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BETWEEN PUBLIC GOOD AND PRIVATE PROFIT: A HISTORY OF CORPORATE
SOCIAL RESPONSIBILITY IN THE TWENTIETH CENTURY

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ABSTRACT OF THE DISSERTATION

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the Twentieth Century

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A history of corporate social responsibility, this dissertation examines how different groups, from managers and business intellectuals to activists on the political left and right, have struggled over the social obligations of business. Tracing the origins of the concept from the years following the Great Depression in the 1930s to its transformation in the age of shareholder value in the final decades of the 20th century, corporate social responsibility is examined here as a field of struggle in which the political and social problem of corporate power is negotiated and defined. This dissertation argues that the historical significance of responsibility is precipitated by the uneasy and unsettled status of the large, publicly traded corporation in liberal democracies, which is by default treated as a private institution owned by shareholders, but which exercises power that touches nearly all aspects of society. Even as expansive or minimalist definitions of responsibility have, by turns, gained legitimacy and circulation due to the work of intellectuals, activists, and policymakers, the corporation's legal and political status as a profit-generating piece of property continues to inform, hamper, and propel conflicting visions of the relationship between business and society.

Dedication

In memory of Donald Ray Williams (1950-2017)

For Sally and Abraham

Caritas omnia sperat

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Introduction

Corporate social responsibility is a powerful idea in today's global economy. From Nike's recent programs for young women's empowerment in the developing world to Whole Foods's long-held claim to support a "virtuous circle entwining the food chain, human beings and Mother Earth," the concept passes under various iterations of adjectival capitalism—such as conscious, sustainable, or stakeholder capitalism—and remains a critical tool for top brands.¹ Firms that adopt such programs and messages hope to communicate to conscientious shareholders, employees, customers, and regulators—the public in all its forms—that their outlook or style isn't possessed solely by the myopic pursuit of profit but includes some consideration of the public interest. Certain investors and managerial gurus go so far as to claim that environmental sustainability, for example, or above-market wages and benefits for employees don't detract from but rather contribute to quarterly profits.² Do well by doing good, they say.

But corporate social responsibility has not always been a branding or investment exercise. This dissertation tells the backstory. It is made up of important conflicts in American political economic life from the New Deal to the age of shareholder value. I examine the concept as it emerged in the late 1920s in response to economic and political crisis. After decades of ideological conflict over the corporate reconstruction of American

¹ On Nike, see this recent study of the "Girl Effect": Kathryn Moeller, *The Gender Effect: Capitalism, Feminism, and the Corporate Politics of Development* (Oakland, CA: University of California Press, 2018). The Whole Foods copy has appeared in company materials for decades, including cookbooks. See Steve Petusevsky and Whole Foods Inc., *The Whole Foods Market Cookbook: A Guide to Natural Foods with 350 Recipes* (New York, NY: Clarkson Potter, 2010), 2.

² See, e.g., Howard Rothman and Mary Scott, *Companies with a Conscience: Intimate Portraits of Twelve Firms That Make a Difference* (Denver, CO: The Publishing Cooperative, 2003); Oliver Falck and Stephan Heblich, "Corporate Social Responsibility: Doing Well by Doing Good," *Business Horizons* 50, no. 3 (May 1, 2007): 247–54. On the circulation of sustainability concerns among investors in recent years, see Robert G. Eccles and Svetlana Klimenko, "The Investor Revolution," *Harvard Business Review*, May 1, 2019.

capitalism, a New Deal settlement preserved private enterprise even as it founded the corporate system on new legal and social expectations of business responsibility, the most basic of which was fiduciary duties to shareholders.

But these expectations did not remain static. Through the actions of activists, intellectuals, business leaders, and policymakers, a series of conflicts over the responsibilities of business unfolded. “Between Public Good and Private Profit” reveals just how narrow our current understanding of corporate social responsibility has become by showing the political and social stakes of its history. A clue to our impoverishment lies in the legacy of the New Deal. Given the contested nature of alternative forms of corporate governance, the hegemonic status of the corporation is still the one originally settled in the regulatory regime constructed in the 1930s—the corporation as the private property of shareholders. But different groups have chafed against this conception of a wholly private corporation. This is a story of contests over how corporate capitalism should be structured and who gets to benefit from it.

Some have tried to offer an accounting of the relative social responsibility of firms and industries at different times and places. The attempt to construct accounting methods for the so-called social performance of business originated and gained momentum in public policy in the 1970s.³ More recently, business ethicists partnering with economists have tried to establish a connection between profits and corporate

³ Archie B. Carroll et al., *Corporate Responsibility: The American Experience* (New York, NY: Cambridge University Press, 2012), 284-285. Secretary of Commerce Juanita Kreps sought in 1977 to create a “social performance index,” released annually by the federal government, that would describe the social activities of business. “Corporations Warned on Ignoring Social Role,” *Washington Post*, Oct. 20, 1977.

responsibility, though that particular quantification gambit has so far proved elusive.⁴ It remains unclear whether “good ethics pays.”⁵ Individual case studies, furthermore, have drawn attention to the abuse or beneficence of particular firms and managerial methods—exercises, as it were, either in genres of muckraking or business leadership.⁶ And there remains a decades-old field where sociologists, management scholars, and business ethicists have sought to produce normative definitions of what corporate social responsibility, broadly understood, is and should be. Although I have made use of some of this work in various ways, I am not interested in contributing a redundant addition to this vast literature, nor am I invested in making normative claims about whether businesses should have responsibilities, which ones, or to whom they should be responsible. At least not here.

My approach to the history of the corporation differs from several fields of scholarship. Historians interested in business, for one, have tended to focus on the internal developments of firms and industries as well as of organizations and technologies.⁷ Political and legal theorists of the corporation, likewise, have explored the

⁴ For an early attempt at proving a correlation, see Philip L. Cochran and Robert A. Wood, “Corporate Social Responsibility and Financial Performance,” *The Academy of Management Journal* 27, no. 1 (1984): 42–56, <https://doi.org/10.2307/255956>. For a recent and critical perspective, see Adriana Galant and Simon Cadez, “Corporate Social Responsibility and Financial Performance Relationship: A Review of Measurement Approaches,” *Economic Research-Ekonomska Istraživanja* 30, no. 1 (January 1, 2017): 676–93, <https://doi.org/10.1080/1331677X.2017.1313122>.

⁵ For a critique of the elite desire to “change the world” while preserving the status quo, see Anand Giridharadas, *Winners Take All: The Elite Charade of Changing the World* (New York, NY: Knopf, 2018).

⁶ Out of dozens of possible examples, see Steve Coll, *Private Empire: ExxonMobil and American Power* (New York, NY: Penguin Books, 2013) or John Mackey, Rajendra Sisodia, and Bill George, *Conscious Capitalism: Liberating the Heroic Spirit of Business* (Boston, MA: Harvard Business Review Press, 2014).

⁷ I won’t seek to recapitulate the vast literature of business history, but the so-called organizational turn led by Alfred Chandler, Jr. guided the emergence of the modern field. See Alfred D. Chandler Jr., *The Visible Hand: The Managerial Revolution in American Business* (Cambridge, MA: Harvard University Press, 1977); *Scale and Scope: The Dynamics of Industrial Capitalism* (Cambridge, MA: Harvard University Press, 1990); Louis Galambos, “Technology, Political Economy, and

development of corporate constitutional rights and the historical foundations of artificial personhood.⁸ Insofar as these literatures made the development of the corporation an object of inquiry, they tended to focus on economic, technological, and legal questions that reinforced traditional conceptions of the corporation as a private, profit-seeking institution of business. I seek to expand what Nan Enstad calls the “boundaries of corporate belonging” in order to include an unconventional range of actors, movements, and interests that, in different ways, calls into question the privileged place of stockholders, managers, or boards of directors in our histories of the corporation.⁹ Corporate social responsibility does a good job of getting us past old boundaries. Since the early twentieth century it has been called upon both by those traditionally understood to be on the “inside” and those plainly on the “outside” of the corporation in their attempts to construct and reconstruct corporate power.

I am not interested, then, in corporate social responsibility *per se*. I am interested, rather, in getting to the bottom of the historical question of what kind of work corporate social responsibility has done and continues to do for different groups and their respective ability to influence the structures of corporate capitalism. Corporate social responsibility, in this study, stands as a field of struggle in which managers, shareholders,

Professionalization: Central Themes of the Organizational...,” *Business History Review* 57, no. 4 (Winter 1983): 471-493.

⁸ Phillip I. Blumberg, “Corporate Personality in American Law: A Summary Review,” *American Journal of Comparative Law Supplement* 38 (1990): 49; Scott R. Bowman, *The Modern Corporation and American Political Thought: Law, Power, and Ideology* (University Park, PA: Pennsylvania State University Press, 1996); David Ciepley, “Beyond Public and Private: Toward a Political Theory of the Corporation,” *The American Political Science Review* 107, no. 1 (February 2013): 139–58; William G. Roy, *Socializing Capital: The Rise of the Large Industrial Corporation in America* (Princeton, NJ: Princeton University Press, 1997); Adam Winkler, *We the Corporations: How American Businesses Won Their Civil Rights* (New York, NY: Liveright Publishing, 2018).

⁹ Nan Enstad, *The Cigarettes, Inc.: An Intimate History of Corporate Imperialism* (Chicago, IL: University of Chicago Press, 2018), x. Her discussion of “corporate belonging” builds on an essay of Abram Chayes: “The Modern Corporation and the Rule of Law,” in *The Corporation in Modern Society*, ed. Edward S. Mason (Cambridge, MA: Harvard University Press, 1959), 25-45.

activists, intellectuals, policymakers, and business leaders *inter alia* have fought over the structures of big business in the U.S. and the world. In the process, the corporation is revealed as a form of governance that develops and operates within dynamic social and political processes.

I take corporate social responsibility to be a set of practices, discourses, and ideas that reflects divergent or, at times, overlapping political commitments to normative conceptions of the corporation. These concepts have passed under a handful of names—sometimes as business statesmanship, or business ethics, or social trusteeship, and other times as managerial or stakeholder or conscious capitalism. The different labels reflect particular emphases and historical moments, but the common thread is that they represent struggles over business power and projects of entrenchment or transformation. I take seriously, in other words, the fact that an insurgent group of left-liberal activists formed a “Campaign to Make General Motors Responsible,” as they called it, in 1970, and postwar industrial leaders asserted the necessity of so-called “business statesmanship.” Both deployed the language of corporate responsibility but directed it toward different goals.

Literature Review

This dissertation is occupied with questions that are not unfamiliar to historians—questions of politics, business, and ideas—but it traverses the terrain of the historiography in unconventional ways. I am interested in the development and use of an idea, namely corporate social responsibility, within the contexts of business institutions, policymaking, and political movements. The frame of analysis presented here is dynamic. It moves from law to business to politics to social movements to high intellectual history.

In the next few paragraphs, I will sketch out the scholarship with which I am most often engaged, but this brief description is by no means comprehensive.

One thread is the relationship between political liberalism and business in the twentieth century. The *locus classicus* of historical reflection on this subject has been the so-called corporate liberalism historiography. First coined by a precocious Martin J. Sklar in a seminal article for the Wisconsin, Madison startup journal, *Studies on the Left*, in 1960, corporate liberalism was first used to describe what he called an American-style social democracy.¹⁰ The Wisconsin school, led by the charismatic force of the elder-leftist William Appleman Williams, reinterpreted the so-called Progressive Era as a triumph of the emerging corporate order and not as a victory of those who wanted to restrain the power of big business.¹¹ The establishment of regulatory and administrative institutions like the Federal Trade Commission and the Federal Reserve, argued Sklar and, after him, James Weinstein and Gabriel Kolko, were signs of the victory of a hegemonic corporate political economy.¹²

There was diversity within the corporate liberalism historiography. Sklar took the rise of corporate capitalism as a sign of socialism or, at least, what Howard Brick calls “post-capitalism.”¹³ Kolko saw the era simply as the triumph of conservatism, while

¹⁰ Martin J. Sklar, “Woodrow Wilson and the Political-Economy of Modern United States Liberalism,” *Studies on the Left* 1, no. 3 (Fall 1960).

¹¹ See William Appleman Williams, *The Contours of American History* (New York, NY: Quadrangle Books, 1961), but also Williams, *The Tragedy of American Diplomacy* (Cleveland, OH: World Publishing Co., 1959). On the intellectual scene in Madison in those years, see Paul Buhle, *History and the New Left: Madison, Wisconsin, 1950-1970* (Philadelphia, PA: Temple University Press, 1990).

¹² Gabriel Kolko, *The Triumph of Conservatism: A Reinterpretation of American History, 1900-1916* (New York, NY: Free Press, 1963); Martin J. Sklar, *The Corporate Reconstruction of American Capitalism, 1890-1916: The Market, the Law, and Politics* (New York, NY: Cambridge University Press, 1988); James Weinstein, *The Corporate Ideal in the Liberal State, 1900-1918* (Boston, MA: Beacon Press, 1968).

¹³ Howard Brick, *Transcending Capitalism: Visions of a New Society in Modern American Thought* (Ithaca, NY: Cornell University Press, 2015).

Weinstein offered a compelling analysis of how the leadership class of large corporate institutions helped to transform the character of American liberalism.

Weinstein put at the center of his narrative the relationship between liberalism and corporate capitalism. In a major revision of those who held that political liberalism was typically a project of restraining the power of big business, Weinstein's book presented two theses about the development of American liberalism. The first was that the ideology of the liberal state, whose substance could be traced from the Great Society backward to the New Frontier, the New Deal, and the New Nationalism, was originally expressed during the years leading up to World War I in the project of corporate liberalism. And, secondly, that project was convened and supervised by the leaders of the largest corporations and financial institutions.¹⁴ "Both in its nineteenth and twentieth century forms, liberalism has been the political ideology of the rising, and then dominant, business groups," he wrote. "Changes in articulated principles have been the result of changing needs of the most dynamic and rapidly growing forms of enterprise."¹⁵

The corporate liberalism historiography was embroiled in the New Left politics that enveloped Madison and New York in the 1960s and, for that reason, produced at times idiosyncratic historical interpretations. That being said, this dissertation builds upon the work that Sklar, Weinstein, Kolko, Williams, and James Livingston did in their attempts to answer the question of how corporate capitalism achieved and maintained hegemony in the twentieth century.¹⁶ Their work remains important precisely because it provokes us to ask questions about the relationship between ideas, public policy, and

¹⁴ Weinstein, *Corporate Ideal*, ix.

¹⁵ Weinstein, *Corporate Ideal*, xii.

¹⁶ James Livingston, *Origins of the Federal Reserve System: Money, Class, and Corporate Capitalism, 1890-1913* (Ithaca, NY: Cornell University Press, 1989).

corporate capitalism. In this spirit, I argue that corporate social responsibility served as a powerful ideological tool for the assertion of business power, even as it was also dynamic. I do not take the Kolko approach and understand responsibility to be always and ever a top-down propaganda project. Weinstein and Sklar are more my muse. Corporate responsibility had different meanings and passed through the twentieth century in a series of conflicts over the exercise of power.

In more recent years, political historians have puzzled over how business leaders understood and responded to the rise of the New Deal Order and the Cold War. Kim Phillips-Fein's work on the business reaction to Franklin Delano Roosevelt's economic reforms has become a contemporary classic.¹⁷ The conservative movement was no backlash or short-term reaction to the social movements of the 1960s. Instead, reactionary groups exercised remarkable power within the business community to contest and unsettle New Deal liberalism before it could ever settle into any kind of stable or, at least, unassailable consensus. Businessmen funded organizations that produced the ideas and the movement structures that eventually led to the electoral rise of the right in the 1970s.¹⁸

¹⁷ Kim Phillips-Fein, *Invisible Hands: The Businessmen's Crusade Against the New Deal* (New York, NY: W. W. Norton & Company, 2009).

¹⁸ The literature on the long conservative movement is now extensive. For some highlights, see Darren Dochuk, *From Bible Belt to Sunbelt: Plain-Folk Religion, Grassroots Politics, and the Rise of Evangelical Conservatism* (New York, NY: W. W. Norton & Company, 2010); Elizabeth Fones-Wolf, "Creating a Favorable Business Climate: Corporations and Radio Broadcasting, 1934 to 1954," *Business History Review* 73, no. 2 (1999): 221–55; Elizabeth A. Fones-Wolf, *Selling Free Enterprise: The Business Assault on Labor and Liberalism, 1945–60* (Urbana, IL: University of Illinois Press, 1994); Shane Hamilton, *Trucking Country: The Road to America's Wal-Mart Economy* (Princeton, NJ: Princeton University Press, 2008); Lisa McGirr, *Suburban Warriors: The Origins of the New American Right* (Princeton, NJ: Princeton University Press, 2001); Bethany Moreton, *To Serve God and Wal-Mart: The Making of Christian Free Enterprise* (Cambridge, MA: Harvard University Press, 2009); Daniel K. Williams, *God's Own Party: The Making of the Christian Right* (New York, NY: Oxford University Press, USA, 2010).

The rise of conservative economic thinking in the decades following World War II plays a significant role in this dissertation. I build on the work of scholars who have sketched out the development of the conservative movement in economics as well as law.¹⁹ The law and economics movement, originating with libertarian economists at the University of Chicago, posed the most formidable intellectual challenge to corporate social responsibility in the postwar U.S. Just how the radical ideas of law and economics made their way into the mainstream of the economics and legal professions has been explored by Steven Teles.²⁰ Working out of his analysis of how intellectual entrepreneurs like Henry Manne, who plays an important role in the story told here, found success, I give attention to the development of market-centered ideas. I am interested, in particular, in how activists on the right made the case for a radically economic conception of the corporation and attempted to delegitimize any consideration of the corporation as a social institution, which might have obligations to more groups than just stockholders.

But even as the story of the conservative movement has been pushed back further in time, the concept of a New Deal liberal consensus has once again gained traction among a handful of scholars. Pamela Walker Laird, for example, has demonstrated that civil rights activists were effectively able to leverage the ideological dimensions of the

¹⁹ Angus Burgin, *The Great Persuasion: Reinventing Free Markets since the Depression* (Cambridge, MA: Harvard University Press, 2012); Jefferson Decker, *The Other Rights Revolution: Conservative Lawyers and the Remaking of American Government* (New York, NY: Oxford University Press, 2016); Nancy MacLean, *Democracy in Chains: The Deep History of the Radical Right's Stealth Plan for America* (New York, NY: Penguin Books, 2018); Philip Mirowski and Dieter Plehwe, *The Road from Mont Pèlerin: The Making of the Neoliberal Thought Collective, With a New Preface* (Cambridge, MA: Harvard University Press, 2015).

²⁰ Steven M. Teles, *The Rise of the Conservative Legal Movement: The Battle for Control of the Law* (Princeton, NJ: Princeton University Press, 2010).

Cold War in order to force concessions from big business.²¹ Jennifer Delton, likewise, has shown how corporate social responsibility, empowered by a corporate liberal conception of the development of capitalism and by the ideological climate of the Cold War, was hegemonic in the middle decades of the twentieth century.²² The rise of what was called business statesmanship in the postwar period represented a project of rehabilitation and accommodation that gained wide acceptance in business, from the liberal-minded Committee for Economic Development to the right-wing National Association of Manufacturers.

Historians and sociologists have also given attention to the transformation of the corporation in the latter part of the twentieth century.²³ Much of this scholarship has sought to uncover how the rise of finance was built on new kinds of managerial strategies that downplayed long-term growth and prized cash flow.²⁴ The Wall-Street-focused firm and the shareholder value movement presaged (or built on?) a transformation of the relationship between business and society and politics.²⁵ Some have gone so far as to say

²¹ Pamela Walker Laird, "Entangled Civil Rights in Corporate America Since 1964," in *Capital Gains: Business and Politics in Twentieth-Century America*, ed. Richard R. John and Kim Phillips-Fein (Philadelphia, PA: University of Pennsylvania Press, 2017).

²² Jennifer Delton, "The Triumph of Social Responsibility in the National Association of Manufacturers in the 1950s," in *Capital Gains: Business and Politics in Twentieth-Century America*, ed. Richard R. John and Kim Phillips-Fein (University of Pennsylvania Press, 2016); *Rethinking the 1950s: How Anticommunism and the Cold War Made America Liberal* (New York, NY: Cambridge University Press, 2013).

²³ Gerald F. Davis, *Managed by the Markets: How Finance Re-Shaped America* (New York, NY: Oxford University Press, 2009); Louis Hyman, *Temp: How American Work, American Business, and the American Dream Became Temporary* (New York, NY: Penguin, 2018).

²⁴ Louis Hyman, "Rethinking the Postwar Corporation: Management, Monopolies, and Markets," in *What's Good for Business: Business and American Politics since World War II*, ed. Kim Phillips-Fein and Julian E. Zelizer (New York, NY: Oxford University Press, 2012). See also Judith Stein, *Pivotal Decade: How the United States Traded Factories for Finance in the Seventies* (New Haven, CT: Yale University Press, 2010).

²⁵ Douglas M. Eichar, *The Rise and Fall of Corporate Social Responsibility* (New York, NY: Routledge, 2017); See generally Naomi R. Lamoreaux and William J. Novak, *Corporations and American Democracy* (Cambridge, MA: Harvard University Press, 2017) as well as Richard R. John and Kim Phillips-Fein, eds., *Capital Gains: Business and Politics in Twentieth-Century America* (Philadelphia, PA: University of Pennsylvania Press, 2016).

that the rise of finance has led to the “vanishing” of the American corporation, but this is an exaggeration.²⁶ The corporation has not vanished; its social obligations and economic character have rather been refashioned and reimagined.

The relationship between business and society, of course, has not only been the purview of historians. In a literature that goes back to the mid-twentieth century, management scholars have sought to understand the social underpinnings of the corporation.²⁷ Archie Carroll in particular has produced helpful historical accounts of changing meanings of corporate social responsibility.²⁸ Carroll’s own normative work, including especially his conception of the “pyramid” of CSR, which ranked the firm’s obligations to a variety of stakeholders from categories of economic and legal to ethical and philanthropic, has proven influential.²⁹ Scholars working in the field of management studies, however, tend to pay too narrow attention to the professional norms and motivations of managers themselves. Even the best historical work tends to be too idealist. While I build on the work of management studies, I seek to bring categories of

²⁶ Gerald F. Davis, *The Vanishing American Corporation: Navigating the Hazards of a New Economy* (Oakland, CA: Berrett-Koehler Publishers, 2016).

²⁷ This literature is vast. Traditionally it begins with Howard Bowen, *Social Responsibilities of the Businessman* (New York, NY: Harper & Brothers, 1953) and with the creation of the *Business and Society* journal. See generally Archie B. Carroll et al., *Corporate Responsibility: The American Experience* (New York, NY: Cambridge University Press, 2012) and Andrew Crane et al., *The Oxford Handbook of Corporate Social Responsibility* (New York, NY: Oxford University Press, 2008). See also the marquee textbook of the field: James Post, Anne T. Lawrence, and James Weber, *Business and Society: Corporate Strategy, Public Policy, and Ethics* (New York, NY: McGraw-Hill Higher Education, 2003). For recent accounts of the state of the field, see Herman Aguinis and Ante Glavas, “What We Know and Don’t Know About Corporate Social Responsibility: A Review and Research Agenda,” *Journal of Management* 38, no. 4 (July 1, 2012): 932–68 and Heli Wang et al., “Corporate Social Responsibility: An Overview and New Research Directions,” *Academy of Management Journal* 59, no. 2 (April 2016): 534–44.

²⁸ Carroll, “Corporate Social Responsibility: Evolution of a Definitional Construct,” *Business & Society* 38, no. 3 (September 1, 1999): 268–95.

²⁹ Carroll, “The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders,” *Business Horizons* 34, no. 4 (July 1, 1991): 39–48.

politics and political economic power to bear on the question of corporate social responsibility.

It was the business ethicists who formed their own field in the late 1970s and early 1980s primarily as an act of revisionism of management studies scholars. Originally trained as philosophers who took positions in business schools as waves of financial scandals rocked the business world, business ethicists organized conferences, created the field's titular journal, and generally made philosophical and liberal arguments for creating new professional norms that would, it was hoped, mold business behavior.³⁰ Like management studies, however, the field was generally idealist in its approach to the relationship between business and society. Robert T. De George, one of the leading early figures in the field, maintained that it was the crisis of corporate protests and social movements of the 1960s and early 1970s that forced business to develop notions of corporate responsibility, though it wasn't until philosophers brought their training in ethics into the conversation that there was any systematic reflection on the place of morals within corporate America.³¹ Largely normative in orientation and now ensconced in institutions like the Darden School of Business at the University of Virginia, business ethicists have made use of stakeholder theory to explain the usefulness of ethical reflection for profit-oriented institutions.³²

³⁰ Bernard Mees, "The History of Business Ethics," in *The Routledge Companion to Business Ethics*, ed. Eugene Heath, Byron Kaldis, and Alexei Marcoux (New York, NY: Routledge, 2018), 14-15. For a window into the rift between business ethicists and managerial theorists, see Peter Drucker's 1981 broadside against the emerging field: Peter F. Drucker, "What Is 'Business Ethics'?", *Public Interest; Washington*, Spring 1981. And the reply from the *Journal of Business Ethics*: W. Michael Hoffman and Jennifer Mills Moore, "What Is Business Ethics? A Reply to Peter Drucker," *Journal of Business Ethics* 1, no. 4 (1982): 293-300.

³¹ Robert T. De George, "The History of Business Ethics," in *The Accountable Corporation: Business Ethics*, ed. Marc J. Epstein and Kirk O. Hanson (Westport, CT: Praeger Publishers, 2006).

³² R. Edward Freeman, *Strategic Management: A Stakeholder Approach* (Boston, MA: Pitman, 1984); R. Edward Freeman, ed., *Business Ethics: The State of the Art* (New York: Oxford University Press, 1991).

Outside of business schools, it has been sociologists who have offered historical genealogies of business ethics and responsibility. Gabriel Abend, for one, has examined the sociology of morality in progressive attitudes about business in the late nineteenth and early twentieth century.³³ So also Rakesh Khurana has offered a compelling history of moral attitudes and business schools in the twentieth century.³⁴ While much of the sociological literature has provided rich analysis of the relation between morals, institutions, and professions, there remains much more work to be done on how corporate power develops within the social processes of politics, movements, and public policy.³⁵

Outline

This dissertation is divided up into four chapters that are roughly chronological.

Chapter one focuses principally on the development of New Deal public policy and the construction of the Securities and Exchange regime through the passage of successive acts of financial reform in the early 1930s. I give attention to key figures within the early New Deal orbit, including Adolf Berle, James Landis, and William O. Douglas. I argue that the intertwined political and economic crisis precipitated by the crash of 1929 and the Great Depression created a vacuum of responsibility in the business community. The SEC regime, which grounded the legitimacy of the corporation in the proprietary interests of securities holders, erected a narrowly financial vision of corporate

³³ Gabriel Abend, "The Origins of Business Ethics in American Universities, 1902-1936," *Business Ethics Quarterly* 23, no. 2 (April 2013): 171-205; Gabriel Abend, *The Moral Background: An Inquiry into the History of Business Ethics* (Princeton, NJ: Princeton University Press, 2014).

³⁴ Rakesh Khurana, *From Higher Aims to Hired Hands: The Social Transformation of American Business Schools and the Unfulfilled Promise of Management as a Profession* (Princeton, N.J.: Princeton University Press, 2010). For a classic ethnographic study of ethics in business, see Robert Jackall, *Moral Mazes: The World of Corporate Managers* (Oxford: Oxford University Press, 2010).

³⁵ For two recent volumes that attempt to fill this gap, see Christian Christiansen, *Progressive Business: An Intellectual History of the Role of Business in American Society* (Oxford: Oxford University Press, 2015); Douglas M. Eicher, *The Rise and Fall of Corporate Social Responsibility* (New York, NY: Routledge, 2017).

governance. The New Deal established as a matter of public policy corporations as pieces of property. The failure of alternative proposals, such as a federal incorporation system, ensured that the political problem of responsibility would be channeled into the apolitical domain of the expert regulators that Landis championed as “administrative law.” Far from resolving the legitimacy crisis that plagued big business, this experiment in technocracy contributed to the persistence of the problem of responsibility. I explore, finally, how business came to embrace the language of trusteeship and responsible leadership in the final years of the 1930s as a counterattack on the New Deal.

The second chapter gives attention to the development of ideas of corporate social responsibility in the postwar era. The narrowly financial and technocratic system of corporate governance that the New Deal engendered did not resolve the crisis of responsibility that had enveloped the business community. This chapter explores the rise and development of a pro-business, manager-led, and top-down vision of corporate social responsibility and considers how a wide range of business leaders, policymakers, and intellectuals articulated an ideology of what they called “business statesmanship” as a key feature of an ideology that circulated under the label of the “new capitalism” or “managerial capitalism.” I argue that business statesmanship served the interests of corporate elites whose reputation had been rehabilitated by World War II and who embraced the mantle of shoring up the legitimacy of free enterprise during the Cold War years.

If early New Dealers saw managerial autonomy as a threatening problem, by mid-century many intellectuals and business leaders became more sanguine about the possibilities of a managerial class set free to pursue “business statesmanship” or, as Berle

waxed eloquently, the “City of God.” Chapter two, “The New Capitalism,” explores the rise and development of a pro-business, manager-led, and top-down vision of corporate social responsibility between 1945 and 1965. This chapter explores how a wide range of business leaders, policymakers, and intellectuals articulated an ideology of business statesmanship as a key feature of what they called the new capitalism or managerial capitalism. Bereft of corporate reform proposals but full of managerial expertise and optimism, this was the high water mark of the New Deal compromise.

The final two chapters trace challenges from both the political left and right to this manager-focused, top-down vision of corporate social responsibility. In the 1960s and 1970s, leftist and liberal activists formed the biggest challenge to corporate power in decades, seeking to make governance more democratic and accessible and to force business institutions to address an increasing number of social and political issues. “Corporate America,” said the activist Saul Alinsky, “says it’s our duty to participate; but, in fact, they won’t allow it. We propose to bring reality into line with that rhetoric.”³⁶ If corporate liberals conceived of corporate social responsibility as a top-down project, these activists wanted to wrestle it away and transform corporate power into a bottom-up regime. In a period of about ten years beginning in the late 1960s, corporate protestors stormed board rooms, formed policy proposals, and flexed their muscles at shareholders meetings. Their efforts took two related but nevertheless divergent paths. One was to focus on reforming corporate institutions from the inside out—changing corporate governance to make it more democratic and reflective more of a stakeholder model. The other was to force particular concessions from business to help solve problems like

³⁶ “Proxies for People—A Vehicle for Involvement,” *Yale Review of Law and Social Action* 1 (Spring 1971): 69.

consumer safety, environmental pollution, and racial inequality in the workplace. This chapter begins with the campaign of black power activists that forced Eastman Kodak to establish job training programs for minorities in the late 1960s and shows how subsequent corporate protests like the high-profile Campaign to Make General Motors Responsible followed their example. It concludes with Big Business Day 1980 and the Corporate Democracy Act that, by transforming the corporation into a quasi-public stakeholder institution, posed one of the most significant challenges to the New Deal settlement. But Big Business Day was a rout. Newly powerful business-backed lobbyists and think tanks launched one of the most sophisticated counterattacks of the new conservative age. The years of corporate protests precipitated a decade of shareholder value, not the era of stakeholder goods.

In 1970 the economist Milton Friedman articulated the succinct doctrine that the “sole social responsibility of business is to increase its profits.”³⁷ If activists on the left had sought to transform the corporation into more of a social organization and less of a purely economic institution, these infamous words of Friedman became a rallying cry of the conservative economic movement which sought to shore up the corporation’s obligation toward the maximization of shareholder value. Behind this agenda lay a sophisticated set of economic ideas about agency costs, the economic interpretation of law, and market efficiencies. But the basic conviction was that the corporation was purely private, either the private property of shareholders or, in the more radical theories, as simply a nexus of contracts with no institutional ontology at all. The result was a vision of corporate responsibility bereft of any content other than profit. This chapter tells this

³⁷ Milton Friedman, “A Friedman Doctrine,” *New York Times Magazine*, Sept. 13, 1970.

intellectual and political story by tracing the career of Henry Manne, a 1950s law graduate of the University of Chicago, who was deeply influenced by the libertarian ideas of Friedrich Hayek, James Buchanan, and Aaron Director, and who sought to bring free market ideas to bear on the practice and theory of corporate law. He cut his teeth in the 1960s writing unpopular but powerful critiques of Berle, Galbraith, Eells, and the general liberal edifice of corporate social responsibility. His ambitions for a traditional academic career rebuffed by the legal establishment, Manne became an “intellectual entrepreneur” and founded the Law and Economics Center at the University of Miami in 1974. This institution played a significant role in the spread of conservative theories of the corporation. At its height in 1980, the LEC organized summer seminars that had educated thousands of law professors and hosted more than one fifth of the federal judiciary. By the mid-1980s, Manne brought the LEC to George Mason University, his final institutional home, where he became dean and rebuilt what is now called the Antonin Scalia Law School. This chapter explores how Manne and a handful of his fellow conservative intellectuals and activists helped to create and spread the ideas that justified narrowly profit-focused mandates for corporations for the age of financialization and shareholder activism.

The New Deal vision of corporate social responsibility was weakened and marginalized, but the ideology remained flexible, mutable, and above all useful in modern political economy. The conclusion opens the aperture and considers how, in the final decades of the twentieth century, corporate social responsibility (or, as now widely known by acronym, CSR) moved out of the American context and became a powerful tool for the globalized economy.

1

The Limits of Reform and the Fight over Responsibility

“The attempt I was then making was to assert the doctrine that corporate managements were virtually trustees for their stockholders and that they could not therefore deal in the freewheeling manner in which directors and managers had dealt with the stock and other interests of their companies up to that time. It was the beginning of the fiduciary theory of corporations which now is generally accepted.”
Adolf A. Berle, Jr., oral history interview (1970).¹

“The old notion that the president of the company was the paid attorney of the stockholders for the purpose of taking as much as possible both from the workers and the public for the benefit of stockholders is gone.”
Gerard Swope, address before the National Institute of Social Sciences (1932).²

“Fidelity to the large public interest is and must be the keynote of our being, and in pursuance of that trusteeship no member of the public need fear the sacrifice of a single dollar’s worth of honest value.”
James Landis, national radio address (1935).³

Twenty years after taking control over the House of Morgan and possession of his father’s inheritance, J.P. Morgan, Jr. was in Washington, D.C. on an unhappy errand. There to testify before the Senate Committee on Banking and Currency, he was a star witness of an investigation into the causes and aftermath of the Wall Street crash of 1929. The inquiry, begun during the waning days of the Hoover administration, was reinvigorated by the election of Franklin Roosevelt and by the appointment of Ferdinand Pecora, a cigar-chomping dynamo and relatively unknown former district attorney from New York, to the position of chief counsel. Pecora acted quickly. He subpoenaed top

¹ Adolf A. Berle, Jr., “The Reminiscences of Adolf A. Berle, Jr.,” interview conducted by Douglas Scott, Columbia University Oral History Collection. Columbia University Libraries, New York, NY (1975), Part II, 114.

² “Young Bars Profit as Trade’s Sole Aim,” *New York Times*, May 13, 1932

³ James Landis, “The Holding Company Act,” *Vital Speeches of the Day*, Oct. 1., 1935, 52.

names in finance and almost singularly transformed what was a moribund investigation into an exposé of Wall Street that became the talk of Washington and, for a time, the obsession of the national press.

Along with his attorneys, partners, stenographers, and other aides, Morgan arrived in the nation's capital in May 1933 and took up a substantial portion of the Carlton Hotel, accommodations that came at a rate of \$2000 a day, according to one report. Despite the retinue and legal resources, he did not avoid scandal over the fact that neither he nor his partners had paid income taxes for years, among other improprieties.⁴ Morgan failed to pay up when the country was in crisis and cut lucrative investment deals with elite clients. He became an icon of financial malfeasance at a time when Americans were looking for someone who fit that description.

As it happened in the spring of 1933, the Carlton Hotel was also the temporary residence of a much humbler party from the Northeast. James Landis and Benjamin Cohen, two young lawyers, had come down at the behest of one of Roosevelt's key advisors, Felix Frankfurter, to work on new policies pertaining to the regulation of Wall Street that would be pushed through Congress during the first hundred days. "We had a room on the seventh floor and the whole eighth floor was taken up by J.P. Morgan," Landis remembered. "Of course he didn't know us. He didn't know that we were termites boring into his kingdom."⁵

In the morning, Landis and Cohen would eye Morgan and his entourage as they stepped into the elevator and rode together down seven floors. Morgan walked the ten

⁴ "Head of N.Y. Banking Firm Admits He Escaped Payments for Two Years," *Baltimore Sun*, May 24, 1933.

⁵ James M Landis, "The Reminiscences of James M. Landis," interview by Neil Newton Gold, Columbia University Oral History Collection, Columbia University Libraries, New York, NY (1975), Part II 204.

minutes to the Capitol Building where he was greeted by crowds of onlookers and journalists and where he would endure what one of his partners dubbed the “Spanish Inquisition.”⁶ The young policymakers took a different path and walked a block and a half to the apartment of another adviser to Roosevelt’s new administration where they hammered out the basics of a program to reform the financial markets of the corporate system.⁷ Their project built on the work of Pecora and would likely have never passed Congress without the publicity of his investigation.⁸

The chance run-in between Wall Street power-brokers and New Deal policymakers was one of many such encounters that would occur in social clubs, offices, and committee rooms in Washington during the early years of the New Deal. Both sides came to the nation’s capital to negotiate political ideas and public policy that were poised to change the way America did business. At stake was corporate and financial reform, two intertwined though different projects that focused on distinct aspects of the exercise of economic power within the system of corporate capitalism. The campaign for financial reform, which focused on the rules, professions, and information by which corporations acquired capital in the stock market, resulted in a handful of laws, including the securities acts of 1933 and 1934, the Glass-Steagall Act, and the Holding Company Act of 1935. The campaign for corporate reform, conversely, which sought to overhaul the systems of governance by which business decisions were made and who benefits from them,

⁶ Ron Chernow, *The House of Morgan: An American Banking Dynasty and the Rise of Modern Finance* (New York, NY: Grove Press, 2010), 361.

⁷ “Reminiscences of James M. Landis,” 160.

⁸ Donald A. Ritchie, “The Legislative Impact of the Pecora Investigation,” *Capitol Studies* 5 (Spring 1977), 88.

produced a few proposals such as federal incorporation and licensing systems but achieved no substantial goals.

Although the victory of financial reform was a blow to Wall Street, the failure of corporate reform provided new opportunities for the assertion of business power. In their fight with New Deal policymakers, the business community came to promote corporate responsibility and what they called “business trusteeship” explicitly as an alternative to substantive regulation and structural change. Business executives emerged from the trial of the Great Depression having learned the lesson that their political legitimacy and public reputation depended on credible displays of social leadership.

The story of the Securities Act of 1933 and the Securities Exchange Act of 1934 are usually not counted among the most important or dramatic developments of the twentieth century—or even of the 1930s. Other features of the early New Deal, such as the National Recovery Administration, the Labor Relations Act, or Social Security, typically eclipse it. There are a few likely reasons. One is that the significance of the Securities and Exchange Commission has declined over the last several decades as the politics of administrative regulation have leaned decisively toward a more hands-off approach. The SEC, in other words, is not as important as it once was.⁹ Another is that the guiding accounts of the politics of the New Deal, such as Ellis Hawley’s classic study, *The New Deal and the Problem of Monopoly*, or Alan Brinkley’s magisterial history, *The End of Reform*, largely passed over the SEC because it did not fit into their taxonomies of New Deal ideas. Hawley and Brinkley organized their work around the narrative that the later New Deal lost the more radical edge that supposedly defined its

⁹ See, e.g., Norman S. Poser, “Why the SEC Failed: Regulators Against Regulation,” *Brooklyn Journal of Corporate, Financial & Commercial Law* 3 (Spring 2009): 289–324.

early legislative victories.¹⁰ The financial reform efforts of the early 1930s don't immediately strike us as particularly radical.

But the significance of this history lies not just in the seemingly technocratic accounting rules that required corporations to disclose information about business operations, such as 10-K forms or other financial statements. The battle over the financial and corporate reforms of the period constitute a turning point in the history not only of Wall Street, but also of the corporation. The regime inaugurated by the New Deal offered a framework for answering some fundamental questions about the rights and responsibilities of business corporations that had been brewing for decades. And it created a new administration that shaped how the responsibilities of business corporations were understood in the twentieth century. As this study of public policy shows, what was done and what was left undone in the 1930s produced new understandings of the exercise of corporate power and responsibilities.

The financial reforms of the New Deal created what I call a property regime for corporations.¹¹ While historians have often noted that the securities acts made disclosure of financial information a hallmark of corporate accountability, few have given attention to how the New Deal established at the federal level corporations as pieces of property owned by and generally speaking for the benefit of shareholders. This redefinition needs more historical attention. Corporations, in short, are not necessarily or naturally the private property of investors.¹² As we will see, there were alternative theories and

¹⁰ Alan Brinkley, *The End of Reform: New Deal Liberalism in Recession and War* (New York, NY: Vintage Books, 1996); Ellis Hawley, *The New Deal and the Problem of Monopoly: A Study in Economic Ambivalence* (New York, NY: Fordham University Press, 1995).

¹¹ I borrow this helpful concept from John J. Flynn. See "Corporate Democracy: Nice Work If You Can Get It," in *Corporate Power in America*, ed. Ralph Nader and Mark J. Green (New York, NY: Grossman Publishers, 1973).

¹² Bondholders, for example, are a class of investors that have little to no corporate proprietary rights.

political interests that saw corporate institutions as creations of the state. An older American legal tradition of special charters, indeed, understood corporations to be social institutions imbued with limited rights and concrete responsibilities. But the property regime rejected these alternatives by grounding the moral and political legitimacy of large corporations in the proprietary claims of shareholders. It was a way of reconciling the institutions of the corporate age with the liberal ideology of property ownership.

The securities acts, of course, were not the first to contemplate shareholders as the owners of corporations. Such notions long existed in tension with theories of corporate personality at the state level.¹³ But by establishing a federal agency charged with the task of enforcing the interests and claims of shareholders, the New Deal helped to channel the legal obligations of business firms into narrower terms—terms that were financial and market-based.

Many supporters of the New Deal who helped to craft the regulatory and disclosure measures of the securities legislation believed that further corporate reforms were necessary in order to finish the work of enacting the “economic constitutional order,” that Roosevelt had called for during the campaign.¹⁴ Some called for a federal incorporation system with the teeth to transform the governance of major corporations. Others suggested an interstate corporate licensing scheme or an expansive Reconstruction Finance Corporation. While there was strong support in the Roosevelt administration early on for some of these ideas, corporate reform faltered. The result was an unbalanced

¹³ Morton J. Horwitz, *The Transformation of American Law, 1870-1960: The Crisis of Legal Orthodoxy: The Crisis of Legal Orthodoxy* (New York, NY: Oxford University Press, USA, 1992); James Willard Hurst, *The Legitimacy of the Business Corporation in the Law of the United States, 1780-1970* (Charlottesville, VA: The University Press of Virginia, 1970).

¹⁴ Franklin Roosevelt, “Commonwealth Club Speech,” Sept. 23, 1932. Box 10. Speech file 522. FDR Presidential Library.

public policy that focused on the outside financing and not the internal governance of corporations.

This chapter begins with the intellectual background of corporate theory, which I explore through the lens of one of the principal theorists—Adolf Berle. Berle’s significance lies in the influence he had on New Deal reforms, the wide-ranging body of academic writing that engaged with contemporary discussions of the corporation, and the longevity of his career and work, which continued to be read widely in the 1950s and 1960s (and which I will take up in chapter two). Berle’s magnum opus, which he co-authored with Gardiner Means, *The Modern Corporation and Private Property*, provides a window into how concepts of responsibility, power, and control circulated among intellectuals and policymakers during the 1930s. After showing Berle’s influence on the presidential campaign of Franklin Roosevelt, I turn to the policy machinations of the securities acts of 1933 and 1934 in order to draw a clearer picture of what was done and left undone by the New Deal—to show how popular politics that had animated corporate and financial reform were supplanted by technocratic administration. The politics of corporate responsibility were channeled away from democratic interests and toward a depoliticized vision of market accountability. And, finally, I conclude with a brief consideration of how big business articulated a vision of social trusteeship and managerial leadership as an explicit alternative to substantive reform.

The Economic Bible of the New Deal

The ideas that were the building material of the New Deal, much like the economic crisis that precipitated it, did not appear overnight. They were collected from experiments that originated in the mobilization of World War I and the progressives’ use

of regulation and antitrust, and they were hewn from the experience of urban planners, social scientists, women social workers, and other policymakers who looked to European social democracy for answers to the failure of laissez-faire.¹⁵ In the area of corporation law, New Dealers articulated their vision of regulation and state planning in reaction to the theorists of trade associations who emerged from the 1920s with confidence in the power of voluntary cooperation to solve economic and social problems.¹⁶ Gerard Swope, the president of General Electric, outlined a proposal in his 1931 book, *The Swope Plan*, calling for the suspension of antitrust laws to allow trade associations to form cartels. In return, he suggested, industries would allow for some federal supervision and offer more robust employee benefits.¹⁷ While New Deal liberals agreed with the call for a “rationalization” of the economy, they would balk at such expansive visions of corporate power.

For many intellectuals and policymakers who eventually joined with Roosevelt, their rejection of business self-regulation and the conservative notion of business statesmanship came at the conclusion of a long process of ideological development. For Adolf Berle, the end of the 1920s was the moment when he turned away from more cautious proposals for voluntary commitments from the financial and the managerial class and toward calls for state regulation and economic planning. At the root of this shift was a greater appreciation for the danger posed by a cabal of financiers and managers

¹⁵ William Leuchtenburg, *Franklin D. Roosevelt and the New Deal, 1932-1940* (New York, NY: Harper & Row, 1963), 33-34; Daniel T. Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge, MA: Harvard University Press, 1998). See also Robyn Muncy, *Creating a Female Dominion in American Reform, 1890-1935* (Oxford: Oxford University Press, 1991).

¹⁶ Ellis W. Hawley, “Herbert Hoover, the Commerce Secretariat, and the Vision of an ‘Associative State,’ 1921-1928,” *The Journal of American History* 61, no. 1 (1974): 116-40.

¹⁷ Gerard Swope, *The Swope Plan: Details, Criticisms, Analysis* (New York, NY: The Business Bourse, 1931). See Alan Brinkley, *The End of Reform: New Deal Liberalism in Recession and War* (New York, NY: Vintage Books, 1996), 36-37.

who controlled an increasing portion of American industry. The shareholders and the public at large, Berle came to believe, should play a greater role in the process of economic governance.

Berle had spent the decade researching and writing about the corporation. The result was a handful of law review articles and a collection of essays, *Studies in the Law of Corporation Finance*, that earned him opprobrium in the field of law.¹⁸ This earlier work stands out for analyzing carefully the relative positions of bondholders, shareholders, managers, and directors. He was interested in how different financial mechanisms provided varying levels of control. But Berle was dissatisfied. A legal scholar who always had more of an interest in political theory and history (he did some graduate studies with Frederick Jackson Turner before going to law school), he needed a more empirical approach to understand what was actually going on in the economy of corporate capitalism. In order to find support for a more expansive study, Berle turned to the Social Science Research Council (SSRC). An organization with broadly progressive aims, led by liberal luminaries such as Wesley Clair Mitchell and Arthur Schlesinger Sr., and with a commitment to interdisciplinary research in disciplines that ranged from economics and political science to anthropology and sociology, SSRC supported projects on contemporary public policy problems like industrial relations, crime, and race relations. In 1927, they gave Berle, who was a member of their advisory council on corporate relations, a grant of \$7,000 for the purposes of a “statistical inquiry into the extent to which business activities of the country are carried on by corporations.”¹⁹

¹⁸ Adolf A. Berle, Jr., *Studies in the Law of Corporation Finance* (Chicago, IL: Callaghan and Co., 1928). Schwarz, *Liberal*, 53-54.

¹⁹ *Annual Report* (New York, NY: Social Science Research Council, 1927), 25.

One of the stipulation of the program, funded by the Rockefeller Foundation, was that the work be cross-disciplinary. Berle, the lawyer, went in search of an economist. “I needed an associate, a statistical and economic research assistant,” he recalled. “I found an old bunkmate of mine in the Army. His name was Gardiner C. Means.”²⁰ Berle went to Columbia Law School, which became the institutional base for his research; he would go on to teach corporation law there off and on over the next several decades.²¹ At Kent Hall, on eastern edge of the Columbia campus, Berle and Means and a stenographer assistant worked for several years putting together what would become *The Modern Corporation and Private Property*.²² “Although we didn’t know it then,” Berle said, “we were pounding out the principles on which the Securities and Exchange Legislation enforced today is based.”²³

The relationship between those principles that Berle and Means developed in the late 1920s and the specific shape that financial reform took in the early 1930s is a matter for debate. On the one hand, the intellectual influence of Berle and Means on the general philosophy of the early New Deal is undeniable.²⁴ They pushed into the forefront of the new administration the problem of managerial autonomy and offered a compelling and academic treatment of corporate finance, a sector whose legitimacy was almost as in doubt as its economic soundness.²⁵ But did the financial acts of 1933, 1934, and 1935 solve the constellation of social, legal, and economic problems that Berle had identified? Some scholars have sought to put daylight between Berle and the securities and exchange

²⁰ “The Reminiscences of Adolf A. Berle, Jr.,” 1974, 119.

²¹ Schwarz, *Liberal*, 50-51.

²² “The Reminiscences of Adolf A. Berle, Jr.,” 1974, 120.

²³ “The Reminiscences of Adolf A. Berle, Jr.,” 1974, 121.

²⁴ And the Temporary National Economic Committee later on. Schwarz, *Liberal*, 61.

²⁵ Joel Seligman, *The Transformation of Wall Street: A History of the Securities and Exchange Commission and Modern Corporate Finance* (New York, NY: Houghton Mifflin, 1982), 41; 51.

regime by pointing out that much of twentieth-century securities law was focused on principal-agent problems and not on the deeper issues of corporate power and responsibility.²⁶ It should be admitted that Berle and Means were addressing wide-ranging problems of political economy. What Berle and Means approached as academics would soon be taken up by politicians and policymakers. Neither had the expertise or desire to be involved in the minutiae of crafting or passing legislation. But if Berle eventually wanted securities regulation to go further than it did, that should not obscure the fact that he supported and, at times, claimed credit for the creation of the securities acts throughout his life. In short, *The Modern Corporation and Private Property* was no public policy proposal; it was an economic study coupled with a historical and political analysis from a progressive liberal perspective. It laid out the terms of a new chapter of political economic life, a part of which was the financial regulation created by the early New Deal.

Berle and Means began with property. The authors noted that under the conditions of the modern industrial corporation, property had been radically transformed. No longer was the predominant mode of economic activity carried on under the auspices of proprietorships, partnerships, or closely held corporations. Now those who provided capital to corporations were large in number and dispersed; those who controlled corporations were very often not the ones who provided that capital. The new corporate economy had transformed the property relations of capitalism: those who invested capital were, in many cases, no longer involved in the process of managing or controlling it.²⁷

²⁶ See, e.g., Kenneth Lipartito and Yumiko Morii, “Rethinking the Separation of Ownership from Management in American History,” *Seattle University Law Review* 33, no. 4 (January 1, 2010): 1025-1063.

²⁷ This transformation has more recently been described as a shift from the “proprietary-competitive” stage to the “corporate-administered one.” See Martin J. Sklar, *The Corporate Reconstruction of American*

The Modern Corporation and Private Property was, in some senses, a work of contemporary historical scholarship that gave context for the dramatic changes unfolding in the structures of corporate capitalism. The locus of the project, and the thesis for which the authors became well-known, was the separation of corporate ownership from managerial control, but Berle and Means were not the first to identify this issue. It was a problem that had been already noticed by social commentators, from Walter Lippmann and Herbert Croly to the legal scholar Ernst Freund, in the previous few decades.²⁸ Social critics like Thorstein Veblen went further, indicting the managerial class's lack of interest in the good of the firm or the practice of production.²⁹ In the hands of Berle and Means, however, this concept of the separation of ownership from control was not just evidence of the large size of corporations or an indictment of specialization. Where they believed there was a pressing need for "defining these relationships anew," it became a way of conceptualizing the political and economic conditions of a new corporate world.³⁰

The separation of ownership and control appeared to Berle and Means to represent both a threat and an opportunity. On the one hand, increasingly management was able to delegate to itself unchecked power such so that they were poised to become the "new princes" and "economic autocrats" of industry. A specter of absolutism loomed over the new concentrations of capital.³¹ The foil of old European politics was not

Capitalism, 1890-1916: The Market, the Law, and Politics (New York, NY: Cambridge University Press, 1988), 4.

²⁸ Herbert Croly, *The Promise of American Life* (New York, NY: Macmillan, 1911), 369-370. Ernst Freund, *The Legal Nature of Corporations* (New York, NY: Burt Franklin, 1897), 17; Walter Lippmann, *Drift and Mastery: An Attempt to Diagnose the Current Unrest* (New York, NY: Mitchell Kennerley, 1914), 58-59.

²⁹ Thorstein Veblen, *Absentee Ownership: Business Enterprise in Recent Times: The Case of America* (New Brunswick, NJ: Transaction Publishers, 1994).

³⁰ Berle and Means, *The Modern Corporation and Private Property*, 4.

³¹ Berle and Means, *The Modern Corporation and Private Property*, 116.

incidental; autocracy posed a threat not just to the efficiency of corporate capitalism but also to the integrity of liberal democracy. But if there was danger, there was also possibility. “The ‘owner’ of industrial wealth is left with a mere symbol of ownership,” Berle wrote, “while the power, responsibility and substance which have been an integral part of ownership in the past are being transferred to a separate group in whose hands lies control.”³² The new corporate regime had reshuffled the power, responsibilities, and motivations of the old liberal and proprietary capitalism of the nineteenth century. This wasn’t necessarily a bad thing. It suggested the possibility that the corporate system no longer a system of private property alone and the individualistic pursuit of profit had reached its twilight.³³ On this insight there would be founded a school of sociological analysis, which reached its climax at midcentury, that saw the corporate system as a key feature of a post-capitalist future.³⁴

Contained in *The Modern Corporation and Private Property* is an obituary for the liberal free market. If it ever existed, was gone forever by the 1920s when John Dewey declared that the U.S. had entered a “corporate age.”³⁵ Monopoly and oligopoly were no longer exceptions to the normal functioning of the market, Berle and Means argued. They had become the modus operandi of the new corporate system.³⁶ In an array of tables and charts, Means showed that the 200 largest corporations in the United States, as of January 1930, controlled nearly one half of all non-banking corporate wealth and about a quarter

³² Berle and Means, *The Modern Corporation and Private Property*, 65.

³³ Berle and Means, *The Modern Corporation and Private Property*, 219.

³⁴ See Howard Brick, *Transcending Capitalism: Visions of a New Society in Modern American Thought* (Ithaca, NY: Cornell University Press, 2015), 54-85.

³⁵ John Dewey, *Individualism, Old and New* (New York, NY: Minton, Balch & Company, 1930), 49.

³⁶ William Leuchtenburg, *Franklin D. Roosevelt and the New Deal, 1932-1940* (New York, NY: Harper & Row, 1963), 34.

of the national wealth.³⁷ And this was no accident of the crash of 1929; concentration was a trend throughout the 1920s as a result of mergers, acquisitions, and higher rates of growth among the largest firms. At the same time, stock ownership had become widely dispersed. It was typical that in large firms the bulk of shares were owned widely with a substantial minority held by a single interest.³⁸ The dispersion of ownership correlated to corporate size, too. With an increasing amount of private savings going into securities markets (at the time, about half), a large portion of wealth for the first time consisted of interest in businesses over which no one individual owned a majority part.³⁹

The language of Adam Smith and the nineteenth century political economists had “ceased to be accurate,” the new liberals wrote, “and therefore tend to mislead in describing modern enterprise as carried on by the great corporations.”⁴⁰ Berle and Means may have overstated the degree to which the 19th century was governed by the language of supply and demand, the invisible hand, and the natural law of the markets. The old theories of market equilibrium and rational economic behavior were no longer as useful for describing the conditions of corporate capitalism.⁴¹ As Means would put it later, “The modern corporation has undermined the preconceptions of classical economic theory as effectively as the quantum undermined classical physics at the beginning of the 20th century.”⁴² Berle and Means instead relied upon the categories of institutional economics and a language of sociological analysis to make sense of the contemporary moment.

³⁷ Berle and Means, *The Modern Corporation and Private Property*, 19-30.

³⁸ Berle and Means, *The Modern Corporation and Private Property*, 48.

³⁹ *Ibid.*, 63-64.

⁴⁰ *Ibid.*, 303.

⁴¹ *Ibid.*, 304-308.

⁴² Gardiner C. Means, “Collective Capitalism and Economic Theory,” *Science* 126, no. 3268 (1957), 287.

The lead author of the book was Berle. He was sensitive to the dynamics of power and he felt an urgency to grasp for new words that could be used to describe these dynamics. Both tendencies can be seen in Berle's concept of control. For him, the separation of ownership from control did not mean the separation of shareholders from management. To admit the latter was simple enough. Many other social commentators had noticed the emergence of the managerial class with the rise of the large, industrial corporation. The relationship between shareholders and managers, after all, had long since been discussed as one species of the principal-agent problem. No, for Berle, control meant something more complex. He noted that a small group of people could, under certain circumstances, gain control over a corporation even without holding positions as directors or upper-level managers. Control was not nearly so formal a thing. With the right combination of voting stocks, influence over the proxy machinery, and managerial support, control could be exercised with very little formally recognized power.⁴³ The concept of control was a sociological term used to categorize a variety of different arrangements in which a person or a group of persons held de facto authority over the operation of the gears of business.

The corporate system had to be accepted; the question was the terms of that acceptance. The major public policy contribution of *The Modern Corporation and Private Property* was to identify the control element of business organizations as a power center in need of reform. The book spent a great deal of attention on financial reform as a means to make the control element more transparent and accountable. In place of

⁴³ Berle and Means, *The Modern Corporation and Private Property*, 6-8; 65-67. See also Kenneth Lipartito and Yumiko Morii, "Rethinking the Separation of Ownership from Management in American History," *Seattle University Law Review* 33, no. 4 (January 1, 2010), 1045-1052.

shareholders who no longer possessed agency within the firm itself to participate in the decision-making process and to hold their agents accountable, Berle and Means looked at the public stock market in aggregate. In the mass of transactions and continuous liquidity, a continuous appraisal of corporate value could possibly be tracked.⁴⁴ The ability of the market to make sound judgments on the value of corporations and their stock could, however, be seriously impaired by misinformation or a lack of easily available information.⁴⁵ The book called for more transparent financial disclosures not only from banks but also from corporations whose stock was traded on the public markets. The remedy of information for the sickness of economic concentration was an old idea with a progressive pedigree. But before *The Modern Corporation and Private Property* it had never been so thoroughly applied to the corporate system of finance. It called for greater availability of information which would not otherwise be easily discoverable and they insisted upon restrictions on the ability of directors and managers to influence the price and sale of stock.⁴⁶

Disclosure and limits on management in the financial markets provided transparency to the investing public, but they did little to transform the element of corporate control. It was, Berle and Means admitted, “relatively unconsidered by law” and had not yet “achieved legal recognition in open market operations.”⁴⁷ The problem, as Berle pointed out in a subsequent article called “High Finance: Master or Servant,” was that the “control point” could be achieved through a relatively informal

⁴⁴ Berle and Means, *The Modern Corporation and Private Property*, 255-263.

⁴⁵ Unlike later theorists of market epistemology, Berle and Means did not see markets as automatic generators of accurate information. See chapter 4. See also, e.g., F. A. Hayek, “The Use of Knowledge in Society,” *The American Economic Review* 35, no. 4 (1945): 519–30; Henry G. Manne, “Mergers and the Market for Corporate Control,” *Journal of Political Economy* 73, no. 2 (April 1965): 110-120.

⁴⁶ Berle and Means, *The Modern Corporation and Private Property*, 278-285.

⁴⁷ Berle and Means, *The Modern Corporation and Private Property*, 290.

mechanism.⁴⁸ In language that may have resonated with a New Leftist like C. Wright Mills a generation later, Berle contended that the informal mechanism was nothing less than the social and legal insulation of Wall Street where there existed an “almost unbreakable ideological unity.”⁴⁹ Through the variety of financial devices and the system where power could only be achieved through the use of expensive machinery (in the case of proxy fights) and arcane knowledge, control was under the purview of insiders.⁵⁰

Control would never disappear, but its use could be directed toward more democratic ends. “The next few years will probably determine whether the elements of power or control now tied to finance,” he wrote in 1933, “remain in the hands of the financial group or whether they pass, measurably, in to the hands of the community.”⁵¹ He only hinted at it in *The Modern Corporation and Private Property*, but increasingly Berle came to believe that national economic planning of some sort would be the only way forward.⁵² While he supported the financial reforms of the early New Deal, he believed more was needed. He latched onto the Reconstruction Finance Corporation, a program that had originated with Herbert Hoover but greatly expanded under FDR.⁵³ Berle served as counsel to the RFC, and he saw the program as an opportunity to transform functions that had formerly been monopolized by investment bankers into financial instruments that could be, in some sense, owned by and controlled by the

⁴⁸ Adolf A. Berle, “High Finance: Master or Servant,” *The Yale Review* 23, no. 1 (September 1933), 24.

⁴⁹ Berle, “High Finance,” 22. C. Wright Mills, *The Power Elite* (New York, NY: Oxford University Press, 1956). See also Berle’s critical, though measured, review: Adolf A. Berle, “Are the Blind Leading the Blind?; Leading The Blind,” *The New York Times*, Apr. 22, 1956.

⁵⁰ *Ibid.*, 27.

⁵¹ *Ibid.*, 43.

⁵² This was a feature of Center for the Study of Democratic Institutions’s Study of the Corporation, in which Berle participated and promoted national planning. Transcript of Advisers meeting, November 19, 1959. Box 161. Folder 2. Fund for the Republic Archives. Mudd Library. Princeton, NJ.

⁵³ James Olson, *Saving Capitalism: The Reconstruction Finance Corporation and the New Deal, 1933-1940* (Princeton, NJ: Princeton University Press, 2017).

people.⁵⁴ In sum, he wanted the corporate system to be controlled by an administrative body that had political and moral legitimacy, that could be reviewed and overseen, and could be made accountable to the public.⁵⁵ Shareholder democracy continued to animate his understanding of political economy.

Berle and the “Prince Politician”

Among historians of the New Deal, the Securities and Exchange Commission and the broader financial reform legislation of the early 1930s have rarely been a central focus. Other alphabet agencies have served the purposes of scholars seeking to demonstrate what was won and lost during the tumultuous years of the 1930s and early 1940s.⁵⁶ The SEC, at once too technical and perhaps too moderate an accomplishment, seems in retrospect to be a technocratic fix that enabled the status quo of Wall Street to continue in much the same way as it had before, albeit with a higher degree of professionalism and regulation. But the securities regime established by the New Deal deserves our attention not least because its impact was felt far beyond the financial community of lower Manhattan. In many ways, it set the terms and limits by which corporate power and responsibility would be debated over the rest of the twentieth century. As Berle and Means made clear, securities markets were not, as it were, appendages to the corporate machinery or part of an independent financial sector. The

⁵⁴ Berle, “High Finance,” 41.

⁵⁵ His critics called Berle’s notions little more than “state capitalism.” Schwarz, *Liberal*, 68.

⁵⁶ Ellis Hawley, for example, focused on the National Recovery Administration and the development of antitrust in the Department of Justice. See *The New Deal and the Problem of Monopoly: A Study in Economic Ambivalence* (New York, NY: Fordham University Press, 1995). Alan Brinkley gave attention to the Temporary National Economic Committee and on the various agencies of war production. Alan Brinkley, *The End of Reform: New Deal Liberalism in Recession and War* (New York, NY: Vintage Books, 1996). And Elizabeth Cohen, like other labor historians, focused on the Wagner Act and the National Labor Relations Board. Elizabeth Cohen, *Making a New Deal: Industrial Workers in Chicago, 1919-1939* (New York, NY: Cambridge University Press, 1991).

financial markets were in many ways institutions that intersected with and helped to govern every large, publicly traded corporation. While financial reform was far from the most radical element of the New Deal, its significance should not be overlooked.

The entrance of Adolf Berle, along with other policymakers and intellectuals who would work on corporate reform, into the orbit of Franklin Roosevelt came in early 1932. Roosevelt gave the go-ahead to Samuel Rosenman, his close adviser and counsel who coined the term, “New Deal,” to go to university faculties in order to find new policy ideas for the campaign. Rosenman felt that, unlike lawyers and business leaders, academics were more likely to produce new and daring ideas. Plus, Roosevelt enjoyed conversations with professors, many of whom he had employed in advisory capacities as governor. Rosenman turned to Raymond Moley, a specialist in criminal law at the University of Columbia Law School, who in turn brought Rexford Tugwell and Berle, both instructors at Columbia who had previously worked together on financial reform, into a group of academics that became known as FDR’s “Brain Trust.”⁵⁷

Berle had been doing work on financial reform measures called Blue Sky Laws for David Lilienthal, who served on the Wisconsin Public Service Commission, but he jumped at the chance to produce new ideas for the Roosevelt campaign.⁵⁸ Although Berle was no policymaker—he neither had the aptitude nor temperament for the detailed work of crafting law—he relished the opportunity to state his case for reform. It was, he said, a “golden period” for an intellectual like him. “The country was too badly off,” he recalled.

⁵⁷ Schwarz, *Liberal*, 70-71. Leuchtenberg, *Franklin D. Roosevelt and the New Deal*, 32. Adolf A Berle and Douglas Scott, *The Reminiscences of Adolf A. Berle, Jr.*, 1974, 167. The title was originally coined by James Kieran of the *New York Times*. “The ‘Cabinet’ Mr. Roosevelt Already Has,” *New York Times*, Nov. 20, 1932.

⁵⁸ Schwarz, *Liberal*, 72.

“It was a situation in which the normal political resistances were not likely to apply.”⁵⁹

Roosevelt’s academic advisers split their time between the governor’s mansion in Albany, where the discussion of policy would drag late into the night, and a hotel suite in New York City, where they crafted speeches and messages for the campaign.⁶⁰

Berle’s first major foray into policy came in May 1932 when he helped to pen a wide-ranging memorandum called “The Nature of the Difficulty.” It was a capacious diagnosis of the economic difficulties afflicting the country. The memo prescribed a range of solutions, from a federal board that would inspect issuance of new securities to federal management of oligopolistic corporations.⁶¹ Over dinner at the governor’s mansion in Albany and at a long, fireside discussion, Berle discussed with Roosevelt, Moley, Tugwell, and Rosenman the rudimentary elements of securities regulation. “We suggested that the tyranny of the syndicates’ list and the lack of information created a horrible situation,” he recalled. “So I suggested that there be a capital issues board which could perform the function of the federal blue sky commission exacting full information about issues sold. Such a commission could gradually be developed to a point where it would exercise a real control over undue expansion of groups and credit instruments where issues of these reached a point threatening the safety of the financial structure.”⁶² The goal was to bring the progressive notion of publicity to bear on the securities markets in order to police insider trading, managerial manipulation, and other intrusions into the proper functioning of the market.

⁵⁹ “The Reminiscences of Adolf A. Berle, Jr.,” 1974, 186.

⁶⁰ Leuchtenberg, *Franklin D. Roosevelt and the New Deal*, 32-33.

⁶¹ Beatrice Berle and Travis Jacobs, eds., *Navigating the Rapids, 1918-1971: From the Papers of Adolf A. Berle* (New York, NY: Harcourt Brace Jovanovich, 1973), 32-50.

⁶² “The Reminiscences of Adolf A. Berle, Jr.,” 1974, 184.

The members of the Brain Trust were, as one historian has put it, speechwriters who wanted to be policymakers.⁶³ Berle, along with Rexford Tugwell, occupied one side of what Arthur Schlesinger, Jr. described as a triangle of policy advice.⁶⁴ He accepted the rise of large, vertically integrated firms and a certain level of concentration as a necessity for modern industry, but he tended to support policies of national economic planning exercised by representative agencies.⁶⁵ His main opponents at the governor's mansion in were Felix Frankfurter and Bernard Baruch who, by turns, articulated the Brandeisian perspective of trust-busting, regulation, and tariffs to control industry. From outside the campaign came the viewpoint of the status quo: laissez-faire and budget balancing.

The metaphor of the triangle has its limits, especially when it came to issues of corporate reform. Take, for example, Roosevelt's Columbus, Ohio speech from August 1932. From the pen of Adolf Berle, the speech addressed the failure of Hebert Hoover to mitigate the economic crisis.⁶⁶ Roosevelt repeated some of the most digestible facts from *The Modern Corporation and Private Property*. More than half the savings of the country was invested in corporate stocks and bonds. Two thirds of American industry was concentrated in a few hundred corporations and managed by just a few people. And the result? The public was "made the sport of the American stock market." In response, he insisted on some of the basic elements of securities regulation, like the disclosure of information about newly offered securities, regulation of the exchanges at the federal level, more rigid supervision of the banks, and the separation of investment and

⁶³ Schwarz, *Liberal*, 75.

⁶⁴ Arthur Schlesinger, Jr., *The Crisis of the Old Order, 1919-1933* (New York, NY: Houghton Mifflin Harcourt, 2003), 420.

⁶⁵ Hawley, *The New Deal and the Problem of Monopoly*, 175-176.

⁶⁶ Berle, *Navigating the Rapids*, 53-55. Schlesinger, *The Crisis of the Old Order*, 425.

commercial banking.⁶⁷ Although Berle and Tugwell would call for greater government controls on corporate finance and reforms of corporate governance, they both supported the basic measures of the speech and in general its emphasis on regulation.

In the speeches and memos that Berle wrote for the Roosevelt campaign in 1932 one can find further outlines of later corporate reforms. In one draft, he argued that publicly traded corporations are in no meaningful sense private. To go into the public market, to ask for the public's money, and to permit free buying and selling of stock—this is a different kind of business action than what is conducted under the auspices of a partnership or closely held corporation. “Add to the fact that the so-called ‘business man’ who runs these corporations generally does not own them,” he wrote, “and you have the picture in all its completeness.” He urged corporate regulations that would provide the public with regular and accurate information about the financial conditions of these public companies.⁶⁸

The most definitive statement of the campaign came with FDR's Commonwealth Club address, given in San Francisco in September 1932. It was written mostly by Adolf Berle and his wife, Beatrice Bishop Berle.⁶⁹ The speech laid out a case for a new kind of liberalism, one that set aside the rough-and-tumble vicissitudes of laissez-faire and entrepreneurship in favor of collective action. The future was a corporate future, one in which the wealth of the country might one day be controlled by a dozen corporations or by one hundred people. The way forward was not to break up the corporations; to construct massive antitrust program was to attempt the impossible. Roosevelt articulated,

⁶⁷ Franklin D. Roosevelt, Campaign Speech, Columbus, OH, August, 20, 1932. Box 10. File No. 490. Series 1. Master Speech File. FDR Papers. FDR Presidential Library.

⁶⁸ “Businessmen,” Box 17. Adolf Berle Papers. FDR Presidential Library.

⁶⁹ Schwarz, *Liberal*, 78.

in the words of Berle, a vision of modifying the system of corporate capitalism into a more democratic and equitable system. “The task of government in its relation to business is,” he said, “to assist the development of an economic declaration of rights, an economic constitutional order.” He called business a public trust that was held together by a social contract and by the bonds of responsibility that goes with power.⁷⁰

The Moderate Path of Policymaking

If Berle had come to assume significant influence producing ideas under Roosevelt the candidate, he possessed decidedly less power under Roosevelt the office-holder. It came as a surprise to many that, after doing extensive and important work for the campaign during the previous year (not to mention his expertise in one of the central issues of the campaign), Berle became secretary of nothing in 1933.⁷¹ After the election, the stage and process by which Roosevelt’s administration produced and passed new proposals was far bigger than the late-night speech writing sessions that Berle had participated in. Roosevelt had political debts to pay, too, and a Congress to maneuver. Although he could have taken a position starting out perhaps as an assistant cabinet secretary, Berle never had the conventional political ambitions that many of his friends and colleagues, such as William O. Douglas, had. Throughout his long career that saw him move in and out of public service, Berle considered himself to be an intellectual in service to a patron, whether it was Roosevelt, LaGuardia, or Kennedy. “By yourself and working alone you won’t get very far. What you need is to find a prince politician who

⁷⁰ Franklin Roosevelt, “Commonwealth Club Speech,” Sept. 23, 1932. Box 10. Speech file 522. FDR Presidential Library.

⁷¹ Schwartz, *Liberal*, 81.

can put some of these things into effect,” his wife Beatrice had told him in the early 1930s.⁷²

Nothing more illustrates Berle’s search for a “prince politician”—or policymaker—who could put his ideas into effect than the fight over financial reform. Soon after the election, Berle wrote to Raymond Moley about the need for a policy agenda that included the issues touched on in the Columbus speech, among other things.⁷³ Moley agreed, calling it a “‘must’ of the first order.”⁷⁴ In December 1932, Roosevelt gave Moley, who had become one of Roosevelt’s legislative directors, the go-ahead to begin work on the regulation of the stock exchanges and new securities issues.⁷⁵ The securities act would be a centerpiece for the first one hundred days.

Roosevelt had put the abuses and indiscretions of financiers, as well as Hoover’s failure to take action about them, front and center in the campaign. If not an economic imperative, the securities act had become a political one.⁷⁶ Roosevelt traded on the popular perception that the Wall Street’s irresponsible speculation had caused the crash of 1929 and led the country close to economic ruin. “Plenty is at our doorstep, but a generous use of it languishes in the very sight of the supply. Primarily this is because the rulers of the exchange of mankind’s goods have failed, through their own stubbornness and their own incompetence, have admitted their failure, and abdicated,” he said in his

⁷² “The Reminiscences of Adolf A. Berle, Jr.,” 1974, 168.

⁷³ Berle, *Navigating the Rapids*, 78.

⁷⁴ Quoted in Seligman, *The Transformation of Wall Street*, 51.

⁷⁵ *Ibid.*, 51-52.

⁷⁶ William Lasser, *Benjamin V. Cohen: Architect of the New Deal* (New Haven, CT: Yale University Press, 2008), 71.

inaugural address in March 1933, “The measure of the restoration lies in the extent to which we apply social values more noble than mere monetary profit.”⁷⁷

But there was another political force that helped push it inside the margins of what was politically possible. The so-called Pecora Commission, which originated during Hoover’s presidency, was a Senate investigation conducted under the auspices of the Committee on Banking and Currency that was supposed to examine the causes of the crash of 1929. Languishing under Republican leadership, the investigation was coming to a close in early 1933 when the outgoing committee chair tapped Ferdinand Pecora to be lead counsel.

Pecora, who quit seminary for law and caught the bug of progressive politics after hearing William Jennings Bryan speak at Madison Square Garden in 1896, took the position with little knowledge about corporate finance or the stock exchange. But he went after the most well-known names on Wall Street with the “manner and manners of a prosecuting attorney who is trying to convict a horse thief.”⁷⁸ Or so said J.P. Morgan.⁷⁹ Pecora may grated against the decorum of the well-heeled, but he was known for being well prepared for hearings, relentlessly though fairly questioning his witnesses based on extensive documentary evidence.⁸⁰

The Pecora investigation was an impressive exercise in the investigatory powers of Congress. Armed with a mandate and resources, Pecora and his team humbled some of the most powerful men in the country and made known their misdeeds to an angry public.

⁷⁷ Franklin D. Roosevelt, “Inaugural Address,” Mar. 4, 1933. Box 13, Speech File 610. FDR Presidential Library.

⁷⁸ Michael Perino, *The Hellhound of Wall Street: How Ferdinand Pecora’s Investigation of the Great Crash Forever Changed American Finance* (New York, NY: Penguin, 2010), 32, 97.

⁷⁹ Quoted in Perino, *The Hellhound of Wall Street*, 40.

⁸⁰ Donald A. Ritchie, “The Legislative Impact of the Pecora Investigation,” *Capitol Studies* 5 (Spring 1977): 88-89.

At the most basic level, these were acts of disclosure. Not only did they help to convince the public that there was a need for corporate and financial reform, they also modelled the significance of making publicly known the practices of an industry that had for so long been shrouded in secrecy and complexity. What the country needed was more knowledge and more disclosure. In the final committee report, Pecora urged regulation of the financial industry. In the process, Pecora, who would eventually take his seat as one of the five commissioners of the Securities and Exchange Commission, became one of the principal procreators of reform measures of the early New Deal.⁸¹

While Pecora played an important role in directing public attention to the problems that festered on Wall Street, the process of writing the securities acts would fall on the shoulders of others. Raymond Moley first turned to Samuel Untermyer, a progressive stalwart who had made a name for himself as an investigator for the Pujo Committee, a house subcommittee that was mandated with the task of investigating the financial system in 1912. Untermyer had the distinction of questioning for two days J.P. Morgan, who consistently denied the existence of a money trust but who could not resist admitting that even though Wall Street speculation cost the country money he still opposed any legislation that would curb such irresponsibility. “You would let speculation run riot?” Untermyer asked. “Yes,” he replied.⁸² The exchange made headlines in newspapers across the country, many of which reprinted the testimony almost in full. The final report of the Pujo Committee, popularized by Louis Brandeis in his expose, *Other*

⁸¹ Ritchie, “The Legislative Impact of the Pecora Investigation,”: 88.

⁸² United States Congress House Committee on Banking and Currency et al., *Money Trust Investigation: Investigation of Financial and Monetary Conditions in the United States under House Resolutions Nos. 429 and 504, before a Subcommittee of the Committee on Banking and Currency*. (Washington, D.C.: U.S. Government Printing Office, 1912), 1090.

