

## Berle and Means's *The Modern Corporation and Private Property*: The Military Roots of a Stakeholder Model of Corporate Governance

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### ABSTRACT

*The Modern Corporation and Private Property* by Adolf Berle and Gardiner Means (1932) remains one of the most cited works in management studies. Our paper shows that Berle and Means espoused a stakeholder theory of corporate governance that challenged the then-hegemonic idea that the sole purpose of a corporation is to create value for the shareholders. We argue that Berle and Means's support for stakeholder theory can be associated with their earlier service in the U.S. military, an organization which then inculcated an ethos of public service in its members. Our paper, which is based on archival research in the Franklin Delano Roosevelt Presidential Library, seeks to relate changes in how U.S. military organizations have structured themselves with contemporaneous changes in the organization of private-sector firms.

### INTRODUCTION

This paper will advance our understanding of the evolution of U.S. ideologies of corporate governance by examining the circumstances that surrounded the writing of *The Modern Corporation and Private Property* by Adolf Berle and Gardiner Means. Other researchers have argued that this influential book promoted "managerialism," the philosophy of corporate governance that dominated U.S. business life from the 1930s to

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the 1970s.<sup>1</sup> Managerialism held that executives ought to take the interests of a wide range of stakeholders, not just shareholders, into account when making decisions.<sup>2</sup> Managerialism was different from both post-1980 shareholder-value ideology and the philosophy that informed U.S. corporate governance prior to the New Deal: from roughly the 1830s to the 1930s, the dominant view in the United States was that business corporations existed solely to maximize shareholder value.<sup>3</sup> According to scholars such as Roger Martin and Lynn Stout, the rise of managerialism around the time of the New Deal encouraged a generation of U.S. managers to share the benefits of rising productivity with workers. The result was a remarkable period of shared prosperity in the thirty or so years after 1945.<sup>4</sup> Martin, Stout, and other authors have connected the well-documented post-1980 rise in levels of income inequality in the United States to the displacement of Berle–Means managerialism by the renascent ideology of shareholder value.<sup>5</sup>

Why does our re-examination of Berle, Means, and their book matter? The research discussed in the previous paragraphs suggests why the study of business ideas and business books can be important: most business books have zero influence on the real world, but some texts, of which *The Modern Corporation and Private Property* is a prime example, do help to change the prevailing ideology of corporate governance, thereby changing millions of lives.

Ideas have consequences. In view of the importance of this text to the history of American business in the twentieth century, it is surely worthy to investigate the motives of its authors. It is hoped that our paper will be read by legal scholars, corporate governance researchers, business

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1. See generally ROGER L. MARTIN, *FIXING THE GAME: BUBBLES, CRASHES, AND WHAT CAPITALISM CAN LEARN FROM THE NFL* (2011); Lynn A. Stout, *On the Rise of Shareholder Primacy, Signs of Its Fall, and the Return of Managerialism (in the Closet)*, 36 SEATTLE U. L. REV. 1169 (2013); Harwell Wells, “Corporation Law is Dead”: *Heroic Managerialism, Legal Change, and the Puzzle of Corporation Law at the Height of the American Century*, 15 U. PA. J. BUS. L. 305 (2012).

2. ARCHIE B. CARROLL ET AL., *CORPORATE RESPONSIBILITY: THE AMERICAN EXPERIENCE* 137–38, 187–91, 199–220 (Kenneth E. Goodpaster ed., 2012).

3. Robert E. Wright, *Corporate Social Responsibility and the Rise of the Non-Profit Sector in America*, in *A HISTORY OF SOCIALLY RESPONSIBLE BUSINESS, c. 1600–1950*, at 117, 121 (William Pettigrew & David Smith eds., 2017); Evelyn Atkinson, *The “People’s Bridge”: Popular Sovereignty and the Charles River Bridge Case* (Stigler Ctr. for the Study of the Econ. and the State, Working Paper No. 25, 2018).

4. See MARC LEVINSON, *AN EXTRAORDINARY TIME: THE END OF THE POSTWAR BOOM AND THE RETURN OF THE ORDINARY ECONOMY* (2016).

5. J. Adam Cobb, *How Firms Shape Income Inequality: Stakeholder Power, Executive Decision Making, and the Structuring of Employment Relationships*, 41 ACAD. MGMT. REV. 324 (2016); see Paddy Ireland, *Shareholder Primacy and the Distribution of Wealth*, 68 MOD. L. REV. 1, 49 (2005). See generally William Lazonick & Mary O’Sullivan, *Maximizing Shareholder Value: A New Ideology for Corporate Governance*, 29 ECON. & SOC’Y 13 (2000).

historians, and other academics. Moreover, we are convinced that the re-discovery of the philosophy of Berle and Means is of genuine social importance. Therefore, we hope to raise awareness of the more radical aspects of their ideas among thoughtful practitioners to encourage reflection on the excesses of the post-1980 period of shareholder primacy.

Some readers may be skeptical of our claim that the ideas of Berle and Means are still relevant. We concede that there are many differences between our time and the context in which Berle and Means wrote, in which the Managerial Revolution (i.e., the transformation of the American economy by the rise of the large oligopolistic corporations managed by non-proprietor managers) was then a very recent phenomenon.<sup>6</sup> Today, we are used to the dominance of many industries by a few firms owned by absentee shareholders.<sup>7</sup> The lengthy sections of the book by Berle and Means devoted to explaining such then-novel phenomena as the separation of management and control therefore strike the twenty-first century reader as both superfluous and quaint. We are nevertheless convinced that the prescriptive ideas of Berle and Means are highly relevant to today's debates about inequality, corporate governance, and the social responsibilities of companies. Berle and Means tackled what is still the most important question in corporate governance: In whose interests should for-profit corporations be managed? At a time when many Americans are once again debating issues related to corporate governance, executive compensation, and whether managers have duties beyond maximizing returns for shareholders, we believe that an exploration of the historical origins of Berle and Means's seminal text is timely.<sup>8</sup> Indeed, re-engaging with Berle and Means's call for business executives to behave in a public-spirited fashion is particularly important in the light of the emergence of political movements and national leaders who simultaneously celebrate the robust pursuit of self-interest in business contexts while claiming to honor the public-service ethos of members of the military.

We now progress to a literature review which looks at how previous authors have viewed the motives of Berle and Means before detailing how the project to write *The Modern Corporation and Private Property* took shape. We argue that Berle and Means's military service influenced their

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6. ALFRED D. CHANDLER, *THE VISIBLE HAND: THE MANAGERIAL REVOLUTION IN AMERICAN BUSINESS* (1977).

7. Gustavo Grullon, Yelena Larkin & Roni Michaely, *Are US Industries Becoming More Concentrated?* (Apr. 2017) (unpublished manuscript), <https://pdfs.semanticscholar.org/138f/249c43bfec315227a242b305b9764d57a0af.pdf> [<https://perma.cc/3DKJ-6F6W>].

8. JEROEN VELDMAN ET AL., *CORPORATE GOVERNANCE FOR A CHANGING WORLD: REPORT OF A GLOBAL ROUNDTABLE SERIES* (2016); Thomas M. Jones & Will Felps, *Shareholder Wealth Maximization and Social Welfare: A Utilitarian Critique*, 23 *BUS. ETHICS Q.* 207 (2013).

thinking. We discuss the reception and impact of the book and then consider how and why the influence of the book declined after around 1970 as Chicago School ideas came to influence U.S. corporate governance, displacing Berle–Means managerialism. We show that the result was a resurgence of the shareholder primacy principle that Berle and Means opposed. We conclude our paper by arguing that the book remains highly relevant today, when Americans are once again debating whether the business corporation has any purpose besides the maximization of shareholder value.

I. LITERATURE REVIEW:  
PERSPECTIVES ON THE MOTIVES OF BERLE AND MEANS

The existing literature on the rise and fall of managerialism has clearly established the importance of *The Modern Corporation and Private Property* in shaping U.S. business thought and practice in the period from the 1930s to the late 1970s.<sup>9</sup> In 1992, a distinguished legal academic noted that *The Modern Corporation and Private Property* shaped the thinking of “an entire generation.”<sup>10</sup> Unfortunately, these authors have neither examined the immediate context in which Berle and Means wrote their seminal text nor reflected on the motives of the authors. One of the few to discuss the authorial motivation behind the book is the Marxist scholar Richard Marens, who regards the publication of *The Modern Corporation and Private Property* as part of a broader Corporate Social Responsibility movement.<sup>11</sup> For Marens, corporate social responsibility was a tactic used by the American corporate elite to preserve its autonomy. This would help them resist increasing labor militancy and growing demands for government regulation in the context of the Great Depression.

We profoundly disagree with Marens’s cynical contention that *The Modern Corporation and Private Property* and “business liberalism” more generally was simply a defensive move by U.S. corporations to preempt

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9. See generally BRIAN R. CHEFFINS, *THE HISTORY OF MODERN U.S. CORPORATE GOVERNANCE* (2011); RAKESH KHURANA, *FROM HIGHER AIMS TO HIRED HANDS: THE SOCIAL TRANSFORMATION OF AMERICAN BUSINESS SCHOOLS AND THE UNFULFILLED PROMISE OF MANAGEMENT AS A PROFESSION* (2007); Gregory Mark, *The Corporate Economy: Ideologies of Regulation and Antitrust, 1920-2000*, in 3 *THE CAMBRIDGE HISTORY OF LAW IN AMERICA* 613 (Michael Grossberg & Christopher Tomlins, eds., 2008); MARTIN, *supra* note 1; William W. Bratton, *Berle and Means Reconsidered at the Century’s Turn*, 26 J. CORP. L. 737 (2001); William W. Bratton & Michael L. Wachter, *Tracking Berle’s Footsteps: The Trail of the Modern Corporation’s Last Chapter*, 33 SEATTLE U. L. REV. 849 (2010); Stout, *supra* note 1; Wells, *supra* note 1.

