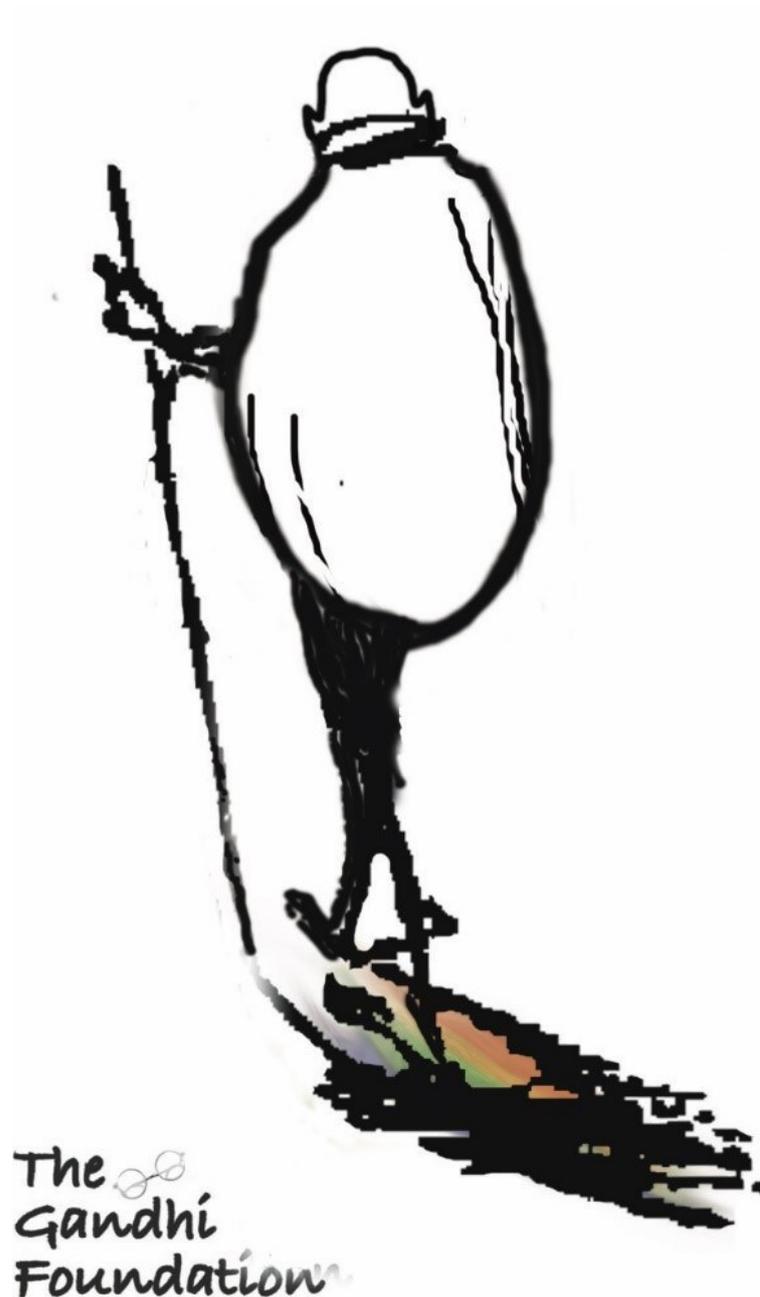


The Gandhi Foundation Annual Lecture 2020

EO v3.0 - Employee ownership with added Gandhian purpose

Graeme Nuttall OBE, Partner, Fieldfisher



The Gandhi Foundation

The Gandhi Foundation is the UK's leading Gandhi organisation. It is a registered charity (no. 292629) whose founding president was Lord Richard Attenborough. The Gandhi Foundation exists to spread knowledge and understanding of the life and work of Mohandas K. Gandhi (1869-1948). It aims to explain and demonstrate the continuing relevance of Gandhi's insights and actions today.¹

The Patrons of The Gandhi Foundation are Lord Bhikhu Parekh, Lord Navnit Dholakia OBE, Sir Mark Tully OBE KBE, Godric Bader, Denis Halliday, Eirwen Harbottle, Martin Polden OBE, Diana Schumacher OBE and Baroness Sandip Verma.²

The Gandhi Foundation's annual lecture is one of its main activities. There is a distinguished list of past lecturers including the Dalai Lama and a former Archbishop of Canterbury.³



1. The Gandhi Foundation, 'Aims' <<https://gandhifoundation.org/aims/>> accessed 13 August 2020.
2. The Gandhi Foundation, 'Fieldfisher's Graeme Nuttall OBE to deliver The Gandhi Foundation Annual Lecture 2020' (10 July 2020) < <https://gandhifoundation.org/2020/07/10/fieldfishers-graeme-nuttall-obe-to-deliver-the-gandhi-foundation-annual-lecture-2020/>> accessed 13 August 2020.
3. The Gandhi Foundation, 'Activities' <<https://gandhifoundation.org/activities/>> accessed 13 August 2020.

Preface



On 28 July 2020 Fieldfisher partner Graeme Nuttall OBE delivered The Gandhi Foundation annual lecture 2020. Graeme Nuttall is a leading expert on the employee ownership business model. In his lecture Graeme explored how Gandhi's theory of trusteeship can help us redefine employee ownership.

Graeme revisited ideas left open from his influential Nuttall Review of Employee Ownership as to how best to define employee ownership. Employee ownership is a great succession solution and provides good work but should employee ownership serve a broader purpose? In particular, Graeme considered how we can redefine employee ownership, so it better meets the needs of society and the environment. His lecture was immediately applauded by leading employee ownership sector bodies in the UK and internationally, who all supported his key conclusion.

This annotated version of Graeme Nuttall's lecture 'EO v3.0 - Employee ownership with added Gandhian purpose' was published on 2 October 2020, the 151st birthday of Gandhi.

The lecture is also available on You Tube at <https://tinyurl.com/GandhiEOV3>.

Fieldfisher

2 October 2020

EO v3.0 - Employee ownership with added Gandhian purpose

Introduction

I am honoured to give the 2020 Gandhi Foundation annual lecture. I spoke at a conference to commemorate the 150th anniversary of the birth of M K Gandhi, Mahatma Gandhi.⁴ I heard how Gandhi believed community is the most effective basis for our development. In response I mentioned how employee owned companies often make explicit commitments to benefit their local communities. The trustees of the Gandhi Foundation suggested I look further at this synergy between Gandhi's ideas and employee ownership. Since accepting this kind invitation, the topic I agreed to explore has become centre stage.

