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Neoliberalism and the Defence of the Corporation

Nicholas Gane
University of Warwick

Abstract

This article addresses a little-known event in the history of neoliberalism: a conference at Stanford University held in 1982 to reconsider Adolf Berle and Gardiner Means' *The Modern Corporation and Private Property* 50 years after its initial publication. This event is important as it is where key members of the neoliberal thought collective sought to define and defend the powers and freedoms of the corporation. First, this article outlines the political commitments of Berle and Means by considering the core arguments of *The Modern Corporation and Private Property*; second, it addresses key papers from the event published subsequently in the *Journal of Law and Economics*; and third, it analyses the neoliberal defence of the corporation that emerged from these papers, and reflects on the limitations of the work of Berle and Means for developing a response to their neoliberal critics.

Keywords

corporations, firms, libertarianism, neoliberalism, ownership, power, value

In the existing literature on the history of neoliberalism, surprisingly little attention has been paid to corporations. Marion Fourcade and Rakesh Khurana explain this neglect by observing that debate about the spread of neoliberal ideas and governance tools has centred either on transformations of the state and international institutions, or on the importance of intellectual networks such as the Mont Pelerin Society. While these concerns have often been addressed separately, in fact they are part of the same historical project, as the transformation of the state required the formation of networks and think-thinks that connected the intellectual practice of neoliberal economics to corporate funding and interests on one hand, and to mainstream party politics on the other. Fourcade and Khurana do not dispute this, but instead draw attention to a key feature of neoliberal state-market relations that has commonly been missed: that the 'cultural circuits' of

Corresponding author: Nicholas Gane. Email: n.gane@warwick.ac.uk
TCS Online Forum: https:// www. theoryculturesociety.org

capital that legitimize the form and actions of modern corporations are not contained neatly within the boundaries of the state or within the intellectual networks central to the emergence of the neoliberal project, for they also include more mainstream ‘channels’ such as business magazines, consulting firms, and business schools. For this reason, they argue that the ‘neoliberal reconfiguration of firms is not simply derivative of the neoliberal reconfiguration of states or a by-product of the general diffusion of neoliberal ideas’, and, because of this, close attention must be paid to the actions of ‘specific carriers’ of what they call the ‘amorphous space of business discourse’ (Fourcade and Khurana, 2017: 349). This argument suggests that the history of neoliberalism should be expanded to include attention to the `carriers’ of such discourse, and, in so doing, address the role it plays in promoting what Fourcade and Khurana call the `neoliberal common sense of capital’ both within and beyond the academy.

This article seeks, in part, to contribute to this project. Fourcade and Khurana question the channels through which corporate powers have been legitimated and popularized, and, rightly, identify the key ‘carrier’ of such business discourse as Michael Jensen. Jensen has barely featured within historical study of neoliberalism, despite the fact that, from the mid-1970s onwards, he was a central figure in the emergence of new forms of managerial economics that were tied to the establishment and rising prominence of what Fourcade and Khurana call ‘the scientific business school’ (2017: 357–68), as well as to a new economics of corporate law (Gindis, 2020). Jensen, unlike most other key figures in the history of neoliberalism, was not based in a department of economics (for example, Chicago or Virginia) but taught at the Graduate School of Business Administration at the University of Rochester, and then at Harvard Business School (on the significance of both these institutions, see Fourcade and Khurana, 2017: 361–74). While he is little-known outside the disciplinary fields of economics, management, and business, his influence within them is remarkable. His 1976 paper, co-authored with William Meckling, ‘Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure’, is the third most highly cited article within the discipline of economics (see Fourcade and Khurana, 2017: 350), currently with over 100,000 citations listed on Google Scholar. This publication is not an outlier in Jensen’s oeuvre, as his work with different co-authors continues to be heavily cited, including the contribution that is of primary concern to the present article: ‘Separation of Ownership and Control’, which was co-authored with Eugene Fama (Fama and Jensen, 1983a), currently with over 28,000 citations).

While these articles are taught and cited routinely in business schools and economics, the underlying political position of Jensen’s ‘agency theory’ has received little critical attention. This is perhaps because papers such as ‘Separation of Ownership and Control’, at surface level, appear to be little more than a technical contribution to an economic understanding of the structure and management of firms. But beneath this technical veneer there is a strong politics that underpins Jensen’s work. From the mid-1970s through to the 1990s, Jensen was *the* key figure to seek a practical application of Milton Friedman’s (1970) argument, endorsed in turn by Hayek (1967: 312), that the social and perhaps even sole responsibility of business is to increase its profits. Jensen extended this argument by pushing back against calls for increased government regulation of corporations and calling instead for the maximization of shareholder value. Fourcade and Khurana observe that this led to a redefinition of the neoliberal 'common sense' of corporate governance, as agency theory became 'widely institutionalized in the management practices and pay structures of American corporations' (2017: 375) – a development that was embraced by fund managers and investors whose primary concern became the maximization of short-term monetary gains. This, in turn, gave rise to a culture of risk-taking fuelled by new forms of speculation and debt-financing, and by the roll-back of government regulation, with the consequence that 'by the late 1990s America's corporate leaders were drag racing without brakes' (Dobbin and Jung, 2010: 31).

