The Cadbury Code and Recurrent Crisis

A Model for Corporate Governance?

Donald Nordberg

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Acknowledgements

The ideas in this book grew from the observations of many scholars and practitioners I have known or whose work I have found stimulating. At the time of the Cadbury deliberations, I was an editorial executive for the news agency Reuters, then based in New York. There we were preoccupied by the collapse of the Soviet Union and an emerging economic order based on triumphant capitalism. As journalists, however, we could not escape the concern for colleagues when Robert Maxwell's two UK-listed corporations – Mirror Group Newspapers and Maxwell Communication – collapsed. Also, Maxwell had sat as non-executive director on the Reuters board as it listed on the London Stock Exchange and rapidly moved into the FTSE100 index, serving alongside his arch-rival Rupert Murdoch.

But there was more. The demise of Maxwell's companies was foreshadowed by fraudulent use of their pension funds to prop up his faltering share prices. Those who lost their retirement savings included reporters and editors at the New York *Daily News*, which Maxwell owned. For journalists, this governance failure was personal. When I returned to London a few years later, I discovered that a strange term – 'corporate governance' – had entered the everyday discourse, not just of investors and corporate directors, but of journalists as well.

By the time 'Cadbury' morphed into the 'Combined Code', I was involved in shareholder relations and met Bernard Taylor at Henley Management College, who convened an annual conference on board effectiveness. There I got to know the famous US activist investor and author Robert A.G. Monks. Through Tomorrow's Company – a project of the Royal Society of the Arts – I joined debates about reforming company law. I also met the governance academics at Cass Business School in London, among them Georges Selim and Rob Melville. They introduced me to Terry McNulty from the University of Liverpool, who had led a research project for the 2003 Higgs Review. He supervised my doctoral studies, which commenced just as the global financial crisis began. This book revisits themes from that study and includes sections adapted from an article in *Economics and Business Review* for a special issue on corporate governance co-edited by my colleague at Bournemouth University, Steve Letza, and used here with permission.

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Donald Nordberg, May 2020

Donald Nordberg is Associate Professor at Bournemouth University in the UK and author of *Corporate Governance: Principles and Issues* (Sage Publications: 2011). His research has been published in many journals, including *Corporate Governance: An International Review, Business History, Journal of Financial Regulation and Compliance, European Management Journal,* and *Philosophy of Management*. He is also a governance practitioner: chair of a major UK social care provider and non-executive director of a company in the performing arts. Earlier he was a correspondent and editorial executive at Reuters, based in London, Frankfurt, Zurich, and New York. A native of Chicago, he was educated in the US at Reed College in Portland, Oregon, and the University of Illinois at Urbana-Champaign, and in Britain at the Universities of Warwick and Liverpool.

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Prologue

Since 1992, corporate governance in the UK and much of the world has been articulated in codes of conduct, rather than formal law and regulations or even less formal social arrangements. Moreover, despite their gradual revision over the years, their core tenets survived despite repeated and arguably growing shocks to the system they were meant to protect. That suggests the problems they sought to address have not been solved. Britain – in particular its banks – was perhaps the worst hit by the global financial crisis, at a cost to the state that continues more than a decade later. How did various revisions fail to undertake fresh approaches to the recurring crises?

This book explores how corporate governance in Britain came to be codified, what key disputes took place during its major revisions, and how it institutionalised a way of viewing what corporate governance should be. This study also suggests that the while the flexibility that was built into the code's compliance regime allowed for variations, few companies took the opportunities provided to experiment with other ways of organisation the work of boards of directors. The code is much admired, with good reason. And it has achieved wide legitimacy. But is it the model for corporate governance?

The Cadbury Code and Report was the starting point for this new direction. It combined a set of principles of good governance that served as a how-to guide for listed companies. It established a regulatory framework that guided equity capital markets and proposed ways that shareholders – principally institutional investors – should relate to the companies in which they invest. This framework was loose because of a central plank of the code: it was to be voluntary, subject the requirement that companies explain why they decided not to comply. Although the Cadbury Code did not use the phrase, this idea quickly attracted the label 'comply-or-explain'.

