

**INVENTING THE INVESTOR: THE ROLE OF DISCLOSURE AND
REPORTING, AND ACCOUNTING EXPERTISE IN THE
GOVERNANCE OF THE CORPORATION AND THE MAKING OF
THE SHAREHOLDER**

by

Mitchell Stein

A thesis submitted to the School of Business

In conformity with the requirements for

the degree of Doctor of Philosophy

Queen's University

Kingston, Ontario, Canada

(April, 2011)

Copyright©Mitchell Stein, 2011



Library and Archives
Canada

Published Heritage
Branch

395 Wellington Street
Ottawa ON K1A 0N4
Canada

Bibliothèque et
Archives Canada

Direction du
Patrimoine de l'édition

395, rue Wellington
Ottawa ON K1A 0N4
Canada

Your file Votre référence
ISBN: 978-0-494-77178-5

Our file Notre référence
ISBN: 978-0-494-77178-5

NOTICE:

The author has granted a non-exclusive license allowing Library and Archives Canada to reproduce, publish, archive, preserve, conserve, communicate to the public by telecommunication or on the Internet, loan, distribute and sell theses worldwide, for commercial or non-commercial purposes, in microform, paper, electronic and/or any other formats.

The author retains copyright ownership and moral rights in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

In compliance with the Canadian Privacy Act some supporting forms may have been removed from this thesis.

While these forms may be included in the document page count, their removal does not represent any loss of content from the thesis.

AVIS:

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque et Archives Canada de reproduire, publier, archiver, sauvegarder, conserver, transmettre au public par télécommunication ou par l'Internet, prêter, distribuer et vendre des thèses partout dans le monde, à des fins commerciales ou autres, sur support microforme, papier, électronique et/ou autres formats.

L'auteur conserve la propriété du droit d'auteur et des droits moraux qui protègent cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

Conformément à la loi canadienne sur la protection de la vie privée, quelques formulaires secondaires ont été enlevés de cette thèse.

Bien que ces formulaires aient inclus dans la pagination, il n'y aura aucun contenu manquant.

Canada

المنارة للاستشارات

Abstract

This thesis presents an historical analysis of the role of financial accounting in the emerging conceptions of corporate governance during the Progressive era in the United States. Specifically, this thesis advances an approach to the governance and control of corporations in terms of historically-situated subjects who are acted upon by various forms of power leading them to assume specific roles in relation to corporations and their governance. The focus of this study is a broad archival analysis of the emergence of the large industrial corporation during the late nineteenth and into the beginning of the twentieth century. In particular, in this thesis I analyze the importance of financial accounting and reporting discourses, as forms of expertise, to the historical emergence of the corporation's external relationships with broader government bodies and authorities and a broad range of individuals within the public domain. I employ a Foucauldian theoretical and methodological lens to highlight the importance of disclosure and reporting at the macro level of a public economic discourse regarding the corporation. This discourse illustrates how governance focused less on prohibitory laws regarding corporate actions and more on normalizing forms of power in terms measuring and disclosure. I also analyze at the micro level the role of accounting expertise and how it leads to the understanding within the public domain of corporations as norms of business organization. Specifically, accounting expertise provides a means by which the corporation is seen as not only controllable, but also productive and utility maximizing. Taken together, this analysis highlights how financial accounting and reporting comprise forms of normalizing power which shape and define individuals as various types of corporate subjects, such as investors.

Acknowledgements

I am deeply indebted to my advisor, Teri Shearer for her advice, encouragement and support during the writing of this thesis. I would also like to thank Steve Salterio for his feedback and Vaughan Radcliffe for his inspiration. Finally, I thank Constance Adamson from the Queen's University library, Deborah Mercer from the New Jersey State library and Bette Epstein from the New Jersey State Archives for their assistance. All errors are my own.

For Petra and the boys

Table of Contents

Abstract.....	ii
Acknowledgements.....	iii
Chapter 1 Introduction.....	1
1.1 Research Questions.....	3
1.2 Overview.....	6
Chapter 2 Literature Review.....	12
2.1 Early Corporate Governance – Managerialism to Contractarianism.....	15
2.1.1 Alternate Corporate Governance Perspectives.....	20
2.1.2 Current Governance Literature within Accounting.....	25
2.2 Other Research Directions.....	31
2.2.1 Political Approaches to Corporate Governance.....	31
2.2.2 Sociological Perspectives on Corporate Governance.....	33
2.2.3 Foucauldian Governance Perspectives.....	42
2.3 Historical Directions in Corporate Governance.....	44
2.3.1 Initial Directions in Corporate Historical Research.....	45
2.3.2 New Directions in Historical Corporate Research.....	48
2.3.3 Financial Directions in Historical Research.....	52
2.4 Accounting.....	55
2.4.1 Accounting’s Financial and Social Relevancy.....	57
Chapter 3 Governmentality Framework.....	64
3.1 Power Disciplining Subjects.....	66
3.1.1 Manufacturing and Deploying Knowledge.....	70
3.2 Governmentality – Governmental Forms of Power and the Population.....	74
3.2.1 Governmentalization of the State.....	78
3.3 Forms of Governmentality in the American Context.....	82
3.3.1 Financial Accounting.....	84
3.4 Governmentalization of the Corporation.....	89
3.4.1 Political Rationalities, Governmental Programmes and Technologies.....	89
3.4.2 The Corporation as a Norm.....	91

Chapter 4 Methodology and Method	95
4.1 Introduction.....	95
4.1.1 Genealogy	96
4.1.2 A Genealogy of the Governance of the Corporation	100
4.2 Archival Documentary Evidence	103
4.2.1 Time Period.....	104
4.2.2 Archival Sources.....	105
4.2.3 Process	111
4.3 Limitations	113
4.4 Conclusion	114
Chapter 5 Governmentality's Emergence	115
5.1 Overview of the American Corporate Environment	117
5.2 Early Corporate Discourse	119
5.2.1 Political Rationalities – Corporate Charters.....	123
5.3 An Emergent Political Rationality – Trusts and Reform	126
5.4 Emergent Programmes – Holding Corporations	130
5.4.1 Governmental Programmes – The Role of New Jersey	131
5.4.2 Governmental Programme – The Corporation Trust Company.....	135
5.4.3 Emerging Corporate Forms and Discourses	139
5.5 The Discourse of Disclosure and Reporting	142
5.5.1 Actions and Reactions.....	146
5.6 Analysis	152
5.7 Conclusion	161
Chapter 6 Governmentalization of the Corporation.....	163
6.1 Accounting Discourse – Publicity and the Role of Expertise	165
6.1.1 Publicity - Control of Corporations	166
6.1.2 Publicity – Expansion of a Corporate Discourse	169
6.1.3 Classification of Corporations – Investment or Speculation.....	173
6.2 Forms of Accounting Expertise and Accounting Technologies	176
6.2.1 Defining a Corporate Nature.....	178
6.2.2 Accounting Definitions	179
6.2.3 Discourses of Capitalization and Value	182

6.2.4 The Sovereignty of Par Value	186
6.2.5 A Discourse of Goodwill and Publicity	190
6.3 The Diffusion of a Discourse of Accounting Expertise	194
6.3.1 The Role of Accounting Expertise within The Industrial Commission	196
6.3.2 The Promotion of Accounting Expertise	200
6.4 Conclusion	203
Chapter 7 Conclusion.....	205
7.1 Contributions	211
References.....	217
Appendix A Information and Issues of New Jersey	234
Appendix B Sources Searched.....	235
Appendix C United States Investor.....	236

Chapter 1

Introduction

Today more than ever, it is easy to live in the immediacy of the present and to lose all sense of the historical processes out of which our current arrangements emerged. (Garland, 2001, p. 1)

While the above quote was made with respect to the current state of penal mechanisms and systems, it could just as easily summarize many of the current challenges facing both corporate governance and related accounting practices. We seemingly move from accounting scandal to accounting scandal, our eyes focused firmly on the present trying to decide which new standard or reform will provide the answer. At the same time, the public becomes accustomed to and no longer surprised by the latest corporate abuses. Despite these abuses, corporations and capital markets are presented as much more sophisticated and developed than the unregulated capital markets at the turn of the previous century, which are often characterized as consisting of robber barons and a lack of uniform accounting standards and professional bodies.

A very different understanding of our present corporate environment and structures emerge if current corporate governance events are viewed from the past. In particular, an observer scanning the current corporate landscape from their historical vantage point of the past would likely be puzzled by what has transpired regarding accounting practices and mechanisms of control within the corporate environment. Specifically, attempts to achieve greater control over corporations through improved governance mechanisms, including more sophisticated accounting practices, have arguably not met with overwhelming success, bringing into question our current view of the

progressiveness and sophistication of our current practices. What would appear particularly troubling to our historical observer regarding such governance mechanisms would be how, despite decades of reforms in accounting in the hope of improving the quality of accounting measures such as net income, accounting more than ever is implicated in corporate governance failures.

This thesis advances a socio-political approach to understand how contemporary practices relating to the governance of corporations, particularly financial accounting and reporting have come to take their current forms, with all of their novel and contradictory aspects (Garland, 2001). This approach therefore seeks to understand financial accounting and reporting in “the contexts in which it operates” or in terms of “the workings of accounting in action” (Hopwood, 1983, p. 303). It provides a means to understand the emergence of financial accounting and reporting, and practices and strategies concerning the governance of corporations as less evolutionary and progressive, and more a result of social and organizational practices.

The focus of this study is a broad archival analysis of the emergence of the large industrial corporation during the late nineteenth and into the beginning of the twentieth century. In particular, in this thesis I analyze the importance of financial accounting and reporting discourses, as forms of expertise, to the historical emergence of the corporation’s external relationships with broader government bodies and authorities and a broad range of individuals within the public domain. I therefore highlight how financial accounting and reporting comprise forms of classification and scientific study which shape and define individuals - as various types of corporate subjects, such as investors.

1.1 Research Questions

In contrast to the traditional view of financial accounting and reporting as technologies that facilitate governance within an exogenously-determined, principal-agent framework of control, I examine how financial accounting and reporting exerted significant productive pressure on the historical emergence of corporations, particularly in terms of relationships with shareholders. Specifically, this analysis examines issues regarding the significance of financial accounting and reporting to the emergence of the governance and control of corporations at both the macro and micro levels. At the macro level, I analyze how the emergence and development of various forms of disclosure and regulation based on financial accounting and reporting led to a new public economic discourse. This discourse was encompassed not only within the purview of laws, but also within various corporate rationalities and programmes, specifically within the state of New Jersey. At the micro level I focus on specific accounting discourses which operationalize such rationalities and programmes through forms of quantification and expertise. I consider how these discourses of accounting expertise and techniques which focused on governing corporations also shaped and constrained the actions and thinking of individuals regarding corporations by constructing an objective conception of the corporation.

I examine these issues by locating the growth of the corporate form and financial accounting and reporting within a wider framework of government, which Michel Foucault termed governmentality. While subsequent chapters will develop more fully the concept of governmentality, at its heart is the operation of power as relational, encompassed in an almost endless number of institutions, procedures, analyses and reflections which form our modern life and practices and work to direct human behaviour, not in an intentional manner, but impersonally

and unintentionally. As Hannah (2000) notes, governmentality acts as a form of social control in terms of how discursive practices construct the social body as an object of knowledge. As a result the social body is given an intelligible form, which renders it susceptible to rational management. In these terms classification and regulation of activities encompassed within financial accounting and reporting therefore control not only the behaviour of corporations but also create and sustain the management of individuals as investors. The following chapters therefore address how in terms of Foucauldian power relations financial accounting and reporting practices affect the governance of corporations in the form of the broader conceptions of government which externally surround corporations at a macro level, rather than at the level of more specific corporate governance issues relating to boards of directors or compensation policies.

The aforementioned observations imply a new understanding of the emergence of financial accounting and reporting and the early construction of corporations within the American context. This understanding in turn suggests a number of significant consequences for the governance of corporations and accounting within the current environment. Specifically, it suggests that accounting provides a discourse or framework surrounding the governance of corporations, constraining and affecting the governance outcomes of particular models or strategies. It does so, however, not simply through particular standards, but rather in how it creates subjects in terms of its discursive and objective nature and as form of expertise. Individuals, through disciplinary technologies of financial accounting and reporting, come to accept large industrial corporations as fundamental forms of organizations or simply the way things are. Such views of corporations generate norms which shape through processes of normalization the actions and thinking of

individuals regarding such corporations, leading individuals to think of themselves as having a specific economic or financial identity or nature.

This result has practical implications for issues of corporate governance reform, particularly concerning financial accounting and reporting. Specifically, much existing reform focuses on improvements in mechanisms of control and information disclosure, assuming only the need to eliminate a few bad apples, and does not sufficiently consider how calculative techniques of financial accounting and reporting, such as net income, shape our economic behaviour and relations, often in unpredictable and unintentional ways. Accordingly, new corporate governance models or new ways of thinking about corporate governance are inevitably subject to power relations constructed by accounting expertise and related calculative techniques. In particular, new governance models which attempt to consider broader stakeholder groups or a wider range of issues beyond the maximization of share value may continue to be problematic; if they fail to address how relationships and subjectivities are formed through techniques of financial accounting and reporting. Unless these forms of power are recognized and addressed, there seems little hope for establishing significantly new, broader and more inclusive models of corporations and their governance.

New models and ways to understand governance are important since existing models, which predominantly focus on short-term shareholder value, arguably contribute to Enron- like scandals. As Deakin and Konzelmann (2003, p. 584) argue, “unless the regulatory framework is adjusted to make this model [shareholder value] unattractive it will only be a matter of time before the same approach is tried again.” New models are also important since they offer a means to understand

the broader role of the corporation in terms of balancing the interests of different stakeholder groups. As Deakin and Konzelmann (2003) continue:

Above all corporate governance must no longer confine its analysis to the relationship between managers, boards and shareholders. The narrowness of this focus is a major contributing factor to the present round of corporate scandals of which Enron is the emblematic. (p. 584)

Ultimately, recognizing and addressing these forms of power and their impact on the relations between corporations and broader groups with society will help to facilitate understanding why corporate governance failures and scandals seem to continue unabated despite ongoing reforms in areas such as accounting. As Clarke (2004) summarizes:

The dynamic complexity of corporate governance can only be conveyed by bringing together a range of theoretical perspectives to assist understanding. This understanding needs to go beyond the immediate mechanisms and institutions of corporate governance, to consider the bigger questions of how corporations allocate resources and returns, and how they contribute to economic development. In turn this requires investigation of the relationships between corporations and the economies and societies in which they exist. (p. 26)

This understanding therefore will, if not eliminate the failures, help to alleviate them and their affects and provide a clearer idea of the role of corporations within the society in which they operate.

1.2 Overview

The remainder of this dissertation is organized as follows. In chapter two, I review the current corporate governance literature, within the American context, from various disciplines and perspectives including accounting. This review highlights the problematic nature of such research, specifically regarding organizational complexity. I then consider how socio-politically

oriented research provides an understanding of the development of the corporation and its various relationships. Specifically, political and sociological research, suggests new directions focusing on power in understanding the emergence of the corporation and current corporate structures and governance arrangements. Next, I examine the relevancy of historical research regarding the corporation to such research directions and how historical research is becoming more attentive to issues of power. Finally, I suggest what accounting in terms of both historical and socio-political analysis can contribute to understanding the governance of corporations, particularly with respect to power relations.

In chapter three, I discuss governmentality, not as a theory, but rather as what might best be described as an analytics of government. From this perspective, governmentality concerns how we think about governing in terms of different mentalities of government (Dean, 1999). In this sense governing is understood in a wider context, beyond that of the state, encompassing all facets of governing life, including corporations and related activities such as investing. Central to this analytics of government is Foucault's concept of power or power relations which function through processes of normalization. This chapter concludes by considering what I refer to as the governmentalization of the corporation or how the governing of the corporation is a much broader activity than generally understood, involving various forms of expertise and encompassing related groups such as shareholders. In particular, I suggest that greater attention needs to be paid to the various rationalities, programmes and technologies which constructed not only corporations but also the social body in terms of acting as investors and other types of corporate constituents.

In chapter four, I describe what Foucault referred to as genealogy, which is the approach to the historical analysis of the establishment or formation of current systems and practices that I employ in this analysis. Genealogy provides an approach to better understand the forces that led to our current practices by unearthing the often overlooked assumptions, discourses and strategies that have come to form current structures, rather than assuming that such structures are inevitable, purposeful and goal-directed outcomes. Genealogy therefore focuses on the utter randomness of historical events in constructing the present. I also outline the specific archival methods used in such a genealogical analysis, which extend beyond more traditional sources such as legislation or court decisions to include documentary evidence concerning more mundane and routine events.

In chapter five, I examine the macro level in terms of a public economic discourse regarding the corporation. Specifically, this chapter focuses on the emergence of the governmentalization of the corporation and the role of not only the State of New Jersey, but also specific individuals who enunciated what might be called a logic of governmentality. In particular, genealogy focuses on unexpected and unanticipated events, which may seem relatively inconsequential at the time but lead to ruptures in existing discourses and the sudden appearance of new and unpredictable discourses. For instance, changes to New Jersey's incorporation laws to generate new sources of revenue led to the emergence of new rationalities and programmes regarding corporations, and their control and governance focused on forms of expertise and regulation, rather than simply prohibiting certain actions or activities through the passage and enforcement laws. Governance therefore came to focus less on prohibitory laws regarding what or what not corporations could do, and more on normalizing forms of power in terms of measuring, appraising and hierarchizing.

In chapter six, I extend this analysis of corporate governmentality by reviewing at the micro level the emerging rationalities, programmes and techniques in the form of financial accounting and reporting discourses. In particular, I consider specific ways in which financial accounting and reporting shaped and constrained thinking regarding corporations through forms of quantification and discourses of accounting expertise. These discourses made the corporations knowable and produced a particular understanding of the nature of the corporation. This understanding was deployed within the public domain as an objective reality, in terms of the corporation's utility and value, highlighting corporations as not simply businesses, but as an investments and opportunities for the public to become shareholders or owners of such businesses. Such discourses include those relating to corporate legislation focused on disclosure and regulation, the publicity of a corporation's financial information, and the measurement of a corporation's value and capitalization. With these discourses power becomes increasingly focused around what Foucault (1978) referred to as "the action of the norm, at the expense of the juridical system of the law"¹ (p. 144). Such normalizing forms of power act more broadly than judicial systems and become encompassed within growing programmes, which both support and are supported by financial accounting and reporting discourses.

Finally, in chapter seven, I summarize how corporate governmentality emerges at the macro level in terms of various political rationalities, programmes which encompass an accounting discourse or logic of disclosure and reporting, and is supported or operationalized at the micro level in terms of a discourses relating to accounting expertise and technologies which existed throughout

¹ "Juridical" refers to a law-based system which comprises a body of rules of conduct of binding legal force and effect, prescribed, recognized, and enforced by a controlling authority. It functions in terms of a specific authority (sovereign) prohibiting actions or behaviour, in contrast to norms which function in accordance with established and acceptable forms of behaviour.

the public domain. At both the macro and micro levels accounting discourses functioned as important forms of power relations in terms of normalizing practices regarding the increasing acceptance of corporations by a growing number of individuals including an expanding shareholder class. Accordingly, I reiterate how power relations that result from these accounting discourses act unintentionally and impersonally, in that they not only focus on their intended objective, the management and control of corporations, but also on the management and regulation of individuals within the public domain by shaping individual beliefs of corporations as productive, providing utility and value in terms of economic welfare.

In sum, this thesis contributes to both the corporate and accounting literature. In terms of adding to the understanding of the history of the corporation, it highlights the importance of discursive conditions to the emergence of our current corporate structures and governance arrangements. In particular, it illustrates the significance of accounting discourses in the form of disclosure and reporting and as a form of expertise to the historical development of the corporation. It also contributes to these literatures by providing a framework to understand how power functions. Power is not only relational, but also results in individuals internalizing certain practices through processes of normalization leading to individuals acquiring particular natures. Critical to this form of power and the inculcation of norms within individuals are forms of expertise such as accounting. In other words, practices and behaviours in relation to corporations are not intentional or even engaged in deliberately, but form values, objectives and habits regarding how individuals understand corporations.

Finally, I contribute to the accounting literature in terms of understanding the significance of financial accounting as not only with respect to standards and principles, but as a broader discourse or logic. This accounting discourse or logic provided a form of expertise and quantification which was critical to how corporations were understood as norms. Accounting therefore is much more intimately involved with the emergence of the corporation and must be considered as a critical factor in both a historical and contemporary understanding of the corporation.

Chapter 2

Literature Review

This chapter reviews corporate governance and related accounting literature from a number of disciplines and paradigms in order to locate my work and contributions with respect to the existing literature. This chapter first analyzes the development of theoretical approaches to corporate governance to understand current corporate governance paradigms and how specific ones have come to dominant corporate governance thought. I then consider how this development of corporate governance thought has impacted accounting research. I do not consider all of the accounting literature related to corporate governance. As mentioned in the previous chapter, I do not focus on specific governance mechanisms such as boards of directors, audit committees or compensation policies, but on governance at the broader macro level focusing on understanding the external relationship between corporations, investors and government or what I refer to throughout this work as the governance of the corporation. As I will discuss, much of the existing literature regarding the governance of corporations suffers from an inability to deal with corporate and organizational complexity.

Limitations of more traditional economic corporate governance research lead me to consider alternative research directions, particularly socio-political approaches, to understand the development of governance structures surrounding corporations. Socio-political approaches consider the development of corporate ownership structures not only in terms of economic efficiencies, but also in terms of political and social forces. Clarke (2004) calls for an understanding beyond the immediate institutions and mechanisms of corporate governance which

he argues “requires investigation of the relationships between corporations and the economies and societies in which they exist” (p. 26). Davis (2005) seeks a more compelling sociological account emphasizing processes through which corporate structures, relationships, and accountability develop and emerge. These research directions call for not only critiques of economic and functional perspectives of corporate governance, but they also seek to grasp the broader causes, origins and functioning of corporate governance institutions by highlighting the need to be more attentive to history, power and culture, as well as documenting critical junctures in the emergence of the corporation and its structures (Davis, 2005).

Socio-political approaches also focus on the relevancy of power to understanding governance issues surrounding corporations. Within this literature, power is increasingly examined in terms of its relational and structural nature, such that actions of governments and individuals shape possible outcomes regarding corporate structures. I highlight how the work of Michel Foucault provides a unique approach to power and government, entirely outside of frameworks based on theoretical perspectives such as agency theory. A Foucauldian concept of power therefore provides a useful further extension of socio-political approaches in terms of dealing with organizational complexity and offering at least a partial framework regarding how power functions with respect to the governance of corporations. In particular, such an approach highlights power in terms of what Foucault referred to as disciplinary techniques which comprise various forms of expertise, such as accounting. Understanding Foucauldian forms of power involves historically tracing the events of interest to understand how these events produce certain types of structures and subjects.

I therefore turn my attention to the historical literature concerning significant changes which were occurring with respect to corporations and their governance structures in the late nineteenth and early twentieth century. I review this corporate historical literature and consider how over time this literature relates to new conceptual understandings or dimensions of power, particularly in a Foucauldian sense. I also consider the extent and role of financial issues, particularly accounting, in terms of the historical development of the corporation. Accounting as a form of expertise or disciplinary technique is relevant to Foucauldian forms of power. Accordingly, I further explore what accounting might add to these new historical and socio-political directions regarding the governance of corporations. Specifically, I review what historical directions have been taken in accounting research, including how accounting does not simply describe an economic reality, but actively shapes and affects the broader environment.

The remainder of the chapter proceeds as follows. In the first section, I review literature concerning the development of various theoretical models and approaches regarding the control and governance of corporations, including the various relationships which comprise such entities. This section focuses on broader theoretical perspectives at the macro level of governance. I also consider how these perspectives of corporate relationships have influenced accounting literature on corporate governance and led to the emergence of alternative corporate governance perspectives. Next, I discuss the relevancy and importance of politically and sociologically oriented research regarding corporate governance. I then consider historical research on the emergence of the corporation to better appreciate the early development of corporate governance relationships. In particular, I focus on the progressive era in the United States and the merger wave of the late nineteenth and early twentieth century, or what Sklar (1988) refers to as the

corporate reconstruction of American capitalism. I also investigate recent research directions which are more attentive to historical context and complexity, less path dependent, and more critical of market beliefs. Finally, I consider historical accounting literature and its relevancy to newly emerging sociological and historical corporate governance literature.

2.1 Early Corporate Governance – Managerialism to Contractarianism

Corporate governance comprises a vast area of literature, reaching into a variety of topics and disciplines. Such topics include executive compensation, specifically the relationship between governance structures and executive compensation (Core et al., 1999) and the extent to which board governance quality is associated with the disclosure of executive compensation practices (Cao and Laksmana, 2010); boards of directors, focusing on what characteristics determine their makeup and actions (Adams et al., 2010); audit committees, regarding their relationship to and their role in preventing earnings management (Klein, 2002; Xie et al., 2003); and the role of institutional investors in corporate governance activities (Romano, 2001). Even definitions of corporate governance vary widely, from those which focus on how suppliers of finance ensure a return on their investments (Shleifer and Vishny, 1997) to others which consider the legal, cultural and institutional arrangements related to the control of publicly traded corporations (Blair, 1995).

While corporate governance is a vast topic, issues within corporate governance have come to center largely on what Berle and Means (1934) describe as the separation of ownership and control in large public corporations with centralized management but widely dispersed shareholders. Berle and Means (1934) conclude that this separation led to what became known as

managerialism, the rise of a powerful class of professional managers free to pursue interests separate from that of owners. The challenge for Berle and Means (1934) was how to ensure this concentrated economic power within the corporation was responsibly exercised in the interest of society.

Berle and Means' concern about the separation of ownership from control was not only about managers' lack of accountability to investors. It was also a concern about managers' lack of accountability to society in general. Berle and Means thus wrote of a small group, sitting at the head of enormous organization, with the power to build, and destroy, communities, to generate great productivity and wealth, but also to control the distribution of wealth, without regard for those who elected them (the stockholders) or those who depended on them (the larger public). This was hardly a cause of celebration, and Berle and Means, in the tradition of Thomas Jefferson, expressed considerable concern about this development. (Mizruchi, 2004, pp. 581-82)

Over the ensuing decades the work of Berle and Means, and specifically managerialism, dominated research on the corporation from a wide variety of disciplines including economics, sociology, law, and political science (Mizruchi, 2004; Tsuk, 2005). While various perspectives were articulated, the focus gradually centered on the issue of the separation of ownership and control, specifically the divergence of interests between shareholders who undertook the risk-bearing function and managers who performed the managerial function. In the 1970s, the work of Alchian and Demsetz (1972) and Jensen and Meckling (1976) would lead to understanding corporate governance issues in terms of agency theory. This work was significant since it allowed economic theory to explain the workings of firms as contracts negotiated by utility maximizing individuals. Under this view of the corporation shareholders were privileged, not as owners, but as residual risk takers. Corporations therefore came to be seen as a nexus of

contracts between various individuals or groups, with managers viewed as agents of shareholders, who were the principals of the corporation. This principal agent relation between managers and shareholders was seen as problematic since agents had an incentive to maximize their own utility rather than that of the principal. Under agency theory, the objective therefore became to align the interests of the manager (agent) with those of the shareholder (principal) through incentives, monitoring and market mechanisms.

Berle and Means have therefore become seen as the fathers of neo-classical models of the firm based on the agency problem between managers and shareholders. This view of the corporation spawned a vast body of literature around corporate governance issues which came to centre on the central problem of protecting the investments of owners of capital (Shleifer and Vishny, 1997). Corporate governance research, particularly within finance and economics, came to rely largely upon this dominant contractarian theory of the corporation, comparing structures of corporate ownership and debating optimal models of corporate control in an attempt to minimize potential conflicts of interest between outside shareholders and inside managers, and to understand, define, measure, and minimize these conflicts, particularly where they arguably impact firm value (Clarke, 2004; Aglietta, 2000; Letza et al., 2004; Denis, 2001).

While these economic approaches have been highly influential in shaping corporate governance thought, various critiques of these approaches have surfaced in terms of their narrowness and their failure to adequately deal with socially embedded personal relationships. Even ardent supporters of agency theory such as Eisenhardt (1989) admit that it provides only a partial view of the world and fails to capture a great deal of organizational complexity due to its simplifying

assumptions such as those regarding the self interest of human nature. She concedes that multiple theories, drawn from other disciplines such as sociology are necessary to understand organizational behavior. Others have been more critical. Moran and Ghosal (1996) argue that:

Theories of today are dominated by a profoundly pessimistic view of organizations...and by an even more skeptical view of individual-organization interactions, grounded in the assumption that the human role in organization is largely passive and frequently pathological. (p. 70)

Criticisms have also been advanced in terms of the relationship of agency theory to corporate governance issues, particularly how various social factors, such as trust, become difficult to capture under such frameworks.

The problem with established theories of corporate governance is that they misconceive the irreducible core of corporate governance at the same time as underestimating the complexity of the phenomenon. If agency theory is useful in highlighting the self-interested economic inclination of agents, it misses the essential basis of trust upon which all human relations are based. At the same time, reducing economic relations to a series of contracts fails to comprehend the complexity of corporate relationships and the need to continually adapt to changing market environments. (Clarke, 2004, p. 19)

O'Sullivan (2000) points out how the leading theories of corporate governance, such as agency theory, do not provide a systematic of innovation in their frameworks. Specifically, she argues that these theories focus on resource allocation in terms of the residual claims of shareholders or other interest groups. From this perspective, innovation decisions are based on management receiving incentives to innovate where required. O'Sullivan (2000) argues, however, that such management decisions often contradict what is known about the innovative behaviour in terms of its developmental, organizational and strategic dimensions. In particular, she points to how

innovative behaviour often requires the commitment of resources with uncertain returns. She does not suggest that corporate governance should only address innovation, but that corporate governance frameworks should at least more explicitly incorporate the dynamics of innovation, which is increasingly important to economic performance.

Furthermore, a case can be made that the work of Berle and Means does not necessarily even lead to an agency perspective of the corporation. In fact, Berle and Means' observation of managerial control arose almost 40 years before agency theory and at the time was not taken to mean that managers should simply act in the interests of shareholders. Instead their observations arose from a broader concern, the growing power of the corporation more generally and what this meant for society. Berle and Means saw corporate power rivaling that of the state, and accordingly they viewed and analyzed corporations not only as private business enterprises, but also similar to states, as social, economic, and political entities (Tsuk, 2005).

A Machiavelli writing today would have very little interest in princes, and every interest in the Standard Oil Company of Indiana. And he would be right; because the prince of today is the president or dominant person in a great corporation. He would draw out his rules for the governance of princes in the last analysis much as Machiavelli had to, by concluding, I think, that the ultimate safety of the system lay in the goodwill of the subjects or people it served. (Berle and Means, 1930, p. 71)

While growing corporate power and managerial control were concerns, they were also seen by some as creating opportunities, since the belief was that in addition to working in the interests of shareholders, managers could also act in the interests of a broader community. This belief that managers should look beyond shareholders was seen as an opportunity, since the previous dominance of corporations by large shareholders meant that interests outside of those of shareholders were virtually never considered. Accordingly, commentators such as Eells (1962)

argued that managers had a broader societal responsibility in terms of how corporate power was utilized. Understanding how corporate power and control functioned therefore became the focus of a growing number of works (Bowman, 1996; Herman, 1981). Specifically, such works began to highlight the competing perspectives of the firm, and the complexity of control within corporations. In particular, questions began to arise regarding the extent of control the board of directors or management actually possessed within the firm. Herman (1981), for instance, argued that management control was constrained by various factors including boards of directors, stockholders, creditors and other external influences, making it unclear the extent of control management actually possessed. Understanding control and specifically the exercise of power became a central focus of corporate governance research. Corporate governance research therefore began to highlight how control and power did not reside in a central location within the firm, but rather within multiple locations (Herman, 1981; Mizruchi, 1983). Accordingly, alternate corporate governance perspectives emerged focusing on the role of power within corporations, particularly who possessed it and in whose interest it should be exercised.

2.1.1 Alternate Corporate Governance Perspectives

These perspectives highlight that, in contrast to agency theory, the interests and motivations of a broader range of groups needs to be considered. One such perspective is stakeholder theory, which views firms as multilateral agreements between the enterprise and its stakeholders (Freeman, 1984). While stakeholder theory can be understood in a contractual sense as a nexus of contracts, it arguably looks beyond contractual relations to how corporations should be managed to serve the interests of a broad group of stakeholders including employees, financiers, customers and communities (Clarke, 2004). It therefore considers not just contractual

arrangements, but responsibilities to the interests of stakeholders, which includes all those who can influence the firm or be affected by it. As Donaldson and Preston (1995) note:

Stakeholder analysts argue that all persons or groups with legitimate interests participating in an enterprise do so to obtain benefits and that there is no prima facie priority of one set of interests and benefits over another. (p. 68)

Another view of stakeholder theory is provided by Blair (1995), who argues that the determination of whose interests the corporation should serve needs to parallel more closely the sources of wealth creation. Whereas in the nineteenth and into the twentieth century such sources of wealth creation could be traced to entrepreneurial investors who financed the building and operating of a canal or railroad and accordingly had significant assets tied up in such ventures, the current corporate model looks quite different. As Blair (1995) notes:

Much of the wealth generating capacity of most modern firms is based on the skills and knowledge of the employees and the ability of the organization as a whole to put those skills to work for customers and clients. (p. 184)

In the current business environment the corporation's sources of wealth creation are therefore much more closely tied to its people, specifically its knowledge workers, than was previously the case, suggesting that corporations and their governance should be reconceived as institutional arrangements between all of the various parties who contribute such firm-specific assets. While stakeholder theory has attempted to supplant agency and shareholder theories of the firm, it has had only limited success since, as Clarke (2004) notes, stakeholder theory has yet to provide a rigorous understanding of organizational practices within the corporation. Furthermore, perspectives such as Blair's cannot address many of the limitations of agency theory's

shareholder model of the firm, since they tend to rely on many of the same assumptions as neoclassical views of the firm in terms of economic choices by utility maximizing agents.

A more direct challenge to agency theory is stewardship theory (Donaldson and Davis, 1991), which argues that managers are stewards of a corporation's assets, not agents of shareholders, and that in fact there is no conflict between managers and owners. Instead of acting as opportunistic agents who need to be monitored to ensure they act in the interests of shareholders, managers choose to behave as stewards or agents and will act in the interest of shareholders or principles as doing so maximizes their own utility and motivations. This view of stewardship departs from how stewardship is understood within accounting, which focuses on stewardship in terms of its reporting function of providing information regarding accountability over the corporation's assets to internal and external parties. This accounting view of stewardship is also more consistent with the assumptions of agency theory.

In terms of a theory of management, however, stewardship theory does not emphasize individualism, as does agency theory, but rather stresses how individuals see themselves as part of the organization and are satisfied and motivated with the attainment of organizational goals and success. As Davis, Schoorman, and Donaldson describe:

A steward protects and maximizes shareholder's wealth through firm performance, because, by doing so the steward's utility functions are maximized. Given the potential multiplicity of shareholder objectives, a steward's behaviour can be considered organizationally centered. Stewards in loosely coupled, heterogeneous organizations with competing stakeholders and competing shareholders objectives are motivated to make decisions that they perceive are in the best interests of the group. Even in the most politically charged environment, one can assume that most parties desire a viable successful enterprise. A

steward who successfully improves the performance of the organization generally satisfies most groups, because most stakeholder groups have interests that are well served by increasing organizational wealth. (Clarke, 2004, p. 9)

This perspective suggests that the responsibility of the board of directors is not monitoring management as agency theory would suggest, but rather working with management as a team at the top of the organization to accomplish organizational goals. The concern, however, is that since stewardship theory views the firm from a collaborative perspective in terms of managers and board members as part of a team, control is not placed in a small group or single individual. Accordingly, it becomes difficult to often clearly delineate who has ultimate accountability or responsibility for organizational performance, particularly when problems arise.

Kay and Silberston (1995) put forward a similar theoretical perspective in the form of trusteeship, which differs from stewardship in that managers have a wide range of motivations beyond acting in the interests of shareholders to maximize their own benefits. Instead, unlike agency theory which views managers as responsible for the value of a shareholder's shares, managers see themselves as trustees over the organization's assets with no particular accountability to a specific other such as shareholders. A corporation's assets are therefore not seen as legally owned, in a practical sense, by anyone. Accordingly, while this perspective also requires monitoring and surveillance mechanisms to ensure that assets are administered in the best interest of the company, Kay and Silberston (1995) argue that these should take the form of statutory changes in corporate governance mechanisms since self regulation or market discipline are seen as ineffectual and inadequate. In particular, statutory mechanisms are seen as more adequate since this perspective does not involve accountability to a specified other, such as the shareholder, but rather the corporation as a whole.

While these alternate perspectives attempt to provide a broader view of corporate governance, the problem as Letza et al. (2004) argue, is that, similar to agency theory, they continue to focus largely on economic analysis in a search for the optimal and most efficient governance structure. Accordingly, like agency theory, they have difficulty contending with the complexity found within organizations. Consequently, all of these approaches are problematic when attempting to explain actual corporate governance phenomenon, often requiring different theories to explain different situations or with the case of stakeholder theory, requiring greater precision to be useful as explanatory tools. Furthermore, like agency theory, they also largely continue to focus on power as held by specific individuals or groups of individuals. They therefore tend simply to expand ideas of agency theory more broadly in terms of other groups beyond shareholders, or other interests beyond individualism. Accordingly, current approaches to corporate governance thought seem to be trapped within economic views of the firm, missing the fact that corporate governance is largely socially driven. As Letza et al. (2004) note:

The economic rationale employed in the governance debate ignores the basic fact that corporate governance is a process, which cannot be isolated from other social and other non-economic conditions and factors such as power, legislation, social relationships and institutional contexts (Roy, 1997). Theories grounded on economic rationality tend to neglect or marginalize the importance of irrationality, emotion, value, belief, and ideology, which often play a significant role in the process of decision-making and governance. (p. 256)

Letza et al. (2004) call for “a more inventive and flexible approach to the understanding of corporate governance practice and the search for effective and efficient governance” (p. 257).

Among a number of characteristics, they suggest that such an approach should include the following:

1. it is not a static approach, but rather explains the temporary, transient and emergent patterns of corporate governance on a historical and contextual interface in any society;
2. it is relational approach which views the reality as fundamentally interconnected and interdependent and mutually influential. In order to learn, business relationships must think about corporate relationships and social interactions. Thus, shareholder interest is not independent of stakeholder interests and vice versa. A firm is not independent of its constituents;
3. it is a pluralist approach which suggests that corporate governance is not only conditioned to the economic logic such as economic rationality and efficiency, but also shaped and influenced by politics, ideologies, philosophies, legal systems, social conventions, cultures, modes of thought, methodologies, etc.; and
4. it is an enlightened approach that attempts to transcend our habitual, inertial, static, and stagnant ways of thinking about corporate governance.

In response to these concerns, subsequent sections of this chapter will review the new directions governance research is taking and what this study can add to these new directions. However, before doing so I review current approaches within the financial accounting literature to understanding the governance of corporations and the impact the above theoretical perspectives have had on this research.

2.1.2 Current Governance Literature within Accounting

In this subsection, I consider how financial accounting research has approached governance issues and how, particularly over the last two decades, such research has been strongly influenced

by agency theory. As noted previously, I focus on what I refer to as the governance of the corporation. Accordingly, in this review I do not focus on literature dealing with specific issues at the level of boards of directors or audit committees.

Agency theory not only offered a new and powerful understanding of how organizations functioned, it also provided an impetus within the accounting literature to better understand the role of accounting and in particular, accounting standards based on models that permitted prediction and rigorous forms of explanation. Agency theory contributed to the establishment, within the accounting literature, of positive accounting theory (Watts and Zimmerman, 1978 and 1979) which emphasized the importance of contracting and political costs in understanding a corporation's accounting choices, particularly the application of accounting standards.

Specifically, positive accounting theory argues that the use of accounting numbers in the design and application of debt and compensation contracts, and in the political process, in the form of regulation and taxes affects a corporation's accounting choices. Watts and Zimmerman (1978, 1979) therefore attempted to explain accounting phenomena, such as the lobbying for or the use of specific accounting standards in terms of not only market processes, but also political processes.

Under positive accounting theory, political processes are treated as an exogenous variable in the determination of a corporation's accounting choice. In other words, corporations choose a particular accounting standard based on the political costs and benefits to the corporation of choosing to use or lobbying for a particular accounting standard. With the introduction of positive accounting theory, accounting literature therefore became increasingly focused on the

belief of the importance to provide an objective theory to explain and predict accounting practice. In particular, accounting literature, including research regarding the governance of the corporation, moved away from managerial concepts of the corporation to focus on the role of contracting and political considerations in explaining managers' actions such as the exercise of discretion in selecting accounting choices.

Under this contractual view of the corporation financial accounting and reporting performs important monitoring and contracting functions within corporate governance, the purpose of which is to reduce the losses in firm value that would otherwise result from the divergence between the interests of managers and those of shareholders (Alchian and Demsetz, 1972; Jensen and Meckling, 1976; Eisenhardt, 1989). It considers how managers manipulate or manage accounting numbers leading to potential losses in firm value. Within this framework, financial accounting and reporting is therefore seen, ideally, as an objective source of accountability within corporations and the broader structures of industrial and financial capitalism. Consistent with these beliefs, financial accounting and reporting research examines how such forms of reporting provide a monitoring mechanism to ensure that managers act in the interests of shareholders. Accordingly, financial accounting provides information that mitigates or alleviates the agency problem, or as Sloan (2001) suggests "accounting provides the information for governance mechanisms to operate efficiently (p. 337).