The question that concerns the present paper is how these developments, which have been well-documented, are to be understood within the broader history of neoliberalism, one that includes attention both to the role of the state and to what Fourcade and Khurana call 'intellectual networks' such as the Mont Pelerin Society. The existing literature on neoliberalism has paid particular attention to historical, threshold moments out of which new understandings of (neo-)liberalism were forged and new organizational networks and institutions emerged as a consequence. In particular, two events are seen to be pivotal: the Walter Lippmann Colloquium in 1938, and the inaugural meeting of the Mont Pelerin Society in 1947. The former, which was drawn to attention by Foucault in his lectures on biopolitics (see 2008: 132–3; for the proceedings of the Colloquium, see Reinhoudt and Audier, 2017), is where, following extensive debate over the rights and wrongs of classical liberalism, the term neoliberalism is said to have been coined (although, in fact, Ludwig von Mises had used this term in his 1927 book *Liberalism: The Classical Tradition*; see Von Mises, 2005: 9). The latter, which continued the task of reinventing liberalism following the Second World War, is more significant, as it brought key participants from the earlier Colloquium into contact with North American economists such as Milton Friedman, Frank Knight, and George Stigler. The society which emerged as a consequence, under the initial leadership of Friedrich Hayek, marked a new phase in the organization of the neoliberal thought collective (see Mirowski and Plehwe, 2009), and is still very much in existence today (see https://www.montpelerin.org/).

The argument of the present paper is that there is a third event in the history of neoliberalism that has been overlooked to date, and which is important not simply because it brought together a range of libertarian and neoliberal thinkers to defend the freedom of the corporation, but because Jensen's contribution to this event – in the form of two papers co-authored with Eugene Fama that addressed so-called 'agency problems' – proved, over time, to be decisive: a conference at Stanford University that was held in December 1982 to reconsider Adolf Berle and Gardiner Means' *The Modern Corporation and Private Property* 50 years after its initial publication. This conference, which was sponsored by the Hoover Institution, filled a gap in the activities of the Mont Pelerin Society, as until this point the corporation had only been addressed by two marginal contributions to Society meetings: first, by C.E. Griffin (an American economist who offered professional advice to large US corporations), who presented a paper on 'The Modern Corporation in a Market Economy' to the meeting in Turin in 1961; and second, by A.A. Alchian (the co-author of a widely-cited paper on production and information costs with Harold Demsetz; see Alchian and Demsetz, 1972), in a presentation 'On Corporations: A Visit with Adam Smith' at the meeting in St. Andrews in 1976, a meeting timed to celebrate the 200th anniversary of *The Wealth of Nations*.

The event at Stanford in 1982, which was organized by Thomas Moore, the then Director of the Hoover Institution Domestic Studies Program, was a low-key affair compared to the Walter Lippmann Colloquium and meetings of the Mont Pelerin Society. This said, however, the conference at Stanford was attended by heavyweights of the US economics profession, including George Stigler (president of the Mont Pelerin Society from 1976 to 1978 and winner of the Nobel Prize in Economic Sciences in 1982); Harold Demsetz (a director of the Mont Pelerin Society); and Eugene Fama (winner of the 2013 Nobel Prize). The papers from this event were published the following year in *The Journal of Law and Economics* – a journal that was founded by the Chicago School economist Aaron Director and was edited from 1963 to 1982 by Ronald Coase (his resignation as editor was announced in the issue immediately prior to the one containing the papers from the Stanford event). The resulting special issue of this journal was introduced by Thomas Gale, a staunch defender of corporate freedoms who later argued in his book *Climate of Fear* that energy companies should be free to produce greenhouse gases because 'most people in most places will be better off in a warmer world' (1988: 157). The fact that Gale was chosen to introduce this issue gives an indication of the political values that underpinned the Stanford event, as well as its broader purpose: put simply, to defend the freedoms and powers of the modern corporation against government intervention and regulation.

While the contributors to this event were in broad agreement, politically, as they stood in united opposition to Berle and Means' attachment to Roosevelt and the New Deal, the event provided a platform for a new body of work that was more Coasean in orientation, and which sought to overcome what Berle and Means called the separation of ownership and control by proposing the value maximization of corporations as a solution. While a number of prominent speakers at this event, such as Hessen, largely repeated their existing positions on the corporation, Jensen, Fama, and Oliver Williamson advanced ideas that were still being developed, and which would become more prominent intellectually and, in the case of Jensen, politically, over the following decade. While Williamson would become the key figure of new institutional economics, Fama and Jensen's two contributions were the centrepiece of the 1982 Stanford event, both in terms of the number of citations they received subsequently when published in *The Journal of Law and Economics*, and the influence their 'agency theory' had on the reform and workings of corporate governance through the 1980s (for an analysis and assessment of the real-life impact of Jensen's work, see Dobbin and Jung, 2010). The present article will argue that the 1982 event was central to the formulation of a neoliberal defence of corporate powers and freedoms, one that was based primarily upon principles of value maximization and self-interest. This argument will be advanced in three stages. First, this article will outline the key ideas and political commitments of Berle and Means, and will consider, in particular, the core arguments of Berle and Means' The Modern Corporation and Private Property, as this was the key text around which the 1982 event was structured. Second, it will address the core contributions to this event in detail, paying particular attention to the position advanced at this event and subsequently by Michael Jensen. Finally, this article will question the neoliberal defence of the corporation that emerged from these papers, and will ask, by way of return, whether the work of Berle and Means can be used to develop a response to their neoliberal critics.

