

Revisioning the Corporation

- Second edition -

A Short Guide to Sustainable Corporate Governance




**Frank
Bold**


CASS
BUSINESS SCHOOL
CITY UNIVERSITY OF LONDON
EST 1894

Authors:

Paige Morrow (Head of Brussels Operations at Frank Bold), Filip Gregor (Head of the Responsible Companies Section at Frank Bold) and Jeroen Veldman (Senior Research Fellow at Cass Business School, City of London).

Editor:

Sandrine Brachotte

Design and layout:

Susanna Arus (Communications and events officer at Frank Bold).

(CC) Icons designed by Freepik

(CC) Cover picture by Andy Ciordia

Citation:

This guide may be cited as: Morrow, P., Gregor, F., and Veldman, J. (2016) *A Short Guide to Corporate Governance*. Brussels: Frank Bold. Comments may be directed to Paige Morrow (paige.morrow@frankbold.org).

Acknowledgments

The authors would like to thank the following people for their comments and contributions to the guide: Marcel Bucsescu, Jay Cullen, Natasha Dyer, Chris Halburd, Andrew Johnston, Tracy Jones (artist of the cartoon), Martin Rich, and Beate Sjøfjell.

The views expressed in this guide are solely those of the authors.

The information in this guide may be freely used, provided that it is attributed in accordance with the Creative Commons Attribution 4.0 International License. To view a copy of this license, visit <http://creativecommons.org/licenses/by/4.0/>.



Who we are

The Purpose of the Corporation Project (an initiative of Frank Bold) provides a strategic, open source platform for leading experts and organisations interested in promoting the long-term health and sustainability of publicly listed companies through business management and public policy.

The Project works with academics and practitioners to develop new options for corporate governance models. We also liaise with business, policymakers and civil society organisations to foster an open discussion with all stakeholders on the purpose of the corporation.

Frank Bold is a purpose-driven law firm using the power of business and non-profit to solve social and environmental problems.

The Purpose of the Corporation Project and the publication of this guide are kindly supported by the Charles Leopold Mayer Foundation for the Progress of Humankind, the Friends Provident Foundation, the Joseph Rowntree Charitable Trust, the Sigrid Rausing Trust, and the Wallace Global Fund.

Objective

The objective of this publication is to provide civil society organisations and responsible businesses with the following:

- An overview of corporate governance, and its implications in terms of corporate impact on civil society concerns.
- An overview of existing and alternative corporate governance models.
- Some food for thought about the corporate governance rules that could help build a responsible corporate governance model.

I Introduction to Corporate Governance 6

- 1.1 What is Corporate Governance?
- 1.2 How Is Corporate Governance Relevant to the Public Interest?
- 1.3 How to Engage with Responsible Corporate Governance: Complementing External Regulation
- 1.4 Responsible Corporate Governance and the Purpose of the Corporation
- 1.5 Basic Principles about the Corporation
- 1.6 What Does 'Bad' Corporate Governance Look Like?
- 1.7 What Does 'Good' Corporate Governance Look Like?

II The Future of Corporate Governance: A Responsible Model 20

- 2.1 Where are we now?
- 2.2 Where should we be heading?
- 2.3 Cooperative Model: Stakeholder-Controlled Enterprises
- 2.4 B Corp Model
- 2.5 Team Production Model
- 2.6 Trust Firm Model
- 2.7 A Path to be Further Explored: Holacracy Model

III Opportunities for Civil Society, Businesses and Investors 28

- 3.1 Reframing the Debate
- 3.2 Proposing Policy Reforms

IV Which Rules for a Responsible Corporate Governance Model? 32

- 4.1 Specify Corporate Purpose
- 4.2 Clarify Fiduciary Duties
- 4.3 Reflect Stakeholders' Interests
- 4.4 Review Executive Pay Rules
- 4.5 Alternative Share Structures
- 4.6 Other Measures to Promote Long-term Shareholding

Related Initiatives 38

Appendix: The Main Corporate Governance Models 40

- A. The Shareholder Wealth Maximisation-Oriented Model
- B. The Stakeholder-Oriented Model

Endnotes 46

Bibliography 54

Introduction to Corporate Governance

1.1 What is Corporate Governance?

Corporate governance has been described as the procedures and processes according to which a business is directed and controlled.^{1,2}

Corporate governance may be broadly understood as the way the modern capitalist corporation is 'governed':



how are corporations administered and structured
by whom, which relates to the issue of corporate control
for whom, i.e. for which purpose

Overall, corporate governance structures the relationships between the company and different groups of stakeholders: shareholders, creditors, boards, managers, workers, communities, trade unions, and the state.³

These definitions clearly recognise the importance of groups other than shareholders and broader interests, including the planet. However, there are different ways to do corporate governance, which are called corporate governance models. **In practice, the current mainstream corporate governance models often favour shareholders' interests.** These models are usually framed using the concepts of shareholder primacy, maximising shareholder value, and enlightened shareholder value.

This guide shows how and why other corporate governance models that better take into account other stakeholders' interests, based on another vision of the purpose of a corporation, will govern corporations in the future.

1.2 How Is Corporate Governance Relevant to the Public Interest?

Engaging with corporate governance is relevant to many critical social issues:

Long-term investment in the real economy



Because a strategic focus on the **short term comes at the expense of a focus on long-term development of the corporation**, investors with a long-term perspective are typically not served by shareholder primacy. Damaging the long-term interests of corporations also hurts end beneficiaries with a long-term horizon for their investment, mostly people who are saving to fund retirement or support their children's education.⁴

Equality



Shareholder primacy produces **pressure to increase the share of corporate revenue going to profits**. This is often done by creating precarious contract conditions for employees and by avoiding or reneging on implicit and long-term aspects of contracts, such as health care coverage, career ladders and progression and pension liabilities. In combination with tax avoidance, **shareholder primacy is connected to growing income inequality**, both within corporations⁵ and in the broader economy.⁶

Sustainability



The **systemic risks connected to environmental sustainability** can be expressed by the concept of planetary boundaries,⁷ which, in a business context, gives rise to the risks of stranded assets, climate change, and scarcity of resources. These issues are being increasingly recognised by the insurance and investor communities.⁸

Today we face complex challenges that cannot be addressed by governments or civil society alone because they are intrinsically connected with the economy, such as climate change; doing business within the limits of the planet's resource boundaries; and negotiating the complicated relationship between economic globalisation, development, and human rights.

It is now generally accepted that **designing corporate governance in a way that takes on board these considerations can help a company to be sustainable in the long-term**. There is, then, a shared interest between civil society, business, and states to reform corporate governance in a way that allows for business to be conducted differently.

1.3 How to Engage with Responsible Corporate Governance: Complementing External Regulation

Responsible corporate governance offers the possibility of forging a vision for business that sees corporations providing benefits to the communities in which they are situated. Reforming the corporate governance framework can make this possible by complementing existing regulation that seeks to promote responsible corporate behaviour.

The current default is to regulate corporate behaviour through external laws, i.e. rules that are imposed by the State, and to a limited extent rely on self-regulation. External controls relating to areas such as the environment, human rights, tax, and accounting are crucial to mitigate acute environmental and social problems, including water pollution and worksite safety.

Yet external regulation is often criticised for being bureaucratic, complicated, expensive to monitor and enforce, adversarial, ineffective at addressing root causes and for having a tendency to stifle innovation.⁹

Furthermore, external regulation sets a minimum floor for behaviour but struggles to provide meaningful guidance.¹⁰ Indeed, existing regulation does not necessarily encourage companies to consider how their business activities could be structured to dramatically reduce or eliminate negative impacts, and conversely how companies could contribute positively to the welfare of workers, the communities in which they operate, and society.¹¹



Revising corporate governance could enhance these regulations by focusing on the structural and regulatory conditions that push companies to prioritise short-term profits and produce negative externalities. State regulation remains important as it creates a legal framework of minimum standards.

1.4 Responsible Corporate Governance and the Purpose of the Corporation

While a corporation serves to generate profits, the purpose of the corporation is emphatically *not* to maximize shareholder value *in the short-term*.¹²

Rather this might be on a very long-term time horizon. **Furthermore, the purpose of the corporation is whatever its founders wish it to be, as long as it is legal.** Thus, it might be to make innovative products, develop cutting edge technology, build a spaceship, create the next penicillin, foster a great working environment for employees, and satisfy their customers or one of many other objectives.

A corporation may also decide to maximise quarterly profits and short-term share price - the key here is that it is a permitted objective, not one that is required by law. However, as explained in this guide, it is not in the interest of shareholders that businesses pursue such a goal as sustainable profit requires a focus on other stakeholders' interest.

When the public limited liability corporate form was made available for general purposes during the 19th century, the law essentially left a vacuum allowing companies to decide what their purpose should be.

By the end of the 20th century, the socially constructed norm of shareholder value had expanded to fit the vacuum. Very few conventional companies were founded with the narrow objective to maximise shareholder value. Rather, these companies became profitable and generated shareholder value as the result of delivering a product or service that addressed a specific societal need.¹³

Over time, the pursuit of shareholder value as measured by share price has become an objective in itself. This change occurred alongside the growing influence of financial markets in the economy and in policy-making.

The eventual formulation and recognition of a renewed understanding of the purpose of the corporation is a first step to start a discussion on the construction of a responsible corporate governance model that sets different conditions and possibilities for companies to take on board and engage with various stakeholders' interests.

Launching this discussion is essential for a change of our economic system as a whole.



1.5 Basic Principles about the Corporation

Current corporate governance rules rely on several misguided beliefs. Addressing those myths is another preliminary step towards the construction of a new corporate model.

Principle 1

Shareholders do not own corporations.

Busting the myth

Shareholders are not the legal owners of corporations – in the USA, in the UK or in any known country. Shareholders only own shares of stock, which give shareholders certain rights in the company, which is a separate legal entity.¹⁴

A corporation is a legal person and therefore has its own rights and obligations, including especially the rights to own property, enter contracts, and be held accountable in its own name for any harm it causes to others. Shareholders cannot be held liable for the corporation's acts. As a result, they only stand to lose the amount of their shares when the corporation goes bankrupt or has to compensate any damage caused.

It is important to be clear that the idea of shareholders as 'owners' is fundamentally incompatible with the corporation as we know it today. Subject to certain exceptions, the financial risk to investors in a publicly traded corporation is limited to the amount of money that they have invested in the corporation (their "shares"). **If a corporation was owned by its shareholders, they could be held financially responsible for any wrongdoing or money owned by the corporation.**

.....
"The relationship between the shareholder and the firm is a contractual relationship, just as someone who works for Apple, or someone buying an Apple bond, enters into a contract. The fact you own Apple shares doesn't mean you can walk into an Apple store and take an iPad."
Lynn Stout, Professor at Cornell Law School

This principle of *limited liability* is what distinguishes a corporation from most other types of business structures, such as sole proprietorships and partnerships.

Principle 2

Boards of directors do not have a legal duty to maximize shareholder value by focusing on short-term stock price or quarterly returns.

Busting the myth

Directors have a fiduciary duty to act in the best interest of 'the company'.¹⁵ **The best interest of the company is difficult to ascertain but it cannot be equated with maximising shareholder value, and especially not in the short-term.**

Directors are free to instead choose to invest in innovation, research and development, employee training, improvements to sustainability or other areas if that will ensure the long-term vitality of the firm. On a sufficiently long-term horizon, the interests of companies oriented towards sustainable long-term value creation become inseparable from societal well-being.

Furthermore, even if directors wish to maximise shareholder value, it is difficult to determine what this means in practice. It may be impossible to identify all major shareholders and determine their interests. Certain investors have very short-term time horizons (e.g. many hedge funds) whereas others are interested in long-term returns (e.g. most pension funds and sovereign wealth funds).

Focusing only on quarterly earnings may lead a company to make decisions that will have a negative impact on the future health of the

firm, e.g. laying off workers or failing to invest in research and development. It is therefore impossible to argue that maximizing short-term profits or raising the share price in the short run is in the interests of all investors, let alone in the short-term interest of ‘the company’.

Principle 3

Directors are not the agents of shareholders.

