Journal of Institutional Economics (2014), 10: 1, 47–69
© Millennium Economics Ltd 2013 doi:10.1017/S1744137413000301
First published online 9 September 2013

Who are the owners of the firm: shareholders, employees or no one?

VIRGILE CHASSAGNON*

ESDES School of Management, Catholic University of Lyon, Lyon, France; GREDEG, Nice, France; and IFGE, Lyon, France

XAVIER HOLLANDTS**

France Business School, Paris, France; CRCGM, Clermont-Ferrand, France; and IFGE, Lyon, France

Abstract: The issue of firm ownership is an ongoing debate. For several decades, contractarian theory has undoubtedly shaped the academic debate in both law and economics. Proponents of this approach suggest that shareholders can legitimately be considered the owners of a firm because they hold shares. This approach, though attractive, is legally incorrect. Legal scholars have noted that a corporation cannot legally belong to shareholders or other stakeholders; no one owns the firm (and a corporation). The question of firm ownership masks the following crucial issue: Who should govern the firm? In this article, after returning to the theoretical debate on firm ownership and explaining why a firm cannot be owned, we shall analyze power as the core of firm governance. This approach is a potentially relevant and accurate way to address the problems of specific human investment, collective creation and productive (consummate) cooperation in modern firms.

1. Introduction

For decades, the corporate governance system has pitted executives and shareholders against each other in a struggle to gain the upper hand with respect to firm control. As early as 1932, Berle and Means highlighted the progressive explosion of the 'atom of ownership' and observed increasing manager control of major firms. In the mid-1990s, executives seemed to have all the effective power in contemporary companies: in one of his major works, Roe (1994) summed up the situation with a lapidary statement: 'Strong Managers, Weak Owners'. By the year 2000, shareholders were asserting themselves with more activist and interventionist behavior. Consequently, corporate governance is slowly crystallizing around the issue of relations – potentially tense relations – between more active and involved shareholders and executive oversight. This issue – which is central to corporate governance – is traditionally regarded as an agency relationship between shareholders and managers; shareholders

*Email: vchassagnon@univ-catholyon.fr
**Email: xavier.hollandts@france-bs.com

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

delegate their executive power – as 'owners' – to the managers, who actually run the business. However, management objectives can potentially be in conflict to those of shareholders. These potential conflicts may concern business strategy or financial decision making such as, for example, the structure and amount of executive compensation. These 'agency conflicts' constitute a key issue with respect to corporate governance.[1] The quality of shareholder control of the managers becomes essential for the *good* governance (Fama and Jensen, 1983). Corporate governance therefore aims to direct and encourage management to act in a suitable way, i.e., create (or not destroy) value for the shareholder (Fama and Jensen, 1983). Certain observers, however, have for some time denounced the perversion of shareholder supervision that, according to them, has only one aim: the unceasing improvement of corporate value creation and profits (Lazonick and O'Sullivan, 2000). The notion of financial value creation is becoming a central one because it is the best objective method and 'yardstick' for measuring the quality of shareholder control and the potential divergence of interests (Hillman and Keim, 2001).

Typically, shareholders are seen as corporation's owners on the grounds that they hold shares, which are sometimes presented as property titles. The power conferred by share ownership confers the shareholders the ability to, as a last resort, exercise control over the corporation's strategy and performance because they are deemed the 'legitimate owners' of the firm. This view, widely purveyed in today's media, is nonetheless a hotly debated subject; if shareholders are treated as corporation 'owners', their dominant position is validated with respect to firm governance. Therefore, shareholders would be able to fix and distribute value created or decide which strategy to follow. However, the question of firm ownership is complex, and certain authors question the notion of ownership based purely on shareholding. Employees, as the possessors of specific human capital, could claim to have status as 'co-owners' of a firm equal to that of shareholders, the possessors of the financial capital. Certain authors dismiss this approach by emphasizing that the question of business ownership alone is unsatisfactory because it does not fully address the essential issue of governing power, which is not the same thing as ownership, and which, in the case of lawyers, is hardly a subject for debate.

The reappraisal of the firm ownership myth should be conducted with respect to the causes and consequences of the 2008 crisis that clearly challenged the legitimacy of the shareholder maximization model. This model feeds speculation and sanctions productive real investments (see Keynes, 1936) and raises the question of who should govern a firm to achieve social and societal cohesion. It is therefore urgent that scholars propose new theoretical and analytical perspectives to business and policymakers (including publics) that cast doubt

1 As Hansmann and Kraakman (2001) point out, agency theory is based on a philosophy of *dispossession,* or how power once lost (by principals, i.e., shareholders) can be reacquired.

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

on shareholder-based capitalism and reconsider stakeholder-based production capitalism. These perspectives should reconsider the fact that the limitations of financial capitalism are strong and dangerous regarding 'the intractabilities of uncertainty, complexity and system openness in the real world' (Hodgson, 2009: 1217), and they should move society toward a more realistic model that identifies who creates collective value and who the human constituents (not the sole shareholders) are of the social and economic entity called 'firm'. This issue is a crucial one for driving post-crisis corporate governance reform that must put workers in a stronger position and shareholders and 'finance' in a weaker one. As Cioffi (2010) rightly notes: 'the crisis not only demonstrated the increasing instability of modern finance capitalism, it also exposed the power relations underlying it. Pre-crisis patterns of deregulation and pro-shareholder regulatory expansion reflected, above all, managerial interests within large financial institutions' (ibid.: 229).

Considering the theoretical legal and economic debate on corporate governance and its consequences and beginning with the debate on firm ownership, the purpose of this study is to discuss the power to govern a firm. Is it founded merely on the holding of shares in the firm, or can it be based on other elements?

Our approach deliberately follows a 'law and economics perspective' which, by combining contributions from both lawyers and legal economists, is particularly relevant. Section 2 demonstrates that property rights theory incontestably legitimized supporters of the shareholder approach by presenting shareholders as the 'owners' of the corporation. This approach is centered on a simple but incorrect argument: shares are considered to be the title deeds of a corporation and individuals who possess shares are consequently 'owners' of the subject of these title deeds, i.e., the corporation itself.[2] However, many lawyers stress that shareholders only own shares and not the assets of the corporation. With respect to firm ownership, Section 3 defends a broader approach by attempting to prove that shareholders cannot legally be considered owners and that, accordingly, they have the same legitimacy as other stakeholders. This approach, based on stakeholder contribution to value creation, paradoxically puts those who contribute critical resources – the employees – back at the center

2 The notion of corporation often relies on the act of being incorporated, which means that 'the corporation is an artificial being, invisible, intangible, and exists only in the contemplation of law' (Dodd, 1941). From this perspective, a corporation is a legal arrangement for creating and operating a business. From an economic and social perspective, the firm is a collective productive form, which integrates both human and non-human assets, based on social cohesion and cooperation. The raison d'être of the firm was, is and will be to produce the collective action necessary to serve human needs (see Chassagnon, 2011b). In this paper, we use the term 'firm' and not the term 'corporation'. The term 'firm' comes from the Medieval Latin *firma* that refers to convention and from the Latin *firmus* that refers to durability and more particularly to firmness (as opposed to softness). As Joo (2002) explains, the economic concept of firm differs from the legal concept 'corporation' also because economics analyzes contract as a reciprocal and voluntary relationship whereas law proposes a definition of contract as a legally enforceable relationship.

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

of governance. Thus, Section 4 illustrates a shift in the central issue of governance with respect to the power (to govern) in a business firm.

