Restructuring Corporate Governance: The New European Agenda
The Europaeum was founded in 1992 as an association of European universities, with a mission to:

- Promote excellence in research and teaching collaboration between Europaeum partners
- Act as an open academic network linking the Europaeum partners and other universities and bodies in the pursuit of study
- Serve as a resource for the general support and promotion of all European studies
- Function independently in the search for new ideas
- Provide opportunities for the joint pursuit of new pan-European initiatives
- Serve as a high level ‘think tank’ exploring new ideas and new roles for universities in the new Learning Age
- Draw on its ‘pool of talent’ to carry out research and inquiry into problems and questions confronting Europe today and tomorrow
- Help train and educate future leaders for a new Europe

The Europaeum comprises 10 leading European university institutions: University of Oxford; Universiteit Leiden; Università di Bologna; Rheinische Friedrich-Wilhelms- Universität, Bonn; Institut Universitaire de Hautes Etudes Internationales, Geneva; Université Paris I Panthéon-Sorbonne; Univerzita Karlova V Praze; Universidad Complutense, Madrid; Helsingin Yliopisto, Helsinki; Uniwersytet Jagielloński, Krakow.

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As Enron, WorldCom, Tyco, HealthSouth, Parmalat, Hallinger and others, entered our everyday lexicon from the late 1990s and early 2000s, the company crashes revealed that all was far from well in the world of international corporations. Certain CEOs on the make, most non-executives frozen out, shareholders too often treated like cannon fodder, lawyers and auditors duped?

In this climate, the failures of a few had a disproportionate, though understandable, impact on market confidence. A raft of new reforms and measures were designed to rebalance corporate governance, to bring back trust and integrity, and to lay down clear lines of accountability, to company boards, to shareholders, to governments and to international authorities.

Of course in Washington and New York, in London and Paris, in Brussels and Tokyo, there were different approaches reflecting different perceptions and differing local arrangements. As new legislation was enacted - regulation after regulation by the Securities and Exchange Commission, the Sarbanes Oxley Act in the US, the 2004 amending legislation and the revised Combined Codes in the UK, derived from the Higgs and Smith’s reviews, and so forth - so the debates continued.

From this, though, a new focus emerged on whether good corporate governance was not just prevention against disaster, but could also strengthen corporate performance.

Questions arose about whether such regulations and new priorities addressed the roots of corporate misdeeds or whether they misallocate accountability and distract board members from their ‘proper responsibilities’.

Against this background, the Europaeum decided to hold a seminar of policy-makers, company leaders, experts, practitioners and academics to discuss three critical areas of concern in the field of corporate governance – the balance between shareholder activism and boardroom decision-making; the balance between prescriptive and enabling strategies; and the balance between ‘European’ and the ‘Anglo-American’ policy agendas.

A policy seminar was organised at the University of Oxford, hosted by the fast emerging Said Business School, and coordinated under the auspices of a new bilateral programme being fostered by Leiden and Oxford, which aims, specifically, to mount programmes that aim to ‘bridge the gap’ between academe and business.

Some 100 key figures from the fields of business, academe, politics, and policy-making were invited, with almost 70 took part, representing at least 13 major companies, and five major European universities, all part of the Europaeum association, in an all-day seminar.

There were seven key-note speeches by such eminent figures on the CG landscape as Alastair Ross Goobey, in the forefront of shareholder activism; Sir Ronnie Grierson, so long at the helm of one of Europe’s super companies; David Jackson, distinguished company secretary of BP; George Dallas, head of the Governance Services Unit at Standard and Poor’s, particularly welcome as one of the world leaders in this area, joining us from the US; Guy Jubb, energetic head of corporate governance at Standard Life; Antonio Borges, both Vice-Chair of Goldmann Sachs and Chairman of the burgeoning European Institute of Corporate Governance, joining us from Brussels; not to mention our very own Colin Mayer, one of the driving professors at the Said Business School (and soon to become the new Dean of the SBS itself). Each contribution was dissected, in turn, by a distinguished discussant and followed by lively discussion.

By all accounts, it was generally agreed that the day had fairly fizzed with ideas. The debates evoked are now fully reproduced in this report, with the kind permission of all participants.

The following quotes, a random collection taken from my own notes during the day, make
this point most clearly. “Get the tanks off company lawns!” “Compliance... is all form?” “Trust has moved away from companies.” “Corporate governance is most about complex chains.” “We need to go beyond a simple theoretical model in Europe.” And finally, “Boards can be too blinkered to make the necessary changes.”

Proceedings culminated in a most enjoyable dinner that seemed to bring key participants closer – even while they continued to debate some of the finer points raised in the day’s discussions.

We also came up with some important ‘answers’ to particular questions in our roundtable discussions, and finally we did identify some key pointers for further thought and research. These included looking at the particular role of independent directors; the relationship between corporate governance and economic performance; the role of shareholder sovereignty and its relation to capital; how to deliver real transparency; and the continuing need to define a European framework.

The Europæum hopes, in time, to return to some of these important themes, perhaps with a follow up event later this year. The Europæum would also like to explore setting up an international research project, linking a number of its distinguished universities, to produce collaborative, multi-disciplinary, comparative work in this field.

Paul Flather
Oxford, June 2006
Programme of Events

9.45  Welcome  Speakers:  Andrew Graham, Master, Balliol College, University of Oxford, former Economic Advisor to UK Prime Ministers  

Maurits van Rooijen, Vice-President for Institutional Advancement, University of Leiden  
Dr. Paul Flather, Secretary-General, Europaeum

10.00 Institutional Activism: Pros and Cons  Chairman:  Dr. Paul Flather  
Speakers:  Alastair Ross Goobey, Chairman, International Corporate Governance Network; Senior Advisor, Morgan Stanley  
Sir Ronald Grierson, European Chairman, Blackstone Group Ltd.; former VP GEC, UK  
Discussant:  Professor Dan Prentice, Allen & Overy Professor of Corporate Law, University of Oxford; Fellow of Pembroke College, University of Oxford

11.40 Session II: Striking the Right Balance: Prescriptive v. Enabling Strategies  Chairman:  Professor Jacob de Smit, Leiden University School of Management and Founder, Rotterdam School of Management  
Speakers:  George Dallas, Managing Director and Global Practice Leader, Standard & Poor's Governance Services Unit  
David Jackson, Company Secretary, BP  
Discussant:  Jonathan Rickford, Director, Company Law Centre, British Institute of International and Comparative Law

14.00 Session III: Round Table Discussion Groups

15.30 Session IV: Which Model Works Better? Contrasting Anglo-American and European Models  Chair:  Professor Colin Mayer, Peter Moores Professor of Management Studies; Saïd Business School  
Speakers:  Antonio Borges, Vice President, Goldman Sachs; Chairman, European Institute of Corporate Governance  
Guy Jubb, Head of Corporate Governance, Standard Life Investments  
Discussant:  Chris Pierce, CEO, Global Governance Services Ltd.; former Director of Professional Standards, Institute of Directors (UK); author of Handbook of International Corporate Governance

16.45 Session IV: Summary, Report backs, Recommendations  Speakers:  Professor Colin Mayer  
Dr. Paul Flather
This event was held at The Said Business School, Oxford University, established in 1996, and currently Europe’s fastest growing Business School. It combines the highest standards of academic rigour with a practical understanding of business and wealth creation. Its faculty are engaged in research on key management issues, in dialogue with the wider intellectual community and with practitioners.

As part of one of the world’s greatest universities, it is uniquely able to draw on Oxford’s strengths across a range of subjects, including sociology, economics, law, psychology, politics and international relations. Working at the interface of disciplines, and collaborating actively with faculty from other disciplines, faculty and researchers transcend the traditional functional divisions of a business school and reflect the complex realities of business and society in our contemporary global economy. The school has already generated outstanding research in many areas and all faculty are at firmly at the forefront of their fields, regularly providing important intellectual leadership for institutions such as the European Commission, the European Corporate Governance Institute and the World Bank.

‘Restructuring Corporate Governance’ was organized under the auspices of the Leiden-Oxford Programme. This was created in order to link two of Europe’s finest historic universities and offer a variety of programmes in the form of symposia, taught modules, short courses and workshops, based mainly around the twin themes of European Business and Culture.

Its special focus is to bridge the two cultures of academia and business. The programmes are aimed primarily at private sector and public sector management-level staff, in Europe or elsewhere. Programmes are seen as a special opportunity to ‘return to the university world to deepen knowledge of the cultures and historical backgrounds’ of Europe.

It's a great pleasure to open today's conference as chairman of the Oxford end of the Europaeum Group and as Master of Balliol, because one of the people who was very committed to the Europaeum is the former Chancellor of the University, Roy Jenkins, who was a member of Balliol. The current Chancellor, Lord Patten, is also a member of Balliol and greatly committed to the Europaeum, so it's a particular pleasure from both the university side and the college side to say hello to you all.

I would like to say one or two other quick words of thanks, particularly to everyone who has made it here through the snow. I would also like to say a special word of thanks to one of the people whose intellectual energy, personal commitment and financial support, helped the Europaeum come into existence: Sir Ronald Grierson, who is here today. Also to Leiden University, which has been one of the most active members of the Europaeum and whose help has been instrumental in putting together today’s conference.

Governance is a word which now seems to be absolutely everywhere. I think it was first coined back in Chaucerian times but then fell somewhat into disuse and, at least in my memory, had almost not been used until in late 1970’s when Harold Wilson, when he stood down as Prime Minister, wrote a book called The Governance of Britain and the word suddenly began to come into use everywhere. Now you can hardly move without running into governance: “corporate governance,” Oxford University has just put out a Green Paper about governance, we had a report about the BBC’s governance... it is simply everywhere and I am beginning to wonder whether it needs to be got under control – but that will be for you to debate.

I bumped into governance quite early in life; whether it was really governance or whether it would now be regarded as the province of the Nolan committee on the standards in public life, I’m not sure. I had a mentor – an extremely bright, rather irascible Hungarian economist called Tommy Balogh – when I was very young man in the Ministry of Power. He was the Adviser to the Prime Minister and I was his assistant, and we were in the Ministry of Power in the early days when North Sea Oil and North Sea Gas were just being discovered. I remember sitting next to him at a fairly small table, with the Under-Secretary from the Ministry of Power and other Ministry of Power staff. About one third of the way through the meeting, Balogh said in a totally audible whisper: “You will note, they’re all in the pay of the oil companies.” He then turned and left me to conduct the rest of the meeting... which was when I really confronted the issue of standards in public life.

On a slightly more serious note, the thought that I would like to leave you with today is that, speaking as an Economist, I am not a great believer in what I would regard as “transplant” theories, but I do think that we can learn a great deal by looking at how experiences compare and contrast across different systems. I don not think we should think of taking one model and plugging it into another context, because models are almost always embedded in complex history, complex institutional structures and cultural surroundings. But I think we can learn a great deal from looking at other systems.

My apologies on behalf of my University’s President, Mr A W Kist, who is not here this morning. He made it up to Schiphol airport and then it started snowing, and as soon as there is a bit of snow in the Netherlands, everything comes to a stop. It would not happen in a country like this, of course!

Leiden and Oxford have been working together for centuries, and the partnership is still strong. We collaborate on research projects, and have a successful student exchange programme, particularly in Law. More importantly, in the
context of the Europaeum, we are collaborating on the new Master’s degree in European History and Civilisation, which is jointly offered by Leiden, Oxford and Paris I Panthéon-Sorbonne.

The idea of the Leiden-Oxford Programme is to bring together future and current leaders in society, the private sector, the public sector, and academia to discuss prominent issues in Europe. It is an idea which came from one of our alumni, Prince Constantijn, who attended our University but also spent some time at Oxford University. He felt there was a great need, and he is right, to bring people together to discuss European affairs – not just to listen to speeches, but to discuss what is happening.

This is the third seminar organised under the Leiden-Oxford programme. The first two were in the Netherlands, starting in June of 2004. The timing was intentional – that was the start of the Dutch presidency of the European Union.

The first event was about the Shaping the Future of Europe. I can remember especially the last session with Wim Duisenberg, who, when he was President of the European Central Bank, was known for making comments which sometimes caused a bit of turbulence for the European currency. I can assure you that after he retired, he was even more outspoken in his comments.

There was an extremely interesting session where he gave a particularly frank assessment of Europe as a monetary union and the role of Europe.

We had a second seminar in December, on the possibility of Turkey joining the European Union, another interesting topic for discussion. Both conferences were extremely well attended and we were pleased with the outcome.

The theme of this today’s conference was suggested by Morris Tabaksblat, chairman of Reed Elsevier, and formerly of Unilever, and author of a recent report on the Dutch Corporate Governance Code. He was looking very much forward to being with us today to discuss corporate governance, which he feels passionate about, and it was with deep regret that he had to withdraw for personal reasons at the last moment.

I am not going to say much about the theme of the conference for the simple reason that I don’t know anything about it, except that corporate governance in Europe – please don’t quote me – seems to be rather a mess. But maybe that is something you want to discuss, rather than me.

It has been our great pleasure to help coordinate this event. Our Europaeum project began in the 1990’s, when we were launched to help promote international debate, research, and study on current issues, with the notion of giving scholars, future leaders, intellectuals, and politicians a fuller sense of Europe. Thinking about this conference, it struck me that there are few themes which fulfil our mission as well as the topic of today’s discussions. In a globalised economy it seems that corporate governance is a live international issue; and as Europe continues to become more integrated, I think we must consider developing rules and regulations across borders. How and why is that best done?

