

# The Separation of Voting and Control: The Role of Contract in Corporate Governance

“In corporate democracy, the default system is voting, but shareholders are free to contract over their votes. In private companies, shareholders routinely do so, using shareholder agreements – contracts amongst the owners of a firm – to bargain directly over directorships and other rights of control. Why? Why use a contract to shape control rather than corporate law’s more familiar instruments – the charter and bylaws? This article shows that shareholder agreements’ distinctive role in corporate governance arises both because of contracts’ distinctive procedural attributes, and because corporate law empowers shareholders to personally waive rights by contract that the charter and bylaws cannot remove. Statutory rules that are mandatory for the charter and bylaws do not bind shareholder agreements,” writes Gabriel V. Rauterberg of the University of Michigan Law School in *SSRN*.

“This article offers a theoretical, legal, and empirical study of shareholder agreements. Its implications range across a number of foundational debates in corporate law and governance.”

*Read the article.*