Defining employee ownership: four meanings and two models

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Abstract

Purpose – The field of broad-based employee ownership within corporations is a specific application of the foundational topic of property ownership. It is situated at the intersection of a broad range of scholarly disciplines including economics, law, finance and management. Each discipline contributes vocabulary and distinctions describing this field. That broad spectrum of disciplinary inquiry is a strength but it also lends a “ships passing in the night” quality to discussions of employee ownership. This paper attempts to unravel the narrative diversity surrounding this topic. Four meanings of ownership are introduced. Those meanings are in turn embedded within two abstract models of the corporation; the corporation as property and the corporation as social institution.

Design/methodology/approach – There is no experimental design The paper presents a conceptual overview and introduces a taxonomy of four meanings and two models of ownership.

Findings – Four meanings of ownership are introduced. The meanings are ownership as compensation, investment, retirement and membership. Those meanings are in turn embedded within two abstract models of the corporation; the corporation as property and the corporation as social institution.

Research limitations/implications – No hypotheses are advanced. This is not a research paper. A conceptual overview that makes use of taxonomy of meanings and models is introduced to help clarify confusions abundant in the field of employee ownership. Readers may differ with the categories of meanings and models introduced in this conceptual overview.

Practical implications – The ambition of the paper is to describe the various meanings and models of employee ownership presently in use in both academic and applied settings. It is not necessary or desirable to assert the primacy of a single meaning or model in order to achieve progress. The analysis provided here surfaces a range of assumptions about ownership that have heretofore been implicit in both scholarship and in practice. Making those assumptions explicit should prove useful to both scholars and practitioners of employee ownership.

Social implications – The concept of employee ownership enjoys a relatively broad appeal with the public. Among the academic disciplines that have trained their lights upon it, a more mixed reception prevails. Much of the academic and policy controversy derives from confusion about the nature and structure of employee ownership. This paper attempts to address that confusion by presenting a taxonomy of meanings and models that may prove useful for future research.

Originality/value – This study is one of the first efforts to comprehinsively map the various meanings and models of broad-based employee ownership.

Keywords ESOPs, Ownership, Cooperatives, Employee

Paper type Conceptual paper

Introduction

The ownership of companies by a broad base of employees, best known by the familiar label of employee ownership, earns a generally sympathetic hearing from the public and the press but remains an outlier concept in contemporary economic and policy discussions. This paper pinpoints one of the core challenges to furthering research and policy discussion of employee ownership – the existence of competing definitions of the meaning of ownership within the context of the modern business enterprise.

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Perhaps the most familiar preoccupation of skeptics toward the idea of employee ownership pertains to what might be described as the "vertical" challenge this idea appears to pose toward hierarchy and the management of the firm. If ownership is shared, concerns often surface about potential operational challenges of authority, efficiency and governance that may arise when ownership rights are distributed among a workforce. These are challenges that have been resolved for centuries in civic life. Democratic states *delegate* power to leaders. Those leaders have been able to govern and manage scarce resources with commitments to efficiency in full view. Responses to the vertical challenge and analogies between political and organizational life have been explored elsewhere by Dahl (1985), Ferreras and Mackin (2021) among others [1].

This paper focuses on a second dimension, what might be called the "horizontal" or "breadth" challenge that interrogates what ownership, in our case employee ownership, actually means. Concepts such as ownership that are embedded in history and law are elusive. What definitions they acquire are usually contested. Rather than attempt to "solve" this problem by asserting a preferred definition, we will describe the variety of narratives or meanings that surround it. We then organize those discrete narratives according to two abstract models of the Corporation as Property and the Corporation as a Social Institution.

The term "employee ownership" has a deceptively modern ring that is not entirely warranted. It is instead a derivative construct, a tributary of a much larger and historically embedded concept of ownership with legal roots that can be traced to centuries old notions of property and contract. It includes entire classes of assets beyond corporate stock such as land, buildings, machinery and money. The intention to clarify the concept of ownership compels us to investigate a deeper, "back story," about how ownership and property claims come to be in the first place. That investigation leads us to the theoretically and historically rich concept, neglected in the teaching of law and economics, of economic appropriation.

Economic appropriation traces the long path of claims to property and ownership as established "ab-initio" from feudal to modern times both by virtue of human effort, famously characterized by the legendary 17th century Lockean account of "the Grass my Horse has bit; the turfs my Servant has cut; and the Ore I have digg'd," as well as by the more familiar and truncated contemporary frame of ownership simply resulting from money invested at risk by entrepreneurs and early stage investors [2]. Because the study of appropriation investigates below the surface and over time it inevitably surfaces disputes regarding the legitimacy of different rights claims.

The early 20th century economic and legal construct of "residual claimant," which purports to fully identify the holders of ownership rights with at risk investors, is the leading example of a theory of rights claims that prevails today [3]. The stringent assumptions made by that theory have discouraged a broader historical, moral and economic analysis that centers the role of human action and human responsibility in the articulation of ownership claims and a broader theory of property ownership. That limitation, which we will return to near our conclusion, is not just a historical curiosity. It also one of the primary causes of the "horizontal" confusion about the meaning of ownership that motivates the writing of this paper. Ownership, it turns out, is an idea with a much broader reach than the modern theory of the residual claimant.

Our approach acknowledges the importance of these broad background themes but the attention we pay to the specific case of employee ownership permits a more restricted analysis of the ownership idea limited by its proximity to the workplace. While the workplace is the setting we wish to discuss, much of the confusion surrounding this topic emanates from a range of meanings that have been imported to the workplace from other realms, including the compensation, investment and retirement policy worlds, that have little to do with the activity of management or workforce labor; with the performance of work inside organizations. Those imported ideas have given rise to four distinct but overlapping meanings of ownership that vie for prominence in the discussion of the employee ownership idea. Tracing how those ideas have been imported or "borrowed" to apply to the workplace can help explain some of the controversy these ideas generate in public policy circles.

Four meanings of ownership

Contemporary discourse about employee ownership in the workplace makes use of four distinct but overlapping meanings as follows:

1. Ownership as Compensation
2. Ownership as Investment
3. Ownership as Retirement Benefit
4. Ownership as Membership

Each of these four meanings enjoys an empirical reality in both the workplace and the economy at large. They each describe, in a partial way, how ownership is practiced. However, the sheer breadth of these four meanings is also responsible for producing a certain "ships-passing-in-the-night" quality to many discussions of this topic in research and in journalism. The short-term and often de-minimis holding of stock is often conflated with long term significant holdings by employees that include governance of the firm. Operating within "silo-like" knowledge domains familiar to university departments, proponents of particular meanings believe they are making persuasive and definitive points about ownership without necessarily being aware of the fact that their audience may be operating from entirely different assumptions.

The actual practice of shared ownership in the workplace takes place in a variety of structural forms, including but not limited to sole proprietorships, partnerships, closely held firms, publicly traded corporations, corporations sharing ownership through various forms of stock options, broad-based equity grants, corporations owned partially or fully through Employee Stock Ownership Plans or ESOPs, through Employee Ownership Trusts or EOTs and through firms structured as Cooperatives.

The sharing of ownership with individuals in workplaces makes use of a range of specific instruments including stock, membership certificates, options, beneficial interests within Employee Stock Ownership Trusts, profit interests and restricted stock units. The plurality of classifications regarding individual holdings attached to these vehicles reinforces the interpretive challenge regarding what is going on with ownership. These classifications give rise to a range of descriptive terms for employees that include owner, partner, shareholder, investor, option-holder, beneficiary and member. Various meanings are attached to these terms, both subjectively by their "holders" and objectively and externally by observers, the popular press, the law and the state.

The breadth of these classifications gives rise to four challenges.

1. First, is the parochial error of omission seen mostly in academic settings where those bunkered inside a single silo of meaning neglect the contributions made by adjacent neighbors thereby "under-defining" the field. Students enrolled in securities law courses learn about investor rights and "qualified investor" norms that apply in publicly traded and privately held firms. They have very little exposure to how those standards might be different when a broad base of employees constitutes the primary ownership group. Similarly, enthusiasts from the social sciences focused upon democratic governance practices making use of Cooperative and Employee Ownership Trust structures often neglect the most economically dynamic feature of ownership that motivates conventional investors, the ability for stock ownership to provide access to wealth building capital appreciation.
2. Second, in an applied vein, business owners interested in extending ownership to employees may not be aware of the range of alternative tools at their disposal. Those who may initiate employee ownership in hopes that it becomes a long-term structural

feature of the firm may only be aware of short-term tools that have a built-in tendency to dissolve ownership earlier than is desired. Conversely, management groups looking to inject a short-term opportunity for employee ownership prior to an Initial Public Offering (IPO) or a sale to a strategic competitor may reach for tools more appropriate for long term holdings.

(3) Third, also in a more applied vein, policy practitioners focused upon topics such as retirement plan regulations may neglect designs that could also meet the near-term wealth sharing needs of younger cohorts of employee owners.

(4) Fourth, returning to the scholarly context of law and economics, there is the challenge of contending with premature intellectual consensus. In their influential 2001 essay *The End of History for Corporate Law* scholars Hansmann and Kraakman predicted the triumph of traditional shareholder value models of the firm over alternative models, including stakeholder and employee ownership. As their title makes clear, they suggest that further discussion on this topic should be foreclosed. A cursory review of law and business school curricula lead us to believe their campaign has been successful. Our investigation suggests a contrary view that far from being settled, law and economics may be approaching a surprisingly open future [4].

