1 Introduction

Nearly 9 out of 10 of America’s largest corporations have shares publicly traded on the stock market.¹ Most Americans will encounter frequently each day products or services a US public company offers, such as social media (Facebook, for example), consumer goods (Procter & Gamble), telecommunications (AT&T), the internet (Google, a subsidiary of Alphabet), transportation (General Motors), computer software (Microsoft), financial services (Bank of America) and shopping (Amazon or Walmart). Public company dominance of America’s corporate economy has existed for decades. As of the early 1930s, only 11 of America’s 200 largest non-financial corporations lacked an important public interest.²

Though the publicly traded company has been dominant for many decades, during this period of dominance the public company itself has been transformed. Large public firms of the 1950s and 1960s could count on substantial customer loyalty due to having few serious rivals. In today’s digital age, warnings are issued regularly even to the biggest companies that there is no room to relax because competition is just a click away. During the middle


² Adolf A. Berle & Gardiner C. Means, The Modern Corporation & Private Property 86 (1932). They list 12 such companies but one had over 12,000 shareholders and thus was clearly publicly traded. Their study is considered in more detail in Chapter 2—see notes 74–76 and related discussion. On public company dominance as of the mid-1990s, see Mark J. Roe, Strong Managers, Weak Owners: The Political Roots of American Corporate Finance 3 (1994).
decades of the twentieth century, unions were a meaningful source of countervailing power in the corporate context but are now mostly an afterthought. Senior executives of large mid-twentieth-century firms often thought of themselves as stewards of the enterprises they ran, seeking to balance if possible the interests of key corporate constituencies. Today’s public company executives might envy such discretion but know they have to focus closely on shareholder returns because mediocre financial results can quickly put them in the firing line.

The transformation the public company has undergone since the mid-twentieth century is a fascinating one. There have been scandals, political controversy, wide swings in investor and public sentiment, mismanagement, entrepreneurial verve, noisy corporate “raiders,” and various other larger-than-life personalities. Ascertaining how and why the public company has been transformed, however, is currently a challenging task.

Amidst the voluminous literature on corporations and big business there are innumerable valuable historical nuggets. One searches in vain, however, for a detailed analytical synthesis of changes affecting the public company since the end of World War II. This book correspondingly examines how the public company has been transformed from the mid-twentieth century through to the present day, using as the primary reference point senior corporate executives and the constraints affecting the choices available to them.

This introductory chapter provides necessary context. The basic chronology with the public company will be summarized first. Next, the book’s contribution to the vast literature on corporations will be spelled out. Case studies that will move the analysis from the abstract to the specific follow. The focus will be on two iconic American business enterprises, American Telephone and Telegraph Company (AT&T) and General Electric (GE). With both being prominent throughout the period the book covers, the case studies illustrate in a concrete fashion key market and regulatory trends examined in the chapters that follow. The chapter concludes with an overview of the remainder of the book.

The Public Company Transformed—A Brief Chronology

This book picks up the public company’s story in earnest during the middle of the twentieth century. An extended treatment of earlier developments would be largely superfluous. This is primarily because of detailed research distinguished business historian Alfred Chandler, “the indispensable authority on the history of the company,” carried out on the leading industrial enterprises of the late nineteenth and early twentieth centuries. He canvassed in considerable detail a shift in emphasis away from firms personally run by their owners toward firms where share ownership tended to be dispersed, and where operating decisions were increasingly concentrated in managers’ hands. His work on this new form of business enterprise is described in his influential works, Strategy and Structure: Chapters in the History of Industrial Enterprise (1962) and The Visible Hand: The Managerial Revolution in American Business (1977).
of capitalism—“managerial capitalism”—largely culminated with his 1990 book *Scale and Scope: The Dynamics of Industrial Capitalism*. In *Scale and Scope* Chandler contrasted the development of the modern industrial enterprise in the United States between the 1880s and the 1940s with parallel trends in Germany and Britain. Chandler thus ended his detailed analysis just prior to the heyday of managerial capitalism, which occurred in the 1950s and 1960s. This era provides the chronological and analytical departure point for this book.

For executives running larger American public companies immediately following World War II, “internal” constraints on their discretion—scrutiny by the board of directors and the shareholders—were more theoretical than actual. Boards operated on a largely collegial basis, at least absent a crisis. Most shares were owned by retail investors with tiny shareholdings and little appetite for scrutinizing companies. There was correspondingly a real risk that senior executives would take advantage of what Adolf Berle and Gardiner Means famously described in 1932 as a separation of ownership and control to exercise their managerial authority in a manner that was contrary to the interests of stockholders and others closely affiliated with companies.

Managerial wrongdoing was in fact rare during the middle decades of the twentieth century, with executives refraining for the most part from taking a freewheeling approach with the discretion available to them. Various “external” factors helped to keep managerial capitalism era executives in check. In numerous key industries organized labor was a powerful force, and in those industries collective bargaining functioned as a significant constraint for management. The mid-twentieth-century heyday of managerial capitalism was also an era of “regulated capitalism,” as governmental action, or the threat thereof, impinged upon executive discretion in various significant ways. In many industrial sectors, including telecommunications, transport, and utilities, regulators exercised control over prices and imposed service provision standards. Moreover, robust antitrust enforcement essentially precluded horizontal mergers involving firms with a sizeable combined market share. Memories that the business community was deeply unpopular during the Depression were fresh. Fears that latent public antipathy toward corporations could translate into new and unwelcome regulation correspondingly provided incentives for executives running large companies to avoid taking steps that might spark an adverse public reaction.

Restricted access to capital could also be an obstacle for ambitious managerial capitalism era executives. Firms already in a dominant position in a market sector could rely on profits generated but not distributed to shareholders (“retained earnings”) to finance plans executives might have. For enterprises without this luxury, progress could be difficult to achieve.

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8 Berle & Means, supra note 2.

The Public Company Transformed

Commercial and investment banks were conservative allocators of capital, and the venture capital industry was a mere fledgling.

With mid-twentieth-century public company executives operating in a context of meaningful external constraints, the prevailing assumption was that the nature of managerial leadership had only a modest impact on corporate success, or lack thereof. In the mid-1950s chief executives “like(d) to remark jocularly that they (were) the most expendable men in their organizations.” Matters did not change markedly during the 1960s. A 1969 study of corporate “oligarchs” reported that senior management “gets the job done . . . by mastering the ‘science of muddling through.’ ” “The relative indifference of the stock market” to the death or replacement of chief executives at that point in time was explained on the basis that shrewd investors deduced “changes at the top have little if any effect on the prospective earnings and growth of the company.” A groundbreaking 1972 empirical study of 167 major public companies lent credence to such logic. Executive “leadership” was found to explain only a small proportion of corporate performance once the strength of the economy, the industry in which a corporation was operating, and a series of company-specific features were taken into account.

By the market friendly 1980s, various external constraints affecting public company executives that were important during the managerial capitalism era were fading in importance. Unions were in decline, a deregulation trend was prompting the dismantling of controls in a wide range of industries, and antitrust enforcement was being relaxed. Growing competition in the banking sector accompanied by a wave of financial innovation eased restrictions on access to capital. The shift in market conditions was a particular boon for companies seeking to challenge market-dominating incumbents, which meant that concerns about losing out to rivals became a more potent external constraint on public company executives than had previously been the case.

With the downgrading of various key checks on managerial discretion executives began to spread their wings. A 1985 *New York Times* article on those serving as chief executive officer (CEO) of public companies, entitled “A New Breed of CEO,” said that while “until fairly recently the most obvious trait of the CEO was his relentless dullness,” various prominent chief executives were eschewing “the old ways of managing and have brought new excitement to rusty companies.” Jack Welch and Robert Goizueta, iconic chief executives of GE and Coca-Cola respectively, agreed in the mid-1990s that their jobs were “three times as fast” as when they were appointed in the early 1980s.

12 Id. at 14–15.
Empirical evidence measuring the extent to which managerial capabilities dictated corporate success over time is scant. The data that is available, however, tends to confirm that top management mattered more to the companies they ran as the twentieth century drew to a close compared with the 1950s and 1960s. A 2015 study that followed in the footsteps of the “ground breaking” 1972 study of the “CEO effect” found that the impact of CEOs on corporate performance was just under 10 percent in the 1950s and 1960s, hovered between 10 percent and 12 percent from 1970 until the mid-1980s and then grew to between 15 percent and 17 percent in the late 1990s. Evidence indicating stock market reactions to unexpected chief executive deaths increased over time corroborates an intensifying CEO effect, as investors apparently attached greater weight to managerial contributions to corporate success.

While various significant managerial capitalism era constraints were receding as the twentieth century drew to a close, in the 1980s an additional external constraint, a “market for corporate control” exemplified by unsolicited takeover bids ostensibly targeting underperforming companies, was helping to keep management on its toes. Such “hostile” takeover activity was prevalent amidst frenetic merger and acquisition (M&A) activity. “The Deal Decade,” however, came to an abrupt end as the 1990s got underway. Executives thus were largely liberated from the anxiety associated with fending off a hostile bid. The 1990s would in its turn become an era of charismatic CEOs. Nevertheless, the muting of the market for corporate control did not afford executives untrammeled discretion. Under the mantle of better “corporate governance,” a term rarely used before the mid-1970s, “internal” constraints had been strengthened since the heyday of managerial capitalism. Boards of directors, for instance, had been reconfigured to bolster the role of “outside” directors as monitors of management.

The Deal Decade and increased emphasis on governance-related internal constraints coincided with a reorientation of managerial priorities in favor of shareholder interests. During the managerial capitalism era, those running public companies, mindful of intense criticism of business in the Depression, took pains to emphasize the good citizenship of the firms they ran. The “traditional” model of the corporation catering to shareholders reputedly persisted “more in theory than in practice.” The Deal Decade helped to prompt a switch back in a shareholder-friendly direction. The surge in the number of hostile bids meant that the fate of publicly traded companies hinged on shareholder perceptions of the capabilities of the incumbent management team to an unprecedented extent.

When hostile takeovers subsided in the 1990s many thought increased shareholder activism would counteract the marginalization of the market for corporate control as a disciplinary mechanism. It was well known as far back as the 1950s that due to superior resources and larger ownership stakes “mainstream” institutional shareholders such as pension funds and mutual funds were better positioned to exercise influence over public company executives.

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19 Quigley, Crossland & Campbell, supra note 17, at 944–45, 947.
than were individual stockholders. By the 1990s, with institutional investors owning as many shares as retail investors, and more in larger companies, there was optimism that asset managers would forsake a traditional bias in favor of passivity. In fact, high hopes for a meaningful governance contribution by institutional shareholders went largely unfulfilled. With isolated exceptions, pension funds and mutual funds refrained from intervening in the affairs of public companies as the twentieth century drew to a close.

While institutional investors generally stood back, shareholder value nevertheless emerged as the top priority for executives. During the 1990s, managerial compensation became primarily equity-based, largely in the form of stock options. Executives correspondingly focused intently on the expectations of investors who could send share prices tumbling in the event of an unwelcome earnings surprise. As of 2000, there was a general consensus “that . . . managers of the corporation should be charged with the obligation to manage the corporation in the interests of its shareholders.”

