The History of the Corporation

By Lee Drutman

How did corporations become the dominant institutions in our society, powerful behemoths with a hand in every almost every aspect of our lives?

The history of corporations in America is indeed a fascinating tale, the story of how a small legal construction designed to harness human ingenuity and entrepreneurship for the public good has been transformed into a largely unaccountable force that has, in some instances, grown larger than entire nations.

The modern corporation dates back to 1601, when Queen Elizabeth I created the East India Trading Company. At the time, the concept of a corporation was quite different than today. Corporations were small, quasi-government institutions chartered by the crown for a specific purpose. The idea was to bring together investors interested in financing large projects, such as exploration. (Many American colonies were originally governed by corporations, such as the Massachusetts Bay Company). Kings and queens kept a close watch on these corporations and didn't hesitate to revoke charters if they weren't happy with the way things were being run. Investors were liable for any harm or loss caused by the company.

As the American colonies developed and won their independence, corporations remained in the background. Sure, there were a few notable anti-corporate protests, like the Boston Tea Party (the Sons of Liberty dumped 342 crates of British East India Company tea into the ocean), but the vast majority of Americans at the time lived and worked on small family farms. The real threat was the unilateral, unaccountable power of King George III, and the founders of a new nation, skeptical of that kind of power, formed a government of checks and balances to prevent any one branch from getting too powerful. Although corporations were not mentioned once in the Constitution or the Bill of Rights, Thomas Jefferson famously noted that representative government's purpose was "to curb the excesses of the monied interests." Had the Founders realized how powerful corporations would become, likely they would have created checks on their power.

Post-Revolution America developed largely along the ideals of Jefferson's yeoman farmer, with American industrialism lagging behind its European counterparts. Corporations remained small institutions, chartered at the state level for specific purposes, such as banking or seafaring. Corporations could only exist for a limited time, could not make any political contributions, and could not own stock in other companies. Their owners were responsible for criminal acts committed by the corporation and the doctrine of limited liability (shielding investors from responsibility for harm and loss caused by the corporation) did not yet exist. Often corporate charters went to the wealthy or well-connected. But these small corporations did move America into the industrial era, encouraging entrepeneurism on a grander scale. Governments kept a close watch on how these corporations were being run, regularly revoking charters if corporations were not serving the public interest. For example, in 1832, President Andrew Jackson refused to extend the charter of the Second Bank of the United States and the State of Pennsylvania revoked 10 banks' charters.

Slowly, though, corporations were gaining power. In 1819, the Supreme Court ruled in the case of *Dartmouth College v. Woodward* that states could not alter a contract granted by a previous legislature, leaving Dartmouth's King George III-granted charter in tact and creating a framework of protection for corporations against government encroachment.

As industrialization began reshaping America, great fortunes began accumulating in the hands of canal owners and financiers and later railroad and steel magnates. And as great fortunes accumulated,

a new wealthy class began influencing policymaking, changing the rules governing the corporations they owned. Charters grew longer and less restrictive. The doctrine of limited liability – allowing corporate owners and managers to avoid responsibility for harm and losses caused by the corporation – began to appear in state corporate laws. Charter revocation became less frequent, and government functions shifted from keeping a close watch on corporations to encouraging their growth. For example, between 1861 and 1871, railroads received nearly $100 million in financial aid, and 200 million acres of land.

As corporations grew in size and influence, however, their accounting structure remained the same. For a small corporation driven by investors, it made sense to measure corporate performance by measuring financial profits and losses. But for a corporation with thousands of employees and millions of customers, a corporation that was receiving public subsidies and encroaching on communities, a more extensive reporting system that measured the impact of the corporation on people's lives might have made sense. This never developed, however, and the profit-generating mentality remained the dominant driving force behind corporations.

The growing industrialization of America in the second half of the 19th century meant more citizens were leaving the countryside farms for work in the cities. A wave of immigration swelled the ranks of the urban workers, creating a new class that depended on factory jobs to earn a living and depended on factory products to survive. The era of self-sufficiency was ending and the era of corporate market dominance was beginning.

Meanwhile, corporations were expanding their power through both courts and legislatures, both of which were increasingly packed with sympathizers. In 1886, corporations emerged from the Supreme Court case of *Santa Clara v. Southern Pacific Railroad* as "persons" under the law and thus could use the 14th Amendment to protect their equal rights. This meant that corporations were now entitled to free speech, protection from searches and seizures, and could not be discriminated against. Suddenly, corporations (artificial persons) had the same rights as real people.

At the state level, checks on corporate power were quickly eroding. In 1889, New Jersey became the first state to permit corporations to own equity in one another, perhaps as an attempt to attract more business. A "race to the bottom" quickly followed, with states all over the country madly gutting their corporate laws to be the most business-friendly state. In 1896, New Jersey passed the revolutionary "General Revision Act," permitting unlimited size and market share, removing all time limits on corporate charters, reducing shareholder powers, and allowing all kinds of mergers, acquisitions, and purchases. Not to be outdone, Delaware passed its "General Incorporation Law" in 1899, which set the standard by essentially allowing corporations to write all their own rules of governance. Today, nearly 60% of all Fortune 500 companies are incorporated in Delaware

Meanwhile, between 1895 and 1904, the first great merger wave consolidated 1,800 companies into 137 mega corporations or "trusts." When all was said and done, the corporation was transformed from a quasi-public, state-controlled organization limited in size to a gigantic unlimited private organization with limited responsibility and limited accountability.

Corporations were now the dominant institutions of society, and as their excesses provoked public sentiment, the government set out to deal with the problem. Presidents like Teddy Roosevelt and Woodrow Wilson now turned to a regulatory system and applied anti-trust laws to corporations that were getting too big, engaging in a tug-of-war with corporations over who was in charge. By the 1920s, however, a string of pro-business presidents (Harding, Coolidge, Hoover) gave up on cracking down on corporate power. Instead, Coolidge proclaimed in 1925: "The business of America is business."

Meanwhile, as corporations grew larger and larger and more and more people began to own stock, a new problem emerged – the owners (now an increasingly diffuse network of individual investors) no longer controlled the corporation. Instead, managers were running the company at their whims, accountable to no one. In the days of the robber barons, magnates like J.P. Morgan and Cornelius Vanderbilt ran the companies they owned with pride, insisting that their benevolent leadership would benefit the public. Now, with ownership increasingly divorced from management, owners took little interest in how their company was being run and managers had few consequences for mismanagement. This meant that managers could more easily use the corporations to enrich themselves at the expense of workers or employees, as they increasingly did. A.A. Berle and Gardiner C. Means first noted this problem in their groundbreaking work *The Modern Corporation and Private Property*, published in 1932.

