

Musings



Do Stockholders "Own" Corporations?

Viewing the corporation as a piece of property is ancient—and destructive



BY MARJORIE KELLY

I grew up with bombs in the house. Two, actually. They were part of my father's collection of antique war implements: a motley assortment of swords, masks, rifles, and these two shells—tall as a two-year-old child, standing upright on the long brick hearth in our basement. It wasn't until dad died and mother moved out—after eight children had grown up wrestling near those bombs—that we discovered one shell was live. It could have gone off any time.

These days I collect tamer antiques, mostly antique ideas. I'm fascinated by how once-ordinary concepts can later seem absurd—or, conversely, how ideas we think of as dead can turn out, like old bombs, to have an unexpected, lingering power. One concept that I've been watching move, oddly, in and out of the antique idea category is this notion that stockholders "own" corporations. The idea is bandied about casually these days, but we miss how recent this usage is—less than two decades old. *Fortune* writer Joe Nocera notes it was rare before the 1980s to speak of stockholders as "owners," and that T. Boone Pickens brought the concept into the common vocabulary—to justify hostile takeovers.

In one sense, then, speaking of stockholders-as-owners is more modern than Andy Warhol. Though in its roots, it's as ancient as the Sistine Chapel. The first recorded English joint stock company—Muscovy Company—dates to about 1555. So while this notion that stockholders own companies is both ancient and modern, in between it fell out of use. As well it should have.

The relationship stockholders have to the modern corporation looks very little like ownership. Stockholders have no tangible relationship to the thing owned, take no responsibility for its misuse, and play no part in its upkeep. As *CFO* magazine notes, only a quarter of market value for S&P 500 companies comes from tangible assets.

So talk about "ownership" is more and more nonsensical, as our legal system has recognized. "Sophisticated lawyers these days don't use the 'ownership' term," Margaret Blair of the Brookings Institution in Washington told me several years ago. "The corporation is a nexus of contracts. It's not a thing that can be owned."

What helped knock the ownership idea out of currency was the 1932 book by Adolf Berle and Gardiner Means, *The Modern Corporation and Private Property*, which first noted the separation of ownership and control in corporations. This separation dissolved the unity of private property, so no one "owned" the corporation any more, Berle and Means wrote. This "released management from the overriding requirement that it serve stockholders."

What emerged after the 1930s was a new era of

"managerial capitalism," embracing a broader concept of corporate purpose. It brought in its wake a golden age, after WWII into the 1970s, when income for the middle class and the wealthy rose in tandem. People rarely spoke of stockholders as owners. Legal scholars "were leaning then toward stakeholder thinking, though they didn't use that term," Blair said.

All that changed with the rising power of institutional investors, and the hostile takeovers of the 1980s, when stockholders reclaimed control. To give a single illustration: Directors rose up and, in one extraordinary period of 1992-93, dismissed a half-dozen CEOs—at General Motors, IBM, American Express, Kodak, Westinghouse, and Borden. The era of "investor capitalism" had arrived. Its single, ruthless focus was shareholder enrichment.

We've seen the results. Under the whip of an investor-driven economy, employees have suffered through layoffs, wage stagnation, insecure temporary work, declining benefits, and longer hours. Communities suffered rising demands for corporate welfare and tax exemptions. Stockholders demanded more, and everyone else was made to pay.

As justification, the idea stockholders "own" corporations was resurrected—probably subconsciously. We use the phrase so lightly, we rarely think what it means. It's worth pausing to do so. For the concept has undertones more at home in the medieval era than the modern era. It harkens back to a time when lords owned serfs, or England owned India. When we unpack this notion of stockholders "owning" corporations, we see it means three things:

1) *The corporation is a thing that can be owned.* That means owning not only tangible assets but "intangibles." Which includes the company's living presence: its employees. Thus one group of humans owns another group of humans.

2) *The owners are masters, and all others are subordinate.* Stockholder needs alone are important, while employee and community needs are unimportant.

3) *The thing owned has no life of its own separate from its masters—no independent integrity that must be respected.* Thus it can be broken apart, sold, squeezed dry, or shut down, as though it is nothing more than an object.

These are antique ideas, worth discarding rather than resurrecting. And yet here they are again among us—unleashing their destructive power. When we look for the cause of capitalism's recent dysfunctions, we rarely think to blame a mere word: "ownership." Yet that is the problem's core, for its medieval undertones retain an unexpected, lingering power—like a bomb on the hearth. ❧

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