

“In Time of Stress, a Civilization Pauses  
to Take Stock of Itself”:  
Adolf A. Berle and the Modern Corporation  
from the New Era to 1933

*Mark Hendrickson*\*

INTRODUCTION

In the spring of 1933, when Adolf A. Berle penned his review of *Recent Social Trends*, quoted in this Article’s title, the U.S. economy had disintegrated with a quarter of the nation’s workforce unemployed and gross domestic product (GDP) plummeting nearly fifty percent since 1929.<sup>1</sup> The banking system nearly ceased to function and deflation drove prices down by twenty-five percent.<sup>2</sup> Times of uncertainty and panic require explanation and action grounded in an understanding of the nature of the problem at hand. Berle’s argument in 1933—“In time of stress, a civilization pauses to take stock of itself”—applied more than once in the period during which Berle rose to prominence in the WWI era and when he wrote his review in 1933.<sup>3</sup> This Article considers the period beginning when Berle left the U.S. Army after his service with the American Commission to Negotiate the Peace in Paris in June of 1919 and follows important aspects of his career and thinking up to the arrival of Berle and

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\* Associate Professor of History, University of California, San Diego. My thanks to Chuck O’Kelley for the invitation to participate in *Berle X: Berle and His World* and this volume. Thanks as well to participants in the symposium for their helpful comments and engaging discussion of Berle and his world. And, finally, many thanks to the fine editors at *Seattle University Law Review* for their assistance in ushering this Article and volume to completion. The quoted portion of this Article’s title is from Adolf A. Berle, *The Trend of the Turn*, SATURDAY REV. LITERATURE, Apr. 15, 1933, at 533.

1. In 1929, the Rockefeller Foundation, with Herbert Hoover’s encouragement, funded *Recent Social Trends in the United States: Report of the President’s Research Committee on Social Trends* (1933). Led by Wesley Mitchell and Charles Merriam—both of whom we encounter later in this Article—this two-volume and nearly sixteen-hundred page study brought together leading social scientists to deliberate on thirty separate topics and trends.

2. For Great Depression statistics, see GARY M. WALTON & HUGH ROCKOFF, HISTORY OF THE AMERICAN ECONOMY 422 (12th ed. 2014).

3. Adolf A. Berle, *The Trend of the Turn*, SATURDAY REV. LITERATURE, Apr. 15, 1933, at 533.

Gardiner Means's classic study, *The Modern Corporation and Private Property*, and the election of President Franklin D. Roosevelt.

By focusing on this relatively narrow but rich and tumultuous period in Berle's life and U.S. history, I aim to develop a broader context that might help us to better understand the era in which Berle and Means conducted the research and puzzled out the ideas that would be central to their collective effort to "take stock" of the American corporation in *The Modern Corporation and Private Property*. The Berle that appears in these pages comes into his own in the era of the "associational state," which, I argue, helps to explain his early ambivalence about expanding the power of the government in corporate affairs during the early years of the Great Depression. A focus on this early period in his career, I suggest in the conclusion, also sheds light on Berle's evolving understanding of the role of the corporation in American society after WWII.

As will be described below, this was a remarkable period in American history. Berle's career began in the highly uncertain years following WWI. The first section below sets the stage by considering how economic instability, labor–capital conflict, racial violence, and the impact of the war itself combined to reveal how little policymakers and leaders in and out of government knew about rapid changes underway in American society. Berle was particularly well suited for a time when many people wanted to "know" what was going on. As is outlined in the second section, he was a quick (and confident) study and had a knack for constructing narratives that described complex situations, and he always wanted to be in the mix when it came time to propose a potential course of action.<sup>4</sup> A supply of experts or potential "knowers" and a set of public problems required institutions and individuals who could coordinate and fund inquiry. The third section describes how, in this period, new institutions emerged bent on providing an empirical basis for understanding change. Berle made a name for himself as a public intellectual in an era when major foundations and philanthropists funded some of the most important nonprofit and nongovernmental institutions in this period, and the federal government—often at the behest of Secretary of Commerce and future president Herbert Hoover—looked to the work done by these relatively new institutions to address pressing public problems. Berle, Means, and many others benefited directly from these efforts. The fourth section and the conclusion consider Berle's effort in the New Era and the early years of the Great Depression—that is to say prior to FDR coming into office—

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4. On the critical role of knowledge and expertise, see Mary O. Furner, *Knowing capitalism: Public Investigation and the Labor Question in the Long Progressive Era*, in *THE STATE AND ECONOMIC KNOWLEDGE: THE AMERICAN AND BRITISH EXPERIENCES* 246–68 (Mary O. Furner et al. eds., 1991).

to try to come to terms with what the nation might do to address the immense power gathered up by the modern corporation.

This Article demonstrates three things. First, an examination of Berle's work and thinking in this critical period reveals the ways in which public problems and the need to "know capitalism," to borrow a phrase from Mary Furner, converged in the post-WWI era in remarkable and unprecedented ways that would shape New Deal and post-New Deal politics and policy. Berle's gift for synthesizing evidence and constructing narratives that explained complex events were particularly well suited to this era that prized the expert.<sup>5</sup> Second, identifying a problem and developing a persuasive narrative is one thing, but finding solutions is another. Berle joined in a collective effort to "grope"—to use a term he employed often—for new ways of ordering the relationship between the state, shareholders, managers, workers, and the corporation. In a related and third point, a close examination of this critical period in Berle's intellectual development helps us to better understand Berle's embrace of the corporation as a progressive and stabilizing force in the post-WWII era. The Berle of the pre-New Deal period was ideologically predisposed to more associational—rather than statist—solutions to public problems. As the Great Depression took hold, Berle recognized the necessity of government taking on new powers, but his correspondence and writings prior to the Roosevelt administration reveal someone never at ease with precisely how the state should regulate the corporation.<sup>6</sup> When post-WWII concerns about the inevitable return to the Great Depression failed to materialize, Berle returned to this more associational approach and celebrated the ensuing prosperity as a victory for now socially responsible corporate managers who had taken the lessons of the Great Depression to heart.

#### I. UNREST AND UNCERTAINTY: THE UNITED STATES IN THE POST-WWI ERA

WWI had a profound effect not only on the men and women serving in the military but also on domestic life, where President Woodrow Wilson's calls to make "the world safe for democracy" infused everyday life with new meaning.<sup>7</sup> Wartime service led many American workers to demand some measure of industrial democracy in workplaces where concentrated economic power left many citizens without a voice in determining the conditions and terms under which they labored. The labor

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5. *Id.*

6. *See generally* Adolf A. Berle Papers, Boxes 1–13 (on file with the Franklin Delano Roosevelt Presidential Library, Hyde Park, New York) [hereinafter Berle Papers].

