REGULATING THE CORPORATION: THE ROLE OF THE INSTITUTIONAL INVESTOR

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Abstract

Government has been pressing one group in civil society – financial institutions - to regulate the behaviour of another group - the companies in which they invest. We consider the implications of this and assess the prospects for success, drawing on evidence obtained in our recent study of the preparation, conduct and consequences of regular face to face meetings between fund managers and senior executives.

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At a conference on corporate governance in the autumn of 2003, the Secretary of State for Trade and Industry, Patricia Hewitt, said, 'It's time to assert the principle that fund managers - as trustees, for us, the savers - have a responsibility, as well as a right, to be active owners.' She went on to ask, 'Do we have the structures today to enable that to happen?' (Hewitt 2003.) This paper addresses such concerns by examining the implications of what is in effect the state mobilizing one group in civil society – institutional investors to regulate the behaviour of another group - the companies in which they invest.

We draw on an empirical study we carried out in 2002-4 exploring relations between the two sides: CEOs, finance directors and investor relations directors on the one hand, and chief investment officers, fund managers and senior analysts on the other. Our research focused on the preparation, conduct and consequences of the regular, typically biannual, face to face meetings between the two. Analysis of the data led us elsewhere to conclude that the meetings, though often ritualistic, have concrete disciplinary effects (Roberts *et al.* in press) reminders of accountability to shareholders ensure senior management concentrate on maximizing shareholder value, so promoting the financialization of the firm, to the possible detriment of other stakeholders.

We now seek to locate these disciplinary effects within the context of regulation. We outline some of the economic and quasi-legal stimuli for institutional investor engagement, or lack thereof, examine the empirical evidence from our research, and consider the consequences of casting institutional investors as regulators.

Research Method

A defining characteristic of the key corporate-fund manager interactions, the regular, typically biannual face-to-face meetings, is that they are private. When coupled with their importance, it is perhaps no surprise that they have proved inaccessible to researchers. They can however provide valuable insights into the views of each on the other.

The primary method employed in the research was the semi-structured interview. We interviewed a representative sample of both parties to the meetings. Although inevitably subjective to some degree, this approach allows the researcher to get as close as practical to the object of study, with the added benefit that interviewees can articulate their views on interactions within the meetings which would not be directly observable from the meetings themselves. Moreover, by interviewing both sides, and by asking similar questions of each, some form of additional reliability is given to the findings. A semi-structured approach is suitable to an under-researched area, because in contrast to a narrower approach of formulating and testing hypotheses, it enables the

emergence of hypotheses that might not have been apparent in advance.

The first series of interviews was carried out in mid/late 2002, with eighteen finance and investor relations directors from fourteen FTSE100 companies. A second phase of the research in early/mid 2003 involved interviewing nineteen senior managers (chief investment officers, senior fund managers and buy-side analysts) from eleven asset management companies. All bar three of the latter agreed to recorded interviews. These interviews averaged eighty minutes in length. In addition we observed (but were not allowed to record) eight meetings hosted by fund managers with CEOs and finance directors of large investee companies. While too few in number to provide reliable inference, these meetings nevertheless provided a useful 'reality check' for the findings from the interviews; they were found to be highly consistent and so added additional reassurance. The interviews were then transcribed and examined for evidence relating to the themes of active share ownership and regulation. A number of quotes are included. In order to preserve anonymity interviewees are referred to throughout as either Fund Managers or Finance Directors rather than by their exact job titles.

Institutional Shareholders and Engagement

The effectiveness of corporate governance has come to occupy a central place in public policy debates around the world. Corporate scandals, the globalisation of investment flows and growing concerns about the conduct of multinational businesses have prompted calls for better standards of corporate governance. The responses to such calls have largely focussed on the establishment of codes of practice governing the constitution, composition and actions of the board, and their responsibilities to their shareholders. In the UK these began with the Cadbury Report on internal financial control in 1992, with subsequent contributions from Greenbury on disclosure of directors' remuneration (1995), Hampel (1998), consolidating previous provisions and further clarifying the roles of directors and shareholders, Turnbull on internal control procedures (1999) and Higgs on independent directors (2003).

