The Language of Ownership and the Rise of Shareholder Value:

the Corporate Governance Discourse, 1980-1999

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Abstract

The purpose of this dissertation is to analyse the changing discourse on corporate governance in the USA during the last two decades of the 20th century, with a focus on persuasive strategies and linguistic choices. A detailed qualitative study, using critical discourse analysis, is conducted of a selection of six speeches of SEC (Securities and Exchange Commission) Commissioners who served during the period in question, as well as of Milton Friedman's 1970 *New York Times* article on the social responsibility of corporations. This is accompanied by quantitative analysis, using the tools of corpus linguistics, of three corpora of texts: the entire set of speeches of SEC Commissioners over the period, and samples of articles from the *New York Times* and *Wall Street Journal*. The three corpora together comprise over 14 million words.

This dissertation represents an original contribution to knowledge in several ways. First, fresh insights are added to existing research on the decisive break in the discourse on corporate governance that took place during the 1980s. By systematically analysing collocations and concordance lines, new light is shed on the contexts in which terms such as *shareholder value* and *corporate governance* are used. Secondly, the progression of the dominant themes in the discourse on corporate governance such as takeovers, compensation, and institutional investors over the 20-year period is explored. Thirdly, this research establishes how the different narratives, or stories, told by the SEC commissioners evolved and the extent to which these narratives are mirrored in press coverage of corporate affairs.

Fourthly, this dissertation shows how the representations of the key groups of actors in the arena of corporate control, namely managers, directors and shareholders, developed over the period both in the speeches analysed and the three corpora. Fifthly, the way in which the notion that shareholders own the corporation has been used over the period to support different argument strategies is critically examined. The accentuation of only one element of ownership, namely the rights of owners, was pivotal in establishing shareholder primacy as a dominant paradigm of corporate governance. Finally, this research includes a systematic examination of Milton Friedman's 1970 NYT article on corporate social responsibility which is a classic statement of the case for shareholder value in the public discourse.

Key words: corporate governance, shareholder value, ownership, discourse, corpus linguistics, argumentation

Chapter 1: Introduction

The purpose of this dissertation is to analyse the changing discourse on corporate governance in the USA during the last two decades of the 20th century. This will help to deepen our historical understanding of how the transformation in the balance of power amongst different corporate constituents was achieved over this period, as well as the role played by language. It is to be hoped that this in turn will provide insights which should help to better understand contemporary developments in corporate governance. I will follow Cheffins' definition: "Corporate governance can be defined as the checks and balances affecting those who run companies" (2015, p. xii).

1.1 The 1980s and 1990s: telling new stories about the corporation

Between 1980 and 2000 there was a shift in the broadly shared consensus on the social role of the corporation[1]. Before the 1980s the dominant view amongst media commentators, business leaders, policy makers and academics was that corporations were accountable to a broad range of constituencies; by the turn of the millennium the shareholders were widely accepted as the legitimate primary beneficiaries of a corporation's business activities. The consensus position that emerged over this period has been referred to as shareholder primacy or as "shareholder value maximization," or "shareholder value" for short. This change in thinking on the purpose of the corporation and its business activity in turn fed the debate on corporate governance – by the year 2000 "shareholder value" was firmly ensconced as a guiding principle on how boards should function and what aims they should satisfy.

The classic statement of the shareholder value maximization principle was formulated by Friedman (1970) in an article in the New York Times magazine published in September 1970. Though the article was to become highly influential, at the time it was written Friedman was putting forward a minority position rather than restating accepted wisdom. As Cheffins (2021) explains, citing Blumberg (1975), Friedman was "part of an intellectual 'rear-guard'" (Cheffins, 2021, p. 1626). The dominant view on the nature and purpose of the corporation did not change substantially in the decade after Friedman's article appeared; indeed it was not until the latter part of the 1990s that shareholder value was the clearly established dominant view amongst business

[1] By "corporation" I mean the business corporation, i.e. the corporation with shares and shareholders.

executives, regulators, academics and media commentators (Cheffins, 2021). In other words, it took Friedman, and those who shared his view, the best part of three decades to win their argument. My goal is to contribute to a deeper historical understanding about how that victory was achieved.

The history of corporate governance in the United States during the 1970s and 1980s has already been examined in detail, by numerous scholars, most prominently by Cheffins (2019), Lazonick (2013; 2014a), Stout (2013a), Fligstein (2016), Unseem (1993) and Heilbron et al. (2014). I will briefly outline this historical background in section 1.4 below. That the prevalent consensus on the nature of the corporation and on corporate governance changed after the 1980s is well established.

The study of what persuasive strategies and linguistic choices accompanied this transformation has been the subject of less attention. It is this aspect of the study of the historical development of ideas on the corporation and corporate governance that I will address, using qualitative and quantitative methods. In identifying these gaps in our understanding of the history of corporate governance in the later part of the 20th century, I have drawn on insights in discourse analysis provided by Teun van Dijk (1998).

I will conduct a detailed investigation of argumentation strategies used in public statements on corporations and corporate governance over the chosen time period. In addition, I will systematically study more subtle choices of grammar and figures of speech, such as metaphor. The study of language use by relevant decision-makers and opinion-formers will contribute to our knowledge of two aspects of the shift in consensus on corporate governance that is at the centre of this project.

First, there is a societal aspect: views on the nature and purpose of the business corporation are interlinked with specific broader normative perspectives on society and how it should be organized. I will look at argumentation strategies with the aim of better understanding the linkages between different views on society and on the corporation, or, to put it another way, the role that ideology may have played in shifting the consensus. The change in consensus was also a social process – the accepted wisdom on corporations was transformed amongst specific groups within society (not necessarily the whole of society) concerned with issues of corporate governance. This required a communication effort over a sustained period, which was in its own right a social process. The audience (or perhaps multiple audiences, though there would have been overlaps)

would have included, inter alia, corporate managers and directors, the business media and its consumers, the corporate legal community, regulators and political decision makers, academics and business educators. The communication strategies aimed at such a broad subset of society were different from the arguments used in purely academic debates and to be found in the specialist literature. It is these public arguments, and the differences with what might be found in academic theory, that is of key interest in this project.

McCloskey (1990; 1998) has been the most prominent amongst economists in explaining the importance of language in forming and communicating economic theory. She has explained that the creation and transmission of "stories" is a key part of economics, as it is with any science (McCloskey, 1990). Moreover, stories need not be universally accepted, nor are they necessarily correct. They are, in other words, "not facts made by nature" (McCloskey, 1990). But to be able to fully understand and critique economic theory, an awareness of modes of expression is a helpful tool: "To criticize the varieties of stories, though, you have to know that they are being told" (McCloskey, 1990, p. 3). My aim is to better understand the stories that were told about the corporation and how they changed during the 1980s and 1990s – and how they differed from the stories that economists told each other. Moreover, all stories involve a choice of what to include and what to leave unsaid. I hope to learn about what and who has been left out of the stories that have been told about the corporation.

The second aspect of the change in the dominant consensus on corporate governance is cognitive. Achieving a shift in people's understanding of the nature of the corporation would have required more than simply refining a definition or expounding a mathematical theory regarding allocative efficiency; it also involved a learning process. New meanings and concepts would have had to be communicated in a comprehensible manner to people with diverse social, professional and educational backgrounds. This partly didactic process would have involved creating new understandings as well as building on pre-existing knowledge and presupposition. Language would have been an essential part of this cognitive process.

1.2 Research questions: the evolving discourse on corporate governance

My first research question reflects the general aim of analysing this discourse: *how did the discourse on corporate governance in the United States evolve between 1980 and 1999?* This

research question reflects my aim to conduct a systematic study of the data selected for my analysis.

I will focus on two further research questions which are key to understanding the way the shift in thinking on corporate purpose and governance took place. The first of these is as follows: *Has the use and meaning of the concept of corporate ownership influenced the public discourse on corporate governance?*

It is a commonplace assumption that shareholders own the corporation. This assumption reveals itself in the speech and written communication of all sides in the debate on the role of the corporation and appears in the statements of experts and lay persons alike. Sometimes it is a background assumption, a feature of the modern corporation that is taken for granted, and at other times it appears as a component in an argumentation strategy. For an example of the former, in their seminal work on the nature of the modern corporation Berle and Means referred to the separation between ownership and control (1932/1993) – references to this "separation" can be found throughout the discourse on corporate purpose and corporate governance.

An example of the concept of ownership (of the corporation by shareholders) being used as part of an argument appears in a statement issued by the Business Roundtable (BRT), an association of the Chief Executive Officers (CEOs) of the largest US corporations, on the working of corporate boards. The document follows the generally held view at the time, that a corporation is responsible to a range of constituents and is in line with the content of other statements issued by the BRT in the late 1970s and early 1980s. This is what the statement had to say about shareholders as owners (The Business Roundtable, 1978, p. 2096):

> *The board of directors then is located at two critical corporate interfaces - the interface between the owners of the enterprise and its management, and the interface between the corporation and the larger society. The directors are stewards - stewards of the owners' interest in the enterprise and stewards also of the owners' legal and ethical obligations to other groups affected by corporate activity*.

This example illustrates that considering shareholders as owners of the corporation is not inevitably bound with the shareholder wealth maximization principle. Moreover, arguments based on ownership are not necessary in order to justify shareholder value; for instance, the view that shareholders are residual risk takers does not rely on a concept of ownership. Indeed, Fama (1980)

has specifically rejected the view that shareholders own the corporation. And as I have shown, the former SEC Commissioner Charles Cox (1987) did not use ownership as a part of argument strategy, though he clearly advocated shareholder primacy. However, the perception of shareholders as owners has been used effectively to promote shareholder value. In contrast to the BRT statement of 1978, when Friedman wrote that "The corporation is an instrument of the stockholders who own it" (1962/2009, p. 134) he was using the idea that the shareholders own the business as a part of a very different argument. Indeed, ownership was a major part of Friedman's argumentation strategy as he formulated his statement of shareholder primacy.

It is for this reason that I have chosen to pay close attention to patterns of use of the notion of shareholders as owners in the discourse.

In much of what has been said about the rights (and occasionally the responsibilities) of shareholders, the view of them as owners is not rigorously expounded. Indeed, explanations of ownership and the relationship between shareholders and the corporation are relatively rare. More often, it is just taken as an intuitive fact that shareholders are the owners of the corporation, a background pre-supposition.

Besides examining how this pre-supposition has supported different argumentation strategies, I also intend to gain a better understanding of how it has been used to bolster ideological positions. This leads to the last of my research questions: *How has the use of the concept of ownership in the discourse on corporate governance supported ideological positions?*

1.3 Shareholders own shares, not corporations

Following the view of a number of legal experts, my own position is that shareholders are not owners of business corporations, but rather, owners of their shares. My view is based in large part on the classic definition of ownership given by the eminent legal scholar Tony Honoré (1961/1987). I regard the corporation, by its nature, as a social institution. I have also taken a critical stance towards the argument for shareholder primacy on economic grounds. In other words, I am at least highly sceptical of the position that there may be an economic case for maintaining the fiction that shareholders own the corporation. While my scepticism towards shareholder primacy has in part motivated this study, the purpose of this dissertation is to examine the views of the actors that are the subject of my investigation, to study their positions and discourse strategies. The aim is not to analyse the extent to which their positions concur with my own.

1.4 Tracing the rise of shareholder value

A useful analytical tool for conceptualizing the change in consensus on corporate governance is provided by the theory of strategic action fields as outlined by Fligstein and McAdam (2011)[2]. A Strategic Action Field (SAF) is "a meso-level social order where actors (who can be individual or collective) interact with knowledge of one another under a set of common understandings about the purpose of the field, the relationships in the field (including who has power and why), and the field's rules" (Fligstein & McAdam, 2011, p. 3). An SAF may be, for instance, a division within a firm, consisting of individual employees and their managers. It could also be the firm itself, comprising separate divisions; or it could be the whole market, with different firms competing against each other for business, as well as forms of cooperation between businesses. Thus, fields may be contained within ever larger fields[3]. As a result, a society may have an unlimited number of SAFs, which may also overlap. According to the theory expounded by Fligstein and McAdam (2011), SAFs are the basic social units for studying social change. An SAF will contain numerous actors, and these can be classified as follows: incumbents, challengers and governance units. Incumbents are those actors who hold power within the SAF and whose views are dominant. Challengers are those who are in a subsidiary position vis a vis the incumbents. Despite the designation, "challengers" may accept their role and position – and are not necessarily in an adversarial relationship towards incumbents. Governance units are responsible for maintaining the rules within the SAF; they are part of the field rather than external agents. In the context of corporate accountability, boards of directors are the most important governance units. Other institutions that set standards and guide the work of boards, such as the BRT, can also be considered as governance units. State structures, such as the SEC and legislative bodies, are external to the field, and will therefore not be considered governance units. An SAF may be stable for long periods of time, with a clear and accepted set of incumbents and challengers. This balance may at times be upset either as new SAFs form, or as the relations within an SAF are transformed, with challengers replacing incumbents in new power relations. The processes by which this change is achieved can be thought of as "social movements."

[2] The Theory of Strategic Action Fields borrows the notion of fields from Bourdieu. Bourdieu (1990; Bourdieu & Wacquant, 1992)

[3] Fligstein and MaAdam (2011) use the analogy of the Russian Matryoshka doll.

Fligstein (2016) has applied strategic field theory to analyse changes in corporate governance. The relevant field is what he terms "the market for corporate control[4]," understood in a broad sense. In the period up to and including most of the 1970s, corporate control was in the hands of managers, with shareholders and other parties exercising minimal power. This was the period of "managerial capitalism," as the business historian Alfred Chandler (1962) phrased it, during which there were few internal constraints on the power of corporate managers (Cheffins, 2019).

I consider the use of the term "market" to describe this field as problematic for two reasons. First, the strategic action field concerns corporate control in a wider sense than the sale and purchase of shares in mergers and acquisitions transactions. This SAF also concerns the processes through which managers are held to account, and the balance of power within corporations is maintained or changed. This includes the structure and functioning of boards, the determination of who sits on boards, and the balance of power amongst various countervailing forces such as regulators and unions as well as public discourse on corporate governance. These aspects of the determination of control do not involve transactions where any assets are exchanged but encompass a broader range of social interactions than those necessarily associated with markets. Even if we intend the use of the term "market" in a metaphorical sense, there is a risk that this causes unnecessary confusion[5]. Secondly, even in the narrower domain of corporate mergers and acquisitions, the field entails a broader array of actors and institutions than simply the buying and selling of shares in market transactions. The process of takeovers is subject to a complex set of regulations in any developed market and involves an often-baffling range of issues and processes. In their account of the takeover of RJR Nabisco by KKR in the late 1980s, Burrough and Helyar (1990) describe in detail the deliberations amongst executives, board members, banks, lawyers, investment bankers and other consultants involved in settling the fate of the corporation. To talk of a market for control may imply a somewhat simpler perception of corporate mergers and acquisitions, and a greater level of transparency, than the often-messy reality merits. Moreover, we run the risk of exacerbating misconceptions about the link between shareholding and actual

[4] As Armour & Cheffins (2013) have explained, the term "market for corporate control" originated with the work on Henry Manne in the 1960s (1964; 1965). A Google Scholar search did not reveal any publications using the term before Manne's work.

[5] In rejecting a potentially misleading overuse of the term "market" I have been guided by the work of Hodgson (2020).

control. For this additional reason I felt it would be preferable to use another term than "market". I prefer to think of the strategic action field as the "arena of corporate control[6]."

I also consider "corporate control" to be a better fit for the title of the SAF than "corporate governance". As Cheffins (2019) explains, corporate governance became widely used as a term in the 1970s, and I want to avoid giving the incorrect impression that I am examining a strategic action field that came into existence only during this period. Indeed, Lund & Pollman (2021) have suggested that corporate governance is a term that is strongly connected with the rise shareholder value, and that references to "good" corporate governance are tied to the principle of shareholder value maximization but also to the principal/agent model as applied to the relationship between managers and shareholders.

For at least the period from the end of the Second World War to the late 1970s, the arena of corporate control, dominated as it was by managers, was a stable field. Already in the 1930s Berle and Means (1932/1993) had pointed out the "separation of ownership and control" where firms were no longer controlled by dominant founders or founding families, but where equity ownership was increasingly distributed amongst a wider public, and where effective control was exercised by management. In his study of the historical development of the public corporation and its emergence as the dominant business form in the United States in the later part of the nineteenth century, Lazonick (2014a) explains that the principal reason for the separation between capital and management was to resolve the "managerial constraint" rather than the "financial constraint." In other words, this corporate structure's main benefit was not so much to attract financial capital (retained earnings remains the primary source of capital for growth) but the professionalization of management and its opening up to a talent pool extending well beyond original founders and their family members. Roe (1991) points to the importance of an additional factor: politically motivated constraints on the power of financial institutions in the American context. Where in other countries, such as, for example Germany and Japan, banks and other financial institutions were able to take the place of dominant founders, such trends were curtailed in the United States.

In the framework of strategic field theory, during the era of "managerial capitalism," managers, were the incumbents and the prevailing view of corporate purpose was that the business

[6] In the choice of the word "arena" I was inspired by the work of the late Elinor Ostrom (1986; 1990; Ostrom & Ostrom, 2004).

corporation existed to serve broader social goals, beyond the earning of financial profits. By at least the mid-1950s this appeared to be the dominant view. For example, in the 1930s and 1940s there was a public exchange between Adolf Berle and Merrick Dodd, with the former advocating shareholder primacy and the latter arguing for a role for the corporation as a social institution responsible for a wider range of interests (Weiner, 1964). By 1954, Berle, whilst not entirely recanting his own viewpoint, was prepared to concede that Dodd had won the argument[7]. In this model corporations retained both financial profit as well as employees, investing in capital assets and further human resources in order to achieve growth. Lazonick and O'Sullivan (2000a) have termed the corporate model of managerial capitalism "retain and reinvest."

The dominant view on the purpose of the corporation during the era managerial capitalism was neatly summarized by the BRT in a statement on corporate responsibility in October 1981. The statement approvingly cited Reginald Jones, who had just completed his term as chairman and chief executive of General Electric (and had been chairman of the BRT until 1980): "Public policy and social issues are no longer adjuncts to business planning and management. They are in the mainstream of it. … Management must be measured for performance in noneconomic and economic areas alike" (1981, p. 1). The role of the BRT as a key governance unit in the arena of corporate control underlines the significance of this clear statement of their position.

The position of the BRT at the time mirrored the public statements of SEC Commissioners. Harold Williams, SEC Chairman during the Carter administration, in a speech delivered to a gathering of the New York State bar association in January 1980, articulated much the same pre-occupation with a broad social purpose for business corporations and of the role of profit within that view (Williams, 1980, p. 15):

> *The purpose of the corporation is to provide customers with goods and services at an attractive level of quality and price. The profitability of the corporation is, over the long run, a measure of its success in discharging that underlying responsibility, rather than an end in itself. The profitability of corporations as a group is a measure of our society's*

[7] "Professor Dodd argued that these [corporate] powers were held in trust for the entire community. The argument has been settled (at least for the time being) squarely in favour of Professor Dodd's contention" (Berle, 1954, p. 169).

success in providing jobs, goods, services, prosperity, and other economic underpinnings of the political freedoms which make our democracy possible.

In 1990, the BRT was still advocating for the interests of a broad group of constituencies to be taken into account (this time using the concept of "stakeholders"), although shareholders were given greater prominence (1990, p. 244):

Some argue that only the interests of the shareholders should be considered by directors. The thrust of history and law strongly supports the broader view of the directors' responsibility to carefully weigh the interests of all stakeholders as part of their responsibility to the corporation or to the long-term interests of its shareholders.

However, by this time a transformation in the SAF of corporate governance (i.e. the arena of corporate control) was already in full swing. Fligstein (2016) cites the high inflation and economic stagnation of the 1970s as external shocks which set in motion the change that was to empower a set of challengers to incumbent corporate managers. Cheffins (2019) refers to numerous corporate scandals, a general decline in public confidence in managers to deliver economic prosperity, and increased competition from Japanese firms. Moreover, some external constraints on management, in the form of union power, regulation and limited access to lending capital were losing their saliency (Cheffins, 2019). As a result, the stability of the SAF was undermined and new actors were gaining the ascendancy. Fligstein (2016), Heilbron et al. (2014) and Cheffins (2021) stress the important role played by the so-called corporate raiders, who were relative outsiders in this transformation. Fligstein (2016) also describes the key position of the financial community as challengers. The credo of the newly empowered actors was shareholder value maximization, the idea summed up by Friedman (1962/2009; 1970), that corporate managers were obliged to place the interest of shareholders first and foremost above all other concerns. Lund & Pollman (2021) have mapped the network of institutions and actors engaged in corporate governance with shareholder value as a guiding principle, including investors, stock exchanges, rating agencies, proxy advisors and investor associations. All of these actors, to a greater or lesser degree, function as governance units within the arena of corporate control. In time, new managers took the place of the former incumbents and also benefitted from the new regime primarily through stock options. This new era of shareholder primacy was epitomized by Jack Welch, the "uber-hero of maximizing

shareholder value" (Denning, 2017), who replaced Reginald Jones at the helm of General Electric in 1981[8].

Heilbron et al. (2014) have examined the incidence of the term "shareholder value" in the *Wall Street Journal* and in the magazine *Institutional Investor*. In their study of *Wall Street Journal* articles, they show that the term "shareholder value" appeared only occasionally in the 1960s and 1970s and in these cases had yet to take on its current meaning. The breakthrough for "shareholder value," referring to the maximization of equity value, came in the 1983-1986 period. Cheffins' (2021) bibliometric survey of the occurrence of the term "shareholder value" in academic publications, shows a similar pattern, with increasing frequency from 1983, and a period of rapid growth starting in 1985. This is consistent with the search conducted by Taylor (2015) of the ProQuest database of annual reports of US corporations, which also revealed that the term "shareholder value" appeared only rarely before 1983 before growing rapidly and peaking in the late 1990s. And this time frame also agrees with the research done by Rajan et al. (2022) who searched the letters of corporate leaders to shareholders for evidence of goals; they also found that the number of firms stating "shareholder value" maximization as a goal grew significantly during the 1980s. The Google Ngrams corpora of books also confirm that the 1980s was the key decade as far as the growth of "shareholder value" is concerned. Figures 2.1 and 2.2 in Appendix 2 trace the rise of the term "shareholder value" in the Google Ngrams corpora of books published in the USA and Britain respectively. The term rose rapidly in the USA starting from the beginning of the 1980s and from the mid-1980s in Britain. Figures 2.3a and 2.3b in Appendix 2 shows the rise of the term among English-language publications in the JSTOR library. In academic literature the term also appears to have started its rise in the 1980s.

Froud et al. (2000) and Knafo and Dutta (2020) trace the rapid growth in use of the concept of shareholder value, and the term, to the work of management consultancy firms, especially LEK Consulting and Stern Stewart, with their pioneering of metrics for measuring performance, such as, for example, Economic Value Added. An important moment in the rise of the concept of shareholder value was the appearance of the book *Creating Shareholder Value* (1986), written by LEK's Alfred Rappaport, which served not only as a restatement of the ideas in Milton Friedman's

[8] Useem (1993) has described the transition using case studies of seven publicly listed companies during the late 1980s and early 1990s.

1970 article but also a manual on implementation of shareholder value for managers and a guide for investors.

By the late 1990s, the dominant view was that of shareholder value, as we can see from the unambiguous stance of the BRT in their 1997 statement on corporate governance (1997):

> *the paramount duty of management and of boards of directors is to the corporation's stockholders; the interests of other stakeholders are relevant as a derivative of the duty to stockholders. The notion that the board must somehow balance the interests of stockholders against the interests of other stakeholders fundamentally misconstrues the role of directors.*

It would appear that the arena of corporate control had been through a transformation, with a new settlement, new incumbents and a new world view.

Besides "shareholder value," another term gained prominence during the 1980s, along with an opposing theory. In 1983 R. Edward Freeman co-authored an article, "Stockholders and Stakeholders: A New Perspective on Corporate Governance" in the *California Management Review* (Freeman & Reed, 1983), which argued that corporate decision-making should balance the interests of a range of "stakeholders" including employees, customers, suppliers, and communities as well as shareholders. The article was followed in 1984 by a book, *Strategic Management: A Stakeholder Approach*, which came to be seen as defining the alternative to shareholder value (Freeman R. E., 1984). Figures 2.7 and 2.8 in Appendix 2 show the increasing usage of the term "stakeholder" in in the Google Ngrams corpora of books published in the USA and Britain respectively over the period from 1970 to 2000 (it should, however, be mentioned that at least for part of the 1980s, "stakeholder" was used as a synonym for "shareholder,"[9] so the data should not be considered to be a fully reliable guide to the growth in the popularity of Freeman's theory). The term also rises from the 1980s onwards in the JSTOR library as shown in Figure 2.9. Stakeholder theory was to be widely seen as the alternative approach to corporate governance.

1.5 Selection of data: the words of decision-makers and opinion-formers

Although I recognize the challenges involved in setting definitive markers for any major change in attitudes, based on the previous section, I have identified the 1980s and 1990s as the key period

[9] See Section 5.3.5 in Chapter 5 for my discussion of the use of the term "stakeholder" in the corpora

for the purposes of analysing the transformation of attitudes to corporate governance. Hence the data for this project will be taken from the 1980-1999 (inclusive) time frame.

I have chosen to make the United States the primary focus of my research. Cheffins (2019) claims that the debate on corporate governance in the US started during the 1970s. Other countries, in his account, followed the United States in debating and reforming corporate governance. According to Cheffins, in the United Kingdom, for instance, the public debate on corporate governance did not begin in earnest until the beginning of the 1990s, with the formation of the Cadbury Committee in 1991 (Cheffins, 2015). This account is very much in line with the prevailing narrative, which traces the history of contemporary debates on corporate governance back to the USA in the 1970s. For example, in Mallin's textbook on corporate governance, the story in the UK begins with the Cadbury Committee with other countries introducing codes in the following decades (Mallin, 2016). Moreover "corporate governance" is originally very much an American term[10], and most of the arguments for shareholder value were formulated in the United States.

It is for these reasons that I have chosen to focus my research on the USA in the 1980s and 1990s[11]. However, it should be added that the history of debates on corporate governance is somewhat more nuanced than this prevailing account. For instance, in the UK the accountability of management to boards was the subject of debate and review well before the 1990s (Toms & Wright, 2002; 2005; Sonin, 2023; Johnston, 2007; 2024).

[10] Figures 2.4 and 2.5 in Appendix 2 show the occurrence of the term "corporate governance" in the Google Ngrams corpora of books published in the USA and Britain respectively. The significant increase in the occurrence of the term came approximately a decade earlier in the United States than in Britain. (As Figures 2.1 and 2.2 show, the term "shareholder value" also rose to prominence first in the United States.) Figure 2.6 shows the steady rise of the term "corporate governance" in academic literature since the 1970s.

[11] As Toms and Wright (2002; 2005) have explained, the Jenkins Report was commissioned in the early 1960s, with a view to increase managerial accountability. The Companies Act of 1967, inter alia, mandated disclosure of directors' compensation (Toms & Wright, 2002). A decade later, in early 1977, the report of the Committee of Inquiry on Industrial Democracy, chaired by Lord Bullock was published. A majority on the committee favoured a form of employee representation on the board level (Davies P. , 1978), with a minority dissenting. Eventually the government published a White Paper with a heavily watered-down version of the proposals in the report. However, the Labour government lost office in 1979, and these proposals never made it into legislation. Johnston (2024) provides a very thorough overview of the role of the Bank of England in promoting a shareholder-centred model of corporate governance in the UK.

In this project, I will concentrate on two specific genres: a sample of the speeches of a group of public policy makers and newspaper articles. Both policy makers and the media are key actors in the broader SAF.

The speeches are those of the Commissioners of the Securities and Exchange Commission (SEC). The Securities and Exchange Commission (SEC) was created in the 1930s, in the New Deal era and is the most important regulator of securities markets in the United States. The SEC is headed by five Commissioners, appointed by the President of the United States, subject to approval by the Senate. No more than three of the five Commissioners may be from the same party, and the Chairman has historically held the same political affiliation as the President. The SEC Commissioners, by virtue of their office, are key policy makers in the area of regulation of capital markets and therefore of the activities of listed corporations that are relevant to their mandate. The SEC has been involved in the debate on corporate governance from the outset and the statements of their leadership therefore represent important contributions to that debate and constitute a valuable source of information on the world views of a key group of public policymakers. Davis and Stout (1992), Heilbron (2014), and Fligstein (2016) stress the central role played by the Reagan administration, which appointed John Shad as chairman of the SEC, in enabling the transition to shareholder value through their approach to deregulation in the 1980s.

A speech as defined by Reisigl is "a structured verbal chain of coherent speech acts uttered on a special social occasion for a specific purpose by a single person and addressed to a more or less specific audience" (Reisigl, 2008, p. 243). As Resigl explains, speeches are usually prepared in advance and are rarely purely spontaneous, even if prewritten texts may differ from the spoken words of the speaker. Moreover, as is certainly the case with the SEC speeches, they are given on formal occasions. The SEC Commissioners' speeches that I will examine were delivered to very specific audiences, such as corporate lawyers, accountants, financial analysts, or academics. These speeches are public pronouncements, albeit made to selected audiences.

In the schema outlined by Reisigl (2008), the SEC speeches fall under the categories of "policy" and "politics." "Policy" speeches involve the articulation of public policy action and goals, answering "the questions of what policy is aimed at whom and for what purpose" (Reisigl, 2008,

p. 246)[12]. Moreover, these SEC speeches are also "political," in the sense that they are aimed not only at articulating a case for a particular course of action, but also at influencing discourse. Speeches in this political category are aimed at effecting change in a contest for power and influence (Reisigl, 2008). In the framework of Strategic Action Fields, these speeches were interventions in the confrontation between incumbents and challengers in the arena of corporate control. Whilst SEC Commissioners are not elected professional politicians, their speeches are in this important sense political in nature. Pardo-Guerra has described the speeches of SEC Commissioners as: "strategic interventions meant to elicit support, bolster legitimacy, rally constituencies, convey core values and practices, or produce shared imaginaries" (2020, p. 252). Both as policy speeches and as rallying calls, these speeches are strategic actions as well as statements.

Fligstein and McAdam (2011) explain that, to undertake strategic actions aimed at protecting an existing order or at establishing a new order within an SAF, actors need to use social skills, or the "ability to transcend their own individual and group's self-interest and consider the interests of multiple groups, in order to mobilize support from those groups for a certain shared world view" (p. 7). What is of interest, then, is the use of social skills in order to support particular world views. As I will demonstrate, the position of the SEC Commissioners changed over the course of the 1980s and 1990s. Thus, it was not only the manner in which they supported their views that changed but also the views that they supported.

I selected six speeches for analysis. I chose them with a view to covering the whole period from 1980 to 1999 as much as possible, in order to trace the development of thinking over time, as well as to have a sample representative of political changes in the United States. The speeches were all focused on corporate governance, and four of the six were made by SEC Chairmen. Table 3.1 in Appendix 3 list the speeches.

My analysis has combined qualitative and quantitative approaches. The first part of the research consists of a detailed textual analysis of a selection of speeches of SEC Commissioners during the time period in question. I have used an approach developed by Ruth Wodak and other scholars in the 1980s: Discourse Historical Analysis (DHA) that falls under the generic description "Critical

[12] The speeches that I will analyse fall into the deliberative category according to the classification scheme outlined by Aristotle.

Discourse Analysis" (or CDA). My goal is to identify changes in linguistic choices, discourse strategies and argument structures in these speeches, and DHA emphasizes the historical and sociopolitical context behind written and spoken texts (Reisigl, 2018). By using a diachronic series of discourse fragments (namely, the selection of speeches) I hope to reconstruct the progression of ideas over the time period in question and also to examine the interrelationships between them (Reisigl, 2018).

The in-depth nature of my text analysis has inevitably necessitated the selection of a limited number of speeches, which I would characterize as "case studies." In order to address the limitations of this approach I have also conducted a systematic analysis of a corpus comprising the entirety of the SEC Commissioners' speeches over the 1980-1999 period. My analysis of this corpus[13] will include both qualitative and quantitative methods.

To aid a better understanding of the context, DHA involves a study of intertextual relationships and I have chosen to analyse the SEC speeches alongside news reporting on corporate affairs in two prominent US daily newspapers: the *Wall Street Journal* and the *New York Times*. To this end, I have therefore compiled two further corpora. I have assembled a systematically selected sample of articles from the *New York Times* (NYT), a major daily newspaper in the USA, (often referred to as the nation's "newspaper of record") and the *Wall Street Journal* (WSJ), the country's foremost business daily. The NYT is a general newspaper, which covers a wide range of subjects, apart from business themes. The WSJ is much more focused on business reporting. I used the same algorithm for selecting the articles, reporting on corporate affairs, for each newspaper, to ensure that any comparisons that I draw are meaningful. In total the three corpora (SEC, NYT and WSJ) amount to 14,163,314 words. I will describe my methodology in greater detail in a subsequent chapter.

I have selected these two genres, viz. speeches of public policy makers and newspaper articles, given their importance in reflecting and guiding discourse on the subject of corporate governance. Further research on this subject might usefully expand the intertextual relationships and investigate

[13] McEnery and Wilson (2001, p. 29) have given a simple definition of a corpus: "In principle, any collection any collection of more than one text can be called a corpus: the term 'corpus' is simply the Latin for 'body', hence a corpus may be defined as any body of text." In the chapter on methodology I will explain what qualities a corpus should have to be useful for analytical purposes.

the discourse contained in other genres, such as, for instance, academic publications, textbooks, literature produced by the major consulting companies and corporate communications.

Since my research will be concentrated on discourse and ideology, I will now explain briefly what I mean by these terms, as well as the related term "common sense."

1.6 Discourse, Ideology and Common Sense

In its simplest sense, "discourse" means nothing more than language as it is used – namely through speech and written texts (Flowerdew & John , 2018; van Dijk, 1998). I will draw on a narrower and more specific meaning of "discourse," as used in Critical Discourse Studies, which is that it consists of language used within the context of a set of views and ideas regarding social relations, processes and institutions. In the simpler sense "discourse" is an uncountable noun; in the narrower sense it usually applies to a specific subsection of social life – so there may be numerous "discourses," such as, for instance, immigration discourse, austerity discourse, or feminist discourse.

As Flowerdew and John express it, in the second, more specific sense, discourse refers "to a specific set of meanings expressed through particular forms and uses which give expression to particular institutions or social groups. …being recognizable in terms of the ideologies they convey and the linguistic and other semiotic structures through which they are expressed" (2018, p. 2). In this sense discourse analysis extends beyond the formal study of grammar and semantics, to explore the links between language use, social relations, and views about society. As Fairclough has written: "In using the term 'discourse' I am claiming language use to be imbricated in social relations and processes which systematically determine variations in its properties, including the linguistic forms which appear in texts" (1995, p. 73).

In these terms the discourse on corporate governance refers to the language used, and the meanings expressed, or implied, in the context of the particular institution of the business corporation and its relation to (and accountability to) the society of which it is a part. So, the "discourse" on corporate governance corresponds to the collection of "stories" told about corporations and the checks and balances placed on those who manage them. A discourse, such as that relating to corporate governance, will include numerous genres, including speeches, academic articles, press articles, radio and television news reporting, board deliberations, management consultants' reports, and corporate communications, to name a few. Indeed, as Machin and Mayr

(2012) have pointed out, discourse can also be considered to include non-verbal forms, such as pictures. For the purposes of this study, however, I will focus on textual forms of discourse.

In the sense that discourse is linked with views of society (or a specific view of society) it is connected to the concept of ideology. A discourse may promote or reject a particular ideological position or set of positions. Since the concept of ideology will form an important part of this analysis, it merits some clarification.

Ideology has been defined concisely by Reisigl and Wodak (2016) as: "a perspective (often one-sided), i.e. a world view and a system composed of related mental representations, convictions, opinions, attitudes, values and evaluations" (p. 26). It is also important to note that ideologies are "open to normative critique" (Fairclough N. , 2015, p. 32). By far the most common conceptualization of ideology as used in Critical Discourse Studies draws inspiration from Gramsci's concept of hegemony (1971), according to which ideologies serve to reinforce social and power relations and are at their most effective when disguised and presented as common sense. This allows readers to be convinced of the necessity of the actions being supported without full deliberation. As Fairclough explains (2015, p. 108):

> *Ideology is most effective when its workings are least visible. If one becomes aware that a particular aspect of common sense is sustaining power inequalities at one's own expense, it ceases to be common sense…. And invisibility is achieved when ideologies are brought to discourse not as explicit elements of the text, but as background assumptions which on the one hand lead the text producer to "textualize" the world in a particular way, and on the other hand leads the interpreter to interpret the text in a particular way. … The more mechanical the functioning of an ideological assumption in the construction of coherent interpretations, the less likely it is to become a focus of conscious awareness, and hence the more secure its ideological status.*

Bourdieu also adds the role of ideology in forming "habits of thought" (Bourdieu & Wacquant, 1992, p. 250) which are often hard to overcome, even amongst scholars.

This explanation of what is meant by ideology and common sense is very much a traditional one used in the field of discourse analysis. I will also draw on a broader understanding of ideology developed by van Dijk (1998) and which does not rely as much on the Marxist tradition and on the work of Gramsci, but which is based on social psychology and takes greater account of the

cognitive dimension of discourse. This theory is equally compatible with my research methods and will be described in the chapter on methodology.

1.7 Prior research examining questions of language in corporate governance discourse

Mine is not the first research on corporate governance to examine questions related to language use. Heilbron et al. (2014) conducted an extensive investigation of the frequency of the occurrence of "shareholder value" in the *Wall Street Journal* and the magazine *Institutional Investor* during the 1965-2007 period. They also studied the prevalence of different groups of actors and themes. As mentioned in Section 1.4 above, Taylor (2015) did comparable research using ProQuest's database of annual reports of US corporations, also tracing the growth of the use of the term "shareholder value." Rajan et al. (2022) performed an even more sophisticated analysis, using natural language processing (NLP) techniques to identify corporate goals from a large database of corporate leaders' letters to shareholders (typically taken from annual reports). They also investigated the relationship between trends in the salience of different goals with various financial and other indicators of corporate performance as well as specific events, such as, for instance, mergers. The research done by Bebchuk and Tallarita (2022) covers a much more recent period – the two years following the BRT's 2019 statement on corporate purpose, which acknowledged the importance of a broader range of stakeholders, besides shareholders. They examined a range of corporate documents for evidence of differences in corporate policies since 2019; their findings give cause for some degree of scepticism regarding the extent of actual change. Zaccone et al. (2021) also analysed CEOs' letters to shareholders over the 2011-2019 period, using a metric based on word counts to determine whether a letter was shareholder- or stakeholder-centred and measuring the correlation of this factor with the interest of activist investors. They found that shareholder activism is more frequent where CEOs focus in their letters on stakeholders, and less frequent where the focus is on shareholders.

However, whilst the findings of all of these researchers have provided valuable insights into some of the trends in corporate governance, none of these researchers provided a systematic description of the process of creating their corpora. Neither did they state the size of the corpora. My work differs from the research that I have described in the above paragraph in that I have clearly delineated the process of selecting my corpora, which it is hoped may be useful in future projects. More importantly, I also identify collocates of key words, to deepen the analysis of trends

in language use, and conduct a systematic examination of selected key words in context. Besides the tools of corpus linguistics, I have also conducted detailed line-by-line discourse analysis of selected texts within one of my corpora (as well as of Milton Friedman's 1970 article on corporate social responsibility). This type of textual analysis serves to identify underlying rhetorical strategies and cognitive processes which would be beyond the reach of purely quantitative studies.

Graham and Luke (2011), in their study of texts produced by major corporations, did draw on insights from critical discourse studies; however, their work is more of a historical overview of trends in business than an analysis of texts. Price et al. (2018) have used an approach that is closer to my own in terms of the use of insights from critical discourse studies in their study of the progress of corporate governance in the UK; they conclude that remarkably little has changed since the 1992 Cadbury report. They also emphasize the importance of intertextuality and a broader social context; they do not, however, combine their analysis with a corpus for more quantitative results, and their focus is on short extracts from larger texts.

Froud et al. (2006; 2009) and Nilsson (2010) have analysed narratives produced by large corporations with a view to examining communication strategies, especially in connection to the shareholder value principle. Their approach has been substantially inspired by the work of the philosopher Walter Fisher (1989), and his claims that narrative, or the telling of "stories" lies at the heart of all human communication. They have stressed the importance of intertextuality; more often than not external parties, such as financial analysts and journalists contribute to the creation of corporate narratives. The work of these researchers includes detailed case studies of specific corporations, typically in the context of particular events (e.g. natural disasters, legislative initiatives or pressure from activist investors). Their methodology includes in-depth study of a range of documents, encompassing several genres, produced by and about specific corporations. They do not, however, conduct systematic analysis of selected texts to examine linguistic strategies and they do not make use of the quantitative methods enabled by corpus analysis. Their methodology is restricted to identifying narratives and does not extend to other aspects of discourse studies.

Besides differences in methodology compared with earlier work, in this dissertation I have also set out different objectives. As I have discussed in a previous section, I aim to examine complete persuasion strategies of the selected actors, including argumentation and language choices. In this

way I hope to fully explore language at work, showing how representations of various agents and institutions created cognitive effects that laid the ground for a transformation in the consensus view on corporations and how they should be governed. Focusing on any one aspect of persuasion risks missing the link between the cognitive and social aspects of language use. As a specific case, I will look at how representations of shareholders as owners of corporations conjured up cognitive effects that reinforced different arguments over time.

1.8 Structure of the Dissertation

I will now present a brief overview of the chapters that comprise this dissertation. In Chapter Two I will address the arguments for shareholder value. The aim of this dissertation is to gain a better understanding of the rhetorical strategies that accompanied the rise of shareholder value. To achieve this requires a full examination of the economic case for shareholder primacy and the relationship between the economics and the rhetoric. Chapter Two will critically examine the case for shareholder primacy from different angles, including agency theory, the status of shareholders as residual risk bearers and the connections between these viewpoints. I will offer alternative perspectives where appropriate, drawing on literature explaining different views on the nature of the corporation. In the course of the chapter, I will explain the importance of contributions of other stakeholders besides shareholders as well as some of the negative consequences of the application of shareholder primacy. Chapter Two is primarily focused on the economic aspects of the debate on corporate governance.

An important part of the rhetorical case for shareholder primacy is based on the claim that shareholders own the corporation. Corporate ownership (the ownership of the corporation) is the subject of two of my three research questions. Chapter Three will focus on the nature of the business corporation and the question regarding whether the shareholders can be considered as its "owners." The idea of ownership arouses powerful emotions and consequently is an effective tool of persuasion. As a precursor to studying this effectiveness, it is important to understand the concept and its relevance in the case of the business corporation. I will consider a classic legal definition of ownership, that provided by Tony Honoré, and will examine whether the contention that shareholders own corporations stands up to scrutiny. Important to this enquiry will be understanding the full consequences of the corporation's status as a legal person, which I will set out. Economists have characterised ownership in different ways to lawyers. Once I have addressed

the application of Honoré's definition to corporations, I will consider economists' definitions of ownership associated with economic theories about the nature of the corporation, with a focus on some of the confusion that arises as a result of conflicting definitions. My conclusion is that shareholders own their shares and not the corporation itself.

After this overview of the legal and economic background, I will, in Chapter Four, explain the methodology that I have selected to approach my objectives. I will be using both qualitative and quantitative techniques and will discuss both in this chapter. For the SEC Commissioners' speeches I will be using methods that fall under the broad category of Critical Discourse Analysis (CDA). Within this very broad set of approaches, I will apply the framework of Discourse Historical Analysis (DHA) which was developed to incorporate historical research. DHA includes argument analysis and allows for different methods; I will use insights that I have learnt from political discourse analysis, which I consider an effective technique for analysing speeches. For my analysis of the three corpora (the full collection of SEC Commissioners' speeches, and the samples of WSJ and NYT articles) I will use both qualitative and quantitative methods. I will conduct a manual study of selected key words and phrases (such as, *shareholders*, *shareholder value*, *owners*) in context, to better understand their use. In addition, I will collect quantitative data in order to provide a more objective picture of trends and patterns of usage.

In Chapter Five I will present the results of my qualitative research. I will begin with my analysis of Milton Friedman's 1970 *New York Times* article on corporate social responsibility, which I consider a classic public statement of the ideology of shareholder primacy. I will show how Friedman used the notion of corporate ownership to support his world view. In Chapter Six I will present the results of my quantitative corpus analysis.

In Chapter Seven I will discuss my results, considering in turn the research questions that I formulated at the beginning of the project. I will first explain what general trends I have observed in the speeches, looking at the argument strategies of the respective SEC Commissioners. I will also examine how these overall trends are reflected in the way different actors are represented in the speeches and in other linguistic choices. The extent to which these trends are replicated in broader discourse will be confirmed or rejected by the evidence provided by the analysis of the corpora that covers two genres – the genre of the SEC Commissioners' speeches as well as newspaper coverage of corporate affairs. Chapter Seven will also include an examination of the

way in which the notion of corporate ownership was used during the period in question and how it changed. I will draw conclusions on the use of ownership in promoting ideological viewpoints.

In Chapter Eight, the conclusion of this dissertation, I will summarize the main findings and possible applications of my research. Chapter Eight will include an overview of possible avenues for further research, both using these three corpora and using new material.

Chapter 2: Is shareholder primacy justified?[14]

This chapter will critically examine the case for shareholder value which emerged as the dominant principle of corporate governance during the period that is the focus of this research. We will start in Section 2.1 by introducing the most straightforward argument used to support shareholder primacy in public discourse which is based on ownership. The core of this argument is simple: the shareholders own the corporation while the directors and management work for them. The challenge of corporate governance then is to ensure that the interests of shareholders are adequately protected, overcoming what Berle and Means (1932/1993) termed the "separation of ownership and control." In the language of agency theory the shareholders are the principal while the directors and managers are their agents.

It is because the claim that shareholders are owners of corporations is such an important part of the public discourse on corporate governance that I examine it in fuller detail in a separate chapter namely Chapter 3. Chapter 2 will focus on economic rather than legal arguments.

Shareholder primacy does not necessarily depend on viewing shareholders as owners of the corporation. A more sophisticated version of the principal-agent theory characterizes shareholders as contracting parties in the corporation like all other groups (such as employees, customers and creditors) but uniquely subject to unspecified income flows. This uncertainty makes the shareholders "residual risk bearers," entitled to special treatment. We will examine this argument in Section 2.2. Section 2.3 will consider the view that conceptualises shareholders as voters in a democracy who elect directors to serve their interests. Shareholder primacy then becomes a natural extension of the democratic principle. We will examine what sort of democracy a public corporation turns out to be in practice.

Shareholder primacy has also been defended from a public policy perspective: in other words, that it is in the broader public interest for the interests of share owners to be given priority in matters of corporate governance. Section 2.4 will discuss the pros and cons of considering promoting shareholder value as a matter of good public policy.

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[14] Parts of this chapter are drawn from a 2015 article published in Research in International Business and Finance (Ali, Beyond shareholders versus stakeholders: Towards a Rawlsian concept of the firm, 2015).

In Section 2.5, the final section of this chapter, we will continue our examination of the intersection between shareholder value and the broader public interest by considering externalities. If corporate activity causes externalities what does shareholder value do to ameliorate their impact? Is it really the best means of ensuring that social costs imposed by corporations are shared fairly?

The emphasis throughout this chapter will be on public corporations which have shares that are freely tradable.

2.1 Shareholders as owners

The representation of shareholders as corporate owners and principals in a principal/agent relationship with managers is a familiar feature of the public discourse on the purpose of the corporation and is also a common staple in many undergraduate texts introducing corporate governance.

2.1.1 Owners, agents and the public discourse

Milton Friedman predicated his argument for shareholder primacy on ownership and agency theory in his famous 1970 *New York Times* article as well as in other writings. His position may be summarized by the following excerpt (Friedman M. , 1970):

> *a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom.*

This is reflected in the BRT's position towards the end of the 1990s which clearly links shareholder primacy with ownership (The Business Roundtable, 1997, p. 1):

> *The Business Roundtable wishes to emphasize that the principal objective of a business enterprise is to generate economic returns to its owners. […] The Business Roundtable believes that good corporate governance practices provide an important framework for a timely response by a corporation's board of directors to situations that may directly affect stockholder value.*

Furthermore, the argument for shareholder value based on ownership is echoed in the pronouncements of SEC Commissioners. Already by the second half of the 1980s, SEC chairman

David Ruder was very clear about broader social interests (in the context of corporate takeover bids): "the basic problem with assertions that employees, communities and other constituencies should be protected against dislocations is that they ignore the interests of the owners of the corporation, the shareholders" (1987b, p. 10).

At the turn of the millennium Arthur Levitt, President Clinton's SEC chairman, summed up his view on corporate governance even more succinctly: "This system works brilliantly, provided those in control operate for the sole benefit of the true owners of public companies – the shareholders" (Levitt, 2000).

2.1.2 Corporate finance textbooks and ownership

Where corporate finance textbooks published since the mid-1990s have addressed questions of governance, they have presented shareholder wealth maximization as the primary goal of the manager of a business corporation, justifying this perspective by a representation of shareholders as owners and an appeal to agency theory. The stakeholder model is mentioned if at all as an alternative view. Whilst textbooks in other business areas such as marketing may emphasize customer value, the corporate finance literature focuses on the measurable financial metrics which are used by corporate boards to evaluate performance and shared with financial market analysts who ultimately determine share prices. The following paragraphs outline the perspectives presented in a selection of US and UK corporate finance textbooks from the mid-1990s.

In *Fundamentals of Corporate Finance*, Ross et al. (1995) are unequivocal in the introductory chapter: "Assuming that we restrict ourselves to for-profit businesses, the goal of financial management is to make money or add value for the owners" (p. 8). This very broad goal is then more precisely formulated in terms of share value: "The goal of financial management is to maximize the current value per share of the existing stock" (p. 9). An explanation of agency theory follows, with the shareholders presented as principals and managers as agents. The stakeholder approach is not described, though stakeholders do receive the briefest of mentions: "a stakeholder is someone other than a stockholder or creditor who potentially has a claim on the cash flows of the firm. Such groups will also attempt to exert control over the firm, perhaps to the detriment of the owners" (p. 14).

Corporate Financial Management (Arnold, 2005), published in the UK, also promotes the shareholder value perspective in clear terms: "The company should make investment and financing

decisions with the aim of maximizing long-term shareholder wealth" (p. 11). The book critiques the stakeholder approach: it then proceeds to explain the problem of corporate governance in terms of agency theory thus highlighting the challenge inherent in the separation of ownership and control.

In *Principles of Corporate Finance*, Brealey et al. (2011) state very clearly at the outset that "a corporation is owned by its shareholders but is legally distinct from them" (p. 5). Later in the introduction the role of the corporation is summarized as follows (p. 12/13):

> *The shareholders are the principals; the managers are their agents. Agency costs are incurred when (1) managers do not attempt to maximize firm value and (2) shareholders incur costs to monitor the managers and constrain their actions.*

While the emphasis is on shareholder value, the authors do soften their focus in two ways. First, they suggest that shareholder value maximization may not necessarily be damaging to the interests of other parties. Secondly, they briefly describe the stakeholder approach as an alternative that is favoured in some non-Anglo-Saxon countries while taking care to conclude that shareholder value is gaining popularity around the world.

More recently, the CFA Institute's reading on corporate governance (2022) takes a more nuanced approach. Whilst some sections of the book describe shareholders as owners of the corporation the chapter on corporate governance avoids this characterization. This chapter begins with an exposition of the interests of different stakeholder groups before side-stepping the stakeholder model itself by plunging into agency theory; it makes reference to the "separation of ownership and control" as well as residual risk bearers and reaches the usual conclusion (Lee, Safieddine, Anderson, Kidd, & Shah, 2022, p. 647):

> *Under the agency theory, managers are expected to undertake their duties with a central goal of serving shareholders' best interests and maximizing firm value. […] The traditional view in the investment community is that directors and managers are agents of shareholders.*

I will examine in greater detail in Chapter 3 the extent to which the claim that shareholders own the corporation stands up to scrutiny. Whilst much of the popular justification of shareholder value rests on the premise that equity holders are the corporation's owners, this is by no means the only

argument that is made. Shareholder value does not rely solely on the assumption that shareholders own the corporation.

2.2 Shareholders as bearers of residual risk

Jensen and Meckling (1976; Gindis, 2020) set out a concept of the firm as a "nexus for a set of contracting relationships among individuals" (p. 310). Their approach draws on the contractual conceptualization of the firm proposed originally by Coase (1937). In this view of the firm, shareholders are contracting parties; Jensen and Meckling assert the uniquely residual nature of the shareholders' claims on the corporation. In their view, the claims of all other parties are fully covered by their contractual relationships – except for the shareholders, who receive only what remains to be distributed once other obligations of the firm have been met.

This concept of residual contracting individuals is further developed into a rationale for the primacy of shareholders by Fama and Jensen (1983a). Fama and Jensen develop their reasoning in a further article later in 1983 extending it to different types of claim and different business forms (1983b). As "residual risk bearers," shareholders have no rights to fixed claims and bear the greatest level of uncertainty vis-à-vis all other contracting parties. It is this relationship between shareholders and the enterprise that forms the case made by Fama and Jensen for prioritizing their interests above all others rather than a direct relationship of ownership, although the word "ownership" retains pride of place in the title of their paper (1983a).

The problem of residual risk is often articulated in terms of "incomplete contracts." The implicit contract between managers and providers of equity capital (shareholders) cannot take account of every eventuality because to do so would be impossibly complicated and also because some events are unforeseeable. These contracts are therefore incomplete. According to Grossman and Hart's (1986) formulation, the rights conferred by contractual relationships can be divided into specific rights which can take into account specific contingencies and residual rights which are all the other rights not specified in the contract. If one party purchases all the residual rights they are the owners of the business. This interpretation of what it means to own a business is not founded on a rigorous legal definition; neither does it recognize the legal personality of the corporation which owns assets in its own right. In business corporations, the shareholders are the party that hold the residual rights (the exercise of these rights is delegated to managers and directors) and are due the residual claims arising from their investment. This makes them owners. Hart and Moore (1990) provide a more

precise definition of residual rights namely the right to exclude parties from the assets owned. This in practice encompasses control over people (employees). The problem of corporate governance then boils down to a question of whether managers and directors exercise the residual rights in the interests of the shareholder/owners. It also conflicts with the position adopted by Fama (1980) who specifically rejects the idea that the corporation can be owned. The claim that shareholders have a special position as residual risk bearers is independent of whether one sees them as owners of the corporation or not. It is, however, open to a range of challenges.

The positioning of shareholders as residual risk bearers assumes a high degree of inflexibility regarding the conditions attached to the hiring by the firm of other resources besides equity capital. However, it is by no means clear that shareholders are unique in facing uncertain payoffs for their investment in the firm.

Zingales has explained that the payoffs accruing to many of the firm's participants are also subject to uncertainty and are heavily reliant on the way the business is run: "de facto a firm's decisions influence the payoff of many other members of the nexus, sometimes to a greater extent than that of equity holders" (2000, p. 1631). If it were the case that other contracting parties were fully protected, the decisions made by the shareholders would be a matter of total indifference to them. That corporate control is at all subject to contention suggests that "other contracting parties … are not fully protected by explicit contracts, undermining the basic premise of shareholders' supremacy" (Zingales, 2000, p. 1632).

Some degree of incompleteness of contracts applies to all firm participants not exclusively to shareholders. As events unfold, all contracts have an ex-post dimension which cannot entirely be covered by what is agreed upon and signed ex ante (Aglietta & Rebérioux, 2005). Given the relatively low proportion of corporations that are listed on exchanges, in the aggregate employees and creditors have far more in terms of valuable assets at stake than shareholders (Mayer, 2013).

Greenwood (2009) suggests that casting shareholders as residual risk bearers represents a model more appropriate for historical corporate ventures based on a single voyage of a ship.[15] In a modern corporation that is a going concern contracts are periodically renegotiated over time; the so-called

[15] In Medieval times the commenda, a form of limited partnership, was often used to set out the relationship between investors and travelling associates and would have been suitable for projects limited in time such as single voyages. Pryor (1977) has described the variety and origin of commenda contracts.

shareholders' return is only really part of this process reflecting their negotiating strength. For instance, salary negotiations in unionized firms often take place on an annual basis; even where there are no trade unions wage levels will depend on labour market conditions as well as the negotiating power of workers. The same applies to customers, suppliers and other groups not only in relation to shareholders but also to each other.

Thus, the determination of profit is the result of a complex process and of economic conditions rather than a mechanical series of deductions of fixed or predetermined amounts.

2.2.1 Employees and uncertain payoffs

Employees, typically with their entire livelihoods tied to the fortunes of a single enterprise, arguably bear far greater risk than shareholders. Blair (1996) argues that employees make substantial investments in human capital that are firm-specific (in terms of networks and knowledge that is specific to the individual company) based on estimates of the exact level of firm-specific investment by employees. Hence part of the wages earned by employees also comprise residual earnings and should properly be counted as part of the economic surplus of the firm though normal accounting only treats net profit as such. This might be shown by the premium earned by long-standing employees of a firm – when they leave and find another job they often take a pay cut. Blair estimates that the employees' share of residual income might be as much as half the total surplus: in other words, equal to the shareholders' part of residual income.

There are also factors that add to the cost of exit for an employee. The process of leaving a firm and searching for new employment opportunities is time-consuming and often risky. Moreover, employees are usually committed to one firm, sometimes over a period of decades. Hsieh (2006, p. 264) gives an overview of the ways in which employee costs of "exit" may be larger than that implied by an examination of purely formal contractual arrangements. Besides the firm-specificity of the human capital investment made by employees, employers might, due to the costs of monitoring, pay above the market rate in order to raise the costs of exit.

Zeitoun & Osterloh (2012) also discuss the residual risk faced by employees and frame the employees' share of residual income as rent. They suggest that a revised approach to firm valuation would account for this rent. Brink (2010) suggests that the risky nature of this "hazardous quasi rent" (p. 641) that forms part of employees' income means that directors owe them fiduciary responsibilities within the scope of agency theory.

Martin Wolf (2014), writing in the *Financial Times*, summarizes these points: “Human capital is perhaps the least diversifiable and insurable of all our valuable assets. Among all forms of human capital, the least hedgeable are firm-specific skills […] employees have no voice in what happens to a company to which they might have devoted their lives, while the shareholder of 10 seconds does.”

2.2.2 The role of employees in creating and preserving knowledge

The nexus-of-contracts view has one other major shortcoming besides failing to recognize the firm-specific investments made by employees with the accompanying risks and rewards. In effectively distilling the contribution of employees to a line item in the profit and loss account it carries over a failing of standard Coasian analysis namely that is overlooks the element of time. In the process it disregards the central importance of long-term relationships both amongst employees and between employees and the firm. As Hodgson (1998) has pointed out, the nexus-of-contracts view sees employees as atomistic individuals engaged in transactional relationships.

Ignoring ongoing relationships underplays the key importance of the accumulation and guardianship of knowledge within the corporation. Edith Penrose (1959/1995) emphasized the accumulation of collective knowledge as central to the efforts of a firm and therefore as key to its success. Penrose saw the firm as a “collection of resources,” including human resources, devoted to production with knowledge being the vital ingredient in ensuring the firm’s effective use of these resources and its growth. Galbraith makes a similar point in connection with the decision-making process and the exercise of power namely that firms rely on the knowledge of many people: “Typically they draw on the specialized scientific and technical knowledge, the accumulated information or experience and the artistic or intuitive sense of many persons” (1967, p. 61). He calls this collective of employees who all bring their accumulated knowledge to decision-making processes the “technostructure” (1967, p. 71). Extensive work on the development of knowledge within firms in combination with external sources through networking relationships and its role in fostering innovation has been done by Christopher Freeman (2008). Dosi and Nelson (2018) emphasize the evolutionary nature of the growth of knowledge and technological progress while Helfat (2018) underlines the key role that the formation of organizational routines and capabilities within business firms plays in this process. Augier and Teece (2009) and Teece (2018) have explained how knowledge and dynamic capabilities fit into the overall process of developing firm

strategies. As Freeman has summarized, "the picture which emerges from numerous studies of innovation and growth in firms is one of continuous interactive learning" (2008, p. 79). Recent work such as that by Sloman and Fernbach (2017) on the creation of knowledge has underlined the collective nature of learning. As Hodgson (1998) puts it the corporation has an important role as a "cultural enclave in which wider group and individual learning can take place" (p. 194). The collective work in building and housing knowledge that is performed by a firm's employees over time is a key element in creating value which is ignored by the nexus-of-contracts view of how a business functions.

Blair (1995) warns of the negative impact of losing firm-specific investments that are important over a long period of time (p. 16):

> *Treating the firm as a bundle of assets belonging to shareholders undermines the expectation of other participants in the firm that their investments will be protected too. Over time this is likely to discourage working people from investing themselves in the companies that employ them. Increasingly, they will come to see themselves as subcontractors rather than employees – they will do a job only for the immediate return or for the experience it gives them that they can take elsewhere. If that happens, the economy as a whole will lose the potential benefits of investments by these workers in firm-specific human capital.*

When large numbers of employees are laid off in order to meet short-term goals, the results in terms of performance and profitability can be serious as Sucher and Gupta (2018) have demonstrated.

The nature of the firm-specific investments of employees, the role of the firm in building and preserving capacities for innovation and the collective nature of knowledge creation all indicate their central importance in the production process. As Pitelis (2004) in his discussion of employees' firm specific investment reminds us, employees are "a crucial determinant in a firm's ability to exist" (2004, p. 219).

2.2.3 Risk shifting and incomplete contracts

Ironically the overarching emphasis on returns to equity investors has shifted risks away from shareholders onto employees. This has made it even less plausible to consider shareholders as

residual risk bearers. Since the dawn of the era of shareholder value firms have increasingly shifted risks onto their employees resulting in shorter job tenure and a decline in job security. A case in point is the phasing out of defined benefit pension schemes in the private sector and the increasing use of defined contribution schemes (Cobb, 2015). The greater the flexibility allowed to firms in the hiring and firing of labour, the more the argument that shareholders are residual risk bears is undermined. One cannot help wondering if a worker on a zero-hours contract would share the view that only shareholders are subject to "incomplete contracts." Indeed, some of the corporate valuation metrics devised by management consultants, especially Economic Value Added (EVA), stipulate a minimum required (or expected) return on equity. In the EVA model only returns above this minimum count towards adding value effectively inserting a minimum required rate of return on equity (Aglietta & Rebérioux, 2005; Lordon, 2007). This turns the notion of the shareholder as residual risk bearer somewhat on its head, making them more like rentiers (Ireland, 2003) on behalf of whom directors and managers effectively maximize value extraction.

2.2.4 Liquidity of shares and diversification

In contrast to the commitments of employees and other firm participants shareholders may sell their shares in a corporation within a matter of minutes if not seconds. In the case of algorithmic trading shares are bought and sold in fractions of a second so small that they are beyond the capacity of the human mind to perceive properly.

A shareholder in a listed corporation cannot be compared with the residual risk-bearing of an entrepreneur with a long-term, illiquid and undiversified holdings concentrated in one risky enterprise.