Achieving widespread agreement around a single definition of ownership is unlikely and arguably unwise. Continuing an unexamined and uncritical acceptance of the current breadth of uses without clarifying distinctions that exist also discourages progress. Progress can perhaps be achieved by persuading researchers and journalists alike that multiple meanings do exist and deserve interrogation before making widespread policy pronouncements [5].

At a more abstract level, the differences we find among the four meanings of ownership introduced above suggest the existence of two deeper, underlying models or theories of property emerging out of history that awkwardly and provocatively cohabit and compete in contemporary economic life. These models provide a broader conceptual background to help situate our discussion.

Meanings and models: foreground and background

Our argument proceeds by use of a perspectival methodology. We distinguish a foreground of specific meanings arrayed against a background of more abstract models. Before describing the particulars of each of the four meanings listed above that constitute our foreground, the background models we propose are as follows:

Model 1 Corporation as Property, and

Model 2 Corporation as Social Institution

These two background models provide a metaphorical "forest" against which we can consider the specific "trees" described by our four meanings. Borrowing from the Weberian sociological convention of "ideal types," these models and the meanings that follow represent approximations of observable reality. They consciously simplify and sacrifice empirical precision in an effort to dissolve stubborn ambiguity, ambiguity that in this case surrounds the field of employee ownership [6].

Sociological categories alone are not sufficient to the task at hand. When discussing economic ideas, we also assert the importance of a historical perspective which re-attaches modern uses of the ownership construct to the prior, foundational idea of economic appropriation. The recovery of this historical dimension and a focus on the idea of appropriation, makes use of what theorists such as Skinner (2010) refer to as a *genealogical* approach to intellectual inquiry that traces how ideas have evolved over time. A genealogical approach reminds us that ownership is a much more expansive concept than is captured by contemporary scholarship and journalism. This approach also helps justify a project that attempts to chronicle a continuum of meanings and models of ownership [7].

Model 1: corporation as property

Our first model, Model 1 Corporation as Property, has achieved a near consensus to serve as the prevailing model in contemporary advanced economies, a status that is likely to remain secure for some time to come. As we will see, it has achieved that consensus by including some strange ideological bedfellows. According to this model, the firm is understood as a commodity, a form of property "owned" by persons or groups known variously as owners, shareholders, investors and as "residual claimants." Historically, Model 1 Corporation as Property actually succeeded Model 2 Corporation as Social Institution. It may be a more recent arrival but its ubiquity and domination of economic and legal discourse nonetheless warrants our designating it as Model 1.

Ellerman describes the Corporation as Property idea as a social invention peculiarly lacking in purposive or normative characteristics. He describes it as a *de facto* "asset holding bin" that has become the default structure for legally organizing modern enterprise [8]. In order to engage in commerce, this model of the corporation is typically activated by the infusion of capital by investors recognized as owner/shareholders. Those shareholders, who may be active members of a firm (i.e. founder-entrepreneurs) or passive capital suppliers, subsequently enter into employment relationships with persons situated largely outside of the "asset bin" who perform management, technical and laboring functions. Those functions are performed for compensation, for what Ellerman and Samuelson (1976) before him refers to as "rental" payments, euphemistically referred to as "wages," paid as consideration for the performance of specific terms of the employment relationship. A depiction of Ellerman's idea of the corporation as asset bin distinct from the institution of employment is provided below in Figure 1 [9].

Owner/shareholders functioning under the prevailing Corporation as Property Model may be either private parties or public entities [10]. Among their privileges it is generally accepted that they are entitled to dispose of or sell property under their control and to govern, through the employment relationship and existing labor law, the actions of employees.

The designation of Model 1 Corporation as Property is not purely theoretical. It also describes a fully functional legal status under state and Federal law. Within that status we find a variety of different types of "holdings" as portrayed below in Table 1.

Holdings under Corporation as Property may be *concentrated* and *private*, owned by small groups of individual shareholders or *concentrated* and *public* as in shareholding by a national

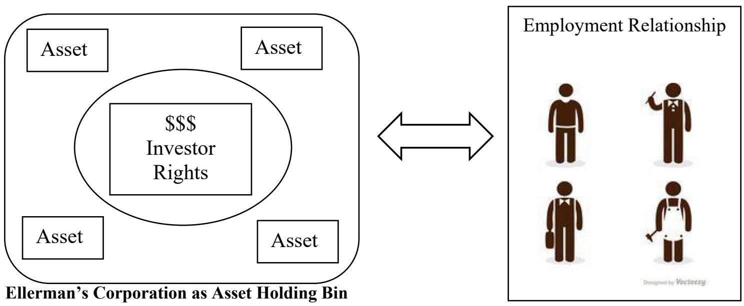

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Figure 1.
Corporation as property

government or state. Holdings in the Corporation as Property framework may also be *dispersed* and *private*, as through ownership by large groups of employees in the case of privately or closely held businesses or *dispersed* and *public* as when owned by sub-state public entities such as citizen groups and local communities [11].

However large the differences between private and public ownership are imagined to be, up to and including in the case of public ownership the association both models share with highly charged labels of capitalism and socialism, both models share a core common assumption that permits their cohabitation within Model 1. That assumption is that governance rights follow from property rights. Regardless of whether ownership of property is private or public, concentrated or dispersed, under Model 1 the firm is understood to be property, a commodity governed in accordance to the proportional property holdings, the "property will" of its owner/shareholders.

Trailing behind the dominant uses of the "corporation as property" model in both capitalist and socialist discourse, we find an ambiguous intermediate concept, found most often in liberal and left scholarship and journalism, of "social" ownership. Most uses of this concept are aspirational, bordering on literary. They reflect an ideological orientation that seeks to move away from the status quo. There is seldom any specific social group singled out that holds legal title to assets. Instead, users of this concept appear to be describing some vague future middle ground that intends to improve upon the problems with private ownership while not falling victim to the well-publicized faults of troubled public/state ownership experiments that have taken place under the banner of socialism.

Leaving those challenges to the side, the standard coupling of the concept of "social" with the concept of "ownership" is telling enough. It reveals that writers, regardless of their ideological persuasion, are making use of the same, core property rights, "property will" assumptions to govern their thinking. In the case of "social" ownership, governance rights are presumed to follow in the very same manner from property rights as they do in more straightforward accounts of private and public ownership. The identity of the "social" unit is most often not named. It may include representatives of government or the "community." But the rights it retains thoroughly resemble the rights asserted by "private" parties, the rights of ownership.

Ironically, while we find wide differences in thinking between left and right, liberal and conservative regarding how the prevailing Model 1 "Corporation as Property" paradigm should be applied, there remains a consensus between these ideologically opposed camps regarding the core construct underlying their positions. For both sides, the firm is a commodity, a form of property governed by ownership or property rights [12]. The suggestion that this Model 1 framework, which merges governance and ownership rights, represents a final and definitive approach to these questions is, like all social constructions of reality, open to challenge.

Ellerman (2021a, b) describes widespread professional and scholarly support for the finality of the Corporation as Property assumption as an embrace of "the fundamental myth"

Table 1.
Variations of model 1 - corporation as property

	Concentrated	Dispersed
Private (Capitalist)	A * Sole proprietorships * Closely held firms	B * Stock Market Firms – "Quoted"- Publicly traded * ESOP Firms - Private
Public (Socialist)	C * National/State Ownership	D * Community/Citizen "Social" ownership

Source(s): Author's own creation/work of ownership. His argument is more surgical than the rhetoric would imply. Indeed, while he is perhaps the leading contemporary interlocutor of the Model 2 Corporation as Social Institution account to follow, Ellerman does not forswear private ownership of property. To the contrary, he celebrates how private rights to participate in ownership by workers and managers can redeem the "fruits of labor" principle that motivated pre-Marxist, 18th and 19th century economists and moral philosophers, most notably John Locke. He then proceeds to deepen the private property argument. Ellerman insists that if outputs or "fruits" are to be shared according to that appealing Lockean principle then the corresponding costs of the inputs of production must also become the responsibility of the productive group [13].

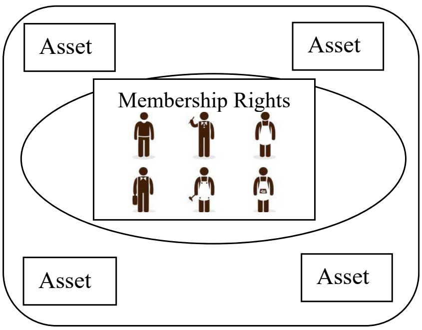
Model 2: corporation as social institution

A second model, what we call Model 2: Corporation as Social Institution, describes a different approach. As indicated above, this model is not a new invention. In terms of the historical record, it arguably precedes or is at least contemporary with the late 18th early 19th century emergence of the now dominant Model 1 "Corporation as Property" construct with its investment infrastructure of equity and debt markets. While it participates in markets and can own property and assets that further its mission, the Model 2 Corporation itself is conceived at its foundation as something other than property. It views corporations as social institutions.

Instead of being governed by a regime of property rights, this model is governed by a regime of personal rights. Instead of the primacy of the property rights of owners, this model, portrayed below in Figure 2, asserts the primacy of the personal rights of members. Those members constitute the corporation as its membership. They are the firm. In anything other than small face to face organizations, they typically delegate responsibilities and authority to management and Boards of Directors leaders as needed [14].

