The Modern Corporation as Social Construction

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INTRODUCTION

Classic works, Mark Mizruchi and Lisa Fein argued, share a particular fate.[1] Authors often cite classic works without reading them—or without reading them carefully. When the classics are read, they are subjected to selective interpretation as readers emphasize the parts that fit their preconceived notions of the world, while tending to minimize or ignore those that do not. As these selective interpretations are disseminated into an academic discipline, members of the field derive their views not from the work itself, but from interpretations of the work rendered by others. These interpretations then come to be accepted as the "correct" readings. The classic work thus develops a socially constructed character, in which certain components of the original—those that fit with collectively accepted views—become the prevailing interpretation of the work itself. This social construction is one reason, Mizruchi and Fein suggested, that readers often experience such surprise when they actually read (or return to) the original classic.

There are many works that exhibit this phenomenon. Mizruchi and Fein used as their example Paul DiMaggio and Walter Powell's essay on the tendency for organizations to come to resemble one another over

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1. *See* Mark S. Mizruchi & Lisa C. Fein, *The Social Construction of Organizational Knowledge: A Study of the Uses of Coercive, Mimetic, and Normative Isomorphism*, 44 ADMIN. SCI. Q. 653 (1999).

time.[2] Another work in the sociology of organizations, Arthur Stinchcombe's classic article on social structure and organizations,[3] has also been selectively interpreted, as has Jeffrey Pfeffer and Gerald Salancik's study of the external control of organizations.[4] Yet perhaps no single work fits the above description better than one of the most important books on the large corporation ever published: Adolf Berle and Gardiner Means's *The Modern Corporation and Private Property*.[5] One can speculate that few works in the social sciences have been as often cited and as little read. As a consequence, we would expect *The Modern Corporation* to be a good candidate for either selective interpretation or outright misinterpretation. And as we shall demonstrate, the book did indeed receive such treatment.

Although Berle and Means were concerned with the concentration of economic power and saw the separation of ownership from control as contributing to this trend, subsequent authors who relied on Berle and Means's findings used them to reach very different conclusions. In particular, *The Modern Corporation* became an important touchstone for a group of prominent mid-twentieth-century scholars, including Daniel Bell, Ralf Dahrendorf, John Kenneth Galbraith, and Talcott Parsons.[6] Drawing on Berle and Means, these authors presented a view of the large American corporation that was considerably more benign than that advanced in *The Modern Corporation*. In this paper, we will show that the findings of *The Modern Corporation* were used to argue that the

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2. Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOC. REV. 147 (1983).

3. Arthur L. Stinchcombe, *Social Structure and Organizations*, *in* HANDBOOK OF ORGANIZATIONS 142 (James G. March ed., 1965).

4. JEFFREY PFEFFER & GERALD R. SALANCIK, THE EXTERNAL CONTROL OF ORGANIZATIONS: A RESOURCE DEPENDENCE PERSPECTIVE (Stanford University Press 2003) (1978). Stinchcombe himself put this in an email message to the first author after reading the article by Mizruchi and Fein:

> I have had the same thing happen to my ancient paper on Social Structure and Organization. . . . First it was excerpted in readers to have only the section on the growth of industry variety in history, then a couple of paragraphs of this started to be cited in the organizational ecology literature, mainly on persistence of organizational form and the liability of newness. In the course of this development, all the stuff on revolutions and the stratification of organizations, on variations in the degree of coerciveness of authority relations within organizations, etc. got lost.

E-mail from Arthur Stinchcombe, Professor Emeritus, Northwestern University, to Mark Mizruchi, Professor, University of Michigan (Sept. 1, 2000) (on file with author). See also Pfeffer's introduction to the 2003 reissue of Pfeffer and Salancik's 1978 book, p. xxiii.

5. ADOLF A. BERLE AND GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY (Harcourt, Brace & World 1968) (1932).

6. DANIEL BELL, THE END OF IDEOLOGY (Collier 1960) [hereinafter END OF IDEOLOGY]; RALF DAHRENDORF, CLASS AND CLASS CONFLICT IN INDUSTRIAL SOCIETY (Stanford Univ. Press 1959); JOHN KENNETH GALBRAITH, AMERICAN CAPITALISM, THE CONCEPT OF COUNTERVAILING POWER, (Houghton Mifflin 1952) [hereinafter AMERICAN CAPITALISM]; TALCOTT PARSONS, STRUCTURE AND PROCESS IN MODERN SOCIETIES (1960).

concentration of power in American society had declined, a view exactly the opposite of what Berle and Means suggested. These more celebratory readings of Berle and Means subsequently became the objects of criticism in their own right, however.[7] Still, these works contained highly textured and nuanced understandings of the post-World War II United States. The analyses they presented, we argue, represented significant contributions, despite their questionable interpretation of *The Modern Corporation*.

We argue that in the post-World War II period, a leading segment of the American corporate elite adopted a moderate, pragmatic approach that included an accommodation to government intervention in the economy and an acceptance of the rights of organized labor. We argue that the managerial autonomy spawned by the separation of ownership and control provided the conditions within which American corporate executives could engage in these policies. This system, however, began to break down in the 1970s, and a major acquisition wave in the 1980s brought stockholders back to prominence. Faced with pressures not seen since the early 1900s, corporate managers became increasingly short-sighted, and the corporate elite became increasingly fragmented. The result has been a business community unable to organize to address the problems of the twenty-first century in a way that its predecessors did in earlier decades. We conclude by discussing the implications of this argument for the thesis of *The Modern Corporation*.

Our goals in this paper are fourfold. First, we present what we see as Berle and Means's primary contributions in *The Modern Corporation*. Second, we describe various interpretations of this classic and situate these interpretations in their historical contexts. Third, we discuss the extent to which these interpretations provided an accurate account of the state of the American corporation and American business in the post-World War II period. We argue that these interpretations can be reconciled when we take into account the countervailing forces of the state, labor, and the financial community that created the conditions for a moderate, pragmatic approach to corporate governance. Finally, we discuss the changes that have occurred since the postwar period, from the 1970s on, and assess the fate of *The Modern Corporation* in light of those changes.

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7. *See, e.g.*, Maurice Zeitlin, *Corporate Ownership and Control: The Large Corporation and the Capitalist Class*, 79 AM. J. OF SOC. 1073 (1974); *see also* Mark S. Mizruchi, *Who Controls Whom? An Examination of the Relation between Management and Boards of Directors in Large American Corporations*, 8 ACAD. OF MGMT. REV. 426 (1983) [hereinafter *Who Controls Whom?*].

I. THE CONTRIBUTIONS OF *THE MODERN CORPORATION*

In *The Modern Corporation*,[8] Berle and Means began their argument by emphasizing that the rise of the large corporation in the United States left an enormous concentration of economic power in a relatively small number of organizations. They noted that virtually all Americans, in the course of their daily lives, are touched in one way or another by large corporations.[9] They showed that during the 1920s, the 200 largest American nonfinancial corporations experienced a growth rate of between two and three times that of smaller nonfinancial firms.[10] In addition, they raised an issue that constitutes a major theme of the book: American society is being transformed from one ruled primarily by market forces toward one in which a relatively small number of individuals control the bulk of the productive capacity.[11] They continued:

> The economic power in the hands of the few persons who control a giant corporation is a tremendous force [that] can harm or benefit a multitude of individuals, affect whole districts, shift the currents of trade, bring ruin to one community and prosperity to another. The organizations which they control have passed far beyond the realm of private enterprise—they have become more nearly social institutions.[12]

Berle and Means argued that as both a cause and a consequence of the enormous size of corporations, stock ownership had become increasingly dispersed. This is the component of the book that received the most attention, especially in the post-World War II era. In giant corporations such as the Pennsylvania Railroad and United States Steel, the largest stockholders owned less than 1% of the stock.[13] This stock dispersal had increased rapidly since the early 1900s: American Telephone and Telegraph, for example, went from 10,000 stockholders in 1901 to more than 642,000 by 1931, and U.S. Steel's number of owners increased more than tenfold during the same period.[14] Moreover, in the five-year period between 1916 and 1921, the distribution of

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8. In the following paragraphs, we will describe what we see as the primary argument of the book. Because *The Modern Corporation* is a broad, deep, and richly textured work, no brief summary can do it justice. It is thus unavoidable that there are some aspects of the book that we will emphasize more than others. We encourage readers to return to the original work, which addresses a considerably broader range of issues.

9. BERLE & MEANS, *supra* note 5, at 19–28.

10. *Id.* at 33–41.

11. *Id.* at 46.

12. *Id.*

13. *Id.* at 47.

14. *Id.* at 52.

ownership became increasingly dispersed across a broad range of income groups—a change of "almost revolutionary proportions," according to Berle and Means.[15] The most important outcome of this process for the authors, however, was that with the dispersal of stock, the owners of large corporations had become increasingly passive with regard to control of the firm:

> In place of actual physical properties over which the owner could exercise direction and for which he was responsible, the owner now holds a piece of paper representing a set of rights and expectations with respect to an enterprise. But over the enterprise and over the physical property—the instruments of production—in which he has an interest, the owner has little control.[16]

With stockholders increasingly dispersed and passive with respect to a firm's administration, who then assumed control? According to Berle and Means, direction of a firm's activities is exercised through the board of directors. Control thus lies with those who have the power to select the directors.[17] The authors distinguished five types of control: control through almost complete ownership, control through majority ownership, control through a legal device, control through minority ownership, and management control. The first two forms of control each involve some aspect of majority ownership, in which the majority owner has the ability to overrule any opposition, while the third, control through a legal device, involves several forms, one of which (pyramiding) includes effective majority ownership. Most interesting for our purposes are the last two types, minority control and management control. Owners can control a firm with fewer than 50% of the shares, Berle and Means argued, but such control is not guaranteed. In the famous Standard Oil of Indiana proxy fight, in which John D. Rockefeller, Jr. was barely able to oust the firm's management, Rockefeller was the holder of 14.9% of the company's stock.[18] To Berle and Means, this percentage represented the likely lowest point at which control via stock ownership could be maintained. They ultimately settled on an admittedly arbitrary figure of 20% as the minimum level of ownership necessary for minority control.[19] In cases in which no single owner was

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15. *Id.* at 60.
16. *Id.* at 64.
17. *Id.* at 66–67. Berle and Means defined management as the "board of directors and the senior officers of the corporation." *Id.* at 196. Most subsequent authors defined management as the senior officers only. Mizruchi, *Who Controls Whom?*, *supra* note 7, at 427. We will use Berle and Means's definition, except as noted.
18. BERLE & MEANS, *supra* note 5, at 76.
19. *Id.* at 108.

above this threshold, control of the firm was said to be effectively in the hands of management, those who ran the day-to-day operations of the firm. In a detailed analysis of the 200 largest American nonfinancial corporations in 1929, the authors found that 44% of the firms could be classified as management controlled.[20] Given the historical proliferation of stockholders that Berle and Means had identified, it stood to reason that the American corporation was becoming increasingly characterized by management control. Although not without controversy, a study by Robert Larner confirmed this trend decades later. Relying on data from 1964, Larner pronounced the managerial revolution "close to complete."[21]

Berle and Means argued that the separation of ownership from control had several important consequences. Initially, as stockholders became increasingly dispersed and increasingly passive, they lost both their ability and their interest in offering input into the firm's policies. Instead, stockholders increasingly viewed their stocks as investments, limiting their concerns to dividend payouts and the value of their equities. This meant that the firm's managers became increasingly insulated from the influence of stockholders. Meanwhile, because of the growing concentration of industry and managers' increasing independence from owners, managers gained control over the distribution of revenue, allowing them to reduce dividends and increase retained earnings.[22]

In light of the separation of ownership from control, Berle and Means advanced an alternative to the traditional justifications for the distribution of corporate profits. Economic logic—the "logic of profits"—suggested that those doing the work should be incentivized to work harder, and thus, the firm's profits should go to the managers.[23] Legal logic—the "logic of property"—suggested that stockholders should receive the firm's profits because they are the rightful owners.[24] Berle and Means argued that neither of these arguments is valid because they both fail to recognize that property and wealth no longer mean the same things that they did in the time of Adam Smith. For Smith, there was no distinction between ownership and control and no difference between *passive property*—shares of stocks or bonds—and *active property*—the relationship of control that managers have to the

20. *Id.* at 86–107.

21. ROBERT J. LARNER, MANAGEMENT CONTROL AND THE LARGE CORPORATION (Dunellen 1970).

22. BERLE & MEANS, *supra* note 5, at 112–16.

23. *Id.* at 299–302.

24. *Id.* at 293–98.

corporation.[25] Because private property split into these two new forms, the traditional logic of property no longer applies.