10. MORTON J. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW, 1870–1960: THE CRISIS OF LEGAL ORTHODOXY* 166–67 (1992).

11. Richard Marens, *What Comes Around: The Early 20th Century American Roots of Legitimizing Corporate Social Responsibility*, 20 ORG. 454, 454–76 (2013).

demands for more radical economic reforms. Maren overlooks the fact that Berle and Means had an interest in the social responsibilities of corporate managers that predates American capitalism's existential crisis in the winter of 1932–1933. The chronology of the manuscript's composition does not fit Maren's argument, since we know from Berle's papers that the book was completed by 1931.<sup>12</sup> Moreover, it is inaccurate to describe Berle and Means as the tools of the corporate elite when powerful business interests actually attempted to suppress the publication of this book.

We are more sympathetic to Christian Christiansen's view that Berle and Means's advocacy of a "socialized, public-oriented corporation" was a profound challenge to the ethos of "free-market liberalism."<sup>13</sup> We also agree with Howard Brick's view that there are some affinities between the stakeholder view presented by Berle and Means and the "war-inspired aspirations" for "industrial or economic democracy" that led to the creation of the "League for Industrial Democracy" in 1921.<sup>14</sup>

Indeed, we concur with Brick and see the legacy of the Great War as crucial to our understanding of the book's origins. During the war, which was fought in the name of making the world safe for democracy, proposals for workplace democracy in the form of works councils and employee representation on boards were energetically debated in the United States and other Entente countries. During the First World War, John D. Rockefeller Jr. became a proponent of worker representation in corporate governance through elected worker representatives.<sup>15</sup> American observers, such as Berle, observed how workers' councils, or "soviets," seized control of factories in Russia in 1917.<sup>16</sup> The Great War saw the creation of works councils in shipyards and other U.S. workplaces. By 1922 there were at least 725 works councils in the United States.<sup>17</sup> Although

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12. Columbia Oral History Transcript 121 (on file with the Franklin D. Roosevelt Presidential Library, Adolf Berle Papers, Box 206) [hereinafter Columbia Oral History].

13. CHRISTIAN OLAF CHRISTIANSEN, *PROGRESSIVE BUSINESS: AN INTELLECTUAL HISTORY OF THE ROLE OF BUSINESS IN AMERICAN SOCIETY* 63 (2015).

14. HOWARD BRICK, *TRANSCENDING CAPITALISM: VISIONS OF A NEW SOCIETY IN MODERN AMERICAN THOUGHT* 56, 62 (2006).

15. Bruce E. Kaufman, *Accomplishments and Shortcomings of Nonunion Employee Representation in the Pre-Wagner Act Years: A Reassessment*, in *NONUNION EMPLOYEE REPRESENTATION: HISTORY, CONTEMPORARY PRACTICE, AND POLICY* 21, 22 (Bruce E. Kaufman & Daphne Gottlieb Taras eds., 2000); JOSEPH A. MCCARTIN, *LABOR'S GREAT WAR: THE STRUGGLE FOR INDUSTRIAL DEMOCRACY AND THE ORIGINS OF MODERN AMERICAN LABOR RELATIONS, 1912–1921*, at 54 (1997); Raymond Hogler, *From Ludlow to Chattanooga and Beyond: A Century of Employee Representation Plans and the Future of the American Labor Movement*, 22 *J. MGMT. HIST.* 130 (2016).

16. A.A. Berle, *How Labor Could Control*, 28 *NEW REPUBLIC* 37 (1921).

17. NAT'L INDUS. CONFERENCE BD., *EXPERIENCE WITH WORKS COUNCILS IN THE UNITED STATES*, RESEARCH REPORT NO. 50, at 1 (1922).

Germany, rather than the United States, would eventually become the nation most closely associated with workplace democracy,<sup>18</sup> our knowledge of this subsequent development should not blind us to the fact that interest in workplace democracy was strong in early twentieth century America.

The Great War debate over industrial democracy, along with the 1916 to 1919 court battle between Henry Ford and his investors,<sup>19</sup> raised the fundamental issue of whose interests corporations ought to be governed for: either only the shareholders or the shareholders along with other participating stakeholders, including workers. Although Berle and Means did not touch on the issue of the inclusion of workers in corporate governance in their 1933 book, they shared the belief of workplace democracy, advocating that managers had a moral obligation to consider the interests of workers as well as shareholders in making corporate strategy, as we show below.

We argue that the stakeholder model of corporate governance Berle and Means presented in their book was influenced by their experiences during the First World War. Their book represents an attempt to introduce into the business world the ethos of professionalism and disinterested public service that characterized the U.S. Army's officer corps. In most modern professional armies, the dominant ethos is one of altruism and devotion to the national interest: individuals are expected to serve the nation selflessly and at modest rates of pay. In the peacetime private sector, in contrast, the profit motive is accepted, and the prevailing ethos holds that it is legitimate for executives, shareholders, and other actors to maximize their own economic interest. *The Modern Corporation and Private Property* was an exhortation to American managers to emulate the ethos of military officers by putting country before self and prioritizing the interests of the nation over those of shareholders and executives.

We also argue that the Berle–Means version of stakeholder theory was a paternalist one in which senior managers were to expect unconditional obedience from subordinates in the same way that early twentieth century U.S. military commanders expected soldiers to respect the chain of command. There has long been a two-way exchange of ideas between the corporate world and the military. At various points in its history, the militaries of the United States and other capitalist countries have borrowed organizational techniques developed by managers in the

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18. Carola Frege, *The Discourse of Industrial Democracy: Germany and the US Revisited*, 26 *ECON. & INDUS. DEMOCRACY* 151 (2005).

19. M. Todd Henderson, "Everything Old is New Again": *Lessons from Dodge v. Ford Motor Company* (Univ. Chi. Law Sch. Coase-Sandor Working Paper Series in Law & Econ., Working Paper No. 373, 2007).

private sector. For instance, management tools developed by civilian railway executives coordinated Allied supply lines on the Western Front during the First World War.<sup>20</sup> As Shamir has shown, ideas about scientific management taken from large U.S. companies have long influenced U.S. military doctrine.<sup>21</sup> This process was famously illustrated by Robert S. McNamara's attempt to manage the Vietnam War using techniques that had previously worked for him at the Ford Motor Company.<sup>22</sup> There is a somewhat smaller body of literature on how military managerial innovations flowed in the opposite direction, namely from the armed forces to the private sector. For instance, the influence of the military on the history of American management is a theme that was developed by Keith Hoskin and Richard Macve in their study of the business careers of graduates from the United States Military Academy, West Point, who brought military organizational techniques into the private sector.<sup>23</sup> While we know about specific managerial techniques that have moved between the military and the private sector, the impact of militarization and the military ethos on the evolution of U.S. corporate governance remains a woefully under-researched topic.

In his pioneering study of the displacement of managerialism by shareholder value ideology after the 1970s, Brian Cheffins asserts that the formative experience of military service during the Second World War influenced the behavior of corporate executives in the 1950s and 1960s.<sup>24</sup> For Cheffins, the replacement of this cohort by younger men who had largely been spared military service helps to explain the rise of shareholder value ideology in the 1980s; he writes that that the military ethos of service to the collective was one of the "factors that helped to keep top management on the straight and narrow during the managerial capitalism era [i.e., between the 1930s and the 1970s] . . . . Values such as duty, honesty, service, and responsibility that were fostered under the testing conditions of the Great Depression and World War II likely contributed to a sense of moral restraint among mid-twentieth-century executives."<sup>25</sup> Unfortunately, Cheffins did not develop this insight, which was supported

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20. Christopher Phillips, *Early Experiments in Civil–Military Cooperation: The South-Eastern and Chatham Railway and the Port of Boulogne, 1914–15*, 34 *WAR & SOC'Y* 90 (2015).

21. Eitan Shamir, *The Long and Winding Road: the US Army Managerial Approach to Command and the Adoption of Mission Command (Auftragstaktik)*, 33 *J. STRATEGIC STUD.* 645, 648–50 (2010).

22. Phil Rosenzweig, *Robert S. McNamara and the Evolution of Modern Management*, 88 *HARV. BUS. REV.* 86, 86–93 (2010).

23. Keith W. Hoskin & Richard H. Macve, *The Genesis of Accountability: The West Point Connection*, 13 *ACCT., ORG. & SOC'Y* 37 (1988).

24. Brian R. Cheffins, *Corporate Governance Since the Managerial Capitalism Era*, 89 *BUS. HIST. REV.* 717, 723 (2015).

25. *Id.*

primarily by a citation of Sobel's celebratory history of the "Greatest Generation."<sup>26</sup>

The sociological term Greatest Generation, which is conventionally applied to Americans born between 1901 and 1927, has recently appeared in non-scholarly works that contrast the imagined virtues of this generation with the selfishness of the Baby Boomers.<sup>27</sup> Professor Cheffins is careful not to romanticize U.S. corporate governance in the managerialist era, noting that executives of the so-called Greatest Generation were responsible for such debacles as the bankruptcy of Penn Central in 1970.<sup>28</sup> He points out that such managerial failures ultimately served to discredit managerialism and thus pave the way for the rise of shareholder-value ideology.

