

# M@n@gement

ISSN: 1286-4692

Emmanuel Josserand, *CMOS, University of Technology, Sydney (Editor in Chief)*

Jean-Luc Arrègle, *EMLYON Business School (editor)*

Laure Cabantous, *Cass Business School (editor)*

Stewart Clegg, *University of Technology, Sydney (editor)*

Olivier Germain, *Université du Québec à Montréal (editor, book reviews)*

Karim Mignonac, *Université de Toulouse 1 (editor)*

Philippe Monin, *EMLYON Business School (editor)*

Tyrone Pitsis, *University of Newcastle (editor)*

José Pla-Barber, *Universidad de València (editor)*

Michael Tushman, *Harvard Business School (editor)*

Walid Shibbib, *Université de Genève (managing editor)*

Alexander Bell, *Université de Genève (editorial assistant)*

Martin G. Evans, *University of Toronto (editor emeritus)*

Bernard Forgues, *EMLYON Business School (editor emeritus)*

## Special Issue

■ Jeroen VELDMAN

Hugh WILLMOTT

2013

What is the corporation and why does it matter?

*M@n@gement*, 16(5), 605-620.

M@n@gement est la revue officielle de l'AIMS



M@n@gement is the journal official of AIMS

Copies of this article can be made free of charge and without securing permission, for purposes of teaching, research, or library reserve. Consent to other kinds of copying, such as that for creating new works, or for resale, must be obtained from both the journal editor(s) and the author(s).

M@n@gement is a double-blind refereed journal where articles are published in their original language as soon as they have been accepted.

For a free subscription to M@n@gement, and more information:  
<http://www.management-aims.com>

© 2013 M@n@gement and the author(s).

# What is the corporation and why does it matter?

---

Jeroen VELDMAN

Cardiff Business School  
veldmanj@cardiff.ac.uk

Hugh WILLMOTT

Cardiff Business School  
willmoth@cardiff.ac.uk

## Abstract

'Management' is widely and deeply embedded in 'corporations'. Yet in many studies of management and organization the corporation is an influential but shadowy and largely unaccountable presence. Rarely is the modern, capitalist corporation thematized. This article contributes to remedying this omission by attending to how the corporation is a product of three imaginaries: legal, economic, and political. In the post-medieval order, the legal imaginary made possible the construction of the corporate form; the economic imaginary has promoted an expansion of this form and shaped its subsequent development; and, finally, the political imaginary offers a way of appreciating how politics, including the power of the state, is key to (i) the rise of the modern corporation, and (ii) to a recognition of how the primacy of the political in the formation and development of the modern corporation is articulated through, and obscured behind, the dominance of legal and economic imaginaries. Attending to the three imaginaries, it is argued, is central to a thorough comprehension of the modern corporation, a concomitant appreciation of its deeply divisive consequences, and lastly, to the development of policies designed to counteract its malign effects.

## INTRODUCTION

There are, we contend, few issues in management and organization studies (MOS) more critical than understanding the modern corporation. Today, 'corporate governance' and 'corporate responsibility' are business buzzwords and are becoming increasingly popular as objects of study. Yet what 'corporate' means, and the contemporary (re)formation and significance of corporations, are rarely the focus of academic study (for an exception, see Crouch, 2001, in particular Chapter 3). Our intention here is to shed some light on the concept of 'the modern corporation' and, in doing so, to make a timely contribution to a transformation in the way corporate practices are understood, taught, and enacted.

What is a corporation? In MOS it would seem as if this question has limited relevance, although MOS is the context in which much 'management' is accomplished and where many structures and processes of organizing are located. Of course, within MOS the purpose, regulation, governance, and responsibility of corporations are taken up for examination where various conceptions of the corporation are more or less implicitly invoked. There is also some residual awareness and appreciation of debates about 'the modern corporation', associated with issues of 'ownership and control', 'the managerial revolution' (Berle and Means, 2007[1932]), 'the visible hand' (Chandler, 2003), etc. The 'financialization' of corporations may soon be added to such background understandings (Davis, 2011; Epstein, 2005; Fligstein, 1993). But, to our knowledge, this awareness has not resulted in the development of a research program, a stream of research in standing working groups, or even a track within MOS conferences dedicated specifically to interrogating and researching the corporate form<sup>1</sup>. Indeed, it would appear that study of the corporation has been quietly ceded to other specialisms such as business history, law, economics, and political science.

## THE CORPORATION AND IMAGINARIES

What, then, is the corporation? Our approach to answering this question presumes that its nature and meaning are inescapably contested and that a variety of imaginaries have been constructed which have rendered the corporate form meaningful, real, and consequential. We identify three imaginaries that have framed and influenced the properties and capacities vested in the modern corporation<sup>2</sup>: the legal, the economic, and the political. As will become clear, our view is that that these imaginaries are intertwined to the effect that they often mutually reinforce and contradict one another. Although analytically distinguishable, they are practically enmeshed<sup>3</sup>.

The political imaginary, we will suggest, is a condition of possibility of legal and economic imaginaries that have obscured the primacy of the political. We adopt the term 'imaginary' to convey the understanding that (i) we have no direct access to the phenomena, including the phenomenon of 'the corporation' itself, which we seek to examine and explicate; (ii) imaginaries are developed to construct, interpret, and scrutinize social phenomena; (iii) imaginaries exert performative effects insofar as they are (albeit partially and selectively) enacted and institutionalized. Whereas the legal and economic imaginaries directly evoke distinct conceptions and prompt particular enactments of the

1. Here we make a distinction between 'the corporation', which can be the collection of individuals, the assets attributed to it, and 'the corporate form' as its (imaginary) representation (e.g. in the legal or economic spheres).

2. We acknowledge that different legal systems and historical developments place different constraints on the concept of incorporation. A rich scholarly field has developed around these differences, comparing the resultant governance systems and their relative effects (Guinnane et al. 2007; Gourevitch and Shinn 2005). However, there are two arguments which suggest that these differences are marginal compared to some underlying similarities.

First, the contemporary concept of incorporation has developed in a strikingly similar way all over the world in almost exactly the same time-frame (Bowman 1996; Guinnane et al. 2007). As Bowman (1996:291) argues: "the corporate reconstruction of the world political economy in the late twentieth century (...) appears to be modelled on the corporate transformation of North American society in the early-to-mid-twentieth century." Although national and regional differences can be found in the precise understanding of incorporation, the major points by which incorporation diverges from other forms of business representation in legal systems worldwide are unwavering.