2. Property rights theories and the economic efficiency paradigm: shareholders must own the firm

Firm governance theory revolves around the issue of firm ownership. 'Ownership of the firm' constitutes, for Ellerman (1990: 6; 2007), a 'fundamental myth'. Ellerman (ibid: 6) stresses that the myth of production ownership is universal because it 'is accepted by both sides in the capitalism–socialism debate'. The overall idea is that shareholders can legitimately be considered as owners of the corporation because they invest in financial capital (e.g., Mikami, 2011). This point is illustrated using the traditional model whereby capital (shareholders) hires labor (workers) (Dow and Putterman, 2000).[3] There is a twofold issue, however, concerning firm ownership that has both economic and legal implications. Economically, who among stakeholders are the individuals most suited to orient the firm in the direction of positive results, efficiency, and economic development? Legally, does the corporation belong to a particular group of stakeholders? Concerning economic effectiveness, the economic theories of a firm tend to legitimize shareholders with respect to efficiency, which places these same shareholders above other stakeholders. Legal theories refocus the debate around the ownership of the corporation and not of the firm. Similar to contractualist economic theories, the contractarian theory also recognizes the preponderant position of shareholders and tends to see them as owners of the corporation. Property rights theory serves to synthesize these two disciplines (law and economics) to propose an effective configuration of organizations that justifies and legitimizes the shareholders as the owners of a firm. Other theories substitute the notion of a firm (with no legal existence) to a corporation, which is more precisely defined. Property rights theorists will rely on legal fiction, which provides them with a legal argument to develop an analysis in terms of contracts and property rights.

Since the end of the 19th century, lawyers have built a legal fiction theory by recognizing that a corporation is no more than a collection of private interests. The firm has no existence or reality; it only exists because of the willingness of one or more entrepreneurs to come together within a legal structure. The corporation (object of rights) is the 'legal clothing' of a firm (productive collective), directed solely by the will of the entrepreneur and his associates, if any. Conceptually and semantically, an incremental shift takes place from the *corporation* to the *firm*. During the 1950s and 1960s, the property rights school grouped the terms

3 'Many of these developments have been necessary in order to adapt the business corporation to modern industrial and financial conditions, [. . .] our traditional assumption [is] that shareholders, as owners' of corporate capital, hire management' (Dodd, 1941: 921).

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

corporation and firm together – often confusing them with the entrepreneur himself. A firm is conceived as a bundle of contracts reflecting the will of individuals to associate inside a common firm. This school synthesizes the two disciplines of law and economics around an essential question: on the basis of what rules can the possession of economic assets be defined?

Property rights theory is seductive in that it relies on the notion of (rights of) property.[4] The entrepreneur is considered to be the owner of his firm because the latter can only exist through the expression of his initial will. Moreover, the entrepreneur as the firm's proprietor is rationally motivated to manage the firm effectively because his property is at stake. The theory of property rights therefore bases economic efficiency – including that of collective organization – on the private possession of rights. These organizations are operated effectively because they are the object of rights that are held privately by individuals. Therefore, the private ownership of the objects, and of the objects subject to the rights, is economically effective. Thus, property rights theory enables every individual to privatize not just his own factors of production but also the profits that may arise from them (Ellerman, 1990). As Hart (1996) summarizes, the notion of property refers to a collection of rights among which the shareholders, seen as 'owners', hold the most useful rights. The *contractarian* legal theory allows the legitimization of the shareholders' preponderant position.

Advocates of this approach rely on the idea of contract and legal fiction. In this view, the word 'firm' is only used for convenience (Iwai, 1999). Consequently, shareholders possess the firm and managers are agents ('mere stewards') and guarantors of shareholder interests (Bainbridge, 2008: 8). For proponents of this approach, the role of corporate law is to minimize agency problems that result from potential conflict of interest between shareholders and management, between controlling shareholders and minority shareholders, and between shareholders and stakeholders (Fish, 2006).

The (economic) contractual approach is explicitly based on an approach that denies the notion of collective entity because the firm only exists and acts through individuals (Bainbridge, 2008). As Hart (1989) recalls, contractual relations with employees, suppliers, clients, and creditors are essential aspects of a firm. For Putterman (1993: 245–246), 'the firm as an ownable asset is an entity that acts as a legal agent in the market place, entering into contractual agreements with other agents to produce and sell goods and services'. Proponents of this approach reject any reification of the firm except for semantic reasons (Bainbridge, 2008; Iwai, 1999). As a result, the firm is no more than a bundle of contracts – explicit and implicit – that establish the rights and obligations of the inputs that constitute

4 Property rights, therefore, narrowly designate all the legally validated rights for holding an asset (Demsetz, 1967; Coase, 1960) but also, more widely, the convention authorizes the holder of the rights to use the resources allocated within the limits authorized by the rules of law according to the social conventions.

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

the firm. If the firm is only a legal fiction consisting of a collection of contracts, then the shareholders, as the principals of these contracts, must have the rights of control over the firm and its assets (Alchian and Demsetz, 1972; Jensen and Meckling, 1976).

From an economic and legal point of view, the arguments justifying the shareholders' preponderant role are on three interlinked levels: the shareholders are the legal owners of the corporation (1: legal argument); they bear an important risk (2: economic argument); and they are the residual claimants (3: legal–economic argument).

The firm as a legal fiction is only a contractual arrangement that supports property rights. In supplying the capital, the shareholders provide the essential starting point for setting up these multiple contractual relations. Once the corporation is registered, it can legally conclude contractual arrangements with multiple stakeholders: hire employees and sign contracts with suppliers and customers. As Bainbridge (2008) mentions, shareholders possess property rights over the capital, which is confusing because capital does not constitute an autonomous entity. In the contractual approach, shareholders, as holders of property rights over the capital, have indirect control over the firm and, by extension, over other assets of the firm (Hart, 1996; Hart and Moore, 1990). This characteristic is reinforced by a major argument. By investing in the corporation, shareholders accept a risk because they have no guarantee regarding the profitability of their investment and still less of its durability.

Shareholders are expected to bear significant risk, theoretically more substantial risk than any other stakeholder: this is residual risk (Easterbrook and Fischel, 1991). Residual risk has its counterpart in remuneration. Shareholders are treated as residual claimants, i.e., they only receive a portion of profits once other stakeholders have been paid (Easterbrook and Fischel, 1991). It is precisely this combination of the formal right to control – as holders of 'rights of property' – and the right to the residual claim that confers on them from the contractualist perspective the status of 'owner' of the firm (Hansmann, 1996). Blair (1995) claims that the confusion is maintained deliberately, but even so, being a residual claimant and bearing the associated risk is not enough to make the shareholder the (sole) proprietor of the firm.

Firms, therefore, are a special form of co-operative coalition in which 'ownership' is assigned to shareholders (Hart, 1995). Accordingly, it is in the interest of shareholders who are mainly remunerated by profits to optimize management, which maximizes overall economic efficiency (Alchian, 1961; Easterbrook and Fischel, 1991). This gives rise to the notion of maximizing shareholder value. This indicator becomes *by default* the principal indicator that a firm is well run and has efficient management (Cioffi, 2010; Hillman and Keim, 2001; Lazonick and O'Sullivan, 2000) given that shareholders cannot observe either manager activity or consequences owing to the incomplete nature of contracts. Examination of firm performance, and particularly of its value

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

creation, is the only instrument of control at their disposal. A firm that creates value for shareholders will necessarily have created value for other stakeholders given that the shareholders are remunerated last – residual claimants.