While Cheffins prudently qualifies his comments, linking managerialism with the Greatest Generation's formative experience of military service, he nevertheless associates a higher level of patriotism to the willingness of managerialism-era managers to consider the interests of non-shareholder stakeholders.

We agree with Cheffins that there was likely a causal linkage between the patriotism manifested in military service and the willingness of U.S. executives of the managerialist era to subordinate the interests of shareholders to those of workers and other stakeholders. However, we feel that more empirical research and conceptual clarity about military patriotism and corporate patriotism is required.

## II. MILITARY SERVICE AND CULTURES OF CORPORATE GOVERNANCE

We would regard it as a serious fallacy to maintain that an executive will be more likely to adopt an ethos of public service in a subsequent business career than would otherwise have been the case just because that executive once served in the uniform of some military force. In our view, the crucial variable is the ethos that pervades the culture of the particular military organization in which the future executive is socialized. Not all armed forces promote service to the collective as a moral ideal, and some militaries have organizational culture that permit the pursuit of financial self-interest by leaders. In our view, military organizations can be placed on a spectrum that extends from those that operate on a pure version of agency theory, in which leaders are motivated financially, to ones in which an altruistic desire to serve the collective (e.g., the nation-state) is

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26. See ROBERT SOBEL, *THE GREAT BOOM 1950–2000: HOW A GENERATION OF AMERICANS CREATED THE WORLD'S MOST PROSPEROUS SOCIETY* (2002).

27. KENNETH ROSE, *MYTH AND THE GREATEST GENERATION: A SOCIAL HISTORY OF AMERICANS IN WORLD WAR II* (2013).

28. Cheffins, *supra* note 24, at 725.

inculcated in all members. A future executive who has served in the latter type of military organization would be, in our view, far more likely to believe that managers ought to prioritize the interests of the wider community over those of themselves and the shareholders. Berle and Means served in such a military force.

The historical record shows that armed forces have occupied different points on this spectrum, using a mixture of material rewards (e.g., cash bonuses) and patriotic appeals to serve the nation to motivate personnel to exert themselves. For instance, the Royal Navy prior to 1815 and the British Army in the pre-1868 era of purchased commissions are outstanding historical examples of armed forces that relied heavily on financial incentives in the course of motivating their multinational workforces to perform risky tasks.<sup>29</sup> In the early modern period, the use of mercenaries with no regard to their nationality was common—the powerful Spanish, Swedish, and French Empires of the sixteenth and seventeenth centuries relied to a large extent on forces recruited from poorer parts of Europe, including Germany, Switzerland, and the British Isles.<sup>30</sup> In the eighteenth century, the link between military units and nation-states became somewhat stronger, but the careers of officers continued to take them across borders, and buying a regiment could be a profitable investment for a military entrepreneur. In this context, there was often no pretense that either the officer or the ordinary soldiers were motivated by patriotism.<sup>31</sup> Such forces were thus similar to present-day, for-profit military companies such as Academic (formerly Blackwater), which also rely on financial incentives rather than patriotism to motivate members.<sup>32</sup>

Berle and Means, in contrast, did their military service in an armed force that had a public-spirited ethos rather than a profit-seeking one. For context, it should be explained that in the aftermath of the French Revolution, many countries abandoned the use of mercenaries and financial incentives for enlistment and performance in favor of appeals based on patriotism.<sup>33</sup> There was a profound change in military culture and

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29. Douglas W. Allen, *Purchase, Patronage, and Professions: Incentives and the Evolution of Public Office in Pre-Modern Britain*, 161 J. INSTITUTIONAL & THEORETICAL ECON. 57, 65–68 (2005); Daniel K. Benjamin & Christopher Thornberg, *Organization and Incentives in the Age of Sail*, 44 EXPLORATIONS ECON. HIST. 317 (2007).

30. JAN GLETE, *WAR AND THE STATE IN EARLY MODERN EUROPE: SPAIN, THE DUTCH REPUBLIC AND SWEDEN AS FISCAL-MILITARY STATES* 6 (2002).

31. Rafael Torres-Sánchez et al., *War and Economy. Rediscovering the Eighteenth-Century Military Entrepreneur*, 60 BUS. HIST. 4, 4–7 (2018).

32. Charles W. Mahoney, *Buyer Beware: How Market Structure Affects Contracting and Company Performance in the Private Military Industry*, 26 SEC. STUD. 30, 50–52 (2017).

33. Deborah Avant, *From Mercenary to Citizen Armies: Explaining Change in the Practice of War*, INT'L ORG., Winter 2000, at 41.

motives for military service in all Western countries,<sup>34</sup> with the officer corps of Revolutionary France and Prussia being among the first in the Western world to experience professionalization and the demise of the older model of military leadership in which the profit motive had been considered legitimate.<sup>35</sup> This professional ethos became dominant in the U.S. officer corps over the course of the nineteenth century thanks to the efforts of U.S. military reformers who admired the professionalism and public-service ethos of the French and Prussian officer classes.<sup>36</sup> The result of the efforts of these reformers was that the U.S. military promoted a non-commercial ethos that contrasted with the acceptance of the profit-motive so evident in other spheres of American life.<sup>37</sup> References to financial incentives are conspicuously absent from the motto of West Point (“Duty, Honor, Country”) created in 1802.

One of the results of the cultural shift effected by the reformers was that U.S. military recruitment in the First World War did not rely on cash incentives, in sharp contrast to the American Civil War. There, military work had been structured via a quasi-market whereby rich men were able to pay poor men to take their places.<sup>38</sup> In a parallel development, the U.S. military had, by the early twentieth century, dispensed with financial incentives as a means of incentivizing officers to exert themselves on the battlefield. The so-called “salary revolution” of the nineteenth century had resulted in the placement of all officers on modest salaries. Whereas officers in the colonial and early national periods were rewarded with performance bonuses, American officers of the early twentieth century were expected to serve for love of country, not for profit.<sup>39</sup> It was into the military culture that had been created by these reformers that Berle and Means were inducted in 1917. In our view, the service-before-self culture of the U.S. officer corps of the First World War era shaped the thinking of Berle and Means about the social responsibilities of business executives.

### III. THE BACKGROUND OF *THE MODERN CORPORATION* AND *PRIVATE PROPERTY*

The radicalism of the 1932 book by Berle and Means becomes evident when compared against either the shareholder-centric theory that

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34. ENOCH HERBERT CROWDER, *THE SPIRIT OF SELECTIVE SERVICE* 48 (1920).

35. CHRISTOPHER DUFFY, *MILITARY EXPERIENCE IN THE AGE OF REASON* 55–56, 61–63, 224 (2005).

36. ALLAN R. MILLETT & PETER MASLOWSKI, *FOR THE COMMON DEFENSE* 134 (2012).

37. NICHOLAS R. PARRILLO, *AGAINST THE PROFIT MOTIVE: THE SALARY REVOLUTION IN AMERICAN GOVERNMENT 1780–1940*, at 318 (2013).

38. CROWDER, *supra* note 34, at 88–90; DAVID M. KENNEDY, *OVER HERE: THE FIRST WORLD WAR AND AMERICAN SOCIETY* 152 (2004).

39. PARRILLO, *supra* note 37.

informed the court's 1919 decision in *Dodge v. Ford Motor Co.*, or the shareholder-centric view of the corporation that has dominated American managerial practice and corporate law since approximately 1980. We therefore agree with the view of R. Edward Freeman et al., that Adolf Berle advanced an important precursor of the stakeholder theory of corporate governance.<sup>40</sup> The communitarian ethos that underpins the stakeholder model of Berle and Means is seen in their call for a "wholly new concept of corporate activity" in which "neither the claims of ownership nor those of control can stand against the paramount interests of the community" in the making of corporate strategy. They argued that the goals of CEOs and other senior corporate managers should be to deliver "fair wages, security to employees, reasonable service to their public, and stabilization of business." Berle and Means said that this program would inevitably divert a portion of the wealth created by firms from the shareholders to other stakeholders. For capitalism to survive and become more humane, it was essential that "the interests of passive property owners" (i.e., shareholders) should "give way" to the moral "claims by various groups in the community."<sup>41</sup>

It is tempting to attribute the radicalism of this book to the fact it was released in early 1933 (the very trough of the Great Depression) when unemployment was at record levels, industry was paralyzed, and it appeared that the survival of capitalism itself was in doubt.<sup>42</sup> However, we should remember that Berle and Means wrote the manuscript of *The Modern Corporation and Private Property* well before this point, in the period 1927 to 1931.<sup>43</sup> As late as the end of 1930, many observers still thought that the recent Wall Street equities crash would have a limited impact on the real economy, a widespread and false belief made possible by the poor state of macroeconomic data in that era.<sup>44</sup> Until the *Kreditanstalt* crisis of May 1931, it was not clear to contemporaries that the United States was heading for a severe crisis rather than simply a mild recession.<sup>45</sup> Thus, when Berle and Means were composing their book, the country had not yet reached a crisis that undermined the legitimacy of capitalism itself.

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40. R. EDWARD FREEMAN ET AL., *STAKEHOLDER THEORY: THE STATE OF THE ART* 50 (2010).

