



RUTGERS
School of Management
and Labor Relations

Institute for the Study of Employee Ownership and Profit Sharing

WORKING PAPER SERIES

SEPTEMBER 2022

WORKING PAPER 3

**Defining Employee Ownership:
Four Meanings and Two Models**

Christopher Mackin

Abstract: The field of broad-based employee ownership within corporations is a specific application of the foundational topic of property ownership. It is situated at the intersection of a broad range of scholarly disciplines including economics, law, finance and management. Each discipline contributes vocabulary and distinctions describing this field. That broad spectrum of disciplinary inquiry is a strength but it also lends a “ships passing in the night” quality to discussions of employee ownership. This paper attempts to unravel the narrative diversity surrounding this topic. Four meanings of ownership are introduced. Those meanings are embedded within two abstract models of the corporation: the corporation as property and the corporation as social institution.

Institute working papers are circulated for discussion and comment purposes. They have not been peer-reviewed.

Defining Employee Ownership: Four Meanings and Two Models

Christopher Mackin, Ray Carey Fellow
Institute for the Study of Employee Ownership and Profit Sharing
Rutgers University School of Management and Labor Relations

Working Paper No. 3

This paper was originally presented at the annual meeting of the American Economic Association, Boston, January 2015.

Christopher Mackin
17 Story Street
Cambridge, MA 02138
cm@ownershipassociates.com

Defining Employee Ownership: Four Meanings and Two Models

Table of Contents

Introduction

Models and Meanings: Background and Foreground

 Model 1: Corporation as Property

 Model 2: Corporation as Social Institution

Two Models in Historical and Modern Context

Four Meanings of Ownership

 Ownership as Compensation

 Ownership as Investment

 Ownership as Retirement Benefit

 Ownership as Membership

Appropriation and the Residual Claimant

Interaction among Models and Meanings

Conclusion

Introduction

The ownership of companies by a broad base of employees, best known by the familiar label of employee ownership, earns a generally sympathetic hearing from the public and the press but remains an outlier concept in contemporary economic and policy discussions. This paper pinpoints one of the core challenges to furthering research and policy discussion of employee ownership – the existence of competing definitions of the meaning of ownership within the context of the modern business enterprise.

Perhaps the most familiar preoccupation of skeptics toward the idea of employee ownership pertains to what might be described as the “vertical” challenge the idea appears to pose toward hierarchy and the management of the firm. If ownership is shared concerns often surface about potential operational challenges of authority, efficiency and governance when ownership rights are distributed among a workforce. These are challenges that have been resolved for centuries in civic life. Democratic states *delegate* power to leaders. Those leaders have been able to govern and manage scarce resources with commitments to efficiency in full view. Responses to the vertical challenge and analogies between political and organizational life have been explored elsewhere by Dahl, Ferreras and Mackin among others.¹

This paper focuses on a second dimension, what might be called the “horizontal” or “breadth” challenge that interrogates what ownership, in our case employee ownership, actually means. Concepts such as ownership that are embedded in history and law are elusive. What definitions they acquire are usually contested. Rather than attempt to “solve” this problem by asserting a preferred definition, we will describe the variety of narratives that surround it. The term “employee ownership” has a deceptively modern ring that we shall see is not entirely warranted. It is also a derivative construct, a branch or tributary of a more senior construct of ownership. Ownership as a master construct has legal roots to be found in centuries old notions of property and contract. It is inclusive of entire classes of assets including not just corporate stock but also land, buildings, machinery and money.

Students of law and economics who study how ownership and property claims come to be, learn to grapple with a deeper “back story” that is introduced by the idea of economic *appropriation*. Appropriation is a hugely neglected concept of economic theory and law that interrogates how property claims are invented and later justified under law as property rights. Economic appropriation, properly considered, tells a story that extends deeper than simply tracing the “last buyer” listed on a price sheet. It investigates the complex path of claims to property and ownership as established ‘ab-initio’ through the ages both by virtue of human effort, famously characterized by the 17th century Lockean account of “the Grass my Horse has bit; the turfs my Servant has cut; and the Ore I have digg'd,” as well as by money invested at risk.²

Because the study of appropriation investigates below the surface it inevitably navigates through disputes regarding the legitimacy of different rights claims. The early 20th century construct of “residual claimant,” which purports to identify the holders of ownership rights with at risk investors, is the leading example of a theory of rights claims that prevails today.³ The assumptions made by that theory dominate legal and economic discourse and needlessly crowd out alternative theories we take up at the conclusion of our analysis.

Our focus acknowledges the importance of these broad background themes but the attention we pay to the specific case of employee ownership permits a more restricted analysis of the ownership idea limited by its proximity to the workplace. While the workplace is the setting we wish to discuss, much of the confusion surrounding this topic emanates from a range of meanings that have been imported to the workplace from other realms, including the compensation, investment and retirement policy worlds, that have little to do with the activity of management or workforce labor; with the performance of work inside organizations. Those imported ideas have given rise to four distinct but overlapping meanings of ownership that vie for prominence in the discussion of the employee ownership idea. Tracing how those ideas have been imported or “borrowed” to apply to the workplace can help explain some of the controversy these ideas generate in public policy circles.

Four Meanings of Ownership

Contemporary discourse about employee ownership in the workplace makes use of four distinct but overlapping meanings as follows:

- I. Ownership as Compensation
- II. Ownership as Investment
- III. Ownership as Retirement Benefit
- IV. Ownership as Membership

Each of these four meanings enjoys an empirical reality in both the workplace and the economy at large. They each describe, in a partial way, how ownership is practiced. However, the sheer breadth of these four meanings is also responsible for producing a certain “ships-passing-in-the-night” quality to many discussions of this topic in research and in journalism. The short-term and often de-minimis holding of stock is often conflated with long term significant holdings by employees that include governance of the firm. Operating within “silo-like” knowledge domains familiar to university departments, proponents of particular meanings believe they are making persuasive and definitive points about ownership without necessarily being aware of the fact that their audience may be operating from entirely different assumptions.

The actual practice of shared ownership in the workplace takes place in a variety of structural forms, including but not limited to sole proprietorships, partnerships, closely held firms, publicly traded corporations, corporations sharing ownership through various forms of stock options, broad based equity grants, corporations owned partially or fully through Employee Stock Ownership Plans or ESOPs, through Employee Ownership Trusts or EOTs and through firms structured as cooperatives.

The sharing of ownership with individuals makes use of a range of specific instruments including stock, membership certificates, options, beneficial interests within Employee Stock Ownership Trusts, profit interests and restricted stock units. The plurality of classifications regarding individual holdings attached to these vehicles reinforces the interpretive challenge regarding what is going on with ownership. These classifications give rise to a range of descriptive terms for employees that include owner, partner, shareholder, investor, option-holder, beneficiary and member. Various meanings are attached to these terms, both subjectively by their “holders” and objectively and externally by observers, the popular press, the law and the state.

The breadth of these classifications and the accompanying interpretation introduces three challenges.

- First, is the parochial error of omission seen primarily in scholarly settings where those bunkered inside a single silo of meaning neglect the contributions made by adjacent neighbors thereby “under defining” the field.
- Second, in a more applied vein, when policy practitioners neglect, by omission or intention, the existence of adjacent meanings that might overcome alleged difficulties.
- Third, returning to the scholarly context, efforts by scholars such as Hansmann and Kraakman appear to discourage further discussion on this topic. Contrary to the spirit of their 2001 article entitled “The End of History for Corporate Law” our investigation indicates that corporate law may be approaching a surprisingly open future.⁴

Achieving widespread consensus around a single definition of ownership is unlikely and arguably unwise. Continuing an unexamined and uncritical acceptance of the current breadth of uses without clarifying distinctions that exist also discourages progress. Progress can be achieved by persuading researchers and journalists alike that multiple meanings do exist and deserve interrogation before making widespread policy pronouncements.⁵

At a more abstract level, the differences we find among the four meanings of ownership introduced above suggest the existence of two deeper, underlying models or theories of property emerging out of history that awkwardly and provocatively cohabit and compete in

contemporary economic life. These models provide a broader conceptual framework to help situate our discussion. An overview of those models, a description of their historical context and an account of how shared ownership first arrived in the modern economy precedes a detailed account of our four meanings.

