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Corporate Governance. Why, When, and How?

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Corporate Governance. Why, When, and How?

1.1 One vote, one share, and the problem of substantive democracy

“Corporate governance is old, only the phrase is new”, writes Bob Tricker in his well-known textbook[1]. His words can be enriched with something else. In Washington, in Pennsylvania Avenue, there is the US National Archives Building, a neoclassical construction, which was part of a planning urbanistic project of the 1920s-1930s. Outside the building, there is a statue, called “Study the past”. A few words explains the importance of that study: “what is past is prologue”, a quotation by William Shakespeare from his play *The Tempest*. These words ought to be added to those written by Tricker. The present is prepared by the past. Its features and choices depend from what has been previously done.

The concept of corporate governance has a dialectic relation with the issue of democracy. It is not by chance that most of the discussion about shareholders rights and the first practices to guarantee them goes back to early decades of the economic and institutional history of United States. The American political elites developed some of the most relevant debates about democracy, when in Europe – with the exception of United Kingdom – the democratic institutions had to struggle to born, to survive, and even more important to work in the best way. Old European social and economic elites and their political representatives were giving a very limited meaning to the rules of democracy. However, in the United States the discussion about democracy in business and in particular in stock companies presented some unexpected aspect that *prima facie* could be contradictory. The equivalence of one head-one vote coming from the political conception of democracy struggled in the real economy with the substantive – not the formal, which by principle and by law did not exist – differences existing among citizens. Some were richer than others were; some could buy more shares than others could. The myth of democracy that accompanied the formulation of the American constitution and its amendments, the debates about the best practices to implement it, was facing a huge obstacle when they entered into the world of business. How to the different rights of the citizens with the need to avoid too big social and economic differences that could endanger the social and political stability of the country?

Literature on the history of shareholders’ voting rights shows that the formal democratic right one share-one vote was common and generalized. On the opposite, it has been the result of a long and controversial series of discussions and of different

[1] TRICKER. B., *Corporate Governance. Principles, Policies, and Practices*, Oxford, 2015, p. 6.

practices. The prevailing inspiration was linked to social conceptions of the firm that in the second part of XIX century disappeared[2]. One of the most famous example bring us to one of the first post-colonial State. Virginia. There, in 1830s, the lawmakers introduce a voting scale method to limit the "privileges" – in fact the different incomes and investments capabilities – among the shareholders. The law approved in 1836 concerning the shareholders of manufacturing corporations established the voting rights in this way: one vote for each share up to 15, one vote for every five shares from 15 to 100, and one vote for each increment of 20 shares above 100 shares[3]. This seems to be an important exception, although not the only one. A research by Henry Hansmann and Mariana Pargendler has shown that manufacturing industry was the sector where this kind of restriction were relatively more frequent in US until 1860s. "Only one out of 135 manufacturing corporations chartered by special act in Connecticut through 1856 adopted voting restrictions. Similarly, restricted voting schemes were present in only 2% of the manufacturing corporations chartered in New York between 1790 and 1825 and 5% of such firms incorporated in New Jersey between 1790 and 1867"[4]. Other studies have noticed that such a method was quite common across all industry, without being never the majority of the cases. In nineteenth-century Connecticut, about 50% of charters and banking corporations adopted the voting restrictions. The forms could vary from a graduated voting scale to an absolute cap on the number of votes per shareholder. Similarly, nearly one-half of early New Jersey banks adopted a graduated voting scale[5]. In New York State this kind of restrictions were not so frequent (an accepted evaluation affirms that just one-fourth banks had voting restrictions. At the national level, there were more: 53% of banks adopted restricted voting between 1790 and

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[2] DUNLAVY C.A., *Social Conceptions of the Corporation: Insights from the History of Shareholder Voting Rights*, in "Washington and Lee Law Review", n. 1347, 2006.

[3] DUNLAVY, C.A., *Corporate governance in late 19th century Europe and the U.S.: the case of shareholder voting rights*, IN K.J. HOPT K. J.-H. KANDA K.- ROE M. J.-. WYMEERSCH E.-S. PRIGGE S. (eds.), *Comparative Corporate Governance. The State of the Art and Emerging Research*, Oxford University Press, 1998, pp. 5–40.

[4] HANSMANN H.- PARGENDLER M., *The Evolution of Shareholder Voting Rights: Separation of Ownership and Consumption*, in "The Yale law Journal", vol. 123, 2013-2014, No. 4, January 2014.

