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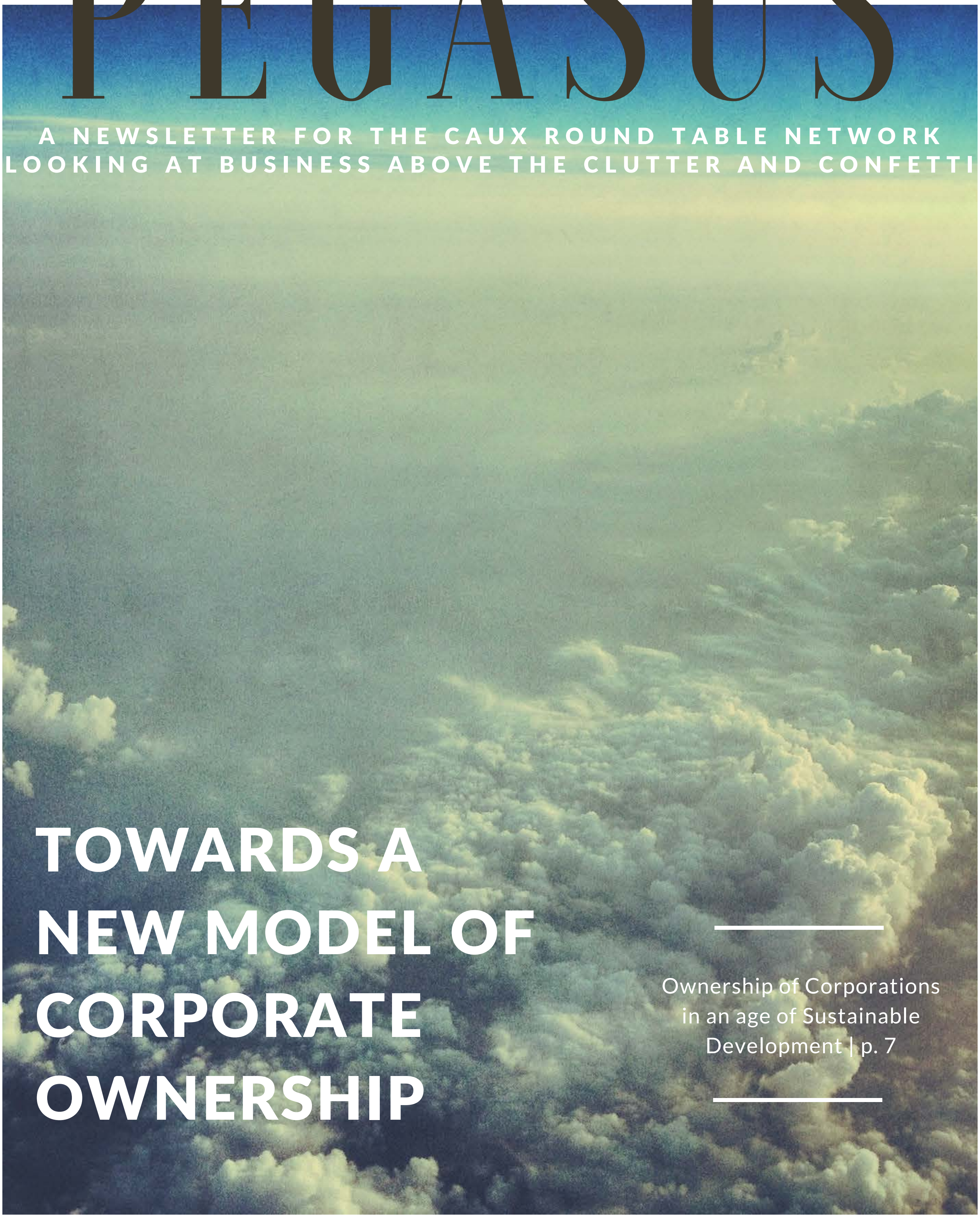

A NEWSLETTER FOR THE CAUX ROUND TABLE NETWORK

LOOKING AT BUSINESS ABOVE THE CLUTTER AND CONFETTI

TOWARDS A NEW MODEL OF CORPORATE OWNERSHIP

Ownership of Corporations in an age of Sustainable Development | p. 7

Pegasus

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INTRODUCTION

Two remarkable instances of failure in corporate acquisitions just happened. Could this be an inflection point in market acceptance of financial theory, changing what we should believe about the purpose of a corporation?

First, Kraft Heinz withdrew an offer to buy Unilever from its current shareholders.

Secondly, Pittsburg Plate and Glass gave up its offer to buy and incorporate the Dutch company AkzoNobel to make a larger company with a larger share of global markets for paint.

By coincidence, the Caux Round Table (CRT) was privy to the concerns of the leaders of both Unilever and AkzoNobel as they held their ground and opposed the take-over offers on ethical grounds.