Moreover, the influence of this domestic exercise was vast. The code's ideas were copied in countries around the world, from France to South

Africa to Germany, then to much of Africa and South America, and to Russia and Japan. One of its core tenets even found its way into the listing requirements of the New York Stock Exchange and Nasdaq, despite wide criticism from American CEOs: the provision concerning the separation of roles of the company chair and the chief executive officer (CEO), to prevent one person having 'unfettered' boardroom control. There, too, 'comply-or-explain' applied.

The code's influence grew even larger. Its principles informed other codes, often written by professional bodies for a wide range of organisation types far removed from the world of capital markets, investment portfolios, and even shareholders.

The UK code of corporate governance is widely admired and imitated, but it has not prevented the types of emergency that led to its creation – recurring failures of large corporations because of the lack of oversight and internal control. The biggest case was the financial crisis of 2007-09, in which the UK suffered disproportionate damage, as we shall see.

Were we expecting too much of a code of conduct? Why did the framers of the code not recommend something stronger than a voluntary code of conduct?

This study examines those questions through analysis of the debates that led up to the drafting of the original Cadbury Code and then the major revisions undertaken in 2003 and 2010 in response to renewed crises. It does so through a critical discourse analysis of contributions to the consultations that informed the drafting, undertaken against the economic and political context that shaped the code and was then shaped by it.

It shows, historically, how the process engaged actors from all parts of the chain of investment, and how that process embedded power in the hands of central actors. Theoretically, it shows how the logics employed in the debate became institutionalised, but also how the form of their institutionalisation provided opportunities for change, leaving rejected logics suspended not defeated, so they could resurface later, which enhanced the legitimacy of the process. Practically, it demonstrates how the code's flexibility forestalled more radical action and won acceptance even among those whose views it rejected.

The crisis in corporate governance is one MacAvoy and Millstein call 'recurrent'. 'The turnaround began taking place in the mid-1990s … The die was cast for effective governance through board structure and process and we could move on … but the new form was not universally and instantaneously followed by changes in conduct.' (2003, pp. 2-3). They were writing just as US financial markets had just been rocked by failures of very large corporations, the collapse of the market in new technology companies, and the implosion of one of the five global accountancy and audit firms. They expressed their concern that the responses, in regulation and corporate behaviour would prove disappointing. There was some change in US practice, which included translating some aspects of UK corporate governance into US listing requirements. Yet before the decade was out, both countries would experience an even more serious corporate governance crisis.

This study examines how the UK reforms, enacted in the 1990s and repeatedly revised, kept options for different responses open to debate but nonetheless left them unexplored in practice. It questions what might have happened if the roads not taken had been followed, perhaps as experiments rather than policy, and if in practice the code had been followed with the degrees of freedom that its language of explanation proposed. Instead of striving for formal compliance, and thus escape enforcement via investors and the proxy voting agencies they employed, corporate boards might have adopted a more thoughtful approach. They might have adapted code recommendations and innovated in board design and process to suit the peculiar circumstances of the company, rather than shaping the board and its processes to fit the code. What sort of ethos might then have developed?

Reference

MacAvoy, Paul, & Millstein, Ira. (2003). *The Recurrent Crisis In Corporate Governance*. Basingstoke: Palgrave Macmillan.

1. Successes in corporate governance – or failures?

Abstract: Codes of corporate governance around the world have drawn inspiration from the UK's Cadbury Code and its subsequent iterations. This widely admired and imitated regulative measure emerged from a crisis in corporate governance and was designed in part to prevent corporation collapses. In the past three decades, however, corporate collapses have continued and even intensified in impact. The chapter asks: In what ways has codifying corporate governance succeeded? In what ways has it failed?

Keywords: Codes of corporate governance, success, failure

For nearly 30 years, corporate governance in the UK – and in the many countries that followed its lead – has been defined in terms of a code of conduct. It was a project conceived in a crisis and then gestated through long processes of consultation, drafting, more consultation, further drafting. It was an effort that engaged the sceptical, confronted the hostile, and eventually won over a large body of believers, many who have invested time, talent, and faith in both the code and the process through which it was created.

The decision to codify what constitutes good, or even best, practice in corporate governance is frequently seen as a masterstroke of regulatory genius. Though its authors could not have anticipated it at the outset, this voluntary arrangement – with very little punishment possible for non-compliance – has all but extinguished pressure for what might have been the alternative: a regime of regulation with tough civil or criminal sanctions. But that does not mean that all is well.

