Inventing Corporate Governance: The Mid-Century Emergence of Shareholder Activism

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Accounts of the history of shareholder activism have tended to give the early "gadflies" less attention than they deserve. Not only were they celebrated in their own time, they raised issues still relevant today. Between 1933 and 1953, these gadflies confronted corporate managers on board composition, executive compensation, moderate and militant views on corporate social responsibility, labor disputes, and the selection of auditors. Moreover, they achieved a number of procedural reforms now taken for granted, including the proxy resolution and the annual report. They achieved what they did through careful strategizing that included: confronting management at annual meetings, garnering favorable publicity in the media, networking with like-minded (if more passive) investors, and arguing for and defending shareholder rights at the SEC and in court. When issues of corporate governance and responsibility resurfaced in later years, the new activists would make use of the precedents set by these pioneers.

INTRODUCTION

> *I am that gadfly which God has attached to the state, and all day long and in all places am I fastening upon you, arousing and persuading and reproaching you. You will not easily find another like and therefore I would advise you to spare me.*
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> ~ *Socrates, as quoted by Plato in the* Apology

Typical explanations of the rise of shareholder activism focus on the emergence of social issue advocates in the early seventies (Alinsky, 1971; Bruyn, 1987; Talner, 1983; Vogel, 1978), the rise of junk-bond driven raiders (Anders, 1992), and the founding of the Council of Institutional Investors in 1985 in response to greenmail and other perceived abuses (Davis & Thompson, 1994; Rosenberg, 1999). Recent academic and journalist accounts have taken note of the surprising activism in recent years by pension funds connected to labor unions (Schwab & Thomas, 1999; Scism, 1994; Vineeta, 1995). Historians have even traced conflict between shareholders and managers of publicly traded corporations back to the eighteenth century English East India Company (Gardner, 1971; Smith, 1901), and can follow similar disputes into the nineteenth and early twentieth Century (Pound, 1993). But the corporate gadflies of the 1940s and 50s, when mentioned at all, tend to be regarded as a historical footnote, a gang of precocious but largely ineffectual eccentrics (Monks & Minnow, 1996; Talner, 1983).

If shareholder activism is viewed as a social movement, that is, an "organized, sustained, and self-conscious challenge to authority" over a perceived grievance (Tarrow, 1994, p. 4), then its origin as a social movement can readily be traced back to the first tentative challenges

to corporate governance and policies advanced by these same gadflies. Decades before anti-war activists, church endowments, pension funds, and other institutional investors began confronting management in a systematic way, these individuals took advantage of the legal space created by the 1934 Securities and Exchange Act to advance the issues, found the organizations, generate the publicity, and fight the basic legal battles necessary to create such a movement.

What is especially striking about the activism of these pioneering gadflies is that they did more than simply lay the procedural groundwork for their successors. By and large, they pursued much the same kinds of issues that energize shareholder activists today, and the early gadflies include forerunners of all four of the basic types of modern activism.

Taxonomies of modern shareholder activism typically divide activism between advocates of "governance" reform, concerned with takeover policies, executive compensation, and procedures for electing directors, and "social issue" campaigners advocating particular policies relating to such issues as civil rights, environmental protection, and the labor standards of third world vendors. Social activism can be further split between moderate and militant wings, between those who view themselves as investors with social as well as financial concerns and those whose main focus is to use the rights of shareholders to advance a particular political agenda (Bruyn, 1987; Rivoli, 1995; Talner, 1983; Vogel, 1978). The activism of labor union-managed pension funds (often referred to as "Taft-Hartley" funds) overlaps all three of these other categories, but because this activity often appears to have a direct or indirect association with an ongoing labor dispute (Moberg, 1998), and because they are coordinated to an extent by the AFL-CIO office of corporate affairs, they are best seen as a fourth category. Barred by securities law from using shareholder resolutions to raise labor disputes directly, labor-connected investment funds have frequently employed both governance and social issues as a pressure point against corporations involved in a dispute with a union, often by a union *other* than the one sponsoring a resolution (Bernstein, 1997; Lewis, 1996; Moberg, 1998).*

The original gadflies of the forties and fifties anticipated all of these approaches. During the decade after World War II, a handful of activists, primarily the Gilbert brothers, Wilma Soss, James Peck, and the leadership of the Association of Independent Telephone Unions (AITU), spearheaded a number of campaigns at different companies that touched on all these basic categories of issues: governance reform, corporate social responsibility, political controversies, and labor disputes. Furthermore, the networking organized by the Gilbert

* Leaving aside what their activity may have done or not done for organized labor, labor-connected shareholder activists have been surprisingly successful in the shareholder arena. In 1999, for example, union funds sponsored half of the forty governance resolutions that received a majority vote from shareholders (Voting results, 1999), including the five out of eight that were legally binding (the vast majority of resolutions are "precatory," i.e., expressions of shareholder sentiment with no legal force), and these activists have even successfully opposed managerial initiatives, most dramatically when labor staffers successfully organized shareholders to oppose a reorganization proposed by the management of staunchly anti-union Marriott Hotels (Binkley, 1998).

brothers and Wilma Soss provided historical precedent for such umbrella organizations as the Interfaith Council for Corporate Responsibility (ICCR), the Council of Institutional Investors (CII), United Shareholders, the Corporate Affairs of Office of the AFL-CIO, and Responsible Wealth. Nor were these activities proceeding in some obscure corner of the financial world. The gadflies argued publicly with Charles Schwab and Douglas MacArthur. Their activities were endorsed by Paul Douglas (Gilbert, 1956) and Benjamin Graham (Emerson & Latcham, 1954). Their photographs appeared in *Life* (Women of Steel, 1950) and *Time* magazines (United Nations, 1950), and their profiles in the *New Yorker* (Bainbridge, 1948; Logan, 1951). A thinly-disguised Wilma Soss was even portrayed by the great Judy Holliday in the film version of the Broadway play, *The Solid Gold Cadillac* (Teichmann & Kaufman, 1954).

Understanding the role played by these gadflies requires a historical approach. This paper provides one by explaining how a small group of activists found themselves with an opportunity to establish a shareholders' movement, why they were both motivated and equipped to lead such a movement, what tactics they employed to advance their causes, and the roadblocks they encountered that ultimately contained their movement and limited its impact. The paper concludes with an assessment of their legacy.

CREATING THE OPPORTUNITY FOR A MOVEMENT

Rowley and Moldoveanu (2000) argue that the behavior of stakeholder activists needs to be understood on levels both larger and narrower than the mid-range delineated by an activist's relationship to a particular corporation. On the larger, more macro level, activists are galvanized by issues that they perceive as permeating the entire society and choose to confront a particular business primarily because it represents one particularly odious or accessible example of a transcendent problem. On the micro-level, activism appeals to individuals who find engaging in activism a psychologically rewarding activity in itself. As a result, the reality that obtaining a satisfactory result is uncertain or even unlikely does not prevent these activists from obtaining a significant degree of personal satisfaction from engaging in the process (Taylor, 1990).

A broad-based concern with the treatment of shareholders after the stock market collapse of 1929 provided the macro issue that galvanized the very first of the gadflies, Lewis Gilbert, to take action. At the time of the crash, the widespread public trading of shares in business corporations (other than publicly-sanctioned monopolies such as railroads or trading companies) was still a relative novelty, less than forty years old (Dodd, 1954; Roy, 1997), and the body of law surrounding the new institution had evolved piecemeal from the incremental actions of a number of state governments (Dodd, 1954; Hartz, 1948; Seavoy, 1982; Roy, 1997). Precisely what rights and powers were, or should be, assigned to this new class of widely dispersed shareholders remained unsettled. There were century-old legal precedents derived from the law of privately-held business corporations (Berle & Means, 1933), but this precedent was of limited value since it was designed for a different kind of investor, one that typically held both a closer relationship with management and a relationship harder to escape should it prove unsatisfactory.

