The Lost History of Women Stockholders and the Modern Corporation

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Sarah C. Hann, *Corporate Governance and the Feminization of Capital* (Dec. 8, 2020), available at SSRN.

In her working paper, *Corporate Governance and the Feminization of Capital*, Sarah C. Haan unearths the lost history of female shareholding and the crucial role gender bias and stereotypical depictions of women may have played in the creation of a corporate law system and ideology that promoted managerialism—to the benefit of white males. From the beginning of the twentieth century to the start of the Great Depression, corresponding with the rapid rise to dominance of the modern corporation, women had grown from an insignificant portion of the nation's stockholders to a majority in many publicly traded firms; by the mid-1950s women were a numerical majority of all owners of publicly-traded stock. In the two decades before the Great Depression, reformers worried about the looming influence of the emerging modern corporation, and many advocated protecting and reinforcing shareholder power as the appropriate antidote.

The Great Market Crash of 1929 and the election of Franklin Roosevelt in November of 1932 provided the crisis and the opportunity to remodel corporate governance. However, rather than increasing the shareholder governance role, corporate theorists and policymakers preferred laws and legal institutions that fostered and supported managerialism. Haan convincingly argues that the path taken corresponded with gender-biased beliefs concerning the capabilities and appropriate roles of men and women, and that Berle and Means' *The Modern Corporation and Private Property* ("*The Modern Corporation*"), published in the summer of 1932, played and continues to play a central role in how corporate law is theorized and understood.

As the early years of the twentieth century unfolded, corporate managers, policymakers, and theorists noticed and commented on the rapid emergence of women as stockholders. As the bull market of the 1920s took flight, brokerage firms targeted women stock purchasers, and the proportion of women in the total stockholding census continued to rise. Nonetheless, as Haan meticulously details, commentators, even progressives, uniformly portrayed women as lacking the capacity or experience to make investment decisions or participate in corporate management. Women were cast as inherently passive and needing protection; their proper action field was the home, not the corridors of corporate power. One of many comments cited by Haan is that of William Ripley, writing in 1927:

> The average stockholder is entirely unqualified to engage actively in management. For a surprisingly large number of great corporations more than half of the shareholders are women—in American Telephone for 1926, 200,000 of the 366,000 were on the distaff side. Such a multitude are ill-fitted by training—begging the moot point of sex—to govern directly, less so than in politics. These business issues are far less simple, far less moral, and they make less appeal to the imagination than those in the field of government.

Ripley's representative comments are particularly interesting given his mentoring relationship with Adolf Berle, the principal author of *The Modern Corporation*, and they occurred just as Berle and his research assistant Means were beginning work on their seminal opus. When published in 1932, *The Modern Corporation* captured influential citizens' attention in the run up to, and early stages of, the New Deal. It provided an empirically-rich account of the extent to which the corporation had come to dominate many sectors of the American economy during the first three decades of the twentieth century, and how many corporations were now effectively controlled by their managers due to the wide dispersal of stock ownership. Moreover, policy makers and lawmakers were given a sense of urgency by Berle and Means' prediction that management control and shareholder dispersal would steadily increase, and that the old model of an entrepreneur-controlled firm, like the Ford Motor Company, would become the rare exception.

What Haan adds to our understanding of Berle and Means' account of the modern corporation and its influence is the hidden role of gender bias. In the rich empirical tapestry Berle and Means wove, one important datapoint was missing—the gender of the modern corporation's shareholders. While ignoring gender in their compilation of stockholder data, Berle and Means persistently characterize stockholders as intrinsically passive, a term which Haan persuasively argues was well understood at the time as a prototypically feminine trait. Moreover, argues Haan, while shareholder dispersion was then well understood and so termed, *The Modern Corporation* is the first important work to term stockholding as by its very nature passive; passivity was not a choice but a structural reality, much as society then viewed the female as inherently unfit to participate in the rough and tumble world of business. And given the inescapability of their passive "feminine" nature, Berle and Means argued that stockholders had agreed to a role subordinate to managers, who, of course then as now were nearly all men, a fact *The Modern Corporation* also ignored.

Haan's working paper proceeds from the New Deal to the present, providing vignette after vignette of the rise of female stock ownership and the almost complete failure of corporation managers, lawmakers, or theorists to accord or support an active management role for stockholders. She then traces the decline of female stock ownership as institutions gradually displaced natural persons of all genders. She, then sketches the consequence of the rise of institutional stock ownership—the effective masculation of stock ownership—given the male dominance of stock fund management, and the accompanying shift in corporate law and theory to better accommodate a more active shareholder role.

Haan's working paper is a sweeping, provocative, and almost totally new synthesis of long-forgotten historical details, coupled with a beginning examination of currently dominant corporate law theories and the centrality of stockholder passivity to those theories. She asks her readers to consider the question that lurks throughout her paper: "Does it matter if a concept so fully embedded in our discipline originated in gender bias?" Haan argues that it does, and describes a research agenda that emerges for those who agree.

This is a must-read article for every teacher and student of corporate law. One can enjoyably digest the text in one sitting, and then devote countless hours to exploring the incredibly rich footnotes and cited sources. Regardless of whether one agrees with Haan's conclusions, a reader will take away a much more nuanced understanding of the nature of the modern corporation and the gender biases which it still reflects.

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