Rules of the game: Whose value is served when the board fires the owners?

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Abstract: How does a board of directors decide what is right? The contest over this question is frequently framed as a debate between shareholder value and stakeholder rights, between a utilitarian view of the ethics of corporate governance and a deontological one. This paper uses a case study with special circumstances that allow us to examine in an unusually clear way the conflict between shareholder value and other bases on which a board can act. In the autumn of 2010 the board of Liverpool Football Club sold the company to another investing group against the explicit wishes of the owners. The peculiar circumstances of this case provide insight into the conflict between ethical approaches to board decisions, allowing us to see certain issues more clearly than we can in listed corporations with many shareholders. What the analysis suggests is that the board saw more than one type of utility on which to base its ethical decision, and that one version resonated with perceived duties to stakeholders. This alignment of outcomes of strategic value with duties contrasted with the utility of shareholder value. While there are reasons to be cautious in generalizing, the case further suggests reasons why boards may reject shareholder value, in opposition to mainstream notions of corporate governance, without rejecting utility as a base of their decisions. Further the partial alignment of duty and utility facilitates a pragmatic decision, rather than one based on *a priori* claims.

Keywords: Corporate governance, boards, ethics, pragmatism, shareholder value, Liverpool FC

Introduction

In 2010 a strange event occurred in a corner of the world of corporate governance: The board of directors of a sizeable enterprise in the UK fired the owners. The event attracted wide coverage in the news media, providing a rare public glimpse into corporate governance operating in the raw. What the incident revealed made intriguing reading for sports fans around the world, throwing up a cast of characters with heroes and villains, a real-life boardroom soap opera, the modern-day equivalent of a morality play. But the lessons we can draw from it, about the ethics of corporate governance and the role of company directors are larger and more nuanced. Liverpool Football Club got new owners and hope for salvation from a forced descent from the English Premier League. In the press and on television the club's directors were hailed as courageous and virtuous as they evicted the greedy merchants from the temple of Anfield.

Away from the hype of the headlines, a more mundane set of concerns arise: The incident suggests that directors do not, in practice, or at least in this case, put their allegiance to shareholders above all. The case raises questions about the nature of shareholder value, which lies at the heart of much of the academic literature and public-policy debate over corporate governance around the world during the past several decades. It offers a rare chance to examine a key issue, how in practice directors see their governance role in quite a pure form, without much of the messy complexity of public corporations and various categories of institutional investors and focuses attention instead on the relationship between boards and owners. At work in this case is a different logic, a different ethic, than the one prescribed in much of the literature on corporate governance, one with implications for how business people use ethics to inform their judgements.

In this essay, we consider first the background of the case and the corporate governance issues it raises and then review what the literature tells us about the role of boards and owners, both under the law and independently of it. We then consider how longstanding debates in ethics give shape to the work of boards of directors – independently of law and regulation – and how in particular utilitarian approaches to board ethics have clashed with duty-based perspectives. The evaluation of the case suggests that in practice the board of this company chose what it felt was the "right thing to do" once the duty and utility became aligned in purpose, a purpose that remained at variance with notions of shareholder value that lie at the heart of many normative views of corporate governance. We conclude with observations about the limitations of generalizing from this case to the wider world of corporations, but also with reasons why this pure case resembles closely the model of corporate governance that the mainstream literature describes. It suggests that pragmatic decisions arise when some forms of utility align with perceived *a priori* duty.

'You'll Never Walk Alone'

Liverpool FC is a proud club. As it entered the 2010-11 season, it could claim 18 championships in the top English football league – tied with its arch rival Manchester United for the lead. It had not won the league, though, in the last 20 years, despite regularly finishing in the top four and competing in the top European club competition. From the stands at its stadium at Anfield, supporters sing out their anthem at the end of every match (from Rodgers and Hammerstein, via Gerry and the Pacemakers), with an appeal to an unnamed "other" person, spirit or force:

> Walk on, walk on, with hope in your heart
> and you'll never walk alone.
> You'll never walk alone.