Veldman and Willmott (2016), for example, warn of the limits of soft regulation, like codes. What they call the 'reflexive governance' of codes and comply-or-explain 'promises to forestall potential pathologies and crises that threaten confidence in corporate governance, and so bestows upon the Code a degree of credibility and legitimacy'. At the same time, however, it 'supports a particular, financialized political economy where the claims of wider constituencies are marginalized or even excluded' (Veldman & Willmott, 2016, p. 583). Their observations highlight a central problem in corporate governance and codes, however. As we shall explore, if the freedom of explanation as a means of compliance leads to reflexive, double-loop learning then it holds the promise of innovative and even transformative governance. If it degenerates into surface compliance and embeds power relationships, it can squeeze out other voices, lose insights that may benefit the company, and in time sap the legitimacy of the code and the corporation. The alternative – hard regulation, with legal enforcement to ensure those 'wider constituencies' share power – risks creating a regime that lacks flexibility to respond to changing contexts.

This was a code fashioned for a particular crisis, in a particular country, at a particular stage in the evolution of its capital markets, and at particularly febrile moment in the politics of Britain. Yet that code – initially named The Cadbury Code, after its principal author, the late Sir Adrian Cadbury – has been widely imitated across geographies, institutional systems, and market contexts. The principles it established have found their way into codes written for other organisational types as well. Charities, trade associations, neighbourhood committees, government departments, and even parliament itself have copied its key recommendations, sometimes verbatim. Those recommendations thus inform what are often labelled 'corporate governance reports' by entities that have nothing else in common with the world of corporations, listed on stock exchanges, with diverse and dispersed shareholders, the world for which the code was designed.

Moreover, the process of its development has come to have many imitators. It came about through a temporary body, established outside government, without statutory grounding, with no power to compel participation in its fact-gathering. That unofficial, non-governmental rule-making body nonetheless gained legitimacy, and not just among those directly affected, but in the broader public as well. The Cadbury Committee held consultations, informal and formal, filtering ideas through a draft and then modifying the draft, and then building a timetable for reviewing the 'final' version two years later, and then roughly two years after that. The cycle of opportunities for revisions arose through custom and practice, not a stipulation of an expiry date, and it has persisted through nearly 30 years of practice. This winnowing and filtering and revisiting makes it a living document, constantly open to revision, a standard in perpetual motion that nonetheless provides an anchor to the way corporate governance works.

The language of the code and the discourse it created have evolved over time in ways that suggest that its various authors are not complacent (Nordberg & McNulty, 2013), but its core principles are remarkably unchanged. According to Price, Harvey, Maclean, and Campbell (2018, p. 1557) that stability shows the code 'is institutionally embedded and subject to institutional stasis'.

The original code (Cadbury, 1992) developed in response to a series of corporate failures, and its major revisions in 2003 and 2010 were motivated by similar and arguably more systemic problems in corporate governance. Indeed, the global financial crisis of 2007-09 nearly paralysed the world's financial system and triggered a recession of a scale not seen since the 1930s. The UK was especially hard-hit, seeing its first run on a bank since the mid-19th Century.[1] That bank was nationalised; and as the crisis spread around the world, Britain was forced to part-nationalise two much larger banks, one of which had claimed the distinction of being the world's largest.

The UK code has focused attention on improving board effectiveness, and it clearly succeeded in getting boards to work harder. The time commitment that directors make has expanded. Board committees meet more frequently, and board papers are generally more detailed. Remuneration of non-executive directors has grown too. Direct data on this is hard to come by across the time since the Cadbury Code, as reporting requirements came into place only towards the end of the 1990s. However, one study showed that during a period of modest inflation in the economy, from just before Enron imploded in 2001 to just after the worst of the post-financial crisis recession had passed, director fees for listed UK companies roughly doubled (Goh & Gupta,

[1] A small bank: Northern Rock. Unlike other major economies, Britain escaped from both the Wall Street Crash of 1929 and the Great Financial Crisis of 1914 without a bank run. See Roberts (2014).

2016). It also demonstrated, against the grain of 'tougher' governance, that fees increased more for well-connected non-executive directors, those with wide personal networks among directors of other companies, and rather less for those with characteristics that might lead them to hold management to account.