In 1929, the stock market crashed, ending a speculative bubble and pushing the country into a great depression where unemployment would reach 25%. Like the stock bubble of the ‘90s, the bubble of the ‘20s featured a new technology (the automobile and the radio) and lots of financial speculation.

The Great Depression changed the corporate power equation again. For the first time, government became the dominant economic force by creating a massive public works program as well as attempting to control wages and prices. The New Deal worked toward stronger government control of industry, but it was a control that favored large, stable corporations over the unpredictability of competition. The New Deal favored government mechanisms to reduce the risks of capitalism. This helped the entrenched corporate powers to stay strong. However, organized labor grew more powerful as well, creating a more balanced corporate framework.

America emerged from World War II as the dominant global power and the world’s major exporter. This helped U.S. corporations to become increasingly wealthy. In the 1950s and 1960s, large corporations dominated, but organized labor and government remained strong countervailing forces, creating an economy that was at least somewhat equitable and balanced (compared to today). In 1954, Union membership peaked at 34 percent of the workforce.

By the 1970s, however, a new free market idealism was developing. In 1970, Nobel Prize-winning economist Milton Friedman wrote that “There is one and only one social responsibility of business — to use its resources and engage in activities designed to increase its profits”, signaling the birth of a new American myth. When Ronald Reagan became president in 1980, he put much of this into policy, kicking off two decades worth of deregulation, eliminating key public controls over corporations. He also cut taxes on corporations and the wealthy, draining the public coffers. Organized labor became weaker as industrial jobs went overseas and employees began to jump around more and more. Big business was now increasingly free to do as it wanted with minimal government oversight. Market populism prospered with mega-mergers everywhere and CEO pay skyrocketing. (By 2000, corporations were merging at the rate of more than 100 a day, approximately 5 times the rate in 1995. Meanwhile, CEO pay clocked in at 531 times average employee pay in 2000; in 1980, the ratio was 42-to-1.)

Corporate political donations also grew rapidly; in 2000, business interests donated $1.2 billion to federally elected candidates, accounting for 75% of all political donations. With 20,000 lobbyists in Washington, corporations have become experts at getting their money’s worth in legislation and lax regulation in return for cash contributions.

And that’s where we are today. Corporations stand as the dominant institutions in our society. They provide the products and services upon which most of us have come to depend. Through advertising, public relations, and mass media, they shape our views of the world and our views of each other. They handle our finances and our health care, even our ability to communicate with each other. They

provide most of our jobs. They wield more influence over the legislative process than any government branch was ever supposed to wield. They increasingly provide many essential services, including water, electricity, and health care. Even public schools, universities, and churches have turned to corporations for funding, opening up once sacred spaces to commercialization. Meanwhile most natural countervailing force against corporate power, organized labor, has become increasingly powerless. Today, only 10% of the private workforce is organized, a 60-year low.

Yet, hopefully by examining and understanding the history of corporations in America, we can understand that it doesn't have to be this way. Corporations were not always the dominant institutions in society. Corporations did not always enjoy constitutional rights, unlimited size, and unlimited lifetimes. Naturally, we cannot go back to the past, nor should we overly romanticize a prior era. We must instead learn from the past and draw inspiration from American traditions like democracy that have proven far more durable than corporate dominance.

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The Evil of Access

From the December 30, 2002 issue of *The Nation*

By Mark Green

Among the least-discussed numbers from November 5 is $184 million—the amount by which Republican national committees out-spent their Democratic equivalents. And with President Bush loudly beating his war drums, who heard any discussion about the escalating cost of campaigns? Spending in the New York and Pennsylvania gubernatorial elections, for example, *tripled* within one election cycle.

The evidence that money shouts is mountainous: Ninety-four percent of the time, the bigger-spending Congressional candidate wins—and 98 percent of House incumbents win. The average price of a House seat rose from $87,000 in 1976 to $840,000 in 2000. It cost Ken Livingstone 80 cents a vote to win the London mayoralty last year, compared with Michael Bloomberg's $100 a vote in New York City.

As money metastasizes throughout our political process, the erosion of our democracy should be evident to left and right alike:

§ *Special Interests Get Special Access and Treatment.* While members publicly and indignantly deny that big contributions often come with strings attached, all privately concede the obvious mutual shakedown—or as one Western senator told me, "Senators are human calculators who can weigh how much money every vote will cost them." Two who violated the usual senatorial *omertà* gave dispositions in the federal district court arguments on the McCain-Feingold law earlier this month. "Who, after all, can seriously contend," said former Senator Alan Simpson, "that a $100,000 donation does not alter the way one thinks about—and quite possibly votes on—an issue?" Senator Zell Miller bluntly described the daily conversations from fundraising cubicles: "I'd remind the agribusinessman I was on the Agriculture Committee; I'd remind the banker I was on the Banking Committee.... Most large contributors understand only two things: what you can do for them and what you can do to them. I always left that room feeling like a cheap prostitute who'd had a busy day." The access that money buys, of course, doesn't guarantee legislative success, but the lack of it probably guarantees failure.

After 9/11, for example, many legislators thought the argument for energy conservation and reduced dependence on Middle Eastern oil was obvious. So Senators John Kerry and John McCain were stunned when their effort to increase fuel-efficiency standards failed 62 to 38—with the average no vote getting $18,000 in donations from auto companies and the average yes vote only $6,000. One senator insisting on anonymity said: "That vote was one of the most politically cowardly things I ever saw in the Senate. We know how to be energy-efficient, and it starts with cars."

§ *Fundraising Is a Time Thief.* Imagine if someone kidnapped all candidates for state and federal office for half of each day. The story would be bigger than Gary Condit, and would surely lead to calls for tougher penalties against political kidnapping.

Well, there is such a culprit. It's the current system of financing political campaigns, which pits each candidate in a spiraling "arms race," not merely to raise enough money but to raise far more than any rival. One Midwestern senator complained, "Senators used to be here Monday through Friday; now we're lucky to be in mid-Tuesday to Thursday, because Mondays and Fridays are for fundraisers. Also, members loathe voting on controversial issues, because it'll be used against you when you're raising money."

Candidates start to feel like Bill Murray in *Groundhog Day*, trapped in a daily, stultifying repetition they can't escape. As a mayoral candidate I made 30,000 phone calls (that is not a misprint) over two years to lists of potential donors and spoke at 205 of my own fundraising events. It's hard to overstate

the physical and psychological stamina required in such an effort, and how little time and energy it leaves for all else.

§ *The "Money Primary" Weeds Out Good Candidates.* Potential candidates know they have to succeed in not one but two elections: The first, in which contributors "vote" with their dollars, comes long before constituents have their say. And if you don't win round one financially, you might as well not bother with round two; after all, because incumbency attracts money and money entrenches incumbency, no challenger spending under $850,000 won a House seat in 2000. With odds like those, many talented women and men flinch.

