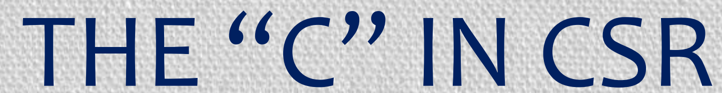


Lori Verstegen Ryan

San Diego State University

Why “*Corporate*” Social Responsibility?

Separation of Ownership and Control

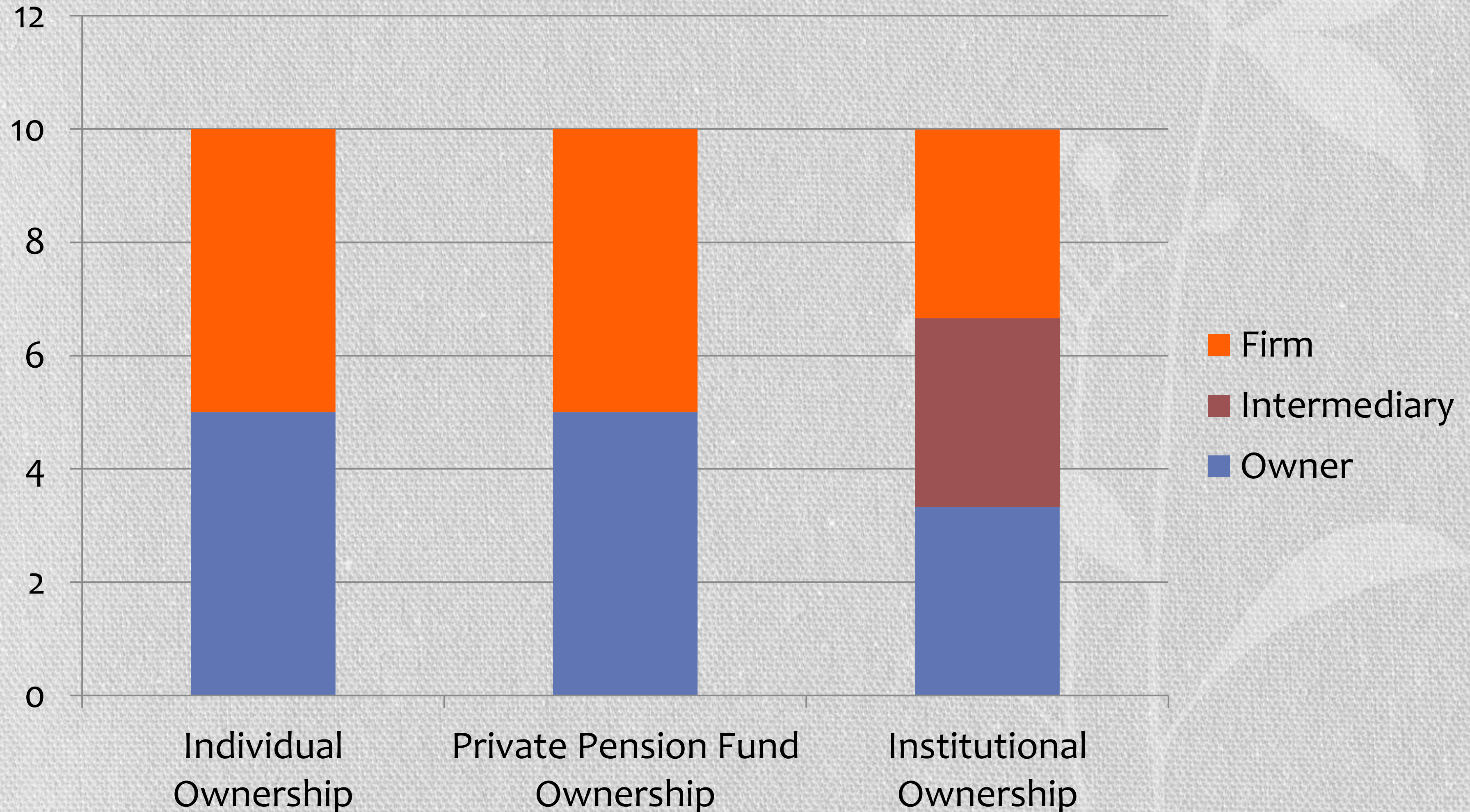
- Berle and Means (1932) argued that the separation of ownership and control at IPO destroys property rights to the publicly traded corporation
- Therefore executives have the discretion to use shareholders' money for their own or others' benefit
- However, executives are likely to abuse that discretion, so they should continue to be held accountable to shareholders

The Explosion of the Atom of Property

- Berle & Means' argument rested on assumptions of active managers and diffused, passive shareholders
- Modern shareholders are anything but diffused or passive
- Either the atom never exploded or the atom has re-fused
- Shareholders own the corporation, just as owners owned the pre-IPO firm

(Ryan, 2000)

Modern Layered Ownership



What Do Shareholders Own?

- At IPO, shareholders invest in the promise of maximum shareholder value within legal and moral constraints, in exchange for assuming the firm's residual risk
- That promise inheres in shares as they change from hand to hand over time

(Easterbrook & Fischel, 1991)

Shareholders’ Traditional Powers

- Right to vote
- Right to sue
- Right to sell their shares

Recent Shareholder Empowerment

- Right to majority voting: Pluralist voting has been replaced in 84% of U.S. corporations since 2004
- Right to an advisory vote on CEO compensation: "Say on Pay" component of Dodd-Frank legislation
- Right to private ordering of proxy access: Shareholders have a legal right to pass by-laws enabling them to nominate directors to boards
- Empowerment has led to the Shareholder-Director Exchange (SDX) and new "shareholder engagement" programs
- No longer passive investors

CSR in the Corporate Governance Literature

- “Shareholder-centric” vs. “Board-centric” governance
- Board-centric governance presumes normative CSR and stakeholder theory
- Shareholder-centric governance has gone too far and over-empowered investors so that they’ve focused boards on short-term share price
- Power needs to be redirected from shareholders to the board so that shareholder interests don’t dictate corporate policy

(Stout, 2005)

Purpose of the Board

- Board of directors rises endogenously due to the residual risk bearers' need for protection from managerial abuses
- Only shareholders do not have pre-arranged compensation for their contributions
- Other constituencies have other mechanisms in place for protecting their interests (warranties, employment contracts, etc.)

(Williamson, 1985)

The Contested Source of CSR

- Legal creator theory: By granting incorporation and limited liability, society “creates” corporations, therefore corporations owe society
- Legal recognition theory: By granting incorporation, all the government does is simplify the paperwork and “recognize” an organization that could exist without it

“Calls” for CSR

- Irrelevant: Where private profits and public interest are aligned
- Ineffective: Executives will not work for the public interest against shareholder interests

(Karnani, 2010)

“Instrumental” vs. “Normative” CSR

- Instrumental: How corporations should engage in CSR programs in order to maximize profits within legal and moral constraints
- Normative: How corporations should engage in CSR programs because it’s the right thing to do, even at the expense of profits

Impact of Normative CSR Programs

- Going Concern: Shareholders' expectations are undermined, and owners of record at announcement pay for entire CSR redirection
- Startup: Investors purchase IPO shares with full knowledge of potential for lower market price