7. 55 CONG. REC. 1,104 (1917).

market tightened as immigration plummeted and hundreds of thousands of American workers left their jobs to fight. At the same time the draft swelled the size of the American Expeditionary Force, American industry ramped up production to support the nation's troops and allies. As unemployment plummeted, hundreds of thousands of women, African Americans, and Mexican and Mexican-American workers entered the ranks of the manufacturing workforce to support the war effort abroad.<sup>8</sup> When American men and women went shopping during the war, they were asked—and sometimes ordered or coerced by government officials or even their neighbors—to conserve food and other resources to nourish the troops. When they went to their local bank or post office, Uncle Sam encouraged them to buy war bonds to finance the effort.<sup>9</sup>

After the war, many workers and mustered-out soldiers demanded that the benefits of democracy extend to their communities and workplaces. But employers saw the end of the war and the pullback of statist war-time policies as an opportunity to attack gains made by workers and unions during the war. Post-war economic turmoil made this a less than ideal time for workers and unions to make such demands. As the war wound to a close, workers and employers benefited from high demand for consumer goods at home and an increase in demand for U.S. goods in war-ravaged Europe, but the prosperity was short-lived and followed by skyrocketing levels of inflation.<sup>10</sup> To make matters worse, as mustered-out troops returned home, cancelled government contracts shrank demand and contributed to increasing levels of unemployment. Employers mercilessly exercised their post-war leverage and slashed wages and drove out many unions that had made inroads during the war. American workers responded by walking off the job by the millions.<sup>11</sup> Americans during and after the war turned on each other as well. In East St. Louis in 1917, white invaders killed at least two-hundred African American residents, and in 1919 race riots broke out in Charleston, Washington D.C., Chicago, and beyond.

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8. See LIZABETH COHEN, *MAKING A NEW DEAL: INDUSTRIAL WORKERS IN CHICAGO, 1919–1939*, at 165–67 (1990); WALTON & ROCKOFF, *supra* note 2, at 391–94.

9. CHRISTOPHER CAPOZZOLA, *UNCLE SAM WANTS YOU: WWI AND THE MAKING OF THE MODERN CITIZEN* (2008).

10. WALTON & ROCKOFF, *supra* note 2, at 395.

11. See generally COHEN, *supra* note 8, at 12–52; MILTON DERBER, *THE AMERICAN IDEA OF INDUSTRIAL DEMOCRACY, 1865–1965* (1970); Steven Fraser, *Dress Rehearsal for the New Deal: Shop-Floor Insurgents, Political Elites, and Industrial Democracy in the Amalgamated Clothing Workers Union*, in *WORKING CLASS AMERICA* (Michael Frisch et al. eds., 1983); MARK HENDRICKSON, *AMERICAN LABOR AND ECONOMIC CITIZENSHIP: NEW CAPITALISM FROM WWI TO THE GREAT DEPRESSION 2–6* (2013); NELSON LICHTENSTEIN & HOWELL JOHN HARRIS, *INDUSTRIAL DEMOCRACY IN AMERICA: THE AMBIGUOUS PROMISE* (1993); JOSEPH MCCARTIN, *LABOR'S GREAT WAR: THE STRUGGLE FOR INDUSTRIAL DEMOCRACY AND THE ORIGINS OF MODERN LABOR RELATIONS, 1912–1921* (1997); ROBERT H. ZIEGER, *AMERICAN WORKERS, AMERICAN UNIONS* 6, 33–65 (2nd ed. 1994).

Lynching increased as well. In 1919 alone, white mobs lynched seventy-six African Americans, including ten veterans, some in their U.S. military uniforms.<sup>12</sup>

The “Great Unrest” that followed the war came about at the precise moment when a number of intellectuals, experts, and investigators realized how starkly unprepared the federal government was to even make sense of these problems, much less to solve them. During the war, the Wilson administration mobilized leaders in academia, business, and labor to lead and participate in an array of temporary government agencies ranging from the widely known and studied War Industries Board and National War Labor Board to less heralded efforts by organizations such as the Woman-In-Industry Services and the Division of Negro Economics.<sup>13</sup> This process, as Robert D. Cuff described it, of applying “private knowledge to public problems” in the context of war resulted in a fairly successful effort to mobilize the nation’s people and economy, but it also revealed enormous limitations in the institutional capacity of the American state.<sup>14</sup> This became particularly clear to leaders such as Edwin Gay, Wesley Mitchell, and others who took wartime positions in federal government. Speaking for the group, Mitchell wrote that they had “learned from hard experience how inadequate was their equipment for dealing with the problems put up to them.”<sup>15</sup>

An expansion of the power, capacity, and capability of the federal government provided one potential path to addressing the many vexing problems the nation confronted coming out of the war. And to a degree, during the 1920s, Republican leaders like Department of Commerce Secretary Herbert Hoover did expand the size and scope of government. But they did so, as Ellis Hawley has long argued, through an associational state model that stressed a role for the government as a sort of information clearing house that would allow the private sector and non-state civil institutions to make informed decisions that advanced the public interest. Associational leaders like Hoover accepted the modern corporation and viewed it as a source of stability in the economy. They sought to facilitate

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12. NELL IRVIN PAINTER, *STANDING AT ARMAGEDDON: A GRASSROOTS HISTORY OF THE PROGRESSIVE ERA* 338, 362–65 (1989).

13. *See generally* VALERIE JEAN CONNER, *THE NATIONAL WAR LABOR BOARD: STABILITY, SOCIAL JUSTICE, AND THE VOLUNTARY STATE IN WWI* (1983) (discussing the National War Labor Board); ROBERT D. CUFF, *THE WAR INDUSTRIES BOARD: BUSINESS–GOVERNMENT RELATIONS DURING WORLD WAR I* (1973) (discussing the War Industries Board); HENDRICKSON, *supra* note 11, at 229–39 (discussing the Division of Negro Economics).

14. Robert D. Cuff, *War Mobilization, Institutional Learning, and State Building in the United States, 1917–1941*, in *THE STATE AND SOCIAL INVESTIGATION IN BRITAIN AND THE UNITED STATES* 392 (Michael J. Lacey & Mary O. Furner eds., 1993).

15. *Id.* at 398; Wesley Mitchell, *Economic Research and the Needs of the Times*, in *ECONOMIC RESEARCH AND THE NEEDS OF THE TIMES* 11 (1944).

information sharing by businesses in order to coordinate production levels and set prices and to prevent what they saw as inefficient and wasteful competition. Advocates of the associational state aimed, as one historian has described it, to “provide a ‘middle way’ between statist collectivism and laissez-faire individualism.”<sup>16</sup> Advocates of the associational state facilitated efforts by the National Bureau of Economic Research (NBER), Federated American Engineering Societies, and other non-government institutions—more often than not non-profits—to join or work in conjunction with the Department of Commerce in studying and understanding the state of the nation.<sup>17</sup>

It was in this environment and, importantly, this intellectual and ideological climate that Berle began his public career. He seemed particularly well suited to operate in an era that prized the expert or the technocrat’s ability to gather information and data and then construct a narrative that explained complicated changes underway. He had, as his biographer Jordan Schwarz noted, “a gift for acquiring expertise quickly.”<sup>18</sup> He also had a knack for developing close relationships with people who could legitimize his ability as a public intellectual and expert. Berle worked quickly in the WWI era and the early 1920s to generate a public image as someone who could not just make sense of rapid changes underway but also propose solutions to public problems. The remedies he seemed most comfortable with fit the era nicely. As will be described below, in the early years of the Great Depression, Berle struggled to come to terms with what role the state should play in controlling and regulating the modern corporation; in fact, he was much more ideologically suited to the associational impulse that characterized New Era policy makers associated with Hoover.

