1. Governance varieties: Locke and Hegel's philosophy of right and the roots of governance traditions

INTRODUCTION

The so-called Great Recession (Redbird and Grusky, 2016; Suárez, 2014; Biven and Shierholz, 2013; Mian and Sufi, 2010), now looming for close to a decade, especially in parts of Europe, and materializing into political consequences (the "Brexit" referendum in the U.K., and the anti-free trader Donald Trump surprising the "political establishment" in Washington by defeating Hilary Clinton) has also generated a renewed scholarly interest for the elementary governance mechanisms underlying the economic stagnation and soaring economic inequality now being widely recognized as undisputed conditions of the contemporary period (Jacobs and Dirlam, 2016; Wodtke, 2016; Stockhammer, 2015; Bartolini, Bonatti, and Sarracino, 2014; Gilens, 2012; Alderson and Nielsen, 2002). Among many things, the enforcement, not so much *de jure* as de facto, of a shareholder primacy model (court rulings in, e.g., Delaware, the state of choice for incorporation for the majority of Fortune 1000 companies, still provide strong support for the "board-centric corporate system"; Levitin, 2014: 2059), stipulating that governance enriching shareholders, the firm's investors, not only minimize the risks of management opportunism but also benefit *all* stakeholders, has been fortified as the dominant corporate governance doctrine. While the popularity of the shareholder primacy model coincides with (some would say *precedes*; see, e.g., Tomaskovic-Devey, Lin, and Meyers, 2015; Dobbin and Jung, 2010) a series of worrying tendencies in advanced capitalist economies, including declining economic growth, soaring economic inequality, the loss of blue-collar and white-collar jobs, and declining investment in long-term ventures including R&D and human capital, the advocacy of the shareholder primacy model seems unrelenting; shareholder primacy advocates do still, notwithstanding the remarkable success they have had in advancing their reform agenda, Cremers and Sepe (2016: 135) say, "see shareholder empowerment as not yet accomplished." Against this wider institutional and socio-economic foregrounding, there are reasons to examine the intellectual and doctrinaire roots of the shareholder primacy model. The history of the shareholder advocacy from the mid-1970s and the publication of the seminal paper of Jensen and Meckling in 1976, is well covered in the corporate governance literature, but this more "recent history" needs to be complemented by the analysis of what the renowned Annales-school historian Fernand Braudel (1980) refers to as *la longue durée*, the long duration wherein intellectual ideas gain a foothold in historical processes only over time but may suddenly spring forward, at times seemingly from nowhere (as in the case of the recurrent waves of American conservatism in the eyes of liberal commentators; see Philips-Fein, 2009: 725) when "their time has come," as the saying goes.

The purpose of this chapter is therefore to discuss how the so-called "Berle–Means firm" was established in the New Deal framework (Hawley, 1966), wherein the legal scholar Adolf Berle served as an advisor in the Roosevelt administration. Prior to the Wall Street crash of 1929, and the depression that lasted well until the Second World War served to blow life into the American economy, there was a debate initiated by the leading American economist Thorstein Veblen and liberals such as the lawyer Louis D. Brandeis regarding the relationship between finance capital investors and "real economy actors," voicing worries that in an economy dominated by "passive shareholders," enterprising and entrepreneurial impetus would be undermined or compromised in undesirable ways. This debate was in turn animated by inherited intellectual traditions in the U.K. (and dominated by the philosophy of right of John Locke, the great British empiricist and proponent of liberalism) and in continental Europe (primarily Germany, and with George Wilhelm Friedrich Hegel's *Philosophie des Rechts* as its intellectual foundation), both being important influences for the New Dealers. Only by examining how the concerns addressed by Veblen and Brandeis in the 1910s, and how their critique of "the Money Trust" was muted in the depression era and post-Second World War period can the present day concerns regarding the long-term consequences of the shareholder primacy model be fully understood. In essence, economists expressing a firm belief in the efficacy of market-pricing, i.e., an economic model by-passing or ignoring the role of the sovereign state, were more attracted by John Locke's "minimal theory of rights" in comparison to Hegel's "extended theory of rights," which granted the sovereign state a more active and affirmative role. While Roosevelt advisors by and large were sympathetic towards continental European doctrines of statism (Adelstein, 1991: 165), the intellectual and cultural climate in the U.S. undermined a meaningful application of, e.g., governance doctrines rooted in, e.g., Hegel's thinking. In the end, the received American model was constructed and operated on the basis of a minimal state doctrine. The consequences for corporate governance practice and theory are considerable, for instance, rendering legislative practices and regulatory control orchestrated by the state suspect in the eyes of, e.g., free-market protagonists.

THE PHILOSOPHY OF RIGHT: THE LIBERAL/BRITISH AND THE STATIST/CONTINENTAL TRADITIONS

While paying attention to philosophical doctrines may appear a concern for a handful of academic specialists or seminarists in defined disciplines, the connection between philosophical doctrines and latter day governance practices is not a moot question. In fact, like in the case of biological systems, also human cultures and social institutions are "built from the bottom up," originating with elementary mechanisms and differentiating over time. Therefore, the economic system of competitive capitalism, intimately bound up with modern democracy and the emergence of a scientific worldview, in brief, *modernity*, needs to be traced to its roots to explain contemporary conditions and practices.

As Duggan (2003: 4) explains, "liberal theorists, such as John Locke and Adam Smith, provided a set of metaphors, an organizing narrative, and a moral apologia for capitalism." The British liberalism tradition, leveraged by the dominance of the Britons in international trade from the early eighteenth century, has many thinkers on its pantheon, including not least John Locke, formulating the foundational liberal principle that any man has the right to the fruits of the work he has invested in or laid down in, say, ploughing and sowing a field, building a clock, or baking a batch of loaves. The concept of property rights in the modern sense of the term, central to Locke's work, was first developed by the Dutch scholar Hugo Grotius (1583–1645). Grotius developed his concept of property rights from natural law. In this view, humans had the "natural right" to use communal resources, say, "apples, land, cloths, chattels, etc." not yet claimed by anyone (De Araujo, 2009: 356). However, this right to use such resources does not per se justify property rights in the modern sense of the term: "In the state of nature, to say that an object is 'common' does not mean to say that everyone possesses it but, rather, that it does not belong to anyone. If an object belongs to everyone, then it is called 'public,'" De Araujo (2009: 356) writes. To overcome the limitations of natural law, Grotius regarded property right a human institution, derived from humans' interactions with one another (De Araujo, 2009: 356). In other words, property rights is not “a natural state of affairs” but is constituted on the basis of human reason; private property, Grotius argued, “arises out of collective recognition that a person is entitled to retain or keep for oneself an object he or she has occupied in the first instance” (De Araujo, 2009: 358). Human interactions, which gradually become more intense as society “thickens,” generate the need for property rights, Grotius argues, and consequently a variety of social institutions such as laws, commerce, and the state are created “for the protection of the institution of private property” (De Araujo, 2009: 364). The epistemic leap in Grotius’ legal theory of property rights is thus from the foundational idea of “natural law” to the institutional view of legislation, a bond between theology-inspired legal theory and a modern institutional legal theory that Grotius, despite his brilliance, could not dissolve. Jeremy Bentham (1748–1832), for instance, writing two centuries later, rejected all propositions regarding natural law, stating that “Rights are … the fruits of law, and of the law alone. There are no rights without law—no rights contrary to the law—no rights anterior to the law” (Jeremy Bentham, cited in De Araujo, 2009: 366). Despite having one foot left in scholastic legal theory and Aristotelianism, Grotius’ legal theory of property rights still paved the way for later generations of legal scholars—the Scottish Enlightenment scholars including e.g., David Hume and Adam Smith recognized Grotius’ work (Haakonssen, 1996, 1985)—and the philosophy of right presented by Locke and Hegel.

In the Anglo-American liberal tradition, Locke is a saintly figure that justifies human integrity and elementary rights vis-à-vis authorities and elites such as the aristocracy. Locke is also explicitly enacting political power, materialized into “a right of making laws with penalties of death, and consequently all less penalties,” as a privilege and prerogative granted only for the benefit of “the public good” (Locke, 1690/2003: 101, Book II, §3). That is, the legislator, first the sovereign and thereafter democratically elected parliaments, must not use legislation to benefit their own interest. In contrast, Hegel’s philosophy of right, formulated 13 decades after Locke’s *Two Treatises on Government* appeared, recognizes private property as a basic legal right, but unlike Locke who stipulates ownership rights as an end in itself, and being of limited interest or concern for the sovereign state once such rights have been enacted by law, Hegel presents a considerably more complex theory of property and property rights. Hegel starts with a fictive individual in a pre-social condition, and asserts that this individual has the right to property; indeed, the right to property is “the origin” of the person’s “right to life and liberty” (Stillman, 1988: 1032)—for Hegel, property is “essential for an individual’s freedom” (Stillman, 1988: 1032). This is essentially where Locke's philosophy of right ends, being a "minimal theory" of rights based on the proposition that "[E]very man has a *property* in his *own person* … The *labour* of his body, and the *work* of his hands, we may say, are properly his" (John Locke, *Two Treatises on Government*, Book II, Ch. 5, cited in Stillman, 1988: 1040). In Hegel's thought, this pro-social recognition of the property right is merely the starting point, an axiomatic first principle in his elaborate philosophy of right. Through his property, Hegel argues, "the person goes forth from himself to relate to other men and to build social institutions" (Stillman, 1988: 1036), i.e., property is the *vehicle* for the construction of an autonomous self and the individual liberties are the basis for the free individual. At the same time, which is a key complexity of Hegel's dense writing, property must, to serve its political, social, and economic purposes, be *aufgehoben* (derived from Hegel's central philosophical term *Aufheben*, meaning "to sublate," to preserve by transcending or to preserve by "destruction" or "cancellation")—it must be both preserved and transcended, become part of the life of the individual and an element within "the structure of society" (Stillman, 1988: 1037). This is a most complex point made by Hegel:

