How To Implement Shareholder Democracy

Oliver Hart, Helene Landemore & Luigi Zingales*

Abstract

We propose a novel way to give mutual fund investors a voice, an alternative to the pass-through voting that large mutual fund companies are starting to implement. Based on the experience of citizen assemblies in the political sphere, we propose allocating the power to decide how to cast mutual funds' votes in corporate ballots on environmental, social, and political issues to a randomly drawn assembly of their investors. We analyze the advantages and limitations of such an approach and discuss various implementation issues.

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Introduction

Last year, fifteen Republican state finance chiefs lambasted BlackRock's CEO, Larry Fink, for sacrificing the return of his investors to advance his climate agenda and profiting from his investments in China at the expense of U.S. security.[1] In other words, they criticized him for maximizing financial return at the expense of a value (patriotism) and not maximizing it in the name of another value (the environment). Gone are the days when asset managers could do their jobs unencumbered by moral and political considerations. Today, large asset managers like BlackRock, Vanguard, and State Street are pressured in different, sometimes irreconcilable, directions. The pressure is not only on what to divest from but also on how to cast their corporate ballots. Shareholders' proposals are becoming increasingly prescriptive.[2] How should asset managers behave in response?

In this paper, we try to answer this question. We start by explaining why the issue has become so controversial in recent years. Index funds' success and strong economies of scale in their industry have concentrated a large chunk of the voting power of all the major American corporations in just three funds. To deflect criticism for this extreme concentration, fund managers have tried to defend their role as non-political and strictly about maximizing the long-term financial value of their investors. As we will argue, this defense ignores the fact that most long-term value judgments are also about values, namely, broad preferences about moral and political outcomes.

At the same time, the large asset managers have tried to distribute some of their voting power to their investors through pass-through voting. Yet, most individuals do not take advantage of this opportunity, and institutions end up voting according to the guidelines of proxy advisors or the corporate governance guidelines of the funds themselves, recreating the excessive

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[1] *James Reinl, EXCLUSIVE: GOP Finance Chiefs Demand Answers from BlackRock over ESG "woke Capitalism" Agenda and Iffy Trades in Coal, China, and Climate Change, DAILY MAIL (August 8, 2023, at 5:41 EDT), https://www.dailymail.co.uk/news/article-12385889/GOP-finance-chiefs-demand-answers-BlackRock-funds-ESG-woke-capitalism-agenda-iffy-trades-coal-China-climate-change.html.*

[2] Kenneth Khoo & Roberto Tallarita, *Expanding Shareholder Voice: The Impact of SEC Guidance on Environmental and Social Proposals*, at 13-15 (Eur. Corp. Governance Institute – L., Working Paper No. 822, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4913660.

concentration they were trying to eliminate. We suggest that, faced with the threat of a breakup, the only way the three largest asset managers can save their business model is to shed their voting power in a politically legitimate and neutral manner. This can be done by transferring the decision over value vs. values trade-offs to a body that can legitimately claim to represent the funds' investors.

Borrowing from the experience of citizen assemblies in the political arena, we claim that the appropriate representative body is a randomly drawn assembly of investors. We outline the characteristics that such an assembly should have to achieve the goals of political legitimacy and neutrality, as well as legal and economic feasibility.

We discuss the major objections that have been raised to citizen assemblies and can be raised to investor assemblies as well: lack of expertise, capture, selection, governance, and legal feasibility. In all these cases, we argue that the problem is less severe than in the alternatives and can be contained with institutional design. Finally, we present evidence that citizen assemblies and citizen assembly-like institutions, such as deliberative polls and juries, have been used successfully worldwide.

We are not the first to think that randomly drawn assemblies can be used in corporate governance. Cooper and Bauer have pioneered this idea with a Dutch pension fund.[3] Our contribution is to articulate the theoretical foundations for this use of lot-based deliberation for index funds, including by linking this solution to the legitimacy crisis that U.S. large asset managers are facing. We also provide an institutional blueprint for how fund governance should be designed to maximize the chances of addressing this legitimacy issue.

In the second section, we explore why delegated voting has become particularly salient in recent years. In the third section, we explain why properly designed investor assemblies can be a solution. In the fourth section, we review the practical appeal of this solution. In the fifth section, we answer common objections.

[3] EMMELINE COOPER & ROB BAUER, HOW TO DEMOCRATISE PENSION FUNDS? DESIGNING A DELIBERATIVE MINI-PUBLIC AT PENSIOENFONDS DETAILHANDEL Netspar (2024).

I. The Legitimacy Question

"Whenever there is a question of power, there is a question of legitimacy," wrote Adolf Berle.[4] Large institutional investors today have enormous power. The increasing popularity of index funds has led to an increased concentration of ownership. In 2000, the median collective stake of the three largest institutional investors (Vanguard, BlackRock, and State Street) in S&P 500 companies was 7.1%.[5] By 2025, the sum of the stakes of the Big Three had increased to about 25%.[6] It is only natural that such concentration of power raises questions of legitimacy, so much so that three influential scholars have proposed to break up large funds to limit their voting power.[7]

A. What Is Legitimacy?

By legitimacy, we mean the normative (as opposed to merely legal) right to use that power, which in practice often corresponds to sociological legitimacy (namely, the public opinion's belief about the normative legitimacy of the authority in question). Legitimacy, as a property, can also be broken into three components: input, throughput, and output legitimacy.[8] Input legitimacy is a function of who gets to decide, throughput legitimacy depends on how decisions are made, and output legitimacy is all about the nature and quality of outcomes.

In democratic politics, the legitimacy of authorities depends on doing reasonably well across the three dimensions. In the case of institutional investors the legitimacy has so far had to do almost exclusively with outcomes: does their power yield good outcomes for investors and, beyond their investors, for society at large?

As democratic expectations have risen, however, together with the impact of these institutional investors on both the economy and the democratic system itself, more and more questions are being asked about both input legitimacy and throughput legitimacy. Why are there so few people at the top making decisions that affect all investors and society? And why is the decision process so opaque and unaccountable to either?

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[4] ADOLF AUGUSTUS BERLE, ECONOMIC POWER AND THE FREE SOCIETY 16 (1957).
[5] Scott Hirst & Lucian Bebchuk, *Big Three Power, and Why It Matters*, 102 Boston L. Rev. 1547 (2022), at 1556.
[6] Nick Maggiulli, *Do Vanguard, BlackRock, and State Street Run the World?*, (Oct. 8, 2024), https://ofdollarsanddata.com/vanguard-blackrock-state-street/.
[7] Eric A. Posner, Fiona M. Scott Morton & E. Glen Weyl, *A Proposal to Limit the Anti-Competitive Power of Institutional Investors*, ANTITRUST L.J. (2017), https://papers.ssrn.com/abstract=2872754.
[8] *See* Fritz Scharpf, Governing in Europe: Effective and Democratic? (1999), https://doi.org/10.1093/acprof:oso/9780198295457.001.0001.; Vivien A. Schmidt, *Democracy and Legitimacy in the European Union Revisited: Input, Output, and, 'Throughput,'* 61 POLITICAL STUDIES 2 (2013).

Because investors and society are two distinct publics (raising sometimes diverging normative expectations), we propose to add a distinction between *internal legitimacy* (vis-à-vis investors) and *external legitimacy* (vis-à-vis the democratic public at large, generally through their elected representatives).

1. Internal Legitimacy

In 2022, Tulipshare Capital, an impact investor, advanced a proposal to Amazon shareholders to 'commission an independent audit and report of the working conditions and treatment that Amazon warehouse workers face." This proposal, backed by 44% of votes cast, did not pass because it did not receive the support of Vanguard and BlackRock.[9]

The irony of institutions managing the savings of millions of workers, but ignoring the concerns of those workers, was not lost on many commentators.[10] "Your Money, Their Votes" is the title of an article on the topic by Investopedia, an online publication aimed at educating individual investors.[11] Not all investors in Vanguard and BlackRock are workers. Still, when these two institutions control enough shares to affect the voting outcomes, the question of whose interests they represent becomes relevant, especially when the issue involves significant externalities that different shareholders might value or internalize differently.[12] These heterogeneous goals create an obvious problem of how to weigh the different objectives. What normative legitimacy do fund managers have to make this choice? While this question has always been central to the study of politics, it has been largely buried under concerns for efficiency in the economic sphere.