This approach of making shareholders the legitimate owners of the corporation has received significant support in various court cases. A well-known example is *Dodge v. Ford* of the Supreme Court of the State of Michigan (170 N.W. 668 Michigan, 1919; for a critical discussion, see Stout, 2008). This decision, one of the most studied and commented on by American lawyers, is the cornerstone for the recognition of shareholder supremacy in American case law (Fish, 2006). At the time, this lawsuit involved two brothers, minority shareholders in the Ford corporation, who emphasized that the corporation should have paid its shareholders a higher dividend, in the region of 10 million dollars. The position of Henry Ford was to claim that it was the responsibility of the managers and directors to decide how to spend and distribute the profits.[5] This vision was not shared by the two brothers, Horace and John Dodge, who believed the dividends proposed represented only a very small fraction of the profits. This conflict, which was originally more concerned with the overwhelming power of the controlling shareholder (Ford) in relation to the minority shareholders, gave the judge the opportunity to lay the legal foundation for shareholder supremacy. The judgment, which held Ford liable and accepted the arguments of the Dodge brothers, includes an enlightening passage that is often quoted in legal handbooks: ‘There should be no confusion. A business firm is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of the directors is to be exercised in the choice of means to attain that end, and does not extend to other purposes’. This decision has an important place in the common law construction of shareholder supremacy even though, as Stout (2002) recalls, the subject would continue to be hotly debated for many years, as the exchange between Professor Berle (1932) and Professor Dodd (1932), published in 1932 in the *Harvard Law Review*,[6] illustrates. Nearly a century later, the central question of property rights and firm ownership remains a topical issue. The domination

5 ‘My ambition’, declared Mr. Ford, ‘is to employ still more men; to spread the benefits of this industrial system to the greatest possible number, to help them build up their lives and their homes. To do this, we are putting the greatest share of our profits back into the business’ *Dodge v. Ford*, 170 N.W. 668 Michigan 1919: 671.

6 As early as 1932, the same opposition between followers of the *contractarian* – and consequently shareholder – approach that recognizes that the firm must be managed by giving priority to the interest of shareholders, and the followers of a broader and more partnership-based approach (*stakeholderism*) represented by Professor Dodd, stressed that the firm ought to be run by the managers in the interests of employees, customers and the community in general as much as of its shareholders. For Dodd, ‘the business corporation [is] as an economic institution which has a social service as well as a profit-making function’ (Dodd, 1932: 1148). It should be noted that the work of Berle and Means (1932) would indisputably have a powerful influence on these debates – an influence that was made decisive by the Securities Act of 1933 and the Securities Exchange Act of 1934.

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

of shareholders regarding the governance of a firm rests mainly on this criterion. Can control of the firm be based on the possession of shares alone, or can it be extended to other foundations?

3. Shareholders do not own the firm. What about employees?

The corporation both influences and is influenced by the law; the firm is a politico–legal entity based on private arrangements (see Baudry and Chassagnon, 2010; Chassagnon, 2011a, 2011b). Law is a necessary condition for productive activity. In addition to contracts, ownership is a crucial attribute of firm governance. However, it is important to note that the nature of firm ownership is seriously debated. Intuitively, the issue is the identification of owners and the owned object. Who really owns the firm? What do the so-called 'owners' of a firm actually own? How can an individual be the owner of a fictive entity such as a nexus *of* contracts or *for* contracts (see Armour *et al.*, 2009)? Some legal principles have been extrapolated and distorted by certain economists (regarding their real legal nature). This especially applies to the case of ownership because while shareholders may own the shares of a corporation (firm's capital), they do not own the firm; no one owns the firm as a real entity, i.e., as an emergent societal entity that cannot by nature be reduced to the individual parts of which it is comprised.

In his famous article, Honoré (1961) set out principles for the nature of ownership: the right of possession; the right of use; the right to manage; the right to any resulting income; the right to the capital value; the right to security from expropriation; the power to transmit it by sale; gift or bequest to someone else (transmissibility); no time limit on the rights (absence of term). These rights are valid in all developed countries for any alienable object, i.e., for any object that is subject to property rights. *A contrario*, non-owners can use their rights to obtain compensation by seizing (through bailiffs) the object of ownership (liability to execution). Additionally, ownership implies the obligation of not using the owned object harmfully (prohibition to harmful use). Finally, Honoré proposes the listing of ten rights (we could add residual control) and obligations that characterize any object of ownership. To understand and appreciate the argument of firm non-ownership, it is useful to understand the difference that exists between, for example, the expressions 'owning a firm' and 'owning a car' (see also Kay and Silberston, 1995). A car as an object of ownership conceals all these rights and obligations, but what about the firm? Does the firm have the same features? In one example, we have an object made up of human constituents, but that is not the case with the other. In all western countries based on legal systems, the ownership of a car enables you to use it, to prevent others from using it (exclusion), to lend it, to sell it, etc. Any infringement of one of these principles is subject to legal proceedings requiring sanction and compensation. Is it reasonable to treat firm ownership in the same way that we treat ownership of

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

a car? Stating that 'shareholders own firm X' is very different from stating that 'shareholders own the shares in X'. Similarly, stating that 'shareholders own the shares in X' is very different from stating that 'shareholders own the assets of X' (see, e.g., Strasser, 2011).

We argue that the firm is not an object of ownership; any physical or moral entity can own the firm as such. There is no doubt about the ownership of shares in a corporation. Shareholders have the right to own a corporation's shares, and nobody can contest their rights to make an income from them. Similarly, nobody can prevent shareholders from selling or giving their shares away. The shareholder must not use his shares harmfully, and shares can be seized if contractual obligations are not honored. However, Kay and Silberston (1995) offer that the rights of possession, to use and to manage the object of ownership, are only partially respected, whereas other rights and obligations are absolutely not respected.[7] The owners of the shares in corporation X are not the owners of X. There is no special contract between shareholders and the firm, which means that they are owners, not of contracts, but of the 'firm' entity itself. The typology of Honoré is used to argue that the firm cannot be owned and to conclude that shareholders do not own the firm itself. With respect to law (and the legal incoherence referenced), a firm cannot be an alienable entity.

If shareholders are not the owners of a firm, it is simply because the firm is not an object of ownership (Blair, 1995; Stout, 2007). It is therefore incorrect to confuse shares with property rights because this leads to shareholders becoming the owners of the corporation (see Blair, 1995; Blair and Stout, 1999; Lan and Heracleous, 2010; Stout 2002).[8] Even Fama (1980) considers that 'ownership of capital should not be confused with the ownership of the firm' (ibid.: 290). Additionally, no human constituents of the firm can own it. No one owns the firm because beyond the formal aspects of it that are recognized by law, the firm is a social organization that is institutionalized separately from law (see also Davies, 2008; Marris, 1964; Robé, 2011). This crucial fact of the non-ownership of the

7 Indeed: (1) the income of share owners is the dividends conditionally given by the decision of the board of directors according to the bargaining powers of employees; (2) shareholders do not have capital value except for exceptional circumstances such as liquidation; (3) they do not have the rights against the expropriation of the assets of X; (4) they cannot sell or give up by bequest these same assets; (5) they do not have the obligation (or the ability) to prevent X from acting in a harmful and abusive manner; and (6) the assets of X cannot be used for shareholder debt.

8 On this point, Stout (2002: 1191) reminds us: 'Milton Friedman is a Nobel Prize-winning economist, but he obviously is not a lawyer. A lawyer would know that shareholders do not, in fact, own the firm. Rather, they own a type of corporate security commonly called "stock". As owners of stock, shareholders' rights are quite limited. For example, stockholders do not have the right to exercise control over the firm's assets. The firm's board of director's holds that right. Similarly, shareholders do not have any right to help themselves to the firm's earnings; the only time they can receive any payment directly from the firm's coffers is when they receive a dividend, which occurs only when the directors decide to declare one. As a legal matter, shareholders accordingly enjoy neither direct control over the firm's assets nor direct access to them. Any influence they may have on the firm is indirect, through their influence on the board of directors'.