Adolf Berle and Gardiner Means: *The Modern Corporation and Private Property*

To understand the reception of Berle and Means' work at the Stanford event, it is necessary, first, to know something about the intellectual and political biographies of these two thinkers. Adolf Berle was Professor of Law at Columbia University from 1927 to 1964 but is best known for working as an advisor to Franklin D. Roosevelt in the years of economic crisis that followed the events of 1929. He was counsel to the Reconstruction Finance Corporation during the New Deal, and later became an Assistant Secretary of State for Latin American Affairs, US Ambassador to Brazil, and a member of Roosevelt's Brain Trust. In the immediate aftermath of the 1929 crisis, Berle was involved in shaping legislation that sought to regulate banking, the stock market and the railroad industry (Krebs, 1971; McCraw, 1990). Berle met Means during his time in the Army Signal Corps around 1917, and later hired him to work on a research project on corporations funded by a grant from the Laura Spelman Rockefeller Foundation, the findings from which were published as *The Modern Corporation and Private Property*. Means, like Berle, had political ties to Roosevelt and the New Deal. Means was an advisor to Henry Wallace (Vice President to Roosevelt and later a nominee for the Progressive Party), first in the area of agriculture and then with the National Recovery Administration. Means went on to work with the National Resources Planning Board and a number of other federal agencies, including the Budget Bureau, before, in his later years, working with the business-led Committee for Economic Development, and then the Fund for the Republic (see Fowler, 1988). Berle died in 1971, but Means attended the 1982 Stanford event and presented a paper on 'Corporate Power in the Marketplace' (Means, 1983a) at the age of 86.

While both Berle and Means published extensively through the course of their respective careers, neither managed to eclipse the early success of their co-authored book *The Modern Corporation and Private Property* (1932). The opening sections of this work address changes in the ownership structures of corporations that started with the shift to general incorporation in the 1830s, and which meant corporations were no longer tied to a public purpose and were, in some respects, freer from the controls of the state. Berle and Means argue that, through the course of the Industrial Revolution, corporations could only expand their operations in three ways: reinvestment of earnings; raising new capital through the issuance of new shares on the stock market; and taking control of other companies (see 1932: 41). Their primary point of interest is in the second of these 'methods', for they observe that 'Over 55 per cent of the growth of large companies has been made possible by the public offering of additional securities', and that this offering of stock to public investors has been 'one of the strongest factors determining the relation between those who control the corporations and their investing stockholders' (1932: 42). While, in their initial form, corporations approved by government charter were owned by a small number of controlling shareholders, with the public offering of stock this situation changed rapidly. Berle and Means illustrate this development through reference to the equity structure of the three largest US corporations of the time: the American Telephone and Telegraphy Company; Pennsylvania Railroad; and the United States Steel Corporation. The first of these corporations only had 10,000 stockholders in 1901, but 30 years later this had grown to 642,180 (see 1932: 55). This proliferation of individual stockholders marked the emergence of a new form of mass shareholder society. Berle and Means observe that through this period there was ‘a major shift in the ownership of industry from people of large incomes to those of moderate means’ (1932: 61–2). Moreover: ‘Within recent years approximately half of all the savings of the community have gone into corporate securities – almost entirely the securities of quasi-public corporations’ (1932: 63–4). This development, for Berle and Means, signalled a revolutionary shift in the basis of property ownership in American society: from the industrial world in which wealth was produced through ownership of the means of production to one based on nominal ownership of stocks, bonds, and securities.

For many, this development was something to be welcomed. Mizruchi observes that David Riesman et al. (1969), in *The Lonely Crowd*, saw it as a democratic turn that would break the power of the ruling class. Ralf Dahrendorf, similarly, argued that the increased separation between the ownership (in the form of stock-holding) and control (or management) of corporations would lead to the ‘decomposition of capital’, and to the emergence of a post-capitalist society in which the previously dominant class would no longer control their own enterprises and be able to work as a ‘a unified block’ (Mizruchi, 2004: 583). On closer inspection, however, the arguments of Berle and Means barely feature in *The Lonely Crowd* (in which there is one passing reference; see 1969: 114) or Dahrendorf’s *Class and Class Conflict in Industrial Society* (which draws on their data in one paragraph; see Dahrendorf, 1959: 42). In fact, Berle and Means advance a quite different position to both these thinkers. In a key section of *The Modern Corporation and Private Property*, they list seven reasons for viewing the separation of ownership from control in a negative light: that with the mass dilution or ‘dispersion’ of stock ownership, owners have become increasingly powerless to exert control over the actions of company managers, and as a consequence have been transformed into ‘passive agents’ (1932: 66); that stock ownership cannot bring the same satisfaction as the ownership of physical property, which is an extension of the owner’s ‘personality’; that the value of individual wealth now depends increasingly on market forces that are outside of individual control; that, because of this, the value of such wealth now exists in a state of flux and ‘is subject to constant appraisal’ (1932: 67); that this wealth, which is no longer in physical property form, is increasingly liquid and can be converted into other forms of wealth at unprecedented speed; that wealth, in the form of stock ownership, cannot be ‘employed directly by its owner’ (1932: 67); and, that, contrary to the later work of Riesman and Dahrendorf, the owners of corporate stock are not owners as such as they have little control over the institutions in which they are investors. This final point is crucial for Berle and Means as they argue that ‘the power, the responsibility and the substance which have been an integral part of ownership in the past are being transferred to a separate group in whose hands lies control’ (1932: 68). The mass expansion of individual stock ownership in corporations, then, should not be seen as paving the way for a democratic form of capitalism, but the exact opposite: the emergence of a new system of property relations in which individuals cede direct control of their own wealth to company managers whose private interests may not coincide with their own.