The ease with which investors can enter and leave equity positions has been greatly aided by the institution of limited liability. In regard to the reduction in risk conferred by limited liability status Adam Smith observed, "this total exemption from trouble and from risk, beyond a limited sum, encourages many people to become adventurers in joint stock companies, who would, upon no account, hazard their fortunes in any private copartnery" (Smith A. , 1776/2005, p. 606). Prior to the introduction of limited liability, shareholders were not only liable to a potentially unlimited degree but were also liable in some jurisdictions for some time after they had sold their shares (Haldane, 2015). This would have acted as a substantial brake on liquidity.

Equity positions are also divisible which offers opportunities for diversification even to individual investors. This observation was made over a century ago by Frank Knight (1921):

> *The minute divisibility of ownership and ease of transfer of shares enables an investor to distribute his holdings over a large number of enterprises in addition to increasing the size of a single enterprise. The effect of this distribution on risk is evidently twofold. In the first place, there is to the investor a further offsetting through consolidation; the losses and gains in different corporations in which he owns stock must tend to cancel out in large measure and provide a higher degree of regularity and predictability in his total returns.*

Since Knight wrote these words the opportunities for shareholders to transfer risk have greatly increased through the development of derivatives markets. Portfolio investors may insure against unexpected market developments using an array of financial instruments including for example, stock index futures. Even concentrated holdings in one or a few companies have been insured through over-the-counter derivatives products. Thus, it has become hard to determine the identity of the ultimate risk bearer.

2.2.5 Other contracting parties besides employees

So far I have focused on the risky firm-specific investments and uncertain payoffs of employees. However, a range of other stakeholders are also subject to uncertain payoffs. Creditors, such as banks and bondholders, are an example of non-equity-holding contracting parties not fully protected by explicit contracts. Though payments to creditors are contractually fixed they are by no means free of risk. In the event of default creditors stand to lose all or part of the amounts lent – this is all the more true in the case of unsecured loans and subordinated debt.

The local communities in which corporations operate are also potentially subject to a substantial degree of risk. In the case of very large enterprises the economies of some localities and even regions may be heavily dependent on the performance of the dominant corporations and industries: this is certainly more so than for diversified portfolio investors.

The nexus-of-contracts view also downplays the role of the state. Lazonick (2014a) has pointed out the very important contribution that government makes in providing for the infrastructure and knowledge base (including the research facilities within universities) which are a vital ingredient for innovation in the corporate sector. This is much the same point made by Mariana Mazzucato

in *The Entrepreneurial State* (2013). As a recipient of tax revenues the state is also a significant risk bearer.

Furthermore, some enterprises are seen as "too big to fail." This is most obviously the case with banks in developed economies; in the aftermath of the 2008 financial crisis governments around the world committed substantial funds to supporting the financial sector. To a large extent these funds were provided under the framework of statutory commitments aimed at guaranteeing bank deposits and the banking sector in general. For instance in the United States the Federal Deposit Insurance Corporation (FDIC) is responsible for protecting depositors' savings; it was therefore involved in the failure of over five hundred banks between 2008 and 2013 in the aftermath of the financial crisis (Federal Deposit Insurance Corporation, 2017) just as it was drawn into earlier crises. In addition the federal government, through the Troubled Asset Relief Program (TARP) and the actions of the Federal Reserve provided massive sums of money to restoring stability in the financial sector. In the case of American Insurance Group (AIG) in 2008 the US government acquired an equity stake in return for playing the role of financier of last resort which effectively nationalized the company (Cunningham & Greenberg, 2013). It is arguable that as regards the financial sector the government is in a contractual relationship to come to the rescue when needed. This would put the state in the position of the ultimate residual risk bearer subject to a clearly incomplete contract.

In the UK, Haldane (2015) has spoken of an implicit subsidy that the state provides the financial sector resulting from the understanding that it will come to the rescue in the event of a crisis. He estimated the value of this implicit subsidy at GBP 150 million in 2009 (Haldane, 2015, p. 12). Extending the logic of the incomplete contracts approach would presumably make the state the ultimate owner of financial corporations that are deemed "too big to fail."

Although state support of the finance sector is the most obvious case it is not the sole one. Also in the months following the fall of Lehman Brothers, the US government provided financial resources to support the "Big Three" automotive companies: General Motors, Chrysler and Ford (Kiley, 2016). Perhaps therefore these corporations might also be thought of as being state-owned.

2.2.6 Shareholders and the problem of shirking

Once we develop a clearer understanding of the risks and uncertain payoffs faced by other parties besides shareholders, the weakness of a further argument for shareholder primacy becomes

apparent. This is the argument that shareholders as residual risk bearers are best placed to monitor the efforts of all parties to avoid the problem of shirking.

Alchian and Demsetz (1972) have described the firm in terms of team production. A team production problem occurs when different parties work together towards a common outcome but where the result is not clearly attributable to the efforts of the respective participants. An ex-ante agreement regarding the sharing of the rewards of the work may result in the "shirking" of the responsibilities of some parties and an ex-post agreement may create incentives for rent-seeking behaviour or capturing a share of the surplus disproportionate to their effort. Thus, team production situations give rise to a problem of "metering" or measuring inputs of the team members as well as monitoring to avoid "shirking." Alchian and Demsetz (1972) claim that the position of the shareholders as residual risk bearers means that they are best placed to play the role of monitor therefore ensuring that shirking is minimized. However, the view of the equity investors as residual risk bearers fails to take into account both the firm-specific nature of the contributions of other parties besides equity investors and the legal personhood of the corporation. Blair and Stout (1999) have argued that the team production problem is better addressed by a "mediating hierarchy" whereby a neutral external arbiter stands above the contracting parties in the firm with a view to resolving issues relating to the monitoring and avoidance of shirking. This, claim Blair and Stout, is exactly the role assigned by corporate law to corporate boards of directors. According to this view boards serve the corporation itself and not a particular contracting party or group of contracting parties. Moreover, Blair and Stout (1999) argue that the team production problem is a better way to conceptualize the challenge of corporate governance than the principal-agent model since it takes into account the entire web of relationships in the firm rather than only the relationship between shareholders and directors.

2.2.7 Are shareholders a homogenous group that shares the same overriding objective?

There is a final problem with the view of corporate governance as a principal-agent problem. Identifying shareholders as principals tends to equate their interests with the profit motive - as a homogeneous group. This disregards the diversity of the share owning structure in a public corporation. As Stout (2012) has pointed out, there is no reason to assume that shareholders should constitute one monolithic group with one shared set of interests. Shareholders may range from employees (either directly or indirectly, for example, through pension funds) with a greater interest

in job security than in quarterly returns to founders and all the way through to pure financial speculators. Each shareholder may have conflicting interests; this is particularly true of employees and the members of local communities in which corporations operate. Some shareholders have longer term goals whilst others, especially hedge funds, may only be interested in quick short-term financial returns and may be preoccupied with wealth extraction (Shin J.-S. , 2018). Even if decision-making were to serve solely the interests of shareholders, we would still be left with the issue of conflicting interests amongst different groups of shareholders and the balance of power between them. One possible response to this problem is to see shareholder primacy through the lens not of management single-mindedly serving one overriding goal but instead in terms of corporate owners setting policy by voting in a democracy. It is to this view of the corporation that we will turn in the next section.

2.3 Shareholders as voters (in a democracy)

The public corporation has been delineated as a representative democracy with shareholders in the role of voters electing a government to act on their behalf. This might be thought of as the metaphor of the "shareholder democracy" and appears in the work of economists as well as lawyers. To give an early example of this phenomenon, Knight (1921) makes references to representative democracy. In addition, Worthington and Davies (2016), refer in a law textbook to what jurists have seen as the "democratic ideal" in corporate governance. Though he emphasizes his preference for market mechanisms Friedman also places voting in corporate contexts within the category of "political mechanisms" (1962/2009) therefore implicitly evoking the idea of a democracy. This idea of shareholder democracy is a major theme in the speeches of Richard Breeden on corporate governance during his time as SEC Chairman: "we rely on representative democracy in governing our corporations. Here the theory says that the shareholders elect the board of directors to represent them" (1992).

This argument of shareholders as the electorate in a body politic is open to challenge from two perspectives. First, it is highly questionable that this democracy metaphor is an accurate reflection of the power relations within a public business corporation. Voting rights at annual general meetings exclude but all but one constituency. We have already seen how employees, amongst other groups, make significant firm-specific investments in the corporation. It is certainly the case that decisions which are made within the corporation impact the lives and livelihoods of employees

and the communities in which the firm operates far more than most shareholders with their highly liquid and diversified portfolios. As Greenwood puts it if (2009, p. 1052):

> *corporate share voting is "democracy," then other participants must be helots or colonized natives, entitled only to such consideration as is necessary to exploit them with maximum efficiency, and any notion that employees might be fellow citizens entitled to respect and consideration must carry a faint odour of subversion.*

Ellerman (1975) points out that shareholders exercising rights to control the firm does not constitute democracy as this entails that "one group of people (the shareholders) elect the managers who are to manage another group of people" (p. 42). Democracy is "self-government" and this shareholder version is "an apologetically inspired misnomer" (p. 42). So "shareholder democracy" is at best little more than "an imperial relationship […] a representative imperial oligarchy" (Ciepley, 2020, p. 632). Ferreras (2017), in calling for a radical expansion of employee voice within firms, has identified the power exerted over employees in corporations as a major limit to democracy. This applies even in societies that are generally considered to be democratic. Indeed as Shin (2018) explains when drawing on the work of Ott (2011), the concept of shareholder democracy was originally intended to mean the stake ordinary people as investors had in the economy and society rather than the restriction of democracy to one particular group.

There is also a pragmatic argument that this "shareholder democracy" barely works in practice: the rights that equity investors do have are restricted in law to a fairly narrow range of options. This is what Worthington and Davies (2016) had in mind when they wrote of shareholder democracy as an "ideal" rather than a reality. Over thirty years ago, Black (1990) provided a detailed description of legal obstacles to active shareholder participation in US listed corporations, including rules that made it hard for dominant shareholders to emerge, complex proxy voting rules, anti-trust concerns, and also anti-takeover provisions such as so-called "poison pills" (or more formally "shareholder rights plans") which may equally be deployed to favour the interests of managers over those of shareholders. Fifteen years later, Donald (2005) made much the same point - that shareholders' theoretical powers were rarely exercised. While some of these obstacles, particularly in the area of communication amongst shareholders soliciting proxy votes, have been eased considerable barriers to participation remain (Lund, 2018). The decisions that shareholders may vote on rarely extend to much beyond the election (or removal) of directors. In many

jurisdictions shareholders have no role in the selection of the chief executive officer, the payment of dividends, merger recommendations or the calling of extraordinary general meetings (Stout, 2012, pp. pp. 42-43).

Many public corporations have dual-class shareholding structures whereby a small group of Class B shareholders, often the founders or original owners, have greater voting rights than the rest, namely the Class A shareholders. This places severe limitations upon the power of ordinary shareholders and challenges the notion of a democracy of "owners." A high-profile example of a dual-class structure involve the businesses controlled by Rupert Murdoch and his family who control approximately 40% of the voting power of both News Corp and Fox Corp with a much smaller share of the total equity (Palmeri, 2022). This type of arrangement is also popular in the technology sector and is used, for example, by Alphabet and Meta (Aggarwal, Eldar, Hochberg, & Litov, 2022). According to Professor Jay Ritter at the University of Florida in 2022 half of all technology company IPOs and a quarter of all IPOs in the USA involved issuing dual class shares (Ritter, 2023).

Other mechanisms that limit the power of shareholders include classified boards, the members of which are elected for differing terms of office; those elected for very long terms may be motivated to be less attentive to the interests and concerns of shareholders instead favouring deeper relationships with management. Staggered boards where different members are elected at different times are also common. Moreover, board elections are frequently run on the principle of plurality and not majority, allowing directors to be put in place with the support of only a minority of the shareholders – and thus rendering the election process symbolic in the case of unopposed candidacies. Voting on resolutions tends to follow a binary system whereby the only options are to vote for or against a proposal (Ganor, 2021). This leaves little opportunity to make voting choices contingent on the behaviour of other shareholders – which may be disadvantageous to smaller investors – or to take decisions on an ongoing basis as would be a case in an assembly that met more frequently than once per year.

There are a number of other practical obstacles to the vision of shareholders exercising democratic control over corporations. Shareholding in large corporations is widely dispersed both in terms of types of shareholders and geographical location; this presents a serious obstacle to any coordination of voting intentions. Any single investor, especially one with a very small stake in a

company as part of a diversified portfolio, who is considering making the effort to take a more active stance is faced with the free-rider problem: dedicating precious time and energy to attending Annual General Meetings and exercising some form of control would also promote the interests of other inactive shareholders free of charge. Therefore, the rational course of action would be to abstain from playing an active role in the exercising of equity rights. Even large institutional investors tend to have relatively small holdings in any individual corporation.

Most recently, attention has focused on the emergence of large institutions dedicated to passive investment strategies or “index funds.” Of particular interest are the three largest such fund managers: BlackRock, Vanguard and State Street. Bebchuk and Hirst (2019), using empirical data on the shareholder engagement of these three institutions, have claimed that their business model encourages them not to be actively involved in the companies that they invest in but rather to defer to corporate management when making voting decisions despite the public pronouncements of some of the leaders of these institutions. Lund (2022) has found that interventions from institutions such as the Big Three have grown in recent years but she believes that they are driven by client demands more than any deeper economic interests. This is likely to place limits on the kinds of intervention taking place. There are also limits to the effectiveness of these enormous institutions to effectively force corporations to internalize externalities related to environmental and social concerns (Lund, 2022). It remains to be seen how far the growing influence of the millennial generation impacts the governance policies of the “Big Three” passive fund management companies.

Moreover, despite relatively rigorous requirements of transparency in developed markets full-time managers inevitably have better information than distant investors. In their exhaustive study of the history of corporate finance, Baskin and Miranti examined the importance of access to information in determining corporate capital structure from a broad historical perspective and concluded that this has been a critical factor over several centuries (1997). In the context of well diversified holding with dozens if not hundreds of positions it is hard to imagine an investor committing the resources to meticulously researching every single investment.

The lack of interest and incentives on the part of the majority of shareholders to actively participate in corporations has been used, as Shin (2018) has shown, by a small minority of hedge

fund and other investors to exert a degree of power disproportionate to their actual holdings primarily for the purpose of value extraction.

Finally, the ultimate investors, such as participants in pension schemes, are often several times removed from their investments with numerous layers of intermediaries such as plan trustees and fund managers in between. Achieving something approaching the ideal of democracy therefore may prove somewhat complicated. In addition, as Stout (2012, pp. 91-94) explains, institutional investors are not necessarily better equipped than individuals to act as effective stewards guarding the interests of their clients. After all, the same resources of time and energy that individuals would need to devote to monitoring corporate performance would need to be committed to monitoring the performance of institutional investors with the same demotivating factors.

2.4 Is shareholder primacy a question of good public policy?

Boatright (1994), after rejecting many of the standard arguments raised in defence of shareholder value, including for instance the principal-agent model, asserts that what remains is a pragmatic case for prioritizing the interests of equity owners above other stakeholders. He makes the case that corporations are a legitimate target of public policy. He suggests it might happen to be good public policy to promote the profit motive in the competitive commercial sector.

In a similar vein, Goodpaster (1991) argues that a move towards multi-fiduciary stakeholders would represent a radical dilution of the notion of private enterprise and the power of the profit motive. He makes the case that this would "blur traditional goals in terms of entrepreneurial risk-taking" representing "the conversion of the modern private corporation into a public institution" (Goodpaster, 1991, p. 66). Thus, Goodpaster posits, shareholder primacy is key to the survival of the private enterprise system as we know it.

This view, however, conflates the role of the risk-taking entrepreneur with that of the passive role of shareholders in the modern corporation with their diversified holdings and high degree of liquidity. Goodpaster has ascribed ownership to shareholders with little discussion of the real meaning of the concept; a deeper analysis of the actual power of shareholders in the governance of large corporations would, as we have seen above, demonstrate that the transition from "private corporation" to "public institution" has already taken place driven by the separation of finance from control and facilitated by the development of modern capital markets.

Marris (1967) recognized this difference between entrepreneurial firms and the corporate form referring to traditional versus corporate methods of economic organization: "corporate assets, created from corporate income, have become a partly autonomous factor in the economic system, and the industrial capital of western democracies is no longer divided into two classes, 'public' and 'private', but rather into three, 'public', 'private', and 'corporate'" (Marris, 1967, p. 13).

Even if we accept Goodpaster's critique of the stakeholder concept as applied to corporations, it does not automatically follow that shareholder value is the only guiding principle of corporate governance and business management that is compatible with the market system. In the 1950s Peter Drucker (1986) argued in *The Practice of Management* that the most important constituent in business was the customer and that the key task of the firm was to "create a customer." His idea of the customer as the primary guiding principle of business has been re-asserted more recently by Roger L. Martin (2010; 2022) who denounces shareholder value as an aberration and approvingly cites the example of Johnson and Johnson who in their corporate credo – which dates back to 1943 – list their obligations to various stakeholder groups with customers in first place and shareholders in last place (1943). As if to address Goodpaster's criticism, Drucker, whilst acknowledging that corporations have social responsibilities, asserts the economic nature of business' primary purpose: "Management must always, in every decision and action, put economic performance first. It can only justify its existence and its authority by the economic results of its products" (1986, p. 7/8). Martin Wolf has made the same point even more succinctly: the business corporation is "an institutional mechanism for adding economic value" (2015). It is significant that Drucker refers to the "economic," rather than "private," nature of business purpose which better fits the public nature of the corporate form. Mayer provides an alternative formulation of the corporate goal but one that is not incompatible with Drucker: "make, develop, and deliver things and to service people, communities, and nations" (2013, p. 4). In Ruskin's simple formulation, "the merchant's function…is to provide for the nation" (1997, p. 178). The survival of the market system does not then necessarily rest on the application of the doctrine of shareholder value. It is possible to accept the economic nature of the purpose of business in a competitive market without shareholder supremacy being a logical corollary.

Indeed, the emergence of the shareholder value principle came relatively recently in the history of the business corporation. The era of "managerial capitalism" includes the three decades after the Second World War which were a time of prosperity and dominance for the US corporate sector.

Even shareholders profited substantially during this time: over the 1933-1976 period investment in the S&P 500 index yielded an annual real compound return of 7.5% (Stout, 2013a). Indeed, even now shareholder primacy is applied with differing degrees of strength around the developed world. In this broader historical context, warning that abandoning shareholder supremacy would lead to a collapse of private enterprise or as Friedman put it "unadulterated socialism" (1970) appears hyperbolic.

2.5 Shareholder primacy and externalities

Public policy arguments against shareholder value are centred around the claim that it creates social externalities or negative impacts that extend beyond the firm itself (Haldane, 2015). The standard response to critiques based on social externalities is that a firm focused on maximizing shareholder value will necessarily also protect the interests of other stakeholders: "in most instances, there is little conflict between doing well (maximizing value) and doing good. Profitable firms are those with satisfied customers and loyal employees; firms with dissatisfied customers and a disgruntled workforce will probably end up with declining profits and a low stock price" (Brealey, Myers, & Allen, 2011, p. 10). The problem lies with the opening words of this quote from a corporate finance textbook: *in most instances*. The doctrine of shareholder primacy presented in this way avoids discussion of what actions management should take when there is an actual conflict between the interests of shareholders and any other party or about how often such conflicts are likely to arise. The moral logic of shareholder value would dictate that the financial interests of shareholders would have to prevail in such cases: "unlike those of shareholders, the rights of other parties are derivative, not fundamental" (Mayer, 2013, p. 29). It is often said that the problem of externalities is a result of the short-term focus of corporate managers rather than of shareholder value per se: in other words, if only managers would take a longer-term perspective looking beyond the tyranny of quarterly earnings reports the interests of all stakeholders and shareholders would coincide. However, this view sidesteps the issue at the heart of the conflicting interests among the firm's stakeholders − namely the problem of aligning incentives towards achieving collective action goals, for example combatting and mitigating climate change (Roe, 2021; 2022a; 2022b).

An important negative social externality that that has been attributed at least partly to corporate governance approaches inspired by shareholder value is the substantial increase in inequality in

the developed world, particularly in the United States, in recent decades. Lazonick (2014b) has shown how the compensation of CEOs and other senior corporate managers relative to other employees has increased dramatically in the USA in recent decades aided by stock options designed to align executive compensation with shareholder interests. This has played a significant part in the growth in income and wealth inequalities in western societies. Tomaskovic-Devey and Lin (2011) have demonstrated how up to 6.6 trillion dollars' worth of income were transferred from the non-financial sector to the financial sector between 1980 and 2010, partly due to shareholder value policies, also contributing to the rise in inequality. Cobb (2016) has explained how firm-level decisions on various levels can contribute to greater economic inequality. In particular, a move to wage-setting outside the firm through outsourcing and other practices has led to greater inequality as the premium set on firm-specific knowledge has declined. In addition, the shift to work outside the boundaries of the firm with the prevalence of more non-standard arrangements has led to increased precarity. Echoing Lazonick (2014b), Cobb (2016) sees increasing executive compensation as an important contributing factor to the growth in economic inequality. Finally, layoffs, which have increased in frequency and severity since the dawn of the shareholder value era and have often resulted in individuals suffering a permanent drop in income, have also contributed to inequality. Fligstein and Shin (2007) have shown how during the period in which shareholder value established itself as a dominant corporate ideology layoffs, though rarely resulting directly in higher profits, led to the replacement of unionized workers with non-unionized employees. The resulting shift in power away from employees has contributed to widening income gaps (Shin T. , 2014; Volscho & Kelly, 2012).

2.6 Conclusion

In this chapter I have explored several justifications of shareholder primacy. They can all be viewed as narratives or stories about the corporation. These stories all have a similar ending: when we place the interests of shareholders above all others everyone shall live happily ever after. These stories, rather like that told by the balance sheet, foreground the role of shareholders and background other parties involved in the workings of the business corporation. Stories about ownership ignore the claims of the owners of other inputs that are also important to the success of the corporation. Stories about shareholders bearing residual risk leave out the risks and insecurities faced by employees, communities, customers and suppliers. The fable of shareholder democracy, not unlike the Athenian prototype, assigns votes to a select few with no space for the many

constituents who affect and are affected in turn by the life of the corporation. Tales of economic efficiency concern the allocation of one resource only - namely financial capital supplied by shareholders.

In the following chapter I will examine the claim that enables the backgrounding of corporate constituents besides shareholders. That is the claim that shareholders are owners of the corporation.

Chapter 3: What is a corporation − and can it be owned?

The purpose of this chapter is to examine whether a business corporation can be owned.

It would be helpful to understand the extent to which the discourse that draws on ideas of ownership (of corporations by shareholders) is grounded in any rigorous scientific definition of what ownership means. I will examine both economic as well as legal considerations of ownership but my emphasis will be on the legal side. Economists have tried to define ownership in different ways and there is no single established treatment of the concept in the economic literature. Indeed, this proliferation of understandings of ownership amongst economists has caused some degree of confusion which I will describe in this chapter. Whilst there is also no consensus on what constitutes ownership amongst jurisprudence scholars the different legal definitions are more rigorous. Moreover, the legal and economic literature is interconnected since much of what has been written on corporate governance generally, and particularly in the context of shareholder primacy, draws heavily on the law and economics tradition. An understanding of ownership as a legal concept is also crucial since it concerns actual practical consequences in corporate affairs. Questions of who owns what in specific cases are settled by courts and have a real impact that goes beyond establishing theoretical models. Therefore, it is helpful to establish whether the concept as used commonly in the discourse relates to a notion that is correct. Finally, the legal understanding is of special relevance for this project since the speeches which I analyse here are predominantly legal in nature. The work of the SEC is primarily of a legal nature; four of the six commissioners whose speeches I have studied were lawyers by training and one was an economist who was trained in the law-and-economics tradition.

I will draw on the classic legal definition of ownership provided by Honoré (1961/1987) and provide justification for the position that a corporation cannot be owned. My concern is with the business corporation i.e. the corporation with transferable shares[16]. In what follows the terms "corporation" and "company" (which will be used interchangeably) will refer to business corporations unless otherwise stated.

[16] Company law allows for shares of business corporations to be transferable although the constitutions of individual companies may restrict the extent to which shares may be transferable.

I begin with an exposition of the separate legal personality of the corporation. This feature of the corporation will be of key importance and will feed into my examination of Honoré's eleven incidents. It forms the crux of the argument that a corporation cannot be owned. Next, I will examine each of Honoré's eleven incidents ("the incidents") of ownership in turn; I will ask for each one whether it could apply to the business corporation.

3.1 The corporation as a legal person

Corporations come in many forms and sizes. There are corporations which are vast organizations employing thousands of people and there are those which have no employees. Some have just one director or one shareholder. A vast range of combinations of shareholding structures and governance arrangements are made possible by the law. However, one feature that is common to all corporations is that of legal personality, i.e. corporations are separate legal persons. The meaning of this concept of legal personality is complex but is succinctly summarized in Sealy and Worthington's *Text, Case and Materials in Company Law*[17]:

> *The most important legal feature of a company is that it is a legal person in its own right, separate from the legal persons that are its members (or shareholders) and its directors. It is important to understand exactly what this means and what consequences inevitably follow from it. We typically use the word "person" to refer to an individual human being but in law the word has a more technical meaning: "a subject of rights and duties." In this sense it is possible to speak of a corporation as "a person" and recognize its separate personality* (Worthington S. , 2016, p. 34).

Thus, the concept of a legal person has a technical meaning which does not equate to the usual meaning of the word 'person' as a living human being. There are rights and duties that apply to both corporate legal persons and human beings while others apply only to human beings. Moreover, some humans may not be full-blown legal persons (such as, for example, minors or people with severe mental disabilities who have rights and duties which are much more limited than those typically applicable for adult humans).

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[17] 11th edition. This is a law textbook. Other law textbooks which we will reference in this analysis include Adams, A.2014. *A Law for Business Students* (8th Ed.); Bainbridge, S.M. 2015. *Corporate Law* (3rd Edition); Davies P. 2010. *Introduction to Company Law* (2nd Edition); Davies, P.L. & Worthington, S. 2016. *Gower's Principles of Modern Company Law* (10th ed.); Dignam, A. 2011. *Hicks and Goo's Cases and Materials on Company Law* (Seventh edition).

The characterization of a corporation as a legal person is not intended to suggest human qualities or agency but to denote legal status. As Gindis (2016) explains: “when the law treats the firm as a “person” nothing more than the fact that the firm *has* (not *is*) a point of imputation for rights and duties that arise in legal relations should be implied. The point of imputation is the legal entity in which ownership rights over assets used in production are vested, in whose name contracts are made, and thanks to which the firm has standing in court” (p. 508).

This institution was not created in a single event but evolved into its present form over a long period of time. Davies & Worthington (2016) comment on the relatively recent history of the full application of the legal personality of the corporation: “corporate personality became an attribute of the normal joint stock company only at a comparatively late stage in its development, and it was not until Salomon v Salomon at the end of the nineteenth century that its implications were fully grasped even by the courts” (2016, p. 29). In other words, it took some time even before courts and judges fully understood the meaning and impact of separate legal personality and made judgements and established precedents which realized the full potential of this concept. Until these precedents were established, many of the attributes of ownership would have fallen on shareholders.

Paddy Ireland (1999) explains that the emergence of large corporations with limited liability and shares traded in liquid markets brought on the modern concept of separate corporate personality accompanied by the idea shareholders own shares as opposed to the company. Although the full development of the principle of separate corporate legal personality may have been stimulated by the emergence of large companies it now applies equally well where there is a small number of shareholders or indeed only one shareholder.

According to Ireland (1999, p. 43):

> *in underlining the externality of the shareholder, these economic and legal changes laid the foundations for the emergence of the modern doctrine of separate corporate personality. The “complete separation” of company and members that this entailed was not, as company lawyers tend to assume, inherent in the legal act of incorporation. Rather, the legal meaning of incorporation in a business context was reinterpreted in the latter half of the nineteenth century to accommodate the radical economic separation of joint stock companies from their shareholders.*

The separate legal personality of the corporation has a number of important practical consequences which we shall now proceed to discuss.

3.1.1 The company owns its own assets

One of the most important consequences of the corporation's legal personality is its ability to own assets. This, as Worthington (2016) explains, comes with the "necessary corollary that the shareholders then do not own this property. This is true even if the shareholders have ultimate control over the company, and can determine, in a practical sense, what is done with the company's property" (p. 43).

Further clarification of this point is made by other commentators. Deakin (2012) affirms that "none of these rights [of shareholders] either derives from or confers a right to property in the firm itself or its assets, nor do any property claims which shareholders might have given them a right to manage the assets of the firm. Ownership of a share does not confer the right to a pro-rata portion of the corporation's assets while it is a going concern"[18] (p. 356).

Indeed, as Pennington (1989) explains "judicial decisions during and since the second half of the 19th century have made it clear beyond question that shareholders or members of a company registered under the Companies Acts have no legal or equitable interest in any part of the company's property or assets and the company is the sole and beneficial owner of all the property vested in it"[19] (p. 140). The same principle applies in the United States. In the words of the American Bar Association's Report of the Task Force of the ABA Section of Business Law Corporate Governance Committee on Delineation of Governance Role and Responsibilities,

[18] See also Dignam (2011): "The company owns its assets and the shareholders have no legal or equitable interest on the corporate assets" (p. 265).

[19] The Salomon ruling was important because it confirmed that the act of incorporation ensured the separation of the assets of the company from its founders and/or shareholders and contributed to establishing the separate legal personality of the corporation. In the words of Lord Halsbury, "Either the limited company was a legal entity or it was not. If it was, the business belonged to it and not to Mr. Salomon"; Lord MacNaughten referred to the "sale of the business to the company" (Salomon v A. Salomon & Co. Ltd., 1897, Worthington, 2016). In Daimler Co Ltd. v Continental Tyre and Rubber Co., Lord Parker stated that "the assets of a company belong to it and the acts of its servants and agents are its acts, while its shareholders, as such, have no property in the assets" (1916, as cited in Worthington, 2016).
In Macaura v Northern Assurance Co. (as cited in Worthington, 2016) the court affirmed that neither a shareholder nor an unsecured creditor may have an insurable interest in the assets of the company even in the case that there is only one shareholder.

"shareholders do not have the right to come to corporate headquarters and remove a proportionate share of the machinery" (2009).

Besides having no claim to any of the assets nor a proportionate share, shareholders have no kind of equitable ownership interest of any kind relating to the assets.[20] Therefore, the property of a corporation is totally separate from that of its members or shareholders. Moreover, none of what has been outlined in the preceding paragraphs relates to the shareholding structure of the company; it would be true even if there was only one shareholder holding 100% of the equity. As Ciepley explains, "Even were there but one stockholder, and this stockholder elected herself to the board and appointed herself the CEO, we could not say she owned the firm's assets. If, at the end of a workday, she were to reach into the cash register and stuff the day's proceeds into her pocket, as a genuine proprietor may, she could go to jail. It is theft from the corporation. Only by having the corporation issue dividends to the stockholders (i.e. to herself) can she legally get the cash. Which is to say, there is a legal separation between the corporation's assets and her personal assets, and this is enforced even when 'pro forma'" (2020, p. 627).

There is then a consensus amongst lawyers that ownership of a share does not confer any kind of ownership rights on the corporate assets. As Paddy Ireland (1999) tells us: "company lawyers are clear what a share is not – apart from when a company is wound up, a rare occurrence in the case of a public company, it is not an interest in the corporate assets" (p. 33).

In the case that the company is wound up in the event of insolvency (i.e. when the corporation ceases to be a going concern), the shareholders are indeed entitled to a distribution of the remainder of the assets but only after all other claims have been met: "they may share proportionally in what is left after the creditors have been satisfied and the costs of the insolvency met, but this is by definition not a claim with much, if any, substance to it in the vast majority of involuntary insolvencies" (Deakin, 2012, p. 358).

The shareholders may choose voluntarily to wind up the corporation. In this very special case the assets would revert to the shareholders. However, as Deakin (2012) observes they would also quite possibly incur liabilities due to the termination of business relationships: "while it is possible

[20] As Ireland states (1999, p. 41): "this transformation in the economic nature of the share was reflected in, and reinforced by, its legal reconceptualization. Following the seminal 1837 case of Bligh v. Brent, it came to be held that shareholders had no direct interest, legal or equitable, in the property owned by the company, only a right to dividends and a right to assign their shares for value."

in most jurisdictions to wind up a solvent company and return the assets to the shareholders, to cease trading in this way may give rise to liabilities to third parties because of the ongoing and overlapping nature of the firm's business commitments, with the result that shareholders' rights may therefore be qualified by steps taken by the liquidator of a solvent company to protect these third party claims" (p. 358). Thus, even in the case of a voluntary liquidation the shareholders do not have any automatic right to the company's assets. Additionally, the power of management over the assets and to determine what is distributed to shareholders lies with the liquidator. Ciepley (2020) suggests that this entitlement of shareholders to the remainder of assets in the event of liquidation might be better described as making them "heirs" rather than "owners" or "residual claimants."

3.1.2 Asset partitioning and limited liability

As Davies (2010) explains, by enabling the separation of the assets of the company from the assets of the shareholders, separate legal personality facilitates limited liability. "Limited liability means that the rights of the company's creditors are confined to the assets of the company and cannot be asserted against the personal assets of the company's members (shareholders)" (Davies P. , 2010, p. 9). Limited liability is enabled – though not legally required – for incorporated companies.

In terms of monitoring, this is a convenient arrangement for third parties who have to deal with only one counterparty – the corporation – rather than various members (Worthington S. , 2016). Importantly, the separation of the assets of the company from those of its shareholders is unrelated to the level of dispersal of the equity holding, applying equally to companies with one shareholder. This, as Worthington explains, was established in the Salomon (1897) ruling at the end of the nineteenth century.[21]

Hansmann and Kraakman (2000), Hansmann, Kraakman & Squire (2006), and Kraakman et al. (2017) have shown that this is a two-way relationship in the sense that assets of the company are also protected against the liabilities of the shareholders. Moreover, they explain that the protection

[21] Lord MacNaghten "if it merely means that there is a predominant partner possessing an overwhelming influence and entitled practically to the whole of its profits, there is nothing in that that I can see contrary to the true intention of the Act of 1862, or against public policy, or detrimental to the interests of the creditors. If the shares are fully paid up, it cannot matter whether they are in the hands of one or many" (Salomon v A. Salomon & Co. Ltd., 1897, Worthington, 2016).

of the assets of the company is more significant in terms of enabling the corporation to create value. In their terminology, limited liability is an example of "owner shielding,": in other words, the protection of the assets of shareholders from the creditors of the firm. "Entity shielding" is the fact that the assets of the firm are protected from the creditors of the shareholders. Strong-form entity shielding in addition means that shareholders cannot unilaterally withdraw their equity contribution and cannot force partial liquidation. This is an important practical arrangement that lowers the cost of capital.

3.1.3 Legal capacity 1): Entering into its own contracts

A corporation can enter into contracts in its own right. When a corporation does enter into a contract, "both the benefits and the liabilities under the contract are the company's […] This is true even if the contract is between the company and its sole director and shareholder in circumstances where that individual must have acted for himself on one side of the transaction and for the company on the other side of the transaction"[22] (Worthington S. , 2016, p. 45).

3.1.4 Legal capacity 2): suing and being sued in its own name

The firm as a legal entity can bring cases to court in its own right. Moreover, "the legal rights and obligations belong to the company; in particular the company carries its own liabilities, and members cannot generally be sued on these liabilities" (Worthington S. , 2016, p. 48). We have seen how this applies to the debts of the company in our discussion of limited liability but this is also true of cases of tort and at least in English law is also generally true in the case of the liabilities of full subsidiary companies (Worthington S. , 2016).

3.1.5 Running its own business

Another consequence of the corporation's legal personality is that it runs its own business. No other party runs the business regardless of the dispersion of the control rights attached to equity holdings. "The fact that one person holds all, or substantially all, of the shares in a company does

[22] The case of Lee v Lee's Air Farming (1961, as cited in Worthington, 2016) affirms the ability of a corporation to enter into its own contracts even with its sole shareholder. The case addresses the situation of an individual who was in control of the company as its director, its sole shareholder and additionally its employee – and whose widow was nevertheless entitled to compensation following his death during the course of his employment.

not, without more, make the company's business that person's business in the eyes of the law" (Worthington S. , 2016, p. 47).

3.1.6 Unlimited duration

A corporation's existence is not subject to any time limits since its duration is not constrained by the lifespan of any individual or group of individuals. As Bainbridge (2015) explains, the corporation's "indefinite legal existence" (p. 5) is terminable only in the following circumstances: a voluntary dissolution, a merger, bankruptcy followed by liquidation or dissolution by a court.

The practical importance of this is underlined by Deakin (2012): "because these features of legal capacity are now associated with a particular organizational form, the firm (as the corporation) can undertake activities on a scale and over a period of time that is beyond the capacity of an individual actor or of a number of individuals linked together solely by contract. Thus, the 'permanence' of the corporation facilitates and underpins the organizational continuity of the firm" (p. 352/3).

I have outlined here some of the key consequences of the legal personality of a corporation.[23]

3.1.7 The corporation cannot be owned

There is a widespread view amongst lawyers based on the separate legal personality of the corporation that it is an entity which cannot be owned.

According to Davies (2010) it is the "modern view that shareholders do not own the company, but only their shares" (p. 61) and later he explains: "the old argument that shareholders have these rights because they are the owners of the company now carries little sway, because its premise is false: shareholders own their shares, not the company" (p. 266).

Dignam (2011) is even more explicit in linking the conclusion that a corporation cannot be owned with the separateness of the assets of the company and its shareholders which in turn results from the separate legal personality of the former: "It is important to immediately cease to describe shareholders as 'owners' of the company as this is incorrect. Shareholders own their shares and

[23] There are other consequences of legal personality which I have not discussed at length, e.g. corporations may have separate nationalities, domiciles and residences from those of their members. Some provisions of the Human Rights Act such as the right to a fair trial also apply to corporations (Worthington S. , 2016).

the rights attached to them – nothing else […] The company owns its own assets and the shareholders have no legal or equitable interest in the corporate assets" (Dignam, 2011, p. 265).

In the United Kingdom the clear judgment setting out the position of shareholders was made in Short v Treasury Commissioners in which the court ruled that the shareholders "were not part owners of the undertaking" (1948, as cited in Davies & Worthington, 2016).

This position is also underlined by the American Bar Association's Report of the Task Force of the ABA Section of Business Law Corporate Governance Committee on Delineation of Governance Role and Responsibilities (2009) which states: "shareholders are often referred to as the 'owners' of the corporation. However, the corporation is a legal person in its own right rather than a mere asset. Once the separation of equity rights and control occurs in the formation of the corporate entity, the analogy of shareholders to 'owners' of the corporate 'asset' is imperfect at best. The asset that shareholders own is the stock that represents their investment interest" (p. 5).

3.2 Ownership and Corporations

3.2.1 Explaining ownership

The explanation of ownership provided by Honoré is not a simple definition. He has outlined eleven "incidents," explaining that all of these must exist within a legal system in order that ownership be considered a meaningful concept in the sense that we understand it in the context of a modern society. Honoré does not, however, insist that all incidents apply in every case in which a party might be considered an owner: "though they may be together sufficient," they "are not individually necessary conditions for the person of inherence to be designated owner of a particular thing" (1961/1987, p. 165). Moreover, he also rejects the idea that any one incident might be considered decisive: "in the case of all the listed rights, however, it is possible to put examples which would lead to the opposite results from that sanctioned by usage" (1961/1987, p. 176/7). Thus, not all of the incidents need to apply for a relationship of ownership to exist and there is no one incident which is decisive.

There is, however, a body of literature that has been critical of this approach. For instance authors such as Penner (1996; 1997), Smith (2011; 2012), and Merrill (1998) argue that there are some attributes or subsets of attributes of ownership that are decisive in determining whether ownership exists or not. For these authors, exclusion is the deciding characteristic of ownership.

We can show that the right to exclusion does not belong to shareholders as regards the corporation. The corporation owns its assets and the right to manage the business which rests with management. Control of the assets of the corporation and the business therefore does not belong to shareholders. The corporation has legal capacity so lawsuits concerning the running of the business or control over the assets would be the concern of the corporation not the shareholders. However, the shareholders do have the right to exclude as regards their shares which they straightforwardly own. In other words, the view put forward by Penner, Smith and Merrill as well as others does not support the view that shareholders own corporations.

3.2.2 When we ask whether the corporation can be owned what exactly are we considering as the object of ownership?

Before I launch into a consideration of the eleven incidents as applied to the corporation (as a potential object of ownership) I will now examine briefly what exactly I am considering as being owned (or not being owned). There is some degree of confusion regarding the nature of the corporation and of shares.

a) Shares

First of all, there is no dispute about the shares themselves – shareholders own their shares. This has been affirmed repeatedly in the literature[24] and is not, in any case, the subject of this chapter. Shares are claims, "a rather complex form of chose in action" (Davies & Worthington, 2016, p. 512).

I should make it clear that throughout this chapter I will be describing legal ownership as opposed to beneficial ownership. Beneficial ownership relates to a situation where one party is the legal owner of an asset but another party (the beneficial owner) exercises control or receives the benefits arising from ownership of the assets. In the United States Section 13 of the Exchange Act

[24] For example (besides the examples are given in section 3.1.7), Stout (2002): "shareholders do not, in fact, own the corporation. Rather, they own a type of corporate security commonly called 'stock'" (p. 1191); Ireland (2003): "the existence of the share as a distinctive, autonomous form of property, quite separate from the company's assets (p. 477)." Also Deakin: "The corporation, in turn, cannot be owned as a 'thing' precisely because (juridically speaking) it is a person - a legal subject - in its own right" (2012, p. 356).

(1934) governs the requirements of investment managers, custodians and other agents to inform the SEC about the beneficial owners of securities that they hold. References to beneficial ownership in the corpora are made largely in the context of the holding of securities by agents on behalf of clients and the requirements of Section 13. Beneficial ownership of shares and the distinction between beneficial and legal ownership, is not of central importance in this thesis, since use of the term "ownership" in this context is not inconsistent with the legal meaning of the term.[25]

b) Assets

It has already been established clearly in Section 3.1.1 above that as a separate legal person the corporation owns its own assets which cannot therefore be owned by any other party. Some writers such as Oliver Hart (1989) have mistakenly confused the corporation with the collection of its non-human assets implying that the shareholders own these assets or at least "property titles" connected with them (Chassagnon & Hollandts, 2014). This view represents "a mischaracterisation of both the corporation and the nature of the corporate shareholder's property" (Ireland, 2003, p. 477). The question of who owns the assets of the corporation is therefore settled and we will not examine it further.

c) Owning a fund

Honoré lists corporate shares as an example of funds and Schrader (1999) has also expressed support for this view: "it is the fund, the collection of capital that makes possible the creation of the corporation, that is collectively owned by the stockholders. Much in the same manner, an individual may own a savings account, a bond, a certificate of deposit" (p. 123). Schrader does not specify exactly what constitutes the fund that shareholders own or how it might be quantified.[26]

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[25] In the United Kingdom government guidelines (government, 2023) define "beneficial ownership of companies" as ownership of 25% or more of the equity. However, the 2006 Company's Act (2006) on which these guidelines are based refer neither to ownership of companies nor to beneficial ownership. The relevant section of the Act (Schedule 1A) refers to "ownership of shares," "ownership of voting rights," "ownership of the right to appoint or remove directors," and to "People with Significant Control."

[26] If the shareholders were owners of a fund, there would be a number of possible ways of quantifying the value of such a fund. One could simply take consider it to be the value of all of the non-human assets of the corporation. In this case we could consider either historical cost or market value to capture the full monetary amount of the fund. Alternatively, we could consider the amount actually contributed by the shareholders – namely the originally subscribed capital plus retained earnings (as accumulated foregone dividends) – this would amount to the balance sheet item "shareholders' funds."

According to Honoré (1961/1987), a fund is the "monetary equivalent of a collection of things or claims or both" (p. 182).

Honoré has this to say about ownership of a fund (1961/1987, p. 182):

> *A variable collection of things may be owned and managed like a particular thing but as a matter of convenience lesser interests in and claims to the collection are not construed as giving the holder powers of management or security against the alienation of particular items in the collection. Such claims are in effect claims to the income and/or capital of a fund which may vary in value and will in any case be composed of varying items.*

The idea of the shareholders as owners of such a fund does not stand up to scrutiny. We have already established that the shareholders have no kind of ownership interest in the assets of the company. Moreover, they have no claim on the capital. As Blair (2003) has shown, once money is invested as equity in a corporation, it is locked in and accessible only to the corporation itself. The shareholders (unlike creditors) have no right to claim any part of the sums they invested at any time during the life of the company. In addition, the shareholders also do not have a right to the income arising from the corporation's assets. The allocation of dividends is a decision made by the board of directors who act as agents of the corporation itself. Thus, shares are different from savings accounts, bonds or certificates of deposit. In each of these cases, but not for shares, the owner is entitled to a return of the initial capital invested and a contractually agreed level of income. Thus, the corporation is itself the owner of the fund that constitutes the monetary equivalent of its assets. The historical development of the corporation which resulted in the current nature of the corporate fund provided by the shareholders but then becoming the property of the corporation has been described in detail by Watson (2018; 2019; 2022). Upon the dissolution of the firm either voluntary or involuntary the assets (or their monetary equivalent) revert to the shareholders only after all other liabilities have been met.

d) The firm

After considering the assets, share and the idea of a fund, what remains is the corporation itself. By "corporation" I mean the overall organisation incorporated in law. The overall organisation was characterized by Berle & Means in the following way: (1932/1993, p. xxiv)

Businessmen describe an enterprise, great or small, as "the property." They do not mean merely the physical plant. They include access to all the facilities necessary to produce, transport, distribute and sell. They mean an entire organization of personnel without which the physical plant would be junk; they mean a hierarchy of executives, technical experts, sales managers and men; as well as the dealer organization and the labor-relations habits.

It is through incorporation that, through its status as a separate legal person, the business organisation is able to function in law as a separate entity. Firms are incorporated precisely to provide the legal structure of a separate entity.

I will now examine using Honoré's eleven incidents whether the corporation can be owned and will demonstrate that it cannot be owned except possibly by itself.

3.3 Honoré's Incidents of Ownership

In this section we will examine the eleven incidents in order. There are ten subsections since the incidents of transmissibility and absence of term are considered together. We will start by explaining the meaning of the respective incident and then we will consider how (if all at) it might be applied to the corporation as a potential object of ownership. We will consider to which party (if not the corporation itself) the incident in question might be applicable.

3.3.1 The Right to Possess

This right, in Honoré's words, conveys "exclusive physical control" (1961/1987, p. 166) over the object of ownership. This includes the legal right to recover property in the case that the owner has been dispossessed of it without their consent; this distinguishes possession from the right to possess. I have already established that the company's assets belong to the company itself and not to any other parties.

Since the corporation is an institutional entity, it cannot be possessed in a physical sense. If there is some abstract sense in which shareholders (or another party) could possess the corporation without possessing the assets this would negate the legal personality of the corporation (Ciepley, 2020).

3.3.2 The right to use

Honoré suggests two interpretations of the right to use: "on a wide interpretation of 'use', management and entitlement to income fall within use. On a narrow interpretation, 'use' refers to

the owner’s personal use and enjoyment of the thing owned, and so excludes management and entitlement to income” (Honoré, 1961/1987, p. 168).

If we consider the wider interpretation we shall shortly see that the right to manage accrues to the management of the company, acting in the interests of the company itself. The entitlement to income also accrues to the company itself. Thus, in the wide sense this right is not unequivocally in the hands of either the management or the company.

Considering the narrower interpretation the corporation is an institutional entity and cannot be used for personal enjoyment. The corporation itself as an actor cannot use assets in a personal sense. This incident is not applicable for the corporation either as a potential asset owned or as an owner of assets.

3.3.3 The right to manage

Honoré has summarized the right to manage as “the right to decide how and by whom the thing owned shall be used” (1961/1987, p. 168).

Since the corporation is not a human being but an institutional entity, actual decisions (exercising the right to decide how the corporation is used) need to be made by human beings. The board of directors of a corporation are responsible for its management and are, as Davies (2010) explains, agents of the corporation itself and not the shareholders.

Indeed, it is not only a right but also a duty of the board of directors to manage the corporation as its agents. In large corporations the board may delegate some of this work to committees or to a hierarchy of managers and employees who are not board members. Management of a corporation means conducting its business and managing its capital structure. This requires the making of decisions over the purchase, leasing and disposal of assets; expenditure of funds; negotiation of contracts; the organisation of work; the development of longer-term strategy and direction as well as capital structure. This type of management therefore necessarily includes the right to manage the corporation’s funds and assets.

The UK Companies Act of 2006 (Companies Act 2006) spells out the responsibilities of directors charged with running the company in Sections 171-173 (p. 80):

S. 171 Duty to act within powers. A director of a company must − (a) act in accordance with the company's constitution, and (b) only exercise powers for the purposes for which they are conferred.

S. 172 Duty to promote the success of the company: (1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole.

Moreover, s. 173 spells out the "duty to exercise independent judgement" (p. 80). Thus, directors are obliged to exercise independent judgement in the interests of the company taking into account a range of other interests. The formulation "for the benefit of its members" suggests a degree of ambivalence regarding the nature of the corporation as a separate entity and the role of shareholder/members. Nevertheless, it remains the case that it is the managers and directors who hold the right to manage the corporation. They are constrained by the company's constitution. The situation in the United States is similar.[27]

Moreover, courts in the English-speaking world have generally applied the "business judgment rule," allowing directors of public corporations considerable flexibility in decision making provided that personal conflicts of interest were avoided (Stout, 2012).

This applies equally to small companies as to large companies. Referring to the Model Articles for private companies provided under the 2006 UK Companies Act, Worthington (2016) states that: "the overriding assumption in these Model Articles is that the directors, not the members, will manage the business of the company" (p. 188). This means that the independence of directors remains despite the fact that the 2006 Companies Act has been described as the addition to UK company law which is the most consistent with the shareholder value doctrine (Mayer, 2013; Haldane, 2015).

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[27] The American Bar Association's Report of the Task Force of the ABA Section of Business Law Corporate Governance Committee on Delineation of Governance Role and Responsibilities (2009) states:

> "the board of directors is vested under state law with managing or directing the business and affairs of the corporation, and therefore is recognized in law as the primary corporate decision-making body (p. 8)."

On the independence of directors, the report has this to say:
"contrary to the often-used analogy, directors are not 'agents' in a principal-agent relationship with shareholders, since shareholders cannot dictate board actions and directors are obligated to make their own judgements based on the best interests of the corporation and bear the full liability for those judgements (p. 5)."

Even in the instance where there is a shareholder who owns a hundred percent of the equity of the corporation this remains the case. Nothing in the law on the role and responsibilities of directors is connected to the level of concentration of equity ownership. It may, however, be the case that the roles of director and shareholder are vested in the same human individual. Davies (2010) gives an elaborate hypothetical example of two entrepreneurs (Smith and Jones) who found a small business which they incorporate and in which they both jointly fill the roles of shareholders, managers and workers (2010, p. 23). As Davies further explains they have control over the business; though it may appear as if this control is due to the fact that they own shares it is actually due to their role as managers and workers.

In large corporations with dispersed shareholding in practice the voting power of shareholders is limited to a few choices, including the election of directors, although in practice this process is mostly controlled by management. In many corporations there are classes of shares that carry no voting rights at all. In practice only appointed managers have the knowledge, access to resources and time to manage the firm. This is a crucial point addressed in detail by Berle and Means (1932/1993) in their seminal work which has been the subject of much discussion in debates on corporate governance ever since. Schrader (1999) summarizes the case in clear terms (1999, p. 108):

> *there is something very implausible about the claim that the control of the large public corporation "really" lies with the stockholders. This was recognized even back in 1890 by Alfred Marshall. Similarly, as all of us who have owned any corporate stock know, the normal corporate "election" process is thoroughly controlled by management. There is normally no more than one candidate for each position on boards of directors. This kind of process is hardly reflective of a "representative democracy," even "in theory." Management's control of stockholders' access to agendas, information, and the identity of other stockholders effectively forecloses stockholder control over the corporation. Even if these factors could be overcome, the transaction costs that would confront any stockholder attempt at corporate control clearly leave stockholders with an effective choice between accepting the course set out by management and simply divesting themselves of stock in that corporation and investing elsewhere.*

Moreover, Schrader explains the majoritarian nature of that control which shareholders do exercise. No individual shareholder has absolute control even in the limited areas that remain the domain of shareholders as a group. Any shareholder may find themselves outvoted at any time. The only way to overcome this conceptual obstacle is to assume that the shareholders form a homogeneous group with the same interest as Hansmann (1988) does. As has been pointed out by Greenwood (1996) and also Stout (2012) this is not a realistic assumption as shareholders represent diverse interests; furthermore each shareholder will have a variety of other interests beside their shareholding. There are frequently agency conflicts between large shareholders and minority shareholders as well as between those shareholders with differing time horizons (long-term versus short-term).

Directors also hold the right to manage another important aspect of a large corporation namely the capital structure. It is they who decide whether to attempt to issue new shares and when, whether to buy back existing shares and when share splits occur. In other words, as Sappideen states, managers "decide on the birth and continued existence of shareholders" (1996-1997, p. 27).

In conclusion, the directors exercise the right to manage the corporation as its agents (i.e. the corporation is the beneficiary) only using their power for the purposes intended subject to limited accountability to shareholders who are given this right by law and by the constitution of the corporation.

3.3.4 The Right to the Income

The income of a company belongs to the company itself, and not to the members or directors.

What remains once all costs have been subtracted from revenues is ordinarily considered to be the profit − or surplus − of the company; this, at least in accounting terminology, constitutes the income of the firm. Profit net of tax is either distributed to the shareholders in the form of dividends (which may take the form of newly issued shares) or reinvested in the company.

Decisions regarding the payment of dividends are made by the directors of a company and are discretionary: in other words, the directors are not obliged to pay any dividends. Moreover, the shareholders have no claim upon reinvested profits at any time – funds, once invested in the company are locked in.

Thus, the company's profit is the total sum that is available for the directors to pay to shareholders. It does not constitute the amount that is due to shareholders as of right.

As Davies (2010) points out (p. 18):

in fact, companies tend to be extremely cautious in granting legally enforceable entitlements to dividends to ordinary shareholders [...] Thus, the board usually has an extensive legal discretion whether it pays out a dividend or invests the surplus in new projects. Broadly, the same is true of other mechanisms whereby a company might return surplus to the shareholders, for example, by way of share buy-backs.

Deakin (2012) makes the same point: "virtually all national company law systems give the board discretion over the size and regularity of dividend payments, which may amount to a discretion not to make them at all" (p. 357). He also makes reference to the American Bar Association's Report of the Task Force of the ABA Section of Business Law Corporate Governance Committee on Delineation of Governance Role and Responsibilities (2009) which states that the board of directors have a duty to determine dividends and that this duty cannot be delegated to any other authority.

Hence in conclusion there is no level of income to which shareholders are automatically entitled and the right to the income from the corporation (or from its business) accrues primarily to the corporation itself

3.3.5 The Right to the Capital

Honoré defines this as the "power to alienate the thing and the liberty to consume, waste or destroy the whole or part of it" (1961/1987, p. 170). His focus is on the power to alienate through any mode.

Given that it is an abstract entity, one cannot consume or waste a corporation. The shareholders may choose to "destroy" the corporation in the form of a voluntary liquidation. However, as we have seen in Section 3.1.1 above, in this unusual event the shareholders' access to the assets is subject to the fulfilment of all outstanding liabilities and subject to the power of the liquidator.

As for the power to alienate as a separate legal person the corporation, cannot be bought and sold.[28]

3.3.6 The Right to Security

In Honoré's words, this right "is in effect an immunity from expropriation, based on rules which provide that, apart from bankruptcy and execution for debt, the transmission of ownership is consensual" (1961/1987, p. 171).

In liberal democracies, it is generally the case that assets may not be expropriated except under special circumstances such as eminent domain (moreover expropriation under eminent domain is subject to legal challenge so can take place only once that challenge has failed); in such a case the owners must be compensated.

If the state were to decide to take possession of part of the assets of a corporation (for example if there were a plan to construct a motorway on land owned by the corporation) then the compensation would be provided to the corporation as the legal entity owning the assets.

Let us suppose that the state were to take control of the corporation as a legal person, i.e. to nationalize it. In this case the shareholders would be compensated for the loss of their shares. The act of nationalization amounts to a compulsory purchase of the shares – the shareholders are receiving compensation for the loss of their shares rather than for the loss of the company which would remain a separate legal entity (although its status might change) albeit under the control of new managers.

Therefore, this right belongs to the corporation itself.

3.3.7 Duration – the Incidents of Transmissibility and Absence of Term

The connection of most actors with the corporation is restricted in time to the duration that a contract or business relationship remains in force. Executives and employees are connected to the corporation by employment contracts – once the contract is terminated the relationship with the firm ceases. Access to the assets and funds of the firm including the powers, rights and responsibility to use them ends and is not transmissible. Former employees may be entitled to payment beyond the time of their employment such as pensions and severance packages; in some

[28] A corporation's assets may be sold as may its shares (in which case the corporation's existence continues independently of the transfer of shares from one owner to another).

cases these may be inheritable but we may regard this as a form of compensation for work performed in the past. The principle applies to members of the board of directors of a corporation.

If a corporation were to cease to exist as an independent entity due to a merger all relationships would pass to the successor entity. The assets of the corporation would also transfer to the new or acquiring firm.

A share may indeed be passed on by the shareholder to an heir along with the full package of associated rights. Once issued a share is not limited by term; a share will continue to exist as long as the corporation exists. If the corporation merges with another corporation or is acquired then the shares are converted into shares in the new or acquiring entity or are bought in return for a cash sum. A share may be bought back by the corporation but this is a voluntary transaction. Only in the case of liquidation is a share destroyed with no (guaranteed) form of cash compensation. Moreover, the shareholder's ownership of the share is not in any way limited by term.

Thus, the shareholder's relationship with the corporation is transmissible and not limited by term as long as the latter remains a going concern. In this sense these two related incidents apply to the relationship of the shareholders with the corporation.

However, this transmission does not have any impact on the firm as an entity – the composition of shareholders may change on a continuing basis without any impact on the composition of its assets or of its management. In this sense it would appear debatable as to whether these incidents apply to the shareholders' relationship with the share and the corporation or with only the share. It is in any case clear that this incident does not apply to any other party's relationship with the corporation.

3.3.8 The Duty to Prevent Harm

According to this incident, the owner must not only not use the thing owned to cause harm but must also not allow others to use it in order to cause harm.

As Honoré has explained, we all have the obligation not to use any item to harm others regardless of ownership. The special feature of this incident is that, regarding things we own, we have a duty to prevent others to use those things to commit harm.

As we have established in Section 2.2.4 above as separate legal entities corporations may sue and be sued in their own names. Therefore, the primary duty to prevent harm rests with the

corporation itself; this includes harm caused by its assets or their use. As we have seen corporations and not shareholders are held liable in cases of tort, negligence or malfeasance by directors or employees under the doctrine of respondeat superior. Moreover, corporations themselves may be subject to criminal prosecution; in such cases sanctions may take the form of fines or loss of licenses or permits. For example, in the United Kingdom a corporation may be prosecuted under the Corporate Manslaughter and Corporate Homicide Act of 2007 (UK government, 2007);such a prosecution need not be related to an act of negligence on the part of any individual manager.

However, managers and employees may also be liable to prosecution when harm clearly has been done. Acting on behalf of a corporation also does not bring protection from prosecution in cases when an individual has committed a criminal act. The exact nature and demarcation of the duty to prevent harm by management, employees and the corporation itself vary across different jurisdictions though in recent years there have been attempts at broadening the principle of extraterritoriality in corporate activities and at creating international standards. The Ruggie principles (OHCHR, 2011) adopted by the United Nations Human Rights Council are an example of such an attempt.

In the case of shareholders the position is very clear. Shareholders bear no responsibility for the harm done by the corporation or by its employees and management. This is clearly the case with the financial liabilities of the corporation (which we shall cover in a later section). As Robé (2009) has written: "Par principe, les actionnaires sont ainsi isolés des dommages causés par la société dans laquelle ils ont investi…. quand les dommages sont subis, quand les problèmes sociaux sont là, ce sont les autres composantes de l'entreprise, ou son environnement naturel, social et humain, qui en subis sent le coût[29]" (2009, str. 34).

Green (1993) cites examples such as the case of Union Carbide in Bhopal in which large modern corporations have the capacity to do immense damage yet shareholders bear no responsibility for any harm caused. One may argue that a fine is equivalent to a penalty for the shareholders thus claiming that the financial burden falls on this group as the ultimate risk bearers. However, the

[29] In principle, shareholders are thus isolated from the damage caused by the company in which they have invested. When social externalities occur, the costs are borne either by other the company's other constituents or by the natural, social and human environment.

exact distribution of the burden of a fine is decided by management. Dividends may indeed be cut but it is equally possible that profits will be lower whilst dividends may remain unaltered or that prices will be raised and the financial burden passed on to customers. Similarly, other parties might be affected through cost-cutting measures.

This applies even in cases where there is a majority shareholder. The legal position on the duty to prevent harm is not related to the concentration of shareholding. There may be exceptions in corporate group structures where courts ascribe responsibility for subsidiaries to parent companies.

Thus, this incident largely applies to the corporation itself as well as to managers as the law regulates their conduct.

3.3.9 Liability to Execution

This is the liability to have the ownership right removed as a result of not being able to meet a debt obligation: "the liability of the owner's interest to be taken away from him for debt, either by executive for a judgement debt or on insolvency" (Honoré, 1961/1987, p. 175).

As we have seen in Section 3.1.2 above the assets of the shareholders are clearly separate from the assets of the corporation. Under the provisions of entity shielding and limited liability where this exists (which is the case for the vast majority of incorporated companies[30]), the shareholders and the corporation are not responsible for each other's financial liabilities. The corporation itself is liable to execution on account of its own debts.

The assets of the corporation are protected from the claims on the property of any other party, including management, employees, creditors, customers and suppliers, just as the assets of other parties are generally not liable to be seized in the process of recovery of the debts of corporation.

3.3.10 Ownership and Lesser Interests: Residuary Character

This incident concerns the status of the owner when other parties have lesser interests in a thing owned such as leases. For Honoré the residuary character of the owner's interest was the key determinant of ownership. The residuary character refers to the fact that after the termination of other lesser interests the corresponding rights pass back to the original owner.

[30] According to Davies (2010) in March 2009 out of a total of nearly 2.7 million companies registered in the UK approximately 5000 were unlimited.

The corporation with its unlimited duration has been constituted in order to provide continuity in an environment where most relationships are temporary. A number of parties hold lesser interests in a company; these are viewed as "lesser interests" if one considers shareholders to be the owners of the company. Board members, executives and employees may terminate their relationship with the firm and will therefore be replaced by others. Customers and suppliers may decide to do business with other entities to be superseded(hopefully) by others. A firm may opt to change suppliers. Once a bank loan is repaid the relationship ceases. Bondholders may sell their positions in the secondary markets or else the bonds mature and the principal is repaid. In all of these situations the interest is either naturally terminated or seamlessly transferred. Under no circumstances does the interest pass on to shareholders. In this sense this incident is not really applicable to the corporation which has been designed as an institution able to survive transient relationships. If a corporation is the subject of a merger then all relationships pass on to the successor organization.