People's Money—And How the Bankers Use It, found an epidemic of concentration both in financial services and in public service, railroads, and other industries. All of this was held together, the investigators argued, by interlocking directorates through which the New York banks had established a financial oligarchy.⁸³

Untermeyer, now in his seventies, had been a gadfly of Wall Street for decades and was a perennial supporter of regulating the stock exchange. He jumped at the chance finally to help craft public policy with teeth. He had “more knowledge and more constructive ideas about reform than anyone else,” Moley recalled.⁸⁴ He was a kind of “colorful, voluble John the Baptist preparing the way for the solemnities of Wilson, Brandeis, and Glass.”⁸⁵ After an exchange of letters at the end of 1932, Moley asked him to put together a bill and suggested that he work with Adolf Berle and the economist Charles Taussig.⁸⁶

The partnership with Untermeyer was short-lived. If the policymakers who crafted the early New Deal prized experimentation and sought to test the limits of federal power, Untermeyer was conservative by comparison. He produced for Moley little more than a modified version of his proposal from 1914. Convinced that any other scheme for federal regulation of the exchanges would be declared unconstitutional, Untermeyer's plan was to task the Post Office Department with the mandate of issuing regulations and prohibitions concerning transactions, new securities issuance, periodic financial statements, and membership of the exchanges. Moley and Roosevelt were both skeptical of the

⁸³ Louis D. Brandeis, *Other People's Money: And How the Bankers Use It* (New York, NY: F.A. Stokes, 1914), 4-6.

⁸⁴ Raymond Moley, *The First New Deal* (New York, NY: Harcourt, Brace & World, 1966), 309.

⁸⁵ Raymond Moley, *After Seven Years* (New York, NY: Harper & Brothers, 1939), 176.

⁸⁶ Seligman, *The Transformation of Wall Street*, 51.

effectiveness of the idea and of the prudence of giving such important regulatory functions to a postal bureaucracy. In Roosevelt's mind, no less than in his advisers', the urgency of the moment, which had been newly energized by the banking crisis that enveloped the country shortly after he took office, gave the new administration an opportunity for more sweeping changes.⁸⁷

In late March, Roosevelt delivered a message to Congress explaining his intention of having legislation introduced that would allow for federal supervision of investment securities. Interstate commerce prevented states from effectively regulating this sector of the economy and business self-regulation was no longer an option. Roosevelt and his aides wanted to avoid a situation in which the government would be in the position of giving a stamp of approval to an investment. A federal guarantee on securities would never work. "There is however, an obligation upon us to insist that every issue of new securities to be sold in interstate commerce shall be accompanied by full publicity and information," he said, "and that no essentially important element attending the issue shall be concealed from the buying public." The rallying cry of this agenda was a spin on the old rule of *caveat emptor*, "Let the seller beware."⁸⁸

Under best of political conditions, policymaking is rarely a simple process. Such was case the for Roosevelt in the first hundred days. The administration turned next to Huston Thompson, a recent chairman of the Federal Trade Commission, to draft the bill, but that proved abortive, too. In the hands of Thompson, a regulator in the Brandeisian mold who feared the expansion of government bureaucracy almost as much as business

⁸⁷ Seligman, *The Transformation of Wall Street*, 52; Parrish, *Securities Regulation and the New Deal*, 44.

⁸⁸ U.S. Congress, *Congressional Record*, 73rd Cong., 1st Sess. 88 (Washington, D.C.: Government Printing Office, 1933), 937. Parrish, *Securities Regulation and the New Deal*, 47-48.

bureaucracy, the securities bill was a blunt instrument for reform.⁸⁹ Approved by Roosevelt and sponsored by Sam Rayburn, the bill was focused almost wholly on disclosure and required that all new issues of stock be registered with a prospectus detailing the financial situation of the company and filed with the Federal Trade Commission. In the case of fraud, the FTC would have the power to revoke the registration, fine the sellers of stock who knowingly filed deceptive information, and give buyers the opportunity to receive the purchase price back. Like the Sherman Antitrust Act on which Thompson had modeled his proposal, the bill was vague and invited criticism both from investment bankers and corporate leaders who feared its liabilities would open the floodgates of litigation. “Scarcely anyone, from the most unreconstructed banker to the most ardent reformer, had a kind word to say for it,” Moley remembered.⁹⁰ After a few days of hearings in which the basic foundations of the legislation were subject to intense scrutiny, Rayburn withdrew the bill.⁹¹

They were back to square one, and Raymond Moley turned to Felix Frankfurter for help. A professor at Harvard Law School, Frankfurter, generally opposed the federal planning impulses of Moley, Berle, and Tugwell.⁹² He had been a longtime adviser to Roosevelt and, with the failure of Thompson and Untermyer, he wielded a great deal of influence over the creation of Securities and Exchange Commission.⁹³ His Harvard connections put him into contact with a younger generation of progressive-minded lawyers. So, when Moley called, Frankfurter answered and brought with him three legal

⁸⁹ Parrish, *Securities Regulation and the New Deal*, 46-57.

⁹⁰ Moley, *After Seven Years*, 178.

⁹¹ Seligman, *The Transformation of Wall Street*, 54-57.

⁹² “Berle saw in Frankfurter an ideological adversary.” Schwarz, *Liberal*, 76-80.

⁹³ Seligman, *The Transformation of Wall Street*, 55.

scholars who had passed through the Harvard Law School—James Landis, Thomas Corcoran, and Benjamin Cohen. They arrived in Washington, D.C. on a Friday, worked long hours one weekend, and produced a draft of the securities bill in order for Landis to return to Cambridge to teach his law classes on Monday.⁹⁴ But this was more than just a weekend project: the three protégés of Frankfurter found themselves drawn into the work of policymaking and the politics of the new administration. They were all in different ways involved in the long process of writing and passing the securities acts of 1933 and 1934 and the Public Utility Holding Company Act of 1935 and, in the case of Landis, serving on the board of the newly created Securities and Exchange Commission.⁹⁵

Cohen, Corcoran, and Landis built on the Blue Sky Laws, which had passed through the legislatures of many states in the 1920s, and the British Companies Act of 1929, both of which made disclosure the mark of corporate responsibility.⁹⁶ At the heart of the SEC, however, would be administrative law, a concept pioneered by Frankfurter and given its full explication by Landis. The administrative process survived on the tension of two conflicting forces of public policy. On the one hand, Congress needed to inscribe substantive legal mandates and policy goals in order to survive hostile jurists or indifferent political appointees. On the other, the law needed to be flexible enough to give room for regulators to address creatively new problems in changing circumstances.⁹⁷

The impetus for corporate reform had emerged from the fires of popular politics, but it was being shepherded into the confines of expertise and consensus. Cohen,

⁹⁴ James M. Landis, “Legislative History of the Securities Act of 1933,” *George Washington Law Review* 28 (1960-1959): 33.

⁹⁵ Parrish, *Securities Regulation and the New Deal*, 57-61.

⁹⁶ Landis, “Legislative History of the Securities Act of 1933”: 34

⁹⁷ Seligman, *The Transformation of Wall Street*, 60.

Corcoran, and Landis wanted a bill that would require transparency and disclosure in securities law in order to protect investors, but, unlike the proposals from Thompson and Untermyer, needed a bill that would not place an undue burden on those who issued securities.⁹⁸ Those inside the administration thought about the political viability of securities reform not in terms the mobilization of those who had lost their fortunes in the stock market or the stirring up of the public's outrage over the Pecora Commission or, later, the Nye Committee. Roosevelt's policymakers sought the buy-in of the different professions affected by the law—not just business leaders and managers, but also accountants, brokers, and bankers.

The bill made it through the Commerce Committee painlessly. Sam Rayburn introduced it in the House on May 5, 1933 with special rules that ensured as much. "When a people's faith is shaken in a business the business becomes halting and lame," Rayburn said. The bill would restore the public's confidence in business and so keep at bay the threat of "socialism, bolshevism, and communism."⁹⁹ Although the bill passed easily in the House, the Senate version had developed away from the input of Landis, Cohen, and Corcoran. The differences were made up in conference committee, where the young policymakers revised drafts of the legislation according to the input they received over the course of several weeks, particularly over issues of civil liabilities imposed on corporate managers and directors.¹⁰⁰

The Securities Act of 1933 changed the way corporations and banks related to the public. The amount of information that corporations were required to file with the federal

⁹⁸ Lasser, *Benjamin Cohen*, 75.

⁹⁹ *Congressional Record*, 73rd Cong., 1st Sess., 2919.

¹⁰⁰ Landis, "Legislative History of the Securities Act of 1933": 44-49.

government upon issuing new securities was unprecedented—detailed balance sheets, profit and loss statements, salaries and perquisites of the company’s officers and directors, the commissions of the underwriters, names and contact information of the lawyers who were consulted on the issue, and a variety of other items of information.¹⁰¹ The bill also imposed civil liabilities on corporations, directors, officers, accountants, and others who filed the registration information if it were to be found deceitful or fraudulent. The administration of the act was in the hands of the Federal Trade Commission, which created a six-member board in charge of collecting, publishing, and analyzing this new trove of corporate data.¹⁰²

But there were problems with the bill. For one thing, regulatory power only extended over the issuance of new securities. It left untouched the trade in shares that were already in circulation. The first act was passed with the assumption that the Congress would follow up the next year. But in the meantime, business opposition grew. In the press, bankers blamed the Securities Act for a slowdown in the capital markets and, increasingly, claimed uncertainty over regulation was impeding an economic recovery.¹⁰³ “The Stock Exchange Bill is receiving a terrific beating,” Landis wrote to Frankfurter in early 1934. “All the corporate wealth of this country has gone into the attack and carried it all the way up to the White House.”¹⁰⁴

While Landis and his colleagues circled the wagons in defense of the bill, some New Deal supporters outside the policymaking inner circle voiced their own concerns. Chief among them were Adolf Berle and William O. Douglas, both of whom urged the

¹⁰¹ McCraw, *Prophets of Regulation*, 173.

¹⁰² Securities Act of 1933, 15 U.S.C. § 77a (1933).

¹⁰³ “Uncertainty Given Blame for Slow Capital Market,” *Los Angeles Times*, Dec. 7, 1933.

¹⁰⁴ Quoted in Seligman, *The Transformation of Wall Street*, 178.

creation of more robust regulatory institutions. “There is nothing in the Act which would control the speculative craze of the American public, or which eliminate wholly unsound capital structures,” Douglas wrote along with the legal scholar George Bates in the pages of the *Yale Law Journal*. He urged administrative control over the market.¹⁰⁵

Berle worked behind the scenes. Unlike Landis and company who, under mounting pressure from Wall Street and particularly the New York Stock Exchange chairman Richard Whitney, came to feel reticent about revising the 1933 act for fear that their opponents might take an opportunity to gut their reform efforts, Berle urged greater aggressiveness on his fellow New Dealers.¹⁰⁶ “If anything is going to be done to that Act,” he wrote Landis, “I would rather we did it than have someone else do it—which is likely.”¹⁰⁷ As he told Roosevelt’s committee on revision, the securities merchants had discredited themselves.¹⁰⁸ He disputed the notion that the Securities Act was the cause or even one of the causes of the slowdown on Wall Street that year. “There is some evidence to believe,” he wrote to Roosevelt, “that among the so-called ‘responsible’ banking houses there is a tacit understanding that financing affected by the act will not be undertaken.” It may have been an exaggeration to call this a financial strike, but it was at least an understandable balk as they came to terms with not only liabilities that Securities Act inscribed but also the new capital structures shaped by the Glass-Steagall Act of

¹⁰⁵ William O. Douglas and George Bates, “The Federal Securities Act of 1933,” *Yale Law Journal* 43, no. 2 (January 1, 1933): 171, 216-217.

¹⁰⁶ On Whitney’s opposition to the Securities and Exchange Act of 1934, see Seligman, *The Transformation of Wall Street*, 75-76; Parrish, *Securities Regulation and the New Deal*, 123-124.

¹⁰⁷ Adolf Berle to James Landis, Feb. 28, 1934. Securities and Exchange Historical Society.

¹⁰⁸ Box 22. Stock Market Investigation, 1933-34. Folder: Draft: Memorandum with corrections in Berle’s Hand [Re: Modifications in Securities Act of 1933]. Berle Papers. FDR Presidential Library.

1933, which required the separation of investment banking from consumer banking.

“Presumably they will get over this,” Berle wrote.¹⁰⁹

Berle had his own suggestions for revision and they are worth a moment’s reflection if only to bring into greater relief the compromise that was struck in 1934. In the first place, he supported the basic principle of disclosure on which the policy was based and, in the main, he suggested the closure of certain loopholes and exemptions in order to provide the investing public with greater information. On the most controversial aspect of the legislation—the personal liability of corporate leaders for fraud and deceit—Berle urged policymakers to hold the line and maintain financial liability up to the price of the shares offered. He only urged swifter judicial proceedings in the federal courts.¹¹⁰

But Berle also imagined more wide-ranging policy ideas. One was what he called corporate licensing. In a memo to Roosevelt, he argued that the only way to ensure uniformity of ethical conduct in the financial industry was to establish a federal administration—he called it the Investment Bankers Code Authority—that could grant or revoke the licenses of banks and thus their ability to do business on the basis of their behavior.¹¹¹ This was one application of a larger project of bringing federal oversight to bear on interstate commerce. It was an offshoot of the policy of federal incorporation that Roosevelt had asked Berle to work on.¹¹² Berle wasn’t alone in his desire to transform the incorporation system. The topic came up repeatedly during congressional hearings in

¹⁰⁹ “Memorandum to the Secretary of Commerce for Transmission to the President,” Jan. 27, 1934. Box 22. Adolf Berle Papers. FDR Presidential Library.

¹¹⁰ “Memorandum to the Secretary of Commerce for Transmission to the President.”

¹¹¹ “Memorandum to the Secretary of Commerce for Transmission to the President.”

¹¹² Schwartz, *Liberal*, 82-83.

February and March of 1934 and was considered by many to be the logical complement to the narrow finance-focused securities acts.¹¹³

The failure of the American incorporation system to shape the conduct and structure of large corporations had been noted by every generation since the 1880s. By the turn of the twentieth century, the victory of general incorporation laws and the so-called race to the bottom among states gave corporations the opportunity to avoid substantial democratic oversight by state legislatures. Managers chose to incorporate in a state (increasingly Delaware and New Jersey) based upon their acid-washed charters.¹¹⁴ The first major push for a federal system came with the Hepburn Act of 1906 and Theodore Roosevelt's campaign to answer the trust question.¹¹⁵ Federal incorporation was no panacea for corporate abuse, however, and many business leaders during the progressive era supported the proposal for reasons of legitimation and efficiency.¹¹⁶

After Roosevelt election, Berle and William O. Douglas became the most vocal supporters of a progressive federal incorporation law. As an adviser to the National Recovery Administration, Gardiner Means put together a proposal, detailing its history, constitutionality, and policy advantages. The state-based system, as he put it, created corporations "without thought of responsibility." A federal system, Means reckoned, would allow lawmakers to structure the internal governance of interstate corporations to achieve socially responsible ends and to provide for supervision and democratic control

¹¹³ Subcommittee on Stock Exchange Practices; Committee on Banking and Currency. Senate., *Stock Exchange Practices. Part 15: National Securities Exchange Act, Feb. 26 - Mar. 2, 5-9, 12, 16, 1934* (Washington, D.C.: U.S. Government Printing Office, 1934), 16.

¹¹⁴ James Willard Hurst, *The Legitimacy of the Business Corporation in the Law of the United States, 1780-1970* (Charlottesville, VA: The University Press of Virginia, 1970).

¹¹⁵ Naomi R. Lamoreaux, *The Great Merger Movement in American Business, 1895-1904* (New York, NY: Cambridge University Press, 1988), 169-173.

¹¹⁶ Ott, *When Wall Street Met Main Street*, 27-28. Gabriel Kolko, *The Triumph of Conservatism: A Reinterpretation of American History, 1900-1916* (New York, NY: Free Press, 1963), 133-134.

of corporations.¹¹⁷ “Confidentially, we are now working on a federal incorporation law which I hope will be presented to Congress in the next Session,” Berle wrote to Douglas in late 1933.¹¹⁸ “You can count on me to pull an oar on federal incorporation,” he responded.¹¹⁹

Federal incorporation was proposed from some sector of the Democratic Party every year of the 1930s beginning in 1933. When a committee consisting of industry and federal representatives, including Landis and Berle, made its formal report to Roosevelt on the stock exchange bill in January 1934, they recommended federal incorporation for corporations engaged in interstate commerce. It was the “most effective way to deal with certain evils.”¹²⁰ But the idea always received more support from those friendly to economic planning within the New Deal, particularly Berle, Douglas, and Tugwell. Thomas Corcoran waved off the proposal at a Senate hearing in late February, calling it a “dilatory plea” to put action off. It would be far too complicated to pass.¹²¹ Frankfurter urged Roosevelt to hold off.¹²² And he voiced his skepticism to Douglas about such “large schemes of which you speak for curbing corporate abuse.”¹²³ The future Supreme Court justice was, in short, naïve:

¹¹⁷ “Federal Incorporation,” Box 3. Series 1. Gardiner C. Means Papers. FDR Presidential Library.

¹¹⁸ Adolf Berle to William O. Douglas, Dec. 30, 1933. Box 2. Folder 5. General Correspondence. William O. Douglas Papers. Library of Congress.

¹¹⁹ Douglas to Berle, Jan. 3, 1934. Box 2. Folder 5. General Correspondence. William O. Douglas Papers. Library of Congress.

¹²⁰ “Text of Committee Report to Roosevelt on Federal Regulation of the Stock Exchanges,” *New York Times*, Jan. 28, 1934.

¹²¹ Subcommittee on Stock Exchange Practices; Committee on Banking and Currency. Senate., *Stock Exchange Practices. Part 15: National Securities Exchange Act, Feb. 26 - Mar. 2, 5-9, 12, 16, 1934* (Washington, D.C.: U.S. Government Printing Office, 1934), 6536

¹²² Frankfurter to Roosevelt, Mar 6, 1934, Felix Frankfurter Collection, Reel 60. FDR Presidential Library. Hyde Park, New York.

¹²³ Felix Frankfurter to William O. Douglas, Jan. 16, 1934. Box 6. Folder 6. General Correspondence. William O. Douglas Papers. Library of Congress. Washington, D.C.

[I]n your letters to me you are fiercely outspoken about the wickedness of Wall Street and gently suggest that I'm a sap in not knowing how wicked they are, and the only thing to it is to boil them in oil. But yet the fact is that you who've had damned little experience in these matters, who've had next to nothing to do with the actual mechanism of committees and courts, but consort not a little with the great and good in great law offices and great business schools.¹²⁴

The problem with federal incorporation, as Frankfurter condescension made clear was that it was solution only attractive to those with an appetite for a more radical transformation of the corporate system. It represented a repudiation of political economic system of federalism that had so empowered large corporations. The plan for federal incorporation legislation was shelved in 1934 because of the "mass of details to be considered," reported the *New York Times*.¹²⁵ It was floated again in 1935 as a possible replacement for the National Recovery Administration after the latter was declared unconstitutional.¹²⁶ The proposal finally became the project of Senators William Borah and Joseph O'Mahoney, who drummed up support for several years until it finally became a prominent feature of the Temporary National Economic Committee.¹²⁷ "It is the culmination of a struggle which has been going on in the United States since most of us now living were born," he told a radio audience in 1936, "to present a comparatively few persons of great ability and skill, but little conscience, to manipulate the corporation

¹²⁴ Frankfurter to Douglas, Mar. 16, 1934. Box 6. Folder. 6. General Correspondence. Douglas Papers. Library of Congress.

¹²⁵ "Federal Incorporation Waits," *New York Times*, Mar. 1, 1934.

¹²⁶ "Some New Deal Quarters Hatching Plan For a Federal Incorporation Law," *Wall Street Journal*, Aug. 10, 1935.

¹²⁷ Hawley, *The New Deal and the Problem of Monopoly*, 371-372.

laws of a few states to the disadvantage of the entire nation.”¹²⁸ By 1938, however, whatever enthusiasm for the federal incorporation plan that existed in the administration was lost.¹²⁹ Even Douglas, by then SEC chairman, had measured the political winds and abandoned the project.¹³⁰

Federal incorporation captured the attention of many would-be corporate reformers, but it wasn’t the only policy proposal that the securities acts would kick up in the early 1930s. Berle’s 1933 article for the *Yale Review*, “High Finance: Master or Servant,” was best known for articulating how Wall Street financiers exercised an informal control over the structures of corporate capitalism. But it was his elliptical consideration of how to displace the power of the investment bankers that was most imaginative. An expansion of the Reconstruction Finance Corporation, which had hitherto played a relatively minor role in the extension of credit, he suggested, could be used to provide an alternative to Wall Street.¹³¹ “The transmission of functions formerly monopolized by the investment banker,” he wrote, “to financial instruments recognized as belonging to the whole people is only barely beginning.”¹³² Putting the federal government in the business of finance, from insurance and mortgages to corporate credit, would substitute what were formerly private interests with the welfare of the entire community. At issue with Berle’s proposal, as with everything else surrounding corporate reform, was a political question. Should high finance regulate the economy or should

¹²⁸ Joseph O’Mahoney, “Federal Incorporation of Interstate Business,” *Vital Speeches of the Day*, January 1, 1937, 175.

¹²⁹ Brinkley, *The End of Reform*, 93.

¹³⁰ Brinkley, *The End of Reform*, 310n23

¹³¹ The Tennessee populist Estes Kefauver would later advocate along similar lines, calling for the RFC as a remedy to corporate concentration. Speech of Sen. Estes Kefauver, Nashville, TN, Jun. 23, 1958. Box 1332. Folder 6. Estes Kefauver Papers. Special Collections. University of Tennessee-Knoxville.

¹³² Berle, “High Finance,” 41.

democratic institutions?¹³³ The securities acts, Berle and many others maintained, did not go nearly far in enough in transforming the exercise of corporate power.

The Politics of the Administrative Process

The Securities Exchange Act of 1934 was a tool for restoring market rationality and efficiency. Far from transforming the social structure of finance or corporate governance, the legislation helped to make the exchange legitimate for the investing classes again. While Frankfurter, like Cohen, Corcoran, and Landis, preferred stricter rules about margins and short-selling, for example, he neither had the appetite nor the politics for the proposals of Berle, Pecora, or Douglas.¹³⁴ “Douglas seems to me to lack a tremendous sense of the realities that are involved in this problem,” Landis wrote to Frankfurter in March 1934, “how the relentless drive for profits leads men to do things and then defend them.”¹³⁵ The exchange’s power was entrenched and it would take a class war to remove it. As Pecora would often remark, it was essentially a private gentlemen’s club—limited to 1,375—whose interests, if not their animal spirits, could turn the wheel of fortune for the rest of the country.¹³⁶

In lieu of a war on Wall Street, Roosevelt’s policymakers sought to cleanse the exchange of what they called speculation. By forcing federal supervision and limited control over the rules of the stock exchange, the act brought the principle of disclosure and publicity to bear on the business of trading. They were loath to put the government in the position of judging the soundness of an investment—or deciding what constituted

¹³³ Seligman, *The Transformation of Wall Street*, 72.

¹³⁴ Steve Fraser, *Every Man a Speculator: A History of Wall Street in American Life* (New York, NY: HarperCollins, 2006), 459-465.

¹³⁵ Quoted in Justin O’Brien, *The Triumph, Tragedy and Lost Legacy of James M Landis: A Life on Fire* (New York, NY: Bloomsbury Publishing, 2014), 50.

¹³⁶ Ferdinand Pecora, *Wall Street Under Oath: The Story of Our Modern Money Changers* (New York, NY: Simon and Schuster, 1939), 259.

speculation—but they could change the rules of the game to limit the likelihood of speculation and to give the average investor enough information to avoid being caught up in a speculator’s schemes. The 1934 act required the registration of all listed securities, not just ones newly-issued. While restrictions on insider trading developed over time, generally speaking the law sought to limit the power of insiders to capitalize on their information in the market. It brought more specialized professional standards to the exchange by dividing the work of brokers from dealers from underwriters, etc. And it imposed for the first time a limitation on the use of credit to trade or sell.¹³⁷

The Securities Exchange Act brought legitimacy to the markets. “It is my belief that the investing public will find the markets to be firmer in their foundations because of the safeguards and because of the increased marginal requirements and the elimination of shoestring speculators” said Joseph P. Kennedy, a conservative New Dealer and ambitious politician with deep ties to Wall Street and whose nomination as the first SEC chairman shocked Landis and Cohen.¹³⁸ In addition to the concerns of the middle class investor, the securities market provided renewed legitimacy for the corporate system as a whole. Now the controlling part of large corporations would no longer be as shrouded in secrecy, so the thinking went; it would be held accountable by a competitive and transparent market.

The SEC represented a new form of regulation in the political economy of the United States, one which had only been hinted at by earlier administrations like the Federal Reserve Board or the Federal Trade Commission. As the drafters of the

¹³⁷ William Lasser, *Benjamin V. Cohen: Architect of the New Deal* (New Haven, CT: Yale University Press, 2008), 88-89. Parrish, *Securities Regulation and the New Deal*, 116-120. Seligman, *The Transformation of Wall Street*, 85-87; 98-100.

¹³⁸ Joseph P. Kennedy, Address at the National Press Club, Jul. 25, 1934. SEC Historical Society.

legislation believed, the problems that they were trying to solve could not be grasped by a slow-to-react Congress nor, as the common law had it, by the initiative and resources of plaintiffs in the courts.¹³⁹ They constructed instead an administrative institution that could evolve over time by creating its own rules, recommending further legislation, and strategically choose how to carry out its mandate.¹⁴⁰ Landis called it the administrative process. “In terms of political theory, the administrative process springs,” he wrote in a book-length apologia, “from the inadequacy of a simple tripartite form of government to deal with modern problems.”¹⁴¹ The conditions of industrialization and mass democracy had, it seemed, made obsolete the lumbering structures of the legislative, judicial, and executive branches. Institutions like the SEC, Landis argued, were not extensions of the executive branch of the government; they were in some sense necessary combinations of all three branches.¹⁴² Necessary because the court system was “slow and costly” in its method of making law case-by-case and the common law conception of the judiciary as mere umpire between opposing parties failed in cases where there was an “absence of equal economic power.” Older regulatory methods, in short, were reactive rather than proactive. The efficiency of the SEC rested in its supposed ability to produce more consistent outcomes because of its power to initiate action independently in the making of rules and policies and the execution of judgments.¹⁴³

Administrative law was founded on the competence of experts. The expert played a role, in Landis’s mind, not just in parsing the technical problems that arose from the

¹³⁹ Landis, *The Administrative Process*, 9.

¹⁴⁰ McCraw, *Prophets of Regulation*, 185.

¹⁴¹ Landis, *The Administrative Process*, 1.

¹⁴² Landis, *The Administrative Process*, 15.

¹⁴³ Landis, *The Administrative Process*, 34-36. See Horwitz, *The Transformation of American Law*, 213-225.

often opaque, if not sophisticated, industry of financial services. The expert also possessed a political function. By conducting work in the “quiet of a conference room” from the “turmoil of a legislative chamber or committee room” and under the cloak of specialized credentials, Landis said, the expert is able to ensure that “calmness of atmosphere in which wise administration flourishes.”¹⁴⁴ The technocracy of the commission helped to buffer its power away from the struggles of the political sphere which could overpower the institution and threaten its long-term viability.¹⁴⁵ Disinterested expertise made the administrative process work.

Landis’s vision of technocratic and apolitical regulation was, of course, inherently political. “The dominant theme in the administrative structure is thus determined not primarily by political conceptualism but rather by concern for an industry whose economic health has become a responsibility of government,” he wrote, not admitting that such a mandate was in itself a political one or that economic health is a necessary political judgment.¹⁴⁶ The policymakers who designed the corporate property regime, like Landis, had lost faith in the ability of markets to self-correct and to produce socially equitable outcomes. They had also lost faith in the initiative of business leaders to self-regulation and make reforms on their own. But, as is often overlooked, they also had lost faith in the political institutions of democracy. They exchanged the Congressional chamber for the conference room.

This technocratic picture of public policy is what the legal scholar K. Sabeel Rahman has called the managerial approach to economic governance. The managerial

¹⁴⁴ Landis, *The Administrative Process*, 70, 171.

¹⁴⁵ O’Brien, *The Triumph, Tragedy and Lost Legacy of James M. Landis*, 77.

¹⁴⁶ Landis, *The Administrative Process*, 12.

approach has been committed to a more active role for government in the economy, both in ensuring the rights of contract and property but also in mitigating risks and protecting vulnerable populations. Nevertheless, this vision cast doubt on the effectiveness of “conventional democratic policymaking bodies and mechanisms” like voting or legislating.¹⁴⁷

Rather, the public good requires the creation of specialized institutions where uniquely expert or talented policymakers can, through the judicious use of their knowledge and public-spiritedness, craft regulations so as to promote the public good. This institutional vision calls for economic policy to be made through bodies that are centralized, expert-led, and politically insulated, free to make policy on the basis of morally neutral scientific knowledge.¹⁴⁸

Rahman argues that in contrast to the mass politics of economic reform that animated projects ranging from Populist radicalism to the Brandeisian progressivism, the framers of the SEC and the property regime channeled political energies into the narrow field of scientific management. It represented a shift away from a moralized vision of economic justice or a critique of concentrated power and toward a focus on optimizing growth and guarding economic stability.¹⁴⁹

Kennedy made it clear to Wall Street from the outset that “their game would not be ruined.”¹⁵⁰ His first address, broadcast nationally, was reassuring: “We regard ourselves, as the President has said, as partners in a cooperative enterprise. We do not

¹⁴⁷ K. Sabeel Rahman, *Democracy Against Domination* (New York, NY: Oxford University Press, 2016), 6-7.

¹⁴⁸ Rahman, *Democracy Against Domination*, 7.

¹⁴⁹ Rahman, *Democracy Against Domination*, 38.

¹⁵⁰ Ralph F. de Bedts, “The First Chairmen of the Securities and Exchange Commission: Successful Ambassadors of the New Deal to Wall Street,” *The American Journal of Economics and Sociology* 23, no. 2 (1964): 168.

start off with the belief that every enterprise is crooked and that those behind it are crooks.”¹⁵¹ When Landis took over the chairmanship about a year later, the message to Wall Street remained largely unchanged. His speeches and articles, no less than his administration, focused on “supervised self-regulation.”¹⁵² As one scholar has put it, the first chairmen of the SEC were successful ambassadors to Wall Street.¹⁵³

Although some New Dealers like Berle and Douglas favored more robust corporate controls, such as a federal incorporation system and an expansive Reconstruction Finance Corporation, the narrower, market-focused vision of Frankfurter and Landis won out. The Harvard-trained policymakers followed in the footsteps of Brandeis, the Supreme Court justice whose appetite for federal intervention in the corporate economy had been largely limited to antitrust.¹⁵⁴ The goals of financial reform and antitrust were similar: to restore to the market the conditions of competition and fair play.¹⁵⁵ The foundation on which the securities acts were built was disclosure. The detailed and intricate collection of data that the new laws required from corporations were supposed to give the investing public not just renewed confidence in the corporate economy but also the information necessary to invest in a competent fashion.¹⁵⁶

This brings us back to the issue of responsibility. While the financial reforms of the New Deal have often been understood by conservative critics as efforts to restrain the power of the market, it is my argument that the securities acts helped to rebuild financial

¹⁵¹ Joseph P. Kennedy, Address at the National Press Club, Jul. 25, 1934. SEC Historical Society.

¹⁵² de Bedts, “The First Chairmen of the Securities and Exchange Commission”: 173.

¹⁵³ de Bedts, “The First Chairmen of the Securities and Exchange Commission”: 165–78.

¹⁵⁴ McCraw, *Prophets of Regulation*, 82. On the relationship between Frankfurter and Brandeis, see Bruce A. Murphy, *The Brandeis/Frankfurter Connection: The Secret Political Activities of Two Supreme Court Justices* (New York, NY: Oxford University Press, 1982).

¹⁵⁵ Louis D. Brandeis, *Other People's Money: And How the Bankers Use It* (New York, NY: F.A. Stokes, 1914), 92–108.

¹⁵⁶ McCraw, *Prophets of Regulation*, 173.

markets as the foundation of the corporate system. By ensuring greater transparency and efficiency, the property regime made corporations more responsible to the interests of the financial community. By establishing at the federal level corporations as the private property of shareholders, the New Deal produced its own vision of corporate responsibility, which it defined as a fiduciary responsibility to the investing public. Although New Dealers would likely have never supported the shareholder-value movement of the late twentieth century, liberal policymakers in many ways helped to set the stage for shareholder radicalism by foreclosing policy alternatives for reforming corporate governance and bringing a wider range of social interests into the decision-making process of business. As we shall see, business leaders laid claim to the banner of social trusteeship and business statesmanship in the late 1930s and 1940s, but this was always a voluntary and tentative way of relating to the public.

Corporate Responsibility and Business Reputations

The business community had a reputation problem. Pecora's investigations, particularly the revelation that J.P. Morgan and company hadn't paid income taxes for several years, roiled the country. But suspicion of big business was founded on more than just scrupulosity. By 1932, the nation's gross national product had declined by 33 percent.¹⁵⁷ The next year, as the first financial reforms were pushed through Congress, the unemployment rate was at 25 percent.¹⁵⁸ Public opinion turned against business. The Louisiana firebrand Huey Long made a name for himself partly by denouncing big

¹⁵⁷ Jason Scott Smith, "Businessmen," in *Encyclopedia of the Great Depression* (New York, NY: Macmillan Reference USA, 2004).

¹⁵⁸ Stanley Lebergott, "Annual Estimates of Unemployment in the United States, 1900-1954," in *The Measurement and Behavior of Unemployment*, a Report of the National Bureau of Economic Research (Princeton, NJ: Princeton University Press, 1957): 211-242.

business and calling for the redistribution of wealth.¹⁵⁹ Business may have avoided the disruptive consequences of corporate reform and won further victories when the Supreme Court struck down key pieces of the New Deal in the mid-1930s, but they still had a problem with public opinion.

Opposition to reform was just one piece of the response. Throughout the latter half of the decade, many in the business community laid claim to social trusteeship as a bulwark against the expanding New Deal state. Raymond Moley, for one, who by this time had abandoned Roosevelt and was on his way to the right wing, told a gathering of the National Association of Manufacturers that managers had become “quasi-public” officials who had responsibilities to consumers, workers and the public.¹⁶⁰ “It seems to me that the best way to stop the hue and cry against business so common in political discussion these days, is to set up a counter-current of understanding,” he urged advertisers on another occasion. “Business that is undertaking to sell itself because of the service it is rendering to the public...will be serving, in no small measure, the economic and social order under which we all live.”¹⁶¹ Such a tact would go a long way in helping Congress to give up its “quest for reform,” which was becoming a bit like administering too much medicine.

Corporate responsibility was one feature of a larger public relations project of “selling the system,” as some advertisers put it. Firms came to rely on sophisticated ways of bringing legitimacy to the business community by employing the services of public

¹⁵⁹ Alan Brinkley, *Voices of Protest: Huey Long, Father Coughlin, & the Great Depression* (New York, NY: Knopf Doubleday, 2011), 55.

¹⁶⁰ Brinkley, *The End of Reform*, 39. Raymond Moley, “Industrial Leadership—1937 Model,” *Vital Speeches of the Day*, Jan. 1, 1937, 186.

¹⁶¹ Raymond Moley, “The Future of Corporate Prophets,” *Vital Speeches of the Day*, Jul. 15, 1936.

relations executives who produced through advertisements, reports, and imagery a sense of the corporate soul.¹⁶² The language of responsibility showed up repeatedly in the annual reports of many companies in the late 1930s. Consider the 1938 statement from General Motors:

More recently a further responsibility has claimed an increasing amount of attention from management, and that is the relationship of industry to the community as a whole. For many years the chief and absorbing problems of industry lay in the fields of engineering, production and distribution... Today there is a greater necessity than ever before for improving the relationships of industry as affecting human progress and for new interpretations of the fundamental place of industry in our social and economic structures.¹⁶³

With its public relations staff of more than 50 and budget that reached \$2 million by the end of the decade, GM stood at the forefront of companies that laid claim to the public interest, but they were not alone. Sears, Roebuck, and Company offered a similar message that same year.¹⁶⁴ “In these days of changing social, economic, and political values, it seems worth while in this annual report to the stockholders to render an account of your management’s stewardship,” the company wrote, “not merely from the viewpoint of financial reports but also along the lines of those general broad social responsibilities which cannot be presented mathematically and yet are of prime importance.” The report

¹⁶² Roland Marchand, *Creating the Corporate Soul: The Rise of Public Relations and Corporate Imagery in American Big Business* (Oakland, CA: University of California Press, 1998), 245-248.

¹⁶³ General Motors, “Annual Report,” 1937, 56.

¹⁶⁴ Marchand, *Creating the Corporate Soul*, 247.

went on to summarize the firm's responsibilities to customers, the public, employees, and suppliers, in addition to shareholders.¹⁶⁵

Corporate social responsibility became a concept that all sides of the business community endorsed even as they sought to shape it for their own purposes. Even Colby Chester, head of the conservative National Association of Manufacturers, emphasized the claim to social responsibility. "I believe that American business today," he told an NAM group, "is as honorable, as socially minded, as conscious of, and as worthy of its great responsibility as any group of citizens in this or any other land."¹⁶⁶ Chester cast American business as the true custodians of society in contrast to the New Deal state, which had gone off course.

In the late 1930s, the public relations industry grew rapidly as companies sought to tell stories about their greater social mission and about the goodness of the capitalist system. The advertiser Bruce Barton called on business to desist from negative ads attacking the popular Roosevelt and the policies of the New Deal. Companies needed to tell stories about the mission of their business and the contributions they were making to the public good. Such efforts helped to undercut the popular perception that the economic system needed more regulation and government intervention.¹⁶⁷ "If any manufacturer says, 'I do not care what the common mass of people of people think about my business, whether it be popular or unpopular with them,'" said the advertiser Bruce Barton, "that man is a liability to all industry. No major industry has any moral right to allow itself to

¹⁶⁵ Sears, Roebuck and Company, "Annual Report, 1937.

¹⁶⁶ C.M. Chester, "How Liberal if Business?" *Vital Speeches of the Day*, Jan. 1 1938, 173.

¹⁶⁷ Marchand, *Creating the Corporate Soul*, 202-206.

be unexplained, misunderstood or publicly distrusted, for by its unpopularity it poisons the pond on which we all must fish.”¹⁶⁸

The cultivation of the public’s trust was not just an issue of creating an institutional image. It was also a project of making the managerial class trustworthy. In the 1920s, professional business schools sought to transform the status of the manager. Wallace B. Donham, dean of the Harvard Business School, was at the forefront of a new generation of business theorists who thought that, far from being mere technicians, managers should exercise independent judgement and serve higher aims. The professions that had in the past provided moral and social leadership, such as law and the clergy, had lost that status. The business manager now had the responsibility to address issues ranging from the labor problem to corporate control.¹⁶⁹ Donham came to believe that the purpose of business schools was not to train students for an occupation but to prepare socially minded business leaders to occupy a “learned profession” and embrace a mission that was redemptive.¹⁷⁰

The tumultuous 1930s only intensified Donham’s ambition, along with other business school leaders at the time, to raise the status of the managerial class. In a seminal article for *Harvard Business Review*, Donham argued that overspecialization in the field of corporate management had led to a failure of social leadership. Managers may have a good understanding of their own business but they have “too little grasp of their own industries as a whole, almost none of the relation between their particular interests

¹⁶⁸ Quoted in Marchand, *Creating the Corporate Soul*, 203.

¹⁶⁹ Rakesh Khurana, *From Higher Aims to Hired Hands: The Social Transformation of American Business Schools and the Unfulfilled Promise of Management as a Profession* (Princeton, N.J.: Princeton University Press, 2010), 115-116.

¹⁷⁰ Khurana, *From Higher Aims to Hired Hands*, 150.

and our general social and economic structure,” he wrote, and “far too little grip on the social consequences of their activities.”¹⁷¹ The point of business leadership (and of professional education) was the skill of grasping the general situation and harmonizing different viewpoints. Like Moley, Bruce Barton, and other business theorists of the 1930s, Donham conceived of corporate responsibility as a means of avoiding regulation:

The solution of problems of business ethics, the task of learning how to conduct business so as to add to general security and happiness, must be undertaken primarily by business leaders. Their object must be to do the job so well that the law and the policeman are unnecessary. When business fails to assume this responsibility, the law will treat it as antisocial, and inept remedies with unpredictable but surely bad social consequences will add strains to civilization. Many unwise laws will result from this depression.¹⁷²

American business education, beginning first with the Wharton School in the 1880s, sought to create moral and social legitimacy to the managerial class by defining the profession in socially capacious terms. Business schools were founded on the vision that managers should run America’s large corporations in such a way that served the broader interests of society and not the narrowly defined ones of capital or labor.¹⁷³ Although business schools largely abandoned this vision in the postwar era, as Rakesh Khurana has argued, during the 1930s Donham, among others, renewed his call for

¹⁷¹ Wallace B. Donham, “The Failure of Business Leadership and the Responsibility of the Universities,” *Harvard Business Review* 11, no. 4 (July 1933): 419.

¹⁷² Donham, “The Failure of Business leadership,” 423.

¹⁷³ Khurana, *From Higher Aims to Hired Hands*, 4.

business programs to help transform management into a profession that would be self-consciously dedicated to the “service of society.”¹⁷⁴

The stance of business leadership toward public policy was generally reactive, but there was one important exception and it paved the way toward more expansive business involvement in charities and philanthropies in the twentieth century. It was the fight for a federal imprimatur on and a tax break for corporate giving. Culminating with the Federal Revenue Act of 1935, there was a fight in the early 1930s on the part of charitable organizations and liberal-minded business leaders like General Electric’s Gerard Swope to encourage corporate giving.¹⁷⁵

The key player in the effort was the Community Chests and Councils, a national institution which had organized the various and dispersed community chests that had arisen during the progressive era. These urban organizations originally had raised money from local corporations and unions for the purposes of community projects, but by the late 1920s the national organization had brought fundraising to the national level by hitting up big business for contributions.

Two things stood in the way of corporate philanthropy. The first had to do with corporate governance. Did corporate managers have the right to give away money that belonged to the firm? The legitimacy and limits of such spending had not been legally clarified at the national level. The second question was about financial motivations. If individuals were encouraged to donate because of the tax benefits, should not corporations also be allowed to deduct contributions from their tax burden? Private

¹⁷⁴ Khurana, *From Higher Aims to Hired Hands*, 185.

¹⁷⁵ For an overview of the “Fight for Five,” Morrell Heald, *The Social Responsibilities of Business: Company and Community, 1900-1960* (Cleveland, OH: Press of Case Western Reserve University, 1970), 148-173.

charities, which had hemorrhaged funds during the Great Depression, saw a change in the tax code as an opportunity to secure larger contributions from corporations.¹⁷⁶

An opportunity for community chest leaders came in 1935 when Roosevelt urged a major overhaul of the tax code. His proposal combined progressive individual and corporate income taxes with estate and inheritance levies, seeking to weaken the concentration of capital and compromise the accumulation of large fortunes. Derided by business as a radical “soak the rich” scheme, the original proposal included no provisions on corporate contributions or giving. Roosevelt had little interest in offering what he thought were concessions to big business.¹⁷⁷ But a progressive bloc of Congress framed the revenue act as an opportunity to encourage the wealthy to share with the government social burdens.¹⁷⁸

Allen Burns, longtime leader of Community Chests and Councils, jumped at the chance to force the corporate contributions issue. Without any support from the National Association of Manufacturers or the Chamber of Commerce, Burns began a massive letter-writing campaign among community chests around the country urging Congress to consider the needs of private charity.¹⁷⁹ Allies like the progressive Newton Baker appeared before Congressional committees expressing the campaign’s message. “I deeply believe that the corporation has not only a right but a duty to be a good neighbor in the town in which its own employees live,” Baker told the Senate Finance Committee, “and that there are obvious and direct benefits going to a corporation which makes a

¹⁷⁶ Heald, *The Social Responsibilities of Business*, 156-165.

¹⁷⁷ "The President's Message to Congress Urging Increased Taxes on Wealth," *Washington Post*, Jun. 20, 1935; Arthur M. Schlesinger, *The Politics of Upheaval: 1935-1936* (New York, NY: Houghton Mifflin Harcourt, 2003), 327-329.

¹⁷⁸ "Borah Goes to Aid of the President on New Tax Plan," *New York Times*, Jun. 24, 1935.

¹⁷⁹ Heald, *The Social Responsibilities of Business*, 166.

subscription within modest limits to a [charitable organization].” Baker went on to say that corporations not only had a duty to give but also that corporate giving provided an example to the public that encouraged private and individual giving.¹⁸⁰

Even as the case was being made for corporate giving, Roosevelt remained opposed. He told the press in July 1935 that the grant of tax deductions for corporate donations encouraged two unsound practices. The first was that such gifts functioned as kind of bribe. Charitable contributions cultivated public goodwill in a way that obscured the legitimate reasons that the public may have had for criticizing business. In making his second objection, Roosevelt waded into the waters of corporate theory. He argued that corporate funds were not the possession of managers to use for whatever purpose they might see fit, even ostensibly responsible purposes like charitable giving. As the securities reform measures that he pushed through Congress had established, corporations were the private property of shareholders. Shareholders were owners of firms and whatever possessions the firm held were, by extension, the collective property of the diverse group shareholders. “These investors ought to have the right to choose the purposes for which they gave [their investment] rather than have the choice made by officials of a corporation,” *The New York Times* reported as Roosevelt’s view.¹⁸¹ It was a perspective that favored the proprietary interests of shareholders. In this sense, Roosevelt remained entirely consistent with the views of Adolf Berle and the corporate theory on which New Deal financial reforms were based.

¹⁸⁰ Committee on Finance. Senate., *Revenue Act of 1935 Hearings, Jul. 30 - Aug. 2, 6-8, 1935* (Washington, D.C.: U.S. Government Printing Office, 1935), 114.

¹⁸¹ “President Hits Corporation Gifts,” *New York Times*, Jul. 25, 1935.

The president's opposition was a "staggering blow," Burns told the press, that denied the obligations of corporations to address private social needs. The community chests entered the crossfire of Brandeisian reform. They warned that unless private corporations picked up the slack of private giving, more of the social burden would have to be taken up government instead of voluntary associations.¹⁸² The heads of several well-known institutions, such as New York's Beekman Street Hospital, warned the president that important social institutions, such as private hospitals, could close down without further corporate support.¹⁸³ While Gerard Swope met privately with Roosevelt to press his case, the letter-writing campaign of the community chests helped to push their cause over the edge. With that, the locus of decision-making had moved from the White House to the Congress.¹⁸⁴ Over the objections of Roosevelt, the House included an amendment to the original bill that allowed corporations to claim deductions on contributions up to five percent of net income.¹⁸⁵

The amendment was broad and opened the door to corporate influence in a variety of fields, including religious, charitable, scientific, literary, educational, and other social welfare activities. The enactment of the Revenue Act of 1935 was a turning point not just in the history of philanthropy, but also in the development of corporate social responsibility. Perhaps second only to changes in election laws that opened the door to corporate political spending, the five percent rule was one of the most powerful tools by which corporate business institutions would influence American social life and cultivate

¹⁸² "Corporation Gifts to Charities," *Social Service Review* 9, no. 3 (1935), 541.

¹⁸³ Heald, *The Social Responsibilities of Business*, 169.

¹⁸⁴ Heald, *The Social Responsibilities of Business*, 170.

¹⁸⁵ Congressional Record. Aug. 3, 1935. "House Bill Applies New Taxation Principles," *New York Times*, Aug. 4, 1935.

for itself a reputation for responsibility. While corporate contributions were alternately praised or criticized for transgressing the narrow confines of profit-seeking, the Bureau of Internal Revenue made it clear at the time that the new law was no blank check for managers. No corporate contributions were supposed to be made, the bureau ruled, unless the business could “reasonably contemplate a financial return commensurate with the payment” and was influenced by such expectation.¹⁸⁶

Conclusion

New legal avenues and incentives for charitable contributions made possible by the revenue act paved the way for increasing corporate philanthropy in the late 1930s and 1940s. The renewed partnership between business and charity was a concrete step in the amelioration of corporate reputations, but it was only one small piece of the puzzle.¹⁸⁷ The larger crisis that enveloped the corporate system in the 1930s called into question the social, economic, and political position of business institutions. No amount of corporate gifts would solve that crisis on its own.

Ferdinand Pecora had revealed the business community to be not only dangerously incompetent but also incapable of self-restraint and self-regulation. The ill-will toward business leadership provided a momentary opportunity for New Deal reform efforts. But scandal and economic depression injected an admixture of urgency and an appetite for experimental ideas into a debate about big business that by the early 1930s had already been going on for a generation. As historians have established with greater clarity in recent decades, the ideas that policymakers deployed over the long

¹⁸⁶ “Corporate Gifts Deductible as Paid,” *New York Times*, Dec. 1, 1935.

¹⁸⁷ Douglas M. Eicher, *The Rise and Fall of Corporate Social Responsibility* (New York, NY: Routledge, 2017), 160-163.

administration of Franklin Roosevelt came from a variety of sources, both in the U.S. and Western Europe, that had their origins in the earlier efforts of progressives, Populists, and social democrats of different stripes.¹⁸⁸

In the case of corporate reform, there were more than a few sources, including the ideals of corporate democracy and Berle and Means's diagnosis of the separation of ownership and control. The New Deal was presided over by the general suspicion that had circulated among the populist left since the late 19th century that corporations had superseded and stood apart from the markets that had hitherto given them legitimacy and made them accountable. As Gardiner Means had argued, for example, far from responding to market signals, large industrial corporations administered their own prices in an uncompetitive manner.¹⁸⁹ A corporation divorced from the accountability of the market and set free from competition was a threat to democracy.

New Deal reform measures should not be underestimated. Put together, the Glass-Steagall Act, the Public Utility Holding Company Act, and the securities acts transformed a financial system that had functioned, to use Berle's terms, as the controlling element of most major industrial corporations. While no civic-minded corporate democracy was ever realized, the market-proprietary regime did establish unprecedented controls on managerial participation in the stock market and requirements on public disclosure of financial information. The new liberalism sought to use the regulatory and supervisory

¹⁸⁸ Daniel T. Rodgers, "An Age of Social Politics," in *Rethinking American History in a Global Age* (Berkeley, CA: University of California Press, 2002); Daniel T. Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge, MA: Harvard University Press, 1998); James Kloppenberg, *Uncertain Victory* (New York, NY: Oxford University Press, 1986).

¹⁸⁹ Gardiner C. Means, "Big Business, Administered Prices, and the Problem of Full Employment," *Journal of Marketing* 4, no. 4 (1940): 370–78.

power of the administrative state to make bring transparency to financial markets and accountability to corporations.

But the New Deal settlement of the corporation, seen in a different light, was a treatment plan that did not reflect the severity of its own diagnosis. Roosevelt's Commonwealth Club address, for example, which more than any other campaign speech outlined a vision for the new administration, warned against the threat of economic oligarchy where just a few unaccountable managers could run a highly concentrated American industry. Roosevelt's alternative to runaway managerial autocracy was an "economic constitutional order," in which concentration would be limited and the large corporation democratized.¹⁹⁰ The New Deal liberal ideal of taking the principles of political democracy and applying them to the governance of corporations surfaced in the repeated proposals for creating a federal incorporation system. Democratic controls on the corporation were key to Adolf Berle's proposal for a federal alternative to the private financial sector.¹⁹¹ These proposals, like other more radical ones that circulated during the 1930s, were never enacted.

The failure to make substantive changes in the area of governance left a void in the New Deal settlement of the corporations. On the one hand, liberals had warned of the threat of concentrated power, autonomous managers, and economic institutions unaccountable to markets. But on the other hand, they urged business leaders to act in a more responsible fashion and to consider the social responsibilities that attended their power and station. Even Berle, who perhaps more than anyone else insisted on the

¹⁹⁰ Franklin Roosevelt, "Commonwealth Club Speech," Sept. 23, 1932. Box 10. Speech file 522. FDR Presidential Library.

¹⁹¹ Democratic controls were also a key feature of Berle's proposals in the 1950s for the "constitutionalization" of the corporation. More on that in chapter 2.

importance of governance, could also point to the necessity of managerial responsibility—what he called the “middle course.” “Creation of a sense of responsibility, then, is, as I see it, the true solution, though it is a long one,” he wrote in *Scribner’s*.¹⁹²

It was out of this contradiction between the threat of autonomy and the imperative of responsibility that a new doctrine of managerialism emerged. The custodians of corporate responsibility would be the professional managers who could rationally and scientifically balance the interests of society with the dirty work of profit-seeking. Or, so the proponents of managerialism like Chester Barnard and Peter Drucker would say. But where they saw promise, James Burnham spoke for a rising generation of critics who saw a managerial revolution taking place. A bureaucratic system would take over both business and government and leave no escape from a managerial society. *The Managerial Revolution* was a fever dream of the Berle and Means thesis where the threat of managerial autonomy took on nightmarish and pandemic qualities. This tension between the opportunity and anxiety would mark the intellectual history of managerialism in the middle decades of the twentieth century.

But the crisis of the corporation was not resolved by public relations, public policy, or the ideology of managerialism. As war loomed over Europe, it was Roosevelt’s enlistment of business in producing the arsenal of democracy that transformed both the reputation and the economic outlook of industry. “Ironically the very individuals, the very industrial organizations, which, during the past few years, have been under political attack and held up to public scorn as enemies of the public interest have now become

¹⁹² Adolf Berle, “A High Road for Business,” *Scribner’s Magazine*, Jun. 1933, 332.

vital instrumentalities of national defense,” Alfred Sloan, Jr., the chairman of General Motors, said in late 1940. “The nation turns to them to protect itself against aggression.”¹⁹³ By enlisting in World War II, industrial leaders proved to the public that they were capable of social responsibility. The war earned business a reprieve from reform and regulation and, in the postwar era, bequeathed to managers the opportunity to remake corporate social responsibility into a top-down ideology that buttressed managerial autonomy. It is to this history of mid-century business-statesmanship and its vision of an apolitical, top-down corporate social responsibility that we will turn in the next chapter.

¹⁹³ Alfred P. Sloan, “The Economic Aspects of American Defense,” *Proceedings of the Academy of Political Science* 19, no. 2 (1941), 130.

2

The New Capitalism

“This threat, which faces not only du Pont, but all companies of like stature, is that of public reaction to bigness; not bigness per se, but bigness with implications of ‘monopoly’, ‘control’, ‘economic influence’, ‘conformity’, and power over people...It is therefore more important than ever that U.S. business management do all in its power to win support for its point of view—to use all means to describe the functions, operations, contributions and social value of the large business organization”
—E.I. du Pont de Nemours & Company Internal Memo (1957)¹

“The corporation is now, essentially, a nonstatist political institution, and its directors are in the same boat with public office-holders. If ever corporate managers base their continued tenure on power and not on reason, the end is disaster.”
—Adolf Berle
The 20th Century Capitalist Revolution (1954)²

The chief virtue of a competitive market in practice is not necessarily that it leads to economic efficiency but that it constrains private economic power...In the evolving giant corporation, managers possess great scope for decision making unconstrained by market forces.
—Carl Kaysen
“The Social Significance of the Modern Corporation” (1957).³

In the final month of 1948, leaders of the largest industrial firms in the United States found themselves in the unusual position of explaining their financial success before well-publicized Congressional hearings. Chairmen and executives from General Motors, U.S. Steel, and General Electric, among other large corporations, came to Washington to answer for what some in Congress said were irresponsible profits.

¹ “E.I. DuPont De Nemours & Company Memo.” Gardiner Means Papers. FDR Presidential Library. Series V. Container 59. Folder: Consulting Cases: Fund for the Republic-Corporations Seminar Papers, 1957-1958.

² Adolf A. Berle, *The 20th Century Capitalist Revolution* (New York, NY: Harcourt, Brace, 1954), 60.

³ Carl Kaysen, “The Social Significance of the Modern Corporation,” *The American Economic Review* 47, no. 2 (1957), 316.

Business earnings, asserted one Republican senator, were “large enough to warrant the diversion of a considerable part of them into lower prices, higher wages, or both.”⁴

Business leaders pushed back. They were eager to dispel the popular perception that they were swimming in the black, and produced financial statements that supported the story that workers, consumers, and the public benefitted as much as corporations from the sixty-two percent increase in profits between 1945 and 1948.⁵

Corporate earnings had been the political focus of attention for much of the year. In his State of the Union address, Harry Truman made profits a centerpiece of the legislative agenda.⁶ The result was months of wrangling over proposed tax increases with little to show for it except, at the end of the year, a joint Congressional committee formed by veteran critics of big business like the populist Senator Joseph O’Mahoney to investigate whether corporate profits were excessive and should be curbed with lower prices or higher taxes.⁷

The investigation into profits staged an encounter between lingering populist impulses, increasingly out of style, and an emergent new apologia for corporate capitalism. New articulations of an expansive social role for corporate management

⁴ Committee, United States Congress Joint Economic, and United States Congress Joint Committee on the Economic Report Subcommittee on Profits. *Corporate Profits: Hearings Before the Joint Committee on the Economic Report, Congress of the United States, Eightieth Congress, Second Session, Pursuant to Sec. 5 (A) of Public Law 304, 79th Congress*. Washington, D.C.: U.S. Government Printing Office, 1949, 1.

⁵ Calculated from John Joseph Wallis, Table Ea731-739 - Federal income tax returns-corporate: 1909-1991. Historical Statistics of the United States Millennial Edition Online.

⁶ Harry S. Truman, *Public Papers of the Presidents of the United States*, vol. 4 (Washington, D.C.: National Archives and Records Service, 1964), 9.

⁷ What neither Congressional nor business leaders knew at the time was that the U.S. economy had already begun to contract by December 1948 and the GDP would slide downward for most of following year. The U.S. experienced 37 months of economic growth following World War II. See Richard Sutch, Table Cb5-8 - Business cycle turning dates and duration-monthly: 1854-2001. Historical Statistics of the United States Millennial Edition Online. For a discussion of Truman’s quest for corporate tax increases, see Steven A. Bank, “The Rise and Fall of Post-World War II Corporate Tax Reform,” *Law and Contemporary Problems* 73, no. 1 (2010), 218-222. The recession effectively put off the movement for corporate tax increases until the financial necessities of the Korean War brought it back to life.

provided new justifications for the hegemony of corporate capitalism. Executives who came to Washington sought to downplay the traditional significance of the profit motive in what they called the free enterprise system. Although undoubtedly motivated to defuse the appearance of greed, they chose a rhetorical strategy that is worth noting. Instead of summoning the reactionary language of the free market, executives echoed social theorists who believed that the rise of the modern business corporation had made obsolete the ethics and motivations of individualistic capitalism.⁸ There was a new spirit hovering over mid-century capitalism and an older spirit disappearing—or going into temporary hiding.

Profit was no longer the governing motivation, or so a parade of well-known executives said. Consider Marvin Coyle, a longtime General Electric officer. He described profits as little more than a byproduct of efficient production and only secondarily as compensation for investors. A profit can only be achieved through lower prices and higher efficiency and volume, Coyle said. “As long as a business continues to produce products of high quality at competitive prices, profits also serve as an effective measurement of efficiency.”⁹ Robert Dunlop, president of Sun Oil Company, said much the same thing. “Adequate profits are essential for business and industry to fulfill their responsibilities to serve the general welfare,” he told the committee. “Our interest in a competitive economy is not as an end in itself, but as a means to an end.” The end being, in this case, an improved standard of living for the American people.¹⁰

⁸ The post-capitalism literature is most fully discussed here: Howard Brick, *Transcending Capitalism: Visions of a New Society in Modern American Thought* (Ithaca, NY: Cornell University Press, 2015); James Livingston, *Pragmatism and the Political Economy of Cultural Evolution* (Chapel Hill, NC: University of North Carolina Press, 1994); James Livingston, *Pragmatism, Feminism, and Democracy: Rethinking the Politics of American History* (New York, NY: Taylor & Francis, 2001).

⁹ Statement of M.E. Coyle, Hearings on Corporate Profits, 511.

¹⁰ Statement of Robert G. Dunlop. Hearings on Corporate Profits, 262.

Postwar industrial leaders promoted themselves and explained their power using the language of public service. They renounced the individualism of nineteenth century capitalism, in which the profit motive fueled a competitive marketplace that supposedly prevented the concentration of economic power. They also departed from the ideas that undergirded the property regime constructed at the New Deal. The reforms of the 1930s had created a regulated and shareholder-focused market that would, so it was hoped, rein in managerial powers and ground the legitimacy of large corporations in the proprietary claims of securities markets.¹¹ By contrast, industrial spokesmen were now making the case that the corporation was not created, as economist Henry Carter Adams had put it in 1896, for the “purpose of attaining public ends through an appeal to private interests.”¹² Corporations were public institutions and their leaders had kicked such acquisitive habits.

Executives spoke in the language of corporate social responsibility as they sought to avert the critical eye of the public. General Electric’s Charles Wilson told Congress that their prices and profits did not “end with its stockholders.” “Even more important is the indirect impact upon these individuals as members of our national economy, both in peace and in war.” Profit was the food on which America had grown to a position of “unchallenged” leadership and usefulness in the world’s economy.”¹³ The goal was to share the “benefits of progress,” he said, as well as the benefits of efficiency, labor-saving machinery, and other wonders of modern industry with a variety of groups: customers, workers, owners, and the nation as a whole.¹⁴

¹¹ See chapter 1.

¹² Henry Carter Adams, *Economics and Jurisprudence: An Address by Henry C. Adams, President of the American Economic Association, Delivered at the Meeting of the Association in Baltimore, Maryland, December 28, 1896* (American Economic Association, 1897), 16.

¹³ Hearings on Corporate Profits, 475.

¹⁴ Hearings on Corporate Profits, 472.

Business leaders of the mid-twentieth century, along with liberal economists, managerial theorists, and liberal intellectuals, made the case that the U.S. was entering a new kind of economy. The adjudication of the interests of the different groups that intersected with firms—this was the new role for business and it corresponded with a new conception of American industry. In this regard, the witnesses called to testify at the hearings on corporate profits in December 1948 were not the exception; they were reflective of broader developments in political economic thinking. It was an announcement of corporate power declared in the language of expert deliberation and tones of pragmatic realism.¹⁵

The editors of *Fortune* put the matter in a manner more fitting to the house style of the *Time-Life* empire. “There has occurred a great transformation, of which the world as a whole is as yet unaware,” they wrote in *U.S.A.: The Permanent Revolution* in 1951, “the speed of which has outstripped the perception of the historians, the commentators, the writers of business books—even any businessmen themselves.”¹⁶ The task of the intellectual as much as the businessman was to discard the faded stereotypes fit for an earlier era and craft a new understanding of things. “The profit motive is, for most practical purposes, on its last leg as the hallmark of American capitalist motivation,” wrote economist Theodore Levitt, commenting on the corporate profits hearings. “The desire for personal and institutional approbation, recognition, security, and approval, and the fear of mutual self-destruction and political attack have created a new and complex

¹⁵ Robert L. Heilbroner, “The View from the Top: Reflections on a Changing Business Ideology,” in *The Business Establishment*, ed. Earl F. Cheit (New York, NY: John Wiley & Sons, 1964), 6.

¹⁶ Editors of *Fortune* and Russell W. Davenport, *U. S. A.: The Permanent Revolution* (New York, NY: Prentice-Hall, 1951), 67.

set of underlying motives.” A new kind of capitalism was overtaking the country, Levitt contended, one made in the image of “industrial statesmanship.”¹⁷

In order to explain how a generation of robber barons and irresponsible financial speculators had ceded to a generation of business statesmen, liberal intellectuals produced a theory of development that told a compelling story about how capitalism had become more social and politically liberal. This was the new capitalism. And it made obsolete the old rules of competition and atomistic individualism. In speeches, advertisements, annual reports, and business school journals, industrial leaders and their allies laid claim to the role of “business statesmanship.”

Business statesmanship promised opportunities for big business, but perils lay hidden. The new capitalist creed was never a popular ideology. It was produced and consumed primarily by elites in business, the academy, and public policy. And even as proponents announced the death of competition and the obsolescence (or at least the anemia) of the profit motive, they failed to supply new ideas that had the explanatory power that the older capitalist creed possessed. The project of a top-down and managerial corporate social responsibility served the ideological needs of the early Cold War. It made the case for a liberal and democratic capitalism. But its fragility was revealed in the late 1960s as a finance-mongering consulting class marginalized the managerial strategies of long-term growth and stability, which were the foundations of business statesmanship.

The lack of popular buy-in was one problem, but deeper vulnerabilities could be found in its own internal contradictions. Despite ostensible concerns for social realities, business statesmanship was individualistic, focused on the prudence and public-

¹⁷ Theodore Levitt, *The Twilight of the Profit Motive* (Washington, DC: Public Affairs Press, 1955), 15.

spiritedness of managers and executives and not on structural and enforceable obligations. The result was confusion and disagreement over what corporate responsibility meant, even over matters as simple as how much to spend on philanthropy and charity and what for. Its historical role as the culmination of a business counter-offensive against the New Deal led to justifiable suspicions about the true motives that lay behind the new friendly face of American industry. Critics on both sides of the political spectrum, from Henry Manne to C. Wright Mills to Edward S. Mason, suggested it was little more than a smooth-talking con game—or an exercise in self-deception. But the claims of social leadership also gave emerging social movements in the New Left opportunities for exposing and protesting the ways business had failed to live up to its own commitments. At the bottom of many of these critiques was the simple observation that business claimed to support democratic social ideals while also resisting the structures of democratic governance.

The construction of corporate social responsibility relied on different kinds of intellectual and public relations work. This chapter explores key facets of that work. It begins with the political economic background of the mid-century moment, giving attention particularly to economic trends, World War II, and the Cold War. Next we turn to the idea of responsibility and its deep connections to the intellectual history of managerialism. The manager-focused vision of corporate social responsibility was most evident, I argue, in the development of corporate gifts and contributions to non-profits. Corporate social responsibility projects took on the importance that they did because intellectuals in the academy and in business articulate a theory of historical development—that capitalism was transforming itself before their eyes. This chapter

gives attention to those intellectual developments. And, finally, it concludes with a consideration of the liberal anticommunism of the Fund for the Republic—and explores how liberal intellectuals had grown disillusioned with public policy.

Contexts

A discourse of the new capitalism developed in speeches, Congressional testimony, academic monographs, and seminars. Prominent executives and directors of major corporations, a generation of aging New Deal liberals, including most prominently Adolf Berle, and a rising cohort of managerial theorists and business academics responded to many of the same issues, employed similar reasoning, and observed many of the same trends.

Although some scholars have used “corporate liberalism” to describe the ideological commitments of these groups, the term lacks specificity.¹⁸ I take corporate liberalism to mean the broad consensus that corporate capitalism was a natural (or evolutionary) successor and improvement upon what Martin Sklar called the “proprietary-competitive” system of nineteenth century capitalism.¹⁹ Much of mainstream social and political opinion from the progressive era to the Great Society and beyond would come under the umbrella of this definition.²⁰ Even the conservative

¹⁸ Archie B. Carroll et al., *Corporate Responsibility: The American Experience* (New York, NY: Cambridge University Press, 2012); Jennifer Delton, “The Triumph of Social Responsibility in the National Association of Manufacturers in the 1950s,” in *Capital Gains: Business and Politics in Twentieth-Century America*, ed. Richard R. John and Kim Phillips-Fein (University of Pennsylvania Press, 2016); Jennifer A. Delton, *Rethinking the 1950s: How Anticommunism and the Cold War Made America Liberal* (New York, NY: Cambridge University Press, 2013). There is a sense in which, however, corporate liberalism can properly be said to define the broad outlines of American politics from the New Nationalism to the Great Society. See James Weinstein, *The Corporate Ideal in the Liberal State, 1900-1918* (Boston, MA: Beacon Press, 1968), ix-xii.

¹⁹ Martin J. Sklar, *The Corporate Reconstruction of American Capitalism, 1890-1916: The Market, the Law, and Politics* (New York, NY: Cambridge University Press, 1988), 38.

²⁰ This was precisely the argument of James Weinstein. See Weinstein, *The Corporate Ideal in the Liberal State, 1900-1918* (Boston, MA: Beacon Press, 1968), ix-xv.

National Association of Manufacturers could be characterized as corporate liberal, insofar as the organization did not actively oppose the administrative and legal apparatus that made industrial capitalism possible. Others have characterized corporate liberalism in narrow terms according to the relatively liberal position of certain business leaders. In this sense, corporate liberals were the “liberal fringe” who supported the early New Deal or partnerships between big business, labor and government.²¹ This is probably the most commonsense way of using the term—corporate liberals are simply the liberals among corporate leaders—but it lacks the necessary specificity for this chapter. Precisely because many of the intellectual trends and corporate projects under consideration here do not fall conveniently along the X-axis of our left-right partisan categories, the conventional use of corporate liberalism would have limited usefulness.²²

Although not lacking difficulties of its own, I use the term “new capitalism,” a phrase used by historical actors themselves, to describe in a non-partisan manner this movement of intellectuals, industrial leaders, and policymakers. Nearly all the of new capitalists supported one version or another of corporate social responsibility, but for them corporate social responsibility grew out of the reality of the new capitalism. Indeed, unlike nineteenth-century proprietary capitalism and early twentieth-century corporate

²¹ Kim McQuaid, “Corporate Liberalism in the American Business Community, 1920–1940,” *Business History Review* 52, no. 3 (ed 1978), 343.

²² As will be explored below, for example, some of the strongest defenders of corporate charitable and philanthropic giving did so because they wanted to push back against the social power of the New Deal state. The NAM, to take another example, initially opposed corporate social responsibility but, in the 1960s, came to support it. Although Delton has characterized the latter as a case where a veneer of conservative rhetoric overlaid what was actually corporate liberalism, it seems to me that there are more felicitous ways of putting it. Jennifer Delton, “The Triumph of Social Responsibility in the National Association of Manufacturers in the 1950s,” in *Capital Gains: Business and Politics in Twentieth-Century America*, ed. Richard R. John and Kim Phillips-Fein (University of Pennsylvania Press, 2016), 194–195. See also Archie B. Carroll et al., *Corporate Responsibility: The American Experience* (New York, NY: Cambridge University Press, 2012), 217–218.

capitalism, the new capitalism emphasized the social role of management in an age of historical disruption. “The managerial writers,” a group of sociologists observed, “see the break with the past as so sharp that the whole system is moving toward a new kind of homogeneity—of large professionally managed, socially oriented corporations.”²³

What did the new capitalists point to as evidence of a radical break with the past?

One was an altered corporate finance system. No longer did a few financial institutions—the masters of high finance as Berle had called them—dominate the development of industry; corporations had options when it came to financing new capital expenditures.²⁴ By the late 1940s, retained earnings rapidly grew, surpassing and outpacing sources of capital that came from securities markets (see Figure 1). This meant that the vast majority of capital funds used by corporate business for things like purchasing equipment and building new plants in the postwar period came from internal sources.²⁵ Wall Street, meanwhile, was increasingly dominated by pension trusts, mutual funds, and large insurance companies—not quite the classic citizens of a shareholder democracy.²⁶ As Berle observed at the time, the securities markets weren’t much of a market when just a few hundred fund managers were involved in the vast majority of stock transactions.²⁷

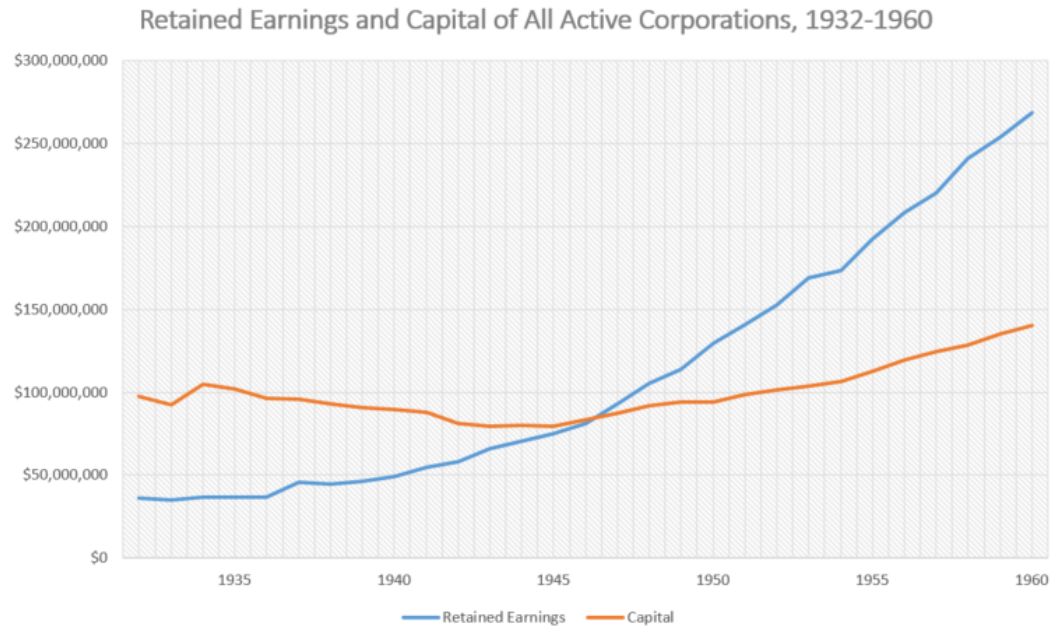
²³ Francis Xavier Sutton et al., *The American Business Creed* (Cambridge, MA: Harvard University Press, 1956), 36.

²⁴ Editors of *Fortune* and Russell W. Davenport, *U. S. A.: The Permanent Revolution* (New York, NY: Prentice-Hall, 1951), 67-68.

²⁵ Survey of Current Business, Sept. 1957.

²⁶ For a contemporary discussion of the rise of institutional investors, see Paul P. Harbrecht, *Pension Funds and Economic Power* (New York, NY: Twentieth Century Fund, 1959).

²⁷ Adolf A. Berle, Jr., *Power Without Property: A New Development in American Political Economy* (New York, NY: Harcourt, Brace and Company, 1959), 45-63.



From data from Naomi R. Lamoreaux. Table Ch510-524 Corporate assets, liabilities, receipts, dividends, and income tax: 1926-1997. Historical Statistics of the United States, Millennial Edition On Line.

The rapid growth in retained earnings was made possible in part by the increasingly large firms that settled into concentrated industries. Economist Maurice Adelman showed in a widely cited study the presence of pervasive oligopoly, including the fact that 135 firms owned 45 percent of industrial assets and the 200 largest employers represented less than one percent of all business firms.²⁸ An unusually dire Federal Trade Commission report found evidence of a merger wave in the late 1940s driven, the administration said, by an anticompetitive conspiracy. Large firms sought to consolidate wartime gains and expand their market position by acquiring small businesses.²⁹ “If nothing is done to check the growth in concentration,” the summary

²⁸ M. A. Adelman, “The Measurement of Industrial Concentration,” *The Review of Economics and Statistics* 33, no. 4 (1951), 278, 270. See also M. A. Adelman, “Is Big Business Getting Bigger?,” *Fortune*, January 1952.

²⁹ Federal Trade Commission, “Present Trend of Corporate Mergers and Acquisitions” (Washington, D.C.: Government Printing Office, 1947), 11.

report warned, “either the giant corporations will ultimately take over the country, or the government will be impelled to step in and impose some form of direct regulation.”³⁰

If it appeared that the leading corporations were becoming untethered from the discipline of financial markets and the accountability of competition, leading intellectuals and policymakers also concluded that they were becoming less responsive to consumer markets. Economist Gardiner Means conceived of the idea of administered prices decades before to describe how many large firms operated under modern industrial capitalism.³¹ No longer did the largest firms rely on the market mechanism—the vast network of interactions between buyers and sellers—to set prices; instead a relatively small number of managers within highly concentrated industries set prices for a predetermined period of time. Means originally used the concept of administered prices to explain how inflexible prices and production had gotten stuck, prolonging the Great Depression. But after World War II, the idea served the purposes of intellectuals and policymakers to critique unfair prices and the insularity of big business.³²

Three distinct but intertwined economic trends—administered prices, industrial concentration, and in-house financing—offered the impression that the relationship between property, prices, wages, and profits was undergoing a transformation. The old rules of competition that made corporations accountable and gave them legitimacy no longer applied. Harry Truman’s Council of Economic Advisers asserted in 1948 that the

³⁰ Federal Trade Commission, “The Merger Movement: A Summary Report” (Washington, D.C.: Government Printing Office, 1948), 28.

³¹ Gardiner C. Means, “Industrial Prices and their Relative Inflexibility.” U.S. Senate Document no. 13, 74th Congress, 1st sess., (Washington, D.C.: Government Printing Office, 1935). See also Gardiner C. Means, “Big Business, Administered Prices, and the Problem of Full Employment,” *Journal of Marketing* 4, no. 4 (1940): 370–78.

³² Senator Estes Kefauver convened hearings to investigate administered prices in 1957. The 1960 Democratic Party Platform called for the restraint of administered prices.

era of competition had come to a close. What would replace it? With no appetite for either antitrust or New Deal-style reform, the council declared that executives needed to exercise their power with social responsibility. “This may offer a better solution of the administered-price problem than can be found in legislation.”³³

The council’s endorsement of managerial power is illustrative of a deeper contradiction within mid-century business. Even as many policymakers and intellectuals identified managerial autonomy—that old foe of the New Deal—as a looming threat, businessmen and their allies cast a new vision of corporate capitalism. They aspired to preside over a post-ideological movement that would accommodate dissident groups (consumers, labor unionists, academics, policymakers, et al.) even as it established the hegemony of a prevailing business order.³⁴

The situation that business found itself in after 1945 was different from the heady and heated debates of the New Deal era. Big business had been under the gun since the Gilded Age and the days of the mythic robber-barons, but, as one *Time-Life* editor put it, the gun had been recently spiked. “The crew of this gun was made up of various intellectuals, church groups, professors, and bureaucrats,” John Jessup wrote. “I need not recall how harassing their fire used to be. It is more instructive to note that it has virtually ceased.”³⁵ Although, as the pollster Elmo Roper concluded, Americans were still

³³ Council of Economic Advisers, “Third Annual Report to the President” (Washington, D.C.: Government Printing Office, Dec. 1948), 19.

³⁴ Robert L. Heilbroner, “The View from the Top: Reflections on a Changing Business Ideology,” in *The Business Establishment*, ed. Earl F. Cheit (New York, NY: John Wiley & Sons, 1964), 2.