In the modern era, a considerable literature describing a "stakeholder" model of the corporation comes close to what we are describing as a Model 2 Corporation as Social Institution [15]. As we will discuss later on, this literature, while significant, shares many of the vagaries of the "social" ownership construct described earlier as part of our Model I Corporation as Property summary. Stakeholder ownership describes a largely aspirational set of ideas that aim to respond to the needs of a range of discrete "stakeholder" groups (e.g., employees, the environment, the community) outside the orbit of shareholders.

Unlike the social ownership construct that nominally traces back to some form of local, regional or Federal government ownership, the term stakeholder serves primarily as a metaphor. The stakeholders themselves are a diffuse group who do not possess a clear legal



Source(s): Author's own creation/work

Figure 2.
Model 2: corporation as social institution

title to any property. They do not hold legally enforceable claims to ownership in actual corporate settings. Lacking legal specificity, this stakeholder terminology is deployed in a discretionary fashion and generally left to management leadership to define. The August 2019 announcement by the Business Roundtable that it no longer subscribes to a narrow maximizing shareholder value theory of the corporation and now favors a "stakeholder" model of the corporation reinforces the underlying ambiguity of this concept [16].

Interest in stakeholder theory is often associated with a second, relatively new arrival in discussions of alternative approaches to corporate ownership and governance. "B" Corporations, also referred to as Benefit Corporations, started in 2006 as a project of a small group of professionals looking to support companies who wished to publicly assert their commitment to a range of stakeholder priorities to, for example, the environment, community welfare and employee well-being in addition to their investors. Gradually, this movement evolved to distinguish between a non-profit group, the B Lab, founded by those professionals, that can independently certify stakeholder claims and authorize companies to use the B Corporation trademark and a second, more decentralized, technical and legal effort initiated at the state level to create a formal "safe harbor" incorporation status. Statutory authority for that Benefit Corporation status now exists in 29 states and is pending in 14 others [17].

The ability to access and through subsequent audits to maintain a "B Corporation" certified trademark suggests a move away from a strict Model 1 Corporation as Property status toward what we are calling Model 2 Corporation as Social Institution. What remains problematic is the fact that the underlying legal ownership rights and privileges of these firms may well remain unchanged. B Corporation certification cannot necessarily prevent a sale when ownership groups change their minds or decide to sell. The further move to making use of Benefit Corporation legal status (with or without B Certification designation) does, however, provide some measure of legal certainty and protection against the forced sale of companies. Challenges to Benefit Corporation legal status by internal or external investment groups can at least theoretically be resisted. Boards of Directors can credibly respond that existing or prospective investors must respect the Benefit Corporation language to be found in their Articles of Incorporation that explicitly permits decisions to be made without narrow adherence to maximizing shareholder value. Future litigation will likely determine whether Benefit Corporation protections can survive challenges to their protected status from disgruntled shareholders.

In the for-profit economy today, the closest and clearest examples of what we describe as Model 2 corporations can be found primarily among cooperatively owned firms. Employees are designated as members of these firms. Membership rights, both economic and political, are not alienable or saleable outside of the firm. For cooperative firms that are aware of and make use of the design feature, individual internal capital accounts record each employee-members proportionate share of capital appreciation paid out either in scheduled 5–7 year disbursements or when employees leave or retire. Those internal accounts, distinct from outer shell of membership certificates held on a personal rights basis by member-employees, hold the proportional net worth claims of members. The financial value of internal accounts rise or fall with the performance of the company. Whatever value exists are property rights of members [18].

The individual account holdings over 100,000 employee members of the Mondragon Cooperative group in the Basque country of Spain presents the best-known example of the existence of these kinds of rights in a commercial context of scale. Unlike the dominant "pure property" Model 1, this Model 2 corporation as social institution construct is governed not through claims that follow from differential property holdings ("property rights") of shareholders. It is governed, instead, through a regime of non-alienable, non-inheritable, democratically distributed, personal rights of members, analogous to the rights that govern the life of citizens in a political community. Just as the political rights of the citizens of New

York cannot be sold to the citizens of Boston, the members of a Model 2 firm cannot sell their membership rights across any geographic or other line.

Before a late 20th century shift to more conventional shareholder ownership models, there was a long history of legal partnerships of professionals in law, accounting and finance. These firms were typically governed according to the same kind of membership norms and rules, including internal accounts, we associate with the firm as a Model 2 social institution. Many firms have retained this traditional partnership structure. Partners are classified as members and voting rights are structured as personal rights independent of the economic value of partner accounts.

Firms owned by legal trusts, including federally regulated Employee Stock Ownership Trusts or ESOTs (often referred to as Employee Stock Ownership Plans or ESOP's) and simpler Employee Ownership Trusts or EOTs are hybrid structures that involve both Model 1 and Model 2 characteristics [19]. ESOP firms share capital appreciation rights with employees. EOT firms are typically designed without capital appreciation accounts and rely instead upon profit sharing [20]. Following conventional Model 1 norms, ESOP firms are subject to sale though considerable efforts are often made to preserve the ESOP structure through generations of employees. EOT firms typically make use of provisions memorialized in their Articles of Incorporation or by-laws to perpetuate their version of employee ownership and discourage sales to outsiders.

Distinct from the prevailing norms of Model 1 Corporation as Property that operate according to the "property will" of shareholders, Model 2 Corporation as Social Institution firms operate according to the "personal will" of their members. The firm as social institution is not property. Corporations as Social Institutions cannot be sold. They may, however, be dissolved. Figure 3 below contrasts the idea of Corporation as Property with that of Corporation as Social Institution.

From models to meanings

Before introducing the more specific and detailed four meanings of ownership framework, our two-model ideal type schema requires additional context. Employee ownership is not a new invention. It has historical roots of significance, particularly in the United States, that occasionally surface in contemporary settings. In more practical and contemporary vein, a second piece of context should be addressed for the employee ownership story to make sense to most readers. The initiation of employee ownership, particularly if that intention involves acquiring existing companies, requires considerable financial resources that employees as a group generally lack. So how can employee ownership proceed at all if employees are unable to pay for it? That is a riddle where public policy has intervened to bridge the gap.

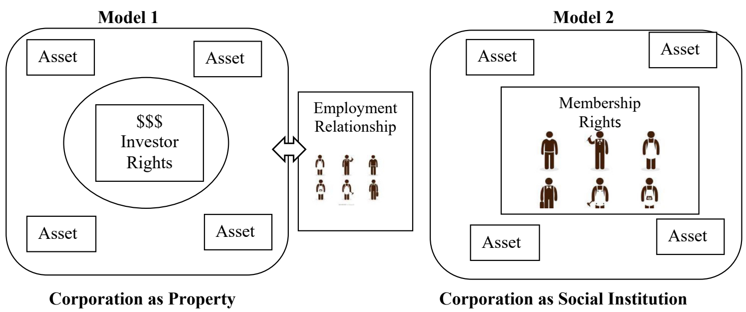


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Figure 3.
Contrast of corporation as property and corporation as social institution

Historical context

Prior to the arrival of industrialization in the early 19th century, farmers and tradespeople working for themselves labored according to a natural form of employee ownership. They worked for themselves. Their work settings tended to be small and stable including family members and apprentices. As industrial production began to replace that earlier formation late in the 19th and early in the 20th century, new practices and language took hold. Employment for a wage replaced working for oneself. New rights and instruments of ownership emerged that were not simply a natural extension of the fruits of one's own labor but could now be "bought" for a price like any other commodity. This is when the justificatory framework for what we are calling Model 1 Corporation as Property began to take hold. As industry grew and economies modernized, that point of view strengthened. It now describes the prevailing expectations about the commercial world we live in today divided between owners who both govern and hold exclusive rights to profits and employees working for wages. This view is supported by a strong consensus in law and public opinion.

Preceding the arrival of that consensus, an alternative Model 2 Corporation as Social Institution path emerged in the United States in response to the appearance of the first industrial workplaces. Groups of workers, described by labor historian Leikin (2005) as "practical utopians," pooled their resources to form competing factories manufacturing commodities such as shoes, barrels and rope.

The 19th century context for this activity, before and after the civil war, was not at a far remove from the American Revolution. The largest and most successful industrial firms were capitalized by European interests who sought to employ traditionally independent farmers and tradespeople. Many Americans spurned their invitations to work for a wage as well as the terminology of employer and employee that they deployed. They found that language demeaning and beneath the standards of citizens of a newly free republic. If factories and industrialization represented the future, they reasoned, then new forms of economic organization should reflect republican values and therefore be structured as cooperatives. George McNeil, a 19th century labor campaigner summarized this point of view when he called for "a republicanization of labor as well as a republicanization of government [21]." At the time of these debates, the highly charged ideological categories and language of modern times pitting the terms capitalism against socialism had not significantly taken hold in the United States. Gourevitch (2014) describes the ideology of resistance evident in this era as "labor republicanism [22]."

Contemporary examples of the Model 2 Corporation as a Social Institution construct have continued to evolve. Though cooperative practitioners invoke early pioneers such as Robert Owen whose cotton spinning factory at New Lanark helped launch the cooperative movement, they also look to Fr. Jose Arizmendi, a 20th century (1915–1976) diocesan priest in the Basque country of Spain widely considered to be the founder of the Mondragon group of industrial cooperatives.

Arriving at ownership

With the exception of a modest stream of grassroots, "bottom-up" cooperative efforts, most employees in the modern era have been accidental investor/owners, arriving at their ownership status through "top-down" initiatives conceived by public policy and/or their employers in firms that range from 50–5,000 employees commonly referred to in the language of the mergers and acquisitions world as the "lower-middle market." Employees as a group have not, with rare exceptions, either dramatically "seized" or, less dramatically, acquired their ownership positions. They have instead primarily been beneficiaries of sale processes, conversions of established and successful firms, where public policy measures have provided incentives to sellers and capital suppliers that effectively invite employees into the ownership room without requiring them to risk their own scarce capital. More recently, employees have also been included as participants in a new form of private equity investing, described at more length further on in this paper.