The background to the case was widely chronicled in the UK press and in statements from the club itself (e.g. Eaton 2010a, Smith 2010a, Liverpool FC 2010, Eaton 2010b, Smith 2010b, Gibson 2010). In February 2007, the club came under the ownership of two American investors, Tom Hicks and George Gillett in a deal that valued the club at £219 million. Hicks, a venture capitalist, had experience of sports franchises, having bought the Texas Rangers baseball team he had acquired in 1998 from George W. Bush, who used the proceeds to finance his successful campaign to become President of the United States. Hicks teamed up with Gillett, who owned the Montreal Canadiens hockey team, promising to revive Liverpool FC with investment in a new stadium and in players to secure its place at the very top of English football. The financing method they adopted was similar to their experience in managing other sports franchises: borrow money on the promise of future revenue streams and maximize the yield to shareholders by keeping equity investment to a minimum. Royal Bank of Scotland made the loans to finance the deal.

The two owners soon fell out with each other, leaving the club without direction or the planned further investment, just as the global financial crisis swept RBS into its maelstrom. Performance on the pitch was good but not great, and the club found it difficult to compete for new talent against rivals like Chelsea, Real Madrid and latterly Manchester City, with seemingly unlimited funds available from wealthy owners who cared little if not at all about the cost. By the autumn of 2010, with the loans coming due for repayment and RBS unwilling, perhaps even unable to extend the term, the club teetered on the brink of slipping into administration, a form of insolvency. The board tried to negotiate the sale of the club to a series of other investors, without success. The turmoil unsettled the team. Seven games into the new season, Liverpool sank to near the bottom of the Premier League, having won only one match and gained only six points. Under league rules, Liverpool FC would have nine points deducted if it went into administration. That would give it a total for the season to-date of minus three, making the threat of relegation next season to the second tier of teams palpable. If that happened, the club would lose tens of millions of pounds in television revenues; key players seemed certain to leave even before that. This path would clearly be bad for the club, bad for the supporters, and probably bad for football. Fans assailed the owners for their actions and inactions, for betraying the proud traditions of the club – their club, the *fans'* club.

The board felt urgent action was needed. After various suitors pulled out of proposed deals, the board was left with a decision: the most viable alternative to administration was to sell the club to another American sports investor, John Henry, through his company, New England Sports Ventures. But there was a catch: Henry's offer, worth about £300 million, was sufficient only to pay off the debt and accrued interest on the loans to RBS. Hicks and Gillett would receive next to nothing. By a vote of 3-2 the board approved the sale of the club to Henry. The dissenting votes were from Hicks and Gillett.

Hicks and Gillett then sought to have two board members removed and replaced with their own associates. The chairman Martin Broughton, who was also chairman of a major listed company, argued that he had joined the Liverpool FC board on explicit written agreement that he should try to find a buyer. Christian Purslow, who had worked in senior managerial roles at a major listed company, became managing director and joined the board to put the club's finances in order. Moreover, Broughton insisted that he and only he could remove members of the board. Hicks and Gillett took their case to court. They lost in a ruling by the High Court in London, which ruled that the board did have the right to sell the club. They then sought and gained an injunction to block the sale from a court in Dallas, Texas, with tenuous jurisdictional grounds, before losing again in London before the Dallas court backed down. The deal was forced through over the continuing objection of the owners. Henry took control of the club, though Hicks and Gillett immediately threatened to sue the other three directors personally for breach of trust. Still, the fans won, and arguably football won. Hicks and Gillett had lost.

The courts no doubt considered the finer points in property rights and contract law in reaching their conclusions, and what company law says about the obligations of directors, under the newly revised Companies Act (UK Parliament 2006), to which we return shortly. The board no doubt took legal advice before voting to disenfranchise the owners, for the sake of minimizing the danger that another court might find the directors in wilful disregard of the law. But law is only an approximation of ethics, the attempt by society to settle what is right with a degree of fairness to all. The decision to go against the express wishes of the owners they were meant to serve raises issues of ethics that underpin, often in an unspoken way, the field of corporate governance. What does it mean for corporate governance when the board fires the owners?