## II. THEORY “WITHOUT CONTACT DOWN TOWN BECOMES THEOLOGY”

Throughout his career, Berle argued for the necessity of connecting academic work to the world of politics, policy, and society. In May of 1932 and in the midst of the Great Depression, he wrote a personally reflective letter to the Harvard Business School’s Georges F. Doriot. In his letter to Doriot, who later came to be known as the father of venture capital, Berle observed, “Theoretical finance without contact down town becomes theology. Financial practice without the theory (as at present run) is simply

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16. GUY ALCHON, *THE INVISIBLE HAND OF PLANNING: CAPITALISM, SOCIAL SCIENCE, AND THE STATE IN THE 1920S*, at 3 (1985).

17. On Hoover, the Associational State, and the role of firms and corporations, see *id.*; HENDRICKSON, *supra* note 11, at 35–77; Ellis W. Hawley, *Herbert Hoover, the Commerce Secretariat, and the Vision of an ‘Associative State,’ 1921–1928*, 61 J. AM. HIST. 1, 116–40 (1974).

18. JORDAN A. SCHWARZ, *LIBERAL: ADOLF A. BERLE AND THE VISION OF AN AMERICAN ERA* 23 (1987).

grotesque and accounts considerably for the mess we are in.”<sup>19</sup> Berle thrived in moments when he could work at the intersection of the theoretical world of academia and the actual practicing of law. As the nation spiraled deeper into the Great Depression, he deduced that the artificial separation between theory and practice accounted in no small measure for the nation’s troubles. Doroit relished Berle’s observations about the dangers of separating theory from practice and, with obvious delight, wrote that he, along with his colleague Dr. Isaacs, had agreed to “change the motto on top of our Library and have chiseled in the stone” Berle’s quotation: “Theoretical finance without contact down town becomes theology.”<sup>20</sup>

This desire to link up theory, empirical research, and practice came easily to Berle, who built a career at the crossroads of policy, research, and reform. And he hardly operated alone. During the 1920s, or the “New Era,” many politicians and theorists tried to use tools of social science and empirical research to solve a plethora of public problems. In the wake of post-war unemployment and inflation, for instance, Secretary of Commerce Herbert Hoover collaborated with the NBER’s Wesley M. Mitchell and Edwin Gay to organize a conference to examine the causes of economic instability. Their work helped to bring the business cycle into clearer view.

In other cases and investigations, the focus shifted to the relationship between labor and capital. In the first three decades of the twentieth century, some employers experimented with various means of bringing some measure of democracy to American industry. To assess the veracity of these efforts, Mary Van Kleeck of the Russell Sage Foundation led a multi-year investigation that revealed marked deficiencies in these efforts (see cartoon at left below).<sup>21</sup> And, in yet another case, when workers at U.S. Steel struck in an effort to demand the repeal of the twelve-hour day in the steel industry during the post-war strike wave, they failed. But soon after, Hoover helped convene a group of experts who produced a report for public consumption that found dramatic inefficiencies and injustices in the long workday. The report and public pressure led U.S. Steel to implement the shorter eight-hour day (see cartoon at right below). And when the war revealed gross inadequacies in the Bureau of Labor Statistics’s collection and data processing methods, the Bureau turned to

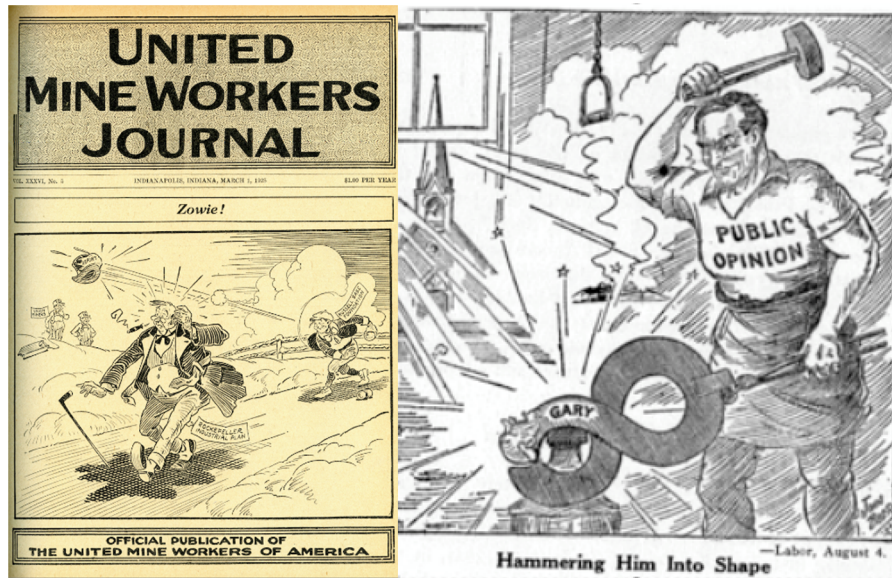
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19. Letter from Adolf A. Berle to George F. Doroit (May 16, 1932) (Berle Papers, Box 7, Folder Den-Du); see also SPENCER E. ANTE, *CREATIVE CAPITAL: GEORGES DOROIT AND THE BIRTH OF VENTURE CAPITAL* (2008).

20. Letter from George F. Doroit to Adolf A. Berle (May 24, 1932) (Berle Papers, Box 7, Folder Den-Du).

21. On the Russell Sage Foundation, see ALICE O’CONNOR, *SOCIAL SCIENCE FOR WHAT?: PHILANTHROPY AND THE SOCIAL QUESTION IN A WORLD TURNED RIGHTSIDE UP* (2007).

the NBER's Wesley Mitchell for critical guidance that led to the reorganization of the Bureau's work.<sup>22</sup>



These are two widely circulated cartoons from the era that provide evidence of some of the means by which inquiry and expertise shaped the public's understanding of economic issues and policies. At left, the research or "report" of the Russell Sage Foundation knocks the hat off of the Rockefeller Industrial Plan while union labor looks on. In the wake of the Ludlow massacre and an investigation by the U.S. Commission on Industrial Relations that laid bare outrageous labor policies in Rockefeller-owned coal mines and steel works, John D. Rockefeller, Jr. worked with W. L. Mackenzie King to develop a labor-management system. This system aspired to apply "the mechanism of republican government in political life" to the steel and coal industry.<sup>23</sup> At right, public opinion—informed by a report by the Federated American Engineering Society conducted at the request of Secretary of Commerce Hoover—hammers "Gary" into the shape of an eight. Judge Gary headed the United States Steel Corporation,

22. These are just a few of many examples of the ways in which social scientists and other experts came to shape the public debate and policy making in the New Era. I discuss these and many others in HENDRICKSON, *supra* note 11, at 35–77.

