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Shareholder primacy and the distribution of wealth

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Abstract: In recent years a growing consensus has emerged in favour of the shareholder-oriented model of the corporation. Increasingly, this model is justified not on the basis of shareholder ownership rights but on efficiency grounds: whoever the immediate and direct beneficiaries of shareholder orientation, it is argued, it ultimately indirectly benefits everyone by ensuring the maximization of aggregate social wealth. The prevalence of this view has caused the distributional dimensions of corporate governance to be neglected. This paper examines the distribution of share ownership and financial wealth in the US and the UK. Although share ownership has become more widely spread, it argues, it remains very heavily concentrated with the result that shareholder primacy is in reality the primacy of a small privileged elite. After an exploration of the contradictions of working class shareholding and the impact of greater shareholder-orientation on the distribution of wealth, the paper concludes by re-evaluating Hansmann and Kraakman's 'end of corporate history' thesis, arguing that recent developments represent a triumph not for efficiency but for the growing power of the shareholder class.

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Shareholder Primacy and the Distribution of Wealth

Many academics and policymakers now seem to believe that the big issues in the debates about corporate governance have been resolved.[1] A'broad normative consensus' has emerged among the 'academic, business and governmental elites in leading jurisdictions', argue Henry Hansmann and Reinier Kraakman, that 'ultimate control over the corporation should rest with the shareholder class' and that managers should manage in its interests. Indeed, such is the degree of harmony, there is 'no longer any serious competitor to the view that corporate law should principally strive to increase long-term shareholder value'. As equity markets develop, the 'ideological and competitive attractions' of the shareholder-oriented model of the corporation will become 'indisputable, even among legal academics' and the goal of shareholder primacy will become 'second nature even to politicians'. Its triumph is thus 'assured' and convergence in 'most aspects of the law and practice of corporate governance' inevitable.[2]

One does not have to endorse Hansmann and Kraakman's more extravagant claims about the 'end of corporate history' to recognise that there does indeed seem to be a growing consensus in favour of the shareholder-oriented corporation.[3] Even those who press the case for stakeholding now tend to do so on the grounds that it would best serve the long-term interests of shareholders, hence Sanjat Bhagat and Roberta Romano's assertion that 'the participants in corporate

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1 'Corporate governance' refers to the processes whereby large publicly quoted corporations are directed and controlled. This article is concerned with shareholder primacy in these corporations.

2 H. Hansmann and R. Kraakman,'The End of History for Corporate Law' (2001) 89 Georgetown LJ 439, 439^441.

3 See, for example, J. Armour, S. Deakin and S. Konzelmann,'Shareholder Primacy and the Trajectory of UK Corporate Governance' (2003) 41BritishJournal of Industrial Relations 531.

law debates share the objective of corporate law - to adopt policies that enhance shareholder wealth', and disagree only 'over the means to achieve that end'. Paradoxically, however, as the shareholder primacy norm has gained in strength, the rationale for it has become rather blurred. Sometimes it is defended simply on the basis of shareholder corporate 'ownership'. For Bhagat and Romano, for example, the goal of corporate law is to 'further the interests of the owners of the firm' and 'the benchmark for evaluating the benefit of corporate and securities laws is whether they improve investor welfare'.[4] It is now increasingly common, however, for the support for shareholder primacy to be couched in the more neutral and consequentialist language of 'efficiency'. Indeed, it was on this basis that the recent Company Law Review rejected a 'pluralist' model of the corporation in favour of one based on 'enlightened shareholder value'.[5] In similar vein, Joseph McCahery and Luc Renneboog have recently written of the debates about 'how to design an effective corporate governance system that promotes economic efficiency', something which just happens to be more or less synonymous with promoting a system which 'ensure[s] . . . management pursues the welfare of shareholders' and 'maximis[es] the returns to investors'.[6]

The growing support for shareholder primacy is not confined to jurisidictions, like the United States and the United Kingdom, noted for their stock market based, shareholder-focused corporate governance regimes and relatively red blooded versions of capitalism. As the Company Law Review acknowledged, shareholder primacy is gaining ground in the traditionally more socially democratic and stakeholder-friendly countries of Continental Europe.[7] Thus, the leading European corporate lawyer, Klaus Hopt, while carefully avoiding direct discussion of the alleged' end of corporate history', recently wrote of the 'probably irreversible', 'market-driven', 'coming together of Anglo-Saxon and Continental law'.[8] And at the international level, the OECD and the World Bank have been vigorously promoting the virtues of American-style, shareholder-oriented corporations.[9] The World Bank frankly admits that its activities in this field 'focus on the rights of shareholders'[10] and the OECD's recently revised Principles of Corporate Governance are firmly shareholder-oriented, notwithstanding allusions to

4 S. Bhagat and R.Romano, 'Event Studies and the Law: Part II' (2002) 4 American Law and Economics Review 380.
5 See CLR Steering Group, Modern Company Law: Developing the Framework, paras 2.7-2.26. For some, the efficiency rationale creates room for a more inclusive approach to shareholder primacy which takes account of the interests of other stakeholders in the long-term interest of shareholders.
6 J. McCahery and L. Renneboog, 'Introduction' to McCahery et al (eds), Corporate Governance Regimes (Oxford: OUP, 2002), 1.
7 The Review noted the movement on the continent 'away from more comprehensive stakeholder views of the company' and the 'growing recognition of the need to respond to the capital markets, including in particular the pension funds, which are . . . becoming a growing force worldwide': see n 6 above, para 3.34.
8 K. Hopt,'Common Principles of Corporate Governance in Europe', in McCahery et al (eds), n 6 above,175 at 176, noting that German capital markets and stock exchanges are growing and undergoing fundamental, internationally driven changes.
9 See OECD, Experiences from the Regional Corporate Governance Roundtables (2003).
10 World Bank, About Corporate Governance, http://worldbank.org/html/fpd/privatesector/cg/ (last visited 10 April 2004).

the importance of fostering wealth-creating co-operation among stakeholders.[11] The evidence supporting the claim that we are currently witnessing a 'convergence on the standard shareholder-oriented model as a normative view of corporate structure and governance' is, then, plentiful.[12]

Although at times rather passionless affairs in which political argument is outweighed by technical discussion, the debates which have emerged from this are seemingly rooted in real-world issues, focusing on nitty-gritty things such as directors' remuneration, minority shareholder protection, accounting standards, disclosure and take-over regulation. There is, however, one respect in which, for all their apparent practicality, they are determinedly unconcerned with empirical reality. One of their most striking, if little commented upon, features is their almost complete lack of interest in the identity of the shareholders who directly benefit from the shareholder primacy norm. In these debates, 'the shareholder' is a curiously abstract figure, the company law equivalent of the liberal individual or homo economicus. Beyond a few references to the widening of share ownership and hints that 'we're all (more or less) shareholders now', little if any energy is expended exploring the distribution of share ownership or the composition and character of Hansmann and Kraakman's 'shareholder class'. As one commentator says, the actual owners of shares are, apparently, 'irrelevant to corporate law'.[13]

This lack of interest in the make-up of the shareholder class flows in part from the fact that it is not supposed to matter who precisely the shareholders of these corporations are. If it is claimed that shareholders 'own' corporations, for example, it is usually inferred that they are entitled to have them run in their interests as of right, whoever they happen to be, whatever the consequences. If, on the other hand, the highly problematic claim of shareholder corporate 'ownership' is diluted or abandoned,[14] shareholder primacy is still defended - whoever the shareholders are - on the grounds that it promotes 'efficiency' and the maximisation of aggregate wealth for the benefit of society as a whole. In the US this is reflected in the frequent use of 'wealth maximisation norm' as a synonym for 'shareholder primacy norm'. Indeed, in recent years, notwithstanding continuing hints about the rights of shareholders as 'owners',[15] this latter claim has become the main

11 Boards of directors are not only deemed accountable to shareholders but have 'a duty to act in their best interests': OECD, Principles of Corporate Governance (January 2004), Annotations, section V. The preamble stresses that corporate governance is 'one key element in improving economic efficiency and growth as well as protecting private savings' and argues that one of the 'key drivers' for public policy involvement in corporate governance 'has been concern about the preservation of private savings for retirement'. 'Good corporate governance', 'an increasingly important factor in investment decisions', needs to 'provide proper incentives for the board and management to pursue objectives that are in the interests of the company and shareholders', 2-3.

12 Hansmann and Kraakman, n 2 above, 443.

13 D. Greenwood, 'Fictional Shareholders: For Whom is the Corporation Managed?' (1996) 69 Southern California Law Review 1021,1026,1032.

14 See P. Ireland, 'Company Law and the Myth of Shareholder Ownership' (1999) 62MLR 32.

15 As Margaret Blair observes, the rhetoric of 'ownership' is even utilized by pro-shareholder advocates of the nexus-of-contracts model of the corporation, whose arguments imply that there is no 'corporation' to be owned, to add moral weight to their arguments: see M. Blair, 'Shareholder Value, Corporate Governance, and Corporate Performance' in P. Cornelius and B. Kogut (eds), Corporate Governance and Capital Flows in a Global Economy (Oxford: OUP, 2003).

justification for shareholder primacy. 'All thoughtful people', Hansmann and Kraakman tell us:

believe that corporate enterprise should be organized and operated to serve the interests of society as a whole, and that the interests of shareholders deserve no greater weight in this social calculus than do the interests of any other members of society.The point is simply that now, as a consequence of both logic and experience, there is a consensus that the best means to this end (that is, the pursuit of aggregate social welfare) is to make corporate managers strongly accountable to shareholder interests and, at least in direct terms, only to those interests.[16]

This is echoed by the Company Law Review's assertion that the 'overall objective' of company law should be'pluralist', in the sense that 'companies should be run in a way which maximises overall competitiveness and wealth and welfare for all', but that this is best promoted by getting directors to act in the 'collective best interests of shareholders'.[17]

The growing popularity of such views have generated a company law version of the veil of ignorance, in that while much continues to be written about the ways in which everyone allegedly, indirectly and rather abstractly benefits from shareholder primacy, very little has been written about the composition of the 'shareholder class' which directly and quite concretely benefits from it. In more inquisitive times this might have raised a few suspicious academic eyebrows. In an era of neo-liberalism and law-and-economics, however, it seems to elicit only sage academic nods.

This paper seeks to lift this particular veil and to elucidate the make-up of the shareholder class whose interests are increasingly being portrayed as the interests of all.To this end it examines financial property ownership in the US and the UK, the countries in which share ownership has become most widely spread, highlighting the distributional dimensions of corporate governance which so many advocates of shareholder primacy wish to suppress.[18] The paper argues that although the base of the financial-property-owning pyramid has indeed widened in recent years, the distribution of financial wealth in general and share ownership in particular both continue to be skewed in the extreme, with the result that shareholder primacy is, in reality, the primacy of a small, privileged elite. It moves on to look at the contradictions of middle and working class shareholding and at the impact of a strengthened shareholder primacy norm on the distribution of wealth. It concludes with a re-evaluation of Hansmann and Kraakman's thesis, suggesting that the spread of the shareholder-oriented corporation is a triumph not for economic logic or efficiency but for the growing political power of the

16 Hansmann and Kraakman, n 2 above, 441.

17 CLR, n 5 above, paras 2.21-2.22.

18 Exemplified by Easterbrook and Fischel's claim that the contractual nature of the corporation 'removes from the field of interesting questions one that has plagued many writers: what is the goal of the corporation? Is it profit, and for whom? Social welfare more broadly defined? Is there anything wrong with corporate charity? Should corporations try to maximise profit over the long-run or the short-run? Our response to these questions is: who cares?': The Economic Structure of Corporate Law (Cambridge, Mass: Harvard UP,1991) 36.

shareholder class. It is the forceful promotion by the US of the interests of finance, the paper argues, that underlies the 'new imperialism'.

TOWARDS A SHARE-OWNING DEMOCRACY?