§ *The "Pay to Play" System Especially Hurts Democratic Candidates and Values.* Most Republicans oppose new regulations and taxes out of authentic belief. So they regard the special-interest funding of public elections as a brilliant system: For them, principles and payments go hand in hand. Robert Reich, a former Labor Secretary and recent Massachusetts gubernatorial candidate, believes his party is losing its identity as the champion of the average family "because Democrats became dependent on the rich to finance their campaigns. It is difficult to represent the little fellow when the big fellow pays the tab."

Ever wonder why polls show that so many Americans strongly favor higher minimum wages, prescription drug benefits for Medicare, quality daycare, publicly financed Congressional campaigns and stronger environmental protection, even at the cost of higher taxes—yet the political system can't produce any of these? The pay-to-play system is a circuit breaker between popular will and public policy.

Put yourself in an honest Democrat's shoes: What do you do when a big-business donor privately asks you, "So where do you stand on X?" X being something that hugely helps or hurts his economic interests? You realize not only that your answer could immediately affect a large contribution but that the cost of paying for X will fall on taxpayers who are not listening on the phone.

Or suppose you're in government. Once, as the New York City consumer affairs commissioner, I was considering filing a legal action that could cost a Democratic businessman I knew well millions of dollars. I successfully sued, and he did lose millions, and he wouldn't speak to me for a decade. But this outcome *did* cross my mind as I weighed my decision to prosecute—given the current political money process, how could it not?

§ *Wealth Buys Office.* As more and more multimillionaires run and win—the percentage of them in the Senate has risen to more than one-third, about the same proportion as it was before senators began being elected by popular vote in 1913—more and more experience-rich candidates are grilled by party leaders about how they can possibly run against experience-poor but wealthy candidates. And when a very wealthy candidate inundates TV, radio and mailboxes with ads portraying him as a young Abe Lincoln and you as the Manchurian Candidate, the pressure to hustle special-interest money becomes even more intense.

Also, as campaign reformer Ellen Miller describes it, "the problem [with] more and more wealthy people running and winning is that then tax policy, healthcare policy and education policy are seen through the lenses of multimillionaires, people who don't need government services. They are a different class of people and from a different world than most Americans, who sit around the kitchen table calculating their finances."

So although issues like terrorism, healthcare and pollution absorb far more public attention and concern, the scandal of strings-attached money corrupting politics and government is the most urgent domestic problem in America today—because it makes it harder to solve nearly all our other problems. How can we produce smart defense, environmental and health policies if arms contractors, oil firms and

HMOs have such a hammerlock on the committees charged with considering reforms? The culprit is not corrupt candidates but a corrupt system that coerces good people to take tainted money.

The old and much-discussed saga of political money may reach a climax between now and 2004 as a result of three epic developments:

First, the corporate scandals of 2001-2 started with questions about corrupt financing practices and then moved to questions about corrupt political practices. Joan Claybrook, head of Public Citizen and a veteran of the campaign finance wars, says, “Political money from the Enrons and others bought loopholes, exemptions, lax law enforcement, underfunded regulatory agencies and the presumption that corporate officials could buy anything they wanted with the shareholders’ money.” Once the current war fever abates electorally, will the Enron/Adelphia/Global Crossing/Tyco/WorldCom scandals lead to a shift in our political zeitgeist, as corruption a century ago led to the Progressive Era?

Second, the McCain-Feingold fight re-educated the public about money in politics. Given all the problems of our current system, the McCain-Feingold law is like throwing a ten-foot rope to a drowning swimmer forty feet offshore. But it’s necessary to stop huge soft-money federal gifts that enable big interests to make an end run around federal bans on corporate and labor donations.

Third, the Supreme Court will likely rule next spring on the constitutionality of McCain-Feingold’s two major provisions: banning soft-money fundraising by the national parties and restricting soft money for sham “issue” ads. This will be the Court’s first major consideration of campaign finance since 1976’s disastrous *Buckley v. Valeo* ruling, which held that legislatively enacted “expenditure limits” were an unconstitutional infringement on speech. If the Court had reached a different conclusion then, there would be no $2 million House candidates today, no $15 million Senate candidates, no $74 million mayoral candidates.

Moreover, the State of Vermont last year enacted a spending ceiling. The Court of Appeals for the Second Circuit initially upheld the law in August, arguing that evidence of legislators routinely selling access showed the law was a constitutionally permissible way of stopping such corruption. If this case goes to the Supreme Court with McCain-Feingold—and swing Justices Sandra Day O’Connor and Anthony Kennedy agree with the Second Circuit majority—we’ll be close to taking the for-sale sign off our democracy.

Meanwhile, can the political process significantly reform not just the soft-money but also the hard-money system?

Most senators and representatives I interviewed thought Congress had exhausted itself in the McCain-Feingold fight and that this Republican Congress had no interest in going further. However, Fred Wertheimer of the campaign-reform group Democracy 21, citing the revolution of rising expectations, believes that “winning McCain-Feingold will open the door to another round,” if not in this Republican Congress then in a future one. “And we have put together the best coalition I’ve ever seen on an issue—from the AARP to the Sierra Club to labor and some businesses.”

But 535 campaign finance experts in Congress don’t want to change the rules that got them there and have kept them there; and there are hundreds of large interests who invest thousands and reap billions, a rate of return unrivaled since IBM and Microsoft went public—and who like things as they are.

So systemic reform may turn on the 2004 presidential election. If Gore, Kerry, Gephardt or Daschle runs against the current money game as ardently as McCain did—and wins—our slow-motion decline from democracy to plutocracy could end. Democrats searching for a popular and important message should embrace three fundamental reforms based on the slogan “Don’t Let Enron Run Your Democracy.”

1. *Public Financing.* The rationale is simple: If, say, twenty special interests give a senator $100,000 each, they own him or her; if instead a million taxpayers give $2 each in public funds, *we* own him or her. Isn't it preferable for elected officials to be responsive to all voters rather than to relatively few donors? "Democratically funded elections" could follow either the New York City or the Arizona model. Under the first, 4-to-1 matching grants are made for all gifts up to $250 from people who can vote for the candidate (so a $25 gift becomes $125); under the second, after a gubernatorial candidate crosses a certain threshold—raising 4,000 contributions of at least $5—he or she receives all subsequent funding up to a specified ceiling from the public treasury, which could be raised by a "democracy surtax" imposed on registered lobbyists, political consultants and TV advertisers.

Public financing has worked in presidential campaigns and in New York City, Arizona and Maine elections. It avoids First Amendment arguments, since it increases speech instead of limiting it, and majorities of 70 percent regularly support it.

