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Preface

This essay is the result of a shared concern about the current state of management and accounting research as well as the need for a new theory of the corporation (firm). The current dominant theory of micro-economics both disregards and displaces socio-political dimensions of the corporation (firm). These dimensions concern the state of the corporation in society and its political consequences. The evolving ideas are being explored within the PAPS-group at the School of Business, University of Skövde, in dialogue with Sten Jönsson and the Banking group at GRI in order to establish a new research agenda addressing these issues. In this essay we return to the history of the corporation to problematize the current situation. We advocate the need for new insights to radicalize a discourse performed and actualized by micro-economic influences. The essay is a critical platform and problem statement. It also serves as a final report for the project: *What separates the listed company from the owner managed company? – A critical and comparative study of boundaries and the fixing of boundaries in companies,* funded by The Swedish Research Council 2010-2012.

Contents

Abstract - summary

Economies and corporations are increasingly being characterized as financialized. The separation of ownership and control is at the core of this development and we depart from an understanding that Jensen & Meckling's (1976) theory of the firm actualizes or performs the current situation. The purpose of this essay is to radicalize this contemporary dominant version and thereby move towards a socio-political theorizing of the corporation (firm). Our method is to examine and reactivate historical constructs of the corporation, with sensitivity to the socio-historical contexts in which these constructs developed. By divorcing Jensen & Meckling's theory of the firm from various historical constructs of the corporation, we e.g. find that 'sovereign corporateness with limited liability', 'unlimited liability of individual entrepreneurs' and 'statesmanship of the post-war era' are obscured and lost under a doctrine of micro-economics. We end the essay with two propositions on how to: 1) engage in research with the purpose of dismantling the existing conditions of possibility of contemporary financialization of the corporation and 2) theorise a new post-financialized corporation (firm) to be actualized.

Keywords:; corporation; performativity; socio-political theorizing; firm; 'separation of ownership and control'

1. Introduction

How can scholars in management and accounting move beyond a position as 'economists in the wild' (Callon, 2007) or 'in the service of shareholders' (Dobbin & Jung, 2010)? Both contemporary mainstream theory and practice is guided by strong and often unarticulated assumptions based in a theory of the firm introduced by Jensen & Meckling in the mid 1970s (Van der Zwan, 2014; Bratton, 1989). We argue that their theory of the firm, also discussed as a separation of ownership and control (Tsuk, 2005), translated into agency theory both obscures and hinder alternative views and positions (e.g. Ireland, 2009). Recent work addressing financialization supports this reading of our current state of affairs (Van der Zwan, 2014). We ask ourselves if it is possible to escape from the straightjacket that this micro-economic theory of the firm currently actualizes in our work (cf. Callon, 2007). How can we establish a broader perspective (less non-state and market based, individualistic and privatized) and assume a position from which we can engage in a more socio-political theorizing of the corporation? The purpose of this essay is therefore to move towards such a socio-political theorizing of the corporation (firm). Similar aspirations and motivations are articulated by a number of scholars (e.g. Moore & Rebérioux, 2011; Erturk et al. 2007; Veldman, 2013; Veldman & Willmott, 2013; Ireland, 2009). We argue that literature incorporating the history of the modern corporation, primarily from legal scholars, provides a material against which the contemporary financial version of the corporation may be criticized. A slightly rephrased purpose of this essay is therefore to examine and reactivate historical constructs of the corporation in order to challenge a contemporary financialized version of the corporation and its inherent financial investor oriented theory of the firm (e.g. Tsuk, 2005). The argument of this essay will unfold that there is an existing body of critique, addressing particular dimensions and aspects of the concerns at hand. However, we argue that there is a particular lack of context-sensitivity, an overwhelming presence of a corporate governance bias (drawing on existing theorising) and a certain specialization adherent to the neo-liberal developments in universities e.g. publication strategies. These tendencies in combination hinder broader or more synthesising academic efforts. Froud et al. (2000b) criticize academics in management and organization studies that are questioning shareholder value for not being radical enough. Davis (2009) encourages scholars outside of the US, where states have played a more active role (mixed economies) to provide insights. So, let us be radical and European.

2. The dominance and altered nature of the corporation

In the introduction to the 1991 edition of Berle & Means *The Modern Corporation & Private Property*, Wiedenbaum & Jensen remind the readers that the authors already in 1932 predicted that the quasi-public corporate form (large and public) would dominate in economic activities. The quasi-public corporation meant that holders of stock gave up their position as owners in favour of a position as recipients of wages of capital. Managers (administrators), on the other hand, gained a powerful position controlling the large aggregates of wealth and its use (investments). The fact that the new group in control was not itself subject to control by stockholders or a wider public was a matter of concern. They not only could have interests of their own but also the means and opportunity to pursue them. Wiedenbaum & Jensen also remind us of a more recent statement by Jensen & Meckling in the late 1970s, where they predicted that the corporation was 'likely to disappear completely' and 'destined to be destroyed' (1991, p. x). The corporation has dominated our understanding and framing of economic activities during the 20th century (as imaginary see Weldman and Willmott, 2013). No other form comes closer as thinking template or thought construct in modern business. This is increasingly the situation also in non-business sectors (Veldman, 2013; Erturk et al. 2007). While Berle & Means' empirical predictions about the number of corporations have failed to materialise, it seems that they were right in terms of theoretical significance.

At the same time, the prediction from Jensen & Meckling holds true as evidenced by recent work within the broad and growing scholarly work addressing financialization. Contemporary advanced political economies in general, and economic organisations in particular (also everyday life e.g. Lapavitsas, 2009), are increasingly being described as financial, financialized or under a strong financial influence (Van der Zwan, 2014; Dore, 2008, French, Leyshon and Wainwright, 2011; Lazonick 2013). In relation to industrial organisations, financialization directs attention to the increasing influence and importance of shareholder value (Collison et al. 2014; Froud et al. 2000a; 2000b, Erturk et al. 2007). Massive significance is awarded to finance and shareholders in defining business practices and corporate governance during the last 30-40 years (Bradley et al. 1999; Turnbull, 1997; Ghoshal, 2005; Dobbin & Jung, 2010). The 'rephrasing' of the problem of the separation of ownership and control, initiated in the work of Jensen & Meckling (1976), is singled out as a theoretical core (Tsuk, 2005; Van der Zwan, 2014). Contemporary scholars also express concerns about how financialization is taking place where global, restructured and increasingly private corporate forms are replacing the managerialist corporations of the post-war era (Davis, 2009; Froud et al., 2000a; Bratton, 1989). While mainstream research regards the efficiency oriented shareholder value driven corporation a success (e.g. Ireland, 2009), a number of scholars describe the changes in organisations and management on a more dystopian note (Davis, 2009; Boyer, 2005; Erturk et al. 2007; Ghoshal, 2005; Lazonick & O'Sullivan, 2000). Also on a critical note, Cooper (2013, 2015) distinctly analyses how the nature of accounting has shifted under financialization. The question of power attached to the corporation by Berle & Means in 1932, has according to sociologist Mizruchi (2010) changed drastically since the 1970s.

Corporations still exist, so the Jensen & Meckling prediction that they would disappear or be destroyed, was an overstatement. However, the managerialist version of the corporation we know from Berle & Means writings up until the 1970s, for our purposes in the essay interestingly and primarily in the US and the UK, has given way to what legal scholars Hansmann & Kraakman (2000) define as 'the contemporary standard model' or 'the shareholder-oriented model' (Lazonick & O'Sullivan, 2000; Froud et al., 2000b; Dore, 2008). This model has since the turn of the millennia been even further established (e.g. Collison et al., 2014; Cooper, 2015; Ireland, 2009). The role of Jensen & Meckling's (1976) theory of the firm, for the present state of affairs in Western societies, is in the financialization literature more explicit than implicit (e.g. Dobbin & Jung, 2010; Van der Zwan). In this essay this serves as a point of departure where a performativity is ascribed to their micro-economic theory (Callon, 2007). The extension of this argument would be that contemporary empirical research material in various forms harbour an actualization of or is constituted by the world the theory describes/performs. It therefore also actualizes certain delimited possibilities of theorizing economic activities beyond principal and agent relations or contracts between individuals (e.g. Tsuk, 2005; Cooper, 2013; Hansmann & Kraakman, 2000; Bratton, 1989; Erturk et al. 2007; Moore and Rebérioux, 2011; Dore, 2008; Ireland, 2009).

When the general right to incorporate was introduced in the UK in 1844 there was, according to Clarke and Gamble (2001), a heated debate around the topic of limited liability. On one hand, the existing business practice was built around an individual entrepreneur with unlimited liability doing business under laissez-faire and gentlemanly principles of regulation. The entrepreneur pursuing his self-interest drew on an evolving economic and political personhood within a newly formed bourgeois class (e.g. Cheffins, 2001; Habermas, 1984). On the other hand, the right to incorporate with limited liability was given under strict regulation by the Crown or state (the sovereign). A charter simultaneously included expectations of a benefit in the business endeavour for the wider society and/or national economy (McBride, 2011; Dodd, 1932). In the construction and subsequent growth of the modern corporation, the notion of economic freedom associated with bourgeois citizenship AND limited liability as given by the sovereign/state, were combined in the new constructs of legal persons (Clarke & Gamble, 2001). By the 1930s, legal and economic scholars such as, Berle & Means (1932) directed attention to and introduced the notion of separation between ownership and control in the large modern corporations. They ended their book by raising the question of how the power associated with corporate entities, amassing resources beyond those possible in the prior entrepreneurial forms, was to be understood and possibly regulated. According to Tsuk (2005), analysing the development of American legal thought, this concern was gradually removed from scholarly imagination by the mid 20th century. Instead, by the 1970s, the question of power had been replaced by the notion of a firm as a nexus of contracts and corporate governance as a matter of singlehandedly addressing the separation of ownership from control from an investor perspective. It is in this context Tsuk reminds us to consider 'How did Berle & Means's sober comparison between corporate power and government power disappear from the scholarly imagination?' (Tsuk, 2005, p. 180).

