

Kris Turner:

Welcome back to Wisconsin Law in Action from the University of Wisconsin Law School. I'm your host, Kris Turner. Today we have the opportunity to hear from assistant professor and John W. Rowe junior faculty fellow Nathan Atkinson. Professor Atkinson is an increasingly prolific scholar and highly regarded classroom instructor. His research focuses on corporate governance, corporate misconduct, contract theory, and voting procedures among a variety of other legal topics. Professor Atkinson, thank you so much for joining the podcast today.

Nate Atkinson:

Thanks so much, Kris, for having me.

Kris Turner:

Of course, of course. Your scholarship, it focuses on voting systems, corporate governance, and like I said, just so many other areas, and I want to hear about all of it. So I hope you're ready to talk for about 10 or 12 hours. I think the listeners will appreciate every single minute of it. I'll cut it down, I promise actually. You said before that they seem, corporate governance and voting systems seem like two different areas, but they're really not. They're both about how we design the rules of the game. How did you come to be interested in these two fields and their shared connections, and how has your education and perspective shaped the questions that you pursue in each of these fields?

Nate Atkinson:

Yeah, thanks so much, Kris. I think that's right. I think that at the fundamental level, both corporate governance and the governance of our country, of electoral procedures, they come down to some of the core... The core questions are the same, right? How do we take a number of individuals, whether they're voters or residents or citizens, whatever we have in the public context, and aggregate their preferences, either voting on measures, voting on elected officials, how do we translate what all of our individual preferences are into some action? And that's the question we face in the public sphere. In the corporate sphere, we have fundamentally corporations are little mini democracies. Every person who buys a share in a corporation, in a typical corporation at least, gets to have some voting rights over the firm.

And so we now are aggregating people's preferences or their information in a corporation. Now, the goals, of course, are very different, right? In public elections, we're thinking about things like representation, equality, all these notions of democracy. In the corporate context, people are much more focused on shareholder wealth or increasing corporate profits. Of course, there's other goals as well. And so we're trying to achieve different ends, but in both cases, we're trying to basically take a number of dispersed individuals and bring them together to create a single course of action. And so I think what's common across these, other than the voting, is that by having this really dispersed nature of voters, whether they're, again, individuals or shareholders, we now need to think about them in this very abstract way.

And actually, it's very mathematical, right? How do we aggregate this large number of people? And so I think what draws me to both these areas is, first of all, designing these rules of the game, they're both hugely important areas, right? How the function of our democracy, but also corporations have created so much wealth for us, our living standards. There's no way we would live in anything like the modern world if we didn't have these robust corporations and protections for investors and things like this. And so trying to think about how do we translate information that people have and create value from that.

Kris Turner:

The way that they can work to different ends, but just work in a very similar way is fascinating to me. When you set them side by side, they both involve choices about how to structure the power. Who gets a voice, like you were saying, how that voice is aggregated, what outcomes we value with those choices. What parallels do you particularly see in the representativeness in elections and accountability in corporate governance?

Nate Atkinson:

Yeah, so when we think about a normal election, let's say for state representative, for governor, we have the idea of one person, one vote, right? Each of us has an equal say in who our elected representatives are. And of course we know there's certain frictions around this. We have gerrymandering, we have states and electoral college, which might mean that voters in certain states have more power or more ability to affect the elections than others. In corporations, the default is one share, one vote. And so now we're very explicitly not giving all people equal votes, but instead we're giving all shares equal votes with the idea being that you, as you buy more shares in a corporation, you have more interest in the firm, maybe you have more incentives now to actually get information and try to affect the firm.

And so we have these very, again, different metrics about who gets voice and then also how do we think about aggregating those. And so in the political context, it's much more about how do we aggregate our preferences, right? You might want one sort of thing, I might want another. How do we think about something that's going to be the true representation of what all people think when we have maybe this left-right spectrum or these more complicated preferences? In corporations, we face a different set of trade-offs, right? Oftentimes it's about information. Who actually is learning about these corporations so that the price signal of the markets works? Oftentimes we're concerned about different things. Are there certain people in a corporation that have too much voting power? Are they going to try to take money out of the firm for their own benefit?

And so again, we have these very different ways of looking at them, but at the core, we can think about how do we want to set the rules of the game, right? What are we trying to achieve? And once we come up with some metric, we can then start analyzing. And that's really my research focus is I'm trained as an economist, and so I try to look at the world by first starting with the question, what are we actually trying to maximize here? In our public democracy, what are we actually trying to achieve? And to do that, I like to approach the question of saying, well, we need to have some concept of representativeness. We need to be able to think in a simple case, I should be able to tell you some set of voters, and you should be able to tell me, all right, what is the correct outcome in this case?

