Reimagining the Corporation: The Relevance of Legal, Economic and Political Imaginaries

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1 Introduction

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

What is a corporation? Although MOS is the context in which much 'management' is accomplished and where many structures and processes

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of organizing are located, it would seem as if this question has limited relevance. Within MOS, the purpose, regulation, governance, and responsibility of corporations are, of course, taken up for examination where various conceptions of the corporation are more or less implicitly invoked. There is also some residual awareness and appreciation of debates about 'the modern corporation', associated with issues of 'ownership and control' (Berle and Means 2007[1932]), 'the managerial revolution' (Burnham 1962[1941]), and 'the visible hand' (Chandler 2002). The 'financialization' of corporations may soon be added to such background understandings (Davis 2011; Epstein 2005; Fligstein 1993). But, to our knowledge, these indications of interest in the modern corporation have not resulted in the development of a research program, a stream of research in standing working groups, or even a track within MOS conferences dedicated specifically to interrogating and researching the corporate form.[1] Indeed, it would appear that the study of the corporation has been quietly ceded to other specialisms, such as business history, law, economics, and political science where its representation(s) reflect the distinctive presuppositons and interpretive frameworks of those disciplines.[2]

2 The Corporation and Imaginaries

What, then, is the corporation? Our approach to answering this question, which is broadly consistent with a stream of work in MOS that addresses the significance of (competing) imaginaries (Davis 2009; Perrow 2002) presumes that the nature and the meaning of the corporation are inescapably contested; and that various imaginaries have been constructed to render the corporate form meaningful, real and consequential. We identify three imaginaries that, we contend, have framed and influenced properties and capacities vested in the modern corporation: the legal, the economic and the political.[3] As will become clear, our view is that that these imaginaries are intertwined, with the effect that they often mutually reinforce and contradict one another. Although analytically distinguishable, they are practically enmeshed.[4] The political imaginary, we will suggest, is a condition of possibility of legal and economic imaginaries that have routinely obscured the primacy of the political.

We adopt the term 'imaginary' to convey the understanding that (i) we have no direct access to the phenomena, including the phenomenon of 'the corporation' itself, which we seek to examine and explicate; (ii) imaginaries are developed to construct, interpret, and scrutinize social phenomena; (iii) imaginaries exert performative effects insofar as they are (partially and selectively) enacted and institutionalized. Whereas the legal and economic imaginaries directly evoke distinct conceptions, and prompt particular enactments, of the corporate form, the political imaginary, as we conceive of it here, is a condition of possibility of the other two imaginaries. Moreover, and relatedly, the political imaginary makes possible the casting of a reflective glance at those conditions as well as a forward anticipation of their consequences. The primacy accorded to the political is pithily stated by Ireland when he relates the rise of the corporate legal form in the nineteenth century to a shift of power to an emergent industrial and financial bourgeoisie:

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

The key point to be drawn from Ireland's analysis is that the (continuous) social (re)construction of the corporate form is accomplished within relations of power which are a condition, but also a consequence, of such constructions.

3 The Modern Corporation

Modern economic organization is heavily dependent upon a distinctive conception of the public limited liability share corporation. This corporate form is "one of the most successful inventions in history, as evidenced by its widespread adoption and survival as a primary vehicle of capitalism over the past century" (Butler 1988, p. 99). At the apex of

the contemporary corporate form stands the huge, multinational firm and its subsidiaries that have come to attract increasing criticisms for their efforts to avoid taxes, the excessive salaries paid to executives and their damaging impacts upon the environment.[5] Many of the potentially problematic effects of the corporate form—notably, with regard to its capacity to concentrate wealth and power and its capacity to circumvent inheritance tax—have been acknowledged since the early thirteenth century (Post 1934; Micklethwait and Wooldridge 2005). In recognition of this status, the corporate form was held under sovereign control until the late eighteenth century (McLean 2004) when pressures to expand and fund imperialist geopolitical ambitions slowly but steadily divorced the corporate form from direct political control by the sovereign (Johnson 2010; Neocleous 2003). In the nineteenth century, political restrictions were further questioned and loosened. Relaxations and occasional tightening of state-mediated political restrictions have ebbed and flowed in the twentieth and twenty-first centuries (Bowman 1996). Following the financial crash of 2007 and 2008, for example, the activities and tax affairs of major financial corporations have reemerged as an object of significant public interest, contestation, and calls for improved regulation (Veldman and Willmott 2016).

Historically, arguments for efficiency and/or improved access to capital (Chandler 2002) have been invoked to promote and to account for the displacement of partnerships by the modern limited liability corporation (Guinnane et al. 2007). Similarly, it has been argued that contemporary accounts of corporate governance foreshadow an end of history for corporate law (Hansmann and Kraakman 2000). In such teleological accounts (see Khurana 2007), a dominant (e.g. economic) imaginary is seen to foster an 'optimal' or inevitable organizational form (Ireland 2010, pp. 837–838), thereby obfuscating deep disagreements regarding the processes—evolutionary or contested—through which corporations developed during the nineteenth and twentieth centuries (Carroll et al. 2012; Johnson 2010). Those disputes have their echoes in contemporary debates about the relative merits of the incorporated, limited liability conception of the corporate form in comparison to other possibilities, such as cooperatives or partnerships. Key to grasping and interrogating the corporate form within the political imaginary, is an appreciation

of the dynamics of contestation in which diverse parties (e.g. investors, industrialists, policy-makers, labor representatives, NGOs, etc), acquire and mobilize material and symbolic resources in struggles to institutionalize, deinstitutionalize, and reinstitutionalize preferred versions of the corporate form (Bowman 1996; Johnson 2010; Nace 2003). Traces of this dynamic are evident in the diverse attributes invoked to characterize the corporate form, such as 'entity', 'subject', 'agent', 'aggregation of individuals', 'nexus of contracts'. We now take a closer look at the genesis of these notions.