Nor did references to the law of either property or contract provide straightforward legal rules, since these had evolved over centuries under entirely different circumstances (Schleuning, 1997). Shareholders might insist that they were "owners" of the corporation, a legal status that would endow shareholders with a strong presumption of legal primacy, but there were sound legal and customary reasons to regard this claim with some skepticism, since both the rights and obligations of shareholders simply did not match the traditional "bundle of sticks" associated with property ownership (Demsetz, 1967). On one hand, shareholders were shielded from the kinds of liability faced by owners of more tangible property, yet, on the other, they lacked such fundamental property rights as the right of entry (Honore, 1961). Nor was traditional contract law much more helpful, since a vague and unenforceable promise of future dividends hardly looked like the kind of "consideration" that would allow stock certificates to be formally classified as contracts. What needed to emerge was a new kind of legal relationship, and like so many new relationships in a common law society, the full legal ramifications waited to be worked out until *after* the relationship had become a commonplace social reality.

The catastrophe of 1929 accelerated this evolutionary process by producing exactly the kinds of grievances that would make the question of shareholder rights relevant for many who would ordinarily never give them a second thought. Some among the newly interested happen to be serving in Congress. The depression-era legislation they passed in response to investor unhappiness with Wall Street created a new unified federal-level forum for settling some of these issues. When it came to shareholder rights, the new de facto federal corporate law that emerged from this legislation would partially replace a hodgepodge of 48 state jurisdictions (Roy, 1997).

Estimates of the number of Americans who owned *some* stock at the time of the market crash range from three to seven million (Berle & Means, 1933; Henderson & Lasher 1967; Perlo, 1958), and millions more were affected by the failure of banks and insurance companies that had invested their funds in Wall Street. Moreover, when Congress passed the Securities and Exchange Act of 1934, the official justification found in the law asserted that the act would also help protect additional millions more who were not themselves investors. In Section 2 of the Act, one finds the claim that "widespread unemployment and the dislocation of trade, transportation, and industry . . . are precipitated, intensified, and prolonged by manipulation and sudden and unreasonable fluctuations of security prices" (1934, p. 1988). When introducing the bill, Senator Duncan Fletcher asserted that the law "was made necessary by the misfortunes of great numbers of our people who have lost part, or all, of their savings through unregulated stock exchanges. Still more, this bill has been made necessary by the needs of the entire American public that the operation of the securities exchanges shall never again intensify a business depression, or help precipitate a business depression" (Fletcher, 1934, p. 2270).

Clearly, the stock market collapse and the ensuing depression for which it was partly blamed had handed Congress a political mandate to take steps to prevent a repeat. As Lewis Gilbert recalled, "In the early days of the New Deal, I realized the time was right to get something for *us*, the shareholders, and not *just* for the socialists and all those other people. We needed a forum of our own" (Scherer, 1980, p. 10).

But general public clamor does not determine the ultimate shape or precise detail of the resulting legislation (Schattschneider, 1960). Congressional attempts to regulate corporate governance required federal regulation of corporate securities, an area where there was neither precedent nor clear constitutional authority. Twelve volumes of transcribed speeches, drafts, hearings, etc. that constitute the legislative record of this landmark 1934 Securities and Exchange Act recorded virtually any imaginable view among the debate's participants on not only what Congress should do, but also what the Supreme Court would uphold once the law was inevitably challenged (Fisch, 1993). Because of such philosophical disagreements and legal uncertainties, the resulting legislation was low on specifics. The vicious political battles over the details of corporate law fought out in the state legislatures of the nineteenth century (Dodd, 1954; Hartz, 1948; Roy, 1997; Seavoy, 1982) may have also made Congress wary of trying to define the issues too precisely.

Congress did, at least, endorse the relatively uncontroversial notion of corporate democracy, declaring through the new law that "fair corporate suffrage is an important right that should attach to every equity security bought on a public exchange" (Ryan, 1988, p. 139). Like many reformers, they sought to frame this goal in terms of conservative values, as a restoration of a dying tradition that had once ennobled some halcyon age (Bohnstedt, 1992; Mumby, 1988). Rather than admitting that empowering shareholders to monitor management themselves was an untested innovation, an experiment that could be attacked as either impractical or a usurpation of the right of states to define corporate law and structure, the proponents of the new law argued they were restoring an alleged golden age of informed and active shareholders under modern conditions, conditions which no longer allowed most shareholders to attend annual meetings. Robert O'Brien, an early SEC commissioner and one of the 1934 law's drafters, expressed this sentiment at a Conference Board meeting in 1943:

> It seems to me that the heart of the problem lies in the failure of corporate practice to reproduce through the proxy medium an annual meeting substantially equivalent to the old meeting in person. I know that the old-fashioned meeting cannot be revived. Admittedly, that is impossible. It is possible, however, to utilize the proxy machinery to approximate the conditions of the old-fashioned meeting (Fisch, 1993, p. 1142).

To accomplish this goal, drafters could focus narrowly on disclosure requirements and thereby respond to political pressures to do something about fraud and stock manipulation while sidestepping the controversial issue of pre-empting the right of state governments to define the substantive rights of shareholders. Thus Congress could pass a bill that was politically "safe," while savvy coalition builders such as House Speaker Sam Rayburn understood that the newly created Securities and Exchange Commission (SEC) would eventually generate exactly the kind of specific rules on which Congress could never achieve consensus (Hardeman & Bacon, 1987).

Although "shareholder resolutions" are not even mentioned in the original law (while, for example, insider trading is), the establishment of the SEC led directly to the legal enshrinement of what would become *the* central tool of shareholder activism, the proxy resolution. In 1939, Lewis Gilbert complained to the SEC that Bethlehem Steel had not "disclosed" to its

shareholders in its proxy statement Gilbert's intention to present two resolutions at the company's annual meeting, one seeking to move the next annual meeting to New York, the other giving shareholders the right to approve corporate auditors. The SEC, perhaps waiting for this opportunity, ruled that Bethlehem Steel had not properly disclosed Gilbert's intentions to the other shareholders and forced the company to reschedule its meeting and reissue proxies with proper notification of Gilbert's proposals (Big year, 1939).

For the very first time, an arm of the federal government had acknowledged that shareholders had the legal right to communicate to each other and to management through the medium of the company's proxy material (Liebeler, 1984; Ryan, 1988). In 1942, the SEC codified this decision into a general regulation, X-14-7 (renumbered 14-8 in 1948), designed to make practical the kind of shareholder vigilance that could police potential "fraud and mismanagement" in the companies they owned (SEC eases up, 1942).

The SEC introduced these rules through a process that it would repeat, in an increasingly formal manner, several more times over the rest of the century (Liebeler, 1984). The Commission publicly proposed X-14-7 and a few other new regulations and invited comments from corporate executives. (In the future, other groups would also be canvassed.) Predictably, these executives expressed the kind of horror they had previously reserved for Bolshevism. "Stirring up shareholders won't stop mismanagement" (Proxy troubles, 1942, p. 95) and "the SEC is daydreaming if it thinks it can make a modern company run according to the principles of Athenian democracy" (p. 97), were among the executives' comments, who were also aghast at another new requirement in the spirit of shareholder populism, the annual reporting of executive pay. As a concession to management, the SEC agreed to limit proxy resolutions to a hundred words, but informally supported the right of shareholders to submit a supporting argument above this limit, and corporations would be required to publish these in their proxy material along with the hundred-word resolution.

