Review of Economics and Economic Methodology
Movement for Economic Pluralism
2021, Vol. 6(1), 1-30
Date received: October 17, 2020
Date accepted: November 6, 2020

Rethinking Corporations

David Ellerman[1]
orcid.org/0000-0002-5718-618X

Abstract

Are corporations the problem? Can reforms in corporate responsibility (e.g., more stakeholder governance) lead to any real changes? Our goal is to analyze the debates concerning the Citizens United case, corporate personhood, the stakeholder theory, the affected interests principle, and finally ending with analysis of the deeper fallacies concerning the rights of capital that are embedded in Marxism and in the conventional economic theories of capital and corporate finance. In the last analysis, there is another institution that is at the root of the problems in the current economic system, namely the renting of human beings in the employment relation—which has also corrupted the original idea of a corporation that does back to medieval times.

JEL Classification: P12, P48, P50

Keywords: Corporations, Citizen's United, Cooperatives, Capitalism

[1] Associate Researcher, Faculty of Social Sciences, University of Ljubljana, Trg Prekomorskih Brigad 7, 1000 Ljubljana, Slovenia.

Corresponding Author: David Ellerman, Associate Researcher, Faculty of Social Sciences, University of Ljubljana, Slovenia. Email: david@ellerman.org.

I. Introduction

Corporations are today the center of much critical analysis of the current economic system that creates and perpetuates the obscene inequalities of income and wealth. In the Antebellum American South, there was a similar inequality in wealth and real income between the masters and slaves. The institutional form creating the inequality was easily traced to the slave plantations. Today the analysis of inequality leads quickly to the analysis of corporations. How might corporations be reformed or completely changed? Or is the idea of a corporation really the root of the problem or is there another institution that is the root and that has completely changed the original idea of a corporation that descends from the Middle Ages? To address these questions, we need to take as our entry-point the whole debate about corporate governance.[1]

II. Citizens United and Corporate Personhood

In the American context, a good place to start is the debate as to whether the Citizens United Supreme Court decision which supposedly was based on the idea that a corporation is a legal person and therefore should have free speech rights the same as natural persons.

The first point to make is that corporate personhood was not be basis for the decision. The basis for the decision was that the members (shareholders) of the corporation are directly or indirectly natural persons so that corporate political speech is then construed as the associational speech of those natural persons—just like the political speech of unions or NGOs is the associational speech of their members. In the case of the large publicly traded corporations, that reasoning might be factually absurd, but that nevertheless was the reasoning, not the rights of corporations as ‘persons.’ Indeed, Justice Stevens’ dissent was based on the fancifulness of seeing corporate political actions as the voice of the natural person shareholders.

> It is an interesting question “who” is even speaking when a business corporation places an advertisement that endorses or attacks a particular candidate. Presumably it is not the customers or employees, who typically have no say in such matters. It cannot realistically

[1] For the current state of the debate on corporation governance, see Clarke & Branson (2012) or Gordon & Ringe (2018).

> be said to be the shareholders, who tend to be far removed from the day-to-day decisions of the firm and whose political preferences may be opaque to management. Perhaps the officers or directors of the corporation have the best claim to be the ones speaking, except their fiduciary duties generally prohibit them from using corporate funds for personal ends. Some individuals associated with the corporation must make the decision to place the ad, but the idea that these individuals are thereby fostering their self-expression or cultivating their critical faculties is fanciful. It is entirely possible that the corporation's electoral message will *conflict* with their personal convictions. Take away the ability to use general treasury funds for some of those ads, and no one's autonomy, dignity, or political equality has been impinged upon in the least (Stevens, 2010).

Now we even find the call to abolish corporate personhood (Edwards & Morgan, 2004; Ripken, 2012 and 2019; Tombs & Whyte, 2015). But that is a cure worse than the disease for several reasons. Other forms of business ownership could lead just as well to the purchasing of political influence as long as money is allowed to play its current role in the political process regardless of the source of the money.[2] Moreover, the whole use of the word "person" is not necessary to describe the characteristic features of a corporation, namely that it is a separate *legal party* from the shareholders. The assets and liabilities of a corporation are not the personal assets or liabilities of the shareholders. It is said that the shareholders have "limited liability" for corporate debts but that is misleading. The shareholders have no personal liability for those debts (although they may lose the value of their shares) and the corporation has full liability for its debts.

In the original conception of a corporation, which goes back to Roman and medieval law, that legal form allows a group of people to undertake the risks of a joint enterprise while keeping those corporate risks from reaching their personal assets. If the corporate form was abolished, then only wealthy people would be able to undertake the risks of sizable business enterprises—so the rest of the population would be condemned to being only hired hands (more on this below).

Similarly, it is hard to imagine any change more politically favorable to the rich 1% than restricting the exercise of political voice to natural persons. Such a change would rule out

[2] See the work of Lawrence Lessig (2011; 2019) for alternatives.

associational speech by trade unions, NGOs, and other civic associations, all of which are not natural persons. Then John Q. Public and Charles Koch would each have the right to as much political voice as they could individually afford.

III. The Stakeholders' Rightful Claims

There is an old maxim in Roman law: "*What touches all is to be approved by all*" (Tierney, 1982, p. 21). Today, this idea is often formulated as the "*Principle of Affected Interests… Everyone who is affected by the decisions of a government should have the right to participate in that government*" (Dahl, 1970, p. 64). That principle is often used to support a stakeholder theory of corporate governance where the stakeholders are the customers, workers, suppliers, and any affected local residents (Robé, 2011; Harrison et al., 2019). The valid component of this principle is that people should have the right and the means to protect their legitimate interests. But the usual use of the principle suffers from a sin of omission—the failure to differentiate between two very distinct ways to protect one's affected interests.

(1) The *negative* or *decision-constraining control right* is the right to constrain the decision of another party that will affect one's interests. In a market economy, this usually takes the form of the decision to not buy a product or not supply a service. Conventional economics criticizes a monopoly seller or a monopsony buyer as leading to inefficiency, but there is the additional problem that it effectively neutralizes the buyer's or seller's negative control rights. Moreover, negative externalities (e.g., pollution) also adversely affect one's interests outside of a market relationship so there needs to be more effective means to protect those interests—other than individuals trying to bargain with corporations.

(2) The *positive* or *decision-making control right* is the right to participate in the decision of another party to protect one's interests. This is the form of the Affected Interests Principle that is usually evoked to argue for all stakeholders (i.e., all whose interests are affected) to somehow participate in a corporation's decision making. This application of the principle is plagued by both practical and theoretical difficulties.

The practical problem is the lack of any plausible form of representation of all whose interests are affected. For instance, when a cell phone manufacturer makes design or pricing changes, that affects all users throughout the world using those phones, but there hardly seems to be any way for the consumers to elect representatives to “protect their interests.” Their best protection is provided by competition in the marketplace, i.e., by their negative control rights. Hence the representational notion of stakeholder control is usually set aside in favor of a fiduciary notion—which suffers from a similar problem of the accountability of the fiduciaries to their beneficiaries as well as the legitimacy of those beneficiaries having positive decision-making rights in the first place.