We are neither the only nor the first ones to raise this concern about legitimacy in the economic context. A vast literature on workplace democracy has long made that case vis-à-vis the representation of the traditionally neglected stakeholders of economic organizations, namely workers, calling for more democratic systems of representation that include their voices as well,

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[9] Arriana McLymore, *Amazon Shareholder Proposals Hit Record for 2nd Straight Year* | REUTERS (Apr. 13, 2023), https://www.reuters.com/business/sustainable-business/amazon-shareholders-introduce-record-number-proposals-second-consecutive-year-2023-04-13/.

[10] Carter Dougherty, News Release: *BlackRock & Vanguard Enable Dangerous Amazon Warehouse Working Conditions*, Americans for Financial Reform (Sept. 5, 2024), https://ourfinancialsecurity.org/news/news-release-blackrock-vanguard-enable-dangerous-amazon-warehouse-working-conditions/.

[11] Peter Gratton, *Your Money, Their Votes: What You Should Know About How Funds Should Vote Your Shares*, INVESTOPEDIA (May 14, 2025), https://www.investopedia.com/how-funds-vote-your-shares-11728772.

[12] Oliver Hart & Luigi Zingales, *The New Corporate Governance*, 1.1 U Chicago L. Rev. (2022),

on the model of, say, German co-determination.[13] But much less has been said about managers' legitimacy vis-à-vis their official stakeholders, namely shareholders themselves, on which we focus here.

2. *External Legitimacy*

Another problem is that of external legitimacy. By external legitimacy, we mean the moral right that decision-makers in economic organizations have to actively shape political decisions affecting the entire political community. This moral right, whether it ever existed, is now widely questioned. As two prominent legal scholars write: "Failure to represent beneficiaries' views harms not only those whose views are ignored [that is the problem of we called "internal legitimacy"] but is deeply undemocratic. Issues like how to address climate change are fundamental public policy questions, and fund managers lack the legitimacy to make such choices on their own."[14] It is likely that the lack of internal legitimacy actually compounds the problem of external legitimacy.

Yet by wielding their voting power inside corporations, large IIs can become de facto market regulators. For example, when State Street started its campaign targeting companies with less than 15% of female directors on the board, 495 U.S. companies added at least one female director.[15] This is similar to the impact of a government rule. In a democracy, however, there are clear procedures to ensure the legitimacy of regulation. What are the procedures in place in the mutual fund industry?

The State of Florida's chief financial officer, Jimmy Patronis, stated it is "undemocratic of major asset managers to use their power to influence societal outcomes."[16] We do not go as far, but we recognize that there is a problem of political legitimacy that both sides of the political

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[13] *See, e.g.*, Robert Alan Dahl, *A Preface to Economic Democracy* (Reprint 2019 ed. 1985); Samuel Bowles & Herbert Gintis, *A Political and Economic Case for the Democratic Enterprise*, 9 Economics and Philosophy 70 (1993), or more recently Richard Wolff, *Democracy at Work: A Cure for Capitalism* (2012), and Isabelle Ferreras & Miranda Richmond Mouillot, *Firms as Political Entities: Saving Democracy through Economic Bicameralism* (2018).

[14] Jill Fisch & Jeff Schwartz, *Corporate Democracy and the Intermediary Voting Dilemma*, 102:1 Texas L. Rev. 5 (2023).

[15] *State Street Global Advisors Marks Third Anniversary and Progress of Fearless Girl Campaign, Reports 681 Companies Added Female Board Members* BUSINESS WIRE (Mar. 5, 2020), https://www.businesswire.com/news/home/20200305005491/en/State-Street-Global-Advisors-Marks-Third-Anniversary-and-Progress-of-Fearless-Girl-Campaign-Reports-681-Companies-Added-Female-Board-Members.

[16] Kate Aronoff, *The Right Has It In for Woke Investors. The Only Problem? They Don't Exist.* THE NEW REPUBLIC (Feb. 15, 2023), https://newrepublic.com/article/170229/right-woke-investors-problem-dont-exist?

spectrum are and will be tempted to exploit. By pressuring the IIs, each side can achieve its political objectives without requiring legislation. Given the difficulty of passing legislation, this method is very tempting for both political aisles. In the absence of a legitimate way to exercise it, this power is easily seen as excessive. Hence, the proposal, made by influential scholars, to break up the large funds to limit their power.[17]

So far, institutional investors (henceforth, IIs) have tried to deflect this multilayered legitimacy issue by pretending that, despite their large voting blocks and documented patterns of influence,[18] they have no power, because the legal framework constrains their choices. As we will argue here, this claim is untenable.

B. A Technocratic Answer

In a debate at Davos, Larry Fink, the CEO of BlackRock, stated, "We only have one responsibility as investors: to maximize return."[19] If this is correct, then the legitimacy problem does not exist. If we all agree that maximizing financial return is the right objective, we should simply let the experts figure out how to achieve it.

Such a view is often justified on theoretical or legal grounds. Let's start with the theory. It is true that if investors care only about money, they will want an intermediary through which they invest to maximize financial return.[20] The problem is that the evidence does not support the idea that investors care only about money. Consider the demand, expressed in a survey, for companies to boycott Russia after the Ukrainian invasion, despite the costs this decision implies.[21] These preferences survive even when people face some monetary costs for their choices.[22]

[17] Posner, et al., *supra* n.7, at.669.
[18] John C. Coates, *The Problem of Twelve: When a Few Financial Institutions Control Everything* (2023).
[19] ProMarket writers, *Unusual Debate at Davos: Lobbying, Maximizing Shareholder Value and the Duty of CEO's*, PROMARKET (Apr. 1, 2016), http://www.promarket.org/2016/04/01/unusual-debate-at-davos-lobbying-maximizing-shareholders-value-and-the-duty-of-ceos/.
[20] There is still a question about whether the intermediary should maximize financial return company by company or the aggregate return of all the companies in the investors' portfolio. We return to this issue below.
[21] Oliver Hart, David Thesmar & Luigi Zingales, *Private Sanctions*, 39 ECONOMIC POLICY 203 (2024).
[22] Rob Bauer, Tobias Ruof & Paul Smeets, *Get Real! Individuals Prefer More Sustainable Investments*, 34 Rev. of Financial Studies 3976 (2021); Malcolm Baker, Mark L Egan & Suproteem K Sarkar, *How Do Investors Value ESG?* (NBER Working Paper Series No. 30708, 2022).

A subtler argument is due to Milton Friedman.[23] Friedman recognized that investors might care about things other than money. Yet, he argued that companies should ignore these non-monetary preferences when making decisions. Investors are better off if a company focuses on maximizing profit and lets shareholders decide how to allocate these profits to the social causes they care about. This separation of monetary and non-monetary goals makes sense in the case of charitable donations. Investors are better off if a company does not donate at the corporate level, but lets each shareholder decide how much of their dividend to donate at the personal level. Each shareholder can donate to their favorite charity instead of being forced to donate to charities they may not support. In this way, separation maximizes the total welfare of the investors.[24]

Friedman's separation result, however, holds only when a firm's business activities and social activities are completely independent (as is the case for charitable donations). This is rarely the case. Take a firm whose money-making activities lead to pollution. In general, it is cheaper to curb pollution than to pollute and clean up, and so socially responsible shareholders may prefer that the firm curbs pollution even if this reduces profit. In these situations, we have shown elsewhere that the firm should maximize the welfare of its shareholders, not profit, where shareholder welfare includes the utility investors derive from the environment, a safer country, and the well-being of others.[25]

As another example, consider Oxfam's proposal to Pfizer's and Moderna's shareholders to share the patents of their COVID-19 vaccines with African countries, which obtained 27.3% and 24% of the votes at the respective shareholder meetings.[26] The standard inefficiency of monopoly pricing tells us that even if all shareholders of the two companies were to donate all their additional monopoly profits in Africa to African countries to buy vaccines, they would not be able to achieve the same social objective (in terms of human lives saved) as distributing the vaccine at (constant) marginal cost in Africa. Thus, again, Friedman's separation result fails, and shareholders' social preferences become relevant for firms' optimal decision-making.