23. BEN M. SELEKMAN & MARY VAN KLEECK, *EMPLOYEES' REPRESENTATION IN COAL MINES; A STUDY OF THE INDUSTRIAL REPRESENTATION PLAN OF THE COLORADO FUEL AND IRON COMPANY* xxviii (1924).



which claimed the eight-hour day unworkable in continuous operating industries like steel.<sup>24</sup>

Berle joined in these efforts. In the years between WWI and 1923, he moved in a number of different intellectual and policy circles. He was, as Schwarz observed, “[a] clever man bent upon capturing the ears of men of power.” Berle, Schwarz quipped, “inevitably would be somebody’s ‘braintruster.’”<sup>25</sup> During the war, Berle served in the U.S. Army in the Dominican Republic where he worked to address one of the many commodity shortages that emerged during the war. While some government agencies sought to secure commodities like tungsten for steel production or nitrates for munitions and fertilizer, Berle worked to maintain supply chains for sugar.<sup>26</sup>

With the end of hostilities, Berle managed to convince the U.S. Army that he had expertise in Russian economics, so they sent him to Paris where he joined the likes of Bernard Baruch, Hoover, Walter Lippman, and other current and future luminaries.<sup>27</sup> When discharged from the Military Intelligence Division in June of 1919, Berle took up Keynes’s critique of the Paris Peace Treaty and began to build a resume as a foreign policy expert in the pages of *The Nation* and the *New Republic* that would serve him well later in his career. In the years after the war, Berle expanded his social network and further extended the issues on which he spoke and wrote with authority. He developed a close friendship with Lillian D. Wald while he lived near and worked with the Henry Street Settlement on New York’s Lower East Side. By way of his involvement with the American Indian Defense Association, Berle worked to protect the rights of the Pueblo Indians.<sup>28</sup> He sought to reach a broad audience by way of an article in the *Nation* and several articles in the *New Republic* (three articles) and *Survey* (twelve articles).<sup>29</sup> All of these pieces appeared between 1919 and 1922, and they dealt with a range of issues including the League of Nations, U.S. involvement in Puerto Rico and the Dominican Republic, and various labor, foreign policy, and progressive causes.

The destruction of WWI and the often violent post-war domestic unrest set the agenda for many intellectuals and experts like Berle. In the wake of these catastrophic events, they worked sometimes collectively and

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24. For images, see Frederick W. MacKenzie, *Steel Abandons the Twelve-Hour Day: A Demonstration of the Power of Public Opinion*, 13 AM. LAB. LEGIS. REV. 3, 184 (1923); Zowie!, UNITED MINE WORKERS J., Mar. 1, 1925.

25. SCHWARZ, *supra* note 18, at 23.

26. *Id.* at 19.

27. *Id.* at 24–25.

28. For an overview of Berle in the post-WWI period, see SCHWARZ, *supra* note 18, at 37–45.

29. For a comprehensive list of Berle’s publications, see *In Honor of Adolf A. Berle*, 64 COLUM. L. REV. 1371, 1373–76 (1964).

at times alone to try to puzzle out a less cataclysmic path forward.<sup>30</sup> In a published *New Republic* article, and in an earlier version that *The Nation* rejected, Berle narrated the ongoing labor–capital conflict and argued that the nation stood at a hinge point. “Will there be a revolution in America?” Berle asked. “The answer is yes; undoubtedly; perhaps the quicker the better.” The precise manifestation of the impending revolution, Berle suggested, is unknown and contingent “depending on the kind and quality of brains at work.”<sup>31</sup> In the American case, Berle noted that the traditional weapons of conflict—troops, armed guards, violence, injunctions, and strikes—had all been rolled out in the recent unrest.<sup>32</sup> Raising the stakes, Berle, like others in the period, situated the American strife in a global context nodding, in particular, to events unfolding in Russia and Italy. Such fraught times called for original thinking, and Berle had a plan that conformed nicely to the New Era associational impulse in policymaking. The new industrial system Berle imagined eschewed a more robust role for the state and instead built on the premise that reform should be rooted in ensuring that investors, managers, and operators all had some skin in the game when it came to firm and plant level decisions.<sup>33</sup>

The problem that Berle identified turned on the recent trend that disempowered investors and workers. This left important decisions to managers who risked other people’s capital yet bore little risk if the business failed. Berle aimed to shift the “speculative hope, the chance, the possibilities” of profit from speculators who bought common stock but held no operational control to the operators—both labor and management—of the actual firm, factory, or plant.<sup>34</sup> Whereas some progressives and reformers hoped statist wartime policies would continue into the post-war era, Berle stressed that a tighter link between risk and

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30. See generally RAY STANNARD BAKER, *THE NEW INDUSTRIAL UNREST: REASONS AND REMEDIES* (1920); JOHN R. COMMONS ET AL., *INDUSTRIAL GOVERNMENT* (1921); W. JETT LAUCK, *POLITICAL AND INDUSTRIAL DEMOCRACY, 1776–1926* (1926).

31. Adolf A. Berle, *The Next American Revolution 2* (unpublished writings) (Berle Papers, Box 2, Folder Berle – Writings (General)).

32. *Id.* at 7–8.

33. Adolf A. Berle, *How Labor Could Control*, 28 *NEW REPUBLIC* 37, 37–39 (1921). In August of 1921, editors at *The Nation* rejected an earlier version of the *New Republic* article. Writing on behalf of the three editors who evaluated the submission, Oswald Garrison Villard wrote that Berle had failed to take into consideration “the mass of literature dealing with guild socialism.” The editors did find interesting that Berle, “of his own consciousness has reached the position that so many others have.” Letter from Oswald Garrison Villard, Editor, *The Nation*, to Adolf A. Berle (Aug. 15, 1921) (Berle Papers, Box 3, Folder T-V). Praising Berle for lack of originality might seem like faint praise at best, but Villard appears to have been a family friend and someone Berle continued to look to for guidance. See Letter from Oswald Garrison Villard Editor, *The Nation*, to Adolf A. Berle (Dec. 4, 1923) (Berle Papers, Box 3, Folder T-V); Letter from Oswald Garrison Villard, Editor, *The Nation*, to Adolf A. Berle (Jan. 20, 1919) (Berle Papers, Box 3, Folder T-V).

34. Berle, *supra* note 31.

actual operation would lead to a more efficient, more stable, more fair, and more productive system of production.<sup>35</sup>

Berle identified two different classes of investors in modern corporations; in the post-revolutionary world he imagined, each class would receive a reward consistent with what they risked and what they contributed to the production process. One group invested not only financial capital in the corporation but also demonstrated an interest in adding additional value to the corporation by “throwing in brains and judgment and skill with their money.”<sup>36</sup> A second class and, in Berle’s assessment, a “larger proportion” of investors, “merely buy, hope, hold and cash in when they can, reaping where they did not sow.”<sup>37</sup> This latter group, he judged, deserved only a return on their investment equal to the current rate of interest. Berle argued that any amount of money that went to this later class above current interest rates amounted to a theft by the passive investor class from the individual who “did not get all he earned,” namely the “men who worked in the corporation’s mills or mines.”<sup>38</sup> Here, he appealed not just to labor but also to active managers. When it came to the distribution of power in this new model, the percentage of common stock ownership going to the manager would be greater than that of an unskilled worker, which would give management greater authority over the decision-making. Holders of bonds, notes, and preferred stock would also find representation on the board of directors, but the voting power of the workers and managers who held the company’s common stock would always trump that of these other bodies. Investment capital could still come from the sale of preferred stock, and should the company be plainly mismanaged, mechanisms existed in Berle’s system for holders of preferred stock to intervene. If the central problem of the post-war era that Berle identified was labor–capital conflict, then the solution he proposed turned not on expanding the power of the government but instead on the necessity of displacing the current group of stockholders who seemed to care little for the actual operation of the company.<sup>39</sup>

Berle’s advocacy of anti-imperialist policies and his interest in shareholder rights came together in the case of the Virgin Islands. In the

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35. Berle received high praise for the article from the likes of James G. McDonald (Chairman of the Foreign Policy Association, future ambassador to Israel, and leader at the Twentieth Century Fund), who wrote, “For the first time I have been made to see concretely an apparently practical and workable basis for industrial democracy.” Letter from James G. McDonald to Adolf A. Berle (Sept. 16, 1921) (Berle Papers, Box 3, Folder M-V). Schwarz also argues that in the 1920s “Berle zeroed in on the stockholder’s lack of defined rights in an unregulated securities market.” SCHWARZ, *supra* note 18, at 52.