Busting the myth

It is often said that directors are the ‘agents’ of shareholders; this is not true under the company law of any jurisdiction.¹⁶ **Directors have a duty to act in the best interests of ‘the company’.** While shareholders should and normally will benefit from a company’s success, directors do not as a matter of law act on behalf of shareholders.

The myth originates in the principal-agent theory of corporate law widely held by institutional investors and legal scholars, particularly in the United States. Under this theory, which was developed as an economic theory and has seeped into the law, directors are the agents of shareholders and are responsible for acting in shareholders’ best interests rather than their own in managing the corporation. **This is one theory of the firm among others (which will be explained further in the next chapter) and does not reflect the obligations of directors to non-shareholder stakeholders,** which is an important feature of corporate law in much of Europe.

Furthermore, the decisions of directors are typically protected by the business judgement rule (or a functional equivalent), which is a legal principle that gives directors the benefit of the

.....
“Shareholder primacy is an ideology, not the law. (...) Shareholder value is not the objective of the corporation; it is an outcome of the corporation’s activities. While shareholders entrust their stakes in a corporation to the board of directors, shareholders are just one audience among others that the board may consider when making decisions on behalf of the corporation.”
Robert G. Eccles, and Tim Youmans, Harvard Business School

doubt provided that they can show that they acted in good faith, with proper care and in a way that the directors reasonably believed was in the best interests of the corporation.¹⁷

Principle 4

Shareholders have certain limited rights in the corporation because they invest capital in it – but there are many other stakeholders with rights as well.

Busting the myth

Shareholders own shares, which give them a number of organisational, control and economic rights in relation to the company, such as the right to receive dividends and to vote on certain matters. **Shareholders do have special rights, but these cannot be justified on the basis of their relationship with the company,** which is analogous to the relationship between the company and other stakeholders, including employees, creditors and bondholders.¹⁸

Principle 5

Corporations do not earn capital when their shares are traded.

Busting the myth

Many believe that companies profit from their shares being bought and sold on securities markets. **In fact, companies only receive money from the first sale of security to the public in the primary market,** which is often referred to as an initial public offering (IPO), and from the issuance of additional shares. When the initial investors resell their shares on the secondary market (commonly known as the ‘stock market’), the sale proceeds and any increase in stock price go to the seller.

The company that issued the stock does not receive any part of the benefits.¹⁹ **Shareholders who trade on stock markets do not provide any additional capital to the enterprise or**

“furnish inputs into the business.”²⁰ It has been argued that shareholders in large, modern, publicly traded corporations should therefore not be considered ‘investors’ in the sense of providing capital to companies.²¹

Principle 6

Shareholders are not the only stakeholders that have a residual interest in the corporation in the event of bankruptcy.

Busting the myth

The principal-agent theory of corporate law (see Principle 3) says that the interests of shareholders should be prioritised because they are the ‘residual claimants’, meaning that they have the sole remaining claim on the company’s cash flows after the deduction of preceding agents’ claims (e.g. wages, outstanding debts and tax) and therefore also bear the residual risk. **This claim is hotly debated, with many legal scholars arguing that employees are also residual claimants** because they invest time and money to acquire special skills of benefit to a specific company.²² When a company goes bankrupt, employees must invest in retraining and finding new employment.

Furthermore, many external stakeholder groups are dependent upon, or affected by, company decisions but their contracts might be incomplete or they might not be in a contractual relationship with the corporation at all, and so have no opportunity to protect their interests.²³ For example, a local community might be indirectly reliant on the company for the economic benefits that it provides. Such a community or the state might also have a more direct claim because it has provided material or immaterial means, such as subsidies, tax breaks, or infrastructure to the company.



1.6 What Does 'Bad' Corporate Governance Look Like?

Perhaps the most famous example of a company where internal decision-making processes went terribly wrong is Enron – whose top executives lied about financial results for years to inflate the value of their personal stock options, with the failure of the board of directors and auditor. The actions went undetected by US regulators, rating agencies or media for years until the firm spectacularly imploded into bankruptcy in 2001.²⁴

There are numerous other examples of publicly listed companies with dysfunctional governance structures that led to egregious misconduct:

Tax avoidance

In the Panama Papers and LuxLeaks scandals, it emerged that European companies had structured their business operations to reduce their tax burden.²⁵ Boards of directors often believe that they have an obligation to reduce their companies' liability to taxation as part of their duty to produce shareholder value.

This is disputed. For example, in the UK, a leading law firm published a legal opinion that concluded: "It is not possible to construe a director's duty to promote the success of the company as constituting a positive duty to avoid tax."²⁶ Indeed, aggressive tax minimisation can have harmful effects on financial performance due to reputational brand damage.²⁷

It is one of the key reasons for the collapse of trust between business and broader society. It also indirectly increases the tax bill paid by citizens and local corporations,²⁸ and reduces the tax income of states reduces the capacity of states to invest in infrastructure, education, and R&D.²⁹



Short-term cost cutting

The Deepwater Horizon oil spill showed how BP's culture of cost-cutting reduced safety oversight and resulted in the largest accidental marine oil spill in the history of the petroleum industry.

Similarly, Shell was accused of lax oversight over its Nigerian subsidiary, leading to immense ecological damage in the Niger Delta.

A foreign Shell subsidiary was ordered to pay compensation to a Nigerian farmer because the company had neglected its duty of care.³⁰



Irresponsible supply chain management

- particularly in the garment and electronics industries -

The drive to reduce labour costs has led to the outsourcing of production. This, coupled with the failure to oversee and guarantee the health, safety and equitable pay for workers, has led to a pattern of human rights violations in several low wage countries.

The most notable recent example is the collapse of Rana Plaza in Bangladesh, which occurred despite the instability of the building structure having previously been identified.



1.7 What Does 'Good' Corporate Governance Look Like?

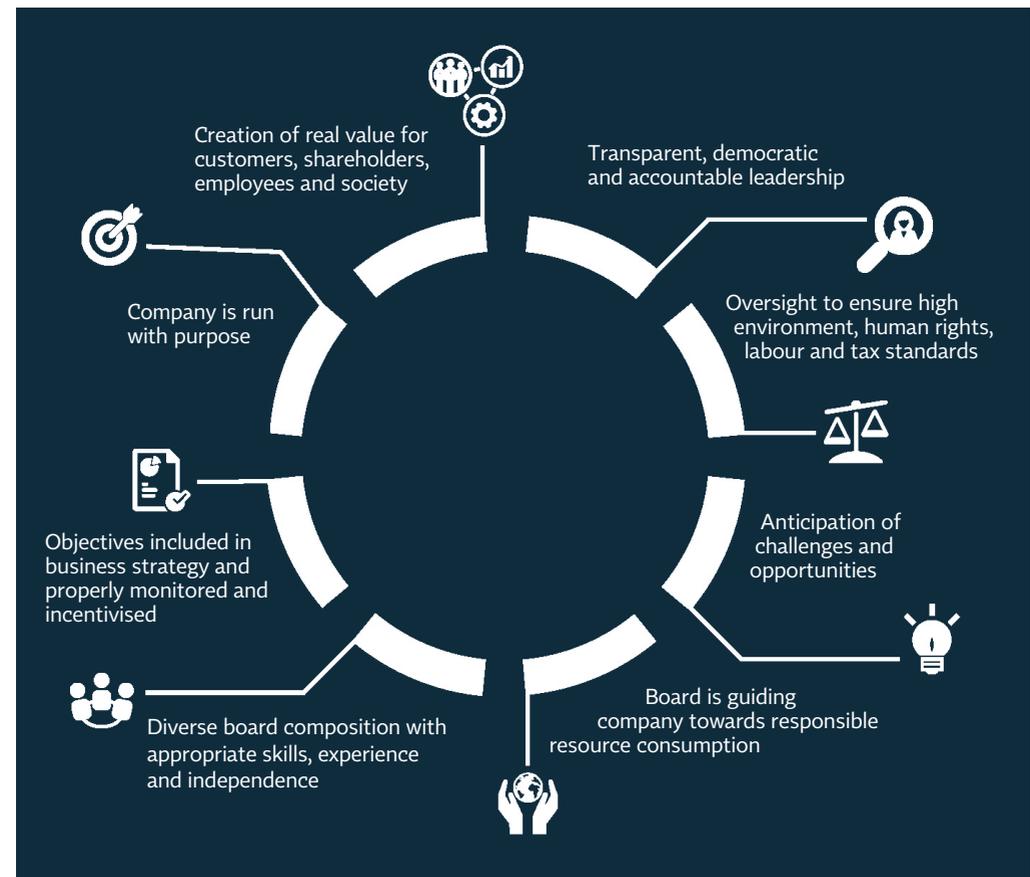
It is harder to identify good governance than to point to bad corporate governance. **One way to define good governance would be to say that it captures the ways in which the company ensures that it creates the conditions to serve its stated purpose in the long run.** In a broader sense, we may say that the purpose of a corporation is not only framed by its own purpose, but by the way it relates to and is embedded in the purpose, culture and values of the community in which it operates in a long-term perspective.

We might say that **a well-run company is sustainable, is managed in a transparent way and accountable to robust standards that govern its performance in all applicable areas,** including the environment, human rights, labour, and tax.³¹ Good corporate governance allows a board (and in turn, the company as a whole) to look well into the future, anticipate challenges and opportunities, create value on an ongoing basis, embrace the creation of real value for customers and wealth for shareholders as mutually reinforcing objectives, and recognize societal and environmental sustainability as essential conditions for delivering on these objectives in the long run.³²

Good corporate governance embraces these objectives and implements them in business strategy through evaluation, monitoring and incentive mechanisms. Companies that are run in this way are more likely to act according to sound ethical principles even in the absence of a clear business case.

There are significant advantages to strong corporate governance, including better relations with stakeholders, less litigation and fewer costly disputes, and reduced interference from regulatory authorities.

Good corporate governance may also result in superior performance on the market for products and services as well as on capital markets - at least in the long-term.³³ It also puts companies in a position to shape new standards, both regulatory and with respect to customers' expectations.³⁴ **Furthermore a well-run company with a great reputation is better placed to attract talented employees. Overall, it provides the conditions for successful long-term business operations and reduces the chance of insolvency.**



.....
Further reading about good corporate governance:

Richardson, B. and B. Sjøfjell, B. (2015). Capitalism, the Sustainability Crisis and the Limitations of Current Business Governance. In Richardson, B. and B. Sjøfjell, B. (Ed.) *Company Law and Sustainability: Legal Barriers and Opportunities*. Cambridge: Cambridge University Press.

International Corporate Governance Network (ICGN) (2015). Human Rights Through a Corporate Governance Lens. London: ICGN. Retrieved from <https://www.icgn.org/policy/viewpoints/human-rights>.

The Future of Corporate Governance: A Responsible Model

2.1 Where are we now?

Broadly speaking, **corporate governance experts tend to talk about two main existing systems of corporate governance** that may be found in Europe and North America:

- 1 **The shareholder primacy model** (typically associated with Anglo-Saxon jurisdictions), which is still the prevalent model;
- 2 **The stakeholder-oriented model** (characteristic of the continental European model), which has not managed to impose itself as a competitive global alternative to the shareholder primacy model in spite of its advantages.

Countries with an Anglo-Saxon legal tradition, including the United Kingdom, United States, Canada and Australia, have a corporate governance model that tends to focus on shareholders.

Countries with a continental European legal tradition, on the other hand, are considered to be stakeholder-oriented industrial systems, meaning that business decisions tend to take greater account of the needs of employees, consumers and other stakeholders.

Within each system, however, there is considerable variation and the systems have influenced each other. Thus, shareholders have become increasingly dominant within continental Europe, whereas in the past their influence was tempered by other stakeholders, including most notably employees/trade unions.³⁵

- 👁️ A detailed description of these models and their variations is beyond the scope of this guide but they are briefly outlined in the appendix to this guide.

2.2 Where should we be heading?

A change of corporate governance models to one that balances the interests of investors, workers, consumers, communities, and the environment would allow businesses to thrive in a climate of sustainability.

For this to happen, it is essential that we **shift the policy discussion** from a single-minded focus on shareholders to a broader understanding of their role in the firm.