The rise of the 'equity culture'

Some years ago, newspapers in Britain featured an advertisement depicting a man lying on a sofa. The man was not only working, we were told, but working very profitably. If at first glance this was difficult to fathom because he didn't appear to be doing anything at all, the small print provided an explanation. The man, it transpired, had been wise enough to invest his money in a particular financial institution which had made prudent investments on his behalf, with the result that as he lay there relaxing on the sofa, his money was, so to speak, working for him. It was, moreover, doing so incessantly, for the money 'never slept'. In amore hip, contemporary variation on this theme, an advertisement recently appeared in the US picturing a man lying around in bed, headphones on, NASDAQ on the screen of his laptop. 'From the trading floor to the dance floor without leaving your pyjamas', the caption jubilantly declared.[19]

At the time that the man on the sofa made his appearance in the late 1980s, Britain was experiencing a rapid and dramatic growth in the number of people owning financial property of one sort or another.[20] In 1980 the government had decided to increase the state pension in line with prices rather than in line with gross earnings, with the result that the relative value of the basic pension began to fall, tumbling from20 per cent of average earnings in the late1970s to under15 per cent in 2001.[21] It simultaneously began actively to encourage people to find alternative ways of saving and providing for their old age, introducing an alphabet soup of tax-favoured forms of saving and investment. PEPs (Personal Equity Plans)were introduced in1987 followed by TESSAs (Tax-Exempt Special Savings Accounts) in 1991,[22] to be replaced by ISAs (Individual Savings Accounts) in 1999. Personal pensions were introduced in1988 and stakeholder pensions in 2001.[23] All these savings vehicles encouraged individuals to become direct or indirect owners of shares and other forms of financial property. So too did the increasing, if ill starred, use of endowment policies to finance mortgage borrowing and the encouragement given to employers to establish tax-favoured employee share ownership (ESOP) schemes aimed at persuading employees to build up their equity stakes in the companies for which they worked. By 1990 there were, according to the CBI, around 900 profit-sharing share schemes and 1,000

19 See P. Anderson, 'The River of Time' (2004) 26 New Left Review 67, 72.
20 By 'financial property' I mean interest-bearing assets which are the source of an income stream. Shares are included as although the returns on them vary with profitability they are received in the form of interest, as rewards for the mere ownership of money.
21 O. Attansio and S. Rohwedder, 'Pension Wealth and Household Saving: Evidence from Pension Reforms in the UK' (2001) IFS Working Paper WP01/21 5.
22 See J. Banks and S.Tanner, Household Saving in the UK (London: IFS, 1999) 89-90.
23 ibid 90-92.

savings-related share-option schemes in operation, covering 20 per cent of listed British companies and nearly two million workers.[24]

By far the biggest single cause of the dramatic increase in direct share ownership, however, was privatization. Started in the early 1980s as a limited programme for returning a few public utilities to private ownership[25], privatization had by the late 1980s been transformed into a major policy for 'rolling back the state' and 'restoring the market'. The telephone system was sold, as was the gas industry and the electricity generating and distribution industries. Jaguar and Rover cars were sold, along with Rolls Royce aeroengines, British Aerospace, British Steel and the government's stake in BP. The national airline was sold, and so too were seven national airports, including Heathrow and Gatwick. The water supply and sewage industries were sold, followed later by the railways and the Post Office. It was, in the triumphant words of Madsen Pirie of the Adam Smith Institute, 'the largest transfer of power and property since the dissolution of the monasteries under Henry VIII'.[26] Levels of direct share ownership were further boosted by the building society demutualizations which began in the late 1980s and which by the end of the 1990s had seen over 80 per cent of building society assets transferred to public companies. Whereas at the beginning of the 1980s, fewer than one in ten households owned shares directly, by the end of the decade the figure had risen to more than one in five.[27]

As private pensions grew in popularity and others followed the British privatization vanguard,[28] the 1980s and 1990s witnessed significant increases in stock market participation in many countries, generating the rise of the so-called' equity culture'.[29] In the US, for example, the decade after 1989 saw the number of individuals owning corporate stock, directly or indirectly, increase by nearly 60 per cent, mainly as a result of the expansion of retirement savings plans and the growth of investment in equity mutual funds. According to James Poterba,

24 P. Saunders and C. Harris, Privatization and Popular Capitalism (Buckingham: Open University Press,1994) 5.

25 Despite specific commitments to sell council houses and to return aerospace and shipbuilding to private ownership, there was no general commitment to privatization in the 1979 Conservative Manifesto. It emphasized, rather, controlling the money supply, reducing public expenditure and cutting income tax. The policy of mass privatization only emerged during the second and third Thatcher terms and was used in part as a way of reducing the public sector borrowing requirement without engaging in politically unpopular cuts in public expenditure; as a way of circumventing the fiscal constraints associated with monetarism: See T. Clarke, 'The Political Economy of the UK Privatization Programme', in T. Clarke and C. Pitelis (eds),The Political Economy of Privatization (London: Routledge, 1993) 205, 206-07.

26 Cited in Saunders and Harris, n 24 above, 6.

27 See Banks and Tanner, n 22 above, 37-47.Most of the increase in direct share ownership occurred between 1985-88 and coincided with the heavily advertised floatation of British Telecom in 1984 and British Gas in 1986. During this period, the proportion of households owning shares in the UK doubled: see J. Banks and M.Wakefield, 'Stockholding in the United Kingdom' in L. Guiso, M. Haliassos and T. Jappelli (eds), Stockholding in Europe (Basingstoke: Palgrave Macmillan, 2003) 201.

28 On privatization in Europe, see L. Guiso, M. Haliossos and T. Japelli, 'Stockholding: A European Comparison' in Guiso et al (eds), ibid 5-6.

29 See Guiso et al, ibid 3.The purpose of the book, they explain, is to 'describe the phenomenon of the spread of equity culture to European households'. See also J.M. Poterba, 'The Rise of the Equity Culture: US Stockownership Patterns, 1989-1998' (2001), at http://econ-www.mit.edu/faculty/poterba/files/aca2001.pdf (last visited 18 October 2004).

Professor of Economics at MIT, thirty million Americans became stockholders in the 1990s, a 'far greater change in the segment of the population owning stock than in any earlier postwar decade'.[30] Confirming this, a recent study estimates that by January 2002 52.7 million US households (49.5 per cent) and 84.3 million investors owned equities, directly or indirectly.[31] In Europe, by the end of the 1990s 17.3 per cent of households in France, Germany, Italy, the Netherlands and the UK were holding stocks directly, with British households showing the highest rate of direct participation at 27.9 per cent. When indirect ownership was taken into account the overall stock market participation rate of households rose to nearly 50 per cent in the UK, 33 per cent in the Netherlands, 23 per cent in France, 20 per cent in Germany and 15 per cent in Italy.[32] As in Britain and the US, the main factors behind the spread of the equity culture in Europe were the transformation of the financial sector,[33] the privatization of public utilities[34] and pension reform.[35] Indeed, researchers are now earnestly investigating why so many households do not have direct or indirect holdings of stocks - what has come to be known as 'the stockholding puzzle'.[36]

'Taking capitalism to the people': equity culture and class identity

What is the wider significance of these developments? In Britain, the expansion of share ownership underlay claims by the then Conservative government that they were 'taking capitalism to the people'.[37] Thus the goal of privatization, according to Nigel Lawson, who as Chancellor of the Exchequer was one of its main architects, was to encourage the creation of 'an ever-widening share owning democracy'.[38] John Moore, Financial Secretary to the Treasury from 1983-1986 and responsible for the initial stages of the programme, confirmed that it had not only rescued 'a whole economy headed for disaster', but had shown 'an unrivalled power to teach the responsibilities and rewards of a free society'.

30 See Poterba, ibid.
31 Investment Company Institute (ICI) and Securities Industry Association (SIA), Equity Ownership in America (2002).
32 Guiso et al, n 28 above, 3.
33 The advent of mutual funds and other financial intermediaries made stock ownership easier, and technological advances (associated in the UK with the 'Big Bang') lowered the transaction costs of trades and made individual share trading possible.
34 Particularly in the UK and Italy. The privatization process has been much slower in places like Germany.
35 Guiso, Haliossos and Jappelli argue that the success in the US of IRAs (individual retirement accounts) and the move from defined-benefit to defined-contribution pension schemes inspired European policymakers. However, although Britain, France, Germany, the Netherlands and Italy have all experienced increases in pension fund assets, there are still significant differences both between European countries and between Europe and the US .While pension fund assets are over 90 per cent of GDP in the Netherlands, for example, and around 60 per cent in the US, they are less than 10 per cent in France, Italy and Germany, where public pension schemes continue to dominate: see Guiso et al, n 28 above, 5-6.
36 See M. Haliossos and C. Bertaut, 'Why so Few Hold Stocks?' (1995) 105 Economic Journal 1110; see also R. Miniaci and G.Weber, 'Survey Design and Estimation of Portfolio Models' in Guiso et al (eds), n 28 above, 52, 63.
37 J. Moore, 'British Privatization - Taking Capitalism to the People' [1992] Harvard Business Review 115.
38 Observer 21/6/87, cited by T. Clarke, n 25 above, 220.

Privatization, he opined, was capable of 'transforming public attitudes towards economic responsibility and the concept of private property', on which basis he recommended its 'widest possible extension'. It was 'an educational process' through which people could grasp 'the fundamental beliefs and values of free enterprise'.[39] Amidst claims of this sort, privatization swept across the world in the late 1980s and early 1990s,[40] by which time the spotlight had shifted to the importance of people making their own private pension provision, adding new purpose to the need to establish 'share-owning democracies'. Ideally, everyone should become a sufficiently substantial owner of financial property to be able to provide for themselves in old age.

While, as we shall see, it is far from clear whether anything like the 'people's capitalisms' envisaged by Lawson have materialized, there is evidence, particularly in those countries where financial property ownership has become most widespread, that there has been a shift in public attitudes along the lines hoped for by Moore and that this has contributed to the recent strengthening of the shareholder primacy norm. There are, for example, frequent allusions in the contemporary literature on corporate governance to widening share ownership and increasing public awareness of the stock market. More and more of us have become shareholders, it is argued, and the direct beneficiaries of shareholder primacy are increasingly widely spread. It is not insignificant that when Lawrence Mitchell, a leading academic critic of existing American corporate governance practices, asks 'who is the stockholder?', he answers 'you and me'.[41]

The ideological importance of this is spelled out and, indeed, emphasised, by Hansmann and Kraakman. In seeking to account for the growing support for shareholder primacy, they point not only to the 'important economic forces [that] have made the virtues of that model increasingly salient', but to 'the rise of the shareholder class', placing considerable weight on the fact that stock ownership'is becoming more pervasive everywhere' and is 'no longer . . . confined to a small group ofwealthycitizens'. They note, in particular, the ever-increasing number of workers who have invested savings in corporate equities through pension funds and the rapid growth of the mutual fund industry as the 'repository of an ever increasing share of non pension savings for the population at large'. The result, they argue, has been a 'rapid expansion' of equity ownership 'within broad segments of society' and 'the emergence of a public shareholder class' which is a coherent, 'broad and powerful interest group in both corporate and political affairs across jurisdictions'. This has forged a 'fundamental realignment of interest group structures in developed economies'. With 'even blue-collar workers now often hav[ing] sufficient personal savings to justify investment in equity securities . . . no longer do labor and capital constitute clearly distinct interest groups in society'. On the contrary, 'workers . . . increasingly share the economic interests of other equity holders'.[42]

39 Moore, n 37 above, 115-116,119.
40 For a brief summary of privatization around the world, 1980-1991, see C. Pitelis and T. Clarke, 'Introduction' in Clarke and Pitelis (eds), n 25 above,1, 8.
41 L. E. Mitchell, Corporate Irresponsibility (New Haven: Yale UP, 2001) 147.
42 Hansmann and Kraakman, n 2 above, 449, 451-452.

Despite the importance attached to widening share ownership, however, little energy is expended elaborating the composition of the shareholder class. Even in Britain and the United States, the countries most associated with equity culture and the shareholder-oriented model of the corporation, there is little discussion of how shares and other forms of financial property are distributed. Nor is much interest expressed in how the much vaunted, wider dispersal of financial property has impacted on the distribution of wealth. It is not, of course, easy to paint an accurate portrait of the shareholder class, not least because so many shares are held by institutions of one kind or another.[43] In the UK, for example, institutional investors - insurance companies, pension funds, unit trusts, investment trusts and the like - collectively account for about 70 per cent of listed equities.[44] In these contexts, not only is the beneficial 'ownership' of the property concerned diffuse, it is difficult to trace.[45] Even in mutual funds, where investments are usually held in segregated accounts, there is no direct link between investors and companies, as the unit-holders of the mutual fund do not actually own the shares in the fund's portfolio. Despite these complications, however, it is possible to make reasonably accurate estimates of the distribution of financial wealth and share ownership using the information elicited by household surveys.[46] In what follows, I concentrate on the US and the UK, homes of the Anglo-American, shareholder-oriented, dispersed-ownership model of corporate governance.