The Europaeum now has ten university members, one from each of ten different European countries. We sometimes like to characterise ourselves as a “university without walls,” but in this new Internet age we are all operating without walls. At the same time, when you think of it, we are in a very nice set of walls here in the Said Business School, and we are delighted to be here.

There are active links between Oxford and Leiden in many disciplines: notably law, but also history, where we are running a joint MA. Students on the programme spent the first term in Leiden, the second in Paris, and are about to come to Oxford for the third term.
For this first session we have two very well-known speakers: Alastair Ross Goobey and Sir Ronnie Grierson. Both have been active in the field of corporate governance and I am going to ask Alastair if he might kick off. Alastair has developed a powerful reputation travelling in America and Europe, talking about notions of institutional involvement and shareholder activism, and has developed a coherent philosophy which is relevant for our discussions today.

It is an unusual pleasure for me to be here. It is also an unusual position for me to be on the extreme left and Sir Ronnie Grierson on the extreme right! The title of this session is “Institutional Activism: Pros and Cons,” and when I talk about institutional activism I mean going well beyond what you would call normal corporate monitoring, and actually intervening in companies in some way. Let us look at this concept from four angles: Why should the institutions do this? Where should they intervene? How should they make this intervention? Who should actually intervene?

What is the role for shareholders (by which I mean institutional shareholders or their clients)? It is widely understood that companies must be controlled and directed by the board. Boards have different roles and different structures under the different regulatory regimes we have within Europe, but whether they are supervisory or unitary, what happens when these boards are ineffective, when they are not structured in an appropriate way, or where the company seems to be drifting or worse? The only people that can intervene are the shareholders. I do think there are times where the institutional shareholders (who are the only ones with sufficient resources) have to step up and question the boards.

What are they entitled to question? It could be purely the governance of the company: if the board is made up of the chief executive, his wife, his brother, the core shareholders, and government shareholders, then the outside shareholder has very little chance of getting a fair crack of the whip. Shareholders may equally want to intervene regarding the company’s strategy, its management, or its capital structure (or a combination of all four of those things).

How should they intervene? There is a lot to be said for both sides of this debate, and Sir Ronald may use the word ‘micro-management’ when he replies. There is, naturally, a great resistance amongst corporate boards and corporate management to the idea that shareholders should come and tell them how to run their company, because shareholders simply don’t have the depth of knowledge about the company and the environment in which it works.

Nonetheless, I see absolutely no reason why the institutional shareholder, properly resourced, should not be able to go to a board and say: “This is our analysis of the problems you face, and here are some ideas about what you might do about. The decision is over to you, this is your responsibility, you are the board of directors. We are just giving you some ideas; our responsibility stops at the boardroom door. Yours starts behind the boardroom door. But if we do not like what you are doing, we will use our opportunity to vote you off.”

In the UK, and in most European countries now, you have that option. In the United States, on the other hand, you do not have the opportunity because the board does not have a simple majority vote for individual directors. That is why American shareholders are very concerned about staggered board terms, because they can prevent the change of control over a board.

In practice, to do this, you start off by maybe talking to the management about your concerns about the strategy, or the corporate governance or the capital structure. You don’t talk to the management about your concerns about the management – you talk to the non-executive directors about that. You can then escalate things to put the matter before a meeting of the whole board. If that is ineffective, you can start...
Talking to other investors, and ultimately you can go public and you can, certainly in some environments, call meetings to dismiss the board.

This is one of the great fears the Americans have about opening the proxy to shareholders: there will be constant demands, and votes against the whole board. My reply is that it has happened very, very rarely in the UK, although we do have a fairly “open” system for doing such things. In my experience, we only voted off one board, and that was only an investment trust, not a huge commercial organisation. When it comes to it, most people put their hands up and say: “If the shareholders are against this sufficiently, we will go quietly rather than make a fuss.” Institutional investors can be a catalyst for change and a catalyst for improved performance in companies, as the board themselves can be too blinkered to see that change is necessary.

This brings us to my fourth question, which is who should do this? As many people have pointed out, institutional fund managers are not qualified to manage companies (arguably, many of them are not qualified to manage institutional funds!) – at any rate, they are certainly not business people. What we found when we set up the Hermes Focus Fund, which I still chair, was that in order to do this in a professional, commercial way, it is no good just having fund managers trying to intervene. For one thing the executives or the boards of companies will say, “what do you know about it? You couldn’t run a candy floss stall.” So that’s what we worked on at Hermes. We built up a skills base of business people and strategic consultants, in addition to fund management analysis people (because you have to do the fundamental analysis of the company in a normal investment way, to make sure there is a value gap there that might be addressed by the changes you are seeking to catalyse).

This is a very interesting change in the way that institutional investors can address the situation, and the great problem for the institutions is to be properly resourced. Very, very few of them are properly resourced in this, and corporate governance monitoring tends to be done by very few people within the organisation. We’ve got Guy Jubb coming this afternoon from Standard Life. I think he has three or four people who work for him, and he has a larger department than many. At the Pru (Prudential), you have Hugh Jones, whose job title is Corporate Finance Executive. He is behind the Chinese wall, so we can talk in confidence to him about these issues because he is not involved in buying and selling the shares. But there are very few institutions which have sufficient resources and the right sort of people to be proficient in the kind of activism that I am discussing. Hermes now has 47 people involved in all this, and it’s only because we set up these commercial funds, in order to earn hedge-type fees, that we have been able to allocate the resources that we require.

I say that we are only scratching the surface, but that is because it is very difficult to do this right. I talk to a lot of institutions about this wearing my Morgan Stanley hat, and many of the investing institutions say, “Well, it’s not going to add one basis point to my performance, so why should I invest in all this? There is a huge free rider problem. We do all the work, at our cost, and every investor gets the benefit.” It is a conundrum for the institutions, and I don’t think the institutions are doing better than, say, six out of ten (possibly seven out of ten) in their attempts at appropriate interventions in companies. It is better than it used to be, but we’re not doing a great job, and if you look around the world at all the companies that institutions invest in, there are really too many companies to look at and not enough people looking at them in this context.

Well, I’ve taken my fifteen minutes, but those are the four questions, and I hope I have answered my own questions too. There are probably lots of other questions I hope you will ask aside from the “why,” “what,” “how” and “who.” I would also be interested to hear whether Ronnie thinks this is a reasonable approach or whether he thinks this is outrageous and that we should get our tanks off his lawn.

Sir Ronald Grierson, our next speaker, has had an extremely distinguished career in British corporate life, but I always think of him as a sort of European Britisher, or a British European, as he is so involved in so many different projects – not least ours, of course. Ronnie, do you think boards are “too blinkered”? I heard “not qualified” and then “tanks on the lawn” - what do you think?

Thank you for that over-generous introduction. I would like, first, to express my pleasure that the Europaeum, which I helped to co-found with my friend George Weidenfeld, has flourished so remarkably under Dr Flather’s leadership. He has done a fantastic job and we’re all enjoying the fruits of it in this room today.

I hope it is not too disappointing, but I don’t disagree with anything that Alastair has said. I have never taken the view that it is wrong for shareholders to make their wishes known, in whatever form is most appropriate and most
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effective.

However, several things bother me; what bothers me particularly is that he makes an artificial distinction between institutional shareholders and other shareholders, and I don’t actually see that distinction. The institutional shareholders, I admit, own, on the whole, more shares per investor than the private investors. Otherwise, as far as the perspective of a company manager goes, there is no distinction between an institutional investor and a private investor. In fact, there is a danger in it quite apart from legality: there is a danger in it because, by law, company managers or company boards are not supposed to bring, or even to reveal accidentally, information to one shareholder which they are not giving to others. So I perceive a very considerable danger in cosy talks between shareholders (be they institutionalised or anything else) and company boards. The same is true, of course, of financial elders and financial columnists and so forth. I think this is an important point to watch, and he seems to have ignored that completely. To me, it is a slightly dangerous area.

I have no problem with activism as such, either. Capitalism seems to expose a lot of flanks, which have been under attack ever since capitalism started – don’t forget, capitalism was incredibly unpopular in the United States in the early 19th century. Banks have been unpopular in the United States throughout the 19th and early 20th centuries, especially during the recession in the 20th century when several thousand banks suddenly disappeared and millions of people’s savings were lost. There is nothing wrong with activism against corporate malpractice or corporate stupidity – I have no problem with that at all and one really has to go back to the origins of the limited liability company to get the right perspective on this.

The limited liability company, if I’m not mistaken, was created in the 19th century when families ran out of money with which to develop their businesses and did not have enough cousins and uncles and others to go to for additional funds. Instead, they went out to the general public. The limited liability company was created in order to protect the company, and protect the shareholders from the consequences of any stupidities committed on their behalf by the businesses.

When the public gave its money to corporations for better or worse, they made some investments that were bad, others that were not so bad, and others that were very good: but in all cases, they handed over a sum of money for a piece of paper which entitled them to go to an annual general meeting and vote, and to receive a dividend, if there was any. They were talking one hell of a risk and they must have known they were taking a risk – this is as true now as when the limited liability company was first born. There is an essentially fraught relationship between shareholders and the businesses in which they invest, because the shareholder is very weak and the company is very strong. Alastair is quite rightly proposing to redress the balance a bit more in favour of the shareholder, but I emphasise that I don’t believe it is suitable for institutional or private shareholders to be more assertive in order to cover the essential weakness of their position vis à vis the company.

I also have difficulty in becoming as obsessed with the role of the non-executive director as some people appear to have done. This is not wholly irrelevant to this part of the discussion, so if I may digress for a moment: There appears to be a feeling that if one works hard enough at it, one could make all non-executives directors perfect, and that by making them perfect one could achieve perfection throughout the companies which they serve, and there will be no longer be badly-run companies.

This thought, which underlies much of the discussion going on today, seems to me like nonsense. There will always be good and bad non-executive directors, and there will always be good and bad executive directors. That is one of the risks which the investor runs, and one of the reasons why he diversifies his investments: he doesn’t invest all the money in one company or two companies because he knows there is this risk. Training non-executive directors in order to make them “fit for their job” seems to me to be very ill-conceived because I cannot actually see a non-executive director of a large company, for instance GEC in the old days, mastering the intricacies of every single part of the business. Why should he attempt to do something which is patently impossible? He should be what the law calls a “reasonable man” and he should have reasonable instincts, and that is about as far as one could go on the subject of who is and who is not suitable to be a non-executive director.

As for the function of company boards, I’m straying slightly outside the strict boundaries of this discussion, but it is not irrelevant: There was a reference already that boards work differently in different countries. We have a big problem in this country, because we are the only country (apart from one or two commonwealth countries) which has unitary boards, and therefore we have the situation in this country where the directors of the company are both the monitors and the practitioners. Directors are the people who are supposed to run the company, but at the same time they are supposed to keep an eye on it… one eye runs into the other and, basically, it is an impossible situation. This does not happen in any other country that I have ever been
associated with, and it creates all sorts of problems. For instance, I read in a recent code of corporate governance (I think it is the e-code of corporate governance) that it is the duty of a board to drive the company’s enterprise forward—or words to that effect. Now, that is something that nobody in America or Germany would even begin to understand.

It is not, in my opinion, the duty of the board to drive a company forward. That is the duty of the management, and by having unitary boards we fail to make this distinction between the management and the board. This is a very serious shortcoming and I am not sure how we can remedy it, but it is something which is the kernel of this whole discussion.

So this is another problem which comes from the fact that we have unitary boards in this country. It is quite difficult to know exactly which hat a director is wearing at any particular moment. In the United States, he knows exactly which hat he wears because there is a distinction between the management and the board. For instance, I served on the boards of a number of very large American corporations, bigger than GEC, and I remember that I used to receive the company accounts, which were submitted to the stock exchange by fax, the same day that the press receive them. They were not shown to the board, and board did not vote to pass the accounts. The audit committee did, but the board as a whole did not pass them because it was not the function of the board, it was the function of the management of the company. This may no longer be so under the new rules, but certainly it was so some time ago.

In conclusion, can I just say this: I am sorry I have rambled across the borders of the subject as well as the core of it, but I want to be clear on one point. We have to be very careful in using this word “governance.” I think Alastair and Paul have both drawn attention to the fact that it is a word dredged up from the distant past. Governance means wielding authority, which probably should be delegated, and this is a very complicated subject because once you delegate authority you have to be fairly vigilant in pursuing those to whom you have delegated it. Yet you must not go too far in this, as you could start destroying a business by constantly attacking it.

The people who run a business are as good as they are, and in the capitalist word there are always good managers and bad managers. The only way you could improve a company from the outside is by changing the management, which is again a risk because you may find that the man you put in, whom you thought better than the one you turf out, is in the end a worse post-holder. I think this element of risk pervades the whole of the discussion. There is a risk in investing, there is a risk in teaching from the outside, as it were; there is a risk even in replacing because you may find that the replacement is less good than what he or she is replacing.
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Discussion

This is an edited version of the conference transcript. The editors apologise for any possible misinterpretations.