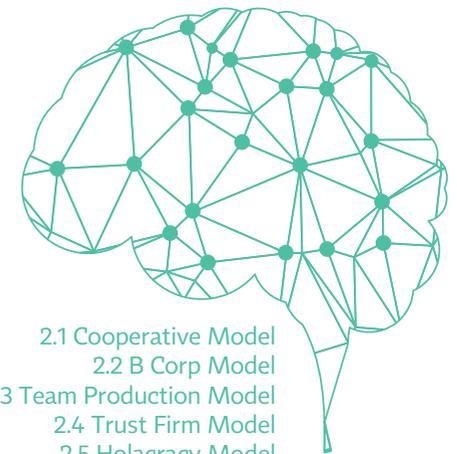
The debate needs to be reframed from 'how do we make investors more responsible?' to 'how do we integrate the needs of all stakeholders and the long-term needs of the company itself into core business decision-making?'

This section briefly sets out five alternative models of governance that could serve as a starting point to design a strong sustainable corporate governance model. It reviews the strengths and weaknesses associated with the adoption of any of these models. The models presented are meant to inspire reflection on the future of responsible governance.

The models are not necessarily mutually exclusive, meaning that one may better fit a certain enterprise, depending on its size, sector, etc. but they may co-exist within the same economy.

Finally, the prototypes differ in their nature: they range from an adaptation of the classic business structure and management (e.g. B Corps and team production theory) to the use of alternative corporate forms (e.g. cooperatives).

As a result, they are not to be considered direct equivalents but rather should be borne in mind when thinking about responsible governance (see the next section).



- 2.1 Cooperative Model
- 2.2 B Corp Model
- 2.3 Team Production Model
- 2.4 Trust Firm Model
- 2.5 Holacracy Model

2.3 Cooperative Model: Stakeholder-Controlled Enterprises

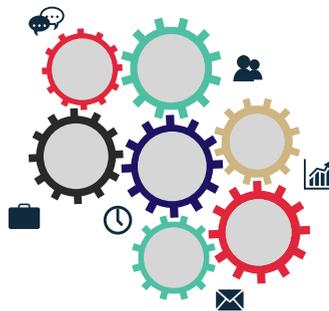
Cooperatives are democratically run businesses whose employees are also their members. This model presents the most significant change from the currently dominant company forms – and perhaps the greatest opportunity to improve the lives of workers and the broader economy.

The International Cooperative Alliance has established seven principles and values that characterize cooperatives:³⁶

- ① Voluntary and open membership
- ② Democratic member control
- ③ Member economic participation
- ④ Autonomy and independence
- ⑤ Education, training and information
- ⑥ Co-operation among co-operatives
- ⑦ Concern for community

Cooperatives, which emerged during the Industrial Revolution in the 19th century, traditionally give each of their members the same voting power (whereas shareholders in a publicly traded company have the voting power that corresponds to the amount of their shares) and the return of profit to the members is proportionate to their use of the cooperative (whereas the return of profit to shareholders depends on the number of shares they hold).

The members of a cooperative may decide all together based on a consensus or delegate this power to a board that counts several members that represents all of them. While cooperatives are typically considered in opposition to publicly traded companies, there are cooperatives that have brought in external investors through various mechanisms, including by issuing publicly traded shares or by creating a subsidiary whose shares are publicly traded.³⁷



There are several types of cooperatives depending on which kind of stakeholders is the owner of the organization.³⁸ The most relevant type

to mention here is the worker cooperative that is owned and governed by employees. While cooperatives are typically perceived to be small companies, it is possible for them to scale up to become large multinationals as demonstrated by the example of Spanish cooperative Mondragon, which gathers 257 companies and cooperatives in the fields of finance, industry, retail and knowledge, and counts over 74,000 members.³⁹

The priority for the cooperative is to improve the quality of life for its members, not to make profits for shareholders. As the world has experienced the fallout that results when enterprises place the profit motive above all else, an EY study has argued that cooperatives show potential as the new business model for tomorrow.⁴⁰

However, to be successful and grow, cooperatives must also be financially robust and well managed. In that regard, there is a need to think of an ‘enlightened cooperative governance’ scheme where cooperatives make sure of the expertise and independence of the board members, disclose transparent information and implement the specific tools required to support good governance.

2.4 B Corp Model

The B Corp model attempts to **imbed the ingredients of corporate responsibility within corporate structures and broaden directors’ fiduciary duties to include the consideration of societal - not just shareholder - interests.** This is done through a private certification process that assesses the company’s impact on the communities where it operates, its relationship with employees, its impact on the environment, and the company’s governance.⁴¹

In some jurisdictions, hybrid corporate forms have been created to allow businesses to anchor their social responsibility within a binding legal framework.⁴²

.....
“If you want to attract more pro-social investors, it’s like hanging a sign around your neck: Nice people invest here.”
 Lynn Stout, Professor at Cornell Law School



The business' constitution must be amended to say that the legal obligation of the directors is to run the business for all the stakeholders, not simply to maximise financial returns for shareholders. Boards of directors are required to consider the impact of their decisions on specific corporate constituencies, including shareholders, employees, suppliers, the community, as well as on the local and global environment. Although shareholders are generally listed first, it is left to the board to decide what weight should be given to the interests of each affected group. As has been explained in this guide, however, it is already open to the directors of any corporation to consider a range of interests.

Whilst until now B Corps have been predominantly small startups, the certifying body B Lab (a global non-profit organisation) is developing performance standards and a verification process for multinational and publicly traded companies. There are already several publicly traded companies with B Corp status, including e-commerce site Etsy and cosmetics maker Natura. They may soon be joined by multinational companies like Unilever (consumer goods) and Danone (agri-food), once certification rules have been developed for complex corporate structures with hundreds or even thousands of subsidiaries.

 B Corps and other hybrid organisations are often very innovative but may have trouble scaling their activities and face the possibility of 'mission drift', meaning a gradually increasing focus on profits at the expense of social good. B Corps have also been criticised for further entrenching the myth that traditional corporations are required to maximise shareholder value by suggesting that businesses must adopt a special status to reflect their dual profit-purpose mission.

Although the B Corp movement should not be considered a coherent theory of corporate governance for existing publicly listed companies, it is an innovative business model that provides some answers to the question of how to govern a business responsibly.⁴³

2.5 Team Production Model

Rather than focusing on conflict between a company's management and shareholders, law professors Margaret Blair (Vanderbilt University) and Lynn Stout (Cornell University) argue for a 'team production analysis' of corporate structures.

This analysis starts from the assumption that everyone associated with the company (employees, management, shareholders, creditors, local communities, etc.) has an interest in its success and should benefit from it. Directors should therefore seek to "maximise the joint welfare of all the firm's stakeholders."⁴⁴



The conceptual appeal of the team production model is its **emphasis on collaboration rather than the presumption that only one narrow set of interests should dominate.**

 While some argue that it does not appear to be a viable alternative model at this time, it has received interest in Anglo-American jurisdictions and could provide the basis for a deeper discussion of a new corporate governance theory.

2.6 Trust Firm Model

Colin Mayer (University of Oxford) has proposed **a new variation on an old form of company, the trust firm, that would grant voting rights on shares proportional to the remaining length of a holding period that the shareholder commits to at the time of share purchase.** During the holding period, shares could not be transferred. Transferable shares would not have any voting rights.

.....
"64% of Swedish companies maintain two share classes with unequal voting rights, and 31% in Finland. The share capital is usually divided into A and B shares. Class A shares generally carry tenfold the votes of class B shares, which is also the legal disparity limit. In Finland class A shares more often carry 20 votes and class B shares one vote"
 Institutional Shareholder Services Inc.

Trust firms would have a Board of Trustees that is obligated to uphold the corporation's values. These values should be disclosed publicly to allow potential stakeholders to evaluate and decide whether to invest or otherwise engage with the company.

Mayer argues trust firms embed long-termism into their corporate structure and reduce the financial engineering that companies engage in to artificially inflate their share price or prevent a hostile takeover.

An example of an existing company using a variation of this model is the foundation-controlled Novo Nordisk of Denmark, which is publicly traded but uses a dual-class share structure to protect its strong social of healthcare delivery (primarily injection systems for diabetes care). For more information about dual-class share structures, see below at 4.5. Alternative Share Structures.

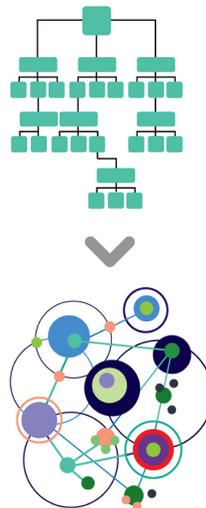
The idea behind this proposal is to reduce the incentives for excessive risk-taking by prioritising long-term shareholders, which should indirectly increase corporate responsibility.

! However, this proposal does not foresee any direct means to integrate environmental, social or labour issues into business decisions. Furthermore, trust firms are not immune to corporate scandals. For example, German foundation-controlled ThyssenKrupp was forced to pay more than 100 million euros in fines for price-fixing and was caught treating journalists to lavish press junkets. Perhaps Mayer's most convincing argument is for a plurality of corporate forms, which would include but not be limited to trust firms.

2.7 A Path to be Further Explored: Holacracy Model

Holacracy is a distributed form of management that seeks to eliminate the traditional top-down form of authority with a self-organising structure.⁴⁵

Employees are assigned to self-managed circles that assume responsibility and leadership for specific roles. The circular hierarchy uses a strict set of principles for how the organisation should be run, how meetings should be conducted and how problems should be addressed. Higher circles are responsible for setting direction, priorities, and guidance while the circles below are expected to execute them in an open and democratic way.⁴⁶
While holacracy is typically considered to be a management model, it can have implications for



structuring the relationship between the organisation and its board of directors and capital providers. Major investment decisions are made by the top circle of directors (the board) but other circles may provide input. Thus a decision on how to react to the decline of sales and profits may involve consultation and input from employees who are not represented on the circle/board of directors.

.....
What if power weren't a zero-sum game? What if we could create organisational structures and practices that didn't need empowerment because, by design, everybody was powerful and no one powerless?
 Frédéric Laloux, Reinventing Organisations

A good example is the Dutch engineering company, Endenburg Elektrotechniek, which faced the termination of 60 staff after a 60% drop in its sales. After the decision was announced, a unit circle advocated for an alternative solution that would delay the layoff to allow for devoting increased staffing to sales and marketing. This solution was presented to the company's general-management circle, which then shared the proposal with the board/circle of directors. The board adopted the proposal and the subsequent sales push meant that the employees did not need to be laid off.⁴⁷

! Holacracy is not without challenges. There have been several companies that unsuccessfully implemented the model, or faced significant challenges. The most high-profile case is Zappos, with about 1,500 employees, which was widely criticised in the media for becoming bogged down in 'circles of responsibility' that resulted in a proliferation of unproductive meetings.⁴⁸ As shown by the Zappos example, holacracy can be difficult (although not impossible) to 'scale' and to date has mostly been implemented in small and medium-sized enterprises. It has not been adopted by any multinational publicly traded companies, although it was used by one of Royal Dutch Shell's units for more than a decade and seemed to have been successful as measured by employee satisfaction and productivity.⁴⁹

It remains to be seen whether this model will gain traction in larger organisations where it is more difficult to introduce significant structural innovations.

Opportunities for Civil Society, Businesses and Investors

As a first step towards the implementation of a more responsible corporate governance model, two main strands of work should be tackled: reframing the debate and proposing policy reforms. These strands are further explained here below.

Preliminarily, it should be made clear that aside from these constituents, such a model cannot be correctly and effectively designed and enforced without the collaboration of businesses and investors, who have a key role to play.

3.1 Reframing the Debate

Why?

Reframing the debate about the corporation and its role in society, which involves a new vision of corporate governance, would have four major implications.



The move to a new paradigm of corporate governance could result in **less need for external regulation of business conduct** as business leaders would consider the effects of their operations on a number of groups and factor that into all strategic decisions.



It would be **easier to advocate for reporting on and the regulation of negative externalities**, such as pollution, if key stakeholders agreed that the purpose of the corporation was not limited to advancing the interests of its shareholders. This is an attainable objective because the long-term interests of society and the company both favour sustainability, innovation, and a strong social licence to operate. **In other words, there is a 'business case' for corporate governance reforms that look beyond the narrow interests of shareholders.** Conversely, it is much harder to argue the business case in the current debate on externality regulation because the shareholder-centric model of corporate governance

tends to perceive any new regulation of business activity as detrimental to the interests of shareholders. Sustainable companies may be more competitive over the long-term,⁵⁰ but it is nearly always more profitable to pursue unsustainable business activities in the short-term.



