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Toward a *Corporate Democracy* Movement

DAVID ELLERMAN*

The myth that management/profit rights are “divine rights” inherent in capital ownership needs to be understood in order to make progress along the path to workplace democracy.

In the nineteenth century, the labor movement aimed to abolish the wage relationship and to establish the “cooperative commonwealth.”¹ During the twentieth century, the labor movement was turned into the trade union movement that aimed to get more for employees within the wage relationship through collective bargaining. If we want to, how can we recapture the original goal of the labor movement of turning the worker from an “employee” into a member or citizen of a democratic work community? How do the modern efforts toward employee ownership help us to rethink these issues?

In the circles of advocacy for employee ownership or workplace democracy, there has always been a basic divide between two different visions:

1. the **capital ownership vision**, which proposes extending property rights in companies to workers in those companies (ESOPs were originally considered an example of this approach), and
2. the **workplace democracy vision**, which proposes extending the personal (or human) right of self-governance to the workplace.

What is the basis for the rights of management and the rights to the profits in a conventional company? The capital ownership view sees these rights as be-

ing part and parcel of capital ownership, so the workers must acquire capital ownership in order to share in those rights. On the workplace democracy view, those rights are based on contracts (namely, the employment contract), and contracts can be redrawn without threatening the actual (versus the imagined) property rights of capital owners. What are the facts? Are rights to management and the profits based on property rights or on contractual rights?

Capital Rights: The Actual Rights and the Mythical “Divine Rights”

The capital ownership vision tends to (mis)interpret the ownership of capital as being the usual notion of owning a machine or financial capital *plus* the super-added “divine rights” to own the product of any production using the capital and to manage the production process—all as part of the inherent rights of capital ownership.

When the owners of capital hire labor, then they thereby acquire the management rights over the use of that labor *by the employment contract*, and, having covered the costs, they also have the claim on the produced product. These additional management and product rights (the net value of the product minus the costs is the profits), which thus accrue to the owners of capital under the conventional capital-hires-labor contract, tend to then

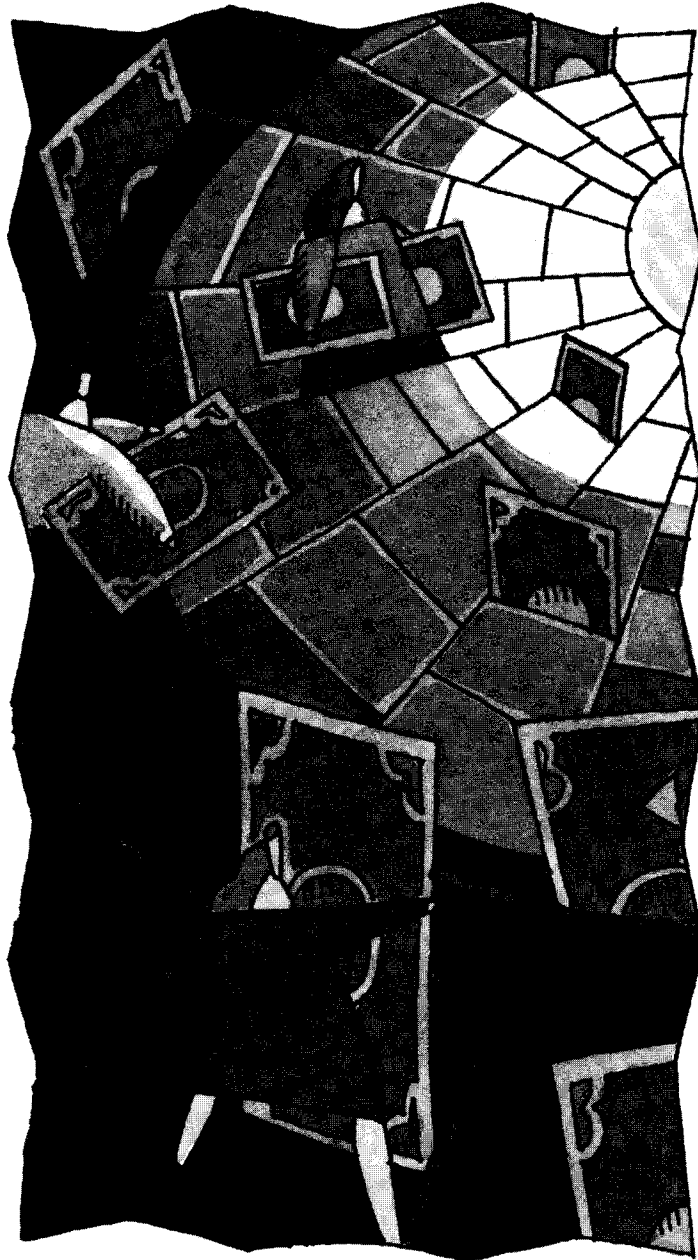
be mythically reified as part and parcel of the ownership of the capital itself.