Dimensions in the constructs of the corporation such as sovereigns, liability, personhood (owner/manager) and society have been significantly altered and are possibly even lost with the resurgence of micro-economics (Bratton, 1989; Hansmann & Kraakman, 2000; Ireland, 2009; Moore & Rebérioux, 2005; Veldman & Willmott, 2013). We turn to historical constructs of the corporation with a sole purpose to reactivate dimensions and constructs of the past, in order to move towards a socio-political theorizing of the corporation (firm). We have found that parts of the construct constituting the corporation, and the modern corporation (pre-1970s), have changed or altered drastically in the following three broad themes. Notions or imaginations that relate to 'sovereign corporateness with limited liability', 'unlimited liability of individual entrepreneurs' and 'statesmanship of the post-war' are lost or displaced. Theorizing within the small box that shareholder value primacy offers, will according to Bratton and Wachter (2008) never engage with these lost dimensions. To re-activate these dimensions, and bring their contemporary impossibilities to scrutiny is pivotal for a move towards a socio-political theorizing of the corporation (firm).

The argument in this essay continues in the following sequence. In section 2 we address the problematic situation at hand, financialization, and provide an in depth description of Jensen & Meckling's theory of the firm. In section 3, we introduce the performativity of economics, micro-economics more specifically, and the methodology we employ in our search for contestants to the contemporary standard theory of the firm. In section 4, we present a narrative on the historical development of the corporation, structured according to certain historically important junctions where existing constructs have been questioned, challenged and displaced. Section 5, elaborates on our findings of the lost dimensions in three broad themes. We end our essay with a short comment on our possibilities of moving towards a socio-political theorizing.

3. Financialization and Jensen & Meckling's theory of the Firm

As with most other concepts covering structural changes and transformations in contemporary economies and societies in the industrialized world, financialization is a broad concept used to describe a whole set of changes where the increasing significance of 'the financial' is a common denominator (Sawyer, 2013; Dore, 2008; French et al. 2011; Van der Zwan, 2014). Financialization is described by Van der Zwan (2014) as a concept used by scholars from political science, sociology, anthropology, geography and economics since the late 1990s. It is used to describe a shift from industrial to financial capitalism, which includes a changing role of finance from providing capital for a real or productive economy to something less connected and even seen as autonomous from the industrial. Krippner's (2005) definition of financialization involves how profits are generated (patterns of accumulation), foremost through financial channels rather than through trade and production of goods. Broadly, whole economies and societies are described as changing as a result of this changing role of finance and the changing relations between the industrial and the financial. According to Fine's Marxist inspired definition, 'economic activity in general has become subject to the logic and imperatives of interest-bearing capital' (2010, p. 99). According to Van der Zwan, (2014), a special issue in Economy and Society in 2000 altered scholarly focus from globalization of the productive economy to financial imperatives, and more specifically shareholder value as driver of changes. This theoretical and empirical body of work highlights a transformation of the modern corporation into a new form. This new form is less production oriented in economies than the previous versions (e.g. Krippner, 2005). In the new form, however, both the provision of returns on investments (Cooper, 2015) and the channelling of financial capital to new business ventures (Lazonick, 2013) have been institutionalized. What scholars in this area particularly emphasize is the centrality of shareholder value in guiding the practice of engaging in business (e.g. Gamble & Kelly, 2001; Froud et al. 2000a; 2000b; Hansmann & Kraakman, 2000; Dore, 2008; Dobbins & Jung, 2010).

> Just as neoliberalism has been successfully portrayed as serving the wider social interest, so too has the Anglo-American, shareholder value corporation. A governance regime which has operated primarily in the interests of a small financial elite – minority of substantial property owners and various capital market intermediaries – has been portrayed as operating in the interests of society as a whole. Elite power has been dressed up as efficiency. (Ireland, 2009 p. 28)

Let us turn to Jensen & Meckling's (1976) theory of the firm, which is singled out as path breaking in establishing the shareholder value model. What is this theory about and how can we connect this theory to the development towards financialization of almost everything (Leyshon & Thrift, 2007)? The specific article by Jensen & Meckling explicitly aims to develop a theory of the ownership structure of the firm. It is conceptual while full of vivid, emotional and empirical illustrations but also most importantly, mathematical in presentation. The authors already in the introduction argue that their analysis can 'cast new light on and has implications for a variety of issues' (p. 306) e.g. separation of ownership and control, social responsibility and the theory of organizations. Jensen & Meckling set out to open the black box of the *firm as actors in markets* and identify a theoretical gap for explaining 'how the conflicting objectives of the individual participants are brought into equilibrium' (p. 307) to maximize profits. They do so in stark contrast to on-going debates at the time, regarding this model's relevance in explaining management behaviour in large corporations (e.g. Machlup, 1967; Kaysen, 1957). Management science was seen as connected to micro-economics as the following well known quote from Simon (1959) illustrates: 'Normative micro-economics, carried forward under such labels as "management science," "engineering economics," and "operations research," is now a flourishing area of work having an uneasy and ill-defined relation with the profession of economics, traditionally defined.' (Simon, 1959, p. 254). Jensen & Meckling maintain a notion of maximizing behaviour for all individuals in their analysis, even though Simon (1959) had redefined the profit maximizing assumption as satisficing in decision-making. The role of theory in economics, and the particular theorising during the period leading up to the publication of their work, is therefore most relevant. Machlup (1967) provides context.

> My charge that there is widespread confusion regarding the purpose of the "theory of the firm" as used in traditional price

> theory refers to this: The model of the firm in that theory is not, as so many writers believe, designed to serve to explain and predict the behaviour of real firms; instead, it is designed to explain and predict the changes in observed process (quoted, paid, received) as effects of particular changes in conditions (wage rates, interest rates, import duties, excise taxes, technology, etc.). In this casual connection the firm is only a theoretical link, a mental construct helping to explain how one gets from the cause to the effect. […] This is altogether different from explaining the behaviour of a firm. As the philosopher of science warns, we ought not to confuse the explanans with the explanandum. (Machlup, 1967, p. 9)

The theoretical constructs of firms are, according to Machlup (1967), quite different from their equivalent in the practice of business. The purpose of the theoretical firm is to elaborate on how equilibriums are established based on changes in various conditions, not to predict the behaviour of actual firms. Robé (2011) makes a similar distinction between the legal construct of the corporation and the actual practice of firms. Yet, drawing on property rights (Alchian & Demsetz, 1973), Jensen & Meckling single out the centrality of contracts where specifications of rights are effected. They assume that these contracts in turn would define individual and managerial behavior in organizations. They continue by defining agency relationships as a particular form of contract where principals engage agents and delegate some authority to them in order to perform a particular service on their behalf. How an agent is in a position to disregard the best interests of the principals, assuming both parties are utility maximizers, is then elaborated. The relationship between the principal and agent involves costs (reductions in profit maximization) and a particular cost, residual losses, is defined in relation to the deviation from a maximized welfare of the principal (separated from monitoring expenditure and bonding costs). The typical agency relationship, they claim, is not only applied to the co-authoring of their paper, but bears resemblance to the relationship between a stockholder and a manager of a corporation. Jensen & Meckling establish a strong link (intimately associated) between the separation of ownership and control in the modern corporation with diffuse ownership. They thereby bypass the broader and more general problem of agency existing in all organizations. Within this possibility of a range of agency problems, Jensen & Meckling focus on 'agency costs generated by the contractual arrangements between owners and top management of the corporation.' (Jensen & Meckling, 1976, p. 309). Instead of a normative theory of how to solve agency problems, they focus on the positive aspects of the theory investigating the incentives and elements resulting in equilibrium contractual forms between managers and stock (debt) holders. This is further developed into a theory of corporate ownership structure. According to Jensen & Meckling (1976), the private corporation or firm is simply one form of:

> legal fiction which serves as a nexus for contracting relationships and which is also characterized by the existence of divisible residual claims on the assets and the cash flows of the organization which can generally be sold without permission of the other contracting individuals. (Jensen & Meckling, 1976, p. 311).

After Jensen & Meckling have elaborated extensively on the owner/managed firm, they move on to 'some unanswered questions regarding the existence of the corporate form' (p. 330). They acknowledge the prevalence of the modern corporate form of organization where diffused ownership places managers into a position of 'discretionary power' (e.g. Machlup, 1967), not only by size but also by numbers. They ask: 'how millions of individuals are willing to turn over a significant fraction of their wealth to organizations run by managers who have so little interest in their welfare?' (Jensen & Meckling, 1976, p. 330). Even stranger to them, is the position these individuals take only as residual claimants, when an alternative would be various forms of fixed claims. The literature on the discretionary powers of managers they argue, e.g. as elaborated on by Machlup (1967), makes any understanding of the large growth of equity in the corporate form problematic. From the investor perspective they introduce, they acknowledge only one of the two questions of the corporation brought to the surface by Berle & Means. If managers can use their position to engage in activities benefitting their own utility functions, rather than the utility function of the stockholders, why are people willing to provide this equity in the modern corporate form? Regarding the role of limited liability in this development, they expand the arguments to include a situation of unlimited liability, where the costs of keeping track of a corporation's liabilities (e.g. IBM's) and the wealth of the other owners would increase to such an extent that it would not be possible. The legal fiction of the corporation is thereby completed as they disregard the corporate entity as the legal person owning corporate assets (e.g. Robé, 2008). The firm, they state forcefully: 'is not an individual' (p. 311), and direct attention away from the corporate legal person. Jensen & Meckling instead return to the example of the entrepreneurial owner managed firm that 'would not suffer the agency costs associated with outside equity', 'as he would bear the full wealth effects of them' (Jensen & Meckling, 1976, p. 334, 342). (Jensen & Meckling, 1976, p. 334, 342). The production of detailed financial statements of the firm by various holders of bonds would in this regard be included in monitoring costs. However, were the managers to produce these reports and to have them verified by external auditors, it would be a matter of bonding costs. By extending the theory of capital structure by Modigliani and Miller from 1963, Jensen & Meckling outline a theory of ownership structure in order to theorize on the optimal size of the firm. This includes not only outside equity and outside debt but most significantly the fraction of (inside) equity held by managers.

Having established that agency costs are non-zero, the question lies in reducing these costs. Agency costs, they argue, depends on managers' taste, the possibilities with which they can accommodate these tastes at the expense of value maximizing, and costs of monitoring and bonding. Further factors that influence divergence from ideal maximization are costs related to measuring managers' performance, designing incentives creating alignment with the welfare of principals, and the design of rules and policies. In cases where managers are external, markets for managers (Fama, 1980) and corporations would also influence agency costs, as contemporary corporate governance literature holds dear (e.g. Turnbull, 1997). Jensen & Meckling expected that specialized financial service providers (institutional investors, brokers and investment advisers) and individual investors would perform increased monitoring activities. These security analysis activities (although they include a large consumption element, i.e. too much analysis being performed) would have a beneficial effect on agency costs associated with the separation of ownership and control.