Broadly speaking, this area of financial accounting research has therefore come to examine issues regarding the quality of earnings including earnings management, and firm performance or valuation. Specifically such research focuses on the relationship between various governance

measures, such as the independence of boards and audit committees, the dominance of CEOs, or audit committee expertise and financial reporting quality measures, such as accounting discretion (Bowen et al., 2008) or the associations of such governance measures with measures of firm valuation (Brown and Caylor, 2006). In particular, this research attempts to understand such relationships by seeking associations between proxies for these governance measures and financial reporting quality or accounting discretion, measured in terms such as fraudulent financial reporting, earnings management or earnings informativeness (He et al., 2008; Bowen et al., 2008; Larcker et al., 2007). It has also studied such governance measures in terms of issues such as financial misstatements (Beasley, 1996; Agrawal and Chadha, 2005). The belief that motivates this line of research is that by better understanding such associations, corporate governance mechanisms can be developed that will enhance financial reporting quality. In other words, it is possible to develop a set of best governance practices that will improve accounting outcomes and enhance shareholder value.

Despite ongoing efforts to establish associations between corporate governance measures and accounting or organizational performance variables, Larcker et al. (2007) report that:

While prior work has examined many measures of corporate governance, the results are frequently contradictory and a consistent set of empirical results has yet to emerge regarding the importance of corporate governance for understanding accounting outcomes and organizational performance. (p. 964)

In fact, it is not always clear whether managers' accounting discretion is necessarily a negative phenomenon in all circumstances. As Bowen et al. (2008) note:

We do not find a negative association between accounting discretion due to governance and subsequent firm performance. Thus, these second stage results do not support the claim that

managers, on average, exploit lax governance structures to exercise accounting discretion at the shareholder's expense. In contrast we find some evidence that discretion due to poor governance is positively associated with future operating cash flows and returns on assets (ROA), consistent with shareholders benefitting from earnings management, on average. (pp. 352-53)

These conflicting empirical results regarding governance measures and accounting and economic outcomes are due in part to difficulties in appropriately determining and defining the relevant variables given the significant degree of organizational and corporate complexity. As Larcker et al. (2007) note:

This task is especially difficult because (to our knowledge) there is not a well-developed theory about the complex, multi-dimensional nature of corporate governance or a conceptual basis for selecting the relevant governance characteristics to include in an empirical study. (p. 965)

Furthermore, commentators such as Cunningham (2002), Ribstein (2002) and Romano (2005) have also noted the lack of success in finding consistent empirical relationships in their questioning of regulatory reforms such as the Sarbanes-Oxley Act (SOX, 2002), which were predicated on the presumed validity of these relationships.

These difficulties confronted within the financial accounting literature are similar to struggles faced by agency theorists more generally within corporate governance research, that the creation of corporate structures and the markets in which corporations operate are arguably complex political and historical creations, and accordingly an almost endless number of social, organizational and political factors influence the governance of corporations. Becht and Delong (2005) note how the absence of block holding in the United States can be attributable to a variety of social, political and organizational factors including the American upper class turning towards philanthropy, the sophistication of the American banking system, legal shareholder protections,

the actions of trust promoters and investment bankers, the belief by families that they could maintain control, and even notions of frenzied finance due to the belief of quickly getting rich by investing in a bull market. They conclude that in light of the variety of solutions across countries to the basic problems of corporate governance and recent corporate governance scandals, no one system of corporate governance of any particular country appears superior or even durable.

Many of these factors which affect the governance of corporations are also historical or political accidents as a result of actions taken for other purposes rather than purely shareholder needs. Roe (1994) shows how laws passed by the U.S. government in the 1930s preventing banks and other financial institutions from controlling industrial corporations were passed for populist reasons. Their intention was to prevent the concentration of economic power in the hands of a few powerful financial institutions. As Roe (1994) notes, they were not passed to produce efficient capital markets or to solve agency problems of firms.

In sum, the literature on contemporary corporate governance has sought to develop models around control and relationships within the firm and with those exterior to the firm. Early models of managerial control lost favour to those based on agency theory, which in turn would be challenged by other alternative perspectives in attempting to address a broader range of stakeholders. An underlying theme of these various approaches is the operation of power and control within the corporate context and the presumption of an equilibrium or optimality in its application. These approaches, however, have led to often disappointing results, failing, as the above critiques note, to grasp social and organizational complexity and unintentional

consequences. While obviously no single approach can fully meet all these needs, the broader theme suggests thinking which is very different from what has been mostly offered to date. A productive avenue from which to address these concerns is a more sociologically driven framework, attentive to social structures and institutional dynamics. These directions are discussed in the following section.

2.2 Other Research Directions

In this section I address research directions that socio-political research has taken and how these directions have led to a growing focus on issues surrounding power. Specifically, these directions increasingly emphasize relational and structural forms of power. This view of power highlights the relevancy of Foucault to understanding issues of power with respect to the governance of corporations. Accordingly, this section first considers the political literature on corporate governance, followed by the sociological literature, and finally Foucauldian views of power and its relevancy to understanding the governance of corporations.

2.2.1 Political Approaches to Corporate Governance

A number of studies consider how political decisions shaped the corporate landscape as much as economic forces. One of the leading early works in this area is Roe (1994), who contends that dispersed ownership was not only a result of inevitable economic forces as Berle and Means suggest, but also was a consequence of various political decisions in response to concerns over the increasing concentration of economic power. Specifically, Roe (1994) argues that dispersed ownership was not inevitable or even necessary to organize and fund mass production and industrial development. He notes how concentrated ownership in the form of strong financial

intermediaries could, just as easily, have been the preferred means for the growth of industrial corporations. Accordingly, if strong financial intermediaries had developed along-side industrial corporations, there would have possibly not been such a high degree of separation between ownership and control. Large block holders, with specialized expertise, would have existed to monitor managers, arguably providing a more optimal corporate governance environment. Roe contends that such large financial intermediaries did not form largely because of political forces which kept banks small and barred insurers from owning corporate common stock, and led to security laws which deterred the formation of large block holders as mutual and pension funds only became significant recently (Roe, 1994). Accordingly, based on the above factors, laws set the parameters within which economic forces could act. Roe therefore argues that the consequence of such political constraint is that corporate governance institutions may not be optimal from an economic perspective.

Bowman (1996) also explores the political and complex nature of corporate power. Specifically, he examines the importance of judicial and political decisions in structuring power relations within corporations in an attempt to provide an alternative theoretical approach to corporate power. Bowman (1996) argues that corporate power has come to have a dominant role within American society. He makes this case by tracing the historical processes by which corporate capitalism became connected to the political theory of liberalism and how such connections played a critical role in corporations becoming largely accepted within the American political environment and in society more generally. He points to the importance of not only the courts in establishing this corporate acceptability, but also Progressive-era theorists as Hebert Croly, Walter Weyl and Thorstein Veblen as contributing to the development of a corporate liberalism.

Bowman (1996) asserts that over time corporate power has grown to such an extent that the combination of the internal authority of managers within corporations and the market power of corporations allows corporate managers to act as a dominant political class. Bowman (1996) therefore attempts to integrate legal, political, and ideological perspectives to develop what he refers to as a trans-disciplinary approach to corporate power within the corporation.

Gourevitch and Shinn (2005) develop a more complex view of how politics shapes corporate governance by examining how groups, including those beyond shareholders and managers, such as workers, form political coalitions through which they engage in political struggle. Gourevitch and Shin (2005) employ coalition models to explain cross country differences in minority shareholder protection and ownership concentration through the interaction of economic preferences and political institutions. They conclude that, in fact, there are no obvious causes to explain variations in corporate governance across countries since interest groups and the political environment weigh heavily in any such outcomes. While this politically motivated line of research acknowledges, among many factors, the importance and relevance of historical specificities to corporate governance outcomes and the lack of convergence across countries to a single system of corporate governance and control, it maintains a belief that continuing regularities can be found and that corporate governance outcomes remain path dependent or as Morck and Steier (2005) argue, “history is more than a string of accidental traumas” (p. 56).

2.2.2 Sociological Perspectives on Corporate Governance

In contrast to economic or political forces determining corporate governance outcomes, sociologically focused research is beginning to address issues regarding the government of the

corporation and how governing institutions are human constructs which depend upon social processes (Fligstein, 2001; Davis, 2005). Much of this sociologically oriented work focuses on the operation of power and control within corporations. Fligstein (1990), for instance, argues that historically state regulatory intervention shaped the strategies and structures firms employ, leading managers to devise new conceptions of control to preserve their growth and profitability. He contends that corporate success was less a result of economic efficiencies and instead driven by long-term shifts in the conception of how corporations had to function to maintain growth and profitability. These shifts resulted from the interaction of the firm, those who controlled the firm, and government. These shifts in conceptions of control were initiated by management seeking control over their internal and external environments. When particular management initiated solutions were blocked by governments, new solutions were sought, leading to a new conception of the corporation and its means of control. As Fligstein (1990) notes:

these changes were not the product of profit-maximizing actors in efficient firms working to become more efficient. Managers and entrepreneurs were not optimizers or satisficers. Instead, they constructed new courses of action based on their analyses of the problems of control they faced. The new conceptions and the strategies and structures that resulted were successful to the degree they allowed firms to survive and grow. (p. 2)

Specifically, Fligstein (1990) points to the emergence since 1880 of four distinct conceptions of control: 1) direct control of competition, 2) control through manufacturing, 3) control through marketing, and 4) our current stage, control through finance. Employing these four conceptions of control he proposes a dynamic interaction between politics, firms, and markets, leading to the contention that corporate power in fact resides in networks of management professionals with a common interest.

The search for new sociologically driven approaches to corporate governance has also led to the placing of greater emphasis on social relationships and controls (Clarke, 2004). Davis and Thompson (1994), for instance, use the rise of shareholder activism to examine the politics of corporate control. They employ a social movement framework to explain how shareholders and managers, as members of classes, act on their class interests in control at the firm, state and federal level. This perspective contrasts with functional approaches since it emphasizes social structures, neither presuming equilibrium in struggles over corporate control nor the emergence of a final regime of corporate control.

Roy (1997) also focuses on not only power in examining the genesis of large industrial corporations. Specifically, Roy (1997) traces the history of the corporation from the early 1800s when corporations were created for public purposes to the turn of the century by which time its purpose had become entirely private in nature. He employs a structural or relational theory of power under which certain institutional choices determine the availability of future paths. Roy therefore extends the more traditional definition of power, of one actor imposing her will on another actor, by considering power in terms of “the degree to which the behavior of one actor is explained in terms of another actor’s behavior” (p. 259). He highlights how, for instance, powerful actors at critical points left business owners with limited choices in terms of having to merge to form large corporations. Accordingly he argues that structural forms of power shaped rational decision making.

I examine major corporations as a form of property set within a broader institutional structure shaped by the dynamics of power as much as by efficiency. The major, publicly traded large-scale corporation constituted a new type of property, socialized property. Socialized property means that instead of each firm being owned by one or a few individuals, each firm became

owned by many individuals, and individual owners in turn typically owned pieces of many firms. In the process the social nature of property was transformed. The consideration of property implies a degree of inequality, that the social processes determining the shape of the economy are explainable by power, not just efficiency. Moreover, the social relations of property and the underlying dynamics of power are set within the interorganizational frameworks we know as institutions. (Roy, 1997, p. 10)

Roy (1997) therefore considers how historical contingencies or even accidents, particularly changes in power relations due to events such as alterations in the legal system, transformed the corporation. He points out how slightly different changes could have dramatically affected corporate structures.

The concept of power highlights the question of *who* is determining the behaviour of social actors. But power relationships that create new structures become embedded within social structures take on a life of their own, a process set within history, so that to understand the reasons why a system like corporate capitalism arose requires that we understand its roots as its immediate precipitants. (Roy, 1997, p. 257)

For Roy (1997) the concept of power is more informative for understanding the emergence of the large industrial corporation in the United States than theories constructed around economic efficiencies.

Compared with efficiency theory, power theory thus proposes a very different agenda for research: Who made the decisions that created large industrial corporations? What were the alternative choices they faced? To what extent did rationality, social influence, or other decision-making logics shape their decisions? (Roy, 1997, p. 14)

The importance of organizational relations and political power is also highlighted by Parker-Gwin and Roy (1996), who illustrate how state power and law shaped economic life by defining property rights surrounding the control of corporations. Specifically they examine how changes

in New Jersey corporate law, particularly its increasing corporate permissiveness, transformed social relationships underpinning the economy. In particular, they argue that granting corporations the power of inter-corporate shareholding led to

more than just a new kind of organization [holding corporations], the new institutional structure included new forms of inter-organizational relations, new forms of “currency” that mediated exchanges among businesses, new ways to facilitate corporate growth, and a new set of understandings about the capitalist enterprise. The laws permitting corporations to own the stock of other corporations meant that the relationship among companies became embedded in a network of property relations that transcended and, at times, controlled market relations. (Parker-Gwin and Roy, 1996, p. 127)

Accordingly, as Parker-Gwin and Roy (1996) conclude, the underlying causal processes affecting economic organization, such as corporate structures and organization cannot be reduced to simple “factors” or events. Instead, as the case of New Jersey shows, these processes are highly contingent, dependent upon the political dimension of the state’s actions with respect to property rights and the judiciary’s role in economic organization (Parker-Gwin and Roy, 1996).

Building upon the work of Fligstein (1990) and Roy (1997), relating to structural theories of power, Dobbin and Dowd (2000) highlight how public policy and power shape markets. Specifically, they point to how judicial decisions regarding anti-trust laws may have led to significant changes in American economic history. Dobbin and Dowd (2000) contend that anti-trust laws in the 1890s in the United States not only affected the level of mergers, as prior research suggests, but also changed the logic that informed such mergers. For instance, they point to how anti-trust laws in the form of the Interstate Commerce Commission and the Sherman Act, confirmed through judicial decisions, meant that railroads could no longer control rates through pools or trust arrangements. In response to these anti-trust laws industry leaders

proposed that large railroads should act as predators in taking over smaller railroads. Financiers however wanted more amicable forms of mergers. Pressure from financiers, including their ability to control access to capital, would eventually lead to mergers being undertaken on this more amicable basis.

In the early 1890s, an influential group of banks led by J. P. Morgan announced that they would not countenance predation, and in particular they would refuse capital for the practice of competitive building. Speaking for the nation's leading bankers, Morgan warned a national assembly of railroads that they would not back predators: "[T]hey will not negotiate, and will do all in their power to prevent negotiation of any securities for the construction of parallel lines, or the extension of lines not unanimously approved" by others in the rail industry (quoted in Chandler 1977:171; see also Roy 1997). (Dobbin and Dowd, 2000, p. 638)

Dobbin and Dowd (2000) note how over time this financing model became seen as the preferred model of growth, almost akin to a natural law, rather than simply the exertion of power by a small group of financiers. Therefore, they argue that while anti-trust policies played a significant role in constituting the modern market this role has largely faded, as rhetoric has taken shape which casts anti-trust not as an intervention to prevent aristocratic power in American industry, but as a pro-growth strategy or foundation of a market economy. As Dobbin and Dowd (2000) explain, "it [anti-trust] was transformed from an intervention into the human-made incarnation of the natural laws of the market" (p. 653).

In terms of this growing focus on the importance of relations, research is also beginning to show how trust is an essential component of the corporate governance relationship. As Westphal and Zajac (1995, 1996 and 1997), and Stiles and Taylor (2001) show, trust is particularly critical

around board relationships, and board and CEO relationships suggesting that trust and control are not seen as mutually exclusive but interdependent. In a related direction, Roberts (2001) explores corporate governance in terms of subjectively constituted processes and practices of accountability and their individualizing and socializing effects, in contrast to essentialist assumptions of human nature which comprise agency theory.

Whereas agency theorists conceive of the governance problem in terms of a potential bipolar opposition between the interests of shareholders (principals) and managers (agents), a focus on the constitutive effects of different forms of accountability suggests an alternative, more complex formulation of the problem of governance. From this perspective, the problem created by the separation of ownership and control is arguably better understood as a problem of trust at a distance rather than an inherently errant human nature. (Roberts, 2001, p. 1567)

Roberts (2001) concludes that positive effects on governance could be achieved “both by broadening external accountability while also strengthening socializing forms of accountability within the organization” (p. 1,568).

While such research has made strides in broadening corporate governance thinking, Davis (2005) suggests more needs to be done. In particular, he argues that while much of the existing sociological research on corporate governance provides both a useful critique of functional economic approaches to corporate governance and offers useful insights into the operations of distinct institutions surrounding corporate governance, such as boards of directors, these efforts, with a few exceptions (e.g., Fligstein and Roy), do not address the need for a broad sociological based institutional framework or matrix surrounding corporate governance to challenge existing economic and agency approaches. Specifically, he highlights a need to explain the dynamics of institutions around financial markets.

As I stated at the outset, investors need assurance that they will get a return, and those that seek to sell financial instruments – from shares of stock to sovereign national debt – need to provide credible evidence that their investors will get a return. That is they engage in corporate governance. But the logic behind the institutions of corporate governance is not limited to public corporations; it also applies to other things traded on financial markets, an increasingly broad category. The significance of this is that entities that seek to attract investors, from states and corporations to bundles of credit card receivables, need to demonstrate their institutional fitness to distant, often dispersed investors. In a world in which financial flows are the life blood of the global economy and in which more and more entities are traded on markets, corporate governance is critical to understanding the contemporary world polity and the dynamics of institutions.... Thus, the focus of a sociology of corporate governance should be on those institutions - where they originate, how they work, how they influence social actors, and how they change (Davis, 2005, p. 156)

Davis (2005) also sees a need for greater sociological involvement in understanding and problematizing “how corporate governance institutions are shaped to respond to financial markets” (Davis, 2005, p. 158). By this he means challenging the antiseptic portrayal of governance found in much of the economics literature by considering the importance of symbolism to financial markets. He notes how some studies have begun to move in these directions by examining the importance of notions of performance, rhetoric and symbolism in the context of financial markets (Westphal and Zajac, 1998, 2001; Zuckerman, 1999, 2000; Mackenzie and Millo, 2003). These studies highlight how managers and markets respond almost ritualistically to certain practices when such changes are consistent with established norms, even if there is little or no effect on actual performance. The adoption of such practices is often intended to simply convey compliance.

One potential issue in developing a broader institutional framework is the question of power, which pervades the sociological literature on corporate governance. While this sociological work emphasizes a concern with understanding broader forms of power in terms of power's relational and structural aspects, these notions of power still largely "involve deliberate, conscious strategies on the part of organizational actors to mobilize power, thereby achieving their objectives either by defeating or circumventing opponents" (Hardy, 1994, p. 230). In particular, current corporate governance models assume that power is 1) located or locatable within various individuals or groups such as managers or investors (Herman, 1981; Mizruchi, 2004), and 2) exercisable, often coercively, as a means of influencing directors (Bainbridge and Johnson, 2004). Accordingly, emphasis is placed how certain groups exercise power. Furthermore as Parker-Gwin and Roy (1996) note there is no clear theoretical framework to understand how relational or structural forms of power affect change.

It is beyond the scope of this article to develop a theory of this mode of change, but we can suggest some pertinent questions: Under what historical circumstances can small changes provoke large changes? For example, political and economic leaders in the nineteenth century proclaimed that they were living through extraordinary times and often justified their voluntary actions by stating that they were merely responding to inevitable forces of history, raising the issue of how important "definition of the situation" is to liminal periods. Is there any way to recognize such liminal periods other than the proclamations of the participants or assessing epochal change? How does one assess the alternative possibilities in such periods, the unused "bullets" that were not triggered? Can the trigger syndrome of change occur within a single institutional structure where the institutional inertia can muffle the effects of the particular changes, or can it occur only (as we suspect) in the interstices between institutions as the relationship between polity and economy seen here? The change within state policy and law was incremental, but the effect on the economy made it monumental. By the time the federal government began another assault on combinations in restraint of trade with the passage of the Clayton

Act in 1994, the large industrial corporation was an accepted fact of life. (Parker-Gwin and Roy, 1996, p. 26)

2.2.3 Foucauldian Governance Perspectives

Foucault, as will be discussed in greater detail in the next chapter, provides a framework to understand such modes of change by suggesting that power is pervasive, found in all relations. In particular, Foucault highlights a number of critical points regarding power, including the importance of knowledge and expertise to power, how it is productive and not simply repressive, and how resistance to power simply reinforces power relations rather than dismantling them. Foucault therefore provides a different understanding of power, not as controlled by an agent to serve a specific political or economic interest or advantage, but rather as a myriad of relations which comprise what Foucault refers to as disciplinary practices. More importantly in terms of accounting, it highlights the crucial role of expertise in the exercise of power.

This study employs a Foucauldian view of power to extend our understanding of how power or power relations function in the context of the governance of corporations. Specifically, this view of power highlights the importance of expertise, particularly financial accounting and reporting, to how power relations function. It also provides a means to understand and appreciate the complexity of power relations within governance systems, particularly how such power relations are not simply repressive, but productive. Furthermore, Foucault notes how resistances do not dismantle power relations but reinforce them. As discussed in greater detail in the following chapter, Foucauldian power works upwards through the various actions and reactions of individuals. Miller and O’Leary (1989) employ this Foucauldian view of power in their examination of the role that different political cultures had on the concepts of management and

the corporation over the period of 1900-1940 within the American political environment.

Specifically, they argue that analyses of the modern corporation benefit from new ways of understanding and analyzing power.

That is, in effect, a call for critical studies of the corporation to work upwards from specific processes and their interrelations, rather than downwards from an assumption that the outworkings of power can be detected and made intelligible by reference to a broad historical postulate such as that of capitalist domination. (Miller and O'Leary, 1989, p. 263)

This Foucauldian view of power has also been fruitfully used in various socio-political contexts within which accounting practices have played a significant role, not only within organizations but also across a vast number of sites in modern life (Fleischman and Radcliffe, 2005). Among many such sites is Hoskin and Macve's (1988) classic study of cost accounting at the Springfield Armory in the 1830s and 1840s. In their study, Hoskin and Macve (1988) illustrate how accounting acted as a technique of surveillance, rendering labour as calculable and total human accountability as possible. Similarly, Miller and O'Leary (1987) demonstrate costing and budgeting as an important calculative practice within wider mechanisms of power which come to manage and govern individual lives. Miller and Rose (1990) extend these mechanisms of power in analyzing the exercise of power in advanced liberal democracies. Specifically, they show how Foucault's ideas regarding power help us understand "the complex and heterogeneous ways in which contemporary social authorities have sought to shape and regulate economic, social and personal activities" (p. 27). Radcliffe (1998) applies Miller and Rose (1990) to understand how accounting and auditing knowledge is inserted into wider areas of practice. Specifically, he considers how efficiency auditing was comprised of an assembly of broadly stated political

rationalities and specific programmes for action (Miller and Rose, 1990 and Rose and Miller, 1992).

Understanding the formation of Foucauldian power relations requires historical tracing of power relations and related disciplinary practices within particular institutional settings. Accordingly, appreciating the relevancy of Foucauldian power relations to the emergence of public corporations and early forms of governance relationships necessitates a historical examination of the corporation. In particular, Foucault points to examining what he refers to as points of rupture which comprise sudden changes in discourse. Determining such critical junctures in the history of the corporation is therefore important to understanding Foucauldian power relations. This historical analysis is also consistent with recent calls within the corporate governance literature for a much better understanding of the history of the corporation. As Sylla notes in his comment on the work of Becht and DeLong, “we need to know a lot more about the history of the corporation, a subject that seems curiously neglected given its importance in modern economic history” (Becht and DeLong, 2005, p. 665). I therefore review the various directions historical corporate research has taken over time.

2.3 Historical Directions in Corporate Governance

In this section I discuss the various strands of historical literature concerning the emergence of the corporation. I first explore the more conventional literature which situates our historical understanding of the corporation and its governance in terms of economic agency relationships. This more traditional work also examines, in terms of economic and efficiency models of the corporation, the impact of changes in laws, specifically shifts from special chartering provisions to general incorporation acts. I then consider more recent historical research, which revisits and

challenges the conventional historical understanding and significance of the emergence of the American corporation and issues of ownership and control. This more recent research is more attentive to the historical complexity of corporate issues and the influences and factors beyond economic ones which must be accounted for. In particular, much of this new research focus questions the inevitability of events.

2.3.1 Initial Directions in Corporate Historical Research

Earlier historical corporate literature was largely based on an economic or legal view of the corporation. This economic view of the corporation provided largely an ahistorical understanding of corporate governance, since the same economic forces were seen as driving corporate structures and relationships for hundreds of years. For instance, Wright et al. (2004), who examine historical documentary evidence relating to corporations dating as early as 1689, argue that,

although modern day corporations are far larger and broader than those of even fifty years ago, and they appear to bear little resemblance to their predecessors, the economic forces driving the modern corporation, including transaction and agency costs, remain the same. (p. xii)

In other words, Wright et al. (2004) assume that corporate governance currently and historically is similarly explainable by contemporary economic theories of the corporation, such as agency theory. Furthermore, such assumptions lead them to conclude that the interpretation of centuries-old historical corporate documents regarding corporations and their governance provide definitive answers to corporate governance issues today.

The documents presented in this series, the editors argue, suggest that direct government oversight of corporations is likely to fail

and that regulators should instead seek to encourage shareholder activism. In other words, instead of trying to monitor corporations on behalf of stockholders, government should implement policies designed to induce stockholders (and other stakeholders) to monitor management more closely. (Wright et al., 2004, p. xi)

These economic views of the corporation originated from studies that focused on changes in technology and the industrial nature of the enterprise. In what is seen as a landmark study of the merger wave of the late nineteenth and early twentieth century, Chandler (1977) looked towards changing technology and argued that large-scale business enterprises resulted from economies of scale. The key for Chandler (1977) was cost reduction through structural transformations in the business enterprise. Lamoureaux (1985) also examines the merger movement largely in economic terms, arguing that mergers were a result of historical circumstances of capital intensive industries with high fixed costs, rapid growth and various economic panics and depressions of the time. In fact, she notes that in many cases mergers actually led to more inefficient enterprises, suggesting that anti-trust laws were in fact unnecessary except in limited industries.

Economic and efficiency models of corporate history also influenced early research on the role that state corporate law and judicial decisions played in the development of the corporation. Prior to the merger wave, corporations were seen from a legal perspective as creations of the state and shareholders were regarded as active members of the corporation (Horwitz, 1985). Over the nineteenth century however various legal decisions began to establish and expand private rights

for corporations². By the late nineteenth century, new understandings of the corporation and likewise its shareholders emerged. The primary one was natural entity theory which envisioned the corporation as having attributes of a real person and its shareholders as passive investors rather than active members.

With the growing importance of corporate law, state governments began to compete with one another to liberalize corporate laws in a process known as chartermongering³ (Grandy, 1993). As Grandy (1993) notes, this competition between states played an important role in the development of corporate structures and their governance. Specifically, Grandy (1993) points to the importance of the federal political structure in the United States and its interaction with economic events leading to the passage of legislation by the state of New Jersey permitting corporations to hold the shares of other corporations. Grandy (1993) argues that the passage of such legislation was critical in the creation of holding company structures which would not only alter American corporate law, but shape future political and economic events. Grandy (1993) therefore shows that chartermongering strategies of states were not only the result of economic forces, but also the consequence of the federal political system, particularly the roles of private and public economic activity within the federal political system.

This early work on holding companies also focused on the economic tradeoffs and motivations states had for liberalizing corporate laws to permit the formation of such entities. Butler (1985),

² *Dartmouth College v. Woodward* (1819) was a key early case which defined corporations as “legal” persons with rights as granted by their charters.

³ Chartermongering involved the active solicitation of corporate charters for the purpose of bolstering state revenues. State incorporation fees and other taxes became an increasingly significant source of revenue to the states. The concern was that many states weakened their corporate laws to attract corporations. This has been referred to as a race to the bottom (Yablon, 2006; Chausovsky, 2007).

for instance, contends that jurisdictional competition provided more efficient laws. Specifically, he argues that states relinquished the granting of special charters, thereby voluntarily reducing their power over business organizations, as result of the decline in “value of the special charter as a marketable piece of special interest legislation” (Butler, 1985, p. 163). The decline in the value of granting special charters resulted from the expansion of interstate commerce and court decisions which led smaller revenue hungry states to begin passing general incorporation laws, attracting corporations from other states. Ultimately this led to states no longer producing special charters and all states enacting general incorporation laws. Similarly, Bittlingmayer (1996) examines mergers and responses to them in the form of antitrust laws from a financial and economic perspective when he considers the impact of antitrust laws on business activity. He argues that greater anti-trust enforcement by Theodore Roosevelt in 1907 and the political uncertainty that it created led to a temporary short term-decline in business activity among larger firms.

2.3.2 New Directions in Historical Corporate Research

Whereas previous historical research employed economic perspectives to understand and interpret the past, more recent research takes as its starting point the empirical and conceptual limitations of this earlier research. In particular, more recent work on corporate history has begun to challenge and counteract some of these more conventional narratives. Dunlavy (2004) argues that the conventional narratives are problematic since they inadvertently naturalize timeless views and ahistorical theoretical perspectives of corporations and its constituent parts, such as shareholders, rather than seeing them as historically contingent and ever changing. She contends that while much existing research examines the corporation from the exterior in terms of the legal

processes through which corporations were created or the development of theories or conceptions of the corporation, these tell us little about the internal workings of the corporation (Dunlavy, 2004). In other words, conventional historical narratives fail to appreciate how “[v]iewed from the interior...corporations and shareholders had become something very different by the 1880s” (Dunlavy, 2004, p. 68). She points to how in the 1800s in the United States, corporations were generally used for large public service ventures such as canals or railroads and were generally seen as unsuitable for industrial or manufacturing concerns.

Dunlavy (2004) counteracts conventional narratives of the corporation concerning corporate voting rights and theories. Specifically, she attempts to denaturalize ingrained beliefs surrounding voting rights within corporations by arguing that changes in voting rights were a critical driver which led to changes in power relations within corporations, and to corporations ultimately being seen as essentially private in nature with all-powerful boards often controlled by majority shareholders. Dunlavy (2004) documents, what has been largely overlooked, that voting power within corporations was at one time based on one vote per shareholder, rather than our current system of one vote or many votes per share. She contends therefore that whereas shareholders started out as citizens of the corporation, this view of ownership would be displaced by something fundamentally different, the plutocratically⁴ governed corporation in which shareholders are merely passive investors.

⁴ Plutocracy refers to control of wealth by a small group of individuals, leading to a large economic inequity with low social mobility. Dunlavy uses plutocracy in referring to one vote per share on the basis that a small group of individuals can own a majority of the shares of the corporation and therefore control the wealth of the corporation. She contrasts this view with what she refers to as the “democratic” corporation where control is more evenly spread since each shareholder has one vote.

Herrigel (2007) refers to this renewed interest in the history of the corporation and its governance as a new wave of historical research on corporate governance. Whereas the first wave of historical research largely comprised the Chandlerian model, this new wave involves 1) a greater openness to the past and the complexities surrounding how individuals are embedded in a larger social, political, and economic context, 2) less focus on path dependency, and 3) more critical of American bias as well as neo-liberal beliefs in the superiority of market arrangements. An example of this new wave of historical research is how O’Sullivan (2007) uses historical analysis to question neo-economic theories linking the expansion of the US stock market between 1885 and 1930 to the protection of minority shareholders. She observes that such theories concerning the protection of minority shareholders do not fit the historical patterns. Specifically, O’Sullivan (2007) documents historical patterns of weakening shareholder rights. Beginning with changes in state law in New Jersey in the mid-1880s, states began increasing the authority of directors and managers and weakening shareholder rights in regards to corporate matters such as consolidations. Instead, she suggests reasons, other than the protection of minority shareholders, for the market’s expansion include an increased demand for stocks by institutions, and an increase in supply necessary to facilitate the merger and acquisition activity of established firms.

This new historical wave of research is also found in a growing body of work that has begun to revisit issues surrounding state competition over corporate charters. Tung (2006), for instance, asserts that the internal affairs doctrine, under which one state regulates a corporation’s internal affairs, even though it carries on business in various states, was not an inevitable result based on efficiency or rational design arguments as commonly understood. Specifically, he argues that the origin of such a doctrine is actually puzzling since it required states to concede territorial

regulatory authority over corporations⁵ and led to state competition in corporate law to attract corporations. He points to how the origins of this doctrine occurred long before state competition over corporate charters, and related instead to protecting states' sovereignty over their newly created corporate creations. It was only with changes in the context of which corporate law had to operate, specifically large-scale firms in major industries that this doctrine proved useful to corporations, allowing them to incorporate in one state but effectively carry on their business in another state. This doctrine therefore moved from a rule of deference to states control over corporate law to a rule concerning private corporate choice and competition. Tung (2006) therefore concludes that the role of the internal affairs doctrine in contributing to charter competition was not planned or inevitable, but rather must be understood within its historical and institutional context.

The evolutionary tale of the internal affairs doctrine and modern charter competition refutes notions that the doctrine was inevitable or resulted from any underlying efficiency-enhanced rational design.... The historical solution to the puzzle of the internal affairs doctrine casts doubt that fundamental institutional change may be accomplished merely through casual prescription. Markets for law may not form spontaneously. Existing institutional arrangements may matter, and they may or may not favour competition. Prescriptions for competition may therefore be incomplete without careful consideration of existing institutional arrangements. (Tung, 2006, pp.100-101)

Further commentators who revisit issues surrounding state corporate law and charters, particularly in terms of their social and political embeddedness, include Chausovsky (2007) who critiques the thesis that the passage of corporate laws by New Jersey, allowing more liberal merger provisions, led to corporations no longer being held in control through state legislative

⁵ Territorial regulatory authority would permit states to regulate a corporation's internal affairs where the state carried on business in that state, but was not necessarily incorporated in that state.

restraints. He argues that this process of the liberalization of corporate law was much more of a historical evolutionary process than a “big bang”, and that New Jersey’s changes were not all that unusual as many states were in the process of adjusting their laws. Finally, Yablon (2006) describes how charter competition is not simply a race to maximize revenue from taxes and incorporation fees as previous work suggested (Grandy, 1993), but rather involves a number of other motivations, particularly the private benefits of individuals, such as legislators, lawyers and promoters along with network and reputational effects, such as that of public opinion in the form of political backlash and public outrage over on corporate behaviour.

2.3.3 Financial Directions in Historical Research

In addition to the importance of law and political considerations, this new historical orientation has led to new questions regarding the role financial innovation played in the merger movement of the late nineteenth and early twentieth century. Hake (2001) employs Thorstein Veblen’s theory of a credit economy to highlight the importance of financial innovations regarding new methods of corporate valuation which made acceptable companies having large capitalizations that were necessary to attract the funds needed for merger activity. Companies ceased basing their values on physical assets and instead looked towards earning capacity. In other words, a new form of capitalization based on earnings became accepted. Critical to these changes were new forms of financial instruments such as common and preferred stock and new accounting principles concerning issues such as goodwill and no par value stock. Hake (2001) extends this analysis to argue and demonstrate how what were at one time considered suspect accounting and financial practices were not actually eliminated, but rather accepted as new financial concepts.

A review of the evolution of accounting and financial practices makes it clear that the stock watering debate encapsulated a conflict between the requirements of the modern industrial corporation and the nineteenth century proprietorship theory of accounting with its attendant focus on the balance sheet and reliance on par-value stock. This conflict was especially severe during the last decade of the nineteenth century due to the widespread adoption of the new methods of finance in the American merger movement, the rapid expansion of the market for industrial securities, and the somewhat retarded development of U.S. accounting standards. With the adoption of no-par stock, and the subsequent increased reliance on the income statement, the resolution of the stock watering debate occurred not with the cessation of suspect activities but with their eventual acceptance as elements of the new financial order. (Hake, 2001, p. 429)

In contrast, Mitchell (2007) recounts the development of new financial techniques as problematic in his tracing of how finance and the stock market triumphed over the importance of manufacturing and developing more sound industrial practices. Mitchell's (2007) study of the late nineteenth and early twentieth century portrays how the American economy transformed from a manufacturer of goods and services to that of securities. Accounting only provides a minimal role in this narrative, its diminished role a result of Mitchell's belief that accounting practices were primitive and not sophisticated enough to protect newly emerging investors. Insufficient forms of disclosure were one factor which permitted promoters and other unscrupulous individuals to profit from small shareholders and creditors who in turn lost much of their wealth.

As the research reviewed above demonstrates, new directions are being chartered in understanding the history of the corporation. In contrast to the earlier historical research that focused largely on economic and efficiency issues regarding ownership concentration, minority

protection, the role of financial intermediaries, and depth of securities markets, these new directions are more attuned to how corporations are embedded in a broader social, political cultural and financial context. Appreciating how corporations function, within these broader social, political, cultural, and financial contexts, opens up not only issues of power, but also the possibility of broader understandings of power, particularly in terms of various forms of expertise, such as financial accounting and reporting. However, as Hake (2001) and Mitchell (2007) highlight, within the broader corporate governance literature, accounting is largely viewed as underdeveloped and unsophisticated, seen largely as an evolutionary practice or progressive body of knowledge to control individuals within corporations and to provide investors with an objective representation or “truth” of the economic reality of the corporation. This understanding of accounting limits how it is viewed in terms of its contributions in understanding the emergence and governance of the corporation.

Accordingly, in the following section I review how despite the above views that accounting was primitive and unsophisticated due to a lack of uniform accounting standards and a still forming professional organization; accounting thought was not only more developed than the above views suggest, but also had significant historical socio-political affects. Unlike more traditional accounting research, which concerns itself with improvements in efficiency and the production of financial accounting standards, what has become known as the “new accounting history” (Miller et al., 1991) is more attentive to the social influences and character of accounting, particularly in terms of the relations between accounting and the social environment. As I discuss in the following section, such a view of accounting has implications for how, historically, accounting is relevant to the development of the governance of the corporation.

2.4 Accounting

Fleischman et al. (2003) note that accounting history consists of divergent streams of research. They observe that traditional explanations of accounting history relate to neoclassical economic concerns over improvements in the efficiency of the business enterprise and markets. This traditional historical perspective leads to the presentation of accounting history in terms of transactions costs and the development of accounting principles and ultimately uniform accounting standards (Zeff, 2003; Miranti, 1989, 1990). As an alternative to this traditional history, Fleischman et al. (2003) point to a growing critical accounting history, the main forms of which are Foucauldian-and Marxist-inspired work. This critical historical research which Miller et al. (1991) and Napier (2006) refer to as a new accounting history challenges more traditional explanations by emphasizing the importance of uncovering the relations between accounting and broader contextual factors in society, particularly how accounting impacts and shapes the environment in which it exists. Napier (2006) points out how this new accounting history views accounting as not simply reflective of social reality, but as constitutive of that reality since accounting is considered to be critical in shaping social relations. This critical or new accounting history therefore highlights how accounting history must be understood not simply in terms of measures of efficiency, uniform standards or even professional organization.

Also important to the employment of accounting history in this study is how Napier (2009) further distinguishes ‘traditional’ and ‘new’ accounting history in terms of the former as documenting accounting rationales and practices and the latter which seeks to understand how accounting “may act as an engine of social, economic and political change” (p. 44). Spence

(2010) extends Napier's (2009) interpretation of accounting as a social phenomenon by "showing how accounting discourses play a fundamental role in shaping significant historical events" (p. 378). Spence (2010) therefore attempts to understand what he refers to as 'history through accounting'. This study therefore employs accounting similar to Spence (2010).

Whereas a history of accounting might employ historical analysis and social theory in order to interpret changes in accounting practice, a history *through* accounting would also try to use accounting in order to contribute to historical understanding and social theory. (p. 378)

A history through accounting employs accounting to understand the emergence of the corporation and its governance and the role accounting discourses play in this process. In this sense, accounting discourses play fundamental roles in shaping the broader socio-political environment. I therefore focus on understanding how historical accounting literature views accounting as contributing to our understanding of the broader environment surrounding the governance of corporations. Specifically, I consider accounting's role in terms of users such as investors and regarding how such users perceive and understand corporations.

While much of this section addresses research connected with more critical accounting history, I first address earlier research which highlights how accounting was not as underdeveloped as commonly portrayed (Brief, 1975) and the existence of reciprocal relationship between financial accounting and the social and cultural context in which it operates (Scott, 1931). I then flesh out how more recent critical or new accounting history has contributed to financial accounting. Specifically, I discuss how this work illuminates accounting's important and significant historical effects within society. I first consider this in terms of how accounting shapes users such as shareholders and then in terms of the socio-political role accounting plays in relation to the

corporation, particularly regarding facilitating and legitimating the corporate form. Finally, I consider how this critical accounting history highlights accounting's relevancy to the historical study of forms of power surrounding the governance of the corporation.

2.4.1 Accounting's Financial and Social Relevancy

The historical work of Brief (1965, 1966, 1975) highlights the relevancy of accounting thought in the nineteenth century to contemporary practices since as Brief notes a number of significant issues regarding asset valuation and accounting calculations were discussed during this period. In considering the historical relevance of accounting, Brief (1965) examines not only the technical aspects of nineteenth century accounting, but more importantly hypothesizes its broader environmental influences on economic development. Specifically, he argues that the potential overstatement of profit by not taking depreciation actually over stimulated economic growth during the late nineteenth century. Furthermore, Brief (1975) points to how many modern proposals for reform can be traced to the nineteenth century, which he refers to as a golden age of accounting since issues were clearly debated free from statutory authority. In fact, he argues that many of the issues facing accounting, since that time, remain unresolved. He highlights how the basic problem facing measurement issues and profit calculations in accounting involve uncertainty about the future, which our statistical methods have not adequately addressed or maybe simply unable to do so. He argues that since issues concerning future uncertainty remain unresolved, legislation and regulation have not in fact produced the intended improvements. Brief's work therefore suggests that the historical relevancy of financial accounting and reporting to understanding corporations is not simply determined by the development, uniformity or even comprehensiveness of a set of standards.