41. ADOLF A. BERLE, JR. & GARDINER C. MEANS, *THE MODERN CORPORATION AND PRIVATE PROPERTY* 356 (Macmillan 1933) (1932).

42. ERIC RAUCHWAY, *THE MONEY MAKERS: HOW ROOSEVELT AND KEYNES ENDED THE DEPRESSION, DEFEATED FASCISM, AND SECURED A PROSPEROUS PEACE* 32 (2015).

43. JORDAN SCHWARZ, *LIBERAL: ADOLF A. BERLE AND THE VISION OF AN AMERICAN ERA* 55–58 (1987).

44. DIANE COYLE, *GDP: A BRIEF BUT AFFECTIONATE HISTORY* 13 (2014); WALTER FRIEDMAN, *FORTUNE TELLERS: THE STORY OF AMERICA'S FIRST ECONOMIC FORECASTERS* 193 (2013).

45. MILTON FRIEDMAN & ANNA JACOBSON SCHWARTZ, *A MONETARY HISTORY OF THE UNITED STATES, 1867–1960*, at 333 (1963).

Rather than seeing the book as primarily a response to the Crash of 1929, we argue that the thinking of Berle and Means was profoundly influenced by the militarization of U.S. society during the Great War; indeed, the co-authors first met during their basic military training in 1917.<sup>46</sup> As Capozzola has noted, World War I had a profound impact on American culture and thinking about the nature of the individual's obligation to the collective: the 1917 Selective Service Act was the "centerpiece" of obligations associated with citizenship during wartime.<sup>47</sup> In 1916, the United States, which had traditionally spent little on its military relative to other Western countries,<sup>48</sup> suddenly began allocating massive resources to the military, paving the way for the nation's eventual transformation into a military superpower. By many metrics, the United States in 1914 was a relatively demilitarized society, at least in comparison to the European states, but within a few years, the armed forces had developed a pervasive role in national life that endures to this day.<sup>49</sup> As we show below, military themes run through their 1933 magnum opus as Berle and Means attempted to extend to the business world the ethos of professionalism and disinterested public service that had earlier come to inform the thinking of members of the United States Army officer corps.

Khurana argues that the managerialist philosophy that animated Berle and Means and other early twentieth century American business reformers and educators was deeply rooted in two American institutions: the socially reformist version of Christianity taught in the mainline Protestant denominations and the U.S. military.<sup>50</sup> According to Khurana, a variant of liberal Protestantism later drove some Progressives to seek to replace the chaos of the unregulated market with a social order in which disinterested experts such as medical doctors and civil servants displaced the profit-motive in the allocation of scarce resources. This elitist and utopian ideology, which was connected to movements such as Prohibition and eugenics, informed the creation of the Harvard Business School (HBS) in 1908 and the move to make management into a profession, curated by insider gatekeepers, similar to medicine and the law. In 1926, HBS Dean Wallace B. Donham declared that the aim of the school was to produce a

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46. Columbia Oral History, *supra* note 12, at 119.

47. CHRISTOPHER CAPOZZOLA, UNCLE SAM WANTS YOU: WORLD WAR I AND THE MAKING OF THE MODERN AMERICAN CITIZEN 21 (2008).

48. ARTHUR A. EKIRCH, JR., THE CIVILIAN AND THE MILITARY: A HISTORY OF THE AMERICAN ANTIMILITARIST TRADITION 172 (1956).

49. ROBERT HIGGS, CRISIS AND LEVIATHAN: CRITICAL EPISODES IN THE GROWTH OF AMERICAN GOVERNMENT 22, 79–81, 129–30 (1987).

50. RAKESH KHURANA, *supra* note 9, at 296–98.

generation of socially minded business men who would reform American capitalism from within corporations.<sup>51</sup>

Khurana also compares the ideologies that have been taught in elite U.S. business schools in various historical periods with the professional ethos that has consistently been cultivated by West Point since 1802. In the officer corps of the United States and other modern nation-states, honor is defined in relation to public service. While not necessarily *anti-commercial*, this military ethos is radically *non-commercial*.<sup>52</sup> It is, therefore, diametrically opposed to the rational-actor model and agency theory, the theories of human behavior that have been dominant in business schools since the late 1970s.<sup>53</sup> Army officers who dedicate themselves to the profession of arms do not do so for material reasons.<sup>54</sup> For instance, there are no cash performance bonuses or stock options for dragging a wounded comrade to safety. Instead, in modern, post-French Revolution armed forces, non-financial rewards such as the Iron Cross, the Victoria Cross, and Congressional Medal of Honor shape the culture of the military.<sup>55</sup>

Our reading of *The Modern Corporation and Private Property* has not revealed the impress of the liberal Protestant ideas discussed by Khurana. However, we do find references to war, particularly the legacies of the First World War, in this text. In many ways, *The Modern Corporation and Private Property* can be viewed as an example of a post-war work written by authors whose lives were transformed by the Great War. The variant of the stakeholder model of capitalism advocated by Berle and Means was congruent with the modern military ethos because it held that the key decision-makers in business organizations should be motivated by the public interest, not personal financial gain.

#### IV. THE MAKING OF *THE MODERN CORPORATION AND PRIVATE PROPERTY*

Born in 1895, Berle completed A.B. and M.A. degrees at Harvard College before entering Harvard Law School in 1914. The United States did not enter the war until April 1917, but American society was divided by the war as soon as it started in August 1914. These divisions were partially ethnic, with many German- and Irish-Americans opposing American entry into the conflict, but the divisions were also related to

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51. *Id.* at 116.

52. Christopher Coker, *Outsourcing War*, 13 CAMBRIDGE REV. INT'L AFF. 95, 102 (1999).

53. Sumantra Ghoshal, *Bad Management Theories are Destroying Good Management Practices*, ACAD. MGMT. LEARNING & EDUC. 4, 80 (2005).

54. SAM C. SARKESIAN & ROBERT E. CONNOR, JR., THE US MILITARY PROFESSION INTO THE 21ST CENTURY: WAR, PEACE AND POLITICS 21 (1999).

55. Avant, *supra* note 33.

region and social class. While many Anglophile upper-class New Englanders instinctively favored the British from the outset, Berle, who was of partly German ancestry, declared that he was indifferent to whether “the Hohenzollerns” or “the French entrenched interests behind Clemenceau and so forth were to be the masters of Europe.” Since “Harvard declared war in 1914, right off the bat,” Berle’s time at college was “a rather bitter period.” Berle enlisted in 1917 despite his reservations about President Wilson’s decision to abandon neutrality by declaring war on Germany. He did his military training in Plattsburg, New York, where he met Means, his future co-author. The two men ended up sharing a bunk bed. Gardiner Means came from a broadly similar social background and was also the son of a minister. Means was intellectually gifted and entered Harvard when he was eighteen to study chemistry.<sup>56</sup>

The war interrupted their career plans. The site of their officer training was culturally significant, as the Plattsburg Barracks were the epicenter of the so-called “Plattsburg Movement,” a social movement that had begun in 1912. This movement sought to promote the altruistic moral ideals associated with military service among American businessmen: businessmen who were reserve officers would run their companies with the public interest rather than the profit motive in mind. Private donors who supported this ideal had funded a training camp for would-be officers in Plattsburg that was dubbed the “businessmen’s camp.”<sup>57</sup> The key idea among the proponents of the Plattsburg Movement was that modern America was too selfish, too driven by the profit motive, and that business leaders needed to give back to the community through unpaid military service on weekends and during the summer months. In effect, the Plattsburg Movement was about promoting a non-commercial ethos among the American business class.

By the time Berle and Means had enlisted, officer-training camps modelled on Plattsburg had been opened across the United States thanks to the efforts of General Leonard Wood, a military man with center-left political views, and former President Theodore Roosevelt. In 1912, Roosevelt ran for the presidency as a third-party candidate on a so-called “New Nationalism” platform, which included increased military spending and a variety of progressive reforms that frightened the pro-business faction of the Republican Party.<sup>58</sup> Wood’s progressive beliefs, which brought him into conflict with U.S. business interests during the military

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56. Columbia Oral History, *supra* note 12, at 30.

57. JOHN GARRY CLIFFORD, *THE CITIZEN SOLDIERS: THE PLATTSBURG TRAINING CAMP MOVEMENT, 1913–1920*, at 92 (2014).

58. SIDNEY M. MILKIS, *THEODORE ROOSEVELT, THE PROGRESSIVE PARTY, AND THE TRANSFORMATION OF AMERICAN DEMOCRACY* 185 (2009).

occupation of Cuba, informed his approach to military reform and left a lasting influence on U.S. Army culture. Today, U.S. military men are often stereotyped as monolithically pro-business and politically conservative: Wood and his many allies in the Progressive-era armed forces help us to refute this common idea, since they advocated government limitations on the profit-making activities of firms.<sup>59</sup>

Soon after he was commissioned, Berle was transferred into Intelligence and served in the Dominican Republic. There, he applied his legal skills in clearing the land titles for the South Puerto Rico Sugar Company as part of a wartime effort to increase sugar production for U.S. consumers. He was then posted to the Versailles Peace Conference where he joined the American delegation as an aide to his former professor, Robert Lord of Harvard. Berle's "worm's eye view" of the conference had a profound impact on him. He recounted how he was initially "carried away" by the idealism of Wilson's Fourteen Points. At Versailles, Berle worked on a committee that focused on the new Baltic republics, and this led him to meet John Maynard Keynes.<sup>60</sup>

The First World War also expanded the intellectual horizons of Means. After basic training at Plattsburgh, where he met Berle, Means was accepted into aeronautics training, but an unfortunate crash ended his hopes of becoming a pilot. In the immediate postwar period, Means traveled to Turkey to assist American aid efforts. There, he had the opportunity to observe how the trade in carpets was conducted in a radically different cultural context. Means's interest in the industry was sparked by his experience in Turkey, where he established a textile manufacturing company soon after his demobilization.<sup>61</sup>

After his return to the United States, Berle practiced corporate law, co-founding his own practice in 1924, and taught finance at HBS from 1925 onward.<sup>62</sup> Berle began his teachings by publishing about corporate governance in *Columbia Law Review* and *Harvard Law Review*. His growing stature as an expert on corporations led the *Encyclopaedia Britannica* to ask him in 1928 to write the entry for "Corporation" in a new

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59. JACK C. LANE, *ARMED PROGRESSIVE: GENERAL LEONARD WOOD* 148, 262, 268 (1978). In her forthcoming study of left-wing factions within the present-day U.S. Armed Forces, the anthropologist Catherine Lutz has noted that many U.S. military personnel are conscious of the consistency between the U.S. right's belief that society benefits when business leaders pursue their self-interest and the cult of "troop veneration," which celebrates the public-spirited sacrifice of soldiers.

