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On Employee Ownership Trusts: "Employee-Partnerships" with neither Partner Capital Accounts nor Partner Governance?

ABSTRACT

This paper explores the Employee Ownership Trust (EOT) model, comparing it with traditional partnerships and employee ownership structures like the US Employee Stock Ownership Plans (ESOPs) and the European Co-op-ESOPs. It primarily focuses on the crucial distinction of EOTs lacking individual capital accounts for employees due to common ownership and leading to what is termed a "horizon problem" where employees do not recoup their share of retained earnings. The "naked in, naked out" rationale, often used to justify this lack of individual accounts in EOTs, is easily refuted by noting that even professional partnerships described as "naked out" still pay off the partner capital accounts of exiting partners. Furthermore, the "first-cohort problem" is analyzed highlighting how initial employees in an EOT may effectively subsidize the acquisition debt without a mechanism to access their accumulated equity, potentially pressuring a future sale of the firm. Finally, EOTs are distinguished from democratic employee ownership since they have a form of trustee-ownership, where governance ultimately rests with a trust rather than with the employee-beneficiaries.

KEY-WORDS

EMPLOYEE OWNERSHIP TRUSTS (EOTS), EMPLOYEE STOCK OWNERSHIP PLANS (ESOPS), COOPERATIVE-ESOPS (CO-OP-ESOPS), PARTNERSHIPS, PARTNER CAPITAL ACCOUNTS

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1. Introduction

In employee ownership circles, a debate is underway about the UK Employee Ownership Trusts (EOTs), primarily concerning their common ownership capital structure and secondarily their governance structure by a trust (a problem shared with the US Employee Stock Ownership Plans (ESOP))[1]. The common ownership structure shares the problems long criticized in the economics literature about the Yugoslav socialist self-managed firms (e.g., the horizon problem and the bias against reinvestment of earnings and in favor of debt financing) as well as a new first-cohort problem, a type of "mule firm" problem threatening the reproduction of employee ownership across generations. The trust structure in the UK EOTs and the US ESOPs implies that the employee-owners are not "trusted" with democratic governance—like when assets inherited by children are put into a trust until they come of age.

These issues need to be understood and addressed before a problematic structure for employee ownership is reproduced in other countries. The hope is that future models of employee ownership and economic democracy will be well-informed by the problems in past and existing models. Employee-owned firms face enough obstacles in today's world; they could at least avoid preventable problems of their own making.

This paper contributes to this debate by focusing particularly but not only on the arguments made by lawyers advocating for the EOT common ownership capital structure. The lawyer arguments are given special attention since partnerships do not themselves operate on the basis of common ownership but have partner capital accounts—so it is puzzling why this structure is not recommended for employee-owned firms where all the employees are the "partners". The issues discussed focus on UK applications but relate also to recent adaptations of UK EOT ideas into the American context (Michael, 2024; Rosen, 2024a)[2].

Section 2 focuses on the capital structure issues. In addition to summarizing the standard criticisms of the socialistic aspects of common ownership, the paper goes into the similarities and differences with partnerships which have partner capital accounts like the individual capital accounts (ICAs) in the Mondragon cooperatives. Also the partner capital accounts are based on net-asset value accounting, not on a market valuation of partnership "shares" so that requires some discussion of valuation theory. The treatment of the "first-cohort problem" by a practitioner in setting up UK EOTs, the late Nigel Mason, is discussed, endorsed, and amplified.

Section 3 goes into governance questions. The low-brow and high-brow arguments for trusteeship over the employee-owners are discussed and criticized in favor of representative

[1] See, for instance, Ellerman and Gonza (2024) for criticisms and Nuttall (2014) as well as Pendleton and Robinson (2025) for defenses of the UK EOT model.

[2] The Canadian EOT model is a hybrid EOT/ESOP model, but most implementations would probably be like the UK EOT without individual capital accounts. Another EOT model was legislated in Denmark, but it has a number of unique additional problems analyzed in Ellerman (2026a).

democratic structures like in democratic communities. A more recently proposed trusteeship model called "steward ownership" is also discussed. Section 3 raises another problem in both governance and capital structure in the UK EOTs and US ESOPs. Namely, the trustee-selected managers are allowed to have individualized outside equity schemes in the form of stock-option plans, share appreciation rights, and virtual equity plans. Finally, Section 3 discusses an alternative framework for corporate analysis by the Yale law professor Henry Hansmann.

