



ICGN

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Afternoon Keynote: Robert Monks, Chairman, ValueEdge Advisors

My friends, a little over 70 years ago, a million Londoners took to the streets of this great city to celebrate the end of World War II in Europe. For people of my generation, those of us old enough to remember what became known in the US as VE Day, nothing can ever compare to the horror of those war years. To even attempt to do so is banal, yet there is much about the task, facing us today, that puts me in mind of the challenges and high stakes of that long ago.

Then, the rich self-rule traditions born and nurtured at Runnymede, at Valley Forge and the barricades of Paris, and elsewhere, hung in the balance. Hitler's Germany held many evils, but among them were a contempt for democracy, the appropriation of sweeping executive powers, the intimidation of press and public, coupled with grandiose visions and a wayward moral compass.

Unaccountable corporate power, I contend, has brought us perilously close to a similar situation in America today. This, of course, is not the way things were meant to be. Just as the American political system is legitimated by a belief in the sanctity of the ballot, so the American corporate system, which vests control largely in the hands of privately appointed managers, is legitimated on three major bases.

The first is a belief that the shareholders, as the owners of the corporation, have the ultimate right to control it. The second is a belief that corporate managers are accountable for their performance. The third is a belief that placing control of the factors of production and distribution, in the hands of privately appointed corporate managers, who are accountable for performance and who act in the interests of the ultimate owners, achieves the most efficient utilisation of economic resources – better than that achievable under alternate systems. In both instances, if you dilute or strip away the foundational beliefs, the legitimacy begins to crumble. I'll talk later about the political system, but about the corporate system, there can be little doubt. Why that is so, I will be detailing in the time allotted to me today.

But first, let me say this. I'm here today more as Winston Churchill than as Jeremiah. On 10 November 1942, two and a half years before he announced the Germans surrendered to his countrymen, Churchill delivered yet another memorable speech, at the Lord Mayor's Day Luncheon at London's Mansion House. Rommel had been defeated in the African desert, America had joined the fray, Germany was not yet on its heels, but as happens so often in sports contests, the momentum had shifted in a subtle, subterranean way.

'This is not the end,' Churchill cautioned, 'it is not even the beginning of the end, but it is perhaps, the end of the beginning.'

He was dead on right. I've titled this speech, 'The end of the beginning', in Winston Churchill's honour and more importantly, in yours.

All of you here today have good reason to be proud of what you have accomplished over the last 20 years against an implacable foe. In the simplest terms, you have made corporate governance a legitimate subject for discussion. You have defined the issues and generated increasingly sophisticated codes of conduct to inform global enterprise. Beyond that, the great institutions have educated themselves as to how they can best discharge their



responsibilities as stewards, and how they can act responsibly as activist shareholders, and how they can hold management to account.

Peter Butler at Hermes was a model for us all. We witnessed that skilful and persistent activists are welcomed to the best corporate boards, even as chairmen. Think of Ralph Whitworth at Hewlett Packard. Clearly, we're ready to advance, but equally clearly, we have a long way to go. We have barely begun the process of persuading managements that their best interests lie in encouraging a system of involved and effective ownership. Until we can achieve this objective, full success will elude our efforts. Our reality checks are not geographic progress, but institutional ones. How far we have to go can most persistently be understood through the lens of executive compensation. The persistent and unending increases, disconnected from any objective measure, are an ugly and ill-recognised part of our culture and a major contributor to broader economic and social problems of inequality.

We need go no further to witness that the commitment of western countries to provide employer finance pensions has been destroyed with little notice. There are today, virtually no companies offering genuine pensions, in the sense that a return is guaranteed by their employer or the government. Managements posted immediate profit from abolishing the so-called defined contribution plans, while transferring risk of loss from those most able to overcome it, to those least able to – employees themselves.

Worse, by far, too many CEOs and their top lieutenants have simultaneously feathered their own nests with executive pensions, generous beyond all measure and far beyond any real need. This huge transfer of wealth stands on its head the old and vital balance between management and worker compensation, with potentially dire social consequences.