36. Berle, *How Labor Could Control*, *supra* note 33, at 38.

37. *Id.*

38. *Id.*

39. *Id.* at 37–39; *see also* Berle, *supra* note 31, at 1–8.

1920s, Berle served as counsel for St. Thomas and St. Croix and represented the islands in Congress when the Senate Committee on Insular Affairs heard arguments for replacing the U.S. Navy government with a permanent government “more in keeping with American democratic ideals.”<sup>40</sup> In 1922, Berle met Rothschild Francis, who, along with others, was in New York to advocate for a permanent government for the islands. This issue received national attention, but it got particular traction with civil rights and civil liberties groups. For instance, in February 1924, Berle and Francis were joined in a New York rally advocating a permanent government for the Virgin Islands by labor leader A. Philip Randolph; St. Croix native and Randolph ally, Frank Crosswaith; and a longtime ally of Berle, the American Civil Liberties Union’s director, Roger Baldwin. As a group, they advocated the establishment of a civil government for the islands, full rights of citizenship, and the removal of barriers of trade.<sup>41</sup>

In the case of the Virgin Islands, Berle asserted himself as an advocate and burnished his reputation as an “expert,” but the experience also provided an opportunity to experiment with the ways of reshaping the ownership structure of an enterprise in a way that more tightly linked ownership and control. In late 1922 and early 1923, Francis and Berle proposed a massive reorganization of the Islands Sugar Company in St. Croix. In November of 1922, Berle constructed a plan “to provide suitable corporate machinery to enable the St. Croix Labor Union” to control the company’s sugar properties.<sup>42</sup> The basic idea was to form a small corporation, chartered perhaps in Delaware, and then for the corporation to own the sugar producing lands. All of the stock in this new corporation would then be turned over to the union, who would in turn elect the corporation’s board of directors. The officers of the union, Berle proposed, would elect the directors of the corporation, which might include local bankers or technical advisors in addition to union men. The advantages of this organization would include limited liability for individual union members and the ability of the new corporation to pay dividends to the owners of the corporation—i.e., union members.<sup>43</sup> Francis returned to St. Croix in January of 1923 and wrote Berle that “several prominent politicians and labor leaders are in sympathy with the draft,” and that he planned to print some two thousand copies to better inform the population

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40. *Islanders Want to Be Citizens*, AFRO-AMERICAN, Jan. 15, 1927, at 20.

41. *New York Virgin Islanders Hold Big Mass Meeting to Protest Bad Economic Rule*, PITTSBURG COURIER, Feb. 23, 1924, at 13.

42. Adolf A. Berle, *Tentative Plan of Organization 1* (Berle Papers, Box 3, Folder Virgin Islands).

43. *Id.*

about the nature of the plan.<sup>44</sup> It is not clear if Berle and Francis ever implemented this planned corporate organization, but Berle's work on it suggests the degree to which he worked to connect his evolving theoretical ideas to what unfolded "downtown" or, in this case, the fields.

### III. FACILITATING INQUIRY IN THE AGE OF THE ASSOCIATIONAL STATE

During the WWI era, a number of long-simmering economic and social issues erupted, but instability and unrest did not alone guarantee the unprecedented and multi-pronged outpouring of research and inquiry that followed. Part of impetus for this work can be traced back to Hoover's efforts, but Hoover and his allies found willing partners in the burgeoning nonprofit and nongovernmental sector that flourished in the New Era. Institutions such as the Russell Sage Foundation (RSF [1907]) (founding dates listed in brackets), the National Bureau of Economic Research (NBER [1920]), the National Industrial Conferences Board (NICB [1916]), and the Social Science Research Council (SSRC [1923]) were among the influential sites of inquiry that emerged in highly uncertain and contingent times. These efforts were funded by various foundations, such as the RSF (which both conducted and funded research), the Laura Spellman Rockefeller Memorial [1918], the Twentieth Century Fund [1919], and the Rockefeller Foundation [1913]. They worked to advance an understanding of the consequences of living in an increasingly urban, consumer, and diverse society. An impressive stream of still important studies emerged from these efforts. In addition to *The Modern Corporation and Private Property* and the already-mentioned RSF studies led by Van Kleeck, these institutions funded many major inquiries from this period including: *Recent Social Trends*, Paul Taylor's multi-volume *Mexican Labor in the United States*, Robert and Helen Lynd's *Middletown: A Study in Modern American Culture*, and a number of works funded by the National Bureau of Economic Research and the also newly created Brookings Institution.

The mission and the work of the SSRC in the 1920s deserve special mention as it funded not just Berle and Means's work but also many New Era inquiries. University of Chicago political scientist Charles E. Merriam first proposed the council's creation in the early 1920s as a means of generating a "new synthesis of knowledge."<sup>45</sup> Merriam found in the NBER's Wesley Clair Mitchell a willing ally, but ideas and friends don't fund a fledgling institution. The recently founded Laura Spelman Rockefeller Memorial initially focused on providing funding for medical

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44. Letter from Rothschild Francis to Adolf A. Berle (Jan. 19, 1923) (Berle Papers, Box 3, Folder Virgin Islands).

45. KENTON W. WORCESTER, SOCIAL SCIENCE RESEARCH COUNCIL, 1923–1998, at 17 (2001).

research, but under the leadership of its young director, University of Chicago Ph.D. Beardsley Rummler, it expanded its purview into the social sciences. If the war revealed a lack of state capacity in the federal government, Rummler found little to celebrate in the state of the post-war social sciences. In the fall of 1922, he argued that those who wanted to pursue the public interest were all “embarrassed” by the lack of “knowledge that the social sciences provide.”<sup>46</sup> With an endowment of \$74 million under his control at LSRM, Rummler had the means to take steps to remedy this problem.<sup>47</sup> In 1927, the LSRM provided the initial \$750,000 to start the SSRC, and within ten years the council provided well over \$4 million in awards to support research in the social sciences.<sup>48</sup>

The initial intellectual agenda of the SSRC—and specifically its Committee on Problems and Policy that set the agenda and the council’s direction—did not lend itself immediately to the issues Berle and Means addressed. Decisions on direction and funding allocation usually happened in the late summer or early fall when the SSRC’s Problems and Policy committee met in Hanover, New Hampshire.<sup>49</sup> At their first meeting in 1925, the committee identified several fruitful areas of inquiry, including the family, immigration from Mexico, internal migration (i.e., the early stages of the Great Migration), race relations, agricultural economics, and the Eighteenth Amendment.<sup>50</sup>

The SSRC’s list of lines of inquiry in the mid-1920s leaned away from concerns over industrial democracy, labor–capital conflict, and the economic instability that had characterized important aspects of Berle and other investigators’ work in the immediate wake of WWI. Part of the reason for this shift likely had to do with extremely uneven, but still important, prosperity that followed the 1920–1921 “V-shaped” recession.<sup>51</sup> By the mid-1920s, even strong advocates for more statist labor legislation recognized that real wages had increased significantly since the war. For instance, in a 1926 article for the *American Economic Review*, prominent advocate for the family wage and University of Chicago economist Paul Douglas, described not only an increase in real wages but also other factors (such as smaller working-class families, an increase in

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46. *Id.* at 20.