Second, as we make clear in the economic imaginary section below, the adoption of a contractual model of the corporation has, after the 1970s, spread a uniform understanding of incorporation across the world. This has, in turn, made it almost impossible to conduct business on an international level without acknowledging and accepting the assumptions behind the Anglo-American concept of incorporation (see also Guinnane et al. 2007:690).

For these two reasons we consider the contemporary concept of 'incorporation' to be internationally accepted – that is to say, a specific form of incorporation, characterized as the modern western limited liability share corporation, which emerged principally from Anglo-American legal and economic origins in the 19th and 20th century.

3. Our notion of the imaginary is loosely compatible with Laclau's (1990) concept of the (social) 'imaginary' which, for him, 'structures the field of intelligibility' and is therefore 'the condition of possibility for the emergence of any object' (ibid: 64). In our case, the corporate form is the emergent object which is articulated within the legal, economic and political fields of intelligibility.

corporate form, the political imaginary, as we conceive of it here, is a condition of possibility of the other two imaginaries and, relatedly, the political imaginary makes possible the casting of a reflective glance at those conditions as well as a glance at their consequences. Our basic proposition has been pithily stated by Paddy Ireland, a corporate law specialist, to whose work we are particularly indebted:

*"[The] emergence and development of [the corporate legal form] was not the economically-determined product of efficiency-driven evolution. It was, rather, in significant part the product of the growing political power and influence of the financial property owning class. The same is true of its recent reinforcement and entrenchment, and of the attempts to extend its global reach" (Ireland, 2010: 853).*

## THE MODERN CORPORATION

Modern economic organization is heavily dependent upon a distinctive — incorporated, limited liability — conception of the corporate form. This form has become "one of the most successful inventions in history, as evidenced by its widespread adoption and survival as a primary vehicle of capitalism over the past century" (Butler, 1988:99). At the apex of the corporate form stand the huge, multinational firm and its subsidiaries. By the end of the 20th century, about half of the world's trade was conducted between such firms (Kobrin, 2006:220). Twenty-nine corporations then figured in the list of the world's largest economies (Chandler and Mazlish, 2006; Goodwin, 2006:135). These firms alone hold 90 percent of all technology and product patents worldwide (Dine 2006:152).

Many of the potentially problematic effects of the corporate form — notably, with regard to its capacity to concentrate wealth and power — have been acknowledged since the early 13th century (Post, 1934; Micklethwait, 2005). As a consequence of this, the corporate form was held under sovereign control until the late 18th century (McLean, 2004). Pressures to expand and fund imperialist geopolitical ambitions (Neocleous, 2003) slowly divorced the corporate form from direct political control. In the 19th century, political restrictions were further questioned and subsequently relaxed. Further relaxations and occasional tightening of these state-mediated political restrictions have ebbed and flowed in the 20th and 21st centuries (Bowman, 1996). Thus, for example, following the financial crash of 2007 and 2008, the activities and tax affairs of major financial corporations have reemerged as an object of significant public interest, contestation, and calls for improved regulation.

The shifting influence of the economic and legal imaginaries of the corporate form has contributed to its changing contours and significance<sup>4</sup>. Historically, the economic imaginary, as it is articulated in arguments for efficiency and/or improved access to capital (Chandler, 2002), has been invoked to promote and to account for the displacement of partnerships by the modern limited liability corporation (Guinnane et al, 2007). Similarly, it has been argued that contemporary accounts of corporate governance foreshadow an end of history for corporate law (Hansmann and Kraakman, 2000). In such teleological accounts (see Khurana, 2007), a dominant (e.g. economic) imaginary is seen

4. Whilst there is a measure of agreement about its rise to dominance and economic influence from the end of the 19th century (Chandler, 2002; Guinnane et al., 2007; Horwitz, 1985; Roy, 1999) there are marked differences of understanding about the nature and significance of the corporate form amongst specialists in legal studies (Freund 1897; Dewey 1926; Ireland 2003; Laufer 1994; Lederman 2000; Naffine 2003; Wells 2005), economics (Jensen and Meckling, 1983:14), corporate governance (Bratton and McCahery 1999:5), political science (Ciepley, 2013; Bowman, 1996), and organization theory (Schrader 1993:1).

to foster an 'optimal' or inevitable organizational form (Ireland, 2010: 837-838), thereby obfuscating deep disagreements that regard the emergence and development of corporations during the 19th and 20th centuries (Carroll et al., 2012; Nace, 2003). These disputes have their echoes in contemporary debates about the relative merits of the incorporated, limited liability conception of the corporate form in comparison to other possibilities, such as cooperatives or partnerships. Key to grasping and interrogating on-going processes of consolidating and problematizing the corporate form is an appreciation of the dynamic of contestation in which, typically, well-resourced groups mobilize resources to institutionalize, deinstitutionalize, and reinstitutionalize preferred versions of the corporate form. Traces of this dynamic are evident in the diverse attributes often used to characterize this corporate form, such as 'entity', 'subject', 'agent', 'aggregation of individuals', 'nexus of contracts'. We now take a closer look at the genesis of these notions.

## THE LEGAL IMAGINARY

5. It is relevant to note that the corporate form was granted to other entities, such as town, universities, etc. before it was bestowed upon businesses. This enabled the town, for example, to make contracts in its name, and against assets assigned to it, rather than in the name of individuals (see Post, 1934; Williston, 1888).

6. Upon the retirement or departure of a partner, there is a substantive or formal liquidation of assets to which partners have priority access, depending upon whether a new partner can be found to purchase the departing partner's share of the assets.

