


# Corporate ownership revisited: who owns what and how?

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# Why care about corporate ownership?

- ☛ Justification of claims on corporate resources and attention
- ☛ Justification of rights and responsibilities
- ☛ Justification of governance structures
- ☛ Justification of corporations' purpose

# Diverse ownership conceptions

- Shareholders are sole owners
- Shareholder not owners at all or marginal owners (Schrader, 1996; Hetherington, 1969)
- Employees are owners as well through provision of productive input (Boatright, 2004)
- Society also owner through provision of opportunity capital (Schlossberger, 1994)

# Property vs. ownership

- Property: a bundle of “relations among persons or other entities with respect to things” (Munzer, 1990, pg. 17)
- Ownership: more specified description of these relationships
- standard “incidents” of ownership in most developed legal systems – taken together described as greatest interest one can have in a thing (Honore, 1961)

# A comprehensive ownership conception

Rights	Right to <b>possess</b> : Right to be put and remain in control without the interference of others, except by permission
	Right to <b>use</b> : Personal use and enjoyment
	Right to <b>manage</b> : Right to make decisions about the use, incl. powers of contracting and licensing
	Right to <b>income</b> : Rents, profit, rewards, benefits from allowing others to use the thing owned
	Right to <b>residual</b> : After lesser ownership interest rights terminate the corresponding rights vest with the owner
Powers, liberties and immunity	Power to <b>alienate</b> : Transfer ownership to others (sell, gift, mortgage, etc.)
	Power to <b>transfer</b> : Transfer/bequeath ownership to successors
	Liberty do <b>destroy, consume or waste</b>
	<b>Immunity from expropriation</b> : Ability to keep ownership indefinitely and only transmit ownership consensually
Duty and liability	<b>Duty not to use harmfully</b> : Use of thing owned restricted to those that do not harm others in society
	<b>Liability for execution</b> : Taking of ownership interest in order to repay debt through execution or judgment

(Based on Honore, 1961; Munzer, 1990)

# What kind of object of ownership is the corporation?

A corporation is more like a variable collection of material objects and claims:

“A variable collection of things may be owned and managed like a particular thing but, as a matter of convenience, lesser interests in and claims to the collection are not construed as giving the holder powers of management or security against the alienation of particular items in the collection. Such claims are in effect claims to the income and/or capital of a fund, which may vary in value and will in any case be composed of varying items. They are claims on the fund, not claims on the items, and they may well be divorced from what in any case is notionally separable, the management of the individual items.” (Honoré, 1961, pg. 582-583)

# What and how do managers/directors own?

- ☞ Partial right to possession:
  - statutory mandate in most states that corporations should be managed by board of directors
  - Officers and directors cannot be removed easily
- ☞ Right to manage
- ☞ Limited power to alienate
- ☞ Right to part of income
- ☞ Duty to refrain from harmful use

# What and how do employees own?

- ☞ Limited right to manage:
  - Through delegation of decisions
  - Through requirement of joint decision making
- ☞ Duty to refrain from harmful use
- ☞ Right to part of income

# What and how do shareholders own?

- ✔ Limited right to manage (restricted to certain decisions: proxies, board, mergers, liquidation, etc.)
- ✔ Right to alienate and transfer shares
- ✔ Right to terminate the corporation
- ✔ Certain immunity from expropriation (but possibility of exchange of shares or alteration of quantity by resolution)
- ✔ Right to income
- ✔ Right to residual
- ✔ Limited duty to prevent harmful use
- ✔ Limited liability

# What and how do institutional shareholders own?

- ☞ Same as for individual shareholders
- ☞ + larger duty to refrain from harmful use
  - Larger de-facto control
  - Legally, fiduciary duty to minority shareholders if controlling shareholder

## What and how do suppliers own?

- ☛ Claim on income (similar to employee analysis)
- ☛ Shareholder ownership in some governance structures (e.g. Keiretsu)

# What and how do creditors own?

- ☛ Limited claim on income
- ☛ Limited indirect right to alienation in default or bankruptcy
- ☛ Limited right to manage in certain circumstances (junk bonds, specific loan agreements)

# What and how does society own?

- ☛ Claim to part of income
- ☛ Power to destroy or waste (revocation of charter)
- ☛ Right to alienate (under law of takings)

### Distribution of ownership interests

Ownership elements	Owner groups					
	Managers	Employees	Shareholders	Creditors	Suppliers	Society
Possession						
Use						
Management						
Income						
Residual						
Power to alienate			shares			
Power to transfer			shares			
Destroy, consume, waste						
Immunity from expropriation			shares			
Duty not to use harmfully						
Liability for execution						

degree to which the elements are captured:

low

high



# Implications of broader ownership conception

- ☛ Use ownership analysis as basis for discussion about responsibilities of various owners
  - E.g. assign greater responsibility to those with greater right to manage or those with greater duty to refrain from harmful use
- ☛ Ownership structures as basis for governance structures
  - E.g. apportion “say” on basis of ownership extent
- ☛ Facilitated discussion between researchers with different ownership conceptions