60. Columbia Oral History, *supra* note 12, at 31, 32–35, 40–43.

61. See Michael E. Latham, *Means, Gardiner Coit*, AM. NAT'L BIOGRAPHY ONLINE (2009), <http://www.anb.org/view/10.1093/anb/9780198606697.001.0001/anb-9780198606697-e-1400875>.

62. Columbia Oral History, *supra* note 12, at 112–13.

edition.<sup>63</sup> Berle's ideas about corporate governance were shaped by other Americans who were interested in limiting what they saw as the excessive selfishness of current business leaders. Berle's earliest publications on corporations had brought him to the attention of William Ripley, the Harvard economics professor who had published *Main Street and Wall Street* in 1927. Ripley had, in turn, been influenced by Louis Brandeis's 1914 book *Other People's Money* and Thorstein Veblen's 1923 book *Absentee Ownership and Business Enterprise*. Brandeis was a crusading lawyer who was appointed to the Supreme Court by President Wilson in 1916, while Veblen was an institutional economist whose radical views had cost him several academic appointments.<sup>64</sup>

Drawing on the iconoclastic ideas of Veblen and Brandeis as well as his own research, Ripley identified a huge expansion in both the number and value of corporations since the outbreak of the First World War.<sup>65</sup> In the 1920s, some progressive businessmen were moving away from shareholder primacy towards the view that managers ought to consider the interests of other stakeholders. For instance, this idea was endorsed by Robert Brookings, a businessman and philanthropist.<sup>66</sup> Owen Young, first chairman of the Radio Corporation of America (RCA), said in a 1927 HBS address, "I hope the day may come when these great business organizations will truly belong to the men who are giving their lives and their efforts to them. I care not in what capacity."<sup>67</sup> Berle and Means were thus part of a community of scholars and practitioners who were interested in challenging the idea that the primary or sole purpose of a corporation was to maximize the return on the shareholders' investment.

Ripley was involved with the Social Science Research Council and the Laura Spelman Rockefeller Foundation. He helped Berle submit a proposal to study corporations, which resulted in a \$7,000 grant.<sup>68</sup> Berle left his part-time teaching job at Harvard Law School in fall 1927, taking his grant to Columbia Law School.<sup>69</sup> Berle then recruited his Plattsburg training camp "bunkmate," Gardiner Means, who was then pursuing a

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63. Letter from Walter Pitkin to Adolf Berle (July 2, 1928) (on file with the Franklin D. Roosevelt Library, Adolph Berle Papers, Box 10).

64. The influence of Veblen on Berle has been discussed in Charles R.T. O'Kelley, *Berle and Veblen: An Intellectual Connection*, 34 SEATTLE U. L. REV. 1317 (2010).

65. WILLIAM Z. RIPLEY, *MAIN STREET AND WALL STREET* 16-40 (1927).

66. ROBERT S. BROOKINGS, *INDUSTRIAL OWNERSHIP: ITS ECONOMIC AND SOCIAL SIGNIFICANCE* 75-80 (1925).

67. Justus D. Doenecke, *Young, Owen D.*, AM. NAT'L BIOGRAPHY ONLINE (1999), <http://www.anb.org/abstract/10.1093/anb/9780198606697.001.0001/anb-9780198606697-e-0600740?rskey=J0cIGU&result=1>.

68. Columbia Oral History, *supra* note 12, at 117.

69. *Id.* at 119.

Ph.D. at Harvard, as his research assistant.<sup>70</sup> The research project, which took four years to complete (1927 to 1931), culminated in *The Modern Corporation and Private Property*. Berle said that he felt that Means should have his name on the title page “because he had contributed so much.”<sup>71</sup>

The 1929 Wall Street crash happened partway through Berle’s research project. Although their offices were uptown at Columbia University, the business connections of Berle and Means meant that they were well positioned to observe both Wall Street’s reaction to the crisis and the ensuing national debate about the social function of corporate finance. Berle knew that the law firms that served Wall Street companies had intensely disliked Ripley’s book *Main Street and Wall Street*. Berle later recalled the following:

[Established law firms] officially disapproved of it, and officially said so, but a good many of the men in them came to see me, came to see Ripley—that’s why he was invited to speak at the State Bar Association—to say, “Now it seems you have a point.” And some of them went as far as saying, “There is going to be a smash up here. Something has got to give. This has become far too dangerous [activity on Wall Street] for serious people.”<sup>72</sup>

The initial reaction of Wall Street to the ideas of Berle and Means were also primarily negative. The Corporation Trust Company, founded in 1892, owned the Commerce Clearing House, which published a range of business books. Speaking in 1969, Berle recalled that the Corporation Trust Company attempted to force their book’s original publisher, the Commerce Clearing House of Chicago, to “find some way of dumping it quietly.”<sup>73</sup> He added that “it therefore came just this side of being suppressed by the then existent financial establishment.” Berle also recalled in 1969 that “though we didn’t know it then, we were pounding out the principles which later became principles on which the Securities and Exchange Legislation enforced today is based.”<sup>74</sup> An unnamed individual at GM—perhaps chairman Alfred Sloan—read a summary of *The Modern Corporation and Private Property* and was deeply offended.<sup>75</sup> The Corporation Trust Company, fearing the loss of GM’s business, attempted to suppress the book. Luckily for Berle and Means,

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70. *Id.* at 120.

71. *Id.*

72. *Id.* at 127.

73. *Id.* at 124.

74. *Id.*

75. DAVID FARBER, SLOAN RULES: ALFRED P. SLOAN AND THE TRIUMPH OF GENERAL MOTORS (2002); Robert Hessen, *The Modern Corporation and Private Property: A Reappraisal*, 26 J. L. & ECON. 273, 280 (1983).

the staff of the Commerce Clearing House did not destroy the publishing plates and instead sold them to Macmillan and Company, which re-published the book in February 1933.<sup>76</sup>

*The Modern Corporation and Private Property* may have infuriated many on Wall Street, but it was critically praised within the academic community. The political scientist George Ward Stocking wrote that Berle and Means had “rendered a service to the science of economics which no economist can afford to overlook.”<sup>77</sup> The book raised Berle’s profile, bringing him into contact with New York State Governor Franklin D. Roosevelt (FDR), who was just about to become President. There is no archival evidence that FDR personally read *The Modern Corporation and Private Property*.<sup>78</sup> Nonetheless, Berle became part of FDR’s brain trust and provided the President with advice about finance and banking reform.<sup>79</sup> Berle also advised FDR’s Labor Secretary, Frances Perkins.<sup>80</sup>

Means’s contribution to the New Deal came largely as a result of his work as an advisor to Agriculture Secretary Henry A. Wallace, the most left-wing of FDR’s cabinet members. In 1936, Means published *The Modern Economy in Action*, a book co-authored with his wife, the historian Caroline F. Ware. This work, which distinguished the “new economy” dominated by large corporations from the “old economy” based on free enterprise, reiterated the argument of Berle and Means, that the rise of the large corporation had represented a revolutionary change in the U.S. economy. As the Second World War approached, Berle and Means continued to work in public service, although their focus shifted to foreign policy. As Assistant Secretary of State for Latin American Affairs from 1938 to 1944, Berle was one of the architects of FDR’s “Good Neighbor Policy,” a diplomatic effort aimed at securing the support of Latin American nations by distancing the U.S. government from the excesses perpetrated by U.S. corporate interests in the region.<sup>81</sup>

Under previous Republican administrations, the U.S. government had largely been seen as the tool of U.S. firms, such as United Fruit. Berle believed that restraining U.S. firms rather than championing their interests in all cases would best secure the long-term interests of the United States

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76. We have cited page numbers in the 1933 version of the book.

77. George W. Stocking, *The Modern Corporation and Private Property by A.A. Berle Jr., and Gardiner C. Means*, ANNALS AM. ACAD. POL. & SOC. SCI., Sept. 1933, at 214 (book review).

78. THEODORE ROSENOF, *ECONOMICS IN THE LONG RUN: NEW DEAL THEORISTS AND THEIR LEGACIES*, 1933–1993, at 16 (1997).

79. Letters from Franklin Roosevelt to Adolf Berle (Apr. 23, 1934 & Sept. 13, 1934) (on file with the Franklin D. Roosevelt Presidential Library, Adolf Berle Papers, Box 10, File: Roosevelt, Franklin D).