7. It is relevant to note that the JSC did not appear overnight. Initially, it was barely distinguishable from the partnership but over a period of approximately fifty years, it took on a distinctive identity that is central to 'the modern doctrine of separate corporate personality, with its reified corporations and "complete separation" of shareholders and the company' (Ireland, 2010: 847)

8. This 'entity' has become consolidated in the legal imaginary as a reified singular construct with attributions of agency, ownership, and rights. This construct has been understood as a full legal 'subject' or even 'person'. Anthropomorphic imagery is widely engaged in both American (Ciepley, 2013; Johnson, 2012) and British (Wells, 2005) contexts. A vivid example is provided by Mitt Romney, who stated in his presidential campaign that "Corporations are persons, sir!" (<http://www.youtube.com/watch?v=E2h8ujX6T0A>). On the basis of such imagery, the corporate form has been endowed in the USA with a large set of amendment rights (Veldman and Parker, 2012). There are, of course, questions to be raised about a legal imaginary which conceives of the corporation as a discrete entity or 'subject' with powers of agency, ownership, etc. abstracted, or differentiated, from its members. In this paper, however, we focus on the performative effects of different imaginaries, and thereby contribute to an ethically-inflected debate about the consequences of these imaginaries, rather than devote more attention to their ontological or epistemological justification.

The role of the state in the establishment of modern corporations is seminal and remains significant today. A charter provided by the state initially enabled distinct, corporate entities to undertake a (very limited) range of activities — such as building roads or canals — where these activities had been assessed to yield substantial public benefit<sup>5</sup>. In contrast to other not-for-profit corporations, the chartered business corporation was permitted to make a private profit for those who invested in it but the liabilities for its investors were unlimited. The granting of a charter facilitated private funding of the provision of public goods in a way that, in principle, retained close public oversight of such business ventures while holding partners ultimately responsible for losses. From these beginnings, the history of the corporation has been one of contestation — with regard, *inter alia*, to the granting of limited liability to corporations and the justification for placing limits on the range of activities undertaken by chartered corporations, to corruption in relation to the granting of monopolies, and to the respective merits of the legal form of the partnership versus the corporation (Horwitz, 1985).

The partnership, as a legal form, is distinguished by the indivisibility of its assets and the partners who invest directly in it. There is no separation between the assets of the entity and those who own it; it follows, therefore, that the assets of the partnership can be seized by the partners' creditors<sup>6</sup>. This means that there is a material incentive for partners, regardless of whether they are practicing or passive investors or not, to pay close attention to the liabilities (e.g. debts) of fellow partners as well as those of the partnership, since all partners are directly exposed to both types of liability.

The modern corporation as a legal form is typically defined as a joint stock company (JSC)<sup>7</sup>. It is distinguished by a separation of the assets of the entity and the assets of those who invest in it, the shareholders. That separation exists because the JSC is constructed in the legal imaginary as a separate legal entity that holds the assets of the corporation. Over time, the separate legal 'entity', in which the personal assets of shareholders are divorced from the corporate assets of the JSC, has become endowed with an (agential) capacity<sup>8</sup>, which, importantly, enables this entity to own other

such entities. It is a capacity that is highly significant for the development of capitalism because it has allowed economic activity to become concentrated within a small number of very large corporations (see *supra*, page 5) as a consequence of processes of acquisition and merger. These corporations now exert a powerful, monopoly-like influence over many areas of economic activity nationally and, increasingly, globally<sup>9</sup>.

In the legal imaginary, it is the entity— not the shareholders, managers, or creditors — that owns the assets of the corporation. The shareholders are legally charged with the formal and potentially substantial responsibility of electing boards of directors, and influence their decisions through this and other mechanisms; their control, however, does not extend to exercising any right over the assets of the corporation. Nor are shareholders legally the primary residual claimants of corporate revenues or assets. If bankruptcy strikes, it is the creditors who have the first claim in the legal imaginary. Likewise, if a breach of health and safety regulation occurs and a penalty is exacted, the fine is not levied on the assets of investors or the managers. Instead, such charges are exacted upon the assets of the corporation.

The notion that the corporate entity, rather than its shareholders, owns its assets is a condition of the possibility of establishing limited liability. With the government as its midwife and guardian, this concession became established in the mid-19th century. The concession was won by shareholders, who, as a consequence of limited liability, retain their access to rewards but minimize the risks associated with the potential recklessness or incompetence of managers and with the turbulence of markets. In addition to capping the risk of claims upon shareholders by creditors, the limited liability format also serves to minimize the growth-restricting necessity of keeping some assets liquid, or devoting assets to (unproductive) insurance in order to hedge against risks. The protection afforded by limited liability to shareholders extends to directors and executives, whose private assets are safe from seizure by creditors or shareholders damaged by any deleterious financial consequences of their actions. The contrast with the partnership form is stark. Whereas partners are subject to losses, including debts incurred by fellow partners, the grant of limited liability to the corporation “[...] permits a man to avail himself of acts if advantageous to him, and not to be responsible for them if they should be disadvantageous; to speculate for profits without being liable for losses” (Edward Cox, 1856, cited in Ireland, 2010: 844).

What, then, of board members and senior executives as constituents of the JSC? They exercise most immediate control over the assets of the corporation. They may also own shares in the company, which entitles them to receive dividends, to trade and/or liquidate their shares freely, and grants them some residual rights over corporate assets after creditors have been paid. Their legal duty, however, is not to act on behalf of shareholders or to maximize shareholder value but, rather, to act “in the best interests of the company” (Parkinson, 2003: 493) — a duty that extends to all those deemed to have an investment in the corporation.

Although they are not the legal owners of corporations, shareholders are the principal beneficiaries of the limited liability corporate form (which is justified by reference to its more productive, but also more risky, use of assets). Contrary to what advocates of agency theory and shareholder value may assume or conjecture (to be discussed below), it is important to underscore

9. It has also enabled the profusion of opaque international control and finance structures (Palan et al., 2010), and unclear attributions of liability (Ackroyd and Murphy, 2013).



the point that shareholders do not 'own' the corporation within the legal imaginary. The widely rehearsed wisdom that the corporate form is 'owned' or used to protect and promote the (exclusive) interests of its shareholders as a prioritized constituency, is a myth (Allen, 1992: 265; Crouch, 2011:136). Qua entity, the corporate form can have multiple 'owners' or 'stakeholders'; these stakeholders may have a variety of 'investments' in its formation, development, and continuation (Ireland, 2005, 2009, 2010; Robe, 2011; Stout, 2012). In the legal imaginary, the corporation is conceived as "having responsibilities to a range of constituents, including shareholders as well as employees [including managers], customers, creditors, and the general public" (Ciepley, 2013: 147)<sup>10</sup>. We now turn to consider the economic imaginary.