Similarly, Berle and Means argued that the profit motive itself has changed in form.[26] Given the immense magnitude of profits available to large firms to distribute as incentives, as well as the diminishing returns associated with additional amounts of income, there is no reason to believe that managers would work twice as hard to make twice as much money. Instead, Berle and Means suggested "that more could be learned regarding [the motives of managers] by studying the motives of an Alexander the Great, seeking new worlds to conquer, than by considering the motives of a petty tradesman of the days of Adam Smith."[27] Since it is not obvious that either managers or owners should be entitled to the profits of modern corporations, Berle and Means suggested a third option, one that recognized that corporations have become political units as much as economic enterprises.

Importantly, Berle and Means described the separation of ownership and control with some degree of consternation. The increasing autonomy of management led to a growing concentration of power in a relatively small group of individuals who were potentially unaccountable to any external forces. In Berle and Means's view, this lack of accountability raised potential concerns for the future of American democracy. Given corporations' prominent positions in society and the enormous consequences of their actions, the nation faced a difficult set of decisions about their proper role.

In the latter part of the book, the authors returned to their earlier concern, noted above, about the role of the corporation as a social institution. Given its prominence and power, the corporation may have an obligation to serve those beyond its stockholders. As we have seen, for Berle and Means, neither managers nor owners have produced any legitimate defense of their claim on the firm's profits. Instead, those who control the firm "[have] cleared the way for the claims of a group far wider than either the owners or the control. They have placed the community in a position to demand that the modern corporation serve not alone the owners or the control but all society."[28]

This constitutes an entirely new conception of the role of the corporation in society:

> When a convincing system of community obligations is worked out and is generally accepted, in that moment the passive property right

25. *Id.* at 304–05.
26. *Id.* at 307–08.
27. *Id.*
28. *Id.* at 312.

> of today must yield before the larger interests of society. . . . It is conceivable—indeed it seems almost essential if the corporate system is to survive—that the "control" of the great corporations should develop into a purely neutral technocracy, balancing a variety of claims by various groups in the community and assigning to each a portion of the income stream on the basis of public policy rather than private cupidity.[29]

The Modern Corporation, then, was a warning shot issued to intellectuals and policy makers, notable for its Jeffersonian concerns regarding the concentration of power as well as for its willingness to raise questions about the larger social role of the corporation. The large corporation had created great wealth and had the potential to be a source for enormous good. It also posed a serious danger, however, in that its rise had resulted in a relatively small group of extremely powerful organizations led by individuals who were unaccountable to any external force. Without some means by which to reign in these organizations, the future of American democracy was in peril.

II. SITUATING INTERPRETATIONS IN THEIR HISTORICAL CONTEXT

In order to understand how various interpretations came to be, some historical background is useful. The large corporation emerged in the United States during the period between 1870 and 1900. The beginning of the twentieth century witnessed the formation of the first giant firms led by United States Steel, a conglomeration of several existing steel companies assembled by J. P. Morgan.[30] The great size of these firms raised considerable concern among critics, but it was more than their size per se that caught people's attention.[31] Of even greater note was the extent to which the corporations were connected with one another in a web of cross-cutting affiliations. Morgan and his firm, J. P. Morgan and Company, controlled several of the leading railroads as well as U.S. Steel and International Harvester, and Morgan and his ally, George F. Baker, controlled several of the largest New York banks.[32] Meanwhile, Morgan's great rival, John D. Rockefeller, not only controlled the Standard Oil Company and several additional firms, but also was allied with James Stillman, president of the National City Bank; Jacob Schiff of

29. *Id.* at 312–13.

30. MARK S. MIZRUCHI, THE AMERICAN CORPORATE NETWORK 1904–1974 18 (1982) [hereinafter AM. CORP. NETWORK].

31. *See, e.g.*, Sereno S. Pratt, *Who Owns the United States?*, 10 WORLD'S WORK 6704, 6714 (1905); IDA M. TARBELL, THE HISTORY OF THE STANDARD OIL COMPANY (McClure, Phillips & Co. 1904).

32. MIZRUCHI, *supra* note 30, at 134–35.

Kuhn, Loeb & Company; and Edward H. Harriman of the Union Pacific Railroad.[33] Although Morgan and Rockefeller were sometimes viewed as rivals,[34] their interests came into alignment through an agreement, described at the time as a "community of interest," following the destructive fight for control of the Great Northern Railroad.[35] This community of interest was reflected in the proliferation of director interlocks among these firms. Baker alone sat on the boards of thirty-eight different corporations in 1904, including several leading banks.

During this period, social critics, muckraking journalists, and even President Theodore Roosevelt railed against this "money trust." Congress held hearings, led by Representative Arsene Pujo of Louisiana. Even future Supreme Court Justice Louis Brandeis entered the fray, publishing a series of essays under the title, *Other Peoples' Money, and How the Bankers Use It*.[36] Brandeis was particularly concerned with the prevalence of interlocking directorates, pronouncing it to be "the root of many evils," in that it violated "the fundamental law that no man can serve two masters."[37] The uproar over the concentrated economic power and the cohesive relations among the leading firms culminated with the passage of the Clayton Antitrust Act of 1914.

This period, roughly 1890 to 1920, has been termed the "era of finance capital."[38] There is widespread agreement that the leaders of the largest American corporations during this period constituted a basically cohesive "capitalist class," which formed the basis of an American social elite, as chronicled by later writers such as Ferdinand Lundberg in *America's Sixty Families*[39] and Anna Rochester in *Rulers of America*.[40] At the same time, a series of changes had begun during the later part of this period that, in the view of many mid-twentieth century observers, led to the demise of this class. Among these changes was Section 8 of the Clayton Act, which prohibited director interlocks between firms competing in the same market. The Act sharply reduced the number of interlocks among leading firms. In a study of 167 large U.S. corporations, Mizruchi found that the number of interlocks among them

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33. *Id.*

34. VINCENT P. CAROSSO, INVESTMENT BANKING IN AMERICA (Harvard Univ. Press 1970).

35. THOMAS C. COCHRAN & WILLIAM MILLER, THE AGE OF ENTERPRISE (Harper & Row 1961) (1942).

36. LOUIS D. BRANDEIS, OTHER PEOPLE'S MONEY, AND HOW THE BANKERS USE IT (National Home Library Foundation 1933) (1914). For more on Justice Brandeis, see Harwell Wells, *The Birth of Corporate Governance*, 33 SEATTLE U. L. REV. 1247 (2010).

37. *Id.* at 35.

38. *See* COCHRAN & MILLER, *supra* note 35; CAROSSO, *supra* note 34.

39. FERDINAND LUNDBERG, AMERICA'S SIXTY FAMILIES (Vanguard Press 1937).

40. ANNA ROCHESTER, RULERS OF AMERICA, A STUDY OF FINANCIAL CAPITAL (Int'l Publishers 1936).

declined by more than 25% between 1912 and 1919.[41] There was also a generational shift, during which the founders of the leading firms of the day—including Morgan, Baker, Rockefeller, and Stillman—died or retired and were replaced by their sons or hand-picked successors, none of whom approached the influence or stature of their predecessors.

A. The Modern Corporation *as Great American Celebration?*

The Modern Corporation appeared in the early years of the Great Depression, and its ominous tone fit well with the grave situation in which American society was engulfed. By the end of World War II, however, circumstances were very different. The United States had emerged from the war as the world's leading economic and military power. The war had ended the Depression, and contrary to the concerns of many scholars and policy makers, the economy did not sink back into a downturn once the war effort wound down. Instead, the nation experienced an economic expansion that, with only a few relatively minor downturns, lasted more than two decades. During this period, a group of prominent scholars presented analyses of American society that viewed the nation as the ideal contemporary manifestation of democracy, a trend that C. Wright Mills derisively labeled the "curious American celebration."[42] And ironically, contrary to the general tenor of Berle and Means, *The Modern Corporation* was often used by scholars of this period as evidence of the success of democracy in the United States.

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41. MIZRUCHI, AM. CORP. NETWORK, *supra* note 30, at 101–02.

42. C. Wright Mills, *On Knowledge and Power*, 2 DISSENT 201, 204 (1955). The phrase typically attributed to Mills (and that we use in the title to this section) is "Great American Celebration," usually capitalized. Despite an exhaustive search, we have been unable to find any reference by Mills himself to the "Great," as opposed to the "curious," American celebration. Paul Baran and Paul Sweezy attribute the phrase "Great American Celebration" to Mills on the first page of their book, *Monopoly Capital*, without a specific citation, and the phrase was used by many authors thereafter, always attributed to Mills and always without citation. *See* PAUL A. BARAN & PAUL M. SWEEZY, MONOPOLY CAPITAL (Monthly Review Press 1966). We suspect that Baran and Sweezy might have used the quote from memory, with the slight alteration, and assumed that it was not necessary to provide a direct reference. We did find a pre-Baran and Sweezy reference to the term "great American celebration" (with "great" and "celebration" in lower case) in a review of three books (including one by Mills) by historian C. Wilson Record. *See* C. Wilson Record, *Of History and Sociology*, 11 AM. Q. 425, 429 (1959). It is possible that Baran and Sweezy had come across Record's use of the term and, given its similarity to Mills's earlier term, mistakenly attributed it to Mills. Or it is possible that Record himself had read Mills's earlier article and used a similar phrase without reference to Mills. Regardless of its origins, the subsequent attribution of the term to Mills provides an example of a phrase taking on a life of its own, independent of its accuracy, another example of the phenomenon discussed by Mizruchi and Fein and described in the introduction to this paper. *See* Mizruchi & Fein, *supra* note 1. Because "Great American Celebration" has become the term of choice, we use it, rather than "curious American celebration," in the title to this section.

Perhaps the most cited reason for the presumed decline of the capitalist class, however, was the separation of ownership from control that Berle and Means chronicled. In fact, by the 1950s, a widely held interpretation of Berle and Means's findings had begun to take hold, one that had implications that were very different from those implied by *The Modern Corporation*. This interpretation, advanced by scholars such as Daniel Bell, John Kenneth Galbraith, Talcott Parsons, and David Riesman, reflected the view noted earlier that American society had become increasingly democratic.[43] We will begin by summarizing the general contours of this story. We then take a closer look at some of the major individual works that advanced this argument.

As we noted earlier, Berle and Means documented the growing dispersal of stockholdings in large American corporations, which led to managers' increasing power. Freed from the dictates of stockholders, these managers now had increasing autonomy over firm policies. Given the lack of stockholder pressure, managers could reduce dividend payouts, thus increasing the amount of available cash. As Berle subsequently argued, the increased level of retained earnings allowed managers to reduce their dependence on banks and other financial institutions, since it was now possible to finance investment with internally generated funds.[44] Unlike the managers of the earlier generation, the new corporate managers were bureaucrats whose primary allegiance was to their own firm rather than to a group of firms under one center of control. This focus on the internal workings of their own firms was believed to have led to a decline in cross-firm cohesiveness. The American business community thus became, in Dahrendorf's words, a plurality of "partly agreed, partly competing, and partly simply different groups."[45]

This presumed "decomposition of capital," as Dahrendorf called it, had important implications for the viability of American democracy.[46] The economist Joseph Schumpeter, in his 1942 classic, *Capitalism, Socialism, and Democracy*, argued that political life in industrialized democratic societies was dominated by a relatively small group of elites, while most citizens were largely apathetic about politics.[47] Because the vibrancy of democracy depends on an engaged public, Schumpeter asked

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43. *See* BELL, END OF IDEOLOGY, *supra* note 6; GALBRAITH, AMERICAN CAPITALISM, *supra* note 6; PARSONS, *supra* note 6; DAVID RIESMAN, THE LONELY CROWD: A STUDY OF THE CHANGING AMERICAN CHARACTER (Anchor 1953).

44. ADOLF A. BERLE, JR., THE 20TH CENTURY CAPITALIST REVOLUTION 35–41 (Harcourt, Brace & World 1954) [hereinafter CAPITALIST REVOLUTION].

45. DAHRENDORF, *supra* note 6, at 47.

46. *Id*. at 41.

47. JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY (1942).

how it was possible to claim that these societies were democratic in any sense of the word. The answer, he concluded, was that the elites who dominated these societies were themselves politically divided. Although one or more segments within this group might be connected to those in office, one or more opposing segments—without such connections—stood as challengers whose candidates had the potential to prevail in subsequent elections. If the public were to become sufficiently dissatisfied with the party in office, it had the option of replacing the current occupants of power with their opponents. This occurred in the United States in 1932 and, after Schumpeter's time, in several subsequent U.S. presidential elections, including the 1968, 1980, and 1992 elections.[48] The existence of democracy in these societies, Schumpeter thus argued, depended on the presence of significant divisions within the elite. Similar arguments were later made by John Kenneth Galbraith and Seymour Martin Lipset.[49]

But on what basis did these elite divisions occur? In a 1958 essay, political scientist Robert Dahl argued that for a group to be powerful, two elements must be present: the group must have an abundance of resources on one hand and a high degree of unity on the other.[50] Many observers, including Dahl and Galbraith, had acknowledged that large corporations had a high level of resources. This meant that to the extent that these corporations could maintain any semblance of unity, their presence could contain serious consequences for the functioning of American democracy. Galbraith argued, however, that the wide range of often-conflicting interests among industries—and among firms within industries—created what he called "countervailing power," in which these cross-cutting interests canceled out one another, thereby preventing large corporations from constituting themselves as a unified political force.

With its emphasis on stock dispersal and on the rise of bureaucratic managers, *The Modern Corporation* was assumed by several authors to provide evidence for the rise of this countervailing power and, therefore, for the increasingly democratic character of American society. A good example of this was presented by the great sociological theorist Talcott Parsons in a critique of C. Wright Mills's *The Power Elite*.[51] Mills had argued that a relatively small, cohesive group consisting of leaders of large corporations, the government, and the military dominated the

48. *Id*. at 269–83.

49. *See* GALBRAITH, AMERICAN CAPITALISM, *supra* note 6; Seymour Martin Lipset, *Introduction* to ROBERT MICHELS, POLITICAL PARTIES 15 (Free Press 1962).

50. Robert A. Dahl, *A Critique of the Ruling Elite Model*, 52 AM. POL. SCI. REV. 463 (1958).

51. C. WRIGHT MILLS, THE POWER ELITE (1956) [hereinafter POWER ELITE].

political life of American society. In taking issue with this argument, in particular with Mills's depiction of large corporations, Parsons suggested that

> [Mills] continues to speak of power *within* the economy as based on property. To a considerable degree, of course, this is legally true, since the legal control of enterprise rests with stockholders. But, as Berle and Means made abundantly clear, very generally it is not substantively true. In the old-style family enterprise, still predominant in the small-business sector of the economy, the functions of management and ownership are fused in the same people. In the larger enterprise they have by and large become differentiated . . . . In general, property holdings have not, of course, been expropriated, except for their diminution through inheritance and income taxes . . . . What has happened is that their relation to the *power* structure of the economy has been greatly altered. Mills almost entirely passes over this change.[52]

Parsons's characterization of Berle and Means's argument is not factually inaccurate. Berle and Means, and certainly Berle in his later writings,[53] did indeed argue that the relation between property ownership and corporate control had changed. What differs is Parsons's use of this point. Parsons criticized Mills for suggesting that power in the corporate world was highly concentrated. He implied, on the contrary, that power had become dispersed, and he cited Berle and Means as support. Yet as we have seen, Berle and Means did not argue that power had become dispersed. Instead, they, like Mills, were concerned that corporate power had become highly concentrated, and unlike Parsons, they believed that the separation of ownership from control had helped further this concentration.[54]

Of course, Parsons was writing in the late 1950s, nearly three decades after *The Modern Corporation* was published. And Berle himself, in a review in the *New York Times*,[55] offered a critique of Mills's book. Berle's criticisms of Mills, however, were based on a very different set of arguments. He did not take issue with Mills's point that there was a high concentration of power in American society. Rather, Berle questioned whether those in power were as amoral as Mills had

52. PARSONS, *supra* note 6, at 210 (emphasis in original). We should note that Parsons's claim that legal control of the firm rests with the stockholders does not follow from Berle and Means's argument. Berle and Means actually devoted considerable attention in *The Modern Corporation* (in fact much of the second half of the book) to the extent to which the legal power of stockholders had been weakened. *See* BERLE & MEANS, *supra* note 5.

53. *See, e.g.*, ADOLF A. BERLE, JR., POWER WITHOUT PROPERTY (1959) [hereinafter POWER].

54. BERLE & MEANS, *supra* note 5.

55. Adolf A. Berle, Jr., *Are the Blind Leading the Blind?*, N.Y. TIMES, Apr. 22, 1956.

indicated. In fairness to Parsons, he did not explicitly attribute to Berle and Means the claim that the separation of ownership from control had led to a dispersal of power. The quote above suggests that Parsons did imply such a connection, however.

Parsons was not the only social scientist who made the link between the separation of ownership and control and the dispersal of power. Ralf Dahrendorf, as we noted above, drew a similar connection.[56] Consistent with Berle and Means, Dahrendorf argued that the dispersal of stock had transformed the relation between property ownership and the firm's administration in contemporary developed societies. But Dahrendorf went further than Berle and Means in describing the consequences of this stock dispersal. For Dahrendorf, the fusion of ownership and control was a central component of capitalism. Because this unity had ruptured and because those who controlled the firm were now mere bureaucrats as opposed to entrepreneurs, Dahrendorf argued that the separation of ownership from control had ushered forth the end of capitalism and made way for a new, "post-capitalist" society.[57] The capitalist class posited by Marx in the nineteenth century had given way to a class of career bureaucrats, whose primary loyalty lay with their employer rather than with a class of property owners. This provided the basis for Dahrendorf's claim, cited above, that "[c]apital—and thereby capitalism—[had] dissolved and given way, in the economic sphere, to a plurality of partly agreed, partly competing, and partly simply different groups."[58] Because this plurality of cross-cutting groups rendered unity among corporations extremely difficult, if not impossible, Dahrendorf's discussion suggests that business would be unable to constitute itself as a singularly powerful political actor. As with Parsons, then, Dahrendorf used Berle and Means's findings to argue that corporate power had become increasingly dispersed in American society, exactly the opposite conclusion from that drawn, or at least suggested, in *The Modern Corporation*.

Ironically, even a Marxist critic of *The Modern Corporation*, Maurice Zeitlin, appears to have missed Berle and Means's concerns about the potential concentration of power wrought by the rise of the large corporation.[59] Zeitlin is for the most part faithful to the text of *The Modern Corporation*. In fact, his account is far more detailed than most

56. Parsons and Dahrendorf were leading representatives of two major—and directly opposing—approaches to sociological theory during the 1950s. It is, therefore, ironic to see the two of them on the same side of this issue.

57. DAHRENDORF, *supra* note 6, at 41–47.

58. *Id.* at 47.

59. Zeitlin, *supra* note 7.

of the more celebratory citations of the book. Nevertheless, in focusing exclusively on Berle and Means's analysis of ownership and control, Zeitlin neglects to mention the authors' concerns regarding the concentration of economic power. This omission, combined with his numerous quotations from authors who used *The Modern Corporation* as evidence for the dispersal of power in American society, gives the impression that Berle and Means themselves shared this conclusion. One possible reason that Zeitlin ignores Berle and Means's concerns about the concentration of power may be that he is more focused on the interpreters of Berle and Means than on the original work itself, and his emphasis is on *their* arguments about the dispersal of power.[60] A second possible reason is that Zeitlin is concerned with making the case for a particular view, in which power is held by a property-owning class that exercises its control through its ownership of corporations. This is reflected in the fact that even other Marxist analysts, such as Baran and Sweezy,[61] come under criticism from Zeitlin for accepting Berle and Means's conclusion on the separation of ownership from control. Whatever the reason, the fact that Zeitlin does not address Berle and Means's statements on the concentration of corporate power leaves the impression, even if unintended, that they were not concerned about this issue. Yet regardless of the views of scholars such as Bell, Dahrendorf, and Parsons, it seems clear that Berle and Means themselves were not participants in an uncritical "celebration" of American society. On the contrary, they offered a considerably more cautious appraisal, based on a genuine concern with the potentially unchecked power of the large American corporation.

B. The Modern Corporation *as Social Criticism*

Although some scholars used *The Modern Corporation* as evidence for the dispersal of power and the spread of democracy in American society, others were more cognizant of the critical aspects of the work and provided a more nuanced interpretation. A good example of this is in *American Capitalism* by John Kenneth Galbraith.[62] Aware that the massive government spending on World War II had lifted the United States out of the Great Depression, many scholars and policy makers were concerned that once the war ended, the nation would again experience a major economic collapse. This collapse did not occur, however, and Galbraith's book was an attempt to understand why.

60. *Id.* at 1074–80.
61. BARAN & SWEEZY, *supra* note 42.
62. GALBRAITH, AMERICAN CAPITALISM, *supra* note 6.

Galbraith began by suggesting that the American economy had left behind the system of competitive capitalism and had instead become a system dominated by a relatively small number of large corporations.

Unlike authors such as Dahrendorf and Parsons, Galbraith drew upon *The Modern Corporation* as evidence of economic concentration.[63] In fact, Galbraith did not even make an explicit reference to the separation of ownership from control, although he did imply its existence when discussing the role of managers in administering firms. Interestingly, however, Galbraith did ultimately conclude that corporate power is limited.[64] Labor unions, the government, and even consumers have the ability to exercise constraints on the actions of firms, Galbraith argued. This suggests that countervailing power had its sources in sectors outside as well as inside the business community, a point that Berle himself made by drawing on Galbraith in one of his later works.[65] Interestingly, then, the situation that Berle and Means envisioned, in which corporations answer to elements of the larger society—what in contemporary terms are referred to as "stakeholders"—had, according to Galbraith, become a reality by the early 1950s. In that sense, Galbraith may have also contributed to the optimism about the nature of American society in the postwar era, even as he acknowledged the critical nature of *The Modern Corporation*.

Yet, by the late 1960s, Galbraith had become more cautious in his praise and more radical in his conclusions. In *The New Industrial State*, he argued not only that control was no longer in the hands of owners, but also that it no longer resided with managers.[66] Instead, he suggested that effective control was now in the hands of a "technostructure"—those "who bring specialized knowledge, talent or experience to group decision-making."[67] "This [technostructure], not the management," Galbraith argued, "is the guiding intelligence—the brain—of the enterprise."[68] Building on a theme that Berle[69] and others had discussed, Galbraith argued that because the ownership of capital had become increasingly irrelevant in industrialized societies, in many respects, the economies of the United States and the Soviet Union had increasingly come to resemble one another. Both economies were characterized by significant central planning. Indeed, Galbraith and Berle both made

63. *Id.* at 39–41; BERLE & MEANS, *supra* note 5.

64. GALBRAITH, AMERICAN CAPITALISM, *supra* note 6, at 108–34.

65. BERLE, POWER WITHOUT PROPERTY, *supra* note 53.

66. JOHN KENNETH GALBRAITH, THE NEW INDUSTRIAL STATE (Houghton Mifflin 1967) [hereinafter NEW INDUSTRIAL STATE].

67. *Id.* at 71.

68. *Id.*

69. BERLE, POWER WITHOUT PROPERTY, *supra* note 53.

reference to the central role of the government in American economic policy. And in both societies, producers were relatively insulated from the market.

Galbraith and Berle also argued, along with Dahrendorf and others, that the entrepreneur played little role in the American economy during the 1950s and 1960s.[70] Perhaps Galbraith's most interesting reference to Berle and Means, however, was his observation on the relation between corporations and the state. Galbraith suggested that for Berle and Means, as corporate power became increasingly unchecked, it would be necessary for the state to appropriate power from the managers.[71] Galbraith even went so far as to label Berle a socialist:

> This formidable conclusion [regarding the possible need for the state to appropriate power], which was expressed in guarded terms, came toward the end of a long book. It seems to have been overlooked. Had his numerous critics been more diligent, Professor Berle's early commitment to socialism would, one imagines, have been more celebrated during his long and greatly distinguished public career.[72]

We believe that Galbraith likely exaggerated, or at least misrepresented, Berle and Means's argument here. In our reading, Berle and Means maintained that it might be advantageous for corporations to be run in the interests of a range of stakeholders, including labor, consumers, and the larger community, but they did not suggest that corporations be controlled by the state. Nevertheless, Galbraith's interpretation represents an example of the extent to which Berle and Means's own critical perspective was evident to those who gave the book a close reading.

Another innovative application of the ideas in *The Modern Corporation* was provided by Daniel Bell. Our praise of Bell in this context may be ironic to some readers, considering that Zeitlin criticized Bell for uncritically accepting the idea of the dissolution of the capitalist class in the early twentieth century.[73] In *The End of Ideology*, Bell did indeed argue that family capitalism in the United States had generally disappeared, at least among the largest corporations.[74] He also accepted Galbraith's concept of countervailing power and issued a biting critique of Mills's *The Power Elite*, arguing, similar to Dahrendorf and Parsons,

70. GALBRAITH, NEW INDUSTRIAL STATE, *supra* note 66; BERLE, POWER WITHOUT PROPERTY, *supra* note 53; DAHRENDORF, *supra* note 6.