Berle and Means’ critique of this separation between ownership and control is an extension of the core argument of Louis Brandeis’ (1914) *Other People’s Money*, which addresses the growing power of investment bankers at the turn of the 20th century. Like Brandeis, Berle and Means are concerned with the increased concentration of economic power in American society from the 19th century onwards, but their focus instead is on corporate managers who, no longer under the direct control of stockholders, are potentially free to pursue private gains from the positions they hold. Berle and Means ask: ‘Are we to assume for him [the corporate manager] what has been assumed in the past with regard to the owner of the enterprise, that his major aim is *personal profits*? Or must we expect him to seek some other end – prestige, power, or the gratification of professional zeal?’ (1932: 122). The problem, they argue, is not simply that managers of corporations are self-interested, but that following the expansion in the share equity of large corporations, they no longer own enough company stock to be motivated to run these institutions for the good of their investors (for Berle and Means’ statistical analysis of ‘stockholdings by management’, see 1932: 51). They observe that there is little to ensure that the material interests of management coincide with those of shareholders (an argument that echoes the concerns of Walter Lippmann in *Drift and Mastery*; see 1914: 45–6), as there are few meaningful legal protections of shareholder rights, with most existing laws working in favour of corporate managers (see 1932: 188). It might be presumed that the directors of corporations exert a degree of independent control over the managers that run these institutions, but this is not necessarily the case as directors often have interests aligned to the managers that appoint them. For while, in principle, it is possible for a board of directors to be elected by the employees or bondholders of a company, Berle and Means observe that, in practice, this is rarely the case (see 1932: 220).

This question of the separation of ownership from control is important for Berle and Means, because of the raw economic power of modern corporations. They state that at the outset of 1930, nearly all of the 200 non-banking corporations that feature in their study had assets of over $100 million, and the 15 largest had assets of over $1 billion (see 1932: 19). The growth of these corporations had been extraordinary through the late 19th and early 20th centuries, and Berle and Means provide data to illustrate the increased power of these institutions, both within the stock market and in proportion to overall corporate, business, and national wealth. They observe that, because of this growth of corporate power, competition is no longer ‘free’ in basis but increasingly takes the form of a duopoly or perhaps even monopoly as large corporate players come to dictate the marketplace (a development Berle considers a further detail in his later work on oligopoly). Berle and Means write, starkly, that ‘a society in which production is governed by blind economic forces is being replaced by one in which production is carried on under ultimate control of a handful of individuals’ (1932: 46).

This concentration of economic power raises important political questions that are addressed in cursory fashion in the final chapter of *The Modern Corporation and Private Property*. Here, they observe that the modern corporation is the site of ‘a long-fought issue of power and its regulation’ (1932: 353), but that the problem now is whether large corporations have become so powerful that there still exists a governmental body able to impose its will on such institutions. Berle and Means raise this problem at the conclusion to their book, where they observe that ‘the modern corporation has brought a concentration of economic power which can compete on equal terms with the modern state’ – a development that has made regulation of corporations increasingly difficult. Indeed, they observe that ‘The future may see the economic organism, now typified by the corporation, not only on an equal plane with the state, but possibly even superseding it as the dominant form of social organisation’ (1932: 357). Berle and Means do not propose a solution to this problem, although they do consider three alternatives at the close of the book: first, that the rights of stockholders be strengthened by reconfiguring management power into a form of trusteeship, so that the corporation is run for the sole benefit of security owners (see 1932: 354); second, that changes in the principle of private property should simply be accepted, thereby ‘leaving a set of uncurbed powers in the hands of control’ (1932: 355); and third, that the corporation should serve neither owners nor management but rather ‘all society’ (1932: 356). They argue that the first of these options is more preferable than the second, but that the third is the only viable option if the modern corporation is to survive. For this to happen, they write, corporate management should take the form of ‘purely neutral technocracy’ – one that works to balance ‘a variety of claims by various groups in the community and assigning to each a portion of the income stream on the basis of public policy rather than private cupidity’ (1932: 356). Exactly what is to drive such a shift in corporate governance, however, and the basis upon which income is to be apportioned to serve different community needs, are questions to which they provide no clear answer.

The Stanford Event

Given this conclusion to *The Modern Corporation and Private Property*, coupled with the political backgrounds of Berle, whom Jordan Schwarz, Berle’s biographer, calls ‘the most brilliant of the new Dealers’ (1987: vii), and Means, who also worked closely with the New Deal administration (see Means, 1962: 23–43), it is not surprising that their ideas were met with hostility at the 1982 Stanford event. As Foucault observes in his lectures on biopolitics, the New Deal was exactly what American neoliberalism stood against: it was ‘defined by reference to the New Deal, the criticism of Roosevelt’s policies, and which, especially after the war, is developed and organized against Federal interventionism, and against the aid and other programs of the mainly Democrat administrations of Truman, Kennedy, Johnson’ (Foucault, 2008: 79). Clearly, Berle’s view that Roosevelt was ‘a great democratic and a great national leader’ (1940: 47), which was largely shared by Means, would not be received warmly within neoliberal and libertarian political circles.

This quickly became apparent at the Stanford event, at which contributors fell into two main groups. There were those who insisted there was nothing new in Berle and Means’ work, for the problem of the separation of ownership and control, if it had any empirical basis, could be addressed, quite simply, through a defence of free market forces, self-interest and individual economic freedoms. Others were less confrontational, and rather than attack Berle and Means directly, instead argued that there are no underlying differences between the interests of those who manage corporations and those who invest in them, as, in practice, they are united by a common goal: the maximization of financial value.

George Stigler and Claire Friedland, in the lead article of the resulting special issue of *The Journal of Law and Economics*, fall into the former camp. They open by observing that Berle and Means say nothing about the incentives and behaviour of corporate officials in practice and provide little documentary evidence of the actual effects of separating ownership from control, including whether companies with a tighter concentration of shareholders operate with a stronger profit motive. They respond by questioning the accuracy of the data collected by Berle and Means and observe that their view of the 'omnipresence' of US corporations is incorrect as 'at least 18 of the 200 corporations on Means' list were already in receivership by early 1933' (1983: 242). Stigler and Friedland's main problem with Berle and Means' work, however, is political. They write: 'The 1930s was a period of accelerating movement away from a competitive, unregulated economic system. Reasons for distrusting such a system or, better yet, bidding it a respectful adieu were in demand for the new rhetoric of public policy, and Berle and Means nicely met that need' (1983: 258). Because *The Modern Corporation and Private Property* was published against the backdrop of the New Deal, Stigler and Friedland argue that its reception was 'astonishingly uncritical', when, in fact, Berle and Means were quite wrong to raise concerns about the increased powers of large corporations and potential conflicts of interest between their ownership and control.