3.3.11 Conclusion

This analysis has shown that the incidents of ownership do not support the view that a corporation may be owned by an external party. Some of the incidents namely the right to the income, the right to the security, the duty to prevent harm and the liability to execution straightforwardly belong with the corporation itself. To the extent that these together justify a relationship of ownership it might be said that the corporation owns itself.

The right to manage the corporation is held and exercised by the board of directors acting as agents of the corporation. The directors (as well as managers and employees) may also be liable for any harm caused by the corporation to the extent that this is defined by law so they share this incident with the corporation itself.

The only incidents that could rest with the shareholders are the incidents of transmissability and absence of term. These two incidents correctly apply to the shareholder's relationship with the company. They also apply to the share itself. It could be argued that they relate therefore to both the share and the company – or just to the share. All of the remaining incidents apply to the share. Thus, shareholders do indeed have the full bundle of rights and obligations associated with their shares.

The only other incident that may apply to shareholders in their relationship to the corporation is the liability to execution in the rare event that the company does not have limited liability.

The analysis of the incidents does not therefore support the view that either the directors or the shareholders own the company.

This analysis applies to closely held companies and those with a majority shareholder including those which were founded and are managed by one single entrepreneur who plays the roles of director, shareholder and employee. Since this applies to the case in which there is one single shareholder it does not apply to the body of all the shareholders of a company. Shareholders do not own the corporation, individually or collectively.

To an outside observer, the latter type of business may look very similar to a sole trader. This is a point that is alluded to by Lynn Stout (2002): "thus, while it perhaps is excusable to loosely describe a closely held firm with a single controlling shareholder as 'owned' by that shareholder, it is misleading to use the language of ownership to describe the relationship between a public firm and its shareholders" (p. 1191). It should be noted that Stout does not exactly endorse the idea of closely held corporations being "owned," couching her statement with the phrases "perhaps excusable" and "loosely describe."

3.4 Confusion and contradiction

In the literature on corporations, corporate governance and corporate law, there is a lack of clarity relating to the question of whether a corporation can be owned. In this section we will address some of these areas of confusion.

3.4.1 Non-legal perspectives on the nature of the corporation

A number of instances of confusion seem to have arisen from non-legal understandings of the nature of the corporation.

The "nexus of contracts" view

Overall, the case of the treatment of ownership under the "nexus of contracts" view is an interesting case epitomising the confused manner in which this subject has been approached by economists and some lawyers.

This is a theory of the firm that regards the firm as a legal fiction which in reality is nothing more than a collection of contracts. In their seminal paper Jensen & Meckling (1976) tell us: "it is important to recognize that most organizations are simply legal fictions which serve as a nexus for a set of contracting relationships among individuals […]There is in a very real sense only a multitude of complex relationships (i.e. contracts) between the legal fiction (the firm) and the owners of labour, materials and capital inputs and the consumers of output" (1976, p. 310/311). The implication here is that there are different input owners working together as contracting parties. The idea of the firm comprising contracting parties which are all resource owners appears in the work of a number of writers who have adopted the 'nexus of contracts' view; Cheung (1983) is such an example.

Nevertheless, Jensen's and Meckling's paper is peppered with references to shareholders only as owners and the agency principle. For example, the authors "confine our attention in this paper to only a small part of this general problem – the analysis of agency costs generated by the contractual arrangements between the owners and the top management of the corporation" (1976, p. 309).

Some of the lawyers who support the nexus of contracts view of the corporation have shown greater care in avoiding references to ownership of the corporation by shareholders (or any other party). For instance Easterbook and Fischel (1983) avoid such references in their work whilst continuing to treat the corporation as essentially a fiction: "just a name for a great web of contractual arrangements" (p. 401). Bainbridge (1997) concurs with this view of the firm: "the firm is simply a legal fiction representing the complex set of contractual relationships between these inputs. In other words, the firm is not an individual thing, but rather a nexus or web of explicit and implicit contracts establishing rights and obligations among the various inputs making up the firm" (p. 859). He also goes on to use the notion that the corporation essentially does not exist therefore specifically rejecting the idea that it might have owners (1997, p. 863 (footnote 22)).

A few years after Jensen's and Meckling's paper, Fama (1980) also spelled out a rejection of the idea that shareholders own the firm. Indeed, he explicitly claimed that ownership is not a meaningful concept in this context. His view was that the shareholders are owners of capital:[31]

[31] Fama failed to explain exactly what he means by "capital" – we are not told whether he meant the capital goods of the firm or the share capital.

"however, ownership of capital should not be confused with ownership of the firm. Each factor in a firm is owned by somebody. The firm is just the set of contracts covering the way inputs are joined to create outputs and the way receipts from outputs are shared among inputs" (p. 290). Indeed, well before Fama's paper Demsetz wrote the following: "shareholders are essentially lenders of equity capital and not owners, although they do participate in such infrequent decisions as those involving mergers. What shareholders really own are their shares and not the corporation " (1967, p. 358/359).

Both Bainbridge and Fama appear to have reached the same conclusion, i.e. that the corporation cannot be owned, but by denying its existence. However, the idea that the corporation is not real is flawed. Deakin (2012) explains that legal capacity, whilst a human institution and not a natural concept, is real and that "it is a misleading strategy to treat the law as a 'fiction' which conceals 'real' relationships of a fundamentally different kind than those implied by the law's account of juridical relations" (p. 355).

Indeed, even Bainbridge, in a more considered articulation of the nexus of contracts view – in which he suggests that a corporation has (and not "is") a nexus of contracts – has explained the risks of ignoring the legal personality of the corporation:

"Yet, perhaps some deference should be shown the corporation's status as a legal person. Corporate constituents contract not with each other, but with the corporation. […] To dismiss all of this as mere reification ignores the axiom that ideas have consequences" (Bainbridge, 2002, p. 16).

It would be more precise to describe the corporation as an artificial phenomenon rather than a fiction or merely an idea. To talk of a fiction implies something that does not exist or is not real. Something that is artificial is not occurring in nature but is made by humans. A corporation as a human institution, is indeed not a natural phenomenon. However, it is very much a real entity, the existence of which has clear economic, legal and social consequences. In Searle's (1995) formulation corporations and their status as legal persons are very much institutional facts (as opposed to brute facts).

Dewey (1926) explained almost a century ago "that 'artificial' is not synonymous with 'fictitious,'" citing Machen (1911) who gives the example of an artificial lake that is not the same

thing as an imaginary lake. An artificial lake may have been constructed by humans; nevertheless, one may fish or swim in it. The lake is not a fairytale lake.

Moreover, the central role ascribed to the shareholder in the nexus of contracts view, that of an input owner merits clarification. Fama (1980) claims that the shareholder is the owner of capital. It is correct that shareholders contribute capital to the corporation and own it up to the point it is invested in the company. However, once the capital is invested – and money is exchanged for shares – due to the lock-in principle it is owned by the corporation and not the shareholders.

Other economists' non-legal interpretations of the nature of the corporation

As we have also mentioned earlier, Oliver Hart (1989) has suggested that the shareholders own the non-human assets of the corporation which is incorrect. This is echoed in earlier work in financial economics, for example by Black & Scholes (1973) and Myers (1977). Hart appears to view the corporation as a collection of assets therefore ignoring its separate legal personality altogether. Alchian and Demsetz (1972) also show some confusion in their exposition of the team production theory. Regarding firm ownership, they state with respect to the classical or entrepreneurial firm (1972, p. 783):

> *it is this entire bundle of rights: 1) to be a residual claimant; 2) to observe input behavior; 3) to be the central party common to all contracts with inputs; 4) to alter the membership of the team; and 5) to sell these rights, that defines the ownership (or the employer) of the classical (capitalist, free-enterprise) firm. The coalescing of these rights has arisen, our analysis asserts, because it resolves the shirking-information problem of team production better than does the non-centralized contractual arrangement. The relationship of each team member to the owner of the firm (i.e., the party common to all input contracts and the residual claimant) is simply a "quid pro quo" contract.*

Alchian and Demsetz do not consider the impact of incorporation on the allocation of this bundle of rights. There is no discussion of whether or how the introduction of a new legal person in the form of the corporation would alter the identity of their "owner." As we have shown in Section 3.1.3, rights 1) and 3) in their bundle belong with the corporation itself. Profits belong to the corporation and are distributed as dividends at the discretion of the board and contracts are with the corporation. Rights 2) and 4) are exercised by the board of directors of the firm (or

managers with authority delegated to them by the board) in the interests of the corporation. Only right 5), belongs with the shareholders – they may indeed sell their shares.

In a footnote they explain at length that shareholders should be seen as a class of investors rather than as owners. The position of shareholders differs to that of lenders mainly in terms of their outlook – they are more optimistic investors and less risk-averse (note 14, p. 789). This echoes Demsetz's comments in an earlier article which I mentioned above. If not the shareholders who then are the owners of the firm to whom they refer to in the main body of the article? This apparent contradiction is not addressed.

3.4.2 Non-legal perspectives on ownership

Hansmann's definition of ownership

Hansmann (1988) regards the owners of an enterprise as "those persons who share two formal rights: the right to control the firm and the right to appropriate the firm's residual earnings" (p.269).

This is a view that Hansmann expands upon in his book "The Ownership of Enterprise" (1996). In a piece co-authored with Armour and Kraakman (2009), he sums up this definition as follows (p. 14):

> there are two key elements of the ownership of a firm as we use the term "ownership" here: the right to control the firm and the right to receive the firm's net earnings. The law of business corporations is principally designed to facilitate the organization of investor-owned firms – this is firms in which both elements of ownership are tied to investment of capital in the firm. More specifically, in an investor-owned firm, both the right to participate in control – which generally involves voting in the election of directors and voting to approve major transactions – and the right to receive the firm's residual earnings, or profits, are typically proportional to the amount of capital contributed to the firm.[32]

There are a number of problems with this characterization of ownership.

First, this definition does not draw on legal treatments of ownership, namely those provided by Honoré, Penner or Smith nor does his work refer to the broader literature on ownership.

[32] This passage remains unaltered in the third edition of The Anatomy of Corporate Law.

Secondly, the right to receive the income from the firm accrues to the corporation and not the shareholders.

Thirdly, the argument that shareholders' interests deserve to be given priority based on the residual nature of their rights to income and control is in fact based on their lack of the actual features of ownership: "what defines shareholders is not that they own most or all of the company. Rather they 'own' least as residual claimants. Associating 'shareholding' with 'ownership' thus makes little substantive sense, despite its widespread use in popular discourse" (Haldane, 2015). Contractual incompleteness affects any party that brings knowledge, skills or resources to the corporation besides and perhaps more so than shareholders. The claims of other parties to residual claimant status were covered in greater detail in Chapter 2.

Lastly, the reasoning implicit in Hansmann's argument somewhat begs the question (Blair, 2006). To claim that the shareholders are owners because they have control rights does not explain why they have (or should have) control rights in the first place.

Barzel (1998) has developed an elaborate theory of divided ownership of assets and resources which is in line with the theory of the firm as a "nexus of contracts." He regards the shareholders as owners of the corporation due to their role as the providers of a guarantee. The need for a guarantee arises because some of the contracting parties in a firm do not have the wealth to cover variability themselves. This understanding of what constitutes ownership is not consistent with any of the common legal definitions. It also raises the question as to what sort of status Barzel would allocate to insurers. Are they in some sense owners of the assets that they insure?

Outright claims that shareholders own the corporation

Even those such as Eisenberg (1999) who quite explicitly assert that shareholders own the corporation fail to fully back up their assertion. Eisenberg explicitly refers to Honoré's incidents − "The body of shareholders has most of the incidents except direct control" (p. 825) − but fails to enumerate how they apply. I have demonstrated above that shareholders do not hold most of the incidents of ownership.

3.4.3 Contradictions

References to shareholders as "owners" of corporations can sometimes be found in the work of authors who have elsewhere very clearly explained that the shareholders do not own a corporation.

For example, Davies (2010) is very clear in emphasizing that the shareholders do not own the corporation (see p. 6 above) and yet there are a number of instances in which he lapses into referring to shareholder ownership of companies. Here are two examples (this list is not exhaustive and neither has this search been conducted systematically across law textbooks):

- there are four references in the book to "owner-managed companies"
- "One form of this objection is that takeovers are driven, not by the gains to be made by addressing the shareholders' agency costs (or realizing economies of scale or scope) but by the possibilities takeovers open up for offerors to transfer wealth from stakeholders such as employees or creditors to the bidder as the new owner of the company" (p.143).

Another example can be found in the work of Worthington (2016) who clearly spells out the implications of the legal personality of the corporation: namely that it owns the assets and the business. However, in a chapter on shares Worthington then goes on to write the following (2016, p. 580): "in total, these combined privileges and limitations on voting and financial rights raise the question of what it means when we say that the shareholders 'own' the company."

Davies and Worthington (2016) cite the Short v Treasury Commissioners ruling which concludes that shareholders are "not part owners of the undertaking" (1948, as cited in Davies and Worthington, 2016). They state that "the word 'share' has become something of a misnomer, for shareholders no longer share any property in common; at the most they share certain rights in respect of dividends, return of capital on a winding up, voting and the like" (2016, p. 787). However, they then proceed to claim that the shareholders have an interest in the company (as opposed merely to interests against which apply to bondholders), that this is a key feature of shareholding and that it is a proprietary interest. They then claim that "insofar as members can be said to own the company, the ordinary shareholders are its proprietors" (p. 796). This last statement is not entirely consistent with the assertion that shareholders do not share any property in common; the conditional suggested by the use of the word insofar indicates at least a degree of ambiguity on the part of the authors if not an outright contradiction.

Moreover, they do not expand on or explain the suggestion that the ordinary shareholders might be considered as proprietors of the company.

Other textbook authors also refer to the shareholders as owners whilst at the same time explaining separate legal personality. For instance Alix Adams (2014), a law academic, explains

the basic concepts of the company and legal personality as well as the limitations of the rights of shareholders covering albeit more briefly and in less detail the same ground as the other textbook authors referenced in this section. She then refers to shareholders as owners (p. 489): “the company is owned by its members and managed by its directors. In a very small company, membership and management may be synonymous but generally company membership does not give rights to dictate how the company is run on a day-to-day basis.”

This is also true of several US authors such as Bainbridge (2015) whose textbook on corporate law is peppered with references to shareholders as owners (for example: “the law’s conception of equity security holders as the corporation’s owners has the important consequence that corporate officers and directors owe fiduciary duties to the equity security holders” (p. 36) despite the fact that he has rejected this notion elsewhere (for example in his paper *The Board of Directors as Nexus of Contracts* (2002) in which he argues for what he terms the “director primacy” model).

None of these authors backs up the claim that shareholders are owners of the corporation with evidence or argumentation. A reasonable explanation for this fairly common inconsistency would be as Schrader suggests that it is simply the result of what he terms “entrenched linguistic habit.” He claims that “the language of corporate ownership has become so deeply embedded in popular usage that even those writers whose positions ought to lead them to reject the view that stockholders own the corporation continue to use that language” (p. 111). Schrader cites the example of Freeman, the key founder of the stakeholder model of corporate governance, in whose work he has found references to shareholders as owners. He argues that this is because “the modern corporate mode of organizing business activity has evolved out of earlier modes of organizing business activity in which ownership did play an important role” (p. 112).

3.5 Concluding remarks

Although shareholders are commonly referred to as “owners” in lay as well as expert parlance, I have tried to demonstrate that this is by no means an established truth. Indeed, it would appear that the predominant view amongst the majority of legal experts is that a corporation cannot be owned.

However, the habitual use of the terms “owner” and “ownership” may distort the debate on corporate governance or the role of the corporation in modern society. As Margaret Blair (1995) has pointed out, the word “ownership” has highly persuasive emotional connotations: “the problem

with calling shareholders the owners of corporations is that the word ‘owner’ has such a powerful, almost moralistic meaning in U.S. culture. Its use in this context cuts off debate by implying that certain rights and prerogatives should, by the very nature of things, flow to shareholders” (p. 16).

In the United Kingdom the word “members” also contributes to cutting off debate on the proper role and function of corporations. This applies to other cultures and social settings than the contemporary United States. It has been argued that ownership of some material possessions, namely those which have some sentimental significance, are an essential part of personhood and identity (Radin, 1982).[33] Different types of ownership (for instance, precious personal possessions[34] versus fungible financial assets) are not distinguished in language and terminology. This makes arguments based on ownership sound intuitively reasonable as well as psychologically and rhetorically compelling.

The emotional power of ownership strengthens its use as rhetorical tool. Veldman and Willmott (2020) and Johnston (2024) have pointed to the performative role of the use of the notion that shareholders own corporations in debates on corporate governance.[35]

Additionally, Ireland (1999) suggests that the remaining roles that shareholders do retain in corporate governance including their voting rights are the result of lingering confusion over this question of ownership: “crucially, of course, the ‘mistaken analogy’ of shareholder ownership, whether of the company itself or of ‘the capital’[in the nexus of contracts view], continues to cast a long shadow over the governance debate, serving as the main justification for the anachronistic retention by shareholders of exclusive governance rights and for the claim that public companies should be run predominantly, if not exclusively, in their interests” (p. 48/49).

Milton Friedman articulated an extremely influential argument for shareholder supremacy using the premise that shareholders are owners as a starting point: “the corporation is an instrument of the stockholders who own it” (1962/2009, p. 135). This claim could act as the basis of Friedman’s argument because he did not need to argue the case for ownership but was able to take it for granted that his readers also saw shareholders as owners of businesses.

[33] This is an idea that was developed from Hegel (1820).
[34] Honoré refers to the “paradigm […] of a single human being owning, in the full liberal sense, a single material thing” (1961/1987, p. 192).
[35] The idea of performativity, namely that words and statements can constitute a form of action and can initiate change, originated with the work of the philosopher J.L. Austin (1962/2009).

In Chapters 2 and 3, the main focus has been on the narratives that are to be found in the academic literature: in other words, the stories told by lawyers as well as economists. I have examined critically these perspectives with a view to dissecting the arguments presented. This has been an important part of understanding the intellectual underpinnings of the shareholder primacy ideology which is at the heart of this research project. The research questions, however, relate to the public discourse that accompanied the transformation of the arena of corporate control rather than the academic literature. My aim is to better understand the stories that have been told to actors in the arena of corporate control (as well as to the broader public). The next chapter will address how I intend to set about analysing the parts of that public discourse which relate to this project.

Chapter 4: Methodology

In Chapter 1, I explained that I find the concept of strategic action fields (SAFs) a useful framework for examining the changes that took place in corporate governance in the last decades of the twentieth century in the USA. The SAF that is central to this research project is the arena of corporate control. Prior to 1980 the incumbents in the SAF were corporate managers and the challengers were an assortment of players including part of the financial sector. A key transformation took place between 1980 and 2000 which saw a shift in the balance of power within the SAF away from the incumbents. Important roles were played not only by the actors within the SAF but also by external parties such as regulators and the media.

For this project I have selected the speeches of the SEC Commissioners during the period in question as the main subject of my research. Table 3.1 in Appendix 3 lists the speeches. As I explained in Chapter 1, these speeches constituted key interventions in the social movement that drove the transformation of the arena of corporate control. It was only practicable to identify a selection of these speeches for analysis. In order to address this limitation, I also created broader corpora of texts including the entire collection of SEC Commissioners' speeches over the 1980-1999 period as well as samples of corporate reporting from the *Wall Street Journal* and *New York Times*.

A key aim of this dissertation is to examine the persuasion strategies of the selected actors including argumentation and language choices. I plan to show how representations of various agents and institutions created cognitive effects that laid the ground for a transformation in the consensus view on corporations and how they should be governed. I will also compare and contrast the approaches revealed by my study of the two genres selected: public speeches and media reporting.

To recap, my research questions are as follows:

1. How did the discourse on corporate governance in the United States evolve between 1980 and 1999?
2. Has the use and meaning of the concept of corporate ownership influenced the public discourse on corporate governance?

3. How has the use of the concept of ownership in the discourse on corporate governance supported ideological positions?

Addressing these questions adequately requires selection of methodology designed for deep line-by-line study of substantial bodies of text. Incorporating into the analysis the important historical context is also critical. The analysis further requires a systematic examination of the various actors in the SAF along with the way they were represented in the speeches and how these representations changed over time. These speeches by SEC Commissioners had as a key objective the goal of persuasion and therefore argumentation analysis is also vital to addressing my research questions.

Moreover, the research questions require an examination of the extent to which the findings from the in-depth text analysis are replicated more generally, necessitating the selection of quantitative as well as qualitative techniques. Finally, an important aspect of my research was investigating the role of language in reinforcing ideology. This requires identifying ideas and habits of thought that are presupposed, or treated as common sense, in the texts that I have selected for study.

It is with these requirements in mind that I selected my methodology for this research project.

My research falls into two major parts. First, I conducted detailed analysis of a selection of speeches made by SEC Commissioners. For this part of my work I used methods that fall under the broad category heading of critical discourse analysis or CDA. My CDA analysis was primarily qualitative in nature although there were quantitative elements. I then assembled three corpora (or bodies of text) which enabled me to study a larger quantity of material. This corpus work does not involve detailed textual analysis but does permit more general conclusions to be drawn. The first of my corpora – the entire collection of SEC Commissioners' speeches over the 1980-1999 period (inclusive) – contains all of the texts which are the subject of my CDA analysis. It might be useful to regard the CDA analysis as "case studies." In Chapter 1, I explained my rationale for selecting SEC Commissioners' speeches and newspaper reports for this research project.

4.1 Critical Discourse Analysis (CDA)

4.1.1 Speeches of SEC Commissioners

The selection of the six speeches for Critical Discourse Analysis was based on a number of factors. First, I restricted the selection to speeches related to corporate governance which is the subject of this research project. Secondly, I wanted to study the whole of the period from 1980 to 1999 without leaving major gaps. This was important for tracing the development of thinking and rhetoric on corporate governance. The speeches that I selected for detailed analysis were spread out over the period beginning from the early 1980s and ending in the second half of the 1990s. Thirdly, I chose speeches covering different issues; I therefore broadly traced shifting preoccupations as described in the historical literature and evidenced in my corpus analysis. Thus, for example, in the 1980s interest was focused on mergers and acquisitions; this gave way to a focus on executive compensation in the early 1990s as well as the role of institutional investors. All of these major topics are covered in my analysis. Fourthly, I selected speeches of different commissioners – in my analysis there are no two speeches given by the same individual. Moreover, I sought out speeches of senior figures; four of the speakers in my sample were Chairmen of the SEC at the time of their speech; one subsequently served as Acting Chairman. Fifthly, I also wanted to ensure a diversity of political opinion thus mirroring the changes in government in the United States during the 1980s and 1990s. The speakers selected were appointed by the Carter, Reagan, Bush and Clinton administrations so therefore included Democrats as well as Republicans. Finally, my selection of speeches aimed to include a diversity of audiences with no single regular event being covered more than once. As I explained in the previous section the level of detailed analysis involved necessitated a relatively restricted sample of speeches; it was not feasible to therefore include all of the relevant speeches by SEC Commissioners over the period in question. This was one of the limitations of this project.

4.1.2 Discourse Historical Analysis and Political Discourse Analysis

CDA is a broad field which encompasses numerous different methodologies and approaches; it does not comprise one universally applicable analytical process. One common thread that runs through the different approaches within CDA is the emphasis on examining power relations and the way in which they are justified. Since the use of ideology to justify power relations within the corporation is a key part of my investigation CDA provides analytical tools suited to my goals.

I have identified two approaches within CDA which are of particular relevance to my research project: the discourse historical approach (DHA) developed principally by Ruth Wodak and Martin Reisigl (2016), and political discourse analysis (PDA) as developed by Norman and Isabella Fairclough (2012). I intend to conduct my following research by combining these approaches.

DHA was designed by researchers in a number of locations (primarily Vienna and later Lancaster) in order to enhance the analysis of discourse in the context of historical processes. DHA has been applied to discourses in a wide range of areas including ethnic identity, political identity, doctor-patient communication and unemployment (Reisigl, 2018). DHA draws on insights from sociolinguistics, sociology, argumentation analysis as well as historical studies. A key emphasis in this approach is on using a historical orientation in the interpretation of texts; therefore DHA is an appropriate tool for the fulfilment of my goals. DHA also typically draws on a range of genres with a substantial focus on speeches as well as newspaper articles.

In brief, DHA involves examining a text with five primary questions in mind. These questions are articulated by Wodak and Reisigl as follows:

1. *How are persons, objects, phenomena/events, processes and actions named and referred to linguistically?*
2. *What characteristics, qualities and features are attributed to social actors, objects, phenomena/events and processes?*
3. *What arguments are employed in the discourse in question?*
4. *From what perspective are these nominations, attributions and arguments expressed?*
5. *Are the respective utterances articulated overtly, intensified or mitigated?* (Wodak & Reisigl, 2016, p. 32)

The speeches of the SEC Commissioners advocate action either by the SEC itself or by other parties. They are more than representations of the world as it is perceived by the speakers; thus, methods designed primarily to examine representations would not suffice. The speeches are political in nature; they concern the nature and future direction of society. For these reasons I have chosen to supplement the use of DHA with the methodology of political discourse analysis (PDA) developed by Fairclough and Fairclough (2012). These authors have developed a form of argumentation analysis drawing on ideas in pragma-linguistics, notably the work of Grootendorst and Van Eemeren (2004). PDA concerns question 3 in the above list of questions.

The process of PDA begins by identifying a claim for action, i.e. what action the speaker is advocating and who they want to take the action? The next steps entail breaking down the line of reasoning leading to the claim for action: the ultimate goals of the action and a means-goals premise. The means-goals premise explains why taking the action should result in the achievement of the stated goals. In addition, the circumstances, which are taken as given, are examined. These circumstances may include, for instance, historical background as well as institutional facts.

The analysis also includes establishing what underlying values motivate the speaker's aims. Where relevant, counterclaims and how they are addressed, are analysed as are additional positive consequences of the actions being advocated along with the negative consequences of not taking said actions. Finally, any appeals to authority that form part of the argument are located and enumerated (Fairclough N. , 2015). The methods of PDA have been applied in the examination of speeches and texts on a number of themes including the application of the term "enterprise" and the growing use of the language of markets in public discourse (Fairclough N. , 1995). I found the analysis of parliamentary speeches during the austerity debates in the years following 2010 by Fairclough and Fairclough (2012; 2016) particularly helpful.

Moreover, the methodology developed by Fairclough and Fairclough is easily combined with other methods of language analysis which focus on specific linguistic features; PDA and DHA are more akin to tools that complement each other rather than separate methodologies. The methods of DHA are helpful in identifying which actors and ideas are backgrounded or omitted in argumentation strategies and what assumptions are presupposed.

By breaking down the argumentation in the texts selected for analysis I will examine how the goals and reasoning of SEC Commissioners changed during the twenty-year period in question. In particular, I hope to learn more about how thinking about the nature of the ownership of the corporation plays a role in constructing arguments and what changed between 1980 and 1999. I will also identify themes for further examination in the corpus analysis. I will also look at the way in which different corporate constituencies are represented, which groups are given prominence and how this has changed over the time period.

4.2 Composition of corpora

4.2.1 The three corpora and the subcorpora

The DHA method stresses the importance of the study of intertextual relationships. Gaining an adequate appreciation of the historical context is at best challenging if the research is restricted to one genre. For this reason I have opted to include an additional genre: I will analyse the SEC speeches alongside news reporting on corporate affairs in two prominent US daily newspapers: the *Wall Street Journal* and the *New York Times*. To this end, I have therefore compiled two further corpora in addition to the corpus of all the SEC Commissioners' speeches.

The three corpora, all of which cover the period from 1 January 1980 to 31 December 1999 (inclusive), are as follows:

- SEC: All publicly available speeches of Securities and Exchange Commission (SEC) Commissioners during the 1980-1999 period. The speeches were accessed through the website of the SEC;
- WSJ: A systematically selected sample of articles from the *Wall Street Journal* (WSJ) covering corporate governance themes over the time period in question;
- NYT: A systematically selected sample of articles from the *New York Times* (NYT) covering corporate governance themes over the time period in question. The articles comprising the WSJ corpus was selected according to the same algorithm as for the NYT corpus.

The newspaper articles were accessed through the Proquest data provider.

Each of these corpora were divided into four subcorpora, to cover the following time periods (inclusive): 1980-1984; 1985-1989; 1990-1994 and 1995-1999. This made it possible to analyse changes in patterns of language use over time.

All the corpus material was available in machine readable form or readily convertible into plain text files. All three corpora are of finite size since they related to a fixed time period.[36]

[36] It is possible to build "monitor" corpora, especially if they are web-based, which grow continuously over time (McEnery & Hardie, 2012).

The SEC Corpus, consisting of all SEC Commissioners' speeches during the 1980-1999 period was not a sample corpus. The other two corpora are selected texts from a much larger language "population" of newspaper reports on corporate affairs. It should first be borne in mind that by selecting to examine articles from the *New York Times* and *Wall Street Journal* I made a choice to focus on these two newspapers rather than a much larger selection of news publications which would have been impracticable given the parameters of the project. Within the two publications selected, I have had to select a subset of all articles relating to corporate affairs. I set about this well aware of the need to avoid skewed samples (McEnery & Wilson, 2001); samples should be representative of the newspapers' reporting on corporate affairs with a special focus on governance. I also strictly applied the same criteria for selecting the articles for inclusion in the corpora for the *New York Times* and *Wall Street Journal*: this was crucial since a major part of my analysis involved making comparisons between the two news outlets.

4.2.2 Selection of samples of articles for the *Wall Street Journal* and *New York Times* corpora

As a first step, I conducted searches for WSJ and NYT articles under the subject tag *corporate governance* for the 1980-1999 period. The vast majority of articles were from the 1990s suggesting much less coding of articles from earlier periods. I assembled the articles resulting from these searches into two pilot corpora – one for each of the newspapers.

The following table shows the sizes of the two pilot corpora as well as the most frequently occurring words:

Table 1: Pilot corpora

WSJ pilot corpus: 168346 words				**NYT pilot corpus: 119944 words**		
Word	**Frequency**	**Per thousand**		**Word**	**Frequency**	**Per thousand**
Company	1495	8.88		Company	1588	13.24
Board	1166	6.93		Board	856	7.14
Director	922	5.48		Director	922	5.48
Corporate	861	5.11		Executive	693	5.78

Shareholder	834	4.95		Shareholder	680	5.67
Executive	505	3.00		Stock	376	3.13
Governance	441	2.62		Chief	370	3.08
Management	400	2.38		Corporate	369	3.08
Stock	399	2.37		Investors	286	2.38
Chairman	368	2.19		Management	251	2.09
Investors	327	1.94		Chairman	221	1.84
Chief	279	1.66		Governance	184	1.53

My aim was to use these pilot corpora to guide the construction of substantially larger corpora for the WSJ and NYT. I wanted to be able to use a corpus which is more representative of all time periods in the 1980 to 1999 interval and which would also better lend itself to being broken up into subcorpora.

The most frequently occurring lemmas[37] (all with a frequency per million words of approximately five or more) in both corpora are *company*, *board*, *director* and *shareholder (*or *stockholder)*. I conducted some initial searches using combinations of these key words, for WSJ and NYT articles. *Company* proved not to be decisive as a search term (omitting the lemma did not make a significant difference to the outcome of searches).

In order therefore to assemble my sample of articles, I searched for those articles in which these words, namely *shareholder* (or *stockholder*), *board* and *director*, all occurred (in the singular or plural form). It was important as far as possible to systematically exclude articles that were not related to this research project. After studying a list of the output from my initial search of NYT articles, I excluded two segments:

- *Big Board* – these were articles that covered only daily share price developments and were not relevant to my research questions

[37] A lemma is the form of a word as it appears in a dictionary. A word count of a lemma would include all forms of the word as they occur in a text. For example, for a noun the count would include singular and plural; for a verb different tenses would be included.

- *Paid notice* – these were notices of deaths, also not relevant

In addition to these two regular segments in the NYT I also excluded the following topic which contains articles not relevant to my research:

- *Co-op* – these were almost all articles about housing cooperatives and were also not relevant.

This finalized the process of selection criteria for the NYT and WSJ corpora.

The aim in creating these corpora is to provide a reasonable sample of the coverage of events related to corporate governance. Given the time and resources available for this research project it would not have been feasible to attempt to create corpora that would include the entire collection of articles on the relevant subjects. Given that my corpora contain several million words it also appears unlikely that larger corpora would have further value in terms of the range of material available for linguistic observation.

Table 2 contains summary data on the three corpora and the sub-corpora.

Table 2: Corpora and sub-corpora

Corpus/sub-corpus	**Time period (inclusive)**	**No. of speeches/articles**	**Word count**
SEC			
SEC84	1980-1984	163	605,106
SEC89	1985-1989	146	566,696
SEC94	1990-1994	242	728,838
SEC99	1995-1999	158	408,018
SEC corpus total		**709**	**2,308,658**
Average speech length			*3,256*
Wall Street Journal			
WSJ84	1980-1984	474	175,399
WSJ89	1985-1989	3,467	2,188,796
WSJ94	1990-1994	2,498	1,895,783
WSJ99	1995-1999	2,762	2,361,409
WSJ corpus total		**9,201**	**6,621,387**
Average article length			*720*
New York Times			
NYT84	1980-1984	1,325	1,108,539
NYT89	1985-1989	1,714	1,674,790
NYT94	1990-1994	1,163	1,122,693

NYT99	1995-1999	1,187	1,327,247
NYT corpus total		**5,389**	**5,233,269**
Average article length			*971*
Total for all corpora			**14,163,314**

4.3 Corpus analysis

I used three methods to examine patterns of language use in these corpora: comparison of word frequencies between different subcorpora in order to detect trends over time, examination of collocations of selected words and qualitative analysis of selected words in context. I used the LancsBox (Brezina, Weill-Tessier, & McEnery) corpus software package developed at the University of Lancaster to assist with this part of my research.

4.3.1 Comparison of Word Frequencies

The first method is comparison of word frequencies for selected terms (e.g. *shareholder value*, *corporate governance*, *owner*, and *stakeholder*) relevant to the research questions. Assisted by the LancsBox package I have compiled a list of these words along with their frequency of occurrence in each of the twelve sub-corpora. I have also tested whether the differences in word frequency taken pairwise were statistically significant across the different subcorpora of each corpus. For each corpus I conducted pairwise tests for consecutive five-year periods. For instance, for the SEC corpus I tested for differences in frequency for the selected words between the following pairs of sub-corpora: SEC84 & SEC89, SEC89 & SEC94, and SEC94 & SEC99. The aim is to establish whether sound grounds exist for concluding whether the results indicated changing patterns of word use.

For this purpose, I used the log-likelihood statistic (LL). This method, outlined by Brezina (2018), can be aided by the use of contingency tables in which the observed word frequencies in each of the two subcorpora under consideration are set out alongside expected word frequencies (assuming a null hypothesis of no significant difference in frequency).

The log-likelihood statistic is given by the following formula (Brezina, 2018, p. 84):

$$LL = 2 * \left(O_{11} * \ln\frac{O_{11}}{E_{11}} + O_{21} * \ln\frac{O_{21}}{E_{21}}\right) \qquad (1)$$

where O_{11} is the frequency of the word of interest, w, in the first subcorpus while O_{21} is the frequency of the word in the second subcorpus while E_{11} and E_{21} are the frequencies which would arise by chance if the words occurred equally frequently in both subcorpora. The following formulae set out the calculation of E_{11} and E_{21} (Brezina, 2018, p. 84):

$$E_{11} = \frac{No.of\ words\ in\ subcorpus\ 1*(freq.of\ w\ in\ subcorpus\ 1+f\quad .of\ w\ in\ subcorpus\ 2)}{Total\ \#\ of\ words\ in\ bot\quad subcorpora} \tag{2}$$

$$E_{21} = \frac{No.of\ words\ in\ subcorpus\ 2*(freq.of\ w\ in\ subcorpus\ 1+freq.of\ w\ in\ subcorpus\ 2)}{Total\ \#\ of\ words\ in\ both\ subcorpora} \tag{3}$$

In an extensive study using a large number of simulation experiments, Rayson et al. (2004) have shown that the log-likelihood statistic should be preferred in terms of reliability over the chi-squared statistic. Moreover, the log-likelihood statistic remains reliable even when using different combinations of corpus size and word probability (subject to recommended minimum expected values of word frequency). According to the so-called Cochran rule, to ensure accurate testing all of the expected values in a 2*2 contingency table should be at least five (Cochran, 1954). Rayson et al. (2004) suggest extending the Cochran rule to thirteen, eleven and eight at the 5%, 1% and 0.1% levels respectively; I have followed this guidance in deciding whether the log-likelihood test is reliable.[38]

[38] An example may be helpful here. Let us look at the occurrences of the word *takeover* in the WSJ89 and WSJ94 sub-corpora. I can draw up a contingency table showing frequency occurrences of *takeover*:

	Takeover	Other words	Total
WSJ89	3385	2185411	2188796
WSJ94	1067	1894716	1895783
Total	4452	4080127	4084579

I can then draw up a further contingency table showing the frequency occurrences of *takeover* in each of the two subcorpora if the total number of occurrences (4452) was distributed across the two subcorpora proportionate to the overall size of the subcorpora, using equations (2) and (3):

	Takeover	Other words	Total
WSJ89	2386	2186410	2188796
WSJ94	2066	1893717	1895783
Total	4452	4080127	4084579

This second table represents the expected frequencies if *takeover* were to be distributed equally across both subcorpora.

The log-likelihood statistic given by equation (1) is 958.21. At the 1% significance level the cut-off level is 6.63. Since 958.21 exceeds 6.63 we can reject the null hypothesis that there is no statistically significant difference in occurrences of *takeover* between the two subcorpora.

The log-likelihood statistic is the normal test of significance used in comparing word frequencies in two (or more) corpora (Brezina, 2018). An alternative that also uses contingency tables is the chi-squared statistics. Rayson et al. (2004) conducted simulated experiments to test the reliability of the two statistics and came out in favour of the log-likelihood test. This result also applies when the corpora being compared

4.3.2 Collocation Analysis

I am using the definition of collocation provided by McEnery and Hardie: "a co-occurrence relationship between two words. Words are said to collocate with one another if one is more likely to occur in the presence of the other than elsewhere"[39] (2012, p. 240).

Collocation analysis can enhance the study of a corpus in a number of ways. First, it can assist with the identification of patterns of word use over time including the occurrence of specific linguistic features (such as metaphors).

Suppose for instance that we were examining the occurrence of the word *money* in a corpus and we found that the word *time* frequently occurred near *money* in the text. This might suggest the use of a 'money as time' metaphor which would merit further detailed investigation. Secondly, collocation can identify discourse prosodies (e.g. negative or positive connotations) associated with specific words in a corpus. Continuing our example with *money* we might find that words like *dirty*, *tainted* and *dodgy* were frequent collocates – notably more so than positive adjectives. This would suggest a negative discourse prosody. Lastly, we will use collocations to identify particular topoi, or themes, associated with words in the corpus. With the help of a list of collocates of *money* we might identify some broad themes such as corruption, fiscal responsibility or money laundering which merit further investigation

For the collocation analysis the challenge is to specify criteria for identifying the words that collocate with a specific word (the "node"). There are three choices to be made.

The first choice is how far away from the nodes to look for collocates; I have chosen to look at a "window" of five words either side of the node. This window size is fairly standard in corpus

are substantially different in size. Because it is the method traditionally used and also based on the work of Rayson et al., I decided to use the log-likelihood statistic.
The Cochran rule stipulates that to ensure the accuracy of a test of statistical significance based on the log-likelihood statistics, the values in a two-by-two contingency table must exceed five. In the tables above, all the values in both tables clearly exceed five so I proceeded with the test. Rayson et al. (2004), based on their experiments, concluded that it would make sense to revise the Cochran rule upwards so that values in contingency tables would have to exceed eleven for tests at the 1% significance level. I have applied this, not conducting tests where frequency values were less than or equal to eleven.

[39] The methodological approach outlined here uses the same parameter as used by Ali & Kellnerová (2020). I have also drawn on a paper by Baker et al. (2008), which also used a very large corpus of newspaper articles.

linguistics and I believe that it allows for the inclusion of a sufficiently revealing selection of relevant collocates.

The second choice is that of a measure of the strength of collocation. There are numerous measures of collocation; I have chosen one called MI3 (MI stands for Mutual Information).

The formula for MI3 is as follows:

$$MI3 = Log_2 (O_{11}^3/E_{11}) \qquad (4)$$

where O_{11} is the actually occurring number of collocations within the corpus of a word with the node. Thus, if I were measuring the MI3 score for the collocation of the word *employee* with *ownership,* O_{11} is simply the number of times the words occur together within my selected five plus five window. E_{11} is the expected number of times the words would randomly occur together. E_{11} is calculated as follows:

E_{11} = (frequency of collocate in corpus * frequency of node)/number of words in corpus

So MI3 can be calculated for corpus data as follows:

$$\frac{Log\left(\frac{(frequency\ of\ collocation\ ^\wedge\ 3)*no.of\ words\ in\ corpus}{(frequency\ of\ collocate*frequency\ of\ node)}\right)}{Log\ (2)} \qquad (5)$$

Some versions of the MI3 formula also include an adjustment of E_{11} for the window size; the software package that I will be using, Lancsbox, does not; MI3 measures for chosen nodes and collocates will differ according to window size because the occurrence of collocations will be fewer for smaller windows.

Let us look at an example. Suppose I am looking at collocates of the word *ownership* in my *New York Times* corpus for the 1980-1984 period. I have the following data for the collocation of *employee* with *ownership*:

Number of collocations = 28

Total occurrences of ownership = 184

Total occurrences of employee = 685

Total size of corpus = 1,108,539 words

So MI3 would be:

$$\frac{Log\left(\frac{(28\ ^\wedge\ 3) * 1{,}108{,}539}{(685 * 184)}\right)}{Log\ (2)}$$

= 17.56 (approximately).

After considering several measures and examining their impact on my corpora, I selected MI3 due to two crucial factors. First, it effectively takes into account the frequency with which a given word occurs near to a selected note. Secondly, MI3 also measures the extent to which a collocate is exclusive to a selected node. This is important because if say *employee* is a commonly occurring word throughout our corpus the observation that it also occurs frequently with *ownership* would in itself have limited informational value. Measuring the exclusivity of the relationship would help adjust for the general frequency of the collocate.[40] To give another example taking the word *shareholder* as a node, the word *value* is not a collocate in the 1980-1984 period but is amongst the top collocates for 1995-1999. I intend to use the MI3 measure for both the SEC Commissioners' Speeches corpus as well as the newspaper corpora.

The third choice to be made is which collocates to include for the purpose of analysis and which to leave out. I have used the cut-off level for the MI3 value of eleven, as suggested by Brezina, McEnery and Wattam (2015), for determining which collocates to include. I thus included for consideration all collocates with an MI3 value over eleven.

[40] There are numerous different measures of collocation; Brezina (2018) lists fourteen. Here is a selection:

- The simplest measure would be frequency or O_{11}, measuring collocates according to how frequently they occur near the node. However, this measure would over-emphasize function words (such as "the," "a," "and," etc.) and be of limited value.
- An alternative measure is MU: the ratio between the number of observed occurrences of a collocate near the node (O_{11}) and the number of occurrences that would be found if the relationship were purely random (E_{11}). So MU = O_{11}/ E_{11}
- MI (Mutual Information) is the logarithm in base 2 of MU. MI = $\log_2 (O_{11}/ E_{11})$. Both MU and MI focus overly on exclusivity, emphasizing collocates that are exclusive but also very rare which does not inform us on general patterns of language use.
- MI2 = $\log_2 (O_{11}^2/ E_{11})$ does not favour rare collocates but rather disregards frequency of occurrence which is also not useful for detecting general patterns of language use.
- Dice is based on O_{11} as well as the frequency of the node in the whole corpus (R_1) and the frequency of the collocate in the whole corpus (C_1) and has exactly the same drawback as MI2. Dice = $(2 \times O_{11})/(R_1 + C_1)$.
- MS (minimum sensitivity) is the minimum of the ratio between R_1 and C_1, so MS = min $(O_{11}/ R_1, O_{11}/ C_1)$. MS measures frequency well but tends to emphasize collocates that are not exclusive to the node.

My search within LancsBox was for lemmas rather than words: this way the calculation of MI3 includes different forms of the same word such as singular and plural as well as different tenses of the same verb.

Words will be selected for collocation analysis in a number of different ways. First of all, given my research questions, words connected with the concept of *ownership* are an obvious starting point. This includes the nouns *ownership* and *owner.* Words of interest in the discourse on corporate governance such as *shareholder*, *stockholder*, *stakeholder*, *corporation*, and *company* will also be considered as will the word pair *shareholder value*. Other words will be identified in the critical discourse analysis of the SEC Commissioners' speeches.

4.3.3 Qualitative analysis of selected words in context

The qualitative part of the corpus analysis will involve examining concordance lines for the selected words. A concordance is "a display of every instance of a specified word or other search term in a corpus, together with a given amount of preceding and following context" (2012, p. 241). In other words, if for instance the selected word is "owner", a concordance search would produce selections of text of a specified length around the word "owner" for each occurrence in the corpus. This will enable me to examine the context around the use of the word in the corpus in a greater level of detail than would be allowed by a collocation analysis. I have chosen a concordance length of twenty words on either side of the word of interest; this is sufficient to see the overall context in which the word appears whilst at the same time remaining manageable in terms of scope. Concordance analysis also enables the researcher to detect and disregard contexts that are not relevant to the research questions.

The following is a selection of concordance lines for the lemma *owner* from the SEC corpus. The title (in bold) refers to the date of the speech containing the excerpt, the surname, and the political affiliation of the speaker. It therefore follows that 012696LevittD refers to the speech made by Levitt, a Democrat, made on 26 January 1996:

> **012696levittD** those investors who are our most important national asset. Many investors want to be recorded directly with the company as owners instead of holding stocks in "street name" through their broker. Many of these direct registered shareholders also want physical certificates--

032096levittD Instead of referring to "state pension funds," he preferred to call them "state-run pension funds." He knew that the real owner was not in fact the state at all but rather the nearly 750,000 present or former government employees who had a stake in the funds.

110696levittD that's set up now is very convenient for the government. Now it's the government's turn to be convenient for business owners and taxpayers." Our SEC Forums try to reduce costs for you through cooperation among small business, federal and state agencies.

052697huntD The SEC also organizes investor and small business town meetings at locations throughout the U.S. at which investors or small business owners can address questions to Commissioners and high-ranking staff members in person. These meetings allow us to hear directly from investors.

052697huntD in person to Commissioners and high-ranking staff members. These meetings allow us to hear directly from investors and small business owners, answer their questions in person and find out what changes or ideas they have. We also have been able to

031298levittD responsive corporate governance. Thanks to the swift flow of reliable information, corporate decision-making has become more accountable to the true owners of every company: the shareholders. Over the last two decades, our companies have become more open. Boards are now armed.

The following concordance lines include the lemma *owner* from the SEC corpus that are not relevant to my research:

102982longstrethD Judge Learned Hand spoke for the Second Circuit in concluding that the owners of a tugboat could be held liable for negligence in the loss of property in a storm due to

041583treadwayR Memberships were to be sold only to owners of condominium units and through their memberships members would only obtain the right to use the club's facilities.

021888ruderR The most obvious hedging technique involving futures is the sale of a stock index future by the owner of a portfolio of stocks. The stock index futures position will increase in value as the prices of the underlying

These last examples serve to illustrate that in the case of *owner* a detailed qualitative study may yield more reliable results than purely quantitative data.

In summary, collocations help to identify patterns whereas concordances help to examine specific contexts.

4.4 Treatment of Ideology

A major part of my research entails revealing and examining instances where ideology motivates rhetorical strategies in the discourse on corporate governance. As I explained in Chapter 1 ideology is often disguised as common sense. A key aim of conducting PDA is to identify premises that are based on presuppositions which are ideological in nature and to explain why arguments supported by these premises are persuasive. In Chapter 1 I outlined definitions of ideology and common sense that are traditionally used in CDA. Given the central importance of these concepts in this project I believe it is important to show that there is an alternative understanding of ideology which I consider superior in its explanatory power and which is equally applicable in the kind of research that I am conducting to boot. This is a theory of ideology which was developed by van Dijk (1998) and which is based on social psychology and takes greater account of the cognitive dimension of discourse (Forchtner, 2018).

Van Dijk characterizes ideology as "the basis of the social representations shared by members of a group" (1998, p. 8). This is not the same as a world view as it encompasses the set of ideas upon which a world view is formed. Apart from different ideologies, in any culture there is a body of common knowledge and values which is shared by all members. This common cultural ground does not constitute an ideology. An ideology is shared amongst groups within the culture rather than the whole culture. However, an ideology may over time become or cease to be – part of this common cultural ground.

In this conceptualization, the term ideology does not necessarily have the negative connotations of its use in the Marxist tradition. Whilst ideologies may support power relations and inequality, they may also be emancipatory in the sense of opposing power and its abuse or indeed not involve power at all. One individual may be part of different groups sharing different ideologies. For instance, a person may work in the corporate sector and subscribe to the basic ideology of modern business; they might at the same time be part of a religious group sharing a very different set of beliefs. Furthermore, an ideology may change over time; it need not be static.

Van Dijk has formulated a clear explanation of what he considers to be common sense. Common sense consists of knowledge, beliefs and opinions that are taken for granted in a society and therefore tend to be "presupposed" in discourse. Common sense also applies to argumentation strategies as in "a common sense" argument which is based on commonly shared premises. Finally, common sense has a dimension which is "immediate, unreflected and untheoretical" (1998, p. 104). Common sense is not necessarily the same thing as scientific knowledge which may be restricted to people with specific educational and professional backgrounds and training. However, to the extent that specialist knowledge has passed into the sphere of what is taken for granted amongst the population at large, there is an overlap with common sense. Common sense is then "an implicit, naïve 'theory' of the world" (1998, p. 104).

Common sense thus conceived corresponds to the concept of a common cultural ground which I outlined above. As van Dijk summarizes: "Common sense is then more or less what we try to conceptualize with the term 'cultural beliefs', that is, the knowledge and opinions, as well as the evaluative criteria, that are common to all or most members of a culture. Like common sense, these cultural beliefs are also used as the basis for specific group beliefs, and also function as the general base of presupposed beliefs in all accounts, explanations and arguments" (1998, p. 105).

Van Dijk argues that ideology and common sense can be connected through the process of legitimation, i.e. providing a justification or motivation for actions that may be subject to criticism and challenge (or potential challenge). Of particular interest is the legitimation of action that is taken (or advocated) in an institutional context; legitimation may be provided by individuals as well as official bodies such as organizations, boards or assemblies. As van Dijk explains: "legitimating discourses presuppose norms and values. They implicitly or explicitly state that some course of action, decision or policy is 'just' within the given legal or political system, or more broadly within the prevalent moral order of society" (1998, p. 256). Ideology that encompasses a call for the adoption of a particular set of policies, especially when this entails a break from the past, will be more appealing if accompanied by legitimation that is effective. In summary, presenting claims that are founded on particular ideological assumptions as uncontroversial common sense can represent a powerful legitimation strategy.

Some authors who have written on corporate governance (Lazonick & O'Sullivan, 2000a; Stout, 2012) have referred to shareholder value as an ideology, though they have not explained the use

of the terminology in detail. Based on the dominance of shareholder primacy by the end of the 1990s in statements of the Business Roundtable, the SEC Commissioners and also in textbooks, I believe it is reasonable and methodologically sound to treat it as an ideology. It certainly fits the description of a set of representations shared by a group.

I aim to show that the argument made by adherents of shareholder value draws on a number of apparently commonsense assumptions and presuppositions, one of the most important of which being the premise that share owners jointly own the corporation. Presenting their case as common sense (i.e. beyond challenge) rather than as a particular perspective that might be critiqued and defended constitutes legitimation at its most effective.

Chapter 5: Results − Discourse historical analysis

In this chapter I will present the results of the text analysis that I conducted — namely my in-depth analysis of both Milton Friedman's 1970 *New York Times* article and of the SEC Commissioners' Speeches. Section 5.1 is the analysis of the Friedman article and Section 5.2 comprises the analysis of the SEC Commissioners' speeches in chronological order. As I have described in the previous chapter I used the Discourse Historical Analysis (DHA) approach, supplemented by the Political Discourse Analysis method developed by Fairclough (2015). In this way I was able to account for the historical context of the article and speeches and at the same time to analyse the argumentation strategies of the authors in each case. The aim was to identify patterns of language usage and persuasion over the twenty-year period in question.

5.1 Milton Friedman 1970

In this section I will apply the methodology of DHA as described in the previous chapter to Milton Friedman's famous 1970 *New York Times* piece: "The Social Responsibility of Business is to Increase its Profits" (1970). As I explained in Chapter 1, I have treated this article as a classic statement of the case for shareholder primacy, at least as far as the public discourse is concerned. A full treatment of the article would require a much longer paper; here I have focused on the way Friedman used the notion of ownership and how he presented a deeply ideological view as apparent common sense. In what follows direct quotes from Friedman's article are italicized. I also use the present tense for the sake of simplicity.

5.1.1. Friedman's positioning of himself, his opponents and his audience

<u>Enemies of freedom</u>

First, we have the *activists* and *reformers* who are barely mentioned in the text of the article except through the metaphor of *forces* that threaten a free society. Although the original article is accompanied by pictures of people Friedman clearly identifies as opponents, he goes beyond individuals in the text. We are not then merely up against people so much as powerful and impersonal external forces − the so-called enemies of freedom. They do not use reason and Friedman does not need to engage seriously with their arguments.

<u>Confused businessmen – unwitting puppets</u>

Friedman does engage with the business executives who are the main actors in the article – the words "manager," "businessman" and "executive" (both in the singular and plural) appear two, twelve and seventeen times respectively; in comparison there are fourteen occurrences of stockholder/stockholders. The businessmen are *unwitting puppets* who lack the capacity for clear thought and do not deserve to be taken seriously: *if they or anyone else took them seriously*. Though they are experts in running their own businesses they speak nonsense and are also not only *incredibly shortsighted and muddleheaded* and *pontificating* but also *suicidal* and *schizophrenic*.

<u>Friedman the economist</u>

Aune (2007) summarizes Friedman's strategy as follows: "accuse the opposition of fuzzy thinking, and present oneself as a model of intellectual clarity" (p. 210). Friedman himself is the

straight-thinking didact who can inject rigor into the debate. It is he who must take the *first step towards clarity*.

This position is also aided by the certainty in expression throughout the article. There are very few modal verbs used which mitigate Friedman's statements (i.e. verbs such as "may," "could," "might" etc.). When they occur they tend to mitigate counterclaims: *a corporation is an artificial person, and in this sense may have artificial responsibilities.* Modal verbs in the article serve mainly to intensify Friedman's assertions: e.g. *but "business" as a whole cannot be said to have responsibilities*; or: *it must mean that he is to act in some way that is not in the interest of his employers* and, *if they are to be civil servants, then they must be elected through a political process*.

This positioning of himself as the didact fits in well with Friedman's view of positive economics as a hard science dealing in certainties and facts rather than opinions and value judgements. Friedman views positive economics as a science that is to be used to make predictions about the real world given a set of inputs.

Friedman's positive economics leads him to view disagreement in the contemporary western world as differences in predictions about the impacts of policy decisions. These are then "differences that in principle can be eliminated by the progress of positive economics – rather than fundamental differences in basic values, differences about which men can ultimately only fight" (Friedman M. , 1953, p. 5). In this scheme of things the *muddleheaded* business leaders are fundamentally on the same side as Friedman. They simply need a proper presentation of the correct facts–by none other than Friedman the economist himself.

Dismissing social issues bolsters Friedman's central position in another way. Discussions about social responsibility, he stresses, are *notable for their analytical looseness and lack of rigor* and are *pure rhetoric*. The word *social* appears in inverted commas twenty-five times in the article, and this is not to indicate a direct citation, but to indicate the author's disapproval–or at best distance. The term social responsibility occurs in the article twenty-eight times and is placed in inverted commas seventeen times. In the first paragraph he refers to the *catchwords of the contemporary crop of reformers* – suggesting their concerns that have at most merely ephemeral importance.

Friedman, on the other hand, asserts that all parties aim to maximize their monetary gains throughout. He expressly states that the desire of shareholders *generally will be to make as much*

money as possible with no consideration of non-financial interests. It is claimed that trade nion leaders are no different and act only in the material interests of their members. Friedman also purports to *share Adam Smith's scepticism about the benefits that can be expected from "those who affected to trade for the public good."*

This perspective is not supported by the evidence. Whilst we do not have the space here to examine the claim in detail in *From Pleasure Machines to Moral Communities* Hodgson (2013) provides an extensive description of how research in numerous fields, including experimental evidence, has shown the vital importance of altruism and cooperation in human behaviour.

<u>The audience</u>

The audience is the general public. For this reason, Friedman takes into consideration the interests of other groups besides shareholders. Most ordinary people are far more likely to be customers and employees than to be shareholders. Adding in these groups more clearly addresses the interests of his audience allowing them to identify with his argument.

He uses the rhetorical device of anaphora (repetition for emphasis) to underline how from his perspective the interests of customers and employees are tied to those of shareholders:

> *insofar as his actions in accord with his "social responsibility" reduce returns to stockholders, he is spending their money. Insofar as his actions raise the price to customers, he is spending the customers' money. Insofar as his actions lower the wages of some employees, he is spending their money.*

Friedman identifies with the American public in one brief passage, using the pronoun 'we': *<u>we</u> have established elaborate constitutional, parliamentary and judicial provisions. <u>We</u> have a system of checks and balances*.

This is Friedman the citizen, the fellow American; it is the only point in the article in which he identifies himself as part of his audience.

5.1.2. Milton Friedman's argument

I will now identify the claims, circumstances, goals, values and means-goal assertion in the argument:

Claim

The central claim in the article is that businesses[i] have no other duty than to increase profits thereby maximizing the wealth of shareholders. In the process of doing so, businesses are constrained by the requirement to abide by ethical norms set out in law and custom to prevent deception and fraud. Friedman summarizes the claim at the end of the article:

> *there is one and only one social responsibility of business[41] – to use its resources and engage in activities designed to increase its profits[42] so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.*

Circumstances

The circumstances that Friedman presents is that freedom is under threat from those who would promote a socialist system. According to Friedman, opposition to capitalism and business is widespread in society and this is a situation that has persisted for a sustained period (*these past decades*). Right at the beginning of the article we read that *businessmen [*incorrectly*] believe that they are defending free enterprise* – evoking a sense of free enterprise as something as something under attack which therefore requires defending.

We encounter the following statements:

- *Businessmen who talk this way are unwitting puppets of the intellectual forces that have been undermining the basis of a free society*
- *the present climate of opinion, with its widespread aversion to "capitalism," "profits," the "soulless corporation" and so on*
- *the already too prevalent view that the pursuit of profits is wicked and immoral and must be curbed and controlled by external forces*
- *But affect the possible survival of business in general*
- *businessmen seem to me to reveal a suicidal impulse*

[41] The article is primarily about a business corporation which has multiple shareholders (or stockholders). In this paper we will use the terms corporation and business interchangeably to mean the same thing unless otherwise stated. Similarly we will use the words manager and executive interchangeably to mean someone vested with powers to manage a corporation.
[42] I will assume that when Friedman claims that managers should "increase profits" he means for them to maximize shareholder wealth.

- *Harms the foundations of a free society (this is mentioned twice)*

Friedman sets up this background through the extensive use of metaphor:

- Conflict – free enterprise/the market system is under attack and needs defending; indeed it is threatened with destruction and its survival is at stake. As Aune (2007) points out, in deploying the terms socialism and collectivism, Friedman is also drawing on a "Cold War narrative" (p. 214).
- Free enterprise is being attacked by *forces*. This evokes a sense of tendencies beyond the control and comprehension of individuals and creates a feeling of ominous inevitability. In referring to the *climate* of opinion, Friedman is creating the sense of a force of nature. He later refers to the "*iron fist*" of bureaucrats, strong and impersonal. The modality "must" is used twice to strengthen the "force" facing business managers: *He is told that he must contribute to fighting inflation* (note the impersonal effect of the passive – Friedman does not reveal who is doing the telling) and *the pursuit of profits is wicked and immoral and must be curbed.* Friedman is evoking the emotional reaction of fear and powerlessness.
- A building whose foundations are being harmed and undermined – the threat here is existential. Undermining the foundations of a building will lead to its collapse.

Goal

The goal of the course of action that Friedman is recommending is the preservation of a free society. In the first paragraph he claims that business leaders committing to social responsibility are *undermining the basis of a free society* and later we hear that even lip service to such ideas are *harming the foundations of a free society*. Thus, the goal is to prevent this harm from taking place.

Values

Friedman does not argue the benefits of a free society, so this is apparently the key value underpinning the article.

Means-Goal Premise

Friedman posits that the sole purpose of businesses must be the maximization of shareholder wealth. This claim represents a course of action which he advocates –businesses must be run to serve this sole purpose. If businesses do anything else, *a free society* is jeopardised. Therefore, his claim is necessary to preserve a free society. Friedman does not tell us whether his claim is also sufficient to preserve a free society. This is something that he does not discuss in the article.

The main argument of the premise is as follows:

> Managers of corporations have responsibilities in their capacity as managers. These are separate from their responsibilities as individuals. As managers they are the agents of the shareholders of the corporations that they work for. Their sole responsibility is to satisfy the desires of the shareholders; their own individual consciences are irrelevant as regards their role as managers. Moreover, we can accept that the desire of the shareholders is to *make as much money as possible*.
>
> Any other course of action (i.e. engaging in corporate social responsibility) involves making a decision that takes money away from the shareholders which is equivalent to imposing a tax on them. Taxation is a function of government with all the democratic mechanisms, checks and balances etc. attached: therefore, the corporate manager is usurping the role of a government official. This situation will inevitably lead to business decisions being made through the political system which is tantamount to an acceptance of socialism as a social and political arrangement; this in turn spells the end of a free society. Friedman however does not explain any processes by which this politicization of business might unfold.
>
> In order to preserve a free society it is hence necessary for corporate executives to use the resources at their disposal solely for the enrichment of the shareholders.

In addition, Friedman questions corporate social responsibility on grounds of efficacy. There are two arguments:

1. There is no reason to expect corporate managers to have the expertise successfully to make decisions regarding social issues (he gives the example of voluntary price controls aimed at controlling inflation).

2. Shareholders, customers and employees can thwart managers' commitments to social responsibility by firing them, transferring their custom to rivals or leaving their jobs.

Finally, Friedman addresses two possible objections to his claim:

1. Friedman rejects the argument that corporate action in the social sphere is justified due to the slowness of political decision-making stating that this consists merely of those who have failed in the political system trying to impose their will by other undemocratic means.
2. He considers the possibility that engaging in corporate social responsibility might actually be in the interests of the shareholders of a corporation. He sees this self-interested behaviour masquerading as social responsibility as a *fraud,* no more than *hypocritical window-dressing*. Friedman asserts that by reinforcing what he perceives as a prevalent prejudice against profit-making this behaviour *harms the foundations of a free society* and praises managers who refuse to commit to social responsibility despite its advantages.