But if the ambition of codes of corporate governance is to forestall corporate collapse, how did the code – through repeated consultations and reformulation, over two decades – fail to seek out other solutions, even as experiments? Why haven't we seen more vigorous interventions – in law and regulation – with greater compulsion, to compensate for the deficiency of what is, in effect, a voluntary code? These questions resonate in fields of public and organisational policy well beyond corporate governance.

This study examines the first question through analysis of the discourse developed as the code was being created and how its major revisions were conducted. That analysis considers the economic and political context in which the code developed, as well as the language in which the debate was conducted and the resulting discourse it created. It addresses the second through context-driven interpretation of those findings, which then leads to unanswered questions that provide a direction for future research in corporate governance and other fields. It does so by considering the process through which the code became institutionalised and then came to be taken for granted as 'good' (Hodge, 2017), or even 'best' (Seidl, Sanderson, & Roberts, 2013) practice.

Much of the code's provisions won over hearts and minds quickly, conforming to common sense and confirming existing custom and practice at many listed companies. Boards are responsible for the business. They should challenge management. That means they need in general to be independent of management, though the definition of independence might be difficult to discern from the outside. Directors should be conscientious, paying close attention to the information they receive. To do justice to the big issues, the code specified that certain tasks should be delegated in the first instance to committees –

remuneration, audit, and nominating new directors, including importantly the chief executive.

Somewhat controversial in 1992 was the stipulation that the role of chairman and chief executive should not be combined. At many companies, however, this practice was already in place, reducing opposition to the idea and making opponents seem self-serving, rather than serving shareholder interests. Even though empirical evidence of its benefit is mixed (Elsayed, 2007; Krause, Semadeni, & Cannella, 2014), this provision became a hallmark of good corporate governance around the world.

Over the years additional layers were added. A 1995 review of executive pay urged boards to pay greater attention to ensuring that executive directors were not involved in decisions over executive pay. A 1998 review discussed interactions with major shareholders, seeking ongoing and constructive dialogue. There were dangers in this, as such investors might become privy the inside information and then not be able to trade shares in the company, so investors were reluctant to get too involved.

Moreover, engagement with corporations was seen as expensive. Large institutional fund managers, with hundreds of companies in the portfolio and perhaps a thousand on the watch list, would require an army of analysts to keep track of the companies and then engage in dialogue. Companies would then face that army and their cacophony of opinions about what the company should do next. But the guidance was broad, non-specific and easily avoided: 'comply-or-explain' is a very useful tool. These guidelines were added to the Cadbury provisions, creating in 1998 a 'Combined Code' on corporate governance (see Committee on Corporate Governance, 2000).

This was a relatively stress-free time in capital markets. The Labour government elected in 1997 had avoided much of the feared anti-business prescriptions, and after quickly setting in motion a major review of Company Law, it then delayed any changes for several years. It had come to appreciate the complexity and the depth of opposition. By 2003, however, after a global crisis in corporate governance, the institutional and market context would shift.

The 2001 collapse of Enron in the US, followed by WorldCom, Tyco, and others, revealed flaws in the US system. The outcome was a sharp legal and regulatory turn in the Sarbanes-Oxley Act (Library of Congress, 2002), which prescribed much greater disclosure and director duties, yet failed to address some of the key faults in governance exposed by Enron and others (Nordberg, 2008). Moreover, this proved not to be a US-specific crisis. Problems also arose in continental Europe (Ahold, Parmalat), Australia (HIH Holdings), and elsewhere (Deakin & Konzelmann, 2004). While the UK was not directly affected in a big way, it was difficult for government to let things stay the same. Company Law reform was back on the agenda, eventually taking effect from 2006, and placing specific duties on company directors for the first time (UK Government, 2007; UK Parliament, 2006). The corporate governance code would also undergo a major revision (FRC, 2003).

Minor revisions followed in 2006 and 2008, the latter published just as the global financial crisis struck, in which UK banks were among those most damaged, and for reasons that were as much home-grown as imported (Bank of England, 2015; FSA, 2011). A revision of the Combined Code, scheduled for 2010, was brought forward a year. It took the form of a three-stage consultation and took 18 months, before the code was finally published in 2010. Even before that, the government ordered a specific review of corporate governance for financial institutions, which argued in part that bank governance might need to be different from non-financial companies (Walker, 2009).