Meanings and Models: Foreground and Background

Two perspectives for analysis are introduced to help make sense of ownership; foreground and background. Our list of four meanings comprises the foreground of this analysis, describing how ownership, specifically ownership of enterprises, is routinely described in the real economy. Before listing the particulars of each meaning and instances where they may overlap, we introduce below a background framework that distinguishes two abstract models for understanding the corporation:

Model 1 Corporation as Property, and
Model 2 Corporation as Social Institution

Background models help illuminate our four foreground meanings. These models illuminate how the ownership construct traces back to the foundational idea of economic appropriation. Harkening back to Adam Smith, John Locke and other early thinkers, economic appropriation describes the origins of property claims, the journey ownership takes and most specifically how property becomes “one’s own.”⁶

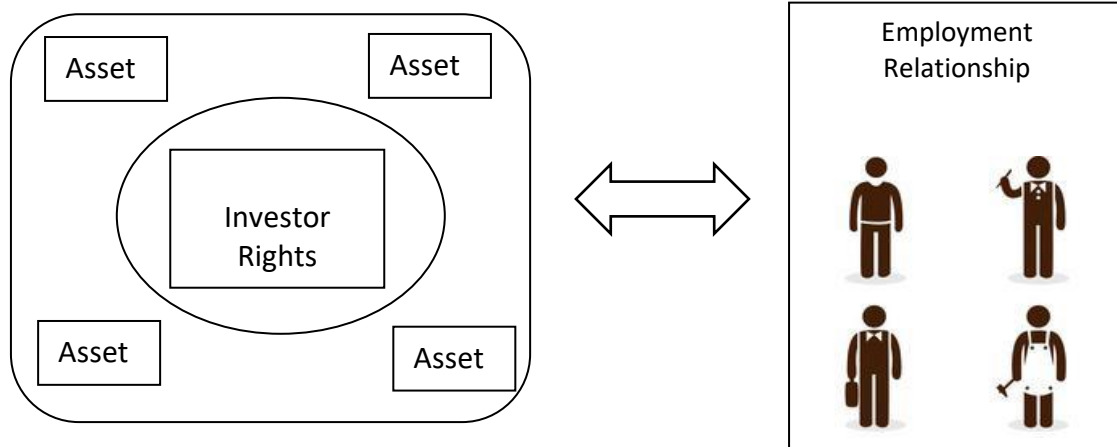
Model 1: Corporation as Property

Our first model, Model 1 “Corporation as Property,” has achieved a near consensus as the prevailing model in contemporary advanced economies, a status that is likely to remain secure for some time to come. As we will see, it has achieved that consensus by including some strange ideological bedfellows. According to this model the firm is understood as a commodity, a form of property “owned” by persons or groups known variously as owners, shareholders, investors and as “residual claimants” who appropriate the positive fruits and take responsibility for the negative responsibilities of production.

In the context of a broader discussion of the limitations of this prevailing model, Ellerman (2018) describes the corporation as property model not as an overtly purposive or normative social invention but instead as a de-facto “asset holding bin” that has become the default structure for legally organizing modern enterprise.⁷ In order to engage in commerce, this model of the corporation is typically activated by the infusion of capital by investors recognized as owner/shareholders. Those shareholders, who may be active members of a firm or passive capital suppliers, subsequently enter into employment relationships with persons

situated largely outside of the “asset bin” who perform management, technical and laboring functions. Those functions are performed for compensation, for what Ellerman and Samuelson before him refers to as “rental” payments, colloquially known as “wages” that are paid as consideration for the performance of specific terms of the employment relationship.⁸

Figure 1 Corporation as Property



Owner/shareholders functioning under the prevailing Corporation as Property Model may be either private parties or public entities.⁹ Among their privileges it is generally accepted that they are entitled to dispose of or sell property under their control and to govern, through the employment relationship and existing labor law, the actions of employees.

The designation of Model 1 Corporation as Property describes a presumed legal status under state and Federal law. Within that status we find a variety of different types of “holdings” as portrayed below in Figure 2-Variations of Model 1 Corporation as Property.

Figure 2- Variations of Model 1 - Corporation as Property

	Concentrated	Dispersed
Private (Capitalist)	A. * Sole proprietorships * Closely held firms	B. * Stock Market Firms – “Quoted”-Publicly traded * ESOP Firms - Private
Public (Socialist)	C. * National/State Ownership	D. * Community/Citizen “Social” ownership

Holdings under Corporation as Property may be *concentrated* and *private*, owned by small groups of individual shareholders or *concentrated* and *public* as in shareholding by a national government or state. Holdings in the Model 1 Corporation as Property framework may also be *dispersed* and *private*, as through ownership by large groups of employees in the case of

privately or closely held businesses or *dispersed* and *public* as when owned by sub-state public entities such as citizen groups and local communities.¹⁰

However large the differences between private and public ownership are imagined to be, up to and including in the case of public ownership the association with highly charged labels of capitalism and socialism, both models share a core common assumption that permits their cohabitation within Model 1. That assumption is that governance rights follow from property rights. Regardless of whether ownership of property is private or public, concentrated or dispersed, under Model 1 the firm is understood to be property, a commodity governed in accordance to the proportional property holdings, the “property will” of its owner/shareholders.

Trailing behind the dominant uses of the “corporation as property” model in both capitalist and socialist discourse, we find an ambiguous intermediate concept, the concept of “social” ownership. Most uses of this concept are aspirational, describing some vague future middle ground that intends to improve upon the problems with private ownership while redeeming the faults of various troubled public/state ownership experiments that have taken place under the banner of socialism. Leaving those challenges to the side, the standard coupling of the concept of “social” with the concept of “ownership” is telling enough. It reveals that writers, regardless of their ideological persuasion, are making use of the same, core property rights, “property will” assumptions to govern their thinking. In the case of “social” ownership, governance rights follow in the very same manner from property rights as they do in more straightforward accounts of private and public ownership. The identity of the “social” unit may be vague and include representatives of government or the “community” but the rights it retains thoroughly resemble the rights asserted by “private” parties, the rights of ownership.

Ironically, while we find wide differences in thinking between left and right, liberal and conservative regarding how the prevailing Model 1 “Corporation as Property” paradigm should be applied, there remains a consensus between these ideologically opposed camps regarding the core construct underlying their positions. For both sides, the firm is a commodity, a form of property governed by ownership or property rights.¹¹ The suggestion that this Model 1 framework, which merges governance and ownership rights, represents a final and definitive approach to these questions is incorrect. Ellerman (2021) describes support for that assumption as the “fundamental myth” of ownership.

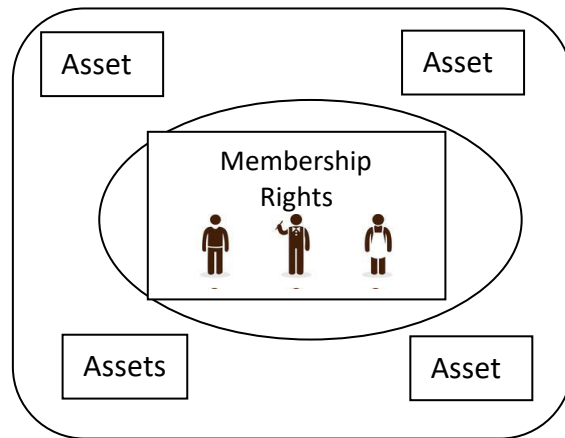
Model 2: Corporation as Social Institution

A second model, what we call Model 2: Corporation as Social Institution, describes a different approach. As we will describe, this model is not a new invention. In terms of the historical record, it arguably precedes or is at least contemporary with the late 18th early 19th

century emergence of the now dominant Model 1 “Corporation as Property” construct. While it participates in markets and can own property and assets that further its mission, the Model 2 Corporation itself is conceived at its foundation as something other than property.

Instead of being governed by a regime of property rights, this model is governed by a regime of personal rights. Instead of the primacy of the property rights of owners, this model asserts the primacy of the personal rights of members. Those members constitute the corporation as its membership. They are the firm. In anything other than small face to face organizations, they typically delegate responsibilities and authority to management leaders as needed.¹²

Figure 3-
Model 2: Corporation as Social Institution



In the modern era, a considerable literature describing a “stakeholder” model of the corporation comes close to what we are describing as a Model 2 Corporation as Social Institution.¹³ As we will discuss later on, this literature, while significant, resembles the Model I Corporation as Property notion of “social” ownership and describes, just as social ownership does, a largely aspirational set of ideas that aim to serve discrete “stakeholder” groups (e.g. employees, the environment, the community) outside the orbit of shareholders.

Unlike the social ownership construct that nominally traces back to some form of local, regional or Federal government ownership, the term stakeholder serves primarily as a metaphor. The stakeholders themselves are a diffuse group who do not possess a clear legal title to any property. They do not hold legally enforceable claims to ownership in actual corporate settings. Lacking legal specificity, this stakeholder terminology is deployed in a discretionary fashion and generally left to management leadership to define. The August 2019 announcement by the Business Roundtable that it no longer subscribes to a narrow maximizing shareholder value theory of the corporation and now favors a “stakeholder” model of the corporation reinforces the underlying ambiguity of this concept.¹⁴

In the for-profit economy today, the closest examples of what we describe as Model 2 corporations can be found primarily among cooperatively owned firms and firms owned by legal trusts, including federally regulated Employee Stock Ownership Trusts or ESOTs and simpler Employee Ownership Trusts or EOTs taking root in the United States but more prominent in the United Kingdom.¹⁵ Before a late 20th century shift to more conventional shareholder ownership models, legal partnerships of professionals in law, accounting and finance were typically governed according to the kind of membership norms and rules we associate with the firm as social institution. Decades of practical experience with professional partnerships governed by their professional members as social institutions have yet to be adequately mined for knowledge by modern scholarship.