Both companies, interestingly each with Dutch origins, took the position that a corporation has duties to a range of stakeholders, not exclusively to its shareholders. In short, both boards and managements rejected the "cowboy capitalism" or "neo-liberalism" of American financial markets, which presumes that the highest and best use of a corporation is to maximize profit for its shareholders.

From this perspective of corporations as a financial vehicle to produce liquidity for shareholders (the shareholder value theory of a firm), other stakeholders, such as customers, employees, suppliers, communities and the environment, take subordinate positions in having claims to solicitude from the entity.

The CRT Principles for Business expressly adopt the stakeholder theory of the firm and put shareholders in the position of dependency for their profits on wise company management of customer demand, employee loyalty and skills, supplier excellence and community approbation.

In short, the shareholders are residual claimants – they get the fruits of either success or failure and so should be concerned that management is successful in the execution of all of its responsibilities.

The American financial theory of the corporation, as opposed to a privately held company, places all its ethical eggs in the basket of ownership. Owners have the legal right to dispose of the assets of the company and so their interests should be always first and foremost in the minds of company directors.

In keeping with the American emphasis on "shareholder value" however, the Third Point LLC hedge fund on Sunday, June 23 bought a $3.5 billion stake in Nestle SA, making the fund a 1.25% owner of the company's shares. Third Point asserted that Nestle could return more money to its owners by improving profit margins (presumably by cutting costs), innovating in its core food business and selling non-core assets, including its 23% stake in L'Oreal SA. Third Point asserted that Nestle had been so managed that its stock price had underperformed in achieving market value when compared to comparable companies selling consumer staples.

But what if shareholders do not intend to act as owners should? Or rather, how should owners of corporate shares act? What should their legitimate aspirations be so that society can tailor their legal rights accordingly? What if they have only short-term liquidity objectives and no commitment to the long-term health of the company? Should they then still be given the status of owners? Or should they only receive the benefits of some other status – like that of a renter of shares for a term?

If shareholders are only gamblers in stock markets, is their importance to the firm and to the economy equal to or more than the company's customers?

To support the management of both Unilever and Akzo-Nobel, the CRT wrote a short white paper on corporate governance suggesting changes in corporate law to better actualize the stakeholder model of a corporation over the absolutism of the shareholder value alternative.

We include that paper and an executive summary in this issue of *Pegasus*.

Your comments and reactions would be of great interest to us.

Stephen B. Young
Global Executive Director
Caux Round Table

Caux Round Table White Paper:
Ownership of Corporations in an Age of Sustainable Development

Executive Summary

1) The social purpose of an economy is to produce goods and services for human flourishing, for what Adam Smith called "The Wealth of Nations". Private corporations, therefore, are given authority in order that they might pursue this goal. Those reliant on the success of private corporations are its stakeholders - customers, employees, owners, creditors, suppliers, communities.

2) Contemporary secondary markets for equity shares no longer contribute to socially responsible ownership of corporations. The "agency problem" has surfaced in these markets as buyers of equity shares no longer accept full responsibility for the long-term success of the company and, therefore, to its ability to meet the reliance interests of other stakeholders. Most current owners of corporate shares are inherently "bad" stewards of total enterprise value.

3) This is especially true for "systemically important corporations". These are large firms such as Unilever and AkzoNobel, on the success of which many significant stakeholder interests depend. The value created by such firms for all individual stakeholders and for the community and the environment is not adequately priced by secondary markets for their shares.

4) Secondary markets today have evolved to reward investor interest in speculation and trading of contract rights. Owners of shares do not act as owners once did. They have no stake in the residual success or failure of the company. They make their profits by "flipping" a contract right over to a new owner. Thus, equity markets easily absorb the issuances of shares without real ownership rights (viz: SNAP, Alibaba, Facebook).

5) Funds invested in secondary markets today do not finance new enterprise or the creation of new wealth. With the massive creation of liquidity by governments over the last 25 years, largely channeled into financial markets for the trading of various contract rights, secondary markets have principally inflated nominal asset prices to the advantage of the wealthy. Such markets have contributed to the widening gap in wealth between the top 10% and

the great mass of citizens, contributing no little amount to the recent rise in populist resentment of elites.

6) Speculators in nominal share values do not deserve to hold substantive rights of dominion and strategic control over the fates of other company stakeholders.

7) The tradition of the Common Law for centuries has divided rights with sophistication and elegance among various interests through contracts and complex forms of simultaneous property ownerships.

8) Today shares to be sold in secondary equity markets by systemically important corporations should have limited rights of control over corporate strategies. Other shares with different but also limited rights should be issued by such corporations to protect the reliance interests of other stakeholders.

Caux Round Table White Paper: **Ownership of Corporations in an Age of Sustainable Development**

The issue of political economics before policy makers today is: who should hold ownership rights in systemically important corporations?

The current takeover offer by PPG in the United States for AkzoNobel of The Netherlands for a 35% premium over current share price comes after a similar offer from Kraft Heinz to take over Unilever. In both cases those seeking ownership of the target companies justify their action on the grounds that it will create more value for shareholders.