The distribution of stock ownership and financial wealth in the US

As indicated earlier, theUS has the highest household stock market participation rates in the world. Research undertaken by the Investment Company Institute

43 The proportion of shares of UK listed companies held by domestic institutions has increased significantly in recent decades, rising from about 29 per cent in 1963, to 47 per cent in 1975, to 60 percent in 1992, before slipping back slightly to 56 per cent in 1997, probably as a result of pension schemes transferring some holdings into bonds: see Office for National Statistics, Share Ownership: A Report on the Ownership of Shares as 31st December 1997 (London: Stationery Office, 1999).
44 Meaning the issued ordinary shares of UK registered companies listed on the London Stock Exchange: see G. Stapledon, 'Analysis and Data of Share Ownership and Control in the UK' www.dti.gov.uk/cld/staple.pdf (last visited 18 October 2004). Stapledon estimates that in 1998 domestic institutional investors owned about 56 per cent of the UK share market, and that overseas institutional investors accounted for about half of the 24 per cent held overseas. About 16.5 per cent were held by individuals, compared to 54 per cent in the early 1960s. Increased institutional holdings have seen overseas holdings rise rapidly, from 7 per cent in 1963 to 13 per cent in 1992 to the 24 per cent of 1998.
45 As Stapledon points out, there are three potential interest-holders in any parcel of shares: the member, whose name appears on the company's register and who is the legal owner; the beneficial owner, as where the member is a trustee; and the holder of the control rights, who holds the voting rights. Where the trustees of a pension fund, for example, engage a fund management firm to manage the scheme's investments, the fund management contract typically transfers the voting rights to the fund manager: see Stapledon, ibid.
46 See J. Banks, F. Stafford and J.Walker, 'Introduction to the JHR's Special Issue on Cross-National Comparative Research Using Panel Surveys' (2003) 38 Journal of Human Resources, 231.

(ICI) and the Securities Industry Association (SIA)[47] shows that the percentage of American households owning stock directly or indirectly rose from about 19 per cent in the early 1980s, to 32.5 per cent by the end of the decade, to 41 per cent in 1995, to 49.5 per cent in 2002. During the same period, the number of individuals holding stock rose from 42.4 million in 1983, to 52.3 million in 1989, to over 84 million in 2002, mainly as a result of the growth in employer-sponsored retirement plans through which nearly half of the equity owning households were introduced to share ownership. This expansion of ownership prompts Mitchell to suggest that 'things are looking up as far as the distribution of corporate wealth is concerned'.[48] However, while the ICI/SIA studies record the gradual spread of ownership, they do not in fact provide much data about its depth or distribution, beyond telling us that most equity investing households have 'portfolios of moderate value' and that the typical investor is 'middle-aged, married and college-educated'.[49] Although information on the distribution of income[50] is more plentiful than that on the distribution of wealth,[51] the importance of the latter is increasingly being recognised by researchers because of its centrality to life chances and economic security and well-being.[52] In the United States, detailed data on the distribution of wealth is now provided by panel surveys such as the Survey of Consumer Finance (SCF), carried out trienially under the auspices of the Federal Reserve, and the Panel Survey of Income Dynamics (PSID), carried out by the Institute for Social Research. The SCF is especially valuable as it is not only designed specifically to measure wealth, examining household balance sheets in considerable detail, but over samples households with substantial holdings of

47 See ICI and SIA, n 31 above.

48 Mitchell, n 41 above 147.

49 See ICI and SIA, above n 31. See also Investment Company Institute, 2001Profile of Mutual Fund Investors (2001).

50 Income tax returns provide good, high-frequency sources of data on these money flows.

51 The term 'wealth' refers to the current value of the assets owned by households, less liabilities and debts. 'Assets' covers everything from financial assets (such as bank accounts, stocks and shares, and life insurance savings), to houses, pension rights, business equity and consumer durables (such as cars); liabilities cover things such as consumer debt and mortgage balances. The more specific term 'financial wealth' refers to resources or assets which give rise to a flow of income in the form of interest or dividend payments: see Banks and Tanner, n 22 above, 2. Certain forms of wealth - most notably those that take the form of rights to uncertain future benefits (pension rights, life insurance, entitlements to future government transfers (including 'social security wealth')) - pose a variety of difficult valuation problems: see J. Davies and A. Shorrocks, 'The Distribution of Wealth' in A. Atkinson and F. Bourguinon (eds),Handbook of Income Distribution (Oxford: Elsevier, 2000) 605, 607.

52 Doug Henwood explains: 'Wealth insulates its lucky holders from personal economic crises, like unemployment and sickness. It offers the opportunity to go to school, start a business, or make big purchases without going into debt. It confers a degree of social prestige and political power. And it can be passed on across the generations. By contrast, income is a lot more ephemeral: you can have a good year, followed by a bad year. But wealth, if it's not recklessly invested, is usually there through thick and thin', After the New Economy (New York: New Press, 2001) 119. See also E. N. Wolff, 'Recent Trends in Wealth Ownership, 1983-1998' (Jerome Levy Economics Institute: Working Paper 300, April 2000), later published in T. Shapiro and E. Wolff (eds), Assets and the Disadvantaged: The Benefits of Spreading Asset Ownership (New York: Russell Sage, 2001).Wealth accumulation is a life-cycle process, for which reason micro-economists like to look at wealth inequality within age groups rather than across the whole population.

wealth, making it less likely to underestimate the concentration of wealth among the extremely wealthy.[53]

The senior economist of the SCF, Arthur Kennickell, has used the data gathered by the last five surveys, together with that collected by Forbes on the 400 wealthiest Americans, to plot changes in the distribution of wealth in the US between 1989-2001, the period which saw the dramatic widening of financial asset and stock ownership.[54] Kennickell's analysis reveals with great clarity the sheer scale of wealth inequality in the US. The Forbes data show that the total wealth of the Forbes 400 as a proportion of total individual wealth rose from 1.6 per cent in 1989 to a peak of 2.4 per cent in 1998 before falling back slightly to 2.3 per cent in 2001.[55] In similar vein, the SCF, which explicitly excludes the Forbes 400,[56] shows that in 2001 the wealthiest one per cent of Americans held over one third of total wealth and the next wealthiest nine per cent another third. It further shows that within the least wealthy 90 per cent, wealth is also heavily concentrated, with the bottom 50 per cent holding only three per cent of total wealth. The concentration of wealth was even more apparent when residential wealth was stripped out from the calculations, as for various reasons it is by most analysts.[57] In 2001 the richest tenth of the American population accounted for over three quarters of non-residential net worth, with the richest five per cent accounting for nearly two thirds. By contrast the bottom half of the population accounted for less than two per cent. Kennickell's findings are confirmed by Edward Wolff. The concentration of wealth in the US in 1998, Wolff concludes, was 'extreme', with the top one per cent of families owning 38 per cent of total marketable wealth and the top 20 per cent of families 83 per cent.[58]

This was vividly illustrated by the fact that in 1998 mean wealth, standing at $61,000, was much higher than median wealth, standing at only $270 – clear

53 On the strengths and weaknesses of these surveys, see Davies and Shorrocks, n 51 above; on their methodology, see Miniaci and Weber, n 36 above.

54 A. B. Kennickell, 'A Rolling Tide: Changes in the Distribution of Wealth in the US, 1989-2001' (2003), SCF Web Site: www.federalreserve.gov/pubs/feds/2003/200324/200324pap.pdf (last visited 18 October 2004).

55 Kennickell, n 54 above, 2-4. In October 1999, the Forbes 400 included 267 billionaires, 200 more than ten years earlier: see J.M. Poterba, 'Stock Market Wealth and Consumption' (2000) 14 Journal of Economic Perspectives 99.

56 And tends, therefore, to underestimate the concentration of wealth at the top end.

57 Because housing as a form of wealth is limited: 'you can borrow against accumulated equity, but you can't liquidate that equity easily without moving on to the sidewalk': Henwood, n 52 above, 122.

58 E. N. Wolff, Top Heavy (New York: New Press, 2002), 1-3. The term 'marketable wealth' (or net worth) refers to the current value of all the marketable assets owned by households less debts and liabilities. Marketable assets include real estate; cash and demand deposits; time and savings deposits, certificates of deposit, and money market accounts; government bonds, corporate bonds or other financial securities; cash surrender value of any life insurance plans or pension plans (including IRAs, Keogh and 401(k) plans); corporate stock or mutual funds; net equity in unincorporated businesses; equity in trust funds. Total liabilities include mortgage, consumer or other debts. Only assets readily convertible into cash are considered 'marketable', so consumer durables (cars, TVs etc) are usually excluded, as are the value of future social security benefits which might be received on retirement and the value of retirement benefits from pension plans, which although a source of future income are not in the direct control of their beneficiaries and cannot be marketed.

Table1 Distribution of Stock Ownership (directly and indirectly held) in the US, SCF Data 2001 (Source: Kennickell)[59]

Wealth Percentile Group	Percentage Share of Equity Owned
99 – 100	33.5
95 – 99	29.0
90 – 95	14.4
50 – 90	21.7
0 – 50	1.4

evidence that 'the vast bulk of household wealth is concentrated in the richest families'.[60]

Not surprisingly, debt as a share of assets also varied hugely across the wealth distribution, the bottom half being by far the most leveraged: between1983-1998 their debt as a proportion of assets averaged 56.2 per cent, compared to under three per cent for the wealthiest one per cent. Indeed, the 1998 figures, Wolff argues, point to the growing indebtedness of the American family, the overall debt-equity ratio having climbed sharply to 0.176 in 1998 from 0.151 in 1983. This, together with their falling financial reserves, he suggests, accounts for 'the growing anxiety of the middle class'.[61]Most 'remarkable' of all, however, in Kennickell's view, was how modest had been the distributional changes between 1989 and 2001, notwithstanding the alleged rise of the equity culture. Indeed, for much of the period such redistributions as did occur were upwards rather than downwards.[62] Confirming this, Wolff observes that 'the only segment of the population that experienced large gains in wealth [between 1983-1998] was the richest 20 per cent of households'. He calculates that during this period 'the richest 1 per cent received 53 per cent of the total gain in marketable wealth' .With the next 19 per cent receiving 39 per cent, the top quintile accounted for 91 per cent of the total growth in wealth, leaving only 9 per cent for the bottom four-fifths of the population. It is not surprising to discover, therefore, that the1990switnessed an explosion in the number of very rich households.[63]

59 Kennickell, n 54 above. The figures were compiled by adding direct holdings of publicly traded stocks (those held outside mutual funds, trusts, managed investment accounts, annuities and tax deferred retirement accounts) to holdings in IRAs, Keogh accounts and other pension accounts like 401(k) retirement accounts.

60 Wolff, n 52 above, 1-3. The SCF also reveals that in 1998 the average 'white' household had an income 76 per cent higher than that of the average 'non white' or 'Hispanic' household, but a net worth (assets less debts), including residence, over seven times higher. Both figures were much higher than in 1992, suggesting that racial gaps had widened. There is 'a vast racial wealth gap between households with otherwise similar demographic characteristics, like education and income', writes Henwood, n 52 above, 125-126. Because of its methodology the SCF provides little data on the gender distribution of wealth.

61 Wolff, n 52 above, 11.

62 The Forbes 400, who are excluded from the SCF analysis, did extraordinarily well: their average wealth (assets minus debts) rose by133 per cent between1989 and 2002.The 400 group as a whole controlled over 2 per cent of total personal wealth in 2002, up from1.6 per cent in 1989 and just 0.8 per cent in 1982. See Kennickell, n 54 above; see also Henwood, n 52 above,119-120.