The article offers sweeping connections to on-going debates at the time, e.g. the increasing significance of institutional investors, social responsibility and large corporations such as IBM. At the same time they provide a micro-economic and legal theoretical framework that is described as applicable to all organisations and an in-depth analysis of ownership structure. Their theorising reactivates a few theoretical concerns e.g. property rights and the agency problem that Berle & Means had discussed in the first part in their book about the modern corporation (Tsuk, 2005). The pricing situation is central to Jensen & Meckling's argument. However a quick glance at the situation in business at the time of their writing would suggest that this turn to an investment decision in an owner/managed firm was very far from the standard investors' perspective in relation to large industrial corporations. This discrepancy between business reality and theory, we argue, is central to the actualising effects of their theorising. The financial crisis of the 1970s offered a policy-oriented group of scholars (Mirowski & Plehwe, 2009) a return to arguments that may have been more applicable to the growth of the large corporations during the first decades of the 20th century. The socio-political question regarding the corporation at the time, that Jensen & Meckling themselves comment briefly on (e.g. separation of ownership and control, social responsibility and the theory of organizations), are distinctly both displaced or rephrased in an earlier vocabulary (Laclau & Mouffe, 1985).

4. Performativity and a method for radicalization

So far, we have only hinted in the direction of how we theoretically frame the role of theory in our current state of affairs, namely as performative (Callon, 2007). Scholars in science and technology studies have increasingly made claims that economics is performing economy (e.g. MacKenzie, Muniesa and Siu, 2007). A reading of the growing literature on financialization would support these claims and bring clarity to our concerns regarding possibilities to offer a certain radicalization of shareholder value dominance. A mainstream position in management and accounting could be characterized as strongly coupled to the notion of 'economists in the wild' (Callon, 2007) engaged in performing the financial version of the corporation (Dore, 2008; Cooper, 2015; Ghoshal, 2005; Vosselman, 2014). What the financialization literature brings to the surface and explicitly includes in the analysis is the pivotal role of Jensen & Meckling's theory of the firm, at the organizational level of analysis (Van der Zwan, 2014; Cooper, 2013; Ghoshal, 2005; Moore & Rebérioux, 2014; Boyer, 2005). Also scholars in the periphery, or more critical to this centre, are in various ways in a position merely to describe these circumstances or engage in antagonistic positions and therefore forced to reproduce certain aspects of Jensen & Meckling's worldview while challenging others. The straightjacket is effectively in place for the micro-economically biased constructs. Moore & Rebérioux, (2014) e.g., argue for the return of an institutional role of the corporation only to place this argument within the corporate governance structures already set in place by shareholder oriented corporate governance theories. The theory of the firm advocated by Jensen & Meckling can be conceptualized as having set in motion or initialized a particular *agencement* (Callon, 2007) oriented towards investors' perspective (institutionalized in corporate governance discourse). This development has taken place since the 1970s. Consequently, financialization can be understood as a result of their radical reframing of the corporation and its primary functions in the economy during the 1970s. The scholarly work within this growing area involves a conceptualizing and study of its reality effects, its actualization. Leaving the broader macro-dimensions of financialization aside at this point, we direct attention to what Van der Zwan (2014) characterizes as the meso-level of analysis (organizations and corporations).

Contrary to a more traditional scientific position where science depicts economic reality truthfully, the statements brought forward by scientist from a performativity point of view, in this case economists, actually create the reality it envisions and thereby *'determine the environments for their survival'* (Callon, 2007: 332). Just as operating instructions are part of a device, Callon draws on the work of Deleuze and Guattari to describe this relationship between the statement and the world, which it no longer only describes but actually bring into existence. An agencement, therefore, is an arrangement with capacity of acting. Callon (2007) describes the formulas' relationship to the world in the following manner, based on MacKenzies (2007) work on the performativity of Black and Scholes formula:

> We could say that the formula has become true, but it is preferable to say that the world it supposes has become actual. […] The actualization process is a long sequence of trial and error, reconfigurations and reformulations. But what makes this process possible is the performative dimension of the statements and the trials they allow. For if the statement could be dissociated from the world in which it functions, if it could be denied as an utterance pointing or shifting to supposed worlds, no trial, learning, or adjustment would be conceivable. The conditions of felicity of a (performative) statement, that is, its success, depend on this adjustment, an adjustment that is never given in advance and always requires specific investments. (ibid, pp. 320-321)

Jensen & Meckling reactivated micro-economic theories involving the pricing of products in markets in general and shifted focus towards a specific type of pricing situation: that of an external investor in the process of making an investment as a minority holder of shares in an owner/managed firm. They strengthened their arguments with an image-provoking example of the asymmetrical position in which this investor would find himself. In 1983 Demsetz argues: 'The holder of corporate stock experiences a loss of control over his resources because ownership is broadly dispersed across large number of shareholders that the typical shareholder cannot exercise real power to oversee managerial performance in modern corporations.' (p. 375). Berle & Means had said the same thing in the early 1930s. Still unresolved, we argue in this essay, is the matter of relevance for the situation of corporation of the 1970s, apart from the lack of applications for pricing theory. Is Jensen & Meckling's theorising addressing how a share or stake in the large complex and less than transparent managerialist corporations of the late 60s and early 70s (Bratton, 1989) could be priced? They provide an extensive mathematical argument for a specific type of investment, although primarily directed towards an investment in an owner-managed firm.

Let us return to the theory effects of this shift in focus on the purpose and nature of the firm provided by Jensen & Meckling. Ghoshal (2005) asks how shareholders could be placed before all other contributors of a firm and finds that the model: 'is justified simply because, with this assumption, the elegant mathematics of principal– agent models can be applied to the enormously complex economic, social, and moral issues related to the governance of giant public corporations that have such enormous influence on the lives of thousands—often millions—of people.' (ibid p. 80). The microeconomic theory of the firm shifted focus from complex investment decisions within managerial power structures to the standpoint of the investor asking: what would make a person give part of their wealth to someone else? Interestingly, this question could at the time have been considered bypassed since Berle & Means had shown that the owner managed firm no longer dominated in business. More importantly, Jensen & Meckling clearly did not address the situation characterising corporate America or Europe at the time of their writings. Intellectual context, can be provided by Friedman, who describes discrepancy between reality and theory in the following manner:

> Don't worry if the assumptions of our theories do not reflect reality; what matters is that these theories can accurately predict the outcomes. The theories are valid because of their explanatory and predictive power, irrespective of how absurd the assumptions may look from the perspective of common sense (Friedman in Ghoshal, 2005: 80; also Cooper, 2015).

Ownership in the US post-war era was characterized less by owner-managed firms and more by public corporations with large numbers of shareholders owning small fragments of holdings (Useem, 1983; Berle & Means, 1991). Under this paradigm owners were not in control, the main argument goes, instead managers were (Bratton, 1989). However, minority holders were legally protected from concentrated financial interests. This is referred to as the standard legal argument of the diffusion of shareholder value oriented corporate governance (Cheffins, 2001; La Porta et al. 1999). The entrepreneurial or owner/managed firm in the theoretical models was a nostalgic rather than actual figure in corporate America, challenged e.g. by oil crisis and stock market crashes (Cooper, 2015; Useem, 1983) at the time of theorizing. As described in the earlier section of this essay the Chicago group of economics had strong policy ambition (Mirowski & Plehwe, 2009; Cooper, 2015). So, however nostalgic the appearance of their theorising, a deliberate discursive theory effect through policy may have been intended by shifting focus onto what had been placed in the background (Laclau & Mouffe, 1985). What Ghoshal (2005) and Cooper (2015) explicitly discuss is how this theory came to influence education and practice in management (particularly agency theory in corporate governance) and in accounting (positive accounting theory), redirecting both in alignment with the new micro-economic formula. This shift has had profound consequences for our possibilities to frame both contemporary and alternative conditions, particularly once they have been actualized and performed, as the literature of financialization more than anything brings to our attention.

Both in economics and law, the underlying individualist assumptions were and still are strong; therefore, non-individualistic situations trigger attention in the field of law as an intellectual challenge (Ireland, 2009). The new economic theory (Bratton, 1989) reduced the complexity of organising in general to a contracting situation between individuals that required pricing and generates costs involved in so doing. Machlup (1967) lists a selection of theories of the firm from business and economics (10 out of at least 21 possible according to himself) and expresses a hope (under the heading of A Sense of Proportion) that none of these are deemed more important or useful than the others, as they serve different purposes. He continues: 'It would degenerate into childish claims about one area of study being more useful than another. I also hope the specialist who uses one concept of the firm will desist from trying to persuade others to accept his own tried and trusted concept for entirely different purposes.' (Machlup, 1967, p. 28). So, to our understanding a choice of theory could depend on the problem at hand or not, it is obviously optional. 'The New Theory of the Firm', as Bratton, (1989) refers to it, has without question successfully outcompeted various other ways in which the corporation may be ontologically and epistemologically conceptualized. On this note, Hansmann & Kraakman (2000) provide a convincing argument on why contestants or alternative models have failed to gain momentum. In our chosen terminology this involve agencements set in motion over decades. We will return more in-depth to this question on the role of theory in economics in our discussion (section 5). Studies supporting the persistence and even reinforcement of shareholder value despite severe financial crises are numerous (e.g. Collison et al. 2014; Cooper, 2015; Ireland, 2009; Kallifatides & Larsson, 2017).

The contractual turn of Jensen & Meckling's theory of the firm hence placed the legal system and corporate law at the centre of organized economic activities. According to Ireland (2009) and Bratton and Wachter (2008), these activities were significantly simplified in the new model. This lack of more complex governing questions regarding the role of the corporation in society may have contributed to legal scholarly activity directed to the history of the corporation. In this essay we draw on published work in association law addressing primarily the Anglo-Saxon corporate legal history (e.g. Tsuk, 2005; Bratton, 1989;

Cheffins, 2003). We acknowledge that there are scholars addressing the variations of corporate governance structures in different national contexts (e.g. Lubatkin et al. 2005), however, the Anglo-Saxon dominance in conceptual framings and definitions of the corporation are rarely contested (e.g. Chandler, 1992; Berle & Means, 1991; Cheffins, 2001). A related argument for addressing the development of the corporate form in the UK and the US is the historical development of broader capitalist modes of accumulation on a worldwide basis (e.g. Arrighi & Silver, 2001; Duménil & Lévy, 2011). One could argue that the Anglo-Saxon complex should be separated into its national parts (e.g. Burrell, 2002), and a distinction between the UK and the US unfolds as different historical contexts of government (Agamben, 2011). The role of state governments and markets historically differ between the contexts and has contributed to the current US dominated version of the corporation. Gamble & Clark (2001, in an endnote) and the legal scholars we draw on similarly describe how the deviation from a market ideal that the growth of the large modern corporation constituted in the societal landscape in the US generated heated scholarly and political debates on how the matters should be framed and resolved. The embeddedness of corporations in government structures in Europe (e.g. Lubatkin et al. 2005) would by a parallel argument generate a more intense debate, given increasing emphasis on market solutions (e.g. Kallifatides & Larsson, 2017). The literature on financialization and the recent financial crisis may indicate such a development. We aim for our following narrative on the history of the corporation to reveal some of these regional distinctions by providing context.