Reframing the debate on responsible business could provide an **opportunity for civil society to counterbalance and distance itself from the corporate social responsibility (CSR) discussion. That is, to move away from the fixation on voluntary corporate initiatives and market forces that currently characterises the CSR debate.** However, as mentioned above, this does not mean that companies and investors have no active role to play: they are to take the first step for any new model to be effectively implemented.



Reframing the debate would **allow for the articulation of a positive vision for the role of corporations in society** that rejects the existence of a conflict between the economic benefits for society and environmental and social concerns.

How?

Civil society could reframe the debate on corporate responsibility based on a new vision of corporate purpose and the role of corporations in society. One of the objectives of this guide is to provide material for this debate.



This strategy could be put in practice by **holding conversations and conferences with business leaders and policy makers, clearly distinguishing the new vision from the CSR concept.** This would refocus the debate and build relationships with new parties and stakeholders.



The communication strategy could be further implemented by **responding in the media (e.g. through opinion editorials and letters to the editor) to economic, environmental and social crises, explaining how they are connected to the dysfunctional behaviour of business and capital markets.**



Sustainability and corporate responsibility should be integrated into new standards in corporate governance, such as the UK Stewardship Code⁵¹ and the OECD Principles for Corporate Governance,⁵² to ensure policy coherence. Civil society organisations (CSOs) may argue that CSR as well as business and human rights policies should be directly integrated into corporate governance frameworks through policy engagement.

.....
Further reading on frames and how they can be integrated into civil society strategy:

Lakoff, G. (2014). *Don't Think of an Elephant! Know Your Values and Frame the Debate*. Chelsea: Chelsea Green Publishing.

Matthews, A. and Matthews, L. (27 February 2015). Five Ways that People Frame Climate Change Debates. Retrieved from The Guardian website <http://www.theguardian.com/sustainable-business/2015/feb/23/five-ways-that-people-frame-climate-change-debates>

Public Interest Research Centre (PIRC) (2011). *Common Cause Handbook*. London: PIRC. Retrieved from <http://valuesandframes.org>

3.2 Proposing Policy Reforms

When engaging in corporate governance policy-making processes, such as reforming the above-mentioned UK Stewardship Code, CSOs, businesspeople, investors and other **stakeholders could promote the integration of corporate responsibility objectives.**

These stakeholders could also advocate for concrete measures to:

- ① Counterbalance the short-term influence of capital markets.
- ② Embed incentives for long-term strategy by companies and investors alike.
- ③ Tie shareholders' influence in corporate governance to long-term commitment.
- ④ Limit harmful practices such as financial engineering by stock buy-backs.

This discussion would further contribute to reframing the debate on the role of corporations in society.

Stakeholders could additionally push for the integration of corporate governance elements into policy plans and standard-setting instruments in the sustainability and business and human rights areas, for example in the National Action Plans on Business and Human Rights. Similarly the importance of corporate governance reform can be voiced to policymakers, businesses, institutional investors, proxy advisors, and other players.

Ultimately, **stakeholders could argue that the definition of corporate purpose in company law as well as associated directors' duties should be changed to reflect broader societal purpose and environmental responsibility.** This broadly formulated objective needs to be stated in precise terms and have concrete monitoring and enforcement mechanisms that are available to civil society and affected groups.

.....
Further reading on advocacy for systemic change:

Narberhaus, M. and Sheppard, A. (2015). *Reimagining Activism: A Practical Guide for the Great Transition*. Berlin: Smart CSOs Lab and Michael Narberhaus. Retrieved from http://smart-csos.org/images/Documents/reimagining_activism_guide.pdf

Broadbent, A. and Omidvar, R. (2011). *'Impacting Public Policy' in Five Good Ideas: Practical Strategies for Non-Profit Success*. Toronto: Coach House Books.

IV Which Rules for a Responsible Corporate Governance Model?

This section presents for discussion a number of **concrete mechanisms for fostering long-termism and sustainability within publicly traded companies** that may be implemented within existing corporate governance frameworks. They should not be taken as the recommendations of the authors but rather promising avenues to explore and further refine.⁵³

4.1 Specify Corporate Purpose

Responsible corporate governance requires that companies **clarify their purpose in key governance documents**, including in constitutional documents such as articles of association. **These documents should also clarify the rights and responsibilities of corporate governance actors**, in particular directors and shareholders, and possibly other stakeholders. In this respect, a clear statement of purpose would:

- 1 Introduce legal clarity in relation to pursuing specific goals, including those related to the social and environmental issues connected to the corporation's business
- 2 Frame directors' fiduciary duties and liabilities
- 3 Clarify what audiences and matters company directors consider material for the company as well as the investment and payout horizon to investors⁵⁴
- 4 Allow corporations to pursue long-term strategies (especially those involving R&D which entail a high degree of uncertainty, or reacting to systemic risks)

Policymakers can foster this practice through supportive changes to company law. For example, **company law could specify more clearly the societal purpose of companies generally and their duties toward internal and external constituencies**. It could allow or request companies to specify their unique long-term purposes in their constitutional documents.

These statements of purpose might cover environmental, social or scientific goals. In addition, **company law could require that companies be able to lock-in those purposes** against opportunistic change by short-term shareholders (perhaps by requiring a supermajority to amend the purpose clause).⁵⁵

Finally, **company law may recognise a director duty to develop long-term plans in order to meet specific societal objectives relevant for their corporation**, e.g. to take into account the planetary boundaries, and annually report to shareholders on how these plans are being fulfilled. The inclusion of long-term (social, environmental or scientific) purposes, either within the corporate constitution or in national companies legislation (as appropriate), would also facilitate informed shareholder engagement. In general, it would prevent the reduction of corporate purpose to the shareholder interest in short-term financial returns.

4.2 Clarify Fiduciary Duties

The term fiduciary duty is used primarily in UK and US law but the basic concept of an obligation based on trust to act in the best interest of another person is widely held across both common law and civil law jurisdictions.

There are **two distinct forms of fiduciary duties** that are relevant to improving corporate governance:

- 1 **Corporate directors** owe fiduciary obligations to the corporation itself to promote the success of the corporation.⁵⁶
- 2 **Institutional investors** (such as pension fund trustees) hold a fiduciary obligation to act in the interest of their beneficiaries, which is owed to those beneficiaries (e.g. pensioners).



These duties are often misinterpreted.⁵⁷ In the case of directors, the duty is often misunderstood to be owed to the shareholders, not to the company, and to maximise short-term shareholder value without regard to environmental or social impact. Similarly, the duty of investors is often misstated as being to maximise short-term returns and used to justify ignoring environmental or social risk factors, such as climate change.⁵⁸

Corporate directors as well as institutional investors are legally permitted to take into account environmental, social and governance (ESG) factors as long as they are a part of legitimate business strategy.⁵⁹

Since the common understanding of fiduciary duties has become oversimplified to mean producing short-term market value, it would be helpful for regulators to give guidance on the correct interpretation of these obligations.

Policy makers could clarify that the duties of corporate directors are owed to the corporation itself (not to shareholders) and that there is no obligation to maximise short-term returns (e.g. through tax optimisation). Additionally, it would be useful for regulators to specify obligations with respect to environmental and social issues that are relevant for particular industries, e.g. systemic financial stability in the case of banks, the mitigation of environmental impacts for extractive corporations, and the development of fair and sustainable supply chain models for apparel corporations.

In the case of institutional investors, investors could be pushed to identify and reflect the interests of end beneficiaries in their investment strategy.⁶⁰

4.3 Reflect Stakeholders' Interests

Over the past decades, shareholders have become increasingly the focus of boards and management, at the expense of the interests of other stakeholders. This development is not aligned with the historical concepts of corporate governance and empirical observations that other types of stakeholders are equally important for the corporation.⁶¹ Those stakeholders comprise internal stakeholders, like employees, as well as external ones like creditors, communities, local authorities, suppliers and customers.

The success of a corporation depends on the existence of a beneficial operational environment, including public confidence, relations with governments and trade blocs, maintaining long-term access to natural capital and guarding against systemic risks that arise with environmental degradation.⁶² **Maintaining good relations with society at large and passive stakeholders such as the environment are necessary for maintaining the long-term social license of corporations.**^{63 64}

Company law could promote the engagement of stakeholders and/or reflect their interests in their governance, as well as broader social costs

and harm to the environment arising out of business operations. This might be achieved through mechanisms which allow these different stakeholder and affected groups to express their views to corporate management and shareholders, or, where this is impossible, by mandating internal processes that assess the company's impact on those interests.⁶⁵

Governance arrangements

A corporation's governance documents and arrangements may be used to protect a corporate purpose, vision, mission and values – as well as to ensure respect for the interests of stakeholders and society at large. For example:

- ① Corporate governance documents may clarify what audiences and matters are material for the corporation. By extension, they can also specify what the corporation needs to report upon and how fiduciary duties and liabilities for directors relate to such material interests for the corporation.⁶⁶ This would introduce greater clarity for directors and provide a framework for shareholder engagement on such matters.
- ② A corporation may be established or transformed into a form which gives controlling or monitoring rights to stakeholder groups, for example through B Corp certification, employee participation in the board, employee share ownership programmes or specific share structures. Examples include worker and consumer cooperatives and credit unions, as well as foundations established to safeguard a corporation's multi-stakeholder philosophy.⁶⁷

4.4 Review Executive Pay Rules

A significant part of top executive remuneration consists of variable pay, typically in the form of share options or incentive plans linked to share price.

There are other ways of governing executive pay that would be more effective in encouraging long-term focus.

As a first step, restrictions might be imposed on variable pay (including stock options). One way to limit variable pay would be to cap bonuses relative to fixed pay in all listed companies.⁶⁸ This would continue to provide incentives to executives, but would reduce their short-sighted focus on share price.⁶⁹

Executive pay as whole may be also capped by reference to average, median or minimum salaries within the corporation.

Additionally, executive remuneration, and specifically share-based remuneration can be made conditional on the achievement and sustainment of long-term goals other than capital market performance. Pay policies could measure performance against both financial and non-financial criteria to capture a range of issues often ignored by stock price, including innovation, and environmental, social and governance matters. This could be done by referencing existing standards such as the Integrated Reporting Framework⁷⁰ or the Global Reporting Initiative (GRI) Guidelines.⁷¹

4.5 Alternative Share Structures

Today, the percentage of institutional investors that actually care about long-term corporate performance remains low – not exceeding 10%.⁷² It is therefore necessary to create incentives to stimulate long run investment.

As a way to do so, loyalty shares appear to be suitable. **These shares offer a loyalty reward to buy-and-hold investors, which may take several forms.**⁷³

These include time-weighted dividends that do not pay out full until the shareholder has held the shares for a pre-determined length of time, e.g. two years, and increased voting rights for shares held for a minimum period of time.

There are a number of ways that long-term shareholders can be favoured. Under both French and Dutch law, a company can grant more dividends or additional voting rights that are subject to a minimum holding period, i.e. two years or longer.⁷⁴

Similarly, the dual-class share structure allows public companies to designate one class of shares as having voting rights while the second class of common shares typically has no or limited voting rights. This enables companies to retain control over business strategy and vision, and resist takeover bids by allotting these shares to the founders, employees or other limited groups of stakeholders.

Dual-class share structures are common in the US in the technology sector, with companies such as Google, Facebook and Alibaba each granting effective control to the founders. Dual-class shares used to also be common in the US media but the New York Times is one of the few remaining outlets that continues to be dominated by a controlling family. In the Nordic Region, Sweden has become famous for its use of A and B class shares to give more voting rights to class A shareholders, which are often family groups. The use of dual-class shares is highest in Sweden at roughly 64% of traded companies using this structure but is also common in Denmark and Finland.

For example, the Danish pharmaceutical company Novo Nordisk publicly trades common shares without voting rights while a foundation retains control over the voting shares.⁷⁵ On the contrary, in the UK dual-class shares are considered problematic because they violate the ‘one share, one vote’ principle.⁷⁶ They have also been banned by the Singapore and Hong Kong stock exchanges.