> Hegel's political philosophy is founded on property; but it is founded on property only so that it can transcend property. The fully developed individual—active outside the sphere of abstract rights, the system of needs, and the administration of justice—has moral and ethical ideals and human interactions (for example, family and state) that are not based on private property. But property nonetheless remains a permanent apparatus for carrying out a life plan, for giving reality to a conception of his own good, for his further development, and for his self-satisfaction**.** (Stillman, 1988: 1037)

The decisive point is that Locke and Hegel represent the two freedoms identified by Isiah Berlin (1958), with Locke speaking of property in terms of *negative freedom*—freedom from oppression and the governance of the sovereign or the government—and Hegel emphasizing how property rights enable and justify participation in civil society. As Stillman (1988: 1040) remarks, "Locke's person is socially and psychologically somewhat static and protective because he already has everything that he needs," while Hegel's person, in contrast, is "dynamic and developmental"; Hegel's person must work to "appropriate and apprehend himself," tasks which, to be fully accomplished, "require not only the content of the prepolitical condition but also, and necessarily, moral attitudes and practical experience in a range of rational social institutions" (Stillman, 1988: 1040). In this latter enactment of the private and public self, society and by implication the state has a much more significant role to play. Locke postulates that the right to property is original and an end in itself, and the individual is thus independent or separated from the individual's social relations "in the state of nature and in civil or political society." In brief, neither individuality, nor property rights are constituted within the realm of social relations. In the Lockean universe, "the preservation of the person's property is a constant and unchanging goal for citizens and for political society," Stillman (1988: 1041) summarizes. This position is central to the Anglo-American tradition of liberalism and its scepticism towards statism in any form, especially in American conservativism and libertarian intellectual traditions.

In Hegel's thinking, social relations, society, and the state are granted a more central and a more positive role. Hegel does not, however, reduce or equate the constitution of fully developed individuals and individual freedom with the functioning of the surrounding society and the state. Just like with the fully developed individual, realizing his or her potentiality, Hegel envisions a social and political world that must grow progressively richer, more complex, and more various in order to "generate the values and relations that can enrich the developing individuality that citizens pursue and that politics encourages" (Stillman, 1988: 1041). For a hard-core latter day libertarian, this vision may sound either naïve or as a *carte blanche* for the development of an authoritarian state, but what Hegel arguably advocated was possibly something more like the liberal welfare state, wherein all the individuals are given certain liberties and possibilities (i.e., through the education system) to become the fully developed person they have the capacity to become. In Locke's view, property right is the basis for a liberal society, but for Hegel, the same property rights are merely the stepping stone for an ongoing project to constitute individuality and a functional society supportive of the development of an autonomous and fully capable person.

The Image of the Market and the Legal Device of the Contract

The deviations that Locke and Hegel's philosophies demonstrate beyond the shared recognition of property right as a constitutive right have considerable economic and policy making implications. While Locke is relatively silent regarding the relationship between the individual and the wider economic system (while being commonly understood as taking an affirmative view of, e.g., commerce, a proposition induced from Locke's statement regarding the rights to property as derived from an investment in labour), Hegel is more explicitly separating the economy from civil society, Stillman (1988) argues:

> Hegel does not wish to impose images, metaphors, or models of private property and free contract throughout all social life. Nor does he wish to follow economistic theorists in asserting, without much argument or context, that free alienating and contracting are always desirable. (Stillman, 1988: 1054)

Again, Hegel's thinking is sophisticated and demands careful examination, and while he is sceptical of reducing property right to economic conditions and mechanisms (e.g., contracting), he still regards "the corporation" as being one of the key institutions of the civil society: "The *family* is the first ethical root of the state; the *corporation* is the second, and it is based in civil society," Hegel (1999: 379) declares. In this context, it is important to keep in mind that "corporation" does not primarily denote the modern firm with defined features such as limited liability, distributed ownership, and salaried managers overseeing operations, but the corporation denotes a wider set of organized activities such as churches, townships, schools, and voluntary organizations. For instance, the development of corporate law, the legal protection of incorporated business ventures against various external and internal opportunistic behaviour and providing additional legal rights and privileges, originally enacted in the late eighteenth century and, being widely established by the mid-nineteenth century in the U.S. (Blair, 2003: 425–426), did not originally incorporate business ventures at all (Kaufman, 2008: 404). Instead, all kinds of civil organizations including churches and townships were granted such business charters. Still, Hegel (1820/1981: 189) emphasizes "the corporation," defined as commercial and professional as well as municipal organizations employing "officials, directors, managers, and the like," as playing a key role in civil society. More specifically, in the corporation, defined as "voluntarily organized groups" including "business corporations, churches, interest groups, charitable societies, etc.," the corporation member finds scope for "liberality and rectitude," Hegel claims (Stillman, 1988: 1048). Within this context of the corporation, private property is *aufgehoben*; it is simultaneously put to use and affected by the norms and goals of the corporation, and the individual must actively contribute to receive *recognition*, and not only maximize personal profit.

Despite this affirmative view of the corporation in Hegel's philosophy of right, Hegel is, unlike social contract theorists in the British tradition (Hobbes, Locke, Adam Smith, etc,) not willing to use the legal device or, alternatively, metaphor of the contract as a meaningful mechanism in his analytical model. This in turn is rooted in Hegel's scepticism towards the idea of the market, widely recognized as an ethically neutral arbiter and efficient resource allocation mechanism in the British liberalism tradition (most notably captured by Adam Smith's metaphor of the "invisible" but ultimately benevolent and fair "hand," directing resources to their best use and thus transcending and neutralizing instrumental self-interest). In contrast to this liberal view, Hegel does not see how the market can provide sufficient agency for the free individual. This is in turn because market transactions, enabled by the use of the legal device of the contract, are based on inequality of power and do not demonstrate what Hegel calls the requirement of "double competition"—competition among "both buyers and sellers." As markets are tilting to benefit either buyers or sellers (as conveyed by the expression, "It's a buyer's/seller's market today"), Hegel anticipates governmental intervention to make markets operable and efficient (Stillman, 1988: 1056). Furthermore, even if markets hypothetically *would* demonstrate fair competition and an absence of power imbalances, Hegel does not believe the legal device of the contract can serve as a metaphor for the state and civil society, simply because the contract is too narrow and too focused on defining mutual rights and obligations (not least because this functional simplicity enables legal enforcement) to fully apprehend how the individual develops socially, intellectually, and emotionally within the realm of the state. Therefore, for Hegel, the market and its contract device/metaphor does not provide adequate possibilities for individuals choosing, which is a *sine qua non* for individual independence and self-determination (Stillman, 1988: 1053). By and large, Hegel is also sceptical towards the idea that freedom of choice would be a legitimate or qualified candidate for the constitution of the free and autonomous individual, on the one hand because the market does not provide possibilities for authentic choices, and on the other hand because the idea of "freedom of choice" is beside the point within Hegel's philosophy of right: "Membership in civil society is not a matter of choice" (Stillman, 1988: 1054).

In summary, Locke provides a minimal liberal theory of negative freedom ("freedom from"), wherein the right to the fruits of one's own labour is a constitutive right in civil society. Hegel, in contrast, offers an extended liberal theory of positive freedom ("freedom to"), wherein property right is stipulated as the basis for civil society, but wherein social organizations such as the corporation and the state play a more central role in materializing individual liberties. Many things do separate Locke and Hegel, but they are unified in their firm stance on property rights, being at the core of the philosophy of rights. While the minimal theory of Locke has been the beacon for generations of Anglo-American liberals, conservatives, and libertarians, Hegel's scepticism about the market and the alleged virtues of freedom of choice (not least being some kind of slogan for the Chicago school of economics tradition, following Milton Friedman's charismatic lead; see, e.g., Friedman and Friedman, 1979) has been less recognized. Yet, Hegel's argument about property rights as being a *constitutional right*, still being only the starting point for the participation in and continuous development of civil society and, *ipso facto*, the individual, is haunting policy makers and theorists, perhaps because it indicates that private property without a surrounding society and functional state would be an oxymoron, as the very term "private" is introduced as a contrast to "public," and "property" is per se a legal term that presupposes at least a minimal state supplying jurisprudence, or at least the presence of collective norms. As will be discussed below, the Hegelian scepticism towards the market and the concern for the corporation as a vehicle for the fulfilment of collective pursuits has been a perennial issue in the corporate governance literature. That is, Hegel's thinking may receive limited recognition in comparison to Locke's, but the issues Hegel addresses within his philosophy of right remain of relevance for corporate governance practice, policy, and scholarship.

THE PRE-DEPRESSION CORPORATE GOVERNANCE DEBATE

The modern concept of the firm including all its defined features was enshrined by corporate law that was developed during the nineteenth century. In addition to corporate law, developed to promote business venturing and enterprising in societies quickly being transformed by the industrial revolution, corporate governance denotes a set of practices, standards, legislation, and regulatory activities that serve to monitor the business venture—the corporation. While corporate law is relatively stable over time to enable a transparent corporate system and law enforcement, yet accompanied in the Anglo-American common law tradition by court ruling cases that further substantiate and clarify the legislation, corporate governance is subject to continuous modifications and ongoing discussions and scholarly analyses. Much of the modern corporate governance practices were developed in the depression era and in the post-Second World War period, characterized by what has been called "managerialism" (Marris, 1964) and the development of the "Berle–Means firm," characterized by the separation of ownership and control. Also in the period preceding the Wall Street crash and the reforms that followed to restore competitive capitalism, there were concerns regarding the governance of industry and the corporate system.