The affected interests principle is validly applied to the exercise of the stakeholders’ negative or decision-constraining control rights, but that by itself entails no valid claim that the stakeholders should somehow ‘participate’ in the other party’s exercise of their positive or decision-making rights. The problem usually is that stakeholders may have little power or opportunity to exercise non-trivial negative control rights vis-à-vis large corporations due to the corporations’ capture of the state and the state’s power to regulate. The conclusion is that such state capture should be abolished; it is not that private corporate overlords (managers and their corporate boards) should be empowered to serve some undefined ‘social’ interests without any means of real accountability or grounds for legitimacy.

The fundamental flaw in stakeholder theory or the affected interests principle is that it considers some hypothetical positive control rights as the solution to the very real problem of negative control rights that are *ineffective* due to monopoly/monopsony power, negative externalities, lack of information about corporate plans, and government regulations that are inadequate or poorly enforced due to state capture. Rather than reformers getting a warm buzz by asserting ineffective claims for asserting positive stakeholder governance rights, energy should be redirected towards stronger anti-trust, environmental, and corporate transparency regulations.

IV. What About Shareholders’ Democracy?

Are the shareholders like the citizens in a democracy? The legal theory underlying today’s conventional corporation is that the members[3] of the corporation are the common shareholders—and those membership rights are ordinary property rights (more on this below)

[3] “In general, the shareholders are the members of the company and the terms ‘shareholders’ and ‘members’ may be used interchangeably” (Hannigan, 2012, p. 304).

so the shareholders are also called the "owners" of the corporation.[4] Some legal commentators have argued that the shareholders are not the "owners" of a corporation *because* they do not own the assets of the corporation as their personal assets (Robé, 2011; Stout, 2012). But this seems a perfect *non sequitur* since it seems no one has argued that the shareholders are owners *because* they somehow personally own the corporate assets. Moreover, the shareholders, again in theory, elect the corporate board and corporations are routinely bought and sold by the agreement of the shareholders. Thus, the argument that the shareholders are not, in theory, the owners of a corporation seems at best to be a suggestion to use some other linguistic euphemism for the shareholders' legal role.

For most of the 20th century and, particularly after Adolf Berle and Gardiner Means' classic book, *The Modern Corporation and Private Property* (1932), it has been well-known that the actual control of a publicly traded corporation (by managers and the board) is separated from the ownership of the corporation (by the far-flung shareholders). But since the member-shareholders, in theory, elect the board, the board members and thus the managers were seen as the agents of the shareholders as the principals in an agent-principal relationship. But since it is so factually farcical to picture the far-flung shareholders as "principals" supervising their "agents," some modern legal theorists, e.g., in the standard corporate law 'hornbook' of Harvard's Robert C. Clark (1986), has suggested that the theoretical agency relationship should be watered down to a fiduciary relationship. Even though that may sound a little more realistic, it is a rather odd 'fiduciary' relationship where the 'beneficiaries' legally elect the 'fiduciaries' and can legally sell the whole organization.

Even more far-fetched are the calls to undo the "separation of ownership and control" by establishing shareholder democracy. In the publicly traded companies, there is a huge collective action problem for any shareholders to privately shoulder the costs to get enough other shareholders to vote to defeat the management-supported slate of candidates for the board. Hence in Albert Hirschman's terms, the realistic response of dissatisfied shareholders is to exercise their negative control rights to exit—even called the "Wall Street Rule" (Sell your shares)—rather than try to exercise voice (their positive control rights as members of the corporation).

[4] See Chassagnon & Hollandts (2014) for a review of the literature on who "owns the corporation" although the debate is somewhat linguistically ill-posed since it is the membership rights that are owned as property rights by the shareholders. Whether or not one interprets that as ownership of "the corporation" is largely of linguistic and ideological interest.

But these pragmatic problems pale beside the deeper problem in the whole concept of shareholders' democracy. In the course of its business activities, the management of a corporation does not exercise managerial authority over the shareholders (qua shareholders), only over the (indirect) property of the shareholders, and democracy is a system for governing people, not governing property. The only people over whom management exercises authority (within the scope of the business activities) are the employees of the corporation.

> The analogy between state and corporation has been congenial to American lawmakers, legislative and judicial. The shareholders were the electorate, the directors the legislature, enacting general policies and committing them to the officers for execution. … Shareholder democracy, so-called, is misconceived because the shareholders are not the governed of the corporation whose consent must be sought (Chayes, 1966, pp. 39-40).

The concept of "shareholder democracy" is analogous to the people of Russia going through the motions of running multi-party 'democratic' elections of the government of Poland.

Some legal theorists still object to restricting the 'democratic' franchise to "the governed."

> Yet in fact there is democracy in the typical investor-owned firm; it is just that the investors of capital do the voting rather than the workers. Converting to worker ownership means not only enfranchising the workers but also disenfranchising the firm's investors while continuing to deny the franchise to the firm's consumers (Hansmann, 1996, p. 43).

In a similar vein, one might say that the American Revolution enfranchised the Americans but also disenfranchised the English while continuing to deny the franchise to the French to elect the government of the Americans.

We have seen that the stakeholder notion of affected interests as well as the call for "shareholder democracy" fail to address the theoretical and practical questions of:

(1) who should legitimately control corporate management, and
(2) who can do so effectively?

The democratic answer to the first question is: "*the people who are managed by the corporate management*," and the answer to the second question is: "*The only cohesive, workable, and effective constituency within view is the corporation's work force*" (Flynn, 1973, p. 106). In spite of Robert Dahl's mention of the affected interests principle (1970), when it came to later specifying "the alternative," he made no use of that principle or the stakeholders theory. He advocated instead "*a system of economic enterprises collectively owned and democratically governed by all the people who work in them*"[5] (Dahl, 1985, p. 91).

But these answers seem beyond the pale of almost all 'responsible' legal, economic, and political thinkers, so the kabuki theater of the 'corporate governance debate' will continue.

V. What About Managerial Capitalism Instead of Shareholder Capitalism?

The notion that the shareholders, rather than managers, are the owners, members, and residual claimants in a corporation did not originate in Milton Friedman's newspaper polemic (1970) or in the neoliberalism of the Chicago School of Economics. Indeed, it was the reason why Berle & Means findings on the separation of ownership and control were considered problematic.