4.6 Other Measures to Promote Long-term Shareholding

Alternatively, changes to accounting regulation and prudential norms might be used to encourage institutional investors to hold shares for periods that match their liabilities.⁷⁷

Outside of corporate governance, the imposition of **financial transaction taxes** have been hotly debated as a means to reduce short-term trading by imposing a small charge on each trade. In fact, at least 40 jurisdictions currently use them, including England and Hong Kong. North American and European regulators have discussed the use of such a tax. The EU tax is expected to come into effect in 2017.⁷⁸ Research about the effectiveness of financial transaction taxes in reducing market volatility is still inconclusive.⁷⁹

 The ideas in this section are further developed in the report: Veldman, J., Gregor, F., & Morrow, P. (2016). Corporate Governance for a Changing World: Report of a Global Roundtable Series. Brussels and London: Frank Bold and Cass Business School. http://www.purposeofcorporation.org/corporate-governance-for-a-changing-world_report.pdf

Related Initiatives

The Modern Corporation Project

<http://www.themoderncorporation.org>

The Modern Corporation Project is an academic project led by Dr. Jeroen Veldman and Prof. Hugh Willmott, both at Cass Business School, City University, London, which studies how political economy conditions corporate governance theory and practice. The Project has published [statements](#) from leading academics on the framing and effects of maximizing shareholder value from their respective field.

Aspen Institute Business and Society Program

www.aspeninstitute.org/policy-work/business-society

The BSP program is conducting a series of off-the-record and public dialogues among scholars, business leaders, and investors to broaden thinking about the corporate objective function beyond shareholder wealth maximization.

B Corporation

www.bcorporation.net

An international community of certified companies that aim to create public benefit as part of their business mission.

Drucker Institute

www.druckerinstitute.com

Carrying on the legacy of management expert Peter Drucker, Drucker Institute is on a mission of strengthening organizations to strengthen society.

Blueprint for Better Business

www.blueprintforbusiness.org

Blueprint for Better Business is an independent charity that challenge and support businesses to realise their true long-term potential: to serve society, respect people, rediscover their purpose and thereby earn a fair and sustainable return for investors.

Sustainable Market Actors for Responsible Trade (SMART)

www.jus.uio.no/ifp/english/research/projects/smart

Sustainable Market Actors is a global research network involving scholars from universities all over the world, wishing to contribute to research that will promote global, sustainable development within a circular, low-emission

economy compatible with the planetary boundaries and in line with the international development goals.

Tomorrow's Company

www.tomorrowcompany.com

Tomorrow's Company is a not-for-profit think-tank that aims to encourage a business approach that creates value for staff, shareholders and society through a focus on purpose, values, relationships and the long-term. Their approach is to identify the changes needed to ownership and governance structures and government policy in order to create conditions in which companies can flourish.

Focusing Capital on the Long-Term

www.fclt.org

Focusing Capital on the Long Term is an initiative for advancing practical actions to focus business and markets on the long term. They conduct hands-on research to develop practical structures, metrics, and approaches for longer-term behaviours in the investment and business worlds, and advocate for adoption of these structures and metrics within these communities.

The Shift Project

www.shiftproject.org

Shift was founded as a non-profit organisation after the endorsement of the Guiding Principles on Business and Human Rights at the UN. Their mission is to put the Guiding Principles into practice in order to support greater respect for the human rights of all people affected by business.

Institute of Business Ethics

www.ibe.org.uk

The Institute of Business Ethics is a non-profit professional organisation that aims at promoting high standards of business practice based on ethical values through the dissemination of knowledge and good practice.

NYU Stern - Center for Sustainable Business

<http://www.stern.nyu.edu/experience-stern/about/departments-centers-initiatives/centers-of-research/center-sustainable-business>

NYU Stern's Center for Sustainable Business's mission is to assist current and future business leaders develop the knowledge, skills, and experience needed to address environmental and social challenges, so their business can reduce risk; create competitive advantage; develop innovative services, products, and processes; while building value for society and protecting the planet.

Appendix: The Main Corporate Governance Models

A. The Shareholder Wealth Maximisation-Oriented Model

At its core, **the shareholder value maximisation-oriented model perceives the sole or primary purpose of the corporation to be to maximise its value for shareholders.** This belief has been developed since the 1970s.

What Are the Weaknesses of this Model?

Lack of legal basis

The immediate challenge to the shareholder model is that the maximisation of short-term profits is not required under any legal system.

Lack of efficiency

Furthermore, it is impossible to speak of 'shareholders' as a homogenous group with a coherent set of interests. While certainly shareholders expect to earn profits, both their expectations for financial returns and their time horizons vary significantly.

.....
The business of business is (...) to use its resources and engage in activities designed to increase its profits [...] as long as it stays within the rules of the game.
Milton Friedman

For example, institutional investors like pension funds and sovereign wealth funds may have extremely long time horizons because they seek to provide a return to their members and citizens over the course of their entire lifetime, or indeed over the course of many lifetimes. As a result, they may be patient investors prepared to invest in research and development to promote long-term innovation (such as new technology, which may take 10-20 years to be profitable) or invest in sustainability measures that are costly in the short-term (e.g. the transition to clean energy or upgrading factory equipment).

At the other extreme, hedge funds and activist investors may seek to 'unlock' shareholder value by pressuring boards to buy back stocks, layoff employees, buy other companies in order to acquire their innovations (rather than investing in risky explorative research) or engage in financial engineering to increase stock price.

In some places, the pressure to raise share price is simply driven by business culture, management reacting to demands from shareholders or seeking to increase the value of their own shareholdings, or a misinterpretation of the legal obligations of directors.

As a consequence, high profile advocates of shareholder primacy such as Michael Jensen (one of the economists who developed the theory), Jack Welch (ex-CEO of General Electric), and Lucian Bebchuk (Harvard law professor) have backed away from the idea that maximizing share value always and everywhere has the effect of maximizing the total social value of the firm or society more broadly.

Although the shareholder-centric model is generally perceived to be effective in terms of streamlining decision making in order to generate profits, they now recognise that specific types of shareholders may dominate the process, leading executive managers to become incentivised to take on too much risk.

.....
"Short-termism, or myopic behaviour, is the natural human tendency to make decisions in search of immediate gratification at the expense of future returns, decisions which we subsequently regret."
John Kay 2012: 14

This may lift the immediate market valuation of the firm, but does so by renegeing on implicit contracts and by imposing costs on creditors, employees, taxpayers, and the economy as a whole.

Growing inequality

In the 20th century, the incomes of middle-class individuals consistently rose despite economic recessions, wars and other upheaval. That is no longer the case. **Recent research has shown that a very large part of global wealth increase is captured by the the top 1%.** The primary causes for this capture are the increase in the share of company proceeds going to shareholders,

notably in the form of dividends and share buybacks and the rise of top executive compensation in large U.S. corporations, which is now largely based on stock options. At the same time, the wages of lower and middle-class workers have essentially flatlined. **Rising inequality within large companies has contributed, along with other factors, to increasing societal inequality on a global scale.**

Economic growth without job creation

As we begin the 21st century, we have witnessed an unprecedented situation where increased **corporate profitability has not translated into job opportunities.** There are numerous reasons for this, not least the rising role of automation and outsourcing. Yet, the fact remains that companies are not reinvesting their returns into research and development (R&D) and/or employment but rather maintaining significant cash reserves, buying out other companies, paying out dividends to shareholders and buying back shares.

Serious environmental and social implications

The use of the corporation as a legal form has had tremendous advantages in the past due to

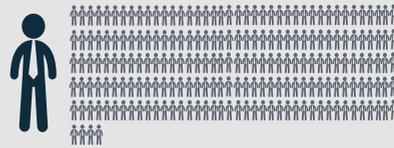
Real Consequences

Dividends to shareholders (UK)



Pay Gap (USA)

CEO pay in 2014 was 204 times that of an average worker



Stock Holding Period (S&P 500)

In 1960 the average was 8 years



its ability to stimulate risk-taking and innovation. At the same time, it has passed along many costs to the broader society - what economists call negative externalities - due to its failure to properly account for its impacts. The problem is particularly acute for climate change, where rapid and deep change is needed to avert impending crisis.

B. The Stakeholder-Oriented Model

In the mid-1980s, business models that placed a number of groups at the centre of decision-making, first began to achieve prominence. **These models saw stakeholders as “any group or individual who is affected by or can affect the achievement of an organisation’s objectives”**, meaning a broad range of interest groups including employees, creditors, customers, and extending to society and the environment - as well as shareholders.

The most well known example of a stakeholder model is Germany, which has adopted a pluralistic governance structure called co-determination.

More specifically, we may speak about an employee-oriented model. Companies with more than 2,000 Germany-based employees allow workers to elect one-half of the members of the supervisory board, which in turn appoints the managing board, monitors its performance and approves major business decisions. Austria has a form of co-determination similar to that in Germany.

Other European countries have forms of employee representation, including Denmark, Luxembourg, Hungary, Slovenia and the Czech Republic, and require companies to allow workers to elect or nominate a portion of the board’s membership. France reserves board seats for labour representatives. The only EU states without formal worker representation are Belgium, Italy, Portugal, and the UK.

The stakeholder model is generally associated with improved working conditions and enhanced productivity. There is also tentative evidence to suggest that it is associated with improved environmental sustainability.

In Germany, for example, many of the largest corporations disclose information about environmental and social matters, often using the Global Reporting Initiative’s reporting standards, and 29 German corporations have agreed to comply with a voluntary Sustainability Code created by the German Council for Sustainable Development.

A study of publicly traded German companies (DAX-30) concluded that in nearly all cases environmental and social activities had been initiated by employees, typically through their representatives on supervisory boards. Furthermore, companies with board level employee representation tend to be more equal because employees have a say in deciding the salaries of the CEO, in addition to lower-ranking employees.

Europe considered adopting the stakeholder model at the regional level but eventually decided against it due to significant opposition.

.....
Further reading on different corporate governance models:

Tricker, B. (2015). *Corporate Governance: Principles, Policies, and Practices*. Oxford: Oxford University Press.

Stout, L. (2012). *The Shareholder Value Myth*. Oakland: Berrett-Koehler Publishers.

The Modern Corporation (2014) Statement on Company Law. Summary. Retrieved from <https://themoderncorporation.wordpress.com/company-law-memo/>.

Veldman, J. (coord.) (2014). *The Modern Corporation Statement on Management*.

Lazonick, W. (2014). Profits Without Prosperity: Stock Buybacks Manipulate the Market, and Leave Most Americans Worse Off. *Harvard Business Review* (September), 47-55.

Eccles, R. G. and Youmans, T. (2015) Materiality in Corporate Governance: The Statement of Significant Audiences and Materiality (Harvard Business School General Management Unit Working Paper No. 16-023). Retrieved from SSRN: <http://ssrn.com/abstract=2654199>.