Our enquiry into the history of the corporation elaborates on typical traits or dimensions of the corporation as a form of economic activity in various contexts, as a series of historical and developments. In these accounts, a variety of theories of the firm surface for scrutiny in relation to the present version provided by micro-economics. 4 significant historical epochs are narrated where the construct of the corporation has altered, changed, or been modified as a result of scholarly and public debates. The first, involves the developments leading up to the general right to incorporate in 1844. The second, involves the growth of the large corporation leading up to Berle and Means seminal work in 1932. The third, involves how the post-war era developed into a status quo among various forces challenging the role of states and include surging social movements. Finally, the fourth, where the shareholder value doctrine was firmly established and set as the standard for managing and organizing industrial production. During the course of almost 200 years, within each time-period questions raised with regard to the innovation of the general corporate form, altered, and changed.

5. Reactivating historical constructs of the corporation

The corporation can be described as an innovation in the organisation and form of business activities and that legislation during the 19th century contributed to establish the corporation in its modern form (Bratton, 1989; McBride, 2011; Gamble & Kelly 2001; Hansmann & Kraakman, 2000). The legal right for persons accomplishing a common purpose to act as a unit, similar to the legal status of the individual person in terms of defined rights and obligations, was prior to this legal redefinition, authorized by King or sovereign through charters or acts of incorporation (Butler, 1986; Warren, 1908; Todd, 1932). 'Persons so authorized are said to be incorporated. A corporation *de jure* may be defined as a body of persons legally authorized to act as a unit.' (Warren, 1908, p. 306) These two legal principles, one defining the legal status of the individuals and the other awarding this legal status to two or more persons involved in a shared endeavour were combined in the Companies Act in 1844 in the UK.

General incorporation in 1844 – combining two principles

Joint stock companies with limited liability were introduced in the UK in 1855 and a significant milestone was passed in 1844 with the Company's Act (Todd, 1932). The Act of 1844 marked a new era as it defined the 5th type of joint stock company by which any company could register, be granted corporate capacity, 'including the right to sue or be sued in the name of a public officer' (Todd, 1932, p. 50). The first joint stock companies were unincorporated, unregistered, and unrecognized by the law and functioned as partnerships between contracting individuals. Possibilities of incorporation existed in three different forms; 1) Incorporation by Royal Charter, often associated with monopoly of trade and governmental powers over a territory (1553) 2) Incorporation by private Act of Parliament (from second half of 16th Century), e.g. for canal constructions and 3) complemented in 1834 with privileges by Letters Patent from the Crown (trading companies especially) since the acts of Parliament were expensive forms of incorporation (Todd, 1932; Butler, 1986).

In the medieval feudal system in the UK, Guilds of Merchants had obtained royal charters for monopoly on trade within communities. In the association each member traded within the regulations of the guild, where the rights and liabilities of the association were undistinguished from those of its members. According to Butler (1986), the incorporation of guilds can therefore not be seen as the source of the corporate form, where instead these two dimensions of the whole (corporation) and the parts (investors) were separate. In connection to more adventurous overseas trading, however, the form of association of individuals was gradually replaced with the partnership form of trading on joint accounts with transferable shares. This corporate form was used e.g. in the East India Company in the 17th century and their privileges defined by common law at the time were similar to those of the pre-financial modern corporations (Warren 1908; Butler, 1986). Incorporation by act or charter, however, was obtained through costly and unwieldy procedures. With Dutch migrant traders during the end of the 17th century the popularity of unincorporated joint stock companies increased. The legal status of this partnership-based form of economic activity remained founded in book-keeping and the legal status of its individual members unlimited liability, rather than in the joint stock company form. After 1720 and the Bubble Act, unincorporated joint stock companies were prohibited by government in the UK as they interfered with the operations of the incorporated (state sanctioned) companies. The prohibition was largely ignored in business practice but the political nature of the changes in the legal status of the corporation in the mid 19th century should, according to Butler (1986), be viewed in this light. The development leading up to the mid 19th century is therefore a process where Parliament in the UK gave up its monopoly control over the market for corporate privileges. The role of government in the development of the corporate form should, however, be placed under scrutiny as certain corporateness (corporate identity, limited liability, transferable shares of stock) was obtained without incorporation prior to and during the period of prohibition (1720-1834) through various contractual devices, the use of managers of trusts and private arbitrators (intermediators) (Anderson & Tollison, 1983). An advantage with the unincorporated partnership form was that it could be dissolved into its individual part if subject to legal liability. Despite the disadvantages of the unincorporated corporate form, Anderson & Tollinson (1983) argue, it survived because it provided a superior economic efficiency instrument for economic activities.

The state interference in the possibilities of incorporation was according to legal historian Todd (1932), a result of the large turnover and death rate of the unregistered joint stock companies in the UK up until the mid 19th century. Doing business was considered hazardous (Todd, 1932). A witness account from the 1843 hearings on the matter expressed: ‘I should say that there had been an entire loss upon every joint stock company formed for the purpose of what we call trading, that is to say, assuming the trading and commercial functions of individuals’

(Todd, 1932, p. 60). The richer shareholders of unregistered joint stock companies prior to the Act were more likely subject to unlimited liability pursued by creditors than poorer ones, 'owing to the cumbersome nature of the law' (p. 61) in pursuing the unlimited liability of all shareholders. The corporate capacity introduced in the Act of 1844 strengthened the unlimited liability of all shareholders. When limited liability was introduced in the UK in 1855 the number of registrations increased significantly (Todd, 1932). According to Butler (1986), the economic and political changes of the Industrial Revolution developed both a middle class and a working class with economic means to invest primarily in low-risk investment opportunities. Channelling these new investor interests, could at the time have been an important political coalition (interests of those constructing and selling shares of stock), actively challenging the conservative legal system of common law and a legislative Parliament selling charters and acts to incorporate through complicated and costly procedures (Butler, 1986). What the legal changes in the mid 19th century brought about, was the possibility to under quite simple measures of registration award partnerships (unregistered and unincorporated joint stock companies) the legal status of a unit. Instead of an association of partners with property rights principles ascribed to an individual proprietor, these rights were ascribed to the corporate entity or unit. Assets in the unit were corporate assets and limited liability of holders of stock limited the participating partners to be liable for what they had put into the partnership. In 1932, Todd concluded that the modern forms increased the average life expectancy of a company. At the same time, once the company made losses the corporate form was less enduring in contrast to the entrepreneurial firm, which under the threat of liquidation had involved a resolve to the brink of personal ruin (Todd, 1932). The Acts brought competition to large owner concentrations since holders of shares in the registered joint stock firms accepted less return on their investments than would the individual entrepreneurs bearing all the risk. Sir T. Farrer, chairman of the Royal Commission on the Depression of Trade and Industry in 1886, describes the situation in the UK at the late 19th century in the following manner:

> All that we can say is that the effect of it has been to enable small capitalists to do what only large capitalists could do before, and has thus introduced additional competition with the large capitalists. In this I cannot see that there is any evil to the productive powers of the country; but, on the contrary, a gain. The capital of the small capitalists is there and it cannot be injurious to the country as a whole, that it should be employed in production. (Todd, 1932, p. 65)

Individual large capitalists or entrepreneurs had prior to the legal changes in the mid 19th century operated under two principles; laissez-faire (non-interference in economic matters) and unlimited liability (full accountability in legal and economic matters) (Gamble & Kelly, 2001). Individual property rights doctrine was used to legitimize the new corporate form, which within the 1844 Act gave a general permission to form companies. Corporate assets became equivalents to private and individually held owner/managed assets earlier regulated with unlimited liability. The corporate form in the UK therefore enjoyed the legal privilege of incorporation and limited liability while the corporate property at the same time was treated as belonging to a private association and, according to predominant laissez-faire principles of non-interference, not a concern of the state (Gamble & Kelly, 2001). The context in the US, given the strong influence from the UK in combination with the declaration of independence from the parent country, provided a tension between business practice and constitutional dimensions of the corporation, which we return to in the following section.

The introduction of limited liability did according to Todd (1932) not improve the quality of companies and he singles out three problem areas; frauds, speculation, and inefficient management. Frauds related to starting up companies or of running them initially increased, but requirements of 'publicity' and increasing liability of directors 'encouraged a better quality of entrepreneurs to enter industry' (Todd, 1932 p. 67). Investors' focus shifted from the risk of making an investment in a fraudulent company to whether a person of normal prudence, or the public, would place their money in an inefficiently or poorly managed company. Public accounts (book-keeping) addressed solvency rather than the possibilities of dividends. The question of the role of management in registered joint stock companies, however, would return in renewed strength. The growth of the large corporation shifted the focus from the individual businessmen to the corporate entity and those in control of its resources, management (Henderson, 1896). Private arrangements of individuals were transforming into public concerns as societally embedded institutions.