[5] DREIER A., *Shareholder Voting Rules in 19th Century American Corporations: Law, Economics and Ideology*, (24 April 1995) Yale Law School, Substantial Paper, at 20. The paper is downloadable from https://www.coursehero.com/file/p78nooj/A-Dreier-Shareholder-Voting-Rules-in-19th-Century-American-Corporations-Law.

1859. In addition, other service sectors were using the same method[6]. Eric Hilt studied the case of New York and noticed, for instance, that restricted voting rules were almost generalized in New York turnpike companies[7].

However, his researches permitted also some other important aspects of the early American stock companies. The firms, usually controlled by a stockholder and/or by the members of the board, encouraged the small shareholders to join the company with some information about the voting rights. Despite the high concentration of the ownership structure, the number of small shareholder was very important[8]. Previous studies detected also the early forms of managerial experience. The progressive specialization of firm implied also the use of professional to manage certain aspects of the company. In certain sectors, like insurance, this was quite indispensable. However, certain functions, especially the financial ones, required also in the manufacturing firms (for instance the textile companies), some early forms of managerial professionalism[9].

All these restrictions and discussions about the different forms to reduce the power of the biggest shareholders became obsolete after 1865. The huge economic development of post-Civil War period produced a situation where the legislation was always late compared to the original initiative of the new big corporations. The boom of the railways constructions and the immense economic and financial power of the railways companies pushed many States to provide special conditions for the incorporation of the companies. A competition started among the States in the late 1880s and the 1890s: offering legal residence to the companies in exchange of franchise taxes. This was particularly true because of the many novelties concerning the form and the character of the companies. New forms of firms raised, while other declined. The formal trust died. The new powerful actor was the holding company,

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[6] HANSMANN H.-PARGENDLER M., The Evolution of Shareholder Voting Rights, cit.

[7] HILT E., *Shareholder Voting Rights in Early American Corporations*, in "Bussiness. Histor", vol, 55, 2013.

[8] HILT E., *When Did Ownership Separate from Control? Corporate Governance in the Early Nineteenth Century*, in "Journal of Economic History", vol. 68, No. 3, 2008.

[9] A. D. CHANDLER A.D. jr*, The United States: Evolution of Enterprise*, in MATHIAS P.-POSTAN M., *The Cambridge Economic History of Europe*, Volume 7: *The Industrial Economies: Capital, Labour and Enterprise, Part 2: The United States, Japan and Russia*, Cambridge, 1978, pp. 70-75.

a firm that could control horizontally several other companies of the same sector or vertically by integrating different segments of the productive process[10].

These changes were also reflecting – and the response to – the depression of the 1870s-80s. While American society was changing with the new waves of immigrants, the big business was establishing new hierarchies among sectors in the American economy. The rise of big business in many sectors, from the railways to the heavy industry, from oil to manufacturing industry, changed the country and not only from the GDP point of view. Some reactions were necessary. The power of the new companies and of their owners scared a part of American society. Critics and attacks against the new giants of the economy were very frequent and even popular, considering the success of the humour magazine *Puck*, which regularly ridiculed the biggest industrialists and bankers of that period (Vanderbilt, Morgan, Carnegie, Rockefeller, etc.) together with some politicians and other members of the American social élites[11]. However, the campaign led to some important result. In 1887, the Interstate Commerce Act put a stop to cartelization of the railways sector. A few years later, a social and political coalition of small farmers (still influenced by the values of the old pioneers that enlarged the Frontier going west), big cities' shopkeepers and members of the Democratic Party succeeded in the first law that introduced precise norms against excessive concentration of market power. In 1890, the Congress approved the Sherman Act, known as the first antitrust law. In reality, in the following years and decades the law was interpreted as an anti-cartelization law, inspired by the principles of fair competition, an expression that was also too candid for the immense strength of the new big players of the American economy.[12] The American contradictory paradox started in those years. On the one hand, the strong push towards economic growth, on the other one, the need of regulations – a special cocktail that was served in that period just in the United States.

The concentration of economic power was not the only aspect of this period. From the point of view of the firm and of the corporate governance, the separation of ownership and management has been the most relevant consequence of the huge economic development of the country in the last decades of XIX century. *Per se*, as

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[10] ATACK J.-PASSEl P., *A New Economic View of American History*, W.W. Norton & Co, 1994 (2nd ed.), pp., 481-487.