At the same time that internal constraints on executives were becoming more robust, competitive pressure from rival firms was growing in importance as an external constraint. As the twentieth century concluded, many industries experienced an influx of new entrants, the most effective of which became known as “disrupters.” Access to finance continued to improve for these rivals to dominant firms. The challengers could also rely increasingly on technological innovation, such as the rise of the internet, to gain ready access to specialized resources that had previously provided dominant incumbents with a decisive and enduring competitive advantage.

While more robust corporate governance and increased competition from rivals counteracted to some degree the expansion of managerial discretion implied by deregulation, declining union power, and improved access to capital, public company executives retained considerable freedom of action. Abuse of the discretion available resulted in a series of major corporate scandals in the early 2000s. Corporate governance-related constraints were duly tightened, with regulatory reform playing a prominent role. “Activist” hedge funds specializing in buying up sizeable stakes in target companies and agitating for change also emerged as a significant disciplinary mechanism. Bank executives nevertheless retained considerable scope to engage in freewheeling practices that contributed to the onset of the 2008 financial crisis. Tougher regulation duly followed. By 2010, top executives arguably even qualified as “embattled.” The retreat has since ended, however, with CEO pay and CEO tenure both increasing since 2010.

There have been suggestions that the concentration of share ownership in the hands of leading institutional investors has reached the point where the separation of ownership and control Berle and Means identified is merely of historical interest. In fact, Berle and Means’s characterization of public company governance remains apt. “Mainstream” institutional investors continue to be reluctant to intervene in the running of public companies. This seems unlikely to change for the foreseeable future, particularly given the rapid growth recently of investment funds that track well-known stock market indices rather than trying

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to outperform the market. The cost-conscious investment model these “passive” funds follow greatly suppresses their incentive to become involved in the affairs of companies in which they own shares.

While the public company has been transformed since the managerial capitalism era, the basic legal foundation of such firms has remained unchanged. *The Structure of the Corporation*, a widely cited 1976 monograph by corporate law scholar Melvin Eisenberg, illustrates the point. He sought in his book “to develop new and more highly articulated models of corporate structure.” As a departure point he described the “well known” outlines of “the received legal model of the corporation,” saying “under this model, the board of directors manages the corporation’s business and makes policy; the officers act as agents of the board and execute its decisions; and the shareholders elect the board...”

Eisenberg stressed that “the received legal model” did not accurately describe at the time how corporations functioned in practice. Managerial power, he said, was vested as a practical matter in the hands of “officers” (i.e., full-time executives), and shareholder election of directors typically was an empty formality because existing management controlled the solicitation of proxies, the written documentation most shareholders would use to cast their votes. Nevertheless, the model has proved to be durable. In a 2008 law review article William Bratton and Michael Wachtter simultaneously cited examples of trends affecting public companies to show that “the corporate landscape changed dramatically” since 1976, while remarking upon the continuity of “the received legal model” Eisenberg had summarized. The situation in Delaware, where a majority of US public companies are incorporated, illustrates the continuity. Amidst incremental modifications in the years since the last major revision of the Delaware General Corporation Law in 1967, the provisions that vest the board with the authority to manage the company, authorize the appointment of corporate officers, and give shareholders the power to elect directors have not been altered materially.

**This Book’s Contribution**

For those familiar with developments affecting public companies over the past half century it will not be news that the public company of today differs considerably from its managerial capitalism era counterpart. Bratton and Wachtter are hardly alone in acknowledging the corporate landscape has changed dramatically. Adrian Woolridge, in a 2011 survey of

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24 *Eisenberg, supra* note 23, at 6.

25 Id. at 1.

26 Id. at 3–4.

27 Id. at 97–104, 139–41.


developments in management theory, observed that companies "are remarkably fluid organizations. Over the past couple of decades they have been forced to rethink almost every tenet of managerial wisdom."31 Rick Wartzman, an academic and journalist, observed in 2014 "there is no question that the ethos of corporate America had changed dramatically over the past 40 years."32 Peter Clapman and Richard Koppes, venerable experts in the art of shareholder activism, noted in 2016 "(c)ompared with today, the corporate governance of the 1980s is nearly unrecognizable."33 Likewise, according to a 2016 book review in the Wall Street Journal

In The New Industrial State, published in 1967, John Kenneth Galbraith argued that big American companies were self-perpetuating automatons. They were responsible to no one, least of all indifferent stockholders. A half-century later, it’s a rare day when some hedge fund titan fails to deliver an ultimatum to an under-achieving CEO to repurchase stock, or pay out a dividend, or else.34

While there is awareness of a significant break with the past with US public companies, historical analysis is patchy. There is, for instance, an extensive literature on corporate governance but the research is largely ahistorical.35 From the 1980s through to the present day, dozens of articles and books have drawn attention to intensifying competitive pressure affecting companies and executives, but meaningful historical perspective has generally been lacking.36

Some may think the events involved are too recent to merit a historically oriented investigation. In fact, substantial water has now gone under the bridge. In 2015, Nitin Nohria planned to refer to Lee Iaccoca, headline-grabbing chief executive of automaker Chrysler from 1978 to 1992, in Nohria’s commencement address as dean of Harvard Business School. He changed his mind when staff told him that many of the students would not know who Iaccoca was.37

A brief précis of the ground covered by a series of books that capably address significant facets of the transformation the US public company has undergone from the managerial capitalism era to the present day illustrates that important analytical gaps remain. Rakesh Khurana’s Searching for a Corporate Savior (2002) has a chapter entitled “The Rise of the

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31 Adrian Wooldridge, Masters of Management 146 (2011).
35 James D. Cox, How Delaware Law Can Support Better Corporate Governance, in Perspectives on Corporate Governance 335, 335 (F. Scott Kieff & Troy A. Paredes eds., 2010). Roy Smith and Ingo Walter’s Governing the Modern Corporation (2006) offers valuable historical background but does so primarily to provide context for an analysis of present-day corporate governance.
36 For a partial exception, see Amanda Bennett, The Death of the Organization Man (1990).
Charismatic CEO* that provides various intriguing historical insights but the bulk of the book focuses on the position of the chief executive at the time of writing.\textsuperscript{38} David Skeel’s 
*Icarus in the Boardroom (2005)* offers a perceptive analysis of changes over time affecting public companies that set the scene for the corporate scandals occurring in the early 2000s but canvases only cursorily other facets of publicly traded firms, and only touches briefly on the managerial capitalism era.\textsuperscript{39}

The rapid financial sector growth that management professor Gerald Davis canvasses in *Managed by Markets: How Finance Reshaped America* (2009) had a significant impact on US public companies, but this was only one of a series of factors that transformed such firms.\textsuperscript{40} In *The Vanishing American Corporation* (2016) Davis draws on history to explain why the public corporation’s days may be numbered but deals primarily with the consequences of the purported corporate collapse and with what is likely to come next.\textsuperscript{41} Mark Mizruchi’s *The Fracturing of the American Corporate Elite* (2013) offers a perceptive take on changes affecting the public company in the decades following World War II but focuses primarily on politics as he argues that the decline of a pragmatic managerial elite from the early 1970s onward had unfortunate consequences for democracy.\textsuperscript{42} David Kotz’s *The Rise and Fall of Neoliberal Capitalism* (2015) covers much the same time period as this book and discusses big business with some regularity but concentrates on changes affecting capitalism generally rather than public companies specifically.\textsuperscript{43} Finally, Rick Wartzman’s *The End of Loyalty* (2017) offers rich historical detail on four iconic US corporations—Coca-Cola, GE, General Motors, and Kodak—but focuses pretty much exclusively on labor relations in those firms.\textsuperscript{44}

This book will offer the purpose-built historical analysis of the transformation the public company has undergone since the mid-twentieth century that has thus far been lacking. With the rise of managerial capitalism providing the chronological departure point, the book focuses closely on circumstances affecting public company executives. The changes the public company has undergone will be described primarily by reference to constraints, both internal and external, on managerial discretion.

Canvassing the public company’s transformation through the prism of constraints on public company executives is a helpful way of identifying relevant trends. As boards and shareholders are regarded as being theoretically pivotal “internal” checks on managerial discretion, developments concerning both will be analyzed in detail. Since unions were a potent “external” constraint during the managerial capitalism era before receding in importance, due account is taken of labor relations. Regulation, as another potentially significant external limitation on executive discretion, will be discussed in some detail. Likewise, because pressure

\textsuperscript{38} Rakesh Khurana, *Searching for a Corporate Savior: The Irrational Quest for Charismatic CEOs* 71 (2002).
\textsuperscript{40} Gerald F. Davis, *Managed by the Markets: How Finance Reshaped America* (2009).
\textsuperscript{41} Gerald F. Davis, *The Vanishing American Corporation: Navigating the Hazards of a New Economy* 93 (2016).
\textsuperscript{42} Mark S. Mizruchi, *The Fracturing of the American Corporate Elite* (2013).
\textsuperscript{43} Kotz, supra note 9.
\textsuperscript{44} Rick Wartzman, *The End of Loyalty: The Rise and Fall of Good Jobs in America* 95 (2017).
from rivals can do much to determine how public company managers conduct themselves, considerable attention will be paid to the intensity with which competitive forces operated. Despite the emphasis placed on internal and external constraints, due regard will be had for key decade-specific developments impacting upon public companies and their executives. These include the market for corporate control in 1980s, a “dot.com” stock market frenzy in the late 1990s, the corporate scandals of the early 2000s, and the financial crisis of 2008. The end result will be a history that draws together and places in chronological and theoretical context the inter-related trends that have transformed the American public company in myriad ways since the mid-twentieth century.

Given the insights the book offers, it should find an audience among US readers interested in business history and students of the public company’s current configuration. For readers elsewhere, a caveat is in order, namely that in the corporate realm considerable care should be used when generalizing from the American experience. Corporate governance arrangements differ across borders depending on various factors. Ownership patterns are particularly crucial. Since the middle of the twentieth century, a separation of ownership and control has been a hallmark of US capitalism, meaning that executives lacking a substantial equity stake have been the key corporate decision-makers in most of America’s largest firms. This book, and the insights it provides, reflects this. In most other countries, in contrast, shareholders with ownership stakes large enough to exercise substantial control over management are the norm in major business enterprises. The influence dominant shareholders exercise means that in most countries any account of changes affecting large companies must address their role in a way that is unnecessary in the American context.

While generalizing from the US experience must be done with care, the insights offered here regarding the public company should still resonate on a cross-border basis. American public companies were playing an outsized role in the global economy during the middle of the twentieth century and remain crucial players. As of 2017, ranked by annual revenue, 38 of the world’s largest 100 companies were American, as were half of the top 10. With publicly

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48 Brian R. Cheffins, Corporate Ownership and Control: British Business Transformed 5–6 (2008) (indicating that an “insider/control-oriented” system of ownership and control is much more prevalent than the “outsider/arm’s-length” regime existing in Britain and the United States); Gur Aminadav & Elias Papaioannou, Corporate Control Around the World, NBER Working Paper 23010 19 (2016) (reporting that with publicly traded companies from 85 countries as of 2012, the ownership stake of the largest shareholder averaged 31.5 percent); María Gutiérrez & Maribel Sáez Lacave, Strong Shareholders, Weak Outside Investors, 18 J. Corp. L. Stud. 1, 4 (2018) (table based on 2016 data from the Osiris database of Bureau Van Dijk, indicating that among 16 continental European countries in only 3 did a majority of large publicly traded firms lack a shareholder owning 25 percent or more of the shares).
traded companies, ranked by market capitalization, 55 of the 100 largest were American.\(^5^0\)
Moreover, even though due allowance must be made for differences between the corporate economy in the United States and in other countries, American developments have been a key reference point for what has occurred with business enterprises elsewhere. As a Financial Times columnist observed in 2015, “(a)s with much to do with capitalism, the debate centres on the US.”\(^5^1\) Insights this book offers correspondingly should be relevant in key respects for readers in countries where big business is organized differently than it is in the United States.