The COVID-19 pandemic has put corporate purpose firmly in the spotlight. This unprecedented interruption to normal business has shown how companies are much more than vehicles for making profit. Even businesses under financial stress have found ways to support their employees. They have also shown they are pillars of our communities: providing vital goods and services and enabling employees to help their communities in numerous ways. Fast-learned new working methods may have shown us ways to tackle environmental problems.

How can we take the best of this behaviour and ensure companies operate like this at all times?

I will explain how the employee ownership business model, and, in particular, how an employee ownership trust (or EOT) owned company could be the ideal model to promote good corporate citizenship in the long term and by doing so help address concerns that have long vexed policymakers before COVID-19.

I will explore how Gandhi's thought and life and, in particular, his theory of trusteeship encourages us to change how we define employee ownership, so it better meets the needs of society and the environment - *employee ownership with added Gandhian purpose*.

Racism and contagion

Mahatma Gandhi died over 70 years ago. It's remarkable how experiences in his life remain relevant today. He launched a campaign to improve the lives of Indians in the Transvaal and the Orange Free State, after personal experience of racial discrimination.⁵ On a return voyage to South Africa he was kept in quarantine because there was plague in Bombay when he set sail.⁶ Gandhi had other experiences of plague. When pneumonic plague broke out near Johannesburg, he and his clerks nursed terminally ill Indian mine workers in a vacant property they had commandeered. He was involved in moving an Indian township's tenants to a camp site, so the township could be set on fire to rid it of the plague. Gandhi convinced his bank manager to accept the savings of these people, savings usually kept as cash. The unearthed savings had to be disinfected before the bank clerks handled the money.⁷

Racism and contagion, how topical these experiences are. One thing we learn from these experiences is how practical Gandhi could be in solving problems.

Truth

Another aspect to what Gandhi called his experiments with truth is also topical. Truth was the sovereign principle for Gandhi. He was heavily influenced by a Hindu scripture, the Gita. Also his training as a barrister had its part to play. When trying to make a particular decision he observed that:

"Snell's discussion of the maxims of English law came to my memory. I understood more clearly in the light of the Gita teaching the implication of the word "trustee""⁸

4. Graeme Nuttall, 'The Employee Ownership Trust as a Modern Economic Model' (*Fieldfisher*, 27 September 2019) <<https://www.fieldfisher.com/en/services/tax-structuring/tax-deductions-blog/the-employee-ownership-trust-as-a-modern-economic>> accessed 14 August 2020.
5. Mohandas K Gandhi, *An Autobiography or The Story of My Experiments with Truth* (first published 1927, Mahadev Desai tr, Navajivan 2009) 116-8.
6. Ibid 173-4.
7. Ibid 266-73.
8. Ibid 244.

It's indicative of how important truth was to him that his first public speech was on "observing truthfulness in business". This is something which is part of his theory of trusteeship. Gandhi's insights on trusteeship can provide us with encouragement, dare I say, enlightenment, as we consider the future of the corporation, and in particular the employee owned corporation, in these difficult economic times, times in which pre-existing fragilities have been exacerbated by the COVID-19 global pandemic.

Gandhi was critical of capitalism, as he was of communism. He isn't the obvious starting point for providing a better way to run an ordinary trading company. However those familiar with employee ownership and especially the employee ownership trust will I hope share my interest in what we can learn from Mahatma Gandhi and his theory of trusteeship.

The theory of trusteeship

I've mentioned how practical Gandhi could be. It is, however, accepted that his theory of trusteeship was never fully formed and, in particular, he hadn't formulated ideas about its practical application.¹⁰ So trusteeship is very much a theory. As Lord Parekh explains in his study of Gandhi's political philosophy, Gandhi's:

"theory of trusteeship is an economic extension of his philosophical concept of man as a trustee of all he had... as [Gandhi] imagined it, every industrialist was to look upon his industry not as his property but as a social trust".¹¹

Gandhi wrote that:

"the capitalist [is] to regard himself as a trustee for those on whom he depends for the making, the retention and the increase of his capital".¹²

And as to the wealthy, each wealthy person:

"must know that all that wealth does not belong to me; what belongs to me is the right to an honourable livelihood, no better than that enjoyed by millions of others. The rest of my wealth belongs to the community and must be used for the welfare of the community".¹³

Although it was primarily for entrepreneurs to uphold trusteeship, workers too had responsibilities. Gandhi said to workers:

"Each of you should consider himself to be a trustee for the welfare of the rest of his fellow labourers ...".¹⁴

And that

"you should treat the business of your employers as if it were your own business and give to it your honest and undivided attention".¹⁵

Let's pull these ideas together. George Goyder CBE writing in 1979 summed up the theory of trusteeship in a way that would hold its own at any contemporary conference on corporate purpose:

"the [Gandhian] principle of trusteeship expresses the inherent responsibility of business enterprise to its consumers, workers, shareholders, suppliers, and the community and the mutual responsibilities of these to one another".¹⁶

9. Ibid 116.

10. George Goyder (ed), *Trusteeship: A Possible Solution to Problems of Power, Exploitation, Conflict and Alienation* (Leslie Sawhny, 1979) <<https://www.mkgandhi.org/ebks/trusteeship1.pdf>> accessed 15 August 2020; Siby K Joseph, Baharat Mahodaya and Ram Chandra Pradhan (eds), *Trusteeship: A Path Less Travelled* (Institute of Gandhian Studies, 2016).

11. Bhikhu Parekh, *Gandhi's Political Philosophy: A Critical Examination* (Palgrave Macmillan, 1989) 138.

12. Mohandas K Gandhi, *Economic and Industrial Life and Relations*, Volume 1 (V B Kerr ed, Navajivan, 1957) 45.

13. Mohandas K Gandhi, *Trusteeship* (Ravindra Kelkar ed, Navajivan, 1960) 4 citing Harijan 3 June 1939, 145 <<https://www.mkgandhi.org/ebks/trusteeship.pdf>> accessed 16 August 2020.