In the managerial versus shareholder capitalism debate, one idea originating from Berle himself (1959) was that management should be treated as a profession (like being a doctor or lawyer). In the large publicly traded corporations, the managerialist thesis was that managers are the custodians of essentially 'social' resources and should be bound by a professional code of ethics and by their fiduciary duty to respect the 'social' interests of all stakeholders. The perspective of managers as managing or governing *people* inside firms (e.g., Anderson, 2017) was ignored in favor of formulating the problem as one of *asset* management in the interests of 'society' as a whole. This idea differed from 'democratic socialism' in that the

[5] The footnote reads: "In clarifying my ideas on this question I have profited greatly from a number of unpublished papers by David Ellerman, cited in the bibliography, as well as numerous discussions with and papers by students in my graduate seminar on The Government of Economic Enterprises and my undergraduate seminar on Democracy at Work."

managers were not the agents of a politically democratic government but were independent professionals bound by their own ‘Hippocratic Oath’ to further ‘social’ interests. But the managerialist conception did not include any actual accountability mechanisms or positive control rights on the part of ‘society.’ By being accountable to everyone, the reality would be that management, as a private sector version of the *nomenklatura*, would be accountable to no one but themselves.

The corporate governance debate between the managerialist and shareholder conceptions of capitalism came to some sort of turning point in the 1990’s when managers found that they could sufficiently further their own interests through a variety of gimmicks such as stock options, virtual equity, and share appreciation rights (SARs) together with stock buybacks (to manipulate stock prices) while all the time pledging or at least feigning fealty to the idea of shareholder primacy. And accordingly, some legal theorists unconscionably declared “the end of history” by the victory of shareholder primacy in the corporate governance debate (Hansmann & Kraakman, 2000). Of course, the managers’ true allegiance was shown in the ballooning CEO-to-worker ratios around 300 [depending on year and method, Mishel and Wolfe 2019] in corporate compensation and in their willingness to use corporate investment funds for stock buybacks to ensure that their own stock options were in the money, e.g., Lazonick (2018), and Lazonick & Shin (2020).

Now it seems that many elite corporate managers are getting tired of play-acting as if they were the hired hands of the shareholders and the agents of shareholder primacy. They seek a more dignified, if not glorious, role. The stakeholder theory provides them with an alternative cover story as they discover new ‘social responsibilities’ to the various interest groups—all without any hint of actual effective accountability mechanisms or source of legitimacy for that role, e.g., Business Roundtable (2019). And the pandemic has revealed the manifest hypocrisy in the whole effort (Goodman, 2020).

VI. What About Cooperative Corporations?

The original conception of a corporation (in its Roman and medieval roots) was a group of natural persons engaged in certain joint activities “*that possessed a juridical personality distinct from that of its particular members*” (Tierney, 1982, p. 19). But the original idea of these joint corporate activities *carried out by the members* was completely corrupted by having those activities actually carried out by the employees of the corporation—a change that fully developed when wage labor became the dominant form of work with the Industrial Revolution.

Many see the *cooperative* corporation as the revitalization of the idea of people joining together to carry out certain cooperative activities and to democratically govern those joint activities.

> A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise (International Cooperative Alliance, 2015, ii).

But this noble idea was quickly also undercut by the similar use of employees to carry out the actual cooperative activities—with the exception of worker cooperatives where the work is carried out by the members.

Consider a consumer cooperative. What is the cooperative activity carried out by the members? It is not consumption; that would be a commune or kibbutz. The activity carried out by the consumer-members is shopping in the cooperative which is a distribution business for food and other consumer goods. But those business activities are carried by the employees of the consumer cooperative—aside from the vestigial "work requirement" for members such as handing out cheese samples to customers for a few hours each month.[6] For instance, in an upscale consumer cooperative, many members were scandalized when it was discovered that some members were having their work requirement performed by their nannies or servants—seemingly without any recognition that all the members have the same relationship to the employees of the cooperative.

The corruption of the cooperative ideal is even more pronounced in the agricultural marketing and processing cooperatives (e.g., Land O'Lakes or Ocean Spray), sometimes

[6] Most consumer co-ops do not have a work requirement and thus they are perfectly mirrored by non-cooperative supermarkets which give "members" a discount secured by showing a bar-coded "rewards card" at checkout.

called ‘producer cooperatives,’ where the members are supposed to be the farmers selling their raw products through the cooperative. The problem is not just that the ‘farmers’ may be agribusinesses running on hired labor but that the ‘cooperative’ activities in the huge processing facilities of the cooperative corporations are all carried out by employees.

Only in worker cooperatives are the actual activities of the corporation carried out by the members and the people governed by the management are the same members of the company.

VII. On Personal Rights and Property Rights

To understand the difference between membership in a cooperative and ownership in a conventional corporation, one needs to understand the difference between personal rights and property rights. People usually have both types of rights. For instance, one’s voting rights in a municipality are based on having the functional role of residing in the city, but those rights may not be bought or sold so they are personal rights, not property rights. In a cooperative corporation, the membership rights are based on the functional role of ‘patronage’ in the cooperative (e.g., working in a worker cooperative or shopping in a consumer cooperative). When membership rights are supposed to be based on having a certain functional or patronage role, then it makes no sense to treat them as alienable property rights. A ‘buyer’ may not have the functional role, and if the person had the functional role, there would be no need to ‘buy’ the rights.

It is easy to distinguish personal rights from property rights in terms of inheritability (or ‘bequeathability’). When a person dies, personal rights like one’s vote in municipal elections are extinguished while property rights like the votes of one’s corporate shares are passed on to one’s estate and heirs. When membership rights, as in a conventional corporation, may be inherited or in general, may be bought and sold, then they are property rights so then the members are usually referred to as “owners.”

VIII. Is a Conventional Corporation a “Capital-Managed Firm” or a “Capital-Suppliers’ Cooperative”?

Does physical or financial capital play any special role vis-à-vis the conventional corporate ownership rights? For instance, labor certainly plays a special role in a worker cooperative with the assignment of the membership rights to those who work in the firm. Is there some similar structure for the shareholders as "capital suppliers" in the conventional joint stock[7] company?

In some of the literature of economics, a democratic firm like a worker cooperative is called a "labor-managed firm" or LMF (Vanek, 1977). Some researchers have tried to set up a neat symmetry between labor-managed firms and "capital-managed firms" (KMFs) in which the latter are identified with the conventional joint stock company, the "capitalist" corporation, e.g., Dow (2003). The membership rights in the KMFs supposedly go to the "capital suppliers" just as they go to the labor suppliers in the LMFs. Similar ideas seem firmly planted in the popular and academic consciousness. Somehow, the corporate ownership rights are based on the ownership of capital goods. The rights of the shareholder are supposedly based on the shareholder's supply or investment of capital in the company.

Perhaps the most thorough development of this theme is Henry Hansmann's (1990; 1996) treatment of the conventional joint stock corporation. To understand Hansmann's approach, we need to look at the general structure of cooperatives that assign the "membership rights" to the "patrons." The patrons are different in different types of cooperatives. Hansmann's theory is that the conventional corporation is essentially a "capital cooperative" or "lenders' cooperative" (1996, p. 14).