Section 4 wraps up the discussion of the UK EOT model (and secondarily the US ESOP model) with a comparison with the Co-op-ESOP model recently legislated in Slovenia.

The types of employee ownership that are discussed are summarized in the following table.

Table 1. Employee ownership models discussed

Structure	Ownership	Capital values	Cash to owners
US ESOPs	Indirect individual ownership in trust	Capital value in individual cap. accts.	Dividends + ICA payouts at exit
UK EOTs	Collective ownership with profit-sharing	Common ownership with no ICAs	Bonuses with "naked out"
Co-op-ESOPs	Indirect individual ownership in co-op	Capital value in individual cap. accts.	Dividends + rollover + exit payouts
Mondragon Co-ops	Direct membership	Individual cap. accts.	ICAs paid out on exit

Source: Author's own elaboration.

2. Capital structure issues

2.1 The central argument

In an employee-owned or worker cooperative firm, the employee-members have to decide on the allocation of the value-added (revenues minus non-labor costs). The value-added they distribute as wages, salaries, and bonuses is their individual property. The alternative is to reinvest some of the value-added to make capital improvements or to pay down debts. The *central claim* is that the employee-members should have just as much individual claim on the *reinvested* earnings as on the *distributed* earnings. Their earnings, distributed or reinvested, should be their earnings. Those individual claims on reinvested earnings are institutionalized through individual capital accounts like in the Mondragon cooperatives (Oakeshott, 1978) or in the accumulated retained patronage dividends used in some US cooperatives (Zeuli and Cropp, 2004). They are not present in firms without ICAs, e.g., common ownership firms such as the UK EOT. EOTs, of course, may have distributed bonuses, but they are unrelated to whose earnings were reinvested in the past.

2.2 Reasoning about "socialized" profits

In the socialist literature, any property rights—such the subordinate *debt* of the individual capital accounts in a Mondragon-type cooperative or democratic firm—must be "capitalist" (e.g., Jossa and Cuomo, 1997, not to mention the literature from the socialist era concerning the Yugoslav self-managed firms) and hence that should be "social ownership" in an alternative model[3]. The individual capital accounts record for the past workers their property rights to the net-asset value that was accumulated *by them* reinvesting part of their net income in the firm rather than taking it out as bonuses or dividends. If the net income was taken out as bonuses or the like, then it became the property of the worker-members. But for a variety of reasons, "socialistic" thought holds that reinvested earnings owed as a *debt* to members, e.g., retained patronage dividends (Zeuli and Cropp, 2004), must be penalized by being "socialized".

The problem is in misinterpreting ICAs as representing "equity capital". Equity in any enterprise consists of the rights to the residual after costs are paid off and the governance rights over the enterprise. *None* of those equity rights are attached to individual capital accounts. In a Mondragon cooperative or in the idea of a democratic firm, there is *no connection* between the *size* of a member's individual capital account (a property right transferred to their estate if a member dies) and a member's labor-based personal rights to a share of the net income and the one-person/one-vote rule in the governance (membership rights which are extinguished upon exit). Bigger ICAs do not get bigger profits or more votes. An obligation of a firm that is independent of profits and has no votes is usually called "debt", not equity. In contrast, a bigger equity share in a conventional corporation represents a bigger share in the profits and more votes.

2.3 The horizon problem with common ownership

According to the UK EOT model legislated in 2014, a certain percentage of the shares in an operating company are held in a special purpose vehicle that is a trust where the employees of the operating company are the beneficiaries of the trust. There are no individual capital accounts in the trust for the employees, so it is what used to be called "common ownership" as in the John Lewis Partnership or Scott Bader Commonwealth (Oakeshott, 2001). Those pre-EOT common ownership trusts were established as gifts from the family shareholders to those trusts. While still featuring the common ownership capital structure, the EOT is significantly different from those older common ownership companies by using the American ESOP[4] mechanism of the company paying out the exiting owners for their shares—rather than the shares being a gift or having the employees pay for the shares with their personal assets. As

[3] This was discussed previously in this journal (Ellerman, 2016: 30).

[4] "ESOP" refers to the US ESOP and "EOT" refers to the UK variety, unless otherwise specified.

with the ESOPs, there are significant tax benefits for the sellers to an EOT[5].