47. *Id.* at 18.

48. See HERBERT HEATON, A SCHOLAR IN ACTION: EDWIN F. GAY 209 (1952) (Herbert Heaton claims that the social sciences and the SSRC received \$25,000,000 between 1925 and 1928 from the LSRM.); WORCESTER, *supra* note 45, at 18.

49. For records and minutes of Hanover Meetings from 1926 to 1930, see Soc. Sci. Research Council, Accession 1, Series 5: Hanover Conference, 1926–1930 (on file with the Soc. Sci. Research Council Collection, Rockefeller Archives Ctr.).

50. HEATON, *supra* note 48, at 210.

51. WALTON & ROCKOFF, *supra* note 2, at 395.

the number of wage earners per household, shorter working days, and increased access to social services) that increased the economic well-being of working-class families.<sup>52</sup> A dramatic decline in labor unrest, increased access to electricity, and increased access to consumer credit were among the many factors that led social and economic investigators to pursue new lines of inquiry.

If concerns over industrial democracy faded in the mid-1920s, other changes underway enhanced the relevance of the questions Berle entertained. Lingering employer concerns from the post-war period of labor unrest combined with a new focus on labor turnover (brought on in part by plummeting levels of immigration) led to a number of different experiments in labor–management relations.<sup>53</sup> These ranged from the type of plans Van Kleeck and the RSF investigated, which tried to bring a measure of democracy to industry, to welfare capitalist plans that built on a longer paternalistic tradition in worker–employer relations. Some of these plans provided workers with company stock as a form of compensation in hopes that employees would come to see their own personal interests aligned with that of the company. Indeed, as the NICB revealed in a 1928 study, the 1920s witnessed a dramatic increase in the number of companies instituting stock purchasing plans.<sup>54</sup>

The employee stock-ownership angle increased the relevance of Berle's proposed study, but his proposed methodology of bringing into conversation law and economics also resonated deeply with the goals of the SSRC. Having a close and powerful ally on the council helped, too. After several years of research and writing in which he described the ways that managers appropriated power over the modern corporation from shareholders, Berle reached out to the SSRC with a proposal for a larger study that he initially entitled *A Study of the Trends of Recent Corporate Development*. Although the specific topic may not have immediately resonated with Problems and Policy Committee, the proposal's emphasis on interrogating the modern corporation using both the tools of law and economics fit nicely with the SSRC's broader emphasis on integrating the social sciences in ways that used interdisciplinary tools to address modern problems. In August of 1927, the council agreed to fund Berle's project. Berle credited Gay above all others in shaping *The Modern Corporation*

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52. See Paul H. Douglas, *The Movement of Real Wages and Its Economic Significance*, 16 AM. ECON. REV. 17, 17–53 (1926).

53. For evidence of concern over turnover in the period, see DON D. LESCOHIER, *THE LABOR MARKET* (1923); SUMNER H. SLICHTER, *THE TURNOVER OF FACTORY LABOR* (1921); Paul H. Douglas, *The Problem of Labor Turnover*, 8 AM. ECON. REV. 306–16 (1918).

54. ADOLF A. BERLE & GARDINER C. MEANS, *THE MODERN CORPORATION AND PRIVATE PROPERTY* 58 (Rev. Transaction ed., New Brunswick: Transaction Publishers 1991) (1932); NAT.Industr. CONFERENCE Bd., *EMPLOYEE STOCK PURCHASE PLANS IN THE UNITED STATES* (1928).

*and Private Property*. “The existence of this study is in large measure due to Edwin F. Gay of Harvard,” who, Berle wrote in the original preface to the text, “molded into concrete form the suggestion that work should be done in this field.”<sup>55</sup>

#### IV. “GROPING FOR A KIND OF CONSTITUTIONAL LAW OF ECONOMIC GOVERNMENT”<sup>56</sup>

Between early 1929 and 1933, the U.S. economy went from the tail end of one of its longest boom periods to the bottom of the Great Depression. In these critical years, Berle sharpened his understanding of the underlying problems the nation faced, and he shifted his focus from the need to empower the shareholder to considering the potential for a much more robust role for the state in managing modern corporations. But aside from recommendations for shifting “control” from the private sector to the government, he—like many others in those anxious days—had much more trouble identifying the proper relationship between the state and the modern corporation.

In the spring of 1929, Berle began to process Means’s incoming statistical findings. The evidence Means gathered painted a grim picture of an economy, where around two hundred corporations administered over one-third of the nation’s wealth. More alarming, less than eighteen hundred men dominated these corporations. Months before the stock market crash, Berle wrote to a friend that this alarming concentration was a “problem of government rather than finance.” The solution, he proposed, was one of “common law acting through equity,” which he described as

the only instrument preventing this situation from turning itself in process of time into a more or less futile absolutism. . . . We thus are really groping for a kind of constitutional law of economic government permitting the flexibility and freedom of action required for successful business operations on the one hand; and at the same time, having sufficient rigidity of principle to protect the very large, unrepresented interests implicit in public security markets.<sup>57</sup>

In the uncertain early days of the Great Depression, Berle of course would consult with FDR, but his correspondence reveals a collective effort by him, his friends, and his colleagues to think through a path forward. Just before Christmas in 1931, he received a letter from an old family

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55. BERLE & MEANS, *supra* note 54, at liv. This is a minor point, but Schwarz identifies the LSRM as the institution from which Berle received the grant, but I believe the SSRC was the actual institution awarding the money. SCHWARZ, *supra* note 18, at 51.

56. Letter from Adolf A. Berle to Stephen G. Williams (Apr. 24, 1929) (Berle Papers, Box 12, Folder Wi-Wr).

57. *Id.*



friend, George Weston Anderson. Anderson's distinguished career included stints as United States Attorney for Massachusetts from 1914 to 1917 and a one-year term on the Interstate Commerce Commission in 1918. That same year, President Wilson nominated and the Senate confirmed Anderson as a judge on the First Circuit. On the bench, he spoke out strongly for civil liberties in the context of the post-war Red Scare and Palmer Raids.<sup>58</sup> In October 1931 and one year before his retirement, Anderson penned a letter to Berle in hopes of getting the younger man's thoughts on the idea of federal incorporation.<sup>59</sup> In his response to this initial letter and in ensuing correspondence, Berle outlined some of the central problems that he and others tried to puzzle out in the face of economic turmoil.