[11] KAHN M.A.-WEST R.S., *What Fools These Mortals Be! The Story of Puck, America's First and Most Influential Magazine of Color Political Cartoons*, IDW Publishing, pp. 161-182

[12] STIGLER G.J., *The origins of the Sherman Act,* in SULLIVAN T.E. (ed.), *The Political Economy of the Sherman Act: The First One Hundred Years*, Oxford University Press, 1991, pp. 32-38; AMATORI F.-COLLI A., *Business History. Complexities and Comparisons*, Routledge, 2011, pp. 68 and 84.

we have noticed before, this was not completely new. The novelty was the generalization of the process. The second industrial revolution, which created new capital-intensive sectors, the technological changes introduced in the old ones, and the beginning of the mass production and distribution implied a wide managerialization of the companies[13].

This transformation of the American firms implied many consequences for the shareholders. The increasing financial resources necessary to develop the activities of the firms need the intervention of many shareholders, most of whom were just small investors without the possibility to play any role in the firm. On the other side, there were big shareholders (financiers, founders of the company, and members of the founder's family) that were extremely interested in the concrete choices of the management and that were frequently interfering with the regular managerial activities. The potential conflict between (very influential) shareholders and managers – between principal and agent, according agency theory - was born, as well as its huge literature, inaugurated by Jensen and Meckling, discussing the problem[14].

1.2 Towards regulation, disclosure, and transparency

However, apart from exceptions, this conflict did not explode in the following decades. The growth of American economy until World War 1 and the so-called "roaring 1920s" permitted to avoid any dispute. Until 1929, managers were considered a sort of King Midas: shareholders remained passive as dividends were regularly distributed. Many companies introduced new financial product on the one hand to reinforce the ownership structure and the biggest shareholders, on the other one to raise new financial resources among the public. The one share-one vote rule was widespread. However, from the early 1920s, since the corporate law did not require it, the companies started to introduce the multiple vote shares and the nonvoting shares. This behaviour led to opposition from the public, as well as the academic community. In 1926, the New York Stock Exchange refused to list a company that issued nonvoting stock for the first time[15].

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[13] CHANDLER A.D. jr, *The Visible Hand: The Managerial Revolution in American Business*, Harvard University Press, 1977.

[14] JENSEN M.-MECKLING W., *Theory of the Firms: Managerial Behaviour, Agency Cost and Ownership Structure*, in "Journal of Financial Economics, No. 3-4 October 1976.

[15] CHOPER J.H.-COFFEE J.C.-GILSON R.J., *Cases and Materials on Corporations*, in "Aspen Law & Business", 2000, p. 565; SHAPIRO LUND D., *Nonvoting Shares and Efficient Corporate*

The dramatic crisis of 1929 completely changed the situation. The managers of stock companies were now criticised under many points of view. The insufficient amount of information as well as its low quality, the lack of transparency of the decision process – too much concentrated frequently just in one person – paved the way for the first scientifically based discussion about the management and its relation with the shareholders. In 1931, Adolph Berle, a professor at the Columbia School of Law, published an article where he affirmed that "all powers granted to a corporation or the management of a corporation (...) are necessarily and at all times exercisable only for the rateable benefit of all the shareholders as their interest appears." He was convinced that corporations were simply instruments for advancing and protecting shareholders' interests and that corporate law should be interpreted to reflect this principle. He suggested that any other account of corporations' function and purpose would "defeat the very object and nature of the corporation itself[16].

One year later, he reinforced his point of view in a book he published with Gardiner Means. In their monography, they highlighted, for the first time, the huge power reached by big corporations, comparing them to State. The conflict moved at the level of regulation between the two powers, the political and the economic one. They held the view that corporate powers are powers in trust for shareholders and nobody else, but admitted that a conflict could emerge. The central question for them was whether there was any justification for assumption that those in control of a modern corporation were choosing to operate it in the interests of the owners – the classic agency dilemma. Their answer was opened the door to a seminal discussion: "it depend on the degree to which the self-interest of those in control may run parallel to the interests of ownership and, insofar as they differ, on the checks on the use of power which may be established by political, economic, or social conditions (...). If we are to assume that the desire for personal profit is the prime force motivating control, we must conclude that the interests of control are different from and often radically opposed to those of ownership; that the owners most emphatically will not be served by a profit-seeking controlling group."[17]

Merrick Dodd, a professor at Harvard Law School, discussed that point of view. He challenged Berle's position in a crucial point, when he wrote "there is in

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Governance, University of Chicago Law School Chicago Unbound Coase-Sandor Working Paper Series in Law and Economics, 2017, p. 9.