Now, of course, that's a simplification, but by making the simplification, we're going to hopefully learn more and more about the world. Similarly, in a corporation, we should be able to now say, here is the economic context. Here are the different shareholders. What are their incentives to invest in the firm, to learn more, to help create and promote growth? And so the concepts of representativeness are very different across these. But again, the goal here in both cases is to somehow choose a system which is going to be best for those involved, whether what is best is creating good policies, right? So we want to have good democracy that we can take into account everyone's preferences and information or to increase the value of the corporation and to create more good for the economy.

Kris Turner:

Everyone's preference and information is something that seems to be becoming increasingly difficult. Here we are in June of 2026 having a discussion with elections forthcoming. So let's just dive into that a little bit more. So you have, as you said, crunched data on this tied to ranked choice voting over the past

few years. Can you explain what this ranked choice voting is, where it's practiced, and why people are either for it or against it?

Nate Atkinson:

When we vote in an election, we use a simple system which should be properly called the plurality system. So whoever gets the most first place votes wins the election. So you can go into the ballot booth and you can vote for your preferred candidate. And we look at who has the most votes at the end of the day, and we elect that person. Now, what this does is it helps us capture who voters' first choice preference is, but it throws away a lot of information, right? If we only have two candidates, it's very simple to say, "All right, do you want to vote for the Democrat or the Republican?" What if we have a third candidate, maybe a centrist candidate, maybe a left-wing candidate to the left of the Democrat, maybe a right-wing candidate to the right of the Republican? How do we now think about people when they're voting amongst not just two candidates, but more than two?

Ranked choice voting is really a whole system of procedures where instead of just voting for one candidate, you're going to rank them first, second, and third in order of preference. The most well-known is really what should be called instant runoff voting. And what instant runoff voting does is it says, "We're going to look at everyone's first place votes, and then we're going to look at the candidate who has the fewest first place votes. We're going to eliminate them from the election. And then anyone who voted for that candidate, we're going to reallocate their votes towards their second most preferred candidate. And we'll continue this procedure again and again until we only have one candidate remaining." And so this election procedure really, I think, took off following the famous Bush-Gore-Nader election of 2000 in Florida where Nader was widely seen as a spoiler on the election.

Bush won by only a few hundred votes over Gore, but Ralph Nader had tens of thousands of votes, probably, which would've gone to Gore as second place votes. And the concern we have, and this is not in this case, this is one where Nader acted as what we call a spoiler. He took votes potentially away from Gore given the election of Bush. It is not a straightforward political issue. There's plenty of examples also where there's spoilers on the right taking away candidate votes from the Republicans. And so people looked to find an electoral system that maybe could deal with the spoiler effect, right? When we have a candidate who's on the wings like this, who doesn't really have a viable chance of winning the election, there was no case that Ralph Nader could actually have won the election how can we effectively neutralize their impact and really focus on the main two candidates?

And so instant runoff voting kind of came into vogue because it would do precisely this. It would say, "Nader, you're going to be eliminated in the first round of the election, but anyone who voted for you, they can now indicate who their second most preferred candidate is." Those votes would transfer, and it would come down again to this head-to-head contest between the two main candidates. To the extent that this is the problem we're dealing with, the instant runoff voting system works quite well. And so it is now the way that elections are administered in Alaska and Maine. A number of other states voted on this in 2024. Washington, D.C. has also implemented it. However, since 2000, we've seen a lot of changes to our politics that maybe should call into question whether this is the correct cure for what's happening now.

If your fundamental concern is that we have two candidates who are broadly representative, but you might have these fringe candidates who are going to take away from their support, then instant runoff voting does the job quite well. But I think what we've seen really in the last two decades is a very different problem, right? We instead have this kind of winnowing out of the political center where Democrats are moving leftwards, Republicans are moving rightwards, and oftentimes there's not too much representation what we call the center. And so every election is really seen as this existential

threat between Democrats and Republicans, this vilification of the opposing party. And voters now go into the ballot box and they now have to choose, "Do I vote for this Democrat even though I would prefer someone else, but I know that only the Democrat or Republican are viable or vice versa voting for Republican?"