³⁵ John K. Jessup, “The U.S. Corporation: A New Form of Government?,” in *Getting Things Done in Business*, ed. Edward Collins Bursk (Cambridge, MA: Harvard University Press, 1953), 16.

suspicious of the private sector, the vast majority of the country agreed that big business was a good thing for the nation.³⁶

World War II rehabilitated the reputation of big business. Roosevelt's call for an arsenal of democracy not only enrolled business institutions in the defense of freedom, but transformed industrial manufacturing into a concentrated and organized partner of the national state. As Peter Drucker put it, the war proved the importance of the large corporation. It "made clear that it is the large corporation which determines the economic and technological conditions under which our economy operates."³⁷ Politically the experience provided an opportunity for business leaders to take a path out of the ideological battles of the 1930s and the cloud of animosity and distrust that had hung over big business since the Wall Street crash.³⁸

The wartime mobilization of business was what Mark Wilson has called "destructive creation"—a time in which a "giant capitalist economy was harnessed for the purpose of annihilating its enemies."³⁹ Business leaders took advantage of the opportunities that the duties of wartime production presented. It was an example, they argued, of the superior ability and flexibility of the private sector.⁴⁰ "The defense production job is the greatest news story of our generation. All the citizenry is watching,"

³⁶ Elmo Roper, "The Public Looks at Business," *Harvard Business Review* 27, no. 2 (March 1949), 166. In 1954, 80 percent of Americans gave a favorable opinion of big business. See Opinion Research Corporation. ORC Public Opinion Index, Aug. 1954 [survey question]. USORC.55JAN.R01. Opinion Research Corporation [producer]. Cornell University, Ithaca, NY: Roper Center for Public Opinion Research, iPOLL

³⁷ Peter F. Drucker, *Concept of the Corporation* (New Brunswick, NJ: Transaction Publishers, 2009), 8.

³⁸ Alan Brinkley, *The End of Reform: New Deal Liberalism in Recession and War* (New York, NY: Vintage Books, 1996), 139; James T. Sparrow, *Warfare State: World War II Americans and the Age of Big Government* (New York, NY: Oxford University Press, 2011), 6.

³⁹ Mark R. Wilson, *Destructive Creation: American Business and the Winning of World War II* (Philadelphia, PA: University of Pennsylvania Press, 2016), 4.

⁴⁰ Wilson, *Destructive Creation*, 137.

said J. Howard Pew in 1941m an opponent of regulation and federal power. “With a vigorous public relations program, competitive enterprise can dramatize its strength more successfully today than its enemies have ever been able to dramatize its occasional temporary mistakes.”⁴¹ In the 1940s business used advertisements, radio programs, and other PR ephemera to cast for-profit industry as the sole institution capable of conjuring the miracle of wartime production that saved democracy and Western civilization.⁴² As Wilson argues, the war offered the chance for business leaders across industry to develop common interests and solidarity for a postwar future in which “state enterprise and regulation would play a smaller part.”⁴³

If WWII offered rehabilitation, the Cold War enlisted business in a long-term ideological conflict that raised the stakes for the public perception for the public perception of large firms. Public relations executives cast business in terms of patriotic service. First in war, first in peace was the phrase du jour.⁴⁴ In an article for *Harvard Business Review* that became a locus classicus for proponents of corporate social responsibility Harvard Business School Dean Donald David described a long struggle between democracy and totalitarianism. “Responsible business leadership has a role of major proportions,” he wrote, “as we make our way through the uncertainties that surround us.”⁴⁵

⁴¹ Quoted in Wilson, *Destructive Creation*, 92.

⁴² Wilson, *Destructive Creation*, 92-93.

⁴³ Mark R. Wilson, *Destructive Creation: American Business and the Winning of World War II* (Philadelphia, PA: University of Pennsylvania Press, 2016), 5.

⁴⁴ Francis Xavier Sutton et al., *The American Business Creed* (Cambridge, MA: Harvard University Press, 1956), 24.

⁴⁵ Donald K. David, “Business Responsibilities in an Uncertain World,” *Harvard Business Review* 27, no. 3 (May 2, 1949), 1.

The Cold War rivalry directed attention not just to the productivity of the capitalist economy but also to how the capitalist society lived up to liberal and democratic values. Efficiency and productivity could demonstrate the superiority of the capitalist economy over the Soviet one. But corporate social responsibility would show the superiority of capitalist society over the Soviet one. The role for business leadership was to manage their companies in efficient and productive ways, but also to contribute to the common good of society. The rivalry between liberal capitalism and communism brought increased scrutiny to bear on American society and its economy. As historians have shown in recent years, the bipolar context of the midcentury provided activists with new-found leverage to press for equality even as it forced the U.S. state to side with civil rights in its efforts to propagandize effectively.⁴⁶ This context also provided expectations and opportunities for the ways in which business presented its social roles. In the zero-sum game of U.S.-Soviet strategy, the expansion of trade and development and support for the free market stood as bulwark against the spread of totalitarianism.⁴⁷ Productive capacity on its own was insufficient.

The common good was a phrase that circulated widely among business leaders no less than intellectuals in the early Cold War era, a time when anticommunists recognized the need for a compelling social vision. This imperative underlay the ideology of business responsibility in its various forms, from the call to defeat communism on the “industrial

⁴⁶ For an account that emphasizes how anticommunism both empowered and circumscribed and empowered civil rights, see Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton, NJ: Princeton University Press, 2000). For a more positive account of the opportunities that the Cold War provided to the Civil Rights movement, see Jennifer A. Delton, *Rethinking the 1950s: How Anticommunism and the Cold War Made America Liberal* (New York, NY: Cambridge University Press, 2013), 96-120.

⁴⁷ Bert Spector, “‘Business Responsibilities in a Divided World’: The Cold War Roots of the Corporate Social Responsibility Movement,” *Enterprise & Society* 9, no. 2 (July 9, 2008), 319.

battlefield,” to corporate support for higher education, charitable organizations, jobs training, community development, and amelioration of racial bias.⁴⁸

Responsibility and Managerialism

Responsibility became a proper term in American business history around the time of the 1950s.⁴⁹ How and why corporate responsibility became a useful concept at the time that it did?

The notion of responsibility was an awkward fit in American political economic thinking. Within the dominant ideology of classical liberalism there was never a place for the exercise of economic power without the accountability of competition. That is to say, power was earned through the agony of competition and could be lost quickly. Economic power always came with a set of contractual obligations that kept firms accountable and prevented, at least in theory, anything like managerial autonomy from cropping up. Under the classical liberal perspective, which would be taken up and repurposed by conservative intellectuals in the twentieth century, corporate social responsibility could only be seen as a category error at best and a drain on the efficacy of competition at worst. This is why the libertarian intellectual Henry Manne would tell a Congressional committee in the 1970s that there was no such thing as a corporate responsibility.⁵⁰

But the ideology of the new capitalism scrambled the assumptions of classical liberalism. The rhetoric of corporate social leadership circulated widely in the mid-century era as a way to explain and justify the conditions of the new capitalism,

⁴⁸ Bert Spector, “‘Business Responsibilities in a Divided World’: The Cold War Roots of the Corporate Social Responsibility Movement,” *Enterprise & Society* 9, no. 2 (July 9, 2008), 325-326.

⁴⁹ See generally Archie B. Carroll et al., *Corporate Responsibility: The American Experience* (New York, NY: Cambridge University Press, 2012), 195-229.

⁵⁰ United States Congress Senate Committee on Commerce, *Corporate Rights and Responsibilities: Hearings Before the Committee on Commerce, United States Senate, Ninety-Fourth Congress, Second Session* (Washington, D.C.: U.S. Government Printing Office, 1976), 227.

especially industrial concentration and the hegemony of managerial expertise. “It is becoming increasingly obvious that a freedom of choice and delegation of power such as businessmen exercise would hardly be permitted to continue without some assumption of social responsibility,” said one business writer.⁵¹

Industrial statesmanship was one popular phrase, and there were others like it. Business statesmanship.⁵² Corporate citizenship.⁵³ Social responsibility in business.⁵⁴ Managerial statesmanship.⁵⁵ Or simply corporate responsibility.⁵⁶ This language, used by managerial elites and members of the business intelligentsia an accommodation of the rise of big government, big labor, and an array of social groups.⁵⁷

This wasn’t the first time that a feeling of social responsibility pervaded the leadership class of American industry. Business leaders in the Gilded Age, for example, established their social status by means of large and public gifts to the arts.⁵⁸ Two things, however, distinguish the social activities of business in the decade following WWII. In the first place, it was business firms, by and large, and their associated non-profit foundations that engaged in administering community outreach programs or contributing to non-profit organizations. Unlike the foundations formed to manage the giving of

⁵¹ Howard R. Bowen, *Social Responsibilities of the Businessman* (New York, NY: Harper & Brothers, 1953), 4.

⁵² N. S. B. Gras, “Leadership, Past and Present,” *Harvard Business Review* 27, no. 4 (July 1949): 419–37.

⁵³ Horace E. Sheldon, “Businessmen Must Get Into Politics,” *Harvard Business Review* 37, no. 2 (April 3, 1959): 37–47.

⁵⁴ Ralph J. Cordiner, “Corporate Citizenship and the Businessman: A Working Program for Action,” *Management Review* 48, no. 7 (July 1, 1959), 15.

⁵⁵ “In The Nation,” *New York Times*, Feb. 19., 1957.

⁵⁶ W. H. Ferry, “Forms of Irresponsibility,” *The Annals of the American Academy of Political and Social Science* 343 (1962): 65–74.

⁵⁷ Jennifer Delton, “The Triumph of Social Responsibility in the National Association of Manufacturers in the 1950s,” in *Capital Gains: Business and Politics in Twentieth-Century America*, ed. Richard R. John and Kim Phillips-Fein (University of Pennsylvania Press, 2016), 184–186.

⁵⁸ On the social development of the new bourgeois class, see Sven Beckert, *The Monied Metropolis: New York City and the Consolidation of the American Bourgeoisie, 1850–1896* (New York, NY: Cambridge University Press, 2003).

individual industrialists like Andrew Carnegie or John D. Rockefeller, mid-century giving was dominated by for-profit corporate firms. And it wasn't just the large exceptional firms like General Motors or General Electric. Corporate gifts and contributions to non-profits, which is the most accessible metric available, were widespread among large and mid-size corporations and across a variety of industries.

Corporate responsibility was a different project. Industrialists like Carnegie built his libraries, for example, out of a sense of obligation to cover over the perception of the sins of what he called "surplus wealth," earned through profit-seeking. Carnegie, of course, was not penitent, but he at least began to recognize that competition and the pursuit wealth had disruptive tendencies. The law of competition needed the gospel of wealth in order to constitute a functional society. The wealthy, then, needed to give away their fortunes in some rational manner, either through bequests, estate taxes, or administration in their own lifetime.⁵⁹

Unlike the older industrial philanthropy, mid-century corporate social responsibility did not emerge as a way to remediate the ill-effects of excessive competition. Its usefulness consisted rather in the justification of the function of corporate power during an age when people had lost faith in the power of competition to make corporate institutions accountable. Responsibility was a part of the job description of managers who, with statesmanlike prudence and restraint, could make decisions that took into account what was best for a broad range of social and legal groups. This manager-centric, top-down project encompassed internal business strategies—when to raise prices or close plants—as well as outward public relations—where to make gifts

⁵⁹ Andrew Carnegie, "Wealth," *The North American Review* 149, no. 391 (June 1889), 657-660.

and contributions or what kind of community outreach program to administer. By and large, mid-century theories of responsibility focused not on the institutional obligations of corporations toward particular social or legal groups; instead, they were almost singularly concerned with the social and moral position of managers. Hence the language of statesmanship, which draws attention to the skills and prudence of an individual, rather than the language of governance, which encompasses the obligations and structures of institutional power.

This vision of managerial responsibility departed in key ways from the shareholder-focused regime of the New Deal. Adolf Berle, here as in many other instances, serves as a useful register of change. The Berle and Means thesis of the separation of ownership and control identified the autonomy of business management and the runaway power of the “control group” as a primary threat to the stability and equity of the American economy.⁶⁰ *The Modern Corporation and Private Property* served as an intellectual inspiration for the public policy of securities regulation, which sought to repair the damaged status of the shareholder by making corporate management more transparently accountable to securities markets.

Where many New Dealers saw an existential threat, others at the time saw opportunity. E. Merrick Dodd, a law professor and an early critic of Berle’s work, argued that corporations were created as servants for the community and that managers could function as trustees for the benefit of the greater commonweal. “Power over the lives of others,” he wrote, “tends to create on the part of those most worthy to exercise it a sense

⁶⁰ Adolf A Berle and Gardiner Means, *The Modern Corporation and Private Property* (New York, NY: Harcourt, Brace, & World, 1932).

of responsibility.”⁶¹ This was well and good as an ideal, Berle responded, but there is no justification to abandon the fact that business corporations exist for the “sole purpose” of generating profits for shareholders “until such time as you are prepared to offer a clear and reasonably enforceable scheme of responsibilities to someone else.”⁶² By 1954, Berle looked upon matters differently. “The argument has been settled (at least for the time being) squarely in favor of Professor Dodd’s contention,” he wrote.⁶³ “Corporations can still have, perhaps some range of choice: they can either take an extended view of their responsibility, or a limited one.”⁶⁴

Two ideas, which blurred the lines between the political and the economic, captured Berle’s imagination in the mid-century. The first was the idea that corporate managers should engage in helping to solve significant social and political problems. In the foreword to *The Corporation in Modern Society* (1959), he wrote that modern corporate leaders “are not limited to running business enterprise for maximum profit, but are in fact and recognized in law as administrators of a community system.”⁶⁵

Berle’s point of view was more pronounced in his 1954 book, *The 20th Century Capitalist Revolution*. He put the matter in this way: “Corporations still have, perhaps, some range of choice: they can either take an extended view of their responsibility, or a

⁶¹ E. Merrick Dodd, “For Whom Are Corporate Managers Trustees?,” *Harvard Law Review* 45, no. 7 (1932), 1157.

⁶² A. A. Berle, “For Whom Corporate Managers Are Trustees: A Note,” *Harvard Law Review* 45, no. 8 (1932), 1367.

⁶³ Adolf A. Berle, *The 20th Century Capitalist Revolution* (New York, NY: Harcourt, Brace, 1954), 169. Dodd, a professor of law at Harvard, had taken aim at Berle’s ambitious and defining book, which he wrote with the economist Gardiner Means, *The Modern Corporation and Private Property*. So, perhaps it’s not surprising that the young Berle would rise so boldly to his own defense.

⁶⁴ Berle, *The 20th Century Capitalist Revolution*, 172.

⁶⁵ Berle, “Foreword,” in Edward S. Mason, ed., *The Corporation in Modern Society* (Cambridge, MA: Harvard University Press, 1959), xii.

limited one.”⁶⁶ The organizational power at the hands of corporate management, Berle believed, was wide-ranging and it demanded from upper level management a great deal of reflection and soul-searching. For him, this was philosophical. And it required nothing less than an articulation of a new “conception of community making for the good life,” he wrote.⁶⁷ Berle believed that a new frontier of corporate political organization was opening up, in which management would need to seek answers not so much in Smith or Say as in the work of Plato, St. Augustine, Thomas More, and Francis Bacon. Berle believed that mid-century liberalism needed a more robust vision of the common good and human flourishing and he called on corporate managers to cast that social vision.

Berle’s about-face on managerial autonomy reflected the change that had taken place within the mainstream liberal view of political economy. “Berle’s apocalyptic perspective of 1932 seemed to have given way to an apologia in the 1950s,” wrote his biographer. “He seemed more embarrassed by reminders of his ‘alarmist’ attitudes of 1932 than by his current euphoria.”⁶⁸ He was not alone in this regard. A generation of liberals, including notably Berle, David Lilienthal, William O. Douglas, and others, had come to see big business and economic growth as the engine for progressive change. There was no sense fighting over how to slice up a pie when it could just be enlarged.⁶⁹ Postwar liberalism continued to identify itself with the New Deal and its vision of social

⁶⁶ Berle, *The 20th Century Capitalist Revolution*, 172.

⁶⁷ Berle, *The 20th Century Capitalist Revolution*, 174.

⁶⁸ Jordan A. Schwarz, *Liberal: Adolf A. Berle and the Vision of an American Era* (New York, NY: Free Press, 1987), 365.

⁶⁹ Otis L. Graham, Jr., *Toward a Planned Society: From Roosevelt to Nixon* (New York, NY: Oxford University Press, 1976), 93-94.

and economic progress, but it deemphasized or abandoned the particular content of 1930s-era reform.⁷⁰

Although Berle was more optimistic about the social role of managers compared to his position articulated decades before in *The Modern Corporation and Private Property*, his conception of corporate governance essentially remained the same. He believed that the ability of stockholders to control managerial decisions was severely attenuated. Stockholders were typically uninformed, passive, and uninterested in the everyday business of corporate institutions. If stockholders, then, could not cast a vision of the common good, the only way forward was for the “small directing group”—what C. Wright Mills called the “power elite”—to sanctify their minds by way of philosophical reflection and begin to contribute to the construction of the “City of God.”

Berle’s quasi-theological speculation about the role of corporations in social life appears in retrospect to be unusual. Many historians neglect Berle’s mid-century work on the basis of the assumption that it bore little of the seriousness and influence that defined the larger body of his thinking about the corporation. But Berle’s writing in the middle decades of the twentieth century was anything but marginal. *The 20th Century Capitalist Revolution* was widely cited among academics and managerial theorists in the twentieth century and, perhaps more telling, it was only one part of Berle’s attempt to grapple with the nature of political and economic power.⁷¹ “Probably the greatest need of all is for

⁷⁰ Alan Brinkley, *The End of Reform: New Deal Liberalism in Recession and War* (New York, NY: Vintage Books, 1996), 265-271.

⁷¹ Adolf A. Berle, “‘Control’ in Corporate Law,” *Columbia Law Review* 58, no. 8 (1958): 1212–25; Adolf A. Berle, “Modern Functions of the Corporate System,” *Columbia Law Review* 62, no. 3 (1962): 433–49; Adolf A. Berle, Jr., *Economic Power and the Free Society* (New York, NY: Fund for the Republic, 1957); Adolf A. Berle, Jr., *Power Without Property: A New Development in American Political Economy* (New York, NY: Harcourt, Brace and Company, 1959); Adolf A. Berle, Jr., *The Three Faces of Power* (New York, NY: Harcourt, Brace & World, 1967); Adolf A. Berle, Jr., *Power* (New York, NY: Harcourt, Brace and World, 1969).

synthesis: the constant projection of a hypothesis of design of the vast aggregation of concentrated power we have been studying,” he wrote in “Modern Corporation and the Modern State,” a large but unpublished manuscript. “Now the design of a civilization in a cosmos is a task for philosophers rather than for financiers.”⁷²

Berle spoke for a generation of liberal intellectuals in his efforts to find a new language for a new system of power. Where political economic power had become managerial, business leaders and their intellectual allies spoke the language of responsibility fluently. This was a top-down, manager-centric project of expert paternalism fit for an age when the competitive individualism of free markets seemed to be receding to the edges of the horizon. Berle’s turn toward managerialism was a sign of the complacency of New Deal liberalism in the face of new political economic realities.

Managerialism

In order to understand the expansive role of the manager, we need to go back to corporate profits—and the question that dominated those hearings in December 1948. Business leaders couched profits within two Cold War-era rhetorics: pluralism and the public good. Consider the words of General Electric president Charles Wilson. The significance of GE’s prices and profits did not “end with its stockholders,” he said. “Even more important is the indirect impact upon these individuals as members of our national economy, both in peace and in war.” Profit was the food on which America had grown to a position of “unchallenged” leadership and usefulness in the world’s economy.”⁷³ He

⁷² “Modern Corporation and the Modern State,” Box 186. Adolf Berle Papers. FDR Presidential Library.

⁷³ United States Congress Joint Economic Committee, *Corporate Profits: Hearings Before the Joint Committee on the Economic Report, Congress of the United States, Eightieth Congress, Second Session, Pursuant to Sec. 5 (A) of Public Law 304, 79th Congress* (Washington, D.C.: U.S. Government Printing Office, 1949), 475.

struck notes of industrial nationalism in his description of GE's social role. The goal was to share the "benefits of progress," he said, as well as the benefits of efficiency, labor-saving machinery, and other wonders of modern industry with a variety of groups: customers, workers, owners, and the nation as a whole.⁷⁴

The absence of a polemical defense of the profit motive did not go unnoticed. This new language of national defense and social responsibility to explain the function of profits and the role of business led some observers to conclude that the profit motive was in decline. "The profit motive is, for most practical purposes, on its last leg as the hallmark of American capitalist motivation," wrote Theodore Levitt, an economics professor who would go on to become a poplizer and cheerleader of the idea of globalization. "The desire for personal and institutional approbation, recognition, security, and approval, and the fear of mutual self-destruction and political attack have created a new and complex set of underlying motives." A new kind of capitalism was overtaking the country, Levitt contended, one made in the image of industrial statesmanship.⁷⁵

But corporate responsibility in the post-war era was more than an act of accommodation. It was a bid for power. The managerial theorist Keith Davis, co-author of a popular business textbook, articulated what he called the "iron law of responsibility," which stated that the avoidance of social responsibility leads to a gradual erosion of

⁷⁴ United States Congress Joint Economic Committee, *Corporate Profits: Hearings Before the Joint Committee on the Economic Report, Congress of the United States, Eightieth Congress, Second Session, Pursuant to Sec. 5 (A) of Public Law 304, 79th Congress* (Washington, D.C.: U.S. Government Printing Office, 1949), 472.

⁷⁵ Theodore Levitt, *The Twilight of the Profit Motive* (Washington, DC: Public Affairs Press, 1955), 15.

social power.⁷⁶ Use it or lose it, you might say. “It is becoming increasingly obvious that a freedom of choice and delegation of power such as businessmen exercise would hardly be permitted to continue without some assumption of social responsibility,” proclaimed another business writer.⁷⁷ The research of the economist Maurice Adelman, which found evidence of widespread oligopoly, including the fact that 135 firms owned 45 percent of industrial assets, was frequently cited in the 1950s surrounding discussions of corporate responsibility.⁷⁸ In this case, the fear was widespread among even the most liberal sectors of the business community that if business didn’t shore up its legitimacy, the U.S. would return to the politics of regulation and government expansion.

Corporate social responsibility was a managerial project in two ways. In the first place, social responsibility functioned as a legitimating force for the professional managerial class. A key part of this story is the emergence of management as a distinct field with professional and intellectual ambitions. At mid-century, the rise of big government and the large, conglomerated firm created a demand for managers, spurring extraordinary growth in business schools and lending credibility to a new generation of managerial theorists.⁷⁹ Proponents announced that management was in the process of becoming a respectable profession like fields of law, medicine, or religion. Schools of business and leaders of management were concerned with developing the accoutrements

⁷⁶ Keith Davis, “Can Business Afford to Ignore Social Responsibilities?,” *California Management Review* 2, no. 3 (Spring 1960), 73. See also Keith Davis and Robert L. Blomstrom, *Business and Its Environment* (New York, NY: McGraw-Hill Book Company, 1966), 174.

⁷⁷ Howard R. Bowen, *Social Responsibilities of the Businessman* (New York, NY: Harper & Brothers, 1953), 4.

⁷⁸ M. A. Adelman, “The Measurement of Industrial Concentration,” *The Review of Economics and Statistics* 33, no. 4 (1951), 278. See also M. A. Adelman, “Is Big Business Getting Bigger?,” *Fortune*, January 1952.

⁷⁹ Rakesh Khurana, *From Higher Aims to Hired Hands: The Social Transformation of American Business Schools and the Unfulfilled Promise of Management as a Profession* (Princeton, N.J.: Princeton University Press, 2010), 197-198.

of professionalism, such as codes of ethics, prestigious associations, and customs of respectability.⁸⁰ Under these conditions, the first systematic treatments of corporate social responsibility were developed in the public speeches of major business executives and in the articles and books of economics and business school professors.⁸¹

The ideal of business statesmanship centered on the role that the executive and manager played in determining and adjudicating the corporation's various responsibilities. Business statesmanship held up moral, ethical, and prudential judgment of individual leaders as the way forward.⁸² But its intellectual roots lay in the development of managerial thought in the late 1930s and 1940s that emphasized the leadership qualities of corporate managers. This intellectual history is worth a moment's reflection.

The Development of the Managerial Ideal

Managerialism had its origins in many ways with the groundbreaking studies of Frederick Winslow Taylor and Henry Gantt, among others, who devised systems of scientific management.⁸³ This literature sold a radical transformation of industrial labor in the name of productivity. Proponents of scientific management provided business with tools and the justification to render traditions of craft work into abstract and discrete

⁸⁰ Benjamin Selekmán, *A Moral Philosophy for Management* (New York, NY: McGraw-Hill, 1959), 5-6.

⁸¹ For a contemporary treatment of the developing ideology that supported the new managerialism, see Robert L. Heilbroner, "The View from the Top: Reflections on a Changing Business Ideology," in *The Business Establishment*, ed. Earl F. Cheit (New York, NY: John Wiley & Sons, 1964); C. Wright Mills, *The Power Elite* (Oxford: Oxford University Press, 1956); Francis Xavier Sutton et al., *The American Business Creed* (Cambridge, MA: Harvard University Press, 1956).

⁸² Berle, in particular, conceived of their role akin to the Lords Spiritual in the English political tradition. Adolf A. Berle, *The 20th Century Capitalist Revolution* (New York, NY: Harcourt, Brace, 1954); Adolf A. Berle, Jr., *Economic Power and the Free Society* (New York, NY: Fund for the Republic, 1957).

⁸³ Frederick Winslow Taylor, *The Principles of Scientific Management* (New York, NY: Harper & Brothers, 1911); Henry Laurence Gantt, *Organizing for Work* (New York, NY: Harcourt, Brace and Howe, 1919).

tasks, thereby supplanting skilled with unskilled labor. The pitch, however, was that efficiency gains in manufacturing labor that could be achieved by the implementation of new methods devised by academic specialists. Managerial literature was, first and foremost,

It was Chester Barnard's *The Functions of the Executive*, first published in 1938, that presented a systematic study of the social characteristics of business institutions, spawning a new branch in modern organizational theory.⁸⁴ President of the New Jersey Bell Telephone Company, Barnard transitioned into a career as a managerial guru in the late 1930s with the support and prodding of Harvard Business School Dean Wallace B. Donham.⁸⁵ Barnard emphasized in particular the social character of successful business leadership. He painted a picture of the moral and charismatic qualities of leadership, which he defined as "the power of individuals to inspire cooperative personal decision." For Barnard, the effectiveness of leadership rested on the ability of the leader to create faith: "faith in common understanding, faith in the probability of success, faith in the ultimate satisfaction of personal motives, faith in the integrity of objective authority, faith in the superiority of common purpose as a personal aim of those who partake in it."⁸⁶ This picture would have long-lasting influence on the ways business leaders explained their role in their own organizations and in society at large.

Barnard's theory of business leadership was an organizational theory. In this sense, he was no pioneer of business statesmanship. He saw the executive's role in the

⁸⁴ Oliver E. Williamson, *Organization Theory: From Chester Barnard to the Present and Beyond* (New York, NY: Oxford University Press, 1995).

⁸⁵ Chester J. Barnard, *The Functions of the Executive* (Cambridge, MA: Harvard University Press, 1938, xxvii).

⁸⁶ Barnard, *The Functions of the Executive*, 259.

organization as an embedded one, focused on maintaining cooperation through the development of processes structures.⁸⁷ Leadership was fundamentally structural or, to use his own figure of speech, the executive function as a part of the overall organization was like the nervous system and the brain as a part of the rest of the body. “It exists to maintain the bodily system by directing those actions which are necessary more effectively,” he wrote, “but it can hardly be said to manage the body, a large part of whose functions are independent of it and upon which it in turn depends.”⁸⁸ The organizational vision of Barnard, as that of managerial Herbert Simon, was directed toward the final ends of efficiency and survival.⁸⁹ Although bounded by the instrumental technology of the organization, Barnard’s business leaders had social potential and charisma. This was a social vision cast the manager not as a mere organizational technician but as a leader in his own right.⁹⁰

James Burnham’s work serves as a useful index of the growing influence of this vision, albeit in a negative sense. Where Barnard et al. saw social potential, Burnham saw an emerging class of professionals that had become entrenched in the most powerful institutions in government and business and had ambitions to conduct a world-historical revolution. The publication of *The Managerial Revolution* in 1941 serves as a landmark in the intellectual history of management.⁹¹

⁸⁷ Barnard, *The Functions of the Executive*, 3-61.

⁸⁸ Barnard, *The Functions of the Executive*, 217.

⁸⁹ On Barnard’s organizational theory, see Williamson, *Organization Theory*.

⁹⁰ Rakesh Khurana, *From Higher Aims to Hired Hands: The Social Transformation of American Business Schools and the Unfulfilled Promise of Management as a Profession* (Princeton, N.J.: Princeton University Press, 2010).

⁹¹ James Burnham, *The Managerial Revolution: What Is Happening in the World* (New York, NY: Van Rees Press, 1941).

Managerialism was a name for the ideology that accompanied the revolution that Burnham sought to explicate. With a background as a Trotskyist (although he had formally abandoned Marxism by the time he published the book), Burnham brought a class analysis to bear on what he believed to be the most significant event of his lifetime—the separation of ownership from control. It was his class analysis that caused Burnham to depart in significant ways from the thesis of Berle and Means. The relevant issue was not the tension between owners and the groups of “controllers,” but rather the displacement of owners and capitalists altogether by an emerging class of managers. Capitalists along with capitalism was disappearing.⁹²

Burnham believed that the function of the manager extended beyond organization of discrete firms and their instrumental pursuit of efficiency and profits. There was a growing managerial class that unified bureaucratic professionals in firms across industry and within the state. The success of the managerial revolution, in his view, depended upon the expansion of state power, of which the New Deal was just the opening shot.⁹³ But *The Managerial Revolution* nevertheless serves as a useful index of the growing prestige of the manager, whose role was recognized by critics and proponents alike as rising above the status of mere technician.

It was Peter Drucker, perhaps more than any intellectual of the midcentury period, who sought to interpret the social meaning and possibilities of the large business form in conservative terms. The most important question, he argued, was not profits. Profit-seeking was a given. Rather he strained his critical eye on a social question; the human relationships that take place within the corporation and the between the corporation and

⁹² Burnham, *The Managerial Revolution*, 74, 78.

⁹³ Burnham, *The Managerial Revolution*, 118, 259.

those outside of it.⁹⁴ For Drucker, the corporation was the family, the military, or the Catholic Church. It was a powerful social construction threaded through the fabric of society and the state, and he was its sympathetic ethnographer.

His 1946 book, *Concept of the Corporation*, took as a case study General Motors Corporation, a leading firm before and during the war and arguably the most successful industrial corporation of the middle twentieth century. It was at GM in the 1940s that Drucker struck on a set of insights into the social dynamics of large corporations that would be influential primarily in the field of business management but also in larger circles of public policy and social criticism. Indeed, for Drucker, the whole problem of industrial productivity and economic prosperity was unlocked by the right kind of social organization—“conscious, deliberate, and planned order of relations.”⁹⁵

Even if Drucker saw the corporation as a social organization, he still held that profit-seeking was its *raison-d’etre*. The dichotomy between profit-seeking and social consciousness was a false one, in his terms. “Profitability is simply another word for economic rationality,” he surmised. “And what other rationality could there be to measure economic activity but economic rationality?”⁹⁶ The world was a materialistic one. And that might lead people to believe that economic goals had displaced deeper notions of the “good life” and higher values of human endeavor. But there is no other alternative, he concluded. The metric of profitability and economic growth was the only common metric.⁹⁷

⁹⁴ Peter F. Drucker, *Concept of the Corporation* (New Brunswick, NJ: Transaction Publishers, 2009), 12-13.

⁹⁵ Drucker, *Concept of the Corporation* (New Brunswick, NJ: Transaction Publishers, 2009), 25.

⁹⁶ Drucker, *Concept of the Corporation*, 235.

⁹⁷ Drucker, *Concept of the Corporation*, 250-251.

In *Concept of the Corporation*, the role of the corporation was expansive. It was the representative social institution. It was the common organization to which individuals belonged to find social standing. But Drucker's concept of the social function of the corporation was at its heart a conservative one. The corporation may have replaced the economic world of free, individual competition. But like art following nature, the corporation's rationality depended on following the principles of economic markets.

Drucker would go on to become more confident in the potential of large corporations to be not only sites of self-actualization but arenas for citizenship. The specialization inherent in the industrial process ensured that the worker would be cut off from producing individually a manufactured good. The alienation that industrialization wrought was understood in multifarious ways within social theory, from Hegel and Marx to Walter Benjamin and Hannah Arendt. For Drucker, it was the corporate system that offered a reparative integration that was a high calling. "It demands a degree of understanding and support on the part of the individual member of the organization that goes far beyond anything traditional society requires," he wrote. "Citizenship is much more important in the mass-production order—if by citizenship we mean the intelligent participation of the individual member in the whole."⁹⁸

Drucker understood the ameliorative "integration" to be social and even mental antidote to the alienation that arose out of changes in physical work. "What the worker needs is to see the plant as if he were a manager," he wrote. He follows with a description of what might be called an exercise in sympathy or imagination. "Only thus can he see his part; from his part he cannot reach the whole. This 'seeing' is not a matter of

⁹⁸ Drucker, *The New Society: The Anatomy of Industrial Order* (New York, NY: Harper & Row, 1962), 25.

information, training courses, conducted plant tours, or similar devices. What is needed is the actual experience of the whole in and through the individual's work." The dissatisfaction of the worker comes from his field of vision being narrowed. The worker instead should embrace the "managerial viewpoint" in order to see the significance of his participation in the whole process of production.⁹⁹ For Drucker, the most effective example of this exercise in industrial imagination comes from the wartime fascism of Nazi Germany.

Drucker's last major book of the mid-century period that most originally addressed the social functions of big business was *Landmarks of Tomorrow*. In it, he argued that the large corporate collective is more than the sum of its parts. "It is an obvious fact that collectives are not just aggregates of individual contracts for specific purposes but genuine entities that outlive the individual, have their own behavior, their own logic, indeed their own being," he wrote. In this sense, corporations are not entirely different from nation-states. Both are collectives that act in unison.¹⁰⁰

It was this institution, Drucker claimed, that acted as a solvent to the class antagonisms of nineteenth century liberal capitalism. Take the case of a president of a large company. He's unlikely to be a very rich man on account of high taxes, Drucker says. He measures his financial status more by his life insurance and pension than his wealth. He would live in a suburban house, help his wife with the dishes, and baby-sit his grandchildren. The real prerogatives of the position, Drucker says, come from his standing within the organization, not in the cultivation of private wealth. "The president of the large business enterprise does not look upon himself as a capitalist," he writes. "He

⁹⁹ Drucker, *The New Society: The Anatomy of Industrial Order*, 180.

¹⁰⁰ Drucker, *The Landmarks of Tomorrow* (New York, NY: Harper & Row, 1959), 108.

looks upon himself as a manager, and is so regarded by society. The least successful of employed professionals, who never gets beyond the position in which he started, does not look upon himself as a worker; he looks upon himself as a professional or as a member of management.”¹⁰¹

Despite Drucker’s conservative sympathies, by the middle of the 1950s he could not resist the tide of business moralism. The most private of enterprises, he acknowledged, existed within society and serve a social function.¹⁰² So conceived, the corporation was a creation of society, which confers the privileges of incorporation with the expectation of responsibility. The manager must “assume responsibility for the public good,” he wrote, and “subordinate his actions to an ethical standard of conduct, and...restrain his self-interest and his authority wherever their exercise would infringe upon the commonweal and upon the freedom of the individual.”¹⁰³ Although he would later criticize those who laid too much responsibility on the corporation, the seeds of a comprehensive doctrine of business statesmanship could be found in Drucker’s assumptions about the social function of business firms. There is, however, a pervasive ambivalence in Drucker’s early work about the relationship between profits and social responsibilities.

Business theorists and a rising generation of business ethicists went further. Howard Bowen, an economics professor, wrote the first book-length treatment of corporate social responsibility in *The Social Responsibilities of the Businessman*, which was published in 1953. It placed a great deal of emphasis on the individual “soul-

¹⁰¹ Drucker, *The Landmarks of Tomorrow*, 104.

¹⁰² Drucker, *The Practice of Management* (New York, NY: Harper & Brothers, 1954), 381.

¹⁰³ Drucker, *The Practice of Management*, 382-383.

searching” of the manager and not on the development of professional standards.¹⁰⁴ The freedom with which the businessman operated required the assumption of some amount of social obligation—to refuse it would risk delegitimizing his own power.¹⁰⁵

Accordingly, Bowen’s definition of social responsibility was voluntaristic. “The term *doctrine of social responsibility* refers to the idea now widely expressed,” he wrote, “that voluntary assumption of social responsibility by businessmen is, or might be a practicable means toward ameliorating economic problems and attaining more fully the economic goals we seek.”¹⁰⁶ To whom was this responsibility to be exercised? The answer was a range of groups, from customers to shareholders, for whom the executive acted. “The idea that workers and others should participate in business decisions generally has surely not been adopted by many American businessmen,” he noted.¹⁰⁷

The notes that Bowen sounded would be echoed in a range of books and articles. One labor relations expert, Benjamin Selekman, called it a “search for a moral philosophy” that began because of the growth of the new professional management class and because of the hostility directed against business since the Great Depression.¹⁰⁸ More pertinently, it was the challenge of the labor unions who attacked business for their focus on profits rather than national welfare. “And so it became inevitable that if it was to maintain its position in the American community,” he wrote, “corporate business had to develop a position of responsibility which would win it acceptance as a legitimate institution.”¹⁰⁹

¹⁰⁴ Howard Bowen, *Social Responsibilities of the Businessman* (New York, NY: Harper & Brothers, 1953), xi.

¹⁰⁵ Bowen, *Social Responsibilities of the Businessman*, 5.

¹⁰⁶ Bowen, *Social Responsibilities of the Businessman*, 6.

¹⁰⁷ Bowen, *Social Responsibilities of the Businessman*, 42.

¹⁰⁸ Benjamin Selekman, *A Moral Philosophy for Management* (New York, NY: McGraw-Hill, 1959), 5.

¹⁰⁹ Selekman, *A Moral Philosophy for Management*, 7.

Business intellectuals grappled with the question of responsibility in different ways. Some saw it as a replacement for the doctrine of *laissez-faire*.¹¹⁰ Others understood it be commensurate with the size and power of large industrial firms. It couldn't be avoided: "The avoidance of social responsibility leads to gradual erosion of social power."¹¹¹ It was a defensive tactic.¹¹² It was a roundabout way at seeking the self-interest of the firm.¹¹³ The question of social responsibility was a regular feature of business journals, university courses, textbooks, newspaper articles, and speeches. Although presented in various ways, there was a striking uniformity in the presentation and the insistence that responsibility began and ended with the exercise of statesmanship on the part of managers. With few exceptions, it was a theory that failed to move beyond the limits of managerialism. The ideal of social responsibility centered on the expertise and position of the manager. It was a top-down project that could not escape the burden of paternalism. And however sincerely believed by some, it was a barely concealed search for the fig leaf of moral legitimacy.

The Giving Corporation

Business statesmanship was nebulous both in theory and practice. It consisted in the voluntary assumption of responsibility to balance the interests of different social and legal groups—all in the name of the public good. And what that meant in practice depended on the circumstances of a firm: in how it imagined its publics, for example,

¹¹⁰ William C. Frederick, "The Growing Concern Over Business Responsibility," *California Management Review* 2, no. 4 (Summer 1960): 54–61.

¹¹¹ Keith Davis, "Can Business Afford to Ignore Social Responsibilities?," *California Management Review* 2, no. 3 (Spring 1960), 73.

¹¹² Theodore Levitt, "The Dangers of Social Responsibility," *Harvard Business Review* 36, no. 5 (October 9, 1958): 41–50.

¹¹³ Theodor V. Houser, *Big Business and Human Values* (New York, NY: McGraw-Hill Book Company, 1957).

and on the scrupulousness of its leadership in how it made the countless decisions that kept a going-concern going every day. Many of the decision-making processes were by the nature of private business opaque to the general public at the time as much as they are to the historian decades later. But corporate social responsibility can be divided up into two general kinds of activity: that which affected the internal practices and processes of a firm's business and that which influenced the outward relations of a firm with the public at large. We might make the distinction, simply put, between "built-in" and "bolt-on" corporate responsibility.¹¹⁴

Up until the 1960s and 1970s when activist movements forced a greater reckoning with the internal dynamics of large firms, bolt-on corporate social responsibility was the only game in town. It was a way of cultivating a reputation for responsibility without ceding managerial control. A corporate donation to the local opera was a world away from incorporating stakeholders into governance system. Precisely because corporate outreach was intended to be publicized and because it often took the form of monetary gifts and contributions, bolt-on corporate social responsibility is easier to track as a matter of the historical record.

The movement for corporate philanthropic and charitable giving reached new heights in the postwar era, but it did not begin there. It was an amendment to the Revenue Act of 1935—an exception to a piece of legislation that was otherwise seen as punitive toward big business and the wealthy—that opened the door to corporate gifts and contributions. Corporations could claim tax deductions on gifts to charitable and philanthropic organizations up to five percent of income. But there were persistent doubts

¹¹⁴ I am thankful to Andrew Lynn for this useful phrase.

about the legal status of such gifts and, in particular, the latitude that managers enjoyed to use corporate resources for purposes that did not immediately benefit either shareholders or the firm itself. Nearly two decades later, the New Jersey Supreme Court ruled in *A.P. Smith Manufacturing* (1953) that directors could make donations to colleges and universities even if there was no immediate benefit for the corporation. The ruling provided a powerful legal precedent. It was widely seen as a final blow to the narrow ruling of *Dodge v. Ford Motor Company* (1919) that proscribed corporate gifts that benefited shareholders only incidentally.¹¹⁵ In the face of rising federal corporate income tax rates, a movement for business philanthropy and charity took advantage of the favorable legal climate to encourage firms to set aside money for gifts and contributions.¹¹⁶

The National Planning Association, a nonpolitical nonprofit organized by business and labor leaders, published a popular pamphlet in 1951 encouraging business leaders to increase corporate charitable and philanthropic giving. *The Five Percent* was a toolkit for upper level managers and directors to find ways to increase their giving and to find good reasons to do it. The title alluded to IRS regulations that allowed corporations to make tax-deductible donations to tax-exempt non-profits up to five percent of a firm's net income before taxes. Corporate giving reached new heights in 1945 on account of the productivity of the war industries, but subsequently plateaued. Six years later, corporations were making checks to tax-deductible charity organizations as they never

¹¹⁵ Jerome L. Himmelstein, *Looking Good and Doing Good: Corporate Philanthropy and Corporate Power* (Bloomington, IN: Indiana University Press, 1997), 18-22.

¹¹⁶ Perhaps the most vocal was a group of business leaders called the Committee for Financial Aid to Education that sought to direct corporate resources toward private universities. See Himmelstein, *Looking Good and Doing Good*, 20.

had before. *The New York Times* heralded the new era with a headline: “New Giant in Giving: Big Business.”¹¹⁷

In their campaign to encourage business leaders to donate the legal limit of the full five percent of net income, the NPA made a case for corporate social responsibility. Management had “new obligations toward its stockholders” to find creative ways to reduce their tax burdens, which were becoming heavier in the 1950s. And, besides, philanthropy had other benefits. A well-planned donation to a university for the creation of a new department or research center, for example, would bear fruit benefiting a firm in the development of new products. Corporations would also benefit from hiring from a pool of well-trained graduates. Other examples included Ford Motor Company’s college scholarship program that supported the children of its employees. Or take the example of R.H. Macy and Company’s contribution to Central Park that funded the creation of a cherry orchard around one of its lakes. “This contribution, although not large in financial terms,” the pamphlet read, “is nevertheless appropriate and dramatic since it...creates a friendly attitude toward Macy’s on the part of the city’s residents and visitors.”¹¹⁸

Responsibility could come with rewards.

But *The Five Percent* was not concerned solely with self-interest. It articulated a vision of a corporation that supported a range of communities beyond the stockholders and that cared for more than just profits. Corporations had a social obligation to embrace educational, scientific, and welfare programs as their own and not leave them up to the government alone. Such expenditures were “social obligations” and duties that corporate

¹¹⁷ F. Emerson Andrews, “New Giant in Giving: Big Business; American Corporations Are Now Contributing Millions for Causes That Once Were Financed Almost Entirely by Private Citizens.,” *The New York Times*, December 2, 1951.

¹¹⁸ Ruml and Geiger, *The Five Percent*, 5.

management had toward the communities in which they did their business.¹¹⁹ Business leaders perhaps agreed. The NPA was not the only one that held forth for corporations the “tests of its social usefulness and good citizenship.”¹²⁰

If corporate social responsibility was a way to buttress the legitimacy of professional managers, it was also almost entirely focused on the initiative, expertise, and moral discipline of managers. In practice, the range of programs funded or administered by corporations was vast. A steel company picked up the tab for a rebuilt water system in east Chicago.¹²¹ Ford, General Electric, and Chase Manhattan developed programs to encourage employee contributions to political parties.¹²² Sears sponsored rural school programs like 4-H and Future Farmers of America.¹²³ Eastman Kodak donated \$30,000 to a local hospital.¹²⁴ Anheuser-Busch bought the St. Louis Cardinals baseball organization, outbidding an out-of-town group and preventing the team from moving.¹²⁵ When it came to these corporate social programs and contributions, decisions were generally made according to the interests, connections, and whims of upper-level management without regard to employees or to industry standards.¹²⁶

¹¹⁹ Ruml and Geiger, *The Five Percent*, 10.

¹²⁰ Ruml and Geiger, *The Five Percent*, 11.

¹²¹ “Hi, Neighbor! Many Companies Find a Sociable Approach Pays Off in Business,” *Wall Street Journal*, June 5, 1956.

¹²² “More Companies Prod Employees to Donate to Political Parties,” *Wall Street Journal*, Oct. 13, 1964.

¹²³ Theodor V. Houser, *Big Business and Human Values* (New York, NY: McGraw-Hill Book Company, 1957), 49-50.

¹²⁴ “Area Hospital Gets \$30,000 From Kodak,” *Democrat and Chronicle* (Rochester, NY), Sept. 27, 1959.

¹²⁵ “Hi, Neighbor! Many Companies Find a Sociable Approach Pays Off in Business,” *Wall Street Journal*, June 5, 1956.

¹²⁶ A survey conducted in 1951 was representative of the general trends of the decade. See Public Relations News, “Corporate Giving: A Survey,” *Management Review; Saranac Lake, N.Y., Etc.* 40, no. 5 (May 1, 1951): 262. See also Richard Eells, “Corporate Giving: A Study for General Electric Educational Relations and Support Services,” Internal Report, 1958. Richard Eells Papers, 1954-1958. Columbia University Rare Book & Manuscript Library Collections.

No one offered a more systematic treatment of corporate philanthropy and giving programs than Richard Eells. It was the work of his life to propose industry-wide standards that would transform the whims of corporate contributions into the logic of cartel-like planning. Originally a manager of public policy research at General Electric, he joined the Columbia University Graduate School of Business in the early 1960s after writing extensively on the subject. He went on to edit a series published by Columbia University Press, “Studies of the Modern Corporation,” that focused almost exclusively on corporate social responsibility.¹²⁷

Eells produced an internal report for General Electric in 1953 making a case for greater corporate aid to higher education. His first foray into the topic of business philanthropy, the report worked from a mainstream postwar business perspective, namely that corporations ought to embrace social leadership and self-regulation in order to place social institutions more firmly in the hands of private control. Large businesses had clear interests in supporting and shaping colleges and universities (unlike primary and secondary schools)—the cultivation of certain kinds of industrial specialists, for example, and the maintenance of competitive employee recruitment programs.¹²⁸ As GE began to develop a program of university donations, it joined other corporations who were contributing to a broader transformation of the university system in the United States after World War II.

¹²⁷ Kathleen Teltsch, “Richard Eells, 75; Professor of Business Urged Philanthropy,” *New York Times*, October 7, 1992.

¹²⁸ “General Electric Aid to Education: A Policy and a Program. September 1, 1953—For Internal Use Only,” 1. Richard Eells papers. Box 1. Folder: Education—General Electric, 1953. Columbia University Special Collections.

Eells believed this education project was a part of a new relationship between the corporation and its publics. “Recently, the public had adopted a new viewpoint toward business; and similarly, business has a new viewpoint toward the public,” he wrote. “This new point of view has brought into focus a new set of responsibilities.” Like other intellectuals heralding the new capitalism, and particularly as an employee of GE, Eells had no interest in grounding these “new responsibilities” in the law of charters or taxation or regulation. They were moral and economic in nature, not legal. The job of executives and their public relations counsel was to balance the moral duties of the “corporate citizen” with the economic duties of profit and organizational self-interest. When it came to supporting higher education, the case seemed to make both economic and moral sense.¹²⁹

Eells made the case to GE executives for other programs, too. He wanted the company to give employees incentives and the time off to participate in local political campaigns and causes.¹³⁰ They donated to local charities and community chests, private non-profit corporations, and public arts projects. Between 1951 and 1957, General Electric increased its private giving by 232 percent. The same went for other major companies; Standard Oil of New Jersey by over 192 percent, U.S. Steel by 220 percent, and Corning by 288 percent.¹³¹ As Figure 1 shows, corporate giving in aggregate increased dramatically throughout the 1940s and 1950s.

¹²⁹ “General Electric Aid to Education: A Policy and a Program. September 1, 1953—For Internal Use Only,” 5. Richard Eells papers. Box 1. Folder: Education—General Electric, 1953. Columbia University Special Collections.

¹³⁰ “Participation in Political Affairs by General Electric Employees: A Policy Study.” Richard Eells papers. Box 1. Folder: Politics and the Corporation, 1956-1959. Columbia University Special Collections.

¹³¹ “Corporate Giving. Revised Edition, December 1958. Part 1: Corporate Giving Programs of 16 Leading Companies.” Richard Eells papers. Box 1. Folder: Corporate Giving, 1954-1958. Columbia University Special Collections.



Table Bg676-690 - Corporate charitable and philanthropic giving, by sector, and large corporate foundation assets: 1929–1997 *Historical Statistics of the United States Millennial Edition*

In the middle of this new period of corporate philanthropic capital, Eells set about to offer a “philosophy of corporate giving” with *Corporation Giving in a Free Society* (1956). His case rested on conservative grounds, conceiving it as an instrument of corporate autonomy. Corporate giving, he wrote, “can be made the cogent ally of a free and competitive enterprise system.”¹³² He described such a project as “strengthening the private sectors of society, protecting the nuclei of private initiative, and a progressive absorption of private responsibilities into the mechanism of the State.” These were, undoubtedly, claims framed by the politics of the Cold War.¹³³

“Statesmanship” was needed for business to defend its private system, but there was left undeveloped a “complete pattern to justify corporate giving for philanthropic purposes.” For Eells, this pattern included coordination with other firms, planned giving that corresponded with business goals over long periods of time, and a geographically

¹³² Richard Eells, *Corporation Giving in a Free Society* (New York, NY: Harpers, 1956), ix.

¹³³ Eells, *Corporation Giving in a Free Society*, 2.

national set of concerns. He interpreted corporate philanthropy through the lens of John Kenneth Galbraith's theory of countervailing power. That is to say, he understood it as an exercise in social and economic power that every organized group with capital resources engaged in.¹³⁴

Pointing to the widespread condition of oligopoly in American business, Galbraith argued that the classical model of competitive economic behavior had largely been suspended. The rise of big government, big labor unions, and big corporations had made it obsolete. This was a view shared by others at the time, including perhaps most significantly C. Wright Mills who found behind these large institutions an undemocratic class of elite power brokers.¹³⁵ Galbraith, for his part, was far more sanguine about the political economic situation—at least at the time that he was writing *American Capitalism* in the early fifties.¹³⁶ Instead of top-down power, he imagined economic behavior to function in a much more pluralistic fashion. As institutions acted and reacted against one another, power became dispersed, fractured, and free-floating.

Galbraith's work at mid-century represented the high modernism of the new liberal theory of the corporation. He articulated his position in more careful language than the likes of Levitt or certain "post-capitalists," whose progressive enthusiasm about the supposed decline of crude profit-seeking made it seem to them like they were experiencing the beginning of a new age. But Galbraith did come to see the corporation as detached from the discipline of the market—there was a buffer, so to speak, between ruthless market competition and the regular productive life of the firm. If the executives

¹³⁴ Eells, *Corporation Giving in a Free Society*, 87.

¹³⁵ C. Wright Mills, *The Power Elite* (Oxford: Oxford University Press, 1956).

¹³⁶ John Kenneth Galbraith, *American Capitalism: The Concept of Countervailing Power* (Cambridge, MA: Houghton Mifflin Co., 1952).

of industrial giants like U.S. Steel were not “automatons of market forces,” then they had taken on the role of non-economic leadership.¹³⁷

When Eells wrote about how business corporations were one unit in a “multigroup society,” he was using the language of mid-century pluralism that ran from liberals like Galbraith to conservatives like the sociologist Robert Nisbet.¹³⁸ This pluralism struck at the heart of what corporate liberals understood the corporation to be. A firm’s incorporation may come from the state, Eells argued, but American constitutional doctrine throws “protective barriers” around private sectors of voluntary associations. “This basic pattern of associational autonomy is rooted in men’s convictions about its social necessity, convictions that have deepened through witnessing the destructive effect of statism on other free societies.”¹³⁹

Like Nisbet, he relied upon the pluralist conception of the corporation that came from the German legal scholar Otto von Gierke to the Anglophone world view Frederic Maitland and Harold Laski.¹⁴⁰ Whatever jurisprudence may say about the corporation as a “mere creature of the law,” the legislature has no real ability to “dangle the corporate puppet on a legalistic string.” Eells found such focus upon law and charters to be laughable and at odds with the “real role” of the modern corporation and the plain facts of economics and politics.¹⁴¹ He went on:

To whom, then, does the corporation owe its genesis? We cannot be satisfied that it is ‘the mere creature of the law.’ Instead, it appears as a basic unit in our multigroup

¹³⁷ John Kenneth Galbraith, *American Capitalism: The Concept of Countervailing Power* (Cambridge, MA: Houghton Mifflin Co., 1952), 50-62.

¹³⁸ Robert A. Nisbet, *The Quest for Community: A Study in the Ethics of Order and Freedom* (New York, NY: Oxford University Press, 1953).

¹³⁹ Richard Eells, *Corporation Giving in a Free Society* (New York, NY: Harpers, 1956), 10.

¹⁴⁰ The intellectual history of this corporate genealogy is presented in the first chapter of this dissertation.

¹⁴¹ Richard Eells, *Corporation Giving in a Free Society* (New York, NY: Harpers, 1956), 82.

society. Its powers are an expression of a method for implementing the needs of society. This is the basis for the corporation's responsibility to society. Corporate philanthropy, as seen in this light, becomes one of the ways in which this responsibility is discharged.¹⁴²

Eells made his case for pluralism even more strongly in his subsequent volume, *the Government of Corporations* (1962). He reflected the mid-century moment in his claim that a free society requires the distribution of “governing power” among numerous centers, both public and private. Pluralism, which militates against the threat of “statism” is the rationale and theoretical construct that justifies “an American type of political economy that is partly guided and planned at governmental levels but left for the most part to private-decision making—which, in fact, becomes largely corporate decision-making.”¹⁴³

More pointedly, the movement for corporate philanthropy reflected the anti-New Deal tendencies of mid-century business thinking. As critics pointed out, the resources and funds given to schools or museums or community chests could be characterized in simple accounting terms as a deduction from shareholder dividends or as an increase in consumer costs. Although Eells characterized contributed funds as public funds, they were only public in a very narrow way.¹⁴⁴ They still procured for particular firms or industry as a whole certain benefits: good-will from the public, say, or regulators. The animating conviction on the part of many proponents of corporate giving was that it pushed back against the social power of the state. “The theory is that the application of

¹⁴² Eells, *Corporation Giving in a Free Society*, 83.

¹⁴³ Richard Eells, *The Government of Corporations* (Glencoe, IL: Free Press, 1962), 8-9

¹⁴⁴ Henry G. Manne, review of *Review of Corporation Giving in a Free Society*, by Richard Eells, *The University of Chicago Law Review* 24, no. 1 (1956), 196.

funds,” wrote Berle to Eells, “will be better done by private corporations than would be the case if the State collected through taxation and applied it through social services.”¹⁴⁵

The question was how to coordinate all of this giving and social endeavors. Much of Eells’s effort, in books, articles, internal reports, and conferences, was to provide workable standards of corporate giving that could be translated across industries. The point was to avoid the kind of parochialism and favoritism that would funnel corporate funds into a narrow range of institutions or apply industrial resources to a small set of social and cultural interests.

Corporate social responsibility, from Eells’s perspective, lay fundamentally in the gift of business resources—whether they be cash, capital, or labor—for the purpose of social and cultural uplift. He was not alone in his belief that this responsibility was almost entirely voluntary. “Responsibility as *enforceable obligation* has but limited application in this view of the corporate role in a plural society,” he wrote. Aside from the contractual obligations that firms held toward stockholders, customers, employees, and suppliers, there was nothing necessarily to guide managerial conduct except the perception of public opinion. “The more significant areas of corporate social responsibility lie in the undelineated zones of inchoate law, of uncoded public expectations, and of incipient demand.”¹⁴⁶ But there were limits. “The public may expect too much.” He continued: “The social responsibilities of a corporation do not demand responses to all public expectations.”¹⁴⁷

¹⁴⁵ Memorandum from A.A. Berle, Jr. to Richard Eells, May 14, 1956. “Correspondence and Drafts.” Box 186. Adolf Berle Papers. FDR Presidential Library.

¹⁴⁶ Richard Eells, *The Corporation and the Arts* (New York, NY: MacMillan, 1967), 174.

¹⁴⁷ Eells, *The Corporation and the Arts*, 175.

In the 1960s, Eells took his position as an adjunct instructor at Columbia Business School where he taught for more than two decades, and where, with support from Wall Street financiers, he directed a program on the study of the modern corporation, which published dozens of volumes on corporate social responsibility.¹⁴⁸ It was a logical move for Eells, one that matched his academic inclinations more than his position at General Electric did. Yet GE served as an important starting-point for Eells and not just for his career. His interest in corporate giving suited the priorities of the company at the time. GE had developed a reputation for itself as leader in corporate social responsibility. Its vice president for labor and community relations in the 1950s and early 1960s, Lemuel Boulware, was convinced that the firm needed to demonstrate its “political importance.” Boulware pioneered a dual path as a hard-driving, anti-union negotiator and a supporter of corporate citizenship.¹⁴⁹

For Boulware, corporate giving was an important tactic in the broader strategy of developing a reputation that would help the corporation achieve its interests where it competed with other countervailing powers like unions and government. The instrumental use of corporate contributions did not generally figure prominently in the social vision that Eells sought to cast. His attempts to offer a coherent account of how to evaluate corporate responsibilities faltered. Outside of the suggestion that the guiding purpose ought to be balance the “goals of the company” with the “related societal groupings.”¹⁵⁰ Despite decades of work in the field of corporate philanthropy, Eells was

¹⁴⁸ Kathleen Teltsch, “Richard Eells, 75; Professor of Business Urged Philanthropy,” *The New York Times*, Oct. 7, 1992.

¹⁴⁹ Archie B. Carroll et al., *Corporate Responsibility: The American Experience* (New York, NY: Cambridge University Press, 2012), 217.

¹⁵⁰ Eells, *The Corporation and the Arts*, 184.

never able to move beyond the immobilizing assumptions of his earlier work. “The legitimate ends of corporate enterprise are certainly a debatable issue today,” he had written. “The scope and legitimacy of managerial authority are unresolved problems.”¹⁵¹

Post-Capitalism, Liberalism, and the American Business Creed

The middle decades of the twentieth century offered new vistas for thinking about American life. One vantage point was international. Although the Cold War can rightly be said to have produced a pervasive cultural conservatism, it is nevertheless true that the U.S.-Soviet rivalry imbued American cultural life with a sense of meaning and an urgency of purpose. Precisely because it was pitted against the ideological foil of communism, capitalism possessed a constellation of social and cultural in addition to economic meanings. The other vantage point was internal. Partly because anticommunism had eliminated many of big business’s ideological foes and discredited alternative visions of political economy, the prevailing business ideology incorporated a wider range of social and economic interests than it had under historical moments of intense scrutiny, such as the 1930s or the 1890s. Business leaders now cultivated and presided over a broad base of support. “For the striking characteristic of our contemporary ideological climate is that the ‘dissident’ groups, labor, government, or academic all seek to accommodate their proposals for social change to the limits of adaptability of the prevailing business order,” wrote economist Robert Heilbroner in 1964.¹⁵² To use the language of religion, corporate capitalism was no longer a sect

¹⁵¹ Eells, *The Government of Corporations*, 13-14.

¹⁵² Robert L. Heilbroner, “The View from the Top: Reflections on a Changing Business Ideology,” in *The Business Establishment*, ed. Earl F. Cheit (New York, NY: John Wiley & Sons, 1964), 2.

seeking to achieve purity of doctrine; it was an established church seeking to maintain religious order.

The sociologist Daniel Bell registered the change of the postwar era as a reconfiguration of political ideas. The grand ideologies, he said, that had shaped social and political life globally for a century were now exhausted.¹⁵³ Political economy, formerly a battlefield riven by competing ideologies of antitrust, regulation, and laissez-faire and by the opposing interests of capital, labor, consumers, and the state, was replaced by a spirit of pragmatism and notions of pluralism, the most prominent of which was John Kenneth Galbraith's theory of countervailing power.¹⁵⁴ Within the predominant corporate culture, one *Life* magazine writer observed, "intellectuals have deserted political and economic theory for the hazy new categories of sociology."¹⁵⁵ At the bottom of these hazy categories was a reticence to engage with the old questions of political economy—namely who gets to exercise and benefit from power. "The refusal to engage questions of power," Jackson Lears has written, "led to the reification of abstract concepts into things which acted autonomously on people."¹⁵⁶ Talcott Parsons's "social system," for example, David Riesman's famous modal personality types in *The Lonely Crowd*, or David Potter's "abundance" all had followed the tendency see abstractions as the real possessors of power.¹⁵⁷

¹⁵³ Daniel Bell, *The End of Ideology: On the Exhaustion of Political Ideas in the Fifties* (New York, NY: Free Press, 1960).

¹⁵⁴ John Kenneth Galbraith, *American Capitalism: The Concept of Countervailing Power* (Cambridge, MA: Houghton Mifflin Co., 1952).

¹⁵⁵ John K. Jessup, "The U.S. Corporation: A New Form of Government?," in *Getting Things Done in Business*, ed. Edward Collins Bursk (Cambridge, MA: Harvard University Press, 1953), 20.

¹⁵⁶ Jackson Lears, "A Matter of Taste: Corporate Cultural Hegemony in a Mass-Consumption Society," in *Recasting America: Culture and Politics in the Age of Cold War*, ed. Lary May (University of Chicago Press, 1989), 42-43.

¹⁵⁷ Talcott Parsons, *The Social System* (Glencoe, IL: Free Press, 1951); David M. Potter, *People of Plenty: Economic Abundance and the American Character* (Chicago, IL: University of Chicago Press, 1954);

Business and sociology grew together. Administrative expansion in corporations and the state created demand for professional managers, spurring extraordinary growth in business schools and lending credibility to a new generation of managerial theorists.¹⁵⁸ Again and again, business school leaders announced that management was in the process of becoming a “respectable profession” like the fields of law, medicine, or religion. A key part of that process was the development of the accoutrements of professionalism, such as codes of ethics, prestigious associations, and customs of respectability.¹⁵⁹ Business schools in the post-WWII era incorporated sociology, political science, and psychology into the curriculum, adapting insights and methods to a new field of study.¹⁶⁰

Mid-century social science played host to a range of intellectuals who had traded in their radicalism for liberal anticommunism but who remained committed to social democracy. Bell was one prominent figure, along with Riesman, Parsons, Seymour Martin Lipset and others. The intellectual historian Howard Brick has identified the “end of ideology” school of thought with a transatlantic notion of a postcapitalist society that placed faith in the “social democratic potential of an evolving status quo.”¹⁶¹ Nothing so complete as a formal theory, postcapitalism was a way of understanding modern society that drew attention to social features that seemed to militate against traditional

David Riesman, *The Lonely Crowd: A Study of the Changing American Character* (New Haven, CT: Yale University Press, 1950).

¹⁵⁸ Rakesh Khurana, *From Higher Aims to Hired Hands: The Social Transformation of American Business Schools and the Unfulfilled Promise of Management as a Profession* (Princeton, N.J.: Princeton University Press, 2010), 197-198.

¹⁵⁹ Benjamin Selekman, *A Moral Philosophy for Management* (New York, NY: McGraw-Hill, 1959), 5-6.

¹⁶⁰ Khurana, *From Higher Aims to Hired Hands*, 333-335.

¹⁶¹ Howard Brick, *Transcending Capitalism: Visions of a New Society in Modern American Thought* (Ithaca, NY: Cornell University Press, 2015), 162-163.

conceptions of capitalism. It projected the development of capitalism toward some as-yet unrealized social democratic form.¹⁶²

If the culture of the postwar era was pervasively conservative, it nevertheless harbored a progressive mood. Jennifer Delton has shown that managerialism was not as conservative as many historians have supposed. Many business leaders were open to and supportive of civil rights politics, among other things.¹⁶³ Although opposed to the political aims of social democracy, liberal business leaders and their intellectual allies agreed with postcapitalist social theorists on two important points. One was that the social structures of the corporate economy possessed the potential to move beyond the individualism and class warfare of an earlier age. The other specified the corporation as the institutional site of social reconciliation that would usher in an age of enlightened management and rational administration.

In the speeches of business leaders, the articles and textbooks of business school professors, and the speculations of the business intelligentsia, a new sensibility characterized free enterprise as a system undergoing fundamental transition. Contemporary observers called it the managerial philosophy, the new capitalism, the ideology of the prevailing business order, or simply the business ideology.¹⁶⁴ In more positive terms, *Fortune* called it the permanent revolution, Adolf Berle the twentieth

¹⁶² Brick, *Transcending Capitalism*, 2-3.

¹⁶³ Jennifer A. Delton, *Rethinking the 1950s: How Anticommunism and the Cold War Made America Liberal* (New York, NY: Cambridge University Press, 2013), 56-77.

¹⁶⁴ Robert L. Heilbroner, "The View from the Top: Reflections on a Changing Business Ideology," in *The Business Establishment*, ed. Earl F. Cheit (New York, NY: John Wiley & Sons, 1964); Henry G. Manne, "Corporate Responsibility, Business Motivation, and Reality," *The Annals of the American Academy of Political and Social Science* 343, no. 1 (September 1, 1962): 55-64; Edward S. Mason, "The Apologetics of 'Managerialism,'" *The Journal of Business* 31, no. 1 (1958): 1-11; Eugene V Rostow, "To Whom and For What Ends Is Corporate Management Responsible?," in *The Corporation in Modern Society*, ed. Edward S. Mason (Cambridge, MA: Harvard University Press, 1959).

century capitalist revolution, Gardiner Means collective capitalism, and the political scientist Earl Latham corporate collectivism.¹⁶⁵ No single term of praise or critique ever gained widespread acceptance, which is perhaps as much as any an indication of the tentative nature of such observations. The “new capitalism” was probably the most popular of all the phrases.

The ideas that circulated within the business community were reflective of broader intellectual trends. This grappling for new phrases, much like the sociological impressions of David Riesman’s “other-directed personality” or William Whyte’s “organization man,” was an index of the social changes brought about by the rise of large, bureaucratic institutions.¹⁶⁶ But the language of the new capitalism also constituted a theory of development. A new economic era was opening up, the theory went, and was in the process of revolutionizing the U.S. and the world. “The modern corporation has undermined the preconceptions of classical economic theory as effectively as the quantum undermined classical physics at the beginning of the 20th century,” wrote Gardiner Means in a widely cited article for *Science* in 1957. He went on to express his enthusiasm for “collective capitalism,” even if he believed, “we are still some way from understanding how it really works and what its imperatives are.”¹⁶⁷

¹⁶⁵ Adolf A Berle, *The 20th Century Capitalist Revolution* (New York, NY: Harcourt, Brace, 1965); Editors of Fortune and Russell W. Davenport, *U. S. A.: The Permanent Revolution* (New York, NY: Prentice-Hall, 1951); Earl Latham, “The Body Politic of the Corporation,” in *The Corporation in Modern Society*, ed. Edward S. Mason (Cambridge, MA: Harvard University Press, 1959); Gardiner C. Means, “Collective Capitalism and Economic Theory,” *Science* 126, no. 3268 (1957): 287–93.

¹⁶⁶ David Riesman, *The Lonely Crowd: A Study of the Changing American Character* (New Haven, CT: Yale University Press, 1950); William Hollingsworth Whyte, *The Organization Man* (New York, NY: Simon and Schuster, 1956).

¹⁶⁷ Gardiner C. Means, “Collective Capitalism and Economic Theory,” *Science* 126, no. 3268 (1957), 287, 293.

Liberalism

This conviction that that classical liberal theory had become obsolete wasn't new to the post-war era; it was foundational to early twentieth-century liberal thought from Oliver Wendell Holmes and John R. Commons to John Dewey and Adolf Berle. The new liberalism had in the past typically been marshalled for the purposes of building the regulatory and administrative structures that made corporate capitalism possible.¹⁶⁸ Martin Sklar coined the term corporate liberalism to describe the ideological construction of a generation of policymakers, intellectuals, and industrial leaders who consciously sought to refashion the American liberal tradition in order to establish the large corporation as the dominant mode of business and to cultivate its popular acceptance.¹⁶⁹

The new capitalism broke with the past by assigning a wide array of responsibilities for the managerial class. Max Weber and Alfred Chandler showed that professional managers emerged in the late nineteenth century alongside the rise of large, integrated business institutions.¹⁷⁰ The technological sophistication of industrial institutions required a variety of experts and technicians whose coordination needed to be managed. But it wasn't until decades later that managers assumed a preeminent social role in what Peter Drucker called the "representative social institution of our society." It was the job of management, these new theorists asserted, to direct the corporation as an

¹⁶⁸ James Livingston, *Origins of the Federal Reserve System: Money, Class, and Corporate Capitalism, 1890-1913* (Ithaca, NY: Cornell University Press, 1989); Martin J. Sklar, *The Corporate Reconstruction of American Capitalism, 1890-1916: The Market, the Law, and Politics* (New York, NY: Cambridge University Press, 1988); James Weinstein, *The Corporate Ideal in the Liberal State, 1900-1918* (Boston, MA: Beacon Press, 1968).

¹⁶⁹ Martin J. Sklar, "Woodrow Wilson and the Political-Economy of Modern United States Liberalism," *Studies on the Left* 1, no. 3 (Fall 1960), 41.

¹⁷⁰ Max Weber, "Bureaucracy," in *From Max Weber: Essays in Sociology*, ed. H. H. Gerth and C. Wright Mills (New York, NY: Oxford University Press, 1946), 196-244. Alfred D. Chandler, *The Visible Hand: The Managerial Revolution in American Business* (Cambridge, MA: Harvard University Press, 1977).

“economic tool,” but also to lead it as a “political and social body.” “[I]ts social function as a community is as important as its economic function as an efficient producer,” wrote Drucker.¹⁷¹

It was the displacement of the market’s power and rationality that made such talk possible. Although conservatives like Friedrich Hayek were hammering out the principles for market radicalism at the time, most liberal intellectuals in the late 1940s and 1950s had discarded the idea that markets and the economy writ large could be separated in any meaningful sense from the structures of society and the forms of public policy.¹⁷² Karl Polanyi’s *The Great Transformation* (1944) offered a powerful history of the development of modern capitalism, arguing that the state created and sustained the existence of what he called the “market society.”¹⁷³ Polanyi worked on *The Great Transformation* in the summer of 1940 alongside Drucker who was writing the manuscript of *The Future of Industrial Man*, a book published two years later that likewise emphasized the social embeddedness of the market.¹⁷⁴ Galbraith published *American Capitalism* in 1952, a book which relocated the engine of economic activity in a self-generating system of countervailing power, not in the network of free competition.¹⁷⁵ “Competition, which, at least since the time of Adam Smith, has been viewed as the autonomous regulator of economic activity and as the only available

¹⁷¹ Peter F. Drucker, *Concept of the Corporation* (New Brunswick, NJ: Transaction Publishers, 2009), 140.

¹⁷² F. A. Hayek, “The Use of Knowledge in Society,” *The American Economic Review* 35, no. 4 (1945): 519–30.

¹⁷³ Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (New York, NY: Beacon Press, 1944).

¹⁷⁴ Peter F. Drucker, *The Future of Industrial Man: A Conservative Approach* (New York, NY: John Day Company, 1942).

¹⁷⁵ John Kenneth Galbraith, *American Capitalism: The Concept of Countervailing Power* (Cambridge, MA: Houghton Mifflin Co., 1952), 113.

regulatory mechanism apart from the state, has, in fact, been superseded,” he wrote.¹⁷⁶

Galbraith’s highly influential theory of countervailing power consternated both conservative free marketers, on account of its denial of the economic rationality of markets, and Keynesian liberals, on account of its seeming celebration of the self-regulating potential of concentrated capitalism.¹⁷⁷

But Galbraith, Drucker, and Polanyi could each be accurately described in different ways as contributors to what Daniel Immerwahr calls the midcentury critique of the economic society.¹⁷⁸ That is, they shared with Talcott Parsons, Thurman Arnold, and James Burnham, among others, the conviction that economistic descriptions of markets and society were, at best, incomplete. Economistic analysis lacked the necessary social and political specificity to amount to anything resembling a history of markets, economic institutions, or labor.¹⁷⁹ Central to this critique was the conviction that capitalism has a history—it is not simply the outworking of natural processes or features of human nature such as, in Adam Smith’s famous dictum, the supposed tendency to “truck, barter, and exchange one thing for another.”¹⁸⁰ Economistic thinking, perhaps more important, lacked the necessary resources for grasping the institutional formation of

¹⁷⁶ Galbraith, *American Capitalism*, 112.

¹⁷⁷ Richard Parker, *John Kenneth Galbraith: His Life, His Politics, His Economics* (New York, NY: Farrar, Straus and Giroux, 2005), 238-239.

¹⁷⁸ Daniel Immerwahr, “Polanyi in the United States: Peter Drucker, Karl Polanyi, and the Midcentury Critique of Economic Society,” *Journal of the History of Ideas* 70, no. 3 (2009), 446. Immerwahr builds in important ways on Howard Brick’s groundbreaking work on postcapitalism. See Howard Brick, *Transcending Capitalism: Visions of a New Society in Modern American Thought* (Ithaca, NY: Cornell University Press, 2015).

¹⁷⁹ Polanyi belonged to what Tim Rogan calls a tradition of moral economists, along with E.P. Thompson and R.H. Tawney. See Rogan, *The Moral Economists: R. H. Tawney, Karl Polanyi, E. P. Thompson, and the Critique of Capitalism* (Princeton, NJ: Princeton University Press, 2017); Tawney, *Religion and the Rise of Capitalism: A Historical Study* (New York, NY: Harcourt, Brace & Company, 1926); Thompson, *The Making of the English Working Class* (New York, NY: Pantheon Books, 1964).

¹⁸⁰ Adam Smith, *The Wealth of Nations* (New York, NY: Penguin, 1982), 117.

mid-century capitalism, which had, as these critics were ready to point out, rendered obsolete many of the most basic features of the old economic *weltanschauung*.

Peter Drucker served as a conservative ambassador of post-capitalism to the world of the business intelligentsia. Although he was a perceptive observer and daring theorist of the social function of the corporation, he eventually disavowed the more expansive implications of business statesmanship. By the early 1960s, he openly criticized liberal theorists like Adolf Berle and John Kenneth Galbraith who, he said, “began to expect too much from business”—that it would save higher education, reform government, solve racial problems, maintain a pluralistic society and democratic principles, among other things. Such were the pitfalls of the “adulation” that business received in the immediate postwar years and the disillusionment toward government that many liberals felt at mid-century.¹⁸¹

In the 1940s and early 1950s, just as he was transitioning in his career from political philosopher to managerial guru, Drucker struggled with the relationship between the social role of the corporation and the limits of market rationality. The dichotomy between profit-seeking and social responsibility was a false one, in his terms. “Profitability is simply another word for economic rationality,” he surmised. “And what other rationality could there be to measure economic activity but economic rationality?”¹⁸² There is no other alternative, he concluded. The metric of profitability and growth was the only available metric.¹⁸³

¹⁸¹ Earl Newsom Papers. Box 56. Folder: PRSA Speech---ENCO General Files, 1961. Summary of Addresses before the New York Chapter – Public Relations Society of America One-Day Institute, February 1, 1961. WSHA.

¹⁸² Peter F. Drucker, *Concept of the Corporation* (New Brunswick, NJ: Transaction Publishers, 2009), 235.

¹⁸³ Drucker, *Concept of the Corporation*, 250-251.

Unlike some proponents of business statesmanship, Drucker believed that the corporation could not be organized around any motivating force other than profit-seeking. But the pursuit of profits did not preclude the possibility of a corporate social life. For Drucker, it was the corporate system that offered a reparative integration that was a high calling. “It demands a degree of understanding and support on the part of the individual member of the organization that goes far beyond anything traditional society requires,” he wrote. “Citizenship is much more important in the mass-production order—if by citizenship we mean the intelligent participation of the individual member in the whole.”¹⁸⁴

For Drucker, the industrial plant itself could be a site of repair for the dangerous condition of modern alienation. “The corporation has replaced,” he wrote, “the manor and the market as the basic institution in and through which the material reality is organized socially. And the corporation management has become the decisive and representative power in the industrial system.”¹⁸⁵ The corporation is more than an economic unit, nor is it a dependent of the state. Its legitimacy comes from the individual rights of citizens who come together to form it. “The modern corporation is thus a *political* institution; its purpose is the creation of legitimate power in the industrial sphere.”¹⁸⁶ It is, he argues, an organization founded on its own kind of social contract between individual property owners. Corporate executives found themselves in the unhappy situation of possessing “uncontrolled and nonresponsible social power which

¹⁸⁴ Peter F. Drucker, *The New Society: The Anatomy of Industrial Order* (New York, NY: Harper & Row, 1962), 25.

¹⁸⁵ Peter F. Drucker, *The Future of Industrial Man: A Conservative Approach* (New York, NY: John Day Company, 1942), 74.