Two strategies can help win over even more voters and some legislators to democratically funded elections: Because the current private system of financing costs tens of billions in corporate welfare, pollution and lost productivity, any public financing system would be inexpensive by comparison. Also, bad policies—for example, privatization of Social Security and weaker fuel-efficiency standards—should be publicly linked to big contributions so voters understand the impact on their health and wallets.

2. *Spending Limits.* Because the financial "alms" race steals time and buys access, Congress and the Supreme Court should approve Vermont-like spending limits, which existed in the 1971 and 1974 federal campaign-finance laws until *Buckley* threw them out. But isn't money protected First Amendment speech, as Senators McConnell, Lott et al. claim? No, money is property, as Justice John Paul Stevens concluded in a recent case, which is why the 1907 Tillman Act has banned corporate contributions for nearly a century. How does it advance First Amendment values to allow a few wealthy interests to spend millions of dollars more and drown out the voices and contributions of millions of average citizens?

3. *Free or Discounted TV.* Because the airwaves belong to the public, we provide broadcasters with federal licenses—for free—on the condition that they agree to serve "the public interest, convenience, and necessity." But they have not lived up to their end of the bargain, perhaps because broadcasters pulled down $1 billion in revenue from political commercials in the 2000 elections. Reducing that revenue would mean cutting into profit margins that average between 30 and 50 percent.

Paul Taylor, executive director of the Alliance for Better Campaigns, a nonpartisan group that advocates free airtime, sums up the scam: "Our government gives broadcasters free licenses to operate on the public airwaves.... During the campaign season, broadcasters turn around and sell access to these airwaves to candidates at inflated prices." He proposes that candidates who win their parties' nominations receive vouchers for electronic advertising in their general election campaigns. Candidates, particularly from urban areas, who don't find it cost-effective to advertise on television or radio could trade their vouchers to their party in exchange for funds to pay for direct mail or other forms of communication. As historian Arthur Schlesinger Jr. writes, "America is almost alone among the Atlantic democracies in declining to provide political parties free prime time on television during elections." If it did so, it would "do much both to bring inordinate campaign costs under control and revitalize the political parties."

For those who universalize the political moment and doubt we'll ever have public financing, a spending ceiling or free TV, please remember that you're right if reformers don't try.

The history of America shows a “capacity for self-correction.” Even the Supreme Court, given enough time, has reversed itself on such issues as affirmative action, right to counsel, poll taxes and health and safety regulations.

Only such apologists for the status quo as George Will could believe it’s OK for a powerful 0.1 percent of the population to make $1,000 contributions to dictate policy to the other 99.9 percent; for only the rich or the kept to win office; for candidates to spend three-quarters of their time raising money so that the toll-takers known as broadcasters will allow public candidates to speak to the public over our publicly owned airwaves.

“History is like waves lapping at a cliff,” wrote French historian Henry See. “For centuries nothing happens. Then the cliff collapses.”

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The Divine Right of Capital

By Marjorie Kelly

Excerpted from a book of the same title published in 2003 by Berrett and Koehler

Wealth

Where does wealth come from? More precisely, where does the wealth of major public corporations come from? Who creates it?

To judge by the current arrangement in corporate America, one might suppose capital creates wealth — which is odd, because a pile of capital sitting there creates nothing. Yet capital-providers (stockholders) lay claim to most of the wealth that public corporations generate. They also claim the more fundamental right to have corporations managed on their behalf. Corporations are believed to exist for one purpose alone: to maximize returns to shareholders. This principle is reinforced by CEOs, the Wall Street Journal, business schools, and the courts. It is the law of the land — much as the divine right of kings was once the law of the land. Indeed, “maximizing returns to shareholders” is universally accepted as a kind of divine, unchallengeable mandate.

In the business world at large, it is not in the least controversial. Though it should be.

What do shareholders contribute to justify the extraordinary allegiance they receive? They take risk, we’re told. They put their money on the line, so corporations might grow and prosper. Let’s test the truth of this with a little quiz:

Stockholders fund major public corporations — True or False?

False. Or, actually, a tiny bit true — but for the most part, massively false. What’s intriguing is that we speak as though it were entirely true: “I have invested in AT&T,” we say, imagining AT&T as a steward of our money, with a fiduciary responsibility to take care of it. In fact, “investing” dollars don’t go to AT&T but to other speculators. Equity “investments” reach a public corporation only when new common stock is sold — which for major corporations is a rare event. Among the Dow Jones Industrials, only a handful have sold any new common stock in thirty years. Many have sold none in fifty years.

The stock market works like a used car market, as accounting professor Ralph Estes observes in Tyranny of the Bottom Line. When you buy a 1993 Ford Escort, the money doesn’t go to Ford. It goes to the previous owner. Ford gets the buyer’s money only when it sells a new car. Similarly, companies get stockholders’ money only when they sell new common stock, which mature companies rarely do. According to figures from the Federal Reserve and the Securities and Exchange Commission, about 99 percent of the stock out there is “used stock.” That is, ninety-nine out of one hundred “invested” dollars are trading in the purely speculative market, and never reach corporations.

Public corporations do have the ability to sell new stock. And they do need capital (funds beyond revenue) to operate — for inventory, expansion, and so forth. But they get very little of this capital from stockholders. In 1993, for example, corporations needed $555 billion in capital. According to the Federal Reserve, sales of common stock contributed 4 percent of that. I used this fact in one of those large-typeface quotes in a magazine article once, and the designer changed it to 40 percent, assuming it was a typo. It’s not. Of all capital public corporations needed in 1993, stockholders provided 4 percent.

Well yes, some will say — that’s recently. But stockholders did fund corporations in the past.

Again, only a tiny bit true. Take the steel industry. An accounting study by Eldon Hendriksen examined capital expenditures in that industry from 1900 to 1953, and found that issues of common stock provided only 5 percent of capital. That was over the entire first half of the twentieth century, when industry was growing by leaps and bounds.

So, what do stockholders contribute, to justify the extraordinary allegiance they receive? Very little. And that's my point.

Equity capital is provided by stockholders when a company goes public, and in occasional secondary offerings later. But in the life of most major companies today, issuance of common stock represents a distant, long-ago source of funds, and a minor one at that. What's odd is that it entitles stockholders to extract most of the corporation's wealth — forever. Equity investors essentially install a pipeline, and dictate that the corporation's sole purpose is to funnel wealth into it. The pipeline is never to be tampered with and no one else is to be granted significant access (except executives, whose function is to keep it flowing).

The truth is, the commotion on Wall Street is not about funding corporations. It's about extracting from them.

The productive risk in building businesses is borne by entrepreneurs and their initial venture investors, who do contribute real investing dollars to create real wealth. Those who buy stock at sixth or seventh hand, or one thousandth hand, also take a risk — but it is a risk speculators take among themselves, trying to outwit one another like gamblers. It has little to do with corporations, except this: Public companies are required to provide new chips for the gaming table, into infinity.