As Nordberg and McNulty (2013) demonstrate, the major revisions to the code left the core principles largely unaltered, but they did involve a shift in tone. The Cadbury Code (1992) emphasised in its selection of metaphor and other language features the need for structures to provide a foundation for good governance:

> Our proposals aim to strengthen the unitary board system and increase its effectiveness, not to replace it. (Paragraph 1.8).
>
> The effectiveness of a board is buttressed by its structure and procedures. One aspect of structure is the appointment of committees of the board, such as the audit, remuneration and nomination committees (Paragraph 4.21).

> Raising standards of corporate governance cannot be achieved by structures and rules alone. They are important because they provide a framework which will encourage and support good governance (Paragraph 3.13).

The symbolism was quiet, working in the rhetorical background to let its prime audiences of directors and investors understand its purpose: ‘buttresses’ of structure and procedure ‘strengthen’ corporate governance, overcoming the weakness which had led to the series of corporate collapses. That it would be a ‘framework’ told them that there was still much to be filled in. Director and management discretion would be constrained but not eliminated.

That first code did not invent the idea of board committees; they already existed in many companies, partly a mechanism for efficiency, partly through imitating practice that had developed in the United States, particularly for committees to consider audit issues. It put committees – for nominating new directors, including the chief executive officer; for remuneration of the executives; and for audit – at the forefront of the code. It structured their practice by giving non-executive directors a prominent role. As we shall see, these structural elements of board design were rather controversial and remained so in the early years.

The 2003 revision to the Combined Code, without changing the structures, shifted the weight of emphasis to director independence. While Cadbury had given special value to the non-executive directors, the experience of corporate collapses abroad – importantly in the US – raised doubts about whether just being non-executive gave enough protection against managerial power. In the worst US collapses, the outside directors were anything but independent. Studies of board interlocks – directors sitting on the boards of companies with directors on the other firm’s board – show the presence of cosy relationships, which can impede critical thinking and boardroom challenge (Shipilov, Greve, & Rowley, 2010) and increase executive pay (Hallock, 1997). Some of the evidence of US experience post-Enron suggests board interlocks continue to be a large and even growing part of the corporate landscape (Withers, Kim, & Howard, 2018).

In the UK, a review of the effectiveness of non-executive directors, conducted by the former investment banker Derek Higgs (2003), called for sweeping changes. Unlike the Cadbury Committee, the Higgs Review was directly a government intervention. It urged that all three board committees be controlled by, not just include, non-executive directors who had no ties to management. His recommendations were controversial, as we shall see, and were not incorporated in their entirety in the new Combined Code (FRC, 2003). But non-executives not deemed independent almost vanished from the code. In the Cadbury Code, at least a third of board members were supposed to be non-executive and most of them independent; in 2003, at least half the seats should be held by non-executives, all of whom would be independent. Moreover, in the 2003 code, the chair should meet the standards of independence at the time of appointment. No longer should a CEO 'retire' to the chairmanship.

In 2010, the post-financial crisis code left the Cadbury structures and principles largely intact; the changes not only maintained but also strengthened board independence. But in its diction and tone, the renamed UK Corporate Governance Code (FRC, 2010) also placed greater emphasis on relationships – between directors themselves, and between the board and shareholders. In a new section near the start with the heading 'Comply or Explain', it said:

> The 'comply or explain' approach is the trademark of corporate governance in the UK. It has been in operation since the Code's beginnings and is the foundation of the Code's flexibility. It is strongly supported by both companies and shareholders and has been widely admired and imitated internationally.
>
> The Code is not a rigid set of rules.… ('Comply or Explain,' Paragraphs 1–2).

The alliterations – 'foundation … flexibility', then 'not a rigid set of rules' – build the sense that the structures of 1992 and the independence in 2003 had missed something important. The equivalent section in the Cadbury Code of 1992 is labelled simply 'Compliance', not a ringing call for explanation:

> Raising standards of corporate governance cannot be achieved by structures and rules alone. They are important because they provide a framework which will encourage and support good governance, but what counts is the way in which they are put to use (Paragraph 3.13).

Cadbury built structures and frameworks and placed the emphasis there, while acknowledging that 'what counts' might lie elsewhere. The 2010 code encourages its principal audiences – directors and investors – to bend the rules and pay more attention to what Cadbury thought 'counts'. This new code was, as Nordberg and McNulty (2013) put it, a recognition as much of the limitations of codification as of its possibilities.

