]

Later research complicated the early media theories. Scholars found that media often exerted influence not directly on the masses but through opinion leaders who shape the attitudes of their peers.[76] This "two-step flow" model emphasized the role of informal, interpersonal networks in diffusing media messages and fostering opinion change.[77] Keller and Berry underscored that broad opinion shifts are usually driven by everyday individuals in social networks—not just elites—through relationships of trust and influence.[78]

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[74] *See supra* note 53 and accompanying text (listing instances of public campaigns to influence corporations); *see also, e.g.*, Jelani Cobb, *Smelling the Coffee*, NEW YORKER, May 29, 2018, at 31–32 (telling of two black men arrested for trespassing in a Starbucks, and the concept of so called black and white spaces); Andrew V. Abela, *Woke Capitalism in a Secular World*, WALL ST. J. (Nov. 26, 2020), perma.cc/A24M-HYBT (exploring the concept of "woke capitalism"); Erin Dowell & Marlette Jackson, *"Woke-Washing" Your Company Won't Cut It*, HARV. BUS. REV. (July 27, 2020), https://hbr.org/2020/07/woke-washing-your-company-wont-cut-it [perma.cc/RT65-D96M] (discussing backlash against "woke-washing" by corporations issuing gratuitous diversity statements); Cam Wolf, *Nike's Colin Kaepernick Ad Nearly Didn't Happen*, GQ (Sep. 27, 2018), https://www.gq.com/story/nike-colin-kaepernick-debate-nyt [perma.cc/GU7A-4T55] (discussing Colin Kaepernick's Nike ad campaign); Gramitto Ricci, *supra* note 45 (discussing how, similar to heroes in Ancient Greece, society holds public companies against the ideal standards and models that they reportedly aspire to, heightening those standards when companies publicly endorse values).

[75] *See* David A. Skeel, Jr., *Shaming in Corporate Law*, 149 U. PA. L. REV. 1811, 1823–29 (2001) (arguing that reputational sanctions once associated with political actors have become an informal but powerful mechanism for disciplining corporate misconduct); Veronica Root Martinez & Gina-Gail S. Fletcher, *Equality Metrics*, 130 YALE L.J. F. 869, 882–85 (2021), https://yalelawjournal.org/essay/equality-metrics [perma.cc/6A36-3N3F] (analyzing how equality metrics translate social expectations into evaluative frameworks that can shape institutional behavior); Lund & Pollman, *supra* note 9, at 2572–80 (describing how corporate governance systems process and respond to external pressures, including reputational and stakeholder demands).

[76] *See* ED KELLER & JON BERRY, THE INFLUENTIALS: ONE AMERICAN IN TEN TELLS THE OTHER NINE HOW TO VOTE, WHERE TO EAT, AND WHAT TO BUY 25–45 (2003) (demonstrating that broad shifts in opinion and behavior are typically driven by trusted, socially connected individuals rather than celebrities or elites); LAZARSFELD ET AL., *supra* note 65, at 151–66 (introducing the two-step flow model, which argues that media influences public opinion indirectly through socially embedded opinion leaders); Katz, *supra* note 65, at 63–67 (synthesizing subsequent empirical findings to show that interpersonal influence often exceeds direct media effects).

[77] *See supra* note 76 and accompanying text.

[78] KELLER & BERRY, *supra* note 76, at 29–30; *see also* Matthew C. Nisbet & John E. Kotcher, *A Two-Step Flow of Influence? Opinion-Leader Campaigns on Climate Change*, 30 SCI. COMMC'N 328, 328–54 (2009) (applying two-step theory to community-based climate advocacy); Darian Harff, Paula Stehr & Desiree Schmuck, *Revisiting Opinion Leadership in the Digital Realm: Social Media Influencers as Proximal Mass Opinion Leaders*, 28 NEW MEDIA & SOC'Y 2341, 2350–51 (2025), https://doi.org/10.1177/14614448251336441 (arguing that everyday social media users function as "proximal" opinion leaders who shape attitudes and behavior within digital interpersonal networks).

Digital media has radically accelerated these dynamics.[79] Social platforms now allow users to bypass traditional gatekeepers, frame narratives, and organize communities in real time.[80] Public opinion is no longer an aggregate of private beliefs but a participatory, performative force.[81] It emerges within interactive, ideologically cohesive communities that often resemble murmuration— a collective behavioral phenomenon in which large groups move in fluid, highly coordinated patterns without centralized control, producing rapid convergence and self-reinforcing dynamics.[82]

These developments carry profound consequences for corporate governance. The reach and volatility of networked sentiment mean that public opinion can reshape brand perception overnight.[83] For firms with reputational exposure, public sentiment is not just a compliance issue—it is a strategic concern. Corporations must now treat public opinion as a governance mechanism to be engaged rather than a sheer reputational risk to be managed or a transaction cost to be minimized.[84]

### *B. Reimagining Public Opinion as Governance Force*

Bernard C. Cohen once stated that "the press . . . may not be successful much of the time in telling people what to think, but it is stunningly successful in telling its readers what to think *about*."[85] Social media crystalizes Cohen's conceptualization, challenging the accepted assumptions of media effects, and at times going a step further by using the technology to tell people what to

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[79] *See* COHEN, *supra* note 28, at 58–61 (analyzing the role of networked information systems in shaping power and information flows).

[80] *See* Hannah Bloch-Wehba, *Global Platform Governance: Private Power in the Shadow of the State*, 72 SMU L. REV. 27, 28–30 (2019) (arguing that platforms operate as privatized regulators of speech and visibility, exercising real-time control over information flows and public discourse); Klonick, *supra* note 40, at 1610–13 (describing how online platforms have assumed key gatekeeping functions over speech and enable users to participate in shaping and disseminating content at scale).

[81] *See* TUFEKCI, *supra* note 68, at 28–33 (describing evolving and expanding information flow); Harff et al., *supra* note 78, at 2349 (showing that digital opinion formation is often driven by non-institutional actors through dynamic, visible engagement).

[82] *See* COHEN, *supra* note 28, at 130–35 (analyzing how networked information systems structure the circulation of information within bounded environments that can produce self-reinforcing patterns of belief and understanding); SOULE, *supra* note 32, at 29–34 (defining social movements as organized, networked collective action operating outside institutional channels and emphasizing the role of decentralized yet coordinated participation and describing social movements as connective structures or networks rather than purely formal organizations); Katz, *supra* note 65, at 63–64 (explaining that media influence is mediated through opinion leaders and interpersonal networks rather than direct transmission to mass audiences).

[83] *See supra* notes 53–55 and accompanying text (explaining that public opinion is a critical aspect of modern corporate governance).

[84] *See* Gramitto Ricci, *supra* note 45 (discussing the role of public opinion in the governance of public companies).

[85] COHEN, *supra* note 70, at 13.

think.[86] The rise of social media transformed public opinion from a largely reactive phenomenon to a participatory and performative one. Social platforms eliminate traditional gatekeepers and allow users to frame issues themselves, mobilize followers, and exert reputational pressure on institutions. Scholars describe this new form of opinion as "naturally occurring, temporally sensitive, and inherently social"—often arising within ideologically cohesive communities that amplify internal consensus while filtering out dissent.[87]

Historically, as Jürgen Habermas has shown in *The Structural Transformation of the Public Sphere*, the public sphere operated as a space for rational-critical debate among citizens, exerting normative pressure on political actors through deliberation.[88] In this classical model, legitimacy arose from communicative processes grounded in accessibility, reason, and consensus.[89] But the rise of algorithmically curated social media platforms has fractured this ideal, creating fragmented, ideologically self-reinforcing "murmuration publics" that exert influence not through deliberation, but through virality.[90] Kate Klonick's work on platform governance underscores that platforms now act as de facto governors of speech and visibility, shaping what publics see, when, and why—often with no democratic accountability or due process.[91] These technologies of visibility, as Julie Cohen argues, have restructured the conditions of knowledge production and public accountability, allowing private intermediaries to wield quasi-sovereign power over discourse.[92] Brishen Rogers extends this analysis into the labor and governance functions of digital technologies, showing that these systems are legally and institutionally configured to entrench managerial and platform control while undermining democratic and

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[86] *See* Patricia Moy & Brandon J. Bosch, *Theories of Public Opinion* (summarizing media effects theories, including agenda-setting and framing, which explain how media shape the issues people consider and how those issues are understood), *in* 1 HANDBOOK OF COMMUNICATION SCIENCE: THEORIES AND MODELS OF COMMUNICATION 289, 301 (Paul Cobley & Peter J. Schulz eds., 2013); *see also supra* note 84 and accompanying text.

[87] Yini Zhang, Fan Chen & Karl Rohe, *Social Media Public Opinion as Flocks in a Murmuration: Conceptualizing and Measuring Opinion Expression on Social Media*, 27 JCMC 1, 15 (2022).

[88] HABERMAS, *supra* note 31, at 27–31.

[89] *Id.* at 36–43 (arguing that legitimacy in the public sphere depends on norms of accessibility, reason-giving, and consensus rooted in communicative action).

[90] *See* COHEN, *supra* note 28, at 130–35 (analyzing how networked, data-driven information systems fragment public discourse and structure the circulation of information within bounded, self-reinforcing informational environments); CASS R. SUNSTEIN, #REPUBLIC: DIVIDED DEMOCRACY IN THE AGE OF SOCIAL MEDIA 68–73 (2018) (arguing that algorithmic filtering and selective exposure create ideological echo chambers and reduce cross-cutting deliberation); TUFEKCI, *supra* note 68, at 160–63 (analyzing how social media environments amplify visibility and shape perceptions of consensus, enabling rapid cascades of attention that do not necessarily reflect sustained deliberation).

[91] Klonick, *supra* note 40, at 1604–06.

[92] COHEN, *supra* note 28, at 18–20.

stakeholder accountability.[93] His insights reveal that informational and technological infrastructures are not simply passive environments for stakeholder expression—they are instruments of power shaped by law and political economy.[94]

This shift has profound consequences for corporate governance. Algorithmic amplification distorts both the reach and substance of public sentiment.[95] Companies are increasingly disciplined not by legal liability or fiduciary duties alone, but by the real-time crowd-led influence generated in digital public spheres.[96] Crowd-led governance, although informal, functions as a potent form of market discipline. We concede that crowds' opinions can be hijacked by coordinated disinformation campaigns, echo chambers, and bad actors.[97] But crowd-led governance elevates marginalized voices, enhances accountability, and exposes injustice or unequal treatment, presenting companies with the opportunity to engage with crowds and provide devices to fact-check information sourced online.[98]

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[93] *See* Brishen Rogers, *Employment Rights in the Platform Economy: Getting Back to Basics*, 10 HARV. L. & POL'Y REV. 479, 486–90 (2016) [hereinafter Rogers, *Employment Rights*] (arguing that digital platforms govern workers through technical and contractual design, displacing legal accountability and concentrating power in the firm's architecture); Rogers, *supra* note 51, at 539–45 (explaining how firm technology can influence power within firms).

[94] *See supra* note 93 and accompanying text.

[95] *See supra* note 84 (showing how public opinion acts as a form of corporate governance).

[96] *See supra* notes 72–75 (showing examples of this disciplining by the public in action); *see also* Parella, *supra* note 21, at 910–11 (describing how publicity surrounding head injuries in the NFL led to better treatment protocols); Reyes, *supra* note 35, at 1878, 1882–83 (examining how blockchain-based organizations rely on stakeholder consensus and technical governance mechanisms rather than corporate law to establish legitimacy and accountability); Sergio Alberto Gramitto Ricci & Christina M. Sautter, *The Wireless Investors' Movement*, U. CHI. BUS. L. REV. ONLINE (Jan. 28, 2022), https://businesslawreview.uchicago.edu/online-archive/wireless-investors-movement [perma.cc/2AEA-ZX3N] (discussing how Millennials and GenZ use investing and voting to influence the corporate sector).

[97] *See, e.g.*, Varsha Bansal, *A Trans Pilot Was Falsely Blamed for a Plane Crash. Now She's Fighting the Right-Wing Disinfo Machine*, WIRED (July 2, 2025), https://www.wired.com/story/a-trans-pilot-was-falsely-blamed-for-a-plane-crash-now-shes-fighting-the-right-wing-disinfo-machine [perma.cc/6QDJ-PL4L] (highlighting the story of a trans pilot who was blamed for a crash they were not involved with because of disinformation); Jessica Guynn, *Shoppers Boycotted Target Over DEI Retreat. Then Came the Bad Actors*, USA TODAY (June 4, 2025), https://www.yahoo.com/news/fueled-target-dei-boycott-answer-212719591.html [perma.cc/87TT-9TKD] (reporting on a disinformation campaign targeting a DEI initiative); Anjli Raval, *The Disinformation Storm Is Now Hitting Companies Harder*, FIN. TIMES (Dec. 23, 2024), https://www.ft.com/content/0aa9725d-e423-4a6b-b842-866ad4541dc2 [perma.cc/Y3N7-NDVJ] (writing about a number of disinformation campaigns related to corporate actions).

[98] *See* MEREDITH D. CLARK, WE TRIED TO TELL Y'ALL: BLACK TWITTER AND THE RISE OF DIGITAL COUNTERNARRATIVES 45–49 (2024) (explaining how Black Twitter functions as a digital counter public that enables users to circulate narratives independently of legacy media and act as autonomous newsmakers); SARAH J. JACKSON, MOYA BAILEY & BROOKE F. WELLES, #HASHTAGACTIVISM: NETWORKS OF RACE AND GENDER JUSTICE 17–22 (2020) (arguing that marginalized groups use hashtag campaigns to bypass elite media and perform agenda-setting from within digital counter publics); Sergio Alberto Gramitto Ricci & Christina M. Sautter, *The Corporate Forum*, 102 B.U. L. REV. 1861, 1863–64 (2022) (introducing the use of online forums as devices that public corporations can deploy to allow investors to fact-check information gathered online and interact with the issuer).

Legal scholars in the law and political economy tradition have emphasized the need to view such dynamics not as aberrations, but as features of a broader neoliberal political economy that externalizes governance functions to private actors and market mechanisms.[99] Public opinion, in this context, becomes both a battleground and a tool—mobilized by stakeholders seeking accountability, but filtered through infrastructural asymmetries that favor capital and dominant ideologies.[100]

These dynamics have direct consequences for firms. Consumer-facing corporations with dispersed shareholders are especially exposed.[101] A single campaign can shift purchasing and investing behavior, pressure executive leadership, or prompt shareholder action. Firms now treat online sentiment as a material risk and allocate governance resources to monitoring, managing, and responding to digital opinion flows.[102]

For example, agenda setting now includes citizens as active newsmakers, and groups that may not have had a voice in traditional media outlets can create their own frames and bypass traditional journalistic filters.[103] Social media has created a new techno-social space allowing for people bound by common

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[99] *See* COHEN, *supra* note 28, at 38–46 (analyzing how informational capitalism reconfigures governance by distributing authority across private, networked systems rather than traditional public institutions); Rachel Brewster, *Enabling ESG Accountability: Focusing on the Corporate Enterprise*, 2022 WIS. L. REV. 1367, 1380–86 (proposing structural reforms to prevent ESG risk externalization and critiquing current disclosure regimes as inadequate for enforcing meaningful accountability); Britton-Purdy et al., *supra* note 37, at 1790–91 (arguing that the legal structure reflects market logic and that to democratize the overriding system, the legal structure has to change too); Amy Kapczynski, *The Law of Informational Capitalism*, 129 YALE L.J. 1460, 1470–80 (2020) (demonstrating how law constitutes digital capitalism by delegating governance functions to platforms while marginalizing public deliberation); Jedediah Purdy, *The Long Environmental Justice Movement*, 44 ECOLOGY L.Q. 809, 820–29 (2018) (arguing that neoliberal legal regimes externalize governance by privatizing public functions and subordinating democratic control to market logic).