14. Mohandas K Gandhi, *Economic and Industrial Life and Relations*, Volume 3 (V B Kerr ed, 2nd edn, Navajivan, 1957) 101.

15. Ibid 101-2.

16. *Goyder* (n 10), 10.

Gandhi's later iterations of his trusteeship theory are radical. One is set out in a document prepared in draft by Professor Dantwala and others, to which Gandhi made amendments.¹⁷ It envisages a possibly state regulated trusteeship, with limited private ownership of property and limits on how much the higher paid earn, under which "an individual will not be free to hold or use his wealth for selfish satisfaction or in disregard of the interests of society".¹⁸

Practical expression

There have been periodic attempts to give practical expression to Gandhi's theory of trusteeship, mostly involving scaling back from its most radical form, to focus on businesses and how they might adopt trusteeship. These attempts all resonate with debates today around corporations needing a broader purpose beyond profit making.

A 1965 conference in Delhi resulted in a declaration that:

"There should be increasing association of workers with the management. One way of doing this is by the sharing of profits and its reinvestment in the company through purchase of the company's shares to be held in trust or by other means which serve to identify the worker with his work and give him an interest in the company..."¹⁹

Again it was emphasized that workers have obligations:

"Likewise, workers should recognise their obligation to do a good day's work for a good day's wage, to co-operate in increasing productivity, to come forward with suggestions and to participate responsibly in the life of the plant community"²⁰

These statements would not be out of place at an annual conference of the American National Center for Employee Ownership or the UK's Employee Ownership Association.

Draft trusteeship laws were promoted in India periodically from 1967 but never enacted.²¹ These Bills proposed the concept of a "Trust corporation" being a company the owners of which have declared themselves to be its trustees in the manner prescribed in the Bill.²²

A 1979 conference to review trusteeship concluded that little of significance had happened since the 1965 declaration.²³ Interestingly the English law concept of an employee trust received little attention. Speakers explained the UK's "common ownership" movement. The John Lewis Partnership was mentioned but the potential for its trust ownership structure to provide a way to make Gandhi's trusteeship work in practice seemed to be missed. There was instead a general acceptance that no model of a responsible enterprise can serve for all. The John Lewis Partnership and the charity owned Scott Bader Group were called "pioneer experiments".²⁴ There were disparate approaches to employee ownership in the UK at this pioneering time. It is understandable how no particular model emerged as a way of putting Gandhi's theory of trusteeship into practice.

Gandhi's aim

Why did Gandhi wish to see these changes in how businesses were owned and operated? Reading again from Lord Parekh's leading work, Gandhi believed capitalism had,

"profoundly dehumanised both workers and capitalists and lowered the level of human existence".²⁵

17. Siby K. Joseph, 'Gandhi's Trusteeship: An Alternative to Capitalist and Socialist Systems' 132 in Joseph (n 10).

18. *Gandhi, Trusteeship* (n 13) 27 citing Harijan 25 October 1952.

19. Prasanta B Mukharji, *Social Responsibilities of Business: Report of the Study Group of the Calcutta Seminar* (Oxford-IBH,1969) 142.

20. *ibid.*

21. Sudhanshu Ranjan, 'Gandhi: Trusteeship and Socialism' 161 in Joseph (n 10).

22. *Joseph* (n 10) app 4.

23. George Goyder, 'Introduction' 3 in *Goyder* (n 10).

24. George Goyder, 'The Responsible Company' 52 in *Goyder* (n 10).

25. *Parekh* (n 11) 135.

His theory of trusteeship was:

"intended to avoid the evils and combine the advantages of capitalism and communism".²⁶

There are some companies in India that practice trusteeship management but most commentators would say Gandhi's theory of trusteeship remains, by and large, a theory. Nevertheless, we can still learn from it.

Employee ownership

If I turn to the employee ownership business model, we have what is demonstrably a tried and tested successful business model. The accounts of the UK's fifty largest employee-owned companies in May 2020 showed combined sales of £20.1bn. Sales were up 4.3% on a like for like basis compared to their previous year's results. They had 178,000 employees and operating profits up 5%.²⁷ Admittedly these statistics include a very large business, the John Lewis Partnership. But what's significant is how employee ownership has taken off among smaller to medium sized enterprises. EO Day 2020 celebrated the best year yet in growing the UK's employee ownership sector. There were over 100 new employee owned companies in the 12 months to June 2020. Companies of all sizes, in numerous sectors and across the UK are now employee owned.²⁸ Employee ownership clearly works. We have moved beyond the era of pioneering experiments.

EOTs

What's made such a difference? It's primarily the EOT. The UK employee ownership sector has grown by over 300% since 2014, when the UK introduced the employee ownership trust.²⁹ Well over 90% of that growth has come from companies adopting the EOT ownership model.³⁰

The 2020 EO Day theme was #EOisThe Answer.³¹ Increasingly employee ownership is the answer. Founders looking for a neat exit, that doesn't involve selling to a competitor and avoids jeopardising a company's ethos can sell to the trustee of an employee ownership trust. The EOT will hold shares permanently on behalf of all the company's employees. The money to buy the company comes from company profits. Once the founders have been paid, profits that would previously have been paid out as dividends can be paid out as all-employee bonuses. The trustee of the EOT can protect the employees' long term interests. Increasingly EO is the answer.

Flexibility of EOTs

It's worth emphasizing the flexibility of the EOT ownership model. I appreciate that anyone familiar with employee ownership will already know much of what follows but for supporters of the Gandhi Foundation I believe it's worthwhile summarising how adaptable the EOT is.

26. ibid 138.

27. Employee Ownership Association 'The Employee Ownership Top 50' 2020 (2020) <<https://employeeownership.co.uk/wp-content/uploads/Employee-Ownership-Top-50-2020.pdf>> accessed 18 August 2020.

28. Andrew Robinson and Nigel Mason, 'How to Build Back Better: Employee Ownership is the Answer' (webinar, Employee Ownership Association, 26 June 2020) <<https://employeeownership.co.uk/events/eo-day-2020/>> accessed 18 August 2020.