To frame the depression, Berle again constructed a narrative of American economic history just as he had done in the *New Republic* piece more than a decade earlier. In this case, he conceived of the present moment as yet another hinge point in the nation's development. In the process, he worked out some of the central ideas that would go into FDR's famous Commonwealth Speech, which the future president delivered in San Francisco nine months later, just days before the 1932 presidential election. According to Berle,

Up to a short while ago the country was being built. It could tolerate the buccaneering of great finance because, in spite of the cruelty and the waste, a tremendous commercial plant emerged. I hold no brief for the morals of the men that achieved this; apparently, however, society wanted the result badly enough to accept the methods.

Today with a finished plant the job is to shift from promoting into administration.<sup>60</sup>

A glance back at the dramatic labor-capital conflict that had accompanied the rise of this great "commercial plant" should have tempered any claims that society "accepted" the buccaneers' methods, but nonetheless, Berle argued that the main problem the nation currently confronted turned on the "the great corporate structure." He entertained Anderson's suggestion of federal incorporation, but he thought similar

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58. On Anderson, see *George Anderson, a Retired Jurist; Ex-Judge of Federal Circuit Court of Appeals for New England Dies Stricken in Florida Home Appointed by President Wilson—Had Held Several Other Places of Importance*, N.Y. TIMES, Feb. 15, 1938, at 26; see also Alan Rogers, *Judge George W. Anderson and Civil Rights in the 1920s*, 54 HISTORIAN 289, 289–304 (1992).

59. Letter from George W. Anderson to Adolf A. Berle (Dec. 2, 1931) (Berle Papers, Box 4, Folder Ami-Au).

60. Letter from Adolf A. Berle to George W. Anderson (Dec. 16, 1931) (Berle Papers, Box 4, Folder Ami-Au).

results could be brought about by empowering the Federal Trade Commission to more rigorously enforce standards on all businesses engaged in interstate trade. To anticipated charges that this amounted to little more than socialism, Berle argued that if the choice was between “a system run by somebody and a system run by nobody, I am all for the former no matter what name you tack on it.” Further, if the choice came down to a system run by “the Government or National City Bank,” he would choose the former “every time.”<sup>61</sup> The lack of some means of controlling the economic system vexed Berle. By March of the next year, Berle recommended to writer and book reviewer Lewis Gannett the just-published book *Is Capitalism Doomed?* by Lawrence Dennis. Dennis’s book, Berle noted, was the first to argue “that an uncontrolled system, like our own, in the long pull is headed for a smashup.” “I think there is no escape from the logic and no escape from the result except by retarding the line of development,” Berle concluded.<sup>62</sup> He assessed the book as “probably the best contribution to economic thinking since John Maynard Keynes’ *Economic Consequences of Peace*.”<sup>63</sup>

Acknowledging the need for some “control” in times as perilous as the Great Depression was one thing but identifying a plan was still another. In early 1932, and several months before the publication of *The Modern Corporations and Private Property*, Berle struggled in private to articulate what this system would look like. In fact, just five days after he sent that letter to Anderson, he sent Louis Brandeis a letter ostensibly to offer a much-belated response to a letter and picture sent the previous year. After three paragraphs of small talk, Berle got to what appears to be the letter’s main purpose. He mentioned that he had recently re-read the Justice’s writings concerning the dangers of corporate concentration, his opposition to it, and his recommendation that these enormous economic entities needed to be broken up. “You were writing in 1915,” Berle wrote to Brandeis, who, as the author, hardly needed reminding of the year in which he wrote. For whatever reason, Berle could not bring himself to actually ask Brandeis straight away if he still believed what he had written nearly two decades earlier. Instead, and perhaps hoping to solicit some response, he outlined his own position by way of yet another narrative that framed recent developments:

Now the concentration has progressed so far that it seems unlikely to break up even in a period of stress. I can see nothing at the moment

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61. *Id.*

62. Letter from Adolf A. Berle to Lewis Gannett (Mar. 4, 1932) (Berle Papers, Box 7, Folder G-GO).

63. Letter from Adolf A. Berle to Ordway Tead (Mar. 4, 1932) (Berle Papers, Box 11, Folder Ta-Th).

but to take this trend as it stands endeavoring to mold it so as to be useful. If the next phase is to be virtually a non-political economic government by mass industrial forces, possibly something can be done to make such government responsible, sensitive, and actuated primarily by the necessity of serving the millions of little people whose lives it employs, whose savings it takes in guard, and whose materials of life it apparently has to provide.<sup>64</sup>

Berle would come to embrace and defend what Schwarz describes as the “state capitalism” of the New Deal, but in early 1932, his call for a “non-political economic government by mass industrial forces” seems more in line with an associational vision of the New Era than the more statist vision of the New Deal.

In the wake of Roosevelt’s election, and now as a trusted “brain truster,” Berle elaborated on his evolving understanding of the problems posed by the modern corporation. Yet, he seemed no closer to coming to a method of controlling the corporation in a manner that protected the public interest and satisfied his own ideological preference for more associational solutions to economic problems. Like Brandeis, bigness concerned him, but going back to an earlier era of a world dominated by smaller enterprises seemed, to Berle, an improbable way forward. Instead, he indicated that he was “working on . . . a vague dream that the commercial organizations which we have built up may be used, more or less as they stand, without being destroyed, in the public interest.” “Surely,” he hoped, “there must be the middle ground which permits individuals to fulfill themselves in their lives, without leaving the bulk of the population merely the sport or prey of passing economic ambition.”<sup>65</sup> What that system would look like remained very much an open question for Berle. In the spring of 1929, and before the full effect of the Great Depression took hold, Berle wrote that as a nation we were “groping for a kind of constitutional law of economic government.”<sup>66</sup> Four and a half years later and now at the trough of the Great Depression, Berle returned to that (rather cringe-worthy) verb and assessed the New Deal as a work in progress in the pages of the *Survey Graphic*: “The NRA,” he wrote “is the first step, groping perhaps, but nevertheless of extreme significance toward” reaching the goal of a stable economy that provided for all of its citizens.<sup>67</sup>

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64. Letter from Adolf A. Berle to Louis Brandeis (Feb. 19, 1932) (Berle Papers, Box 5, Folder Br-Bu).

65. Letter from Adolf A. Berle to George W. Anderson (Feb. 14, 1932) (Berle Papers, Box 4, Folder Ami-Au).

66. Letter from Adolf A. Berle, *supra* note 56.

67. See generally Adolf A. Berle, *The Law and the Social Revolution*, in 22 SURVEY GRAPHIC 592 (Kirtley F. Mather et al. eds., 1933).