10. In conceptions of the corporate form which prevailed from the 1930s until the 1970s the legal imaginary led to the view of the corporate form as a 'quasi-public' type of representation (Berle and Means, 2007[1932]) which implicitly incorporated a stakeholder conception of governance (Drucker, 2006[1946], Kaysen, 1957).

## THE ECONOMIC IMAGINARY

The economic imaginary does not directly challenge or overturn the legal imaginary. Instead, the 'entity' that is central to the legal imaginary is placed in the background as an inconsequential 'legal fiction'. In this process of displacement, attention is shifted away from the legal entity and the role of executives in safeguarding and expanding the assets of the corporation on behalf of a wide range of stakeholders to the material interests and right of control that is ascribed exclusively to investors.

The economic imaginary routinely speaks to the superior efficiency of the corporation as an organizational form (Hanssman and Kraakman, 2000). Rational economic justifications for the JSC advanced by the economic imaginary underscore how, for example, in contrast to the partnership, there is less need to maintain substantial liquid resources, with the beneficial outcome that those resources are available for investment in productive processes, thereby reducing the cost of capital in relation to prospective returns. As a consequence of shares being tradable, the joint stock company is also seen to bring the benefit of greater liquidity, as noted earlier. Furthermore, and again in contrast to the partnership form, the liquidation and exchange of firm assets is avoided. Higher returns can be expected since less provision must be made for claims upon assets<sup>11</sup>.

11. What the shareholder owns is a coupon, whose value is only indirectly and indeterminately related to the assets of the JSC. Rather than relating to the assets themselves, the value of the coupon depends upon imponderables such as investor sentiment (with regard to the particular JSC but also financial markets).

In the economic imaginary, these advantages are calculated comfortably to offset the downside of surrendering any direct legal claim on the assets of the JSC. Nonetheless, there remain two significant downsides to the JSC without limited liability. In addition to shares being less easily tradable because they carry a residual risk, shareholders are also obliged to safeguard the value of their shares by expending time and effort in understanding and monitoring the business (like members of a partnership). Apart from limiting exposure to debt incurred by the firm to the value of the shares, limited liability substantially reduces these other burdensome opportunity costs and therefore makes investment in the business corporation more appealing than investment in a partnership.

There is, however, also a significant drawback associated with shareholding in a limited liability JSC as it is conceived within the economic imaginary. Shareholders remain dependent upon the honesty as well as the competence of managers who are hired to control the activities of the corporation in place of partners and/or shareholders. As employees, managers have no material

incentive comparable to partners or shareholders to maximize returns to investors. They may merely ‘satisfice’ performance and/or engage in their own vanity, job-securing, or empire-building projects. The assessment that managers lack sufficient inducement to safeguard and maximize the interests attributed to shareholders summons the specter of an ‘agency problem’, for which the favored economic solution is the introduction of sufficiently potent incentives in the form of stock options and (short-term) performance-related bonuses designed to align executive decision-making with the maximization of shareholder value (Khurana, 2007).

In this agency-theoretic economic imaginary there are three radical departures from the legal imaginary. First, the corporation is cast as a ‘nexus of contracts’ (Bratton, 1989), that is, as a nexus of on-going contractual relations among the self-interested, atomistic individuals who comprise its factors of production. Imagining the corporation as a continuous process of contract negotiation means that coordination through hierarchy becomes comparatively less significant. Relatedly, less weight is given to a conception of management as a materially and symbolically privileged element, which possesses obligations as well as rights, within a vertical division of labor. There is also a departure from a view of managers as impartial experts or mediators who apply their expertise to make informed, well-balanced decisions in the interest of wider sets of stakeholders.

Second, according to the agency-theoretic economic imaginary, the most critical aspect of corporate governance concerns the contract between shareholders (principals) and directors and executives (agents) (Bratton, 1989; Jackson, 2000). This leads to a dyadic view of corporate governance in which parties other than investors, directors, and executive officers are largely external to this conception of the corporation and its governance. As Johnson (2012: 1160) observes:

*“Other parties, however important their contributions to the flourishing of dynamic enterprise, are regarded as secondary, instrumental participants, and are remitted to contract law or other legal regimes dealing with creditors’ rights, employees’ rights, consumer protection, or environmental concerns, and so on.”*

*Third, the contemporary, agency-theoretic economic imaginary “recasts firm relations in terms of discrete, bilateral contracts. [It] deemphasizes the entity [...] To find the firm’s essence, [it] looks solely to the behaviour of individual economic actors” (Bratton, 1988/9). 428.*

Differences between the respective legal and economic imaginaries are summarized in Table 1.



**Table 1.** Legal and Economic Imaginaries

	Legal imaginary	Economic imaginary
Ownership	Held by legal entity	Held by legal fiction, but attributed to shareholders as prioritized constituency
Fiduciary duties	To 'the company'	To 'the shareholders'
Limited liability	Historical addition conditional upon the establishment of a legal entity	Necessary to fulfill the potential of the corporation as a vehicle for the comparatively riskless expansion of private wealth

From the perspective of the legal imaginary, the economic imaginary relies upon a displacement that amounts to intellectual shamanism (Bratton, 1989; Robé, 2011; see also quote below), as it lends unsupportable (academic) legitimacy to the assertion that “public companies should be run predominantly, if not exclusively, in their [the shareholders’] interests” (Ireland, 1999: 49), and because the distinctive advantages of the corporate form over the partnership form — such as limited liability and the reduction of opportunity costs — are trumpeted without regard to the legal imaginary of the firm in which a collective, multi-stakeholder conception of its purpose is assumed.

## THE POLITICAL IMAGINARY

Advocates of a political imaginary contend that

*“[...] it is important that scholars of corporate governance do not permit deeply political processes to be passed off as the products of a politically neutral, purely economic logic or allow the distributional dimensions of corporate governance to be spirited off the agenda by the shamans of law-and-economics, those unremitting class warriors for the rich and powerful”* (Ireland, 2005: 81, emphasis added).

