Places and spaces: Control or experimentation in corporate governance?

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Abstract: For a quarter of a century, corporate governance in many countries has been viewed as a process of institutionalising codes of good conduct. Episodic shocks, induced by spectacular corporate failures, have created opportunities for more radical change, but such codes have proved resilient. But has this been process firmed up a thickening core? With each revision, the corporate governance community has come to live in a field increasing dominated by the ideas traditional actors – corporate management and mainstream institutional investors – who colonized the ill-defined territory of corporate governance at the outset. Over time, however, the changing investment landscape has undercut some of the principles on which this domination was based. Let us explore the philosophical underpinnings basis of the code, drawing on concepts from the writings of de Certeau (1984) and Turner (1977), to reflect on places, spaces, rituals, and explorations, to understand what creates and constitutes control and resilience, and what it says about the possibilities for innovation and experimentation.

Keywords: Place, space, liminality, ritual, codes of conduct, resilience, corporate governance

Introduction

Britain is currently in the process of reconstituting an important, iconic part of its framework of corporate conduct, a promised root-and-branch rethink of the UK Corporate Governance Code. It promises to be a major event, and potentially not just in Britain, with ramifications for many organisations in many countries Key aspects of the code have been copied throughout the world (Aguilera & Cuervo-Cazurra, 2009). The code has informed practice in both civil- and common-law jurisdictions, in emerging markets and developed economies. It has provided core concepts of good corporate governance to multilateral

organisations, listed and unlisted companies, public- and private-sector organisations, and even organs of national governance (Nordberg, 2014).

From its inception as the Cadbury Code (1992), through a major, post-Enron revision (FRC, 2003), and the challenge to its integrity after the existential crisis of the global financial crisis (FRC, 2010), the code has proved resilient. Nordberg and McNulty (2013) show how, in response to these crises in the corporate world, the code has bent to embrace shifting understandings of what constitutes good governance but remained true to its core.

Other revisions, at intervals of roughly two years, have made minor modifications. This practice of periodic revision has institutionalised a process of deinstitutionalisation, creating a ritual of consultation and revision and at once facilitating change while reinforcing its legitimacy. Resilience implies both flexibility and rigidity, a balance between a solid centre and a surface to absorb shocks. That raises uncomfortable questions for a code now a quarter of a century old. When does a core ossify or the surface become brittle? How does change proceed when the crisis isn't one in the core constituencies of corporate management and investment practice? How does change proceed when the motivation for it come from a crisis in national governance, the shock of Brexit and the questions of legitimacy of government itself through an ill-timed election and the ill-run campaign?

In this work-in-progress paper, I seek to explore ways of understanding the problem in preparation for an analysis of how the code revision itself proceeds. I do so by bringing into discussion two perspectives little used in corporate governance literature but with much to say about resilience in the face of change. First is work drawing on ideas of the French sociologist, Michel de Certeau (1984), who distinguishes between the concepts of place and space. Place in de Certeau embodies definition and ownership; space facilitates emergence, lacks definition, and connotes freedom of action. Second is a stream of thinking that developed from the writings of the British anthropologist Victor Turner (1977) concerning rituals and rites of

passage and the creation of liminal spaces where hierarchy is suspended, temporarily, to encourage creativity.

This paper proceeds by discussing briefly the institutional and market context of corporate governance, with reference to the UK and the 2018 revision of the code currently unfolding. It then examines place and space through de Certeau's writings and its elaboration into the world of management and entrepreneurship through Hjorth (2004, 2005), and company secretaries (McNulty & Stewart, 2015). Next is the concept of liminality, as developed by van Gennep (1909/2013) and Turner (1977), and then modified to illuminate the work of management consultants (Czarniawska & Mazza, 2003), expatriate managers of multinational businesses (Guimarães-Costa & Pina e Cunha, 2009), and boards of directors (Concannon & Nordberg, 2018). Using the issues under discussion in the current revision process of the UK code, the paper then examines the overlap between place, space, and liminality, asking questions about the ontologies these standpoints inhabit, and what that says about (de)institutionalisation and resilience. It concludes with observations on codification and ideas

Corporate governance in context

From its inception as the Cadbury Code (1992), through a major, post-Enron revision (FRC, 2003), and the challenge to its integrity after the existential crisis of the global financial crisis (FRC, 2010), the code has proved resilient. Nordberg and McNulty (2013) show how, in response to these crises in the corporate world, the code has bent to embrace shifting understandings of what constitutes good governance but remained true to its core. Other revisions, recently at intervals of roughly two years, have made relatively minor modifications.