Executives, at least publicly, were unappeased by these limitations. Fearful that the SEC's new rule would "open the door to cranks" (presumably meaning Gilbert, his brother John, and a few other allies), they lobbied Congress unsuccessfully for relief (Nice lunch, 1943, p. 85). Their failure to prevent these reforms might be attributable to the relatively low level of corporate political influence resulting from the depression (Domhoff, 1998). And, according to *Business Week*, they may have actually restrained their lobbying efforts on these matters out of fear of alienating politicians voting on lucrative war contracts, a much higher priority than silencing the occasional shareholder suggestion or complaint (Nice lunch, 1943).

THE EMERGENCE OF MOVEMENT LEADERSHIP

If the stock market crash had convinced many scholars, politicians, and investors that corporate managers could do with greater oversight, it remained for individuals to step forward who would fill this role. Policing requires police, and the extrinsic rewards of assuming such a role could not have been obvious since there could have been no reasonable expectation that the effort or expense expended confronting management would necessarily increase dividends or raise the price of a stock (MacBeth, 1985). Moreover, an individual gadfly could not hope to recruit large institutional investors to exert serious pressure as they often do today. While institutional investors existed even then, their share of outstanding equity was much

smaller than it is today, and their behavior far more deferential to corporate management (Ghilarducci, Hawley, & Williams, 1997). And, given the current controversy over whether it pays for even enormous public pension funds to expend resources on shareholder activism (Karpoff, 2000), it is arguable that it would have made more sense to sell shares of a company one believed to be poorly run.

As a result, it is not surprising that the most innovative gadflies of this era all claimed to find *intrinsic* value in their activism, often admitting to a mixture of revenge and high-minded idealism as motivating factors. Lewis Gilbert often related the story of how he first had the idea of asserting shareholder rights while attending a stockholders meeting in 1933 with the intention of discussing problems faced by the troubled company. He rose to ask a question after sitting through hours of droning reports, but was ignored by the chairman who adjourned the meeting by inviting stockholders to a buffet. As Gilbert put it, "I had been publicly humiliated by my own employees. I was a partner in the business but I was treated like a tramp who could be put off with a handout" (Gilbert, 1956, p. 20).

But Gilbert saw himself as a crusader, not merely a vengeance seeker. He offered, as evidence of his idealism, his refusal of offers to serve as a director or consultant, and he accepted only expenses for his lectures and his self-published annual report of shareholder meetings (Gilbert, 1956). What he did get out of his efforts, according to his own testimony, was a sense of purpose, titling one chapter of his autobiography, *The Good Life*. He expressed how much he enjoyed his work by telling his readers, "[T]he variety of my life stems from more than corporate problems. I am a writer, and an editor, a teacher and a lecturer . . . ." (pp. 59-60). Moreover he appeared to relish the self-image he generated through his activism, warning the reader that the role of minority shareholder "is not for the timid" (p. 66).

Wilma Soss, founder of the Federation of Women Shareholders, was arguably the first *moderate* social issues activist, a serious investor willing to confront management regarding a non-financial issue. She was curtly rebuffed at a U.S. Steel stockholders meeting in 1947 when she asked about the possibility of appointing a woman director to the board. She noted later "that if they had treated me better there would have been no Federation of Women Shareholders" (Henderson & Lasher, 1967, p. 247). And like Gilbert, she turned her humiliation into a mission, declaring that "I didn't choose to head the women's economic suffrage movement, the movement chose me" (Norman, 1986, p. 20).

Soss, who had long chaffed under patronizing sexism during the course of her career in public relations, expressed to her interviewer chronic dismay and anger at "what most men really think of most women." She experienced this opinion unvarnished while overseeing an office redecoration: "You should have seen those male faces out there whenever I'd suggest that while they were redoing their office in Moroccan leather they put one full-length mirror in the lady's room" (Logan, 1951, p. 44).

For James Peck, the first *militant* social issue shareholder activist, the affront was less personal but no less compelling. Although a pacifist, as a disciple of both A.J. Muste and Mahatma Gandhi, Peck was hardly one to either back away from a (non-violent) fight or avoid publicity. During the course of his activist career, he served a prison term for draft refusal (Peck, 1958), was once photographed by *Time Magazine* while being thrown out of a Security

Council meeting he had leafleted during the Korean War (United Nations, 1950), and was later attacked and injured in the course of a Freedom Ride in the South (Wittner, 1984).

He and Bayard Ruskin, both then working for the Congress of Racial Equality, each bought a share of stock in Greyhound as the price of admission to the annual shareholder's meeting in 1948 with the intention of raising the issue of integrating bus seating in the South. While Ruskin was pulled away by other business, Peck spent parts of the next three years battling Greyhound at future meetings, at the SEC, and in the Courts over his right to present this issue to shareholders (Peck, 1951, 1952). Similarly the union officials of the AITU, who pioneered the first shareholder resolution aimed at resolving a labor dispute, were simply applying a new tactic in an old struggle to force AT&T to the bargaining table (Barbash, 1952).

These entrepreneurs also had the means as well as the psychological motivation to pursue these campaigns. John and Lewis Gilbert were the inheritors of a small fortune from various family businesses, a combined inheritance Lewis estimated at between two and three million in 1961 (Profile, 1961). While presumably smaller than that back in the 1930s, it was sufficiently large to support a non-paying avocation (Lewis abandoned a career in journalism, his brother John one in insurance), but, perhaps, not so great as to make the brothers feel entirely secure after the 1929 crash. Wilma Soss was able to leave public relations work and devote herself full-time without pay to the Federation of Women Shareholders because her husband was an advertising executive (Logan, 1951). Peck, who may have had inherited funds from his family's successful retail business, was a full-time civil rights worker with the Congress of Racial Equality (Wittner, 1984). Similarly, the officials of the AITU were on the payroll of an organization already dedicated to advancing their cause.

PURSUING THE ISSUES

Making Shareholders "Owners" Again

If there is any philosophical doubt as to whether the law should regard shareholders as the "owners" of publicly-traded corporations (as opposed to contractee, residual claimant, or some other category that might better fit the reality of shareholder rights and obligations), there was none in the mind of Lewis Gilbert, an understandable perspective for a young man whose earliest exposures to corporations included such family-run businesses as Gilbert Toys. Over his six decades of gadfly activity (he died in 1993), he constantly referred to shareholders as "owners" and "partners" in his writings and comments at shareholders meetings (Gilbert, 1956; Nussbaum & Dobryznski, 1987). And he insisted that, as owners, shareholders had the right to expect certain things. Shareholders are still fighting management over some of his expectations, and as for those issues that are no longer controversial, he had a great deal to do with establishing contemporary standards. Among the ideas he promoted successfully were accessible meeting sites, published meeting reports, annual election of directors, and shareholder approval of both company auditors and stock options for executives. Issues Gilbert pushed that have reappeared more recently on shareholder agendas include: ending staggered boards, appointing independent outside directors, separating the Chair from the CEO, connecting director and executive pay with performance, and requiring

directors to own company stock, something he demanded publicly of Douglas MacArthur and Lucius Clay (Gilbert, 1956; Sperry Rand, 1953).