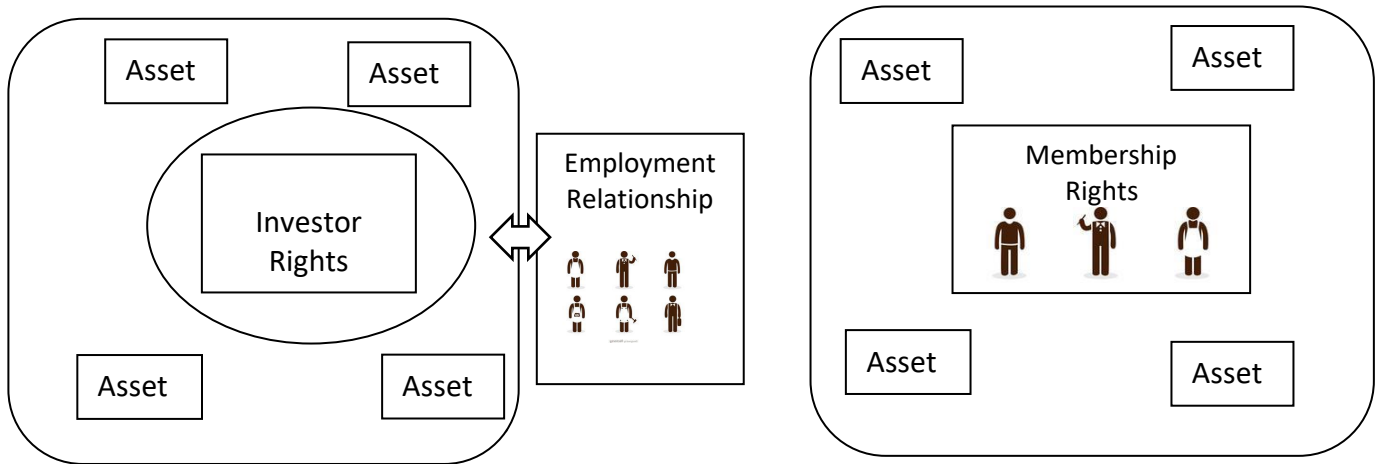
Non-profit organizations ranging from universities and hospitals to churches, unions and private clubs also conform to similar Model 2 Corporation as Social Institution norms and rules. None of these entities are owned by any private or public party. They are, instead, governed by members. Those members may include staff, customers, congregations or members of a broader community. As indicated, social institutions of both the for-profit and non-profit variety may own property and engage in the routine practices of commerce. They may buy and sell assets and enter into multi-party relationships and contracts. They may introduce private accounts that accumulate wealth attached to persons qualifying as members. However any and all holdings are generally accompanied by restrictions governing against sales or transfers to outside third parties.

At least in the case of for-profit firms as social institutions, it is possible to distinguish between an external shell that is not alienable or saleable and internal individual property rights. The individual capital accounts held by the over 100,000 employee members of the Mondragon Cooperative group in the Basque country of Spain presents perhaps the best-known example of the existence of these kinds of rights in a commercial context.¹⁶ However, unlike the dominant “pure property” Model 1, the corporation as social institution of Model 2 is governed not through claims that follow from differential property holdings (“property rights”) of shareholders. It is governed, instead, through a regime of non-alienable, non-inheritable, democratically distributed personal rights of members, analogous to the rights that govern the life of citizens in a political community. Just as the political rights of the citizens of New York cannot be sold to the citizens of Boston, the members of a Model 2 firm cannot sell their membership rights across any geographic or other line.

Distinct from the prevailing norms of Model 1 Corporation as Property that operate according to the “property will” of shareholders, these Model 2 Corporation as Social Institution firms operate according to the “personal will” of their members. The firm as social institution is not property. Corporations as social institutions cannot be sold. They

may, however, be dissolved. Figure 4 below contrasts the idea of Corporation as Property with that of Corporation as Social Institution.

Figure 4-
Contrast of Corporation as Property and Corporation as Social Institution



Historical Context

There are historical footprints that help explain the emergence of these two distinct models. Over two centuries ago, tracking the arrival of industrial forms of organizing larger workplaces, the concept of “rights” that underlies much of our political discourse migrated from the political realm and entered commercial discourse.¹⁷ Accompanying this transition, a common belief took hold that certain rights in the workplace, the rights of ownership, could be “bought” for a price like any other commodity and the justificatory framework for what we are calling Model 1 Corporation as Property began to take hold. That point of view has endured and accurately describes common, even dominant expectations about the commercial world we live in today. It is supported by a strong consensus in law and public opinion.

Preceding that consensus, starting in the late 18th century in the United Kingdom and the early 19th century in the United States the alternative Model 2 framework of the Corporation as a Social Institution began to enjoy standing alongside the newly emerging industrial workplaces through the creation of firms organized as industrial or workers cooperatives. Though the number of those firms was never large, their presence today, with certain well-known exceptions such as the Mondragon cooperatives of Spain and the cooperative group of Emilia-Romagna in Italy, remains modest. There is recent evidence of a revival of interest in the United States and a growing recognition that this model of thinking about the enterprise maintains the potential for a much larger footprint.¹⁸

The 19th century roots of the Model 2 Corporation as Social Institution story in the United States took place in a newly independent, post-colonial era where debates had commenced about how to contend with the arrival of large-scale industrialization. Largely independent farmers and tradespeople, immediate descendants of generations that had recently fought for political independence were being introduced to new ideas and vocabulary of economic organization that made use of the legal status of “employees” working for a “wage” in factories owned by investors, primarily wealthy industrialists recently arrived from Europe.

Many Americans spurned those invitations as well as the assumptions and terminology of employer and employee, finding them demeaning and beneath the standards of citizens of a newly free republic. If factories and industrialization represented the future, they reasoned, then new forms of economic organization should be designed that corresponded to the values of the recently established political republic. A political republic should be reinforced by an industrial republic. Practically speaking, this republican industrial aspiration pointed in the general direction of cooperatively owned as opposed to investor-owned firms.

When these debates first commenced, the highly charged ideological categories and language of today, pitting the terms capitalism against socialism had not yet taken hold in the United States. Alex Gourevitch, a political theorist and historian at Brown University, describes the ideology of resistance evident in this era as “labor republicanism.”¹⁹ George McNeil, a 19th century labor campaigner summarized this point of view when he called for “a republicanization of labor as well as a republicanization of government.”²⁰

While operating over time in the shadow of the faster growing Model 1 Corporation as Property model that has dominated discourse at least since the emergence of industrial capitalism and stock markets, the filling out of the alternative assumptions of what we are calling a Model 2 Corporation as a Social Institution construct has also continued over more than two hundred years. Important figures who shaped those ideas include Robert Owen, the mid-19th century British industrialist (1771-1858) whose cotton spinning factory at New Lanark and whose Rochdale Pioneer cooperative food stores helped launch the cooperative movement, Fr. Jose Arizmendi, a 20th century (1915-1976) diocesan priest in the Basque country of Spain widely considered to be the founder of the Mondragon group of industrial cooperatives and David Ellerman (1943-) a philosopher and author who works in the fields of economics and political economy.²¹

Until Model 2 examples are able to achieve scale, most of the research and discussion about the merits and shortcomings of employee ownership will take place largely within the prevailing Model 1 domain. The largest single cohort of firms in the United States that operate significantly under Model 2 assumptions are the approximately 6,500 firms employing an estimated 14 million workers that make use of Employee Stock Ownership

Plans or ESOPs.²² The emergence of “B Corporations” also presents a promising bridge between what we refer to as Model 1 and the Model 2 spheres.²³

We will return to a fuller discussion of Model 2 at the conclusion of our discussion of the 21st century landscape of ownership models and the four meanings of ownership that dominate contemporary conversation. Before presenting that typology a final piece of modern context needs to be introduced.

Arriving at Ownership

However successful the results of employee ownership may be, it should be admitted that employee owners in the 20th and 21st centuries have been, for the most part, accidental investor/owners, arriving at their ownership status through “top-down” initiatives conceived by public policy and/or their employers. Employees as a group have not, with rare exceptions, either dramatically “seized” or, less dramatically, acquired ownership from the bottom up.

It is also overwhelmingly the case that employees approach the employment relationship with a focus on near term income challenges, satisfying the material demands of families and if possible, leisure. The introduction of the horizons of investment may describe how employees think about the discretionary purchase of substantial personal assets such as homes and automobiles, purchases that they undertake typically through savings. For most employees, employment is a relationship focused on income, on near term payments to manage the necessities of life. Work is considered a job, not an investment. The resulting divide between those who view employment as income and those - who if still working at all - view employment as merely a component of a broader investment relationship with their place of work and their ability to invest outside of work also helps to describe the character of modern economies. An economy divided between those who earn and those who own, between those whose horizon is limited to paychecks and those whose horizon is focused upon the prudent deployment of assets turns out to be a highly unequal economy.²⁴

What distinguishes between the two dominant models under discussion in this paper are the “agency” and the origins of the investment act. Leaving to the side the legendary individual entrepreneurs, whose micro ventures launched in the kitchens and garages may or may not graduate to the venture capital world, the behavior of employees as a group initiating employee ownership has a unique character.

The ambitions of the early 19th century cooperators described earlier and their 20th and 21st century emulators have never been exclusively economic. Though the motive of forming these enterprises to produce a living for their founder/members is prominent, the language

used is typically not a language of investment. It is instead a language stressing social and economic independence, viewing their work organization as a form of collective self-employment rather than that of employer and employee. In the same spirit of their bottom-up origins, cooperative firms of the past and the present are not however immune to economic facts. They do rely on the supply of at-risk capital supplied primarily by their members to help launch and sustain their enterprises; a feature asserted as central by the “ownership as investment” model.