We will now examine how Friedman managed to persuade so many readers using a number of rhetorical and linguistic devices. Our main focus in the next section will be to consider his ideological premises and examine how he was able to present these as common sense.

5.1.3. Critiquing Friedman: Ideology and common sense

Friedman has succeeded in presenting positions based on his world view as common sense in the article.

<u>Friedman's view of the corporation</u>

Friedman predicates his argument on the following claim regarding the role of corporate managers:

- *a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers.*

This constitutes a framing of the relationship between managers, shareholders and corporations.

I will use the definition of a frame given by Fillmore (1975) who does so in the following very general way: “not only visual scenes but also familiar kinds of interpersonal transactions, standard scenarios defined by the culture, institutional structures, enactive experiences, body image, and, in general, any kind of coherent segment of human beliefs, actions, experiences, or imaginings” (1975, p. 124). According to Fillmore therefore a frame is “any system of linguistic choices – the easiest cases being collections of words, but also including choices of grammatical rules or linguistic categories – that can get associated with prototypical instances of scenes” (Fillmore, 1975, p. 124). In this model, the significance of frames and scenes is that they “activate each other” in the minds of people familiar with the associations between them.

Milton Friedman has provided two frames. First, framing the executives as employees of the shareholders (rather than for instance officers of the corporation) puts them in a position of being in a subordinate relationship to the shareholders. Executives receive and carry out instructions, i.e. in the familiar scene of employee and boss. Secondly, framing the shareholder as the owner of the corporation (rather than for instance as a contracting party) evokes the powerful imagery of control and attachment involved in the personal ownership of things.

Friedman reinforces these frames by drawing on the principal/agent model, characterising the executive as the agent and the shareholder as the principal thereby equating shareholders with the business itself:

- *the manager is the agent of the individuals who own the corporation*
- *the executive is an agent serving the interests of his principal*

This understanding of the relationship between managers and shareholders is grounded in Friedman’s view of the corporation which is founded in turn on his atomistic individualism. In *Price Theory* (2017) he explains how a market economy in its purest form would work “as a collection of Robinson Crusoes” (p. 5) voluntarily exchanging goods and services. In a complex modern economy, firms and money serving intermediary functions have been introduced thus enabling specialization and exchange without barter. However, for Friedman this “does not change the fundamental principle of a market system” (Friedman M. , p. 5).

Friedman is even clearer about his view of the corporation in *Capitalism and Freedom*: “enterprises […] are intermediaries between individuals” (Friedman M. , 1962/2009, p. 13) who are the “ultimate contracting parties” (Friedman M. , 1962/2009, p. 14).

Every individual, in Friedman's world view, is the owner of resources or factors of production which she may rent out to another individual under the terms of a contract in exchange for a fixed sum in payment. Alternatively, the individual may use her resources to engage in production herself by becoming an entrepreneur. The individual as entrepreneur sells her products and receives a "residual income" in place of a fixed "rent" for the use of her resources.

Such an entrepreneurial individual in Friedman's view is the core of what constitutes a firm. The difference between the expected residual and the rent the individual would have received from hiring out her resources constitutes the return due to what Friedman terms her "entrepreneurial capacity," or profit. Managers are employees of these "ultimate contracting parties," namely individual suppliers of resources and entrepreneurial capacity.

In the article, however, Friedman does not elaborate on the assumptions underlying his view of the corporation. He simply frames corporate managers as employees of their shareholders and arrives at conclusions regarding the limits of their responsibilities based on this assertion. Once again this is made to appear as simple common sense reinforced by the widespread perception of shareholders as "owners" of corporations which Friedman has deployed strategically.

This approach neatly sidesteps any discussion of Friedman's world view and more profound questions about the nature of the corporation. As Robé (2012) has pointed out his conception of what a corporation is applies rather to individuals acting as sole proprietors. Friedman has essentially treated the firm as an enterprising individual (or possibly a group of individuals) who supply resources plus "entrepreneurial capacity." It takes no account of firms which have no easily identifiable supplier of entrepreneurial capacity or where equity holders provide only money. Such firms are run by a hierarchy of professional managers. Moreover, Friedman's characterisation does not take into account the actual status in law of the corporation as a legal person with a range of rights and responsibilities. Friedman may view an enterprise as an "intermediary" but the legal status of a corporation has very real consequences which he waves aside. Managers have a contractual relationship with the corporation itself and not with the shareholders.

Defending a free society

Friedman argues that the course of action that he advocates is necessary to maintain a *free society*. The value underlying the goal (freedom is good) is one likely to appeal to the majority of the intended audience; indeed, it certainly extends beyond those who would agree wholeheartedly with Friedman's free-market ideology. In this sense it is an appealing goal.

This broad appeal is maintained in the article in two ways. First, the reader is presented with a binary choice between a free society and its opposite; this therefore identifies his recommended course of action with freedom. Secondly, he at least partially disguises his very specific conception of freedom which is rooted in his world view.

Chilton (2004) has explained that much political discourse leads readers to form mental models that are binary in nature. This is exactly what Friedman does through the dichotomy that he presents in the ways resources may be allocated: the **market mechanism** is characterised by *voluntary cooperation*, *resting on private property*. Nobody is obliged to do anything so everybody must benefit from the cooperation. The **political mechanism** works on conformity. The individual is obliged to conform to *a more general social interest.* Friedman does not make much of a distinction between democratic or non-democratic political mechanisms; conformity is obligatory *whether that be determined by a church or a dictator or a majority*. There is no middle ground in such a characterization and no discussion of possible merits of cooperation as opposed to competition. Democracy is reduced to majoritarian rule.

Friedman then claims that any attention to corporate social responsibility is equivalent to absolute negation of the market mechanism: *but the doctrine of "social responsibility" taken seriously would extend the scope of the political mechanism to every human activity.* This is in line with his assertion that any kind of commitment to social responsibility means that businesses will inevitably be subject to political control. Friedman does not explain how this transition to political control will happen.

Furthermore, according to the assertions of the article this will also destroy freedom: *I have called it a 'fundamentally subversive doctrine' in a free society.* As Aune (2007) has pointed out, Friedman has created a "highly polarized rhetorical climate" (p. 209). Friedman's binary choice is also "grounded in a slippery slope argument" (Aune, 2007, p. 209).

Grootendorst and Van Eemeren define the slippery slope fallacy as follows way (2004, p. 171):

> *the protagonist commits this fallacy if he presents a proposition in which a prediction is made, without any further motivation, regarding the desirable or undesirable consequences of taking or not taking a measure and derives from that an evaluative proposition in which it is claimed that it is necessary to take or not to take the measure. By presenting the prediction as uncontroversial, the protagonist makes it difficult for the antagonist to raise the critical questions.*

Friedman's conclusion that businesses should either totally reject corporate social responsibility or face a future in a socialist society bereft of freedom would appear to fit this definition most aptly.

This stark binary choice is buttressed through the plentiful use of conflict metaphors. This effectively frames the circumstances in terms of an epic struggle with a binary set of outcomes: such as victory or defeat as well as life or death (*matters that are outside their businesses but affect the possible survival of business in general* or *businessmen seem to me to reveal a suicidal impulse*).

Friedman has been able to present his prediction of the dire consequences of corporate social responsibility because he never fully explains in the article what exactly he means by *a free society*. In other works, however, Friedman more rigorously outlines his world view, positing that "a free society" is one in which the market mechanism reigns supreme.

In *Price Theory* (2017), Friedman explains the market and political mechanisms in terms of two basic organisational principles − namely "centralised authority (command) and the market (voluntary exchange)" (p. 8). Command is likened to "an army with a commanding general giving orders that are transmitted down a rigid hierarchy and that govern every detail of behaviour of the lowliest foot soldier" (p. 8).

For the market principle, Friedman uses the metaphor of voting: "in a free-enterprise economy, this task [of rating alternative ends by individuals] is accomplished essentially through voting– voting in the marketplace with dollars. In effect, this is a system of effective, proportional representation that permits every group in the society to express its wishes to the extent of its dollar votes. The votes of the members of a free-enterprise exchange economy are manifested through

prices, which, in turn, reveal the standards of the society" (p. 9). Expressed in this way, a system that delivers such "effective, proportional representation" looks like the purest form of "voting." It is not hard to tell which organisational principle Friedman sees as more conductive to fostering individual choice.

This argument ignores entirely both the impact of politics on business and the influence of business in politics but does explain why Friedman believes that it is *the socialist view that political mechanisms, not market mechanisms are the most appropriate way to determine the allocation of scarce resources to alternative uses*. Describing socialism as the application of what he calls political mechanisms to economic decisions accords with Friedman's core beliefs. However, by completing the argument in the article he manages to pass it off as uncontroversial.

<u>Taxation and spending someone else's money</u>

Friedman describes taxation as *spending someone else's money* […] *in a different way than they would have spent it*.

This description subsumes two related claims. First, taxation constitutes taking expropriation of money that rightfully belongs to individuals. In the case of business corporations Friedman sees managers engaged in corporate social responsibility as distributing money that rightfully belongs to the shareholders. The second and related claim is that any expropriation of "somebody else's money" constitutes taxation.

Friedman's position rests upon a specific ideological view regarding the role of the state and taxation, namely that people's incomes are the result of market processes and that the state intervenes to deprive them of part of that income. Along with Murphy & Nagel (2002), we may think of this view as "everyday libertarianism," recognizing that it may appear to be plain common sense.

However, as Richard Murphy (2015) has pointed out, money collected in tax belongs to the government. If there is a property right attached to tax money it is held by the government. Moreover, the state enables markets to exist and regulates them. The outcomes of market processes cannot be somehow independent of the state and its functioning. It is not correct to see one's income as a part of a free-market process with the state playing no role other than taking a portion of this income (Murphy & Nagel , 2002).

Therefore, neither conceptualizing tax as “someone else’s money” nor equating appropriation of funds by any party with taxation are as straightforward as Friedman would have us believe.

Moreover, since the corporation is a separate legal person as far as the law is concerned, executives engaged in social responsibility are spending the corporation’s money not that of specific individuals. Whilst for Friedman there is no contradiction in asserting that this money actually belongs to individual shareholders, he avoids any discussion of the real practical consequences of the legal facts.

5.1.4. Conclusion

Despite the apparent simplicity of his message Friedman’s argument is deeply ideological in nature. The most important ideological principle that underpins the article is that of shareholder primacy. Friedman believes that corporations should be run with solely the interests of shareholders in mind. Whilst this is the result of a conscious value judgement based on a particular world view, by keeping the ideological premise hidden from view Friedman succeeds in presenting it as a matter of mere common sense.

He achieves this by deploying a combination of subtle but powerful different rhetorical and linguistic strategies. The idea that a corporation is owned by its shareholders plays a key role in Friedman’s overall approach.

5.2 SEC Commissioner's Speeches

For each speech I addressed the five major questions which I also outlined in my overview of Discourse Historical Analysis (DHA) in Chapter 4:

1. *How are persons, objects, phenomena/events, processes and actions named and referred to linguistically?*
2. *What characteristics, qualities and features are attributed to social actors, objects, phenomena/events and processes?*
3. *What arguments are employed in the discourse in question?*
4. *From what perspective are these nominations, attributions and arguments expressed?*
5. *Are the respective utterances articulated overtly, intensified or mitigated?* (Wodak & Reisigl, 2016, p. 32).

I approached this in a systematic manner by looking at the representations of the different social actors, examining grammatical forms, identifying linguistic devices (such as metaphor) and breaking down arguments. It would not have been helpful to present here the entire output of this analysis; in this chapter I have summarized the results most relevant to my three research questions.

In preparing the summaries that follow I was guided by several priorities. First, considering the arena of corporate control as a strategic action field I aimed to show how the representation of the key actors changed over time and from speaker to speaker. To recap, the incumbents are management, the challengers are represented by the interests of shareholders while the internal governance units are corporate boards and individual directors. How these groups are described and the roles ascribed to them in the speeches are matters of key importance particularly in regard to the first of my research questions. It is this analysis which I hope will shed light on the changing dynamics within the field and the evolving positions of these groups of actors. I also identified other actors and representations relevant to the transformation of the arena of corporate control that took place in the 1980s and 1990s; for instance, some of the speakers, especially early on in the period in question consciously appealed to the interests of the nation.

I also examined the argumentation strategies of each of the speakers, focusing on the case for action presented. My objectives were to further examine the roles of the various actors in the argumentation and advocacy of the speakers as well as to analyse underlying presuppositions and

values. Moreover, related to my second and third research questions I was interested in better understanding how perceptions of firm ownership supported the arguments of the speakers. For this reason, where necessary I have devoted a separate subsection to provide a more detailed study of the way in which ownership (of corporations by shareholders) was represented in the respective speech. Finally, where specific linguistic devices played a role in presenting an overall argument or representing a specific world view, I explained how this was done: for example, some of the speakers made a rich use of metaphor while others used various mitigation devices.

The importance of the historical context is key to the process of Discourse Historical Analysis. For this reason, each of the speeches is accompanied by a discussion of the overall historical context and the background of the speaker. In order to concentrate on the key results in this chapter, the historical context is provided in Appendix 1.

5.2.1 Harold Williams

Williams addressed the Securities Regulation Institute (SRI), an annual law conference, in San Diego, CA on 22nd January 1981 (Williams, 1981). The title of the speech is "The Corporation as a Continuing Enterprise."

Social actors

The nation

Williams is appealing primarily to the national interest. The ultimate beneficiaries of corporate governance reform are the people, society and economy of the United States. We see this eighty-six times in the speech, for example:

- *A key to the long-term economic health of both business and the <u>Nation</u>*
- *We must lengthen our focus if we are to remain a prosperous and competitive <u>nation</u>*

The pronouns 'our' and 'we' are used frequently thus serving to strengthen Williams' appeal to collective national goals.

The overall sense that we are granted of the condition of the United States is that it is dissatisfactory. Williams talks early on in the speech about the *vote of dissatisfaction with the condition and management of our Nation's economy* and asserts that *the economic record in the last decade was inferior to all but the terrible 1930s*.

Using the first-person plural has also enabled Williams to position the audience (and himself) primarily as Americans; in this way he clearly identifies himself with the audience. In contrast to 'we' and "our," the words 'you' and 'your' appear only twice and three times respectively in the whole speech.

Shareholders

Shareholders are mentioned in the singular and plural twenty-seven times in the speech. Williams sees shareholders as only marginally involved with their corporations:

i. Shareholders have a relationship to the company that is transient in nature and their concerns are short-term – in other words, shareholders are speculators. Williams is largely

negative about this relationship; they are twice referred to as *so-called investors* and have *whims* (as opposed to strategies or goals).

- *the parochial interests of those who may momentarily be speculating in its shares*

ii. Shareholders no longer control the corporations that they invest in:

- *not only is the controlling shareholder nearly an extinct species*

iii. The prevalent view is that an unsatisfied shareholder should sell their shares rather than using their voting rights (the Wall Street Rule):

- *notion that a displeased shareholder can, and should, sell-out*

iv. Ownership is not a meaningful way to characterize the contemporary relationship of shareholders to the corporation.

Management

Williams sees corporate managers as blighted by a focus on short-term gain either by choice or as a result of irresistible pressures; moreover, their commitment to the corporations which they run is fickle. Here are a few illustrative quotations from the speech:

- *the myopia of many corporate managers is indisputable*
- *the mobility of managers who become hired guns for the highest bidder*

Along with shareholders then, managers are a significant part of the problem. Williams is, however, ambivalent in allocating blame. Whilst he talks of “hired guns” and “mercenaries” he also refers to “talent” and “goodwill” giving the impression that the fault lies at least as much with broader systemic issues as with the behaviour of individual managers.

Boards

Williams sees contemporary boards as ineffectual and often in thrall to the CEO; his primary concern is with his prescription of how boards should act and what characteristics they should have. Independence is an important quality and the dominant theme is the need to safeguard the long-term viability of the corporation as a long-term entity:

- *the independent board as an important mechanism in realigning the dynamics*

- *an effective and independent <u>board</u> of directors has a role to play*
- *proper purpose of a <u>board</u>, rather, should be to direct the corporation as an enterprise whose long-term economic viability*

Williams' "imaginary" – his ideal state of affairs – includes an ideal board which would use its existing powers (thus obviating the need for further legislation) to ensure that corporations are run as continuing entities accountable to society as a whole:

- *to direct the <u>corporation</u> as an enterprise whose long-term economic viability*

The Argument

<u>Claim for action</u>: The main claim for action in the speech is as follows: corporate boards should govern their companies independently of the interests of shareholders and with a focus on long-term viability.

<u>Circumstances</u>: The general mood is of dissatisfaction with the state of the US economy with underperformance in a number of areas. The business sector has lost the confidence of the public.

The more fundamental threat is to ongoing prosperity (*our economic and social future would be at risk),* political stability and freedom in the United States. A particular concern that Williams alludes to is competition from Japan.

The reason for this economic weakness is a focus on short-term gain by those entrusted with the management of private sector businesses. This short-termism has been able to negatively affect the performance of corporations due to the lack of accountability of corporate managers.

In Williams' view, managers are not accountable as a result of an <u>institutional fact</u>, viz. that there is at present no mechanism for holding them to account. This means that the long-term interests of the corporation are neglected or are *without a champion*. Shareholders, who served this role in the past, do not now hold managers to account in the long-term interests of the corporation:

- *the feeling among many that no direct management accountability to shareholders exists.*

This "institutional fact" leads to a disconnect between shareholding and the ideal of ownership that could hold managers to account as well as between the shareholders and the long-term interests of the corporation as a continuing enterprise. Mechanisms that exert discipline on managers through indirect (market) pressures are not in the interests of the corporation. Hence the need for

a *rebalanced accountability system, which deemphasizes the idea of the shareholder as corporate owner.*

By disabusing and liberating themselves from the notion that shareholders own corporations it is easier to understand that they are not in a position to ensure accountability.

This is also why some other party is required to step in and make managers accountable. Williams believes that boards of directors are best suited to fill this role.

Goal: Williams identifies three goals, which are connected. As he states in his speech: *The objective: A heightened prospect for long-term viability of the individual enterprise, regaining a leadership position in the world for U.S. business and, most importantly, assuring the future of this country as a free and libertarian society.*

The first goal, economic success on the level of the individual corporation, contributes to the second goal, namely the success of business and the private sector as a whole. This in turn is essential for the economic wellbeing of the population of the United States. For Williams business corporations serve a public interest beyond the private interests of shareholders; *there is a public interest involved: the corporate sector is the cornerstone of our prosperity and stability, and of the standard of living that undergirds our society and our aspirations*.

Moreover, this economic success and prosperity is necessary to meet the third goal, the preservation of freedom.

The link between prosperity and freedom is stated but not explained in this speech. In his "Political Physics" speech Williams more clearly articulated his belief that economic success and political freedom are interrelated: "private enterprise, operating under a profit discipline, creates a climate which sustains the democratic process as we know it. The reverse is also true. Political liberty is essential to flourishing economic opportunity, and the economic system itself stimulates the individualism essential to political independence" (Williams, 1980a).

Values: As we have seen Williams's argument emphasizes the national interest. In outlining his goals, he specifically states that he wants *a leadership position in the world for U.S. business* indicating that patriotism is a key value in his argument. Tied to this patriotism is freedom: *assuring the future of this Country as a free and libertarian society*.

“Accountability” occurs seventeen times in the speech. Besides being a precondition for economic success, accountability is also a value in its own right. Williams tells his audience that *no opportunity comes without accountability for how it is seized*.

He expressed his belief in accountability per se most succinctly in 1979: “we have a deep-seated conviction that anyone who exercises power needs to be accountable to someone else for his stewardship” (Williams, 1979).

In summary, the values underpinning Williams’ argument are patriotism, freedom and accountability.

<u>Means-Goal Premise</u>: It is the responsibility of corporate boards of directors to maintain their independence and to serve the purpose of safeguarding the interests of the corporations that they govern as continuing enterprises. Williams advocates boards using powers currently available to them while also suggesting that the existing voting rights of shareholders not be removed. These actions will in Williams’ view restore accountability in the management of corporations which will in turn reverse their deteriorating economic performance.

Independent boards can insulate managers from pressures arising from the short-term thinking pervasive in US society and provide incentives (rewards) for acting in the long-term interests of the corporation. This two-pronged approach can ensure that corporate managers are accountable for the exercise of their power while also ensuring the long-term success of corporations. In turn according to Williams this will halt the decline of American business while serving its wider purpose which is *to produce the level of goods, services, employment, and real wealth which provide our standard of living and have become the foundations for a free and libertarian society.*

<u>Negative consequence of not taking action</u>: Not taking the action recommended by Williams would lead to continuing and terminal decline − *both American business and our Nation face a dim future*. Also: *Corporate America is facing a serious, potentially mortal, crisis* and *our economic and social future would be at risk*.

This suggests that the action is necessary to avoid this continuing decline. Williams does not specifically explain whether it is also sufficient. He does, however, mention some other areas in which change might be helpful.

The one concrete policy measure that Williams advocates is increasing the taxation of short-term trading profits. He favours greater disclosure on matters such as proxy voting and executive compensation but in the speech he only expresses a belief that this will follow as an outcome of investor demands. For the rest, Williams says very little in terms of concrete policies preferring to "encourage" possible measures – but we are not told which of them are necessary.

Shareholders and ownership

Williams appears to believe that shareholders should not be regarded or treated as the owners of the corporation. In an earlier speech delivered at Columbia University in April 1977, he says of shareholders: "they do not become owners in the company. Rather they invest or speculate in its income stream and stock market action and are in the business of trading securities" (Williams, 1977).

This is perhaps his clearest articulation of this view. However, he is not always this unambiguous and in the speech which is the subject of this analysis we see some qualifications of this position. For example, he says:

- *this is further evidence that shareholders are no longer thought of as corporate owners*
- *as archaic as the characterization of a company's shareholders as owners*

Though not approving of the notion of shareholders as owners, in these statements Williams qualifies his view. "No longer" and "archaic" at the very least hint that it might once have been reasonable to consider shareholders as owners. Perhaps Williams does indeed believe that in some way shareholding holds the potential for corporate ownership. In the following statement he links ownership with a commitment over time:

> *but the shareholder who displays the characteristics of ownership such as a stable commitment over time to "his" company has become increasingly rare.*

One wonders if a shareholder who did demonstrate a long-term commitment to the company would in Williams' view be more justifiably thought of as an owner.

The statement that *the predominance of a shareholder who neither wants nor accepts the obligations of ownership* hints at the possibility that ownership might be the result of a choice by the shareholder rather than an independent fact.

In a couple of instances Williams does refer to shareholding as ownership:

- *in more recent years corporate ownership and structure underwent fundamental changes*
- *So diffuse has corporate ownership become*

However, here there is no accompanying explanation of these statements which would contradict his rejection of the idea that shareholders own companies; it is possible that these were simple casual references, i.e. more a result of habit rather than reflections of a considered view. He might also be confusing the ownership of equity with the ownership of the corporation itself.

On the other hand, discussing the situation in the past, when corporations had dominant individuals such as Henry Ford, John Rockefeller and Andrew Carnegie who held managers to account, (Williams' examples), *they acted as would corporate owners*. The words "as would" suggest that even these major names were not really corporate owners.

Thus Williams' view of the relationship of the shareholders to the corporation and of ownership is complex and not unambiguous. In 1979 he stated:

> *in my view, that concept [that the interests of shareholders are paramount] is correct, but the definition of shareholder which its proponents use is not. The "shareholder" to which management should regard itself as accountable is not simply those individuals who happen to be shareholders today – or at any arbitrary point in time – but to "ownership" as an institution over time. When the "shareholder" is viewed as a continuing long-term group – even though its membership is changing daily – there is far greater congruence between corporate activity in the interests of its shareholders and the interests of the larger society.*

Here we see two interconnected beliefs at play. First, as we have already observed, Williams believes that corporations serve a broad public and national interest. Secondly, he sees a connection between shareholding and ownership; however, this is more abstract than practical (it may be that Williams has simply not been able to fully abandon the idea that shareholders have an ownership stake in the corporation). He apparently does not feel that the corporation should be managed in the sole interest of individual shareholders or the body of shareholders at any particular moment in time. The connection between these two viewpoints seems to be as follows: serving the

interests of the shareholders, in the abstract permanent sense that he sets out, can serve as a proxy for the interests of society. However, he places some importance on the length of the shareholder's commitment to the company: in William's formulation, the longer term the commitment, the closer the shareholder appears to be to the ideal of ownership. Contemporary shareholders as a group are far removed from this ideal and should not be seen as owners, even in an abstract sense.

Mitigation

To understand how Williams mitigates some of his claims, it may be illustrative to examine the manner in which he employs the metaphor of milking. The metaphor of milking per se vividly conveys the idea of acquisitive exploitation; indeed, Williams uses it three times in the speech. However, in each case Williams uses a mitigating strategy:

- *we have tended to milk it [the American industrial system] for short-term benefit*
- *John Rockefellers, and Andrew Carnegies sought to build, not to milk, the enterprises they controlled*
- *important participants in it may have an interest in milking American business*

Each time Williams has avoided explicitly setting out who exactly is doing the "milking." In the first statement, the subject of the sentence is the collective "we," so the fault lies with a broad and undefined group. In the second sentence he informs the audience that past business leaders did not "milk" their companies but we are again not told explicitly who is now doing the "milking." It is indirectly implied that milking is now being done. Finally, in the last example we read that there are 'important participants' who "may have" an interest in doing the milking. Once again, Williams refrains from telling us exactly which people or which groups of people are "milking" American companies. Indeed, he does not assert outright that they are milking – they *may have an interest* in doing so. The modal adverb "may" compound the mitigation.

Following a decade in which numerous corporate scandals received widespread public attention, it would not have been difficult for Williams to point to specific examples of exploitative behaviour. However, he chose not to do so.

Williams also used impersonalisation to mitigate some of his assertions. Impersonalisation involves downplaying human agency, and by not attributing blame, can serve to blunt the full impact of assertions:

- *A private sector which is inefficient and shortsighted would not enjoy the deference*
- *The discipline of the market price is causing dysfunctional behaviour*
- *I would envisage two urgent tasks for the independent board: first, neutralizing those dynamics [...] second, developing a system*

In each of these examples some action is being attributed to an entity or entities other than human individuals. In the last example the objects of the actions of the board are "dynamics" and "systems." Boards should neutralise dynamics and develop systems rather than for instance remove incompetent managers. Specific acts are implied rather than stated explicitly.

Another instance of impersonalisation is Williams' use of the metaphor of 'forces' in his discussion of the deeper causes of short-termism in US society. There is no one cause, no *single diabolical force* but rather an *amalgam of forces*. Moreover, these forces are all impersonal − except politicians − and Williams avoids laying the blame on social actors or their behaviour.

The use of the passive voice also serves to "background" social actors who are responsible for the problems that Williams is describing. For example:

- *Management [...] often feels compelled to operate the company with an eye to insuring that stock prices are always sufficiently high*

Williams' formulation means that he can omit to address directly the question: who is doing the compelling?

Williams also uses a pattern of metaphorical references to health and illness. Here are some examples:

- *A key to the long-term economic <u>health</u> of both business and the Nation*
- *The American <u>condition</u>*
- *these are merely <u>symptoms</u> of a far deeper problem*
- *creating an environment conducive to a <u>remedy</u>*

This is accompanied by a metaphor of weak eyesight (the words *myopia*, *myopic* and *shortsighted* occur twice each). The metaphor of health (there are positive as well as negative allusions so we have a "condition" but also "remedies") is a recurrent pattern throughout the speech. The body has fallen into poor health having been sapped of its strength and is in mortal

danger. This conceptualisation comprises mitigation; one feature of illness is that it is usually not associated directly with blame. Using this metaphor helps Williams to background the role of human agency in bringing about the state of affairs that he is describing. However, the health metaphor also intensifies the negative impact of not following the recommended action. The threat is not only serious but *potentially mortal*.

5.2.2 Charles L. Marinaccio

Marinaccio addressed the Chicago Regional Group of the American Society of Corporate Secretaries in Chicago, Illinois on 9th January 1985 (Marinaccio, 1985a). The title of the speech is "Public Policy Issues Concerning the Subjects of Tender Offers and the Developing International Equities Market." The speech contains three sections: a brief introduction followed by discussions on tender offers and the international equities market. In this analysis I examine only the first two sections which are relevant to this research project.

Social Actors

Shareholders

There are fourteen references to shareholders in the speech including one to investors. Overall Marinaccio is largely concerned that they are treated equally and fairly:

- *its responsibility to prove a fair return to shareholders.*
- *resulting in equal treatment to the shareholders.*

Moreover, he distinguishes between shareholders who have short-term goals and those who have a long-term interest in the firm:

- *Some shareholders benefit. These are mainly professionals and institutions. More cautious shareholders, primarily interested in long-term appreciation, receive the lesser benefits.*

Marinaccio does not refer to shareholders as owners. Indeed the word owner does not appear in the speech; the only reference to ownership refers to shares rather than the corporate entity itself:

- *One was the stability of share ownership in the hands of individuals and others that did not view short-term appreciation as their primary goal.*

Management and boards

Overall there are eighteen references to management or managers. Besides the focus on their responsibilities as described in the previous section, management are characterized as *incumbent* and the tendency to divert their attention towards the short-term interests of some parties is a recurrent theme:

- *Policies that dissuade corporate managements from their historical role under the business judgment rule of concern for the long-term viability of the enterprise*

Boards and directors are mentioned but to a much lesser extent than management. There are two references to boards of directors both of which refer to Marinaccio's proposal that boards approve certain types of tender offer. However, given that much of the discussion involving managers revolves around the business judgement rule which mostly concerns the approach that the courts take in relation to boards, it is possible that Marinaccio is not making a distinction for the purposes of this analysis between managers and directors. In any case he does not pay attention to the relationship between boards and managers.

The business judgement rule

There are three passages during the speech in which Marinaccio refers to the role of corporate managers in terms of satisfying the needs of multiple constituents, including employees, customers, the national interest as well as shareholders. This broad set of roles is tied to the *business judgment rule,*[43] which is referenced seven times in the speech. Marinaccio's formulations of the role of the corporation are as follows:

- *Capital is allocated, management and labour organized, consumer wants satisfied by goods produced, communities prosper and stabilize, and the Nation gathers strength*.
- *management operating under the business judgment rule was able to weigh the various constituent needs of the corporate enterprise: namely, management's responsibility to the juridical entity to maintain its long-term viability; its responsibility to produce a competitive product; its responsibility to provide jobs in an expanding economy; its responsibility to maintain stable employer and community relations; and its responsibility to prove a fair return to shareholders.* (It is worth noting the repeated use of the word *responsibility* in this second passage which is attributed to managers.)

[43] The Business Judgement Rule according to West's Encyclopaedia of American Law is: "a legal principle that makes officers, directors, managers and other agents of a corporation immune from liability to the corporation for loss incurred in corporate transactions that are within their authority and power to make when sufficient evidence demonstrates that the transactions were made in good faith" (Phelps & Lehman, 2005).

- *their* [management's] *historical role under the* _business judgment rule_ *of concern for the long term viability of the* _enterprise_*, building a competitive product for domestic and international markets, devising strategies for stable employee and community relations, and concern for enhancing shareholder values and force those managements into emphasizing new policies designed for maximizing short term interests and which alter corporate capital and voting structures are counterproductive to our best economic interests.*

The first of these passages contains Marinaccio's appeal to the broader national interest. The success of corporations is tied with the interests of the nation.

Marinaccio also uses the collective "our" to identify himself with this broader interest placing it above the interests of specific parties: *It has become a big money game to many but the stakes for* _our_ *national* wellbeing *are too great to be ignored by the rest of us*

It seems reasonable to take the last two passages above together as a definition of the business judgement rule as far as Marinaccio is concerned.

In turn Marinaccio connects the business judgement rule to what he calls a *reserve value base* or *reserve equity base*. This *reserve equity* is not precisely defined and is not related to any accounting term (as far as I can tell) but seems to refer instead to a general set of resources that a firm may draw upon in order to respond to change and fulfil the needs of a broad set of stakeholders (though Marinaccio does not use the term "stakeholder"):

- *in no small part to the operation of the* _business judgment rule_ *historically, corporations built up an enormous* _value reserve base_ *not necessarily reflected on their balance sheets*

He seems to be concerned about the short-term extraction of value by or on behalf of some group of shareholders. This apparently is value that may belong to the corporation as an entity but is not allocated to shareholders either on the balance sheets or in market valuations of equity. Hence it is part of neither the book value of equity nor the market capitalisation. The concept of the *reserve value base* rests neither on accounting rules nor valuation principles. It is vaguely defined and not founded on any clear economic principle.

The Argument

Claim for action: It is desirable that managers run companies in line with the business judgement rule[44] maintaining competitiveness and meeting the needs of a wider group of actors. Congress should act to introduce new regulations on corporate takeovers in order to reassert the primacy of the business judgement rule.

Circumstances: We are currently experiencing a time of considerable change. One major change has been in the field of corporate takeovers. The balance of power between bidders and target company managers has shifted sharply in favour of bidders *(the balance has shifted radically against the target and its management to the bidder*). Previously there was an even balance between these two groups. There are a number of reasons for this change.

There is an important institutional consideration: the 1968 Williams Act which governed takeovers in the US at the time of the speech came into law at a time when there was a balance between the interests of bidders and target company managers (*Congress enacted the Williams Act at a time when there was a reasonable balance of power between the offeror and the target*). Moreover, the Act helped to maintain this balance. However, the balance has shifted; the Williams Act is no longer fulfilling its original purpose.

The increased power of bidders has made it easier for them to use the bidding process in order to monetize and acquire all or part of the *reserve equity* which is *at the mercy of bidders*. This means that companies are not necessarily being acquired to be managed for the long term but to provide short-term returns to bidders and some shareholders. Often *the breakup of the enterprise* is *a likely result*.

Goals: Marinaccio's main goal is to ensure that corporate managers run their companies in line with the business judgement rule. This will in turn serve the national interest. First, by addressing the needs of various social actors the corporate sector will serve its purpose, namely that of

[44] Stout (2012) has explained how the Business Judgement Rule rules out the idea that directors are legally obliged to maximize shareholder value since it "allows directors in public corporations that plan to stay public to enjoy a remarkably wide range of autonomy in deciding what to do with the corporation's earnings and assets. As long as they do not take those assets for themselves, they can give them to charity; spend them on raises and health care for employees; refuse to pay dividends so as to build up a cash cushion that benefits creditors; and pursue low-profit projects that benefit the community, society, or the environment. They can do all these things even if the result is to decrease – not increase – shareholder value" (2012, p. 31).

sustaining prosperity at home in the US. Secondly by focusing on competitiveness in international as well as domestic markets, this will safeguard the economic position of the US in the world.

Values: Marinaccio espouses a number of values in his speech. His main argument is for the national interest: he does not talk only of society but about the nation as he is concerned about the competitiveness of US firms in international markets. Thus patriotism is a key value in his argumentation.

Marinaccio is also committed to free markets and a laissez-faire approach to economic policy making. He sets out his view clearly right at the beginning of the speech. It is important for him *to maintain open and competitive free markets with a minimum of governmental intervention*. Economic liberalism is another value underlying Marinaccio's approach.

Moreover, Marinaccio regards the corporate form as vital to enabling a free market; it is, in his words, *indispensable to the operation of a free market economy*. Hence the duty of managers to ensure the success of their corporations is of such great importance. Marinaccio does not state it in this speech but he sees the business judgement rule as a key part of what is necessary to preserve the free market system. In a speech a few months earlier, he more clearly associates the business judgement rule with free markets: "corporate managements exercise important responsibilities in a free market economy" (Marinaccio, 1984, p. 11). He goes on to list these responsibilities. They are the same multiple responsibilities to various parties that he enumerates in this speech.

Moreover, there are a number of references to stability in the text. Though he supports free markets, he also wants policies that will *stabilize free market forces*. In addition, he wants to ensure that *historically balanced and stable industrial and financial policies and the national market for securities* are not at risk of *disruption*. There are also references to stability in social relationships associated with the firm. One of management's responsibilities under the business judgement rule is *to maintain stable employer and community relations*. This would suggest that an attachment to stability is part of the overall scheme of values which Marinaccio articulates in this speech.

In addition, Marinaccio wants to see all shareholders treated fairly. Besides the broader goals of social stability and national prosperity fairness is also a value that is promoted as an outcome of the action which Marinaccio is advocating.

Finally, Marinaccio believes that the system that he aims to preserve also contributes to *a democratic way of life*.

Thus, the key values which we can identify from the text are patriotism, economic liberalism, social stability, fairness and democracy.

Means-Goal Premise: In the speech Marinaccio outlines eight specific policy goals. He claims that if these goals are achieved the current situation in which bidders are in a more powerful position than corporate managements will be rectified. A restored balance in the power between bidders and target companies will in turn free managers from the pressure to focus excessively on short-term financial goals and the need to forestall aggressive takeover attempts. Freed from these pressures, managements can then return to run their companies in accordance with the business judgement rule, thus benefitting both social and economic stability as well as national economic prosperity. They will also no longer be distracted by the necessity to forestall hostile tenders and will be able to focus on the core activity of managing their businesses. Moreover, a restored balance will also better ensure the protection of the *reserve equity* from being monetised by bidders so that it may be used by managers to overcome changing circumstances.

Each of the eight goals leads directly either to the safeguarding of the reserve equity or restoration of the balance of power between bidders and management.

The argumentation presented by Marinaccio includes appeals to authority, a discussion of the consequences of not taking action as well as a counterargument.

Counterargument: Marinaccio volunteers the view that there is no need for regulatory change, but that a balance will be restored as events run their natural course, as *shareholders who are disenfranchised discover that their share prices fall* and react accordingly. He admits that this line of argument has a certain appeal for him but then waves aside these reservations and asserts that congress should review takeover legislation therefore suggesting that not taking the action that he advocates would result in *disruption* of *historically balanced and stable industrial and financial policies and the national market for securities*. He also appeals to national interest (*the stakes for our national wellbeing are too great to be ignored*) but does not explain why the counterargument is incorrect.

Negative consequence of not taking action: Besides the disruption mentioned in the previous section Marinaccio warns that policies which apply pressure on managers to deviate from their traditional role would be *counterproductive to our best economic interests*. He does not outline a specific set of consequences resulting from a failure to implement any of the policy goal he outlines.

5.2.3 Charles Cox

Cox addressed the S.E.C. Finance Committee of the Westchester-Fairfield Corporate Counsel Association in Stamford, Connecticut on 28th May 1987 (Cox, 1987). The title of the speech is "Contracts, Corporations and Corporate Governance."

Social actors

Shareholders

The speech is primarily about the relationships between shareholders, managers and corporations. There are forty-six references to shareholders (including stockholders and investors). Shareholders are largely characterized as having a distant and impersonal relationship with the company: this relationship is purely financial in nature and they remain ignorant of much of what is going on. They are often not even fully aware of the contractual details of that relationship:

- *business enterprises, which shareholders are in mainly for the money and which they can join and leave in a few seconds*
- *generally remote and impersonal relations between shareholders and their corporations*
- *shareholders are poorly placed to effectively oversee management's efforts*

Management

Management is the other group of human actors who feature in this speech. There are forty-one mentions of managers, management or executives; the adjective managerial occurs eight times. There are some identifiable themes including for instance several references to *discretion* (in terms of decision-making):

- *whatever discretion the* managers *may claim under their contract*
- *there are limits that corporate law reasonably imposes on the discretion that managers may contract for*

Another theme running through the speech is that of the alignment of the interests of managers and shareholders:

- *Corporations also align the interests of managers with those of shareholders*

Directors or boards do not feature in the speech.

Corporations, markets and human agency

Altogether there are fifty-six references to the corporation as a business entity. This includes mentions of words that are used interchangeably with *corporation*, namely *company*, *firm*, *business* and *enterprise*. There are also thirty occurrences of the adjective corporate. The most salient themes in Cox's representation of the corporation are those of contracts, governance (which is in the title of the speech) and control.

Noticeably, despite his view of the corporation as a *fundamentally contractual arrangement*, Cox attributes agency to it. The corporation, or indeed the corporate contract, is the subject in a subject-verb clause in a number of instances:

- *Corporations also align the interests of managers with those of shareholders*
- *Causing it [the corporation] to behave in an economically rational way*
- *the discretion that the corporate contract typically delegates to management has been poorly used*
- *Managerial discretion or control is part of a package that the corporation offers to the capital markets*

Indeed, in the last example the corporation offers the discretion to the markets; the transaction being between two non-human entities. In this way Cox backgrounds the role of shareholders entirely. This is consistent with the view that shareholders are *in mainly for the money and … can join and leave in a few seconds*.

Whilst the concepts of a contractual relationship and control are frequently referenced, there is only one mention of ownership in the text of the speech (*Separation of corporate ownership and corporate control is said to diminish profit incentives*).

Markets are mentioned eleven times in the text of the speech. They are the subject in subject-verb sentences several times and are frequently cast in the role of human agents:

- *suggests that securities markets quite regularly take the long-term point of view.*
- *In some situations the market may regard these measures as enhancing corporate earnings*
- *Financial markets….decide whether the discretion offered to management represents a reasonable balance*

The concept most commonly associated with markets is that of corporate control.

The Argument

We break down the main argument presented by Cox as follows:

Claim for action: The central claim is that market forces rather than regulation, should, by fulfilling their role as allocators of capital, direct the fate of individual companies subject to takeover bids as well as the evolution of management practice in regard to tender offers.

Circumstances: In recent years the threat of takeovers has grown, therefore presenting a challenge to managerial discretion in the running of corporations. Corporate managers and bidders have engaged in frequent and high-profile struggles for the control of firms. Each side has used a range of different intellectual arguments to make their case and has advocated the use of regulations to constrain their opponents. The empirical evidence (in Cox's view) does not support either of the opposing cases for regulatory or legislative action.

Goal: The ultimate goal seems to be overall welfare or what Cox calls *society's aggregate wealth*. This is achieved through an intermediate goal: in other words that of maximizing profits. By maximizing profits, managers ensure rational economic behaviour and benefit society as a whole.

Values: Cox argues that the current contractual arrangement between shareholders and corporations is equitable; equity is clearly a value that is important to Cox. However, this remains a secondary concern. Cox values economic efficiency even more highly, and this is the main focus of the speech. He supports market forces since in his view they lead to superior economic outcomes measured in material terms (*society's aggregate wealth*).

Means-Goal Premise: In Cox's view corporations are contractual arrangements between different parties. He prioritizes the financial gain of shareholders. His underlying assumption is that by maximizing the wealth of shareholders, managers will make economically rational decisions and will in turn increase overall prosperity. The contractual relationship should allow managers a degree of discretion in the execution of their responsibilities though this should not mean any *deviation from the pursuit of profit*. The capital markets in which shareholders are free to exit from positions and take decisions in their economic best interests are the best guarantor that the system will work.

Cox poses two questions regarding the corporate contractual relationship both of which stem from the perspective of shareholders only. First, he asks whether the relationship is equitable. Secondly, he asks if it is efficient. He answers both questions in the affirmative.

Question 1: is the corporate contract equitable towards shareholders? This question is reframed as: is the shareholders' consent genuine? Cox argues that it is. First of all, there is no duress, physical or otherwise, involved. Shareholders have choices to invest amongst a range of corporations as well as other investment opportunities. Secondly, it is not necessary to insist that they give their consent after individual negotiations. Moreover, although there is a certain level of ignorance on the part of the shareholder of the exact details of the contractual arrangement, Cox argues that this is not unreasonable provided that the "small print" of the arrangement broadly conforms to a *general norm* and that information is given in the case of departures from this norm. Cox believes that existing corporate law is adequate to ensure that the relative ignorance of shareholders (and the resulting discretion given to managers) is not abused.

Question 2: Is the corporate contract efficient? Here Cox is only concerned with the *efficiency of the corporate contract for maximizing shareholder wealth*.

Before addressing the question, Cox states the problem in terms of the separation of ownership from control. Managers might be motivated to favour other interests than those of the corporation's shareholders.

In answering this second question, Cox outlines mechanisms which ensure that the arrangement is efficient while also addressing a number of counterarguments. He dismisses these counterarguments thus affirming his position in favour of leaving the determination of outcomes to market forces rather than regulation.

Arguments from authority:

The speech contains numerous references to recent literature researching the themes covered by Cox. Though there is some diversity in terms of the authors' background, there remains, however, a noticeable focus on authors who were affiliated to the Universities of Chicago or Rochester at the time of publication or who were awarded PhDs by either of these institutions. Of the fourteen sources cited in Table 3.4, eight had at least one author who was affiliated to one of these two institutions at the time of publication. Ten of these sources had at least one author who

had received a doctoral degree (or JD degree) from one of these two previously mentioned institutions.

Ownership and contracts

Cox's argument starts with two presuppositions. These are stated but not explained; in effect they do not form part of the argumentation but are taken simply as given. The first of these is his view of the corporation as a *contractual arrangement*. This is based on the "nexus of contracts" view of the corporation as presented by Jensen and Meckling (1976). Although he does explain that there is an alternative view, which he characterises as "the firm as a *little commonwealth,"* he does not add any further comment. This simple statement of his personal view without any further discussion means that he sidestepped the debate over the nature of the corporation. The view of the corporation that one adopts is more than a matter of personal taste but forms part of two very different ideological perspectives (or world views) and has significant consequences. The "nexus of contracts" view forms the basis of the rest of the argumentation in the speech.

There is an additional point worth noting. Whilst the corporation is presented as a *fundamentally contractual arrangement*, it is the subject of a number of verbs in the speech. Shareholders have contractual arrangements with the corporation rather than with any or all of the other contracting parties. For a "legal fiction" the corporation is doing a fair amount of work. This is either a rhetorical device that helps to downplay the relationship between shareholders and managers (and amongst the shareholders) or evidences a degree of confusion on Cox's part about the nature of the corporation's status as a legal entity.

Cox's second presupposition is that he assumes the primacy of the interests of shareholders amongst the contracting parties who in his view make up the corporation. This is never explained but is simply assumed. Other contracting parties are barely mentioned in the speech nor are their interests in the firm explained. The most we see in the way of an explanation as to why this should be so is Cox's assertion that *social policy has usually assumed that the corporation's pursuit of profit is a good thing.* This statement is also an interesting example of impersonalisation. The assuming is being done by *social policy* not by Cox himself nor by any other human actor. This has enabled Cox to avoid being specific about the assumption that he has introduced into the argument, which he passes off as generally accepted wisdom.

Both of these major presuppositions are ideological premises. Their ideological nature is hidden in the speech.

Cox's position regarding shareholders is entirely consistent with the "nexus of contracts" view of the corporation. In this view the business corporation is nothing more than the sum of contracts between the different parties each of which contribute resources. The interests of the shareholders, as the residual income bearers, are prioritized by the board and management; maximizing profit is indeed equivalent to maximizing the wealth of shareholders. However, this viewpoint disregards an important legal reality: that the corporation itself is a separate legal person distinct from the shareholders which owns its profits and which may dispose of them as it (governed by the corporate board) deems appropriate. By omitting to explain his position, Cox has been able to treat the theoretical foundations of his standpoint as commonly accepted wisdom, making them less susceptible to challenge and consequently more powerful.

The way in which the notion that shareholders "own" the corporation fits into Cox's argumentation is not clear from this speech. The "nexus of contracts" literature treats this idea of ownership in a way that is not consistent; different authors treat this question in different ways. As explained in Chapter 3, some represent shareholders as owners while others are careful to avoid or reject such a representation.

Cox's speech reflects this somewhat ambiguous approach to the role of ownership in discussions of the corporate entity although he himself did regard shareholders as owners as well as contracting parties,[45] and did not share Fama's (1980) view. On the one hand, we are told that shareholders have an impersonal relationship with the corporation which is solely financial in nature (in other words, they are in mainly for the money and they can join and leave in a few seconds). In addition, shareholder primacy seems to play an instrumental role, at least in part as an intermediate stage towards a broader social goal.

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[45] Private correspondence January 2021. In a private e-mail exchange with me, Cox confirmed that he believed – and continues to believe – that shareholders are owners as well as contracting parties. Moreover, he does not support the 2019 statement of the Business Round Table, adopting a more stakeholder-driven approach regarding this as an abandonment of profit maximization and a negative development for corporate governance. Cox does not, however, see profit maximization as prioritizing shareholder interests at the expense of other contracting parties but as doing so subject to the constraints of these other contractors.

On the other hand, ownership plays a key role in the means-goal premise which rests on the claim that there are processes in place that ensure that corporate officers do indeed serve to maximize the wealth of shareholders. (Without this the contention that market mechanisms function effectively would not stand.) Cox introduces this claim with the question: does the corporate contract ensure shareholder wealth maximization? He justifies this with the alternative hypothesis that the separation of corporate ownership and corporate control are said to diminish profit incentives framing this assertion in the language of ownership. He then looks to seminal works for further validation referring to Berle and Means along with Adam Smith and their formulations of this problem. The passage of Smith that he cites refers to corporate officers as managers rather of other people's money thus implying an agency relationship with shareholders. In this sense, ownership plays an important though somewhat hidden role in Cox's argumentation. Moreover, this impersonal and purely transactional form of ownership comes without any responsibility.

Thus although it is not unequivocally expressed but rather implicit in the argumentation the idea that shareholders own the corporation is an important part of Cox's view of the corporation and the proper role of those who run it.

5.2.4 David Ruder

Ruder addressed the 27th Annual Corporate Counsel Institute in Chicago, Illinois on 11th October 1988 (Ruder, 1988). The title of the speech was "The Impact of Institutional Investors on Large Corporations."

Social actors

Shareholders / Institutional investors

Institutional investors are the most frequently mentioned social actor in the speech, with one hundred and forty-six mentions. They are not presented in a particularly positive or negative light though they are associated with a number of themes throughout the speech.

Power, along with size, is the most prominent theme associated with institutional investors. Not only are these actors large but they are often growing or increasing in size:

- *The existence of increasingly large institutional holdings in today's markets suggests that some notions of corporate power and accountability may need to be re-examined.*

- *resulting in institutional domination of our markets.*

Ruder also emphasizes the responsibility of institutional investors to their beneficiaries (they are *managers of other people's money*) and as corporate "owners."

Another common theme relates to activity and participation by institutional investors in corporations as well as markets:

- *Paradoxically, while corporate managers dislike the increasing activism of institutional*

- *Institutional investors have become more active market participants.*

Institutional investors are presented in an impersonal light. In a speech replete with examples and factual details, there is not one single reference to an individual fund manager or executive within an institution. This is compounded by the observation that the institutions take on human

form in places; they are the subject of verbs, such as for instance owning and are given human emotions and functions. This serves to background actual human individuals:

- *matters affecting the financial future of corporations have begun to awaken institutional shareholders*
- *Corporate managers who, respond to shareholder desires as expressed by institutional investors will avoid charges that they are accountable to no one*

Managers

Corporate managers are the most prominent group of individual people in the speech. They are most frequently referenced as being opposed to the involvement of institutional investors in corporate matters:

- *The emerging role of institutional investors in corporate governance has not been entirely welcome to corporate managers.*

Moreover, Ruder wants managers to change their approach and be more responsive to institutional investors often using the modal *should:*

- *In turn, corporate managers should recognize the power of their institutional shareholders and take steps to be responsive to them.*

Managers appear in this speech in a relatively impersonal manner. They are "managers" fourteen times but "management" thirteen times. Ruder does not give any examples of individual managers or actions.

The argument

Claim for action: Institutional investors should actively engage with the corporations in which they have invested. Corporate managers should respond positively to the concerns of these institutional investors.

Circumstances: Institutional investors have been growing in importance, currently making up almost 50% of the equity of listed companies; this figure rises to over 50% for the largest

corporations and 70-80% of market turnover. This growth changes the position of shareholders as hitherto largely anonymous and dispersed actors in corporate matters.

Although institutional shareholders have had a reputation as passive investors there have been signs of a more active approach in recent years. Institutions have collectively taken a stand on issues of social responsibility, and more recently still also matters of corporate governance including anti-takeover measures such as poison pill provisions and on tender offers. Ruder separates social responsibility from corporate governance.

The SEC has been reacting to the emerging power of institutional investors since the 1970s requiring greater disclosure of holdings and encouraging them to be more actively involved in corporate affairs.

Institutional investors serve three functions: managers of funds, owners of corporations [Ruder's characterisation] and participants in capital markets. These functions are interrelated.

Goals: Ruder's ultimate goal is expressed in the conclusion of the speech; he wants to see a focus on long-term performance in the interests of overall prosperity. Ruder seems to identify three intermediate goals all connected with the roles of institutional investors: fulfilment of obligations to those whose money they are investing, successful corporations and well-functioning capital markets.

Values: Ruder does not emphasize values in this speech, but the most clearly articulated value is responsibility (with fourteen direct mentions alongside four of "duties" as well as one of "fiduciaries") particularly connected with ownership. Ruder is concerned with the responsibility of institutional investors towards their beneficiaries as well as their responsibility as owners of corporations. In addition there are four mentions of corporate social responsibility and one of the responsibility of managers towards shareholders.

Means-Goal Premise: The argument is two-pronged. Ruder argues that institutional investors should take a more active approach as corporate shareholders by exercising the responsibilities of ownership. At the same time he argues that managers should accept the reality of increased influence of institutional investors engaging with them and responding to their concerns.

The argument for institutions to take a more active role as shareholders is threefold and is connected to their large and increasing size. First, Ruder argues that as large shareholders who

participate in markets, these institutions need both the corporations and the markets to function well in order to be able to deliver on their obligations in the long run to the investors who are their ultimate constituents (and to whom they have fiduciary responsibilities). Secondly, the very size of these institutions makes it harder for them to take the "Wall Street Rule" approach to investing, i.e. selling their share if they are dissatisfied with management; actively participating in corporate governance to turn around negative situations should prove to be a better alternative. Thirdly, Ruder points out that passive investment strategies with their inherently short-term focus when enacted by large numbers of sizeable market participants are destabilizing and counterproductive leading to events such as the 1987 stock market crash. A better strategy would be to take a long-term approach including attentiveness to what is going on inside corporations.

Ruder's advice to managers is predicated on the view that the rising importance of institutional investors as corporate shareholders is a permanent trend. In these circumstances, managers would benefit from engaging with these investors rather than resisting their involvement.

Appeals to authority: The speech is rich in references to data and Ruder gives numerous examples to support his case. The examples refer mostly to the largest corporations such as for example General Motors, General Electric and IBM along with the largest investors, e.g. CALPERS. The majority of the twenty-four footnotes to the speech consist of supporting factual data from a range of sources including the periodical *Pensions and Investment Age*, the *Investor Responsibility Research Center*, the SEC itself as well as academic sources such as *Business Lawyer*.

Ruder on ownership

Ownership is an important aspect of the role of institutional investors. The word "owner" appears eight times and six of these portray investors as owners of corporations (rather than of shares):

- *As corporate owners, they gradually may be overcoming their reticence to influence the management of the companies whose shares they hold.*
- *managers may be pleasantly surprised if that responsiveness causes institutional investors to behave more as long-term owners of corporations.*

The word "ownership" appears seven times. Six of these seven references are to ownership of corporations rather than shares:

- *it seems inevitable that they will gradually assume the responsibilities of ownership.*
- *The time has come for both institutional investors and corporate managers to recognize the power and permanence of institutional corporate ownership.*

Ruder's academic writings appear to reveal a commitment to a nuanced form of shareholder primacy. In *Public Obligations of Private Corporations* (Ruder, 1965) he supported profit maximization which he identified with shareholder primacy as the main purpose of business although he denied that this was incompatible with meeting other social goals. His main conclusion was that businesses should not promote goals entirely separate from profit maximization.

Sixteen years later, in *Current Issues Between Corporations and Shareholders* he reaffirms this commitment to profit maximization on behalf of shareholders, whilst at the same time maintaining social concerns as a consideration: "Within the limits acceptable under the concept of long-range profit maximization, the corporation should recognize that its great assets and great power create an obligation to be accountable to other aspects of society" (Ruder, 1981, p. 774). In *Duty of Loyalty – A Law Professor's Status Report*, while discussing the fiduciary duties of management he clearly affirmed "…the proposition that corporate managers owe their primary responsibilities to the owners of the corporation – the shareholders (Ruder, 1985, p. 1384)." The focus here is on conflicts of interest between managers and shareholders, such as self-dealing, insider trading and excessive compensation, as well as the protection of minority shareholders. In contrast to the earlier articles, Ruder does not comment here on the social responsibility of shareholders.

Ruder's 1987 speech on corporate governance

The speech that Ruder gave in 1987 also in Chicago (Ruder, 1987b) is also of relevance to this investigation. The title of that speech was 'Federal Prevention of State Anti-takeover Legislation.'

The principal claim for action that Ruder made was for Congress to act to pre-empt state-level legislation that would enable corporate managers to resist takeover bids. Essentially Ruder was arguing in favour of maintaining the legislative status quo on takeover regulation.

Ruder gave a very a clear account of the values that underpinned his argument in the last sentence of the speech: “I acknowledge that my views are influenced by a fundamental concern for the rights of shareholders and that, as Chairman of the Securities and Exchange Commission, I also must acknowledge my responsibility to assure that our capital markets continue to be strong, viable and uninhibited” (Ruder, 1987b, p. 12).

Moreover, his commitment to the paramount interests of shareholders was predicated on the belief that shareholders owned the corporation. Ruder rejected arguments for restricting takeover activity based on other stakeholder interests in no uncertain terms: “…they seem to ignore what I regard as the fundamental premise of tender offer regulation, that corporations are owned by their shareholders (Ruder, 1987b, p. 3).” He repeats this assertion later in the speech in the discussion of state laws: “[…] the basic problem with assertions that employees, communities, and other constituencies should be protected against dislocations is that they ignore the interests of the owners of the corporation, the shareholders (1987b, p. 10).”

In contrast to his earlier positions, in which he acknowledged the social responsibility of corporations, here Ruder dismisses these broader concerns presenting shareholder primacy with all the stark directness of Gordon Gekko the principal villain addressing the Annual General Meeting of the fictitious Teldar corporation in the seminal film *Wall Street*, which was released in the same year as the speech: “You own the company. That's right. You, the stockholder (Stone, 1987).”

5.2.5 Richard Breeden

Breeden addressed the Town Hall of California in Los Angeles on 7th June 1992 (Breeden, 1992). The title of the speech is "Corporate Governance and Compensation."

Social actors

The nation

Breeden refers to the nation frequently in order to present the questions which he discusses as being of national interest. The pronouns *our* and *we* help to identify the speaker as a compatriot:

- *America's public corporations should rely on market forces, not government dictates or social engineering through the tax code. As a nation we have far too much at stake in global economic competition to allow public trust in the legitimacy and fairness of public corporations to erode too far.*
- *the result of that is a loss of economic vitality for the country and reduced opportunities for our people to pursue their economic dreams.*

Shareholders

The picture that emerges from the speech is of shareholders as participants in a representative democracy deserving of the accompanying rights:

- *we rely on representative democracy in governing our corporations. Here the theory says that the shareholders elect the board of directors to represent them.*

Moreover, the shareholders need protection of their interests and rights (from misuse of the power entrusted to managers):

- *boards of directors will protect the shareholders against overreaching or inept performance by management.*

Although Breeden acknowledges the importance of institutional equity ownership (there are four mentions of institutions or institutional shareholders) this is not underlined in the majority of mentions. His framing of a corporation as a representative democracy involves shareholders primarily as human actors.

Management

Management is presented in the speech in a largely negative light. The discussion is about dealing with failures of managers, the need to keep a check on their powers and their compensation. The context is frequently that of poor performance:

- *boards of directors will protect the shareholders against overreaching or inept performance by <u>management</u>.*
- *the cost of waiting for a takeover or bankruptcy to make <u>management</u> changes will be far higher than through board action*

Boards

Breeden clearly distinguishes between the roles of managers and boards of directors. Boards are clearly the elected representatives of the shareholders:

- *many shareholders ask, "Who is the <u>board</u> representing?"*
- *Through both improved disclosure and greater freedom for shareholders to express their views directly to the <u>board</u>, we hope to see improved accountability of the board to the shareholders*

Another theme that runs through the speech is that of the need for independence of both boards and individual directors:

- *the perception and the reality of <u>board</u> independence and capacity to play a meaningful role would be enhanced if every large company followed this practice.*

Breeden also touches on the internal workings of boards going beyond general principles; the requirement of independence is also discussed for board committees as part of the process of deliberation and ensuring accountability.

The Argument

<u>Claim for action</u>: The main claims for action are threefold: First, the SEC should require greater disclosure on compensation. Secondly, the SEC should change current rules in order to enable shareholders to more easily communicate with each other. Thirdly, corporate boards should ensure that the processes by which compensation is determined are independent of management – and seen to be so. This should not be achieved through legislative or regulatory measures.

Circumstances: In the United States equity in public corporations is owned by a significant proportion of the overall population. This has been achieved by direct investment in shares and through institutional ownership (which Breeden sees as a positive influence on corporations to improve performance). This broad sharing of equity interests in corporations has led to the problem of how to ensure that shareholders' interests are adequately guarded. The solution (*the linchpin of our system of corporate governance*) lies in boards of directors who are elected by shareholders to ensure that their interests are represented by overseeing the work of managers. The problem now is to ensure that this system (which Breeden terms as *representative democracy*) works as it should (*it is important for this theory to be more than a Hollywood fantasy*) and that boards are effective in pursuing the interests of shareholders. Management compensation is part of this broader problem of governance.

Moreover, there are legitimate reasons to doubt that boards fulfil their role as set out by Breeden (*many people rightly ask, "Where were the directors?"*).

Nevertheless, this criticism should not be overstated. Successful executives deserve to be well rewarded – the problem is not the amounts paid per se but rather the rewarding of failure.

Goals: Breeden's first goal is to ensure that corporations are run in the best interests of shareholders. To this end managers should be compensated in a way that motivates them to strive towards this goal. Secondly, Breeden wants to ensure that corporations are successful in order to provide for wider economic success of the United States both at home and in terms of international competition.

The first goal hinges on the premise that shareholders are the owners of the corporation. Breeden begins his speech praising the country's *success in fostering public ownership of corporations* and then immediately proceeds to examine the problem of representation of shareholders: *the problem of governing widely diversified companies*. This problem is only framed in terms of the shareholders as owners. The board is the *foundation of the legitimacy of actions taken by management in the name of the shareholders*. There is no other source of legitimacy for management; they act in nobody else's name.

Moreover, Breeden identifies the corporation with the shareholders, and not as a separate legal person. The money paid to executives in compensation in his mind is paid by the shareholders and not by a separate and independent entity:

- *the owners of the company have every right to know just exactly what they are paying to those who run the company*
- *it [decisions on management pay] has to be made in the interests of the company as a whole and that means the shareholders*
- *facts regarding compensation the shareholders are expected to pay*

In case there was any doubt that the aim of management is shareholder wealth maximization we are told in clear terms that:

- *People who make their shareholders wealthy should earn a great deal.*

The second goal is emphasised at the end of the speech. In the final paragraph he says: *as a nation we have far too much at stake in global economic competition*. The concluding words of the speech stress the need to be *successful at building the businesses for our economic future*.

Values: Breeden has stated explicitly that he sees shareholders as owners of corporations and that he believes that they deserve to have their interests prioritized as of right. The rights of ownership would appear to be the key value that pervades the speech.

He also refers to widespread share ownership as the democratization of the economy, democracy being another key value that he espouses.