With respect to the book’s contribution, there are two additional points the reader should bear in mind. The first relates to nomenclature. A reader might be expecting the deployment of a handy catchphrase to describe the form of capitalism that superseded managerial capitalism. No single label, however, captures properly the nuance involved.

While Chandler’s Scale and Scope focused on the period between 1880 and 1940, he offered an afterword tracing developments from the 1950s onward.\(^5^2\) He said the 1990 version of the modern industrial enterprise was undergoing changes that could be leading to a “new era of managerial capitalism” that “the historian is not yet in a position to analyze or evaluate.”\(^5^3\) We have moved on nearly three decades in the meantime and now know that what was occurring as Chandler wrote was not merely a new era of managerial capitalism but a new era entirely for the public company.

Various observers have sought to christen the post-managerial capitalism era, seeking primarily to capture the growing importance of shareholders and more particularly financial intermediaries such as mutual funds and pension funds. Contenders have included “fiduciary capitalism,”\(^5^4\) “investor capitalism,”\(^5^5\) and “shareholder capitalism.”\(^5^6\) These terms, however, fail to capture an important part of the story.

This book will describe in some detail how shareholders have grown in importance as an internal constraint on public company executives. An incorrect inference one might draw, however, from labels such as “fiduciary,” “investor,” or “shareholder” capitalism is that stockholders marginalized other potentially key players in the public company. In particular, with managerial capitalism displaced, one might assume that the power and influence of executives receded markedly, presumably with little room to maneuver as shareholder power grew. This did not happen.

\(^5^2\) Chandler, supra note 6, at 605–28.
\(^5^3\) Id. at 621.
\(^5^6\) Davis, supra note 40, at 63.
While shareholders moved up the priority list for public company executives as the twentieth century drew to a close, in various ways the discretion available to senior management was greater than it was when managerial capitalism prevailed. This resulted in “the advent of (a) new breed of corporate leader” at the expense of “the professional Organization Man who toiled in anonymity,” culminating in the rise of “the charismatic CEO” as the twentieth century ended. CEOS took a hit in the 2000s, but they remain a dominant force in public companies. As venerable corporate governance expert Bob Tricker said in a 2015 text on the topic “(m)anagement runs the business.” An appropriately pitched catchphrase for the post-managerial capitalism era must reflect the continuing importance of corporate executives, and for now we await a suitable moniker.

The second point for the reader to bear in mind is a normative stance not taken. The move away from mid-twentieth-century managerial capitalism could be a cause for regret. Donald Trump campaigned for president in 2016 using the slogan “Make America Great Again.” In so doing he was seeking to tap into nostalgia for a 1950s-style American Dream oriented around national prosperity, home ownership, secure gainful employment, and upward mobility. The nostalgia could readily extend to the public company because it was a crucial element of mid-twentieth-century economic prosperity. There has indeed been some speculation that managerial capitalism might return, and that this could be a good thing. This book refrains from offering an explicit value judgment on the merits of managerial capitalism as compared with what replaced it. This is because taking a normative stance on its passing is likely to be a moot exercise.

If there was a realistic possibility that managerial capitalism was likely to return, the analysis this book provides of its operation and demise would offer a solid evidentiary platform for deciding whether its restoration would be a “good” or “bad” thing. As the concluding chapter argues, however, it is highly unlikely that managerial capitalism or a regime closely resembling it will return. This verdict is akin to that offered by Wartzman in relation to a mid-twentieth-century labor-related “Golden Age” where “the American corporation used to act as a shock absorber” as part of a social contract between large corporate employers and their staff. Wartzman admires the era and the social contract he says was in place. He concedes, however, that the corporate social contract cannot be reconstructed because “(t)he Golden Age was sui generis, and too much has changed since then.” The situation is, in all likelihood, the same with public companies and managerial capitalism.

57 Khurana, supra note 38, at 71.
61 Chapter 7, notes 476, 480–87 and accompanying text.
62 WARTZMAN, supra note 44, at 5, 19, 81.
63 Id. at 361.
The fact that the book does not stake out an explicit position on whether the passing of managerial capitalism was a “good” or “bad” thing does not mean this volume is an exercise in studied neutrality. For instance, while the hostile takeovers of the 1980s have been widely criticized, attention will be drawn to the fact they provided management with a potent incentive to focus on the bottom line in an era when neither boards nor shareholders were monitoring executives vigilantly and public company executives were being criticized for being counterproductively complacent. Likewise, though various observers have argued that academic theorizing did much to push shareholder value to the forefront in public companies as the twentieth century drew to a close, we will see that intellectual analysis played merely a subsidiary role. Moreover, while the dot.com stock market of the late 1990s is often characterized as a bubble, the point will be made that with tech companies currently dominating the list of the world’s largest companies, the internet-obsessed investors of that era were not engaging entirely in a flight of fancy.

Iconic Public Companies Transformed

The reader will now be aware in a general way how the public company has been transformed since the managerial capitalism era. Before we examine the key trends in detail in the chapters that follow, it is instructive to use case studies to illustrate the trends the book canvasses. The remainder of the book is organized chronologically rather than thematically. Cross-referencing is used to connect key themes across time, but the chronological orientation means the overall structure and shape of the story the book addresses may nevertheless be obscured to some degree. The case studies draw out in a concrete fashion the full narrative arc of the book.

We will consider the trajectory of two iconic American companies, namely the American Telephone and Telegraph Company and General Electric. Their prolonged prominence makes them atypical. AT&T and GE were the only two firms operating under their own names that Forbes included in rankings of the 50 largest companies in the United States as of 1917 and 2017.64 Despite this abnormal continuity, both firms underwent great change, and did so in ways that were representative of trends affecting large public companies generally.

AT&T

The American Telephone and Telegraph Company was incorporated in 1885 and initially was a wholly owned subsidiary of the Bell Telephone Company that telephone pioneer Alexander Graham Bell cofounded in 1877.65 In 1899 AT&T acquired the assets of the parent company and became the apex of the Bell system ("Ma Bell"), which encompassed licensees operating telephone networks throughout the United States.66 AT&T would go on to become the largest company in the world and an iconic managerial enterprise before experiencing tumultuous changes from the 1980s onward. AT&T was distinctive in that for

64 America’s Top Companies, Forbes, Sept. 28, 2017, 38.
65 Thunderbird School of Global Management, AT&T: Twenty Years of Change, Nov. 17, 2001, 1.
decades it had federally sanctioned monopoly power that meant it “could be run like a family” to a greater extent than other large companies.\textsuperscript{67} Nevertheless, Time referred to AT&T in 1995 as long having “been almost synonymous with Big Business.”\textsuperscript{68} Among America’s elite corporations AT&T was for decades “the bluest blue chip,” and its experience illustrates in various ways how “the corporate ethic . . . changed everywhere.”\textsuperscript{69}

Fully diffuse share ownership would become the norm in large US business enterprises during the middle decades of the twentieth century.\textsuperscript{70} AT&T moved in this direction considerably earlier. Key AT&T patents relating to telephones expired in the 1890s and the corporation found responding to competition from new entrants to be a major financial drain.\textsuperscript{71} This forced a group of Boston financiers who had exercised substantial control over the Bell system since 1880 to loosen their grip.\textsuperscript{72} The number of AT&T shareholders was simultaneously growing rapidly, from 7,515 in 1900 to 40,381 in 1910.\textsuperscript{73} When Clarence Mackay, a telegraph magnate, used the stock market in 1907 to buy up enough equity to become by far the largest single stockholder he only owned 5 percent of the shares.\textsuperscript{74}

Elite Wall Street investment bank J.P. Morgan & Co. would supplant the Boston financiers as the locus of effective control for AT&T in 1906 due to extensive capital raising on the corporation’s behalf.\textsuperscript{75} The House of Morgan orchestrated behind the scenes the 1907 appointment of Theodore Vail, a former senior AT&T executive, to the top managerial post of president.\textsuperscript{76} The bank’s influence over AT&T waned after J.P. Morgan died in 1913.\textsuperscript{77} Correspondingly, Vail, identified by the editor of Forbes in 1919 as one of America’s six greatest business leaders,\textsuperscript{78} had substantial discretion to run the company in the manner he thought best. That year he turned the presidency of the company over to Harry B. Thayer, a friend of Vail’s who had worked as part of the Bell system since 1879.\textsuperscript{79} Ownership of AT&T

\textsuperscript{67} Stephanie Mehta, \textit{Say Goodbye to AT&T}, \textit{Fortune}, Oct. 1, 2001, 134 (quoting Bob Lucky, an employee for 31 years at AT&T’s Bell Labs subsidiary).


\textsuperscript{69} Mehta, supra note 67.

\textsuperscript{70} Chapter 2, notes 82–95 and related discussion.


\textsuperscript{72} Brooks, supra note 66, at 122.


\textsuperscript{76} Brooks, supra note 66, at 123; Tim Wu, \textit{The Master Switch: The Rise and Fall of Information Empires} 50–51 (2010). Vail denied at the time of the appointment that Morgan had exercised any influence: \textit{Vail Is Fish Successor}, \textit{Bos. Globe}, May 1, 1907, 16.

\textsuperscript{77} Brooks, supra note 66, at 135.


\textsuperscript{79} Brooks, supra note 66, at 153, 160.
shares had dispersed still further in the meantime, with the company having 281,149 shareholders by 1923, more than any other US public company.80

A government investigator in the 1930s identified the periods of control for AT&T as being “banker” from 1907 to 1918, “government” from 1918 to 1919 due to a brief war-driven federal takeover of the telephone system, and “management” thereafter.81 Berle and Means concurred with the post-1919 assessment in their 1932 classic *The Modern Corporation and Private Property*, part of which comprised a study of ownership and control of the 200 largest US industrial companies.82 They listed AT&T as one of 21 firms that was under management control because there was affirmative evidence that the firms lacked a single shareholder group owning 20 percent or more of the shares.83 Berle and Means, citing a 1930 press report, identified Sun Life Assurance Co. as AT&T’s largest shareholder with 0.6 percent of the shares, and suggested AT&T, with its assets of nearly $5 billion and 568,000 shareholders, offered “perhaps the most advanced development of the corporate system.”84

AT&T became in additional ways an early twentieth century exemplar of the sort of managerial capitalism that would flourish in corporate America during the middle decades of the century. AT&T had in place by 1910 a sophisticated central administration system that would change little until the 1970s.85 As Alfred Chandler said, building, operating, and coordinating a long-distance telephone network “brought, indeed demanded, the creation of (a) modern managerially operated business (enterprise).”86 Also, in a manner that would be familiar in the managerial capitalism era, AT&T eschewed the ruthless, hard-charging approach often associated with businesses that were dominant in the late nineteenth and early twentieth centuries.87 Doing so would help to ensure that AT&T would retain quasi-monopolistic market power for decades to come.