4 The Legal Imaginary

The role of the state in the establishment of modern corporations is seminal and remains significant today. A charter provided by the state initially enabled distinct, corporate entities to undertake a (very limited) range of activities—such as building roads or canals—where these activities were assessed to yield substantial public benefit.[6] In contrast to other not-for-profit corporations, the *chartered business* corporation was permitted to make a private profit for investors in it, but their liabilities were also typically *unlimited* well until the nineteenth century. The granting of a charter thus facilitated private funding of the provision of public goods in a way that, in principle, retained close public oversight of such business ventures—by granting a charter that could be retracted, and by making partners ultimately responsible for losses. From these beginnings, the history of the corporation has been one of contestation—with regard *inter alia* to the granting of limited liability to corporations and the justification for placing limits on the range of activities undertaken by chartered corporations, as well as to concerns about corruption associated with the granting of monopolies, and the respective merits of the legal form of the partnership versus the corporation (Horwitz 1985; Johnson 2010).

The partnership, as a legal form, is distinguished by the indivisibility of its assets and the partners who invest directly in it. Since there is no separation between the assets of the entity and those who own it, partners are jointly liable for the actions of each of the partners; the assets of the

partnership can be seized by the partners' creditors[7]; and partner's shares carry considerable residual liabilities, making it challenging to sell such a share. As all partners are directly exposed to these types of liability, there is a material incentive for them, regardless of whether they are practicing partners or passive investors, to pay close attention to the actions of partners; and to pay attention to the liabilities (e.g. debts) of fellow partners as well as those of the partnership (Veldman and Willmott, fc, management chapter in CUP book). Moreover, because the partnership would be dissolved at the death or exit of a partner, the time horizon for a partnership and its operations in nineteenth century UK environment would be limited, typically about 15 years.

The *public limited liability joint stock corporation* is constructed in the legal imaginary as a separate legal entity that holds the assets and liabilities. The importance of this legal 'entity' in the legal imaginary can hardly be overstated, as it endows the corporation with a perpetual legal status and representation—independent of the investors, managers, or partners—that was not previously available to partnerships. Over time,[8] this legal 'entity', has also been endowed with attributions of ownership, rights, and protections in the capacity of legal 'subject', 'person', or even 'citizen'. Moreover, the legal entity has been endowed with an (agential) capacity[9]—a capacity which, importantly, enables it to contract in its own name and to own other such entities. This last capacity is highly significant for the development of capitalism as it has enabled, as a consequence of processes of acquisition and merger, economic activity to become concentrated within a small number of very large corporations (Chandler 2002; Hannah 2010). It is the modern corporate form, and not the partnership form, which has come to exert a powerful, monopoly-like influence over many areas of economic activity nationally and, increasingly, globally.[10]

Apart from such direct attributions of perpetuity, agency, ownership, rights, and protections, the notion of the 'entity' is also important. That is because, in contrast to the partnership, in the *public limited liability joint stock corporation* it is the legal entity that 'holds' the assets and liabilities of the corporation. This provides the basis for a very specific idea of ownership and liability in which the personal assets and liabilities of shareholders are divorced from the assets and liabilities of the corporation.

Since the assets, patents, investments, and liabilities are 'held' by the 'entity', they are "locked-in" and cannot be touched by the shareholders. The full separation of shareholders from the corporation's assets and liabilities means that shareholders cannot simply get hold of the assets that are 'held' by the entity. The legal entity thus provides a reciprocal protection against other shareholders, which means that passive shareholders especially are, in principle, far better protected against direct expropriation by other (controlling) shareholders than they would be in the partnership.

The attribution of assets and liabilities to the entity is accompanied by an assumption that the assets it holds are to be used for the benefit of 'the corporation'. Because the legal entity stands in for 'the corporation' as a whole, the assumption is that the legal entity represents the interests of the corporation per se. The notion that the legal entity or corporation has interests, separate from the controlling shareholders or the executive managers, is of particular interest to minority shareholders as it protects them against the imposition of single-focus strategies by controlling shareholders and executive managers; and it directs executive managers to use corporate assets in a way that will serve the corporation as a 'going concern'. Such notions of a going concern arguably focus on directing corporations in relation to long-term strategies for ongoing wealth creation (Biondi et al. 2007).

The assurances that, in contrast to the partnership, the corporation will not be dissolved at the exiting of every shareholder-partner; that corporate assets cannot be easily embezzled by individual (majority) shareholders; and that the assets held by the corporate entity will be used for the development of the corporation as a going concern, rather than for executive remuneration or shareholder payouts—all of these factors are not just of interest to minority shareholders, but also to other constituencies, notably creditors, but also employees, who depend on such notions for the protection of the implicit aspects of their contracts. In short, the legal imaginary of a corporate 'entity' provides important protections to a variety of constituencies (Deakin 2012).

It was also the notion that the corporate entity, and not the shareholders, holds corporate assets and liabilities which provided the basis for a general application of limited liability for private corporations in the

mid-nineteenth century (Djelic 2013; Handlin and Handlin 1945). The development of limited liability was followed by the removal of residual liabilities from shares, such as the requirement that shareholders could be called upon to provide extra capital. Removing those requirements led to the development of fully paid up shares that made possible the liquid trading of shares in a secondary share market. The shares traded by the end of the nineteenth century are entirely different from the shares that partners had previously held in the partnership, as they function as financial 'coupons'. They do not carry residual liabilities and they are formally detached from onerous ownership functions as management or control. Again, the contrast with the partnership form is instructive. Partners are subject to liabilities, including those incurred by fellow partners. In contrast, the grant of limited liability to the corporation and the development of the new ideas of shares "[…]permits a man to avail himself of acts if advantageous to him, and not to be responsible for them if they should be disadvantageous; to speculate for profits without being liable for losses" (Edward Cox 1856, cited in Ireland 2010, p. 844).