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[23] Milton Friedman, *A Friedman Doctrine- The Social Responsibility of Business Is to Increase Its Profits*, The New York Times, Sept. 13, 1970, at 122.
[24] But, see Hart, et al., *supra* n. 12. , 2022 for a caveat.
[25]Oliver Hart & Luigi Zingales, *Companies Should Maximize Shareholder Welfare Not Market Value*, 2 LFA 247 (2017); Hart and Zingales, 2022, Supra; see also Eleonora Broccardo, Oliver Hart & Luigi Zingales, *Exit versus Voice*, 130 J. POL. ECON. 3101 (2022).
[26] Jonathan Josephs, *Investors Lose Vote to Share Covid Vaccine Know-How*, BBC (Apr. 28, 2022), https://www.bbc.com/news/business-61262065.

II. A LEGAL ANSWER

In the above debate, Larry Fink specified, "We live in a world where the Department of Labor gave us this guidance about our fiduciary responsibility as investors." [27] The guidelines of the Department of Labor, however, are binding only for funds belonging to a pension plan subject to the 1974 Employee Retirement Income Security Act (ERISA). ERISA section 404(a)(1) states that the assets of a pension plan "shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries." What constitutes a benefit is not specified in the law; thus, both pecuniary and non-pecuniary benefits qualify. In 1994, the Department of Labor clarified that, under ERISA, fiduciaries responsible for managing plan assets have a duty to vote proxies in a manner that is in the best interest of plan participants and beneficiaries. In 2014, the Supreme Court ruled that "benefits" to be pursued by ERISA fiduciaries as their "exclusive purpose" does not include "nonpecuniary benefits."[28] The Department of Labor rule and Supreme Court decision have been interpreted to mean that IIs should vote only in favor of decisions that maximize long-term shareholder value.

Even if we accept this position (more about this later), we have to recognize that long-term shareholder value cannot be objectively measured. On a hundred environmental and social resolutions filed at S&P 100 companies between 2021 and 2023, the big three voted the same way only 31% of the time.[29] Moreover, whereas Vanguard voted against 72% of the proposals, BlackRock voted against 45% and State Street 28%. BlackRock supported 73% of the resolutions on civil rights and racial equity, while Vanguard opposed all of them. This behavior seems inconsistent with random errors in the valuation process, but consistent with subjective *values* impacting the value estimation. We see clear evidence of values impacting valuations in credit analysts' expectations about U.S. economic growth.[30] Democratic credit analysts had more optimistic forecasts about the economy than Republican ones when Obama was president, but the ranking reversed under Trump. If values spill into expectations and estimation, all these questions

[27] Promarket, Inc.,*supra* n. 19, 2016.
[28] Fifth Third Bancorp v. Dudenhoeffer, 573 U.S. 409 (2014) (U.S. Supreme Court 2014).
[29] Lindsey Stewart, *Proxy-Voting Insights: How Differently Do The Big Three Vote on ESG Resolutions*, HARV. L. SCH. F. ON CORP. GOVERNANCE (2023), https://corpgov.law.harvard.edu/2023/07/03/proxy-voting-insights-how-differently-do-the-big-three-vote-on-esg-resolutions/.

[30] Elisabeth Kempf & Margarita Tsoutsoura, *Partisan Professionals: Evidence from Credit Rating Analysts*, 76 THE JOURNAL OF FINANCE 2805 (2021).

of value are ultimately questions of values. This raises the ultimate legitimacy question: whose values?

A. The Wall Street Rule

A third way out of the legitimacy question is based on the idea that investors can effectively vote with their feet. Known as the Wall Street Rule, the conventional wisdom has been that investors, including IIs, either support management or sell.[31] This rule makes some sense when ownership is very fragmented and investors care only about monetary returns. In such a situation, small investors have no power to change managerial decisions, and if they do not like them, they are left only with the option of selling the stock. This option, however, is not worthless. By putting downward pressure on prices, exiting can incentivize an activist to intervene in the company and replace management.[32]

"Consent or exit," however, is a rule that does not make sense in a world where ownership is more concentrated and investors have objectives other than profit maximization. Today, the three largest institutional investors have enough votes to change the outcome of most corporate proposals (like the one on sharing the COVID-19 vaccine). Thus, investors have an additional and distinctively political option besides consent or exit, namely "voice"—or the capacity to shape an organization's decisions from within.[33] Further, it can be shown that voice is more effective than exit in pushing companies toward pursuing objectives other than profit maximization. Exit is unlikely to change company behavior since the downward pressure on prices caused by exit attracts more selfish investors to buy the stock, attenuating or muting the incentives to change objectives.[34] In contrast, under voice, socially responsible investors can make their preferences felt by remaining as shareholders.[35]

Last but not least, most investors are stuck in the S&P 500 Index. Most 401(k) plans do not allow many options, and the alternatives available in each plan tend to be more expensive and

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[31] The first known use of the term Wall Street Rule is in Edward S. Herman*, Corporate Control, Corporate Power: A Twentieth Century Fund Study* (1. paperback ed ed. 1982)., but the idea is already in A. A. Berle, Power Without Property: A New Development in American Political Economy (1959).
[32] Henry G. Manne, *Mergers and the Market for Corporate Control*, 73 J. POL. ECON 110 (1965).
[33] See Albert O. Hirschman*, Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (1972).
[34] Robert Heinkel, Alan Kraus & Josef Zechner, *The Effect of Green Investment on Corporate Behavior*, J. FIN. & QUANT. Analysis 431 (2001).
[35] Broccardo, Hart, and Zingales, *supra* n. 25, at 3101 2022.

often less diversified. If they want to achieve a reasonable level of diversification at a reasonable cost, most citizens have no choice with their pension money other than investing in the index fund offered by their 401(k) plan. Deprived of their option to exit, investors' only alternative is to start demanding a voice.

III. THE INVESTOR ASSEMBLY SOLUTION

Having identified the sources of the increased demand for legitimacy and accountability, we will now explain how we plan to satisfy this demand in light of two challenges. First, individual preferences over corporate decisions need to be aggregated. This cannot be done easily through a poll because shareholders are uninformed. Take Oxfam's proposal to share the patents of COVID-19 vaccines with African countries. If implemented, would it save lives in Africa? What is the cost? What are the long-term consequences for scientist recruitment and customer acquisition? Most investors lack the knowledge to make the appropriate decision, not because they are incapable of it, but because they have not spent the time to acquire this information. Most importantly, they do not have any incentives to learn this information. With typically 500 companies in their portfolios, and a trivially low probability of being pivotal, it is rational for them to remain uninformed. This is the standard Downs' rational apathy argument applied to corporate voting.[36] In this context, the argument is even more compelling than in the political sphere because while in political elections, most voters feel a moral obligation to become at least somewhat informed and vote, and voting retains a social and public dimension, none of this applies (at least so far) in corporate elections.

This brings us to the second challenge. In the last 250 years, the solution to legitimacy problems in the political sphere has been elections, which allow citizens to choose their representatives and kick them out of power if they prove disappointing or unresponsive to their preferences. Elections thus ensure both legitimacy (the right to rule) and responsiveness and accountability through the threat of power removal.

We could in theory similarly ask investors to elect a group of representatives who would define the guidelines for value-values trade-offs for them. The candidates would run campaigns about the kind of trade-offs they would recommend once in "office" and after a suitable period

[36] *See* Anthony Downs, *An Economic Theory of Political Action in a Democracy*, 65 J. POL. ECON. 135 (1957).

where they would be free to exercise this recommendation power (we assume for now asset managers are still the ones in the ultimate decision-making position) they would be subjected to the constraint of reelection.