In addition, Breeden professes a clear belief in the superiority of market solutions: a fundamental commitment to the free market is another value that underpins his argument.

Finally, patriotism is a value that partially motivates Breeden's argument.

Means-Goal Premise: By ensuring that shareholders have adequate information about compensation along with the unimpeded ability to communicate amongst themselves, the SEC can facilitate better functioning of electoral mechanisms with the desired result that boards adequately perform their role. These measures are necessary to ensure that shareholders' interests are pursued in the process of determining management compensation. Additionally, boards themselves should ensure independence of management in the process of determining compensation. These measures together are sufficient to meet the goals set out in the argument. Breeden implies that further and more intrusive action by government regulators would risk being counterproductive for the shareholders, corporations and the national economy.

In the speech Breeden outlines a number of alternative claims for action. He deals with some but not all of them. Some arguments are stated but not addressed.

Although he does not quite state this explicitly, Breeden seems to draw the line at the concrete measures that he proposes which appear to constitute a limit to the extent to which regulation has a role to play in corporate governance.

Ownership

Three of the ten references to ownership relate to ownership of shares rather than of corporations. The majority (seven) refer to ownership of corporations or to *corporate America* generally (or to the economy as a whole). Moreover, this is "ownership" by a broader public:

- *we have a special record of success in America with our securities markets in promoting broad public <u>ownership</u> of the economy.*

5.2.6 Arthur Levitt

Levitt addressed the Directors' College at the Stanford Law School on 28th March 1996 (Levitt, 1996). The Directors' College is an annual educational conference aimed at past and present corporate board members. The title of the speech is "Shareholder Interests As The Director's Touchstone."

Social Actors

Shareholders

In this speech shareholders (Levitt also refers to them as investors) are largely passive beneficiaries or at most silent partners. They are represented by directors and are in need of having their interests defended:

- *remember your critical roles as shareholders' representatives.*
- *Every time you sit down at the table with your fellow directors, thousands of shareholders sit with you.*

Identification of shareholders with ordinary people and their aspirations was a common theme in Levitt's speeches and we see this here too:

- *The 52 million Americans who invest in the market are counting on you and me.*

Management

Besides Levitt himself and directors, corporate managers are the second most frequently mentioned group in the speech. The most common reference is to CEOs and the tone is generally negative:

- *The board will sometimes learn that, despite the most cleverly designed incentive program, the problem is not the CEO incentive structure, but the CEO. In today's high-pressure market, not every CEO is up to the job*
- *Keeping a poorly performing CEO in place is simply too expensive.*

Boards and Directors

Levitt uses three ways to refer to boards and directors: the collective *board*, the individual *director* and the direct address *you*. The differences between these are worth noting. *Board* is sometimes the subject of verbs (e.g. *The board will sometimes learn that*; *Does the board*

understand?). However, this collective designation does not dominate the speech. Levitt uses board both for the majority of negative references and also for the much of the questioning that forms a part of his rhetorical strategy:

- *There are too many boards that overlook more than they oversee; too many boards that substitute CEO directives for board initiative; too many boards that spring not into action but reaction, only after a crisis strikes. Such boards do no one a service*
- *Or were they a passive, rubber- stamp of a board, filled with good buddies and old cronies.*

Levitt uses *director* for more neutral and matter-of-fact statements and recommendations, e.g.

One study of 444 companies in the Standard and Poor's 500 found that in 72 percent, independent directors were a majority.

There are fewer questions involving directors than there are for boards and the positioning is broadly positive:

- *the one opportunity I have each year to address a unique and important constituency - directors of publicly traded corporations*.

The positive slant is even more marked when Levitt uses *you* to directly address his audience:

- *By virtue of your attendance, you have identified yourselves as directors who care about governance and competitiveness and who want to improve boardroom practices - and for that you all deserve praise.*
- *my experience as Chairman of the SEC has only convinced me more that you play a vital role in maintaining*

Levitt uses *you* as part of a strategy to establish a bond with his audience. The greater part of his exhortations also involves direct appeals often using "if" or "when" clauses:

- *But if you don't sense the right set of priorities, or if you sense an inadequate commitment to shareholders, you should think seriously of not joining the board*
- *even if you think you may be alone, thousands of shareholders stand with you.*

The argument

Claim for action: Corporate directors should make the interests of shareholders their predominant objective.

Circumstances: Corporate boards and the S.E.C. have the same overarching goal of protecting investors (*our shared responsibilities to investors*) though the onus is on directors to ensure oversight within individual companies (*the S.E.C.'s abilities as a watchdog pale in comparison with yours*). Boards are responsible for setting standards of conduct throughout the organisation – their leadership is exercised primarily through example. Some boards, however, play a mostly perfunctory role; many failures in corporate performance might have been prevented by early action on the part of directors had they been more engaged in exercising their responsibilities.

Goals: The welfare of corporate shareholders is Levitt's most important goal. He sees these shareholders as ordinary people, ending by telling his audience that *52 million Americans who invest in the market are counting on you and me to look after their interests*. In addition, by meeting this primary goal, directors are serving other interests namely those of markets and of the nation itself.

Values: In urging directors to commit to the welfare of their investor constituency and not to allow considerations of personal gain or conflicts of interest to dilute this commitment, Levitt is emphasizing the values of integrity and responsibility (*High standards for integrity in the board room translate into high standards throughout the enterprise*). That Levitt made integrity the main focus of one of his few speeches on corporate governance, in March 1998, demonstrates the importance that he attached to this character trait (Levitt, 1998). He also emphasizes the importance of boards devoting the time and effort to execute their responsibilities; diligence is a third key value (*The commitment of time is an essential requirement*). Finally, like the other speakers whom I have examined, Levitt appeals to a national interest – patriotism is another key value (*We share a responsibility to the nation*).

Means-Goal Premise: It is right that directors consider the interests of shareholders of paramount importance. Unlike other stakeholders, shareholders have no other representatives besides directors.

Corporate directors should consider the interests of shareholders when examining the functioning of the boards as well as the decisions that they make.

By critiquing the way that the board functions through the lens of shareholder interests, directors will avoid arrangements that might be convenient but not effective. They will also help to ensure that they achieve the goal of furthering the shareholders' interests. There are some key questions that should determine whether directors' commitment to their shareholders is sufficient: do directors make a sufficient time commitment to govern the corporation? Are the right people on the board, offering a broad range of skills and diverse backgrounds? Is the board genuinely independent?

Similarly, if boards examine key issues in the light of shareholder interests they will make sound decisions. Important contemporary issues include executive compensation, CEO replacement and compliance.

Rather than questioning whether directors should serve interests besides those of shareholders and evaluating the case for other stakeholders, Levitt sidesteps this discussion by emphasizing that other stakeholders are already well-represented in the corporation: *legions of people already look after the interests of management, of the industry, of the capital markets, of employees and others*.

Metaphor

Levitt liberally uses metaphor in order to intensify his claims.

The most prominent metaphor appears in the title: *touchstone*. Shareholder interests are to be seen as a *touchstone* for directors. This is repeated once in the speech. According to the Mirriam-Webster dictionary, a touchstone is "a black siliceous stone related to flint and formerly used to test the purity of gold and silver by the streak left on the stone when rubbed by the metal" (Mirriam-Webster, 2021). It is also "a fundamental or quintessential part or feature" or "a test or criterion for determining the quality or genuineness of a thing." This second meaning is a metaphorical derivation of the first meaning which is commonly used and would be easily recognizable for the audience; it emphasizes the reliability of the test that Levitt proceeds to prescribe for directors.

Levitt also uses the metaphor of watchdogs guarding over their shareholders' interests: *the SEC's abilities as a watchdog pale in comparison*. Later he says: *you can't be a good watchdog if you're only on patrol three times a year*.

Levitt sidesteps discussions as to whether other stakeholders besides shareholders should be given consideration in board deliberations by emphasizing that these other stakeholders are already well represented by *legions of people*. The military metaphor stresses how well-represented these interests are and how numerous their advocates are. Indeed Levitt does not even have to argue for shareholder primacy or to delegitimize the concerns of other stakeholders – it suffices to say that these interests have already been taken care of.

Another area in which Levitt uses metaphor to intensify his argument is when talking about board failures. There are *too many boards that spring not into action but reaction only after a crisis strikes*. Board members are failing in their duties if *they march in lockstep with management*; neither should they *turn imperial*. When boards are simply *papering over the CEO's deficiencies, warning bells should go off*. The human agency that is lent to boards in these examples is a key part of Levitt's rhetorical strategy.

Levitt uses the metaphor of seduction to intensify his warning to directors about potential conflicts of interest:

> *If you suddenly find yourself with season tickets on the 50 yard line, you're being seduced. If you are swept off by corporate jet to meetings in Hawaii and Nassau, you're being seduced. If there's an offer to pay one board member more than the others or to give him or her a special contract on the side chances are the director is being seduced.*

Interestingly, at the same time, Levitt mitigates the force of this warning by using the passive voice. We are not told who is doing the seducing merely that the director is being seduced.

Lastly, concluding the speech, Levitt places the shareholders in the board room with the directors. For example, they are *sitting* and *standing* with them during meetings (as is the SEC):

> *Every time you sit down at the table with your fellow directors, thousands of shareholders sit with you. And every time you stand up for what's right, even if you think you may be alone, thousands of shareholders stand with you. What's more the SEC stands with you.*

Chapter 6: Results − The SEC corpus and the press corpora

In this chapter I will summarize the results of the corpus analysis. This analysis has both a quantitative and a qualitative dimension. The quantitative aspect consists of the measurement of key word frequencies and collocations, the full breakdown of which is presented in Appendices 4 and 5.

I analysed frequency for the following lemmas and phrases: *owner*; *ownership*; *corporate governance*; *shareholder value*; *takeover*; *compensation*; *institutional investor*; *small shareholder/investor*; *activist*; *stakeholder*; *market/marketplace*; *fiduciary*; *Jensen*; *democracy*. These are set out in Appendix 4 (Appendix 4A comprises tables; the same data is presented in graphic form in Appendix 4B).

I analysed collocations for the following lemma and phrases: *owner*; *ownership*; *corporate governance*; *shareholder value*; *democracy*. In addition, I studied collocations for the lemma *shareholder*. There were a vast number of occurrences of *shareholder* and I divided the collocates into several categories: takeovers; political themes; size; shareholder value; mood; conflict; rights and responsibilities.

All of the collocations are set out in Appendices 5A and 5B. Appendix 5A consists of tables, with graphs in Appendix 5B.

All frequencies and collocations are presented in separate tables for each corpus which show the differences between the different sub-corpora.

The qualitative work involved analysis of concordance lines from the three corpora as explained in Chapter 4. I have included examples of concordance lines in the sections below. Longer lists of concordance lines are presented in Appendix 6.

To recapitulate, the corpora are:

a) the full collection of speeches of all of the SEC Commissioners over the 1980 to 1999 (inclusive) period;

b) a large sample of articles reporting on corporate affairs from the *Wall Street Journal* over the 1980 to 1999 period;

c) a large sample of articles reporting on corporate affairs from the *New York Times* over the 1980 to 1999 period.

The total number of words in the three corpora taken together comprise 14,163,314 words.

As regards the presentation of the results of the corpus analysis in this chapter, both quantitative and qualitative, I have prioritized two main objectives. First, I wanted to trace the overall contours of the corporate governance discourse to address the first of my research questions: how did the discourse on corporate governance in the United States evolve between 1980 and 1999?

With this objective in mind, I sought to examine whether particular patterns and trends that I identified in the speeches are more widely represented in the corpora. This involved a study of patterns of usage of key words and phrases focusing not only on frequency of occurrence but also context hence the importance of collocations and concordance lines. I also looked for evidence of common threads in the speeches and in the corpora examining how the focus of interest developed over time. In addition, I was interested in discovering whether the narratives that appeared in the speeches which I examined in Chapter 5 were more broadly reflected in the corpora. An interesting set of narratives present shareholders as ordinary people, members of the investing public. Such stories appeared alongside discussions of the role of large institutional investors. For example, Breeden represented the corporation as a democracy with the shareholders as the electorate, while Levitt told homey stories of small savers striving to realize their dreams. These narratives were not easily identified in the quantitative analysis and I have devoted a separate section of this chapter to a qualitative exploration of the extent to which these representations featured in the three corpora.

Sections 6.1 to 6.5 (inclusive) relate to the first objective.

Secondly, I have examined the treatment of ownership as it refers to the position of corporate shareholders. The aim was to shed light on the second of my research questions: has the use and meaning of the concept of corporate ownership influenced the public discourse on corporate governance? For this purpose, I examined the occurrences of the lemmas *owner* and *ownership* when they refer to shareholders in the three corpora. As I will explain in this chapter, the analysis here is qualitative rather than quantitative. Sections 6.6 to 6.8 (inclusive) address this second objective. I have left a full discussion of the third research question for Chapter 7.

As in other parts of this dissertation, I have been guided by the insights lent by the theory of strategic action fields in examining evidence of changes that took place over the 1980-1999 period.

6.1 Shareholder value and the transformation of the arena of corporate control

In Chapter 1 I explained that the strategic field relating to corporate control underwent a transformation in the 1980s and 1990s with a range of challengers rising in power and influence. Since shareholder value maximisation was the guiding principle of the challengers, I will begin with an analysis of the occurrence of *shareholder value* in the three corpora. We will see that the increasing frequency of occurrences is in line with the results of earlier research. Naturally I hope to contribute additional insights.

6.1.1 Maximizing, increasing, improving

The frequency of occurrence of the term *shareholder value* rises steadily in all corpora throughout the period (Appendix 4A, Tables 4.8a, 4.8b; Appendix 4B, Figure 4.8), although there is no clear break at any point between 1980 and 1999.

An examination of collocations reveals more about changes that have taken place over the twenty-year period. The most salient collocate of *shareholder* value in the WSJ and NYT corpus in all periods is *maximize* suggesting a clear orientation towards shareholder wealth maximization. Other collocates common to both the WSJ and NYT corpora are *increase*, *improve*, *enhance* and *create* suggesting a positive overall discourse prosody[46] or general mood. The references to shareholder value are not generally critical. That there are no collocates for shareholder value in the entire SEC corpus, nor in any sub-corpus for the 1980-1984 period, is due to the low frequency of occurrence.

[46] Discourse prosody or "semantic prosody" was developed as a concept in corpus linguistic by Louw (1993, p. 157): "a consistent aura of meaning with which a form is imbued by its collocates is referred to in this paper as a semantic prosody. Semantic prosodies have been largely inaccessible to human intuition about language and they cannot be retrieved reliably through introspection." Subtirelu and Baker (2018) have described Louw's approach citing his work (Subtirelu & Baker, 2018, p. 107): "examining a 37 million word corpus, Louw showed that certain words or phrases tended to be mainly used in positive or negative contexts, e.g. *bent on* has a negative prosody."

6.1.2. The SEC Corpus

The term *shareholder value* occurs sixteen times in the SEC Corpus. The distribution between the sub-corpora is as follows:

SEC84: 1

SEC89: 2

SEC94: 7

SEC99: 6

Whilst these numbers suggest an increase in use of the term over the twenty-year period in question, there is insufficient data for the purpose of drawing conclusions about statistical significance. Throughout the period, however, shareholder value is presented in a positive light and the most frequent accompanying verbs are *maximize*, *increase* and *enhance*:

> **092887grundfestD** the substantial shareholder value created by mergers and acquisitions and strongly suggest that these transactions can lead to an increase in the efficiency
>
> **041993beeseR** The result should be an expansion of the company's capital base and enhanced shareholder value. I am very hopeful that the leadership that Daimler showed will encourage other foreign companies
>
> **110193robertsR** Institutional shareholders are flexing their muscles and are communicating to management the importance of maximizing shareholder value.

6.1.3 *Wall Street Journal* Corpus

This increasing trend of occurrences of *shareholder value (*shown in Appendix 4) for the WSJ corpus is statistically significant.

As with the SEC Corpus, *shareholder value* is not presented as the subject of any debate or controversy. It appears as a simple objective; if there is controversy it is about whether any particular policy or course of action is successful in terms of maximizing *shareholder value*. The most frequent collocates of *shareholder value* throughout indicate this positive prosody: *maximize*, *enhance*, *increase*, *improve* and *boost*:

Many of the occurrences consist of directly reported speech in inverted commas:

> **WSJ89** both of which are actions designed to enhance the balance sheet and shareholder value.

WSJ89 Arnold B. McKinnon, chairman and chief executive officer, noted that the new repurchase program "should serve to enhance shareholder value."

WSJ94 it was considering merging with or being acquired by another company to help "maximize shareholder value."

WSJ99 Mr. Schrempp indicated his top priority was "shareholder value," a novel concept in Germany

WSJ99 The principles are: that the chief corporate objective should be to maximize shareholder value

There is relatively little discussion of whether shareholder value should be maximized in the long or short term (there are nineteen references to the long term and eight to the short term). Where this is brought up, the preference is for long-term shareholder value maximization:

WSJ94 "are committed to the successful growth of all our businesses, food, tobacco and beer, as the best way to improve shareholder value over the long term."

WSJ89 intent on remaining "an independent company in order to pursue corporate objectives and thus maximize long-term shareholder value."

There is only one case where the clear preference expressed is for short-term value over long-term value:

WSJ99 "A majority feels the board should be maximizing shareholder value in the short term rather than the long term," said Peter Schoenfeld, vice chairman.

In the whole of the WSJ Corpus there is only one reference to a case in which shareholder value maximization is questioned and this specifically relates to the short-term not the principle per se:

WSJ94 the Delaware judges ruled last year, "is not under any per se duty to maximize shareholder value in the short term, even in the context of a takeover."

6.1.4 *New York Times* corpus

Occurrences of shareholder value also steadily increase for the NYT Corpus; the increase can be shown to be statistically significant. As with the WSJ Corpus, the emphasis is on shareholder value as an objective (at times a legal obligation) with the verbs *maximize*, *enhance* and *increase* being the most important collocates:

Even references that appear negative, such as mentions of destruction, in fact uphold *shareholder value* maximization as a primary goal. As with the WSJ Corpus many of the occurrences consist of directly reported speech:

NYT84 He went on to say that the Allied bid would maintain and enhance shareholder value over time

NYT89 he was "motivated by an interest in having the company seek to maximize shareholder value, including by having Del Webb explore a sale of the company."

NYT94 he contended that the process was "destroying shareholder value."

There are only three references to alternative approaches to shareholder value maximization as a goal of corporate governance:

NYT94 a prominent voice arguing for a different interpretation of shareholder value, one that would include an element of social responsibility

NYT94 a board is "not under any per se duty to maximize shareholder value in the short term."

NYT94 a conflict between their understanding of their legal obligation to maximize shareholder value and their personal concern for the company's long-term welfare.

6.1.5 Shareholder value as a 'crusade'

Though I have not observed any prevalent metaphors in the way that shareholder value is portrayed both the NYT and WSJ Corpora include a few allusions to religion:

WSJ99 due out in March. Mr. Millstein, a partner at Weil Gotshal &Manges, has gained a reputation as a crusader for shareholder value.

WSJ99 Bringing the crusade for shareholder value to Germany

WSJ89 Phillips, it turned out, had gotten the raiders' religion, making short-term shareholder value paramount.

NYT94 it had no major divisions to sacrifice on the altar of shareholder value.

6.2 Corporate governance: a preoccupation with shareholders

As I explained in Chapter 1, corporate governance was a term that was not commonly used before the 1970s. Appendix 2 includes charts that trace the rise in usage of the term since the 1970s. In this section I will show the extent to which this trend is matched in the three corpora over the 1980s and 1990s and also examine the extent to which discussions of "corporate governance" show a preoccupation with the interests of shareholders.

6.2.1 Increasing interest in the 1990s

The term *corporate governance* occurs with increasing frequency over the full period of our study most markedly in the first half of the 1990s.

In all three corpora the trend is similar – occurrences of *corporate governance* flatline and then rise in the early part of the 1990s (Appendix 4A, Tables 4.7a and 4.7b; Appendix 4B, figure 4.7). In the SEC corpora the growth in occurrences flatlines again in the late 1990s; the WSJ and NYT corpora show a continuing increase.

6.2.2 Positive prosody

A discussion of the collocates of corporate governance should begin with the clarification that for the WSJ and NYT corpora relevant collocates are only to be found for the periods after 1990; before that the frequency of occurrence of *corporate governance* is too small to reveal meaningful collocations. An examination of collocates of *corporate governance* in the corpora (Appendix 5A, Tables 5.3-5.5; Appendix 5B, Figures 5.2-5.4) demonstrates a very limited preoccupation with accountability. The word *accountability* appears as a collocate in only the SEC84 subcorpus and the word *responsibility* is not a collocate of *corporate governance* in any corpus or subcorpus. The only corporate stakeholders that feature in the collocates list are shareholders and directors. Moreover, for the SEC and WSJ corpora the discourse prosody, or general mood, of the coverage of *corporate governance* is positive. The collocates lists throughout the period for these two corpora include adjectives such as good, strong and effective. References to change include the collocates *improve* and *reform*. Where the references to corporate governance are critical of the status quo, the approach is looking forward to improvement and enhancement. The only negative references are to be found in the SEC84 subcorpus, where we see the collocates *cook* and *book* (as a result of speeches complaining about corporations "cooking the books"). The NYT corpus, in contrast, does not demonstrate any kind of discourse prosody.

6.2.3 Common themes – and differences in emphasis

In analysing the concordance lines with *corporate governance*, it becomes apparent that there is a difference in emphasis between the three corpora and also between different time periods. The table below summarizes particular areas of emphasis over the twelve sub-corpora:

Table 3: *Corporate governance* in the twelve sub-corpora

	Corpus		
Time period	**SEC**	**WSJ**	**NYT**
1980-1984	• Corporate accountability	• No clear focus	• Work of the American Law Institute on corporate governance, reaction of the Business Roundtable
1985-1989	• Institutional investors • Division of responsibilities for regulation between states and federal agencies	• Institutional investors • Takeovers	• American Law Institute • Institutional investors
1990-1994	• Improving corporate governance	• Institutional investors • Improving corporate governance	• Institutional investors
1995-1999	• More positive emphasis (*effective*, *strong* and *good* most	• Institutional investors • "Shareholder value"	• Improving corporate governance • Role of unions

	salient collocates of *corporate governance)*		• Corporate governance movement

Table 6.1 in Appendix 6 contains a selection of examples of concordance lines from all three corpora, which illustrate the range of themes covered over the twenty-year period.

The prominence of shareholders (mainly as *institutional investors* after the mid-1980s) is common to all three corpora. The only exception is the SEC84 sub-corpus in which *accountability* is the most salient theme associated with *corporate governance*, appearing in the speeches of several of the Commissioners.

6.2.4 Primary focus on shareholders: the challengers predominate

In all three corpora, and throughout the twenty-year time period, the interests of other stakeholders (besides shareholders) are barely mentioned; managers and directors are in a subservient role to shareholders. The title (in bold) refers to the date of the speech containing the excerpt, the surname and the political affiliation of the speaker. So 012696LevittD refers to the speech made by Levitt, a Democrat, made on 26th January 1996. For the press corpora the title refers to the sub-corpus:

> **111387ruderR** primary obligations to the shareholders of their corporations is well established in our law and serves as the cornerstone of corporate governance theory.
>
> **NYT99** "The real focus on corporate governance is to create shareholder value,'' Mr. Brennan said.

Table 6.2 in Appendix 6 contains a more exhaustive list of concordance lines associating corporate governance with the interests of shareholders.

At least for the period in question, these observations would appear to lend credence to the claim that the term *corporate governance* is tied closely to the social movement whereby power flowed from incumbent management towards challengers in the arena of corporate control.

6.2.5 The influence of experts in the arena of corporate control

A noticeable tendency in the WSJ and NYT corpora is the reliance on quotations from experts in coverage of corporate governance:

> **WSJ94** his threats of bad publicity or a proxy fight on corporate- governance issues-- aren't very powerful. "Institutional activism is never going to amount to much," says Michael Jensen, a
>
> **WSJ94** various corporate governance policies, and Institutional Shareholder Services' comments on whether the provisions were "in the best interests of shareholders."
>
> **NYT99** John Coffee, a law professor at Columbia who specializes in corporate governance. "These large pension funds,'' he said, "were properly trying in this action to not only recover financial losses

Table 6.3 in Appendix 3 contains a longer list of references to corporate governance experts.

6.3 Stakeholders: an emerging concept on the margins

As I explained in Chapter 1, with the publication by Freeman of his major work on stakeholder theory (1983), the concept of *stakeholders* gained prominence as an alternative view to shareholder value. I will show that, while there were indeed increased references to *stakeholders* after the early 1980s, they pale in significance as compared with the rising prominence of *shareholder value* as far as these corpora are concerned. In the overall discourse on corporate control the stakeholder view remained at best a marginal position.

6.3.1 SEC Corpus

There are six mentions of the lemma *stakeholder* in the SEC corpus; one is in the SEC84 sub-corpus and the rest in the SEC99 sub-corpus. Only two are direct references to corporate *stakeholders*:

> **052282longstrethD** "The goal of the standards... is that there are constituencies and stakeholders other than shareholders and we should struggle to figure out how to give them either some voice in

050595robertsR These companies appear to be very cognizant of stakeholder concerns for clear, unambiguous disclosures about a registrant's exposure to and interaction with the environment.

The rest are references to *stakeholders* in accounting standards or the capital markets in general.

There are more occurrences of the lemma stakeholder in the WSJ and NYT corpora but still very few.

6.3.2 *Wall Street Journal* corpus

Of the twenty-one occurrences of the lemma *stakeholder* in the WSJ89 sub-corpus at least eight refer to one corporation: NCR, which apparently champions the stakeholder concept. It is worth also noting that the word stakeholder often occurs in inverted commas, denoting a distance between the author and the statement in question:

WSJ89 great wide world in which a company operates deserves as much consideration as the corporate owners. As NCR tells it, stakeholders include customers, employees, suppliers, the "world-wide communities in which we operate" and closing the list "our shareholders."

Some of the occurrences are straightforward statements of the stakeholder concept:

WSJ89 The truth is management today must balance the concerns of many groups of "stakeholders." Stockholders are one group; others include customers, employees, vendors, ultimate consumers and society.

Others deploy irony:

WSJ89 he is known to pontificate about a company's responsibility to "stakeholders": its employees and communities.

WSJ89 Shareholders of NCR Corp. may be surprised to learn their diminished status as mere "stakeholders."

Moreover, there are numerous references to shareholders as owners:

WSJ89 An owner with a short investment objective is probably pursuing his own crude, profit-motivated interest at the expense of other stakeholders.

WSJ89 have, with some success, imposed on directors higher duties than representing the corporate owners. It's worth noting that no other stakeholders have been similarly disenfranchised

WSJ89 and the surrounding community ought to have some representation on corporate boards." NCR hasn't gone that far. The left saw stakeholders as a way of stripping ownership from property and gaining control

In the WSJ94 sub-corpus there is only one reference to corporate owners (also the only mention of NCR) and only one reference that is openly critical:

WSJ94 He might even be speaking on behalf of other "stakeholders," including employees, suppliers or NCR customers. But it is doubtful that NCR shareholders - the corporate owners who bear the economic

WSJ94 but instead owe top duties and not just normal good business practices to some vague collection of "stakeholders" − employees, suppliers, the local charity. These critics should be wary of corrupting legal principles, such as fiduciary duties owed stockholders.

However, there are three references to the stakeholder concept insulating managers:

WSJ94 directors to base decisions not only on shareholders' interests, but also on the interests of employees, customers, suppliers and other "stakeholders." The provision also insulates directors from most lawsuits by aggrieved stakeholders and guarantees labor contracts and severance pay in the

There are five mentions of stakeholders in a non-US context and three places where "stakeholder" is a synonym for "shareholder":

WSJ94 "They have a different mindset in Japan. They don't think of shareholders so much as stakeholders…. What might make us more competitive as a nation is if more attention were paid to workers as stakeholders."

WSJ94 Minority stakeholders include serious-money players such as Trust Co. of the West; Apollo Capital Management, controlled by Leon Black; and Fidelity Management

Of the twenty-one occurrences of the lemma *stakeholder* in the WSJ99 sub-corpus, in seven of these instances "stakeholder" is used as a synonym for "shareholder":

WSJ99 Mr. Gibson says GaSonics has talked about a mandatory-vote amendment with SWIB, a 7% stakeholder as of September. "We're taking a look at how we can be responsive to their concerns while still retaining flexibility

For the most part the statements are matter-of-fact, with liberal use of inverted commas:

WSJ99 Beyond environmental concerns, Edison must take into consideration its customers, shareholders and other stakeholders, Mr. Bryson explains.

WSJ99 think of business decisions in terms of how they affect people − employees and shareholders. He likes to sound out several stakeholders before reaching a decision, earning him criticism for being too consensus-driven and sometimes plodding

6.3.3 *New York Times* corpus

In the *New York Times* corpus there were no occurrences of *stakeholder* in the 1980s. Of the thirteen occurrences in the NYT94 sub-corpus, three involve the word being used as a synonym for "shareholder":

NYT94 said Mr. Wanger, portfolio manager of the Acorn Fund in Chicago, which became a large stakeholder in Cooper in May 1989

There are four mentions of NCR (displaying a time lag as compared with the WSJ corpus), one of which is negative, and two references to Japan. Like the WSJ, the *New York Times* also deploys the tactic of placing the word *stakeholder* in inverted commas:

NYT94 NCR's defense against A.T.&T. centered on the theory that the company was responsible to its "stakeholders" − not just shareholders, but customers, employees, suppliers and the Dayton community

NYT94 Exley's constant use of the stakeholder concept as a defensive weapon in interviews and advertisements proved to be a powerful irritant in some quarters.

NYT94 Mr. Kester depicts the contemporary Japanese company as the creature of various "stakeholders" rather than simply of shareholders and management

Of the twelve occurrences of *stakeholder* in NYT99, six use the word as a synonym for "shareholder":

NYT99 Redback shareholders will own 62 percent of the new company and Siara stakeholders will own 38 percent.

The concept of the stakeholder is again associated with Japan and there is one clear reference to shareholders as "owners":

NYT99 all of corporate management, not just the management at banks, is stakeholder management, not shareholder management," Mr. Yanagisawa said.

In one instance the concept of *shareholder value* is upheld at the expense of the *stakeholder* concept:

NYT99 Mr. Strenger said: "Calpers says shareholder value is the only thing and the rest will follow for the stakeholders. In Europe, there are more parties at the table, and they behave better if you involve them early."

Throughout the three corpora, though stakeholders represent an emerging concept, references are sparse compared with shareholder value. Moreover, the concept is treated with a degree of scepticism and distance. Only one major company, NCR, is clearly linked with the stakeholder approach.

6.4 Shifting themes in the corporate governance discourse

We have seen how the frequency of references to corporate governance flatlined during the 1980s before rising in the 1990s. It has been claimed − and this will be discussed in greater detail in Chapter 7 − that there was less emphasis on corporate governance in the 1980s because the wave of takeovers which dominated the American corporate scene in that decade was seen to have a sufficient disciplinary effect on managers.

6.4.1 Takeovers

The occurrence of "takeover" rose sharply in all corpora in the second half of the 1980s, before falling sharply – the trend is similar in all three corpora (Appendix 4A, Tables 4.5a and 4.5b; Appendix 4B, Figure 4.5). A similar pattern is discernible by observing the collocates of shareholder which are related to takeover (Appendix 5A, Tables 5.9 to 5.11). For the SEC corpus there is a sharp rise in the salience and number of collocates of shareholder that are related to takeovers in the second half of the 1980s followed by an event more abrupt drop: there is little said about takeovers in the 1990s. The WSJ and NYT corpora see a similar dramatic rise in interest in

takeovers between the first and second half of the 1980s. Whilst the 1985-1989 period has the largest number of takeover-related collocates for both the WSJ and NYT corpora, interest does not entirely fall off in the 1990s but remains strong.

As the 1980s drew to a close and the takeover boom came to an abrupt end, interest in corporate governance rose. There was a corresponding rise in interest in executive compensation.

6.4.2 Compensation

We see the frequency of *compensation* rising sharply in all corpora (Appendix 4A, Table 4.6a, 4.6b; Appendix 4B, Figure 4.6); there is then a fall in frequency, except for the NYT corpus, in which occurrences continue to rise at a slower pace.

Throughout the twenty-year period which is the focus of this research, there was an interest in the power, influence and role of institutional investors. This is also reflected in the data from the three corpora.

6.4.3 Institutional Investors

In the SEC corpus the frequency of occurrences of the term *institutional investor* rose sharply in the second half of the 1980s before flatlining (Appendix 4A, Table 4.14a, 4.14b; Appendix 4B, Figure 4.14). In the NYT corpus the frequency rose through the second half of the 1980s and the early 1990s. The interest in institutional investors lagged for the WSJ corpus, rising only in the early 1990s. In all the corpora the frequency of the term institutional investor dips slightly in the last period, namely 1995-1999.

As we will now see in the following section, large institutional investors clearly dominate over small retail investors in the discourse.

6.5 Stories about the shareholding public

6.5.1 Protecting the small people

Protecting the rights of small individual investors was a major theme for Arthur Levitt who was SEC Commission chairman for seven of the twenty years that are the subject of this study. For Levitt small investors are a key part of his narrative and seem to be part of a rhetorical strategy which potentially has considerable emotional appeal. I have therefore examined the treatment of

small investors (or small shareholders) in order to assess the extent to which Levitt's interest was part of a general trend.

In the SEC corpus the frequency of mentions of small shareholders and small investors (counted together) peaks in the 1985-1989 period before tailing off. For the WSJ corpus the frequency peaks in the 1990-1994 period before also falling; for the NYT corpus there is no discernible trend over time. There are also too few mentions to produce a meaningful collocates list. This contrasts with institutional investors who are mentioned much more frequently and for whom there is a discernible trend. For this reason, I have decided to conduct a qualitative assessment of the representation of small investors in the three corpora.

Small investors are generally presented as victims. Common themes are discrimination, being ignored, being placed at a disadvantage and disenfranchisement:

> **111885petersD** The individual small investor does not have equal access to this critical information.

> **121390schapiroI** some individuals who previously were investors no longer believe that the U.S. stock market is a safe place for the small investor. Happily, the percentage of investors who feel so disenfranchised that they have withdrawn from the market is still small.

Specific issues of the time include penny stocks and other forms of fraud:

> **102188ruderR** the Securities and Exchange Commission is mobilizing its efforts to protect small investors from "penny stock" fraud and manipulation.

The impact of program trading is also an issue that is covered:

> **101986grundfestD** whether or not program trading helps or hurts the market in the aggregate, many small investors believe firmly that it hurts them. They also believe there is something unfair about this new computer-driven game.

The themes of discrimination, disadvantage and disenfranchisement occur in the WSJ and NYT corpora as well as the SEC corpus:

> **WSJ94** will hurt small investors looking for new products that help them compete with large institutional investors.

WSJ99 hard core, of domestic investors friendly to the all-powerful executive and impervious to the demands of small shareholders.

NYT84 The lesson to be learned was that small shareholders are virtually powerless to affect major decisions made by management or to choose directors

NYT89 about how Wall Street has disenfranchised the small investor. Mr. Sosnoff is taking his own advice and speaking up.

Neither the WSJ corpus nor the NYT corpus includes any significant level of coverage of penny stocks or program trading.

However, in addition to framing small investors as "victims," the WSJ and NYT corpora contain instances in which this group is combative, involving itself in activism, protest, and organising proxy votes. Shareholder associations, such as for example United Shareholders of America are also featured, in contrast with the SEC corpus:

WSJ94 The small investors are expected to collect their dividends and keep quiet. Now, however, the small investors are banding together across borders in an attempt to make maximum use of what little legal power they can muster.

WSJ99 Officials of the Investors' Rights Association of America, a small shareholder advocacy group in Great Neck, N.Y. said it decided to drop 1996 pension-killing resolutions at American Express, McGraw Hill, Melville,

NYT84 one of the more vitriolic of the hundreds of such meetings just getting under way. Many of Warner's small stockholders are likely to take the floor and complain loudly

NYT94 The possibility of being forced to renounce this right at the Banesto stockholders' meeting scheduled in March, has angered many small shareholders, who are organizing to protest.

NYT94 said Ralph V. Whitworth, president of the United Shareholders Association, a group that represents individual small investors. This year, Mr. Whitworth's group negotiated such "corporate governance" changes at twenty-five companies, including American Cyanamid, Deere &Company, Occidental Petroleum

In summary, though there is a discernible narrative in the SEC and press corpora of disenfranchised and marginalised small investors, sometimes who are portrayed as fighting for their rights although this appears rather rarely. In any case, small shareholders are somewhat overshadowed by large institutional investors throughout the corpora.

6.5.2 The corporation as a democracy

Democracy was a key theme of Breeden's speech, forming an important part of his rhetorical strategy. As with Levitt's narrative based on individual investors, Breeden sets himself up as being on the side of ordinary people, invoking the democratic ideal. The frequency data and collocations, especially *shareholder* indicate some confirmation that the corporate governance discourse underwent increased politicisation during the period of this study. In order to further test whether democracy as a principle gathered increasing salience over this period, I examined the frequency of occurrence of the word, principal collocates and also the context in which it appeared in the three corpora.

In the SEC and NYT corpora the frequency of occurrence of "democracy" dips in the second half of the 1980s before increasing again in the early 1990s. There is another dip as the 1990s draws to a close. It might well be that this is related to the intensity of coverage of the events in Eastern Europe following the fall of the Berlin Wall in 1989 and the subsequent attention paid to political as well as economic development in the newly liberated countries of the former Soviet bloc. There is no discernible change in mention of democracy over time in the WSJ corpus.

The most commonly occurring collocates of democracy are shareholder and corporate. *Corporate democracy* was a commonly used term in the United States (see Appendix 2, Figure 2.11) in the 1970s and 1980s but has declined in usage since the beginning of the 1990s. "Corporate democracy" related to demands for greater accountability on the part of corporate management. At times the term meant accountability to a wide group of constituencies; in particular, this was what the framers of the 1980 Corporate Democracy Act had in mind (House of Representatives, 1980). This act was in fact a bill proposed by Representative Benjamin Rosenthal and eight fellow Democratic legislators which was also supported by numerous civil society groups, as well as Ralph Nader (Whitaker, 2007). The bill was intended to address the perceived lack of independence of corporate boards and to empower shareholders but also included provisions to mandate greater disclosure on a range of issues as well as protecting the rights of local communities

and employees. The bill also stipulated stiffer penalties for corporate lawbreaking (Green, 1980). However, elsewhere corporate democracy was a term more narrowly focused on the rights of shareholders (Irvine, 1988; Frank, 1976).

Williams alludes to Nader and the Corporate Democracy Act, which he associates with the concept of corporate democracy in its broader sense:

> **080880williamsD** a second one by the Nader group that is much more comprehensive and called, innocently, the Corporate Democracy Act.

Otherwise references in the three corpora to corporate democracy are predominantly shareholder focused and the term as it is used is synonymous with shareholder democracy in the sense in which it was used at the time (Shin J.-S. , 2018):

> **111180evansR** The Court stated that "ultimately shareholders may decide, through the procedures of corporate democracy, whether their corporations should engage in debate on public issues."

> **091384treadwayR** But this was not an exercise in corporate democracy, for a shareholders' agreement placed voting control in three senior officers of the National City Bank.

> **092090lochnerR** troubling issue arises from the fact that institutional investors are not traditional shareholders. Phrases like "accountability to shareholders" and "corporate democracy" presuppose that the individuals who vote the stock also own it.

> **WSJ99** "This spinoff vote will be a milestone in the history of corporate democracy and common shareholder rights," Diana Temple, a Salomon Brothers analyst, wrote to clients Friday.

In summary it does appear that the concept of democracy was used broadly to support the interests and rights of shareholders throughout the three corpora. This was the limited version of democracy, largely restricted to shareholders, the privileged party in much of the discourse of the period.

6.6 "True owners" versus "hired hands"

The next three sections will examine the contexts in which shareholders are clearly labelled as owners. The words *owner* and *ownership* are used in a wide range of situations, by no means

restricted to notions of ownership of corporations by shareholders. Consequently, only a subset of the occurrences of these words are of interest and the most important analytical tools are qualitative in nature. My aims for the remainder of this chapter are to examine what we can learn about the representation of shareholders in the corpora from studying the occurrences of *owner* and *ownership* and to identify specific issues and themes in the discourse.

6.6.1 Owners of what exactly? The drawbacks of quantitative analysis

References to owner(s) as they occur in the corpora fall into three categories. The first are those for which neither corporations nor corporate shares are the "things owned." These are instances where buildings (or other forms of property, such as, for example, land) are owned by corporations or other entities. There are examples in all of the corpora:

> **100380friedmanD** Since 20% of all U.S. farmland is already subject to absentee ownership, and absentee owners (both foreign and domestic) appear to purchase
>
> **101492robertsR** Unlike most fault-based liability schemes, past or present owners of a hazardous waste site can be held liable

These references are not relevant to my research questions as they do not concern corporate governance.

The second category comprises all references to owner(s) of shares/stock, which are also abundant within all of the corpora. These include descriptions of or statements about technical processes of trading (*beneficial* is a common collocate of *owner* in these cases):

> **062599ungerR** One way to effect direct issuer-shareholder communications would be to let beneficial owners register their share ownership directly on the books of the issuer as an alternative to the current "street name" model.
>
> **WSJ99** his Schedule 13G Securities and Exchange Commission filing indicates Mr. Buffett, not Berkshire, as the owner of 500,000 Bell shares.
>
> **WSJ94** or others "are intended to enhance shareholder value and to be supportive of its clients' inherent interests and rights as owners of the securities."

The third category are instances where there is a reference to persons or entities as owners of corporations:

> **021481friedmanD** In 1979, the SEC was sued by Dow Jones the owner of the *Wall Street Journal* under, the FOIA.

WSJ94 Sits on 11 boards. J. Bruce Llewellyn, 66, owner of Coca-Cola Bottling Co. of Wilmington Inc. and Queen City Broadcasting, Inc. an ABC affiliate.

Many of these references are matter-of-fact and of no real analytical value. Moreover, it is often ambiguous as to whether the underlying purpose is to indicate ownership of securities or of corporations. Often it would be possible to conclude, charitably, that the writer or speaker was referring to ownership of equity rather than corporations:

WSJ94 with a bidder who offers a premium for the company's shares, takeover experts say. And the makeup of the company's owners could make Kemper's defense difficult. Stockholders include well-known hedge fund managers

NYT99 what have proved to be invaluable management benefits by making Ted Turner a board member, vice chairman and 11 percent owner of Time Warner.

Therefore, quantitative methods, i.e. collocations and word frequencies do not constitute an effective analytical tool. Although I have provided lists of collocates of owners and details of frequencies in Appendices 4 and 5 for illustrative purposes, my focus is on qualitative analysis of references to an owner (or owners) of corporations. Whilst there is a marked decline in the use of the lemma *owner* in the last five-year period, as evidenced by all three corpora, it is not clear whether representing shareholders as company owners grew or declined over this period. What I have done with the data from the corpora is to conduct a qualitative analysis of the contexts in which shareholders have been characterised as owners. The aim is to better understand what is being said about shareholders as owners of corporations, what themes are being emphasized and in addition whether the way in which shareholders were characterised as owners changed over the twenty-year period.

6.6.2 Three common themes: emphasising shareholders' status as owners

There are a number of themes that run through all corpora and are common to all four time periods. There was no significant shift in emphasis over time or indeed between the corpora:

- accountability (of managers towards "owners") and rights

092090lochnerR proxy rules will point out that the issue is not some vague one of democratic accountability but rather accountability to owners.

040992schapiroI* For without the assurance that their fundamental rights as owners are protected by the director/fiduciaries, independent of management, shareholders are unlikely to continue

WSJ94 was a case where long-term underperformance was attributable to a poor mix of business and a lack of accountability to owners.

WSJ94 or others "are intended to enhance shareholder value and to be supportive of its clients' inherent interests and rights as owners of the securities."

(*Schapiro was nominated as an Independent)

- managers and employees acting/behaving/thinking/being like "owners", particularly in the context of executive share ownership

051893beeseR This realization is leading some large institutional players to act less like passive investors and more like owners.

WSJ99 If shareholders want governance, they must act like owners before, not after, trouble hits.

WSJ94 Jensen, a professor at Harvard Business School: "The major problem with CEO pay is how to make managers more like owners.

WSJ94 Mr. Theobald says he hoped the stock-ownership requirement would make senior officials behave more like entrepreneurial owners of private companies, which represent two-thirds of the business bank's customers.

NYT94 an ownership stake for management in the new Borden, but K.K.R. buyouts typically include management because managers who think like owners make better managers."

- adjectives lending strong emphasis to the status of shareholders as owners (e.g. "true owners", "real owners")

WSJ89 tactics that would be contrary to the interests of the real owners of Carson 's, namely, the shareholders."

WSJ89 have proposed will strengthen the process by placing control of America's corporations where it belongs, with the shareholders, the true owners.

NYT89 poison pills and management lockups in the right direction, which is to run things for the benefit of the true owners – the shareholders.''

NYT94 these large shareholders have long argued that they deserve to be treated like the rightful corporate owners that they are.

6.6.3 Differences in emphasis

Besides these themes that run through all of the corpora, there a difference in emphasis between the three corpora and also between different time periods. The table below summarizes particular areas of emphasis over the twelve sub-corpora:

Table 4: *Owner* in the twelve sub-corpora

	Corpus		
Time period	**SEC**	**WSJ**	**NYT**
1980-1984	• Rejection of shareholders as owners (Williams)	• No clear focus	• Employees as owners • Milton Friedman • “owners” v. “hired-hands”
1985-1989	• Institutional investors	• Employees as owners • Takeovers	• Employees as owners • Disenfranchisement of “shut-out” owners • “owners” v. “hired hands”
1990-1994	• Employees as owners • Executive compensation	• Employees as owners • Executives as owners • Executive compensation	• Employees as owners • Executives as owners

1995-1999	• No clear focus	• Executives as owners	• “owners v. hired hands”

The table shows that the only sub-corpus in which there was a discussion of whether or not shareholders owned the corporation was SEC84 and here the influence of Harold Williams was clear. However, he was not the only SEC Commissioner to cast doubt on whether shareholders should be considered owners. The SEC corpus (SEC89) is also the only place where institutional investors are a major theme. All of the corpora cover the topic of employee ownership although it appears as if the NYT began covering the topic earlier than the others. Executive ownership also featured in observations of concordance lines for the NYT and WSJ. In the early part of the 1990s executive compensation became a topic of interest for the SEC and WSJ. The NYT corpus showed some particular themes such as disenfranchisement of shareholders as well as revealing relatively frequent references to managers as “hired hands.” Where I have indicated no clear focus, the number of occurrences of owner were too few to draw conclusions. It should be emphasized that the table does not show topics of interest overall in the corpora but only the topics that featured when shareholders are represented as owners. The sample sizes are too small to draw statistically significant conclusions about the occurrence of these topics and themes; these are very much qualitative observations.

Table 6.4 in Appendix 6 contains a selection of examples of concordance lines from all three corpora.

6.7 Ownership, executives and employees

6.7.1 Problems with quantitative analysis

An examination of the occurrence of *ownership* in the three corpora presents the same issues for purely quantitative approaches as with *owner*. The word is used in many contexts that are not relevant to this research project. In addition, there is not always a clear demarcation between ownership of shares and of corporations. Therefore a purely quantitative analysis is not particularly instructive. For reference I have summarized data on frequency of occurrence and on collocations of ownership in Appendices 4 and 5 respectively.

6.7.2 Common themes

There are a number of themes that run through all corpora and which are common to all four time periods. There was no significant shift in emphasis over time or indeed between the corpora:

- The separation between ownership and control

052282longstrethD control of the corporation (resting in the hands of management) was separated from ownership (resting in the hands of shareholders).

- Institutional investors

092680friedmanD the ownership of large companies is increasingly held in institutional hands

111392breedenR a continued shift toward institutional ownership, mainly public and private pension funds

WSJ99 Institutional ownership will probably continue to increase.

Unlike with the lemma *owner* there is less emphasis on rights and fewer, if any, instances of emphatic affirmations of the position of shareholders ("true" owners etc.).

6.7.3 Shifting emphasis: employee ownership and executive ownership

Besides these themes that run through all of the corpora, there are differences in emphasis between the three corpora and also between different time periods. The table below summarizes particular areas of emphasis over the twelve sub-corpora:

Table 5 *Ownership* in the twelve sub-corpora

	Corpus		
Time period	**SEC**	**WSJ**	**NYT**
1980-1984	• Rejection of shareholders as owners (Williams) • Responsibilities of ownership	• No clear focus	• Employee ownership • Executive ownership

1985-1989	• Executive ownership • Agency problems (Grundfest)	• Anti-takeover provision • Executive ownership	• Employee ownership • Executive ownership •
1990-1994	• Employee ownership • Executive ownership • Democratisation of ownership (Breeden)	• Executive ownership and compensation • Dispersed ownership	• Employee ownership • Executive ownership
1995-1999	• No clear focus	• Demutualization	• Employee ownership • Executive ownership • Demutualization

Table 6.5 in Appendix 6 contains a selection of examples of concordance lines from all three corpora.

Close examination of appearances of *owner* and *ownership* has revealed a preoccupation with the conflicting interests of shareholders and those entrusted with the management and governance of corporations (both managers and directors). Discussion of resolving this conflict is often framed in terms of accountability and of aligning the interests of executives and shareholders/owners. The status of shareholders as owners is often emphatically affirmed throughout the corpora and sub-corpora. Broad themes of particular interest, such as the role of institutional investors and takeovers, are reflected in this study alongside the more specific topics of employee and executive share ownership.

It would appear that more is said about the rights of shareholders as owners than about any responsibilities inherent in their position in relation to the corporation. I will now examine what is said about the responsibilities of shareholder/owners more closely in Section 6.8.

6.8 What are owners responsible for?

6.8.1 Does a shareholder/owner have responsibilities?

In all three corpora there are minimal references to the responsibilities of owners. Overall across all three corpora I identified nine such references and even these only in two instances referred to broader responsibilities to society or to other corporate constituencies. I have examined each of the references to better understand the context which I explain below:

> **WSJ84** I do agree with Mr. Drucker, however, that institutional fiduciaries appear to be lax in performing their duties as owners of the corporation. Institutional shareholders, who often have both the knowledge and the ability to act, should move
>
> *Context: the need to address management issues before takeover bids arise*
>
> **WSJ89** Mr. Goldin said he hoped the meeting would be within 10 days. "We as owners have an obligation to force management to explain how this disaster came about and to disclose what steps are being
>
> *Context: Exxon Valdez oil spill disaster, 1989. The focus is on protecting shareholders despite the language of obligation.*
>
> **WSJ94** The huge pension funds, he argued, had to act as "responsible owners," not just short-term players in a company's stock.
>
> *Context: Corporate lawyer Ira Millstein and GM. Millstein's aim is to make companies more competitive. Millstein is an advocate of the stakeholder view and the focus here is on stakeholders, argued as a matter of national interest.*
>
> **WSJ99** Up to now, he said, the ICI hasn't focused "on the responsibilities that funds may have as corporate owners," but instead has addressed the best interests of fund companies.
>
> *Context: The fund manager John Bogle is talking about stock options. The focus is on shareholders rather than externalities or social concerns*
>
> **WSJ99** Even if they are getting it, if they feel that there's an abuse of it, then the owners are the people responsible. They should speak up if they don't like what the boards and the executives are doing.

Context: CEO Dennis Kozlowski (1997) is talking about executive compensation. The focus is not on broader society or stakeholders. Kozlowski was later convicted of numerous crimes.

NYT94 America in the last 20 years." HOW TO MAKE CAPITALISM WORK "The only way for capitalism to work is for owners to take responsibility," declares Lester Thurow, dean of the Massachusetts Institute of Technology's Sloan School of Management. That, in sum,

Context: Lester Thurow arguing for more European and Japanese style corporations. Argument for national interest.

Context: Argument for more of a stakeholder approach

NYT94 It is my hope that corporate boards of directors will recognize the value of having responsible institutional owners constructively monitor their performance as they strive to keep their companies and America competitive.

Context: The author is Comptroller in New York State. The primary concern is shareholder interests but with a nod to competitiveness of national businesses.

101188ruderR Today, institutional investors have major responsibilities as the managers of other people's money. As corporate owners, they gradually may be overcoming their reticence to influence the management of the companies whose shares they hold.

101188ruderR the power and permanence of institutional corporate ownership. Institutional investors must recognize the new era by behaving responsibly as corporate owners and as market participants.

Context: Both of these excerpts come from the Ruder speech that I analysed in depth. Ruder's primary concern is for the ultimate clients of institutional investors who are the providers of the funds invested. He does, however, mention social responsibility in passing in his speech and elsewhere.

Overall, when shareholders are represented as owners, besides neutral language use, the rhetorical goal appears to be to emphasize their special status in the corporation (true owners). Little or nothing ties owners to broader social responsibility. Moreover, there is no clear break in the pattern of representation over the 1980-1999 time period.

6.8.2 Does ownership bring responsibility?

As was the case with *owner*, in all three corpora there are minimal references to responsibilities connected with *ownership*. Overall across all three corpora I identified eight such references and even these only referred to broader responsibilities to society or to other corporate constituencies in three instances. I have examined each of the references to better understand the context:

> **103180williamsD** directors to address the offer in terms of its economic sufficiency for all the corporation's shareholders. Who exercises responsibility of ownership? If no one, then government will.
>
> *Context: This is a wide-ranging speech, in which Williams argues that corporations should be responsible to an array of constituents. The responsibility is this part of the speech refers to a range of stakeholders in a takeover situation*
>
> **112180williamsD** relationships in this country would be compatible with our political philosophy. We must, however, explore whether we can encourage equity ownership to assume the responsibilities traditionally associated with it or whether we should make the role of equity less important.
>
> *Context: Williams is arguing for the responsibilities of business to ensure national economic prosperity. This is an argument for broader social responsibility with a focus on avoiding an overly short-term focus*
>
> **101783treadwayR** ownership, and the same permissiveness should prevail when proxy machinery is sought to be used to assert the responsibility of ownership. Just as the first is not the exclusive domain of management, neither is the second." Contrary to its decision to
>
> *Context: Treadway is addressing a religious audience on the impact of ethics on business decisions through shareholder votes. The excerpt is a quote from a submission from Campaign GM (it was the influence of Campaign GM on General Motors that sparked Friedman's 1970 article) defending the right of shareholders to propose resolutions on social issues. In the case of GM the SEC sided with Campaign GM. Treadway's position is somewhat inconclusive.*

101188ruderR continually increasing, institutions are replacing traditional individual investors, and it seems inevitable that they will gradually assume the responsibilities of ownership. It seems highly likely that institutional shareholders will insist upon accountability by corporate management. In doing so, they can protect

101188ruderR the power and permanence of institutional corporate ownership. Institutional investors must recognize the new era by behaving responsibly as corporate owners and as market participants.

Context: both of the above concordance lines are from the Ruder speech that I analysed. Ruder's primary concern is for the ultimate clients of institutional investors, the providers of the funds invested.

WSJ99 seeking greater disclosure of accounting practices, board decisions and proxy voting. Such information is necessary for shareholders to exercise their ownership responsibilities, the fund said. "Germany's traditional form of corporate governance does not provide for adequate disclosure to shareowners," said William

Context: Calpers is pressurizing German firms to provide greater disclosures in order to enable them to better pursue their investment goals. The subject is not broader social responsibility

WSJ99 have its chance. On this, he and Mr. Barnevik agree. "We're not a mutual fund," Mr. Barnevik says. "We have ownership responsibility." Comerica Inc. Publication info: *Wall Street Journal*, Eastern edition; New York, N.Y. [New York, N.Y]18 May 1998: B11. COMERICA

Context: the article is a profile of the Swedish concern Wallenberg. The context is the desire of family directors to pass on the concern to the next generation. The emphasis is not on broader social responsibilities either in this specific context or in the longer article

NYT94 began to exhort pension fund managers to flex their power over intransigent corporate managers. "I got the idea that stock ownership was a responsibility," he said. "Before, I just wanted to trade." His 1984 speech "The Institutional Investor as a Corporate

Context: the quote is from the shareholder rights activist Robert Monks. It is not directly related to broader social responsibilities of corporations, but embraces management accountability on a range of issues

6.9 Conclusion

In this chapter I have summarized the outcomes of the empirical research which I conducted on the three corpora that I compiled.

In the next chapter I will demonstrate how the findings in Chapter 5 and Chapter 6 shed light on my three research questions which relate to the discourse of corporate governance and the specific role that the concept of ownership of the corporation has played in forming this discourse.

I will show how what I have discovered in the two genres selected for this research project – namely the SEC Commissioners' speeches and newspaper articles reporting on corporate affairs – confirms and adds to the claims in the existing literature about how the general consensus on corporate governance changed during the 1980s and 1990s. The concept of ownership of the corporation was important in communicating and establishing the ideology behind the new consensus. I will show how ownership was influential in setting perceptions on the purpose of the corporation.

Chapter 7: Discussion

In Chapter 1 I outlined my three research questions:

1. How did the discourse on corporate governance in the United States evolve between 1980 and 1999?
2. Has the use and meaning of the concept of corporate ownership influenced the public discourse on corporate governance?
3. How has the use of the concept of ownership in the discourse on corporate governance supported ideological positions?

In this chapter I address these three questions in the light of my research. Sections 7.1 to 7.3 will be focused on the first of the research questions. My analysis confirms that the SEC Commissioners' speeches reflect the major transformation in the approach towards corporate governance that is described in the literature. Drawing on the ideas of Strategic Field Theory, I examine how various key groups of actors were represented in the speeches in order to learn more about this transformation. This should also reveal signs of changes that might have taken place before the period in question.

Narrative plays an important role in any discourse and I will outline the stories told by the SEC Commissioners and examine the extent to which they are reflected in the corpora. Finally, Section 7.3 will compare major themes present in the speeches with those in the corpora and also with accounts of the development of corporate governance in the existing literature. Whilst the transformation in the consensus in corporate governance that took place in the last two decades of the 20th century has been covered extensively, my work adds a level of detailed linguistic analysis that is new.

Section 7.4 will cover the second of my research questions. By considering the argument strategies of the SEC Commissioners, it can be seen that the idea of shareholders owning corporations played an important role in their discourse. I will also show that this notion of ownership was strengthened by the media coverage of corporate governance as evidenced in the WSJ and NYT corpora.

Finally in Section 7.5 I will explain how the ownership idea was used to support the ideological premises behind shareholder value. More important than the presupposition of ownership of the

corporation are the aspects of ownership that were emphasized, namely rights rather than responsibilities.

7.1 The evolution of the discourse on corporate governance between 1980 and 1999

The shift towards shareholder primacy – how the view of the purpose of the corporation changes over twenty years

A detailed analysis of the six speeches that I studied indicates a clear shift in position towards shareholder primacy over the period in question. Williams and Marinaccio both advocate an approach to corporate management and governance that balances the interests of a range of constituents, including amongst others shareholders, creditors, employees, customers, communities and society at large. By contrast, Cox, Ruder, Breeden and Levitt all advocate shareholder primacy albeit in different ways.

Both Williams and Marinaccio set the long-term viability of business corporations as their main objective. Williams emphasizes the role of boards in achieving this objective, urging boards to step up to the challenge of safeguarding the long-term interests of the businesses that they are entrusted to oversee.

Marinaccio in contrast addresses the more specific context of the 1980s takeover boom and what he sees as an emerging imbalance of power between aggressive bidders and target companies. He argues for legislative and regulatory measures (something which Williams studiously avoids) to restore a balance of power. Such legislative measures would ensure that corporations are run in accordance with the business judgement rule which Marinaccio describes in terms of the need for managers to account for a range of interests in performing their role.

Cox's goal appears to be overall welfare; he wants market forces to perform their role in ensuring the optimal allocation of resources. His position is shareholder-centric by omission; he concentrates on the shareholder-manager relationship whilst ignoring other parties in what he presents as a contractual relationship.

Ruder prioritizes long-term performance of corporations and markets with a goal of greater overall prosperity in mind. He addresses both institutional investors and corporate executives urging both groups to engage with each other to further the achievement of these goals. Ruder

dismisses the claims of other corporate stakeholders by stating point-blank that shareholders own the company.

Cox and Ruder both favour shareholder primacy but they frame this perspective in terms of overall prosperity. Breeden and Levitt put shareholder interests first and foremost in a much more direct way. They both argue that the corporation should be run in the interests of its shareholders because it belongs to them. Breeden argues for changes to regulations requiring greater disclosure and making communication amongst shareholders easier. This, he claims, should suffice in enabling shareholders to hold managers to account and in particular exert more control over executive compensation levels. Levitt is concerned with the way in which boards function overall; he is not focused on any specific contemporary issues. He urges boards to focus on shareholders as a paramount priority.

Despite the difference in basic approach, there are some areas of commonality between all of the speeches. The speeches are all relatively light on theory. The exception is Cox who is also the only speaker who was trained as an economist;[47] he incorporates the nexus-of-contracts view of the firm in his speech which is peppered with references to the work of economists, primarily those associated with the Universities of Chicago and Rochester. The other speakers largely set aside academic debate in favour of common sense arguments, despite the relatively sophisticated nature of their audiences. Marinaccio places the business judgement rule at the centre of his argument but spends little time explaining it rigorously. Ruder, whilst demonstrating a clear grasp of the legal theories related to corporate governance in other writings, opted for a simpler line of argumentation.

The "decisive break with managerial capitalism"

The break in terms of the basic view of corporate governance took place between the speeches of Marinaccio (January 1985) and Cox (May 1987). From Cox onwards none of the Commissioners advocate a broader social role for the corporation, focusing in different ways on the shareholder-centric view; this suggests a degree of consistency in the change of approach. Moreover, given that Cox, Ruder and Breeden were Republican nominees to the SEC Commission and that Levitt was a Democrat (and that the period in question covers both Republican and

[47] Williams, Marinaccio, Ruder and Breeden had legal backgrounds whilst Levitt had a career in finance.

Democratic administrations), there does not appear to be an obvious political divide in terms of the approach to corporate governance.

I will now examine whether the quantitative observations from the SEC and press corpora are consistent with these observations from the SEC Commissioners' speeches. I focus on the term *shareholder value* and its occurrence in the corpora because it is tied very clearly and closely to the principle of shareholder primacy. I will then examine how the occurrence of the term *corporate governance* informs us about the development of the discourse.

Regarding *shareholder value*, my first observation is that the transformation in the approach to shareholders and corporations in the speeches mirrors the findings in the literature in work by Heilbron et al. (2014), Taylor (2015) and Rajan et al. (2022) who have studied the frequency with which the term *shareholder value* occurs in the business press, annual reports and in business leaders' letters to shareholders respectively. They demonstrate steady increases in the use of the term *shareholder value* from the early 1980s. In all three of the sources mentioned, a key break seems to have taken place in the second half of the 1980s; though the use of *shareholder value* may have fluctuated since 1990, it was in the late 1980s that it emerged as a term that was common currency. This coincides with the publication in 1986 of Rappaport's (1986) book on shareholder value. As Heilbron et al. summarize: "from around 1985, the shareholder value conception seems to have acquired a predominant position among the main actors in the economic field" (2014, p. 17). Cheffins concurs with this assessment: "in the 1980s the decisive break with managerial capitalism occurred" (2019, p. 156). The change in approach that I have found in speeches of the SEC Commissioners matches the timing and pattern of this shift to a shareholder-centric view of the corporation.