63 See Wolff, n 52 above, 4; n 58 above, 3.

Table 2 Distribution of Stock Ownership in the US, SCF Data 1998 (Source: Poterba)[64]

	Excluding Pensions (%)	**Including Pensions (%)**
Top 0.5%	41.4	37.0
Next 0.5%	11.8	10.7
Next 4%	27.7	27.2
Next 5%	10.3	11.3
Next 10%	7.2	9.8
Bottom 80%	1.7	4.1
Top 1%	53.2	47.7
Top 10%	91.2	86.2

So far as stock ownership specifically is concerned, as Table 1 shows, Kennickell's analysis reveals to be the concentration of stock ownership, direct and indirect, even greater than the concentration of wealth in general. The share of the highest decile of the wealth distribution of direct and indirect holdings of bonds and corporate stock was, he says, 'particularly large'. The SCF data indicates that although simple deposit accounts and houses and vehicles remain the most important assets outside the wealthiest 10 per cent, the proportion of assets attributable to direct and indirect stock holdings did indeed increase markedly after 1989, particularly for those in the 50th to 90th percentiles of the wealth distribution, rising from about 5.6 per cent in 1989 to 17 per cent in 2001. But this had little effect on the overall distribution of stock ownership. In 2001 the wealthiest one per cent of Americans still held (directly and indirectly) over a third of corporate equity and the next wealthiest nine per cent over 43 per cent. The wealthiest tenth of the American population thus accounted for just under 77 per cent of corporate equity ownership. In contrast, the bottom half of the population accounted for only 1.4 per cent.[65]

In a separate analysis of the1998 SCF, James Poterba similarly concludes that the distribution of stock ownership is 'highly skewed'. Indeed, as Table 2 indicates, Poterba's analysis suggests that the distribution of corporate stock is even more concentrated at the top end.

Poterba estimates that in1998 the one per cent accounted for over 53 per cent of corporate stock ownership when pensions were excluded and nearly 48 per cent when pension wealth was taken into account. By contrast, the bottom80 per cent accounted for only four per cent of stock ownership when pension wealth was included, falling to 1.7 per cent when it was not.[66]Wolff paints a similar picture, calculating that in 1998 the richest one per cent of households held half of all outstanding stock, financial securities and trust equity, and 36 per cent of investment real estate. The wealthiest ten per cent of households accounted for about 90 per cent of stocks, bonds, trusts and business equity, and about three-quarters of

64 Poterba, n 55 above,116.
65 Kennickell n 54 above. He notes that the proportion of both directly and indirectly-held stock owned by the highest 10 per cent of the wealth distribution declined a little after 1998 (the difference being captured by the next wealthiest 40 per cent).This might account for the even higher levels of concentration found in Poterba's analysis, whichwas based on the 1998 SCF.
66 Poterba, n 55 above,101-102.

non-home real estate. Moreover, despite the fact that 48 per cent of households owned stocks directly or indirectly through mutual funds, trusts, or various pension accounts, the richest ten per cent of households still accounted for 79 per cent of stock ownership, only slightly less than their 85 per cent share of directly owned stocks and mutual funds.[67] Things are not, it would seem, looking up quite as much as Mitchell thinks. On the contrary, as Doug Henwood says, 'it is hard to see much democracy in the distribution of [US] stock ownership'.[68]

The distribution of share ownership and financial wealth in the UK

The distribution of financial wealth in the UK is harder to assess, the data on wealth and asset holding being significantly less comprehensive.[69] In relation to share ownership specifically, for example, there is not only less information on direct ownership but relatively little quantitative data on the distribution of UK pension fund wealth.[70] Despite this, it is possible to paint a reasonably accurate, broad brush picture using the data provided by UK household surveys and the general measures of the distribution of wealth constructed by the Inland Revenue.

It is clear from the Family Resources Survey (FRS),[71] for example, that, as in the US, there has been a gradual increase in the importance of shares, mutual funds, life insurance, and other relatively risky assets in UK household portfolios.[72] The FRS shows that by 1998 just under 28 per cent of households (6.7 million) held stocks directly and just under 17 per cent (4 million) held them indirectly in PEPs, unit trusts or mutual funds, but excluding direct contribution pension schemes. Taking the two together, 34.8 per cent (8.3 million) of households held stocks either directly or indirectly.[73] Although rates are lower than in the US, in comparison to European countries such as France, Germany, Italy and the Netherlands, the UK has unusually high levels of direct and indirect stock ownership. It is clear, however, that stock market participation rates are much higher among the higher income decile groups and that participation rates for households in the bottom half of both the income and financial wealth distributions remain very low. A large proportion of European stockholders 'belong to

67 Wolff, n 52 above, 5-6; n 58 above, 8-16.
68 Henwood, n 52 above,122.
69 See Banks and Wakefield, n 27 above, 204, 217-18.
70 See Banks and Wakefield, ibid 213.The significance of this is heightened by the fact that a higher proportion of corporate shares are held by pension funds here than in the US.
71 The FRS is a large computer assisted personal interview (CAPI) survey run by the Central Statistical Office, involving around 23,000 households: see Guiso et al (eds), above n 27, 10-11, 62, 202. Some data is also provided by the Family Expenditure Survey (FES): see Banks and Tanner, n 22 above, 38.
72 Direct share ownership was far less common in the UK than in the US in the early1980s, but grew more rapidly following privatization. By mid 1990s about one quarter of British households directly owned stock, compared to one-third of American households: J. Banks R. Blundell and J.P. Smith, 'Understanding Differences in Household Financial Wealth between the United States and Great Britain' (2003) 38 Journal of Human Resources, 241, 259.
73 This represented an increase of 8 per cent from1995. For the reasons for the exclusion of direct contribution schemes, see Banks and Wakefield, n 27 above, 207, 213.

Table 3 Percentage of UK Households investing in stocks, by financial asset quartiles[74]

	Quartiles (low to high)			
	I	II	III	IV
Stocks (direct)	1.6	11.7	38.7	59.5
Mutual Funds	1.5	5.8	16.8	43.4
Pension Funds	6.8	22.9	26.0	25.1
All Three	9.1	34.0	58.8	77.6

groups with considerable amounts of overall financial wealth'.[75] Confirming this in the British context, James Banks and Matthew Wakefield report that 'only certain types of UK household typically [directly] own any shares at all' and that the 'typical UK stockholder' is 'middle-aged, well-educated and wealthy'.[76] This is borne out by the fact that the median wealth of TESSA and PEP holders is around twenty times that of the population at large.[77] Indeed, as Table 3 shows, even when the most important forms of indirect holding are taken into account, the proportion of households owning stock is much higher in the upper quartile of the financial wealth distribution.[78]

It is also clear that there has been little change in the numbers directly owning shares in the UK since the late 1980s[79] and that while the government's privatization programme widened direct share ownership, it did little to deepen it.[80] A large proportion of shareowners still only hold shares directly in privatized industries or recently demutualized building societies and their direct equity holdings are correspondingly small. [81]Although there is no detailed data on the value of financial holdings, some data is provided by the Inland Revenue' calculations of the distribution of wealth and by surveys such as the British Household Panel Survey. [82] Drawing primarily from inheritance and capital transfer tax returns, for

74 Source: Banks and Wakefield, n 27 above, 209.
75 Guiso et al, n 28 above,14-18.They have to exclude the UK from their calculations of stockholding participation across the distribution of financial wealth because wealth deciles cannot be calculated from the available data. They note the strong correlation everywhere between education and age and stock market participation.
76 Banks and Wakefield, n 27 above, 200, 202, 216.
77 Banks and Tanner, n 22 above, x.
78 For data on the percentage of households with occupational pensions (which has been hovering at around 50 per cent since the late 1970s) and personal pensions (now held by just under 20 per cent of households), see Banks and Tanner, ibid, 38, drawing on the FES. In 2000 one third of the British adult population still had no interest-bearing financial assets at all: see Banks and Tanner, ibid, x.
79 See Banks and Tanner, n 22 above, 42-47.
80 There is evidence that the greater awareness of share-ownership as an investment opportunity fostered by privatisation and demutualisation and by the availability of PEPs and ISAs has led to higher levels of direct ownership among younger people, though 'not typically from middle or lower-income groups': see Banks and Tanner, ibid, 43-44; Banks and Wakefield, n 27 above, 202.
81 See Banks et al, n 72 above, 244.
82 The BHPS is an annual interview survey of around 10,000 adults in around 5,000 representative households. Data on financial wealth was contained in two of the ten interviewing waves, those of 1995 and 2000.The BHPS does not, however, over sample high income and wealth households and for this reason almost certainly understates the concentration of wealth among the richest: see Banks et al, ibid, 245.

Table 4 Distribution among the adult population of marketable wealth (Source: Inland Revenue, Series C estimates)[83]

	Concentration of wealth among adult population						
	Most Wealthy Percentages of Population						
	1	2	5	10	25	50	
Year	Percentage of Wealth Owned						Gini Co-Efficient
1976–79	20.75	26.75	37.75	49.75	71.25	92.00	65.25
1980–83	18.00	25.00	36.25	49.75	72.75	91.25	64.50
1984–87	18.00	24.25	36.00	49.50	73.75	90.75	64.75
1988–91	17.25	23.75	35.75	47.75	70.75	92.25	64.50
1992–95	18.50	26.00	38.25	50.75	73.00	92.75	66.00
1996	20.00	27.00	40.00	52.00	74.00	93.00	68.00
1997	22.00	30.00	43.00	54.00	75.00	93.00	69.00
1998	22.00	28.00	40.00	52.00	72.00	91.00	69.00
1999	23.00	30.00	43.00	55.00	74.00	94.00	70.00
2000	22.00	29.00	42.00	55.00	74.00	94.00	69.00
2001	23.00	30.00	43.00	56.00	75.00	95.00	70.00

example, the Inland Revenue has for many years produced estimates of the distribution of personal wealth, principal among them the so-called 'Series C' estimates of 'marketablewealth'.[84] These underline the magnitude of the distributional inequalities in the UK.

Some data on the distribution of financial wealth more specifically is provided by the BHPS, 'the most complete and up-to-date micro data for studying the [financial] wealth of the British population'.[85] Although it gathers little information on the value of pension wealth, the BHPS now elicits a considerable amount of information on individual savings, investments and debts. The data gathered by the 2000 survey reveals that, as in the US, the distribution of financial wealth in

83 The series c estimates are constructed from the information provided by inheritance tax returns. Although very useful, they are based on non-random samples (the recently deceased) and provide little information on the structure of the wealth holdings, and particularly the financial wealth holdings, of the majority of the population (while individuals have to reveal their income for tax purposes every year, they do not have to do so with their wealth): see Banks and Tanner, n 22 above, 3-4, 7-16. The 1976-1995 figures have been averaged; those for 2000 and 2001 are provisional. The gini coefficient is a measure of the inequality of a distribution, ranging between 0 (no inequality) and 1 (all resources owned by one person).

84 'Marketable wealth' includes land and buildings, (directly owned) stocks and shares, trade assets, shares in private companies and partnerships, bank and building society accounts, cash, life assurance policies and cars and other durable goods; but excludes such things as occupational and state pensions as they are usually contingent rights which cannot readily be realised: see Inland Revenue Statistics (1998), para 18. The estimates are compiled by using an 'estate multiplier method 'which estimates the wealth of the living by regarding those who die in any one year as a sample of the whole population, with some adjustments to take account of the different mortality rates for people of different age, sex and marital status. This method was endorsed by the Royal Commission on the Distribution of Income and Wealth (1975, Report 1: Cmnd 6171) as the most appropriate way of estimating the distribution of wealth in the personal sector.

85 J. Banks, Z. Smith and M. Wakefield, 'The Distribution of Financial Wealth in the UK: Evidence from 2000 BHPS Data' (London: IFS, Working Paper 02/21, 2002) 4.