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It's odd. And it's connected to a second oddity — that we believe stockholders are the corporation. When we say "a corporation did well," we mean its shareholders did well. The company's local community might be devastated by plant closings, its groundwater contaminated with pollutants.

Employees might be shouldering a crushing workload, doing without raises for years on end. Still we will say, "the corporation did well."

We do not see rising employee income as a measure of corporate success. Indeed, gains to employees are losses to the corporation. And this betrays an unconscious bias: that employees are not really part of the corporation. They have no claim on the wealth they create, no say in governance, and no vote for the board of directors. They're not citizens of corporate society, but subjects.

Investors, on the other hand, may never set foot inside "their" companies, may not know where they're located or what they produce. Yet corporations exist to enrich investor alone. In corporate society, only those who own stock can vote — like America until the mid-1800s, when only those when owned land could vote. Employees are disenfranchised.

We think of this as the natural law of the free market, but it's more accurately the result of the corporate governance structure, which violates free-market principles. In a free market, everyone scrambles to get what they can, and they keep what they earn. In the construct of the corporation, one group gets to keep what another earns.

The oddity of it all is veiled by the incantation of a single magical word: "ownership." Because we say stockholders "own" corporations, they are permitted to contribute very little, and take quite a lot.

What an extraordinary word. One is tempted to recall the comment of Lycophron, a Greek philosopher, during an early Athenian slave uprising against the aristocracy. "The splendour of noble birth is imaginary," he said, "and its prerogatives are based upon a mere word."

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A mere word. And yet the source of untold trouble. Why have the rich gotten richer while employee income has stagnated? Because that's the way the corporation is designed. It is designed to pay stockholders as much as possible, and to pay employees as little as possible. Why are companies demanding exemption from property taxes? Why are they cutting down 300-year-old forests? Because that's the way the corporation is designed. It is designed to internalize all possible gains from the community, and to externalize all possible costs onto the community.

"A rising tide lifts all boats," the saying goes. The corporation really functions more like a lock-and-dam operation, raising the water level in one compartment by lowering it in another.

The problem is not the free market. That notion — buyers and sellers regulating prices without external guidance — is relatively innocent. Indeed, brilliant. Nor is the problem capitalism. The capitalist system — private ownership driven by self-interest — is in many ways superbly effective. Certainly free-market capitalism is the most fruitful economic system the world has yet conceived. If we go rummaging through its entire basket of economic ideas — supply and demand, private property, competition, profit, unconscious regulation, wealth creation, and so forth — we'll find most concepts are sturdy and healthy, well worth keeping. But we'll also find one concept that is inconsistent with the others. It is the lever that keeps the lock and dam functioning, and it is these four words: maximizing returns to shareholders.

When we pluck this notion out of our basket and turn it over in our hands – really looking at it, as we so rarely do – we will see it is an aristocratic edict. In a competitive free market it decrees that the interests of one group will be systematically favored over others. In a system devoted to unconscious regulation, it says corporations will consciously serve one group alone. In a system rewarding hard work, it says members of that group will be served regardless of their productivity.

Shareholder maximization is a form of entitlement. And entitlement has no place in a free market. It is a form of privilege. And privilege accruing to property ownership a remnant of the aristocratic past.

Democracy

Alexis de Tocqueville observed that there are two great ages of human history: the aristocratic age and the democratic age. In the twentieth century, governments worldwide have made a great passage from one to the other. In the years just prior to World War I, kings and emperors sat enthroned atop most nations of the globe – but they did not, by and large, survive the two world wars. After a calamitous interval of dictatorship and communism, a majority of the world's nations had, by the 1990's, turned to democracy

We have crossed a great divide in history from aristocracy to democracy. But we have done so only in government. We have yet to democratize economics.

We think of capitalism as the handmaiden of democracy, but that's only partially true. Free market theory points toward democratic outcomes in its emphasis on individuals getting what they earn. But corporate governance points towards aristocratic outcomes in its insistence on shareholder primacy. Corporate governance is anti-democratic. Or, perhaps, pre-democratic.

The wealth-owning class today is a kind of secular aristocracy, much as dictators were secular monarchs attempting to reproduce aspects of privilege enjoyed in the aristocratic era. In the past, secular monads largely failed because they lacked the sustaining myth of the divine right of kings. As fallen dictators from Mussolini to Marcos showed the world, power without myth does not long endure. Analyzing the fall of dictators in a chapter tellingly tilted "The Weakness of Strong State," Francis Fukuyama observed, "The critical weakness that eventually toppled these strong states was in the last analysis a failure of legitimacy – that is, a crisis on the level of ideas."

The secular aristocracy must cling to its sustaining myths. They provide the base of its legitimacy, without which the amassing of wealth begins to seem indefensible. That's why the core myth of today's aristocracy – that shareholder returns must be maximized – is considered unchallengeable, nearly sacred. It is a myth with the force of law. We might call it our modern version of the divine right of kings.

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Although such myths serve to legitimate a bias favoring those who own property (which today we call "financial assets") we do not hold them consciously; instead, our legal structures hold them for us, as they once held biases favoring men over women, or whites over blacks.

The first step to changing unconscious bias is to see it. To help us do so is the aim of this essay (and of the book I am writing of the same title). It is a venture into what Michel Foucault would call an "archaeology of knowledge," a foundational dig, examining the ancient conceptual structures on which wealth bias is built. It is an inquiry into the aristocratic echoes in the corporate worldview — the sustaining myths which support shareholder primacy.

I'm primarily addressing public corporations, because they are fundamentally different from smaller, private, family-owned corporations. My premise is that the shareholder primacy that drives these mammoth firms is, like the divine right of kings, an increasingly archaic mandate, imposed on an organic system capable of self-governance. It is a stricture that is blocking the natural evolution of capitalism, because it is increasingly out of step with the times due to a number of massive changes in the nature of major public corporations:

1. Increasing size. Today, among the world's one hundred largest economies, fifty-one are corporations. They have revenues larger than nation-states, yet maintain the guise of being "private."
2. The shrinking of ownership functions. Though still considered "owners," stockholders in major public companies do not manage, fund, or accept liability for "their" corporations. Ownership function has shrunk to one dimension: extracting wealth.
3. The rise of the knowledge economy. For many companies, knowledge is the new source of competitive advantage. To allow shareholders to claim the corporation's increasing wealth — when employees play a greater role in creating that wealth — is a misallocation of resources.
4. The increasing damage to our ecosystem. The rules of accounting were written in the sixteenth century, when nature seemed an unlimited reservoir of resources, and an unlimited sink for wastes. That is no longer true, but the rules of accounting retain fossilized remnants of those ancient attitudes.