Complaints by Mackay and a group of independent telephone companies that AT&T was violating antitrust laws ultimately resulted in AT&T agreeing in 1913 to a consent decree known as the “Kingsbury Commitment,” named after Nathan Kingsbury, then AT&T’s vice president.88 AT&T provided an undertaking to the federal attorney general to divest itself of a dominant stake in Western Union, the telegraph company, thereby foreclosing any possibility of total AT&T control of wire communications. Independent telephone companies were also permitted access to AT&T’s long-distance network at government-set rates that were “just and fair.” Crucially for AT&T, though, it was given a license to acquire competitors

80 Becht & DeLong, supra note 73, at 641. AT&T had passed Pennsylvania Railroad as the corporation with the most shareholders by 1918—Berle & Means, supra note 2, at 52.
81 N.S.B. Gras, BUSINESS AND CAPITALISM: AN INTRODUCTION TO BUSINESS HISTORY 277 (1939).
82 For a succinct overview of Berle and Means’s empirical findings see Chapter 2, notes 74–76 and related discussion.
83 Berle & Means, supra note 2, at 99, 107; Cheffins & Bank, supra note 47, at 453.
84 Berle & Means, supra note 2, at 4–5, 99.
85 Chandler, Visible, supra note 5, 202.
86 Id. at 189.
88 Brooks, supra note 66, at 156; Wu, supra note 76, at 55, 172.
and integrate a nationwide telephone network unmolested, a pivotal competitive advantage locked in by statute in 1921 when Congress passed the Willis-Graham Act.\textsuperscript{89}

The Kingsbury Commitment, by “sanction(ing) the most lucrative monopoly in history,”\textsuperscript{90} set the stage for AT&T to become one of the world’s most prominent corporations through much of the remainder of the twentieth century. At the same time, the deal could be characterized, as President Woodrow Wilson did, as an act of business statesmanship.\textsuperscript{91} A 1975 history of the telephone industry in the United States explained why, saying that as of 1913 for AT&T and Vail, “(t)wo courses were now open—to push on toward monopoly at the expense of public hatred and a probable huge government antitrust suit to dismantle the company, or to compromise. Vail, in what is regarded, with justice, as one of his most statesmanlike acts, chose the latter course.”\textsuperscript{92} Timothy Wu, in a 2010 study of information empires, described Vail’s efforts similarly:

Proportionately, he probably delivered less profit for shareholders than Wall Street might expect today. Vail was acutely aware of how important the telephone network would be to the nation, and there is no evidence that he ever put AT&T’s profitability ahead of the obligation to serve.\textsuperscript{93}

The trading off of shareholder profit against other interests that underpinned the Kingsbury Commitment reputedly was undertaken with some regularity by public company executives in the managerial capitalism era.\textsuperscript{94} Certainly the ethos would be sustained at AT&T. Walter Gifford, who began working in the Bell System in 1904, succeeded Thayer as president in 1925 and would remain in charge for nearly a quarter of a century thereafter,\textsuperscript{95} said in 1928 “a greater sense of responsibility is assumed by those who serve as managers for these great enterprises. Our job is to balance the relationships among the public, the stockholders and the employees so all three groups will be satisfied.”\textsuperscript{96}

A byproduct of “balance” was that AT&T delivered mediocre returns to shareholders. According to Forbes, few matched Gifford’s “phenomenal record” in running what was the world’s largest business enterprise.\textsuperscript{97} The company’s shareholders might have begged to differ. With regulation pushing down rates AT&T could charge, its share price in the late 1940s was much the same as it had been in 1901, implying a decline of roughly two-thirds in real terms.\textsuperscript{98} Nevertheless, with AT&T paying generous dividends and with the wide dispersion

\begin{thebibliography}{99}
\bibitem{89} 42 Stat. 27 (1921); \textit{Brooks, supra} note 66, at 160; \textit{Wu, supra} note 76, at 56, 59; \textit{Richard H.K. Vietor, Contrived Competition: Regulation and Deregulation in America 172–73} (1994).
\bibitem{90} \textit{Wu, supra} note 76, at 59.
\bibitem{91} \textit{Brooks, supra} note 66, at 136.
\bibitem{92} \textit{Id.} at 135–36.
\bibitem{93} \textit{Wu, supra} note 76, at 60. See also James Flanigan, \textit{Executives Get Greedy despite Huge Paychecks}, \textit{LA Times}, Dec. 4, 1988, D1 (indicating that under Vail the stock price did not go up but the dividends got paid).
\bibitem{94} Chapter 2, notes 9, 238–50 and accompanying text.
\bibitem{95} \textit{Brooks, supra} note 66, at 168–69.
\bibitem{96} John F. Sinclair, \textit{American Bell Leader Limited}, \textit{LA Times}, Apr. 8, 1928, B8. See also \textit{Brooks, supra} note 66, at 172–73.
\bibitem{98} \textit{Brooks, supra} note 66, at 226–27.
\end{thebibliography}
of shares guaranteeing the president substantial autonomy, Gifford securely held one of the most powerful positions in American business as “a kind of king.”  

In keeping with an established AT&T pattern, in 1948 Gifford took the lead in finding his successor and ultimately chose Leroy Wilson, who had been part of the Bell System since 1922, from among four internal candidates. Consistent with a strong managerial capitalism norm in favor of elevating a current executive to the CEO post, the tradition of chief executives coming “up the telephone pole” would endure. In 1971 Haakon Romnes, then AT&T’s chief executive, responded to a suggestion from a securities analyst that the company might need “fresh blood” by praising the company’s management development system in the course of defending its promote-from-within policy. Romnes’s successors John deButts and Charles Brown both spent their entire business careers with AT&T.

Vail and Gifford’s public service ethos also endured at AT&T. Following World War II AT&T was an organization of “almost conspicuously average . . . likeable. . . . ‘Bell-shaped men.’ ” Supposedly “even those high in the executive ranks were exemplified by the repairmen who traditionally took their sweet time installing telephones and making sure they worked, even though many of these accounts were not profitable for AT&T.” Brown said in 1981 “(t)he people in this company understand—not only me, but others—that we operate a business that’s essential to the public interest. These jobs carry with them a responsibility that is really like a public trust.”

With AT&T retaining its public service ethos, a corollary was that shareholder returns remained a secondary consideration. In 1958 Fredrick Kappel, who became AT&T’s president in 1956, wrote in the Christian Science Monitor that he put service before profits. This thinking permeated the managerial ranks. Reputedly, “AT&T’s managers saw profit as a way to support and extend the monopoly, not an end in itself. Cost control was an issue less for corporate efficiency than for ensuring that outlays didn’t upset the company’s regulatory overseers.” The New Yorker observed in 1982 that while AT&T’s stock performance was not particularly good despite being “the all-time champion favorite of widows and orphans or their trustees . . . the stockholder’s loss had been the public’s gain.”

99 Id. at 226, 228.
100 Id. at 228–29.
102 From the Bottom Up, Forbes, Nov. 15, 1947, 35.
106 Id.
107 Shook, supra note 104, at 52.
108 BROOKS, supra note 66, at 258.
The Public Company Transformed

AT&T’s “Bell-shaped men” tooted up some impressive accomplishments. Relying on technology developed by its Bell Telephone Laboratories subsidiary, AT&T improved dramatically capabilities for long-distance telephone calls and more or less achieved universal telephone service in the United States with penetration increasing from 50 percent in 1945 to 90 percent in 1969. Arno Penzias, a Nobel Prize-winning physicist who was a senior manager at Bell Labs from 1979 to 1998 said, “(t)he Bell System infused a million people with a common goal: We were taking care of the world.”

Despite the progress AT&T had made, by the 1970s its monopoly position was being eroded by technological innovations such as data transmission via microwave towers and the proliferation of equipment manufactured by AT&T competitors that could connect to AT&T’s telephone network using phone jacks. These changes coincided with an antitrust lawsuit the US government filed in 1974 arguing that AT&T’s quasi-monopoly was no longer appropriate or necessary for long-distance telephone service. AT&T, which had previously retaliated with sharp tactics when government regulators took tentative steps to foster competition in the parts of the telecommunications sector in which the company operated, realized that the 1974 lawsuit could jeopardize its future, and settled in 1982.

Under the 1982 settlement AT&T committed to divesting itself of the wholly owned Bell operating companies that were providing local telephone service, which in turn would come to be known as “Baby Bells.” The government, for its part, agreed to the dismantling of a 1956 antitrust settlement under which AT&T had agreed to restrict its activities to the regulated business of the national telephone system and government projects. In January 1984, pursuant to the 1982 settlement, “America’s largest private employer was split into eight separate pieces.” Under the Telecommunications Act of 1996 the Baby Bells were explicitly authorized for the first time to compete in long distance services, though AT&T’s share of the long distance market had already fallen to 50 percent from 90 percent 12 years earlier.

After the 1984 divestment of the “Baby Bells,” “AT&T suddenly found itself trying to operate in a world utterly foreign to its experience.” The switch from a regulated monopoly to a competitive environment necessitated a reinvention of its corporate culture to function

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112 Thunderbird School of Global Management, supra note 65, at 2; Tiebing & Estabrooks, supra note 71, at 199.
115 Wu, supra note 76, at 192.
116 Id. at 188–94; David Pauly, Ma Bell’s Big Breakup, Newsweek, Jan. 18, 1982, 58.
117 Wu, supra note 76, at 194.
120 Thunderbird School of Global Management, supra note 65, at 3.
121 Crossen & Solomon, supra note 110.
as a market participant with meaningful rivals.\textsuperscript{122} This was a company for which genuine consumer choice was largely foreign, as exemplified by Lily Tomlin’s Ernestine the Operator character on the late 1960s comedy sketch TV show *Laugh In*: “We don’t care. We don’t have to. We’re the phone company.”\textsuperscript{123} Indeed, in 1982, “(t) o prepare itself for the free market,” AT&T set up an academy “to teach its executives how to do what they haven’t had to do much of: sell.”\textsuperscript{124} A byproduct of AT&T’s introduction to market forces was that it would experience many of the trends transforming public companies generally in the United States in the late twentieth century, albeit often on a larger scale. After all, AT&T was, in the decades immediately following World War II, the largest public company in the world.\textsuperscript{125}

Labor relations constituted one facet of AT&T’s reinvention due to exposure to market forces. In the 1980s, unions were generally on the back foot,\textsuperscript{126} and the trend was pronounced at AT&T. Traditionally at AT&T lifetime employment was a fact of life for the rank and file, with job security being akin to that afforded by the government.\textsuperscript{127} Moreover, with AT&T’s quasi-monopoly status leaving it well positioned to pass rising labor costs along to customers, its Communications Workers of America (CWA) membership grew as the phone company did.\textsuperscript{128} In 1947, there were 650,000 AT&T employees, a new peak, most of who were union members.\textsuperscript{129} This figure had increased to 1,009,000 by 1984.\textsuperscript{130}

Things would soon change substantially. AT&T retained 173,000 employees after the 1984 divestiture.\textsuperscript{131} AT&T announced later that year plans to eliminate 11,000 jobs.\textsuperscript{132} The downsizing trend, which was pervasive among large American corporations during the 1980s, continued despite a nationwide strike in 1986 by the CWA against AT&T.\textsuperscript{133} AT&T felt it must drive down costs to stay competitive with ambitious long distance rivals such as MCI Communications and Northern Telecom.\textsuperscript{134} For AT&T staff the tradition of lifetime employment ended abruptly, leaving “people walking around . . . in a daze.”\textsuperscript{135} AT&T staffing figures fell to 273,000 by 1989, and by 1995 it was a clear downsizing leader, having eliminated 140,000 jobs since the 1984 breakup.\textsuperscript{136}


\textsuperscript{123} Mehta, *supra* note 67; Adam Cohen & William Dowell, *Ma Bell Calls It Splits*, Time, Nov. 6, 2000, 96.