Table 5 Net Financial Wealth in the US and the UK, by percentile of financial wealth (Measured in 1995 US dollars, thousands)[86]

	PSID (US)			BHPS (UK)	
Percentile Net Financial Wealth	1984	1989	1994	1995 Lower	1995 Higher
50	3.1	4.0	4.1	1.5	2.3
70	16.0	22.6	22.6	9.3	12.4
90	82.3	101.3	141.1	54.3	72.2
95	146.2	178.8	249.2	100.9	139.7
98	276.7	359.6	465.2	184.0	251.1

the UK is 'extremely unequal'[87] and very heavily concentrated at the top end of the distribution.[88] Thus while mean net financial wealth - money held in savings and investments minus debt - was over d12,000, median net financial wealth, a more accurate guide to the middle of the distribution, stood at only d600. Indeed, a quarter of families were d200 or more in debt.[89] Particularly striking were the differences between the distributions of income and wealth. In 2001, the ratio between the 90th (richest) and 50th (middle) percentiles of the income distribution was around two, whereas that in the net financial wealth distribution was 58. The inequality in the distribution of wealth is thus 'huge' compared to that found in the distribution of income.[90] Other studies have broadly confirmed these findings.[91] As Table 6 shows, the distribution of wealth directly held in stocks and shares specifically is also 'highly skewed, with extreme concentrations once again in the wealthiest 5-10 per cent of households'.[92] Thus although the top of the wealth distribution contains a relatively small number of households, in both the US and the UK these households hold and control 'a disproportionate amount of stocks'.[93] The 1995 UK and 1984 US figures are virtually identical, suggesting that after the stock market surge of the early 1990s 'British households had stock wealth

86 See Banks et al, n 72 above. The table was compiled from the PSIDs for1984,1989 and1994 and the BHPS for 1995, the design of the latter having been modelled in part on the former. Data is for selected percentiles starting at the median. Because of the methodology employed by the UK survey a single estimate of household wealth was impossible to provide, hence the upper and lower 'bounding 'method employed.
87 J. Banks, R. Blundell and J. P. Smith, Wealth Inequality in the United States and Great Britain' (London: Institute of Fiscal Studies,WP00/02, 2000) 12.Their comparisons are based on the Panel Survey of Income Dynamics (PSID), supplemented by the SCF, in the US; and the BHPS, supplemented by the Family Expenditure Survey (FES) and the Financial Research Survey (FRS) in the UK: see above, 6-7.
88 See Banks et al, n 85 above.
89 Banks et al, n 86 above. Because of the extreme skew in wealth distributions, means are treacherous summary statistics to use for household wealth as they are heavily influenced by a small number of individuals with very large holdings.
90 Banks et al, n 85 above, 7-8.
91 See for example, W. Paxton, 'Wealth Distribution - the Evidence' (London: IPPR Report, September 2002); and P. Johnson and S.Tanner, 'Ownership and the Distribution of Wealth' (1998) 75 Political Quarterly 365.
92 Banks et al, n 86 above, 23.
93 Guiso et al, n 28 above, 16.

Table 6 Value of stocks and shares, by percentile of wealth held in stocks and shares (Measured in 1995 US dollars)[94]

	1995 BHPS (UK)		1984 PSID (US)		1994 PSID (US)	
%tile	All	Sh only	All	Sh only	All	Sh only
50	–	10.1	–	9.9	–	20.5
70	–	31.1	–	21.3	2.0	51.1
90	15.5	116.4	14.2	99.3	51.1	204.5
95	50.5	156.8	42.6	141.9	139.9	306.7
98	116.4	326.0	127.7	354.8	306.7	511.2
Mean	10.3	43.4	10.1	40.7	28.7	83.4

similar to American households ten years earlier'.[95] There is also evidence that the skewing has not been greatly alleviated by the growth in occupational and personal pensions. Until the mid 1990s the Inland Revenue compiled estimates which took account of the capitalised value of private (mainly employment-related) and state pension rights (the 'Series D' and 'Series E' estimates). As one would expect, these show slightly lower levels of distributional inequality than the Series C estimates, but the percentage of wealth owned by the top ten per cent still hovered around 43 per cent throughout the period 1980-1994, and that owned by the top quarter at just under 70 per cent.[96]

Although, therefore, the base of the financial pyramid has undoubtedly widened in recent years and although the distribution of financial wealth in the UK is not quite as skewed as in the US, financial property and share ownership in the UK is still very heavily concentrated. Despite the rise of the equity culture, most British and American households possess 'very few financial assets', the top five per cent having more than 50 times those of the median household.[97] Indeed, the concentration of financial asset ownership at the upper end of the British and American wealth distributions is, Banks, Blundell and Smith argue in their comparative study, the 'real story'. It is also, however, at this upper end that there are 'critical differences' between the two jurisdictions: the top fifth of American households have considerably more financial wealth than their counterparts in theUK.[98] What is clear is that in both countries the 'public shareholder class 'upon whose emergence Hansmann and Kraakman attach so much weight, is not only not quite as 'broad' as sometimes suggested but is for the most part very shallow in its holdings. The result is that even within jurisdictions where direct and indirect

94 Banks et al, n 72 above, 262.
95 Banks et al, n 72 above, 260.
96 They were discontinued because of growing computational difficulties: see Inland Revenue Statistics (London: Stationery Office: 1998) chapter 13, para 21. In the Series E figures, which take account of state pension entitlements, distributional inequality is slightly lower still: see Tables 13.6-13.7.The estimates again show significant increases in inequality from the mid 1980s.
97 See J. Smith, 'Why is Wealth Inequality Rising?' in F.Welch (ed), The Causes and Consequences of Increasing Inequality (Chicago: University of Chicago Press, 2001).
98 Banks et al, n 72 above, 248.

share ownership has become more widespread, shareholder primacy remains in essence the primacy of a small, privileged elite; the primacy of the wealthiest ten percent. If one broadens and globalises the picture - in order to take account of the fact that a significant proportion of the interest and dividends accruing to financial property is derived from the labour of people elsewhere in the world, among the great majority of whom financial property ownership is virtually non-existent - this elite begins to look smaller still. Against this backdrop, any claims that we are entering an era of 'people's capitalism' are risible.

THE CONTRADICTIONS OF SHAREHOLDING

The increasing illegibility of class

It would, however, be mistaken to conclude that nothing much has changed. As Hansmann and Kraakman suggest, the spread of stock ownership has contributed to the blurring of traditional class distinctions. Spurred on by the fear that by the time they retire (or require medical care, or lose their jobs) the supports provided by the welfare state will be inadequate, and encouraged no doubt by the steady rise in share prices in the 1980s and 1990s, more and more workers have invested money in the stock market, usually via institutions and retirement funds. As a result many now have a foot (or toe) in more than one class camp, being both wage-labourers and owners of modest amounts of capital. Some commentators, harking back to Peter Drucker's idea of 'pension-fund socialism',[99] see in this an opportunity for worker-shareholders to press for the adoption of less rapacious, more socially responsible, worker-friendly corporate policies.[100] At present, however, the money that wage-earners hand over to money managers simply joins the general pool and is managed no differently. Indeed, most workers have even more reason than wealthy investors to be concerned with getting the best possible returns from their modest financial assets, as this may well be the key to averting an impoverished old-age.[101] Even more importantly, perhaps, these workers are very much in a minority, a modern-day 'labour aristocracy', for even in the wealthiest parts of the West, let alone elsewhere in the world, many working people have no financial property at all and many others have insufficient to fund comfortable retirements. While it would, therefore, be mistaken to assert, as did Drucker, that 'worker and capitalist are one and the same person', there is little doubt that the 'social security capital' or 'deferred labour income' that has flooded into the capital markets in recent years has served further to blur 'the traditional dividing line between wage-income and capital accumulation',[102] contributing

99 P. Drucker, The Unseen Revolution: How Pension Fund Socialism Came to America (London: Heinemann, 1976).
100 See, for example, R.Minns, 'The Social Ownership of Capital' (1996) 219 New Left Review 42.
101 See W. Seccombe's account of the Ontario Teachers Pension Plan, 'Contradictions of Shareholder Capitalism' in Socialist Register (1999), 76, 92-94.
102 Drucker, n 99, quoted in Seccombe, n 101, 91-92.

to what Richard Sennett has called the increasing 'illegibility' of class and class structures.[103]

The growth of shareholder power

The significance of widening of share ownership goes beyond its impact on class consciousness and identity, however. Even for the privileged minority of workers who benefit from sufficiently well-paid employment to become financial property owners, let alone for the much larger number around the world who do not, the growth in financial property ownership has had a downside. The nature of this can, perhaps, best be grasped by returning to the man on the sofa and the man who had yet to leave his pyjamas.

Contrary to the claims made by the advertisement, of course, the man on the sofa was not working. But someone, somewhere certainly was, enabling the sofa bound man to make more money from the money that he had invested in the financial institution concerned. As Aristotle and the scholastics pointed out, money does not make more money by itself;[104] lacking 'organs for generating any other piece', it is inherently unproductive.[105] The payment of interest entails taking part of the product of the labour of others. And it is, of course, precisely these unknown others, working in unknown places, in unknown industries, for unknown wages and in unknown conditions, who were generating the wealth to which the men in the advertisements were entitled to lay partial claim by virtue of their ownership of financial property. The adverts were thus vividly illustrative of the nature of the property forms which are now so central to modern capitalism and, indeed, of some of the reasons for the growing illegibility of class relations. Nowadays, the key to wealth and power is increasingly to be found in the ownership of that most abstract and impersonal of commodities, money - and, through it, of the intangible financial property forms that confer titles to revenue. It is these that enable some people in one part of the world to lay claim, through their rights to receive interest and dividends, to part of the product of the labour of others in other parts of the world while lying on their sofas or in their beds. Indeed, the adverts also shed light on the contemporary idea that the working class is disappearing, for more and more of the work that sustains the relatively privileged lifestyles of so many in the West now takes place offshore, in far-away sweatshops in places like China, which seems finally to have become a worker's

103 R. Sennett, 'The Legibility of Class' in D. E. Davis, Political Power and Social Theory, volume14 (London: JAI, 2000) 327-332, exploring the changing nature of social institutions and, in particular, the decline of the relatively stable, bureaucratic, pyramid-structured public and private institutions in which people could readily locate themselves and acquire the clear sense of self upon which (class) consciousness was based. The new capitalism is still class based, Sennett argues, and there is still consciousness of domination and subordination, 'but the ['flexible'] institutions of the new order work against consciousness of structure. We have emerging an organization of power and profit which takes advantage of its own illegibility'.

104 Aristotle, Politics I, 8-10; Nicomachean Ethics V, 5. See also S. Miekle, 'Aristotle and Exchange Value', In D. Keyt and F.Miller (eds), A Companion to Aristotle's Politics (Cambridge, Mass: Blackwells,1991) 156-181. J. Noonan, The Scholastic Analysis of Usury (Cambridge Mass: Harvard UP,1957).

105 J. Bentham, Defence of Usury (1787), in Works, Volume III (New York: Russell and Russell,1962) 16.

state, though not perhaps in quite the way envisaged by Mao. Arguably, in much of the developed world class has become not so much illegible as near-invisible, its traces confined to the 'Made in . . .' labels attached to the things we consume.[106] From this perspective, what we have seen in recent years, as Hansmann and Kraakman rightly say, is a significant increase in the power of the financial property-owning, shareholder class, a development to which the torrent of social security capital entering the world's money markets has contributed. As more and more money has become concentrated in the hands of financial institutions and fund managers, so too has more and more power, power which has been used to exert intense pressure on corporate executives to maximise 'shareholder value' and on policymakers worldwide to 'open up markets'. The 'rentier function has become institutionalized' and with this 'the influence of the financial sphere has become greater [than] at any time since the 1920s'.[107] This is reflected in Hansmann and Kraakman's observations about 'the new prominence of substantial institutions that have interests coincident with those of public shareholders' - institutions that are 'prepared to articulate and defend those interests' and that are 'acting increasingly on an international scale'. The result is that 'we now have not only a common ideology supporting shareholder-oriented corporate law, but also an organized interest group to press that ideology - an interest group that is broad, diverse, and increasingly international in its membership'.[108]

Operating through its institutional agents, the shareholder class has used a judicious mix of carrots and sticks to compel executives to seek to maximise shareholder wealth. Sometimes direct pressure is exerted by money managers - so-called shareholder activism; on other occasions it is exerted indirectly through capital markets and the market for corporate control. These sticks have been supplemented by executive remuneration packages based around performance bonuses and share options, packages which have contributed not only to the increasing, self-interested, executive focus on maximising shareholder value but to the explosion in executive pay, particularly in jurisdictions boasting Anglo-American style shareholder-oriented corporations and governance regimes. Crucially, however, as Wally Seccombe points out, while fund managers may have emerged as capitalism's 'new magnates', wielding tremendous power in financial markets, they are also compelled to submit to the disciplines of those markets.[109] Like the corporate executives upon whom they exert pressure, fund managers have themselves become subject to ever greater competitive pressures and forced to maximise financial performance. Ultimately, of course, this entails extracting as much unpaid, surplus labour as possible from workers for distribution to