The fact that most employee ownership activity evident today has been externally initiated also reminds us that employees typically approach the employment relationship with modest ambitions, focused upon earning income that can meet the material demands of families and if possible, leisure. The introduction of the horizons of investment and ownership may describe how employees think about the discretionary purchase of substantial personal assets such as homes and automobiles but work is considered a job, not an investment. As the modern-day architects of employee ownership point out, an economy divided in this fashion between a large group of employees whose economic horizon is limited to paychecks and a smaller group exercising exclusive ownership rights, is a highly unequal economy. Policy measures to address this divide followed [23].

The first set of policy ideas that built a bridge to ownership arrived through the imagination of an attorney and economic thinker by the name of Louis Kelso. It was Kelso who first persuaded Senator Russell Long of Louisiana, the son of legendary populist Huey Long, of the merits of the idea of providing Federal tax incentives to induce business owners to "sell" significant ownership stakes to legal trusts representing employees (managers and workers). The problem with capitalism, Long and Kelso were fond of repeating, was that there were too few capitalists. Because of the underlying economic realities facing working people who generally do not possess the capital to initiate transactions, public policies had to be designed to fill the gap. Starting in the mid-1970s, Long and a bi-partisan list of Senators and Congresspeople designed law and regulations that encouraged internal sales between business owners and employee trusts - employee stock ownership trusts – that require no cash outlays from employees. Known popularly as ESOPs or Employee Stock Ownership Plans, they number approximately 6,500 firms, collectively employing 14 million workers [24].

Management and employee groups do, on rare occasions, initiate ESOP transactions. However, the choice to sell remains with incumbent ownership groups. That choice typically involves a desire on the part of founding owners to sell either to pursue other opportunities or to retire. It should be no surprise that when faced with a choice between selling to a highly capitalized private equity community and internal sales to ESOPs, sellers typically opt for conventional sales. Private equity can satisfy the desire to sell with ample capital and with transactional efficiency. Sales of the second, ESOP variety can be realized but they necessarily involve a more complex process, often relying partially upon sellers to serve as lenders issuing debt instruments, seller notes, that take the place of traditional equity but which enable capital poor employees to meet market prices. Policy initiatives under discussion that would extend Federal loan guarantees to investment funds backing management and employee groups, creating a new category of ESOP private equity, promise to even the playing field and alter the employee ownership dynamic [25].

Regardless of the legal structures used to achieve employee ownership, a significant cohort of cooperative members and ESOP employee owners have, directly or indirectly, in addition to their continued status of wage earners, assumed the mantle of investor-owners. In so doing they have attracted the attention of the intellectual and policy guardians of both the investment and the labor policy class. The reception from those guardians has been mixed.

Four meanings of ownership

Our Model 1 Corporation as Property and Model 2 Corporation as Social Institution conceptual scheme provides a background for four overlapping meanings of the term ownership in employee ownership enterprise settings. As was the case with our use of

Models, these Meanings are deployed as sociological ideal types. Certain examples of employee ownership span more than one meaning though usually with a primary appearance to be found in a single use. They compete for the attention and understanding of scholarly, press and public audiences. Given the breadth of the ideas they encompass, there should be little wonder that ownership remains a controversial and often confusing topic.

Meaning # 1 – ownership as compensation

Beginning in the late 19th century in Chicago and New York, a market began to develop for stock options in American corporations. Much as they function today, options were then designed not as actual stock but as derivative financial instruments whose value is derived from an underlying asset, in this case the appraised or traded value of a share of stock. The original options market was a market designed primarily for outside speculators with money to invest. Options were not designed for or used by employees of those early corporations. In those early days, options were traded over the counter by broker dealers without any regulation. In addition to the core risk associated with the market activity of the company associated with those options, early holders faced a further risk of liquidity. Cashing in depended upon economic results achieved at a given expiration date and the integrity of the seller to pay up [26].

After the stock market crash of 1929, the Federal government began to assert partial control over the options market, though the market remained external to the firms. According to business historians, options and related practices of incentive pay originated in the 1950s. They took on a more prominent role in the 1960 and 70s as entrepreneurs and outside investors of predominantly new, start-up firms in emerging "hi-tech" locales associated with Silicon Valley began to use them to recruit talent from old economy companies and as elements of executive compensation. Options provided the attraction of economic incentives while minimizing economic dilution and preserving the corporate governance power of actual shareholders. Over time, the increasing demand for scarce technical talent prompted the extension of options to entire workforces as a whole. Options today are used both by newly emerging firms that remain in private hands anticipating an initial public offering (IPO) and by firms that have passed into public stock market ownership and continue to use options to compensate their employees.

Ask a random thirty-year-old working today in either a pre or post IPO Silicon Valley firm who received stock options as part of her hiring package whether they are a part owner of their firm and you are likely to get a slightly confused response. Most employees of firms that use stock options and related forms of incentive pay understand that ownership of their place of work really belongs to executives at the top of their firm and/or external investment groups. Employees, including executive level employees who receive options, further understand that options which they hold are purely economic instruments that do not confer any governance rights. Our thirty-year-old respondent therefore may find the question about whether her options make her an owner of her employer to be curious. She is likely to know that she holds options. She is also likely to feel positively about holding options and as a result of holding them may even be inclined to "act like an owner." She is likely to be more inclined to follow the stock price in hopes that her options can be cashed in once a target price has been reached. But on balance she is likely to consider options as primarily an element of compensation.

That fact that the use of options may not evoke a strong sense of employee ownership does not detract from their utility as a recruitment and compensation enhancement tool.

The use of options has become a norm that high technology companies, particularly early-stage companies, ignore at their peril. They have become an expected element of compensation. In a 1999 interview on the PBS television interview program Charlie Rose, Jeff Bezos, the founder of on-line retailer Amazon summarized the extent to which options had infiltrated the world of compensation stating that Amazon had essentially "outsourced its compensation strategy to Wall Street [27]." Over 2 decades later, as Amazon grew to nearly 1 million employees in a labor-intensive industry, it is interesting to note that its compensation strategy had radically changed. Pressured to raise wages to a $15.00 per hour minimum in 2018, Amazon chose to withdraw the use of stock grants [28].

Two significant developments early in the century; the decision in 2003 by Microsoft to end the use of stock options in favor of direct stock and the 2004 decision by the Financial Accounting Standards Board (FASB) to no longer permit stock options to be used as a deductible business expense slowed down the use of stock options from their 1995–2000 peak. A decision by Apple in 2015 to extend a variation of the option idea, an instrument called Restricted Stock Units or RSUs, to all employees began to signal a reversal of the option retreat. At least for certain large companies, the ability of these instruments to recruit and retain employees overcame the deterrent of needing to expense the cost.

A second high profile decision in 2016 by Hamdi Ulukaya, founder of Chobani Yogurt, to share broad-based equity grants with his 2,000 full time employees garnered national press [29]. Finally, in February 2021, an unexpectedly bold entry took the stage from within the heart of mainstream private equity at Kohlberg, Kravis and Roberts (KKR). The Managing Partner of the KKR Global Industrials practice, Peter Stavros, has enthusiastically embraced the practice of including rank and file employees in equity sharing through broad-based equity grants, arguing that it should be standard practice in private equity investing [30]. He has backed up his interest by launching a full-scale non-profit organization, Ownership Works, that advocates for equity sharing particularly within the private equity community.

The upsurge in use of broad-based equity grants, Restricted Stock Units (RSUs) and other equity instruments, is an encouraging development. There is no doubt that many of the more recent initiatives taken at companies such as Chobani and industrial companies operating under the wing of KKR are genuine and motivated by something approaching an explicit embrace of long-term ownership more than simple, short-term enhancements to compensation packages.

What is problematic about this approach is that the equity sharing mechanisms being employed are generally designed to capture relatively short-term stock appreciation. The triggering events that promise to bring about truly significant wealth sharing through Initial Public Offerings (IPOs) or a sale of a company to a strategic buyer are events which typically terminate employee ownership. It is difficult, in other words, for the valued shared ownership arrangement to survive the ordinary trajectory and demands of equity markets. One or two cohorts of employees may benefit from equity incentives. Subject to negotiations with the subsequent buyer who may or may not share the inclusive ownership vision, future cohorts are likely not to benefit in the same way.

The use of options and broad-based equity grants as a method to outsource compensation to stock markets remains a significant, broad based, Model 1 "Corporation as Property" meaning and technique. Their use can be broad-based or targeted to a narrower slice of employees. In certain cases, primarily in publicly traded companies, options and grants are rolled forward by employees who may also invest additional discretionary funds in stock, thereby at least partially transitioning into our next meaning of Ownership as Investment. In none of these cases however do we find these instruments serving a dominant ownership function of governing the enterprise. Option pools and equity grants typically constitute less than 20% of corporate stock. Instead of functioning as a permanent representative of employee voice, they function primarily as relatively short-term incentives, tools that shape employee loyalty and executive behavior. The question of whether these techniques fulfill a robust definition of ownership is at the very least debatable. If they are to become robust, they will need structural enhancements that for now are absent.