Ownership to Gilbert meant responsibility as well as rights. He tried to encourage corporations to pursue non-financial objectives such as charity, good labor relations, racial and gender equality, both because he felt it was good business in the long term and because that "owners" need to be responsible members of their community, regardless of financial calculation. His book, *Dividends and Democracy* (1956), takes a Jeffersonian view of widespread corporate ownership, in which stakeholders, namely "farmers, housewives, trade unionists, consumers and other groups" would all become enfranchised in a large-scale corporate democracy based on almost universal stockholding. This Jeffersonian imagery was tinged with nostalgia he shared with the framers of the 1934 SEC Act for nineteenth century shareholders' meetings, which he described as "genuine sharing of wisdom, a democratic forum in which each owner contributed to . . . the formulation of corporate policy" (Gilbert, 1956, p. 28).

Gilbert's ownership philosophy, coupled to his tendency to hold stock for a very long time (MacBeth, 1985), anticipated the influential "relational investing" approach advocated later by banker/Reagan official Robert Monks and generally endorsed by the large, primarily public, pension funds that make up the Council of Institutional Investors (Hanson, 1993; Monks & Minnow, 1996; Nomani, 1994; Pound, 1993; Rosenberg, 1999). In his 1956 book, Gilbert claimed that his family's portfolio held 600 different companies, a number that reached 1,500 at his death (Sloane, 1993). He rarely sold stocks and lived largely on dividends (MacBeth, 1985). As such, he made himself into a prototype of public pension funds that own enormously diverse portfolios and hold on to stock far longer than other investors. As a result he was an advocate of what is now known as "patient capital," stating that "I am for the permanent investor . . . out of knowledge of a particular corporation and its continued growth" (Gilbert, 1956, p. 72), language that would not be out-of-place today coming from an official of the California Public Employee Retirement System (CalPERS) (Hanson, 1993; Koppes, 1996). Conceding, even reveling in the fact, that "in an age of conformity and acquiescence, free speech astonishes" (Gilbert, 1956, p. 4), he constantly argued for vigilant and participative shareholding that would not only keep management on its toes, but produce the public benefit of a more democratic society.

He also anticipated a stakeholder model of corporate responsibility, arguing that through shareholding and proportional board representation, farmers, housewives, trade unionists, consumers and other groups could win representation on the board of directors (Gilbert, 1956). Nor were his social concerns purely theoretical. During a 1940 shareholder meeting, Gilbert denounced the *Saturday Evening Post's* management for publishing a puff piece on the Quisling Regime in Norway, both because it was unpatriotic and because it would generate bad publicity for the magazine (Gilbert, 1956). He consistently supported Wilma Soss's attempts to place women on corporate boards (Logan, 1951), and decades later, he suggested a Percy ICCR proposal to put blacks on the board of Mobil (Gilbert & Gilbert, 1978). He also endorsed the idea of corporate charity as an obligation of profitable corporations (Gilbert & Gilbert, 1979), and expressed enthusiasm for the idea of employees and civil rights advocates using annual meetings to present their views (Gilbert & Gilbert, 1967). He even argued, as former Labor Secretary Ray Marshall (1992) has done more recently, that union officials should participate in annual stockholder meetings since "shareholders can learn

things from individual employees, but they [employees] fear losing their jobs by speaking out" (Gilbert & Gilbert, 1970).

His democratic and egalitarian instincts had their limits. While entirely supportive of free speech on the floor of annual shareholder meetings, he felt that the SEC was acting properly by avoiding potential turmoil by keeping resolutions invoking "all kinds of isms" out of the printed proxy materials (Gilbert & Gilbert, 1971). And despite a generally pro-labor and pro-employee outlook (his annual reports always included a section on "employee-owners"), he seemed unaware that if corporations yielded to his constant nagging for higher dividends, it might be at the expense of employees, a blind-spot not surprising in a man once quoted as saying, "We [he and his brother] live on dividends, just like everyone else." (Sloane, 1993, p. B8). Similarly, his nostalgia for the supposed "genuine sharing of wisdom" of the 19th century shareholders meeting ignored the backdrop of the bloodiest era in any nation's labor history (Taft & Ross, 1979). But even his contradictions were generally consistent with American liberalism, and it is not surprising that liberal icon Senator Paul Douglas agreed to write the foreword for his book.

Investing with an Eye to Social Responsibility

If Lewis Gilbert showed an interest in what would now be regarded as corporate social responsibility, Wilma Soss made the first concerted effort to raise a particular social issue in a consistent and organized campaign across the companies in which she and her allies invested. In that she can be regarded as the precursor of the Interfaith Council on Corporate Responsibility (ICCR), a group Gilbert has praised in his annual reports (Gilbert & Gilbert, 1978), and a group whose members are serious investors, typically church funds or university endowments, but investors who are concerned with *how* the companies they "own" behave as corporate citizens. She also anticipated a tactic commonly used by ICCR, arguing for a policy on two levels: that a particular policy is both ethically sound *and* an exercise in good business sense.

This two-level argument was not entirely original with Soss. As stated above, Gilbert used the same tactic in criticizing the *Saturday Evening Post's* coverage of the Quisling regime from the floor of a shareholders meeting, and he is not likely to have been the first to argue against a particular corporate policy on both ethical and pragmatic grounds. But Soss was probably the first to employ that kind of two-pronged argument in a shareholder resolution included in a company's proxy statement. Her 1950 proxy resolution submitted to American Radiator and Standard Sanitary argued not only that "[a] qualified woman on our board would give better representation to women's equity in our company," but also, "[c]ompany research and development work should benefit from a woman's angle." (Emerson & Latcham, 1954, p. 143). Soss extended this enlightened self-interest argument further by asserting that companies were hurting themselves by discriminating against women with industry expertise. When she nominated Sybil Burton for the MGM board, she pointed out that her nominee would offer a great deal more relevant expertise than such incumbent directors as General Omar Bradley and a steam ship line executive (Henderson & Lasher, 1967).

If Sass pioneered "socially responsible investor activism," then James Peck's campaign at Greyhound in 1948 may have been the first to "put the cart in front of the horse," as the strategy of an activist who became an investor solely for the purpose of confronting corporate

behavior. A socialist who had worked for the Workers Defense League before WWII, Peck joined the staff of CORE shortly after the Second World War (Pacificism, 1990). Segregated seating on buses was an important target of the civil rights movement, and Greyhound, an interstate carrier subject to federal law was considered especially vulnerable, and since it profited from a substantial black clientele, deservedly so. Peck and Bayard Ruskin each bought a share of stock in Greyhound in order raise the issue at the 1948 annual meeting in Wilmington, Delaware, which all of five other stockholders attended. Over the next three years, Peck (Ruskin was no longer involved) reintroduced the issue as a shareholder resolution and even defended his right to do so in court.

In 1949, around the same time that Soss and Peck were becoming active, the AITU (precursor to the Communications Workers of America) became the first labor group to use the rights of shareholders to advance a collective bargaining issue. Faced with a unilateral decision by the management of American Telephone and Telegraph to cut pension benefits, and perceiving themselves as too weak to call a strike, this alliance of unions connected to America's largest employer bought shares of stock in order to bring the issue to the attention of the company's stockholders (Barbash, 1952; Emerson & Latcham, 1954; Gilbert & Gilbert, 1951).