And so what we should be able to ask ourselves is what are we actually trying to achieve in our electoral system? Is it the case that we want simply the election to be between the Democrats and the Republican? And if so, instant runoff voting is probably the correct method. But if instead we would like a system that tries to promote some sort of compromise between these very diffused groups, we can think about different electoral systems that might do it a little bit better. And so I've been doing a lot of research and also advocacy work around thinking about different forms of election reform, either ranked forms or not. And so one is I sit on the advisory board of a nonprofit called Better Choices for Democracy, and we are pushing for what is called majority voting. And what majority voting is is you can implement it in a ranked procedure, but also you can implement in a head-to-head procedure.

And what that would do is let's consider an election with three different candidates in it, all right? So we're going to just say we have a left candidate, we have a right candidate, and we have a center candidate. On your ballot, you now have three different choices. It's going to ask you, do you prefer the left candidate or the center candidate? And you check the box or fill in your bubble. Then it asks you a second one. Do you prefer the left candidate or the right candidate? And then the third one is, do you prefer the center candidate or the right candidate? Now what's this has done is it's now given us head-to-head matchups between these three different candidates. And what we can do now is ask the very simple question, is one of these candidates majority preferred to the other two candidates?

And if so, we think that's really the most fundamental notion of representativeness and of majority rule. But instead of only looking at people's top choice, this allows us to actually look beyond that. And so in a really polarized country, most people are going to probably tend to have a view, they prefer the left candidate or the right candidate. And in a plurality election or standard election, there's no chance for someone, kind of more of a bridging or more representative candidate to enter and win the election. And so changes like this can hopefully allow truly the most representative candidates to contest and win the election. That's where a lot of my research has been and also my public outreach on trying to think about how we can bring these better representative electoral systems into the game.

Kris Turner:

You had mentioned one aspect of this was what will we like out of our electoral systems? And that seems like a very valid and difficult question to unearth, especially in times like these where the attitudes are just so widely dispersed across a lot of different spectrums. Related to that, I'm just curious how the attitude has changed over time, particularly with ranked choice voting since 2000, since the Nader-Bush-Gore election. And if it has changed or evolved at all, why has it done so?

Nate Atkinson:

Yeah, so I think that this instant runoff voting, which again has been used in Maine and Alaska, it was untested. I mean, it's used in some other countries, but in the United States they've been untested. The very first test case for it in Alaska was a special election for Alaska House seat. And the long-serving representative from Alaska died and there was a special election. And this is special election now, Alaska has a system where there'll be four candidates, but because one of the candidates dropped out, there's three candidates in the general election. So there was Mary Peltola, a Democrat, Sarah Palin, a Republican, former vice presidential candidate, and then Nick Begich, also a Republican who's generally perceived to be a little bit more to the center, a little bit more moderate than Sarah Palin.

The election happened where in the first round of the election, Nick Begich received the fewest first place votes, so he was eliminated and his votes were then transferred to Peltola and Palin. Peltola came out ahead winning the election. This got a lot of news. Alaska's a purple state, but it definitely leans a little bit more Republican, and a Democrat won the election. And this was the first test case for instant runoff voting in Alaska. It got a lot of news. With a co-author, with co-authors, we actually got all of the anonymized voting records in Alaska. So we know how every single person voted. We don't know who you are, but we can see your ballot. And we actually crunched the numbers and we looked at these head-to-head comparisons because once you have a ranked ballot, I can see now that your ballot says Peltola, then Begich, then Palin, right?

We can see that you prefer Peltola to Begich and Begich to Palin. And that allows us then to look at these head-to-head comparisons. And what we saw is actually when you look at the head-to-head comparisons, Nick Begich was actually preferred by a majority of the voters to both Sarah Palin and Mary Peltola. So Peltola won fair and square under Alaska's system of instant runoff voting. But if we actually look at people's preferences, they preferred Nick Begich head-to-head against each of the other two candidates. And so I think this realization here, and something we've been writing on already, this realization really solidifies one of the key concepts is that there's very little maybe we can agree with in our democracy. But what most people at the end of the day will come down is this idea that we do have a system that is fundamentally one of majority rule, right?

We have very important protections at the electoral level and at the legal level for minority protections. But fundamentally, our electoral system is one where if a majority prefers something, that's the direction we're going to go. And instant runoff voting very clearly violated that. And I think that's really what's now been pushing more interest in these kind of reforms like what we are talking about here and this consensus choice or majority voting. Actually asking, is there an option that a majority of the population prefers to all the others? Then we should enact that. And so I think that's really the core thing that I've been interested in is how can we implement these kind of majority preferred procedures?

Kris Turner:

Well, you mentioned you've been doing a lot of public outreach and advocacy work on behalf of different voting procedures. I'm curious, when you've been doing this work, have there been anything that's been most surprising to you in speaking with legislators or policymakers or just the general public?