Meaning # 2 – ownership as investment

One need not reach far to encounter pervasive cultural imagery that identifies ownership with the concept of investment. From media pictures of the Wall Street "bull" sculpture to the ubiquitous stock ticker that scrolls across television and computer screens, we are constantly reminded that investment, hopefully shrewd investment, is a core value of contemporary life. While the dominant media imagery concerns investments in stocks and bonds traded on public exchanges, investment also functions as a core economic concept governing the purchase of land, buildings, equipment and a wide range of other valuable assets. In either case, whether applied to instantly tradable securities or to longer term assets, the pursuit remains the same. Investment is made to increase or at the very least hold constant the value of money. Investment implies an economic "return," the possibility of achieving capital appreciation from the earnings of the firm, that is expected to reward the investor for the exercise of risk.

Given this dominant cultural background, it should be of little surprise that when the topic of employee ownership is introduced to academic or journalistic circles, attention turns decisively toward the language and attendant norms of "investment" as the presumed driving force behind the employee ownership choice. According to this school of thought, employees entering into ownership who may, from the inside of their organizations, actually conceive of their ownership relationship on quite different terms, are first and foremost perceived as employee investors.

Those who view ownership as investment emphasize two standards. First is the magnitude of the financial "return" employees can be expected to enjoy by virtue of their status as employee owners – what we might call the "payoff" of ownership. Second is the "prudence" of the ownership investment employees are either making directly or having made for them in the firms where they work. Prudence, while related to judgments of viability and hoped for return, is also typically judged through use of a long-standing allocation standard promoted by economists and by the investment community, the idea of risk diversification. The management of risk through diversification is described in academic and professional literature as portfolio theory [31].

In response to the first demand regarding the ability of employee ownership to share wealth, an early (1997) study made use of comparison data to support its claims [32]. Reporting results limited to Washington State in the mid-1990s when the research was conducted, Kardas, Keogh and Scharf report that wages were 5–12% higher and total retirement assets were 2.6 times greater in firms with Employee Stock Ownership Plans or ESOPs than comparable firms [33]. Subsequent research in 2016 by O'Boyle *et al.* confirmed these general findings [34]. Judgments can be made regarding the significance of this data. Those judgments should take into account employment settings where there is no ownership sharing. A 2010 study conducted by the National Center for Employee Ownership states that "ESOP participants have approximately 2.2 times as much in their (ESOP) accounts as participants in comparable non-ESOP companies with defined contribution plans and 20% more assets overall. The average ESOP Company contributed $4,443 per active participant to its ESOP in the most recently available year. In comparison, the average non-ESOP company with a defined contribution plan contributed $2,533 per active participant to their primary plan that year [35]."

On the second demand emanating from the investment community, the matter of whether ownership as investment is sufficiently prudent and respectful of "portfolio theory" standards, objections from critics begin with the very definition of employee ownership. Because the earning power of employees, defined as wages and benefits, is made possible by an employer, then any funds available from savings by employees for investment are, according to widely accepted norms, encouraged to be diversified outside that employer, thereby protecting the employee in the event the employer were to fail or close. This interpretation ushers in the metaphor favored by advocates of portfolio theory; avoiding the undue placement of too many "eggs in one basket."

This perspective enjoys a certain abstract persuasive power. Where it falls short however is that it strictly equates employment with investment. Employment differs from investment. Employment is a complex social institution where, in addition to collecting paychecks, individuals realize, or are frustrated in their desire to further develop, their human and technical capabilities over considerable period of time. The employment relationship is also a site whose economic character need not be restricted to paychecks. Workplaces are sites where wealth can be built in addition to income earned – if, that is, employees are included in the ownership relationship.

A popular rejoinder to the familiar portfolio theory "diversification first" critique arrives by way of literature. It was Mark Twain who, through the character of Puddn'head Wilson, proclaimed that one should "Put all your eggs in the one basket and — WATCH THAT BASKET [36]. Andrew Carnegie, a contemporary of Twain, is alleged to have added luster to the metaphor by turning Puddn'head's wisdom back on Twain himself when he warned him against reinvesting the profits from his writings in an overly broad basket of investments.

If Twain and Carnegie's rebuttal to modern portfolio theory suffers a lack of precision, a more sober fact might help. Portfolio theory assumes the prior existence of wealth, the existence of assets to diversify. In an economy where working people are reported to increasingly live from paycheck to paycheck, public policy should perhaps be focused on how to assist employees to build a nest egg in the first place that can, once created, eventually be diversified. Median earning (and below) workers do not resemble investors. They instead resemble small subsistence farmers whose livelihood is restricted to a limited number of crops on small plots of land. In another context where he critiques the fetish of economic liquidity, Keynes (1936) helps to elucidate the contrast of our median worker's status with the proverbial investor of portfolio theory legend.

> (It) is as though a farmer, having tapped his barometer after breakfast, could decide to remove his capital from the farming business between 10 and 11 in the morning and reconsider whether he should return to it later in the week [37].

And in a related vein Keynes remarked:

> If farming were to be organized like the stock market, a farmer would sell his farm in the morning when it was raining, only to buy it back in the afternoon when the sun came out [38].

Properly outfitted with something more than a subsistence farm to protect, that is, with more than a notional ownership stake in their enterprise, the rational discipline of diversification should always be welcomed in discussions of employee ownership. As reported above, research shows that where broad-based employee ownership has made serious inroads, with the universe of broad-based employee ownership companies, primarily organized as ESOPs, the wisdom of diversification has, within reason, been respected. ESOP companies are likely to also include 401(k) plans as part of their retirement package. Most comparable firms supply neither an ESOP nor a 401(k) plan [39, 40].

Despite evidence that the ESOP community has recognized the diversification challenge, a certain necessary tension remains between the omnipresent investment ethos of contemporary finance that views employee ownership as simply another investment relationship and the upstart field of employee ownership. That tension is not solely economic. It is also cultural. There is a longstanding narrative at work in modern economies with champions located across the ideological spectrum who believe that a clear division of economic labor between wealth accumulating investors and wage-earning employees is a preferred and superior system.

A final note about the topic of investment pertains to its merits. The economic potential of capital invested in equity to capture proportional shares of capital appreciation is well understood in mainstream investment circles. The sharing of equity provides the opportunity to share in wealth. Employee ownership offers the opportunity to distribute these same wealth sharing features of investment among employee groups. Legal designs used by subsets of the employee ownership community that exclude capital appreciation, as is the case with some cooperatives and most firms making use of Employee Ownership Trusts (EOT's) popular in the United Kingdom, restrict economic participation in what is still termed employee ownership to wages and profit sharing. Those designs are typically chosen either to avoid complexity or as a deliberate means to put economic temptation out of reach both as it might apply to employees and to possible future external investors.

Two of the leading employee ownership groups, the Mondragon cooperatives which make use of a system of individual internal capital accounts and contemporary ESOPs which also feature inclusive allocation designs, have successfully navigated these challenges and feature designs that share wealth with employees. Challenges do exist to preserve fully distributed employee ownership designs, particularly in successful firms. Those challenges should be able to be addressed by advances in the infrastructure of financing sympathetic to the goal of sustainable employee ownership.

Meaning # 3 – ownership as retirement benefit

The third meaning of ownership, Ownership as Retirement Benefit, bears a close resemblance to the Ownership as Investment discussion but with important distinctions. Ownership as Retirement Benefit features a longer time horizon than that commonly used by investors in publicly traded corporations focused on the trading of stocks. Ownership as Retirement Benefit is by definition a more patient, long-term proposition.

For purposes of this paper, ownership as retirement benefit also warrants its own treatment due to the fact that the two statistically most prominent examples of employee ownership; companies owned through Employee Stock Ownership Plans (ESOPs) in the United States and worker cooperatives, most prominent and scaled in Europe but also an important presence in the United States, feature the primary payout of employee owner accounts at retirement. The practical reason for this design in both cases, as distinct from more liquid, cash available designs, is centered on the desire to retain earnings that can be applied to the future growth needs of the sponsoring firm.

In the United States, ownership through Employee Stock Ownership Plans or ESOPs, is legally classified as a retirement plan regulated by a 1974 law, the Employee Retirement Income Security Act (ERISA), which is administered by the United States Department of Labor (DOL). The placement of ESOPs within ERISA by their original legislative architect, Senator Russell Long (D-Louisiana), has presented certain challenges but also enjoys some underappreciated strengths. Given the focus in ERISA on policies to protect retirees, it should come as no surprise that ESOP designs which carry out an explicit Congressional mandate for investment in single company stock have also been a source of confusion. Such an approach is contrary to conventional portfolio theory principles that emphasize the diversification of risk.

The challenge of single company investment risk was recognized by Senator Long and a long bi-partisan list of Congressional supporters in a second stage of ESOP legislation initiated in the mid-1980s but not at the expense of encouraging a continued focus on significant shareholding by employees at their places of work. The Tax Reform Act of 1987 introduced amendments to ESOP regulations which mandate that participants be presented with investment diversification options outside of employer stock when they arrive at certain age thresholds. Subject to the age of the ESOP and the tenure of employees, employees may diversify up to 25% of their accounts at age 55 and 50% of their accounts by age 61 [41]. As described above, awareness of the risks of reliance upon a single stock investment has also driven the ESOP field to voluntarily, without Congressional mandates, encourage the inclusion of supplemental retirement income plans, primarily 401(k) plans, that further diversify retirement income risk.

The location of the largest cohort of enterprises in the field of employee ownership within the regulatory framework of ERISA is not conceptually essential nor necessarily ideal. But it does offer certain clear advantages, particularly for employees. ESOP participation does not presume or require any "at risk" investment outlays by employees. Instead of a direct purchase or investment in corporate securities, stock is contributed by companies to ESOPs in exchange for tax benefits that apply to sellers and to the future partially or fully ESOP owned corporation.