I would like to invite Professor Dan Prentice to join us, to help kick off the discussion by serving as discussant. In case you are relaxing and you think that two “knights of the realm” in this world of corporate governance are beginning to agree, I sense actually quite a fundamental difference emerging. Alastair, in a way, is arguing that there is a net good from institutional activism and involvement, and (perhaps I am going too far with this) there is even a net benefit to economic performance. I think Ronnie is pointing out that there are huge risks to jumping into the fray and that managers have to be allowed to get on with their job. Dan – what have you to say?

I came across the word “governance” a considerable period of time ago, when I first married my beautiful wife and she said to me: “Dan, we have to organise the governance of the family. You will deal with the important questions: should China be admitted to the United Nations, should we have nuclear disarmament... questions of that magnitude are for you. I will deal with the trivial questions: where should we live, what car should we drive, where will we take our holiday, should we privately educate the children... small matters like that.” This is part of the problem with executive and non-executive directors. Who decides what?

Now let us look at some points. One of the things that come out in both speeches is the relationship between board structure and performance. Alastair did not go into that in considerable detail, but it seems to be an important question. Perhaps the unitary board presents difficulties in allowing for a non-executive performance within the board. The second point that comes out is the question of how to deal with a board that is under-performing. We can say to them, “these are our suggestions and, by the way, if you don’t implement them we are going to remove you.” That is not much of an option and it seems to be a very crude instrument indeed. It is the workings of the interaction process which most interests me – the option of death or suicide does not seem to me to be a sensitive regulatory device.

The third point that comes out is the question of resources for institutional involvement in the corporate governance issue. It is quite clear that a lot more needs to be done, but the ultimate result may be that we simply have shadow boards, and I do not know how the shadow boards run by the investors will interact with the board itself. We know about the exit problem, the free-rider problem and problems of expertise, but another point that came out for both – and as a practicing lawyer I have noticed it is a considerable issue – is disclosure of inside information. However, I think its menace has been exaggerated. If it is a barrier, and we are always told it is a barrier, we can get round disclosure by simply altering the relevant legislation. There would be no difficulty whatsoever in drafting a piece of legislation stating that, in certain circumstances, it is proper to disclose confidential information. With fuller disclosure, the board can receive fuller investor confidence and well-performing boards can be left to get on with business.

The last point is this problem of board structure. There are two aspects to it: one is the duties of the directors, and other is the structure of the board. There is a piece of legislation called the Company Directors Disqualification Act. It is the most active piece of regulatory legislation used by the Department of Trade and Industry. It is used predominately by small companies which have been run in a highly improper manner, but has also been used against one or two major players. The Barings litigation is one, and if you look at that legislation and the case law under it, this is a region in which directors’ duties are being actively developed by the Court. The model they put forward is not a model of active participation in the management of company; it is a supervisory model. What the directors must do is ensure that they have in place systems (which were not in place at Barings) to provide adequate supervision of what is going on.

Moving on to Sir Ronnie’s point about unitary boards, with the Combined Code, I think you get very close to a two-tier board system. You have supervision and internal board structure, which are the two important ingredients. Its best point is that it manages (partly) to avoid one of the problems with two-tier boards which, all the continentals will tell you, is information flow: what is going up to the supervisor board and what is coming down.

This information-flow problem was highlighted by the most brilliant student I have ever taught: I said to him, “what does management mean to you,” and he said, “one over arching principle, Dan: no surprises.” The combined code model overcomes many of the two-tier...
information problems because the structure is slightly divided but you get all the information flows to all of the board. It seems to me that we are moving towards a very sophisticated system, with boards becoming more supervisory.

I think my position may have been made to seem a bit more radical than it is by Sir Ronnie. We do not go to boards saying, “if you don’t do this, we will fire you.” We say, “there is clearly a problem in your company, because your company has been underperforming in its peer-group for five years. What are you going to do about it? Here are some ideas,” and then we monitor them. If they say, “we are going to do absolutely nothing at all,” then we might start suggesting their positions are at risk, but there is an escalation strategy in these things. I do not think this is terrorism, I think it is proper stewardship – part of stewardship is making sure that the board is appropriately structured.

I understand Sir Ronnie’s point about “the perfect non-executive director,” but sometimes we have to intervene and say, “look, you have a completely deadbeat board. Do you want to do something about this?” I think that activism is an extension of stewardship, but when you get into activism, as I say, the recommendations stop at the boardroom door. It is for boards to execute the changes, and they may have completely different idea of how to change things, which we are happy to listen to. We effectively end up being free consultants.

There is no need to be dismissive of advice offered by people who used to work in the business world and end up working in the activist funds. It is not an insignificant business to be involved in and we have very highly qualified people with a lot of experience of PLC management doing this: we can look these boards in the eye and say, “don’t tell us we cannot manage candy floss stalls because we do manage candy floss stalls.”

The great problem for the institutional investors, though, is that they are looking at thousands of companies around the world. I do not normally make a distinction between the institutional shareholders and small shareholders: small shareholders have equal rights. However, they don’t have the resources; only institutions have the resources to do these things. Actually, though, in 1993 over the issue of three-year rolling contracts, we used the small shareholders as the shock troops – and that really was terrorism because they used to turn up at annual general meetings and get up and ask the chief executive, “why do you need a three-year rolling contract? Surely you are not that lacking in confidence in yourself?” The one thing that executives hate is questions about their own remuneration or their own contracts at annual meetings. In this case, small shareholders were highly instrumental in getting policies changed – it was an alliance between all shareholders. But I do think that we are not generally “terrorists” in the normal way.

Coming from East Asia, I am especially aware of the structural differences between East Asian companies and Western European ones. For example, shareholding patterns are very different in Asia (family ownership, etc.) and board structures can be radically different. To what extent do you think these differences are driven by endogenous factors and to what extent do you think we’ll come to look more like each other in time?

There is considerable literature dealing with regulations of security markets and corporate governance, called “convergence literature.” I think the jury is out on the accuracy of the various theories, but one certain characteristic in Europe and North America is that the driver for convergence has been the large law firms. One of the great changes over the last decade has been the way in which the large firms operate out of every jurisdiction. I know more about Allen & Overy than any others, but I think they are a fairly representative firm. I think they have about four hundred and twenty partners, and about a year ago, for the first time, about fifty percent of their partners were non-English-trained lawyers. That is a massive statistic and I believe the role of law firms deserves to be explored further.

Following on from the gentleman’s question, I would like to point out that, while we are discussing shareholder activities in a fairly narrow European – or even British – sense, it is important to remember that there are other structures for corporate governance and ownership in the world.

I have a graduate student who has just finished a thesis on corporate governance in Thailand, and course the board structure there is family-dominated companies. They do not have the type of agency problems we have, because management and shareholders are the same. They have other types of problems, but they do not have the agency problem that we would identify in the United Kingdom. I think there is cer-
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tainly a minority shareholder oppression problem, but not the classic “agency” problem that economics point out here.

That’s extremely important to the young woman who just finished, because she belongs to one of these very wealthy families. In her thesis, she put a footnote saying “interview with the Minister of Finance.” I asked, “oh how did you get an interview?” and she replied, “oh, that’s my uncle.”

Actually, when looking at the lack of “agency problem” in large shareholder concentrations, I do not think there is necessarily an identity of interest between the outside shareholders and controlling shareholders of family-owned companies. What we have found as investors is that these families don’t seem to understand that swapping assets from their private interest to the public company at the wrong price is not in the interest of the outside shareholders, maybe even the interest of the insider shareholders.

The agenda of the controlling shareholders can be very different from the agenda of long-term external institutional shareholders. They may be more concerned about maintaining control of the company than they are, necessarily, with maximising long-term shareholder returns. We have seen this in Europe now, of course, with the takeover directive in which the Swedes managed to maintain super voting structures to protect the Wallenberg family control over most of Swedish industry. That system is not necessarily to the advantage of outside investors because it protects Swedish industry from normal market forces in some ways.

At Hermes we have had to face the question of how to engage with large dominant shareholders, whether governments or families. Before we set up our European focus fund, we found that many of these companies, when you get into them, have disagreements within the families or within the core shareholders which an external stimulus helps draw to a conclusion. We have very rarely been told, “go away, we are not going to talk to you,” and we have seen some really substantial achievements. You can take an example like Orkla in Norway, a sort of holding big holding company which had a huge holding in Carlsberg. It was not an efficient holding in Carlsberg and we were pressing them to do something about the inefficient way they were using a Norwegian holding company. Orkla did actually unwind that, to the great advantage of Orkla shareholders, and we would say that we did not have any real levers other than being large shareholders. Norway is probably even more protective of its own companies than Sweden, so we found this result very encouraging. You can approach these companies, and you would be surprised how often you can actually get through the door and get some traction.

I would just like to come quickly to the defence of dominant directors in businesses. If you look back on the history of capitalism, in this country alone, you will find that most successful businesses were started by people who remained dominant, and sometimes their children and grandchildren remained dominant, and the moment they departed from the scene – Marks & Spencer’s, Sainsbury’s, you name it – things started to unwind. So before we start being too unkind to the memory (and indeed the current observation) of dominant personalities in business, I think we need to remember that I have only recently retired from typical example of it: until a couple of years ago, I was a director of the Daily Mail, which is probably the only – not probably – is the only company in the FT100 which still has differential voting rights. But it is very well run and the shareholders are satisfied, so you need to be careful: if ever the family sold out, I am not so sure the business would go on being quite as successful as it is now – but that’s a subjective view and you would expect me to say that.

There have certainly been dominant personalities in business that turned out to be either crooks or incompetent. Of course, that is true. But rather than individuals, I was talking about family businesses which were created by families and carried on in some cases for generations. When you bring up examples like Marconi or Vivendi, these are all cases of irresponsible people who seized control of the companies – but may I point out that in every single one of these examples, incompetent leaders were followed enthusiastically by institutional investors.

Corporate Governance, in the sense covered by this conference, is a new addition to the business landscape – I think you could genuinely argue that we are only interested because of the impending pension crisis. In response to Sir Ronald’s point about the “perfect non-executive director,” I train non-execs regularly, and it can be done. His approach seems somewhat outmoded to me. Therefore, my question is more to Alastair Ross Goobey: how far do you think you can go with activism?
I have been described as anti-quated, which I regard as a complement, of course. It says that I am mature. But I began my remarks by saying that I did not quarrel with the basic proposition put to me by Alastair; I merely pointed out some of the dangers inherent in it, and some of the drawbacks and some of the limitations. I am all for activism. I have nothing at all against activism as long as it is within the law and so long as the legal niceties are being observed. The burden of my remarks really was that there is an asymmetrical relationship between shareholders and the companies in which they invest. The shareholders have a very weak position and what Alastair is doing successfully—and others are doing not quite so successfully—is to strengthen the weak side in this relationship.

Such activism is entirely legitimate, so long as it is done sensibly, within the law, and people realise that there is a limit and that the ultimate sanction of the shareholder is to sell his shares— I admit, this is more difficult when you own ten percent of a company than when you own one thousandth of one percent, but that is the ultimate sanction that you have, and that is why you diversify. If one company goes wrong, you sell those shares and reinvest in another company. But none of what I have just said in any way reduces my admiration for activism.

However, following on from a point raised earlier in the discussion, I hasten to point out that there is a danger in giving different information to one group of shareholders than one gives to another.

That is the point: do shareholders sell when they get desperate? The reason that Hermes have taken the path we have is because many years ago we decided to have a core index portfolio, rather than a multitude of more active portfolios. In doing this, we foreswore the option of selling up and moving on. At any rate, institutions that do sell are just selling to another institution, passing the problem to somebody else. Somebody at some stage has got to intervene and that is what really drove us. After we built the resources to a certain level, my trustees and owners felt that the free rider problem was huge. You cannot prove that benevolent activism reduces the cost of capital by improving our returns—we could assert it but we could not prove it—so we came up with the idea of “focus funds,” which enabled us to earn some fees in order to build up our resource to the level that we now have.

We can go quite a long way with this: we have just announced a sort of quasi-focus fund that is going to be set up in Japan with Nippon Life. Of course, being Japanese it will be done in an entirely different way. We are not going to go banging on the doors of boards and saying, “do this or we will vote you out.” That would not go down terribly well in Japan. But it is a step in the direction of becoming a pure governance fund, trying to encourage better governance.

It saddens me to hear in two of the original presentations some questioning of the practicality of the unitary board. I have always seen the unitary board, and so have the authors of the combined codes that we have had from Cadbury down to Higgs, as being the real strength of the UK system of board structures. I think we may be at risk of talking ourselves out of that structure.

I do not think there has been a change in the directors’ fundamental balancing act between management and supervisory duties. Of course, it must be closely defined, in a quasi-legal way, what those fiduciary duties are: when do they have a supervisory responsibility, and when are they responsible for driving the performance of the business?

I do disagree with Sir Ronnie, in that I do think it is the board—and it must be the board—which is responsible for the performance of the business; otherwise the institutions and the investors are wasting their time having a dialogue with the board if the company is underperforming. I think it would be a great shame if we talked ourselves out of that position entirely. However, you are not the only people to point out that the burden on non-executive directors is such that, in practice, we may creating a two-tier board system within a unitary board, and if that is so I think it needs to be looked at.