[16] BERLE A.A., *Corporate powers as powers in trust*, in "Harvard Law Review", 1931, Nr 44, pp. 1049-1074 (here 1049 and 1074).

[17] BERLE A.-MEANS G., The Modern Corporation and Private Property, Transcation Publisher, 1932, pp. 113-114.

fact a growing feeling not only that business has responsibilities to the community but that our corporate managers who control business should voluntarily and without waiting for legal compulsion manage it in such a way as to fulfil those responsibilities". In this framework, he introduce the concept of "social responsibility", a concept that would be developed many decades later. For him, that implied that if corporate managers paid more attention to the needs of their employees and consumers, this would ultimately benefit shareholders[18]. Their ideas would have received a larger formalization thirty years later with the famous book by Marris on managerial capitalism[19].

The debate between the two academics did not inflame very much, but was not without any consequence[20]. The New Deal reforms that started in 1933 brought an important novelty also for the corporate community. In 1934, the Congress passed the law that established the first stock exchange independent authority, the Security Exchange Commission (SEC) that for the first time constrained the exercise of corporate power and inculcated a greater sense of public responsibility into corporate managers. The new institution, whose first chairman was Joseph P. Kennedy (the father of the John Fitzgerald Kennedy), introduced a stricter regulation for the listed companies and to uniform disclosure of information[21]. However, a recent paper reveals that not all consequences of the creation of SEC were positive. If the situation of the capital market was now more transparent and the quality and quantity of information thanks to quarterly report of the listed companies increased significantly, from the point of view of corporate governance the effects seem to go into another direction. The creation of the SEC "may have imposed "too much" governance on some firms, but (…) they were able to offset the governance imposed on them". The research permits the authors to affirm: "one of the most significant effects of the creation of the SEC was to cause the boards of affected firms to become less independent. An independent board and an independent chairman appear to have been more valuable in the pre-SEC era compared to in the post-SEC period. There is also some evidence that

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[18] DODD E.M., *For whom are corporate managers trustees*, in "Harvard Law Review", vol 45, 1932, pp. 145-1163.

[19] MARRIS R., *The Economic Theory of Managerial Capitalism*, MacMillan, 1964.

[20] WEINER J. L., *The Berle-Dodd Dialogue on the Concept of the Corporation*, in "Columbia Law Review", Vol. 64, No. 8 December 1964, pp. 1458-1467.

[21] STIGLER, G.J., *Public regulation of the securities markets*, in "Journal of Business", 1964, pp. 117–142. WILLIAMS C.A., *The Securities and Exchange Commission and Corporate Social Transparency*, in "Harvard Law Review", Vol. 112, No. 6, April 1999, pp. 1215-1242.

board governance was affected more broadly as the creation of the SEC resulted in larger boards and less local director monitoring"[22].

However, the implementation of the rules took some time, while the general economic situation changed very much after World War 2. The American economy was booming again as well as all the western partners of United States. Discussions and new reforms of corporate law and corporate governance started again only in the early 1970s, when the economic cycle was sinking. A litigious climate dominated United States, because shareholders of failed companies were asking for legal compensation from the former directors and from the auditors. In 1972, SEC required all listed companies to create audit committees that should dialogue with external audit committees[23].

In Europe, the discussion about homogenize corporate law and companies statutes was an effect of the integration process. In 1972, the European Commission presented a draft directive that had the purpose to establish a uniform model of statute and a model of corporate governance. The proposal was to introduce the two-tier system in the countries where the companies were managed just by a board. The social protests and the requests of the workers' movement in many Western European countries of the late 1960-early 1970s pushed the Commission to introduce also the proposal to include the co-determination model in that years adopted just by some industrial sectors in Germany. The reactions to the draft were not positive. The topic disappeared from the European agenda until the early 2000s. the new form of company was given the name of Societas Europaea (a Latin word for European society or company), a public company registered in accordance with the corporate law of the European Union, introduced in 2004 with the Council Regulation on the Statute for a European Company. The companies willing to adopt this form were free to have the one-tier or the two-tier system. In 2005, the norm added the inclusion of the employees' representative in case the firm adopted the supervisory board[24].

United Kingdom, which joined the European Union in 1973, did not appreciated the proposal of the European Commission. During that decade, before the arrival to the power of Margaret Thatcher, many debates took place in Great Britain about the rules concerning public companies and their social responsibility.

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[22] AVEDIAN A.-CRONQVIST H.-WEIDENMIER M., *Corporate Governance and the Creation of the SEC*, Swedish House of Finance Research Paper No. 15-03, 2015, pp. 22-23.