Corporate governance, in theory and practice

Much of the literature on corporate governance has taken the view that the purpose of boards is to ensure the company strives to achieve shareholder value. Under agency theory, managers, the "agents", are assumed to act in their own interest, which may diverge substantially from those of shareholders, the "principals" (Eisenhardt 1989, Fama 1980, Fama and Jensen 1983). This theoretical approach views the board of directors as the shareholders' intermediary. Shareholders elect boards to monitor the performance of managers at closer hand than shareholders could do on their own. In this view, boards may represent another level of agency relationship to their principals, but one, if properly structured, that is less likely to show conflicts of interest with the principals, and thus help to overcome the agency problem that arises from the separation of ownership and control in corporations (Jensen and Meckling 1976). The ethical assumption is this: Agents should act in accordance with the interests of owners, so the corporate governance imperative is to align the utility of boards and owners. In practice boards' primary roles are 1) to structure pay for managers that align their interests with those of shareholders and then 2) to monitor performance against targets. Discussions of the agency problem are often couched in terms of behavioural economics: They assume that "economic man", as non-ethical actors, will respond to incentives in a self-interested way. This line of theory led to the growth of pay-for-performance and stock options in public companies. While they represent an "agency cost" to shareholders, that cost is worth incurring if performance enhances shareholder value even more. With growing theoretical justification (e.g. Rappaport 1986), striving for shareholder value became the main goal of enterprises and the defining purpose of boards.

Agency theory may dominate the literature on corporate governance, but it has its critics as well, who give voice to alternative interpretations of the role of boards. Challenges come from the idea that directors have greater duties that monitoring managers and controlling their behaviour. Empirical studies suggest that boards have input to the strategy of enterprises (McNulty and Pettigrew 1999, Pugliese et al. 2009, Pye and Pettigrew 2006), even if their contribution is modest (Stiles 2001). Directors also facilitate access to scarce external resources (Hillman et al. 2000). These contributions sit uncomfortably in corporate governance models where the board's role is performance monitoring and control (Roberts et al. 2005). Blair and Stout (1999) argue that boards serve as a mediating hierarchy to resolve the contesting claims on a company's resources. Still others see in the behaviour of directors and senior corporate officers a commitment to doing a good job, an area known as stewardship theory (Davis et al. 1997, Muth and Donaldson 1998). Its conclusions share with agency theory a focus on value creation, often for shareholders, but like resource-dependency approaches they reach conclusions about the "right thing to do" that are at odds with an agency-based approach.

Other doubts about the adequacy of agency theory have emerged as well. Most of the corporate governance literature focuses on relationships on larger listed companies, with a large number of dispersed shareholders, where the agency problem is seen as most acute. Berle and Means (1932/1991), arguing in the context of a collapse in confidence in corporations in the wake of the Wall Street Crash of 1929, described the issues raised by the separation of ownership from control, setting the stage for much of the debate over corporate governance since then. But the agency problem is not just a matter of remote and powerless principals unable to control agents. A second stream of the literature concerns large owners who abuse their comparative power and expropriate corporate resources for their own purposes at an agency cost to minority shareholders, a stream of argument often focused on continental European companies, so many of which have controlling "blockholders" (Enriques and Volpin 2007, Laeven and Levine 2008, Roe 2003). Another stream looks at governance in private companies (e.g. Bartholomeusz and Tanewski 2006, Ng and Roberts 2007), but that often focuses on issues of succession planning in family businesses, rather than shareholder value (Hillier and McColgan 2009, Scholes et al. 2010). That literature, however, raises issues that go to the heart of this case, and by reflection those of large listed companies as well: What happens when shareholders interests are out of line with the interests of the business itself?

Perhaps the loudest challenge to agency theory comes from proponents of stakeholder theory (e.g. Donaldson and Preston 1995, Freeman and Philips 2002), who see boards as having duties that go beyond satisfying shareholders. This position hold that directors should look after all those who have a legitimate interest in the enterprise, including suppliers, customers, employees and others. In this view, the duty of directors is to assess the salience of stakeholder interests (Suchman 1995). Stakeholder theory can be seen as taking two forms. In a weak form, boards should promote those stakeholder claims that also contribute to the value of the enterprise, what Jensen (2001) calls enlightened value maximization. A strong form of stakeholder theory, however, ascribes rights to stakeholders, placing their interests on a par or even ahead of shareholder interests (Crowther and Caliyurt 2004). Freeman, whose early invocation of the term stakeholder (1984) launched this stream of discussion, has since sought to reconcile what he called the instrumental and normative forms of stakeholder theory (Freeman and Philips 2002).