The overall picture is that the modern corporate form is altogether a very different legal and organisational construct to that of the partnership form. The legal imaginary of the legal 'entity' establishes a fundamental distinction between the corporation and the stockholders. This distinction is the basis for many legal and economic privileges and protections, but it also creates a highly specific institutional background for the conceptual creation, justification, and legitimation of the corporate form.

Contrary to what advocates of agency theory and shareholder value may assume or conjecture (to be discussed below), the legal imaginary challenges the widely rehearsed wisdom that the corporate form is 'owned' by, and is therefore at the disposal of, its shareholders as a prioritized constituency whose interests it is obliged to pursue and promote (Allen 1992, p. 265; Crouch 2011, p. 136). Crucially, in the legal imaginary, the legal entity implies a structural separation of the functions of ownership, management, and control so that shareholders do not and cannot 'own' the corporation.[11] Shareholders do enjoy a limited set of rights, and in UK Company Law this includes the formal and potentially substantial responsibility of electing boards of directors. But their legitimate influence does not extend to exercising any direct rights over the assets of the

corporation. Nor are shareholders legally the primary residual claimants of corporate revenues or assets. If bankruptcy strikes, it is the creditors who have the first claim in the legal imaginary. This works the other way around as well: if a breach of health and safety regulation occurs and a penalty is exacted, the fine is not levied on the assets of investors or the managers. Instead, such charges are exacted upon the assets of the corporation. In addition to a structural separation from claims to direct ownership, this means that, in principle, shareholders have limited options to exercise pressure on boards in relation to the determination of strategic issues. That is because such actions place in jeopardy the justification for the benefits of the separate legal entity, most notably limited liability.

In combination, the radical divergence from the partnership form provided by the legal entity; the specific properties and protections provided by this legal entity; and the specific ownership and control structure it puts in place, serves to explains why, in the legal imaginary, shareholders are not seen as having direct or primary claims on the corporation. Instead, the corporate form, *qua* entity, can have multiple 'owners' or 'stakeholders'; and these stakeholders may have a variety of 'investments' in its formation, development, and continuation (Biondi et al. 2007; Ireland 2005, 2009, 2010; Robé 2011; Stout 2012). It is for this reason that, in the legal imaginary, the *legal* duty of CEOs, board members and senior executives is *not* to act exclusively or primarily on behalf of shareholders or to maximize shareholder value. Instead, the legal obligation is to act "in the best interests of the company" (Parkinson 2003, p. 493)—a duty that extends to all those deemed to have an investment in the corporation (Biondi et al. 2007; Robé 2011; Veldman and Willmott 2015 (HR)). As conceived within the legal imaginary, the corporation *qua* legal entity has "responsibilities to a *range* of constituents, including shareholders as well as employees [including managers], customers, creditors, and the general public" (Ciepley 2013, p. 147, emphasis added).[12]

This understanding of the corporation as a legal entity is not overturned by an economic imaginary that, as we will see shortly, focuses on efficiency or social utility. It is not overruled by the idea that shareholders are the principal beneficiaries of the limited liability corporate form on the grounds that they provide a more productive, but also more risky, class of corporate assets, in the form of capital. Nor, however dominant it

may become, does the idea that the use of equity capital leads to optimal social utility (see Aglietta and Rebéroux 2005) defeat the point that the structural conditions which provide the legitimacy for the corporation in the *legal* imaginary are directly connected to the idea of an 'entity' that holds ownership over corporate assets.

5 The Economic Imaginary

The economic imaginary poses an alternative to, but does not override or overturn the legal imaginary. As we saw in the previous section, the legal imaginary of the corporate form provided a very specific notion of an 'entity' that produced beneficial outcomes to the company and the shareholders, including a host of direct attributions of agency, ownership, rights, and protections; a perpetual time horizon for the legal recognition of the company; significant expansion of de facto time horizons for the company and its operations; significant safeguards for shareholders and creditors by setting the conditions for a specific ownership and control structure; provision of conditions for the application of limited liability; and provision of a liquid status for stocks, and thereby the conditions for the creation of a liquid stock market. Were the economic imaginary to reject the legal entity altogether, these advantages would be at risk. For this reason, in the economic imaginary, the 'entity' is retained, but is backgrounded and domesticated as an inconsequential 'legal fiction'. In this process, the economic imaginary shifts attention *away from* the legal imaginary, where the role of executives is to safeguard and expand the assets of the corporation on behalf of a wide range of stakeholders; and it shifts attention *towards* the material interests and right of control ascribed to investors (Aglietta and Rebérioux 2005).

The economic imaginary accords greatest significance to the superior efficiency of the corporation as an organizational form (Hanssman and Kraakman 2000)—for example, in terms of reduced transaction costs compared to markets. Rational economic justifications for the modern corporation, as advanced by the economic imaginary, also underscore how, for example, perpetuity and the ownership of assets by the legal entity provide distinct benefits. In comparison to the partnership, there

is, as noted in the previous section, less need to maintain substantial but unproductive liquid resources, with the beneficial outcome that those resources are available for investment in productive processes, thereby reducing the cost of capital in relation to prospective returns. As a consequence of shares being tradable, the joint stock company is, as also noted above, seen to bring the benefit of greater liquidity. Moreover, and again in comparison to the partnership form, the recurring liquidation and exchange of firm assets introduced by the partnership form is avoided. Higher returns can be expected as less provision must be made for claims upon assets.

In the economic imaginary, these economic advantages are calculated comfortably to offset the downside of surrendering any direct legal claim on the assets of the modern corporation. Nonetheless, *in the absence of limited liability,* shares are less easily tradable on account of carrying a residual risk. Under these conditions shareholders are obliged to safeguard the value of their shares by expending time and effort in understanding and monitoring the business (like members of a partnership). *Limited liability*, then, makes investment in the business corporation more appealing than investment in a partnership because it reduces transaction costs in relation to share ownership and share trading.