[23] TRICKER B., *Corporate Governance*, cit., p. 9.

[24] HIRTE H.-TEICHMANN C. (ed.s.), *The European Private Company - Societas Privata Europaea (SPE*), de Gruyter, 2013. Among the most famous european comanies that adopted the Societas European statute there are Airbus, Allianz, BASF, E. ON, Fresenius, LVMH Moët Hennessy Louis Vuitton, SAP, Schneider Electric and Unibail-Rodamco.

Moreover, some of the suggestions raised by that draft of the European Commission and from the German law on Co-determination, approved by the Bundestag in 1976, found an echo in the Report of the Committee of Inquiry on Industrial Democracy of 1977 [25].

Other critical reports and enquiries on UK companies were showing that the quality of company law and of the firm's behaviour was still to be improved. The neo-liberal wind of the last 1970s and the 1980s with the new mainstream about the "superiority" of the market and the de-regulation – both in United States and the United Kingdom – did not eliminate the quest for rules and for a better protection of shareholders' rights and interests. For instance, in 1985 a US Treasury Commission was set up to analyse fraudulent financial reports. The report published by the Commission let to the establishment of the National Commission on Fraudulent Financial Reporting, an independent private-sector initiative that studied the causal factors that can lead to fraudulent financial reporting. It also developed recommendations for public companies and their independent auditors, for the SEC and other regulators, and for educational institutions[26].

1.3 Discovering and reforming the "continent" Corporate Governance

Many companies' collapses and many scandals occurred in the 1980s and the early 1990s and their impact on the international public opinion was very strong. On the other hand, the end of Cold War, the first effects of the privatization process in many countries gave the impression – certainly the hope - that a new start was not only possible but also necessary. United States and United Kingdom, mainly because of the size and importance of their capital market and stock exchanges, were the two countries where all these tensions and pressures were stronger. In 1991, the Financial Reporting Council, the London Stock Exchange, and the accountancy profession established a special committee in London. The chairman was Adrian Cadbury, until 1989 the chairman of Cadbury Schweppes and director of the Bank of England since 1970. The increasing lack of confidence of the investors in the honesty and accountability of listed companies was at the origins of the Committee's initiative. In addition, during its works two other sudden financial collapses (wallpaper group Coloroll and Asil Nadir's Polly Peck consortium) contributed to exacerbate the climate

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[25] LORBER, P.-NEAL A.C., *Financial Participation of Workers and the Role of Social Partners: United Kingdom Experience*, in BIAGI M (ed), *Quality of Work and Employee Involvement in Europe*, Kluwer Law International 2002, pp. 195-218.

[26] https://www.coso.org/Pages/aboutus.aspx, TRICKER,B, *Corporate governance*, cit., pp. 11-12.

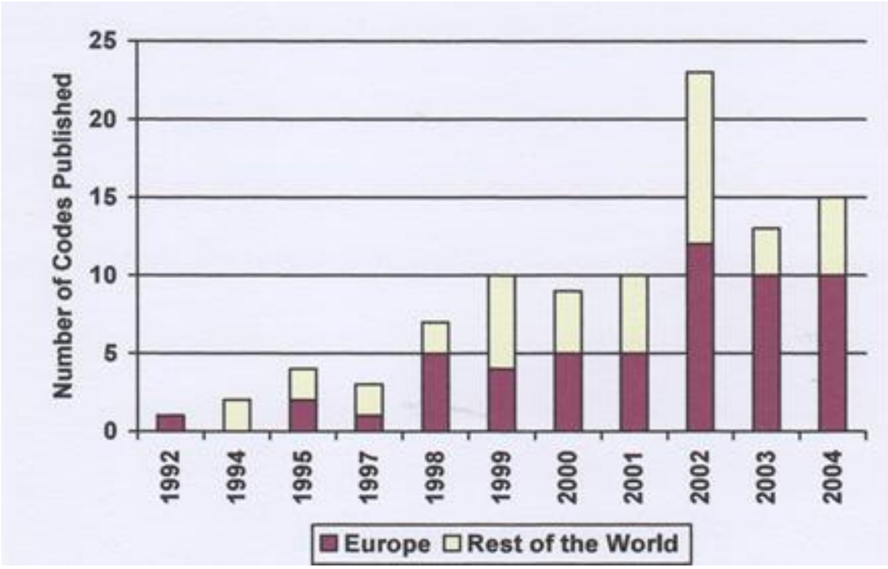
because neither of these sudden failures was at all foreshadowed in their apparently healthy published accounts. Moreover, two other scandals shocked the financial: the collapse of the Bank of Credit and Commerce International and discovery of its widespread criminal practices, and the posthumous discovery of Robert Maxwell's appropriation of £440m from his companies' pension funds as the Maxwell Group filed for bankruptcy in 1992[27].