> Despite many attempts to dissolve the corporation into an aggregate of stockholders, our legal tradition is rather in favor of treating it as an institution directed by persons who are primarily fiduciaries for the institution rather than for its members. That lawyers have commonly assumed that the managers must conduct the institution with single-minded devotion to stockholder profit is true; but the assumption is based upon a particular view of the nature of the institution which we call a business corporation, which concept is in turn based upon a particular view of the nature of business

> as a purely private enterprise. If we recognize that the attitude of law and public opinion toward business is changing, we may then properly modify our ideas as to the nature of such a business institution as the corporation and hence as to the considerations which may properly influence the conduct of those who direct its activities. (ibid: 1162)

The growth of the corporation and concerns about power

The development of the corporate form originated, in a sphere of quasi-public interest regarding trade, insurance, banking, railways or infrastructural investments. It took a turn towards private enterprise during the second half of the 19th century, particularly in the US (McBride, 2011). What had previously been a possibility of a landed capitalist class of entrepreneurs, or the joint efforts of partners in the quasi-public periphery of a state or sovereign, had become an instrument for enterprise in general through the legal structures established in the UK and the US by the mid 19th century. The innovation of general incorporation provided empowerment rather than restriction, to facilitate collective action according to McBride (2011). Limited liability offered protection to small investors and therefore provided capital for emerging and developing industries requiring substantial investments (Gamble & Kelly, 2001). In some way still treated as private associations, incorporations under laissez-faire principles provided conditions where the empowered corporate entities could operate on larger scales and with managerial autonomy, resulting in 'the rise of sites of economic power which were independent of the state.' (Gamble & Kelly, 2001, p. 111). This development was more distinct in the US than in the UK. In 1870, family owned businesses were the standard in American economy. A corporate revolution, where large corporations dominated the economic landscape had taken place by the beginning of the 20th century (Kristol, 1975). Not holding back on the critique, Kristol (1975) describes how this revolution was by Americans seen as inflicted upon them like an accident, rather than something created by me. As an institution, the large corporation was consistently unpopular, even more so than slavery. Values of private property, free trade, and individualism were taught at prestigious private colleges of the Establishment on the East Coast during the 19th century according to Cavanagh (1976), in his work on the historical roots of the American business system. Moral philosophy as part of the religious orientation of e.g. Harvard and Yale, both founded as Congregationalists, also placed conservative economics and business on the curricula (e.g. Burrell, 2002). Successful businessmen, primarily manufacturers, held a strong position in forming

American industrial societies, idealizing the adventurous, inventive but also dictatorial spirits. Against this background, questions regarding the role of business within a wider societal context were on-going (e.g. Dodd, 1932; Henderson, 1896), with a significant scepticism regarding the role of intellectuals and government.

In the first volume of The American Journal of Sociology, Henderson (1896) argues that the duty of the social scholar is: 'to place a keep before the public the supreme criterion of social conduct, the common welfare. In a boiler factory, where the din and noise drown all sounds, the cry of a child cannot be heard. So men of affairs are apt to be deafened, by the uproar of those very affairs, to the neglect and forgotten members of our common humanity.' (Henderson, 1896, p. 389). He continues to describe how this duty serves to inform men of business to enlarge their scope beyond the public opinion of their class and those who lobby for it. At this time it mainly regarded the conditions of factory workers, which should be supported by society. Taking a broad view on welfare, the social scientist is in a position to remind the businessman aspiring for titles of captain or King that wealth is merely a means to an end and therefore should include regards beyond the individual success stories of wealth accumulation (Hendersson, 1986). At the end of the 19th century, Henderson (1986) concludes his text in the following manner: 'It is of the essence of democracy that the interests of all should not be at the mercy of a few, but should be the care of representatives on the entire community' (p. 397).

The growth of industrial society depended on the new of form of business, the large manufacturing corporations, which differed from old entrepreneurial or family owned businesses. In waves of technological innovations the manufacturing processes were rendered more capital intensive (Chandler, 1992). The economies of scale and scope were exploited efficiently but also required large capital investments. Teamwork (a term in economics for management) was needed to maintain flows of input and throughput in growing multi-unit oligopolistic industries. In 1932, lawyer Adolf Berle and economist Gardiner Means published *The Modern Corporation & Private Property* and addressed the consequences of the modern corporation in a growing industrialized society. Unlike the UK companies during the latter half of the 19th century, described by Todd (1932), the corporate entities in the US had amassed substantial resources (capabilities according to Chandler, 1992). This was beyond those possible in the entrepreneurial forms and outcompeted their UK counterparts still operating within established aristocratic family structures (Useem, 1983; Cheffins, 2001). The new corporate entities represented a concentration of economic power unthinkable in the earlier eras. The distinction between public and private regimes of economic power was blurred as a result. Particularly, the corporate entities challenged the view of private property. The investor in the large quasi-public corporations had become a passive investor among thousands and in the hands of management and those who were in control to elect them (Berle, 1932).

> Berle & Means argued that just as the breakup of the property atom allowed corporations to accumulate and exercise power of the magnitude of state power, it also undermined traditional assumptions about the protection of property rights and justified subjecting corporations to the limitations associated with sovereign power–that is, the requirement that their power be exercised to benefit the community at large. […] Corporate power was a power in trust for society. (Tsuk, 2005, p. 182)

The question of the social responsibility of the firm was according to Dodd in 1932, not a question of whether managers accepted these tasks but whether the principles of the law of business corporations supported such experiments. Berle (1932) held the more conservative position that either you have a system of property rights or you do not (the position of the early Berle according to Bratton and Wachter, 2008). He argued that the capitalist system was not ideal for taking care of the community as a whole, which instead needed a system of law or government. To hope that administrators of economic power mobilized under 5000 directors and a few hundred in control would do nice things was a weak solution according to Berle (1932). It would irresponsibly drain the passive contributions to corporations provided by an estimated half of the population. The separation of ownership and control, Berle & Means argued did something to the traditional views held towards business regarding individual self-interest and efficiency. Active management, controlling groups (read trans-Atlantic financial interests originating in the UK (Burell, 2002)) and passive investors would not engage in value creation or the efficient use of property. None of these groups should therefore be trusted (Ireland, 2009). Berle's writings channelled to a large extent the critical discussions (e.g. Veblen) around the financial elites' use of the corporate form to serve their interests (Ireland, 2009). The question for Berle was to protect the large group of middle-class investors, both from claims of managerial liability towards society and from irresponsible drains of corporate resources by a financial elite. In contrast to Dodd (1932), Berle argued that managerial fiduciary duties were a non-constraining power in relation to the construct of the corporation. The legal status or social position incorporated in individual personhood (property rights) would not function to regulate those in control of corporate resources within the management corporation

(Bratton, 1989), where ownership and control were separated. Nor would it regulate the power of the corporation in society. According to Tsuk (2005), a central concern for Berle & Means was how this new situation should be understood and possibly regulated. Berle and Means (1932; 1991) ended *The Modern Corporation & Private Property* with the following paragraph:

> The rise of the modern corporation has brought a concentration of economic power, which can compete on equal terms with the modern state-economic power versus political power, each strong in its own field. The state seeks in some aspects to regulate the corporation, while the corporation, steadily becoming more powerful, makes every effort to avoid such regulation. Where its own interests are concerned, it even attempts to dominate the state. The future may see the economic organism, now typified by the corporation, not only on an equal plane with the state, but possibly even superseding it as the dominant form of social organisation. The law of corporations accordingly might well be considered as a potential constitutional law for the new economic state, while business practice is increasingly assuming the aspect of economic statesmanship. (Berle & Means (1932; 1991, p. 313)

Tsuk (2005) pays specific attention to their concerns about the power associated with the modern corporation and describe how American legal scholars, contemporaries to Berle and Means, were influenced by a collectivist tradition or legal pluralism. Bratton & Wachter (2008) suggest that the concept *corporatist* better describe their position. A pluralist tradition among political theorists had already assumed how the corporations were a constitutive element in the American society, and therefore central to the experiment of democracy (elaborated by Moore & Rebérioux, 2011). Further, within the legal pluralism tradition corporations could be seen as a 'norm-creating and norm-enforcing institution', thereby comparable but not identical to the coercive power of the state (Tsuk, 2005, p. 181). According to Bratton (1989), by the 1930 'the management-centred conception of large corporate entities took hold' (ibid, p. 1476), where management held power legitimately based on expertise and statesmanship in hierarchical structures. Berle raised concerns regarding the legitimacy of management, particularly when closely entrenched with the interests of controlling groups, thereby upholding a non-managerialist position in the debate (Bratton & Wachter, 2008). A question separating managerialists (corporations as private in nature) from anti-managerialists (corporations as public in nature) was whether management could and should be held accountable for their use of power as a selfless holder of public office would (Bratton, 1989). Management had assumed the power (and liability) which shareholders as owners had given up in the construct of the legal person in the large corporation (in the breaking of the property atom). As such it should be placed in the interest of all. The legal pluralist notion from Berle and Means informed the early phase of the New Deal programs, where collaboration rather than regulation defined the relation between government and business. Government initiatives e.g., constructed large-scale welfare programs attending to the situations of workers as part of The New Deal. This approach was subsequently altered for a stronger regulatory stance and after the Second World War, federal regulations regarding shareholders, creditors, workers, customers, and suppliers had changed the corporation (Tsuk, 2005). What is characterized as the managerialist corporation therefore existed within an active and responsive regulatory state context according to Bratton & Wachter, (2008), which addressed the concerns raised in the end of Berle and Means book (1991). Public interest in corporate matters was a mediating factor in these regulatory responses.

The post war era of policy making and social movements

Cavanagh (1976) describes how the work of Sutton and colleagues on the American business creed from 1956, had identified two different versions of the creed. The classical version identified with traditional business values praising the achievements of the US business system in terms of production and higher living standards as something unique to American capitalism. The democracy, the political system, and the enterprise all with the prefix *free*, constituted an integrated system within this version of the business creed (Cavanagh, 1976). According to Cavanagh (1976) the creed defined the American business system as unique, natural, and stable (unless attacked), which had to be chosen (a moral choice rendering a person in a position of the enemy should they refuse). Government should stay out of economic life, and not place limitations on individual liberty, however some regulation might be necessary. Welfare programs could, e.g. according to the creed, encourage laziness and undermine hard work and sobriety. A weakness in this ideology, according to Cavanagh, was the blatant adulations for material prosperity, much for its own sake, and that it never was concerned with the question: productivity for what? A lack of overall purpose and vision for society characterized the group of business men, beyond those of the immediate economic activity. ‘The creed proudly extols the material and practical achievements of the system, and holds these to be justification in themselves for American capitalism. There are few claims of cultural or esthetic gain from the system, and spiritual and moral achievement are largely to those connected to freedom.’ (Cananagh 1976, p. 61). Parallel a managerial version with stronger affiliation to the larger corporations of the creed had developed, which also identified with these more traditional values. However, in stark contrast to the classical creed, this segment of the business community emphasized social consciousness and public image. This group of more enlightened business men were e.g. involved in policy making in the Committee for Economic Development, (Mizruchi, 2010).