The political imaginary gives primacy to relations of power, formulated primarily in terms of class and of contests between fractions of capital in which legal and economic elements are conceived as a medium as well as an outcome of relations of domination and subjugation. Within the political imaginary, the key to understanding the historical emergence and subsequent development of the corporate form is neither economic efficiency nor refinements in legal theory. Rather, the evolution of the corporate form is understood to be integral to shifts in power relations between classes, and their respective capacities for mobilizing resources to consolidate or transform relations of domination in which elites systematically gain material and symbolic advantage.

The political imaginary facilitates an account of the emergence of the JSC based upon the priorities of a rentier class instead of an account that celebrates some other, more impersonal or ostensibly progressive set of factors. It is informed by the understanding that, when historically viewed, the partnership form was appropriate and viable for all but a few business ventures (McClean, 2004). The exception of incorporation was granted only where a public benefit was clear, where the risks were exceptionally high, and where the activities of the business could be readily routinized. Only in such limited circumstances, as Adam Smith argued, may the rewards of the JSC, in terms of prospective public benefits, conceivably outweigh the risks of ‘negligence and profusion’

invited by the JSC. Such risks arise from executives' misuse of the money of others and from the irresponsibility of rentiers generally disinclined to take a close interest in the management of corporations. In recent years there have been numerous individual and systemic examples of such 'negligence and profusion'.

Why, then, was free incorporation and general limited liability granted by the state? The political imaginary invites consideration of which group or groups wielded sufficient influence and/or stood to benefit most from extracting this concession. During the early 19th century, the class of investors expanded in size and influence. Prior to the establishment of the JSC, members of the rentier class sought to invest wealth but found themselves restricted to buying government debt that offered unexciting returns or to investing in partnerships at rates pegged by usury laws (until 1854), which also yielded slim returns; or, finally, they could risk their fortunes by forming or joining partnerships, which required their personal involvement in management and brought with it liability issues. Even opportunities for pursuing the latter course of action, which promised the highest economic returns, were restricted, since most partnerships were able to fund desired expansion by ploughing back profits or by borrowing at capped rates instead of by attracting further investors.

It was to the growing, and increasingly influential, class of rentiers that the prospect of the JSC with limited liability was most attractive. When investing in such a business, rentiers were able, at least in principle<sup>12</sup>, to secure a high-yield and yet comparatively risk-free return on their capital; moreover, the coupons that represented that capital also became more easily tradable. The increased tradability of these coupons facilitated the distribution of capital across a portfolio of investments, thereby reducing investor risk. With the establishment of many JSCs in which to invest, coupled with the protection afforded by limited liability, rentiers were able to enjoy capital appreciation and/or strong dividends without the demands, costs, risks, or responsibilities of overseeing, or even inquiring into, how their gains were generated. However, the position of the rentier who speculates in the trading of coupons, where the prospect of boundless rewards is enhanced by the containment of risks, is politically contingent as well as historically dynamic. There is no guarantee that this position can be maintained, as occasional calls for the mutualization and nationalization of assets attest. As circumstances change, restrictions upon speculative investment activity may be (re)imposed in order to redress their excessive relaxation.

During the 20th century, the rapid growth of the JSC drew in comparatively small shareholders in addition to the rentier class. This widening of share ownership through institutional investment (e.g. pensions, savings) resulted in a wider dispersion of share ownership and a resulting 'socialization' of the ownership of the modern corporation. As the capacity of shareholders to exercise control (e.g. over the appointment of directors) has been diluted, corporate managers have become empowered to prioritize and pursue objectives — self-interested as well as public-interested — other than those attributed to shareholders<sup>13</sup>.

In the United States, in particular, 'managerial capitalism' (Khurana, 2007) was advanced by a continuing diffusion of share ownership, the increased ability to obtain funding from sources other than share markets, and by a

12. In practice, rentiers continued to be exposed to fraud, in part because they declined to take any active interest in the businesses in which they invested.

13. But, as Ireland (nd: 16) cautions, while managers enjoyed more room to maneuver, they could not afford to ignore or marginalize shareholders or substantially redefine their established markers of performance. Even when external pressures were relaxed, executives willingly imposed similar disciplines upon themselves by developing multi-divisional management structures in which decentralized profit centers competed for capital.

partial embrace of Keynesianism, reflected in increased state subsidization and intervention in the private sector resulting from the New Deal (e.g. the expansion of a military-industrial complex, see Marens, 2012). By the 1960s, it has been suggested that even in the US

*“little was left of the classical corporation. Its internal dealings with shareholders and its debtor-creditor relations were substantially regulated by the federal securities acts. Its labor relations were regulated by the new federal labor laws. Its relations in the general market with consumers and suppliers became increasingly regulated by the antitrust laws [...]”* (Hovenkamp quoted in Tsuk, 2003: 1897).

What remained unchanged, however, was the legal imaginary of the corporate form and its conception in company law (Ireland 2009). In the immediate post-War era, a consensus view developed, coincident with the post-War settlement, that corporate law had accommodated an irreversible managerial revolution. Accordingly, the relevant challenge was not to reform the law but rather to ensure that the benefits of this revolution were fully realized by training a cadre of scientific and impartial corporate managers to represent the interests of multiple stakeholders (Drucker, 2006; Kaysen, 1957; Khurana, 2007). That the managerial revolution was shallowly rooted, incomplete, or stillborn, if not wholly illusory, became evident in the 1970s. A mounting fiscal crisis, poor returns to investors, and disillusionment with what were now construed as the smothering attentions of a bloated and unsustainable nanny state, provided the conditions for a counter-revolution. Economic decline and fiscal crisis presented an awaited opportunity for the rentier class to pursue a neo-liberalist agenda with an emphasis upon market discipline as a remedy for weak economic performance. In response to demands to revive flagging growth attributed to the dampening effects of Keynesian full employment policies, welfare provision, and extensive state ownership, Bretton Woods was dismantled<sup>14</sup>. This unleashed the expansionist powers of finance and hastened the concentration of shareholding in financial institutions. It was these developments, underpinned by a broad and sustained shift in the direction of neo-liberalism, which reversed the over-hyped ‘managerial revolution’. The degree of autonomy enjoyed by corporate management in the post-War years was reigned in by the imposition of performance measures, notably variants of shareholder value metrics, as the tiller of economic development passed from corporate managers and state bureaucrats to the rentiers (Ireland, 2010). Finance, Keynes had declared, should be the servant not the master. By the mid-1980s these roles were being systematically reversed.