The dominant employee ownership initiatives of contemporary times have, however, clearly been more “top-down” affairs. They have been guided by the vision of thinkers turned policy makers whose approach to these ideas acknowledges the fact that cash strapped workers are generally not in a position to buy their way into employee ownership. The most prominent of these was Louis Kelso, an attorney and economic philosopher. It was Kelso who first persuaded Senator Russell Long of Louisiana, the son of legendary populist Huey Long, of the merits of providing Federal tax incentives that would induce business owners to “sell” significant ownership stakes to legal trusts representing employees (managers and workers).

The problem with capitalism, Long and Kelso were fond of repeating, was that there were too few capitalists. Because of the underlying economic realities facing working people who generally do not possess the capital to initiate transactions, public policies had to be designed to fill the gap. Starting in the mid 1970s, Long and a bi-partisan list of Senators and Congresspeople designed law and regulations that encouraged internal sales between business owners and employee trusts - employee stock ownership trusts – that require no cash outlays from employees. Known popularly as ESOPs or Employee Stock Ownership Plans, they number approximately 6,500 firms, collectively employing 14 million workers.²⁵

Management and employee groups do, on rare occasions, initiate ESOP transactions. However, the choice to sell remains with incumbent ownership groups. It should be no surprise that when faced with a choice between selling to a highly capitalized, eager to acquire external private equity community and internal sales to ESOPs, sellers typically opt for conventional sales. The first group can satisfy the desire to sell with ample capital and with transactional efficiency. Sales of the second ESOP variety can be realized but they necessarily involve a more complex process, often partially relying upon sellers who issue debt instruments to help capital poor employees meet market prices. Policy initiatives under discussion that would extend Federal loan guarantees to investment funds backing management and employee groups, creating a new category of ESOP Private Equity, promises to even the playing field and alter the employee ownership dynamic.²⁶

Regardless of the legal structures used to achieve employee ownership, a significant cohort of cooperative members and ESOP employee owners have, directly or indirectly, in addition

to their continued status of wage earners, assumed the mantle of investor-owners. In so doing they have attracted the attention of the intellectual and policy guardians of the investment class. The reception from those guardians has been mixed.

Four Meanings of Ownership

The introduction of the Model 1 Corporation as Property and Model 2 Corporation as Social Institution conceptual scheme provides a background for our primary, foreground topic of discussion: the four overlapping meanings of the term ownership currently in use in enterprise settings. These four meanings compete for the attention and understanding of scholarly, press and public audiences. Given the breadth of the issues they encompass, there should be little wonder that ownership remains a controversial and often confusing topic.

Meaning # 1 – Ownership as Compensation

Beginning in the late 19th century in Chicago and New York, a market began to develop for stock options in American corporations. Much as they function today, options were then designed not as actual stock but as derivative financial instruments whose value is derived from an underlying asset, in this case the appraised or traded value of a share of stock. The original options market was a market designed primarily for outside speculators with money to invest. Options were not designed for or used by employees of those early corporations. In those early days, options were traded over the counter by broker dealers without any regulation. In addition to the core risk associated with the market activity of the company associated with those options, early holders faced a further risk of liquidity. Cashing in depended upon economic results at a given expiration date and the integrity of the seller to pay up.²⁷

After the stock market crash of 1929, the Federal government began to assert partial control over the options market, though the market remained external to the firms. According to business historians, options and related practices of incentive pay originated in the 1950s. They took on a more prominent role in the 1960s and 70s as entrepreneurs and outside investors of predominantly new, start-up firms in emerging “hi-tech” locales associated with Silicon Valley began to make use of them to recruit talent from old economy companies and as elements of executive compensation. Options provided the attraction of economic incentives while minimizing economic dilution and preserving the corporate governance power of actual shareholders. Over time, the increasing demand for scarce technical talent prompted the extension of options to entire workforces as a whole. Options today are used both by newly emerging firms that remain in private hands anticipating an initial public offering (IPO) and by firms that have passed into public stock market ownership and continue to use options to compensate their employees.

Ask a random thirty-year-old working today in either a pre or post IPO Silicon Valley firm who received stock options as part of her hiring package whether they are a part owner of their firm and you are likely to get a slightly confused response. Most employees of firms that use stock options and related forms of incentive pay understand that ownership of their place of work really belongs to executives at the top of their firm and/or external investment groups. Employees, including executive level employees who receive options, further understand that options which they hold are purely economic instruments that do not confer any governance rights. Our thirty-year-old respondent therefore may find the question about whether her options make her an owner of her employer to be curious. She is likely to know that she holds options. She is also likely to feel positively about holding options and as a result of holding them may even be inclined to “act like an owner.” She is likely to be more inclined to follow the stock price in hopes that her options can be cashed in once a target price has been reached. But on balance she is likely to consider options as primarily an element of compensation.

That fact that the use of options may not evoke a strong sense of employee ownership does not detract from their utility as a recruitment and compensation enhancement tool.

The use of options has become a norm that high technology companies, particularly early-stage companies, ignore at their peril. They have become an expected element of compensation. In a 1999 interview on the PBS television interview program Charlie Rose, Jeff Bezos, the founder of on-line retailer Amazon summarized the extent to which options had infiltrated the world of compensation stating that Amazon had essentially “outsourced its compensation strategy to Wall Street.”²⁸ Over two decades later, as Amazon grew to nearly 1 million employees in a labor-intensive industry, it is interesting to note that its compensation strategy had radically changed. Pressured to raise wages to a \$15.00 per hour minimum in 2018, Amazon chose to withdraw the use of stock grants.²⁹

Two significant developments early in the century; the decision in 2003 by Microsoft to end the use of stock options in favor of direct stock and the 2006 decision by the Financial Accounting Standards Board (FASB) to no longer permit stock options to be used as a deductible business expense slowed down the use of stock options from their 1995-2000 peak. A decision by Apple in 2015 to extend a variation of the option idea, an instrument called Restricted Stock Units or RSUs, to all employees began to signal a reversal of the option retreat. At least for certain large companies, the ability of these instruments to recruit and retain employees overcame the deterrent of needing to expense the cost.

A second high profile decision in 2016 by Hamdi Ulukaya, founder of Chobani Yogurt to share broad-based equity grants with his 2,000 full time employees garnered national press.³⁰ Finally, in February 2021, an unexpectedly bold entry took the stage from within the heart of

mainstream private equity at Kohlberg, Kravis and Roberts (KKR). The Managing Partner of the KKR Global Industrials practice, Peter Stavros, has spoken enthusiastically about how including rank and file employees in equity sharing through broad-based equity grants should be standard practice in private equity investing.³¹ He has backed up his interest by launching a full-scale non-profit organization, [Ownership Works](#), that advocates for equity sharing particularly within the private equity community.

The upsurge in use of broad-based equity grants, Restricted Stock Units (RSUs) and other equity instruments, is an encouraging development. There is no doubt that many of the more recent initiatives taken at companies such as Chobani and industrial companies operating under the wing of KKR are genuine and motivated by something approaching an explicit embrace of long-term ownership more than simple, short-term enhancements to compensation packages.

What is problematic about this approach is that the equity sharing mechanisms being employed are generally designed to capture relatively short-term stock appreciation. The triggering events that promise to bring about truly significant wealth sharing through Initial Public Offerings (IPOs) or a sale of a company to a strategic buyer are events which typically terminate employee ownership. It is difficult, in other words, for the valued shared ownership arrangement to survive the ordinary trajectory and demands of equity markets. One or two cohorts of employees may benefit from equity incentives. Subject to negotiations with the next buyer who may or may not share the inclusive ownership vision, future cohorts are likely not to benefit in the same way. Alternative shared ownership mechanisms, including Cooperatives and Employee Stock Ownership Plans (ESOPs) can potentially address this challenge, particularly if strengthened by credit enhancement measures.³²

The use of options and broad-based equity grants as a method to outsource compensation to stock markets remains a significant, broad based, Model 1 “Corporation as Property” meaning and technique. Their use can be broad-based or targeted to a narrower slice of employees. In neither case do we find these instruments serving a dominant ownership function of governing the enterprise. Option pools and equity grants typically constitute less than 20% of corporate stock. Instead of functioning as a permanent representative of employee voice, they function primarily as relatively short-term incentives, tools that shape employee loyalty and executive behavior. The question of whether these techniques fulfill a robust definition of ownership is at the very least debatable. If they are to become robust, they will need structural enhancements that for now are absent.

Meaning # 2 – Ownership as Investment

One need not reach far to encounter pervasive cultural imagery that identifies ownership with the concept of investment. From media pictures of the Wall Street “bull” sculpture to the ubiquitous stock ticker that scrolls across television and computer screens, we are constantly reminded that investment, hopefully shrewd investment, is a core value of contemporary life. While the dominant media imagery concerns investments in stocks and bonds traded on public exchanges, investment also functions as a core economic concept governing the purchase of land, buildings, equipment and a wide range of other valuable assets. In either case, whether applied to instantly tradable securities or to longer term assets, the pursuit remains the same. Investment is made to increase or at the very least hold constant the value of money. Investment implies an economic “return” that is expected to reward the investor for the exercise of risk.