According to Kristol (1975) the post-war era, when corporations at best were tolerated, was not normal but much formed by the necessities of life in building a material standard and therefore accepted. The managerial creed described by Cavanagh (1976) and Mizruchi (2010) could be seen as contingent upon these particular circumstances. Parallel to the institutional model of the firm elaborated above, there was an on-going debate in economics regarding a variety of theories of the firm (Machlup, 1967). The various behaviours of real managers and possible deviations from profit maximization, suggested a compromise, where managers provided stable returns to shareholders while granted the freedom to pursue strategies of growth (e.g. Bratton, 1989). On the other hand, the social responsibility of the firm undertaken by management of large corporations run by 'civic-minded men, bursting with social responsibility and cocksure of their ability to know what is in the national interest' (Machlup, 1967) was clearly contested. This position is well known from Friedman (1970).

The parallels to sovereign power that Berle & Means brought forward included a discussion with Dodd (1932) regarding the legal framework supporting the restraints of princes of industry. Berle was initially clearly cautious of giving up the principle of shareholder value in the corporation for a theory of the benevolence and good will of these so-called princes. A new legal framework instead was needed to support 'a high degree of required responsibility' of corporate administrators (Berle, 1932, p. 1372). Awarding these sovereign characteristics to a group that do not consider themselves in this position, he argued, was not a proper way to achieve stable and reliable results. Instead, in elaborating on his anti-managerialist position on the matter he portrays it the following way: 'it must be conceded, at present, that relatively unbridled scope of corporate management has, to date, brought forward in the main seizure of power without recognition of responsibility – ambition without courage.' (Berle 1932, p. 1370).

The question remained unsolved legally and was a matter of legitimacy during the post-war period (Bratton, 1989). This managerial freedom was according to Preston and Post (1975) challenged by the increasing complexity of a non-market environment of business deriving from social movements and public policy. From within the ranks of management, Preston and Post addressed this intersection of private management and public policy through notions of accountability and the more preferred notion of responsibility. Fields for the study of Business and Society more formally took shape.

Corporate managers who were more oriented towards society engaged in national policy discussions, beyond the particular interests of their class (Mizruchi, 2010). A heated debate about the political actorhood of the American corporate community raged during the mid to late 20th century. Although, the large majority of business leaders held conservative political views (including free markets, low government involvement in economy, low personal and corporate taxes, and labour organizing objections) there existed a small group of politically active business leaders - a corporate elite.

> In fact, in some cases, scholars argued, this group exhibited concerns about the well-being of the larger society, even in cases in which such views required corporations to place aside their own short-term interests (Kaysen, 1957; Bell, 1973; Useem, 1984). I shall refer to this group as the "corporate elite." (Mizruchi, 2010, p. 111)

The embeddedness of the US corporation in a societal context is described in Moore (1975), where the United States Supreme Court 'has explicitly held that there is no natural or fundamental right to conduct business in the form of a corporation. Incorporation is a privilege within the authority of the sovereign states. Moreover, state control clearly reaches the purposes for which a corporation may be formed.' (Moore, 1975, p. 823). The corporate form was recognized as successful and competitive both for business and non-business corporations and seen as a legitimate form, particularly for non-profit associations. Moore (1975) describes lawful purposes as central to the general right to incorporate in the US. In the process of granting the rights of incorporations state officials equated lawful with public policy. This development sometimes unconstitutionally influenced the right to incorporate (e.g. *Grant,* where an association promoting gay views was denied privileges). Benefits or privileges as equivalents of rights awarded individuals could not be denied to group associations The Supreme Court ruled. The norm creating or setting dimensions of the corporation ascribed to the corporate form in the institutional model (Tsuk, 2005), was hereby incorporated in public policy making. The corporate form could at the time ensure competing on equal terms with other formal organizations, beyond the constitutional rights of free association. Corporations had according to Berle in 1952 taken over government responsibilities (Tsuk, 2005). Government funded technologies had entered 'the process of corporate explosion', Berle continues in a foreword to a new edition of The Modern Corporation & Private Property in 1967. These corporate assets could no longer be described as private. They were social.

According to Bratton (1989), the question regarding management was one of legitimacy, solved primarily through policy rather than legal doctrine. Legal scholars discussed the matter of whether the corporation should be regarded as a private or public matter. Concession theory, where the role of states in providing the means of incorporation, no longer was in vogue (Bratton, 1989), contrary to the argument in the citation from Moore (1975) above. Managerial discretion drew on the notion of corporations as private. Parallels between managerial and government power were also under scrutiny, carrying the legacy of Berle & Means notion of statesmanship. Management's position and activities could not be explained by classical and neo-classical economics, as there was no easy application of the study of efficient markets (Bratton, 1989). Managers participated in a broad variety of engagements, where growth had replaced profit, which was most eagerly criticized by micro-economists. Institutional economics, on the other hand, provided analytical tools for theorizing the growing hierarchical power structures (e.g. Williamson, 1981; Bratton, 1989). The steady growth and normalized returns (in accepting lower returns for the delimitation of risk through limited liability) from American industry, re-enforced the owner or investor perspective in the large corporation as in a position of recipients of wages of capital (Berle & Means, 1991). According to legal scholar Ireland (2009), this time period built on an understanding of diverse contributions to the economy, e.g. by business, more than it was a matter of law or regulation. It built on trust.

Only a decade after the publication of *The Modern Corporation & Private Property* focus of legal scholars shifted, according to (Tsuk 2005), from collective entities of accumulated resources toward individuals as the centre of analysis, accentuated by growing totalitarian regimes in Europe and advocators of market solutions (e.g. Friedman, 1962). However, the notion of the large corporation as embedded in a wider societal context, not only financial, had been firmly established. It had informed informed policy both after the financial crisis of the 1920s and after the Second World War (Bratton & Wachter, 2008). These developments unfolded differently in the US and the UK (Gamble & Kelly, 2001). In the US, active regulation had radicalized the pure financial interest in the managerialist corporations, which enforced a fragmented and dispersed ownership (Bratton, 1989). Despite active measures suggested e.g. by Labour regarding the role of finance and the corporations, the development from family organized ownership to large modern corporations in the UK, went mainly uncontested in terms of public policy during the large part of the 20th century (Gamble & Kelly, 2001; Cheffins, 2001). According to Mizruchi (2010) the contributions of the large corporations to the American economy and the material standard of Americans, undermined opposition to the state's role in the economy and a return to a more free-market orientation. Political behaviour of traditional businessmen was in this respect kept in check. This stability was challenged by the shifting economic situation of the Western economies in the 1970s (Krippner, 2010; Cooper, 2015). The influence of Labour in the UK and the influence of government in the US would resurge by the 1970s and so would the response by business (Useem, 1983).

Performing a micro-economic theory of the firm

The theory introduced by Jensen & Meckling in the mid 1970s should be seen against this background in order to fully embrace and acknowledge the particular reality effects their theory would produce. The post-war developments in policy and law included the corporations into the functioning of the society, the state apparatus, and as a platform for collective action of growing social movements (emerging new institutions of norm-setting). The managerialist corporation can in some way be described as approximating the pre-1844 incorporations, before the general laws granting general rights of incorporation were established in the UK in terms of embeddedness (Granovetter, 1985). Instead of sovereigns and parliament there *were* society and states. The legal person of the corporation was increasingly incorporated in public policy matters while social movements advocating individual human rights were liberating individual citizens (Tsuk, 2005). The individualist perspective inherent in economics (Lawson, 2007; Cooper, 2015) and the individualist re-turn in American legal scholarship during the post-war period, was according to Tsuk (2005) successfully mobilized in the theorizing of the Chicago school. In the final paragraphs of their article, Jensen & Meckling (1976) explicitly state that their analysis is in an incomplete state regarding 'its application to the very large modern corporation whose managers own little or no equity' (p. 356). They simultaneously claim that they believe it to be applicable and that it will be a topic for a future paper. What they had extensively addressed in their paper was however, a single investment decision of a potential investor in an owner/managed firm, i.e. the situation where ownership and management is separated by external stockholders. Let us give a full account of their conclusions:

> The publicly held business corporation is an awesome social invention. Millions of individuals voluntarily entrust billions

> of dollars, francs, pesos etc., of personal wealth to the care of managers on the basis of a complex set of contracting relationships which delineate the rights of the parties involved. The growth in the use of the corporate form as well as the growth in market value of established corporations suggest at least, up to the present, creditors and investors have by and large not been disappointed with the results, despite the agency costs inherent in the corporate form. Agency costs are as real as any other costs. The level of agency costs depends among other things on statutory and common law and human ingenuity in devising contracts. Both the law and the sophistication of contracts relevant to the modern corporation are the products of a historical process in which there were strong incentives for individuals to minimize agency costs. Moreover, there were alternative organizational forms available, and opportunities to invent new ones. Whatever its shortcomings, the corporation has thus far survived the market test against potential alternatives. (Jensen & Meckling, 1976, p. 357).

Early publications within the Chicago School of economics (Friedman, 1962) was subsequently followed by publications advancing theories about the necessity of property rights in relation to commons (the position of the principal) (Alchian & Demsetz, 1973), the ownership structure of the firm (Jensen & Meckling), the necessity of how to price the managerial effort (the position of the agent) (Fama, 1980), the separation of ownership and control regarding ownership structure (Demsetz, 1983) or survival of the firm (Fama & Jensen, 1983). The revised notion of 'separation of ownership and control' became firmly established in 1983, a few years after the publication of Jensen & Meckling's (1976) conceptual study about a theory of the firm and 50 years after Berle & Means had coined the expression (Tsuk, 2005). In 1983, left alone to defend his and Berle's position, Means did not see any of their original arguments remain (Tsuk, 2005). Jensen & Meckling theoretically framed the idea of shareholders investing in firms and singled out the principal-agent relationship. Shareholders were defined as principals and management of the firm defined as the agent, and the shareholders would return in full capacity.

Under the heading of some general comments on the definition of the firm, Jensen & Meckling state that contractual relationships (drawing on Alchian & Demsetz 1973 and their notion of monitoring) are the essence of the firm regarding all involved relationships and that most organizations (universities, firms, government bodies) are legal fictions (see e.g. Bratton, 1989). Their theory of organizations dissolved the boundaries between what is outside and inside the firm into a complex set of relationships (contracts). Reifying or regarding the firm as an individual is then misleading, e.g. in relation to the notion of social responsibility, according to Jensen & Meckling (1976). Instead the 'behavior of the firm' is compared to that of a market in terms of outcomes of equilibrium processes. Whereas markets are rarely compared to individuals, Jensen & Meckling continues, the opposite thinking is more commonplace, where organizations are ascribed intentions. Heated debates in economics during the mid 20th century had included strong notions about the new managerial capitalism growing in significance with the growth of the large corporations (Machlup, 1967). In his list of possible theories of the firm Machlup describes how legal theory and practice depart from a notion of the firm as 'a legal person with property, claims and obligations' (p. 28). This view of the firm is closely linked to the early legal frameworks granting joint stock companies the legal status of an individual (Warren, 1908; Todd, 1932). According to Bratton (1989) The New Economic Theory, advocated by Jensen & Meckling, was rapidly imported into corporate law. The underlying theory of the corporation became contractual following the definition of a legal fiction serving as a nexus of contracting relationships (among individuals providing factors of production).