[100] *See supra* notes 97–98 and accompanying text (noting the value of public opinion and the inherent risks built into it).

[101] *See* Sergio Alberto Gramitto Ricci & Christina M. Sautter, *Harnessing the Collective Power of Retail Investors* (explaining that consumer-facing corporations attract disproportionate retail ownership because investors favor companies whose products or services they know, and that companies with substantial retail ownership face heightened engagement dynamics), *in* A RESEARCH AGENDA FOR CORPORATE LAW 207, 219–20 (Christopher Burner & Marc Moore eds., 2023).

[102] *See supra* notes 72–75 and accompanying text (listing significant public campaigns).

[103] *See* CLARK, *supra* note 98, at 45–49 (explaining how Black Twitter functions as a digital counter public that enables users to circulate narratives independently of legacy media and act as autonomous newsmakers); JACKSON ET AL., *supra* note 98, at 17–22 (describing how certain marginalized groups circumvented traditional media through the use of hashtags); Moy & Bosch, *supra* note 86, at 294–99 (summarizing media effects theories, including agenda-setting and framing, which explain how media shapes the issues people consider and how those issues are understood); Katz, *supra* note 65, at 63–65 (explaining that audiences actively interpret and retransmit media through interpersonal networks, with opinion leaders shaping the flow and framing of information); Klonick, *supra* note 40, at 1610–14 (describing how online platforms structure and govern speech through systems that incorporate user participation and displace traditional editorial gatekeeping functions).

values and superordinate goals to express opinion in real time.[104] The unfolding of public opinion on social media resembles a "murmuration framework" where homogenous, interactive, and stable networks share in opinion expression.[105] Research shows that opinion expression can be predicted by network membership, supporting the echo chamber tendency of social media.[106] All this must be taken into account as social media public opinion interacts with media attention and coverage.[107]

## II. REVERSIBLE GOVERNANCE IN A POLARIZED ERA

The rapid rise and retreat of corporate DEI initiatives in the aftermath of George Floyd's murder reveal a deeper instability in the contemporary accountability framework—what we term *reversible governance*.[108] Reversible governance occurs when firms adopt public commitments to justice or sustainability but fail to embed those commitments into governance structures, leaving them vulnerable to ideological headwinds, market backlash, and executive discretion. The term reversible governance is introduced here to describe a form of corporate commitment that remains nonbinding in practice. It draws on venture capital scholarship—which conceptualizes contracting architectures as deliberately structured to permit staged commitments, shifting control rights, and exit in response to evolving contingencies.[109] This Article repurposes the concept to characterize corporate stakeholder commitments that are struc-

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[104] *See* TUFEKCI, *supra* note 68, at 29–32 (describing the impact of social media around the world); Bloch-Wehba, *supra* note 80, at 43–44 (describing international acknowledgement of the impact of social media).

[105] *See* Zhang et al., *supra* note 87, at 4 (developing the "murmuration" metaphor to describe how public opinion on social media emerges in fluid, coordinated, and self-reinforcing patterns akin to the collective movement of birds); COHEN, *supra* note 28, at 130–35 (analyzing how algorithmic systems sort users into ideologically homogenous, performative networks); Harff et al., *supra* note 78, at 2349 (describing digital opinion expression as coordinated within self-reinforcing groups).

[106] *See* KELLER & BERRY, *supra* note 76, at 25–58 (demonstrating that broad shifts in opinion and behavior are typically driven by trusted, socially connected individuals rather than celebrities or elites); SUNSTEIN, *supra* note 90, at 68–73 (explaining group polarization and its importance in the social media context); Zhang et al., *supra* note 87, at 15 (describing the "murmuration" metaphor).

[107] *See* Gramitto Ricci & Sautter, *supra* note 98, at 1865 (discussing how young generations of investors source information from social media and podcasts alongside traditional and institutional venues).

[108] *See* Fairfax, *supra* note 6, at 129–31 (describing corporations making ESG commitments and then retreating from them).

[109] *See* Ronald J. Gilson, *Engineering a Venture Capital Market: Lessons from the American Experience*, 55 STAN. L. REV. 1067, 1071–83 (2003) (describing venture capital governance as adaptive and responsive to changing conditions); Paul A. Gompers, *Optimal Investment, Monitoring, and the Staging of Venture Capital*, 1995 J. FIN. 1461, 1461–62 (explaining staged financing as a mechanism for continuing or abandoning investment as information evolves); Steven N. Kaplan & Per Strömberg, *Financial Contracting Theory Meets the Real World: An Empirical Analysis of Venture Capital Contracts*, 70 REV. ECON. STUD. 281, 281–84 (2003) (showing that venture capital contracts allocate control rights contingently).

turally nonbinding, ideologically contingent, and susceptible to rollback under political or managerial pressure. Nowhere is this more visible than in the case of Target Corporation, a once-celebrated leader in DEI whose silent dismantling of equity programs after the 2024 U.S. presidential election exemplifies the vulnerability of performative commitments to political and market headwinds.[110]

But Target is not an outlier. Its retrenchment reflects a broader shift in the governance landscape, one shaped by both domestic pressures and the international diffusion of anti-DEI sentiment through diplomatic and economic channels.[111] From U.S. embassies pressuring multinational firms to abandon race-conscious programming, to European corporations rebranding DEI under politically safer euphemisms, the post-Floyd equity wave has been met with a coordinated backlash that transcends national borders.[112] This Part analyzes reversible governance and its root cause—short-termism—to highlight the institutional gaps caused by the corporate myth of the monolithic shareholder.

### *A. Target: Market Exposure Without Anchoring*

In the immediate aftermath of George Floyd's murder, Target pledged $2 billion to Black-owned businesses, partnered with HBCUs, and launched high-visibility equity campaigns.[113] These initiatives—particularly the REACH pro-

[110] *See supra* notes 1–2 and accompanying text (comparing Target's commitment to diversity, equity, and inclusion and its subsequent ignominious retreat from it).

[111] *See supra* notes 6, 21 and accompanying text (describing the retreat of ESG commitments throughout corporate America); *see also* Parella, *supra* note 21, at 923–39 (analyzing how reputational pressures operate across borders through intermediaries and international networks—shaping corporate behavior through transnational flows of information and norms).

[112] *See* Chris Osuh & Aamna Mohdin, *Firms 'Rebranding' Diversity Initiatives to Avoid Unwanted Political Attention*, THE GUARDIAN (May 26, 2025), https://www.theguardian.com/business/2025/may/26/firms-rebranding-diversity-initiatives-avoid-unwanted-political-attention [perma.cc/AC36-L4K9] (noting that U.S. and European companies are rebranding DEI under terms like "belonging" and "culture" to deflect backlash and preserve equity efforts); *France Accuses U.S. Diplomats of Meddling with a 'Diktat' About Trump's DEI Policies*, AP NEWS (Mar. 30, 2025), https://apnews.com/article/french-companies-dei-letter-us-trump-diversity-7ef9ad5839b0a3ded6fa454a8ea84d1d [perma.cc/M4PG-YFD4] (describing French government criticism of U.S. embassy directives as undue political interference in domestic corporate affairs); *U.S. Embassies Tell Suppliers to Comply with Trump Ban on Diversity Policies*, REUTERS, https://www.reuters.com/world/us-embassies-globally-tell-suppliers-comply-with-trump-ban-diversity-policies-2025-03-31/ [perma.cc/R67T-HV2V] (reporting that U.S. embassies instructed overseas contractors to certify they had eliminated DEI programs to maintain eligibility for federal contracts).

[113] *See* Target Corp., Annual Report (Form 10-K) 5 (Mar. 9, 2022), https://www.sec.gov/Archives/edgar/data/27419/000002741922000007/tgt-20220129.htm [perma.cc/A22E-CZXU] (noting that "de–veloping teams where team members feel heard, respected, and included is a core Target value," and describing workforce diversity monitoring practices); Target Corp., Definitive Proxy Statement (Form DEF 14A) 3 (Apr. 26, 2021), https://www.sec.gov/Archives/edgar/data/27419/000130817921000258/ltgt2021_def14a.htm [perma.cc/5CHS-7KPR] (detailing post-George Floyd initiatives, including a $10 million contribution to racial equity partners, 10,000 hours of pro bono services to BIPOC-owned businesses, and a goal to increase Black representation in leadership by twenty percent); *supra* note 2 and accompanying text (highlighting Target's inclusion and equity commitments).

gram and supplier diversity efforts—were tracked, publicized, and initially met measurable diversity benchmarks.[114] But by early 2025, days after President Trump's second inauguration, Target quietly announced the sunset of its DEI infrastructure.[115] The Supplier Diversity division was rebranded, national benchmarking programs were abandoned, and public disclosures ceased.[116] No apology was issued. The retrenchment—implemented through internal memos and silent rebranding—signaled not just reputational retreat, but structural reversibility. Although some global supply chain policies remained intact under the guise of vendor compliance, the company's equity mandate was functionally dissolved.[117] A forty-day consumer boycott followed, generating temporary sales declines and renewed demands for stakeholder engagement.[118] Yet despite public protest, Target's governance architecture absorbed the backlash without institutional reform—illustrating the limits of performative governance absent formal stakeholder power.[119]

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[114] *See supra* note 2 and accompanying text (comparing Target's goals and the measurable success of the corporate actions).

[115] *See* Target Corp., Current Report (Form 8-K) (June 13, 2025), perma.cc/3UKE-7ST6 (reporting "unscheduled material event or corporate event" consistent with rollback memo); Target Corp., Current Report (Form 8-K) (May 21, 2025), perma.cc/CL3U-MFWA (incorporating Q1 earnings press release reporting a 3.8 % decline in same-store sales); *Target's Belonging at the Bullseye Strategy*, TARGET CORP., (May 20, 2026) https://corporate.target.com/press/fact-sheet/2025/01/belonging-bullseye-strategy [perma.cc/R78R-ZXW2] (ending REACH and renaming Supplier Diversity to Supplier Engagement, and ceasing external DEI benchmarking); Target Corp., Definitive Proxy Statement (Form DEF 14A) 18–19, 42 (Apr. 28, 2025), perma.cc/4GD9-HWZ4 (describing conclusion of REACH and discontinuation of HRC benchmarking as part of strategy realignment in response to external environment); Press Release, Congressional Black Caucus, Readout of Congressional Black Caucus Meeting with Target Corporation (June 27, 2025), https://cbc.house.gov/news/documentsingle.aspx?DocumentID=3041 [perma.cc/8CG6-Q89M] (discussing the demands made of Target by "a national campaign led by a broad coalition of activists"); *supra* note 1 and accompanying text (showing how Target quietly ended its DEI programs).

[116] *Supra* note 115 and accompanying text (laying out the rollback of Targets initiatives).

[117] *See* TARGET CORP., 2024 SUSTAINABILITY & GOVERNANCE REPORT 12–14, https://corporate.target.com/getmedia/e2d80340-eb9f-43a7-a84c-219280aa5ba4/2024-Sustainability-and-Governance-Report.pdf [perma.cc/2CY7-NNBB] (reporting the inclusion of Responsible Sourcing and Sustainability governance structures, Standards of Vendor Engagement, and Responsible Purchasing Practices to ensure ethical, transparent procurement); *Responsible Supply Chains*, TARGET CORP., https://corporate.target.com/sustainability-governance/responsible-supply-chains [perma.cc/9DKT-F5HX] (describing ongoing commitment to ethical vendor standards, traceability, and human rights across global manufacturing).

[118] *See* Stacy M. Brown, *Diversity, Equity and Inclusion Rollback Costs Target Billions and Loyalty*, MSHALE (Mar. 28, 2025), https://mshale.com/2025/03/28/diversity-equity-and-inclusion-rollback-costs-target-billions-and-loyalty [perma.cc/F7GC-C6CT] (describing the boycott organized by Pastor Jamal Bryant).

[119] *See* Taylor Telford, *Target Stumbles as Tariffs Hit Earnings and Sales Fall Amid DEI Backlash*, WASH. POST (May 21, 2025), https://www.washingtonpost.com/business/2025/05/21/target-earnings-foot-traffic-tariffs-dei [perma.cc/59F5-GP2X] (reporting a drop in store traffic and decline in online sales attributed to the February 28 "Blackout Day").

This institutional inertia—where some programs survive even when others are dismantled—illustrates how governance reforms that are embedded into procurement, compliance, and operational policy are harder to reverse than those located in marketing or philanthropy.[120] In Total Governance terms, the survival of these policies suggests that equity-based governance, when formalized through supply chain and legal protocols, can withstand ideological shifts better than more symbolic commitments.[121]

Target Corporation is now facing multiple high-profile lawsuits stemming from its implementation and subsequent rollback of DEI initiatives.[122] Plaintiffs allege that Target misled investors by failing to disclose the foreseeable financial risks associated with its DEI programming—particularly the 2023 Pride Month campaign—which provoked consumer backlash and market volatility. One of the lead cases, filed by the City of Riviera Beach Police Pension Fund, claims that Target's management materially obscured the reputational and political risks of its public alignment with social justice values.[123] The complaint argues that such omissions violated federal securities laws by depriving investors of critical information.[124] These claims have since been echoed by state attorneys general in Florida and Ohio, backed by America First

[120] *See* ATINUKE O. ADEDIRAN, DISCLOSURELAND: HOW CORPORATE WORDS CONSTRAIN RACIAL PROGRESS 3–5 (2026) (demonstrating that race-conscious disclosures issued between 2020 and 2022 were largely defensive in nature—designed to manage litigation and reputational risk rather than to embed durable equity commitments—and that these disclosures were often reversed or diluted under political pressure); Fairfax, *supra* note 10, at 160–62; Fletcher & Lovelace, *supra* note 21, at 419–29 (calling for a structural shift from performative racial justice to enforceable corporate racial responsibility embedded in law and governance); Gadinis & Miazad, *supra* note 8, at 1432–33 (discussing how insufficient integration of social-risk considerations in corporate governance structures contributes to vulnerability under political scrutiny); Root Martinez & Fletcher, *supra* note 75, at 911–13 (describing how equality metrics, once embedded in organizational systems such as procurement and compliance, structure decision-making and become more durable than purely symbolic commitments).