Robert Hessen, a prominent libertarian thinker and associate of Ayn Rand, continued this attack on Berle and Means. Hessen recalls that *The Modern Corporation and Private Property* was originally to be published by a small company called the Commerce Clearing House, but an employee of General Motors, after reading a summary of this work, contacted the owner of the publisher (of whom General Motors was a client) and asked for the book to be pulled. The publisher obliged but sold on the plates of the book to Macmillan, which then produced its own edition. Hessen does not treat these events as an example of corporate power in action, indeed this thought is not even raised as a possibility, but rather as an instance of 'good fortune' as this change of publisher increased the book's visibility and, in turn, helped it become 'a living classic' (1983: 273). Hessen, however, is far from sympathetic to the arguments of *The Modern Corporation and Private Property*. Its key weakness, he argues, is that it fails to distinguish clearly between the legal basis of a corporation and other company forms, such as a partnership, limited partnership, and business trust. As a consequence, Berle and Means 'single out corporations for special criticism' (1983: 284) without understanding that the separation of ownership from control is not unique to modern, publicly-traded corporations. Hessen adds, moreover, that their criticism is unmerited because public investors hold shares in corporations on a purely voluntary basis, and not only have voting rights that give them an active role in the governance of the companies they own, but are 'free to choose' (a phrase Hessen borrows from Milton Friedman) which corporations they hold shares in. Hessen writes: 'Millions of people freely choose to invest their savings in the shares of publicly traded corporations. It is farfetched to believe that they are being victimised, yet still retain their shares and buy new shares or bid up the price of existing shares' (1983: 288). For Hessen, the separation of ownership from control is not in itself a problem, for modern corporations can be governed by the choices of their investors, meaning that such institutions require little regulatory intervention from the state.

Following a brief response by Gardiner Means (1983b), in which he accuses Hessen of neglecting the conclusions of the book and its argument that the separation of ownership and control can benefit the efficiency of the corporation in terms of its ability to raise capital, Harold Demsetz continued the assault on *The Modern Corporation and*

Private Property. Demsetz claims there is nothing essentially new in the core argument of this book as the problem of separation and control had already been identified and addressed by Thorstein Veblen in his 1921 book *Engineers and the Price System*. But, for Demsetz, the problem is not just the originality of this work but the lack of attention it pays to the role of market forces in ensuring that the separation of ownership and control works to the benefit of the corporation. He writes: ‘Underlying technical and market conditions will set boundaries to the type of business organisation through which investors and managers may combine financial and human resources to achieve their goals in a mutually advantageous manner, and within these limits cooperation will be achieved efficiently by different resource deployment’ (1983: 384). In similar vein to those who spoke before him, Demsetz declares that ‘diffuse ownership’ is not in itself a problem as self-interest is a powerful force that will safeguard against managers ‘shirking’ their responsibilities, and therefore will ensure the corporation operates profitably and efficiently. Demsetz argues that self-interest will drive shareholders to exercise control over management, no matter how ‘dispersed’ these may be, for, if needed, ownership can be ‘concentrated’ enough to discipline or even remove managers, and to threaten the possibility of a rebellion or takeover. On this basis, Demsetz draws a similar conclusion to that of Hessen: ‘In a world in which self-interest plays a significant role in economic behaviour, it is foolish to believe that owners of valuable resources systematically relinquish control to managers who are not guided to serve their interests’ (1983: 390). The message here is now a familiar one: there is no reason why the separation of ownership and control of modern corporations, as described by Berle and Means, should be a point of concern.

Agency Problems and Value Maximization

Others were less vocal in their critique of Berle and Means, and instead used the Stanford event as an opportunity to develop their own approaches to the study of the corporation. Among these, the ideas of Ronald Coase featured prominently. Coase, who won the Nobel Prize in Economic Sciences in 1991, lived and worked in quite different circles to those of Berle and Means; there is no reference to Coase in Berle’s biography (see Schwarz, 1987), and he is not mentioned by name in Means’ (1962: 61–6) attempt to ‘update’ the theory of the firm. Coase’s essay ‘The Nature of the Firm’ was published in 1937 in the journal *Economica*, but, as he later explained (see 1991: 35), his ideas on this subject were already in place for a lecture series he taught at the University of Dundee in 1932. Coase’s work on the firm, then, dates from roughly the same time as Berle and Means’ *The Modern Corporation and Private Property*, but the core arguments of the two could not be further removed. Whereas Berle and Means raise political questions that centre on the public control of corporations, Coase, by contrast, is concerned with the firm as an institutional form that operates on a cost-benefit basis. For Coase, market-based transactions are never frictionless as they involve legal and operational costs between contracting parties, and this explains the existence of firms, for it can be more cost-effective for work to be done within an institution on the basis of an ongoing set of contracts rather than renegotiate contracts for each individual transaction (see 1937: 391). While Coase and his colleagues at Chicago stood in fundamental opposition to the idea of a planned economy, his argument is that the firm can be more cost-effective by not going to the market to establish the price of all of its activities, because market relations, in themselves, are never free and without 'taxes' (see Coase, 1937: 392). If firms are to be successful, then the entrepreneur – a figure Coase places at the centre of the firm – should decide whether work should be undertaken in-house or if a cheaper alternative can be found by going externally to the market; a decision that places firms in a state of 'moving' equilibrium as it determines how large they can be while continuing to be cost-effective. This is not to say, however, that the market should be supplanted by the firm, for, in keeping with neoliberal economics more generally, it is seen to be the only mechanism that can provide a true measure both of price and, more concretely, of labour and transaction costs.