It is telling that even as *The Modern Corporation and Private Property* gained traction after its publication in July 1932, Berle joined an effort to again bridge his academic work to reforms downtown using the tools of the associational state. He joined an effort spearheaded by Adrian Vere Shaw to create a voluntary, non-profit association “for the protection and advancement” of American investors. In this initial effort, Berle and Shaw were joined by a group of notable experts from a number of different fields, including efficiency expert and mechanical engineer L. P. Alford, University of Chicago economist and future U.S. Senator Paul Douglass, and economist Virgil Jordan, who headed the National Industrial Conference Board. The organizing document for the association reads not like a recipe for state capitalism but instead like a framework for using the tools of the associational state to solve public problems. The proposed organization would “compile complete and unbiased information” in hopes of educating “members, the public, corporate executives and financial practices” as to “what constitutes the best investment standards,” “abuses and means of overcoming them,” and “improvements and means of accomplishing them.” Even the initial seed money sought for the effort had a decidedly New Era bent with Edward Filene and the Twentieth Century Fund—a foundation for which Berle would serve as chairman of the Board of Trustees later in life and with which he remained involved from the 1930s until his death—identified by Shaw as “taking a real interest in this movement” and likely to provide the funding to get the association up and running.<sup>68</sup>

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68. Adolf A. Berle, Reports to Organization Committee of American Investors Association (Berle Papers, Box 11, Folder Se-S1); Letter from A. Vere Shaw to Adolf A. Berle (Oct. 11, 1932) (Berle Papers, Box 11, Folder Se-S1); Letter from Adolf A. Berle to A. Vere Shaw (Oct. 3, 1932) (Berle Papers, Box 11, Folder Se-S1); Letter from A. Vere Shaw to Adolf A. Berle (Sept. 24, 1932) (Berle Papers, Box 11, Folder Se-S1). On Berle and the Twentieth Century Fund, see SCHWARZ, *supra* note 18, at 351–52; and on Shaw, see N.J. Wyckoff, *A. Vere Shaw Dies*; *Finance Advisor*, N.Y. TIMES, Nov. 11, 1970, at 48.



The real American capitalist can be found at stockholders' meetings. Here one is shown exercising his democratic right to speak up to company officers.

Photo accompanied a September 21, 1952, *New York Times* article by Berle. The caption reads, "The real American capitalist can be found at stockholders' meetings. Here one is shown exercising his democratic right to speak up to company officers." While the man speaks, a large number of women shareholders look on.<sup>69</sup>

#### CONCLUSION

Berle was a public figure of undeniable importance, but his ideological and philosophical beliefs are often hard to pin down. No doubt, he embraced and defended many New Deal statist policies after 1933, but when it came to controlling the modern corporation, statist solutions always seemed like an uneasy fit for an intellectual who before the New Deal seemed more ideologically at ease with associational solutions. It is impossible to tell, but perhaps his inability to arrive at a clear policy prognosis for controlling the modern corporation in the New Deal era can be explained by the fact that he never really believed that there was a robust role for the state in the management of corporate affairs.

What we do know is that by the 1950s, Berle moved in quite a different direction on issues of economic power, the modern corporation, and the state. He, as Schwarz notes, continued to be concerned about concentration, but he now contended that corporate leaders had gained a sense of social responsibility that "made him optimistic about the future of economic democracy in a capitalist society." In the realm of corporate

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69. Adolf Berle, *Our Capitalists—Soviet View and the Reality; A Stereotype Beloved of the Russians is Upset by the Statistics on American Share Ownership*, N.Y. TIMES, Sept. 12, 1952, at SM12.

ownership, Berle saw pension funds as important players who were “socializing” property ownership and creating a “peoples’ capitalism.”<sup>70</sup> In this later period, Berle celebrated the American company officer, the diffusion of ownership of corporations, and the marginal role of the American state in the activities of the modern corporation. Always quick to construct a narrative, Berle dismissed communist critiques of American capitalists as antiquated; they were writing about an economic system that had passed some fifty years ago. “Fifty years ago,” he argued, “American corporations did have identifiable ‘owners.’ These died, split up their holdings, paid inheritance taxes, sold out, gave away their fortunes, and otherwise dispersed.” Since the turn of the century merger movement, a more and more dispersed ownership structure displaced the proprietary capitalists’ dominance of industry. To find the new owners or the new capitalists, Berle suggested critics of American capitalism look to the 86 million insurance holders and 6.5 million stockholders of the nation. They were the owners of the modern corporation.<sup>71</sup>

Berle took pride in what he believed was his and his generation’s role in bringing about a “peoples’ capitalism.” And his assessment of these accomplishments was at least partially merited, but at the very moment he celebrated the achievement of post-war American capitalism, a second wave of foundations and think tanks began emerging that had a far different agenda than the RSF, SSRC, LSRM, Twentieth Century Fund, and other organizations that emerged in the early years of the twentieth century. This new phalanx of institutions came peopled with individuals bent on turning back key New Deal and Great Society public policies and articulating a clear defense of the market and the free enterprise system as they understood it.<sup>72</sup> Coincidentally, or maybe ironically, 1971—the year of Berle’s death—marked not just the starting point for the upward trend in wealth and income inequality that in many respects defines the United States today, but it was also the year that future Supreme Court Justice Lewis Powell penned his memorandum to the Chamber of Commerce advising investment by conservative foundations in like-minded think tanks and policy institutes.<sup>73</sup>

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70. SCHWARZ, *supra* note 18, at 365.

71. Berle, *supra* note 69.

72. Alice O’Connor, *The Politics of Rich and Rich: Postwar Investigations of Foundations and the Rise of the Philanthropic Right*, in AMERICAN CAPITALISM: SOCIAL THOUGHT AND POLITICAL ECONOMY IN THE TWENTIETH CENTURY 228–48 (Nelson Lichtenstein ed., 2006).

73. An aside: The rise of right-wing and conservative think tanks and policy research institutes transformed American politics in the decades after WWII. This effort began in response to the transformation in the American social contract brought on by the New Deal, but it gained particular traction in the early 1970s, and, in part, as a response to the agenda outlined by future Supreme Court Justice Lewis Powell in his famous *Powell Memorandum* of 1971. In this influential memo, Powell described an American economic system that was “under broad attack” in American classrooms,

Due in no small measure to these efforts, we live in a world where, as Daniel T. Rodgers has pointed out, “the market” is seen as the most efficient and appropriate means of making complex economic decisions.<sup>74</sup> The Berle of the 1950s drifted toward the idea that corporate officials, with some oversight from stockholders, were effectively regulating themselves in the public interest. But even this rose-colored view of American capitalism recognized that there had to be some force—at the very least stockholders or far-sighted company officials—who could look out for the public interest. Even in the prosperous years of the New Era and the booming 1950s, policy makers would have found confidence in something as amorphous as “the market” a curious concept on which to latch the economic future of the nation.

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churches, state houses, media outlets, and beyond. The Powell Memo amounted to a call to arms for business leaders and conservative groups who constructed organizations like the Heritage Foundation, Cato Institute, and Manhattan Institute, among others, to confront the statist and even socialist tendencies they identified in American politics and society. This flourishing and influence of institutions designed to advance a particular agenda stands in contrast to the early twentieth century, when industrial leaders and philanthropists poured resources into an earlier group of institutions devoted to making sense of the dramatic changes underway in American society in the first decades of the twentieth century. RONALD STORY & BRUCE LAURIE, *THE RISE OF CONSERVATISM IN AMERICA, 1945–2000: A BRIEF HISTORY WITH DOCUMENTS* 5–20 (2007).

74. DANIEL T. RODGERS, *THE AGE OF FRACTURE* 41 (2011).