In the UK, the nature of stakeholder rights was hotly debated during an eight-year process that began shortly after a Labour government came to power in 1997. Some political actors on the left urged the adoption of worker representation on boards, using Germany's longstanding principle of "co-determination" as a base. Others pressed for explicit duties of directors towards employees, customers and suppliers, citing Dutch law among others as a model. More conservative voices, including much of the asset management industry, argued for shareholder primacy. When the reform of company law eventually passed, it specified, for the first time, the "general duties" of directors as being "to the company" (UK Parliament 2006: Section 170). Section 172 then specifies how directors are to interpret that obligation. Directors must have "due regard to" the interests of a variety of stakeholders, but that phrase as a sub-point of the main statement: "A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole" (Section 172.1); case law shows that by "members" the law means shareholders. While advocates of normative forms of stakeholder theory claimed progress, supporters of shareholder interests asserted that the "benefit of members" had maintained precedence (Mullerat 2010). Ministers in the Labour government at the time spoke of the Act as embodying "enlightened shareholder interest" (UK Government 2007), partially echoing the attempt by Jensen (2001) to reconcile shareholder and stakeholder perspectives. Those words do not, however, figure in the legislation, and other actors made different interpretations. The GC100, an association of general counsel for the largest 100 companies on the London Stock Exchange, says directors should act in "the interests of the Company and its shareholders, both current and future, as a whole" (GC100 2007: 1). This may well prevail for large, listed companies with a dispersed and fluid shareholder base; whether it applies where shareholders are clearly identified is less clear. The Institute of Chartered Accountants in England and Wales gives a yet another view: The law gives directors a "single duty to work for the benefit of shareholders"; moreover, those same ministers "consistently tried to provide comfort to directors on the impact of the provisions" (ICAEW 2011). But the accountants' institute notes that until case law develops we cannot be sure. The case of Liverpool FC might become one, but in the meantime, how does a director decide?

When the legal ground is new, ambiguous and untested, and when current theory of corporate governance that informs the training of company directors pulls boards in at least three different directions, the choice becomes an ethical stance. We turn now to a discussion of the ethical principles that underlie these contesting approaches to corporate governance.

Ethics in corporate governance

Virtually every decision a board could make has ethical dimensions: Their choices almost always involve spending someone else's money. A substantial literature sees corporate governance as a practical example of ethics in action (Brickley et al. 2003, Martynov 2009, McCall 2002, Roberts 2005, Roberts 2009, Rodriguez-Dominguez et al. 2009, Wieland 2001, Zetzsche 2007). The starting point is often that the agreement to create a corporation is a decision based on perceived utility for the participants, so utilitarian ethics hold sway. Echoing Bentham (1789/1904) and Mill (1863/1991), this approach sees the greater good for the greatest number of shareholders as its central principle. Agency theory, sometimes seen as taking an amoral stance, can be viewed as being based on ethical egoism (Frankena 1963), moderated through the moral force of the invisible hand of markets (Zak 2008). This view has resonances in company law and theories of the firm as a nexus of contracts with the aim of minimizing transaction costs (Coase 1937, Williamson 1988).

This view sits unhappily with many scholars of ethics, as a shortcoming of utilitarianism and other consequentialist approaches yield problematic responses to many of the moral questions that businesses face. Much of stakeholder theory, particularly of the strong variety, is built on deontological assumptions of *a priori* duties of boards to consider the broader impact of corporate decisions (Bowie 1999, Evan and Freeman 1993, Freeman and Evan 1990), rather than just the fabled "bottom line".

Various scholars have attempt to bridge the divide between duty-based and consequentialist approaches. Hasnas (1998) argues for a consent-based view of corporate governance, as it represent the common ground between shareholder- and stakeholder-based approach as well as with a social contract theory of the firm. This, too, is unsatisfactory as the basis for the difficult decisions, however, when the interests of shareholders and stakeholders polarize sharply, which is when boards need to turn to ethics for guidance, cases where both law and codes of conduct tend to be silent. Hendry (2001: 173) argues that business ethics scholars have failed to make the case for a realistic version of stakeholder theory that would provide a practical alternative to the shareholder perspective, concluding that "despite all the talk of stakeholders, they have become increasingly marginal to the corporate governance debate".