> The members of the capital cooperative each lend the firm a given sum of money, which the firm uses to purchase the equipment and other assets it needs to operate (say, to manufacture widgets-or cheese). The firm pays the members a fixed interest rate on their loans, set low enough so that there is a reasonable likelihood that the firm will have net earnings after paying this interest and all other expenses. The firm's net earnings are then distributed pro rata among its members according to the amount they lent, with the distributions taking place currently, as dividends, or on liquidation. Similarly, voting rights are apportioned among members in proportion to the amount they have lent to the firm. To supplement the capital that it obtains from its members, the firm may borrow money from lenders who are not members but who simply receive a fixed rate of interest (which may be different from the fixed rate paid to members) without sharing in profits or control (Hansmann, 1996, p. 14).

[7] For our purposes here, the arguments about joint stock companies also apply to limited liability companies (LLCs).

Hansmann goes on to argue that this is "*precisely the structure that underlies the typical business corporation*" (1996, p. 14) in which we interpret the lender-members as the shareholders and their fixed interest rate as zero.
Hansmann is clear that shareholders who bought shares on the secondary market are not direct suppliers of capital, but for the sake of argument we can join him in a generous interpretation of a secondary shareholder as being an indirect "capital supplier." Also, one should note that shareholders who buy higher valued new shares have the same share rights as those who bought them cheaply.

The real problem in the thesis is that shares can be obtained for any of the reasons that any property is transferred. To attract a prized employee, a company might issue new shares as a signing bonus. Workers might receive new shares in lieu of or in addition to cash wages. Or one could receive shares for any consideration whatever. And one can receive shares in return for no consideration, that is, as a gift or inherited property. In summary, shares may be acquired in any of the ways that property may be acquired:

1. Creating shares by the founders of a corporation;
2. Purchased from an existing corporation for money;
3. Purchased from other shareholders;
4. Acquired as a labor, hiring, or other bonus;
5. Acquired as a gift for no consideration; or
6. Inherited.

There is no necessary connection between acquiring shares and supplying capital to the corporation (number two above). One can repeat the argument for any other sort of property such as a car. If someone says "owning a car" is characterized by the role of "paying money to a car company," then the statement is easily refuted by pointing out that one can own a car by: 1) building it from spare or junk parts, 2) buying it from a car company , 3) buying it second-hand, 4) getting the car as a bonus or prize, 5) getting the car as a gift, or 6) inheriting a car. There is no exclusivity or necessity in the #2 reason.

What is the alternative hypothesis? Start with the idea of a cooperative in which the membership rights are assigned to those who have a certain patronage role, as in a worker, consumer, or marketing cooperative. Then, take the limit as the patronage role goes to zero. In the limit, the membership rights would become free-floating with no patronage prerequisite necessary to qualify one for membership. With the patronage requirement vacated, the shares (which represent the underlying membership rights) become just freely-transferrable pieces of property that can be acquired for any of the usual reasons listed above. The conventional joint stock corporation is not a "capital cooperative" or capital-patronage cooperative; it is the *'zero-patronage cooperative'* corporation. The shares (representing the membership rights) in the mis-named "capitalist" corporation are simply free-floating property rights. The joint stock company is not like a cooperative in which the "patronage" is supplying capital; it is the limiting case of no patronage.

In this manner, one arrives at the notion of a *universal corporation* whose shares are free-floating property unattached to any role of supplying labor or capital or patronizing the company in any way or being related to the company in any other way (than as "shareholder"). A little more thought reveals that this is exactly what the joint stock company has become. This, in part, accounts for the flexibility, staying power, and world-wide use of this legal form. This approach shows the unique limiting role, and hence, universality of the so-called "capitalist" corporation. If it did not exist, it would be soon reinvented in the current legal system.

Hansmann's work nevertheless reminds us that "membership" is the basic analytical concept that cuts across associations, cooperatives, and conventional joint stock corporations. Indeed, Hansmann points out that "All firms are cooperatives" (2013) but with different criteria for membership. And contrary to Hansmann's idea of a "capital-suppliers cooperative," membership in a joint stock corporation is the limiting case of being devoid of any qualifying role—unlike, say, residence in a municipality that is required to vote in city elections. Hence corporate membership rights become free-floating property rights that may be freely bought and sold, rather than qualified for or earned.

IX. What are the Rights of Capital?

X. The Fundamental Myth

We have argued that membership in the conventional corporation is not legally based on supplying capital to the corporation. This misconception about corporations being capital-based is usually accompanied by a far more basic falsehood that might be called the fundamental misconception about the rights of capital in the current economic system.

The *fundamental myth* is that the discretionary decision-making control rights over a productive process and the rights to the product of that process are legally part and parcel of the ownership of the capital assets used in the process, i.e., the "ownership of the means of production."[8] The point is not that capital should not have those rights but that capital in fact does not have such legal rights in the current legal system.

Throughout the last century, the 'Great Debate' raged between (so-called) Capitalism and Socialism/Communism over:

> The classical distinction between firms with privately-owned production means and firms with publicly-owned production means. In this case one will have capitalism on the one hand and two or more forms of socialism on the other… (Jossa & Cuomo, 1997, p. 113).

But that whole debate was ill-posed from the beginning since it (like the very name "capitalism") was based on a misconception about the rights of capital. It is often said that Marx did not give specifics about his vision of socialism or communism. But if one spends one's adult life condemning X (e.g., *private* ownership of the means of production), then it is clear that one's image of a better society will not have X. Hence the alternative of socialism or communism in the Marxist tradition *had* to have social, public, or state ownership of the means of production along with substantial non-market allocation—as indeed was the case in every Marxist country.

[8] I am using "capital" in the older sense of capital assets used in production, i.e., the "means of production," not in the sense of wealth in general as in the works of Piketty (2014 and 2020).

Marx also popularized the capital-based phraseology of "capitalist" and "capitalism." To understand Marx's (mis-)conception of the "rights of capital" embodied in the "ownership of the means of production," one must go back to the medieval notion of dominion based on the ownership of land. What today we might call the "landlord" was then the Lord of the land exercising both political/juridical control over the people living on the land and the rights to the fruits of their labor. As the legal historian, Frederic Maitland (1850-1906), put it: "ownership blends with lordship, rulership, sovereignty in the vague medieval *dominium*...." (Maitland, 1960, p. 174). Or as the German legal scholar, Otto von Gierke (1841-1921), put it simply: "Rulership and Ownership were blent" (Gierke, 1958, p. 88).

It is this medieval notion of dominion associated with the ownership of land or 'landism' that Marx carried over to the ownership of capital in his conception of 'capitalism.'

> It is not because he is a leader of industry that a man is a capitalist; on the contrary, he is a leader of industry because he is a capitalist. The leadership of industry is an attribute of capital, just as in feudal times the functions of general and judge were attributes of landed property (Marx, 1977, Chap. 13, pp. 450-451).

Marx's blunder has been a staple of socialist thought ever since as was pointed out by Bo Rothstein.

> It is astonishing that a hundred years of socialist thought have not confronted the basic capitalist idea—that owners of capital have the right of command in the relations of production. The idea behind nationalization, wage earner funds, and the like is in fact fundamentally the same idea as that on which capitalism is based, namely, that ownership of capital should give owners the right to command in the production process (be they democratically elected politicians, state bureaucrats/ planners, workers' representatives, or union officials). Indeed, this is a nice example of what Antonio Gramsci called bourgeois ideological hegemony (Rothstein, 1992, p. 118).

