



ANNUAL SHAREHOLDER MEETINGS

From Populist to Virtual

By Lawrence A. Cunningham
and Stephanie Cuba

THE 1933 ANNUAL MEETING of Exxon-Mobil, then Standard Oil of New Jersey and among the world's oldest and largest corporations, was a gathering of five people at a New Jersey gas station. By 1977, the company's annual meeting filled the 2,000-seat Houston Music Hall and in 2018 still draws thousands to a similar Dallas venue.

These dramatically different attendance numbers point us to the history of the corporate meeting. Chief protagonists are John and Lewis Gilbert, brothers who chose fighting for shareholder rights as

their life's work. Their motives appear in Lewis Gilbert's portrayal of the problem in his 1956 book, *Dividend and Democracy*:

In 1932, the typical annual meeting, often tucked away in some remote rural hideaway, was usually attended by no more than a silent dispirited baker's dozen who listlessly listened to the mechanical legal jargon by which insiders re-elected themselves to do as they pleased.

Through the 1930s, large US corporations were owned mostly by a small number of influential banks, financiers and dynasties, such as Morgan, Rockefeller and Vanderbilt. But as the Great

Depression stoked suspicions of concentrated corporate power, Congress passed banking, securities and tax laws that fostered diffuse share ownership.

Individuals nationwide came to own stock in American companies, and the Gilberts spent five decades advocating for them. Their legacy of shareholder engagement endures, though the US shareholder base since 1980 re-concentrated, with rising ownership by pension funds, mutual funds and other institutions.

The legacy is relevant to emerging debates over whether annual meetings should continue to be held in-person anymore, or instead solely online, as several public companies have recently begun doing. This modern development stirs debate about the purpose and value of shareholder meetings. History sheds light on the stakes.

Shareholders gather ahead of the Berkshire Hathaway annual meeting in Omaha, Nebraska, on Saturday, May 5, 2018.

The Populist Quest for Shareholder Democracy

From 1940 to 1979, as individuals steadily came to own more and more corporate equity, the annual meeting grew increasingly engaging. While only a small percentage of shareholders attended, and a minority of those spoke up, they helped forge a shareholder-centric orientation across corporate America.

The Gilbert brothers and fellow advocates put proposals on the meeting agenda for a vote, posed pointed questions to senior managers during the proceedings and then publicized their progress widely. All were media savvy, spreading their mission in articles and books, on radio and television, and through public lectures and Congressional testimony.

The Gilberts were known as the deans of the professional shareholders. Throughout this period, the brothers personally attended as many as 300 annual meetings yearly and covered another 50 with a small staff of associates. Legatees of an estate whose assets included small stakes in some 600 public companies, the two lived in a fashionable apartment building on Manhattan's Upper East Side.

The Gilberts' persistence and logic won them many governance reforms over five decades, ranging from confidentiality in shareholder voting to the rise of outside directors. As early as 1947, they gained a tactical advantage after pushing shareholder proposals at Transamerica to have shareholders choose the auditors and for a post-meeting transcript. In ordering the company to comply, an influential court opinion famously explained, "A corporation is run for the benefit of its stockholders, not for that of its managers."

Annually from 1940 to 1979, the Gilberts published a book-length account of the major annual meetings and related issues of the day. Entitled "Annual Reports on Stockholder Activities at Corporation Meetings," the Gilbert volumes were published in limited quantities—print runs of 8,500 in earlier years and 6,000 in later ones—and are today collectors' items.¹

The reports were astonishingly consistent, opening with 20 pages of photographs from the year's meetings; a brief useful glossary; a consciously-compact average of about 265 pages of narrative text; an index of companies; and, most impressively, a substantially identical table of contents (see Figure 1).

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Figure 1: The standard table of contents appearing in the Gilbert brothers' annual report on shareholder meetings.

The books and meeting attendance had one overriding purpose: to promote "people's capitalism." By 1954, they had already made substantial progress. As put by a distinguished contemporary establishment figure, Covington Hardee, who served as general counsel of Union Pacific Railroad and later CEO of Lincoln Savings Bank, the Gilberts were waging a "remarkable campaign" for "shareholder democracy."

Hardee credits the Gilberts with making the annual meeting a meaningful forum to present shareholder opinion and influence managerial action. They made it a priority to have meetings held in rational locations—locales with a high concentration of shareholders, major urban settings with good local transportation, near company facilities and, for some companies, rotating across a series of cities. They advocated for adequate seating, including overflow rooms, and closed-circuit TVs, and for meeting transcripts to be circulated afterwards, including identification of those posing questions from the floor to facilitate shareholder coordination.