71. GALBRAITH, THE NEW INDUSTRIAL STATE, *supra* note 66, at 119.

72. *Id.* at 127.

73. Zeitlin, *supra* note 7, at 1076–77.

74. DANIEL BELL, END OF IDEOLOGY, *supra* note 6.

that the decline of family capitalism contributed to the dissolution of corporate power.[75] In a subsequent work, however, Bell charted a new direction that acknowledged the concerns that Berle and Means had originally raised.[76]

Bell's primary focus in this work, *The Coming of Post-Industrial Society*, was on the social ramifications of the shift in the American economy from one based on manufacturing to one based primarily on service.[77] Included in his discussion was a critique of the idea, expounded most notably by Milton Friedman, that, as Bell put it, "*individual* satisfaction is the unit in which costs and benefits are to be reckoned."[78] Bell argues that this view "reflects the utilitarian fallacy that the sum total of individual decisions is equivalent to a social decision."[79] Bell proposes what he terms the "sociologizing" mode as an alternative: "the effort to judge society's needs in a more conscious fashion."[80] He argues that as we move into post-industrial society, the value of a corporation will increasingly be based on the extent to which it responds to the needs of its full set of stakeholders.

Although Bell does not refer to *The Modern Corporation* in this work, he does mention the oft-cited debate between Berle[81] and Merrick Dodd[82] regarding to whom the corporation is responsible.[83] Ironically, as will be well-known to readers of this journal, it was Dodd who argued for the stakeholder view of the firm in this debate. Berle's concern was that in the absence of a "clear and reasonably enforceable scheme of responsibilities," management would be able to act in its own interests and then arbitrarily identify one or more stakeholders as the presumed beneficiaries of management's actions. Of course, Berle subsequently came to accept Dodd's view, and both positions served as an important reference point for Bell. So despite his seeming acceptance of Berle and Means's "dispersal of power" interpretation, Bell ultimately came to

75. DAHRENDORF, *supra* note 6; PARSONS, *supra* note 6.

76. DANIEL BELL, THE COMING POST-INDUSTRIAL SOCIETY (Basic 1973) [hereinafter POST-INDUSTRIAL SOCIETY].

77. *Id.*

78. *Id.* at 282–83 (emphasis in original).

79. *Id.* at 283.

80. *Id.*

81. Adolf A. Berle, Jr., *Corporate Powers as a Trust*, 44 HARV. L. REV. 1049 (1931).

82. E. Merrick Dodd, Jr., *For Whom are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145 (1932).

83. For discussions of the ways in which this debate continues to influence contemporary legal scholarship, see, for example, William W. Bratton & Michael L. Wachter, *Shareholder Primacy's Corporatist Origins: Adolf Berle and* The Modern Corporation, 34 J. CORP. L. 100 (2008); David Millon, *Berle vs. Dodd After 80 Years: Why Are We Still Arguing About This?*, presented at *In Berle's Footsteps*, a symposium at Seattle University School of Law, November 6–8, 2009.

embrace the need to reign in the corporation—a position much closer to the concerns raised in the later chapters of *The Modern Corporation*.

III. BUT PERHAPS THEY WERE RIGHT

We have seen that there were two broad interpretations of *The Modern Corporation* that led to two very different conceptions of the role of the large corporation. On one hand, in a view seemingly closer to Berle and Means's original concerns, there were authors who focused on the dangers of concentrated economic power wrought by the concentration of industry and the lack of accountability of management. On the other hand, there were those who saw the separation of ownership from control as the source of the dispersal of corporate power and the consequent further democratization of American society. One question we need to ask is whether these two interpretations are compatible. A second question is whether either, or both, turned out to be historically accurate.

We believe that the two views indeed are compatible but not because we believe that corporate power actually became dispersed by the mid-twentieth century. Instead, we argue that while power among large corporations remained highly concentrated, a series of institutional factors compelled corporate leaders to act in ways that were, if not completely socially responsible, at least relatively benign compared to the standards of the twenty-first century. We believe that the concept of countervailing power, as applied to the relations between corporations and non-business actors, provides a generally tenable description of the situation that prevailed in the postwar period. To make this case, we begin by providing a brief historical account of the political ideology of American business executives. We then describe the three countervailing forces that we believe placed constraints on the actions of large corporations during this period: the state, organized labor, and the financial community. Finally, we describe the forces that contributed to the breakdown of this arrangement and the consequences this breakdown had for the current status of American corporate managers.

A. Corporate Ideology and the Countervailing Powers that Compelled Moderate Corporate Behavior

1. The Ideology and Behavior of American Corporate Leaders

There is widespread agreement that the vast majority of American business executives have historically held political views that would, under today's labels, be termed "conservative."[84] These views include support for free markets, suspicion of government intervention in the economy, support for low individual and corporate taxes, and opposition to organized labor. They have been reflected in businesspeople's consistently strong support for the Republican Party. They were reflected in businesspeople's widespread opposition to the New Deal reforms of the 1930s. And, they were reflected in support for the turn toward free market policies that began in the late 1970s and continued into the twenty-first century.

Despite the support for these conservative ideas among most American businesspeople, there has been a subset of American executives that held more moderate views since at least the early 1900s. The National Civic Federation, formed in 1900, consisted of prominent business leaders, labor leaders, academics, and politicians, all of whom were dedicated to finding solutions for the most deleterious consequences of free-market capitalism.[85] The corporate executives in this group never constituted more than a small percentage of the corporate leaders of the day, however, and the organization had become greatly weakened by the 1920s. This group nevertheless provided evidence that there were some corporate officials who saw a need for both private firms and the state to take a more active role in providing basic social services for workers. Many of the ideas proposed by this group were eventually adopted as welfare policies by private firms and also became the basis of New Deal reforms during the 1930s.[86]

A similar group of relatively moderate corporate leaders emerged in the period after World War II. Centered in organizations such as the Committee for Economic Development and the Council on Foreign Relations, these business executives were associated primarily with the largest corporations and financial institutions, and they tended to sit on the boards of two or more firms.[87] In contrast with most American businesspeople, these leaders held a relatively broad, cosmopolitan orientation, in which they sought to reach an accommodation with members of alternative sectors of the society. This included limited acceptance of the right of labor unions to engage in collective bargaining,

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84. *See* HERMAN E. KROOSS, EXECUTIVE OPINION: WHAT BUSINESS LEADERS SAID AND THOUGHT ON ECONOMIC ISSUES 1920S–1960S (1970); David Vogel, *Why Businessmen Distrust Their State: The Political Consciousness of American Corporate Executives*, 8 BRIT. J. OF POL. SCI. 45 (1978) [hereinafter *Why Businessmen Distrust*].

85. JAMES WEINSTEIN, THE CORPORATE IDEAL IN THE LIBERAL STATE, 1900–1918 (1968).

86. NEIL J. MITCHELL, THE GENEROUS CORPORATION: A POLITICAL ANALYSIS OF ECONOMIC POWER (1989).

87. MICHAEL USEEM, THE INNER CIRCLE: LARGE CORPORATIONS AND THE RISE OF BUSINESS POLITICAL ACTIVITY IN THE U.S. AND U.K. (1984).

a similarly limited acknowledgement of the occasional value of government regulation of the economy, and cautious support for civil rights and anti-poverty legislation.[88]

Considerable debate exists regarding the extent to which these views reflected a set of ideological beliefs or a pragmatic response to reality.[89] There is some evidence that the beliefs were in fact genuine. In a survey of 120 leading corporate executives conducted in 1971, Allen Barton found widespread support for Keynesian deficit spending, for federal antipoverty programs, and for the idea that the government should provide jobs when the private economy is unable to do so.[90] Regardless of whether these views reflected deeply held convictions, they at least indicated that many of the leading corporate executives were willing to adopt a pragmatic approach toward policy.

This relatively moderate strategy of the leading corporations was held in place, we argue, by three countervailing forces: (1) a relatively powerful and active state; (2) a relatively powerful and well-organized labor movement; and (3) a financial community capable of mediating conflicts of interest among firms and disciplining recalcitrant individual capitalists. We turn now to a discussion of these forces.

2. The State

Prior to the Great Depression, the government played a relatively minor role in the American economy.[91] The Federal Reserve System, which was not established until 1913, handled monetary policy, and various regulations had been passed in the late 1800s, including the Interstate Commerce Act and the Sherman Antitrust Act. It was not until the 1930s, however, that the government began to play a significant direct role in the economy. By the postwar period, programs such as Social Security and financial regulations imposed by the Glass–Steagall Act, which forced commercial and investment banks to separate, and the

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88. *Id.*

89. *See, e.g.*, JAMES A. GROSS, BROKEN PROMISE: THE SUBVERSION OF U.S. LABOR RELATIONS POLICY, 1947–1994 (1995).

90. Allen H. Barton, *Determinants of Economic Attitudes in the American Business Elite*, 91 AM. J. SOC. 54 (1985).

91. This statement requires clarification. Broadly construed, the economy includes the organization of production and distribution of goods and services in the entire nation. From this standpoint, the Civil War could be seen as a government intervention into the economy, ending a particular form of production (slavery). Similarly, the government's role in the establishment and maintenance of property rights dates back to the nation's birth. When we say that the government played a relatively minor role in the economy prior to the 1930s, we are highlighting the absence of the sorts of interventions now most commonly debated, such as regulations involving working conditions; pay; environmental standards; tax policies designed to stimulate investment in particular sectors; and social welfare programs for the sick, disabled, and elderly.

Securities Exchange Act, which created the Securities and Exchange Commission, had become taken-for-granted aspects of the institutional landscape.[92] The state's most important role beginning in the 1930s, however, was the introduction of Keynesian fiscal policy, in which the government used tax and spending measures, including deficit spending, in an attempt to ensure economic stability.

Keynesian theory was based in part on the idea that developed capitalist societies had a built-in tendency for aggregate demand to lag behind production. Without some way to increase demand, the economy would sink into a recession or, if the gap was sufficiently severe, a depression. Through policies such as Social Security, welfare, and the largest element of the budget—military expenditures—the state helped increase demand, thus heading off the threat of a depression.[93] Although some government social policies ran counter to the free market ideology of most businesspeople, the enormous economic success that the United States experienced in the postwar period tended to minimize opposition to these policies. In fact, dating from the 1930s, there were significant numbers of leading business figures who accepted the idea that the government would play a significant role in the economy.[94] This approach reached its culmination with the formation of the Committee for Economic Development (CED) in 1942. As Robert Collins notes, this group reflected policies similar to those of the earlier National Civic Federation, with an emphasis on cooperation among business, government, and labor.[95] The CED attempted to address economic and social problems through technical expertise rather than political ideology, and its members supported a significant and growing role for the federal government, including the idea of government support to maintain high levels of employment—a view echoed in the responses to Barton's survey three decades later.[96] The influence of the CED and other groups of leading businesspeople, a more broadly liberal-political atmosphere, and the economic success experienced by the United States in the postwar period fed the continued adherence to Keynesian economic policies through both Democratic and Republican administrations. By the turn of the 1970s, these policies had become so

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92. *See, e.g.*, Interstate Commerce Act (Cullom Act), ch. 104, 24 Stat. 379 (1887); Sherman Antitrust Act, ch. 647, 26 Stat. 209 (1890); Banking Act (Glass–Steagall Act), ch. 89, 48 Stat. 162 (1933); Securities Exchange Act ('34 Act), ch. 404, 48 Stat. 881 (1934).

93. ROBERT M. COLLINS, THE BUSINESS RESPONSE TO KEYNES, 1929–1964 (1981).

94. *Id.* at 56–64.

95. *See id.*

96. Barton, *supra* note 90.

widely accepted that President Nixon remarked, in 1971, that "I am now a Keynesian in economics."[97]

In addition to its role in stabilizing the economy, beginning in the 1930s, the state also became increasingly involved in regulating business practices. First and foremost among these regulations was the Fair Labor Standards Act of 1938, which established the minimum wage, rules for overtime pay, and restrictions on the use of child labor.[98] The government also involved itself in the regulation of several industries, including oil, sugar, and transportation. In such cases, the industries themselves either sought or supported regulation as a means of ensuring a level playing field and of preventing disruptive behavior—a point that Berle noted in one of his later works.[99] Through both its economic and regulatory policies, then, the state imposed constraints that contributed to the moderate political strategy adopted by the American corporate elite.