In the economics literature, there has long been a critique of common or social ownership in businesses (Furubotn and Pejovich, 1970; 1972) most often referred to as the "horizon problem". The root of this problem is that social or common ownership provides no recoupable claim on retained earnings to buy productive assets or pay down debts. Thus, there is a general preference for paying out all net income and debt financing of investment which postpones the problem of finance to the future debt payments. This problem is called the "horizon problem" since the views of a worker will depend on their time horizon with the firm. For instance, if a worker is with the firm throughout the lifetime of a purchased asset, then that is the way they recoup the benefit of their portion of the retained earnings. But if their time horizon with the firm is shorter than the useful life of the purchased asset, then they are not recouping the full benefit of their retained earnings.

This critique of common or social ownership (e.g., for the old Yugoslav socialist firms) is well known in the economics literature (Furubotn and Pejovich, 1970; 1972). And the less well-known solution (Ellerman, 1986; 2013; 2020) to the horizon problem is the system of individual capital accounts, e.g., in the Mondragon cooperatives or in the European Co-op-ESOP model adopted into law in October 2025 in Slovenia (Ellerman, Gonza and Berkopec, 2022; Gonza, Ellerman, and Juri, 2024; Gonza, 2025). Each member's individual capital account records each member's share of the annual *retained* earnings, not including any cash payouts such as bonuses or profit-sharing payments. When a member exits, the balance in the member's capital account is paid out perhaps over a period of time.

2.4 One reasoning behind EOT's common ownership structure

Some people reason that businesses should have a "social" purpose and thus should have social or common ownership—reasoning that will be considered in the section below on governance issues. But there is a more basic misunderstanding in the reasoning put forth by lawyers who support common ownership and that is our concern in this section.

The first point to understand is that *legal partnerships generally have individual capital accounts for the partners*[6]. Those partner capital accounts operate (*mutatis mutandis*) like the individual capital accounts in the Mondragon cooperatives or the Co-op-ESOP model. At the end of each year, each partner/member's capital account is credited with their share of the net earnings minus any cash payouts to (or "drawings" by) the partner/members. Thus, the difference between a partner's earnings and cash draws is that partner's share of the retained earnings. It is not "socialized" with

[5] Recently (2025-2026), the 100% capital gains exemption for sales to a UK EOT was reduced to 50% and the uptake of EOT conversions fell from one or two a day to very few. See European Federation for Employee Shareholding (2026).

[6] See Gov.UK (2025) for the UK, Hurwitz (2023) for the US, Achen Henderson CPAs (2023) for Canada, or Google on "partner capital accounts". Or see the chapters on partner capital accounts in accounting textbooks such as Warren, Reeve and Duchac (2007) or Wild and Shaw (2019).

no specific recoupable claim in the future. Cash drawings are not always identical with earnings, e.g., when the partnership needs to make capital investments in new offices or remodeling of old offices, and so forth. Upon exit, the balance left in a partner/member's capital account is paid out in cash typically over a period of time. It is not "naked out". We may thus assume that any lawyers in legal partnerships in the UK, US, Canada, or elsewhere advocating EOTs are well-aware of partner capital accounts.

Yet EOTs have no such capital accounts for the partner/member/beneficiaries. How can this fundamental fact be so "overlooked"? Here is the mistaken reasoning.

> An EOT conveys ownership in the company to employees, just as an ESOP does. However, there is typically no equity component (no individual employee share accounts) with an EOT. The standard practice is that when employees leave the company, they do not receive any compensation relative to the value of the company. As is said in the United Kingdom, participants in an EOT are "naked in, naked out". This means that employees do not buy into the plan when they enter the company and are not bought out when they leave. This is just the same as in any professional partnership, like a law firm, architectural firm, or medical practice. In some cases, a nominal buy-in and fixed buyout might be involved in such a firm. But the main benefit of participating in such a professional partnership is to participate in the profits, not the equity growth of the firm. (Broughton et al., 2024: 17-18)[7]

In a professional partnership, a partner makes an initial investment (which may be nominal or substantial) but that is recorded as the initial balance in the partner capital account that is eventually paid out (with interest). Sometimes, the partner's account is divided into a capital account (initial investment) and a current account which records the partner's share in the net income minus the payouts called "drawings". For simplicity, we assume both functions in the partner's unified capital account. *All that is the same in the individual capital accounts or ICAs in a Co-op-ESOP* or in a Mondragon cooperative. There may be a "membership fee" in the beginning, which is recorded in the ICAs, but their main function is to record each member's share in the retained earnings (i.e., share in net income minus payouts).