[121] *See* Fairfax, *supra* note 6, at 129–31 (warning that ESG and DEI disclosures untethered from structural reform create reputational and legal exposure, especially in politically polarized climates); *DEI Task Force Update*, *supra* note 7 (analyzing the increased risk for companies with DEI programs).

[122] *See* Craig v. Target Corp., No. 2:23-cv-559-JLB-KCD, 2024 WL 4981026, at *1 (M.D. Fla. Dec. 4, 2024) (securities class action stemming from the same Pride campaign disclosures; transfer denied on Dec. 4, 2024); Complaint at 4–5, State Bd. of Admin. of Fla. v. Target Corp., No. 2:25-cv-00135 (M.D. Fla. Feb. 20, 2025) [hereinafter State Bd. Complaint] (accusing Target of concealing financial harm from DEI initiatives, in a case brought by Florida's pension fund and attorney general); Complaint at 1–2, City of Riviera Beach Police Pension Fund v. Target Corp., No. 2:25-cv-00085 (M.D. Fla. Jan. 31, 2025) [hereinafter Riviera Beach Complaint] (alleging Target misled investors regarding DEI risks associated with its Pride Month merchandise).

[123] Riviera Beach Complaint, *supra* note 122, at 1–2.

[124] *See* Securities Exchange Act of 1934, 15 U.S.C. § 78a (establishing the legal foundation for public company disclosure and periodic reporting requirements); 17 C.F.R. § 249.308a (2025) (quarterly reporting form that reinforces short-term financial expectations by requiring updates every three months); *id.* at § 249.310 (annual reporting form that mandates comprehensive financial disclosures but still orients governance around yearly performance benchmarks).

Legal, which has also initiated a separate shareholder suit.[125] Collectively, these actions reflect a new frontier in corporate accountability: one in which both the adoption and retraction of DEI policies may trigger legal liability from ideologically opposed stakeholders.

Although Target has chosen to shift its policies to align with the current administration, by over-indexing on short-term political and financial calculations, they risk alienating the very stakeholders—employees, consumers, and investors—whose trust is necessary for long-term resilience. When corporate governance is structured around situational marketing rather than mission, it is the communities that once trusted the firm—Black consumers, LGBTQ+ patrons, and equity-centered entrepreneurs—who suffer most from its reversals. Under a Total Governance framework, Target would have prioritized values alignment over temporary appeasement, insulating its brand and operations from cyclical partisan shifts.

### *B. Short-Termism as Reversible Governance*

The post-2020 surge in DEI initiatives—alongside a growing embrace of ESG frameworks—signaled a potential shift in how firms engage with social responsibility.[126] But the subsequent wave of reversals—especially in the wake of Project 2025—underscores a deeper reality: both ESG and DEI, as currently practiced, rest on fragile foundations of performative governance rather than structural values anchoring.[127] Corporate reversals on equity commitments are not simply the result of ideological retreat; they are often structurally incentivized.[128] The contemporary governance regime is defined by a compressed temporal logic that prioritizes quarterly performance over long-term accountability.[129]

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[125] *See supra* notes 3 and 122 and accompanying text (showing a press release from America First Legal and a series of cases they are involved with).

[126] *See* ADEDIRAN, *supra* note 120, at 3–14 (introducing the post-2020 shift); Afsharipour, *supra* note 19, at 1012–13 (arguing that ESG is seen in M&A transactions more as a risk to manage than an obligation to adhere to); Carliss N. Chatman, *Corporate Family Matters,* 12 U.C. IRVINE L. REV. 1, 59–60 (2021) (explaining how corporate governance regimes structurally prioritize shareholder interests over those of employees, consumers, and communities, thereby entrenching short-termism and excluding key stakeholders from firm decision-making).

[127] *See supra* note 124 and accompanying text.

[128] Gadinis & Miazad, *supra* note 18, at 95–96.

[129] *See* STOUT, *supra* note 29, at 2–3 (describing the pitfalls of "shareholder value thinking"); Afsharipour, *supra* note 19, at 1010–13 (describing how M&A negotiations and deal structures reflect short-term financial incentives that can undermine longer-term ESG commitments); James J. Park, *From Managers to Markets: Valuation and Shareholder Wealth Maximization*, 47 J. CORP. L. 435, 440–42 (2022) (describing how quarterly earnings pressure and valuation metrics influence managerial short-termism).

The case of Target Corporation and its reversals is the epitome of short-term horizons crafted by public company reporting requirements.[130] Quarterly (10-Q) and annual (10-K) reports dictate a rigid timeline of performance assessment.[131] Executive performance and compensation are routinely tied to short-term benchmarks.[132] As a result, analysts and institutional investors pressure boards to deliver results on a 90-day cycle. So, reputational commitments that cannot be monetized in that timeframe often become recessive.[133]

This temporal tension between stakeholder expectations and governance incentives is consequential.[134] It privileges reversibility over resilience, and brand management over values. When political conditions shift, firms like Target are structurally primed to abandon DEI initiatives that might invite scrutiny, suppress short-term value, or risk litigation.[135] Indeed, as lawsuits from Florida, Ohio, and conservative shareholder groups emerged in response to DEI programs, the cost of maintaining equity commitments rose—not just politically, but legally and financially.[136]

Economic modeling confirms this bias.[137] Corporate actors facing reputational risk or political headwinds often treat equity as contingent exposure—an asset to be liquidated when it no longer provides marketing or valuation up-

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[130] *See* 15 U.S.C. § 78m(a) (requiring periodic reporting by publicly traded companies under the Securities Exchange Act of 1934).

[131] *See* Sec. & Exch. Comm'n, Form 10-Q (2026), https://www.sec.gov/files/form10-q.pdf [perma.cc/9VPZ-A7UU] (requiring public companies to disclose unaudited quarterly financial information); Sec. & Exch. Comm'n, Form 10-K (2026), https://www.sec.gov/files/form10-k.pdf [perma.cc/Q5S6-WWWT] (requiring audited annual financial statements and detailed disclosure); *see also* William Lazonick, *Profits Without Prosperity*, HARV. BUS. REV., 48 (Sep. 2014), https://hbr.org/2014/09/profits-without-prosperity [perma.cc/QJ2P-TQP4] (criticizing quarterly reporting cycles for distorting executive incentives and corporate governance).

[132] *See* Afsharipour, *supra* note 19, at 1012–13; Gadinis & Miazad, *supra* note 18, at 85–87; Park, *supra* note 129, at 480–81. To be sure, compensation metrics and managerial incentives should be reconsidered rather than depriving equity markets of quarterly reporting. 10-Qs provide a critical information stream without which individuals would be at a disadvantage to institutional investors, further disenfranchising the everyday citizen in corporate governance. 10-Ks and 10-Qs also reduce agency costs. Letter from Sergio Alberto Gramitto Ricci & Christina Sautter, to Off. of the Sec'y, Sec. & Exch. Comm'n (July 6, 2026), https://www.sec.gov/comments/S7-2026-15/s7202615-945144-2916969.pdf [perma.cc/FP97-ATTJ].

[133] *Supra* note 132 and accompanying text.

[134] *See* Afsharipour, *supra* note 19, at 1010–14 (describing the tension between short-term financial incentives and longer-term ESG commitments in M&A transactions); Park, *supra* note 129, at 440–41 (noting that changes in timeline for governance could help reconceptualize corporate purpose).

[135] *See supra* notes 113–119 and accompanying text (laying out Target's commitment to DEI, the rollback, litigation, and the subsequent economic challenges Target faced).

[136] *See supra* notes 122–123 and accompanying text (noting the shareholder lawsuits against Target).

[137] *See supra* notes 122–125 and accompanying text.

side.[138] In such conditions, the calculus is simple: rollback becomes rational. As a result, stakeholder trust and loyalty to values become the casualties of a system that incentivizes performative responsiveness but punishes values-anchoring.

This logic is not unique to Target. Across the market, similar reversals occurred at companies like Starbucks, Google, and Amazon, where early post-2020 DEI programs were later downscaled, defunded, or rhetorically diluted.[139] The pressures of the market make these reversals appear pragmatic. Fiduciary obligations narrowly construed around shareholder value, proxy fights shaped by short-term returns, and capital market expectations all conspire to make values-anchoring politically costly and economically counterintuitive.[140]

### *C. Disenfranchising Governance*

The current corporate governance model is structurally exclusionary.[141] It vests formal power in shareholders while ignoring the deeply embedded, often more consequential, investments made by other stakeholders—particularly employees and communities.[142] Employees, for instance, make firm-specific investments that bind them to a corporation more deeply than do retail shareholders, yet they are entirely disenfranchised.[143] They cannot vote on directors

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[138] *See* Afsharipour, *supra* note 19, at 1010–13; Fletcher & Lovelace, *supra* note 21, at 363–70; Lund & Pollman, *supra* note 9, at 2585–91; Shelby*, supra* note 22, at 149–55.

[139] Eric Lau & Taylor Telford, *"DEI" Vanishing from Corporate Filings, Mirroring Business World's Retreat*, WASH. POST (Apr. 30, 2025), https://www.washingtonpost.com/business/interactive/2025/dei-companies-sec-filings/ [perma.cc/P5MK-8PFT] (compiling an analysis of S&P 500 10-K reports).

[140] *See supra* notes 9, 19–20 and accompanying text (discussing shareholder primacy and the way stakeholder commitments are often treated as optional).

[141] Gramitto Ricci & Sautter, *supra* note 46, at 36–46 (arguing that formal participation rights in corporate governance systematically fail to translate into practical power, and tracing this rights-powers gap across centuries of corporate governance); *see supra* note 140 and accompanying text (discussing shareholder primacy); *see also* LYNN STOUT, SERGIO GRAMITTO & TAMARA BELINFANTI, CITIZEN CAPITALISM: HOW A UNIVERSAL FUND CAN PROVIDE INFLUENCE AND INCOME TO ALL 27–48 (2019) (detailing the corporate governance machinery that disenfranchises individuals); Atinuke O. Adediran, *Corporate Accountability and Worker Empowerment*, 69 UCLA L. REV. DISCOURSE 178, 184–86 (2022), https://www.uclalawreview.org/coroporate-accountability-and-worker-empowerment/ [perma.cc/35YN-XXB4] (arguing that corporate accountability requires formalized structures for worker empowerment, as traditional governance models inherently marginalize employee voices); Lynn Stout & Sergio Gramitto, *Corporate Governance as Privately-Ordered Public Policy: A Proposal*, 41 SEATTLE U. L. REV. 551, 565–66 (2018) (suggesting that the current corporate governance model "fails to serve most shareholders, because they are not only shareholders; they are also consumers, employees, taxpayers, organisms that must live in the environment, and ethical beings who often care (to at least some degree) about others' welfare, including the welfare of those who come after them").

[142] Lund & Pollman, *supra* note 9, at 2578–85; *see* Blair & Stout, *supra* note 9, at 271–74, 280–85 (discussing how employees make firm-specific investments, and incomplete contracts fall short of protecting their investments).

[143] Sergio Alberto Gramitto Ricci, Daniel Greenwood & Christina M. Sautter, *The Shareholder Democracy Lie*, 78 FLA. L. REV. (forthcoming 2026) (manuscript at 36–38), https://papers.ssrn.com/

or policy decisions, despite their outsized contributions to the corporation's operations and success.

Even shareholders are not uniformly empowered.[144] Most of the equity in public corporations is held not by individual investors, but by institutional intermediaries.[145] These institutions, in turn, rely heavily on proxy advisory firms—chiefly ISS and Glass Lewis—to guide their voting behavior.[146] This duopoly homogenizes decision-making and distances actual shareholders from governance.[147] As a result, corporate power is not only concentrated but also decoupled from the moral and economic interests of the individuals whose capital enables it.[148]

## III. Reversibility as Design Failure

Part II discussed how corporate commitments to values are reversible and how reversibility is rooted in short-termism. This Part explores the design failures that make commitments to values weak. The roots of reversibility are complex and multifaceted. Successful crowd-led governance and Total Governance initiatives need to map the design characteristics that protect special interests.

### *A. The Fragility of Performative Governance*

Atinuke Adediran's *Disclosureland* offers compelling evidence that race-conscious disclosures between 2020 and 2022 were largely defensive—tools to manage litigation and reputational risk rather than vehicles for transformation.[149] Firms signaled alignment with racial justice while resisting shareholder proposals for equity audits and omitting mechanisms for enforcement.[150] When political winds shifted, many engaged in what Adediran terms

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sol3/papers.cfm?abstract_id=5143857 [perma.cc/H37H-BHMP]; *see* Blair & Stout, *supra* note 9, at 271–74 (pointing out that firm specific investments need enhanced protection because they have low resale value outside the specific firm).

[144] *See* Gramitto Ricci & Sautter, *supra* note 46, at 9 (arguing that shareholders are not a monolithic class and that power differentials within the shareholder constituency are at least as consequential as those between constituencies).

[145] STOUT ET AL., *supra* note 141, at 32.

[146] Gramitto Ricci et al., *supra* note 143, at 6.

[147] STOUT ET AL., *supra* note 141, at 34; Gramitto Ricci et al., *supra* note 143, at 42–44; Stout & Gramitto, *supra* note 141, at 563–65.

[148] *See* Gramitto Ricci & Sautter, *supra* note 46, at 55–57 (theorizing the structural decoupling of formal shareholder rights from the practical power to exercise them and conceptualizing how elites capture corporate governance to the detriment of human investors' voice); Gramitto Ricci, *supra* note 55, at 117–21 (introducing the "Vitruvian Shareholder" as a corporate governance model that remarries the human values and ethics of a retail shareholder with their investing goals).

[149] ADEDIRAN, *supra* note 120, at 7.

[150] *See* ANAND GIRIDHARADAS, WINNERS TAKE ALL: THE ELITE CHARADE OF CHANGING THE WORLD 11–17, 147–62 (2018) (critiquing how elites and institutions adopt symbolic commitments to social change while avoiding structural reforms that would impose meaningful constraints or account-

"race-conscious retraction," scrubbing statements and rebranding equity commitments with neutral language like "belonging."[151] These reversals were not aberrations—they were consistent with a logic that treats DEI as a reputational hedge, not a governance mandate.[152] Anand Giridharadas's critique of elite philanthropic capitalism as a self-preserving enterprise applies with equal force to corporate DEI: performative gestures often serve to stabilize existing power structures while shielding firms from demands for structural transformation.[153]

The empirical data in *Disclosureland* supports this conclusion. Adediran's review of over 2,000 public and private companies shows that although race-conscious disclosures became common across sectors after 2020, they were largely nonbinding and heavily concentrated in corporate sustainability reports.[154] These reports often lacked concrete commitments. Accountability mechanisms did not hold either. Moreover, when DEI became politically contentious, many companies sanitized their language—shifting from explicit terms like "racial justice" and "equity" to generic phrases like "belonging" or "inclusive culture."[155] This pattern of linguistic retreat was most pronounced in states governed by conservative leadership, reinforcing the finding that reputational calculus dictated disclosure strategies.