But with up to 80% of shares on the London Stock Exchange held by financial institutions (see Hampel 1998: 40), and UK government ministers under pressure to address matters such as 'payment for failure,' recent calls for institutional shareholders to be more active in their dealings with investees are perhaps inevitable:

> Too many fund managers, when faced with under-performance, continue to support inadequate management. Others simply pull the plug and switch investments. So a merger or take-over becomes the only route to replacing failed management - despite the evidence that few mergers create lasting value. Instead, active owners can create value for their investors and future pensioners - replacing bad management and helping to create a good business rather than just walking away from a bad one. So it's time to assert the principle that fund managers - as trustees, for us, the savers - have a responsibility, as well as a right, to be active owners (Hewitt 2003).

Traditionally, as the Secretary of State for Trade and Industry asserts, very few institutional investors have sought consistently to engage with investee companies, most preferring instead to simply adjust their holdings. After all, their only legal responsibility is the appointment of directors and auditors. But with index tracker funds now accounting for an estimated 20% of UK institutionally owned equities (35% in the US), and 'quasi-trackers' (e.g. fund of funds) also increasing in popularity, fund managers' mandates often compel them to hold stock in companies against their own preferences (see Clementi 1999 and Investment Management Association 2004). It is difficult for managers of successful active general UK funds to avoid holding the stock of very large companies such as BP. As one of the fund managers interviewed for this research put it, 'The vast majority of investment managers don't have to take a decision on it because it's 8½% of the index and everybody's got between 7 and 10%.' In such circumstances intervention is the only way forward. Fund managers can either make a private approach, 'jawboning' directors to change senior personnel or strategy (Wahal 1996, Holland 1998c), or they can go public, briefing journalists or presenting proposals for change at the AGM (see Black 1998).

The problem is that, in the normal course of events, fund managers have a 'substantial disincentive to "monitor" managements [as] they do not get extra pay for doing so and enthusiastic oversight runs the risk of creating commercially threatening resentment' (Monks 1991, see also Black 1992). They tend to perceive the costs to be greater than the benefits (Pozen 1994). Even the most activist US institutions spend less than 0.005% pa on interventions (Black 1998), which is why Lowenstein (1991a) proposed incentives for institutional investors to engage in long-term participation, principally by instating mandatory shareholder directors (see also Lowenstein 1991b).

On the other hand, there are a number of arguments put forward in support of intervention. Hoskisson and Turk (1990) argued that in the absence of adequate monitoring by shareholders, firms tended to diversify excessively, to their detriment. And Parthiban *et al.* (2001) showed that R&D spend increased in targeted companies, an indication that institutional intervention may move such companies to focus on long-run returns (see also Baysinger *et al.* 1991).

Market Leaders in Activism

Some institutional investors have built considerable reputations as active shareholders. Perhaps the best known of these are Hermes Investment Management Ltd. in the UK, and CalPERS (California Public Employees' Retirement System) in the US.

Hermes, with £46bn under management (as at 30 June 2004), is owned by, and is principal fund manager for, the British Telecom Pension Scheme. It controls on behalf of its 200 clients approximately 1.2% of all the shares in the FTSE All Share Index, which in itself provides a rationale for placing 'great emphasis on exercising its ownership rights in all the companies in which it invests,' and its 'belief that companies with interested and involved shareholders are more likely to achieve superior long-term financial performance than those without.' (http://www.hermes.co.uk). Hermes devotes considerable resources to corporate governance issues, and has taken the lead in a number of disputes between investors and the boards of investee companies, but whilst there has been much political encouragement for their approach, there have been no academic studies proving its effectiveness. Nonetheless they are perceived as market leaders in corporate governance amongst the financial community. Armour *et al.* (2003: 548) suggest:

> Hermes … approach carries wider significance because of the way in which the regulatory framework is currently being realigned in an effort to encourage institutional investors to place greater weight on voice and less on exit in their relations with companies.

On the other hand, CalPERS (http://www.calpers.ca.gov), which manages $163.5bn (as at 31 July 2004) on behalf of 1.4m California public employees, retirees and their families, has been the subject of numerous studies, particularly by finance academics. Smith (1996) examined their attempts to bring about change in the organizational control structures of firms considered poor performers. He found that the structural changes demanded were indeed adopted by 72% of firms targeted, but there was no statistically significant change in subsequent operating performance, as measured by accounting earnings. Nonetheless, the share price of targeted firms increased (Nesbitt 1994), perhaps as a consequence of the way in which individual investors and smaller institutions tend to support proposals by major institutional activists (Gillan and Starks 2000), and whilst Akhigbe *et al.* (1997) calculated this increase to be, on average, 23% by the end of the third year following intervention, English *et al.* (2004) found the effect really only lasted 6 months on average. Indeed in a recent survey of surveys, Carlson *et al.* (2004) found that exactly half of all studies of the effect of shareowner proposals showed positive returns, the other half showing either negative returns or no impact.