Endnotes

- 1 European Central Bank (ECB) (2004). *Annual Report: 2004*. Frankfurt: ECB. Retrieved from <https://www.ecb.europa.eu/pub/pdf/annrep/ar2004en.pdf?%204cc01c9b5ba4f31492c002bd7b5c954e>. Glossary.
- 2 Organisation for Economic Co-operation and Development (OECD) (2009). *Principles of Corporate Governance*. Paris: OECD.
- 3 Aglietta, M. and Reberioux, A. (2005). *Corporate Governance Adrift. A Critique of Shareholder Value*. Cheltenham: Edward Elgar.
- 4 Sorkin, A. R. (2015). BlackRock's Chief, Laurence Fink, Urges Other C.E.O.s to Stop Being So Nice to Investors, *The New York Times*; Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? *The Business Lawyer*, 66, 1-27.
- 5 Lazonick, W. (2013). The Financialization of the U.S. Corporation : What Has Been Lost, and How It Can Be Regained. *Seattle University Law Review*, 36, 857-909; Mishel, L., & Davis, A. (2015). Top CEOs Make 300 Times More than Typical Workers.
- 6 Jacoby, S. M. (2008). Finance and labor: Perspectives on risk, inequality and democracy. *Comparative Labor Law and Policy Journal*, 30, 17-61; Jacoby, S. M. (2011). Labor and finance in the united states. In C. A. Williams, & P. Zumbansen (Eds.), *The embedded firm: Corporate governance, labor, and finance capitalism* (pp. 277- 317). Cambridge: Cambridge University Press; Lazonick, W. (2013). The Financialization of the U.S. Corporation : What Has Been Lost, and How It Can Be Regained. *Seattle University Law Review*, 36, 857-909; Orhangazi, Ö. (2008). Financialisation and capital accumulation in the non-financial corporate sector: 1973-2003. *Cambridge Journal of Economics*, 32(6), 863-886; Piketty, T., & Saez, E. (2014). Inequality in the long run. *Science (New York, N.Y.)*, 344(6186), 838-43.
- 7 Planetary boundaries is the central concept that defines a safe operating space for humanity on planet Earth by defining nine boundaries. Transgressing one or more planetary boundaries may be highly damaging or even catastrophic. The boundaries include ozone depletion, loss of biosphere integrity, chemical pollution, the release of novel entities, climate change, ocean acidification, freshwater consumption and global hydrological cycle, land system change, nitrogen and phosphorus flows to the biosphere and oceans, and atmospheric aerosol loading. The concept was proposed by scientists led by Johan Rockström from the Stockholm Resilience Centre and Will Steffen from the Australian National University. For more information see: <http://www.stockholmresilience.org/research/planetary-boundaries/planetary-boundaries/about-the-research/the-nine-planetary-boundaries.html>. For an explanation of how the concept of planetary boundaries could be integrated into corporate law, see also Sjaafjell, B., & Richardson, J.-B. (2015). *Company Law and Sustainability Legal Barriers and Opportunities*. Cambridge: Cambridge University Press; Häyhä, T., Lucas, P. L., Vuuren, D. P., Cornell, S. E., & Hoff, H. (2016). From Planetary Boundaries to national fair shares of the global safe operating space — How can the scales be bridged? *Global Environmental Change*, 40, 60-72.
- 8 Purpose of the Corporation Project. (2015). *Corporate Governance for a changing world: Zurich Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School, p.3.
- 9 See e.g. Abbott, C. (2006). Environmental Command Regulation. In Richardson B. and Wood S. (eds). *Environmental Law for Sustainability*. Oxford: Hart Publishing. At 61.
- 10 See e.g. the UK's White Paper on Modernising Company Law, where it noted that "Government is not always best placed to draw up detailed legislation." DTI (2002). *Modernising company law (Cm 5553)*. London: DTI.
- 11 Veldman, J. and Willmott, H. (2013). What Is the Corporation and Why Does It Matter? *M@n@gement* 16(5), 605-620.
- 12 Blair, M., et Stout, L. (2011). Specific investment and corporate law. In L. Sacconi, M. Blair, R. Freeman, et A. Vercelli (ed.). *Corporate social responsibility and corporate governance. The contribution of economic theory and related disciplines* (p. 99-127). Basingstoke: Palgrave Macmillan.
- 13 Kay, J. (2011). *Obliquity: Why Our Goals Are Best Achieved Indirectly*. London: Profile Books.
- 14 The Modern Corporation (2014) Statement on Company Law. Summary. Retrieved from <https://themoderncorporation.wordpress.com/company-law- memo/>. Para. 1.
- 15 Statement on Company Law. Summary, op. cit. Para. 9 ; Gerner-Beuerle, C., Paech, P., and Schuster, E. P. (2013). *Study on Directors' Duties and Liability*. Brussels: European Commission DG Markt. Retrieved from http://ec.europa.eu/internal_market/company/docs/board/2013-study-analysis_en.pdf.
- 16 See Statement on Management, op. cit.; Richardson, B. and Sjaafjell, B. (2015). *Capitalism, the Sustainability Crisis and the Limitations of Current Business Governance*. In Richardson, B. and Sjaafjell, B. (Ed.) *Company Law and Sustainability: Legal Barriers and Opportunities*. Cambridge: Cambridge University Press.
- 17 Statement on Company Law. Summary, op. cit. Para. 10.
- 18 See Aglietta and Reberioux (2005), op. cit.; Biondi, Y. et al. (2007). *The Firm as an Entity: Implications for Economics, Accounting, and the Law*. London and NY: Routledge.
- 19 Ireland, P. (2003). Property and contract in contemporary corporate theory. *Legal Studies*, 23(3), 453-509.
- 20 Scott, K. (1998). Agency Costs and Corporate Governance. In P Newman (Ed.) *New Palgrave Dictionary of Economics and the Law*. London: Macmillan, 26.

- 21 Berle, A.A. (1962). *Modern Functions of the Corporate System*. Columbia Law Review 62.
- 22 See e.g. Biondi et al. (2007), op. cit.; Blair, M. (1995). *Ownership and Control. Rethinking Corporate Governance for the Twenty-First Century*. Washington: Brookings Institution Press.
- 23 Deakin, S. (2012). Corporation as Commons: Rethinking Property Rights, Governance and Sustainability in the Business Enterprise. *Queen's LJ*, 37(2), 339- 381.
- 24 Tricker, B. (2015). *Corporate Governance: Principles, Policies, and Practices*. Oxford: Oxford University Press.
- 25 Morrow, P. (22 January 2016). 'Lux leaks' Scandal Shows Why Tax Avoidance Is a Bad Idea. Retrieved from Politico website: <http://www.politico.eu/article/lux-leaks-scandal-shows-why-tax-avoidance-is-a-bad-idea>.
- 26 Fairer & Co LLP (2013). *Fiduciary Duties and Tax Avoidance*. Opinion. London: Fairer & Co LLP. Retrieved from http://www.taxjustice.net/cms/upload/pdf/Farrer_and_Co_Opinion_on_Fiduciary_Duties_and_Tax_Avoidance.pdf.
- 27 Macalister, T. (8 September 2013). Tax Avoidance 'Not a Legal Duty'. Retrieved from The Guardian website <http://www.theguardian.com/business/2013/sep/08/tax-avoidance>.
- 28 Palan, R., Murphy, R., & Chavagneux, C. (2010). *Tax havens: How globalization really works*. Ithaca, New York: Cornell University Press; Reich, R. B. (2016). *Saving capitalism: For the many, not the few*. London: Icon Books.
- 29 Chang, H. (2011). *23 things they don't tell you about capitalism*. London: Penguin; Mazzucato, M. (2015). *The entrepreneurial state: Debunking public vs. private sector myths*. London: Anthem Press; Johnston, A. (2010). Varieties of Corporate Governance and Reflexive Takeover Regulation. In U. Bernitz and W-G Ringe (Eds.), *Company Law and Economic Protectionism*. Oxford: Oxford University Press; Mayer, C. (2013). *Firm Commitment: Why the corporation is failing us and how to restore trust in it*. Oxford: Oxford University Press.
- 30 Chazan, G. (30 January 2013). Shell Ordered to Pay Niger Delta Farmer. Oil Group Found not Liable in Four of Five Pollution Charges. Retrieved from the Financial Time website <https://www.ft.com/content/d30ad810-6acc-11e2-9670-00144feab49a>.
- 31 Richardson, B. and Sjøfjell, B. (2015), op. cit. At 24.
- 32 Biondi et al. (2007), op. cit. ; Deakin (2012), op. cit.; Kay (2011), op. cit. ; Mayer, C. (2013). *Firm Commitment: Why the corporation is failing us and how to restore trust in it*. Oxford: Oxford University Press.
- 33 Eccles, R. G., Ioannou, I., and Serafeim, G. (2012). The Impact of a Corporate Culture of Sustainability on Corporate Behavior and Performance (Harvard Business School Working Paper No. 12-035). Retrieved from http://trippel.sdg.no/wp-content/uploads/2014/09/Eccles-HBR_The-Impact-of-a-Corporate-Culture-of-Sustainability1.pdf.
- 34 Sisodia R. et al, (2014). *Firms of Endearment: How World-Class Companies Profit from Passion and Purpose*. New Jersey: Pearson Education; Kilroy, D. and Schneider, M. (2014). *The Legacy of Good Leadership. A Wealth Creation Paradigm for the Third Millennium*. Ultimo (NSW): Read Along Publishing.
- 35 For example, the rising importance of American activist investors in France has led to pressure on French companies to reform their governance in line with the US model (see Basini, B. (30 April 2016). Les Investisseurs Activistes Débarquent en Europe. Retrieved from Le Journal du Dimanche website <http://www.lejdd.fr/Economie/Les-investisseurs-activistes-debarquent-en-Europe-783331>).
- 36 A more formal definition is provided by the International Co-operative Alliance (ICA): a cooperative, also called 'coop' or 'co-op', is 'an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically-controlled enterprise.' Retrieved from the ICA website: <http://ica.coop>.
- 37 In North America, this is typically done by issuing preferred stock, nonvoting stock common stock or participation certificates. See Chaddad, F. R. and M. L. Cook. (2004). Understanding new cooperative models: An ownership-control rights typology *Review of Agricultural Economics* 26(3), 348-360.
- 38 There are different classifications and names. See for instance What Are Cooperatives? (n.d.) Retrieved from nic.coop website: <http://www.nic.coop/media/1572/What%20Are%20Cooperatives.pdf>; What is a Co-operative? (n.d.) Retrieved from the Cooperative Learning Centre website: <http://www.learningcentre.coop/content/what-co-operative>.
- 39 See the official website: <http://www.mondragon-corporation.com/>. It should be mentioned however that the model has evolved from a pure worker cooperative system to a hybrid system where some workers are owners while others are not. See also how Mondragon dealt with the collapse of its subsidiary Fagor Electrodomesticos which has proved its sense of solidarity and democracy: Navarro, V. (30 April 2014). The Case of Mondragon. Retrieved from the Counterpunch website: <http://www.counterpunch.org/2014/04/30/the-case-of-mondragon/>.
- 40 EY (2012). *Enlightened Co-operative Governance*. The Bahamas: EYGM Limited. Retrieved from EY website: [http://www.ey.com/Publication/vwLUAssets/Enlightened_co-operative_governance/\\$FILE/Enlightened%20co-operative%20governance_EN.pdf](http://www.ey.com/Publication/vwLUAssets/Enlightened_co-operative_governance/$FILE/Enlightened%20co-operative%20governance_EN.pdf).
- 41 There are two types of entities that should be distinguished to avoid confusion. B Corp is an independent certification label (like fair trade labelled products) while Benefit Corporations have adopted a special legal form. The legal form is only available in certain US states and Italy. See more about the distinction at <http://www.triplepundit.com/2014/08/whats-difference-certified-b-corps-benefit-corps/>.
- 42 More controversially, B Corps omit any systematic consideration of their impacts on human rights, for example in their supply chains. See Bauer, J. and Umlas, E. (2015).