By the 1980s, the legal discourse had been successfully reoriented (Bratton, 1989; Hansmann & Kraakman, 2000). The preceding paradigm in corporate law had drawn on a conception of the corporation as a management power structure (the technostructure in the socio-economic literature). The corporation from the post-war years is thereby dissolved from this particular theoretical view, or is completely bypassed and displaced. In the legal vocabulary provided by Bratton (1989), the corporation as an essence, a public entity and as a concession of state was marginalised by this return to contractarianism. The writings of the Chicago School of Economics included a particular neo-liberal ideology and policy agenda (Mirowski & Plehwe, 2009; MacKenzie et al. 2007). Jensen & Meckling more than anything in 1976, returned focus on the external investor with a task for managers to return to the service of shareolders, thus repositioning and elaborating a theoretical standpoint of the outsider looking in to a possible investment. Erturk et al. (2007), arguing against a functionalist view of agency, describe this transformation of the investor as a historical break in the following terms: 'But the social construction of the investor changes over time as the left's bad rentier of the 1920s and 1930s is reinvented as the right's good shareholder for the 1990s and 2000s.' (ibid, p. 54). A general micro-economic theoretical focus on pricing situations was redirected to the large modern corporate entities and their primary controlling function at the time, management, societally embedded in various versions of mixed economies. Control shifted to a question regarding ownership in new and organized forms, assuming but not carrying individual property rights, so the findings of Berle and Means and the broken property atom were ignored and displaced (e.g. Robé, 2011). The view of the corporation as a nexus of contracts replaced the moral obligation included in ownership (which had been taken over by management) with market situated efficiency criteria, where the fiduciary duties of directors were strengthened. A rephrasing of the position of shareholders as residual risk bearers placed them in a position to increase control over directors of enterprises, and this should be regulated by contracts among individual legal subject; directors, non-directors and shareholders (Jensen & Meckling, 1976).

The new micro-economic theory of the firm developed in the mid 1970s, quite rapidly took hold in business theorising and practice. Dore (2008) describes how agency theory became a favourite in economic journals and in relation to notions of shareholder value: 'game- theorists explored the infinite variations on the conditions under which the agent's (i.e., manager's) interests could be made to coincide with those of the principal, i.e., the owner.' (Dore, 2008, p. 1105). Empowering investors to make relevant investment decisions rather than placing these decisions in the hands of self-serving, self-interested and growth oriented corporate managers was a central theme in this body of work. Dobbin & Jung (2010) summarizes the scope of these efforts concisely in the following manner:

> Agency theorists proposed that firms should compensate executives based on stock performance, disassemble bloated conglomerates so that investors could make their own diversification decisions, finance new acquisitions with debt to rein in wayward executives on buying binges, and improve executive monitoring and discipline by giving corporate boards more independence. (p. 35)

By the end of the 1990s, agency theory was established firmly among practitioners and as a result, Dore (2008) claims, management lost autonomy. The rise of the shareholder value principle for corporate governance has positioned management with an impossible task of value management according to Froud et al. (2000) but also in a powerful position to be compensated accordingly (Boyer, 2005; Erturk et al. 2007; Ghoshal, 2005). According to Lazonick & O'Sullivan (2000), shareholder value altered corporate strategy in the US from 'retain and reinvest' to 'downsize and distribute'.

The increasing concentration of capital taking place parallel was according to Dobbin & Jung (2010) central in the success of the theory, as institutional fund managers and securities analysts promoted its application. Jensen is described as particularly important in advocating the ideas from the article, in subsequent publications in finance and practitioner outlets. He joined Harvard Business School in 1985 and a consultancy firm in 2000 (Dobbin & Jung, 2010). The attitude of corporate management towards their redefined position in the corporation and society is described in the following manner:

> Executives mostly opposed agency theory at first, for it blamed poor corporate performance on CEOs, and on their propensity to serve themselves. But with time CEOs joined the bandwagon. They saw that the new compensation formulas could work to their advantage. (Dobbin & Jung, 2010, p. 35)

With the growth of institutional investors since the 1980s, who in 2005 owned 61% of equities according to Dore (2008), capital ownership has become re-concentrated and organised in stark comparison to the widely held corporation. A similar development in the organisation of equity holding, with the increasing prominence of institutional investors (i.e. mutual, pension and hedge funds), is described by Harmes (1998) as reproducing neo-liberalism. Erturk et al. (2007) argue that managers and the growing group of often invisible intermediaries (investment bankers, traders, partners in large accounting and law firms) should be seen as in a position of value skimming and that shareholders similarly are in a position to engage in value surfing. Instead of focusing on production and investment in specific firms, which would relate to discussions of value creation, the historical break in the investor function leads to renewed attention on contemporary corporate governance practices as engaged primarily in value capture. 'The intensification of pressure specifically for short-term yields came from newer forms of concentrations of capital, the private equity funds backed by investment banks, asset management firms, and hedge funds which grew steadily in importance from the 1990s.' (Dore, 2008:1104). The capital market has become the new source of corporate control (Davis, 2009). Institutional investors and various intermediaries can be described as having taken over the position as new sites of economic power. From a legal pluralist stance they could be seen as institutions (norm creating and norm producing) in a societal context (e.g. Harmes, 1989) and again the broken property atom has bearing. According to Erturk et al. (2007) an estimate of the scope and scale of this new control function of highly paid intermediaries would give 10 000 people: 'or maybe twenty times the number of highly paid top executives. The fragments certainly indicate there are two major constituents in the group of intermediaries: first, senior City bankers and traders and, second, partners in the major accounting and law firms.' (ibid: 2007, p. 63).

> They have revolutionized executive compensation, dediversified, financed new endeavours with debt, appointed outside board

> directors, and reduced board size. Companies followed these strategies largely at the behest of fund managers, who themselves benefitted from the steady increases in stock price that these strategies promised, for fund manager bonuses were tied to improvements in the value of the portfolios they managed. CEOs at first resisted these innovations, but soon realized that they stood to win big by taking stock options and by focusing on increases in stock value rather than on growth for its own sake. They embraced some of the innovations simply to keep fund managers happy. (Dobbin & Jung, 2010, p. 54)

During the oil and stock market crisis in the mid 1970s the skills of professional management had been openly questioned. Instead, a new financial version of management developed directed towards shareholders, at the expense primarily of workers in a sequence of changing patterns; restructuring, rationalization, marketization and globalization (Froud et al. 2000a; Mizruchi, 2010; Lazonick, 2013). Davis (2009) goes so far as to make the claim that with the rise of finance, the society of organizations has fallen. Stock-price more than long-term value creation is now central to management (Lazonick, 2013). On this note, let us return to the notion of performativity discussed earlier. In relation to accounting Cooper (2015) writes: 'In the case of financial models, they will be ''performative'' even if those who use them are sceptical of their virtues, unaware of their details, or even ignorant of their very existence. Accounting and finance provide a conduit through which financial economic rationalities are legitimated, implemented and become part of the symbolic universe.' (Cooper, 2015 p. 66). A significant trait of the new controlling group (finance) is that they operate under little if no regulation and Mizruchi (2010) describes how the rise of finance has involved a return to laissez- faire economic policy. If anything, the severe financial crisis of 2007-2008 has meant a reinforcement of shareholder value (Collison et al. 2014; Cooper, 2015). An equivalent to the CED activities in the 1960s and 70s where industry took a broader and societal outlook is absent. This is, according to Mizruchi (2010), also an explanation to our current state of affairs. The political surge of business in the 1970, as a reaction to Labour advancements in the UK (where the business community was characterised as weak, diffuse and lacking purpose) and increasing regulatory pressures regarding safety, equality and environment in the US, is described in detail by Useem (1983).

Management acted to advance the freedom of the business community by engaging in political activities on an earlier unprecedented scale, however this surge was not long-lived.

6. Discussion – sovereign, personhood and entities lost

If we return to the two propositions in the introduction of this essay (that the quasi-public corporate form will dominate economic activities and that the corporation may be destroyed) the previous section if anything illustrates how the corporation, as known in the early 1970s, may well have been destroyed, and something new has taken its place. The individualistic assumptions, reactivated in both economics and corporate law, have turned global and financialized corporations into ongoing processes of private contracting and pricing between actors in markets (Bratton, 1989; Cooper, 2015). According to Bratton (1989) both the neo-classical version (Jensen &Meckling's markets) and the institutional version (Williamson's hierarchies) of the New Economic Theory of the firm, disregard political, social and economic behaviour out-side the binary contracting situation in focus. In a recent critique, Cooper (2015) draws on Fine's (2008) work and his caricature of zombie economics to describe the current situation in economics. Fine (2008) portrays how methodological individualism and an esoteric and intellectually bankrupt technical apparatus is unquestioned and intolerant to alternatives. Fine (2008) also describes economics as imperialist in its influence on other social sciences and that it reduces the social. In Fine's own words: 'It is alive in the sense of not only aggressively and crudely, if not savagely, occupying its own territory and subject matter to the exclusion and absorption of competing paradigms but also through its increasing appetite for the flesh of other disciplines that it both infects and converts to its own nature with only limited traces remaining of what has been destroyed. By the same token, it is intellectually dead, having nothing new to offer other than parasitic extension of its principles to new applications.' (Fine, 2008). An explicit discussion around this imperialism is found in Gershon (2011) as the primacy of neo-liberal agency from an anthropological point of view.