29. It can be calculated from a White Rose Employee Ownership Centre (WREOC) survey published in 2019 that there were 142 employee owned companies (as defined in that survey) in the UK by 2013. There were 470 such companies in the equivalent WREOC survey published in June 2020. This is an increase of 328 i.e. an increase of over 300%. Andrew Robinson and Andrew Pendleton *Employee Ownership in Britain: Size and Character* (White Rose Employee Ownership Centre, 13 June 2019) <<https://employeeownership.co.uk/wp-content/uploads/White-Rose-Centre-for-employee-ownership-survey-2019-report.pdf>> accessed 18 August 2020; Robinson (n28).

30. According to the Employee Ownership Association 2020 EOT survey, containing data up to March 2020, there were 314 new operational EOTs (that is excluding pre-existing trusts that are deemed EOTs under the Finance Act 2014). So, of the 328 new employee owned companies after 2013, it would seem that over 90% have a new EOT. A few pre-2014 employee owned companies have changed their ownership model to EOT ownership but new EOTs are predominantly in companies that have become employee owned from 2014. (Employee Ownership Association 'EOT Survey 2020 Results' (webinar, Employee Ownership Association, 2020) <<https://secure.toolkitfiles.co.uk/clients/32555/sitedata/files/EOT-Survey-2020-Results.pdf>> accessed 18 August 2020.

31. Employee Ownership Association 'EO Day 2020: #EOisThe Answer' (2020) <<https://employeeownership.co.uk/events/eo-day-2020/>> accessed 18 August 2020.

EOT ownership can apply to companies whatever the size of the workforce. Most companies converting to this model have between 10 and 49 employees but much larger and smaller companies have also adopted this model successfully.³² There are no complexities from buying and selling individual employee shareholdings with an EOT. The collective holding of shares by a trustee company works whatever the size and type of the employed workforce. EOT ownership also works, pretty much, whatever the type of business undertaken.

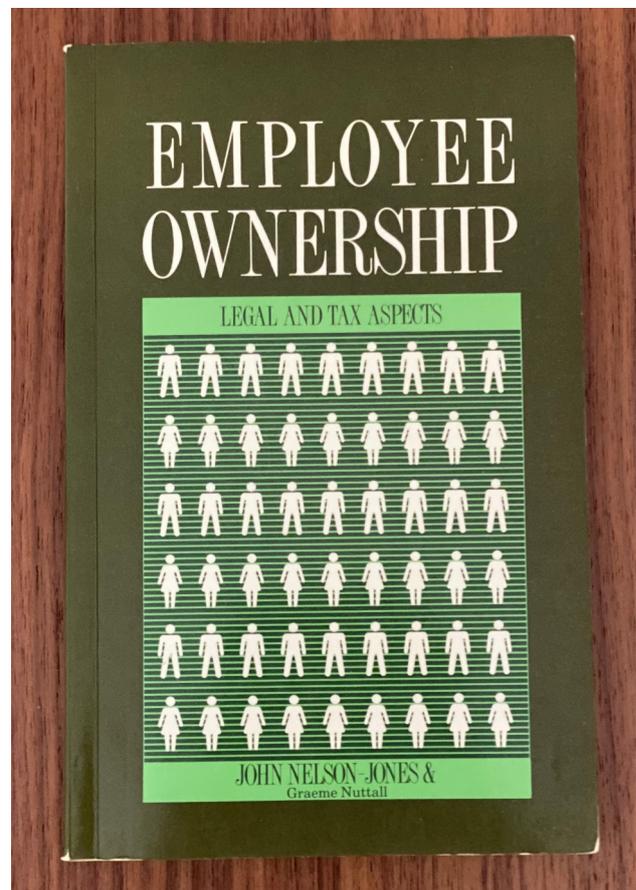
Ease of operation of EOTs

A properly established trustee company has few running costs or administrative burdens. The process of moving to EOT ownership needs skilful experienced advice but these one off costs are soon forgotten. The main reason why the structure is elegant is that it is dependent for success on a readily available resource: a company's employees. Best practice is to have a paritarian board: one comprising representatives of senior management and the same number representing other employees. In this way there is parity between the interests of the two main stakeholder groups. Each group can appoint and remove "its" trustee directors. Also there is usually an independent chair. Day to day management remains with the trading company's board of directors, who may include directors specifically selected or elected to represent employees. There is also likely to be an employees' council that interacts regularly with the trading company board. In this way the trustee board is freed up to act as custodian or guardian of the company's employee ownership ethos, in accordance with its fiduciary duties under the EOT's trust deed. Overall, there are checks and balances to try to prevent mismanagement and to promote the success of the business for the benefit of its employees.

EO v1.0

How can Mahatma Gandhi's ideas help develop further the successful employee ownership business model?

Employee ownership is successful but what exactly do we mean by "employee ownership"?



In 1987 I helped write the first book on the legal and tax aspects of employee ownership.³³ There wasn't an accepted definition. I concentrated on who owned the shares in a company. This is what I call "EO version 1". The book identified three main forms of employee ownership:

- individual employees owning shares personally in their company;
- a trustee owning shares in an employee trust on behalf of all employees, as a class of beneficiaries of that trust; and
- a hybrid model that mixed the two.³⁴

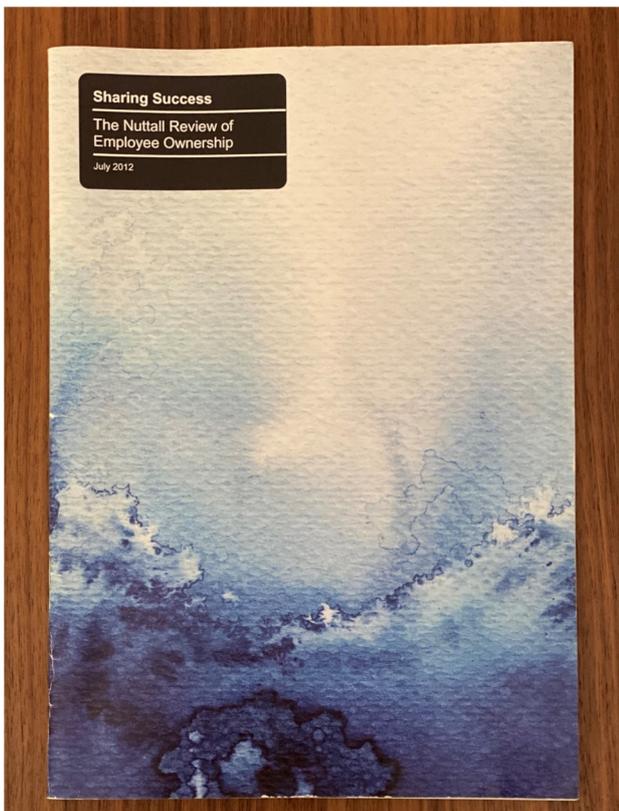
This definition worked well when describing the legal mechanics and tax consequences of moving from one set of shareholders to another. This definition fitted in with

32. *ibid* (n 28) 9.