Given this dominant cultural background, it should be of little surprise that when the topic of employee ownership is introduced to academic or journalistic circles, attention turns decisively toward the language and attendant norms of “investment” as the presumed driving force behind the employee ownership choice. According to this school of thought, employees entering into ownership who may, from the inside of their organizations, actually conceive of their ownership relationship on quite different terms, are first and foremost employee investors.

Those who view ownership as investment emphasize two standards. First is the magnitude of the financial “return” employees can be expected to enjoy by virtue of their status as employee owners – what we might call the “payoff” of ownership. Second is the “prudence” of the ownership investment employees are either making directly or having made for them in the firms where they work. Prudence, while related to judgments of viability and hoped for return, is also typically judged through use of a central allocation standard promoted by economists and by the investment community, the idea of risk diversification. Strategies for maximizing risk diversification are described in academic and professional literature as portfolio theory.³³

In response to the first demand regarding economic performance, an early (1997) study made use of comparison data to support its claims.³⁴ Reporting results limited to Washington State in the mid-1990s when the research was conducted, Kardas, Keogh and Scharf report that wages were 5-12% higher and total retirement assets were 2.6 times greater in firms with Employee Stock Ownership Plans or ESOPs than comparable firms. Judgments can be made regarding the significance of these findings. Those judgments should take into account employment settings where there is no ownership sharing. A 2010 study conducted by the National Center for Employee Ownership states that “ESOP participants have approximately

2.2 times as much in their (ESOP) accounts as participants in comparable non-ESOP companies with defined contribution plans and 20% more assets overall. The average ESOP Company contributed \$4,443 per active participant to its ESOP in the most recently available year. In comparison, the average non-ESOP company with a defined contribution plan contributed \$2,533 per active participant to their primary plan that year.”³⁵

On the second demand emanating from the investment community, the matter of whether ownership as investment adequately respects the “portfolio theory” standards of investment, objections from critics begin with the very definition of employee ownership. Because the earning power of employees, defined as wages and benefits, is made possible by an employer, then any funds available from savings for investment are, according to widely accepted norms, encouraged to be diversified outside that employer, thereby protecting the employee in the event the employer were to fail or close. This interpretation ushers in the metaphor favored by prudent advocates of portfolio theory; avoiding the undue placement of too many “eggs in one basket.”

This perspective enjoys a certain abstract persuasive power. Where it falls short however is that it strictly equates employment with investment. Employment differs from investment. Employment is a complex social institution where, in addition to collecting paychecks, individuals realize, or are frustrated in their desire to further develop, their human and technical capabilities. The employment relationship is also a site whose economic character need not be restricted to paychecks. Workplaces are sites where wealth can be built in addition to income earned – if, that is, employees are included in the ownership relationship.

A popular rejoinder to the familiar portfolio theory “diversification first” critique arrives by way of literature. It was Mark Twain who, through the character of Puddn’head Wilson, proclaimed that one should “Put all your eggs in the one basket and --- WATCH THAT BASKET.”³⁶ Andrew Carnegie, a contemporary of Twain, is alleged to have added luster to the metaphor by turning Puddn’head’s wisdom back on Twain himself when he warned him against reinvesting the profits from his writings in an overly broad basket of investments.

If Twain and Carnegie’s rebuttal to modern portfolio theory suffers a lack of precision, a more sober fact might help. Portfolio theory assumes the existence of wealth, the existence of assets to diversify. In an economy where working people are reported to increasingly live from paycheck to paycheck, there is some merit to considering how public policy might help them build a nest egg in the first place that can, once created, eventually, be diversified. Median earning (and below) workers do not resemble investors. They instead resemble small subsistence farmers whose livelihood is restricted to a limited number of crops on small plots of land. In another context where he critiques the fetish of economic liquidity, John Maynard

Keynes helps to elucidate the contrast of our median worker's status with the proverbial investor of portfolio theory legend.

“(It) is as though a farmer, having tapped his barometer after breakfast, could decide to remove his capital from the farming business between 10 and 11 in the morning and reconsider whether he should return to it later in the week.”³⁷

And in a related vein Keynes remarked:

“If farming were to be organized like the stock market, a farmer would sell his farm in the morning when it was raining, only to buy it back in the afternoon when the sun came out.”³⁸

Properly outfitted with something more than a subsistence farm to protect, that is, with more than a notional ownership stake in their enterprise, the rational discipline of diversification should be welcomed back into focus for employee ownership. As reported above, the good news is that research shows that where broad based employee ownership has made serious inroads, with the universe of broad-based employee ownership companies, primarily organized as ESOPs, the wisdom of diversification has, within reason, been respected. ESOP companies are likely to also include 401(k) plans as part of their retirement package. Most comparable firms supply neither an ESOP nor a 401(k) plan.^{39 40}

Despite evidence that the ESOP community has recognized the diversification challenge, a certain necessary tension remains between the omnipresent investment ethos of contemporary finance that views employee ownership as simply another investment relationship and the upstart field of employee ownership. That tension is not solely economic. It is also cultural, pertaining to a presumed division of economic labor between wealth accumulating investors and wage-earning employees.

Meaning # 3 – Ownership as Retirement Benefit

The third meaning of ownership, Ownership as Retirement Benefit, bears a close resemblance to the Ownership as Investment discussion but with important distinctions. Ownership as Retirement Benefit features a longer time horizon than that commonly used by investors in publicly traded corporations focused on the trading of stocks. Ownership as Retirement Benefit is by definition a more patient, long-term proposition.

For purposes of this paper, ownership as retirement benefit also warrants its own treatment due to the fact that the two statistically most prominent examples of employee ownership; companies owned through Employee Stock Ownership Plans (ESOPs) in the United States and worker cooperatives, most prominent and scaled in Europe but also an important presence in the United States, feature the primary pay down of employee owner accounts at retirement. The practical

reason for this design in both cases, as distinct from more liquid, cash available designs, is centered on the desire to retain earnings for growth and firm investment.

In the United States, ownership through Employee Stock Ownership Plans or ESOPs, is legally classified as a retirement plan regulated by a 1974 law, the Employee Retirement Income Security Act (ERISA), which is administered by the United States Department of Labor (DOL). The placement of ESOPs within ERISA by their original legislative architect, Senator Russell Long (D-Louisiana), has presented certain challenges but also enjoys some underappreciated strengths. Given the focus in ERISA on policies to protect retirees, it should come as no surprise that ESOP designs which carry out an explicit Congressional mandate for investment in single company stock have also been a source of confusion. Such an approach is contrary to conventional portfolio theory principles that emphasize the diversification of risk.

The challenge of single company investment risk was recognized by Senator Long and a long bipartisan list of Congressional supporters in a second stage of ESOP legislation initiated in the mid-1980s but not at the expense of encouraging a continued focus on significant shareholding by employees at their places of work. The Tax Reform Act of 1987 introduced amendments to ESOP regulations that mandate that participants be presented with investment diversification options outside of employer stock when they arrive at certain age thresholds. Subject to the age of the ESOP and the tenure of employees, employees may diversify up to 25% of their accounts at age 55 and 50% of their accounts by age 61.⁴¹ As described above, awareness of the risks of reliance upon a single stock investment has also driven the ESOP field to voluntarily, without Congressional mandates, encourage the inclusion of supplemental retirement income plans, primarily 401(k) plans, that further diversify retirement income risk.

The location of the largest cohort of enterprises in the field of employee ownership within the regulatory framework of ERISA is not conceptually essential nor necessarily ideal. But it does offer certain clear advantages, particularly for employees. ESOP participation does not presume or require any “at risk” investment outlays by employees. Instead of a direct purchase or investment in corporate securities, stock is contributed by companies to ESOPs in exchange for tax benefits that apply to sellers and to the future partially or fully ESOP owned corporation.

Conventional securities laws classify low wealth employees as “non-qualified” investors, restricted and in certain cases prohibited from making direct investments in securities offerings. By virtue of these regulations, a large percentage of the American workforce is essentially prevented from participating in the wealth accumulating potential of stock ownership. In addition to not requiring any cash outlays, the ESOP design circumvents securities law and regulations. Tax liabilities that accrue with conventional stock ownership, do not apply. Taxes are paid upon exit, when employees leave or retire from ESOP firms.

The choice in 1974 by Senator Russell Long (D-Louisiana) to attach ESOPs to ERISA legislation and be administered by the Department of Labor has however prompted challenges. An agency whose primary focus has been on the subject of compliance, on the enforcement of wage and benefit promises made by employers to the American workforce, has not always been the most sympathetic or coherent host for an idea that originally sought to ambitiously re-imagine or at least expand our understanding of corporate ownership as a whole. Continued, bi-partisan legislative support for employee ownership, including consideration of Federal credit guarantees previously applied to housing, agriculture and exports, suggests a promising future for these ideas.⁴² For those ideas to achieve their potential, a second administrative, executive branch home will be necessary.