- Making Corporations Responsible: The Parallel Tracks of the B Corp Movement and the Business and Human Rights Movement. *SSRN Electronic Journal*. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2650136.
- 43 For analysis of the innovative , see Liao, C. (2014). Disruptive Innovation and the Global Emergence of Hybrid Corporate Legal Structures. *European Company Law* 11(2).
- 44 Blair, M. M., & Stout, L. A. (1999). A team production theory of corporate law. *Virginia Law Review*, 247-328.
- 45 Laloux, F. and Wilber, K. (2014). *Reinventing Organizations*. Brussels: Nelson Parker.
- 46 Morgan, J. (2014). *The Future of Work: Attract New Talent, Build Better Leaders, and Create a Competitive Organization*. John Wiley & Sons.
- 47 Romme, G. (2015). The big misconceptions holding holacracy back. *Harvard Business Review* (Sept.). Retrieved from <https://hbr.org/2015/09/the-big-misconceptions-holding-holacracy-back>.
- 48 Bernstein, E. et al. (2016). Beyond the Holacracy Hype. *Harvard Business Review* (Jul.-Aug.). Retrieved from <https://hbr.org/2016/07/beyond-the-holacracy-hype>.
- 49 Romme, G. (2015), *op. cit.*
- 50 Eccles, et al. (2012), *op. cit.*
- 51 The UK Stewardship Code (Financial Reporting Council (FRC) (2012). *The UK Stewardship Code*. London: The Financial Reporting Council Limited. Retrieved from <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Stewardship-Code-September-2012.pdf>) aims to enhance the quality of engagement between asset managers and companies to help improve long-term risk-adjusted returns to shareholders. The Code sets out a number of areas of good practice for institutional investors and describes steps asset owners can take to protect and enhance the value that accrues to the ultimate beneficiary. It is complementary to the UK Corporate Governance Code (FRC (2016). *The UK Corporate Governance Code*. London: The Financial Reporting Council Limited. Retrieved from: <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-April-2016.pdf>) for listed companies and, like that Code, it is to be applied by the companies signatories on a 'comply or explain' basis. See the FRC official website: <https://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Stewardship-Code.aspx>.
- 52 Organisation for Economic Co-operation and Development (OECD) (2009). *Principles of Corporate Governance*. Paris: OECD.
- 53 The ideas in this section are further developed in the report: Veldman, J., Gregor, F., & Morrow, P. (2016). *Corporate Governance for a Changing World: Report of a Global Roundtable Series*. Brussels and London: Frank Bold and Cass Business School.
- 54 For further information on the concept of materiality, see e.g. Eccles, R. G. and Youmans, T. (2015) *Materiality in Corporate Governance: The Statement of Significant Audiences and Materiality* (Harvard Business School General Management Unit Working Paper No. 16-023). Retrieved from SSRN: <http://ssrn.com/abstract=2654199>.
- 55 Segrestin, B. and Hatchuel, A. (2012). *Refonder l'Entreprise*. Paris: Seuil.
- 56 Robé, J.-P. (2011). The Legal Structure of the Firm. *Accounting, Economics, and Law*, 1(1), 1–86.
- 57 Sullivan, R., Martindale, W., Feller, E. and Bordon, A. (2015). *Fiduciary Duty in the 21st Century*. Geneva: UN PRI. Retrieved from <http://www.unpri.org/press/new-report-aims-to-end-debate-about-esg-and-fiduciary-duty/>.
- 58 See Johnston, A., & Morrow, P. (2016). *Fiduciary Duties of European Institutional Investors Legal Analysis and Policy Recommendations*. University of Oslo Faculty of Law Research Paper No. 2016-04.
- 59 Legal memoranda on fiduciary duty and corporate obligations with regard to non-financial reporting and related topics in 35 countries collected by American Bar Association Sustainable Development Task Force, available at: http://www.americanbar.org/groups/leadership/office_of_the_president/sustainable_development_task_force.html.
- 60 See Kay, J. (2015). *Other people's money: The real business of finance*. New York: PublicAffairs.
- 61 Ciepley, D. (2013). Beyond public and private: Toward a political theory of the corporation. *American Political Science Review*, 1-20; Djelic, M., & Bothello, J. (2013). Limited liability and its moral hazard implications: The systemic inscription of instability in contemporary capitalism. *Theory and Society*, 42(6), 589-615; Gleeson-White, J. (2014). *Six Capitals: The revolution capitalism has to have - or can accountants save the planet?* Sydney: Allen & Unwin; Parkinson, J. E., Gamble, A., & Kelly, G. (2000). *The Political Economy of the Company*. Oxford: Hart Publishing; Johnson, L. P. Q., & Millon, D. (2005). Recalling Why Corporate Officers are Fiduciaries. *William & Mary Law Review*, 46(5), p.1644; Segrestin, B., & Hatchuel, A. (2011). Beyond agency theory, a post-crisis view of corporate law. *British Journal of Management*, 22(3), 484–499; Zumbansen, P., & Williams, C. A. (2011). *The Embedded Firm Corporate Governance, Labor, and Finance Capitalism*. Cambridge.
- 62 Purpose of the Corporation Project. (2015). *Corporate Governance for a changing world: Zurich Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School.
- 63 Morrison, J. (2014). *The Social License: How to Keep Your Organization Legitimate*. Basingstoke: PalgraveMacmillan.; Tricker, B. (2012). *Corporate Governance: Principles, Policies and Practices*. Oxford: Oxford University Press.; Zumbansen, P., & Williams, C. A. (2011). *The Embedded Firm Corporate Governance, Labor, and*

- Finance Capitalism. Cambridge: Cambridge University Press. See also Purpose of the Corporation Project. (2015).
- 64 Corporate Governance for a changing world: Zurich Roundtable Executive Summary. Brussels and London: Frank Bold and Cass Business School; Purpose of the Corporation Project. (2015). *Corporate Governance for a changing world: London Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School.
- 65 This could begin with a soft law requirement of employee representation on remuneration committees, before moving on to a hard law requirement of minimum levels of employee board-level participation across listed companies.
- 66 Johnston, A., & Morrow, P. (2015). Towards long-termism in corporate governance beyond. In S. Vitols (Ed.), *Long-term investment and the Sustainable Company: a stakeholder perspective* (Vol. 3). Brussels: European: the Shareholder Rights Directive and Trade Union Institute (ETUI).
- 67 Novo Nordisk. (2015). *Why do so many people in cities get diabetes?* (Annual Report).
- 68 This is the approach taken by the EU Capital Requirements Directive to limit European bankers' variable pay .
- 69 Johnston, A. (2012). Shareholder Value Still Calling the Shots: European Regulation of Executive Remuneration in Banks. Conference on Post-Crisis Trajectories of European Corporate Governance, University of Leeds.
- 70 International Integrated Reporting Council (IIRC) (2013). *The International Integrated Reporting Framework*. London: IIRC. Retrieved from <http://integratedreporting.org/wp-content/uploads/2013/12/13-12-08-THE-INTERNATIONAL-IR-FRAMEWORK-2-1.pdf>.
- 71 Global Reporting Initiative (GRI). The Sustainability Reporting Guidelines. Retrieved from the GRI website <https://www.globalreporting.org/>.
- 72 Bolton, P. and Samana, F. (2013). Loyalty Shares: Rewarding Long-Term Investors. *Journal of Applied Corporate Finance* 25(3) 38-49. At 38.
- 73 See for instance the model of Bolton, P. and Samana, F. (op. cit.) in which loyalty warrant are granted to all shareholders, one which vests only after the expiration of a pre-determined loyalty period (like three years).
- 74 See the commentary of the Dutch Supreme Court in that regard: Houthoff Buruma (27 december 2007). Dutch Supreme Court Allows Loyalty Dividend. News Update. Retrieved from http://www.houthoff.com/_files-cms/file/Newsupdates/Corporate%20News%20Update%20DSM_December%202007.pdf. In France, Article L 232-14 of the Commercial Code authorises that the by-laws provide for a maximum 10% higher dividend to be distributed to shareholders that have hold shares for at least two years. In listed companies, the total amount of such shares cannot exceed 0.5% of the capital.
- 75 The Economist (18 April 2015). The Family Way. Distinctive Problems Call for Tailor-Made Solutions. Retrieved from <http://www.economist.com/news/special-report/21648175-distinctive-problems-call-tailor-made-solutions-family-way>.
- 76 Smith, A. David P. J. and Foley S. (3 October 2013). Exchanges Divided by Dual-class Shares. Need for Safeguards Collides with Desire for New Listings. Retrieved from the Financial Time website: <https://next.ft.com/content/e18a6138-2b49-11e3-a1b7-00144feab7de>.
- 77 Auvray T., Dallery T., and Rigot S. (2016). *L'entreprise Liquidée. La Finance Contre l'Investissement*. Paris: Michalon.
- 78 Update 1 – Interview – Financial Transaction tax unlikely before 2017 – Austria finmin (8 May 2015). Retrieved from Reuters website <http://www.reuters.com/article/2015/05/08/eu-tax-idUSL5N0XZ35A20150508>.
- 79 Pomeranets, A. (2012) Financial Transaction Taxes: International Experiences, Issues and Feasibility (Bank of Canada Review Autumn 2012). Retrieved from <http://www.bankofcanada.ca/wp-content/uploads/2012/11/boc-review-autumn12-pomeranets.pdf>.

Bibliography

Books

- Aglietta, M. and Rebérioux, A. (2005). *Corporate Governance Adrift. A Critique of Shareholder Value*. Cheltenham: Edward Elgar.
- Auvray T., Dallery T., and Rigot S. (2016). *L'entreprise Liquidée. La Finance Contre l'Investissement*. Paris: Michalon.
- Biondi, Y. et al. (2007). *The Firm as an Entity: Implications for Economics, Accounting, and the Law*. London and NY: Routledge.
- Blair, M. (1995). *Ownership and Control. Rethinking Corporate Governance for the Twenty-First Century*. Washington: Brookings Institution Press.
- Broadbent, A. and Omidvar, R. (2011). 'Impacting Public Policy' in *Five Good Ideas: Practical Strategies for Non-Profit Success*. Toronto: Coach House Books.
- Chang, H. (2011). *23 things they don't tell you about capitalism*. London: Penguin.
- Kay, J. (2011). *Obliquity: Why Our Goals Are Best Achieved Indirectly*. London: Profile Books.
- Kilroy, D. and Schneider, M. (2014). *The Legacy of Good Leadership. A Wealth Creation Paradigm for the Third Millennium*. Ultimo (NSW): Read Along Publishing.
- Lakoff, G. (2014). *Don't Think of an Elephant! Know Your Values and Frame the Debate*. Chelsea: Chelsea Green Publishing.
- Laloux, F. and Wilber, K. (2014). *Reinventing Organizations*. Brussels: Nelson Parker.
- Mazzucato, M. (2015). *The entrepreneurial state: Debunking public vs. private sector myths*. London: Anthem Press.
- Mayer, C. (2013). *Firm Commitment: Why the corporation is failing us and how to restore trust in it*. Oxford: Oxford University Press.
- Palan, R., Murphy, R., & Chavagneux, C. (2010). *Tax havens: How globalization really works*. Ithaca, New York: Cornell University Press.
- Reich, R. B. (2016). *Saving capitalism: For the many, not the few*. London: Icon Books.
- Sisodia R. et al, (2014). *Firms of Endearment: How World-Class Companies Profit from Passion and Purpose*. New Jersey: Pearson Education.
- Segrestin, B. and Hatchuel, A. (2012). *Refonder l'Entreprise*. Paris: Seuil.
- Stout, L. (2012). *The Shareholder Value Myth*. Oakland: Berrett-Koehler Publishers.
- Tricker, B. (2015). *Corporate Governance: Principles, Policies, and Practices*. Oxford: Oxford University Press.

Articles

- Abbott, C. (2006). Environmental Command Regulation. In Richardson B. and Wood S. (eds). *Environmental Law for Sustainability*. Oxford: Hart Publishing.
- Bauer, J. and Umlas, E. (2015). Making Corporations Responsible: The Parallel Tracks of the B Corp Movement and the Business and Human Rights Movement. *SSRN Electronic Journal*. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2650136.
- Bernstein, E. et al. (2016). Beyond the Holacracy Hype. *Harvard Business Review* (Jul.-Aug.). Retrieved from https://hbr.org/2016/07/beyond-the-holacracy-hype?utm_campaign=harvardbiz&utm_source=twitter&utm_medium=social.
- Blair, M., et Stout, L. (2011). Specific investment and corporate law. In L. Sacconi, M. Blair, R. Freeman, et A. Vercelli (ed.). *Corporate social responsibility and corporate governance. The contribution of economic theory and related disciplines* (p. 99-127). Basingstocke: Palgrave Macmillan.
- Blair, M. M., & Stout, L. A. (1999). A team production theory of corporate law. *Virginia Law Review*, 247-328.
- Bolton, P. and Samana, F. (2013). Loyalty Shares: Rewarding Long-Term Investors. *Journal of Applied Corporate Finance* 25(3) 38-49.
- Chaddad, F. R. and M. L. Cook. (2004). Understanding new cooperative models: An ownership-control rights typology. *Review of Agricultural Economics* 26(3), 348-360.
- Deakin, S. (2012). Corporation as Commons: Rethinking Property Rights, Governance and Sustainability in the Business Enterprise. *Queen's LJ* 37(2), 339-381.
- Häyhä, T., Lucas, P. L., Vuuren, D. P., Cornell, S. E., & Hoff, H. (2016). From Planetary Boundaries to national fair shares of the global safe operating space — How can the scales be bridged? *Global Environmental Change*, 40, 60-72.
- Ireland, P. (2003). Property and contract in contemporary corporate theory. *Legal Studies*, 23(3), 453-509.
- Jacoby, S. M. (2008). Finance and labor: Perspectives on risk, inequality and democracy. *Comparative Labor Law and Policy Journal*, 30, 17-61.
- Jacoby, S. M. (2011). Labor and finance in the united states. In C. A. Williams, & P. Zumbansen (Eds.), *The embedded firm: Corporate governance, labor, and finance capitalism* (pp. 277-317). Cambridge: Cambridge University Press.
- Johnston, A., & Morrow, P. (2016). Fiduciary Duties of European Institutional Investors Legal Analysis and Policy Recommendations. *University of Oslo Faculty of Law Research Paper No. 2016-04*.