¹⁸⁶ Drucker, *The Future of Industrial Man*, 77.

they did not seek, but into which they have been pushed.”¹⁸⁷ The necessary thing to do was to make managerial ruling power in the industrial system a “legitimate power.”

Decades after American jurists had shorn the corporation of its greater social obligations and its deeper political origins, mid-century social theorists and business intellectuals came to recognize the inevitability of reckoning with the non-economic character of corporations.¹⁸⁸ By and large, this intellectual ferment had little effect on corporation law and state-issued charters in the middle decades of the twentieth century.¹⁸⁹ One legal scholar registered the wider feeling when he wrote in 1962 that “corporation law, as a field of intellectual effort, is dead in the United States.”¹⁹⁰ As the courts provided more latitude for managers to use corporate resources as they saw fit, liberal intellectuals pronounced shareholder democracy a failed project.¹⁹¹ Even Adolf Berle, once a pioneer for the rights and protection of shareholders, characterized shareholders as hopelessly passive investors who performed no function in the modern corporation. “We go through the ancient forms and it is good that we do so,” he wrote in the late 1950s, “but everyone knows that a stockholders’ meeting is a kind of ancient,

¹⁸⁷ Drucker, *The Future of Industrial Man*, 99.

¹⁸⁸ On the transformation of corporation law in the late nineteenth and early twentieth century, see Morton J. Horwitz, *The Transformation of American Law, 1870-1960: The Crisis of Legal Orthodoxy: The Crisis of Legal Orthodoxy* (New York, NY: Oxford University Press, USA, 1992), 65-107. See also David Ciepley, “Beyond Public and Private: Toward a Political Theory of the Corporation,” *The American Political Science Review* 107, no. 1 (February 2013): 139–58; Adam Winkler, *We the Corporations: How American Businesses Won Their Civil Rights* (New York, NY: Liveright Publishing, 2018).

¹⁸⁹ Jonathan Levy, “From Fiscal Triangle to Passing Through: Rise of the Nonprofit Corporation,” in *Corporations and American Democracy*, ed. Naomi R. Lamoreaux and William J Novak (Cambridge, England: Harvard University Press, 2017).

¹⁹⁰ Bayless Manning, “The Shareholder’s Appraisal Remedy: An Essay for Frank Coker,” *The Yale Law Journal* 72, no. 2 (1962), 245n37.

¹⁹¹ *A.P. Smith Manufacturing Co. v. Barlow* (1953), which upheld the manufacturing company’s management’s right to make corporate contributions to Princeton University was widely held by business intellectuals as the legal grounds for corporate philanthropy. See Richard Eells, “Corporate Philanthropy: The Elements of a Policy,” address before the University of California at Los Angeles Business School Association and Alumni Group (April 11, 1957). On shareholders and management, see Eugene V Rostow, “To Whom and For What Ends Is Corporate Management Responsible?,” in *The Corporation in Modern Society*, ed. Edward S. Mason (Cambridge, MA: Harvard University Press, 1959).

meaningless ritual like some of the ceremonies that go on with the mace in the House of Lords.”¹⁹²

The American Business Creed

The idea of the new capitalism set the tone for a popular ideology that gained ascendancy among the liberal business community. Beginning in the late 1940s, the outlines of it could be found in the speeches of business elites, in articles in the *Harvard Business Review*, *Fortune*, and the *California Management Review*, and in the public relations campaigns and advertisements of top companies. Nothing so complete as a formal theory, it came to pass as the commonsense for the concentrated and mixed economy of the postwar years.

The most thorough study of the prevailing business ideology came from a group of Harvard scholars that included James Tobin, Carl Kaysen, and Francis Sutton in 1956. In a survey of advertisements, speeches, trade journals, and other corporate ephemera, they called it the “American business creed.”¹⁹³ There were a variety of elements that constituted this ideology. One was its view of history. The “managerial” strand of capitalism was in the process of supplanting the “classical” version.¹⁹⁴ Business elites came to believe that they were presiding over a moment that bore little resemblance to the past. Property ownership no longer entailed purely private rewards but rather into the belief that “ownership carries social obligations,” wrote the editors of *Fortune*, “and that the manager is a trustee not only for the owner but for society as a whole. Such is the

¹⁹² Adolf A. Berle, Jr., *Economic Power and the Free Society* (New York, NY: Fund for the Republic, 1957), 7.

¹⁹³ Francis Xavier Sutton et al., *The American Business Creed* (Cambridge, MA: Harvard University Press, 1956).

¹⁹⁴ Sutton et al., *The American Business Creed*, 9.

Transformation of American Capitalism.”¹⁹⁵ For the liberal wing of the business community, these capitalized terms carried a world-historical weight. The socialization of property was just one facet of a larger revolution in which economic rationality was being eclipsed by the expertise and moral fortitude of manager-statesmen. They saw the break with the past as so sharp that the “whole system” was “moving toward a new kind of homogeneity—of large professionally managed, socially oriented corporations.”¹⁹⁶ This new kind of capitalism was supposed to be markedly different both from the reckless capitalism of the 1920s and the 1890s and from the developing social democracy of Europe. As Ralph J. Cordiner, president of General Electric, put it in lectures funded by the McKinsey Foundation, “Many thoughtful persons have observed that the United States has evolved a wholly new form of capitalism.”¹⁹⁷

One feature of this world-historical change was the unprecedented size of business. The work of Maurice Adelman that identified growing concentration in industry was often cited in *Barron's* and *Business Week*, among other members of the business press, and in financial trade journals like National City Bank of New York's *Monthly Letter*.¹⁹⁸ One mark of the growing attention given to business was the *Fortune* 500. *Fortune's* list of the top 500 industrial firms, which listed each companies' revenues, profits, and assets, was first published in 1955. The separation of ownership and control was frequently cited in the 1950s as the basis for the more humane, less profit-focused

¹⁹⁵ Editors of *Fortune* and Russell W. Davenport, *U. S. A.: The Permanent Revolution* (New York, NY: Prentice-Hall, 1951), 88.

¹⁹⁶ Francis Xavier Sutton et al., *The American Business Creed* (Cambridge, MA: Harvard University Press, 1956), 36.

¹⁹⁷ Ralph J. Cordiner, *New Frontiers for Professional Managers* (New York, NY: McGraw-Hill Book Company, 1956), vi.

¹⁹⁸ M. A. Adelman, “The Measurement of Industrial Concentration,” *The Review of Economics and Statistics* 33, no. 4 (1951): 269–96; M. A. Adelman, “Is Big Business Getting Bigger?,” *Fortune*, January 1952.

capitalism. The size of the firm necessitated a large bureaucratic apparatus that flouted the traditional economic motivations of a variety of social groups who participated in the corporation but primarily the managers. As Drucker put it, “The president of the large business enterprise does not look upon himself as a capitalist. He looks upon himself as a manager, and is so regarded by society.”¹⁹⁹ Not limited by the calculating spirit of the capitalist, the manager was free to do more at the institutional helm.

The fact that the size, however, had transformed American capitalism was never so often explained as it was assumed. Scale seemed correlated with economic power and, in some ways, oligopoly, both of which seemed to suspend purely economic analysis. “Bigness itself is a relatively new phenomenon in our society,” wrote Thomas Watson, Jr., president of IBM. “Even if nothing else had changed the vast concentrations of power in our society would demand that businessmen reconsider their responsibilities for the broader public welfare.”²⁰⁰

The identifying mark of the new business creed was professional responsibility. “The manager is becoming a professional,” *Fortune* editors intoned, “in the sense that like all professional men he has a responsibility to society as a whole.”²⁰¹ Talk of the social responsibilities of management had become ubiquitous by the middle of the 1950s. “You might wonder, if you were a conscientious newspaper reader,” quipped Drucker, “when the managers of American business had any time for business.”²⁰² The special emphasis on the professional responsibility evinced the growing aspirations of the

¹⁹⁹ Peter F. Drucker, *The Landmarks of Tomorrow* (New York, NY: Harper & Row, 1959), 104.

²⁰⁰ Thomas J. Watson, Jr., *A Business and Its Beliefs: The Ideas That Helped Build IBM* (New York, NY: McGraw-Hill Book Company, 1963), 80.

²⁰¹ Editors of *Fortune* and Russell W. Davenport, *U. S. A.: The Permanent Revolution* (New York, NY: Prentice-Hall, 1951), 79.

²⁰² Peter F. Drucker, “The Responsibilities of Management,” *Harper’s Magazine*, November 1954.

managerial class.²⁰³ But questions of responsibility represented anxiety over the size of corporations and the power that they exercised.

There was, of course, optimism about big business. “The jobs we want done require bigness— big thinking, big organization, daring experimentation,” the public relations guru Earl Newsom said buoyantly. “Americans, more than any other people on earth, like bigness.”²⁰⁴ But there was another side to things. Thomas Watson put the matter plainly: “We all know that special power imposes special responsibilities on those who hold it.”²⁰⁵ But the focus on the morals of managers worked to obfuscate a question of institutional power and help subordinate political economy into a matter of personal ethics.

The language of responsibility in popular business publications was noticeably ambivalent about what the word meant. It could denote an attitude, a set of morals, a conscience or a soul, community leadership, anti-inflationary pricing, respect for employees, and a liberal record on civil rights, among a large group of qualities. “Management, as a good citizen, and because it cannot properly function in an acrimonious and contentious atmosphere, has the positive duty to work for peaceful relations and understanding among men,” said Frank Abrams, chairman of the Standard Oil Company of New Jersey.²⁰⁶

²⁰³ A project propelled by the booming ranks of business schools, which funded journals, published books, used textbooks, and hosted lectures where many notions of CSR first blossomed. See generally Rakesh Khurana, *From Higher Aims to Hired Hands: The Social Transformation of American Business Schools and the Unfulfilled Promise of Management as a Profession* (Princeton, N.J.: Princeton University Press, 2010), 195-231.

²⁰⁴ Earl Newsom Speech, March 13, 1948, Earl Newsom Papers. Wisconsin Historical Society, Box 17, Folder 30.

²⁰⁵ Thomas J. Watson, Jr., *A Business and Its Beliefs: The Ideas That Helped Build IBM* (New York, NY: McGraw-Hill Book Company, 1963), 91.

²⁰⁶ Frank W. Abrams, “Management’s Responsibilities in a Complex World,” *Harvard Business Review* 29, no. 3 (May 1951), 30.

Liberal-minded paternalism was heralded as the panacea to the ideological conflicts that had plagued big business in the past. Proponents of the business creed were keenly aware that wartime industrial mobilization had rescued the reputations of business just a few short years ago. Near to their minds were the political struggles of the New Deal and even the conflicts of the gilded age and progressive era. One Midwestern manufacturing president put it this way:

Let's be frank about it. If our predecessors in management, two or three generations ago, had devoted a mere modicum of their time to some individual soul-searching about their motives, about their good faith, about the responsibilities they owe to the people—we wouldn't be facing some of the tough problems we face today. [...] An active social conscience...and individual recognition of social responsibilities will compel us, as individuals, to test *every* managerial practice, measure *every* policy by a simple yardstick. Not "What does it mean for me," but rather "What will this mean to my *workers as people*, to my *customers*, to my *suppliers*, to my *stockholders*, to the *community* in which my plant is located, to my *government*, to the *industry* of which I am a part, to the *economy* as a whole?" These tests, honestly made, of *every* individual managerial action, policy, and practice, will be evidence of true social consciousness.²⁰⁷

The corporation was imagined as having the capacity for institutional virtue or a soul or a conscience or social obligations. These virtues were contemplated in explicit contrast to the vices that characterized the financial speculators of the 1920s who were

²⁰⁷ Morris Sayre, President of Corn Products Refining Company, speech in 1948. Quoted in Howard Bowen, *Social Responsibilities of the Businessman* (New York, NY: Harper & Brothers, 1953), 52n9.

believed to have brought on the Great Depression or the capitalists of the late nineteenth century who still served as icons of business indiscretion and malfeasance.²⁰⁸

The manager, it was said, stood at the nexus of a range of different publics: employees, stockholders, people in plant communities, dealers, customers, policymakers, and the public at large. In some cases, the expectations of groups like suppliers, customers, and stockholders were relatively straightforward and revolved around financial interests. But, as Theodore Houser, head of Sears, Roebuck, and Company, put it, “The relationships of a corporation with the community, the public and the government are less direct but not less real, and need to be given thought as a part of the broad spectrum of management responsibility.”²⁰⁹ The genius of the manager-statements consisted in the cultivation of a proper institutional balance between the interests of different groups—in abstract terms, between the public good and private profit, and between short-term gains and long-term investments.

The stability and long-term vision that marked the business creed was propelled by the stable growth of the postwar era. Giant leaps in housing, automobile manufacturing, and defense spending, along with high rates of labor union membership and the growing prevalence of conglomerates created conditions in which corporations developed long-term relationships with their various “publics.”²¹⁰ This made possible, for example, what Richard Sennett dubbed called social capitalism. That is, the possibility of

²⁰⁸ Matthew Josephson’s popular history of the robber barons was republished for a new generation in 1962. Matthew Josephson, *The Robber Barons: The Great American Capitalists, 1861-1901* (New York, NY: Harcourt Brace and World, 1962).

²⁰⁹ Theodor V. Houser, *Big Business and Human Values* (New York, NY: McGraw-Hill Book Company, 1957), 31.

²¹⁰ On how the financial imperatives of corporate capitalism transformed the social relations of industry, see generally Gerald F. Davis, *Managed by the Markets: How Finance Re-Shaped America* (New York, NY: Oxford University Press, 2009); Louis Hyman, *Temp: How American Work, American Business, and the American Dream Became Temporary* (New York, NY: Penguin, 2018).

lifelong employment with a single firm created for the male breadwinners of a generation of Americans the sense of predictability, along with generous benefits and retirement. Although criticized by sociologists like William Whyte and C. Wright Mills for its conformity-inducing character, this mid-century capitalism enabled “enabled people to think about their lives as narratives—narratives not so much of what necessarily will happen as of how things should happen.”²¹¹ Careers, like investments, were built around long-term expectations.

The prevailing business ideology enjoyed a unique position in the middle decades of the twentieth century. The politics of economic reform, whether in the form of antimonopoly or state planning, had been largely immobilized.²¹² Hints of radicalism had been rooted out of the mainstream of American society under the auspices of widespread investigations into communism and decades-long federal loyalty programs.²¹³ “Every general medium of mass communication carries a heavy freight of business ideology,” the authors of *The American Business Creed* observed.²¹⁴ “In part undermined by the sheer economic success of America, in part by the terrible disillusionment with the Soviet Union, the antibusiness party of ideas has suffered a crushing defeat,” economist Robert Heilbroner wrote in 1964.²¹⁵ The dominant group of business managers, intellectuals, and advertisers had achieved a level of legitimation that invalidated in public discourse the

²¹¹ Richard Sennett, *The Culture of the New Capitalism* (New Haven, CT: Yale University Press, 2006), 23.

²¹² Richard Hofstadter declared the antitrust movement dead in the early 1960s. Richard Hofstadter, “What Happened to the Antitrust Movement? Notes on the Evolution of an American Creed,” in *The Business Establishment*, ed. Earl F. Cheit (New York, NY: John Wiley & Sons, 1964), 114.

²¹³ Ellen Schrecker, *Many Are the Crimes: McCarthyism in America* (Princeton, NJ: Princeton University Press, 1998); Landon R. Y. Storrs, *The Second Red Scare and the Unmaking of the New Deal Left* (Princeton, NJ: Princeton University Press, 2013).

²¹⁴ Francis Xavier Sutton et al., *The American Business Creed* (Cambridge, MA: Harvard University Press, 1956), 302.

²¹⁵ Robert L. Heilbroner, “The View from the Top: Reflections on a Changing Business Ideology,” in *The Business Establishment*, ed. Earl F. Cheit (New York, NY: John Wiley & Sons, 1964), 2.

ideas, values, and experience of its political, intellectual, and economic opponents.²¹⁶ The ideology of the prevailing business order, in short, had become commonsense.

This cultural hegemony had important consequences for the development of corporate social responsibility. Most significantly, business leaders and intellectuals felt the need to develop and preside over a broad movement that was inclusive and not nearly as embattled or sectarian as it had in the past. Observe changing attitudes at the National Association of Manufacturers. Its postwar assault on full employment, wage and price controls, and corporate social responsibility was inaugurated by a two-volume study, *The American Individual Enterprise System: Its Nature, Evolution, and Future*, that derided any imposition on business, whether from the state or the public, as a burden of arbitrary demands. “The word ‘liberal,’ which once denoted and should still denote one who believes in the maximum freedom of the individual from governmental interference,” the report stated, “now has been assumed and travestied as a label for those who wish to take away liberties and whose faith is the desirability of socialized direction of individual activities.”²¹⁷ The NAM staked its institutional reputation on opposition to this liberalism.

The organization rightly recognized that corporate social responsibility was an attack on the ideology of *laissez-faire* that the organization had long embraced, at least at the rhetorical level. William Grede, a small-time industrialist and bellicose leader at the NAM, saw social responsibility as a public relations canard that sought to influence business decisions on the “basis of what is popular with the public,” not on sound

²¹⁶ T. J. Jackson Lears, “The Concept of Cultural Hegemony: Problems and Possibilities,” *The American Historical Review* 90, no. 3 (1985), 574.

²¹⁷ National Association of Manufacturers (U.S.) Economic Principles Commission, *The American Individual Enterprise System: Its Nature, Evolution, and Future* (New York, NY: McGraw-Hill Book Company, 1946), 693.

economics. Large corporations, he noted, were led to believe that their broad ownership and concentration required a development of a “sense that they are a public corporation and therefore must be responsive to the popular public opinion.”²¹⁸ But, as Jennifer Delton has shown, the NAM’s opposition to corporate social responsibility soon shifted as new leaders reformulated the organization’s rhetorical position.

After Werner Gullander took over the helm, the NAM came around to the viewpoint that corporate social responsibility afforded business the opportunity to expand its own autonomy by mitigating criticism from policymakers, academics, and the public at large. “When the business community demonstrates to the American public that they have the social responsibility and are willing to accept it,” Gullander told an audience in the 1960s, “you are not going to have them questioned so much as to whether the power of the management, the power of the share owners, is too great for the American public.”²¹⁹ The goal of the NAM was to harness the power of free enterprise and to produce “free market solutions” to problems such as racial inequality as a deliberate attempt to forestall government intervention.²²⁰

The transformation of the NAM reflects in miniature the broader change in business attitudes between about 1945 and 1965. It wasn’t simply that a spirit of moderation descended on industrial leadership or that corporate liberalism finally arrived

²¹⁸ Quoted in Jennifer Delton, “The Triumph of Social Responsibility in the National Association of Manufacturers in the 1950s,” in *Capital Gains: Business and Politics in Twentieth-Century America*, ed. Richard R. John and Kim Phillips-Fein (University of Pennsylvania Press, 2016), 189.

²¹⁹ Werner P. Gullander, “The Future Direction of the Modern Corporation,” *The Business Lawyer* 24, no. 1 (1968): 171.

²²⁰ Delton, “The Triumph of Social Responsibility in the National Association of Manufacturers in the 1950s,” 189-195.

in the most right-wing sectors of business politics.²²¹ Rather business groups and large firms, whether typically conservative or liberal, came to believe it was necessary to embrace a the role of ruling class leadership. Postwar corporate capitalism established its hegemony by incorporating the interests and concerns of what were previously “dissident” social movements or groups in government, labor unions, or the universities.²²² The projection of responsibility, in the end, was a way to reconcile business with social interests while still retaining the status quo of corporate governance.

Robert Heilbroner looked retrospectively on this business movement:

[T]he business ideology has come to assume an uncommonly responsible one. In the absence of any large-scale projections of a different social order, it tends to define society more consensually than in the past... Thus, it falls to the lot of the business ideology, as the only socioeconomic doctrine of consequence, to provide for nonbusiness groups and, in particular, for the intellectual community the sense of mission and destiny that in the past usually emanated from rival ideologies.²²³

The new capitalism was the ideology of the dominant business groups. Sympathetic observers noted the new liberal face of business, even if they admitted the conclusion that very little had fundamentally changed. Even in the humane and sensitive rhetoric of business leaders and managerial theorists, there was a pervasive conservatism that foreclosed the possibility of the substantive and structural socialization of the structures of corporate capitalism.²²⁴ Heilbroner came near to the reality of the matter

²²¹ Here I disagree with Jennifer Delton’s argument that a liberal consensus characterized the postwar business scene. Corporate social responsibility is not an inherently liberal ideology. Delton, “The Triumph of Social Responsibility in the National Association of Manufacturers in the 1950s.”

²²² Robert L. Heilbroner, “The View from the Top: Reflections on a Changing Business Ideology,” in *The Business Establishment*, ed. Earl F. Cheit (New York, NY: John Wiley & Sons, 1964), 2.

²²³ Heilbroner, “The View from the Top,” 2-3.

²²⁴ *The American Business Creed*, 385.

when he called it a “more or less transparent defense of privilege masquerading as philosophy” and a “search for sanction cloaked as a search for truth.”²²⁵

The Fund for the Republic and the Exhaustion of Public Policy

The Cold War was a catalyst for mobilizing corporate social responsibility efforts and giving urgency to the project of corporate theory. The rivalry between communism and capitalism motivated defenders of free enterprise to project a vision of the economy that fit with a liberal, democratic society.²²⁶ Business had long sought to discard the image of the robber barons whose energies were bent toward profit-seeking and personal gain. Public relations experts worked to obscure the negative connotations of impersonal bureaucracy and instrumental power that the large corporation had long evoked. The quest to cultivate the corporate soul was a multigenerational project that culminated the postwar era.²²⁷

Although some business leaders chafed at the challenge of the Cold War, liberal intellectuals became preoccupied with it. Nowhere was this task embraced more enthusiastically than at the Fund for the Republic. A brainchild of Henry Ford II and presided over for most of its existence by former University of Chicago president Robert M. Hutchins, the Fund originated in 1952 as an independent organization with funds from the Ford Foundation and with a general mandate to support civil liberties and civil rights.²²⁸ Its goals were wide-ranging and reached into area of politics, business, and

²²⁵ “View from the Top,” 35.

²²⁶ On the influence of the Cold War on the development of civil rights, see: Delton, *Rethinking the 1950s: How Anticommunism and the Cold War Made America Liberal*; Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton, NJ: Princeton University Press, 2000).

²²⁷ See generally Roland Marchand, *Creating the Corporate Soul: The Rise of Public Relations and Corporate Imagery in American Big Business* (Oakland, CA: University of California Press, 1998).

²²⁸ Thomas Reeves, *Freedom and the Foundation: The Fund for the Republic in the Era of McCarthyism* (New York, NY: Alfred A. Knopf, 1969), 22-23.

education, but the perspective that tied its various work together was a liberal anticommunism. The organization became known especially for putting its resources behind projects that challenged the reactionary enthusiasm of McCarthyism, including work in areas of freedom of thought and expression, due process, and race relations.²²⁹ “We could see that McCarthy was coming over the horizon, we could see that the race problem was going to be very serious, and I think these two phenomena were the things we were most concerned about,” commented Robert Hutchins years later.²³⁰

The Cold War was the direct context for much of what the institution did. “The Fund has determined first of all,” an early booklet read, “to study the extent of the internal Communist threat to our basic liberties and the historical background and present status of those liberties.”²³¹ For years, the organization occupied itself with providing millions of dollars in grants to underwrite individual projects on the study of communism, for example, or the development of constitutional rights.²³² In the latter half of the 1950s, the Fund shifted gears and reorganized around what it called the Basic Issues program, an initiative headed up by Wilbur Ferry, a former executive at the PR firm Earl Newsom and Company, the stated goal of which was to offer a liberal perspective on society, including “the offering of proposals for a society which will be just and free.”²³³

²²⁹ See Thomas Reeves, *Freedom and the Foundation: The Fund for the Republic in the Era of McCarthyism* (New York, NY: Alfred A. Knopf, 1969); Greg Barnhisel, “James Laughlin, Robert Hutchins, and Cold War Cultural Freedom,” *The Princeton University Library Chronicle* 75, no. 3 (2014): 385–405.

²³⁰ Quoted in Thomas C. Reeves, “The Foundation and Freedoms: An Inquiry into the Origins of the Fund for the Republic,” *Pacific Historical Review* 34, no. 2 (1965), 203.

²³¹ “Proposed Booklet,” Folder 45. Box 23. Earl Newsom Collection. Wisconsin Historical Society.

²³² Thomas Reeves, *Freedom and the Foundation: The Fund for the Republic in the Era of McCarthyism* (New York, NY: Alfred A. Knopf, 1969), 206–208.

²³³ Letter from Robert M. Hutchins to Frank K. Kelly, Aug. 6, 1957. Folder 6. Box 161. Fund for the Republic. Mudd Library. Princeton University.

The Basic Issues program consisted of six different groupings, including most prominently an initiative on the study of the corporation. The corporation project followed after the basic concern of the Fund for the Republic, namely the protection of individual liberties. One report presented the following questions that the project sought to answer: “If civil liberty describes a proper relation between the state and the individual, should the idea of civil liberties be carried into corporate life? Or does a different concept, say a concept of corporate liberties, apply? In a conflict between individual rights and corporate profits, which should give way?” Answering such questions was an urgent necessity, they said, because the institutions and principles of American freedom as they were originally crafted did not contemplate the existence of large corporations, which “now employ three-fourths of the nation’s labor force and hold considerable powers, explicit and implicit, over their employees.”²³⁴

The transition to the Basic Issues program led to the creation of the Center for the Study of Democratic Institutions headquartered on the campus of the University of California, Santa Barbara.²³⁵ Both the Fund and the Center fostered some of the more robust considerations of the social role and responsibility of corporate institutions in the mid-century era. The program invited the participation of figures as diverse as Herbert Marcuse and Henry Manne.²³⁶ They hosted regular seminars attended by intellectual and business luminaries such as Henry Luce, John Courtney Murray, Reinhold Niebuhr, Gardiner Means, Adolf Berle, John Kenneth Galbraith, Abram Chayes, and Stuart Chase.

²³⁴ “Draft: Freedom and Justice in Modern America: An Inquiry,” June 18, 1957. “Consulting Cases: Fund for the Republic – Corporations Seminar Papers, 1957-1958.” Box 59. Gardiner Means Papers. FDR Presidential Library.

²³⁵ James Arthur Ward, *Ferrytale: The Career of W.H. “Ping” Ferry* (Stanford, CA: Stanford University Press, 2001), 61-62.

²³⁶ Memo from Scott Buchanan to Seminar on Corporations, December 18, 1957. Fund for the Republic Archives (Princeton, NJ). Box 152. Folder 15.

Formal committee members, such as Galbraith and Kaysen, were given a stipend of \$2,000 with the expectation of attending quarterly meetings and providing advice.²³⁷ The output of books, pamphlets, articles, conferences, and other proceedings was considerable. In the early years particularly, the program operated much like an academic seminar, with participants reading and discussing texts ranging from Frederic Maitland's classic preface to Otto von Gierke's study of political theory to the internal memoranda of the du Pont Company. The seminar also provided opportunities for the distribution of works-in-progress and the development of papers into publishable condition.²³⁸

Frank Kelly, a former speechwriter for Harry Truman and a long-time executive at the Center for the Study of Democratic Institutions, believed that the Basic Issues program had the potential to shape public opinion significantly. The goal, in short, was to create conditions where new ideas could emerge and, upon taking coherent shape, be introduced to two target groups: the "200,000 active citizens who read 'highbrow' magazines, go to civic meetings, write letters to editors, communicate with their Congressman, stir up political parties, etc." but also to a broader base of students, teachers, and members of the public who "regard themselves as 'responsible liberals' or 'forward-looking conservatives.'"²³⁹ Like many foundations and later think tanks, the final purpose of these efforts was to translate the production of new ideas into the transformation of public policy and social institutions.²⁴⁰

²³⁷ W.H. Ferry, "Report on the Project on the Corporation," July 1, 1958, Folder 12, Box 153. Fund for the Republic Archives. Mudd Library. Princeton.

²³⁸ The transcripts of most of these early seminars were distributed to participants are held in multiple archives. These transcripts have given me a helpful window into the ambitions and intellectual depth of the project.

²³⁹ Letter from Frank K. Kelly to Robert M. Hutchins, Aug. 6, 1957. Folder 6. Box 161. Fund for the Republic. Mudd Library. Princeton University.

²⁴⁰ On the role of private foundations generally, see Ellen Lagemann, *The Politics of Knowledge: The Carnegie Corporation, Philanthropy, and Public Policy* (Chicago, IL: University of Chicago Press, 1992).

The seminar on the corporations was organized by the affable but at-times fiery Wilbur Ferry. The son of a successful automobile manufacturer who had been a leader in the Michigan Republican party and an outspoken critic of the New Deal, Ferry went on to build a career that was distinguished from his father's in almost every way except ambition.²⁴¹ He started out his career an associate of the public relations executive Earl Newsom and played a pivotal role in helping the Ford Motor Company navigate labor disputes with Walter Reuther and United Auto Workers in the late 1940s.²⁴² Ferry's professional anti-unionism contrasted in some ways with the turn his later career took—a long tenure in the non-profit sector characterized by criticism of corporate capitalism and American foreign policy. His class treachery prompted one journalist to call him a “happy heretic” and *The Nation* to praise him near the end of his life as a “friend of peace and the dispossessed.”²⁴³ In many ways, however, Ferry fit into the mid-century business stereotype in which executives easily moved out of business and managerial circles into intellectual and cultural ones.

The animating conviction of the project was that theory, law, and political institutions had failed to keep pace with the development of corporate power—with the result being that American liberty was under threat.²⁴⁴ “The basic need is for scrutiny of what in fact happens in the new economy of corporate discretion operating with new forces whose implications are not yet clear,” Gardiner Means said in a seminar. “A crucial problem is the use of power in ways not justified by our concept of a functioning

²⁴¹ James Arthur Ward, *Ferrytale: The Career of W.H. “Ping” Ferry* (Stanford, CA: Stanford University Press, 2001), 9-11.

²⁴² Ward, *Ferrytale*, 41.

²⁴³ Victor S. Navasky, “The Happy Heretic,” *The Atlantic Monthly*, July 1966; “‘Ping’ Ferry,” *The Nation*, October 23, 1995.

²⁴⁴ Here the Cold War context of the project remained consistent.

society because the concept derives from Adam Smith and doesn't fit the present reality."²⁴⁵ Although less sanguine about it than business leaders and their fellow business school proponents, Means and many of his colleagues at the seminar agreed with the broad outlines of the thesis of the new capitalism. The corporate economy had jumped the bounds of the profit motive and the corresponding system of competitive individualism. The question was what to do about it.

A new theory of the corporation was called for, Ferry contended, one in which accountability would play a vital role. "'Accountability' will be a principal theme of the new economy theory," he wrote. "Corporate power pyramids pose a...conundrum to democratic theory. Contrary to state power, the accountability of these pyramids is limited and private. It amounts on the one hand to obeying the law and on the other to public relations programs to 'present the company's story' to stockholders employees and others." But this status quo was inadequate, Ferry argued in a wide-ranging document that served as both a summary of the project's work and a statement of its central goals. "Reports on operations to stockholders and on good employee relations to the community are only partial accountability," he continued. "They do not necessarily show how the corporation may be meeting the needs of society, as judged by criteria established by the community, not by itself."²⁴⁶ Ferry and the plurality of his colleagues at the study on the corporation believed that responsibility did not consist in public relations and business statesmanship. Responsibility should be subjected to the norms of democracy.

²⁴⁵ Summary of Discussion at Williamstown Meeting, Aug. 28-29, 1957. Folder 6. Box 161. Fund for the Republic Archives. Mudd Library. Princeton.

²⁴⁶ W.H. Ferry, "Notes for a Discussion of the Corporation and Economy," Mar. 5. 1959. Folder 12. Box 153. Fund for the Republic Archives. Mudd Library. Princeton.

One long-lasting production of the project was a collected volume of essays on the relationship between corporations, managers, and the community, originally titled, “The Corporation and the Community.”²⁴⁷ Edward Mason, dean of the Harvard Littauer School of Public Administration, originally proposed *The Corporation in Modern Society* with an eye toward a set of basic questions: how much power should corporations have? What is the area within which corporate managements have freedom of choice? How is it limited? To whom are corporate managements responsible? What are the implications of self-financing? What is the relationship between managerialism in the Soviet Union and in the United States?²⁴⁸ These were just a few of the topics that led the Fund for the Republic to spend a portion of its \$200,000 budget on the corporation program to pay fifteen scholars in fields of law, economics, and political theory to write essays on the relationship between the corporation and society.²⁴⁹ Within a year, the book had received considerable attention, including a long review in *Time* and selection for the Executive Book Club, which quickly resulted in a second printing at Harvard University Press.²⁵⁰

The corporation was a “community system,” Berle asserted in the foreword to the volume.²⁵¹ Most of the contributors agreed. Modern society had dramatically increased social mobility and communications. “The bonds which held together the geographical community were loosened,” wrote Abram Chayes, “and the bench marks by which men could know and measure their place in the old community lost relevance and definition.” Had the corporation supplied a “new community,” institutional rather than geographical,

²⁴⁷ It is still in print at Harvard University Press. Edward S. Mason, ed., *The Corporation in Modern Society* (Cambridge, MA: Harvard University Press, 1959).

²⁴⁸ Edward S. Mason, “Tentative Outline,” Folder 6, Box 160. Fund for the Republic. Mudd Library. Princeton.

²⁴⁹ “Report and Recommendation to the Board,” May 7, 1959. Folder 3. Box 164. Fund for the Republic.

²⁵⁰ “Monthly Report,” Feb. 29, 1960. Folder 3. Box 164. Fund for the Republic.

²⁵¹ Adolf A. Berle, Jr., “Foreword,” in *The Corporation in Modern Society*, xii.

to replace the old bonds?²⁵² Chayes thought so. Corporations had become centers of membership and belonging. The corporation was imagined as a thing to which a person or a group of people could belong. But governance had not yet caught up with this social reality. “Their rightful share in decisions on the exercise of corporate power would be exercised through an institutional arrangement appropriately designed to represent the interests of a constituency of members having a significant common relation to the corporation and its power.”²⁵³ Chayes offered a compelling diagnosis of the social transformations wrought by corporate organization, but he followed through with very little precision about the structural transformation of governance and power.

Common to much liberal theorizing about the corporation was an intellectual temptation to neglect serious engagement with public policy. This neglect of the role that regulation, charter, or law would have in the project of transforming corporations into the social institutions of the liberal imagination was perhaps a vice, but like most vices it was an understandable one. Here *The Corporation in Modern Society* is illustrative. Consider the words, again, of Chayes: “The modern business corporation emerged as the first successful institutional claimant of significant unregulated power since the nation-state established its title in the sixteenth and seventeenth centuries.”²⁵⁴ This historical claim emphasized the radical disjuncture that the corporate economy presented. Kingman Brewster, Jr., later president of Yale University, wrote, “The political interpretation of economic institutions seems to be taking its place alongside the mellowing economic

²⁵² Abram Chayes, “The Modern Corporation and the Rule of Law,” in *The Corporation in Modern Society*, 28.

²⁵³ Chayes, “The Modern Corporation and the Rule of Law,” 41.

²⁵⁴ Chayes, “The Modern Corporation and the Rule of Law,” 37.

interpretation of politics.”²⁵⁵ In such a pivotal moment, it seemed perhaps that the details of public policy necessarily paled in comparison to the task of producing a new political theory that would incorporate the social and political function of corporations.

In the meantime, the demand for new theory served as evidence of a legitimacy crisis in American business. “When the invisible hand of the competitive market is,” wrote the political scientist Carl Kaysen, “displaced to a significant extent by the increasingly visible hand of powerful corporate management, the question ‘Quo warrant?’ is bound to arise.”²⁵⁶ The scope of management’s choice was wide when it came to shaping the social life of employees, for example, or donating corporate resources to an institution of higher learning. The problem of authority and responsibility reared its head. The fact was, Kaysen stated, that

the power of management is, in the political sense, irresponsible power, answerable only to itself. No matter how earnestly management strives to ‘balance’ interests in making its decisions—interests of stockholders, of employees, of customers, of the ‘general public,’ as well as the institutional interests of the enterprise—it is ultimately its own conception of these interests and their desirable relations that rules.²⁵⁷

Berle called the political and legal developments that followed from this fact the “developing law of corporate concentration.” It was a part of a broader sociological, economic, and political transformation of the twentieth century. “In the long view of history,” he speculated in *The 20th Century Capitalist Revolution*, “it is quite probable

²⁵⁵ Kingman Brewster, Jr., “The Corporation and Economic Federalism,” in *The Corporation in Modern Society*, 72.

²⁵⁶ Carl Kaysen, “The Corporation: How Much Power? What Scope?,” in *The Corporation in Modern Society*, 99.

²⁵⁷ Kaysen, “The Corporation,” 99.

that the capitalist revolution will be found to be one branch...of the revolution which the twentieth century as wrought around the world. In many countries of the old world, its instrument was one or another form of socialist organization. In the United States, the chief instrument has proved to be the modern giant corporation.”²⁵⁸ Or as he put it elsewhere, the issue facing American democracy was not between free enterprise and a planned economy, but “between differing views of the objectives for which planning shall be carried out...and what groups shall make these determinations.”²⁵⁹ Planning wasn’t an option; it was a given.

A theory of development undergirded the new liberalism that the study on the corporation sought to foster. It consisted in the observation of certain key economic and institutional facts, the most significant of which was concentration and administered prices, and in the extrapolation from those facts the hypothesis that a political economic change at the world-historical level was unfolding. Understandably, not everyone agreed. In reviewing the most vociferous claims for managerial responsibility, Eugene Rostow concluded that it was all “bewildering balderdash.”²⁶⁰ There was no compelling replacement for the traditional price theory of economics. “The literature of ‘managerialism,’” Rostow wrote, “from Commons and Veblen to Drucker, Burnham, and Berle, suggests no criteria to replace the standards for judging the propriety of wages and prices which the economists painfully developed during the last century or so.”²⁶¹ Rostow asserted that the move toward corporate social responsibility revealed a deep corruption

²⁵⁸ Berle. *The 20th Century Capitalist Revolution*, 164.

²⁵⁹ Adolf A. Berle, Jr., “The Developing Law of Corporate Concentration,” *University of Chicago Law Review* 19, no. 4 (June 1, 1952), 643.

²⁶⁰ Eugene Rostow, “To Whom and For What Ends is Corporate Management Responsible?,” in *The Corporation in Modern Society*, 63.

²⁶¹ Rostow, “To Whom and For What Ends is Corporate Management Responsible?,” 67.

at the heart of liberal thinking. It revealed a loss of confidence in the role of regulation and in the “possibility of public oversight.”²⁶²

Rostow’s criticism was incisive even if it overstated things. It certainly wasn’t the case that the study on the corporation was necessarily opposed to regulation. One early seminar focused especially on the importance of national planning—a new political economic system of industrial production that would be a “necessity” in 30 years, Berle said. The imperatives of national planning were full employment, full production, and technological progress. But the limits of political thinking in the Cold War era presented themselves. Leland Hazard, a Pittsburgh manufacturer, objected that planning could become overly governmental and bureaucratic. “We have to tolerate less than perfect performance of our economy in a democratic society,” he said. “Voluntary planning, by the institutions themselves, would be acceptable.”²⁶³ Here, inchoately, was a vision that liberals at the Fund for the Republic tended to embrace: public interest pluralism that might produce a consensus that transcended the political conflicts of bargaining agreements or regulation.

The group, in the end, was not focused so much on technical economic policies as they were on solving the social problems of Cold War era business life that liberal intellectuals had been preoccupied with. Whether it was the “organization man,” the civil liberties of employees, or the threat (or promise) of managerial autonomy, the energies of the study on the corporation were directed toward articulating a liberal and anti-communist vision of making corporate capitalism fit in a democratic society. There were

²⁶² Rostow, “To Whom and For What Ends is Corporate Management Responsible?,” 55-56.

²⁶³ “Meeting of Ad Hoc Advisers to the Study of the Corporation,” Nov. 19, 1959. Folder 2. Box 161. Mudd Library.

proposals for the “constitutionalization” of the corporation—that is, the application of basic Bill of Rights protections for employees, customers, suppliers, etc. The program sponsored work on the development of a federal chartering system that would have reformed the governance and mandates of corporations. But such ideas tended to float toward the margins of the project. As Abram Chayes said at seminar, “The state can’t even appoint an honest meat inspector; how could it appoint a director to General motors? Nothing in our experience leads us to think that the state could participate sensibly in a board of directors of a private corporation.”²⁶⁴ Persistent doubts about state power and the practical efficacy of public policy foreclosed more ambitious plans for a new corporate system.

These doubts revealed an exasperation with the political process of democracy, a tendency that would become a fault-line between liberals who styled themselves in a New Deal vein and an emerging generation of leftists for whom the democratic process was at the heart of their political efforts. Berle’s penchant for bold reforms that characterized his early career had given way to the flight to the familiar. A tendency toward an apologia pervaded his thinking. “He had not graduated to Polyanna status,” writes his biographer Jordan Schwarz, “but he had a need now to affirm what his generation had accomplished.”²⁶⁵

Berle was not alone. Seminar participants gravitated not toward the public policy of reform but rather toward the development of social norms and expectations. At bottom, one consultant said, the corporation constitutes a “community life” and its

²⁶⁴ “Meeting of Ad Hoc Advisers to the Study of the Corporation,” Nov. 19, 1959. Folder 2. Box 161. Mudd Library.

²⁶⁵ Schwarz, *Liberal*, 365.

“members” as individuals are “accepted as corporate citizens.” Corporate conduct grows out of this organic community process.²⁶⁶ But this was intellectual pabulum that ignored the manner in which business power was conducted. The liberal intellectual project that the Fund for the Republic originally helped to conduct never moved beyond the most basic assumptions of top-down corporate social responsibility, a vision which left corporate power in the hands of elite managers whose statesmanlike qualities were supposed to make them fit to make decisions with a social conscience in mind.

Conclusion

In 1971, the Committee for Economic Development (CED), an organization long known to be a liberal standard-bearer for business-government partnerships, published a report on the social responsibilities of business corporations.²⁶⁷ It was the same year that soon-to-be Supreme Court Justice Lewis Powell wrote a memorandum for the U.S. Chamber of Commerce outlining a conservative strategy for how big business could respond to what he called attacks on the American free enterprise system.²⁶⁸ The report came out about the same time that the U.S. Senate was conducting hearings on the economic and social power of corporations.²⁶⁹ And its publication coincided with a movement of corporate protests, including the well-publicized Campaign to Make General Motors Responsible, that sought to bring a wide array of social and political interests to bear on large corporations.²⁷⁰

²⁶⁶ Seminar on Corporations: First Meeting, January 29, 1958. Fund for the Republic Archives (Mudd Library, Princeton University). Box 152. Folder 15.

²⁶⁷ Delton, *Rethinking the 1950s*, 58-59.

²⁶⁸ Winkler, *We the Corporations*, 281-289.

²⁶⁹ United States Congress Senate Committee on Small Business Subcommittee on Monopoly, *Role of Giant Corporations: Hearings Before the Committee on Monopoly of the Select Committee on Small Business, United States Senate, Nov. 9, 12, 1971* (Washington, D.C.: U.S. Government Printing Office, 1971), 1971.

²⁷⁰ See discussion in chapter 3.

The CED report represented the culmination of the post-World War II consensus about the corporation and its social role. It reaffirmed a few basic points. The corporation was responsible to five constituencies whose “interests and welfare” were identified as “inexorably linked”—employees, stockholders, consumers, suppliers, and community neighbors. Corporations ought to make contributions to non-profits—what it called “enlightened self-interest.” Good ethics pays, in other words. Stockholders, in the long run, the report asserted, benefited from both non-profit gifts and socially responsible business practices. New measures of profit were needed that would incorporate social contributions into quantitative models. In the meantime it was management that had to show leadership. “Exceedingly good managerial judgment will be required to achieve the right balance,” it said, “between the internal constraints on corporate leadership and external social needs and pressures.”²⁷¹

Not all responsibilities were the same, of course. The CED report noted a distinction between the inner circle of obligations that includes the economic efficiencies and profits, the intermediate circle of incorporating social interests into the business model, and the outer circle that included donations or the administration of community-focused programs.²⁷² The long-term goal for many proponents was to erase the distinctions between the economic and social metrics. Corporate activities encompassed a range of fields, which included economic growth and employment but also education, civil rights and equality, urban renewal and development, environmental protection and conservation, culture and the arts, healthcare, and government.²⁷³

²⁷¹ “Social Responsibilities of Business Corporations,” 33.

²⁷² “Social Responsibilities of Business,” 15-16. The basic distinction between social responsibilities as “built in” vs “bolted on” is observed here.

²⁷³ “Social Responsibilities of Business Corporations,” 37-40.

“Social Responsibilities of Business Corporations” came at a watershed moment. The result of a six-year process first begun under the leadership of New Dealer David Lilienthal, the study represented what it called a “fresh and enlightened point of view about the role of business as an important instrument for social progress.”²⁷⁴ The Committee for Economic Development’s endorsement of business statesmanship is worth noting. Founded in the early 1940s to articulate a liberal business perspective as industrial leaders looked toward post-war economic reconversion, the organization represented throughout the twentieth century liberal ideals in business research and public policy.²⁷⁵ But even as the CED’s defense of corporate responsibility was in many ways the culmination of a decades-long consensus, it came at a time when the basics of that consensus were coming under attack.

Responsibility is always an exercise of power. In this case, the power that corporate responsibility engendered resided in large business institutions and, more specifically, in the professional managerial class. Liberals like Adolf Berle had come to think differently about the role and power of managers; in the 1930s Berle and Means saw managerial autonomy as one of the most significant threats to a democratic and stable economy but in the 1950s Berle became the foremost proponent of business statesmanship. The conservative legal scholar Henry Manne noted this transformation. “Although at one time Berle was seriously concerned about the amount of uncontrolled

²⁷⁴ “Social Responsibilities of Business Corporations,” 10.

²⁷⁵ Robert M. Collins, “Positive Business Responses to the New Deal: The Roots of the Committee for Economic Development, 1933-1942,” *The Business History Review* 52, no. 3 (1978): 369–91; Kim McQuaid, “Corporate Liberalism in the American Business Community, 1920-1940,” *The Business History Review* 52, no. 3 (1978): 342–68; Charlie Whitham, “The Committee for Economic Development, Foreign Trade and the Rise of American Corporate Liberalism, 1942–8,” *Journal of Contemporary History* 48, no. 4 (October 1, 2013): 845–71.

power lodged in the hands of a few important executives,” Manne wrote, “he now believes that this is not a critical problem.”²⁷⁶

The liberal record on managerial autonomy, however, was mixed. Berle, for one, had some reservations. As explored earlier in this chapter, he supported what he called the “constitutionalization” of the corporation—a kind of reform to corporate governance that provided basic protections for the various publics of business institutions—consumers, workers, suppliers, community members, and so on. The idea was a special project of the Fund for the Republic and, subsequently, the Center for the Study of Democratic Institutions. But Berle, along with other business intellectuals, eventually shrank from bold proposals of accountability and control. There was little appetite in the two decades or so following WWII for policy proposals that interrupted the status quo of political economy. As one Fund for the Republic consultant concluded in 1959, “The constitutionalization of the corporation is not a fruitful avenue to ways of controlling corporate practices.”²⁷⁷ Constitutionalization ran counter to corporate law as it was practiced and the consensus that sought to remove restrictions on governance and burdens on management.²⁷⁸

And therein lies the both the promise and peril of the mid-century movement for corporate responsibility. Its principal intellectual proponents believed that the managerial focus on profit maximization had become obsolete. Those who wielded business power

²⁷⁶ Henry G. Manne, “The ‘Higher Criticism’ of the Modern Corporation,” *Columbia Law Review* 62, no. 3 (1962), 414.

²⁷⁷ Abram Chayes quoted in transcript of private meeting of Advisers to the Study of the Corporation, Nov. 19, 1959. Folder 2. Box 161. Fund for the Republic Archives.

²⁷⁸ See Wilber G. Katz, “The Philosophy of Midcentury Corporation Statutes,” *Law and Contemporary Problems* 23, no. 2 (1958): 177–92. Although constitutionalization never became a formal policy proposal until Ralph Nader and his supporters took it up in the 1970s, the basic contention was that corporations, having become like private governments, needed to be reformed according to the principles of political democracy and the model of the Bill of Rights.

needed to embrace social obligations. This was necessary in order to shore up the rehabilitated public image that big business had enjoyed since laying claim to building the arsenal of democracy and winning WWII. But it was also necessary in order to push back against the regulatory and social welfare tendencies of a growing federal government. And, perhaps most consequentially, it gave American elites new ways to sell free enterprise to a world divided by the rivalry of the Cold War. The pitch was that capitalism was democratic and equitable.

But there were also perils. The announcement that classical liberalism had been rendered obsolete in the age of the new capitalism was itself premature. Liberal intellectuals convinced themselves that countervailing power, bigness, administered prices, managerial autonomy, oligopoly, and other characteristics that defined mid-century political economic thought had supplanted notions of competitive individualism, the coordination of the market, the profit motive, and so forth. The problem, as critics pointed out, was that the managerial philosophy of the new capitalism did not go nearly far enough in explaining and legitimizing economic behavior and the exercise of economic power. Classical liberalism no longer accurately described many aspects of the economy, but it was still useful. It was a functional worldview that provided a workable description of resource allocation and market efficiency, competitive constraints on firms or individuals, and the constant striving for maximum profits. Most importantly, classical liberalism obscured economic power relations by explaining the existence of winners and losers in terms of market competition.²⁷⁹

²⁷⁹ Edward S. Mason, "The Apologetics of 'Managerialism,'" *The Journal of Business* 31, no. 1 (1958): 1–11.

But the economic theories of classical liberalism that seemed so moribund in previous years were now retooled and recharged for a new conservative era. Take the liberal Committee for Economic Development, once a supporter of business statesmanship. By the end of the 1970s, the organization was a champion of the market. “We stress primary reliance on the market system,” the organization wrote in a widely cited report advocating for deregulation and economic efficiency.²⁸⁰ In liberal intellectual life, markets were the measure again, the “most efficient and effective means of achieving greater productivity, economic growth, and social diversity.” As one contemporary observer noted, the CED had “set up for itself the choice between the pursuit of economic goals through an unregulated market structure and the cultivation of social goals through private voluntarism and private-public cooperation.”²⁸¹

Even as proponents of the new capitalism effectively demonstrated the variety of ways that the nineteenth-century model of competitive individualism was an obsolete doctrine, they failed to produce an alternative that would replace such ingrained moral, economic, and political notions as profit maximization, supply and demand, the market mechanism, the profit motive, and so on.²⁸² The idea of a new capitalism never achieved the popular acceptance that classical liberalism procured. It should come as no surprise, then, that right-wing intellectuals like Henry Manne and Milton Friedman found that the entrenched liberalism was susceptible to a rising and combative conservative movement.²⁸³ “It is clear for many reasons that the philosophy of business statesmanship

²⁸⁰ Committee for Economic Development, “Redefining Government’s Role in the Market System,” (July 1979), 10.

²⁸¹ William C. Frederick, “Free Market Vs. Social Responsibility: Decision Time at the CED,” *California Management Review; Berkeley, Calif.* 23, no. 3 (Spring 1981), 22.

²⁸² Mason, “The Apologetics of ‘Managerialism’”: 1–11.

²⁸³ See Chapter 4.

does not offer a realistic alternative to the traditional orientation of business decision-making,” Manne wrote in 1962—an assertion that he would repeat in various ways until it became the new conventional wisdom decades later.²⁸⁴

As much as business elites sought to associate themselves with liberal goals like diversity, equality, and charitable and philanthropic causes, the manner in which they addressed themselves to these goals was neither liberal nor democratic. It was, in the end, they failed to keep pace with the libertarian ideal of market-centrism and of the liberal-leftist ideal of democratic process.

Not so with the new capitalism. A creation of and for business and intellectual elites, it was not a popular worldview. And although it offered a description of managerial and institutional behavior, unlike classical liberalism the justification of those who exercised that power did not emerge from the description of economic behavior. The new capitalism, then, left itself profoundly exposed to the criticism, first articulated by James Burnham in the early 1940s and subsequently taken up by populists like Kefauver and proto-new leftists like C. Wright Mills, that the “economic structure of managerial society seems to raise obstacles to democracy.”²⁸⁵ Responsibility was a versatile concept that potentially offered a way out of the antidemocratic impulses of managerialism. But the principal intellectual proponents of corporate responsibility tended to collapse the concept into a question of individual managerial morality instead of dilating it into the realm of structure and governance.²⁸⁶ Business statesmanship focused managerial

²⁸⁴ Henry G. Manne, “Corporate Responsibility, Business Motivation, and Reality,” *The Annals of the American Academy of Political and Social Science* 343, no. 1 (September 1, 1962), 63.

²⁸⁵ Burnham, *The Managerial Revolution*, 169.

²⁸⁶ W. H. Ferry, “Forms of Irresponsibility,” *The Annals of the American Academy of Political and Social Science* 343 (1962), 73-74.

prudence, ethics, and judgment; it was an ideology of managerial empowerment and not a movement for democracy. By the late 1960s, the internal contradictions of this ideology were revealed as left-liberal activists called on corporations to include social movements in the decision-making processes of industry and to make substantive changes to business practices.

Given its commitment to managerial autonomy and its inability to countenance reforms to corporate governance, the prevailing business order failed to live up to the imperatives of the social responsibility that it engendered. In other words, the notion that corporations are social and even political institutions provoked the critique that the structures of corporate capitalism ought to conform to the norms of democracy and social accountability. Similarly it should come as no surprise that liberal and leftist activists protested a range of major corporations in the 1960s and 1970s, urging structural changes to the way firms did business and made decisions.²⁸⁷ As the Port Huron Statement put it, “[We cannot] trust the corporate bureaucracy to be socially responsible or to develop a ‘corporate conscience’ that is democratic. The community of interest of corporations, the anarchic actions of industrial leaders, should become structurally responsible to the people.”²⁸⁸ Each in different ways, those on the left and those on the right came to oppose mid-century corporate liberalism and its claims of social responsibility. The result was that both movements, which broke from the legacies of New Deal liberalism, helped to undermine the legitimacy of managerialism.

²⁸⁷ See Chapter 3.

²⁸⁸ Richard Flacks and Nelson Lichtenstein, eds., *The Port Huron Statement: Sources and Legacies of the New Left's Founding Manifesto* (Philadelphia, PA: University of Pennsylvania Press, 2015), 272.

3

It's Your Business, America

“Corporate America says that it desires active stockholder participation, that it’s our American duty to participate; but, in fact, they won’t allow it. We propose to bring reality into line with that rhetoric.”

Saul Alinsky, interview with *Yale Review of Law and Social Action* (1971).¹

“What we have here is a business version of the principle behind the Vietnam War—the imposition of casualties on other peoples in the name of some tenet, such as freedom or profits, as the case may be.”

Robert Heilbroner, “Controlling the Corporation,” *In the Name of Profit: Profiles in Corporate Irresponsibility* (1972).²

“I believe that, if business prospers in the 1980s, it will be in large measure because business changes its attitudes, opens its spirit, admits its humanity, and acknowledges that its presence in a community where it is welcome and where it is given the privilege to create wealth and profits implies acceptance of a broad array of responsibilities to that community and to the larger world outside our offices.”

Rafael Pagan, Jr., President, Nestlé Coordination Center for Nutrition, Inc. Speech before the Public Relations Society of America National Conference (1982).³

Big Business Day was originally planned to be an annual event, but it only happened once. The project of public interest activists, including Ralph Nader and Mark Green, it took place in April 1980 and brought attention to the bad behavior of big corporations like Exxon and Citicorp and to drum up support for legislative reform.⁴ The protest took place in about 150 cities across the country, included labor, consumer, and environmental activists, and consisted of teach-ins, rallies, and in Washington, D.C., a

¹ “Proxies for People—A Vehicle for Involvement,” *Yale Review of Law and Social Action* 1 (Spring 1971), 69.

² Robert L. Heilbroner, *In the Name of Profit: Profiles in Corporate Irresponsibility* (New York, NY: Doubleday, 1972), 192.

³ Rafael D. Pagan, Jr., “Carrying the Fight to the Critics of Multinational Capitalism: Think and Act Politically,” *Vital Speeches of the Day*, Jul. 15, 1982.

⁴ “Critics and Proponents Mark Role of Business,” *New York Times*, Apr. 18, 1980.

“Corporate Hall of Shame.” The recklessness of big corporations, from specific instances like the poisoning of Love Canal in New York to more general claims about how business interests influenced national economic policy, were presented as evidence that private institutions had subverted the democratic public good.⁵

The message of Big Business Day, however, did not just consist in opposing business. Organizers also had a vision for what corporations could do better. Speakers made the case that corporations should be committed to and accountable for benchmarks that extended beyond shareholder profit and include the interests of other stakeholders like consumers, workers and local communities. Among those delivering that stakeholder idea at public events were Nader, the liberal economist John Kenneth Galbraith, the democratic socialist Michael Harrington, public and private sector union leaders like the United Farm Workers organizer Cesar Chavez or the president of the United Auto Workers, Douglas Fraser, as well as a few Democratic politicians.⁶

In making the case for what he called “corporate democracy,” Green, a lawyer and formerly one of “Nader’s raiders,” the group of young activists who investigated the regulatory effectiveness of federal bureaucracies in the late 1960s, had high hopes for what the event might spark. “Whereas the American political agenda of the 1970s focused extensively on the size and abuses of big government,” he wrote, “the agenda of the 1980s should focus on the size and abuses of big business.”⁷ Little did he realize that

⁵ “Critics Proclaim Big Business Day to Condemn ‘Crime in the Suites,’” *Los Angeles Times*, Apr. 17, 1980; “Critics and Proponents Mark Role of Business: ‘No-Growth Nightmare,’” *New York Times*, Apr. 17, 1980; “Coalition Attacks Big Business,” *Washington Post*, Apr. 18, 1980; “Nader Proposes Cuts on Big Business Power,” *Hartford Courant*, Apr. 18, 1980.

⁶ “Big Business Day; The Voice of the ‘stakeholder’ Is Rising,” *Washington Post*, Apr. 14, 1980.

⁷ Mark Green, “The Case for Corporate Democracy,” *Regulation* (May/June 1980), 20.

Americans would focus in subsequent years on almost everything but the abuses of business. Big Business Day, in fact, would barely be remembered.

The event was most successful at stirring up the ire of conservative business interests. “Kick-a-businessman day,” *Business Week* said, was a cynical attempt to revive interest in a consumer movement that had waned in strength since Nader faced off against the auto industry.⁸ Likewise, in the pages of the *Wall Street Journal*, the conservative economist Herbert Stein dismissed criticisms of the big American corporation. “Who do they think created the unparalleled affluence enjoyed by the American people? Ralph Nader?”⁹ Such questions, it seemed, needed no answers.

Far from signaling a decade of corporate reform efforts, Big Business Day elicited one of the most coordinated and sophisticated business counter-attacks of the new conservative era.¹⁰ The Business Roundtable and the U.S. Chamber of Commerce began organizing a response almost immediately after the event was announced. They reacted to left-liberal activists by going on the offensive, calling it “Anti-Business Day,” and presenting their own version of events that highlighted the efficiency and productivity of the American economy. The Chamber unfurled a 70-foot-long banner that could be seen from the Washington Mall: “It’s Your Business, America. The U.S. Chamber Salutes America’s 15 Million Businesses.”¹¹ The American Enterprise Institute, the Cato Institute, and the Heritage Foundation sponsored opposition programs, including “Growth Day” that sought to highlight the “positive achievements of the private-

⁸ “Kick-a-businessman day,” *Business Week*, Apr. 21, 1980.

⁹ Herbert Stein, “Let’s Hold a ‘No Business Day,’” *Wall Street Journal*, Jan. 7, 1980.

¹⁰ For a discussion of this business mobilization, see Benjamin Waterhouse, “The Corporate Mobilization against Liberal Reform: Big Business Day, 1980,” in *What’s Good for Business: Business and American Politics since World War II* edited by Kim Phillips-Fein and Julian Zelizer (New York: Oxford University Press, 2012), 233-248.

¹¹ “Nader Proposes Cuts on Big Business Power,” *Hartford Courant*, April 18, 1980.

enterprise system.” At a well-attended breakfast, they attacked government regulation and praised the capitalist system as the “finest wealth-generating tool in the world.”¹²

The event was a victory for the conservative side, but that wasn’t necessarily a foregone conclusion. There were good reasons for liberal and leftist activists, intellectuals, and policymakers to think that the late 1970s were an opportune time to launch a campaign for bold change to American business. Congress Watch, a public interest watchdog founded at the height of the consumer movement in the early 1970s and the organizing institution behind Big Business Day, hoped in addition to the regulatory measures the group had long championed that more substantive victories might come when business was reformed from the inside out.¹³ Corporate governance, a policy area that Congress Watch’s president Mark Green had been working on for almost a decade, was seen as the key to the future.¹⁴ By the late 1970s, moreover, American confidence in the leadership of large business institutions had collapsed. Fewer Americans than ever believed that corporations struck the right balance between profits and the public good. Even fewer trusted business leaders.¹⁵ Big Business Day, however, failed to capture that public sentiment in any meaningful way. That same crisis of confidence that afflicted the institutions of corporate capitalism also narrowed the horizon for the bold reform efforts that these activists hoped to spearhead.

¹² “Critics and Proponents Mark Role of Business,” *New York Times*, April 17, 1980.

¹³ Mark Green, *Bright, Infinite Future: A Generational Memoir on the Progressive Rise* (New York, NY: St. Martin’s Press, 2016), 73-78.

¹⁴ See Ralph Nader and Mark J. Green, eds., *Corporate Power in America* (New York, NY: Grossman Publishers, 1973); Ralph Nader, Mark J. Green, and Joel Seligman, *Taming the Giant Corporation* (New York: W.W. Norton & Company, 1976).

¹⁵ According to widely cited numbers from Yankelovich, Skelly & White and Louis Harris surveys, less than twenty percent believed business struck a fair balance between profits and the public good, down from seventy percent at the end of the 1960s. See *Washington Journalism Review*, vol. 2 (1980), 91.

The failure of the project, however, has obscured the historical significance of these events. Both liberal activism and its conservative opposition show how the New Deal consensus about the rights and obligations of business corporations had splintered. Built largely on the Securities and Exchange laws of 1933 and 1934 as well as the experience of industrial leadership during World War II, the consensus incorporated a balance between the imperatives of shareholder profits and social responsibility.¹⁶ The conception of the corporation as a private institution—really, a piece of property—owned by and operated for the financial benefit of shareholders was legitimized in the twentieth century by business leaders who charted a liberal path for their organizations. They cast the corporation as a social institution that could execute a communitarian mission and cultivate charitable and philanthropic causes. The best corporations, in the idealistic eloquence of the New Dealer Adolf Berle, were governed not just by the whims of Wall Street but also by the telos of the City of God.¹⁷

By the end of the 1970s, that the business statesmanship vision was discredited. From the left, activists who had for over a decade pressured corporations to embrace more robust social responsibilities came to believe that there were fundamental flaws in the New Deal corporate structure. The chief objective for Green, Nader, and others was the promotion of the Corporate Democracy Act of 1980, a collection of bold public policy measures that would have upended the way corporations exercised power and

¹⁶ To be explored in chapter 2.

¹⁷ For literature on the New Deal Order, see Brian Balogh, *The Associational State: American Governance in the Twentieth Century* (Philadelphia, PA: University of Pennsylvania Press, 2015); Alan Brinkley, *The End of Reform: New Deal Liberalism in Recession and War* (New York, NY: Vintage Books, 1996); Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton University Press, 2009); Jefferson Cowie, *The Great Exception: The New Deal and the Limits of American Politics* (Princeton University Press, 2016); Steve Fraser and Gary Gerstle, *The Rise and Fall of the New Deal Order, 1930-1980* (Princeton, NJ: Princeton University Press, 1989); Ira Katznelson, *Fear Itself: The New Deal and the Origins of Our Time* (W. W. Norton & Company, 2013).

made decisions. The act retained the rights of shareholders in the corporation of the future, but it placed them alongside legible and legally enforceable obligations to stakeholders. In so doing, not only was the imperative of shareholder value seriously modified, but the power of management was significantly circumscribed. The Corporate Democracy Act shows a movement of activists that rejected one of the key assumptions of the New Deal, namely that concentrated economic power can be justified by the liberal conduct of management.

But if the New Deal consensus was being punched at from the left, the ascendant New Right presented its own challenge to the status quo. In a critique that the law and economics scholar Henry Manne had been developing since the late 1950s, conservative intellectuals and activists argued that the social responsibility of business was to increase profits for shareholders and nothing more. It became known as the “Friedman Doctrine” after a 1970 article for the *New York Times Magazine* by the enterprising polemicist Milton Friedman, but this rejection of corporate liberalism and embrace shareholder value was commonplace in the conservative movement by the time Ronald Reagan took office in 1981.

Big Business Day’s significance lies not in its failure at shaping the agenda of the 1980s, but in what it can tell us about the development of corporate social responsibility. In many ways, it serves as a bookend to an era of corporate protest that began in the middle of the 1960s and it shows how activists had stretched and eventually balked at the limits of the New Deal Order. In so doing, however, the corporate protestors stumbled over the limits of their own political moment. The Corporate Democracy Act of 1980 stands revealed as a crossroads in the corporate social responsibility movement; going

forward, activists focused more on gaining particular concessions and less on more substantive changes to how corporate power was exercised.

In the 1960s and 1970s, grassroots and public interest activism challenged the corporate status quo in ways that had not been seen since the tumult of the New Deal. Protestors used in different combinations a variety of tactics, but they had two primary goals. In the first place, they sought to change business practices and make them responsive to particular issues like racial discrimination, pollution, and consumer safety. The other objective was to change the structures of corporate power—who gets to make decisions and how. The result was a national debate over the rights and responsibilities of business corporations.

Activists did not entirely reject the ideals of business statesmanship. They made the concept their own. Non-elite activists and policymakers wielded this ideology in order to wield corporate resources for radically new social goals. The corporate protestors agreed that the corporation was a social and governmental institution that carried certain responsibilities, but unlike the postwar business intelligentsia, they harbored little support for the statesmanship model of the enlightened, liberal manager. They wanted instead a legible structure of corporate accountability. Where Adolf Berle, for example, had called on business elites to find in themselves a faith in something more than profits, activists who will be discussed here—Mark Green, Philip Moore, Barbara Williams, and Douglas Johnson, among others—wanted to bring back a robust incorporation system that would limit corporate powers. They found little praiseworthy in the New Dealer and former Tennessee Valley Authority head David Lilienthal's mid-century encomium to the new

“top boss” who was a “man with a strong and practical sense of responsibility to the public and an awareness of the ethics of the present-day business competition.”¹⁸

Activists embraced older notions of what a corporation was and what it was for. They recalled a tradition of political and legal thought that was once prevalent in the United States that understood corporation persons to be artificial legal creations and concessions of state power.¹⁹ In their proposals to reshape the incorporation system and demands that businesses recognize the power of community organizations, these activists approached corporations as if they were social institutions, not economic ones.

The story of the corporate protestors shows the challenges of transcending the structures of market relations. Even as activists hoped to make corporations less responsive to markets, they found their most effective tools consisted in assuming roles as market actors. They bought shares on the stock exchange in order to introduce resolutions and influence managerial decisions. They solicited other shareholders in their efforts to form proxies. They boycotted consumer brands. Public policy was one tool, too, but the agency that markets provided was immediate and practical.

This moment also points to long-term shifts in the American political economy. The corporate protests, perhaps surprisingly, precipitated an era in which corporations were more than ever before focused on producing profits for shareholders. The interpretive question might be put in this way: how did the 1980s become the decade of shareholder value and not the decade of stakeholder goods? The failure of the corporate protestors certainly lies with the rise of the New Right, but activists had their own limitations. The corporate activists were often most effective at gaining concessions from

¹⁸ David Lilienthal, *Big Business: A New Era* (New York, NY: Harper, 1953), 27.

¹⁹ See ch. 1.

large businesses when their protests were conducted in the form of shareholder proxy votes or boycotts. Over time, activists came to embrace a new order of market-thinking and to abandon the more radical vision of fundamental change to corporate governance. By the 1980s, then, there was a convergence between shareholder activism and shareholder value, with liberal activists in the United States using labor union pension funds, for example, or the financial holdings of non-profit foundations to pressure large corporations on certain issues. The result was that other modes of engaging the corporation as a political, social, or community institution foundered as business became radically redefined in the narrow terms of financial markets.

As they exacted concessions and compromises on specific issues, the project of transforming corporate governance dissipated. There emerged a rift between activists who organized around discrete issues of corporate behavior and those who sought to reform corporate governance. For the former, pragmatism suggested that once more equitable job training programs were established, for example, or vehicle safety standards were adopted, issues of what might be called “private policy” faded in importance. And for those focused on corporate governance, the task of organizing a mass movement around such technical and often abstract issues of business power posed substantial difficulties and was out of step with mainstream politics.

The movement for corporate social responsibility in the 1960s began as a radical project of black power activists who sought to force major industrial corporations to help solve the urban crisis and it soon expanded to include other social issues. Over the next decade and a half, as they assimilated the lessons of public protest, corporations developed new public relations programs and corporate social responsibility offices.

Unlike the project of public interest and social activists, CSR as it was presided over by large corporations became purely voluntary and private; it trumpeted the free market as the best way to solve social problems. What began, then, as a radical challenge to the structure of private power eventually ended as a new way to legitimate the efficiency of corporations and market structures.

This chapter brings together key events in the history of corporate protests between the 1960s and 1980s. Big Business Day is a significant part of this story. It comes at the end and offers an opportunity to think about the political limits and the intellectual development of corporate activism. The movement encompassed a range of issues, places, and corporations. What brought together these disparate actors and groups was a conviction that business is political and economic power should be bent toward social goods. Activists borrowed ideas and tactics and increasingly supported common causes.

This chapter begins with the era's first major campaign that took place in Rochester, New York in the latter half of the 1960s. The Eastman Kodak Company and a community organization called FIGHT that arose in the aftermath of the 1964 Rochester uprising feuded publicly for nearly a year over the establishment of a training and hiring program for black workers. The FIGHT-Kodak dispute was influential because key tactics and tactics—protesting shareholders meetings, making use of voting stock, mobilizing religious support, demanding community participation in business decisions, and targeting a major, publicly traded corporation—were immediately recognized as explosive by business leaders and social activists alike. What began in Rochester spread across the country.

The Campaign to Make General Motors Responsible was modelled on the activism of Rochester. A modestly funded, public-interest effort organized by the Project on Corporate Responsibility, a group that consisted of Nader and a handful of young lawyers in Washington, D.C. They wanted greater minority representation in dealerships and management, among other things, and they wanted firm commitments to environmental and consumer safety issues. With support from consumer, labor, civil rights, and environmental groups, the activists forced a vote at the GM annual meeting in May 1970 on two proposals that would have profoundly changed how the multinational company incorporated social issues into their business model. The showdown in Detroit between activists and management was a media event that produced a national conversation about the rights and responsibilities of big business. Campaign GM was the first major test of the corporate social responsibility movement. It showed, on the one hand, that when put to a public fight, management could be forced to make certain concessions; on the other, it showed that corporate machinery could not easily be wrestled away from management. As this chapter explores, as corporate protests became more national in scope they became less connected to the community and social movement organizations that they sought to represent. It presaged, indeed, a split between activists who focused on discrete issues (particular acts of pollution or certain employment policies) and those who focused on governance (changing how board members are elected or tweaking the incorporation system).

The final case study is the infant formula controversy that unfolded principally between 1974 and 1984 and enveloped major multinationals like Bristol-Myers, American Home Products, and especially the Nestlé Company. The problem here was

that bottle feeding was supplanting breastfeeding among the urbanizing poor of the developing world and that material conditions in many of these places were unfit for a product that had been developed originally for affluent westerners. The result was an alarming rise in disease, undernutrition, and infant mortality in countries like the Philippines, Jamaica, or Pakistan. With a different social issue, the tactics of activists changed. For one thing, Nestlé, the primary target because of its market-dominance, was a Swiss-based company and not subject to the same securities regulations as American firms. For another, organizers of the campaign against Nestlé were not the same people who were most affected by the company's production and advertising; they were primarily middle-class Americans and Europeans. Activists organized an international boycott of Nestlé companies beginning in Minneapolis in the summer of 1977 and continuing until the company agreed in 1984 to adhere to an international marketing code from the World Health Organization. In this case, the boycott became the sole tactic that activists deployed to pressure the company. And Nestlé, for its part, eventually worked to develop a socially conscious brand by creating its own non-governmental agency, the Coordination Center for Nutrition, Inc., which monitored and facilitated responsible business practices. The story illuminates how, as contests over corporate power developed, social responsibility was no longer the possession of social activists but had also become a public relations and marketing project for large companies.

Can FIGHT and Kodak Agree?

When preparations were made for the Eastman Kodak Company's annual shareholders meeting in 1967, management had hoped that Flemington, New Jersey would play to their advantage. The quiet borough located in a rural part of the state had

been Kodak's annual location for decades and that year it promised an advantageous ground on which to face the controversy and national publicity that had been hounding the company for months. But the smallness of the town only made the protests that would envelop the meeting seem more pronounced. It was overrun. State police, worried about the possibility of violence, setup a temporary headquarters for the occasion. Along with hundreds of state troopers, there descended on the town that weekend in late April hundreds of shareholders, a large national media contingent, and busloads of activists and protestors.²⁰ With his usual flair for the incendiary, Saul Alinsky, who helped lead the protests, riled up reporters. "The war with Kodak," he said, "begins tomorrow."²¹

The showdown consisted of large protests and speeches, a few interruptions at the meeting, and a lot of bravado. It was a climactic scene in a dispute that had been going on for months between the company and a community organization in Rochester, New York that Alinsky had helped advise. The group was called FIGHT and its acronym stood for "Freedom, Integration, God, Honor—Today." The context for the conflict was the relative lack of minority employment and the need for jobs training programs for African-American workers, but the substance of the acrimony had to do with how the company's social responsibilities were managed in the city where it was headquartered. The struggle over how a jobs program would be administered was in many ways a proxy war over a much more fundamental issue of who had the right to make decisions for a corporation that possessed a great deal of power over a community.²² The conclusion was

²⁰ "Troopers Mobilizing for Protests Expected at Kodak Co. Meeting," *The Courier-News* (Bridgewater, NJ), April 24, 1967.

²¹ "Alinsky in Flemington," *Democratic and Chronicle* (Rochester, NY), April 25, 1967.

²² R.D.G. Wadhvani, "Kodak, Fight and the Definition of Civil Rights in Rochester, New York 1966–1967," *Historian* 60, no. 1 (September 1997), 66. P. David Finks, "Crisis in Smugtown: A Study of Conflict, Churches, and Citizen Organizations in Rochester, New York, 1964-1969" (dissertation, Union Graduate School, July 1975), 121.

a happy one. Kodak agreed to help create a large program that would successfully train thousands in Rochester over the next few years. The broader historical consequence, however, was the unleashing of a movement of activism that challenged the liberal managerial class and sought to wield the power of America's largest corporations in new ways. What began in Rochester and reached a climax in Flemington marked the beginning of corporate protests that would dramatically reshape American business over the next decade and a half.

FIGHT's battle with Kodak arose in response to one of the first major riots of the decade, the Rochester uprising in the summer of 1964. It began with a Friday night street dance in the inner city when a K-9 police squad arrived to remove an allegedly inebriated young black man from the event. In the ensuing scuffle, many in the large crowd claimed to witness white police officers let loose a German Shepherd to attack the man and in the chaos a young girl was also bitten.²³ The struggle and disturbance of the arrest was seen by hundreds of those present and rumors about police brutality spread quickly throughout the urban center.²⁴

The situation was soon out of control. The late-night crowd swelled and rained down on the police a storm of cans, rocks, and bottles. Although they had carefully watched similar events break out just days before in uprisings in Harlem and Brooklyn, Rochester police had no mobilization plan in place. Officers flooded the scene, but their large numbers failed to restore order even as the police chief pleaded with the crowd to disperse. Plumes of tear gas filled the streets to little effect. In the early morning hours

²³ Laura Warren Hill, "'Strike the Hammer While the Iron Is Hot': The Black Freedom Struggle in Rochester, NY, 1940-1970" (Binghamton University - State University of New York, 2010), 102.

²⁴ Wadhwani, "Kodak, Fight and the Definition of Civil Rights in Rochester, New York 1966-1967," 59-60. Finks, "Crisis in Smugtown," 21.

the crowd continued grew up to about 2,000, overturning and burning squad cars and targeting white-owned businesses for destruction and generally leaving behind a path of destruction.²⁵ The ensuing violence caused a handful of deaths, hundreds of injuries, over a million dollars in damage, and was only finally stopped with the deployment of the National Guard.²⁶

All of this seemed impossible to most residents of the Flower City. The community had long been known as a regional home for big industry and enjoyed many years of economic prosperity and social peace. The city, indeed, had one of the lowest overall unemployment rates in 1960s America.²⁷ White liberals in particular prided themselves on Rochester's history as a center of anti-slavery politics and a home to such abolitionists and suffragists as Frederick Douglass and Susan B. Anthony. The city had seemed to many to be immune from the kind of racial violence and black militancy that was emerging in other northern industrial cities. Mayor Frank Lamb summed up the conventional wisdom when he said following the riot, "It is unbelievable that such a thing could happen in Rochester."²⁸

The salient facts were not to be found in the heritage of nineteenth-century progressive politics, but in the racial and economic conditions of the post-World War II era. Like many other northern industrial cities, Rochester experienced an influx of African-Americans from the South in the decades after the war.²⁹ The black population

²⁵ Michael W. Flamm, *In the Heat of the Summer: The New York Riots of 1964 and the War on Crime* (Philadelphia, PA: University of Pennsylvania Press, 2016), 209-210.

²⁶ Wadhvani, "Kodak, Fight and the Definition of Civil Rights in Rochester, New York 1966-1967," 60. Hill, "Strike the Hammer While the Iron Is Hot," 103.

²⁷ S. Prakash Sethi, *Business Corporations and the Black Man: An Analysis of Social Conflict: The Kodak-FIGHT Controversy* (Scranton, PA: Chandler Pub. Co., 1970), 17.

²⁸ Finks, "Crisis in Smugtown," 1.