Thorstein Veblen, for instance—"quite probably the most famous American economist in the first quarter of the twentieth century," in Ebenstein's (2015: 28) account—expressed his concern regarding what he referred to as "absentee ownership," i.e., finance capital owners' investment in companies to reap the benefits without being actively involved in the day-to-day management. In Veblen's view (1919/1964: 44), in this regime, ownership has become "denatured" and "no longer carries its earlier duties and responsibilities." The dominance of "absentee ownership of anonymous corporate capital" means that the corporate system loses some of its legitimacy, as wealthy investors can now "control the conditions of life" of the majority of the population, but without taking any responsibility. In another publication, Veblen (1916: 16) criticized the new "financial captains of industry," who demonstrate that an "[a]ddiction to abstract and unremitting valuation of all things in terms of price and profit leaves them, by settled habit, unfit to appreciate those technological facts and values that can be formulated only in terms of tangible mechanical performance." In Veblen's (1916: 16) scathing critique of these finance capital investors, "they are experts in process and profits and financial manoeuvers; and yet the final discretion in all questions of industrial policy continues to rest in their hands." There are thus two major concerns that Veblen addresses: first, that finance capital investors are granted significant power and authority in the economic system of competitive capitalism, now being able to serve, Veblen (1919/1964: 45) says, as "an anonymous pensioner on the enterprise." Second, Veblen (1916: 16) is worried that this singlehanded emphasis on "profits and financial manoeuvers" leads to "the financial captains of industry … losing touch with the management of industrial processes, at the same time that the management of corporate business has, in effect, been shifting into the hands of a bureaucratic clerical staff." In the end, Veblen believes the corporate system is now being hi-jacked and taken over by investors exclusively concerned with generating finance capital rents, but otherwise having little expertise in how liquidity is generated on the basis of highly illiquid capital such as machinery, input materials, and human resources.

Veblen was not the only liberal in the period who worried about the dominance of the finance industry and the hegemony of finance capital investors. The liberal lawyer Louis D. Brandeis (1914/1967: 43), an outspoken critic of what he referred to as the "money trust"[1] claimed that "industrial and political liberty" was "imperiled" by the money trust. Like Veblen, Brandeis was critical of the finance industry's claim that they supplied the finance capital needed to fuel the capitalist economy, while, in fact, Brandeis claimed, "the great banking houses" only "come into relation" with enterprises, "either after the success had been attained, or upon 'reorganization' after the possibility of success had been demonstrated," or when the funds of "the hardy pioneers, who had risked their all, were exhausted" (Brandeis, 1914/1967: 91–92). Such claims are consistent with and substantiated by more recent scholarly works demonstrating that finance capital enters industries only *after* most of the risks have been discounted by the state, or where the state serves to socialize losses (Roy, 1997; Evans, 1995; Dobbin, 1994; Levitin, 2014). In other words, liberals such as Veblen and Brandeis were concerned already during the first decades of the twentieth century that finance capital investors were granted liberties that were possibly not optimal for overall economic efficiency, as they undermined the incentives of business entrepreneurs. In the 1920s, and especially after the Wall Street crash of 1929, this discussion about the relationship between passive capital owners and active entrepreneurs, business promoters, and their assigned executives would be even more animated, not the least on the basis of the works published by the legal scholar Adolf A. Berle.

THE DEPRESSION-ERA RESOLUTION: THE QUESTIONS OF THE SEPARATION OF OWNERSHIP AND CONTROL, MANAGERIAL ACCOUNTABILITY, AND THE INSTITUTIONALIZATION OF THE "BERLE–MEANS FIRM"

Just like Veblen and Brandeis two decades earlier, depression-era liberal scholars and intellectuals were equally concerned with the governance of industry and the role of capital investors. What has been known as the Dodd–Berle debate between the Harvard Law School Professor E. Merrick Dodd Jr. and President Roosevelt's advisor Adolf A. Berle has been emphasized as a watershed discussion between advocates of state regulation and a market-oriented governance model. Following Veblen and Brandeis' strident advocacy of a more detailed monitoring of the finance industry, Dodd (1932: 1153) argued that shareholders, "who have no contact with business other than to derive dividends from it," were particularly unsuitable for playing a key role in contributing to social and economic welfare. Rather than promoting shareholder-centric or finance industry-based governance in the corporate system, Dodd (1932: 1153), proposed that "incorporated business" could only be "professionalized" (i.e., play a wider role than merely generate rents for its investors) if the managers were involved in such a project. For instance, one such welfare-generating effect, of acute interest during the depression era when unemployment soared to unprecedented levels, was how to make "the economic security of the worker" one of the obligations of the incorporated business, Dodd (1932: 1151–1152) argued. For Dodd (1932), such questions were not simply of academic or theoretical interest but concerned the question of whether "capitalism is worth saving" and can "permanently survive under modern conditions"; for Dodd, writing in 1932, such eschatological themes were by no means far-fetched or beyond the issues at hand.

Berle, a liberal legal scholar, shared many of Dodd's worries and concerns, and yet his response to Dodd has been widely interpreted as a clear defence of a shareholder-based corporate governance model. This interpretation of Berle's work has been disputed in the corporate governance literature, where some scholars emphasize that Berle did in fact not endorse shareholder primacy governance, as advocated by agency theorists and contract theorists from the 1970s. Similar to Dodd (1932), concerned about the efficacy of the governance function of the corporate system, Berle (1932: 1366–1367) speaks of the "great industrial managers, their bankers and still more the men composing their silent 'control'" (i.e., shareholders), and claims that this group today serves "more as princes and ministers than as promoters or merchants." In addition, Berle (1932: 1367) is sceptical towards the recent view, taken by corporate lawyers—"mainly in New York," Berle adds—that managers are "trustees" for "corporate security holders." This can be seen as a critique of early attempts to downplay the role of managers in the corporate system. Yet, Berle (1932) is a staunch defender of the economic system based on individual ownership of property, and he deplores the lack of concern regarding "the subject of private property" in "American enlightened juristic thought." This negligence is a "great misfortune" in Berle's account, because "a society based on the individual" can only be maintained on the basis of a "vigorous protection of the property that he has" (Berle, 1932: 1368). However, consistent with Veblen's previous critique, Berle makes a distinction between "active" and "passive" property, whereof the latter is exemplified by a "stock certificate or a bond," each representing "an infinitesimal claim on massed industrial wealth and funnelled income-stream" (Berle, 1932: 1368). At the same time—and this is probably the reason for his being portrayed as a shareholder primacy governance advocate—Berle says that "the owner of passive property" has limited possibilities for securing the value of such assets, but can only sell off the asset if he is dissatisfied with the performance of the management team of the firm, issuing the stock; furthermore, this predicament "[l]eaves him [the shareholder] entirely in the hands of the factual possessor or administrator of the massed wealth" (Berle, 1932: 1370).

Berle (1932: 1370) then proceeds to claim that the present regime of corporate management has generated a social and professional class that can seize power "without recognition of responsibility." That is, it is reasonable to claim that Berle (1932) is more sceptical towards unchecked managerial authority than he is concerned with shareholders drawing the shortest straw; the subordinate position of the shareholder is merely invoked to indicate the power balance in favour of top management in American corporations. Berle (1932) is thus sceptical towards Dodd's (1932) belief in the managers as social reformers and functionaries within the emerging welfare state:

> Most students of corporation finance dream of a time when corporate administration will be held to a high degree of required responsibility—a responsibility conceived not merely in terms of stockholders' rights, but in terms of economic government satisfying the respective needs of investors, workers, customers, and the aggregated community. (Berle, 1932: 1372)

Furthermore, Berle advocates mechanisms that would impose checks and balances on managers, or else they would be able to claim substantial authority in the corporate system, and, *ipso facto*, wider society, now dependent on the corporate system for its subsistence:

> Unchecked by present legal balances, a social-economic absolutism of corporate administrators, even if benevolent, might be unsafe; and in any case it hardly affords the soundest base on which to construct the economic commonwealth which industrialism seems to require. (Berle, 1932: 1372)

Berle's (1932) staid critique of unregulated managerial authority has been widely interpreted as a favourable attitude towards shareholder primacy governance, especially after the publication of Berle and Means' seminal work *The Modern Corporation & Private Property* in 1932—"[o]ne of the most influential social-scientific works of the twentieth century" (Moore and Rebérioux, 2011: 86)—at the height of depression and within the political project to restore the faith in competitive capitalism. Competitive capitalism was both seriously impaired by the system-wide consequences of the Wall Street crash of 1929, and was now rivalled by both socialist and communist economic models and the corporatist fascist economic model being developed in, e.g., Italy and Germany in the 1930s.

Still, against this background, Berle's concern for shareholders has been overstated, Hill and Painter (2009: 1178) claim:

> The emphasis on stock-based compensation reflected that in many influential quarters, shareholder primacy had become the norm. To overstate the case (but not by much), many believed that making managers shareholders would solve everything. Thus, one of the problems that Berle identified—that managers too often do not do what stockholders want them to do—was supposedly solved, with enormous, some would say grotesque, stock compensation plans. The broader problem that Berle, Dodd and Brandeis had discussed—that corporations and particularly banks were sometimes run in a socially irresponsible manner—was largely ignored. (Hill and Painter, 2009: 1178)

When advocating this interpretation of Berle's work and his intentions, Berle's response to a critique of his work published by legal scholar Henry Manne in 1962 is key to Berle's normative view of the balance of power between shareholders and managers (and, thus, the firm *sui juris*). Being a head-on assault on *The Modern Corporation & Private Property*, Manne (1962) claims that a lack of "traditional economic analysis," and an overstating of corporate law issues undermine the practical relevance of the book. By implication, Manne continues, Berle and Means (1934) advocate a corporate governance model that keeps managers "safe from outside interference" (i.e., market evaluations of their performance). This, in turn, Manne (1962: 405) argues, leads to predictable and systematic managerial opportunism: "If this situation exists for all firms in the industry, then … incumbent managers will be able to capture for themselves this greater-than-competitive return for their services." Here, Manne (1962: 404) does not spare the reader numerous examples of how this managerial opportunism may materialize into squandering of resources, including the buying of "[e]xpensive office furnishings, lavish expense accounts, company yachts, time off from day-to-day business concerns, and a variety of other nonpecuniary rewards." In short, Manne (1962) portrays Berle and Means (1934) as being lax on managerial accountability and naïve regarding allegedly escalating opportunist behaviour in executive suites.