But in the 21st Century age of post-industrial capitalism where sustainability is the social requirement to be achieved by political economy, what should constitute our understanding of "value"? And, separately, who should have power to decide what "value" is acceptable?

For systemically important corporations, the components of value are many. There is, of course, the net profit for the company which permits it to sustain its mission. There is, of course, the share price value set by financial markets. But there is also the value provided to customers in the goods and services sold by the company. And there is the value of wages, human dignity, and personal and family advancement provided by the company to its employees. Not to be forgotten is the value to society of the company's financial flows to employees, investors, suppliers, governments, and communities, of its care or disparagement of the environment, and of the quality and quantum of the civic engagement of its senior executives and employees.

With aging populations, reliability of pension funds is more important than ever. A stock of reliably diligent dividend paying corporations is necessary to provide retirement security for millions of pensioners. This reliability is a social value of no little consequence. Reliable dividends support a solid floor under the market price of a company's stock, preserving its asset value.

In addition to financial capital, companies produce internal and external stocks of social and human capital of great importance.

All these tangible and intangible forms of capital and flows of money need to be valued. Good value is to be preserved and bad value eliminated.

Those who today buy company shares in the open market do not have sufficient moral interest in the totality of value produced by a systematically important company to have the ultimate power of decision as to its business model and corporate culture. What once might have been true – shareholders are justly the owners of a company – is no longer so certain where systemically important corporations are concerned.

The systemic importance of a corporation arises from 1) its scale and 2) the number and the significance of persons who depend for their well-being on its success.

A small company, particularly one selling in a robust free economy where replacement costs are low, does not have a large social footprint. The seas of change and time can wash away its autonomy with impunity.

But a company grown to scale - especially the to the scale of consolidated companies such as would emerge upon the mergers of AkzoNobel with PPG and with Unilever and Kraft Heinz - loses its vulnerability. Its sustainability as a source of manifold values becomes a social good. Because social sectors are more dependent on its existence than if it were small, it draws upon itself continuing obligations of stewardship for their welfare. The systemically important corporation cannot willfully shed its stewardship duties.

This moral conclusion is recognized in the laws of The Netherlands and the United Kingdom. Dutch law requires corporate boards to take into consideration the interests of stakeholders when deciding on material issues of corporate survival. UK Company Law requires boards to take into account the interests of stakeholders in the normal course of supervising the management of the company.

Recent challenges to corporate management demand a far-sighted response from owners, investors, and legislatures. The ownership realities of modern publicly traded corporations are evolving into more complex but fragmented arrangements of rights. To balance optimal management with social needs in an era of sustainability new corporate government structures are required.

In sum, shares which support trading markets should be separated from shares which have rights to long-term stewardship of the comprehensive social value of a publicly-traded corporation.

The issue of who should have authority over corporate decision-making has been brought front and center by several transactions: the PPG takeover offer for AkzoNobel; the Kraft Heinz offer of US$143 billion to acquire Unilever; the issue by SNAP of non-voting shares; a demand that General Motors issue classes of common stock with different rights to boost overall demand for its shares and raise its cumulative market capitalization; a proposal by Theranos to issue shares without a right to sue the company or its founder.

The PPG and Kraft Heinz offers pose anew the telling question for our time of how do you value a company – by its values, the market price of its shares, or by its discounted cash flow?

The SNAP public offer of non-voting shares, following similar offerings by Facebook and Alibaba of shares with diluted control over the company, poses the question of what value are investors buying if they can't control the strategic vision of a company.

To answer these question, we need a social policy as to what we want from business in a post-industrial globalized economy.

The PPG and Kraft Heinz "Wall Street/Shareholder Value" business model is not what we want. It is a harbinger of an unneeded dysfunction in our new age of global capitalism.

Squeezing future operations in purchased companies like Unilever, which respect all their stakeholders, only to raise funds to retire debt or to repurchase its shares from holders in secondary markets may not be in society's best interests.

But let us put the "Wall Street Shareholder Value" proposition in historical perspective.

In the 19th century, the UK, US, and European firms which created unprecedented economic wealth and modern middle classes were founded and run by entrepreneurs but capitalized by society at large.

In the 20th century after the collapse of stock markets in 1929, more sophisticated banking sectors were structured through legislation and regulation as a partnership between professionals in finance and managers of corporations. What tied one to the other was the fiduciary duties of corporate boards to those who marshalled financial investment for the enterprise. The tie was supervised by government through prudential regulation of the means used to solicit investment funds.

Thus was a market capitalism designed for stability as a public good.

But such regulated financial capitalism still rested on 19th century assumptions about rational and responsible long-term holders of ownership shares.

In the opening decade of the 21st Century, we live with disappointment in capitalism expressed as globalization. People everywhere sense that globalization is from them and is not run for them. Thus, our economic system is challenged by populism fueled by resentment from those denied access to elite professions.

The owners of financial power are today neither trusted nor admired. And, the owners of corporate shares seem too eager to sell their rights in fast-moving markets.

