Membership through stewardship

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Abstract: The problems of corporate governance, and particularly the relationships between investors and companies, seem intractable, despite decades of theorising and empirical research. This thought experiment asks us to look at the problem through a fresh lens. It draws on the British legal custom of calling shareholders "members", and then uses the political philosopher Michael Walzer's idea of membership in states, clubs, neighbourhoods, and families to draw lessons for the corporate world. Rethinking what membership of a company might mean points to a pragmatic escape from short-termism without the injustice of depriving shareholders of rights. This path also points to having a corporate governance system that relies too heavily on mechanisms only modestly well, while reducing the reliance on expecting investors and directors to act always ethically.

Keywords: Corporate governance, investor stewardship, membership, Michael Walzer

Introduction

Investors are often described as part of the problem of the short-term orientation of companies (Aspara et al. 2014; Aspen Institute 2009; He and Mi 2022; Tonello 2006). While the evidence supporting this claim is nuanced (Swanson et al. 2022; Giannetti and Yu 2021), public policy measures have been widely (but far from universally) implemented in the past decade to encourage investor stewardship (e.g., FRC 2010; FSA Japan 2014). However, such policies have met scepticism (Cheffins 2010; Reisberg 2015), and studies of investor stewardship have shown mixed empirical results with respect to both firm outcomes (Lu et al. 2018) and the codes' perceived beneficiaries of public policy (Klettner 2021). Nonetheless, interest among policymakers has not waned; indeed it has been reinforced by calls for greater attention to ESG (environmental, social, and governance) investing (Romberg 2020) and corporate "purpose" (Younger et al. 2020). McNulty and Nordberg (2016) have discussed theoretically how stewardship might develop in institutional investment, outlining a process with many obstacles. Moreover, while stewardship is an elusive concept (Klettner 2021), it suggests duties to some third party and thus a moral if perhaps not quite legal obligation.

To probe this riddle, this essay conducts a thought experiment exploring the conditions that might links that moral side with the policy concerns. It does so by using the lens of pluralism and complex equality in the political philosophy of Michael Walzer and then seeing whether and in what ways his perspectives on membership might apply in the relations between investors and the corporate sector.

Walzer's thinking has recently attracted considerable attention among management scholars, often focusing on the question of distributive justice and its connection to corporate social responsibility (Chang et al. 2021). For example, Wicks et al. (2021) discuss how Walzer's ideas, with their focus on the value of the particular and thus the complex pluralism of modern societies, can be extended to business ethics, rather than just state-level considerations. From a survey of senior executives, Burri et al. (2021) found that executives see Walzer's ideas of justice not just as a matter of law and actions of states and that companies and societies alike fall short desirable outcomes.

This paper takes a different but related direction. It conducts a thought experiment on how Walzer's ideas about "members" and "strangers" apply to institutional investors and their relationships with listed companies and draws analogies to private equity investment and other corporate forms. Specifically, it uses Walzer's conceptualisation of membership to examine investor stewardship, the illusive goal of public policy in many countries, building on the aspirations of the original UK Stewardship Code (FRC 2010). It thus extends the conclusions of Macklin and Mathison (2018) about the value of a dialogic approach in communitarian approaches to business ethics.

Let's look first at the problems of corporations and the concern that investor actions can lead to decision-making with a time horizon shorter than what might be optimum for creating social value and how stewardship might be a solution. Next, we will examine the issues in bring stewardship into action. We will then turn to membership in Walzer's political philosophy and extend its logics into the sphere of corporations and capital markets.

This discussion points us to a modest set of policy considerations – not recommendations; as a thought experiment, its contributions are quite tentative. But it might prompt real world experimentation and then offers observations about what this approach says for the broader issues in corporate governance. It argues that by adopting Walzer's ideas, we can see how the corporate sphere is one that involve a plurality of goods operating under conditions that require a complex view of equality. It shows how investor stewardship might become the price of membership, which can help to minimise the need for ethics in the relationship between investors and companies.

Corporations, investors, and the short term

To put it bluntly, attempts to find a solution to the problems of corporate governance have mainly failed. That is, they have all failed, though some have brought about partial solutions to some issues, in some circumstances, for some organisations. A decade ago, Ahrens et al. (2011, p. 312) wrote that despite an "enormous volume of research we still know very little about corporate governance.… This should lead corporate governance researchers to pause and reflect. Are we wasting our time?"

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The problem of governing for stewardship

The problem most often examined in the corporate governance literature is the danger that managers (the "agents") in possession of an informational advantage will act in a self-interested manner, ignoring the needs of others, including importantly shareholders, those who notionally own the business. This "agency problem" is an ethical issue for business, and it comes in two varieties: shirking and stealing (Aguilera and Jackson 2010). Two central solutions have developed: … Both address symptoms rather than causes, and both carry serious downside risks.

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How do we get to stewardship – of managers and investors – without sacrificing the drive, creativity, and persistence required for business success without relying, somehow, on everyone being everyone else's ethical person? This essay suggests a path that points in that direction: membership. …

Membership

The problems in governing the modern corporation arise from a deeply rooted flaw in the design of economic associations. Let's call it stranger-hood. Shareholders are often strangers to the company in which they invest.

To understand it and its implications, we need to consider, first, the basic conception of a society. As the political philosopher Michael Walzer reminds us, ancient languages, including Latin, use one word to describe two separate modern concepts: the stranger and the enemy.