Historical perspectives of accounting also focus on its broader social and organizational effects and consequences, and how accounting shapes and is shaped within its environmental context (Scott, 1931; Merino, 1993; Covaleski and Dirsmith, 1995). One of the earliest contributions came from the classic work of DR Scott (1931), who placed accounting within the process of social development by considering the influence of not only economic organization, but social and cultural organization upon accounting. Scott argued that accounts are not external to social and cultural organization, but at the very center of it. For Scott, accounting had to be understood by how it both was influenced by and influenced the environment. As Scott (1931) observes:

persons steeped in the habit of thinking in subjective terms sometimes get the notion that development of an ability to predict in social affairs would free social phenomena from causal determination by making such phenomena subject to human control. They appear to think of social phenomena as retaining their present characteristics, that is, as remaining constant, while man learns to control them. They thereby put man outside of society. They do not seem to appreciate that an understanding of social phenomena running in objective terms would, if it became general, constitute or involve a fundamental change of social phenomena. Such an illusion is corrected by including man in the causal process. (p. 131)

Scott (1931) places accounting within a broader social context. In particular, he saw economic methods of production as a cultural matter and therefore the development of accounting had to be considered within the process of cultural change. In other words, he was one of the first to observe how accounting is not stable but is in motion emphasizing the importance of different issues and the interests and influences of different groups within organizations and society over time (Covaleski and Dirsmith, 1991).

A number of commentators consider the various socio-political consequences of financial accounting to shareholders. Merino and Neimark (1982) were one of the first to question the ahistorical and asocial nature of accounting disclosure to external users such as investors. Specifically, they argue that the Securities and Exchange Commission's securities acts were not fundamental changes in public policy in response to market abuses of the 1920s, but rather "were part of a continuing nineteenth- and twentieth-century effort to reconcile corporate dominance with individualistic eighteenth-century democratic and economic theories without disturbing the existing set of social and economic relations" (Merino and Neimark, 1982, p. 34). Their conclusion, "that the securities acts were designed to maintain the ideological, social, and economic status quo while restoring confidence in the existing system and its institutions" highlights that the such legislation was in fact more complex than previously assumed, and therefore requires the investigation of "the socioeconomic circumstances in which these objectives are embedded" (Merino and Neimark, 1982, p. 49).

Young (2006) also illustrates the social constructivist side of accounting and the taken-for-grantedness of financial information. She looks beyond the accounting profession to consider the taken-for-grantedness of financial statement users and the justification of accounting practices and disclosures based on users. In particular, she points out how standard setters constructed a very specific user – the rational economic decision-maker, leaving little space for any behaviour outside of such users. Young (2006) highlights how such justifications occur in a timeless and static framework "in that a 'rational decision' requires no context but can be assumed to be the same across time periods, economic situations and decision makers" (Young, 2006, p. 596). A consequence of this limited conception of users is that accounting reports become similarly

narrow in scope since other significant and meaningful information that doesn't aid in the prediction of future cash flows, future profitability or future financial position can be easily dismissed.

Finally, research examines the important role of accounting knowledge in facilitating relations between individuals and shareholders. This research also illustrates how accounting acts as form of power or discipline in legitimating specific forms of corporations and their proliferation. Espeland and Hirsch (1990) note the role of accounting in relation to the corporation in their examination of the symbolic power of accounting in redefining the corporation during the conglomerate movement in American business in the 1960s. Specifically, they examine how the rhetorical power of accounting stimulated and legitimated new forms corporate forms and practices with the appearance of conglomerate mergers, which contributed to the financial transformation of American business.

We have emphasized two interrelated aspects of accounting: its significance as a conceptual framework for making sense of the firm and its potent symbolic power. Accounting concepts help to define the "premises of decision-making" within the firm. As a critical symbolic resource, accounting also helped to legitimate to audiences outside of the firm a new corporate form and a new philosophy of business. (Espeland and Hirsch, 1990, p. 92)

Espeland and Hirsch (1990) conclude that financial accounting is therefore active in supporting a particular conception of the firm. In other words, it represents an important form of power which needs to be addressed in understanding the emergence and development of corporations. As Espeland and Hirsch (1990) argue:

Neither the rhetorical nor the cognitive aspects we have emphasized conform to the traditional view of accounting as an objective enterprise which results in an accurate reflection of the

financial status of an entity. Accounting is much less passive than that. It is, in fact, more important than accountants have traditionally claimed, and surely the sociology of business and the study of organizations has suffered from its neglect of accounting. The role of accounting has been central in facilitating and legitimating important transformations in business, not the least of which is the recent financial transformation. Anyone interested in understanding the development and consequences of capitalistic forms ignores accounting only at their intellectual peril. (p. 93)

Merino (1993) further examines how accounting knowledge and expertise at the turn of the nineteenth century played a critical role in reconciling individualistic economic theories and actual economic conditions in the U.S. Specifically, employing the pragmatic concept of deliberation, she considers how the proprietary theory of accounting arose as a creative and imaginative response to conditions of the progressive era and to the need for a model to reconcile the new emergence of absentee ownership with the entrepreneurial function. In other words, proprietary theory made “it appear that stockholders (owners) could control investment and reinvestment decisions” (Merino, 1993, p. 178). Merino (1993) contends, however, that while proprietary theorists wanted the world to see stockholders as retaining control, the methods they employed indicated otherwise, strengthening the control of financial capitalists. She also asserts that proprietary theorists “knew accounting techniques were not neutral and that they did more than report facts” (Merino, 1993, p. 179). Furthermore, she draws attention to the influence of proprietary theory on our current literature and contemporary accounting theory in terms of the normative assumption that managers should maximize returns to owners (shareholders) and in how naturalistic attributes of objectivity, amorality, determinism, and pessimism are used to respond to criticisms in accounting. As Merino (1993) notes, “external critics can challenge

general concepts such as profit, but accounting techniques, requiring specialized knowledge, seem impervious to external criticism” (p. 179).

Accounting researchers have therefore recognized the interrelationship between financial accounting, as a form of knowledge and discourse, and various corporate relationships, particularly those relating to investors. However, while the above research offers important insights into the historical specificities regarding accounting within its social context and highlights a growing attentiveness to power (Merino, 1993; Covalleski and Dirsmith, 1995), it largely continues to infer intentionality and direction in the application of such power, often arguing that accounting is complicit in supporting and reproducing certain political and economic interests. I wish to suggest an alternative, which locates the historical emergence of financial accounting and reporting in relationship to the emergence of the corporation within other social and organizational practices (Miller and O’Leary, 1987), rather than serving particular interests. I therefore extend Espeland and Hirsch (1990) and Merino (1993) to highlight how accounting functions not only in terms of its symbolic and rhetorical nature, but also in terms of how it leads individuals to accept corporations as norms of business organization.

I also extend Stein (2008) who conceptualizes contemporary corporate governance reforms such as the Sarbanes-Oxley Act (“SOX”) in terms of corporate governance norms. As Stein (2008) notes, the need for managers to conform to corporate governance norms, leads managers to monitor their actions and seek advice from experts such as accountants. Through this process, managers create new identities through forms of power which are not locatable, but relational, found in the actions of various individuals, including those of accountants.

As the critical accounting history literature discussed above indicates, accounting and particularly financial accounting plays an important role in terms of the broader contextual factors. Specifically, it highlights how as a calculative technique accounting conveys a belief of objectivity regarding corporations. Accordingly accounting's effects and its importance are not simply tied to its development in terms of uniform standards or principles, but are also found in what it offers as a calculative technique and a form of expertise. From this perspective accounting is relevant in how it affects individuals and their understanding of corporations, particularly how it leads to the development of certain 'corporate identities' within individuals. It therefore arguably shapes in terms of Foucauldian power how corporate organizational forms and governance relationships came to be as they are conceived today.

In the next chapter, I consider how financial accounting acts as a form of power in terms of what Foucault refers to as disciplinary techniques, which construct individuals as subjects. As I elaborate in subsequent chapters, disciplinary techniques govern an individual's behaviour by constructing individuals as certain types of subjects through processes of normalization. Foucault identified expertise, and particularly forms of quantification, as critical to such processes. Accordingly, I argue that financial accounting, as a form of expertise and quantification, acts as a critical disciplinary technique or form of power by which individuals accepting new corporate forms and practices.

Chapter 3

Governmentality Framework

This chapter discusses governmentality which forms the framework of my analysis. Michel Foucault coined the term governmentality to refer to a rethinking of the concept of government. Foucault saw government not only in terms of a sovereign body or state, but also as a means to understand particular mentalities of rule that emerged since the eighteenth century. Foucault argued that these mentalities of rule provided a practical way of acting and reflecting in managing the conduct of individuals, which Foucault refers to in terms of the phrase the ‘conduct of conduct’. As Stein (2008) notes:

governmentality concerns the condition of the people, the economy, the family; what accounts for problems and what would lead to their improvement; what effects our strategies have produced; and what can and should be done by whom, in order to make things better. (p. 1,005)

This broader sense of government refers to an analytics of government which endeavors to illustrate how the taken-for-grantedness of the way we do and think about things is not entirely self-evident. This analytics of government is anchored in Foucault’s understanding of power as the actions of others. While Foucault views power as relational, he does not see it as a force or the making of anyone do anything. For Foucault, power is not coercive, but a web of unintentional and impersonal individual actions and relations.

This view of power highlights how power is encompassed in a broad range of actions including disciplinary techniques. While Foucault points to disciplinary techniques in fields such as health and criminality, accounting comprises a similar disciplinary technique within the corporate

environment. Foucault's understanding of power provides a unique way to understand power, with respect to the governance of corporations, not as a theory, but rather in terms of how it is exercised and its effects. Furthermore, this view of power highlights how power is pervasive and does not prohibit actions, but shapes actions, largely in unintentional ways. This view of power therefore provides a starting point to come to appreciate the complex nature of power found within corporate relationships. In particular, it allows for the possibility to see power's effects not only on corporations, but also on individuals, such as investors, who seek to find ways to control and govern corporations.

This chapter will illustrate how Foucauldian notions of government and power are relevant to understanding the governance of corporations. It will provide a framework to understand why attempts to control and govern corporations through sovereign mechanisms of power, such as laws, often lead to unintentional consequences, and how governance extends to processes of normalization in terms of how disciplinary techniques, such as accounting, affect and shape individuals relation to and understanding of corporations. This chapter therefore argues that accounting constitutes a form of power in terms of how it acts as a form of discourse regarding the control and governance of corporations, leading to corporations and widespread share ownership being seen as norms of business organization within the economic environment.

This chapter proceeds as follows. First, I discuss Foucauldian power as a disciplinary technique. I then consider how Foucault extends this concept of discipline beyond institutional settings to understand how power creates individuals as subjects through processes of normalization. This understanding of Foucauldian power provides a basis to develop Foucault's notion of

government, governmentality. Specifically, I address how government exists outside of forms of sovereignty. Next I outline the relevancy of governmentality within the American context, particularly in terms of a growing focus on forms of quantification and financial accounting. Finally, I analyze how governmentality applies in terms of the corporation.

3.1 Power Disciplining Subjects

Foucault developed his ideas of government out of his earlier investigations of power. His investigations did not so much focus on the question of power, but rather they considered power as an outcome of what Foucault saw as a more relevant and tractable question of how individuals become subjects. For Foucault the term subject had two meanings, the sense of an individual being subject to someone else and the sense of “reflexive relations by which people come to know themselves and become tied to a certain identity” (Covaleski et al., 1998, p. 295). In his examination of how individuals come to be constituted as subjects, Foucault does not view power as deliberately mobilized by individual actors. Instead, Foucault argues that power functions as a result of various disciplinary techniques, such as penal mechanisms, social work and teaching, which lead individuals to come to see themselves as certain types of subjects. As this thesis will argue, financial accounting and reporting constitutes one such disciplinary technique, relevant to how investors come to know themselves as subjects possessing a certain economic nature as financial corporate constituents.

For Foucault, power is not personal, but rather relational. Specifically, Foucault observes power as a *complex set of relations* which serves no end or purpose and has no objective (Prado, 2000). Power is not held or exercisable by anyone or any particular group, such as a state or group of

shareholders; nor does it reduce to forms of coercion, domination and prohibition. In fact, power is not exercisable at all but rather constitutes a diverse set of individual actions.

‘Power’, for Foucault, is not to be thought of as the property of particular classes or individuals who ‘have’ it, nor as an instrument which they can use at will.... His special focus is always upon the way these power relations are organized, the forms they take and the techniques they depend upon, rather than upon the groups and individuals who dominate or are dominated as a consequence. (Garland, 1990, p. 138)

As understood by Foucault, power is embodied in the whole set of social relations, not simply in its individual components. It comprises the totality of relations involving ongoing and ceaseless struggles, confrontations, dominations, intimidations, coercions, prohibitions and resistances.

Power does not constrain individuals, but conducts individuals’ actions, or what Foucault referred to as “the conduct of conduct”. Foucault emphasizes that power can only be exercised over free subjects who come to internalize such power relations. Foucault does not deny the existence of more traditional forms of power; rather he argues that during the eighteenth and nineteenth centuries judicial forms of power represented by the sovereign or monarch became less important and new mechanisms of power in the form of what Foucault referred to as processes of normalization became more relevant and influential. Whereas individuals, previously, were scrutinized judicially and politically in terms of legal and social dictates, beginning in the seventeenth century individuals came under scientific forms of scrutiny to assess and determine their normalcy in terms of a specific identity or nature.

Jeremy Bentham’s disciplinary design for a prison known as the Panopticon perhaps best illustrates Foucault’s understanding of power (Foucault, 1979). The Panopticon was a prison design which allowed a small number of individuals to exercise constant surveillance over the

multitude of prisoners. Under this spatial design prisoners are under the constant gaze of those in a central tower, but are unable to determine who or even if anyone is watching them. The inmate's obedience and compliance is obtained as a result of the asymmetrical relation of panoptical surveillance in which inmates were placed. What is relevant for Foucault is how compliance by inmates is a result of the design or spatial arrangement of the cold gaze of the tower, making the actual exercise of more overt or physical forms of power unnecessary (Foucault, 1979). The cold gaze of the tower led inmates to become responsible for their own subjection, with the guard only exercising power through his position in the tower. This panoptic form of power became a metaphor for how Foucault saw the control of the body. Within society the body became controlled through an array of disciplinary techniques including architectural designs, motion studies and timetables (Covaleski et al., 1998). These panoptic-like disciplinary techniques are central to Foucault's conceptualization of power.

Foucault considers how specific groups of individuals became certain types of subjects through disciplinary techniques, particularly how such techniques made individuals calculable, permitting them to be judged against norms, and their actions to be situated, ordered and arranged in relation to such norms.

The judges of normality are present everywhere. We're in the society of the teacher-judge, the doctor-judge.... It is on them that the universal reign of the normative is based; and each individual, wherever he may find himself, subjects to it his body, his gestures, his behavior, his aptitudes, his achievements.
(Foucault, 1979, p. 304)

Norms provide a minimum standard or threshold which an individual's actions must meet, permitting quantitative rankings of individuals, and finally specifying corrections or adjustments

for those who do not meet such standards or thresholds. Individuals are not predetermined but rather emerge or are manufactured through such normative processes.

Critical to these normative processes is discourse which provides a means to define individuals as subjects.

Foucault's point is that "the subject" is a product of discourse rather than prior to discourse. Discourse generates the subject rather than being "the majestically unfolding manifestation of a thinking, knowing, speaking subject." Once this is understood, discourse is seen as "a totality, in which the dispersion of the subject and his discontinuity from himself maybe determined." (Foucault, 1972:55) When we attend to the discontinuities genealogy uncovers we come to understand what it is we actually do in speaking about people. Then we appreciate that 'the subject' is what we say it is. (Prado, 2000, pp. 57-8)

Normalization involves the interrelationship between power and knowledge. As Foucault (1979, p. 27) argues "there is no power relation without the correlative constitution of a field of knowledge, not any knowledge that does not presuppose and constitute at the same time power relations". For Foucault, knowledge and power are closely related, as the outcome of power relations, such as conducting other's conduct or observation in the form of panoptic surveillance, is knowledge. Knowledge also enables and sustains power relations, since knowledge, or more specifically self knowledge, leads individuals to see themselves as having a certain identity. In the constitution of identity, knowledge is interwoven with power, such that power relations and knowledge are mutually supporting.

As Covaleski et al. (1998) note, Foucault describes power or power relations as "capillary," comprising various networks of disciplinary practices which are diffused throughout society in multiple, heterogeneous forms of force relations exercised in an inexhaustible number of local centers. In Foucault's words, "power is everywhere not because it embraces everything, but

because it comes from everywhere” (Foucault, 1978, p. 93). This all encompassing notion of power also means that there is a constant potential for various forms of resistance to arise at a multiplicity of points. Points of resistance, however, rather than opposing power, simply constitute another form of power, reinforcing power relationships rather than dismantling them.

Resistance is never in a position of exteriority in relation to power.... Their [power relations] existence depends on a multiplicity of points of resistance: these play the role of adversary, target, support or handle in power relations. These points of resistance are present everywhere in the network. Hence there is no single locus of great Refusal, no soul of revolt, source of all rebellions or pure law of the revolutionary. Instead there is a plurality of resistances, each of them a special case: resistances that are possible, necessary, improbable; others that are spontaneous, savage, solitary, concerted, rampant or violent; still others that are quick to compromise, interested or sacrificial; by definition, they can only exist in the strategic field of power relations. (Foucault, 1978, p. 95-6)

Accordingly, resistances are similar to disciplinary techniques, not only in their pervasiveness and capillary nature, but also in how they affect the conduct of other individuals, constructing individuals as subjects. Foucault (1983) therefore concluded that in fact power was best understood by studying such localized points of resistance.

3.1.1 Manufacturing and Deploying Knowledge

In his later work Foucault (1978) shows not only how individuals are controlled by being constructed as subjects in specific settings or organizations, such as prisons or asylums (Foucault, 1979), but also how such claims regarding individuals are generalizable to broader settings centered across the population, such as the governance of sexuality. In particular, Foucault describes how individuals come to see themselves as possessing a particular nature through the deployment of certain ideas or beliefs, and the construction and dissemination of a particular

account of those ideas and beliefs (Prado, 2000). Accordingly, not only are subjects formed, but also certain types of knowledge or ideas are manufactured which individuals see, not as subjectively created, but as objective facts. Foucault, for instance, uses something as apparently objectively determined as sexuality to show “how power manufactures a particular subjectivity by producing norms and self-images that people internalize and take as the truth of themselves as sexual beings” (Prado, 2000, p. 85).

Foucault’s analysis differentiates what he calls the legal regime, which comprises contractual elements involving complex rules regarding prohibitions and the articulation of acceptable standards of behaviour, from the norm regime, which deploys a particular conception of what something is and thereby regulates every aspect of thought, discourse and behaviour (Prado, 2000). Rather than regulating conduct through coercive prohibitions, the norm regime shapes the perceptions of one’s own and others’ needs and wants, leading individuals to accept a particular nature as their own. Individuals, who see themselves as having a particular sexual nature, see themselves as either conforming or deviating from that nature. In other words, “Everyone wants to be ‘normal’. No one wants to be deviant, so everyone strives for normalcy – though with greater or lesser success” (Prado, 2000, p.89). Accordingly, instead of encompassing the diverse actions of individuals, behaviour is the result of natural inclinations, drives and needs which are in fact managed through disciplinary techniques that incorporate a variety of judicial, social and regulatory practices. In other words, Foucault (1978) shows how these processes of normalization involve classification and regulation of diverse activities as a means to control behaviour.

Categorization of some activities as sexual, and consequent control of those activities, initiated and sustained the production

of a sexual nature, of sexual subjects, and of knowledge about sexuality. (Prado, 2000, p. 87)

Essential to this subjectivity are new forms of scrutiny in terms of classification of behaviour, which provide a means for individuals to determine whether their nature is normal or abnormal (Foucault, 1978). These forms of scrutiny result from Foucault's analysis of the bio-political nature of power or what is more commonly referred to as bio-power. Foucault contrasts bio-power, which he describes as a power over life with the long-held view of power in the form of sovereignty. Whereas sovereign power focuses on the right to give or take life or the power of life and death, bio-power focuses on the fostering of life through various forms of expert knowledge. Foucault describes how:

this power over life evolved in two basic forms; these forms were not antithetical, however; they constituted rather two poles of development linked together by a whole intermediary cluster of relations. One of these poles – the first to be formed, it seems – centered on the body as a machine: its disciplining, the optimization of its capabilities, the extortion of its forces, the parallel increase of its usefulness and its docility, its integration into systems of efficient and economic controls, all this was ensured by the procedures of power that characterized the *disciplines: an anatomo-politics of the human body*. The second, formed somewhat later, focused on the species body, the body imbued with the mechanics of life and serving as the basis of the biological processes: procreation, births and mortality, the level of health, life expectancy and longevity, with all the conditions that can cause these to vary. Their supervision was effected through an entire series of interventions and *regulatory controls: a bio-politics of the population*. The disciplines of the body and the regulations of the population constituted two poles around which the organization of power over life was deployed. (Foucault, 1978, p.139)

Foucault therefore traces bio-power not only to the above discussed disciplinary techniques, but also to what he refers to as pastoral power or the forms of early types of power exercised by the

Christian Church. Over time these technologies of power became secularized, focused on individual salvation - health, security and economic welfare, and involving forms of self-examination and confession through various types of expertise such as doctors, psychiatrists, teachers and police officers.

For Foucault government is therefore not limited to the imposition of law, but rather a wide range of practices, techniques, tactics and institutions aimed at knowledge of the individual and which target the population as their primary field of intervention (Foucault, 1991). As a result of various forms of interventions, individuals come to be governed by the internalization of norms, which emphasize the importance of experts, rather than laws. Foucault therefore points to how new forms of control, focused, not on prohibitions, but on utility and value.

Law cannot help but be armed, and its arm, *par excellence*, is death; to those who transgress it, it replies, at least as a last resort, with that absolute menace. The law always refers to the sword. But a power whose task is to take charge of life needs continuous regulatory and corrective mechanisms. It is no longer a matter of bringing death into play in the field of sovereignty, but of distributing the living in the domain of value and utility. Such a power has to qualify, measure, appraise, and hierarchize, rather than display itself in its murderous splendor; it does not have to draw the line that separates the enemies of the sovereign from the his obedient subjects; it effects a distribution around a norm. (Foucault, 1978, p. 144)

Accordingly, the key to Foucauldian power relations is the internalization of norms, specifically in terms of habit formation by individuals. Essential to this habit formation is that individuals take the external environment or social world as objective and independent of them, or in other words they accept that there is a particular way that things are (Prado, 2006). Furthermore, individuals do not only take how things are in the social environment, but rather “they take how things are as determining what and how they themselves *should be*” (Prado, 2006, p. 167). The

critical point is that understanding things from this essentialist perspective shapes and determines much of our thought and action as we attempt to conform to these constructed norms (Prado, 2006).

In sum, for Foucault, the disciplinary management of individuals in society occurs through normative processes of classification and regulation, which are deployed as particular norms, which lead individuals to see themselves as having an objective corporate nature. This disciplinary management Foucault saw as a question of government, which he saw as constituting various modalities of governing or what he referred to as governmentality.

3.2 Governmentality – Governmental Forms of Power and the Population

Foucault's view of government encompasses what he refers to as governmentality (1991).

Foucault coined the term governmentality in the course of his 1977-1978 lectures titled "Security, Territory and Population" in which he historically reconstructs political power from ancient Greece to modern neo-liberalism. "Government" as used by Foucault applied broadly to almost all activities and situations from "governing the self" to "governing others". Foucault's interest in government was a result of his concern to understand liberalism, "not as a theory or ideology, but as a political rationality, a way of doing things that was oriented to specific objectives and that reflected on itself in characteristic ways (Rose et al., 2006). Government focuses on what Foucault referred to as the political problem of population, which involves the general welfare of the population in terms of its health, wealth and an almost endless number of other characteristics. For Foucault, this growing focus on the welfare of the population did not mean an enlargement of state government in the form of what is commonly thought of as the 'welfare

state', but rather the growth of "a multiplicity of non-state authorities and agencies to discipline the conduct of individuals and to regularize the molar body of populations" (Merlingen, 2006). Government is therefore an ongoing project of supposed improvement, focused on the conduct of individuals as productive and the enhancement of the population's overall capabilities and productivity through new forms of civil, economic, and social macrostructures.

In these investigations of political power, Foucault traces early forms of government to sixteenth and eighteenth century treatises, particularly Machiavelli's discussion of "The Prince" in which governing principles were based upon "traditional virtues, 'wisdom, justice, liberality, respect for divine laws and human customs' or from common abilities such as 'prudence, thoughtful decisions, taking care to surround oneself with the best advisor'" (Rose et al., 2006). Foucault points to a developing anti-Machiavellian literature at the time in the form of a series of texts by Guillaume de La Perriere and others up to the mid eighteenth century which highlight as problematic the fact that the prince is external to and in a position of transcendence to his principality, making his bonds over his territory tenuous. Foucault notes how these texts did not solely focus on sovereignty, as constituted in the doctrine of the prince, but rather on what Foucault referred to as the art of government. In contrast to sovereignty, in which governing is centrally located in the prince, the art of government instead highlights how governing occurs internally within the state at numerous locations through various agents.

Specifically, the art of government is identifiable at various sites and levels including "the art of self government, connected with morality; the art of governing a family, belonging to economy; and finally the science of ruling the state, concerning politics" (Foucault, 1991, p. 91). The

essential point is that unlike sovereignty, in which the prince's power is external and separate from those governed, under the art of government there exists both an upwards and downwards continuity between the various forms of government. At the centre of this continuity, however, remains 'economy' or the management of individuals. As Foucault observes, the many texts from that time period drew a parallel between economy and government, since to govern a state meant focusing on the welfare of its inhabitants in terms of a common welfare for all. Economy is therefore central to this new art of government since it represents "a level of reality, a field of intervention, through a series of complex processes that I [Foucault] regard as absolutely fundamental to our history" (Foucault, 1991, p. 93).

The art of government, as becomes apparent in this literature, is essentially concerned with answering the question of how to introduce economy – that is to say, the correct manner of managing individuals, goods and wealth within the family.... into the management of the state. (Foucault, 1991, p. 92)

The second point that Foucault makes concerning these texts is that "government is the right disposition of things, arranged so as to lead to a convenient end" (Foucault, 1991, p. 93). By "things" Foucault means that it is not simply a matter of governing inhabitants and territory as in the case of Machiavelli's prince, but rather a complex of humans and things involving:

humans' relations with wealth, resources and the means of subsistence; with territory in its specific qualities, soil, climate, etc.; with each other in their customs and habits; and with the eventualities such as accidents and misfortunes (Foucault, 1991, p. 93). (cited in Dean, 1999, p. 86)

Furthermore, rather than a common good, the objective is a convenient end, which suggests not one aim, but a plurality of aims for each thing governed. Government is not simply the obeying

of laws and the respect of the ruler (sovereign), but rather involves the disposing of things so that such and such ends can be achieved. Foucault argues that to dispose of things necessitates the employment of tactics, including the use of laws as tactics, which requires knowledge of the state through governmental apparatuses and new statistical measures.

This new form of government, or what Foucault calls governmentality, therefore represents a mentality of government that reflects political thought and action, distinct from that of sovereignty which is, “too large, too abstract and too rigid,” and the family which is, “too thin, weak and insubstantial”. Government instead is “concerned with population that could not simply be controlled by laws or administrative fiat or conceived of as a kind of extended family” (Rose et al., 2006, p. 87). This concern with the population resulted from the realization “that the population had a reality of its own, with its regularities of birth, illness, and death, and its own internal processes that were independent of government yet required the intervention of government” (Rose et al., 2006, p. 87). Individuals who comprised the population were no longer separate judicial subjects ruled by laws of a sovereign authority. Instead they existed as part of “a dense field of relations between people and people, people and things, people and events” (Rose et al., 2006, p. 87). This field comprised various political rationalities of government, which necessitated action and administration “using a whole range of strategies and tactics to secure the well-being of each and of all” (Rose et al., 2006, p. 87). As Foucault observes government was an:

ensemble formed by institutions, procedures, analyses and reflections, the calculations and tactics that allow the exercise of this very specific albeit complex form of power, which has as its target population, as its principal form of knowledge political economy, and as its essential technical means apparatuses of security. (Foucault, 1991, p. 102)

Government therefore involves “the business of knowing and administering the lives and activities of the persons across a territory” (Rose et al., 2006) or what Foucault refers to as the ‘governmentalization’ of the state.

3.2.1 Governmentalization of the State

By coining the term governmentalization of the state, Foucault challenges the conventional belief of an all important and powerful state by viewing the state as not possessing a unity or even functionality but rather as “a composite reality and a mythicized abstraction” (Foucault, 1991, p. 103). As Foucault argues:

the governmentalization of the state is at the same time what has permitted the state to survive, and it is possible to suppose that if the state is what it is today, this is precisely thanks to governmentality, which is at once internal and external to the state, since it is the tactics of government which make possible the continual definition and redefinition of what is within the competence of the state and what is not, the public versus private, and so on; thus the state can only be understood in its survival and its limits on the basis of the general tactics of governmentality. (Foucault, 1991, p. 103)

Specifically, Foucault provides an account of how the art of government becomes autonomous or separated from the theory and practice of sovereignty. The starting point is Foucault’s observation, discussed in the previous section, of how an art of government emerged alongside, but distinct from mechanisms of sovereignty.

Next, Foucault points to how this art of government led to the emergence of various rationalities and techniques of government. These rationalities and techniques however remained tied up or trapped within the issue of sovereignty, since attempts to apply this art of government in practice

always manifested themselves in terms of the sovereign's might or greatness or looked to the use of judicial laws or law – like regulations (Dean, 1999). Foucault illustrates this difficulty in the case of mercantilism, which despite attempts to apply this art of government remained trapped within mechanisms of sovereignty since its objective was not the increase of wealth of the country but that of the ruler (sovereign). To resolve this problem of sovereignty, attempts were made to reconcile this art of government with renewed theories of sovereignty, such as in a formalized theory of the contract.

Contract theory enables the founding contract, the mutual pledge of ruler and subjects, to function as a sort of theoretical matrix for deriving the general principles of an art of government. (Foucault, 1991, p. 98)

Foucault maintains however that this resolution was incomplete since it remained at an abstract and theoretical level in terms of the formulation of principles of public law.

Foucault argues that the art of government was only able to overcome the obstacle of sovereignty as a result of population growth and economic, particularly agricultural, expansion. Foucault saw population as critical to the elaboration of the art of government in a number of ways: 1) the conception of the governed is different as members of the population are no longer simply subjects who submit to the sovereign, rather they possess their own customs and habits; 2) the definition of populations in terms of health, welfare and demography encourages the use of newly devised statistical measures; and 3) population is a collective entity and objective reality which one can have knowledge of, and which is irreducible to any of its members (Dean, 1999). This process however was gradual, involving both theoretical innovations of political economists, and technical developments or forms of quantification such as statistics and census taking (Dean, 1999).

Foucault traces a series of developments by which statistics became a major technical factor in a new model of government focused on what he refers to as the problem of the population.

It was through the development of the science of government that the notion of economy came to be recentered on to that different plane of reality which we characterize today as the 'economic', and it was also through this science that it became possible to identify problems specific to the population; but conversely we can say as well that it was thanks to the perception of the specific problems of the population, and thanks to the isolation of that area of reality that we call the economy, that the problem of government finally came to be thought, reflected and calculated outside of the juridical framework of sovereignty. And that 'statistics' which, in mercantilist tradition, only ever worked within and for the benefit of a monarchical administration that functioned according to the form of sovereignty, now becomes the major technical factor, or one of the major technical factors, of this new technology. (Foucault, 1991, p. 99)

The common and essential element of this focus on the population was a concern with the administration of life. Specifically, this focus on the population led to the proliferation of rationalities and techniques of government, aimed at making the population knowable so that life could be administered in an endless number of spheres from public health to criminality to the living, working and housing conditions of the laboring population. In particular, Foucault points to how new statistical technologies and techniques were critical in understanding the population, since they permitted making the population knowable in terms of its distribution around a mean, or norm of behaviour. Accordingly, statistics became a key technical factor in governing the population, since they revealed how the population had its own regularities regarding its health and well-being, amongst an endless number of other factors. Statistics also highlighted that the population was irreducible to the family since populations could be shown to have their own aggregate effects, such as mortality, and specific economic effects through shifts, customs and

activities. Foucault therefore argued that the population comprised not simply an extension or enlargement of that of the family, but rather a completely different and unrelated model of government.

Foucault is not suggesting that sovereignty or sovereign forms of government disappear; in fact, he points out that they become increasingly emphasized and pressing. Sovereignty however is transformed, taking on a new set of functions (Dean, 1999). Rather than an unencumbered form of power, it conceals mechanisms of discipline and their forms of domination by “the displacement of politics towards questions of sovereignty and the juridical subject of rights” (Dean, 1999, p. 109). As Foucault states:

The theory of sovereignty, and the organization of a legal code centered upon it, have allowed a theory of right to be superimposed upon the mechanisms of discipline in such a way as to conceal its actual procedures, the element of domination in its techniques, and to guarantee to everyone, by virtue of the sovereignty of the State, the exercise of his proper sovereign rights. (Foucault, 1980, p. 105)

Similarly, the law is also transformed from a juridical system to codify and express the authority of the sovereign, to an instrument which becomes “part of complex apparatuses of normalizing practices” (Dean, 1999, p. 110).

I do not mean to say that the law fades into the background or that the institutions of justice tend to disappear; but rather that the law operates more and more as a norm, and that the juridical institution is increasingly incorporated into a continuum of apparatuses (medical, administrative and so on) whose functions are for the most part regulatory. (Foucault, 1978, p. 144)

By the governmentalization of the state Foucault therefore contends that sovereignty, discipline and government are not mutually exclusive such that one replaces the other, but rather the reality is “a triangle of ‘sovereignty-discipline-government, which has as its primary target the population and as its essential mechanism the apparatuses of security” (Foucault, 1991, p. 102). These apparatuses include not only armies and police forces but also health, education and social welfare systems and mechanisms of the management of the national economy (Dean, 1999). For Foucault, the problem is that we continue to understand government only in the form of sovereignty, failing to recognize governmental techniques and practices which extend beyond the monarch or state. In particular, the features of this society of government are its focus on the population, economic management through various forms of knowledge, and control by apparatuses of security from police forces to national economic systems and mechanisms. Government therefore involves a shift from a government of inhabitants, households and ‘things’ to a government through tendencies, necessities and processes. The following section outlines this governmentality framework in terms of the creation of governance structures surrounding corporations and the importance of numeracy and quantification to this governmentality framework.

3.3 Forms of Governmentality in the American Context

As the previous chapter notes, existing corporate governance models and thinking focus largely on sovereign forms of power, embodied in economic theories such as agency theory (Roberts et al., 2006), which assume that power emanates from certain locations and can be controlled through judicial means. They do not sufficiently account for Foucault’s contention that power exists in the totality of relations, and that it does not primarily involve the prohibition but rather

the enabling of individuals. Specifically, individuals are enabled or made productive through various forms of expertise and quantification.

Forms of quantification have played a critical role in the social development of American society and thought throughout the nineteenth century⁶. Over the latter half of the nineteenth century the growth in forms of quantification and statistical analysis was also noticeable at the level of state government. Specifically, the state of New Jersey began producing an increasing number of statistical and financial reports in the 1880s, such as a Report of State Board of Assessors starting in 1884, a Report of the State Board of Taxation starting in 1891 and a Report of Bureau of Statistics of Labor and Industries starting in 1878, which included a Statistics of Manufactures beginning in 1896.

This growth in various forms of quantification is also traceable to the relevancy of governmentality in analyzing American social development. Hannah (2000) highlights the importance of quantification, in the form of social statistics provided by the U.S. census, to decision making within the American social environment at this time. In particular, he points to how the systems and means by which the U.S. census were analyzed, studied and contrasted in the nineteenth century formed a logic of governmentality, since they were not simply a means to learn about the social body but shaped and even constituted the environment and social body (Hannah, 2000).

⁶ see Porter, 1995; Cohen, 1982 ; Davis, 1972 regarding the emergence of an American fascination with social statistics. Also White (*The Atlantic Monthly*, December 1901) laments how statistics have become so entrenched in our society stating, “We have lost the power of reasoning without a mathematical crutch. Americans are indeed a calculating people. The premise of those who wish to inflame, convince, excite, or move us is that this must be done in no other way than in digits and systems of digits.”

Hannah (2000) highlights that, in contrast to most studies of this period of the United States which focus on state power (“administrative capacity”), governmentality emphasizes what are often assumed less relevant programs and techniques of government, captured in the availability and usage of statistics. As Hannah (2000) notes, the problem with the more dominant focus on administrative capacity is that it overly emphasizes issues such as partisan politics and misses distinctions between actual regulation and the decision whether and how to regulate. A logic of governmentality permits an understanding beyond simply binary distinctions, perpetuated in most other analyses, of whether simply to regulate or not regulate. It examines the more complicated and subtle position of social control through what Hannah (2000) refers to as a blending of principles of freedom and regulation, such that the decision about whether and how much to regulate becomes an empirical case by case investigation.

3.3.1 Financial Accounting

This logic of social regulation in the form of quantification and study, which permeated the American social body at this time, provides a useful lens through which to analyze how financial accounting and reporting governs corporations by shaping and constraining individual corporate subjects. In particular, it provides a starting point to understand how financial accounting and reporting, as a quantitative means to analyse and study corporations, affected the public’s understanding of and conduct in relation to the emergence of industrial combinations in the form of corporations and trusts in the late nineteenth century. As the following comments show, forms of quantification were becoming increasingly important to emerging issues regarding industrial

combinations and their relation to the control and management of the broader population at the time.

The discussion concerning industrial combinations has been so active during the last few years, not only through the ordinary channels of the newspaper press and the current monthly magazines, but also in lectures, political speeches, and in public debates, that I should feel some hesitation in touching upon this topic were it not for the fact that the Manufactures Division of the Census Office has recently prepared some interesting data concerning this much-agitated question.... Such an array of statistics as I have presented may be somewhat dry, but there seems to be no better way of giving a clear idea of the real condition of these industrial enterprises. Unquestionably they constitute a difficult problem in civic control. (Merriam, 1902, pp. 332 and 338)

With the growing importance of quantification surrounding new corporate combinations, governmentality focuses on financial accounting and reporting's relevancy in terms of how it functions as a form of quantification and expertise, constructing an accounting discourse important to how individuals within the public began to understand corporations⁷. This accounting discourse is understandable by looking beyond the development of accounting as a profession or the creation of accounting principles and standards, which have largely been the focus of most research of this time period (Previts and Merino, 1998). Specifically, because of its calculative nature financial accounting and reporting provided a particular discourse of quantification and measurement, and a focus on value, which, as the following chapters will argue, was critical to the development of the corporation and its governance relationships.

Similar to how forms of quantification such as statistics and census information began to be used

⁷ Hake (2001) and Mitchell (2007) convey the notion, which pervades the corporate historical literature in other disciplines, that accounting was unsophisticated. This lack of sophistication appears to be due to an understanding of accounting simply in terms of standards. As Brief (1975) shows accounting was not in fact unsophisticated since significant discussion was occurring regarding accounting theory and principles at the time.

to understand the individual as part of the population, financial accounting measures such as net income, dividends, and share capital provided a means to understand the corporation.

These accounting discourses began to make the corporation “scientifically” understandable and knowable, particularly in terms of the appearance of growing forms of financial information and analysis within the American business environment. In particular, an increasing mathematical and scientific focus consistent with the growing usage of various forms of quantification and statistical analysis took hold within the social and economic domains. Beginning with Sprague’s classic essay, “The Algebra of Accounts” (Sprague 1880) and his later lectures in which he would coin the term accountics, meaning the “mathematical science of values”, a growing focus on quantification and the scientific nature of accounting began to develop. For example, new publications, such as *Accountics, A Monthly Magazine devoted to the Science of Accounting and the Art of Bookkeeping* (Brief, 1992), focusing on accounting as science were created. Specifically, within its pages are found articles such as Kittredge’s February 1900 article entitled, *The Application of Advanced Accounting Methods to Modern Enterprises, The Scientific Analysis of Business Accounts* and Dale’s May 1989 article entitled, *How are the Profits for the Year to be Ascertained*.

As these writings highlight, there was an increasing importance of not only accounting measures, but also the scientific determination and analysis of such accounting measures. As Kittredge argues “bookkeeping is the art, the method, the embodiment of the plan, the practice. In contradistinction, accounting is the science, the analysis, the classification, the scheme, or plan in the abstract” (Brief, 1992, p. 18). This emerging accounting science of the corporation is also

found in the expansion of accounting publications into new fields. For instance, the *Journal of Accountancy* in September 1906 began a section devoted to the review of the reports of railroad and industrial corporations the objective of which was “to present to the public the real condition of the corporations which invite their support” (p. 389).

In terms of positive accounting theory, Watts and Zimmerman (1979) contend that the development of accounting theories regarding industries such as railroads were not about presenting the real condition of corporations, but rather were a response to political and regulatory conditions at the time. Specifically, they argue that rate regulation, particularly in the case of railroads created a demand for theories such as those that treated depreciation as an expense. Accounting theories, such as those that treated depreciation as an expense therefore provided justifications for regulatory activities. Accordingly, the power of positive accounting theory is that it provides a framework to explain and predict why certain accounting choices are made and the affect of such choices on a user’s welfare.

In contrast, a Foucauldian perspective focuses on the various types of subjects which emerge from such processes. From this perspective, accounting forms a disciplinary technique or practice in terms of how the scientific determination of profits within the corporation comes to govern the nature and actions of the individual. Growing forms of financial information and writing illustrate how new disciplines and forms of expertise begin to emerge in these newly developing subject areas and expand over broader areas of life. While new disciplines claim to possess important expertise in the form of knowledge, an approach employing Foucauldian power illustrates how such disciplines, including accounting, do not actually discern truths. In fact, they

discern nothing. Instead, these disciplines and related processes of intellectual inquiry, “manufacture their own content,” never getting “beyond their own idioms and self generated topics” (Prado, 2000, p. 43). In terms of Foucauldian power relations, disciplines, such as accounting do not provide a picture of a financial reality; instead they are the result of individual responses to various situations, which become accepted as established practice as a result of expert discourses of accounting. Accordingly, accounting theories do not act as justifying practices employed by individuals in response to political processes, but rather as disciplinary techniques which are critical to a governmental understanding of the corporation.