Ideally the United States Department of Labor should continue its excellent service as a compliance agency, ensuring that fair transactions take place and that employees receive the financial benefits of shared ownership. An office for Inclusive Capitalism in another division of the Executive branch of government, in the United States Department of Commerce or the United States Treasury, can and should assume a more deliberate advocacy role, carrying out the wishes of Congress as codified in at least six laws adopted since the original ERISA amendment. Those laws spell out explicit, unusually bi-partisan Congressional intent to advance shared ownership strategies in order to increase productivity and competitiveness and to encourage a broader sharing of wealth that can only come about through employee ownership.

One of the advantages that the “Ownership as a Retirement Benefit” construct contributes to the practice of employee ownership is an emphasis on ownership as a long-term relationship. This longer time horizon offers the opportunity to expand the frame of the employee ownership idea from that of a simple employee/investor, looking to “cash in” at a moment’s notice to a longer-term citizen of the firm where they are employed. This long-term perspective also provides a bridge to the fourth and final meaning destination offered by this paper of “Ownership as Membership” where employees are invited to participate in the long-term economic success of the enterprise on terms different from or at least more expansive than those typically proposed by the dominant Model 1 “Corporation as Property” legal framework.

Meaning # 4 – Ownership as Membership

In a modern economy dominated by what we have described as Model 1 Corporations as Property and attendant language and assumptions regarding compensation, investment and retirement, a fourth and final meaning of ownership, “Ownership as Membership,” faces challenging cultural odds to be understood. This ownership meaning is visible today primarily in what has come to be known as the cooperative sector consisting of a patchwork quilt of agricultural producer/marketing cooperatives, whose members are farmers, marketing commodities such as oranges, grapes, almonds and cranberries, a national network of consumer

food cooperatives supplying groceries, credit unions, whose members are typically affiliated with large employers, with universities being a prominent example and finally worker cooperatives, whose members are management and workers of companies engaged in a range of commercial endeavors from manufacturing to engineering to the writing of software. A second diminished, but still evident, segment that fits under this categorization exists outside the world of cooperatives in the world of professional partnerships in law, accounting, architecture and other professions.

For the purposes of a paper that maintains a focus on firms and the structure of workplace employment, our focus will remain with the worker cooperative segment of this sector and the surviving examples of professional partnerships where we find a membership-based employment relationship that differs from the previously listed meanings of ownership. Worker cooperatives in the United States maintain a modest but growing footprint of 600 + firms, collectively employing approximately 6,000 members.⁴³ This American cohort draws a good deal of inspiration from more scaled international models such as the Mondragon Group in the Basque country of Spain, worker cooperatives based in the Emilia Romagna area of Italy as well as worker cooperatives in Canada. Those international models and the infrastructure they have designed to support their operations informs the direction of existing American efforts.

Perhaps the most fundamentally distinct claim of the “Ownership as Membership” model resides in the realm of governance. The organization and delegation of power within these firms to, for example, elect Boards of Directors that hire and fire management and decide how to invest annual profits derives explicitly from what are termed membership and not ownership or property rights relationships. Those membership rights are recognized in state law and through internal corporate by-laws. These rights apply on a per person basis, independent of capital investment or capital retained.

The group or organizational exercise of membership rights typically takes place in democratic assemblies that differ from the standard notion of shareholder meetings familiar in conventional corporate settings. In an “Ownership as Membership” firm, rights cannot be bartered, sold or accumulated by sellers or buyers. There are no outside owners, there are only inside members. Even within the community of members there are prohibitions upon the purchase or transfer of shares. Personal rights of membership not property rights of ownership.

Within the worker cooperative field there exists a debate regarding whether firms should conform to conventions of law that regulate employment, including the payment of payroll and related taxes and a second model strongly advocated by Attorney Laddie Lushin (2018) and others that assert cooperatives are a form of collective self-employment that should be independent of employment law. At a theoretical level, the existence of this “purist” school of cooperative practice corroborates our claim that “Ownership as Membership” is a distinct

construct. In practice, most worker cooperative firms of any scale (e.g., greater than 10 members) typically opt to conform to state and Federal employment law while maintaining their distinct, membership-based governance characteristics.⁴⁴

From a distance, the day-to-day functioning of a membership based cooperative or partnership, a firm where we see “Ownership as Membership” in action, may not appear appreciably different from firms operating under the more familiar models. Firms functioning in accordance with “Ownership as Membership” governance must contend with the same challenges of achieving efficiency and quality in production and in producing and delivering competitively priced products and services that their customers will approve. Nonetheless, the differences described are material. Apart from our more central task of mapping the existence of different approaches to ownership, a practical question this paper poses for future research is how central or important the differences among these four models are to explaining their success.

Appropriation and the Residual Claimant

It should be acknowledged that perhaps the most substantive difference asserted by the fourth and final “Ownership as Membership” meaning derives from an alternative approach that model suggests for property rights and the production process in firms. Property rights in production can be understood through what economists refer to as the concept of appropriation, the central economic act or process by which property is “made one’s own” or claimed. Most of modern law and economics assert that there exists an agent, commonly described as an investor or group of investors, known as the residual claimant who holds the final claim on an organization’s net cash flows after the payment of preceding claims owed to workers, creditors and the government. According to conventionally accepted legal and economic practice, the performance of this residual claimant role reveals the identity and justifies the claims of the owner(s) of the firm, residual claimants who possess a property right that follows from their provision of at-risk capital.⁴⁵

The fact that capital in modern economies is both concentrated and scarce has shaped our traditional understanding of the identity of the residual claimant. Owners of capital come in two general categories.

- The first and best known arise from accounts of the legendary entrepreneur, whose efforts take place in the privately held company market. Residual claimants in this context are those persons whose original scarce capital made the enterprise possible and who typically hand down the rights that followed from their original risk-taking act through generations.
- The second category follows from the familiar narratives of modern corporate finance both with publicly traded “Wall Street” firms and privately held firms. Wall Street

sources its capital for publicly traded firms from far and wide in both institutional and retail form. Privately held firms source their funds through venture capital and private equity.

These two categories of traditional entrepreneurial and modern corporate finance shape our understanding of who owns and controls economic life. Their omnipresence and familiar back stories create the impression of inevitability. An alternative approach to the appropriation process which has always been present apart from the dominant frame portrays a reversible relationship between parties. Instead of conferring rights to one or more residual claimants supplying capital, this approach describes a contractual *relationship* between suppliers and users of capital, in our case between capital suppliers and labor suppliers. Viewing these arrangements through the lens of a contractual relationship introduces the possibility of moving from the standard and static idea of residual claimants to the performance of a role we can describe as residual *claimancy*. This view argues that the identity of the final residual claimant should follow the direction of a contract, specifically the direction of the residual claimancy contract that exists between agents. According to this view, capital can hire labor and labor can hire capital.

In the Ownership as Membership firm, it is labor suppliers (workers and managers) who are presumed to be residual claimants. Instead of inviting outside investors to secure the role of residual claimants with attendant equity rights, they rent all necessary capital, including both conventional debt and equity, from capital sources. Alternative institutional arrangements, evidenced, for example, by the central bank of Mondragon (Laboral Kutxa) that make capital available to management and worker groups on terms previously dominated by outside investors as well as a nascent American public policy idea, the Employee Equity Investment Act (EEIA), which would deploy Federal loan guarantees to back the equity contributions of managers and workers acquiring firms, illustrate the potential for alternative outcomes.^{46 47 48}

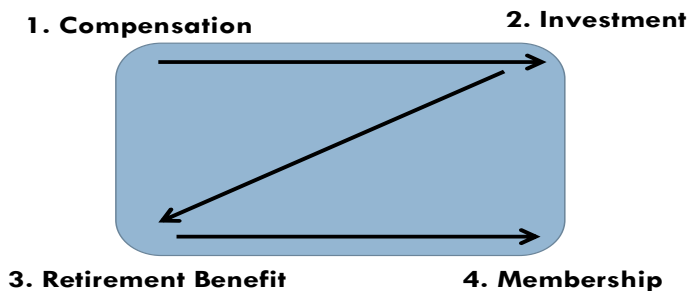
In settings where capital is rented, it is possible to reframe the dominant idea of a firm as a piece of property differentially claimed or “owned” by its residual claimant capital suppliers. It becomes possible to instead view firms as democratic associations comprised of members who rent capital. In place of ownership rights, we can substitute the idea of membership rights. In place of property rights governing firms, we can substitute personal rights of governance exercised by democratically constituted organizational citizens through deliberately constructed organizational constitutions. Those same organizational citizen-members will not have abandoned the idea of private property. Far from it. Under these alternative arrangements, these members would be positioned to enjoy their proportionate share of property ownership as member/owners of their firms.

Interaction Among Meanings and Models

This paper has sketched what we have called a “foreground” typology of four meanings of ownership common to contemporary discussions of employee ownership. In practice, these four meanings regularly appear in disciplinary silos that tend to conform to the interests of their champions in policy circles and in the research academy. What we have aspired to do is to diminish the exclusive explanatory power of each of these silos by describing the simultaneous existence of alternative meanings.

The progression of this “foreground” typology of four meanings portrayed in Figure 5 proceeds on a path from the strongest example of Model 1 “Corporation as Property” to be found in Meaning 1 “Ownership as Compensation” through a second meaning “Ownership as Investment” through a third meaning “Ownership as Retirement Benefit” to a fourth and final destination of “Ownership as Membership.”

