

## In Berle's Footsteps

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Some men effectively catch the drift of development and have a vision of things to come. Such men become active forces in that very development and their names become landmarks and turning points. Time alone is the final judge of a candidate's right to inclusion in this select list.<sup>1</sup>

On the weekend of November 6–8, 2009, scholars from around the world gathered in Seattle for a symposium—*In Berle's Footsteps*—celebrating the launch of the Adolf A. Berle, Jr. Center on Corporations, Law and Society. As founding director of the Berle Center, I described our undertaking:

It is with a profound sense of obligation to the legacy that has been entrusted to my care, that I announce the launching of the Adolf A. Berle, Jr. Center on Corporations, Law and Society. It is a privilege to follow in Berle's footsteps.

As with all good academic conferences, debate was lively throughout the weekend. This was foreshadowed by the pre-conference debate and banter concerning the ideal symposium title. The initial front runner was *In Berle's Footsteps*. Challengers soon emerged. Included in the field were: *In Berle's Shadow*, *Standing on the Shoulders of Berle*, *Enumerating Old Themes: The Legacy of Adolf A. Berle*, *Reconsidering Berle in a Time of Financial Crisis*, *A New Look at Berle's Legacy*, *The Political Economy of the Corporation: Reconsidering Adolf A. Berle*, *The Political Economy of the Corporation: Berle's Legacy*, *Viewing the 21st Century from Berle's Shoulders*, and *Bringing Berle into the New Millennium*. Ultimately, *In Berle's Footsteps* beat back all challengers.

These suggested symposium titles convey a consistent message and confirm two important realities that will shape the life and work of the Berle Center. First, scholars agree that “Adolf A. Berle, Jr.” is the land-

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1. Joseph Dorfman, *Source and Impact of Veblen*, 48 AM. ECON. REV. 1, 1 (1958).

mark name in the field of corporation law—the gold standard for all who seek to enter the hall of monumental difference-makers. Second, scholars have rich but divergent views about the fundamental nature of Berle and his work. Exactly what did Berle intend and how should his work be interpreted today? What role should Berle and his life play in the continuing evolution of the field in which he is so revered?

The papers presented at *In Berle's Footsteps* and published in this volume each present a unique answer to these questions. I expect subsequent Berle Center symposia will continue this debate. It is through this ongoing dialog with the work of Adolf A. Berle, Jr. that he will continue to play an active role in the development of corporation law and policy.

Necessarily, a dialog with Berle is a venture in historical research. Berle would delight in being a historical subject. He was torn between his intellectual and activist aspects. Berle the intellectual wanted to be a historian. Thus, while Berle the activist chose to be a lawyer, he remained a historian at heart.<sup>2</sup> Indeed, *The Modern Corporation and Private Property* could be viewed as applied historical research. As the papers in this symposium edition show, a true dialog with the past will enrich not only our understanding of Berle and his era, but also our understanding of the times in which we live.

Berle would enjoy the notion that we, today, are following in his footsteps. He believed in following footsteps. His father laid the path that Berle consciously trod—a trail taken in pursuit of social justice that involved the conscious choice of law as a profession and platform.<sup>3</sup> Intellectual giants, including Marx, informed his thinking.<sup>4</sup> In fact, Berle hoped that he would be, and would be remembered as, “an American Karl Marx—a social prophet.”<sup>5</sup>

Thus, Berle would be pleased that his is a landmark name not because he understood the past or because he consciously chose a propitious path, but because his abilities enabled him to “catch the drift of development and have a vision of things to come.”<sup>6</sup> Berle saw that corporations would become the dominant institution in society. Moreover, he foresaw that corporations would be loosely united by common goals and interests into a force that would rival and perhaps subdue the modern

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2. See JORDAN SCHWARZ, LIBERAL: ADOLF A. BERLE AND THE VISION OF AN AMERICAN ERA 13–14, 45–46 (1987).

3. *Id.* at 45–46. Berle strove to be a “lawyer who is also a scholar, who understands both legal history and legal theory and who can dovetail with the sister sciences of economics and government.” *Id.* at 46.

4. *Id.* at 13, 56, 104–105, 369.

5. *Id.* at 62.

6. Joseph Dorfman, *Source and Impact of Veblen*, 48 AM. ECON. REV. 1, 1 (1958).

state.<sup>7</sup> Berle sought, and supported institutions that sought, to “carry on the work of discovering intellectual tools and philosophic principles, in the hope of enlarging the capacity of generations yet unborn to confront conditions and dangers no dawn has yet revealed.”<sup>8</sup> As this symposium reflects, the Berle Center intends to be such a forward-looking institution.

And so with this symposium, the Adolf A. Berle, Jr. Center on Corporations, Law and Society begins its journey. Of course, Berle’s legacy belongs to no man, woman, or institution. It is his gift to the world he so profoundly influenced. Yet it is a gift that has no meaning unless used and used wisely. Accordingly, as we breathe life into the Berle Center, organizing programs and shaping its reach and scope, I acknowledge that my powers as director of the Berle Center are powers held in trust, to be exercised as best I may on behalf of all who have, have had, or will have a stake in Adolf Berle’s legacy.<sup>9</sup>

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7. ADOLF A. BERLE, JR. & GARDINER C. MEANS, *THE MODERN CORPORATION AND PRIVATE PROPERTY* 352 (MacMillan 1933).

8. See SCHWARZ, *LIBERAL*, *supra* note 2, at 369, citing ADOLF AUGUSTUS BERLE, *LEANING AGAINST THE DAWN* (Twentieth Century Fund 1969).

9. See Adolf A. Berle, Jr., *Corporate Powers as Powers In Trust*, 44 HARV. L. REV. 1049, 1049 (1931) (for the foundational proposition on which I draw: “[A]ll powers granted to a corporation or to the management of a corporation, or to any group within the corporation, whether derived from statute or charter or both, are necessarily and at all times exercisable only for the ratable benefit of all the shareholders as their interest appears.”).