Corporate language and priorities have captured the American republic. The allocation of government resources is directed by the imperatives of short-term profit maximisation and by a vocabulary of cost-benefit, rather than of concern for flesh and blood citizens. While we watched, CEOs have acquired autocratic control of the levers of corporate power, which in turn has given them accelerating political power. They are accountable to no one, as they direct lobbying and the legal corruption of sponsoring political conventions, inaugurations, presidential debates, congressional self-monuments, not to mention the bread and butter of political campaigns.

More alarming still, these lobbying efforts are increasingly off the book. One might take heart in the fact that the number of registered lobbyists in Washington DC, has actually declined in recent years, until one realises that the amount spent on lobbying has grown dramatically, thanks to whatever expanding network of stealth lobbyists is taking advantage of ever weakening lobbying regulations. This has been nowhere more true than in finance, insurance and the real estate sector, which has spent somewhere between \$450 million and \$1 billion annually on lobbying, ever since the finance-driven crisis of 2008. Not coincidentally, one suspects, not a single high-ranking executive of any major finance firm has yet been prosecuted for malfeasances that rocked the entire global financial structure. But that is the subject of another speech.

Suffice it for now to note, that while ownership has awakened to the challenge, CEO accountability remains largely a myth. Yet, American shareholders can neither nominate, remove, nor communicate with directors. The tendency is for the largest corporations to become drones in the sense of having no effective owners. That is, no owners with more than 10% of the total. What's more, ownership increasingly is represented by index and algorithm selection, in which human decisions, as to purchase and sale, have no relevance. As one might expect, drone corporations, on the whole, pay fewer taxes, incur larger criminal



finer, reward their CEOs with higher compensation and externalise more liabilities onto society, than do corporations that have effective owners.

The latter point, indecently, includes externalising onto shareholders' fines. Sometimes in the billions of dollars imposed in civil actions, undertaken as the direct result of management malfeasances. 80 years ago, Adolf A Berle warned that granting management free reign brought with it, 'the corresponding danger of a corporate oligarchy, coupled with a probability of an era of corporate plundering'. Today, this corporate capture has found its fullest expression in the decision of the United States Supreme Court in *Citizens United*, that a Supreme Court Justice could write the opinion, as Anthony Kennedy did, that little evidence of abuse that cannot be corrected by shareholders through the process of corporate democracy, shows how far we have sunk into a never, never land of convenient truths and rosy shibboleths.

Instead of corporate governance, we've devised a kind of shadow play kabuki, in which the various constituents act out their assigned roles, culminating in the kabuki festival we know as the annual meeting. Even shareholder activism, rather than undermining the legitimacy of the current system, serves illegitimizing function at these yearly events, by maintaining the illusion that reform for the better is possible and that shareholders have power.

The endless proposals asking for actions to be subject to shareholder consent, have not progressed from the classic judgement of the great scholar, Melvin Aron Eisenberg, who said that it was a delusion to think that shareholders meaningfully are involved, when they're asked for a legal consent. The same can be true of shareholder access to the company board for the nominations to the board of directors. Here's the *drôle de guerre* in all its glory: words like nominate, elect, invoke, are used for a process that virtually always results in the election of those individuals whose names are on the proxy, credited and distributed at shareholder expense, but selected entirely by the incumbents.

Similarly, words and phrases like trustee and fiduciary obligation, are promiscuously elicited to describe the functional responsibility of the CEO and board members, under circumstances in which their pervasive conflicts of interest are manifest. It is almost as if we dumbly recite the words in denial of the certainty that they will have no effect. When George Orwell spoke of political speak, it's equally true of corporate speak, they're largely the defence of the indefensible.

'A mass of Latin words, falling upon the facts like soft snow, blurring the outline and covering up all the details.'