At this stage we need a new capitalism – one centered around stakeholder-focused companies like Unilever which balance finance, share ownership, and others like employees, suppliers, communities and the environment.

A social accord is needed to provide for markets which are global, innovative, and sustainably committed to the long-term felicity of all, which alone can optimize benefits to stakeholders.

Our globalized economy under pressure from climate change, equity demands for wealth and income, employment for the young, will not highly value companies which contribute to problems rather than provide remedial solutions on a micro or macro scale.

Enterprise in our time is becoming more and more social in its justification.

Today two intersecting ethical paradigms press upon us for a re-definition of value in market capitalism.

One is the seventeen sustainable development goals of the United Nations (SDGs).

The second is Pope Francis' encyclical *Laudato Si'*.

The SDGs assert that economic activity, whether private or through state enterprises, must achieve sustainability for our communities and our planet. The pecuniary interests of owners make up only part of what is to be sustained.

Pope Francis in his encyclical drew our attention to "anthropocentrism" as a negative value. Too much attention paid to ourselves and having too little concern for our environments will not, he argues, improve our well-being.

In fact, the economic interests of owners today and in the future is a derivative function of broader sustainability. If the company is not sustainable, if its products or services lack merit, if its business model is corrupt or abusive, its future profitability cannot reliably generate optimal expected financial returns.

A new calculus is needed for an age of sustainability with which to assess the value of a company and allocate that value fairly across different classes of stakeholders.

Given the current scale of financial intermediation – some 600 trillion US$ in outstanding derivatives for example and global debt three times global GDP, confidence in Adam Smith's optimism that individual market transactions can happily aggregate into positive outcomes for all is hard to come by. What is a positive sum game for some individuals does not always give positive sum results for systems.

Worthy efforts are being made to shift our thinking about financial capitalism. The World Business Council for Sustainable Development has drafted protocols for estimating natural capitals and social capitals as assets of business enterprise. The Integrated Reporting Initiative recommends adding natural, social, and human capital accounts to traditional financial capital accounts as measures of enterprise value. The Blueprint for Better Business in London has principles which constructively blend profit for shareholders with value for all stakeholders.

Our Caux Round Table suggests measurement of management of stakeholder relationships for quality. Good management of these goodwill assets will reduce out-year risks and so increase present company value.

Major powers of governance should go most to those who carry the long-term risks of success or failure. These would be those investors who constrain their ability to sell ownership rights, employees, some suppliers, and some community stakeholders. A special class of shares should be issued with ownership rights. Other classes of shares issued would carry non-ownership rights to dividends and other benefits.

The classic Anglo-American business corporation as established in the mid and late 19th Century grounded its governance requirements on a very traditional concept of ownership. Corporations were legalized as collaborative entities to provide financial investors with returns commensurate with risks freely and willingly assumed. Since the shareholders could not reasonably themselves manage from day to day the business and affairs of a corporation, stewards were provided to look after their ownership rights and rewards. Those stewards were authorized as a board of directors of the incorporated company. They were bound to their principals by fiduciary duties and subject to personal liability for breach of those responsibilities.

This governance model presumed that the owning shareholders relied on the company's profits for economic return on their investment, that shareholders would remain as owners for years to come, by which commitment merging their financial self-interest with the long-term prospects of the business, and that their exercise of such enlightened self-interest would secure the company against irrational exuberance and other foolishness and promote its enlightened self-interest over the long term.

The notable expression of this long-term commitment was that the shareholders held the "residual" interest in the company, that at the end of the day they and no one else – not employees (including managers), not creditors, not suppliers, and not customers – would reap the final profit or swallow the final loss in the case of failure.

There was however a conceptual flaw hidden under these assumptions of probity and good sense. This flaw had been identified by Adam Smith in his seminal 1776 work on private capitalism, *Wealth of Nations*. Smith then realistically pointed out the exposure of good judgment in management to corruption when "other people's money" is being used by managers.

Agents, Smith concluded, were not always the model of faithfulness and due care in decision making. Their own predilections, foibles, and self-interest could divert them from scrupulous attention to the best interests of their principals. That this is true of human nature can be seen in the centuries old attempt of the Common Law to protect principals from being "taken" by their negligent or unfaithful agents through the development of what we call Agency law, partnership law, the law of trusteeships, the law of constructive trusts, and other instances of fiduciary duty being imposed on those entrusted with power to act for the benefit of others.

But in the early 20th Century, especially in the United States, the scale of financing necessary to fund the behemoths of modern industrial capitalism – General Motors, Ford, US Steel, the railways, etc. – lead to the proliferation of shareholding. Companies came to have tens of thousands of shareholders. Perforce, the nature of their ownership interest evolved in new directions. Secondary markets for the selling and buying of significant volumes of shares arose promoted by investment bankers. Owners of shares came to value short term share prices over long-term relationships with the company. Their financial strategy was to sell shares rather than benefit from a continuous, long-term stream of dividends or a sale of the entire company to a new owner for a very profitable return of capital.