During these major revisions after crises, as well as the other periodic reviews, the key principles and specific recommendations of the code were left largely unchanged. Gradually other recommendations were added, for example, on membership of and attendance at board committees, gender diversity, and board evaluation (Nordberg & Booth, 2019). These changes added layers of specific measures that required compliance, albeit under the 'comply-or-explain' principle. Governance reports became a regular reporting requirement, and then became longer and more detailed, written increasingly in routine, standardised language, and composed by public relations consultants who wrote the non-financial sections of annual reports.

In the 2010 revision, the principal author, Sir Christopher Hogg, warned against this 'fungus' of 'boiler-plate' (Paragraph 7), urging company chairs to take personal responsibility of the governance report.[2] The danger he saw was that corporate governance might become even more of a 'box-ticking' exercise, and thus detract from the important matter of strengthening board relationships and engaging in serious debates.

The broad agreement on key elements of the code no doubt helped it become institutionalised, that is, accepted as legitimate by most people

[2] The 2010 code makes this recommendation. That it was the view of the Sir Christopher comes from a personal conversation with the author of this study undertaken after the code was published. Sir Christopher was chair of the Financial Reporting Council at the time. A former CEO (of Courtaulds plc) and chairman (of Reuters Group plc), he had in 1992 also served as adviser to Sir Adrian Cadbury in the later stages of formulating the first code.

affected and largely taken for granted. But that does not mean these consultations lacked controversy. Far from it. What was at stake in the debates were issues that might have upset the established order. Much of the custom and practice of boards pre-dated Cadbury. It also threatened to upset existing power structures, including the balance of discretion between corporate management, boards of directors, and shareholders. Codifying new ways of working could open the door to more radical measures – work representation on boards, rights to other constituencies, constraints on direction and managerial discretion, revisions to the nature of the accountability of audit.

This study focuses on three recurrent issues, ones that aroused controversy in 1992 and would not go away: a) board design, that is, its structure and composition; b) the resulting effects on the prevalent tone, the custom and practice, that is, the *ethos* of the boardroom; and c) the nature of compliance. By examining the rhetoric in arguments used by participants in the public consultations that led to the three major versions of the code, we see how the language of the code and the discourse it created reflected the power dynamics in the system of corporate governance. Once its legitimacy was established, the code became an impediment to more radical revisions. Veldman and Willmott (2016, p. 581) discuss this process as one of a 'single loop of reflexivity', but one that has not achieved the 'double loop' that permits more transformational change through 'questioning underlying organization policies and objectives' (Argyris, 1977, p. 117). The debates also demonstrate that the underlying problems persisted, and that alternative approaches resurface with each attempt at revision, to be accommodated, if only in part.

This study develops our understanding of corporate governance in three ways: Historically, it shows how the language of the code developed through the distillation of ideas arising in the consultation process. That process, operating repeatedly in context of political indecision and weakness, led to decisions that favoured central actors at the expense or more peripheral ones with more radical ideas. It shows how, in the centre, institutional investors wrested power from corporations. But it also shows that the processes allowed ideas rejected at one stage to resurface. The code thus was a living document, not a stale, historical artefact. Actors across the spectrum of the investment chain had a stake in its success, and in its perpetuation.

Theoretically, the study shows how logics of action, often voiced but sometimes unstated, create a discourse that valorises certain ideas, which come to be taken for granted as those logics become institutionalised. The consultations led to structures that may blend contesting logics, but by giving legitimacy to alternative discourses through their participation in the process, it left others suspended and held in abeyance, but not vanquished.

Practically, it demonstrates how the process of governing through codes has greater flexibility than legislation or regulation, but also how the institutionalisation of the process can inhibit stronger state intervention or even experimentation with other ways of organising the governance of organisations. The discussion suggests ways in which these lessons may have application beyond the UK and in aspects of organisational life and regulatory process other than in *corporate* governance.

The rest of the study is structured as follows: Chapter 2 provides an overview of the field of corporate governance and provides a framework for thinking about the issues it raises in terms of ethics, the political processes of contestation over power, and the how the rules thus devised become institutions.