As (Miller and Rose, 1990, p. 1) contend “‘governmentality’ has come to depend in crucial respects upon intellectual technologies, political activities, and social authority associated with expertise”. Discourses of accounting expertise are found in a large number of the political rationalities, programmes and techniques that surround the corporation and its particular constituents, particularly the need to study and understand the corporation through a range of forms of disclosure and reporting. These political rationalities and programmes generated a discourse of the corporation as an objective body of knowledge that could be made knowable or calculable, acted upon and optimized. It is through these various forms of inquiry, analysis and discourse that a certain conception of the nature of the corporation and its governance was produced, and taken as an objective truth (Prado, 2000). In particular, it highlights how power relations construct various types of corporate subjects, such as investors.

3.4 Governmentalization of the Corporation

Governmentality suggests a need for a broader level of analysis than most current research has undertaken with respect to the governance of the corporation. In particular, governmentality points to how economic enterprises or structures within the American business environment are not simply understandable in terms of sovereign notions of power based on rights and laws, but also, and perhaps more importantly, are understandable, similar to how Foucault saw the government of the state as an “ensemble formed by institutions, procedures, analyses and reflections” (Foucault, 1991, p. 102). In other words, processes of governmentalization suggest that in terms of the governance of the corporation, power; is traceable to a much broader ensemble of institutions, procedures, analyses and calculations; targets a much wider ranging corporate population; and incorporates an extensive range of financial expertise and knowledge. From this perspective, the governance of the corporation is connected to and a critical element in the process by which the state comes to know and administer the economic lives and activities of individuals within its territory.

3.4.1 Political Rationalities, Governmental Programmes and Technologies

In contrast to neo-classical economic based contract theory, which theorizes the corporation as a nexus of contracts, the governmentalized corporation suggests that the corporation is understandable as comprising a broader nexus of political rationalities, governmental programmes and technologies, extending beyond the corporate domain. Political rationalities, which encompass various economic, legal and political debates, “create idealized representations of the world as ethical and moral imperatives.” By creating new discourses, political rationalities contribute to the development of norms and acceptable governance practices, and beliefs

(Radcliffe, 1998). Political rationalities are articulated in government programmes, which “encompass the ideas of experts and specialists, individuals, committees and other organizations” and comprise “reports, proposals, plans and legislation, and taken for granted (tacit) knowledge” (Radcliffe, 1998, p. 380). Programmes are in turn realized through technologies that include both the prosaic and practical such as “regular features of organizational life as forms of notation, computation and calculation, systems of data storage and analysis and methods of standardization and verification” (Radcliffe, 1998, p. 381). Consistent with Radcliffe’s (1998) view of technologies as providing a “specific means to act” (p. 381) financial accounting technologies also include financial statement standards, principles and concepts.

The growth of these rationalities, programmes and technologies does not simply concern the control of corporations and those who control corporations, but also focuses on how corporate government targets the population, shaping its needs and desires, through organized practices, encompassing what Radcliffe (1998) refers to as an assembly of rationalities and programmes. The construction of the corporation based upon political rationalities and governmental programmes therefore leads to governance structures based on a vast array of administrative expertise directed at knowing, in terms of various forms of quantification and calculative techniques, the corporation and the population which forms its constituent parts. As a correlate to these forms of governance of the corporation, laws and the contracts, which previously formed the foundation of the corporation come to comprise simply another tactic of government, or what Ewald (1990) refers to as an “instrument of a normative order, which is part of the complex order of normalizing practices” (Dean, 1999, p. 110). A consequence of these governmental processes

is that governance and management extend beyond the corporation to a newly emerging population of investors within the public.

Rationalities, programmes and technologies, however, did not directly result from new forms of corporate government. Instead, similar to the art of government, which Foucault observed as trapped within the problems of sovereignty, corporate relationships seemingly continued to focus on sovereign mechanisms of laws, contracts and closely held shareholding. As with the governmentalization of the state, it was population that provided a means for corporate government to take hold outside of and overcome mechanisms of sovereignty. Specifically, the following chapters outline how the emergence of the public in terms of new social, economic and political relations, including growing reform movements, led to the elaboration and increased relevancy of distinctly governmental rationalities, programmes and technologies regarding corporations, autonomous from sovereignty. Even laws begin to function not as sovereign mechanisms of control, but as norms, forming part of a growing regulatory apparatus.

Accordingly, corporate structures and even investors themselves, rather than being ahistorical objects, emerge out of various political rationalities, governmental programmes and technologies. Ultimately, the combination of political rationalities, governmental programmes and technologies shape the discourse that comes to constitute corporate structures and relationships, and the mobilization of individuals as corporate constituents.

3.4.2 The Corporation as a Norm

Governance of the corporation therefore includes the deployment of normalizing discourses regarding corporations within the public. Specifically, by making corporations understandable

and knowable in quantitative terms, financial accounting and reporting leads to the classification and categorization of corporations in terms of corporate norms based on quantitative measures such as net income, revenue, expenses, assets, liabilities, and capital. This normative classification of corporations permits an understanding of corporations by the public as forms of economic wealth and more importantly investment opportunities, providing a powerful normalizing discourse regarding a particular corporate nature. Specifically, the deployment of this discourse shapes individual conduct and perceptions leading to the emergence of a growing class of small investors or corporate constituents within the public domain.

Chapters five and six document this process in terms of how, prior to the emergence of trusts and holding corporations in the U.S., corporations comprised sovereign forms of governance recognized in terms of their shareholder or shareholders. In fact, in the early- to mid-nineteenth century, corporations were not well differentiated from proprietorships or partnerships as they were largely seen as simply businesses owned by specific individuals, rather than as entities separate from their owners. Corporate power was characterized in terms of mechanisms of sovereignty based on the fact that a single or a few owners controlled their business activities. In this sense, corporations were viewed as largely external or outside of the public domain. In these corporate models financial accounting and reporting was more of a private matter to individual owners, employed to the extent of its usefulness to each owner.

As corporations became more prominent in organizing broader public economic activities such as canals and railroads, governance became more than simply the shareholder/owner controlling and growing their own business. Instead, broader economic welfare and management issues became

necessary given the public and political nature of such activities. This governance of corporations no longer involved a small number of shareholders in relation to a corporation, but rather involved various relations and concerns with the public. Specifically these relations and concerns revolved around issues such as economic concerns over the growing monopolistic tendencies of corporations and corporations constituting new form of investment or wealth. The exercise of corporate government or corporate governmentality therefore became distinguishable from corporate sovereignty. These newly created large corporate combinations are not simply larger in size than their predecessors; rather, as the following chapters will show an entirely new form of business organization emerges, irreducible to such previous corporate forms.

The following chapters will therefore illustrate the importance of accounting discourses, such as financial accounting and reporting, in shaping the economic nature of those outside the corporation and their relationships with the corporation. The unpredictable and impersonal nature of power relations means that effects of accounting discourses on corporate relationships are only partially intentional. Accordingly such discourses shape an individual's understanding of and relationship to corporations in unexpected ways. Finally, these accounting discourses are not simply found within grand narratives of corporate history, but instead within more mundane and routine events and happenings, or the actions of less recognized individuals. As the following chapters will show, the thinking and actions of various individuals, groups of individuals and government agencies and commissions espoused an accounting discourse relevant to how individuals began to understand corporations and shaping their actions in relation to corporations.

In the next chapter, I review the methodology and method by which I investigate the various issues of power and government which governmentality encompasses. Specifically, I consider genealogy as a critical methodology to analyze the various practices, particularly those relating to accounting, which exist and shape the corporation and its relationships to society and the environment in which it operates.

Chapter 4

Methodology and Method

4.1 Introduction

In this chapter I discuss my research methodology and the research methods which I use to execute my research methodology. The research methodology that I employ in my analysis is genealogy. I employ genealogy as a research methodology to guide the conduct of my research and illustrate the underlying philosophical assumptions of my research. Specifically, it highlights the need to consider a broad range of events and actions of individuals. It also suggests specific methods in terms of identifying and analyzing various ideas and discourses circulating within the public domain at a particular time. Accordingly, it supports my research method of examining documentary evidence to understand such discourses, regarding corporations, within the public domain.

Specifically, genealogy permits an analysis of a broad range of sites to understand the specific types of discourses which coalesce and form what is presently understood as practices regarding the governance of corporations. The sites at which such discourses are located, and which form the analysis of the subsequent two chapters include representative individuals, public commissions, various studies and conferences, legislative amendments, and new types of corporate subjects. The material which informs my discussion of these sites is documentary evidence from a wide variety of sources, including formal evidence in the form of laws and commissions and more informal newspapers and magazines. Since this study focuses on the governance and control of the corporation and its relationship to society, not simply the financial

accounting function or the accountant, the individuals, groups and mechanisms studied were also from a variety of backgrounds and disciplines. Accordingly, this study offers the opportunity to understand and provide insights into the relationship between the emergence of corporate structures and various forms of accounting discourses.

The chapter proceeds as follows. I first discuss genealogy, in terms of both its general usage and how I specifically employ it in my analysis. Following a discussion of this research methodology, I review the specific method that I followed in the implementation of this research methodology. Specifically, I review the types of archival evidence used and the process by which such evidence was obtained.

4.1.1 Genealogy

Genealogy encourages attentiveness to the socio-political specificities that combine to produce the present-day phenomenon of interest (Foucault, 1980). Genealogy therefore presents what Foucault referred to as a history of the present which:

is motivated not by a historical concern to understand the past but by a critical concern to come to terms with the present. It is a genealogical account that aims to trace the forces that gave birth to our present – day practices and to identify the historical and social conditions upon which they still depend. The point is not to think historically about the past but rather to use that history to rethink the present. (Garland, 2001, p. 2)

At the heart of genealogy is Nietzsche's idea that history is misconceived as a search for origins or for the exact essence of things (Foucault, 1971; Prado, 2000).

Genealogy does not oppose itself to history...; on the contrary, it rejects the metahistorical deployment of ideal significations and

indefinite teleologies. It opposes itself to the search for “origins”. (Foucault, 1971, p. 77)

This conception of history is derived from Nietzsche’s inversion of the particular over the universal. Using Nietzsche’s idea that history is misconceived, Foucault develops his own inversions, including the interpretive significance of the marginal over the ostensibly central, the constructed over the supposedly natural and the originative importance of the accidental over the allegedly inevitable (Prado, 2000). Based on such inversions, genealogy provides an alternative to an origin seeking history by showing that there is no essence to historical development or to explain why things developed as they did.

Foucault notes how genealogy unearths neglected and over-looked historical items that are often glossed over. He points to the need to focus on historical particularities or “making visible singularities” and thereby avoid the temptation of more traditional historical analysis to invoke an obviousness which imposes itself uniformly on events (Prado, 2000). By carefully tracing such particularities of historical events, genealogy unearths how such events are largely “accidents and coincidences that are united only by essentialist interpretations” (Prado, 2000, p. 34). This tracing of events also involves an engagement with entangled, confusing and disparate historical factors and events, often in conflict with each other, and at times even mobilized in combative campaigns. As Prado explains:

But the contrast here is not simply one between striving to find universal, teleological determinants, on the one hand, and attending to micro-particularities on the other. Universalist accounts may require attention to particularities and some anti-universalist accounts may not. The contrast is between conceiving of micro-particularities as components of some broader process, and seeing those particularities as exhaustive of history’s subject matter. (Prado, 2000, p. 34)

Genealogy therefore seeks the antithesis of essences by highlighting how history only tracks “disparate components that our interests and priorities turn into episodes in an imposed progression” (Prado, 2000, p. 34).

Genealogy, however, is not simply interested in an analysis of origins; it is also concerned with the complementary analysis of emergence, or understanding how items come together to produce a particular result (Prado, 2000). Specifically, Foucault argues that something comes to be not as the result of an “obscure purpose that seeks its realization at the moment it arises” (Foucault, 1971, p. 83), but accidentally or coincidentally, as the result of blind conflict or a struggle between particular forces. Such forces comprise Foucauldian notions of power that were discussed in the previous chapter. What emerges and gains dominance out of this accidental collision of opposing forces or blind conflict is a diverse list of things, which order our lives and yet appear natural to us. The task of genealogy is to invert the relationship between what appears natural and the accidental so that the emergent as inevitable is called into question (Prado, 2000).

A genealogical analysis highlights how what emerges to us is based on power relations. These power relations result from the actions of all individuals. Of particular relevancy to power relations are the actions of experts and how they lead to an emergent subject or individual. It is the tiny influences of the ongoing actions of others, particularly experts, which produces individuals defined in terms of what they take to be knowledge about themselves and their world. Genealogy also exposes how individuals are unaware of such influences and come to believe that they are autonomous in their actions. Dreyfus and Rabinow (1982) note, a genealogical analysis focuses on locating “the acute manifestations of a particular ‘meticulous ritual of power’ or

‘political technology of the body’ to see where they arose, took shape and gained importance” (Dreyfus and Rabinow, 1982, p. 119).

Dreyfus and Rabinow (1982) emphasize two critical points regarding this approach. First, the focus should be on current topics which have become enmeshed with power relations with the objective of understanding what it was in prior periods. Care needs to be taken, however, to avoid the all too common presentist fallacy of projecting current meaning back into history. Second, this approach does not search for finalities or even a fully adequate picture of the past which attempts to represent it correctly. Foucault is not interested in “fabricating a subject that evolves through the course of history” (Foucault, 1980, p. 117). The aim instead is:

to dispense with the constituent subject, to get rid of the subject itself, that’s to say, to arrive at an analysis which can account for the constitution of the subject within a historical framework. And this is what I call genealogy, that is, a form of history which can account for the constitution of knowledges, discourses, domains of objects etc., without having to make reference to a subject which is either transcendental in relation to the field of events or runs in its empty sameness throughout the course of history. (Foucault, 1980, p. 117)

Genealogy therefore provides an approach to analyze power relations, particularly expert discourses, and how they lead to the emergence of what is taken as objective truths.

Specifically, it highlights how various ruptures and discontinuities lead to what is understood as objective knowledge and expertise concerning current corporate discourses.

Accordingly, as a means of interpreting various historical events, genealogy’s focus on the role of expertise as a disciplinary practice offers insights into the role of financial accounting and reporting within the emergence of various governance practices regarding corporations. In

particular, it seeks to reveal the historical conditions upon which such discourses depend, and the relevancy of individuals and groups, such as accountants, who play a marginal role, at best, in traditional histories.

4.1.2 A Genealogy of the Governance of the Corporation

Genealogy provides a means to analyze the historical and social practices that have been assembled over time regarding corporations, and to uncover the assumptions, discourses and strategies that have come to form and structure our understanding of the governance of corporations. Specifically, I employ genealogy to reconceptualize the current order of governance thinking by problematizing it in terms of historical reproduction (Kearins and Hooper, 2002). As Foucault explained, I use genealogy “to show, based on their historical establishment and formation, those systems, [corporate governance models and beliefs,] which are still ours today and in which we are trapped” (Foucault cited in Kearins and Hooper, 2002). A genealogical analysis therefore exposes how corporate governance practices or events likely do not have a historical inevitability or essence, or only an essence that has been fabricated.

As the previous chapters demonstrate, the conditions within which corporations and likewise early forms of governance relations emerged do not constitute an easily explainable theoretical account, but rather comprise a “messy” narrative. Genealogy provides a means to understand and analyze the messiness of corporate relationships and outcomes with constituent groups, such as shareholders, by paying attention to the myriad of details and disparate components of events, which are otherwise often unnoticed or glossed over in searching for what Miller and Napier (1993) refer to as “the triumphal march of progress” (p. 644). I therefore extend Miller and

Napier's genealogical analysis which highlights accountancy as "nothing other than an assemblage of disparate components that has been put together in a piecemeal fashion" (Miller and Napier, 1993, p. 644), to governance practices, particularly the financial accounting and reporting practices that have come to surround the corporation.

Specifically, I employ genealogy to reconceptualize the historical formation of governance by examining how the ahistorical nature of intellectual inquiry does not provide objective knowledge but just establishes practices that we take as truths. As the previous chapter argues, disciplines do not actually discern a truth or reality; they provide disciplinary practices over populations leading individuals to believe what they conceive as truth not as historically determined but as the acquisition of objective knowledge regarding corporations based on ahistorical principles. Accordingly, the acquisition of objective knowledge regarding the formation of large corporations in the late nineteenth and early twentieth century led to the emergence of various subjects of inquiry and disciplines, requiring new bodies of knowledge and financial expertise regarding the governance of such corporations. Using genealogy I show that rather than being comprised of ahistorical principles or truths regarding the governance of corporations, such disciplines simply "manufacture their own content" (Prado, 2000, p. 43). Such disciplines are therefore nothing more than a collection of individual actions, in response to diverse situations, held together by expert discourse.

These disciplinary practices do, however, construct power relations which influence the behavioural practices and self images of individuals and their involvement with corporations. In particular, genealogy shows how individuals, such as the small widespread shareholder, are

constructed through power relations. Specifically, I employ genealogy to map power relations in order to understand how power is exercised and sustained through discourses and technologies, including processes of normalization. As Miller and Napier (1993) argue “[a]ccountancy is a profoundly normalizing activity” (p. 645). This study examines how accounting became interwoven with corporate governance, particularly regarding the constitution of power relations and various corporate subjects, such as investors.

The first analytical chapter focuses on these events at the macro level. Specifically, it emphasizes the political rationalities and governmental programmes in terms of how forms of the governance of corporations emerge in accounting discourses of disclosure and reporting. It chronicles how these discourses are not intentionally developed as calls from small investors to govern and control corporations, but how the origins of these discourses become intertwined with state objectives to increase state revenues and the ideas and plans of a variety of individuals. Furthermore, rather than simply providing a means to control corporations to act in the interest of shareholders, these discourses construct certain conceptions of corporations as controllable and norms of business organization or forms of investment.

The second analytical chapter examines the micro level, focusing on how technologies in the form of accounting beliefs, concepts, procedures, processes, theories and principles operationalize or work through programmes. The focus is not accounting as a profession or in the form of specific standards, but rather on accounting as a form of quantification. As Miller and Napier (1993) argue, “we need to broaden the conception of what counts as accounting, and what counts as evidence” (p. 645). Finally, this second analytical chapter examines how such accounting

discourses of disclosure and reporting are deployed through various government bodies and a variety of other groups.

4.2 Archival Documentary Evidence

Showing how individuals are constructions of power techniques or relations requires reconstructing these forms of power through the careful scrutiny of descriptive materials within documentary evidence including newspapers, magazines, conference reports, treatises and political statements. The objective of such detailed archival research is “to establish what was and is being said and done, by whom to whom, and to what effect” (Dreyfus and Rabinow, 1982, p. 200). Accordingly, an extensive number and type of documentary sources were analysed in undertaking this genealogical analysis to account for the constitution of knowledge, discourses and domains of objects surrounding the control and governance of the corporation in the United States. Furthermore, where other studies provide extensive analysis of various pieces of corporate legislation or see the passage of such legislation as critical moments of change, these legislative changes only form a part of the following analysis, mentioned to the extent they contribute or relate to forms of power or the constitution of subjects. This study took a broader approach by examining various events through documentary evidence to see what emerged. It eventually came to also consider events or individuals whose importance and significance has diminished over time, but hold important clues, which often go unnoticed in current analysis. In particular, it highlights more mundane and less-noticed events, especially those which lead to or involve disciplinary practices.

4.2.1 Time Period

The time period examined in this study is 1880-1903. This time was chosen because it involved points of discontinuities and ruptures within corporate structures, where suddenly new discourses emerge and become dominant. In considering such points of rupture the late nineteenth century comprised what Sklar (1988) refers to as “the age of corporate reconstruction of American capitalism” (p. 1). This period witnessed a significant change in corporations which involved a complex series of interactions and issues, including the consolidation of smaller corporations into holding companies or large consolidated corporations, the growth of monopolies, and the emergence of widespread share ownership. In particular, corporations underwent significant change during this time period in terms of their size, ownership, and function (Chausovsky, 2007; Lamoreaux, 1985; Berle and Means, 1934), leading to the emergence of new corporate discourses⁸. These changes coincided with growing forms of expertise and a new focus on control, not through laws, but through disclosure and reporting.

Also in this time period, significant events occurred within New Jersey leading to the emergence of new corporate structures. In particular, during this time period new sources of revenue were sought by the state of New Jersey by encouraging the growth of corporate charters. As the following chapters note, growth in the number of corporate charters issued in New Jersey and other states occurred as early as 1881 and started declining by 1903. Specifically, Standard Oil organized the first trust in 1882. Also beginning in the 1880s, New Jersey corporate law underwent substantial revision. While these changes were substantially complete by 1896, other states would continue to debate, analyze and respond to these changes into the following century.

⁸ Fligstein (1990), for instance, notes this time as the beginning of what he refers to as *The Transformation of Corporate Control*.

Accordingly, events in New Jersey would set the stage and contribute to a vast and sudden merger movement at the end of the nineteenth century. Finally, this period is consistent with other analyses of events in New Jersey and in other states relating to corporations and corporate regulations⁹. While the main focus of this study is the post-1880 period, I also review relevant changes in New Jersey law prior to 1880 since what emerges within the period of 1800 to 1903 obviously results from prior forces, conflicts and ruptures within New Jersey. This review however is less comprehensive, focusing on specific issues and events, which were the most relevant to the main period of investigation as defined based on the above-noted criteria.

4.2.2 Archival Sources

Archival materials came from a variety sources including both scholarly and popular works on corporations and trusts by writers and commentators of the period, major newspapers such as The New York Times and The Wall Street Journal, various business and accounting related publications, proceedings from various conferences and commissions, archival information on key individuals, government reports, legislative material including debates, and surveys of public opinions. Periodical sources included not only business and accounting periodicals but also non-business publications of the time period, such as McClure's, Harper's Magazine and The Atlantic Monthly. Also more recent academic material, such as previous dissertation work in other disciplines which not only highlighted a significant number of primary sources, but also gave important descriptive detail of events, were invaluable sources.

⁹ Yablon (2006) uses the relevant period of 1880-1910 in his study of the competition for corporate charters, emphasizing events in New Jersey; Stoke (1930) in his study of the economic influences upon the corporation laws of New Jersey identifies 1875-1901 as a specific time period; Grandy (1993) in his study of chartermongering in New Jersey uses the period of 1875-1929 and finally Chausovsky's (2007) study of the state regulation of corporations, focusing on New Jersey, refers to changes in New Jersey laws in the 1880s and 1890s.

The first phase of developing these archival sources involved a broad review of the literature dealing with the governance of corporations, excluding literature focusing on boards of directors, audit committees, compensation and auditors, to not only ascertain pertinent archival material, but also relevant events and time periods. This phase involved searching the corporate governance literature from a broad range of disciplines including sociology, political science, law and economics. Accordingly the following databases were searched: ABI/Inform, which provides coverage of business and management since 1971; Business Source Complete, which covers a broad range of business disciplines from 1886; JSTOR, which provides coverage of core academic journals in humanities, business, social sciences and law; and Scholars Portal, which focuses on social science material. As well the following historical databases were searched: 19th Century Masterfile, which is a compilation of several indexes to periodicals published prior to 1925 covering culture and, intellectual life, religion and law; and the Humanities and Social Science Index Retrospective, 1907-1984, which covers a wide range of scholarly journals and numerous lesser-known specialized magazines.

In conducting this search I focused on not only corporate governance issues, but also on historical issues relating the formation of the corporation. This phase involved identifying over fifty different sources, including books and articles, and reviewing each source to understand the development of governance and formation of corporations. While this review indicated that many sources trace corporate governance to the work of Berle and Means, it also highlighted that significant corporate issues regarding small public shareholders and corporate control existed well into the nineteenth century. These sources provided important references to works written at

the end of the nineteenth and early twentieth century concerning the control of various forms of industrial combinations and their relationship to an emerging class of investors¹⁰.

The next phase involved reviewing in more detail specific historical works identified by my more general review to scope specific events of interest and to develop appropriate source material. In particular, these works indicated a period of significant and sudden change regarding corporations, especially in terms of their growth in size, control and relationship to the public. Specifically, much debate developed regarding the consequences of such changes. These works were also essential to understanding the relevant and important terminology of the time period. For instance, disclosure and reporting of financial information and early forms of auditing were generally referred to as publicity. These sources also pointed to what were the major concerns of the time, such as that of overcapitalization and stock watering. The identification of major issues and historical terminology were necessary to search further archival sources such as newspapers, magazines and journals from the time period. While these terms and concepts no longer form part of current financial accounting and reporting discourse, they were critical to understanding the historical context.

This review pointed to events and individuals in New Jersey as not only relevant to the early growth in corporations. Specifically, this review suggested a change in emphasis regarding the control of corporations. This change in emphasis involved the control of corporations not simply in terms of legislative authority and the prohibition of actions, but also as a result of forms of

¹⁰ These works include Edward Meade's insightful 1903 treatise, *Trust Finance*; Von Halle (1895), *Trusts or Industrial Combinations and Coalitions in the United States*; Clark (1904), *The Problem of Monopoly*; Cook (1893), *The Corporation Problem*; Van Hise (1914), *Concentration and Control: A Solution of the Trust Problem in the United States*; and Haney (1913), *Business Organization and Combination*.

control centered on disclosure and reporting of corporate information. In understanding such changes I focused not only on key political figures or significant new legislation, but also on events within the broader environment. In particular, my review of the environment highlighted the usefulness of examining lesser known figures, such as a trust lawyer named James B. Dill, and smaller and less-eventful actions surrounding the control and governance of corporations. This identification of events in New Jersey relating to the early growth in corporations led to further investigation of the role of such events in the emergence of various types of corporate combinations, particularly holding corporations. Further searches were conducted around these events and figures using the above databases and online sources provided by the New Jersey State Archives and New Jersey State Library.

I also contacted the New Jersey State Archives and the New Jersey State Library to obtain information pertaining to understanding legislative and political events, but also the impact of James B. Dill. Specifically, Appendix A provides the list of questions and issues requested. As well, I reviewed Hasse's Index of Economic Material in Documents of the States of the United States New Jersey 1789-1904. Based on these findings, I visited both locations to view and obtain relevant materials regarding early New Jersey institutions, laws, corporations and individuals. This material included annual reports from various state statistical and regulatory bodies which outlined information such as fees from corporate charters, annual Reports of the State Governors, annual and other reports of the Corporation Trust Company, Votes and Proceedings of the New Jersey Assembly, the Journal of the Senate, treatises on New Jersey corporate law and other writings by James B. Dill, and various other miscellaneous articles

regarding corporations and trusts. This information forms the basis of the analysis presented in the following chapter.

In addition to reviewing events in New Jersey, I examined a wide body of writings to understand attitudes and reactions of the public, government, business leaders, economists, the judiciary and legal experts, and accountants to the emergence of trusts and other forms of industrial combinations such as holding companies. In particular, I conducted a review of a broad variety of sources, including newspapers, magazines, government and non-government reports, treatises. These sources included not only business and technical publications but also general interest periodicals to obtain the widest possible coverage of opinion and beliefs.

Specifically, newspapers were searched electronically using Proquest Historical Newspapers while other magazines or publications were searched using manual indices or manually reviewing all issues. I ensured these searches were as complete as possible by examining newspapers using various combinations of search terms until the no new information was located that would provide a different significantly new information regarding the issues under review. Generally, I could identify that a point of saturation had been reached when different searches would locate the same articles. Other reference sources, such as works on trusts and corporations from the time period and other academic work were also important to locating archival material as well as providing a check on completeness of such archival sources. In cases where word searches were not possible, volumes were scanned for relevant archival documents. The time period over which such searches were made was from 1880- 1903 depending upon the number of years the

publication existed and the availability of information. Appendix B provides a summary of these sources and search methods used.

My review also included an examination of relevant historical accounting texts, journals and other publications. These were generally identified by reviewing historical accounting sources including Previts and Merino (1998), *A History of Accountancy in the United States*; Bentley (1929), *A Brief Treatise on the Origin and Development of Accounting*; and Loeb and Miranti (2004), *The Institute of Accounts Nineteenth-Century Origins of Accounting Professionalism in the United States*. These accounting sources are also noted in Appendix 2.

Given the historical nature of this study, records for some of the years for certain publications do not exist or were not available. While newspaper issues were generally fully available, they were limited to the specific newspapers accessible on Proquest Historical Newspapers. Despite being limited in number of newspapers searched, I was able to obtain reasonable assurance based on prior studies that such newspapers provided reasonable coverage. In his study of attitudes towards trusts Gordon (1963) - who examined fifty historical newspapers - did not find any significant difference in the general content of the material across newspapers¹¹. Furthermore, similar to Gordon, my review of these newspapers did not indicate substantial variation in content, indicating no need to increase the number of newspapers examined. In terms of other

¹¹ Gordon (1963, p. 158) notes:

of the fifty-five newspapers examined, only one showed anything but hostility, The Albany Journal said:

The Journal, alone among newspapers of the country, has taken the position that trusts are largely private affairs and an outgrowth of modern methods of doing business. We have taken a position which we admit is not popular but which we believe is right and in the long run the only tenable one....

publications I was unable to obtain issues of U.S. Investor from 1890-1899. I did, however, search and examine a number of other business publications for this period of time, including The Wall Street Journal.

Unfortunately, there is very little record of legislative debates regarding the passage of corporate legislation. As was noted by Bette Epstein, head archivist at the New Jersey State Archives, regarding the Votes and Proceedings of the New Jersey Assembly: “The minutes are very cut and dry and do not include any discussion of legislation.” This was confirmed in my review of these proceedings at the New Jersey State Library. Finally, it is not possible to investigate all of the beliefs and attitudes within the public domain. I believe, however, that the material examined represents a wide perspective of thought, opinion and reactions to the various changes occurring during this time. I also attempted to ensure as much relevant material as possible was covered by consulting other studies to confirm that I had reviewed major works of the period.¹²

4.2.3 Process

The process of reviewing these various documents was not linear, but rather circular; documents were examined a number of times, particularly where they were quoted or used by other sources. After an initial reading of the documents, the most relevant documents were grouped to better understand particular issues, such as overcapitalization or publicity. These groupings were then reviewed separately to consider issues such as how concerns pertaining to trusts affected other’s conduct, the influence of various forms of expertise, differences of opinion, points of conflict and

¹² One of the most comprehensive and often quoted traditional historical studies is Thorelli (1955), The Federal Antitrust Policy Origination of an American Tradition.

resistances, and the unintentional consequences of individual actions or policies. The objective was to study as many sources as possible, focusing on the positions and arguments made by such sources rather than the particular merits or value of such sources.

Consistent with genealogy's objective of writing a history of the present, attempts were made to understand events and study them within their appropriate historical context. Accordingly, sources such as works and treatises written at the time from economists, political scientists and legal scholars provided not only a significant resource in interpreting events, but also played critical and significant roles in understanding the relevant attitudes and influences within the public at the time. The review of these sources was also an iterative process as the review of particular documents often indicated the need to examine other documents or even suggest new lines of inquiry.

Finally, the following analysis also tends to use the terms corporations and trusts interchangeably. Trusts initially referred to a specific form of organization under which shareholders of different corporations would have their shares held by a trustee. Over time, however, the term came to refer to a large corporation or industrial combination over which there were concerns about monopolistic tendencies. Accordingly, much of the literature from the time period refers to what are legally corporations as trusts, especially when a negative connotation is intended. Also, the discourse, both scholarly and popular, would often use terms such as 'evil' and 'dangerous' in referring to trusts and corporations. Accordingly, where appropriate this analysis employs the relevant descriptions and terminology within its historical context.

4.3 Limitations

One limitation of this study involves genealogy's claimed documentary nature. In particular, genealogy's claim to the use of thorough and meticulous documentary evidence leads to a problem regarding its historical approach of focusing on discontinuous beginnings. The problem is that by claiming a documentary nature, genealogy begins to look like it can get things *right*, that it has the *correct* account of how things are. As Prado (2000) notes:

It is difficult to see how the genealogical analyses themselves remain historicist in nature while exposing the constructed nature of all other disciplinary truths. It does look as if the way genealogy exposes alleged event-determining essences as constructed is by tracing objective sequences of events that have been distorted by ideological or other factors. The claim that those sequences have been misinterpreted, in being made to look integrated and teleological, seems to entail that the genealogical account of those events is the correct one. The alternative ... is to accept that genealogical accounts are just so many more stories on an equal footing with the stories genealogy opposes. (p. 38)

In this study, these concerns are apparent in the fact that individuals, such as James B. Dill or certain events may seem overly privileged, as if their actions are grand narratives or suggest inevitability. In other words, if simply evaluated by its own standards, genealogical studies, such as this one, would arguably fail. However, as marginal and oppositional, such genealogies provide an important "problematizing attitude or stance that draws its life from what it investigates and opposes" (Prado, 2000, p. 164). Genealogies therefore offer alternatives to which the more traditional views must respond, in either disproving, assimilating or dangerously ignoring them (Prado, 2000). From this perspective, genealogies ask us to rethink our more dominant views and consider the relevance and importance of what had previously been marginalized or thought of as not important.

4.4 Conclusion

Genealogy provides a useful research methodology by which to understand the formation of the phenomenon of the governance of the corporation. Specifically, genealogy is particularly useful in how it focuses on a broad range of sites which often might be overlooked in other analyses. It also provides a means to study Foucauldian notions of power and how they function, not only in governing corporations, but also in governing the beliefs and actions of individuals. Specifically it focuses on the importance of expertise in understanding power. This methodology leads to specific research methods which require a detailed study of historical documentary evidence from the period which highlights the beliefs, thoughts and actions of a wide variety of individuals and groups. In making such an examination, genealogy therefore highlights the need reconsider our current thinking around the governance of corporations.

I proceed in the following two chapters to employ genealogy and the related research methods to understand not only the governance of the corporation, but also the construction of the corporate subject, such as the investor. In chapter five I consider these issues at the macro level of a public economic discourse of the corporation. In chapter six I examine the micro level of financial accounting expertise and technologies.

Chapter 5

Governmentality's Emergence – Corporate Control within the State of New Jersey

The following chapters provide a genealogy of the modern corporate subject within the context of the American business environment. Specifically, this genealogy examines how strategies and calculative techniques of corporate control and governance constitute a form of governmentality. This chapter focuses on the emergence of governmentality at the macro level in terms of the formation of industrial combinations in the form of holding companies and corporate consolidations, and in particular the actions of individuals and groups within the state of New Jersey with respect to such combinations. As previous chapters note, the end of the nineteenth century was a critical period for the emergence of corporations and their governance within the United States. At the center of these changes was the state of New Jersey, which as discussed in previous chapters played a critical role in the emergence of industrial combinations or what were referred to as trusts. New Jersey therefore provides a useful starting point and roadmap to how a logic of governmentality, expressed in terms of rationalities, programmes and technologies of financial accounting and reporting contributed to the emergence of new types of corporate relationships, which contribute to and shape the governance of corporations.

As noted in chapter three, political rationalities comprise various economic, legal and political debates which become influential and acceptable as a result of their widespread usage by various individuals. Whereas political rationalities represent general statements, programmes provide more specific detail regarding how political rationalities might be accomplished. As Radcliffe

(1998) notes, “programmes provide the intellectual machinery that allows abstract political rationalities to be implemented (Miller and Rose, 1990)” (p. 380). Technologies, which are addressed in greater detail in this chapter, provide a specific means by which programmes are operationalized or realized. Specifically, technologies comprise not only systems of notation, computation and calculation, but also accounting concepts, principles and standards.

This chapter begins by providing an overview of the early corporate environment within the United States, focusing on how corporations began to be understood in quantitative terms and changes in corporate charters. I then examine how out of this early corporate environment emerged various political rationalities regarding trusts and the need for reform, particularly in the state of New Jersey, which eventually led to governmental programmes and the construction of holding corporations and other types of industrial combinations. Next, I examine a growing discourse of disclosure and reporting, which began to permeate discussions and debates over the control and governance of corporations. In particular, I consider the various actions and reactions to these discourses particularly within the public domain. Finally, I analyze these changes in the governance of corporations using a framework of governmentality, specifically a shift from sovereign mechanisms of control to governmental ones. These governmental mechanisms focus on control based on practices of normalization, directed not only at the corporation, but also at the broader public domain. The chapter is organized with the analysis following the discussion of events to provide a clearer understanding of the events and the debates, discussions and outcomes of the events. I include, however, throughout the earlier sections of the chapter Foucauldian motivated concepts and allusions as markers to connect the earlier sections to the analysis section.

5.1 Overview of the American Corporate Environment

While the corporation has a long history within the American economic and business environment, over the last two decades of the nineteenth century there occurred a fundamental shift in the nature of the corporation, often referred to as corporate capitalism (Sklar, 1988). Business entities underwent decisive changes in terms of their purpose, structure and most importantly their relationship to capitalism. These changes were particularly prominent in the State of New Jersey, which by the end of the century had become known as the “home of the trusts”. Current accounts of these changes and their impact on corporate structures and relationships focus on larger narratives, particularly highly visible political or economic events, which emphasize sovereign forms of corporate power and control existing in corporate laws or held by industrialists like John D. Rockefeller of Standard Oil and Andrew Carnegie of US Steel or financiers like J.P. Morgan. What these approaches neglect, however, are the lesser recognized governmental forms of power constituted within political rationalities, programmes and technologies, which in the form of emerging financial information made the corporation knowable and quantifiable in financial terms not only to corporate owners, but also in the public domain.

Evidence of the emergence of financial information was found in the growth of various financial publications in the second half of the nineteenth century, which began to provide an increasing amount of financial and accounting information regarding corporations. *The Commercial and Financial Chronicle*, “The Chronicle” began providing financial information on a large number of investments, including quotations of stocks and bonds, as early as 1865. The Chronicle’s initial focus on representing the industrial and commercial interests of the United States expanded

over time. By 1890, it had begun including corporate annual reports and an Investor's Supplement, which provided over 100 pages of analysis and financial information on stocks and bonds. By 1900, various other supplements had been added, including a Quotation Supplement, Street Railway Supplement and State and City Supplement. In 1890, the *United States Investor*, subtitled "A Journal of Greater America" made its appearance. This weekly publication devoted to investing, not only included a vast quantity of financial information such as corporate earnings, capital and dividends, it also provided analyses of financial information relating to specific corporations. For example, the publication provided detailed analysis of corporations and their investment opportunities in features such as, "Studies in Values", or "Some Manufacturing Shares" which began to regularly appear within its pages. The growing publication of financial information, however, was not limited to investor specific publications, but was also found in more general publications such as *The New York Times*. In 1897, for instance, *The New York Times* began publication of its "Annual Financial Review". By the ninth Annual Financial Review in 1905, its scope and significance in providing financial information had increased to such an extent that the Times referred to the Review as "Unequaled in Fund of Statistics and Authoritative Data". The article went on to claim:

It may be fairly said that no newspaper publication in the world ever contained such a fund of statistical information and authoritative data bearing on the financial and business life of the country as the Ninth Annual Financial Review of *The New York Times*, which appeared yesterday morning. The comprehensiveness of the issue was the marvel of all who saw it, yet the arrangement was such that anyone seeking information of a specific nature was able to obtain it readily and without walking through a mass of extraneous matter. (*The New York Times*, Jan. 9, 1905, p.5)

Many of these publications not only provided numerical financial and accounting information, they also provided extensive commentary on the growth of new forms of business organizations such as trusts. Extensive commentary and examination regarding trusts and combinations relating to a wide range of issues could even be found in various articles in *The Bankers' Magazine*.¹³ The explosion in the quantity of published financial information and analysis illustrates how trusts and corporations were becoming objects of study in terms of creating new corporate discourses that, as this chapter documents, increasingly took the form of an accounting logic emphasizing disclosure and reporting. This view of the corporation was very different from previous conceptions of the corporation, which saw corporations as limited in scope, not particularly suitable for manufacturing and other industrial enterprises, and largely undifferentiated from their owners.

5.2 Early Corporate Discourse

Generally, corporations in the United States in the eighteenth and early nineteenth centuries only arose as a means of raising funds for public service ventures such as public utilities or railroads; rather than as an efficient means to raise capital for production. In fact, during much of this time period, corporations were viewed as not even well suited for industrial businesses. Shareholders were generally perceived as engaging in the business themselves since corporations were viewed much like partnerships, undifferentiated from their owners. Corporations were generally held by only a limited number of shareholders and little attention was given to broader stakeholder groups

¹³ Some examples include articles from the following issues of *The Bankers' Magazine*, April 1899, "Trusts and Combinations"; July, 1902, The Opposition to Trusts; February 1903, "Are 'Trusts' An Enemy of Labor?"

or minority shareholders. The model of corporate control therefore simply involved the relation between the shareholder(s) and what he (they) owned in terms of the assets of the business.

While corporations functioned as if the shareholder engaged in the business directly, there was still a need to ensure or at least make it appear that corporations acted in the public interest given that corporations were created to develop larger public service ventures. Accordingly, to ensure corporations acted in the public interest, states, such as New Jersey, attempted to retain control over corporations by granting, through special legislative acts, corporate charters, which carefully defined and limited corporate powers.¹⁴ Furthermore, the state generally retained the power to revoke the corporation's charter if the corporation did not act in the public interest. Corporations were therefore creatures of the state, vulnerable to public opinion and ultimately bound under state control, since the state could judicially change corporate powers and end a corporation's existence through the revocation of its charter.