In any case, Gaved (1996) reminds us that a period of underperformance, a key factor in target selection by fund managers, is frequently followed by a period of outperformance, particularly in companies prone to cyclical movements in the economy, whether or not there has been a change in governance structure (see also Karpoff *et al.* 1996; Del Guercio and Hawkins 1999). Some critics have gone even further. Daily *et al.* (1996) suggested that many institutional investors engage in activism merely in order to enhance their public image as monitors of corporate behaviour, and in an equally damning paper, Romano (2001) concluded that much of the intervention that does take place is misdirected, evidence of the lack of accountability of fund managers.

Reluctant Regulators

Evidence on the effectiveness of intervention by institutional shareholders is therefore inconclusive, which may in part explain the reluctance of many to actively engage, despite increasing pressure from politicians and exhortations from the authors of the various codes of governance (Cadbury 1992; Hampel 1998). The Myners review of institutional investment in the UK was given a number of reasons for this lack of engagement, none of which it found compelling. These were:

> a culture that seeks to avoid conflict; unwillingness of managers to act on judgements about the strategy and top management of the companies in which they retain holdings, despite being highly paid to make such judgements; alleged regulatory obstacles, which the review found difficult to verify; the lack of incentive for managers to intervene in a company, if they feel the key issue for their client is the next quarter's performance figures; and potential conflicts of interest. (Myners (2001): 10).

This reluctance has led some UK commentators to follow their US counterparts in questioning whether voluntary measures aimed at increasing shareholder participation, such as those outlined in Hampel (1998: section 5) can ever be effective. For example, Dignam (1998) is critical of the voluntary approach of Hampel in relying on publication of the voting record of institutional investors alone as sufficient incentive to vote their shares. (Although he also suggests that pressure on institutional investors to engage may also lead to an even greater emphasis on short-term earnings at the expense of long-term growth).

Nonetheless, the latest Statement of Principles of the Institutional Shareholders' Committee which 'sets out best practice for institutional shareholders and/or agents in relation to their responsibilities in respect of investee companies' is typically exhortative, urging institutional investors to:

> 'set out their policy on how they will discharge their responsibilities - clarifying the priorities

> attached to particular issues and when they will take action; monitor the performance of, and establish, where necessary, a regular dialogue with investee companies; intervene where necessary; evaluate the impact of their activism; and report back to clients/beneficial owners (Institutional Shareholders' Committee 2002: 1).

And in the latest revision of the Combined Code on Corporate Governance:

> Institutional shareholders should consider carefully explanations given for departure from this Code and make reasoned judgements in each case. They should give an explanation to the company, in writing where appropriate, and be prepared to enter a dialogue if they do not accept the company's position (Financial Reporting Council 2003: 20).

Institutional shareholders therefore find themselves in a difficult position. There is little evidence on the effectiveness of interventions but increasing political pressure to intervene, a state of affairs that some find distinctly unsatisfactory:

> All this talk about corporate governance rather annoys me. I think it is a necessary duty on our part to ensure that there isn't misuse of company funds, but most of the focus is on minor issues. Whether the company has a corporate jet or not is really rather irrelevant. It might annoy us that the chief executive leads a glamorous life but it is irrelevant compared with the key decisions that a company makes which are about how to invest their shareholders' capital. (Fund Manager)

And in any case there are some legitimate concerns over the optimality of increased engagement, in that 'in a system of dispersed ownership, shareholder passivity is inevitable, and perhaps even desirable' (Armour *et al.* 2004: 533), not least in order to protect the rights of smaller shareholders and other stakeholders.

The Regulatory Effect of Shareholder Value

The question then is, in terms of corporate behaviour, what are the implications of expanding the regulatory role of institutional investors? To investigate this we first consider the characteristics of the system of corporate governance in the UK.

Following Berle and Means (1932) landmark study, corporate governance is typically seen as a response to the problems arising from the separation of ownership from control in the modern corporation. The assumption inherent in this model is that firms exist to maximize shareholder value, but due to their distance from day to day operations, shareholding principals do not have sufficient control to ensure their managerial agents maintain this focus. Self-interested managers may pursue their own interests and ambitions at the expense of the owners of the firm (Jensen and Meckling 1976; Shleifer and Vishny 1997). The problem is considered essentially a matter of whether it is more efficient to prioritize, and indeed incentivize, means or ends, specific behaviours or specific outcomes.