Cary Martin Shelby's theory of commodification deepens this critique by demonstrating that Black pain itself has been transformed into a profitable asset within multiple private markets. As she argues, racial justice initiatives

ability); Shelby, *supra* note 22, at 1265–67 (arguing that elite investors profit from marginalized communities through opaque social impact structures); Creary et al., *supra* note 21 (arguing that DEI becomes durable only when embedded at the board and leadership levels, and that board composition and governance processes must evolve to recognize stakeholder pluralism as a feature of institutional legitimacy, not a reputational afterthought).

[151] ADEDIRAN, *supra* note 120, at 119–26; Gadinis & Miazad, *supra* note 8, at 1455–57 (illustrating how corporations' superficial handling of social risks leads to performative governance that fails under pressure).

[152] Gadinis & Miazad, *supra* note 8, at 1455–57; *see also* GIRIDHARADAS, *supra* note 150, at 143–68 (critiquing how elites and institutions adopt symbolic commitments to social change while avoiding structural reforms that would impose meaningful constraints or accountability); Afsharipour, *supra* note 19, at 1010–16 (arguing that ESG considerations are frequently employed to manage reputational risk rather than to create enforceable stakeholder protections, particularly in deal contexts); Lucian A. Bebchuk & Roberto Tallarita, *The Illusory Promise of Stakeholder Governance*, 106 CORN. L. REV. 91, 159–62 (2020) (arguing that stakeholderism lacks binding mechanisms and is therefore vulnerable to managerial opportunism and superficial implementation).

[153] GIRIDHARADAS, *supra* note 150, at 143–68 (critiquing elite-driven social change as self-serving and designed to stabilize existing power hierarchies through symbolic rather than structural reform); *see also* Gadinis & Miazad, *supra* note 18, at 78–80 (presenting empirical evidence demonstrating that corporations tend to abandon stakeholder-focused policies swiftly once they become politically inconvenient or economically burdensome, exposing the inherent fragility of performative governance).

[154] ADEDIRAN, *supra* note 120, at 119.

[155] *Id.* at 122.

were never insulated from market logics.[156] Rather, they were absorbed into corporate strategy as monetizable events—rallying points for consumer engagement, brand differentiation, and investor signaling. Once the commodified value of DEI initiatives diminished, corporate commitments evaporated, exposing the underlying fragility of such efforts.[157] In this framework, the reversal of DEI is consistent behavior; it is the logical outcome of commodification strategies that extract value from pain without redressing its root causes.

Lisa Fairfax complicates this narrative in her empirical study *Racial Rhetoric or Reality?*—in which she concedes that some firms did undertake substantive internal reforms in response to BLM-era pledges.[158] Yet even these actors, she warns, remain vulnerable to political backlash and shareholder volatility unless protected by institutional anchors. Fairfax's optimism is tempered by her own data: performative commitments outpaced structural ones, and the firms most vulnerable to retrenchment were those that failed to embed stakeholder participation into governance processes.[159]

DEI, and particularly the George Floyd moment, exemplify the fragile nature of performative governance.[160] It also illustrates what is required to transform a performative marketing response into a lasting corporate policy.[161] The Total Governance framework would require companies to do more than just capitalize on a public relations moment. Instead, companies would acknowledge cross-stakeholder collaboration, shared values, and superordinate goals.

### *B. Shuffling Values*

ESG discourse frequently masks performative marketing behind opaque metrics and selectively enforced commitments.[162] Ratings agencies function without transparency. Institutional investors apply ESG selectively, using it to

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[156] *See* Shelby, *supra* note 22, at 1265–67 (describing social impact investing as exploitative).

[157] *Id.* (describing social impact investing as exploitative); *see also* GIRIDHARADAS, *supra* note 150, at 11–17, 147–62 (critiquing elite-led reform as a self-serving mechanism to entrench power).

[158] Fairfax, *supra* note 10, at 138–41 (articulating the range of concrete corporate commitments made alongside corporate statements).

[159] *Id.* at 191–205.

[160] *See supra* notes 6, 21 and accompanying text (noting the rollback of reforms made in in response to the murder of George Floyd and characterizing the reforms as often symbolic).

[161] *See supra* note 160 and accompanying text (describing a range of substantive reforms alongside corporate statements).

[162] *See* Elizabeth Pollman, *The Making and Meaning of ESG*, 14 HARV. BUS. L. REV. 403, 424–33 (2022) (explaining that ESG has evolved through legal, market, and institutional developments into a fragmented and flexible framework, often used to reinforce managerial discretion rather than empower stakeholders); Lund & Pollman, *supra* note 9, at 2563, 2569–74 (describing the evolution of how corporate governance systems process ESG-related inputs through metrics and intermediaries, producing outcomes that may be partial, inconsistent, or selectively enforced); Paul G. Mahoney & Julia D. Mahoney, *The New Separation of Ownership and Control: Institutional Investors and ESG*, 2021 COLUM. BUS. L. REV. 840, 851–58 (arguing that ESG initiatives often reflect agency conflicts, enable managerial opportunism, and lack accountability to long-term investor interests).

manage reputational risk rather than to democratize power.[163] The result is a governance system where equity and sustainability are instrumentalized for capital accumulation and marketing, not authentic anchoring to values.[164] This reflects a broader political economy in which value extraction is often celebrated, while value creation—especially by labor and community stakeholders—is rendered invisible.[165]

The superficial responsiveness of ESG and DEI must be situated within a broader critique of neoliberal governance.[166] More broadly, the epistemic instability of performative governance has been explored by Julie Cohen and Kate Klonick.[167] In *Between Truth and Power*, Cohen shows how informational capitalism reorders value and legitimacy through algorithmically curated visibility.[168] In this context, DEI becomes a form of "managed visibility"—a branding tool responsive to sentiment but devoid of durable commitments. Klonick's work on platform governance reinforces the point: in both digital speech and corporate behavior, legitimacy is determined not through democratic process, but through opaque, discretionary moderation with no anchoring safeguards.[169]

These critiques underscore the key insight: performative governance mimics accountability without delivering it.[170] It collapses under scrutiny be-

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[163] Fairfax, *supra* note 6, at 170–71; *see* Park, *supra* note 129, at 457–58 (highlighting how valuation pressures influence corporate strategy, encouraging firms to prioritize short-term gains over substantive and consistent stakeholder engagement).

[164] *See* MARIANA MAZZUCATO, THE VALUE OF EVERYTHING: MAKING AND TAKING IN THE GLOBAL ECONOMY 14–21, 185–94 (2018) (arguing that prevailing economic systems conflate rent extraction with value creation, leading to distorted incentives and a devaluation of public and stakeholder contributions); Kishanthi Parella, *Protecting Third Parties in Contracts*, 58 AM. BUS. L.J. 327, 329–32 (2021) (highlighting that corporate legal frameworks routinely ignore affected third-party stakeholders, rendering public-facing commitments vulnerable to reversal without liability or recourse).

[165] *See supra* note 164 and accompanying text.

[166] *See* Jared A. Ellias & Elisabeth de Fontenay, *The Credit Markets Go Dark*, 134 YALE L.J. 779, 779–92, 844–47 (2025) (documenting how the rise of private credit markets has reduced transparency and weakened stakeholder governance mechanisms; Colleen Honigsberg, Edwin Hu & Robert J. Jackson, Jr., *Regulatory Arbitrage and the Persistence of Financial Misconduct*, 74 STAN. L. REV. 737, 737–43 (2022) (explaining how financial advisors exploit regulatory gaps to evade enforcement and reputational consequences); Reyes, *supra* note 35, at 1885–90 (noting how decentralized organizations often reject ESG-style branding and instead rely on community-based legitimacy and consensus mechanisms to signal ethical orientation).

[167] COHEN, *supra* note 28, at 75–91(analyzing how informational power structures shape knowledge production and social ordering); Klonick, *supra* note 40, at 1618–22, 1631–35 (describing how online platforms develop and enforce evolving speech norms through privately governed systems that reflect competing values and contested standards).

[168] COHEN *supra* note 28, at 75–91 (examining the ways informational power structures shape both knowledge production and the ordering of society).

[169] *See* Klonick, *supra* note 40, at 1609–14 (describing how online platforms exercise discretionary authority over speech through privately developed rules and enforcement systems outside traditional democratic processes).

[170] *See* Fairfax, *supra* note 6, at 170–71 (warning that voluntary ESG disclosures disconnected from practice may expose firms to reputational and regulatory risks); Fairfax, *The O.G.*, *supra* note 32, at 180–81 (arguing that governance structures are essential for translating ESG commitments into

cause it is reversible by design. When DEI becomes risky, firms retreat—because nothing in their governance structures compels them to stay. Reversibility is not a failure of communication—it is a market failure.[171] In this context, market failure describes the inability of stakeholder markets—consumers, employees, investors, and contractual partners—to impose consistent, durable governance constraints, allowing corporations to make and abandon value-based commitments without sustained economic consequence.[172]

This failure does not occur in isolation. It is compounded by deeper shifts in the architecture of corporate law that increasingly insulate firms from public accountability.[173] Charter competition may, in some contexts, contribute to governance arrangements that privilege certain investors and managerial interests over broader stakeholder voice.[174] Dual class equity structures further entrench power.[175] Legislative capitulation and the political nature of compliance tend to promote short-termism, as the regulatory regime is inconsistent.[176]

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corporate accountability); Parella, *supra* note 21, at 935–37 (explaining how companies adopt reputational strategies to manage stakeholder expectations).

[171] *See* Jill E. Fisch & Steven Davidoff Solomon, *Should Corporations Have a Purpose?*, 99 TEX. L. REV. 1309, 1340–41 (2021) (noting that corporate purpose statements and stakeholder commitments generally lack enforceable constraints and remain subject to managerial discretion); Parella, *supra* note 164, at 329–32 (explaining that contract law frameworks often exclude third-party stakeholders, limiting their ability to enforce or rely on corporate commitments).

[172] *See* Carliss N. Chatman & Sergio Alberto Gramitto Ricci, *Disney's Jimmy Kimmel Flip Shows Why Values Matter for Governance*, BLOOMBERG L. (Sep. 23, 2025), https://news.bloomberglaw.com/legal-exchange-insights-and-commentary/disneys-jimmy-kimmel-flip-shows-why-values-matter-for-governance [perma.cc/64P9-KNAN] (describing "reversible governance" as the pattern of creating commitments, relinquishing them under pressure, and reinstating them in response to stakeholder backlash, and showing that stakeholder coordination produces only episodic rather than durable governance constraints).

[173] *See* Chatman, *supra* note 126, at 19–23 (noting procedural elements necessary for accountability).

[174] *See* Carliss Chatman & Tammi S. Etheridge, *Federalizing* Caremark, 70 UCLA L. REV. 908, 930–32 (2023) (explaining how doctrinal and litigation pressures shape governance choices and reinforce director-centered authority); Lynn M. LoPucki, *Corporate Charter Competition*, 102 MINN. L. REV. 2101, 2165–68 (2018) (arguing that interstate charter competition has incentivized legal regimes that minimize constraints on managers and deprioritize broader stakeholder interests); Lund & Pollman, *supra* note 9, at 2565–67 (describing how corporate governance systems filter and channel stakeholder input through intermediaries); *see also* Gramitto Ricci & Sautter, *supra* note 46, at 47–57 (using recent Texas legislation to illustrate how states compete for incorporations by offering corporate insiders greater flexibility from traditional governance constraints).

[175] *See* Business Roundtable v. SEC, 905 F.2d 406, 407–10 (D.C. Cir. 1990) (invalidating an SEC rule that would have curbed dual-class stock, thus preserving companies' ability to concentrate voting power in insiders at the expense of outside shareholders); Lucian A. Bebchuk & Kobi Kastiel, *The Untenable Case for Perpetual Dual-Class Stock*, 103 VA. L. REV. 585, 602–03 (2017) (explaining that dual-class voting structures insulate founders from market discipline, entrenching their control even as their equity stake and performance decline, and creating "serious problems" of agency costs and self-dealing as a result).

[176] *See* Afsharipour, *supra* note 19, at 1010–12 (explaining how short-term financial incentives in dealmaking can conflict with longer-term ESG commitments); Chatman & Etheridge, *supra* note 174, at 945–47 (describing how shifting regulatory signals and political pressures shape corporate compli-

Corporations focused on disclosure and reporting requirements as well as financial metrics are incentivized to be performative.[177]

### *C. Design Matters*

Reversible governance reveals itself differently across firm structures. At Target, equity commitments were publicly celebrated and then quietly reversed in response to ideological pressure.[178] At Tesla and Meta, stakeholder resistance has been rendered ineffective not because commitments were reversed, but because they were never embedded—due to structural insulation and high stakeholder transition costs.

Tesla presents a complex dynamic. Although Elon Musk cultivated a brand of anti-establishment innovation, his increasingly visible alignment with far-right politics—culminating in his leadership role in the Department of Government Efficiency (DOGE) under President Trump—alienated key segments of Tesla's customer base.[179] His dual role as a government actor and private CEO—coupled with inflammatory rhetoric and unilateral decision-making— eroded trust among socially conscious consumers and ESG-oriented investors.[180] Yet, stakeholder efforts to discipline Tesla have failed to generate sustained accountability.[181] Despite a drop in brand trust and public boycotts, sales have remained largely resilient in core markets.[182]

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ance behavior); James J. Park, *Do the Securities Laws Promote Short-Termism?*, 10 U.C. IRVINE L. REV. 991, 991, 994–1000 (2020) (observing that mandatory quarterly disclosure is widely criticized for incentivizing corporations to deliver "short-term results" rather than to develop "sustainable, long-term strategies," reflecting a regulatory focus on near-term financial metrics).

[177] *See* Atinuke O. Adediran, *Disclosing Corporate Diversity*, 109 VA. L. REV. 307, 311–15 (2023) (critiquing current disclosure regimes for producing formal compliance rather than substantive equity outcomes); Afsharipour, *supra* note 19, at 1012–13 (arguing that market-based metrics render stakeholder efforts performative and reversible without deeper structural reforms); Bebchuk & Tallarita, *supra* note 152, at 124, 164–66 (finding that stakeholder governance framed through disclosure regimes remains "for show" absent enforceable mechanisms).

[178] *See supra* notes 113–119 and accompanying text (describing Targets DEI commitments and subsequent reversal).

[179] *See* Tim Levin et al., *From "First Buddy" Bromance to a Feud to a Thaw: Here's How Elon Musk and Donald Trump's Relationship Has Evolved*, BUS. INSIDER (Jan. 4, 2026), https://www.businessinsider.com/elon-musk-donald-trump-feud-relationship-timeline-2022-7 [perma.cc/X8GJ-2J9N] (detailing Musk's appointment to the Department of Government Efficiency under President Trump and the evolution of their political alignment).

[180] Vivian Ho, Victoria Bisset & Hannah Natanson, *The Chain Saw, the Salute and Other Moments from Musk's Time in Government*, WASH. POST (May 29, 2025), https://www.washingtonpost.com/politics/2025/05/29/elon-musk-doge-moments-trump-administration [perma.cc/CXU2-FL2B] (describing public backlash to Musk's political conduct while serving in government and noting a seventy-one percent drop in Tesla's quarterly profit).