Johnston, A. and Morrow, P. (2015) Towards Long-termism in Corporate Governance: The Shareholder Rights Directive and Beyond. In Vitols, S. (ed). *Long-term investment and the Sustainable Company: a stakeholder perspective*. Brussels: ETUI. Retrieved from <http://www.etui.org/Publications2/Books/Long-term-investment-and-the-Sustainable-Company-a-stakeholder-perspective.-Vol.-III>.

Johnston, A. (2010). Varieties of Corporate Governance and Reflexive Takeover Regulation. In U. Bernitz and W-G Ringe (Eds.), *Company Law and Economic Protectionism*. Oxford: Oxford University Press.

Lazonick, W. (2014). Profits Without Prosperity: Stock Buybacks Manipulate the Market, and Leave Most Americans Worse Off. *Harvard Business Review* (September), 47-55.

Lazonick, W. (2013). The Financialization of the U.S. Corporation : What Has Been Lost, and How It Can Be Regained. *Seattle University Law Review*, 36, 857-909.

Liao, C. (2014). Disruptive Innovation and the Global Emergence of Hybrid Corporate Legal Structures. *European Company Law* 11(2).

Orhangazi, Ö. (2008). Financialisation and capital accumulation in the non-financial corporate sector: 1973-2003. *Cambridge Journal of Economics*, 32(6), 863-886.

Piketty, T., & Saez, E. (2014). Inequality in the long run. *Science* (New York, N.Y.), 344(6186), 838-43.

Richardson, B. and Sjøfjell, B. (2015). Capitalism, the Sustainability Crisis and the Limitations of Current Business Governance. In Richardson, B. and Sjøfjell, B. (Ed.) *Company Law and Sustainability: Legal Barriers and Opportunities*. Cambridge: Cambridge University Press.

Romme, G. (2015). The big misconceptions holding holacracy back. *Harvard Business Review* (Sept.). Retrieved from <https://hbr.org/2015/09/the-big-misconceptions-holding-holacracy-back>.

Sjafjell, B., & Richardson, J.-B. (2015). *Company Law and Sustainability Legal Barriers and Opportunities*. Cambridge: Cambridge University Press.

Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? *The Business Lawyer*, 66, 1-27.

Veldman, J. and Willmott, H. (2013). What Is the Corporation and Why Does It Matter? *M@n@gement* 16(5), 605-620.

Other Academic Publications

Eccles, R. G., Ioannou, I., and Serafeim, G. (2012). The Impact of a Corporate Culture of Sustainability on Corporate Behavior and Performance (Harvard Business School Working Paper No. 12-035). Retrieved from http://trippel.sdg.no/wp-content/uploads/2014/09/Eccles-HBR_The-Impact-of-a-Corporate-Culture-of-Sustainability1.pdf.

Eccles, R. G. and Youmans, T. (2015) Materiality in Corporate Governance: The Statement of Significant Audiences and Materiality (Harvard Business School General Management Unit Working Paper No. 16-023). Retrieved from SSRN: <http://ssrn.com/abstract=2654199>.

Johnston, A. (2012). Shareholder Value Still Calling the Shots: European Regulation of Executive Remuneration in Banks. Conference on Post-Crisis Trajectories of European Corporate Governance, University of Leeds.

Organizations' Publications

European Central Bank (ECB) (2004). *Annual Report: 2004*. Frankfurt: ECB. Retrieved from <https://www.ecb.europa.eu/pub/pdf/annrep/ar2004en.pdf?4cc01c9b5ba4f31492c002bd7b5c954e>.

EY (2012). *Enlightened Co-operative Governance*. The Bahamas: EYGM Limited. Retrieved from EY website: [http://www.ey.com/Publication/vwLUAssets/Enlightened_co-operative_governance/\\$FILE/Enlightened%20co-operative%20governance_EN.pdf](http://www.ey.com/Publication/vwLUAssets/Enlightened_co-operative_governance/$FILE/Enlightened%20co-operative%20governance_EN.pdf)

Fairer & Co LLP (2013). *Fiduciary Duties and Tax Avoidance. Opinion*. London: Fairer & Co LLP. Retrieved from http://www.taxjustice.net/cms/upload/pdf/Farrer_and_Co_Opinion_on_Fiduciary_Duties_and_Tax_Avoidance.pdf.

Financial Reporting Council (FRC) (2012). *The UK Stewardship Code*. London: The Financial Reporting Council Limited. Retrieved from <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Stewardship-Code-September-2012.pdf>.

FRC (2016). *The UK Corporate Governance Code*. London: The Financial Reporting Council Limited. Retrieved from <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-April-2016.pdf>.

Gerner-Beuerle, C., Paech, P., and Schuster, E. P. (2013). *Study on Directors' Duties and Liability*. Brussels : European Commission DG Markt. Retrieved from http://ec.europa.eu/internal_market/company/docs/board/2013-study-analysis_en.pdf.

Global Reporting Initiative (GRI). *The Sustainability Reporting Guidelines*. Retrieved from the GRI website: <https://www.globalreporting.org/>.

International Corporate Governance Network (ICGN) (2015). *Human Rights Through a Corporate Governance Lens*. London: ICGN. Retrieved from <https://www.icgn.org/policy/viewpoints/human-rights>.

International Integrated Reporting Council (IIRC) (2013). *The International Integrated Reporting Framework*. London: IIRC. Retrieved from <http://integratedreporting.org/wp-content/uploads/2013/12/13-12-08-THE-INTERNATIONAL-IR-FRAMEWORK-2-1.pdf>.

Narberhaus, M. and Sheppard, A. (2015). *Reimagining Activism: A Practical Guide for the Great Transition*. Berlin: Smart CSOs Lab and Michael Narberhaus. Retrieved from http://smart-csos.org/images/Documents/reimagining_activism_guide.pdf.

Organisation for Economic Co-operation and Development (OECD) (2009). *Principles of Corporate Governance*. Paris: OECD.

Pomeranets, A. (2012) Financial Transaction Taxes: International Experiences, Issues and Feasibility (Bank of Canada Review Autumn 2012). Retrieved from <http://www.bankofcanada.ca/wp-content/uploads/2012/11/boc-review-autumn12-pomeranets.pdf>.

Public Interest Research Centre (PIRC) (2011). *Common Cause Handbook*. London: PIRC. Retrieved from <http://valuesandframes.org/>.

Purpose of the Corporation Project. (2015). *Corporate Governance for a changing world: Zurich Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School.

Sullivan, R., Martindale, W., Feller, E. and Bordon, A. (2015). *Fiduciary Duty in the 21st Century*. Geneva: UN PRI. Retrieved from <http://www.unpri.org/press/new-report-aims-to-end-debate-about-esg-and-fiduciary-duty>.

Veldman, J. (coord.) (2014). *The Modern Corporation Statement on Management*.

Veldman, J., Gregor, F., & Morrow, P. (2016). *Corporate Governance for a Changing World: Report of a Global Roundtable Series*. Brussels and London: Frank Bold and Cass Business School.

Newspaper Articles and Web Posts

Basini, B. (30 April 2016). Les Investisseurs Activistes Débarquent en Europe. Retrieved from Le Journal du Dimanche website <http://www.lejdd.fr/Economie/Les-investisseurs-activistes-debarquent-en-Europe-783331>.

Chazan, G. (30 January 2013). Shell Ordered to Pay Niger Delta Farmer. Oil Group Found not Liable in Four of Five Pollution Charges. Retrieved from the Financial Time website <https://next.ft.com/content/d30ad810-6acc-11e2-9670-00144feab49a>.

Eccles, R. G., Ioannou, I., and Serafeim, G. (2012). The Impact of a Corporate Culture of Sustainability on Corporate Behavior and Performance (Harvard Business School Working Paper No. 12-035). Retrieved from http://trippel.sdg.no/wp-content/uploads/2014/09/Eccles-HBR_The-Impact-of-a-Corporate-Culture-of-Sustainability1.pdf.

Eccles, R. G. and Youmans, T. (2015) Materiality in Corporate Governance: The Statement of Significant Audiences and Materiality (Harvard Business School General Management Unit Working Paper No. 16-023). Retrieved from SSRN: <http://ssrn.com/abstract=2654199>.

Houthoff Buruma (27 December 2007). Dutch Supreme Court Allows Loyalty Dividend. News Update. Retrieved from http://www.houthoff.com/_files-cms/file/Newsupdates/Corporate%20News%20Update%20DSM_December%202007.pdf.

Macalister, T. (8 September 2013). Tax Avoidance 'Not a Legal Duty'. Retrieved from The Guardian website <http://www.theguardian.com/business/2013/sep/08/tax-avoidance>.

Matthews, A. and Matthews, L. (27 February 2015). Five Ways that People Frame Climate Change Debates. Retrieved from The Guardian website <http://www.theguardian.com/sustainable-business/2015/feb/23/five-ways-that-people-frame-climate-change-debates>.

Mishel, L., & Davis, A. (2015). Top CEOs Make 300 Times More than Typical Workers. Retrieved from the Economic Policy Institute website <http://www.epi.org/publication/top-ceos-make-300-times-more-than-workers-pay-growth-surpasses-market-gains-and-the-rest-of-the-0-1-percent>.

Morrow, P. (22 January 2016). 'Lux leaks' Scandal Shows Why Tax Avoidance Is a Bad Idea. Retrieved from the Politico website: <http://www.politico.eu/article/lux-leaks-scandal-shows-why-tax-avoidance-is-a-bad-idea/>.

Navarro, V. (30 April 2014). The Case of Mondragon. Retrieved from the Counterpunch website <http://www.counterpunch.org/2014/04/30/the-case-of-mondragon/>.

Smith, A. David P. J. and Foley S. (3 October 2013). Exchanges Divided by Dual-class Shares. Need for Safeguards Collides with Desire for New Listings. Retrieved from the Financial Time website: <https://next.ft.com/content/e18a6138-2b49-11e3-a1b7-00144feab7de>.

Sorkin, A. R. (2015). BlackRock's Chief, Laurence Fink, Urges Other C.E.O.s to Stop Being So Nice to Investors, The New York Times.

The Modern Corporation (2014) Statement on Company Law. Summary. Retrieved from <https://themoderncorporation.wordpress.com/company-law-memo/>.

The Economist (18 April 2015). The Family Way. Distinctive Problems Call for Tailor-Made Solutions. Retrieved from <http://www.economist.com/news/special-report/21648175-distinctive-problems-call-tailor-made-solutions-family-way>.

Update 1 – Interview – Financial Transaction tax unlikely before 2017 – Austria finmin (8 May 2015). Retrieved from Reuters website <http://www.reuters.com/article/2015/05/08/eu-tax-idUSL5N0XZ35A20150508>.

What Are Cooperatives? (n.d.) Retrieved from nic.coop website: <http://www.nic.coop/media/1572/What%20Are%20Cooperatives.pdf>.

What is a Co-operative? (n.d.) Retrieved from the Cooperative Learning Centre website: <http://www.learningcentre.coop/content/what-co-operative>.

Responsible corporate governance is a cornerstone of sustainable companies. Together, the articulation of long-term purposes and the introduction of a plurality of voices into corporate governance would allow a better alignment of corporate decision-making with the common good, and operate as a brake on the current systemic tendency towards short-termism.

Responsible corporate governance offers the possibility of forging a vision for business that sees corporations providing benefits to the communities in which they are situated and creative solutions to the complex challenges we face that cannot be addressed by governments or civil society alone, such as climate change.