Since we must assume that the lawyers advocating the common ownership EOTs are well aware of the partner capital accounts in "any professional partnership, like a law firm", how is that "overlooked" in their "naked in, naked out" rationale for EOT's common ownership? After all, Mondragon cooperatives and Co-op-ESOPs are also "naked out" in the sense of that *after the payouts of the individual capital accounts* there is no more payouts to represent "equity growth of the firm" or "goodwill" since the firm is not structured as piece of property on the market. In most law partnerships, they are also "naked out" in the same sense of *after the payouts of their partner capital accounts*.

The confusion in the EOT lawyers' reasoning may come from the existence of some law firms organized on a share basis so after the payouts, in effect, of the capital accounts, there may be an

[7] This quotation can also be found on the NCEO website at: https://www.nceo.org/publications/using-employee-ownership-trust-business-transition [Accessed: 5 July 2025].

additional payout of share appreciation reflecting the goodwill created by the law firm. A leading UK law firm, Fieldfisher LLP, wisely argues against that share-based structure and in favor of the "naked out" structure where only the partner capital account (initial capital contribution plus profit shares minus drawings) is paid out with no regard for some alleged "goodwill" factor over and above the capital account increases[8].

> The "naked out" part of this means that a retiring partner does not realise a capital return for goodwill built up over time. What the partner gets is a share of profits over the time he or she was a partner. This business model can stand the test of time. There are no distracting discussions on what "my equity" is worth and "how will I get paid that increase in value"? (Fieldfisher, 2015)

It may also be helpful to be clearer about the nature of ESOPs.

> An EOT holds shares collectively on behalf of all employees. There are no individual awards of shares and so an EOT is not the UK equivalent of a US ESOP. EOTs provide all employees with a significant and meaningful stake in the business that employs them through shares held in trust on their behalf. This avoids the complications of direct EO, especially for private companies. There is no need, for example, for there to be a share market to allow employees to sell shares. (Nuttall, 2014)

The share-denominated capital accounts in an ESOP are *not* direct employee ownership. The ESOP is the registered owner of all the ESOP shares; the employees may not sell, gift, bequeath, or mortgage the shares said to be "in" their capital accounts. The ESOP share-denominated capital accounts are indirect employee ownership. In arguing for what would become the EOT, Fieldfisher said:

> The indirect ownership model usually involves the permanent holding of shares within an employee trust. This avoids some of the complications associated with direct share ownership such as buying back shares when employees leave the business. (Fieldfisher, 2013)

The American ESOP and the Slovene Co-op-ESOP both involve a "permanent holding of shares" while the EOT presents a case of "employee ownership in name only" rather than indirect employee ownership (Rosen, 2024b). The US ESOP features indirect employee ownership. The European ESOP or Co-op-ESOP has value-denominated capital accounts *just like in a partnership* doing away with the need to buy or sell shares in the first place and thus there "are no distracting discussions on what 'my equity' is worth…" (Fieldfisher, 2015).

The Fieldfisher arguments do have a point in arguing against the US ESOP which has share-based ICAs that are annually updated with mandatory "market valuations" which, in effect, impute the profits earned by future members back to the shares indirectly owned by current members. But, here again, this is not an argument for collective ownership, but an argument for member/

[8] This is in accord with technical valuation results (Ellerman, 2025) which show that conventional "market valuations" treat the profits earned by *future* workers ("goodwill") as if they were owned by the current owners. This is incorrect when the future workers are partners in a partnership or members in a worker cooperative or Co-op-ESOP. The future members/partners are not the employees of the current members/partners, so the profits the future member/partners earn should not be discounted back to the valuation of shares of current member/partners in a conventional "market valuation". The value recorded in the ICAs is based on current net asset value, not future "goodwill".

partnership capital accounts based on the "profits over the time he or she was a partner", not on the profits earned by future member/partners.

Of course, EOTs have cash bonuses (when available) which play a role corresponding to the drawings (*mutatis mutandis*) in the legal partnership. But cash bonuses depend on the availability of cash which may not be available due to investment demands for new structures or equipment or for paying off debts. In the partner capital accounts, those retained earnings are recorded as each partner's share of the profits minus the drawings. But in an EOT, there is no such record of *a share of profits minus bonuses* since there are no individual capital accounts in the common ownership structure in the first place (see the first-cohort problem discussed below).

2.5 Partner/member capital accounts in a partnership and in an EOT

The following is an illustration of a partner capital account assuming no initial capital contribution, i.e., "naked in". In each year, the partner's profit share minus drawings is the partner's share in the *retained* earnings of the partnership for that year.