The reversal was evident in the gathering concentration of share ownership within investment funds, including hedge funds and sovereign wealth funds, of sufficient size to create and exert influence upon ‘the market for corporate control’. This development provided the basis for a rapid expansion and resulting domination of financial markets. Deregulation and liberalization also hugely increased and accelerated international capital flows. The expansion of financial(ized) capitalism was also promoted and legitimized by advocates of agency theory, whose thinking both chimed with and guided the thinking of neo-liberal policy-makers. As noted earlier, agency theory is attentive only to shareholders and managers, to the exclusion of all other stakeholders, with managers being identified as the recalcitrant but tractable servants of

14. The ‘Bretton Woods’ agreement was established in 1944 as a basis for reforming an international economic system amongst leading capitalist nations. It created rules and institutions (e.g. International Monetary Fund, IMF) which obliged states which ratified the agreement to peg their currency to the US dollar, and for the IMF to ‘manage’ imbalances. In 1971, the US terminated unilaterally the convertibility of the US\$ into gold, resulting in the end of the Bretton Woods agreement as the US\$ effectively became the reserve currency of choice and currencies floated instead of being tied to the US\$.

shareholders. Stock options and other forms of financial incentives (e.g. performance bonuses) have been widely used to secure closer alignment between agents (corporate managers) and principals (shareholders), most dramatically demonstrated by the use of stock buybacks. This expansion of financialized capitalism has been fuelled by leveraged buyouts and an associated growth of private equity funds. These developments exemplify neo-liberalism because they depend on a legal and economic infrastructure that is provided by the state, but nevertheless escape even minimal public regulation and accountability. The turn to neo-liberalism has restored the value of the corporate form as an unsurpassed means of private wealth accumulation in capitalist social relations.

The political imaginary has reprivatized capital in the name of reestablishing market dominance. One consequence of this is that those occupying commanding positions in markets are the best placed to enhance their positions. When viewed in this way, the creation of the JSC, and especially the concession of limited liability, is understood to have been “more the product of the growing political power of the rentier investors than it was of economic imperatives, an argument that might easily be extended to the current attempts to universalize corporate law in its resolutely shareholder-oriented Anglo-American form” (Ireland, 2010: 838).

## Summary

We have conceived of the corporation as a political imaginary in which other, legal and economic imaginaries are nested and are mobilized in contests over the corporate form. Distinct legal and economic imaginaries, we have argued, are each productive of the corporate form — a source of tension that helps to account for the corporate form’s unstable, contested enactment and practical effects. In the legal ‘imaginary’ the corporate form is conceived as an ‘entity’, ‘subject’, or ‘person’. When cast within the economic domain, in contrast, the ‘imaginary’ of the corporate form is a more limited construct. The economic imaginary formally affirms the legal status and effects of the corporation as a reified, singular legal ‘entity’, but nevertheless reduces this ‘entity’ to the status of a ‘legal fiction’. This comparatively ‘flat’ version of the corporate form privileges a particular view of its ‘ownership’, in which the preferences of rentier investors are privileged. The success of this version is reflected in rentier investors’ post-1970s resurgence and their continuing dominance in financial markets.

In the contemporary imaginary the corporate form is dominated by neo-liberalism: exclusive control rights are granted to shareholders and the singular pursuit of shareholder value is prioritized. The focus on shareholders as the sole ‘principal’ to which managers, functioning as ‘agents’, are accountable, means that the domain of governance and responsibility is very often disconnected from wider social concerns such as environmental degradation and global warming. The scope of corporate governance is routinely restricted to the question of how boards may better serve their shareholders, notably by disclosure of financial and legal indicators, and by strengthening the role and training of non-executive directors and extending some forms of reporting (Ezzamel, Veldman and Willmott, 2013). Within this imaginary, the purpose of corporate governance and the development of corporate social responsibility

is indifferent to the representation of diverse stakeholders on company boards and to the payment of taxes by 'corporate citizens', which serve to support and improve the public infrastructures of education, health, and the like, upon which corporate activity depends. Considerations of social responsibility rarely extend beyond calculations of how investment in CSR (corporate social responsibility) will or can protect corporate image and reputation.

By engaging the political imaginary, it is possible to appreciate and challenge how the neo-liberal version of the economic imaginary, in which corporate assets are conflated with the ownership of shares, has become such a deeply consolidated and performative myth. This myth formally acknowledges but substantively ignores and obscures the status of corporate form as it exists in the legal imaginary, where the entity, rather than shareholders or boards, holds the assets (Ireland, 1999, Bratton, 1989; Ireland, 1996; Robe, 2012), and where the fiduciary duty of managers is to 'the company' (Armour et al., 2003: 537), instead of to its shareholders. It follows from this model of the corporate form that managers function as the 'trustees' of institutional assets. Their fiduciary duties are correspondingly interpreted as being towards 'the company', not (just) to 'shareholders'. The political imaginary shows that those who are critical of the economic imaginary, while also objecting to a reified conception of the corporation, inadvertently contribute to the perpetuation of the myth; meanwhile, subscribers to the logic of agency theory seize upon the insistence that persons — such as shareholders, executives, employees, etc. — are the only conceptual category that can be recognized as contractual agents capable of owning assets and of acting as subjects.

### **Concluding Remarks**

We began with the claim that there are few issues more critical in management and organization studies (MOS) than understanding the modern corporate form. We also set out our objective of contributing to an illumination of 'the modern corporation' in such a way as to facilitate a transformation in how corporate practices are understood, taught, and enacted.

Today, the dominant, neo-liberal conception of the corporation is that of an asset owned by individual shareholders, not an entity dissociated from them. We have noted how this understanding parallels the basis of the partnership form in which shareholder-partners have direct collective control over the partnership's activities and assets. A feature of the partnership model is that partners have unlimited liability for losses and debts, except perhaps in very exceptional cases, identified by Smith (see *supra*, page 17). For this reason, there is a strong incentive for shareholder-partners to take a close interest in the governance and operation of the corporations that they collectively own. This understanding and arrangement, however, also conflates the ownership of shares with the ownership of corporate assets, because it displaces consideration of other stakeholders' involvement in the creation and reproduction of those assets (see Paranque and Willmott, 2013). An alternative position, commended here, conceives of the corporate form as "a network of social and productive relationships" (Ireland, 1999: 56), rather than as an object or asset, over which a particular group (e.g. partner-shareholders, rentiers) can legitimately claim ownership.