This concern with distance and control influenced developments in the categorization of corporate governance systems according to whether they are insider or outsider and arm's length or control oriented (Berglöf 1997). The former refers to the concentration of share ownership, the latter to the degree of control exercised by shareholders. Whereas many European countries are considered to have insider/control oriented systems, the UK and US are considered outsider/arms length, hence the need for external mechanisms of control such as codes of governance. Irrespective of effectiveness, the existence of such codes, and the focus on the problem of enforcement, does tend to produce a shareholder-oriented discourse. As Armour *et al.* (2003: 533) observe, 'What is striking about the UK framework is just how focused on the shareholder value model it appears to be.' Hostile takeovers, directors' legal obligations to their shareholders, and the Listing Rules requirement to observe the Combined Code (UK Listing Authority 2003), all tend to focus the mind of the manager on the primacy of the shareholder. A finance director interviewed for our research put it bluntly: 'I don't have any problem in saying the leading objective of this company is to maximize shareholder value over the long-term.'

We argued elsewhere that this focus gives rise to a kind of self-disciplining process in company directors, beyond merely acknowledging the property rights of their shareholders, and the right to monitor and hold them to account (Rao and Sivakumar 1999). Rather like the prisoners in Bentham's Panopticon, they appeared to be in 'a state of conscious and permanent visibility that assures the automatic functioning of power' (Foucault 1979):

> Some of the managers we met were in this way almost more dedicated to the pursuit of shareholder value than the fund managers they were meeting. At the very least power works in such a way as to ensure that there are strong incentives to present the self as being already what the other desires. The purpose of the meetings [between them] is to remind managers that they are accountable, that they are being watched (Roberts *et al.* in press)

Institutional investors are therefore in a sense already implicated in the regulation of corporate behaviour, and their role acknowledged by their regulatees. However, in essence the purpose of regulation is to optimize system efficiency by minimizing the risk of system failure, and in order to achieve that aim the regulator must be accurately calibrated. System failure can result from the failure of any individual components, including the regulator. A system with a badly adjusted regulator may in effect be little different to an unregulated system. If the supply of steam to an engine's piston is chocked off too early the engine will grind to a halt.

If the various mechanisms to reduce body temperature are initiated too early the body will fail to maintain its ambient operating temperature.

Measuring Regulatory Success

This leads to the question of how regulatory success is to measured? Most fund managers, and many directors would, as discussed, opt for the pursuit of shareholder value as the primary objective, on the grounds that shareholders bear the residual risk; they are the 'residual claimants' of the enterprise (Easterbrook and Fischel 1991). But, irrespective of the desirability of this objective, if is to be realized there needs to be some common understanding of what it is, and how it is to be measured. Whilst most of the finance directors and fund managers interviewed for our research agreed broadly on the *means* by which corporate performance could be measured, some form of cash flow return on investment or simply a steadily rising share price, there was no certainty as to what precisely constituted success. The regulatory ends are not clear:

> I mean shareholder value is basically what drives stock market behavior. It isn't NPVs. They're just part of it. And yet you have to be careful that you're not driven short-term, by short-term interpretations that drive your business in the wrong direction. But [equally] there's no point in driving business in a long-term direction which investors don't want. That, I think, is the ultimate test of a management team that's been in place five years. They will have failed or been successful in their interaction with their main investors as to where that business wants to go. And that's a very touchy-feely thing. (Finance Director).

This unknown, and in some sense unknowable, mark of success in achieving shareholder value - the endorsement of management action over time by the shareholders - illustrates the differential possession of knowledge of the two sides in this crucial area of key regulatory objective, and exposes the potential for shareholders to dominate their investees. Of course, in the light of corporate failures and excessive executive pay, it can be argued that increased surveillance of corporate behaviour and more focussed enforcement of standards of behaviour will merely address an inherent imbalance of power, to the benefit of the ultimate beneficiaries of the shares held by financial institutions, i.e. individual investors and pension scheme members. However, whilst corporate failure and excessive executive pay is known and is often well-publicized the earnings and often relatively poor performance of fund managers receives less scrutiny. Moreover, it is far from clear that fund managers perceive their interests, or even those of their clients, as being aligned in any way with those of the public. They are not dedicated regulators charged by an enabling Act of Parliament to pursue some public goal.