FROM OBSESSION TO MOVEMENT: THE ROLE OF NETWORKING

Both Gilbert and Soss attempted to construct bridges to potential supporters through publicity and organization. With backgrounds in journalism and public relations, it is not surprising that both were effective in getting mentioned in press reports of shareholder meetings. Soss pulled stunts such as appearing at a meeting dressed in a turn-of-the-century bathing suit to dramatize the backwardness of the company's board of directors. And such stunts had their effect. Soss received sufficient publicity and word-of-mouth endorsement to successfully recruit over a thousand women investors into the Federation of Women Shareholders, enrolling both heirs without the expertise to manage their investments and working women who lacked the leisure to do so. Members of her organization would sign over their proxies to Soss or another agent to use at their discretion at selected annual meetings (Logan, 1951).

For Gilbert, his humiliation at the 1933 meeting where he was treated "like a tramp" spurred him, not only to return the next year prepared to ask hard questions, but to branch out and attend several other meetings as well, including one held by giant Standard Oil where he was one of only three outside shareholders in attendance (Hafner, 1985). By 1935, he became something of a local celebrity in the small world of New York finance, an object of curiosity for financial journalists for his pointed questions and the verbal attacks and threats he provoked in return. He once initiated a shouting match with Charles Schwab after suggesting that the steel executive go without pay after Bethlehem had a bad year. Another time, the Chair of Chemical Bank threatened to punch him in the nose for his impertinence (Scherer, 1980). But not everything he did was merely theatrical. He anticipated contemporary arguments over excessive compensation for executives, once asking the Bethlehem Board why they deserved to receive higher compensation then their counterparts at the larger U.S. Steel Corporation. Such stances resonated with the public during the depression and the years after World War II, and he also fought *for* populist reforms intended to empower shareholders, such as more convenient meeting locations, and the routine issuing of company reports of meeting results.

Other shareholders saw or read about Gilbert (or his younger brother John whom he had enlisted to help) and contacted him with complaints and offers of their own proxies. By 1939, he was mailing copies of a newsletter at cost to his subscribers, a journal that hit 300 pages (and thousands of subscribers) by 1955. These journals described his and various lieutenants' (including his brother John's) experiences at various stockholder meetings as well as editorial asides regarding his philosophy of shareholder democracy, the limits of shareholder power, and the emergence of exciting new trends in the area.

But, arguably, Lewis Gilbert's most lasting contribution to the never-ending process of organizing shareholders was as pioneer of the proxy resolution. He not only became the first shareholder to win the right to present such resolutions, he, his brother, and a handful of allies became the predominant users of the process for three decades. Shareholder resolutions, started out as a trickle, the SEC counting only an average of twenty-seven per year during the first four years (1943-47) after their legal status was established in late 1942 (Securities and Exchange Commission, 1945-1948). During the next four years, 1948-51, the average shot to nearly 72 a year. However, one might question whether these numbers really reflected exploding popularity. Out of a total of 286 resolutions during these four years, John or Lewis Gilbert sponsored 137, and James Fuller, a trusted ally of the Gilberts (Gilbert, 1956), was second with 27. The newly-formed Federation of Women Stockholders joined in by sponsoring an additional 19 over the years 1950 and 1951. Thus, these four sponsors collectively accounted for 63% of the total of all shareholder resolutions from 1948 to 1951 (Emerson & Latham, 1954), and the Gilberts and their associates continued to dominate proxy submissions, accounting typically for half or more of the annual count until the early seventies (Movement, 1971). Not surprisingly, they were often accused, particularly early on, of being, in the words of one Goldman Sachs partner, "publicity seeking characters" constantly manufacturing controversies because they loved the attention (Henderson & Lasher, 1967, p. 238).

Although they were overwhelmingly the most active shareholders, it does not follow that these gadflies were simply a handful of ineffectual, isolated cranks intent on exploiting securities regulations to gain attention for themselves. Even if the motivations of the gadflies were less than selfless and involved some degree of self-indulgence, the charge still ignores two related facts. The first is that the Gilberts and Soss could justify their claims to speak for thousands, if not millions, of others. Soss, as indicated above, claimed over a thousand members for her Federation of Women Shareholders (estimated roughly at 1,000 in Logan's 1951 interview) and the organization won ten thousand votes for her first woman-on-the-board resolution in 1950. Presumably, she had hit some collective nerve to earn two large photographs in *Life Magazine* (1950), and a popular Broadway play, later a movie, *The Solid Gold Cadillac* based loosely on her confrontation with the directors of U.S. Steel (Teichmann & Kaufman, 1954).

The Gilberts not only sold thousands of copies of their annual reports of various shareholders meetings and SEC actions and claimed to receive over a thousand letters a year by the mid-fifties, but also achieved vote totals for their resolutions that were impressive, given the unfavorable conditions of the time period. With the large, activist pension fund investors still decades in the future (Monks & Minnow, 1996), the gadflies could not, as activists do today, hope to win broad support from among a company's institutional shareholders with a

reasonable proposal for governance reform. Management at that time also reserved for itself the right to vote unmarked proxies against a critical proposal. Nonetheless, one study found that in the period 1948 through 1951, 84% of the gadflies' resolutions received over 3% of the vote, 70% over 5%, and 35% of the resolutions over 8%, suggesting that many thousands of other shareholders supported the reforms that they presented through corporate proxy statements (Emerson & Latcham, 1954). Apparently, the issues they pursued resonated with uncounted thousands of other shareholders who feared having their interests ignored or even exploited.

And while the large majority votes that governance resolutions sometimes earn today were virtually unknown during that era (only three reported by 1951, and only one of the three against the opposition of management), that was almost beside the point. Though they would propose occasional by-law changes, the vast majority of the gadflies' resolutions were advisory only, urging, not requiring, the board of directors to take a particular action. This raises the second reason why the efforts of Gilbert, Soss, and a few others represented more than their personal opinions. Precisely because they could not garner votes large enough to compel change, any reforms they effectuated were presumably due in part to their ability to persuade other shareholders and management of the basic soundness of their positions. Thanks to the collective effort of the gadflies, corporations conducted annual meetings more democratically and courteously, meeting sites were moved or rotated to more convenient locations, and boards started nominating women for open seats (Logan, 1951). Even before the war, *Business Week* gave Gilbert some of the credit for the decision by RCA, American Can and other major corporations to allow shareholders to approve auditors, and for the generally more informative and "pepped up" appearance of annual reports (Big year, 1939). Douglas MacArthur, Chair of Remington Rand, after declaring at the 1953 meeting that it was not Gilbert's business whether he bought company stock or not (Sperry Rand Meeting, 1953), went out and bought 800 shares before the next meeting. Ten years later, the same company, then facing severe financially troubles, offered to voluntarily cut executive pay in return if Gilbert and Soss agreed to withdraw a resolution to that effect (Henderson & Lasher, 1967).

Undoubtedly, many of these agreements were not evidence that they had successfully transformed the way top management might have seen a particular issue. While managerial motives are rarely recorded, let alone tested for sincerity, there surely were cases, possibly a majority, when they convinced management to go along by implicitly or explicitly framing an issue so that the executives of the company could envision gaining good public relations at relatively little cost. Perhaps more interesting, however, are those cases in which persistence by gadflies and their allies succeeded by successfully appealing to management's sense that the shareholder had the inherent right to demand certain behavior. After a Gilbert proposal to limit executive pensions successfully won over 10% of the shareholder vote for a number of years at American Tobacco, the CEO offered to discuss modifying pensions, not because he conceded that they were too high but because he felt he did not have the right to ignore the wishes of such a large minority of company shareholders, and a 10% vote probably represented a large slice of attentive independent shareholders at the time (Scherer, 1980). And AT&T, after a quarter century of lobbying by Sass and Gilbert, finally instituted secret balloting in 1977 (Maidenberg, 1977), a reform that could scarcely benefit management.