3. Labor

Although management and workers share similar interests in certain respects—both have an interest in the survival and prosperity of the firm, for example—it has long been acknowledged that they have opposing interests in other respects. There are few American corporations that, other things being equal, would prefer that their workers be organized, and management has both resisted the formation of unions and attempted to weaken them once formed. Nevertheless, there have been periods in which some corporate officials have been willing to accommodate unions, especially in cases in which alternative courses of action were seen as even more objectionable. In the early 1900s, for example, when the prospect of socialism was a genuine concern to American business leaders, some firms were willing to accept unions that were more moderate. The American Federation of Labor gained its initial foothold precisely in response to these conditions.[100]

The 1930s witnessed a broad increase in unionization in the American business world, and the passage of the Wagner Act in 1935

97. The quote, "We are all Keynesians now," is often attributed to Nixon, but it was actually originally stated, interestingly, by the militantly free-market economist Milton Friedman in a 1965 interview in *Time* magazine. In a subsequent letter to the editor, Friedman maintained that he had been quoted out of context. Letter from Milton Friedman to Editor, TIME 13 (Feb. 4, 1966). His full comment, he recalled in the letter, was, "In one sense, we are all Keynesians now; in another, nobody is any longer a Keynesian." *Id.*

98. Fair Labor Standards Act (Black–Connery Fair Labor Standards Act), ch. 676, 52 Stat. 1060 (1938) (current version as amended in scattered sections of 29 U.S.C. (2010)).

99. BERLE, CAPITALIST REVOLUTION, *supra* note 44, at 50.

100. DAVID BRODY, WORKERS IN INDUSTRIAL AMERICA, 82–119 (2d ed. 1993).

increased unions' ability to organize.[101] Given labor shortages during the war, unions became increasingly militant, and strike activity increased sharply. By 1950, there were 424 work stoppages in the Unites States, involving nearly 1.7 million workers.[102] The number rose to a high of more than 2.7 million workers in 1952.[103] Increasingly concerned with the lost work time resulting from this worker militancy, some large firms reached agreements with their unions to limit the number of disruptions. These agreements, typified by the 1950 "Treaty of Detroit" involving General Motors and the United Auto Workers, became known as the "capital–labor accord."[104] As Bowles et al. put it:

> Corporations would retain absolute control over the essential decisions governing enterprise operations—decisions involving production, technology, plant location, investment, and marketing . . . . In return, unions were accepted as legitimate representatives of workers' interests. They were expected to bargain on behalf of labor's immediate economic interests, but not to challenge employer control of enterprises . . . . Unions would help maintain an orderly and disciplined labor force while corporations would reward workers with a share of the income gains made possible by rising productivity, with greater employment security, and with improved working conditions.[105]

In other words, corporations were willing to accept the existence of unions, along with higher wages and benefits, in return for labor peace and control of the work process.

There has been renewed debate among labor historians regarding whether the capital–labor accord ever existed. Several scholars argue that business not only continued to aggressively fight labor during this period, but that American corporations never accepted the legitimacy of unions.[106] Rather, as McIntyre and Hillard suggest, business and labor at most reached a partial truce rather than a genuine accord.[107]

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101. National Labor Relations Act (Wagner–Connery Labor Relations Act), ch. 372, 49 Stat. 449 (1935).

102. BUREAU OF LABOR STATISTICS, U.S. DEPARTMENT OF LABOR, WORK STOPPAGES INVOLVING 1,000 OR MORE WORKERS, 1947–2009 (2010), *available at* www.bls.gov/news.release/wkstp.t01.htm.

103. *Id.*

104. SAMUEL BOWLES, DAVID M. GORDON & THOMAS E. WEISSKOPF, BEYOND THE WASTELAND: A DEMOCRATIC ALTERNATIVE TO ECONOMIC DECLINE (Anchor Doubleday 1983).

105. *Id.* at 73.

106. *See, e.g.*, ELIZABETH A. FONES–WOLF, SELLING FREE ENTERPRISE: THE BUSINESS ASSAULT ON LABOR AND LIBERALISM, 1945–60 (1994); GROSS, *supra* note 89; NELSON LICHTENSTEIN, STATE OF THE UNION: A CENTURY OF AMERICAN LABOR (2002).

107. Richard McIntyre & Michael Hillard, *The 'Limited Capital–Labor Accord': May it Rest in Peace?*, 40 REV. OF RADICAL POL. ECON. 244 (2008).

We agree that there are reasons to doubt the extent to which employers internalized ideas about the acceptance of labor unions. We also believe, however, that whether this accord reflected deeply held attitudes toward unions is beside the point. Just as the corporate support for certain Keynesian economic policies reflected a pragmatic adaptation to a seemingly immutable reality, the acceptance of collective bargaining also reflected an understanding that unions were a basic component of business life, even if they were undesirable. Certainly unions could be fought, just as government redistributive economic policies could arouse opposition. Given unions' existence, however, many corporate leaders reasoned that it was preferable to make their peace with them.

4. The Financial Community

In addition to government and labor, the financial community also contributed to the relatively moderate stance of the postwar corporate elite by serving as a meeting place for its leading members. Commentators from future Justice Brandeis to Daniel Bell noted the central role played by major banks and insurance companies in the early twentieth century.[108] As these authors noted, the banks, led by J. P. Morgan, George F. Baker, and others, were the most powerful corporations of the era.

Most observers believed that banks' power waned after the Depression, however. First, the Glass–Steagall Act of 1933 forced commercial and investment banks to separate their functions, significantly weakening both groups.[109] Second, as several authors argued, nonfinancial corporations, especially after the war, became increasingly able to finance their investments with retained earnings. Thus, nonfinancial corporations reduced their dependence on banks, and the banks' power was further reduced. This latter point ultimately came under dispute. In a study of corporations' use of external financing between 1925 and 1955, John Lintner found that the level of external financing had remained virtually constant during the period,[110] and a subsequent study by Linda Stearns revealed that the level of external financing actually increased beginning in the mid-1960s and remained high into the early 1980s.[111] Still, by the postwar period, it was difficult

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108. BRANDEIS, *supra* note 36; BELL, END OF IDEOLOGY, *supra* note 6.

109. Banking Act (Glass–Steagall Act), ch. 89, 48 Stat. 162 (1933) (repealed 1999).

110. John Lintner, *The Financing of Corporations*, *in* THE CORPORATION IN MODERN SOCIETY 166 (Edward Mason ed., 1959).

111. Linda Brewster Stearns, *Capital Market Effects on External Control of Corporations*, 15 THEORY & SOC. 47, 53 (1986). Of course, the mere use of external funding does not necessarily mean that corporations are dependent upon it. Firms may borrow when interest rates are low or for tax benefits, even when suitable alternatives exist. In a study of twenty-two large firms between

to argue that banks exercised control over nonfinancial corporations in the way that J. P. Morgan and others had done at the turn of the century.

The banks nevertheless continued to play an important role. Even if nonfinancial corporations were not ultimately dependent on them for capital, the banks were uniquely positioned to provide information and advice because they were "industry-neutral." That is, they had no reason to favor any particular industry over another, except on the basis of which investment would produce the highest overall return for the system as a whole.[112] Perhaps as a result of this factor, the major commercial banks, the leading insurance companies, and significant lenders of capital were consistently the most central nodes in the networks created by director interlocks among firms from the early twentieth century through the 1970s.[113]

Although it is difficult to conclusively demonstrate, there is evidence to suggest that the banks, while rarely exercising control over firms, played a moderating influence during the postwar period.[114] This was evident in the widely discussed case in which Saul P. Steinberg, an entrepreneur and the head of Leasco, attempted to acquire Chemical Bank, one of the six leading New York money-market banks, in 1968. Within two weeks of Steinberg announcing his bid, Leasco's stock had dropped by nearly 30%, and it continued to drop in the following weeks, thus ending Steinberg's bid. A primary reason for the decline of Leasco's stock price was that the trust departments of the six major New York banks—Chemical and its five competitors—all held stock in Leasco and all simultaneously sold their Leasco stock after Steinberg's announcement of his bid.[115] This event provides an illustration of the way in which banks were occasionally willing to intercede to discipline what they viewed as recalcitrant individual capitalists.

B. The Modern Corporation *and the Postwar Accommodation*

The above description of the postwar corporate elite suggests two things: on one hand, the power of large corporations may in fact have become highly concentrated, just as Berle and Means had feared; on the

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1956 and 1983, Mizruchi and Stearns showed that even when interest rates and a series of other financial variables were controlled, a low level of retained earnings was the strongest predictor of firms' use of debt. Mark S. Mizruchi & Linda Brewster Stearns, *A Longitudinal Study of Borrowing by Large American Corporations*, 39 ADMIN. SCI. Q. 118 (1994). This suggests that when internal funds are available, firms tend to use them.

112. BETH MINTZ & MICHAEL SCHWARTZ, THE POWER STRUCTURE OF AMERICAN BUSINESS (1985).

113. MIZRUCHI, AM. CORP. NETWORK, *supra* note 30.

114. MINTZ & SCHWARTZ, *supra* note 112.

115. DAVITA SILFEN GLASBERG, THE POWER OF COLLECTIVE PURSE STRINGS 102–18 (1989).

other hand, the constraints faced by large corporations created a situation in which corporate leaders behaved in a relatively moderate, even socially responsible, fashion. To the extent that the latter was the case, it suggests that the postwar interpreters—scholars such as Bell, Dahrendorf, and Galbraith—had identified a genuine feature of the American corporate landscape. And we shall argue that this was indeed the case. However much any of these authors may have selectively interpreted, or even distorted, the writings of Berle and Means, the picture that they painted of the post-World War II United States was largely accurate. We acknowledge that this is a potentially controversial argument. It is one that we believe is supported by the evidence, however.

Our case begins with Zeitlin's critique of the argument for the separation of ownership from control.[116] Although Zeitlin takes issue with Berle and Means, his primary targets are the mid-twentieth century sociologists, such as Bell, Dahrendorf, and Parsons, who used Berle and Means's findings to argue that the capitalist class had dissolved.[117] As we saw, these observers were willing to acknowledge that American society had a generally cohesive group of leading businesspeople at the turn of the twentieth century, but they argued that this group had disappeared over time as power and property were decoupled. *The Modern Corporation*, with its data on stock dispersal, was used as the empirical foundation for these arguments. In criticizing Berle and Means's findings, Zeitlin called into question the extent to which ownership and control had in fact become separated. To do this, Zeitlin returned to the detailed table in *The Modern Corporation*[118] in which Berle and Means provided a list of the 200 corporations in their analysis, the size of their largest stockholders, the source of their information, and their classification of the firm. It was this table from which Berle and Means concluded that 88.5 of the 200 largest American nonfinancial corporations could be classified as management-controlled.[119] Zeitlin showed, however, that for nearly half of the firms in Berle and Means's table, the authors were admittedly unable to locate a significant owning interest, and thus, they classified the firm as "presumably" under management control. Zeitlin concluded that Berle and Means had demonstrated a clear basis for management control in only 22% of their

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116. Zeitlin, *supra* note 7.
117. *Id*. at 1073–80.
118. BERLE & MEANS, *supra* note 1, at 86–107.
119. Berle and Means classified some firms as under joint control, hence, the one-half figure.

firms, as opposed to the 44% figure that the authors themselves ultimately provided.[120]

Regardless of the questions that might have been raised about Berle and Means's findings, one would think that the argument had been put to rest three decades later in a study by Robert Larner.[121] Using a more stringent criterion for management control, Larner found that 84% of the 200 largest U.S. nonfinancial corporations could be classified as management-controlled.[122] This finding, which was cited by Berle and Means themselves in the 1968 reissue of their book, suggested to Larner that the managerial revolution was "close to complete."[123]

Any set of results that relies on an arbitrary metric for identifying management control can, of course, be challenged—a point that Berle and Means were clear to note. Zeitlin, citing studies by Robert Sheehan,[124] Philip Burch,[125] and others, argued that Larner's findings themselves could be called into question.[126] Sheehan, an editor of *Fortune*, for example, was able to identify fifty-two firms among the 500 largest American nonfinancials that Larner had classified as management-controlled that in fact were more likely controlled by owners. Although this may appear to be an impressive refutation of Larner's findings, one could argue that it had little impact on his general conclusion. Larner had found that ninety-five, or 19%, of the 500 largest U.S. nonfinancial firms were owner-controlled. When Sheehan's additional fifty-two firms are added to the tally, the proportion of owner-controlled firms increases to 29.4%. This hardly stands as strong evidence for widespread owner control.[127]

Similarly, Burch argued that 45% of the 300 largest manufacturing and mining corporations could be classified as "probably" family-controlled, and an additional 15% could be considered "possibly" family-controlled. His criteria for control, however—a 4%–5% stockholding and representation on the board of directors over time—are at least as open to question as Larner's, a point that Zeitlin concedes.[128] And even

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120. Zeitlin, *supra* note 7, at 1081–82.

121. LARNER, *supra* note 21.

122. Larner set his criterion for management control as cases in which no individual ownership interest held 10% or more of the firm's stock, as opposed to the 20% that Berle and Means had used.