While special charters supposedly gave the state control over the corporation, often the powers granted to the corporation left the corporation, which meant a single or small group of shareholders, in control. Accordingly, the ultimate objective of such corporations often became the wealth and well-being of those who controlled the corporation. This was particularly true in New Jersey, since the state wanted to establish itself as a key business centre by attracting corporations. The result was the granting of highly generous charter privileges which gave corporations a large degree of control and privilege. In addition to monopolistic territory or

¹⁴ Cadman (1949) reports that for the years 1858 to 1875 during which general incorporation had become available, "special charters for those years while only 361 filed certificates under general laws" (p. 160).

property rights, special incorporation laws in New Jersey provided other significant corporate privileges. Cadman lists these privileges as follows:

More liberal borrowing privileges than the general laws allowed was one. By securing a special charter a company might escape the over-all debt limits established in a number of the important laws... Another was the exception of less strict rules on director and stockholder liability than were imposed by the important general laws. Still others were the right to issue stock in exchange for property other than money and special exemptions from taxation. The publicity requirements of the manufacturing act of 1849 were very unpopular and could be avoided by securing special acts of incorporation. (Cadman, 1949, p. 169)

In the state of New Jersey, perhaps no better examples existed of the granting of generous charter rights than those of the Delaware and Raritan Canal Company and the Camden and Amboy Railroad Company, which later formed the United Railway and Canal Company, better known as “Camden and Amboy.” In the early nineteenth century railroads were seen as highly risky ventures in which to invest, requiring the state to grant the predecessor companies of Camden and Amboy charters that gave them highly monopolistic rights in terms of territory, and other significant privileges¹⁵ (Stoke, 1930). In fact, the control exercised by Camden and Amboy of not only the transportation industry in the state, but also the rights to large and strategic pieces of land, was so extensive that New Jersey became known across the country as the State of Camden and Amboy.

The effect of the purchase [the combining of the companies] was soon evident. The Camden and Amboy, now known as the United Railroad and Canal Company, became by far the most powerful monopoly in New Jersey, and its influence was enormous. According to the terms of the charter, it [Camden] paid no property tax and only a small transit duty of ten cents for

¹⁵ The railroad would eventually agree to pay a small sum to New Jersey as a transit tax.

each “through” passenger and fifteen cents for each ton of freight, which relieved the burden¹⁶ of this from Jersey citizens and threw it upon the citizens of other states. The government of New Jersey felt gratified at the steady income from its stock and transit duties. One New Jersey writer said:

It was the duties paid by these companies that built our State Prison, and Lunatic Asylums...; also our beautiful State House...; and , in fact, the means for all of our internal improvements, as well as a large amount towards the support of our magnificent system of public schools, is derived from this source, thereby saving our citizens from an enormous yearly tax, which must have accrued through our extensive internal improvements, did we not have other means of meeting that expenditure, (Stoke 1930, p. 56-57; references 2nd paragraph from J.O. Raum, the History of New Jersey (Philadelphia, 1877), II, 334.) Stoke (1930, p. 556-57)

The control that Camden and Amboy exercised across the state allowed it great leeway in its actions, evident even in areas such as accounting and how it maintained its books. For instance, it was common knowledge that Camden and Amboy understated revenues for the purpose of determining transit taxes which the state collected from the railroads. An often-cited reason for the inability to prevent such abuses was the unsophisticated or primitive nature of accounting, and its susceptibility to manipulation (Mitchell, 2007). The implicit belief was that accounting development would enable the prevention of such abusive practices and opportunities for manipulation. Accounting, however, was not simply unsophisticated¹⁷ and subject to manipulation; it was, more importantly, under the control of Camden. In other words, accounting functioned to serve Camden’s interests. Motivations for changes in control and governance

¹⁶ The predecessor corporations were essentially exempt from taxation with only a “trifling” transit tax, which was imposed upon traffic. This tax exemption burdened the state with significant financial problems.

¹⁷ See Brief (1975), who highlights that accounting theory was more developed than conventional wisdom suggests.

practices would therefore not only be found in improvements in accounting standards or new corporate laws, but also in accounting functioning outside of corporate sovereignty, to reveal corporations as understandable to the public through various forms of quantification and disclosure. These changes in the operation of accounting would result from a gradual and subtle process involving the relationship of emerging forms of economic and social change to a growing corporate population, in terms of the growth in the number of corporations, and the size of corporations.

5.2.1 Political Rationalities – Corporate Charters

The growth in the number of corporations coincided with the replacement of special charters of incorporation by general incorporation laws. Specifically, the granting of special charters led to a number of concerns that as a result of the privileges granted under them, corporations, rather than acting in the public interest, focused on the interest of the corporation and its owners. Special charters also presented what are best described as growing technical difficulties. Since each charter was unique and required interpretation, courts had to continually rule on the unique provisions of each charter, leading to added pressures as the numbers of charters increased. Accordingly, special charters started to become problematic.

While changes in incorporation laws limiting special charters were occurring throughout various states, a major impetus for such changes, especially in the State of New Jersey, was a growing need for increased state tax revenue and the growing cost to the state of granting special charters (Cadman, 1949). The first steps towards general incorporation laws were taken with the passage of laws as early as 1846, which defined general rights for corporations and in 1849, which

permitted certain types of corporations to incorporate by simply filing a form rather than requiring legislative approval. All that was required was the name of the company, its place of business, the amount of stock and capital, names and residences of the shareholders, and its commencement date and termination dates (*Laws of New Jersey*, 1849, p. 300).

The movement to replace special incorporation laws by general incorporation laws, however, did not happen without resistance from those in business who benefitted from such special incorporation laws. This was particularly true with prominent and some of the largest corporations, such as the railroads in New Jersey, the owners of which heavily lobbied state legislators to prevent such changes (Stoke, 1930). In fact, despite what were often and loudly referred to as the evils of special charters -repeated even by state governors- the New Jersey legislature remained largely silent on the issue.¹⁸

Finally, in 1875, public opinion had become sufficiently opposed to special incorporation laws that constitutional changes were made prohibiting such forms of incorporation, leading to general incorporation laws becoming the sole means of incorporating in the state of New Jersey (Cadman, 1949).¹⁹ The attention given to these changes in the Governor's message in 1876 to the legislature of the state of New Jersey highlights their significance to not only corporations, but also to the broader social and political environment. Among the four pages devoted to this topic the Governor states:

¹⁸ See Governor Randolph's Annual Message to the legislature in 1872 (p. 11) in which he highlights the evils of special legislation.

¹⁹ Yablon (2006, p. 331) points to the importance of the abolition of special charters in leading to an increase the number of incorporations in New Jersey; in contrast to the more traditional view that the main driver was subsequent legal changes to New Jersey corporate law permitting holding corporations.

One marked feature of this paragraph is, that it cuts off all right to grant exclusive corporate privileges, and prevents the Legislature from conferring, by special law, any corporate powers. This is a sweeping change. Exclusive privileges should never be granted. They are unfair, and contrary to a sound State policy, and the policy is equally strong, that no corporate powers should be granted by special law when practicable to provide them by general laws; but the wisdom of an entire restriction, except by general laws, is not free from doubt, and can only be determined by its practical results. (State of New Jersey Legislative Documents, 1876, p.7)

Whereas under special incorporation laws corporate charters were viewed as privileges granted to certain business owners by the state, under general incorporation laws corporate privileges and rights were available and exercisable by almost anyone, who either had or could obtain the necessary legal expertise regarding corporate law. As Governor Joseph D. Beadle stated in his inaugural address of 1875:

Corporate privileges in many matters of legitimate trade and enterprise should be open alike to all, and readily obtainable on compliance with general laws whenever demands of business require it. (p. 13)

While the objective of such changes was to make incorporation and the privileges it provided available broadly, these changes would also affect, as part of a series of largely unintentional events, the growth in size of corporations and ultimately the governance and structure of corporations, including their relationships to a broader range of individuals within the public domain.

5.3 An Emergent Political Rationality – Trusts and Reform

Political rationalities regarding competition and increasing corporate size were central features of the business environment in which the development of new corporate forms would take shape. The growth in corporate size began with the formation of trusts, which arguably resulted not simply from economic efficiencies (Chandler, 1977), but also from an increasing competitive environment, which many argued resulted in ruinous competition (Lamoreaux, 1985). Among the various factors that contributed to this growing competitive environment, as discussed in the previous section, was the passage of general incorporation laws (Yablon, 2006).

As the above section illustrates, the growth of public sentiment towards the encouragement of greater competition and business expansion led to the passage of general incorporation laws that the public hoped would eliminate monopolies. As Governor Randolph noted in his annual message to the New Jersey legislature in 1872:

To the legislative branch of government, a vast saving of time would be secured by its adoption. To the judicial department, the economy of labor would be a manifest advantage. To the public, the certainty of just and equal privileges, which such laws establish, would go far toward ensuring the accretion of capital within our own borders, the healthful and steady development of industrial enterprises, and security against the wrongs, which special privileges, by legislation, are calculated to engender. (p. 11)

Despite the long held belief of the importance in competition and individual ownership, competition soon became problematic. In an era characterized by periods of economic depression and currency deflation, unregulated competition began to be seen, by producers, as wasteful, leading to duplication of effort, higher cost production processes for consumers and economic ruin for producers (Collier, 1900). Producers claimed that business within the U.S. had become

characterized by industrial overcapacity and undue price competition as a result of excessive competition (McCraw, 1981; Seager et al., 1929). In its place, price stability at levels which permitted producers to be profitable became the overriding objective, in line with the belief of producers that they were entitled to a much larger piece of the profit pie (Meade, 1903).

In response to the above concerns over price stability and producer's claims of ruinous competition, which resulted from the introduction of general incorporation laws in New Jersey and other states, corporate owners formed pools with the intent of restricting competition and controlling prices. The initial success of these pools in controlling prices was a result of their lack of visibility. While the formation of such pools was not unique to New Jersey since other states faced similar issues, these arrangements would lead to a series of sudden and largely unforeseen events that would eventually vault New Jersey into national prominence by becoming known as place friendly towards new forms of corporate combinations, known as trusts.

While secrecy and lack of visibility made early pools advantageous, they were contractually weak since contracts involving restraint of trade were unenforceable. Accordingly, these forms of organization would soon be replaced by much stronger ones in the form of trusts. Trusts involved agreements whereby each shareholder deposited the stock of their corporations with Trustees in return for trust certificates (Meade, 1903; Cook, 1893). The first major use of the trust form of organization was by Standard Oil in 1882, followed by the American Cotton Oil Trust in 1884 (Meade 1903; Cook 1893). The early success of these trusts in getting agreement among various corporations to establish unified control over production and prices in the oil and cotton oil industries soon led to the emergence of various imitators in industries ranging from sugar to

whiskey. A growing belief developed, within various industries, that by controlling production, profitable prices could be maintained and competition eliminated.

At first, impacting only a few industries this new form of organization soon spread much more widely. While producers saw trusts as necessary to control prices, the public saw things differently. Public outcry soon ensued over the restriction of competition since trusts were much more visible than pools or associations. Concerns over trusts permeated American society as evidenced by significant number of popular writings and treatises on trusts from a variety of disciplines, including economics, sociology, political science and law. Trusts provided critical points of debate, examination and study, which began to shape a new corporate discourse and lead to newly emerging political rationalities. This discourse concerned not only whether trusts were problematic or evil, as the terminology of the period referred to them, but also what to do with the trust problem. In a treatise written at the time, Cook illustrates the prevailing concerns that saw trusts as evils and unnatural entities, which circumvented the natural laws of competition and resulted in the elimination of competition through their monopoly power and questionable practices.

There is something inherently vicious and dangerous in the powers which are given to the trustees of a trust. The secrecy of their operations and orders, the concealment of the condition of the business, the power to refuse all information, and the unrestricted irresponsible powers of the trustees renders the trust mode of doing business intolerant and intolerable. (Cook, 1893, p. 76)

Furthermore, he notes an environment characterized by a struggle for control between governments and corporations.

Government is seeking to rule corporations, and the corporations are seeking to control government. Indeed, it seems as though every important property interest of a corporation involves it in a contest with the legislative, executive, or judicial part of the national, State, or municipal government. (Cook, 1893, p. 77)

Cook's conviction was that the only effective solution to control trusts and other monopolistic combinations was legislation and effective court action.

The visibility of trusts and the public concern surrounding them made trusts open to attack by state and federal governments. At the state level, trusts were generally challenged on the basis that they lessened competition.²⁰ Despite state jurisdiction over corporate law, the federal government also believed it necessary to address monopoly and antitrust concerns on the basis that many business activities involved inter-state commerce (Seager et al., 1929). This was particularly true in the case of the railroads, which were among the largest and most influential corporations. As a means of controlling their growing influence, particularly with increasing public concerns over rail rates, Congress passed in 1887 the Interstate Commerce Act, which forbade rate discrimination practices by the railroads (Seager et al., 1929). The main federal response to trusts and concerns over monopoly would arrive a few years later with the passage of the Sherman Act of 1890, which as Meade notes declared that:

every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared illegal and

²⁰ Yablon (2006) and Thorelli (1955) both note the success of states in attacking trusts through legal challenges. Some of the more significant examples include Louisiana State vs. the Cotton Oil Trust, 1887; New York State vs. the North Sugar Refining Company (member of the Sugar Trust), 1888; California State vs. the American Sugar Refining Company (member of the Sugar Trust), 1889; and Nebraska State vs. the Nebraska Distilling Company (member of the Whiskey Trust), 1890. Thorelli (1955) notes how "the trustee device did not provide the durable foundation of monopolistic control of large industries that promoters had hoped for" (p. 79).

every attempt to monopolize such trade or commerce, or every actual monopoly of it was illegal. (Meade, 1903, p. 32)

5.4 Emergent Programmes – Holding Corporations

With trusts increasingly under attack throughout the 1880s, new forms of business organizations began to emerge in the form of holding corporations. Instead of a trust holding stock certificates, a holding corporation was used to hold the shares of other corporations. Whereas trusts could be challenged on the basis of a conspiracy to unite different corporations under the same control with the objective of creating a monopoly, the holding corporation was more difficult to challenge since it was a single corporation that owned the shares of other corporations, which, if necessary, could be merged into the holding corporation (Montague, 1904). This subtle difference made it more difficult for states, legally, to challenge holding corporations. Holding companies did not so much circumvent laws, but rather because of their structure, in which there was a single corporation at the top, were less subject to legal challenge than trusts as a conspiracy of several persons. As commentators at the time remarked, trusts were remodeled (Ripley, 1905; Cook 1893). Holding corporations however were also highly contested structures.

While the holding company was less susceptible to legal challenge, such structures were difficult to implement since state law generally prohibited corporations in most industries from owning the stock of other corporations. The basis for such prohibitions was that stockholders were presumed to be investing their money to carry on specific activities as contained in the corporation's charter. Accordingly, corporations were understood as a means of engaging in a specific business enterprise, such as building railways or canals, which precluded the idea of investing in another corporation. In other words, holding corporations were not the natural concepts that we

understand today. As Yablon (2006) notes, their formation was not simply the creation of a different legal structure, but rather altered the fundamental meaning of the corporation.

The emergence of the holding corporation depended upon it being sanctioned under state law, which appeared highly unlikely, especially since the previously discussed anti-trust sentiments had heightened concerns over the monopolistic tendencies of corporations (Mitchell, 2007). Despite a hostile environment, the following section will describe how, within a few years, holding corporations were not only permitted in many states, but had transformed the economic landscape.

5.4.1 Governmental Programmes – The Role of New Jersey

The early growth of holding companies was in fact greatly influenced by a rather unexpected source, an unassuming New York lawyer, James B. Dill, who resided in New Jersey. Dill was not a particularly grand figure. Instead as his background highlights he was a very practical and even nondescript individual, somewhat of a misfit among his contemporaries, the industrialists and financiers of the time (Mitchell, 2007). Dill however was recognized as one of the most successful trust lawyers in the U.S. possessing an extensive knowledge and expertise of corporate law and regulation. As reported in the November 11, 1901 edition of the New York Times:

The discussions of trusts by Mr. James B. Dill of this city at Chicago on Saturday evening has a special interest from the well-known ability of that gentleman in the line of practice connected with this class of corporations and his wide experience. It is fair to assume that there is very little to be learned from the outside or the inside that Mr. Dill does not know on this subject. (p. 6)

His prominence came from not only his influence in regards to corporate law, but also in how he employed laws not as sovereign forms of control but as regulatory mechanisms.

Furthermore, Dill's effect on these processes was not a result of his sovereign authority, either in terms of controlling corporate enterprises or political office, but rather a result of his expertise and conduct, and more importantly how that conduct affected the conduct of others. In fact, the primary focus of Dill's intentions was not the governance or control of corporations, but rather the implementation of what he saw as a financially and politically lucrative plan, not only for himself but also for those who held political office in the State of New Jersey.²¹ In his account of events in the state of New Jersey, Steffens (1905) states:

Mr. Dill says that he had in mind many small companies, not the big trusts; he did not foresee all of the future; and I believe him, for he is openly against some of the recent developments of Jersey's corporation legislation. All that is maintained here is that the men concerned at that time in the adoption of the Dill scheme "didn't care a whoop" what might result, and what the other States might think, or feel, or wish. They were out for themselves and Jersey. Some of them told me so. (p. 258).

In the late 1800s, some states had begun to slowly liberalize their corporate laws, in the hope that they could attract businesses and therefore generate new sources of tax revenue through corporate filing fees. Dill saw an opportunity for not only specific changes in corporate laws to attract corporations, but more importantly to promote such changes and package them to serve corporate needs. He therefore developed a specific plan which he hoped that New York State would implement by amending its incorporation laws. After unsuccessful attempts to convince New

²¹ See Lincoln Steffens, (1905), *New Jersey, A Traitor State*, for an account of Dill's story and how Dill's intentions centered on gaining expertise in corporate law to expand his practice. Steffens emphasizes how Dill was a "practical man".

York State to amend its incorporation laws, Dill crossed the Hudson to his home state of New Jersey with a proposal to help overcome the state revenue problem. In New Jersey, the need for revenue sources was particularly acute. Among various measures implemented to generate revenues, in 1882 New Jersey eliminated tax exemptions it had previously provided to railroads, which, at the time, were some of the largest corporations in the state (Stoke, 1930). Despite such attempts to increase tax revenues, significant revenue increases only came about with the arrival of Dill (Stoke, 1930). To overcome this revenue problem Dill proposed that the state amend its incorporation laws so corporations could buy and hold stock of other corporations, which many other states argued made New Jersey's corporate laws some of the most liberal in the country.

From 1888-1896, under Dill's supervision a series of changes occurred in New Jersey's corporate law.²² The first significant changes occurred in 1888 and 1889 with the passage of laws that permitted corporations in New Jersey to purchase the shares and bonds of corporations from other states.²³ Various changes would ensue over the following years to broaden these provisions, including key changes in 1891 and 1893 with the passage of provisions allowing corporations to buy the stock of other corporations and issue their own stock as payment based upon valuations set by the directors of the corporation acquiring the shares.²⁴ These changes effectively permitted "any corporation to buy any property it could, pay any price it wished, and to issue sufficient stock to pay for the same" (Stoke, 1930, p. 571). While debates exist over which changes were

²² A number of excellent sources discuss and provide different interpretations of the significance of the various amendments to New Jersey law, including. Grandy, 1992, *New Jersey and the Fiscal Origins of Modern Corporate Law*; Stoke, 1930, *Economic Influences Upon the Corporation Laws of New Jersey*; Yablon, 2006-07, *The Historical Race Competition for Corporate Charters and the Rise and Decline of New Jersey: 1880-1910*; Mitchell, 2007, *The Speculation Economy*.

²³ *Laws of New Jersey* (1888), p.385 and (1889), p. 414.

²⁴ *Laws of New Jersey* (1891), p. 329 and (1893), p .301.

the most significant, the final result was that holding companies could now incorporate in New Jersey and that the corporations they owned could still operate within other states and comply with antitrust laws of those states, leaving such states almost powerless to deal with New Jersey holding companies.

New Jersey's success in attracting corporations and concerns within the public regarding corporate size and monopolistic tendencies of corporations, led to its corporate law changes being contested by other states and various corporate reform groups. The contested nature of New Jersey's intercorporate shareholding law led to ongoing debates and discussions regarding both the place and meaning of the corporation. For many, this simple act of the legislature of New Jersey nullified years of effort through state antitrust laws to control an increasingly feared concentration of ownership and monopolization. However, New Jersey's attractiveness as a jurisdiction for corporations to incorporate in was not simply because it permitted holding company structures, since other states were also in the process of liberalizing their laws even prior to changes in New Jersey (Chausovsky, 2007). In fact, the passage of the initial amendments to New Jersey's corporate law in 1888 and 1889 received little attention within the state (Chausovsky, 2007). Instead, these amendments were perhaps more significant in that, unlike changes in the laws of other states, they highlighted the New Jersey's clarity and commitment to corporations, adding to the state's reputation as a place friendly to trusts and differentiating it from other states (Yablon, 2006).

5.4.2 Governmental Programme – The Corporation Trust Company

New Jersey's clarity and commitment to trusts also resulted not simply from the changes to its laws, but also from how the state actively promoted or mobilized its laws. Specifically, Dill's plan led to the establishment of a corporation, The Corporation Trust Company,²⁵ whose sole purpose was to promote the incorporation of companies in New Jersey. The basic operation of The Corporation Trust Company was fairly straightforward. It would advertise the perceived advantages of incorporation in New Jersey to corporations in other states in an attempt to persuade them to incorporate in New Jersey. If successful it would increase the state's revenue through incorporation and corporate filing fees. Furthermore, the Corporation Trust Company did not simply advertise New Jersey's laws it also assisted corporations who wanted to incorporate in New Jersey by ensuring that all necessary paperwork was completed for a corporation's incorporation and ongoing activities (Stoke, 1930). Corporations were not so much permitted, they were manufactured.

Here is how the company worked. Anybody who was interested in incorporating in New Jersey had only to write to the Secretary of State. That functionary would send in return a treatise on New Jersey law which carefully explained the latitude it gave corporate managers and directors in structuring and financing their corporations. The Secretary of State would then refer the inquiry to the Corporation Trust Company or one of its later competitors, which would service the client, sending the necessary legal forms and offering to complete the entire incorporation process for the promoter, all at a modest fee. (Mitchell, 2007, p. 41)

²⁵ Refer to New Jersey Department of State, "Annual Reports of The Corporation Trust Company of New Jersey" file X-14890 for information on The Corporation Trust Company.

The Corporation Trust Company would become critical to the functioning of the corporate laws of New Jersey, which provided not only favourable treatment to large business, who had always found a good home in New Jersey, but also came to target much smaller businesses and the public more generally. What was critical was how New Jersey employed its laws. New Jersey corporate law did not simply say what could or could not be done. Its focus was not on prohibiting actions but encouraging and enabling corporate activity and thereby providing a particular conception. As Lincoln Steffens points out:

What was wanted was a State that would not only open up its laws, but would advertise itself; that State would get the business which would go forth with business push, advertising and drumming up trade among the businesses that had never heard of West Virginia, Delaware, and New Jersey as dealers in lawful license. Now a State, as a State, could not afford, even if its officials, like the Secretary of the State of West Virginia, had the loyal energy to take up the work, to go out on the road showing its goods and advertising itself as the easiest, safest and best shop for limited liability charters. The thing to do, therefore, was to make it worthwhile for a private company, incorporated under Jersey laws, to undertake this part of the business. So Mr. Dill proposed to form a company which, for small but numerous fees, should advertise Jersey as a charter-granting State, explain her laws, vouch for her courts, attend to the incorporation of commercial companies, and look out for them at home while they were off doing business in other States. (Steffens, 1905, p. 260)

Furthermore the fact that the Corporation Trust Company was noted in out-of-state newspapers, particularly those of New York provides evidence of its significance and noteworthiness beyond the borders of New Jersey. As stated in an article in *The New York Times*:

The offices will be about all there is to the new corporation. It will need no more extensive plant, for its object is simply to act as trustee of corporations organized under the laws of New-

Jersey, but doing business outside of that State. Of these there are a great many. For them the new corporation will act as local agent, or, as it might be said, as a trustee for trusts, furnishing the office for them and acting as a register and guarantee of their stock debentures. (*The New York Times*, 1892, p. 8)

The effectiveness of the Corporation Trust Company's activities depended upon New Jersey's corporate law. Accordingly, New Jersey's corporate law had to be constantly readjusted to ensure it provided the necessary benefits. In particular, further amendments or improvements were made to the law over the next decade since the initial changes did not provide the expected benefits to the state of New Jersey (Mitchell, 2007). These reforms culminated in the Act of 1896, which among its many amendments permitted the formation of corporations for any lawful purpose²⁶ and left the issue of price or value at which corporations could issue shares to buy shares in other corporations entirely at the discretion of corporate directors.²⁷ These amendments further advanced the ability of individuals, such as promoters, to combine corporations, since they permitted the use of the stock of the new combination to purchase existing companies (Mitchell, 2007). Accordingly, by 1896 New Jersey corporations could be formed for any lawful purpose, carry on business in any state or country, and merge and consolidate (Stoke, 1930). As well, foreign corporations could hold and convey property (Stoke, 1930),

Perhaps more significant than the specific content of these changes is how these revisions simplified New Jersey's corporate law, moving it in the direction of what Yablon (2006) refers to as an enabling statute, in contrast to the complexity and vast array of regulations found in the corporate laws of other states.

²⁶ *Laws of New Jersey* (1896), pp. 279-80.

²⁷ Specifically, the Act of 1896 expanded corporate powers enormously by permitting corporations to amend their charters regarding changes in the nature or affairs of the business, and to make changes to their capital stock including the creation of various classes of stock.

The innovations of the 1896 Act were not primarily in granting new or expanded powers to New Jersey corporations. Rather, Dill's achievement was to present a clear, simple, and unified conception of corporate law as a body of enabling rules that provided a wide scope for private contracting among individuals. It turned New Jersey corporate law into a marketable brand. (Yablon, 2006, pp. 349-50)

Cumulatively, these changes in New Jersey corporate law, particularly the 1896 revisions, created an entirely different conception of the corporation, concerned not with potential abuses or dangerous of aggregations of capital, but as a productive enterprise, comprising relations between individuals.

The amendments of 1896 to New Jersey law were also prominently promoted by The Corporation Trust Company as one of the benefits of New Jersey corporate law contributing to a growing discourse regarding the benefits of corporations:

But it is not alone owing to such technical advantages that the greatest industrial corporations of the country are chartered in New Jersey. A more potent cause may be found in the policy of the legislature which made, and the Courts which support, the provisions of the Act. The law was revised in 1896, not as an untried theoretical code, but as the result of a half century of practical testing of all its provisions. New Jersey, from the fact that its manufacturing interests early assumed corporate form, gave ample opportunity to its Courts to pass judicially upon every question to which corporate law gives rise. Thus the law is practically a compilation, of decisions and its codification, the Courts have unwaveringly supported it.

A most important example calls special mention. In that section which authorizes the issuance of stock for property, the statement that the judgment of the directors as to the value of the property is absolutely final in the absence of fraud, was first flatly stated in the law in 1896, but the Courts for many years previous to this laid down the same principle and repeatedly affirmed it. Since the Courts and Legislature thus supplement each other's efforts every provision of the law is the rational

result of long experience. (The Corporation Trust Company, 1903, pp. 16-17)

5.4.3 Emerging Corporate Forms and Discourses

These efforts by the state of New Jersey proved highly successful as incorporations rose dramatically over the twenty-year period from 1880 to 1900. Total annual incorporations in New Jersey increased from 168 in 1880 to 897 in 1890 and to 1,995 in 1900.²⁸ Even more significant was the large increase in the percentage of incorporations in New Jersey versus other states. An examination of incorporations in New Jersey, Pennsylvania, Maine, Connecticut, and Massachusetts reveals that incorporations in New Jersey represented 21.8% of all the incorporations in these five states in 1880, 38.1 % in 1890 and 50.9% by 1900 (Yablon 2006). Also, this data highlights that while there was a substantial increase in the number of large incorporations of companies from 1880 to 1900 with authorized capital stock of greater than \$1 million, there was also growth in incorporations in small- and medium-size companies, with capitalizations of less than \$10,000 and between \$10,000 and \$1 million, respectively (Yablon, 2006).

This increase in the number of incorporations led to increasing attention and controversy, particularly within the popular press. For instance, various commentaries and complaints over New Jersey companies were commonly found within the pages of prominent newspapers such as

²⁸ Evans, George Heberton, (1948), *Business Incorporations in the United States: 1800 – 1943* provides a detailed summary of incorporations in various states from information he derived from various state officials.

The New York Times.²⁹ These articles note New Jersey's success in attracting corporations, reporting that 1,626 corporations were formed in New Jersey in 1891 (Stoke, 1930). They also point to continued growth in the number of incorporations after the 1896 amendments; from January to August of 1899, 1,336 corporations representing an aggregate capital of more than \$2 billion were formed in New Jersey (Stoke, 1930). More importantly, significant fiscal benefits accrued to New Jersey as the number of corporations and the amount of tax assessed increased from 619 corporations and \$195,273 in 1884 to 2,103 corporations and \$574,048 in 1890, reaching 6,602 corporations and \$2,048,008 by 1900.³⁰ In fact the fiscal benefits were so significant to New Jersey that "by 1902, the state's debt was eliminated, and these fees and taxes comprised 44 percent of state receipts" (Parker-Gwin and Roy, 1996, p.122).

This corporate growth and these fiscal benefits highlight how corporate laws were no longer simply forms of control, in the sovereign sense of permitting or forbidding actions, but instead they were aimed at encouraging or enabling certain forms of behaviour. Laws became more closely tied to forms of regulation focused on corporations as progressive and productive entities within the public domain. As Dill states, "The industrial movement must stand or fall by the simple proposition whether industrials are or not to become an investment for small capitalists....By the small capitalist, Mr. Dill said he meant that class who have from \$100 to \$10,000 to invest" (*The New York Times*, 1900, p. 3-4). This growing emphasis on the small investor meant that corporate law operated increasingly as part of growing regulatory apparatus

²⁹ Stokes (1930) provides a detailed discussion of how New Jersey corporations were perceived by neighbouring states, particularly New York.

³⁰ New Jersey, Seventeenth Annual Report of the State Board of Assessors of the State of New Jersey for the year, 1900. These figures are not consistent with numbers of incorporations reported in *The New York Times* since many corporations were incorporated but never carried on any activity or business.

directed at controlling not simply corporations, but developing a particular conception or discourse of the corporation within the public domain. Accordingly, corporations were not simply legal creations, but were beginning to be understood as norms of business organization within the public domain.

New Jersey was not the only, or even the first, state to amend its corporation laws to permit mergers or intercorporate stockholding.³¹ Various states, including Virginia, Pennsylvania, Michigan, Ohio, Tennessee, West Virginia, New York, Minnesota, and Wisconsin provided for intercorporate stockholding for specified types of corporations. The difference was that these states approached changes to their laws as piecemeal adjustments that could be provided to specific industries of interest, whereas New Jersey looked at corporate laws in terms of their totality in order to create a set of coherent provisions which were available more broadly. The difference between New Jersey and other states was therefore how New Jersey assembled and packaged various legal changes. As Chausovsky (2007) argues:

New Jersey's innovation was to assemble already existing provisions into a coherent and thoroughly liberal package – certainly, an important innovation in its own right as a single set of uniformly and thoroughly liberal legal provisions governing corporations had never previously existed. (p.62)

The coherency of New Jersey's law added to how it acted as productive and enabling towards corporations. More importantly, this difference in New Jersey's approach to corporations, and specifically corporate law, from that of other states was also apparent to commentators at the time.

³¹ Chausovsky (2007) provides an extensive analysis and comparison of state corporate laws.

I think that a careful examination of the course of legislation and judicial decision in New Jersey will show that in dealing with the organization and regulation of corporations she followed a consistent, definite and progressive policy. This policy is different from that of many States. It is a policy of encouraging rather than discouraging the aggregation of capital. It regards the corporation as a means of bringing the savings of many into efficient use as capital for the development of resources and the promotion of industries. (Keasbey, 1900, p. 209)

While New Jersey was not the only state to revise its corporate laws, its revisions unlike those of other states offered a coherent and consistent package of laws that were broadly available. Specifically, New Jersey's actions in terms of the approach to corporations and its articulation in various plans and legislation, particularly changes in its laws and creation of the Corporation Trust Company, comprise governmental programmes focused on concerns of state legislators over issues such as state revenue problems.

5.5 The Discourse of Disclosure and Reporting

Governmental programmes depend upon discursive elements to provide a link to previously discussed political rationalities over the need for increased state tax revenue and regarding corporations, over corporate size, monopolistic tendencies and control, circulating within the public domain. Of particular importance is the role of expertise in such discourses, specifically its role in addressing both problems and issues of political authorities and the concerns of individuals regarding such political rationalities. Central to these processes regarding the emergence of industrial combinations was a discourse of disclosure and reporting, which permitted the mobilization of such programmes across the public domain.

The growing emphasis within New Jersey on the progressive and productive nature of corporations coincided with the formation and emergence of new accounting discourse of disclosure and reporting. This discourse became increasingly emphasized, as legal responses to industrial combinations and trusts, such as the Sherman Act, were perceived as increasingly ineffective.³² The difficulty with legislative solutions, such as the Sherman Act, was that they were ideas borrowed from a long gone “smalltown culture”, whereas the current environment was very different, requiring new forms of regulation to meet an emerging variety of goals across a broad and diverse population of farmers, shippers, middlemen, merchants, retailers, manufacturers and numerous other groups. Furthermore, during the late nineteenth and early twentieth century the general public became the focus of a wide range of economic, political, and social reforms. Works such as, *The Public and its Problems* by prominent writers like John Dewey, highlight the growing significance of the relation between such reforms and the public. The public also became a topic of other works, focusing on more specific issues such as concerns over what growing monopolistic tendencies of corporations meant for the public (Baker, 1889; Clark, 1904).

This growing focus on the public was also found in how discourses of disclosure and reporting began to permeate laws and various legal treatises as an increasing regulatory focus developed.

³² The original intentions of the Sherman Act were only minimally realized, especially over the ensuing decade. The Sherman Act had little impact in eliminating or even slowing the growth in corporations since only five short years after its passage there occurred what Lamoreaux (1985) referred to as *The great merger movement in American Business*. Various reasons have been offered for the Sherman Act’s apparent lack of effectiveness including, its vague wording, an unwillingness to prosecute cases under its provisions, and courts applying its provisions too strictly. With enduring debates over the Sherman Act’s inability to control mergers, attempts were made by Congress to strengthen the law. The introduction of numerous bills in both the House and Senate over the subsequent decade, however, accomplished almost nothing.

Specifically, this regulatory focus attempted to make the law more accessible to the public and required greater disclosure of corporate information. In New Jersey this growing regulatory focus towards industrial combinations in the form of disclosure and reporting was evident in how a figure such as Dill approached the law. Dill spent much time analyzing and writing on New Jersey corporate law. In 1898, he published a very clear, concise and highly comprehensive treatise on New Jersey law, which illustrated his knowledge and expertise on the subject and drew attention to simplicity of organization and freedom of internal management within corporations (Dill, 1906). In comparing the corporate laws of New Jersey to those of New York, he highlighted how New Jersey's law constituted a complete code, eliminated special charters and state discretion in levying taxes, provided extra territorial powers for its corporations, and permitted shareholders more leeway without court approval (Dill, 1903a).

This treatise was not only directed at legal experts; instead it was also directed at a broad public audience, providing a case for New Jersey corporations as a simple and generally desirable form of business organization. Specifically, Dill focused on the regulatory aspects of New Jersey law, or as he stated "elements of her public administration" (p. 2) and "the business end of her corporate policy" (Dill, 1903a, p. 18). In his writings and discussions of New Jersey law, Dill therefore makes corporate law and accordingly, the corporation as understandable and accessible to a much broader range of individuals in the public, from those wanting to incorporate an existing business to those looking for a form of investment. As Yablon (2006) describes:

Here Dill was advocating the new conception of corporate law on both egalitarian and libertarian grounds. Under New Jersey law, the benefits of the corporate form previously available to the well-connected few were now potentially available to all, and created, defined, or limited in accordance with the wishes of the individuals involved. It was a conception of corporate law

designed to appeal to business both large and not so large, and it came just in time for the greatest merger boom in American history. (p. 353)

While attempting to make the law understandable and accessible to non-specialists, Dill was careful to maintain the importance of expertise in interpreting and applying the laws. In discussing important additional powers of incorporation provided by the 1896 Act, he states:

This is one of the most important provisions of the Corporation Act and around it centers the skill of counsel for corporations in drawing charters and in effectively laying the foundation of the corporate structure. (Dill, 1898, p. 21)

Here Dill employs expertise not to make corporations seem unattainable and only possible for a few, but as a necessary component of making the corporation available much more broadly within the public domain. The expert becomes someone who can assist the individual in dealing with the nuances of corporate law helping them understand and identify the corporation as important to their economic well-being.

For Dill the key technique to make the corporate form not only accessible but also acceptable within the public domain was publicity or making the corporation knowable through various forms of quantification and accounting measurements. Specifically, publicity involved providing financial and other information regarding the corporation to the general public. With such information individual investors and others could make informed decisions regarding corporations. In contrast to other states and groups which raised concerns that New Jersey law was weak since it actually encouraged large corporations rather than controlling their growth, Dill argues that in fact New Jersey had some of the strongest corporate laws, not the weakest, particularly regarding required publicity (Dill 1903b). Dill points to how New Jersey law focused

on the legitimacy of corporations by requiring the disclosure and reporting of information. As Dill (1903b) states:

Corporations are required to file an annual report, signed by two directors, or by the President and another officer, which report must give the name of the corporation, the location of its registered office in New Jersey and the name of the agent in charge of such office, who must be either a resident of New Jersey of full age, or a corporation organized under the banking Act.

The report is also required to state the character of the business actually carried on, the amount of authorized capital, the amount actually issued and outstanding, and by another existing statute corporations are required to state separately the amount paid in money and the amount of stock issued for property.

The names and addresses of the directors and officers of the company and when the term of each expires are required. The date of the next annual meeting must be given and, what is most important, the officers were required in the report to certify whether or not the name of the company had been displayed at its registered office, whether or not the corporation had maintained a registered office and had kept a stock book, and whether or not these books had been at all times during business hours open to the inspection of stockholders.

A false statement in a corporation's report will render persons signing the report liable for the debts of the company, and is equivalent to perjury. (pp. 9-10)

Dill therefore focuses on governance and control of the corporation by making it open to public scrutiny in terms of permitting the public to inspect its books and records and in the statements made by the officials of the corporation, rather than prohibitions under corporate law.

5.5.1 Actions and Reactions

Actions and reactions of not only other state governments, but also of those within the anti-trust movement extended this discourse of disclosure and reporting within the public domain. A

discourse of disclosure was found increasingly in various other treatises and more popular writings on corporations and trusts. Some of these later works began to see corporations or trusts “as a necessary and progressive innovation providing an institutional framework for large scale, technologically advanced, and efficient production” (Parker–Gwin and Roy, 1996, p. 117). Flint (1910) argued that they offered numerous, cost, price and wage advantages. In one of the most comprehensive writings on trusts, Collier highlights trusts as the evolution of management development, leading to the creation of new forms of economies and an abundance of real economic advantages such as cheaper production and distribution. He begins by stating:

Great accomplishments are the results of great forces marshaled into great organizations. It is a day of great things,- great aims and great ambitions, great forces and great mechanisms, great undertakings and great accomplishments, great opportunities and great achievements, great men and great organizations. . . . The tendency of the age towards great organizations manifests itself especially in those spheres of activity in which we accomplish results only by some form of cooperation-politics and economics, government and industry. (Collier, 1900, pp. 1-2)

In his writings he makes a distinction between large-scale operations and those trusts seen as monopolistic. It is only in the case of the latter that he argues that the need for control is necessary. He highlights a growing belief that such trusts are controllable through not simply legislative means in the form of anti-trust legislation, but through new forms of control focusing on financial disclosure.

A step, then, of immediate practical importance, a remedy that, in the present light, we should employ for trust evils – one that permits the continuance of the universal tendency to consolidation which has so far always brought success to industry and which means cheap production and distribution, and yet one that holds us back from the socialism which would strike down individualism – is the remedy of publicity. (Collier 1900, p. 329)

A discourse of disclosure and reporting began to pervade popular writings and treatises on corporations and trusts, focusing on the productive nature of such forms of organization.

Comparisons and contrasts between New Jersey law and that of other states, particularly New York, which saw a constant stream of corporations cross the Hudson, formed a part of this reporting and disclosure discourse. Accordingly, other states, such as New York, attempted to amend their competition laws in response to New Jersey. As *The New York Times* of Feb. 14, 1900 reported regarding legislation introduced in the state of New York, “In brief, the bill is designed to draw from the State of New Jersey the corporations now going there, and in some respects, the bill is on the New Jersey lines” (p. 9). At the end of the nineteenth century Maine, New York, West Virginia, Delaware, Connecticut and Massachusetts amended their corporate laws, either to compete for corporate charters or simply to deter local corporations from incorporating elsewhere (Yablon, 2006). These responses by other states led to debates centered on the liberalization of corporate law, prompting further regulatory competition and debates over the best approach to regulate and control trusts (Yablon, 2006). Specifically, Yablon (2006) highlights that other states raised concerns that New Jersey attracted corporations by reducing requirements corporations had to meet leading to reduced shareholder protection, and that for other states to compete they were similarly forced to reduce their requirements.

Dill, however, argued that other states mistakenly continued to focus simply on specific features of the law as permitting or prohibiting certain actions, rather than as part of a broader regulatory apparatus.

New Jersey's financial success appears to have had an unfortunate influence upon the corporate policy of some other States. Some charter-granting states have looked at the question of success or failure entirely from the financial standpoint. They have assumed that corporations went to New Jersey solely because of certain popular features in her laws. They have assumed that these popular features were the so-called "liberal" features, and so they have attempted to out-Jersey New Jersey by removing every restriction and salutary limitation upon corporate powers. They have reduced the price of incorporation to a mere nothing. They have done away with annual taxes. They grant "roving" charters and the tendency is to create "tramp" organizations, without responsibility and without protection to the public. This erroneous view of New Jersey's corporate policy has had a regrettable influence upon many other States. (Dill, 1903a, p. 21)

Dill saw corporate law as simply part of a broader regulatory framework. Law did not simply have to prohibit corporate actions as it did in many states. Rather it could state how corporations could be useful and productive assuming appropriate regulations were followed such as disclosing necessary information about the corporation. Such regulations however needed to be seen as reasonable and clear in their enforcement. A. Parker Nevin, counsel for the Lawyer's Incorporation Company of New York echoes this regulatory focus of New Jersey corporate law in his description of how New Jersey's laws, unlike those of New York, were uniform and fair.