Major public corporations have evolved into something new in civilization, structures more massive, more dominant in the world than our democratic forefathers dreamed possible. They left us little guidance on governing these institutions – the word "corporation" appears nowhere in the Constitution – because only a handful of American corporations existed when that seminal document was written. Washington and Jefferson governed a nation of farmers, in which most nonagricultural businesses were indeed "private," run out of the parlor, or in the barn, as part of the private household.

As the name itself implies, "public" corporations are no longer private. The major corporation, as Franklin D. Roosevelt observed, "represents private enterprise become a kind of private government which is a power unto itself."

* * *

We fail to see the growing public power of corporations because we accept the myth that corporations are pieces of private property owned by shareholders whose primacy is a natural mandate of free markets, just as our ancestors accepted that nations were private kingdoms owned by kings whose supremacy was a natural mandate of God.

We live with these myths like buried shells from an old war, the war we thought we had won, between monarchy and democracy. When these invisible old bombs go off – as they have in the resurgence of sweatshops, the rise of income inequality, or the increasing demands of corporate welfare – we become alarmed. We ask, how can the "free market" go so wrong? Believing the myth that the system must remain unfettered, we feel powerless to reach down and defuse the explosive and buried nub of the problem, which is shareholder primacy. Or in broader terms, wealth bias.

Property

In searching for the source of stockholder privilege, we come around again to the incantation of that single, magical word: "ownership." It is property ownership that gives stockholders power. Thus, like a feudal estate, a corporation must be considered a piece of property – not a human community – so it can be owned and sold by the propertied class.

This word "own" is deceptively small, and worth unpacking. Because stockholders "own" corporations, we are implicitly told: 1) the corporation is an object that can be owned; 2) stockholders are sole masters of that object; 3) they can do as they like with "their" object. It's an entire worldview in three letters. And as a result of this tiny incantation (like the "Shazam" that turns a boy into Captain Marvel), stockholders gain omnipotent powers: they can take over massive corporations, break them apart, sell them, squeeze them dry, or shut them down – while employees and communities remain powerless to stop them.

Power of this sort has an unmistakable feel of something more ancient. Ownership – that bundle of concepts we also label "property rights" – is one antique tradition that has remained impressively intact. It comes down to us from that time when the landed class was the privileged class, by virtue of its wealth in property. To own land was to be master. And in the master's view, what was owned was subordinate, as in the imperial presumption that India was a "possession" of the throne of England. Or the feudal presumption that lords could own serfs, like so much livestock.

Ownership, according to British law, conferred upon the owner "sole and despotic dominion." The phrase is from William Blackstone's eighteenth century *Commentaries on the Laws of England*. It is a phrase worth lingering over, for "dominion" shares the same root as "domination." And "despotic" means the tyrannical rule of those who are not free.

Even in John Locke's *Two Treatises of Government* – considered a founding document of democracy – God is conceived of as the Great Property Owner. Locke wrote:

> For Men being all the Workmanship of one Omnipotent, and infinitely wise Maker; All the Servants of one Sovereign Master, sent into the World by his order and about his business, they are his Property, whose Workmanship they are....

This notion of one sovereign master extended to the marriage relationship, where only men were permitted to own property. In early American law, a husband became owner of his wife's property upon marriage. He had sole right to administer it, had sole claim to its profits, and was required to render his wife no accounting. In the 1764 case of *Hanlon v. Thayer*, a Massachusetts court said a husband owned even his wife's clothing — though she'd brought it with her at marriage. Husband and wife were one legal person, and that person was the husband.

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Today, the corporation is considered one legal entity, and that entity is equated with stockholders. Like wives, employees "disappear" into the corporation, where they have no vote. The property of the corporation is administered solely in the interests of stockholders, who like husbands claim the profits, and are required to render employees no accounting. We have thus a "corporate marriage" in which one party has sole dominion. The reason is property.

Profit

The "property" stockholders have in corporations is represented by two numbers. The first is the stream of income, called profit, or earnings. Stockholders get a piece of it in dividends. The second is the value of the corporation itself, called market value, or capitalization. (It's the value of all shares added together.) Stockholders receive their portion of market value when they sell stock and pocket capital gains, if the stock has gone up. In analogy to a rooming house, you might say stockholders own the stream of rent coming in, and they own the house itself.

The key to it all is profits. This is the wealth – the "property" – the corporation creates each year. The value of the corporation as a whole is often expressed as a multiple of profits (generally called "earnings"), as in the price/earnings ratio. If earnings go down, the value of the corporation will often go down. Hence maximizing profits means working in the stockholder's interests — and if necessary, working against employee and community interests. Profit is often viewed as a neutral concept, and it could be, if companies made some rational, periodic analysis of how to allocate it. But they don't. Custom grants to employees and the community no right to a cut of profit. Capitalist theory says it belongs to stockholders alone.

Jeff Gates in *The Ownership Solution* calls this the "closed loop" of wealth creation. Stockholders are by definition those who possess wealth. And in the design of the corporation, all new wealth flows to those owning old wealth, in a closed loop.

In the current narrative of the corporation, it works like this: A corporation exists to generate profit. Profit belongs to stockholders, but they leave part of it in the corporation to fund growth. So a portion (about a third) is paid out as dividends, and the rest is kept as retained earnings. Those earnings are generated by the income statement, and retained on the balance sheet, where they are added to shareholder equity. Equity is what stockholders initially contributed when they purchased shares from the company. And by the magical closed loop of accounting, equity grows, year after year, while stockholders never contribute another cent out of their pocket.

Ergo- Stockholders "create wealth" without lifting a finger.

We call this "return on equity," or ROE. It is designed to continue into infinity.

It's a bit like the plant in *The Little Shop of Horrors*, which ate everything in sight. The more equity grows, the more it demands to grow. If equity is at, say, $1 million, and grows 15 percent a year for ten years, it quadruples. So if a 15 percent return on equity initially means shoveling out $150,000 worth of profits to satisfy shareholders, by the tenth year 15 percent requires a shovel four times as

big, or $600,000. The company needs four times the profits just to stay in place as far as stockholders are concerned, yielding the same ROE, year after year.

It's like pushing a rock up a hill, and when you push nice and hard, the rock gets bigger. There is no top of the hill. You must do this for eternity.

It's little wonder CEOs at public companies are desperate to boost profits however they can — sending jobs to sweatshops overseas, demanding corporate welfare, refusing to give raises using temporary workers without benefits, wheedling tax breaks, downsizing staff. No one needs to stand up and tell them to do these things. The financial statements make the demand. The closed loop of corporate accounting holds the demand in place forever.

One enforcement mechanism is the hostile takeover, in which CEOs who fail to deliver are given the boot. Return on equity functions a bit like the Mafia, demanding a larger and larger payment every year, or the hostile takeover folks come and break the CEO's kneecaps.