The economic imaginary identifies benefits of limited liability, but it also highlights a significant drawback. This can be illustrated by the post-1970s economic imaginary that raises questions about the 'value' received by 'shareholders'. In this imaginary, concerns have been expressed about shareholders' dependence upon the competence, in addition to the loyalty, of salaried executive managers who are identified as their 'agents'. When managers are salaried employees, and not owners, they may be seen to lack sufficient incentive to prioritise returns to investors. Instead, they may merely 'satisfice' performance and/or engage in job-securing or empire-building projects. That managers are imagined to lack sufficient inducement to safeguard and maximize the interests attributed to shareholders points to the presence of an 'agency problem', for which the favoured solution developed within the economic imaginary is the introduction of incentives in the form of stock options and (short-term) performance-related bonuses. The introduction and/or raising of these

incentives is intended to align executive decision-making with the maximization of shareholder value (Khurana 2007).

In this contemporary (principal-agent) economic imaginary, there are three inter-related departures from the legal imaginary. *First,* the corporation is typically cast as a 'nexus of contracts': a nexus of on-going contractual relations among the self-interested, atomistic individuals who comprise its factors of production (Bratton 1989). Imagining the corporation as a continuous process of contract negotiation, and as a nexus that seamlessly extends into a broader market, means that non-market forms of coordination, such as hierarchy and processes of learning, become comparatively less important. Relatedly, less weight is given to a conception of management as a materially and symbolically privileged element in possession of obligations as well as rights, as defined by a vertical division of labor. Another feature of this first departure from the legal imaginary is the rejection of a view of managers as impartial experts or mediators who apply their expertise to make informed, well-balanced decisions in the interest of wider sets of stakeholders (Veldman and Willmott, fc, management).

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

> Other parties…are regarded as secondary, instrumental participants, and are remitted to contract law or other legal regimes dealing with creditors' rights, employees' rights, consumer protection, or environmental concerns, and so on.

Regardless of the importance of their contribution to a flourishing, dynamic enterprise, the significance of groups other than shareholders and boards is structurally marginalized in the economic imaginary of corporate governance.

Table 1 Key features of the legal and economic imaginaries

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

A third departure from the legal imaginary is the recasting of firm relations within the contemporary, agency-theoretic economic imaginary "in terms of discrete, bilateral contracts. [It] deemphasizes the entity […] To find the firm's essence, [it] looks solely to the behaviour of individual economic actors" (Bratton 1988/9, p. 428). By focusing exclusively on the action of economic 'individuals' as it simultaneously de-emphasises the legal entity, the economic imaginary disregards the central features and issues of the legal imaginary. The distinctive economic benefits of the corporate form are celebrated as teleological outcomes of legal innovation, while the tradeoffs which came with the legal imaginary—notably, the separation of ownership from the ownership of assets that are vested in the legal entity—are downplayed or simply ignored. On the basis of this displacement of the legal imaginary, the economic imaginary of the corporation lends spurious (academic) credibility to the assertion that "public companies should be run predominantly, if not exclusively, in their [the shareholders'] interests" (Ireland 1999, p. 49).

The key features of the legal and economic imaginaries are summarised in Table 1.

6 The Political Imaginary

It is when the claims of the economic imaginary are considered from the perspective of the political imaginary that they are seen to rely upon the displacement of the legal imaginary—a practice that has been

characterized as intellectual shamanism (Ireland 2005, p. 81; Bratton 1989; Robé 2011). Charges of 'intellectual shamanism' point to the contested terrain of the corporate form and its governance. They invite reflection upon the relations of power through which representations of the corporation are advanced, warranted and challenged. For those who invoke the political imaginary

> […] it is important that scholars of corporate governance do not permit deeply political processes to be passed off as the products of a politically neutral, purely economic logic or allow the distributional dimensions of corporate governance to be spirited off the agenda… (Ireland 2005, p. 81, emphasis added).

The political imaginary gives primacy to relations of power, formulated primarily in terms of class, and of contests between fractions of capital, in which legal and economic elements are conceived as a medium as well as an outcome of relations of domination and subjugation. Within the political imaginary, the key to understanding the historical emergence and subsequent development of the corporate form is neither economic efficiency nor refinements, or teleological accounts, of legal theory. Rather, the emergence and development of the corporate form is understood to be a condition and a consequence of shifts in power relations between, and also within, groups that mobilise available resources, as they establish, consolidate or transform relations of domination from which they endeavour to gain material and symbolic advantage (see Johnson 2010; Wilks 2013).

The political imaginary supports, for example, an account of the modern corporate form in which its emergence is linked directly to the priorities of a *rentier* class. This account is specifically informed by the understanding that the partnership form was appropriate and viable for all but a few business ventures prior to the early nineteenth century (Johnson 2010; Mclean 2004). Historically, the exception of incorporation was granted only where a public benefit was clear; where the risks were exceptionally high; and/or where the activities of the business could be readily routinized. It was only in such exceptional circumstances, as Adam Smith (1998[1776]) argued, that the rewards of the corporate

form, in terms of prospective public benefits, would conceivably outweigh the risks of 'negligence and profusion' invited by the risks of replacing the partnership with the corporate form. From the perspective of the political imaginary, the risk takes multiple forms. In addition to executives' potential misuse of the investments made by many stakeholders in the corporation, there is also the risk of the prospective irresponsibility of investors who, as a consequence of their option to dispose of their shares in a secondary market when performance dips, are disinclined to take a close interest in how corporations are run. Moreover, such risks are, by default, increased by a lack of (potential for) oversight and control by other parties—the public, the state, supranational political units, etc.—with a direct interest in determining the direction and purpose of corporations (Veldman 2013; Veldman and Willmott 2016). In recent years, there have been numerous individual and systemic examples of 'negligence and profusion', as anticipated by Smith, that have shown what is at stake for diverse stakeholders.