If I may make one other point: where I fundamentally agree with Sir Ronnie is that we must not differentiate between institutional and private investors. In my days as a regulator I learnt over backwards to make sure that the rights and responsibilities owed by companies were owed to all investors and in fact I would like to say two things on that. Dan Prentice says, “if the law gets in the way, easy enough, change the law.” I don’t actually think there is any problem with the law in this area of disclosure, but I would point out that changing the law is not such an easy matter because a lot of it is European law, and the law has been changing, although it is changing to resemble the UK model more than any other model.

Finally: Dan Prentice raised the issue of directors’ responsibilities under law. He mentioned that under the Company Directors
Disqualification Act – it’s no secret I would like to see that act extended to breaches by directors of disclosure rules, which are not necessarily happening – if directors deliberately favour one group of shareholders against or above another group in terms of sharing information, those directors are not fit to be on a board and they ought to be subject to the possibility of a disqualification order.

I don’t know why this view has got about that unitary boards are somehow failing. I don’t think they are. Of course in practice, it almost works out to a two-tier system: I don’t know of a single serious company where the executives don’t meet separately before the board meeting, to make sure that they are all speaking the same language to the board when they get in front of the non-executives. But in Germany, for instance, you have, in effect, three-tier boards – I don’t know a single serious company there where the management nominees on the supervisory board don’t meet separately from the union representative on the management board, before the supervisory board meets.

It is not just in the UK and other English-speaking countries that you have unitary boards: France boasts the unique opportunity of doing things in three different ways. You can have a unitary board in the sort of Anglo-American way, or you can have a two-tier board, or you can have something which is dominated by the PDG (Président Directeur Générale), who has more power than Napoleon had. Of course there are good PDGs – there are good strong executives, Ronnie – and there are bad ones. The only people who could try and intervene when an executive has been identified as not a very good one, or not acting in the interest of shareholders, are the shareholders, through their voting. I don’t think there is a conclusive answer to whether the single-tier board is a good thing or a bad thing. I think it works pretty well, and if it works, don’t fix it – but I agree with Ken Rushton that we should come up with a better approach to breaches of disclosure.

I have no problem extending the Disqualification Act to breaches of confidential information. It seems that what Mr Rushton wants to do is extend it in such a way that breach of the regulatory provisions would automatically result in (or at least could be the basis for) disqualification.

I don’t want to prolong the discussion too much. At the moment, we don’t have the power to disqualify a director. Under the new system we can levy unlimited fines as a correctional measure. I’m not saying that is not a powerful sanction, but a real deterrent would be the threat of disqualification for a period.

Sir Ronnie, could you comment here? Does it work better – is the balance better – in America because there is less threat to directors?

I think the main difference between America and this country is that the Americans rely more on law, which I am in favour of. We try to self-regulate and the Americans feel more comfortable with law. The Sarbanes-Oxley Act is a prime example of this resort to law, changing the security laws. Almost everything America is now seen as a Securities Protection and that protection comes to him under law rather than by relatively cosy arrangements of a self-regulatory nature.

It seems to be obvious common sense that you don’t treat all shareholders alike. If Alastair rings up Sir Ronnie and says, “I want to talk to you about your company’s remuneration policy,” Sir Ronnie may treat Alastair differently from the way he would treat me if I rang up. If he has any sense, he would realise that he would have a real problem at his annual general meeting from Alastair, but he won’t from me. In accordance with normal principles, as regards the direction of the company, he should treat Alastair in a very different sense from me. Now if there is a legal requirement that every shareholder is to be treated alike in all circumstances, regardless of the size of stake and inclination to be involved, then we have a problem. There is a legal requirement that this be the case, and contrary to what Dan Prentice suggested, it cannot be completely changed because it is in the Second and Thirteenth European Directives.

There is a series of different problems that issue here. There is the problem of sensitive/confidential information brought up by Ken Rushton, and then there is the principle of equality. To give an example from a German company that I recently advised about a takeover, it has...
provided substantial confidential information to the bidder. One of its shareholders, who happens to be a competitor, said “I am entitled to equality of information; I want the same disclosure as you have given this bidder.” The answer has to be – and it seems to be consistent with the law and with good policy – I do not think that the policy is equality of treatment in that strict sense.

To make my point I would like to share a story with you. A few years ago, the CEO of Deutsche Telekom went to Frankfurt, to the main investment company in Germany, and he reported there to the reception desk and said “hello, I’m the CEO of Deutsche Telekom and I would like to speak to the bankers here.” “The porter said, “sit down over there, have a cup of coffee, the bankers will be with you in a minute.” This shows the balance of power between investment funds and CEOs – and this story happened before the New Economy bubble burst. It has been said that corporate governance is about strengthening the weaker side, but I am not sure that that is correct.

Shareholders had incredible power before the busting of the New Economy bubble and all the governance scandals, and this didn’t prevent them from losing billions of euros or dollars. In this case, corporate governance is not about strengthening weak side but about exercising the power differently. How do you see the situation yourselves?

I think, insofar as shareholders have power, many them don’t exercise it because they don’t have the resources to do it or they are hopelessly conflicted. If you are part of a large investment bank, and I speak as an adviser to one, it is very difficult for the investment management arm to kick up a fuss. When we started having a go at those three-year running contracts, I was told by all my colleagues in the fund management division: “yes, I absolutely agree with you, but we’re not going to stand up with you because we have six hundred clients and five hundred of them have got those sorts of contracts.” That’s one of the problems with institutions and it does need something like Hermes, which is owned by a pension fund, to be able to do these sorts of things.

In the United States, of course, what has happened is that much of the activism has been taken over by people with a more political motivation, but that’s another question for another time.

I first wanted to back Alastair up, really, in terms of the role of institutional shareholders. Widely dispersed ownership structures can help an awful lot in mitigating (and mediating) the complicated relationship between ownership and control.

Second, when looking at the problem of agency, in a concentrated ownership structure where you’ve got situations where you have the majority shareholders extracting “benefits” from the whole, what are your views on how shareholder rights might be improved in the US?

Thank you very much indeed for supporting what we do. As to what I would change about shareholder rights in the States, I think being able to vote on individual directors would be very helpful, which of course is not possible under the current laws.

The ICGN (International Corporate Governance Network), which I currently chair, had a meeting in Delaware last October, which David Jackson was at – no, his colleague was at – and at that meeting I felt that we were making some real progress.

I think regulation in this sense is a States’ rights question rather than an SEC (Securities and Exchange Commission) question. At our meeting, we were trying to see whether there is a way in which we can persuade companies registered in Delaware to change their bylaws to allow these sorts of things (e.g. voting on individual directors), and the Delaware courts didn’t see any problem with this. We are having another meeting in July with the Delaware courts to see whether we can make actual progress, because that would unlock the problem that you identified.

I believe there is sometimes a necessity to intervene, but obviously the question is who controls the control. My old friend Igor Ansoff, founder of the Strategic Management Society, coined the term, “stakeholder theory of the firm.” This term is still floating around, although much misused. I am myself a private investor and my favourite stock is Philips, not because its doing well but because it goes up and down: I try to buy when it is low and sell when it is high. Philips is rather predictable, because historically, the cycle is associated with the tenure of the CEO.

Which leads me to the question: Is it in the interest of the shareholders to serve the interest of the company at large? I doubt it because, as a private investor, I don’t care if the shares go
down. What I care about is that they go up and down – at any moment the price may be on the way down or on the way up, I don’t mind that much. I am not sure that is not the same with institutional investors. After all, their incentives regarding their clients are commission and profits made when you buy and sell, and you can see that there is a lot of movement in stock markets.

In my country, the Netherlands, it is still legally the duty of the advisory board to serve the interest of the company at large, and all stakeholders, and not favour one part of the group. I am a little bit puzzled that this discussion seems to be focused on the right of shareholders alone to intervene, as I’m not certain that that would be their job in the right type of solution.

So long as independent directors are paid by the company, they are always “captured” and can never be truly independent. Has there been any thought about creating some kind of external organisation, or perhaps a kind of “governance fund” that could pay directors so they could be truly independent?

I would like to ask Alastair a question that is quite practical. I am a director of a non-governmental organisation in the United States and there is a question of how active we should be in seeking information. The directors asked to be able to see the salaries of the employees in order to understand the budget. There has been a change in staff and the new head of personnel said that she thought that it was quite micromanaging to ask to see this list, and it would be involving the directors in micromanagement rather than in governance. I fly to Washington for my board meeting in eight days time... what do I do?

Resign!

Is there a remuneration committee in this NGO, and if not, why not? It has not got the proper governance structures otherwise. If you have an audit committee, you should have a remuneration committee.

There is a human resources committee, which I’m on. They do not want to give us the remuneration information.

You have every right to insist. Whether you are indeed micromanaging depends on what you do with the information. You must not go to the HR department and say, “so-and-so is only doing X, Y and Z, and you should pay her $102,000, not $103,000” that is micromanagement. But you have every right to see the structure of remuneration; it is what you are there to do. Make that point – you are not trying to say what everybody should get, but you should be allowed to have the information. There are people on trial in the United States now that claim they never got all this information. If you are in a fiduciary position, this is information you must have, and you should be in a position to insist on it.
Our topic, “striking the right balance: prescriptive versus enabling strategies” is an interesting one. The topic for this session is extremely interesting and we have very able speakers in George Dallas, David Jackson, and Jonathan Rickford, our discussant.

Before yielding floor to them, I would like to underline the subtitle of our conference, “The New European Agenda.” In discussing corporate governance, we often have a tendency to follow the literature and discuss extensively the differences between Britain and the United States. These are of some interest, but not necessarily of more interest than the differences between Germany and Britain. In reality, it is the European agenda which we must think about, because regardless of how we feel about the European Project, European laws and regulations will affect us. This big economic entity needs rules. They do not necessarily need to be identical, but there must be some commonalities or business will not function well. And now I leave Mr Dallas to tell us how we can go about this.

I would like to set the stage by distorting three quotations:

The first comes from the 20th Century German theologian Reinhold Niebuhr, who wisely remarked that “man’s capacity for justice makes democracy possible, but man’s inclination to injustice makes democracy necessary.”

The corporate governance twist might be to substitute governance for democracy: I think the point here is that investors cannot simply assume or take as a given that a company is being managed with integrity and effectiveness. We need to have structures for corporate governance to assist companies and stakeholders as they aim to build well-run firms.

The second quotation is from the former US Supreme Court Justice, Potter Stewart, who commented about a 1960s pornography case that “I am not sure I can define pornography, but I certainly know it when I see it.”

Here, we could substitute governance for pornography: if you try to break governance into bits and pieces and think about codes and regulations – which is our perennial temptation – we miss the forest for the trees. Corporate governance is very difficult to define, but its attributes become clear in its absence.

The third quotation comes from the Clinton campaign slogan in 1992, when James Carville, his advisor, said, “It’s the economy, stupid.” With corporate governance, it’s all about trust, stupid. In other words, behind the hard façade of law, economics, regulations and the individual minutiae which comprise it, ultimately governance is about soft (but real) issues: trust, integrity, effectiveness, tone. Even with traditional quantitative approaches to credit and equity analysis, if you cannot trust the managers — or if you cannot trust the governance system of the company — how can you trust the numbers that you are ultimately going to use for various types of investment analysis?

Trust, if it is well merited, should serve the purpose of leading to better market confidence, efficient markets, and types of growth that do suit the interests of the new European agenda.
A starting point for this discussion – I think it was phrased this way in the first session – is that corporate governance can be considered a “risk factor” if we frame it as such, but we need to be careful. The question you might ask is whether good corporate governance creates value.

You might expect that, given this is what I do for a living, I would be a strong advocate for the proposition that good corporate governance does create value. But I have to be honest and say that it is not clear empirically. One has to be careful with regard to codes and prescriptive formulae that ostensibly produce good governance. We actually do look at academic literature as well as other evidence, and frankly, the empirical evidence about corporate governance and specific tactics to promote good governance is still developing.

I have heard Colin Mayer say on several occasions that governance is something about which there are many opinions, but fewer facts, and I think we need to keep that in mind when we are starting to think about the individual pieces of code.

If you look at the recent Centre for European Policy Studies document that came out in February 2005, this point is emphasised as well, citing a number of academic studies looking at individual pieces of governance (codes of practice). They reach a fairly agnostic opinion about many of the specific components that comprise individual codes. Notwithstanding the potential to be agnostic about wholesale prescriptive solutions for governance, it remains important to understand the extent to which management or governance issues might be strengths or weakness influencing a company’s strategic position or risk profile. Indeed, in the “enhanced analytics initiative” we see in the city of London and elsewhere, the driving objective is to use new approaches to research to better understand of qualitative “non financial” factors and how these affect the interest of financial stakeholders.

To return to the second point, we may not know whether good corporate governance can increase value, but I think we know from some of the cases that were cited in the first session today, bad corporate governance certainly can destroy value. This is something we need to pay more attention to. I think the challenge is how these so-called “soft factors” relating to governance and trust can be systematically, objectively, and meaningfully assessed and factored in to investment process, whether its an equity investor looking at the notion of an the equity premium or perhaps how that should effect the discount rate with which one discounts the anticipated future earning of cash flows. For a debt holder or credit analysts the question is how governance factors might affect a credit rating, decisions about credit risk spreads, or lending decisions in general. Another important community, of course, is the insurance world, as it deals with the level of premiums and the terms and conditions that relate to the important area of Directors and Officers liability insurance.