The Gilberts argued for cumulative voting, preemptive rights and annual financial audits, and against staggered boards. They scrutinized executive pay and urged periodic shareholder approval of incentive bonus plans. They were vociferous critics of stock options for managers and opposed employee stock ownership plans (ESOPs) overseen by managerial trustees. Hardee rightly described the Gilbert reports as "absorbing reading" and, while containing "a certain brashness of tone, such a gadfly for management is useful."

Discussion explores dozens of specific meetings to animate the prevailing attitude of managers and shareholders. Striking is how similar debates rage today, including: the pros and cons of staggered boards (continuity versus accountability); age limits for directors (the Gilberts favored mandatory retirement at age 72); separating or combining the chairman and CEO roles (the Gilberts urged separating); "over-boarding" (directors not sitting on too many boards); and proxy voting (from shareholder nominations of directors to the possibility of shareholders voting no for specific directors).

The Gilberts—and fellow gadflies—rated companies on many aspects of shareholder democracy. As to the conduct of meetings, they graded chairmen on the degree of conformity to *Robert's Rules of Order*, the bible of parliamentary procedures, though it is not required by law. Among the era's leading experts on *Robert's Rules* was the Gilberts' friend and fellow activist Wilma Soss, who in 1947 founded the Federation of Women Shareholders of American Business and for many decades hosted a popular NBC radio show called "Pocketbook News."

At shareholder meetings, when chairmen would silence Soss for being "out of order," she would cite specific passages from *Robert's Rules* to explain that it was not she who was out of order. If the Gilberts veered urbane and diplomatic, Soss had a reputation for antics and impudence. Soss made her point about shareholder voice a dramatic one, by bringing megaphones to meetings, and a literal one, by demanding that microphones be placed throughout meeting halls.

A 1951 profile of Soss in *The New Yorker* criticized her incendiary behavior, but for a woman of that era and in that context, her tactics were far more effective than would have been following the Gilbert

style. And although Soss drew criticism for her acid comments, she earned enormous respect as well. A front-page *Wall Street Journal* article in 1963 highlights her blistering critique of IBM's skimpy post-meeting report along with a resolution requiring more detail. In response, Chairman Thomas Watson Jr. invited her to IBM's headquarters, where he accepted her proposal.

By the early 1960s, the Gilberts bragged in their annual reports of many impressive turnouts: up to 10 meetings drew more than 1,000; two dozen between 300 and 900; and AT&T, a bellwether boasting millions of shareholders, set the era's record at 12,000. A 1964 *New York Times* story reported: "The vociferous minority shareholders helped popularize meetings by their persistent attendance and their keen questioning on controversial matters." The Gilberts, who devoted a section of their reports to press coverage, declared in 1965: "The press throughout the nation showed a growing interest in what takes place at the annual meeting."

New Yorker columnist John Brooks reported on several annual meetings in 1966. Altogether, he found the action lively and unruly, laced with ill-mannered verbal dueling and removal of hecklers. But he also heard substantial dialogue that put a human face on corporate executives and shareholders. His chief takeaway: professional shareholders helped reveal executive personalities, as the Q&A "brought the companies to life."

Calvin Trillin made the rounds in 1972, reporting in *The New Yorker* a more cynical synthesis of the era's quest for shareholder democracy. Critics saw the gadflies as abetting a charade, under the pretense that shareholders exercised control, serving management by projecting the false appearance of democracy. But while most shareholder proposals garnered few votes and rarely passed, in aggregate over those decades the gadflies—along with management—made shareholder primacy the norm in corporate life.

Trillin also noted the arrival of a different breed of activists at the annual meeting, focused on social responsibility. They first appeared in 1967 at the Eastman Kodak meeting, where Saul Alinsky challenged its minority hiring practices and, after debate, the company agreed to reforms. The approach gathered force throughout the 1970s, as social activists won court



Wilma Soss (left) and Lewis Gilbert (right) at the 1957 New York Central annual meeting.

Wilma Soss Papers, American Heritage Center, University of Wyoming

rulings drawing on earlier victories by the Gilberts, insisting that management put shareholder proposals on diverse subjects to a vote "to give true vitality to the concept of corporate democracy."

The Project for Corporate Responsibility emerged, mounting its famous Campaign GM, which used shareholder proposals and the annual meeting on behalf of the rights of others stakeholders, just as the gadflies had in the name of shareholders. Ralph Nader advanced the interests of consumers against corporations through annual meetings as well. Shareholder activist Evelyn Davis rose to fame during

this period, though running counter to the social activists and sometimes against the Gilberts and Soss. For instance, she repeatedly offered shareholder proposals to prohibit corporate donations to charitable organizations.