We will not pursue this solution here, however. Elections are cumbersome, costly, and have shown their limits in politics, both in terms of responsiveness and accountability. It seems particularly inappropriate for the world of finance, as it would run into the same problems of attention deficits as proxy voting. We can easily predict that investors would not bother to read the candidates' pamphlets and would most likely not vote en masse. For the same reason, the mechanism of electoral accountability, already rather weak in political democracies, would likely be toothless in the world of investment funds.

What we propose instead is a system inspired by electoral democracy's failings. It does not require mass investor participation and does not rely on electoral sanction as an accountability mechanism. Instead, it creates representatives who think like the population of investors because they are a statistically representative sample of that population. We now turn to this solution.

A. Citizen assemblies

Faced with the widely noted "crisis of democracy, " governments have started experimenting with citizen assemblies. Citizen assemblies are relatively large bodies of individuals (anywhere between 50 and several hundred) chosen at random (technically through stratified random sampling) from the larger population. Think of large juries aimed to capture the full diversity of a population and, in the ideal scenario, offer an accurate demographic mini-portrait of it. They are typically convened to deliberate at length about and come up with policy recommendations on topics ranging from abortion and end-of-life issues to climate justice, electoral law, and urban planning. Importantly, the members of such assemblies are compensated for their time, and their expenses are paid upfront (to maximize take-up). They are also provided with resources, briefing materials, and access to experts and informational resources. Deliberation takes place in both facilitated plenaries and a variety of small groups.

Citizen assemblies are typically more representative of the larger population's views than elected parliaments, which over-represent educated socio-economic elites, or the highly self-selected public of "notice and comment" outreach efforts. Consequently, the results of their deliberations are more likely to track what the larger public needs and is likely to agree with. The deliberative process also generates solutions and recommendations that polls alone or even ballot initiatives cannot generate (as those simply aggregate opinions about predefined options from people who may not be very well informed for the reasons enunciated above).

This legitimacy-enhancing role of citizen assemblies is consistent with what Tocqueville wrote about American juries.[37] By involving ordinary people in judicial decisions, juries diffuse power, check elite dominance, and reinforce equality. Tocqueville also thought that juries act as a counterbalance to the judiciary, preventing the bench from becoming oligarchic or unaccountable. Recent empirical work confirms Tocqueville's insights. Countries with jury trials have better-performing criminal adjudication systems and exhibit higher trust in the judiciary.[38]

IV. INVESTOR ASSEMBLIES

In what follows, we argue that this idea can be applied to the world of investments, but it is not a simple transposition. The concept needs to be adapted and refined.

1. At What Level?

In principle, investor assemblies could be organized at the company level, at the mutual fund level, or the fund family level. There are several reasons why it is impractical to organize them at the company level. If we restrict our attention to the S&P 500 index funds, this amounts to 500 assemblies yearly, which could be pretty costly. An assembly per company would also be inefficient because many companies face similar issues (environment, diversity, patriotism) and share most of the same shareholders. Thus, organizing these assemblies at the fund level makes more sense. Last but not least, decisions made in one company can have important effects on other companies. If we want to ensure companies can internalize these externalities, the decisions should be made at the portfolio level, not at the company level.[39]

[37] Alexis de Tocqueville et al., *Ch. 8 On the Jury in the United Stated Considered as a Political Insitution*, 1 *in* Democracy in America (Paperback ed ed. 2002).

[38] Lei Chen & John Zhuang Liu, *Jury Trial and Public Trust in the Judiciary: Evidence from Cross-Countries Comparison*, 28 ASIA PAC. L. REV. 412 (2021).

[39] This is the concept of universal ownership already alluded to in footnote 11, The concept was first advanced by Corporate Governance (Robert A. G. Monks & Nell Minow eds., 5th ed ed. 2012), and then developed by James P. Hawley & Andrew T. Williams, The Rise of Fiduciary Capitalism: How Institutional Investors Can Make Corporate America More Democratic (2000). The idea is now supported by many scholars, including Ellen Quigley, *Universal Ownership in the Anthropocene* (2019), https://papers.ssrn.com/abstract=3457205, Frederick Alexander, *An Honorable Harvest: Universal Owners Must Take Responsibility for Their Portfolios*, 32 J APPLIED CORP. FIN. 24 (2020)., Jeffrey N. Gordon, *Systematic Stewardship,* 627, (2022), https://papers.ssrn.com/abstract=3782814.

The answer is more ambiguous if we consider whether the assembly should be organized at the fund or the fund family level. Vanguard has two vehicles to invest in the S&P 500: its ETF and its mutual fund. Having just one investor assembly makes sense since these two funds have the same portfolio. Besides their S&P 500 funds, the Big Three manage many active funds with different portfolios. Thus, it is probably reasonable for each of the Big Three to have several assemblies. Because of the large economies of scale, we think that the assemblies should initially be limited to the largest funds, with the possibility of extending them to smaller funds, depending on an analysis of costs and benefits. In what follows, we assume that the entity whose votes will be directed by the investor assembly is a S&P 500 index fund or a S&P 500 ETF.

2. Opt-out Option

Citizen assemblies are generally organized by political entities that have the power to impose the procedure and apply the outcomes on the population at large. We envision investor assemblies as a private ordering solution, so they will lack this coercive power. Furthermore, the goal is to represent investors too busy to get informed and vote. If some investors want to become informed and vote, we will allow them to opt out of the investor assembly before the selection process. If they opt out, they will retain the right to vote through pass-through voting (more about this later). This opt-out system will also make it easier for funds to introduce this mechanism because they are not changing the condition of their investment contract; they are changing just the default.

More questionable is the possibility of allowing people to opt out after the investor assembly has been organized and the voting guidelines have been decided. The risk of this additional option is that some (large) investors might play strategically: try to influence the investor assembly and, if they fail, withdraw their votes after the assembly has taken place, reducing the voting power of the assembly. This risk should be traded off against the moral outrage of some investors learning that their votes will be cast in a way that conflicts with their morals. Consider some deeply Catholic investors. They might be too busy to get informed, and they might go along with the guidelines devised by the investor assemblies until one of these guidelines

Universal ownership can also lead to competition problems, because rival companies with a common ownership will compete less aggressively, see José Azar, Martin C. Schmalz & Isabel Tecu, *Anticompetitive Effects of Common Ownership*, 73 J. FIN 1513 (2018).

promotes access to abortion. In such a case, the noise in the media is sufficiently loud that they realize that their votes will be cast against their morals and become outraged.

To avoid this risk, we propose that investors have the right to opt out, at least initially, even after the investor assembly has decided on the voting guidelines.

3. Optimal Size

The size of the investment assembly should be determined based on three parameters: representativeness, sampling errors, and cost. We define representativeness as the probability that a group representing a fraction x of the population has a voice in the assembly, in the sense that it has at least one member present.[40] If we let n be the size of the assembly, the likelihood that a group representing a fraction x has a voice equals $1-(1-x)^n$. Thus, with an assembly of size 100, the probability that a 5% minority is represented is 99.4%, but the likelihood that a 2% minority is represented is only 86.7%. If we increase the size to 150, the possibility that a 2% minority is represented rises to 95.1%.

We define a sampling error as the probability that a position supported by a fraction $p<0.5$ of the underlying population wins a vote in an investor assembly, where the threshold to win is set at $q>0.5$. Note that we are taking a very conservative stand here. We assume it is very costly to implement rules when the majority does not support them. Still, we do not consider the opposite cost: decisions supported by a majority are not implemented. We think this is a reasonable position, at least at the beginning, in the case of investor assemblies, given the initial diffidence about these assemblies.