Table 2. Partner capital account

Debits	**Credits**
Accumulated drawings	Accumulated profits shares
	Balance = Accumulated profit shares minus accumulated drawings = Accumulated retained earnings

Source: Author's own elaboration.

In spite of the obvious differences between a legal partnership and a Co-op-ESOP (e.g., all employees are member/partners and one-person/one-vote), *the value-based ICAs in a Co-op-ESOP nevertheless operate in the same way as the partner capital accounts*. Thus, there should be no objective reason why lawyers advocating EOTs should not understand what is missing in EOTs, i.e., *member/partner capital accounts to record each member's share of the retained earnings*.

The following is the hypothetical or implicit capital account for an employee-member of an EOT.

Table 3. Implicit member capital account in an EOT

Debits	**Credits**
Accumulated drawings (bonuses)	Implicit accumulated profit shares
	Balance = Implicit accumulated profit shares minus accumulated drawings (bonuses) = Implicit accumulated retained earnings

Source: Author's own elaboration.

In spite of the "naked out" language, an exiting partner in a partnership (or exiting member in a Mondragon cooperative or Co-op-ESOP) is paid out the last balance in their account which is their accumulated retained earnings prior to their exit. Thus, the partner gets, over their time in the partnership, the accumulated drawings plus the accumulated retained earnings of the partner, and similarly with the ICAs in cooperatives or Co-op-ESOPs.

In an EOT, the employee-member gets the accumulated drawings in the form of the cash bonuses, and that is all, since there are no member capital accounts or ICAs for the members to record their share of the retained earnings. They do not recoup their share of the retained earnings which are implicitly "donated" to common or social ownership—unless the EOT is sold out (see the first-cohort problem below).

2.6 A digression on valuation issues

In the literature of financial economics, two Nobel-prize-winning authors, Merton Miller and Franco Modigliani (1961) gave the idealized but definitive arguments for four equivalent formulas to value corporate shares. But there is a fifth proven equivalent formula (Ellerman, 1982: Chap. 12; 2021b: Chap. 3; 2025; 2026b) which shows that their share valuations can be parsed as the economic value of the identifiable net assets of the company plus the present discounted value of all future pure profits. The value of the identifiable assets of the firm minus the value of the liabilities is the *net asset value* on the balance sheet and the discounted value of future pure profits is called "goodwill" so the Miller-Modigliani value can be parsed as:

Share value = Net asset value + Goodwill

In the generally accepted accounting standards of most countries, it is not allowed to list "goodwill" as an asset of the company. There is a good reason for this, not because future profits are uncertain, but because future profits are based on the contractual decisions of other parties such as customers, suppliers, and employees. The company has no present property rights to enforce those decisions to give the assumed future pure profits.

Practicing valuators of corporate shares use various cookbook formulas instead of the highly mathematical and idealized formulas of Miller and Modigliani. But if those formulas use estimated future cash-flows or profits, then they go beyond the net asset value on the balance sheet of a firm to include some estimate of goodwill.

One of the conceptual flaws in the US ESOP is the requirement, after the original purchase of shares, of annual valuations by those conventional methods. This requirement is flawed not only because it includes some notion of "goodwill" but also because in an employee-owned company, the future profits should accrue to the future members who produce them. Those future profits should not be included in the price of present employee shares—as if future workers had to buy the right to the net fruits of their labor from the present employees. No annual valuations are needed in the Mondragon cooperatives or in a Co-op-ESOP since the capital accounts are adjusted annually to register

the changes in the net asset value (also called "book value") which is a known balance sheet value.

That is why the Fieldfisher recommendation of the conventional "naked in, naked out" legal partnerships with partner capital accounts (as opposed to a share-based system) is correct. The partner capital accounts are updated each year, just like the Mondragon capital accounts or the value-denominated ICAs in a Co-op-ESOP, so their sum is equal to the net asset value on the balance sheet. No annual valuations are needed in a partnership.

2.7 The first-cohort problem: EOTs as mule firms

In a partnership with partner capital accounts, the partners eventually recoup their share of the retained earnings (share of earnings recorded in the partner accounts minus drawings) when their capital accounts are eventually paid out. But since the member capital accounts are left out of the EOT structure, the member/beneficiaries do not recoup their share of the *retained* earnings. This is particularly evident when the EOT is paying out its net earnings to buy the seller's shares or to pay off the loan to purchase the shares.