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

corporation is clear in all developed capitalist countries, and in both common and civil systems of law. Social networks, relational commitments, collective identity, etc., are not negotiable and are not alienable. The moral personality of the corporation implies that it cannot be owned. As Latty (1936) notes: 'a corporation is a wholly different person from its stockholders[9] – it is an entity, separate and distinct from them.[10] This answer reveals the traditional approach to scores of problems in corporation law, an approach that can lead the incautious into considerable trouble' (ibid.: 597). With respect to the spirit of the nexus of contracts view, shareholders circumscribe the legal entity called 'the firm'. Thus, 'corporate assets belong not to shareholders but to the corporation itself' (Blair and Stout, 1999: 250–251). In summary, Dodd (1932) raises the following question: 'For whom are corporate managers trustees?' The answer has become shareholders in modern economic debates.[11] However, it is clearly a *non sequitur* and a legal heresy; Greenwood (1996) sees in shareholders fictions within the fiction (the nexus of contracts). The corporation must be recognized as 'an end in itself', which requires a model of firm governance to give it existence that is independent from its shareholders (Kay and Silberston, 1995).

From the property rights theory perspective, shareholders who own the non-human assets of a firm determine the legal boundaries of the firm (see, e.g., Moore, 1992). Ultimately, the owner personifies the aggregation of entities that have residual rights of control (see Bolton and Scharfstein, 1998).[12] Shareholders are the key figures of the aggregate; they are the firm. However, the responsibility of shareholders is only partial (Easterbrook and Fischel, 1985). The firm is no longer a plural entity (a societas), a 'we' composed of several distinct constituents but a fictive entity empty of them (Ireland *et al.*, 1987). However, shareholders do not participate in the internal organization of the firm but benefit (or not)

9 We find a similar intuition in Marris (1964: 12): 'This person, which is really a specially defined collective, may sue and be sued, prosecute and be prosecuted, employ labour, own assets, incur debts and be subjected to taxation. Its management is vested in board of directors who sign documents, bind the company and generally behave as its agents'. Marris (1964: 13–14) underlines in subsequent pages that shareholders do not own either assets or firms.

10 This notion must be compared with the function of separate patrimony and the concept of *entity shielding* (see Hansmann *et al.*, 2006).

11 The classic case of *Dodge v. Ford* has played a crucial role in the shareholder value movement. However, as Fish (2006) explains, it is not an obligation but a shareholder primacy norm. Indeed, some recent cases have reminded us that firms can make decisions that do not maximize shareholder value (see, e.g., *Blackmore Partnets LP v. Link Energy LLC*, 864 A.2d 80, *Delaware and Revlon Inc. v. MacAndrews and Forbes Holdings*, 506 A.2d 173, Delaware, 1986). These cases show the fact that the managers of these firms can make decisions that could be less efficient for certain shareholders, even though they have to justify the accuracy of these same actions (Fish, 2006). However, in these cases the principle of an assessment of managers from a criterion of shareholder maximization is not evoked (see Stout, 2008).

12 Stout (2002) reminds us that the argument that makes shareholders the sole residual claimants can be discussed in the sense that it is the case only when there is liquidation. In other cases, shareholders bear the weight of just a part of the risk, notably because they can diversify portfolio risk in contrast to employees or suppliers (see also Blair, 1995).

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

from the action of productive members. In this view, as Radin (1932) argues: 'if the firm is a fiction, the shareholders who profit by the agent's services ought to bear the burden of his negligence. If it is a real person, it is evident that it must be held to account' (ibid.: 662). However, the fiction paradigm has grown to the detriment of the real entity paradigm (Chassagnon, 2012b; Gindis, 2009; Phillips, 1994). Consequently, in law, a gap has emerged between shareholders and the 'firm' entity, legally recognized in the sense that if corporations are the owner of real productive capital, shareholders are the owners of fictive social capital. Interestingly, the lawyer Ireland (1999: 56) rightly argues that 'by facilitating recognition of the corporation not as an owner, nor as an object capable of being owned, but as a network of social and productive relationships, it would enable us to begin the process of reconceptualizing the corporation and corporate property'.

The firm is not composed of only shareholders, and we must appreciate it as a real entity to break with this assessment. As Dodd (1932) explains, 'we are not bound to treat the corporation as a mere aggregate of stockholders. The traditional view of our law is that a corporation is a distinct legal entity. Unfortunately, its entity character has been thought of as something conferred upon it by state which, by a mysterious rite called incorporation, magically produces *e pluribus unum*. The present vogue of legal realism breeds dissatisfaction with such legal mysteries and leads to insistence on viewing the firm as it really is' (ibid.: 632). The real entity paradigm (see also Berle, 1947; Phillips, 1994) leads us to include all stakeholders, owners or not, that influence or are influenced by the economic organization called the 'firm'. Whereas the stakeholder theory does not break with the aggregate and nexus logic (see Macey, 1999), it does break with the shareholder value paradigm (see, e.g., Donaldson and Preston, 1995). Neither managers nor shareholders are the sole legitimate entities that bear or must bear the weight of the risks of productive activity. What about suppliers, consumers and particularly employees who are the main productive force in the firm? The issue of the position of human capital in firm governance should be raised. As Blair and Stout (1999) explain: 'the key asset a corporation uses in production is intellectual capital – that is, the knowledge and experience residing in the minds of its employees, rather than the hands of its shareholders' (ibid.: 261). Employees, like shareholders, matter for firm governance. To quote Summers (1982: 170), because the firm is conceived 'as an operating institution combining all factors of production to conduct an on-going business', employees are 'as much members of that enterprise as the shareholders who provide the capital'.

It seems logical and intuitive to question employee firm ownership and to extend the 'property rights theory' to human capital to address the actual modern firm environment (see Mahoney *et al.*, 2005). In the current context, employee ownership (including top managers) appears to be more 'legitimate' and justifiable, but we consider it to be a *non sequitur* and an inaccurate

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

assessment because employees cannot have the property rights of the firm itself as we have previously explained. No one can own the firm, nor the corporation. With employee ownership, the controlled agent, therefore, also becomes the controlling agent. This is one of the reasons why we argue that ownership is not the right concept for taking into account the valuation of specific human capital in the modern firm. It is necessary to move to a new politico–economic category. We believe that power could play this role precisely, which also implies the need to shed light on a new vision of firm efficiency that is not based on allocation (of property rights) but on production (and value creation). In view of Chassagnon (2012a), we move from the strict legal orthodox view of firm ownership to an ontological view. This view of the firm is one of a social real entity that is based on collective properties that result from complex interactions between individual agency elements and institutional structures (see Hodgson, 2013).

4. Not ownership but power (in the firm): productive cooperation and specific human capital in firm governance

Corporate law is converging in western countries on a model based on shareholder value, in which firms have the same essential legal features (see Hansmann and Kraakman, 2001). In a recent paper, Davis (2011) explains that the public firm of Berle and Means has reached its twilight because the shareholder value movement has led to making managers 'faithful servants of share price maximization' (ibid.: 1121). The firm is reduced to a financial placement and feeds on speculation. The essence of the firm is as a set of financial claims and nothing more. Such a firm governance model is largely related to the assumption of efficient financial markets of which it is legitimate to give priority to shareholder interests. This influence has resulted in the financialization of the capital accumulation process, a pattern of accumulation in which profits come from financial channels rather than from trade production (Krippner, 2005). Ireland (2010: 848) argues that corporate shareholders 'enjoy the best of all possible legal worlds' in the sense that they are completely separate from the firm in which they hold shares and draw dividends, even though this firm must be run exclusively in their interests. Can such a model of firm governance be sustainable over time?