80. Letter from Adolf Berle to Frances Perkins (Mar. 22, 1934) (on file with the Franklin D. Roosevelt Presidential Library, Adolf Berle Papers, File: Pa–Ph).

81. CAROLINE WARE & GARDINER C. MEANS, *THE MODERN ECONOMY IN ACTION* 141 (1936).

and its corporations. Berle's approach to foreign policy was thus congruent with his support of the domestic policies associated with the New Deal. During, and immediately after the Second World War, Berle worked with likeminded liberal internationalists, such as Dean Acheson, to reshape U.S. foreign policy in keeping with this theory of enlightened self-interest. As an elder statesman, Berle advised President Kennedy about U.S. policy in the region, again urging a policy of enlightened self-interest in which the U.S. government would sacrifice the short-term needs of particular corporate interests to win the hearts and minds in the region.<sup>82</sup>

Means also served in Washington during the New Deal and wartime eras. He worked as an advisor to Agriculture Secretary Henry A. Wallace and a variety of federal agencies before leaving the Government to do research for the Committee for Economic Development. After 1952, Means worked for the Fund for the Republic, a left-leaning organization that provided legal services to the targets of McCarthyism, which had received financial backing from Henry Ford II and other progressive businessmen.<sup>83</sup>

#### V. EVIDENCE OF THE INFLUENCE OF MILITARY-DERIVED IDEAS ON THE THINKING OF BERLE AND MEANS

Our reading of *The Modern Corporation and Private Property* has not revealed much evidence of the Social Gospel or liberal Protestant ideas that Khurana regards as having driven many early twentieth century U.S. business reformers to try to limit the pursuit of self-interest. Berle and Means mention religion only three times in the text, and in all of these instances they do so in the course of analogizing the concentration of economic power in the hands of unaccountable corporate executives to the hierarchical power structures of the Catholic Church.<sup>84</sup> A particular comparison was the practice of CEOs handpicking the boards to which they are nominally subordinate to "the organization which dominates the Catholic Church. The Pope selects the Cardinals and the College of Cardinals in turn select the succeeding Pope."<sup>85</sup> The use of this example may have been an attempt by the authors to play to the prejudices of Protestant readers who had been socialized to prefer the more decentralized, grassroots governance systems of American Protestantism. Beyond that, however, we find no explicit references or even allusions to

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82. KYLE LONGLEY, *IN THE EAGLE'S SHADOW: THE UNITED STATES AND LATIN AMERICA 175–76* (2002).

83. See WARREN J. SAMUELS & STEVEN G. MEDEMA, *GARDINER C. MEANS, INSTITUTIONALIST AND POST KEYNESIAN* (1990).

84. BERLE & MEANS, *supra* note 41, at 88, 352, 357.

85. *Id.* at 88.

religious themes in the book. The authors neither refer to those sections of the New Testament that condemn avarice or the profit motive nor cite Walter Rauschenbusch and the other Social Gospel theologians who had used these passages to argue for socialist policies.<sup>86</sup> *The Modern Corporation and Private Property* is an essentially secular book, albeit one with an ethos that is congruent with the Social Gospel.

In our view, the influence of war and militarization on this text is much greater than that of religion. At the start of the book, Berle and Means cite *Die Neue Wirtschaft*, a 1918 essay by Walther Rathenau (1867–1922), a German business executive of center-left political leanings who believed that Germany’s capitalism should be improved by giving workers a voice in corporate governance so that managers would consider workers’ interests rather than just those of shareholders.<sup>87</sup> From 1915, Rathenau served as chairman of the Allgemeine Elektrizitäts-Gesellschaft (AG), the electrical goods firms his father had founded; a position that allowed him to play an important role in Germany’s war effort and the political transformation that followed the Kaiser’s abdication. Rathenau, who strived to create a social-democratic and republican Germany, was assassinated in 1922 by right-wing German nationalists who wrongly assumed that his Jewishness meant that he sympathized with the new Bolshevik regime in Russia.<sup>88</sup> In their conclusion, Berle and Means discuss Rathenau’s late-1918 book *Von Kommenden Dingen*,<sup>89</sup> where Rathenau argued that managers should liberate them from the control of shareholders, which would thus allow them to share profits with workers.<sup>90</sup>

Rathenau’s writings on the future of capitalism, which were shaped by his wartime experiences, influenced Berle and Means. Berle and Means were, like Rathenau, attempting to understand how the First World War had transformed capitalism while simultaneously thinking about how it could be reformed into a more humane and just system. The First World War and its socioeconomic impact is a major theme in *The Modern Corporation and Private Property*. Although the authors discuss the U.S. Civil War, which they appear to regard as a turning point in business history,<sup>91</sup> they are more interested in the legacies of the First World War

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86. While it was largely devoid of religious ideas, the book by Berle and Means was indirectly connected to the Social Gospel movement in that members of the Rockefeller family financially supported both. For John D. Rockefeller’s patronage of Social Gospel theologians, see CHRISTOPHER H. EVANS, *THE SOCIAL GOSPEL IN AMERICAN RELIGION: A HISTORY* 80, 84, 128 (2017).

87. See generally SHULAMIT VOLKOV, *WALTHER RATHENAU: WEIMAR’S FALLEN STATESMAN* (2012).

88. *Id.*

89. BERLE & MEANS, *supra* note 41, at 352.

90. WALTER RATHENAU, *VON KOMMENDEN DINGEN* 150 (1917).

91. BERLE & MEANS, *supra* note 41, at 12–14.

and the social and ethical questions it raised. For instance, the authors refer to the impact of the outbreak of the European war in 1914, which raised demand for steel on American steel companies, in the course of discussing the obligation of business executives.<sup>92</sup> The authors also discuss how wealthy Americans attempted to shield their dividend incomes in response to the “heavy surtaxes on large incomes during the [First World] War and the post-war period.”<sup>93</sup>

Berle and Means argue that this war helped to democratize the ownership of corporate stocks, which previously had been owned by a small group of wealthy Americans who had come to be much more dispersed by the conclusion of the conflict in 1919. In their account, the nature of American capitalism was changed profoundly during the relatively brief period; the U.S. was a belligerent nation. Although Berle and Means were open to the possibility that the advent of mass shareholding during the Great War might be reversed in the future, they said it was more likely that the wartime dispersal in the ownership of corporate equity represented a “permanent change in the ownership of industrial wealth comparable to the shift in landownership which was an outgrowth of the French Revolution.”<sup>94</sup>

Berle and Means analogize business activity with military service while arguing against the “individual liberty” advocated by Adam Smith. Whereas the enterprises of Smith’s era consisted of “an individual or a few partners[,] . . . today we have tens and hundreds of thousands of owners, of workers and of consumers combined in single enterprises.”<sup>95</sup> The rise of these large organizations meant that “individual initiative” would largely disappear: “[T]he idea that an army operates on the basis of ‘rugged individualism’ would be ludicrous. Equally so is the same idea with respect to the modern corporation.”<sup>96</sup> Berle and Means had realized that the corporation was not just an economic institution but also a social one, embodying a wide range of interpersonal relationships contextualized by power, in a similar fashion to the military.

Neither Berle nor Means was a socialist, and they almost certainly detested the Bolshevik regime that came to power in late 1917. However, the analysis of corporate governance in their book was grounded in an interpretation of history that follows Marxism in holding that conflict between different layers of societies and organizations is a universal constant and a primary motor of historical change. They note that the

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92. *Id.* at 323.

93. *Id.* at 62.

94. *Id.*

95. *Id.* at 349.

96. *Id.*

current struggle over control of America's great business corporations is just the latest iteration of a perennial issue: "a constant warfare has existed between the individuals wielding power, in whatever form, and the subjects of that power," with the latter group wanting to ensure that power is "the servant of the bulk of the individuals it affects."<sup>97</sup> It was in that context that Berle and Means referred to the College of Cardinals in the Catholic Church.<sup>98</sup> In analyzing recent struggles to control U.S. companies, they used military language and metaphors. For instance, Berle and Means use words such as "fight," "battle," and "open warfare" when referring to the use of proxy votes in 1929 by John D. Rockefeller, Jr. to oust Colonel Robert W. Stewart as chairman of Standard Oil Company of Indiana.<sup>99</sup>

Although the worldview expressed by Berle and Means in *The Modern Corporation* is similar to that of Marxism in that it posits that social conflict is a universal constant, their approach differs from Marxism, which issues confident predictions about the future. Berle and Means evidently disagree with the Marxist concept of historical inevitability, and as a result, their book is characterized by intellectual modesty and a sense of historical contingency. Berle and Means confess that it is not yet clear to them what "position in the community" America's "princes of industry" will eventually acquire.<sup>100</sup> They note that while other authors regard the current socioeconomic order "plutocracy" as "a transition phase towards ultimate socialism or communism," it was too soon to venture a firm conclusion about how the existing system would evolve.<sup>101</sup> Similarly, they declare that "it is not possible to predict" with absolutely certainty that the trend towards corporate concentration would continue since the annual rate of concentration was varied in recent years.<sup>102</sup> To reinforce their claim that future prediction was challenging, they point out the concentration rate in "1921 through 1923" slowed, which may have been "a breathing spell after the excessive growth of the war years."<sup>103</sup> In other words, the rate of corporate consolidation was not destined to accelerate forever. However, they are reasonably confident that "the great corporation, already of tremendous importance today, will become increasingly important in the future."<sup>104</sup>

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97. *Id.* at 353.