> While these [bonus] payments are still subject to NICs [National Insurance Contributions], they provide a real, material benefit to the employees of an EOT company. The company must still generate sufficient cash flow to pay the bonuses and they may not be paid up to the full level, if at all, for the first several years of EOT ownership, as the company may need to dedicate its excess cash flow to repaying the debt used to finance the transaction. (Karch, 2018: 10)

Thus, the first-cohort of employees in the EOT will have their would-be bonuses kept as retained earnings to pay off the acquisition debt. They are building up an "implicit equity" in the company which they can only recoup by a selling out the EOT. This pressure to sell out the EOT to recoup those retained earnings means that the EOT (without member capital accounts to record their share of the retained earnings) is a "mule firm", an employee-owned firm with a tendency not to reproduce itself as an employee-owned firm.

This analysis of the "first-cohort problem" for EOTs was even developed by one of the original practitioners of setting up EOTs, Nigel Mason, as the head of the RM2 firm.

> A threat to the long term future of EOTs lies embedded in the way they are currently structured. In the current set up, employees have no right of access to the equity value locked up in the trust. So a successful EOT business could face pressure to accept a takeover offer so that all or some of the equity value trapped in the trust can be distributed to the employee beneficiaries. The dilemma for EOT companies is that holding all equity collectively in trust is good for long term, stable governance; but bad in that employees have no right to a share in potentially rising capital values. (Mason, 2019: 12)

Mason even went beyond the theoretical critique of the first-cohort problem and calculated the average implicit ICA balance (see the previous example of a member's implicit capital account) that would have accrued to the employees in the twenty EOTs that his company RM2 had implemented at that time.

> As an illustration of the scale of value in EOTs, in the twenty EOT transactions advised on to date by RM2, the equity value per employee will be GBP 175,000 once vendor loans have been repaid, assuming (very pessimistically) no appreciation in the value of the company in the meantime. One can imagine some employee beneficiaries questioning why such value should remain inaccessible to them indefinitely. (Ibid.:12)

Nigel Mason's proposed solution was to have some individual capital accounts as an option in an EOT. He reasoned in terms of share-based accounts but value-based and denominated ICAs, as in the usual legal partnership or in the Co-op-ESOP model, would be better in the context to avoid the usual problems of needing costly annual valuations or having "goodwill" incorporated in the share valuations.

3. Governance issues

3.1 What's wrong with democracy?

The central claim in this section is that a person's inalienable right to self-determination should be recognized in the communities of work just as it is recognized in the broader political communities (Dahl, 1985; Ellerman, 2016; 2021a). The trust structure subverts that claim. Trusts are usually set up for minors who inherit assets or for senile or demented people who cannot manage their own affairs. Neither case applies to the trusts in the UK EOTs or the US ESOPs.

It is remarkable how lawyers, economists, political scientists, and other social commentators can "forget" about the idea of democracy in the workplace in the never-ending discussions about corporate governance. There is no parallel debate about municipal governance in the political democracies so why is the question of governance of most adults in half their waking hours even debated? The issues of war and peace, that can determine the fate of humankind, can be dealt with by political democracies, but the somewhat more mundane issues of corporate governance somehow cannot be entrusted to workplace democracy? Is it a matter of professional elites always coming up with smart and high-minded ideas why self-government cannot be entrusted to ordinary people?

3.2 Democratic versus steward/trustee governance

The governance issue for alternative firms centers on the conflict between democratic employee ownership and the tradition variously described as trustee-ownership, foundation ownership, or steward ownership or the like.

It is an old debate in political theory between political democracy and the form of government by the "Great & Good" as in the Roman Senate.

> Like the Romans, responsibility is passed from one generation of stewards to the next based on their skills and values. Ownership in these organization is viewed as a responsibility. The stewards of a company control the "steering wheel"—the voting rights—of the company. (Purpose Foundation, n.d.: 7)

Applying people's inalienable rights to self-determination to the workplace gives the notion of workplace democracy in a democratic firm (Dahl, 1985; Ellerman, 2021a), not governance by "trustees" with the workers only as "beneficiaries" to the trustee/steward ownership. This old debate has come to a head in the controversy over the EOTs which are clearly in the trustee-ownership tradition of John Lewis Partnership and Scott Bader Commonwealth in the UK. Prior to the EOT 2014 legislation, these trustee-ownership companies were largely or entirely good-hearted gifts to a charitable trust which thus held the shares of the underlying operating company. In Europe, Zeiss, Bosch, Novo Nordisk, Fabre, and Carlsberg are examples in this tradition.