The defenders of 'capitalism' are more than happy to accept this view that the management rights ("leadership of industry") and the rights to the product are all "an attribute of capital," of the "ownership of the means of production." Then any change in the employer's role can be pitched as a violation of "property rights."

XI. What is Wrong With the 'Fundamental Myth'?

The myth is factually incorrect; there are no such rights of capital in the so-called "capitalist system." In spite of Marx's imprimatur and the constant ideological assertion of the "rights of capital," it takes nothing more than an understanding of the *renting out of capital* to see the fallacy.

Suppose capital assets are *rented out* to another legal party who buys, hires, or already owns the other inputs and who undertakes a productive process. Then that legal party, by virtue of being the hiring party (not the owner of the capital assets), exercises the discretionary management rights within the limits of the input contracts (i.e., the management rights) over that process and has ownership of whatever product is produced.

Capital is in fact routinely rented out. In addition to banks and other financial firms in the business of loaning out financial capital, real estate companies, equipment rental companies, and computer hardware companies are also in the business of hiring, renting, or leasing out physical capital assets.

Let us consider some simple examples. When an individual owns, say, a widget-making machine, then it is easily understandable that the machine could be rented out. But if the individual forms a corporation and puts in the machine and other capital as initial capital, then many people think that the individual's ownership of the corporation somehow makes a fundamental difference in the logic of rentability as if the machine can no longer be rented out. But the machine, of course, may still be rented out in which case the owner of the corporation does not have the management or product rights in the going concern operation using that machine. The process of incorporation does not miraculously transubstantiate the ownership of a capital asset into the ownership of the net results produced using the capital asset in a going concern.

The identity of the legal party holding those management and product rights in a going concern is legally determined by the pattern of market contracts, i.e., by who hires or rents what or whom, not by the prior ownership of capital.

> This *contract theory of the power over the corporation* fundamentally changes the parameters for establishing economic democracy. Not realizing the importance of this logic has probably been the second most important mistake by the socialist and Marxist left over the last hundred years (Rothstein, 2020, p. 10).[9]

This is a conceptual point about the structure of property rights in the current system and is not about the bargaining power (typically in the hands of capital owners) or transaction costs involved in renting capital out of a corporation or renting people into a corporation.[10]

The ownership of capital gives the owner the negative control rights over the use of the capital as in: "*No, you may not use this machine, building, or land*." This right is sufficient to make those who nevertheless use the machine, building, or land into trespassers—but it does not automatically make them into employees.

> Central to ownership is the right to exclude others from contact with an item. Ownership thus gives the owner of an item the right to control the uses to which others put it in the sense that he may veto any use of it proposed by someone else. But it does not give him any right to tell anyone to put that property to the use that he wants. It is not a right to command labor (McMahon, 1994, p. 16).

The positive discretionary control or management rights over employees legally come from the employer-employee contract, not the ownership of the capital the employees are using.

XII. The Briggs Manufacturing Example

It is the pattern of contracts (who hires what or whom) that determines who owns the product produced using some of the corporation's assets (which could be leased out). In addition to the fundamental myth being involved in a common misunderstanding of the "ownership of a

[9] Rothstein considers the foremost mistake to be "*that the industrial working class would be the engine behind a new (socialist) mode of production*" (2020, p. 10).

[10] The author has been making this distinction between the corporation and the contractually-defined firm-as-a-going-concern for over 40 years (Ellerman, 1975). A French legal scholar, Jean-Philippe Robé, has independently made essentially the same distinction between the corporation and "*the firm—the organization built via contracts transferring control over resources to the corporations used to legally structure the firm*" (Robé, 2011, 4). For instance, paying attention to this distinction in the previous quote from Rothstein, it would read the "*contract theory of the power over the [firm]*" (Rothstein, 2020, 10).

corporation," it is also expressed in the usual notion of "owning a factory." But the simple logic of the rentability of capital does not stop at the ownership of a whole factory.
In the early 1950s, an automobile manufacturer, the Studebaker-Packard Corporation, had the Packard bodies produced in the Detroit Conner Avenue plant of the Briggs Manufacturing Company. After the Briggs founder died, all twelve of the U.S. Briggs plants were sold to the Chrysler Corporation in 1953. "*The Conner Ave. plant that had been building all of Packard's bodies was leased to Packard to avoid any conflict of interest*" (Theobald, 2004).

This actual example illustrates the vacuity of the usual idea that "being the firm" is determined by "the ownership of the corporation." Where was the "ownership of the corporation" that included the ownership of the car-bodies coming off the assembly line or the management rights over that production process? Of course, the shareholders in Studebaker-Packard owned that company and similarly for the shareholders in Chrysler, but that did not answer the question of "who is the firm" in that going-concern operation in the Conner Avenue plant. That was determined by pattern of the new market contracts—by who hires, rents, or leases what or whom. Studebaker-Packard leased the factory from Chrysler. Then the Studebaker-Packard Corporation would hold the management rights over the hired workers and product rights for the operation of the factory owned by the Chrysler Corporation.

In spite of the logical argument and factual examples, most economists and legal theorists seem unwilling to draw out the implications of capital being rentable. Of course, conventional economists and legal thinkers *can* understand that capital can be rented out, but they find no convenience in drawing out the consequences. Out of learned ignorance or intellectual lassitude, they assume the fundamental myth which serves as the *pons asinorum* in the understanding of the "rights of capital" and in the theory of capital and corporate finance theory of the economists (see below). For them, it is a bridge too far.

XIII. Sorry Karl, Even the Name "Capitalism" is a Misnomer!

In the Middle Ages, there was little or no developed market for renting out land, so those governance and product rights were rolled into the medieval notion of land ownership as dominion. But capital assets, including land for that matter, are *routinely* rented out in our so-called 'capitalist' system. Given the central role of the Marxist notion of the "ownership of the means of production," it may be understandable why Marxists cling to the fundamental myth and the "capitalist" phraseology as a matter of quasi-religious dogma.[11] Many defenders of the 'capitalist' system seem equally dogmatic in failing to think through the consequences of capital being rentable in a private property market economy.

There was, however, one economist who stood out as the most philosophically and economically sophisticated defender of the so-called "capitalist" system—and he didn't call it by that name. He was Frank Knight (1885-1972), one of the founders of the Chicago School of Economics. Knight was perfectly clear on "capitalism" being a misnomer and on Marx's role in propagating that myth about capital ownership.

> Karl Marx, who in so many respects is more classical than the classicals themselves, had abundant historical justification for calling, i.e., miscalling—the modern economic order "capitalism." Ricardo and his followers certainly thought of the system as centering around the employment and control of labor by the capitalist. In theory, this is of course diametrically wrong. The entrepreneur employs and directs both labor and capital (the latter including land), and laborer and capitalist play the same passive role, over against the active one of the entrepreneur. It is true that entrepreneurship is not completely separable from the function of the capitalist, but neither is it completely separable from that of labor. The superficial observer is typically confused by the ambiguity of the concept of ownership (Knight, 1956, 68, fn. 40).