Needless to say, Berle (1962) does not let such accusations pass without a proper response, and stepwise disassembles Manne's argumentation. First of all, Berle is critical of Manne's inability to take into account the wider socio-economic and historical conditions that brought forward Berle and Means' (1932) seminal work:

> Professor Manne and his contemporaries did not live through World War I and the decade of the twenties, and the crash of 1929, culminating in the breakdown of the American economic system in 1933. They have not experienced a corporate and financial world without the safeguards of the Securities and Exchange Commission, without systemization and enforced

> publicity of corporate accounting, without (more or less) consistent application of antitrust laws, without discouragement of financial pyramiding, and which tolerated conflicts of interest to a degree unthinkable now. (Berle, 1962: 433)

Berle (1962) thus argues that Manne (1962) is guilty of the so-called "whig history" fallacy, wherein the present situation is understood to be the outcome of a series of inevitable and historically determined events unfolding, and where the situation today is accomplished on the basis of an almost mechanical finalism. As opposed to this view, commonly treated as an overtly naïve historical view, it could have been possible that history would have taken a different turn, leading to entirely different scenarios and outcomes.

Second, Berle (1962) grapples with the implicit objective of Manne's (1962) critique, to advocate and render legitimate an economic theory of law that should trump inherited legal traditions and legal theory on the basis of instrumental rationality and calculations derived from rational choice theory: "Professor Manne and his academic supporters are, of course, accepting and crusading for an academic theory of economics, and are trying to place the modern corporation within it" (Berle, 1962: 435). This attempt to overturn legal theory and to subsume it under some generic "economic theory of law" (pioneered by the law and economics tradition initiated at the law school of the University of Chicago by Aaron Director in the 1950s, originally concentrating on criticizing anti-trust law; Van Horn and Emmett, 2015) does not impress Berle. In Berle's view, the critique of what he refers to as "the industrial system" on the basis of orthodox economic theory overlooks and marginalizes the role of institutions being developed over time, and ignores the separation of "ownership from management" as being a legal innovation (Berle, 1962: 436), protected by law in business charters issued by states (in the U.S.) or the federal state (in, e.g., the U.K.). Rather than being inefficient and impaired by clumsy and self-sufficient managers, this corporate system, being under the guidance and control of both finance market actors and regulatory agencies (whereof many were instituted within various New Deal initiatives), Berle (1962: 437) says, "has done more for more people, has made possible a higher standard of living for the vast majority of a huge population in a huge country, has preserved more liberty for individual self-development, and now affords more tools (however unused or badly used) from which a good society can be forged so far as economics can do so, than any system in recorded history." At the same time, Berle (1962: 437) admits, despite such accomplishments and benefits, the industrial system is still "eons from perfection."

In the sections that follow, Berle proceeds to respond to and reject a series of technical issues brought up by Manne (1962) and consistently avert his criticism regarding the protection of managers, and undermines Manne's own theory of the market for management control. In making this argument to support the received corporate system as stipulated by corporate law, Berle (1962) enforces the authority and discretion of managers vis-à-vis shareholders; in Berle's view, Manne (1962) and his collaborators fail to present any credible argument justifying legal reforms. That is, the authority and discretion of managers stand fast and in fact represent a balancing force against "free market pricing":

> In assuming responsibility for certain aspects of community life, in making gifts to charity, in playing any role in economic statesmanship not dictated by market considerations, the corporate management traitorously departs from the discipline of seeking the highest possible profit, regarded by classicists as the motive driving all into the court of the 'free market'—the supreme and beneficent arbitrator. When these recreant managements depart somewhat from their devotion to making the last market-dollar for their stockholders, they denigrate the market mechanism and are thus faithless to their profit-seeking trust. (Berle, 1962: 442)

When revisiting Berle's article (1962), Berle does not emerge as a proponent of shareholder primacy, nor as a sponsor of shareholder activism. On the contrary, Berle's work represents a legal theory view of the corporate system that does not seek to reduce the relationship between the legal device of the business charter, its finance capital supply, and its executive function to a mere price-setting mechanism. In Berle's view, the legal device of the corporation, developed over decades and even centuries, cannot be abandoned simply on the basis of fictive cases of allegedly rampant managerial malfeasance, as the institutional framework of competitive capitalism is a social and legal system that has evolved over time and with the intention of striking a balance between, e.g., stability and economic growth, enterprising and finance industry rent-seeking, individual and collective objectives, etc. While Berle (Berle and Means, 1932/1991) argued that managers—but also their bankers and shareholders—are now "the princes" of the economic system, it does not follow that he is willing to discard the entire legal innovation of the chartered business as soon as some legal scholar inspired by economic theory or an economist airs the idea that legal theory would benefit from economic analyses. On the contrary, Berle (1962) maintains that the industrial system, despite its imperfections, remains a major accomplishment that needs to be recognized in its full complexity, rather than simply being dismissed on the basis of marginal concerns (i.e., the perceived risk of managerial opportunism). Seen in this view, Berle remains a key figure in the corporate governance literature, and a figure whose seminal contributions remain disputed.

BERLE'S LEGACY: THE "BERLE–MEANS FIRM"

Adolf A. Berle's work and the joint work of Berle and Gardiner Means, a skilled statistician, have remained subject to perennial scholarly debate since their publication. While some shareholder primacy advocates regard Berle as a forerunner and proponent of the finance market-based model they champion, others see Berle as a defender of the legal theory view of the firm as prescribed by corporate legislation. As, e.g., Mizruchi (2004: 581) points out, "Berle and Means's concern about the separation of ownership from control was not simply about managers' lack of accountability for investors. It was also a concern about managers' lack of accountability to society in general." Such arguments indicate that Berle has been misinterpreted in ways that have benefitted certain political and scholarly programmes, pitting Berle as a white knight of free-market pricing against E. Merrick Dodd's call for increased regulatory control of the corporate system, and an expanded role of the state in corporate matters.

Under all conditions, Berle and Means (1932/1991) have been credited for their work under the label of the "Berle–Means firm" (Roe, 2000: 546), denoting the chartered business with dispersed ownership and with directors and defined executives at the helm, serving as the directors' agents. The Berle–Means firm dominated in the era of managerial capitalism of the post-Second World War period until the mid-1970s' economic depression (Marris, 1964). Romano (1984) outlines the components and mechanisms of what she refers to as *corporatism*, the idea that the firm as a hierarchical structure relying on delegation is conducive to economic welfare. For Romano (1984), "the corporatist political ideal" can be "most lucidly illustrated" by the views of Berle: "The organizing principle of Berle's vision is not a market system but the hierarchical corporation" (Romano, 1984: 936). For Romano (1984: 928), a legal scholar, the "business organizations" have an advantage inasmuch as they "may foster cooperative behavior when the individually dominant strategy of noncooperation produces inefficient outcomes." As the firm conducts repeated transactions over time, the "firm's permanence" has "reputation-building effects," which in turn foster "the emergence of the more efficient cooperative outcome" (Romano, 1984: 928). This is the principal contribution of the legal construct of the corporation: it provides better possibilities than comparable market transactions to organize collaborative efforts, and to receive positive feedback in the form of a favourable reputation. For free-market theorists, the crux is still that the hierarchy is more complex to manage than one-on-one market contract relations, and therefore the hierarchy rests on a "substantial delegation of decisional authority" (Romano, 1984: 929). Romano (1984: 929) argues persuasively that information cost, the actors' costs for acquiring accurate, useful, and trustworthy information, makes decentralized decision mechanisms unworkable (direct democracy being one such case). Instead, hierarchical organizations and decision making delegation (and representative government in the case of the democratic political systems) are more efficient mechanisms for optimizing economic and social wellbeing. The delegation of decisional authority thus creates the "master problem" of the hierarchical organization, an agency or representation problem—the problem of how to ensure that "delegation is effective," and that the agent's incentives are aligned with the principal's desires" (Romano, 1984: 929).

This problem is given different weights in the two models of the firms that Romano presents. In the "contract approach," the corporation is treated as a shell or form created by consenting individuals, interrelated and integrated by the explicit and implicit contracts these individuals have agreed to sign. These contracts should in turn represent the "contracting parties' wishes" (Romano, 1984: 933). If contracts are possible to specify in detail and costless to enforce (which they may be in theory, but not in practice, especially not within the realm of the corporation, attending to a vast number of contingencies), there are no costs generated by the decentralized decision mechanism. Furthermore, in this ideal situation, there is no need for a delegation of decision authority, and consequently no agency costs are generated. In contrast, in the "concession view" of the corporation, the corporation is an entity *sui generis*, "something quite different from its individual parts," and serving as an independent economic, political, and social entity. Furthermore, the concession view, at least in its purest form, assumes that all corporate rights are "privileges granted by the state" (Romano, 1984: 933). The contract view is based on an "individualist ideal," rendering the problem of the delegation of the decision authority a matter of aggregating individual preferences to joint decisions that are tolerable for all participants and at a low cost. In the individualist ideal, there is no assumption made about information costs, but an individual knows, and indeed solely knows, "his best interests" (Romano, 1984: 929). In the concession view, in contrast, delegation is not only tolerable but mandated as a pathway to joint and individual economic welfare.