Amid this activism, proposals arose to abolish annual meetings. Proponents argued they were no longer useful to corporations; "crushing bores," was a common description. In 1972, Delaware, a leading state of incorporation, updated its law to let shareholders act by written consent rather than at meetings. In a *New York Times* op-ed, J.B. Fuqua of Fuqua Industries



Wilma Soss speaks into a megaphone at the 1956 New York Central annual meeting. The woman behind her is Emma Chambers Maitland, a "professional wrestler/entertainer" who Soss hired as her "bodyguard."

advocated for abolition, in favor of voting by mail. But shareholders overwhelmingly pushed back and stock exchanges ruled that the consent method did not meet their requirement to have an annual meeting.

Virtually no corporate leaders concurred with Fuqua, and by 1975 *The New York Times* called his cause "notably unsuccessful." By then, corporate America has clearly sided with the Gilberts. NYSE Chairman James J. Needham explained that the annual meeting is "the basic forum of shareholder democracy and an important stimulus to candid corporate self-analysis." The head of Houdaille

Industries, Gerald C. Saltarelli, elaborated: "Shareholders should have the opportunity to personally question the management on company affairs and to obtain answers. [T] his questioning forces a discipline upon management to prepare for them and to re-think the company's past performance from a shareholder's standpoint."

In a 1976 article, the general counsel of DuPont, Donald E. Pease, later a professor at Delaware Law School, advised: "The annual meeting serves a practical purpose for two reasons. First, it is necessary to preserve the 'legend' of corporate democracy and the elimination of the

annual meeting could cause the introduction of restrictive and undesirable legislation. Second, the annual meeting imposes a discipline on management because it is in effect, an annual audit of management's stewardship of the business."

The Gilberts announced in their 1979 report that it would be their last, and they left the stage having succeeded in making the annual meeting an important forum and holding managers accountable to shareholders. They helped professionalize the fields of investor relations and corporate governance, manifest in the founding of numerous periodicals in this era that continue today, such as *Directors & Boards* and *NACD Directorship*. Their contributions endure, even as the era of the individual shareholder seeking a voice in corporate affairs was dwarfed by powerful institutions more capable of holding managerial feet to the fire.

Institutional Ownership and Corporate Identity

From 1980 through 2010, as ownership of public company equity shifted from individuals to institutions, the prevailing shareholder-manager power dynamic changed. During this era, companies increasingly communicated to shareholders throughout the year, always at regular quarterly intervals and often more frequently, approaching a continuous disclosure model.

Yet while ownership and communication changed, the annual meeting remained a staple of corporate life, an important opportunity for shareholders—both individuals and representatives of institutions—to meet management, pose questions, press issues and resolve debate.

But if the prior era's annual meetings stressed individual shareholders and associated "democratic" rights, this one increasingly brought out corporate identity and culture. For example, Ben & Jerry's Homemade, from 1984 until its sale to Unilever in 2000, attracted a crew of socially responsible owners to a meeting that looked more like Woodstock than Wall Street.

Held among cattle farms near Burlington, Vermont, the founders ran the meeting informally, weaving in the vocabulary of hipsters: co-founder Jerry Greenfield might intone, "Hey, man, time for a little Q&A." The company's commitment

to sustainable profitability, and social responsibility through charitable giving, resonated with this group, while outside shareholder advocates cringed. Pressed by critics on board authority to allocate corporate profits to charitable causes, co-founder Ben Cohen explained:

We've never taken a formal vote of all the shareholders, but at our annual meetings, I usually ask them—just a show of hands, it's nonbinding—if they support the company's supporting the community and giving away what are really their profits. And they're all in favor of it.

The Ben & Jerry's annual meeting was part of the company's branding—achieved at low expense and producing considerable returns.

Meanwhile, in Omaha, Nebraska, Warren Buffett began building what would become the most popular annual shareholder meeting ever at Berkshire Hathaway. In 1975, a dozen attended in an office cafeteria, but then for three decades added a digit each—hundreds by 1985, thousands by 1995 and tens of thousands by 2005. In 2018, more than 40,000 attended, the record for a US public company, at the largest convention center in town. The Berkshire meeting's main feature has long been a six-hour Q&A with Buffett and Vice Chairman Charlie Munger.