[181] *See supra* notes 179–180 and accompanying text.

[182] *Tesla's Green Reputation Crashes as Its Sustainability Perceptions Value Falls by Over $7 Billion*, BRAND FIN. (June 5, 2025), https://brandfinance.com/press-releases/teslas-green-reputation-crashes-as-

In firms like Tesla—where the product is high-cost, high-commitment, and difficult to abandon—stakeholder pressure becomes structurally constrained.[183] Total Governance in such contexts would require coordinated buy-in not just from consumers, but from shareholders and employees, likely through collective or unionized action.[184] The failure of consumer discipline is not a failure of conviction; it is a function of exit costs. Tesla buyers enter multi-year financial and social commitments. Replacing a vehicle entails steep monetary losses, logistical burdens, and limited access to substitutes—particularly given Tesla's dominance in the luxury EV space.[185] Investors fare no better: Elon Musk's concentrated control and the absence of meaningful governance checks convert dissent into symbolism.[186] What emerges is reputational immunity—an insulation from stakeholder reprisal not because outrage is absent, but because the architecture of exit and voice has been legally and institutionally foreclosed.[187]

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its-sustainability-perceptions-value-falls-by-over-7-billion [perma.cc/YEH9-CMHS] (reporting a twenty-three billion dollar drop in brand value due to governance and ESG-related concerns).

[183] *See* Lund & Pollman, *supra* note 9, at 2569–75 (explaining how corporate governance systems mediate and filter stakeholder inputs, limiting the extent to which external pressures translate into corporate decision-making; Chatman, *supra* note 7 (showing the legal risks from commitment rollbacks); *DEI Task Force Update*, *supra* note 7 (showcasing the firm's DEI taskforce aimed at helping clients navigate risk).

[184] *See infra* notes 221–233 and accompanying text (applying the total governance approach to values and identity formation for a corporation).

[185] *See* Lauritz Fischer, Felix Rupalla, Shivika Sahdev, & Ali Tanweer, *Exploring Consumer Sentiment on Electric-Vehicle Charging*, MCKINSEY & CO. (Jan. 9, 2024), https://www.mckinsey.com/features/mckinsey-center-for-future-mobility/our-insights/exploring-consumer-sentiment-on-electric-vehicle-charging [perma.cc/PFQ2-3452] (noting limited consumer willingness to switch due to infrastructure and brand loyalty barriers).

[186] *See* Tornetta v. Musk, 310 A.3d 430, 547–49 (Del. Ch. 2024) (holding that Elon Musk's 2018 compensation package was unfair and void due to inadequate board independence and flawed approval process, despite formal shareholder vote); *see also* Tesla, Inc., Annual Report (Form 10-K) 20–21, 28 (Jan. 26, 2024), https://www.sec.gov/Archives/edgar/data/1318605/000162828024002390/tsla-20231231.htm [perma.cc/8B2X-EJTN] (confirming Musk's significant ownership and single-class stock control); Press Release, Sec. & Exch. Comm'n, Tesla Charged with and Resolves Securities Law Charge (Sep. 29, 2018), https://www.sec.gov/newsroom/press-releases/2018-226 [perma.cc/Y46N-T7CE] (describing settlement requiring Musk to pay $20 million, step down as board chair for three years, and pre-clear Tesla-related tweets with counsel); Press Release, Sec. & Exch. Comm'n, Elon Musk Charged with Securities Fraud for Misleading Tweets (Sep. 27, 2018), https://www.sec.gov/newsroom/press-releases/2018-219 [perma.cc/J2SE-GTMK] (announcing charges against Musk for falsely claiming he had secured funding to take Tesla private at $420 per share).

[187] *See Tornetta*, 310 A.3d at 508–11 (voiding Musk's 2018 pay package due to lack of independent oversight, affirming how structural governance deficits limit shareholder voice); Motion and Memorandum of Law in Support of an Order to Show Cause at 1–2, SEC v. Musk, No. 1:18-cv-08865 (S.D.N.Y. Feb. 25, 2019), ECF No. 18 (requesting that Musk be held in contempt for violating the settlement's pre-approval requirement for Tesla-related tweets); Litigation Release No. 26219, Sec. & Exch. Comm'n, SEC Charges Elon Musk for Violating the Beneficial Ownership Reporting Requirements of the Federal Securities Laws (Jan 14, 2025), https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26219 [perma.cc/9EF7-MUVM] (alleging Musk violated disclosure requirements by failing to timely report his Twitter stock purchases, allowing him to profit at the expense of public

Meta (formerly Facebook) further illustrates the limits of stakeholder influence in environments dominated by infrastructural entrenchment. The company has undergone a public political realignment, shifting from a perceived center-left position during the Obama era to a platform that accommodates, and arguably enables, reactionary discourse under the guise of neutrality.[188] Mark Zuckerberg's public meetings with conservative leaders, policy choices around content moderation, and symbolic gestures—such as featuring the "Don't Tread on Me" motif—signal a calculated withdrawal from the company's prior alignment with liberal democratic norms. Yet despite multiple scandals—including Cambridge Analytica, algorithmic radicalization, and the January 6 insurrection—Meta has escaped sustained stakeholder-driven correction.[189]

Meta is not merely a brand—it is an infrastructure.[190] Its platforms, Facebook and Instagram, function as social and economic architecture for billions of users, including small businesses, nonprofits, and political organizers.[191] Users do not purchase Facebook or Instagram; they inhabit them.[192] Exit entails forfeiting digital identity, community ties, and economic opportunity.[193]

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investors); *see also* ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES 34–43 (1970) (showing that high switching costs suppress stakeholder exit); OLSON, *supra* note 183, at 1–3 (arguing that collective action fails when costs are individualized).

[188] *See* Max Zahn, *Here's Why Meta Ended Fact-Checking, According to Experts*, ABC NEWS (Jan. 7, 2025), https://abcnews.go.com/US/why-did-meta-remove-fact-checkers-experts-explain/story?id=117417445 [perma.cc/GY4K-HYEG] (reporting on a policy reversal to user-based moderation amid allegations of political bias).

[189] Jeff Horwitz & Deepa Seetharaman, *Facebook Executives Shut Down Efforts to Make the Site Less Divisive*, WALL ST. J. (May 26, 2020), https://www.wsj.com/articles/facebook-knows-it-encourages-division-top-executives-nixed-solutions-11590507499 [perma.cc/3P6L-Y4DY] (reporting internal findings that Facebook's algorithms amplified divisive and extreme content); Jeff Horwitz et al., *The Facebook Files*, WALL ST. J. (Oct. 1, 2021), https://www.wsj.com/articles/the-facebook-files-11631713039 [perma.cc/RT8J-Y55Z] (documenting internal research on harmful algorithmic effects); Edvard Pettersson, *Meta to Pay Record $725 Million to Settle Class Action Over Cambridge Analytica Scandal*, COURTHOUSE NEWS SERV. (Dec. 23, 2022), https://www.courthousenews.com/meta-to-pay-record-725-million-to-settle-class-action-over-cambridge-analytica-scandal/ [perma.cc/CLW4-WEMJ] (confirming record-setting class-action payout yet limited change in platform design).

[190] *See* Elettra Bietti, *Self-Regulating Platforms and Antitrust Justice*, 101 TEX. L. REV. 165, 168–69 (2022) (arguing that dominant platforms such as Facebook function as quasi-public infrastructure, shaping participation, communication, and visibility in ways comparable to public utilities).

[191] *See* Kate M. Conlow, Note, *Feeding the Beast: How Facebook's Monopolization of the Digital Social Advertising Market Harms Consumers and Competition in the Personal Social Networking Market*, 108 IOWA L. REV. 859, 880–83 (2023) (explaining that Facebook and Instagram constitute essential marketing infrastructure for small businesses and nonprofits, controlling over eighty percent of the U.S. social advertising market).

[192] *See* Jean-Christophe Plantin, Carl Lagoze, Paul N. Edwards & Christian Sandvig, *Infrastructure Studies Meet Platform Studies in the Age of Google and Facebook*, 20 NEW MEDIA & SOC'Y 293, 303 (2018) (describing Facebook as a deeply embedded social infrastructure that users inhabit as part of their daily routines and online identities).

[193] *See* Nikolas Guggenberger, *Essential Platforms*, 24 STAN. TECH. L. REV. 237, 240–42 (2021) (arguing that platforms like Facebook function as essential infrastructure due to network effects and

This embeddedness generates a classic collective action problem: individual discontent yields little leverage unless coordinated at scale.[194] Most users remain not from affinity, but from constraint. Transaction costs are too high; collective action problems are insurmountable. Meta's advertising-driven revenue model compounds this inertia, transforming engagement—however critical—into profit.[195] The result is a regime of resigned participation—where outrage is monetized and dissent metabolized as data.[196] Governance fails not because users lack concern, but because the infrastructure itself renders protest and initiatives structurally impotent. Meta illustrates how stakeholder voice dissolves when governance design absorbs resistance and repackages it as value.[197]

When this stakeholder inertia is combined with a favorable stock structure, a system in which Mark Zuckerberg's transient political inclinations dominate corporate decision-making can persist. Meta operates under a dual-class share structure that consolidates control in the hands of founder and CEO Mark Zuckerberg.[198] The company issues Class A shares, which carry one vote per share, and Class B shares, which carry ten votes per share and are held almost exclusively by Zuckerberg and select insiders. As a result, despite owning a minority of the company's economic interest, Zuckerberg controls the vast majority of voting power—effectively insulating himself from shareholder challenges and entrenching his unilateral authority over corporate governance.

Short-termism and the performative governance it inspires are most prominent in companies designed to disregard stakeholders and even some shareholders. When comparing Target to Tesla and Meta, it becomes clear that facing the consequences of a market response to a failure to integrate superordinate stakeholder and shareholder goals is more likely when the capital structure and market position support it. Although stakeholder responsiveness is more likely in highly visible consumer-facing companies, capital formation including dual class structures like Meta, or a structure with a dominant personality wear-

lock-in costs, such that exiting the platform entails steep losses in visibility, connection, and opportunity); Rogers, *supra* note 51, at 563–64 (explaining how firm technology can influence power within firms).

[194] *See* OLSON, *supra* note 183, at 2–3, 9–10 (explaining the challenge of collective action).

[195] *See* Bloch-Wehba, *supra* note 80, at 40–43 (analyzing how platform business models, including advertising-driven revenue, shape incentives around engagement and content governance); Fairfax, *The O.G.*, *supra* note 32, at 175–78 (arguing that governance structures are essential to making ESG commitments effective and that, without such structures, ESG initiatives lack accountability and durability).

[196] TUFEKCI, *supra* note 68, at 216–19.

[197] *See* Rogers, *Employment Rights*, *supra* note 93, at 492–95 (arguing that digital platforms govern workers through technical and contractual design, displacing legal accountability and concentrating power in the firm's architecture).

[198] *See* Meta Platforms, Inc., Annual Report (Form 10-K) 48 (Jan. 29, 2024), perma.cc/7RMK-QLCG (confirming dual-class structure in which Class B shares carry ten votes per share, while Class A shares carry one); Meta Platforms, Inc., Definitive Proxy Statement (Form DEF 14A) 78 (Apr. 19, 2024), perma.cc/3Z2F-MZUL (reporting that Zuckerberg and affiliates hold nearly all outstanding Class B shares, retaining majority voting power despite minority economic interest).

ing multiple hats like Tesla, enables a company to disregard stakeholders. These entities are designed to be reversible.

## IV. Total Governance as a Strategic Framework

The retraction of corporate commitments to values in the face of political pressure exposes the unreliability of a governance paradigm dominated by situational opportunism.[199] In an era defined by ideological polarization, rapid information dissemination, and evolving consumer ethics, the traditional model of governance falls short of protecting values.[200]

Interlocking accountability and values-anchoring are the antidote to governance volatility and political polarization. Total Governance offers a model through which such a framework can be operationalized—transforming public demands into internal accountability mechanisms capable of enduring the ideological pressures of the contemporary corporate landscape. By embedding stakeholder power inside the firm's corporate governance structure, corporate legitimacy becomes institutionalized, allowing a corporation's values to endure beyond electoral cycles and ideological shifts. This Part explores the myth of monolithic shareholder interest in Section A.[201] In Section B, this Part considers the Total Governance framework in response to this myth, before turning to the role of activism within this framework in Section C.[202] This Part concludes by addressing the blueprint for Total Governance in Section D.[203]

### *A. Common Corporate Myths*

The traditional corporate governance model rests on a foundational myth: that stakeholders can be reduced to singular, category-specific interests.[204] This fictional paradigm reduces stakeholders to category-bound interests: shareholders seek returns, employees want wages, and consumers demand price and quality.[205] This reductionist taxonomy not only misrepresents the complexity of hu-

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[199] *See* Bebchuk & Tallarita, *supra* note 152, at 159–65 (arguing that stakeholderism is an empty promise).

[200] *See* Lund & Pollman, *supra* note 9, at 2569–75 (describing how corporate governance systems process stakeholder and market inputs through intermediaries and metrics, with resulting gaps and limitations in how such concerns are incorporated into decision-making).

[201] *Infra* notes 204–220.

[202] *Infra* notes 221–239.

[203] *Infra* notes 240–248.

[204] Gramitto Ricci & Greenwood, *supra* note 16, at 391; *see also* Fisch & Davidoff Solomon, *supra* note 171, at 1345–46 (noting that corporate purpose, absent enforceable governance mechanisms, fails to deliver meaningful stakeholder inclusion, and risks substituting rhetoric for accountability); Reyes, *supra* note 35, at 1884–96 (arguing that decentralized entities demonstrate how individuals often engage simultaneously as developers, investors, users, and community members—defying rigid stakeholder categories embedded in corporate law).

[205] Gramitto Ricci & Greenwood, *supra* note 16, at 391.

man motivation but also obscures the profound potential for cross-stakeholder coordination around shared values and superordinate goals.[206]

Superordinate goals are compelling, high-value objectives that can only be achieved through the collaborative efforts of groups traditionally assumed to be in conflict and that cannot be realized by the groups independently.[207] When parties presumed to have disparate goals—like shareholders presumed to only want profits, lenders who only seek repayment, and third-party stakeholders who may be consumers or community members seeking to minimize negative externalities and corporate rent-seeking—consolidate their goals and collaborate, these goals function as structural mechanisms for reducing intergroup tension by requiring cooperation toward shared ends, thereby reorienting social identity and status hierarchies through joint action.[208] When stakeholder groups coordinate around superordinate goals—such as racial justice, climate stability, or product safety—they create institutional accountability that transcends stakeholder categories and embeds shared values across governance structures.[209]

A reductionist stakeholder taxonomy overlooks a paramount aspect: the human nature of stakeholders. Stakeholders can be institutions, such as banks, corporate clients, and hedge funds. But very often they are human beings. Consumers, employees, members of communities proximate to production plants, and retail investors are human beings who live on a shared plane and

[206] *Id.* at 378; *see also* Stephanie J. Creary, Brianna Barker Caza & Laura Morgan Roberts, *Out of the Box? How Managing a Subordinate's Multiple Identities Affects the Quality of a Manager-Subordinate Relationship*, 40 ACAD. MGMT. REV. 538, 555–57 (2015) (arguing that efforts to recognize and support those identities can materially improve relational trust and performance across stakeholder roles); Kishanthi Parella, *Corporate Governance & International Law*, 76 ALA. L. REV. 417, 450–52 (2024) (analyzing how transnational governance mechanisms can facilitate coordination among diverse actors around shared norms and collective goals).