3.3 How EOTs differ from older trusteeship companies

The innovation in the 21st century EOTs have introduced into the 19th and 20th century tradition of common ownership is using the ESOP buyout mechanism to establish trustee-ownership *without it having to be a gift*. That innovation and the sizable tax benefits which have been attached to EOT's by UK law have led to the significant statistical uptake in the UK (Pendleton and Robinson, 2025)[9]. Trustee-ownership is explicitly neither direct nor indirect employee *ownership* but the employees have a special position as beneficiaries of profit-sharing and tax-favored bonuses. The EOTs are a tax-benefited way to convert to trustee/common ownership using the ESOP buyout mechanism (i.e., the company itself pays out the exiting owners) with a tax-favored employee profit-sharing scheme. The employees have neither a recoupable claim on retained earnings (ICAs) nor governance rights in the basic model of trust-ownership although some more democratic provisions can be written into the trust documents.

3.4 Trusts are for untrustworthy beneficiaries

It is helpful to remember that the whole idea of a legal trust is based on certain people not being trustworthy, e.g., minors or senile people, so their affairs/property may be managed by a trust. At least in the case of trusts set up to manage the inherited property of minors, the young people eventually become of age and then the trust is dissolved and they manage their own property. Both the US ESOPs, US EOTs (Michael, 2024), and the UK EOTs have trusts where the beneficiaries never grow up to manage their own affairs. The treatment of the employees as minors is permanent.

3.5 Low-brow and high-brow rationales for trust governance

Broadly speaking, it might be said that there are different reasons for the trusts in the US and UK examples. In the American case, the ESOP was essentially invented by Louis Kelso. The

[9] This has changed in 2026 due to the UK EOT capital gain exemption being reduced from 100% to 50%.

managing partner of Kelso & Co., Joseph Schuchert, was quite explicit.

> Our programs are the antithesis of workplace democracy... We've been criticized for not giving workers more participation, but we believe workers are natural shareholders, not natural managers. (Quoted in Hiltzik, 1985: 54)

According to Hoerr and Hammonds (1988), Kelso felt that employee voice in corporate decisions would result in "amateur management" (quoted in Murphy, 2005: 659). In general, the low-brow reason for trustee-governance even in employee-owned firms is what, in impolite society, is called "class prejudice".

In the UK case, that structure seems to be motivated by a high-minded notion of trusteeship, not simply by low-brow class prejudice. If employee-owners had actual control over the company, then they might be motivated by self-interest whereas a trusteeship could lift its sight and pursue lofty "social" goals under the leadership of steward-elites.

> What Gandhi's theory of trusteeship encourages is to get to the position that a company is not employee owned unless it also serves society and the environment, locally and globally, as well as its shareholders, its employees (call this EO with added Gandhian purpose or "EO Version 3"). (Nuttall, 2022: 138; see also: Nuttall, 2020)

3.6 Trustee-ownership versus employee-ownership in EOTs

In spite of the language of employee ownership in the name "Employee Ownership Trust", that label was rarely applied, if at all, to older common-ownership or trustee-owned companies. Prior to the 2014 EOT legislation, John Lewis, Scott Bader, Zeiss, etc. were *not* called "employee owned" but were the flagships of "common ownership", "steward ownership", "purpose ownership" (Purpose Stiftung, 2025), or "foundation ownership". One friendly analysis of the non-employee ownership motivation behind common, commonwealth, trustee, foundation, or steward ownership can be found in Robert Oakeshott's book on Scott Bader (Oakeshott, 2001: Chap. 2).

That non-employee ownership motivation consists of a high-minded mixture of upper class disdain for "worker" ownership, Gandhian trusteeship ideas (Gandhi, 1960; Goyder, 1979; Nuttall, 2022), social Christianity ideas, appeals to social or stakeholder governance often dressed up in the language of a higher "purpose" embodied in the Great & Good who by nature or up-bringing are free of baser motives. And, as in the standard argument for stakeholder corporate governance, by being responsible to further the interests of all stakeholders ("society and the environment, locally and globally"), the steward/trustee management would be accountable to and removable by none. What better social disguise for governance by a self-perpetuating elite than higher social goals; "current stewards should choose future stewards based on these principles" (Sanders and Neitzel, 2025:11). That is a high-minded version of a governance system where the old rulers choose the new rulers which would usually be considered a form of oligarchy. But in steward ownership circles, that is called:

> self-determination: The company cannot become an object of speculation but remains self-determined and independent in the long term. The steering wheel always remains in the hands of people who are connected to the company and its mission. (Purpose Stiftung, 2025: 12)

3.7 Another issue: outside equity plans for managers

This paper focuses on the fallacies in the arguments given by advocates, particularly lawyers, in favor of EOTs as opposed to the US ESOPs or the Slovene Co-op-ESOP model in Europe. Another problem in EOTs and US ESOPs that might just be mentioned is allowing managers to have their own outside individual virtual equity and stock options plans. These individual equity plans are particularly hypocritical in EOTs where ordinary employees have only common ownership. In both cases of UK EOTs and US ESOPs, such outside plans for managers increase the pressure, sooner or later, for sellouts—and, in both cases, the current employees and managers get the net proceeds of a sellout after the outstanding liabilities have been met.