The probability that a strict minority position $p=.3$, say, will prevail is trivial (0.0004% with a 50% threshold and 100 people).[41] The concern becomes serious when the position is a minority, but close to the 50% threshold. Take, for instance, the case of $p=0.49$. If the threshold is 50%, the sampling error is high: 38% with 100 participants and 37% with 150. Yet, this error can be reduced by increasing the threshold. With a 55% threshold, the likelihood of a sampling

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[40] *See* Paolo Spada & Tiago C. Peixoto, *The Limits of Representativeness in Citizens' Assemblies: A Critical Analysis of Democratic Minipublics*, 1 J. SORTITION 137 (2025).

[41] If the draws are independent, the sum X will be distributed as a Binomial(n,p). Thus, $Prob\left\{\frac{X}{n}>q\right\}=\sum_{i=nq+1}^{n}\binom{n}{i}p^i(1-p)^{n-i}$.

error drops to 10% with 100 participants and 7% with 150. With a 60% threshold, the likelihood of a sampling error drops to 1% with 100 participants and 0.3% with 150.

Finally, there is the cost component. There are two major costs involved. The first is the cost of flying, lodging, feeding, and compensating the participants. We estimate the cost to be roughly $2,500 per participant, so an extra 50 participants cost $125,000. In addition, there is the coordination cost. One of the key elements of the success of citizen assemblies is the ability of the members to know and befriend each other.[42] Recall that the number of dyadic relationships in a group of size *n* is $\frac{n(n-1)}{2}$. Thus, the complexity rises with the square of the number of members of a group.

Given all these considerations, we settle for a *n* of 150 and a quorum of 60%. Of course, these numbers can be adjusted with experience.

4. *Chances of Being Extracted*

Each investor who does not opt out will be given a number of lottery tickets in proportion to the size of their investment in the fund. From this pool, we would extract 150 of these tickets; thus, larger investors would be more likely to be drawn. The sample should be appropriately stratified so that if one chosen investor decides not to participate in the assembly, we can draw a similar one instead.

Note that this design choice to assign lottery tickets in proportion to investment shares is a departure from regular citizen assemblies in the political sphere, which operate based on "one person, one lottery ticket" (though, in practice, stratified random sampling also somewhat violates that equality). We justify this variation—"one share, one lottery ticket"—to respect the notion of "shareholder democracy," which similarly apportions votes according to the number of shares investors hold.

We allow each investor to be drawn only once. Thus, if CalPERS (the California Public Employees Retirement System) owned 10% of the Vanguard S&P 500 index, it would be de facto assured that it would have one representative at the assembly, but not more than one.[43]

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[42] *See*, for example, Helene Landemore, *Politics Without Politicians: The Case for Citizen Rule* (2025).
[43] Imagine that besides CalPERS, the fund has 1M investors, each owning one share in the fund. Then the probability of CalPERS being drawn is approximately equal to $0.1 * \sum_{i=0}^{149} 0.9^{i} \approx 1$.

Once the investors are drawn, each representative will have equal voting power and status in the assembly. This is important as we believe that deliberation works best if only the "forceless force of the better argument" is at play, as opposed to differences of status in the assembly (given what we know of human dynamics, differences of status are likely to emerge anyway in the deliberative process but we don't want to bake them in from the beginning). By extension, if it were known that some people were granted more votes down the line, it would retroactively affect the way people engage in the prior deliberation, even if they have equal status. Since the point of deliberation is to have issues decided on the merits, we think it is essential to equalize status among participants.

5. Agenda Setting

Citizen assemblies are generally called upon with a precise topic in mind. Investor assemblies will have to deal with many different issues (at least over time). The prioritization of these issues is an important policy decision and must be left to the assembly.

We envision that investor assemblies will take place in the fall of each year in preparation for the proxy season of the following year. Thus, as soon as they have been selected, representative investors will receive a package of information with topics discussed in the past assemblies and new issues that have come up for a vote in corporate ballots in the last proxy season.

After receiving this information, the representatives will meet online for one day. During this day, representatives will be randomly drawn into 10 groups of 15 people each, with a facilitator ensuring that speaking rights are equally distributed and everyone is given a chance to be heard. Each group will discuss the topics they consider important. Halfway through, these groups will be dissolved, and new randomly selected groups will be reconfigured to allow everyone to meet and deliberate with more assembly members. At the end of the session, each group will present its two topics to the general assembly, and the general assembly will deliberate on which two topics to choose. To organize the proceedings, the groups will also choose a representative (using the method of their choice), and the 10-person committee will then select a chairperson (using the method of their choice).

Immediately after the first meeting, this 10-person governance committee will meet to decide what information on these topics should be provided to all members to aid the assembly's deliberation. They will also decide who the appropriate experts are to deliver this information.

During the month following the first meeting, the assembly members will receive all the requested information, either in written form or online presentations. Finally, they will meet for a weekend and deliberate. The goal of the assembly is to develop a voting guideline to be implemented by the fund, not unlike the corporate governance guidelines that each fund today prepares, but chosen by the investor assembly, not hired experts such as Institutional Shareholder Service. For example, the first investor assembly could recommend that the fund should support resolutions that call on companies to obtain shareholder approval for lobbying campaigns. Later investor assemblies will deliberate on voting guidelines in response to the specific lobbying campaigns that have emerged from the previous recommendation. For instance, oil companies may ask permission to carry out lobbying against carbon taxes. The investor assembly will hear expert advice on both sides of this issue and then decide whether such lobbying is a good idea or not.

At least initially, these assemblies should be conceived of as consulting bodies. The fund will retain the right to overrule the recommendation, but it must give very detailed explanations of why it chose to do so. Early on, investor assemblies will focus on voting guidelines that address popular topics in corporate ballots. Yet over time, voting guidelines will motivate corporate political activists to introduce proposals that are targeted to the voting guidelines.[44] Nothing prevents investor assemblies from asking their fund to introduce proposals themselves.

V. DESIRABLE PROPERTIES

Several criticisms raised against citizen assemblies can also be raised against investor assemblies. Before discussing those, we want to benchmark investor assemblies against our goal of a politically legitimate and politically neutral mechanism that is legally and economically feasible in a world affected by rational apathy.

A. Political Legitimacy, internal and external

Since the founding of America 250 years ago, governance in the hands of elected representatives has stood out as the most politically legitimate mechanism for making collective decisions. In recent years, however, faced with a "crisis of democracy," governments worldwide started experimenting with the oldest form of democracy: sortition. In Aristotle's words: "It is accepted

[44] Roberto Tallarita, *Stockholder Politics*, HASTINGS L.J., 1697, (2021), https://papers.ssrn.com/abstract=3798101..

as democratic when public offices are allocated by lot; and as oligarchic when they are filled by election." [45]

Randomly drawn assemblies thus arguably have their own distinct normative legitimacy compared to elected ones, let alone appointed managers. Additionally, recent scholarship suggests that on one dimension at least, output legitimacy, the performance of randomly selected assemblies, which tap a form of collective wisdom, is likely to be higher than that of either elected assemblies or appointed managers.[46] We think this should be reassuring to reformers worried about the consequences of introducing this new form of investor representation within companies.

When it comes to external legitimacy, the legitimacy vis-à-vis the larger public and the political officials that represent its interests, we also think that a form of investor representation that takes into account the preferences of actual investors, as opposed to those of managers, should provide a form of input legitimacy. There is no guarantee, however, that the decisions produced by an investor assembly will be fully aligned with the common good (the relevant output legitimacy in this case). In order for this alignment to be assured, the external normative legitimacy of investor assemblies will have to be reinforced (perhaps through regulation) via throughput legitimacy, namely efforts to make the decision process transparent and accountable to public authorities.

VI. POLITICAL NEUTRALITY

We believe investor assemblies are a more legitimate way to make the inevitably political and moral decisions that are currently made by managers in investment funds. However, we also think that a great advantage of this method is that it is politically neutral. In a divided political environment, a proposal like ours risks being judged by whether it will enhance the Republican or Democratic agenda, not on its intrinsic merits. Liberals tend to believe that humans are more prosocial, while Conservatives tend to believe that they are more selfish. Thus, either side will think its side will prevail. On a priori grounds, we are unable to determine the likely winner. We regard this as a plus since each political side will fight tooth and nail to prevent the introduction of a mechanism that will see its side lose. Political neutrality is a big advantage in any situation. It

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[45] Aristotle, *Politics IV*.