Return on equity lasts forever, as did title of nobility, which had a similarly tenuous connection to merit. At some point, it's true someone did invest dollars in the corporation, just as someone quite often did do something "noble." But that single act granted passive privilege to a string of other folks, who did nothing. They continue to pass on privilege, hand to hand, forever. Of course, privilege of nobility passed by inheritance, while privilege of stock ownership passes by purchase. So we have made a few changes.

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One might debate the legitimacy of this arrangement. One might question the rationale of an infinite payback for a one-time hit of money. (Even credit cards let you off the hook at some point.) But let us sidestep that debate.

Let us assume, for the sake of argument, that all profits legitimately belong to stockholders. Let us assume they own all tangible corporate assets: the book value of the corporation is theirs. (Book value means everything you own minus everything you owe. It's what would be left, theoretically, if you sold everything and paid off debts.) Even granted this, stockholders are still running off with 75 percent of corporate value that's arguably not theirs.

Consider: At year-end 1995, book value of the S&P 500 accounted for only 26 percent of market value. The combined book value of these companies totaled $1.2 trillion. Market value was $4.6 trillion. Thus "intangibles" were worth $3.4 trillion – three times the value of tangible assets.

Thus, even if S&P stockholders owned the companies' tangible assets, they got off scot-free with other airy stuff worth three times as much.

Included in intangibles is discounted future value (what the market will pay today for estimated future value), plus things like patents and reputation. But also included is a company's knowledge base, its living presence. Or to call it by a simpler name: employees.

Human Capital

In owning intangible value, stockholders essentially own employees — or at the very least, they have the right to sell them (which amounts to the same thing).

Take the case of the Maryland company in Chapter 11 bankruptcy, which in 1997 sold itself to Space Applications Corp. (SAC) in Vienna, VA. The company's real assets were its one hundred scientists.

So it sold them. As Edward Swallow of SAC told the *Wall Street Journal*, “The company wasn’t worth anything to us without the people.”

“Human capital” acquisitions happen all the time. Through 1997, Cisco Systems Inc. in San Jose, California, had made nineteen of them – mostly acquisitions of small software companies with little revenue but fifty to one hundred employees, for which it paid premium prices: up to $2 million per employee.

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It’s revealing when the accountants go to record such purchases on the balance sheet. If you pay $100 million for a company with, say, $25 million in tangible assets, what’s the other $75 million of stuff you bought? How do you record it? Well, what you don’t record is “one hundred scientists.” In post-Civil War America, we recoil from the notion human beings might be bought and sold. So we say a company has purchased “goodwill.” That’s how it’s booked: as a line item on the balance sheet called “goodwill.”

The parallel to Blackstone is eery: our law does not support the literal buying and selling of persons, but it does support the principle that stockholders can own certain kinds of property in employees. We allow company owners to sell company assets, even when the primary assets are one hundred scientists. This doesn’t make these scientists property in the sense slaves were property, because the scientists are free to leave. But neither are they property owners, with a right to vote on the sale and a right to pocket the proceeds. Their status is akin to a third category recognized by Blackstone: “that of a right-bearing subject who is also the property of another.”

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Employees-as-property is a disturbing concept. But evidence of it is disturbingly widespread – as in the commonplace observation that “employees are our greatest assets.” Assets, of course, are something one owns.

And companies can take this quite literally. Consider the case of Evan Brown. This computer programmer claimed to have dreamed up a concept that would fix outdated computer codes, and he wanted to develop it on its own. But his employer, DSC Communications in Piano, Texas, said the idea was company property, because Brown had signed an agreement granting DSC rights to inventions “suggested by his work.” Brown never made notes for his concept. So when DSC sued him, it wasn’t for ownership of his papers. It was for ownership of his thoughts.

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How can companies own employees’ thoughts? Isn’t it unconstitutional to own human beings? Questions like these are not asked in the property-based society of capitalism. The fact that corporations fail to ask them is a sign of their pre-democratic bias: their archaic mental habit of seeing everything – even human knowledge – as property, and seeking to own it.

Through the lens of ownership, one either owns property, or becomes property. There is nothing else.

It’s an attitude that says, if I own the assets of a firm, I own everything created on top of those assets. All new wealth flows to old wealth. This is a feudal assumption – and we can see it more clearly if we make the analogy to land. Say a landowner pays a tenant to farm some land, and the tenant builds a house there. Who owns the house? The landowner or the tenant?

In feudal England, the landowner legally claimed the house. But as legal scholar Morton Horwitz points out, American courts rejected this claim, beginning with the 1829 case. *Van Ness v. Pacard*, where Justice Story wrote: "what tenant could afford to erect fixtures of much expense or value, if he was to lose his whole interest therein by the very act of erection?" Under democratic law, the rule became that "the value of improvements should be left with the developer."

Refusing to bow to ancient property rights, democratic law articulated a new precedent: the house belongs to the person who built it. New wealth flows to those who create it.

In this tradition, employees who "build" atop the corporation (creating new products or new efficiencies) should have a legal right to the value of their improvements. But in corporate law that isn't the case. Corporate law says stockholders own everything, Hence the increasing value of the corporation flows to shareholders, though they haven't lifted a finger to create that value. The presumption is literally feudal.

Personal Assets

Tied up with this feudal presumption is the notion that property owners are the corporation. Employees are incidental: hire them today, get rid of them tomorrow, they're of no consequence. They're not on the balance sheet, so they don't exist in the tally of what matters.

Yes, well. We might puncture this fantasy with a simple question: What is a corporation worth without its employees?

This question was acted out, interestingly enough, in London, with the revolutionary birth of St. Luke's advertising agency, which was formerly the London office of Chiat/Day.

In 1995, the owners of Chiat/Day decided to sell the company to Omnicon — which meant layoffs were looming — and Andy Law in the London office wanted none of it. He and his fellow employees decided to rebel. They phoned clients and found them happy to join the rebellion. And so at one blow, London employees and clients were leaving.

Thus arose a fascinating question: what exactly did the "owners" of the London office now own? Without employees and clients, what was the London branch worth? One dollar, it turned out. That was the purchase price – plus a percentage of profits for seven years – when Omnicon sold the London branch to Law and his cohorts. They renamed it St. Luke's, and posted a sign in the hall: Profit Is Like Health. You Need It, But It Is Not What You Live For. All employees became equal owners. Ownership for St. Luke's is a right that is free, like the right to vote. Every year now the company is revalued, with new shares awarded equally to all.

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Thus we see how the presumptions of property hold up in the knowledge era: the fiction that outsiders can "own" a company, which is nothing but a network of human relationships, is as flimsy as a house of cards. Employees themselves are the cards, willingly holding the place together, even as stockholders walk off with the wealth that employees create.