Following Ireland (1999), the key to conceptualizing the corporation is

an appreciation of how it comprises “a network of social and productive relationships” (ibid). Misgivings about a conception of corporations based upon their reification are misplaced when it is recognized that aggregated ‘actors’, such as shareholders and executives, are themselves reifications. As conceptually reified ‘actors’ they are composites deeply embedded in diverse social relations. Likewise, as actors, people are not homogeneous or autonomous beings inhabited or animated by a unified ‘agency’. In principle, then, there is no credible basis for objecting to the attribution of agency or assets to a legal entity. Indeed, there is a defensible ethico-political basis for insisting upon such an attribution, because it serves to acknowledge how the (re)production of the ‘network’ (ibid) depends on the participation of a wide diversity of stakeholders, past and present. These diverse contributions (e.g. as suppliers, creditors, employees, etc.) are the very condition for the creation of the assets ascribed to the corporation. Attributing agency to a corporate entity serves, in this instance, to recall how its assets are indivisibly social, and not private, property. From this perspective, accounts of the corporation and its ownership, governance, and responsibilities, which deny or conflate the distinction between corporate assets and the ownership of shares, are appropriately interpreted as the self-interested claims of a dominant class that has appropriated those assets. Such claims therefore invite radical challenge rather than supine endorsement.

Studies of management and organization can be enriched by giving closer consideration to how they are framed within the imaginaries of the corporate form, and to the role of these imaginaries in structuring expectations of ownership, control, and hierarchy. Examining the nature and significance of how legal, economic, and political imaginaries of the corporate form are currently framed reveals discrepancies and conflicts between the different imaginaries, most notably between the legal and economic imaginaries. It also draws attention to how incongruence is masked by a faith-like adherence to mutually exclusive underlying principles of reification (the legal imaginary) and atomization (the economic imaginary). Understanding these underlying discrepancies usefully illuminates and exposes the shallowness of analyses of, and restrictiveness of prescriptions for, corporate governance, which are based on simplistic denials or conflations of these imaginaries. In turn, their explication may stimulate interest in interventions and reforms that problematize the (control) rights assumed by shareholders and, more positively, may support alternative forms of ownership, governance, and ‘social responsibility’ — such as those framed within principles of mutuality and cooperation. This prospect, we have suggested, can be enhanced by underscoring and more fully institutionalizing the legal, economic, and political claims of diverse stakeholders in the currently shallow and narrow sense of ‘social responsibility’ attributed to corporations. Understanding the differences, discrepancies, and conflicts between imaginaries of the corporate form provides a way of moving beyond the symptoms associated with the domination of a neo-liberal economic imaginary as it is expressed in widespread practices intended to maximize shareholder value, ramp up executive remuneration, exploit tax loopholes, etc. It also provides a way of addressing the political economy in which the contemporary theory of corporate governance, based on mutually exclusive legal and economic



imaginaries of the corporate form, is embedded.

Advancing this reconstruction of corporate governance requires input from a number of academic disciplines, but also the involvement of politicians, NGOs, and practitioners. At the time of writing, we are taking preliminary steps towards this goal: we are assembling a group of prominent international critical scholars to explicate the problematic nature of the corporate form from within the domains of law, economics, politics, and organization studies. This project aims to combine currently dispersed contributions in order to establish and disseminate an alternative, socially inclusive understanding of corporations that incorporates an appreciation of the presence and effects of legal, economic, and political imaginaries. The project is focused on the European context but we anticipate that it will become an intercontinental project dedicated to the reformation of corporate governance theory and the reconstruction of the corporate form.

**Jeroen Veldman** is a research associate at Cardiff University Business School. His research interests include the history of the corporate form and its consequences for current developments in corporate governance from the perspective of organization studies. His current research project 'The Modern Corporation' looks at the relation between financialization and corporate responsibility.

**Hugh Willmott** is Research Professor in Organization Studies, Cardiff Business School and has held visiting professors at Copenhagen Business School and the Universities of Uppsala, Lund, Innsbruck, Sydney and the University of Technology, Sydney. He currently serves on the board of Academy of Management Review, Organization Studies, Journal of Management Studies and is an Associate Editor of Organization. He has contributed to a wide range of management and social science journals and has published over 20 books. Full details can be found on his homepage: <https://sites.google.com/site/hughwillmottshomepage>