This area of governance analysis is challenging, and in some ways it is like trying to put a cloud into a bottle, but I see it as a gauntlet that has been thrown down to us to try to do a better job of looking at these factors more systematically then we have done in the past. While I am not here to talk about what S&P is doing per se, we are typical of many institutional investors and research groups who are trying to develop stronger tools in this area. In this regard, we have established a stand-alone corporate governance rating system. We have been working with the system for several years now, mostly in the emerging markets, in part because this is a voluntary process. We do this working together with the company – I will talk about the interactive and clinical dimensions of this and why this non-“tick the box” approach is absolutely essential. We are doing this largely in emerging markets because emerging-market companies are often presumed guilty of bad governance by virtue of the fact that they are operating in countries with bad reputations; they are looking in many cases for some way to differentiate themselves from their peers and to demonstrate that their governance standards may be better than others’.

Our governance rating service, quite honestly, is less well developed in more developed mar-
kets, but we are beginning to focus on governance analytics more in our traditional credit rating process (what we call at S&P our own Enhanced Analytics Initiative). The question here is to what extent corporate governance should influence a credit rating positively or negatively. I would say it is more likely to be the case that if companies proceed with bad corporate governance, it is easier for us to lower our credit rating. There have not been any cases to date, and it may be a while before we see this, where we perceive good corporate governance actually raising a credit rating. This is something we need to think about.

We also have an equity research group which factors governance into its equity assessments. Across S&P in our traditional analytical services, the customers that we are serving – which are by and large from the institutional investment community – increasingly expect that we look at governance factors rigorously and comprehensively, and that we assess the qualitative risks in a more systematic fashion than in the past.

This takes us back to the theme here, which is the rule of codes, legislation, and codes of best practice. Obviously, in the light of many of the corporate governance problems that we have seen in recent years, there has been a whole flurry of public policy responses to try to address this from the top down, to create codes, laws, regulations and what have you. I suppose, as we look at this thing, people may disagree with certain codes or certain types of legislation, but by and large I think this trend has been a positive development. In many ways it has raised the bar for corporate governance standards and practices.

But at the same time I think we need to be very cautious. Regulations have their place, but they also have their limits, and the first point I would like to make is that we cannot simply assume that if a company can wave a piece of paper that says they are compliant with Sarbanes-Oxley, the Combined Code or whatever else, this means that the company is well-governed and that we should sleep better at night. We need to look at compliance as a baseline, and not an end in itself. If we are not careful, compliance could be form without substance, and we all need to be alert to the risk of window-dressing and gaming the system, because any time you establish rules you are going to find people who will try to make it look good on the surface when there is rot within. Good corporate governance is not something that can be instituted simply by regulatory fiat.

This leads to the premise, and it is somewhat self-serving, but that is why we are devoting resources to it, that there is scope for a more market-based assessment. This is partly what Hermes and other institutional investors are doing, but the point is that there is a limit to the positive impact of codes and hence a need for the market to assess governance risks in individual firms. If done properly – and it is a challenge to do properly – this can compliment regulatory initiatives. The process of evaluating governance can provide greater transparency for investors as well as a positive incentive for companies to improve governance standards. What is measured tends to be managed, and this can potentially create a virtuous cycle.

It is really in that context that I would like to put this discussion in the framework of, perhaps, an overly simplistic model. Think of corporate governance as a sort of combination of two basic things: one is corporate governance architecture, the types of things that tend to be codified in regulations in codes. The other part, which tends not to be focused upon because, frankly, it is more difficult to do, is the people who inhabit this architecture. In many ways, I think this dimension is missing from most analysis, although it is perhaps the most crucial dimension. If you imagine the “architecture” and “people” put into a simple grid, in the best of all possible worlds, we would have good people in a good architecture and the opposite would be bad people in a bad architecture.

I think the more interesting question comes when you look at the rest of the grid: would you rather have good architecture and bad people, or good people and bad architecture? I think we would probably choose good
people and bad architecture, and perhaps in the short term that is the next best thing to having good people and having good architecture. But I think we need to remind ourselves of the Reinhold Niebuhr quote about man’s inclination to injustice. People themselves can change, and organisations can change their people. If you want to have governance that endures over time, I think there is a case for both good corporate governance structures and principles to hold this all together. Really, the aspiration should not be one or the other – good people or good architecture – but how do you pull it all together? This is what we are doing at S&P in our analytical approach to governance issues.

I am not going to elaborate in any detail, but let me present an outline of the framework that we have developed over the years to assess corporate governance, and I would like to mention a few points. First of all, we have four major components (ownership structure and external influences; stakeholder rights and relations; transparency, disclosure, and audit; and board structure and effectiveness. And there are further sub-categories under these broad categories. If you read our criteria or book (Governance and Risk, McGraw-Hill, 2005), you will see that this can be broken down even further. The point is that governance, at least from our perspective, has to be a holistic assessment of multiple factors.

The discussion earlier this morning flagged up ownership as an issue, and I think it is going to crop up later this afternoon. Our starting point is ownership because it is almost like a fork in the road. The first question is who owns the company... it sounds like a simple question but sometimes the answer is not that simple, because it is not always that easy to know. But the point is that even if you do know, the next question is whether or not there is a controlling shareholder or a wide group of shareholders, which creates the two different agency problems that we need to be alert to. One of the issues about corporate governance codes is that they do not always address the point of ownership structure. This can be absolutely fundamental since the types of governance risk manifest themselves differently in different situations, depending on whether ownership is concentrated or widely held.

I am not going to belabour any other points; I will talk about the stakeholder issue if there are any questions, because I think it is a more complicated situation, but at the end of the day its part of the mix. Ultimately, we are focussing our own analysis on the interest of what we call financial stakeholders, which are shareholders and creditors, but you see there are issues of transparency, disclosure, audit, board structure, and effectiveness which all need to be considered. The point is that we are considering long lists of factors, and there are other people who do this sort of thing. It is not just a question of what list you have, but of how you do this type of analysis. How do you actually evaluate the company? I think methodology is key.

I believe the best way to do this is not to start with a template, i.e. “here are the twenty governance issues, you can answer these questions right or wrong,” and expect that out of the right-hand side of the equation comes a meaningful measure of a company’s corporate governance. I think that is the wrong way to go about it, but there are lots of people who are trying to mechanically model governance, which can be fraught with peril.

Ultimately, if you are going to try to assess a company’s corporate governance – it is more complicated and ultimately perhaps a bit more subjective – we believe you need to look at companies on a case-by-case basis. You need to talk to people who are actually part of the governance process at the firm in question, whether they are managers or directors, and ideally you need to get directors in rooms by themselves, speaking candidly. It is important to avoid rigid box-ticking and the attitude of looking at governance simply for the sake of governance. The key really has to be how corporate governance facilitates execution of a company’s mission, how it might affect a company’s risk profile, and how it might help the company build sustainable competitive advantage, which over time should lead to greater levels of performance and greater levels of trust.

If you are wondering about how this works in a multicultural context, we are doing this in Asia, North America, Latin America, and Europe;
in our experience working with companies’ governance structures and philosophies differ, sometimes radically, from company to company. There are differences of ownership structure, and there are companies that have different attitudes towards whether they should focus on working with existing shareholders or look for a broader stakeholder mix. You have one- versus two-tier boards, and there is also that big debate, particularly in the United States, about whether the Chair should or should not be combined with the chief executive role.

In our experience, these are legitimate differences. Governance structures can be done well in some companies and poorly in others. I think it is difficult to hold to the belief that there is only one way of doing corporate governance, because you may end up with the tail wagging the dog. You have to be wary of a rule-driven system. Box-ticking, as I said earlier, can be gamed and can lead to false positives and false negatives. For those of us that try to analyse companies from an investment perspective, obviously we need to know the extent to which companies comply, but I think if companies explain why they don’t, we need to be listening with very open ears and possibly be willing to accept to the explanation.

This ultimately speaks to the point that there is room for both rules and principles, but at the end of the day you need to focus on a principle-based system, as principles will ultimately trump rules. The principles that I offer are the ones we use in the S&P criteria, which we borrowed from the OECD corporate governance guidelines: companies should be driven by fairness, transparency, accountability, and responsibility. The point is, if you are looking at disparate structures, you need to put these principles as the lens in front of your eyes, so that you can interpret different structures through these principles. One would hope that these principles, even though we may differ about specific nuances of corporate governance, would be relatively consistently valued from culture to culture around the world.

To bring this home, then: the conclusion that I would like to leave with you is that corporate governance is a risk factor. There is a linkage of governance risk to the concerns of investors and D&O insurers, and there is the need to try to understand these qualitative and difficult-to-understand issues more systematically and objectively. Laws and codes can provide a positive discipline, but there is more to it than simply that. Equally, and linked to this mission, is that governance is not a one-size-fits-all concept. You need to assess companies on a case-by-case basis and I would argue that the best way to do it is not just to tick boxes, but to try to do this interactively, to connect to and provide the best expos-
seen in terms of regulation and compliance.

There is one issue that helps open all this up and that is the question of fraud. Where would we have been if the frauds in Europe and the US had not happened? If Enron, WorldCom and Parmalat had been non-existent, in the US there would have been no Sarbanes-Oxley, no Public Company Accounting Oversight Board (PCAOB), no Section 404 and the New York Stock Exchange would have continued in its stately progress towards the reform of the listing rules to deal with their governance initiatives.

In continental Europe, the High Level Working Group on Company Law under Jaap Winter would have finished its work, reported, and I think the Commission would have lined up some work to follow on the Financial Services Action Plan.

In the UK, Derek Higgs, who had already started his work on the effectiveness of non-executive directors, would have reported and we may or may not have had changes to the Combined Code – instead, Derek’s report was clearly hijacked by government and put up as part as their response of “we’re doing something about this problem as well.” There was a clear ratcheting up of what was in the Code. Some of the core principles of the code to my mind detract from what I believe are the sensible recommendations of the report. The sensible recommendations are related to some of the issues Sir Ronnie was talking about earlier.

But we are where we are... and where are we? We have some very real problems over expectations, over definitions, over cause and effect. Corporate governance is now becoming ever more linked with regulation and with compliance. There is a clear link between fraud (or the likelihood of fraud) and the problems of the increased cost of compliance and the distraction it may cause the management. But perhaps this is not the issue. Before we consider how we can move forward and strike the right balance, I am afraid to say we come back to the question that rather dogged the first group, of what is meant by governance. George Dallas alluded to pornography and I think of the old description of an elephant: I know what it is but I cannot describe it.

In the UK, businesses see governance as synonymous with compliance. If you go to conferences like this – and I don’t want people to put their hands up – two questions are always asked: would all the reforms that have taken place stop another Enron happening (and everybody says no), then we go onto the Marconi question: was Marconi a failure of governance or was it a failure of strategy (and everybody says it was a failure of strategy rather than governance). Then everybody moves on, feeling quite comfortable that they know where the line is drawn.

I reflect on a conversation I had with a FTSE 100 chairman. It was one of those dinners that you get invited to where there are a few investors, a few people from companies and a chairman. The idea is to educate people about how chairmen and investors and governance come together. And there was another company secretary there who was bemoaning the fact that he was trying to put together his report on corporate governance for his annual report, and the length of time it was taking, and the level of disclosure that was required... And the FTSE 100 chairman said, “there we go again. We are here to talk about what boards do, and we have already started talking about corporate governance. Now let us spend another ten minutes on that, kill the issue and get on with what we are really here to discuss.”

I think that is absolutely missing the plot. I don’t want to get philosophical about this, but if governance isn’t what boards do, what on earth do they do? The prime role of the board is to govern and the fact that you can have a chairman of a FTSE 100 company making that sort of statement shows one of the real problems that we have had because of the way in which the agenda has been rolled out within the UK, and in other parts of the world, in reaction to problems of corporate fraud.

I am very fortunate. I have been with BP for three years – not that I have only been there for three years – but I am very fortunate that I have been with BP for three years and have been able to follow the example of some of the work that has been done by some of my predecessors, because governance is something that we have thought about and we have had a set of governance policies in place since about 1996. They were put in place for one reason: David Simon was Chief Executive of the company and he was going to move up to become Chairman, and John Brown was going to take over as Chief Executive.

David went to my predecessor Judith Hanratty and said, “look, I know what it’s like to be a Chief Executive, and you and the Board are now asking me to be a Chairman. What on earth do I have to do?” Judith, true to her academic training and work at the bar, went off and spent a lot of time thinking about this with a number of people and we came up with a set of governance policies that we put in place at BP in 1996/7. Even with all the changes that have gone on in regulations since then, we have not changed one word of our policies. The reason is that we did what Derek Higgs suggested in his report.

People don’t read Derek’s report; they just read the Combined Code. I would commend the words of the report to you rather than the Code, because it led us to work out what are the different roles of the board, chairman, chief executive,
the non-executive directors and the committees. If you can get that clarity you actually understand what governance is about, and really it is about making sure the board can carry out those tasks that are unique to the board, which only the board can do as the agent of the shareholders. It is not a case of the board getting involved in management. Generally speaking, governance is about ensuring that the company’s activities are directed at the main purpose of the company and that the assets and funds of the company are dedicated to that purpose and to nothing else. So it is not a monitoring function, it is very much a looking forward function. It is a governing function but it is not a managing function, and the purpose of course is the creation of long-term shareholder value.