The great enemy of clear language is insincerity. By this time you must be wondering what is this all about? Where is he taking us? We now have been confronted with the reality that all manner of professionals are conducting serious discussions about corporate governance and arriving at conclusions based on plainly erroneous understandings of key concepts. Is this just an accident? Is everybody being careless? Is this equilibrium of misunderstanding excepted because it provides something of value to the principally interested parties? Institutional shareholders can claim to their beneficiaries that they're monitoring trust assets. Corporate directors can solemnly aver they're subject to excruciating oversight, all of which justifies their otherwise incomprehensibly large fees. And corporate managers can assign professional advisors to play whatever role in this kabuki drama, all the while unthreatened, in their virtually absolute control of corporate assets and direction.

You have to ask, is there an organising mind that profits from this confusion and engenders its continuance? Is the corporate governance industry a high profile smokescreen that



enables the present composition of corporate power, hegemony of the CEO? Answering these questions is the legacy of this speech. All I will say now is, it didn't get there by chance, and it won't be changed by a simple laying on of hands.

The inescapable fact is that corporations cannot be effectively monitored or controlled by elements external to the corporation. Simply, corporations can lobby more effectively, can hire better lawyers to control the process of converting laws into public policy. And now, thanks to Citizens United, can commit almost limitless corporate funds, to turning the political process in their favour.

As the great Louis Brandeis once put it, 'we believe that no method of regulation ever has been or can be devised to remove the menace inherent in private monopoly and overweening commercial power'. That's about 100 years ago. The only internal component of the corporate system, with power, motivation and interest, sufficient to act as an effective monitor is the ownership. Here though, we do have some models to build on.

War has produced unlikely heroes: the meek private who storms an empty bunker. I don't put Carl Icahn in that category – meek he is not – and self-interest enters freely into his calculations. But Carl has shown, repeatedly, that a single activist, using his own long-term money, can generate long and short-term results. In doing so, he's offered both compelling evidence that responsible, active involvement is the key to superlative investment performance and has shown the way for a generation of imitators, like him, capable of being part of the problem as well as of the solution.

Owners with skin in the game. That, my friends, is the magic formula, and that is the challenge for the rest of us. How do we organise the trillions of dollars under management, so as to emerge with activists, capable of and willing to hold management to account? How can we corral Carl Icahn's energies to more holistic ends?

Let me begin to answer that, with a fundamental truth. Ownership needs to expand its agenda for the future. In the globalised world of commerce, effective and legitimate corporate functioning, will require leadership from the business community and co-operation from governments. The future agenda must deal with at least the following items. First, corporations must have a legal domicile, importantly connected with their operations. Domicile shopping, for the least effective governance regime, must stop.

Second, all constituencies need to cooperate on developing a system of integrated accounting, so that corporations stop having incentive to pursue socially destructive practices and shareholders and customers stop being enablers of personal conduct that they deplore. Thirdly, all publicly traded companies must have real owners. Obviously, defining the requisite characteristics will require much flexibility as there is no shoe that fits every foot. What is critical, is that there exist within the corporate framework, an energy capable of acting as steward, or even fiduciary for the shareholders, capable of dealing with such issues as the permissible level of environmental impact and involvement in politics.

Let me leave you with two thoughts that harken back to World War II, with which I began this talk. Both thoughts would be hyperbolic, were I not convinced that the social and economic fabric of my country were at such risk. The first is a riff on the famous, 'first they came for' formulation by the German Theologian Martin Niemöller, who survived seven years in concentration camps.

First, the CEOs paid themselves royally, second they took control of the Government. I said nothing because I wasn't a CEO; I said nothing because I rarely vote. Then they ended



pensions, captured Governments, corrupted international institutions and suborned the judiciary. Finally, they came for the owners, me.

Lastly, on a more upbeat note, and a return to where I began, this abridgement from Winston Churchill's 42, 'end of the beginning' speech.

'Henceforth, those who oppose us will meet equally well-armed and perhaps better armed troops. Henceforth, they will have to face, in many theatres, that superiority which they have so often used without mercy against others.'

The stakes are high. One reads today of daily attacks on government by and for the people. Holding corporate account, power to account, may well be the best, even the only opportunity to return a civil society, based on human values. The tide, I believe, is turning in our favour. Corporate hegemony is unnoticed, management excesses will no longer go unchallenged. The fight that remains will be a long one, but I leave the struggle to you, with great confidence.