106 For an illuminating account of the processes whereby money makes money, see B. Garson, Money Makes the World Go Around (London: Penguin, 2001). Garson invested part of her book advance in a small local bank and part in a mutual fund. She then followed her money around the world as it 'worked' for her. The journey took her to the For Ex trading room of the Chase Manhatten Bank, to the planning offices of amulti-billion dollar petro-chemical refinery in Thailand, to Singapore, to Malaysia, and back to the US and a Union meeting in the living room of a sacked Sunbeam worker inTennessee, one of the many victims of 'Chainsaw Al' Dunlap, the King of the downsizers.
107 D. Henwood, Wall Street (London:Verso,1997) 263-264, 267.
108 Hansmann and Kraakman, n 2 above, 453.
109 Seccombe, n 101 above, 89.

shareholders and the owners of other forms of interest-bearing financial property.[110]
In this context, the growth in shareholder power is best seen as one aspect of the more general shift in the last thirty or so years in the balance of class forces around the world. Acting on behalf of the shareholder class, money managers have been snapping up the shares of companies whose top executives 'aggressively slash the payroll, shut-down unprofitable plants, sell off sideline businesses and use the profits extracted by ruthless cost-cutting to boost dividend payouts and repurchase company shares'.[111] The desire to 'unlock shareholder value' has generated downsizing, re-engineering, spining-off and outsourcing, and seen labour come more than ever to be treated as nothing more than an expendable commodity. Wage bills have been cut, real wages have stagnated, job insecurity has increased, 'long-hours' cultures have emerged, and working practices and labour markets have been made more 'flexible'. Flexibility is, of course, primarily demanded not for but of workers, and with the growing financial pressures which have accompanied stagnating real wages and the decline of the welfare state generating a growing need for all adult householders to work, women in particular have suffered, entering the paid workforce while still shouldering the bulk of domestic labour. Paradoxically, then, while the rise of the equity culture has seen more and more working people become financial property owners, by contributing to the growing power of the shareholder class and more vigorous assertion of the shareholder primacy norm it has also intensified the market imperatives which have borne down so fiercely on working peopleworldwide.[112] Financial power has been used to discipline workers and to create huge, new, amorphous, unorganized, easily exploited proletariats. The rise of the equity culture has thus been part of larger processes which have hardly operated for the benefit of workers qua workers even in the developed world, let alone for their less fortunate counterparts elsewhere. Until recently, writes Robert Reich,

the norm had been . . . that if a company was highly profitable, workers could be assumed to have steady employment [and] if company profits increased, workers benefits and wages would increase with them . . . That is no longer the case . . . Highly profitable companies now shed thousands, if not tens of thousands, of workers. In doing so, companies are in certain cases doing nothing more than redistributing income from employees to shareholders.[113]

Indeed, it is not even clear that share and financial property ownership will enable the new labour aristocracy to realise its principal goal of a financially secure retirement, for in recent years the flood of pension money into the markets has con-

110 See Garson, n 106 above. Everyone who acquired Garson's money had to find something profitable to 'invest' it in. It was this imperative, Garson suggests, coupled with the growing dearth of profitable domestic investment outlets, that lay behind the American championing of the dismantlement of the controls on capital flows and the opening up of money markets and globalisation.
111 Seccombe, n 101 above, 79.
112 This is one of the themes of Garson's book, n 106 above. It casts light not only on the way international money markets work but on the impact of the shareholder primacy norm and the search for 'shareholder value' on ordinary working people around the world. It also makes plain how misleading the term 'investment' can be: much of the money 'invested' on her behalf was not put into something new but spent on existing titles to revenue.
113 R. Reich, Harper's Magazine May 1996, 38.

tributed to the dramatic rise in stock market prices, greatly increasing the cost of buying titles to future revenue. Moreover, with the end of the bullmarket, many pension funds have been seriously depleted, contributing to the various collapses, scandals and scares of recent years. With a bear market a seemingly constant threat, and with many funds suffering from a declining ratio of contributors to beneficiaries, there is considerable risk of further problems in the future. Women, again, are especially vulnerable to poverty in old-age. Henwood sums things up with typically curt acerbity. 'It seems odd', he writes, 'that workers should be asked to trade a few extra percentage points return on their pension fund, on which they may draw some decades in the future, for 30 or 40 years of falling wages and rising employment insecurity'. As he says, the point of shareholder activism 'is to increase the profit share of national income and to claim a larger portion of that profit share for rentiers. Any gains to people of modest means are accidental'. The hints and suggestions in the debates surrounding corporate governance that the average stockholder is 'you and me' and that 'the portfolio managers demonized as greedy Wall Streeters are really managing all of society's savings for the long term interest of all' simply do not survive close scrutiny.[114]

Share ownership and the changing distribution of wealth

Given the grossly unequal distribution of financial property, it is not, perhaps, surprising that notwithstanding the broadening base of the financial pyramid, the last twenty or so years have seen a widening rather than a narrowing of wealth inequalities. In both the US and the UK, the 1980s saw a reversal of equalising trends which had begun in the 1930s.[115] In the US, as Table 5 shows, the distribution of financial wealth was far more unequal in the mid 1990s than it had been a decade earlier,[116] and by the millennium's turn the gap between 'the haves and the have-nots [was] greater than at any time since 1929'.[117] James P. Smith, a Senior Economist at RAND, confirms that household wealth inequality in the US 'increased steadily' between1984-94, particularly within the upper half of the distribution.

Moreover, the trend was 'even more dramatic' in financial assets alone, for while there was little change in the assets held by the typical household, the value of those held by the top five per cent increased by 50 per cent.[118] 'Contrary to popular perception', therefore, the 'go-go years of the 1980s and 1990s did not offer everyone a piece of the action'. They were, rather, 'a party for those at the very top of the wealth distribution'.[119]

114 Henwood, n 107 above, 293.

115 On the downward trend in wealth inequality in the US and the UK from the 1920s to the 1980s, see Davies and Shorrocks, n 51 above 639-640;Wolff, n 58 above, 8-9.

116 According to Wolff, the share of the top 1 per cent of wealth holders rose by 5 per cent between 1983 and 1998, while the wealth of the bottom40 per cent showed an absolute decline. Almost all the absolute gains in real wealth accrued to the top 20 per cent of wealth holders, see Wolff, n 58 above, 8-9.

117 Wolff, ibid, 2.

118 Smith, n 98 above; see also Banks et al, n 72 above, 260.

119 Wolff n 58 above 2; Davies and Shorrocks, n 51 above 664, 646;Wolff, ibid, 2. He reports that the share of marketable net worth held by the top 1 per cent, which had fallen 10 percentage points between1945 and1976, rose from34 per cent in1983 to 37 per cent in1989.At the same time, the share of wealth held by the bottom 80 per cent fell from19 to 16 per cent: Wolff, ibid,12.

As Smith says, the 'principal culprit' for this rise in inequality is 'easy to find': 'the stock market surge'.[120] Poterba agrees. There were, he observes, sharp differences in the growth rates of the components of net worth between 1989 and 1998. The real value of tangible assets, for example, increased by only14 per cent and the real value of financial assets other than equities by 38 per cent. The real value of equities, on the other hand, rose by 262 per cent. More than 60 per cent of the wealth creation during this period was, therefore, attributable to the rising value of stock holdings. For most US households, however, these increases in stock values had, as Poterba points out, only 'modest wealth effects', as most households have 'no or very limited holdings of corporate stock'. In 1998, for example, less than 16 per cent of households held stock whose value exceeded the gross value of their home (and nearly half of these did not own a home at all) and under eight per cent of households both owned a home and stocks of greater value. Indeed, even an across-the-board increase in asset values would have 'only a modest effect on . . . most households, since most households h[ave] relatively few assets to beginwith'.[121]That the boom in stock prices brought significant benefits only to those at the very top of the wealth distribution was, then, entirely predictable. As James Davies and Anthony Shorrocks observe, because 'corporate stock is held disproportionately by the wealthiest families, wealth inequality can be expected to rise during stock market booms'.[122] As, for the same reason, it can when the shareholder primacy norm is strengthened.

It is clear that the last couple of decades have also seen a reversal of the long trend towards greater equality in the distribution of wealth in the UK. The first half of the twentieth century saw a considerable redistribution of wealth from the very rich (the top one per cent) to the upper middle classes (the top ten per cent), although in 1950 over half of personal wealth was still in the hands of the most affluent one per cent and 85 per cent in the hands of the richest tenth. The postwar period saw still further downward redistribution, with a continuing fall in the share of the richest one per cent and a significant increase in the share of the middle classes. The bottom 80 per cent of the adult population, for example, saw their share of total wealth rise from eight per cent in the 1930s to 35 per cent in the 1970s. But redistribution stalled in the late 1970s and early 1980s, and went into reverse in the 1990s. As Table 4 shows, between 1985 and 2001 the share of total personal wealth held by the richest one per cent increased from18 per cent to 23 per cent, the share of the richest five per cent from 36 per cent to 43 per cent, and the share of the richest ten per cent from 48-50 per cent to 55-56 per cent. At the same time, the share of the bottom half of the population fell from8-9 per cent to 5-6 per cent, with the result that the gini coefficient of inequality rose from64-65 to 69-70.[123] The last two decades may have seen wealth creation on an unprecedented scale, primarily as a result of stockmarket gains and rising property values, but the gains have been very unevenly distributed.

120 Smith, n 97 above,16; Banks et al, n 86 above, 24.On the deterioration in the racial distribution of wealth, see Wolff, ibid, 3.
121 Poterba, n 55 above, 99-102.
122 On the changing values of US stock holdings, see Wolff, n 58 above, 28-29.
123 See Paxton, n 90 above, 3, drawing on the Inland Revenue estimates.

It is harder to trace the changes in the distribution of UK financial wealth specifically since the 1980s because of the limited availability of relevant data, especially for the earlier years. However, by drawing on a variety of sources Banks, Blundell and Smith are able to cast some light on developments. Their conclusion is that 'strikingly, the bottom three quarters of the distribution of net financial worth remain[ed] close to constant in real terms' during the 1990s. This was in contrast to the US where this was true only for the bottom half. Moreover, in the UK substantial real increases in financial assets were to be found only 'at the 90th or even 95th percentiles and above'. There was, in other words, a lack of growth at both the bottom and middle of the distribution. Indeed, as of the late 1990s, one third of the British population still had no interest-bearing financial assets at all, and one tenth no assets of any kind. In short, in the UK the real gains from the stock market boom were probably concentrated in even fewer hands than in the US.[124] Other studies looking only at financial assets have confirmed the growing inequalities and also highlighted the increasing numbers with no assets at all.[125]

ATRIUMPH FOR EFFICIENCYOR POWER?

Law-and-economic determinism: the new vulgar marxism?