Because companies see the combined code as prescriptive regulations, they see it as an example of prescriptive strategy. But did Derek really intend the Combined Code in its present form to be prescriptive? Of course he did not. Derek saw what he was trying to do in the combined code as an enabling strategy.

Why has that confusion come about? Firstly, I don’t think boards really want to get that torch out and look into the various relationships that are there between the chairman, chief executive and others. There is a cosy way in which UK board tend to operate. We know the roles. Perhaps because boards tend to be made up of executives from other companies, they are happy working in an executive environment, and will seize on doing executive things rather than standing back and doing governance things. I spoke to a non-executive director who said, “you have actually had to write all this down, what the chairman does, what the chief executive does... Is there a problem with your company?” It is rather like what Dan Prentice said about his wife and himself in splitting up the roles: if you have to write something down it must not be a good idea. I believe there was even an article in a leading newspaper that raised this point shortly after Derek’s report came out.

So we need to be very careful. Boards do not like the idea – or, rather some boards don’t like the idea – of actually reflecting on what they do. I think there is also a lack of understanding as to the role the board is playing and the features of the shareholder capitalism under which we are operating. I think there is a resistance to accountability. This is OK when the company is going well, but if things don’t do well, the spotlight will be that much harsher. Trust has moved away from companies and I am not sure that companies actually see now that they have role in getting that trust back.

Why is all this important and what’s it to do with Europe? As I mentioned at the beginning, this is a good question at a great time. I think we have a unique opportunity now to stand and think about how corporate governance ought to fit into the European agenda. We know that the comply-or-explain approach is the heart of the UK system of governance and the dialogue between the boards and its owners. This is the first year when companies are going to be putting out their reports under the new Combined Code, which is there to try to ensure transparency, clarity and dialogue.

I think it is very important that both the companies and their owners understand the responsibilities that lie on them this year, because I firmly believe that if there are issues that are the result of miss-communication around this time, the whole concept of comply or explain could be fatally wounded – and that would not be helpful for the way things are taken forward in Europe. We have the company law action plan and we have a timetable for its going forward but there are two other important initiatives.

Firstly there was a corporate governance conference in The Hague which I referred to a little earlier. For those that were there, it was clear that across the European agenda there were two very different approaches. I think the phrases “regulation” and “self-regulation” were being used, describing what were seen as a “European” approach to matters and a more “Anglo-American” approach.

Certainly there are those within Europe, in the Scandinavian countries and elsewhere, who would see a regulatory approach as being the only way forward: get a set of rules in, deal with it, and move on. Acknowledging the shareholder capitalism approach is not something they want to engage with. The idea that you can comply or explain falls into the too-difficult box and there is a resistance to that approach. It was Alistair, I believe, who mentioned the forum: there is an issue around shareholders and their position on the forum. Comply or explain is also an issue that the forum is looking at; there will be a report on this in the summer so its important that the comply-or-explain system be seen to operate.

I think the other huge opportunity before us is the appointment of Charlie McCreevy as the EU’s Internal Market Commissioner, which could potentially provide a step-change from Frits Bolkestein’s approach. McCreevy, I think, has nailed his colours pretty firmly to the mast. He wants to be more pragmatic about the way in which regulation and legislation is brought through. He wants to learn the lessons of the implementation of the Financial Services Action Plan. He is interested in evidence-based and cost-based regulation. Above all, he wants to focus on competition and the workings of the marketplace. This is why it is such a good time...
to be having these discussions: I think that right now, as we weigh up the need for prescriptive or enabling strategies, there is a door opening, where influence and discussion can take place.

The challenges, then. I see three constituents: the companies, the owners, and governments and regulators as a body. Let us deal with the last one first. I believe both legislators and regulators need to be clear on what they are about. Lack of clarity and consistency is threatening to further harm the confidence that business has in the way in which the regulatory agenda is being taken forward. The challenge is clear: where there is a role for prescriptive regulation, the regulators must ensure that all people know why the regulations are necessary and who is the target to be protected in all of this.

“Me-too” regulation, of which we have seen quite a bit coming across the Atlantic from Sarbanes-Oxley and other influences, is not helpful and should not be supported. I think there is a general fear in Europe that there will be a dive to the bottom with blanket regulation by the Commission reducing all to the lowest common denominator, to the harm of the many. The watchwords in taking regulation forward should be equivalence and a principles-based approach – so too should evidence-based regulation and cost-based regulation.

Regrettably, the UK government in its own right is not very good at cost-based regulation, for example, the initial proposal for the Operating and Financial Review (OFR): the suggestion that the additional cost of complying with OFR regulation would be only £29,000 was an absolutely hopeless way at looking at it, and frankly threatened to undermine what was actually a very sensible piece of transparency regulation.

There also needs to be joined-up regulation. The plethora and empowerment of new regulators in the City, often through the Financial Reporting Council (FRC), has not been a particularly good idea. The example here is where you see that, after a lot of discussion about the OFR regulations which firmly say that the regulations are there to ensure that companies interact with their shareholders or members, the Accounting Standards Board (which is supposed to be the touchstone of compliance) uses the word “investors” throughout. Now you may say that this is a legal nicety, and it’s silly to get worked up over the detail. But for companies it sets a very different standard as to what directors are supposed to be doing. I do not believe that there has been joined-up thinking in the past and there definitely needs to be in the future. Patience Wheatcroft wrote today the Times under the headline “FSA should at least seek the City’s respect”: I think that is an important message for all regulators. They have been put in place by an Act of Parliament, but they still need to earn the respect of those on whose behalf they are operating, on both sides.

The owners, as I have already said, have a clear role to play in this system. They need to understand their role and focus on their duties as well as their rights. Owners should be engaging with companies in a relationship based on respect and their mutual roles – and not on fear. Shareholders do not have to be active just because Paul Myners says so or the UK government says so and is threatening regulation if they don’t; they should be engaging properly.

Business clearly has a clear role. Trust has to be rebuilt. There is a fine balance to be struck. Companies are owned by shareholders and not by management and that needs to be remembered at all times. Transparency and clarity on governance is a small price to pay. Let us not compound the errors of the past but learn from them.
Let me go back to the title, bearing in mind our Chairman’s stricture that we need to take account of the new European dimension, and work my way into a brief discussion of the two extremely interesting and stimulating contributions we have had during this session. The title says “prescriptive versus enabling strategies,” and I want to start with an apparently silly logical point.

The classic remit which neither of our speakers has adopted in response to prescriptive versus enabling strategies is “prescriptive bad-enabling good.” Prescriptive Sarbanes-Oxley = rules = bad (contrary to what Sir Ronnie Grierson believes), and enabling = let the market work according to broad principles = good.

It is excellent that Mr Dallas and Mr Jackson have avoided this trap, as I would put it to you that actually it is a false antithesis: if you are going to make enabling strategies work, you need prescription.

The first thing you need is adequate information – everybody seems to agree on that. The classic philosophy of company legislation in the UK since the Company Law Review (and in Europe, too, post-Jaap Winter, what I like to call the “Spring of European Company Regulation”) is that you begin with transparency and work from there.

Unfortunately, enabling classic “properly informed markets” to operate in this field is not enough. Even if you prescribed information, that would not be enough because, in addition to information, you need to enable the people who are going to act on the information to exercise the influence that needs to be brought to bear, and that requires prescription.

Some of the prescriptions we have in the UK have already been mentioned this morning: Alastair mentioned the standard UK rule that fifty percent (and in the typical British company that means fifty percent of the capital because we have as a matter of practice a one-share-one-vote rule), fifty percent can sack the board or any of its members.

Whilst that nuclear option is almost never invoked, it casts its shadow over the whole relationship between the board and shareholders. That is not true in the United States, as Alastair said. It is not true de facto, either, in Continental Europe. For an enabling strategy to work, you need legal powers and you need to disable the removal of those legal powers, which results in some highly prescriptive rules.

We also need to bear in mind that if we are going to look at enabling strategies – I will just mention this point briefly because it has not hitherto been raised – we need to look at enabling strategies at different levels. There are enabling strategies at the level of the shareholders, there are enabling strategies at the level of the company (and, in particular, the board), and there are enabling strategies at the level of the member states.

If we are looking in a European context, clearly enabling strategies in terms of community policy and community legislation can operate either by adopting a role of enabling member states (or at least not disabling member states), or enabling shareholders. So my first point is that enabling and prescriptive are not contrary and mutually exclusive terms; indeed, you need prescription to enable enabling.

My second point is about trust, which was raised by George Dallas, and I think also by David Jackson. It is often said that what we really need is trust, as if that excluded legislative or regulatory intervention, which, to my mind, is not good enough.

What we need is a climate in which actions by company management can be trusted, and that requires a regulatory context. To take George’s grid of people and architecture, I completely agree that a bad architecture and good people is hugely better than bad people in good architecture.

The reason, of course, is if you have really good people you don’t need architecture at all. If you have got an effective system of company management, being operated by responsible and well-informed business people with good judgement, you do not need procedures. But the point of course is that good architecture and good people are not mutually exclusive. The object of the exercise is to produce an architecture which encourages good behaviour in the dynamic environment of company management. In that context, it has been said that principles trump rules and trust cannot be legislated.

It seems to me that the benefit – and here I do agree with the initial thesis – the benefit of
principles is that they can create an atmosphere in which company managers recognise what trust-engendering behaviour is. Rules cry out to be avoided. Principles – set with a high enough objective – must be aspired to by the exercise of honest judgement by company managers.

Does it work? As George said, the evidence is inconclusive, but there does seem to be a growing body of evidence. First of all, in the Company Law Review we were told overwhelmingly that whilst good governance could not create good companies, good governance could prevent bad companies, which was George’s point. I have great difficulty in seeing how you could regard these two propositions as not contradictions in terms; I would expect that if good governance could prevent bad companies, then such an outcome would show up in the empirical research that has been done. In fact there is some evidence for this: a growing body of empirical research suggests that good governance does matter.

There is an initial study by Paul Gompers and others; there is also a much more recent study by Lucien Bebchuck which unpacks the Gompers study and shows that for America (and it may not be true for either the United Kingdom or Continental Europe), there are key factors within the Gompers set that are crucial. One is the entrenchment or lack of entrenchment of boards, and the other is the openness or lack of openness of the company to takeovers - neither of which has got much to do with the Combined Code, it has to be said.

I said I would come to the European agenda. The Winter group was not influenced by Enron. Of course the Winter group looked at Enron and looked at the Sarbanes-Oxley Act as it emerged. But it came to the conclusion that the Sarbanes-Oxley Act was not an appropriate way to achieve a corporate governance regime within Europe, primarily because of the lack of flexibility and the huge disparities of practice and culture within Europe. The Winter group focused on conflicts of interest, as did Cadbury, and that led to a series of outcomes which are now embodied in the European Action Plan.

We have two recommendations which cover the heartland of corporate governance codes in the traditional sense, and which adopt the UK approach, i.e. a comply-or-explain regime for board structure and a mandatory regime with annual general meeting approval for remuneration structure.

In the other direction we have an audit directive, which has been heavily influenced by Sarbanes Oxley and creates mandatory audit committees. In yet another direction, we have a Thirteenth Directive on Takeovers which illustrates my final point. It seems to me that there is a real question whether the mandatory component on which the enabling strategy (in the Cadbury code sense) that has been adopted in the UK is likely to be replicated in Europe. If it is not, there is a big question about the European strategy on corporate governance.

If you look at what happened in terms of political and economic influences on the Thirteenth Directive on Takeovers, what happened was a combination of governments with protectionist instincts, management with protectionist instincts (but, of course their own protection), and trade unions with protectionist instincts (their own protection) came together to emasculate the propositions in the Thirteenth Directive in favour of an open market and corporate control.

I fear that may be illustrative of the likely reactions of the block holders and protectionist governments towards the approach of openness, enabling strategies, and the empowering of shareholders that is the underpinning for approach in the United Kingdom. If that fear is justified then the European strategy will not work. Lets hope that I am wrong and that the evidence of protectionism in Europe turns out to be ephemeral.

Additional discussion followed. Edited extracts are below.

The role of governance in emerging & developed markets

In developed markets, there is a danger of treating new codes as a box-ticking exercise:

1) Companies in more developed markets may be presumed innocent of bad governance until proving themselves guilty through fraud and scandal; and

2) Any approach which varies from the code is likely to be presumed invalid (perhaps unfairly).

There is some evidence to suggest that open systems of corporate governance do add value and reduce the cost of capital in developed markets: a recent article by Mark Rower shows that capital premiums are very high in continental Europe, intermediate in the US, and lower in the UK, which seems to be a reflection of the different regulatory situations. A piece by Lewis and
Bebchuck shows a clear correlation between various corporate governance factors and stock exchange prices.

Companies in emerging markets tend to be interested in corporate governance (especially external assessment) because it can reduce the cost of capital and/or increase access to capital, i.e., it is a rational activity within those markets. Also:

1) It encourages investor trust (companies in developing markets are presumed guilty of bad governance until proven innocent); and
2) It can provide a baseline in countries where national government regulation is weak, particularly if shareholder rights are not upheld or enforced in the law courts.

“There is a role for architecture in explaining to good people what is good. You need standards in order for people to assess their own behaviour.”

Principles versus rules

Rules can be avoided, while principles may be unenforceable. How should the burden be distributed?

Participants stressed that regulators must be clear about who the rules are trying to protect. Legal sanctions, e.g. for failure to comply with financial reporting requirements, are effective and are arguably very important for maintaining the UK’s high corporate standards.