\textsuperscript{124} *Ma Bell’s New School of Selling*, Newsweek, Oct. 25, 1982, 111.

\textsuperscript{125} *To Eat or Sleep Well*, Forbes, Jan. 4, 1958, 35, 57; *Thinking Unaccustomed Thoughts*, Forbes, May 14, 1971, 54.

\textsuperscript{126} Chapter 4, notes 405–06, 435–16 and related discussion.

\textsuperscript{127} Bruce Keppel, Olson Seeking to Take His Best Shot as Head of AT&T, LA Times, Nov. 19, 1986, B1.

\textsuperscript{128} *After the Bell Breakup: A New Ballgame for Unions*, Bus. Wk., May 13, 1985, 50.

\textsuperscript{129} Oliver J. Gingold, AT&T Misses $9 Mark, But Sees Upturn, Barron’s, Dec. 8, 1947, 27.

\textsuperscript{130} Thunderbird School of Global Management, *supra* note 64, at 2.

\textsuperscript{131} *Id.*


\textsuperscript{133} Chapter 4, notes 315–16 and accompanying text; AT&T, Union Yet to Feel Crunch of Strike, Hartford Courant, June 9, 1986, AC7; David Pauly, *The Wrong Battlefield*, Newsweek, June 16, 1986, 52.


\textsuperscript{136} Church & Curry, *supra* note 68; Trebing & Estabrooks, *supra* note 71, at 105; AT&T Freezes Hiring, Plans Shifts in Jobs, LA Times, July 22, 1988, F2.
Hectic acquisition activity was another 1980s corporate trend with which AT&T fell into line. The 1980s were the Deal Decade and AT&T, aiming to diversify with its telephone monopoly gone,\textsuperscript{137} joined the party, if slightly belatedly. Bob Allen, a long-time AT&T executive who became CEO in 1988,\textsuperscript{138} had within a year of taking office “made millions of dollars’ worth of acquisitions” and had plans to make more.\textsuperscript{139} AT&T persevered despite takeover activity dropping sharply as the 1980s ended.\textsuperscript{140} It even resorted in 1991 to a hostile takeover offer to acquire control of computer-maker NCR Corp. for $7.4 billion.\textsuperscript{141} The NCR deal was the biggest takeover in the history of the computer business to that time but AT&T went one better in 1993, paying $12.6 billion in stock in a friendly deal to acquire McCaw Cellular Telecommunications Inc.\textsuperscript{142}

AT&T’s acquisition spree quickly went sour. In particular, the NCR acquisition proved to be “a disastrous marriage,” resulting in losses of nearly $6 billion for AT&T.\textsuperscript{143} This was a catalyst for a 1995 breakup of AT&T into three companies, a computer company (NCR), a systems and equipment business that would become Lucent Technologies, and a communications company that remained AT&T.\textsuperscript{144}

AT&T’s unbundling was just one example of many during the 1980s and 1990s, as dozens of US public companies were restructured by way of split-ups and spin-offs.\textsuperscript{145} Unlocking value for stockholders was an oft-cited rationale for such moves in an era when improving shareholder returns was increasingly identified as the top priority for public companies.\textsuperscript{146} With its 1995 breakup, AT&T fell into line amidst complaints that AT&T was worth less than the sum of its parts.\textsuperscript{147} Allen said that while “investors couldn’t understand the strategy of the combined company,” with the split they would “clearly understand it now.”\textsuperscript{148} So it seemed, at least initially, with the price of AT&T’s shares rising 10 percent when Allen announced in September 1995 “AT&T is reinventing itself once again.”\textsuperscript{149}

\textsuperscript{137} Trebing & Estabrooks, supra note 71, at 203, 205.
\textsuperscript{138} Calvin Sims, Robert Allen Is on the Line, NY TIMES, Apr. 24, 1988, F5.
\textsuperscript{139} Robert Allen, supra note 134.
\textsuperscript{140} Chapter 4, notes 147, 152–54 and related discussion.
\textsuperscript{142} AT&T’s Bold Bet, BUS. WK., Aug. 30, 1993, 26.
\textsuperscript{143} Sara Rimer, A Hometown Feels Less Like Home, NY TIMES, Mar. 6, 1996, A1; see also Clossen & Solomon, supra note 110.
\textsuperscript{144} Thunderbird School of Global Management, supra note 65, at 4; Trebing & Estabrooks, supra note 71, at 215.
\textsuperscript{145} Chapter 4, note 100 and accompanying text; Church & Curry, supra note 68; Wesley B. Truitt, The Corporation 61–63 (2006).
\textsuperscript{148} Useem, supra note 55, at 4.
The 1995 AT&T breakup would send the company further down the downsizing path, with AT&T announcing in January 1996 that 40,000 additional jobs would be cut as a result of its corporate shake-up.\(^{150}\) Downsizing was at that moment very much in the media spotlight, and AT&T found itself to be a potent symbol of the phenomenon.\(^{151}\) Allen was labeled a “corporate killer.”\(^{152}\) Allen protested, saying he hated firing people.\(^{153}\) At the same time he acknowledged that there “used to be a lifelong commitment on the employee’s part and our part. But our people now realize that the contract does not exist anymore.”\(^{154}\) The optics for AT&T also proved to be terrible. Investors responded to the January 1996 announcement of mass layoffs by adding $6 billion to AT&T’s stock market valuation, prompting a Newsweek columnist to suggest it would have been timely for top AT&T executives to donate some of their executive compensation to a fund for the fired employees.\(^{155}\)

The January 1996 downsizing would also embroil AT&T and Allen in a contretemps over executive pay, a highly controversial topic as the 1990s began and an issue in the 1992 election campaign that resulted in Bill Clinton becoming president.\(^{156}\) The Financial Times observed in April 1996 that “(t)he increasingly vexed topic of US executive pay is in the news again” and attributed this primarily to a “roasting” over CEO compensation Allen had been subjected to at AT&T’s annual stockholder meeting.\(^{157}\) The controversy arose primarily because AT&T “disclosed a pay package for Allen that would have made Croesus blush, right on the heels of (the) massive layoff announcement” AT&T had made in January.\(^{158}\) Allen was to be awarded stock options with a projected value of nearly $10 million, bringing his overall pay to $16 million.\(^{159}\)

If the 1995 AT&T breakup had been a strategic success, this may have helped to cancel out the downsizing and executive pay criticism. Fortune indeed hailed the AT&T split as a “move that would “go down as one of the classic organizational restructurings of American business.”\(^{160}\) Things quickly went awry, however, setting the stage for AT&T to conform to yet another trend affecting public companies as the twentieth century drew to a close, the hiring of an external candidate as CEO.\(^{161}\)

Between 1995 and mid-1997, AT&T suffered a “stock market debacle” as its share price fell by one-quarter during a bull market so potent that the next-weakest performance among the biggest 50 American public companies was telecommunications and electronics firm
Motorola with a 23 percent increase.162 Business Week said "(e)nough. It’s time for the board of AT&T to find real leadership" and indicated that the company needed "a dynamic leader."163 Allen himself concluded that the time had come to break with the AT&T tradition of chief executives being appointed from within the company.164 He left it to the board to appoint his successor, which decided after a protracted search to choose Michael Armstrong, chief executive of Hughes Electronics.165 A securities analyst enthused "AT&T appears to have gotten the superstar CEO it needs."166

Armstrong quickly sought to transform AT&T’s “calcified corporate structure.”167 The most tangible manifestation was a new flurry of acquisitions that included a hostile take-over of cable giant MediaOne for which AT&T ended up paying $44 billion.168 Initially, Armstrong enjoyed success, eliciting praise in the Harvard Business Review for "galvanizing AT&T" and for being "a real leader if there ever was one."169 His “acquisition binge . . . ha(d) even his harshest critics marveling,”170 and AT&T’s stock rebounded strongly.171 The share price rally, however, was likely underpinned indirectly by yet another trend impacting public companies in the early 2000s, namely a corporate-related scandal.

In late 1999, Armstrong indicated he was delighted to have persuaded Jack Grubman, a highly influential telecommunications securities analyst at the Salomon Smith Barney unit of Citigroup, to abandon a bearish outlook on AT&T stock of four years’ standing.172 Grubman explained at the time there had been some suspicion on Wall Street “that AT&T has been playing with the numbers to get the stock price up,” but indicated that he felt Armstrong did not want to this to be part of his legacy and said "(i)f the numbers are real, the stock is huge."173 Grubman’s re-examination of AT&T was precipitated by Sandy Weill, Citigroup’s chairman and an AT&T director, who had asked Grubman to take a “fresh look” at the stock.174 Weill contemporaneously donated $1 million to a highly selective Manhattan preschool that in turn admitted Grubman’s twin two-year-olds.175 The result was a scandal

164 Ram Charan, Why CEOs Fail, Fortune, June 21, 1999, 68.
165 Mehta, supra note 67.
166 Khurana, supra note 38, at 78.
167 Jared Sandberg, She’s Baaaack, Newsweek, Feb. 15, 1999, 44.
171 Mehta, supra note 67.
172 Janet Guyon, AT&T’s Big Bet Keeps Getting Dicier, Fortune, Jan. 10, 2000, 126.
173 Id.
175 Id. at 435-18; Roger Lowenstein, Origins of the Crash: The Great Bubble and Its Undoing 212-13 (2004).
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dubbed “nursery-schoolgate.” In 2003, in a settlement the federal Securities and Exchange Commission and other regulators reached with Grubman where he was banned for life from the financial services industry and had to pay a $15 million fine, his upgrading of AT&T was specifically cited as a factor relevant to the proceedings.

Ultimately, Armstrong’s flurry of M&A activity would work out no better than Allen’s mid-1990s acquisition spree. AT&T’s share price fell from $57 to $22 between the end of 1999 and late 2000. Aware investors were disgruntled, Armstrong announced in October 2000 a plan to break the company up again into pieces. In 2001, AT&T spun off AT&T Wireless and followed soon after with the sale of its cable business, leaving AT&T to operate in a long distance market buffeted by intense price competition. Fortune remarked ruefully “(w)e really are witnessing the death of an American icon.” Armstrong jumped ship in 2002 to become chairman of the board of cable operator Comcast. Harvard Business School’s Rakesh Khurana cited Armstrong as an example of a chief executive hired on the often erroneous assumption that a managerial “savior” could solve a troubled company’s problems.

In 2005, SBC, known as Southwest Bell when it was one of the Baby Bells spun off in 1984, bought its former parent for $15 billion in stock. SBC said at the time it would eliminate the historic AT&T brand. SBC quickly changed its mind and decided to scrap its own name and style itself AT&T, reasoning that no one outside its service area knew what SBC meant.