Self-Interest and Regulation

It is also not clear that institutional investors are ready to, or indeed are equipped, to act as regulatory agents of either the state or the public. Theories of regulation can be divided into those that assume that regulatory action arises out of private interests and those that assume private interests can be 'bracketed' in favour of a general public interest. The extent to which the regulator is perceived as pursuing private self-interests, conciliating disparate private interests, or exercising moral judgement in furtherance of often ill-defined public objectives, depends on the degree to which one subscribes to rational choice, pluralist or public interest explanations of regulation. Powerful private interests, and thus conflicts of interest, are an everyday occurrence for many institutional investors. As Farrar and Girton (1981) point out, 'the presence of other business relationships between institution and portfolio company, unfortunately, tends to diffuse the identity of interests between institutional and other stockholders, and in some instances may even produce a conflict between the interests of the institution and the beneficiaries of portfolios under management' (1981: 380).

Whilst this fund manager was at least aware that self-interest could become a problem … :

> This complex web of conflicts of interest which could in some instances derail things, so that's an issue from the whole corporate governance engagement point of view, and the relationships which go beyond us acting as institutional investors, and sometimes we might want to vote against somebody whose pension fund we're running. (Fund Manager)

… most did not see regulation as their responsibility, unless it could be shown to be clearly compatible with their core task as investment managers:

> We have to pay a bit of lip service to corporate governance, particularly [with] this current government, but actually for us, our clients aren't giving us the money to say make Britain a better place. They're saying, 'give us the best return for a risk level,' and they don't want you to get on your high horse and keep holding the shares just so you can vote against something. If it's bad for the share price then just sell it. (Fund Manager)
>
> If corporate governance is [only] to be vaguely useful… why do it? Oh it will make everybody feel better, and make politicians happy. It's only if it actually makes companies deliver higher returns than otherwise they will. If it doesn't, it's a waste of everybody's time. It's a waste of pension funds asking us to do it. It's a waste of lots of hours of eminent people writing government responsive reports. It's only useful if it causes companies to generate better investment

returns, and largely what's been discussed most recently has nothing to do with that - even the Higgs Report. (Fund Manager)

Even those who adopted a more positive approach to corporate governance matters were concerned that good governance was not necessarily indicative of a sound investment:

Corporate governance? A lot of it is quite important - that they tick all the boxes in order to help them make the right decisions. It's rare you see a company that has terrible corporate governance that's very successful, but you quite often see companies that are maybe not perfect on every aspect but are generally the right way. And there are some companies that tick every box - it all looks immaculate - but they're just hopeless. (Fund Manager)

And whilst this fund manager was generally less negative on the subject, seemingly reconciled to the need to monitor corporate governance, it was still not perceived as a core task:

I think most of the people we talk to on corporate governance are pension fund investors so generally speaking, unless there is an obvious risk there, it's not actually part of the investment decision process; it's more of an overlay. (Fund Manager)

Public Interest Regulation

The role of self-interest in regulatory encounters has been explored extensively in the literature, particularly the economics literature (e.g. Stigler 1971 on regulatory capture; Mitnick 1975; Peltzman 1976) whilst contributions from public policy and law have tended to emphasise the public interest purpose of regulation (e.g. Francis 1993; Corry 1995; James 2000; see also Baldwin and Cave 1999). Indeed, Plato writes of a form of regulation in 'The Republic' in which he describes an ideal aristocratic society in which benign propertyless guardians steer the ship of state for the benefit of all.

In contrast to private interest explanations, public interest theories recognize that there is a public interest dimension to regulatory decision-making. Moreover, this public interest is not the same as the interest of the state or of its representative agencies. This normative public interest approach to regulation is of an entirely different order from the pluralist interest group and self-interested rational or public choice approaches, which can be viewed, to a greater or lesser extent, as positivist critiques of it (see Baldwin *et al.* 1998: 8-13, Francis 1993: 8). The expectation is that the benign state will intervene directly or via subordinate agencies on behalf of the public to rectify market failure. This perspective explicitly acknowledges the public purpose of regulation. Public interest regulators, and the regimes of which they are a part, are considered effective to the extent that the regulatory framework they construct realizes a set of objectives that satisfy that public purpose. Arguments may persist over the detail of the regulating instruments employed or the degree of discretion granted to regulators, but ultimately judgements on the effectiveness of regulatory policy are made by reference to the values implicit in notions of a public (unity, community, mutuality and so on). Indeed, such broader notions of responsibility were noted by Cadbury:

Although the reports of the directors are addressed to the shareholders, they are important to a wider audience, not least to employees whose interests boards have a statutory duty to take into account (Cadbury 1992: 2.7).