Romano (1984: 934) here introduces the term *corporatism*, a model that combines the individualist ideal of the contract view under the label of pluralism, and the concession view of the corporation as an autonomous legal entity (carefully separated from its European, fascist version), and as an ideal "that emphasizes hierarchical organization and an organic conception of community." Romano (1984: 934) continues: "The corporatist universe is a vertically segmented system of complementary and interdependent social units in which the hierarchical organizational arrangement of the business corporation is fundamental." In this vision of the corporation, each individual "occupies a niche in a unified social system," namely the corporation, and thereby contributes to the collective production of economic value and welfare. Furthermore, being another deviation from the contract view and its individualist ideal, corporatism accepts that government agencies and industry associations assume the role of market makers and market regulators because such entities have the capacity to collect the information needed to oversee the entire field; the hierarchical model's information processing capacities grant such agencies certain privileges, which translate into net economic welfare when their assigned roles are skilfully executed. A standard critique of such central agencies is that the market, *ex hypothesi*, does this job more effectively, and that the delegation of decision authority of necessity aggregates agency costs that are higher than the benefits, i.e., central agencies do not add to aggregated efficiency as stipulated by corporatists. Romano disagrees that such a critique is substantiated on the basis of empirical data, nor are these propositions theoretically consistent (e.g., all actors may demonstrate opportunistic behaviour, not just actors entrusted with decision making authority at the apex of corporations, nor individuals located in central agencies), but adds that corporatism is based on a pluralist theory of the state wherein central agencies serve a "market-correcting function" that justifies forms of coercion, as such coercion is "necessary to guarantee that individuals attain their optimal consumption bundles" (Romano, 1984: 942). This proposition in turn generates the thorny practical questions regarding (1) justifiable levels of coercion (the risk of "over-regulation" is always a practical concern); and (2) on what grounds market failure can be factually demonstrated, a concept that the corporatist regulatory model depends on. Romano also adds that the corporatist model is bundled with the assumption regarding certain entitlements (associated with welfare state provisions) that the contract view and the individualist ideal oftentimes reject as a mere politicization of the corporation:

> State regulation of private activities is justified on grounds of market failure. In addition, in keeping with an individualist perspective, the theory of the welfare state is based on notions of individual entitlements. It emphasizes a political judgment that each member is entitled to a specified minimum bundle of rights or subsistence level, which the operation of markets may not provide. (Romano, 1984: 942)

Despite the critique of proponents of the contract view, accepting neither the ideas about market failure, nor the welfare-generating effects of central agencies, nor the idea about citizenry based on defined entitlements, the corporatist model is relatively freed from additional social or cultural assumptions and ad hoc hypotheses, Romano (1984: 936) argues: the corporation is essentially enacted as a value-neutral vehicle for social betterment, and there are few abstractions being imposed on the model:

> Berle does not draw upon any ethnic or nationalist metaphors, as do other corporatists, to create the spiritual basis that secures the unity of the whole. In his work there is no explicit theory of harmony, no overarching group-legitimating explanation that guarantees the spiritual cohesiveness that is so important to corporatists. The one exception is the abstraction of the corporation itself. (Romano, 1984: 936)

In this corporatist view, advocated by Berle, individualism is, seemingly paradoxically, recognized and enforced on the basis of collective organization, an outcome enabled by the corporation and its intricate governance mechanisms being either mandated by corporate law or established on the basis of market mechanisms: "Legal rules giving power to the board to act in the shareholders' interests to maximize profits … promote the core elements of a pluralist polity, the realization of individual ends by means of organizations" (Romano, 1984: 953). These legal rules are based on the trust that must always be assumed in what Reynaud (2017: 132) calls a "delegatory relationship." The delegation of decision making authority to directors and managers is still not "committed blindly," as that would be a case of mere "submission" (Reynaud, 2017: 132); instead, the delegation is dependent on the asymmetry and "the reciprocity of commitment" that characterizes all relationships dependent on trust. The corporation is therefore playing a role similar to that of money in Georges Simmel's (1978) seminal account; it is a legal device, sanctioned by the sovereign state, supportive of individualism on the basis of collective agreements. "Money has made it possible for people to join a group without having to give up any personal freedom and reserve," Simmel (1978: 371) argues. In Simmel's case, the trust in the monetary system is the price that needs to be paid to take advantage of its affordances; in the case of the corporatist model, the trust in delegated decision authority and the role of the central agencies enables individualism on the basis of collectivist agreements. As long as such sources of trust can be upheld, all participants benefit.

Concerning the legal entity in question, the corporation granted a business charter, both proponents of the minimal state, mostly adhering to the contract view and the individualist ideal, and welfare state pluralists, endorsing the corporatist model and recognizing the role of the state as a market maker and regulator, value the efficiency gains generated by the corporate organization in the non-public sector and its powerful ability to "augment individual welfare" (Romano, 1984: 944). The efficacy of the corporate system, a major socio-economic and legal innovation constituted by legal, economic, and managerial statutes and practices, is therefore not disputed; the question is instead to what extent such efficiency gains are generated on the basis of, or despite, e.g., the delegation of decision authority and the active central agencies and associations, to what extent market failure can be demonstrated, and what level of coercion such alleged failures may justify. That is already quite a few issues to address.

The Post-Berle–Means Firm

Since the mid-1970s, the corporation has undergone considerable restructuring and reform, and de-regulatory impulses in the finance industry, also globalizing over the last four decades, have altered the governance function of the corporation, now considerably much more responsive to finance market interests. That is, it is today possible to speak about a "post-Berle–Means firm" (Moore and Rebérioux, 2011) wherein the influence and deficiencies of finance market pricing are no longer cushioned by a competent board of directors and their assigned managers, but where the finance market is instead understood and treated as a neutral mechanism for the assessment of managerial decision making quality. This represents a diametrically opposed view of the market to that taken by Veblen, Brandeis, Berle, and the New Deal policy makers, granting the finance market certain capacities and benefits but not being in a position to effectively govern the corporate system:

> [T]he doctrine of shareholder primacy relies for its effective realization upon the functioning of a liquid and efficient stock market: in a sense, while a liquid stock market was perceived as a "problem" in the post-Berle and Means managerialist literature, it is considered by contractarianism as the "solution." (Moore and Rebérioux, 2011: 88)

In the end, Veblen, Brandies, Berle, and the New Dealers advocated a "Hegelian firm," wherein the "corporation" is the favoured and assigned platform for the realization and transcendence of private property; in contrast, shareholder primacy advocates, including a heterogeneous group of agency theorists, contract theorists, and free-market protagonists, all sharing a belief in the analytical benefits of orthodox neoclassical economic theory, have successfully promoted a "Lockean firm," wherein private property is carefully separated from the wider socio-economic, institutional, and cultural conditions that were originally integrated into corporate law.

THE STANDING OF THE BERLE–MEANS FIRMS IN THE NEW MILLENNIUM: HAS MANAGERIAL DISCRETION AND THE BOARD-CENTRIC GOVERNANCE RESISTED SHAREHOLDER ACTIVISM?

A key question in the corporate governance scholarship is to what extent the managerialist and board-centric system that was enacted in corporate law in the nineteenth century and further enforced in the New Deal and post-Second World War era has managed to fend off shareholder activism and its claim to have the right to dictate managerial decision making. One strand of research points at the decline of, e.g., corporate elites, by implication making shareholder activism a successful campaign. In contrast, another body of literature emphasizes that managerial discretion still holds and that the board-centric system is operable despite being under the strain of shareholder activism.

The Decline of Business Elites and the Board-centric Model Argument

Mizruchi (2013) and Mizruchi and Marshall (2016) argue that the traditional "corporate elites" no longer play a central role in governing the corporate system. "Corporate elites" here denotes "a particular subset of presidents, chairmen (and women, where applicable), and what are now called chief executive officers (CEOs) of the largest American corporations" Mizruchi (2013: 12) writes. The post-Second World War period of economic growth, rooted in the New Deal system developed during the Great Depression of the 1930s (Fraser and Gerstle, 1989; Hawley, 1966), generated remarkable economic welfare in the U.S.:

> The average real standard of living of American families was rapidly improving, nearly doubling between 1946 and 1970. Poverty, which afflicted nearly one-quarter of the American population in 1960, was reduced by almost half over the following decade. Millions of Americans became homeowners and began to enjoy a middle-class lifestyle. (Mizruchi, 2017: 105)

When this period of economic stability came to an end in the 1970s, propelled by the politically generated oil-crisis driving up inflation, and accompanied by a political leadership crisis following the Watergate scandal and the failure to bring the Vietnam war to closure, the business elite allied itself for the first time with conservatives and free-market protagonists to develop and advocate a new economic regime. The 1970s campaign to restore the authority of industry was highly successful, and by the time of the election of Ronald Reagan in 1980, "the business community had achieved virtually all of its goals," Mizruchi (2017: 108) writes:

> Organized labor had been significantly weakened. Government intervention in the economy had been delegitimized. Corporate taxes had been sharply reduced. And even with a Democratic president and Democratic control of both houses of Congress, a series of liberal ventures, including the proposed Consumer Protection Agency, had been soundly defeated. (Mizruchi, 2017: 108)

At the same time as "business interests" were carefully attended to in Washington DC during the Reagan presidency, the major American banks started to lose the centrality in the business networks when finance markets were de-regulated as a component of the pro-business policy. Finance industry reforms prompted a process of disintermediation (see e.g., Fang, Ivashina, and Lerner, 2015; Myers and Rajan, 1998), and banks were impaired by their declining importance as a source of capital for industry and had to increasingly turn to fee-for-service activities. In addition, reflecting these changes, banks "reduced their appointments of nonfinancial chief executives to their boards," which ultimately served to marginalize the major banks in the corporate elite network (Mizruchi, 2017: 109). This gradual shift from network-based governance to market transactions undermined the authority and influence of the business elites: "By the early 1990s, the corporate elite was incapable of acting collectively to address the crisis over the cost of health care and this inability to act has persisted into the present" (Mizruchi, 2017: 108).