[207] *See* Carton & Tewfik, *supra* note 16, at 1126–27 (explaining how superordinate goals are effective management tools); Sherif, *supra* note 16, at 349–50 (defining superordinate goals); *see also* Gramitto Ricci & Greenwood, *supra* note 16, at 358–61 (showing how coordination across shareholders, consumers, employees, community members, and other stakeholders is achievable and consequential and challenging the premises that shareholders are exclusively profit maximizers); Parella, *supra* note 206, at 450–52 (examining how transnational governance mechanisms enable diverse actors to coordinate around shared norms and collective goals); Sale, *supra* note 25, at 1013 (noting that the line between "private" corporate decision-making and public accountability has blurred, as media, stakeholders, and political actors increasingly examine corporate behavior and advocate for changes in the distribution of corporate power.); Leo E. Strine, Jr., *Restoration: The Role Stakeholder Governance Must Play in Recreating a Fair and Sustainable American Economy—A Reply to Professor Rock*, 76 BUS. LAW. 397, 397, 411–15 (2021) (arguing that corporate governance must be reoriented toward stakeholder welfare to restore a "balance among stakeholders" and achieve a fair, sustainable economy).

[208] *See* Carton & Tewfik, *supra* note 16, at 1126–27 (describing superordinate goals); Sherif, *supra* note 16, at 349–50 (defining superordinate goals).

[209] Gramitto Ricci & Greenwood, *supra* note 16, at 391–92; *see also* Gramitto Ricci & Sautter, *supra* note 101, at 207–09 (noting that collective retail investor efforts can align capital allocation with social goals, challenging corporate short-termism and expanding the scope of stakeholder voice).

operate in society. In the United States, most investors, in the scale of millions, are human beings. Only thousands of investors are institutions.

Common sense and intuition contradict any textbook assumptions about the singularity of stakeholders.[210] A human shareholder who is a breathing, sentient organism living on a shared planet and in a social community carries interests and goals as an investor but also as a mother, a sister, a friend, and possibly a social activist or an individual engaged in socially and environmentally valuable causes.[211] This human shareholder might prioritize values that extend far beyond their immediate economic interests.[212] These findings challenge the core premises of a contractarian framework, which assumes that equity investors are motivated exclusively by the maximization of financial returns and that their interests necessarily conflict with those of other stakeholders.[213] Instead, stakeholders across categories share remarkably consistent commitments to fundamental ethical principles, creating opportunities for coalition-building that traditional governance models fail to recognize and harness.[214]

Moreover, the current model operates under a myth of investor monolithism.[215] It assumes shareholders are solely motivated by financial return and that their interests are always at odds with those of workers, consumers, or communities.[216] This zero-sum framing is both outdated and factually un-

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[210] Caleb N. Griffin, *Humanizing Corporate Governance*, 75 FLA. L. REV. 689, 699 (2023) ("In any other context, the notion that a person's interests extend only so far as their pocketbook would be considered an overly simplistic caricature.").

[211] Gramitto Ricci, *supra* note 55, at 120–22; Gramitto Ricci & Sautter, *supra* note 96.

[212] Gramitto Ricci & Greenwood, *supra* note 16, at 376–77 ("Most human shareholders have other commitments and other restraints on their willingness to profit at any cost to society, strangers, of the ecosphere."); Gramitto Ricci, *supra* note 55, at 117–18; Griffin, *supra* note 210, at 699 (noting how simplistic a purely economic conception of shareholder value is).

[213] Gramitto Ricci & Greenwood, *supra* note 16, at 391; Griffin, *supra* note 210, at 698–700.

[214] *See* Gramitto Ricci & Greenwood, *supra* note 16, at 373, 378 (explaining that diversity of stakeholders is a strength when they coordinate to pursue common goals); Gramitto Ricci & Sautter, *supra* note 96 (showing how younger generations actually seem to coalesce around certain commitments, like environmentalism); Stephen Kim Park, *Human Rights Due Diligence at the Intersection of Corporate Compliance and Corporate Purpose*, 19 BROOK. J. CORP. FIN. & COMM. L. 67, 75 (2024) ("Through the prism of corporate purpose, the seminal debate about the social responsibilities of business has been reinvigorated by the rise of ESG investing and newfound interest in stakeholders . . . .").

[215] Daniel J.H. Greenwood, *Fictional Shareholders: For Whom Are Corporate Managers Trustees, Revisited*, 69 S. CAL. L. REV. 1021, 1029–35 (1996) (critiquing the assumption that shareholders form a unified interest group and arguing that the legal construction of shareholder primacy relies on a fiction of investor unanimity that conceals diverse and often conflicting preferences); Dorothy S. Lund, *Nonvoting Shares and Efficient Corporate Governance*, 71 STAN. L. REV. 687, 716–18 (2019) (demonstrating that institutional investors, activist hedge funds, and retail shareholders often pursue divergent goals, undercutting the notion of a coherent shareholder will); Pollman, *supra* note 162, at 427–30.

[216] FRANK H. EASTERBROOK & DANIEL R. FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW 11–18 (1991) (arguing that shareholder wealth maximization is the central contractual purpose of the firm and that corporate law should enforce efficient private bargains).

sound.[217] Modern stakeholders—particularly among Millennials and Gen Z—routinely make economic decisions informed by social values, environmental concerns, and long-term ethical considerations.[218]

In sum, the mythical monolithic shareholder, who primarily seeks profits and has no other interest in investment, contributes to the focus on positive reports, short-termism, and reversible governance. These misconceptions justify behavior that can both harm the corporation itself and create negative externalities in the short and long term. When combined with a failing administrative and compliance state, the rise of private equity and unicorn companies, and charter competition, these myths can cause harm beyond the corporation.[219] In a world where corporations influence nearly every aspect of life, and where salaried workers depend on the market for retirement, a framework that considers superordinate goals is needed.[220]

### *B. Total Governance & Identity Creation*

Total Governance responds to these deficiencies by offering a pluralistic, intersectional, and digitally integrated alternative.[221] Central to this framework is the insight that individuals engage with corporations from multiple and often cumulative angles—as shareholders, employees, consumers, and members of proximate communities.[222] Like Johan Cruyff's Total Football strategy, where players fluidly rotate positions to optimize collective performance, Total Governance enables individuals to exert influence from multiple stakeholder roles and vantage points.[223]

Total Governance reimagines stakeholder engagement not as external noise but as a constitutive element of corporate legitimacy.[224] It anchors corporations to values through interlocking cross-stakeholder efforts. Only by shifting to anchoring strategies can stakeholders and accountability frameworks fence off the threats of the current corporate governance machinery, in an era of democratic and economic instability.[225]

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[217] Gramitto Ricci & Greenwood, *supra* note 16, at 391.

[218] Gramitto Ricci & Sautter, *supra* note 24, at 67–70; Gadinis & Miazad, *supra* note 18, at 85–87; Park, *supra* note 129, at 444–46.

[219] STOUT ET AL., *supra* note 141, at 44–47.

[220] Stout & Gramitto, *supra* note 141, at 84–87.

[221] Gramitto Ricci & Greenwood, *supra* note 16, at 355–59.

[222] *Id.*

[223] *Id.* at 395.

[224] Gramitto Ricci & Greenwood, *supra* note 16, at 376–78.

[225] *See* Zohar Goshen & Reilly S. Steel, *Barbarians Inside the Gates: Raiders, Activists, and the Risk of Mistargeting*, 132 YALE L.J. 411, 417–20 (2022) (noting that activist investors may pursue governance changes that misalign with long-term stakeholder goals, reinforcing the need for internal participatory structures).

But what are a corporation's values? The literature on corporate purpose and the nature of the corporation have tackled this question from a theoretical angle, overlooking an intuitive but sophisticated concept.[226] The values of corporations have roots in several intertwined sources. Articles, bylaws, and other corporate documents only provide one set of those sources. Corporations such as Patagonia and Ben & Jerry's embed their corporate values in binding governance architecture—through charter design, ownership structure, and board-level mandates—rather than leaving those values to managerial discretion.[227] Patagonia, for example, has adopted a purpose trust structure that legally commits the company to environmental stewardship,[228] while Ben & Jerry's operates with an independent board charged with preserving its social mission alongside financial performance.[229] This clarity allows them to cultivate their customer base, their investor base, their workforce, and strategic business alliances.[230] But what are the values of enterprises that choose not to solidify their values in foundational documents?

In the absence of corporate norms beyond the naked pursuit of profits, the values of a corporation can be formed bottom-up. Investors, consumers, employees, and members of communities in which corporations operate can shape the values of corporations through their choices and responses to corporate decisions.[231] When stakeholders of different categories identify common values and coordinate their actions to uphold these values, they play a key role in crafting and protecting the identity of the corporation. They institutionalize their common values; they interlock their actions—both magnifying their collective power by engaging with the corporation from different angles and keeping each other accountable across different categories of stakeholders.[232]

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[226] Fisch & Davidoff Solomon, *supra* note 171, at 1340–41.

[227] *See Patagonia's Next Chapter: Earth Is Now Our Only Shareholder*, PATAGONIA WORKS, https://www.patagoniaworks.com/press/2022/9/14/patagonias-next-chapter-earth-is-now-our-only-shareholder [perma.cc/UT5J-SJRL] ("We're in business to save our home planet."); *Ben & Jerry's Values*, BEN & JERRY'S, https://www.benjerry.com/values [perma.cc/7J8Z-LZQJ] (describing the company's "progressive, nonpartisan social mission" including human rights and environmental protection).

[228] *See Patagonia's Next Chapter*, *supra* note 227 (announcing transfer of ownership to Patagonia Purpose Trust and Holdfast Collective to ensure company profits are used to combat climate change).

[229] Agreement and Plan of Merger, dated Apr. 11, 2000, among Conopco, Inc., Vermont All Natural Expansion Company & Ben & Jerry's Homemade, Inc., Annex A to Definitive Proxy Statement (Form DEFM14A) (July 5, 2000), https://www.sec.gov/Archives/edgar/data/768384/000091205700030913/defm14a.txt [perma.cc/P7TV-92E3] (establishing an independent board with authority over Ben & Jerry's social mission and brand integrity).

[230] Gramitto Ricci & Sautter, *supra* note 209, at 14–15; Gramitto Ricci & Greenwood, *supra* note 16, at 381–83.

[231] Chatman, *supra* note 126, at 25–28.

[232] Blair & Stout, *supra* note 9, at 275–78; Jeffrey S. Harrison & Andrew C. Wicks, *Stakeholder Theory, Value, and Firm Performance*, 23 BUS. ETHICS Q. 97, 105–06 (2013) (describing how shared values among stakeholders enhance cooperation and generate sustained firm performance); Leo E.

This framework anchors the corporation to these shared values by demanding performance consistent with cross-stakeholder collaboration and superordinate goals.

This is the novelty of Total Governance: it is a paradigm that overcomes the assumption that stakeholders make decisions primarily driven by neoclassical maximization rather than by conscious free will. Total Governance is also truly participatory rather than merely performative and reversible. Corporate democracy demands that companies integrate more than the concerns of shareholders.[233]

### *C. Total Governance & Activism*

Total Governance recognizes the corporation as a political and cultural institution and conceptualizes the network of overlapping, interlocking, and interdependent stakeholder relationships as a governance paradigm.[234] Drawing from theories of liberal republicanism and participatory democracy, Total Governance rejects the idea that corporate governance should be confined to formal deliberations and quarterly earnings reports. Instead, it posits that governance legitimacy arises from the degree to which corporate conduct reflects the values, experiences, and commitments of those it materially affects. This reconceptualization aligns with Katharina Pistor's argument that the legal infrastructure of capitalism encodes certain assets—like corporate shares—with special protections that reproduce wealth and shield it from democratic intervention.[235]

Under the traditional governance model, boycotts are often dismissed as ephemeral marketing concerns or reputational nuisances. They are evaluated primarily through the lens of short-term financial impact, with corporate actors seeking to weather the storm rather than engage substantively with stakeholder demands. The legitimacy of such collective action is rarely acknowledged, and structural changes in governance are seldom considered in response. Stakeholder voices, especially those outside the shareholder-director binary, are thus rendered peripheral, reactive, and external to the governance process itself, as

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Strine Jr. & Michael P. Klain, *Stakeholder Capitalism's Greatest Challenge: Reshaping a Public Consensus to Govern a Global Economy*, 47 SEATTLE U. L. REV. 329, 342–48 (2024) (emphasizing the necessity of a public values consensus to align stakeholder influence and corporate conduct).

[233] *See* Justin Blount, *Creating a Stakeholder Democracy Under Existing Corporate Law*, 18 U. PA. J. BUS. L. 365, 372–75 (2016) (contending that corporations may implement stakeholder governance structures through private ordering to reflect democratic legitimacy); Grant M. Hayden & Matthew T. Bodie, *A Democratic Participation Model for Corporate Governance*, 109 MINN. L. REV. 1579, 1582–91 (2025) (proposing a restructured governance model that enfranchises stakeholders beyond shareholders); Brett McDonnell, *Stakeholder Governance as Governance by Stakeholders*, 47 SEATTLE U. L. REV. 511, 523–30 (2024) (arguing that stakeholder voice requires formal governance power rather than indirect representation through shareholder primacy).

[234] Gramitto Ricci & Greenwood, *supra* note 16, at 358; Adediran, *supra* note 141, at 186–88.

[235] KATHARINA PISTOR, THE CODE OF CAPITAL: HOW THE LAW CREATES WEALTH AND INEQUALITY 2–5 (2019) (explaining how legal design privileges capital and insulates it from civic accountability).

if the governance of large public companies, including mass-consumer-facing issuers, were just an internal affairs matter.[236]

By contrast, a Total Governance framework perceives boycotts as essential expressions of participatory governance. Rather than seeing them as disruptions, Total Governance views coordinated stakeholder campaigns as integral to corporate governance.[237] These actions represent governance in action—akin to shareholder votes or board deliberations—except diffused across a broader, more democratic spectrum of participants.[238] Under this model, a boycott is not just a sign of reputational risk; it is a signal that stakeholder harmony has fractured, and that corporate legitimacy is in jeopardy.[239]

### *D. The Geometry of Total Governance*

The geometry of Total Governance is not uniform; it shifts across industries, share ownership structures, customer bases, and stakeholder cohesion. In some contexts, stakeholder voice *is* robust and multi-channeled. In others, it *can be* robust and multi-channeled. But, in certain contexts, it is performative, episodic, or structurally foreclosed. Agency is not presumed—it is produced, and its distribution is shaped by infrastructure, identity, and the friction of exit.[240] Firms that produce durable goods (like Tesla) or operate as platforms (like Meta) embed stakeholders in ways that raise the costs of dissent[241] and suppress the possibility of coordinated exit. At the same time, stakeholders often act within silos: consumers may boycott, investors may file proposals, employees may protest. But stakeholder activism is often reactive and reversible, unless rooted in a systemic, structural protection of values and corporate identity.