Nate Atkinson:

When you talk to people is I think there's a pretty widespread agreement that there are deep issues with our current system, that effectively you go to the ballot box and you have a choice between a Democrat and a Republican. And in many states or many districts, the only fundamental choice is going to be the primary because it's going to be either a Democrat seat or Republican seat. And so effectively it'll be a Republican primary to choose between a more moderate more right-wing Republican or a Democratic primary where it's more left-wing or more moderate Democrat. And so this leaves a lot of people feeling very unrepresented or disenfranchised. And so I think when I talk to people, there is certainly appetite for reform. But at the same time, I think there's been some deserved skepticism of instant runoff voting for these kind of failures of, for example, this majority criterion.

I think a lot of people right now are trying to figure out what should we do? And so I'm seeing lots of openness. And so for example, Senator Blessing has recently introduced a bill in Ohio that would implement this consensus choice or this three head-to-head matchups for the election that we just discussed. And so I think it's really great to see that there is this interest in electoral reform to really try to solve some of these problems of polarization. And importantly, it's across the aisle, right? This is not

something that is a Democratic or Republican thing. Instead, it is something that people understand that there are problems with the system and that fundamentally we need to figure out a way to bridge these large gaps and the electoral procedures can be a way to do so.

Kris Turner:

When I do these interviews on the podcast, I don't always come away with some optimism depending on the subject that we were discussing, but it's always nice to hear that there is interest in solving problems in the state houses to say, "Look, we are recognizing a problem, that there are ways forward to try to make this more what we would consider democratically sound there." But before we continue to get too optimistic, let's turn from the public world to the private world and discuss corporate governance and all your work on that. You studied how prosecutors can weigh collateral consequences when imposing penalties on corporations. What did you learn about how these considerations shape enforcement decisions?

Nate Atkinson:

So when we think about corporations, corporations, these are massive effects for good in our society, that they create jobs, they create goods. And the strength of a corporation is it allows us to pool money from all this large dispersed group of investors, right? Those of us in our retirement accounts, individuals up to the very wealthy, and we can pool our money into corporations. They can use that money to produce everything from our clothes, our drinking water, our phones. Everything we use is mediated by these corporations. And they've been this huge force for economic advancement, alleviating policy. But at the same time, corporations by their sheer size have this tremendous potential to do bad also, right? They have these firms that have these values of millions or hundreds of millions or billions of dollars.

And just as they have this huge ability to increase welfare through economic advancement, they also have this ability to harm. So I've done research on looking at what happens when a corporation has broken the law, whether that's environmental harm, whether that's antitrust, whether that's fraud. There's a variety of ways. And of course, this is not most corporations or most people in corporations, but it does happen. What will happen is that then we'll have prosecutors working for either the state or federal government, and they will now be trying to figure out how should we penalize this corporation, right? We now have entered into a settlement agreement with them or there's going to be a court judgment and we're going to impose some penalty on the corporation.

A concern that prosecutors can sometimes have is that imposing a sufficiently large penalty on the corporation to punish them can actually threaten the viability of the corporation and thereby cause collateral consequences to innocent third parties. So the concern is we're going to impose a large penalty on a corporation, and now that corporation might struggle to stay in business, thereby threatening the employment of all of its employees, maybe threatening counterparties and entire regions can be harmed if corporations go out of business. And so I've done research actually looking at across the federal government to show that there's these really robust policies to take these collateral consequences into account.

And so prosecutors, judges, regulators, they're instructed or they can take into account these potential collateral consequences when reaching decisions about how to penalize corporation. And it's a really stark choice sometimes, right? Do I want to impose the correct penalty on a corporation however, but threaten the innocent third parties? Or do I want to lower the fine, protecting the third parties, but then effectively allowing the firm to get away with some sort of misconduct and maybe even incentivize it in the future? Empirically, we find that this actually happens with a non-trivial frequency that fines are in

fact lowered. And so I've done research trying to figure out what are the determinants of this. And then I think more importantly, what can we actually do about this, right?

This is a very real trade-off. These are real people in a prosecutor's office trying to say, "How do I weigh these two goods? Protecting innocent third parties and penalizing a corporation has broken the law? How do I balance these things?" And so I've done work on trying to think about, well, can we think about this from a more of a corporate finance perspective? How can we impose fines on a corporation in a way that's not going to affect these innocent third parties? And one of the proposals I've made and written about is, can we actually require the firm to issue new equity? And so equity, you can think of those as shares in the corporation. And the concern is the firm is going to have to borrow money or take money out of its coffers in order to pay this fine.