In Mizruchi's (2013: 8) view, the role of this corporate elite is today substantially reduced: "[T]here [is] no longer a relatively cohesive group of moderate, pragmatic leaders at the top of the American business community." For Mizruchi (2017), the ambition of the *ancien régime* to anchor competitive capitalism within the democratic state apparatus, and to actively endorse and participate in collaborative work between business and government is now discounted, put under erasure by the anti-statist ideology of, e.g., the free-market theorists who had counselled American presidents continuously since the Nixon Administration:

> The corporate leaders of the postwar era believed in a strong cooperative relation between business and government. If critics … saw this alliance as potentially undemocratic, it did have an underlying virtue: it was based on the assumption that any attempt to address seriously the social and economic problems of the society required systematic solutions that were carried out through public policy, that is, through the actions of government. (Mizruchi, 2017: 109)

Patrician and statesmanlike CEOs are no longer actively advocating "collective solutions" for issues of concern to the business community and society as a whole, but instead large corporations address their firm-specific interests through lobbying. Executives are today compensated "at levels far beyond what their predecessors received," Mizruchi and Marshall (2016: 144) argue, and yet, seemingly paradoxical, they experience "less autonomy," i.e., "they face greater scrutiny from their boards of directors and the investment community" than previous generations of executives did:

> During the postwar period and into the early 1980s, the chief executives of the largest American corporations were able to operate with a high level of autonomy. Largely insulated from the pressures of stockholders, these executives were able to consider the long-term implications of their actions for the wellbeing of the larger business community, and even, as I suggested earlier, the society as a whole. (Mizruchi, 2017: 109)

In addition, while becoming CEO used to be the crowning moment of a long and loyal career within a major corporation—the work and career of General Motors' legendary CEO Alfred P. Sloan Jr. being an exemplary case (Sloan, 1964)—the tenure of CEOs has declined substantially. Mizruchi and Marshall (2016: 153) report a decline in mean CEO tenure in the 24–30% range in the 1980–early 2000s period. "[R]egardless of their compensation, today's corporate CEOs face a more volatile and precarious environment than did those of the managerial era," Mizruchi and Marshall (2016: 153) summarize. As detailed by Khurana (2002), the search for new CEOs is today structured around the idea of finding an efficient and preferably charismatic market communicator. Loyalty, industry experience and expertise, and similar “old school” qualifications are rated as being of less importance, despite evidence suggesting otherwise (see e.g., Vuori and Huy, 2016). “The enlightened self-interest advocated by the Committee for Economic Development in 1971 has been replaced by a narrow, short-term self-interest, the consequences of which we are continuing to see,” Mizruchi (2017: 114) contends.

The situation for directors demonstrates a similar pattern, Chu and Davis (2016) demonstrate. The “inner circle” of interlocked directors—directors sitting on several boards—has essentially been in decline since the 1990s, indicating a shift in corporate governance activities: “In 1994, at least 75 people held five board seats. By 2012, there was only one director serving on five S&P 500 boards” (Chu and Davis, 2016: 715). Collecting a data sample including 27,000 directors serving on almost 2,500 corporate boards in the United States in the 1997–2010 period, Chu and Davis (2016: 716) find evidence that “the inner circle” of elite directors, being “a durable feature of the U.S. corporate landscape over the 20th century,” has now disappeared (Chu and Davis, 2016: 716). This means that “distances between companies on the interlock network” have lengthened to “unprecedented levels” (Chu and Davis, 2016: 716). One of the key implications is that the prospects for “broad-based, moderate political action by corporate elites are lowered,” Chu and Davis (2016: 716) argue, a conclusion in line with the work of Mizruchi (2013) and Mizruchi and Marshall (2016). In addition, “multiple interlock ties”—directors sitting on many boards—served to diffuse new corporate practices (say accounting methods or management concepts) between organizations. Today, such mimetic isomorphism is promoted through other channels (e.g., management consultants). Chu and Davis (2016: 726) thus propose that “the disappearance of superconnectors” is indicative of an institutional shift in competitive capitalism: “Much that was true of the interlock network for 100 years became untrue within ten subsequent years. The U.S. corporate interlock network suffered a striking decline in connectedness.” The economic and social value of having well-connected directors on the board declined and other mechanisms substituted for the interlock ties. In the end, Chu and Davis (2016: 750) propose, the rapid decline of multiple-board membership prestige is indicative of how “social elite membership” and “corporate power” are separated: the corporate elite is no longer overlapping the social elite. Davis (2015) summarizes the changes in U.S. capitalism as being indicative of the decline of corporate elites, and speaks explicitly about the decline of the Berle and Means corporation:

> The “shareholder value” movement of the past generation has succeeded in turning managers into faithful servants of share price maximization, even when it comes at the expense of other considerations. But the shareholder value movement brought with it a series of changes that have undone many core features of the Berle and Means corporation. Corporate ownership is no longer dispersed; concentration of assets and employment has been in decline for three decades; and today’s largest corporations bear little semblance to the companies analyzed by Berle and Means. Moreover, there are fewer of them than there used to be: the United States had half as many publicly traded domestic corporations in 2009 as it did in 1997. (Davis, 2015: 155)

Mizruchi (2010: 132) argues that the new corporate elite is today located in the finance community. That community differs substantially from the traditional corporate elites, a “small group of leading, old-line New York commercial banks.” Instead, the new corporate elite include “[a] mélange of professional investors, working in the service of institutional stockbrokers, financial analysts, hedge-fund managers, and arbitrageurs” (Mizruchi, 2010: 132). Apparently, this group of finance market actors no longer need interlock ties and “superconnectors” to advance their interests, as they operate through other means and mechanisms to accomplish their goals. In the end, the balance of power in the corporate system is tilted in favour of finance industry actors to marginalize traditional corporate elites. In this analytical framework, the managerialist and board-centric model is in decline, gradually being subsumed under a finance industry interest model that is characteristic of investor capitalism.

Ownership and Governance in Agency Capitalism

Gilson and Gordon (2013) argue that the Berle–Means firm model and the various problems including agency costs is now obsolete in the era of what Gilson and Gordon (2013: 864) refer to as *agency capitalism*, dominated by “[a]n ownership structure in which agents hold shares for beneficial owners.” In this new regime, where institutional investors (including pension funds, mutual funds, hedge funds, etc.) hold approximately 73 percent of all stocks in Fortune 1000 companies,[2] “a double set of agency relationships” are established first, between shareholders and managers (the traditional agency theory bilateral relation between defined principals and agents), and, second, between “beneficial owners and record holders” (Gilson and Gordon, 2013: 864). In this new model, the institutional investors act as “governance intermediaries,” working to benefit the beneficial owners, but also on the basis of the incentives that the performance–reward system fund managers operate within, which means that fund managers may be more active and may demonstrate a higher degree of risk-appetite than the median beneficial owner in a given fund. This means that institutional investors are not to the same degree "rationally apathetic" as dispersed owners of stock would be on the basis of the information cost associated with shareholder activism. Instead, Gilson and Gordon (2013: 867) argue that institutional investors actively "monitor company performance" and then "present to companies and institutional shareholders concrete proposals for business strategy through mechanisms less drastic than takeovers." At the same time, most institutional investors (e.g., pension funds and mutual funds) are not acting as what Gilson and Gordon (2013: 895) call "governance entrepreneurs," as the "costs, lack of expertise, and incentive conflicts reduce the value of governance rights in the hands of intermediary institutions." Only funds with a high-risk investment strategy, attracting clients that pay a higher fee for a higher return such as hedge funds, may benefit from shareholder activism campaigns and thus participate in such activities:

> Activist shareholders are not control-seekers, in the sense that they are neither motivated by the pursuit of private benefits of control, nor do they anticipate actually managing a portfolio company. Rather they are governance entrepreneurs, arbitraging governance rights that become more valuable through their activity monitoring companies to identify strategic opportunities and then presenting them to institutional investors for their approval. (Gilson and Gordon, 2013: 895)

Only a smaller proportion of the institutional investors are in fact activist shareholders and "governance entrepreneurs," whereas the remainder of the institutional investors can be assumed to be "rationally reticent," Gilson and Gordon (2013: 867) propose; that is, fund managers "will respond to proposals but are unlikely themselves to create them." In practice, this creates a free-rider problem (Olson, 1965) wherein rationally reticent institutional investors may benefit from the campaigns orchestrated by, e.g., hedge fund managers operating in concert (see e.g., Coffee and Palia, 2016) but without actively participating in, or carrying the costs of the campaigns.

In this new environment, wherein first the Berle–Means firm model is no longer an accurate depiction of the corporate system, populated by independent but uncoordinated shareholders, the board-centric model is put under pressure by, e.g., highly leveraged hedge fund managers. This in turn implies that managerial decision making discretion can no longer be assumed, as fast-moving finance capital markets undermine the governance structures' ability to adapt to changes; in addition, actors' concern for the protection of inherited privileges and entitlements may play a role, Gilson and Gordon (2013: 873) suggest: “path-dependent institutions move less quickly than markets, in no small part because adaptation negatively affects those favored by existing patterns.” The question is still to what extent does the activism of, e.g., hedge funds generate economic stability and welfare in a medium- to long-term perspective,[3] or does the “divest and distribute” policy mandated by shareholder activism lead to a depletion of firm-specific resources and competences (Coffee and Palia, 2016)?