In terms of corporate lineage the legacy of the SBC/AT&T acquisition is somewhat ambiguous. A senior SBC executive said at the time of the name switch that it might be the same name as the old AT&T “but it’s not the same company.” On the other hand, Tim Wu argued in his 2010 study of information empires that AT&T, “that perennial phoenix,” “was back.” Regardless, for present purposes the key point is that AT&T, formerly a paradigmatic managerial capitalism company, was transformed from the 1980s onward in ways that illustrate numerous trends changing public companies over the same period.
GENERAL ELECTRIC

Though AT&T illustrates effectively key trends that have affected US public companies historically it was, as a state-sanctioned monopolist for much of the twentieth century, a highly atypical corporation. One result was that regulatory developments such as its 1982 antitrust settlement dictated the pace of change to a greater extent than would have been the case for most publicly traded companies. General Electric’s operations lacked the same sort of regulatory underpinning as AT&T. Market forces correspondingly did more to shape the myriad changes GE experienced since it began operations in the late nineteenth century, making it perhaps a more apt representative of corporate change than AT&T. GE indeed was itself often a trend-setting organizational and management model for other companies, typically respected and frequently admired by corporate peers.189

GE was the product of an 1892 merger of the two largest manufacturers in the electrical-equipment industry, Thompson-Houston and Edison General Electric.190 Charles Coffin, Thomson-Houston’s president, became GE’s first president with the backing of J.P. Morgan & Co., which arranged the financing for the merger.191 Anticipating by decades the heyday of managerial capitalism GE had from the outset a strong managerial orientation. As Alfred Chandler noted, “(f)rom almost its very beginning the key policy makers at General Electric were . . . its full-time salaried managers, Charles Coffin and his departmental vice presidents.”192 The board, dominated by outside financiers, continued to have a significant veto power. Otherwise, Chandler wrote in 1977, “the structure built at General Electric became and still remains today a standard way of organizing a modern integrated industrial enterprise.”193

Coffin was GE’s “dominating genius for a generation.”194 His managerial style, however, was far removed from the charismatic CEOs who would move to the forefront as the twentieth century concluded, including at GE. Coffin shrank from the limelight, believing “a company’s job is to supply goods and sell them. The less said about personalities the better.”195 By the time Coffin stepped down as chairman of the board in 1922 “a hundred men” at GE had “received vastly more publicity than he.”196 At that point, Gerald Swope, an MIT engineer and GE lifer, took over as president, and Owen D. Young, GE’s general counsel since 1912, became chairman of the board.197 They would run GE jointly for 17 years until 1939, with each stepping down due to an age 65 retirement policy both had advocated.198

190 Chandler, supra note 6, at 213.
191 Chandler, Visible, supra note 5, at 429.
192 Id. at 431.
193 Id. at 433.
195 Big Electric, Forbes, Oct. 1, 1932, 45.
They returned, however, to run the firm again from 1942 to 1944 when their successors were seconded to Washington, DC as senior administrators of the federal government’s war production effort.\(^{199}\)

Under Swope and Young, GE became a fully-fledged managerial enterprise. Outside financiers were replaced in the boardroom by a combination of top GE managerial personnel and senior executives from other large industrial enterprises.\(^{200}\) GE’s stockholder base expanded considerably, growing from 36,008 in 1923 to 49,481 in 1927, 194,753 in 1934, and 241,838 in 1945.\(^{201}\) In 1928 Swope denied rumors that an eastern banking concern controlled GE, saying that no single shareholder owned more than 1 percent of the stock.\(^{202}\) GE, as with AT&T, was one of the 21 companies in Berle and Means’s 1932 study of ownership and control of the 200 largest US industrial companies to be deemed to be under management control because of affirmative evidence indicating the lack of a single shareholder group owning 20 percent or more of the shares. Berle and Means identified an employee investment company that was a GE subsidiary as GE’s largest stockholder, with about 1.5 percent of the shares.\(^{203}\)

Under Swope and Young GE anticipated an expansive approach to corporate constituencies that would become prevalent generally in large American corporations after World War II. For the most part, executives in the 1920s and 1930s considered themselves, in Swope’s words, to be “paid attorneys of capital.”\(^{204}\) A 1941 history of GE commissioned by the company described how Swope and Young’s approach encompassed a broader sense of corporate responsibility:

They were almost the first to recognize a new conception of management’s responsibilities—a conception of management, not as an agent of the owners, but as a trustee of all groups vitally interested in industry—owners, employees, and the general public, including customers. It was their determination to guard the interests of all three groups.\(^{205}\)

GE’s putting into production numerous new electrical appliances in the late 1920s was an example of a policy that ticked all of Swope and Young’s corporate responsibility boxes. The company’s revenues increased both from the sale of the appliances and additional use of electricity, new employment was provided for thousands, and domestic life was made easier for customers eager to buy GE products.\(^{206}\)

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199 Two Who Are Not So Young Return to Duty, BALT. SUN, Sept. 20, 1942, 10; Wilson Made President of General Electric; Swope, Young Retire, WALL ST. J., Sept. 9, 1944, 2.

200 CHANDLER, Visible, supra note 5, at 451–52.


202 Real Wizards, supra note 201.

203 BERLE & MEANS, supra note 2, at 100, 107. On Berle and Means’s analysis of AT&T, see supra note 83 and related discussion.

204 WARTZMAN, supra note 44, at 31. See also HAMMOND, supra note 198, at 387.

205 HAMMOND, supra note 198, at 387; See also FORBES, supra note 194; Owen D. Young, A Leader’s Duties, FORBES, Mar. 1, 1929, 60.

206 Big Electric, supra note 195; HAMMOND, MEN, supra note 198, at 389.
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GE demonstrated in other ways an expansive approach to corporate responsibility under Swope and Young. GE improved employee benefits introduced during the Coffin era, such as a pension plan and a life insurance plan, and added new ones such as hospital coverage and housing assistance.207 When the Depression hit, GE provided loans and other relief to staff it could no longer employ.208 In the late 1930s, while many companies fought bitterly against unionization campaigns legally bolstered by Depression-era federal labor law reforms, Swope and Young embraced the national union movement, and GE acceded readily as the United Electrical and Radio Workers of America successfully unionized the workforce.209

In 1950 Ralph Cordiner, having spent most of his career at GE, succeeded Charles Wilson as president and became chairman of the board as well in 1958.210 Cordiner’s philosophy of corporate responsibility was similar to Swope and Young’s, as might have been expected with that philosophy growing in popularity among post–World War II executives. Cordiner said just before becoming president “(m)anagement is a public trust. . . . And the public is our customer. If we do right by them—give them the best we can—they will buy the products that give labor employment and stockholders dividends.”211 In 1965, the year Cordiner stepped down,212 a study of America’s “managed economy” said GE “makes a greater public display than any other of its freedom from stockholder domination and its sense of social responsibility.”213 Nevertheless, Cordiner did not ignore stockholders. In a pioneering step for public corporations he set up in the early 1950s an investor relations department responsible for fostering realistic expectations about GE among the investment community and for communicating investor sentiment internally so executives understood what results were anticipated.214

Cordiner was “a model executive for his time, an Organization Man’s Organization Man,”215 refraining from maximizing personal fame and fortune and seeking to foster managerial autonomy. Though Cordiner spent most of his career at GE he was chief executive of Schick, an electric razor company, in the late 1930s and early 1940s and said “I learned from that experience that one should never work exclusively for financial reward.”216 He was eager for GE to have a large number of stockholders so no one individual or investment group could control the company.217 As of 1961 the company had 405,000 shareholders and was one of the most widely held of all US public companies.218 When Cordiner stepped down in

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207 WARTZMAN, supra note 44, at 30; ROthschild, supra note 197, at 47–49.
208 ROthschild, supra note 197, at 48.
209 WARTZMAN, supra note 44, at 32–34.
210 Id. at 111–12; Cordiner to Succeed Wilson as Head of General Electric, BALT. SUN, Dec. 17, 1950, 4; GE’s Chairman Is Now the Boss, Bus. Wk., Apr. 26, 1958, 34.
211 Stepping Stone, Forbes, June 15, 1949, 15.
215 WARTZMAN, supra note 44, at 130.
216 Id. at 132.
217 ROthschild, supra note 197, at 89.
GE's product lines, generally oriented around its electrical equipment base, expanded in number from 30 in 1910 to 281 in 1940 into the thousands by the early 1960s. Cordiner overhauled an organizational structure that, despite GE's increasingly sprawling operations, had remained largely unchanged since the early twentieth century. The primary emphasis was on decentralization, a 1950s management fad where Cordiner's moves were widely imitated. Cordiner had a strong preference for delegation, saying "(a) man must have responsibility in his work." To help to prepare GE's fast-growing crop of ostensibly self-sufficient managers, Cordiner had GE open in 1956 America's first corporate university, a 15-acre campus on the Hudson River north of New York City. GE was also spending around $40 million annually on management education, nearly 10 percent of GE's pretax profit.

Though GE in many ways exemplified managerial capitalism under Cordiner, it was not entirely a managerialist idyll. Profits, among the various result areas GE emphasized for its managers, were usually treated as the top priority. Nevertheless, in the final few years Cordiner ran GE shareholders did not benefit particularly, as the company's profitability and share price lagged behind many other large corporations. Labor relations were also not as harmonious as GE's managerialist rhetoric implied they would be. A corporate bargaining philosophy of "do right voluntarily" translated into inflexibility once a "fair but firm" offer was on the table, resulting in a ruling that the company's bargaining tactics amounted to an unfair labor practice with a 1960 strike that GE was thought to have won.

Under Cordiner's leadership GE was also besmirched by a corporate scandal that "put a crack" in GE's "image of corporate citizenship based on regard for the welfare of the community." In 1960 GE was fined after pleading guilty to collusion with other electrical systems and products companies to fix prices on government contracts. GE fired numerous second-tier executives directly implicated in the price-fixing, including three who were jailed. Perhaps benefitting indirectly from the company's decentralization policy, Cordiner
and the rest of the top brass escaped direct blame because of lack of knowledge of the clandestine scheme even if they were criticized for inadequate supervision.232

Fred Borch, a GE lifer who succeeded Cordiner in 1963, continued his predecessor’s decentralization strategy even as “profitless growth” prompted critics to characterize GE as “a beleaguered colossus.”233 Despite the grumbling, Borch anticipated later corporate governance trends by reorganizing GE’s board to set up a number of committees, including an audit committee and compensation committee, primarily motivated by a desire to improve the review function of the board. Business Week said of the reforms “(i)f the idea spreads “(i)f the idea spreads to other companies, some directors may miss their noonday naps, but shareholders may sleep better at night.”234 GE already had form with regard to boardroom innovation. Under Cordiner the board was structured so that outside directors substantially outnumbered executives, a format that was beginning to find favor in the 1950s.235

Despite the price-fixing scandal, Cordiner was generally thought of as “a real giant of American business.”236 Reginald Jones was the next GE chief executive in that category. Jones, who replaced Borch in 1972, quickly became widely regarded as one of the country’s ablest CEOs and under his tutelage GE was thought of as perhaps the best-managed large US company.237 By the time he left office in 1981, the reserved, scholarly Jones would be one of the most admired businessmen in the country and a corporate statesman exemplar, marked by service as an adviser to President Jimmy Carter on taxes, trade, and worker training.238

Jones’s primary organizational innovation at GE was to step back from decentralization and implement a centrally coordinated strategic planning system that assumed resources were limited and should be allocated to GE business units that had the highest potential.239 Jones and his management team treated GE’s vast array of businesses as an investment portfolio, underpinned by the intention that top management would back the winners and prune the losers.240 Divestiture was a realistic possibility, and indeed somewhat fashionable, because just before becoming CEO Jones had led on GE’s behalf the sale of its failing computer business.241 By 1979, 45 percent of companies in the Fortune 500, a list of America’s largest 500

232 Reagan, supra note 213, at 144–45; Inez Robb, He Did It or He Isn’t Running His Job Right, Austin AM.-Statesman, Mar. 9, 1961, A6; Cordiner Reaffirms His Stand, Bus. Wk., June 10, 1961, 31.