Conventional securities laws classify low wealth employees as "non-qualified" investors, restricted and in certain cases prohibited from making direct investments in securities offerings. By virtue of these regulations, a large percentage of the American workforce is essentially prevented from participating in the wealth accumulating potential of stock ownership. In addition to not requiring any cash outlays, the ESOP design deliberately steers clear of securities law and regulations. Tax liabilities that accrue with conventional stock ownership, do not apply. Taxes are paid upon exit, when employees leave or retire from ESOP firms.

The choice in 1974 by Senator Russell Long to attach ESOPs to ERISA legislation and be administered by the Department of Labor has nonetheless presented challenges. An agency whose primary focus is compliance, on the enforcement of wage and benefit promises made by employers to the American workforce, has not always been the most sympathetic or coherent host for an idea that originally sought to ambitiously re-imagine or at least expand our understanding of corporate ownership as a whole. Ideally the United States Department of Labor should continue its service as a compliance agency, ensuring that fair transactions take place and that employees receive the financial benefits of shared ownership. An office for Inclusive Capitalism located at the Department of Labor or elsewhere in the Executive branch of government, in the United States Department of Commerce or the United States Treasury, could theoretically support a more deliberate advocacy role, carrying out the wishes of Congress as codified in at least six laws adopted since the original ERISA amendment. Those laws spell out explicit, unusually bi-partisan, Congressional intent to advance shared ownership strategies in order to increase productivity and competitiveness of American businesses and to encourage a broader sharing of wealth that can only come about through employee ownership.

One of the advantages that the "Ownership as a Retirement Benefit" construct contributes to the practice of employee ownership is an emphasis on ownership as a long-term relationship. This longer time horizon offers the opportunity to expand the frame of the employee ownership idea from that of a simple employee/investor, looking to "cash in" at a moment's notice to that where employees and management are considered longer-term citizens of the firm where they are employed. This long-term perspective also provides a bridge to the fourth and final meaning destination offered by this paper of "Ownership as Membership." In this final meaning, employees are invited to participate in the long-term economic success of the enterprise on terms different from or at least more expansive than those typically proposed by the dominant Model 1 "Corporation as Property" legal framework.

Meaning # 4 – ownership as membership

In a modern economy dominated by what we have described as Model 1 Corporations as Property and accompanied by attendant language and assumptions regarding compensation, investment and retirement, a fourth and final meaning of ownership, Ownership as Membership, faces challenging cultural odds to be understood. This ownership meaning is visible today primarily in what has come to be known as the cooperative sector. This sector consists of a patchwork quilt of agricultural cooperatives, whose members are farmers, marketing commodities such as oranges, grapes, almonds and cranberries. It also includes a national network of consumer food cooperatives supplying groceries and credit unions, whose members are typically affiliated with large employers, often universities. Lastly there is the case of worker cooperatives, whose members are management and workers of companies engaged in a range of commercial endeavors from manufacturing to engineering to the writing of software. A second diminished, but still functioning, cluster of firms that fit under this ownership as membership framing exists outside the world of cooperatives in the world of professional partnerships in law, accounting, architecture and other professions.

For the purposes of a paper describing the structure of workplace employment, our focus remains with the worker cooperative segment of this sector along with the surviving examples of professional partnerships where we find a membership-based employment relationship that differs from prior meanings of ownership. Worker cooperatives in the United States maintain a modest but growing footprint of 600 + firms, collectively employing approximately 6,000 members [42]. This American cohort draws inspiration from more scaled international models such as the Mondragon Group in the Basque country of Spain, worker cooperatives based in the Emiglia Romagna area of Italy as well as worker cooperatives in Canada. Those international models and the infrastructure they have designed to support their operations informs the direction of existing American efforts. Efforts underway in this field in the United States show potential for a much larger footprint [43].

Perhaps the most fundamentally distinct claim of the "Ownership as Membership" model resides in the realm of governance. The organization and delegation of power within these firms to, for example, elect Boards of Directors that hire and fire management and decide how to invest annual profits derives explicitly from what are termed membership and not ownership or property rights relationships. Those membership rights are enumerated in state law and codified through internal corporate by-laws. They apply to members on a per person basis, independent of capital investment or capital retained.

The group or organizational exercise of membership rights in Ownership as Membership firms typically takes place through democratic assemblies that resemble shareholder meetings familiar in conventional corporate settings. What sets these assemblies apart and also invokes the model of town meetings in the civic sphere, is that the rights of participants cannot be bartered, sold or accumulated by external agents. There are no outside owners, there are only inside members. Within the community of members there are prohibitions on the purchase or transfer of shares among members. Personal rights of membership are distinct from property rights of ownership.

Within the worker cooperative field there is an ongoing debate regarding whether firms should conform to conventions of employment law, including the payment of payroll and related taxes. A legal model strongly advocated by Attorney Laddie Lushin and others assert that cooperatives are a form of collective self-employment that should be independent of employment law. This debate corroborates the view that Ownership as Membership is a distinct construct. In practice, most worker cooperative firms of any scale (e.g., greater than 10 members) typically opt to conform to state and Federal employment law while maintaining their distinct, membership-based governance characteristics [44].

From a distance, the day-to-day functioning of membership-based cooperatives or professional partnerships, firms where we see Ownership as Membership in action, may not appear appreciably different from conventional firms. Firms functioning in accordance with Ownership as Membership governance must contend with the same challenges of achieving efficiency and quality in production and in producing and delivering competitively priced products and services that their customers will approve. The governance features of these firms nonetheless are distinct. They set them apart from conventional firms.

Appropriation and the residual claimant

Our account thus far has traversed a mixture of treatments of the idea of employee ownership captured by the two models and four meanings of ownership. In addition to making use of ideal types to attempt to capture the diversity of applications, we have also embraced what Skinner (2010) describes as a genealogical approach, a historically informed method which attempts to uncover the different ways in which a concept may have been used in earlier times. As Skinner has remarked "When we trace the genealogy of a concept . . . (we) equip ourselves with a means of reflecting critically on how it is currently understood [45]."

Hansmann and Kraakman's influential 2001 essay *The End of History for Corporate Law* took a different approach to history. Their account described shareholder owners, the residual claimants of modern times, as the final governors and beneficiaries of modern economic life. Challenges to the seeming consensus of that view should begin where their analysis ended, with tools of history. Earlier, our account described a social history of practical utopian players on the stage of the American workplace. We now turn to a glimpse of intellectual history. That glimpse reveals that pivotal ideas in the fields of law and economics possess a more complex back story than is usually appreciated. One such idea is the idea of economic appropriation.

The primary distinction asserted by our fourth and final "Ownership as Membership" meaning and the more general account of Model 2 Corporations as Social Institutions returns us to early thinking about the concept of private property introduced by writers such as Locke (1980) and Hodgskin (1832) who first described how property rights are established both by capital and labor. Writers such as these were intellectual pioneers whose work described the claims of self-governing citizens emerging from feudalism. Locke proposed a narrative that centered the idea of productive activity, "the Grass my Horse has bit; the turfs my Servant has cut; and the Ore I have digg'd." That account in its time dramatically challenged ancient assumptions that rights were gifts handed down to subjects by Kings, during a time when, following von Gierke (1958), "rulership and ownership were blent [46]." In place of those ancient doctrines, these classical liberal thinkers put forward the radical new view that productive activity and resulting property claims resulted from the intentional actions of human beings. Acts of appropriation by participants in economic life were described as the "fruits" of their labor. Locke's account of that activity became known as the labor theory of property. As ideas such as these took hold, they gave shape to modern property law and to the emerging discipline of economics, then described as "political economy."

These early treatments of economic life were formulated at a time when economies that had long been dominated by farms and small workshops were beginning to give way to labor intensive industrialization powered by the steam engine. This development created a political problem for the emerging field of economics. The prominent role that labor played in Locke's framework privileged to a disturbing degree the agency and the claims of increasingly centralized groups of working people in the emerging industrial age. Karl Marx's subsequent, idiosyncratic labor theory of value added fuel to the fire. This problem of labor as an overly central agent of production was eventually "solved" by what came to be known as the marginalist revolution of the late 19th and early to mid-20th century. In 1899, John Bates Clark introduced a narrative method that made that revolution possible. He described economic activity as taking place through a *metaphor* of distributive shares.

The image Clark provided of distributive shares, an easy to imagine pie consisting of abstract factors of capital and labor, expanded the realm of apparent responsibility for economic action beyond labor to include capital. That imagery and metaphorical language took over the economic conversation. In particular the distributive shares metaphor advanced the idea of capital as an equivalent if not superior causative factor to labor in explaining the production process. The position and rights of each of these factors were heretofore to be determined by judgments of their relative efficiency or contributions to the ideal of marginal productivity. Marginal productivity theory eventually supplanted Locke's labor theory of property as well as Marx's labor theory of value. In a memorable framing that both mimics and mocks Marx, Friedman (1962) celebrated the enhanced role of capital and capital goods by asserting "To each according to what he and the instruments he owns produces."

Neo-classical economists have long since embraced the distributive shares metaphor as the master narrative that describes economic activity and the productive process. With the exception of our Meaning 4 Ownership as Membership category, labor no longer occupies a privileged position of agency with attendant rights that follow from its role in the production process. It has instead been ushered off the stage to the economic audience, excluded from ownership and compensated by wages.