²⁹ Isabel Wilkerson, *The Warmth of Other Suns: The Epic Story of America's Great Migration* (New York: Vintage Books, 2011).

increased by over 500 percent to about 40,000 between 1950 and 1964. But the new racial composition of the city did not result in changes in political representation. All local governmental boards and offices were white and there were very few black public employees. Even the local NAACP and CORE were led by whites. Along with this imbalance in political representation, housing conditions were poor. As whites moved out of the inner city to wealthy suburban developments, blacks had difficulty finding housing that was decent, unsegregated, or well maintained.³⁰ Finally, joblessness was high. The unemployment rate among the African-American population was fourteen percent—compared to two percent overall. And even for those who were employed, Rochester had one of the highest rates of income inequality along racial lines.³¹

In the aftermath of the riots, it became clear to many that these social and economic problems were propounded by the lack of black-organized community institutions. It was the black churches, the only things that came close organized representation, that partnered with the city's greater Protestant establishment through an inter-denominational partnership, the Rochester Area Council of Churches, to form a black-led community organization.³² They looked outside the city for help and first turned to the Southern Christian Leadership Conference, but that proved to be abortive. Their church-based organizing methods were a bad fit and their style was not attuned to

³⁰ Laura Warren Hill, "'Strike the Hammer While the Iron Is Hot': The Black Freedom Struggle in Rochester, NY, 1940-1970" (Binghamton University - State University of New York, 2010), 105-109.

³¹ This social data comes from Wadhwani, "Kodak, Fight and the Definition of Civil Rights in Rochester, New York 1966-1967," 60-61.

³² I am relying for my interpretation on Finks, "Crisis in Smugtown," 29.

Rochester's urban situation.³³ One SCLC member street-preaching on nonviolence, for example, was derided by a passerby: "What is all this Jesus crap?"³⁴

Organizers looked elsewhere. Thanks in no small part to the bestselling book *Crisis in Black and White* (1964), which gave a journalistic account of the urban crisis in the early 1960s and highlighted the work of Saul Alinsky and his Woodlawn Organization in Chicago, a handful of church leaders in Rochester knew about Alinsky's community organizing methods. A group from the Council of Churches went to Chicago to meet him and they were impressed his tough approach, which one minister said was "confrontational but it wasn't violent... We liked that."³⁵ Alinsky's blending of militant tactics with a community self-help agenda fit with emerging consensus of the local religious community.³⁶

By spring 1965, after months of planning and fundraising on the part of the local Protestant establishment, Alinsky and his staff had agreed to a long-term campaign for community organizing in Rochester. Alinsky and white church leaders signed a two-year contract that gave total control of the \$100,000 raised for the organization to black organizers.³⁷ "The new organization of organizations could then begin to weld the blacks of Rochester," a local pastor wrote, "into a powerful and aggressive force for

³³ Laura Warren Hill, "FIGHTing for the Soul of Black Capitalism: Struggles for Black Economic Development in Postrebellion Rochester," in *The Business of Black Power: Community Development, Capitalism, and Corporate Responsibility in Postwar America*, ed. Laura Warren Hill and Julia Rabig (Rochester, NY: University Rochester Press, 2012), 50.

³⁴ Quoted in Sanford D. Horwitt, *Let Them Call Me Rebel: Saul Alinsky, His Life and Legacy* (New York, NY: Vintage Books, 1992), 456,

³⁵ Marvin Chandler, "Rochester Black Freedom Struggle," interview by Lauren Warren Hill, May 13, 2009, Rochester Black Freedom Struggle Oral History Project, University of Rochester Rare Books and Special Collections, Rochester, NY.

³⁶ Finks, "Crisis in Smugtown," 34; 37-38.

³⁷ Horwitt, *Let Them Call me a Rebel*, 461.

independent, black participation in the structures and institutions [of the city.]”³⁸ The banner organization, FIGHT, met in a constitutional convention in April with 1,300 participants and immediately elected Franklin Florence, a black minister, as its chair. The resolutions passed at that first meeting stressed the importance of collective bargaining and equal employment opportunities.³⁹ But they first made housing their agenda and publicly announced their intentions to expose slumlords and absentee landlords.⁴⁰

The turn toward a corporation-focused activism came in late 1965. As a result of talks between the local AFL-CIO and management, the local Xerox company started a small program, “Step Up,” that was aimed at helping disadvantaged workers meet employment standards as well as training those who were “hard-core” unemployed for industrial positions.⁴¹ The company quickly approached FIGHT for assistance in reaching out to potential participants and for translating the goals of the program to the city’s black community. Implicit in the idea was the fundamental conviction of FIGHT that legal equality would not lead to economic equality. Step Up was a small operation—it began first as a 13-week program starting with only 20 trainees—but Xerox said that its “goal is select people with good latent abilities whose environment has deprived them of the opportunity to develop these abilities.”⁴² This kind of corporate program and central role that FIGHT played in its administration would, it turns out, pave the way for far more ambitious proposals.

³⁸ Finks, “Crisis in Smugtown,” 58.

³⁹ Finks, “Crisis in Smugtown,” 68-69.

⁴⁰ “FIGHT Plans to Expose ‘Slumlords,’ Absent Owners,” *Democrat and Chronicle* (Rochester, New York), April 21, 1965.

⁴¹ Finks, “Crisis in Smugtown,” 115.

⁴² “Xerox ‘Step Up’ Provides an Ally,” *Democrat and Chronicle* (Rochester, NY), November 16, 1965.

At FIGHT's second convention in June 1966, Franklin Florence was reelected with the promise of more militancy and an expansive agenda, which included unseating certain city council members, the creation of a newspaper, support for police crackdown on vice crimes, and other issues of poverty, welfare, and education.⁴³ Most consequential for FIGHT was their employment resolutions. They wanted Xerox to expand the Step Up project and train and hire more industrial workers but also more clerical employees. Added to that was the overwhelmingly passed resolution that "Eastman Kodak be urged to initiate a Step Up program."⁴⁴

The reputation of liberal paternalism made Kodak a strategic target. Organizers of FIGHT understood that the company's reputation could be exploited to create a jobs program, but at the same time they saw an opportunity to strip the company of its self-satisfied paternalism and put power into the hands of the African-American community. "Eastman was very proud of its record. And did have a good record of being a liberal, white company," said Rev. Marvin Chandler, an activist and Council of Churches member. Like others associated with FIGHT, he saw also a deep racial animus even in the terminology used to describe potential job trainees. There was a sense, he said, "that these poor people, the poor whatever of Rochester—they called 'em poverts." "I took umbrage at the language that was used to describe people and at the attitude that said they didn't have skills," he continued. "You're wrong. It is not that these people have no job skills, it's the fact that most of the people who came to Rochester lately came from agrarian states...this is an industrial economy. It's just that their skills don't match the

⁴³ "Florence Re-elected By 283-134 Vote," *Democrat and Chronicle* (Rochester, NY), June 18, 1966.

⁴⁴ Wadhvani, "Kodak, Fight and the Definition of Civil Rights in Rochester, New York 1966–1967," 63.

skills that you're talking about."⁴⁵ Corporate leaders saw black workers as objects of charity, not as equals whose opportunities were limited by economic exclusion.

For organizers of FIGHT, this racist condescension was one part of a larger structure of business power where the Rochester community in general, but especially its minority community, was dependent on large companies over whose business decisions they had little influence. FIGHT wanted to "change the dynamic of the thing", as Chandler put it, in two ways. The first was to turn this condescension on its head and assert that the African-American community was capable of modern work and self-help. They sought to expose the company's white liberal paternalism as retrograde and unfit for the problems of urban life. But more fundamentally they wanted to bring the model of the community organization to bear on the business corporation. "Power and organization are one and the same," Alinsky wrote a few years later in *Rules for Radicals*.⁴⁶ The jobs training program meant more social responsibilities, but, as we will see, it also entailed that Kodak would capitulate in small but nevertheless significant ways to the governance of the community. The corporation belonged to the community, from Alinsky's view, the community didn't belong to the corporation.

They made their move in September. Reverend Franklin Florence, wearing a Black Power lapel button and joined with fifteen FIGHT associates, entered the headquarters of the company unannounced and told the receptionist, "I want to see the top man." Surprisingly to Florence, they were received hospitably in an impromptu

⁴⁵ Marvin Chandler, "Rochester Black Freedom Struggle."

⁴⁶ Saul Alinsky, *Rules for Radicals: A Practical Primer for Realistic Radicals* (New York, NY: Random House, 1971), 113.

meeting with Kodak's chairman, the president, and the executive vice president.⁴⁷

Officials quickly agreed to a second meeting at which FIGHT offered a written proposal. Florence demanded that Kodak hire and train over an 18-month period between 500 and 600 persons so that they would qualify for entry-level positions throughout the company and that FIGHT be allowed to act as recruiter and coordinator for trainees. The organization asserted this right based on their status as the only mass democratic institution for the city's unemployed minorities. The company refused to make any commitments, but the president, William Vaughn, offered the tepid gesture that they hoped to benefit from the suggestions of community organizations like FIGHT.⁴⁸

Over the next two months, Kodak and FIGHT met frequently with the aim of coming to some agreement about the program. Slowly it became clear that any hope for cooperation was dissipating. FIGHT stood firm. They wanted to train 500 to 600 blacks and, more provocatively, refused to yield any ground on their right to help administer the program. Kodak management, meanwhile was protective of its own autonomy and its right to control when, how many, and for how long job training would go on. The company insisted that it must "take full account not only of its legal obligation to avoid discrimination but also of its responsibilities to Kodak customers, employees, stockholders," and other groups.⁴⁹ "Florence wanted to set up a hiring hall," William Vaughn recalled, "and tell us what people to hire."⁵⁰ For FIGHT this issue was as much

⁴⁷ "FIGHT Presses Kodak For Job Opportunities," *Rochester Democrat and Chronicle* (Rochester, NY), September 3, 1966.

⁴⁸ Sethi, *Business Corporations and the Black Man*, 26-27; Wadhvani, "Kodak, Fight and the Definition of Civil Rights in Rochester, New York 1966-1967," 634.

⁴⁹ "Statement by Eastman Kodak Company to representatives of FIGHT on September 14, 1966," reprinted in Finks, "Crisis in Smugtown," 322-324.

⁵⁰ Quoted in Sanford D. Horwitt, *Let Them Call Me Rebel: Saul Alinsky, His Life and Legacy* (New York, NY: Vintage Books, 1992), 490.

about coordinating members of its community as it was about challenging corporate power per se. As Marvin Chandler put it, the community organization did not trust the company to be sensitive to the needs of job trainees. “On a Monday morning,” he said, “somebody’s gotta call some guy who’s not been used to having to get up at 6 o’clock on Monday morning and say, ‘Get up outta bed, you gotta go to work.’”⁵¹

The locus of the dispute, then, was control and administration. Kodak refused to cede either, while FIGHT asserted that anything less than mutual cooperation was illegitimate—FIGHT was the representative institution for the community of Rochester, not Kodak. Communications broke down. Neither side could even agree about what had taken place at a series of meetings that fall.⁵² Vaughn, who had been in contact with Franklin Florence, announced they would no longer consider FIGHT’s proposal. Kodak’s modus operandi were nothing more than “cozy paternalism,” Florence shot back. “They do not negotiate with anyone.”⁵³

On October 22, Kodak announced that it had formed an agreement with the Indianapolis-based Board of Fundamental Education to administer a jobs program of its own. The company made no mention of its protracted negotiations with FIGHT or how this program compared to other proposals. Vaughn called it a “joint community endeavor” that was aimed at solving the structural problems with the city’s community.⁵⁴ It was, among other things, an attempt at sidestepping the activists.

⁵¹ Marvin Chandler, “Rochester Black Freedom Struggle.”

⁵² Sethi, *Business Corporations and the Black Man*, 29.

⁵³ Finks, “Crisis in Smugtown,” 122.

⁵⁴ “Kodak to Set Up Classes for Unskilled Workers,” *Democrat and Chronicle* (Rochester, NY), October 22, 1966.

But FIGHT struck back, arriving the next day at Kodak personnel offices with a bus load of 50 persons to apply for training slots. When they were predictably turned away, Florence attacked the program: “It’s a fraud. It’s a trick.”⁵⁵ “Black Leaders in every ghetto across the nation are watching the Kodak-FIGHT controversy,” he said,” and several groups have offered any help FIGHT requests.”⁵⁶ Saul Alinsky said that Kodak’s failure to set up a jobs program with FIGHT was an example of “abysmal arrogance, typical of Rochester.” The Board of Fundamental Education wouldn’t empower the black community, he said, because it was a “darling of the Indianapolis Chamber of Commerce” and nothing more than a public-relations “con game.” For Alinsky, Florence, and the fundamental convictions of FIGHT, a jobs program that would effectively empower the black community was one created by the community itself. “Equality can’t be handed down as an act of charity,” Alinsky would often say. “Equality comes from taking, or from getting, because the other side knows you have the power to take.”⁵⁷

It would be fair to say that for Freedom, Integration, God, Honor—Today one of their most effective tactics was to pressure their opponents to act more quickly than they wanted. In late 1966, they used the fresh memory of riots in Detroit and Watts. They reminded their opponents that the Rochester riots took place only a couple of years earlier and that they could easily happen there again.⁵⁸

⁵⁵ Finks, “Crisis in Smugtown,” 124.

⁵⁶ Wadhwani, “Kodak, Fight and the Definition of Civil Rights in Rochester, New York 1966–1967,” 65.

⁵⁷ “Black Power Passing Phase,” *Democrat and Chronicle* (Rochester, NY), October 24, 1966.

⁵⁸ Wadhwani, “Kodak, Fight and the Definition of Civil Rights in Rochester, New York 1966–1967,” 65–66.

Outmaneuvered and overwhelmed in the press, Kodak realized it needed to proceed on different terms. John Mulder, an assistant vice president, emerged as an unlikely negotiator. It was his membership in the city's Third Presbyterian Church and involvement in the interdenominational group, the Rochester Area Council of Churches, that made the difference. Through these religious back channels, he got in touch with Rev. Marvin Chandler who worked for the Council and had been involved with FIGHT from the beginning. Informal conversations got the ball rolling again. The outgoing president, William Vaughn, hopeful that new representatives with common ground might find rapprochement, appointed Mulder to negotiate with Chandler.⁵⁹

The two men met along with a handful of colleagues from both sides on December 19 and made quick work of their problems. Kodak agreed with a firm number of trainees; they would commit to train at least 600 unemployed workers for positions across the board within two years, barring any unforeseen economic contingencies. And FIGHT agreed to relinquish their status as the sole referrer for trainees. They even set a start date—January 15. Within two days, a drafted letter of agreement gave the victory largely to FIGHT. As they drew negotiations to a close and were about to sign the document, there was some discussion about whether John Mulder had the authority to make such a commitment. Would his signature bind the company? Mulder insisted that his appointment made him the sole representative of the company.⁶⁰

⁵⁹ Sethi, *Business Corporations and the Black Man*, 31; Wadhwani, "Kodak, Fight and the Definition of Civil Rights in Rochester, New York 1966–1967," 66; Finks, "Crisis in Smugtown," 125–126.

⁶⁰ Finks, "Crisis in Smugtown," 127–128.

The next day's Rochester *Democrat and Chronicle* heralded the agreement as a mark of industrial citizenship.⁶¹ Unity was short-lived. Kodak almost immediately denounced the statement and claimed that Mulder had no authority to sign the agreement.⁶² The appointment of a sympathetic company official to deal with FIGHT probably never had much of a chance of mitigating the opposition that had solidified within Kodak. Negotiations, too, had taken place just as there was a change in leadership at the company. President William Vaughn, who appointed Mulder, was replaced days after the agreement by Louis Eilers, a conservative who had little interest in corporate social responsibility programs. He was furious when he learned of the agreement and wasted no time in convening a board meeting that would abrogate Mulder's commitment.⁶³

FIGHT called foul and accused the company of acting in bad faith. Rev. Florence led a rally of 150 ministers, nuns, rabbis, priests, and laypeople at his church. "We are disgusted and angry," he said. "Kodak's word is no good. Kodak's signature is no good." The group distributed a petition calling on the company to honor the agreement as signed. Realizing that the window for successful negotiations had closed, FIGHT's strategy going forward was avoid private re-negotiations and put public pressure on Kodak to honor the original agreement.⁶⁴

The local context of Rochester soon faded from view. The dispute became increasingly a national concern, and it wasn't just the *New York Times* that was paying

⁶¹ "Kodak, FIGHT Agree on New Job Program," *Democrat and Chronicle* (Rochester, NY), December 21, 1966.

⁶² "Kodak Tags Accord With FIGHT 'Unauthorized,'" *Democrat and Chronicle* (Rochester, NY), December 23, 1966.

⁶³ Finks, "Crisis in Smugtown," 128-129.

⁶⁴ Wadhvani, "Kodak, Fight and the Definition of Civil Rights in Rochester, New York 1966-1967," 67.

attention. The National Council of Churches came to FIGHT's side. The Citizens' Crusade Against Poverty announced it would investigate. *The New Republic* sympathetically profiled the situation and reported that there were plans in the works to boycott Kodak and wage a publicity campaign against its major stockholders.⁶⁵ "The only contribution the Eastman Kodak company has ever made to race relations is the invention of color film," Saul Alinsky told the *Washington Post*. "They run the town of Rochester like a southern plantation."⁶⁶

Kodak and FIGHT dug in their heels and Rochester became more divided over the dispute. The rhetoric coming from Florence and other more militant black leaders was provocative. "The cold of February will give way to the warm of spring and eventually to the long hot summer. What happens in Rochester in the summer of '67 is at the doorstep of Eastman Kodak," the minister said.⁶⁷ With a stalemate settling in at the local level, FIGHT set its sights on the annual shareholders meeting that would take place that spring in Flemington, New Jersey and ramped up its publicity efforts.

The idea of disrupting a shareholders meeting and challenging management over a social issue was a new concept. It was Larry Black, a Rochester pastor and supporter of FIGHT, who suggested a proxy fight. "What could be more in keeping with the American way?" he said. The idea was that churches, denominations, and individuals would sign over their voting proxies to FIGHT officers. With those votes in hand, Florence would stand up at the shareholders meeting and demand an answer for the broken jobs training

⁶⁵ James Ridgeway, "Attack on Kodak," *The New Republic* (January 21, 1967), 11.

⁶⁶ "Picture's Fuzy as Kodak Fights FIGHT," *Washington Post*, January 9, 1967.

⁶⁷ Quoted in Wadhwani, "Kodak, Fight and the Definition of Civil Rights in Rochester, New York 1966–1967," 70.

agreement.⁶⁸ All efforts turned to this new project, which they called “Focus on Flemington.” In speeches around the country, Alinsky used the idea to build public support. FIGHT had bought a few shares but they needed more to make an effective demonstration. By March, they sent out a letter inviting national church bodies to support the group at the shareholders meeting in New Jersey. “To all those who are appalled by institutional racism and irresponsibility toward the poor,” the letter read, “this issue offers a concrete opportunity.”⁶⁹

The annual shareholders meeting on April 25, 1967 was highly anticipated. Something, it seemed, had to give. On a clear day in the green country of western New Jersey, the convoy of eight buses full of FIGHT activists arrived in Flemington the morning of the meeting.⁷⁰ Hundreds of shareholders were there. The national press was there. And the local police prepared for the group that had long been described by journalists as “black militants.”

The meeting in the Hunterdon High School was packed and guards checked credentials at the door as the FIGHT delegation, including Alinsky and Florence, took their seats together amid boos and shouts of “throw them out.”⁷¹ About 700 demonstrators loudly though peacefully picketed the meeting, which didn’t last three hours. The session, however, was a testament to Kodak’s careful management of the agenda and control of physical space. The overwhelming majority of stockholders voted

⁶⁸ Finks, “Crisis in Smugtown,” 146.

⁶⁹ Finks, “Crisis in Smugtown,” 150.

⁷⁰ Finks, “Crisis in Smugtown,” 153; Wadhwani, “Kodak, Fight and the Definition of Civil Rights in Rochester, New York 1966–1967,” 71.

⁷¹ Finks, “Crisis in Smugtown,” 155.

with the company's leadership. There was never really any doubt about who controlled the meeting.⁷²

The challenge of mounting a successful intervention at an annual meeting has historically almost always been an insurmountable one. Especially when the issues at hand are political. The activists of FIGHT (and others following in their path) who marched into these meetings were facing down company officials who had significant advantages of controlling the pacing of the meeting, publicity over proxy resolutions, and the cultivation of voters' goodwill. As this chapter will show further, the very structures of shareholder enfranchisement are deeply favorable toward management.

For FIGHT, the Flemington meeting was about more than the chance to challenge Kodak's management at the shareholder polls, but it was that. And it was about more than the opportunity to bring national scorn on Kodak and publicity for FIGHT, but it was that, too. It was fundamentally, however, an assertion of power over the decision-making processes of a powerful economic institution. The corporation, activists claimed, was accountable to the power of the community, not the other way around. This perspective governed the organization's approach to Kodak from the very beginning, but perhaps it was most clearly displayed in the ruckus caused by Franklin Florence on that day in Flemington.

As soon as William Vaughn, the company's chairman, approached the microphone to call the meeting to order and offer welcoming remarks, Florence stood and interrupted him. "Are you going to honor the December 20 agreement? Are you going to keep your word with the poor?" Taken aback, Vaughn struck his gavel, called him out of

⁷² "Black Power Protests Mark Kodak Meeting, *The Los Angeles Times*, April 26, 1967. Wadhwani, "Kodak, Fight and the Definition of Civil Rights in Rochester, New York 1966–1967," 71.

order, and demanded to be heard. “We will give you until 2 o’clock to honor that agreement,” Florence shouted back. He and his FIGHT colleagues strode out of the meeting with the shareholders’ boos and hisses fading to the sound of supporters outside and cheers and shouts of “Sock it to him!”⁷³ At 2 P.M the delegation returned and Florence asked if they would honor the agreement to shouts of “No! No!” When Vaughn said they would not, Florence said, “We’ll see you in Rochester.”⁷⁴

Outside the meeting, FIGHT announced that they were increasing their demands from 600 to 2,000 jobs and that they would lead a national pilgrimage of the poor against Kodak’s headquarters on the anniversary of the Rochester riots, June 24.⁷⁵ “This is war,” Florence shouted.⁷⁶

Flemington was a turning point for Florence, Alinsky, and the leadership of FIGHT. A capitulation from Kodak would have been devastating for the autonomy of corporate management, not just at Kodak but potentially for other companies around the country. But the resoluteness of management, the subsequent public backlash against FIGHT and increasing dissension within the organization itself showed that the abrasive confrontation was an overreach. As R.D.G. Wadhwani argued, the encounter at Flemington weakened the credibility of the organization. Alinsky, realizing that the window of opportunity was coming a close, soon reached out to Daniel Patrick Moynihan for help overseeing renegotiations with Kodak. By June the two sides had made a

⁷³ Finks, “Crisis in Smugtown,” 155. “Kodak Holds Its Meeting Amid Racial Protests,” *New York Times*, April 26, 1967.

⁷⁴ “Black Power Protests Mark Kodak Meeting,” *Los Angeles Times*, April 26, 1967.

⁷⁵ Wadhwani, “Kodak, Fight and the Definition of Civil Rights in Rochester, New York 1966–1967,” 72.

⁷⁶ “Black Power Protests Mark Kodak Meeting,” *Los Angeles Times*, April 26, 1967.

compromise in which the company would agree to train the “hard core” unemployed but FIGHT would remain involved only in an advisory capacity.⁷⁷

The result was the Rochester Jobs Incorporation, an organization that included dozens of other businesses and placed over one thousand people in jobs by the following spring.⁷⁸ Along with involvement from the Chamber of Commerce, Kodak next formed the Rochester Business Opportunities Corporation that helped inner-city residents form and manage their own businesses. By many pragmatic measures, these things were a straightforward victory for FIGHT, but the story is more complicated. As the historian Lauren Warren Hill has argued, the strategy of cutting FIGHT out of decision-making and precluding black-owned and operated institutions was used by Kodak officials to “define Black capitalism in a way that actually precluded Black power.”⁷⁹

The Fight-KODAK dispute ought to be understood through the lens of debates within the black power movement over the role that business should play in the black community. E. Franklin Frazier, an African American sociologist, articulated a popular viewpoint in his 1955 book, *The Black Bourgeoisie*, that black entrepreneurship was a mistaken substitute for a more thoroughgoing attack on modern capitalism. But beginning in the late 1960s, as the historian Joshua Clark Davis has recently shown, a new generation of black power activists built and operated businesses like bookstores and record shops that sought to create an alternative entrepreneurial and consumer culture for the black power movement. This turn toward economic power was based on the radical

⁷⁷ Wadhvani, “Kodak, Fight and the Definition of Civil Rights in Rochester, New York 1966–1967,” 72–74.

⁷⁸ “Rochester Gets Training Program,” *New York Times*, Mar. 31, 1968.

⁷⁹ Laura Warren Hill, “FIGHTing for the Soul of Black Capitalism: Struggles for Black Economic Development in Postrebellion Rochester,” in *The Business of Black Power: Community Development, Capitalism, and Corporate Responsibility in Postwar America*, ed. Laura Warren Hill and Julia Rabig (Rochester, NY: University Rochester Press, 2012), 57.

idea of community control, the notion that “black-controlled spaces and organizations were integral to African American self-determination and Black Power.”⁸⁰

The efforts of FIGHT constitute not only an important chapter in the history of Black Capitalism, but also one of the first significant episodes in the history of radical corporate social responsibility. Louis Eilers, the Kodak president, said in the days after the December agreement had fallen apart that FIGHT was using the problem of jobs as a cover for the more fundamental goal of gaining power in the community.⁸¹ The accusation of FIGHT’s cynicism notwithstanding, Eilers was right about the stakes of the dispute. Job training was a proxy war in a greater conflict over two intertwined issues: the social obligations of business institutions and the decision-making processes by which those obligations might be addressed.

The Campaign to Make Corporations Responsible

The FIGHT-Kodak dispute provided new lessons to those who were watching. To those in the business world, it was a harbinger of a new era in which public disputes important issues were no longer channeled into the familiar lanes of industrial relations nor were they contained by public relations departments, but were spilling out into complicated relationships with communities, consumers, and the public at large.

Activists on the left gleaned other ideas. The conflict showed how corporations could be forced to address new kinds of issues with their vast resources. It showed, more specifically, how certain tactics such as proxy withholdings, protests at annual meetings,

⁸⁰ Joshua C. Davis, *From Head Shops to Whole Foods: The Rise and Fall of Activist Entrepreneurs* (New York, NY: Columbia University Press, 2017), 46; 44-47.

⁸¹ James Ridgeway, “Attack on Kodak,” *The New Republic* (January 21, 1967), 11.

and dramatic demonstrations could be used to bring corporations to the negotiating table. A new generation of activists could smell fear and sensed new opportunities.

For activists and business leaders, institutional economic power seemed up for grabs. One important feature in this activism, which has received little attention from historians, was the use of stockholder and proxy voting rights. Saul Alinsky, a community organizer since the 1930s, noted the surprise and uncertainty with which management reacted to these kind of tactics. “In all the years that I had been fighting corporations,” he said in 1971, “I had never seen them so scared and so uptight about anything.”⁸² Alinsky’s signature idea coming out of the FIGHT-Kodak dispute was what he called “Proxies for People.” He believed that a mass of middle class activists could be motivated by the vast amount of stockholdings to participate in annual shareholders meetings. He grasped the interlocking character of shares—corporations, pension funds, and non-profits owning shares in other corporations who own shares in even more corporations—as a tool that could be wielded to force concessions from American business. “Proxies for People,” partly due to the death of Alinsky in the early 1970s never became more than an idea, but other organizers who to bring the power of the stock market to bear on large corporations.⁸³

The most significant campaign in the history of corporate social responsibility activism was the Campaign to Make General Motors Responsible. It is an event that

⁸² “Proxies for People—A Vehicle for Involvement,” *Yale Review of Law and Social Action* 1 (Spring 1971): 65

⁸³ These ideas are still in circulation on the left. See, e.g., David Webber, *The Rise of the Working-Class Shareholder: Labor’s Last Best Weapon* (Cambridge, MA: Harvard University Press, 2018). For a critical review of such strategies, see Bob Farkas, “The Mirage of Pension-Fund Activism,” *Jacobin*, April 16, 2018, <http://jacobinmag.com/2018/04/pension-fund-activism-working-class-shareholder-review>, accessed September 16, 2018.

business school textbooks on CSR commonly cite, but it is also an activist campaign that shows how corporate power was being contested in new ways in the 1960s and 1970s.⁸⁴

After decades of popular support, Americans began in the early 1970s to change their minds about big corporations. This was in no small part due to the late 1960s exposures of environmental malfeasance like the burning of the Cuyahoga River and negligence toward consumers like the failure to implement basic safety designs for automobiles.⁸⁵ Activists and muckraking journalists churned out reports on ever-expanding corporate misconduct to a public hungry for more. Consider the Citizens Committee for Responsible Corporate Action that released a report in 1971 showing that California's 67 largest corporations had a shocking lack of social diversity in their leadership—no blacks or Hispanics on its boards or in top-level management and only twelve women. They called it a “corporate apartheid.”⁸⁶ Or take for example *In the Name of Profit: Profiles in Corporate Irresponsibility*, a best-selling 1972 volume edited by the economist Robert Heilbroner that included sensational reports on napalm production, dangerous pharmaceuticals, and corruption in the petroleum industry. Heilbroner compared these scandals to the recent My Lai massacre. “What we have here is a business version of the principle behind the Vietnam War,” he wrote, “the imposition of casualties on other peoples in the name of some tenet, such as freedom or profits, as the case may be.”⁸⁷

⁸⁴ See, e.g., Archie B. Carroll and Ann K. Buchholtz, *Business and Society: Ethics, Sustainability, and Stakeholder Management* (Stamford, CT: South-Western College Pub, 2014).

⁸⁵ Carolyn Merchant, *The Columbia Guide to American Environmental History* (New York, NY: Columbia University Press, 2012), 179-182; Lizabeth Cohen, *A Consumer's Republic: The Politics of Mass Consumption in Postwar America* (Knopf, 2003).

⁸⁶ “Power to Which People?” *The New Republic*, Feb. 20, 1971.

⁸⁷ Robert L. Heilbroner, *In the Name of Profit: Profiles in Corporate Irresponsibility* (New York, NY: Doubleday, 1972), 192.

From the end of the 1960s to the middle of the next decade, an unprecedented array of regulation was enacted. New federal administrations like the Environment Protection Agency, the Occupational Safety and Health Administration, and the Equal Employment Opportunity Commission were emblematic of a changing relationship between business and the state.⁸⁸ The social and political dislocations of the period, attended by the New Left “movement of movements” in its various iterations, and the financial disruptions of the decline of the staid, liberal, and conglomerated firm produced widespread anxieties. Jimmy Carter would diagnose this anxiety as a “crisis of confidence” undermining American faith in its major institutions.⁸⁹

At the end of the 1960s, according to surveys, Americans had confidence in their economic institutions. Seventy percent said that business generally strikes a fair balance between profits and the public good and more than half expressed a great deal of confidence in major business leaders. Ten years later, however, those numbers plummeted below twenty percent.⁹⁰ In a major article in 1980 that registered the frustrated sentiments of business leaders, *Fortune* magazine laid the blame for their flagging social status on critics and activists for corporate social responsibility whom it dubbed the “corporation haters.”⁹¹

Americans had not just changed their minds about whether big business was good or bad; efficient or inefficient, but also, and more fundamentally, they wondered whether

⁸⁸ Meg Jacobs, “The Politics of Environmental Regulation: Business-Government Relations in the 1970s and Beyond,” in *What’s Good for Business: Business and American Politics since World War II*, ed. Kim Phillips-Fein and Julian E. Zelizer (New York, NY: Oxford University Press, 2012), 212-232.

⁸⁹ Leonard Silk and David Vogel, *Ethics and Profits: The Crisis of Confidence in American Business* (New York, NY: Simon & Schuster, 1976).

⁹⁰ These numbers come from widely cited Yankelovich, Skelly & White and Louis Harris surveys. See *Washington Journalism Review*, vol. 2 (1980), 91.

⁹¹ Herman Nickel, “The Corporation Haters,” *Fortune* (June 16, 1980).

corporations should be doing more. One contemporary observer argued that the corporation was becoming politicized. In this increasingly popular view, there was an emphasis on the power of institutions, a concern about their responsiveness to consumer and minority groups, and, he said, a “complete absence of reference to the economic objectives of the corporation and the interests of its shareholders.”⁹² New kinds of regulation had changed the relationship between business and the state. The relationship between business and the public was in flux, too.

There was, then, from the late 1960s to the middle of the next decade an explosion in activity surrounding corporate social responsibility. In just a few years, new organizations emerged like the Council on Economic Priorities, the Corporate Accountability Research Group, the Corporate Information Center of the National Council of Churches, the Center for New Corporate Priorities, and the Interfaith Center on Corporate Responsibility, as well as new mutual funds, like the Dreyfus Third Century and the Pax World Fund, that claimed to invest only in responsible companies.⁹³ At the same time there were activists who purchased stock of a particular company and began proxy campaigns pressuring large, institutional investors to withhold their votes from management and support various resolutions and causes. The number of companies targeted is too long to list, but it included some of the biggest like AT&T, Atlantic-Richfield, General Electric, Dow Chemical, CBS, Gulf Oil, Honeywell, IBM, and United Airlines over issues ranging from gender equality and pollution to military contracts and colonial investments.⁹⁴

⁹² Phillip I. Blumberg, “The Politicization of the Corporation,” *The Business Lawyer* 26, no. 5 (1971): 1551.

⁹³ “Emergence of the Corporate Conscience,” *New York Times*, Jan. 6, 1974.

⁹⁴ David F. Linowes, *The Corporate Conscience* (New York, NY: Hawthorn Books, 1974), 187.

Ralph Nader announced the opening of the Campaign to Make General Motors Responsible in early February 1970. Organized by one of his new groups, the Project on Corporate Responsibility, the initial plan was to call attention to its misconduct such as air pollution and the violation of safety laws and to purchase twelve shares in order to submit resolutions and make public comment at the annual meeting. “G.M. may be the host for a great public debate on the role of this giant corporation in American society rather than a wooden recital of aggregate financial data,” Nader said. Along with his associate Mark Green and others at the Project, Nader envisioned, like Alinsky’s idea of a “Proxies for People” that they would demand support from large institutional investors like universities, banks, churches, insurance companies, and unions. If they didn’t come on board, they would bring their campaign to the students, depositors, laypeople, policyholders, union members, and other constituencies.⁹⁵

At the heart of the project was a diagnosis of the ills afflicting the corporate political economy. Corporations had become large, powerful, and ubiquitous, but they were also secretive and unresponsive to the general public. “For most citizens there can be no rejection of nor escape from the corporate embrace,” Nader said. “There can only be submission or control in varying degrees. The choice is between increasing predation or increasing accountability of corporate power to the people.” Like early New Leftists such as C. Wright Mills or William Appleman Williams, Nader saw a complex of economic power that was long in its reach and reinforcing in its structure.⁹⁶ The impact of corporate action on people was unilateral and often harmful. The catalog of these

⁹⁵ “Nader to Press for G.M. Reform,” *New York Times*, Feb. 8, 1970.

⁹⁶ C. Wright Mills, *The Power Elite* (Oxford: Oxford University Press, 1959); William Appleman Williams, *The Contours of American History* (New York, NY: Quadrangle Books, 1961).

imprints was expansive: growing violence to air, water, and soil; technologies that harmed users and dehumanized operators, colossal waste and intentional depreciation of consumer goods, and monopolistic predation that harmed consumers and small businesses.

Like Adolf Berle and Gardiner Means decades before, Nader pointed to the problem of the separation of ownership from control.⁹⁷ Managers had become less and less responsive to the needs and interests of the massive numbers of shareholders; shareholders meanwhile had become passive, atomized, and uninterested. The securities and exchange laws of the early 1930s sought to make the stock market function more efficiently and transparently in order to make managers more accountable to shareholders. The shareholder democracy of the New Deal was built on the notion that profit-seeking stockholders would make business leaders behave rationally and responsibly.⁹⁸

Whereas Berle and Means's account of corporate corruption precipitated reforms that were fundamentally economic in nature, the Project on Corporate Responsibility, in contrast to New Deal policy notions, called for new ways of governing the corporation and for new ways of thinking about it that were not exclusively economic. Economic rationality, Nader's group insisted, was no solution to problems that were basically political. The corporation, in their view, was a kind of "private government," not the private possession of shareholders for the exclusive purpose of profit-seeking. It existed

⁹⁷ Adolf A Berle and Gardiner Means, *The Modern Corporation and Private Property* (New York, NY: Harcourt, Brace, & World, 1932).

⁹⁸ For the background to the New Deal idea of shareholder democracy, see Julia C. Ott, *When Wall Street Met Main Street: The Quest for an Investors' Democracy* (Cambridge, MA: Harvard University Press, 2011).

at the nexus of shareholders, yes, but also of consumers, workers, the environment, local communities, small businesses, and various other public interests. Nader called for a “new constituency for the corporation” that would harness the powers of the corporation for the “fulfillment of a broader spectrum of democratic values.” This way of thinking about the corporation as a private government belonged in many ways to an older tradition in American thought, one that saw corporate power as a concession of the state, but it was virtually unheard of by the early 1970s.

This school of activism presaged a way of reforming American business that was distinct both from economic regulation and labor unionism. Where big labor and big government had, in the influential account of John Kenneth Galbraith, acted as countervailing powers to hold big business in check, these corporate reformers sought instead to change the structures of economic institutions themselves.⁹⁹ Nader called for the “establishment of enduring access to corporate information, the effective voice for affected social and individual interest, and thorough remedy against unjust treatment.”¹⁰⁰

The Project on Corporate Responsibility singled out General Motors for its size, not necessarily because it was the biggest abuser of corporate power (though GM’s bad behavior provided plenty of fodder for the campaign). The company provided an opportunity to bring their message to the wide public and to test out their proposals in the public forum of the annual meeting later on that year in May.¹⁰¹

⁹⁹ John Kenneth Galbraith, *American Capitalism: The Concept of Countervailing Power* (Cambridge, MA: Houghton Mifflin Co., 1956).

¹⁰⁰ All quotations from Statement by Ralph Nader, submitted by Rep. Benjamin S. Rosenthal, on Feb. 24, 1970, U.S. Congress, *Congressional Record*, 91st Cong., 2nd Sess. (Washington, D.C.: U.S. Government Printing Office, 1970), 4484-4486.

¹⁰¹ “Nader Seeks GM Changes,” *Washington Post*, February 8, 1970.

Activists had a handful of goals. The first was to put three directors on the board who would represent consumer, minority, and environmental interests. They also submitted nine resolutions to the company ranging in scope and issues. One would force GM to allocate a “fair proportion” of its dealer franchises to members of minority groups and diversify its employment more generally. Another was to amend the corporate charter to create a permanent committee for corporate responsibility that would include labor, environmental, academic, consumer, civil rights, and religious representatives, among other groups. The committee would have a mandate to examine issues of consumer safety, labor, public transportation, social welfare, and stakeholder participation, and submit its findings annually to shareholders. Other resolutions followed along similar lines, committing General Motors to support public transportation, consumer safety, and worker safety.¹⁰²

Nader introduced Campaign GM to the public in February 1970 at a press conference in Washington, but he moved to the background. Nader was still at least loosely associated with the Project on Corporate Responsibility though it is unclear to what degree he remained involved behind the scenes. He was not completely independent—that much is sure. The campaign was the first major confrontation between Nader’s camp and General Motors since a Senate hearing in 1966 when the company apologized to Nader for using private investigators to follow and collect personal information about him.¹⁰³ The company settled a lawsuit with him in August 1970 for \$425,000, most of which he used to fund public interest groups like the Center for Study

¹⁰² “G.M. Urged to Respond to Public Need,” *New York Times*, February 22, 1970. Appendix B in Donald E. Schwartz, “The Public-Interest Proxy Contest: Reflections on Campaign GM,” *Michigan Law Review* 69, no. 3 (1971).

¹⁰³ “Nader Embarks on Campaign Against GM,” *Wall Street Journal*, Feb. 9, 1970.

of Responsive Law.¹⁰⁴ It seems likely that by stepping into the background, Nader sought to dispel any public perception that Campaign GM was based on a personal feud. The move also communicated that the effort was about more than consumer safety issues. The campaign sought to give attention to larger problems of corporate governance that affected a range of different social and economic problems.

General Motors rejected all resolutions put forward on the grounds that they pertained to social causes and not business operations.¹⁰⁵ After Campaign GM organizers appealed to federal regulators, the Securities and Exchange Commission also threw out most of their proposals, with two exceptions. Although the removal of seven resolutions was a blow to Campaign GM, the ones the SEC retained were perhaps the most significant of them all. One was the expansion of the board of directors to include members that would represent public interests. The group supported three candidates for these new positions: the minister and civil rights activist Channing Phillips, the liberal consumer activist Betty Furness, and the scientist and environmentalist René Dubos. The SEC also approved a second resolution, a proposal for a “shareholders committee for corporate responsibility” that would include representatives from the United Auto Workers, environmental groups, consumers, academics, and religious institutions, among others.¹⁰⁶

Facing a vote in two months, GM was forced to organize. The resolutions at stake, the president and chairman said, would “restrict management’s ability to meet its

¹⁰⁴ “G.M. Settles Nader Suit On Privacy for \$425,000,” *New York Times*, Aug. 14, 1970.

¹⁰⁵ “Nader Panel Rebuffed by GM on Plea to List Consumers’ Demands,” *Wall Street Journal*, Mar. 6, 1970.

¹⁰⁶ “Rebels Win Spot On GM’s Proxy,” *Detroit Free Press*, Mar. 20, 1970.

responsibilities to the stockholders and the public.”¹⁰⁷ This was the message. The resolutions would hamper the profitability and effectiveness of a company that was already addressing issues of civil rights and the environment. The company put into motion an elaborate campaign consisting of public relations and professional proxy solicitors who targeted individual and institutional shareholders.¹⁰⁸ They sent out to shareholders “GM’s Record of Progress,” a 21-page booklet refuting the charges made against them, and published full-page ads in newspapers across the country touting their record on environmental issues.¹⁰⁹

Campaign GM, organized almost exclusively by young attorneys, had far fewer resources. They were like many Nader-associated projects at the time in the sense that they used performed investigations and exploited little-known procedural mechanisms in order to bring public pressure to bear on large regulatory and business institutions. This strategy consisted typically in litigation and high-profile public events. In the case of GM, they relied upon what was the only formal mechanism by which shareholders could influence the decisions of corporate managers—that was the shareholder proposal. The law required shareholders be allowed to submit resolutions to the meeting and that all proxy resolutions, consisting of a short policy statement and explanation, be sent to all

¹⁰⁷ “GM Managers Oppose Two Proposals Urged by Nader Associates,” *Wall Street Journal*, Apr. 10, 1970.

¹⁰⁸ These sophisticated proxy campaigns emerged in the late 1950s. For a discussion of these trends, see Leland Whetten, *The Influence of Recent Proxy Contests on Social and Economic Trends*, Studies in Business and Economics. Bulletin; No. 11 (Atlanta, GA: Georgia State College of Business Administration, 1961).

¹⁰⁹ “On the Corporate State and the Corporatizing of America,” Ralph Nader Reader, 118. For an example of the ad, see “Does GM Care About Cleaner Air,” Display Ad 36, *Wall Street Journal*, Apr. 13, 1970.

voting shareholders at the expense of the company.¹¹⁰ In essence, General Motors's own communications became the vehicle for Campaign GM's critique of the company.¹¹¹

The origins of the requirement go back a consequential rule that the Securities and Exchange Commission created in the early 1940s—Rule 14a-8. The purpose of the regulation was to give shareholders a more effective and ordinary means to participate in business policies and to hold directors and top-level managers more accountable.¹¹²

“When our proxy rules were amended to permit stockholders to make and justify proposals within the sphere of proper stockholder action a bomb exploded,” one SEC commissioner looking back on the new policy said in 1950, “We were branded as wild-eyed radicals.”¹¹³ The idea ran counter to the dictum that if a stockholder disagrees with management, he should sell the stock rather than vote at the annual meeting, which was the conventional wisdom of Wall Street before hostile takeovers and proxy fights became more common in the 1970s and 1980s. The SEC rule sought to bring the machinery of the annual meeting into line with the New Deal vision that encouraged shareholders, as purported owners of companies, to participate in the decision-making process.

The importance of the proposal procedure, as one of its policymakers argued later on, didn't necessarily lie in the achievement of victory at the ballot. The important thing was to the extent that stockholders “challenge the judgement of management,” then “management is required to make a defense of its position.”¹¹⁴ Although Rule 14a-8 was

¹¹⁰ Securities and Exchange Commission, Release Notice, 34-3347 (Dec. 18, 1942).

¹¹¹ “On the Corporate State and the Corporatizing of America,” Ralph Nader Reader, 118.

¹¹² Donald E. Schwartz & Elliott J. Weiss, “An Assessment of the SEC Shareholder Proposal Rule,” 65 *Georgetown Law Journal* 635, 636-37 (1977).

¹¹³ Edward T. McCormick, “The Corporate Secretary and the Proxy Rules” (American Society of Corporate Secretaries, Atlantic City, NJ, May 13, 1950), 4.

¹¹⁴ Milton V. Freeman, “An Estimate of the Practical Consequences of the Stockholder's Proposal Rule: The Seamless Symposium,” *University of Detroit Law Journal* 34 (1957-1956), 555.

always subject to certain exceptions that restricted shareholder proposals, the 1970s saw a liberalizing trend at the SEC that allowed for more proposals pertaining to social issues. The result was a remarkable increase in the amount of proxy activism at large corporations, of which the movement against General Motors was among the first.¹¹⁵

Campaign GM was shrewd in its public relations efforts. The group took out a full page advertisement in the Sunday edition of the company's hometown newspaper, *Detroit Free Press*, soliciting donations and proxy votes from shareholders. It explained the proposals that were to be put to a vote at the annual meeting as well as the other resolutions that were previously rejected. The campaign sought to make General Motors "more responsible to the community as a whole" and that "all corporations must serve interests larger than their shareholders." This was about more than profits:

The proposals described in this proxy statement could further lead to actions by the Corporation involving substantial expenditure of funds, and there is no assurance that these expenditures would make the Corporation more profitable. It is possible that adoption of these proposals could cause a reduction in the Corporation's profits. However, the Coordinators believe that in the long run only those companies which conduct their business in a manner more responsible to the large community needs will be able to profitably survive.¹¹⁶

This language was not meant to persuade the management and shareholders of General Motors. It was meant to provoke. And it contributed to the narrative that had

¹¹⁵ Marc I. Steinberg, *The Federalization of Corporate Governance* (New York, NY: Oxford University Press, 2018), 168-169. See also Donald E. Schwartz and Elliott J. Weiss, "An Assessment of the SEC Shareholder Proposal Rule," *Georgetown Law Journal* 65 (1977 1976): 635-90.

¹¹⁶ "Campaign to Make GM Responsible: Proxy Statement," Advertisement, *Detroit Free Press*, May 3, 1970.

caught the imagination of the press that this was a David-and-Goliath story. It was a group of young, idealistic, Washington lawyers with just a few thousand dollars to their names, standing up against one of America's largest corporations.¹¹⁷

At the heart of the campaign, however, there was a contradiction that illustrates the challenges that faced the corporate protestors of the late 1960s and 1970s. They indicted GM for its conventional corporate structure, which they said was a system of governance that made the company inadequately accountable to the public. They wanted to restructure the company to create new opportunities for public interest groups, consumers, workers, and others to participate in decision-making processes. They envisioned, in other words, a new way for large numbers of people to be involved in large corporations that could not simply be reduced to modes of consumerism or financial investment. They sought to make corporations more representative and governmental. Therein lies the contradiction. In order to force such changes, Campaign GM brought pressure to bear on the corporation by acting as shareholders or consumers. They remained market actors. The broader implications of the Project on Corporate Responsibility are perhaps missed in retrospect because its organizers sought to accomplish an admittedly radical agenda by means of entirely conventional structures of the market.

By the end of April, Campaign GM expected to lose the vote on both resolutions by overwhelming margins, and despite this, they believed they were winning "on all fronts." So said Philip Moore, a 28-year-old recent graduate of Harvard Law School who

¹¹⁷ The most comprehensive newspaper profile is here: "Campaign GM: The Leaders and Their Battle Plan," *Detroit Free Press*, May 17, 1970.

was the energetic head of the Project on Corporate Responsibility.¹¹⁸ They received support from elected officials including the liberal senator Edmund Muskie and a group of sixteen members of Congress who called it an “unprecedented effort” to make corporations more responsive.¹¹⁹

The annual meeting, which took place in Detroit on May 22, provided the biggest forum for liberal reformers to offer their critique of large corporations. Clocking in at about six hours, supporters of Campaign GM dominated the questions and comments but the voters stood with management. The two proposals—first, to expand the board by three, and, second, to create a corporate responsibility committee—were defeated by 97 percent of the vote (a result not too different from most shareholder proposals at the time).¹²⁰

Over three hundred activist supporters showed up to the meeting. They were described by reporters (about 130 journalists were present) as bright and energetic, mostly young and generally well dressed, but with long sideburns and hair and wearing casual ties and miniskirts. They passed out campaign literature to other attendees. The longtime holders of small shares were typically resentful. “Why, they are just a bunch of youngsters who are hardly past diaper age,” a retired GM engineer told the *Detroit Free Press*. The company, fearful of scuffles breaking out or, worse, the threat of a bombing, hired local police and private guards to patrol the meeting. A few weeks before, the

¹¹⁸ “The Greening of James Roche,” *New York Magazine*, Dec. 21, 1970.

¹¹⁹ “‘Campaign GM’ Says It’s Winning ‘On All Fronts,’” *New York Times*, Apr 22., 1970; “Support for Campaign to Make General Motors Responsible,” by George E. Brown, Jr., on May 19, 1970, 91st Cong., 2nd sess., *Congressional Record* 116, pt. 12:16397.

¹²⁰ “Critics Dominate Meeting of G.M.,” *New York Times*, May 23, 1970.

Honeywell shareholders meeting was cancelled after fourteen minutes when managers were unable to get control of corporate protestors.¹²¹

After a statement from management defending its record and concern for the public's interest, supporters of Campaign GM questioned business leaders for hours from the floor of the meeting. They pressed on issues of pollution and consumer safety. A United Auto Workers spokesman gave an endorsement of the protestors, adding that management had lost confidence with shareholders. A dramatic moment came when Barbara Williams, a young black law student from the University of California Los Angeles, asked, "Why are there no blacks on the board?" James Roche, the chairman, replied, "Because none of them have been elected." "I expected better of you," she shot back. She asked the question again. "No black has been nominated, and no black has been elected." Asked in the same way a third time, Roche said, "I have answered the question." To which Williams replied, "You have failed not only the shareholders but the country." She sat down to cheers and whistles.¹²² This interaction between Roche and Williams was unprecedented in the history of the corporation, if not only for her status as a young woman of color standing up to a powerful white man, then also for the substance of her question, the representation of minority people in the upper levels of business leadership.

Campaign GM lost big at the ballot, but made a splash and promised to keep at it. Donald Schwartz, the legal counsel for Campaign GM, closed his remarks toward the end of the annual meeting by saying, "Mr. Roche, we look forward to seeing you next

¹²¹ "GM Airs Policies, Wins Votes," *Detroit Free Press*, May 23, 1970; "Audience Listens to Both Sides," *Detroit Free Press*, May 23, 1970. E.J. Kahn, Jr., "We Look Forward to Seeing You Next Year," *New Yorker*, Jun. 20, 1970.

¹²² E.J. Kahn, Jr., "We Look Forward to Seeing You Next Year," *New Yorker*, Jun. 20, 1970.

year.”¹²³ They saw their efforts from the beginning to be a multi-year project. “I don’t think we won a victory,” said James Roche, the chair and CEO of General Motors. “We won a vote of confidence. We could lose that vote of confidence very quickly unless we respond in the way our shareholders expect us to.”¹²⁴

The company responded on its own terms. Later that year Roche announced the creation of a public policy committee that would report directly to the board of directors and would advise them on matters that affect the general public. A gesture toward “corporate citizenship,” it may have been, but the move was criticized by Philip Moore who said it was afflicted like the rest of the company with a kind of parochialism. No African-Americans, women, or representatives from the consumer or environmental movement were on the committee.¹²⁵

Likewise GM appointed Leon Howard Sullivan, a black minister and civil rights activist from Philadelphia, to its board in January 1971—another victory, Moore said.¹²⁶ “General Motors would never be the same,” Sullivan recalled in his memoir, *Moving Mountains*, “Nor would other large corporations in America who would open their doors to African Americans in leadership positions.”¹²⁷ He used his position to pressure the company and other large industrial firms to change their policies on discrimination, particularly as they pertained to business in South Africa.

¹²³ Quoted in Art Kleiner, *The Age of Heretics: A History of the Radical Thinkers Who Reinvented Corporate Management*, 2nd ed. (San Francisco, CA: Wiley-Bass, 2008), 115.

¹²⁴ “GM Easily Turns Back the First Assault from within by Liberal Reform Activists,” *Wall Street Journal*, May 25, 1970.

¹²⁵ “G.M. Names 5 Directors as Public-Issue Advisers,” *New York Times*, Sept. 1, 1970.

¹²⁶ “G.M. Elects First Negro as Member of its Board,” *New York Times*, Jan. 4, 1971.

¹²⁷ Leon Howard Sullivan, *Moving Mountains: The Principles and Purposes of Leon Sullivan* (King of Prussia, PA: Judson Press, 1998), 2.

Beyond these victories, if the goal of the protest was to start a national debate about the social responsibilities of business, as Moore said, then they were successful. Notably, GM's concessions provoked the right-wing economist Milton Friedman to write a widely read and cited article for *New York Times Magazine*, "A Friedman Doctrine—The Social Responsibility of Business is to Increase its Profits." The argument, a popular reiteration of one that he had made in his 1962 book, *Capitalism and Freedom*, relied upon an understanding of the business corporation as the private possession of shareholders.¹²⁸ Management was, he said, "the agent of the individuals who own the corporation," and those owners—diverse in views and large in numbers—can only credibly be represented by profit-seeking. For the corporate executive to use resources for the purpose of "social responsibilities" would be to "act in some way that is not in the interest of his employers"—i.e. shareholders.

Such criticism applied to the mid-century model of business statesmanship that GM was attempting to wield in response to the new activism of the 1960s and 1970s. They were still wed to the notion that business managers could function as broad-minded statesmen and bring their good intentions to bear on social problems. It did not apply, however, to the activists who grounded their vision of expanded corporate responsibility in changes in corporate governance that would hold executives accountable not to their personal knowledge or their whims but to legible structures of expertise and representation.

The Project on Corporate Responsibility expanded and shifted its efforts. For the 1971 GM meeting, they targeted institutional investors like universities and colleges,

¹²⁸ For a more detailed discussion of Friedman's thought, see Chapter 4.

foundations, and investment firms that held by far the largest percentage of stock. This move signaled a shift away from earlier corporate activism that had sought to mobilize small-holding, middle class investors. But with the exception of some institutions like Bryn Mawr College and the First Pennsylvania Banking & Trust Company, the group had little success with big institutions. Their resolutions—to change procedures for board elections and to require the company to publish information on minority hiring, anti-pollution, and safety activities—received once again less than three percent of the vote.¹²⁹ By 1972, the group moved its focus on Ford, Chrysler, and AT&T. In subsequent years, they would target similar issues in the drug industry and the petroleum industry.¹³⁰

Looking back on the activist campaigns at the end of the decade, the finance expert Edward Herman argued that corporate democracy efforts were a lost cause without some fundamental changes in corporate governance. “It seems reasonable to conclude, and is generally recognized by reformers, that gaining directorships through the processes of corporate democracy as now constituted, is close to impossible,” he wrote. The few successes that activists earned, as in the case of Campaign GM, were through “moral and economic pressure rather than by effecting board composition changes.”¹³¹

Nestlé Kills Babies

The Sisters of the Precious Blood won an out-of-court settlement with the conglomerate Bristol-Myers in 1978. The Roman Catholic religious order based out of Ohio had sued the company for what it said were false statements sent to shareholders in

¹²⁹ “GM Critics Suffer Big Defeat as Shareholders Veto Plans,” *Detroit Free Press*, May 22, 1971.
 “Campaign GM ‘Partial’ Success,” *Lowell Sun*, Apr. 13, 1972.

¹³⁰ See, e.g., “Gulf Fighting Stockholder Proposal,” United Press International, Apr. 4, 1974.

¹³¹ Edward S. Herman, *Corporate Control, Corporate Power: A Twentieth Century Fund Study* (New York, NY: Cambridge University Press, 1981), 266-267,

response to a resolution the group submitted for the annual shareholders' meeting in 1976. The issue at hand was infant formula, particularly the use and marketing of Enfamil in the developing world. The nuns proposed that Bristol-Myers publish a report on its formula business in countries where there was extreme poverty.¹³² The company, in turn, recommended that shareholders vote against the resolution and said, among other things, that they did not sell infant formula products in the least developed countries.¹³³ In thousands of pages of affidavits from medical professionals and mothers in countries like Jamaica and Indonesia, the nuns, along with help from the Interfaith Center on Corporate Responsibility, sought to show that the company had made deliberately misleading statements to shareholders.¹³⁴ After a year and a half of litigation, Bristol-Myers agreed to what the activists originally wanted: a full report on the international marketing and use of infant formula.¹³⁵

The efforts of these Roman Catholic nuns belonged to a larger movement of activists that had been battling producers of infant formula since the early 1970s. The settlement in particular came at a key moment both in the industry itself and in the development of corporate responsibility writ large. It was just a few months after a group based in Minnesota, the Infant Formula Action Coalition (INFAC), had launched what would become a worldwide boycott of Nestlé companies.¹³⁶ And it came just before a high-profile Senate hearing, convened by Edward Kennedy, that investigated the marketing and promotion of infant formula in the developing world.¹³⁷ In the next few

¹³² "Precious Blood Sisters sue firm over baby formula," *Dayton Daily News*, Apr. 21, 1976.

¹³³ *Sisters of the Precious Blood, Inc. v. Bristol-Myers Co.*, 431 F. Supp. 385 (S.D.N.Y. 1977).

¹³⁴ "The Bottle Baby Scandal: Milking the Third World for all it's Worth," *Mother Jones*, Dec. 1977.

¹³⁵ "Cincinnati Area Nuns Win Infant-Formula Dispute," *Cincinnati Enquirer*, Jan. 23, 1978.

¹³⁶ "Marchers protest formula maker," *Star Tribune* (Minneapolis, MN), Jul. 5, 1977.

¹³⁷ "Role of Infant-Formula Makers in Developing Nations Hit," *Washington Post*, May 24, 1978.

years, the controversy over infant formula would capture the world's attention and precipitate a response from the United Nations, the World Health Organization, and a number of multinational corporations.

The infant formula controversy represented a new stage in the corporate protest movement. Both in terms of geography—it was by nature a global crisis—and in terms of constituency—those most affected by the problem were the global poor—the problem tested the limits of corporate social responsibility. Activists in the United States who worked mostly through the Infant Formula Action Coalition and the Interfaith Center on Corporate Responsibility embraced two strategies: consumer boycotts and international policy frameworks at the World Health Organization. These efforts represented a shift in strategy. They sought to change business practices through external controls, not through changes in internal governance. Their success at combating the problem helped in many ways to undermine those who sought to transform the structure of corporate responsibility by radically altering the decision-making process.

As the historian Tehila Sasson has recently shown, the adoption of artificial milk for infants was particularly acute in colonial countries in the early twentieth century for a couple of reasons. One was that colonial administrators understood the use of such products as a part of larger development and modernization projects. The adoption of industrial consumer goods transformed colonial populations into modern and healthy subjects. The introduction of infant formula also came in colonies like Belgian Congo along with state-led efforts to bring women into the industrial labor market. Where the

demands made upon the industrial working class stood at odds with the traditional habits of childrearing like breastfeeding, bottle feeding offered an important alternative.¹³⁸

The research most notably of the nutritionist Derrick Jelliffe, first published in scientific journals, precipitated a global conversation about breastfeeding. Jelliffe, a professor at the University of the West Indies in Jamaica, noted in a widely cited article in 1968 in *Clinical Pediatrics* a connection between the rise of artificial formula and worldwide “protein gap” between the rich and poor. Like Cicely Williams decades earlier, he pointed to the “de-domestication” of women in countries like Chile and Uganda as well as to the negative example given by economically advantaged women who possessed the resources to use commercial formula products. But more than other pediatricians and nutritionists at the time, it was Jelliffe who blamed multinational corporations for disrupting traditional patterns of childrearing particularly by newspaper and radio advertising. Such methods promoted the growing sense among the urbanizing poor that breastfeeding was “archaic” and consumer alternatives were both “modern” and “statusful.”¹³⁹ The result of the rapid decline of breastfeeding was the spread of health problems, including malnutrition and infant mortality, but also significant and long-term problems in mental and physical development.

Jelliffe’s 1966 pamphlet, *Child Nutrition in Developing Countries*, became something of a handbook for aid workers in the third-world. Its clear advice about infant nutrition and its support for traditional methods of breastfeeding helped to precipitate a

¹³⁸ Tehila Sasson, “Milking the Third World? Humanitarianism, Capitalism, and the Moral Economy of the Nestlé Boycott,” *American Historical Review* 121, no. 4 (October 2016), 1201; Nancy Rose Hunt, “‘Le bébé en brousse’: European Women, African Birth Spacing and Colonial Intervention in Breast Feeding in the Belgian Congo,” *International Journal of African Historical Studies* 21, no. 3 (1988): 401–432;

¹³⁹ Derrick B. Jelliffe, “Breast-Milk and the World Protein Gap,” *Clinical Pediatrics* 7, no. 2 (February 1, 1968): 96.

movement against infant formula in the Global South.¹⁴⁰ It was in particular the Protein-Calorie Advisory Group (PAG) at the UN that emerged in the late 1960s and 1970s as a clearinghouse for information about formula in the developing world. Jelliffe's research and his critique of the formula industry became one of the most controversial viewpoints represented by the working group.¹⁴¹

The group met to examine the issue of global infant nutrition for the first time in Bogotá, Colombia in late 1970. Among those participating were academics, pediatricians, and government and business representatives. Given the wide-ranging conditions of countries discussed and the diversity of participants, the group initially set out just few general objectives that included promoting breastfeeding, advertising guidelines for producers, and some kind of cooperative action between public health advocates and the formula industry.¹⁴²

Jelliffe, one of PAG's consultants, walked away from the meeting hopeful about what PAG could accomplish at the next gathering that was planned for Paris in 1972. The "conversations were frank and mutually instructive," he wrote, and there were reasons to think that government leaders were becoming more responsive. As he surveyed conditions among the global poor, however, he typically saw either stasis or deterioration. In an article for *Nutrition Reviews* Jelliffe once again laid blame at the feet of industry. "It is harsh, but correct, to consider some of these children as suffering from 'commerciogenic malnutrition'—that is caused by the thoughtless promotion of these

¹⁴⁰ Tehila Sasson, "Milking the Third World? Humanitarianism, Capitalism, and the Moral Economy of the Nestlé Boycott," *American Historical Review* 121, no. 4 (October 2016): 1203.

¹⁴¹ Lisa H. Newton, "Truth Is the Daughter of Time: The Real Story of the Nestle Case," *Business and Society Review* 104, no. 4 (December 17, 2002): 368-369.

¹⁴² John Dobbing, ed., *Infant Feeding: Anatomy of a Controversy 1973–1984* (London: Springer-Verlag, 1988), 31.

milks and infant foods,” he wrote.¹⁴³ Pointing to a recent collection of muckraking reports on corporate misdeeds edited by Robert Heilbroner, Jelliffe saw what was going on with infant formula in the developing world as one part of a larger industrial trend in which social responsibility was sacrificed for the profit motive.¹⁴⁴

After the Paris meeting, the PAG working group issued a preliminary though widely circulated report, its Statement No. 23, in July 1972 in which it summarized the problems and reaffirmed that “breast milk is an optimal food for infants” and “adequate as the sole source for food during the first four to six months of age.” The challenge aid workers and medical professionals faced consisted in trying to do two things at once. They needed to encourage breastfeeding while at the same time make available substitute products for mothers who could not or for different reasons did not breastfeed. The document gave clear and challenging recommendations to governments and pediatricians and other physicians, but the main weight of responsibility was laid upon industry.¹⁴⁵ They asked corporations to educate their employees about the benefits of breastfeeding and to cease from discouraging breastfeeding in their promotional and sales materials. The document pointed to the need for labels that would be more effective among illiterate populations. They also asked industry to stop directly promoting products to new mothers in hospitals.¹⁴⁶

Within a year, Jelliffe had become disillusioned with the Protein Advisory Group. Its goal of finding some accommodation between meeting the nutritional needs of the

¹⁴³ D. B. Jelliffe, “Commerciogenic Malnutrition?,” *Nutrition Reviews* 30, no. 9 (September 1, 1972), 201.

¹⁴⁴ Robert L. Heilbroner, *In the Name of Profit: Profiles in Corporate Irresponsibility* (New York, NY: Doubleday, 1972).

¹⁴⁵ Protein Advisory Group of the United Nations System, PAG Statement No. 23: Rational Promotion of Processed Foods, July 18, 1972.

¹⁴⁶ John Dobbing, ed., *Infant Feeding: Anatomy of a Controversy 1973–1984* (London: Springer-Verlag, 1988), 34.

developing world and a mass market for infant formula and a modest but ethical profit for business seemed unworkable to him. Voluntary commitments from industry were a far too uncertain foundation. "I don't think we shall get far with this," he said, "and some other group may have to take a more aggressive, Nader-like stance in this regard."¹⁴⁷

The reference to Nader is worth a moment's reflection. Jelliffe did not expand upon what he meant, but considering that he uttered these words in a conversation that occurred in 1973 at the height of the corporate protests he perhaps had in mind some kind of action at annual meetings and a coordinated movement directed at a large corporation, perhaps something akin to the Campaign GM. Yet any would-be activists immediately faced the reality that infant formula was unlike many other consumer products or business misdeeds that reformers in America had faced in the past. Artificial milk, for one, most directly affected poor communities in the Global South. These victims were quite unlike, for example, the white, middle-class young girl who gruesomely died from wounds caused by glove compartment door in an automobile crash whose story Ralph Nader used to provocatively illustrate the dangers of bad automobile designs.¹⁴⁸ She was a perfect victim for an American audience. Dead babies in Sri Lanka were not.

There were other challenges. The infant formula producers were—at least in the case of Nestlé— multinational firms whose international governance made them more difficult to challenge by means of shareholder action. The rise of the global market for formula made activism more challenging. And, finally, communication was uniquely difficult. The problem of infant disease and malnutrition was caused by a range of

¹⁴⁷ Derrick B. Jelliffe and E. F. Patrice Jelliffe, "Food Supplies for Physiologically Vulnerable Groups," in *Ciba Foundation Symposium 23 - Human Rights in Health* (Wiley-Blackwell, 2008), 144.

¹⁴⁸ Ralph Nader, "The Safe Car You Can't Buy," *The Nation* (Apr. 11, 1959).

intersecting trends in public health. How could these things be explained to a mass audience in such a way as to provoke a mass movement?

The first overt step toward the creation of a Nader-like movement came in 1973 when *The New Internationalist*, a newly founded leftist British magazine, published two articles on infant formula. The first article, “The Baby Food Tragedy,” was published with a picture of a malnourished infant and a dirty baby bottle alongside advertisements that showed happy and well-fed babies. It consisted of two interviews with nutritionists who had studied the use of artificial milk principally in Africa and the Middle East.

Experts noted a “worrying swing” across the board, in the developing world and in countries like the United States, toward the use of infant formula, but significantly both researchers shifted the focus away from general social trends and toward one specific company—the multinational food manufacturer, Nestlé. They pointed to advertising and to promotional techniques used to target new mothers while they are recovering in the hospital with plenty of anecdotes to share. R.G. Hendrikse, a director at Liverpool University, said there was an urgent need for some international consensus on what constituted appropriate advertising. As things stood in 1973, there were huge differences in policies and practices between companies and among different regions. “In Bangkok, I saw a mother who was just about to leave hospital with a baby that had just been born and she had on the locker beside the bed, a tin of Nestlé’s milk and a small bottle with Nestlé written on it which, I was told, is given to all mothers before they leave hospital,” said David Morley, an expert in tropical child health at the University of London. “I think that the sellers of these milks would like to paint the idea to us that it is a responsible campaign. But I do not think that they have evaluated the total effect of their efforts on

the health of the children. I think that to be really responsible they should do this. They will nearly always give some lip service to breast-feeding but if you read their advertisements the weight is still on bottle-feeding.”¹⁴⁹

The New Internationalist, which in its early years published reports on a range of topics of concern to the New Left like the Vietnam War or the Green Revolution, returned to the topic of infant formula a few months later in an editorial that narrowed in on the Nestlé Company. Nestlé had responded to their previous interviews, the article reported, and disputed that the “immense socio-economic complexities of the situation” could be blamed on one single company. But the magazine rebuffed these appeals. “Tinned milk is still being advertised in maternity clinics and post-natal wards,” the article said, “Local conditions are still not being taken into account - it is all very well for the label on the tin to say that boiled water should be used to make up the milk-powder solution, but if the tin is sold to an illiterate mother the message tends to be lost.” The editors asserted that the product itself, which required the resources of developed countries, could not be responsibly promoted in many countries around the world.¹⁵⁰

Less than a year later, “The Baby Killer” was published by War on Want, an international non-governmental organization founded in the 1950s in the United Kingdom to bring relief for global poverty. The group distributed the 20-page document widely in the United States and Europe. An investigation of the use of powdered baby formula in the third world written by a journalist named Mike Muller, “The Baby Killer” was explosive because it translated for a broad audience the work of Jelliffe and the Protein Advisory Group, the research of the World Health Organization, and the

¹⁴⁹ Hugh Geach, “The Baby Food Tragedy,” *New Internationalist*, Aug. 1973.

¹⁵⁰ “Milk and Murder,” *New Internationalist*, Oct. 1973.

investigations of *The New Internationalist*. It laid out in plain language a handful of key indictments against the industry that would circulate over the next ten years among activist groups. “The baby food industry stands accused of promoting their products in communities which cannot use them properly,” Muller wrote in the report, “of using advertising, sales girls dressed up in nurses uniforms, giving away samples and free gift gimmicks that persuade mothers to give up breast feeding.”¹⁵¹

The argument of “The Baby Killer” was straightforward. Even the latest and most advanced formula was only an approximation of human milk, which was regarded by all experts and major health organizations to be the best source of nutrition for infants. But developing countries had over the last couple decades rapidly embraced artificial formula. One reason was that countries like Chile had promoted and supplied formula, but more broadly the shift was associated with larger economic and social changes. Rural populations were rapidly urbanizing, joining the industrial workforce, and giving up on traditional domestic practices. “Adoption of Western attitudes, like looking at the breast as a cosmetic sex symbol rather than a source of nourishment reinforce the trend,” Muller wrote.¹⁵² But one of the more pernicious causes of this shift—one that received most of the scorn—was the promotion of formula through advertisements, free samples, and particularly sales staff in hospitals who dressed similar to professional nurses.

War on Want pointed out that the problem wasn’t necessarily the use of formula, which had come a long way since the days of sweetened condensed milk, but rather the promotion of formula in areas of the world where it was likely to be misused. This

¹⁵¹ Mike Muller, *The Baby Killer: A War on Want Investigation into the Promotion and Sale of Powdered Baby Milks in the Third World* (London: War on Want, 1974), 1.

¹⁵² Mike Muller, *The Baby Killer: A War on Want Investigation into the Promotion and Sale of Powdered Baby Milks in the Third World* (London: War on Want, 1974), 5.

happened in a few ways. The first was the preparation of bottle milk. In contrast to the assumptions of product directions that instructed caregivers to boil and cool water, many people in the developing world could not easily do this. “The vast majority of West African mothers have no electric stoves. They cook in a ‘three-stone’ kitchen. That is, three stones to support a pot above a wood fire,” the report explained. “The pot that must be used to sterilise baby’s bottle also has- to serve to cook the family meal—so sterilising and boiling of water will probably be forgotten.” The expectation that mothers refrigerate mixed formula and sterilize water, and sterilize bottles with boiling water did not correlate to the facts on the ground. Running cold water was similarly a luxury for many. With these lack of resources, the bottle milk fed to infants was often unhygienic and could cause diarrhea or other illnesses. Many mothers had difficulty following these instructions in the first place. Sometimes the instructions were too complicated for the uneducated who were not familiar with using precise measurements, but for a large portion of the population even literacy with their own language was not something the formula producers could expect.¹⁵³

Aside from the lack of household resources or education, perhaps the single biggest impediment was economic. The Protein Advisory Group produced a table in 1971 showing the average cost of formula compared with the typical per-week minimum wage in different countries. In countries where there were no government subsidies like Peru or the Philippines the cost could be at least fifteen percent of weekly income for feeding a three-month old or, in the case of Pakistan and Egypt, as high as forty percent. In these cases, bottle feeding really wasn’t a practical option for most families. The most

¹⁵³ Mike Muller, *The Baby Killer: A War on Want Investigation into the Promotion and Sale of Powdered Baby Milks in the Third World* (London: War on Want, 1974), 7-8.

egregious example, often repeated, was of mothers who could not afford to use the required amount of formula and would ration it by half or more, leading to severe cases of undernourishment.¹⁵⁴

Activists made the devastating effects of this behavior vivid. Undernutrition, infection, malnutrition followed by a range of conditions and diseases which, if left untreated, caused long-term problems in childhood development, if not infant mortality. “Evidence has been growing which points to irreversible mental effects of malnutrition in children under two years old,” Muller wrote. “Children who have suffered from malnutrition lagged behind in language development and other indicators of intellectual performance.”¹⁵⁵ The report placed images of emaciated children alongside photos of product displays and advertisements.

The crisis in the developing world was, Muller echoed the words of Jelliffe, “commerciogenic.” Companies like Nestlé, the War on Want said, used newspaper, radio, and television advertisements along with sales women to promote formula use, not simply to make a product available as needed. The goal of such tactics, including giving away free samples and bottles, was to expand market reach and increase profits. Industry had abdicated its social responsibility. “It is easy to forget that the milk companies exist to make money for their shareholders. And it is commercial competition that creates many of the problems we have mentioned,” Muller wrote. “The social conscience of the companies is dictated by the long-term interests of their shareholders.”¹⁵⁶

¹⁵⁴ Mike Muller, *The Baby Killer: A War on Want Investigation into the Promotion and Sale of Powdered Baby Milks in the Third World* (London: War on Want, 1974), 7-8.

¹⁵⁵ Mike Muller, *The Baby Killer: A War on Want Investigation into the Promotion and Sale of Powdered Baby Milks in the Third World* (London: War on Want, 1974), 3.

¹⁵⁶ Mike Muller, *The Baby Killer: A War on Want Investigation into the Promotion and Sale of Powdered Baby Milks in the Third World* (London: War on Want, 1974), 13.

The impact of “The Baby Killer” was international. War on Want distributed copies in the United Kingdom and advertised it in newspapers like *The Guardian*.¹⁵⁷ A group called Third World Working Group translated it into German and published it in Switzerland with the provocative title, “Nestlé Kills Babies,” provoking a libel suit from the corporation that stretched on for years and provided a great deal of publicity for the activists.¹⁵⁸ In 1976, the documentary maker Peter Krieg released a film called “Bottle Babies” which focused on the impact of Nestlé’s formula products in Kenya.¹⁵⁹ As one academic observed at the time, the film was “probably responsible for enrolling most of the persons and groups who support the Nestlé boycott.”¹⁶⁰

The World Health Organization and the United Nations lent their official support for these efforts to mitigate the problems associated with infant formula. In 1974, the World Health Assembly passed a resolution that noted “the general decline in breast-feeding,” was related to “sociocultural and environmental factors, including the mistaken idea caused by misleading sales promotion that breast-feeding is inferior to feeding with manufactured breast-milk substitutes.”¹⁶¹ But aside from supporting research and raising general awareness, the tools of the WHO were limited and consisted in recommendations to the industry, member governments, and the general public.

The first activist action in the United States began not with the Nestlé Corporation, which was the largest producer of milk formula in the world, but with a handful of American companies—Abbott Laboratories, Bristol-Myers, and American

¹⁵⁷ “Shrivelled children, swollen profits,” *The Guardian*, Mar. 12, 1974.

¹⁵⁸ “13 Swiss Convicted In Nestle Libel Case,” *Washington Post*, Jun. 25, 1976.

¹⁵⁹ Tehila Sasson, “Milking the Third World? Humanitarianism, Capitalism, and the Moral Economy of the Nestlé Boycott,” *American Historical Review* 121, no. 4 (October 2016), 1210.

¹⁶⁰ George A. Garland, “An Examination of the Nestle Controversy,” Unpublished Manuscript, 10/18/82, 46. INFAC Records, cs. 1977-1993. Box 3. State Historical Society of Wisconsin Archives Division.

¹⁶¹ World Health Assembly, 27 (WHA27.43, 1974).

Home Products.¹⁶² It was the Interfaith Center on Corporate Responsibility (ICCR), an organization representing dozens of Protestant and Roman Catholic groups and founded largely in response to the Campaign to Make General Motors Responsible, that brought resolutions to the annual shareholders meetings of these companies in early 1976. Along with the Sisters of the Precious Blood, the women's religious community from Ohio, their efforts to pressure corporations by means of shareholder resolutions publicity in the United States. Dubbed, "ecclesiastical Ralph Naders," by some, these groups recognized the potential influence that voting shares held in the endowments of religious institutions like monasteries, denominations, and colleges might have in American business. Tim Smith, one of the leaders of the ICCR, imagined the Christian church as a shareholder. "The church is a massive shareholder," he said. "For too long, the church has kept its stock portfolios in one pocket and social ethics in another. Finally, it discovered that it could no longer remain a social schizophrenic."¹⁶³

These religious activists, whom *Fortune* magazine would call "Marxists marching under the banner of Christ," were instrumental in forcing the infant formula issue.¹⁶⁴ The ICCR introduced resolutions at the annual meetings of Bristol-Myers, Abbot Laboratories Inc., and American Home Products asking the companies to present their consumer education programs and to provide information on the promotion of infant formulas in developing countries.¹⁶⁵ Although these resolutions failed overwhelmingly at the corporate ballot, Bristol-Myers was compelled to respond to public criticism by releasing a report later in 1975, "The Infant Formula Marketing Practices of the Bristol-Myers

¹⁶² "Formula for Malnutrition," *The Corporate Examiner* (Apr. 1975).