It has never been the policy of New Jersey to attract capital by a laxity of statutory safeguards, nor, on the other hand to repel capital by unnecessary paternalism and unwarranted publicity. Its policy has been the establishment of a corporation law reasonable in its operation, and enforcing certain definite regulations as to corporate conduct. (*The New York Times*, 1900, p. 14)

This contrast between New Jersey and the laws of other states illustrates how a discourse of disclosure and reporting promulgated by individuals such as Dill became critical points of debate, emphasizing the growing regulatory nature of laws.

These debates and discussions permeated society to such an extent that they were found not only at the corporate level but also within the public domain. In fact, public debates over trusts became increasingly common, found even in some of the most unexpected places. For instance, an article in the April 12, 1900 edition of *The New York Times* illustrates the extent to which not only corporations but even Dill himself had become such a point of contestation and debate within society.

The debate on trusts which was to have taken place yesterday at the East Orange High School has been postponed indefinitely. Miss Emma Dill, daughter of James B. Dill, who has been identified with a number of large corporations, including the National Steel and American Tin Plate and the Carnegie-Frick interests, was to have spoken in the defence of trusts. So widespread had the interest in her paper grown, however, that Mr. Dill yesterday had his daughter's name withdrawn from the list of speakers. (p. 16)

Debates and discussions of trusts therefore formed an important part of the broader and popular discourse within the public domain. As part of this discourse these debates and discussions played an important role in affecting and shaping individuals' actions and reactions towards corporations and trusts.

Corporations and trusts also incited various points and forms of resistance as found in the constant barrage of anti-trust articles from an almost endless number of sources³³, including a substantial increase in popular writings on trusts. Much of this anti-trust literature emerged from the political rationality of progressivism, which developed in response to many of the social and

³³ Examples include *The New York Times*, *The Wall Street Journal*, *The Bankers Magazine*, *Harpers Magazine*, *McClure's*, *the Atlantic Monthly*

economic problems. These social and economic problems were often attributed to what were considered the excesses of large-scale corporate capitalism. In contrast to the political rationalities of laissez-faire economics, which arose from the works of Adam Smith and John Stuart Mill, progressivism favoured government intervention to maintain competition within business and free enterprise. Within the progressive movement, opposition to trusts, particularly their presumed monopolistic tendencies, arose from the populist ideal of the mistrust of the centralization of power and decision making (Dewey, 1927). This opposition would solidify under leaders, such as Louis D. Brandeis, who strongly opposed combinations on the grounds that they not only restrained competition, but also seldom seemed to achieve promised productive efficiencies (McCraw, 1981).

Much of the most prominent and strongest anti-trust literature of the progressive movement came from a group known as the muckrakers. While works by muckrakers such as Henry Demarest Lloyd, Ida Tarbell, Ray Stannard, and George Fife were highly influential in creating and maintaining an anti-trust sentiment, they also provided very detailed factual research and writings not only on trusts, but also on those who organized, controlled and invested in them.³⁴ Such writings ensured that the economic, social and political issues of trusts were kept constantly in the public eye and mind.

Despite what appeared to be strong antitrust rhetoric, the condemnation of progressives was not universal. The objectives and goals of the reformers of the Progressive era often became

³⁴ Classic articles appeared in *McClure's Magazine*. See Baker, "What the U.S. Steel Corporation Really is, and how it Works, November, 1901; and Tarbell, *The History of the Standard Oil Company*, November, 1902.

obscured through the underlying motives of many reformers, which were often tied to specific interests such as securing the wealth of the small and independent businessman (Seager et al., 1929). As well, some reformers believed that groups such as organized labour could fairly deal with the trusts and that even in some circumstances higher economies of scale could be passed onto labour (Leinwand, 1962). As Kolko (1963) argues, the rhetoric of reform never fundamentally conflicted with business supremacy over the control of wealth. Calls for reform were therefore less straightforward and more nuanced than much of the rhetoric suggested, involving shifting political rationalities and invoking various struggles, confrontations, strategies and resistances over trusts. Perhaps more than anything else the progressive movement contributed to extending corporate discourses within the public domain by making trusts and their activities objects of detailed examination, study and debate.

5.6 Analysis

Governmentality provides a framework to understand changes in the governance of corporations, particularly the uncoordinated nature and unintentional consequences of such changes. It also illustrates a shift from the governance of corporations based on sovereignty to broader regulatory apparatuses and enabling mechanisms, encompassed in a discourse of disclosure and reporting. Early forms of corporate organization characterized what might be described as a sovereign model of corporate control and governance, since special charters and the privileges granted under them resulted in power being centered in what was a relatively small group of corporate shareholders, who exercised authority over the corporation and its activities much like Machiavelli's prince in relation to his territory. Corporate control was grounded in the laws and special legislative acts which provided the corporation and its shareholders special privileges and

rights. Accounting was contained in this model of corporate sovereignty. Accordingly, it functioned within an administrative framework of sovereignty, or in other words in the interests of those who controlled the corporation.

The governmentalization of the corporation initially surfaced through rationalities and programmes related to the growth in number and size of corporations. In particular for accounting to operate outside of a sovereign framework required new economic motivations, which would appear in terms of various developments relating to both the growth in number and size of corporations. The first development was the elimination of special legislative charters and their replacement by general incorporation laws. General incorporation laws prevailed as a result of public pressure illustrating the growing connection between corporations and the public and their concerns; in contrast corporate sovereignty suffered from being disconnected from the public, based largely upon special corporate privilege rather than broader public objectives.

The governmentalization of the corporation therefore refers how corporations no longer simply took their power simply from privileges granted under legislative authority, but how broader forms of authority began to develop alongside but separate from corporate sovereignty. Specifically, these forms of authority developed in terms of an accounting discourse of disclosure and reporting. Also the act of incorporation became much more broadly available, centered on new administrative apparatuses in the form of legal expertise. Corporations became increasingly regulatory creations involving legal expertise in terms of completing the necessary forms and filing requirements, rather than privileges granted by the state. While incorporation is still often referred to as a privilege granted by the state, this belief is consistent with Foucault's observation

that we continue to look towards sovereign forms of power or still need to cut off the king's head. However, privileges granted by the state must be understood in terms of earlier forms of special charters, where corporations were granted very specific authorities and incorporation was not generally available.

Despite the emergence of the governmentalized corporation distinct from the notions of sovereignty, governance of corporations still remained largely concerned and focused on issues of sovereignty. This was particularly the case with the formation of trusts, which attempted to re-establish control of specific industries by a few individuals and to eliminate growing competition. Trusts, however, remained susceptible to sovereign models of power and control in the form of anti-trust laws; since their existence was largely based upon legal agreements, which could easily be invalidated by the law. In terms of Foucault's notions of government, trusts were therefore too rigid based on control through prohibiting competition; their means of conduct separate and outside of the public.

The governance of the corporation would only attain some form of autonomy from sovereignty by discovering its own instruments and ways of reasoning distinct from sovereign corporate models. This autonomy would arise from changes in, or what Foucault referred to as problems of, the population. Accordingly, similar to Foucault's emphasis on the population, the public becomes critical to the establishment of the governmentalization of the corporation. Its importance highlighted in terms of first, a different conception of what is governed. The focus is not simply on what a corporation is permitted to do; rather, corporations become seen as productive forms of organizations tied to broader aims concerning the public such as raising state

revenues, price stability, competition, production efficiencies, or providing business or investment opportunities. Second, corporations become objects of study through a proliferation of political rationalities and programmes of government, including changes in corporate charters and laws, the establishment and activities of The Corporation Trust Company, and various treatises on trusts and corporate law. The initial objective of such programmes, however, was simply to increase state revenue through increases in corporate charter fees, not the creation of problematic industrial combinations.

Essential to these rationalities and programmes are the actions of governmental figures such as Dill, particularly the mobilization of a discourse of disclosure and reporting. This discourse was mobilized by Dill and his expertise, particularly in New Jersey, to emphasize corporations as the new norm of business organization, controlled and governed through regulatory forms of disclosure and reporting. Consistent with Foucault's observation regarding government more generally, what is important is how Dill's actions affect the conduct of a myriad of other individuals, not only political leaders or large capitalists, but also small businessmen, investors and reformers. In particular, how ideas and beliefs regarding corporations circulate within the public domain, shaping the needs and desires of individuals in terms of their economic well-being and nature. Corporate expertise therefore leads to the emergence of new forms of power, or what Foucault referred to as bio-power, focused on administering the economic welfare of individuals by making the corporate form more widely available and appealing to individuals with small businesses or savings to invest.

A critical aspect of this governmentalization of the corporation is the transformation of corporate law. Instead of focusing on sovereignty as a judicial system codifying and expressing the legislature's authority, the law becomes incorporated as part of a growing regulatory apparatus based on an accounting logic of disclosure and reporting. While corporate laws continued to emphasize sovereign forms of power in terms of granting corporations greater control, the focus was not on determining permissibility of or prohibiting corporate actions, but rather on enabling such actions in a productive manner, particularly regarding relations between corporations and the public, comprised of a growing number of small capitalists. The fact that corporate law continues to be emphasized in terms of sovereign notions of power in the form of continuing anti-trust legislation simply acts to conceal these more normalizing forms of power. Specifically, it ensures that the state is seen as continuing to exercise its sovereignty and control over corporations.

In New Jersey for instance, laws were no longer simply centered on sovereign forms of power in granting specific powers to the corporation, but were rather assembled as programmes to encourage corporations to act in a more productive manner. This focus on a discourse of disclosure and reporting therefore considers how law functions as a type of regulatory mechanism or normalizing practice since it focuses on establishing a particular conception of a corporation as a norm of business organization. Accordingly, the outcome of such programmes is not simply the increase in state revenue, but the deployment of corporations as norms of business organization within the public domain, further contributing to discourses regarding expanding corporate forms of organization in terms of industrial combinations.

The effects and consequences of such forms of power extend beyond New Jersey or even state legislatures to the ongoing actions and reactions of various states in search of new sources of tax revenue, or groups and individuals within the various reform movements. These actions and reactions, which constitute what Foucault refers to as the capillary nature of power, are essential to normalizing discourses. Such debates and points of resistances only strengthen the normalizing influence of discourses, rather than acting as impediments to such discourses. Resistances therefore constitute further forms of power simply extend such discourses, making them known and practical to an almost endless number of individuals within the public who Dill refers to as small capitalists. In particular, these powers relations, rather than eliminating trusts, made discourses surrounding them even more salient and visible.

While the above provides a strong case for the need to look beyond the propagation of accounting standards and the determination of what standards best reflect economic reality, positive accounting theory also offers similar insights and arguably leads to comparable outcomes in terms of understanding accounting's role. For instance, positive accounting theory illustrates how managers voluntarily undertake accounting practices such as disclosure of financial information so that individuals are willing to invest in corporations. In particular, positive accounting theory considers how political processes and government intervention affects the actions of various individuals relating to the corporation, particularly managers. Such similarities, however, are generally found at the surface; a deeper analysis reveals that a Foucauldian governmentality framework subscribes little to what positive accounting theory offers and diverges in how we understand governance.

While positive accounting theory incorporates political costs, it does so by making a clear causal link between political processes and accounting outcomes. Watts and Zimmerman (1978) note how positive accounting theory offers “fertile research possibilities of examining the effects of politically motivated factors on maximizing the behaviour of firms’ management and shareholders” (p. 132). Political processes therefore lead to specific accounting outcomes based on individual behaviour. The individual, such as the manager or investor, is treated as a utility maximizing agent with a clearly defined interest, who makes discretionary accounting choices, employing accounting in her interest. Positive accounting theory therefore implies intentionality and predictability both in the agent’s actions and in the outcomes. Furthermore, it suggests that political processes and contracts can be arranged to achieve preferred actions and outcomes.

In contrast, Foucault’s focus is on understanding the subject, specifically understanding how individuals are made subjects. Accounting as a form of expertise acts upon the individual, constructing the individual’s nature and behaviour. A Foucauldian approach to governance therefore examines how a corporation’s management and shareholders come to be. Whereas positive accounting theory assumes the existence of individuals, such as shareholders, a Foucauldian analysis asks how an individual comes to see himself in terms of a shareholder. Accordingly, an understanding of the role of accounting within the governance environment requires an understanding of how accounting shapes the individual, who both makes accounting choices and responds to such choices. Ultimately, a market understanding of accounting, as espoused in positive accounting theory comes to depend upon this newly created subject.

This focus on the subject highlights the complexity and the almost endless number of power relations which shape the subject. It also illustrates how power relations must be understood in their totality, not analysed in terms of how a specific political process or regulation affects the behaviour of individuals. In examining events at this time period, Watts and Zimmerman (1979) highlight how positive accounting theory offers the hypothesis that rate regulation of the railroads led to a demand for accounting theories rationalizing depreciation as an expense. While arguments for depreciation expense were certainly tied to rate regulation of industries such as the railroads, the environment, as this chapter illustrates, was much more complex than Watts and Zimmerman suggest. Much discussion during this period also revolved around issues of appropriate asset measurement and how to ensure adequate reserves for asset replacement purposes. The discussion of new accounting issues also found fertile ground in the fact that power relating to the governance of corporations had shifted from sovereign forms of power to growing regulatory forms of power such as those relating to financial disclosure and reporting. Accordingly, various power relations affected and shaped individuals within the corporate environment and within the broader public domain. To separate out each of these factors becomes an impossible task given the vast complexity of such relationships.

The result of this complexity of power relations and the importance of understanding individuals in their totality is that, in contrast to the predictions of positive accounting theory, outcomes are only ever partially intentional. Much of what occurs and results is unexpected. Whereas positive accounting theory emphasizes intentionality and predictability, a Foucauldian approach emphasizes unpredictability. Unpredictability and unexpected outcomes lead to further attempts to achieve the original intended outcomes, which in turn create further power relations and even

more complexity. The ultimate result is an increasing regulatory process, evidenced in the form of an ever expanding web of accounting standards. One cannot deny that part of this emerging regulatory process within financial accounting and reporting is a result of the self interested actions of agents as positive accounting theory would posit. However, this process involves a great deal more complexity, particularly with respect to how subjects are created through a vast network of power relations. Actions, such as those of Dill or the passage of laws by New Jersey illustrate the unpredictability of the effects and consequences of power relations As Chausovsky (2007) notes in analyzing the importance of statutory laws as a component of the historical context and material conditions that led to the advent of corporate capitalism:

The consequences of statutory laws may well not have been anticipated by those who crafted them. ... Just as important, it is unlikely that states intended to weaken their own capacity to regulate their economies when they liberalized their laws to allow corporations wider leeway to engage in economic activities. (p. 249)

Accordingly, forms of power, as constituted in the actions of individuals, result in laws seldom having expected outcomes. Instead the effects of power are unpredictable, not only in how they affect corporations, but also in how they affect the way individuals think and relate to corporations.

Unlike positive accounting theory, a Foucauldian analysis of how accounting contributes to the making of individuals as subjects problematizes the role of accounting. It highlights how individuals are integrated into sophisticated corporate structures as result of a series or network of complex power relations, which discipline individuals by shaping their nature in terms of accounting and the understanding of corporations as norms of business organization. Individuals therefore come to see and accept economic and corporate relations based on forms of accounting

discourse. This leads to the problematic result that debates and discussions regarding the governance of corporations are always framed within accounting measures, such as net income, leaving little room for other governance frameworks or models.

5.7 Conclusion

Whereas other analyses attempt to explain the emergence of corporations in terms of the actions of states or affects of laws on institutions or property rights, this chapter has shown that individual actions and conduct must also be considered as forms of power in how they affect the actions and conduct of others. Dill's actions provide one example of how relational forms of power are constituted. Specifically, corporate law was no longer directed at the simple granting of rights or privileges to the corporation. In contrast to other states, which, as noted, acted in a piecemeal fashion, New Jersey employed laws and related discourses of reporting and disclosure as a coherent package or broader programmes.

These programmes began to serve a multitude of objectives and purposes, directed at not only controlling the corporation, but employing laws as tactics to achieve various objectives within the state of New Jersey. These programmes also affected and shaped how corporations were understood within the public domain in terms of a growing focus on expertise and an accounting discourse of reporting and disclosure. This discourse was found in an almost endless number of forms of power relating to debates, discussions and contestations over corporations within a broad range of locations and spaces. The following chapter will examine at the micro level the importance of specific accounting technologies or expertise to these programmes and discourses, and correspondingly to the deployment of a particular conception of a corporation and its nature

to individuals, particularly those who constitute Dill's growing class or groups of small capitalists.

Chapter 6

Governmentalization of the Corporation– the Emergence of Accounting Expertise and Accounting Technologies

This chapter focuses on the governance of corporations at the micro level, specifically the growing importance of accounting expertise and accounting technologies as part of a broader accounting discourse. It analyzes how accounting expertise and technologies provided an important form of objectivity which supported corporate discourses that emerged out of various political rationalities and governmental programmes in New Jersey. In the state of New Jersey, and to varying extents in other states, political rationalities regarding corporations focused on the relationship of corporations to state revenue needs and growing concerns about the size and monopolistic nature of corporations. Programmes including changes to state corporate law and the creation of The Corporation Trust Company provided a means to accomplish such rationalities. Technologies, which are addressed in greater detail in this chapter, operationalize programmes, permitting their realization. Related to technologies is the rise of expertise, which Radcliffe (1998) describes as central to addressing questions concerning governmentality.

In addressing governmentality, Miller and Rose (1990) pay special attention to the role of expertise. For them, the rise of expertise is linked to a transformation in the rationalities and technologies of government. In particular, they suggest that experts enter into a kind of “double alliance” between political authorities and individuals. For political authorities, experts focus on their problems, problematise further issues and incorporate political concerns into the vocabulary of their disciplines, whether they be accounting, management, medicine or other specialized bodies of knowledge. For individuals, experts address the concerns of daily life, offering techniques of improvement (for example, in careers, investments and family life). In this sense, experts are responsive, developing specific

knowledge to address the problems of others. But beyond this relatively passive role, experts themselves develop problematisations whose persuasive power is enhanced by the social legitimacy of expertise. In generating such problematisations, expertise begets more expertise; problematisations promote expertise as a solution, in ways that broaden the “enclosures” within which professional knowledge operates, widening its apparent legitimacy, and fostering further outlets for its use (Abbot, 1988; Rose & Miller, 1992). (p. 396)

As I argue in this chapter, forms of accounting expertise were critical to how corporations were made knowable and understandable as norms within the public domain.

The expansive nature of expertise across the socio-political environment highlights how accounting expertise provided a critical linking mechanism in terms of the transmission and diffusion of discourses relating to corporate rationalities and programmes to broader areas of the public domain. Accordingly, this chapter first examines the roles of accounting expertise within the socio-political environment and how expertise functioned. At one level expertise functions as a seemingly objective means to control corporations and trusts through accounting technologies of financial disclosure and reporting. At another level, however, it contributes to the expansion and growth of corporations by providing a means by which corporations become seen as norms of business organization and investment opportunities.

This chapter then examines the role of accounting expertise in the process by which the corporation became seen as objective and knowable within the public domain. Accounting expertise and technologies contributed to new theories of the corporation, which increasingly focused on the purpose of the corporation as being the increase in the wealth of investors. The understanding of corporate value was transformed from being based on the corporation’s

capitalization to being based on future opportunities for profits encompassed in concepts such as goodwill. Finally, the chapter considers the deployment within the public domain of an accounting discourse, specifically in terms of its increasing importance in understanding and controlling corporations. This accounting discourse was found in a wide variety of locations from conferences to government actions focused on how to control corporations to the actions of corporate promoters. The deployment of this accounting discourse shaped how individuals became tied to a certain identity regarding corporations, contributing to the growth of what James B. Dill referred to as small capitalists or investors.

6.1 Accounting Discourse – Publicity and the Role of Expertise

Accounting played an increasingly prominent role in attempts to control corporate combinations and resolve public concerns over the concentration of corporate power and monopolistic behaviour of an ever-growing number of industrial combinations. As the previous chapter notes, despite continued passage of corporate laws, in the late nineteenth century sovereign forms of power, encompassed in the judicial system of law, grew increasingly ineffective in dealing with growing corporate problems. Various treatises on corporations (Cook, 1893; Collier, 1900) noted the ineffectiveness of prior legislative attempts and political intentions to abolish trusts through the prevention or prohibition of monopoly practices. They noted how such laws, at both the state and federal level, exist in plenty, and while a few have affected the form of combinations, they have not made any substantial change in the process or results. For example, legislation dissolving the Standard Oil Trust, simply led to the Standard Oil Companies, with undiminished aim and unity or purpose. Accordingly, an almost endless number of legislative solutions had been tried in a futile attempt to control corporate combinations, largely through the prohibition of

various forms of combination or consolidation. Furthermore, his comments suggest a developing belief within society that further legislative solutions were unlikely to meet with success.

6.1.1 Publicity - Control of Corporations

With the ineffectiveness of legislative forms of control over corporations, a general belief arose for a need for new forms of corporate control that focused on the disclosure of a corporation's financial information (Clews, 1906; Sears, 1956). These new forms of corporate control, or what Foucault describes as "continuous corrective and regulatory mechanisms", comprised a growing emphasis on accounting expertise. American financial analysts and financiers, particularly Henry Clews, argued that expert accountants could provide the required level of publicity regarding corporate accounts. In particular, the influence of the growing importance of reporting in the railroad industry meant that new accounting technologies began to take hold. These accounting technologies took the form of theoretical works such as Charles Sprague's series of papers entitled "Algebra of Accounts" which led to the development of new systematic approaches to reporting financial information. As Previts and Merino (1998) note regarding the role of accounting at this time:

The important role of accounting was being recognized in the financial and business community, that is, beyond the business itself, as corporations began to hire expert auditors to replace the annual audit visit of shareholders (p.174)

Perhaps no greater indication of this accounting expertise was the call for increased corporate oversight in the form of publicity, which argued for the need for greater openness or transparency in financial reporting.

This call for publicity was widespread as it was noted in both treatises on trusts and corporations, within the business and more popular press and even within accounting journals at the time. Publicity made known publically those practices, which previously had existed in the dark (Collier, 1900; Meade 1903). Collier (1900) argued that publicity was the most effective remedy for all the evils of corporations and trusts, such as monopolies.

We must have full, open, and accurate reports from trusts, upon forms prepared by the government, sworn to by the officers of these corporations. We must also have, in the case of gigantic corporations which possess gigantic powers, inspection by public officials³⁵ just as our banks and insurance companies are subjected to such inspection; and further, we must have full tabulated statistical information. (Collier, 1900, p. 308)

This belief in the value of publicity also became evident in various business publications such as *The New York Times*, *United States Investor* and *The Commercial and Financial Chronicle*, as well as a few years later in accounting publications such as *The Journal of Accountancy*.

Wall Street is giving attention to an address delivered by Vice President Frank Dickerson of the American Tin Plate Company upon the subject of corporation development. Mr. Dickerson takes the position that there is scarcely a limit to such development provided sane policies are pursued; and among what he considers the necessities is open accounting between corporation Trustees and their shareholders and the public. "Publicity" is in Mr. Dickerson's view absolutely essential to the maintenance of corporation well-being. (*The New York Times*, 1902, p. WF5)

Publicity of accounts is in the air, and a general demand exists that the Congress and state legislatures shall pass laws compelling corporations of the class mentioned to open their books to the inspection of disinterested examiners. Accountants

³⁵ The general call at the time was that financial reports should be audited by government officials since government was still seen as the main body to control corporations. Also private sector auditing was still in the process of developing and not a norm.

everywhere should unite to further this movement. A general acceptance of the principle of publicity will place the accounting profession on a high plane of usefulness and public esteem. (The Journal of Accountancy, 1905, pp. 136-7)

The belief was that publicity of the large profits corporations where making from monopolies would encourage greater competition bringing an end to such monopolies and providing a means for investors to overcome the overzealous promotion of speculative securities.

Publicity provided a means to overcome the great secrecy surrounding the financial affairs of corporations, evidenced by features of accounting systems at the time such as “private ledgers” in which were kept the confidential account details, particularly regarding accounts such capital expenses, salaries, and purchases and sales. Only the most trusted individuals would see the trial balance of these accounts in posting the account totals to the general ledger (Previts and Merino, 1998). Accordingly, publicity incorporated the calculative techniques of financial accounting and reporting as a means by which corporations could be made knowable in measureable terms and acted upon to function in the public interest. Publicity therefore highlighted a need for the disclosure of financial and accounting information, illustrating the existence of the increasing importance of accounting expertise within the business and economic environment and its growing role in the governance of the corporation.

6.1.2 Publicity – Expansion of a Corporate Discourse

While publicity was seen as a cure for the many great evils of corporations (Clews, 1906), in fact little from the time period indicates any substantial change in how corporations or those who controlled them acted.³⁶ New corporations continued to be incorporate at an increasing rate.³⁷ In fact, publicity and the growth of accounting expertise did not coincide with the containment of corporations, but rather their explosion; incorporations, and particularly consolidations, continued to increase not only in New Jersey, but also in other states. Explanations for this sudden and expansive growth in corporate consolidations do not consider the role of or how publicity or the growth of accounting expertise contributed to this corporate expansion.

At the time, explanations for the need to consolidate were based on the rationale that it was necessary to reduce competition. As noted in chapter five, business owners in particular argued that too much competition had reduced prices to such a level that it was impossible for businesses to be profitable, particularly with the depression of the early 1890s which further hurt profitability. While ruinous competition and depressed business conditions were the most often cited rationales to justify the need for firms to consolidate, the most significant consolidation movement did not actually occur until 1898 (Meade 1903; Seager et al., 1929). This period coincided not with poor business conditions but with extraordinarily good ones, suggesting that consolidations were not simply driven by the need to avoid economic ruin but that corporations

³⁶ Sears (1956) points out that a closer examination of the business environment in 1900 highlights that while businessmen at the time were concerned with the dangers of mergers and trusts, in contrast to subsequent writings of a business environment dominated by trusts and monopolies, many reported competition and considerable activity within the business environment.

³⁷ Stoke (1930) shows a continuing large number of annual charters issued in New Jersey after 1900 and Yablon (2006) shows that the number of incorporations in Pennsylvania, Massachusetts and Maine increased substantially after 1900.

represented an important new form of wealth and economic well being in which participation was seen increasing as necessary and a norm of behaviour.³⁸

An examination of economic events illustrates how at the same time as forms of accounting expertise and accounting technologies, in the form of new systems of financial reporting, were becoming prominent, particular needs and desires were taking hold within the public in terms individuals developing a growing appetite for stock. Meade (1903), writing at the time, provides a lucid description and interpretation of events over this time period. Meade describes how the trust movement originated subsequent to the end of the industrial depression, which followed the panic of 1893. He notes how at that time:

the securities market was especially depressed. An index number made up from the prices of ten leading railroad stocks shows a decline, from 1892 to 1894, decreased 36,800,00 shares. New listings of stock on the New York Exchange from 1894 to 1896, compared with the period 1891 to 1894, decreased \$100,000,000. Although the general depression throughout the country produced a large surplus of idle funds which flowed into New York banks, the low interest rate resulting were powerless to excite the public interest in speculation. (Meade, 1903, p.3)

Meade (1903) further describes how recovery began in the summer of 1897 as a large wheat crop sold at good prices, increasing the earnings of grain-carrying railroads and stimulating investment in securities. He notes how these increased earnings within the railroads as well as increased output in other industries continued to lift the market into 1898.

³⁸ Thorelli (1955) using data from the *Twelfth Census Reports*, Vol. 7, Manufactures, Part 1 (1902) and Myron W. Watkins, *Industrial Combinations and Public Policy* (1927), finds “the broad and incontestable conclusion that may be drawn is that the number of consolidations tended to decrease in depression and increase, or remain high, during years of prosperity” (p. 276).

Meade (1903) depicts how this environment of increased earnings of railroads began to lead to a growing speculative demand for stocks across a number of industries, even leading to the organization of new companies to meet this growing demand for industrial securities.

The first buying of stocks came from investors who were attracted by the larger earnings of railroads to transfer their capital to more promising investments. A speculative demand for these securities set in at the same time, and large amounts were bought to sell at an advance. The profits, which were rapidly realized, attracted wide notice and the demand for stocks became general. The stock market was the place to be where money was to be made. People of every class and condition caught the fever of speculation and were ready to buy. It was impossible to supply this demand for stocks from existing issues. Most of these were held for investment, and only small quantities came into the market. The time was ripe for the promotion of enterprises. New companies were organized and their securities were readily sold. (Meade, 1903, p. 7)

As Meade describes above, speculative demand for securities spread more broadly, especially since the panic of 1893 and the ensuing period of stagnation depressed stock prices making them tempting bargains to a growing investing public (Meade, 1903). In fact, as Meade points out, the resulting demand for stock, fueled by the reported earnings, led to the need for the further creation of stock through consolidations of smaller businesses which had previously been held by only a few individuals. Consolidations and the organization of new corporations occurred not because they necessarily made economic or industrial sense; they occurred because, as Meade notes above, it was necessary to produce more shares to meet an ever-increasing “demand for stock”. Reporting of accounting information, such as earnings, therefore helped construct an environment conducive to the buying of shares.

While consolidations occurred in large numbers, there was no consistency regarding the rationale for such consolidations, since all types of industries and organizations were subject to

consolidation. The combining of corporations was therefore no longer simply the consolidation of two businesses or steel refineries to improve efficiencies; it was becoming its own business with stock as its product. At the end of the decade, headlines such as “Era of Incorporations Remarkable Development in Organization of Capital”³⁹ and “Big Trusts Forming Here Makers of Mowers, Tiling, Furniture, and Other Products to Combine – Money Rates Hamper Promoters.”⁴⁰ As an article in the *The New York Times* notes regarding the rationale for combination in the thrashing machine business:

Manufacturers of thrashing machines have undertaken to form a trust, and the preliminaries are in the hands of an Indianapolis promoter, now in this city. The claim is made that the business has been very unprofitable of late because of the extended credits and the irresponsibility of many purchasers. (*The New York Times*, 1899, p. 3)

Meade’s above description of events also notes how the prospect of ever-increasing profits continued to drive the need for consolidations.

Specifically, within this environment, accounting expertise relating to earnings, profits and returns was becoming more prominent and began to form critical points of debate. For example, one, among many such headlines, announces in the Mar, 29, 1902 edition of *The New York Times* “Asphalt Trust’s Affairs, Net Earnings for 1900 and 1901 only \$698,176.18, Security Holders Cannot Realize More Than 25 Percent on Their Investments- Audit Company’s Investigation.

The article continues by stating:

Investigation by the Audit Company of New York into the affairs of the National and the American Asphalt Companies has

³⁹ *The New York Times*, April 17, 1899, p. 5. The article provides a detailed analysis and listing of the enormous growth of incorporations.

⁴⁰ *The New York Times*, November 12, 1899, p. 3.

resulted in bitter disappointment for the holders of the trust's securities. Net earnings of the Asphalt Trust for the years 1900 and 1901, it is found, amounted to only \$608, 176.18, and this was made on an authorized capitalization of \$58,000,000... (p. 2)

Just as important as earnings were the payment dividends since at the time many equated one with the other. A continuous stream of advertisements, such as those found on p. 221 of the Feb. 17, 1900 edition of the United States Investor promised regular monthly dividend payments (Appendix C). Accordingly, profits, and even more importantly dividends, were the principle focus, such that the entire purpose of the corporation became not the production of goods, but the production of dividends to its owners (Meade, 1903).

6.1.3 Classification of Corporations – Investment or Speculation

Accounting expertise was relevant to the expansion and diffusion of corporate discourses within the public domain since it provided a means to classify corporations based on the nature of the investment. These forms of classification led to further debates and discussions over corporations as investments, particularly regarding an emerging contrast between those securities considered speculative and those considered to be “on an investment basis” (Meade, 1903). Specifically, concerns arose that many of the newly organized corporations and trusts were largely speculative in nature, dependent upon future expectations which could not be met once current favourable economic conditions began to worsen. These concerns prompted heated debate regarding speculation.⁴¹ Some argued that speculation was necessary for economic development:

Everyone has to admit, however, that speculation has a rightful place in the affairs of the world. Without it there would be no

⁴¹ A search of *The New York Times* shows that for the year 1900, 1,094 articles and news items included the word speculation.

progress. The whole aim is to get gain. (*United States Investor*, 1900, p. 68)

Others however saw that rather than promoting sound investments, promoters sold shares which could never live up to their promises and that economic growth could result on a much more sound financial foundation. As Meade (1903, p. 353) states “the buyer of trust stock has been sacrificed on the altar of a new form of industrial organization”. Prominent corporate experts such as James B. Dill would also argue against such speculative investments.

No one can safely disagree with the proposition that if the great industrial enterprises of this country are to be put and kept in the hands of promoters and speculators for the purpose of speculation, the inevitable result must not be not only a financial panic, but a social and industrial revolution. (Dill, 1900, p. 3)

Debates over the speculative nature of investments therefore highlighted the need to understand the nature of an investment.

Critical to the determination of an investment’s nature were accounting technologies in the form of measures and definitions. Speculative securities adopted a short term focus promising high yields in the form of dividends with little concern for the future sustainability of such payments or their affect upon the business. In contrast, Meade (1903) employed the accounting technology of reserve funds to argue that corporations should provide a cautious and conservative approach to the payment of dividends by maintaining surplus reserves. Specifically, Meade (1903) felt that corporations should be required to establish substantial reserve funds prior to being permitted to distribute even a modest portion of their profits as dividends. Debates and discussions over the

determination of an investment's nature therefore increasingly came to focus accounting technologies.

Accounting expertise also played a psychological role with respect to the expansion of corporate discourses within the public domain. Accounting, and specifically publicity, not only attempted to provide a clear and accurate picture of a corporation's true financial condition, but also managed the beliefs of investors within the public. As Meade (1903) comments at the time regarding prospectuses of new corporations, the phenomenon is psychological, rather than financial; the influence of accountants' reports is very uncertain, since manipulation may occur even where companies disclose their earnings to the fullest.

A firm of New York promoters, who make a specialty of mining propositions, the most risky to the general speculator, and where the desirable certainties are usually picked up by insiders without public subscription, make a great point of publicity in all their transactions, even going so far as to send monthly statements of the operations of each one of the properties, giving the fullest information concerning receipts, disbursements and prospects, to each one of their stockholders. It is evident, however, that the speculator who buys their stocks cannot see any further into the earth because of these elaborate tabulations and reports. No amount of publicity can make the future clear to the present. (Meade, 1903, p. 372-73)

Furthermore, concerns were raised in terms of whether accounting information actually made the investor more knowledgeable. As noted in *The Chronicle* of March 10, 1900:

We should like to know what proportion of the shareholders in an industrial company making annual statements are really wiser than they were before, after examining the complicated entries of allowance for depreciation of plant, for bad accounts, and for actual value of real estate and machinery. (p. 454)

Despite these concerns, calls continued for an ever greater amount of financial disclosure from all large industrial corporations. Given concerns over the usefulness of financial information to investors, accounting expertise largely affected investors' beliefs. Accordingly, the influence of accounting expertise was not only in terms of providing financial information to investors, but also as a result of its psychological impact on investors.

Accounting expertise was therefore critical to shaping the expansion of broader corporate discourses. In particular, accounting expertise contributed to the deployment of a conception of corporations as more than organizations permitted or controllable under the law, but as a norms of business organization. Accounting expertise contributed to understanding corporations as norms of business organization in terms of how accounting metrics such as earnings affected the beliefs of investors, leading to an increasing demand for stock. Accounting expertise also contributed to this understanding in terms of the how it permitted the classification of shares as speculative or on an investment basis. Accounting expertise in form of financial statements and publicity therefore had as much of a psychological impact as a financial one. Accordingly, discussions and debates about corporations, particularly surrounding expertise and financial information would mean that control was not so much about the sovereign forms of control over corporations, but rather the management of a growing investing public or small capitalist.

6.2 Forms of Accounting Expertise and Accounting Technologies

Central to corporations being understood as norms of business organization is the deployment of a clear and articulate theory of the corporation, which permits the corporation to be easily understood within the public domain. This need to understand the nature of the corporation arose

out of questions regarding the differentiation of holding companies and consolidated corporations from previous forms of trusts.⁴² Specifically, the concern was whether problems associated with the trusts, including reduced competition and inflated prices of goods had simply been multiplied many times as result of the increase number of corporations in comparison, previously, to the number of trusts. These concerns over trusts and subsequently large corporate structures largely focused on concerns over their monopolistic tendencies, ranging from concerns over prices, elimination of competition, and issues inimical to the laboring classes. These concerns were found in a variety of sources at the time including popular publications such as *McClure's Magazine*, *Harper's* or *The Atlantic Monthly*, or business publications such as *The Bankers' Magazine* or *The Wall Street Journal*. As noted at the annual meeting of the National Association of Manufacturers on April 24-26, 1900:

The reorganization of the manufacturing business, through combination and consolidation, has created industrial conditions without precedent in history which seem to set at naught some of the time-honored maxims of political economy, which must readjust many of our social relations, and which may largely influence and modify the future legislation of Congress and the States.

In defiance of the frantic efforts of State Legislatures to check their progress and embarrass their operations these Goliath combinations have possessed themselves of the great staple industries of the country.... Just what their relations to the smaller industries are to be, just what is to be their effect upon

⁴² As noted in chapter five, despite differences in their legal form, the generic word trusts tended to be used for all such combinations, including corporations. Jones (1929, p. 28) notes how “the only important changes were: the substitution of the shares of the holding company for the certificates of the of the old ‘trust’; the substitution of the relation of owner for the relation of trustee; and the substitution of the board of directors for a board of trustees.”

wages, upon prices, upon competition, upon the general industrial conditions and prosperity of the masses, we do not know; yet this is the problem which more than all others combined interests the American people today. (cited in Sears, 1956, p. 389)

Accordingly, a clear need existed for a better understanding of the corporation to address the vast number of unanswered questions and concerns.

6.2.1 Defining a Corporate Nature

This lack of understanding of the corporation and, particularly, its relationship to the state (Seager et al., 1929) led to a substantial amount of effort directed towards understanding the nature of corporations in terms of a number of different philosophical and sociological perspectives, legal views and accounting discourses. A theory of the corporation would not only provide an understanding of corporation, but more importantly, it was argued, provide the foundation for a means of regulation and control to alleviate the above concerns. Theories of the corporation ranged from viewing the corporation in legal terms as a fictional person to representational theory, which argued that the corporation was an association of persons with a common purpose, rendering corporate action as merely collective action conforming to the corporate charter. New theories of the corporation also meant changes in the role of the state regarding the control of corporations, further highlighting the increasing importance of forms of control focusing on mechanisms of disclosure and reporting instead of judicial and legislative forms of control.

This focus on mechanisms of disclosure and reporting meant that forms of accounting expertise and, particularly accounting technologies, began to play a more important role in the control and

governance of the corporation. Montague (1904) summarizes how new corporate theories led to changes in control from that of the state to forms of disclosure and reporting.

The old notion was that the corporation, being the creature of the State, should be guaranteed by it to the public in all particulars of responsibility and management. Beginning in the late eighties and early nineties, there came a different view. The corporation, it was said, is merely a legal person: its stockholders and creditors are no more the wards of the State than are the partners and creditors of an ordinary citizen; and, in the absence of fraud in organization and in management, a business corporation should be allowed to do anything that an individual may do. Under the modern theory, the State owes no duty to persons who may deal corporations to look after the solvency of the companies; nor to stockholders to protect them from the consequences of investing in such concerns. When it has clearly provided that creditors and stockholders shall be informed of all the facts of organization and of management, the duty of the State has ended. (Montague, 1904, p. 34)

New theoretical understandings of the corporation therefore emerged, which highlighted the control and governance of the corporation in terms of new rationalities of disclosure and reporting of factual information regarding the corporation.

6.2.2 Accounting Definitions

These new rationalities of reporting and disclosure information regarding corporations began to be expressed in calls for accounting technologies in the form of the reporting of assets used in forming industrial combinations.

If whenever a trust is formed the State should require full accurate reports of all assets entering the combination, followed up from time to time with other reports showing the progress and condition of the business, every person would have a chance of knowing what he was investing in. Reports are now required by State authority of banks and other corporations, which are more or less complete according to the rigor with which the law requiring reports is enforced. The Federal Government requires

reports of the National banks and such other corporations as may be required chartered by it in the Territories. In all proceedings against banks, these report, which are made under oath, and for making which falsely there are severe penalties, form a basis of evidence as to infractions of law. These reports are not only made to State and Federal officers but are also required to be published in the newspapers. (*The Bankers' Magazine*, 1901, p. 177)

New theories of the corporation therefore began to emphasize the control and governance of corporations not through sovereign mechanisms of control, such as the state, but instead through mechanisms of accounting expertise and accounting technologies.

This focus on accounting expertise and accounting technologies contributed to making corporations knowable within the public domain impacting the understanding of corporations. In particular, new accounting theories and valuation models began to emerge which made corporations more understandable. As an editorial in the March 1902 edition of *The Banker's Magazine* notes, the level of knowledge of trusts and corporations within the public domain affected general attitudes towards them.

Trusts and Combinations of capital are objects of popular dislike because of the general ignorance prevailing as to their character and objects. The veil of obscurity surrounding them is gradually being pushed aside, and as more light is thrown upon them the number of citizens of the country who see them a personal grievance calling for their abolishment by political methods is diminishing. (p. 339)

Accounting expertise and accounting technologies are critical to the practices by which light is thrown upon corporate combinations within the public domain. By making corporations understandable within the public domain, accounting expertise and technologies also affect the perception of corporations within the public domain. Accounting expertise and technologies

therefore had a significant impact on how individuals began to understand and relate to corporations.

Specifically, accounting expertise and technologies affected the understanding of corporations in terms of their nature and value. In particular, the development of theoretical accounting models, such as proprietary theory, suggested to the public that shareholders controlled the corporation as owners of the business. Merino (1993), for instance, shows how proprietary theory⁴³ provided a model that reconciled the absentee ownership of small passive investors with the belief in entrepreneurialism and corporate ownership. Merino (1993) notes how proprietary theorists on one hand wanted the public to see shareholders in control. On the other hand, Merino (1993) illustrates proprietary theorists adopted an income model of the corporation which strengthened the control of financial capitalists.