98. *Id.* at 88.

99. *Id.* at 82.

100. *Id.* at 2.

101. *Id.*

102. *Id.* at 41.

103. *Id.*

104. *Id.*

The references to the Great War in *The Modern Corporation and Private Property* are not surprising, for we know that the conflict did indeed contribute to the dispersion of share ownership, as Julia Ott has recently demonstrated.<sup>105</sup> During the war, the federal income tax, which had been introduced in 1913 following the ratification of the Sixteenth Amendment, became significantly more progressive.<sup>106</sup> To maintain the support of union leaders such as Samuel L. Gompers for military conscription, the Wilson administration had agreed to an excess profits tax that effectively conscripted wealth.<sup>107</sup> In the United States, as in wartime Europe, military conscription on a massive scale resulted in the introduction of progressive forms of taxation that ensured that older wealthy men shared the burden with the young and physically fit men who were compelled to join the military: as Scheve and Stasavage have observed in their study of Western tax regimes since 1900,<sup>108</sup> progressive taxation and the militarization of societies tends to go hand in hand.

We certainly see this broader pattern at work in the United States during the First World War, when wartime rhetoric disparaged profit-seeking in favor of patriotism. During this conflict, wealthy industrialists who were too old to serve in uniform agreed to serve in the public sector as “Dollar-a-Year Men,” while wealthy investors were implored to invest in low-yield government securities during war bond drives.<sup>109</sup> In other words, the pursuit of economic self-interest was to be suspended for the duration of hostilities. In discussing the popularity of the service ideal in this era of American society, David M. Kennedy noted that “few words were so widely bruited in American society in the World War I era as ‘service’ . . . the wide currency of the term ‘service’ reflected the . . . historical phase through which American society was then passing.”<sup>110</sup> Contemporaries ranging from Walter Lippman to Herbert Hoover believed that the country was “negotiating a passage between individualistic and collective era.”<sup>111</sup>

While U.S. battlefield casualties in the First World War were relatively light, the economic impact of the war was significant, as

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105. JULIA C. OTT, *WHEN WALL STREET MET MAIN STREET* 152 (2011).

106. Richard C. Sutch, *Financing the Great War: A Class Tax for the Wealthy, Liberty Bonds for All* (Berkeley Econ. History Laboratory, Working Paper No. 2015-09, 2015).

107. John W. Hillje, *New York Progressives and the War Revenue Act of 1917*, 53 N.Y. HIST. 437 (1972).

108. KENNETH SCHEVE & DAVID STASAVAGE, *TAXING THE RICH: A HISTORY OF FISCAL FAIRNESS IN THE UNITED STATES AND EUROPE* 22 (2016).

109. Robert D. Cuff, *A “Dollar-a-Year Man” in Government: George N. Peek and the War Industries Board*, 41 BUS. HIST. REV. 404 (1967).

110. DAVID M. KENNEDY, *OVER HERE: THE FIRST WORLD WAR AND AMERICAN SOCIETY* 132–33, 252–56 (1980).

111. *Id.* at 153.

economic historians have demonstrated.<sup>112</sup> The transformative impact of the Great War on American business helps to explain why Berle and Means discuss this conflict frequently in a book published fourteen years after the armistice. Furthermore, the war years witnessed *Dodge v. Ford Motor Co.*, in which Ford's shareholders sued the industrialist on the grounds of insufficient dividends. This court case, which was discussed in the book,<sup>113</sup> prompted widespread reflection about whether the non-shareholder stakeholders had a moral claim to the share of the profits made by corporations. Henry Ford had attempted to run his company in keeping with a variant of a stakeholder theory of corporate governance, albeit one that saw no role for organized labor. Nevertheless, the courts ruled that this practice was a breach of Ford's fiduciary duty to his shareholders.<sup>114</sup>

#### VI. THE DECLINING INFLUENCE OF THE BERLE–MEANS VISION OF BUSINESS LEADERSHIP AS PUBLIC SERVICE AFTER 1970

As we have seen, Berle and Means were calling on top managers to selflessly disregard their pecuniary interests and those of shareholders so that they could serve a wider range of stakeholders, including workers, consumers, and crucially, the nation-state. Berle and Means outlined a vision of corporate governance in which business executives behaved like the army officers who risk life and limb not for profit but to serve the national interest. The book by Berle and Means went through many U.S. editions in the postwar-period, and it also influenced thinking in other countries via its translations into German, French, Japanese, Italian, and other languages.<sup>115</sup> Moreover, Berle and Means's vision of business executives who were motivated by public service rather than simple profit maximization was echoed by other popular business books of the postwar era, such as the 1958 bestseller *The Capitalist Manifesto* by Louis Kelso and Mortimer Adler, as well as Howard Bowen's 1953 book *The Social Responsibilities of the Businessman* and Morrell Heald's *The Social Responsibilities of Business, Company, and Community, 1900-1960*.<sup>116</sup>

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112. Michael J. Greenwood & Zachary Ward, *Immigration Quotas, World War I, and Emigrant Flows from the United States in the Early 20th Century*, EXPLORATIONS ECON. HIST., Jan. 2015, at 76; Hugh Rockoff, *Until It's Over, Over There: The U.S. Economy in World War I* (Nat'l Bureau of Econ. Research, Working Paper No. 10580, 2004).

113. BERLE & MEANS, *supra* note 41, at 190, 261.

114. Henderson, *supra* note 19.

115. Letter from Haruzo Kaneko to Adolf Berle (1951) (on file with the Franklin D. Roosevelt Presidential Library, Adolf Berle Papers, Box 181, File: The Modern Corporation and Private Property Correspondence, 1949–1970).

116. Stefan J. Padfield, *The Inclusive Capitalism Shareholder Proposal*, 17 U.C. DAVIS BUS. L. J. 147 (2017).

In the 1950s and 1960s, Berle and Means's vision influenced the culture of corporate America: in this period, most managers explicitly rejected the idea of shareholder primacy and declared their firms existed to serve a wide range of stakeholders, including workers.<sup>117</sup> However, starting in the 1970s, the political and business cultures of the United States shifted away from the ethos espoused by Berle and Means. The key player in the realm of ideas who contributed to this shift was the neoliberal economist and public intellectual Milton Friedman, who famously declared that the "one and only one social responsibility of business" was to maximize profits for shareholders.<sup>118</sup> Friedman promoted such neoliberal ideas in his academic work at the University of Chicago, his Newsweek column and television documentaries, and in the advice he gave personally to U.S. Presidents and world leaders.<sup>119</sup> The end of the draft in 1974 was strongly supported by Friedman and other neoliberals who wanted a more market-oriented approach to military recruitment.<sup>120</sup>

The neoliberal belief that firms should maximize profits as much as the law allows is fundamentally similar to the ethos that says that military service should be structured like any other employment market in which self-interested, rational actors participate. In both cases, it is assumed that everyone is self-interested and there are no appeals to patriotism or any other form of altruism. The end of military conscription, which was a crucial early victory for the neoliberal project,<sup>121</sup> can therefore be linked to the cultural trends that contributed to the rise of the ideology of shareholder value in the 1980s and 1990s, a period when U.S. managers returned to the early twentieth century view that the sole purpose of a corporation was to promote shareholder value.<sup>122</sup> The ideology of shareholder value was promoted among the U.S. business elite by Professor Michael Jensen, who joined the faculty of HBS in 1984 and aggressively promoted this vision of how companies ought to be governed

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117. CARROLL ET AL., *supra* note 2.

118. MILTON FRIEDMAN, CAPITALISM AND FREEDOM 133 (1962).

119. DANIEL STEDMAN JONES, MASTERS OF THE UNIVERSE: HAYEK, FRIEDMAN, AND THE BIRTH OF NEOLIBERAL POLITICS 173 (2012); PHILIP MIROWSKI & DIETER PLEHWE, THE ROAD FROM MONT PÉLERIN 167 (2009).

120. Charles Moskos, *The Marketplace All-Volunteer Force: A Critique*, in THE ALL-VOLUNTEER FORCE AFTER A DECADE: RETROSPECT AND PROSPECT 15–17 (William R. Bowman et al. eds., 1986).

121. James Burk, *The Changing Moral Contract for Military Service*, in THE LONG WAR: AMERICA'S QUEST FOR SECURITY SINCE WORLD WAR II (Andrew Bacevich ed., 2007); Deborah E. Cowen, *Fighting for "Freedom": The End of the Conscription in the United States and the Neoliberal Project of Citizenship*, 10 CITIZENSHIP STUD. 167 (2006); Ronald R. Krebs, *The Citizen-Soldier Tradition in the United States: Has its Demise Been Greatly Exaggerated?*, 36 ARMED FORCES & SOC'Y 153 (2009).

122. KHURANA, *supra* note 9; William Lazonick & Mary O'Sullivan, *Maximizing Shareholder Value: A New Ideology for Corporate Governance*, 29 ECON. & SOC'Y 13 (2000).

in his influential publications and the MBA classroom.<sup>123</sup> Although influential, Milton Friedman and Michael Jensen promoted ideas that were diametrically opposed to the citizen–soldier ethos promoted by Berle and Means.