What light does this cast on the growing strength of the shareholder primacy norm? According to Hansmann and Kraakman, the emerging consensus flows from the 'widespread disenchantment with a privileged role for managers, employees, or the state in corporate affairs' and the growing belief, based on 'logic and experience', that shareholder-oriented corporations are the best means to achieve the end of 'aggregate social welfare'. There are, they suggest, three factors at work: 'the failure of alternative models, the competitive pressures of global commerce; and the shift of interest group influence in favor of an emerging shareholder class'. Historically, their argument runs, various alternatives to the shareholder-oriented model of the corporation have been tried - some manager oriented (the US), some labour-oriented (Germany), some state-oriented (France, Japan), some a mixture of these (Netherlands). Ultimately, however, all have 'lost much of their normative appeal', as have the stakeholder models which emerged in their wake, because 'important economic forces' have made the virtues of the shareholder-oriented model 'increasingly salient'. The latter, they argue, has now come to be recognized as superior 'by force of logic, by force of example, and by force of competition'.[126]

On closer inspection, it becomes clear that these forces are at root one and the same. Like law-and-economic analyses in general, Hansmann and Kraakman's arguments are underlain by a belief in a politically neutral, trans-historical, market-based, purely 'economic' rationality or logic, which is always struggling to

124 Banks et al, n 86 above, 26-27; Banks and Tanner, n 22 above, x.
125 See, for example, Banks and Tanner, ibid, 53-57. In 2000-2001, 28 per cent of households and 67 per cent of single parents (most of whom are women) had no savings at all, see Paxton n 90 above, 6-7.
126 Hansmann and Kraakman, n 2 above, 441-449.

assert itself, which common law judges often intuitively grasp and act upon, and which, if allowed free reign, operates to maximise aggregate social welfare. For Hansmann and Kraakman, this rationality provides 'persuasive reasons 'for believing that the shareholder-oriented model of the corporation, particularly if characterized by dispersed, 'outsider' shareholding, 'offers greater efficiencies than the prinicipal alternatives'. Being more market-based and more subject to (financial) market disciplines, shareholder-oriented corporations are, a priori, economically superior. In their view, confirmation of this is to be found in the economic performance in recent years of the 'developed common law jurisdictions' (with their shareholder-oriented corporations) relative to those of 'the principal East Asian and continental European countries' (with their more stakeholder-friendly models). Hansmann and Kraakman recognise that not long ago German and Japanese firms 'were winning the competition' and that many commentators, including some in the US, were arguing that their corporate governance regimes and models of capitalism were superior. But, they claim, any suggestion that the more recent successes of the American economy might themselves prove ephemeral are based on a 'mistaken interpretation of the nature of economic competition in recent decades'. Previously, American corporations were manager-oriented and correspondingly less-than-efficient, hence their relatively poor performance in the1960s and 70s. Only in the last decade or so have they become genuinely shareholder-oriented, at which point, with competition becoming truly international for the first time, the state- and labour-oriented corporations of Japan and Germany have simply been'out-competed'.[127]
From this perspective, if market forces, and financial market forces in particular, are encouraged and permitted to operate without impediment, economic logic will generate convergence towards shareholder-oriented corporations. And this, Hansmann and Kraakman argue, is precisely what is happening. Equity markets are growing not only in Europe but throughout the developed world, and with this the economic logic of the market is inevitably asserting itself, subjecting corporations to its inexorable will and compelling convergence on the more efficient shareholder-oriented model. The latter's victory should 'not [therefore] come as a surprise'.[128] On the contrary, it is the absence of Anglo-American, shareholder oriented, dispersed-ownership structures, rather than their presence, which is in need of explanation, hence the tendency of some recent US scholarship to focus on the reasons for their non-emergence in certain jurisdictions, something commonly attributed to legal, political and cultural impediments, such as inadequate minority shareholder protection[129] and the overly-interventionist states and anti-shareholder ideologies associated with European social democracy. It is in this context that use is made of the idea of 'path dependency' to refer to the historical and cultural phenomena which have generated and sustained 'inefficient' (insufficiently shareholder-oriented) arrangements and impeded the emergence of market-based, economically 'rational' and 'efficient' (shareholder-oriented)

127 ibid 450, 468.
128 ibid 468.
129 See La Porta et al, 'Investor Protection and Corporate Governance' (2000) 57 Journal of Financial Economics 3.

structures.[130] The curious result is that Hansmann and Kraakman's analysis is characterised by the same kind of economic determinism which characterises, ormore accurately perhaps characterised, the unsophisticated, economistic and reductionist versions of Marxism associated with the base-superstructure metaphor. Like contemporary law-and-economics scholarship, these versions of Marxism also rigidly separated the determining economic sphere (base) from other social realms, the superstructural spheres of such things as politics and law; and like law-and-economics, they too tended to offer essentially linear, economically determined accounts of historical development.

As it did for adherents of these versions of Marxism, history has for Hansmann and Kraakman an economically determined endpoint. As the fetters on economic rationality and progress are removed, the politically neutral, purely economic logic of the market will assert itself, bringing (corporate) history to an end.[131] It is deeply paradoxical that this work at one level elevates the economic to the highest possible status, exemplifying what Emmanuel Todd has called 'the madness of economic determinism within [contemporary] American intellectual life',[132]while at another all but erasing that dimension of the economic concerned with income and wealth distribution.

History resumes

In the last few years, however, far from looking like a marker of corporate history's end, Hansmann and Kraakman's thesis has come to look uncomfortably like the transient product of a particular historical conjuncture – a manifestation of the collapse of Stalinism, of the much hyped, decade-long expansion of the American economy and of the euphoria engendered by the stock market boom and supposed emergence of a'New Economy'. In the second half of the1990s,whenHansmann and Kraakman were formulating their theory, equity prices were still rising and the American economy was still seemingly moving dynamically forward, in stark contrast to the economies of its major rivals, Japan and Germany. In the mid 1990s, however, the dollar, which had effectively been devalued by the American government in the mid 1980s at the time of the Plaza Accord, began to rise once more, depriving the US economy of 'the main motor . . . [of] its impressive turnaround'.[133] For a while, the stock market continued to rise despite the fall in

130 See L. Bebchuk and M. Roe 'A Theory of Path Dependence in Corporate Governance and Ownership' (1999) 52 Stanford Law Review 127; M. J. Roe, Political Determinants of Corporate Governance (Oxford: OUP, 2002). From this perspective, the highly fragmented ownership structures of the US and the UK are often seen as economically more rational, facilitating the operation of market forces, whereas the blockholding shareholding structures of continental Europe are seen as standing in their way: the controlling shareholders are able to obstruct the economic logic of the market and to 'dominate corporate policy no matter what the prevailing ideology of the corporate form': Hansmann and Kraakman, n 2 above.

131 For a critique of these versions of history and Marxism, see P. Ireland, 'History, Critical Legal Studies and the Mysterious Disappearance of Capitalism' (2002) 65 MLR 120. One difference between the two bodies of thought is that while in these deterministic versions of Marxism law is a reflection of 'the economic', in law-and-economics it is its servant and facilitator.

132 E. Todd, After the Empire (London: Constable, 2004) 10.

133 After decades of sustained growth and increasing productivity, in the 1970s the American economy entered a period of stagnation and declining profitability, in part because Japan and Germany had become highly effective economic competitors. The Plaza accord was aimed at making US manufacturing exports more competitive.

manufacturing profitability which followed. Indeed, the 'wealth effect' which resulted underlay the sharply increased household borrowing which enabled the economy to continue to grow. 'In effect', writes Robert Brenner, 'the Federal Reserve replaced the increase in the public deficit that was so indispensable to US economic growth during the 1980s, with an increase in the private deficit during the second half of the1990s - a kind of stock-market Keynesianism'. Bymid 2000, however, the chickens had begun to come home to roost: amidst the rubble of numerous dot.com companies the US stockmarket began a sharp descent and by early 2001the economy had fallen into recession, continuing downwards despite a dramatic easing of credit. As the current account deficit began to scale new heights, it became increasingly clear to many that the stockmarket boom of the1990swas in significant part a bubble and that the improved profitability was based not so much on miraculous productivity increases and a 'New Economy' but on 'dollar devaluation, a decade of close to zero wage growth, serious industrial shake-out, declining real interest rates and a turn to balanced budgets'.[134] The 'miracle', such as it was, came, in other words, at the expense of America's major rivals and ordinary working people. Against this backdrop, Hansmann and Kraakman's extravagant claims began to look increasingly suspect.[135] To make matters worse, by the millennium's turn it had become clear that the attempts, led by American corporate lawyers and financial economists, to introduce shareholder-oriented, Anglo-American corporate laws into Russia were going horribly wrong.[136] And by late 2001, as American corporations were engulfed by one financial scandal after another, it had become evident that the stock market bubble had been inflated in part by accounting malpractices - malpractices considered by some endemic to the model of governance which evolved in the US in the 80s and 90s. For Hansmann and Kraakman and their ilk, the first few years of the 21st century have been, as Margaret Blair says, 'a sobering time'. Or at least they should have been, for as Todd suggests, recent events have had a disorienting psychological and ideological impact in the US, leading at times to a denial of reality.[137]

None of this, however, is to say that the shareholder primacy norm is not still gaining ground, nor that it will not continue to do so in the future. The

134 R. Brenner, 'New Boom or New Bubble?' (2004) 25 New Left Review 60-61.

135 As I write (April 2004), the US economy appears to be showing signs of revival, but both the IMF and the OECD are warning that the US government's ballooning budget deficit threatens the global recovery, see Guardian 15 April 2004, 19.

136 Western, and particularly American, advisers rushed to transition countries to preach the virtues of financial market discipline and the importance of giving control rights to financial investors and ensuring that the institutional supports were in place to create and maintain markets in which financial property rights could be freely and securely traded: see B. Black and R. Kraakman, 'A Self-Enforcing Model of Corporate Law' (1996) 109 Harvard Law Review 1911. For Black's admission of error, see 'Russian Privatization and Corporate Governance: What Went Wrong?' (2000) 52 Stanford Law Review 1731.

137 Blair, n 15 above. The psychological impact of financial scandals in France is limited,Todd argues, because they simply confirm the prejudice that 'France's capitalism is crooked'. Since the fall of communism, however, America has 'become one of the most ideological nations in the world, in its naive belief in the perfection of the free-market and the productive power of the stock exchange'. In this context the ideological and psychological impact of scandals is much more profound.' The realization that their capitalism is in away phoney produces disorientation, despair, but also, perhaps in a majority of cases, a denial of reality. They deny their own doubts and become frantic to stamp out heresy in others. . . .This, I think, is one of the reasons for the emergence of massive irrational and unconscious factors in American political life', Todd, n 132 above, 208.

significance of these events lies in the light that they cast on the reasons for this. As we have seen, Hansmann and Kraakman argue that the growing consensus in favour of shareholder-oriented corporations is rooted in the 'economic performance of the jurisdictions in which it predominates' in the 1990s when genuinely shareholder-oriented corporations were finally brought into direct, international competition with alternative models and able conclusively to demonstrate their economic superiority. It has been this, they argue, that has persuaded more and more business, government and legal elites to adopt corporate laws dedicated to increasing long-term shareholder value.[138] Recent events have undermined these claims and the 'efficient capital markets hypothesis' underlying them.[139] It now seems clear that for prolonged periods in the 1990s the share prices of many corporations deviated rather radically from the 'real' underlying value of the corporations concerned, confirming that financial markets are not only less than 'efficient' but highly susceptible to fads and manipulation. Moreover, as Brenner says, 'occurring as it did in the face of the downward trend in profitability – and made possible by increases in corporate borrowing and household consumption that were both dependent upon the stock market bubble - much of the growth in investment in the second half of the decade was inevitablymisallocated'.[140] In short, the 'economic case for the shareholder-oriented model of governance 'upon which Hansmann and Kraakman place such explanatory weight, has come to look increasingly suspect. There are nevertheless still reasons for taking some of Hansmann and Kraakman's arguments seriously, for what remains intact, of course, is their 'final source of ideological convergence': 'the rise of the shareholder class'. It is becoming increasingly clear that it has above all else been the growing power of finance, of the owners of financial property like shares, acting through their many and varied representatives, that has underlain the more rigorous imposition of the shareholder primacy norm.As Hansmann and Kraakman themselves observe, 'the persuasive power of the standard [shareholder-oriented] model has been amplified through its acceptance by a worldwide network of corporate intermediaries, including international law firms, the big five accounting firms, and the principal investment banks and consulting firms - a network whose rapidly expanding scale give it exceptional influence in diffusing the standard model of shareholder-centred corporate governance'.[141] In this context, 'the market' has been used not as an instrument of 'efficiency' but as an instrument of private power; as one of the key mechanisms whereby financial property owners can exert pressure on workers, on corporate managers and on states to ensure they can appropriate a larger share of the product of industry and economic growth around the world. 'If the market is always right', writes Henwood, 'then doing what pleases it is ideal social policy, [and] what pleases it is maximising profits, which means keeping wages and other costs as low as possible'.

138 Hansmann and Kraakman, n 2 above, 450.
139 The efficient capital markets hypothesis is the financial theory which claims that as long as financial markets are sufficiently deep and liquid the market price of a corporation's shares will be a good measure of the corporation's true underlying value.
140 Brenner, n 134 above, 62. 'The scope and depth of over-capacity was thus very much extended, especially into high-technology industries both within and outside of the manufacturing sector, exacerbating the decline in profitability'. Previously, the dramatic growth of investment in telecommunications, the Internet, IT and so on had been seen as evidence of the ability of US financial markets to make long-term investments in innovation.
141 Hansmann and Kraakman, n 2 above, 451-52.