[46] Josiah Ober, *Democracy and Knowledge: Innovation and Learning in Classical Athens* (2010); Hélène Landemore, *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many* (First paperback printing ed. 2017).

is particularly so when political neutrality comes with political legitimacy, as is the case for an investor assembly.

A. Legal Feasibility

There is a fair amount of ambiguity on what is feasible under current legislation. Under Delaware Law, corporate directors have a fiduciary duty "to the corporation and its stockholders."[47] Yet, the business judgment rule allows directors a great deal of discretion in interpreting the interests of the corporation and its stockholders.

In Shlensky v. Wrigley, the Appellate Court of Illinois refused to consider a suit against a director's decision in the absence of "fraud, illegality, or conflict of interest in making that decision."[48] Without those conditions, shareholders cannot easily sue directors for failure to maximize shareholder value, let alone failures to represent their (moral and political) values at the expense of (financial) value.

Justice Alito arrived at a similar conclusion in the 2014 Hobby Lobby case, regarding whether the Religious Freedom Restoration Act applies to corporations. Writing for the majority opinion, Alito states, "For-profit corporations, with ownership approval, support a wide variety of charitable causes, and it is not at all uncommon for such corporations to further humanitarian and other altruistic objectives. … Hobby Lobby and Mardel stores close on Sundays, even though the Greens calculate that they lose millions in sales annually by doing so."[49] So Justice Alito recognizes the right of a majority shareholder to choose values over value.

The issue is more controversial regarding the casting of votes by an asset manager fiduciary in favor of a proposition like closing stores on Sunday. The 1940 Investment Companies Act establishes that "...investment companies are organized, operated, or managed in the interest of holders of securities." Under the authority of the 1940 Act, in 2003, the SEC clarified the need for adequate procedures to ensure votes were cast in clients' best interest. As recently as 2019, the SEC reiterated that "to satisfy its fiduciary duty in making any voting determination, the investment adviser must make the determination in the best interest of the client and must not place the investment adviser's own interests ahead of the interests of the client." [50] Nowhere does the

[47] Guth v. Loft, Inc., 5 A.2d 503, at 510 (Del. 1939)
[48] Shlensky v. Wrigley, 237 N.E.2d 776, at 780 (Ill. App. 1968)
[49] Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, at 717 (2014)
[50] SECURITES AND EXCHANGE COMMISSION, COMMISSION GUIDANCE REGARDING PROXY VOTING RESPONSIBILITIES OF INVESTMENT ADVISERS (2019).

SEC restrict the best interest of the client to a mere financial interest. Thus, a client can instruct a mutual fund to "vote for proposals calling for tobacco companies to cease the production of tobacco products" on their behalf, as the Catholic Faith Guideline of the Institutional Shareholder Service does, without violating any rule.[51]

The question is more problematic for investments made under a retirement plan subject to the 1974 Employee Retirement Income Security Act (ERISA). ERISA section 404(a)(1) states that the assets of a pension plan "shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries." As noted earlier, in 2014, the Supreme Court ruled that "benefits" to be pursued by ERISA fiduciaries as their "exclusive purpose" do not include "nonpecuniary benefits".[52] Thus, it can be debated whether a 401(k) holder of a mutual fund can ask the fund to cast their vote according to the ISS Catholic Faith guideline, let alone according to the deliberation of an investor assembly.

However, two prominent legal scholars, Jill Fisch and Jeff Schwartz, argue that fund managers have a fiduciary duty to seek input on investor values. They suggest that beneficiary preferences should be transformed into votes with the help of professional managers.[53] Legal reasons thus do not prohibit taking into account investors' preferences over values, including when these run against their strict financial interest. For the above reasons, we think this taking into account is best done through an investor assembly.

B. Economic Feasibility

Between its ETF and mutual fund, Vanguard has $1.2 trillion indexed to the S&P 500. The average expense ratio is four bps. Thus, the revenues generated by these two funds are $480 million a year. We have drafted a budget available on request for a two-weekend investor assembly of 150 people, inclusive of travelling, lodging, and a $150 per diem stipend. The total is approximately $1M. Thus, it represents one seven-thousandth of a basis point of additional cost: too small to register even in the fierce competition for low-cost funds.

[51] Institutional Shareholder Services, *United States Catholic Faith-Based Proxy Voting Guidelines: 2025 Policy Recommendations*, 89, (2025), https://www.issgovernance.com/file/policy/active/specialty/Catholic-US-Voting-Guidelines.pdf?v=2025.1.
[52] Fifth Third Bancorp v. Dudenhoeffer, 573 U.S. 409, 412 (2014).
[53] Fisch and Schwartz, *supra* n. 12, at 1, 2023.

BlackRock discloses that it employs roughly 70 people to decide on the corporate proxies of the $ 4.6 trillion worth of shares of indexed funds.[54] At a cost of $150,000 per person (the actual cost might be much higher), this team of people costs $10.5 M. We are not suggesting that all these people will become redundant, but the number would certainly be reduced. Thus, investor assemblies are very competitive even from a cost point of view, not to mention the favorable advertising that funds adopting this democratic procedure will receive.

4.2 The Pass-Through Voting Alternative

Since 2021, growing concerns about the outsized influence of the "Big Three" index managers have spurred them to introduce "pass-through" voting, where asset managers enable fund investors to direct how the votes associated with their fund shares are cast.[55] BlackRock pioneered pass-through voting with a program called Voting Choice, which was directed at institutional investors. By the end of 2023, $2.6 trillion of its assets under management were eligible for Voting Choice, and almost $600 billion were enrolled in Voting Choice.[56] In 2024, BlackRock extended Voting Choice to some retail investors, restricting their choices to six voting policies (curated from ISS and Glass Lewis guidelines, plus BlackRock's own policy).[57] BlackRock has not reported what fraction of retail investors have taken advantage of this program.

In February 2023, Vanguard launched "Investor Choice," which allows some of its retail investors to choose among a limited set of voting guidelines.[58] As of the end of 2024, Vanguard reported only 40,000 participants, out of the millions of investors who had access to the program.[59]

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[54] Angel Au-Yeung, *How a Small Group of BlackRock Analysts Speaks for Millions of Investors*, FIN. NEWS 4 (2022).
[55] Emmanuel Tamrat, *Governance Guide: Proxy Voting*, Council of Institutional Investors 28 (2024).
[56] Sodali & Co - Thomas P. Skulski, *Institutional Pass-Through Voting*, LEXOLOGY (Mar. 18, 2024), https://www.lexology.com/library/detail.aspx?g=caaec1da-20a9-4fe6-be7a-21b0d2620c98.
[57] Joud Abdel Majeid & Rachel Aguirre, *BlackRock Has Expanded Proxy Voting Choice to Millions of U.S. Retail Shareholder Accounts*, HARV. L. SCH. F. ON CORP. GOVERNANCE (2024), https://corpgov.law.harvard.edu/2024/04/01/blackrock-has-expanded-proxy-voting-choice-to-millions-of-u-s-retail-shareholder-accounts/.
[58] Vanguard, *Vanguard Proxy Voting Choice Pilot*, VANGUARD CORP. (Feb. 1, 2023), https://corporate.vanguard.com/content/corporatesite/us/en/corp/who-we-are/pressroom/press-release-vanguard-launches-proxy-voting-choice-pilot-020123.html.
[59] Lamar Johnson, *Vanguard to Add Four More Funds to Investor Proxy Choice Program | ESG Dive*, ESGDive (June 3, 2025), https://www.esgdive.com/news/vanguard-adds-four-more-funds-to-investor-proxy-choice-program/749690/.

Similarly, in 2022, State Street launched a program dubbed "Proxy Voting Choice," first offered to institutional clients in separately managed accounts and only later to some retail investors, where investors can choose among a predetermined set of guidelines.[60] State Street has not disclosed what fraction of retail investors have taken advantage of this program.