The divide is apparent when setting out the ethical approach that underpins the main theories of corporate governance. Nordberg (2008) makes the case that another consequentialist approach is possible, changing the frame of reference away from stakeholder versus shareholder notions of the firm. He proposes a concept called "strategic value", in which directors may adopt a utility-based approach, calculating the value of the outcomes of their decisions, though not with shareholder value or even an instrumental notion of stakeholder theory as its focal point. In this ethical frame, directors focus on the consequences of decisions to the value of the business, irrespective of the outcome for any stance any group of shareholders might take. This is not quite what the UK law identifies as the responsibility of directors, as it puts greater emphasis on the descriptive first part – to "promote the success of the company" – than on the normative second part – "for the benefit of its members as a whole" (UK Parliament 2006: Section 172).

Still, shareholder value is a problematic notion, despite the mathematical formulation advanced by Rappaport (1986) with its calculation of a return on capital largely divorced from the interests of the people who provide it, locating the decisions of boards as rational, economic ones, while ignoring the bounded nature of the rationality that leads to them (Simon 1955). This approach to value calculation stands accused by think-tanks (e.g. Aspen Institute 2009, Tonello 2006), policy-makers (e.g. Walker 2009) and academics (e.g. Bebchuk 2005) of fostering a short-term approach to business decisions. The metric of "total shareholder return", the sum of dividends and capital gains, seems simple enough to calculate until one recognizes shareholders lack a common time horizon for their interests, even if those interests were common (Admati and Pfleiderer 2009, Edmans and Manso 2009, Nordberg 2010).

Another approach draws upon the philosophical tradition of pragmatism to reconcile competing claims of duty and utility. Hendry (2004) argues the case for a bimoral approach to move beyond the shareholder-stakeholder views with their utilitarian and deontological underpinnings. Hendry draws the view from Rorty (1989) that behind American pragmatism sits an optimistic view that people "will use their freedom not only to advent their self-interest but also to protect the common interest" (Hendry 2004: 149-50). Here the moral choice involves living with and reconciling tensions between obligations and self-interest. Singer (2010) shares the view that shareholder and stakeholder orientations split along deontological and consequentialist grounds with a utility-based view for more instrumental approaches to stakeholders in the middle. He sees in the American pragmatist tradition of James, Dewey and Peirce a way to reconcile the dilemma and work through the dialectic of contesting ethical norms. He notes that Margolis (1998) called for pragmatic solutions when empirical ambiguities arise. Margolis and Walsh (2003) see ambiguity as the starting point of many strategic decisions, pointing towards a pragmatic basis for decision-making weighing the balance of contending ethical frames.

With this frame of reference in mind we return to the case of Liverpool FC as its directors voted to ignore the expressed wishes of the owners and sold the club out from under them. What was the ethical basis for their decision, and what implications might it have more generally for the work of corporate boards?

Ethics at Liverpool FC

The exact nature of the deliberations of the Liverpool FC board cannot be known in detail. Even if the individuals would agree to discuss them, the contentious nature of the events and the litigation that ensued suggest they might at best offer redacted views of the events or engage in reinterpretation of meanings after the event. The event itself was reported in news media, which took an uncommon interest in issues of corporate governance because of the uncommon celebrity of the company and the uncommon passion of one set of stakeholders, the fans. Liverpool FC makes good headlines even without a boardroom bust-up.

To those interested in corporate governance, this case is uncommon for another reason. It presents a remarkably simple example of the issues that arise between owners and boards. First, it is a private company, required under law to report only summary annual financial statements to the authorities and only many months in arrears. It faces no obligation for continuous disclosure of material information. However, in keeping with the practice of several large football clubs in the UK, many of which were once listed on public equity markets, Liverpool FC has been more forthcoming with disclosures than the law requires. Second, when the case began, and stripping away the formalities of the corporate entities that acted as intermediaries, there were only two shareholding individuals, so discussions of its corporate governance need not deal with the complexity of how board could discern where the interests of shareholders lie. Third, both shareholders were members of the board of directors, with direct access to all the information relevant to the board's decision. Neither the separation of ownership and control nor the information asymmetries that complicate analysis of corporate governance concerns in public companies apply.