But instead of actually going to the equity markets and require them to raise the money through an equity issuance, that's going to impose the full incidence of the liability directly on the firm's shareholders, right? Those who have invested in the firm, they of course may be entirely innocent and ignorant of the crime themselves, but they're the ones who are benefiting from the firm's upside. And so we can impose it on the downside on them as well. And so that's I think one of the questions here is how can we help or how can I help these prosecutors facing really difficult decisions? How can I think about corporate finance in a more nuanced way to help give them better tools in order to combat corporate misconduct?

Kris Turner:

So some of the work that you've done involves estimating the profits that firms earn from violent environmental laws, showing that misconduct can actually be economically rational under current rules. What does that imply about these incentives that companies face or the reforms that might actually change behavior?

Nate Atkinson:

If we think about a corporation, again, we started this podcast by discussing the fact that a typical corporation is likely to have millions and millions of shareholders, you and I in our retirement accounts, and we are not monitoring these corporations that we are invested in, right? Instead, we invest through our retirement accounts or through a mutual fund, and our shares are ultimately voted for board members and the board members now appoint a CEO and the CEO are going to appoint management. And now someone within the firm is going to be making decisions. And corporations are largely structured around the idea of profit maximization, taking actions to increase the value of the firm. Now, what happens when profit maximization comes into conflict with breaking the law? And one of the ways we can look at this or the ways I looked at this was thinking about environmental violations.

We might have a firm that is making a decision about retrofitting a plant or how much emissions to emit at a petrochemical plant, a power plant, something like this. And they're making a decision about do they comply with the law or do they break the law? Now written into EPA, Environmental Protection Agency, guidelines is the idea that when you break the law, you should have to fully pay back any of your ill-gotten profits from that, right? Our concern is we don't want a firm saying, "All right, well, I'm going to break the law and pay back the profits." And so the EPA actually has a specially designed system to try to actually calculate the firm's profits. And the concern might be something like this is that you choose to break the law, let's say in 2010 by not installing a scrubber on your plant that you're required to have, you now emit much more pollution than you should.

You're caught 10 years later, and now you have to pay a fine. Now in that intervening 10 years, you've saved a lot of money, right? You took that money you would've had to spend on these capital

improvements. You've now paid it back as dividends to your shareholders or you've invested it profitably. You've made lots of money. And so what I did is I looked at every single Clean Air Act violation by stationary source emitters. So I think again, power plants, chemical plants, things like this. And actually looked at the question like net of paying the fines, did the firm profit from this misconduct or not? And what I found is that in all of the large cases, the firm's profits from misconduct were actually larger than the fines that they had to pay.

And so I think what we can expect from this is that the individuals within corporations I think are mostly like you or I, they're going to be good ethical people, but the profit motive is very strong. And so if there is an ability for a firm to profit from misconduct, I think oftentimes water flowing downhill, they'll find a way. And so I think this is an indication that if our laws are not structured in a manner to actually make people internalize their externalities, to actually make them pay costs, that we should not expect these fines to actually do the job. And so I think this really pointed to the question of these fines being set too low and therefore the firms are going to take advantage and profit even though they're breaking the law. And you could think then of the fines as effectively a cost of doing business.

Kris Turner:

Like I say, there's a first time for everything, and I really appreciate being characterized as an ethical person. So that's a nice bonus here. You've made my entire summer learning that I'm an ethical person. So your check's in the mail, Professor Atkinson, for that one. I did want to follow up actually, are there institutional designs that consistently reduce this misconduct that will occur? In your research, has anything jumped out at you for patterns about how organizations respond to rules, penalties, and oversight?

Nate Atkinson:

Yeah, that's a really tricky question. Thinking about corporations as largely as profit maximizing entities, I think as a first order approximation is the correct way to think of them. And so in that case, we need to ensure that the system is set up so that harming society or engaging in misconduct is not profitable. Changes that we make are oftentimes difficult to look at. So in a working paper with Anat Admati and Paul Pfleiderer, we've been trying to study the effect of various policies on corporate misconduct. And so starting from a position where there is scope for profitable misconduct, where the firm actually can engage in misconduct, how then should we think about imposing fines? Do we want to impose the fines on the corporation or do we want to impose fine on culpable managers? And then do we want to think about other policies like self-reporting programs or compliance programs?