If the track record of Gilbert and Soss suggest that they were more than publicity hounds, to argue the opposite, that any reforms that are credited to them would have happened any away since the "market" demanded them (and would presumably punish companies by depressing the stock of those that did not meet a particular demand), ignores that they contributed their own time and effort to convince their fellow shareholders that there was, indeed, anything worth demanding. They solved the collective-action problem of turning a grievance into an organized movement by making a virtue out of the costs and risks of being a "social movement entrepreneur" (Taylor, 1990). The Gilbert brothers abandoned normal professions to devote their time and energy to the cause. Soss claimed to be a reluctant leader who hoped to organize a Federation of Women Shareholders and then return to her career (Logan, 1951). Instead, she stayed on to insure its success and, presumably, because she liked what she did.

It is certainly difficult to imagine that the reforms they prompted paid off in their portfolios. A Canadian journalist who observed Gilbert at a meeting in Toronto in 1985 noted that the Gilbert family owned so little stock in the corporation, that no increase in dividends that Gilbert's questions might generate could possibly cover the airfare from New York (MacBeth, 1985). They were among the few who had the freedom, temperament, and competence to pursue this work, and those who shared these qualities found it easier to work within the structures they had created than to strike off on their own. Moreover, having assumed the responsibility, others who might have been predisposed to fill their roles may then have accepted a back seat.

THE LEGAL ARENA

Fighting the Good Fight

Managerial complaints regarding alleged abuses of the proxy resolution process continued after the first regulations took affect in 1942. The SEC immediately agreed that corporations could exclude resolutions that were not "a proper subject for shareholder action" under the law of a company's incorporating state. In 1945 the SEC created a more specific limit when it ruled resolutions concerning "general social, political or economic" questions out of bounds, with the SEC agreeing that corporations should not have to bear the burden of publishing and discussing solutions to issues that were beyond management's power to effectuate, such as modifying antitrust law or the abolishing the taxation of dividends (Securities and Exchange Commission, 1945).

The precise space for legitimate resolutions between state law limitations and the federal ban of social issues became contested terrain almost at once, an argument that continues to this day. As a result of this ambiguity, in 1947 the SEC began its role as a case-by-case referee, ordering companies to consult with it regarding any shareholder resolutions they wished to exclude. It would respond with an opinion as to the legality of the exclusion, what would become known as the "no-action letter," named after the concluding line of the standardized response letter: "[T]he SEC shall take no action if you should choose to exclude this resolution." Such letters could be challenged in court, but judges, cautious about opening the floodgates for new forms of litigation, could usually be expected to defer to SEC expertise in these matters.

By 1948, the SEC had almost entirely sketched out the general contours of how proxy resolutions are regulated even today. It agreed with arguments made by various corporate secretaries to the agency's staff that corporations should not have to incur the expense of printing and mailing resolutions that were not of general interest to other shareholders. As a consequence, the SEC allowed corporations to exclude resolutions that either involved a personal grievance (or, by extension, a personal benefit) not relevant to the average shareholder. In addition, a company could exclude any resubmitted resolutions that had failed to achieve a 3% vote on the last ballot, a de facto empirical test of how much interest a particular suggestion actually held for other shareholders (Liebeler, 1984).

One indirect measure of the Gilbert brothers' success at transforming personal obsession into a broader movement is that their resolutions were rarely excluded. They were clever enough to stay within the rules, and had opportunities during their circuit of annual meetings to raise more picayune or otherwise potentially excludable matters from the floor. But Lewis Gilbert also managed to influence the rules of the game with regard to what was a legitimate shareholder issue. After returning from World War II, he discovered that Transamerica Corporation had refused to include three of his resolutions in its proxy filing, although none of these would appear remarkable or controversial today. One resolution required shareholder approval of auditors, another concerned procedures for running annual meetings, and the third asked that a report be mailed to all shareholders summarizing the meeting. The SEC backed Gilbert's complaint and after a mixed decision in District Court based on apparent conflicts between one of the resolution and the relevant law of the incorporating state, the Federal Appeals Court found for Gilbert and the SEC *in toto* (*SEC v. Transamerica Corp.*, 1947).

Given the nature of the issues involved, the court could have found for Gilbert on a fairly narrow financial or contractual reading of his position. They could have ruled that an investor fearing fraud or misrepresentation could insist on both approving company auditors and receiving a report on an annual meeting he was not able to attend. Instead the court implied acceptance of a broader set of rights for shareholders by declaring that "a corporation is run for the benefit of its shareholders and not that of its management" (*SEC v. Transamerica Corp.*, 1947, p. 511). It also went further toward accepting the legitimacy of corporate democracy by endorsing the intentions of the framers of the SEC law to go beyond strengthening disclosure.

Transamerica had argued that Gilbert's resolutions, while perhaps not specifically barred by the law of the domicile state (Delaware), were at cross-purposes with the state's expressed reservation of certain issues to the discretion of the board. The court rejected the argument as irrelevant, asserting, for the very first time, that state law was not the sole source for determining "proper shareholder action" and that if Transamerica was "allowed to insulate itself in the manner in which it sought, it would serve to circumvent the intent of Congress in enacting the Securities Exchange Act of 1934" (*SEC v. Transamerica Corp.*, 1947, p. 518). In short, the SEC had the freedom, even a responsibility, to create its own positive common law of shareholder rights in those areas where the relevant state law was not helpful in carrying out the intent of the 1934 federal law. Whatever an individual state might say, shareholders of publicly-traded companies now had federally protected rights to exercise voice in the conduct of corporate affairs.

The Empire Strikes Back

By the time Eisenhower reached the Presidency, the gadflies had earned sufficient legitimacy and popularity that efforts to seriously curtail their efforts were largely ineffective. Even the Association of Corporate Secretaries refused to endorse a report by one of its own committees that criticized the gadflies for wasting corporate time and resources (Gilbert, 1956). Corporate lobbying did induce the Eisenhower appointees to the SEC to consider new regulations limiting the process, but, for the first of several times, the agency held hearings that not only included managerial representatives *but* Gilbert, Soss, and much of the rest of what constituted a coalescing community of shareholder activists, including Abraham Weiner, counsel for the activist AITU (Gilbert, 1956).

Given the conservative nature of the administration and the corporate power behind the call for regulation, the results were surprisingly mixed. In 1954, as a result of corporate lobbying, the SEC replaced a requirement that a resolution be a "proper subject under state law." That rule had been largely nullified in the *Transamerica* case, so a new rule was instituted. This one excluded so-called "ordinary business" decisions as a proper subject matter for shareholder resolutions on that the grounds that management required a degree of discretion and immunity from the interference of shareholding amateurs (Liebeler, 1984). One result was to put an end to Gilbert's frequent resolutions demanding higher dividends, a piece of "ordinary business" that was of obvious interest to other shareholders but annoying to directors who did not wish to be pressured into paying out more than they deemed prudent.