The current system is not characterized by capital being unrentable, but by *both* persons and capital goods being legally rentable.

> Since slavery was abolished, human earning power is forbidden by law to be capitalized. A man is not even free to sell himself: he must *rent* himself at a wage (Samuelson, 1976, 52 [his italics]).

[11] The point here is that Marx was wrong in adopting the fundamental myth that the product and management rights are part of the ownership of the means of production—"*the second most important mistake by the socialist and Marxist left over the last hundred years*" (Rothstein, 2020, 10). Instead of understanding the point, many will just think of other reasons to use the name "capitalism," e.g., to refer to the banality that organized capital has overwhelming bargaining power over unorganized workers.

Similar remarks are made by other economists.

> The commodity that is traded in the labor market is labor services, or hours of labor. The corresponding price is the wage per hour. We can think of the wage per hour as the price at which the firm rents the services of a worker, or the rental rate for labor. We do not have asset prices in the labor market because workers cannot be bought or sold in modern societies; they can only be rented. (In a society with slavery, the asset price would be the price of a slave.) (Fischer et al., 1988, p. 323)

A better name for the current system is the *human rental system* (Ellerman 1992, 2015, 2021) which differs importantly from the previous system where workers were owned rather than rented. Moreover, the human rental relation is voluntary in the usual juridical (and un-'theorized') sense of the word.[12]

Given the bargaining power enjoyed by corporations and the transaction costs involved in currently reversing the contract between capital and labor, it is almost a truism that people will be rented by the owners of capital, not capital being rented by people. But where the labor movement has contractually or legislatively succeeded in linking some protections to the formal "employee" role, some businesses have created even less protected de facto 'employees' by representing them as "independent contractors" in the gig economy.

It is a shame that so many economists and conventional classical liberals think that since they and Marxists all agree on the "rights of capital" that it must be a valid characterization of the misnamed 'capitalist' system. Frank Knight had the intellectual clarity to draw out the consequences of capital being rentable for the "superficial observer" who cannot get beyond easily refuted banalities about the "rights of capital." Capital is rentable in any private property market economy and "in a free society the larger part of the productive capacity employed (as matters stand today in a typical Western nation) consists of the services of human beings themselves, who are not bought and sold but only, as it were, leased" (Knight, 1936, p. 438). And it is that hiring, renting, or leasing of persons that is the characteristic feature of the current system.

[12] We are not indulging in the usual left-wing parlor game of escalating one's theorized notion of "voluntariness" so as to exclude the employment contract—and thus stay within the conventional classical liberal criterion of voluntariness as being necessary and sufficient condition for accepting a legal contract—instead of developing the notion on inalienable rights that descends in the Abolitionist and Democratic Movements.

XIV. How Does the Fundamental Myth Occur in Capital Theory and Corporate Finance Theory?

Such a fundamental misunderstanding of the rights of capital is sure to show up in conventional Economics in the theory of capital and corporate finance theory (see Ellerman, 1992). Even John Maynard Keynes (1883-1946) was not immune to this sophisticated version of the fundamental myth. He saw the rights to the net returns from using a capital asset in a going concern as being attached to the capital asset—as if the asset could not be rented out.

> When a man buys an investment or capital-asset, he purchases the right to the series of prospective returns, which he expects to obtain from selling its output, after deducting the running expenses of obtaining that output, during the life of the asset (Keynes, 1953, p. 135).

Corporate finance theory, as well as the older capital theory, are both based on definitions that capitalize the *future* profits or "prospective returns" that would result from being the firm (in the going concern sense) using a capital asset—into the *current* value of the capital asset (typically a corporation). In the words of two Economics Nobel Prize winners:

> [I]n valuing any specific machine, we discount at the market rate of interest the stream of cash receipts generated by the machine, plus any scrap or terminal value of the machine, and minus the stream of cash outlays for direct labor, materials, repairs, and capital additions. The same approach, of course, can also be applied to the firm as a whole, which may be thought of in this context as simply a large, composite machine (Miller & Modigliani, 1961, p. 415).

But this assumes that the "machine" owner is running the going concern business (i.e., is the "residual claimant" in the business using the machine) now *and in the future*. The market contracts that amount to future residual claimancy have hardly been made now for the entire future time periods. When such contracts are just assumed, the machine owner or the corporation has no ownership right over their future suppliers or customers to force them to make the "assumed" contracts. Hence there is no *present* property right to those *future* profits and thus that capitalized value cannot be added into the "value of the corporation" (or other capital assets) as if it were currently owned by the capital owners. That is the fundamental myth as a part of capital theory and corporate finance theory.

The present value of the assumed future profits depends on the contractual behavior of suppliers and customers (all 'unowned' by the corporation being valued) and thus it is called "*goodwill*." The remarkable inattention or learned ignorance in conventional Economics about property rights is well-illustrated by two other Economics Nobel laureates when they assert the fundamental myth that the "*rights of authority at the firm level are defined by the ownership of assets, tangible machines or money) or intangible (goodwill or reputation)"* (Holmstrom & Tirole, 1989, p. 123). This statement combines the fundamental myth about management rights ("rights of authority") with the rights to future products and profits ("goodwill") all being part of presently owned capital.

The example of these four Nobel laureates shows that a failure to follow out the simple consequences of a capital asset being rented out and the non-ownership of future contractual fact-patterns hardly disqualifies one from the so-called 'Nobel Prize' in Economics. And even accountants (who are somewhat lower on the academic totem pole than economists) realize that there is something dubious about claiming goodwill as a presently owned property right, and thus the standard Generally Accepted Accounting Principles (GAAP) do not allow goodwill to be listed as an asset on the corporate balance sheet.

But even the accounting profession seems unsure what to do with so-called "purchased goodwill" when a corporate asset is purchased at a price above its economic replacement value. As in the old joke about a country bumpkin coming to New York and being "sold the Brooklyn Bridge," such a transaction does not create a property right that the seller did not have in the first place. Hence there is no logical basis for the usual practice of suddenly treating "purchased" goodwill (or the "purchased" Brooklyn Bridge) as an asset to be depreciated in the future. Some accountants have correctly noted that "purchased goodwill" should be booked as a debit to equity—which would be replaced by the future profits if and when they are earned.

> The amount assigned to purchased goodwill represents a disbursement of existing resources, or of proceeds of stock issued to effect the business combination, in

> anticipation of future earnings. The expenditure should be accounted for as a reduction of stockholders' equity (Catlett & Olson, 1968, p. 106).

Thus, even some accountants can get it right about what is actual owned and what is not owned by a corporation.

XV. Conclusions

Our purpose has been to analyze a miscellany of misconceptions about corporations and the rights of capital. But the corporate form itself, at least in its original conception, is not the problem. Blaming “corporations” for the ills of the current system of renting human beings is like blaming glass bottles for alcoholism.