And it's an incredibly complex system, as we said, right? You as an investor are investing in a mutual fund. The mutual fund is now buying shares in a corporation. They vote those shares to select a board of directors. The board of directors appoints a CEO. The CEO appoints managers. This is all mediated by various contractual mechanisms and performance-based pay and things like this. And so I think one of the big takeaways is it's really, really hard and it's [inaudible 00:27:52] hard to make robust predictions. I think one of the interesting things is there's been this really big turn over the last about 15 years, I think following the financial crisis, that the complexity of corporations makes it very difficult to find individuals and even the firm itself culpable of misconduct, right? You have a firm maybe with tens of thousands or hundreds of thousands of employees.

It can be very difficult to pin down who within a firm has made a decision to engage in misconduct or was it any one person versus a group of people? And so there's been this real interest in enforcement policies and enforcement circles, including the Department of Justice, most notably, of trying to effectively enter into cooperation agreements with corporations. And so the idea is that encouraging

them to self-report any misconduct or encouraging them to put into place compliance programs that are going to ensure that the firm is complying with the law or when they do have misconduct, self-reporting it. And so we've been really diving into trying to understand the efficacy of this type of program. And I think our big takeaway is it's complicated, right? So on the one hand, you think something like a compliance program, that sounds like a great idea. We're going to introduce a compliance program at a corporation.

But in order for a corporation to introduce the compliance program, we need to give them a carrot, right? If it's now going to increase the propensity or our likelihood of finding profitable misconduct, the corporation's only going to do so if you can either offer them some reason to do so. And so oftentimes what this is in DOJ policy, and this has really been accelerated across the Obama, Trump one, Biden, and Trump two administrations, is trying to encourage cooperation and effectively saying, "If you cooperate with us, we will lower your fines." Now, what that does is ex-post now going to induce more cooperation, which sounds great. However, now that's going to ex-ante lower the threat of engaging in misconduct, because now if I engage in misconduct and I self-report it, I'm going to get a lower fine. And because I'm getting to lower fine, that's going to actually lessen my incentives to follow the law.

These policies, which I think have a lot of intuitive appeal, are actually potentially much more complicated than we might think them. And so unfortunately, I think in corporate misconduct and corporate governance, the complex interrelations of systems just makes things really complicated where it's hard to say, "Here's a change you can make that's always going to improve things." I think at the fundamental level, we want firms to be internalizing their externalities. We want to make sure that when they're harming people, they are having to pay the costs for that so that they do not do so because that fundamentally is going to align their profit motivation with the societal interest more broadly.

Kris Turner:

So one thing I want to catch up on is the rapid consolidation of equity ownership by passive index funds, which has triggered a search for mechanisms to neutralize their outsized corporate influence. One of your recently accepted papers is called *Mirroring the Market: Passive Voting and Outcome Non-Neutrality*. Without mathing too hard, I come from a poli-sci history background, so math can scare me sometimes, can you tell us about the framework that you propose and how it fulfills obligatory obligations?

Nate Atkinson:

Great. Yeah, thanks so much. So this is a joint work with John Macey, and so we can discuss it with no math at all. And so this goes back to what we were discussing just a few moments ago, is that you or I, as investors, we're likely to either invest through our retirement funds or we'll invest through a large intermediary such as Vanguard or BlackRock or State Street. In fact, these three are known as the big three. So these three, along with a number of other asset managers, they invest a huge amount in almost every single publicly traded corporation in the country or really in the world, right? So they're taking our small investments and the small investments of millions and millions of other people around the country and around the world, and they are now investing them as index investors or maybe as active managers across all these firms.

And so Vanguard or BlackRock or State Street together, they will hold for us as the retail investors shares in all these corporations and oftentimes a huge amount. So these passive investors can hold 20, 30, 40% of the voting power in these corporations. And that can fundamentally change how we think about corporate governance. So as we said earlier, corporations are effectively little democracies where all

shareholders are going to vote for the board of directors. And now what we have is as individual investors invested through Vanguard, for example, I'm now not voting my shares, but Vanguard is voting them for me. Now they have this really complete and rigorous compliance or governance department with dozens of employees that are basically trying to look at thousands of corporations across all these different board meetings and shareholder proposals and trying to determine how to vote those shares in a way that furthers the interests of the ultimate owners, people like you and I.

The growth of these index funds or these asset managers more generally has led more and more people to have various sorts of concerns, right? So one is now that you have this small number potentially of asset managers who are dispositive, right? They're outcome determinative on basically every corporate vote if they wanted to be. Now, oftentimes they don't want to be, right? Instead, they're trying to vote their shares in a way that they think is best for the investors like you and I. Most of these investments are going through some sort of passive fund that I buy shares in a Vanguard fund that buys the S&P 500, the 500 largest companies in the country. And then I just buy and hold. It's not an active strategy where they're buying different shares and now they're voting those shares. And so there's been this concern now that these asset managers have too much voting power.