My work with the three corpora of SEC speeches over the period as well as with press coverage shows not only the increase in the frequency of use of the term *shareholder value* but also the positive context in which it is used and the emphasis on reporting the commitment to shareholder primacy by managers and directors. The frequency of the term in all three corpora rises as explained in Chapter 6; the most salient collocate is *maximize*. As with corporate governance, the discourse prosody[48] is focused on improvement. A qualitative analysis of concordance lines with the term *shareholder value* confirms this overall supportive context – there are few if any critical

[48] The concept of discourse prosody is explained in footnote 41 above.

mentions of shareholder value. Frequently the mentions are part of direct citations of senior corporate managers or directors who are committing to a goal of maximizing shareholder value. The strong presence of reported citations from managers supports the claim made by Knafo and Dutta (2020) that the 1980s saw a rise in management methods based on shareholder value maximization. The concept had clearly filtered through to the people actually managing companies.

I also looked at those collocates of *shareholder* which are related to shareholder value maximisation (Appendix 5A, Tables 5.18-5.20; Appendix 5B, Figure 5.13). We see that the collocates *maximize* and *value* appear for the first time in the WSJ corpus in the WSJ89 sub-corpus. For the NYT corpus these collocates rise sharply in salience in the 1985-1989 period. In the SEC corpus there is no clear trend for *maximize* but *value* appears for the first time as a collocate of shareholder in the SEC89 corpus. These findings lend some support to the idea that there was a break in usage of the concept of shareholder value maximization during the 1980s with a sharp increase taking place in the second half of the 1980s.

The term *corporate governance* grows in terms of frequency of occurrence in the SEC corpus as well as the press corpora over the period in question. As described in Chapter 6, though the trends are different in the three corpora, they all demonstrate growth in occurrence especially in the 1990s. Moreover, an analysis of collocations indicates positive discourse prosody with a focus on improvement. As I mentioned in Chapter 1, Lund and Pollman (2021) have suggested that corporate governance as a term has become closely identified with the shareholder value principle and that references to positive corporate governance are "equated with minimizing agency costs" (2021, p. 2566) in the framework of the principal / agent model. S*hareholder* is the only collocate of *corporate governance* that appears in the tables (Appendix 5A, tables 5.3-5.5) and which refers to a corporate stakeholder. The qualitative analysis of concordance lines (Section 6.2.4) confirms the strong emphasis on shareholders (as well as revealing that a large part of these references is focused on institutional investors). This suggests that the rising interest in corporate governance was focused on shareholders though there is no evidence that this is connected with agency theory.

In both the NYT and WSJ corpora, the word *expert* is a significant collocate, suggesting a strong degree of appeals to authority from outside specialists. A qualitative examination of concordance lines reveals frequent quotations from persons designated as corporate governance "experts." An

analysis of what Hall at al. (1978) term primary definers or those "credible individuals and institutions granted media access to enable their initial framing of events which are assumed to be within their area of competence" (Oxford Reference) in the debate on corporate governance would be a fruitful avenue for further research.

How representations in the SEC speeches of the major actors in corporate governance accompanied the shift to shareholder primacy

In Chapter 1 I described the arena of corporate control in terms of strategic action fields (SAFs) referencing the work of Fligstein (2016) in particular. I considered what I term the arena of corporate control as an SAF which underwent a transformation during the last decades of the 20th century. The main players in an SAF are incumbents, challengers and governance units (Fligstein & McAdam, 2011). The incumbents are those who wield power and set rules; challengers are those who are subject to the power of the incumbents (the term "challenger" does not mean that they must necessarily be engaged in a struggle for power); and governance units play a regulatory role within the field (as opposed to external regulators such as governmental agencies). The incumbents for our SAF prior to the transition are corporate managers.

Managers figure in most of the speeches and in the following paragraphs I will evaluate the way in which the different speakers represent them. The challengers are a mixed group of players. Fligstein (2016) considered challengers to be various sections of the financial sector and Cheffins (2019) added corporate raiders such as Carl Icahn and T. Boone Pickens. Whilst this disparate group are not for the most part major players in the speeches, the credo that supported their emerging ascendancy was that of shareholder primacy. I will therefore consider the representation of shareholders as a sign of the rising power of the challengers. Finally, boards serve as the governance units in the SAF; I will also examine the way in which our speakers characterize this third group. Fligstein makes a distinction between external and internal governance units; boards constitute internal governance units whereas agencies such as the SEC constitute external governance units.

Managers are represented in a generally negative tone across all six speeches. Williams is broadly critical of managers and what he sees as their focus on short-term goals. He is concerned that managers be held accountable for the power that they wield. Marinaccio directly characterizes management as "incumbents" and contrasts what he views as their proper role safeguarding the

long-term viability of the corporation with the pressures placed on them to achieve short-term results. Cox is relatively neutral in his depiction of managers focusing on the discretion allowed to them in what he sees as the implicit contract with shareholders. Cox believes that the interests of managers and shareholders should be aligned in order to achieve the best economic results whilst rejecting the argument that there is currently any serious dysfunction in the relationship. Ruder is critical of managers specifically in the context of their perceived unwillingness to embrace the rise of institutional investors and to engage with them on matters of corporate governance. Otherwise his treatment of managers is relatively impersonal with no references to any individual executives. Breeden presents managers in a largely negative light, referring to failures and underperformance more than to successes. The context of his speech is executive compensation and his concern that salaries of senior managers match the performance of their companies. Similarly, Levitt also references managers in a negative context whilst praising directors (his audience). Neither Breeden nor Levitt make overall criticism of managers part of their argumentation but their references to management tend to highlight negative contexts.

Thus in summary, five of our six speakers represent management in a generally negative tone. Only Cox is wholly neutral in his presentation of managers. In sharp contrast to managers, the representation of shareholders underwent a major shift.

Williams treats shareholders as marginal to the life of the corporation. Modern shareholders are transient speculators with little interest beyond short-term pecuniary gain. Unlike the founder-shareholders of a past era, they do not qualify as owners. Shareholders figure less in Marinaccio's speech; he distinguishes between short-term and more laudable long-term shareholders but is primarily concerned that all are treated equally. Although Cox advocates shareholder primacy, his representation of shareholders is not far apart from that of Williams. He also sees shareholders as having a remote and primarily transactional relationship with the firm with little interest in managing or overseeing the business. Ruder's speech focuses on institutional investors; these are the shareholders who are at the centre of his attention. Ruder's shareholders are large and powerful and becoming more pro-active. They are also owners of their corporations and are gradually assuming the responsibilities that Ruder associates with ownership. In sharp contrast, Breeden sees shareholders as participants in a representative democracy; to him they are a multitude of individual citizens electing directors to protect their interests. He also appears to identify the shareholders with the corporation itself. Like Breeden, Levitt sees shareholders as individuals:

ordinary people who are unfamiliar with the world of finance and who are therefore generally passive in terms of activity in the corporate sphere and are thus in need of having their interests protected by directors. Levitt represents shareholders in terms of stories of people's aspirations and hopes for the future. Directors are responsible for the savings of this mass of people.

From being transient speculators with impersonal relations with the companies that they invest in, shareholders emerge as the common people striving for a better future. By presenting an obstacle to corporate performance, they have turned into the rightful primary beneficiaries of corporations and consequently the "touchstone" of corporate performance.

I will now explore the way in which the speakers characterize boards which are the governance units of the SAF relating to the arena for corporate control. Williams appears to see boards as ineffective and largely loyal to incumbent CEOs. He argues for directors to more actively assume the role of guardians of the corporation's long-term viability. Marinaccio does not mention boards very much at all; his focus is mostly on the work of regulators and legislators. Cox and Ruder do not discuss boards and their role; their concern is with the relationship between shareholders and managers. Boards return to a prominent place in Breeden's speech – like Williams he stresses the importance of the need for directors to be independent. Now, however, the role of boards as a governance unit has changed. Instead of safeguarding the corporation itself as a viable entity over the long term, they are now elected representatives of a multitude of shareholders, entrusted with protecting the rights and serving the interests of their constituents. Breeden is implicitly critical of the role of boards; he sees room for improvement. Like Breeden, Levitt also sees the purpose of boards solely in terms of representing shareholders, rejecting explicitly the idea that they might also consider other interests. Levitt is addressing an audience composed of company directors; his perspective is divided into favourable and more critical stances. When he is taking a favourable stance Levitt talks about "directors" with whom he establishes a bond by addressing his audience repeatedly (using "you" frequently). When he is more critical he talks about "boards" as collective organs.

Thus, the representations of boards have shifted away from being mainly negative.

The way in which the speakers characterize shareholders and boards undergoes an interesting change. Shareholders are central in all of the speeches but their importance to the life of the corporation has been transformed from being marginal players or little more than ephemeral

speculators to becoming the true "owners" and legitimate ultimate beneficiaries of the firm. Boards have shifted from being guarantors of the long-term viability of corporations and of the business sector in general towards being champions of shareholders.

The way in which the role of boards changed in the speeches demonstrates how complete the transformation was: by the end of the 1990s the SAF had undergone a thorough shake-up and a new order was prevalent.

My analysis of the press corpora demonstrates that as regards shareholders, the trends that I have identified in the speeches are replicated in more general discourse. I assembled collocates of shareholder; since the list was extensive, I sorted them into different categories as shown in Appendix 5. As mentioned in the previous section, the collocates related to shareholder value intensify over the period, especially after 1985. In the next section which centres on my discussion of Breeden's narrative, I will show that there is an increased focus on the rights of shareholders and that collocates related to activity as participants in voting processes (as well as political metaphors) also rise in salience. Furthermore in my qualitative and quantitative study of the occurrence of "owner" (when used in the context of shareholders represented as corporate owners) it becomes apparent that there is increased emphasis on shareholders and their rights and position in the hierarchy of priorities. I cover this in Section 7.4 below. Shareholders rise in prominence over the twenty-year period and their interests gain pride of place in discussions of corporate priorities.

Detailed study of texts such as speeches is ideal to analyse how different actors are represented since it allows one to view statements in a broader context. The evidence of the corpora in the case of shareholders provides helpful additional insights. Nevertheless, corpus research is by its nature demanding in terms of resources; in terms of the scope of this project it was therefore necessary to place limitations on the scope of work. Further research could usefully extend this examination to the representation of corporations and boards in the three corpora using the kind of collocation analysis applied to the word *shareholder*.

The changing representation of managers in the speeches indicates that a change in the SAF may have been in process already at the beginning of the 1980s. Whilst the power structures may not have undergone a transformation prior to 1980 the status quo was also not unchallenged. I

suggest that this lends credence to the view that although the prevalent consensus had not visibly changed in 1980 the dynamics which led to a later shift were already in motion.

This is consistent with Cheffins' (2019) account of the changing climate during the 1970s, amid corporate scandals and concerns about underperformance, during which the role of corporate managers came under increasing scrutiny. While a new consensus regarding the purpose of the corporation had not become established, there are signs that a process of change was underway. Managers were a legitimate target of criticism and their central role as incumbents in the prevalent view of corporations was called into question.

7.2 The Stories of the SEC Commissioners and are they reflected in the corpora?

In this section I will examine the main narratives in the SEC Commissioners' speeches. I will study where applicable the extent to which these narratives are replicated in the corpora.

In the case of Williams and Marinaccio, the appeal is to the national interest in which the rhetorical methods (e.g. repetition for effect) are specific to spoken genres. A full investigation of the extent to which their narrative is replicated elsewhere would merit a study of speeches of other actors and over different time periods. I have, however, identified that appeals to patriotism are a common feature of US political discourse.

Cox's narrative relates to the role of markets and to agency theory. I have tried to examine the occurrence of references to agency theory in the corpora and found little to indicate that it was a major part of the corporate governance discourse.

Ruder's story, insofar as he told a story, related to the role of institutional investors; I have examined their occurrence in the corpora; this is discussed in Sections 7.3 and 7.4. They feature prominently in the discourse from the late 1980s.

The narratives of Breeden and Levitt, democracy and individual savers respectively, were not covered elsewhere in my analysis so I conducted separate corpus research with a view to establishing how prevalent their themes were.

Williams and Marinaccio: The national interest

I have described the central argument laid out by Williams and Marinaccio. Whilst they oppose shareholder primacy they mention other corporate constituents only to state that their interests should be taken into consideration. There is no substantial discussion of the justice of the claims

of other players in the arena of corporate control such as employees or communities. (The other speakers barely reference other constituents at all.)

The patriotic appeal of Williams and Marinaccio is also revealing. The story that they tell is shrouded in the national interest: they frame their arguments in terms of patriotism and in the case of Williams national renewal. This is a more cautious approach than the more full-blooded affirmation of the view of the social role of the corporation formulated in the Business Roundtable's 1981 statement (1981). During the 1980s the Cold War was in full force and an appeal to patriotism, freedom and democracy might have been an effective rhetorical device for advocates of a broader social role for the public corporation whilst at the same time backgrounding the claims of actual corporate constituents.[49] The caution of these two speakers in fully presenting the case for the social role of corporations may reflect a changing balance of power.

A final indication that Williams and Marinaccio were making their case during a period when the balance of power within the corporate control SAF was in a state of flux is the mitigation strategies that they use. Both speakers use rhetorical devices to soften the full impact of their claims. Williams extensively uses the passive voice to avoid blaming both managers and directors for the current situation. Possibly reluctant to go the whole way in a general climate that favoured

[49] Appealing to the national interest or to patriotic sentiment when confronting corporate interests has a long pedigree in American political discourse. Whilst a full study of the use of patriotism as a rhetorical strategy is beyond the scope of this project a few examples from speeches of US Presidents may be instructive. As early as 1910, in a speech in Kansas President Theodore Roosevelt (1910) defined a "new nationalism" proposing a wide range of measures including curtailing the power of large corporations. In his 1961 Farewell Address, Dwight D. Eisenhower (1961) uses appeals to the national interest to warn against the rising power of the "military-industrial complex". Barack Obama (2012), campaigning for re-election in 2012 appealed to a "new economic nationalism" echoing Roosevelt's words from just over a century earlier. Bill Clinton played the patriotic card the most succinctly making the case for tighter regulation of the tobacco industry to an audience of schoolchildren: "to me, no company's bottom line is important compared to America's bottom line. America's bottom line should be your future, your life, your health" (CNN news, 1998).

deregulation, Marinaccio advocates for regulatory change using the passive voice for a large part of his speech. These strategies lend a somewhat defensive tone to their arguments.

Cox: Let markets decide

Cox and Ruder couch their arguments for shareholder primacy in terms of general welfare.

Insofar as he tells a story, Cox talks about the superiority of the market as a tool for determining outcomes. Cox underplays the role of actual human actors by lending anthropomorphic qualities to corporations and markets which are often the subjects of verbs. Markets in particular appear to make decisions and to adopt viewpoints; they are often the subjects of his sentences and have opinions and make decisions – like some sort of supreme being with supernatural powers. “Let the market decide, the market knows best” might be a concise summary of Cox’s story. Although Cox does not reference the agency principle as such, his arguments rest on its foundational premises in the form of the nexus-of-contracts view. A number of authors, including Cheffins (2019), Fligstein and Goldstein (2022), as well as Knafo and Dutta (2020), have suggested that in general the agency principal was preceded by the change in the narrative on corporate governance and not the reverse. Whilst a full investigation of the place of agency theory in these corpora is beyond this investigation, I have identified the frequency of occurrences of *fiduciary* (a key concept in the principal agency relationship) and *Jensen* (nor including those that did not involve the academic Michael Jensen), as shown in Appendix 4A: Tables 4.14a, 4.14b, and 4.15 (Appendix 4B, Figures 4.14, 4.15). No discernible trend is apparent in either case. Moreover, the references to Michael Jensen are rare. For the sub-corpus with the greatest number of references, SEC 89, the majority of the mentions are in three speeches made by one SEC Commissioner (Joseph Grundfest). This tends to support the claim that agency theory was not a key driver of the shift to shareholder value.

Ruder and storytelling

Ruder is the most challenging speaker in terms of elucidating a narrative; his speech is the most prosaic in terms of presenting arguments in very plain terms. His main theme is the growing influence of institutional investors and their troubled relationship with corporate managers. Insofar as he tells a story, it is that by working together these two groups can help improve the general health of the economy and avoid a repeat of the 1987 stock market crash, which seems to have overshadowed Ruder’s tenure as SEC Commission chairman.

Breeden's Story: Corporations as democracies

In Breeden's story, shareholders are voters in a representative democracy, electing directors to serve their interests. His arguments for greater disclosure and loosening of rules restricting communication amongst shareholders are intended to ease the working of this democracy. If Cox's maxim is "let the market decide" then Breeden's is "let the people rule."

Breeden's concept of democracy with millions of ordinary people wielding the ultimate power over corporations misinterprets the historical concept of shareholder democracy as described by Shin (2018). Originally shareholder democracy was conceived as a means of giving ordinary people a stake in the broader economy through retail investment as well as greater economic security. The concept was not originally intended to encompass the idea of shareholders influencing management decisions and certainly did not include institutional investors. In an era where power was increasingly held and exercised by large institutions, Breeden's speech is something of a misapplication of this idea. Moreover, Breeden takes no account of large institutions and their influence nor of the balance of power amongst different groups of shareholders. As I have shown in Chapter 2, the conception of shareholders as voters represents at best a distorted form of democracy excluding groups who are equally affected by firm-level decisions. I also explain in Chapter 2 how restricted the voting rights of shareholders are in reality. However, Breeden's appeal to a democratic ideal is consistent with Shin's (2018) argument that shareholder democracy was misused to back increased activism during from the 1980s. Knafo and Dutta (2020) have also claimed that shareholder activism rose during the period in which shareholder value became the established governance paradigm. I will now briefly whether the corpora reveal a growth in interest in shareholder democracy and activism with a view to testing whether Breeden's narrative reflected a broader trend in the discourse at the time.

Examination of the frequency of the word *democracy* itself (Appendix 4A, Table 4.12a, 4.12b; Appendix 4B, Figure 4.12) shows that there is no clear trend in terms of occurrence that runs through all three corpora. An analysis of collocations of *democracy* (Appendix 5A, Tables 5.6 to 5.8; Appendix 5B, Figures 5.5) shows that *corporate* and *shareholder* are consistently the most important collocates. My examination of concordance lines reveals that the term is used

predominantly in the context of the rights of shareholders. Despite the broader meanings of the term "corporate democracy" and the intentions of the promoters of the Corporate Democracy Act, in the corpora the term is used in a way that is synonymous with shareholder democracy. Breeden's understanding of the corporation as a democracy appears to be consistent with its use in the corpora. Shareholder democracy, whether or not it grew in importance, was a regular feature of the discourse captured by these corpora during the 1980s and 1990s. Although Breeden's speech does not appear to have coincided with a turning point in the application of the concept of shareholder democracy, he was certainly using an idea that was common during the 1980-1999 period.

The frequency of occurrences of the word *activist* (as a noun and an adjective) is shown in Appendix 4A, Tables 4.10a, 4.10b and 4.11a and 4.11b (Appendix 4B, Figures 4.10 & 4.11): we see a consistent rise, though the word is relatively infrequently used.

Appendix 5A, Tables 5.12 to 5.14 (Appendix 5B, Figures 5.9 to 5.11) show a list of those collocates of *shareholder* in all three corpora that are connected with voting, elections and politics. For the SEC corpus there is no sign of any diachronic trend; for the WSJ and NYT corpora we see an increase in the number of these "political" collocates after the 1980-1984 period. There is also a marked increase in the MI3 score for those collocates that appear throughout the twenty-year period. We see an increase in the salience of words connected to governance processes such as *voting* and *control* but also of words that suggest the use of political metaphors such as *revolt* and *dissident*. I also examined the collocation of *right/rights* with *shareholder* (Appendix 5A, Tables 5.26 to 5.28; Appendix 5B, Figure 5.16). We see *rights* associated with *shareholder* throughout the twenty-year period: however, there is a sharp increase in salience for the WSJ and NYT corpora after the 1980-1984 period. The evidence from the corpora is consistent with the claim made by Knafo and Dutta (2020) that a rise in shareholder activism accompanied the ascent of shareholder value; the discourse in the newspapers selected for the corpora suggests an increased interest in shareholder activism accompanied by political metaphors.

I also considered adjectives and nouns indicative of mood amongst collocates of shareholder. For the SEC corpus I did not find any but Tables 5.21 and 5.22 in Appendix 5A (Figure 5.14 in Appendix 5B) show a growing negative prosody over the period in the WSJ and NYT corpora. Shareholders were predominantly *disgruntled* or *angry* suggesting a growing atmosphere of

confrontation. This impression is reinforced by an examination of the collocates of shareholder denoting a metaphor of conflict – words such as *victory*, *battle*, or *fight*. We see a rising occurrence of such references in the WSJ and NYT corpora especially after the first half of the 1980s.

Overall, it appears that Breeden was tapping into a theme that was a common feature of the discourse on corporate governance at the time, namely the representation of the corporation as a political unit and shareholders as its electorate. This was a period during which shareholders became more active in terms of expressing a voice within governance processes as suggested in the literature. There is no evidence, however, that Breeden's intervention marked or coincided with a turning point in the discourse.

Levitt's Story: Dreams and Aspirations

Levitt's narrative is one of ordinary people striving to secure their dreams and aspirations through the stock market. He uses a rich array of metaphors to make his point, including that of the touchstone, which is in the title of the speech. He warns directors against the risk of "seduction" by corporate managers and wants them to envisage scores of ordinary people literally present along with them in the boardroom. This is, as with Breeden, a view that takes no account of the institutionalization of investment and which backgrounds the investments of other corporate stakeholders originate from. While Breeden emphasizes democracy Levitt focuses on aspiration.

I also examined the corpora for evidence of whether this is supported in general by representations of shareholders as ordinary people as was the case with Levitt's speech. I counted the frequency of the terms *small investor*, *small shareholder* and *small stockholder* together (Appendix 4A, Table 4.13a, 4.13b; Appendix 4B, Figure 4.13). There is no consistent diachronic trend across all corpora over the twenty-year period in question. Moreover, there is considerably more interest in large, especially institutional, shareholders, as shown in Appendix 5A, Tables 5.15 to 5.17. When there are references to small shareholders/investors, two themes dominate: the powerlessness and vulnerability of small investors, and, for the WSJ and NYT corpora, also their willingness to collaborate and assert their rights often with the help of shareholder associations. This last finding reinforces the sense that shareholder activism was a focus of interest during this period. Levitt's aspirational narrative about the dreams of ordinary people appears to be very much his own preoccupation rather than part of a broader discourse.

7.3 Themes in Corporate Governance: Diachronic trends between 1980 and 1999

The themes of the speeches also follow a pattern that is consistent with events and with trends that I found in the three corpora. Marinaccio and Cox discuss corporate mergers. Ruder addresses the role of institutional investors while Breeden's main concern is with executive compensation.

The occurrence of "takeover" rose sharply in all corpora in the second half of the 1980s before falling sharply – the trend is similar in all three corpora (Appendix 4A, Tables 4.5a and 4.5b; Appendix 4B, Figure 4.5). A similar pattern is observed by examining the collocates of shareholder that are related to takeover (Appendix 5A, Tables 5.9 to 5.11). Interest falls after 1990 though less so for the WSJ and NYT corpora that for the SEC corpus. The peak in interest in takeovers in the late 1980s should not come as a surprise since this period saw a culmination of corporate mergers and acquisitions in what Cheffins (2019) calls the "deal decade." This wave of corporate mergers came to an abrupt end at the beginning of the 1990s.

During the late 1980s the role of institutional investors attracted growing interest. We see this reflected in the corpora (examining the occurrence of the term *institutional investor*), as explained in Chapter 6, although this trend is different for each corpus. Tables 5.15 to 5.17 in Appendix 5A (Figure 5.12 in Appendix 5B) show the collocates of *shareholder* relating to size. We can see from these that the collocates denoting largeness or institutions are more salient than those denoting smallness or individual shareholders. The prevalent interest throughout the period is with large and/or institutional shareholders. There is a slight drop in interest in the second half of the 1990s. The rise in interest in institutional investors in the SEC is mirrored in the theme of Ruder's speech in the second half of the 1980s.

In the early 1990s, there was growing interest in executive compensation levels – we see the frequency of *compensation* rising sharply in all corpora (Appendix 4A, Table 4.6a, 4.6b; Appendix 4B, Figure 4.6); Breeden's speech was in this period.

These trends are in line with the description of the historical development given by Heilbron et al. (2014). They suggest that the deregulation of the Reagan years and the increased wealth of players in the oil industry gave rise to the takeover boom of the 1980s. Cheffins (2019) also credits the increased availability of finance; occurrences of the word "takeover" and other related terms peak in the second half of the 1980s. The upheaval of these years led to tensions between "corporate raiders" and institutional investors who were gaining an increasing overall share of

corporate equity. The increased influence and activism of institutional investors is consistent with the greater interest in this group – both on the part of the SEC as well as the media as evidenced by the findings from the corpora. As shareholder primacy gained in acceptance and the power of managers waned, the latter group began to adapt and to find ways to benefit from the new consensus. One of the ways in which managers sought to benefit was to adopt the shareholder value paradigm themselves and to align their pay with share prices. The result was a rapid increase (and interest) in executive compensation in the 1990s.

Thus, this description of the development and consolidation of the shareholder value principle, provided by Heilbron et al. (2014) and by Cheffins (2019), is mirrored in the progression of themes covered in the speeches and the trends shown in the corpora.

Another term that emerged in the same period is *stakeholder* which represents an opposing view to shareholder value. Stakeholders became the standard way to refer to disparate corporate constituencies after the publication of Ed Freeman's *Strategic Management: A Stakeholder Approach* (1984). While it is true that the term seems to have become more frequent in the corpora since 1984 (as evidenced by the Google Ngrams corpora and as I discussed in Chapter 1 the term occurred more frequently in general language usage from the mid-1980s) the numbers are very small – mostly too small to conduct significance tests for growing frequency. References to stakeholders are generally unfavourable and at times the word is used as a synonym of shareholder. In the genres that I have examined, the stakeholder concept is not one that gained traction between 1980 and 1999.

7.4 Shareholders as owners: a changing pattern of use

Milton Friedman used the notion that shareholders own corporations as a key element in his argumentation strategy. As I explained in Chapter 5, he very effectively framed shareholders as employers and managers as their employees thus placing the latter group in a subordinate position. By then representing shareholders as owners, he used the powerful imagery of control and attachment which ownership evokes. In doing so, he set the terms of his line of argument: that shareholders owned corporations and were the bosses became his starting point. This key presupposition enabled Friedman to present his views on shareholder primacy as a logical outcome of a commonsense notion.

I will now show how the use of the notion of shareholders as owners has developed in the argumentation strategies of the SEC Commissioners.

Williams discusses ownership at length in the speech that I analysed as well as in other speeches. He dismisses the idea that contemporary shareholders can be seen as owners but when looking back to past corporate founders it is not at all evident that he denies that a corporation can be owned at all. He seems to believe that some of the historical figures that he names are deserving of being called "owners" and in one speech he emphasizes that he does see ownership as key in corporate governance, albeit not ownership applicable to temporary shareholders. Williams appears to see responsibility and commitment as key features of ownership. He devotes a great deal of attention to ownership but not with the purpose of supporting shareholder primacy. Indeed, a key part of the background to his claim for action, the institutional fact that he describes, is that corporate shareholders are unwilling and unable to assume the responsibilities and long-term commitments of ownership. They do not, therefore, deserve to be considered owners. It is the vacuum created by this institutional fact that Williams urges boards to fill. Thus ownership is a key part of Williams' argument strategy but is used in support of a very different view than shareholder value.

In contrast to Williams, ownership is not a part of Marinaccio's argument. Shareholders feature in Marinaccio's speech though they are not foregrounded and are not represented as owners.

Williams and Marinaccio present alternative argumentation strategies related to the same overall world view: namely that corporations exist to serve a range of constituencies. Moreover, directors and managers are responsible for maintaining the long-term viability of the corporations they serve.

Cox, like Marinaccio, does not use owners or ownership as a part of his argument or persuasive strategy. As I explained in Chapter 5, the notion of shareholders as owners is an important part of his position though not a part of his rhetoric. He foregrounds shareholders and backgrounds other stakeholders by simply ignoring the latter and focusing on the former.

Unlike Marinaccio and Cox, Ruder places ownership at the centre of his argument. His central claim for action is that institutional shareholders and managers should engage with each other. His goals include improving the performance of corporations and the functioning of markets. However, he also wants to see institutional shareholders fulfilling their responsibilities as corporate

owners. Responsibility connected to ownership is the key value in his argument strategy. For Ruder the responsibility of ownership resides with institutions; he backgrounds individuals and lends human agency to institutional investors. Moreover, Ruder sees the responsibilities of institutional investors more in terms of their fiduciary financial obligations to their ultimate investors rather than to society as a whole although the latter concerns are not entirely absent.

Breeden also relies heavily on the concept of ownership but he stresses rights rather than responsibilities. His primary goal is that the interests of shareholders be protected and the rationale for this is that they are the owners of the corporation. The ensuring success of corporate America as a whole is a corollary emphasized in passing and certainly less central than it is for Williams. In terms of values, his primary focus is on the rights of shareholders as owners; in at least one place he identifies the company with its shareholders. The key shift between Ruder and Breeden is that the focus has moved from responsibility to rights.

This emphasis on rights continues with Levitt. Making the interests of shareholders paramount is at the core of Levitt's claim for action and his main goal. The values that he espouses are integrity and responsibility in the service of this goal. As I have shown in Chapter 5, Levitt has been very effective in his use of metaphor in order to emphasize this overriding goal and to background other corporate constituencies.

In summary, my analysis of the SEC Commissioners' speeches suggests that ownership was a central theme in four of the six speeches that I examined. For one of the other two speeches (Cox), ownership was an important element of the rationale, if not the rhetoric. It is only for Marinaccio that ownership appears to be wholly uninteresting.

In the three corpora, the way that "owner" is used tends to reinforce the primacy of shareholders. There is no clear quantitative trend in the frequency of use of *owner* and *ownership* over the period in question. However, much of the context in which these words are used reinforces the primacy of shareholders. In Section 6.2.1 I identified three major themes regarding the use of *owner* (in situations where shareholders are represented as owners). These themes appear in all corpora and time periods:

- accountability of managers towards "owners" and rights of ownership
- managers and employees acting/behaving/thinking/being like "owners", particularly in the context of executive share ownership

- adjectives lending strong emphasis to the status of shareholders as owners (e.g. “true owners”, “real owners”).

The only place where any doubt was expressed that shareholders were owners is the SEC84 sub-corpus. Shareholders are represented as owners throughout, certainly after 1985.

Other themes are specific to particular topics of interest at different times. For instance, a large proportion of the occurrences of owner relates to discussions about employees receiving shares in the corporations that they work for; this is particularly the case for the WSJ and NYT corpora. Some of that discussion relates to potential conflicts arising from employee “ownership” and addresses the scepticism of some managers and union officials. This discussion of employee ownership serves to highlight the difference in status between workers and shareholders attaching greater importance to the latter group. The New York Times, in addition, highlighted the plight of “disenfranchised” owners especially in the late 1980s. This newspaper had a specific tendency to frame managers as “hired hands” as opposed to “owners.”

With *ownership* there is less emphasis on rights and fewer, if any, instances of emphatic affirmations of the position of shareholders (“true” owners etc.). The focus is, however, still on shareholders. The only place where there is a degree of rejection of the idea that shareholders equate owners is the SEC84 sub-corpus.

Overall then the evidence of the press corpora suggests a strong connection between shareholders and the notion of ownership of the corporation. There is very little said about ownership conveying responsibilities. Though it is not clear whether there was a marked change since the 1970s or earlier decades, it would seem that the notion of ownership was ripe for use as a rhetorical tool to promote shareholder primacy at the beginning of the 1980s. The SEC corpus generally follows this pattern with the exception of the SEC84 sub-corpus. It is not clear whether SEC84 reflects a pattern of change, or the specific views of one or more of the commissioners.

7.5 Ownership and ideology

In terms of how the SEC Commissioners use the idea of ownership in their arguments, there is a clear shift in emphasis from responsibility to rights. The shift is detectable between the speeches of Ruder and Breeden; it can be traced to the late 1980s or early 1990s. Since these speeches are official statements from a government agency this shift is significant and should not be put down

purely to the idiosyncrasies of the individual speakers. However, given that these case studies are based on a sample of speeches one should not attempt to pinpoint an exact time for this shift in emphasis towards rights and accountability. The shift accompanies the overall transition to shareholder value though it is not clear from these speeches whether or not it precedes it.

The evidence from the corpora suggests an emphasis on the rights rather than the responsibilities of owners (as shareholders that is) for most of the period between 1980 and 1999.

In the previous section I explained that throughout the period, and in all three corpora, we see a focus on accountability to owners and the rights of owners. This is the result of a qualitative study of occurrences of *owner* in the corpora.

A first look at collocates of *owner* and *ownership* does not reveal very much about whether rights or responsibilities prevail. *Right* appears as a collocate of *owner* in the SEC99 sub-corpus. *Right* is also a collocate of *ownership* in the WSJ94, WSJ99, and NYT99 sub-corpora. *Control* is a collocate of *ownership* in the WSJ94 and NYT99 sub-corpora. In any case, neither *responsibility* nor *commitment* appear as collocates of either lemma in any of the sub-corpora. Overall, the evidence gleaned from a study of the collocates of *owner* and *ownership* is inconclusive as regards the question of whether rights or responsibilities prevailed though there is a little evidence that rights are a more important theme.

However, as I observed in the discussion on shareholder democracy when we look at collocates of *shareholder* there is a clear upward shift in focus on rights in the WSJ and NYT corpora after 1984. Moreover, *right* is consistently a stronger collocate of *shareholder* than *responsibility* and *duty* (Appendix 5A, tables 5.26 to 5.28).

Thus the quantitative evidence from the corpora suggests there are indeed signs of a greater focus on rights than on responsibilities when shareholders are represented as owners.

I also undertook a qualitative study of all the concordance lines where responsibility occurred within twenty words of owner and ownership. This was more detailed than an examination of collocates the measurement for which used a five-by-five word window and was quantitative in nature. Besides wanting to know how often *responsibility* occurs with *owner* and *ownership*, I also wanted to learn more about the specific contexts. The results are set out in Chapter 6; the word responsibility occurred in nine of the concordances lines with *owner* and eight with *ownership*.

This is for all three corpora throughout the twenty-year period. Five of these seventeen instances relate to advocacy of an approach that would take into account a range of social interests. This indicates the very low level of interest in the responsibility aspect of ownership throughout the corpora.

The point here is not that corporate social responsibility was not discussed during the 1980s and 1990s or that these were not issues of interest; that would be a separate research question. The point is that responsibility was not connected with ownership in the discourse on corporations.[50]

In Chapter 1 I explained that ideology is at its most effective when it is presented as common sense.

I have shown that ownership, relating to shareholders and corporations, has been an important tool in the argumentation offered by SEC Commissioners to their various audiences.

I have also now shown that the use of ownership is more complex than may appear at first sight.

Representing shareholders as owners per se need not obviously lead to any one single position. The idea that ownership might serve different viewpoints can be seen from the statements of the BRT.

One possibility is that ownership is not used at all or used only very sparingly in presenting a point of view. The BRT's 1981 Statement of Corporate Responsibility (1981) characterises shareholders as "providers of risk capital" (p. 7). They are not referred to as owners in this document which endorses what later came to be known as the stakeholder view of corporate governance. This corresponds to the strategy used by Marinaccio who also bypasses the concept of ownership of the corporation. However, it also corresponds to Cox who does not use ownership as part of his persuasion strategy though he believes that shareholders own corporations. Clearly

[50] Moreover, the evidence concerns the two genres that were the subject of this project - namely the speeches of SEC Commissioners and reporting in the US national press. The broader situation is a good deal more complex; there were those who argued for increased shareholder enfranchisement on the grounds of responsibility. Monks, for instance, makes the responsibilities and duties of shareholders as owners a major part of his rhetoric. A good part of his textbook on corporate governance (Monks & Minnow, 2008) laments the neglect of duty of contemporary corporate "owners."

it is possible to make the case for shareholder primacy without using ownership as an element in one's rhetorical strategy. Representing shareholders as owners is not a necessary part of an argument for shareholder value but it considerably strengthens the persuasive power of such an argument.

The representation of shareholders as owners can be used to serve the opposing argument to shareholder wealth maximisation. In Chapter 1, I gave the example of the BRT's 1978 (The Business Roundtable, 1978) statement on corporate boards which emphasized shareholders "legal and ethical obligations." In this case, representing shareholders as owners serves a very different argument to the one used by Friedman. Williams appears to feel that contemporary shareholders have largely forfeited the right to be deemed owners due to their lack of commitment and responsibility. There is a commonality between Williams and the 1978 BRT position in the sense that both associate ownership with responsibility. Ruder's position also associates ownership with responsibility but is not primarily concerned with its social aspects.

Breeden and Levitt identify ownership with rights rather than with responsibility. This is largely in line with the findings from the corpora quantitative observation of which reveals that the salient aspects of ownership are rights and the status of owners as the ultimate bosses. Emphasizing shareholders as "true" owners usually seems to reinforce this last point. In this sense the rhetoric moved much closer to Friedman over the course of the 1980s and 1990s.

Ownership has many different aspects. As discussed in Chapter 3, Honoré outlined eleven incidents of ownership including a number of rights but also the duty to prevent harm. Friedman focuses on rights even though he does not explicitly use the vocabulary of rights. Friedman's representation of managers as employees and shareholders as owners and bosses asserts the right to control. He also emphasizes the right to income, especially in his view that managers are handling money that rightfully belongs to shareholders and his analogy of corporate social responsibility with taxation. The speeches of Breeden and Levitt, as well as, to some extent Ruder, focus on the right to manage and the right to income. The evidence from the corpora suggests that these incidents associated with ownership are also the ones most prevalent in media discourse on corporation. Little is said about the duty to prevent harm which would be associated with externalities caused by the activities of corporations. Even Williams talks of responsibility in a very broad sense and any mention of responsibility has disappeared altogether by the time we

arrive at Breeden and Levitt. We see a progression in the understanding of ownership that is projected by the SEC Commissioners over time.

Even more than simply representing shareholders as owners, Friedman, and later Breeden and Levitt, concentrate only on very specific aspects of ownership. Moreover, Breeden and Levitt go further than Friedman. By representing shareholders primarily as ordinary people in need of protection, they are further backgrounding any notion of responsibility associated with ownership. Shareholders have certain rights and are vulnerable to exploitation; they are thus deserving of the attention of managers and directors. This representation creates a presupposition of shareholder primacy which is not argued or explained. This in turn helps to build the "habits of thought" which set the scene for the shareholder value ideology. That this is never explained but is presupposed makes the argument all the more powerful.

7.6 Concluding Comments

An examination of the speeches suggests that a major break in the dominant consensus on corporate governance took place in the middle of the 1980s. This is consistent with the literature that covers the history of the corporate governance discourse during this period. The analysis of the corpora tends to confirm that the mid-1980s constitute a decisive point in the transformation of the consensus towards a shareholder-centred view; repeatedly we see a break between the sub-corpora containing the 1980-1984 period and the 1985-1989 period.

When I examined collocates of *shareholder value* and those of *shareholder* related to shareholder value I observed a shift from the mid-1980s. Beyond that point relatively little changed. There is the same trend in the developments on shareholder activism and the occurrence of words related to voting and of political allusions: again a decisive point seems to be the mid-1980s. I should clarify that for the most part this trend applies to the WSJ and NYT corpora; the situation is often less clear with the SEC corpus. However, given that the SEC corpus includes all speeches of all SEC Commissioners during the period of this study it covers a broader range of topics than the other two corpora; it is therefore to be expected that the quantitative findings will differ. However, the analysis of the speeches shows very much the same timing for the most important change in the discourse amongst SEC Commissioners. As discussed in Chapter 1, work by Taylor (2015) and Rajan et al. (2022) suggests that this same pattern of a rise in support for

shareholder value starting in the early-to-mid 1980s reveals itself in material produced by the corporations themselves.

The commonalities in timing of the rise of shareholder primacy revealed by different analytical methods suggests that neither the SEC Commissioners nor the newspapers examined, the *Wall Street Journal* and *New York Times*, led the debate on corporate governance. There is no clear sign that a shift in the discourse on corporate purpose and corporate governance occurred in one of the two genres analysed before the other. For the same reason, though there are differences in the progression of ideas amongst the different corpora, it is impossible to conclude that one genre consistently lagged behind the other. My investigation did not look in detail at corporate correspondence but the literature discussion in the preceding paragraph leads to the same conclusion for that genre.

I have shown that in the genres examined here, the shareholder value principle rose in prominence in the last two decades of the 20th century. It would appear that a key break with the old consensus occurred during the latter half of the 1980s.

Moreover, the representation of the key actors in the strategic action field related to corporate governance evolved over the 1980 to 1999 period. My research centred on shareholders; again it appears that a major change occurred during the 1980s. A study of the perception of corporate management supports the hypothesis that a transformation of the field was already underway when the period of this study began.

The idea that shareholders own the corporation formed a key part of the argumentation strategies of most of the SEC Commissioners and was underlined in much of the discourse on corporate governance as represented by the corpora. However, perhaps of greater significance was the aspect of ownership that I identified in relation to the persuasive strategies on behalf of shareholder value as an ideology. Representing shareholders as owners per se was not as critical a strategy as highlighting limited aspects of ownership. I have shown that in the SEC Commissioners' speeches the shift in emphasis moved from responsibility to rights over the period in question. The evidence from the corpora suggests that the focus was on the rights of owners/shareholders throughout the 1980s and 1990s. It was this emphasis, combined with the evocative power of the concept of ownership, that proved to be an effective rhetorical tool.

Chapter 8: Conclusion

In this dissertation I have researched an important period in the history of corporate governance. My aim was to gain a better understanding of the rise of shareholder primacy in the late twentieth century. I used methodologies from applied linguistics in order to study changes in the discourse on corporate governance in two important genres: the speeches of key regulators and print media. I used strategic field theory to organize and frame my investigation. In the terminology of field theory, the arena of corporate control experienced a "social movement" in the 1980s and 1990s that led to a new balance of power amongst key actors.

8.1 Original Contributions

This research represents an original contribution to knowledge in a number of ways.

First, I have added fresh insights to existing research on the decisive break in the discourse on corporate governance that took place during the 1980s. I have not only confirmed the findings of earlier research using much larger corpora of texts but by systematically analysing collocations and concordance lines I have shed new light on the contexts in which terms such as *shareholder value* and *corporate governance* are used. For instance, I have shown that shareholder value maximisation as a management philosophy was largely embraced early on by corporate managers and directors. *Corporate governance,* which rose in salience as a term during the 1980s and 1990s, was focused on shareholders excluding all other stakeholder groups; this is something that is quantitatively verifiable. Moreover, there is no evidence of a link in the discourse between corporate governance and agency theory.

Secondly, I have shown how attention shifted amongst key themes in the discourse such as takeovers, compensation, and institutional investors over the 20-year period. The progression of themes of interest in the speeches that I analysed largely tracks the corpora.

Thirdly, I have shown how the different narratives or stories told by the SEC commissioners evolved with their perspectives on corporate governance and the extent to which these narratives are mirrored in the corpora particularly the press corpora.

Fourthly, I have shown how the representations of the key groups of actors in the arena of corporate control changed over the period both in the speeches analysed and the three corpora:

- Managers are generally viewed in a negative light throughout: they are shown to be self-serving and overly driven by short-term concerns. That this is the case when they were still dominant players at the beginning of the 1980s suggests that their position was already subject to challenge;
- The role of directors changed markedly from being guardians of the corporation itself responsible for ensuring its continued existence in the long term to becoming representatives solely of one constituency namely the shareholders;
- Early in the period, shareholders were seen as marginal players with only transient and transactional interests in corporations. This view is shared by supporters and opponents of shareholder primacy alike. By the end of the period, shareholders are viewed as central to corporate existence and are often represented as voters in a democracy. Corpus analysis indicates an increased focus on shareholder rights and managerial accountability (towards shareholders).

Fifthly, I have shown how the notion that shareholders own the corporation has been used over the period in question to support different argumentative strategies. In the SEC speeches that I analysed ownership is marginal in early arguments even for proponents of shareholder primacy. In later speeches ownership is a central part of the argument strategy; it is used strategically to emphasize the central importance of shareholders as primary beneficiaries of corporate activity.

The analysis of the corpora also shows a preoccupation with shareholders' rights and a tendency to stress their position as owners.

The aspect of ownership emphasized in the argumentation strategies is key. The SEC speeches show a shift in emphasis from responsibilities to rights attached to ownership. The press corpora show primarily a focus on rights and only minimal interest in broader responsibilities associated with ownership throughout the 1980s and 1990s. The accentuation of this one aspect (or element) of ownership to the exclusion of others was pivotal in establishing shareholder primacy as a dominant paradigm of corporate governance as it supported narratives that largely ignore other corporate constituents.

Finally, this research includes a systematic examination of Milton Friedman's 1970 NYT article on corporate social responsibility which is a classic statement of the case for shareholder value in the public discourse.

I believe that I have developed a methodology which is well suited to deepening our understanding of the changes that took place in corporate governance and in addition to how ideas spread from one domain to another. The methods I have used were applied to studying a relatively large corpus of texts but could just as well be used to investigate smaller more limited research questions and case studies.

8.2 Limitations and Directions for future research

The major limitations of this project are that it is confined to a specific time period and to two genres.

In terms of further illuminating the historical shift in the ideology and discourse on corporate governance the research that I have undertaken could usefully be extended to cover other genres. I have examined the various statements and positions issued by the Business Roundtable (BRT) relevant to corporate governance from the later 1970s to the end of the 1990s but did not conduct a full analysis of any of these. A small corpus of all of these documents and a more systematic analysis of a selection of texts would comprise material that could help to better understand how argumentation and rhetorical strategies changed. As a representative body of US CEOs, the BRT would provide some indication as to how the thinking and public discourse of top managers developed. Such research could be complemented by studying the communications issued by corporations themselves thereby extending research done by Rajan et al. (2022) and Taylor (2015).

Another key avenue for further research would be to study the genre of literature produced by management consulting companies in the 1970s and 1980s (and perhaps also the 1960s) to examine the hypothesis suggested in work by Froud et al. (2000) as well as Knafo and Dutta (2020) that these firms played a key role in leading the shift in the discourse which led to the transformation of the arena of corporate control. Besides revealing whether similar trends appear in the arguments and rhetoric as with the SEC Commissioners we would also be able to evaluate whether the consulting firms preceded other genres in embracing shareholder value. The influence of academics and public intellectuals on the thinking of management consultants (and vice versa) would also be an interesting avenue for further research. For example, there is a key passage in

Rappaport's influential book on shareholder value (1986) which reproduces Friedman's argument closely. Reading these pages it is surely hard to deny Friedman's influence.[51] A study of the literature produced by management consultants and an examination of the influences that shaped their thinking would reveal interesting insights on the background behind the changes that took place during the last decades of the twentieth century.

Another limitation was the relatively small number of speeches analysed. The speeches comprised a selected sample of all the speeches made by SEC Commissioners on corporate governance during the 1980s and 1990s. Moreover, within the genre of public speeches, the research could usefully be extended beyond the SEC, to cover representatives of other key public institutions involved in corporate governance, including senior officials of the US Treasury, the Federal Reserve and also judges in key states such as Delaware.

In addition, the research could stretch further in time to include the 1970s and perhaps also the 1960s. A more detailed analysis of trends during these decades would reveal how the public discourse evolved before the major shift in the consensus occurred in the 1980s and 1990s.

Besides studying other genres and deepening the analysis of the genres examined in this project, further research may also make greater use of the corpora that have already been created. I shall outline a few possible avenues for further research in the following sub-section. I will also briefly

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[51] The following is a passage from Rappaport's book: "in a market-based economy that recognizes the rights of private property, the only social responsibility of business is to create shareholder value and to do so legally and with integrity. Critical social issues in education, health care, drug abuse, and the environment pose enormous social challenges. Corporate management, however, has neither the political legitimacy nor the expertise to decide what is in the social interest. Our form of government calls for elected legislators and the judicial system to be the mechanisms for collective choice. Ironically, costs that social responsibility advocates would impose on corporations often are costs that voters through the political process would be unwilling to bear. Such imposed costs invariably will be passed on to consumers by way of higher prices, to employees as lower wages, or to shareholders as lower returns" (Rappaport, 1986, pp. 5-6). We can compare with the following excerpts from Friedman's article (1970): "in a free-enterprise, private-property system, a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom […] In each of these cases, the corporate executive would be spending someone else's money for a general social interest. […] Insofar as his actions lower the wages of some employees, he is spending their money […] We have established elaborate constitutional, parliamentary and judicial provisions to control these functions, to assure that taxes are imposed so far as possible in accordance with the preferences and desires of the public."

outline how this research might also be extended to cover other countries especially the United Kingdom.

Further use of the SEC, WSJ and NYT corpora

In this chapter I have examined how the representation of various key players in the arena of corporate control changed over the 1980-1999 period. In my analysis of the SEC Commissioners' speeches I focused on managers, shareholders and boards. This detailed analysis was accompanied by an examination of collocates of the lemma *shareholder* (which treated *stockholder* as synonymous with *shareholder*). This enabled me to examine the similarities and differences between the representation of shareholders in the speeches and in the corpora generally. As explained in Section 7.1, further research could extend this examination to the representation of corporations and boards.

There is another way in which the corpora can be used to provide further insights. Collocations and concordance lines are powerful tools which enable researchers to shed light on the general context in which specific words are used and also to conduct qualitative analysis of contexts. However, they both have limitations given the degree of human effort involved and the limited excerpts of text used. There is a case for conducting a deeper investigation into a possible link between mentions of corporate governance and indirect references to agency theory. As I mentioned earlier Cheffins (2019), Fligstein and Goldstein (2022), and Knafo and Dutta (2020) have suggested that the dominance of agency theory followed the transition in the corporate governance discourse; however Lund & Pollman (2021) have suggested that references to positive corporate governance are linked to agency theory. My corpus analysis, whilst showing a clear focus on shareholders when corporate governance was mentioned, did not find a direct link with agency theory. That is not to say however that indirect links did not exist. Newer techniques based on natural language processing (NLP) techniques which use artificial intelligence are available for analysing massive corpora of texts and could usefully help to provide further insights on this question.

Beyond the United States

Finally, this project has been focused on the discourse on corporate governance in the United States. The research that I have undertaken could be extended to other countries for instance the

UK. It might be particularly instructive to examine the work on the theme of corporate governance undertaken by the Bank of England in the 1970s.

8.3 Potential applications

Besides expanding our understanding of history, my work has some potential applications.

In recent years there has been a debate on whether the consensus on corporate governance is shifting back towards a stakeholder-centred approach with the increasing focus on Environmental, Social and Governance (ESG) investment criteria. The BRT's 2019 letter (2019), signed by dozens of US CEOs and calling for business to address the concerns of various groups, has been cited as marking a transition away from shareholder value although there is by no means a consensus on this question. Applying some of the methods of this project to more recent speeches and texts would reveal more about the persuasion strategies used in contemporary discourse on the corporation. In particular, my approach could reveal insights about the representation of various parties in the arena of corporate control, and on the way in which ownership is a feature of the current debate.

I can envisage another application of my work in the field of pedagogy. Much of the literature in contemporary business curricula is centred around the principles of shareholder primacy. Despite recent interest in ESG criteria for making firm-level decisions, students of business particularly in the areas associated with finance are taught that shareholder wealth maximization is the basic goal of corporations. This is often presented as a major starting assumption and drives the explanation of performance metrics. An examination of the use of language in creating presuppositions has the potential to lead students to question, debate and better understand the ideological foundations of some of what passes as basic knowledge.

In addition, I believe that what I have shown about the use of ownership in the discourse on corporate governance may be of help in formulating strategies for presenting alternative viewpoints. In Chapter 3 I set out my reasoning behind the position that a corporation cannot be owned. This view was based on a study of the legal literature on the subject as well as on a classic legal definition of ownership. In Chapter 3 I focus on ownership from a scientific perspective. I believe this was important since the law has immediate practical implications and consequences. However, there exist in parallel ideas on ownership both in everyday language and in other scientific fields besides law. This is not necessarily wrong but it is important to understand the

difference. For those wishing to consider how to formulate arguments for a more inclusive understanding of the purpose of the business corporation, I would point out that the idea of businesses being owned is very firmly established in everyday language. Trying to argue that no business that is incorporated can be owned would necessitate a focus on the purely legal understanding of ownership and might not be productive. Referring to "owners" of businesses may be excusable in situations where responsibility is a feature of the relationship between individuals and firms. I would suggest focusing on the publicly traded corporations that are in any case of interest in debates on corporate governance. Here shareholders tend to have limited real power and rarely have other roles in corporations. It would be easier to explain that these shareholders are not real owners and to base such an argument on the absence of responsibility which would include both the freedom from financial liability and from the duty to prevent harm. This latter point is vital since the need to regulate or avoid the creation of negative externalities by corporations is (or should be) central in discussions on corporate governance. An argument based on a refined and sharpened version of the case made by Harold Williams might not be such a bad starting point.

Finally, the notion that corporations are owned by shareholders has a constraining influence on other debates besides corporate governance. In recent years in the United Kingdom and other countries there has been lively political debate in some quarters on the future of companies that were privatized in the 1980s and 1990s. Arguments have been raised for renationalizing some of these companies particularly the utilities sectors and the railways. Much of this discourse is framed in terms of ownership – taking privately owned companies back into public ownership. As with much of the discourse behind shareholder value, an examination of the concept of firm ownership is not itself a major part of this debate. The quality of the debate on the future of privatised companies would benefit from a more nuanced understanding of the nature and legal status of corporations and their shareholders as well as of power structures in the arena of corporate control. Analysis founded on a view of corporations as independent institutions legally separate from shareholders as well as on a deeper understanding of the role of company law in influencing the balance of power in corporate governance would deepen the debate beyond simple sloganeering. Recognizing both business firms and public enterprises as independent entities in their own right subject to a range of checks and balances (quite apart from will of shareholders) may allow for new insights and a broader range of policy choices.

Some of the themes I have covered in this conclusion extend well beyond the scope of this dissertation. My aim was to identify a few applications of my research. I hope I have succeeded in this aim.

Appendix 1: Historical background on the speeches

Harold Williams

Harold Williams was appointed to the Chairmanship of the SEC in early 1977 by the incoming Carter administration. He had worked with the Commission in the preceding years most notably serving on the Advisory Committee on Disclosure and was identified during a search process (Williams, 2006). Williams served as SEC Chairman for the whole of the Carter presidency.

After graduating from Harvard Law School, he began his career in a small law firm in Los Angeles before taking up a position with the Norton Simon food concern eventually becoming Chairman of the Board. He left the corporate sector to become Dean of the Graduate School of Management at UCLA. Williams came to the SEC with experience of serving on corporate boards: Norton Simon itself, the companies that it acquired, as well as board seats which he accepted during his time at UCLA. In particular he joined the board of Phillips Petroleum in the mid-1970s after it had been sued by the non-profit *Center for Law in the Public Interest* over the maintenance of a political slush fund which was used amongst other things to contribute to Richard Nixon's re-election campaign (Williams, 2006; United States Senate, 1976, pp. 438-443).

Williams took an active interest in corporate governance; it was the theme of twenty-six of the sixty-nine speeches and lectures that he gave as SEC Chairman. However, his approach to regulation in this field was cautious and conservative. Although he was critical of contemporary corporate boards, Williams followed his predecessor Roderick Hills in opposing legislative solutions to problems of corporate governance. This is despite the fact that during the election campaign in 1976, Carter had endorsed proposals for federal legislation on corporate law.

According to Seligman (2003), during the 1970s the SEC played an important role in kindling public interest in corporate bribery scandals both in the United States and abroad as well as in the passing of the Foreign Corrupt Practices Act. On the other hand, "the SEC's response to the corporate governance debate per se was strikingly limited (p. 534)" with no systematic work undertaken to address fundamental questions on corporate governance or to assess the adequacy of existing laws. Seligman wrote that "the emphasis throughout Williams' chairmanship was on exhorting business executives voluntarily to reform their boards (2003, p. 549)" with the main

achievements being in the areas of disclosure of board composition and activities and in proxy voting.

This account is consistent with Williams' own stated views on the need for business to reform itself and his consistent opposition to legislating on corporate governance; for him corporate governance reform was necessarily a voluntary endeavour. In a 2006 oral history interview which he gave for the SEC Historical Society he explained that he clearly saw the potential to use his role as a "bully pulpit" to make his case (Williams, 2006). He also reiterated his opposition to legislative measures to bring about change. Moreover, he was relatively modest about the impact of his advocacy: "I'd like to think it had an impact but I couldn't prove it. Over the years, there has been an evolution towards more outside directors, some more independent than others, so I'd like to think I boosted the process a bit (Williams, 2006)."

We will now proceed to examine the speech that Williams gave to the Securities Regulation Institute (SRI) in San Diego, CA on 22th January 1981 (Williams, 1981). The title of the speech is 'The Corporation as a Continuing Enterprise.' The SRI is an annual law conference held in California on corporate law and securities issues which began under the auspices of the University of California in 1974. Harold Williams addressed the SRI each year during his chairmanship[52]. The speech fits the subject of interest, i.e. corporate governance, exactly and does not cover other areas of SEC activity. The views expressed in the speech are consistent with Williams' views on corporate governance as set out in other speeches and also fall within the 1980-1999 period which is the subject of this research project.

Charles L. Marinaccio

Charles L. Marinaccio (known as "Lindy") was appointed an S.E.C. Commissioner by President Ronald Reagan, who began his term in May 1984. A Democrat, he was one of the non-Republican appointees of the Reagan presidency (a maximum of three of the five Commissioners may be from any one political party), and served for little over one year leaving the S.E.C. in July 1985.

Marinaccio came to the S.E.C. after a career in the public sector spanning more than years (Marinaccio, 1985b). A graduate of the George Washington University Law School, he began his

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[52] The SRI continues to be held annually in California but is now sponsored by the Pritzker School of Law at Northwestern University in Chicago.

career as clerk to the Chief Judge of the District of Columbia Court of Appeals (Garn, D'Amato, Proxmire, & Sarbanes, 1983). His next position was with the Department of Justice where he worked as a trial lawyer before moving to the Anti-Trust Division specializing in the mergers and acquisitions of financial institutions. He then spent over five years at the Federal Reserve followed by eight years with the U.S. Senate Committee on Banking, Housing and Urban Affairs initially serving as General Counsel and then Minority General Counsel. He was involved in the passing of numerous pieces of legislation, including, for instance, the Foreign Corrupt Practices Act (Garn, D'Amato, Proxmire, & Sarbanes, 1983). In his resignation letter from the S.E.C., Marinaccio (1985b) explained that he planned to transition to the private sector.

Despite being at the centre of activity in public policy-making for a long period Marinaccio maintained a relatively low profile. Beyond his seven speeches as an S.E.C. Commissioner there is very little in the way of recorded documentation about him or produced by him.

We will now proceed to examine the speech that Marinaccio gave to the Chicago Regional Group of the American Society of Corporate Secretaries in Chicago, Illinois on 9th January 1985 (Marinaccio, 1985a). The title of the speech is 'Public Policy Issues Concerning the Subjects of Tender Offers and the Developing International Equities Market.' The speech contains three sections: a brief introduction, followed by discussions on tender offers and the international equities market. In this analysis we will examine only the first two sections since they are the most relevant to this research project. In the analysis that follows, references to "the speech" are to these sections of the speech. Section 2.6 contains a brief summary of the final segment of the speech. In order to gain a better understanding of Marinaccio's views, we will also refer to a speech that he gave a few months previously, i.e. in September 1984, in Virginia, part of which addresses the same subject (Marinaccio, 1984).

Charles Cox

Charles Cox was trained as an economist at the University of Chicago during the 1970s. During his time there he developed a keen interest in the law and economics approach (Cox, 2013) which he applied in his doctoral dissertation on the impact of commodities futures trading on spot prices. His supervisor was George Stigler. After eight years teaching at Ohio State University, Cox took up a position at Texas A&M where he was involved in developing a law and economics program. From there he was recruited by the then S.E.C. chairman John Shad in 1982 to set up the Office

of the Chief Economist (Cox, 2013). The purpose of the new office was to bolster the role of economics at the S.E.C. by supplementing the work of the existing Directorate of Economic and Policy Analysis. In Cox's own words, as cited by Khademian (1992), the goal was "to bring economists with the latest and most technical training in economics to work on Commission projects (United States Senate, 1983)." Initially this new office was staffed by Cox himself and two researchers.

As Khademian (1992) explains, the Office of the Chief Economist provided support to Shad's agenda of deregulation as it tended to favour market-based approaches. At least at the beginning, the office met with considerable resistance within the S.E.C., dominated as it was by legal experts with little time for the type of economic analysis that Cox was trying to apply to the problems of financial regulation.

In 1983 Shad recommended Cox's nomination to the commission to replace John Evans a fellow Republican who had been appointed by Richard Nixon in the 1970s. Evans had hoped to be nominated for a further term; he and three other S.E.C. Commissioners opposed Cox's nomination on the grounds that he was unfit for the role as he lacked any training in securities law and no practical experience. In other words Shad himself was the only supporter on the commission of Cox's nomination which was also opposed by some legislators who saw him as a Reaganite ideologue (Khademian, 1992) and likely to be "totally beholden to Shad, a rubber stamp (Rowen, 1983)."

Despite this opposition, Cox's nomination was approved and he became a Commissioner, a post he held until 1989. For a few months in 1987 he served as Acting Chairman. After leaving the S.E.C. Cox joined the Chicago-based consulting firm Lexecon (now called Compass Lexecon) where he is currently an Executive Vice-President. (The current chairman and president of Compass Lexecon is the jurist Daniel R. Fischel).

<u>David Ruder</u>

David Ruder came to the S.E.C. from academia; he was a law professor at Northwestern University in Illinois specializing in securities law and had been dean of the law school between 1977 and 1985 (Anyaso, 2020). Ruder was not the administration's first choice; as he explained in an oral history interview for the S.E.C. Historical Society they "had not had much success (Ruder, 2015)" in finding a replacement for John Shad who had been appointed US Ambassador to the

Netherlands. At the time of Ruder's nomination in 1987, the Reagan presidency was in its final years; the Iran-Contra scandal had broken and the Democrats controlled both the Senate and the House of Representatives. Rudolph Giuliani, then US Attorney for Manhattan, had been approached and refused the offer. The administration then turned to leading investment bankers as well as possible candidates within the government including the future Treasury Secretary Nicholas Brady all of whom had all also refused the position (Nash, 1987a).

Ruder was seen as having a more moderate approach than John Shad. In 1980 Harold Williams had sounded him out about a potential role at the S.E.C. believing him to be less conservative than other potential Republican appointees (Ruder, 2015). Once nominated he was keen to emphasize a less ideologically driven approach telling the press: "I am not a University of Chicago economist (Nash, 1987b)," a point which he repeated during his confirmation hearings with the Senate (United States Senate, 1987). Moreover, though registered as a Republican at the last election before his nomination, Ruder had never been politically active (Ruder, 2015). His nomination nevertheless met with scepticism amongst some Democratic legislators, including the chairman of the Senate Committee on Banking, Housing and Urban Affairs, William Proxmire (Ruder, 2015).