Coase's theory of the firm is not concerned with labour as a collective or political form, but rather explains the existence and operation of these organizations on the basis of economic efficiency. If it is cheaper for a firm to contract out rather than use its own pool of labour then this, according to the logic of Coase's argument, is exactly what it should do. It is not hard to see why there was sympathy towards Coase's work among those in attendance at the Stanford event. Douglass North observed in a response to Stigler and Friedland that Coase's essay, rather than anything Berle and Means had written, should be celebrated as 'the foundation for modern transactions cost theory' (1983: 270). Oliver Williamson (Nobel Prize, 2009), meanwhile, who had studied under Coase, was more specific in his praise of Coase and what should be taken from his work: that it is necessary to study the internal organization of firms, and, in particular, address the ways in which 'market and hierarchical modes of organization' exist in 'active juxtaposition with one another' (1983: 365) – a task that was to become central to what Williamson, along with Coase and North, called 'New Institutional Economics' (see Williamson, 2000, for an overview). But at the Stanford event, two papers by Eugene Fama (Nobel Prize in Economic Sciences, 2013) and Michael Jensen – the first entitled 'Separation of Ownership and Control', the second 'Agency Problems and Residual Claims' – developed a neoliberal defence of the corporation in a different direction and became pivotal in framing a new understanding of the relationship between company shareholders and management, or what became known, subsequently, as the 'agency problem'.

Before addressing the arguments of these two key contributions to the Stanford event, it is instructive, first, to consider an earlier paper by Jensen and Meckling – 'Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure' (1976a) – which, as stated above, has become one of the most highly cited articles in the social sciences of the past 50 years. This paper responds to Berle and Means by developing a strongly Coasean position as it conceptualizes firms as nothing more than 'legal fictions' that serve as '*a nexus for contracting relationships among individuals*' (1976a: 310, emphasis in original). This statement is significant as, in treating the corporation as a purely legal entity, it refuses to ascribe it human characteristics. This means that the corporation cannot have a conscience, as argued by Berle (1955: 89), because, as a nexus of contracting relationships among individuals, it is neither an individual in itself ('it does not feel' or 'choose') nor a collective entity that is able to take social responsibility for its actions. In the words of Jensen and Meckling: 'A corporation can no more be responsible than can a lump of coal' (1983: 9).

In their ‘Theory of the Firm’, Jensen and Meckling develop this position by extending the work of Coase to the study of the ‘behavioural implications’ of property rights in contracts between the owners and managers of firms (1976a: 308). They do so by treating the owners and managers of corporations as self-interested utility maximizers, or rather ‘rational beings who choose among alternatives in an effort to benefit themselves’ (Jensen, 2000: 5). Between them, Jensen and Meckling argue, owners and managers can solve the so-called agency problem as both stand to gain from the efficient and profitable running of the firm, and hence a state of equilibrium will emerge between them – one moderated by the discipline of the market, for if investors are unhappy with the performance of management, then they are free to take their money elsewhere (a position reiterated by Hessen). Jensen and Meckling conclude that the growth and predominance of the corporate form is testament to its success as an `awesome social invention’ (Jensen and Meckling, 1976a: 356); one that has been held back by government interventions that have abrogated the freedoms and rights of individuals to make their own decisions (see Jensen and Meckling, 1983: 18) and by the imposition of excessive and unnecessary regulatory costs (see 1976b).

There is, then, a political backdrop to the two papers presented by Fama and Jensen at the Stanford event. Fama and Jensen shared the same doctoral advisor, Merton Miller (Nobel Prize in Economic Sciences, 1990), at Chicago’s Booth School of Business, and Fama had written previously on ‘Agency Problems and the Theory of the Firm’. Like Jensen, he had insisted on the separation of security ownership and control as an efficient mode of economic organization, arguing that market-based competition from other firms (including the threat of a hostile approach or takeover) would ensure the effective performance of all staff, including managers (see 1980: 288). In their joint papers, Fama and Jensen look more closely at the organizational structure of firms and the processes through which decisions within these institutions are made. They argue that the common rule for any business institution, be this a corporation, partnership, financial mutual, or nonprofit (see Fama and Jensen, 1983a: 301), is that its organizational structure must ensure its survival, and for this to happen there must be ‘a balance of the costs of alternative decision systems and systems for allocating residual risk against the benefits’ (1983a: 307). For Fama and Jensen, the hierarchical structure of modern corporations offers a solution to the concerns of Berle and Means, as in such organizations decision-making is passed upwards and monitored through different layers of management, at the top of which lies a board of directors (‘trustees, managing partners, etc.’), which is said to provide a final round of checks and balances. In the second paper presented at the Stanford event, Fama and Jensen reiterate this point: the ‘agency problem is controlled by decision systems that separate the management (initiation and implementation) and control (ratification and monitoring) of important decisions at all levels of the organization’ (Fama and Jensen, 1983b: 331). Berle and Means’ anxiety about the separation of ownership and control in modern corporations is thus seen to be unfounded, as corporations (at least those with the right organizational structures), just like those who invest in them, are said to be rational, utility-maximizing entities that are quite able to look after themselves.