Political and economic reconsideration of the role of employees in firm governance

The share price maximization paradigm appears to be neither sustainable nor compatible with real-world industry. On the one hand, the recent and current financial crisis, along with the related need to rethink how financial systems must be regulated, casts doubt on the durability of such a model (see Bratton and Wachter, 2008). On the other hand, the governance of the modern firm should undertake industry-specific aims. It appears that the agency and the shareholder

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

value models should be replaced by the trustee model, which aims to balance the divergent interests of different current stakeholders linked to each other by long-term trust relationships. The positive relationship between firm performance and productive operations should be reconsidered (Chassagnon, 2011b). We defend the thesis that the main productive force of a firm is specific human capital, and it is necessary to rethink firm governance from the new capitalism based on a knowledge economy. This is a condition for moving to the real entity paradigm of the firm. It should be remembered that the need to reconsider employees in firm governance could not be approached from the notion of ownership, not because a large part of economic theory argues that firms that are owned and controlled have efficiency disadvantages (see Dow and Putterman, 2000; Hansmann, 1996), but because no one legally owns the firm. The move to the real entity paradigm involves replacing the allocation of property rights to critical stakeholders (see Zattoni, 2011) by the distribution of power to critical stakeholders and thus mainly to employees who have control of their human capital. We emphasize the fact that replacing ownership by power is not a change of terminology but a change in the category of analysis. It is a way to make employees a real part of the firm. However, it is important to note that if economists have been interested in authority, they have often neglected the power issue – and notably the employee power issue – in the positive analysis of the firm (see Williamson, 1996). In contrast, political science considers that power is a central concept in firm governance perspective (see, e.g., Cioffi, 2010; Gourevitch and Shinn, 2005).

To move toward a new model of firm governance, we must break with the nexus of contract theory and propose new theoretical foundations (Zingales, 2000). Arguably, it was the main objective of Blair and Stout (1999) when they first proposed some building blocks for a team production theory of the firm (see also Blair, 2012). This approach can be assessed as a generalization of the principal-agent problem that has the particularity of being symmetric (and differs substantially from the shareholder-centric principal-agent model; see Frey and Osterloh, 2005). Firm participants have interest in full cooperation because it is a strong condition of a firm's productive efficiency and survival. One of the main weaknesses of the shareholder primacy view is that it fails to give consideration to the creation of productive cooperation and, consequently, to the value creation called 'relational quasi-rent' (see, e.g., Aoki, 1988; Baker *et al.*, 2002; Dyer and Singh, 1998). The legal foundation of a corporation (notably moral personality) is a constituent institutional instrument of corporate law that was instituted to promote the firm for the organization of productive activities, which means that the sources of value creation in the firm are yet to be questioned.

For Hall and Soskice (2001: 6), the firm is a crucial player in capitalist economies that should be appreciated as a relational entity in which what matters is 'the quality of the relationships the firm is able to establish, both internally, with its own employees, and externally, with a range of other actors

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

that include suppliers, clients, collaborators, stakeholders, trade unions, business associations, and governments'. Regarding human capital, 'the central problem is to ensure that employees have the requisite competencies and cooperate well with others to advance the objectives of the firm' (ibid.: 7). Gourevitch and Shinn (2005) develop an analysis of corporate governance with respect to power and responsibility from the idea that 'corporate governance structures are fundamentally the result of political decisions' (ibid.: 3). In a perspective closed to the VOC theory, they propose approaching political power and corporate control in terms of 'degrees of coordination'.

This 'coalitional' analysis mixes workers (employees) with owners and managers as institutional actors that provide employees with their own governance concerns. Roe (2003) develops a similar point of view, not in a political coalition perspective but in a social conflict perspective. He explains that 'social conflict, often among owners, managers, and employees, leads to political settlements and these settlements can determine the structure of one of these pieces of the firm' (ibid.: 5). Similarly, an important insight resulting from this political view is that 'the struggle for power inside the firm is settled by the struggle for power outside the firm, in the political system that determines rules' (Gourevitch and Shinn, 2005: 57). Roe (2003) defends the thesis according to which, beyond law and economics, the firm and its governance are influenced by what he calls the 'political environment'. It is clear that power within a firm is linked to a considerable degree to external political institutions and coalitions. Our arguments are based on the power within a firm, but we must also recall that a firm is embedded in a broader institutional environment that has influence on power within firms (Chassagnon, 2012a).

This argument is advocated by Cioffi (2010), who considers that corporate governance practices are strongly linked to political processes in such a way that both political and legal aspects must complete the sole economic foundations of corporate governance. We have to advance toward new theoretical foundations for firm governance that take into account specific human capital, which forms the basis of production-based capitalism in which the firm is a productive entity other than the powerful institutions called 'markets' and that places workers at the core of political and public governance issues.

Additionally, Rajan and Zingales (1998, 2000, 2001) consider that employees who have access – i.e., the ability to use or work with a critical resource of the firm – get new residual rights of control owing to the specific human capital they develop in the firm. The position of Rajan and Zingales can be summed up as follows:

> 'The ownership of physical assets is not the only source of power within a firm, nor necessarily the most effective in promoting relationship-specific investments. Furthermore, a firm is more than a simple collection of assets. There is a sense in which employees 'belong' to an organization even in a

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

> world without permanent indenture. This sense of belonging arises from the expectation 'good citizens' of an organization have that they will receive a share of future organizational rents. (. . .) All the employee gets is the opportunity to specialize her human capital to the resource and make herself valuable. When combined with her pre-existing residual right to withdraw her human capital, access gives her the ability to create a critical resource that she controls: her specialized human capital. Control over this critical resource is a source of power' (Rajan and Zingales, 1998: 388).

We believe that these complementary approaches to the firm echo the need to move toward a productive model of firm governance. A firm exists and becomes durable if the individual entities (human capital) who form it – the employees – cooperate together to achieve a common purpose and cooperate beyond contractual objectives to obtain a share of the relational quasi-rent resulting from it: this is consummate cooperation (see also on this point Williamson, 1975). Contract is just a reference point (see Hart and Moore, 2007, 2008).

A specific human capital-based analysis of power and cooperation in firm governance

The employment contract allows the existence of the employer–employee subordination; organizations as cooperative systems composed of individuals who form a whole from a rational system of coordination that generates an authority (see, e.g., Barnard, 1938). Finally, authority in the corporation is the 'legal guarantor' of employee contractual obligations and contractual cooperation (called perfunctory cooperation). Law legitimizes, through employment contracts, the power of an employer to become an authority (see Simon, 1951). The employer draws his authority contractually from the acceptance by subordinates of the legitimacy of his decisions. Legal authority that results from an employment contract matters in the firm because it is an important source of cooperation. However, authority coexists with different powers in the modern firm.

In an alternative view to Dahl's (1957) one-dimensional and individualistic definition of power, Chassagnon (2011b) defines power in a whole system as 'an individual or collective entity's ability (that will be exerted or not) to structure and restrain choices and actions of another individual or collective entity by some particular mechanism intrinsic to the given social relationship that may be formal as well as informal' (ibid.: 39). We use this definition in the remainder of the paper and a typology which takes into account the two sources of power that are different from authority (see *ibid.*).