Though the change in approach that he brought to the S.E.C. was not dramatic, Ruder was seen to be a more active regulator than Shad (Nash, 1988). He told the Senate Committee on Banking, Housing and Urban Affairs during the confirmation process: "I do not regard myself as a conservative, if that phrase means refraining from strong and positive regulatory initiatives (United States Senate, 1987)." This more hands-on approach to regulation was compounded by the stock market crash of 1987 and the subsequent preventive measures that were put in place. Reflecting on his time at the S.E.C., Ruder said that he had "turned out to be more regulatory than I thought I would be, and I think more than the Reagan people thought I was going to be (Ruder, 2015, p. 55)". He surprised even some Democratic lawmakers by his opposition to the repeal of the Glass-Steagall Act (Nash, 1987c; Ruder, 2015). He also advocated for increased funding for the S.E.C. (Khademian, 1992).

Ruder left the S.E.C. in 1989 and subsequently returned to Northwestern University. He also worked as a partner at the international law firm Baker and McKenzie for some years (Goldsborough, 2020) while also serving on various advisory roles for the S.E.C. and other

organisations. In 2008 Ruder was to join two other former S.E.C. chairmen in endorsing Barack Obama for the U.S. Presidency (Mason, 2008).

Ruder on corporate governance

In the area of corporate governance, Ruder was firmly in favour of shareholder primacy. During his confirmation process in the US Senate, in response to questions from individual senators he affirmed that protecting shareholders was his overriding priority regarding the enforcement of existing tender offer laws and regulations (United States Senate, 1987). He also dismissed concerns which had been raised by Alan Greenspan and John Shad that leveraged takeovers were causing corporate debt to rise to dangerously high levels stating his unwillingness to see this as a subject for legislation or regulation. Moreover, he expressed concern about moves to introduce multiple classes of shares and the resulting "disenfranchisement" of shareholders (United States Senate, 1987).

The 1988 speech

We will now examine the speech that Ruder gave to the 27th Annual Corporate Counsel Institute in Chicago, Illinois on 11th October 1988 (Ruder, 1988). The title of the speech was 'The Impact of Institutional Investors on Large Corporations.' The audience would have been composed primarily of corporate lawyers as indicated by the name of the event as well as Ruder's introductory remarks: *I want to share with you some thoughts accumulated during the last year which I believe may be helpful to corporate counsel as advisors to management*. The length of the speech is 4633 words including references.

Institutional equity ownership in the United States had grown considerably during the post-war period. In 1950 domestic institutions owned 6.0% of all US equities; by 1990 this figure had risen to 44.9% (Friedman B. M., 1996). As Cheffins (2019) explains in his history of corporate governance, many of the views that Ruder airs in this speech were commonly held. Many commentators expected institutions to become more involved in corporate governance for much the same reasons as given by Ruder, i.e. because of the increasing size of institutional holdings. With larger sums of money at risk and greater obstacles to unwinding sizeable positions, it was supposed that institutions would be more motivated to involve themselves in corporate governance. There were some high-profile dismissals of CEOs in the 1990s and boards did intervene in matters of executive compensation; moreover, some large institutional investors, such

as CalPERS[53] became increasingly vocal in their activism. However, the overall level of institutional involvement in corporate affairs was more limited than Ruder might have hoped. Regarding the first half of the 1990s, Cheffins concludes that "the traditional bias in favour of passivity remained largely intact in the early- and mid-1990s (Cheffins, 2019, p. 245)." This did not change as the decade unfolded: "passivity remained the byword generally for mainstream institutional shareholders in the late 1990s (Cheffins, 2019, p. 246)."

Richard Breeden

Richard Breeden was nominated as S.E.C. Chairman by President George H. W. Bush and took up the position in October 1989 (SEC, 1989). Trained as a lawyer, he had some experience of practice in the fields of corporate finance as well as mergers and acquisitions before entering government in the Reagan administration. Notably he was deputy counsel to then Vice-President Bush between 1982 and 1985. In this post he served as staff director of the Task Group on Regulation of Financial Services which was led by Bush and which recommended numerous regulatory changes. In the months before joining the SEC, Breeden worked under Bush in the White House where he was involved in developing legislation to reform the savings and loan sector and also in creating the Resolution Trust Corporation (SEC, 1989; Havard Law School, 2019).

At the SEC Breeden took a substantial interest in corporate governance and spoke frequently on the subject. He gained a reputation for promoting shareholder rights while also taking a tough line on insider trading and other forms of securities fraud (Havard Law School, 2019).

After leaving the SEC in 1993, Breeden joined Coopers & Lybrand as a partner before launching his own firm in 1996 specializing in corporate restructuring. Inter alia, he was corporate monitor for Worldcom/MCI after its failure and for KPMG after illegal activities were discovered. He is currently managing an investment company in addition to a number of corporate directorships (Havard Law School, 2019).

Arthur Levitt

Arthur Levitt was the longest-serving chairman in the history of the S.E.C. His term began in 1993 and ended in early 2001 so was therefore concurrent with both terms of the Clinton presidency.

[53] California Public Employees' Retirement System.

A New Yorker, Levitt came to the S.E.C. with a varied career behind him. After majoring in English, Levitt gained admission to the Yale Law School though he never took up legal studies (Levitt, 2013). Instead he served in the air force for two years before working in a sales role for *Life* magazine. He then took up a position with a Kansas firm in which he sold herds of cattle as tax shelters to absentee owners who were primarily Wall Street financiers. It was from this job that he was recruited into the financial services business becoming a partner in the newly formed brokerage Carter, Berlind & Weill (Levitt, 2013). Levitt was to spend sixteen years in the brokerage business, eventually leaving in 1978 to become Chairman of the American Stock Exchange (AMEX). During his time at AMEX, Levitt founded the American Business Conference, a lobby group for medium-sized corporations, his intention being to mirror the work of the Business Roundtable (Levitt, 2013). After leaving AMEX in 1989, Levitt focused on his role as controlling shareholder of *Roll Call*, a newspaper based in Washington, D.C. and reporting on Congress. This venture enabled him to build the relationships across the political divide that proved helpful in his position at the S.E.C. During and after his time at AMEX Levitt served on several corporate boards. Additionally, when he was nominated for the S.E.C. by the Clinton administration, he was chairman of the New York City Economic Development Corporation (Seligman, 2003).

Levitt had been considered for the S.E.C. Chairmanship in the closing years of the Reagan presidency and had attracted the support of some Republicans. Nevertheless, being a Democrat provided an insurmountable obstacle and the position went to David Ruder (Levitt, 2013). In 1992 Levitt helped to organize a fundraising dinner for the Clinton campaign; through the event he personally raised approximately USD 750,000 (Levitt, 2002) on Clinton's behalf. Although he was not otherwise close to the team around the incoming president he was nominated for the S.E.C. Chairmanship and took office in July 1993.

Levitt led the S.E.C. at a time of considerable change and multiple challenges to which he brought his varied experience, contacts and skills. In 1994, the Republicans won congressional elections, taking control of both the Senate and the House of Representatives for the first time in almost half a century, and Levitt "confronted the most hostile legislative majority that the Commission had faced since the early 1950s (Seligman, 2003, p. 629)." Throughout his chairmanship Levitt had to manage resources carefully as growth in funding was consistently outpaced by growth in the securities markets. His appeals for increased budget allocations met

with limited success; staff morale was negatively affected as salaries remained relatively low and employees overburdened (Seligman, 2003). Besides striving to increase the resources at his disposal and fielding calls for further deregulation, Levitt also addressed a number of major issues and brought forward several key initiatives. He reformed the US municipal bond sector in which it was common practice for issuers to make political contributions in return for business (the so-called 'pay to play' system). In addition, he introduced reforms to the brokerage industry, as well as the audit firms, opposing what he saw as the conflicts of interest facing the 'Big Six' (later the 'Big Five'). He was also engaged in the debate on the repeal of the Glass-Steagall Act. At every stage he faced considerable opposition from business leaders and legislators (Seligman, 2003). Levitt also spearheaded a plain English campaign aimed at simplifying corporate communications to investors. He addressed the general public more broadly by initiating town hall meetings across the country; by doing so Levitt was at least in part motivated by the desire to develop the political potential represented by individual investors and their interests (Levitt, 2002). Seligman summarized Levitt's leadership of the S.E.C. highly positively. He was

> *someone who again rose to the great challenges of his time. Levitt had as difficult a political context as any SEC Chair during six of his eight years as Chairman, political control was in the rival political party and it was during a period of a bull market when enthusiasm for regulation is considerably dissipated, if you will. That he performed as well as he did was an extraordinarily effective achievement* (Seligman, 2004, p. 14).

Levitt consistently affirmed that championing the interests of the individual investor was the guiding principle of his leadership of the S.E.C. This outlook seems to have been formed early in his life. In his memoir and elsewhere – for instance in an oral history interview that he gave for the S.E.C. Historical Society in 2013 – he describes the influence of his parents' experiences. His mother was a schoolteacher who saved for her retirement and "her mistrust of the stock market was visceral (Levitt, 2002, p. 9)". His father, Arthur Levitt Senior, served as New York State Comptroller for 24 years and was the sole trustee of the state employees' pension fund. Levitt describes how his father strove to safeguard the interests of the fund's beneficiaries as an exclusive goal: "the rights of the small pensioner and efforts by politicians in both parties to raid the state pension funds dominated our discussions. My father placed the well-being of New York retirees above all other considerations (Levitt, 2002, p. 9)." Reminiscing about his time in the brokerage business, Levitt recalls the scepticism that he encountered from retail clients regarding whether

they had a fair chance in the financial markets concluding that "from the day President Clinton nominated me, I knew I wanted the individual investor to be my passion (Levitt, 2002, p. 13)."

This emphasis on individual investors and their life goals was to be a common refrain throughout Levitt's chairmanship and was emphasized regularly in his speeches and annual reports. Early on in his tenure, in a speech in May 1994 cited by Seligman, Levitt told an audience at the National Association of Securities Dealers (NASD): "the first priority of the S.E.C. is to protect the individual investor. Consumer protection is our birthright, our focus, our mission and our passion (Levitt, 1994a)." Later that year, addressing the National Press Club on the plain English campaigns led by the S.E.C. he said: "that's what these initiatives are about – people reaching for a better life – a new home, children through college, or a decent retirement. People looking to our capital markets as never before (Levitt, 1994b)." In 1998, addressing an audience at New York University, we see another example of Levitt framing his commitment to individual investors in terms of personal stories: " relying on the numbers in a financial report are livelihoods, interests and ultimately stories: a single mother who works two jobs so she can save enough to give her kids a good education; a father who laboured at the same company for his entire adult life and now just wants to enjoy time with his grandchildren; a young couple who dreams of starting their own business (Levitt, 1998b)."

At the end of his term, in his farewell speech to S.E.C. staff, Levitt again emphasized the agency's mission in terms of the individual investor: "while technology and competition are two reasons for the emergence of the retail investor, one, in my mind, is foundational: public confidence. Much of the genesis for that confidence rests with each of you who pass through the doors of this building every day with the mission of protecting the investor's interest (S.E.C., 2000)."

Appendix 2: Frequencies from the Google Ngrams corpora and the JSTOR library

The figures in this appendix show the development of the frequencies of phrases in the JSTOR library (published in English) and the Google Ngrams corpus of books published in the USA and UK. The Google Ngrams corpora consists of the texts of the books available in Google books. Given the lack of available detail about the methodology behind the creation of the Google Ngrams corpora, these figures should be considered an approximate guide to the frequency of common usage of the terms in question.

More details about the Google Ngrams corpora can be found on the following site: https://books.google.com/ngrams/info

Figure 2.1

Frequency of *shareholder value* in American English corpus

https://books.google.com/ngrams/graph?content=shareholder+value&year_start=1970&year_end=2019&corpus=en-US-2019&smoothing=3

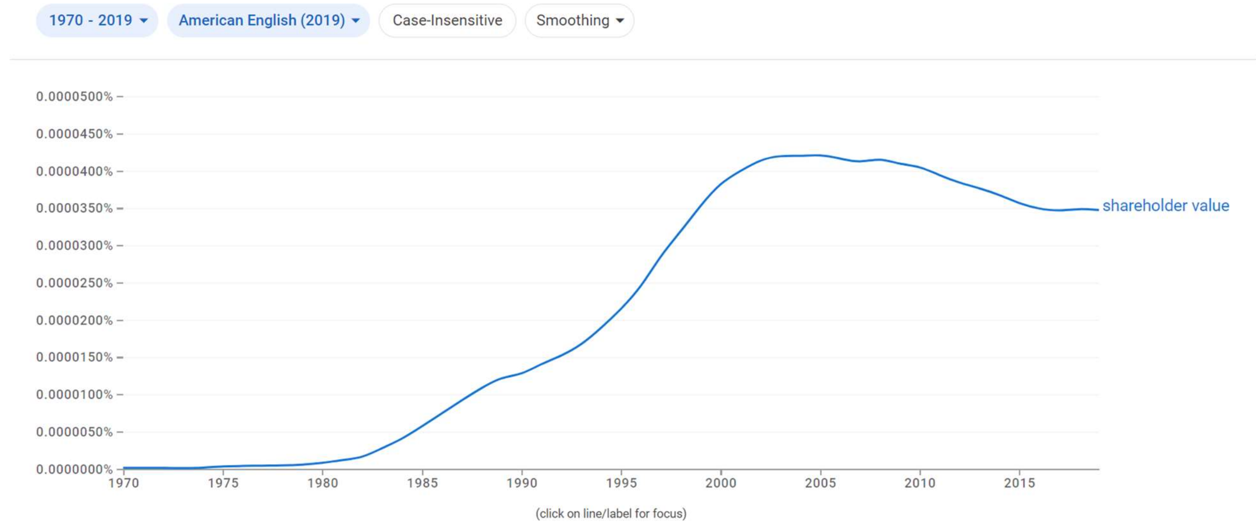


Figure 2.2

Frequency of *shareholder value* in British English corpus

https://books.google.com/ngrams/graph?content=shareholder+value&year_start=1970&year_end=2019&corpus=en-GB-2019&smoothing=3

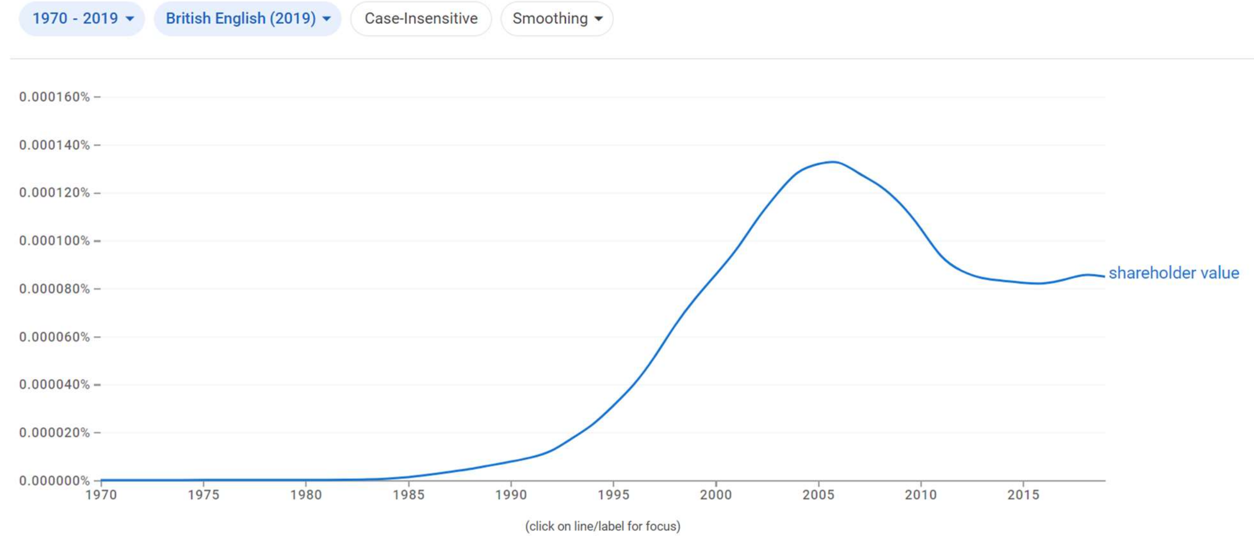


Figure 2.3a

Frequency of *shareholder value* in JSTOR, 1970 to present.

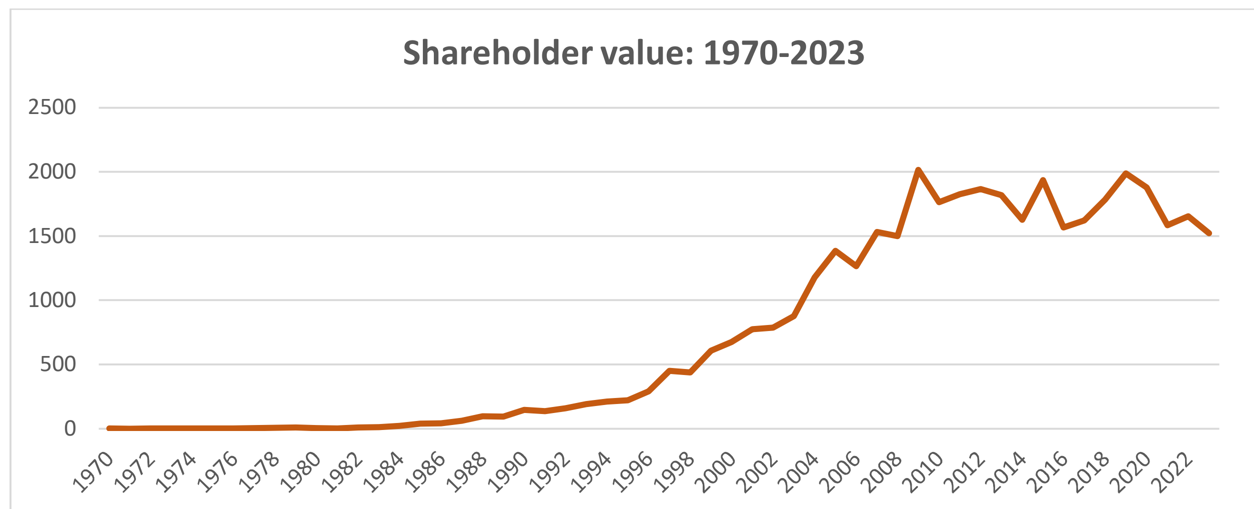


Figure 2.3b

Frequency of *shareholder value* in JSTOR, 1980s.

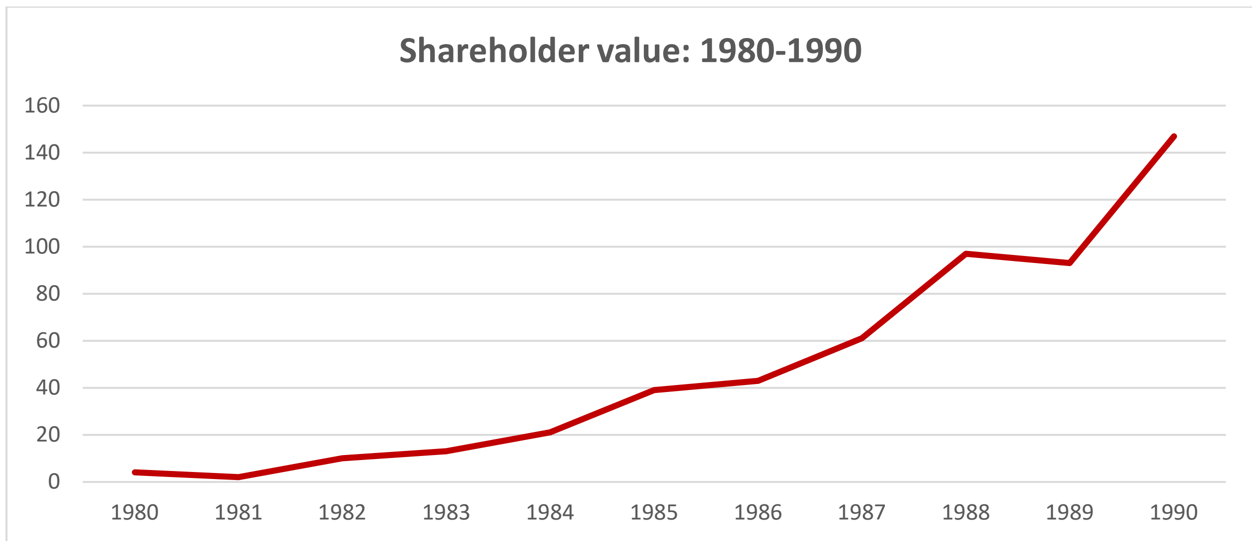


Figure 2.4

Frequency of the term *corporate governance* in American English corpus

https://books.google.com/ngrams/graph?content=corporate+governance&year_start=1960&year_end=2000&corpus=en-US-2019&smoothing=3

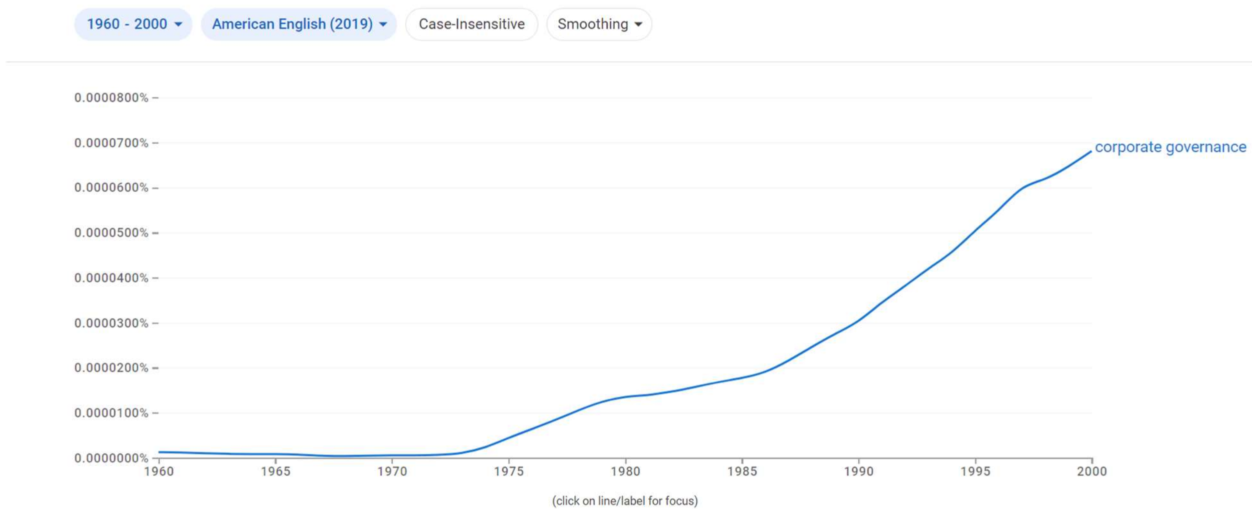


Figure 2.5

Frequency of the term *corporate governance* in British English corpus

https://books.google.com/ngrams/graph?content=corporate+governance&year_start=1960&year_end=2000&corpus=en-GB-2019&smoothing=3

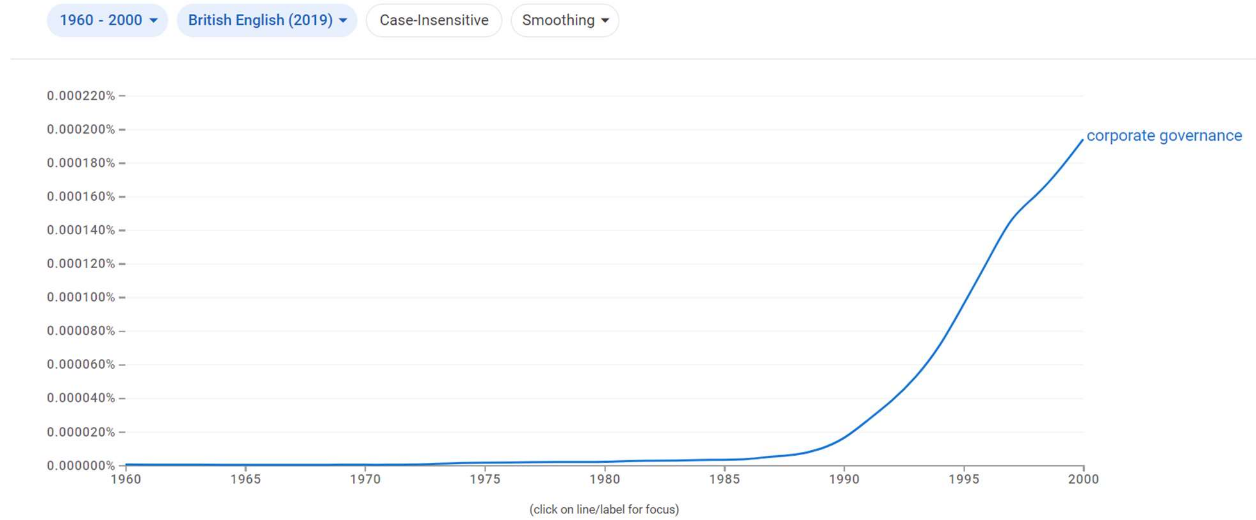


Figure 2.6

Frequency of the term *corporate governance* in JSTOR

Figure 2.7

Frequency of the term *stakeholder* in American English corpus

https://books.google.com/ngrams/graph?content=stakeholder&year_start=1970&year_end=2000&corpus=en-US-2019&smoothing=3

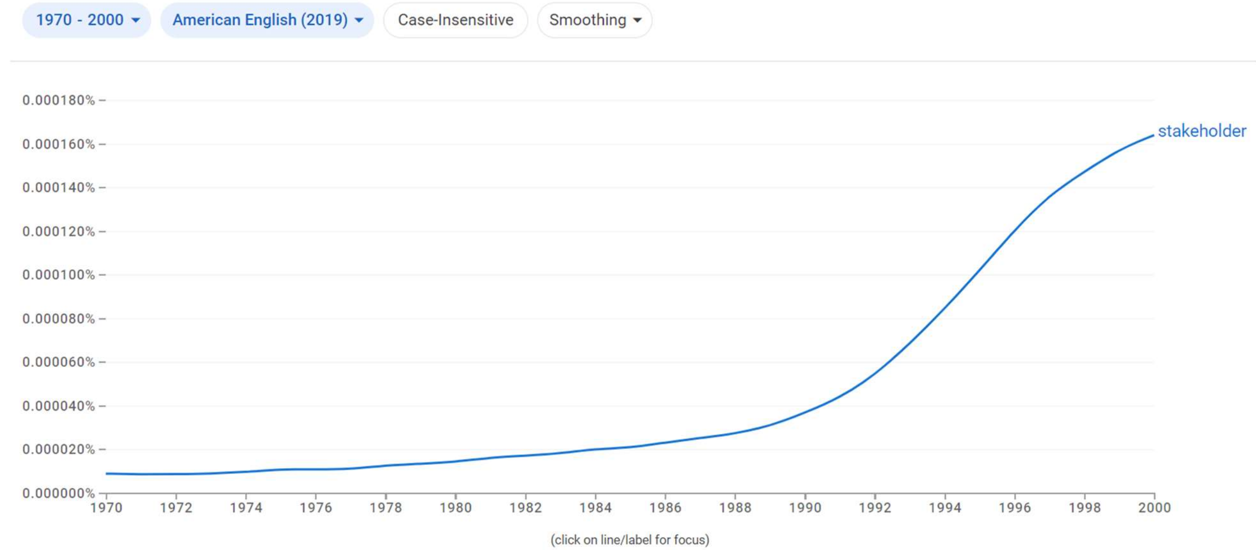


Figure 2.8

Frequency of the term *stakeholder* in British English corpus

https://books.google.com/ngrams/graph?content=stakeholder&year_start=1970&year_end=2000&corpus=en-GB-2019&smoothing=3

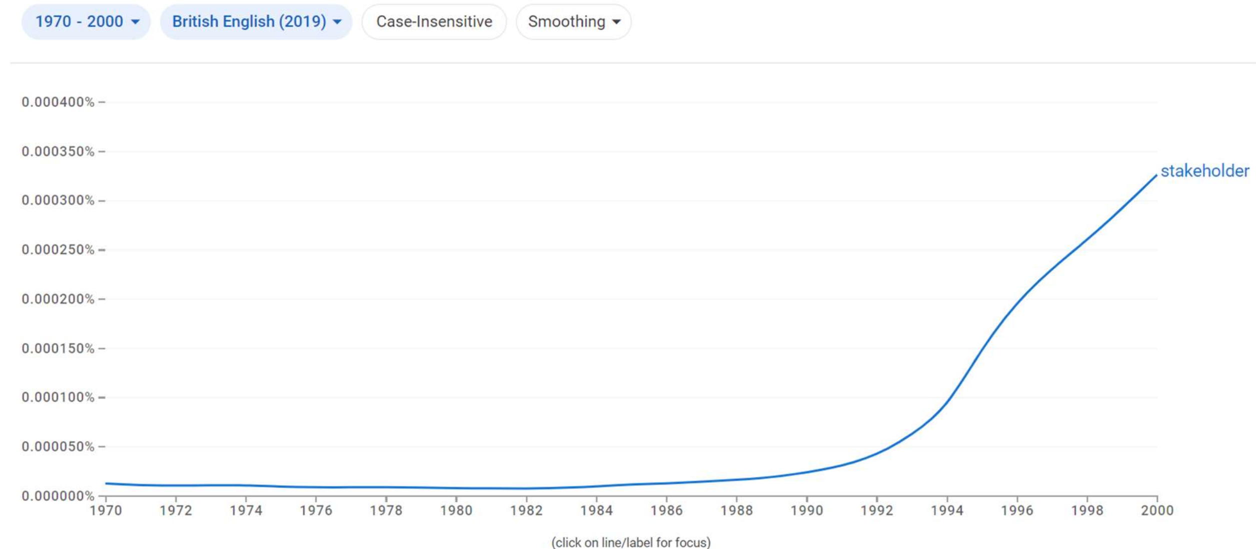


Figure 2.9

Frequency of the term *stakeholder* in JSTOR

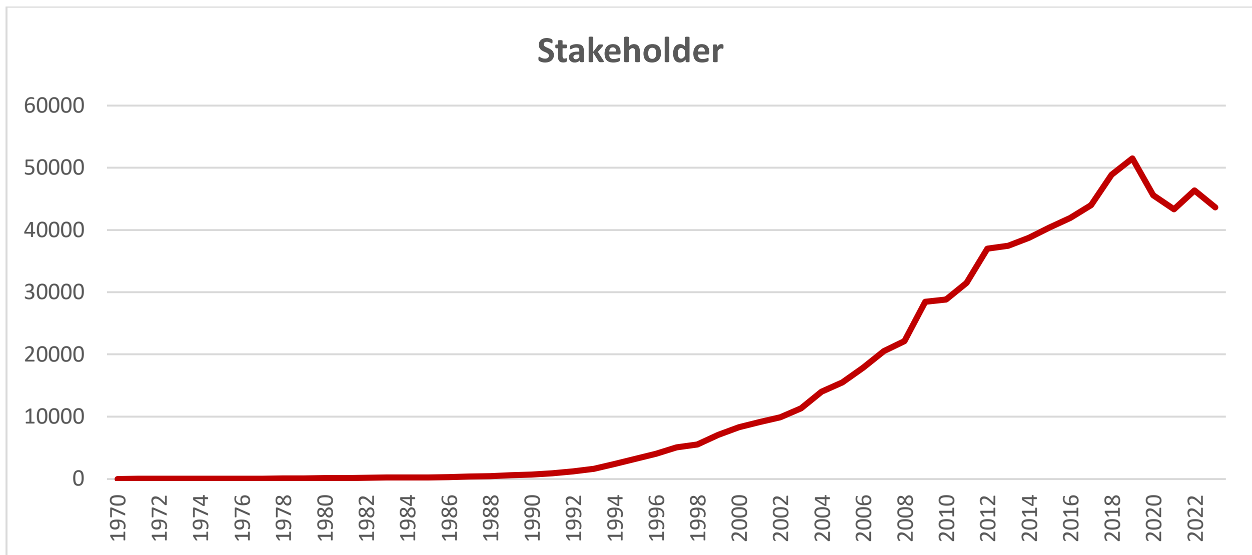


Figure 2.10

Frequency of the term *corporate democracy* in JSTOR

Figure 2.11

Frequency of the term *corporate democracy* in American English corpus

https://books.google.com/ngrams/graph?content=corporate+democracy&year_start=1920&year_end=2019&corpus=en-US-2019&smoothing=3

Appendix 3: SEC Commissioners' Speeches

Table 3.1

Speaker	Title	Date	Length (words)	Audience	Location	Topic
Harold Williams	The Corporation as a Continuing Enterprise	22.01.81	5025	Securities Regulation Institute (SRI)	San Diego, CA	Corporate Boards
Charles L. Marinaccio	Public Policy Issues Concerning the Subjects of Tender Offers and the Developing International Equities Market	9.1.85	2319	Chicago Regional Group, American Society of Corporate Secretaries	Chicago, Il	Tender Offers
Charles Cox	Contracts, Corporations and Corporate Governance	28.5.87	3104	S.E.C.-Finance Committee of the Westchester-Fairfield Corporate Counsel Association	Stamford, Connecticut	Tender Offers
David Ruder	The Impact of Institutional Investors on Large Corporations	11.10.88	4633	27th Annual Corporate Counsel Institute	Chicago, Illinois	Institutional Investors
Richard Breeden	Corporate Governance and Compensation	7.6.92	3229	Town Hall of California	Los Angeles, CA	Executive Compensation
Arthur Levitt	Shareholder Interests as the Directors' Touchstone	28.3.96	2264	Directors' College at the Stanford Law School	Stanford, CA	Corporate Boards

Appendix 4A: Word frequencies - tables

Frequency: Per million words

Table 4.1a
Owner

	SEC	WSJ	NYT
84	88	131	244
89	109	124	219
94	108	187	248
99	34	161	222

Table 4.2a
Ownership

	SEC	WSJ	NYT
84	132	194	166
89	221	213	187
94	154	215	208
99	22	171	189

Table 4.3a
Shareholder

	SEC	WSJ	NYT
84	1720	5188	2789
89	1315	3763	2800
94	1679	3735	3036
99	914	3341	2890

Statistical significance (at 1%) between periods

Table 4.1b

Sub-corpora compared	Statistically significant?		
	SEC	**WSJ**	**NYT**
84, 89	No	No	No
89, 94	No	Yes	No
94, 99	Yes	No	No

Table 4.2b

Sub-corpora compared	Statistically significant?		
	SEC	**WSJ**	**NYT**
84, 89	Yes	No	No
89, 94	Yes	No	No
94, 99	Yes	Yes	No

Table 4.3b

Sub-corpora compared	Statistically significant?		
	SEC	**WSJ**	**NYT**
84, 89	Yes	Yes	No
89, 94	Yes	No	Yes
94, 99	Yes	Yes	No

Table 4.4a
Market/marketplace

	SEC	WSJ	NYT
84	630	690	1059
89	7900	1050	1167
94	8927	1467	1433
99	6760	1796	1358

Table 4.4b

Sub-corpora compared	**Statistically significant?**		
	SEC	**WSJ**	**NYT**
84, 89	Yes	Yes	Yes
89, 94	Yes	Yes	Yes
94, 99	Yes	Yes	No

Table 4.5a
Takeover

	SEC	WSJ	NYT
84	231	1260	1004
89	1142	1547	1433
94	47	563	479
99	12	660	442

Table 4.5b

Sub-corpora compared	**Statistically significant?**		
	SEC	**WSJ**	**NYT**
84, 89	Yes	Yes	Yes
89, 94	Yes	Yes	Yes
94, 99	Yes	Yes	No

Table 4.6a
Compensation

	SEC	WSJ	NYT
84	154	74	91
89	97	117	101
94	593	577	358
99	262	466	426

Table 4.6b

Sub-corpora compared	**Statistically significant?**		
	SEC	**WSJ**	**NYT**
84, 89	Yes	No	No
89, 94	Yes	Yes	Yes
94, 99	Yes	Yes	Yes

Table 4.7a
Corporate Governance

	SEC	WSJ	NYT
84	104	0	15
89	101	12	15
94	180	84	76
99	186	94	124

Table 4.7b

Sub-corpora compared	**Statistically significant?**		
	SEC	**WSJ**	**NYT**
84, 89	No	n/a	No
89, 94	Yes	Yes	Yes
94, 99	No	No	Yes

Table 4.8a
Shareholder value

	SEC	WSJ	NYT
84	1	0	4
89	2	65	26
94	7	75	54
99	6	120	67

Table 4.8b

Sub-corpora compared	**Statistically significant?**	
	WSJ	**NYT**
84, 89	n/a	Yes
89, 94	No	Yes
94, 99	Yes	No

Insufficient frequencies in SEC corpus for significance tests

Table 4.9a
Stakeholder

	SEC	WSJ	NYT
84	1	0	0
89	0	10	0
94	0	10	12
99	5	9	9

Table 4.9b

Sub-corpora compared	**Statistically significant?**	
	WSJ	**NYT**
84, 89	n/a	n/a
89, 94	No	n/a
94, 99	No	No

Insufficient frequencies in SEC corpus for significance tests

Table 4.10a
Activist (n)

	SEC	WSJ	NYT
84	5	0	16
89	0	14	16
94	3	86	34
99	3	100	24

Table 4.10b

Sub-corpora compared	**Statistically significant?**	
	WSJ	**NYT**
84, 89	n/a	No
89, 94	Yes	Yes
94, 99	No	No

Insufficient frequencies in SEC corpus for significance tests

Table 4.11a
Activist (adj)

	SEC	WSJ	NYT
84	0	0	2
89	1	6	0
94	4	36	13
99	0	34	14

Table 4.11b

Sub-corpora compared	**Statistically significant?**	
	WSJ	**NYT**
84, 89	n/a	n/a
89, 94	Yes	n/a
94, 99	No	No

Insufficient frequencies in SEC corpus for significance tests

Table 4.12a
Democracy

	SEC	WSJ	NYT
84	88	6	29
89	26	11	10
94	56	11	26
99	10	12	14

Table 4.12b

Sub-corpora compared	**Statistically significant?**		
	SEC	**WSJ**	**NYT**
84, 89	Yes	No	Yes
89, 94	Yes	No	Yes
94, 99	Yes	No	No

Table 4.13a
Small shareholder/investor

	SEC	WSJ	NYT
84	28	0	15
89	113	12	16
94	47	24	101
99	29	11	20

Table 4.13b

Sub-corpora compared	Statistically significant?		
	SEC	**WSJ**	**NYT**
84, 89	Yes	n/a	No
89, 94	Yes	Yes	Yes
94, 99	No	Yes	Yes

Table 4.14a
Institutional investor

	SEC	WSJ	NYT
84	64	63	38
89	279	79	93
94	243	194	168
99	147	146	128

Table 4.14b

Sub-corpora compared	Statistically significant?		
	SEC	**WSJ**	**NYT**
84, 89	Yes	No	Yes
89, 94	No	Yes	Yes
94, 99	Yes	Yes	Yes

Table 4.15a
Fiduciary

	SEC	WSJ	NYT
84	215	103	38
89	134	87	41
94	69	73	51
99	83	54	42

Table 4.15b

Sub-corpora compared	Statistically significant?		
	SEC	**WSJ**	**NYT**
84, 89	Yes	No	No
89, 94	Yes	No	No
94, 99	No	No	No