The SEC also added to the resubmission requirement of 3% after the first year, thresholds of 6% after two years and 10% after three, but these were slightly lower figures than what corporate officials had urged the agency to adopt. Moreover, the SEC "gave one" to the gadflies by requiring, for the first time, that corporations print the names and addresses of resolution sponsors, allowing shareholders to communicate to each other directly. Thus, the SEC seemed to acknowledge that while it was restricting "excesses" in the resolution process that were, arguably self-indulgent, cost companies money, and improperly interfered with management, the general idea of expanding shareholder democracy remained valid.

The new rules did not appreciably inhibit the activity of the Gilberts, Soss, and their allies, and Evelyn Y. Davis had little trouble joining their ranks as a full-time gadfly two years later. The rules did not bar most of their pet issues from the proxy statements, and other subjects could still be raised on the meeting floor. Endless repetitions of the same resolutions at the very same company were usually no longer practical, since obtaining and sustaining 10% would probably prove unlikely for most resolutions, although exceptions existed, such as the previously mentioned resolution at American Tobacco. But since most resolution issues fit the circumstances of many companies, the ultimate effect of the 10% restriction was simply that activists targeted more firms. Total proxy resolutions continued to climb steadily from about 100 annually in the mid-fifties to over 200 in 1970 (Security and Exchange Commission, 1950-1970), after which they exploded in number with the onset of social issue campaigns influenced by activism at Kodak, Dow Chemical, and General Motors (Talner, 1983; Vogel, 1978).

One reason the SEC did not seem to consider a more stringent crackdown was that even corporate executives, as well a more conservative administration, held mixed feelings with regard to the gadflies, seeing their value as well as their annoyances. Certainly, some corporate board members were on record as disliking being challenged or inconvenienced, and some complained about unnecessarily long shareholder meetings or even paying the printing costs of including shareholder resolutions (Bayne, Cowen, Emerson, & Latcham, 1954). Executives would certainly not have appreciated campaigns to reduce or limit executive pay. But even these complaints hardly prevented massive increases in executive compensation over the years. A generation ago, Lewis Gilbert anticipated Crystal Graef when he told Dupont's Irving Shapiro that the first million dollar CEO was "only a matter of time" (It's show and tell, 1979, p. 56). But if they periodically angered or insulted an occasional CEO, the overall impact of their activities provided a boost to the system that benefited these same executives.

Greater disclosure and communication, in the form of better annual reports, more informative and convenient annual meetings, and more open process of auditing, did not prevent all malfeasance, but they might have prevented some, and, perhaps more importantly, it contributed to restoring legitimacy and trust in a financial system that, after 1929, was in short supply of both. It is unthinkable today, for example, that a modern CEO would respond to Wilma Soss's suggestion for regional stockholder meetings as Alfred Sloan did with the observation that his executives' time would be better spent playing golf (Logan, 1951). The inclusion of women and (later) minority directors only added to this legitimization process. Such a concession had the virtue that it publicly displayed sensitivity, but did not necessarily mean that the company felt compelled to end either harassment or discrimination below this highest level.

For forty years, journalists who covered the gadflies inevitably found corporate insiders to quote (often anonymously) who claimed to appreciate that gadflies were raising the legitimate concerns of stockholders (e.g., Bainbridge, 1948; Kleinfield, 1981; MacBeth, 1985; Scherer, 1980). Not all of this praise was necessarily disingenuous, since most corporate executives, as people of high income themselves, were likely to be outside investors at other companies and might well have been pleased that someone else was raising unpopular questions on behalf of their own investments. Lewis Gilbert, who was always well-informed, became increasingly polite as he aged, leading one financial journalist covering an AT&T meeting to claim that if corporate management could restrict the gadflies to one-per-meeting, he would be their consensus first choice (Kleinfield, 1981). Board members could have at least taken comfort in his willingness to confront a few common enemies, such as takeover insurgents as Robert Young (Gilbert, 1956) and T. Boone Pickens (Blumenthal, 1987), neither of whom shared Gilbert's (1956) philosophy of patient relational investing.

Cutting out the Militants

The more radical wing of shareholder activism, however, was regulated out of existence almost as soon as it appeared. Possibly, corporate executives could find some virtue in the arguments from Lewis Gilbert, the liberal capitalist investor, that management should view him as a stakeholder. They could, if pressed, mollify middle-class professional businesswoman Wilma Soss with a token board appointment or a better meeting site. But they were hardly as tolerant of the labor and civil rights activists from AITU and CORE who were becoming

stockholders only to use shareholder rights as a platform to promote the interests of employees or the victims of discrimination.

When James Peck asked for the floor at Greyhound's annual meeting in 1948, the corporate secretary allowed him to speak but suggested that he was technically out-of-order and should have submitted a proxy resolution first (Peck, 1951). Taking his advice, Peck submitted a resolution eight months in advance of the 1950 meeting requesting that management consider abolishing segregated seating. After numerous delays the SEC opined that it was acceptable since it was, unlike the examples they released in 1945 of overly broad and political resolutions, sufficiently specific to the business conducted by Greyhound to be within the company's control. However, the company still excluded it, claiming that the decision had come too late for that year's proxy statement. In 1951 Peck resubmitted it, but now the SEC reversed its own decision of the previous year and agreed it was excludable. After hearing from some other stockholders that they would welcome the opportunity to vote on such a proposal, Peck took Greyhound to court to force it to include his resolution in the company's proxy statement (Peck, 1951).

Peck lost at both the district and circuit level as both courts deferred to the SEC opinion. Peck did try to argue, in the manner of Soss, that segregation was a "bottom-line" issue as well as a political one because customers who experienced segregation would institute expensive lawsuits against the company, but he still failed to persuade the court. Shortly thereafter, afraid, perhaps, that others would justify political positions with economic arguments, the SEC tightened the restriction on political, social, and economic issues in 1952 by giving itself the power to examine the motives of the sponsor as well as the prima facie content of resolutions (Liebeler, 1984). Certainly Peck, owner of only a single share of stock and a founding member of David Dellinger's Committee for Nonviolent Revolution, had been ingenuous in professing concern for Greyhound's profitability, and he abandoned the issue after the court defeat, even admitting in print to have achieved his real goal of publicizing the issue of segregation (Peck, 1952).

Just when Peck and Ruskin were initiating the Greyhound campaign 1948, the leadership of AITU of AT&T had began their experiment in the power of corporate democracy and the tolerance of the SEC by using shareholding as a tactic in a labor dispute. The post-war years were a period of both contentious labor relations at AT&T and a state of uncertainty with regard to the structure of American labor law. The contentiousness arose because an enormous and diverse labor force, scattered among the states and represented by a number of different, sometimes feuding, unions, faced a unified AT&T, a monopoly with a government guaranteed profitability. This unique situation severely complicated the logistics of a traditional strike, and, not surprisingly the unions found the company intransigent in negotiations (Barbash, 1952).

In fact, the company initially refused to bargain over pensions at all. As part of the company's program of anti-union welfare capitalism, management had initiated a pension scheme before the Social Security program became law during the New Deal. Once the government program took effect, the company unilaterally cut pensions by half of the retiree's social security benefit on the grounds that the company now had to pay half the payroll tax that financed the public benefit. While the National Labor Relations Board (NLRB) had decided in 1947 that

pensions, as a form of compensation, were a mandatory subject of bargaining, several companies disagreed and challenged the NLRB decision in the courts (Ghilarducci, 1992).