When we examine the methods proprietary theorists employed, rather than their rhetoric, it is clear that while they wanted the world to see a model that theoretically enabled stockholders to retain control, they did not believe stockholders could or should have actual control. (Merino, 1993, p. 179)

She argues that proprietary theory therefore permitted the mobilization of accounting expertise to make certain claims regarding the nature of corporations which become unchallengeable.

Specifically she highlights how accounting is not neutral, but partisan in nature and as such has broader social affects. Accounting expertise and accounting technologies therefore contributed to the deployment of a corporate nature and its acceptance across the public domain.

⁴³ For a detailed discussion of proprietary theory, see Previts and Merino (1998) “Proprietary theorists argued that the purpose of a business, its organization or form notwithstanding, was to increase the wealth of its owners. Specifically with respect to corporations, the owners – those who bore the risk of business operations - were investors. The accounting function did not change with separation of ownership from control but remained as the measure of net wealth accruing to owners” (p. 214).

6.2.3 Discourses of Capitalization and Value

The question of corporate value was critical to these new models of the corporation, since the concept of value is central to an individual becoming an investor in a corporation. Of particular importance is how individuals, such as small capitalists, understand a corporation's value. Value can be understood in various ways, including in terms of a corporation's tangible assets or its future earning potential. Accounting expertise and accounting technologies made visible a number of critical issues regarding the valuation of corporations including what the corporation did with its profits, how it raised new capital and how it legitimated its capitalization (Meade, 1903). In particular, the study of and question regarding the value of a corporation's stock, specifically its capitalization, permitted the understanding of the corporation in a couple of accounting numbers. The question of corporate value, particularly in terms of its capitalization, was therefore important to how individual investors understood corporations.

At this time, a corporation's capitalization did not refer to the market value of its shares, but rather the nominal or stated value of the stock and bonds a corporation was authorized to issue under its charter (Mitchell, 2007). Under corporate charters stock had a par value, which represented the minimum amount of capital per share that each shareholder committed to the corporation. Accordingly, the par value per share multiplied by the number of shares gave the corporation's capitalization.

Par value allowed shareholders to be confident that they paid neither more nor less for their stock than other shareholders and

gave creditors some assurance that the corporation really did have the value of its stock represented.⁴⁴ (Mitchell, 2007, p. 65)

The debate over a corporation's capitalization largely arose because of concern over practices known as overcapitalization and stock watering.

While the terms overcapitalized stock or stock watering were used in a variety of ways, the basic idea was that each represented a condition in which the par value of the securities of a company exceeded their actual value based on either the company's tangible assets or its current profits. The issue of overcapitalization therefore arose since contemporary observers understood that the amount invested in the corporation in the form of the par value of securities should approximately equal the value of the corporation. Meade (1903) explains the thinking at the time.

We may define overcapitalization, therefore, as that condition in which the par value of the securities of a company exceeds their actual value based on profits. The term "overcapitalization" implies a converse "undercapitalization" which may be defined as that condition in which the actual value of the assets of a corporation is greater than the par value of its securities. ... If "over" and "under" are to be understood as terms of invidious distinction between the conditions of capitalization which they describe and some third condition which may be styled, for lack of a better term, "proper" capitalization, we may understand the last mentioned term to refer to a condition where par and market value correspond: in other words, where the corporation is "worth" precisely the sum which the face of its stocks and bonds declare its liabilities to be. In short, a corporation may be said to be "properly" capitalized when its securities will sell for their face value. (p. 291-2)

Accordingly, a company's capitalization and how it was measured became a critical issue with respect to the relationship between a corporation and its investors.

⁴⁴ Hawkins (1963), pp. 152-53 suggests credit protection was more of an afterthought.

While the issue of overcapitalization has been tied to fraudulent schemes, and certainly these existed, its most basic problem concerned financial theory and value (Mitchell, 2007). In particular, overcapitalization depended upon a means to measure value to determine what a new combination was worth. While Meade's quote above defines overcapitalization in terms of the excess of a corporation's par value of securities over its profits, other views, particularly legal models of the firm considered overcapitalization to be the excess of the par value of the corporation's securities over the value of its tangible assets.⁴⁵

The contentiousness of this issue increased with the previously noted passage of laws, in states such as New Jersey, permitting corporations to pay for property acquired from other corporations using their own capital stock and directors having discretion to determine the value of the properties acquired (Mitchell, 2007). Specifically, the concern was that this discretion provided motivation for directors to inflate the values of the properties which were acquired from business owners in exchange for stock of newly consolidated corporations, as a means to encourage business owners to sell their businesses into combinations. Accordingly, based on the par value

⁴⁵ Par value has no real meaning in current capital markets. Accordingly, the concepts of overcapitalization and stock watering are not found in current finance or economic theory. Interestingly, however, parallels can be drawn between the ways that stock watering arose and problems in capital markets today. For instance, watered stock arose from companies issuing stock instead of cash in exchange for property. This led to companies often overvaluing the property and issuing large amounts of stock in exchange for property. Another means by which watered stock arose was from companies issuing stock to partially service interest charges on debt. This use of stock has parallels to recent events in which many companies, particularly technology companies overpaid in acquiring other companies. Much of this payment was made not in cash but in the stock of acquiring company.

In terms of financial theory, overcapitalization and watered stock effectively meant that equity was overvalued. While many attributed this to unsophisticated capital markets and that audited statements were not mandated, similar overvaluation of equity issues were identified by Jensen (2004) in the most recent financial crisis.

of the shares, the combination ultimately ended up issuing more shares than the property was actually worth. Issues of overcapitalization and stock watering therefore drew attention to how the measurement of a corporation's value shaped and constituted the underlying thinking about corporations.

Overcapitalization and stock watering became highly debated issues as a result of newly formed corporations issuing a vast quantity of securities to a growing and eager investing public. Economists, investors, reformers, congresses, university presidents; even President Roosevelt offered opinions about these practices.⁴⁶ While these seemingly unfair practices of overcapitalization and stock watering were strongly condemned since they were seen as particularly disadvantaging small shareholders, who were left with nothing but speculative investments, the actual extent of overcapitalization and stock watering was not at all clear. The major problem in making such a determination was exactly how to measure the capitalization of a corporation, since this entirely depended upon the issue of value.⁴⁷ Overcapitalization and stock watering were therefore highly debatable issues with broader and financial and social affects, particularly in terms of small shareholders.

Arguments over a corporation's value, and thus capitalization, largely centered on accounting technologies; specifically whether a corporation's value was measureable in terms of its tangible assets or its future earning power. While the legal model looked towards the market value of its

⁴⁶ See *The New York Times*, March 11, 1906, p. 6 for comments from the President of Harvard, and *The New York Times*, May 31, 1907, p. 1 for comments from President Roosevelt condemning these practices.

⁴⁷ Mitchell (2007) notes how even economists differed on the best approach to valuation. In fact while many economists had strong opinions of regarding overcapitalization they were much more circumspect about how to measure value. Only Meade and Fischer had clear views regarding value. Mitchell notes in fact that practitioners such as Greene, an auditor, were more focused on questions of value.

tangible assets, others, particularly business owners and some economists argued future earning power was a more relevant measure. Some individuals even argued that on the basis of a corporation's future earnings, practices such as stock watering and overcapitalization were quite legitimate and even necessary to promote economic growth (Montague, 1904; Hake, 2001; Dos Passos, 1901). As Dos Passos (1901) states in his testimony to the Industrial Commission regarding over capitalization in the railroads:

Well, many of these railroads that were given away almost, have now reached a success, far beyond the dreams of their most sanguine founders; they have been reorganized, and recapitalized again, and are paying handsome profits on each investment. (p. 59)

Accounting technologies relating to a corporation's assets and earnings, and specifically their value, therefore provided critical points of debate concerning issues of corporate value.

6.2.4 The Sovereignty of Par Value

Particularly relevant to the question of corporate value was the par value of a corporation's shares. While par value was not related to a share's market value or traceable to cash or particular assets of the corporation, for investors par value had a real and significant meaning since it was the base on which the payment of dividends to investors was determined. The problem was however that to entice investors to provide capital or existing business owners to provide assets, some type of bonus often had to be provided, usually in terms of additional shares. This meant that the total par value of shares issued on which dividends had to be paid often far exceeded the earning capacity of the corporation's assets, making it extremely difficult for corporations to pay the expected rate of dividends on all of the shares issued. In other words, the productive assets of the company usually had little chance of supporting the rich dividend

payments which corporations promised. The issue of overcapitalization therefore revolved around whether corporations could support a steady stream of such payments without detrimentally impacting the corporation.

Dividends therefore became managed since they had to project stability and permanence, which in industrial enterprises was a near impossibility, given the various market fluctuations (Meade, 1903). This management of dividends therefore necessitated a corresponding need to manage competition. As Meade (1903) notes, “Stability of profits, then, is influenced by market control.” Corporations could only meet such expectations by charging very high prices for their products during strong economic times or through the control of an industry and charging monopoly prices, conditions that were short lived and attracted forms of trust regulation such as anti-trust laws. The objective was no longer to meet the long-term growth of the business, but to manage and ensure the payment of dividends as a means to manage the expectation of the newly expanding class of small investors or capitalists.

This focus on maintaining the payment of dividends led to industrial combinations becoming highly risky ventures, as they sought to payout an ever-increasing amount of dividends beyond what their earnings could support over the longer term (Meade, 1903). As the president of the American Sugar Refining Company testified before the Industrial Commission in 1900 in response to a question about how dividends can be declared when the business is carried on at a loss, “You can carry on business and lose money, you can meet and declare dividends. One is an executive decision and the other is a business matter.” Upon further question regarding the source of the funds, he declared, “We may borrow it”, adding in response to a further query about

how long such practices could continue, “That is a problem for everyone...we should either buy or sell stock if we knew that” (Previts and Merino, 1998, p. 184-185).

At one level, practices such as overcapitalization and stock watering provide an understanding of corporations in terms of sovereign forms of power under which the shareholder is effectively the owner of the business with direct control over the corporation’s assets and profits in the form of dividend distributions. This view saw corporations, particularly new combinations, in the following way. Investors invest money in corporations based on the par value of the corporation’s shares. These funds are then invested in assets. Accordingly, there is some expectation as to a correlation between the corporation’s tangible assets and the par value of the corporation’s shares. This view of a corporation’s value was particularly influential with the courts and legal models of the corporation. As Merino (1993) notes, it was also the view of the corporation that the proprietary theorists wanted shareholders to see. Based on this perspective of the corporation, any significant excess of the par value of corporation’s stock above its tangible assets was water. Merino (1993) notes how for proprietary theorists goodwill presented a challenging problem since as a difference between the par value of a corporation shares and its assets it had to be included on the balance either as goodwill or an inflated asset value. To the extent it was included as an asset it was generally amortized based on the notion that it was only a temporary benefit. Minimal room was therefore provided to explain corporate value based on notions of the earning capacity of the corporation.

The belief therefore was that solutions to prevent abusive practices of overcapitalization and stock watering rested with the enactment sovereign forms of power in the form of laws or

regulations. In particular, newspapers of the day debated the need and usefulness of laws to control or prevent such practices. On one side were those such as W.B. Hornblower who notes in a speech reported in the July, 9, 1899 edition of *The New York Times*:

Much clamor is made with regard to the overcapitalization of these great companies. This, however, would seem to be a matter which affects only those who buy or speculate in the stocks of the companies. The only method of preventing such overcapitalization, if prevention is called for, is by prohibiting the issuing of capital based on good will or earning capacity or patent rights or other intangible assets. (p. 3)

Other articles noted how laws were proving increasingly ineffective in dealing with overcapitalization.

Those who are eagerly advocating the enactment of laws forbidding the overcapitalization of industrials are beginning to wonder whether, after all, they can give a definition of the term “overcapitalization”, if called upon to do so. For example, the Industrial Commission seems to have reached the conclusion that the United States Steel Corporation is “vastly overcapitalized” We are not prepared at this point, for the good reason that it would not be a profitable use of limited space – and also for the better reason that if we were called upon to say in what overcapitalization consisted in this instance we should have great difficulty in doing so. (*The New York Times*, 1901, p. 6)

While the belief was that overcapitalization and stock watering could be controlled through sovereign mechanisms of power in the forms of laws prohibiting such practices, these sovereign mechanisms of power were increasingly discovered to be ineffective in preventing overcapitalization and stock watering.

6.2.5 A Discourse of Goodwill and Publicity

The eventual resolution of practices such as overcapitalization and stock watering would come not as a result of the prohibition or elimination of such practices, but rather their redefinition in terms of the accounting technology of goodwill. Specifically, the claim was that the excess of the par value of a corporation's shares over the corporation's tangible assets constituted goodwill.⁴⁸ As goodwill, overcapitalization represented a form of value investors could realize in the future. The argument that goodwill had value rather than simply consisting of water was based on the future earning potential of the corporation. Of course those who took a more conservative view of value based on assets argued that such goodwill was only based on broad estimates given the uncertainty of future earnings. The definition of overcapitalization and stock watering in terms of goodwill however permitted corporations to separate the value of assets from that of earnings. Specifically, preferred stock was issued to the cash value of the tangible assets and common stock was issued for what was referred to as capitalized "goodwill" or the savings of the combination (Montague, 1904). The accounting technology of goodwill therefore led to an important new view of corporate value.

While goodwill and the use of various classes of shares offered a new way to understand overcapitalization and stock watering, others saw it as simply creating a further problem, what the September 22, 1900 edition of the *United States Investor* referred to as 'The Common Stock Menace'. The issue of whether stocks actually contained water was a decision of the market. In a response to a subscriber, the September 9, 1904 edition of *The Wall Street Journal* stated:

⁴⁸ See Veblen who argues that water in stock is capitalized goodwill, *The Chicago Daily Tribune*, February 15, 1903, p. 2.

In a recent article The Wall Street Journal explained that the measure of true capitalization is earning power. But a company whose capital represents actual earning power to-day, may tomorrow represent “water” because its earning power has been lost. On the other hand, a company whose capital represents little but water when organized, may eventually measure a true earning power. In the long run the stock market determines the actual capitalization of the company, for the price of the stock in the main represents the earning power either present or prospective. Thus in the past two years, the water in a multitude of stocks has been distilled out of them by the heat of the Wall street speculative furnace. (p. 1)

The answer lay in what accounting expertise offered in the form of publicity which would permit investors to distinguish water from value. As the above article continues

There can be no doubt, of course, that over-capitalization is an evil working injury to both investors and public, but this evil could be removed if there was a proper system of publicity. The harm of “water” in capitalization consists, in the main, in the inability to distinguish the water from value... But if there was a system of perfect publicity, if companies were obliged by law to advertise exactly of what their capitalization consisted; how much, for instance represented cash, how much real estate, how much plant, how much payments to promoters and underwriters, how much earning capacity, with the calculations on the point clearly set forth, the investor would have no reason for complaint. The actual value might be \$1,000,000 and the capitalization \$10,000,000, but the investor being in possession of all the facts, would know that while par value was 100, the real value was 10 and if he chose to pay more than that for the stock he would do so with his eyes wide open to the risk, in the hope that future developments would increase the value. (p.1)

It was not a question of eliminating or destroying practices such as overcapitalization, but rather controlling them through regulatory and corrective mechanism such as accounting forms of financial reporting and disclosure. All that was necessary was to ensure adequate disclosure so that new investors entering the market would have the necessary information.

Corporate earning power encompassed within goodwill could therefore be positioned as productive, possessing both value and utility to the small capitalist. While, on one hand overcapitalization and stock watering were seen as unscrupulous practices initiated by promoters interested in lining their pockets; on the other hand, such concepts would lead to powerful rationalities of accounting and financial innovation, and the eventual adoption of new methods of valuation focused on corporate earnings and new accounting techniques of goodwill.

A review of the evolution of accounting and financial practices makes it clear that the stock watering debate encapsulated a conflict between the requirements of the modern industrial corporation and the nineteenth century proprietorship theory of accounting with its attendant focus on the balance sheet and reliance on par value stock. This conflict was especially severe during the last decade of the nineteenth century due to the wide spread adoption of the new methods of finance in the American merger movement, and the rapid expansion of the market for industrial securities, and the somewhat retarded development of US accounting standards. With the adoption of no-par stock, and the subsequent increased reliance on the income statement, the resolution of the stock watering debate occurred not with the cessation of suspect activities, but with their eventual acceptance as elements of the new financial order. (Hake, 2001, p. 428-29)

Despite concerns of some prominent economists,⁴⁹ over the first decade of the future earnings would come to comprise the norm of how corporate value was understood. The belief in future earnings however depended heavily upon calls for increasing disclosure and reporting in the form the publicity of corporate information.

With this increasing emphasis on earnings, the issue of value became related to the measurement of net income or as Foucault would observe concerned with economic regularities of the

⁴⁹ William Z. Ripley was one of the more prominent economists and strongest opponents of goodwill referring to it in his 1926 classic, *Main Street and Wall Street*, as “the outward expression of inward unsustainability”.

corporation. Valuation became a problem that required study and understanding (Mitchell, 2007). It was not simply a question of value, but more importantly that a corporation's value was interpretable, measurable and determinable, requiring new forms of accounting expertise to understand a corporation's prospective profits. Furthermore, the boundaries of a firm's value became fungible, malleable and open to adjustment since value could be divided and allocated between various individuals and groups, such as shareholders and creditors, based on various forms of expert accounting interpretation. The belief developed that by understanding and measuring the regularities of corporations, such as earnings, corporate value could be made understandable across the public domain.

Accounting expertise and technologies therefore began to be seen as critical with regards to the increasing need to address newly expanding issues regarding the governance of corporations. These new accounting techniques however did not so much prevent or control practices such as stock watering or overcapitalization, but rather managed the growing population of small capitalists by providing new concepts of value. This transformation of the understanding of value is important since it provides a rationale for small capitalists to see large corporate combinations not as problematic or fraudulent schemes but as investment opportunities. In particular, through the transformation of accounting discourses - from overcapitalization to goodwill - corporations came to be understood within the public as opportunities rather than speculative or watered stocks, providing a means through which a growing proportion of the public could begin to understand themselves and their relationship to corporations as shareholders.

6.3 The Diffusion of a Discourse of Accounting Expertise

The final section of this chapter examines the deployment and diffusion of a discourse of accounting expertise in the form of financial reporting and disclosure or publicity. Specifically, it considers the various forms of this discourse beyond those found in the regulatory provisions of New Jersey State corporate law, as well as an ever growing number of locations in which such discourses could be found. The deployment and forms of this discourse of accounting expertise are critical to processes of normalization, since such processes largely result from individuals internalizing discourses. The issue is not whether this discourse even leads to specific quantifiable outcomes, but how they form a web of power relations to which individuals must react or consider their reactions, therefore shaping their identity in relation to corporations.

The growing interest in and the coalescence of public opinion around trusts and the need for accounting expertise in the form of publicity were enunciated in various forums and conferences. These forums and conferences sought to uncover a truth regarding trusts and their control through careful study and forms of quantifications, often based on the call for increasing publicity of a corporation's financial activities. As Franklin Head stated in the opening address of the Chicago Conference on Trusts on September 13, 1899, sponsored by the Civic Federation of Chicago, "It is not a trust or an anti-trust conference, but a conference in search of truth and light" (p. 7). Prominent speakers at the conference such as J.W. Jenks, Statistician of the United States Industrial Commission, and Henry C. Adams, Statistician Interstate Commerce Commission further highlighted in their talks the growing importance of forms of quantification and, specifically, publicity to the control of trusts and corporations.

In particular, accounting practices such as disclosure and reporting were noted as fundamental to the relationship between corporations and the public or more specifically the public's welfare. As Jefferson Davis asks, "What is the influence of large corporations upon public welfare?" (p. 278). Central to this relationship was the need to ascertain through practices of publicity an underlying truthfulness of representations.

All corporations which appeal to public support by placing their stock upon the public exchanges, thus inviting investment by the public in their securities, should be give the greatest degree of publicity to their affairs. If the public are invited generally to invest in the securities of a corporation, the truthfulness of all representations made should be enforced, and the same degree of publicity to which the stockholder is entitled should be extended to the public. (Hatch, The Civic Federation of Chicago, 1900, p. 71)

A discourse of publicity also begins to appear not simply as a broad theoretical exercise, but in more concrete forms and recommendations. For instance, among the otherwise unsurprising conference resolutions, such as calls for uniform state legislation, legislation regarding the organization of corporations, and the prohibition of watered stock, is found the need for the objective control of corporations through accounting technologies in the form of reporting systems. In other words, discourses of publicity provided a means not simply to control and manage these new corporations, but critical to achieving the benefits of corporations as productive and utility maximizing enterprises.

And finally, there should be a thorough system of reports and governmental inspection, especially as to issues of bonds and stock and the status and value of property, whether corporeal or incorporeal. Yet, at the same, in the matter of trading and industrial companies, there are legitimate business secrets which must be respected by the general public. In short, we need to frankly recognize the fact that trading and industrial corporations

are needed to organize the activities of our country, and that they are not to be scolded or belied, but controlled, as we control steam and electricity, which are also dangerous if not carefully managed, but of wonderful usefulness if rightly harnessed to the car of progress. (Howe, The Civic Federation of Chicago, 1900, pp. 624-625)⁵⁰

Neither anti-nor pro-trust, the conference was criticized as producing little in the way of substance towards a policy of how to control trusts, again signifying the growing difficulty of governing or controlling corporations through laws despite ever-increasing legislative activity. Instead, the conference could be seen as a precursor to the increasing influence of expertise in controlling and governing corporations and trusts.

6.3.1 The Role of Accounting Expertise within The Industrial Commission

Accounting expertise and publicity also featured prominently in the Industrial Commission.

Created in 1899 in a politically charged environment, the Industrial Commission's objective was to:

“investigate questions pertaining to...manufacturing, and to business,” and as a result of its investigations, “to suggest such laws as may be made the basis of uniform legislation by the various States of the Union, in order to harmonize conflicting interests and be equitable to the laborer, the employer, the producer and the consumer.” (North, 1899, p. 709)

While the commission had a sweeping mandate and appeared to offer an opportunity for real reform, many saw it as politically motivated to placate a restless and uneasy public. Despite hearing from a large number of witnesses and amassing an enormous amount of information, concerns were raised that those who testified largely represented big business and even the trusts,

⁵⁰ For a detailed list of resolutions see speech by Howe in Speeches, Debates, Resolutions, List of Delegates, Committees at Chicago Conference on Trusts, 1900, pp. 624-25.

and that the voices of groups such as small business received minimal attention. As one of the Commission's members, North noted, perhaps more than actually implementing changes, the Commission provided a forum for individuals to express their opinions and grievances over trusts. Notwithstanding its recommendations, little actual legislative change or reform resulted from the Industrial Commission's Report. Accordingly, in terms of sovereign like legal solutions aimed at the prohibition of trusts, The Industrial Commission appeared less than successful.

The Commission's activities, however, clearly indicated the emergence of a corporate discourse within the public domain emphasizing new forms of control, based on accounting expertise, specifically forms of disclosure and reporting. As Adams (1902) notes, "It is commonly acknowledged that publicity is an essential agency for the control of trusts" (p. 895). For instance, the final report of the Industrial Commission emphasized mandatory publicity of financial information as critical to the control of trusts.⁵¹

A permanent bureau, the duties of which shall be to register all State corporations engaged in interstate or foreign commerce; to secure from such corporations all reports needed to enable the Government to levy a franchise tax with certainty and justice, and to collect the same; to make such inspection and examination of the business and accounts of such corporations, as will guarantee the completeness and accuracy of the information needed to ascertain whether such corporations are observing the conditions prescribed in the act, and to enforce penalties against delinquents; and to collate and publish information regarding such combinations and the industries in which they may be engaged, so as to furnish to the Congress proper information for possible future legislation.

The publicity secured by the governmental agency should be such as will prevent the deception of the public through secrecy

⁵¹ See Mitchell p. 126 note about NYSE requiring listed companies to file annual reports, tended to be meaningless.

in the organization and the management of industrial combinations, or through false information. (Industrial Commission, 1902, pp. 650-1)

The need for publicity, including specific details regarding the nature of accounting information, was similarly highlighted in a preliminary report of the Industrial Commission in 1900.

The larger corporations – the so-called trusts – should be required to publish annually a properly audited report, showing in reasonable detail their assets and liabilities, with profit or loss; such report and audit under oath to be subject to Government inspection. The purpose of such publicity is to encourage competition when profits become excessive, thus protecting consumers against too high prices and to guard the interests of employees by a knowledge of the financial condition of the business in which they are employed. (Industrial Commission, 1902, p. 650)

The practices of these commissions and bodies therefore came to rely upon a vast array of expertise to classify trusts. North (1899) noted how the Commission's approach, unlike haphazard attempts of the past, relied upon such expertise and factual information.

As a case in point, the creation of the Commission was contemporaneous with the epidemic of industrial reorganization and consolidation now sweeping the country. The manner in which it deals with this question will determine the country's judgment upon the entire work of the Commission. It understands that it must handle it fearlessly, intelligently and exhaustively. It is preparing to approach the subject in a manner quite different from the haphazard treatment it has thus far received at the hands of Congressional and Legislative Committees. It has appointed Professor Jeremiah W. Jenks, of Cornell University, as its expert agent to study the question of industrial combination and consolidation from the economic point of view, and to collate and analyze the facts in their bearing upon process, upon the wage earning class, upon production, and upon the community as a whole. (North, 1899, pp. 717-18)

Edward Dana Durand, editor and secretary to the Commission, echoes this sentiment in describing the uniqueness of the Commission's work in terms of "the extent to which it called in the assistance of university men and trained investigators" (Durand, 1902, p. 566). He continues by suggesting the need for a more permanent body of expertise. In particular, the size and volume of the Commission's final report, which comprised 19 volumes and amassed an enormous amount of information on trusts and corporations, reveals the growing importance of expertise and forms of quantification to the control of trusts and corporations. As Thorelli (1955) notes regarding the commission's work:

it may be observed in passing that in the work of the Industrial Commission social scientists and other experts were employed to an extent previously unknown in similar situations. Generally speaking, there was an increased willingness to listen to, and to some extent even rely upon, the judgment of experts. In part this is probably a reflection of the changing attitude toward professionals and the government. In part this responsiveness – so conspicuously absent before 1890 – is doubtless due to a gradual overall convergence of popular and expert views on the trust problem. (p. 579)

Publicity was not only seen as critical to the control of trusts within the contemporary literature or within the confines of conferences or commissions, but it was attractive to a number of leading government and non government figures, among them President Theodore Roosevelt. The Industrial Commission's final report was published in 1902, shortly after Roosevelt had become President and just prior to the decision to sue the Northern Securities Company under the Sherman Act. Roosevelt was the leading political figure in dealing with trusts and was seen as someone who strongly supported anti-trust measures. In contrast to this historical persona as a trust buster, however, Roosevelt was actually largely supportive of big business. So while he sought a means for greater government control of trusts (Leinwand, 1962; Mitchell, 2007), he

believed that such measures should only punish trusts which engaged in practices that ran against the national welfare. As Roosevelt noted, publicity provided a means to determine which trusts did not act in the national welfare.

The actual working of our laws has shown that the effort to prohibit all combination, good or bad, is noxious where it is not ineffective. Combination of capital, like combination of labor, is a necessary element in our present industrial system. It is not possible completely to prevent it; and if were possible, such complete prevention would do damage to the body politic. What we need is not vainly to try to prevent all combination, but to secure such rigorous and adequate control and supervision of the combinations as to prevent their injuring the public, or existing in such forms as inevitably to threaten injury.... It is unfortunate that our present that our present laws should forbid all combinations, instead of sharply discriminating between those combinations which do good and those which do evil.... It is public evil to have on the statute-books a law incapable of full enforcement, because both judges and juries realize that its full enforcement would destroy the business of the country; for the result is to make decent men violators of the law against their will, and to put a premium on the behavior of the willful wrongdoers. Such a result in turn tends to throw the decent man and the willful wrongdoer into close association, and in the end to drag down the former to the latter's level; for the man who becomes a lawbreaker in one way unhappily tends to lose all respect for law and to be willing to break it in many ways. (Montague, 1910, p. 5)

6.3.2 The Promotion of Accounting Expertise

Finally, discourses relating to accounting expertise were also found in the activities of promoters. The promoter was a key force behind the sudden explosion of combination and consolidation of smaller businesses (Meade, 1903). The promoter combined the undeveloped resources held by some with the money of a vast variety of people, often with a minimal amount of savings (Meade, 1903; Collier, 1900). The promoter was therefore a critical element in facilitating the emergence

of the small capitalist. In particular, the promoter's activities made the corporation understandable to the small capitalist through the use of various accounting technologies.

A review of popular business media during the 1890s and 1900s illustrates how in fact issues such as profit determination in accounting reports were essential to the promoter's activities. For example, various articles in *The New York Times*, discuss the organization and promotion of the United States Rubber Company in 1892 and the Cleveland Brewery Trust in 1898, and specifically refer to the examination by accountants of various financial disclosures in the prospectuses, particular relating to reported earnings. Also, issues of profit determination and accounting reports are found within disputes over activities in organizing such combinations or unscrupulous behaviour by promoters. Examples can be found in articles regarding the Plow Trust on August, 21, 1901, the Ship Building Company on May 4, 1905, the Whiskey Trust on July 2, 1905, the Passaic Steel Company on August 25, 1906, and the Lead Trust on August 25, 1906. For instance, a headline in the May 3, 1900 edition of *The New York Times* declared, "Promoter Sues for Share of Steel and Wire Profits, Parks says he was cut out, Tells of the Formation of the Combination and Asserts Profits Amounted to Several Millions" (p. 5). More specifically, the July 27, 1904 edition of *The New York Times* reported the following regarding the United States Steel Corporation.

The profits realized by some of those interested in the promotion of the United States Steel Corporation were shown recently through an action brought in the United States Circuit Court by William H. Van Time against William J. Hilands for a partnership accounting, which was finally decided yesterday by Judge Coxe for the complainant. (p. 3)

In particular, accounting expertise played a significant role in the promoter's activities and specifically the processes through which stocks in industrial corporations were sold. As Meade (1903) notes, on the one hand investments in new industrial consolidated corporations were positioned as highly reputable, supported by not only outstanding managers but expert accountant reports, and perceived by new investors as a means to generate future wealth from often minimal savings with little risk. On the other hand, despite the accountant reports certifying earnings of such industrial ventures, these ventures were considered as speculative as unknown mining adventures.

Both are based on unknown conditions. Neither has any positive assurance to rest upon. In the one case, the mine "ought" to be rich, and in the other the *earnings* of the trust "are expected" to be large. . . . The one has his calculations of cost and profit and his township and section maps; the other has his expert accounts' reports, his "beliefs", "expectations", and "estimates" of the savings by consolidation, and his imposing list of properties, sometimes covering the entire country. (Meade, 1903, p. 143)

In other words, as Meade (1903) argued, despite promises of wealth, promoters could in fact offer little more than a chance in a lottery or as Collier (1900) observed, the purpose of the promoter was to sell overcapitalized stock often leading to manipulation and corporate mismanagement. In acting as an intermediary between those with money and those with undeveloped property, the promoter therefore relied upon expertise in the form of accounting discourses. Specifically, the promoter provided a key link between the corporate rationalities and discourses that saw consolidations as attractive and individuals within the public domain, particularly the newly forming small capitalists.

6.4 Conclusion

In sum, accounting expertise and accounting technologies, contributed to making corporations knowable and understandable as norms of business organization within the public domain. In particular, they provided a critical link to the transmission and diffusion of broader corporate rationalities and programmes as discussed in chapter five. Accounting expertise and accounting technologies functioned in a number of ways. First, they were relevant to a growing call for greater publicity (financial disclosure and reporting). While the intention was that publicity would provide a means to control corporations, by making corporations knowable and understandable, publicity contributed to a corporate discourse of corporations as norms of business organization. Corporations would be controlled not by their abolishment through laws, but by regulatory and corrective measures. Such measures would permit corporations to be seen as productive and economically attractive. Corporations could be changed from speculative enterprises to investments.

In particular, accounting expertise and accounting technologies focused on making corporations understandable in terms of new theories regarding the nature of the corporation and in terms of its value based on accounting concepts such as goodwill. Furthermore, the actions of various public bodies and groups such as promoters were critical to the deployment of discourses of accounting expertise as a means to not only control, but make productive the corporation with the public domain. Accordingly, in terms of Foucauldian power relations, discourses of accounting expertise provided a means through which corporations were made understandable as norms, which individuals internalize, affecting and shaping their thoughts and actions and contributing to their own nature as various types of corporate subjects or what Dill described as small capitalists.

In the next chapter, I provide concluding comments which summarize the importance of accounting to understanding power relations regarding the governance of corporations and how such relations govern not only the corporation but individuals, such as investors across the public domain.

Chapter 7

Conclusion

This thesis has been framed around events relating to the emergence and formation of large industrial corporations, commonly known as trusts, in the United States in the late nineteenth century. Specifically, it focuses on events in the state of New Jersey relating to changes in corporate law and their broader effect on the corporate environment. I examine the discursive role financial accounting and reporting played in the formation of such corporations, specifically regarding their relations to a growing number of investors within the public domain. In particular, I consider how such accounting discourses began to replace judicial forms of control over corporations. These accounting discourses are analysed at the macro level in terms of a mentality of disclosure and reporting found within the actions of state governments and at the micro level in terms of specific accounting technologies and forms of expertise. I interpret this material using Foucault's analytics of power and government, which view power as not only relational, but all-pervasive, found in a web of relations rather than centrally located. Specifically, I employ Foucauldian genealogy to demonstrate how such power relations led individuals to take social constructs, such as large industrial corporations, as norms influencing their thoughts and actions towards such entities.

At the macro level I point to a growing emphasis on discourses of disclosure and reporting. These discourses can be at least partially traced to events in New Jersey surrounding changes in corporate law, which permitted a broader range of corporate structures and actions, including the establishment of holding corporations and industrial combinations. These events largely

originated with political rationalities designed to increase state tax revenue through fees relating to corporate charters. What was significant about these events was not only the change in laws to permit such structures, but also how laws were employed as tactics to attract corporations to the state of New Jersey. Specifically New Jersey's corporate laws were actively promoted through the creation of the Corporation Trust Company, which assisted other corporations establishing themselves in New Jersey. Such employment of law and its active promotion constituted governmental programmes which provided a means to operationalise political rationalities within the state.

The changes in New Jersey law contributed to the emergence of large industrial corporations, the existence of which led to growing debates and discussions regarding such corporations, particularly their size. Much of this debate focused on how to control large corporations and on concerns over the weakening of corporate law within states. States initially responded to the call for the control of trusts through the passage of further laws in attempt to control and where possible abolish such entities. However, the growing ineffectiveness of judicial forms of control or prohibition of trusts or corporations led to the search for new forms of control in the form of disclosure and reporting. In particular states such as New Jersey began to focus on regulatory forms of control which relied upon disclosure and reporting.

Debates over a weakening of state corporate law, particularly in terms of states such as New Jersey which were seen as providing more liberal corporate law provisions, led to a growing discourse regarding corporations and trusts. New Jersey was seen as largely responsible for the increasing weakening of state corporate law. In response to such criticisms, individuals such as

James B. Dill argued that New Jersey did not weaken its corporate laws, but strengthened them, by requiring corporations to provide greater disclosure and reporting about their activities. Specifically Dill pointed to the critical role of publicity, in making corporations and their activities known to the public. In particular, he argued that through publicity corporations and trusts were forced to provide information which would make their activities known to the public. Furthermore, this approach rather than restricting and prohibiting corporations, enabled corporations viewing them as productive, in terms of their utility and value. Corporations therefore began to be presented as norms within the business environment as such discourses coincided with individuals increasingly investing in corporations. In fact, Dill recognized the importance of what he called small capitalists to the continued growth of corporations, which continued to be an important source of state tax revenue. The growth and expansion of corporations and trusts did not happen, however, without responses and resistances from other states and a mounting anti-trust movement. These responses and resistances, rather than repressing or reforming corporate activity, increased the visibility of corporations, reinforcing discourses of corporations as norms of business organization only requiring forms of disclosure and reporting as a means of control.

At the micro level accounting expertise provided a critical linking mechanism in the transmission and diffusion of discourses relating to corporate rationalities and programmes to broader areas of the public domain. While accounting expertise in the form of disclosure and reporting was perceived as providing a mechanism to control corporations, it also provided a means by which corporations were increasingly made knowable in terms of a growing corporate discourse. In conjunction with macro level state actions, this discourse also began to situate corporations as

objective and norms of business organization. In particular, forms of expertise, such as accounting, led to corporations becoming knowable in terms of their nature and value. New theories of the corporation began to emerge, which argued that corporations were separate from the state with respect to their management and control, constituting legal persons.

Such theories meant that new forms of control such as disclosure and reporting took on a greater importance. Theories of the corporation also began to form within the accounting literature, specifically proprietary theory, which maintained the view of stockholders as owners who were in control of the firm. With stockholders perceiving themselves as owners of the corporation, they raised questions regarding corporate value, particularly with growing concerns by stockholders that the value of their shares appeared to largely consist of “water”. Such concerns were driven by the fact that the corporation’s total capitalization far exceeded the corporation’s net assets and even appeared to be more than the corporation’s current earnings could support. Accounting technologies helped to resolve such concerns through a growing focus on future earnings in the form of goodwill. This conceptual understanding of share value would over the ensuing years gradually begin to take hold and become accepted as an objective measure of what such shares were worth.

Finally, accounting expertise in the form of discourses regarding disclosure and reporting began to expand within the public domain, not only through commissions and conferences, but also as result of the activities of individuals such as promoters. Expertise took on an increasing importance in terms of both attempting to devise methods to deal with corporations as well

promote the sale of shares within the public. Accounting technologies therefore presented a conception of the corporation as something that could be made knowable.

My analysis therefore suggests that to understand the emergence of large industrial corporations and the governance of such corporations, particularly their relationship with shareholders, it is necessary to address the discursive conditions that allowed such changes to take place and contributed to corporations coming to be seen as norms within the public domain. Specifically, I argue that discourses of expertise, particularly regarding disclosure and reporting, were important to the various political rationalities, government programmes and technologies that surrounded perceptions of corporations within the public domain. These discourses provided a means to argue that through appropriate forms of regulation corporations could be made knowable and controlled to act in the public interest, including that of a growing shareholder class. In particular, discourses of disclosure and reporting were connected to government programmes in the state of New Jersey in the form of both changes to corporate law and the functioning of the Corporation Trust Company. These discourses also formed the basis of how these programmes were operationalised in terms of accounting technologies, such as goodwill, including a body of new accounting principles and concepts such as goodwill.

In terms of Foucauldian power relations and understanding of government, discourses of disclosure and reporting, and forms of accounting expertise highlight important normalizing practices not only in the corporate environment, but across the public domain. Power relations, as Foucault has shown, are not simply concerned with prohibiting or requiring certain actions, as current governance literature emphasizes, but rather include a productive dimension in which all

actions affect others in complex and interrelated ways. Such a view of power provides an understanding of how actions such as those of James B. Dill or even the state of New Jersey can affect the broader corporate environment in unintentional and unexpected ways. Whereas Dill had particular intentions with regards to his actions in terms of increasing state tax revenue, his actions also contributed to the emergence of corporate combinations that he certainly did not foresee or intend to result. Other actions that contributed to the emergence of these corporate forms would be the growing focus on new forms of expertise, such as the emphasis on publicity. The point is that eventual outcomes are not predictable and only ever partially intentional. This view of power, despite its inherent unintentionality and unpredictability advances our understanding of the governance of corporation in important ways.

In contrast to prohibition of actions, which focus on sovereign forms of power such as laws, in the governance of corporations Foucauldian power highlights the importance of other processes including expertise and calculative techniques, which not only surround the corporation, but also individuals in the public domain, particularly a growing body of small capitalists. These forms of power, which Foucault termed government, focused on optimizing economic welfare through various governmental techniques and technologies relating to disclosure and reporting of information, quantitative analysis in the form of accounting calculations of profits and capitalization, and accounting concepts such as goodwill. Accordingly, the focus is on the individual, not as possessing a given or objective nature, but in terms of how an individual's identity and accordingly actions are shaped in terms of such forms of power. Corporations come to be seen as increasingly legitimate and necessary for the improvement of an individual's economic welfare. Specifically, individuals understand corporations as norms of business

organization, providing wealth in terms of dividends and future growth in value. For the individual, the objective becomes corporate participation.

This governmental model, centered on the public and the economy, was not, however, simply a larger form or combination of previous sovereign corporate models, divisible into its components, rather it was a changed corporate identity, irreducible to previous sovereign forms of control and governance. In other words, the corporation was no longer understandable simply in terms of a sovereign model of control, but instead, was understandable in terms of a broad range of political rationalities, programmes and techniques relating to beliefs and activities of promoters regarding economic growth and profits, accounting discourse of expertise and publicity, the nature of speculative securities in contrast to investments, and theories of the corporation and corporate value. The corporation therefore came to be seen as possessing a certain objective nature, particularly in terms of its economic value, utility, and opportunity. The focus of these forms of power relations are not simply the control or management of trusts or corporations but also the management of the public and particularly the emerging small capitalist in terms of seeing corporations and trusts as not something to be eliminated, but as something productive, providing utility, value and opportunities for wealth in the form of investments.

7.1 Contributions

This thesis offers a number of contributions to both the understanding of corporate history, including the emergence of governance structures, and the role of accounting in that history. Specifically, I add to an under-researched area or at least an area where many questions still remain or are poorly understood. Dunlavy (2004) and Davis (2005) indicate a paucity of research

concerning the history of corporate governance, particularly in terms of shareholders and how such shareholders came to be. As Dunlavy (2004) notes “Although corporate governance attracts widespread interest in business circles today, its history before the twentieth century remains largely unexplored” (p. 66) .