In 1992, the Cadbury Committee published its Report, which can be considered the first code of good corporate governance practices. The main points concerned the implementation of a wider use of independent directors, the introduction of an audit committee; a precise list of different responsibilities of the chairman and of the board; the introduction of a remuneration committee to establish the rewards of the top managers and the members of the board and of a nomination committee to prepare the list of the new board's members. Finally, the listed companies had to comply with the code and if not explain why they do not. On can perceive the influence of the Cadbury Report in many other similar initiatives that took place in the same years. In some case, like in some other Anglo-Saxon country such as Australia, Canada, but also in South Africa and in Hong Kong (just before the British administration left the city), the echoes are quite visible and positive and many similar recommendations were adopted. In others, like France as we will see in another chapter, there was a more dialectic relationship[28]. However, in the following years the influence of the Cadbury Report went well beyond the Anglo-Saxon countries that introduced codes of corporate governance. In the first twelve years after publication of the Cadbury Report, fifty-two codes were introduced and reformed (many times in some cases) in Europe and forty-two in the rest of the world, as Figure 1.1 shows.

[27] SPIRA L.F.-SLINN J., *The Cadbury Committee: A History*, Oxford University Press, 2013.

[28] http://cadbury.cjbs.archios.info/report.

Figure 1.1 – Number of corporate governance codes published by year (1992-2014)



Source: https://ecgi.global/content/codes

In Great Britain the code was emended in 1995 by another Committe, chaired by Richard Greenbury (chairman and CEO of Marks & Spencer), just reinforced the instruments towards making managers more accountable. In 1998, another Committee chaired by Sir Ronald Hampel, chairman and managing director of ICI, concentrated on the new topic: the goal of boards of directors should be to make shareholders rich, not just to make managers accountable. The mainstream of the shareholder's value was actually very effective, but its negative consequences were not yet visible[29]. However, the comments of "The Economist" were not so enthusiastic. On the hand, the magazine said the "yet the corporate governance movement continues to focus on narrow rules and regulations, to the point where producing rulebooks for boardrooms has become something of a cottage industry". On the other hand, it recognized that the reforms urged by institutional investors in America and Britain for the past few year – "such as increasing the number of outside (non-executive) directors, and having someone besides the chief executive chair the board—are clearly worthwhile. Although there is no proof yet that such changes

[29] LAZONIK W.-O'SULLIVAN M., *Maximising Shareholder Value: a New Idoleogy for Corporate Governance*, in "Economy and Society", 29, 2001, pp. 13-35.

improve share-price performance, the change of tone in many boardrooms suggests that they will eventually"[30].

In 1998-99, the OECD summarized many aspects of the discussions and of the different results of the implementation of the first codes of corporate governance in a publication that became a sort of guide for the "late-comer countries" in this subject. Many emerging economies and the BRIC countries used the OECD *Principles of Corporate Governance* when they established the first codes of corporate governance. In addition, this document was emended a couple of times, before and after the economic and financial crisis, in 2004 and in 2015. In addition, the OECD Corporate Governance Committee launched a thematic review process designed to facilitate the effective implementation of the Principles. In the last years it published many reports on Board Practices: Incentives and Governing Risks (2011), The Role of Institutional Investors in Promoting Good Corporate Governance (2011, Related Party Transactions and Minority Shareholder Rights (2012), Supervision and Enforcement in Corporate Governance (2013), Board Member Nomination and Election (2013), and Risk Management and Corporate Governance (2014)[31].

United States that have been for decades the frontrunner of any discussion about corporate governance did not introduce a real code for many years. In the 1990s and even more in the early 2000s, the companies were simply requested go accomplish the company law of the state where they were legally incorporated and "comply with the generally accepted accounting principles", abridged as GAAP. The Enron scandal of 2001 induce the Congress to reinforce the legislation with the approval of the Sarbanes-Oxley Act, which requires more severe rules of corporate governance for all the listed companies, underlining much more the role of independent directors and stressing very much the role of audit committee. External audit firms were also requested to avoid too much familiarity because of long-term contracts and relations with the same firms, introducing a rotation system. The Blue Ribbon Commission, created by the National Association of Corporate Directors, had suggested the same things one year before. However, the myth of the rationality of the markets was still dominating Wall Street. The alternative opinions were not considered until September 2008, when the subprime crisis, started about one year before, suddenly cancelled not only the trust in many giants of the finance, but pushed the US administration to intervene as a classic Colbertist state to avoid a

[30] *Reforming the firm*, in "The Economist", 7.8.1997.