Chapter 3 examines the context: The historical background and key concepts of corporate governance, including differences in context between the starting point of concern in the US during the Great Depression after the Wall Street Crash of 1929 and the UK, and then extending that to the end of the 20th century. A detailed look at institutional, market and political situations in the UK in which the code developed.

Chapter 4 describes institutions, institutional theory, and power: formal and informal institutions, the problem of institutions outliving their usefulness, how institutions disguise power, and how institutional logics illuminate the relationship to power. Less theoretically and philosophically inclined readers may decide to skip this chapter, but they will miss some of the ideas that underpin the later discussion of power relations and impact of the code.

Chapter 5 looks at how the institutional context for corporate governance – especially the battle between the UK and the European Union over company law – created flashpoints for the framers of the first code: the shape of the board of directors (board design) and the nature of compliance.

Chapter 6 provides detailed historical analysis of the inputs of corporations, accountancy bodies and firms, lawyers, investors and lobbyists over the question of board design, covering 1992 and then the major code revisions in 2003 and 2010, after fresh crises in corporate governance. Chapter 7, in parallel to the previous one, analyses the debates concerning board ethos and compliance.[3]

Chapter 8 provides a critical analysis of what these debates show us about the seat and shift of power between the key actors in the field – corporations, mainstream institutional investors, professional services firms and bodies, and more peripheral voices in the debate. Central actors have embedded their authority over the process, marginalising more peripheral voices but without excluding them, which allows their arguments to resurface in the cycle of recurring code revision. It returns to the framework outlined in Chapter 2 to show how the cycle of ethical choices, political contestation and institutionalisation manifests in the debate over codification.

Chapter 9 offers conclusions about how the code has influenced the practice of corporate governance and how the process of developing the code has both built a consensus, a logic of corporate governance while also embedding a lack of experimentation that might have done more to address the underlying problem of corporate collapse. It also notes that participation in the more recent code debates have failed to reflect the shifting patterns of investment in the UK equities market. It discusses how the product of this long debate – the code itself – has changed organisational governance well beyond listed companies and well beyond the UK.

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[3] A description of the research methods and document sampling appears in Appendix 1.

The book closes with an epilogue offering a contemporary postscript, looking at the collapse of Carillion in 2018, a hesitant discussion during the government of Theresa May over having employees on corporate boards, and following her fall from power in 2019 the ongoing debate over regulation of accountancy and corporate governance more widely. It ends with some very initial thoughts on the consequences of the coronavirus pandemic on the economic and corporate governance systems.

References

Argyris, Chris. (1977). Double loop learning in organizations. *Harvard Business Review, 55*(5), 115-125.

Bank of England. (2015, November). The Failure of HBOS plc. *UK Financial Conduct Authority and Prudential Regulatory Authority report.* Retrieved November 19, 2015, from http://www.bankofengland.co.uk/pra/Documents/publications/reports/hbos.pdf

Cadbury, Adrian. (1992). The Financial Aspects of Corporate Governance. Retrieved September 1, 2015, from http://www.ecgi.org/codes/documents/cadbury.pdf

Committee on Corporate Governance. (2000, May). Combined Code: Principles of Corporate Governance and Code of Good Practice. *UK Financial Services Authority publication for the Committee on Corporate Governance.* Retrieved February 10, 2017, from http://www.ecgi.org/codes/documents/combined_code.pdf

Deakin, Simon, & Konzelmann, Suzanne J. (2004). Learning from Enron. *Corporate Governance: An International Review, 12*(2), 134-142. doi: 10.1111/j.1467-8683.2004.00352.x

Elsayed, Khaled. (2007). Does CEO Duality Really Affect Corporate Performance? *Corporate Governance: An International Review, 15*(6), 1203-1214. doi: 10.1111/j.1467-8683.2007.00641.x

FRC. (2003). Combined Code on Corporate Governance. *UK Financial Reporting Council.* Retrieved June 20, 2006, from http://www.frc.org.uk/documents/pagemanager/frc/Web%20Optimised%20Combined%20Code%203rd%20proof.pdf

FRC. (2010). The UK Corporate Governance Code. *UK Financial Reporting Council.* Retrieved May 29, 2010, from http://www.frc.org.uk/documents/pagemanager/Corporate_Governance/UK%20Corp%20Gov%20Code%20June%202010.pdf

FSA. (2011, December). The Failure of the Royal Bank of Scotland plc. *UK Financial Services Authority report.* Retrieved November 19, 2015, from http://www.fsa.gov.uk/pubs/other/rbs.pdf

Goh, Lisa, & Gupta, Aditi. (2016). Remuneration of non-executive directors: Evidence from the UK. *The British Accounting Review, 48*(3), 379-399. doi: 10.1016/j.bar.2015.05.001

Hallock, Kevin F. (1997). Reciprocally Interlocking Boards of Directors and Executive Compensation. *Journal of Financial & Quantitative Analysis, 32*(3), 331-344.