The board voted by 3 to 2 to sell the club to New England Sport Ventures. Despite their disagreements over seemingly everything else to do with the club, Hicks and Gillett were united in their view that selling the club was a bad idea. The agency problem described by many scholars of corporate governance (Fama 1980, Fama and Jensen 1983, Kumar and Sivaramakrishnan 2008) took on a rather different light. Viewing the board and senior management of the club as agents of the owners, the agency problem swells to extreme proportions: not only has the board appropriated resources of the owners, they have taken control of the company away its owners and given it to another party.

The proposed price, from New England Sports Ventures or the other would-be suitors, was insufficient to give the owners much if any return on their investment. The alternative – Hicks and Gillett remaining as owners while the club enter a court-ordered administration – included the risk that key players would see to leave the club at the next available time in January 2011. The consequences included possible relegation next season, with lower revenues from television rights, but with the possibility that the owners could still recover some value at some time in the future. Whether that would be the case is a business judgement, and opinion on the board might well have been divided. Even so, the interests of the shareholders were clear: They had expressed them in no uncertain terms.

The case raises legal questions concerning the boundaries of property rights and the nature of the contracts under which the chairman and the managing director joined the board. As noted above, it seems likely that the board took legal advice before acting against the instruction of the owners, but earlier they faced what was essentially a question of ethics in corporate governance. Narrow self-interest, what Frankena (1963) calls ethical egoism, seemed not to play a role in the board's decision. A threat of litigation hung over the case, and the board members who voted against the owners had little personally to gain other than the peace and freedom of leaving the board with the job of selling it done. They may have calculated, more or perhaps rather less formally, the utility of the transaction, but clearly the owners' perception of utility was very different. And if the board's fiduciary duty is to the owners, as one reading of Section 172.1 of the Act has it, then a legal interpretation of utility would have led the board to a different conclusion. This was not, then, a simple, utilitarian view based on shareholder value.

An analysis under stakeholder theory suggests a different interpretation of the rationale for the board's decision. The chairman and managing director were both avowed supporters of the club. Much of the interest among news organizations and reporting on the club's website focused on fan reaction. New management would end the boardroom feuding and let the players concentrate on on-the-pitch performance. Fewer players would demand to have their contract sold to other clubs in the next transfer period in January. New owners would proceed with rebuilding the stadium to increase its capacity and create improved amenities for fans. Most importantly, new owners would give the club a fighting chance to revive its performance enough to escape relegation, a humiliation that fans could scarcely contemplate. Moreover, as a sports enterprise, Liverpool FC has commitments to its competitors. Unlike a normal business, the presence of competitors is fundamental to the product. Horizontal growth by acquisition has no meaning. And the nature of competition-as-product gives a requirement from greater regulatory intervention and an ethical obligation towards other clubs. Football league rules are set to facilitate the failure of clubs, though the demise or even just the demotion of one of the biggest clubs would cause both financial and reputational damage to others. This alters the stakeholder map, making competitor claims more salient (Agle et al. 1999) and justifying a level of regulation that further constrains the action of managers and owners and the discretion that boards have in choosing a course of action.

But was this an invocation of stakeholder rights over shareholder rights? Was this a decision based on a sense of duty to a larger purpose? As the case reached its conclusion, Broughton spoke of his allegiance to the fans and the club's "wonderful history, a wonderful tradition", adding:

> I said "keep the faith". I had the faith. I was quite clear in my mind that we were doing the right thing, and I was quite clear that justice was on our side and that we would work our way through it…. I want to thank the fans as well. This has been as stressful for them as it has been for us. I fully sympathise with their anxieties and the nerve-wracking nature of that. I thank them for keeping the faith (Eaton 2010b).