In many ways the UK code had created a template for the mitigation of the principal-agent problem identified in agency theory (Fama, 1980), in which managers' interests are misaligned with those of shareholders. First Cadbury (1992) and then the Higgs Review (2003) placed

emphasis on board structures and director independence as central to increasing accountability to shareholders. Alternatively, stewardship theory (Davis, Schoorman, & Donaldson, 1997) holds that, rather than being self-interested schemers or lazy skivers, managers generally seek to do a good job. Its remedies to the ills of corporate governance and directly opposed those of agency theory.

This practice of periodic revision has institutionalised a process of deinstitutionalisation, creating a ritual of consultation and revision and at once facilitating change while reinforcing its legitimacy. Resilience implies both flexibility and rigidity, a balance between a solid centre and a surface to absorb shocks. But scholars have long argued that institutionalisation hardens the process, and that the rules it embodies become decoupled from the changing world around them (Fiss & Zajac, 2006; Meyer & Rowan, 1977).

That raises uncomfortable questions for a code now a quarter of a century old. When does a core ossify or the surface become brittle? How does change proceed when the crisis isn't one in the core constituencies of corporate management and investment practice? How does change proceed when the motivation for it come from a crisis in national governance, the shock of Brexit and the questions of legitimacy of government itself through an ill-timed election and the ill-run campaign? These questions we raise here require a type of analysis that goes beyond the theoretical thinking familiar to scholars of corporate governance, using different and less familiar theoretical perspectives.

Perspectives of resilience and change

Two perspectives offering philosophical insights on resilience and change can provide new ways of thinking about the old conundrums of corporate governance: first, who will guard the guardians, and second, how firms explore if their boards always seek to control. These perspectives, drawn from sociology and anthropology, appear in more practical literatures as

diffuse as architecture and town planning, to management consultancy and remote and temporary working. They are, however, little used in corporate governance literature but have much to say about resilience and innovation in the face of change. First is work drawing on ideas of the French sociologist, Michel de Certeau (1984), who distinguishes between the concepts of *place* and *space*. Second is a stream of thinking that developed from the writings of the British anthropologist Victor Turner (1977) concerning rituals and rites of passage and the creation of liminal spaces where hierarchy is suspended, temporarily, to encourage creativity.

Place vs. space

These concepts, derived from the work of Lefebvre (1974/1991) and Bachelard (1957/1994), take on a subtle meaning in the work of de Certeau (1984; de Certeau, Giard, & Mayol, 1998). He divides the world into categories of being. Place refers to an abstraction of physical or psychological dimensions, the parts of a field with definition, boundaries and rules, a signification ownership or control;[1] place is a "configuration of positions" implying an "indication of stability" (de Certeau, 1984, p. 117). Space, by contrast, is the location of movement, the "intersections of mobile elements … term dependent upon many different conventions" (de Certeau, 1984, p. 117). Spaces may be seen therefore as open territories between places, where rules are in the process of becoming, a continuing unfolding that resonates with Heidegger (1927/2010) and Gadamer (1975/2013). These concepts find elaboration into the world of management and entrepreneurship through Hjorth (2004, 2005), and within the corporate governance literature in a partial way in a recent study of company secretaries (McNulty & Stewart, 2015).

Ritual, and liminal spaces

The concept of space also resonates with the liminality discussed in anthropology and associated with rituals and rites of passage. As developed by van Gennep (1909/2013) and Turner (1977), liminality implies a condition on the threshold between one state and another. The elders of a tribe temporarily dispense with hierarchy, play with the young males, instil them with the culture of adulthood, before inducting them into the society of men. The state of being between states, with its ambiguities and uncertainties allows for playfulness and learning, while the rules become embedded through experience rather than coercion. In management studies, the concept has been employed to illuminate the work of management consultants (Czarniawska & Mazza, 2003), expatriate managers of multinational businesses (Guimarães-Costa & Pina e Cunha, 2009), creative people working from remote locations (Vesala & Tuomivaara, 2018), and boards of directors (Concannon & Nordberg, 2018).

Issues of place, space, and liminality in the UK code debate

Early attempts to solve the agency problem suggested market mechanisms, like share options and other incentives, to limit agency risk (Fama & Jensen, 1983). The Cadbury Code and others that it inspired took a different approach, where rules created structure, encouraged director independence, and later emphasised the interpersonal relationships on the board (Nordberg & McNulty, 2013), which highlights the institutional side of governance.

Many writers have analysed the codification of corporate governance in institutional terms (Aguilera & Yip, 2004; Capron & Guillén, 2009; Estrin & Prevezer, 2011; Haxhi & Aguilera, 2017; Judge, Douglas, & Kutan, 2008). Codes set the formal and semi-formal rules of how boards work and how they interact with investors. Institutional theory has puzzled over how to account for change, either radical (Greenwood & Hinings, 1996) or even gradual (Mahoney & Thelen, 2010). Greenwood, Suddaby, and Hinings (2002) theorised that an exogenous, precipitating jolt might dislodge the taken-for-granted assumption in a field to instigate a

process of de-institutionalisation. DiMaggio (1988) proposed the concept of institutional entrepreneurship, in which social actors at the periphery of the field tapped into sources of legitimacy in adjacent fields. Other writers extended the concept to include efforts to disrupt, alter, or maintain an institution during times of doubt, called the phenomenon institutional work (Zietsma & Lawrence, 2010). Those routines and rituals and their often tacit explanations of legitimacy spawned interest in the concept of institutional logics (Friedland & Alford, 1991; Thornton & Ocasio, 1999).