## REFERENCES

- Allen, W. T. (1992). Our Schizophrenic Conception of the Business Corporation. *Cardozo Law Review*, 14(2), 261-281.
- Armour, J., Deakin, S., & Konzelmann, S. J. (2003). Shareholder primacy and the trajectory of UK corporate governance. *British Journal of Industrial Relations*, 41(3), 531-555.
- Berle, A. A., & Means, G. C. [1932] (2007). *The modern corporation and private property* (Rev. ed.). New Brunswick, NJ ; London: Transaction Publishers.
- Bowman, S. R. (1996). *The modern corporation and American political thought: law, power, and ideology*. Pennsylvania: Pennsylvania State University Press.
- Bratton, Jr. W. W. (1989). The New Economic Theory of the Firm: Critical Perspectives from History. *Stanford Law Review*, 41(6), 1471-1527.
- Butler, H. N. (1989). The Contractual Theory of the Corporation. *George Mason University Law Review*, 11(4), 99-123.
- Carroll, A. B., Lipartito, K. J., Post, J. E., Werhane, P. H., & Goodpaster, K. E. (Eds.). (2012). *Corporate Responsibility: The American Experience*. Cambridge: Cambridge University Press.
- Chandler, A. D. [1977] (2002). *The visible hand: The managerial revolution in American business*. Cambridge, MA: Harvard University Press.
- Ciepley, D. (2013). Beyond Public and Private: Toward a Political Theory of the Corporation. *American Political Science Review*, 107(1), 139-158.
- Cox, E. W. (1857). *The New Law and Practice of Joint Stock Companies, with and Without Limited Liability*. London: Law Times Office.
- Crouch, C. (2011). *The Strange Non-Death of Neo-Liberalism*. Cambridge, UK: Polity.
- Davis, G. F. (2009). *Managed by the Markets: How Finance Re-Shaped America*. Oxford: Oxford University Press.
- OECD (2004). *OECD Principles of Corporate Governance 2004*. Paris: OECD Publications.
- Drucker, P. F. [1946] (2006). *Concept of the Corporation*. New Brunswick: Transaction Publishers.
- Epstein, G. A. (Ed.). (2005). *Financialization and the world economy*. Cheltenham: Edward Elgar Publishing.
- Ezzamel, M., Veldman, J., & Willmott, H. (Unpublished Working Paper). *Limits of Reflexive Governance: Whose Reflexivity in Corporate Governance Codes?*
- Fligstein, N. (1993). *The transformation of corporate control*. Cambridge, MA: Harvard University Press.
- Goodwin, N. (2006). The Social Impact of Multinational Corporations: An Outline of the Issues with a Focus on Workers. In A. D. Chandler & B. Mazlish (Eds.), *Leviathans: Multinational corporations and the new global history* (pp. 135-166). Cambridge: Cambridge University Press.
- Gourevitch, P., & Shinn, J. (2005). *Political Power & Corporate Control, the new global politics of corporate governance*. Princeton ; Oxford: Princeton University Press.
- Guinnane, T., Harris, R., Lamoreaux, N. R., & Rosenthal, J. L. (2007). Putting the Corporation in its Place. *Enterprise and Society*, 8(3), 687-729.
- Hansmann, H. & Kraakman, R. (2001). The End of History for Corporate Law. *Geo.LJ*, 89, 439.
- Horwitz, M. J. (1985). Santa Clara revisited: the development of corporate theory. *West Virginia Law Review*, 88, 173-224.
- Ireland, P. (2009). Financialization and corporate governance. *Northern Ireland Legal Quarterly*, 60(1), 1-34.
- Ireland, P. (2005). Shareholder Primacy and the Distribution of Wealth. *The Modern Law Review*, 68(1), 49-81.
- Ireland, P. (1999). Company Law and the Myth of Shareholder Ownership. *Modern Law Review*, 62(1), 32-57.
- Ireland, P. (2010). Limited liability, shareholder rights and the problem of corporate irresponsibility. *Cambridge Journal of Economics*, 34(5), 837-856.
- Jackson, G. (2000). Comparative Corporate Governance: Sociological Perspectives. In J. E. Parkinson, A. Gamble & G. Kelly (Eds.), *The political economy of the company* (pp. 265-288). Oxford: Hart Publishing.
- Johnson, L. (2012). Law and Legal Theory in the History of Corporate Responsibility: Corporate Personhood. *Seattle University Law Review*, 35(4), 1135-1164.
- Jones, M. T., & Haigh, M. (2007). The transnational corporation and new corporate citizenship theory: a critical analysis. *Journal of Corporate Citizenship*, 27, 51-69.

- Kaysen, C. (1957). The Social Significance of the Modern Corporation. *The American Economic Review*, 47(2), 311-319.
- Khurana, R. (2007). *From higher aims to hired hands: the social transformation of American business schools and the unfulfilled promise of management as a profession*. Princeton: Princeton University Press.
- Kobrin, S. J. (2006). Multinational Corporations, the Protest Movement, and the Future of Global Governance. In A. D. Chandler & B. Mazlish (Eds.), *Leviathans: Multinational corporations and the new global history* (pp. 219-236). Cambridge: Cambridge University Press.
- Marens, R. (2012). Generous in victory? American managerial autonomy, labour relations and the invention of Corporate Social Responsibility. *Socio-Economic Review*, 10(1), 59-84.
- McLean, J. (2004). Transnational Corporation in History: Lessons for Today? *Indiana Law Journal*, 79(2), 363-377.
- Micklethwait, J., & Wooldridge, A. (2005). *The Company: A Short History of a Revolutionary Idea*. London: Modern Library.
- Murphy, J., & Ackroyd, S. (2013). Transnational corporations, socio-economic change and recurrent crisis. *Critical perspectives on international business*, 9(4), 336-357.
- Nace, T. (2003). *Gangs of America*. San Francisco, CA: Berrett-Koehler.
- Neocleous, M. (2003). *Imagining the state*. Maidenhead: Open University Press.
- Palan, R., Murphy, R., & Chavagneux, C. (2010). *Tax havens: How globalization really works*. Ithaca, NY: Cornell University Press.
- Paranque, B., & Willmott, H. (Unpublished manuscript). *Cooperatives - saviours or gravediggers of capitalism? The ambivalent case of the John Lewis Partnership*.
- Parkinson, J. (2003). Models of the company and the employment relationship. *British Journal of Industrial Relations*, 41(3), 481-509.
- Post, G. (1934). Parisian masters as a corporation, 1200-1246. *Speculum*, 9(4), 421-445.
- Robé, J. P. (2011). The Legal Structure of the Firm. *Accounting, Economics, and Law*, 1(1), 1-86.
- Roy, W. G. (1999). *Socializing capital: The rise of the large industrial corporation in America*. New Jersey: Princeton University Press.
- Schrader, D. E. (1993). *The Corporation as Anomaly*. Cambridge: Cambridge University Press.
- Stout, L. A. (2012). *The shareholder value myth: How putting shareholders first harms investors, corporations, and the public*. San Francisco, CA: Berrett-Koehler.
- Tsuk, D. (2003). Corporations Without Labor: The Politics of Progressive Corporate Law. *University of Pennsylvania Law Review*, 151(6), 1861-1912.
- Van Horn, R. (2009). Reinventing Monopoly and the Role of Corporations: The Roots of Chicago Law and Economics. In P. Mirowski & D. Plehwe (Eds.), *The Road from Mont Pèlerin: The Making of the Neoliberal Thought Collective* (pp. 204-237). Cambridge, MA: Harvard University Press.
- Veldman, J., & Parker, M. (2012). Specters, Inc.: The Elusive Basis of the Corporation. *Business and Society Review*, 117(4), 413-441.
- Wells, C. (2005). *Corporations and criminal responsibility*. Oxford: Oxford University Press.
- Williston, S. (1888). History of the Law of Business Corporations before 1800. *Harvard law review*, 2(3), 105-124.