Cheng and Xiong (2014: S185) provide evidence that demonstrates that hedge fund managers, trading commodity futures, a financial derivative instrument used to trade risks in the agriculture industry, make changes in their holdings and in their market positions that are not justified by market price changes: “Our empirical analysis shows that although hedgers’ futures positions are much smaller than output, the volatility of their positions is much higher than the output volatility measured by either the year-to-year output fluctuation or month-to-month fluctuation of professional output forecasts.” Furthermore, as a factual condition in the agriculture industry, during the harvest season, “output uncertainty” declines, but there is no evidence of hedgers’ trading volatility demonstrating an accompanying decline; instead, “trading volatility remains stable throughout the year” (Cheng and Xiong, 2014: S185). In addition, Cheng and Xiong’s empirical data (2014: S185) demonstrate that hedge fund managers’ trading activities amplify price changes so that they are not in parity with actual supply of commodities, i.e., hedge fund managers tend to “respond strongly to changes in price”: hedge fund managers “short more futures contracts when the futures price rises and reduce their short position as the futures price falls.” That market behaviour indicates that hedge fund managers participate in speculation: “It is difficult to reconcile such trading behavior as purely that of hedging strategies of risk-averse hedgers seeking to hedge price and output uncertainty,” Cheng and Xiong (2014: S185) argue. Based on two sets of empirical evidence, Cheng and Xiong (2014: S185) suggest that commodity futures markets include substantial speculation, as “hedgers frequently change their positions over time for reasons unrelated to output fluctuations.” In fact, based on this evidence, Cheng and Xiong (2014: S186) suggest that the theoretical distinction between “hedgers,” having “commercial interests” and “speculators,” being financial traders, is “less informative than previously thought for benefit–cost analyses of financial regulation.” Furthermore, in day-to-day trading, “genuine hedgers” may believe they have “informational advantage” vis-à-vis the "speculators," and this overconfidence may result in excessive trading when hedgers disagree with the speculators regarding future price movements (Cheng and Xiong, 2014: S204–S205). That is, *even if* there are distinctively separated "genuine hedgers" and "speculators" in the market, the hedgers act *as if* they were speculators as they disagree with finance-oriented traders, as the hedgers believe they act under the advantage of superior market information, partially derived from their perceived expertise in the trade vis-à-vis finance traders, partially derived from their actual interest in the underlying commodity. That is, as speculators' behaviour strongly affects the everyday trade of commodities futures, and the distinction between hedgers and speculators demands an understanding of the traders' intentions, or relies on second-guessing the motives and preferences of traders (something commonly excluded from economic theory and frowned upon by economists as a form of psychological or sociological research question, instead assuming endogenous and heterogeneous interests and preferences among actors being separated from market-based pricing and economic incentives), these two categories can be collapsed into one class of commodity futures traders. Expressed in more positive terms, participants in futures markets are not the producers themselves but are "market makers" who trade in futures markets to "hedge forward contracts written with ultimate commodity producers such as farmers" (Cheng and Xiong, 2014: S205). In their role as market makers, serving the interests of third, non-market-based parties, hedgers still engage in "significant non-output-related trading" (Cheng and Xiong, 2014: S204), which generates market price fluctuations beyond what is justified by elementary supply–demand equilibria, theoretically defining the market price. In other words, hedge fund managers and commodity futures traders do add to socio-economic wellbeing but they tend to generate additional informational complexity on the basis of speculation, which imposes costs that befall other actors outside, e.g., the commodity futures trade business.

To summarize the literature, the Berle–Means firm is today a legal entity that is exposed to finance market-based pricing that tends to marginalize the board-centric corporate governance model and downplay the discretion and autonomy of managers. Under all conditions, in the agency capitalism regime, the managerialist model is no longer unrivalled, and the consequences thereof is partially known and partially still in the making.

The Persistency of the Managerialist Model Argument

Another body of literature recognizes the expanding role of shareholder activism but maintains that the managerialist and board-centric model is still operational, and points at empirical data that stress managerial discretion as a factual condition in corporations (Goranova and Ryan, 2014; Shin, 2013; Ertimur, Ferri, and Stubben, 2010). "[a]lthough the shareholder value principle is dominant today, it is far from being hegemonic," Shin (2013: 829) writes. Goldstein (2012: 269) demonstrates that, despite operating under shareholder primacy ideologies, i.e., managers are scrutinized regarding how they allocate financial capital, the proportion of managerial employees in the U.S. private sector "rose steadily from the mid-1980s through the early 2000s by several different metrics." More specifically, the share of total business income "devoted to managerial salaries actually rose from 16 to 23 percent between 1984 and 2001" (Goldstein, 2012: 269). Such data indicates, Goldstein (2012: 269) argues, that executives have been instrumental in re-channelling anti-managerial sentiments within the shareholder primary advocacy into self-enriching outcomes. Gordon (1996) argues that the downsizing activities that were justified and actively promoted by shareholder value programmes, leading to fewer employees yet being subject to more intensive work pressure, demanded *more* rather than *less* supervising managers, leading to corporations increasing their managerial costs. This "more managers chasing fewer employees" scenario leads to inflated professional managerial services cost. Seen in this view, shareholder primacy governance and managerialism are not mutually excluding governance regimes but are instead intimately bound togther.

Benton (2016: 662) portrays corporate governance as the mechanism wherein power is allocated to various participants and stakeholders. Despite being under the pressure to satisfy shareholder interests, "managerialist governance models" remain "surprisingly resilient," Benton (2016: 662) claims. Using a network structure approach that represents the social ties among corporate leaders (and not directors, as in the case of Chu and Davis', 2016, study), Benton (2016: 662) suggests that these social ties are resources that "aid them in maintaining managerialist governance profiles." Benton does recognize the decline in the number of directors holding multiple-board appointments, but there are still norms among directors that enforce managerial discretion and the maintenance of what is called the "business judgment rule" in court ruling, i.e., the managers' ability to make business-related decisions without negotiating with third parties. As a consequence, Benton (2016: 675) continues, "Directors who have recently participated in implementing shareholder-oriented governance reforms frequently receive social sanctions from other directors." Furthermore, the overall "interlock network" among corporate executives serves the role of upholding management discretion, thus indicating that corporate elites are not totally disarmed in the era of shareholder activism: "Managers hoping to maintain their autonomy may need to rely more on their fellow corporate leaders than ever before, even as those resources fade," Benton (2016: 701) summarizes. The social ties that Benton examines is thus a resource in the hands of corporate directors, supportive of the board-centric governance model, as it reduces shareholder voting rights, installs takeover defences, delays proxy battles, and protects officers (Benton, 2016: 701). More specifically, research conducted by James Westphal and colleagues has demonstrated how corporate executives are able to neutralize or mute the critique of external directors (Westphal and Khanna, 2003), shareholders (Westphal and Zajac, 1998), institutional investors (Westphal and Bednar, 2008), security analysts (Westphal and Graebner, 2013; Westphal and Clement, 2008), and journalists (Westphal et al., 2013). Such managerial skills and competencies arguably contribute in substantial ways to the reinforcement and reproduction of the board-centric governance model. The primary mechanism manipulated by corporate managers is thus to decouple the everyday decision making in the executive suite from finance market evaluation (Westphal and Zajac, 2001).

The work of, e.g., Goldstein (2012) and Benton (2016) indicates that the managerialist governance regime is far from obsolete; while there are new forms of pressure on managers and directors to serve shareholder interest, managerial discretion and the board-centric model are still operable, Goldstein (2012) and Benton (2016) suggest. This leaves the analyst with two alternative models: one wherein corporate elites have lost much of their power and position, now being transferred to the finance industry, and one wherein the core of the managerialist governance regime is maintained, primarily on the basis of corporate executives and directors' ability to co-opt shareholder pressure and turn it in their own favour. Not least the soaring economic compensation of corporate executives is indicative of such political clout on the part of the executives. Still, the question remains to what extent the present corporate governance regime is informed and defined by shareholder interests.

THE CORE QUESTION: DEBATING THE SHAREHOLDER PRIMACY ARGUMENT

The shareholder primacy model, advocated by, e.g., agency theorists and contract theorists, is indebted to Locke's minimal theory of negative freedom, making the question of shareholders' rent the core issue in governance theory and practice. Moreover, in this view, rights are irreducibly individual and can only be secured and preserved on the basis of individual preferences, aspirations, and entitlements. La Porta et al.'s (2000: 4, emphasis added) definition of corporate governance, stated accordingly, "Corporate governance is, to a large extent, a set of mechanisms through which *outside investors* protect themselves against expropriation by the insiders," is by and large consistent with this Lockean view; it is the "outside investors' interest" that is the primary concern, and such interest needs to be "protected." In contrast, theories of corporate governance that emphasize the team production qualities of the chartered and incorporated business are founded on Hegelian ideas wherein foundational rights are fulfilled and rendered meaningful within the domain of the corporation; as such, and through legislation, property rights and other individual rights bestowed upon the individual are only meaningful if they are means to accomplish wider goals—goals that transcend and fulfil the original rights serving as the basis for civil society. In this Hegelian view, represented by Berle himself and a series of legal–managerial scholarships, the corporation is a vehicle for the differentiation of civil society. O'Sullivan's (2000: 1, emphasis in the original) definition of corporate governance is representative of this extended theory of positive freedom, rooted in the corporation: "Corporate governance is concerned with the institutions that influence how business corporations allocate resources and returns. Specifically, *a system of corporate governance shapes and makes investment decisions in corporations, what types of investments they make, and how returns from investments are distributed.*" Rather than simply speaking about the interests of "outside investors," as La Porta et al. (2000) do, O'Sullivan (2000) includes a wider set of "institutions" that all add to the production of economic value. This indicates a Hegelian tradition of thinking, making individual property rights merely the starting point for the corporate system and the wider institutional set-up of the economic system at hand, i.e., in the contemporary period, competitive capitalism.