123. *See* Zeitlin, *supra* note 7, at 1083. Larner had published an earlier article previewing some of the findings that subsequently appeared in his book.

124. Zeitlin, *supra* note 7, at 1083–89, 1118 (citing Robert Sheehan, *There's Plenty of Privacy Left in Private Enterprise*, FORTUNE, July 15, 1966, at 224).

125. *Id.* at 1083–89, 1115 (citing PHILIP H. BURCH, JR., THE MANAGERIAL REVOLUTION REASSESSED (1972)).

126. Zeitlin, *supra* note 7, at 1083–89.

127. *Id.*; *see also* Sheehan, *supra* note 124; Burch, *supra* note 125.

128. Zeitlin, *supra* note 7, at 1089.

if we accept Burch's suggested 5% proportion of ownership sufficient for control, a level also used by the 1968 report of the House Banking and Currency Committee chaired by Representative Wright Patman,[129] it remains undeniable that the dispersal of stock had advanced significantly since Berle and Means's study.[130]

What Zeitlin is especially concerned about, however, is the idea that stock dispersal led to the decomposition of the capitalist class. His attempt to show that property ownership and corporate control have remained fused, or at least to raise questions about the claim that they have become separated, is driven by his view that there remains a propertied class in American society. This class, according to Zeitlin, exercises control over not only the economy but also the larger political life of the society through its ownership of corporations. This view, if not fully apparent in his 1974 article, became more explicit in his 1976 response to a critique of his article by Michael Allen.[131] One could certainly raise the question of whether ownership and control have become reconnected in the United States in recent decades, as some argued occurred during the acquisition wave of the 1980s.[132] Berle himself, in an extraordinarily prescient discussion,[133] raised the possibility that the growing presence of institutional stockholders would lead to a resurgence of owner control, or at least, to control by institutions. His point anticipated a concern that is now widespread by several decades.[134] These "great banks and pension funds," as Berle put it,

> [b]uy securities in corporations; thus far they have ordinarily leaned over backward in not entering the management of the companies whose securities they buy. But it does not follow at all that as their assets continue to grow (they do) and their holdings of securities of operating corporations continue to increase (as they inevitably

129. STAFF OF H. COMM. ON BANKING AND CURRENCY, 90TH CONG., COMMERCIAL BANKS AND THEIR TRUST ACTIVITIES: EMERGING INFLUENCE ON THE AMERICAN ECONOMY (Comm. Print 1968).

130. A detailed study of this issue by Brian Cheffins and Steven Bank lends further support to Berle and Means's original conclusions. *See* Brian Cheffins & Steven Bank, *Is Berle and Means Really a Myth?* (European Corporate Governance Institute, Working Paper No. 121/2009, 2009).

131. *See* Michael Patrick Allen, *Management Control in the Large Corporation: Comment on Zeitlin*, 81 AM. J. SOC. 885 (1976); Maurice Zeitlin, *On Class Theory of the Large Corporation: Response to Allen*, 81 AM. J. SOC. 894 (1976).

132. *See, e.g.*, Michael Useem, *The Revolt of the Corporate Owners and the Demobilization of Business Political Action*, 6 CRITICAL SOC. 7 (1989) [hereinafter *The Revolt*]; MICHAEL USEEM, INVESTOR CAPITALISM: HOW MONEY MANAGERS ARE CHANGING THE FACE OF CORPORATE AMERICA (1996) [hereinafter INVESTOR CAPITALISM].

133. BERLE, CAPITALIST REVOLUTION, *supra* note 44, at 44–45.

134. *See* DAVID M. KOTZ, BANK CONTROL OF LARGE CORPORATIONS IN THE UNITED STATES 8–13 (1978); Useem, *The Revolt*, *supra* note 132.

> must) that they can indefinitely remain spectators of the corporations whose stock and bonds furnish the vehicle for their investments.[135]

Still, whatever the current role of institutional stockholders, we believe that Zeitlin's critique is misplaced. We maintain instead (1) that it is not necessary to demonstrate a fusion of ownership and control to demonstrate the existence of a cohesive corporate community; and (2) that such a group did in fact exist in the postwar United States; but (3) that the basis of this cohesive corporate community was in the corporation, per se, not as Zeitlin argued, in an owning class. In this sense, Bell and the other mid-century authors were incorrect to argue that the business community had become completely fragmented. These authors were largely correct, however, in their characterization of postwar American capitalism as relatively benign. The pragmatic, forward-looking segment of the corporate elite that we described earlier, and that was cited by Bell, did in fact represent a qualitatively different approach to business political action—one that, while relatively short-lived (from the end of the war into the early 1970s), was in fact consistent with a broadening of democracy in the United States. In other words, we argue that a relatively cohesive corporate elite did indeed exist in the postwar United States and that this elite did in fact act with a relatively high degree of concern for the larger community within which business operated.

This group was based not on property ownership, however, but on the structural interdependence that existed both among the largest firms and between these firms and their external environment, as represented by the state, organized labor, and the banks. We agree with Cheffins and Bank[136] that the separation of ownership from control during this period was real. As thinkers from Galbraith[137] to the Marxist economists Baran and Sweezy[138] argued, organizational position was now more important than ownership of capital. Those at the helm of the largest corporations were at the centers of power. And with this power came the resources to allow them to be concerned with issues beyond those of their own firms. The high performance of their firms, the security of their positions, and the high levels of autonomy that these corporate officials experienced also allowed them to operate with a long-term perspective. This "golden age" of management, with its pragmatic accommodation to labor unions

135. BERLE, CAPITALIST REVOLUTION, *supra* note 44, at 44–45.
136. Cheffins & Bank, *supra* note 130.
137. GALBRAITH, NEW INDUSTRIAL STATE, *supra* note 66.
138. BARAN & SWEEZY, *supra* note 42.

and the state, prevailed from the end of World War II into the early 1970s.

Our aim is not to romanticize this period. This was the era of the Vietnam War—a major foreign policy disaster brought on and perpetuated by a series of mishaps by the elites who surrounded Presidents Kennedy and Johnson,[139] as well as enormous social turmoil domestically. Yet the American economy was relatively strong during this period. The distribution of income became more equal, as the nation witnessed the rise of a middle class.[140] Although African-Americans continued to lag far behind whites and continued to face high levels of discrimination, there was progress as well. Civil rights became fully encoded in law, if not in practice.[141] Universal medical care for the elderly and the poor was established, which provided increased economic security for a large segment of the population.[142] And changes in social mores significantly expanded freedom of expression as repressive norms were turned aside.

Alongside these changes was a corporate elite that exhibited concern for societal well-being in a way that was, if not historically unique in its existence, unique in its scope. Although corporate leaders continued to oppose labor unions and government regulation, they were also willing to support Keynesian economic policies and greater attention to social problems, including education, poverty, and civil rights. A good example of this approach is provided by Bell,[143] who quoted a 1971 article in *Fortune* describing the views of Alden W. Clausen, the CEO of the Bank of America, the nation's largest bank at the time: "[Clausen's] thoughts turn often to: how to alleviate if not cure the blight now spreading at Hunter's Point and south of Market Street [in San Francisco]; how to crack the city's hard-core unemployment; how to cope with student unrest at Berkeley or down the peninsula at Stanford."[144]

Berle, in his critique of Mills's *The Power Elite*,[145] raised a similar point. "Some . . . corporate executives . . . do act as Mills records. Others run museums of modern art, foreign aid programs, [and] civic

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139. *See* DAVID HALBERSTAM, THE BEST AND THE BRIGHTEST (Random House 1992) (1969).

140. Thomas Piketty & Emmanuel Saez, *Income Inequality in the United States, 1913–1998*, 118 Q. J. ECON. 1 (2003).

141. The Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241(1964).

142. The Social Security Act of 1965, Pub. L. 89-97, 79 Stat. 286 (1965).

143. BELL, POST INDUSTRIAL SOCIETY, *supra* note 76.

144. *Id.* at 292 (quoting John Davenport, *Bank of America is Not for Burning*, FORTUNE, Jan. 1971) (changes in original).

145. MILLS, POWER ELITE, *supra* note 51.

services."[146] Some authors went even further. Carl Kaysen, for example, argued that the modern firm, shorn of the need to maximize profit, had become a "soulful corporation" whose managers were driven to do good by their personal identification with the firm and its employees.[147] It was not necessary to go that far, of course. As the *Fortune* article that Bell quoted suggests, there were entirely pragmatic reasons for corporate executives to be concerned with the social problems of the time. Still, these concerns were real, and they were reflected in the corporate behavior of the period.

The rise of management that Berle and Means described, then, may have led to a concentration of power among the heads of the largest corporations. As the postwar interpreters of *The Modern Corporation* suggested, however, it also created a corporate elite that, if not altruistic, at least saw itself as having an obligation to society that went beyond simple maximization of return to stockholders. In that sense, Berle and Means's worst fears seemed to have been averted.

IV. THE BREAKDOWN OF THE POSTWAR CONSENSUS

This situation did not last, however. As we moved into the 1970s, the United States experienced a confluence of events that began to create fissures in the postwar social contract. Most of these problems were economic in nature, but they came from varied sources and were driven in some cases by political events.

The American economy experienced significant growth in the 1960s, but government spending, driven by the simultaneous occurrence of Lyndon Johnson's Great Society programs and the Vietnam War, led to an upsurge of inflation by the end of the decade. This increase accelerated during the 1970s. Meanwhile, American manufacturers for the first time since the end of the war began to experience significant competition from foreign producers.[148] The balance of trade became increasingly unfavorable, to the point that President Nixon eventually abandoned the postwar Bretton Woods agreement, which had pegged international exchange rates to the dollar.[149] To compound matters, oil producing nations sharply increased the price of oil in 1973, which plunged the American economy into a severe recession. Unlike earlier recessions, however, in which inflation declined as unemployment rose, the nation experienced an unprecedented simultaneous increase in both

146. Berle, *Are the Blind Leading the Blind?*, *supra* note 55, at 22.

147. Carl Kaysen, *The Social Significance of the Modern Corporation*, 47 AM. ECON. REV. 311, 314 (1957).

148. DAVID VOGEL, FLUCTUATING FORTUNES (1989).

149. FRED L. BLOCK, THE ORIGINS OF INTERNATIONAL ECONOMIC DISORDER (1977).

unemployment and inflation. The inverse relationship between these two indicators was a fundamental component of Keynesian economics. The fact that policymakers could no longer assume that a recession would reduce inflation created considerable consternation. In the midst of these economic problems, the nation was also experiencing the Watergate scandal, which, along with the residue from the social conflicts around the Vietnam War, created a significant crisis of legitimacy among major American institutions. Polling data from the period indicated that the proportion of Americans who trusted major societal institutions, including business and government, was at a historic low.[150] Finally, the establishment of two major regulatory agencies, the Environmental Protection Agency and the Occupational Safety and Health Administration, both signed into law by President Nixon, turned corporations increasingly against what they viewed as government intrusion.

In the midst of these crises, corporations saw themselves, and even capitalism as a system, under siege. In response, they organized politically and mounted a significant counteroffensive. This movement has been well-documented by others from a broad range of perspectives, and it is not our purpose to recount these events.[151] Some aspects of these events warrant mention, however. Among the most important of these was the formation of a new group, the Business Roundtable, consisting of the CEOs of the largest American corporations.[152] This movement also involved the establishment or expansion of funding for conservative think tanks.[153] What distinguished both the Business Roundtable and these newly ascendant research organizations were two things: First, unlike the Committee for Economic Development and the Council on Foreign Relations, the Roundtable consisted exclusively of businesspeople. Second, these foundations, including the American Enterprise Institute and the Heritage Foundation, were distinguished by their explicit focus on advocacy research. This stands in contrast to the Brookings Institution, the Conference Board, and other foundations that had received funding from corporations but had been devoted to the use of value-free social science, in the hope that an unbiased understanding

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150. Seymour Martin Lipset & William Schneider, *The Decline of Confidence in American Institutions*, 98 POL. SCI. Q. 379, 380 (1983).

151. *See, e.g.*, THOMAS FERGUSON & JOEL ROGERS, RIGHT TURN: THE DECLINE OF THE DEMOCRATS AND THE FUTURE OF AMERICAN POLITICS (1986); VOGEL, FLUCTUATING FORTUNES, *supra* note 148.