Specifically, the political imaginary invites consideration of how (i) the development of the modern corporate form was not a result of received legal and political wisdom and always retained a very unsatisfactory theoretical status; and, therefore, was never a 'natural' step in a process of organisational evolution or a teleological development toward a more effective organization of finance and ownership (Roy 1999); (ii) the host of properties and protections that have benefitted *rentier* shareholders foremost rest on a conception of the corporation as an organisational form that potentially presents significant risks to broad sets of stakeholders; and (iii) the corporate form, along with the properties and protections it provides, has historically been an object of contestation for that reason (see Bowman 1996; Johnson 2010). This introduces the questions why central features of the modern corporate form, such as the corporate concession, which presents political risks when applied to private ventures, was nevertheless deemed fit to be freely obtainable; why limited liability was granted as a generally accessible privilege, even though this was a highly contested grant at the time; and why the 'entity' was endowed with such broad attributions of agency, ownership, rights, and protections on the basis of questionable theoretical justifications.

Both informed by and in pursuit of such concerns, the political imaginary focuses on the group or groups that wield sufficient influence and/or stand to benefit most from the development of the modern, limited liability corporate form. We contend that, prior to its establishment, investors could risk their fortunes by forming or joining[13] partnerships but, crucially, mitigating the personal risks associated with joining the partnership necessitated their close and questioning involvement in management (Veldman and Willmott, management, fc). The other limitation of partnerships is that, for investors, they yielded slim returns as rates were pegged by usury laws (until 1854) while alternatives, such as gilts, also offered unexciting returns. It was members of the growing class of (*unlimited* liability) shareholders who, during the early nineteenth century, were rapidly expanding in numbers and influence, who found the prospect of the *public limited liability corporate form* highly attractive as it offered a large number of legal and economic advantages in comparison to the partnership (Johnson 2010). The subsequent creation of a liquid market in shares meant that if the actual or anticipated yield became less attractive, there was always the option to sell the coupons (Veldman and Willmott, fc, management). In turn, the increased tradability of these coupons facilitated the distribution of capital across a portfolio of investments, and thereby further reduced investor risk. In short, the establishment of the modern corporate form, with the protection afforded by limited liability, enabled *rentier* investors, at least in principle,[14] to secure comparatively risk-free returns on their capital by enjoying capital appreciation and/or dividends without the demands, costs, risks, or responsibilities of overseeing, or even inquiring into, how their gains were generated.

This analysis does not deny or exclude the appeal of limited liability for stimulating rapid economic growth or the positive material benefits of expansion for an emergent middle class of comparatively privileged (white collar) wage workers—that is, managers (Chandler 2002; Djelic 2013; Pollard 1968). But it does emphasise how the 'push' for the development of this new organisational form was aligned most directly with the material interests of an emergent class of investors, and with the agency of politicians and professionals who served to

articulate and advance their concerns and priorities (Johnson 2010). Nor does this analysis disregard how the position of the modern corporate form and its creation of the conditions for modern shareholding remains politically contingent as well as historically dynamic (Djelic 2013). There are no guarantees that the situation will be maintained, as occasional calls for the mutualization and nationalization of corporate assets attest. Nor, finally, does the present analysis ignore how, as circumstances change, calls for restrictions upon speculative investment activity may prove politically irresistible, resulting in a (re)imposition of regulations to redress what is regarded as their earlier, and excessive, relaxation.

Instead, this analysis invites consideration of the *effects* of the development of the modern corporate form, and to understand these in relation to the interests of a range of stakeholders. The capacity of the corporate form to transform economies showed itself most dramatically between 1890 and 1910, when the UK and US economies consolidated to a massive degree (Chandler 2002; Hannah 2010). This consolidation led to a strong dispersal of shareholding positions and drew in increasing numbers of comparatively small shareholders (Johnson 2010), resulting in a degree of 'socialization' of the ownership of the corporation (Roy 1997). The increasing dilution of strong blockholding positions actualised the theoretical split between the functions of ownership, control, and management that the legal changes of the mid-nineteenth century made possible (Veldman and Willmott, fc). As a consequence of the dilution of the capacity of shareholders to exercise direct control, and with an increased ability for executive managers to obtain funding from sources other than share markets, executive managers were correspondingly empowered to take control over these emerging corporate empires. A 'managerial revolution' (Berle and Means 1932; Burnham 1962[1941]) was perceived to be the outcome of these *de jure* and de facto shifts of control to executive managers.

In whose name or on whose authority these executive managers operated was, and remains, a contested question. The dilution of the capacity (and willingness) of shareholders to exercise control and oversight meant that these managers were increasingly seen to have the capacity

to prioritize and pursue objectives—self-interested as well as public-interested—that departed from those attributed to shareholders.[15] For Berle and Means (2007[1932]), the legitimacy for the corporate form itself, the oligopolistic reconstitution of the economy it had helped to bring about, and the lack of oversight by shareholders were reasons to argue that managerial control over these corporations required explication and justification (Moore and Reberioux 2007). It was anticipated that, with the advent of 'managerial capitalism', the attention of managers would shift, progressively and irreversibly, toward a broad 'public purpose' conception of the corporation whose goals, and, concomitantly, its proceeds would be directed to mitigation of a broad range of issues (Berle 1954, 1959; Drucker 2006[1946]; Kaysen 1957).