Based on the distinction between a Lockean and a Hegelian view of corporate governance, a number of objections to the minimal theory of corporate governance can be articulated. First of all, shareholders are neither de jure, nor de facto, the firm's investors (i.e., owners) in the way that the minimal theory suggests: "[F]rom a legal perspective, shareholders do not, and cannot, own corporations. *Corporations are independent legal entities that own themselves*, just as human beings own themselves" (Stout, 2012: 10, emphasis in the original). "By folklore habit we say the buyer of stock of AT&T or General Motors has 'invested in' these companies; but this is pure fiction," Berle (1962: 446) adds. Second, shareholders are not the only residual claimants (as stated by, e.g., Fama and Jensen, 1983) outside the highly specific case of bankruptcy law (Stout, 2013). This is because in a world of incomplete contracts, complicated and costly to write and enforce, not only shareholders are exposed to various market risks: "When contracts are incomplete, residual claimant status is a matter of degree and is not restricted to shareholders" (Garvey and Swan, 1994: 154). Third, by legal statutes, directors are *trustees*, not the shareholders' agents, and managers, whom shareholder primacy advocates want to turn into the shareholders' agents on the basis of the two arguments disqualified above (i.e., that shareholders "own" the firm and that they are the only legitimate residual claimants), are the agents of the directors and no one else: "In the eyes of the law, corporate directors are a unique form of fiduciary who, to the extent they resemble any other form, perhaps most closely resemble trustees," Blair and Stout (1999: 291) say. In addition, in the role of trustees, bestowed with fiduciary duties, the directors are expected to act in ways that contribute to social welfare and not only to enrich certain stakeholders such as shareholders: "[The Board] had an obligation to the community of interests that sustained the corporation, to exercise judgment in an informed, good faith effort to maximize the corporation's long-term wealth creating capacity," a Delaware Chancery Court statement makes clear (cited in Blair and Stout, 1999: 296). As a consequence, shareholders cannot "control" managers, and to build a theory of the corporation on the premise that shareholders have contracted for such rights "grossly mischaracterizes the legal realities of most public corporations" (Blair and Stout, 1999: 260–261). Fourth and finally, as an empirical matter, the assumption that shareholders would be more prudent and demonstrate less proclivity to succumb to opportunistic and illicit behaviour than, e.g., managers—systematically made suspicious of being of such weak moral fibre—is not a tenable proposition. As, e.g., Coffee (1991: 1334) states, "institutional investors should not be mistaken for financial saints"; nor will institutional investors "automatically represent all shareholders," but they are likely to "favor the interests of their employers" in the case of diverging interests (Coffee, 1991: 1334). Therefore, Coffee (1991: 1367) induces, the reduction of agency costs (being the favoured, yet hard-to-measure and thus largely theoretical estimate of the degree of management opportunism in the shareholder primacy literature) "cannot be the sole goal of corporate governance reform," on the grounds that "monitors [e.g., regulators] as well as managers can behave opportunistically" (Coffee, 1991: 1367). In addition, what free-market protagonists at times address as a free-rider problem, and commonly being an argument in favour of de-regulatory reform, is present among the community of shareholders (Coffee, 1984: 1190). Speaking about how a "rational apathy" characterizes the behaviour of shareholders, as no shareholder can, Coffee (1984: 1190) argues, "fully appropriate the gain that his individual efforts might produce," Coffee says that the rational shareholders choose to take no action and thus generate a free-rider problem. In other words, Coffee (1984) argues that opportunistic or self-interested behaviour does not solely exist in the executive suites, but is a human predicament affecting the entire economic system on various levels.

In the end, the question of corporate governance is a matter of how to balance individual interests and rent-seeking, and how to institute and enforce incentives for participating in collective action. Both the minimal Lockean and the extended Hegelian theory provide their own distinct benefits, but the one-sided dominance of the individualistic and reductionist Lockean theory in shareholder primacy advocacy has overstated the benefits of self-interest in this delicate balancing of individual rent-seeking and collective action. On the other hand, a dominance of the extended Hegelian theory in corporate governance theory would easily understate individual interests, with undesirable consequences following. While much agency theory and contract theory literature promoting the shareholder primacy model is unhesitantly Lockean in orientation and in its advocacy, the legal theory and management studies literature arguably does a better job to shed light on the wider field, indeed making corporate governance a matter of the *institutional conditions* constituting and supporting the corporate system and the specific firm in question. That is, a scholarship that contributes to the handling of corporate governance issues must continuously question the very foundation upon which such scholarship rests, and not the least seek the roots of inherited and in many ways taken for granted doctrines and beliefs, or else the balancing of individual rent-seeking and collective action is tilted in either direction.

SUMMARY

The flamboyant and provocative social theorist Slavoj Žižek (2008: 1) advises that theorists should avoid "an arrogant position of ourselves as judges of the past." In the post-Second World War period, Hegelian statism has been widely endorsed within the project to expand and deepen the welfare state and its provisions, and yet has been treated as a thinly veiled argument in favour of a paternalist, even authoritative state by certain commentators, frequently in conservative and libertarian quarters. The recent decline in the faith in the liberal economy and its institutions, indicating that a new conventional wisdom is about to be established, departing from what once was referred to as the "Washington consensus" among political commentators (see, e.g., Babb, 2013; Sheppard and Leitner, 2010), may be equally problematic for the Lockean theory of individual rights. Efficient governance is rooted in both formal legislation and everyday practices (Kogut, 2012), and in each case the balancing of individual benefits and collective accomplishments remains imperative. Therefore, it is important to not abandon the Lockean, liberal inspirations now when the pendulum possibly swings back in this forthcoming period of governance reform. The Lockean and the Hegelian positions are thus complementary rather than mutually excluding frameworks for the establishment of governance legislation, regulation, and practices. However, taking a Braudelian (1980) *longue durée* view of corporate governance breeds an understanding of how perennial issues have been tackled over time and with the ebb and flow of the economic cycles and regulatory reform initiatives. For instance, the role of individual rent-seeking and collective action such as team production efforts, the balancing of the interest of financial and nonfinancial industries, and director and management accountability are a few examples of corporate governance issues that have been debated over time and temporarily handled through specific practices and rules. What worried Thorstein Veblen, Louis D. Brandies, and Adolf A. Berle in the 1910s and the 1930s may essentially be the same thing that worries scholars, policy makers, and commentators at the beginning of the third millennium, despite all the finance industry innovations (e.g., the development of derivative instruments and the expansion of securitization of assets, the implementation of digital media including the recent use of high-frequency trading and "robot trading," and various legal and regulatory reforms; MacKenzie, 2017; Arnoldi, 2016; Lange, Lenglet, and Seyfert, 2016; Lenglet, 2011). This ultimately testifies to the condition that when all things are said and done, human nature and the demand for both recognizing individual self-interest and collaborative action remain stable factors over time. Governance scholarship thus needs to consider this condition and to reconcile various objectives within prescribed policies and practices.

NOTES

1. "Trust" is here a synonym of monopoly and a widely used term following the anti-trust legislation of the Sherman Act of 1890 (see, e.g., Wood and Anderson, 1993; Pitofsky, 1979).
2. In comparison, in 1950, stocks were still held predominately by households, whereas institutional investors, including pension funds, held "only approximately 6.1% of U.S. equities" (Gilson and Gordon, 2013: 874).
3. An empirical literature indicates that hedge fund activism does produce value for shareholders (Brav, Jiang, and Kim, 2015; Klein and Zur, 2009). Klein and Zur (2009: 187) refer to hedge funds as *entrepreneurial activists,* defined as "[a]n investor who buys a large stake in a publicly held corporation with the intention to bring about change and thereby realize a profit on the investment." Hedge funds also target financially healthier firms with higher earnings and with more cash on their balance sheets in comparison to other entrepreneurial activists (including, e.g., asset management groups, private equity funds, and venture capital funds; Klein and Zur, 2009: 190), who tend to target smaller firms in terms of revenues and market capitalization (Klein and Zur, 2009: 205). Pursuing such strategies, Klein and Zur (2009: 209) argue that hedge funds generate "abnormal returns" for their clients in comparison to other entrepreneurial activists. Moreover, Klein and Zur (2009: 211) remark that hedge fund activism is most successful:

   > Hedge fund activists enjoy a 60% success rate. Most strikingly, they gain representation on the target's board 30 out of 41 times, for an achievement rate of 73%. They are 100% successful in getting the firm to buy back its own stock, replace the current CEO, and initiate a cash dividend. Approximately 50% of the time, the target firm changes its operating strategies, drops its merger plans, or agrees to be taken over or merged. (Klein and Zur, 2009: 211)

   Unfortunately, this success does not benefit all constituencies. Brav, Jiang, and Kim (2015) report that labour suffers wage losses after hedge fund campaigns as "improvement in labor productivity" is not translated into real-wage growth. Instead, "workers do not fully capture the value of productivity improvements but instead relinquish most of the surplus to equity investors after hedge fund intervention" (Brav, Jiang, and Kim, 2015: 2726). This loss of return on productivity growth is particularly salient for white-collar workers, whose average wage drops by 5 percent after an activist campaign. In summary, therefore, Brav, Jiang, and Kim (2015: 2753) write, "on average, workers at target firms do not share in the improvements associated with hedge fund activism. They experience stagnation in wages, while their productivity improves significantly." In the end, hedge fund activism and its reduction in productivity-adjusted wages facilitates "[a] transfer of 'labor rents' to shareholders, which may account for a portion of the positive abnormal returns associated with the announcement of hedge fund interventions" (Brav, Jiang, and Kim, 2015: 2753). Such empirical research findings suggests a zero-sum game situation where the shareholders' gain comes at the other constituencies' (white-collar workers in particular) loss. In addition, as healthy and financially sound companies are a primary target (rather than underperforming companies, potentially poorly managed), the hedge funds' aggregated effects on economic welfare should be subject to further scholarly research.