The important idea to preserve is the original and ancient idea of a corporation as a group of natural persons engaged in certain joint activities “*that possessed a juridical personality distinct from that of its particular members*” (Tierney, 1982, p. 19). This original conception of the corporation is well described in Davis (1961), Raymond (1966), and in Abram Chayes’ *Introduction* in the Davis book.

> We can here perhaps note a final irony, at least. The concept of the corporation began for us with groups of men related to each other by the place they lived in and the things they did. The monastery, the town, the gild, the university, all described by Davis, were only peripherally concerned with what its members owned in common as members. The subsequent history of the corporate concept can be seen as a process by which it became progressively more formal and abstract. In particular the associative elements were refined out of it. In law it became a rubric for expressing a complicated network of relations of people to things rather than among persons. The aggregated material resources rather than the grouping of persons became the feature of the corporation (Chayes, 1961, xix).

The point that is little, if at all, mentioned in the corporate law literature is that the original associative activity of the members could only be squeezed out since it was replaced by the joint activity of the employees (including managers) of the corporation. Conceptually speaking, the modern *absentee-owned* corporation is a ‘wholly-owned subsidiary’ of the human rental relation, the employment contract.

The basic problem is *not* in the original idea of a corporation but in the legal institution that has completely corrupted and undermined that original conception of the corporation—namely the employment relation, the renting of human beings.

With the active members in the original conception of a corporation replaced by employees, membership could be debased into 'ownership.' The corruption of the notion of membership in the corporation was carried to its logical conclusion in the modern corporation of the joint stock or limited liability variety. The partaking in the human activities of the corporation (e.g., "patronage" in a cooperative) was reduced to zero thus turning the membership rights into untethered free-floating (i.e., no personal functional role requirement for the members) property rights that could be arbitrarily bought and sold on the market like any other pieces of property. And this reduction of the members' personal functional roles to zero was *enabled* by the above-mentioned human rental institution where the employees carry out the corporation's human activities.

Thus, the original conception of the corporate embodiment for people engaged in a joint human activity was turned into a piece of property like a piece of real estate or "a large, composite machine" to be bought and sold in the marketplace. When an occupant of the American White House suggested buying Greenland, the leading thinkers in political science, economics, and the law as well as various pundits and thought-leaders ridiculed the suggestion and did not accept "it's just a real estate deal" as a justification. Yet, the same thinkers find no problem in the daily purchase and sale of corporations (whose workforce is many times the population of Greenland); after all, it is supposedly just the purchase and sale of "aggregated material resources"—since "the associative elements were refined out of [the modern corporations]."

An interesting aspect of the whole corporate governance debate is how so many legal, political, and economic thinkers have completely lost sight of the concept of democracy in the organizations where people spend most of their waking hours. The human rental relation and the subsequent debasement of membership into ownership seems to have eclipsed the democratic ideal in so many learned thinkers today who would otherwise pledge their undying allegiance to democratic self-governance in the public sphere. The feminist movement has learned well that "It's private" is not a justification for denying women basic human rights "inside the household." But many people (including many feminists) seem to take "It's private" as a sufficient reason to deny the basic human rights of self-governance inside the firm. It is only because of this professionally prudent forgetting of democratic ideals in the workplace that the whole question of corporate governance and purpose is "up for grabs" in the first place. There is no analogous debate about who should govern a municipality.

In the times of slavery, there was a similarly obscene mal-distribution of wealth and real income between the masters and slaves. The original Abolitionist Movement led to the elimination of the market for the involuntary—and even the voluntary—buying and selling of other human beings. That slowly changed the dynamics of income and wealth generation in the future—although it did not redistribute the results of the institutional robbery in the past, not even "40 acres and a mule" for each slave family.

Today, more worker ownership would certainly help improve the income distribution (Rieger 2016). But the root problem is systemic. We now have the institution for the voluntary renting of other human beings—and that in turn has allowed the complete corruption and debasement of the original idea of the corporate embodiment for people carrying out certain joint activities. The human rental relation allows the absentee owners of corporations to legally appropriate all the assets and liabilities created as the fruits of the labor of the people working in the corporation—with those people's labor treated only as one of the expense items. That is the root of the problem, and that statement should be as obvious as saying that the root of the problem of inequality in the Antebellum American South was the master-slave relation.

The idea of a corporation is not the root of the current inequality problem—anymore than the legal form of cotton farms (as slave plantations) was in Antebellum times. The root problem today is the employer-employee (or master-servant) institution for the employing, hiring, leasing, or renting of human beings. Hence the rise of the neo-abolitionist call (Ellerman, 2021) for the abolition of that human rental institution in favor of all corporations being democratic associations of the people carrying out the activities of the corporations.

References

Anderson, E. (2017). *Private Government: How Employers Rule Our Lives (and Why We Don't Talk About it)*. Princeton University Press.

Berle, A. A. (1959). *Power Without Property: A New Development in American Political Economy*. Harcourt Brace & Co.

Berle, A. and Means, G. (1932). *The Modern Corporation and Private Property*. MacMillan Company.

Business Roundtable. (2019, August 19). Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy That Serves All Americans.' *Business Roundtable*. Available at: https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans.

Catlett, G. and Olson, N. (1968). *ARS No.10: Accounting for Goodwill*. American Institute of Certified Public Accountants.

Chassagnon, V. and Hollandts, X. (2014). Who are the owners of the firm: Shareholders, employees or no one? *Journal of Institutional Economics*, 10 (1 March), pp. 47–69. https://doi.org/10.1017/S1744137413000301.

Chayes, A. (1961). Introduction. In J. P. Davis (Ed.), *Corporations* (pp. i–xix). Capricorn Books.

Chayes, A. (1966). The Modern Corporation and the Rule of Law. In E. S. Mason (Ed.), *The Corporation in Modern Society*. Atheneum.

Clark, R. C. (1986). *Corporate Law*. Aspen Law and Business Publishers.

Clarke, T. and Branson, D. (Eds.). (2012). *The Sage Handbook of Corporate Governance*. Sage Publications.

Dahl, R. A. (1970). *After the Revolution? Authority in a Good Society*. Yale University Press.

Dahl, R. A. (1985). *Preface to Economic Democracy*. University of California Press.

Davis, J. P. (1961). *Corporations*. Capricorn Books.

Dow, G. (2003). *Governing the Firm: Workers' Control in Theory and Practice*. Cambridge University Press.

Edwards, J. and Morgan, M. (2004, May 20). Abolish Corporate Personhood. *Reclaim Democracy*. Available at: https://reclaimdemocracy.org/abolish-corporate-personhood/.

Ellerman, D. (1975). The “Ownership of the Firm” is a Myth. In D. Garson and M. P. Smith (Eds.), *Organizational democracy: Participation and self-management*. Sage Publications.

Ellerman, D. (1992). *Property & Contract in Economics: The Case for Economic Democracy*. Blackwell.