Table 4.16
Jensen

	SEC	WSJ	NYT
84	0	0	5
89	32	0	2
94	3	11	6
99	0	0	1

Insufficient frequencies to conduct significance tests

Appendix 4B: Word frequencies - graphs

Figure 4.1

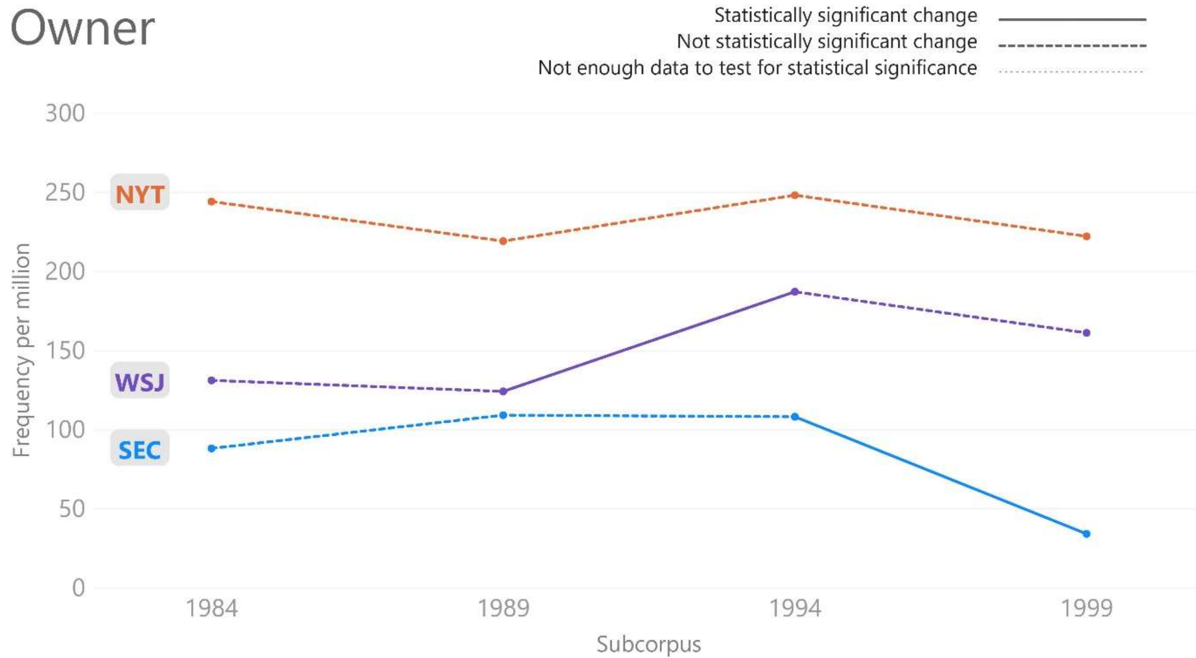


Figure 4.2

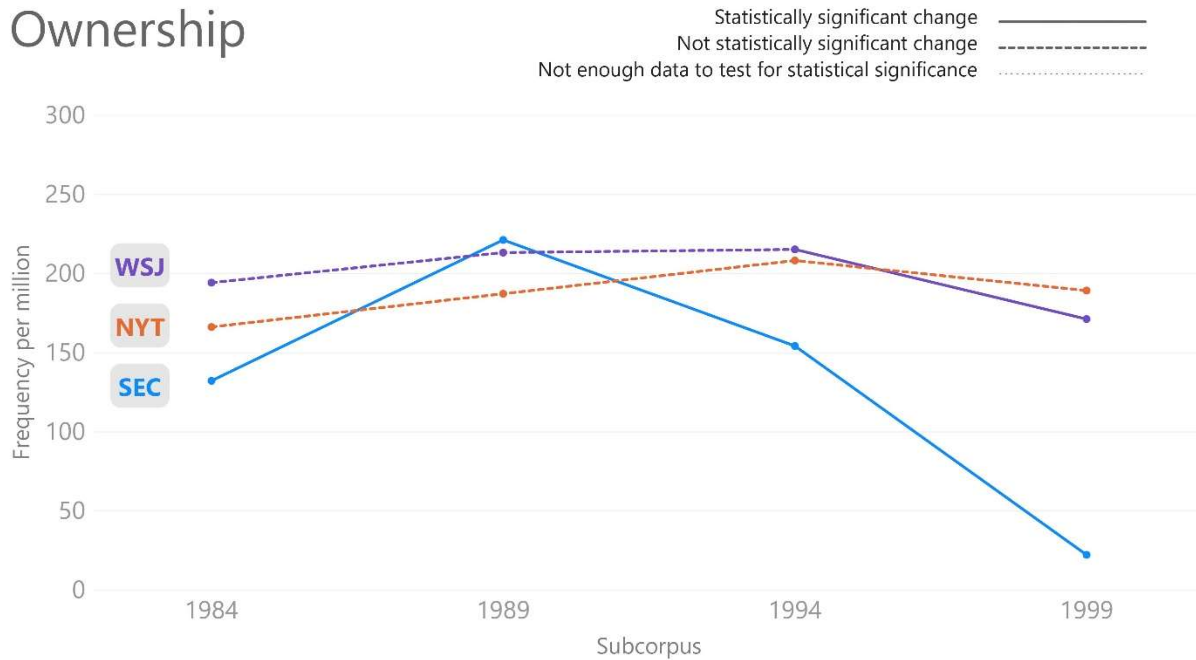


Figure 4.3

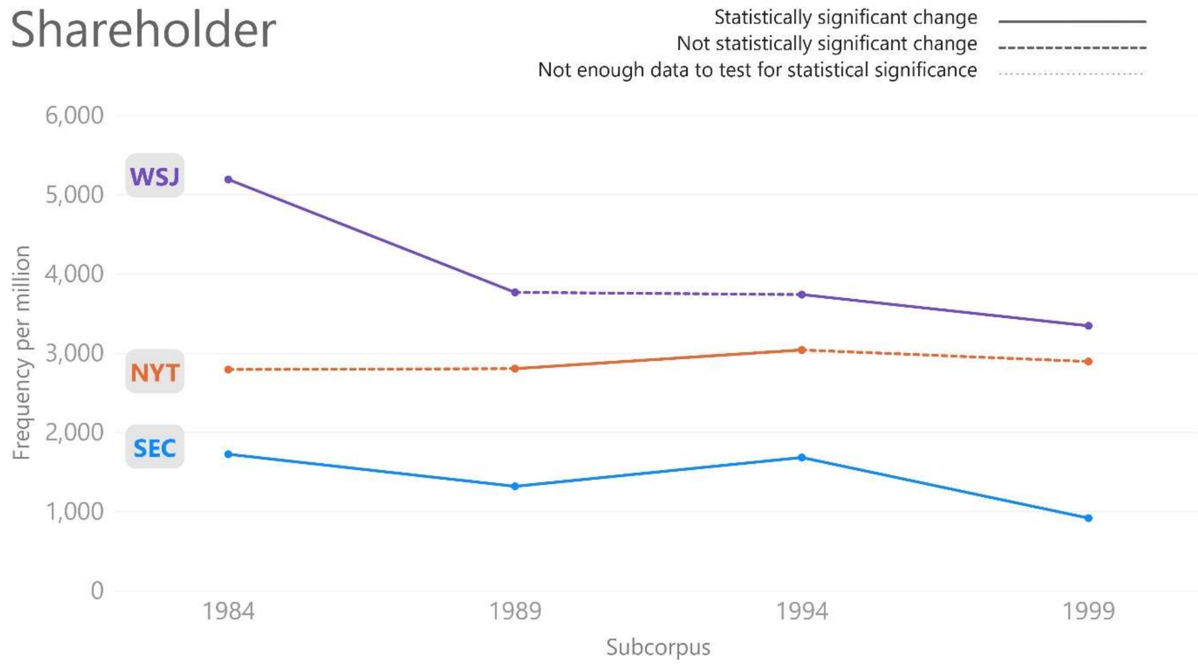


Figure 4.4

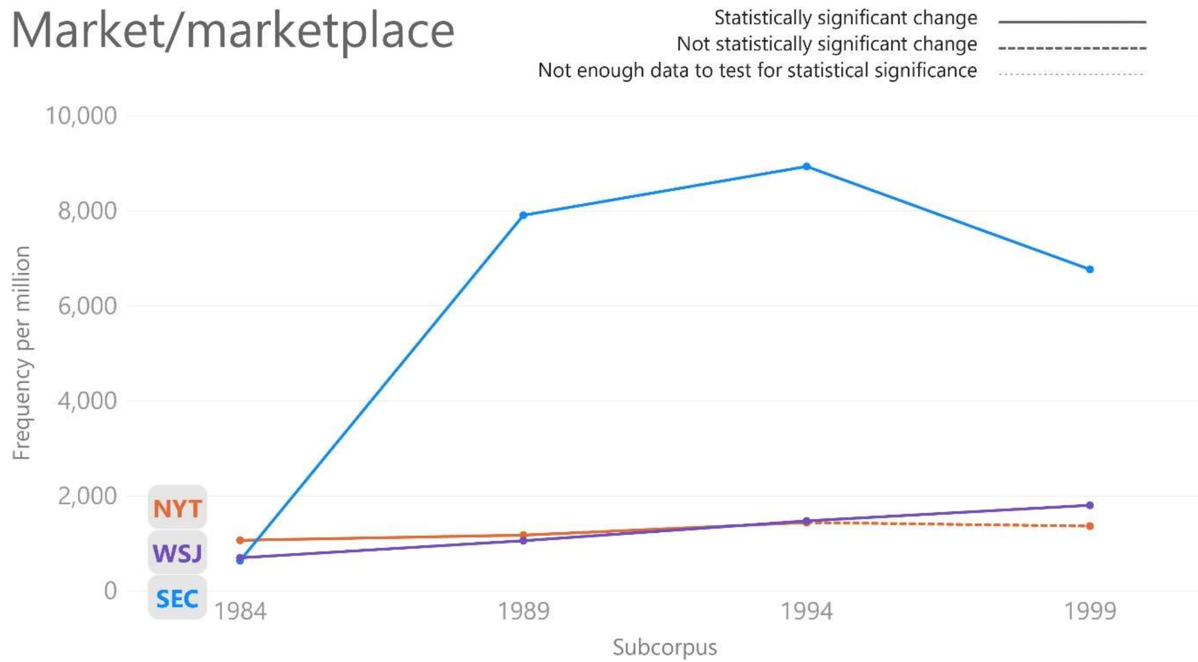


Figure 4.5

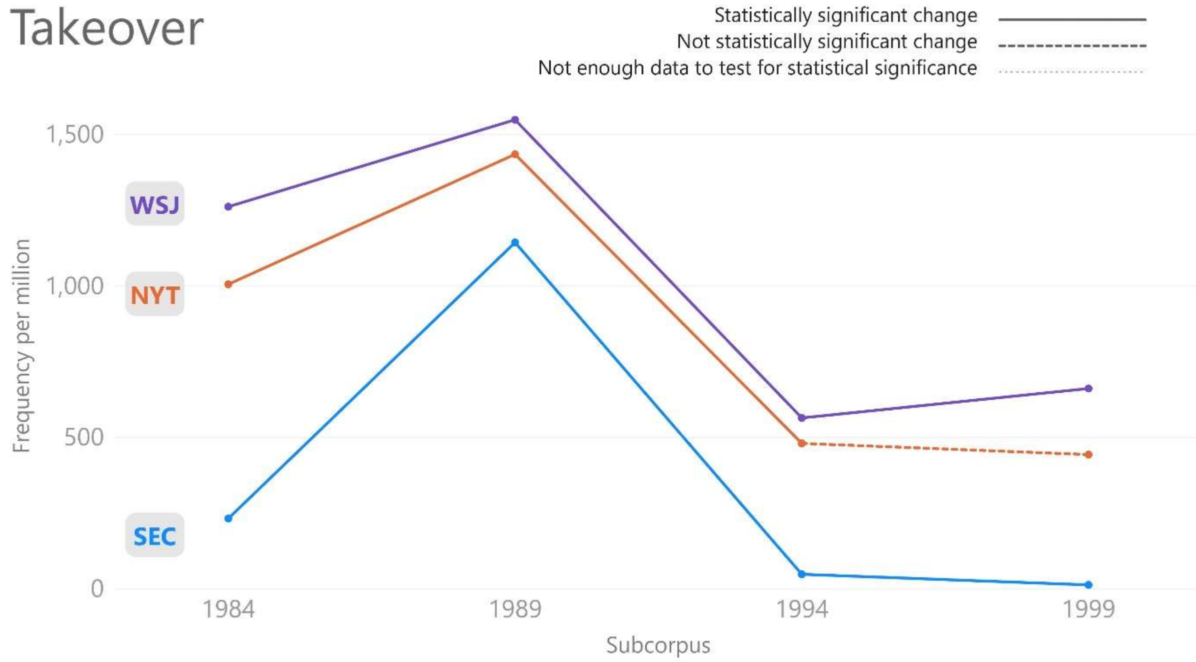


Figure 4.6

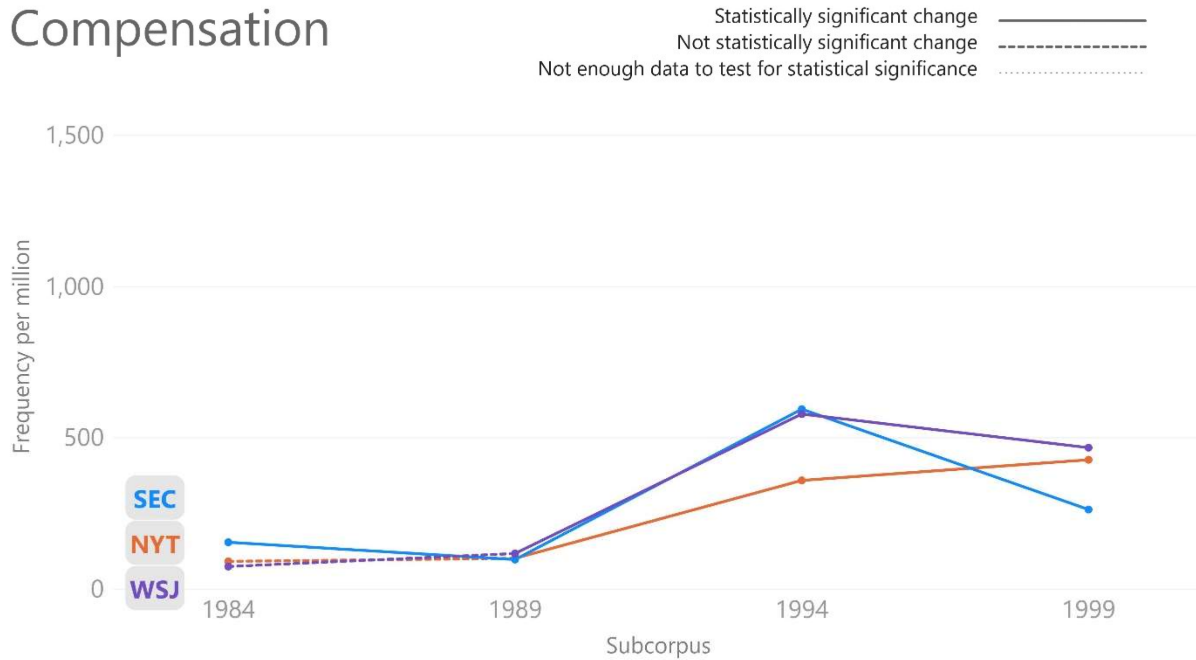


Figure 4.7

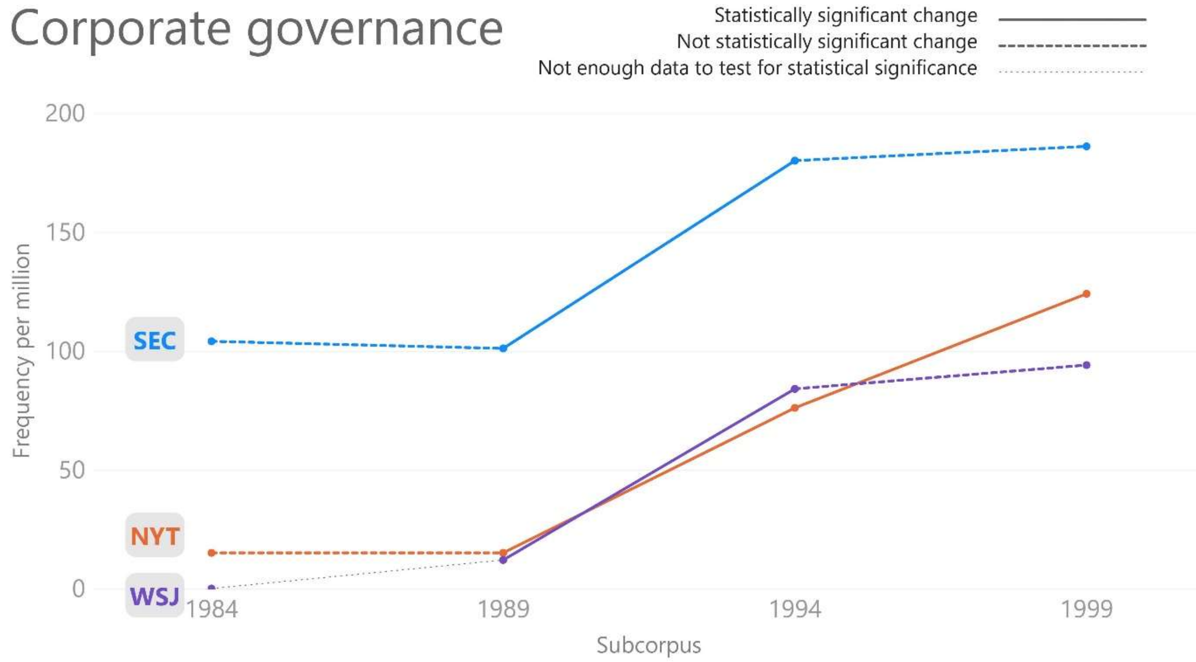


Figure 4.8

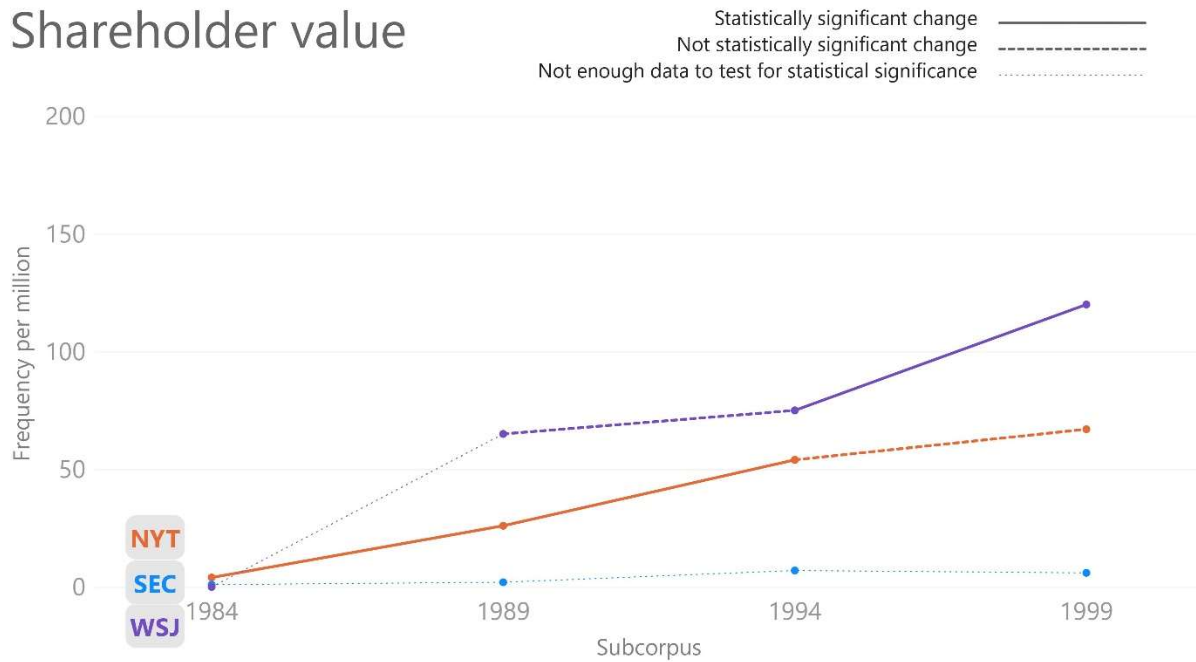


Figure 4.9a

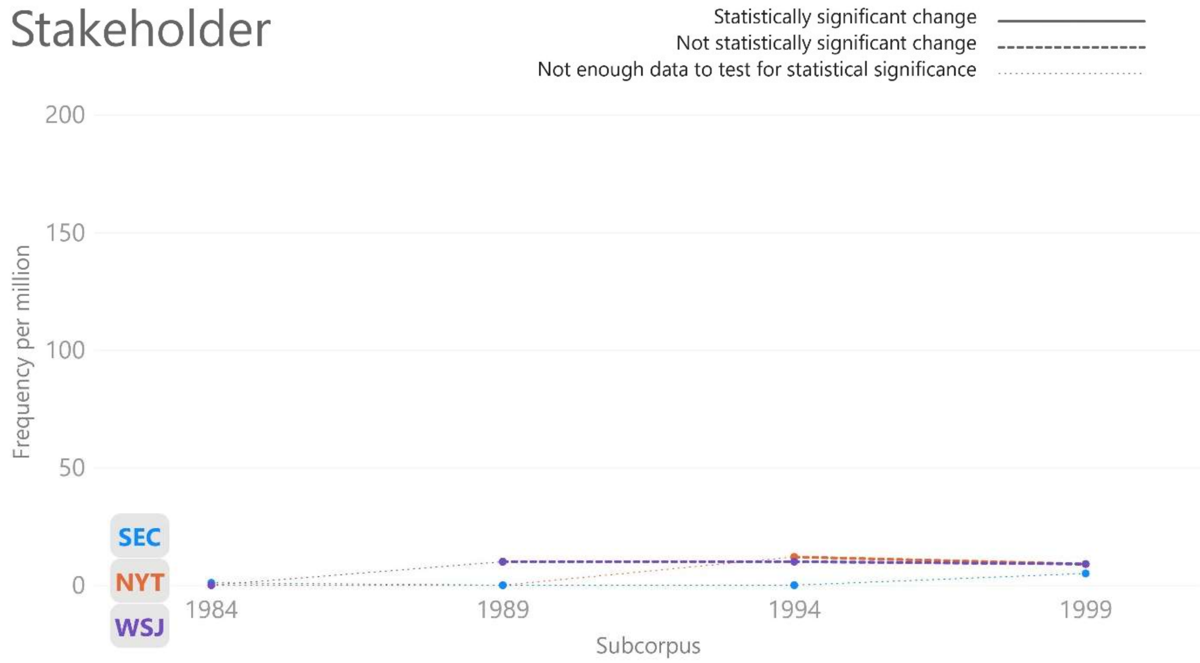


Figure 4.9b

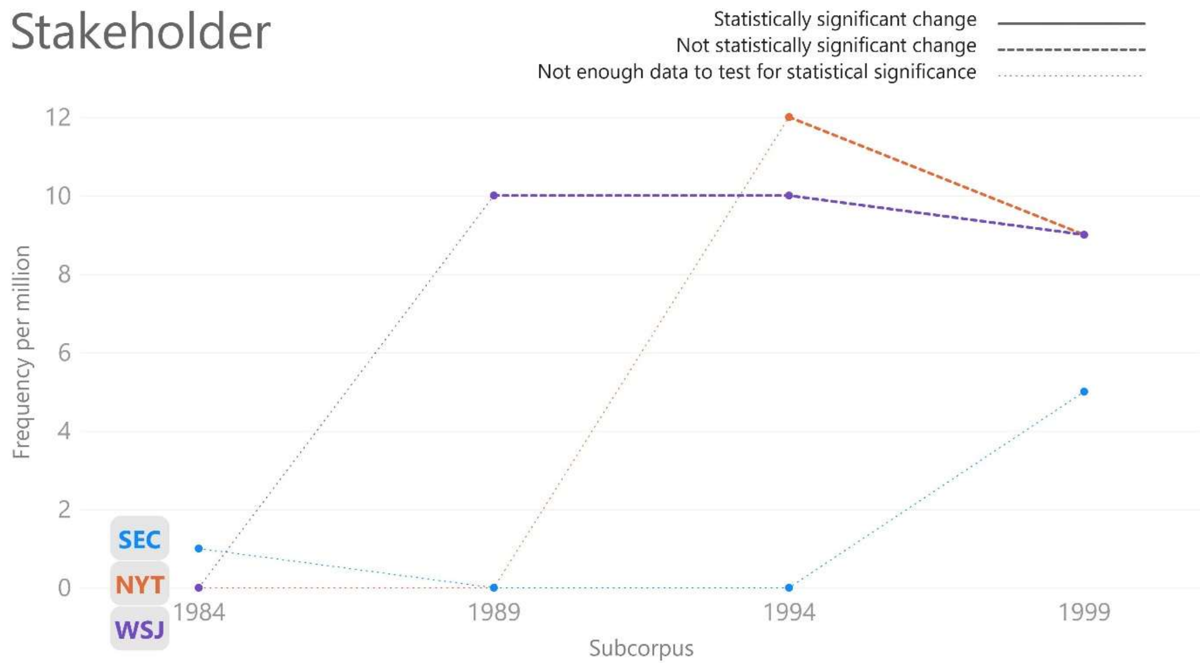


Figure 4.10

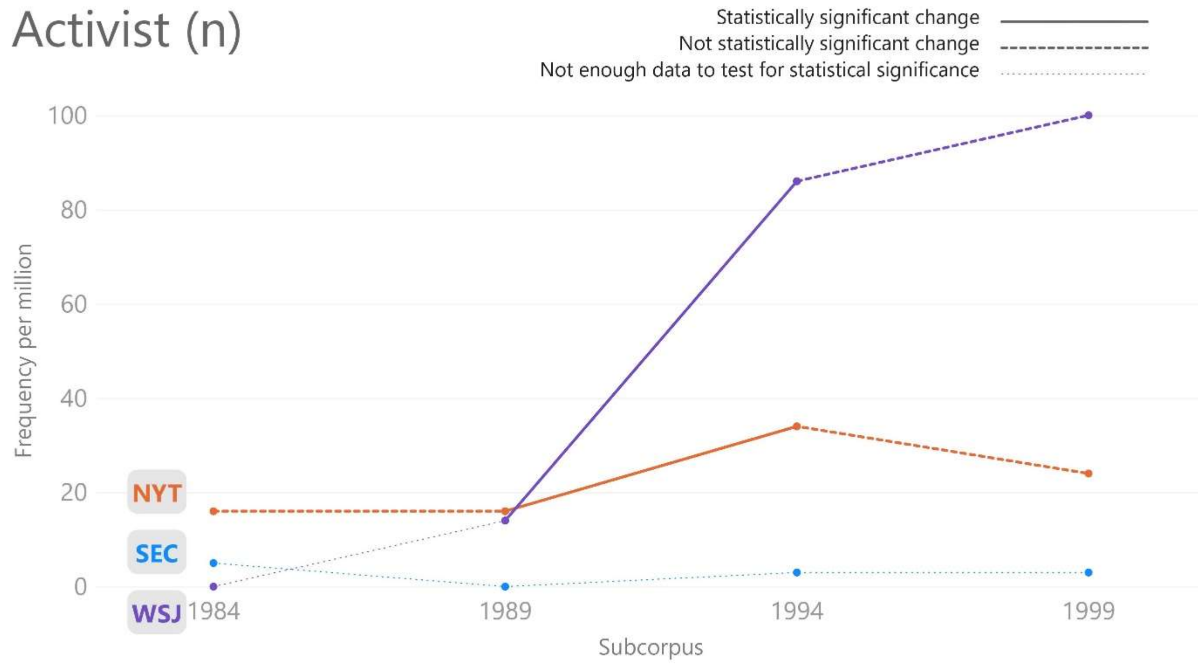


Figure 4.11

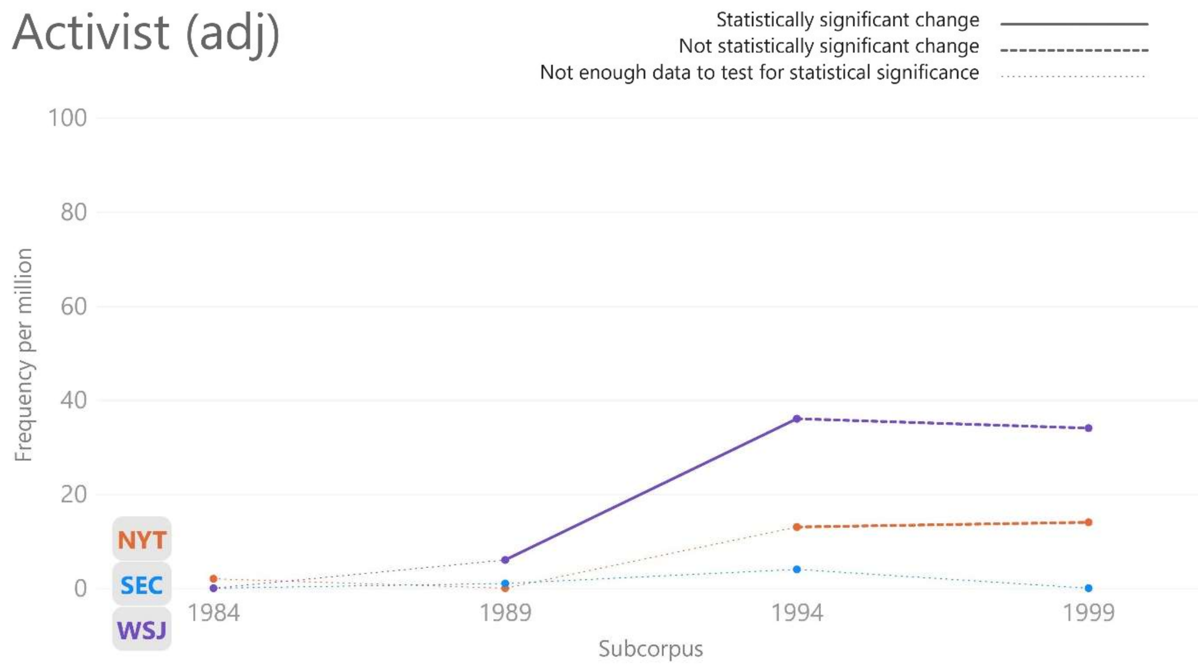


Figure 4.12

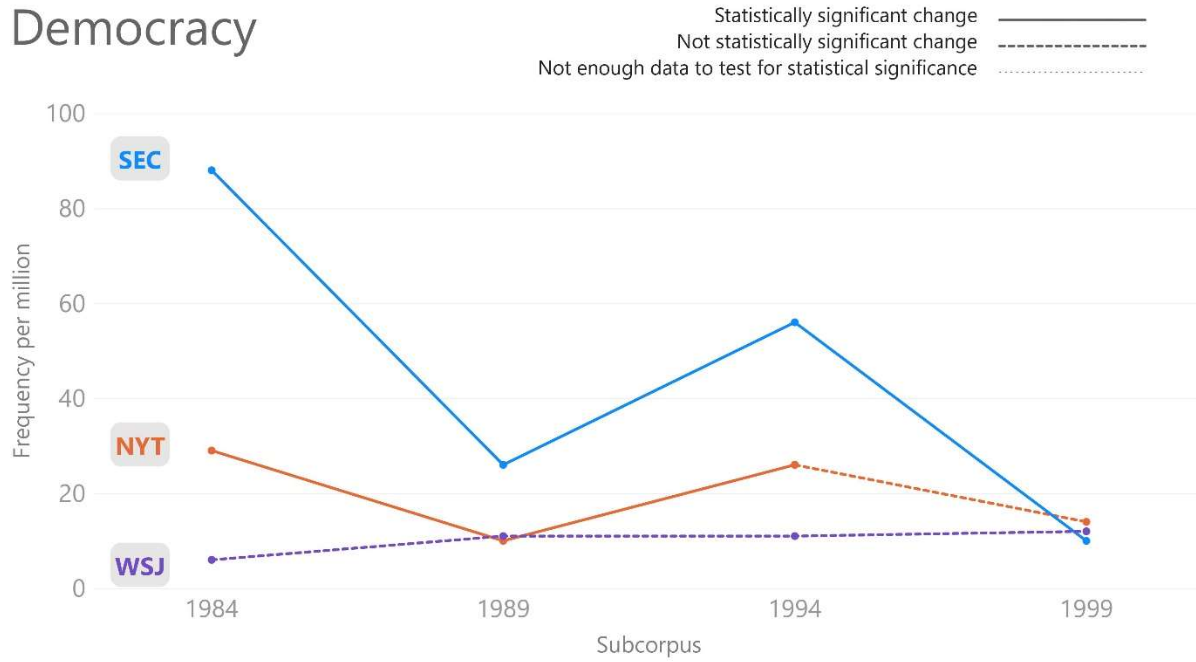


Figure 4.13

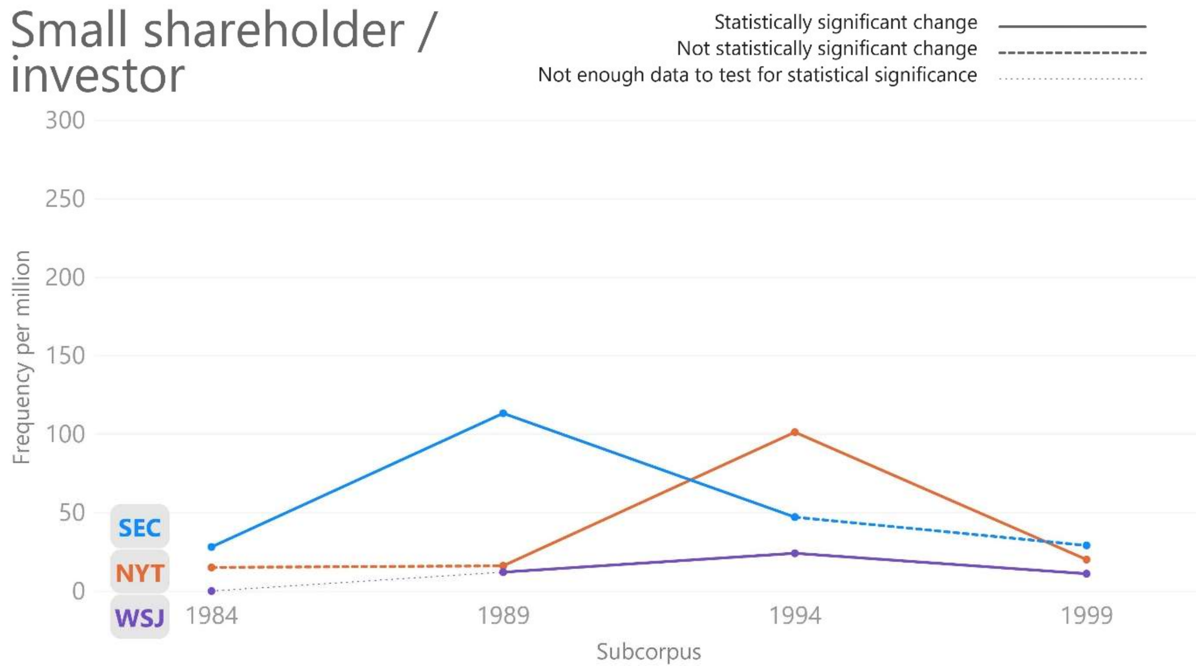


Figure 4.14

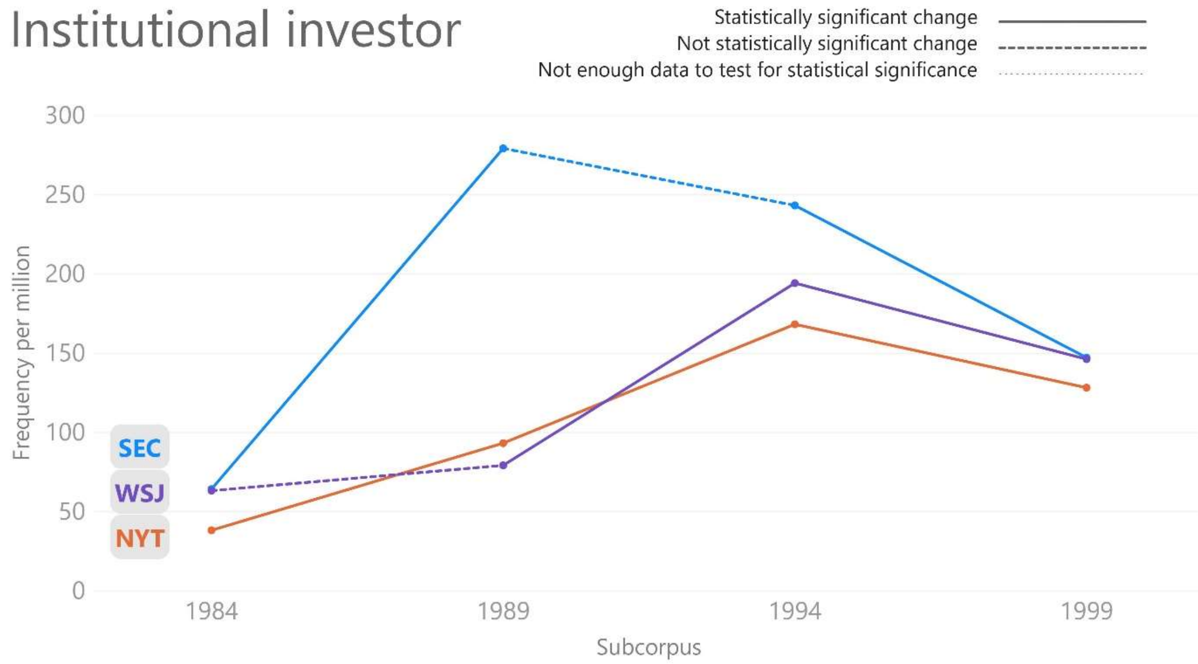


Figure 4.15

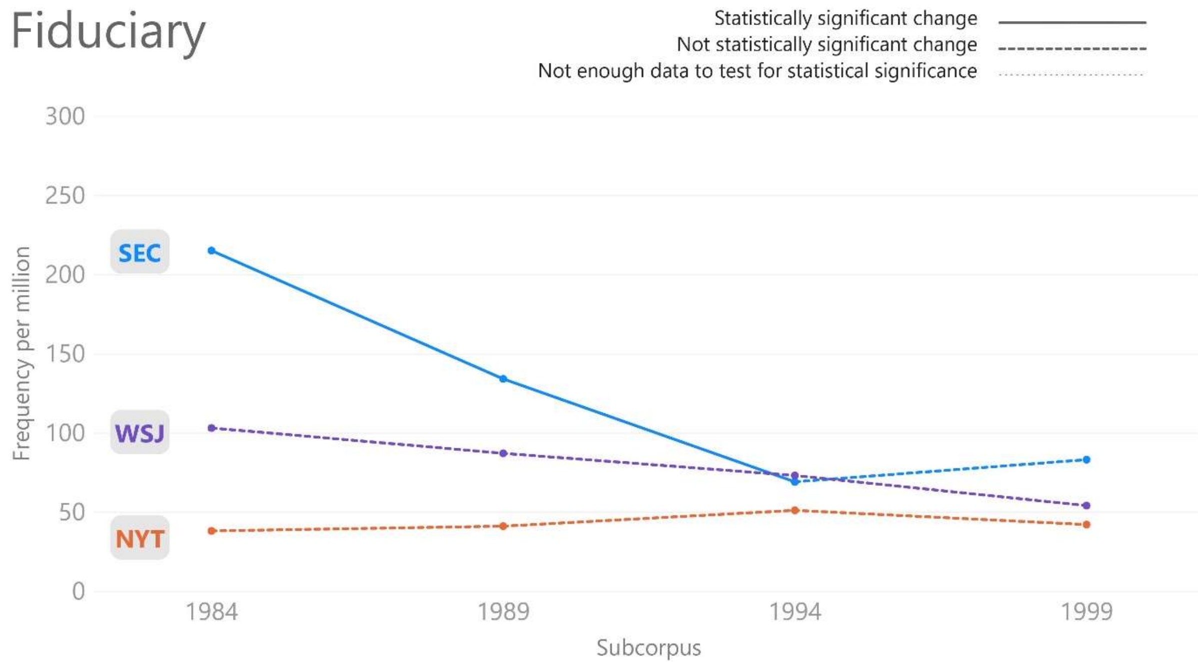
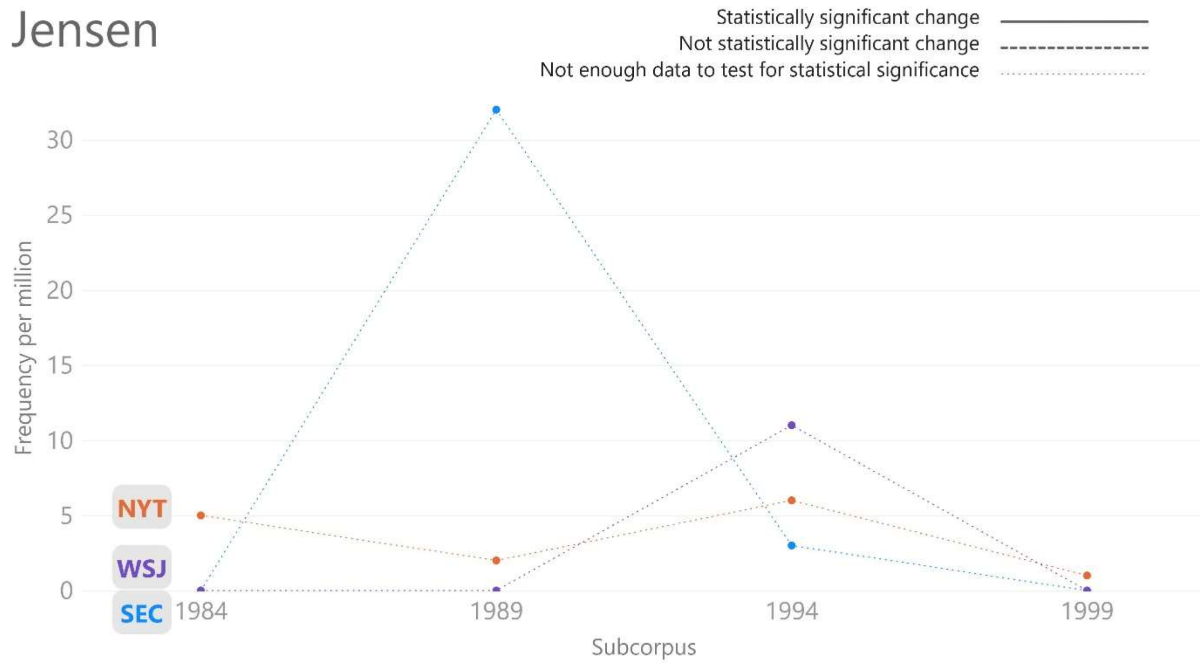


Figure 4.16



Appendix 5A: Collocation - tables

Table 5.1 – Collocates of shareholder value: WSJ

Collocate of *shareholder value*	**MI3**		
	WSJ89	**WSJ94**	**WSJ99**
Maximize	23.30	22.59	23.81
	22.71	21.52	20.53
Improve	16.08	15.43	16.07
Increase	15.68	13.42	18.63
Boost	12.74	n/a	16.57
Build	n/a	12.52	12.47
Create	n/a	n/a	16.68

Table 5.2 – Collocates of shareholder value: NYT

Collocate of *shareholder value*	**MI3**		
	NYT89	**NYT94**	**NYT99**
Maximize	20.26	21.34	19.37
Enhance	18.79	18.55	16.83
Increase	n/a	15.60	16.65
Improve	n/a	13.95	n/a
Create	n/a	n/a	13.03

Table 5.3 – Collocates of corporate governance: SEC

Collocate of *corporate governance*	MI3			
	SEC84	**SEC89**	**SEC94**	**SEC99**
Cook	15.63	n/a	n/a	
Accountability	14.86	n/a	n/a	
Book	14.28	n/a	n/a	
Shareholder	12.33	n/a	12.59	
Issue	11.29	n/a	11.27	11.29
State		11.98	n/a	
Improve			17.11	
Suggestion			13.75	
System			12.99	
Mechanism			12.88	
Topic			12.76	
Idea			12.72	
Effective			11.40	13.77
Proposal			11.11	
Recognize				12.92
Strong				12.66
Process				12.26
More				11.32
Good				11.01

Table 5.4 – Collocates of corporate governance: WSJ

Collocate of *corporate governance*	MI3	
	WSJ94	**WSJ99**
Reform	14.30	
Issue	13.81	16.59
Expert	13.48	14.52
Hanson	13.49	
Say	12.62	14.05
Policy	12.61	
Matter	12.60	
Change	12.50	11.81
American	11.77	
Investor	11.18	11.37
Good		15.20
Promote		14.89
Calpers		14.86
Improve		14.22
Shareholder		13.69
Principle		13.48
Board		13.08
Director		12.89
Program		12.73
Committee		11.98
University		11.72
Standard		11.59

Global		11.44

Table 5.5 – Collocates of corporate governance: NYT

Collocate of *corporate governance*	**MI3**	
	NYT94	**NYT99**
Issue	15.54	14.35
Shareholder	12.09	12.27
Director	11.88	12.83
Say	11.71	13.62
Expert		18.98
Practice		14.13
Committee		14.06
Calpers		12.36
Law		12.11
School		12.03
Rule		11.72
Believe		11.71
Question		11.70
Fund		11.53
Center		11.18

Table 5.6 – Collocates of democracy: SEC

Collocate of *democracy*	**MI3**			
	SEC84	**SEC89**	**SEC94**	**SEC99**
corporate_adj	14.53	13.33	17.38	
shareholder_n	14.38	14.85		
political_adj	12.61			
interest_n	10.56			
competitiveness_n			15.43	

Table 5.7 – Collocates of democracy: WSJ

Collocate of democracy	MI3			
	WSJ84	WSJ89	WSJ94	WSJ99
corporate_adj		14.47		12.51
shareholder_n		13.65		12.45

Table 5.8 – Collocates of democracy: NYT

Collocate of democracy	MI3			
	NYT84	NYT89	NYT94	NYT99
economic_adj	16.06			
corporate_adj	14.91	14.61	14.08	
shareholder_n			11.43	

Table 5.9 Collocates of shareholder related to takeovers: SEC

Collocate of *shareholder*	MI3		
	SEC84	SEC89	SEC94
target_n	13.76	17.57	
buyout	11.27	11.46	
bidder	10.94	11.43	
tender_v	11.45	12.99	
offer_n		14.63	
pill		14.13	
takeover		12.74	
poison		11.62	
tender_n		13.5	11.51
hostile		11.14	

Table 5.10 Collocates of shareholder related to takeovers: WSJ

Collocate of *shareholder*	MI3			
	WSJ84	WSJ89	WSJ94	WSJ99
offer_n	11.76	19.39	14.9	17.17
pill		17.11	13.62	16.24
poison		16.81	14.05	15.54
takeover		16.3	14.38	14.88
merger_n		14.92	15	14.9
deal_n		12.56	15.32	16.3
poison-pill		12.34	11.66	12.44
tender_n		12.13		13.41
acquisition		12.14		12.59
raider		11.33		
buyout		11.13		
bid		15.37	14.33	15.46
target			13.04	
defensive				11.27
hostile		12.56		
tender_v		18.35	11.04	15.73
bidder		11.1		

Table 5.11 Collocates of shareholder related to takeovers: NYT

Collocate of *shareholder*	**MI3**			
	NYT84	**NYT89**	**NYT94**	**NYT99**
offer_n	17.74	19.64	14.29	16.11
tender_n	11.19	14.42		
merger_n	15.62	14.14		11.11
pill		14.82	11.06	11.19
poison		13.87		
deal_n		13.78	14.41	14.8
takeover		13.32	11.29	11.5
hostile		11.14		12.78
defensive		11.54		
bid	11.73	13.3		12.71
buyout			11.84	
target			11	
tender_v	16.9	17.17	14.9	

Table 5.12 Collocates of shareholder related to 'political' processes: SEC

Collocate of *shareholder*	**MI3**			
	SEC84	**SEC89**	**SEC94**	**SEC99**
voting	18.07	16.05	20.22	
vote_n	12.72	13.97	17.33	
vote_v	13.56	14.56	16.39	12.27
proxy_adj	15.5		16.78	11.54
proxy_n	11.27	13.69	14.51	15.08
democracy	14.21	14.66		
dissident_adj				15.93
activism			16.78	
disenfranchise		14.21	15.11	
disenfranchisement			13.97	

Table 5.13 Collocates of shareholder related to 'political' processes: WSJ

Collocate of *shareholder*	MI3			
	WSJ84	WSJ89	WSJ94	WSJ99
voting		16.76	16.38	15.18
vote_n	14.4	21.06	21.03	22.48
vote_v	15.99	21.4	22.06	21.91
proxy_adj		17.42	18.45	17.21
proxy_n		15.63	16.29	14.63
democracy		13.5		12.37
dissident_adj	15.03	21.12	21.02	20.88
dissident_n		12.67	12.9	11.7
activist_adj			15.91	12.28
activist_n			18.91	20
activism		11.85	18.82	17.74
disenfranchise				12.66
revolt				14.69
protest				12.26
power		12.99	13.49	13.69
control_n		13.92	12.41	12.46
control_v		14.1	14.32	14.32
controlling		14.89	18.04	17.45

Table 5.14 Collocates of shareholder related to 'political' processes: NYT

Collocate of *shareholder*	MI3			
	NYT84	NYT89	NYT94	NYT99
voting		11.92	12.82	12.29
vote_n	18.76	20.21	18.24	19.22
vote_v	18.47	21.17	19.97	20.09
proxy_adj	13.96	15.08	15.57	15.38
proxy_n	14.05	12.4	12.71	13.89
democracy			11.26	
dissident_adj	19.8	19.75	19.79	18.54
activist_adj			11.42	12.69
activist_n			16.69	14.54
activism			16.58	14.9
disenfranchise		12.86		
revolt			13.19	13.65

power		11.57	13.11	
control_n		11.64	12.17	
control_v		12.38	11.9	11.1
controlling		13.3	14.75	14.66

Table 5.15 Collocates of shareholder relating to size: SEC

Collocate of *shareholder*	MI3			
	SEC84	SEC89	SEC94	SEC99
institutional		13.11	18.01	
large		12.29	15.24	
big			11.3	
individual		12.23	15.87	
independent			12.91	
unaffiliated	13.48			

Table 5.16 Collocates of shareholder relating to size: WSJ

Collocate of *shareholder*	MI3			
	WSJ84	WSJ89	WSJ94	WSJ99
institutional		17.38	20.8	21.56
large	17.25	23.49	23.39	22.96
second-largest		12.49	13.71	15.47
big		17.12	19.76	19.78
dominant			11.82	
top			11.62	
individual		15.59	16.07	14.92
small		13.61	12.5	14.42
independent		12.84	11.95	12.32

Table 5.17 Collocates of shareholder relating to size: NYT

Collocate of *shareholder*	MI3			
	NYT84	NYT89	NYT94	NYT99
institutional	12.34	15.25	20.49	20.58
large	21.37	21.6	21.69	20.93
second-largest	11.35			13.95
big	14.39	15.53	16.15	17.66
individual	16.53	16.35	12.97	12.1
small		11.27	12.34	11.45
independent			11.3	12.11

Table 5.18 Collocates of shareholder related to 'shareholder value': SEC

Collocate of *shareholder*	MI3			
	SEC84	SEC89	SEC94	SEC99
maximize	11.69		11.79	
value		12.19	12.11	11.59
fiduciary		11.91		12.74

Table 5.19 Collocates of shareholder related to 'shareholder value': WSJ

Collocate of *shareholder*	MI3			
	WSJ84	WSJ89	WSJ94	WSJ99
maximize		20.85	19.17	20.7
value		22.43	21.71	23.36
fiduciary		15.77	12.46	12.72
price		15.73	14.4	13.4

Table 5.20 Collocates of shareholder related to 'shareholder value': NYT

Collocate of *shareholder*	MI3			
	NYT84	NYT89	NYT94	NYT99
maximize	13.24	18.02	16.45	16.56
value	12.91	20.46	19.24	20.37
fiduciary		12.38		12.16
price	13.48	14.58	12.45	11.69

Table 5.21 Collocates of shareholder related to mood: WSJ

Collocate of *shareholder*	MI3			
	WSJ84	**WSJ89**	**WSJ94**	**WSJ99**
disgruntled	12.23	13.85	14.58	16.24
angry		13.87	15.36	15.94
unhappy		13.09	14.12	13.03
restive			12.5	11.87
discontent			13.16	12.47
frustration			12.57	
dissatisfaction		12.66	11.03	
happy			11.32	13.23

Table 5.22 Collocates of shareholder related to mood: NYT

Collocate of *shareholder*	MI3			
	NYT84	**NYT89**	**NYT94**	**NYT99**
disgruntled	14.03	12.12	14.07	13.76
angry			11.07	11.55
unhappy			11.12	
restive				12.6

Table 5.23 Collocates of shareholder related to conflict: SEC

Collocate of *shareholder*	MI3			
	SEC84	**SEC89**	**SEC94**	**SEC99**
eliminate	10.96			

Table 5.24 Collocates of shareholder related to conflict: WSJ

Collocate of *shareholder*	MI3			
	WSJ84	**WSJ89**	**WSJ94**	**WSJ99**
victory				12.87
defeat_v		14.6	13.3	
fight_n		15	15.21	13.57
fight_v			12.41	
battle			12.01	13.75
defense		12.78	12.08	
eliminate		11.64	11.71	

Table 5.25 Collocates of shareholder related to conflict: NYT

Collocate of *shareholder*	MI3			
	NYT84	NYT89	NYT94	NYT99
victory			12.74	
fight_n		12.74	11.22	11.39
battle				11.72

Table 5.26 Collocation of shareholder with rights, responsibilities and duties: SEC

Collocate of *shareholder*	MI3			
	SEC84	SEC89	SEC94	SEC99
right	17.06	15.42	19.58	12.03

Table 5.27 Collocation of shareholder with right/rights: WSJ

Collocate of *shareholder*	MI3			
	WSJ84	WSJ89	WSJ94	WSJ99
right	12.6	22.85	21.81	20.98
responsibility		13.86		11.35
duty		16.19	13.20	13.46

Table 5.28 Collocation of shareholder with right/rights: NYT

Collocate of *shareholder*	MI3			
	NYT84	NYT89	NYT94	NYT99
right	13.71	20.91	19.34	18.77
responsibility		11.76		11.45
duty		14.84	11.63	13.10

Table 5.29 – Collocates of owner: SEC

SEC Corpus - Collocates of owner			
Lemma	**MI3**		
	SEC84	**SEC89**	**SEC94**
beneficial_adj	19.72	19.89	19.31
communicate_v	15.32		
issuer_n	12.48		
corporate_adj	11.51	11.20	
list_n		14.19	
manager_n		13.94	
portfolio_n		13.52	
percent_n		13.27	
protect_v		12.83	
stock_n		12.78	
require_v		12.62	
corporation_n		11.09	
hazardous_adj			17.52
waste_n			17.07
present_adj			15.86
operator_n			15.82
site_n			15.44
past_adj			15.02
scheme_n			12.99
right_n			11.75
liability_n			11.11

Table 5.30 – Collocates of owner: WSJ

WSJ Corpus - Collocates of owner				
Lemma	**MI3**			
	WSJ84	**WSJ89**	**WSJ94**	**WSJ99**
share_n	9.6		11.27	11.08
beneficial_adj		16.04	14.77	
buccaneer_n		16.95		
tampa_n		15.21		
bay_n		15.06		
new_adj		14.65	14.71	15.81
sole_adj		14.63		
operator_n		14.13	12.15	
building_n		13.67		
majority_n		13.33	13.67	12.14
corporate_adj		11.98		
identify_v		11.9		
hold_v		11.69		
part_n		11.61		
say_v		11.42	12.52	12.72
store_n		11.34		
company_n			14.33	12.42
station_n			12.84	
property_n			12.59	11.7
act_v			11.77	
make_v			11.58	
shareholder_n			11.43	
director_n			11.23	
more_adv			11.05	
big_adj			11.02	
small-business_n				16.96
funeral-home_n				16.24
hotel_n				12.1
large_adj				11.56
family_n				11.25
many_adj				11.03

Table 5.31 – Collocates of owner: NYT

NYT Corpus - Collocates of owner				
Lemma	**MI3**			
	NYT84	**NYT89**	**NYT94**	**NYT99**
beneficial_adj	19.26			
league_n	15.49			
absentee_n	15.26			
new_adj	15.21	15.75	13.91	12.10
percent_n	14.46	12.34		
cowles_n	14.38			
principal_adj	13.73			
sole_adj	13.72			
club_n	13.20			
pennsylvania_n	12.75			
company_n	11.95	13.89		12.68
unit_n	11.47		12.34	
building_n	11.41	12.79	11.81	
make_v	11.36	13.47		
corporation_n	11.23	11.87		
mitchell-lama_n		17.31		
theater_n		14.41	13.46	
lighting_n				
stock_n		13.28		
island_n		12.83		
business_n		12.79		11.06
preferred_adj		12.35		
large_adj		12.34		
tax_n		12.05		
majority_n		11.83	11.46	11.38
allow_v		11.37	12.21	
return_n		11.37		
twins_n			16.73	
baseball_n			14.09	
minnesota_n			13.78	
manager_n			13.20	
minority_n			12.88	
owner_n			12.86	
property_n			12.80	
station_n			12.58	13.47
true_adj			12.42	
gas_n			11.85	
say_v			11.76	11.54

shareholder_n			11.52	
bank_n			11.07	
rockefeller_n				14.73
track_n				13.24
share_n				13.14
include_v				11.21
process_n				11.18
center_n				11.13
know_v				11.03

Table 5.32 – Collocates of ownership: SEC

SEC Corpus - Collocates of ownership			
Lemma	**MI3**		
	SEC84	**SEC89**	**SEC94**
equity_n	14.42		
percent_n	12.26	12.92	
foreign_adj	12.15	12.99	
stock_n	12.05		14.28
beneficial_adj		18.01	15.81
institutional_adj		15.68	
interest_n		14.20	
contend_v		13.94	
threat_n		13.65	
estate_n		13.50	
control_n		13.18	
rise_v		12.98	
management_n		12.60	
real_adj		12.30	
corporate_adj		11.95	
increase_v		11.59	
level_n		11.10	
share_n			14.43
individual_adj			14.42
incentive_n			13.87
public_adj			13.30
commercial_adj			13.13
corporation_n			13.09
u.s._n			12.70
private_adj			11.98
bond_n			11.97
structure_n			11.79
security_n			11.72

employee_n			11.66
municipal_adj			11.17

Table 5.33 – Collocates of ownership: WSJ

WSJ Corpus - Collocates of ownership				
Lemma	**MI3**			
	WSJ84	**WSJ89**	**WSJ94**	**WSJ99**
stock_n	12.47	20.14	19.1	17.59
share_n	11.07	14.96	12.52	13.85
employee_n		21.82	20.47	15.57
plan_n		18.76	17.36	12.83
public_adj		15.89		
change_n		15.81		13.27
company_n		15.68	14.13	14.26
plan_v		14.53	12.22	
increase_v		14.24	12.36	13.72
stake_n		13.93		15.3
interest_n		13.86	11.06	11.41
esop_n		13.84	13.37	
majority_n		13.8	14.6	
convert_v		13.75		12.72
management_n		13.5		
transfer_v		13.48		
minority_n		13.42		12.04
more_adj		12.84		11.01
shrink_v		12.62		
fcc_n		12.5		
restriction_n		12.41		
enterprise_n		12.39		
result_v		12.39		
structure_n		12.37	14.02	15.25
say_v		12.32	12.31	11.85
pilot_n		12.23		
class_n		12.22		
reduce_v		12.01		
mutual_adj		11.97		
new_adj		11.91		
change_v		11.89		
give_v		11.66	13.66	12.81
establish_v		11.61		
common_adj		11.52		
mean_v		11.42		
bank_n		11.4	11.91	
person_n		11.25		
association_n		11.2		

public_n		11.03		
foreign_adj			15.15	14.89
dilute_v			13.22	
right_n			13.03	11.86
retain_v			12.91	11.92
percentage_n			12.51	11.76
limit_v			12.23	
private_adj			11.64	
significant_adj			11.64	
control_n			11.61	
government_n			11.48	
large_adj			11.28	
risk_n			11.17	
offering_n			11.11	
u.s._n			11.04	
guideline_n				15.47
policyholder_n				15.39
institutional_adj				14.11
level_n				13.29
shareholder_n				13.02
encourage_v				12.69
limit_n				12.62
executive_n				12.03
share_v				11.88
group_n				11.22
executive_adj				11.21
family_n				11.16
ceo_n				11.02

Table 5.34 – Collocates of ownership: NYT

NYT Corpus - Collocates of ownership				
Lemma	**MI3**			
	NYT84	**NYT89**	**NYT94**	**NYT99**
employee_n	17.56	21.26	20.77	17.10
plan_n	16.44	17.23	16.37	11.46
stock_n	16.38	18.84	17.44	16.63
percent_n	16.27	16.58	14.03	13.34
dilute_v	14.64		14.25	
increase_v	12.32	12.75	11.71	
present_adj	12.14			
worker_n	11.32		12.52	
change_n	11.21	14.46	13.12	12.09
continental_n	11.14			
public_adj		16.57	11.06	
company_n		15.23	11.24	14.24
plan_v		15.12	13.58	
foreign_adj		14.18	11.51	
transfer_v		13.78		
private_adj		13.48		
majority_n		13.30		
structure_n		12.97		
position_n		12.23		
new_adj		12.08	12.52	
medium_n		12.02		11.76
management_n		11.93		
say_v		11.32	11.80	11.77
stake_n		11.27	13.27	12.57
convert_v			13.92	
minority_n			14.89	
give_v			11.78	
bank_n			11.70	
interest_n			11.47	
property_n				13.65
guideline_n				13.40
control_n				13.09
requirement_n				12.75
black_adj				12.20
home_n				12.13
take_v				12.12
state_n				11.80
right_n				11.49

center_n				11.36

Appendix 5B: Collocation - graphs

In Appendix 5B there are two types of graphs: ribbon graphs (e.g. Figure 5.1) and 'heatmaps' (e.g. Figure 5.2). In the ribbon graphs, the different collocates are colour coded. The strength of the collocation (the MI3 measure) determines the size of the collocate as represented in the graph. The MI3 measures are also given in the graph. In the heatmaps the strength of the collocation determines the darkness (for stronger collocations) or lightness (for weaker collocations) of the colour of the cell in the row adjacent to the respective collocate. My preference was for ribbon graphs, due to their visual effects. I used heatmaps where there were longer lists of collocates.

Figure 5.1 – Collocates of shareholder value

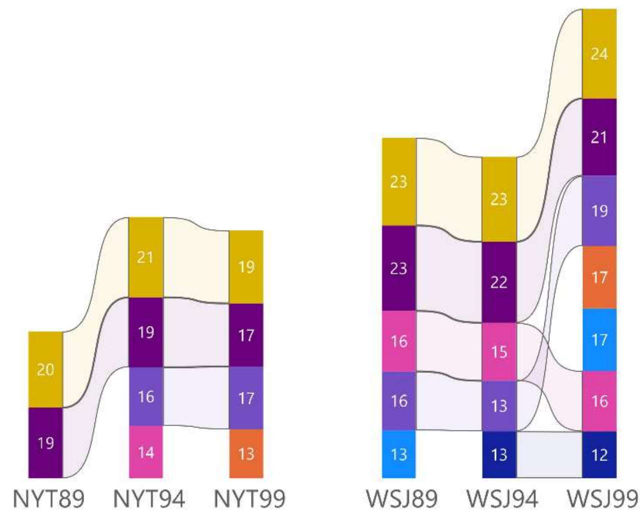


Figure 5.2 – Collocates of corporate governance: SEC

Corporate governance

SEC Corpus

Collocates	SEC84	SEC89	SEC94	SEC99
cook	15.63			
accountability	14.86			
book	14.28			
shareholder	12.33		12.59	
issue	11.29		11.27	11.29
topic			12.76	
system			12.99	
suggestion			13.75	
strong				12.66
state		11.98		
recognize				12.92
proposal			11.11	
process				12.26
more				11.32
mechanism			12.88	
improve			17.11	
idea			12.72	
good				11.01
effective			11.40	13.77

Figure 5.3 – Collocates of corporate governance: WSJ

Corporate governance

WSJ Corpus

Collocates	WSJ94	WSJ99
reform	14.30	
issue	13.81	16.59
hanson	13.49	
expert	13.48	14.52
say	12.62	14.05
policy	12.61	
matter	12.60	
change	12.50	11.81
american	11.77	
investor	11.18	11.37
university		11.72
standard		11.59
shareholder		13.69
promote		14.89
program		12.73
principle		13.48
improve		14.22
good		15.20
global		11.44
director		12.89
committee		11.98
calpers		14.86
board		13.08

Figure 5.4 – Collocates of corporate governance: NYT

Corporate governance

NYT Corpus

Collocates	NYT94	NYT99
issue	15.54	14.35
shareholder	12.09	12.27
director	11.88	12.83
say	11.71	13.62
school		12.03
rule		11.72
question		11.70
practice		14.13
law		12.11
fund		11.53
expert		18.98
committee		14.06
center		11.18
calpers		12.36
believe		11.71

Figure 5.5 – Collocates of democracy: SEC

Democracy

- competitiveness
- corporate
- economic
- interest
- political
- shareholder

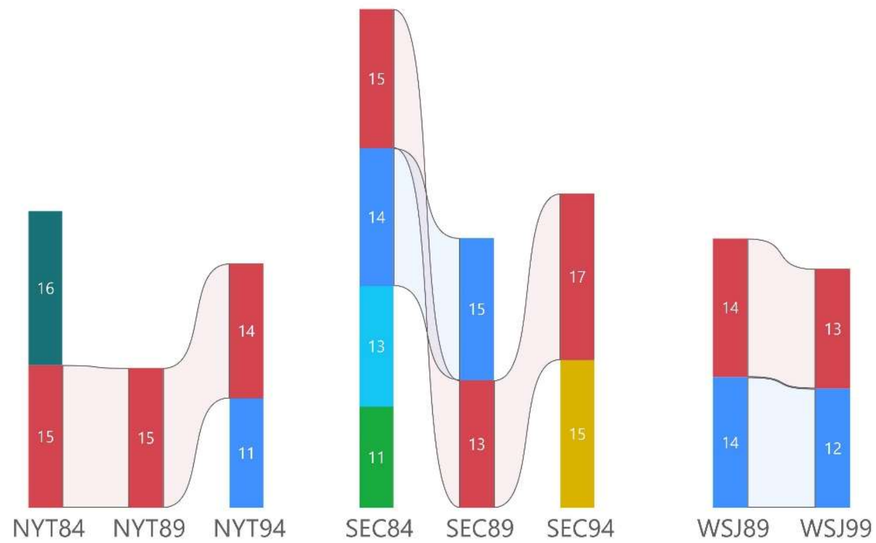


Figure 5.6 Collocates of shareholder related to takeovers: SEC

Shareholder: takeovers

SEC Corpus

Collocates	SEC84	SEC89	SEC94
target_n	13.76	17.57	
tender_v	11.45	12.99	
buyout	11.27	11.46	
bidder	10.94	11.43	
tender_n		13.50	11.51
takeover		12.74	
poison		11.62	
pill		14.13	
offer_n		14.63	
hostile		11.14	

Figure 5.7 Collocates of shareholder related to takeovers: WSJ

Shareholder: takeovers

WSJ Corpus

Collocates	WSJ84	WSJ89	WSJ94	WSJ99
offer_n	11.76	19.39	14.90	17.17
tender_v		18.35	11.04	15.73
tender_n		12.13		13.41
target			13.04	
takeover		16.30	14.38	14.88
raider		11.33		
poison-pill		12.34	11.66	12.44
poison		16.81	14.05	15.54
pill		17.11	13.62	16.24
merger_n		14.92	15.00	14.90
hostile		12.56		
defensive				11.27
deal_n		12.56	15.32	16.30
buyout		11.13		
bidder		11.10		
bid		15.37	14.33	15.46
acquisition		12.14		12.59

Figure 5.8 Collocates of shareholder related to takeovers: NYT

Shareholder: takeovers

NYT Corpus

Collocates	NYT84	NYT89	NYT94	NYT99
offer_n	17.74	19.64	14.29	16.11
tender_v	16.90	17.17	14.90	
merger_n	15.62	14.14		11.11
bid	11.73	13.30		12.71
tender_n	11.19	14.42		
target			11.00	
takeover		13.32	11.29	11.50
poison		13.87		
pill		14.82	11.06	11.19
hostile		11.14		12.78
defensive		11.54		
deal_n		13.78	14.41	14.80
buyout			11.84	

Figure 5.9 Collocates of shareholder related to 'political' processes: SEC

Shareholder: political

SEC Corpus

Collocates	SEC84	SEC89	SEC94	SEC99
voting	18.07	16.05	20.22	
proxy_adj	15.50		16.78	11.54
democracy	14.21	14.66		
vote_v	13.56	14.56	16.39	12.27
vote_n	12.72	13.97	17.33	
proxy_n	11.27	13.69	14.51	15.08
dissident_adj				15.93
disenfranchisement			13.97	
disenfranchise		14.21	15.11	
activism			16.78	

Figure 5.10 Collocates of shareholder related to 'political' processes: WSJ

Shareholder: political

WSJ Corpus

Collocates	WSJ84	WSJ89	WSJ94	WSJ99
vote_v	15.99	21.40	22.06	21.91
dissident_adj	15.03	21.12	21.02	20.88
vote_n	14.40	21.06	21.03	22.48
voting		16.76	16.38	15.18
revolt				14.69
proxy_n		15.63	16.29	14.63
proxy_adj		17.42	18.45	17.21
protest				12.26
power		12.99	13.49	13.69
dissident_n		12.67	12.90	11.70
disenfranchise				12.66
democracy		13.50		12.37
controlling		14.89	18.04	17.45
control_v		14.10	14.32	14.32
control_n		13.92	12.41	12.46
activist_n			18.91	20.00
activist_adj			15.91	12.28
activism		11.85	18.82	17.74

Figure 5.11 Collocates of shareholder related to 'political' processes: NYT

Shareholder: political

NYT Corpus

Collocates	NYT84	NYT89	NYT94	NYT99
dissident_adj	19.80	19.75	19.79	18.54
vote_n	18.76	20.21	18.24	19.22
vote_v	18.47	21.17	19.97	20.09
proxy_n	14.05	12.40	12.71	13.89
proxy_adj	13.96	15.08	15.57	15.38
voting		11.92	12.82	12.29
revolt			13.19	13.65
power		11.57	13.11	
disenfranchise		12.86		
democracy			11.26	
controlling		13.30	14.75	14.66
control_v		12.38	11.90	11.10
control_n		11.64	12.17	
activist_n			16.69	14.54
activist_adj			11.42	12.69
activism			16.58	14.90

Figure 5.12 Collocates of shareholder relating to size: SEC

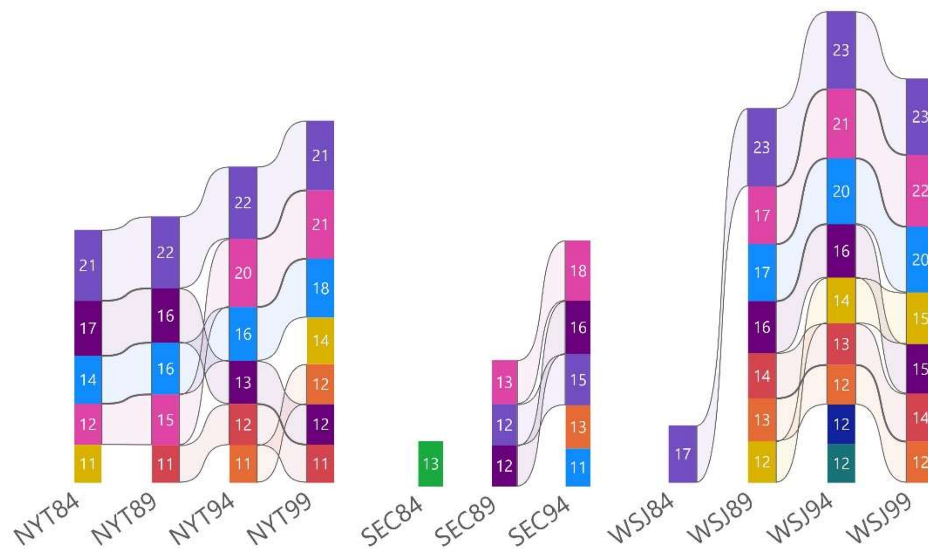


Figure 5.13 Collocates of shareholder related to 'shareholder value'

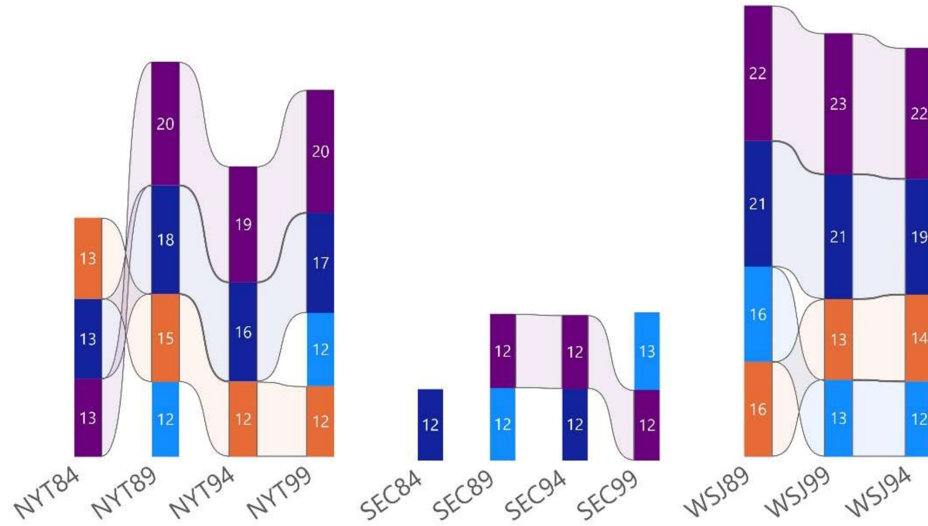


Figure 5.14 Collocates of shareholder related to mood

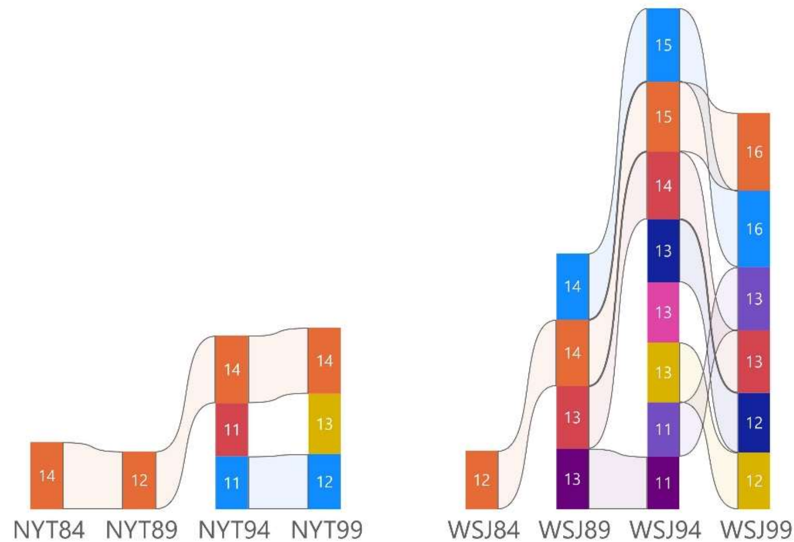


Figure 5.15 Collocates of shareholder related to conflict

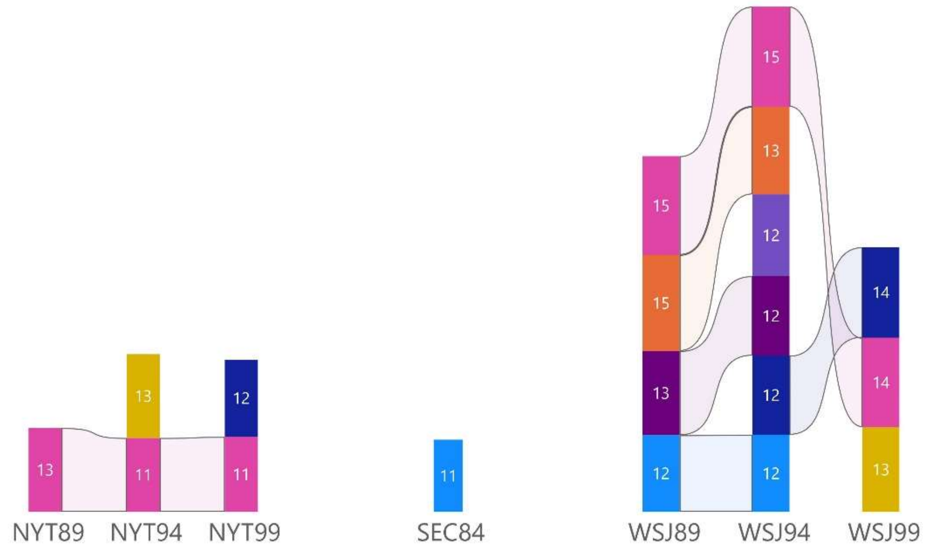
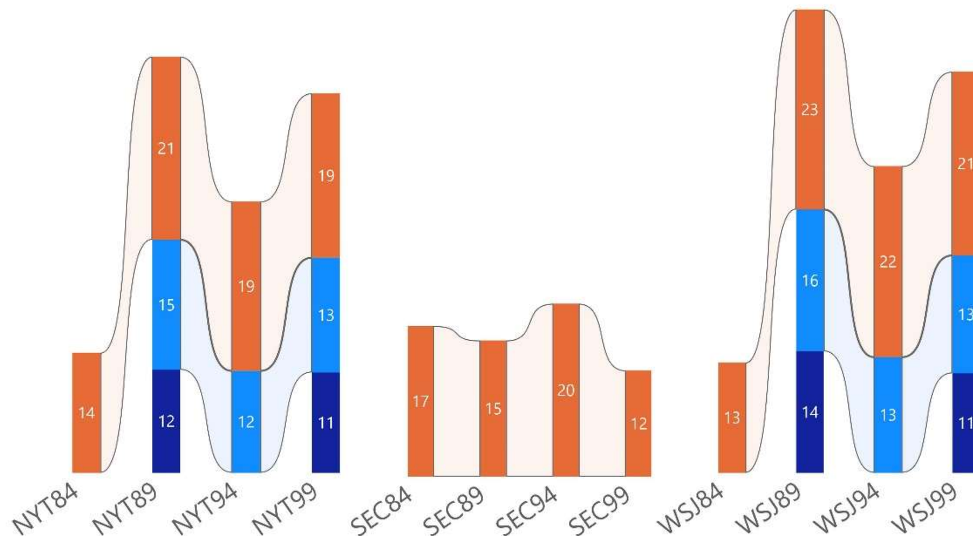


Figure 5.16 Collocation of shareholder with rights, responsibilities and duties: SEC



Appendix 6: Concordance lines

For excerpts for the SEC corpus, the first column details the specific speech from which the concordance line was extracted. The information given is: the date of the speech and the surname and political affiliation of the speaker. So 012696LevittD refers to the speech by Levitt, a Democrat, on 26 January 1996. For the press corpora the first column refers to the subcorpus.

Table 6.1 Corporate governance: major themes in the discourse

Speech/subcorpus	Concordance line
031380williamsD	The issues presently being widely discussed under the rubrics of "corporate governance" and "corporate accountability" relate to corporate power
092680friedmanD	is the informing principle of much of corporate governance and corporate accountability
101188ruderR	run is that institutional investors have begun to make use of their potential power and influence in the area of corporate governance.
092090lochnerR	Improving corporate governance increasingly is seen as one of the answers.
100799levittD	what will guarantee high-quality and meaningful information for investors, regardless of what face or form our markets may take: strong corporate governance.
WSJ89	a large institutional investor for the first time in a meaningful way," said Stephen Cohen, director of Heyman Center on Corporate Governance at New York's Cardozo Law School.
WSJ89	The Epstein report says the current wave of takeover fights revives the debate about corporate governance."
WSJ99	the latest effort on Wall Street to link corporate governance and shareholder value.
NYT84	When the American Law Institute, a group of distinguished Establishment lawyers, decided to look into corporate governance, in order to toughen the law relating to the administration of large corporations, some members of the Business Roundtable
NYT89	again fighting the business community over the rules of corporate governance. For almost a decade, the American Law Institute has faced a barrage of complaints from the Business Roundtable
NYT94	a new era in corporate governance, in which powerful institutional investors are putting pressure on long-passive boards
NYT94	"Unions have really stepped up their activity," said Patrick McGurn, director of the corporate governance service at the Investor Responsibility Research Center

NYT99	the founder of the modern corporate governance movement and certainly its most effective advocate," said Richard Schlefer, the director of corporate governance at T.I.A.A.-C.R.E.F., the giant retirement fund.
NYT99	is evidence of the increasing sophistication of the corporate governance movement. Since the mid-1980 's, shareholders have successively revolted

Table 6.2 Corporate governance: shareholders dominate the discourse

Speech/subcorpus	Concordance line
040883treadwayR	and enforce adequate controls and procedures to assure that the corporation is operated solely for the benefit of stockholders. Sound corporate governance requires a corporate structure and procedures which will preclude or minimize undesirable activity prior to its occurrence.
111387ruderR	primary obligations to the shareholders of their corporations is well established in our law and serves as the cornerstone of corporate governance theory.
031298levittD	I may need to clarify where I stand, and why. My remarks this afternoon are focused on one aspect of corporate governance: the crucial role of boards of directors as representatives of the shareholders - and for the shareholders' rights to full
WSJ89	a significant problem with corporate governance in this country: Directors of large public corporations often feel their loyalty is to management, not to the shareholders
NYT94	increasingly successful effort to pry open board rooms and make corporate America more accountable to shareholders. "We primarily view our corporate governance efforts as a fiduciary responsibility
NYT94	the adoption of the regulations would mark "a watershed for corporate governance" and that the regulations were intended "to empower shareholders."
NYT99	"The real focus on corporate governance is to create shareholder value,'' Mr. Brennan said.

Table 6.3 Corporate governance experts

Speech/subcorpus	Concordance line
WSJ94	threat of bad publicity or a proxy fight on corporate- governance issues--aren't very powerful. "Institutional activism is never going to amount to much," says Michael Jensen, a
WSJ94	do, it's in very muted fashion," says Bernard Black, a professor at Columbia University's law school and an authority on corporate governance.

WSJ94	various corporate governance policies, and Institutional Shareholder Services' comments on whether the provisions were "in the best interests of shareholders."
WSJ99	One scholar who studies corporate governance issues and takeovers, Jeffrey N. Gordon, professor of law at Columbia Law School, said Delaware is unlikely to throw out
NYT84	Robert Neuschel, professor of corporate governance at Northwestern University, asserts that there is too little good news… in the European co-determination experience to recommend this approach
NYT89	Ronald J. Gilson, a Stanford University professor of law who has written extensively on corporate governance.
NYT94	corporate governance experts. Jay W. Lorsch, a professor at the Harvard Business School, said: "I'm surprised at how well they've done.
NYT99	John Coffee, a law professor at Columbia who specializes in corporate governance. "These large pension funds,'' he said, "were properly trying in this action to not only recover financial losses but

Table 6.4 Shareholders as owners: major themes

Speech/subcorpus	**Concordance line**
080880williamsD	Shareholders are merely speculators in the income stream and do not behave as owners as they might have done at one time in the history of the corporate structure.
092680friedmanD	that many individual shareholders view themselves solely as beneficiaries of an income stream; they do not think of themselves as owners of the company, only of its stock.
101188ruderR	Today, institutional investors have major responsibilities as the managers of other people's money. As corporate owners, they gradually may be overcoming their reticence to influence the management
061792breedenR	In some cases this may be painful, but the owners of the company have every right to know just exactly what they are paying to those who run the company.
WSJ89	machinists have previously opposed plans that would give majority ownership to employees, saying that they don't believe employees should be owners. They also are concerned about the concessions that would have to be made to gain majority ownership.
WSJ94	Moreover, employees often feel that their role as an owner conflicts with their role as a worker.
NYT84	EVEN some union leaders are having second thoughts, worrying that union members cum shareholders will find their loyalties lying with owners. There has been no major union-management confrontation recently, but that doesn't stop ''what if'' questions from arising.
NYT84	don't want to listen to the owners.'' In Mr. Lasky's eyes, Mr. Petersen is the hired hand; Mr. Getty, the owner.

NYT84	been argued by Milton Friedman, the Nobel Prize-winning economist, who says that corporations should concentrate on profits and let their owners make contributions if they want to.
NYT89	maintain its tradition of excellence, while being infused with the entrepreneurial energy, commitment and spirit that come when employees become owners,'' he added.
NYT89	Paramount attacked the new merger plan as ''a deliberate, persistent pattern of entrenchment moves by management, which shuts out the owners of Time- its shareholders.''
NYT89	owners to run, there has been a tug-of-war between the managers of companies- the hired hands- and the shareholders- the owners.
NYT99	own the company.'' The result is a culture that seeks to stir the creative juices by making every employee an owner, with no corporate ladder to climb or glass ceiling to break through.

Table 6.5 Shareholder and ownership: major themes

Speech/subcorpus	**Concordance line**
112180williamsD	The linkage between ownership and participation in the equity markets is to put it mildly strained
101783treadwayR	the same permissiveness should prevail when proxy machinery is sought to be used to assert the responsibility of ownership.
012281williamsD	the predominance of a shareholder who neither wants nor accepts the obligations of ownership.
101882longstrethD	this trend toward employee ownership of, as he put it, "the means of production."
021089grundfestD	professional managers who did not have significant ownership interests in the firm. Unfortunately, the separation of ownership from control creates substantial agency problems that can adversely affect the
061792breedenR	larger companies are also using stock options to give a wide range of employees the incentives of ownership.
WSJ89	how they voted on so-called ownership decisions, and the reasons behind their vote. "Ownership decisions" would include votes on "poison pills," tender offers, disputed proxy contests
WSJ99	plans to "demutualize," a cumbersome process of converting to ownership by outside shareholders
WSJ89	by giving management ownership of the company's best assets at very little cost to themselves.
WSJ94	But real financial commitment, real ownership, is completely practical for bank managers and directors.
NYT89	the experts said that employees who have an ownership stake in a company tend to view problems more as management does

NYT99	to shift from mutual ownership, in which the policyholders nominally own the company, to a regular publicly traded company

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