33. John Nelson-Jones and Graeme Nuttall *Employee Ownership: Legal and Tax Aspects* (Fourmat, 1987).

34. *ibid* 124.

the times and the lobbying emphasis of the Employee Ownership Association (or Job Ownership Limited as it was then called). By 1987 the UK had a useful array of tax advantaged share and share option plans, which allowed executives and other employees to acquire shares personally in their company. Lobbying to promote employee ownership was part and parcel of promoting all types of employee share ownership including executive share plans. Although tax changes were achieved, to promote individual employee share ownership, none of these acted as the trigger to large scale growth of employee ownership.



Nuttall Review

In 2012 the Coalition Government decided to review why employee ownership had not taken off in the UK private sector.³⁵ The initial announcement of this review wasn't clearly understood by the Press. There was an assumption that the Government was simply going to

look again at employee share plans. It was obvious that employee ownership needed a clearer definition.

EO v2.0

The Nuttall Review of Employee Ownership³⁶ defined employee ownership in a significantly different way, call this EO version 2. This started with EO version 1, by including trustee ownership as well as individual employee ownership and hybrid models. But importantly the definition went beyond looking at who owned shares to requiring that the employees' shareholding underpinned genuine employee engagement. It also made it clear that share ownership by a few employees wasn't enough to count: it had to be all employees. And it wasn't enough that all employees owned an insignificant percentage of a company's shares. The shareholding had to be significant, so that it could underpin meaningful employee engagement.³⁷

This definition helped move employee ownership from being seen as an add-on to the standard business model to a business model in its own right. This emphasis also helped move EO from being promoted by reference to the tax system to being seen as something that had strong commercial merits. It was good for business success and happier staff.

As a result of the findings of the Nuttall Review the employee ownership trust was introduced in the Finance Act 2014. My review had emphasised the benefits of the trust model of employee ownership and I argued for a level playing field. Why should there only be tax advantages for individual employee ownership? After discussion with HM Treasury two key tax advantages were introduced:

- one that provides a complete exemption from capital gains tax for individuals selling a controlling shareholding to the trustee of an employee ownership trust or EOT; and
- another to make cash bonuses to all the employees of an EOT controlled company income tax free, up to £3,600 per employee per tax year.³⁸

35. 'Graeme Nuttall appointed Government adviser on employee ownership' (Press Release, Department for Business, Innovation and Skills, 8 February 2012).

36. Graeme Nuttall, *Sharing Success: The Nuttall Review of Employee Ownership* (Department for Business, Innovation & Skills, 2012).

37. *ibid* 74-5.

38. Graeme Nuttall 'Employee-Ownership Trusts: Tried and Tested' (Tax Adviser, October 2014) 43.

Sellers to an EOT usually have to wait for several years to be paid in full. The capital gains tax exemption is a vital part of making a sale to an EOT work in practice, as well as acting as a nudge to professional advisers to talk about employee ownership. And the income tax exemption means there's a tangible benefit to employees from this ownership model. As far as I'm aware tax hasn't distorted decision making.

I expected there to be an increase in the use of the trust model and thought that other models based on employees holding shares directly would also continue to be popular. But the EOT has turned into the dominant type of UK employee ownership.

In 2012 EO version 2 changed the emphasis towards the main trigger of EO's success: genuine employee engagement.

Is it timely, in 2020, to adopt an expanded definition of employee ownership?

EO v3.0

What Gandhi encourages us to consider is a new definition of employee ownership, a bolder definition that defines EO with expanded corporate purpose, so that employee-owned companies are synonymous with good corporate citizenship.

As I've explained, a company isn't employee-owned if all its shares are held by a few senior managers. And even if all employees own a few shares in a company that won't create employee ownership. Employees must have genuine voice individually and as a group in how the business is run and a share in its profits. Why not get to the point of saying a company isn't employee owned unless it also serves society and the environment, locally and globally, as well as its shareholders, its employees?

Unfinished business

This is unfinished business from the Nuttall Review. I did consider requiring employee-owned companies to have a clear corporate mission and also to have a limit on pay

differentials. I consulted on these ideas. I was impressed by how many employee-owned companies had powerful mission statements and how some had express limitations to prevent senior management being paid more than a reasonable multiple of average pay. It seems uncanny at first glance that in Gandhi's draft trusteeship formula we find references to:

- fixing both "a decent minimum living wage" and "the maximum income that would be allowed any person in society", and
- also "the character of production will be determined by social necessity and not by personal whim or greed".³⁹

But it's not so surprising when one of the UK examples of employee ownership I had in mind in 2012 was The Scott Bader Commonwealth. This was established by Ernst Bader as an express attempt to realise Gandhi's trusteeship principles.⁴⁰ Indeed some in India refer to The Scott Bader Commonwealth as an example of how to adopt trusteeship principles.

Changed times

What has changed since the Nuttall Review in 2012? That's an easy question to answer isn't it? EO version 3 would be a new definition fit for the age in which we now live: one in which we have no choice but to tackle inequality, sustainability and climate change.

Much has changed and changed quickly.

Nationally and internationally there is a wide-ranging set of initiatives to tackle societal and environmental problems, encompassing corporate social responsibility, environmental, social and governance (or ESG) criteria, purpose beyond profit and the like.⁴¹ There have been well-publicised moves by major organisations that demonstrate a major shift away from shareholder primacy, the idea that a successful company is one that maximises its profits for its shareholders.

39. *Gandhi*, Trusteeship (n 18).

40. Godric Bader 'Trusteeship: The Transforming Ethic' 159, 166 in Anthony Copley and George Paxton (eds), *Gandhi and the Contemporary World* (IBH, 1997).