The extent to which most fund managers in general are eager to take on a broader regulatory role may be questionable, but it may not be problematic for those already taking a holistic approach to their responsibilities:

We don't separate corporate governance issues from investment issues. We think the two are so closely welded together that's it's important that there's one conduit here. (Fund Manager)

Of course, the decisions of such managers depend not only on the information received, but crucially on the rationality of the decision-maker. Thus whilst the quantity, quality and relevancy of information gathered is important perhaps a more critical factor is the way in which such information is understood and processed. We found that whilst finance directors were dubious of their ability to use available data to predict future performance beyond the very short term, fund managers were quite confident about using exactly the same data to make much longer term predictions (Barker *et al.* 2004). This has serious consequences in terms of feedback, an essential component of effective regulation. Differential action based on observation of the other by two decision-makers could produce, for a significant period of time, positive feedback, each observation incorrectly reinforcing the other rather than producing corrective action (i.e. negative feedback).

Concluding Thoughts

In an article on totalitarianism in the Observer in 1933, Lloyd George wrote 'the world is becoming like a lunatic asylum run by lunatics.' The notion that the problems of running an asylum were best tackled by those lacking the rationality so to do, was clearly derisory. In the world of investment there is little evidence that institutional investors are in at all eager to act as public interest regulators, intervening on behalf of the general public. As presently constituted it is simply not their role. Their primary task is to represent their clients' interests. And if pressed into public service now, there is no certainty that private self-interests will be 'bracketed,' rendered subservient to a greater public good, or even that

their clients' interests would be furthered by such actions.

In an interview later in his life, Adolf Berle was as concerned about the power of investors, the concentration of ownership in the hands of institutional shareholders, as he had been earlier about the power of managers. 'The current estimate – it frightens me – is that by 1970 institutional investors will hold one third of the stock of all corporations listed on the New York Stock Exchange' (Rosen 1968). He would probably be alarmed to be told that institutional shareholdings now account for around 80% of both the London and New York Stock Exchanges (Hampel 1998; Carlson *et al.* 2004). It may be tempting to suggest that this represents some sort of beneficial countervailing power, addressing the inherent agency problem caused by the separation of ownership and control. But consider that more than half of the shares on the London market are controlled by just 10 financial institutions (Investor Relations Society 1999). The notion of dispersed ownership is clearly fallacious. Whilst it remains true that in 85% of UK companies the largest single shareholder does not control a blocking minority of 25% or more (Crespi-Cladera and Renneboog 2003) the largest financial institutions do certainly between them command such stakes.

So there is clearly a need to examine the accountability of financial institutions in far greater detail than has been undertaken hitherto. In their response to the call by Hampel for an increased role for institutional investors in corporate governance, Webb *et al.* argue from a financial systems theory perspective, that increased participation could create anomalies in the efficient operation of capital markets, as well as free rider problems, and increased costs. They conclude that 'future research should attempt to evaluate expectations of regulatory authorities for the nature of institutional involvement in corporate governance' (2003: 71). Perhaps the first step is to address the chain of accountability - right through from institutional investors to the ultimate beneficial owners of the shares they hold.

> Active ownership requires not only a different relationship between fund managers and companies - but also a different relationship between fund managers and the public. It requires […] a new 'civil economy' based on a fundamental change in the behaviour of institutional investors. … Whether through voluntary codes or regulation, we need to create a chain of transparency and accountability that stretches from the boardroom to the individual shareholder and saver, via the pension fund manager, trustee and institutional investor (Hewitt 2003).

The question is how to frame an additional series of principles and supporting rules that can be readily operationalized, monitored and enforced without raising costs disproportionately to savers – and how to persuade savers to play their part in monitoring the institutions to whom they ultimately entrust their savings.