The 2025 proxy season marked a pivotal moment in participatory resistance to ideological retrenchment.[242] Across numerous high-profile companies—including Apple, Levi Strauss, Costco, Procter & Gamble, Salesforce,

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[236] Lund, *supra* note 215, at 737–45.

[237] TUFEKCI, *supra* note 68, at 30–33; Parella, *supra* note 21, at 943–44.

[238] *See* Gramitto Ricci & Sautter, *supra* note 209, at 212–14 (arguing that retail investors increasingly act collectively to influence corporate behavior, often driven by shared values and public norms rather than traditional financial incentives); Reyes, *supra* note 35, at 1890–93 (describing internet governance).

[239] *See* Angela N. Aneiros & Karen E. Woody, Caremark*'s Butterfly Effect*, 72 AM. U. L. REV. 719, 722–25, 740 (2022) (arguing that evolving oversight duties—including ESG-related concerns—have reshaped board-level responses to reputational and legitimacy risk); Fairfax, *Social Activism*, *supra* note 32, at 1144–46, 1152–53 (detailing the implications of the deterioration of stakeholder harmony).

[240] Rogers, *Employment Rights*, *supra* note 93, at 488–93; Rogers, *supra* note 51, at 567–69.

[241] *See supra* note 175 and accompanying text (explaining how insider power is entrenched in governance structures).

[242] *See supra* note 15 and accompanying text (highlighting the failure of a coordinated anti-DEI campaign during the 2025 proxy season).

and others—shareholders decisively rejected anti-DEI proposals.[243] These votes reaffirmed corporate commitments to inclusive governance and demonstrated that when stakeholder values are embedded in structured governance, firms can successfully resist politicized rollbacks.[244]

The divergence between Target's passive retreat and the affirmative shareholder stance at Apple, Levi Strauss, and Costco reveals an important insight: Total Governance is not merely a normative ideal but an emerging practice.[245] Where such influence is structurally sound, stakeholder engagement can operate as a source of organizational legitimacy and strategic resilience.[246] Isolated consumer outrage or performative shareholder proposals falter in the face of entrenched managerial discretion.[247] But where stakeholder constituencies cohere around shared values and interlock their roles—mobilizing as consumers, investors, workers, and community members—they can convert reputational vulnerability into structural alignment.[248]

Taken together, these insights clarify that Total Governance is more than a diagnostic lens; it is a strategic blueprint. Transitioning from performative, reversible governance to Total Governance requires firms to abandon the myth of the monolithic shareholder and instead acknowledge the symbiotic role between the corporation and all its constituencies. This shift enables corporations to reimagine stakeholders not as external constraints but as interdependent participants in identity formation and legitimacy. When firms recognize that investors, consumers, employees, and communities operate across overlapping roles and shared values, they move beyond episodic brand management toward institutional coherence and values-anchoring. In doing so, reputation ceases to function as background noise to be filtered by marketing and instead becomes a source of ethical orientation and strategic clarity. Total Governance provides the architecture for this transformation: a governance model rooted in pluralism, anchored by values, and designed for resilience.

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[243] *See supra* note 15 and accompanying text.

[244] Gadinis & Miazad, *supra* note 8, at 1468–74.

[245] *See* ADEDIRAN, *supra* note 120, at 115–29 (discussing the cycle of race related disclosures and subsequent retractions by corporations); Carliss N. Chatman, *DEI Rollbacks*, *supra* note 7 (showing the legal risks from commitment rollbacks); Fletcher & Lovelace Jr., *supra* note 21, at 422–29 (calling for a structural shift from performative racial justice to enforceable corporate racial responsibility embedded in law and governance); Fairfax, *supra* note 10, at 127–32 (articulating the range of concrete corporate commitments made alongside corporate statements); *DEI Task Force Update*, *supra* note 7 (documenting corporate rollbacks across sectors in response to the surge in legal, regulatory, and ideological pressure on DEI initiatives).

[246] Root Martinez & Fletcher, *supra* note 75, at 894–901.

[247] Afsharipour, *supra* note 19, at 1014–17 (describing how ESG provisions and commitments are often negotiated and diluted, limiting their ability to constrain managerial discretion).

[248] Parella, *supra* note 21, at 962–68.

## V. VALUES AS INFRASTRUCTURE: HOW SUPERORDINATE GOALS POWER TOTAL GOVERNANCE

Stakeholders can institutionalize their common values. When they interlock their actions, stakeholders magnify collective influence by engaging the corporation from multiple roles and keeping one another accountable across categories of stakeholder identity. This enables stakeholders to anchor the corporation to values and superordinate goals over time.[249] This is the distinctive power of Total Governance. It recasts corporate identity not as a top-down managerial brand or a reactive performative stance, but as a product of sustained, cross-stakeholder engagement. When workers, consumers, investors, and community members act in concert—not episodically but structurally—they embed civic commitments into the operational and normative DNA of the firm. These coalitions do not merely respond to corporate decisions; they shape what the corporation is. Even when they lose a policy fight or face ideological backlash, values-driven stakeholders often win something more enduring: the creation of corporate identity through pluralist alignment. Values, when institutionalized through interlocking actions, cease to be external expectations. They become internal constraints—an infrastructure of accountability, identity, and legitimacy that is not easily reversed.[250]

Moreover, coordinated efforts to uphold values and pursue superordinate goals establish inherent accountability mechanisms. Stakeholders watch what other stakeholders do both intra and infra categories. This mutual oversight interlocks the commitment to values and secures commitment to common-values-driven goals. This interlocked commitment not only institutionalizes the values by forming corporate identity,[251] but it also anchors the corporation itself to the values that characterize its identity.

Total Governance and the pursuit of superordinate goals form a stable framework for a model of governance rooted in values and ethical commitments, which we dub values primacy. This Part contends that *values primacy* provides a civic infrastructure for business corporations. Total Governance is the normative logic that renders participatory mechanisms credible, coordinated, and resilient.

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[249] *See supra* notes 207–208 and accompanying text (discussing shareholder coordination and superordinate goals).

[250] *See supra* notes 207–208 and accompanying text (discussing superordinate goals and shareholder coordination).

[251] CHARLES FOMBRUN, REPUTATION: REALIZING VALUE FROM THE CORPORATE IMAGE 41 (20th anniversary ed. 2018) (defining corporate identity).

### *A. Tech-Enabled Values*

The technological infrastructure of the digital age has dramatically enhanced the capacity for values-driven stakeholder coordination. Social media platforms, mobile investing applications, and online organizing tools enable individuals to identify shared values across stakeholder categories and coordinate collective action at unprecedented scale and speed.[252] When Target reversed its DEI commitments, the resulting boycott was organized not by a single stakeholder group but by a cross-category coalition of consumers, employees, investors, and community advocates united by shared commitments to racial justice.[253] The campaign's digital coordination mechanisms enabled participants to transcend traditional stakeholder boundaries and mobilize around common values rather than categorical interests.[254]

Mobile-first investing platforms and social media have dramatically lowered barriers to entry for participation in equity markets, enabling a more diverse population of retail investors to engage with corporate behavior.[255] At the same time, these tools have facilitated coordination across stakeholder categories, allowing consumers, employees, and shareholders to align around shared goals and express them through boycotts, petitions, and public campaigns.[256]

Many shareholders who invest and coordinate their investing endeavors online, particularly among Millennials and Gen Z, explicitly incorporate social and environmental considerations into their investment decisions, often accepting lower financial returns in exchange for values alignment.[257] These values-driven wireless investors have more in common with socially conscious employees and ethically motivated consumers than they do with profit-maximizing institutions.[258] This suggests that values-based coalitions operate online across different categories of stakeholders, and they may be more politically salient than demographic-based coalitions.[259]

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[252] Gramitto Ricci & Sautter, *supra* note 24, at 91–92, 95; Reyes, *supra* note 35, at 1880–84; Gramitto Ricci & Sautter, *supra* note 96.

[253] *See supra* notes 113–119 and accompanying text (noting Target's DEI commitments in the aftermath of the murder of George Floyd, Target's subsequent retreat from these commitments, and the legal and political backlash involved in both actions).

[254] *Id.*

[255] Gramitto Ricci & Sautter, *supra* note 24, at 53–54.

[256] *Id.* at 61–65; Klonick, *supra* note 40, at 1616–27.

[257] Gramitto Ricci & Sautter, *supra* note 24, at 54, 77; Joan MacLeod Heminway, *Materiality of ESG Information: Why it May Matter*, 84 LA. L. REV. 1365, 1394–96 (2024) (agreeing that "[m]illen–nials are more apt to invest pursuant to their ESG values than to make a profit").

[258] Gramitto Ricci & Greenwood, *supra* note 16, at 391; McDonnell, *supra* note 233, at 517–19, 527–33; *see* Griffin, *supra* note 210, at 698–700 (arguing that "shareholder interests" and "shareholder welfare" are falsely equated with "shareholder wealth" and "shareholder value").

[259] *See supra* notes 113–119 and accompanying text (describing Target's commitment to DEI, the rollback, litigation, and the subsequent economic challenges Target faced).

The rise of digital platforms and mobile-first investment technologies allows stakeholders to coordinate and communicate across traditional boundaries.[260] These changes have created a participatory infrastructure through which previously disenfranchised voices can now shape corporate behavior. This paradigm shift is fueled by Millennials and Gen Z.[261] These generations, projected to inherit $70 trillion by 2030, already align their economic activity with social values, influencing companies not only through investment decisions but also through employment preferences and consumption habits.[262]

Kate Klonick's study of content moderation regimes on platforms like Facebook and YouTube reveals how private actors increasingly function as governance institutions—developing quasi-legal rules, adjudicating disputes, and shaping norms of visibility and legitimacy with limited transparency or public input.[263] These governance practices, although often dismissed as technical moderation, in fact constitute exercises of regulatory power in the digital public sphere—paralleling how corporations govern stakeholder engagement beyond the confines of formal legal structures. These developments call for new private ordering and regulatory solutions that harness the potential of these new trends while mitigating the associated risks.[264] Total Governance provides a framework that increases individuals' agency while enhancing accountability.

### *B. Overcoming Scarcity*

Values primacy challenges the false scarcity logic that pervades traditional corporate theory—the assumption that stakeholder gains necessarily come at the expense of shareholder returns.[265] When stakeholders coordinate around shared values like environmental sustainability or social justice, they often identify synergistic solutions that benefit multiple constituencies simultaneously.[266] Companies that excel in environmental stewardship, for example, often

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[260] Gramitto Ricci & Sautter, *supra* note 24, at 83–88.

[261] *Id.* at 52–55.

[262] Gramitto Ricci & Sautter, *supra* note 209, at 208.

[263] *See supra* note 80 and accompanying text (explaining how social media platforms self-regulate content).

[264] Gramitto Ricci & Sautter, *supra* note 98, at 1877.

[265] Gramitto Ricci & Greenwood, *supra* note 16, at 391–92; *see* Jeffrey M. Lipshaw, *The False Dichotomy of Corporate Governance Platitudes*, 46 J. CORP. L. 345, 349, 373 (2021) (noting that in practice, corporate managers are rarely forced to choose between shareholder value and other stakeholder interests, and that the case law typically only frames such decisions as zero-sum when management explicitly and defiantly prioritizes a social objective over shareholder returns); Neil Taylor, *You Gotta Serve Somebody: Shareholders vs Stakeholders and the Corporate Enterprise View of Corporate Governance*, 19 HASTINGS BUS. L.J. 149, 187–88 (2023) (arguing in support of the view that directors owe fiduciary duties to the corporate enterprise that encompasses more than shareholder value).

[266] Afsharipour, *supra* note 19, at 1030–32; Gramitto Ricci & Sautter, *supra* note 24, at 95; McDonnell, *supra* note 233, at 529–33.

attract values-driven investors, talented employees, loyal customers, and supportive communities, creating virtuous cycles that enhance both social impact and financial performance.[267] Shareholders concerned about climate risk, employees advocating for sustainable workplace practices, consumers demanding eco-friendly products, and community members facing environmental degradation often align around identical goals: reducing carbon emissions, eliminating toxic waste, and transitioning to renewable energy sources.[268] This values-convergence demonstrates that environmental sustainability is not merely a "special interest" of a particular stakeholder group but a shared priority that cuts across traditional categorical boundaries.[269] When these stakeholders coordinate their efforts—through shareholder resolutions, employee walkouts, consumer boycotts, and community organizing—they can exert far greater influence than any single group operating in isolation.[270] This is how values primacy work.

The key insight is that values alignment can generate positive-sum outcomes that transcend the zero-sum logic of traditional stakeholder theory.[271]

Critically, values primacy need not displace existing models of corporate authority but can instead operate as a complementary system that enhances directorial decision-making without undermining managerial efficiency. Ste-

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[267] *See* Gramitto Ricci & Sautter, *supra* note 209, at 226–27 (describing the newest generation of investors as creating a resurgence of retail investing and new conceptions of value); Amelia Miazad, *Investor Climate Alliances*, 102 WASH. U. L. REV. 797, 819 (2025) (explaining how institutional investors' collaboration with hedge fund managers and proxy advisors empowers investor climate alliances' efforts to promote corporate environmental stewardship); Anahit Mkrtchyan, Jason Sandvik & Vivi Z. Zhu, *CEO Activism and Firm Value*, 70 MGMT. SCI. 6519, 6519–21 (2024) (observing a positive relationship between CEOs' environmental activism and firms' financial performance); Pollman, *supra* note 162, at 413–17 (summarizing arguments made by a collaborative initiative of asset managers and the UN in support of ESG).

[268] Gramitto Ricci & Sautter, *supra* note 24, at 54 (observing that this trend is especially prominent among millennials).

[269] Gramitto Ricci & Sautter, *supra* note 96; *see* Mark J. Roe, *Corporate Purpose and Corporate Competition*, 99 WASH. U. L. REV. 223, 224–26 (2021) (explaining how market competition pressures can prevent companies from pursuing long-term ESG goals despite stakeholder alignment, underscoring the need for governance intervention); *cf.* Griffin, *supra* note 210, at 698 ("It is assumed, as a default, that generalized profit maximization is the standard, 'non-special' interest of the majority. Is this assumption accurate? . . . [F]or the majority of [human] investors, the relentless and single-minded pursuit of profit is the true special interest.").

[270] Gramitto Ricci & Greenwood, *supra* note 16, at 373, 378; McDonnell, *supra* note 233, at 529–33.