Another public intellectual who influenced U.S. business culture in a fashion that undermined the public-service ethos promoted by Berle and Means was Ayn Rand, a thinker who had a profound impact on U.S. politics and culture despite never having an institutional affiliation.<sup>124</sup> Although only a small minority of business and political leaders have openly identified themselves as followers of this self-employed philosopher, her absolutist defense of free markets and the pursuit of self-interest has had a well-documented influence on U.S. business culture and on the thinking of U.S. CEOs in industries ranging from energy to retail.<sup>125</sup> Prominent CEOs who have acknowledged Rand’s influence on their thinking include Rex Tillerson of ExxonMobil, Andy Pudzer of the fast-food group CKE Restaurants, and John A. Allison IV, CEO of BB&T and subsequent head of Washington’s Cato Institute.<sup>126</sup> Ayn Rand wrote that each individual ought to pursue “his own rational self-interest, none sacrificing himself or others . . . . This is the opposite of what the word ‘service’ means.”<sup>127</sup> Although Rand never directly attacked the publications of Berle and Means, her ideas were clearly incompatible with their philosophy of corporate governance.

The results of the displacement of the Berle–Means vision of how companies ought to be governed with Friedman and Jensen’s shareholder value ideology has produced a range of negative consequences for U.S. business and society. The adoption by U.S. business leaders of shareholder value ideology resulted in a wave of ruthless downsizing of the type pioneered by GE’s Jack Welch, the development of a short-termist

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123. DUFF McDONALD, *THE GOLDEN PASSPORT: HARVARD BUSINESS SCHOOL, THE LIMITS OF CAPITALISM, AND THE MORAL FAILURE OF THE MBA ELITE* (2017).

124. CHRIS MATTHEW SCIABARRA, *AYN RAND: THE RUSSIAN RADICAL 1* (1995).

125. JENNIFER BURNS, *GODDESS OF THE MARKET: AYN RAND AND THE AMERICAN RIGHT* 297 (2009); Jonathan Freedland, *The New Age of Ayn Rand: How She Won Over Trump and Silicon Valley*, *GUARDIAN* (Apr. 10, 2017), <https://www.theguardian.com/books/2017/apr/10/new-age-ayn-rand-conquered-trump-white-house-silicon-valley> [<https://perma.cc/QCL7-NCZX>]; Mina Kimes, *At Sears, Eddie Lampert’s Warring Divisions Model Adds to the Troubles*, *BLOOMBERG* (July 11, 2013), <http://www.bloomberg.com/bw/articles/2013-07-11/at-sears-eddie-lamperts-warring-divisions-model-adds-to-the-troubles>.

126. James Hohmann, *Ayn Rand-Acolyte Donald Trump Stacks His Cabinet with Fellow Objectivists*, *WASH. POST* (Dec. 13, 2016), [https://www.washingtonpost.com/news/powerpost/paloma/daily-202/2016/12/13/daily-202-ayn-rand-acolyte-donald-trump-stacks-his-cabinet-with-fellow-objectivists/584f5cdf9b69b36f3b/?utm\\_term=.900c85b70ccb](https://www.washingtonpost.com/news/powerpost/paloma/daily-202/2016/12/13/daily-202-ayn-rand-acolyte-donald-trump-stacks-his-cabinet-with-fellow-objectivists/584f5cdf9b69b36f3b/?utm_term=.900c85b70ccb) [<https://perma.cc/LJB6-B26P>].

127. Ayn Rand, *How Not to Fight Against Socialized Medicine*, *OBJECTIVIST NEWSL.*, Feb. 1963.

approach to corporate decision-making, reduced spending on corporate R&D, and growing economic inequality both within firms and the wider society.<sup>128</sup>

#### CONCLUSION

We interpret *The Modern Corporation and Private Property* as an attempt by the authors to introduce to the business world the ethos of disinterested public service that characterizes the officer corps of the U.S. military. In effect, Berle and Means were calling on top managers to selflessly disregard their pecuniary interests and those of shareholders so that they could serve a wider range of stakeholders, including workers, consumers, and, crucially, the nation-state. Berle and Means outlined a vision of corporate governance in which business executives behaved like the army officers who risk life and limb not for profit but to serve the national interest. Our paper has suggested the Berle and Means's vision of corporate executives who altruistically serve the national interest was informed by the example of military officers who patriotically serve the national interest in return for modest salaries. We would therefore suggest that the managerialist/stakeholder philosophy of Berle and Means can be associated with the militarization of U.S. society, a process that accelerated during the First World War and which had a profound impact on both of the book's authors.

*The Modern Corporation and Private Property* played an important role in debates about the social purposes of U.S. corporations during and after the New Deal. As other authors have noted, the public service ethos that Berle and Means promoted in the book was dominant in U.S. business culture until about 1980, when a new generation of business leaders and intellectuals resurrected the idea that the sole purpose of a corporation is to maximize shareholder value.<sup>129</sup> By the 1990s, shareholder value ideology was hegemonic in U.S. business culture, and it has had a significant impact on business decision-making.<sup>130</sup>

However, a single book, no matter how eloquent and thoroughly researched, cannot shift the business culture of an entire nation. The research of Cheffins suggests that the ideas of Berle and Means had such a great influence on U.S. business because they were congruent with the ethos of public service that was inculcated in U.S. business leaders of the so-called Greatest Generation during the Second World War. Cheffins's insight raises the counterfactual question of whether the ideas of Berle and

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128. MARTIN, *supra* note 1; MCDONALD, *supra* note 123; Stout, *supra* note 1; Wells, *supra* note 1.

129. Wells, *supra* note 1.

130. See MCDONALD, *supra* note 123.

Means would have resonated with so many U.S. business leaders of the Greatest Generation had the United States not experienced mass mobilization, and the associated political and culture transformations, after 1941.<sup>131</sup>

Some scholars who research economic inequality subscribe to Walter Scheidel's theory that economic inequality in capitalist societies is only likely to fall during and immediately after major war and other catastrophic episodes of violence.<sup>132</sup> The casual mechanism said to link mass military mobilization and greater economic inequality is that universal military service is thought to promote norms that encourage the more egalitarian distribution of wealth.<sup>133</sup> Scheidel's theory is congruent with the observed behavior of U.S. businesses in the three decades after 1945, when the managers of U.S. corporations allowed workers and other non-shareholder stakeholders to share in the benefits of rising productivity to a degree that looks generous in retrospect.<sup>134</sup> Combining Scheidel's theory with the research presented in this paper helps us to identify a direction for future research, namely historical research to determine how precisely the legacies of wartime mobilization interacted with the ideas presented by Berle and Means to help produce the public-spirited business culture of the United States in the three decades after 1945. Such research might involve comparing the words and actions of post-war business leaders who had served in uniform with those who did not. Another possible research avenue leading from this paper would be to investigate the reception of Berle and Means's book outside of the United States.

We believe that the arguments that Adolf Berle and Gardiner Means articulated are still germane to policy discussions. There are, of course, important differences between the historical context in which this book was written (i.e., the end of the Roaring Twenties) and the present, and some striking parallels exist, including high rates of income inequality and widespread dissatisfaction with the prevailing shareholder-centric theory of corporate governance. In our view, the relevance of the ideas of Berle and Means is illustrated by an episode from the 2016 presidential election, when Hillary Clinton called for more "corporate patriotism." Campaigning in Detroit in March 2016, Clinton criticized the outsourcing of U.S. manufacturing jobs to low-wage countries: "The idea of corporate patriotism might sound quaint in era of vast multinationals, but it's the

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131. Cheffins, *supra* note 24, at 717.

132. For a leading example, see generally THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* (2013).

133. WALTER SCHEIDEL, *THE GREAT LEVELER: VIOLENCE AND THE HISTORY OF INEQUALITY FROM THE STONE AGE TO THE TWENTY-FIRST CENTURY* 115 (2017).

134. MARC LEVINSON, *AN EXTRAORDINARY TIME: THE END OF THE POSTWAR BOOM AND THE RETURN OF THE ORDINARY ECONOMY* (2016).

right thing to do.”<sup>135</sup> In her speech to the July 2016 Democratic National Convention, Clinton once again called on American corporations to begin acting in a more “patriotic” fashion: “I believe American corporations that have gotten so much from our country should be just as patriotic in return.”<sup>136</sup> In a piece of political theatre, Clinton’s call for a “New Bargain” between corporations and American workers was delivered after a series of uniformed military speakers had warmed up the audience. The juxtaposition of symbols of military service with a discussion of corporate greed subtly challenged shareholder value ideology, i.e., the view that the sole purpose of a company is to make money for its worldwide shareholder base.<sup>137</sup>

As we have shown, Berle and Means believed that just as male citizens of a democracy have a duty to perform military service, the managers of corporations must also seek to promote the commonwealth rather than exclusively their own interests or those of the shareholders. At a time when Americans are once again debating issues related to corporate governance, executive compensation, and whether managers have duties beyond maximizing returns for shareholders, thinking about the historical origins of Berle and Means’s text is timely. It may be that Hillary Clinton’s corporate patriotism concept is resurrected by future political leaders. The public service ethos that shaped Berle and Means appears to be less prevalent than it was when *The Modern Corporation and Private Property* was published. However, Berle and Means wrote about a problem—control of corporations—that continues to have enormous public policy implications. They still have much to contribute to discussions of corporate power, ownership, and who gets to shape the role of corporations in society.

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135. *Hillary Clinton Pitches for Corporate Patriotism*, HANS INDIA (Mar. 5, 2016), <http://www.thehansindia.com/posts/index/International/2016-03-05/Hillary-Clinton-pitches-for-corporate-patriotism/211530> [<https://perma.cc/CJF9-5UWY>].

136. Hillary Clinton, Address to the 2016 Democratic National Convention (July 29, 2016).

137. *Id.*