

- holders access to company funds to solicit proxies. *Business Roundtable et al. v. Securities and Exchange Commission*, No. 10–1305 (D.C. Cir., July 22, 2011).
- ³⁷ Delaware General Corporation Law, Section 102 (2011).
- ³⁸ Lynn A. Stout, “Why We Should Stop Teaching *Dodge v. Ford*,” 3 *Virginia Law & Business Review* 163 (2008).
- ³⁹ Delaware General Corporation Law, Section 101 (2011).
- ⁴⁰ Stout, “Why We Should Stop Teaching,” 169.
- ⁴¹ *Id.*
- ⁴² *Id.*, 170.
- ⁴³ Margaret M. Blair and Lynn A. Stout, “A Team Production Theory of Corporate Law,” 85 *Virginia Law Review* 247, 293 (1999).
- ⁴⁴ *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (1985).
- ⁴⁵ *Shlensky v. Wrigley*, 95 Ill. App.2d 173, 237 N.E.2d 776 (1968).
- ⁴⁶ *Air Products and Chemicals, Inc. v. Airgas Inc.*, Civ. 5249-CC, 5256-CC (Del. Ch., Feb. 15, 2011) 92, citing *Paramount Communications Inc. v. Time, Inc.*, 571 A.2d 1140, 1150 (Del. 1990).
- ⁴⁷ *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986).
- ⁴⁸ Lynn A. Stout, “Why We Should Stop Teaching *Dodge v. Ford*,” 3 *Virginia Law & Business Review*, 163, 171–172 (2008).

Notes to Chapter Three

- ⁴⁹ William T. Allen, Jack B. Jacobs and Leo E. Strine, Jr., “The Great Takeover Debate: A Mediation on Bridging the Conceptual Divide,” 69 *University of Chicago Law Review* 1067 (2002); Margaret M. Blair and Lynn A. Stout, “A Team Production Theory of Corporate Law,” 85 *Virginia Law Review* 247 (1999); Einer Elhauge, “Sacrificing Corporate Profits in the Public Interest,” 80 *New York University Law Review* 733 (2005); D. Gordon Smith, “The Shareholder Primacy Norm,” 23 *Journal of Corporation Law* 277 (1998).
- ⁵⁰ Henry Hansmann and Reinier Kraakman, “The End of History for Corporate Law,” 89 *Georgetown Law Review* 439 (2001).
- ⁵¹ For a classic example, see Lucian Bebchuk and Jesse M. Fried, *Pay without Performance: The Unfulfilled Promise of Executive Compensation* (Cambridge, Massachusetts: Harvard University Press, 2006).

- ⁵² Martin Lipton and Paul K. Rowe critique this view in “Pills, Polls, and Professors: A Reply to Professor Gilson,” 27 *Delaware Journal of Corporate Law* 1 (2002).
- ⁵³ A recent SEC attempt to impose just such a “proxy access” rule on public companies was struck down by a federal court. *Business Roundtable et al. v. Securities and Exchange Commission*, No. 10–1305 at 12 (D.C. Cir., July 22, 2011).
- ⁵⁴ Milton Friedman also expressed this view still earlier in his bestseller *Capitalism and Freedom* (Chicago, Illinois: University of Chicago Press, 1962).
- ⁵⁵ Roger Martin, *Fixing the Game: Bubbles, Crashes, and What Capitalism Can Learn from the NFL* (Boston, Massachusetts: Harvard Business Review Press, 2011), 11.
- ⁵⁶ Richard A. Posner and Kenneth E. Scott, *The Economics of Corporation Law and Securities Regulation* (Boston and Toronto: Little, Brown and Company, 1980), 39–56.
- ⁵⁷ Frank H. Easterbrook and Daniel R. Fischel, *The Economic Structure of Corporate Law* (Cambridge, Massachusetts and London: Harvard University Press, 1991).
- ⁵⁸ Hansmann and Kraakman, “The End of History,” 468.
- ⁵⁹ Fischer Black and Myron Scholes, “The Pricing of Options and Corporate Liabilities,” 81 *Journal of Political Economy* 637 (1973).
- ⁶⁰ Easterbrook and Fischel, *The Economic Structure of Corporate Law*, 36–37.
- ⁶¹ Lynn M. LoPucki, “The Myth of the Residual Owner: An Empirical Study,” *Washington University Law Quarterly* 1341, 1343 (2004).
- ⁶² Lynn A. Stout, “Bad and Not-So-Bad Arguments for Shareholder Primacy,” 75 *Southern California Law Review* 1192–95 (2002).
- ⁶³ Delaware General Corporation Law, Section 170 (2011).
- ⁶⁴ *Id.*
- ⁶⁵ Delaware General Corporation Law, Sections 108, 170 (2011).
- ⁶⁶ American Law Institute, Restatement (3d) of Agency, Section 1.01 (2006).
- ⁶⁷ Delaware General Corporation Law, Section 141 (2011).
- ⁶⁸ Robert Charles Clark, *Corporate Law* (Boston and Toronto: Little Brown, 1986), 95.

- ⁶⁹ Margaret M. Blair and Lynn A. Stout, "A Team Production Theory of Corporate Law," 85 *Virginia Law Review* 247, 303 (1999).
- ⁷⁰ Lynn A. Stout, "Bad and Not-So-Bad Arguments for Shareholder Primacy," 75 *Southern California Law Review* 1189, 1203–124 (2002).
- ⁷¹ Hansmann and Kraakman, "End of History," 443 (emphasis added).
- ⁷² Frank H. Easterbrook and Daniel R. Fischel, *The Economic Structure of Corporate Law* (Cambridge, Massachusetts and London: Harvard University Press, 1991), 38.
- ⁷³ Mark J. Roe, "The Shareholder Wealth Maximization Norm and Industrial Organizations," 149 *University of Pennsylvania Law Review* 2063, 2065 (2001).

Notes to Chapter Four

- ⁷⁴ Renee Adams and Daniel Ferreira, "One Share-One Vote: The Empirical Evidence," 12 *Review of Finance* 51 (2008).
- ⁷⁵ Valentin Dimitriv and Prem C. Jain, "Recapitalization of One Class of Common Stock into Dual-Class: Growth and Long-Run Stock Returns," 12 *Journal of Corporate Finance* 342 (2006).
- ⁷⁶ Sanjay Bhagat and Bernard S. Black, "Independent Directors" (2008), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1139191.
- ⁷⁷ Sanjay Bhagat and Richard H. Jefferis, *The Econometrics of Corporate Governance Studies* (Cambridge and London: MIT Press, 2002); Lawrence Brown and Marcus Caylor "Corporate Governance and Firm Operating Performance," 32 *Review of Quantitative Finance and Accounting* 129 (2009).
- ⁷⁸ Id.
- ⁷⁹ "Schumpeter: Corporate Constitutions: The World Knows Less about What Makes for Good Corporate Governance Than It Likes to Think," *Economist* 74 (October 30, 2010), www.economist.com/node/17359354.
- ⁸⁰ See, e.g., Dan R. Dalton, et al., "The Fundamental Agency Problem and Its Mitigation," 1 *Academy of Management Annals* 1–64 (December 2007).