Figure 5
Four Meanings of Ownership



3

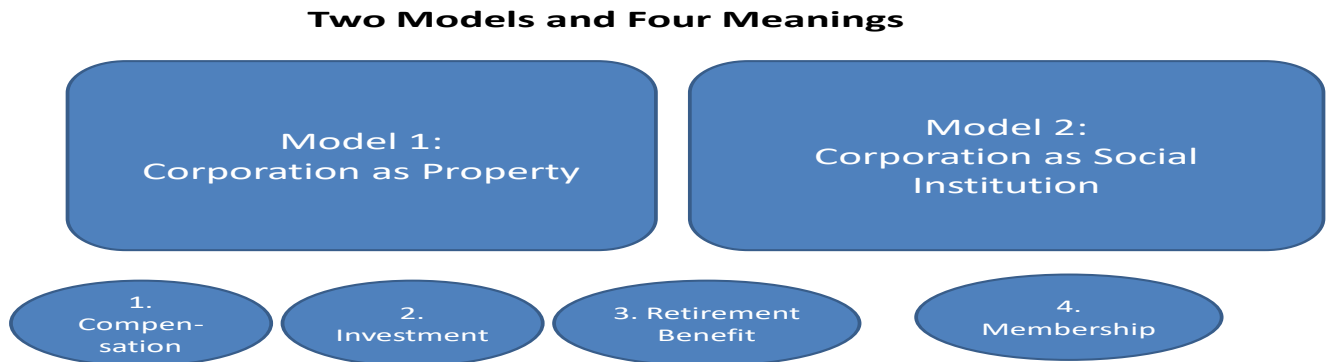
This “foreground” four meaning sequence and the descriptions of each meaning in our text reveals certain normative assumptions. The claim made here is that “employee ownership” at the workplace takes place on a continuum that extends from the most commodified, short-term form of ownership as property, Meaning 1 “Ownership as Compensation” evidenced by the use of stock options to the least commodified – Meaning 4 “Ownership as Membership” evidenced by employment in membership based cooperative and partnership based firms.

In order to more fully explain the background assumptions of this continuum of *Meanings* we introduced a second “background” typology of *Models* that situate at a higher level of abstraction the differences between the four meanings presented.

As portrayed below in Figure 6, Model 1 Corporation as Property provides an umbrella framing most relevant to two discrete meanings, ownership as compensation and ownership as investment. By virtue of its long-term investment horizon a third additional Model 1 meaning

“ownership as retirement benefit” bridges into the domain of our second, abstract frame Model 2 “Corporation as Social Institution.”

Figure 6



The arrangement of these meanings and models acknowledges the real-world presence of ownership meanings that in today’s economy and for the foreseeable future exist largely under the Model 1 Corporation as Property frame and outside of the Model 2 Corporation as Social Institution domain. There are differences among these meanings that deserve attention and recognition by policy makers and researchers alike.⁴⁹ Our accounting finds merit in each of the meanings though not necessarily equivalence.

Conclusion

The concept of employee ownership enjoys a relatively broad appeal with the public. Among the academic disciplines that have trained their lights upon it, a more mixed reception prevails. Much of the academic and policy controversy derives from confusion about the nature and structure of employee ownership. We conclude with two interpretations of why those controversies persist.

The first account speaks to the power of semantics. There is considerable honest confusion about the meaning of ownership. The simple breadth of meanings we have described, ownership as compensation, investment, retirement plan or membership provides ample opportunity for confusion to arise. That confusion exists and as we have stated lends a certain “ships passing in the night” quality to discussions both in research circles and in the business press about just what is taking place under the heading of employee ownership. Efforts such as the one undertaken here to document these differences are intended to surface the discrete features of these different

ownership “ships” presently plying the commercial sea in order to make accessible what is of value with each meaning and as an exercise to encourage borrowing from others as need be.

A second interpretation of the limited reach of employee ownership to date recognizes that the weight of status quo arrangements matters. Contemporary economic arrangements that largely benefit incumbent ownership and investor groups have flourished under the dominant Model 1 “Corporation as Property” model. Those benefiting by those arrangements are not likely to welcome consideration of alternative views, however well-grounded they may be in logic or history. Those entrenched interests must be reckoned with. But the hold which they maintain on economic conversation is never complete.

A modest ambition offered here is that the presentation of a clear delineation among the various meanings and models presently at work in our economy could lead to a sharing of best practices among them. It is not necessary or desirable to insist upon a single, ideal structure for organizing the workplace in order to achieve practical progress. Many workplaces within the general domain of what can be called employee ownership across our two Models share much more with one another than they do with purely finance driven models. The analysis provided here ideally can help interested parties surface the principles and values that have heretofore been implicit in their choice of legal structure. With that understanding in hand, they can choose to either continue or to amend their ownership path.

Finally, the diversity of thought and of practice in the field of broad-based employee ownership described here ultimately returns us to the realm of ideas and to key pillars of theory governing our understanding of the fields of law and economics. Though critics of markets continue to make their case and unfair competitive practices and monopoly dominance provide ample fuel for skepticism, the narrative ideal of market competition which, it is important to recall, began as a “reform” movement against feudal structures, remains accessible and relatively uncontroversial. Market competition for goods and services is a salutary goal that needs to be redeemed by public regulation and not eclipsed by utopian planning exercises.

Exempting market mechanisms from our critique however makes more room for a deeper consideration of the institutions of property and contract that surround them. Insufficient attention has been paid to examining the mechanisms of appropriation that drive how firms operate in market economies. More work is needed to increase our understanding of the structural roles played by capital and labor suppliers in the production of wealth. It should be possible to design new institutional arrangements that can return to labor the share of wealth it produces while paying capital a fair, risk adjusted price for helping to bring about success.

The field of broad-based employee ownership, home to a spirited mixture of legal structures, idealism and commercial intent has achieved a level of scale to host the experimentation that is

needed. With sufficient attention paid to the distinctions at work within this field, there is reason to believe that progress can be achieved.

¹ Dahl, Robert 1985 Preface to *Economic Democracy*. Berkeley: University of California Press, Ferreras, Isabelle, *Gouverner le capitalisme ? Pour le bicamérisme économique*, September 2012, Paris: Presses universitaires de France, Mackin, Christopher, 2021 *Property Not Pay, Restoring the Middle Through Ownership*, Chapter 17 of *The Many Futures of Work: Rethinking Expectations and Breaking Molds*, Temple University Press.

² Locke, J. 1980. *Second treatise of government* (C. B. Macpherson, Ed.). Hackett Publishing.

³ Hollander, Jacob H, *The Residual Claimant Theory of Distribution*, *The Quarterly Journal of Economics*, Volume 17, Issue 2, February 1903, Pages 261–279, <https://doi.org/10.2307/1883665>

⁴ See Hansmann, Henry and Kraakman, Reinier, 2001. “The End of History for Corporate Law,” 89 *Georgetown Law Journal* 439-68.

⁵ Largely as a product of the initiative of Professor Joseph Blasi and the generosity of funders, the Rutgers School of Management and Labor Relations hosts an [Institute for Employee Ownership and Profit Sharing](#) that provides financial support to graduate students, junior faculty and senior advisers from a wide range of disciplines to study the field of employee ownership. Intellectual silos are more difficult to maintain when exposed to a wide spectrum of scholarship.

⁶ An extremely large intellectual debt is owed here to the work of David Ellerman who has served as the leading intellectual excavator of heretofore unchallenged assumptions about the roots of property theory. See www.ellerman.org

⁷ Ellerman, David (2020) *Fallacies of Corporate Analysis*, *Challenge*, 63:3, 133
155, DOI: [10.1080/05775132.2020.1723289](https://doi.org/10.1080/05775132.2020.1723289)

⁸ Samuelson, Paul, *Economics* (10th edition) 1976. “Since slavery was abolished, human earning power is forbidden by law to be capitalized. A man is not even free to sell himself; he must rent himself at a wage [p.52].

⁹ Coase, Ronald. “The Nature of the Firm,” *Economics*, 4, 16 (1937):386-405

¹⁰ Broad stock markets selling and holding private securities are often referred to as “public” markets. The meaning of the term public here is specific. It generally means accessible for a market price to the general public of private citizens and private entities. Public markets and publicly traded securities do not refer to public ownership as in ownership by state/governmental bodies.

¹¹ Ironically, the core differences between these models often escapes even theoreticians and practitioners of today’s cooperative movement. Many in that community borrow uncritically from the property-centric vocabulary of Model 1, describing their Model 2 cooperative “membership” institutions in Model 1 cooperative “ownership” terms.

¹² Ellerman, David in *Worker Cooperatives: The Question of Legal Structure*, Chapter 11 of *Worker Cooperatives in America*, Robert Jackall and Henry Levin, University of California Press, 1984.

¹³ Michael E. Johnson-Cramer, Robert A. Phillips, Hussein Fadlallah, Shawn L. Berman, Heather Elms, *What We Talk About When We Talk About Stakeholders*, *Business & Society*, 10.1177/00076503211053005, 61, 5, (1083-1135), (2021).

¹⁴ Gelles, D. and Yaffe-Bellany, D. (2019) *Shareholder Value is No Longer Everything, Top CEO’s Say*. *New York Times*, 19 August 2019.