3.8 Hansmann's argument that all firms are cooperatives

Henry Hansmann (2013) has argued that all firms are cooperatives since a conventional corporation could be seen as a capital-suppliers cooperative in parallel with, say, a labor-suppliers or worker cooperative. Since Hansmann's framework is well-known and has different implications for capital structure and particularly for governance issues, we need to give an analysis of it.

To understand the problem with his argument, we need to step back and review the difference between two fundamentally different types of rights.

1. A *personal right* is a right that a person needs to qualify for—like qualifying to be a citizen in a state or to be a voting resident in a municipality. By its nature, it is not the sort of thing that may be bought or sold. If a person qualifies for a personal right, then they don't need to buy it. A person may not sell the right since the buyer may not have the qualifying role, and if they did, they would not need to buy the right. Hence a personal right is not the sort of thing that may be alienated; it cannot be transferred, bequeathed, marketized, or commoditized.
2. A *property right* is a right that may be bought and sold, bequeathed, transferred, or gifted to another person.

The membership rights (essentially the governance and profit rights) in any type of cooperative are personal rights based on the functional role of patronage, e.g., consuming in a consumer cooperative, working in a worker cooperative, living in housing cooperative, and so forth. As personal rights, those membership rights may not be transferred, bequeathed, or gifted to others. In contrast, the membership rights, i.e., the rights of shareholders, in a conventional corporation are clearly property rights that may be bought and sold, bequeathed, or gifted. There is no qualifying role of patronage. The role of "supplying equity capital" is really a purchase of a property right. And, moreover, one can acquire those property rights without supplying equity capital as when

those rights are purchased on the secondary market or when those rights are bequeathed or gifted. The difference between personal and property rights also shows up in governance. If membership is based on the qualifying role of patronage, there is always one-person/one-vote since there is no such thing as qualifying multiple times. In contrast, a shareholder has as many votes as shares.

If a conventional corporation is not correctly characterized as a "capital-suppliers cooperative", then how is it related to cooperatives? It is very simple. Start with the notion of membership in a cooperative based on patronage and then reduce the patronage role to zero, i.e., eliminate the patronage role. Then the membership rights become free-floating, unattached, and untethered rights that may be freely transferred, bequeathed, or gifted, i.e., the membership rights become property rights.

4. In conclusion: the comparison with the Co-op-ESOP model

The Co-op-ESOP model (e.g., as implemented in pilot projects and then legislated in Slovenia) is essentially a gradual version of the Mondragon-type worker cooperative (Ellerman, Gonza, and Berkopec, 2022; Ellerman and Gonza, 2024; Gonza, Ellerman, and Juri, 2024; Gonza, 2025; Ellerman, 2026c). While Mondragon-type worker cooperatives have typically been start-ups or spin-offs, almost all prospective Co-op-ESOPs will be partial or full conversions of established firms. When the ownership of the underlying company reaches 100% in the "employee ownership cooperative" that serves as the special purpose vehicle to hold the company shares, then it is the functional equivalent of a Mondragon worker cooperative.

One way to understand the European Co-op-ESOP model (including the 100% version) is to compare it to a (limited liability) partnership. One difference is that all who work in the underlying company would be members/partners in the cooperative and, as a cooperative, it would be one-member/one-vote. The *major similarity* is that both a partnership and a Co-op-ESOP both have individual capital accounts for the partners/members. That similarity makes it all the more remarkable when lawyers, who work in a legal partnership with partner capital accounts or are well aware of the structure of the partner capital accounts, nevertheless advocate the current legal form of the "employee ownership trust" that has a common ownership structure and is thus devoid of the capital accounts for the workers/partners. This paper is devoted to analyzing the problems in their reasoning and arguing instead for the European Co-op-ESOP model as essentially an example of a worker partnership with both partner capital accounts and partner governance—instead of neither in the current EOT.

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