The first, called *de jure*, comes from the legal system of private property that confers the right to exclude. This argument is close to the Marxian theory but also to the model of Hart and Moore (1990). However, recent structural transformations have significantly tempered the impact of this argument: first,

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

the financial revolution that facilitates access to capital ownership making this less critical, and, second, the valuation of specific human capital and intangible capital – whose rights of control are not directly contractible and are difficult to enforce (see Mahoney *et al.*, 2005) – which are increasingly important in the productive organization and competitive advantage of the firm. These two structural changes are central to the second kind of power called *de facto* power. *De facto* power does not result from legal mechanisms but from access to critical resources. It is because B is involved in an employment contract and invests in human capital that B has access to the key resources of the collective entity controlled by A, and therefore B has *de facto* power over A. If the law is, via contract and ownership, a source of authority, power and the core resource of the employer, then access to critical resources is the informal source of employee power (Chassagnon, 2011b). The argument involving *de facto* power has been explained by Rajan and Zingales (1998, 2000), who proposed to reintroduce power and to weaken the role attributed to ownership and owners in the creation of production value – Coff (1999: 121) reminds us that 'Since strategic resources are nodes in the nexus that the firm cannot own, the property rights to the rent are quite ambiguous'.

De facto power is a strong property of 'new capitalism'. The reasoning is the following: employees do not have resources other than their specific human capital; they must therefore be indispensable, productive and effective to obtain a portion of power. It is economically more efficient to grant employee access to critical resources of the collective entity rather than to confer to them property rights in respect of these resources (see Chassagnon, 2011b). Rajan and Zingales (1998) conclude that ownership must be held by a third party (what they call 'third part ownership'). This position is close to that of Blair and Stout (1999) concerning 'the mediating hierarchy' that aims to avoid abuse of power and allow the production of consummate cooperation leading to productive efficiency in the firm. The role of this 'third entity' is distinct from the corporation itself, and it is to keep control of resources and assets away from the hands of both human capital owners and financial capital owners to obtain a portion of power only from productive activity and not from ownership (which has adverse effects on incentives to specialize and prevents exclusion).

Rajan and Zingales (1998) therefore underline the 'dark side' of ownership because ownership increases the holder's opportunity of distorting specific investments to appropriate future rents. They explain that 'if all the parties have to make substantial specific investments over time, it may be optimal for a completely unrelated third party to own the assets. The third party essentially absorbs the opportunity losses from specialization. It is precisely because it does not make specific investments that it is in the best position to bear the losses. Another way of saying this is that the third party holds power so that the agents critical to production do not use the power of ownership against each other' (ibid.: 422).

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

The third party could be a legal entity separated from the firm itself that could have the property rights on physical investments and on some critical resources. Blair and Stout (1999) therefore note that the board of directors could play this role in the sense that they have to act in the interests not of a specific group called shareholders, but of the whole entity itself. The third party legal entity is close to the representation of the moral person with the particularity of acting as a collegial structure – like an internal court of appeal (Frey and Osterloh, 2005) – dealing with conflicts involving different stakeholders such as employees, suppliers, and shareholders.

The alternative conception of firm governance that replaces ownership by power (notably employee power) in the study of who should govern the firm should be actualized in the post-crisis context that is a real driver of reform. We think that employees should be considered to be a strong social player in future national and international public politics and, more largely, in the political economic development of firm governance (see also Cioffi, 2010).

In summary, it is urgent that firm employees be recognized with respect to firm governance (see Blasi *et al.*, 2003; Wang and Barney, 2006). This argument leads to a 'flattening firm', which involves revisiting traditional vertical hierarchy (see Rajan and Wulf, 2006; Rajan, 2012), weakens the role of ownership in the firm and redeems employee power in firm governance. In this view, the crucial issue of identification and organizational commitment in knowledge-based firms requires discussion of the nature of the relationship between power and cooperation. We leave this issue to be addressed by future studies, but we believe that collective social identity must be included in studies involving firm governance.

5. Conclusion

The issue of the ownership of the firm has been discussed for many decades. Mainstream scholars have combined economic and legal approaches so as to build a unified contractarian theory of the firm, which has clearly marked the debate. This approach sees the firm as a legal fiction that is simply an object of property rights ruled by the shareholders. However, this approach appears particularly wrong from a legal point of view. Indeed, a thorough analysis of this question shows that the firm – or more precisely the corporation – cannot be a subject of property. Shareholders cannot claim the 'ownership' of the firm on the grounds that they just have shares. Some authors emphasize that this is the starting point of the 'hold-up of shareholders' in the firm (see Greenwood, 1996). The question underlying this debate appears to be the appropriation and valorization of a firm's critical resources. On this point, legal scholars agree to recognize that specific assets are by law held by the corporation as a legal entity. In this sense, none of the parties can claim any ownership of the assets of the corporation without committing a hold-up *vis-à-vis* other stakeholders.

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

Historically, the question of the ownership of the firm has acted as a smokescreen hiding the key issue for us: who should govern the firm?[13]

Our analysis emphasizes that it is crucial to rethink the nature of corporate governance models so as to better integrate and enhance both human capital and financial capital, dialectically present within the firm. A major issue of corporate governance is therefore no longer the ownership – which is a *non sequitur* – but power in the firm. Power must become central in the configuration of governance structures because it helps protect and enhance the assets and specific investments, especially in terms of human capital (which are by nature inalienable). Power appears to be the positive category we must use to examine the question of the internal and external (inter-firm) organization of the modern capitalist firm. Arguably, it appears to be the better unit of analysis for studying the functioning rules of the firm in the knowledge-based market economy and for better regulation of modern industrial relationships.

We want to add that the corporation is legally recognized through three core functions that we find in market economies (Armour *et al.*, 2009): (1) transferable shares (the corporation is characterized by the full transferability of its shares that allows the business activities to continue even if there are changes in the shareholders); (2) delegated management with a board structure (corporate law institutes a central authority over corporate affairs and creates what is called a ‘board of directors’, who are elected by the shareholders and who have the delegated decision-making power); and (3) investor ownership (the corporation is based on both the right to control the firm, even though control can be delegated, and the right to receive the firm’s net earnings). However, historically, French lawyers have proposed to go beyond the institutional skeleton of the legal fiction to include the socio-productive nature of the firm and to approach (notably through jurisprudence) some social realities of the firm (for more explanations and examples, see Chassagnon, 2012b) – among which we find employees’ social rights. A central legal device of the French system is the notion of the ‘economic and social unity’ of the firm – called the ‘*Unité Economique et Sociale (UES)*’ – that allows judges to bypass corporate law to include the social interest of (and within) the firm. We think it will be interesting to propose a comprehensive inter-country comparison of the different legal definitions of the so-called ‘firm’. We leave this crucial question for future studies.

Acknowledgements

We are grateful to the Editor-in-Chief, Geoffrey Hodgson, and two anonymous referees of this journal for helpful criticism. All remaining errors are our own.

13 We believe that this issue is limited by two key elements: (1) maintaining a cooperative equilibrium within the firm and (2) the internal organization of a value-creation process necessary for its durability and its reconstitution in time.