Many scholars have considered the effects of adoption of such institutional arrangements, and especially the UK code (e.g. Doble, 1997; Koutoupis, 2012; MacNeil & Li, 2006), but comparatively little attention has been paid to the processes involved it creating and revising them. Spira and Slinn (2013) take a historical perspective on the development of the Cadbury Code, using the Cadbury archive at the University of Cambridge to trace the interplay of social, political, and economic actors, the issues they highlighted, and how they resolved into the language of the first code. Two recent studies (Nordberg, 2017a, 2017b) take a thematic approach to the code's origins and its development through crises of confidence in the early 2000s and then through the 2007-09 financial crisis. Those three works indicate how the company directors, and especially their chairmen and associations, jostled with representatives of asset management firms, insurance companies and pension funds for power over the language of the code. They point us towards an interpretation of corporate governance as a field with twin focal points, mediated by professional actors, most notably the large accountancy firms and their professional organisations. Other actors are heard in the debates, but their voice are then marginalised as the codes pass from ideas, to drafts, to the final language that then shapes and controls behaviour.

Those studies provide a narrative of events and the beginnings of a conceptualisation of the process. But they stop well short of theorising how these forces interact. They provide

tantalising if preliminary insights into why marginalised voices participate and continue to engage in a process where their power is limited. They point, therefore, to a value in examining those processes themselves as a social phenomenon. And because a) the UK code and its processes have informed corporate governance debate in many countries, and b) the process of codification has echoes in many field (e.g. the fabled Lamfalussy process in the European Union), undertaking such a study will have policy as well as theoretical and practical benefits.

This study intends to address that challenge by comparing the process of the 2018 major revision with what took place in other periods, analysing those differences through the lenses of liminality and de Certeau's place-space distinction. From this preliminary view, the Cadbury code ventured into unclaimed territory, with echoes of unorganised space. Previous code revisions have similarities to the rites of passage recounted in Turner.

But if the periphery abuts un- or less-theorized *spaces*, in de Certeau's sense, where institutionalisation is weak, the rules less well defined, and actors are open to the possibilities of change and becoming, then change seems more likely. In his specialised vocabulary, de Certeau (1984) say *places* are marked by the *strategies* they exhibit, that is, that the power relationship that allow the actor to generate relations with an "exterior distinct from it", (de Certeau, 1984, p. xix), such as competitors, customers, etc. In *spaces*, however, actors rely on *tactics*; a tactic "insinuates itself into the other's place, fragmentarily, without taking it over in its entirety" (de Certeau, 1984, p. xix). This suggests a more activist approach to change, rather than the opportunism associated with early depictions of institutional entrepreneurship. Places, spaces, strategies, and tactics describe the constellations of power, as opposed to the determinism that often seems to dominate institutional theory. In the work of Hjorth (2004, 2005), these ideas are translated into the world of disruptive entrepreneurs and innovators.

Liminality offers another view of the process of codification. The anthropological accounts of (Turner, 1977) sees structure yielding (temporarily) to anti-structure for the sake

of easing the uninitiated into the society. The freedom in liminal spaces provides avenues for creativity, but with the object of bringing those into support of the established order. Management scholars, including Czarniawska and Mazza (2003) and Sturdy, Schwarz, and Spicer (2006) see this at work in management consultancy, a business that resides in a permanent state of liminality, never inside, but never quite outside.

Further development

With this starting point, the paper will use the history of the corporate governance code in the UK as an example of the contestation for power over the definition of good corporate governance as it emerged in the 1990s and then developed through its first 25 years. It will examine how mainstream investors – domestic pension funds, collective investment organizations, and insurance companies – created a discourse that legitimated shareholder primacy as a dominant logic in the emerging field. It then vied with managerial discretion, the previous dominant view, for authority over the emerging standards of corporate governance. These actions can be seen as transforming the ill-defined corporate governance *space* into controlled *places*. Consultation processes opened the field to experimentation and innovation, but codification constrained the remaining *space* and new actors emerged to colonize other parts of the field.

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[1] *Place* in French is "lieu", and in de Certeau "lieu propre", a phrase his translators have struggled to portray. The word "propre" denotes something clean but also connotes something owned; its usage thus suggests places are ordered and possessed, where rules exist and are generally followed.