The practical psycho-social distance between shareholders and Boards of Directors, between Boards and managers, and so between shareholders and managers grew more and more distant and tenuous. The problem of bad agency associated with the management of "other people's money" grew apace accordingly.

In 1932, Adolf Berle and Gardiner Means wrote an influential book pointing out the implications of this separation of ownership and control - the legal rights of ownership now had little to do with management – the decisions made by those who actually ran the company. Management became a profession separated from ownership.

In the 1970's, Adam Smith's insight and the Berle and Means thesis were re-stated as the "Agency Problem". The Agency Problem was presented to financial theory as a danger undermining good corporate governance: people were said to be incapable of being faithful agents; their subordination as managers to the interests of their principals must be bought through the provision of economic reward for achieving specified goals. By implication, the Agency Problem exposed traditional attempts at corporate governance through insistence on fiduciary duties as a foolish errand into the wilderness of human depravity.

Corporate affairs placed in the hands of managers who were not inherently motivated to seek the best interests of owners were guided in directions most favorable to the interests of managers, which were often short-term and disdainful of company stakeholders. Material considerations for placing a value on a corporation would be more and more aligned with the interests of managers. Judgment of a corporation's value then tended to rise or fall according to short-term considerations.

At the same time ownership of shares more and more left individuals for concentration in investment funds. Fund managers (agents of owners) traded shares to maximize returns as their principal duty to principals; Such managers focused on share prices and not on oversight of corporate boards. Their response to disappointments and uncertainties in corporate management was more likely to sell the stock rather than act as owners seeking to guide long-term results.

Such investor preferences opened up new arbitrage trading opportunities for some to buy control of companies, change its practices, and then sell shares at (hopefully) higher prices aligned with the newly created expectations of return.

Then in the 1990s leading investment banking houses became public corporations. They were run by managers rewarded for short-term performance and owned at arms-length by shareholders. The firms could now borrow funds against their equity to finance the buying and selling of securities. The application of leverage fueled exponential expansion of trading markets for shares and other investment contracts.

Option contracts to speculate on price movements and derivatives to speculate in price changes in a range of assets were invented and sold in significant amounts. Rising prices in trading markets were further encouraged by the arrival of technology firms – the Dot.Coms.

Those investors still holding for the long term have shifted much of their money into index funds which tracked compilations of different share prices like the S&P 500 or the Dow Jones or the FTSE 100. The prices of such companies were still driven more by traders than holders of index funds.

Market realities more and more aligned with John Maynard Keynes' description of them as casinos where money changes hands but little new wealth is created for society.

In 1998, George Soros called the pricing dynamic of modern financial markets "reflexivity" and linked it to a crisis of global capitalism. Reflexivity occurs where thinking is relational between people and not between people and reality. The facts taken into consideration by decision-makers, in this case investors, do not necessarily provide an independent criterion of truth. It was this reflexivity which caused the 2005 -2008 asset bubble in sub-prime mortgages, their syndication and their support for derivative investment contracts. The invention of derivative contracts permitted bets to be made on future prices of other investment contracts, further separating many investors from making money through direct ownership of a corporation.

The arrival of computers with great computational power and digital communications revolutionized trading markets. They could grow both in volume and in particularized, compartmentalized, niches. Algorithms permit buying and selling of financial contracts in seconds to play the odds of up and down deviation from expected values.

Driven by financial markets, the nature of ownership changed. Those who owned common shares more and more did not think or act like owners. They rarely saw their advantages over the long-term or held shares for the long run; they worried about short-term risks and returns; they did not care about the fundamentals of the companies which they legally owned; they would "sell out" the company in a heart-beat and rarely stay around to participate in "residual" eventualities.

With trading markets for shares linked to markets for derivatives and dominated by pricing arbitrage by the hour, minute and second, the price disclosure provided by markets is irrational and not well grounded on stakeholder concerns and future risks of enterprise. The prices of syndicated sub-prime mortgages and derivative securities bore no rational relationship to value from the Spring of 2007 until the collapse of credit markets in September 2008. The Goldman Sachs Abacus valuations were a case very much in point.

Investors were less and less motivated to act as owners and more and more only as traders. Their incentive was to "flip" an asset – buy low and sell high, not to risk a long-term exposure to the vagaries of fate as they would impact a company's prospects and reputation. They were interim owners with interests in the property used akin to renters – only short term usage was being purchased. A long-term investment was not being made and so, since our hearts follow where we put our treasure, a short term economic investment draws forth short-term concerns only.

Further, financial markets turned more and more away from raising capital for new companies as investors funded trades in secondary markets.

In addition, there is now much more in common between transient shareholders and the short-term thinking of managers than between the shareholders and a board seeking long-term value, in building up a "franchise" as Warren Buffet calls it - the high probability that future cash flows from a business will be reliably bountiful.

Why then should society grant to seekers of interim advantage powerful rights of long-term dominion over companies?

