

1998

Corporate Democracy -- Not Such A Radical Idea

Carlin Meyer

New York Law School, carlin.meyer@nyls.edu

Follow this and additional works at: https://digitalcommons.nyls.edu/fac_other_pubs

 Part of the [Banking and Finance Law Commons](#), [Business Organizations Law Commons](#), and the [Law and Gender Commons](#)

Recommended Citation

Meyer, Carlin, "Corporate Democracy -- Not Such A Radical Idea" (1998). *Other Publications*. 297.
https://digitalcommons.nyls.edu/fac_other_pubs/297

This Article is brought to you for free and open access by the Faculty Scholarship at DigitalCommons@NYLS. It has been accepted for inclusion in Other Publications by an authorized administrator of DigitalCommons@NYLS.

REVERSING A LONG-HELD position, the Securities and Exchange Commission recently decided that owners of corporations -- that is, shareholders -- could, after all, have a voice in corporate employment policies. Sometimes. The about-face was prompted by a case involving Cracker Barrel Old Country Store's 1991 decision to fire -- and no longer hire -- gay employees, because being a homosexual was "contrary to traditional American values."

Shareholders sought to overturn the policy through a shareholder resolution, or proxy. Originally, the SEC ruled that the shareholders couldn't place a proxy on the ballot because hiring policies were "ordinary business" decisions, rather than ones affecting social policy, and thus entrusted entirely to corporate directors and officers. The SEC's May 21 reversal of its decision is a step in the right direction, but a far too limited one. The SEC continues to refuse shareholders a say in decisions ranging from whether corporate advertising campaigns that disparage certain groups (Native Americans, women, minorities) should cease to whether certain products should be altered because they are harmful to children to whether employee wages should be raised in tandem with corporate profitability.

At present, Congress is discussing a reversal of the SEC's policy that shareholders are not even entitled to information about corporate charitable contributions. Ironically, as recently as the 1950s, this would have been a non-issue because many states prohibited corporations from making not only charitable but political contributions as well. The states viewed these contributions as contrary to the purpose of a corporation.

The question of whether or not shareholders might have the right through proxy votes to influence contributions is also on the table, but in the face of opposition by business and charities, there is little chance it will become law. Even in the unlikely event that the SEC would open up all kinds of decisions to shareholder proxy decision-making, who would then be making the decisions?

Realistically, the boards of large shareholders, such as pension and mutual funds, would be influencing corporate decision-making. One set of directors would be substituted for by another. However, the true "owners" of corporations -- small shareholders, owners of shares of mutual funds and pensioners whose money is invested in pension funds -- would have little voice. The larger issue in these rulings

is: Who should be entitled to a voice in running a corporation? It is time to ask if corporations are "private" entities or quasi-public, as we consider utilities to be? Should they not be governed by democratically elected "public boards," whose members may or not be shareholders, making decisions in the public interest but also in the interests of shareholders? Corporations are public creations. They began as entities specifically chartered by governments to perform costly public tasks, such as building bridges and canals, for which private capital was needed. Today, without laws allowing corporations to offer investors limited liability for corporate harms, corporations could not and would not exist. So, it is unclear why only the "owners" of corporations should be making decisions. The truth is, the actions of corporations affect us daily -- from the air we breathe to the products we consume to our daily bombardment by advertising. It is time to reassert greater public control over these entities -- to collectively establish policies, guidelines and even rules for everything from employment policies (including officer salaries) to product decisions to political and charitable giving to advertising campaigns. National legislation would be required to assert control, even though individual corporations are creatures of state creation in the sense that they are regulated in large measure by the laws of the state that incorporated them.

However, without national uniformity, states would compete to offer the best climate for incorporation, as they did early in this century -- offering rights of incorporation with fewer and fewer restrictions. Indeed, in the increasingly global economy, even national legislation may be insufficient, because other nations can offer corporations less restrictive environment. International treaties that subject corporations to democratic control worldwide would be needed.

If this suggestion appears idealistic, that is because it is. But it was 18th century visionaries who challenged the domination of centuries-old monarchies to establish democracy in the United States and elsewhere. Is it too much to hope that 20th century visionaries can rein in corporate dominance, a phenomenon of far more recent vintage than were the European monarchies) by democratizing corporate rule?