But capital may be rented, hired, borrowed, or leased—all without violating any “inherent rights of capital.” When labor hires capital, then the management and profit rights go to labor. So prior to the contract between capital and labor, the management/profit rights were neither an inherent part of the rights of capital nor of labor. The myth that management/profit rights are “divine rights” inherent in capital ownership needs to be understood in order to make progress along the path to workplace democracy. To obtain the management and profits rights in an enterprise, the people who make up the firm do not need to “buy” those rights from capital; they need only to redraft or reinterpret the contract between labor and capital as a labor-hires-capital contract.

From the Employment Contract to a Democratic Constitution in the Workplace

There is a long history dating from antiquity where nondemocratic political government was seen as being based on an explicit or implicit contract of subjugation. The citizen-subjects alienated their right of self-government to the sovereign who ruled in his own name. The employment contract is actually a contract of this sort for the workplace. The employees alienate the right to manage their work to the employer. The employer is not a representative or agent of the employees and does not exercise delegated power in the name of the employees; it is a contract of alienation, not a contract of delegation.

The democratic argument for workplace democracy argues that the employment contract should be converted from a contract of subjugation into a democratic constitution that delegates rather than alienates the rights of self-determination in the workplace. This conversion



in the workplace would mimic the conversion from a monarchy seen as based on an implied contract of subjugation into a political democracy.

How might this conversion take place in the workplace? Consider corporation A where the people who work there have an employment contract. “Capital” (e.g., the collectivity of the shareholders) hires labor. The same productive opportunity could be undertaken with the same people and resources but with a reversed contract between capital and labor. One way this might happen (involving large transaction costs) would be for the workers and managers to form a new democratic corporation B, with themselves as members, and then for B to hire, rent, or lease the required assets of A. However, another approach, with less transaction costs, would be to directly reconstitute A as a democratic corporation A*, with all who work in the company as members and the shareholders as preferred stockholders or bondholders. Either way would eliminate the employment contract in favor of a democratic workplace constitution.

If investors only supplied capital to a company but did not work in it, then they would not be among the governed and thus would not be members of the company reconstituted as a self-governing company. They would form a class of bondholders who perhaps have some risk sharing (like nonvoting preferred stockholders).

Partial conversions in this direction are carried out in the German co-determination scheme or in the large Japanese company-as-community.² How might this sort of transformation take place in the United States or the United Kingdom?

The Approach to Corporate Democracy via the Corporate Governance Problem

The corporate governance debate in the United States dates at least from the Adolf Berle and Gardiner Means's seminal 1932 book *The Modern Corporation and Private Property* (Macmillan). They argued that the mass stock market atomized the traditional notion of ownership combined with control. The far-flung shareholders still had "formal" ownership, but the actual or effective control has passed into the hands of the top managers (who are only nominally the "agents" of the shareholders).

One approach to the corporate governance problem is to redefine the "owners" of the company as a broader set of "stakeholders," for example, workers, long-term customers, suppliers, and local residents. Unfortunately these suggestions are rarely if ever accompanied with any mechanism by which the managers would actually be accountable to the far-flung stakeholders. One sometimes has the suspicion that "stakeholder" governance ideas are being floated by managers who know that, by being responsible to everyone, they will be accountable to no one.

Among all the groups of stakeholders, there is one group that is not far flung and in fact does hold meetings—eight hours a day for five or so days a week. This stakeholder group not only can make decisions but has to do so if the work of the enterprise is to be done. Indeed, this is the one stakeholder group that can have the organization and the information to hold management accountable. "The only cohesive, workable, and effective constituency within view is the corporation's work force."³ In this manner, the corporate governance debate can lead back to the idea of a democratic company. In the Nader and Green book *Corporate Power in America* (Grossman, 1973), they suggest that federal rechartering may be the way to carry out the democratization of companies

either voluntarily or for all companies that satisfy a certain criterion (e.g., beyond a certain number of workers).

Who Are the Members of the Company?

How might the employee-to-member transformation take place? Today, who are psychologically considered to be the members of a company? Go to a bookstore and pick up any book out of the business rack, and see who is referred to as the "members" of the company. Or consider a standard managerial accounting textbook.