In sum, the activity by all three largest IIs indicates their awareness that their concentrated power is not sustainable. Pass-through voting works well for large institutional investors but, judging from the available numbers, has so far failed to provide a viable alternative for small retail investors. This is consistent with Downs's rational apathy argument: small investors, knowing their decisions will almost surely have no impact, may not even bother to pick a guideline.[61] Since funds retain the voting decision for all the investors who do not opt for the pass-through option, the problem of concentrated power is only attenuated, but not eliminated.

In addition, pass-through voting does not solve the informational problem. Investors make decisions without the proper amount of information. The beauty of investor assemblies is that they provide the opportunity for a superior form of information aggregation via deliberation.

Last but not least, in a pass-through voting environment, the agenda-setting power remains in the hands of the asset managers, while in investor assemblies, it is transferred to the investors themselves. A well-known political adage states that whoever sets the agenda can determine the voting outcome. Letting investors themselves decide and formulate, through expert-supported deliberation, the menu of options they can then vote on is key to a real return of power from asset managers to investors themselves.

VII. CRITICISMS

A. Need for Expertise

One of the main criticisms of citizen assemblies, which is likely to translate to investor assemblies, is that randomly drawn people do not have the expertise to make competent decisions. This criticism assumes that political competence to decide about value-values trade-offs is akin to a form of expertise. Political democracy, however, is founded on the postulate that such trade-offs are a matter of common sense, which can be informed by expertise, but are not inherently a matter

[60] *Proxy Voting Choice | State Street*, State Street Investment Management, https://www.ssga.com/us/en/about-us/what-we-do/asset-stewardship/proxy-voting-choice (last visited July 30, 2025).

[61] The problem may be exacerbated by the fact that the guidelines offered so far are generic and may not appeal to investors. Personalized guidelines (as offered by iconik) may improve matters.

of expertise. Assuming the opposite is a form of political elitism that runs against the fundamental premise of political equality. This fundamental premise, in the United States, translates into the Constitution's recognition of universal suffrage and the allocation to randomly drawn sets of individuals, called juries, the right to incarcerate people and even to nullify the law.

Nobody is asking an assembly of randomly drawn persons to perform brain surgery or decide whether a hub-and-spoke system is better than a point-to-point one for a specific airline. These are technical decisions that can best be addressed by experts. Investor assemblies would also not be asked to calculate the optimal hedging strategy against interest rate risk. Instead, they would be asked whether they are willing to accept a slightly lower return in order to treat slaughtered animals in a more humane way. This decision is not a technical decision; it is a value-values decision. Financial experts can opine on the economic cost of treating animals humanely. Meanwhile, welfare animal specialists and scientists can opine on how much animals have feelings or how much pain they are likely to experience when slaughtered in different ways. Yet, the final trade-off is a moral decision that nobody is better qualified to make than the owner of the shares (who also suffers the economic consequences of these decisions).

A misconception about citizen assemblies is that they would not involve expert advice at all. Far from it, almost all such processes to date have relied heavily on experts, with the caveat that they should be put "on tap, and not on top." In the French Climate Convention, economists came to plead for the efficiency of a carbon tax (also President Macron's favored solution). The citizens found it too regressive and socially unjust and rejected it at the national level. But they listened to experts on many other dimensions, including the need to launch a massive housing renovation plan, reduce meat consumption, and take measures to increase city density and resist urban sprawl.

In an ideal world (where there are no costs of getting informed), every investor would be able to decide on their ideal trade-off, and a vote would aggregate their opinions. Unfortunately, we do not live in an ideal world, and it would be prohibitively costly for each individual to undergo this process. Statistically, investor assemblies replicate the ideal outcome at a small fraction of the cost.

B. Risk of Capture

A second criticism often raised against citizen assemblies (and applicable to investor assemblies too) is the risk of capture by vested interests (or even outright corruption). Citizen assemblies represent a unique combination of power (if citizen assemblies are decisive on some important issue, each member is very powerful) and a lack of electoral accountability.[62] This combination renders them particularly vulnerable to capture by powerful actors.

This is a very serious issue, but it implicitly compares citizen assemblies with an idealized world where no capture exists, or at least a world where elections provide sufficient accountability that elected representatives are not captured.[63] In the case of investment funds, accountability mechanisms are even weaker than in political democracies because investors are less engaged, and the ability to punish a fund for its voting behavior by choosing an alternative fund family is limited by the choice of investable funds made by the 401k plan's corporate sponsor. As a result, the gap between voters' preferences and representatives' votes is even wider.[64]

A better way to reframe the same question is to ask: To what extent are investor assemblies more prone to capture than existing mechanisms of vote determination (for example, proxy advisors)? As an example, consulting contracts with a firm influence proxy advisors' recommendations vis-à-vis that firm.[65]

There are theoretical reasons why capture is more difficult in citizen or investor assemblies, at least in countries where outright corruption (payment of money for favors) is relatively rare. The first reason is that capture relies heavily on the existence of assembly members with a particular kind of expertise who can then plausibly be employed in a revolving-door manner by powerful interests seeking to buy their votes. Citizen participants in an assembly have no easily identifiable expertise to sell. And in the case of the occasional banker, lawyer, or otherwise relevant professional in the mix (as will happen just by virtue of chance), they can easily be restricted from being employed by firms with a great interest in the issue at stake. The fact that elected assemblies have not successfully created firewalls between the public and the private sectors does not mean the same needs to be true of citizen or investor assemblies.

The second reason is that capture is particularly likely when an elected office is part of a career. To overcome the cost of running for office, with the associated risk of failure, the politician's

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[62] Dimitri Landa & Ryan Pevnick, *Is Random Selection a Cure for the Ills of Electoral Representation?*, 29 J POLITICAL PHILOSOPHY 46 (2021).
[63] *See* Martin Gilens & Benjamin I. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12 Persp on Pol 564 (2014). for some serious doubts on whether this is the case in our political democracy.
[64] *See* B. Pablo Montagnes, Zachary Peskowitz & Suhas A. Sridharan, *How Well Do Voting Choice Policies Represent Public and Investor Preferences?*, SSRN ELECTRONIC JOURNAL 62 (2024).
[65] Tao Li, *Outsourcing Corporate Governance: Conflicts of Interest Within the Proxy Advisory Industry*, 64 MANAGEMENT SCIENCE 2951 (2018).

career must provide a large payoff in case of victory, either in the form of power or in the form of access to remunerative future jobs in the private sector. Only people with a predisposition and an interest in those jobs will be running for office, maximizing the risk of capture. This problem does not arise with citizen or investor assemblies.

The evidence on juries also sheds light on this issue, since randomly drawn juries are small citizen assemblies, albeit with the distinguishing feature that participation is mandatory and in criminal trials their decisions should be unanimous. Countries with a jury system experience less corruption than countries without one, and countries employing jury trials have a more effective criminal justice system.[66]

C. Self-Selection

The weakest point of citizen and investor assemblies is self-selection. One form of self-selection is based on the extrinsic motivation to participate. On the one hand, if reimbursement and compensation are insufficient to cover out-of-pocket costs, poorer people will not be able to participate. On the other hand, people with a very high opportunity cost will not be fully compensated for the time they dedicate to the assembly, and thus, they are unlikely to participate. The first selection problem can be eliminated by paying people sufficiently and ensuring their expenses are paid in advance, avoiding any cash crunch. The attrition of wealthy people cannot be avoided if we want to maintain equal pay and not break the budget. Yet, wealthy people are overrepresented in a one-share one-vote lottery. Thus, it is likely that their point of view is adequately represented. Hence, this bias will partially or fully compensate for the other.

The other form of selection is based on intrinsic motivations. Environmentalists will be highly motivated to participate in an investor assembly dedicated to setting environmental guidelines, while in assemblies devoted to animal welfare, animal lovers will. To overcome this problem, the agenda of investor assemblies should not be established in advance: the assembly itself has to determine the agenda after the participants are selected.