But what are costs to capital (and shareholders) are, of course, often benefits to others.[142]

The claim that the shareholder primacy norm benefits 'us all' 'in the long-run' by ensuring the maximisation of aggregate social wealth is, therefore, questionable. Indeed, 'to anyone who has worked for a corporation or observed the ways that corporations can externalise some of their costs onto employees, customers, or the communities where they operate', Margaret Blair suggests, 'the idea that maximising share value is equivalent to maximising the total social value created by the firm seems obviously wrong'. The long-run maximization of share value is not, she says, equivalent to maximising total social value. On the contrary, the in-the-long-run argument simply 'fails to make a case that shareholders' interest should be given precedence over other legitimate interests and goals of the corporation . . . Neither in theory nor in practice, is it true that maximizing the value of equity shares is the equivalent of maximizing the overall value created by the firm'.[143] Indeed, in seeking to guarantee and extend the ability of rentiers to levy a charge on the productive system, recent trends in corporate governance arguably privilege their interests at the expense of the functional requirements of productive growth and investment.[144]

If it is far from clear whether the shareholder primacy norm really does benefit us all, however, it can hardly be disputed that it brings very real and substantial benefits to some. As we have seen, notwithstanding the widening of direct and indirect share ownership, the strengthening of the norm has disproportionately benefited a relatively small privileged minority - the elite ten or so percent who account for the vast majority of financial property and share ownership. It has, moreover done so at the expense of others.[145] This suggests that shareholder primacy is more accurately seen as a device for achieving a particular distribution of the product of productive activity than as a mechanism for achieving economic efficiency. Its vigorous re-assertion, like the adoption of neo-liberal policies more generally, involves 'a shift in the internal social relationships within states in favour of creditor and rentier interests, with the subordination of productive sectors to financial sectors and with a drive to shift wealth and power and security away from the bulk of the working population'.[146]

Indeed, when one adopts a more global perspective to take account of the fact that a significant proportion of the interest accruing to financial property is derived from the labour of workers in less developed parts of the world, the rentier elite looks even smaller, even more exclusive, and even richer. The Human

142 Henwood, n 52 above, 203.
143 Blair, n 15 above.
144 See P. Gowan, The Global Gamble (London:Verso,1999) 8-18.Much of the trade that takes place in stock markets around the world is concerned with titles to revenue issued long ago; it does not involve funds for new investment. As a result the claim that stock markets are functionally indispensable investment mechanisms is questionable. Only a relatively small proportion of the funds that flow into genuinely new productive investment comes through the stock market.
145 The German economist Margrit Kennedy has tried to calculate the interest payments made and income received from interest by the ten income deciles of the German population. She estimates that the bottom eight deciles all paid more in interest than they received, the ninth received slightly more than it paid and the tenth (richest) received about twice as much as it paid out. Much of the interest gain was concentrated in the top 1 per cent. This, she suggests, 'explains graphically, in a very simple and straight forward way why the rich get richer and the poor get poorer': Interest and Inflation Free Money (Philadelphia: New Society Publishers,1995) 25-26.
146 Gowan, n144 above, vii.

Development Report for 2003 produced by the United Nations Development Programme reveals that in 2001 significant proportions of the GDPs of many countries disappeared overseas to service debt: over 26 per cent of GDP in the case of Hungary, and between 10 and 20 per cent in the cases of, among many others, Slovakia, Lithuania, Croatia, Panama, Brazil, Chile, Thailand, Turkey, Angola, Indonesia and the Philippines. Debt service as a percentage of exports of goods and services was also staggeringly high in many countries, standing at between 40-50 per cent in Argentina and Lebanon, at between 20-30 per cent in places like Uruguay, Columbia, Brazil and Turkey, and at over ten per cent in places such as Russia, Poland, Pakistan, Nicaragua, Morocco, India, Kenya, Zambia, Croatia, Mexico, Bulgaria, Bosnia-Herzegovina, Venezuela, Romania, Peru, Jordan, Benin, Gambia, Indonesia, Algeria and the Philippines.[147] In this context, the findings of a recent study conducted by World Bank economist Branko Milanovic are, perhaps, unsurprising. Noting that empirical studies made it clear that 'globalization' had been accompanied by an increase in within-country inequalities, Milanovic sought to discover whether it had been accompanied by an increase in world between-country inequality. Combining the data produced by household surveys in 91 countries for two years, 1988 and 1993, he found that world income inequality had indeed markedly increased during this period, the Gini coefficient rising from62.5 in 1988 to 66 in 1993. It was, moreover, between-country inequality that drove overall inequality up. Thus while the bottom five per cent of the world's population grew poorer, their real incomes falling by a quarter, the real income of the richest quintile grew by 12 per cent. By 1993, Milanovic calculates, the richest one per cent of the world's people received as much as the bottom 57 per cent; in other words, the less than 50 million richest got as much as the 2.7 billion poorest. In five years, the ratio between the average income of the world's richest and poorest five per cents increased from 78 to 114.[148] Things do not seem to have improved since. The UNDP recently reported that three decades ago the people in the wealthiest countries were 30 times better off than those housing the poorest 20 per cent of the world's population but that by 1998 this gap had widened to 82 times. We now live in a world in which the wealth of its three richest individuals exceeds the combined GDPof the 48 least developed countries.[149] While there are, of course, many aspects to the conflicts which currently permeate the world, we should not forget the role played by these economic inequalities and injustices, and by the measures which have to be taken by those who wish to sustain them. It may require 'an effort to discover within th[e] tangle of political violence and contests of power the stern laws of the economic process', but they are there.[150]

Corporate Governance and the New Imperialism

Much of the pressure for the adoption of rigorously shareholder-oriented corporate structures has, of course, come from the US, as part of the more general pressure

147 UNDP, Human Development Report 2003, Appendix 16.
148 B. Milanovic, 'True world income distribution, 1988 to 1993'. It is the first attempt to calculate world distribution for individuals using household survey data, adjusted for differences in purchasing power.
149 UNDP, 'Wealth Distribution Statistics 1999' at http://www.cooperativeindividualism.org/wealth_distribution1999.html (last visited 18 October 2004).
150 Rosa Luxemburg, The Accumulation of Capital (New York: Monthly Review Press, 1968 ed).

exerted to compel governments worldwide to adopt neo-liberal economic and social policies. It has been US academics who have been largely responsible for developing the theories which try to rationalize and legitimate both neo-liberalism and Anglo-American style shareholder primacy.[151] This is not insignificant, for it was the growing problems faced by US capital - problems arising out of overaccumulation, a gradual loss of manufacturing dominance and a resulting shortage of profitable domestic outlets for investment - that prompted theUS to dismantle the old Bretton Woods financial regime and to strengthen its control of international financial networks in search of what David Harvey has called 'spatio-temporal fixes' to its accumulation difficulties.[152] There is thus 'a clear relationship between the lack of dynamism of the real economy and the enhanced interest in the financial economy', [153] between the overaccumulation of capital - what Hannah Arendt called 'superfluous money'[154] - and the concerted attempts to facilitate the movement of surplus capital around the world. 'Threatened in the realm of production', Harvey explains, 'the US . . . countered by asserting its hegemony through finance' and 'mov[ed] towards becoming a rentier economy in relation to the rest of the world'. For this rentier cosmopolitanism to work effectively, however, 'markets in general and capital markets in particular had to be forced open to international trade - a slow process that [has] required fierce US pressure backed by use of international levers such as the IMF and an equally fierce commitment to neo-liberalism as the new economic orthodoxy'.[155] Subordinate economies, especially those in the developingworld,
have had to be compelled to create domestic conditions appropriate to the needs of financial capital. Initially, the 'structural adjustments' demanded of states as pre-conditions of investment, loans and aid were concerned only with broad economic policy - an emphasis on production for export, the removal of import controls, high interest rates, the privatization of public services so as to bring them within the orbit of foreign capital, financial 'deregulation' and so on.[156] More

151 In Henwood's typically blunt words: 'Even something as abstract and nonsensical as efficient market theory isn't pointless: it [has] served as a nice intellectual rationale for class warfare', n 52 above, 203.
152 See D. Harvey The New Imperialism (Oxford: OUP, 2003) 128-132. Harvey notes that strong internal capitalist development soon generates over-accumulation problems and demands spatial fixes. Thus, recently successful adherents to capitalist development, such as South Korea, Singapore and Taiwan, have found themselves in need of spatio-temporal fixes startlingly quickly, swiftly moving from being net-receiving to net-exporting territories. Harvey observes that as a result they also have to 'adjust faster to the blowbacks from their own spatio-temporal fixes', as the countries, like China, to which their surplus capital travels, rapidly overtake them in many lines of production and export.
153 Exemplified by the growing involvement of many large, ostensibly non-financial corporations in finance: by1999, for example, GE Capital Services, the financial services arm of General Electric, a once famed industrial company, was responsible for over 41 per cent of its earnings: D. Ben-Ami, Cowardly Capitalism (Chichester: John Wiley, 2001) 4.
154 Hannah Arendt, Imperialism (New York: Harcourt Brace Janovich, 1968),15.
155 Harvey, The New Imperialism, n 152 above, 62-63, 66, 128-129. Harvey observes that the impact of these policies on America's industrial structure were catastrophic, with wave after wave of deindustrialization hitting industry after industry. The US was thus 'complicit in undermining its dominance in manufacturing by unleashing the powers of finance throughout the globe', 64-65. The phrase 'rentier cosmopolitanism' is borrowed from K. Phillips, Wealth and Democracy (Broadway Books: New York, 2002), 286.
156 This is one facet of what David Harvey describes as 'accumulation by dispossession': see Harvey, ibid chapter 4.

recently, however, following the East Asian financial crisis of 1997, the adjustments demanded have begun increasingly to entail implementation of detailed measures aimed at financial sector reform and the promotion of so-called 'good governance', not least of course in the corporate sphere. This has precipitated even more radical losses of sovereignty. The rules of the whole financial system - from those on debt management, to those on trade and foreign aid, to those on corporate governance - are being redrawn to compel economies worldwide to bow to the needs of financial capital. Given the resulting IMF, World Bank and WTO imposed neo-liberal domestic transformations, not to mention growing US military interventionism,[157] it is not, perhaps, surprising that new life has recently been breathed into the ideas of 'empire' and 'imperialism' - not only by critics but by supporters of US policies.[158] In reality, 'globalization' has had rather less to do with free trade than with the careful control of trading relationships and the preservation of assymetries in exchange; driven less by a technological and purely 'economic' logic than by political power.[159] This has, of course, been carefully concealed: just as the imperialism of the nineteenth and early twentieth centuries was carefully garbed in the ideology of progress and a civilising mission, today's 'new imperialism' has its own ideological drapery, a neo-liberal melange which invokes ideas of market freedom, economic efficiency and universal well-being to justify the foisting upon others of institutional arrangements aimed at furthering the very particular interests of financial capital.[160]

It is precisely because of the growing power of finance and the capital-owning, 'shareholder class' that the shareholder primacy norm is likely to continue to strengthen in the future. As this happens, it will, no doubt, continue to be claimed by the neo-liberal clerisy that this benefits 'us all', 'in the end', by promoting economic efficiency and maximising aggregate social welfare. But the strengthening of the shareholder primacy norm is not producing, nor is it intended to produce, a happy and harmonious state in which everyone is better off. It is, rather, contributing to ever greater levels of inequality, both internationally and nationally - particularly in places like Britain and the US where neo-liberalism and the Anglo-American model of corporate governance have been so enthusiastically embraced. Against this backdrop, it is important that scholars of corporate governance do not permit deeply political processes to be passed off as the products of a politically neutral, purely economic logic or allow the distributional dimensions of corporate governance to be spirited off the agenda by the shamans of law-and-economics, those unremitting class warriors for the rich and powerful. Nor should they succumb to the complacent assumption that what exists works. They should, at the very least, ask 'works for whom?'.

157 See Ben-Ami, n 153 above, 24,142-44.
158 The front cover of the New York Times Magazine of 5th January 2003, for example, declared: 'American Empire: Get Used to It'.
159 See E. Meiksins Wood, Empire of Capital (London: Verso, 2003),115-117.Wood points out that globalization has, in reality, been as much about preventing as promoting global integration; as much about sustaining differential wage-levels and conditions of labour for profitable exploitation by capital. In this context, the nation state, far from becoming less important, has become pivotal.
160 The basic relationships of what he calls the 'Dollar-Wall Street Regime' can, Gowan argues, 'be understood without the slightest familiarity with neo-classical economics. Indeed, for understanding international and financial relations, lack of familiarity with the beauties and ingenuities of neo-classical economics is a positive advantage', n 144 above, 5.