

Control the Corporation Conference
Summary of Remarks by Kent Greenfield

The law of corporate governance offers an untapped resource for progressives who want new regulatory tools to control and channel corporate power and influence. Currently, the law of corporate governance is dominated by Delaware, which prioritizes the interests of management and the financial elite at the expense of other stakeholders, other states, and the nation generally. Corporate law could be used and adjusted in various ways to protect stakeholder interests and constrain illegal behavior:

* Shareholder activists can use the doctrine of ultra vires as a basis for lawsuits against companies engaged in illegal behavior. Corporations are chartered only for "lawful activities," and illegal activities are beyond their power. Shareholders can use the old doctrine of ultra vires – beyond the power – to enjoin corporations from illegal acts, even if such acts are performed in international jurisdictions otherwise beyond the reach of US courts

* Corporate law could explicitly require managers and directors to owe fiduciary duties to all stakeholders, not just shareholders. In order to enforce this obligation, boards could include stakeholder representatives.

* The concept of limited liability is an important public policy in some circumstances, but not in many situations in which it is now utilized. We should refuse the protection of limited liability to corporations that own or control other corporations. Limited liability should not provide protection for corporations manipulating the doctrine to shift costs to the public or the victims of shoddy products or services.

* Shareholders are the beneficiaries of federal fraud law, employees are not. If managers lie to shareholders they can go to jail; if they lie to employees, there is little recourse. Federal law could be adjusted to protect employees from fraud and misrepresentation.