This was the backdrop to the emergence of a broad consensus, institutionalised in a post-War settlement, where a selective embrace of Keynesianism became reflected in increased state subsidization and intervention in the private sector (e.g. the expansion of a military-industrial complex, see Marens 2012). It has been suggested that the effects of this settlement were such that, by the 1960s, even in the US "little was left of the classical corporation. Its internal dealings with shareholders and its debtor-creditor relations were substantially regulated by the federal securities acts. Its labor relations were regulated by the new federal labor laws. Its relations in the general market with consumers and suppliers became increasingly regulated by the antitrust laws[…]" (Hovenkamp quoted in Tsuk 2003, p. 1897). Such was the appeal of the idea that the corporate form could be harnessed to provide positive outcomes for a wide range of stakeholders, and such was the myopia or complacency of the left (Bowden 2001), that between the 1940s and the 1970s, the relevant political challenge was not considered to be the reform of company law to cement these changes as the latter seemed irreversible (Ireland 2009). Rather, the focus was on the fuller realisation of the benefits of the 'managerial revolution'. This vision involved the selection and development of a cadre of scientific and impartial corporate executives, trained in newly established business schools, to represent the interests of multiple stakeholders (Drucker 2006[1946]; Khurana 2007).

That the realization of the 'managerial revolution' and the trumpeted redirection of corporate purpose and value was shallowly rooted if not

wholly illusory became evident in the 1970s. The allegiance of executives to managerialism was tested in the 1970s and subsequent decades when a "perfect storm" developed comprising a mounting fiscal crisis, diminishing returns to investors, and disillusionment with what was increasingly construed as the smothering attention of a bloated and unsustainable nannying state. In the face of these developments, there were some calls for a strengthening, or further extension of, the 'managerial revolution' but these were drowned out by those who seized upon economic decline and fiscal crisis presented as a long-awaited awaited opportunity to re-establish market discipline and revitalise shareholder primacy.

Proponents of the counter-managerial revolution attributed flagging growth to the dampening effects of Keynesian full employment policies, disempowering welfare provision, and extensive state ownership. From the 1980s, this rhetoric led to extensive deregulation and liberalization. In combination with the dismantling of Bretton Woods,[16] international capital flows increased and accelerated, thereby hastening the concentration of shareholding in financial institutions, investment funds, including pension funds, hedge funds and sovereign wealth funds—all of which were a condition and a consequence of a rapid expansion and domination of financial markets (Davis 2009; Epstein 2005; Krippner 2012).

What, then, were the effects of this counter-revolution upon the modern corporation? Concerned to reassert the discipline of the market, a dyadic conception of corporate governance has been generated, inspired by agency theory, that, in effect, is attentive only to the relation between shareholders and boards. To refocus managerial attention on the interests of shareholders, a number of means have been mobilised, such as stock options and other forms of financial incentives (e.g. performance bonuses), in addition to performance measures (e.g. shareholder value metrics). Seeking a closer alignment between 'agents' (corporate managers) and 'principals' (shareholders), these inducements have been introduced to (re)impose market discipline as a remedy for weak economic performance. As corporate managers were returned to an early nineteenth century position of recalcitrant but tractable servants of shareholders (Veldman and Willmott, fcmanagement) the degree of autonomy that had been enjoyed by executives during the post-War years was drastically

reduced as the tiller of economic development passed from executives and state bureaucrats to the rentier investors (Ireland 2010).

The politico-economic reorientation of corporate governance with shareholder demands became increasingly visible in the post-1970s era, as an overriding concern with shareholder value (Lazonick and O'Sullivan 2000, p. 16) came together with the widespread use of leveraged buy-outs and M&As to restructure the corporate landscape. In combination with the increasing use of corporate profits for dividends and stock buybacks, these developments produced a massive redistribution of social wealth. From the 1950s through to the mid-1970s, companies, on average, directed 45% of their after-tax profits to dividend payments. Even in 1981, corporations still directed a little less than half their profits to shareholders.[17] Yet, between 1990 and 1995, nonfinancial corporations paid out 78% of their after-tax profits as dividends (Henwood in Newfield 2008, p. 128)—a trend that shows little sign of reversing. For the US, between 2003 and 2012 dividend payouts went to 37%, and share buybacks constituted 54%, giving a total of 91%.[18] For the 86 largest companies that appear in the S&P Europe 350 Index, the equivalent figure is 89% during 2001–2010, with dividends payout at 63% and share buybacks at 26%.[19]

In sum, the political imaginary highlights the contingency of the development of the corporate form and attends to the distribution of the benefits derived from this specific legal construct. Keynes (2007[1936]) declared that finance should be the servant, not the master. In its post-1940s incarnation, the modern corporate form broadly complied with this injunction: shareholder interests were accommodated but not exclusively privileged, while a technocratic and public-spirited idea of managerial control over these massive institutions that had transformed the UK and US economies was supported by a broad range of actors (Khurana 2007). From the 1970s onwards, the sidelining of a legal imaginary that had provided the basis for the exercise of managerial control meant that effective power over the corporation shifted to (mostly institutional) market parties, such as pension funds, hedge funds, private equity funds, and sovereign wealth funds. As a result, the corporate form, once again, became harnessed to the priorities of shareholders, notably in the pursuit of short-termist private wealth accumulation.

7 Concluding Remarks

We began with the claim that, in management and organization studies (MOS), there are few issues more critical than the modern corporate form. Corporations are potent enablers of collective action. Whatever the corporation is conceived, or imagined, to be, informs how corporate practices are established, enacted, taught, legitimized and changed. Multiple and competing imaginaries, we have argued, are influential in the constitution of the corporate form—an influence that is evident in its theoretical instability, the shifts between different imaginaries, and in the practical effects that follow those shifts.