And so there's been proposals now that maybe what we should do is have those asset managers or these index funds vote their shares in a manner that is also passive. This has been called mirror voting. And so what mirror voting would entail is these passive funds like Vanguard or BlackRock would look to the rest of the market and they would say, "Okay, these active shareholders, the people who are actually showing up to vote, they vote their shares in a particular manner. Instead of us making our own decision about how to do so, we are going to just look at what they did and vote proportionally or mirror the market." And so there's been this big discussion. I was actually just at the SEC last week discussing this. And there's, I think, good arguments to be made both ways about why this is a good idea and also maybe some of the costs of doing so.

Our paper is really down in the mathematical weeds here. So in corporate law, we have a variety of different voting standards. And so in certain things, it's going to be just a majority, let's say, of everyone who voted. And so maybe you have 100 shares, 70 of them voted, and so you only need 36 yes votes in order to pass something, right? So that's kind of a present majority standard. In other corporate votes, you actually need to have a majority of all outstanding shares. So if there's 100 shares outstanding, you need 51 yes votes. And so if 60 people don't show up to vote and you get 40 yes votes, that's not enough. The thing wouldn't pass. And so what we show in this paper is that mirroring gets actually much more complicated than you would think once you take all these different voting thresholds into account.

And the way that a passive fund actually mirrors, can actually cause a bias that would favor changes beyond what is contemplated in normal corporate law. And so what we show in this paper is not an argument about you should mirror yes or you should not mirror no, but instead, if we actually look at mirroring, here's the effect it can be expected to have, and here's some biases it might have, and here's how we can correct it to ensure that the fundamental state law which governs corporations is being respected when we have this mirroring policy and that we are actually being outcome neutral if that is the goal of the mirroring policy.

Kris Turner:

That's fascinating. Just the amount of data that you and your co-authors have been able to uncover and examine and show these nuances in different aspects is worth the price of admission for me alone. But I want to turn back to you working with the co-authors because looking across both these domains that we've been talking about, election systems and corporate governance, you've co-authored papers,

which isn't uncommon in academia of course, but can you talk about how you lean into this and how this has made you a better scholar?

Nate Atkinson:

Yeah, so I think co-authoring is a little bit more nascent in legal academia than other areas. And so I've benefited tremendously. I think I have somewhere on the order of 15 or so co-authors at this point across a variety of areas. So legal academics, mathematicians, political scientists, finance scholars, economists, engineers. And so I think really recognizing that each of us, we have our own expertise and there's certain things that I can contribute to a project and there's things that I'm not the best at. And finding co-authors who can really complement what I am doing, that really goes a long way. And so it's really the type of project that kind of determines who I'm working with.

And so in some projects there's going to be questions, corporate law, like in this last one here where I can really team up with someone who's a really corporate law expert who knows the institutional details inside and out, and to make sure that we can really be making the best contribution there. Or on these more voting papers, there might be these very difficult theoretical problems. I can work with them and they can maybe solve things that I can't. Or in terms of corporate misconduct, working with finance scholars who really understand these financial markets at a very deep level. And I think this specialization allows us to really create a paper I think that is much better and do research that is much better than any of us could do alone because fundamentally the work I'm doing is very interdisciplinary, all right?

It's either trying to think about the mechanics of voting in the public context, which again is very mathematical, but also philosophical and trying to leverage everything we know about that. Or in the corporate context, we need to understand the incentives of those within the firms, we need to understand the financial markets, we need to understand those working at the government level. And so to really understand the system as a whole, we need to bring together lots of experts in different areas, bouncing ideas across each other and trying to build something I think better than any of us could do by ourselves.

Kris Turner:

A common theme over the recent podcasts that I've recorded are interdisciplinary actions, multidisciplinary aspects, and I'm so grateful to hear that because while I refuse to accept the notion that you are not good at some things, Professor Atkinson, I will appreciate you bringing in other experts to work with you to help fill in those necessary gaps. I just think it gives such a rich perspective to all the work that you've been putting out there. Regarding both of these domains, again, election systems and corporate governance, what do you think policymakers misunderstand about how institutions behave in practice versus how they're designed on paper?