How long this will be sustainable remains to be seen. But for the time being, employees seem content to remain hypnotized: believing themselves powerless, and accepting (shazam!) that stockholders have sole and despotic dominion.

No one thinks to object when employees are called "assets" – or sold in an acquisition. We don't notice when employees are lumped with "intangibles": as though they are not flesh and blood, but ghosts. It

seems rational that corporate accountants recognize the value of "goodwill," even as they ignore the value of employee knowledge.

We accept these notions, because we operate from the unconscious assumption that corporations are objects, not human communities. And if they're objects – akin to feudal estates – then they're something outsiders can own, and the humans working there are simply part of the property. Either you own property, or you become property: there is nothing else in a property-based world.

These antique notions inhabit us at levels beneath awareness. We don't become conscious of them until someone like Andy Law, or Evan Brown, stands up to stockholders and says, "I am not your property." Such gestures are reminiscent of the founding fathers standing up to Great Britain and saying, "America is no longer your property." Or women standing up to men saying, "We are not your possessions."

What seems solid melts under challenge. In the heat of confrontation, the notion of "owning" human beings slips away, like ice melting. Or like an incantation, fading, once we have broken its spell.

Wealthism

It's instructive to recall that at America's founding, the voting franchise was limited by three biases then considered legal: biases based on race, sex, and wealth. All three restrictions on the vote have since been removed. But only the first two restrictions have been recognized as unfair forms of discrimination, which we term "racism" and "sexism." The third, discrimination based on wealth, hasn't yet been fully recognized. We might begin by giving it a name. I suggest "wealthism."

Though it is pervasive, this bias has no coherent history or theory comparable to those dealing with racism and sexism. There is a large literature on "class," which is a vital beginning. But "class" is too amorphous a term. Wealth lurks in its background, but in the foreground are an array of issues, having to do with the family you're from, your mode of dress, where you went to school, how you speak – all of which may be only tangentially related to possession of wealth. Furthermore, America pretends it is a society without classes. But no one would suggest we are a society without wealthy individuals.

In point of fact, "wealthism" has a precision that "class" lacks. Corporate financial statements do not discriminate based on mode of dress. The voting franchise was not restricted based on how people spoke. These structural forms of discrimination find their basis in wealth. Because we fail to name this discrimination precisely, we fail to see how it functions (how many people understand how financial statements work?) and we fail to claim its history. This history lies cloaked in collective amnesia, lost in a kind of vast national forgetting. How many of us could say when or how wealth restrictions on the vote were removed? How many of us remember Thomas Dorr?

Dorr was a hero in the fight for white manhood suffrage in Rhode Island, where property restrictions once kept more than half of adult males from voting. In the Dorr Rebellion of 1842, the disenfranchised rose up and created their own "People's Constitution" – mandating universal suffrage for white males – and elected Dorr as their governor. This put Rhode Island in the awkward position of having two governors until President Tyier stepped in to crush the rebellion. Dorr was sentenced to "life imprisonment" (which lasted one year), but his cause was soon triumphant: In 1843, state suffrage provisions were liberalized. By the 1850s, wealth restrictions on the vote were abolished in virtually all states.

We don't know this history, because wealth prejudice remains largely unconscious. Change begins by seeing. And we do not yet see.

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Wealth bias is articulated – quite brazenly – in the mandate to maximize returns to shareholders. It is given institutional form in the denial of corporate voting rights to employees. It is right in front of our eyes.

The 1919 date of *Dodge v. Ford Motor Co.* – the case that said the purpose of the corporation is to serve stockholders – is worth noting, for it anchors the notion of shareholder primacy in the era to which it belongs: that era which still denied voting rights to women and blacks, that era when such forms of discrimination were legal. In that time, when only white men were considered full members of society, it seemed natural that only wealth-holders would be full members of corporate society.

Corporations still live in the charmed circle of this taboo. They see their customs as unalterable, like the custom that only stockholders may vote, that wealth's only goal is more wealth, that the measure of success is a rising stock price. We buy into this belief system. With our tiny stashes of stock, we think the system is working for us, even as wages are sluggish, working hours are increasing, layoffs are rampant, and benefits are declining. Even as our children study in poorly funded schools while corporations elude the property taxes that once supported those schools.

There are seams of vulnerability here, once we think to look for them. Great seams of illegitimacy, of a creaky antiquity, One day, when there's been a bit more of a thaw in the climate of opinion, the time will come to strike at a few of these seams. Change might result more quickly than we imagine. Roosevelt enacted his most transformative New Deal laws in just one hundred days, or slightly over three months. This kind of opening for change is likely to come again. For if the system design is unsustainable (and it is), crisis becomes more likely. If the corporate governance system in the meantime seems impenetrable, it's because all closed societies seem impenetrable. The monarchy in its day seemed eternal. Shareholder primacy today seems likewise inevitable and eternal. But history suggests it will not be.

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Marjorie Kelly is the co-founder and editor of Business Ethics, a national publication on corporate social responsibility launched in 1987 and the author of the book *The Divine Right of Capital: Dethroning the Corporate Aristocracy*, published in November 2001 by Berrett-Koehler Publishers. The book explores why socially responsible practices have failed to take hold and identifies the problem as the mandate to maximize returns for shareholders, which is an aristocratic mandate to serve the interests of wealth-holders above all other interests. For more information go to: www.thedivinerightofcapital.com

Discussion Questions for Session II

1. Do you think that corporations should have the same rights as people under the law? Why or why not?

2. Compare the corporation in Early America to the corporation today in terms of rights and responsibilities. Would today's corporation fit within the Founding Fathers' conception of democracy?

3. Has government deregulation historically favored corporations? Explain. What are some other impacts of relaxed government oversight and the perpetual "race to the bottom," both domestically and internationally?

4. What's wrong with corporations giving money to candidates for elected office? Do you think publicly financed elections would help restore democracy? What else should we do?

5. Marjorie Kelly says the problem is not the free market, nor is it capitalism. The problem is the notion that corporations exist to maximize returns to shareholders. Do you agree? Could we pull this bias out and leave other structures intact?

6. Who creates wealth? A financial news reporter for Barron's wrote that an "amazing $4 trillion in wealth has been created in the stock market since the end of 1994." What did the columnist mean by that? Did the stock market actually create that wealth? If not, where did it come from? Why do you think no one ever talks about stockholder productivity? Why is this term missing from the vocabulary of economics?

7. Are there limits to what can be owned? If an idea is created on the job, who owns it? Why? Where should we draw the line between what can and cannot be counted as assets?

8. Marjorie Kelly compares property discrimination (wealthism) to racism and sexism. Is that valid? Does that mean we're due for a new movement akin to the civil rights or feminist movements?