Engaging a political imaginary helps to explicate how, in the legal 'imaginary', the corporate form is conceived as a construct that features as an 'entity', 'subject', or 'person'; and it illuminates how the legal imaginary has produced a very specific legal and organisational form which creates very specific privileges as a consequence of the attribution of perpetuity, ownership, agency, rights, and protections. The political imaginary also attends to how the legal imaginary of the corporate form provides ways to advance and represent the claims made by different parties (see Biondi et al. 2007; Deakin 2012). Most importantly, the political imaginary recalls how, in the legal imaginary, the corporation cannot be understood as a simple asset over which a particular group (e.g. partner-shareholders, rentiers, or managers) can legitimately claim ownership or control. That is because, legally, the corporation is an 'entity' that holds ownership in and by itself (Robé 2011). Because the very condition for the creation of the assets ascribed to the 'entity' is the contribution(s) made by diverse stakeholders (e.g. as suppliers, creditors, employees, etc.), both past and present (Biondi et al. 2007; Deakin 2012; Williams and Zumbansen 2011), the separate legal entity is conceived to represent "a network of social and productive relationships" (Ireland 1999, p. 56; see also Gindis 2009). The (re)production of this 'network' (ibid) depends on the participation of a wide diversity of stakeholders in the creation and reproduction of those assets (see Paranque and Willmott 2013). Attributing assets to a corporate entity serves, in this instance, to recall how *corporate assets are indivisibly social, and not private, property.*

The political imaginary helps to show how, in the economic imaginary, the legal status and effects of the corporate form are formally acknowledged but substantively disregarded as it is relegated to the status of a 'legal fiction'. The displacement of the legal imaginary by the economic imaginary has practical significance as it obscures the basis for the separation of (i) ownership of shares from (ii) ownership of assets and from (iii) corporate control (Ireland 1999; Bratton 1989; Ireland 1996; Robé 2012). More specifically, the displacement derogates the role of executives as the 'trustees' of institutional assets and ignores how their fiduciary duties are towards 'the company', not (just) to 'the shareholders' (Armour et al. 2003, p. 537). More broadly, the displacement of the legal imaginary removes the basis for the legal and economic benefits of the corporate form (e.g. limited liability) and the justifications for those benefits.

By exposing the contingency and partiality of the dominant, economic imaginary, the political imaginary debunks the latter's apparent self-evidence and neutrality, making it vulnerable to radical challenge rather than supine endorsement (Veldman and Wilmott 2016). It challenges corporate governance theory and policy that: identifies shareholders as the sole 'principal' to whom managers are held accountable (Veldman and Willmott fc, management); commends incentive structures (e.g. stock options) established by 'principles' (shareholders) to control their 'agents' (executives) leading to a myopic focus on short-term results (Davis 2009); and frames enhancement of corporate governance exclusively and limitedly in terms of the capacity for monitoring and control by (institutional) shareholders by extending financial information flows, by improving the role and training of non-executive directors, and by separating the roles of the chairman and the CEO, etc. (Veldman and Willmott 2015, HR). It also challenges corporate governance theory and policy that discounts non-explicit aspects of contracts for all other stakeholders, specifically under takeover conditions (Aglietta and Rebérioux 2005; Deakin 2015; Tsagas 2014). And, moreover, the political imaginary illuminates how the focus of the economic imaginary on shareholder value as a proxy for social utility (Aglietta and Rebérioux 2005) condones the exploitation of tax loopholes (Palan et al. 2010) and regulatory arbitrage (Overbeek et al. 2007); and shows how this focus also ratchets up the payouts for shareholders and managers through the

raising of dividends and stock buybacks (Lazonick 2000) at the expense of other constituencies and interests.

To counter these developments, it is necessary to question and resist the diverse but interdependent elements of an economic imaginary that assigns control over the corporate form to shareholders, and thereby promotes the priorities of a dominant class which has harnessed the corporate form for its own ends—that is, the private appropriation of corporate wealth (Aglietta and Rebérioux 2005; Lazonick and O'Sullivan 2000). The genius of the contemporary economic imaginary resides mainly in its subversion and reversal of the reforms associated with an earlier debate on the corporation, exemplified in elements of Berle and Means' *The Modern Corporation*—a debate that temporarily opened up a broader, more inclusive perspective on issues of ownership, control, accountability, responsibility, and the purpose of corporate governance (Moore and Rebérioux 2007).

Engaging the political imaginary draws attention to how the contemporary economic imaginary is central to the systemic exclusion of voices other than shareholders and directors from the theory and practice of corporate governance. It attends to how the dominance of the economic imaginary has been instrumental in the production and widespread naturalisation of externalised costs (e.g. pollution and global warming) that improve the corporate bottom line, and so strengthen short-term shareholder returns but also contribute directly to the major problems facing the world today, including massive and growing economic inequality, largely unchecked environmental degradation, and rapid climate change. Studying the nature and governance of corporations, as outlined above, can assist proponents of MOS to engage critically with these issues.

Notes

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

2. Whilst there is a measure of agreement about its rise to dominance and economic influence from the end of the nineteenth century (Chandler 2002; Guinnane et al. 2007; Horwitz 1985; Roy 1999) there are marked differences of understanding about the nature and significance of the corporate form amongst specialists in legal studies (Freund 1897; Dewey 1926; Ireland 2003; Laufer 1994; Lederman 2000; Naffine 2003; Wells 2005), economics (Jensen and Meckling 1983, p. 14), corporate governance (Bratton and McCahery 1999, p. 5), political science (Bowman 1996; Ciepley 2013), and organization theory (Schrader 1993, p. 1).
3. We acknowledge that additional imaginaries might be identified—such as the moral imaginary that, today, animates the social responsibility attributed to corporations, in addition to conditioning both the legal and economic imaginaries. We also acknowledge that in the use of the concept of the 'political imaginary', we focus on the political aspects of the contemporary concept of the corporate form, rather than its development in relation to the direct political constitution of and control over the corporate form that determined the development of the concept up until the start of the nineteenth century (Veldman 2011). Finally, we acknowledge that different legal systems and historical developments place different constraints on the concept of incorporation. A rich scholarly field has developed around these differences, comparing the resultant governance systems and their relative effects (Guinnane et al. 2007; Gourevitch and Shinn 2005). However, there are two arguments which suggest that these differences are marginal compared to some underlying similarities. *First*, the contemporary concept of incorporation has developed in a strikingly similar way all over the world in almost exactly the same time-frame (Bowman 1996; Guinnane et al. 2007). As Bowman (1996, p. 291) argues: "the corporate reconstruction of the world political economy in the late twentieth century(…)appears to be modelled on the corporate transformation of North American society in the early-to-mid-twentieth century." Although national and regional differences can be found in the precise understanding of incorporation, the major points by which incorporation diverges from other, forms of business representation in legal systems