However, the investment community and other market participants have powerful sanctions to enforce principles, e.g. making capital expensive to reward bad behaviour.

UK accounting standards are currently principles-based, and the takeover panel also has an effective sanctioning system for breaches of principle at its disposal.

Whether to use principles or rules depends on what you are trying to regulate, and on what kind of sanction you can effectively bring to bear. Private sanction at the annual general meeting may be precisely the answer in some cases.

Many people see principles as a sort of longstop for a regulator to use if all else fails. However, in the early days of the current round of regulation, there was a great discussion over whether regulators would resort to rules only if the behaviour clearly went outside the principle; or whether they would look to the principle first and quietly forget about the rule.

The role of trust

“Economic activity of principal corporations is the basis of the prosperity in the countries where we all live and work. It is important that people have confidence in that system, that it is not going to be abused in any way.

The people who are in business are currently at the lower end of the trust scale, when they ought to be at the higher end. Trying to regain that confidence in the whole system is why we are working to regain trust.”

From an outside perspective, reliance on principles and self-regulation may not be sufficient to rebuild this trust – hence the push to regulate.

The regulatory ratchet and the pace of change

Regulators must consider the rate of change which the market can absorb. The sheer volume of new regulation must be considered. The Tabaksblat Code alone mentions over 150 principles and rules in its 70 pages.

“There is some expectation that corporate governance measures will prevent fraud. This is a dangerous idea, because rules will never prevent fraud (although they may reduce the risk of it). If we have further scandals, there will be further pressure for action. How do we avoid a regulatory ratchet?”

As a political matter, this may be a question for the Department of Trade and Industry, but from the business standpoint, the answer revolves around process.

“We should make the process of change more sticky and more expert to head off the temptation of ministers to respond to crisis by shooting from the hip, in the way Sarbanes-Oxley did.”

Communication is key in preventing different regulators, working in different fields with different objectives, from duplicating each other’s work or creating confusing patchworks of jurisdiction. The coordination of the effort under European Single Market Commissioner Charlie McCreevy may slow the rate of change, but further coopera-
tion would be desirable.
Several participants believed that the rate of change will slow down in the next two years, partly because the recent flurry of activity has plugged several major gaps, and partly because the public’s attention has moved on.

The role of ownership

When discussing the “management and owners” of a company, it is important to recall that the shareholders are not the owners, as the company is only a legal abstraction – only the company’s assets are truly owned.

However, the concept of ownership is still a useful handle on the question:
Controlling shareholders perhaps provide a “more fertile ground for expropriation.” By contrast, in a widely-held company there may be confusion and risk in deciding who will take up the mantle in overseeing management of the company.
It is important to understand the ownership structure because the point of corporate governance is to penalise companies where there is a misalignment of interest between the controlling shareholder and the minorities.
There is considerable debate on this subject, taking as its background the observation that there appear, at least superficially, to be significant differences across countries in terms of the structure of their corporations and the way in which corporations are governed. At one end of the spectrum is the “Continental European model,” which is actually applicable to most countries in the world, in which ownership is dominated by large shareholders or blocks of shares held by particular investors. Graph 1 below records the holdings in excess of fifty percent in listed companies in a variety of countries, showing the proportion of listed companies in those countries in which there is a single majority shareholder which holds more than fifty percent of shares in a company.

The graph records that in countries like Austria, Belgium, Germany and Italy, in more than fifty percent of listed companies there is a single majority shareholder. In contrast if you look at the UK, there is a single majority shareholder in only two percent of listed companies; in the US its about the same.

It is even more striking on Graph 2, if you look at the proportion of companies in which there is a single shareholder with a minority blocking control in a company, with more than twenty-five percent of shares.

In continental European countries, in more than eighty percent or in some cases more than ninety percent of companies there is such a shareholder, whereas in the UK it is around about fifteen percent, and in the US it is 5-8 percent depending on which market you look at.

It is not only in terms of the size of the shareholdings that there appear to be substantial differences. It is also in terms of the composition, so in many countries outside of the UK there is a dominance of holdings by families and trusts holding on behalf of families, as in the case of Germany, as Graph 3 demonstrates below.

The other striking feature of this graph is the extent to which there are holdings by other companies: inter-corporate holdings, cross-shareholdings and pyramid structures by which companies hold shares in other companies as a way of controlling those companies lower down in the pyramid.

In contrast in Britain, as we know, the dominant source of shareholding comes from financial institutions, which own sixty or seventy percent of the shares in companies.

Graph 4 (below) brings out another feature: the importance of insider-director holdings in the context of the UK.

These observations first raise the question of to what extent are they temporary or are they likely to be eroded over time. In fact, the differences are very persistent.

Since the end of the Second World War, the structure of ownership in Canada, Germany, Japan UK and US the trends we observe today have existed: the dominance of families and corporate holdings in Germany, dominance of corporate holdings in Japan, and family holdings in Canada — against the widely held shareholdings in the UK and the US. Things may be changing now, but at least those structures have persisted for an extended period.

The questions that we ought to raise in this session are, first of all, what (if anything) is the significance of these differences? Do they matter in terms of corporate governance and the performance of corporations? Do we prefer one system to another? Is it the fact that these systems are changing an indication that we are converging, and is the widely-held view that we are converging on an Anglo-American structure or should be converging on an Anglo-American structure, the correct one? What role will different players, in particular financial institutions, play as these governance structures change?

To address these questions we have a group of very well qualified people to talk on this subject. Our first speaker is Antonio Borges who is a Vice President at Goldman Sachs and a Chairman of the European Corporate Governance Institute, which is a body which brings together academics and practitioners across Europe and in the United States from both the law and an economics and finance background to address corporate governance issues. Before that, Antonio was the...
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Graph 1: The proportion of companies in which one individual owns in excess of 50% of the shares

Graph 2: The proportion of companies in which a single shareholder has more than 25% of the shares.

Graph 3: The composition of ownership in the UK

Graph 4: The composition of ownership in Germany
Dean at INSEAD and so he has experience which comes both from an academic perspective and from that of a practitioner.

It is a great pleasure to be here today and a great honour as well to be at such a distinguished university with such an extraordinary group of people and in particular next to my colleague Colin Mayer, who is one of the pillars of the European Corporate Governance Institute as you may well know.

Unfortunately, we have very limited time and this subject is very complex and very serious and it deserves in-depth study. I will have to brief and therefore somewhat simplistic – I hope you will forgive me. I will try to be provocative as well to generate some discussion and then we will see how things develop in the debate.

First of all, I will take a relatively short-term perspective, say five to ten years as opposed to a hundred years. I hope in one hundred years we will have all converged to the Anglo-American model, as Colin was saying, but that may take a little bit of time so I will take a shorter view. I will also take a view on how things operate in practice and the extent to which corporate differences do have a significant impact on market efficiency and also on distributive justice.

This is a summary, so I will cover governance models, myth and reality. This caricature that there is an Anglo-American model and then there is the rest of the world. Its not quite like that. The practice in the US and the practice in Britain are quite different, with significant implications for what we are debating here.

Europe is a different world all together, starting from the ownership patterns that Colin has already highlighted. The European model is not necessarily inferior – in many ways it is actually superior, which is why it has lasted so long and why people continue to rely on it – but it also brings considerable problems and there is a concern about its survival for the future because, as we move towards what I will boldly call the new economy, one in which the rules of the game are not quite the same, the governance model in Europe may not be the most appropriate.

First of all, the caricature of standard corporate governance problems: the agency problem, the distance between shareholders and management, the temptation of managers to take over companies as if they were their own and forget about shareholders. How do you protect against that? You create these model companies, these single standing companies, meaning that they are not part of a vast conglomerate or pyramid system with very confused systems of control. You have dispersed ownership. They should be open to takeovers.

Boards should be independent from management and there should be a system to protect minorities carefully. This is the theory. This is the ideal Anglo-Saxon model.

If we then go to practice we are actually very far from that and in the US it is amazing how far we are from this theory. In fact, we often have boards dominated by management, both in the sense of the number of executives who are on the board relative to non-executives, but also in the sense that non-executives are friends of the chairman, chosen by the chairman and expected to be loyal to the chairman.

The management is usually quite powerful, with a huge degree of authority in the US tradition. In particular, the role of the CEO (who is also chairman in almost every case) is crucial and most analysts, observers and researchers identify the results, performance, etc of the company with the managerial style of the chairman/CEO. If you talk to US directors, if you talk to US chairmen certainly, they will say there is no proof whatsoever that any system is better than this one.

This is how things are done and they work well – “please prove to me that by separating the roles or by making the CEO more accountable to some other power that this would improve performance: it does not and therefore we stick to our rules.”

This is not very close to the model we had in mind, of shareholder sovereignty represented well at the board and the board independent from management and the management fully accountable for its decisions. How come the US system works well? Because above the all-powerful chairman/CEO and the formidable management there is the market, and the market is very strong indeed. It is a source of constant scrutiny; market mechanisms exercise a ready sanction over poor performance and can compel the removal of the chairman/CEO if performance is not satisfactory, no matter how powerful he may be.

In fact, one could argue that in the US, chairman/CEO tenure is too short, with an average length of the mandate between two and three years. I think we would all agree that within two or three years there is very little you can prove, and very little you can do. If anything, we should perhaps claim that there is a bit of market myopia and that hasty sanctions can get in the way of a longer-term view.

But there is no question, in my view, that it is through the market mechanism that some degree
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of accountability exists and that sanctions are exercised. The important point here is that the US system will not work unless there is a very powerful capital market with the resources to mobilize capital to remove a CEO, through takeover if necessary. This must be a sophisticate market that knows how to judge performance and act quickly.

Of course, as you can well imagine, this is a requirement that is not so widespread. Many countries cannot rely on that kind of market because it does not exist. But it also shows in my view why the corporate governance scandals in the US were so serious and why the reaction was what it was: if you mislead the market, if you manage to withdraw information or provide the wrong information such that market cannot exercise its scrutiny over management, then the whole system collapses.

There is no more control. The whole problem of US governance today is how do we make sure that managers cannot provide wrong information and are forced to disclose everything they should with the right degree of rigour.

This is what in my view explains Sarbanes-Oxley and everything’s related to it: the single-minded focus on guaranteeing that the market has the information it needs to exercise its scrutiny over management. According to US philosophy, if information is available, the market will do its job.

When we come to the UK, it is a very different world. I would argue that the UK is the country where corporate governance standards are highest and where in fact we have the most sophisticated and most advanced model, with a great degree of thought on how the board operates and how it can perform its role well. There is a very clear separation between governance and management, which is an important pillar of good governance, and a lot of effort was put in to describing how the board should be chosen.

What is the appropriate composition of the board? How do we guarantee its independence, and how do we guarantee its independence (not just in name but also in practice) with the idea that you have to provide independent directors with the opportunity to communicate their views and debate among themselves? How do we guarantee through board evaluation that the practice is improving? How does the board have enough resources to perform its role? All of these are extreme refinements of a model that’s been improving over time.

These successive improvements have taken things to a point where there is beginning to be a bit of a backlash with people saying, “aren’t we going too far? After all, shouldn’t the directors be on the side of the management most of the time to make sure that things go well?”

I think this is a good sign. It means that things have been pushed as far as they could possibly go, which is reassuring. But clearly this is a more institutional approach. It is an approach according to which you rely on the board to perform its role because you cannot rely on the market, because the market in the UK is not as nearly as powerful as in the US – the market sometimes sanctions companies with lower stock prices and nothing happens.

Certain companies, and we can discuss particular cases, are allowed to keep on destroying value for a long time and nothing happens. There are no takeovers. Its takes a long time, four or five six years, before something really happens. Either the board performs this role, or nobody will, which as you can see is very different from the US practice, where there is no question about speed of action. If the board does not work, somebody else who will take care of it – there is no doubt of a swift response.

Now if we go to the European case we have a very different story indeed. European corporations are dominated by these so-called reference shareholders, these big block holders who very often have majority control (as Colin Mayer has just shown) but even if they don’t, they do exercise important influence over the company.

The main problem, then, is a complete confusion between governance and management. The reference shareholders are on top of the management all the time. Sometimes they are the management, particularly in family firms. The standard problem of governance, the agency problem where management, independent of shareholders, pursues its own interest as opposed to the shareholders’ interest, which is unthinkable in continental Europe.

This situation just cannot happen; it doesn’t last thirty seconds. Management and shareholders are often the same and if they are not, everybody knows who is in charge.

The main problem here is of course the minorities. What about everybody else? What about those who are not reference shareholders? Can we develop a proper capital market based on block stockholders only?

This is a serious problem of incentive incapability, if you will, because everybody will argue people should have an interest in having there shareholders with them, and should have an interest in generating support from shareholders in making sure that everybody is happy and trusts the corporation and so forth. In reality, in the long term this would be fine, but in the short term there are too many incentives and opportunities to take personal advantage of specific decisions at the expense of minorities. This becomes a standard problem across Europe, probably the dominant one.
Interestingly, for example in Germany, some-wrong. They know where their interests lie and around and become hostile when things go shareholders very often are the first to turn that the opposite is true. These so-called friendly one of our colleagues at ECGI produced shows you actually extract yourself from market scruti-nary, where people know they have to be on.