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

References

Alchian, A. (1961), *Some Economics of Property*, Santa Monica: Rand Corporation.
Alchian, A. and H. Demsetz (1972), 'Production, Information Costs and Economic Organization', *American Economic Review*, **62**(5): 777–795.
Aoki, M. (1988), *Information, Incentives and Bargaining in the Japanese Economy*, Cambridge: Cambridge University Press.
Armour, J., H. Hansmann, and R. Kraakman (2009), 'What is Corporate Law?', in R. Kraakman, J. Armour, P. Davies, L. Enriques, H. Hansmann, G. Hertig, K. Hopt, H. Kanda and E. Rock, *The Anatomy of Corporate Law: A Comparative and Functional Approach*, 2nd edn, Oxford: Oxford University Press, pp. 1–34.
Bainbridge, S. (2008), *The New Corporate Governance in Theory and Practice*, New York: Oxford University Press.
Baker, G. P., R. Gibbons, and K. J. Murphy (2002), 'Relational Contracts and the Theory of the Firm', *Quarterly Journal of Economics*, **107**(1): 39–84.
Barnard, C. I. (1938), *The Functions of the Executive*, Cambridge: Cambridge University Press.
Baudry, B. and V. Chassagnon (2010). 'The Close Relation Between Organization Theory and Oliver Williamson's Transaction Cost Economics: A Theory of the Firm Perspective', *Journal of Institutional Economics*, **6**(4): 477–503.
Berle, A. A. Jr (1932), 'For Whom Corporate Managers are Trustees: A Note', *Harvard Law Review*, **45**(8): 1365–1372.
Berle, A. A. Jr (1947), 'The Theory of Enterprise Entity', *Columbia Law Review*, **47**(3): 343–358.
Berle, A. A. Jr and G. Means (1932), *The Modern Firm and Private Property*, New York: MacMillan.
Blair, M. M. (1995), *Ownership and Control: Rethinking Corporate Governance for the Twenty-First Century*, Washington: Brookings Institution Press.
Blair, M. M. (2012), 'Corporate Law and Team Production Problem', SSRN Working Paper Series, http://ssrn.com/abstract=2037240.
Blair, M. M. and L. A. Stout (1999), 'A Team Production Theory of the Corporate Law', *Virginia Law Review*, **85**(2): 247–328.
Blasi, J., D. Kruse, and A. Berstein (2003), *In the Firm of Owners, the Truth About Stock-Options and Why Every Employee Should Have Them*, New York: Perseus Books.
Bolton, P. and D. S. Scharfstein (1998), 'Corporate Finance, the Theory of the Firm and Organizations', *Journal of Economic Perspectives*, **12**(4): 95–114.
Bratton, W. W. and M. L. Wachter (2008), 'Shareholder Primacy's Corporatist Origins: Adolf Berle and the Modern Firm', *Journal of Firm Law*, **34**(1): 99–152.
Chassagnon, V. (2011a), 'The Network-Firm as a Single Real Entity: Beyond the Aggregate of Distinct Legal Entities', *Journal of Economic Issues*, **45**(1): 113–136.
Chassagnon, V. (2011b), 'The Law and Economics of the Modern Firm: A New Governance Structure of Power Relationships', *Revue d'Economie Industrielle*, **134**(2011/2): 25–50.
Chassagnon, V. (2012a), 'Nature et ontologie sociale de la firme', *Social Science Information*, **51**(1): 71–96.
Chassagnon, V. (2012b), 'Une analyse historique de la nature juridique de la firme. Du nœud de contrats à l'entité (collective) réelle', *Revue de la Régulation*, **12**(2): 1–16.
Cioffi, J. W. (2010), *Public Law and Private Power. Corporate Governance Reform in the Age of Finance Capitalism*, Ithaca and London: Cornell University Press.

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

Coase, R. (1960), 'The Problem of Social Cost', *Journal of Law and Economics*, **3**: 1–40.

Coff, R. W. (1999), 'When Competitive Advantage Doesn't Lead to Performance: The Resource-Based View and Stakeholder Bargaining Power', *Organization Science*, **10**(2): 119–133.

Dahl, R. A. (1957), 'The Concept of Power', *Behavioral Science*, **2**(3): 201–215.

Davies, P. L. (2008), *Gower and Davies' Principles of Modern Company Law*, 8th edn, London: Sweet and Maxwell.

Davis, G. F. (2011), 'The Twilight of the Berle and Means Firm', *Seattle University Law Review*, **34**(4): 1121–1138.

Demsetz, H. (1967), 'Toward a Theory of Property Rights', *American Economic Review*, **57**(2): 347–359.

Dodd, E. M. (1932), 'For Whom Are Corporate Managers Trustees?', *Harvard Law Review*, **45**(7): 1145–1163.

Dodd, E. M. (1941), 'The Modern Firm, Private Property, and Recent Federal Legislation', *Harvard Law Review*, **54**(6): 917–948.

Donaldson, T. and L. E. Preston (1995), 'The Stakeholder Theory of the Firm: Concepts, Evidence, and Implications', *Academy of Management Review*, **20**(1): 65–91.

Dow, G. K. and L. Putterman (2000), 'Why Capital Suppliers (Usually) Hire Workers: What We Know and What We Need to Know', *Journal of Economic Behavior and Organization*, **43**(3): 319–336.

Dyer, J. H. and H. Singh (1998), 'The Relational View: Cooperative Strategy and Sources of Interorganizational Competitive Advantage', *Academy of Management Review*, **23**(4): 660–679.

Easterbrook, F. H. and D. R. Fischel (1985), 'Limited Liability and the Firm', *University of Chicago Law Review*, **52**(1): 89–117.

Easterbrook, F. H. and D. R. Fischel (1991), *The Economic Structure of Corporate Law*, Cambridge, MA: Harvard University Press.

Ellerman, D. (1990), *The Democratic Worker-Owned Firm: A New Model for the East and West*, New York: Unwin Hyman Limited, Harper Collins Academic.

Ellerman, D. (2007), 'On the Role of Capital in 'Capitalist' and in Labor-Managed Firms', *Review of Radical Political Economics*, **39**(1): 5–26.

Fama, E. F. (1980), 'Agency Problems and the Theory of the Firm', *Journal of Political Economics*, **88**(2): 288–307.

Fama, E. and M. Jensen (1983), 'Separation of Ownership and Control', *Journal of Law and Economics*, **26**(2): 301–326.

Fish, J. (2006), 'Measuring Efficiency in Corporate Law: The Role of Shareholder Primacy', *The Journal of Firm Law*, **31**(3): 637–674.

Frey, B. and M. Osterloh (2005), 'Yes Managers Should Be Paid Like Bureaucrats', *Journal of Management Inquiry*, **14**(1): 96–111.

Gindis, D. (2009), 'From Fictions an Aggregates to Real Entities in the Theory of the Firm', *Journal of Institutional Economics*, **5**(1): 25–46.

Gourevitch, P. A. and J. Shinn (2005), *Political Power and Corporate Control. The New Global Politics of Corporate Governance*, Princeton: Princeton University Press.

Greenwood, D. J. H. (1996), 'Fictional Shareholders: For Whom are Corporate Managers Trustees Revisited?', *Southern California Law Review*, **69**(5): 1021–1104.

Hall, P. A. and D. Soskice (2001), 'Introduction', in P. A. Hall and D. Soskice (eds.), *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*, Oxford: Oxford University Press, pp. 1–68.

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

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

Hansmann, H. and R. Kraakman (2001), 'The End of History of Corporate Law', *Georgetown Law Journal*, **89**: 439–468.

Hansmann, H., R. Kraakman and R. Squire (2006), 'Law and the Rise of the Firm', *Harvard Law Review*, **119**: 1333–1351.

Hart, O. D. (1989), 'An Economist's Perspective on the Theory of the Firm', *Columbia Law Review*, **84**: 1757–1764.

Hart, O. D. (1995), *Firms, Contracts, and Financial Structure*, Oxford: Oxford University Press.