worldwide are unwavering. *Second*, as we make clear in the economic imaginary section below, the adoption of a contractual model of the corporation has, after the 1970s, spread a uniform understanding of incorporation across the world. This has, in turn, made it almost impossible to conduct business internationally without acknowledging and accepting the assumptions behind the Anglo-American concept of incorporation (see also Guinnane et al. 2007, p. 690). For these two reasons, we consider the contemporary concept of 'incorporation' to be internationally embraced: a specific form of incorporation, characterized as the modern western limited liability share corporation, which emerged principally from Anglo-American legal and economic origins in the nineteenth and twentieth century.

4. Our notion of the imaginary is loosely compatible with Laclau's (1990) concept of the (social) 'imaginary' which, for him, 'structures the field of intelligibility' and is therefore 'the condition of possibility for the emergence of any object' (ibid, p. 64). In our case, the corporate form is the emergent object which is articulated within the legal, economic and political fields of intelligibility.
5. By the end of the twentieth century, about half of the world's trade was conducted between such firms (Kobrin 2006, p. 220). Twenty-nine corporations then appeared in the list of the world's largest economies (Chandler and Mazlish 2006; Goodwin 2006, p. 135); and these firms alone hold 90% of all technology and product patents worldwide (Dine 2006, p. 152).
6. It is relevant to note that the corporate form was granted to other entities, such as town, universities, colonial settlements etc. before it was bestowed upon private ventures (Arrighi 2010; Gindis 2009). This enabled such entities to make contracts in their own name, and against assets assigned to them, rather than in the name of individuals (see Maitland 2003; Post 1934; Williston 1888).
7. Upon the retirement or departure of a partner, there is a substantive or formal liquidation of assets to which partners have priority access, depending upon whether a new partner can be found to purchase the departing partner's share of the assets.
8. It is relevant to note that the corporate form did not appear overnight. Initially, it was barely distinguishable from the partnership but

over a period of approximately 50 years, it took on a distinctive identity that is central to 'the modern doctrine of separate corporate personality, with its reified corporations and "complete separation" of shareholders and the company' (Ireland 2010, p. 847).

9. This 'entity' has become consolidated in the legal imaginary as a reified singular construct with attributions of agency, ownership, and rights and by the end of the nineteenth century was understood as a full legal 'subject' or even 'person'. Anthropomorphic imagery is widely engaged in both American (Ciepley 2013; Johnson 2012) and British (Wells 2005) contexts. On the basis of such imagery, the corporate form has been endowed in the USA with a large set of amendment rights (Veldman and Parker 2012). There are, of course, questions to be raised about a legal imaginary which conceives of the corporation as a discrete entity or 'subject' with powers of agency, ownership, etc. abstracted, or differentiated, from its members. In this paper, however, we focus on the performative effects of different imaginaries, and thereby contribute to a debate about the consequences of these imaginaries, rather than devote more attention to their ontological or epistemological justification.
10. It has also enabled the profusion of opaque international control and finance structures (Palan et al. 2010), and unclear attributions of liability (Ackroyd and Murphy 2013).
11. See https://themoderncorporation.wordpress.com/company-law-memo/ for a statement written and supported by leading company lawyers to this effect.
12. In conceptions of the corporate form which prevailed from the 1930s until the 1970s the legal imaginary led to the view of the corporate form as a 'quasi-public' type of representation (Berle and Means 2007[1932]) which implicitly incorporated a stakeholder conception of governance (Drucker 2006[1946]; Kaysen 1957).
13. Opportunities for joining partnerships, which promised the highest economic returns, were restricted, since most were able to fund desired expansion by ploughing back profits or by borrowing at capped rates.
14. In practice, rentier investors often continued to be exposed to fraud, in part because they declined to take any active interest in the businesses in which they invested (Johnson 2010).

15. But, as Ireland (nd, p. 16) cautions, while managers enjoyed more room to maneuver, they could not afford to ignore or marginalize shareholders or substantially redefine their established markers of performance. Even when external pressures were relaxed, executives willingly imposed similar disciplines upon themselves by developing multi-divisional management structures in which decentralized profit centers competed for capital.
16. The 'Bretton Woods' agreement was established in 1944 as a basis for reforming an international economic system amongst leading capitalist nations. It created rules and institutions (e.g. International Monetary Fund, IMF) which obliged states which ratified the agreement to peg their currency to the US dollar, and for the IMF to 'manage' imbalances. In 1971, the USA terminated unilaterally the convertibility of the US$ into gold, resulting in the end of the Bretton Woods agreement as the US$ effectively became the reserve currency of choice and currencies floated instead of being tied to the US$.
17. http://www.washingtonpost.com/opinions/harold-meyerson-in-corporations-its-owner-take-all/2014/08/26/0c1a002a-2ca7-11e4-bb9b-997ae96fad33_story.html.
18. https://hbr.org/2014/09/profits-without-prosperity and http://www.washingtonpost.com/opinions/harold-meyerson-in-corporations-its-owner-take-all/2014/08/26/0c1a002a-2ca7-11e4-bb9b-997ae96fad33_story.html.
19. http://www.theguardian.com/commentisfree/2012/aug/27/shareholder-payouts-holding-back-prosperity.