152. JOHN B. JUDIS, THE PARADOX OF AMERICAN DEMOCRACY (2000).

153. J. Craig Jenkins and Teri Schumate, *Cowboy Capitalists and the Rise of the 'New Right': An Analysis of Contributors to Conservative Policy Formation Organizations*, 33 SOC. PROBS. 130 (1985).

of social and political issues would serve corporate leaders in their decision making. The goal of these new groups was to advocate pro-business political positions, without any pretense to objectivity.[154]

Thus, business groups during the 1970s took on an increasingly conservative tone. They focused on two issues: the excessive regulation imposed by government and restrictive rules imposed by labor unions. Both of these constraints were seen as reducing productivity. In response to the increasingly ineffective Keynesian approach to economic policy, a rising group of critics, mostly from outside the academic world, began to focus not on the lack of demand and ways to counteract it—the traditional Keynesian concern—but rather on the lack of supply, which was seen as a chief cause of inflation. Lack of supply was in turn viewed as a function of the low productivity triggered by government and labor.[155]

By the late 1970s, this corporate offensive had experienced increasing success. In 1978, an intense lobbying effort by American businesses was able to overcome an attempt to weaken the strongly anti-labor Taft–Hartley Act, an outcome that shocked not only unions, which had assumed a victory given the Democratic President and Congress, but also members of Congress, the news media, and even the corporations themselves.[156] Similarly, corporations were able to defeat a proposed Consumer Protection Agency in the same year. Even before Ronald Reagan's election in 1980, business had already experienced significant victories. By the time Reagan assumed the Presidency, labor unions had been significantly weakened, and regulations had been either removed, scaled back, or with Reagan appointees now running the agencies, less aggressively enforced.[157]

A. The Revolt of the Owners

Despite the changes that had occurred during the 1970s, management's position remained relatively secure. This started to change during the 1980s, however. The stock market decline of 1974 left the market dormant for several years. Meanwhile, Keynesian economics began to lose adherents, and alternative approaches began to emerge. In addition to the "supply-side" approach, a second alternative,

154. JUDIS, *supra* note 152.

155. GEORGE GILDER, WEALTH AND POVERTY (1981); JUDE WANNISKI, THE WAY THE WORLD WORKS (Regnery Publishing 1978).

156. VOGEL, FLUCTUATING FORTUNES, *supra* note 148, at 148–59.

157. *Id.*

known as agency theory, began to take hold.[158] Agency theory had originated in financial economics, and one of its central concerns, as illustrated in a foundational article by Michael Jensen and William Meckling, was the relation between shareholders and managers. By managers, the authors meant the leading officers of the firm, as distinct from the board of directors.[159] As Berle and Means had suggested, and as later observers had elaborated, managers and owners did not necessarily share the same interests. Owners were concerned with the firm's financial performance, its stock price, and its payment of dividends. Managers, while concerned with performance, had other interests as well, including their own salaries and benefits and a desire to limit dividends as a means of increasing their available cash. If Bell, Dahrendorf, Galbraith, and Kaysen were correct, managers also had concerns other than the pure maximization of profits.[160] Among these concerns was an awareness of the interests of the larger stakeholder community, in addition to those of stockholders.

Managers are appointed by a board of directors, whose members are elected by the stockholders. In the traditional theory of the firm, the managers are expected to be working in the interest of the stockholders. To the extent that stockholders and managers have conflicts of interest, however, there is an inherent problem in the owner-management relationship. Given the broad dispersal of stock during the twentieth century, which gave managers a relatively high degree of autonomy, how were owners going to ensure that their interests were supported? In the view of agency theorists, the fundamental question raised by the separation of ownership from control was how owners were going to monitor their employees—the management. The primary answer, agency theorists determined, was "alignment of incentives."[161] That is, it was necessary to create a system whereby the interests of managers and owners converged. A good way to do this was to ensure that managers' compensation was linked to the firm's stock price. And a way to ensure this link was to use the firm's stock as a form of managerial

158. Agency theory is not technically an alternative to Keynesianism. Keynesian economics is primarily a macroeconomic approach concerned with the stable functioning of the market economy as a whole, while agency theory is a more micro-level approach designed to understand the governance of individual corporations. The leading adherents of agency theory, however, tended to favor free market approaches to economic policy. In that sense, their views were closer to supply-side economists than to Keynesians.

159. Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure*, 3 J. FIN. ECON. 305 (1976).

160. BELL, POST INDUSTRIAL SOCIETY, *supra* note 76; DAHRENDORF, *supra* note 6, GALBRAITH, NEW INDUSTRIAL STATE, *supra* note 66; Kaysen, *supra* note 147.

161. Eugene F. Fama & Michael C. Jensen, *Separation of Ownership and Control*, 26 J.L. & ECON. 301 (1983).

compensation. It turned out that even the use of stock as compensation did not ultimately solve the problem. As the Enron case illustrated, it was possible for managers to artificially drive up the firm's stock price and then sell out before others realized that the firm was worth far less.[162] But our concern here is with another issue raised by agency theorists.

As stock prices continued to stagnate through the late 1970s and into the early 1980s, investors began to see the possibility that many leading firms were "undervalued"—that is, their market (stock) value was less than their book (accounting) value. This was seen as an opportunity. And as we moved into the 1980s, an acquisition wave of unprecedented proportions developed. Although the United States had experienced several earlier acquisition waves, most recently in the 1960s, what occurred during the 1980s dwarfed these earlier events.[163] Alfred Chandler had shown that during the twentieth century, there had been a remarkable degree of stability among the largest American corporations.[164] In the single decade of the 1980s, fully one-third of the *Fortune* 500 manufacturers disappeared, in most cases the result of acquisition by other firms rather than dissolution.[165]

This acquisition wave was fueled in part by the emergence of a new form of financing—low quality, high yield bonds, subsequently labeled "junk bonds"—and it was characterized by an enormous level of instability in the financial world. Of particular interest is the rationale that was used to justify this wave. In the view of agency theorists, stock prices had been depressed due to poor management.[166] The firm takeovers were a means by which underperforming managers were replaced by a new group who would operate the firm in a more efficient manner. This created a situation not seen for many decades: a management that was suddenly vulnerable. And in fact, there was considerable evidence for this. CEO tenure declined sharply during the 1980s, and this trend continued into the 2000s.[167] Firings occurred in firms whose managers had been assumed to be invulnerable, such as the 1992 ouster of General Motors's Robert Stempel. The increasingly

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162. BETHANY MCCLEAN & PETER ELKIND, THE SMARTEST GUYS IN THE ROOM: THE AMAZING RISE AND SCANDALOUS FALL OF ENRON (Penguin 2003).

163. Linda Brewster Stearns & Kenneth D. Allan, *Economic Behavior in Institutional Environments: The Corporate Merger Wave of the 1980s*, 61 AM. SOC. REV. 699 (1996).

164. ALFRED D. CHANDLER, JR., THE VISIBLE HAND (Harvard University Press 1977).

165. GERALD F. DAVIS, MANAGED BY THE MARKETS: HOW FINANCE RE-SHAPED AMERICA (2009).

166. Michael C. Jensen & Richard S. Ruback, *The Market for Corporate Control: The Scientific Evidence*, 11 J. FIN. ECON. 5 (1983).

167. Steven N. Kaplan & Bernadette A. Minton, *How Has CEO Turnover Changed? Increasingly Performance Sensitive Boards and Increasingly Uneasy CEOs* (Nat'l Bureau of Econ. Research, Working Paper No. W12465, 2006).

precarious role of management was further illustrated in a detailed study of ten firms by Useem.[168] As Zajac and Westphal showed, an ideological shift had occurred in which the earlier glorification of management had been replaced by a focus on "shareholder value"—the notion that managers were mere hired hands whose primary, if not sole, charge was to increase the share price of their firms.[169] These developments raised the possibility that the era of the management-controlled corporation, the firm of *The Modern Corporation*, had come to an end.

The idea that stockholders had finally reasserted their control over the firm received further support from the continually increasing role of institutional investors. As we noted earlier, Berle himself had anticipated the growing role of institutional stockholders back in 1954, and he even raised the possibility that they would someday come to dominate the firm.[170] By the 1960s, the trust departments of leading commercial banks had come to hold relatively large shares in a significant proportion of leading American corporations. The Patman Committee[171] found that a single bank trust department held a 5% or greater share of stock in more than 29% of the 500 largest nonfinancial corporations. Based on these and subsequent data, an economist, David Kotz,[172] estimated that nearly 40% of the 200 largest U.S. nonfinancial corporations were at least partially controlled by banks.[173] And in a 1968 interview, Berle, following up on his 1954 observation, noted that "about fifteen or twenty of the big banks through their trust departments could today mobilize voting control of a very large percentage of American industry."[174] In subsequent years, commercial bank trust departments were joined by

168. MICHAEL USEEM, EXECUTIVE DEFENSE: SHAREHOLDER POWER AND CORPORATE REORGANIZATION (Harvard University Press 1993).

169. Edward J. Zajac & James D. Westphal, *The Social Construction of Market Value: Institutionalization and Learning Perspectives on Stock Market Reactions*, 69 AM. SOC. REV. 433, 451 (2004).

170. BERLE, CAPITALIST REVOLUTION, *supra* note 44, at 44–45.

171. STAFF OF H. COMM. ON BANKING, *supra* note 129.

172. KOTZ, *supra* note 134.

173. Banks in the United States are not legally permitted to directly own stock in nonfinancial corporations. Many commercial banks had trust departments that managed pension funds for nonfinancial corporations, however, and these trust departments were allowed to invest in corporate stock. This gave the bank trust departments voting rights on the stock of the firms in which they had invested. If their holdings were sufficiently large, it raised the possibility that the bank trust department could exercise effective control of the firm. The fact that the trust departments of the six major New York money-market banks all held stock in Leasco in 1968 (and the fact that they simultaneously sold their Leasco stock) has been cited as a major reason that Saul Steinberg, the President of Leasco, was forced to abort his attempt to acquire Chemical Bank. See GLASBERG, *supra* note 115, for a detailed account of this episode.

174. Cheffins & Bank, *supra* note 130, at 35–36 (quoting Adolf Berle).

mutual funds such as Fidelity and Vanguard and pension funds such as CalPERS and CREF as leading stockholders.[175]

Historically, these trust funds and other investors were believed to be bound by the "Wall Street Rule": when dissatisfied with management, sell.[176] As institutional holdings became increasingly large, however, the costs of the exit strategy became prohibitive, and there was reason for these investors to exercise more of a voice strategy.[177] As Useem suggests, institutional investors have become increasingly active in pursuing their agendas with the firms whose stock they hold.[178] We do not want to push this "decline of management" argument too far, however, since evidence remains that managerial power has not completely disappeared. Davis and Kim show, for example, that although pension funds such as CalPERS and CREF have become increasingly willing to challenge management, mutual funds such as Fidelity have been far less likely to do so.[179] Moreover, despite cases such as the 1968 Leasco–Chemical Bank episode, a range of scholars representing differing views have questioned the extent to which bank trust departments intervene in the affairs of the firms in whose stock they have invested.[180] Cheffins and Bank provide several reasons that bank trust departments would be unlikely (and unwise) to challenge management, including the potential conflict of interest that might occur were bank trust departments to use their stockholdings to further the commercial interests of the bank, rather than the interests of the firms whose pension funds they are entrusted to invest.[181] Finally, events such as the Enron and Worldcom scandals of the early 2000s suggested that managers were able to engage in unscrupulous activities while shielded not only from stockholders but also from their boards.[182] Although these may have been relatively unique cases in the same way that the Leasco–Chemical Bank case was unique,[183] the problems that they revealed were deemed sufficiently serious to spawn broad legislation: the Sarbanes–Oxley Bill.[184] After an exhaustive review of studies based on evidence dating from 1900 to the present, Cheffins and Bank conclude that "a

175. Gerald F. Davis & E. Han Kim, *Business Ties and Proxy Voting by Mutual Funds*, 85 J. FIN. ECON. 552 (2007).

176. EDWARD S. HERMAN, CORPORATE CONTROL, CORPORATE POWER (1981).

177. ALBERT O. HIRSCHMAN, EXIT, VOICE AND LOYALTY (1970).

178. USEEM, INVESTOR CAPITALISM, *supra* note 132, at 54–61.

179. Davis & Kim, *supra* note 175, at 554.

180. *See, e.g.*, HERMAN, *supra* note 176; MINTZ & SCHWARTZ, *supra* note 112.

181. *See* Cheffins, *supra* note 130, at 37–40.

182. MCLEAN & ELKIND, *supra* note 162.

183. *See* MINTZ & SCHWARTZ, *supra* note 112.

184. Miriam A. Cherry, *Whistling in the Dark? Corporate Fraud, Whistleblowers, and the Implications of the Sarbanes–Oxley Act for Employment Law*, 79 WASH. L. REV. 1029, 1055 (2004).

separation between ownership and control remains an appropriate reference point for those seeking to come to terms with the historical development of U.S. corporate governance[.]"[185]

Nevertheless, even if the separation of ownership from control remains the predominant condition of the largest American corporations, it does not mean that management has the level of autonomy that it enjoyed during its golden age, from the 1920s through the early 1970s. And the increasing pressures faced by corporate CEOs have consequences for the fate of American democracy, just as the separation of ownership and control did in the post-World War II period.