234 Waking Up the Directors, Bus. Wk., July 15, 1972, 96. On the extent to which companies introduced audit and compensation committees during the 1970s, see Chapter 3, notes 278–79 and accompanying text.

235 Rothschild, supra note 197, at 89; Chapter 2, notes 279–81 and related discussion.

236 GE’s Fall, supra note 222.


239 Rothschild, supra note 197, at 154–55, 180; Chairman of GE, supra note 238.


companies ranked by annual revenues, were using business portfolio planning schemes akin to GE's. 242

Under Jones GE's revenues doubled, the corporation averaged 15 percent annual earnings growth, and there was $2.2 billion in cash and marketable securities on hand when he left the company. 243 All was not well, however. GE's share price fell during Jones's tenure, modestly underperforming in difficult economic conditions the iconic Dow Jones Industrial Average stock market index, which encompasses 30 of America's largest public companies. 244 Jones, moreover, feared that bureaucracy was strangling GE, and believed the company had to be shaken to its roots. 245 He identified Jack Welch, who had quickly established a reputation at GE as a brash overachiever with a disdain for protocol, as the man to execute the needed changes. 246 The GE board appointed Welch CEO in 1981 after an exacting succession process involving the assessment of numerous internal executive contenders. 247

Welch's appointment was recognized as a change of course for GE. Contemporaries said with the intense 45-year-old Welch GE had replaced “a legend with a live wire” and had picked “a new breed of executive.” 248 Welch indeed would be in the executive vanguard in a couple of important ways by the time he left his post two decades later. The first related to treating shareholders as the top corporate priority. Emphasizing shareholder value was a practice with which Welch was closely associated, 249 in stark contrast to Swope, Young, and Cordiner's expansive corporate responsibility stance. The second involved the elevation of the late 1990s chief executive to iconic status. Welch would become emblematic of the CEO as charismatic leader, 250 somewhat ironically given that Cordiner was the quintessential “organization man” and given Jones's reserved air.

While Welch was destined to become a CEO exemplar by the time he stepped down, neither a shareholder value orientation nor executive charisma featured prominently during his first decade in office. When Welch was being considered for the CEO post he did acknowledge the need to appeal to stock market investors. 251 He was also eager by the late 1980s for GE's market capitalization to increase by a sufficiently large amount to pass IBM


243 Rothschild, supra note 197, at 190; Gepfert, supra note 238; Thomas O'Boyle, Jack Welch, General Electric, and the Pursuit of Profit 49 (1998).


245 Byron, supra note 189, at 101, 110, 112; Tichy & Sherman, supra note 233, at 32–33, 41; O'Boyle, supra note 243, at 49–50.


249 See, for example, Kennedy, supra note 189, at 50–66.

250 Khurana, supra note 38, at 69, 153.

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and leave GE as the stock market’s largest company.252 A 1981 speech Welch gave on steps that corporations should take to prosper in a slow growth economy has been cited as the birth of the shareholder value movement.253 Still, while he told his audience of the need to cut costs to increase profits he never mentioned the term “shareholder value.”254 The term was not even used in a GE annual report to shareholders until 1994.255

The manner in which a securities analyst characterized a $10 billion GE share buy-back in 1989 indicates that neither GE nor Welch yet had a distinctive reputation for prioritizing shareholder returns. The buy-back was the largest share repurchase ever by a US corporation up to that point.256 Nevertheless, the analyst did not see GE as any sort of shareholder value pioneer, saying “(e)very chief executive considers the stock price a sort of report card and this should help Jack Welch.”257

As for CEO celebrity, the Financial Times did refer to Welch in 1989 as “charismatic,” as articles and books on his management style began to appear with some regularity.258 However, up to that point in time “the world at large barely noticed Jack Welch,” and he ended up well down a list of 50 members of the corporate elite compiled by Business Week in 1985.259 During the mid-1980s, Welch even referred to himself as nothing more than a corporate “grunt.”260 Business Week said of Welch in 1987 that he “seems to care little about being Corporate America’s model manager.”261 Even in 1992, Newsweek suggested Welch was “notoriously press-shy.”262

Welch was hardly idle during his first decade in office. His primary objective in the opening half of the 1980s was to improve GE’s bottom line by cutting costs.263 The general rule with GE divisions became “fix it, close it, or sell it,” with the usual benchmark for survival as a GE unit being ranked first or second in the market in which it operated.264 By 1985 more than $5.6 billion worth of businesses had been sold off.265 GE’s management style was also

256 O’Boyle, supra note 243, at 128.
257 Paul Richter, GE Will Spend Up to $10 Billion to Repurchase Its Own Stock, LA TIMES, Nov. 18, 1989, D1.
258 Rothschild, supra note 197, at 192; Christopher Lorenz & Geoffrey Owen, Charismatic Takeover Specialist Looking for a Leading Role, Fin. TIMES, Jan. 11, 1989, 26; Sherman P. Stratford & Cynthia Hutton, Inside the Mind of Jack Welch, FORTUNE, Mar. 27, 1989, 38.
259 Byron, supra note 189, at 177–88.
260 Chapter 4, note 580 and related discussion.
263 Wasserstein, supra note 119, at 285.
264 Wartzman, supra note 4.4, at 234.
265 Wasserstein, supra note 119, at 287.
overhauled, with its heretofore renowned strategic planning system greatly streamlined and a complex managerial hierarchy flattened considerably.\textsuperscript{266} Though Welch was not yet a celebrity CEO during his first decade in office, he did achieve notoriety for GE employee layoffs,\textsuperscript{267} of which there were 120,000 in the 1980s.\textsuperscript{268} In 1982, Newsweek identified GE as a prime example of a large company cutting its payroll and nicknamed Welch “Neutron Jack,” implying he emptied still-standing buildings of people, like a neutron bomb.\textsuperscript{269} Welch objected strongly to what would become a popular moniker, believing that GE had no choice but to become more agile and arguing that GE had slimmed down responsibly by providing exit packages to those told to leave and by avoiding mass layoffs due to spreading out the process over a number of years.\textsuperscript{270} Nevertheless, in what was a major change in approach for a company where there had been a paternalistic orientation that meant that only employees who messed up badly would be fired, Welch stressed GE could not and should not be offering assurances of lifetime employment because that would encourage underperformance and mediocrity.\textsuperscript{271} GE was subsequently cited as a role model that made it easier for US corporations to dismiss workers at the earliest hint of trouble.\textsuperscript{272}

The 1980s were renowned for M&A activity and GE participated fully, particularly in the second half of the decade with Welch looking to expand revenues as his confidence in the state of GE’s existing businesses grew.\textsuperscript{273} In 1986, GE acquired Kidder Peabody, a major investment bank, and, in the largest ever non-oil corporate acquisition to that point, paid $6.5 billion for RCA, a diversified electronics company that owned a national television network via the National Broadcasting Corporation.\textsuperscript{274} While almost half of GE’s earnings came from “core manufacturing” in 1980, after the Kidder Peabody and RCA deals nearly 80 percent came from services and high technology.\textsuperscript{275} A host of other deals followed, including the acquisition of a major credit card business and the swapping of GE’s consumer electronics unit for a sizeable medical equipment business.\textsuperscript{276}

For US companies, the hectic dealmaking that characterized the 1980s ceased abruptly as the decade ended.\textsuperscript{277} GE similarly stepped down its acquisition activity, as Welch was
generally satisfied with the company’s mix of businesses and sought to shift the emphasis to improving productivity. GE continued, however, to carry out financial services acquisitions. GE Capital, the group’s financial services arm, became accustomed to growing larger under Welch, and it was increasingly the engine driving its parent’s profits. Financial services accounted for 6 percent of GE’s net earnings just before Welch took the helm. This figure then increased steadily from 13 percent in 1983 to 24 percent in 1990, 32 percent in 1992, and 42 percent as 2000 began. GE exemplified in this way a “financialization” trend in the economy, with the proportion of total profits in the US economy accounted for by the financial sector rising from between 10 to 15 percent in the 1950s and 1960s to over 20 percent in the early 1990s before exceeding 40 percent in 2001.

GE’s financial services arm would ultimately contribute substantially to a remarkable run of success for GE under Welch. From 1983 through the late 1980s, GE underperformed the Dow Jones. Welch said of the trend “I cannot understand it for the world,” and portfolio managers were beginning to mutter “that’s a bad stock.” Barron’s noted in 1999 “(h)e certainly wasn’t the world-class performer in the ’Eights that he since has become.” GE Capital would help to change its parent’s luck. In sluggish economic conditions in the early 1990s GE Capital was “a veritable money machine.” In 1991 GE was rewarded as it achieved Welch’s goal of becoming the largest company by market capitalization. In a 1993 cover story Business Week contrasted GE Capital’s approach “to the plodding, risk-averse attitude that pervades most banks,” saying of GE’s finance arm what is “most important is a culture that successfully blends an entrepreneurial spirit with the hard-driving and intensely competitive focus of its parent.”

GE’s stock market performance went into overdrive for the remainder of the 1990s. During Welch’s two decades as CEO, GE’s share price increased approximately fortyfold, far outpacing the S&P 500, a prominent stock market index comprised of 500 of America’s largest companies ranked by market capitalization. With GE’s earnings increasing eight times over Welch’s entire two decades as CEO, adjusting for later splits, GE’s shares rose from $1.20 to roughly $50. On GE and the S&P 500 under Welch, see Jeffrey A. Krames, *The Price of Heroes*, BARRON’S, Oct. 30, 2000, 66; Andy Serwer, *A Rare Skeptic Takes On the Cult of GE*.

278 Nohria, Dyer & Dalzell, supra note 241, at 20–21.

279 Kennedy, supra note 189, at 51–53 (setting out a list of major GE acquisitions and disposals from 1981 until the late 1990s); Tim Smart, *GE’s Money Machine*, BUS. WK., Mar. 8, 1993, 61.


282 Smart, supra note 279; Plender, supra note 280; Barker, supra note 281; David W. Tice, *Cruisin’ for a Bruisin’*, BARRON’S, Oct. 22, 1990, 10.


287 Smart, supra note 279.

288 O’Boyle, supra note 243, at 132.

289 Smart, supra note 279.

290 Lowenstein, supra note 175, at 56 (“(o)ver Welch’s entire two decades as CEO, adjusting for later splits, GE’s shares rose from $1.20 to roughly $50”); Jerry Useem, *Tyrants, Statesmen, and Destroyers (A Brief History of the CEO)*, FORTUNE, Nov. 18, 2002, 82 (5021 percent).
during Welch’s tenure, by the time he stepped down investors were paying roughly five times more for a dollar of GE’s earnings than they were when he took over. The rerating occurred primarily in the 1990s, when GE’s stock price rose stratospherically (Figure 1.1).