Unaware of the bites of the zombie economist, management and accounting are playing their part in actualizing financial economics and agency theory. This is the straightjacket described earlier. In this essay we draw broadly on the notion of performativity (Callon, 2007) to describe how the theory of Jensen & Meckling has been actualized. This choice of theory is particularly relevant for understanding these matters and the concern at hand, according to Mirowski & Nik-Khah (2007). They argue that there are strong intellectual affiliations between micro-economics and scholars addressing the performativity of economics. Explicitly from within the ranks of economics, Lawson (2006) argues that economics is failing and that it should engage more as a social science. A philosophical intervention acknowledging aggregates or collectivities, is needed he argues. Alternative views of the corporation are discussed however, also reproducing worldviews of single academic disciplines (e.g. Ireland, 2009; Robé, 2011; Bratton & Wachter, 2008).

Legal theorists were according to Bratton (1989) engaged in heated debates when the management corporation appeared. They agreed, however, on rejecting the notion of legal fiction of the corporate person. One side took the individualist and classical economic side and the other 'abandoned individualism for "corporate realism"' (ibid, p. 1489). The market oriented rejected concession theory and replaced it with contracting individuals, pursuing 'classical ideals of a disaggregated producer universe' (ibid, p. 1489). The corporation was therefore not regarded as an entity or collective effort, and legally this resulted in restrictions on size and purpose. The corporate realism oriented instead drew on European ideas about the spirituality of group life, where the group took on the entrepreneurial function. After 1890 the classical economic models influence on corporate law diminished in the growing oligopolistic economy of the management corporations. A similar development in legal theory took place when the managerial corporation was in its strongest position in the post-war era. Public policies opened up a whole new range of possible uses of the corporation, e.g. as a possible inclusionary principle when deciding whether a right to incorporate should be granted or not (Moore, 1975). Jensen & Meckling's theory provided one solution to this situation. There were others.

Bratton (1989) also singles out the theory effects of economics and law, particularly in relation to the corporation as a collective phenomenon. The corporate legal entities in the hands of individual managers (also referred to as entrepreneurs) diluted the moral and legal responsibilities in business communities. It also subverted the efficient functioning of markets with increasingly privatized monopolies and agents (management) who could not replace the productive spirit of real entrepreneurs. Economics and law had predominantly focused on individuals in what Bratton characterizes as an atomistic economy, and the emerging corporate form particularly in the US challenged these notions and led to open intellectual and political discussions on the topic (e.g. Tsuk, 2005). The inherent conflict in the separation of management and control initially gave substance to management, and entrusted management as they represented a more long-term view of corporate assets (e.g. Chandler, 1992). The turn to finance, as the previous sections has illustrated, has advanced a different view, e.g. more short term. Contrary to some contemporary arguments on the strong US bias of the corporate form, the shareholder value paradigm with the central position of the separation of ownership and control, provided means to regulate managers of corporations by reference to the private property of shareholders on whose behalf the managers were an executive function. The broken property atom, as Berle and Means point out, by the growth of the large corporation meant legally that shareholders did not own corporations (Robé, 2011). Therefore the individual rights invoked on behalf of holders of shares are misplaced (Tsuk, 2005). Jensen & Meckling re-invoked this diluted notion of ownership (almost as a civil right drawing on Tsuk, 2005) but at the same time left the sovereign dimensions included in private property and the questions about statesmanship raised by Berle & Means unaddressed. If private property was invoked as central, a responsibility in the use of this property could follow, as in the case of earlier unlimited liability of individual unincorporated entrepreneurs operating under laissez-faire.

Several authors return to the questions brought to the surface by Berle and Means, although with a particular attention to questions deriving from contemporary corporate governance discourse (Tsuk, 2005). Moore and Rebérioux (2011) e.g., identify management in the financialized corporation as the target of market pressures. They argue that Anglo-American Law could provide managerial neutrality under 'a board-centric governance regime' involving worker participation. A similar bias is found in Cheffins' (2001) work as he returns to history accompanied by contemporary corporate governance issues. The economic perspective (under-socialization in Granovetter, 1985) dominating this debate performs a state unwilling to act state proper (Krippner, 2005) in contemporary forms of moderate to non-existing regulation or laissez- faire (Mizruchi, 2010). The general right to incorporate can be described as a middle-class attempt, through various legal processes, to secure a possibility to engage in empowered collective action similar to what was formerly a possibility of privileged entrepreneurs/families or incorporated quasi-public (combinations of public and private) partnerships sanctioned by a crown or sovereign. By Jensen & Meckling, a situation of empowerment is replaced with an outside-investor perspective and their perceived loss of control.

The greed of owners in the classical models of economics would be kept in check by competition in the marketplace and the individual entrepreneur was given economic freedom (individual property rights) based on assumptions of these constraints. Markets with contracting among individuals (contractualism or the contractarian view), not law, provided context to these business endeavours resembling the atomistic actors in markets in the economic models. This individualistic notion of business was imported from the UK to the US before the general right of incorporations were in place in either of these countries. At the same time, the more concessional form of incorporation was granted to the business involved in quasi-public activities the market system fell short to regulate (Bratton, 1989; McBride 2011). The corporations were seen as artificial or fictional entities (state-created entities through concessions) in comparison to the strong status of the individual entrepreneur in economic and legal doctrine at the time. The corporateness (e.g. Bulter, 1986) awarded to collectives by sovereign or state was thereafter gradually awarded to individuals (entrepreneurs and financiers) to empower similar forms of collective action. McBride (2011) elaborates on how the modern corporation by the turn of the 20th century had transformed into something beyond a privilege; incorporation became a general right used by businessmen and financiers. If we leave the question of who these people were, a matter well described by e.g. Burrell (2002), the disconnection from the sovereign is central. Applying a distinctly evolutionary perspective, McBride (2011) argues that the corporation had evolved from a specific instrument for ends of a sovereign into an instrument instituted by courts and parliaments for a broader (still limited) group of economic actors and the economy. Both of these forms of incorporation share the common denominator of facilitating or empowering collective action rather than regulating or placing limits on its application. 'First, the essential purpose of a corporation–or any other form of legal entity–is to facilitate collective action by individuals. It allows various persons to make varying contributions to the collective effort.' (McBride, 2011, p. 5). The success of the corporate form is, according to McBride (2011), questioned only by how its benefits are allocated within society. A few suggestions regarding the changing allocation of benefits from the corporation since the mid 19th century have been presented in this essay, in order to radicalize the contemporary allocation under financialization (e.g. Duménil &Lévy, 2011).

Trapped in a form for collaborative action that has brought the pre-corporation constructs of neo-classical firms back into the foreground, which emphasize individuals rather than collectives, we argue that the possibilities of bringing matters regarding social responsibility and democracy back into the frame are few. Rather, the dominant theory seems to survive also the most recent crisis in its financial offspring to return to the vocabulary introduced already by Machlup in 1967. Machlup (1967) described the unholy alliance of marginalism and managerialism as a marriage and he raised concerns regarding its duration. Divorce, he claimed, was not unheard of or unusual. Jensen & Meckling's theory of the firm and their reconceptualization of Berle & Mean's view of the corporation (as an essential power structure in a societal context) into a matter of how to discipline those who carried this power in the 70s, namely managers, is not and has never been an appropriate tool to conceptualize the 20th century corporate form. It may be appropriate for other types of analysis. Breaking with Jensen & Meckling's legacy and what they constructed, as far as corporate life is concerned, is a tricky matter. The agencements in place for its actualization are strongly embedded in the neo-liberal legal, political and economic disciplines and practices, which are informed by an entrepreneurial ideal and individuals doing business in market contexts (e.g. Cooper, 2015; Gerson, 2011). The literature on financialization is overly convincing on these matters. The imperialism of economics is actualized by agencements in corporate law and corporate governance, where management and accounting practices are oriented towards a narrowly defined shareholder or investor interest. We argue that the existing jacket is too straight. How can what has been lost in this translation to micro-economics be regained? As our history of the corporation has aimed to illustrate, there is a vast range of other ways to think and do the corporation.

> And if this is right then two questions arise: what realities do the current methods of social science help to enact or erode? And what realities might they help to bring into being or strengthen? There are no simple answers to these questions. [...] The implication is that there is no single 'world'. (Law & Urry, 2004: 396)

7. A few final comments - towards a socio-political theorising of the firm

How then can we conceptualise and think the corporation differently? In order to move beyond the performativity of shareholder value we invite scholars to define a research agenda where earlier debates concerning 1)'sovereign corporateness with limited liability', 2) 'unlimited liability of individual entrepreneurs' and 3) 'statesmanship of the post-war' in various ways can be reactivated. Contemporary reality making effects through this financial theoretical framework need further radicalization, as our thinking tool led us as scholars to engage with and make the reality under study. The societal and distributional dimensions of the contemporary financialized corporations e.g. are still under-conceptualized. We therefore argue for a more distinct movement toward a socio-political theorising of the corporation (firm). We visualize two possible ways out of our initially stated predicament, as in the service of shareholder or economists in the wild.

The first would engage deliberately in dismantling the possibilities of actualizing the financialized conditions of contemporary corporations. What if we were to attempt a reverse engineering of sorts of the particular version of the corporation dominating in contemporary financial capitalism, where would that leave us? From this perspective new conceptualizations of what was formerly known as 'the management corporation' (the socio-economic notion which for a long time dominated organisation theory) could be developed to further capture its present poor anorectic state, as a re-distributional mechanism on societal levels, offering value capture for investors.

We argue that there are renewed conceptual possibilities by engaging in a historic turn (Wolfram Cox & Hassard, 2007; Clark & Rowlinson, 2004) and returning to the historical context of the corporations prior to the 1970s, but with a broader perspective than existing corporate governance and the financial (e.g. Ireland, 2009; Moore & Rebérioux, 2011). The significance of constructs of personhood is central here to challenge contemporary framings of individuals by economics and expand those incorporated in the financialized corporation (e.g. Gershon, 2011).

The second is more radical, suggesting a move similar to that of Jensen & Meckling in the mid 1970s. This move would entail conceptualizing something non-contemporary, a desired state to be performed by a new agencement. Since Jensen & Meckling returned to what could be described as an investment decision in an entrepreneurial or owner/managed firm of the early 20th century, we argue that we should engage in theorizing the corporation in its post-entrepreneurial and pre-financial form. Instead of returning to earlier financial eras for inspiration for a reformed research agenda, we suggest that the post-war period is more fruitful in order to remobilise certain radicalizing conceptual possibilities. A socio-political version of the firm requires a reconceptualization regarding notions and practices of personhood, organizations/corporations, societies and regulatory contexts (state involvement). We find inspiration in the work of Cavarero (2002) and the concept of *absolute locality*.

This, to our knowledge has not yet been successfully done. Paraphrasing Jensen & Meckling: it could be a topic for a future paper.

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