[31] All these report and the different version of the OECD *Principles on Corporate Governance* can be downloaded from https://www.oecd.org/corporate/principles-corporate-governance.htm.

systemic crisis, injecting into the financial system 700 billion dollar[32]. All the aspects of the corporate governance were concerned - and to some extent put at risk. One can start with the role of the big shareholders, the professional capabilities of the board and the abuse of moral hazard. But there were also the non-independence of many independent directors, and the dubious independence of the external auditors. Another very delicate point, also because of the impressive impact it had on the public opinion, concerned the excessive salaries of the banking top managers that led their financial institutions to the crisis if not at survival's risk. Last but not least, one must mention the role of rating agencies. The US Financial Crisis Inquiry Commission, which investigated the origins and responsibilities of the financial crisis in the United States, was extremely severe in its judgement about the rating agencies:

> The three credit rating agencies were key enablers of the financial meltdown. The mortgage-related securities at the heart of the crisis could not have been marketed and sold without their seal of approval. Investors relied on them, often blindly. In some cases, they were obligated to use them, or regulatory capital standards were hinged on them. This crisis could not have happened without the rating agencies. Their ratings helped the market soar and their downgrades through 2007 and 2008 wreaked havoc across markets and firms.[33]

The European Commission intervened in the discussion about the consequences of the crisis over the corporate governance. In April 2010, Michel Barnier, the new Commissioner for Internal Market and Services, announced that a Green Paper would be published. The aim was to start a "real debate at the European level" over the "role and governance of auditors". In his opinion, because of urgency connected with the financial crisis, governments had so far "focused their attention on the urgent measures necessary to stabilize the markets", and then on the role of major economic and financial reasons that provoked it. In Barnier's opinion, the role of

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[32] STIGLITZ J.E., *The Roaring Nineties: A New History of the World's Most Prosperous Decade W.W. Norton & Co*., 2003; FOX J., *The Myth of the Rational Market. A History of Risk, Reward, and Delusion on Wall Street*, Harper Business Publishing, 2009; ROUBINI N.-MIHM S., *Crisis economics. A Crash Course in the Future of Finance*, The Pinguin Press, 2010; TOOZE A., *Crashed. How a Decade of Financial Crisis Changed the World*, Allen Lane, 2018.

[33] *The Financial Crisis Inquiry Report. Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States Submitted by Pursuant to Public Law* 111-21 January 2011, p. XXV.

auditors had not really been questioned following the crisis. The Green Paper was issued on 13 October 2010, with the title “Audit Policy: Lessons from the Crisis”. The document’ intentions were not only to make auditing a more relevant issue, but also make clear that the Commission was “keen to assume leadership at the international level on this debate and will seek close co-operation from its global partners within the Financial Stability Board and the G20”. The consultation stimulated great interest, with 688 responses being received by the Commission. Moreover, a Commission staff-working document was issued in November 2010 with the title *Corporate Governance in Financial Institutions: Lessons to be drawn from the current financial crisis, best practices Accompanying document to the Green Paper Corporate governance in financial institutions and remuneration policies*. In this document, the main issues were strictly linked to the core of the corporate governance. The document stressed how to improve the functioning and the composition of boards of financial institutions in order to enhance their supervision of senior management. It also underlined how to establish a risk culture at all levels of a financial institution in order to ensure that long-term interests of the business are taken into account. The involvement of shareholders, financial supervisors and external auditors in corporate governance was also considered, as well as how to change the remuneration policies in companies in order to discourage excessive risk taking[34]. The Greek crisis and its consequences on the European agenda did not really permit this document to get the audience they deserved.