References

1. Akhigbe, A., Madura, J., and Tucker, A. L. (1997) Long-Term Valuation Effects of Shareholder Activism. *Applied Financial Economics.* 7: 567-573.
2. Armour, J., Deakin, S., and Konzelmann, S. (2003) *Shareholder Primacy and the Trajectory of UK Corporate Governance*. Cambridge: University of Cambridge. Centre for Business Research Working Paper WP266.
3. Baldwin, R. and Cave, M. (1999) *Understanding Regulation: Theory, Strategy and Practice*. Oxford: Oxford University Press.
4. Baldwin, R., Scott, C., and Hood, C. (eds.). (1998) *A Reader on Regulation*. Oxford: Oxford University Press.
5. Barker, R. G., Sanderson, P., Hendry, J., and Roberts, J. (2004) *The Corporate-Fund Manager Interface: Objectives, Information and Valuation*. Cambridge: ESRC Centre for Business Research, University of Cambridge. Working Paper Series No. 293.
6. Baysinger, B., Kosnik, R., and Turk, T. A. (1991) Effects of Board and Ownership Structure on Corporate R&D Strategy. *Academy of Management Journal.* (March): 205-214.
7. Berglöf, E. (1997) A Note on the Typology of Financial Systems, in K. J. Hopt and E. Wymeersch (eds.) *Comparative Corporate Governance: Essays and Materials*: 151-164. Berlin: Walter de Gruyter.
8. Berle, A. A. Jr and Means, G. C. (1932) *The Modern Corporation and Private Property*. New York: Macmillan.
9. Black, B. S. (1992) Agents Watching Agents: The Promise of Institutional Investor Voice. *UCLA Law Review.* 39: 811-893.
10. Black, B. S. (1998) Shareholder Activism and Corporate Governance in the United States, in P. Newman (ed.) *The New Palgrave Dictionary of Economics and the Law (vol. 3)*: 459-465. Basingstoke: Macmillan.
11. Cadbury, A. (1992) *: Report of the Committee on the Financial Aspects of Corporate Governance.* London: Gee and Co
12. Carlson, R., Valdes, C., and Anson, M. (2004) Share Ownership: The Foundations of Corporate Governance. *Journal of Investment Compliance.* (Spring): 54-61.
13. Clementi, D. (1999) Equity Indices and Europe. *Speech at the FTSE European Shareholder Dinner* (Claridges, London: Bank of England.
14. Corry, D. (ed.). (1995) *Regulating in the Public Interest*. London: Institute for Public Policy Research.
15. Crespi-Cladera, R. and Renneboog, L. (2003) *Corporate Monitoring by Shareholder Coalitions in the UK*. Brussels: European Corporate Governance Institute. ECGI Working Paper Series in Finance 12/2003.
16. Daily, C. M., Johnson, J. L., Ellstrand, A. E., and Dalton, D. R. (1996) Institutional Investor Activism: Follow the Leaders? Paper presented at *Academy of Management Meeting* Cincinnati: OH.
17. Del Guercio, D. and Hawkins, J. (1999) The Motivation and Impact of Pension Fund Activism.