¹⁶³ "The Ralph Naders of the Church," *Chicago Tribune*, Jan. 18, 1975.

¹⁶⁴ Herman Nickel, "The Corporation Haters," *Fortune* (Jun. 16, 1980).

¹⁶⁵ "Do-Gooders Gird For Battle as Annual Meetings Near," *Cincinnati Enquirer*, Mar. 14., 1975.

Company in countries outside the United States.” Advocates alleged that the document was riddled with falsehoods.¹⁶⁶

The next year, the ICCR along with the Ohio-based Sisters of the Precious Blood made another proposal at the Bristol-Myers annual meeting. The company responded with a recommendation to shareholders to vote against the measure.¹⁶⁷ The mailer to voters was supported with information culled from the previous year’s report, information which activists were convinced was deceptive. Such a violation of SEC proxy rules presented the nuns with an opportunity for legal action. In early 1976 they filed a lawsuit alleging Bristol-Myers was lying when it said it “does sell infant formula products in the least developed countries; its sales in the less developed countries are only one-third of its total sales; its sales are mostly of ‘sick baby’ formulas; and its products are marketed through professional medical personnel and are not promoted where poverty and ignorance could lead to misuse.”¹⁶⁸ The case, which was settled out of court in 1978, represented an important win for the religious activists and offered significant publicity for the movement.¹⁶⁹

Meanwhile the movement against Nestlé was developing on other fronts. The Minneapolis-based Infant Formula Action Coalition, which had been organizing demonstrations against the local Nestlé office for months with handmade messages like “Nestlé cares for profit more than people,” announced on July 4, 1977 that they were launching a boycott.¹⁷⁰ The group, which was just one chapter of the nation-wide

¹⁶⁶ Bryan Knapp, “‘The Biggest Business in the World’: The Nestlé Boycott and the Global Development of Infants, Nations and Economies, 1968-1988,” Dissertation (Brown University, 2015), 119.

¹⁶⁷ “Drop in Breast Feeding Causes Health Problems in Poor Countries,” *New York Times*, Apr. 16, 1975.

¹⁶⁸ *Sisters of the Precious Blood, Inc. v. Bristol-Myers Co.*, 431 F. Supp. 385 (S.D.N.Y. 1977).

¹⁶⁹ “Nuns Storming the Boardroom to Save Babies’ Lives,” *Chicago Tribune*, Apr. 8, 1978.

¹⁷⁰ “Group pickets Nestle Co.,” *Minneapolis Star*, Jun. 30, 1977.

INFACT organization, says it singled out Nestlé because the firm was the largest producer of infant formula and that it refused to decrease its advertising in developing countries.¹⁷¹ The first claim was undoubtedly true, but the second was more complicated. Nestlé tended to be more responsive and willing to meet with activists than other firms and they participated in crafting industry codes particularly when it came to advertising. The market share and the name recognition of the Nestlé Company, which was a multinational food producer conglomerate, made it an ideal target.

The Swiss company posed significant challenges to American activists in particular because it was not subject to the same securities laws or shareholder markets as American companies like Bristol-Myers or General Motors.¹⁷² Storming the shareholder meeting and challenging management, unlike other episodes of shareholder activism, was not an option. INFACT's campaign, which spread internationally among a variety of groups, took the fight to consumers. But even the consumer market was not straightforward. Nestlé did not market its formula products in the United States. Other aspects of the firm's business had to be targeted. Nestlé was a conglomerate made up of a variety of companies in different sectors of good production and food service. As in the case of other diversified firms at the time, it was this variety that gave the corporation its stability. But in the case of a boycott conglomeration became a liability because of the broad range of products that consumers could avoid purchasing. INFACT targeted

¹⁷¹ "Marchers protest formula maker," *Star Tribune*, Jul. 5, 1977.

¹⁷² Tehila Sasson, "Milking the Third World? Humanitarianism, Capitalism, and the Moral Economy of the Nestlé Boycott," *American Historical Review* 121, no. 4 (October 2016), 1216.

products ranging from Stouffer's frozen dinners and Nestlé's chocolate to Cain's coffee and Libby's frozen vegetables.¹⁷³

The coalition called on Nestlé to make several policy changes. Chief among them was to stop the promotion and advertising of formula and to discontinue the distribution of free samples to hospitals and clinics. They also demanded that the company desist from employing "milk nurses" in third world hospitals. Like other corporate activists had done in those years, INFACT hoped to meet and work with the company to "rectify this situation." The two sides would find some agreement on these demands, but they stumbled over two others: promotion to the medical profession and the availability of formula to "people who do not have the means or facilities to use it safely."¹⁷⁴

The group pressed Nestlé to respond as soon as possible. The company did, and their motivation was likely not fear of an immediate impact to their revenues—boycotts are difficult to execute successfully on a large scale—but rather of guilt by association with such an odious problem as infant malnutrition and mortality. The damage to the company's brand in the long-term could be profound. Nestlé officials met with INFACT representatives in the fall of 1977 along with other activists in the corporate responsibility movement including people from the Interfaith Center on Corporate Responsibility and other activists.¹⁷⁵

Following the meetings, Nestlé issued a "policy changes" statement that outlined how the company was conducting its formula business in developing countries. Among

¹⁷³ "Nestle in the USA—Giant in Disguise?" Part 6. Box 1. Folder 8. Nestle as a Corporation. INFACT Records, 1971-1993.

¹⁷⁴ John Dobbing, ed., *Infant Feeding: Anatomy of a Controversy 1973–1984* (London: Springer-Verlag, 1988), 62.

¹⁷⁵ "Chronology," Folder 5-6. Box 8. Part 1. INFACT Records, 1971-1990.

other things, the document said that information stressing the importance of breastfeeding was now on product labels and educational materials, but the company still distributed promotional brochures at clinics and hospitals. The statement also emphasized that all promotional and educational materials as well as hospital and home visits from Nestlé personnel were monitored and only approved by a controller. And staff no longer wore white uniforms that might allow them to be confused with nurses.¹⁷⁶ But INFACT largely rejected the statement as inadequate. “It is not the color of the nurses uniforms to which INFACT objects,” their newsletter shot back.¹⁷⁷

The company’s hopes of containing the boycott were quickly dashed. They met again with activists in early 1978 and learned that their policy changes statement had done little to satisfy representatives of INFACT, ICCR, and others. Critics said that it did not represent a “fundamental rethinking” of the formula problem.¹⁷⁸ Unlike Nestlé officials, activists did not trust the company to hold itself accountable. As some within INFACT started to think, even meeting with the company in private gave legitimacy to Nestlé and provided them with the ammunition to claim that they were serious about solving the problem.¹⁷⁹ Increasingly activists came to agree that some system of independent monitoring and accountability had to be established on an international scale.

The most high-profile event came in May 1978 with a Senate hearing on the formula issue chaired by Edward Kennedy. The hearing room was crowded with activists

¹⁷⁶ Letter from S.E. Korsen to Leah Margulies. Oct. 6, 1977. Folder 33, Box 24, Part I. INFACT Records. Wisc. Hist. Soc.

¹⁷⁷ “Has Nestle Really Changed?,” INFACT Newsletter, Winter 1978. “INFACT Newsletter, 1979-1981,” Folder 4, Box 3, Part 1. Wisconsin Historical Society.

¹⁷⁸ “Nestle and Critics Meet,” INFACT Newsletter, March 1978.

¹⁷⁹ Internal Policy Committee Memo, “Thought Pieces,” Folder 4, Box 2, Part 1. Wisconsin Historical Society.

and industry representatives, television cameras, and journalists. Among topics discussed at the hearing, the fundamental one was whether it was responsible for companies even to sell certain products in some places. “Can a product which requires clean water, good sanitation, adequate family income and a literate parent to follow printed instructions be properly and safely used in areas where water is contaminated, sewage runs in the streets, poverty is severe and illiteracy high?” Kennedy asked in his opening statement.

Corporations like Abbott Laboratories made the case that their internal codes had addressed the most significant issues, but critics who testified insisted that problems caused by offering free samples, for example, could not be solved by a code that specified the appropriate way to hand out free samples.¹⁸⁰

Activists called for radical change; business leaders pointed to reform efforts. In a public forum where liberal senators sided with the activists, business was outmatched. The president of Nestlé-Brazil, Oswaldo Ballarin, for example, at the request of Nestlé officials in the U.S. testified before the subcommittee. “The U.S. Nestlé Co. has advised me that their research indicates this is actually an indirect attack on the free world's economic system,” he said. “A worldwide church organization, with the stated purpose of undermining the free enterprise system, is in the forefront of this activity.” To laughter and applause, Kennedy interrupted and upbraided Ballarin. “You do not seriously expect us to accept that on face value,” he said. “It seemed to me that they were expressing a very deep compassion and concern about the well-being of infants, the most vulnerable

¹⁸⁰ “Role of Infant-Formula Makers in Developing Nations Hit,” *Washington Post*, May 24, 1978.

people on the face of this world, and expressing it on the basis of information and scientific knowledge, understanding and care and compassion.”¹⁸¹

Between activists and business leaders, the dispute, at least as it unfolded in public, was not whether corporations had responsibilities but which ones and how those responsibilities should be met. The maker of the product Similac was no exception. “We are keenly aware of the responsibilities of Abbott Laboratories to make a positive contribution to the health and well-being of infants in developing countries,” the company said in its Code of Marketing Ethics in Developing Countries in 1977.¹⁸² In the face of mounting criticism of the conduct of the largest producers, however, such statements came to sound pat. Activists and policymakers called for legible structures of accountability, not general feelings of concern. It all turned on responsibility. “Whose responsibility is it to control the advertising, marketing and promotional activities which, in and of themselves, may create a market in spite of public health considerations?” Edward Kennedy asked at the hearing in 1978. “When economic incentives are in conflict with public health requirements, how shall that conflict be resolved? Is it enough to establish a code for product, use and disown or turn away from the realities of product use?”¹⁸³

Despite Kennedy’s outraged reaction to the Nestlé official’s contention that activists were attacking the free enterprise system, his own line of questioning, which summarized the issues at stake, posed significant challenges to the status quo of corporate

¹⁸¹ Subcommittee on Health and Scientific Research, Committee on Human Resources, *Marketing and Promotion of Infant Formula in the Developing Nations: Hearings before the Subcommittee on Health and Scientific Research, Committee on Human Resources* (Washington, D.C.: U.S. Government Printing Office, 1978), 127-128.

¹⁸² “Code of Marketing Ethics,” Folder 1, Box 1, Part 1. INFAC Records. Wisc. Historical Society.

¹⁸³ Subcommittee on Health and Scientific Research, Committee on Human Resources, *Marketing and Promotion of Infant Formula in the Developing Nations*, 1-2.

capitalism. INFACT recognized this. “If the study of this problem leads people to ask questions about multinational corporations and the free enterprise system, then those are questions that must be asked,” The group’s quarterly newspaper said. “Nestlé’s irresponsible cover-up efforts stand as a poor defense of capitalism’s ability to cope effectively with important social problems.”¹⁸⁴

The infant formula issue showed how deeply corporate social responsibility could run. More than other controversies over the obligations of business, this one challenged the nexus of what John Kenneth Galbraith called countervailing powers.¹⁸⁵ Unlike Ralph Nader’s consumer safety campaigns in the 1960s, for example, the consumers of infant formula were by definition unable to participate in mass political action. Many of the largest formula producers were international firms whose political economic context was not solely or even particularly American. Certain regulatory tools, then, that could work when it came to domestic business did not effectively cover economic transactions that took place in developing countries. Shareholder action, as in the case of the Nestlé Company, had a limited reach as well. The situation called for some new kind of accountability mechanism.

A more substantive understanding of corporate social responsibility, one that the infant formula activists embraced, consisted in fundamental changes to how companies were governed. “Other corporations have acknowledged that their social responsibilities encompass the ways in which they do business,” *The Corporate Examiner* wrote, “the quality of their products, creative employment patterns for women and minorities, and the

¹⁸⁴ “Nestle to Hire Public Relations Firm,” INFACT Update, July/August 1978. Folder 4, Box 3, Part 1.

¹⁸⁵ John Kenneth Galbraith, *American Capitalism: The Concept of Countervailing Power* (Cambridge, MA: Houghton Mifflin Co., 1956).

implications of certain overseas investments.”¹⁸⁶ For activists at the ICCR, the key was internal corporate change that made managers accountable to standards that extended beyond profit. It was the infant formula issue that precisely by eluding traditional methods of influencing corporate behavior highlighted the importance of restructuring how institutional power was exercised in the first place. As they had pointed out years before, even if business regulation at the legislative level could be effective in some cases, it was by itself a tool of limited usefulness. “Many critics of the corporate responsibility movement say that its focus is misdirected. If change is to come, they say, it will and must come through legislation,” *The Corporate Examiner* editorialized. “The critics’ assumption is that the legislative dog does in fact wag the corporation’s tail. Yet as research into the activities of business and its leaders continues, serious questions about corporate influence on legislators and governmental agencies emerge.”¹⁸⁷

Nestlé felt the heat of the boycott as the activist movement continued. *Business Week* reported that their sales were down in 1980.¹⁸⁸ Sensing that things had gotten out of control, the company formed an office with fifteen staffers to handle corporate social responsibility issues.¹⁸⁹ A memo written in 1980 by a vice-president, Ernest Saunders, which was subsequently leaked to activists, shows a company feeling besieged and in some cases outmatched. “It is clear that we have an urgent need to develop an effective counter propaganda operation,” Saunders wrote, “with a network of appropriate

¹⁸⁶ “Corporate Responsibility: A Brief Action Guide,” *The Corporate Examiner*, Mar. 1975.

¹⁸⁷ Editorial, *The Corporate Examiner*, March 1972.

¹⁸⁸ “Nestlé: Centralizing to Win a Bigger Payoff from the U.S.,” *Business Week*, Feb. 2, 1981.

¹⁸⁹ “A Boycott Over Infant Formula,” *Business Week*, Apr. 23, 1979.

consultants in key centres, knowledgeable in the technicalities of infant nutrition in developing countries, and with the appropriate contacts to get articles placed.”¹⁹⁰

Saunders was particularly pleased with *Fortune* magazine’s publication of “The Corporation Haters,” in June 1980, a red-baiting article that cast the infant formula activists as willful promoters of communism. He hoped that widespread circulation of the piece would help the formula industry. The confidential internal memo showed that Nestlé had secretly helped fund the Ethics and Public Policy Center, a new right-wing think tank, which reprinted and distributed the article. The effectiveness of this campaign was short-lived, however, because Saunders’s memo eventually ended up in the hands of Morton Mintz, a reporter at the *Washington Post*, who published an exposé, “Infant-Formula Maker Battles Boycotters by Painting Them Red,” that detailed the secret arrangement.¹⁹¹

Embarrassed and on their heels, Nestlé pivoted. It created an organization headquartered in Washington, D.C. that was more publicly friendly to the corporate social responsibility cause, the Coordination Center for Nutrition, Inc. The head of the center, Rafael Pagan, described its mission in this way: “What we can do—what indeed we must do—is to learn to think and act politically; to establish political goals; to develop political techniques and expertise; and, most important, to ally ourselves to some affirmative popular aspirations in the world.”¹⁹² Another way of putting Pagan’s point is that strident opposition to compromise and cooperation was doing harm to Nestlé’s

¹⁹⁰ Memo from E.W. Saunders to A. Furer, August 2/4, 1980, Folder 2, Box 2, Part 1. INFAC Records. Wisc. Hist. Soc.

¹⁹¹ *Washington Post*, Jan. 4., 1981.

¹⁹² Rafael D. Pagan, Jr., “Carrying the Fight to the Critics of Multinational Capitalism: Think and Act Politically,” *Vital Speeches of the Day*, Jul. 15, 1982.

political legitimacy. He positioned the new campaign as a third way between the company's old habits and the radical demands of the activists.

Like Oswaldo Ballarin had said at the Kennedy's Senate hearing, Pagan believed that the activists at INFACT and the ICCR opposed the systems of free enterprise and market democracy. He recognized that those who wanted to restructure corporate governance were seeking to transform the corporation itself. In a speech to the Public Relations Society of American in 1982, Pagan offered a refashioned vision of corporate liberalism for the late twentieth century. "Is the corporation human? What are the corporation's citizen responsibilities? Should the corporation be required to do other than what it is intended to do?" he asked. "Where and how should business and society interface? To whom is the corporation accountable on ethical and moral questions?" These questions struck at the core of what a corporation was and what it was for, he believed, and they could be answered by keeping business structures essentially the same. What activists believed was an existential problem could simply be solved by more effective communications strategies. "We must be able to bridge the gap between opposing perceptions involving the corporation and the public. That is our call."¹⁹³ Leaders of INFACT interpreted this shift in tone as just another propaganda tactic.

While Nestlé was ramping up its lobbying arm in Washington, D.C., representatives from INFACT, the ICCR, the War on Want, and other international committees met with industry leaders, the World Health Organization, and UNICEF at a summit in Geneva in late 1979. Although UN and WHO organizations had organized

¹⁹³ Rafael D. Pagan, Jr., "The Future of Public Relations and the Need for Creative Understanding of the World Around Us," 35th Public Relations Society of America National Conference, San Francisco, CA, Nov. 8, 1982. Folder 8, Box 8, Part 1. INFACT Records. Wisc. Hist. Soc.

meetings between industry, policymakers, and experts before, this event was unique because the participants included international activists. The meeting produced a call for an international code on the marketing and distribution of baby formula, a ban on all advertising, and any industry materials that would discourage breastfeeding.¹⁹⁴ The resolution also called for partnership between NGOs, governments, and industry to allow for international monitoring.¹⁹⁵ The document, as Tehila Sasson has argued, framed any opposition to an international code as a kind of human rights violation.¹⁹⁶

At the 34th World Health Assembly in May 1981, the WHO formally adopted an international code that acknowledged the social and economic complexities involved in the use of breast milk substitutes in the developing world nevertheless set clear limits on how companies presented their formula products to consumers and how health care systems educated mothers. It also called for strict international system of monitoring so that any malfeasance on the part of manufacturers, distributors or hospitals could be identified.¹⁹⁷ The code established for the first time a system of governmental accountability for multinational corporations. The code, which was opposed solely by the new Reagan Administration, represented a change in how corporate decisions could be made, what managerial accountability meant, and how social responsibilities were understood.¹⁹⁸ “Global justice was to be achieved through an ethical form of regulated capitalism rather than through state policy,” Sasson notes.¹⁹⁹

¹⁹⁴ “Baby-Food Industry Agrees to a Curb on the Promotion of Infant Formulas,” *New York Times*, Oct. 13, 1979.

¹⁹⁵ Statement of the Joint WHO/UNICEF Meeting on Infant and Young Child Feeding, October 1979, 29.

¹⁹⁶ Sasson, “Milking the Third World?,” *American Historical Review*, 1222.

¹⁹⁷ World Health Assembly, 34. (1981). International Code of Marketing of Breastmilk Substitutes. World Health Organization.

¹⁹⁸ “Two AID Officials Dispute Reagan Decision to Oppose Code for Infant Formula,” *Washington Post*, May 17, 1981.

¹⁹⁹ Sasson, “Milking the Third World?,” *American Historical Review*, 1222.

The boycott of Nestlé continued up until 1984. Although the company accepted the central requirements of the code, they wanted to carve out room for individual nation-states to adapt it to certain local needs. Eventually in January 1984, after one-on-one negotiations, activists and Nestlé jointly announced victory and the end of the boycott. The final concession, INFACT's Douglas Johnson said, was that the company agreed to follow the direction of the WHO and UNICEF when it came to interpreting the code.²⁰⁰

The infant formula controversy, which began in the late 1960s with aid workers and concerned researchers and continued into the 1980s as activists continued to pressure corporations to adhere to the WHO code, strained the limits of the corporate social responsibility movement. The international scope and the variety of institutions involved, from corporations and NGOs to international governmental agencies and activist organizations, made the project complex. It was the international boycott that pressured the Nestlé company, not just in terms of its profits but also its public image. The boycott, however, helped to channel political and social activism back into the market—back into market thinking and market relations. In response Nestlé became more careful about handling its public image and strategic about addressing the problem of infant malnutrition and successfully defended itself against fundamental challenges to corporate governance.

Conclusion: Big Business Day

“There is no doubt that we face major problems in the governance of our major corporations.” So said Senator Howard Metzenbaum at a hearing of the Senate Subcommittee on Securities in 1980. Noting a collapse public support of big business, a

²⁰⁰ “Statement to the Press, Feb 6th, 1984 Mexico City,” Folder 40, Box 2, Part 1. INFACT Records. Wisc. Hist. Soc.

decline in the number of people who invested in corporations, and the widespread failure of corporate boards to provide institutional oversight, Metzenbaum declared that there was a loss of confidence in business.²⁰¹ The subcommittee met to consider the Protection of Shareholders' Rights Act of 1980, which Metzenbaum had introduced earlier that year. The bill, attacked by ascendant conservatives who called it anti-business, would have transformed corporate capitalism in profound ways.

The Corporate Democracy Act of 1980, as it was otherwise known, was the brainchild of Mark Green, head of a public interest group called Congress Watch, and his associate, Ralph Nader. Both had been involved in projects together going back to the late 1960s, including Campaign GM, and had been working on corporate governance issues for about a decade.²⁰² It was the goal of Big Business Day 1980 to promote this legislation by calling attention to the abuses of major corporations. It represented perhaps the most developed policy proposal to emerge from the corporate responsibility movement of the 1970s. But its rapid defeat and almost complete disappearance from late twentieth century American politics marks the Corporate Democracy Act as one of the final events in the era of corporate protests. The defeat was significant because the bill would have revolutionized the decision-making apparatus of major corporations—a step many activists had come to believe was a necessity for corporate reform.

The bill built on ideas that had percolated during a decade and a half of activism. The boards of directors, for example, would be restored to their original status as auditing

²⁰¹ Protection of Shareholders' Rights Act of 1980, Senate Subcommittee on Securities, Nov. 19, 1980. (Statement of Howard M. Metzenbaum, U.S. Senator from the State of Ohio)

²⁰² See Ralph Nader and Mark J. Green, eds., *Corporate Power in America* (New York, NY: Grossman Publishers, 1973); Ralph Nader, Mark J. Green, and Joel Seligman, *Taming the Giant Corporation* (New York: W.W. Norton & Company, 1976).

institutions. Directors would come from outside the corporation and be charged with a mandate (and the resources) to oversee managers and to keep track of business decisions that shaped important social issues. It likewise would have made the corporation more of a government institution by restoring the voting capacity of shareholders and stakeholders. Finally the act envisioned the corporation as a publicly accountable institution which would be required to provide accessible information to the general public and to give advanced notice of business decisions that might significantly impact unemployment. “The fundamental premise of Big Business Day is that shareholders are just one of many ‘stakeholders’ of a corporation,” Mark Green said. “Yet other than shareholders, these other stakeholders, like workers, consumers and local communities, are denied access to a voice in these giant private governments.”²⁰³

It was not just the election of Ronald Reagan in 1980 that made Big Business Day and the Corporate Democracy Act seem quixotic. As Metzenbaum put it that November, “I do not delude myself into thinking that this bill will be promptly enacted, especially after the results of the recent election.”²⁰⁴ It was also that these corporate reform efforts provoked an unprecedented opposition from right-wing think tanks and large business groups. Big business had come a long way since Saul Alinsky had marched into the shareholders meeting of the Kodak Company in 1967. It was now more organized, experienced, and able to repel activists. The fiasco of Big Business Day served, as

²⁰³ “Big Business Day; The Voice of the ‘Stakeholder’ Is Rising,” *Washington Post*, Apr. 14, 1980.

²⁰⁴ Subcommittee on Securities, Committee on Banking, Housing, and Urban Affairs. Senate, *Protection of Shareholders’ Rights Act of 1980: Hearing before the Subcommittee on Securities, Committee on Banking, Housing, and Urban Affairs. Senate, Nov. 19, 1980* (Washington, D.C.: U.S. Government Printing Office, 1980), 12.

Benjamin Waterhouse has put it, as “a potent symbol of their declining political influence.”²⁰⁵

As the decade of Wall Street deregulation dawned in the United States, the obligations of business were changing. The language of corporate social responsibility was rarely used to speak of changes to corporate governance or commitments to non-economic benchmarks. The imperatives of shareholder value and the function of shareholder activism were growing.

²⁰⁵ Benjamin Waterhouse, “The Corporate Mobilization against Liberal Reform: Big Business Day, 1980,” in *What’s Good for Business: Business and American Politics since World War II* edited by Kim Phillips-Fein and Julian Zelizer (New York: Oxford University Press, 2012), 234.

4

There is No Such Thing as a Corporate Responsibility

If anything is certain to destroy our free society, to undermine its very foundations, it would be a wide-spread acceptance by management of social responsibilities in some sense other than to make as much money as possible. This is a fundamentally subversive doctrine.

-Milton Friedman, academic seminar (1958)¹

Corporate social responsibility, a doctrine offered by many as a scheme to popularize and protect free enterprise, can only succeed if the free market is abandoned.

-Henry Manne, American Enterprise Institute event (1972)²

I was probably the most reviled law professor in America...It may be hard for younger people to believe the intense hatred and ridicule that defenders of private property and free markets experienced just a few years back. But it was so, and to experience it as an academic was not fun.

Henry Manne, oral history interview (2007)³

The corporate protests created a market for Henry Manne. As young activists in the late 1960s and early 1970s remade corporate social responsibility into an insurgent political doctrine that posed new challenges to the legitimacy of big business, Manne's ideas and services became more valuable. Once dismissed by colleagues as a "conservative kook" and relegated to the margins of academia, the 43-year-old University of Rochester law professor found new and larger audiences for his scathing criticisms of Ralph Nader and the Campaign to Make General Motors Responsible. "It is high time," he told a public audience in 1971, "that we stop treating corporate activists as simply nice

¹ Quoted in Friedrich A. Hayek, "The Corporation in a Democratic Society," in *Management and Corporations* 1985 ed. by Melvin Anshen and George Bach (New York, NY: McGraw-Hill, 1960), 117.

² Henry Manne and Henry Wallich, *The Modern Corporation and Social Responsibility* (Washington, DC: American Enterprise Institute for Public Policy Research, 1972), 34.

³ Henry G. Manne, "How Law and Economics Was Marketed in a Hostile World: A Very Personal History," in *The Origins of Law and Economics: Essays by the Founding Fathers*, ed. Francesco Parisi and Charles Kershaw Rowley (Northampton, MA: Edward Elgar, 2007), 310, 311.

young idealists, and start realizing that they are irresponsible gadflies who deserve to be publicly chastised.”⁴

Manne had a gift for polemics and more than enough energy to go with it. In addition to his teaching regularly and organizing a newly created summer economics boot camp for law professors, Manne crisscrossed the country giving speeches defending the profit motive and delivering the message that the proposals of the “anti-corporate zealots” were fascist.⁵ He appeared in public debates with Nader and with other leaders of Campaign GM.⁶ At the White House Conference on the Industrial World Ahead in 1972, he traced the ideology of corporate responsibility through the New Deal back to Progressivism and Populism. It was, he said, a defunct concept that would lead to the destruction of the market system.⁷ The liberal activists were, he wrote in *Barron's*, afflicted by a “paranoid delusion of vast power and responsibility.”⁸ It was not without reason that *Business Week* called him Nader’s “most outspoken critic.”

In addition to creating a market for Manne’s ideas, the activists who protested business misdeeds at the annual shareholders meetings of General Motors, Eastman Kodak, and Dow Chemical also generated demand for Manne’s services. He was a consultant to General Motors and other large corporations at the time. He provided advice for how to deal with the social issues that activists raised.⁹ He wrote position papers and

⁴ “Meet Ralph Nader’s most outspoken critic,” *Business Week*, Jul. 24, 1971.

⁵ “Hard Times,” *Indianapolis News*, May 21, 1971.

⁶ “Business/People,” *Democrat and Chronicle*, Sep., 29, 1971; Donald E. Schwartz, “Towards New Corporate Goals: Co-Existence with Society,” *Georgetown Law Journal* 60 (1972 1971), 788n10.

⁷ Henry G. Manne, “The Paradox of Corporate Responsibility,” in *White House Conference on the Industrial World Ahead: A Look at Business in 1990* (Washington, D.C.: Government Printing Office, 1972), 95-98.

⁸ Henry G. Manne, “Who’s Responsible: What the Anti-Corporate Zealots Are Pushing Is Coercion,” *Barron’s National Business and Financial Weekly*, May 17, 1971.

⁹ “Meet Ralph Nader’s most outspoken critic.”

crafted the language that eventually wound up in the speeches of important business leaders like the chairman of GM, James Roche, who declared that corporate social responsibility was a catchphrase of the “adversary culture,” which was threatening free enterprise and provoking national division.¹⁰

Manne came out of this experience with big ideas. He planned to launch an organization modeled after the American Civil Liberties Union, but this one would be for the defense of free enterprise and would engage in activities like suing regulatory agencies and lobbying against licenses. He hoped to write a book that would finally take down liberal economic theory, from Adolf Berle to John Kenneth Galbraith.¹¹

A civil liberties union for business, however, did not materialize in the way Manne had envisioned, but his plans became no less ambitious. With support from large corporations and conservative foundations like the Liberty Fund and the Olin Foundation, Manne built the Law and Economics Center (LEC), which became one of the most influential conservative institutions of the 1970s and 1980s. Combining academic research with professional education programs and public advocacy, the LEC supported the conservative counterattack on corporate social responsibility and advocated deregulation of antitrust, finance, and consumer and environmental protection. With deep connections to the Mont Pelerin Society and the University of Chicago, Manne was able to form powerful networks between conservative legal and economic thinkers and leaders in business, law, and government. Eventually, as dean, he rebuilt what became the Antonin Scalia Law School at George Mason University and which remains the premiere institution for the libertarian perspective in law and economics. Relentlessly active and at

¹⁰ “GM Chief Attacks Fly-by-Night Critics,” *Detroit Free Press*, Mar. 26, 1971.

¹¹ “GM Chief Attacks Fly-by-Night Critics.”

times intellectually brilliant, Manne brought his devotion to the ideas and politics of free enterprise into everything that he did.

This chapter tells the story of the conservative opposition to corporate social responsibility by following the career of Henry Manne. He concluded his career the same way that he began it—as an outsider—but, though he is largely unknown today, he ended up as one of the most important conservative intellectuals in the second half of the twentieth century because of his ideas and his ability to create and maintain institutions.

Manne is illustrative for a couple reasons. One is that the trajectory of his career tracks nicely with the historical development of conservative legal and economic ideas and especially of new market-centered theories of the corporation as they were created, circulated, and eventually admitted into the world of respectable opinion. Another reason is that Manne’s work, through his connections with the University of Chicago, the Mont Pelerin Society, and the Liberty Fund, overlapped in productive ways with different spheres of the conservative movement, from its economics and legal wings to its public policy activism.

In recent years, scholars have given a great deal of attention to the long history of the conservative movement and to the development of neoliberalism inquiries that overlap with the narrative of this chapter in key ways. More narrowly, historians have examined the development of the conservative legal movement, the Mont Pelerin Society, and the “Chicago School” of economics. These, too, intersect with and give context to the story being told here. But this chapter focuses on the development of conservative opposition to liberal corporate theory, the ideology of business statesmanship, and the corporate protest movements. This history begins in the

immediate postwar years with Manne's intellectual influences and early scholarly work and reaches a crescendo in the 1970s and 1980s as the institutions that Manne helped to build reached powerful positions of influence in American politics and law. Along the way, I give attention to the rise of the larger movement of law and economics within the judiciary and fields of legal scholarship. The story of economically minded legal theorists and right-wing intellectuals told here provides a crucial element to the history of corporate social responsibility. It shows how activists were able to deploy new and radical ideas of economic individualism, market efficiency, and contractual rationality to dislodge notions of the corporation as a social and governmental institution. The ideas of power and responsibility, a conceptual space where politics and economics overlapped, were weakened and marginalized—at least for a time. The language of markets metastasized. “I stand in awe of what the free market can do,” Manne said.¹²

From the Chicago School to Law and Economics

The University of Chicago plays an important role in the stories that scholars and journalists tell about the conservative movement. Even more than the institution itself, the so-called “Chicago view” or “Chicago approach” occupies an enormous space in the history of ideological battles that took place in the latter half of the twentieth century in the United States and across the globe.¹³ Along with the Mont Pelerin Society, no name is

¹² “Meet Ralph Nader’s most outspoken critic.”

¹³ Among the voluminous literature, see, for example, Glen Biglaiser, “The Internationalization of Chicago’s Economics in Latin America,” *Economic Development and Cultural Change* 50, no. 2 (2002): 269–86; Wendy Brown, *Undoing the Demos: Neoliberalism’s Stealth Revolution* (Cambridge, MA: MIT Press, 2015); Angus Burgin, *The Great Persuasion: Reinventing Free Markets since the Depression* (Cambridge, MA: Harvard University Press, 2012); Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978-1979* (New York, NY: Picador, 2010); David Harvey, *A Brief History of Neoliberalism* (New York, NY: Oxford University Press, 2005); Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (New York, NY: Henry Holt and Company, 2010); Philip Mirowski, *Never Let a Serious Crisis Go to Waste: How Neoliberalism Survived the Financial Meltdown* (Brooklyn, NY: Verso Books, 2013); Philip Mirowski and Dieter Plehwe, *The Road from Mont Pèlerin: The Making of the*

more likely to serve as a shorthand than the Chicago School for a collection of ideas that are now perceived to have had consequences for the development of public policy, including especially deregulation and the governance of financialization.¹⁴

The University of Chicago and the Mont Pelerin Society appear as influential pieces of a larger network in which the story of this chapter develops. These institutions especially at mid-century are unavoidable if we want to understand the development of the conservative movement and, relatedly, neoliberalism especially in the field of economics, but also in the field of law.¹⁵ In this story, University of Chicago Department of Economics and the Mont Pelerin society functioned as networks of people and ideas that developed in unforeseen ways. As Philip Mirowski has put it, if the Mont Pelerin Society occupied the ideologically pure center of the movement because it was an “exceptionally successful structure for the incubation of integrated political theory and political action,” then the University of Chicago Law School and Economics Department were the “next layer of the Russian doll.” In Mirowski’s telling, these centers of conservative idea-making and mongering were the “emergent public face of the thought collective.”¹⁶

Neoliberal Thought Collective, With a New Preface (Cambridge, MA: Harvard University Press, 2015); George Monbiot, “Neoliberalism – the Ideology at the Root of All Our Problems,” *The Guardian*, April 15, 2016, <https://www.theguardian.com/books/2016/apr/15/neoliberalism-ideology-problem-george-monbiot>; George Monbiot, *How Did We Get Into This Mess?: Politics, Equality, Nature* (Brooklyn, NY: Verso Books, 2016). For a revisionist focus on ordoliberalism and neoliberalism in the Austrian school of economics, see Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Cambridge, MA: Harvard University Press, 2018).

¹⁴ For a discussion of how the “Chicago School” became a proper term, see Cléo Chassonnery-Zaïgouche, “Identifying a ‘Chicago School’ of Economics: On the Origins, Diffusion, and Evolving Meanings of a Famous Brand Name,” *History of Recent Economics Conference* (blog), September 26, 2018, <https://hisreco.wordpress.com/2018/09/26/identifying-a-chicago-school-of-economics-on-the-origins-diffusion-and-evolving-meanings-of-a-famous-brand-name/>. On Foucault’s notion of financialization and governance, see Brown, *Undoing the Demos*, 70-72.

¹⁵ See Burgin, *The Great Persuasion*, 34-45; Steven M. Teles, *The Rise of the Conservative Legal Movement: The Battle for Control of the Law* (Princeton, NJ: Princeton University Press, 2010), 91-96.

¹⁶ Mirowski, *Never Let a Serious Crisis Go to Waste*, 43-44.

One need not follow Mirowski every step of the way through his narrative of the development of neoliberalism in order to recognize his broader point.¹⁷ The ecosystem in which institutions interact and function as a part of a larger movement are indispensable for the history of politics and ideas. The rise of the conservative movement, in particular, cannot be understood without an eye toward the institutions (including foundations, think tanks, and universities) and the informal networks that gave certain ideas legitimacy.¹⁸ The University of Chicago supported a range of people and ideas in the 1940s and 1950s that play an important role in debates over the proper form and function of corporate responsibility in the 1960s and 1970s. The Department of Economics and the School of Law were places where influential intellectuals, activists, and entrepreneurs came through on their way to building other institutions and movements. Henry Manne was one of the key players in those developments.

The great-grandson of Romanian Jews, Manne was one of two boys born in New Orleans to a family that found its livelihood in shop keeping. As his grandfather had in Missouri, Henry's father opened a dry-goods store in a few years after Henry's birth in Memphis and it was there in the 1930s and 1940s that Henry gained first-hand experience with the entrepreneurship. "My whole life's philosophy can be traced back to those early beginnings," he remembered when he was advanced in years.¹⁹ After World War II, he attended nearby Vanderbilt where he came under the influence of an economics professor

¹⁷ Mirowski's descriptions of the neoliberal self are significant even aside from his analysis of historical causation. See Jackson Lears, "Technocratic Vistas: The Long Con of Neoliberalism," *The Hedgehog Review* 19, no. 3 (Fall 2017).

¹⁸ Daniel T. Rodgers, *Age of Fracture* (Cambridge, MA: Harvard University Press, 2011), 7.

¹⁹ Fred S. McChesney, "General Introduction," in *The Collected Works of Henry G. Manne*, ed. Henry N. Butler, vol. 1, 3 vols. (Indianapolis, IN: Liberty Fund, 2009), viii.

who urged him to continue his studies in law at the University of Chicago.²⁰ There Manne shed his interest in labor law as started to become familiar with the assumptions and methods of the emerging Chicago school.²¹

At the time, connections between the law school and economics department were not strong. Aaron Director was in the process of changing that and bringing economics into the curriculum when Manne arrived in 1950. A “steel-minded devotee of free markets,” as Manne remembers, Director belonged to a kind of libertarian “metaphysical club,” that included Friedrich Hayek, Milton Friedman, George Stigler, and W. Allen Wallis.²² With personal support from Hayek, Director’s coming to Chicago in 1946 was the brainchild of the conservative stalwart Henry Simons who negotiated funding for his position from the Volker Fund, a Kansas City-based libertarian foundation.²³ Simons saw Director as part of a project both to “keep alive” and promote “traditional-liberal” ideas that would matter in American politics.²⁴

Director excelled in his position. The year Manne enrolled at Chicago, Director was fully engaged in the work of promoting the free enterprise system. He was one of the early members of the Mont Pelerin Society, which Hayek founded in 1947.²⁵ With his brother-in-law Milton Friedman, he participated in public events promoting conservative

²⁰ Henry Manne, oral history interview by James Stocker, August 6, 2012, Securities and Exchange Commission Historical Society, Washington, D.C., 1-2.

²¹ McChesney, “General Introduction,” vii-viii.

²² Henry Manne interview by James Stocker, 10. Partly this was a reunion of a group that had been forged at the University of Chicago when Stigler, Friedman, Director, and Wallis were in graduate school. Burgin, *The Great Persuasion* 157.

²³ The Volker Fund played an important role in supporting Hayek and in popularizing *The Road to Serfdom*. See Kim Phillips-Fein, *Invisible Hands: The Businessmen’s Crusade Against the New Deal* (New York, NY: W. W. Norton & Company, 2009), 41-45.

²⁴ R. H. Coase, “Law and Economics at Chicago,” *The Journal of Law & Economics* 36, no. 1 (1993), 245-246; Edmund W. Kitch, “The Fire of Truth: A Remembrance of Law and Economics at Chicago, 1932-1970,” *The Journal of Law & Economics* 26, no. 1 (1983), 180-181.

²⁵ Directories, 1949-1950. Box 80. Folder 23. Friedrich A. von Hayek Papers. Hoover Institution Archives.

economic ideas.²⁶ Faced with a severe case of what he called writer's block, Director never finished his dissertation or wrote a major monograph, but in many ways he helped to establish the field of law and economics through his institutional labors—he established the field's titular journal—and his mentoring of budding law students like Manne, Robert Bork, and Richard Posner.²⁷

Under the wing of Director, Manne was introduced both to the ideological landscape of post-war conservative movement as well as, and more importantly, the methodological technique of using economic theory to understand the law and legal institutions. Although many identify Director as one of the first influential conservatives to use economic analysis in law, his name is not widely known largely because he barely published. Instead he is remembered for his conversations and classroom instruction. “I gradually learned that when he began asking simple questions about some comfortable belief I had proposed,” the conservative economist and Nobel laureate George Stigler remembered, “the odds were high that I would end up with a difference view of the matter.”²⁸

Director's courses introduced rising conservatives to new ways of thinking about political economy. “My recollection of the course was that the application of price theory to issues of public policy was one of the more interesting parts,” Robert Bork

²⁶ Director appeared with W. Allen Wallis and Friedman at a meeting of the Citizens Board for a program entitled, “A Positive Program for Conservatives,” Mar. 29, 1950. Milton Friedman Collection. Box 216. Folder 4. Hoover Institution Archives.

²⁷ Henry Manne interview by James Stocker, 7. “Director and Posner made a perfect pair as a teacher and student,” Posner's biographer, William Domnarski, has written. “One colleague, whose office was next door to Posner's, said the two spent hours discussing law and economics, Director lecturing and Posner, the intellectual sponge, taking it all in. Director would come to Posner's office at least weekly, often daily, and the two would talk for hours at a time.” See William Domnarski, *Richard Posner* (New York, NY: Oxford University Press, 2016), 55; 54-58.

²⁸ George J. Stigler, *Memoirs of an Unregulated Economist* (Chicago, IL: University of Chicago Press, 2003), 156.

remembered.²⁹ Director wielded economic analysis in order to undo the prevailing liberal legal theory. He would go on to make contributions to the field of antitrust, but many of his students remembered his significance in the same way as Bork. He developed in his courses a way of thinking about law that empowered his students in their diverse fields and made them relish a kind of iconoclastic approach to public policy.³⁰

Manne is a good example. “It was clear to me very early that economics was important in most of the courses I was taking in law school,” he said. “I don’t think the majority of students in my class sensed economics pervading the law school as much as I did. To me it was almost overwhelming and remained with me ever after.”³¹ In Manne’s memory, economics dominated the law school in the early 1950s almost to the exclusion of other subjects.³² This was an idiosyncratic approach to legal education and it was almost completely unheard of in law schools at the time. “With the exception of perhaps six to eight people at the University of Chicago and four or five more scattered around the country,” Manne said, “there was literally no remnant of libertarian philosophy in academic economics in America.”³³ In many ways, the overriding goal of Manne’s career could be thought of as an attempt to make this method of legal education mainstream.³⁴

The perspective that Manne imbibed from Chicago and its various networks had important implications for the way that he went on to critique the prevailing liberal theory of the corporation. The most direct way to illustrate the difference is to recall what Adolf

²⁹ Edmund W. Kitch, “The Fire of Truth: A Remembrance of Law and Economics at Chicago, 1932-1970,” *The Journal of Law & Economics* 26, no. 1 (1983), 181.

³⁰ Kitch, “The Fire of Truth,” 184.

³¹ *Ibid.*, 184.

³² Kitch, “The Fire of Truth,” 190.

³³ Quoted in Teles, *The Rise of the Conservative Legal Movement*, 104.

³⁴ See generally Henry Manne, “Intellectual History of the Law School | Scalia Law School,” accessed October 18, 2018, <https://www.law.gmu.edu/about/history>.

Berle and Gardiner Means had written about the relevance of traditional economy theory for the corporate economy. It was, they thought, generally irrelevant. “[T]hese terms [of classical liberal theory] have ceased to be accurate, and therefore tend to mislead in describing modern enterprise as carried on by the great corporations,” they wrote in *The Modern Corporation and Private Property*. “Though both the terms and the concepts remain, they are inapplicable to a dominant area in American economic organization.”³⁵ In their view, the competition of the market had given way to “depersonalized monopoly” and business enterprises had to be understood as social organizations. “Power is what the book is about.”³⁶ Berle and Mean’s tome was, according to *Time*, the “economic bible” for the Roosevelt administration, but that epithet could just as easily be used to describe its importance for mid-century corporate liberals.³⁷ While Manne was learning the principles of microeconomic theory at Chicago, the prevailing liberal view in business schools, public relations firms, and leading foundations was that corporate leaders should take on further social responsibilities and embrace the mantle of “economic statesmanship.”³⁸

Market advocates had been driven from the world of respectable opinion in the 1930s as *laissez-faire* suffered under a barrage of denunciations, but in the years following World War II, that began to change.³⁹ The perspective of the conservative economic movement can be summed up as a confidence in the ability of markets to

³⁵ Adolf A Berle and Gardiner Means, *The Modern Corporation and Private Property* (New York, NY: Harcourt, Brace, & World, 1932), 345.

³⁶ Jordan A. Schwarz, *Liberal: Adolf A. Berle and the Vision of an American Era* (New York, NY: Free Press, 1987), 60.

³⁷ *Time*, Apr. 24, 1933.

³⁸ Berle and Means, *The Modern Corporation and Private Property*, 357. These themes are discussed in chapter 2. For a representative volume of corporate liberal thought, see Edward S. Mason, ed., *The Corporation in Modern Society* (Cambridge, MA: Harvard University Press, 1959).

³⁹ Burgin, *The Great Persuasion*, 12-54.

organize production and allocate resources efficiently. This rigid fidelity to markets was both a pillar of an emerging economic methodology at the University of Chicago at the same time that it was a cornerstone for the conservative politics of anti-communism.⁴⁰

Hayek's *The Road to Serfdom* is illustrative of the politics at work. Published in 1944 by the University of Chicago Press and subsequently abridged for a popular audience by Reader's Digest, this surprising bestseller was written as a warning against the supposed tendency toward totalitarianism in modern liberalism. Hayek's argument is mapped out in terms of these two roads—one toward totalitarianism and the other toward freedom. National planning, in his mind, was an unnecessary program that sacrificed individualism for collectivism and was, if followed through, a harbinger of economic and political tyranny.⁴¹ Milton Friedman would make a similar case but in more positive terms in his 1962 book, *Capitalism and Freedom*. Friedman believed in the power of markets to increase the freedom of every individual. "There is an economic incentive in a free market to separate economic efficiency from other characteristics," he wrote.⁴² When individual choices are made because of economic self-interest, discrimination on the basis of personal factors like race or religion declines. There are, he argues, two basic ways of coordinating economic activity: through the price mechanism or through central direction. The latter represents a kind of conflation of two things that ought to remain separate—politics and markets:

⁴⁰ The Cold War politics is illustrated by the National Association of Manufacturers' 1950s opposition to corporate social responsibility, which the NAM regarded as an attack on laissez-faire. See Jennifer Delton, "The Triumph of Social Responsibility in the National Association of Manufacturers in the 1950s," in *Capital Gains: Business and Politics in Twentieth-Century America*, ed. Richard R. John and Kim Phillips-Fein (Philadelphia, PA: University of Pennsylvania Press, 2016), particularly 188-189.

⁴¹ Friedrich Hayek, *The Road to Serfdom* (Chicago, IL: University of Chicago Press, 1944), 4, 53, 56-59.

⁴² Milton Friedman and Rose D. Friedman, *Capitalism and Freedom* (Chicago, IL: University of Chicago Press, 1962), 109.

What the market does is to reduce greatly the range of issues that must be decided through political means, and thereby to minimize the extent to which government needs to participate directly in the game. The characteristic feature of action through political channels is that it tends to require or enforce substantial conformity. The great advantage of the market, on the other hand, is that it permits wide diversity. It is, in political terms, a system of proportional representation.⁴³

Hayek and Friedman carved out the broad outlines of the conservative view of the social and political benefits of markets for the Cold War era. They wed their analysis of political economy to a dichotomous understanding of historical change that cast the outcome of public policy debates in terms of extremes. In other words, Keynesian liberalism and national planning were exits for the road toward a totalitarian United States. Markets, on the other hand, were a path toward liberty. “Friedman’s philosophical models brooked no concessions to communism,” Angus Burgin writes, “and the America of his time found a ready audience for a philosophy that did not allow itself to be measured in degrees.”⁴⁴

These Cold War polemics were one part of the story, but there was another side to conservative economic thinking that was more academic. Chicago School adherents understood markets not just as the natural domain for democratic social outcomes but as the methodological key to understanding and preserving rational human behavior. These were two, intertwined insights that made a deep impression on Henry Manne early in his career.

⁴³ Friedman and Friedman, *Capitalism and Freedom*, 15.

⁴⁴ Burgin, *The Great Persuasion*, 154.

Having graduated from the University of Chicago in 1952, Manne left for Yale Law School to earn a research doctorate but the curriculum was a letdown compared to what he was used to studying. Feeling in intellectual exile, he returned to reading in areas that had originally been introduced to him by Aaron Director. “I hadn’t put all the pieces together by any means, but I was obviously very attracted to that writing,” he recalled. “So in some ways I give Yale some credit that they probably would reject. It was a valuable year, but not for reasons that the Yale law faculty had anything to do with.”⁴⁵

Two figures that marked Manne’s development that year were probably at the time the two most important theorists of using economic analysis to describe human behavior. The first was Ludwig von Mises. A towering intellect in the Austrian School of economics, his magnum opus, *Human Action*, was published in the United States for English readers in 1949.⁴⁶ Mises offered an integrated theory based upon what he called “praxeology” to explain how human decision-making typically functions in an individualistic and economically rational manner. Institutions and social cooperation in general, he argued, are finally dissolvable into the logical choices of separate individuals. A social collective “has no existence and reality outside of the individual members’ actions.”⁴⁷ This contractual and atomistic vision of the common good became an important part of Manne’s dissection of the corporation. “I always used to joke,” he recalled, “that I was one of the few people in the world who probably sat down and read the whole of *Human Action*.”⁴⁸

⁴⁵ Henry Manne interview by James Stocker, 13-14.

⁴⁶ Ludwig Von Mises, *Human Action: A Treatise on Economics* (New Haven, CT: Yale University Press, 1949).

⁴⁷ Ludwig von Mises, *Human Action, The Scholar’s Edition* (Auburn, AL: Ludwig von Mises Institute, 1966), 42.

⁴⁸ Henry Manne interview by James Stocker, 14.

Hayek came along with Mises to offer a powerful defense of the coordinating function of the market. Manne had encountered Hayek at Chicago and sat in on his classes, but it was at Yale that he dug deeper into the theoretical implications of his work. It was his article, published in 1945, “The Use of Knowledge in Society,” that explained what was later called “spontaneous order.” Just as in *The Road to Serfdom*, Hayek bifurcated planning and markets. Instead of trying to prove the totalitarian tendencies of planning, he offered a positive vision for how markets are the most efficient mechanism for coordinating human action. When established and set free from state intervention, order is achieved spontaneously because markets function as network that accurately and quickly provides information that is dispersed among the whole of society. This information about wants and desires, supply and demand, would be impossible for a single person or group of people to ascertain. Hayek imagined every discrete market transaction not just as an exchange of commodities but also as a mechanism for communicating information.⁴⁹ “It is more than a metaphor to describe the price system as a kind of machinery for registering change,” he wrote, “or a system of telecommunications which enables individual producers to watch merely the movement of a few pointers, as an engineer might watch the hands of a few dials, in order to adjust their activities to changes of which they may never know more than is reflected in the price movement.”⁵⁰ Markets, in short, are efficient because they are epistemological networks that run through the whole of society and channel what would otherwise be the chaos of specialization into a general kind of order.

⁴⁹ F. A. Hayek, “The Use of Knowledge in Society,” *The American Economic Review* 35, no. 4 (1945), 526.

⁵⁰ Hayek, “The Use of Knowledge in Society,” 527.

Although Manne was in the early stages of his thought, it's possible to see in this moment how a combination of Hayekian and Misesian insights precipitated a radically market-centered ethics and epistemology that would have important implications for public policy and other fields not generally thought of as purely economic. As Quinn Slobodian has recently argued, "Geneva School" neoliberalism constituted a negative theology; the epistemological workings of the market could never be fully known. Ironically the market's "invisibility" made it necessary for policy makers to design the right political economic institutions to encase and expand the market.⁵¹

Applied to the problem of corporate responsibility, the market took on ethical dimensions. As Hayek argued in a collected volume published in 1960 where he sparred with Adolf Berle, corporate power should be confined to the one specific goal of using the capital of shareholders to generate profits. It is "precisely the tendency to allow and even impel the corporations to use their resources for specific ends other than those of long-run maximization of the return on the capital placed under their control," he wrote, "which tends to confer upon them undesirable and socially dangerous powers." The doctrine in fashion at the time that social considerations should play a role in business decisions was "likely to produce most undesirable results."⁵² Not only did social responsibility potentially transfer a dangerous amount of power into the hands of managers, it conferred on them obligations toward problems they might not even be experts in. It substituted the expertise of the manager for the dispersed wisdom of the market. As Milton Friedman put it, "Appeals to 'social responsibility' arise because of an

⁵¹ Slobodian, *Globalists*, 87.

⁵² Hayek, "The Corporation in a Democratic Society," 100.

unwillingness to let the price system work. They constitute an attempt to replace the price system by some alternative device.”⁵³

Let the price system govern—this was rallying cry that Manne heard in his formative years of legal and economic education. Perhaps almost as important as the libertarian philosophy and economic methodology that this mantra engendered was the contrarian attitude that came with it. In this respect, Manne was not alone. He belonged to a rising generation of conservative activists and intellectuals who were ready to challenge (and skewer) the reigning liberal orthodoxy of law and public policy in fields ranging from antitrust to securities regulation. But what effect did these ideas have? The “interval between the time when ideas are given currency and the time when they govern action [...] is usually a generation, or even more,” Hayek said. “and that is one reason why on the one hand our present thinking seems so powerless to influence events, and why on the other so much well meant effort at political education and propaganda is misspent, because it is almost invariably aimed at a short run effect.” Hayek hoped to imitate the socialists, who were not afraid to emphasize the importance of ideas and who had the “courage to be ‘utopian.’”⁵⁴ The intellectual revolution came first and in a rather quick fashion; the difficult task of building institutions and networks took much longer.

Henry Manne contra mundum

Henry Manne cut his teeth in the 1950s and early 1960s composing polemics conventional wisdom about the corporation. Like many of his colleagues and mentors who passed through or identified with the Chicago school of economics, Manne’s

⁵³ Milton Friedman, “Responsibility: Insights from Economics,” Faculty Seminar I, Institute for Religious and Social Studies, March 8, 1965. Box 8. Folder 15. Milton Friedman Papers. Hoover Institution Library and Archives.

⁵⁴ Quoted in Burgin, *The Great Persuasion*, 217.

writerly voice possessed an edge. In carving out a space for conservative economic thought in the area of corporate law, he stood against world of popular opinion, elite scholars, and powerful policymakers.⁵⁵ He disputed the self-confidence of liberalism and skewered its often self-congratulatory approach to corporate responsibility.⁵⁶ Even if in retrospect he voiced frustration and bitterness about how his early work was dismissed and rejected by those whose approval he craved, Manne nevertheless played the gadfly well.⁵⁷

The most significant obstacles Manne faced early on involved the lack of institutional support. For law and economics and for the conservative legal movement more broadly, the creation and spread of ideas required specific support structures. As Steven Teles has argued, this meant first that institutions like the Department of

⁵⁵ The liberal view of the lacked the coherence to be a proper school of thought mainly because its assumptions were so dominant, though there were noteworthy opponents. Populists like Senator Estes Kefauver or the sociologist C. Wright Mills maintained that corporate power had become undemocratic. See Estes Kefauver, *In a Few Hands: Monopoly Power in America* (New York, NY: Pantheon Books, 1965); C. Wright Mills, *The Power Elite* (Oxford: Oxford University Press, 1956). And conservatives (and especially small business interests) represented by groups like the National Association of Manufacturers and the John Birch Society, opposed the prevailing liberal sensibilities in business as attacks on free enterprise in the 1950s. See generally Jennifer Delton, “The Triumph of Social Responsibility in the National Association of Manufacturers in the 1950s,” in *Capital Gains: Business and Politics in Twentieth-Century America*, ed. Richard R. John and Kim Phillips-Fein (University of Pennsylvania Press, 2016). But at elite business schools like Harvard and Wharton, law schools like Yale and Columbia, and institutions like the Fund for the Republic and the Center for the Study of Democratic Institutions, corporate liberalism and its assumptions about corporate social responsibility were fully entrenched. See chapter 2. And, generally, Frank K. Kelly, *Court of Reason: Robert Hutchins and the Fund for the Republic* (New York, NY: Free Press, 1981); Rakesh Khurana, “Disciplining Business School Faculty: The Impact of the Foundations,” in *From Higher Aims to Hired Hands: The Social Transformation of American Business Schools and the Unfulfilled Promise of Management as a Profession* (Princeton, NJ: Princeton University Press, 2010).

⁵⁶ The irony is that Manne’s critique of liberal paternalism and managerial autonomy was one that social activists like Saul Alinsky and Ralph Nader, who otherwise disagreed with Manne’s free market conservatism, would take up a decade or two later against the leaders of large corporations. Mid-century corporate liberals wanted business leaders to exercise social power without regard for the politics of power relations. On the sustained inattention to power relations within mid-century social thought, see Jackson Lears, “A Matter of Taste: Corporate Cultural Hegemony in a Mass-Consumption Society,” in *Recasting America: Culture and Politics in the Age of Cold War*, ed. Larry May (Chicago, IL: University of Chicago Press, 1989).

⁵⁷ Manne, “How Law and Economics Was Marketed in a Hostile World,” 311.

Economics at the University of Chicago provided a supportive context for the cultivation of young academics and the sustenance of ongoing scholarly endeavors. But these institutions existed outside the mainstream and thus lacked the respectability necessary to convey new ideas to those in power. They also needed their ideas and scholars to find acceptance at elite institutions. The brand power of law schools at Harvard or Yale would eventually help conservative economic ideas to gain a foothold, but that only came later. The success of the movement depended on outsider institutions to cultivate scholarly ideas while also winning a foothold among the elite brands.⁵⁸

Manne learned these lessons over time and eventually became one of the shrewdest activists of the twentieth century in terms of his ability to cultivate and disseminate new ideas. But he began his career attempting a more traditional path. After Chicago and Yale law, Manne spent some time in private practice and in the Air Force and it was during that time that he started to make his mark writing—“quite naively,” as he recalled—about the economics of the corporation.⁵⁹

Corporate philanthropy was Manne’s first substantial target. In the midst of a booming economy and during a time when big business enjoyed a rehabilitated reputation, many large corporations were devoting more funds for non-profit donations. The *New York Times* called big business the “new giant” that “roams the field of philanthropy.”⁶⁰ Among medium and large sized firms, corporate giving as a percentage of income grew in the 1950s by an average of about 40 percent.⁶¹ As explored in chapter

⁵⁸ See Tele’s description of the “Fabian” vs. the “Gramscian” strategies of influencing law in *The Rise of the Conservative Legal Movement*, 207-208.

⁵⁹ Manne, “How Law and Economics Was Marketed in a Hostile World,” 310.

⁶⁰ “New Giant in Giving: Big Business,” *New York Times*, Dec. 2, 1951.

⁶¹ Calculated from data in Internal Revenue Service, “SOI Tax Stats - Historical Data Tables,” 1951-1960.

two, public relations leaders and liberal groups like the National Planning Association encouraged big business to spend five percent of their pre-tax income on tax-deductible donations. This was the maximum allowed by IRS regulations going back to the 1930s. The NPA published a pamphlet calling for corporate giving as a test of the “social usefulness and good citizenship” of big business.⁶² In addition to the tax advantages of making deductible contributions, a constructive and dramatic program of corporate giving would, it argued, cause consumers, employees, suppliers, and the public generally to “look with friendly eyes on its activities, to be receptive to its product and services, [and] to respond to its merchandising efforts.”⁶³

Strategies of public relations and corporate accounting aside, there were other intellectual justifications in circulation for an increasing philanthropic role for corporate managers. Richard Eells, a public relations researcher at General Electric and eventually a professor of business at Columbia University, devoted much of his work to promoting corporate philanthropy, first through internal reports and proposals at GE, and, second, through his own public writing and editing a series, *Studies of the Modern Corporation*, for Columbia University Press. He wrote *Corporation Giving in a Free Society* in 1956 and soon followed with *The Government of Corporations* and *The Corporation and the Arts*.⁶⁴ Eells was no radical. Compared to some of his fellow corporate liberals who announced the end of the profit motive in soaring rhetoric, Eells’s approach was downright conservative—or at least Tocquevillean. His justification for the expansion of

⁶² Beardsley Ruml and Theodore Geiger, *The Five Percent* (Washington, DC: National Planning Association, 1951), 11.

⁶³ *Ibid.*, 11.

⁶⁴ Richard Eells, *Corporation Giving in a Free Society* (New York, NY: Harpers, 1956); Richard Eells, *The Government of Corporations* (Glencoe, IL: Free Press, 1962); Richard Eells, *The Corporation and the Arts* (New York, NY: MacMillan, 1967).

the social influence of private enterprise was that it would protect society from the expansion of a large federal state.⁶⁵ Business leaders, as he saw it, could help to restrain big government by assuming for themselves the responsibility to solve social problems and to cultivate the education, culture, philanthropy, and the associational life in all its forms.

The focal point for much of the discussion about corporate giving at mid-century was *A.P. Smith Manufacturing*, a 1953 Supreme Court decision that affirmed the right of managers to make gifts and contributions without the permission of shareholders.⁶⁶ The question for corporate liberals was how to characterize the use of these funds. Eells argued that corporate donations could work to the financial benefit of the corporation as much as to the philanthropic or charitable institution receiving it.⁶⁷ Corporations may enjoy a better reputation for it. Or they might help increase standards of living and thus produce better consumers and employees. But how all this was to be accounted for economically neither Eells nor anyone else could say for sure. As corporations take on more social responsibilities, what will be the final result? “Must the inevitable result be a breakdown of the business enterprise as an institution,” Eells asked, “or perhaps its transmutation into an ambiguous social instrument for getting done any or all of the many tasks that need to be carried out?”⁶⁸ These were underdeveloped thoughts. They were experimental, suggestive. The main idea that Eells wanted the business community to accept was relatively simple: managers and directors should take on more responsibilities, they should give away money, and they should hire experts to plan how

⁶⁵ Eells, *Corporation Giving in a Free Society*, 10.

⁶⁶ *AP Smith Manufacturing Co v Barlow*, 13 N.J. 145, 98 A.2d 581 (N.J. 1953)

⁶⁷ Eells, *Corporation Giving in a Free Society*, 76.

⁶⁸ Eells, *Corporation Giving in a Free Society*, 79-80.

to do these things intelligently. He was more interested in the effect and philosophy of such actions and not so much on the precise legal or economic justification for them.

This was the kind of muddled thinking that Aaron Director and his Chicago school curriculum had prepared Manne to dismantle. He did so in his review of *Corporation Giving in a Free Society*, Eells's first book which he wrote while he was head of Public Policy Research for General Electric.⁶⁹ Eells displayed an ambivalence, Manne pointed out, as to whether "there is anything contradictory in the notion of corporate gifts."⁷⁰ Such was the basic problem with much of corporate legal theory, according to Manne—from the idea of the "corporate conscience" to the proposal to "constitutionalize" the corporation. These terms lacked sufficient content and definition to serve as functional guides to managerial conduct. Should the five-percent rule apply to all publicly traded corporations or just the big ones? Was it a rigid rule or more of an ideal? How should the largest companies coordinate their social programs? These were some of the questions that Eells raised for which he never gave a thorough answer, if indeed one could be found at all.

In the vein of Hayek and Friedman, Manne exposed the conceptual weaknesses of mid-century of business statesmanship. Without the market as a guide or without law as a predictable rule, the evaluation of the performance of managers had no objectivity. There was no available accounting system that would allow someone to compare accurately economic benefits lost to "social benefits" gained under a regime of corporate social responsibility, Manne said. "Absent such a method of comparison it can never be known

⁶⁹ Richard Eells, "The Rationale of Corporate Giving," *Western Business Review* vol. 1. no. 3, August 1957, 99. Box 1. Folder "Corporate Giving, 1954-1958," Richard Eells Papers. Columbia University Rare Book & Manuscript Library.

⁷⁰ Manne, Vol. 1, 4.

whether the net result is more beneficial than it is harmful.”⁷¹ The one metric available that did seem to lend some objectivity was shareholder value. Securities holders, Manne contended, should not be seen as voters enfranchised to influence how business uses its resources; they were simply capital markets. “It is a certainty that no company’s stock ever appreciated in value because of a charitable contribution made by that company.”⁷²

One thing seemed clear. Corporate managers’ ability to spend institutional funds for projects and donations of their own choosing would likely improve the reputation and standing of the corporate brand as well as that of the managers themselves. These “muscular Christians” of enterprise, as the sociologist David Riesman called them, were inescapably “addicts of one or another of the many fads” and would proceed to promote their “self-image as proper businessmen.”⁷³ Richard Eells, Manne said, was one of these managerial tutors who had found a place for himself for an age when American corporations were learning the art of conspicuous spending.⁷⁴ Manne argued that the practice of engaging in non-economic activities had a tendency toward amassing power in the hands of autonomous managers who may not be qualified and who are tempted to self-aggrandizement. The long term effect of these factors, he said, may turn out to be the opposite of the goal Eells and his fellow corporate liberals wanted. That is, instead of strengthening private business against the encroachment of an expansive government, it conduct could provoke more government intervention in the economy for fear that managerial autonomy was too expansive.⁷⁵

⁷¹ Henry G. Manne, review of *Review of Corporation Giving in a Free Society*, by Richard Eells, *The University of Chicago Law Review* 24, no. 1 (1956), 199.

⁷² *Ibid.*, 199.

⁷³ David Riesman, “Some Relationships between Technical Progress and Social Progress,” in *Individualism Reconsidered and Other Essays* (Glencoe, IL: Free Press, 1954), 294.

⁷⁴ Manne, review, 198.

⁷⁵ *Ibid.*, 200-201.

A book review may seem like an odd place to begin for describing someone's intellectual body of work. Reactive if not often ephemeral, the review genre typically does not present opportunities for significantly original and long-lasting work, but Manne's treatment of Eells is significant for two reasons. For one thing, Eells's book, whatever its faults, was representative of a prevailing liberal sensibility that was confident about corporations supporting socially responsible projects but was uncertain about what they should specifically look like in industry at large and how they should be evaluated. Manne pointed out those conceptual weaknesses, making the case that markets were the only objective way to evaluate the proper use of corporate funds and that managers had no responsibilities past the limits of the market. Manne would spend the next decade developing those two ideas.

Manne's frustrations with the field and his disagreements with its premises and modes of thought were perhaps best summed up by his contemporary Bayless Manning, a professor of law at Yale, who said in 1962 that "corporation law, as a field of intellectual effort, is dead in the United States."⁷⁶ What Manning had immediately in mind was the incorporation system that by mid-century was composed of what he called "empty corporation statutes" that continued to use the language of corporate personhood and the concepts of the old common law tradition of corporate concessions, but which failed to come to grips with practical rights and responsibilities of business institutions. While the nation's best known social critics and economic thinkers from Galbraith to Drucker to Adolf Berle were attempting to rethink the structure and purpose of corporate power, incorporation charters were rarely remarked upon and as matters of policy were largely

⁷⁶ Bayless Manning, "The Shareholder's Appraisal Remedy: An Essay for Frank Coker," *The Yale Law Journal* 72, no. 2 (1962), 245n37.

left to the technocratic interests of the American Bar Association.⁷⁷ As Harwell Wells has argued, thinking about the corporation at mid-century was marked by what he calls “heroic managerialism,” a optimism about the exercise of managerial power that was largely divorced from the legal rules establishing corporate governance.⁷⁸

Henry Manne went on to take his scalpel to the whole breadth of the liberal school from Berle and Means’s theory of separation of ownership and control in the 1930s to John Kenneth Galbraith’s theory of countervailing power in the 1950s.⁷⁹ Manne’s efforts could best be described as an attempt to reestablish the field on an alternative basis, a foundation that would come to be called law and economics. In a pair of articles in the early 1960s, the first in the *University of Detroit Law Journal* and the second in the much more prestigious *Columbia Law Review*, he sought to excavate and catalog the perspectives of those whom he called the “corporation critics,” who engaged in a “higher criticism” of the corporation. This was a taxonomic project; Manne categorized and described the lay of the land. “The concern is not exactly with monopoly, although that is involved; it is not exactly with the relationship between managers and owners, although that is certainly involved as well,” he wrote. “In some rather nebulous sense, the concern may be said to be with the political position of the modern corporation, the role it is and should be playing in the distribution and enjoyment of the values in which the community is interested.”⁸⁰

⁷⁷ Whitney Campbell, “The Model Business Corporation Act,” *The Business Lawyer* 11, no. 4 (1956): 98–110.

⁷⁸ Harwell Wells, “Corporation Law Is Dead: Heroic Managerialism, Legal Change, and the Puzzle of Corporation Law at the Height of the American Century,” *University of Pennsylvania Journal of Business Law* 15 (2013 2012), 310–311.

⁷⁹ Berle and Means, *The Modern Corporation and Private Property*; John Kenneth Galbraith, *American Capitalism: The Concept of Countervailing Power* (Cambridge, MA: Houghton Mifflin Co., 1952).

⁸⁰ Henry G. Manne, “The ‘Higher Criticism’ of the Modern Corporation,” *Columbia Law Review* 62, no. 3 (1962): 399.

Here Manne is the German higher critic, revising his way through sacred texts, or at least he plays the role of the debunker. Such a rhetorical strategy was, of course, not unheard of in the field of corporate law. Thurman Arnold, the New Dealer and former head of the Justice Department's Antitrust Division, was perhaps most successful with such posture in his 1937 book, *The Folklore of Capitalism*, which had similarly iconoclastic aims. "The moment that folklore is recognized to be only folklore," Arnold wrote, "it ceases to have the effect of folklore."⁸¹ For Manne, the chiefly operating folklore of American intellectual life when it came to the corporation was the Berle and Means thesis of separation of ownership and control. The problem of runaway corporate managers and passive shareholders had trickled down into the "lore of every economics freshman."⁸² But if, as Alan Brinkley has put it, Arnold "learned to question inherited ideas without repudiating inherited institutions," Manne was far more revolutionary in his intellectual proclivities.⁸³

The original sin, as Manne saw it, was the reliance on institutional economic analysis rather than what he called "traditional" economic theory. His project was, in short, to see what would happen if you didn't follow Berle and Means in their assumption that the rise of corporate institutions had made obsolete key features of classical economics. In their view, the division between the markets in which owners moved and the institutional structure in which managers governed had supplanted economic logic with sociological and political interests. "Perhaps the unhappiest aspect of all was their

⁸¹ Thurman W. Arnold, *The Folklore of Capitalism* (New Brunswick, NJ: Transaction Publishers, 2010), 46.

⁸² Henry G. Manne, "Current Views on the Modern Corporation," *University of Detroit Law Journal* 38 (1961-1960), 560.

⁸³ Alan Brinkley, "The Antimonopoly Ideal and the Liberal State: The Case of Thurman Arnold," *The Journal of American History* 80, no. 2 (1993), 558.

belief, largely followed by subsequent writers,” he wrote, “that the modern corporation could no longer be analyzed in traditional economic terms.”⁸⁴ Their efforts, he said, were misleading.

Adolf Berle looked on Manne’s project with puzzlement. He was still active and writing about issues of corporate power when Manne’s piece was published in the *Columbia Law Review*. “Pioneer work usually does (and invariably should) come in for critical rake-over a generation later,” Berle wrote in response. “By that time, the author is usually dead. I am not, and find the experience piquant.” Berle correctly identified Manne as influenced by Ludwig von Mises and Friedrich Hayek and by the idea, to put it simply, that “the free market under competitive conditions is the best.” But by this Berle was wrong: “I think it is a last-ditch stand of the nineteenth-century school. Manne is doing the best he can, but is making heavy weather.”⁸⁵ Berle, for his part—and who can blame him?—didn’t seem to have the energy to relitigate a career’s worth of corporate theorizing. Many years later, in an oral history interview, Manne remembered the exchange this way: “Berle really didn’t understand it. He’s responding to something I didn’t write. I’ve read it a hundred times; I can never quite grasp what it is he has in mind. But you have to realize how much alone I was in all of this. There was literally zero analysis of this type on the law side, no one in any way sympathetic with what I was writing or how I approached it.”⁸⁶

⁸⁴ Henry G. Manne, “The ‘Higher Criticism’ of the Modern Corporation,” *Columbia Law Review* 62, no. 3 (1962): 399.

⁸⁵ Adolf A. Berle, “Modern Functions of the Corporate System,” *Columbia Law Review* 62, no. 3 (1962): 433; 435; 436.

⁸⁶ Securities and Exchange Commission Historical Society. George Mason University Antonin Scalia School of Law. Interview with Henry Manne. (August 6, 2012). 23.

Manne set out to catalog the errors and muddy thinking that had followed in the wake of Berle and Means.⁸⁷ His work in the early 1960s is a testament to his ambition. His goal was to prove wrong the field corporate liberalism or, as others called it, “managerialism.” And although we will not recapitulate his survey of that literature here entirely, it suffices to say that he found that by and large mid-century liberals committed the same errors that Berle and Means had. They were far too focused on the politics of the corporation and not nearly clear about its economics. As a result, they were left without the proper standard by which to evaluate good and bad corporate practice. His plea was for an “objective criteria which classical economic theory did at least suggest.”⁸⁸

For Manne, the language of ethics, power, responsibility, and politics was a misnomer when it came to discussing the form and function of economic institutions. The corporation could only appropriately be thought of as political in the event that it controlled an industry in a monopolistic fashion, which for him can’t really happen without government support.⁸⁹ He disputed the traditional notion that corporations are created by the government. “The truth is that there is almost no aspect of corporateness, in the modern commercial sense of the term, that could not be acquired—although in a very cumbersome fashion—by the exercise of freedom of contract, a freedom not generally considered a gift from the state.”⁹⁰

Manne’s most sophisticated treatment of the corporation came in 1965 with, “Mergers and the Market for Corporate Control.” An article published in the *Journal of*

⁸⁷ *Time*, Apr. 24, 1933.

⁸⁸ Henry G. Manne, “Current Views on the Modern Corporation,” *University of Detroit Law Journal* 38 (1961 1960), 586n90.

⁸⁹ On this point Milton Friedman agreed, saying corporations can only properly be political if they are state grants of monopoly. See “Monopoly and the ‘Social Responsibility’ of Business and Labor, North Carolina College, 1957. Box 216. Folder 6. Friedman Papers. Hoover Archives.

⁹⁰ Manne, “The ‘Higher Criticism’ of the Modern Corporation,” 429n95.

Political Economy, his essay discussed the relationship between corporations and securities markets. It was the most influential article that Manne wrote and it was one of the most cited and lauded law articles in the latter part of the twentieth century.⁹¹ It was a key conceptual building block of Manne's outline of a new modern theory of the firm.⁹²

Manne imagined shareholders not as owners who should have input in decision-making and whose long-term property rights must be guaranteed by special privileges. He disputed the analogy between the shareholder franchise and the citizenship right to vote in elections. The relationship between shareholders and corporations was purely a market transaction. Perhaps the most revolutionary conceptual step is that Manne took the Berle and Means concept of corporate control and instead of positioning it as a quasi-political group of people and interests that stood apart from market control, he conceived of control as a valuable asset that was the object of an active market among those who bought and sold stock.⁹³ The "market for corporate control" would circulate widely among regulators and intellectuals in the 1970s and 1980s who offered justifications for the rise of mergers and hostile takeovers.

The basic claim of the article was that those markets actually work reasonably well in governing business. There was a positive correlation between managerial efficiency and the market price of shares. "As an existing company is poorly managed," Manne wrote, "the market price of the shares decline relative to the shares of other companies in the same market or relative to the market as a whole."⁹⁴ In contrast to the

⁹¹ William J. Carney, "The Legacy of the Market for Corporate Control and the Origins of the Theory of the Firm," *Case Western Reserve Law Review* 50 (2000 1999): 215-240.

⁹² *Ibid.*, 225.

⁹³ Henry G. Manne, "Mergers and the Market for Corporate Control," *Journal of Political Economy* 73, no. 2 (April 1965), 112.

⁹⁴ *Ibid.*, 112.

New Deal liberal pessimism toward markets and securities markets in particular, Manne asserted that markets were actually quite efficient. There was reason to believe, he said, that share prices were determined by intelligence and not by randomness or ignorance. By buying and selling and by putting or calling, people with reliable information will over time make the price accurate. They're motivated, he said, to capitalize on their inside information, the byproduct of which will be the decline or appreciation of share prices. "It would seem that the average market price of a company's shares must be the 'correct' one."⁹⁵

Why would the share price accurately reflect the efficiency or inefficiency of a corporation? One reason was those people with reliable information were motivated to participate in the market and spread that information around. Another reason was the managers, Manne surmised, would be properly motivated to avoid getting unseated from their positions. Prices increase insofar as corporations are run effectively, thus increasing the cost of a merger or hostile takeover, and share prices decline when confidence is low, thus making the removal of upper-level management more feasible.⁹⁶ It is worth noting that there was no empirical data to back up Manne's contentions. Like Mises's *Human Action*, it was an exercise in rationalism pure and simple.

This had enormous public policy implications in the field of antitrust. His primary target was the Celler-Kefauver Act of 1950. It placed restrictions on horizontal mergers, which, lawmakers believed, impeded the normal functions of the market.⁹⁷ Mergers, he

⁹⁵ Ibid., 112n10.

⁹⁶ Ibid., 113.

⁹⁷ Size and market share alone were evidence that the market wasn't functioning correctly, according to most antitrust proponents at the time. See Robert Sobel, *The Age of Giant Corporations: A Microeconomic History of American Business, 1914-1970*, 3rd ed. (Westport, CT: Praeger, 1993), 193.

argued, were not the great big threat to a democratic economy that populists like Senator Estes Kefauver made them out to be.⁹⁸ In fact, mergers were not usually done to establish monopolies and limit competition. Instead they were important features of the market for managerial efficiency. The alternatives to mergers were quite costly by comparison. Bankruptcy proceedings were drawn-out and wasteful. Proxy fights were rare and cumbersome. And the direct purchase of shares could be extremely expensive. But mergers protected shareholders, increased the mobility of capital, and were more efficient.⁹⁹

The implications of Manne's short article went well beyond the public policy of antitrust. The separation of ownership and control was at the heart of it. Shareholders were not hapless, passive, and ignorant. They possessed information and they could act in meaningful and productive ways in the affairs of big business.