The overall effect of these biases is hard to assess theoretically, but it can easily be addressed empirically. Unlike in citizen assemblies, in the case of investor ones, it is relatively easy for the organizers to survey the entire population before the random extraction.[67] Given this,

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[66] Stefan Voigt, *The Effects of Lay Participation in Courts — A Cross-Country Analysis*, 25 European Journal of Political Economy 327 (2009). Chen, et al., *supra* n.38 at 48 2018.

[67] A mutual fund has the phone numbers and the emails of all its cleints. Thus, it is easier for a mutual fund to survey its clients than for the government to survey its citizens.

the sample can be stratified to match the whole population among several dimensions, including the initial priors on some key issues. The criteria used in the stratified randomization and the final difference between the selected sample and the entire population should be published to enhance trust in the procedure.

D. Governance

There is a major difference between citizen (or investor) assemblies and deliberative polls of the kind pioneered by Fishkin.[68] Deliberative polls are primarily scientific tools designed to measure opinion change in a deliberative body of ordinary citizens, as compared to a carefully constructed control group. Citizen assemblies, by contrast, are political actors, meant to generate impactful policy recommendations. In both cases, the questions or agenda put to the citizens is set by the entity commissioning the process. But there is a lot more leeway for participants to re-shape or expand the agenda, and even the process, in a citizen assembly, which is often co-governed by citizens themselves (as opposed to entirely managed from the outside by experts in the case of deliberative polls). Since our goal is to empower investors, not just use them as a focus group, we prefer the citizen assembly approach with the additional feature that the investor assembly will itself choose the agenda.

One key design feature in that respect is the question of the investor assembly's governance. The assembly's governance is essential not just for the agenda setting, but also for selecting the information provided and who provides it. The timing of the meetings of our investor assemblies is designed to enable these assemblies to control the process, making their own choices regarding the allocation of time and the selection of experts.

E. Precatory Votes

Another risk is that these investor assemblies become totally ineffective, a side show without any bite. After all, the shareholder proposals we discussed are all precatory, and firms can choose to ignore them. While this risk exists, we do not think it is very severe. We have seen that when IIs announce a policy (as in the case of diversity on boards), companies tend to comply. The reason is simple: IIs can retaliate by withholding their votes for corporate directors. Thus, they carry a very strong implicit threat. They do not even need to formalize this threat with a vote; just the

[68] James S. Fishkin, Democracy When the People Are Thinking: Revitalizing Our Politics through Public Deliberation (First editon ed. 2018).

announcement is sufficient. The same can happen for investor assemblies if they represent enough of the IIs' votes.

So far, we have limited the investor assemblies to drafting the proxy guidelines for the IIs. Nothing prevents them, however, from drafting the guidelines for all the IIs' engagement strategies. At the beginning, we expect them to limit themselves to the proxy guidelines, but if these guidelines are ineffective, we are confident that they will escalate to different forms of engagement.

VIII. EXISTING EVIDENCE

A. Juries

Cross-national data show that perceived corruption is lower in countries with jury trials.[69] Yet, too many factors can affect this comparison. More reliable studies are experimental or quasi-experimental. Harry Kalven and Hans Zeisel conducted the classic study of judge-jury agreement. They found that jurors' and judges' decisions agree 75% of the time.[70] More recent studies seem to confirm this result.[71] Judges are just as susceptible as laypeople to three of the five most common behavioral biases, while they are slightly less affected by the remaining two.[72]

The advantage of judges is that they are more educated and have accumulated some field-specific skills. The advantage of juries is twofold. The deliberation process tends to smooth out individual idiosyncrasies, and collective intelligence can allow a jury to process a greater proportion of the evidence than a single judge.

B. Other citizen assemblies

A report by the Organization for Economic Cooperation and Development (OECD), subtitled "Catching the Deliberative Wave," documented 733 minipublics (as of 2023) across thirty-four countries.[73] Among them, at least a dozen were of sufficient duration and scope to qualify as full-on citizen assemblies at the national level. Among the most famous and well-studied of these are

[69] Stan Hok-Wui Wong, *Juries, Judges, and Corruption: A Cross-National Analysis*, 9 PUBLIC INTEGRITY 133 (2007).
[70] Harry Kalven & Hans Zeisel*, The American Jury* (1966).
[71] Brian H Bornstein, *Judges VS Juries*, 43 AM. JUDGES ASS'N 4 (2006).
[72] Chris P. Guthrie, Jeffrey J. Rachlinski & Andrew J. Wistrich, *Inside the Judicial Mind*, 86 SSRN JOURNAL at 777 (2001).
[73] OECD, Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave (2020), https://www.oecd.org/en/publications/innovative-citizen-participation-and-new-democratic-institutions_339306da-en.html.

the 2004 British Columbia Citizens' Assembly in Candada, which gathered 160 randomly selected citizens to deliberate about electoral reform; the Irish Citizens' Assemblies on marriage equality, abortion, and gender equality, which gathered around 100 citizens each; and the French Citizens' Convention on Climate (150 citizens) and on End-of-Life Issues (184). In the United States, examples are fewer and mostly at the local level thus far.

C. Early corporate examples

The idea of citizen assemblies is not only gaining momentum in the political sphere but is also starting to penetrate the corporate one. In fall 2022, after some initial trial phases at the national level, Meta gathered what they call a "community forum," involving six thousand randomly selected people from its global user base, to deliberate online on how to regulate cyberbullying in the Metaverse. In October 2023, Meta followed up with another community forum of 1545 online participants recruited to represent the general public in four countries (Brazil, Germany, Spain, and the United States). This forum discussed and then voted on what principles should guide generative AI's engagement with users.

In early 2024, a Dutch pension fund organized an investor assembly to discuss responsible investments.[74] 55 investors from the pension fund were randomly drawn and brought to the city of Utrecht for three different days, during which they approved 49 proposals for responsible investment to submit to the board. The role of the Dutch assembly was advisory.

Finally, a coalition of seven Norwegian non-profits recently organised a citizen assembly of 56 Norwegians, called the *Framtidspanelet*, or Future Assembly. These ordinary citizens met from January to April 2025 to deliberate about the use of the Oil Fund (aka the Norwegian Government Pension Fund Global or GPFG), whose income represents today 20% of the government budget. The panel's report presented to the Norwegian Parliament in May 2025 contained 19 recommendations balancing domestic needs (such as education, defense, research, and innovation) and global responsibilities toward present and future generetations (in supporting global work on public health, medical research and the climate crisis).[75]

[74] Deelnemersdialoog, Pensioenfonds Detailhandel (2024), https://pensioenfondsdetailhandel.nl/content/publications/Deelnemersdialoog-English.pdf.

[75] DemocracyNext & Hugh Pope, *Norway's Citizens Want to Share Their Fortune with Future Generations and the World*, DEMOCRACY NEXT'S NEWSLETTER (June 12, 2025), https://demnext.substack.com/p/norways-citizens-want-to-share-their.

IX. CONCLUSION

The extreme concentration of corporate voting power in the hands of three asset managers is forcing innovation in the proxy voting system. In response to this pressure, the Big Three have adopted some form of pass-through voting. While pass-through voting mitigates the concentration problem, it does not eliminate it, because it does not resolve the rational apathy problem small investors face. It also leaves what is included in the guidelines squarely in the hands of the same three asset managers.

To overcome the limitations of pass-through voting, we propose an alternative: A randomly chosen group of investors should be gathered together in the form of an investor assembly to advise institutional investors on how they should vote on shareholder proposals and more generally engage with companies; investors can opt out of the assembly and its voting recommendations but they have to do so explicitly. We have described how this procedure can deliver the outcome that investors would arguably have converged on had they had all the information needed and the opportunity to deliberate among themselves.

We present this solution as a choice of the IIs in response to the threat of legislation forcing a breakup. Yet, it can also be interpreted as a regulatory mandate to address the excessive concentration of voting power. Finally, it is a move in the direction of investor democracy, a desirable goal in itself.