These interventions by Fama and Jensen are a turning point because they laid the ground for a neoliberal theory of value-maximization that was championed by Jensen in the years following the Stanford event. This became clear in a 1990 paper in which

Jensen and another co-author, Kevin Murphy, were to argue that the problem of modern corporations was that their CEOs are rewarded like government 'bureaucrats' rather than as 'value-maximising entrepreneurs' (Jensen and Murphy, 1990: 138). In response, they offer three possible solutions: first, that CEOs should hold large amounts of stock in their companies; second, that they be rewarded or penalized according to their track record of value-maximization; and third, that failure on this count should lead to their dismissal. Of these proposals, the first, they say, promises to solve the agency problem as it aligns the self-interests of management with shareholders, as both stand to benefit from value-maximizing activities that increase the company's share price (see Jensen and Murphy, 1990: 141). Their answer to the concerns of Berle and Means on the separation of ownership from control is to introduce measures such as performance-based pay, and to incentivize corporate managers to hold more stock in the companies they run, either through the provision of attractive stock options or by buying back publicly held stock to enable management to hold a higher percentage of available shares. As Dobbin and Jung (2010) observe, this reconceptualization of corporate managers as value-maximizing entrepreneurs led to important shifts in the culture of corporate management, for value-maximization, by, among other things, inflating share prices and returning profits to shareholders, led to the emergence of a new culture of risk-taking that was made possible by the weakening of regulatory powers (both of the state and of company boards that were rarely 'independent' of the interests of management), and which played out through new forms of debt-financing, the leveraging of equity, and, in practice, rewarding 'executives for short-term price gains without punishing them for losses' (2010: 31).

Jensen's position is largely consistent with Milton Friedman's (1970) argument that the social responsibility of business is to increase its profits, but whereas Friedman was concerned with the question of maximizing profits, Jensen is more concerned with the responsibility of managers to maximize the value of corporations by increasing the price of their stock. This is made clear in his 2001 paper, 'Value Maximization, Stakeholder Theory, and the Corporate Objective Function', which draws upon and responds to the work of Friedrich Hayek. Jensen rejects what he calls stakeholder theory (the idea that firms should be run in the interests of all stakeholders; see Jensen, 2001: 6) on the grounds this this deviates from the single objective that should drive the operation of the corporation: value-maximization. Jensen argues that if value-maximization is not the primary objective of the firm, then there is no clear basis upon which particular stakeholder interests can be prioritized over others, meaning that such decisions are devolved to the personal discretion of senior managers. Instead, he advocates a form of 'enlightened stakeholder theory' that deals with stakeholder claims through the operation of a market. This involves making 'optimal trade-offs' between different groups that, potentially, can profit the firm – an approach Jensen calls 'enlightened' because it employs a form of calculative rationality in order to make corporate decisions. Jensen argues that this approach is in keeping with human 'progress', for against unenlightened stakeholder theory, which treats the corporation as a form of 'family', 'band' or 'tribe' because of an 'evolutionary attachment' to the 'small group' (2001: 15), Jensen argues instead that the answer is to embrace modern private property rights and what Hayek calls '*the pricing system in market exchange*' (see 2001: 15, emphasis in original). Against the failed 'experiments' of socialism and communism, Jensen argues, the only way to deal with different stakeholder interests and, at the same time, to maximize 'social welfare' is to remain true to this pricing system, and to do so by maximizing company value – a practice that is said to benefit all.

Concluding Remarks

The event at Stanford in 1982 is important as it offers insight into the intellectual agenda of the political right ahead of the revolution in corporate finance that proceeded under Reagan in the following years. Clearly, there were differences between those who contributed to this event. Hessen (1979), for example, advanced a libertarian position which seeks, at all costs, to free the corporation from constraints imposed by the state, whereas Stigler (1982) was more neoliberal in orientation as he treated the modern American corporation as a model that could be applied to the state and from which government should learn. But, in spite of this, the Stanford event crystallized the political and economic defence of the modern corporation into a coherent whole, and, in the case of the interventions by Fama and Jensen, proposed new solutions to what Berle and Means called the separation of ownership from control – solutions that, under the seemingly glib title of 'agency theory', were to have huge impact both within and beyond the academy. What united those present at the Stanford event, in spite of their different libertarian and neoliberal commitments, was a defence of the American corporation on the following grounds: it is said to be founded upon the freedom of individuals to contract with each other on a purely voluntary basis; it is a legal fiction rather than a human form, and as such cannot take collective responsibility for its actions; it requires minimal state regulation in order to govern itself effectively; it elevates self-interest to a normative principle that can serve to limit abuses of organizational power; it prioritizes the profit motive as an integrative force for social good; and it offers limited liability to individuals who wish to invest in them. What emerged from this event as a simple, normative solution to the problems raised by Berle and Means, and which united the above commitments, was a theory of value maximization, one which worked out of a political position established by Friedman and Hayek and applied to a Coasean understanding of the firm.

The event at Stanford is an important moment at which mobilization against the regulatory powers of the state took a new and, arguably, decisive form. One of the primary points of concern at this event was the role of the state in corporate governance; indeed, this was one of the main reasons Berle and Means' work was of interest to those present. *The Modern Corporation and Private Property* opens with a history of incorporation in the US, through the course of which Berle and Means argue that corporations were initially born out of a grant of power from a state that enabled them to exercise a monopoly over a given area of industry, with an expectation, in return, that they operate in the public interest. With the move to general incorporation, Berle and Means argue that state power over corporations weakened as control was passed on to shareholders – a development that at the end of their book they argue against. Berle, in his later work, views the legal process of incorporation as a form of government control in the last instance, insisting that 'Theoretically, the corporation is a creature of the state which can limit its action and terminate its very existence' (Berle, 1950: 47). Of those in attendance at the Stanford event, Hessen, in particular, seized on this position and argued that it was factually wrong as incorporation is little more than a bureaucratic formality. He writes: 'Quite literally, the government plays a smaller role in the creation of a corporation than a marriage' (1979: 26). Hessen argues that the move to general incorporation was a positive development because it meant corporations were no longer creatures of the state, which now merely recorded their existence, and gave them no 'special privileges or legally enforced monopolies' (1979: 30), meaning that, increasingly, they were free to compete for their own market share beyond the reach of government regulation – a development that was welcomed by those at the Stanford event, including Jensen, for whom this freedom was to take the form of value-maximization, both in theory and in practice.