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The idea of membership

Walzer's idea of membership is a component of a larger argument on the nature of justice. His 1983 book *Spheres of Justice* lays out the case for accepting plurality of social goods and in the arrangements to distribute them ("spheres"), rather than a single all-encompassing one, and for seeing justice in terms of a complex view of what constitutes equality. While Rawls's theory of justice thought each rule would apply to all, Walzer argues that people's interests are too varied, the social goods they value too numerous, for a single statement of duty to suffice. Moreover, he sees Rawls's veil of ignorance as an implausible hypothesis. What we need instead is a framework for a just society that recognises plurality and complexity in its design.

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While citizenship need not be conveyed just by residence, Walzer suggests that justice requires that states provide such resident-strangers with a path to citizenship, that is, to membership in civil society.

Membership in corporations

This discussion of citizenship and justice may seem at first quite distant from the world of corporations, shareholders, and the governance of their relationships with each other and with the wider economic communities they inhabit. It is not. Before the mid-19th century, companies were largely creations of the state, organisations with royal charters, licensed by the crown to conduct commerce on the crown's behalf. Notably that came to include establishing and operating the institutions of state in distant colonies (Micklethwait and Wooldridge 2003).

Even as the state link faded away, companies of a more private form were like private associations, made up of individuals who knew each other and joined together as members in an economic venture.

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In British law, which pioneered both incorporation and limited liability, though the term "share" does exist, the term "shareholder" does not. In law, "members" of a company own shares. Even companies created without shares, like charities, have members. This language is legal relic of the days when companies were the men with whom one kept economic and social company. It reminds us of the days when companies were partnerships, and when providers of capital – financial, physical, and intellectual – were members.

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But that does not mean members are without power. Corporations today are different from the "modern" ones described by Berle and Means (1932/1991), when ownership was separate from control, and when masses of small shareholders lost their savings in the Crash of 1929. Nowadays institutional investors dominate shareholding, aggregating the funds of savers and gaining a stronger claim to what Hirschman called voice. It creates an agency problem of its own, separating the beneficiaries (end-investors) from the decisions, but that is an issue covered by fiduciary duties under securities law. Institutional investors professionalise buy-sell-hold decisions; the people they employ to act as agents for their end-investors exercise decisions on voice and exit. This professionalisation may impede development of loyalty (McNulty and Nordberg 2016) because it impedes affective commitment, an antecedent to stewardship.

Stewardship

Stewardship has been defined as "the extent to which an individual willingly subjugates his or her personal interests to act in protection of others' long-term welfare" (Hernandez 2012, p. 174). It grows through development of a psychological contract through both cognitive and affective mechanisms. Together they foster a sense of "ownership" of the thing of which one is steward.

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Stewardship – of what, for whom?

What such policy approaches overlook is the underlying diversity of sources of value – the social goods in Walzer's terminology – that bring people into membership of an organisation, and the of the spheres of distribution of those goods in which those people engage.

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As we've discussed, weighted voting rights have the potential to create perverse effects, not least giving management, founders, and families a sense of entitlement, but also leading to tunnelling (Johnson et al. 2000) and cases of what we call principal-principal conflicts (Schneider and Ryan 2011). The model proposes here needs a remedy in a route to membership. How might qualification as Walzerian members work?

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The corporation: neighbourhood, family, club, or state?

This essay has focused on one aspect of corporate governance: the relationship of investors to the companies in which they invest. But the logic of seeing companies – and organisations more generally – as Walzerian membership points to how one might extend the use of this lens. Both corporate social responsibility and ESG investing involve corporations and their relationship to non-shareholding parties, as the literature cited at the start of this essay shows. Focusing on the enemy-stranger-member framework, we may be able to develop pathways to justify and then make constitutional some forms of voice on major, board-level decisions for those affected by the corporation's actions – "forms" because, following Walzer, we should anticipate plurality. Employee voice might follow a similar path.

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Conclusions

Walzer is often labelled a communitarian, an academic and political activist on the left wing of American politics, at quite a distance from the neoliberal advocates of free markets. Yet as a scholar he is also seen who does not reject liberalism completely. According to Schilcher (1999, p. 435), "He seems to be no longer interested in replacing liberal positions with Communitarian ones, but rather in supplementing them." Walzer's ideas on membership and distributive justice in a pluralist world, where people and groups value different social goods and where the equality of access to them is complex and messy, can help us appreciate the complexity in corporate affairs. They warn us to be wary of placing too much faith in top-down, standardised ways of shaping interactions of corporations and investors. That way tyranny lies.

This view does not itself bring us closer to a singular solution to the problems of corporate governance, however. But Walzer's defence of plurality is itself an argument against seeking singular solutions. It can, however, caution us against "wasting our time", as Ahrens et al. (2011) have said, in one corner of the field and not spending enough attention to others. This essay suggests that if investor stewardship is desirable as *private*, corporate-level policy, then there may be room for *public* policy to encourage it.

If investors do not wish to bear the costs of stewardship and become members, Walzer's logic leads us to consider them as "strangers", where distribution of the social goods of companies – product and process innovation, a thriving community of a workforce, dividends, voting rights, etc. – may be unequal but where the path to complex equality is open. "Exit" need not mean selling shares and going away, but perhaps just going away without selling the shares. "Voice" may not arise merely from holding shares, exercising voting, and engaging in activism, but examining the net position of an investment, the residual risk after mitigations, and persuading members of the company to seize opportunities.

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