This statement, cast in moral and even religious language, suggests that the board held, at least to an extent, to a notion of duty from the perspective of stakeholder theory, and that a deontological rather than strictly utilitarian view led to the board's decision to cast shareholder value to the side. Yet both anecdotal evidence from executives in other enterprises and the academic literature on corporate governance and social responsibility (e.g. Barnea and Rubin 2010, Hawkins 2006, Lea 2004) have many examples of considerable scepticism of directors towards any notion *a priori* rights of stakeholders.

"Keeping the faith" involved another set of stakeholders, without whom the enterprise would fail: the players, supported by owners who would take an approach seeking the common good, the good of the fans. Broughton's interview continued:

> "We have had an incredible team and they've all done a great job…. We have owners now who understand about winning, are dedicated to winning, have put the club on a sound financial footing, are willing to back the club to get back to being one of the, preferably THE, top teams…. NESV bring the passion, the experience, the understanding of sport and the passion of fans and the need to think about how the fans as stakeholders fit into the whole thing. It is a business but it's not just a business and they understand that the emotional side of the fans and that's what sets them apart" (Eaton 2010b).

"It's a business but not just a business": In this case, we see a determination by the board in which stakeholder interests, in particular those of the fans but also those of players, took priority over shareholder interests. In this way, the role of the board emerges not as the monitor for shareholders but as a mediated hierarchy (Blair and Stout 1999) to settle competing claims. That is, however, only one part of the board's calculus.

The consequences of a decision in favour of the owners' interest would have damaged, perhaps very badly, the business of the football club. The fact that a perceived duty to fans coincided with one utilitarian judgement (strategic value) at odds with another (shareholder value) gives the decision of the board greater impetus to decide against the interest of the owners and against shareholder value. What remained for the courts to decide were the narrow legal matters of property rights and contract, not the moral principles that underpin the board's decision. In the face of ambiguity, the board adopted a pragmatic approach, suggesting that pragmatic decisions arise more easily when consequential and deontological interpretations of what is right coincide, even if they coincide imperfectly. In this case, one version of utility trumped another. In different circumstances, a different interpretation might arise from the same set of considerations.

Conclusions and observations

This case differs from the mainstream corporate governance literature in several ways that may limit applicability of its conclusions. It involves a private company, not a modern public corporation of the type described in the seminal works on corporate governance and agency theory (Berle and Means 1932/1991, Jensen and Meckling 1976). Unlike other private companies, it is one unusually in the public eye. These observations must, therefore, remain very tentative. To generalize would require research that goes beyond an inquiry into one decision by one board of one company operating under one country's law and regulation.

That said, the peculiarities of the case also allow a particularly clear view of the issue issues and ambiguities surrounding the concept of shareholder value and how they affect the ethical choices a board faces. By eliminating the ambiguity over where shareholder interests lie, the ambiguities over ethical choices are laid bare. By examining a private company that adopts an unusually public stance because of a perceived obligation to stakeholders for transparency, the case affords unusual access to board deliberations.

The picture that emerges is one of a contest between differing goods and rights that illustrate the value and shortcomings of taking a strong view of stakeholder theory, with its roots in duty ethics, and those of shareholder theory, with its basis in a narrow view of utility. This special case shows that appeals to shareholder value involve appeal to a different special case, that of the public company with dispersed shareholders, where that narrow view of utility often approximates the wider view of the strategic value of the business.

In this case, deontological and utilitarian views differ on what is right; but when aspects of those views approximate each other, the door opens for a pragmatic choice. In public companies these views are blurred by the uncertainties over whether the concept of shareholder value pertains to current shareholders, future shareholders or market participants as a whole. Those uncertainties give boards latitude to justify decisions to themselves without having to choose between utility and duty when rejecting at least a narrow definition of shareholder value. The analysis suggests further that the term shareholder value can be used as a substitute for strategic value when needed to resolve an ethical dilemma and used with a different meaning when discussing specific decisions with special shareholders.

You'll never walk alone: The fans make this point at every game, and in this case the board paid considerable heed to their arguments, a stakeholder view. The rules of this game can be derived from the actions of the board as moral agents, if not exactly as agents of shareholders. The fact that the board agreed with fans and not owners does not mean that the board had abandoned utility, merely that it had abandoned a narrow view of it, the view of shareholder value. Different circumstances might well lead to a different conclusion, as pragmatism suggests.

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