41. The British Academy provides a timeline of developments in support of purposeful business from November 2018 to September 2019. The British Academy, *Principles for Purposeful Business: How to Deliver the Framework for the Future of the Corporation* (November 2019), 15.

It helps to mention briefly a couple of these initiatives, to get us thinking about what it might mean in practice for a company to have a positive impact on society and the environment.

Global initiatives

There are global initiatives such as The 2030 Agenda for Sustainable Development, adopted by all United Nations Member States, which has at its heart 17 Sustainable Development Goals, including no poverty, zero hunger and good health and well-being.⁴²

As another example, the United Nations supported Principles for Responsible Investment (or PRI) initiative helps integrate ESG considerations into investment decision-making.⁴³ In relation to environmental issues, PRI highlights climate change as well as water risk, sustainable land use, fracking, methane as a climate pollutant and risks associated with plastics. Social issues highlighted by PRI are human rights and labour standards, employee relations and conflict zones. Governance issues highlighted are tax avoidance, executive pay, corruption, effective director nomination processes and cyber security risks.⁴⁴

National initiatives

There are country specific responses.

In 2014 a change to Indian company law made it mandatory for large private and public sector firms to spend at least 2% of their net profits on corporate social responsibility projects as set out in the law. This change

was entirely in keeping with Gandhi's trusteeship principles. The list of possible projects includes, as examples, promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and other facilities for senior citizens.⁴⁵ By 2019 social impact spending had grown by 100% in the relevant companies.⁴⁶ The majority of spending was through third party implementation agencies, rather than a company's own foundation or direct spending.⁴⁷ Education and health and sanitation projects accounted for the majority of expenditure.⁴⁸

In the UK certain larger companies now have to include a statement, known as a section 172(1) statement, within their Annual Report and Accounts, explaining how directors "have regard" to what are called "enlightened shareholder value" considerations.⁴⁹ These statements set out company specific actions. It is too early to tell what impact this additional accountability is having⁵⁰ and there are suggestions that additional regulation is needed to help ensure that the reporting is done with integrity and meaning.⁵¹

The key issues

Certain key issues recur when trying to define what is needed from corporations:

- to what extent should wider corporate purpose be integral to how a business operates;
- if it is integral how should it rank compared to serving shareholders' interests; and
- to what extent should achieving a wider corporate purpose be compulsory?

42. United Nations General Assembly, A/RES/70/1, 'Transforming our world: the 2030 Agenda for Sustainable Development' (25 September 2015).

43. Principles for Responsible Investment, *A Blueprint for Responsible Investors* (2017).

44. Principles for Responsible Investment, 'ESG Issues' < <https://www.unpri.org/esg-issues> > accessed 18 August 2020.

45. Companies Act 2013 (India), s 135 and sch VII.

46. KPMG, *India's CSR Reporting Survey 2019* (February 2020), 'Five years of Section 135 of the Companies Act, 2013'.

47. *ibid* 8.

48. *ibid* 41.

49. Companies Act 2006, s 172(1).

50. *Stakeholder Perceptions of Non-Financial Reporting* (Research paper 2019/027, Department for Business, Energy & Industrial Strategy October 2019).

51. Donald Brydon, *Assess, Assure and Inform: Improving Audit Quality and Effectiveness* (Department of Business, Energy and Industrial Strategy December 2019) paras 8.4.2-3.

And just as importantly, having identified what change is needed, how in practice do you achieve substantive positive change?

Wider corporate purpose as integral to business

How does my proposed new definition of employee ownership fit in with these key issues?

I see wider corporate purpose as integral to how a business operates. I am not talking just about worthwhile activities such as ad hoc charitable donations that are incidental to doing business. Obviously, I don't mean using CSR as a marketing tool to increase profits. My proposal is that employee owned companies make changes in how their business operates so as to impact positively on society and the environment. This means going beyond compliance with the letter of relevant ESG laws and innovating to help avoid, mitigate and indeed solve societal and environmental problems.

Upholding shareholder value is what UK company law currently prescribes as the default duty on directors. This duty is, importantly, caveated by a requirement in the Companies Act 2006 that Directors must "have regard to" various matters including the impact of the company's operations on the community and the environment. So the directors of an ordinary trading company can, under UK company law, already take into account corporate interests other than maximising profits, if they wish.

Choice over prioritising wider corporate purpose

As to how these wider interests rank alongside, for example, making a profit and providing good work, well I believe that for now there needs to be flexibility.

The long process culminating in the Companies Act 2006 considered the idea of changing a director's duty so it is not just about a duty to the shareholders but also to employees, the wider community, and the environment. A pluralist approach like this would have forced directors to consider the interests of each set of stakeholders in arriving at a decision. The directors would have had to weigh these interests against each other when making decisions and shareholder interests could lose out. This change was rejected because it would confuse decision-making and ran the risk of creating a litigious climate.⁵²

What exactly does it mean to serve these wider interests? As you will probably have worked out from my earlier example initiatives, in practice, you have to move swiftly from concerns at a State level, to look at industry specific concerns and business specific concerns to answer this question. What are priorities for one company will not be the same for another. Some companies will find it harder to make a positive impact locally and or globally than others.

A flexible solution is needed at a corporate level.

Compulsion

As to compulsion, well I would like all employee-owned companies to embrace serving a wider corporate purpose.⁵³ How they do that would be left to each business but it would be great to see all employee owned companies around the World accepting this obligation.

There are calls for UK companies of all types to be required to state their purpose. The directors' duty would then be to promote that purpose. There are calls for a change in directors' duties to adopt a pluralist approach such that social, environment and employee interests are on an equal footing with shareholder profit.⁵⁴ There is some momentum around these initiatives. Current law does not readily permit directors to further wider corporate interests, at the expense of

56. Trade and Industry Committee, *The White Paper on Modernising Company Law (2005-6, HC 439)* paras 15-16 citing Company Law Review Steering Group, *Modern Company Law: For a Competitive Economy - Developing the Framework* (Department of Trade and Industry, March 2000) paras 3.30-3.31.

57. *The British Academy* (n 41) 20-21.