As with GE Capital, one of the great bull markets in US stock market history, running from 1982 to the end of the 1990s largely without interruption, contributed to GE’s stellar stock market performance as the twentieth century concluded. GE also benefitted from an unparalleled run of continuous earnings increases. During the 1990s, investors prepared to drive down the share price of companies announcing results that failed to meet market expectations would also reward handsomely companies that featured regular, consistent earnings growth. GE was stellar in the latter regard. By February 2001, GE’s earnings from continuing operations had increased 101 consecutive quarters, generally understood to be a record. Investors came to believe GE was immune to twists of fate that would sideswipe lesser public companies, and correspondingly priced GE’s shares much more generously.

**Figure 1.1** General Electric Share Price, 1981–2001, Adjusted for Splits and Dividends, $.

Welch maintained when asked about GE’s stellar track record “(c)onsistency comes from managing businesses, not earnings.” Skeptics, however, said GE used accounting gimmicks adeptly (if legally) to do what was required to hit financial targets and keep earnings rising steadily upwards. GE Capital was identified as a particularly promising venue for squirrel-ing away profits during good quarters and releasing them in tougher times.

As Welch reached retirement as GE’s CEO in 2001, enthusiastic acclaim drowned out a skunk or two at the garden party carping about the uncanny consistency of GE’s smoothly rising earnings curve. A securities analyst who followed GE said in 1998 “(t)his guy’s legacy will be to create more shareholder value on the face of the planet than ever—forever.” Business Week said of Welch’s ability to run so successfully “the most far-flung, complex organization in all of American business” that “(h)e does it through sheer force of personality, coupled with an unbridled passion for winning the game of business and a keen attention to details many chieftains would simply overlook.” A Barron’s book reviewer suggested in 1999 that Welch was as close to an anointed saint as the business world came. The same year Fortune named Welch “manager of the century.” A 2001 study of Welch hailed him as “(b)eyond a CEO,” saying “he is seen as a management role model, an oracle, an icon for those people who hope to ascend the mountaintop of management.”

For US public companies buoyed in the 1990s by the bull market in stocks, the 2000s was akin to “the decade from hell” as share prices fell sharply to open the decade, corporate scandals hit the headlines in the early 2000s, and the financial crisis of 2008 created havoc. The pattern was similar for GE, as the company was “under siege” as the 2000s concluded. In 2009, the company announced its first dividend cut since 1938 and had its debt rating set below the top ranking of triple A for the first time since the 1960s. GE, the world’s most respected company in 2005 according to Barron’s, fell to 11th in the rankings by 2008 and 43rd in 2009.

Problems struck GE as the 2000s got underway, largely coinciding with Jeffrey Immelt taking over as CEO from Jack Welch in September 2001. In early 2003, Barron’s said...
GE, “long envied and emulated as the class act in American business, is looking more and more like a weary foot soldier these days.”

“The house that Jack built,” Barron’s noted, had “proved no more immune than anyone else’s to the ravages of a weak economy and a wicked bear market” as GE’s shares had fallen 62 percent from the market high in August 2000.

Accounting shenanigans were an integral element in the corporate scandals of the early 2000s. GE responded by launching a major publicity campaign to assuage any doubts regarding its accounting practices and to distinguish itself from the scandalized companies, emphasizing the veracity of GE’s numbers and providing additional details on the performance of GE Capital’s key units. Despite these reassurances, in 2009 GE agreed to pay $50 million to the Securities and Exchange Commission to settle charges of accounting fraud occurring in the early 2000s without admitting or denying what was alleged.

Even Jack Welch could not escape scandal-like controversy in the early 2000s. Divorce proceedings put the spotlight on generous retirement benefits GE was paying Welch under a 1996 employment agreement, including sizeable consulting fees, the use of a luxury Manhattan corporate apartment, and access to company aircraft. Citing the fact that corporate scandals had recently eroded public trust and confidence Welch announced he would forgo his consulting fees and pay personally for any facilities and services GE provided to him.

During the mid-2000s GE trod water with Immelt garnering some praise despite GE underperforming a rallying stock market. The financial turmoil that concluded the 2000s was then a major jolt. With GE Capital accounting for 46 percent of GE’s earnings in 2007, when a “credit crunch” that year was followed by the full-blown financial crisis in the autumn of 2008 GE was highly exposed. GE’s market capitalization dropped by over $200 billion as the company’s share price fell by more than half between October 2007 and October 2008.

In early October 2008, “in one of the more dramatic days in GE’s 130-year history” the company sought to shore up confidence in its position by raising $15 billion as a “rainy day fund” by issuing securities to investors, including a $3 billion capital injection by Berkshire Hathaway and its legendary investor impresario Warren Buffett.

311 Id.
312 Chapter 6, note 31 and related discussion; Table 6.1.
318 Geoff Colvin, Katie Benner & Doris Burke, GE under Siege, Fortune, Oct. 27, 2008, 84.
319 Id.
said at the time GE’s strategy “dramatizes how the credit storm is prompting even the most stalwart companies to seek shelter.”

GE’s crisis-induced 2008 capital injection and the economy stepping back from the brink in 2009 did not save GE’s triple A credit rating or leave GE’s long-standing dividend policy sacrosanct. GE did survive the financial turmoil intact, however. Its share price even rose modestly in the early 2010s as it lowered the risk profile of and slimmed down GE Capital, which became subject to considerably tougher regulation after the financial crisis due to federal regulators deeming the unit to be a systematically important financial institution. When GE announced in 2015 that it would sell off most of GE Capital, GE’s shares went up 11 percent. The same year Trian Fund Management, an activist hedge fund run by veteran corporate agitator Nelson Peltz, acquired a 1 percent stake in General Electric but, in a departure from usual hedge fund protocol, bought in as a supporter rather than a detractor of GE’s strategic direction. Still, GE’s troubles were not over.

GE’s share price and financial results were languishing as 2017 got underway, and Trian, unconvinced by reassurances Immelt was offering, pressed for change as speculation grew that the 61-year-old CEO would retire. As investor concerns mounted, GE announced John Flannery, a three-decade GE veteran, would succeed Immelt. Within a few months, GE had invited a Trian representative on the board, executed a fresh dividend cut, and announced plans to winnow down its portfolio of businesses to create a simpler and more efficient GE.

A securities analyst quoted by the New York Times when GE announced Flannery’s appointment advocated more forceful change than Flannery had suggested might be on the agenda, saying “GE needs an ‘AT&T style’ breakup.” Flannery himself subsequently acknowledged that a radical shakeup could be in the offing. A breakup would be an ironic twist of fate for General Electric. The conglomerate, a corporation that owns companies operating in a number of largely separate market sectors and lacking a well-defined

321 Glader & Rappaport, supra note 310.
322 Supra note 307 and related discussion.
324 Colvin, supra note 290; James B. Stewart, Do It All Era Ending as GE Returns to Core, NY TIMES, Apr. 11, 2015, A1; Avi Salzman, Time to Sell General Electric, BARRON’S, Apr. 13, 2015, 19.
329 Steve Lohr, The GE Puzzle, With the Diverse Pieces a New Chief Executive Must Make Fit His Plan, NY TIMES, June 14, 2017, B3; See also Judging Jeff, ECONOMIST, June 17, 2017, 68 (acknowledging the possibility but saying it would be a bad idea).
connection between the products and services it offers, was discredited in the 1970s, and continues to prompt wariness among investors today. Even having divested much of its financial operation GE remains today a conglomerate-like entity, with units specializing in power, healthcare, aviation, engines and generators, oil-field gear, and digital products. Given the long-standing antipathy toward conglomerates, if an “AT&T style breakup” is in prospect for the next (final?) chapter in General Electric’s history a corporation that has so often been a corporate trendsetter would become a much-belated follower of fashion.

Overview of the Book

This book’s basic toolkit has now been revealed. All that remains as a matter of introduction is to provide a synopsis of what is to come. Chapter 2 sets the scene by focusing on the managerial capitalism era that prevailed prior to the myriad changes the public company would experience in the late twentieth and early twenty-first centuries. The chapter will describe how managerial capitalism began to take shape in the opening decades of the twentieth century and reached its zenith in the decades immediately following World War II. It will also discuss how managerial capitalism worked in practice during its heyday. During the 1950s and 1960s neither boards nor shareholders acted as a robust check on potentially wayward executives. Corporate scandals, however, were rare, with the prototypical executive being a bureaucratically inclined “organization man” who subordinated personal aspirations to foster the pursuit of corporate goals. The prevalence of industry-level regulation, robust antitrust enforcement, fears of additional heavy-handed governmental intrusions, powerful unions, and a banking sector reluctant to back risky corporate ventures all served to keep managerial ambition in check.

Chapter 3 focuses on the 1970s. Managerial capitalism continued to prevail but its moorings were now shaky. This was part of a broader trend, with many features of post–World War II America being called into question, including the efficacy of governmental institutions. Confidence in the public company and the managers who were running them suffered particularly due to the collapse in 1970 of Penn Central, then the seventh largest company in the United States, and revelations of illicit corporate payments, both domestically and abroad. These crises helped to set in motion a corporate governance “movement” oriented around reforming corporate decision-making processes that continues to this day.

Chapter 4 will consider the market-friendly 1980s, when the demise of managerial capitalism meant the transformation of the public company documented here moved into full

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swing. During “the Deal Decade” takeover bids, most conspicuously ones flamboyant corporate “raiders” made, constituted a potent “external” governance mechanism that provided executives with incentives to bolster shareholder returns to forestall an unwelcome approach. “Junk bonds” deployed widely during the takeover wave were a hallmark of a liberalization of corporate finance that would expand the options public company executives had in running their firms. Deregulation similarly enhanced managerial discretion in sectors formerly subject to industry-specific oversight but also intensified competitive pressure for incumbents previously insulated by regulatory barriers to entry.

Chapter 5 discusses the 1990s. During this generally prosperous decade, fluctuating market conditions dramatically affected perceptions of public companies and the executives in charge. There was considerable pessimism as the 1990s got underway, growing confidence during the middle of the decade, and borderline euphoria by the time the decade was drawing to a close. As the 1990s ended chief executives and the public companies they were running were riding high in a manner that was unmatched in the post–World War II era.

Chapter 6 analyzes the 2000s. In contrast with the euphoria that characterized the end of the 1990s, this was “the decade from hell” for American public companies and the executives who ran them. Stock prices fell, the number of public companies declined substantially, and scandals in the early 2000s and the financial crisis of 2008 eroded confidence in big business. The “imperial CEO” who was ruling the public company as the 1990s drew to a close was dethroned amidst a reversal of the deregulatory trend associated with the 1980s that continued in the 1990s.

Chapter 7 concludes. This chapter extrapolates from trends the previous chapters have identified to speculate on the future trajectory of the public company. The exercise is not one of pure historical deduction. Instead, salient developments from the 2010s are taken into account, with particular emphasis on those implying a path different from what would be anticipated given developments occurring from the mid-twentieth century through to the opening decade of the twenty-first century.

One forecast Chapter 7 makes bears mention now to put into proper context the transformation of the public company this book chronicles. Gerald Davis is by no means alone in suggesting the days of public company dominance are numbered. Predictions of the death of the public company have been proffered with some regularity since the late 1970s and continue to be made today. If in fact the public company is on the verge of extinction then this book could serve as an epitaph, chronicling how the public company changed as it began its relegation from crucial economic instrument to business afterthought. Chapter 7, however, frames matters differently. Despite speculation to the contrary, the public company should remain a key element of the American economy for the foreseeable future. Hence, the transformation described here should end up being part of a larger story of the public company yet to be written.

Supra note 41 and related discussion.