The OECD was even more critical on corporate governance: “the financial crisis revealed severe shortcomings in corporate governance. When most needed, existing standards failed to provide the checks and balances that companies need in order to cultivate sound business practices”[35] One of its first report issued after the crisis stated that “corporate governance arrangements which did not serve their purpose to safeguard against excessive risk taking in a number of financial services companies. Accounting standards and regulatory requirements have also proved insufficient in some areas. Last but not least, remuneration systems have in a number of cases not been closely related to the strategy and risk appetite of the company and its longer term interests”. For this reasons, and for many others, “the current turmoil

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[34] *Opinion of the European Economic and Social Committee on the ‘Green Paper — The EU corporate governance framework’* COM (2011) 164 final; for an analysis of the first green paper see HUMPHREY C.-KAUSAR A.-LOFT A.-WOODS M., *Regulating Audit beyond the Crisis: A Critical Discussion of the EU Green Paper*, in “European Accounting Review” , 2011, Vol. 20, No. 3, pp. 431–457.

[35] https://www.oecd.org/daf/ca/corporategovernanceprinciples/corporategovernanceandthefinancialcrisis.htm.

suggests a need for the OECD to re-examine the adequacy of its corporate governance principles in these key areas”[36].

Debates went on and not at the headquarters of OECD. In 2016, 13 of America’s most prominent chief executives, convened by Jamie Dimon of JPMorgan Chase and Warren Buffett of Berkshire Hathaway, and included the likes of GE and GM, as well as Vanguard and T. Rowe Price, two of the most important fund manager published a report with the title “Common-sense principles of corporate governance”, containing seventy-seven suggestions. The document appeared in the most important newspaper. The “Financial Times” hosted it in a special page (most probably paid by the group). The document says how big companies should be led, how they should communicate with their shareholders, and how large investment firms should fulfil their own responsibilities. “Much of the report – wrote “The Economist” - is devoted to the role of directors, in theory the apex of a company but in reality often an assembly of dim bulbs with bright names that serve as an appendage of the CEO”. The text suggest that directors should be “shareholder oriented”, with diverse backgrounds and skills, undistracted by excessive other commitments. The final comment of “The Economist” was essential: “None of the bigwigs’ suggestions are particularly exceptional. They may not soften the hearts of those who are fundamentally opposed to business. But any attempt to meet concerns that companies are feckless and undeserving of trust is worthwhile”.[37]

At the beginning of 2019, Senator Elisabeth Warren, a Democratic presidential candidate, recently unveiled a proposal that would transform corporate America. The project would force large US companies to modify their current state charters with a federal one that pushes companies be run for the benefit of all stakeholders, not just stockholders. In addition, her proposal contains also an aspect that would transform US corporations in German firms, because it would also give workers the right to elect 40 per cent of each board of directors. There are many aspects that maybe. The “Financial Times” questions is “whether such reforms could be accommodated under the current arrangement by which American states charter corporations. The Securities and Exchange Commission could circumvent this by requiring reforms at companies whose shares or debt are publicly traded. But that would still leave out the growing number of corporations that are owned by private equity firms and wealthy individuals”. However, its final comment was more than open-minded: the proposal “deserves credit for starting a wider political discussion

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[36] KIRKPATRICK G., *The Corporate Governance Lessons from the Financial Crisis*, Financial Market Trends, OECD, 2008.

[37] The text can be downloaded from https://www.governanceprinciples.org/. For a comment see *Change, or else*, in “The Economist” 30.7.2016.

of these corporate governance issues. Given the broad dissatisfaction with capitalism, such issues should already be at the top of the agenda"[38].

In summer 2019, the CEOs of some of the largest US corporations connected with the Business Roundtable, an association of chief executive officers of America's leading companies, made an important announcement. On the one hand, they reaffirmed that "the long-held view that maximising shareholder value is the defining corporate goal". On the other one, they added an important element that implies a more inclusive vision that takes account of other stakeholders. They explicitly stated, "broader interests such as those of employees, the environment and customers is intended to set a new standard for companies across the US". The "Financial Times" comment was that this "wider approach to corporate purpose should create a more sustainable and inclusive form of capitalism"[39]. The consequences for corporate governance will probably be quite relevant in the future.

Two among the most important international financial media show that they do not have any prejudices in discussing all kind of proposals that could permit to improve corporate governance and making it more effective, and to enlarge the vision on the purposes of the firm. The business and financial community seems also ready. The political institution, by tradition, prefers the self-regulation approach that has been - and still is - largely predominant in most of the countries that adopted codes of corporate governance. However, the choice for a different approach is on the table. The coming years will decide in which direction this debate will develop.

[38] PEARLSTEIN S., *Save capitalism by freeing companies to try new models. Politicians should make it easier to nominate board directors*, "Financial Times", 20.1.2019.

[39] *Business must act on a new corporate purpose*, ibidem, 19.8.2919.