58. Sophie Short 'How do Companies Act? The time for change is now' (Social Enterprise Mark, 28 October 2019) <<https://www.socialenterprisemark.org.uk/how-do-companies-act-the-time-for-change-is-now/>> accessed 18 August 2020.

55. Lord Sales, Justice of the Supreme Court, 'Directors' duties and climate change: Keeping pace with environmental challenges' (Speech, *Anglo-Australasian Law Society*, Sydney 27 August 2019); GC 100, *Guidance on Directors' Duties: Section 172 and Stakeholder Considerations* (October 2018); UNEP Finance Initiative, *A Legal Framework for the Integration of Environmental, Social and Governance Issues into Institutional Investment* (October 2005).

shareholders, and it may not provide protection to the directors of companies that promote purposes beyond shareholder value, unless this is expressly permitted under a company's articles of association.⁵⁵

A 2014 UK Government report on corporate responsibility noted that "There was a near equal split between those who favoured more legislation in this field and those against it."⁵⁶ I wonder what the proportion in favour of additional legislation would be now?

Novelty and radicalism

How novel and radical a suggestion is my expanded definition of employee ownership?

It's certainly not new to call for companies to be good citizens. This is part of Gandhi's theory of trusteeship.

It's not radical in the employee ownership sector, in that there are already employee-owned companies, such as Riverford Organics⁵⁷ and Paradigm Norton⁵⁸ which are Certified B Corporations. This means they have had their standards of social and environmental performance, public transparency and legal accountability verified through the B Corp Certification process.⁵⁹ They have articles of association that require a company to make a positive contribution to society and the environment as well as serve shareholders. The success of the Certified B Corporation community has encouraged me in formulating my proposal that employee ownership should also involve making an overall positive contribution to society and the environment.

We have other examples of how wider corporate purpose co-exists with employee ownership. Public service mutuals are employee led organisations that deliver public services.⁶⁰ These are often structured as

community interest companies.⁶¹ And of course worker co-operatives already champion this ideal. Cooperatives are people-centred enterprises owned, controlled and run by and for their members to realise their common economic, social, and cultural needs and aspirations.

The 2018 Ownership Dividend report found that a majority of employee-owned companies made explicit commitments to contribute directly to their local communities, albeit with an emphasis on sustaining local jobs.⁶² If the Ownership Effect inquiry was held now I am confident you would find those same companies talking more broadly about the positive impact they are making on society and the environment.

Immediate step

Gandhi has encouraged me to be bold and to propose an all-encompassing idea. He would I am sure want me to be practical in how that idea is encouraged. He would also, I believe, agree that one step at a time can be good enough.

I am not expecting every employee owned company to become a Certified B Corporation or to adopt the detailed provisions Scott Bader Company Limited has in its articles of association (or its unique ownership structure). A mission statement or equivalent document could contain these commitments to make an overall positive contribution to society and the environment, suitably adapted to the circumstances of a business. This wider corporate aim could be succinct. For example, the Useful Simple Trust is a group of companies with expertise in engineering, design, architecture and communication. Their objective is to "improve the human environment by delivering useful, simple outcomes that are beautiful and good".⁶³

56. *Good for Business & Society: Government Response to Call for Views on Corporate Responsibility* (Department for Business, Innovation & Skills April 2014) para 2.11.

57. Riverford Organic Farmers 'Certified B Corp' <<https://www.riverford.co.uk/ethics-and-ethos/bcorp>> accessed 29 September 2020.

58. Paradigm Norton 'Proud to be Certified 'B' Corporation Business' (11 October 2019) <<https://www.paradigmnorton.co.uk/paradigm-thinking/proud-to-b>> accessed 18 August 2020.

59. B Lab (UK) 'The B Corp certification process: The B Impact Assessment and B Corp certification' <<https://bcorporation.uk/certification>> accessed 18 August 2020.

60. GOV.UK 'Introduction to Public Service Mutuals' (21 August 2017) <<https://www.gov.uk/guidance/introduction-to-public-service-mutuals>> accessed 18 August 2020.

61. Social Enterprise UK, *Public Service Mutuals: The State of the Sector* (April 2018) 7.

62. The Ownership Effect Inquiry, *The Ownership Dividend: The Economic Case for Employee Ownership* (EOA-LID 2018) 7.

63. Useful Simple Trust 'About the Trust' <<https://www.usefulsimple.co.uk>> accessed 19 August 2020.

If you want to get into governance specifics, an employee ownership trust deed could contain a purpose clause that includes these wider purposes. My firm, Fieldfisher, already includes as standard a Main Purpose clause that requires a trustee to ensure the company it controls has good employee engagement. That clause can extend what an employee ownership ethos means to include making an overall positive contribution to society and the environment. This will help overcome company law concerns about whether serving the interests of shareholders is compatible with wider stakeholder concerns.

If the 1979 Conference on Trusteeship was reconvened today, possibly the employee ownership trust with added Gandhian purpose would be recognised as a model of responsible business that can serve for all.

Safe hands

Why is this new definition of EO such a good fit for the employee ownership sector?

- employee owned companies are most of the way there already to being good corporate citizens. They already take care of their workforce and deliver great customer service. Many are also already taking care of society and the environment;
- employee owned companies have good systems of governance and accountability to ensure companies will fulfil these wider purposes: systems that can be readily adapted to encompass a broader corporate purpose;
- in particular, employee ownership offers offer the stability of ownership required to fulfil these purposes; and
- we need everyone's ideas to tackle societal and environmental issues and what better force for good is there than employee owners.

More than a business model

This new definition may sound a technical change. But for me it's part of a bigger need and that's for employee ownership to be recognised as more than a business model. Franchising is a business model. I would like employee ownership to be more than that. What I would eventually like to see is that employee ownership is an "-ism", a distinctive belief system that is synonymous with good corporate citizenship. I would like people to be able to say I believe in employee ownership. And who's encouraged me to think in these terms, M K Gandhi.

Gandhi said of his theory of trusteeship that it "...is no make-shift, certainly no camouflage. I am confident that it will survive all other theories. It has the sanction of philosophy and religion behind it ...".⁶⁴ I can't claim the same of employee ownership but Gandhi encourages us to be more ambitious in striving towards similar aims.