The key conclusion: today trading markets produce imperfect valuations of a company's social value, the present value in monetary terms of its cumulative long-term contributions to and harm done to its stakeholders. The prices placed by such markets cannot be reliably accepted as a measure of good or bad corporate governance. Low prices in a trading market may or may not incorporate long-term realities but only temporary reflexivities among spot price buyers and sellers working off algorithms. Under such conditions, good long-term governance can be punished and bad long-term stewardship rewarded.
An era of sustainable development needs a better measure of governance than such prices.

The separation of quality ownership from the control over a company now given to share "renters" and to self-interested managers has grown too distant. New ownership arrangements are needed to bring company strategies more in line with social aspirations and needs for economic growth to reduce inequalities of income and wealth.

The corporate governance system for promoting long-term well-being of a society has broken down. Short term thinking bestrides the narrow world of global capitalism like a colossus while we petty people "walk under his huge legs and peep about to find ourselves dishonorable graves".

Financial markets have contributed more than their fair share to the rising inequality of wealth between those who can invest and those who can't. Those with higher incomes and assets as collateral can borrow to speculate in financial markets. As such speculation sustains higher and higher asset prices, the rich benefit most, the middle class to some extent, and the poor do not.

What is to be done?

The agency problem must be faced head on under current conditions of financial markets. Those who own shares today are too frequently bad agents for the best interests of the company, its employees, its suppliers and customers, its impact on the environment and communities. Owners of shares today are speculating indirectly with "Other People's Money" – the economic interests of those with long-term dependencies on company success. It is not obvious why the interests of such owners in name only should be privileged over the competing interests of other stakeholders in the company.

Therefore, rights permitting short-term speculation in share contracts must be carved out and separated from other rights of just and reliable ownership willing to hold a long-term position in a company and see it through tough times and changes in course to keep it sustainably profitable.

The genius of the Common Law in property has ever been to "slice and dice" rights among different holders simultaneously. Cloth has been relentlessly cut to fit different purses.

Rights of full ownership can be pledged to give security for a debt; security interests contingent on future events have a present hold on both land and chattels and on intangible assets; goods can be pawned; mortgages hypothecated and sold; bills of exchange negotiated; options to buy in the future can be bought and sold; leasehold rights are granted for a term; so can easements in perpetuity can be assigned to non-owners; mineral rights under the ground and air rights over it can be sold to third parties; joint ownership of land is legal; trustees have legal title over property that is to kept and used for the benefit of others; spouses have interests in community property; life interests coincide with the rights of remaindermen; intellectual property can be licensed with rights to use in one and rights to profit in another; land is used subject to the interests of others in there be no nuisance in the use; all property is subject to the law of equity that it not be used to abuse the rights and valid expectations of others.
The social need of our age of sustainable development is to ensure the health of public goods and the production of merit goods and services in private markets.

Public goods include the intangibles of having private wealth support individual expressions of human dignity and of having markets check abuses of power, both private and public. Society has an interest in rewarding private property and ownership in responsible use.

Today self-interest in sustainability vests in employees from top managers to those on the remaining shop-floors. Some enterprises institutionalize this reality with employee ownership using non-tradable shares.

Benefit corporations in the United States restrict the rights of shareholders to change the business model of the company away from its initial stated objectives to seek profit while producing only meritorious goods and services.

The Report on the Proportionality Principle in the EU (2007, p 8–9) defines control-enhancing mechanisms (CEMs) as situations where a shareholder can increase control over a company without holding a proportional stake of equity. The report identified a number of mechanisms allowing block holders to enhance control by leveraging voting power that included the following:

Multiple voting rights shares

Some shares issued by a company can give different voting rights based on an investment of equal value. Many European companies (particularly Sweden and the Netherlands) issue voting shares with different voting power. For example, some types of shares might give one vote per unit of par value, and other types of shares might give 10 votes per unit of par value.

Non-voting shares (without preference)

Some shares have no voting rights and carry no special cash-flow rights (such as a preferential dividend) to compensate for the absence of voting rights. These are common in the UK and France.

Non-voting preference shares

These are non-voting shares issued with special cash-flow rights to compensate for the absence of voting rights and are prevalent in Italy, Germany and the UK. For example, shares might have no voting rights, but have a preferential (higher or guaranteed) dividend.

Pyramid structures

Pyramid situations occur when a company controls another corporation that in turn holds a controlling stake in another corporation, which can be repeated a number of times. The higher the number of companies involved in the pyramid, the higher the degree of deviation from the proportionality between ownership and control.

Priority shares

These shares grant their holders specific powers of decision or veto rights in a company, irrespective of the proportion of their equity stake. They are commonly found in the Netherlands, the UK and France. The rights attributed to the holders of priority shares vary from company to company and can include the entitlement to propose specific candidates to the board of directors, the right to directly appoint board members or involve veto powers of decisions taken at the general meeting.