Higgs, Derek. (2003). Review of the Role and Effectiveness of Non-Executive Directors. Retrieved October 15, 2006, from http://www.ecgi.org/codes/documents/higgsreport.pdf

Hodge, Chris. (2017, February). Untangling Corporate Governance. *ICSA Future of Governance series.* Retrieved March 6, 2017, from https://www.icsa.org.uk/knowledge/research/the-future-of-governance

Krause, Ryan, Semadeni, Matthew, & Cannella, Albert A. (2014). CEO Duality: A Review and Research Agenda. *Journal of Management, 40*(1), 256–286. doi: 10.1177/0149206313503013

Library of Congress. (2002). H.R.3763, The Sarbanes-Oxley Act. Retrieved October 15, 2006, from http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_bills&docid=f:h3763enr.txt.pdf

Nordberg, Donald. (2008). Waste Makes Haste: Sarbanes-Oxley, Competitiveness and the Subprime Crisis. *Journal of Financial Regulation and Compliance, 16*(4), 365-383. doi: 10.1108/13581980810918422

Nordberg, Donald, & Booth, Rebecca. (2019). Evaluating the effectiveness of corporate boards. *Corporate Governance: The International Journal of Business in Society, 19*(2), 372-387. doi: 10.1108/CG-08-2018-0275

Nordberg, Donald, & McNulty, Terry. (2013). Creating better boards through codification: Possibilities and limitations in UK corporate governance, 1992-2010. *Business History, 55*(3), 348-374. doi: 10.1080/00076791.2012.712964

Price, Michael, Harvey, Charles, Maclean, Mairi, & Campbell, David. (2018). From Cadbury to Kay: discourse, intertextuality and the evolution of UK corporate governance. *Accounting, Auditing & Accountability Journal, 31*(5), 1542-1562. doi: 10.1108/AAAJ-01-2015-1955

Roberts, Richard. (2014, March). The Great Financial Crisis of 1914. *The Alchemist, Issue 73.* Retrieved September 8, 2019, from http://www.lbma.org.uk/assets/blog/alchemist_articles/Alch73Roberts.pdf

Seidl, David, Sanderson, Paul, & Roberts, John. (2013). Applying the 'comply-or-explain' principle: discursive legitimacy tactics with regard to codes of corporate governance. *Journal of Management & Governance, 17*(3), 791-826. doi: 10.1007/s10997-011-9209-y

Shipilov, Andrew V., Greve, Henrich R., & Rowley, Timothy J. (2010). When do interlocks matter? Institutional logics and the diffusion of multiple corporate governance practices. *Academy of Management Journal, 53*(4), 846-864.

UK Government. (2007, June). Companies Act 2006: Directors' duties - Ministers' statements. Retrieved August 5, 2011, from http://www.bis.gov.uk/files/file40139.pdf

UK Parliament. (2006). Companies Act. Retrieved June 20, 2007, from http://www.legislation.gov.uk/ukpga/2006/46/contents

Veldman, Jeroen, & Willmott, Hugh C. (2016). The cultural grammar of governance: The UK Code of Corporate Governance, reflexivity, and the limits of 'soft' regulation. *Human Relations, 69*(3), 581-603. doi: 10.1177/0018726715593160

Walker, David. (2009, November 26). A review of corporate governance in UK banks and other financial industry entities: Final recommendations. *HM Treasury Independent Reviews.* Retrieved November 26, 2009, from http://www.hm-treasury.gov.uk/d/walker_review_consultation_160709.pdf

Withers, Michael, Kim, Ji Youn, & Howard, Michael. (2018). The evolution of the board interlock network following Sarbanes-Oxley. *Social Networks, 52*(1), 56-67. doi: https://doi.org/10.1016/j.socnet.2017.05.005