B. The Aftermath of the 1980s, and its Consequences for Management

We argued earlier that critics accused the much-maligned postwar interpreters of *The Modern Corporation*—scholars such as Daniel Bell, Ralf Dahrendorf, John Kenneth Galbraith, and Talcott Parsons—of misrepresenting Berle and Means's arguments to make their case for the dissolution of corporate power and the increased democratization of American society. We also suggested that these authors, with the exception of Galbraith, may have ignored or underemphasized the degree to which Berle and Means were wary of, rather than celebrating, the separation of ownership from control. On the other hand, however selective these authors' readings of *The Modern Corporation* may have been, we also suggested that their views of the postwar position of American business contained an element of tenability. The leaders of the American corporate elite during the postwar period did exhibit a relatively high degree of concern for society's well-being. Still, there is no need to romanticize this group. The largest American firms continued to aggressively oppose the actions of labor unions, and they continued their suspicious attitudes toward the state.[186] Yet when viewed in historical perspective—especially when compared with the period that began in the 1970s—the corporate elite of the postwar period was relatively moderate, relatively pragmatic, and relatively conscious of and concerned about the social problems in American society.

It was precisely the large, management-controlled corporations that created the conditions within which firm leaders could exercise this pragmatic approach. Largely insulated from market pressures, as well as pressures from stockholders and bankers, managers were free to pursue broader goals. It was not only management-controlled firms that exhibited these tendencies, of course. Large, family-controlled firms,

185. Cheffins & Bank, *supra* note 130, at 52.

186. Vogel, *Why American Businessmen Distrust, supra* note 84.

such as Ford, had shown great commitment to their local communities for decades and continued to do so during the managerial era.[187] In both cases, it was the ability to act unrestrained by the capital markets that was the key factor.

The economic crisis of the 1970s led to a breakdown in this postwar accommodation and led corporate elites to turn increasingly against both labor and the state. The acquisition wave of the 1980s then had the effect of significantly weakening management. Increasingly less able to act with autonomy and subject to increased pressures from the financial community and their own peers, managers became less able to concern themselves with long-term decision-making and the well-being of the larger society. Pressures to compete in global markets and the firms' increasing use of foreign labor (one need not worry about the nation's educational system when one can simply hire employees overseas) further exacerbated this trend.

Mizruchi has argued that the consequence of the success of the corporate political offensive of the 1970s was a paradoxical fragmentation of business.[188] Once business political action had achieved its goals, continued organization was no longer necessary. In response, corporations went their separate ways during the 1980s, focusing primarily on firm-specific issues, as evidenced by the lobbying effort surrounding the 1986 tax reform bill, in which individual firms, or small coalitions, pursued narrowly tailored goals.[189] The takeover wave of the 1980s then largely ended whatever collective organization the American corporate community had enjoyed. The shift to the system of largely atomized firms described by Dahrendorf in the 1950s in fact reached its fruition in the aftermath of the 1980s.[190] The American business community, now increasingly disorganized, became incapable of generating any form of collective effort to address not only the larger problems of the society, but also to even address issues of concern to the corporations themselves.

C. Two Examples: Taxes and Healthcare

The corporate elite's inability to generate effective collective action can be seen in the response of the Business Roundtable—now the

187. Holger M. Mueller & Thomas Philippon, *Family Firms, Paternalism, and Labor Relations* (European Corporate Governance Institute, Working Paper No. 186/2007, 2007).

188. Mark S. Mizruchi, *The American Corporate Elite and the Historical Roots of the Financial Crisis of 2008*, 28 RES. IN THE SOC. OF ORGS. (forthcoming 2010).

189. CATHIE JO MARTIN, SHIFTING THE BURDEN: THE STRUGGLE OVER GROWTH AND CORPORATE TAXATION (1991).

190. DAHRENDORF, *supra* note 6.

leading political organization for the largest American corporations—to two important issues: taxation and healthcare. Concerned about the record deficits engendered by President Reagan's income tax cuts, the Business Roundtable recommended a tax increase in 1983.[191] This was an extremely unpopular position to take, but the Roundtable felt that it was a necessary step in response to what they viewed as a dangerously high deficit. Even if corporate leaders saw it as ultimately in their self-interest, this position at least represented an act of responsibility, in which business leaders' concerns for the well-being of the economy led them to oppose policies from which they had personally benefited, since the tax cuts had brought disproportionate benefits to the wealthy.[192] Yet two decades later, in 2004, facing an almost identical situation in response to President George W. Bush's tax cuts, the Roundtable was silent on the issue. In a speech at the Detroit Economic Club in April 2004, John J. Castellani, the President of the Roundtable, spent several minutes railing against the deficit but made no mention of the Bush tax cuts as a possible cause.[193] This silence was especially striking given that the United States was involved in the Iraq War and had recently experienced the September 11th attacks—both events that could have served as the basis for a request that the American public make a sacrifice as a show of support for the war effort, which at the time remained highly popular.

The difference between the Business Roundtable's response to the deficit in 2004 and its response in 1983 reflects what we see as the breakdown of business collective action, the increasing inability of the leaders of the corporate community to support a position consistent with society's—and ultimately its own—long-term interest. We are not suggesting that a tax increase was the only possible response to the deficit. We do believe, however, that the Roundtable's willingness to support a tax increase in 1983, and its failure to do so two decades later,

191. *Business Roundtable Urges that U.S. Raise Taxes, Cut Spending*, WALL ST. J., March 3, 1983, at 34.

192. Reagan's tax cuts involved an equal percentage cut at all levels of income. Suppose, for example, that person A has an income of $500,000 and pays $100,000 in taxes, while person B has an income of $30,000 and pays $6,000 in taxes. With a 10% across-the-board tax cut, which was enacted in the first year of the Reagan presidency, person A would receive a refund of $10,000, while person B would receive a refund of only $600. And this underestimates the disproportionate benefit of the reduction for person A, because person A would have been taxed at a higher rate than person B, so his or her refund would have been proportionately larger than that provided in the above example. *See* REPORT BY REPUBLICAN MEMBERS OF THE CONGRESSIONAL JOINT ECONOMIC COMMITTEE (April 1996), http://www.house.gov/jec/fiscal/tx-grwth/reagtxct/reagtxct.htm.

193. John J. Castellani, President, Bus. Roundtable, Address to the Detroit Econ. Club (April 26, 2004). The first author was in attendance at Castellani's speech.

reflects an inability to engage in coordinated collective action to address what its members saw as a serious economic problem.

A second example of the weakness and fragmentation of the American corporate elite involves its response to health care reform. Mizruchi has estimated that the 500 largest American corporations alone spent more than $375 billion on healthcare for their employees in 2009.[194] Given this enormous expense, it would seem to be in these companies' interest for the responsibility for these payments to shift to another entity, such as the state. Healthcare costs have been cited by many American firms as putting them at a competitive disadvantage with firms from other developed nations, all of which have national health care programs.[195] And yet American firms have been either unable or unwilling to develop or support a proposal for single-payer insurance that would demonstrably be in their own economic interests.[196] The Business Roundtable's own plan is extremely general and contains little specific content, certainly nothing that would shift funding from the firms themselves to another entity, such as the state.[197] Perhaps it is simply ideology that is preventing corporate leaders from embracing a system that would alleviate firms from one of their greatest financial burdens. Perhaps the Roundtable has in fact conducted a thorough cost-benefit analysis that demonstrates that a single-payer system would ultimately cost corporations more than the current system of employer-paid insurance. If this is the case, however, then it is unclear why the group would not make this analysis available to the public. Whatever the reason for its inaction, the document that the Roundtable produced, and its piecemeal efforts to reduce the size of employer mandates in the bill that was being debated in the Senate in January 2010, reflect a group that is incapable of coordinated action to advance its interests.

What these examples represent, then, is a paradox. In the period of managerial ascendance in which their power was largely unquestioned and untouched, the leaders of the American business community exhibited a pragmatic, moderate perspective that allowed them to support a relatively active state and to accept the legitimacy, if not the demands,

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194. Mizruchi, *The American Corporate Elite*, *supra* note 188.

195. *See* BUSINESS ROUNDTABLE, CONSUMER HEALTH AND RETIREMENT INITIATIVE, http://www.businessroundtable.org/initiatives/health (last visited Feb. 13, 2010).

196. One argument against such a plan might be that a single-payer national healthcare plan would lead to increases in corporate tax rates that would outweigh any savings that the firms might experience in regard to funding their own employees. On the other hand, firms in Canada, as well as every OECD country in Europe, have lower tax rates than do American firms. Scott A. Hodge, *U.S. Corporate Taxes Now 50 Percent Higher than OECD Average*, FISCAL FACTS, (Aug. 13. 2008), http://www.taxfoundation.org/research/show/23470.html.

197. BUSINESS ROUNDTABLE, *supra* note 195.

of labor unions. In the post-managerial period, in which corporate CEOs no longer enjoy their earlier level of autonomy, we have a fragmented, ineffectual business community, one that is seemingly incapable of addressing any of the important issues of the day. It is true that there are individuals such as Bill Gates and Warren Buffett who have engaged in significant philanthropic activities. There are also groups of corporations, such as those involved in a Pew Foundation initiative, that have taken voluntary steps to reduce their emissions of greenhouse gases. These efforts are relatively isolated, however, and none involve the kind of cooperation with the state that the Committee for Economic Development viewed as necessary to address societal problems in a 1971 position statement.[198] The corporate elite of the twenty-first century has thus far exhibited little of the efficacy that characterized its predecessor of the postwar period.

V. CONCLUSION

We began this essay by noting that classic works are often selectively interpreted by their readers, or not read at all. Those who do read the works see what they want to see and ignore the rest.[199] We saw that those who made use of Berle and Means's classic work, *The Modern Corporation and Private Property*, especially those writing in the post-World War II period, tended to focus on the separation of ownership from control rather than on an equally important component of the book—Berle and Means's concern with concentrated economic power and its implications for American democracy.

In reviewing these secondary works, however, we discovered two things: First, not all of these authors were as unaware of Berle and Means's concern about concentrated power as *their* subsequent critics had assumed. Second, however selectively they may have used Berle and Means, with the hindsight of half a century, it is evident that these scholars' characterizations of the postwar American corporation did indeed have merit. The separation of ownership from control helped create a class of managers with a relatively moderate, pragmatic approach to the concerns of the larger society. The resurgence of investors in the 1980s, however, placed managers under increasing pressures, which led in part to the fragmentation and ineffectuality of the corporate elite.

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198. William C. Frederick, *Free Market vs. Social Responsibility: Decision Time at the CED*, 23 CAL. MGMT. REV. 20 (1981).

199. Paraphrasing Simon and Garfunkel, SIMON & GARFUNKEL, *The Boxer* (Columbia Records 1969).

Viewing Berle and Means's arguments in a broad historical perspective, we believe that they were correct about the rise of management control. We also believe that they were justified in raising concerns about concentrated economic power. Yet a system of constraints existed in the post-World War II United States that gave rise to a corporate elite that, if neither liberal nor altruistic, did exhibit a pragmatic concern for the well-being of the larger society.

The turmoil of the 1970s and the acquisition wave of the 1980s took their toll on this responsible corporate elite, however. Management came increasingly under siege in the 1980s. This weakening of management did not lead to a furthering of democracy, but instead resulted in the thwarting of it, as the lack of business collective action became just one component of the gridlock that gripped national policy making from the 1990s onward. Managers' fears of Wall Street investors—both the professionals who handle investments for institutional stockholders[200] and the analysts who issue quarterly profit projections[201]—have significantly transformed the system, but this has not necessarily led to a more well-functioning political environment.

The sociologist E. Digby Baltzell, himself a member of the Philadelphia upper class, argued that a democratic society requires a committed and responsible elite.[202] This is a statement with which Adolf A. Berle, Jr., who wrote of elites "running museums of modern art, foreign aid programs, and civic services," might have agreed. We believe that in an earlier era, the United States had a group that at least approached this ideal. It lacks such a group in the early twenty-first century.

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200. USEEM, INVESTOR CAPITALISM, *supra* note 132, at 54–61.

201. Frank Dobbin & Dirk Zorn, *Corporate Malfeasance and the Myth of Shareholder Value*, 17 POL. POWER & SOC. THEORY 179 (2005).

202. E. DIGBY BALTZELL, PURITAN BOSTON AND QUAKER PHILADELPHIA (1979).