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Unconventional Enforcement: Clarence Venner's Shareholder Suits against the Board and the Problem of Extortionate Litigation, 1900-1920

American regulation in the late 19th and early 20th centuries has often been characterized as weak or underdeveloped, especially as compared to contemporaneous regulatory regimes of European countries. Recent historical studies, however, have emphasized the importance of regulation in shaping markets, business culture, and entrepreneurship. Yet the older historical narrative persists. This paper integrates these competing narratives by looking at the ways private parties acted as public regulators through litigation. It argues that public regulations relied on private parties to enforce and advance certain regulatory policies. This essay focuses on the private enforcement of corporate law and equity jurisprudence by examining the career of the serial litigant Clarence Venner. Venner became infamous in the early twentieth century for purchasing nominal shares of corporate stock in order to sue the Board of Directors for a violation of corporate or antitrust laws. Although reviled by the corporate bar for bringing "extortionate suits" that could delay or destroy legitimate business deals, he also played an important role in exposing both corporate malfeasance and the inner workings of crony capitalism. Additionally, his suits helped shape corporate behavior and judge-made law more generally. Striking the right balance between shareholder rights and corporate autonomy to make business decisions remains a contentious legal and political issue. This essay seeks to recover how one important, yet overlooked, litigant contributed to that ongoing debate and thereby, influenced the development of modern American capitalism.