¹⁵ Michael, Christopher, *The Employee Ownership Trust, an ESOP Alternative*, *Probate and Property*, January/February, 2017

¹⁶ Other firms organized under the “Corporation as Social Institution” model such as Employee Ownership Trusts (EOTs) also referred to as Common Ownership Trusts in the United Kingdom eschew individual capital accounts in favor of a “no one owns” approach with the rewards above wages shared, if at all, through occasional profit-sharing bonuses. Considerable debate between the individual capital account and the common ownership account schools of thought. The individual capital account school argues that the need for routine capital investment to maintain competitiveness will only be supported by cohorts of employee owners if they believe that they will benefit both individually and collectively – a rational “horizon” of self-interest. Common Ownership Trusts have typically been initiated as “gifts” by sellers, limiting their use to a small subset of sellers not desiring capital remuneration for their prior efforts. Similarly, if Common Ownership Trusts do obtain outside capital to secure an internal sale to employees, it is problematic for a first generation of employees to assume responsibility for repayment of capital and not obliging future generations to share in that burden,

¹⁷ MacPherson, C.B, 1977. *The Life and Times of Liberal Democracy*, Oxford University Press.

-
- ¹⁸ [Economic Recovery and Employee Ownership](#), National League of Cities and the Democracy at Work Institute, May 20, 2021.
- ¹⁹ Gourevitch, Alex, 2014. *From Slavery to the Cooperative Commonwealth: Labor and Republican Liberty in the 19th Century*, Cambridge University Press.
- ²⁰ As cited in *'An iron chain of bondage': lessons from the Knights of Labor*, Alex Gourevitch, [Our Kingdom, Democratic Wealth](#), November 29, 2012 - <http://www.opendemocracy.net/ourkingdom/alex-gourevitch/iron-chain-of-bondage-lessons-from-knights-of-labor/>
- ²¹ Ellerman, David, 1992. *Property and Contract in Economics: The Case for Economic Democracy*, Cambridge, MA, Blackwell
- ²² Data tracking the number of employee-owned firms using Employee Stock Ownership Plans at <https://www.nceo.org/articles/employee-ownership-by-the-numbers#1>
- ²³ See the B Corporation [web site](#) for further explanation.
- ²⁴ The debate between income based measures and asset based measures to contend with challenges of economic inequality is summarized in a recent essay for the PBS NewsHour titled [The Alternative American Dream: Inclusive Capitalism](#).
- ²⁵ Selling a business to employees through the use of ESOP law is a process almost entirely orchestrated by existing ownership groups. The seller and the company going forward enjoy favorable tax treatment but they typically must also help finance the sale. Conventional banks will lend funds to start the sale process, limiting their role to the most secure, collateralized layer of the financing. But because workers and managers lack equity, sellers typically end up lending their own money in the form of “seller notes” to the employee trust to complete transactions.
- ²⁶ See publication at Ownership America, *Turning Employees into Owners*, pps. 11-12, <https://secureservercdn.net/192.169.220.85/111.986.myftpupload.com/wp-content/uploads/2021/11/WhitePaper-TurningEmployeesIntoOwners.pdf>
- ²⁷ Blasi, Joseph, Kruse, Douglas and Aaron Bernstein, *In the Company of Owners*, New York: Basic Books, 2003
- ²⁸ In a Fall, 1999 appearance on the Charlie Rose PBS television show, Jeff Bezos, the founder and CEO of Amazon.com summarized the function of options by stating that Amazon had, in effect, “outsourced its compensation strategy to Wall Street.”
- ²⁹ Broad based restricted stock units or RSUs, a variation on the stock option idea, apparently popular with rank-and-file employees, were withdrawn in 2018 in favor of enhancements in fixed pay. This policy change was prompted in part by external pressure applied by the \$15.00 an hour living wage campaign and Senator Bernie Sanders. Amazon employee objections to this forced tradeoff was reported in the press. [Why Some Amazon Workers are Fuming About Their Raise](#), *The New York Times*, October 9, 2018.
- ³⁰ [At Chobani, Now It's Not Just the Yogurt that is Rich](#), *New York Times*, April 26, 2016
- ³¹ [KKR Executive's Push to Spread Employee Stock Ownership Begins to Gain Traction](#), *Wall Street Journal*, February 19, 2021, [Q & A: Industrials head Pete Stavros unpacks KKR's equity sharing model](#), *Pitchbook*, November 20, 2018
- ³² See publications ([here](#)) of Ownership America describing a contemplated Employee Equity Investment Act.
- ³³ Markowitz, Harry, *Portfolio Selection*, *The Journal of Finance*, Vol. 7, No.1 (March, 1952), pps. 77-91
- ³⁴ Published by the National Center for Employee Ownership [at this link](#). Also cited in *Economic and Industrial Democracy*, November 2010, *Employee ownership and participation effects on outcomes in firms majority employee-owned through employee stock ownership plans in the US*. Vol 31: pps. 449-476
- ³⁵ See <http://www.nceo.org/articles/employee-ownership-retirement-plan>
- ³⁶ Notes on the origin of ‘Watch That Basket,’ Which Came First, the Carnegie or the Twain?, *Herbison Consulting Gateway* – [at this link](#).
- ³⁷ Keynes, John Maynard 1936. [The General Theory of Employment, Interest and Money](#). Macmillan, p. 151.
- ³⁸ Attributed by Hutton, Will, “Will the real Keynes stand up, not this sad caricature?”, *Guardian*, November 2, 2008.
- ³⁹ Op cit <http://www.nceo.org/articles/employee-ownership-retirement-plan>
- ⁴⁰ “Employee stock ownership and diversification,” [Annals of Operations Research](#), April 2010, Vol. 176, No. 1, pp. 95-107. By Harry Markowitz, Joseph Blasi, and Douglas Kruse.
- ⁴¹ See [this link](#) from National Center for Employee Ownership (NCEO). An excerpt follows. “After ESOP participants reach age 55 and have participated in the plan for ten years, they have the right during the following five years to diversify up to a total of 25% of company stock that was acquired by the ESOP after December 31, 1986, and has been allocated to their accounts; during the sixth year, they may diversify up to a total of 50%, minus any previously diversified shares. To satisfy the diversification requirement, the ESOP must (1) offer at least three

alternative investments under either the ESOP or another plan such as a 401(k) plan or (2) distribute cash or company stock to the participants.”

⁴² See publications ([here](#)) of Ownership America describing a contemplated Employee Equity Investment Act.

⁴³ <https://institute.coop/resources/2021-worker-cooperative-state-sector-report>

⁴⁴ Lushin, Laddie, [An Anarchist Path to the Liberation of Alternative Communities](#), Creative Commons Attribution-NonCommercial -NoDerivatives 4.0 International License and <https://www.co-oplaw.org/knowledge-base/illinois-2/>

⁴⁵ Hollander, Jacob H, The Residual Claimant Theory of Distribution, *The Quarterly Journal of Economics*, Volume 17, Issue 2, February 1903, Pages 261–279, <https://doi.org/10.2307/1883665>

⁴⁶ *On Property Theory*, Journal of Economic Issues, Vol. 48, issue 3, 2014, pps.601-624

⁴⁷ Mutual Interest Media, [Lessons from Mondragon: Financing the Fightback](#)

⁴⁸ See [Turning Employees into Owners](#), Ownership America, 2022

⁴⁹ See Carey, Ray, *Democratic Capitalism: The Way to a World of Peace and Plenty*, AuthorHouse, 2004 for comprehensive treatment of policy alternatives.

References

- Dahl, Robert. 1985. *A preface to economic democracy*. Berkeley, CA: University of California Press.
- Ellerman, David. 2021. *Putting Jurisprudence Back Into Economics: What is Really Wrong With Today's Neoclassical Theory*. Springer.
- Ellerman, David. 2021. *Neo-Abolitionism: Abolishing the Employer-Employee Relation in Favor of Workplace Democracy*. Springer.
- Ferreras, Isabelle. 2019. Democratizing the Corporation: The Proposal of the Bicameral Firm. *In Proceedings of the Real Utopias Project Conference on Democratizing the Corporation. Stockholm, March, 2020.*
- Gourevitch, Alex 2014. *From Slavery to the Cooperative Commonwealth: Labor and Republican Liberty in the Nineteenth Century*. Cambridge University Press.
- Keynes, John Maynard 1936 *The General Theory of Employment, Interest and Money*. Macmillan.
- Kruse, Douglas, Freeman, Richard B. and Blasi, Joseph. 2010. *Shared Capitalism at Work: Employee Ownership, Profit and Gains Sharing and Broad-Based Stock Options* University of Chicago Press
- Locke, J. 1980. *Second treatise of government* (C. B. Macpherson, Ed.). Hackett Publishing.
- Mackin, Christopher, 2021. Property Not Pay: Restoring the Middle Through Ownership, Chapter 17 in *The Many Futures of Work: Rethinking Expectations and Breaking Molds*, Temple University Press
- May, Richard, Hockett, Robert and Mackin, Christopher “Encouraging Inclusive Growth: The Employee Equity Loan Act,” *Challenge Magazine*, Volume 62, 2019, Issue 6, pps. 377-397
- Samuelson, Paul A. 1976. *Economics*. Tenth Edition. London: McGraw Hill