So long as we are unable to discern any control relationship between small shareholders and corporate management, the thrust of Berle and Means's famous phrase remains strong. But...the market for corporate control gives to these shareholders both power and protection commensurate with their interest in corporate affairs.¹⁰⁰

Fred McChesney, Manne's friend and colleague, has argued that "Mergers and the Market for Corporate Control" registered a change in the way people thought about corporate power. It was a paradigm shift concerning mergers, he said, "away from a focus on competitive problems and towards the benefits in protecting shareholders-

⁹⁸ So also C. Wright Mills, who described mergers as a mechanism for power elites to pay one another off. C. Wright Mills, *The Power Elite* (New York, NY: Oxford University Press, 2000), 113.

⁹⁹ Manne, "Mergers and the Market for Corporate Control," 119.

¹⁰⁰ *Ibid.*, 112.

consumers.”¹⁰¹ Robert Bork, who was a fellow student of Manne’s at the University of Chicago Law School, would take up similar arguments about the consumer benefits of mergers in his book. *The Antitrust Paradox*.¹⁰² This view-- that mergers should be evaluated in terms of whether they were products of competition and whether they benefited consumers—would transform the way the Supreme Court handled antitrust cases.¹⁰³

The supposed epistemic efficiency of markets was the key to Manne’s understanding of the relationship between shareholders and corporate control. The dispersed bits of knowledge inherent in the buying and selling of assets create a market that conveys information much quicker than the alternative. The idea, of course, did not originate with him; he built on Hayek’s notion of spontaneous order, but Manne brought it into the field of securities regulation and produced some of his most conservative and provocative polemics in the realm of public policy.¹⁰⁴ Nobody “has to know anything for markets to function absolutely perfectly,” Manne said. “That was true of shareholders. They didn’t have to know ether managers were doing well or not. All they had to know was whether the price of their shares was as much as they wanted.”¹⁰⁵

Manne moved quickly from antitrust to securities regulation. Published in 1966, *Insider Trading and the Stock Market* represented Manne’s most developed attack

¹⁰¹ Fred S. McChesney, “Manne, Mergers, and the Market for Corporate Control,” 251.

¹⁰² Robert H. Bork, *The Antitrust Paradox: A Policy at War with Itself* (New York, NY: Basic Books, 1978).

¹⁰³ Peter M. Gerhart, “The Supreme Court and Antitrust Analysis: The (Near) Triumph of the Chicago School,” *The Supreme Court Review* 1982 (1982): 319–49; George L. Priest, “Bork’s Strategy and the Influence of the Chicago School on Modern Antitrust Law,” *The Journal of Law & Economics* 57, no. S3 (2014): S1–17. A political paradigm shift that tracks with the transformation of the citizen into an investor or consumer. See Brown, *Undoing the Demos*, 175–178.

¹⁰⁴ Nancy MacLean, *Democracy in Chains: The Deep History of the Radical Right’s Stealth Plan for America* (New York, NY: Penguin Books, 2018), 39–40.

¹⁰⁵ Manne Interview, 25–26.

on the New Deal regime of corporate governance. Designed primarily as an attack on contemporary SEC prosecutions against insider trading and as a case for deregulation, went to the foundation of the New Deal vision of the corporation and reexamined the Pecora Commission and the reasoning that went into the creation of the SEC regime. He found it wanting in the scales of economic logic. “Economists think with a different tradition behind them,” he wrote. “Theirs is perhaps the most scientific of the social sciences. Here the word *scientific* must connote objectivity and moral detachment, as well as systematic verification of results. Economists tend to view any controversy as reflecting a platonic, ideal conflict.”¹⁰⁶ Mutual fairness and individual morality, he intoned, were not germane.

When it came to insider trading, then, the issue was not the political dimensions of the responsible execution of economic power, but the issue was financial cost and the efficient allocation of resources. His argument was that insider traders provide a desirable service to financial markets by transmitting reliable information about the status of the management and the future of the firm. For Manne, the stock market itself was an exercise in the “marketing of information.” Excepting for the randomness of traders who have zero information, the profits of most traders ought to be seen as a reflection of the different “degrees of sophistication” and the “reliability of their information.” “The stock market is, par excellence, the arbiter of the value of information,” he wrote.¹⁰⁷

Insider trading is a good thing, Manne argued, because it tends to provide information more quickly and accurately any other clearinghouse of information. The value of this information is not necessarily realized only by those who are on in the

¹⁰⁶ Henry G. Manne, *Insider Trading and the Stock Market* (New York, NY: Free Press, 1966), 11.

¹⁰⁷ Collected Works of Henry G. Manne, Vol. 2., 59.

inside. And to explain why insiders should be allowed to profit from information obtainable only by virtue of their privileged place, Manne argued that it was a form of compensation for the “sale” of information about productive innovation.¹⁰⁸ “Information is not a free good, and we should not assume, without more information than we now possess, that its distribution is generally capricious, arbitrary, random, or uncontrolled,” he wrote. “Rational, self-serving individuals will not blithely or willingly allow information of tremendous value to pass freely to individuals who have no valid claim upon it.”¹⁰⁹ Here is where Manne’s Misesian methodological individualism squarely conflicts with the liberal institutional economics approach. Given what we know about the economic rationality of human beings, it is more logical and efficient to allow information to be allocated in a market-like system of exchange.

The logical extension of Manne’s theory of insider trading was that the Securities and Exchange regime was a fundamentally flawed project. He developed this line of thought further a few years later in a lecture for New York University’s College of Business and Public Administration. Later published as “Economic Aspects of Required Disclosure under Federal Securities Laws,” Manne’s speech attacked the New Deal vision of how to keep corporations accountable to shareholders and to the public at large. “Among securities lawyers today only the uninitiated take the idea of shareholder democracy seriously,” he said.¹¹⁰ The ideal of a democratic corporation was founded on the practice of the public disclosure of information through the SEC. This practice, he

¹⁰⁸ Collected Works of Henry G. Manne, Vol 2., 148-149.

¹⁰⁹ Collected Works of Henry G. Manne, Vol. 3, 168.

¹¹⁰ Henry Manne, “Economic Aspects of Required Disclosure under Federal Securities Laws,” in *Wall Street in Transition: The Emerging System and Its Impact on the Economy* (New York, NY: New York University Press, 1974), 60.

argued, was vastly more inefficient and costly than the disclosure of information through markets. The requirement that corporations filed accurate, publicly available information with the government simply served as a tool for entrenched interests to perpetuate their hold on power. In Manne's mind, bureaucratic and political methods could never match what he believed to be the efficiencies of markets and, in particular, information markets. "The whole 'disclosure philosophy' as a basis for securities regulation is close to being a fraud on the American investing public, providing unwarranted benefits to government officials, securities lawyers, accountants, financial analysts, and printers."¹¹¹

In the space of about ten years when he was a professor in law at St. Louis University, the University of Wisconsin, and George Washington University, from the mid-1950s with his first book reviews to the 1960s with his articles in leading economics and law journals, Manne had laid his analytical axe to the root of the New Deal system of corporations. He attacked corporate social responsibility, corporate democracy, corporate ethics—the corporation driven by anything other than economic logic. In place of the categories of power and responsibility, he asserted the objectivity of economic science. And, in contrast to a regulatory system of corporate accountability, he erected a defense of the deregulated market as a system of responsibility.

The result? "I was probably the most reviled law professor in America," he said decades later.¹¹² How he went from maligned outsider to powerful intellectual requires some explanation, and the story shows how the conservative attack on corporate social responsibility gained ascendancy in the 1970s.

¹¹¹ Manne, "Economic Aspects of Required Disclosure under Federal Securities Laws," 66.

¹¹² Manne, "How Law and Economics Was Marketed in a Hostile World: A Very Personal History," 310, 311.

The broader movement

In addition to the broader conservative economics movement, Henry Manne belonged to an overlapping school of thought that came to be called law and economics. The origins of this movement are found in a handful of personalities, institutions, and happenstances, which can't be related here entirely. Manne used the term himself in his 1966 book on insider trading, though the name came along quite a few years earlier. Aaron Director founded the *Journal of Law and Economics* at the University of Chicago in 1958. More important than the name, however, was its meaning and function. Law and economics became a label for the application of economics to the field of law. As many observers have noted, even though the aims and emphases are quite different, law and economics has this in common with legal realism and, later, critical legal studies, namely that it seeks to take a methodology outside of the field of law and use it to analyze legal institutions.¹¹³ Critical legal studies and law and economics sought to displace traditional and formalist accounts of law and both were acutely focused on public policy, even though the former analyzed law in terms of power and the latter in terms of supposedly depoliticized economics.¹¹⁴

Law and economics started out generally speaking as a descriptive methodology, but it came to incorporate prescriptive views as time went on. Scholars working in the field proposed economic models as a normative method of legal reasoning for practical

¹¹³ Oliver E. Williamson, "Revisiting Legal Realism: The Law, Economics, and Organization Perspective," in *Coasean Economics Law and Economics and the New Institutional Economics*, ed. Steven G. Medema, Recent Economic Thought Series (Dordrecht: Springer Netherlands, 1998), 119–59.

¹¹⁴ See Morton Horwitz, "Law and Economics: Science or Politics?," *Hofstra Law Review* 8, no. 4 (January 1, 1980).

use in courts and regulatory administrations.¹¹⁵ The British economist Ronald Coase, a longtime teacher at the London School of Economics (LSE) who eventually took a professorship at the University of Chicago Law School, is an illustrative example of this change.

Coase wrote an important article in 1937 for the LSE journal *Economica* called “The Nature of the Firm,” which was probably the first conceptual building block for the law and economics movement.¹¹⁶ At the time, most analysis of the firm centered on the legal and political dimensions of property and power, but Coase used neoclassical theory to explain why firms are created and why they grow. He assumed, in the first place, that corporations represented a kind of suspension of the market. That is to say, the productive activities that take place inside a firm are coordinated in a manner different from productive activities that take place in the open market. The latter is coordinated by the price mechanism; the former by managers or entrepreneurs. The question, then, was a simple one: why are some forms of production coordinated by the market and others by the firm? Or, as Coase put it, “why is there any organisation?”¹¹⁷

The answer had to do with the principles of marginalism, economic substitution, and something that he would later call “transaction costs.” The price mechanism may be able to coordinate activity, he argued, but there are costs associated with it. The characteristics of some production and services are such that they may be more profitable to coordinate within a firm. “At the margin, the costs of organizing within the firm,” he

¹¹⁵ The journal billed itself as dealing specifically with public policy for experts in economics and law. See the announcement in “A New Journal for Law and Economics,” *The American Journal of Economics and Sociology* 18, no. 2 (1959), 169.

¹¹⁶ R. H. Coase, “The Nature of the Firm,” *Economica* 4, no. 16 (November 1, 1937): 386–405.

¹¹⁷ *Ibid.*, 388.

writes, “will be equal either to the costs of organising in another firm or to the costs involved in leaving the transaction to be ‘organised’ by the price mechanism.”¹¹⁸ Firms grow larger and larger, consuming, as it were, more factors of production until a kind of balance is reached. This theory explained business in the “real world,” he thought. So described, the firm participated in a continual process of adjustment—a process of dynamic equilibrium.

Coase later published a more influential article dealing with the issue of externalities called “The Problem of Social Cost.”¹¹⁹ Regarding questions of state intervention in the economy for the purposes of social welfare, Coase argued, the cost of market transactions ought to be taken into account. That is to say, economic analysis should be used to evaluate the relative difference between the social costs of a firm’s production and the value of that production. In some circumstances, eliminating or significantly altering modes of production is associated with high transaction costs. Jurists and regulators, he argued, ought to reason their way through these kinds of cases by way of economic efficiency. The value of economic reasoning it provides alternatives, such as fining or taxing instead of extensive government intervention.¹²⁰

Coase was one of the founders of the field of law and economics, alongside Henry Manne, Richard Posner, and Guido Calabresi.¹²¹ The latter two likely did more than any others to legitimize law and economics and make it hegemonic within legal studies.

¹¹⁸ Ibid., 404.

¹¹⁹ R. H. Coase, “The Problem of Social Cost,” *The Journal of Law & Economics* 3 (1960): 1–44.

¹²⁰ R. H. Coase, “The Problem of Social Cost,” *The Journal of Law & Economics* 3 (1960), 11; 28. Manne would help write and lobby for state legislation in Florida in the 1970s that would require agencies to follow this Coasean method. See Robert W. Poole, “Spotlight: Henry G. Manne,” *Reason*, May 1, 1976.

¹²¹ The American Law and Economics Association honored the four men with this title in 1991. Daniel L. Rubinfeld, “American Law and Economics Association,” in *Encyclopedia of Law & Society: American and Global Perspectives*, 3 vols. (Thousand Oaks: Sage Publications, Inc., 2007), 60.

Posner's *Economic Analysis of Law*, published in 1973 and almost universally described as monumental, signaled that the economic approach to legal questions could no longer be ignored.¹²² Posner picked fights with top scholars and pointed out economic flaws in revered legal scholarship. He published widely in a range of fields and created his own economic consulting firm called Lexecon. As Steven Teles has put it in appropriately economic terms, "Posner's work [...] produced a positive externality for the movement, by increasing the demand for its scholarship and removing blockages to its supply."¹²³

Calabresi made his name writing in the field of tort law. His breakthrough book, *The Cost of Accidents: A Legal and Economic Analysis*, came in 1970 and offered a new logic by which to adjudicate accident law.¹²⁴ He found, similarly, that notions of responsibility and fault should not be the guiding concepts of torts. The efficiency of the overall legal and economic system should be the guiding principle. It followed for Calabresi, then, that legal reasoning should favor the reduction of accident costs and accident avoidance costs. Generally speaking, he argued, that the party ablest to reduce those costs was also the party best able to perform the appropriate cost-benefit analysis.

By the 1970s, law and economics was no longer confined to Chicago. Not only had it made its way into top schools like Harvard and Yale, it was also embraced by a range of scholars who were not so conservative or as motivated by ideological libertarianism as those in the Chicago school. There are a variety of taxonomies useful for describing the different emphases and methodological schools of law and

¹²² Richard A Posner, *Economic Analysis of Law* (Boston, MA: Little, Brown and Company, 1973).

¹²³ Teles, *The Rise of the Conservative Legal Movement*, 96-97.

¹²⁴ Guido Calabresi, *The Cost of Accidents: A Legal and Economic Analysis* (New Haven, CT: Yale University Press, 1970).

economics.¹²⁵ Probably the most prominent has been to note the differences between the so-called Chicago and Yale schools. As Francesco Parisi has put it, Chicagoans emphasized that the common law was a result of efforts to create efficient outcomes and that efficiency should be the predominant factor in shaping rules and procedures. Those at Yale tended to emphasize the need for state intervention to correct for the problems of market failure. They were more prone toward policy intervention for the good of social outcomes, as many have pointed out.¹²⁶ But both schools of thought were driven by their own normative understandings of public policy.

The debate between the so-called Chicago and Yale schools, as represented by Calabresi and Posner, had an effect of popularizing the law and economics brand in American law. George Priest, a professor of law and economics at Yale Law, described the effect in this way:

It was the debate between the Chicagoan and the Yale, the conservative and the ultra-liberal, which had the influence. And that influence derived not from any idea, but from the debate itself and, especially, from the fact that both parties embraced the core of economic analysis as a mechanism for thinking about legal problems; they simply differed in that embrace in many respects. At heart, what was important in the Posner-Calabresi debate was the economic analysis that they agreed upon. Observers could side with one or the other combatant regarding their differences. To do so convincingly, however, each observer had to *learn* the common areas of agreement.¹²⁷

¹²⁵ See, for example, Nicholas Mercuro, "The Jurisprudential Niche Occupied by Law and Economics," *Journal of Jurisprudence* 2 (2009): 61–110.

¹²⁶ Francesco Parisi, "Positive, Normative and Functional Schools in Law and Economics," in *The Elgar Companion to Law and Economics*, ed. Jürgen G. Backhaus (Cheltenham, England: Edward Elgar Publishing, 2005), 63–64.

¹²⁷ George L. Priest, "Henry Manne and the Market Measure of Intellectual Influence," *Case Western Reserve Law Review* 50, no. 2 (1999), 329.

The spread of law and economics had a cascading effect for a rising generation of economists who had to come to their own conclusions about the form and function of the large corporation. Older legal and economic thought focused on the differences between firms, but law and economics scholars in the 1960s and 1970s sought to show that corporations were essentially structured and governed by market logic.

Two examples will suffice. Armen Alchian and Harold Demsetz, both libertarian in their predilections and longtime members of the Mont Pelerin Society, wrote an important article in 1972 called “Production, Information Costs, and Economic Organization,” that took up Coase’s theory of transaction costs. They argued that corporations exist on an ongoing basis because of constantly renegotiated contracts. This had significant consequences for the way they thought about corporate power. “It is common to see the firm characterized by the power to settle issues by fiat, by authority, or by disciplinary action superior to that available in the conventional market,” Demsetz and Alchian wrote. “This is delusion.”¹²⁸

The corporation, in their view, should be seen simply as a team constituted by contracts and exchanges that are not much different from what is coordinated in the market. That is to say, the employer/employee relationship was basically the same as the consumer/retailer relationship. “Telling an employee to type this letter rather than to file that document is like my telling a grocer to sell me this brand of tuna rather than that brand of tuna.”¹²⁹ Although it was a bizarre analogy based on fundamental misunderstanding of the social conditions of working life, Alchian and Demsetz produced

¹²⁸ Armen A. Alchian and Harold Demsetz, “Production, Information Costs, and Economic Organization,” *The American Economic Review* 65, no. 5 (1972), 777.

¹²⁹ Alchian and Demsetz, “Production, Information Costs, and Economic Organization,” 777.

a powerful theory of the firm as a “specialized surrogate” for a market in which managers are able to more efficiently supervise and surveille contracted employees.¹³⁰

The shareholders weren’t interested in power or shareholder democracy; they were just utility-maximizers. In an aside, Alchian and Demsetz floated the idea that shareholders could be seen not as joint owners but as investors who don’t necessarily have a proper role in governing the firm.¹³¹ The economists Michael Jensen and William Meckling developed this view further in one of the most influential economics papers of the late twentieth century. The firm, they argued, was not a concession of power from the state. It was a legal fiction which “serves as focus for a complex process in which the conflicting objects of individuals” are brought into equilibrium “within a framework of contractual relations.” They argued that the behavior of a firm is basically the same as the behavior of a market—i.e. “the outcome of a complex process of equilibrium.”¹³² There was essentially no difference between the “inside” or “outside” of a company.¹³³ The corporation, in this understanding, was not concession of the state and it had no owners, not really. In Jensen and Meckling’s words, the corporation was just a “nexus of contracts.”

It's worth noting that these developments in law and economics had produced a theory of the firm that improved upon the older Chicago view. Hayek and Friedman, for their part, thought of the corporation as a piece of property owned by shareholders. On the occasion of the Campaign to Make General Motors Responsible and other corporate

¹³⁰ Alchian and Demsetz, “Production, Information Costs, and Economic Organization,” 794n18.

¹³¹ Alchian and Demsetz, “Production, Information Costs, and Economic Organization,” 789n14.

¹³² Michael C. Jensen and William H. Meckling, “Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure,” *Journal of Financial Economics* 3, no. 4 (October 1976), 311.

¹³³ Gerald F. Davis, *Managed by the Markets: How Finance Re-Shaped America* (New York, NY: Oxford University Press, 2009), 83.

protests, Friedman popularized this view in an article for *New York Times Magazine*.¹³⁴

The sole social responsibility of business was to create profits for shareholders, he argued. Leading economists, in subsequent years, had come to think of the corporation as a kind of institution that lacked, so to speak, the ontological substance to even have owners. The language of markets had metastasized and rendered anemic the concepts of property, power, and responsibility.

Mobilization and the Law and Economics Center

Before Posner and Calabresi published their groundbreaking works and before law and economics had become hegemonic in the American academy, Henry Manne had already finished his most productive intellectual period. His timing, you might say, was off.¹³⁵ By 1966, he had earned a master's and J.S.D. in law from Yale, but such credentials didn't grant him entry into circles of academic prestige. Rebuffed by elite legal scholars and SEC leaders like William Cary and Louis Loss (whose views of regulation he attacked but whose approval he still craved), Manne felt frustrated and excluded. His next move was to pivot to economics, writing and presenting in a field that was more welcoming, and eventually he took up a professorship in the political science department at the University of Rochester, where he was outspoken in his opposition to Ralph Nader and other corporate protestors.¹³⁶

For years, Manne had been saddled with his association with the "Chicago school," the epithet of derision that leading liberals used to label the libertarians and

¹³⁴ Milton Friedman, "A Friedman Doctrine," *New York Times Magazine*, September 13, 1970.

¹³⁵ Roberta Romano, "After the Revolution in Corporate Law," *Journal of Legal Education* 55, no. 3 (2005), 342.

¹³⁶ See, e.g., "Crisis may Bring Business Controls," *Democratic and Chronicle* (Rochester, NY), Aug. 12, 1970.

conservatives whose work lay outside the margins of respectable opinion. That began to change, however, by the late 1960s, and the increasing popularity of Milton Friedman and Friedrich Hayek served as a kind of litmus test.¹³⁷ Manne remembered one moment in particular at a meeting of the Association of American Law Schools. “I remember I was starting up an escalator in a hotel and there were two young professors I didn’t know in front of me, except that I overheard that they were talking about me,” he said in an oral history interview in 2012. “One of them said to the other one, ‘Aw, no, he’s not a conservative kook; he’s like Milton Friedman.’ At that point, I knew that the world had changed. If it had reached the level where Milton’s popularity and influence was now resurrecting my reputation, it was of big importance.”¹³⁸

That memory may have long marked in his mind the moment when neoclassical economics and conservative thought more generally had started to become accepted in the legal field, but Manne personally felt burned out in his quest for a conventional academic career. “The educational world is such a mess today from the libertarian point of view that a cleansing is certainly long overdue,” he wrote to Pierre Goodrich, the right-wing businessman and founder of the Liberty Fund.¹³⁹ He became captivated by the idea of establishing an educational institution that would not only serve as a beachhead for law and economics in universities but also as a center through which lawyers, judges, and business professionals could be brought around to the free market viewpoint. Instead of an academic, Manne embraced a vocation as an “intellectual entrepreneur,” operating

¹³⁷ Association with Hayek and Friedman had even more currency after they won Nobel Prizes in economics in 1974 and 1976, respectively. Teles, *The Rise of the Conservative Legal Movement*, 102.

¹³⁸ Interview with Henry Manne, 33.

¹³⁹ Quoted in Teles, *The Rise of the Conservative Legal Movement*, 104.

within the field of law while also seeking to change the intellectual content and the practice of legal education.¹⁴⁰

Manne may have been disillusioned with a traditional academic career path, but his ambitions had not narrowed; they had widened. At Rochester, Manne proposed the creation of an entirely new law school that would be built around an economics curriculum. Starting a new program from the ground up created opportunities for tailoring the faculty, administration, and curriculum to fit this vision. But this idea of a new kind of legal education required not just new intellectual connections but also new institutional structures and most of these Manne formed through his own salesmanship and networking.¹⁴¹ A school of law and economics also promised a measure of influence that outpaced other institutions. “[N]o other social discipline can begin to match the relevance and importance of economics for the training of modern lawyers,” he wrote to W. Allen Wallis, the president of the university and a fellow Chicago alum. “The idea should be to infuse the entire curriculum with economic sophistication.”¹⁴²

Manne envisioned an institution that would sit at the nexus of law, government, and business. The “economic sophistication” of his curriculum would provide graduates with opportunities in public policy and in-house legal work. If Manne’s school could feed graduates into the ranks of large corporations, then business would see the value not only in training economically literate lawyers but also in the cultivation of pro-business ideas. It would be a mutually beneficial relationship. As he wrote to Goodrich, “A single

¹⁴⁰ Teles, *The Rise of the Conservative Legal Movement*, 104-105.

¹⁴¹ Ronald Cass, “One Among the Manne: Changing Our Course,” *Case Western Reserve Law Review* 50, no. 2 (January 1, 1999), 206.

¹⁴² Letter from Henry Manne to President W. Allen Wallis, “Report on Law Schools,” January 1968, 3-4. Quoted in Teles, *The Rise of the Conservative Legal Movement*, 103.

generation of lawyers from one school dedicated to true liberal values could turn the American legal system back into a productive and desirable channel.”¹⁴³

Recent trends toward public interest law at elite schools and powerful non-profit foundations provoked Manne. Public interest law was the name given to movements within the legal profession that sought to give representation to groups and causes that were generally bereft of power and representation. Although public interest organizations like the NAACP and the ACLU had played important roles since the early twentieth century in the civil rights movement, among other things, public interest lawyering took on new dimensions among a generation of young, liberal law school graduates in the 1960s and 1970s. “A source of intense interest for the present generation of law students is the small number of practitioners outside government or corporate law practice whose prime goal is the promotion of significant social change,” wrote a group of Yale Law students in 1970. “The activities of these lawyers, coupled with their sense of commitment and willingness to make personal sacrifices, have led publicists to call them the new ‘public interest lawyers.’”¹⁴⁴ With support from liberal institutions, new public interest organizations took up causes of civil rights, the environment, and, in particular, the failure of regulatory agencies to mitigate corporate abuses.¹⁴⁵ As Steven Teles has ably described, the conservative legal movement, with which Henry Manne and company were comrades in arms, was mobilized primarily in opposition to public interest law.¹⁴⁶

¹⁴³ Quoted in Teles, *The Rise of the Conservative Legal Movement*, 104.

¹⁴⁴ “The New Public Interest Lawyers,” *The Yale Law Journal* 79, no. 6 (1970), 1069-1070.

¹⁴⁵ Charles R. Halpern and John M. Cunningham, “Reflections on the New Public Interest Law: Theory and Practice at the Center for Law and Social Policy,” *Georgetown Law Journal* 59 (1971 1970), 1096-1097.

¹⁴⁶ Teles, *The Rise of the Conservative Legal Movement*, 22-57.

If non-profits like the Ford Foundation and elite institutions of higher education like Harvard and Yale law schools fostered liberal and public interest law, Manne hoped that allies within big business could be called upon to support free market ideas in law. In letters to Wallis and Pierre Goodrich that were a kind of Powell Memo *avant la lettre*, Manne outlined the plan for a conservative takeover of legal education.¹⁴⁷ “I have no interest in founding ‘just another law school,’ and certainly no interest in furthering the statist characteristics of our leading schools,” he wrote to Goodrich. “Nothing would make me more proud than to be able to name our law school the Pierre F. Goodrich School of Freedom Under Law.”¹⁴⁸ Manne’s vision of law was all-encompassing and he hoped for an institution that would bring a free market approach to government, law, and business.

The funding and institutional support for a law school never materialized at Rochester, but Manne found another path by starting a summer economics program for law professors. “I got the idea that perhaps I could train people to be able to read what I had written,” he recalled. “That was part of my idea in doing this and part of it was to establish a law school connection to the University of Rochester, but it developed a life of its own.”¹⁴⁹

The first summer program for law professors began in 1971 and continued annually for the next twenty-five years. Manne secured the funding to give \$1000

¹⁴⁷ On the “Powell Memo”, see Adam Winkler, *We the Corporations: How American Businesses Won Their Civil Rights* (New York, NY: Liveright Publishing, 2018), 283-305. Justice Lewis Powell, Jr., turned out to be one of the champions of Manne’s vision of deregulating securities, including particularly those pertaining to insider trading. See A. C. Pritchard, “Justice Lewis F. Powell, Jr., and the Counterrevolution in the Federal Securities Laws,” *Duke Law Journal* 52, no. 5 (2003): 841–949.

¹⁴⁸ Letter from Henry Manne to Pierre Goodrich, December 15, 1972. Quoted in Teles, *The Rise of the Conservative Legal Movement*, 105.

¹⁴⁹ Interview with Henry Manne, 42.

stipends to each participant and pay for their travel and accommodations costs. That first cohort of professors was an important one. He carefully selected faculty members from elite law schools for purposes of branding and advertising. And he shrewdly recruited legal experts who were already sympathetic and interested in the mission. Manne didn't want someone who was there to "argue about ideology or first causes."¹⁵⁰ "Pareto in the Pines," as it came to be called, needed the credibility that came from those who first bought into the program.¹⁵¹

There was a sheen of academic neutrality that varnished the economics camps. It was important to Manne that they were perceived as educating professors in the objective science of economics, not in some ideology. But, after a few years, law and economics critics like Arthur Leff were left appalled by its politics and surprised by its popularity. He wondered at the fact that Manne's "summer indoctrination session in economics" was "continuously over-subscribed" to the point that "his little Pareto-in-the-Pines has its own long and distinguished alumni group rivaling that of more conventional 'legal' alma maters."¹⁵² The way Manne came to see it was that if he couldn't start his own law school, he could at least "wholesale" his understanding of law to professors who could then "retail" it to students.¹⁵³ And it seemed to be working. He had a long list of applicants every year and consistent support from a dozen major corporations who were

¹⁵⁰ Manne, "How Law and Economics Was Marketed in a Hostile World," 313.

¹⁵¹ J. Kelley, *Bringing the Market Back in: The Political Revitalization of Market Liberalism* (London: Springer, 1997), 68-69.

¹⁵² Arthur Allen Leff, "Economic Analysis of Law: Some Realism about Nominalism," *Virginia Law Review* 60, no. 3 (1974), 452.

¹⁵³ Manne, "How Law and Economics Was Marketed in a Hostile World," 315.

interested in promoting a more business friendly approach to antitrust.¹⁵⁴ In time he would see over 650 law professors go through his programs.¹⁵⁵

But that experience taught Manne that there must be new ways of influencing the law—ways that were untried and untested. The summer programs demonstrated the importance of professional networks in gaining broad-based acceptance of new ideas. As Steven Teles has shown, early participants at Rochester like Ralph Winter from Yale and Douglas Ginsburg from Harvard took the law and economics perspective back to their respective law schools and to their respective scholarly agenda. The Manne programs did a lot to develop a core of law and economics professors at law schools like the University of Virginia and University of Southern California.¹⁵⁶ “It created a group of true believers,” said Michael Graetz, a UVA law professor. “If you look at key-first generation people of a certain age cohort of that time, you’d find that they had been through the Manne school at some point, because he did it for a long time.”¹⁵⁷

In 1974, with support from Soia Mentschikoff, a Chicago alum and Dean at the University of Miami, Manne founded the Law and Economics Center (LEC) in Coral Gables, Florida.¹⁵⁸ This was a milestone in the development of the field of law and economics because it “served as a kind of clearinghouse or association for people interested in the field,” as Manne put it, but it was also a platform by which he would disseminate a free market perspective.¹⁵⁹ The center continued the work of educating law

¹⁵⁴ Ibid.

¹⁵⁵ Manne, “How Law and Economics Was Marketed in a Hostile World,” 315-316. Teles, *The Rise of the Conservative Legal Movement*, 106.

¹⁵⁶ Teles, *The Rise of the Conservative Legal Movement*, 106-107.

¹⁵⁷ Quoted in *The Rise of the Conservative Legal Movement*, 107.

¹⁵⁸ Henry Manne, “Intellectual History of the Law School | Scalia Law School,” accessed October 18, 2018, <https://www.law.gmu.edu/about/history>.

¹⁵⁹ Ibid.

professors in conservative economic ideas through short-term courses, but its agenda became increasingly ambitious. This was somewhat paradoxical because the institution that hosted the LEC was fairly marginal, at least compared to the Yale Law School that had surprisingly that same year finally offered Manne a job.¹⁶⁰ That offer was a milestone in terms of the mainstream recognition that it offered him, but Manne realized by that time that it would be easier to influence the legal establishment from the outside rather than the inside.

The relative weakness of the University is paradoxically an advantage in that same regard. At a stronger University or law school, where I would not be the most prominent professor, it is very unlikely that I could promote a program of this sort without considerable resistance and interference from other members of the law faculty, the economics department, and from the University administration.¹⁶¹

In an era when think tanks were becoming prominent within American political and intellectual life, the Law and Economics Center was one of the most disciplined and successful at spreading conservative ideas. The center hired researchers and brought on board big names like Friedrich Hayek, James Buchanan, and Ronald Coase for visiting professorships or lectureships. They published research for specialists and popular audiences. In association with the libertarian Liberty Fund, they hosted conferences. They pursued a multi-pronged approach to the dissemination of ideas.¹⁶²

¹⁶⁰ “You’re five years too late for me to give a damn,” Manne told Yale. Henry Manne interview by James Stocker, 39.

¹⁶¹ Confidential Memorandum from Henry G. Manne on The Center for Studies in Law and Economics at the University of Miami Law School, April 16, 1974. Quoted in Teles, *The Rise of the Conservative Legal Movement*, 109.

¹⁶² Teles, *The Rise of the Conservative Legal Movement*, 109.

The most controversial and perhaps most successful program that the LEC organized was a summer Economic Institute for Federal Judges, which was an all-expenses paid vacation and educational program that had at one point hosted one-fifth of the federal judiciary.¹⁶³ The *Washington Post* sounded the alarm in 1980 that 93 judges had attended the programs of a right-wing institution bankrolled by over 100 corporations.¹⁶⁴ Despite controversy over the appearance that big business was influencing the opinions of powerful federal judges, Manne maintained that the courses were non-ideological. He solved, he claimed, the appearance of impropriety by funding the judges program solely through the donations of foundations and no longer through corporate funds. Later that year, a judicial ethics committee gave its approval to continued operation of the program.¹⁶⁵

What was most striking about the judges' program was the far reach of its influence and Manne's ability to navigate his institutional ship through polarizing political winds. In the span of about 25 years, more than 450 federal judges attended the program, including such varied and powerful jurists as Clarence Thomas and Ruth Bader Ginsburg.¹⁶⁶ Even the liberal Ginsburg walked away from the seminar with appreciation and later congratulated Manne on the program. "Cheers to Henry, innovator and dean

¹⁶³ "Big Corporations Bankroll Seminars For U.S. Judges," *Washington Post*, Jan. 20, 1980.

¹⁶⁴ *Ibid.*

¹⁶⁵ "Paid Course May Pass Judges' Group," *Washington Post*, Aug. 23, 1980.

¹⁶⁶ Calculation comes from list in "Appendix B: Cumulative List of Participating Federal Judges," in Henry N. Butler, "The Manne Programs in Economics for Federal Judges Symposium: The Legacy of Henry G. Manne--Pioneer in Law & Economics and Innovator in Legal Education May 21-22, 1999," *Case Western Reserve Law Review* 50 (2000 1999), 376-387.

nonpareil,” she wrote in 1999. “As a student in two of his seminars, I can affirm that the instruction was far more intense than the Florida sun.”¹⁶⁷

The pleasant Florida sun was one part of the formula that made the program work. Combined with fine food and drink and recreation afforded by the beach or golf course, the new “Pareto under the Palms” attracted participants with more than just microeconomics. Manne was a “zealous proponent of over-consumption of fine food,” one alumnus recalled.¹⁶⁸ “Naturally, one remembers stone crab, pecan pie, and great snorkeling more vividly than macroeconomics,” said another judge of the Ninth Circuit, “but the amenities improved the absorption rate of the substantive matter.”¹⁶⁹ This combination of wining and dining was important for the success of all of Manne’s programs. “Some who attended Manne’s ‘summer camp’ got a good rest or a good tan, but most came away with more,” said Ronald Cass, a Chicago alum and former dean of the Boston University School of Law. “Most found something in the economic analysis that change the way they looked at a problem or a group of problems.”¹⁷⁰

The Law and Economics Center created a market for the field by enhancing the reputation of scholars in the field and by creating a demand for the conferences themselves. The chance to mingle with senior scholars and Nobel Laureates like Milton Friedman, Friedrich Hayek, and Paul Samuelson at an all-expenses-paid conference that

¹⁶⁷ Quoted in Henry N. Butler, “The Manne Programs in Economics for Federal Judges Symposium: The Legacy of Henry G. Manne--Pioneer in Law & Economics and Innovator in Legal Education May 21-22, 1999,” *Case Western Reserve Law Review* 50 (2000 1999), 358.

¹⁶⁸ Butler, “The Manne Programs in Economics for Federal Judges,” 358.

¹⁶⁹ Quoted in Henry N. Butler, “The Manne Programs in Economics for Federal Judges Symposium: The Legacy of Henry G. Manne--Pioneer in Law & Economics and Innovator in Legal Education May 21-22, 1999,” *Case Western Reserve Law Review* 50 (2000 1999), 358n19.

¹⁷⁰ Ronald Cass, “One Among the Manne: Changing Our Course,” *Case Western Reserve Law Review* 50, no. 2 (January 1, 1999), 207.

took place at a luxury resort—this was enough to pique the interest of most judges and law professors.¹⁷¹

The effectiveness of the summer programs, however, was not a trick of crabs and snorkeling but of the care and shrewdness of Henry Manne. As George Priest, the longtime sponsor of the Federalist Society at Yale Law School, put it, Manne paid attention consistently over the years to the content of the conference and the positions of the attendees. “None of the many Manne conferences that I attended were ideological directly. There was no clear or, to my mind, subterranean agenda,” he wrote. Manne provided for a balance, but not “too much balance.” “Commonly, extremely prominent liberal economists would attend—such as Paul Samuelson and Ken Arrow,” he remembered. “Though both are irrepressible, their positions were often cabined by topics far from familiar to them.” Manne would bring in liberal academics to the judges’ programs to teach sessions on “safe topics.” A liberal economist teaching supply and demand has very little danger compared to having them teach on antitrust or regulation. “That,” Priest wrote, “Henry Manne would never allow.”¹⁷²

Perhaps Henry Manne’s most high-profile opportunity to respond to the rising tide of activists who were calling on corporations to embrace new forms of social responsibility came in 1976. At the behest of John Durkin, a junior New Hampshire senator who had made a name for himself as a public interest activist particularly in areas of consumer protection and corporate fraud, Warren Magnuson, the powerful Democratic

¹⁷¹ Manne excelled at fundraising. Perhaps this was because, as Ronald Cass said, businesses and foundations that funded the LEC were “confident that it was improving the quality of judges’ analysis of issues with obvious economic dimensions.” See Cass, “One Among the Manne,” 209.

¹⁷² George L. Priest, “Henry Manne and the Market Measure of Intellectual Influence,” *Case Western Reserve Law Review* 50, no. 2 (1999), 330.

chairman of the Senate Commerce Committee, convened hearings that summer to discuss new proposals relating to corporate rights and responsibilities.¹⁷³

It was a significant moment. Both sides of the corporate social responsibility debate had the chance to state their case, from conservative members of the American Enterprise Institute and the Hoover Institution to liberal faculty at elite law schools.¹⁷⁴ It was frequently clear, however, where the sympathies of many of the liberal committee members lay. With perhaps the exception of the senate hearings that Edward Kennedy convened a few years later to address the global infant milk formula crisis, the 1978 Commerce Committee hearings were the most important occasion that decade for members of the senate to discuss corporate reform.¹⁷⁵

Although the general context for the hearings were debates over corporate reform that had been ongoing throughout the decade, the proximate cause was a new proposal from the Corporate Accountability Research Group. Consisting primarily of Ralph Nader and his associates Mark Green and Joel Seligman, these public interest activists proposed a new Federal Chartering Act that would make large corporations more responsive to a range of social concerns and more accountable to the federal government.¹⁷⁶ The case for a new federal incorporation system was laid out in a controversial book published by W.W. Norton, *Taming the Giant Corporation*, showed how corporations had become out

¹⁷³ Durkin's public interest politics played an important role in his 1974 campaign for Senate. "Durkin Optimistic for New Congress," *The Portsmouth Herald*, Feb. 13, 1974. Committee on Commerce, *Corporate Rights and Responsibilities: Hearings before the Committee on Commerce, Senate, Jun. 15-17, 21-23, 1976* (Washington, D.C.: U.S. Government Printing Office, 1976), 1-2.

¹⁷⁴ Committee on Commerce, *Corporate Rights and Responsibilities: Hearings before the Committee on Commerce, Senate, Jun. 15-17, 21-23, 1976* (Washington, D.C.: U.S. Government Printing Office, 1976), iii-iv.

¹⁷⁵ John Dobbing, ed., *Infant Feeding: Anatomy of a Controversy 1973-1984* (London: Springer-Verlag, 1988), 68-74.

¹⁷⁶ "Nader Calls for Federal Charter of Business," *Washington Post*, Jan. 25., 1976.

of control and untethered from the vision of a democratic political economy.¹⁷⁷ The legislative proposal was practically an omnibus of liberal ideas for how to reform corporations, including more democratic shareholder voting processes, increased social disclosure requirements, and an employee “bill of rights.”

The hearings that June 1976 were tense at times. Among certain populist Democratic members of Congress, such as Oklahoma’s Senator Fred Harris, the Nader bill had stirred a lot of interest and many at the hearings were sympathetic to its general aims.¹⁷⁸ But among those on the conservative side who had been called to testify, Nader and his ilk were poster boys for muddled economic logic and a special kind of threat to the free market. If there were an individual most disposed to dislike and disregard Nader’s perspective, it was likely to be Henry Manne. And if there were one to see Manne as a cynical mouthpiece of the corporations who funded the Law and Economics Center, it was probably Nader. The crux of Nader’s argument was that corporations had grown to become something much bigger and more powerful than they were when America’s corporation laws had been written. The imperative was to bring the law up to speed with reality. But Nader knew that wasn’t entirely persuasive. “There are some observers who say that size itself makes no difference,” he said. “These observers are usually relegated to academic groves in south Florida.”¹⁷⁹ The dismissive reference to the Law and Economics Center in Miami was thinly veiled. As Henry Manne’s turn came to testify, the presiding senator joked, “Since Mr. Nader referred to the Southern Florida

¹⁷⁷ Ralph Nader, Mark J. Green, and Joel Seligman, *Taming the Giant Corporation* (New York, NY: W.W. Norton & Company, 1976).

¹⁷⁸ Harris represented an insurgent Democratic populism that positioned itself in opposition to corporate power. See, e.g., Fred R. Harris, *The New Populism* (New York, NY: Saturday Review Press, 1973).

¹⁷⁹ Committee on Commerce, *Corporate Rights and Responsibilities: Hearings before the Committee on Commerce, Senate, Jun. 15-17, 21-23, 1976* (Washington, D.C.: U.S. Government Printing Office, 1976), 199.

experts, we will permit you to testify.” “I should have thought my suntan would make it clear to everyone that it was I to whom Nader was referring,” Manne said.¹⁸⁰

That humorous exchange precipitated an unusual bit of testimony at the committee hearings that day. As the libertarian *Reason* magazine reported with exasperation, the liberal Democratic Senator Vance Hartke was the only member present and even he left just a few sentences in to the prepared statement, leaving Manne talking to an empty dais and a handful of aides and spectators. Halfway through, Hartke returned and proceeded to interrupt with a series of questions that were occasionally aggressive, if not rather insulting. The ensuing back-and-forth revealed Manne as defensive, Hartke dismissive, and seemed to be an object lesson in how conservative economic ideas had yet to be taken seriously among many in Washington. “Is the conclusion that [...] it’s useless to attempt to ‘work through the system’ bit by bit?” *Reason* asked. “Or is the conclusion that the free-market position is finally getting on the map, since only people who are getting scared pull such shenanigans?”¹⁸¹

The effort represented by Nader and company to “democratize” the corporation was an “attempt to solve a nonexistent problem,” Manne said.¹⁸² He laid out the rudimentary sketch of conservative economic theory, including in particular the efficient market hypothesis as well as his own long-held views on how the price of shares reflected accurate information about the value of investments and the efficiency of corporate management. “Some market mechanism,” he said, “must be available to assure

¹⁸⁰ Committee on Commerce, *Corporate Rights and Responsibilities: Hearings before the Committee on Commerce, Senate, Jun. 15-17, 21-23, 1976* (Washington, D.C.: U.S. Government Printing Office, 1976), 225.

¹⁸¹ Henry G. Manne, “Federal Chartering: The New Attack on Corporations,” *Reason*, May 1977.

¹⁸² Committee on Commerce, *Corporate Rights and Responsibilities: Hearings before the Committee on Commerce, Senate, Jun. 15-17, 21-23, 1976* (Washington, D.C.: U.S. Government Printing Office, 1976), 226.

managerial efficiency and to replace less productive managers with more efficient ones.” The point was this: shareholding was simply an economic act, not a political phenomenon. To alter the structure of corporate governance by bringing in non-economic interests to bear would distort market mechanisms, produce massive inefficiencies, and result in general economic catastrophe.¹⁸³

Vance Hartke returned in the middle of Manne’s statement to press him on whether corporations have responsibilities with regard to pollution. “Senator, individuals can have responsibilities to society; corporations are not such beings as can have responsibilities or souls or spirits or anything of that sort,” Manne said. Hartke was incredulous. “There is no such thing as a corporate responsibility,” Manne repeated. Upon closer inspection, a corporation dissolves into a collection of contracts and utility-maximizing individuals. It was a misnomer, he contended, to infer that institutions have responsibilities at all; “the ultimate unit of analysis is individuals have incentives, constraints, motivations, responsibilities, and can be dealt with in those fashions.” “I think you are going to find yourself in such a minority that we don’t have to worry much about this testimony,” Hartke retorted.¹⁸⁴

The ensuing back-and-forth quickly foundered, with Hartke accusing Manne of being an anarchist and having a “callous approach” and Manne defending rather tactlessly the usefulness of economic metrics for the valuation of social goods, including human life. Such lines of thought were fit for seminars at the Law and Economics Center

¹⁸³ Committee on Commerce, *Corporate Rights and Responsibilities: Hearings before the Committee on Commerce, Senate, Jun. 15-17, 21-23, 1976* (Washington, D.C.: U.S. Government Printing Office, 1976), 226.

¹⁸⁴ Committee on Commerce, *Corporate Rights and Responsibilities: Hearings before the Committee on Commerce, Senate, Jun. 15-17, 21-23, 1976* (Washington, D.C.: U.S. Government Printing Office, 1976), 227.

and not so much for hearings on Capitol Hill. It is safe to say that Henry Manne's appearance before the Senate Commerce Committee was a poorly received attempt at rebutting Ralph Nader's justification for corporate reform. But it is also fair to say that Manne was unlikely to find a particularly receptive audience in the Senate regardless of the rhetorical persuasiveness of his performance. While proposals as radical as Nader's failed to find legislative support, the politics of corporate responsibility still had not yet caught up to the conservative economic movement. The experience confirmed for Manne something that he had already learned, namely that the best way to evangelize for his cause was not at elite institutions directly, be they Ivy League law schools or the U.S. Senate, but rather indirectly through non-mainstream but well-funded institutions that could cultivate and spread conservative ideas.

By 1980, Manne had fully embraced the role of the outsider, but he was no longer frustrated about it. Entrenched within the emerging conservative movement, the LEC had a budget exceeding \$1.5 million raised from right-wing organizations like the Olin Foundation, but also from major corporations like AT&T, Ford Motor Company, and U.S. Steel.¹⁸⁵ He felt like he was well on his way in establishing "Hoover East," as he came to call it—an academically and politically more significant version of the conservative Hoover Institution on the east coast.¹⁸⁶

By the time the Law and Economics Center was ten years old, it had become a major force in the conservative movement. Milton Friedman wrote to Manne in the summer of 1984 to congratulate him on the anniversary and note that the field of law and economics had become dramatically more significant partly as a result of his efforts.

¹⁸⁵ "Paid Course May Pass Judges' Group," *Washington Post*, Aug. 23, 1980.

¹⁸⁶ Teles, *The Rise of the Conservative Legal Movement*, 124-132.

“The consequences are reflected not only in scholarly articles in journals and the establishment of new journals devoted to the field,” he wrote, “but also in court decisions by judges who have participated in your economics institute for Judges or for Law Professors.”¹⁸⁷ Manne would use Friedman praise for the all-important task of fundraising, an enterprise that he excelled at both with corporations and foundations.¹⁸⁸

While law and economics was adopted in law schools at the University of Virginia, the University of Southern California, and in guarded ways at Yale and Harvard, Manne’s project at the University of Miami was the most recognizable and most overtly ideological of all these institutions. Manne, however, was always in the market for expanding his vision of what the Law and Economics Center could be. He brought the LEC to Emory University for a time. Initially with significant support from the conservative John M. Olin Foundation and from the university administration, Manne had plans to purchase a large building on the outskirts of the campus that would help make the LEC the premiere free market institution on the East Coast.¹⁸⁹

Support and funding fell through for Manne’s “Hoover East” as Emory, not least due to personality conflicts, but his next step brought him to his final institutional home at George Mason University. James Buchanan and Gordon Tullock, the libertarian social choice theorists who were also friends with Manne, invited him in 1985 to meet with the president of GMU who was looking for someone to head the law school that the university had recently acquired. It was a match. “He committed enough money that I

¹⁸⁷ Letter from Milton Friedman to Henry Manne, June 12, 1984. Box 165. Folder 1. Milton Friedman Collection.

¹⁸⁸ Letter from Henry Manne to Milton Friedman, May 31, 1984. Box 165. Folder 1. Milton Friedman Collection.

¹⁸⁹ Teles, *The Rise of the Conservative Legal Movement*, 124-132.

could buy out a lot of the existing faculty and fire those that didn't have tenure, and I did," Manne said. "I got rid of fourteen people in one year and hired eleven new people, twenty-five personnel actions without a single faculty meeting. Nothing like that has never happened in the history of higher education. By the second year, we were already an important law school, and embarked on implementing the Rochester program at Mason."¹⁹⁰ Manne's contempt and disregard for faculty governance went a long way toward compiling a team of conservative economic specialists who were highly motivated but likely undervalued in the liberal academy. He built up an institution that was focused on public policy and specialized in feeding graduates into government and business.¹⁹¹

"The Social Responsibility of Business is to Increase Its Profits"

If conservative law and economic thought conducted itself on the margins of public policy and academia in the postwar era, by the 1970s that had changed. Conservatives were then in a position to mount highly publicized counterattacks on the liberal-left movement for corporate social responsibility. General Motors's public relations nightmare of 1970 is illustrative. A group of young lawyers at the Center for Corporate Responsibility, along with the *bête noire* of corporate America, Ralph Nader, launched the Campaign to Make General Motors Responsible in January of that year. The campaign focused on reforming GM's governance and forcing the firm to address consumer, environmental, and civil rights issues. After a highly publicized clash at the annual shareholders meeting in May that attracted hundreds of journalists, went on for hours and included the impassioned speeches of dozens of young people, Campaign GM

¹⁹⁰ Interview with Henry Manne, 44

¹⁹¹ John J. Miller, "A Law School With a Twist," *National Review*, March 27, 2006.

made plans to reignite its activist efforts for the next year.¹⁹² Careful not to be seen as capitulating to the demands of activists but eager to avoid a repeat performance, the chairman James Roche offered a concession: a public policy panel that would advise the board on issues of corporate social responsibility.¹⁹³ In January of 1971, the company took one step further and appointed Reverend Leon Howard Sullivan, a longtime civil rights leader and promotor of industrial training and black self-help in Philadelphia, as the first African-American on its board.¹⁹⁴ Such actions, Roche said, demonstrated their “awareness of the expanding role of business in society.”¹⁹⁵

Such was the occasion for Milton Friedman to write an essay in the *New York Times Magazine* that has remained infamous (or celebrated, depending on the reader) ever since. It was called “A Friedman doctrine—The Social Responsibility of Business Is to Increase Its Profits.”¹⁹⁶ Although Friedman did not single out any particular corporate executives or activists, the context was made clear by the editors who framed the piece with photos of James Roche, Campaign GM organizers, and other movement leaders. According to Friedman, corporate social responsibility was fundamentally flawed project because it conflated economic action with political action. These two spheres ought to remain separate because, he argued, the logic of the market is the only immediately and commonly available coordinator of human activity. Politics is far less efficient than the price mechanism, invites conflict rather than consensus, and, when called upon to determine economic decisions, acts as a handmaiden to socialism. Friedman reserved his

¹⁹² “Campaign GM Loses on Ballot but Claims Victory for Ideas,” *Los Angeles Times*, May 23, 1970.

¹⁹³ “General Motors Forms a Public Policy Panel Of 5 of Its Directors,” *Wall Street Journal*, Sept. 1, 1970.

¹⁹⁴ “General Motors Names a Negro to Board, First Such Appointment in Auto Industry,” *Wall Street Journal*, Jan. 5, 1971. Leon Howard Sullivan, *Moving Mountains: The Principles and Purposes of Leon Sullivan* (King of Prussia, PA: Judson Press, 1998), 25-32.

¹⁹⁵ “General Motors Forms a Public Policy Panel.”

¹⁹⁶ Milton Friedman, “A Friedman Doctrine,” *New York Times Magazine*, Sep. 13, 1970.

greatest opprobrium for liberal business leaders, like Roche, who failed to stand firm against the corporate protestors and who gave heartfelt speeches on corporate citizenship. “This may gain them kudos in the short run,” he wrote. “but it helps to strengthen the already too prevalent view that the pursuit of profits is wicked and immoral and must be curbed and controlled by external forces.”¹⁹⁷

Friedman’s article took on second life in subsequent years as a classic text in the field of business ethics and it is perhaps for that reason that the context of General Motors and its corporate protestors has largely been lost when we remember it. A regular feature of business ethics textbooks and to this day a staple of MBA course syllabi, the essay articulated in a succinct and accessible way the conservative opposition to the idea of corporate social responsibility.¹⁹⁸ Friedman presented the relationship between shareholders and corporate leadership as a relationship of agency in which the only fiduciary duty of the managers and directors was to create profits. Profits are the responsibility and expertise of business leaders and little else. Using the language of social choice theorists, Friedman explained that activists, like those involved in Campaign GM, were rent-seekers who wanted to take control of corporate institutions in order to divert profits for their own personal interests.¹⁹⁹ Any executive who capitulated to such schemes, he argued, was in effect imposing taxes on shareholders.

¹⁹⁷ Ibid.

¹⁹⁸ See, e.g., K. Praveen Parboteeah and John B. Cullen, *Business Ethics* (London: Routledge, 2013); William H. Shaw, *Business Ethics: A Textbook with Cases* (Boston, MA: Cengage Learning, 2016).

¹⁹⁹ This application of game theory to the social order runs through conservative economic theory all the way to Frank Knight, though its principal expositor was James Buchanan. MacLean, *Democracy in Chains*, 97-98. “The whole game analogue for social order runs through Frank Knight’s writing, but I know of no single place where he concentrates full attention on this. I have often wished he had put these ideas in one place.” Letter from James Buchanan to Friedrich Hayek, Sep. 2, 1975. Box 13. Folder 14. Hayek Papers. Hoover Institution.

The “Friedman Doctrine” was kind of *praeparatio evangelica* for the era of shareholder value.²⁰⁰ Although it didn’t advocate a particular kind of managerial strategy, it did provide a justification for the maximization of corporate investments and an ideological shield from the more substantial proposals for corporate reform. On one point Friedman and Nader agreed; corporate social responsibility only made sense if the corporate system of governance was redesigned to empower community representatives and experts who participated in a substantive decision-making process. Friedman was fond of pointing out that business school graduates and their other colleagues in management did not possess the expertise to solve social issues.²⁰¹

Substantial changes were afoot in the 1970s, but not along the lines of what Nader and company were hoping for. As Louis Hyman has shown, the shareholder value movement depended upon developments in managerial strategy first pioneered in the late 1960s that abandoned the stability of the mid-century conglomerate model and put in its place the high-risk and high-profits of the investment portfolio model. Established firms were gutted for their cash and assets and diverted to more profitable investments.²⁰² By the 1980s, this managerial approach combined with substantial deregulation of antitrust and banking law laid waste to the diversified corporation as a wave of mergers and hostile takeovers reorganized the structure of American finance.²⁰³

²⁰⁰ On the idea of shareholder value, see William Lazonick and Mary O’Sullivan, “Maximizing Shareholder Value: A New Ideology for Corporate Governance,” in *Corporate Governance and Sustainable Prosperity*, ed. William Lazonick and Mary O’Sullivan, The Jerome Levy Economics Institute Series (London: Palgrave Macmillan UK, 2002), 11–36.

²⁰¹ Milton Friedman, “Responsibility: Insights from Economics,” Faculty Seminar I, Institute for Religious and Social Studies, March 8, 1965. Box 8. Folder 15. Milton Friedman Papers. Hoover Archives.

²⁰² Louis Hyman, “Rethinking the Postwar Corporation: Management, Monopolies, and Markets,” in *What’s Good for Business: Business and American Politics since World War II*, ed. Kim Phillips-Fein and Julian E. Zelizer (New York, NY: Oxford University Press, 2012), 202–204.

²⁰³ Andrei Shleifer and Robert W. Vishny, “The Takeover Wave of the 1980s,” *Science* 249, no. 4970 (1990): 745–49.

The transformation of corporate capitalism between the 1970s and the 1990s cannot be characterized in simple terms. Some have said that the American corporation vanished and was replaced by markets.²⁰⁴ Others have said that the corporation was “deinstitutionalized” or became “hollowed out.”²⁰⁵ But the corporation did not so much vanish or deconstruct as it was reorganized and its governance was reformed to fit the goals of a new mode of political economic logic. This new regime of corporate capitalism was set in motion by a constellation of social, political, and economic transformations that militated against the New Deal settlement.

Not only did the stability of the New Deal corporation falter during the 1980s, its institutional integrity as distinct from the rough-and-tumble competitiveness of the market lost credibility. A “corporation without boundaries” became a phrase du jour in 1980s and 1990s management speak.²⁰⁶ If the corporation of New Deal liberalism could be characterized as a social institution, the neoliberal corporation was a market or perhaps a network.²⁰⁷ The institution became fungible as jobs, assets, and divisions of the firm were sold off, absorbed and reconfigured into new firms, or replaced by sophisticated contracts and subcontracts. The generation of liberal business managers who had cultivated for themselves in the decades following World War II a sensibility of liberal

²⁰⁴ Forgetting perhaps that markets are constituted by corporate structures already. Gerald F. Davis, *The Vanishing American Corporation: Navigating the Hazards of a New Economy* (Oakland, CA: Berrett-Koehler Publishers, 2016). For a more sophisticated treatment of the relationship between conglomerates and financial markets in the postwar era, see Davis, *Managed by the Markets*.

²⁰⁵ Gerald F. Davis, Kristina A. Diekmann, and Catherine H. Tinsley, “The Decline and Fall of the Conglomerate Firm in the 1980s: The Deinstitutionalization of an Organizational Form,” *American Sociological Review* 59, no. 4 (1994): 547–70.

²⁰⁶ See, e.g., Robert D. Haas, “The Corporation Without Boundaries,” in Michael Ray, ed., *New Paradigm in Business: Emerging Strategies for Leadership and Organizational Change* (New York, NY: Tarcher, 1993).

²⁰⁷ Gerald F. Davis, Kristina A. Diekmann, and Catherine H. Tinsley, “The Decline and Fall of the Conglomerate Firm in the 1980s: The Deinstitutionalization of an Organizational Form,” *American Sociological Review* 59, no. 4 (1994), 566.

paternalism and social leadership (and whose motivations were criticized by New Leftists like the historian James Weinstein) was submerged by a rising tide of executives who were more impervious to liberal compulsions. They tended to see the purpose of business through the metrics of shareholder value and return on investment.²⁰⁸

The conventional wisdom of the era was evident on the front cover of the Coca-Cola Company's annual report from 1984 that printed above a photo of a fizzing glass of iced soda the words: "To increase shareholder value over time is the objective driving this enterprise."²⁰⁹ Corporate raiders like Carl Icahn and T. Boone Pickens kept executives faithful to this objective as they hunted for companies that were financially inefficient or possessed assets that could be sold off or managed differently.²¹⁰ High profile hostile takeovers rocked Wall Street like the leveraged buyout of RJR Nabisco which was dramatized for popular readers and HBO viewers in the book and made-for-TV movie *Barbarians at the Gate*.²¹¹ "Any management—no matter how powerful and independent," wrote the finance expert Jack Treynor, "that flouts the financial objective of maximizing share value does so at its own peril."²¹² Icahn, for his part, thought of his work in patriotic terms. "I believe I'm doing something that must be done. Productivity in the U.S. continues to decline," he told *Fortune*. "I get really angry at the managements of many U.S. corporations. Outrage is probably what drives me the most."²¹³ \$1.3 trillion

²⁰⁸ James Weinstein, *The Corporate Ideal in the Liberal State, 1900-1918* (Boston, MA: Beacon Press, 1968).

²⁰⁹ Coca-Cola Company, "1984 Annual Report."

²¹⁰ James P. Walsh and Rita D. Kosnik, "Corporate Raiders and Their Disciplinary Role in the Market for Corporate Control," *The Academy of Management Journal* 36, no. 4 (1993): 671–700.

²¹¹ Bryan Burrough and John Helyar, *Barbarians at the Gate: The Fall of RJR Nabisco* (New York, NY: Harper & Row, 1990).

²¹² Quoted in Alfred Rappaport, *Creating Shareholder Value: The New Standard for Business Performance* (New York, NY: Free Press, 1986), 13.

²¹³ "Icahn on Icahn," *Fortune*, Feb. 29, 1988.

changed hands in the 1980s as 143 companies in the Fortune 500 (or 28 percent) disappeared in mergers and hostile takeovers.²¹⁴

In his regular column for the *Atlanta Journal and Constitution*, Henry Manne lauded these recent trends in corporate management. "Mergers and takeovers represent our most important devices for moving productive assets into the hands of more efficient managers," he wrote.²¹⁵ The governance and practices of big business in those years came to reflect more closely the world that Manne had described and envisioned in his law and economics work in the early 1960s—a world where deregulation enabled mergers and takeovers, where management was responsive to active financial markets, and where shareholder value reflected the efficiency of management.²¹⁶

Under the direction of financializing CEOs like General Electric's Jack Welch who "managed by stress," large and lumbering conglomerates traded in the stability and structure of the maze-like organizational chart for something much more like an internal market. Welch immediately fired 100,000 people, graded each professional with efficiency metrics, and made his employees compete with each other annually in order to keep their jobs.²¹⁷ In an interview with the *Harvard Business Review* in 1989, Welch used market language to describe how corporate employees needed to be motivated by "adding

²¹⁴ Andrei Shleifer and Robert W. Vishny, "The Takeover Wave of the 1980s," *Science* 249, no. 4970 (1990), 745.

²¹⁵ "U.S. must update its merger laws," *The Atlantic Journal and Constitution*, Mar. 10, 1985. Manne would advocate for even greater deregulation to spur hostile takeovers as a cure for business scandal exemplified by Enron. Henry G. Manne, "Bring Back the Hostile Takeover," *Wall Street Journal*, Jun. 26, 2002.

²¹⁶ Manne, "Mergers and the Market for Corporate Control," 110-120.

²¹⁷ Douglas M. Eicher, *The Rise and Fall of Corporate Social Responsibility* (New York, NY: Routledge, 2017), 3-4; Carol Hymowitz and Matt Murray, "Raises and Praise or Out the Door: How GE's Chief Rates and Spurs His Employees," *Wall Street Journal*, Jun. 21, 1999.

value” instead of by “control”: “[E]ach staff person has to ask, How do I add value? How do I help make people on the line more effective and more competitive?”²¹⁸

From control to value and from institutions to markets—this was the shift in thinking that conservative economic thinkers had helped to pioneer and that became mainstream in the era of shareholder value. Enveloped within that shift toward market categories was a larger departure from the New Deal system of corporate capitalism. That regime was founded on a compromise between the profit-seeking interests of shareholders *qua* corporate owners and an ideology of corporate responsibility that commissioned managers to balance profits with liberal values. Just as financial and corporate deregulation proceeded apace in the Reagan Era, the ideology of corporate social responsibility became increasingly marginalized in the late 1970s and 1980s. The New Deal compromise was undone as the claims of shareholder value displaced the ideology of corporate responsibility and pushed back against the substantive corporate reformers proposed by activists on the liberal-left.

The corporate protests of late 1960s and early 1970s had taken business leaders by surprise. Although there had been marginal attempts to use proxy resolutions in the early civil rights movement, the sophistication and public support of campaigns directed toward Eastman Kodak and General Motors were new. The Conference Board, for one, issued and distributed a volume that laid out strategies for managers for dealing with protests at annual shareholders meetings.²¹⁹ The alarm that such activism provoked caused many business leaders to feel besieged and precipitated a long counterattack from

²¹⁸ Noel Tichy and Ram Charan, “Speed, Simplicity, Self-Confidence: An Interview with Jack Welch,” *Harvard Business Review*, September 1, 1989.

²¹⁹ See Henry C. Egerton and Conference Board, *Handling Protest at Annual Meetings* (New York, NY: The Conference Board, 1971).

conservative intellectuals, beginning first of all with Milton Friedman's defense of corporate profits in the *New York Times* magazine. But the intellectual movement of which Friedman, Hayek, Ronald Coase, Henry Manne, Robert Bork, and others were a part must be understood as constituting a longer trajectory in American history. It was no backlash. In regard to corporate theory and corporate responsibility, law and economics and the conservative economic field more generally had been at work for decades rooting out the ideas and support that made the New Deal vision of the corporation credible.²²⁰

The ideas that Manne and his colleagues in the conservative economic movement developed took on greater political importance in the 1970s and 1980s as older models of the stable conglomerate eroded and new structures of financialization, globalization, and shareholder value emerged. The question of historical causation naturally arises in trying to understand this history and to explain the relationship between ideas and political economy. The story told here, however, is not an illustration of conspiracy or a conscious plan to remake corporate capitalism. It is rather that the ideas, rhetoric, and intuitions that were in circulation through the Chicago School or the Law and Economics center became useful and more significant as historical circumstances changed. As the historian Daniel Rodgers has discussed in his work on the Progressive Era, political ideas become politically viable when they come to be seen as urgent and needed solutions to politically significant problems. "The framers of solutions do not come into the act at the last minute," he writes. "They are present at the moment of creation, transforming a tragic but

²²⁰ Davis, *Managed by the Markets*, 59-101.

incurable condition into a politically solvable problem and, by that very act, defining the field within which legislators and executives will ultimately maneuver.”²²¹

The Law and Economics Center in Miami published and widely distributed a volume in 1978 entitled, *The Attack on Corporate America: The Corporate Issues Sourcebook*. Like many pro-free market groups, the LEC saw big business as almost always in a state of crisis and in need of defense.²²² “The supreme irony of modern American corporate history,” Manne wrote with urgency, “may be that just when the intellectual battle about free enterprise has been won overwhelmingly by its proponents, the system is in the greatest danger ever of being destroyed.” The volume was made up of short chapters (not more than a few pages) that offered rebuttals to many of the most common liberal ideas about what was wrong with corporations and how they should be fixed. Harold Demsetz made a brief for the efficiency of large corporations. Warren Schwarz argued that breaking up big corporations would be too costly. Arthur Laffer explained that securities markets provided all the information that the public needed to know about corporate management. Other conservative scholars similarly took up questions of federal chartering, labor unions, and executive compensation.²²³

Manne reserved for himself the issue of corporate social responsibility and accountability, a cause that lacked, he said, any consistency or coherency. He reiterated in clear and accessible language once again the argument that he had been making since the mid-1950s that the market was the best judge of what is responsible, not politics or

²²¹ Daniel T. Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge, MA: Harvard University Press, 1998), 6.

²²² See, e.g., Herman Nickel, “The Corporation Haters,” *Fortune* (June 16, 1980).

²²³ Bruce Johnson, ed., *The Attack on Corporate America: The Corporate Issues Sourcebook* (New York, NY: McGraw-Hill, 1978).

regulation.²²⁴ This time, his ideological opponents were activists like Ralph Nader, not corporate liberals like Adolf Berle, but the mechanics of the intellectual case were basically the same. Corporate responsibility, he said, was an artifact of the crisis of the Great Depression, a misbegotten ideology of the New Deal, and a parasite on the private property system.²²⁵

Although Manne may have felt besieged and may have thought the free enterprise system was in danger, perhaps he felt that way in the late 1970s more out of habit than out of careful analysis of current events. After all, he had been an outsider for a long time, ever since he found himself reading Mises and Hayek instead of the assigned readings at Yale Law School. His career was a war of position that aimed to bring free market economic ideas into law, especially corporate law. As the head of the Law and Economics Center and, eventually, dean of the George Mason University School of Law, Manne remained a kind of outsider, but he was an outsider with power. By the late 1970s, he and the movement that he helped build did more than anyone else to weaken and marginalize corporate social responsibility in the twentieth century.

²²⁴ “[T]here’s only one rigorous social science and that’s economics.” Interview with Henry Manne, 12.

²²⁵ Henry G. Manne, “Corporate Social Responsibility and Accountability,” in Bruce Johnson, ed., *The Attack on Corporate America: The Corporate Issues Sourcebook* (New York, NY: McGraw-Hill, 1978), 3-8

Conclusion

The founder and head of Nike came to the National Press Club in May 1998 with the intention of challenging the reputation of human rights negligence that had dogged the shoe and apparel company for the past several years. Speaking to a group of executives, members of the press, and the national C-SPAN audience, Philip Knight gave the impression that Nike was committed to substantive changes to its labor practices even as he struggled to shake the defensive posture that the company had been maintaining for months. “I figured that I’d just come out,” he said, “and let you journalists have a look at the great Satan up close and personal.”¹ Muffled laughter can be heard on the video recording. He cleared his throat.

Phil Knight started what eventually became the dominant athletic brand, as the oft-repeated story went, by selling imported Japanese shoes out of the back of his Plymouth Valiant automobile in the 1960s. Nike went public in 1980 and became the consumer icon of Michael Jordan and Tiger Woods in the 1990s. The company rode a wave of transformation in the textile industry by manufacturing its innovative product designs with more innovative global supply chains. Although Nike found success in no small part because of its exceptional ability to use advertising and celebrity to establish a powerful brand, it was this agile entrepreneurialism, which traded in old-school commitments to domestic manufacturing for short-term international subcontractors, that made the company what it was. Nike’s was a story of globalization.

¹ Philip Knight, “Nike in the Global Economy” (May 12, 1998), <https://www.c-span.org/video/?105477-1/nike-global-economy>. Accessed June 15, 2019.

The firm was the model of a new kind of corporation. Unlike postwar giants such as General Electric or General Motors that established market power by means of vertical integration and conglomeration, a new generation of firms resembled something less tangible and permanent. A core team of talent worked on design in-house; the rest of the company's needs, from marketing to production to distribution, were met either by consultants or contractors.² This flexible and contractual structure of production saddled Nike with few entrenched commitments to various social and legal groups. That was particularly true when it came to labor, in which case subcontractors operated in developing countries where third-party monitoring was as scarce as regulation and labor unions. The social responsibilities that the company maintained were those stated explicitly in its contracts with buyers, suppliers, customers, or shareholders.³ Because the organization's structure was global and its relationships with the public less visible, its corporate social responsibilities were less burdensome than traditional companies. Or so Nike had assumed.

But the shoe company became an object of criticism for activists, journalists, and non-governmental organizations in the 1990s. Highly publicized investigations found human rights abuses at its plants in Indonesia, Vietnam, and Thailand. Underage workers, primarily young girls, suffered through long work-days with low wages and socially degrading conditions.⁴ The accounting firm Ernst and Young found dangerously polluted working conditions in factories in Vietnam.⁵ The company initially showed little

² Gerald F. Davis, *Managed by the Markets: How Finance Re-Shaped America* (New York, NY: Oxford University Press, 2009), 240.

³ Davis, *Managed by the Markets*, 21.

⁴ E.g., "Activist Finds Abuses at Vietnam Nike Plants," *Washington Post*, Mar. 28, 1997.

⁵ "Nike Shoe Plant in Vietnam is Called Unsafe for Workers," *New York Times*, Nov. 8, 1997.

willingness to address these conditions, beginning first of all with Phil Knight. “There is no value in making things anymore,” he told a journalist in the midst of this public relations storm. “There’s no reward for those who make shoes in Vietnam or Indonesia. The reward goes to those who can think of clever ways to make people think those shoes are worth a lot more than they really are.”⁶ Knight made the mistake of telling the truth on the record when he told the documentary filmmaker Michael Moore that it didn’t bother him that fourteen-year-old girls were working in Nike factories in Indonesia.⁷

Knight’s address at the National Press Club, however, was heralded as a turning-point in the company’s approach to human rights issues.⁸ He told the public that the company would improve air-quality conditions at its 350 overseas plants and raise its minimum hiring age to 18 at its footwear plants and 16 at its apparel plants.⁹ Nike retained the larger contractual nexus of manufacturing even as it sought to mitigate the most egregious abuses of the system that had been the foundation of the firm’s market dominance. Knight promised voluntary reform, not structural transformation.

Nike’s pivot on production standards, although criticized at the time by activists and journalists as not robust enough, ushered in a new era in the history of corporate social responsibility.¹⁰ Knight’s collection of proposals, which included health and social auditing by NGOs, expanded education programs for workers, microloans in host countries, support for university research on responsible business practices, and women’s and girl’s empowerment programs—all of these became standard features of

⁶ “The Story of a Shoe,” *World Watch*, Mar./Apr. 1998.

⁷ Michael Moore, *The Big One* (Miramax Films, 1998).

⁸ Matthew Kish, “The Moment It All Changed,” *Portland Business Journal*, May 23, 2014.

⁹ “Nike to Increase Minimum Age in Asia for New Hirings, Improve Air Quality,” *New York Times*, May 13, 1998.

¹⁰ David Vogel, *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility* (Washington, D.C.: Brookings Institution Press, 2005).

multinational corporations' public relations strategies in the late 1990s and early 2000s.

"I truly believe that the American consumer does not want to buy products made in abusive conditions," Knight said. "The challenge is to give them assurances."¹¹

Although Nike's pivot came in response to a public relations crisis, it was a part of broader international movement toward corporate social responsibility (or CSR, as it became widely known in acronym) that was understood by many to be something more than ad-hoc. Its strongest supporters believed that it was the beginning of a new kind of capitalism—one that eschewed the reckless pursuit of profit and took into account what was good for society. The Clinton Administration, directly in response to the crisis over sweatshops, formed the Apparel Industry Partnership, which included labor, industry, and public interest groups, that eventually led to the creation of the Fair Labor Association in 1999. The organization produced a code of conduct for multinationals, which included minimum wages, compliance monitoring, and minimum age requirements for workers.¹² But the FLA was just the beginning.

At the World Economic Forum at Davos that same year, United Nations Secretary General Kofi Annan expressed the hope that global capitalism could balance the needs of society and the economy. "You can uphold human rights and decent labour and environmental standards directly, by your own conduct of your own business," he told business leaders. "We have to choose between a global market driven only by calculations of short-term profit, and one which has a human face."¹³ With support from

¹¹ Knight, "Nike in the Global Economy."

¹² "Groups Reach Agreement for Curtailing Sweatshops," *New York Times*, Nov. 5, 1998. Ruth Pearson, Gill Seyfang, and Rhys Jenkins, *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy* (Oxfordshire, UK: Taylor & Francis, 2013), 23-24.

¹³ Kofi Annan, "Address to World Economic Forum," Davos, Switzerland (Jan. 31, 1999). <https://www.un.org/sg/en/content/sg/speeches/1999-02-01/kofi-annans-address-world-economic-forum-davos>, accessed December 1, 2018.

multinationals, Annan helped to form the United Nations Global Compact, a voluntary CSR initiative explicitly sold as an alternative to national and international government regulation, which sought to make standards of responsibility a feature of multinationals' production in developing countries.

"Many people," wrote a pair of business consultants in 2002, "would be amazed if they lifted the stone of contemporary business activity and saw the army of consultants, experts, charlatans and do-gooders scurrying around inside and outside companies trying to help them be more socially responsible."¹⁴ The number of NGOs, business school professors, and CEOs who promoted the language of corporate social responsibility grew rapidly in the 2000s. The idea that multinationals should embrace social responsibilities, particularly in the developing world was eventually embraced by anti-poverty agencies and policymakers at institutions ranging from UNICEF, USAID, and the World Bank to the World Economic Forum, the Bill and Melinda Gates Foundation, and the Clinton Global Initiative.¹⁵ But outside of the context of particular firms grappling with specific issues related to their business model, CSR remained a doggedly abstract concept. *The Economist* defined it in terms of a partisan spectrum. "The left demands that more rules be applied to companies, to make them more responsible," the magazine explained, using the language of globalization. "The right fires back that governments already subcontracts far too much of their social policy to companies."¹⁶ Many business leaders on both sides of the political spectrum employed strategies of CSR as a part of an attempt

¹⁴ Steve Hilton and Giles Gibbons. Quoted in Jeremy Moon, *Corporate Social Responsibility: A Very Short Introduction* (New York, NY: Oxford University Press, 2014), 20.

¹⁵ Maria Hengeveld, "Nike Boasts of Empowering Women Around the World," *Slate*, Aug. 26, 2016, http://www.slate.com/articles/business/the_grind/2016/08/nike_s_supply_chain_doesn_t_live_up_to_the_i_deals_of_its_girl_effect_campaign.html.

¹⁶ "Special Report: Corporate Social Responsibility," *The Economist*, Dec. 14, 2002.

to preserve their own autonomy, shore up the legitimacy of global capitalism, and resist the development of costly regulatory regimes.

In the last several decades, corporate social responsibility has become entrenched in the language and strategies of business. Although activists have at different times sought a robust agenda of accountability and transparency using the language of responsibility, the predominant understanding of CSR within the business intelligentsia and corporate leadership has consisted in a collection of voluntary commitments to philanthropy and codes of conduct that resist both a consistent system of accountability as well as structures of shared or democratic governance. Even among business ethicists who criticize the voluntary nature of CSR, the alternative they articulate offers little hope of moving beyond the limitations that have hampered CSR. The stakeholder model, to take one example, hitches good morals to strategies of business profits but it is not capable of filling the vacuum of moral grammar, politicized and otherwise contested as it is.¹⁷ As it stands, stakeholder managerialism attempts to substitute a model of profitability for difficult task of politics and culture. Corporate social responsibility, in its various forms, has often been an exercise in avoiding responsibility or the establishment a legible system of enforcing the expectations of society on the economic sphere.