Hart, O. D. (1996), 'The Meaning of Ownership', in M. M. Blair (ed.), *Wealth Creation and Wealth Sharing*, Washington: Brookings Institution Press, pp. 25–32.

Hart, O. D. and J. Moore (1990), 'Property Rights and the Nature of the Firm', *Journal of Political Economy*, **98**(6): 1119–1158.

Hart, O. D. and J. Moore (2007), 'Incomplete Contracts and Ownership: Some New Thoughts', *American Economic Review*, **97**(2): 182–186.

Hart, O. D. and J. Moore (2008), 'Contracts as Reference Points', *Quarterly Journal of Economics*, **123**(1): 1–48.

Hillman, A. and G. Keim (2001), 'Shareholder Value, Stakeholder Management, and Social Issues: What's the Bottom Line?', *Strategic Management Journal*, **22**(2): 125–139.

Hodgson, G. M. (2009), 'The Great Crash of 2008 and the Reform of Economics', *Cambridge Journal of Economics*, **33**(6): 1205–1221.

Hodgson, G. M. (2013), *From Pleasure Machines to Moral Communities. An Evolutionary Economics Without Homo Economicus*, Chicago: University of Chicago Press.

Honoré, A. M. (1961), 'Ownership', in A. G. Guest (ed.), *Oxford Essays in Jurisprudence*, Oxford: Oxford University Press, pp. 107–147.

Ireland, P. (1999), 'Firm Law and the Myth of Shareholder Ownership', *Modern Law Review*, **62**(1): 32–57.

Ireland, P. (2010), 'Limited liability, Shareholder Rights and the Problem of Corporate Irresponsibility', *Cambridge Journal of Economics*, **34**(5): 837–856.

Ireland, P., I. Grigg-Spall, and D. Kelly (1987), 'The Conceptual Foundations of Modern Firm Law', *Journal of Law and Society*, **14**(1): 149–165.

Iwai, K. (1999), 'Persons, Things and Firms: The Corporate Personality Controversy and Comparative Corporate Governance', *American Journal of Comparative Law*, **47**(4): 583–632.

Jensen, M. C. and W. H. Meckling (1976), 'Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure', *Journal of Financial Economics*, **3**(4): 305–360.

Joo, T. W. (2002), 'Contract, Property and the Role of Metaphor in Corporations Law', *UC Davis Law Review*, **35**(3): 779–820.

Kay, J. and A. Silberston (1995), 'Corporate Governance', *National Institute Economic Review*, **153**(1): 84–107.

Keynes, J. M. (1936), *The General Theory of Employment, Interest and Money*, London: Macmillan.

Krippner, G. R. (2005), 'The Financialization of the American Economy', *Socio-Economic Review*, **3**(2): 173–208.

Lan, L. and L. Heracleous (2010), 'Rethinking Agency Theory: The View From Law', *Academy of Management Review*, **35**(2): 294–314.

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

Latty, E. R. (1936), 'The Corporate Entity as a Solvent of Legal Problems', *Michigan Law Review*, **34**(5): 597–636.

Lazonick, W. and M. O'Sullivan (2000), 'Maximizing Shareholder Value: A New Ideology for Corporate Governance', *Economy and Society*, **29**(1): 13–35.

Macey, J. R. (1999), 'Fiduciary Duties as Residual Claims: Obligations to Non-shareholder Constituencies from a Theory of the Firm Perspective', *Cornell Law Review*, **84**(5): 1266–1281.

Mahoney, J. M., C. C. Asher, and J. T. Mahoney (2005), 'Towards a Property Rights Foundation for a Stakeholder Theory of the Firm', *Journal of Management and Governance*, **9**(1): 5–32.

Marris, R. (1964), '*The Economic Theory of 'Managerial' Capitalism*', New York: MacMillan.

Mikami, K. (2011), *Enterprise Forms and Economic Efficiency*, Abingdon: Routledge.

Moore, J. (1992), 'The Firm as a Collection of Assets', *European Economic Review*, **36**(2–3): 493–507.

Phillips, M. J. (1994), 'Reappraising the Real Entity Theory of the Firm', *Florida State University Law Review*, **21**(4): 1061–1122.

Putterman, L. G. (1993), 'Ownership and the Nature of the Firm', *Journal of Comparative Economics*, **17**(2): 243–263.

Radin, M. (1932), 'The Endless Problem of Corporate Personality', *Columbia Law Review*, **32**(4): 643–667.

Rajan, R. G. (2012), 'The Corporation in Finance', NBER working paper no. 17760.

Rajan, R. G. and J. Wulf (2006), 'The Flattening Firm: Evidence from Panel Data on the Changing Nature of Corporate Hierarchies', *Review of Economics and Statistics*, **88**(4): 759–773.

Rajan, R. G. and L. Zingales (1998), 'Power in a Theory of the Firm', *Quarterly Journal of Economics*, **113**(2): 387–432.

Rajan, R. G. and L. Zingales (2000), 'The Governance of the New Enterprise', in X. Vives (ed.), *Corporate Governance: Theoretical and Empirical Perspectives*, Cambridge: Cambridge University Press, pp. 201–227.

Rajan, R. G. and L. Zingales (2001), 'The Firm as a Dedicated Hierarchy: A Theory of the Origins and Growth of Firms', *Quarterly Journal of Economics*, **116**(3): 805–851.

Robé, J.-P. (2011), 'The Legal Structure of the Firm', *Accounting, Economics, and Law*, **1**(1): 1–88.

Roe, M. (1994), *Strong Managers, Weak Owners*, Princeton: Princeton University Press.

Roe, M. (2003), *Political Determinants of Corporate Governance. Political Context, Corporate Impact*, Oxford: Oxford University Press.

Simon, H. A. (1951), 'A Formal Theory of the Employment Relationship', *Econometrica*, **19**(3): 293–305.

Stout, L. A. (2002), 'Bad and Not-So-Bad Arguments for Shareholder Primacy', *Southern California Law Review*, **75**: 1189–1206.

Stout, L. A. (2007), 'The Mythical Benefits of Shareholder Control', *Virginia Law Review*, **93**(3): 789–810.

Stout, L. A. (2008), 'Why we should Stop Teaching Dodge v. Ford', *Virginia Law and Business Review*, **3**(1): 163–176.

Strasser, K. A. (2011), 'A comment on the Legal Structure of the Firm', *Accounting, Economics, and Law*, **1**(1): 13.

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press

Summers, C. W. (1982), ‘Codetermination in the United States: A Projection of Problems and Potentials’, *Journal of Comparative Corporate Law and Securities Regulation*, **4**(2): 155–170.

Wang, H. and J. Barney (2006), ‘Employee Incentives to Make Firm Specific Investment: Implications for Resource-Based Theories of Corporate Diversification’, *Academy of Management Review*, **31**(2): 466–476.

Williamson, O. E. (1975), *Markets and Hierarchies: Analysis and Anti-Trust Implications*, New York: Free Press.

Williamson, O. E. (1996), ‘Efficiency, Power, Authority and Economic Organization’, in J. Groenewegen (ed.), *Transaction Cost Economics and Beyond*, London: Kluwer Academic Publishers, pp. 11–42.

Zattoni, A. (2011), ‘Who Should Control a Firm? Toward a Contingency Stakeholder Model for Allocating Ownership Rights’, *Journal of Business Ethics*, **103**(2): 255–274.

Zingales, L. (2000), ‘In Search of New Foundations’, *Journal of Finance*, **55**(4): 1623–1653.

https://doi.org/10.1017/S1744137413000301 Published online by Cambridge University Press