Journal of Financial Economics. 52 (3): 293-340.
18. Dignam, A. (1998) A Principled Approach to Self Regulation? The Report of the Hampel Committee on Corporate Governance . *Company Lawyer.* 19: 140-154.
19. Easterbrook, F. and Fischel, D. (1991) *The Economic Structure of Company Law*. Cambridge: MA: Harvard University Press.
20. English, P. C. II, Smythe, T. I., and McNeil, C. R. (2004) The "CalPERS Effect" Revisited. *Journal of Corporate Finance.* 10: 157-174.
21. Farrar, D. E. and Girton, L. (1981) Institutional Investors and Concentration of Financial Power: Berle and Means Revisited. *Journal of Finance.* XXXVI (2): 369-381.
22. Financial Reporting Council. (2003) *The Combined Code on Corporate Governance, July 2003.* London: Financial Reporting Council. (http://www.frc.org.uk/publications/content/CombinedCodeFinal.pdf)
23. Foucault, M. (1979) *Discipline and Punish: The Birth of the Prison*. Harmondsworth: Penguin.
24. Francis, J. (1993) *The Politics of Regulation: A Comparative Perspective*. Oxford: Blackwell.
25. Gaved, M. (1996) Taking Stock of the CalPERS Effect. *World Equity.* (November): 40-41.
26. Gillan, S. L. and Starks, L. T. (2000) Corporate Governance Proposals and Shareholder Activism: The Role of Institutional Investors. *Journal of Financial Economics.* 57: 275-305.
27. Greenbury, R. (1995) *: Directors' Remuneration.* London: Gee & Co
28. Hampel, R. (1998) *Committee on Corporate Governance.: Preliminary Report, August 1997; Final Report, January 1998.* London: Gee Publishing
29. Hewitt, P. (2003) Speech to the *Hermes Stewardship and Performance Seminar* (Royal Society of Arts, London: Department of Trade and Industry.
30. Higgs, D. (2003) *Review of the Role and Effectiveness of Non-Executive Directors.* London: Department of Trade and Industry
31. Holland, J. B. (1998) Influence and Intervention by Financial Institutions in their Investee Companies. *Corporate Governance.* 6 (4): 249-264.
32. Hoskisson, R. E. and Turk, T. A. (1990) Corporate Restructuring: Governance and Control Limits of the Internal Capital Market. *Academy of Management Review.* 15: 495-477.
33. Institutional Shareholders' Committee. (2002) *The Responsibilities of Institutional Shareholders and Agents – Statement of Principles.* London: Institutional Shareholders' Committee
34. Investment Management Association. (2004) *Asset Management Survey*. London: Investment Management Association.
35. Investor Relations Society. (1999) *Shareholder Activism*. London: Investor Relations Society. Briefing Paper.
36. James, O. (2000) Regulation Inside Government: Public Interest Justifications and Regulatory Failures. *Public Administration.* 78 (2): 327-343.
37. Jensen, M. C. and Meckling, W. H. (1976) Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure. *Journal of Financial Economics.* 3 (4): 305-360.
38. Karpoff, J. M., Malatesta, P. H., and Walkling, R. A. (1996) Corporate Governance and Shareholder Initiatives: Empirical Evidence. *Journal of Financial Economics.* 42: 365-395.
39. Lowenstein, L. (1991) *Sense and Nonsense in Corporate Finance*. Reading, MA: Addison-Wesley.
40. Lowenstein, L. (1991) Why Managements Should (and Should Not) Have Respect for Their Shareholders. *The Journal of Corporation Law.* 17 (1): 1-27.
41. Mitnick, B. M. (1975) The Theory of Agency: The Policing "Paradox" and Regulatory Behaviour. *Public Choice.* 24: 27-42.
42. Monks, R. A. G. (1991) Fund Managers: To Whom Are They Accountable? *The Economist Conference* (London, http://www.lens-library.com:
43. Myners, P. (2001) *Institutional Investment in the United Kingdom: A Review.* London: HM Treasury
44. Nesbitt, S. (1994) Long Term Rewards from Shareholder Activism: A Study of the CalPERS Effect. *Journal of Applied Corporate Finance.* 6: 75-80.
45. Parthiban, D., Hitt, M. A., and Gimeno, J. (2001) The Influence of Activism by Institutional Investors on R&D. *Academy of Management Journal.* 44 (1): 144-157.
46. Peltzman, S. (1976) Towards a More General Theory of Regulation. *Journal of Law and Economics.* 19 (August): 211-240.
47. Pozen, R. C. (1994) Institutional Investors: The Reluctant Activists. *Harvard Business Review.* (January-February): 140-149.
48. Rao, H. and Sivakumar, K. (1999) Institutional Sources of Boundary-Spanning Structures: The Establishment of Investor Relations Departments in the *Fortune* 500 Industrials. *Organization Science.* 10 (1): 27-42.
49. Roberts, J., Sanderson, P., Barker, R. G., and Hendry, J. (in press) In the Mirror of the Market: The Disciplinary Effects of Company/Fund Manager Meetings. *Accounting, Organizations and Society.*
50. Romano, R. (2001) Less is More: Making Shareholder Activism a Valuable Mechanism of Corporate Governance. *Yale Journal on Regulation.* 18: 174-251.
51. Rosen, G. R. (1968) The New Realities of Corporate Power. *Dun's Review.* 92 (December).
52. Shleifer, A. and Vishny, R. W. (1997) A Survey of Corporate Governance. *Journal of Finance.* 52: 737-783.
53. Smith, M. P. (1996) Shareholder Activism by Institutional Investors: Evidence from CalPERS. *Journal of Finance.* LI (1): 227252.
54. Stigler, G. J. (1971) The Theory of Economic Regulation. *Bell Journal of Economics and Management Science.* 6 (2): 3-21.
55. Turnbull, N. (1999) *Internal Control: Guidance for Directors on the Combined Code.* London: The Institute of Chartered Accountants in England and Wales
56. UK Listing Authority. (2003) *The Listing Rules.* London: Financial Services Authority.
57. Wahal, S. (1996) Pension Fund Activism and Firm Performance. *Journal of Financial and Quantitative Analysis.* 31: 1-23.
58. Webb, R., Beck, M., and McKinnon, R. (2003) Problems and Limitations of Institutional Investor Participation in Corporate Governance. *Corporate Governance.* 11 (1): 65-73.