Having achieved the status of the dominant explanatory frame, the distributive shares metaphor and marginal productivity theory in economics paved the road for capital to serve as the lead metaphorical actor or agent in the economic conversation. The rights of capital are operationalized in modern law and economics through the idea of the residual claimant. The residual claimant is the name assigned to the agent whose at risk capital allegedly does the lion's share of the work in enabling the productive process. The agent that places capital at risk is perceived as the unquestioned owner of productive opportunities.

Modern law and economics have full internalized this movement in intellectual history. They assert that investors or groups of investors, abstractly referred to as capital, are the sole residual claimants in production [3]. The fact that capital in modern economies is both concentrated and scarce has shaped our understanding of the identity of the residual claimant and contributed to a sense of the inevitability of contemporary arrangements. An alternative approach to the appropriation process and the respective roles of capital and labor, with early footprints evident in Locke's labor theory of property has been developed by Ellerman (2021a, b). His revived labor theory of property, which is relentlessly critical of Marx, asserts that there can at least theoretically be a reversible relationship between parties [47]. Instead of conferring exclusive rights to one or more residual claimants supplying capital as the final owners of production, his approach describes a possible contractual relationship between suppliers and users of capital, between capital suppliers and labor suppliers. Viewing these arrangements through the lens of a contractual relationship introduces the possibility of moving from the standard and static idea of residual claimants to the performance of a reversible role that he describes as residual *claimancy*. This view argues that the identity of the final residual claimant should follow the direction of a contract, specifically the direction of the residual claimancy contract chosen by agents. According to this view, property should perform on a broader stage. Capital can hire labor and labor can hire capital [48].

In the Ownership as Membership firm of today, it is labor suppliers (workers and managers) who are acting as residual claimants. Instead of inviting outside investors to assume that role with attendant equity rights, they rent all necessary capital, including both conventional debt and equity, from capital sources. Alternative institutional arrangements, evidenced, for example, by the central bank of Mondragon (Laboral Kutxa) which makes capital available to management and worker groups on terms previously restricted to outside investors illustrates the potential for this alternative approach. Additional points of entry into a labor hiring capital can be imagined. Sovereign Wealth Funds can realize a standard of "sovereignty respecting investments" across borders by capitalizing professional investment funds that initiate transactions that feature employee ownership [49]. A nascent American public policy idea, the Employee Equity Investment Act (EEIA), would deploy Federal loan guarantees to investment funds that initiate employee ownership transactions [50].

In settings where capital is rented, it is possible to reframe the dominant idea of a firm as property proportionally claimed or "owned" by its residual claimant capital suppliers. Firms can instead be viewed as associations of managers and employees, members who rent capital. Membership rights take the place of ownership rights. In place of property rights governing firms according to capital stakes owned, firms can be governed by personal rights exercised by employees organized as organizational citizens. Those same organizational citizen-members will not have abandoned the idea of private property. Far from it. Under these alternative arrangements, those members would be positioned to retain wealth accumulating capital appreciation rights proportionally allocated to individual accounts in their names.

Conclusion

This paper has sketched a "foreground" typology of four meanings of ownership common to contemporary discussions of employee ownership against an abstract "background" of two models of the corporation as property and the corporation as a social institution. In practice, these meanings and models regularly appear in disciplinary silos that tend to conform to the interests of their respective champions in policy circles and in the research academy. What we have aspired to accomplish by this account is to diminish the exclusive explanatory power of each silo by describing the simultaneous existence of alternative interpretations.

We conclude with two interpretations of why confusion persists in this field.

The first account speaks to the power of semantics. There is considerable honest confusion across academic, professional and journalistic audiences about the meaning of employee ownership. The sheer breadth of meanings we have described attempts to explain why. That breadth is partly a function of a largely forgotten history of ideas that reach back to the foundations of economic theory, a history that is not often taught.

Academic conferences on the topic of employee ownership illustrate the challenge. Sessions that describe the risk tolerance of employees in the use of stock options compete for attention across the hall with sessions exploring the connection of worker cooperatives to the legacy of Mahatma Gandhi. In an important sense, this breadth is actually a strength demonstrating that there are several possible on ramps to the idea of employee ownership. This same expanse of interpretations can however also function as a liability when advocates of a particular view mistake their theory and practice for the field as a whole. This paper holds up a mirror to both insiders and outside observers so that more informed and deliberate choices can be made. Future research projects should clarify which form of employee ownership they are studying.

A second interpretation recognizes that status quo opinion matters. Contemporary economic arrangements have flourished under the dominant Model 1 Corporation as Property model where ownership is concentrated among a small circle or dispersed outside the firm with external investors. Those benefiting by those arrangements hold considerable economic, cultural and political power. Some of those interests, who may reside anywhere on the ideological spectrum from right to left, do not welcome consideration of alternative views. Others, including stewards of considerable capital resources such as New York State Comptroller Thomas DiNapoli, have proven to be open to these alternatives if provided with clear evidence of how they perform [51].

The field of broad-based employee ownership has achieved a level of scale to warrant further experimentation and support. If due attention is paid to the variety of meanings and models at work within this field as well as to policy measures that can address some of its present limitations, there is reason to believe that it will emerge from the margins to become a more prominent feature of the economic landscape.

Notes

1. Dahl, Robert 1985 Preface to Economic Democracy. Berkeley: University of California Press, Ferreras, Isabelle, *Gouverner le capitalisme ? Pour le bicamérisme économique*, September 2012, Paris: Presses universitaires de France, Mackin, Christopher, 2021 Property Not Pay, Restoring the Middle Through Ownership, Chapter 17 of The Many Futures of Work: Rethinking Expectations and Breaking Molds, Temple University Press.
2. Locke, J. 1980. Second treatise of government (C. B. Macpherson, Ed.). Hackett Publishing.
3. Hollander, Jacob H, The Residual Claimant Theory of Distribution, *The Quarterly Journal of Economics*, Volume 17, Issue 2, February 1903, Pages 261–279, https://doi.org/10.2307/1883665
4. See Hansmann, Henry and Kraakman, Reinier, 2001. "The End of History for Corporate Law," 89 Georgetown Law Journal 439–68.
5. The Rutgers School of Management and Labor Relations hosts an Institute for Employee Ownership and Profit Sharing that provides financial support to graduate students, junior faculty and senior advisers from a wide range of disciplines to study the field.
6. See section 5.2 Ideal Type of the Stanford Encyclopedia of Philosophy treatment of the work of Max Weber.
7. An extremely large intellectual debt is owed here to the work of David Ellerman who has served as the leading intellectual excavator of heretofore unchallenged assumptions about the roots of property theory. See www.ellerman.org
8. Ellerman, David (2020) Fallacies of Corporate Analysis, Challenge, 63:3, 133,155, doi: 10.1080/05775132.2020.1723289
9. Samuelson, Paul, Economics (10th edition) 1976 "Since slavery was abolished, human earning power is forbidden by law to be capitalized". A man is not even free to sell himself; he must rent himself at a wage [p. 52].
10. Coase, Ronald. "The Nature of the Firm," Economics, 4, 16 (1937):386–405
11. Broad stock markets selling and holding private securities are often referred to as "public" markets. The meaning of the term public here is specific. It generally means accessible for a market price to the general public of private citizens and private entities. Public markets and publicly traded securities do not refer to public ownership as in ownership by state/governmental bodies.
12. Ironically, the core differences between these models often escapes even theoreticians and practitioners of today's cooperative movement. Many in that community borrow uncritically from the property-centric vocabulary of Model 1, describing their Model 2 cooperative "membership" institutions in Model 1 cooperative "ownership" terms.
13. See Mackin, Christopher, 2021. Review of Neo-Abolitionism: Abolishing Human Rentals in Favor of Workplace Democracy. *Challenge Magazine*, Volume 64, 2021, Issue 5–6, pps. 453–459. Ellerman's more specific and demanding challenge to what we have called Model 1 Corporation of Property has to do with both the placement and the completeness of property claims. Property rights should be governed by and therefore subsidiary to the personal rights of economic participants who delegate decision making, as necessary, to professional managers and Boards of Directors. Operating within the assumptions of the modern limited liability corporation, those claims must also be balanced. They, the economic participants, must take responsibility for the negative fruits of labor, the costs or inputs of production, as part of a balanced bargain that justifies enjoying the positive fruits of economic activity.
14. Ellerman, David in *Worker Cooperatives: The Question of Legal Structure*, Chapter 11 of Worker Cooperatives in America, Robert Jackall and Henry Levin, University of California Press, 1984.
15. Michael E. Johnson-Cramer, Robert A. Phillips, Hussein Fadlallah, Shawn L. Berman, Heather Elms, What We Talk About When We Talk About Stakeholders, Business and Society, 10.1177/00076503211053005, 61, 5, (1,083–1,135), (2021).