[271] *See* Carton & Tewfik, *supra* note 16, at 1135–37 (describing positive effects of value alignment and management); Lipshaw, *supra* note 265, at 349, 373 (contending that "corporate management rarely faces the binary choice of diverting value away from the shareholders to other stakeholders," and that "the only circumstances in which the zero-sum decision arises in the case law are those in which management articulates the metaphorical middle finger to the shareholders in favor of some other social goal"); Sherif, *supra* note 16, at 349–52 (defining superordinate goals as objectives "compelling and highly appealing to members of two or more groups in conflict but which cannot be attained by the resources and energies of the groups separately").

phen Bainbridge's Director Primacy model, which places ultimate corporate authority in boards of directors while constraining both shareholder and managerial overreach, provides a stable foundation for corporate governance that values primacy can strengthen rather than challenge.[272] The key insight is that Total Governance operates most effectively at the margins of corporate decision-making—in domains where crowd-sourced stakeholder input provides informational advantages that directors cannot easily obtain through traditional governance mechanisms.[273] Total Governance can also strengthen a corporation's identity, providing directors with a compass as they navigate decision-making.

Under this complementary framework, directors retain ultimate decision-making authority over core business strategy, operational management, and capital allocation decisions—areas where expertise, institutional knowledge, confidential information, and rapid response capabilities are paramount.[274] Values primacy, however, supplements directorial authority in domains where cross-stakeholder values alignment can provide crucial intelligence about reputational risks, emerging social expectations, and long-term sustainability challenges that may not be immediately apparent through conventional market signals or financial metrics.[275] Rather than viewing stakeholder activism as external pressure to be managed or resisted, directors operating within a values-primacy model would treat values-driven stakeholder coordination as a governance resource to be systematically harvested and integrated into strategic planning.[276]

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[272] Stephen M. Bainbridge, *Director Primacy*, *in* RESEARCH HANDBOOK ON THE ECONOMICS OF CORPORATE LAW 23–24 (Claire A. Hill & Brett McDonnell eds., 2012).

[273] Gramitto Ricci & Sautter, *supra* note 24, at 84–85, 85 n.292; *see also* Christine Hurt, *Socially Acceptable Securities Fraud*, 49 J. CORP. L. 785, 807 (2024) (discussing "integrated marketing communication (IMC) strategies" by which firms utilize stakeholder input).

[274] *See* Bainbridge, *supra* note 272, at 23–26 (explaining the necessity of centralized authority in a board of directors).

[275] *See* Einer Elhauge, *The Inevitability and Desirability of the Corporate Discretion to Advance Stakeholder Interests*, 106 CORN. L. REV. 1819, 1824–30 (2021) (arguing that fiduciary duty does not preclude directors from serving stakeholder interests at the expense of shareholder wealth); William J. Moon, *Beyond Profit Motives*, 122 MICH. L. REV. 1059, 1072–75 (2024) (positing Moon's "new concession theory" of corporate governance as an alternative to shareholder primacy that reconciles centralized directorial authority with corporations' responsibilities to the institutions that confer legitimacy upon them); Haskell Murray, *Adopting Stakeholder Advisory Boards*, 54 AM. BUS. L.J. 61, 95 (2017) (arguing that stakeholder advisory boards can introduce diverse viewpoints and challenge the conformity that often emerges within predominantly uniform corporate boards).

[276] Lisa M. Fairfax, *Board Committee Charters and ESG Accountability*, 12 HARV. BUS. L. REV. 371, 386–93 (2022) (demonstrating how formal committee structures increasingly integrate ESG and DEI oversight, enabling boards to treat stakeholder input as an internal governance function).

### *C. The Complementarity Framework at Work: Product Safety*

Product safety provides a compelling example of values primacy. The Boeing 737 MAX crisis[277] demonstrated how employees with safety concerns, shareholders worried about the financial ramification of defective products, consumers demanding airworthy aircraft, and communities affected by crashes share identical interests in preventing corporate negligence and opportunism.[278] The tragedy was not that stakeholder interests conflicted, but that Boeing's governance structure failed to institutionalize the shared values that could have prevented the disasters.[279] Had Boeing received sufficient coordinated pressure from stakeholders driven by values primacy, the safety concerns raised by engineers, the risk management imperatives of investors, and the survival interests of passengers would have been recognized as convergent forces demanding immediate attention to design flaws.[280]

This division of labor leverages the comparative advantages of both governance models. Directors bring institutional knowledge, fiduciary accountability, and decisional efficiency to the core business.[281] Meanwhile, values primacy provides early warning systems, legitimacy validation, and stakeholder buy-in for decisions that affect broad constituencies, the corporation itself, and the society at large.[282] The result is not governance by committee or paralysis by consensus, but rather enhanced directorial decision-making informed by systematically aggregated stakeholder intelligence.[283]

The complementary framework also addresses legitimate concerns about governance efficiency and expertise that critics of stakeholder governance often raise.[284] Directors need not become experts in every domain of stakeholder

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[277] *See* Stumo v. Boeing Co. (*In re* Ethiopian Airlines Flight Et 302 Crash), No. 19 C 2170, 2025 U.S. Dist. LEXIS 52465, at *14–16 (N.D. Ill. Mar. 21, 2025) (providing a brief factual background); Mark Matthews & Charles Q. Choi, *Compass Course*, 29 AM. SOC'Y ENG'G EDUC. PRISM 24, 28–29 (2019) (analyzing the institutional mishaps as a teaching tool).

[278] *See* Matthews & Choi, *supra* note 277, at 28–29 (analyzing institutional errors for educational purposes).

[279] *See id.* at 28 (discussing Boeing's *ex post* evaluation of its governance structure, including its "communication [and] documentation across all of the stakeholders").

[280] *Id.*

[281] Bainbridge, *supra* note 272, at 17–33; *see also* Yaron Nili & Roy Shapira, *Specialist Directors*, 41 YALE J. ON REG. 652, 662, 712 (2024) (observing that the rise of ESG has made specialized expertise in the boardroom more crucial than ever).

[282] *See* Daniel J. Morrissey, *The Promise of Stakeholder Advisory Councils*, 23 U. PA. J. BUS. L. 470, 498 (2021) (observing that stakeholder advisory panels have generally been efficacious).

[283] Murray, *supra* note 275, at 105–06 (noting that stakeholder advisory boards can enhance decision-making by incorporating varied perspectives, strengthening a company's social impact, and fostering deeper stakeholder commitment).

[284] Critiques of stakeholderism suggest that MBA curricula equate corporate purpose with the maximization of profit and shareholder wealth *a priori,* and that business executives are consequently ill-suited to champion causes unconnected to financial outcomes. *See, e.g.*, Bebchuk & Tallarita, *supra* note 152, at 164–65 (arguing that stakeholderism is an empty promise); Brian R. Cheffins, *The*

concern, nor must they submit every decision to stakeholder approval. Instead, values-primacy governance creates feedback loops that enable directors to understand when their decisions conflict with broadly shared values and to calibrate strategies accordingly.[285] When stakeholders across categories converge around environmental concerns, for example, directors receive clear signals about the reputational and operational risks of continuing unsustainable practices—information that enhances rather than constrains their strategic options.[286]

Moreover, this complementary model recognizes that shareholders themselves are not monolithic profit-maximizers but include many values-driven investors whose interests align with other stakeholder constituencies.[287] When values primacy reveals broad stakeholder consensus around issues like social justice or environmental sustainability, directors can pursue values-aligned strategies with greater confidence that they are serving not only stakeholder interests but also the interests of values-driven shareholders.[288] This alignment reduces the tension between fiduciary duty and stakeholder responsiveness that has long plagued corporate governance theory.[289]

### *D. Internalizing Total Governance*

The institutional design of this complementary system recognizes that durable stakeholder power requires formal infrastructure—mechanisms that transform shared values into binding constraints on corporate behavior.[290] Total Governance depends not only on stakeholder sentiment, but on structural devices that institutionalize interlocks across stakeholder roles.[291] The institutional design of this complementary system would also preserve directorial authority for values-driven stakeholder input. This can be achieved through

*Past, Present and Future of Corporate Governance*, 48 DEL. J. CORP. L. 387, 394–95, 421 (2025) (discussing the role of expertise and institutional design in corporate governance and the tradeoffs associated with expanding stakeholder-oriented decision-making); Lund & Pollman, *supra* note 9, at 2602–05 (discussing the role of expertise and intermediaries in corporate governance and the importance of structured processes for managing complex information and decision-making).

[285] *See* Gadinis & Miazad, *supra* note 8, at 1441 ("ESG helps establish trust between the company and its stakeholders. Throughout the ESG process, information flows in both directions.").

[286] *Id.* at 1426.

[287] Gramitto Ricci, *supra* note 55, at 120–23; Gramitto Ricci & Greenwood, *supra* note 16, at 355, 391; Lund, *supra* note 215, at 718–22.

[288] Gramitto Ricci & Greenwood, *supra* note 16, at 378, 388, 391.

[289] *Id.* at 391.

[290] *See* Reyes, *supra* note 35, at 1900–03 (showing how endogenous block-chain protocols compare with, and differ from, corporate law and governance structures).

[291] *See* Charles M. Elson & Nicholas J. Goossen, *E. Merrick Dodd and the Rise and Fall of Corporate Stakeholder Theory*, 72 BUS. LAW. 735, 736–38 (2017) (discussing the development of stakeholder theory and the challenges of translating stakeholder interests into corporate governance structures).

several devices including stakeholder advisory councils, participatory disclosure mechanisms, and cross-stakeholder coordination platforms.[292]

Stakeholder advisory councils would provide regular input on issues where cross-category values alignment emerges.[293] Participatory disclosure mechanisms would enable stakeholders to assess corporate performance against shared values.[294] Cross-stakeholder coordination digital platforms would facilitate values-based coalition-building.[295] The architecture of digital platforms could resemble that of investor forums.[296] Without such mechanisms, values remain diffuse and reversible; with them, they become governance.

Participatory devices also mitigate the temporal mismatch between quarterly reporting cycles and long-term stakeholder commitments that have contributed to the reversibility of corporate social responsibility initiatives.[297] By internalizing Total Governance as an ongoing input rather than an episodic crisis response, directors can make values-aligned decisions with greater confidence that stakeholder support will persist through political and economic cycles.[298] Rather than making performative commitments that are easily reversed when external pressures change, directors can embed stakeholder values into business strategy with the knowledge that those values reflect durable stakeholder priorities rather than momentary activist pressure.[299]

In this light, Total Governance and values primacy represent a reconceptualization of corporate legitimacy that strengthens rather than undermines traditional directorial authority—understood as Director Primacy[300] or a Team Production framework in which boards play a mediating hierarchy role to properly distribute corporate surplus to attract, retain, and retribute specific investments.[301] The future of corporate governance will be determined not by choosing between directorial expertise and stakeholder engagement, but by creating institutional mechanisms that further enable directors to systematically incorporate stakeholder values into strategic decision-making. The complementary framework transforms corporate decision-making from a site of

[292] Gramitto Ricci & Sautter, *supra* note 98, at 1872–77.

[293] Gadinis & Miazad, *supra* note 18, at 95.

[294] Gadinis & Miazad, *Corporate Law and Social Risk*, *supra* note 8, at 1426; Gramitto Ricci & Greenwood, *supra* note 16, at 392.

[295] Gramitto Ricci & Greenwood, *supra* note 16, at 394–95.

[296] Gramitto Ricci & Sautter, *supra* note 98, at 1867–72.

[297] Park, *supra* note 129, at 479.

[298] Gadinis & Miazad, *supra* note 18, at 95 (showing one route to shareholder inputs).

[299] *Id.*

[300] *See* Stephen M. Bainbridge, *Director Primacy and Shareholder Disempowerment*, 119 HARV. L. REV. 1735, 1740–42 (2006) (supporting the view that governance evolves through persistent identity and legitimacy claims—even when not legally enforceable in the short term).

[301] Blair & Stout, *supra* note 9, at 253.

stakeholder-director conflict into a forum for values-informed directorial leadership that serves both efficiency and legitimacy imperatives.

Total Governance offers a systematic and institutional blueprint for converting stakeholder activism into formalized corporate power. By reimagining governance architecture through a civic lens, this model aligns corporate legitimacy with democratic accountability. As corporate power continues to shape public life, institutionalizing stakeholder voice is not merely desirable; it is necessary. Total Governance repositions large public companies as civic institutions, in which legitimacy flows not from capital alone, but from the sustained participation of all those who animate their existence.

Values primacy transforms corporate accountability from an episodic performance into a continuous civic dialogue. It recasts stakeholder engagement not as a sequence of discrete demands, but as a field of converging ethical imperatives. When embedded within the architecture of Total Governance these values operate as a legitimating force across cycles of political change and market volatility.

In this light, Total Governance is not a rejection of institutional authority, but a reconfiguration of its foundations. Directors retain strategic discretion, but their legitimacy depends on responsiveness to values that are widely shared across the polity that their firms affect. Rather than treating values as constraints to be managed, Total Governance recognizes them as sources of actionable intelligence, moral orientation, and institutional resilience. Governance that is truly public-facing must be grounded in the ethical pluralism of those it purports to serve. Values primacy ensures that corporate governance is not merely a technocratic model, but a democratic one.

## Conclusion

The unraveling of commitments to values—often at the mere whisper of political headwinds—exposes the limits of performative governance and the inadequacy of the current accountability framework. As this Article argues, such reversals are not anomalies. They are design features of a governance model still beholden to short-termism and insulated from the pluralistic realities of twenty-first-century political economy.

This Article applies *Total Governance* as a doctrinal, normative, and institutional corrective. Unlike models that view stakeholders as peripheral or adversarial to corporate purpose, Total Governance posits that legitimacy in the modern corporation must derive from the ongoing participation of all who contribute to its operation and bear its risks—workers, consumers, communities, and shareholders alike. It draws on liberal republican commitments to civic obligation, the political theory of participatory democracy, and insights from law and political economy to propose a reconstitution of the firm as a civic institution—not merely an economic one.

This reconceptualization is not merely aspirational. It is already visible in the differentiated responses to stakeholder political and market pressure at Target, Apple, Levi Strauss, and Costco. Where values were institutionalized, corporate identity withstood ideological retrenchment. Where values remained transient and symbolic, it collapsed. This juxtaposition reveals that the future of corporate governance will not be determined by branding or benevolence, but by institutional design and values anchoring.

Total Governance challenges the assumption that stakeholder interests are zero-sum. It highlights the empirical reality that many individuals hold multiple roles—as investors, workers, consumers, and citizens—and that governance must account for this interdependence. It also embraces the common sense intuition that many stakeholders have shared values and superordinate goals that hold true across different categories and roles. Unlike the contractarian model, which privileges market discipline over moral claims, Total Governance recognizes that stakeholder legitimacy derives not from transactional consent but from structural embeddedness.

To that end, Total Governance proposes integrating stakeholder voice. Just as the state is obligated to be responsive to the governed, so too must corporations build legitimacy by engaging those they affect. In doing so, Total Governance does not abandon economic rationality; it reimagines it through the lens of democratic inclusion, institutional integrity, and process design.

Just as constitutional legitimacy requires institutional responsiveness to the governed, corporate legitimacy in the twenty-first century must rest on civic accountability to those whose labor, data, and lives animate the firm. Total Governance offers not merely a path to stakeholder inclusion—but a theory of democratic corporate legitimacy itself.