Berle and Means' work was at odds with these positions, not least because it opposed Coasean understandings of the corporation as a nexus of contracts and insisted instead that it is an institution made up of human beings (see Berle, 1955: 8). Indeed, Berle asserted that 'it is not the law, with its fiction of juristic personality, that supplies the life blood and beating heart of these vast mechanisms' (1955: 9). Because of this, for both Berle and Means, the corporation was not simply a collection of individual freedoms but rather an institution born out of relations of power. Means argues that, because of this, such institutions will not exist in a state of equilibrium whether left alone by government (the libertarian view) or regulated by forces of competition (the neoliberal one). This placed him in opposition to figures such Hayek. In a letter of 1944, he wrote: 'if you introduce the power factor into Hayek's competitive system, it takes on an entirely new form and many of his conclusions are seen to be faulty' (cited in Samuels and Medema, 1990: 50). This question of power was also a major concern for Berle, who, towards the end of his career published a book entitled *Power* (1967), the main argument of which is Weberian in basis: that power is tied to the question of legitimacy. The problem, he argues, is that while modern corporations have extraordinary economic power, they have only 'the slenderest claim of legitimacy'. This, for him, was something that needed to be rectified, as he argues that: 'Legitimacy, responsibility and accountability are essential to any power system if it is to endure' (Berle, 1967: 16).

While this position might appear progressive when compared to the views aired at the Stanford event, aside from a few lines in conclusion, *The Modern Corporation and Private Property* centres on the internal governance of the modern corporation and, in particular, the separation of shareholder 'ownership' from managerial 'control'. Whereas the participants at the Stanford event treat the corporation as a democratic form that is modelled on the individual freedoms of the market, Berle and Means are concerned, instead, by the rise of a new breed of managerial autocrats whose interests not only are likely to run counter to those of shareholders but to be protected in law. They write: 'The concentration of economic power separate from ownership has, in fact, created economic empires, and has delivered these empires into the hands of a new form of absolutism, relegating "owners" to the position of those who supply the means whereby the new princes may exercise their power' (1932: 124). Berle and Means are worried less by the powers of large corporations over society at large than by the emergence of a new property relation that cedes previous powers of owners to a small group of managers over which there are fewer checks and balances. This means that their primary concern is not whether corporations can and should work for the public good but how corporate managers can operate legitimately and responsibly towards their shareholders. For this reason, Berle and Means, while hinting at a technocratic solution to the government of corporations that potentially realigns these institutions to wider public interests, largely seek to reform corporations through what McCraw (1990: 589) calls 'regeneration and legal trusteeship' rather by restricting their growing societal powers through direct government intervention.

Many of the concerns raised through the course of *The Modern Corporation and Private Property* continue to be important today: the ability of large corporations to 'dominate the state'; the potential for these institutions to supersede the state as 'the dominant mode of organisation' (1932: 357); the possibility of applying state regulation to multinational organizations; and, more fundamentally, whether corporations should have a social purpose, or, as they put it, serve 'all society' (1932: 356). However, neither Berle nor Means pursue these questions at any length, and while Berle's work might look progressive as it treats power as a foundational concept for the study of institutions such as corporations, it defines power as something that is 'invariably individual' and 'is an attribute of man' (1967: 60). As a consequence, Berle dispenses with the study of structural and collective forms of social and political power and instead appeals to the 'conscience' of the managers to run these institutions for the good of all. This position, which eschews any interest in class and elites, is opposed, rightly, by C. Wright Mills who, in a brief comment in his *The Power Elite*, argues that Berle is mistaken in his belief that institutions such as corporations can be restrained by appealing to 'the conscience of the powerful' (1956: 438). Moreover, when Berle and Means speak of a corporate world that serves society it is unclear what this might mean apart from corporations being more accountable to their shareholders, for they offer little consideration of the corporation in relation to the powers of classes, elites and governments within capitalist society more widely.

For those at the Stanford event, Berle and Means' anxiety about the separation of ownership from control in modern corporations carried an implicit suggestion that an outside agency – in the form of the state – must be introduced to solve this problem – a position they rejected as a matter of principle. In response to this suggestion, Jensen (see 2000: 9) was particularly vocal, as he argued that the separation between ownership and control only became a problem following the introduction of government legislation from the 1930s onwards (i.e. from the time of the New Deal), as this disrupted the internal equilibrium of the corporation and skewed powers towards management and away from shareholders. The neoliberal response, which was championed by those at the Stanford event, and taken forward by Jensen through his agency theory and call for value-maximization in the following years, was threefold: first, the state should not impose regulatory costs on the corporation, for as a collection of individuals contracting on a voluntary basis it should be left to operate outside the reach of government; second, that, as an assemblage of individual contracts, corporations cannot have a conscience and, as a consequence, should not be expected to be socially responsible; and third, that the interests of investors and managers, who are both rational, utility-maximizing agents, necessarily coincide as both stand to benefit from the value-maximization of the corporation. For whereas, in Berle and Means' view, self-interest is largely the problem that lies at the heart of the separation of ownership from control, for the majority of those present at the Stanford event, including Jensen, it is the basis upon which corporations should both operate and be governed.

ORCID iD

Nicholas Gane https://orcid.org/0000-0001-8102-6509

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Nicholas Gane is Professor of Sociology at the University of Warwick, UK. His recent publications include articles on competition, debt, usury, nudge economics, and the history of neoliberalism.