

Book Review
The Divine Right of Capital
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The Divine Right of Capital by Marjorie Kelly. 2001. San Francisco: Berrett-Koehler Publishers, Inc. \$24.95

Most of the readers of this newsletter probably believe that employee ownership is a worthwhile goal for its general economic benefits and its implicit recognition of the humanity and dignity of everyone who works. But most readers who like employee ownership probably also believe that the goal should be to spread ownership within the present framework. Marjorie Kelly, editor of *Business Ethics*, will take you further than that. Much, much further.

In *The Divine Right of Capital*, Ms. Kelly takes on the very nature of share ownership, the purpose of corporations, the relationship between corporations and government, the fiduciary duty of boards of directors, and the power of wealth. She proposes a radical alternative to present arrangements. If you have been longing for something that would go beyond the slow gains that employee-owners are making through buyouts and progressive management, this is the book for you.

Ms. Kelly is highly critical of the rights and powers of shareholders. She likens them to a feudal aristocracy in that they benefit from the profits and capital gains of companies without making a contribution to business success, they govern absolutely through the board, and they can buy and sell companies and their employees' jobs in the same way that aristocrats could sell their lands and the people who lived there. Most of us are so used to this system that we don't question it, she writes. But democratic revolutions ended political feudalism and enabled ordinary people to have a say in government. It's time for a parallel revolution in the economy.

There's a lot for the revolution to overcome, because shareholder primacy is enshrined in law, at the heart of fiduciary duty. And corporations are legal persons with indefinite existence. Ms. Kelly would put an end to all that. Law that places shareholders in an exalted position can be changed, she points out, arguing that most of the important law is case-based rather than statutory.

Ms. Kelly asks, why should shareholders alone claim the profits of the corporation? Employees have a good claim because they make the company work. And the community has a claim, too, because they provide the setting, the security, the social support, and material infrastructure that companies need in order to do business. Why shouldn't investor capital simply earn a wage, a fair rate of return? Ms. Kelly advocates changes in law to reflect the claims of all stakeholders, including investors, employees and community, as well as others. .

Raising her eyes from the aristocracy of the shareholders, Ms. Kelly takes aim on the social structure. Fundamentally, it's a problem of wealth privilege, argues Ms. Kelly. The wealthy may not be able to directly control everything in the political system any more, she argues, but public policy enables the wealthy to keep control of most assets, and through their control of assets, most people. Except for a short period from the Depression through the 1960's, argues Ms. Kelly, the rich have been able to dominate the U.S. economic and political system, legally seizing the products of other people's work, and keeping many in poverty.

Ms. Kelly asks, What do the wealthy contribute? Her answer is that most of them don't contribute anything to the welfare of the corporation, because the stock they own was bought from another shareholder, not from the company itself. Except for initial public offerings and rare sales of stock from the company treasury, most purchases on the stock market are a form of gambling on what the value of the company will be in the future, and don't return any benefit to the company. If the stock price goes up, it's because the company's employees created value, not the shareholders. However, the shareholders' interest in profits must be the prime directive of the board, as they alone are entitled to dividends and capital gains, while the employees are viewed as a cost to be minimized.

Many objections can be raised to Ms. Kelly's ideas. One is the risk that wealthy stockholders will simply exit to another country if they are forced by law to surrender large amounts of profits and control. Another is that over half the stock market is owned by pension funds, though Ms. Kelly argues that the funds hold mostly the money of the wealthy. A third objection is that an enterprise is not the same as a political community – in a political community the cooperation and contribution of all is needed to create internal order, defend against external threats and develop infrastructure. But, most of the time, political communities are not at risk for their very existence, and so can tolerate the loose and sloppy practices of extensive debate, considering many points of view, and allowing for slow change. An enterprise exists in a more hostile environment of competition, where more structured and hierarchical leadership may be needed for survival and success. Even successful, participative employee-owned companies must work very hard to keep participation efficient and manageable.

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