Nate Atkinson:

I think we always have this hope that things are maybe simpler than they really are. Most things are much more complicated. And most of us, we don't have the time to really sit down and think through all the complexities and nuances ourselves. And so I really see that as my job is to look at these things and not to point at someone, whether they're in a corporation or in a prosecutor's office or in a boardroom and say, "Oh, you guys didn't think of this." But instead to say, "You have a thousand things on your plate and you're trying to balance all these questions and do your job." And I think I really see my job as trying to understand and really delve into things that others maybe don't have the time to do and trying

to expose some complexities that really matter that are really important either for public decision-making or corporate decision-making, and then to try to bring those up.

And again, I think that's why I find people to be quite receptive when I bring up these. When I talk to someone at the EPA and tell them about these issues with profitable pollution, they're really receptive. They invite me into dozens and dozens of enforcement officers to do that. Or if I discuss this mirror voting, then the SEC invited me out last week because they said, "Okay, this is a nuance we hadn't thought of before." And so I think it's important to approach these as not ever that I know something you don't know, but you know this is a problem, let me help you think about that and help you understand probably where you would've come if you would've had the time to do so. I don't think that people are missing that. I think that we all know that things are really complicated and I try to help people think through things that maybe they don't have the capacity right now because of their many other commitments to think through in detail.

Kris Turner:

And that also goes back to your assertion earlier about that there is an interest in solving problems. And if you approach this in such a manner that they know that, the people you are working with, and then you help them get there and say, "You would've come to this conclusion, but you have a million other things on your plate." What a wonderful approach to help actually get practical work done. My final question for you, what lies ahead? What questions and issues are you most excited to explore next?

Nate Atkinson:

Wow. Yeah, there's so many, and I think this is sometimes the cost of having so many great co-authors is it's not just my own ideas that are coming, but then people keep pinging me with ideas and you have friends that you start liking to work with and you do more and more work with them. And so I think across a couple areas, I'm doing work right now, a couple papers looking really at voting mechanisms, but now firmly within corporations. So how do we think about electing boards of directors? And there's current institutional rules. There's been some change over the last couple of years about allowing things in corporate board elections that were not allowed before. So I'm doing work now to think how can we think about what the best way in some sense, or a good way in some sense to elect directors for corporate boards?

So I have a couple projects on that. I'm also doing some work now in the public election space to really try to understand how do we think about incentives for candidates to enter the election? We discussed before our current system really will favor these elections between one Democrat and one Republican, and it's not really feasible for other candidates to enter, contest, or even win the election. And so we're trying to think, can we say something about different electoral systems to say which ones are more or less amenable to having competitive entry? So I'm doing some work on that. And I think one area where we haven't really discussed is I'm doing some work right now on securities litigation also, and really trying to understand some of the core statistical assumptions that are made in securities litigation.

And so this is something where a manager of a corporation has maybe made a misstatement and it's caused the stock price to maybe artificially inflated, and then the misstatement comes out and the stock price drops. And we have this question about what can we infer from the amount of that drop and the harm that was caused to shareholders and really trying to dig in deep and understand what inferences can we actually make about misstatements and about the effect of those misstatements on investors when we observe these kind of corrective disclosures when a misstatement comes out. So these are all projects across a variety of co-authors. Really excited to keep working on them and hopefully getting

them to people who are interested decision makers so that they can hopefully implement them and we can improve either the function of our public elections or the functioning of our corporations.

Kris Turner:

One way that I have approached these podcasts recently is to start writing down notes as I'm discussing things, and you have set a new record for me cramping my hand for how many things I want to have you come back and discuss at some point. So we will schedule in the future, the far future, parts 2, 3, 4, 18 or so to discuss all these wonderful new projects that you just went over. It just sounds so wonderful. And again, what I like is the law in action aspect. You are going and making a practical change with all these findings that you are uncovering through your scholarship. Professor Atkinson, thank you again for joining the podcast to discuss so many of those aspects of your scholarship. The breadth and the depth of your work and the analysis you provide is such a critical addition and boon to academic researchers, to practitioners, and to policymakers.

To find a list of Professor Atkinson's latest scholarship, visit either the University of Wisconsin Law School's digital repository or nathanatkinson.com. And you can learn more about consensus choice voting at betterchoices.vote. Thank you all for listening. This was Wisconsin Law in Action from the University of Wisconsin Law School. To hear more conversations with our faculty about their research and its real world impact, visit wilawandaction.law.wisc.edu. You can stay up to date on Wisconsin Law School scholarship by subscribing to the podcast via the Apple iTunes store or via Spotify or follow the Wisconsin Law School on social media for updates on faculty news and publications. I'm Kris Turner. See you next time and happy researching.