An organization consists of people, not physical assets. Thus, a bank building is not an organization; rather, the organization consists of the people who work in the bank and who are bound together for the common purpose of providing financial services to a community.⁴

In each case, the *members* or the *people* who are the organization are *the people working in the company*. Nevertheless, for the strict legal point of view, the legal members of the corporation are the shareholders who trade in and out of the company stock by the hour. It is those shareholders who are invited to the "Annual Meeting" of the company each year, not the people who hold a meeting to conduct the business of the company every working day of the year.

The same distinction between the *de jure* firm and the *de facto*, or actual, firm was pointed out in 1944 by Lord Eustace Percy.

Here is the most urgent challenge to political invention ever offered to the jurist and the statesman. The human association which in fact produces and distributes wealth, the association of workmen, managers, technicians

and directors, is not an association recognised by the law. The association which the law does recognise—the association of shareholders, creditors and directors—is incapable of production and is not expected by the law to perform these functions. We have to give law to the real association and withdraw meaningless privilege from the imaginary one.⁵

The legal conversion of the association of workmen, managers, technicians, and directors from being employees to being members is precisely the transformation that would "give law to the real association and withdraw meaningless privilege from the imaginary one."

A Movement for Corporate Democracy?

One approach to the transformation of employees into members of the company might be through a reconstituted labor movement. Perhaps associational unionism is a step in that direction. In any case, this would require a mental retooling. It would mean, for example, arguing with management not about what is best for the employees as wage earners but about what is best for the company. In general, the transformation would mean expanding the potential membership in the union or members' association to include the middle managers and potentially everyone in the company. And it would mean somehow going outside the golden cage of the National Labor Relations Act, which presupposes the employment relationship. All of that is a rather tall order, particularly in a country with a labor movement in long-term secular decline.

Thus I am reluctantly led to think that the original labor movement goals of abolishing the wage system must now be approached through different means. Here I must clearly be specu-

One approach to the transformation of employees into members of the company might be through a reconstituted labor movement.

lative. In the promotion of political democracy, the most active class was neither the lower classes nor the rulers but the middle class. In a similar manner, the most likely group to lead a movement for corporate democracy might be neither the workers on the bottom nor the corporate mandarins at the top but the broad group of blue- and white-collar workers and middle managers. Perhaps the question is “Who identifies with the company as a long-term entity and thus would be willing to participate in an effort to become the legal members of the company?” The answer would seem to be the broad middle range of blue- and white-collar workers—particularly those who have developed firm-specific skills and knowledge.

The increasing power of the stock market to influence managers through their stock options and the general growth of globalization create fertile opportunities for the “middle class” in a company to oppose the greed and lack of long-term commitment on the part of the option-chasing top managers. They could fuel a drive to address the corporate governance and corporate irresponsibility problems by converting the com-

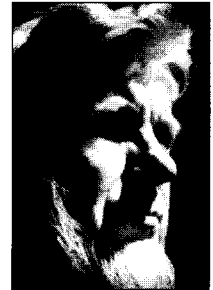
pany into a democratic firm. No matter how the corporate democracy movement might develop, it will never get started until these issues are formulated in fresh terms and are clearly discussed not only in intellectual circles but by the general public.

NOTES

*The findings, interpretations, and conclusions expressed in this essay are entirely those of the author and should not be attributed in any manner to the World Bank, to its affiliated organizations, or to the members of its board of directors or the countries they represent.

1. See Gerald Grob, *Workers and Utopia* (Chicago: Quadrangle, 1961; Christopher Lasch, *The True and Only Heaven* (New York: W. W. Norton, 1991); and Jonathan Grossman, *William Sylvius, Pioneer of American Labor* (New York: Columbia Univ. Press, 1945).
2. See Ronald Dore, *Stock Market Capitalism: Welfare Capitalism. Japan and Germany versus the Anglo-Saxons* (Oxford: Oxford Univ. Press, 2000).
3. John J. Flynn, “Corporate Democracy: Nice Work If You Can Get It,” in *Corporate Power in America*, ed. Ralph Nader and Mark J. Green (New York: Grossman Publishers, 1973), pp. 94–110, at p. 106.

4. Ray Garrison, *Managerial Accounting* (Dallas: Business Publications Inc., 1979), p. 2.
5. Quoted in G. Goyder, *The Responsible Company* (Oxford: Basil Blackwell, 1961), p. 57.



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