But the Berkshire meeting has evolved into a three-day weekend extravaganza. The company has for decades hosted events on the days surrounding the meeting—a Friday night ball game, Saturday evening cookout, Sunday champagne brunch—and shareholders have added their own side-meetings, panels and speakers that alone draw hundreds or thousands. As recounted in an edited collection of essays, *The Warren Buffett Shareholder*, it is a series of energetic scenes of manager-owner partnership, a people's capitalism the gadflies would love.

Another mighty midwestern town, Fayetteville, Arkansas, has been the scene of the Walmart stockholders' meeting, most distinctive because of its conscious focus on employees. While founder Sam Walton hosted the first Walmart Stores annual meeting in 1970 at a coffee shop with five other people, throughout the 1980s, the meetings have added special events and celebrity guests to draw ever-larger crowds. The venue has moved from the



Gadfly Lewis Gilbert at an annual shareholder meeting.

Willma Sos Papers, American Heritage Center, University of Wyoming.

headquarters auditorium to University of Arkansas arenas now seating 20,000.

Walmart executives bound onto stage amid flashes of light and sound, met with roars of crowd approval. Managers get the crowd to spell out Walmart, declare that the store is number one and proclaim their love of the brand. Though Walmart remains an economic powerhouse serving its shareholders well, its identity is in its employees, which it affectionately refers to as “associates.” The annual meeting is their centerpiece.

During this era, the corporate annual meeting also became a stage for drama. Many examples appear in a memoir by Randy Cepuch, based on visits to 50 annual meetings from 2002 to 2006. He captures poignant moments revealing the personalities behind corporate cultures: when Roy Disney and Stanley Gold led the ouster of Disney CEO Mike Eisner, and when Sandy Weill ended his amazing run at the helm of Citigroup to an enraptured group of applauding shareholders. The fate of Dow Jones was shaped at its annual meeting, including a persuasive argument made by noted value investor Mark Boyar that the Bancroft family should sell.

Savvy managers today use the annual meeting to attract shareholders they desire—especially important for managers with long time-horizons seeking patient capital. At an annual meeting of Southeastern Asset Management, this enabled Chairman O. Mason Hawkins to boast: “We have the best shareholders in the mutual fund business.” The claim has

rivals, such as Ruane Cunniff, which runs the famed Sequoia Fund. It cultivates intelligent long-term investors, attracting and retaining them in part through its annual meetings that draws a regular group of 1,000 in early May to New York's Plaza Hotel.

Today and Tomorrow: The Virtual Meeting?

Since 2010, several large public companies have held annual shareholders meeting solely by electronic means, not convening in a physical location, a so-called virtual-only meeting. Many had for several years supplemented annual meetings with digital feeds—such as Cisco System dating to 2005—and most others followed suit, including Berkshire Hathaway from 2016. But even now only a small fraction host remote-only annual meetings, amid controversy.

Authorization to host virtual-only shareholder meetings was first enacted in 2000 by Delaware corporate law. Today, most state corporate laws permit the practice. (Both federal law and stock exchange rules have tended to defer to state law on the manner of holding annual meetings.) In the first decade, a smattering of mostly-smaller companies opted in. They were led by such names as Ciber, ICU Medical and Inforte, and followed by the likes of Adaptec, Herman Miller and UAP Holding.

During this period, a few big names put their toe in the water only to retreat under

shareholder objection—CSRA, Conoco Phillips, Siebel, Symantec and Union Pacific Railroad—while others overcame or overlooked shareholder resistance—Comcast, Duke Energy, Intel, PayPal and Warner Music Group.

Proponents cite several advantages for virtual-only shareholder annual meetings. These start with lower costs, potentially increasing the number of shareholders tuning in, and a cost-benefit framework that stresses that few attend and little occurs. A related advantage argues that institutional owners cannot attend all the meetings where they own stock because their portfolios are so diversified while ability to tune-in increases coverage. A final asserted benefit notes that virtual annual meetings are not much different from quarterly conference calls.

Skeptics counter each point, especially the assertion that the meeting is a mere formality not worth the cost. As history suggests, engaged managers and shareholders have made the meetings productive. The virtual-only format is unlikely to produce gains like those from the Gilberts and Soss pressing managers, or Ben & Jerry and Warren & Charlie meeting their

shareholders. Poor turnout and banality are not reasons to abandon the meeting, but rather rationales to reinvest in it to realize its historical promise. \$

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Note

1. The Library of Congress holds volumes 1951 through 1974, but they do not circulate; the New York Public Library holds volumes 1946 through 1968, though at its off-storage site available only to New York State residents; and the George Washington University Law Library holds 1959 through 1979 (other than 1962 and 1971). They are not widely offered for sale online.

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