I add to this area by exploring the importance of discursive conditions to the emergence of large industrial corporations, their governance structures and relationships to an emerging investor class. In particular, I point to discourses of disclosure and reporting and the roles these play in shaping the governance of corporations. Furthermore, the effect of the discourse of disclosure and reporting extend beyond the boundaries of the corporation to the broader public domain. Accordingly, in analyzing historical corporate developments, greater attention needs be paid to the social embeddedness of early corporate relationships. In particular historical analysis of the corporation needs to go beyond sovereign mechanisms of control, such as the judicial system of laws, to consider broader forms of government encompassed in expanding forms of expertise in terms of accounting related discourses of disclosure and reporting.

I also expand understanding how power functions with respect to the governance of corporations. While some recent sociological research regarding the corporation has argued for the need to consider power as relational and structural these analyses still focus on the centrality of more sovereign forms of power such as state actions or the judiciary’s role. They therefore continue to “involve deliberate conscious strategies on the part of organizational actors to mobilize power, thereby achieving their objectives either by defeating or circumventing opponents” (Hardy, 1994). Instead of these more predictable and deterministic forms of power, Foucauldian

disciplinary forms of power highlight how the outcomes and consequences of power are almost always very different than the original intentions. Furthermore, Foucault's use of power highlights how power exists in actions which are not coercive or dominant in nature, but productive and enabling.

As I illustrate in the preceding chapters this Foucauldian view of power is highly relevant in terms of the historical emergence of corporations and their governance. While the actions of James B. Dill would influence the emergence of large industrial corporations, his original intention focused on increasing New Jersey State revenue. Furthermore, discourses of disclosure and reporting served almost a dual purpose in both arguing for the control of such corporations as well as being used to promote and highlight the productive nature of such corporations to those within the public domain. This Foucauldian view of power therefore offers a framework by which power is understood as not simply acting on individuals, but actually changing individuals. What Foucault wants to make clear is that individuals do not engage in practices to avoid sanctions, rather they internalize such practices.

Foucauldian discipline and power relations *do not work* if disciplined subjects do not internalize practices imposed upon them; they must come – and come to *want* – to self condition themselves to conform to established norms. If discipline-imposed practices remain intentional, if they continue to be engaged in deliberately in order to avoid sanctions, those practices remain open to intentional variation. The moment surveillance is relaxed or absent, the practices may be changed or dropped. And not only is compliance jeopardized if it remains intentional, if compliance with discipline does remain intentional, the values, objectives, and self-images - the norms - that should be inculcated by the imposed practices will not be inculcated. Since subjects will not engage in self-conditioning habit formation, their subjectivity will not be redefined in accordance with operant norms. Habit formation, then, is pivotal; without it, discipline would remain enforced compliance

and power relations would remain only restrictive; power relations would not be productive, as Foucault insists they are. (Prado, 2006, p. 166-67)

From this perspective, power with respect to the governance of corporations rests, at the most fundamental level, on the fact that individuals come to believe and understand that large industrial corporate structures are simply the ways things are. This acceptance extends to the importance of accounting measures such as net income in understanding corporations. Essential to individuals coming to accept such structures and measures are forms of expertise, such as accounting, which contribute to the establishment of various norms within society, including corporate norms.

Finally, I contribute to understanding the historical role of financial accounting. Specifically, I illustrate that accounting's role extends beyond accounting principles and even its professional foundation, to how it forms a particular logic or discourse which pervades many areas of thought, such as corporate law, affecting the control and governance of the corporation. This accounting logic or discourse was expressed in various forms from how the state of New Jersey began to emphasize the strength of corporate law based on requirements for disclosure and reporting in terms of an increasing emphasis on publicity in debates and discussions over corporations and their control. Such discourses highlight corporations as productive, and that the alleviation of concerns of corporations as constituting monopolies requires not sovereign forms of control such as laws, but the disclosure of corporate financial and other practices. Accordingly the relevancy of financial accounting must be understood beyond sovereign forms of power, such as principles, which during this time were still being formed and standards, which did not even exist, to governmental forms of power constructed around norms and regulatory mechanisms.

As a form of quantification and disclosure, this accounting discourse provides a means by which corporations can be compared to and accordingly constructed around norms. Quantifiable norms in terms of measures such as income and value allow corporations to be seen as understandable and to gain legitimacy within the broader public. The understanding of corporations in terms of norms affects and shapes individuals' actions and attitudes towards these entities permitting individuals to begin to see investing and share ownership as consistent with their economic nature. Critical to this process of normalization is how accounting functions not only as a form of expertise, but also how it provides a form of objectivity to its subject matter. Financial accounting and reporting was seen as objective and scientific in nature, leading to a belief that solutions to the issues and problems regarding the governance and control of the corporation simply required improvements in accounting. From this perspective the historical development of financial accounting and reporting is understandable concurrently and as part of the emergence of the large industrial corporation, rather than an outcome of needs which arise from such corporations and their shareholders, such as the need to provide investors with better financial information.

In sum, corporate governmentalization depends upon new emerging scientific and objective measurements and control mechanisms of financial accounting and reporting standards and principles, which encompass theoretical debates and accounting methodologies concerning the appropriate representation of this new objective reality. Accounting is not only an instrument to be employed as a sovereign form of power, in terms of laws, but also acts as a form of normalization which is deployed over a broad corporate population who come to see themselves

as corporate constituents possessing an objective economic nature which is expressed in terms of being a shareholder of a corporation. Accordingly, consistent with society, the governance of the corporation is understandable as a triangle of sovereignty, discipline and government, which has as its target the corporate population and its mechanism of control financial accounting and reporting.

References

- Acts of the Seventy Third Legislature of the State of New Jersey, 1849.*
- Acts of the One Hundredth and Twelfth Legislature of the State of New Jersey.*
1888.
- Acts of the One Hundredth and Thirteenth Legislature of the State of New Jersey.* 1889.
- Acts of the One Hundred and Fifteenth Legislature of the State of New Jersey.*
1891.
- Annual Reports of the Corporation Trust Company of New Jersey. 1892. edited
by T. New Jersey Department of State.
- Acts of the One Hundred and Seventeenth Legislature of New Jersey.* 1898.
- United States, *Reports of Industrial Commission*, vols. 1-19, 1900-1902.
Washington, Govt print off.
- Big Trusts Forming Here Makers of Mowers, Tiling, Furniture, and Other
Products to Combine – Money Rates Hamper Promoters. 1899. *The New
York Times*, 3.
- Speech by W.B. Hornblower. 1899. *The New York Times*, 3.
- Speeches, Debates, Resolutions, List of Delegates, Committees etc. 1899.
Paper read at Chicago Conference on Trusts, 1900, at Chicago.
- Trusts and Combinations. 1899. *The Bankers' Magazine*, 521-522.
- Ethics of Speculation. 1900. *U.S. Investor*, 68.
- Jersey Corporation Laws. 1900. *The New York Times*, 14.
- Jobbery in Stocks Strongly Denounced. 1900. *The New York Times*, 3-4.
- Legislation Regarding Trusts. 1900. *The Chronicle*.
- New Corporation Bill. 1900. *The New York Times*, 9.

OVERCAPITALIZATION. 1900. *The New York Times*, 6.

Withdraws from Trust Debate. 1900. *The New York Times*, 16.

Wants to Examine Gates, 1900. *The New York Times*, 5

Editorial Comment. 1903. *The Bankers' Magazine*, 177.

Trusts and Publicity. 1901. *The New York Times*, 6.

Asphalt Trust's Affairs, Net Earnings for 1900 and 1901 only \$698,176.18,
Security Holders Cannot Realize More Than 25 Percent on Their
Investments- Audit Company's Investigation. 1902. *The New York Times*,
2.

Editorial Comment. 1902. *The Bankers' Magazine* March 1902:339.

Publicity is Essential 1902. *The New York Times*, WF5.

The Opposition to Trusts and Combinations. 1902. *The Bankers' Magazine*, 19-
20.

"Water" in Stock Good. 1903. *The Chicago Daily Tribune*, 2.

More About Stock Watering, 1904, *Wall Street Journal*, 1.

Profits in Steel Trust. 1904. *The New York Times*, 3.

Times Financial Reveiw A Remarkable Number. 1905. *The New York Times*, 5.

HONESTY IN BUSINESS THE PLEA OF DR. ELIOT. 1906. *The New York
Times*, 6.

ROOSEVELT IS REASSURING. 1907. *The New York Times*, 1.

Will Look after Corporations, Object and Purpose of a Trust Company in New
Jersey. 1892. *The New York Times*, 8.

Editorial: A New Field for the Journal of Accountancy. 1906. *The Journal of
Accountancy* 2(5), 388-389.

Adams, H. C. 1902. What is publicity? *The North American Review* 175
(553):895-904.

- Adams, R. B., B. E. Hermalin, and M. S. Weisbach. 2008. The role of boards of directors in corporate governance: A conceptual framework and survey. *Journal of Economic Literature* 48 (1):58-107.
- Aglietta, M. 2000. Shareholder value and corporate governance: some tricky questions. *Economy and Society* 29 (1):146-159.
- Agrawal, A. and S. Chadha. 2005. Corporate governance and accounting scandals. *The Journal of Law and Economics* 48:371-709.
- Alchian, A. A., and H. Demsetz. 1972. Production, information costs, and economic organization. *The American Economic Review* 62 (5):777-795.
- Anonymous. 1905. The Public Accountant and Publicity. *The Journal of Accountancy* 1 (2):136-137.
- Assessors, 1900. Seventh Annual Report of the State Board of Assessors of the State of New Jersey: S. Chew & Sons, 5-15.
- Bainbridge, S. M., and C. J. Johnson. 2004. Managerialism, Legal Ethics, and Sarbanes-Oxley Section 307. *Michigan State Law Review* 2:299-326.
- Baker, C. W. 1889. *Monopolies and the People*. New York: Putnam.
- Baker, R. S. 1901. What The U.S. Steel Corporation Really Is, And How It Works." *McClure's Magazine*, November: 4.
- Beasley, M. S. 1996. An empirical analysis of the relation between the board of director composition and financial statement fraud. *Accounting Review* 71 (4):443-465.
- Becht, M. and J.B. DeLong. 2005. Why Has There Been So Little Block Holding in America. In *A History of Corporate Governance Around the World*, edited by R. K. Morck. Chicago: University of Chicago Press, 613-666.
- Bedle, J. D. 1875. Inaugural Address of His Excellency Joseph D. Bedle, Governor of New Jersey: Pangborn, Dunning & Dear, 1-17.
- . 1876. Governor' Message, New Jersey: Pangborn, Dunning & Dear, 1-13.

- Bentley, H. C. 1929. *A Brief Treatise on the Origin and Development of Accounting*. New York, NY: Bentley school of accounting and finance.
- Berle, A. A., and G. C. Means. 1934. *The modern corporation and private property*. New York, NY: The MacMillan Company.
- Berle Jr, A. A., and G. C. Means. 1930. Corporations and the public investor. *The American Economic Review* 20 (1):54-71.
- Bittlingmayer, G. 1996. Antitrust and business activity: the first quarter century. *The Business History Review* 70 (3):363-401.
- Blair, M. M. 1995. *Ownership and control: Rethinking corporate governance for the twenty-first century*. Washington, D.C.: Brookings Institution Press.
- Bowen, R. M., S. Rajgopal, and M. Venkatachalam. 2008. Accounting discretion, corporate governance, and firm performance. *Contemporary Accounting Research* 25 (2):351-405.
- Bowman, S. R. 1996. *The Modern Corporation and American Political Thought*. University Park, PA.: The Pennsylvania State University Press.
- Brief, R. P. 1965. Nineteenth Century Accounting Error. *Journal of Accounting Research* 3 (1):12-31.
- . 1966. The Origin and Evolution of Nineteenth-Century Asset Accounting. *The Business History Review* 40 (1):1-23.
- . 1975. The Accountant's Responsibility in Historical Perspective. *The Accounting Review* 50 (2):285-297.
- , ed. 1992. *New Works in Accounting History Series, Accountics*. 3 vols. Vol. 3. New York: Garland Publishing Inc.
- Brown, L. D., and M. L. Caylor. 2006. Corporate governance and firm valuation. *Journal of Accounting and Public Policy* 25 (4):409-434.
- Butler, H. N. 1985. Nineteenth-Century Jurisdictional Competition in the Granting of Corporate Privileges. *Journal of Legal Studies* 14 (1):129-166.
- Cadman, J. W. 1949. *The corporation in New Jersey: business and politics, 1791-1875*. Cambridge: Harvard University Press.

- Cao, J., and I. Laksmana. 2008. The effect of capital market pressures on the association between R&D spending and CEO option compensation. *Review of Quantitative Finance and Accounting* 34 (2):273-300.
- Chandler, A. D. 1977. *The visible hand: The managerial revolution in American business*. Cambridge, MA: Belknap Press of Harvard University.
- Chausovsky, J. 2007. State Regulation of Corporations in the Late Nineteenth Century: A Critique of the New Jersey Thesis. *Studies in American Political Development* 21 (01):30-65.
- Clark, J. B. 1904. *The problem of monopoly: a study of a grave danger and of the natural mode of averting it*. New York: The Columbia University Press, The Macmillan Company.
- Clarke, T. 2004. *Theories of corporate governance: The philosophical foundations of corporate governance*. New York, NY: Routledge.
- Clews, H. 1906. No danger in great fortunes and great corporations in America: An address.
- Cohen, P.C. 1982. *A calculating people: The spread of numeracy in early America*. Chicago: University of Chicago Press.
- Collier, W. M. 1900. *The Trusts: What Can We Do with Them? What Can They Do for Us?* New York: Baker Taylor and Company.
- Company, Corporation Trust. 1903. *Business Corporations under the Laws of New Jersey*. Jersey City: The Corporation Trust Company of New Jersey.
- Congress, U. S. 1901. Report of the Industrial Commission on Trusts.
- Cook, W. W. 1893. *The Corporation Problem*. New York: G.P. Putnam's Sons.
- Core, J. E., R. W. Holthausen, and D. F. Larcker. 1999. Corporate governance, chief executive officer compensation, and firm performance. *Journal of Financial Economics* 51 (3):371-406.
- Covaleski, M. A., and M. W. Dirsmith. 1991. The management of legitimacy and politics in public sector administration. *Journal of Accounting and Public Policy* 10 (2):135-156.

- . 1995. The preservation and use of public resources: Transforming the immoral into the merely factual. *Accounting, Organizations and Society* 20 (2-3):147-173.
- Covaleski, M. A., M. W. Dirsmith, J. B. Heian, and S. Samuel. 1998. The calculated and the avowed: Techniques of discipline and struggles over identity in Big Six public accounting firms. *Administrative Science Quarterly* 43 (2):293-327.
- Cunningham, L. A. 2002. Sarbanes-Oxley Yawn: Heavy Rhetoric, Light Reform (and It Just Might Work), The. *Connecticut Law Review* 35:915-988.
- Davis, C. 1972. "The beginnings of American social research," In *Nineteenth Century American Science: A reappraisal*, edited by Daniels, G. Evanston, IL: Northwestern University Press: 152-78
- Davis, G. F. 2005. New directions in corporate governance. *Sociology* 31 (1):143-162.
- Davis, G. F., and T. A. Thompson. 1994. A social movement perspective on corporate control. *Administrative Science Quarterly* 39 (1):141-173.
- Deakin, S., and S. J. Konzelmann. 2003. After Enron: an age of enlightenment? *Organization* 10 (3):583-587.
- Dean, M. 1999. *Governmentality*. London: Sage.
- Denis, D. K. 2001. Twenty-five years of corporate governance research... and counting. *Review of Financial Economics* 10 (3):191-212.
- Dewey, J. 1927. *The Public and Its Problems*, New York, Holt.
- Dill, J. B. 1900. The Combination of Capital as a Factor of Industrial Progress. *The American Academy of Political and Social Science* April 21:3.
- Dill, J. B. 1906. Corporation Laws of New Jersey. *New Jersey A Historical, Commercial and Industrial Review*:16-18.
- Dill, J. B. 1903a. *Laws of New Jersey relating to corporations*. New York: Baker, Voorhis & Co.

- Dill, J. B. 1903b. " *Some aspects of New Jerseys corporate*": address before the *Pennsylvania bar association, June 29, 1903, by James B. Dill, esq.* New York: GH Buchanan & Co.
- . 1898. *The Statutory and Case Law Applicable to Private Companies Under the General Corporation Act of New Jersey.* New York: Baker, Voorhis & company.
- Dobbin, F., and T. J. Dowd. 2000. The Market that antitrust built: Public policy, private coercion, and railroad acquisitions. *American Sociological Review* 65 (5):631-657.
- Donaldson, L., and J. H. Davis. 1991. Stewardship theory or agency theory: CEO governance and shareholder returns. *Australian Journal of Management* 16 (1):49.
- Donaldson, T., and L. E. Preston. 1995. The stakeholder theory of the corporation: Concepts, evidence, and implications. *Academy of Management Review* 20 (1):65-91.
- Dos Passos, J. R. 1901. *Commercial trusts: the growth and rights of aggregated capital; an argument delivered before the Industrial commission at Washington. DC, December 12, 1899:* GP Putnam's sons.
- Dreyfus, H., and P. Rabinow. 1983. *Michel Foucault: Beyond structuralism and hermeneutics.* Chicago: University of Chicago Press.
- Dunlavy, C. A. 2004. From Citizens to Plutocrats: 19th-Century Shareholder Voting Rights and Theories of the Corporation. In *Constructing Corporate America: History, Politics, Culture*, edited by K. S. Lipartitio, D.B. Oxford: Oxford University Press, 66-93.
- Durand, E. D. 1902. The United States Industrial Commission; Methods of Government Investigation. *The Quarterly Journal of Economics* 16 (4):564-586.
- Eells, R. S. F. 1962. *The government of corporations.* New York, NY: Free Press.
- Eisenhardt, K. M. 1989. Agency theory: An assessment and review. *Academy of Management Review* 14 (1):57-74.

- Espeland, W. N. and P. M. Hirsch. 1990. Ownership changes, accounting practice and the redefinition of the corporation. *Accounting, Organizations and Society* 15 (1-2):77-96.
- Evans Jr, G. H. 1948. *Business Incorporations in the United States, 1800-1943*. New York: National Bureau of Economic Research, Inc.
- Ewald. 1990. Norms, discipline and the law. *Representations* 30:138-161.
- Fleischman, R. K., and V. S. Radcliffe. 2005. The roaring nineties: accounting history comes of age. *The Accounting Historians Journal* 32 (1):61-109.
- Fleischman, R. K., V. S. Radcliffe, and P. A. Shoemaker. 2003. *Doing accounting history: contributions to the development of accounting thought*. Oxford: Emerald Group Pub Ltd.
- Fligstein, N. 1990. *The Transformation of Corporate Control*. Cambridge, MA: Harvard University Press.
- . 2001. *The Architecture of Markets: An Economic Sociology of Twenty-First-Century Capitalist Societies*. Princeton, NJ: Princeton University Press.
- Flint, C. R. 1910. *The Trust: Its Book*, edited by Bridge, New York: DoubleDay, Page & Company.
- Foucault, M. 1971. Nietzsche, Genealogy, History. In *The Foucault Reader*, edited by Rabinow. New York: Pantheon, 76-100.
- . 1978. *The history of sexuality: An introduction. Vol. 1*. New York, NY: Pantheon.
- . 1979. *Discipline and punish: The birth of the prison*. Translated by A. Sheridan. New York, NY: Vintage Books.
- . 1980. *Power/knowledge: Selected interviews and other writings, 1972-1977*. Edited by C. Gordon. New York: Pantheon.
- . 1983. The Subject and Power. Afterword to Dreyfus and Rabinow 1983, 208-226.

- . 1991. Governmentality. In *The Foucault effect: studies in governmentality: with two lectures by and an interview with Michel Foucault*, edited by M., G. Burchell, C. Gordon, and P. Miller: Chicago: University of Chicago Press, 87-104.
- Freeman, R. E. 1984. *Strategic management: A stakeholder approach*: Pitman Publishing.
- Garland, D. 1990. *Punishment and modern society: A study in social theory*. Chicago: University of Chicago Press.
- . 2001. *The culture of control: Crime and social order in contemporary society*. Oxford: Oxford University Press.
- Gordon, S. D. 1963. Attitudes towards Trusts prior to the Sherman Act. *Southern Economic Journal* 30 (2):156-167.
- Gourevitch, P. A., and J. Shinn. 2005. *Political Power and Corporate Control. The New Global Politics of Corporate Governance*. Princeton, NJ: Princeton University Press.
- Grandy, C. 1993. *New Jersey and the fiscal origins of modern American corporation law*. New York, NY: Garland Pub.
- Hake, E. R. 2001. The stock watering debate: more light, less heat. *Journal of Economic Issues* 35 (2):423-430.
- Haney, L. H. 1913. *Business organization and combination: an analysis of the evolution and nature of business organization in the United States and a tentative solution of the corporation and trust problems*. New York: Macmillan.
- Hannah, M. G. 2000. *Governmentality and the mastery of territory in nineteenth-century America*. Cambridge, United Kingdom: Cambridge University Press.
- Hardy, C. 1994. *Managing strategic action: mobilizing change: concepts, readings, and cases*. London, UK: Sage.
- Hawkins, D.F. 1963. The Development of Modern Financial Reporting Practices among American Manufacturing Companies. *The Business History Review* 37 (3): 135-168.

- He, L., R. Labelle, C. Piot, and D. B. Thornton. 2008. Board monitoring, audit committee effectiveness, and financial reporting quality: Review and synthesis of empirical evidence.
- Herman, E. S. 1981. *Corporate Control, Corporate Power*. First ed. Cambridge: Cambridge University Press.
- Herrigel, G. 2007. A New Wave in the History of Corporate Governance. *Enterprise and Society* 8 (3):475-488.
- Hopwood, A. G. 1983. On trying to study accounting in the contexts in which it operates. *Accounting, Organizations and Society* 8 (2/3):287-305.
- Horwitz, M. J. 1985. Santa Clara Revisited: The Development of Corporate Theory. *West Virginia Law Review* 88:173-224.
- Hoskin, K. W., and R. H. Macve. 1986. Accounting and the examination: a genealogy of disciplinary power. *Accounting, Organizations and Society* 11 (2):105-136.
- Hoskin Richard, H., and W. Keith. 1988. The genesis of accountability: The west point connections. *Accounting, Organizations and Society* 13 (1):37-73.
- Jensen, M. C., and W. H. Meckling. 1976. Theory of the firm: Managerial behavior, agency costs and ownership structure. *Journal of Financial Economics* 3 (4):305-360.
- Jones, E. 1929. *The Trust Problem in the United States*, New York, MacMillan Company.
- Kay, J. and A. Silberston. 1995. Corporate Governance. *National Institute Economic Review* 153 (1): 84-107.
- Kearins, K., and K. Hooper. 2002. Genealogical method and analysis. *Accounting, Auditing and Accountability Journal* 15 (5):733-757.
- Keasbey, E. Q. 1899. New Jersey and the Great Corporation. *Harvard Law Review* 13:198-212.
- Klein, A. 2002. Audit committee, board of director characteristics, and earnings management. *Journal of Accounting and Economics* 33 (3):375-400.

- Kolko, G. 1963. *The triumph of conservatism*. New York: Free Press.
- Lamoreaux, N. R. 1985. *The great merger movement in American business*. Cambridge: Cambridge University Press.
- Larcker, D. F., S. A. Richardson, and A. I. Tuna. 2007. Corporate governance, accounting outcomes, and organizational performance. *Accounting Review* 83 (4):963-1008.
- Lazonick, W. 2000. Maximizing shareholder value: a new ideology for corporate governance. *Economy and Society* 29 (1):13-35.
- Learmount, S.. 2002. *Theorizing Corporate Governance: New Organizational Alternatives*: ESRC Centre for Business Research, University of Cambridge.
- Leinwand, G. 1962. *A History of the United States Federal Bureau of Corporations: 1903-1914*. Ph.D. diss., New York University.
- Letza, S., X. Sun, and J. Kirkbride. 2004. Shareholding Versus Stakeholding: a critical review of corporate governance. *Corporate Governance* 12 (3):242-262.
- Loeb, S. E., and P. J. Miranti. 2004. *The Institute of Accounts: nineteenth-century origins of accounting professionalism in the United States*. New York: Routledge.
- MacKenzie, D., and Y. Millo. 2003. Constructing a market, performing theory: the historical sociology of a financial derivatives exchange. *American Journal of Sociology* 109 (1):107-145.
- McCraw, T. K. 1975. Regulation in America: A Review Article. *The Business History Review* 49 (2):159-183.
- . 1981. *Regulation in perspective: historical essays*. Cambridge: Division of Research, Graduate School of Business Administration, Harvard University.
- Meade, E. S. 1903. *Trust Finance*. Vol. 387. New York: D. Appleton and Company.

- Merino, B. D. 1993. An analysis of the development of accounting knowledge: A pragmatic approach. *Accounting, Organizations and Society* 18 (2-3):163-185.
- Merino, B. D., and M. D. Neimark. 1982. Disclosure Regulation and Public Policy: A Sociohistorical Reappraisal. *Journal of Accounting and Public Policy* 1 (1):33-57.
- Merlingen, M. 2006. Foucault and world politics: promises and challenges of extending governmentality theory to the European and beyond. *Millennium Journal of International Studies* 35 (1):181-196.
- Merriam, W. R. 1902. "Trusts" in the Light of Census Returns. *The Atlantic Monthly*, 332-339.
- Miller, P., T. Hopper, and R. Laughlin. 1991. The new accounting history: an introduction. In *Accounting, Organizations and Society*: Elsevier, 395-403.
- Miller, P., and C. Napier. 1993. Genealogies of calculation. *Accounting, Organizations and Society* 18 (7-8):631-647.
- Miller, P., and T. O'Leary. 1987. Accounting and the Construction of the Governable Person. *Accounting, Organizations and Society* 12 (3):235-265.
- . 1989. Hierarchies and American ideals, 1900-1940. *Academy of Management Review* 14 (2):250-265.
- Miller, P., and N. Rose. 1990. Governing economic life. *Economy and Society* 19 (1):1-31.
- Miranti Jr, P. J. 1989. The Mind's Eye of Reform: The ICC's Bureau of Statistics and Accounts and a Vision of Regulation, 1887-1940. *Business History Review* 63 (3):469-509.
- Miranti, P. J. 1990. *Accountancy comes of age: the development of an American profession, 1886-1940*. Chapel Hill: University of North Carolina Press.
- Mitchell, L. E. 2007. *The speculation economy*. San Francisco: Berrett-Koehler Publishers.

- Mizruchi, M. S. 1983. Who controls whom? An examination of the relation between management and boards of directors in large American corporations. *Academy of Management Review* 8 (3):426-435.
- . 2004. Berle and Means revisited: The governance and power of large US corporations. *Theory and Society* 33 (5):579-617.
- Montague, G. H. 1904. *Trusts of Today*. New York: McClure, Phillips & Co.
- . 1910. Trust Regulation To-Day. *The Atlantic Monthly*, 1-9.
- Moran, P., and S. Ghoshal. 1996. Theories of economic organization: The case for realism and balance. *Academy of Management Review* 21 (1):58-72.
- Morck, R., and L. Steier. 2005. *The global history of corporate governance*. Chicago: University Of Chicago Press.
- Napier, C. J. 2006. Accounts of change: 30 years of historical accounting research. *Accounting, Organizations and Society* 31 (4-5):445-507.
- . 2009. Historiography. In *The Routledge companion to accounting history*, edited by J. R. Edwards and S. P. Walker. Oxford: Routledge, 30-49.
- North, S. N. D. 1899. The Industrial Commission. *The North American Review* 168 (511):708-719.
- O'Sullivan, M. 2000. The innovative enterprise and corporate governance. *Cambridge Journal of Economics* 24 (4):393.
- . 2007. The Expansion of the US Stock Market, 1885 1930: Historical Facts and Theoretical Fashions. *Enterprise and Society* 8 (3):489-542.
- Parker, L. D. 2004. 'Presenting'the past: perspectives on time for accounting and management history. *Accounting , Business and Financial History* 14 (1):1-27.
- Parker-Gwin, R., and W. G. Roy. 1996. Corporate Law and the Organization of Property in the United States: The Origin and Institutionalization of New Jersey Corporation Law, 1888-1903. *Politics and Society* 24 (2):111-135.
- Porter, T. 1996. *Trust in Numbers: The pursuit of objectivity in science and public life*. Princeton, NJ: Princeton University Press.

- Prado, C. G. 2000. *Starting with Foucault: An introduction to genealogy*. Boulder, Co.: Westview Press.
- . 2006. *Searle and Foucault on Truth*. New York, NY: Cambridge University Press.
- Previts, G. J. and B. Merino. 1998. *A History of Accountancy in the United States: The Cultural Significance of Accounting*. Second ed. Columbus: Ohio State University Press.
- Radcliffe, V. S. 1998. Efficiency audit: An assembly of rationalities and programmes. *Accounting, Organizations and Society* 23 (4):377-410.
- Randolph, T. F. 1872. Annual Message of His Excellency Theodore F. Randolph Governor of New Jersey to the Legislature of 1872: Pangborn, Dunning & Dear, 1-19.
- Ribstein, L. E. 2002. Market vs. regulatory responses to corporate fraud: A critique of the Sarbanes-Oxley Act of 2002. *Journal of Corporation Law* 28 (1):1-67.
- Ripley, W. 1905. *Trusts, Pools and Corporations*. New York: Ginn and Co.
- Ripley, W. Z. 1926. *Main Street and Wall Street*. New York: Kessinger Publishing.
- Roberts, J. 2001. Trust and control in Anglo-American systems of corporate governance: The individualizing and socializing effects of processes of accountability. *Human Relations* 54 (12):1547.
- Roberts, J., P. Sanderson, R. Barker, and J. Hendry. 2006. In the mirror of the market: The disciplinary effects of company/fund manager meetings. *Accounting, Organizations and Society* 31 (3):277-294.
- Roe, M. J. 1994. *Strong Managers, Weak Owners*. Princeton, N.J.: Princeton University Press.
- Romano, R. 2001. Less is more: making institutional investor activism a valuable mechanism of corporate governance. *Yale Journal on Regulation* 18 (2):174-251.

- . 2005. The Sarbanes-Oxley Act and the making of quack corporate governance. *Yale Law Journal* 114:1521-1611.
- Rose, N., and P. Miller. 1992. Political power beyond the state. *British Journal of Sociology* 43 (2):173-205.
- Rose, N., P. O'Malley, and M. Valverde. 2006. Governmentality. *Annual Review of Law and Social Science* 2:83-104.
- Roy, W. G. 1997. *Socializing Capital: The Rise of The Large Industrial Corporation in America*. 1st ed. Princeton, New Jersey: Princeton University Press.
- Scott, D. R. 1931. *The Cultural Significance of Accounts*. New York, NY: H. Holt.
- Seager, H. R., C. A. Gulick, and W. S. Hein. 1929. *Trust and corporation problems*. New York: Harper.
- Sears, M. V. 1956. The American Businessman at the Turn of the Century. *The Business History Review* 30 (4):382-443.
- Shleifer, A., and R. W. Vishny. 1997. A survey of corporate governance. *Journal of Finance* 52 (2):737-783.
- Sklar, M. J. 1988. *The corporate reconstruction of American capitalism, 1890-1916: the market, the law, and politics*. Cambridge, United Kingdom: Cambridge University Press.
- Sloan, R. G. 2001. Financial accounting and corporate governance: a discussion. *Journal of Accounting and Economics* 32 (1-3):335-347.
- Spence, C. 2010. Accounting for the dissolution of a nation state: Scotland and the Treaty of Union. *Accounting, Organizations and Society* 35 (3):377-392.
- Sprague, C. E. 1880. The Algebra of Accounts. *The Book-Keeper* July 20:2-4.
- Steffens, L. 1905. New Jersey: A Traitor State. *McClure's Magazine*, 41.
- Stein, M. J. 2008. Beyond the boardroom: governmental perspectives on corporate governance. *Accounting, Auditing and Accountability Journal* 21 (7):1001-1025.

- Stiles, P., and B. Taylor. 2001. *Boards at work: How directors view their roles and responsibilities*. Oxford, United Kingdom: Oxford University Press, USA.
- Stoke, H. W. 1930. Economic Influences upon the Corporation Laws of New Jersey. *The Journal of Political Economy* 38 (5):551-579.
- Tarbell, I 1902-1904. History of the Standard Oil Company, *McClures Magazine*, November, 1902 - October, 1904.
- Thorelli, H. B. 1955. *The Federal Antitrust Policy*. Baltimore: The John Hopkins Press.
- Tricker, R. I. 1984. *Corporate governance: Practices, procedures, and powers in British companies and their boards of directors*. London: Gower London.
- Tsuk, D. 2005. From Pluralism to Individualism: Berle and Means and 20th-Century American Legal Thought. *Law and Social Inquiry* 30 (1):179-225.
- Tung, F. 2006. Before Competition: Origins of the Internal Affairs Doctrine. *Journal of Corporation Law* 32:33-101.
- Van Hise, C. R. 1914. *Concentration and control: a solution of the trust problem in the United States*. New York: Macmillan.
- Von Halle, E. 1895. *Trusts: or industrial combinations and coalitions in the United States*. New York, NY: Macmillan and co.
- Watkins, M. 1927. *Industrial Combinations and Public Policy*. Boston, Houghton Mifflin and Company.
- Watts, R., and J. Zimmerman. 1978. Towards a Positive Theory of the Determination of Accounting Standards, *The Accounting Review* 53 (1):112-134.
- . 1979. The Demand for and Supply of Accounting Theories: The Market for Excuses, *The Accounting Review* 54 (2):112-134.
- Westphal, J. D., and E. J. Zajac. 1995. Who shall govern? CEO board power, demographic similarity, and new director selection. *Administrative Science Quarterly* 40 (1):60-83.

- . 1997. Defections from the Inner Circle: Social Exchange, Reciprocity, and the Diffusion of Board Independence in US Corporations. *Administrative Science Quarterly* 42 (1):161-183.
- . 1998. The Symbolic Management of Stockholders: Corporate Governance Reforms and Shareholder Reactions. *Administrative Science Quarterly* 43 (1):127-153.
- . 2001. Decoupling policy from practice: The case of stock repurchase programs. *Administrative Science Quarterly* 46 (2):202-228.
- White, E.R. 1901. The Plague of Statistics. *The Atlantic Monthly* 88(530): 842-844.
- Wright, R., W. Barber, M. Crafton, and A. Jain, eds. 2004. *History of Corporate Governance: The Importance of Stakeholder Activism*. London: Pickering & Chatto.
- Xie, B., W. N. Davidson Iii, and P. J. DaDalt. 2003. Earnings management and corporate governance: the role of the board and the audit committee. *Journal of Corporate Finance* 9 (3):295-316.
- Yablon, C. M. 2006. Historical Race Competition for Corporate Charters and the Rise and Decline of New Jersey: 1880-1910, The. *Journal of Corporation Law* 32:323-380.
- Young, J. J. 2006. Making up users. *Accounting, Organizations and Society* 31 (6):579-600.
- Zajac, E. J., and J. D. Westphal. 1996. Director Reputation, CEO-Board Power, and the Dynamics of Board Interlocks. *Administrative Science Quarterly* 41 (3):507-529.
- Zeff, S. A. 2003. How the US Accounting Profession Got Where It Is Today: Part II. *Accounting Horizons* 17 (4):267-287.
- Zuckerman, E. W. 1999. The categorical imperative: Securities analysts and the illegitimacy discount. *American Journal of Sociology* 104 (5):1398-1438.
- . 2000. Focusing the corporate product: securities analysts and de-diversification. *American Sociological Quarterly* 45 (3):591-619.

Appendix A

Information and Issues of New Jersey

- 1) State statistical information on business combinations (industrial trusts or corporations) from 1880-1910, including numbers of such combinations, detailed financial statement or accounting information specific combinations, methods used in such combinations (i.e. whether stock acquired in exchange for property or cash);
- 2) State records showing the issuance of share capital or bonds by year, including the value and type of such securities issued and the number of investors;
- 3) Information on types of investors, such as income level and dispersion among the general population (i.e. where new groups of individuals investing in corporate securities);
- 4) Security and stock exchanges listings and statistical information on the growth of stock exchanges and security listings;
- 5) Statistical information on business and economic activity in the state of New Jersey over that period.
- 6) Amendments and revisions to the New Jersey Company Act between 1888 and 1896, including revisions to the incorporation of holding companies and share ownership;
- 7) Legislative records or debates of the New Jersey State Legislative Assembly regarding holding company legislation and revisions to the New Jersey Company Act;
- 8) Information on James Brooks Dill, who was a leading figure in establishing New Jersey corporate legislation including speeches, texts he may have written or other personal writings, which may not be widely available elsewhere;
- 9) Annual reports or other information on the Corporation Trust Company in which Dill was actively involved and which held many of the early trusts;
- 10) Information or other documentary evidence from those who opposed such trusts and holding corporations;
- 11) Trust or corporation share agreements of any New Jersey trusts or corporations

Appendix B

Sources Searched

Publications	Years	Method
<u>Newspapers</u>		
Wall Street Journal	1889-1903	On-line based on the following search terms across all newspapers
Washington Post	1880-1903	Account*
Atlanta Constitution	1880-1903	Invest*
Boston Globe	1880-1903	Corporation or Holding Corporation
Chicago Defender	1880-1903	Trust
Chicago Tribune	1880-1903	Promoter
Hartford Currant	1880-1903	Financial Statements
Los Angeles Times	1880-1903	Capitalization
New York Times	1880-1903	Publicity
<u>Business</u>		
The Commercial and Financial Chronicle	1884-1896 1899-1903	Manually reviewed paper copies
U.S. Investor	1900-1903	Manually reviewed indexes
Banker's Magazine	1896-1903	Manually reviewed micro-fiche
<u>Non Business</u>		
Atlantic Monthly	1890-1903	Manually reviewed paper copies
Harper's Magazine	1890-1903	Manually reviewed paper copies
McClure's	1890-1903	Manually reviewed paper copies
<u>Accounting</u>		
Commerce, Accounts & Finance	1901-1903	Manually reviewed paper copies
Accountics	Apr 1897- Aug 1900	Manually reviewed paper copies
The Book keeper and the American counting- room	1880-1884	Manually reviewed paper copies

Appendix C

United States Investor

Feb. 15, 1900

UNITED STATES INVESTOR

[cont.] 221

WE BUY AND SELL BONDS FROM THE FOLLOWING STATES:

- | | |
|-------------|----------------|
| TEXAS | KENTUCKY |
| GEORGIA | FLORIDA |
| ALABAMA | NORTH CAROLINA |
| LOUISIANA | SOUTH CAROLINA |
| MISSISSIPPI | VIRGINIA |
| TENNESSEE | WEST VIRGINIA |

ROSENBERG & LIVERMORE,
Speculators in Southern and Western Bonds,
12 WALL ST., NEW YORK.

International Zinc Co., Ltd.

SHARES ADVANCE FEB. 24TH TO \$1.00.

Par value at present price
\$50. Per Share,
some 40% on their investment
and the regular dividend of 10%
available to holders of all shares
no date of record. Terms open.

Such applications accompanied
by reference, will be received at
either of the following offices of
the local agents.

JOSHUA BROWN & CO., Bankers,
65 State St., Boston.

\$250,000

30-Year

5%

Gold Bonds

\$500 EACH

Guaranteed

By Middlesex Banking
Company of Middle-
town, Conn.

Full information from
**LIVERMORE
& HILDICK**
149 Broadway, New York

Applications for stock at 5%
will close at 10:30 a.m. on
Friday, Feb. 24th. This applies
to all shares.

SECURITY.

6% GOLD BONDS.

IT IS ONLY FAIR TO INVESTIGATE

These bonds are guaranteed by the
State of New York and are secured
by the full faith and credit of the
State. They are sold at a discount
of 10% and will yield 6% per
annum. They are guaranteed by
the State of New York and are
secured by the full faith and credit
of the State.

JOHN BULHOLLAND,
38 Park Row,
NEW YORK CITY.
41 W. 4th St.,
River View,
Brooklyn.
with a Party Office,
New York City.
Savoy City, Va.

10%
A small amount of stock of many
companies which will pay a dividend
of 10% per year. This is a
guaranteed investment. For
particulars, see the prospectus
sent on application.

DIVIDENDS.
I have come from Annual Meeting
of the Sagamore Zinc & Lead Co.

THE SAGAMORE ZINC & LEAD CO.
This producing company has
just declared a dividend of
10% per year. This is a
guaranteed investment. For
particulars, see the prospectus
sent on application.

A. R. SPEIGHT & CO.,
REAL AGENTS,
68 Commercial St., Room 44, Downtown Bldg.,
BOSTON.

Opportunities for Capital in California

There are many opportunities for
capital in California. The State
is rich in natural resources and
is rapidly developing. There are
many opportunities for capital in
California. The State is rich in
natural resources and is rapidly
developing. There are many
opportunities for capital in
California. The State is rich in
natural resources and is rapidly
developing.

Address: **JOHN E. BENNETT,**
1111 1/2 St., San Francisco, Cal.

Specialty by State
JOS. AND O'NEIL WALKER
Bankers and Real Estate Agents,
100 Broadway, N. Y. City.

Wanted—\$4,000 Loan

I have had a loan of \$4,000 from
a private individual in a business
of 10 years in Kingsbury county, N. Y.
I am now in need of a loan of
\$4,000 for the same purpose. I
am a responsible person and have
a good record. I am willing to
pay 10% per year. For
particulars, see the prospectus
sent on application.

The Power Multiplying Engine Company of New York.

THOS. A. EDISON, JR., Pres.
This company has just declared a
dividend of 10% per year. This
is a guaranteed investment. For
particulars, see the prospectus
sent on application.

\$5. PER SHARE,
Par Value \$20.
The Power Multiplying Engine
Company of New York has just
declared a dividend of 10% per
year. This is a guaranteed
investment. For particulars,
see the prospectus sent on
application.

Prentice Investment Co.,
Bankers and Real Estate Agents,
100 Broadway, N. Y. City.