The failure of CSR, however, to live up to the lofty goals of the Global Compact has presaged a legitimacy crisis. There is no shortage of jeremiads detailing the misdeeds of firms that promote CSR and spelling out the end of the movement. For some, it serves

¹⁷ R. Edward Freeman, *Strategic Management: A Stakeholder Approach* (Boston, MA: Pitman, 1984).

as a sign for the ascendancy of global neoliberalism, in which the regulatory and political processes of political economy come under the auspices of private institutions.¹⁸

But if the legitimacy of corporate social responsibility is called often into doubt, the willingness with which corporate leaders and the brands they represent wade into controversial cultural and political matters has only increased in the last half decade or so. Companies have boycotted states for legislation on gender and sexuality. Corporations have promoted messages of inclusion and equality in the most expensive of advertising slots. Corporate leaders have put their support behind specific legislative goals, including what they call commonsense gun control measures.¹⁹

Most recently, the language of responsibility made headlines in September 2019 in a statement released by the Business Roundtable, a professional advocacy organization otherwise known for promoting deregulation and shareholder value. The statement, signed onto by CEOs at Amazon, J.P. Morgan Chase, and Apple, outlined a variety of commitments to customers, employees, suppliers, communities, and shareholders. “We commit to deliver value to all of them,” the business leaders pledged.²⁰ “This new statement better reflects the way corporations can and should operate today,” said

¹⁸ Wendy Brown, *Undoing the Demos: Neoliberalism's Stealth Revolution* (Cambridge, MA: MIT Press, 2015); Daniel Stedman Jones, *Masters of the Universe: Hayek, Friedman, and the Birth of Neoliberal Politics*, Revised ed. edition (Princeton, NJ: Princeton University Press, 2014); Philip Mirowski, *Never Let a Serious Crisis Go to Waste: How Neoliberalism Survived the Financial Meltdown* (Brooklyn, NY: Verso Books, 2013); Ronen Shamir, “Corporate Social Responsibility: Towards a New Market-Embedded Morality?,” *Theoretical Inquiries in Law; Tel Aviv* 9, no. 2 (July 2008): 371-394.

¹⁹ Andrew Ross Sorkin, “‘Simply Unacceptable’: Executives Demand Senate Action on Gun Violence,” *The New York Times*, Sept. 12, 2019.

²⁰ Statement on the Purpose of a Corporation, Business Roundtable, Aug. 19, 2019

chairman and CEO of Johnson & Johnson Alex Gorsky, just days before his firm was ordered to pay over half a billion dollars for its role in the opioid crisis.²¹

In many ways, the statement was nothing particularly new. The liberal Committee for Economic Development released a statement in 1971 that took a comparable axiom: “Business functions by public consent,” the CED said, “and its basic purpose is to serve constructively the needs of society—to the satisfaction of society.”²² Even the Business Roundtable itself affirmed that “managers of corporations are expected to serve the public interest as well as private profit.”²³ Or so they said in 1981. But the group gained infamy in the early 2000s for its statement that the “paramount duty of management and of boards of directors is to the corporation’s stockholders.”²⁴ The statement of the Business Roundtable, then, was perceived as a shift in attitudes, even as it hearkened back to a conception of the corporation that was decades old.

The recent affirmation of stakeholder interests—what the Business Roundtable called a “redefinition” of the corporation—provides insight, even if not in the ways that the group intended. For one, it shows that the language of responsibility remains just as vital as it was when it emerged in the American political discourse in the 1930s—and maybe even more so. We cannot expect the problem of corporate responsibility to disappear. But it also points to a larger set of problems that the concept of corporate responsibility reflects. The statement that major CEOs promoted in 2019 offered no

²¹ Business Roundtable, “Business Roundtable Redefines the Purpose of a Corporation to Promote ‘An Economy That Serves All Americans,’” Aug. 19, 2019. “Johnson & Johnson Ordered to Pay \$572 Million in Landmark Opioid Trial,” New York Times, Aug. 26, 2019.

²² Committee for Economic Development, “Social Responsibilities of Business,” June 1971.

²³ “The Business Lobby’s Wrong Business,” New York Times, Dec. 20 1981.

²⁴ Business Roundtable, “Statement on Corporate Governance,” Sept. 1997.

explanation of or commitment to a structure of legibility, governance, or accountability that would make sure that the high ideals of social responsibility would, indeed, be met. Within the language of responsibility lies hidden economic and political relations by which power is exercised. As such, the problem of corporate responsibility strikes at the core of what it means to maintain a democratic political economy and live in a democratic society.

Bibliography

Manuscript Collections and Archives

Adolf Berle (Franklin Delano Roosevelt Presidential Library, Hyde Park, NY)
 Donald Dozer (Hoover Institution, Stanford University, Palo Alto, CA)
 Earl Newsom (Wisconsin Historical Society, Madison, WI)
 Estes Kefauver (Modern Political Archives, University of Tennessee-Knoxville, Knoxville, TN)
 Felix Frankfurter (Franklin Delano Roosevelt Presidential Library, Hyde Park, NY)
 Franklin Delano Roosevelt (Franklin Delano Roosevelt Presidential Library, Hyde Park, NY)
 Friedrich Hayek (Hoover Institution, Stanford University, Palo Alto, CA)
 Fund for the Republic (Mudd Library, Princeton University, Princeton, NJ)
 Gardiner Means (Franklin Delano Roosevelt Presidential Library, Hyde Park, NY)
 INFAC of Minnesota (Wisconsin Historical Society, Madison, WI)
 James Weinstein (Wisconsin Historical Society, Madison, WI)
 Leon Howard Sullivan (Library of Congress, Washington, D.C.)
 Milton Friedman (Hoover Institution, Stanford University, Palo Alto, CA)
 Public Relations Society of America (Wisconsin Historical Society, Madison, WI)
 Richard Eells (Columbia University Rare Books and Manuscripts, New York, NY)
 Securities and Exchange Commission Historical Society (Washington, D.C.)
 Studies on the Left (Wisconsin Historical Society, Madison, WI)
 William O. Douglas (Library of Congress, Washington, D.C.)
 Yale Brozen (Hoover Institution, Stanford University, Palo Alto, CA)

Newspapers and Journals

Baltimore Sun
 Business Week
 Chicago Tribune
 Cincinnati Enquirer
 Courier News (Bridgewater, NJ)
 Democratic and Chronicle (Rochester, NY)
 Detroit Free Press
 Hartford Courant
 Indianapolis Star
 Los Angeles Times
 Minneapolis Star
 National Review
 New Republic
 New York Times
 Portsmouth Herald
 Star Tribune
 The Guardian
 Vital Speeches of the Day

Wall Street Journal
 Washington Post
 Washington Journalism Review
 World Watch

Government Documents and Cases

- AP Smith Manufacturing Co. v. Barlow*, No. 98 A.2d 581 (1953).
- Burwell v. Hobby Lobby Stores, Inc.*, No. 573 U.S. ____ (2014).
- Citizens United v. FEC*, No. 558 U.S. 310 (2010).
- Committee on Banking and Currency, Arsène Pujo, Everis Hayes, and Henry McMorran.
Money Trust Investigation: Investigation of Financial and Monetary Conditions in the United States under House Resolutions Nos. 429 and 504, before a Subcommittee of the Committee on Banking and Currency. Washington, D.C.: U.S. Government Printing Office, 1912.
- Committee on Commerce. *Corporate Rights and Responsibilities: Hearings before the Committee on Commerce, Senate, Jun. 15-17, 21-23, 1976*. Washington, D.C.: U.S. Government Printing Office, 1976.
- Committee on Finance. *Revenue Act of 1935: Hearings before Committee on Finance, Senate, Jul. 30 - Aug. 2, 6-8, 1935*. Washington, D.C.: U.S. Government Printing Office, 1935.
- Committee on Small Business Subcommittee on Monopoly. *Role of Giant Corporations: Hearings Before the Committee on Monopoly of the Select Committee on Small Business, United States Senate, Nov. 9, 12, 1971*. Washington, D.C.: U.S. Government Printing Office, 1971.
- First National Bank of Boston v. Bellotti*, No. 435 U.S. 765 (1978).
- Internal Revenue Service. "SOI Tax Stats - Historical Data Tables," 1951-1960.
- Joint Economic Committee. *Corporate Profits: Hearings Before the Joint Committee on the Economic Report, Congress of the United States, Eightieth Congress, Second Session, Pursuant to Sec. 5 (A) of Public Law 304, 79th Congress*. Washington, D.C.: U.S. Government Printing Office, 1949.
- Marsh v. Alabama*, No. 326 U.S. 501 (1946).
- Securities and Exchange Commission. *Release Notice, 34-3347*. Washington, D.C.: U.S. Government Printing Office, 1942.
- Sisters of the Precious Blood, Inc. v. Bristol-Myers Co.*, No. 431 F. Supp. 385 (1977).
- Subcommittee on Health and Scientific Research, Committee on Human Resources.
Marketing and Promotion of Infant Formula in the Developing Nations: Hearings before the Subcommittee on Health and Scientific Research, Committee on Human Resources, May 23, 1978. Washington, D.C.: U.S. Government Printing Office, 1978.
- Subcommittee on Securities, Committee on Banking, Housing, and Urban Affairs.
 Senate. *Protection of Shareholders' Rights Act of 1980: Hearing before the Subcommittee on Securities, Committee on Banking, Housing, and Urban Affairs. Senate, Nov. 19, 1980*. Washington, D.C.: U.S. Government Printing Office, 1980.

- Subcommittee on Stock Exchange Practices; Committee on Banking and Currency. Senate. *Stock Exchange Practices. Part 15: National Securities Exchange Act, Feb. 26 - Mar. 2, 5-9, 12, 16, 1934*. Washington, D.C.: U.S. Government Printing Office, 1934.
- U.S. Congress. *Congressional Record, 73rd Cong., 1st Sess.* Washington, D.C.: Government Printing Office, 1933.
- . *Congressional Record, 91st Cong., 2nd Sess.* Washington, D.C.: U.S. Government Printing Office, 1970.

Oral History Interviews

- Berle, Jr., Adolf A. 1970. "The Reminiscences of Adolf A. Berle, Jr." Interview by Douglas Scott. 1970. Columbia University Oral History Collection. Columbia University Libraries, New York, NY, 1975.
- Chandler, Marvin. 2009. Marvin Chandler, "Rochester Black Freedom Struggle." Interview by Lauren Warren Rochester Black Freedom Struggle Oral History Project, University of Rochester Rare Books and Special Collections, Rochester, NY.
- Landis, James M. 1963-1964. "The Reminiscences of James M. Landis." Interview by Neil Newton Gold. Columbia University Oral History Collection. Columbia University Libraries, New York, NY, 1975.
- Manne, Henry. 2012. Interview by James Stocker. Securities and Exchange Commission Historical Society. Washington, D.C.

Articles, Reports, Book Sections, Unpublished Dissertations, Presentations

- Abend, Gabriel. "The Origins of Business Ethics in American Universities, 1902-1936." *Business Ethics Quarterly* 23, no. 2 (April 2013): 171–205. <https://doi.org/10.5840/beq201323214>.
- Abrams, Frank W. "Management's Responsibilities in a Complex World." *Harvard Business Review* 29, no. 3 (May 1951): 29–34.
- Adams, Henry Carter. *Economics and Jurisprudence: An Address by Henry C. Adams, President of the American Economic Association, Delivered at the Meeting of the Association in Baltimore, Maryland, December 28, 1896*. American Economic Association, 1897.
- Adelman, M. A. "Is Big Business Getting Bigger?" *Fortune*, January 1952.
- . "The Measurement of Industrial Concentration." *The Review of Economics and Statistics* 33, no. 4 (1951): 269–96. <https://doi.org/10.2307/1926455>.
- Aguinis, Herman, and Ante Glavas. "What We Know and Don't Know About Corporate Social Responsibility: A Review and Research Agenda." *Journal of Management* 38, no. 4 (July 1, 2012): 932–68. <https://doi.org/10.1177/0149206311436079>.

- Alchian, Armen A., and Harold Demsetz. "Production, Information Costs, and Economic Organization." *The American Economic Review* 65, no. 5 (1972): 777.
- Alperovitz, Gar. "Notes Towards a Pluralist Commonwealth." *Review of Radical Political Economics* 4, no. 2 (1972): 28–48.
<http://rrp.sagepub.com/content/by/year>.
- Annan, Kofi. "Address to World Economic Forum in Davos." United Nations Secretary-General, February 1, 1999. <https://www.un.org/sg/en/content/sg/speeches/1999-02-01/kofi-annans-address-world-economic-forum-davos>.
- Bank, Steven A. "The Rise and Fall of Post-World War II Corporate Tax Reform." *Law and Contemporary Problems* 73, no. 1 (2010): 207–32.
- Berle, A. A. "Corporate Powers as Powers in Trust." *Harvard Law Review* 44, no. 7 (1931): 1049–74. <https://doi.org/10.2307/1331341>.
- . "For Whom Corporate Managers Are Trustees: A Note." *Harvard Law Review* 45, no. 8 (1932): 1365–72. <https://doi.org/10.2307/1331920>.
- Berle, Adolf A. "A High Road for Business." *Scribner's*, June 1933.
- Berle, Adolf A. "'Control' in Corporate Law." *Columbia Law Review* 58, no. 8 (1958): 1212–25. <https://doi.org/10.2307/1119961>.
- . "High Finance: Master or Servant." *The Yale Review* 23, no. 1 (September 1933).
- . "Modern Functions of the Corporate System." *Columbia Law Review* 62, no. 3 (1962): 433–49. <https://doi.org/10.2307/1120052>.
- Berle, Jr., A.A. "How Labor Could Control." *The New Republic*, September 7, 1921.
- Berle, Jr., Adolf A. "The Developing Law of Corporate Concentration." *University of Chicago Law Review* 19, no. 4 (June 1, 1952).
<https://chicagounbound.uchicago.edu/uclrev/vol19/iss4/2>.
- Biglaiser, Glen. "The Internationalization of Chicago's Economics in Latin America." *Economic Development and Cultural Change* 50, no. 2 (2002): 269–86.
<https://doi.org/10.1086/322875>.
- Blumberg, Phillip I. "The Corporate Personality in American Law: A Summary Review." *American Journal of Comparative Law Supplement* 38 (1990): 49–69.
- . "The Politicization of the Corporation." *The Business Lawyer* 26, no. 5 (1971): 1551–87.
- Brinkley, Alan. "The Antimonopoly Ideal and the Liberal State: The Case of Thurman Arnold." *The Journal of American History* 80, no. 2 (1993): 557–79.
<https://doi.org/10.2307/2079870>.
- Butler, Henry N. "The Manne Programs in Economics for Federal Judges Symposium: The Legacy of Henry G. Manne--Pioneer in Law & Economics and Innovator in

- Legal Education May 21-22, 1999.” *Case Western Reserve Law Review* 50 (2000 1999): 351–420.
- Campbell, Whitney. “The Model Business Corporation Act.” *The Business Lawyer* 11, no. 4 (1956): 98–110.
- Carney, William J. “The Legacy of the Market for Corporate Control and the Origins of the Theory of the Firm.” *Case Western Reserve Law Review* 50 (2000 1999): 215.
- Carroll, Archie B. “Corporate Social Responsibility: Evolution of a Definitional Construct.” *Business & Society* 38, no. 3 (September 1, 1999): 268–95.
<https://doi.org/10.1177/000765039903800303>.
- . “The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders.” *Business Horizons* 34, no. 4 (July 1, 1991): 39–48. [https://doi.org/10.1016/0007-6813\(91\)90005-G](https://doi.org/10.1016/0007-6813(91)90005-G).
- Cass, Ronald. “One Among the Manne: Changing Our Course.” *Case Western Reserve Law Review* 50, no. 2 (January 1, 1999): 203.
- Charan, Noel Tichy and Ram. “Speed, Simplicity, Self-Confidence: An Interview with Jack Welch.” *Harvard Business Review*, September 1, 1989.
<https://hbr.org/1989/09/speed-simplicity-self-confidence-an-interview-with-jack-welch>.
- Chassonnery-Zaïgouche, Cléo. “Identifying a ‘Chicago School’ of Economics: On the Origins, Diffusion, and Evolving Meanings of a Famous Brand Name.” *History of Recent Economics Conference* (blog), September 26, 2018.
<https://hisreco.wordpress.com/2018/09/26/identifying-a-chicago-school-of-economics-on-the-origins-diffusion-and-evolving-meanings-of-a-famous-brand-name/>.
- Chayes, Abram. “The Modern Corporation and the Rule of Law.” In *The Corporation in Modern Society*, edited by Edward S. Mason. Cambridge, MA: Harvard University Press, 1959.
- Ciepley, David. “Beyond Public and Private: Toward a Political Theory of the Corporation.” *The American Political Science Review* 107, no. 1 (February 2013): 139–58.
<http://dx.doi.org.proxy.libraries.rutgers.edu/10.1017/S0003055412000536>.
- Coase, R. H. “Law and Economics at Chicago.” *The Journal of Law & Economics* 36, no. 1 (1993): 239–54.
- . “The Nature of the Firm.” *Economica* 4, no. 16 (November 1, 1937): 386–405.
<https://doi.org/10.1111/j.1468-0335.1937.tb00002.x>.
- . “The Problem of Social Cost.” *The Journal of Law & Economics* 3 (1960): 1–44.
- Cochran, Philip L., and Robert A. Wood. “Corporate Social Responsibility and Financial Performance.” *The Academy of Management Journal* 27, no. 1 (1984): 42–56.
<https://doi.org/10.2307/255956>.

- Collins, Robert M. "Positive Business Responses to the New Deal: The Roots of the Committee for Economic Development, 1933-1942." *The Business History Review* 52, no. 3 (1978): 369–91. <https://doi.org/10.2307/3113736>.
- Committee for Economic Development. "Redefining Government's Role in the Market System." Washington, D.C., July 1979.
- Cordiner, Ralph J. "Corporate Citizenship and the Businessman: A Working Program for Action." *Management Review; Saranac Lake, N.Y., Etc.* 48, no. 7 (July 1, 1959): 15–26.
- "Corporation Gifts to Charities." *Social Service Review* 9, no. 3 (1935): 540–45.
- Cowie, Jefferson, and Nick Salvatore. "History, Complexity, and Politics: Further Thoughts." *International Labor and Working-Class History*, no. 74 (October 1, 2008): 63–69.
- . "The Long Exception: Rethinking the Place of the New Deal in American History." *International Labor and Working-Class History*, no. 74 (October 1, 2008): 3–32.
- David, Donald K. "Business Responsibilities in an Uncertain World." *Harvard Business Review* 27, no. 3 (May 2, 1949): 1–8.
- Davis, Gerald F., Kristina A. Diekmann, and Catherine H. Tinsley. "The Decline and Fall of the Conglomerate Firm in the 1980s: The Deinstitutionalization of an Organizational Form." *American Sociological Review* 59, no. 4 (1994): 547–70. <https://doi.org/10.2307/2095931>.
- Davis, Keith. "Can Business Afford to Ignore Social Responsibilities?" *California Management Review* 2, no. 3 (Spring 1960): 70–76. <https://doi.org/10.2307/41166246>.
- De George, Robert T. "The History of Business Ethics." In *The Accountable Corporation: Business Ethics*, edited by Marc J. Epstein and Kirk O. Hanson. Westport, CT: Praeger Publishers, 2006.
- Delton, Jennifer. "The Triumph of Social Responsibility in the National Association of Manufacturers in the 1950s." In *Capital Gains: Business and Politics in Twentieth-Century America*, edited by Richard R. John and Kim Phillips-Fein. Philadelphia, PA: University of Pennsylvania Press, 2016.
- Dewey, John. "The Historic Background of Corporate Legal Personality." *The Yale Law Journal* 35, no. 6 (1926): 655–73. <https://doi.org/10.2307/788782>.
- Dodd, E. Merrick. "For Whom Are Corporate Managers Trustees?" *Harvard Law Review* 45, no. 7 (1932): 1145–63. <https://doi.org/10.2307/1331697>.
- Donham, Wallace B. "The Failure of Business Leadership and the Responsibility of the Universities." *Harvard Business Review* 11, no. 4 (July 1933): 418.

- Douglas, William O., and George Bates. "The Federal Securities Act of 1933." *Yale Law Journal* 43, no. 2 (January 1, 1933).
<https://digitalcommons.law.yale.edu/ylj/vol43/iss2/1>.
- Drucker, Peter F. "How Big Is Too Big?" *Harper's Magazine*, July 1950.
<http://harpers.org/archive/1950/07/how-big-is-too-big/>.
- . "The Responsibilities of Management." *Harper's Magazine*, November 1954.
<http://harpers.org/archive/1954/11/the-responsibilities-of-management/>.
- . "What Is 'Business Ethics'?" *Public Interest; Washington*, Spring 1981.
- Drucker, Peter Ferdinand, 1909-. "Saving the Crusade." *Harper's Magazine* (10457143) 244 (January 1972): 66–71.
- Eccles, Robert G., and Svetlana Klimenko. "The Investor Revolution." *Harvard Business Review*, May 1, 2019. <https://hbr.org/2019/05/the-investor-revolution>.
- Falck, Oliver, and Stephan Hebllich. "Corporate Social Responsibility: Doing Well by Doing Good." *Business Horizons* 50, no. 3 (May 1, 2007): 247–54.
<https://doi.org/10.1016/j.bushor.2006.12.002>.
- Farkas, Bob. "The Mirage of Pension-Fund Activism." *Jacobin*, April 16, 2018.
<http://jacobinmag.com/2018/04/pension-fund-activism-working-class-shareholder-review>.
- Federal Trade Commission. "Present Trend of Corporate Mergers and Acquisitions." Washington, D.C.: Government Printing Office, 1948.
- . "The Merger Movement: A Summary." Washington, D.C.: Government Printing Office, 1948.
- Ferry, W.H. "Forms of Irresponsibility." *The Annals of the American Academy of Political and Social Science* 343 (1962): 65–74.
- Finks, P. David. "Crisis in Smugtown: A Study of Conflict, Churches, and Citizen Organizations in Rochester, New York, 1964-1969." Graduate School of Union of Experimenting Colleges and Universities, 1975.
- Flynn, John J. "Corporate Democracy: Nice Work If You Can Get It." In *Corporate Power in America.*, edited by Ralph Nader and Mark J. Green. New York, NY: Grossman Publishers, 1973.
- Fones-Wolf, Elizabeth. "Creating a Favorable Business Climate: Corporations and Radio Broadcasting, 1934 to 1954." *Business History Review* 73, no. 2 (1999): 221–55.
<https://doi.org/10.2307/3116241>.
- Frederick, William C. "Free Market Vs. Social Responsibility: Decision Time at the Ced." *California Management Review; Berkeley, Calif.* 23, no. 3 (Spring 1981): 20–28.

- . “The Growing Concern Over Business Responsibility.” *California Management Review* 2, no. 4 (Summer 1960): 54–61. <https://doi.org/10.2307/41165405>.
- Freeman, Milton V. “An Estimate of the Practical Consequences of the Stockholder’s Proposal Rule The Seamless Symposium.” *University of Detroit Law Journal* 34 (1957 1956): 549–57.
- Galambos, Louis. “Technology, Political Economy, and Professionalization: Central Themes of the Organizational...” *Business History Review* 57, no. 4 (Winter 1983): 471. <https://doi.org/10.2307/3114810>.
- . “The Emerging Organizational Synthesis in Modern American History.” *The Business History Review* 44, no. 3 (1970): 279–90. <https://doi.org/10.2307/3112614>.
- Galant, Adriana, and Simon Cadez. “Corporate Social Responsibility and Financial Performance Relationship: A Review of Measurement Approaches.” *Economic Research-Ekonomska Istraživanja* 30, no. 1 (January 1, 2017): 676–93. <https://doi.org/10.1080/1331677X.2017.1313122>.
- Garson, Barbara. “The Bottle Baby Scandal: Milking the Third World for All It’s Worth.” *Mother Jones*, December 1977.
- Gerhart, Peter M. “The Supreme Court and Antitrust Analysis: The (Near) Triumph of the Chicago School.” *The Supreme Court Review* 1982 (1982): 319–49.
- Gras, N. S. B. “Leadership, Past and Present.” *Harvard Business Review* 27, no. 4 (July 1949): 419–37.
- Green, Mark. “The Case for Corporate Democracy.” *Regulation* (Washington, D.C.), June 1980.
- Gullander, Werner P. “The Future Direction of the Modern Corporation.” *The Business Lawyer* 24, no. 1 (1968): 165–71.
- Hasen, Richard L. “‘Citizens United’ and the Illusion of Coherence.” *Michigan Law Review* 109, no. 4 (2011): 581–623.
- Hawley, Ellis W. “Herbert Hoover, the Commerce Secretariat, and the Vision of an ‘Associative State,’ 1921-1928.” *The Journal of American History* 61, no. 1 (1974): 116–40. <https://doi.org/10.2307/1918256>.
- Hayek, F. A. “The Use of Knowledge in Society.” *The American Economic Review* 35, no. 4 (1945): 519–30.
- Hayek, Friedrich A. “The Corporation in a Democratic Society.” In *Management and Corporations 1985*, edited by Melvin Anshen and George Bach. New York, NY: McGraw-Hill, 1960.
- Heilbroner, Robert L. “The View from the Top: Reflections on a Changing Business Ideology.” In *The Business Establishment*, edited by Earl F. Cheit. New York, NY: John Wiley & Sons, 1964.

- Heli Wang, Li Tong, Riki Takeuchi, and Gerard George. "Corporate Social Responsibility: An Overview and New Research Directions." *Academy of Management Journal* 59, no. 2 (April 2016): 534–44.
<https://doi.org/10.5465/amj.2016.5001>.
- Hengeveld, Maria. "Nike Boasts of Empowering Women Around the World." *Slate*, August 26, 2016.
http://www.slate.com/articles/business/the_grind/2016/08/nike_s_supply_chain_doesn_t_live_up_to_the_ideals_of_its_girl_effect_campaign.html.
- Hill, Laura Warren. "FIGHTing for the Soul of Black Capitalism: Struggles for Black Economic Development in Postrebellion Rochester." In *The Business of Black Power: Community Development, Capitalism, and Corporate Responsibility in Postwar America*, edited by Laura Warren Hill and Julia Rabig. Rochester, NY: University Rochester Press, 2012.
- . "'Strike the Hammer While the Iron Is Hot': The Black Freedom Struggle in Rochester, NY, 1940-1970." Binghamton University - State University of New York, 2010.
- Hoffman, W. Michael, and Jennifer Mills Moore. "What Is Business Ethics? A Reply to Peter Drucker." *Journal of Business Ethics* 1, no. 4 (1982): 293–300.
- Hofstadter, Richard. "What Happened to the Antitrust Movement? Notes on the Evolution of an American Creed." In *The Business Establishment*, edited by Earl F. Cheit. New York, NY: John Wiley & Sons, 1964.
- Horwitz, Morton. "Law and Economics: Science or Politics?" *Hofstra Law Review* 8, no. 4 (January 1, 1980). <https://scholarlycommons.law.hofstra.edu/hlr/vol8/iss4/2>.
- Hunt, Nancy Rose. "'Le Bebe En Brousse': European Women, African Birth Spacing and Colonial Intervention in Breast Feeding in the Belgian Congo." *The International Journal of African Historical Studies* 21, no. 3 (1988): 401–32.
<https://doi.org/10.2307/219448>.
- Hyman, Louis. "Rethinking the Postwar Corporation: Management, Monopolies, and Markets." In *What's Good for Business: Business and American Politics since World War II*, edited by Kim Phillips-Fein and Julian E. Zelizer. New York, NY: Oxford University Press, 2012.
- Hymowitz, Carol, and Matt Murray. "Raises and Praise or Out the Door: How GE's Chief Rates and Spurs His Employees." *Wall Street Journal* (1923 - Current File); New York, N.Y. June 21, 1999, sec. Marketplace.
- Immerwahr, Daniel. "Polanyi in the United States: Peter Drucker, Karl Polanyi, and the Midcentury Critique of Economic Society." *Journal of the History of Ideas* 70, no. 3 (2009): 445–66.
- Ireland, Paddy. "Corporate Social Responsibility in a Neoliberal Age," 77–104, 2010.
https://doi.org/10.1057/9780230246966_4.

- Jacobs, Meg. "The Politics of Environmental Regulation: Business-Government Relations in the 1970s and Beyond." In *What's Good for Business: Business and American Politics since World War II*, edited by Kim Phillips-Fein and Julian E. Zelizer. New York, NY: Oxford University Press, 2012.
- Jelliffe, D. B. "Commerciogenic Malnutrition?" *Nutrition Reviews* 30, no. 9 (September 1, 1972): 199–205. <https://doi.org/10.1111/j.1753-4887.1972.tb04042.x>.
- Jelliffe, Derrick B. "Breast-Milk and the World Protein Gap." *Clinical Pediatrics* 7, no. 2 (February 1, 1968): 96–99. <https://doi.org/10.1177/000992286800700211>.
- Jelliffe, Derrick B., and E. F. Patrice Jelliffe. "Food Supplies for Physiologically Vulnerable Groups." In *Ciba Foundation Symposium 23 - Human Rights in Health*, 133–51. Wiley-Blackwell, 2008. <https://doi.org/10.1002/9780470715390.ch8>.
- Jensen, Michael C., and William H. Meckling. "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure." *Journal of Financial Economics* 3, no. 4 (October 1976): 305–60.
- Jessup, John K. "The U.S. Corporation: A New Form of Government?" In *Getting Things Done in Business*, edited by Edward Collins Bursk. Cambridge, MA: Harvard University Press, 1953.
- Joanne B. Ciulla. "Is Business Ethics Getting Better? A Historical Perspective." *Business Ethics Quarterly* 21, no. 2 (2011): 335. <https://doi.org/10.5840/beq201121219>.
- "Joint WHO/UNICEF Meeting on Infant and Young Child Feeding." Geneva, October 1979.
- Kahn, E. J. "We Look Forward To Seeing You Next Year," June 13, 1970. <https://www.newyorker.com/magazine/1970/06/20/we-look-forward-to-seeing-you-next-year>.
- Katz, Wilber G. "The Philosophy of Midcentury Corporation Statutes." *Law and Contemporary Problems* 23, no. 2 (1958): 177–92. <https://doi.org/10.2307/1190439>.
- Kaysen, Carl. "The Social Significance of the Modern Corporation." *The American Economic Review* 47, no. 2 (1957): 311–19.
- Kish, Matthew. "The Moment It All Changed." *Portland Business Journal*. Accessed September 30, 2019. <https://www.bizjournals.com/portland/print-edition/2014/05/23/matthew-kish-the-moment-it-all-changed.html>.
- Kitch, Edmund W. "The Fire of Truth: A Remembrance of Law and Economics at Chicago, 1932-1970." *The Journal of Law & Economics* 26, no. 1 (1983): 163–234.
- Knapp, Bryan. "'The Biggest Business in the World': The Nestlé Boycott and the Global Development of Infants, Nations and Economies, 1968-1988." Dissertation, Brown University, 2015.

- L., W. "A New Journal for Law and Economics." *The American Journal of Economics and Sociology* 18, no. 2 (1959): 169–169.
- Laird, Pamela Walker. "Entangled Civil Rights in Corporate America Since 1964." In *Capital Gains: Business and Politics in Twentieth-Century America*, edited by Richard R. John and Kim Phillips-Fein. Philadelphia, PA: University of Pennsylvania Press, 2017.
- Landis, James M. "Legislative History of the Securities Act of 1933." *George Washington Law Review* 28 (1960 1959): 29–49.
- Laski, Harold J. "The Personality of Associations." *Harvard Law Review* 29, no. 4 (1916): 404–26. <https://doi.org/10.2307/1326689>.
- Latham, Earl. "Anthropomorphic Corporations, Elites, and Monopoly Power." *The American Economic Review* 47, no. 2 (1957): 303–10.
- . "The Body Politic of the Corporation." In *The Corporation in Modern Society*, edited by Edward S. Mason. Cambridge, MA: Harvard University Press, 1959.
- Lazonick, William, and Mary O'Sullivan. "Maximizing Shareholder Value: A New Ideology for Corporate Governance." In *Corporate Governance and Sustainable Prosperity*, edited by William Lazonick and Mary O'Sullivan, 11–36. The Jerome Levy Economics Institute Series. London: Palgrave Macmillan UK, 2002. https://doi.org/10.1057/9780230523739_2.
- Lears, T.J. Jackson. "A Matter of Taste: Corporate Cultural Hegemony in a Mass-Consumption Society." In *Recasting America: Culture and Politics in the Age of Cold War*, edited by Lary May. Chicago, IL: University of Chicago Press, 1989.
- . "The Concept of Cultural Hegemony: Problems and Possibilities." *The American Historical Review*, 1985.
- . "Technocratic Vistas: The Long Con of Neoliberalism." *The Hedgehog Review* 19, no. 3 (Fall 2017).
- Lebergott, Stanley. "Annual Estimates of Unemployment in the United States, 1900–1954." In *The Measurement and Behavior of Unemployment*, 211–42. Cambridge, MA: National Bureau of Economic Research, 1957. <https://econpapers.repec.org/bookchap/nbrnberch/2644.htm>.
- Leff, Arthur Allen. "Economic Analysis of Law: Some Realism about Nominalism." *Virginia Law Review* 60, no. 3 (1974): 451–82. <https://doi.org/10.2307/1072437>.
- Levitt, Theodore. "The Dangers of Social Responsibility." *Harvard Business Review* 36, no. 5 (October 9, 1958): 41–50.
- Levy, Jonathan. "Accounting for Profit and the History of Capital." *Critical Historical Studies* 1, no. 2 (September 1, 2014): 171–214. <https://doi.org/10.1086/677977>.

- . “From Fiscal Triangle to Passing Through: Rise of the Nonprofit Corporation.” In *Corporations and American Democracy*, edited by Naomi R. Lamoreaux and William J Novak. Cambridge, England: Harvard University Press, 2017.
- Lipartito, Kenneth, and Yumiko Morii. “Rethinking the Separation of Ownership from Management in American History.” *Seattle University Law Review* 33, no. 4 (January 1, 2010): 1025.
- Machen, Arthur W. “Corporate Personality.” *Harvard Law Review* 24, no. 4 (1911): 253–67. <https://doi.org/10.2307/1324056>.
- Maier, Pauline. “The Revolutionary Origins of the American Corporation.” *The William and Mary Quarterly* 50, no. 1 (1993): 51–84. <https://doi.org/10.2307/2947236>.
- Manne, Henry. “Economic Aspects of Required Disclosure under Federal Securities Laws.” In *Wall Street in Transition: The Emerging System and Its Impact on the Economy*. New York, NY: New York University Press, 1974.
- . “Federal Chartering: The New Attack on Corporations.” *Reason.Com*, May 1, 1977. <https://reason.com/1977/05/01/federal-chartering-the-new-att/>.
- . “Intellectual History of the Law School | Scalia Law School.” Accessed October 18, 2018. <https://www.law.gmu.edu/about/history>.
- Manne, Henry G. “Corporate Responsibility, Business Motivation, and Reality.” *The Annals of the American Academy of Political and Social Science* 343, no. 1 (September 1, 1962): 55–64. <https://doi.org/10.1177/000271626234300108>.
- . “Current Views on the Modern Corporation.” *University of Detroit Law Journal* 38 (1961 1960): 559.
- . “How Law and Economics Was Marketed in a Hostile World: A Very Personal History.” In *The Origins of Law and Economics: Essays by the Founding Fathers*, edited by Francesco Parisi and Charles Kershaw Rowley. Northampton, MA: Edward Elgar, 2007.
- . Review of *Review of Corporation Giving in a Free Society*, by Richard Eells. *The University of Chicago Law Review* 24, no. 1 (1956): 194–202. <https://doi.org/10.2307/1598340>.
- . “The ‘Higher Criticism’ of the Modern Corporation.” *Columbia Law Review* 62, no. 3 (1962): 399–432. <https://doi.org/10.2307/1120051>.
- . “The Paradox of Corporate Responsibility.” In *White House Conference on the Industrial World Ahead: A Look at Business in 1990*. Washington, D.C.: Government Printing Office, 1972.
- Manning, Bayless. “The Shareholder’s Appraisal Remedy: An Essay for Frank Coker.” *The Yale Law Journal* 72, no. 2 (1962): 223–65. <https://doi.org/10.2307/794814>.
- Mason, Edward S. “The Apologetics of ‘Managerialism.’” *The Journal of Business* 31, no. 1 (1958): 1–11.

- . “The Current Status of the Monopoly Problem in the United States.” *Harvard Law Review* 62, no. 8 (1949): 1265–85. <https://doi.org/10.2307/1336466>.
- McChesney, Fred S. “General Introduction.” In *The Collected Works of Henry G. Manne*, edited by Henry N. Butler, Vol. 1. Indianapolis, IN: Liberty Fund, 2009.
- McCormick, Edward T. “The Corporate Secretary and the Proxy Rules.” presented at the American Society of Corporate Secretaries, Atlantic City, NJ, May 13, 1950.
- McQuaid, Kim. “Corporate Liberalism in the American Business Community, 1920–1940.” *Business History Review* 52, no. 3 (ed 1978): 342–68. <https://doi.org/10.2307/3113735>.
- Means, Gardiner C. “Big Business, Administered Prices, and the Problem of Full Employment.” *Journal of Marketing* 4, no. 4 (1940): 370–78. <https://doi.org/10.2307/1246037>.
- . “Collective Capitalism and Economic Theory.” *Science* 126, no. 3268 (1957): 287–93.
- . “Industrial Prices and Their Relative Inflexibility.” U.S. Senate. Washington, D.C.: Government Printing Office, January 17, 1935.
- . “The Growth in the Relative Importance of the Large Corporation in American Economic Life.” *American Economic Review* 21, no. 1 (March 1931): 10.
- Mees, Bernard. “The History of Business Ethics.” In *The Routledge Companion to Business Ethics*, edited by Eugene Heath, Byron Kaldis, and Alexei Marcoux. New York, NY: Routledge, 2018.
- Mercuro, Nicholas. “The Jurisprudential Niche Occupied by Law and Economics.” *Journal of Jurisprudence* 2 (2009): 61–110.
- “Milk and Murder.” *New Internationalist*, October 1973.
- Monbiot, George. “Neoliberalism – the Ideology at the Root of All Our Problems.” *The Guardian*, April 15, 2016, sec. Books. <https://www.theguardian.com/books/2016/apr/15/neoliberalism-ideology-problem-george-monbiot>.
- Moore, Michael. *The Big One*. Miramax Films, 1998.
- Nader, Ralph. “The Safe Car You Can’t Buy.” *The Nation*, April 11, 1959.
- Newton, Lisa H. “Truth Is the Daughter of Time: The Real Story of the Nestle Case.” *Business and Society Review* 104, no. 4 (December 17, 2002): 367–95. <https://doi.org/10.1111/0045-3609.00072>.
- Nickel, Herman. “The Corporation Haters.” *Fortune*, June 16, 1980.
- Parisi, Francesco. “Positive, Normative and Functional Schools in Law and Economics.” In *The Elgar Companion to Law and Economics*, edited by Jürgen G. Backhaus. Cheltenham, England: Edward Elgar Publishing, 2005.

- Parsons, Talcott. "The Motivation of Economic Activities." *The Canadian Journal of Economics and Political Science / Revue Canadienne d'Economie et de Science Politique* 6, no. 2 (1940): 187–202. <https://doi.org/10.2307/137203>.
- Poole, Robert W. "Spotlight: Henry G. Manne." *Reason.Com*, May 1, 1976. <https://reason.com/archives/1976/05/01/spotlight>.
- Poser, Norman S. "Why the SEC Failed: Regulators Against Regulation." *Brooklyn Journal of Corporate, Financial & Commercial Law* 3 (Spring 2009): 289–324.
- Priest, George L. "Bork's Strategy and the Influence of the Chicago School on Modern Antitrust Law." *The Journal of Law & Economics* 57, no. S3 (2014): S1–17. <https://doi.org/10.1086/676462>.
- Pritchard, A. C. "Justice Lewis F. Powell, Jr., and the Counterrevolution in the Federal Securities Laws." *Duke Law Journal* 52, no. 5 (2003): 841–949.
- Protein Advisory Group of the United Nations. "Rational Promotion of Processed Foods," July 18, 1972.
- "Proxies for People—A Vehicle for Involvement." *Yale Review of Law and Social Action* 1 (Spring 1971).
- Radin, Max. "The Endless Problem of Corporate Personality." *Columbia Law Review* 32, no. 4 (1932): 643–67. <https://doi.org/10.2307/1114707>.
- Reeves, Thomas C. "The Foundation and Freedoms: An Inquiry into the Origins of the Fund for the Republic." *Pacific Historical Review* 34, no. 2 (1965): 197–218. <https://doi.org/10.2307/3636993>.
- Ritchie, Donald A. "The Legislative Impact of the Pecora Investigation." *Capitol Studies* 5 (Spring 1977).
- Rodgers, Daniel T. "An Age of Social Politics." In *Rethinking American History in a Global Age*. Berkeley, California: University of California Press, 2002.
- Roper, Elmo. "The Public Looks at Business." *Harvard Business Review* 27, no. 2 (March 1949): 165–74.
- Rostow, Eugene V. "To Whom and For What Ends Is Corporate Management Responsible?" In *The Corporation in Modern Society*, edited by Edward S. Mason. Cambridge, MA: Harvard University Press, 1959.
- Sasson, Tehila. "Milking the Third World? Humanitarianism, Capitalism, and the Moral Economy of the Nestlé Boycott." *American Historical Review* 121, no. 4 (October 2016): 1196–1224.
- Schwartz, Donald E. "The Public-Interest Proxy Contest: Reflections on Campaign GM." *Michigan Law Review* 69, no. 3 (1971): 419–538. <https://doi.org/10.2307/1287435>.
- . "Towards New Corporate Goals: Co-Existence with Society." *Georgetown Law Journal* 60 (1972 1971): 57–110.

- Schwartz, Donald E., and Elliott J. Weiss. "An Assessment of the SEC Shareholder Proposal Rule." *Georgetown Law Journal* 65 (1977 1976): 635–90.
- Scruton, Roger, and John Finnis. "Corporate Persons." *Proceedings of the Aristotelian Society, Supplementary Volumes* 63 (1989): 239–74.
- Shamir, Ronen. "Corporate Social Responsibility: Towards a New Market-Embedded Morality?" *Theoretical Inquiries in Law; Tel Aviv* 9, no. 2 (July 2008): 371–394.
- Sheldon, Horace E. "Businessmen Must Get Into Politics." *Harvard Business Review* 37, no. 2 (April 3, 1959): 37–47.
- Shleifer, Andrei, and Robert W. Vishny. "The Takeover Wave of the 1980s." *Science* 249, no. 4970 (1990): 745–49.
- Sklar, Martin J. "Woodrow Wilson and the Political-Economy of Modern United States Liberalism." *Studies on the Left* 1, no. 3 (Fall 1960).
- Sloan, Alfred P. "The Economic Aspects of American Defense." *Proceedings of the Academy of Political Science* 19, no. 2 (1941): 127–39.
<https://doi.org/10.2307/1172598>.
- Smith, Jason Scott. "Businessmen." In *Encyclopedia of the Great Depression*. Vol. 1. New York, NY: Macmillan Reference USA, 2004.
- Spector, Bert. "'Business Responsibilities in a Divided World': The Cold War Roots of the Corporate Social Responsibility Movement." *Enterprise & Society* 9, no. 2 (July 9, 2008): 314–36.
- Stewart, Fenner. "Berle's Conception of Shareholder Primacy: A Forgotten Perspective For Reconsideration During the Rise of Finance." *Seattle University Law Review* 34, no. 4 (May 30, 2011): 1457.
- "The Greenining of James Roche." *New York Magazine*, December 21, 1971.
- "The New Public Interest Lawyers." *The Yale Law Journal* 79, no. 6 (1970): 1069–1152.
<https://doi.org/10.2307/795258>.
- "Third Annual Report to the President." Washington, D.C.: Government Printing Office, December 1948. <https://fraser.stlouisfed.org/title/234/item/5772>.
- Vogel, David. "The Corporation as Government: Challenges & Dilemmas." *Polity* 8, no. 1 (1975): 5–37. <https://doi.org/10.2307/3234345>.
- Wadhwani, R.D.G. "Kodak, Fight and the Definition of Civil Rights in Rochester, New York 1966–1967." *Historian* 60, no. 1 (September 1997): 59–75.
<https://doi.org/10.1111/j.1540-6563.1997.tb01387.x>.
- Walsh, James P., and Rita D. Kosnik. "Corporate Raiders and Their Disciplinary Role in the Market for Corporate Control." *The Academy of Management Journal* 36, no. 4 (1993): 671–700. <https://doi.org/10.2307/256755>.

- Waterhouse, Benjamin. "The Corporate Mobilization Against Liberal Reform: Big Business Day, 1980." In *What's Good for Business: Business and American Politics Since World War II*, edited by Kim Phillips-Fein and Julian E. Zelizer. New York, NY: Oxford University Press, USA, 2012.
- Wells, Harwell. "Corporation Law Is Dead: Heroic Managerialism, Legal Change, and the Puzzle of Corporation Law at the Height of the American Century." *University of Pennsylvania Journal of Business Law* 15 (2013 2012): 305–56.
- Whitham, Charlie. "The Committee for Economic Development, Foreign Trade and the Rise of American Corporate Liberalism, 1942–8." *Journal of Contemporary History* 48, no. 4 (October 1, 2013): 845–71.
<https://doi.org/10.1177/0022009413493944>.
- Williamson, Oliver E. "Revisiting Legal Realism: The Law, Economics, and Organization Perspective." In *Coasean Economics Law and Economics and the New Institutional Economics*, edited by Steven G. Medema, 119–59. Recent Economic Thought Series. Dordrecht: Springer Netherlands, 1998.
https://doi.org/10.1007/978-94-011-5350-8_7.

Monographs, Edited Volumes, Collections.

- Abend, Gabriel. *The Moral Background: An Inquiry into the History of Business Ethics*. Princeton, NJ: Princeton University Press, 2014.
- Alinsky, Saul. *Rules for Radicals: A Practical Primer for Realistic Radicals*. New York, NY: Random House, 1971.
- Arnold, Thurman W. *The Folklore of Capitalism*. New Brunswick, NJ: Transaction Publishers, 2010.
- Balogh, Brian. *A Government Out of Sight: The Mystery of National Authority in Nineteenth-Century America*. New York, NY: Cambridge University Press, 2009.
- . *The Associational State: American Governance in the Twentieth Century*. Philadelphia, PA: University of Pennsylvania Press, 2015.
- Barillari, Michele. *Sul concetto della persona giuridica: contributo alla teoria filosofica della persona giuridica*. Rome, Italy: Loescher, 1910.
- Beckert, Sven. *The Monied Metropolis: New York City and the Consolidation of the American Bourgeoisie, 1850-1896*. New York, NY: Cambridge University Press, 2003.
- Berle, Jr. Adolf A, and Gardiner Means. *The Modern Corporation and Private Property*. New York, NY: Harcourt, Brace, & World, 1932.
- Berle, Beatrice, and Travis Jacobs, eds. *Navigating the Rapids, 1918-1971: From the Papers of Adolf A. Berle*. New York, NY: Harcourt Brace Jovanovich, 1973.

- Berle, Jr., Adolf A. *The 20th Century Capitalist Revolution*. New York, NY: Harcourt, Brace, 1954.
- . *Power Without Property: A New Development in American Political Economy*. New York, NY: Harcourt, Brace and Company, 1959.
- . *Studies in the Law of Corporation Finance*. Chicago, IL: Callaghan and Co., 1928.
- . *The Three Faces of Power*. New York, NY: Harcourt, Brace & World, 1967.
- Binder, Julius. *Das Problem Der Juristischen Persönlichkeit*. Leipzig, Germany: A. Deichert, 1907.
- Bork, Robert H. *The Antitrust Paradox: A Policy at War with Itself*. New York, NY: Basic Books, 1978.
- Bowen, Howard Rothmann. *Social Responsibilities of the Businessman*. New York, NY: Harper & Brothers, 1953.
- Bowman, Scott R. *The Modern Corporation and American Political Thought: Law, Power, and Ideology*. University Park, PA: Pennsylvania State University Press, 1996.
- Brandeis, Louis D. *Other People's Money: And How the Bankers Use It*. New York, NY: F.A. Stokes, 1914.
- Brick, Howard. *Transcending Capitalism: Visions of a New Society in Modern American Thought*. Ithaca, NY: Cornell University Press, 2015.
- Brinkley, Alan. *Liberalism and Its Discontents*. Cambridge, MA: Harvard University Press, 1998.
- . *The End of Reform: New Deal Liberalism in Recession and War*. New York, NY: Vintage Books, 1996.
- . *Voices of Protest: Huey Long, Father Coughlin, & the Great Depression*. New York, NY: Knopf Doubleday, 2011.
- Brown, Wendy. *Undoing the Demos: Neoliberalism's Stealth Revolution*. Cambridge, MA: MIT Press, 2015.
- Buhle, Paul. *History and the New Left: Madison, Wisconsin, 1950-1970*. Philadelphia, PA: Temple University Press, 1990.
- Buhle, Paul, and Edward Francis Rice-Maximin. *William Appleman Williams: The Tragedy of Empire*. New York, NY: Psychology Press, 1995.
- Burgin, Angus. *The Great Persuasion: Reinventing Free Markets since the Depression*. Cambridge, MA: Harvard University Press, 2012.
- Burnham, James. *The Managerial Revolution: What Is Happening in the World*. New York, NY: Van Rees Press, 1941.

- Burrough, Bryan, and John Helyar. *Barbarians at the Gate: The Fall of RJR Nabisco*. New York, NY: Harper & Row, 1990.
- Calabresi, Guido. *The Cost of Accidents: A Legal and Economic Analysis*. New Haven, CT: Yale University Press, 1970.
- . *The Future of Law and Economics: Essays in Reform and Recollection*. New Haven, CT: Yale University Press, 2016.
- Canaday, Margot. *The Straight State: Sexuality and Citizenship in Twentieth-Century America*. Princeton, NJ: Princeton University Press, 2009.
- Carroll, Archie B., and Ann K. Buchholtz. *Business and Society: Ethics, Sustainability, and Stakeholder Management*. Stamford, CT: South-Western College Pub, 2014.
- Carroll, Archie B., Kenneth J. Lipartito, James E. Post, and Patricia H. Werhane. *Corporate Responsibility: The American Experience*. New York, NY: Cambridge University Press, 2012.
- Chandler Jr., Alfred D. *Henry Varnum Poor, Business Editor, Analyst, and Reformer*. New York, NY: Arno Press, 1981.
- . *Scale and Scope: The Dynamics of Industrial Capitalism*. Cambridge, MA: Harvard University Press, 1990.
- . *The Visible Hand: The Managerial Revolution in American Business*. Cambridge, MA: Harvard University Press, 1977.
- Chernow, Ron. *The House of Morgan: An American Banking Dynasty and the Rise of Modern Finance*. New York, NY: Grove Press, 2010.
- Christiansen, Christian. *Progressive Business: An Intellectual History of the Role of Business in American Society*. Oxford: Oxford University Press, 2015.
- Cohen, Lizabeth. *A Consumer's Republic: The Politics of Mass Consumption in Postwar America*. New York, NY: Vintage Books, 2004.
- . *Making a New Deal: Industrial Workers in Chicago, 1919-1939*. Cambridge: Cambridge University Press, 1991.
- Cordiner, Ralph J. *New Frontiers for Professional Managers*. New York, NY: McGraw-Hill Book Company, 1956.
- Countryman, Matthew. *Up South: Civil Rights and Black Power in Philadelphia*. Philadelphia, PA: University of Pennsylvania Press, 2006.
- Cowie, Jefferson. *Capital Moves: RCA's Seventy-Year Quest for Cheap Labor*. Ithaca, NY: Cornell University Press, 1999.
- . *Stayin' Alive: The 1970s and the Last Days of the Working Class*. New York, NY: The New Press, 2010.
- . *The Great Exception: The New Deal and the Limits of American Politics*. Princeton, NJ: Princeton University Press, 2016.

- Crane, Andrew, Abigail McWilliams, Dirk Matten, Jeremy Moon, and Donald S. Siegel. *The Oxford Handbook of Corporate Social Responsibility*. New York, NY: Oxford University Press, 2008.
- Croly, Herbert. *The Promise of American Life*. New York, NY: Macmillan, 1911.
- Davis, Gerald F. *Managed by the Markets: How Finance Re-Shaped America*. New York, NY: Oxford University Press, 2009.
- . *The Vanishing American Corporation: Navigating the Hazards of a New Economy*. Oakland, CA: Berrett-Koehler Publishers, 2016.
- Davis, John P. *Corporations: A Study of the Origin and Development of Great Business Combinations and of Their Relation to the Authority of the State*. New York, NY: Capricorn Books, 1961.
- Davis, Joshua C. *From Head Shops to Whole Foods: The Rise and Fall of Activist Entrepreneurs*. New York, NY: Columbia University Press, 2017.
- Decker, Jefferson. *The Other Rights Revolution: Conservative Lawyers and the Remaking of American Government*. New York, NY: Oxford University Press, 2016.
- Delton, Jennifer A. *Rethinking the 1950s: How Anticommunism and the Cold War Made America Liberal*. New York, NY: Cambridge University Press, 2013.
- Dewey, John. *Individualism, Old and New*. New York, NY: Minton, Balch & Company, 1930.
- Dicey, A.V. *An Introduction to the Study of the Law of the Constitution*. London, England: Macmillan, 1985.
- Dobbing, John, ed. *Infant Feeding: Anatomy of a Controversy 1973–1984*. London: Springer-Verlag, 1988.
- Dochuk, Darren. *From Bible Belt to Sunbelt: Plain-Folk Religion, Grassroots Politics, and the Rise of Evangelical Conservatism*. New York, NY: W. W. Norton & Company, 2010.
- Domnarski, William. *Richard Posner*. New York, NY: Oxford University Press, 2016.
- Drucker, Peter F. *Concept of the Corporation*. New Brunswick, NJ: Transaction Publishers, 2009.
- . *The End of Economic Man: The Origins of Totalitarianism*. Transaction Publishers, 1939.
- . *The Future of Industrial Man: A Conservative Approach*. New York, NY: John Day Company, 1942.
- . *The Landmarks of Tomorrow*. New York, NY: Harper & Row, 1959.
- . *The New Society: The Anatomy of Industrial Order*. New York, NY: Harper & Row, 1962.

- . *The Practice of Management*. New York, NY: Harper & Brothers, 1954.
- Dudziak, Mary L. *Cold War Civil Rights: Race and the Image of American Democracy*. Princeton, NJ: Princeton University Press, 2000.
- Duguit, Léon. *Law in the Modern State*, translated by Frida and Harold Laski. New York, NY: B.W. Huebsch, 1919.
- Editors of Fortune, and Russell W. Davenport. *U. S. A.: The Permanent Revolution*. New York, NY: Prentice-Hall, 1951.
- Eells, Richard. *Corporation Giving in a Free Society*. New York, NY: Harper & Brothers, 1956.
- . *The Corporation and the Arts*. New York, NY: Macmillan, 1967.
- . *The Government of Corporations*. Glencoe, IL: Free Press, 1962.
- Egerton, Henry C, and Conference Board. *Handling Protest at Annual Meetings*. New York, NY: The Conference Board, 1971.
- Eichar, Douglas M. *The Rise and Fall of Corporate Social Responsibility*. New York, NY: Routledge, 2017.
- Enstad, Nan. *The Cigarettes, Inc.: An Intimate History of Corporate Imperialism*. Chicago, IL: University of Chicago Press, 2018.
- Flacks, Richard, and Nelson Lichtenstein, eds. *The Port Huron Statement: Sources and Legacies of the New Left's Founding Manifesto*. Philadelphia, PA: University of Pennsylvania Press, 2015.
- Flamm, Michael W. *In the Heat of the Summer: The New York Riots of 1964 and the War on Crime*. Philadelphia, PA: University of Pennsylvania Press, 2016.
- Fones-Wolf, Elizabeth A. *Selling Free Enterprise: The Business Assault on Labor and Liberalism, 1945-60*. Urbana, IL: University of Illinois Press, 1994.
- Foucault, Michel. *The Birth of Biopolitics: Lectures at the Collège de France, 1978--1979*. New York, NY: Picador, 2010.
- Fraser, Steve. *Every Man a Speculator: A History of Wall Street in American Life*. New York, NY: HarperCollins, 2006.
- Fraser, Steve, and Gary Gerstle. *The Rise and Fall of the New Deal Order, 1930-1980*. Princeton, NJ: Princeton University Press, 1989.
- Freeman, R. Edward, ed. *Business Ethics: The State of the Art*. New York, NY: Oxford University Press, 1991.
- . *Strategic Management: A Stakeholder Approach*. Boston, MA: Pitman, 1984.
- Freund, Ernst. *The Legal Nature of Corporations*. New York, NY: Burt Franklin, 1897.

- Friedman, Milton, and Rose D. Friedman. *Capitalism and Freedom*. Chicago, IL: University of Chicago Press, 1962.
- Galambos, Louis, and Joseph Pratt. *The Rise of the Corporate Commonwealth: U.S. Business and Public Policy in the Twentieth Century*. New York, NY: Basic Books, 1989.
- Galbraith, John Kenneth. *American Capitalism: The Concept of Countervailing Power*. New York, NY: Houghton Mifflin Co., 1952.
- . *The Affluent Society*. New York, NY: Houghton Mifflin, 1969.
- . *The New Industrial State*. New York, NY: Houghton Mifflin, 1967.
- Gantt, Henry Laurence. *Organizing for Work*. New York, NY: Harcourt, Brace and Howe, 1919.
- Gierke, Otto Friedrich von. *Das Deutsche Genossenschaftsrecht*, 4 volumes. Berlin, Germany: Weidmann, 1954.
- . *Political Theories of the Middle Age*. Translated by Frederic Maitland. Cambridge: Cambridge University Press, 1900.
- Giridharadas, Anand. *Winners Take All: The Elite Charade of Changing the World*. First Edition, First Printing edition. New York, NY: Knopf, 2018.
- Graham, Jr., Otis L. *Toward a Planned Society: From Roosevelt to Nixon*. New York, NY: Oxford University Press, 1976.
- Green, Mark. *Bright, Infinite Future: A Generational Memoir on the Progressive Rise*. New York, NY: St. Martin's Press, 2016.
- Hallis, Frederick. *Corporate Personality: A Study in Jurisprudence*. London: Oxford University Press, 1930.
- Hamilton, Shane. *Trucking Country: The Road to America's Wal-Mart Economy*. Princeton, NJ: Princeton University Press, 2008.
- Harbrecht, Paul P. *Pension Funds and Economic Power*. New York, NY: Twentieth Century Fund, 1959.
- Harris, Fred R. *The New Populism*. New York, NY: Saturday Review Press, 1973.
- Harvey, David. *A Brief History of Neoliberalism*. New York, NY: Oxford University Press, 2005.
- Hawley, Ellis. *Herbert Hoover and the Crisis of American Capitalism*. American Forum Series. Morristown, NJ: Schenkman Pub. Co., 1973.
- . *The New Deal and the Problem of Monopoly: A Study in Economic Ambivalence*. New York, NY: Fordham University Press, 1995.
- Hayek, Friedrich August. *The Road to Serfdom*. Chicago, IL: University of Chicago Press, 1944.

- Heald, Morrell. *The Social Responsibilities of Business: Company and Community, 1900-1960*. Cleveland, OH: Press of Case Western Reserve University, 1970.
- Heilbroner, Robert L. *In the Name of Profit: Profiles in Corporate Irresponsibility*. New York, NY: Doubleday, 1972.
- Herman, Edward S. *Corporate Control, Corporate Power: A Twentieth Century Fund Study*. New York, NY: Cambridge University Press, 1981.
- Himmelstein, Jerome L. *Looking Good and Doing Good: Corporate Philanthropy and Corporate Power*. Bloomington, IN: Indiana University Press, 1997.
- Hirst, Paul Q. *The Pluralist Theory of the State: Selected Writings of G.D.H. Cole, J.N. Figgis and H.J. Laski*. London, England: Routledge, 2005.
- Hobbes, Thomas. *Leviathan*. New York, NY: Oxford University Press, USA, 1998.
- Hofstadter, Richard. *The Age of Reform: From Bryan to F.D.R.* New York, NY: Vintage Books, 1955.
- Hoover, Herbert. *American Individualism*. New York, NY: Doubleday, Page & Company, 1922.
- Horwitt, Sanford D. *Let Them Call Me Rebel: Saul Alinsky, His Life and Legacy*. New York, NY: Vintage Books, 1992.
- Horwitz, Morton J. *The Transformation of American Law, 1870-1960: The Crisis of Legal Orthodoxy: The Crisis of Legal Orthodoxy*. New York, NY: Oxford University Press, USA, 1992.
- Houser, Theodor V. *Big Business and Human Values*. New York, NY: McGraw-Hill Book Company, 1957.
- Hurst, James Willard. *Law and the Conditions of Freedom in the Nineteenth-Century United States*. Madison, WI: University of Wisconsin Press, 1956.
- . *The Legitimacy of the Business Corporation in the Law of the United States, 1780-1970*. Charlottesville, VA: The University Press of Virginia, 1970.
- Hyman, Louis. *Temp: How American Work, American Business, and the American Dream Became Temporary*. New York, NY: Penguin, 2018.
- Jackall, Robert. *Moral Mazes: The World of Corporate Managers*. New York, NY: Oxford University Press, 2010.
- Jacobs, Meg. *Pocketbook Politics: Economic Citizenship in Twentieth-Century America: Economic Citizenship in Twentieth-Century America*. Princeton, NJ: Princeton University Press, 2007.
- John, Richard R., and Kim Phillips-Fein, eds. *Capital Gains: Business and Politics in Twentieth-Century America*. Philadelphia, PA: University of Pennsylvania Press, 2016.

- Johnson, Bruce, ed. *The Attack on Corporate America: The Corporate Issues Sourcebook*. New York, NY: McGraw-Hill, 1978.
- Josephson, Matthew. *The Robber Barons: The Great American Capitalists, 1861-1901*. New York, NY: Harcourt Brace and World, 1962.
- Kantorowicz, Ernst H. *The King's Two Bodies: A Study in Mediaeval Political Theology*. Princeton, NJ: Princeton University Press, 1997.
- Katznelson, Ira. *Fear Itself: The New Deal and the Origins of Our Time*. New York, NY: W. W. Norton & Company, 2013.
- Kelley, J. *Bringing the Market Back in: The Political Revitalization of Market Liberalism*. London: Springer, 1997.
- Kelly, Frank K. *Court of Reason: Robert Hutchins and the Fund for the Republic*. New York, NY: Free Press, 1981.
- Khurana, Rakesh. *From Higher Aims to Hired Hands: The Social Transformation of American Business Schools and the Unfulfilled Promise of Management as a Profession*. Princeton, N.J.: Princeton University Press, 2010.
- Klein, Naomi. *The Shock Doctrine: The Rise of Disaster Capitalism*. New York, NY: Henry Holt and Company, 2010.
- Kleiner, Art, Warren Bennis, Steven Wheeler, and Walt McFarland. *The Age of Heretics: A History of the Radical Thinkers Who Reinvented Corporate Management*. San Francisco, CA: Wiley-Bass, 2008.
- Kloppenborg, James T. *Uncertain Victory: Social Democracy and Progressivism in European And American Thought, 1870-1920*. New York, NY: Oxford University Press, 1986.
- Kolko, Gabriel. *The Triumph of Conservatism: A Reinterpretation of American History, 1900-1916*. New York, NY: Free Press, 1963.
- Lagemann, Ellen Condliffe. *The Politics of Knowledge: The Carnegie Corporation, Philanthropy, and Public Policy*. Chicago, IL: University of Chicago Press, 1992.
- Lamoreaux, Naomi R. *The Great Merger Movement in American Business: 1895-1904*. Cambridge, England: Cambridge University Press, 1985.
- Landis, James McCauley. *The Administrative Process*. New Haven, CT: Yale University Press, 1938.
- Lasser, William. *Benjamin V. Cohen: Architect of the New Deal*. New Haven, CT: Yale University Press, 2008.
- Leuchtenburg, William. *Franklin D. Roosevelt and the New Deal, 1932-1940*. New York, NY: Harper & Row, 1963.
- Levitt, Theodore. *The Twilight of the Profit Motive*. Washington, DC: Public Affairs Press, 1955.

- Linowes, David F. *The Corporate Conscience*. New York, NY: Hawthorn Books, 1974.
- Lippmann, Walter. *Drift and Mastery: An Attempt to Diagnose the Current Unrest*. New York, NY: Mitchell Kennerley, 1914.
- Livingston, James. *Origins of the Federal Reserve System: Money, Class, and Corporate Capitalism, 1890-1913*. Ithaca, NY: Cornell University Press, 1989.
- . *Pragmatism and the Political Economy of Cultural Evolution*. Chapel Hill, NC: University of North Carolina Press, 1994.
- . *Pragmatism, Feminism, and Democracy: Rethinking the Politics of American History*. New York, NY: Taylor & Francis, 2001.
- MacLean, Nancy. *Democracy in Chains: The Deep History of the Radical Right's Stealth Plan for America*. New York, NY: Penguin Books, 2018.
- Maitland, F. W. *Maitland: State, Trust and Corporation*. New York, NY: Cambridge University Press, 2003.
- Manne, Henry G. *The Collected Works of Henry G. Manne*. Edited by Fred S. McChesney, Stephen Bainbridge, Henry Butler, and Jonathan Macey. 3 vols. Indianapolis, IN: Liberty Fund Inc., 2009.
- . *Insider Trading and the Stock Market*. New York, NY: Free Press, 1966.
- Marchand, Roland. *Creating the Corporate Soul: The Rise of Public Relations and Corporate Imagery in American Big Business*. Oakland, CA: University of California Press, 1998.
- Mason, Edward S., ed. *The Corporation in Modern Society*. Cambridge, MA: Harvard University Press, 1959.
- McCraw, Thomas K. *Prophets of Regulation*. Cambridge, MA: Harvard University Press, 2009.
- McGirr, Lisa. *Suburban Warriors: The Origins of the New American Right*. Princeton, NJ: Princeton University Press, 2001.
- Merchant, Carolyn. *The Columbia Guide to American Environmental History*. New York, NY: Columbia University Press, 2012.
- Michoud, Léon. *La théorie de la personnalité morale et son application au droit français*. Paris, France: F. Pichon et Durand-Auzias, 1906.
- Mills, C. Wright. *The Power Elite*. Oxford: Oxford University Press, 1956.
- . *White Collar: The American Middle Classes*. Oxford: Oxford University Press, 1951.
- Mirowski, Philip. *Never Let a Serious Crisis Go to Waste: How Neoliberalism Survived the Financial Meltdown*. Brooklyn, NY: Verso Books, 2013.

- Mirowski, Philip, and Dieter Plehwe. *The Road from Mont Pèlerin: The Making of the Neoliberal Thought Collective, With a New Preface*. Cambridge, MA: Harvard University Press, 2015.
- Mises, Ludwig von. *Human Action, The Scholar's Edition*. Auburn, AL: Ludwig von Mises Institute, 1966.
- Moley, Raymond. *After Seven Years*. New York, NY: Harper & Brothers, 1939.
- . *The First New Deal*. New York, NY: Harcourt, Brace & World, 1966.
- Monbiot, George. *How Did We Get Into This Mess?: Politics, Equality, Nature*. Brooklyn, NY: Verso Books, 2016.
- Moon, Jeremy. *Corporate Social Responsibility: A Very Short Introduction*. New York, NY: Oxford University Press, 2014.
- Morawetz, Victor. *A Treatise on the Law of Private Corporations*. Boston, MA: Little, Brown, and Company, 1886.
- Moreton, Bethany. *To Serve God and Wal-Mart: The Making of Christian Free Enterprise*. Cambridge, MA: Harvard University Press, 2009.
- Muller, Mike. *The Baby Killer: A War on Want Investigation into the Promotion and Sale of Powdered Baby Milks in the Third World*. London: War on Want, 1974.
- Muncy, Robyn. *Creating a Female Dominion in American Reform, 1890-1935*. Oxford: Oxford University Press, 1991.
- Murphy, Bruce A. *The Brandeis/Frankfurter Connection: The Secret Political Activities of Two Supreme Court Justices*. New York, NY: Oxford University Press, 1982.
- Nader, Ralph. *The Ralph Nader Reader*. New York, NY: Seven Stories Press, 2000.
- Nader, Ralph, and Mark J. Green, eds. *Corporate Power in America*. New York, NY: Grossman Publishers, 1973.
- Nader, Ralph, Mark J. Green, and Joel Seligman. *Taming the Giant Corporation*. New York, NY: W.W. Norton & Company, 1976.
- National Association of Manufacturers (U.S.) Economic Principles Commission. *The American Individual Enterprise System: Its Nature, Evolution, and Future*. New York, NY: McGraw-Hill Book Company, 1946.
- Nisbet, Robert A. *The Quest for Community: A Study in the Ethics of Order and Freedom*. Oxford: Oxford University Press, 1953.
- O'Brien, Justin. *The Triumph, Tragedy and Lost Legacy of James M. Landis: A Life on Fire*. New York, NY: Bloomsbury Publishing, 2014.
- Olson, James. *Saving Capitalism: The Reconstruction Finance Corporation and the New Deal, 1933-1940*. Princeton, NJ: Princeton University Press, 2017.

- Ott, Julia C. *When Wall Street Met Main Street: The Quest for an Investors' Democracy*. Cambridge, MA: Harvard University Press, 2011.
- Parboteeah, K. Praveen, and John B. Cullen. *Business Ethics*. London: Routledge, 2013.
- Parrish, Michael E. *Securities Regulation and the New Deal*. New Haven, CT: Yale University Press, 1970.
- Parsons, Talcott. *The Social System*. Glencoe, IL: Free Press, 1951.
- Pearson, Ruth, Gill Seyfang, and Rhys Jenkins. *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy*. Oxfordshire, UK: Taylor & Francis, 2013.
- Pecora, Ferdinand. *Wall Street Under Oath: The Story of Our Modern Money Changers*. New York, NY: Simon and Schuster, 1939.
- Perino, Michael. *The Hellhound of Wall Street: How Ferdinand Pecora's Investigation of the Great Crash Forever Changed American Finance*. New York, NY: Penguin, 2010.
- Perry, Jonathan S. *The Roman Collegia: The Modern Evolution of an Ancient Concept*. Leiden, Netherlands: Brill, 2006.
- Phillips-Fein, Kim. *Invisible Hands: The Businessmen's Crusade Against the New Deal*. New York, NY: W. W. Norton & Company, 2009.
- Phillips-Fein, Kim, and Julian E. Zelizer. *What's Good for Business: Business and American Politics since World War II*. New York, New York: Oxford University Press, 2012.
- Posner, Richard A. *Economic Analysis of Law*. Boston, MA: Little, Brown and Company, 1972.
- Post, James, Anne T. Lawrence, and James Weber. *Business and Society: Corporate Strategy, Public Policy, and Ethics with PowerWeb and Enron Case*. New York, NY: McGraw-Hill Higher Education, 2003.
- Potter, David M. *People of Plenty: Economic Abundance and the American Character*. Chicago, IL: University of Chicago Press, 1954.
- Rahman, K. Sabeel. *Democracy Against Domination*. New York, NY: Oxford University Press, 2016.
- Rappaport, Alfred. *Creating Shareholder Value: The New Standard for Business Performance*. New York, NY: Free Press, 1986.
- Ray, Michael, ed. *New Paradigm in Business: Emerging Strategies for Leadership and Organizational Change*. New York, NY: Tarcher, 1993.
- Reeves, Thomas. *Freedom and the Foundation: The Fund for the Republic in the Era of McCarthyism*. New York, NY: Alfred A. Knopf, 1969.

- Riesman, David. *Individualism Reconsidered and Other Essays*. Glencoe, IL: Free Press, 1954.
- . *The Lonely Crowd: A Study of the Changing American Character*. Yale University Press, 1961.
- Ripley, William Z. *Main Street and Wall Street*. Little, Brown, and Company: Boston, MA, 1927.
- Rodgers, Daniel T. *Age of Fracture*. Cambridge, MA: Harvard University Press, 2011.
- . *Atlantic Crossings: Social Politics in a Progressive Age*. Cambridge, MA: Harvard University Press, 1998.
- Rogan, Tim. *The Moral Economists: R. H. Tawney, Karl Polanyi, E. P. Thompson, and the Critique of Capitalism*. Princeton, NJ: Princeton University Press, 2017.
- Rothman, Howard, and Mary Scott. *Companies with a Conscience: Intimate Portraits of Twelve Firms That Make a Difference*. Denver, CO: The Publishing Cooperative, 2003.
- Roy, William G. *Socializing Capital: The Rise of the Large Industrial Corporation in America*. Princeton, NJ: Princeton University Press, 1997.
- Ruml, Beardsley, and Theodore Geiger. *The Five Percent*. Washington, DC: National Planning Association, 1951.
- Runciman, David. *Pluralism and the Personality of the State*. New York, NY: Cambridge University Press, 1997.
- Schlesinger, Arthur M. *The Crisis of the Old Order, 1919-1933*. New York, NY: Houghton Mifflin Harcourt, 2003.
- . *The Politics of Upheaval: 1935-1936*. New York, NY: Houghton Mifflin Harcourt, 2003.
- Schrecker, Ellen. *Many Are the Crimes: McCarthyism in America*. Princeton, NJ: Princeton University Press, 1998.
- Schwarz, Jordan A. *Liberal: Adolf A. Berle and the Vision of an American Era*. New York, NY: Free Press, 1987.
- Selekman, Benjamin. *A Moral Philosophy for Management*. New York, NY: McGraw-Hill, 1959.
- Seligman, Joel. *The Transformation of Wall Street: A History of the Securities and Exchange Commission and Modern Corporate Finance*. New York, NY: Houghton Mifflin, 1982.
- Sennett, Richard. *The Culture of the New Capitalism*. New Haven, CT: Yale University Press, 2006.

- Sethi, S. Prakash. *Business Corporations and the Black Man: An Analysis of Social Conflict: The Kodak-FIGHT Controversy*. Scranton, PA: Chandler Pub. Co., 1970.
- Shaw, William H. *Business Ethics: A Textbook with Cases*. Boston, MA: Cengage Learning, 2016.
- Sklar, Martin J. *The Corporate Reconstruction of American Capitalism, 1890-1916: The Market, the Law, and Politics*. New York, NY: Cambridge University Press, 1988.
- Slobodian, Quinn. *Globalists: The End of Empire and the Birth of Neoliberalism*. Cambridge, MA: Harvard University Press, 2018.
- Smith, Adam. *The Wealth of Nations*. New York, NY: Penguin, 1982.
- Sobel, Robert. *The Age of Giant Corporations: A Microeconomic History of American Business, 1914-1970*. Westport, CT: Praeger, 1993.
- Sparrow, James T. *Warfare State: World War II Americans and the Age of Big Government*. New York, NY: Oxford University Press, 2011.
- Sparrow, James T., William J. Novak, and Stephen W. Sawyer. *Boundaries of the State in US History*. University of Chicago Press, 2015.
- Stein, Judith. *Pivotal Decade: How the United States Traded Factories for Finance in the Seventies*. New Haven, CT: Yale University Press, 2010.
- Steinberg, Marc I. *The Federalization of Corporate Governance*. New York, NY: Oxford University Press, 2018.
- Stigler, George J. *Memoirs of an Unregulated Economist*. Chicago, IL: University of Chicago Press, 2003.
- Storrs, Landon R. Y. *The Second Red Scare and the Unmaking of the New Deal Left*. Princeton, NJ: Princeton University Press, 2013.
- Sullivan, Leon Howard. *Moving Mountains: The Principles and Purposes of Leon Sullivan*. King of Prussia, PA: Judson Press, 1998.
- Swope, Gerard. *The Swope Plan: Details, Criticisms, Analysis*. New York, NY: The Business Bourse, 1931.
- Tawney, R.H. *Religion and the Rise of Capitalism: A Historical Study*. New York, NY: Harcourt, Brace & Company, 1926.
- Taylor, Frederick Winslow. *The Principles of Scientific Management*. New York, NY: Harper & Brothers, 1911.
- Teles, Steven M. *The Rise of the Conservative Legal Movement: The Battle for Control of the Law*. Princeton, NJ: Princeton University Press, 2010.
- Thompson, E.P. *The Making of the English Working Class*. New York, NY: Pantheon Books, 1964.

- Truman, Harry S. *Public Papers of the Presidents of the United States*. Vol. 4. Washington, D.C.: National Archives and Records Service, 1964.
- Veblen, Thorstein. *Absentee Ownership: Business Enterprise in Recent Times : The Case of America*. New Brunswick, NJ: Transaction Publishers, 1994.
- Von Mises, Ludwig. *Human Action: A Treatise on Economics*. New Haven, CT: Yale University Press, 1949.
- Ward, James Arthur. *Ferrytale: The Career of W.H. "Ping" Ferry*. Stanford, CA: Stanford University Press, 2001.
- Watson, Jr., Thomas J. *A Business and Its Beliefs: The Ideas That Helped Build IBM*. New York, NY: McGraw-Hill Book Company, 1963.
- Webber, David. *The Rise of the Working-Class Shareholder: Labor's Last Best Weapon*. Cambridge, MA: Harvard University Press, 2018.
- Weinstein, James. *The Corporate Ideal in the Liberal State, 1900-1918*. Boston, MA: Beacon Press, 1968.
- . *The Decline of Socialism in America: 1912-1925*. New York, NY: Vintage Books, 1967.
- Whetten, Leland. *The Influence of Recent Proxy Contests on Social and Economic Trends*. Studies in Business and Economics. Bulletin / Georgia State College, Bureau of Business and Economic Research ;No. 11. Atlanta, GA: Georgia State College of Business Administration, 1961.
- Williams, Daniel K. *God's Own Party: The Making of the Christian Right*. New York: Oxford University Press, 2010.
- Williams, William Appleman. *The Contours of American History*. New York, NY: Quadrangle Books, 1961.
- . *The Tragedy of American Diplomacy*. Cleveland, OH: World Publishing Co., 1959.
- Williamson, Oliver E. *Organization Theory: From Chester Barnard to the Present and Beyond*. New York, NY: Oxford University Press, 1995.
- Winkler, Adam. *We the Corporations: How American Businesses Won Their Civil Rights*. New York, NY: Liveright Publishing, 2018.