We need to see positive changes in society and our relationship with the environment. What better dynamic to make these essential changes than to channel the energies of employee owners towards finding and implementing solutions. The employee ownership sector can become an exemplar for good corporate citizenship by embracing wider corporate purposes as part of what it means to be employee-owned.

Summary

In summary, I would like to see every employee-owned company making an overall positive contribution to society and the environment, as part of promoting the success of the company, and to make this commitment in the strongest terms appropriate to its business. This would be a step on the way to a new definition of employee ownership, one that is synonymous with good corporate citizenship. This would send a strong message to other businesses that they also need to adopt wider corporate purpose.

64. *Gandhi, Trusteeship* (n 13) 4 citing Harijan 16 December 1939, 376.

Build back better

The COVID-19 pandemic has delayed me giving this lecture. I was going to say exactly the same thing before the novel Coronavirus intervened. What's different is that every business and every individual will now understand more clearly why we need wider corporate purposes. In support of my Gandhi empowered proposal, I can read out in full the Build Back Better UK campaign's statement of what it wants:

"Let's not go back to normal. It's time for a new deal that protects public services, tackles inequality in our communities, provides secure well-paid jobs and creates a shockproof economy which can fight the climate crisis".⁶⁵

Thank you again to the trustees of the Gandhi Foundation for inviting me back and for giving me this opportunity to explain how employee ownership can be redefined with added Gandhian purpose.

28 July 2020

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65. Build Back Better, 'The Campaign for a Coronavirus Recovery Plan that Builds Back Better' <<https://www.buildbackbetteruk.org>> accessed 19 August 2020.

Employee ownership—the solution to higher standards of ESG

Graeme Nuttall OBE, a partner at European law firm Fieldfisher, has today called for employee ownership to reach new heights and fulfil environmental, social and governance (ESG) obligations.

Leading employee ownership organisations have backed his proposal, agreeing that employee-owned companies should be an exemplar for reducing inequality, tackling climate change and sustainability especially as we face the ongoing challenges of COVID-19.

The UK Employee Ownership Association, Employee Ownership Wales, Scotland for Employee Ownership, Irish ProShare Association and Employee Ownership Australia have today jointly announced they encourage every employee-owned company to make an overall positive contribution to society and the environment, as part of promoting the success of the business, and to make this commitment in the strongest possible terms. Co-Operative Development Scotland also sees employee ownership as key to a stronger, more resilient, productive and fair economy.

Mr Nuttall, a leading expert on the employee ownership business model and author of the influential Nuttall Review of Employee Ownership, presented his thoughts for the Gandhi Foundation's annual lecture,

at which past speakers include Archbishop Desmond Tutu, His Holiness the Dalai Lama and former Archbishop of Canterbury Dr Rowan Williams. The Gandhi Foundation welcomes this practical application of M K Gandhi's ideas.

"The time is right for employee ownership with added Gandhian purpose. What M K Gandhi encourages us to consider is a new definition of employee ownership, a bolder definition that defines EO with enhanced corporate purpose, so that employee-owned companies are synonymous with good corporate citizenship," said Mr Nuttall.

"We need to see positive changes in society and our relationship with the environment. What better dynamic is there to make these essential changes than to channel the energies of employee owners towards finding and implementing solutions?"

"The employee ownership sector can lead the way in good corporate citizenship by embracing wider corporate purposes as part of what it means to be employee-owned."

Mr Nuttall added that the COVID-19 pandemic has changed the fundamental dynamics of the way we work. He cited the 'Build Back Better UK' campaign's statement of what it wants, as a beacon for how society can change for the better and protect public services, tackle inequality in our communities, provide secure well-paid jobs and create a shockproof economy that can fight the climate crisis.

Mr Nuttall explained this is not a radical suggestion for the employee ownership sector in that there are employee-owned companies, such as Riverford Organics and Paradigm Norton, which are Certified B

Corporations. There are also employee-led public service mutuals and worker co-operatives that already combine employee ownership with wider corporate purpose.

Deb Oxley, Chief Executive, Employee Ownership Association

said: "Evidence in the report the Ownership Dividend showed that employee owned businesses tend to have an approach that supports them to do well while doing good. This is why it feels natural to make a call out to every employee-owned company to have a focus of making an overall positive contribution to society and the environment, as part of promoting the success of the company, and to make this commitment in the strongest terms appropriate to their business."

Derek Walker, Chief Executive, Wales Co-Operative Centre

on behalf of Employee Ownership Wales said: "We are pleased to support Graeme Nuttall's call for employee owned companies to lead the way in the business community as enterprises that commit to improving society and the environment as well as pursuing economic success. This responsible approach is needed now more than ever. We will continue to support the growing number of employee owned businesses in Wales to be good corporate citizens."

John Housego, Scotland for Employee Ownership board member,

said: "Scotland for Employee Ownership (SfEO) fully supports the proposition that employee ownership can be a driver for a better, fairer and more equal society. SfEO is very proud of the many excellent examples of good corporate citizenship demonstrated by Scotland's employee-owned community."

Darah Zahran, Co-operative Development Scotland said: "Co-operative Development Scotland is fully committed to supporting and growing employee ownership in Scotland as the key to a stronger, more resilient, productive and fairer economy. We believe Scotland's employee-owned businesses deliver wider benefits to the communities in which they operate and society as a whole. The pandemic has highlighted what's important; safeguarding the long-term future of their companies, keeping them rooted in its local community and retaining jobs, skills and investment."

Seán Quill, Council Member of the Irish ProShare Association said: "In these uncertain times we see employee ownership as a significant tool to assist companies in providing stronger, more resilient, productive employment. We also believe that where there is true employee engagement, Employee Ownership can and will make a positive contribution to their local environment and society by the influence of employees."

Andrew Clements, Deputy Chair of Employee Ownership Australia said: "We welcome Graeme Nuttall's call to redefine employee ownership so it is synonymous with good corporate citizenship. We will encourage all Australian employee owned companies to make positive contributions to society and the environment as part and parcel of running a successful business that provides good work."

Mark Hoda, Chair of the trustees of the Gandhi Foundation said: "All companies need added Gandhian purpose. The effects of COVID-19 have amplified interest in companies serving a public purpose. Employee owned companies are especially well placed to do this, because of the joint responsibilities on employers and employees to help the economy Build Back Better."

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