16. Gelles, D. and Yaffe-Bellany, D. (2019) Shareholder Value is No Longer Everything, Top CEO's Say. New York Times, 19 August 2019.
17. See the B Corporation web site for further explanation.
18. Non-profit organizations ranging from universities and hospitals to churches, unions and private clubs also conform to similar Model 2 Corporation as Social Institution norms and rules. None of these entities are owned by any private or public party. They are, instead, governed by members. Those members may include staff, customers, congregations or members of a broader community. Social institutions of both the for-profit and non-profit variety may own property and engage in the routine practices of commerce. They may buy and sell assets and enter into multi-party relationships and contracts.
19. Michael, Christopher, The Employee Ownership Trust, an ESOP Alternative, Probate and Property, January/February, 2017.
20. Employee Ownership Trusts (EOTs) also referred to as Common Ownership Trusts in the United Kingdom eschew individual capital accounts in favor of a "no one owns" approach with the rewards above wages shared, if at all, through occasional profit-sharing bonuses. Considerable debate has arisen between the individual capital account and the common ownership account schools of thought. The individual capital account school argues that the need for routine capital investment to maintain competitiveness will only be supported by cohorts of employee owners if they believe that they will benefit both individually and collectively – a rational "horizon" of self-interest. Common Ownership Trusts have typically been initiated as "gifts" by sellers, limiting their use to a small subset of sellers not desiring capital remuneration for their prior efforts. Similarly, if Common Ownership Trusts do obtain outside capital to secure an internal sale to employees, it is problematic for a first generation of employees to assume responsibility for repayment of capital and not obliging future generations to share in that burden,
21. As cited in *"An iron chain of bondage": Lessons from the Knights of Labor,* Alex Gourevitch, Our Kingdom, Democratic Wealth, November 29, 2012 - http://www.opendemocracy.net/ourkingdom/alex-gourevitch/iron-chain-of-bondage-lessons-from-knights-of-labor/
22. Gourevitch, Alex, 2014. From Slavery to the Cooperative Commonwealth: Labor and Republican Liberty in the 19th Century, Cambridge University Press.
23. Rosen, Corey and Case, John, 2022. Ownership: Reinventing Companies, Capitalism and Who Owns What, Berrett-Koehler. The debate between income-based measures and asset-based measures to contend with challenges of economic inequality is summarized in an essay for the PBS NewsHour titled The Alternative American Dream: Inclusive Capitalism.
24. Selling a business to employees through the use of ESOP law is a process almost entirely orchestrated by existing ownership groups. The seller and the company going forward enjoy favorable tax treatment but they typically must also help finance the sale. Conventional banks will lend funds to start the sale process, limiting their role to the most secure, collateralized layer of the financing. But because workers and managers lack equity, sellers typically end up lending their own money in the form of "seller notes" to the employee trust to complete transactions.
25. See publication at Ownership America, Turning Employees into Owners, pps. 11–12, https://secureservercdn.net/192.169.220.85/111.986.myftpupload.com/wp-content/uploads/2021/11/WhitePaper-TurningEmployeesIntoOwners.pdf
26. Blasi, Joseph, Kruse, Douglas and Aaron Bernstein, In the Company of Owners, New York: Basic Books, 2003
27. In a Fall, 1999 appearance on the Charlie Rose PBS television show, Jeff Bezos, the founder and CEO of Amazon.com summarized the function of options by stating that Amazon had, in effect, "outsourced it compensation strategy to Wall Street."
28. Broad-based restricted stock units or RSUs, a variation on the stock option idea, apparently popular with rank-and-file employees, were withdrawn in 2018 in favor of enhancements in fixed pay. This policy change was prompted in part by external pressure applied by the $15.00 an hour living wage

campaign and Senator Bernie Sanders. Amazon employee objections to this forced tradeoff was reported in the press. Why Some Amazon Workers are Fuming About Their Raise, *The New York Times*, October 9, 2018.

29. At Chobani, Now It's Not Just the Yogurt that is Rich, New York Times, April 26, 2016
30. KKR Executive's Push to Spread Employee Stock Ownership Begins to Gain Traction, Wall Street Journal, February 19, 2021, Q & A: Industrials head Pete Stavros unpacks KKR's equity sharing model, Pitchbook, November 20, 2018
31. Markowitz, Harry, Portfolio Selection, The Journal of Finance, Vol. 7, No.1 (March, 1952), pps. 77–91
32. Published by the National Center for Employee Ownership at this link.
33. Kardas, P., Scharf, A., Keogh, J. "Wealth and income consequences of ESOPs and employee ownership: A comparative study from Washington State." *Journal of Employee Ownership Law and Finance*10:4 (1998)
34. O'Boyle, E. H., Patel, P. C., and Gonzalez-Mulé, E. (2016). Employee ownership and firm performance: a meta-analysis. Human Resource Management Journal, 26(4), 425–448
35. See http://www.nceo.org/articles/employee-ownership-retirement-plan
36. Notes on the origin of "Watch That Basket," Which Came First, the Carnegie or the Twain?, Herbison Consulting Gateway – at this link.
37. Keynes, John Maynard 1936. The General Theory of Employment, Interest and Money. Macmillan, p. 151.
38. Attributed by Hutton, Will, "Will the real Keynes stand up, not this sad caricature?", Guardian, November 2, 2008.
39. Op cit http://www.nceo.org/articles/employee-ownership-retirement-plan
40. "Employee stock ownership and diversification," Annals of Operations Research, April 2010, Vol. 176, No. 1, pp. 95–107. By Harry Markowitz, Joseph Blasi, and Douglas Kruse.
41. See this link from National Center for Employee Ownership (NCEO). An excerpt follows. "After ESOP participants reach age 55 and have participated in the plan for ten years, they have the right during the following five years to diversify up to a total of 25% of company stock that was acquired by the ESOP after December 31, 1986, and has been allocated to their accounts; during the sixth year, they may diversify up to a total of 50%, minus any previously diversified shares. To satisfy the diversification requirement, the ESOP must (1) offer at least three alternative investments under either the ESOP or another plan such as a 401(k) plan or (2) distribute cash or company stock to the participants."
42. See https://institute.coop/resources/2021-worker-cooperative-state-sector-report
43. Economic Recovery and Employee Ownership, National League of Cities and the Democracy at Work Institute, May 20, 2021.
44. Lushin, Laddie, An Anarchist Path to the Liberation of Alternative Communities, Creative Commons Attribution- Non-Commercial-NoDerivatives 4.0 International License and https://www.co-oplaw.org/knowledge-base/illinois-2/
45. Skinner, Quentin, 2010. The Sovereign State: A Genealogy, Chapter 1 in Sovereignty in Fragments: The Past, Present and Future of a Contested Concept, Cambridge University Press, Hent Kalmo, Quentin Skinner (ed), p. 26
46. Von Gierke, Otto 1958. Political Theories of the Middle Age, Beacon Press, p. 88
47. *Ellerman*, David, 2010. "Marxism as a capitalist tool," Journal of Behavioral and Experimental Economics
48. Ellerman, David 2021. Neo-Abolitionism: Abolishing Human Rentals in Favor of Workplace Democracy, pp.78-81

49. Mackin, Christopher 2019. Sovereign wealth funds must choose a different path, The Financial Times, April 7, 2019
50. Richard C. May, Robert C. Hockett, Christopher Mackin, "Encouraging Inclusive Growth: The Employee Equity Loan Act," *Challenge Magazine*, Volume 62, 2019, Issue 6, pp. 377–397 and Turning Employees into Owners, Ownership America, 2022
51. DiNapoli, Thomas, 2022. Employee Ownership of Business in New York State, released October 18, 2022

References

Dahl, R. (1985), *A Preface to Economic Democracy*, University of California Press, Berkeley, CA.

Ellerman, D. (2021a), *Putting Jurisprudence Back into Economics: what Is Really Wrong with Today's Neoclassical Theory*, Springer Nature, Cham.

Ellerman, D. (2021b), *Neo-Abolitionism: Abolishing the Employer-Employee Relation in Favor of Workplace Democracy*, Springer Nature, Cham.

Friedman, M. (1962), *Capitalism and Freedom*, University of Chicago Press, Chicago.

Gourevitch, A. (2014), *From Slavery to the Cooperative Commonwealth: Labor and Republican Liberty in the Nineteenth Century*, Cambridge University Press, Cambridge.

Hodgskin, T. (1832), *The Natural and Artificial Right of Property Contrasted*, Augustus M. Kelley, Clifton, NJ, 1973.

Keynes, J.M. (1936), *The General Theory of Employment, Interest and Money*, Macmillan, London.

Leiken, S. (2005), *The Practical Utopians: American Workers and the Cooperative Movement in the Gilded Age*, Wayne State University Press, Detroit.

Locke, J. (1980), in Macpherson, C.B. (Ed.), *Second Treatise of Government*, Hackett Publishing, Cambridge, MA.

Mackin, C. (2021), *Property Not Pay: Restoring the Middle through Ownership, Chapter 17 in the Many Futures of Work: Rethinking Expectations and Breaking Molds*, Temple University Press, Philadelphia.

Samuelson, P.A. (1976), *Economics*, 10th ed., McGraw-Hill, London.

Skinner, Q. (2010), "The sovereign state: a genealogy", in Kalmo, H. and Skinner, Q. (Eds), *Chapter 1 in Sovereignty in Fragments: the Past, Present and Future of a Contested Concept*, Cambridge University Press, Cambridge.

Von Gierke, O. (1958), *Political Theories of the Middle Age*, Beacon Press, Boston.

Further reading

Ferreras, I. (2019), "Democratizing the corporation: the proposal of the bicameral firm", *Proceedings of the Real Utopias Project Conference on Democratizing the Corporation*, Stockholm, March, 2020.

Kruse, D., Freeman, R.B. and Blasi, J. (2010), *Shared Capitalism at Work: Employee Ownership, Profit and Gains Sharing and Broad-Based Stock*, Options University of Chicago Press, Chicago.

May, R., Hockett, R. and Mackin, C. (2019), "Encouraging inclusive growth: the employee equity loan act", *Challenge Magazine*, Vol. 62 No. 6, pp. 377-397.

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