Depository certificates

These are financial instruments representing the underlying shares in a company which are held by a foundation that administers the voting rights. In this case, the holder of the depository certificates does not hold voting rights, but only the financial rights of the underlying share. The depository certificates are the financial instruments issued on the market and represent the shares held by the foundation, which executes the votes. This instrument is used in particular in the Netherlands.

Voting right ceilings

A voting right ceiling is a restriction prohibiting shareholders from voting above a certain threshold irrespective of the number of voting shares they hold. Voting right ceilings can be expressed as a percentage of all outstanding voting rights (for example, when no shareholder my vote for more than three per cent of the company's registered share capital) or as a percentage of all votes cast at a general meeting. Ceilings are very common in many European countries. Related to voting rights ceilings is the 'one head – one vote' rule found in the co-operative banks where there is a limit to the number of shares that can be held by any one shareholder and each member is entitled to a single vote, regardless of the number of shares held.

Ownership ceilings

An ownership ceiling is an example of share transfer restrictions which prohibit potential investors from taking a participation in a company above a certain threshold (these are common in Italy and the UK).

Supermajority provisions

Supermajority provisions exist where company bylaws or the national law require a majority of shareholders larger than 50 per cent plus one vote to approve certain important corporate changes.

Partnerships limited by shares

Partnerships limited by shares are a particular legal corporate structure authorized by some European countries (for example, the French Sociétés en Commandite par Actions, or the German Kommanditgesellschaft auf Aktien (KGaA)). These companies have two different categories of partners (without having two types of shares): the general partners (unlimited liability partners or associés commandités) who run the company and the limited sleeping partners (limited liability partners or associés commanditaires) who contribute equity capital but whose rights are limited to monitoring rights.

Golden shares

Golden shares are priority shares issued for the benefit of governmental authorities. Golden shares confer special rights to national or local governments or government-controlled vehicles to maintain control in privatized companies by granting rights that go beyond those associated with normal shareholding. They can enable governments to block takeovers, limit voting rights or veto management decisions.

C*ross shareholdings*

Cross shareholdings occur when company X holds a stake in company Y which, in turn, holds a stake in company X. Circular holdings, where A has shares in B, B in C and C in A are a special case of cross shareholdings.

Shareholders agreements

These agreements can be formal or informal shareholder alliances.

Action Recommendation

Trading markets for share contracts issued by systemically important corporations should no longer be used to drive the governance of business corporations. Trading should be separated from ownership. A diminution in the amount spent in trading markets would not be a social loss. It would encourage the movement of investible capital towards real investment in economic growth.

Ownership rights should be dis-aggregated through the use of different, co-existing share contracts.

To meet the expectations of those who seek to trade in financial markets, trading certificates can be issued.

To those who want dividends or share buy-backs, rights to dividends can be sold.

To those who want control over the mission and vision of the company, voting rights can be sold or put in trust for use upon contingencies. For example, such voting rights could be sold to employees or to trusts created by employees. They could be sold to trusts for communities in which companies do business.

The trusts could have limited voting rights, to be exercised upon the happening of certain contingencies such as a merger, sale of the company, the acquisition of more than, say, 10% voting control by a new third party.

The manifold rights which together constitute ownership of a systemically important corporation should be placed by contract with parties who have an interest in the long-term operation of those rights.

Systemically important corporations should be run by stewards, not by those who only rent the corporate assets day to day or hour to hour.

Stephen B. Young
Global Executive Director
April 20, 2017

Outro: The Theory and Reality

This issue of *Pegasus* brings forth a fascinating example of why the Caux Round Table (CRT) is not just a 'think tank' but a 'think-and-do tank.' We, and our network, are not simply holding get-togethers for wizened individuals to pontificate on a subject. We are approaching problems within the system of modern capitalism and are coming forth with innovative solutions.

As capitalism has developed, there have been numerous evolutions of laws governing ownership and finance as the white paper discusses. It is now time, perhaps past time, for the next evolution of the system.

The suggestions put forth by the CRT in this white paper for the new classifications of ownership truly address the actual reality of modern finance and capitalism. Capitalism and the globalized economy, to my reading, rarely preforms in actuality as it does in theory. This is because the theory of Capitalism is taken out of books and Economics classes and then placed into the world of human beings. Human beings are not always rational and so our ideals of what a 'free market solution' should be rarely match up to the nuance and context of reality.

We end up looking at an image of capitalism, but in reality, the everyday functioning of the system is often very different. Beyond that, the things that we have decided that we want from our economic and financial systems have changed. Where we used to simply want returns on investment, there are many people who have looked around and realized that there are many other things much more important – or at the very least *equally* important – than returns.

As the white paper reflects, there are many other interests to be considered beyond the simple commodification of every waking moment. We have learned that we need to take into account the reality of the entire system – environment, employees, customers, etc – not simply shareholders.

In professor Karen Ho's fascinating "Liquidated: An Ethnography of Wall Street" she writes extensively on the topic of shareholder value and its place within Wall Street culture. Indeed, she has an entire chapter on the topic of the 'Shareholder Value Revolution,' from which I quote at length.

