

## **Democratizing Corporate Governance: Concepts and Proposals Completing the Eighteenth Century Liberal Revolution**

- I. Governance not ownership: Ending the Divine Right of Kings**
  - a. Just as governments and government offices are not the sort of thing that should be owned, so too large businesses
  - b. Business, like government, is instituted among men to promote their interests – security, liberty, productivity, and freedom
  - c. Teaching executives to see themselves, like their public sector equivalents, as servants rather than masters
    - i. The Anti-Corruption Principle: Ending the ideology of pure pursuit of personal interest
    - ii. Ideology more than law: the Business Schools and the business press
    - iii. Fiduciaries, not Cain & the self-interested contractor
    - iv. The law (still) holds that directors and executives are fiduciaries, not owners
  - d. Investors as one interest group among several
    - i. Should shareholders owe a fiduciary duty to the firm or the public?
    - ii. What weight should law or decisionmakers give to the interests of stockmarket speculators / rapid traders
  
- II. The Public Good – Business in the public interest, not the private interests of the decisionmakers.**
  - a. Corporate Social Responsibility (CSR)
  - b. The problem of cognitive dissonance, bias and elite self-interest: Won't decisionmaking elites see the public interest as the same as their own interest?
  - c. The counterproductive pursuit of share-value maximization
  - d. Frankenstein's Monster: markets pursuing market success not human needs
  
- III. Minimum Rights of Citizenship: Republican limited government**
  - a. Creating Public Opinion -- public information and a right to criticize.
  - b. Limiting incumbent's monopoly on the distribution of speech: May the King Determine the National Religion?
    - i. Citizens United: If corporations may engage in broad politics, including lobbying as well as campaign advertising, they should be required to do so based on the will of the entire corporate citizenry, not just unilateral elite decisions.
    - ii. Creating spaces for effective debate – Worker's Councils / Meetings / Press
  - c. Protecting Debate and Dissent over Company Purposes, Goals, Methods and Policies
    - i. Anti-retaliation protection
  - d. Anti-Exile provision: Ending "employment at will" – due process before exile or gulag (firing) (Civil Service and its alternatives)
  - e. Freedom of Religion/Conscience/Expression
    - i. Establishing the principle that employers do not control their employees personal lives – even at work
    - ii. Countervailing need for a degree of public conformity

#### **IV. Division of Powers, Countervailing Power, Due Process and Good Government**

- a. Introducing basic good governance to the corporate sector
- b. Multiple lines of authority to reduce the “yes man” problem
  - i. Restraining the “unitary executive”
  - ii. Workplace Councils (Germany, academy, professional partnerships)
  - iii. Ombudsmen
  - iv. Independent judiciary / due process rights to reduce corruption, court intrigue, flattery and to protect dissidents, minorities, and malcontents
  - v. Boards that are not dominated by incumbent elites
  - vi. Reducing the overweening power of the financial markets
- c. External countervailing powers after the collapse of the unions
  - i. “Planning function” to guide the invisible hand
  - ii. Regulatory authorities
  - iii. Self-regulating associations (professional associations, stock markets, union standard setting)
  - iv. Democratic control?

#### **V. Internal Democracy: Abolishing the Property Qualification for Voting**

- a. Who are the entity’s citizens? Why so many helots?
  - i. Governance rights for investors, employees, customers and surrounding communities
  - ii. The Onceler: “Who will speak for the trees?”
- b. Shareholders are investors, although rarely important ones in a successful firm.
- c. Virtual representation fails here as in Parliament. Expanding and democratizing the franchise on a one person one vote basis.
- d. The majoritarian problem: Which majority counts?
  - i. Who speaks for the people who don’t work for the firm, the future victims of pollution or accidents who don’t exist yet, potential customers, etc?

#### **VI. The Regulatory System and Elite Protection: Acemogulo, Robinson and “capture”**

- a. Making markets work – macro and micro problems
  - i. Markets regulating markets: the auto-pilot problem (“unnatural selection”)
  - ii. Creating trust, infrastructure, and standards; limiting externalities (tort, carbon tax)
  - iii. Limiting upward redistribution & demand collapse
  - iv. Full employment / Must income follow employment? (Ackerman’s endowment)
  - v. Preserving competition, innovation and churn (anti-monopoly law)
- b. Separating the spheres/ fighting stasis: Incumbent managers and investors using the power of office and past wealth to pursue additional power and wealth
- c. Ending influence peddling, lobbying, campaign finance etc. (“Good government”)
- d. First National Bank v. Bellotti (1978): For whom does the corporation speak, and why don’t its funders, producers, and dependants control what it says?