Ellerman, D. (2015). On the Renting of Persons: The Neo-Abolitionist Case Against Today’s Peculiar Institution. *Economic Thought*, 4 (1), pp. 1–20.

Ellerman, D. (2021). *Neo-Abolitionism: Abolishing Human Rentals in Favor of Workplace Democracy*. Springer Nature. https://doi.org/10.1007/978-3-030-62676-1.

Fischer, S., Dornbusch, R. and Schmalensee, R. (1988). *Economics*. McGraw-Hill Co.

Flynn, J. J. (1973). Corporate Democracy: Nice Work if You Can Get It. In R. Nader and M. J. Green (Eds.), *Corporate Power in America* (pp. 94–110). Grossman Publishers.

Friedman, M. (1970, September 13). The Social Responsibility of Business is to Increase its Profits. *New York Times*.

Gierke, O. von. (1958). *Political Theories of the Middle Age*. Beacon Press.

Goodman, P. S. (2020, April 13). Big business pledged gentler capitalism. It’s not happening in pandemic. *New York Times*.

Gordon, J. N. and Ringe, W.-G. (Eds.). (2018). *The Oxford Handbook of Corporate Law and Governance*. Oxford University Press.

Hannigan, B. (2012). *Company Law 3rd Ed.* Oxford University Press.

Hansmann, H. (1996). *The Ownership of Enterprise*. Harvard University Press.

Hansmann, H. (1990). Ownership of the firm. In L. A. Bebchuk (Ed.), *Corporate law and economic analysis* (pp. 281–313). Cambridge University Press.

Hansmann, H. (2013). All firms are cooperatives—And so are governments. *Journal of Entrepreneurial and Organizational Diversity*, 2 (2), pp. 1–10. http://dx.doi.org/10.5947/jeod.2013.007.

Hansmann, H. and Kraakman, R. (2000). The End of History for Corporate Law. *Discussion Paper No. 280, Olin Center for Law, Economics, and Business, Harvard Law School*, *3*, pp. 1–37.

Harrison, J. S., Barney, J. B., Freeman, R. E. and Phillips, R. A. (Eds.). (2019). *The Cambridge Handbook of Stakeholder Theory*. Cambridge University Press.

Holmstrom, B. and Tirole, J. (1989). The Theory of the Firm. In R. Schmalensee and R. Willig (Eds.), *Handbook of Industrial Organization: Vol. I* (pp. 61–133). North-Holland.

International Co-operative Alliance. (2015). *Guidance Notes on the Cooperative Principles*. International Co-operative Alliance. Available at: https://www.ica.coop/sites/default/files/publication-files/ica-guidance-notes-en-310629900.pdf.

Jossa, B. and Cuomo, G. (1997). *The Economic Theory of Socialism and the Labour-managed Firm: Markets, Socialism, and Labour Management*. Edward Elgar.

Keynes, J. M. (1953). *The General Theory of Employment, Interest, and Money*. Harcourt Brace Jovanovich.

Knight, F. H. (1936). The Quantity of Capital and the Rate of Interest: I. *Journal of Political Economy*, 44 (4), pp. 433–463.

Knight, F. H. (1956). *On the History and Method of Economics*. Phoenix Books.

Lazonick, W. (2018, February 27). Stock Buybacks Hurt Workers and the Economy. We Should Ban Them. *Institute for New Economic Thinking*. Available at: https://www.ineteconomics.org/perspectives/blog/congress-can-turn-the-republican-tax-cuts-into-new-middle-class-jobs.

Lazonick, W. and Shin, J.-S. (2020). *Predatory Value Extraction: How the Looting of the Business Corporation Became the US Norm and How Sustainable Prosperity Can Be Restored*. Oxford University Press.

Lessig, L. (2011). *Republic, Lost: How Money Corrupts Congress—And a Plan to Stop It*. Hachette Book Group.

Lessig, L. (2019). *They Don't Represent Us: Reclaiming Our Democracy*. Dey Street Books, William Morrow.

Maitland, F. W. (1960). *Frederic William Maitland: Historian* (R. L. Schuyler, Ed.). University of California Press.

Marx, K. (1977). *Capital (Volume I)*. Vintage Books.

McMahon, C. (1994). *Authority and Democracy: A General Theory of Government and Management*. Princeton University Press.

Miller, M. H. and Modigliani, F. (1961). Dividend Policy, Growth, and the Valuation of Shares. *The Journal of Business*, 34 (October 1961), pp. 411–433.

Mishel, L. and Wolfe, J. (2019). *CEO compensation has grown 940% since 1978* (No. 171191; p. 21). Economic Policy Institute. https://files.epi.org/pdf/171191.pdf.

Piketty, T. (2014). *Capital in the Twenty-First Century*. Harvard University Press.

Piketty, T. (2020). *Capital and Ideology*. Belknap Press.

Raymond, R. L. (1966). The Genesis of the Corporation. In *Corporations: Selected Essays reprinted from the Harvard Law Review* (pp. 1–16). Harvard Law Review Association.

Rieger, S. (2016). Reducing Economic Inequality through Democratic Worker-Ownership. *Century Foundation*. Available at: https://tcf.org/content/report/reducing-economic-inequality-democratic-worker-ownership/.

Ripken, S. K. (Ed.). (2012). Citizens United, Corporate Personhood, and Corporate Power: The Tension between Constitutional Law and Corporate Law. *University of St. Thomas Journal of Law & Public Policy*, 6 (2 Spring), pp. 285–316.

Ripken, S. K. (Ed.). (2019). Abolishing Corporate Personhood. In *Corporate Personhood* (pp. 241–269). Cambridge University Press.

Robé, J. P. (2011). The Legal Structure of the Firm. *Accounting, Economics, and Law*, 1 (1), Article 5. https://doi.org/10.2202/2152-2820.1001.

Rothstein, B. (1992). Social Justice and State Capacity. *Politics & Society*, 20 (1 March), pp. 101–126.

Rothstein, B. (2020, March 19). *Why No Economic Democracy in Sweden? A Counterfactual Approach*. Stockholm: Democratizing the Corporation.

Samuelson, P. A. (1976). *Economics* (10th ed.). McGraw-Hill.

Citizens United vs. Federal Election Commission, 558 U.S. 310 (U. S. Supreme Court 2010). Available at: https://supreme.justia.com/cases/federal/us/558/310/.

Stout, L. (2012). *The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations, and the Public*. Berrett-Koehler Publishers.

Theobald, M. (2004). Briggs Mfg. Co. *Coachbuilt*. Available at: http://www.coachbuilt.com/bui/b/briggs/briggs.htm.

Tierney, B. (1982). *Religion, Law, and the Growth of Constitutional Thought 1150-1650*. Cambridge University Press.

Tombs, S. and Whyte, D. (2015). *The Corporate Criminal: Why Corporations must be Abolished*. Routledge.

Vanek, J. (1977). *The Labor-Managed Economy*. Cornell University Press.