> I recall my initial surprise during my time at Bankers Trust (bt), when senior bankers and colleagues all assumed that I knew what bt 's ''true'' (though unstated) mission statement
> was. I had assumed that a corporate mission statement, albeit a public relations device in line with the agribusiness claim to ''feed the world,'' would be individualized to particular corporate purposes, visions, and strategic initiatives, addressing such questions as ''why are we here,'' ''what do we stand for,'' and ''what does our business seek to accomplish.'' Instead, I was told that regardless of what engravings or plaques decorate our offices, ''the mission (of all of Wall Street and all corporations) is always to create shareholder value.''
>
> Shareholder value was the most important concept with which my informants made sense of the world and their place in it: it shaped how they used their ''smartness'' and explained the purpose of their hard work. However, just as smartness and

hard work are represented as unmarked, meritocratic ideals embodied by Wall Street despite their groundedness in hierarchy, shareholder value itself is an all-encompassing objective, which implodes and contradicts in practice. Although shareholder value and ''the shareholder revolution'' of the 1980s and 1990s are precisely what allowed for Wall Street to solidify its influence over corporate America, they also outline a cultural ideal that eludes full realization. Yet it is only through analyzing the particularities, intricacies, and contradictions of Wall Street's shareholder value ideologies, and how they historically came to be the predominant measure of U.S. corporations since the 1980s, that the ethnographic present will make sense.

…

When discussing with other academics the ascendancy of shareholder value and the often radical effect it has had on American business culture, I am often asked, ''What's so new about that? Hasn't capitalism always been about making as much money as possible?'' These questions project an ahistorical capitalism across time and space; conflate profit with stock price; flatten the complexity and multiplicity of capitalist institutions, values, and motivations; and reinforce dominant approaches to capitalist histories. Apprehending shareholder value, then, necessitates delineating its meanings, uses, and effects in the present, as well as how historiographies of shareholder value and a particular capitalist past are used to justify Wall Street interests.

…

To briefly illustrate the massive shift in cultural understandings of the corporation from the 1950s to the present time, consider the following juxtaposition. In The Concept of the Corporation (originally published in 1946), a classic study of industrial capitalist organization, Peter Drucker describes the mission and the character of the corporation, using General Motors as his prototype: ''If the big-business corporation is America's representative social institution it must realize these basic beliefs of American society. … It must give status and function to the individual, and it must give him the justice of equal opportunities. … [T]he corporation in addition to being an economic tool is a political and social body; its social function as a community is as important as its economic function as an efficient producer'' (Drucker 1972, 140). Drucker rebukes neoclassical economic arguments that the corporation is simply ''the sum of the property rights of the individual shareholders.'' The notion of shareholder ownership of the corporation is an ''old'' and ''crude'' but ''linger[ing]'' fiction (Drucker 1972, 20). Writing in the heyday of manager-dominated bureaucratic firms, Drucker emphasizes: ''In the social reality of today . . . shareholders are but one of several groups of people who stand in a special relationship to the corporation. *The corporation is permanent, the shareholder is transitory.* It might even be said without much exaggeration that the corporation is really socially and politically a priori whereas the shareholder's position is derivative and exists only in contemplation of law'' (Drucker 1972, 20–21, my emphasis). In the immediate postwar period, then, the corporation was dominantly understood as a social institution, an organization with constituents and responsibilities well beyond the individuals and institutions that owned stock in the corporation. The primary concern of the corporation was the maintenance of the integrity of the organization over and beyond what was dubbed as the ''derivative'' claims of the shareholder—which might have to be sacrificed for the good of the corporation itself.

Ho goes on to note that the concept of 'shareholder value' signified a mission statement, a declaration of purpose, and even a call to action for the corporation. Shareholder value became (and still is) the standard by which corporations are measured, the rubric for corporate behavior, and the hallmark for American corporate and Wall Street culture.

This, as Steve references, was what Unilever and AkzoNobel were concerned about. There are myriad other stakeholders that are as – if not more – important that shareholders. As Drucker wrote, the corporation "in the social reality of today" has a responsibility to more than just shareholders but the entire community. Corporations were not and are not supposed to single-mindedly generate profits to feed into the toothy maw of the Wall Street casino.

The way to change these current corporate behaviors to more appropriately reflect the modern stakeholder environment is to alter the ownership structure of these businesses. This CRT white paper presents the next evolutionary step in corporate ownership structures to more adequately reflect this reality.

Erik Sande
Caux Round Table

Final Thought:

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Editor in Chief
Stephen B. Young

Editor
Erik Sande

Assistant Editor
Jed Ipsen

Design, Layout, and cover photos by Erik Sande

Caux Round Table

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FACEBOOK.COM/CAUX.ROUND.TABLE

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Questions, Comments, or Concerns for the good of the moral order can be directed to: erik@cauxroundtable.net