Even after the Supreme Court decided in *NLRB v. Inland Steel* in 1949 that pensions were indeed a mandatory subject of bargaining, AT&T still refused to show flexibility on the issue. As a result, the AITU, an umbrella association of the unions connected to the company that would later become the Communications Workers of America, bought a share of stock in order to both raise the issue with other shareholders (who included many employees and people of relatively modest means) and alert the financial press. By 1951, the resolution was receiving a remarkable degree of support for the time, nearly 11%, or over three million votes, in part because AT&T offered a stock purchase plan to its employees, and the union association had asked these employees for their proxies (Barbash, 1952).

The SEC's regulatory revisions of 1954 put an end to this campaign. While, in the past, the SEC had refused to allow AT&T to exclude the pension resolution as a "personal grievance" and therefore not of general shareholder interest, the SEC now gave AT&T the green light to exclude it under the brand new "ordinary business" limitation. In an ironic twist, the same logic that allowed the NLRB to require bargaining over pensions because it was a form of compensation also permitted the SEC to decide that a general pension resolution could be excluded since collective bargaining was a routine activity that fell squarely within managerial, not shareholder, responsibility. The SEC ruling was upheld in court, with the judge asking skeptically why the AITU, holder of a single share of stock, should have the power to force a huge company with thousands of shareholders to cancel an annual meeting (*Curtin v. AT&T*, 1954).

But that was not the end of union shareholder activism. At the same time that direct labor action was ruled out-of-bounds within the shareholder resolution process, unions were finding other, more indirect ways, to use shareholding to advance their interests. While actions were relatively rare, those that were taken anticipate some of the strategies undertaken by labor-connected activists in the 1980s and 1990s. A union at Colonial Airlines had established a mutual fund exclusively for Colonial employees for the purposes of owning and voting Colonial stock. According to Gilbert's account in an annual report, a majority of employees actually joined, and by 1953 the fund led a fight against a sale of the company to Eastern Airlines (Gilbert & Gilbert, 1954). Around this same time, the International Brotherhood of Teamsters was buying the stock of one of its members' largest employers, Montgomery Ward. According to rumors reported and dismissed, probably naively, by the Gilberts, Teamster President David Beck was hoping to use this bloc to pressure management (Gilbert & Gilbert, 1954).

Even the aborted AT&T campaign may have contributed to future efforts. Henry Mayer, an official of the AITU, attempted to appeal to appeal to outside shareholders by arguing at the annual shareholders' meeting that protecting the pensions of employees would obtain "for the company and its shareholders a better relationship and stability" with its workforce (Gilbert & Gilbert, 1954, p. 251). While the impact of such efforts were small, a future generation of union leaders would make the same appeal to other investors for a "high road" human resource program purported to benefit both employees and investors alike (Sheinkman, 1988).

But these efforts would have to wait for three or more decades. For about fifteen years after the 1954 rule changes, shareholder activism stabilized, staying within a narrow range of issues. The gadflies, who now included Evelyn Davis, continued their campaigns, and these grew, though slowly, in terms of numbers of resolutions and subscribers. New generations of activists with innovative approaches would have to await the social conflicts of the sixties and early seventies (Alinsky, 1971; Vogel, 1978) and the takeover battles and explosion in public pension endowments of the eighties (Davis & Thompson, 1994).

CONCLUSION: THE GADFLIES' LEGACY

Still, the achievements of the first wave of activism were not unimpressive. They did not achieve all of their goals, and most emphatically did not convince either courts, companies, or the SEC that they were entitled to the full panoply of ownership rights that would have allowed them to question on ethical or financial grounds any use of a company's assets (Honore, 1961). But certainly they made significant uses of the social space created by the vagaries of law, a public suspicious of corporate behavior after 1929, and the innovations of a new agency with a mandate to regulate shareholding and strengthen its democratic features.

The gadflies, then, extend shareholder rights well past the most minimal definition: the exchange of capital for future dividends and the right to approve a slate of directors who would theoretically enforce these claims (Demsetz, 1967). Shareholders could now demand information from their corporations, and exercise the right to communicate with both management and each other through the proxy statement. They won the right to influence meeting places, board nomination policies, and executive compensation, and management now required their approval for stock options, and auditing firms, and changes in board structure.

They also founded a movement. Gilbert and the others attracted sympathizers and subscribers, and convinced corporate managers, regulators, and judges that at least part of their agenda was legitimate. They forged a critical community (Tarrow, 1994) that developed strategy, addressed the public, and spoke with legitimacy in front of legislators and regulators (Bayne et al., 1954). This legacy may have lain dormant for several years, but it remained available for use when new actors appeared on the scene, energized by the social upheavals of the 1960s and 1970s and the takeover battles of the 1980s. Robert Monks, the first strategist of the Council of Institutional Investors, acknowledges his debt to the gadflies (Monks & Minnow, 1996; Rosenberg, 1999). The social issue activists followed the gadflies' precedents.

Indeed, their debt may have been even greater than that. Saul Alinsky's campaign at Kodak has long been credited as the starting point of social issue shareholder activism (Talner, 1983; Vogel, 1978). Because of his influence on Caesar Chavez and Ray Rogers, organizers of labor campaigns against grape growers and J.P. Stevens respectively, Alinsky could also be credited with triggering the revival of labor-oriented shareholder activism (Barber & Rifkin, 1978; Horwitt, 1989). But the Kodak campaign, which was aimed at integrating the company's workforce, may well have been a deliberate replay of James Peck's Greyhound campaign. Alinsky (1971) does not credit Peck with the idea, which he claims as original, but Alinsky did have connections with CORE in the 1950s (Horwitt, 1989) and he must have been aware of Peck, a prominent member of that organization. While there is no direct

evidence that he knew about Peck's activities at Greyhound, it seems likely that he did since publicity was, after all, Peck's (1952) explicit goal, and, so, it appears plausible that the earlier campaign affected Alinsky's thinking (consciously or unconsciously) fifteen years later.

And, certainly, the two-track "enlightened self-interest argument" that Wilma Soss used in her 1950 shareholder resolution remains very much alive today. To take one of hundreds of possible recent examples, the Union of Needleworkers and Textile Employees (UNITE), which has been battling Phillips-Van Heusen over unionization for years, put forward a shareholder resolution in 1997 urging the company to investigate in its subcontracting practices in Guatemala because the company's image "is an extremely important corporate asset" (Securities and Exchange Commission, 1997). While such an argument may seem far too transparent to generate support from other shareholders, it can provide cover for sympathetic pension fund managers who may feel they require a financial rationale for supporting a social issue. No less significant an investor than CalPERS (1999), for example, reported voting for an anti-sweat shop resolution at Walt Disney on the grounds that contracting with sweatshops would bring the company unfavorable, and therefore financially damaging, publicity.

The legacy of the gadflies may grow even stronger in the foreseeable future. To the end of his long life, Lewis Gilbert would question management from the floor of meetings on the selection process with regard to auditors. No doubt, managers and most shareholders in attendance regard such concerns as a pathetic anachronism, a half century-old obsession with the scandals that emerged out of the roaring twenties, irrelevant in the age of modern accounting practices (MacBeth, 1985; Maidenberg, 1977). Developments at Enron, Global Crossing, and other recent events, however, suggest that Lewis Gilbert's insight and persistence remain, to this day, a better bet than conventional wisdom. We have all just witnessed a decade, much like the 1920s, in which the performance of the stock market far outstripped the growth of other measures of economic health such as gross domestic product, productivity, wages, and trade balance, and we may indeed have come full circle. This time, however, we may see new champions of outside investors rallying the troops freely and instantaneously over the internet and charging ahead with the force of institutional investors behind them.

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