In conjunction with this control by a limited number of large block holders, we have across Europe many instances – or even systems – of limitation of shareholder sovereignty, be they golden shares on the part of government, limits on voting rights, pyramid schemes, dual systems of shares, etc. This is from northern Europe to southern Europe, east and west. One share, one vote is the exception rather than the rule and that of course creates a different model and a different approach.

So is this good or bad? This model has significant advantages. These reference shareholders perform an important role in providing stability, and in particular, commitment to a certain strategy that often has to go beyond short-term cycles. In certain industries in particular this has become extremely beneficial. Managers know with whom they are working – they do not have the same independence that they have in the US, but on the other hand they also know that they have the support of shareholders and if things work well those shareholders will very often pro-vide the commitment and the long-term view which management would otherwise need to move forward.

In fact, what we have is this concept of active ownership: I not only own these shares, but I actually get involved in the company and I help my management. To a certain degree I delegate the management of the company but I am there to support, guide, make clear my preferences and stand by them when things become a little rough.

There is a line of argument that says this is a caricature of governance, because what happens in these corporations is that you fill up the boards with your cronies, you get friends to hold stock in your company while you hold stock in their company and through these cross-holdings you actually extract yourself from market scruti-nity and therefore there is no accountability and no sanctions if things go wrong.

Actually some very interesting research that one of our colleagues at ECGI produced shows that the opposite is true. These so-called friendly shareholders very often are the first to turn around and become hostile when things go wrong. They know where their interests lie and interestingly, for example in Germany, some-times these so-called friendly shareholders and board members are the first to hold hostile posi-tions and to hold them in a clandestine way which is nobody detects until it is too late. They actually become an agent of change, which is quite curious.

So what are the challenges of this model? Often, it is easy to distort the model, in particular through these limitations of shareholder sover-eignty, to protect control and to make sure that whatever happens I do not lose the control of my company and therefore I am not subject to market scrutiny through takeover.

This is supposedly beneficial in the longer term, giving time to solve problems and put things back on track, but in fact we know that this often becomes essentially a protectionist sys-tem. If you put this together with the tendency of many governments to intervene and to work together with companies to supposedly help them become stronger, you move towards the politicisation of companies which is so easy to detect in particular countries like France, Spain or Italy, and which is far from market discipline.

You could also argue that there are serious issues with board authority. Boards very often are pro-forma. They are window dressing. We go there, we sit we listen. Management makes wonderful reports. We ask some questions, they respond, but we know the real decisions are not taken at the board, they are taken in meetings between the management and the dominant shareholders somewhere else – that, again, is not in the interest of minority investors. There are serious concerns about compensation, and finally it is worrying that there is no openness to using market mechanisms as the ultimate source of reward or sanction.

If I take this a step further and become even a little more radical, let me talk for a bit about the New Economy: a growth model based on innova-tion, entrepreneurship and risk-taking, which demands very rapid reallocation of resources. The most important features must be a strong ability to get rid of inefficient uses of resources and to channel resources to whatever new oppor-tunities may exist, some of them quite random really, with some prospect of gain but with very high risk associated with them.

This approach, which of course lies behind the extraordinary performance in the US econo-my that we are now observing, is clearly based on ruthless market discipline. If you don’t keep up with market expectations, after a few quarters you are out. If this kind of performance continues, your company will be taken over and the resources are diverted elsewhere. The knowledge that the takeovers, real or potential, can happen quickly generates a permanent sense of fear and anxiety, where people know they have to be on
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their toes. Together with this, there is an appetite for bold strategies, which otherwise you do not find. Shareholders are prepared to gamble on very risky strategies that management will propose to them because it is what delivers the highest returns. There is a capital market to hedge your bets and to make sure that you deal well with risks.

Finally, if the capital markets operate well, those gambles pay off and they pay quickly because you have quick capitalisation. You bring to the present this future stream of income, and that provides a very, very strong incentive to risk taking.

The classic criticism is the US market is myopic. It sanctions management too easily and gets rid of CEOs too early – but on the other hand, it also forces very rapid reaction and very quick (you might say too quick but that is the price you pay) reallocation and readiness to make all these gambles. That’s why the US governance model is doing so well for the US economy.

If you go to Europe, you have a very different approach because in Europe we are far from a powerful and strong capital market that would exercise this type of scrutiny, rewarding outstanding performance and supporting a bolder approach to strategy.

We are far from that model partly because we are very far from an integrated capital market in Europe, in particular because governance barriers are crucial (but slow-moving) in market integration. Investors do not invest cross-border easily because they don’t understand the governance systems of other countries and they are highly reluctant to put their money in a place where they do not feel confident.

Furthermore, you have these instances of collusion between governments and companies attempting to develop national champions. This, of course, requires the cooperation of those reference shareholders that I mentioned before. They will work with the government if they are given proper compensation, and again, this is far from a market mechanism that will generate the results I was talking about before.

Capital markets remain very fragmented and there is a sort of vicious circle where, because governance does not improve, capital markets remain fragmented, and because when capital markets are fragmented people don’t trust the market as a system of control. If you go to a French or German industrialist or politician and talk to them about opening up, allowing cross-border takeovers, letting investors elsewhere in Europe decide who can best manage a German or a French company, they would say it’s “out of the question. We don’t trust the market; we don’t believe it will lead to the right decisions.” That argument is not completely wrong, but the longer we maintain these barriers, the longer the market will be prevented from get to where it should be.

Then you have some additional problems. Not necessarily of the same nature, but the cultural differences across Europe are amazing in the way they have a bearing on governance. Boards, especially those with people from different nationalities, find themselves in complete paralysis because people from different countries have such different attitudes about what should be done.

I am not sure we should discuss specific cases here, but if you remember the Vivendi case, which was such an extraordinary example of value destruction year after year – there were essentially two groups of directors, some from France and some from Canada and the USA, and they lived in different worlds and were perpetually blocking each other.

What one chairman thought was exactly right, the other thought was exactly wrong, for reasons which had nothing to do with each other. They fundamentally had different perspectives on the problem and continued blocking each other until the company went down. This dimension, while difficult to quantify, makes life difficult.

Finally, my key point: as we try to put better models in place for Europe, I think our first priority and our best goal would be to eliminate those differences that create significant barriers to a European capital market and discourage investors from one country to invest in another. Having a proper market the size of this continent would allow us to rely on the market, going beyond a simple theoretical model and seeing it actually work in practice.

Today I would like to share with you my views as a practitioner working in investment, working between companies and fund managers to try and get the best returns for our clients.

I want to pause for a moment and look at the question: “Which works better? Contrasting Anglo-American and European models.”

There are two words that I want to focus on: “model” and “Anglo-American.” I suggest that we spend too much time talking about models and too little time talking about chains of corporate governance.

In dealing with models, the first question is whether the Anglo-American model exists. John Plender in the Financial Times has already high-
lighted some of the important differences between the approach in America (also noted by Antonio) and the approach taken in Britain. I will come back to that in a moment. Second, does the European model exist? We have talked about some of the differences with reference shareholders in certain markets, and there are also differences to do with voting and infrastructure. I propose that there is actually no such thing as the “European model.”

Institutional investors are important players in this – of course I would say that, but nonetheless – they are the people who are involved along the length of the governance chain, providing the glue between the investors, the shareholders, ultimately the men in the street, and the companies in which we invest. And investors themselves are not homogeneous: in particular, hedge funds are very diverse. Where do they fit into corporate governance?

Lastly, in sharing my views with you, I want to touch a little bit on the question of engagement, which is an important catalyst in making sure corporate governance actually works. Particularly between institutions and companies, but it perhaps goes further down the chain as well.

In terms of the myths of models, it seems to me, having been in this so-called business for a number of years now, that corporate governance is more about chains, and the chains can be extremely complex – like playing three-dimensional chess at times.

At the very basic level, you have at one end the investor, who gives his money to Standard Life Investments, who then invests it in the company. The company pays the dividend, which comes back to Standard Life Investments, and is then put into our client’s pension or other investment vehicle.

When we come back to the complex governance chain, this relationship takes on new dimensions. Our clients come in different shapes and sizes. Sometimes we have pension funds, sometimes we have charities; sometimes the pension funds are large, with demographically mature members, and sometimes they are young. Each has different preferences and different liabilities.

There are NGOs that impact on the governance chain, which themselves represent different subsections of men in the street (the ultimate beneficiaries of all this). There are representative bodies, governments, legislators... and down at the company end you have different companies in different jurisdictions, with their attendant reference shareholders and disparate goals.

Within the chain, you have a lot of complexity, and the chain is only as strong as its weakest link. There are different chains in different jurisdictions, and even different chains in the same jurisdiction. There is evidence of this in the UK when, after privatisation, a number of companies had special shares (“golden shares”), which carried different rights to the others.

But chains have the same beginning and the same end. We talk a lot about the chain going from the institution down to the company, but the chain is ultimately my client’s money going from us to the company, and back as a dividend. My clients are the beginning and the end of that chain, but when you speak to our clients walking around Oxford, they are almost entirely unaware of corporate governance.

In my ten, eleven years at Standard Life dealing with this responsibility towards 2.5 million policyholders, I have probably received twenty or thirty letters about corporate responsibility and how we perceive our responsibilities about corporate governance. From a macro policy level, we have a big issue relating to the education of investors on investment practices, and corporate governance is an important subset of this education.

In terms of dealing with chains, each company has a unique corporate governance DNA. No two companies are the same: they have different shareholders and different regulations. That is the great interest for me in corporate governance – no two companies or situations are ever quite the same. I get to match the style of the investor to the different styles and DNAs of the companies. The DNA will determine the cultural style of the company, and as ever, the DNA chain is only as strong as the weakest link.

Moving along to institutional investors, I believe they can control the governance chain. Whether they do control the chain is another question altogether, but institutional investors are involved both in policy engagement and in corporate engagement. They lobby on policy, largely through representative bodies but also individually. They use the media as a mechanism for lobbying views on particular policy.

In terms of engagement, institutions are involved in both proactive corporate engagement, and in reactive engagement where institutions have to roll up their sleeves and get involved. Cable and Wireless is an example of this; Marconi is another.

Reactive engagement has been much in the news lately, but proactive engagement is just as important: it is where we pick up the phone to companies, and say “can we come round and have a cup of coffee?” There may not be a particular issue to talk about, but it is an important part of the dialogue between institutions and corporations, keeping the chain together.

Comparing between the different jurisdictions in the US, the chain tends to be litigious and con-
frontational. This is not the case in Europe and the UK. In the UK, we have tended however to have influential pressure points.

The situation at GSK on remuneration was one such: it was a watershed in the UK that told companies that investors were prepared to be assertive. It also had the encouraging dividend of far better company awareness of the need to keep shareholders informed of what they are doing and to listen to shareholder views. In Europe, as Antonio was saying, we have “friends of the family” who can sometimes be the representative shareholders or, in certain parts of Europe, institutions: for example, Telecom Italia, where the banks may be actually pulling the strings or making sure they are associated with what is going on.

Going global does bring challenges to institutional investors when it comes to corporate governance. Although our influence is diluted in the UK, I can by and large gain access to boardrooms when I want to. That is more challenging when I go to Europe or the US.

Coordination becomes difficult when dealing with institutional investors, although institutional investors are increasingly bonding together in different networks – Hermes was instrumental in building up GIGN, the Global Investors’ Governance Network, and there is also the ICGN, which Alastair chairs and which is coming up with some very useful recommendations.

But cost is an issue for institutions. I was listening to Alastair earlier this week in Edinburgh, highlighting that institutions have to face up and be prepared to pay for what they are doing on corporate governance.

There is a cost (whether I am an overhead or a profit centre is a question for debate) but it is very much an issue which does require an investment by institutions; there are issues of economic scale that come into play. When going global, you do have challenges in trying to blend together the different views of US, European and UK shareholders, who all come to the table with a different agenda.

Comply or explain: In the UK this is now becoming the generally accepted approach, but I would suggest that this is still not proven in terms of whether or not it will work. I acknowledge its general acceptance, but I believe there are still some rough edges to address as we go forward. In Europe this is gaining some momentum, although time will tell as to how well it will work – it is more explaining than complying. In the US, law and regulation are still the drivers.

Good communication down the DNA chain does align the players. In the UK, I suggest these communications are now channelled. Yesterday I was speaking to a chairman of a company we invest in, and the day before another company chair came up to Edinburgh to see me. Each day this is happening. Ten years ago, it did not. Ten years ago, chairmen were asking (and I still have a few letters on file), “by what right does Mr Jubb ask these questions?” I think this has now changed in the UK.

In the US, we have regulation FD (Fair Disclosure, which is fair but arguably neither helpful nor constructive). FD is used on one hand to try to keep a level playing field, while on the other hand many institutions in the US use it as an excuse not to actually talk about things like corporate governance, which are not necessarily price-sensitive. In Europe, we are starting to break the ice. In my experience, there are enlightened companies and there are unenlightened ones – middle ground is not so well understood.

Representative bodies: in terms of the key to the codes in the US, we have the Council of Institutional Investors, which is quite good at political lobbying and is getting better at coordinating its members to deal with individual corporate situations, but by and large it is not as effective as the ABI (Association of British Insurers) and the NAPF (National Association of Pension Funds) in dealing with situations in the UK. In the UK, the ABI and the NAPF are rather like the representative shareholders.

They can bring a degree of discipline to bear when discipline is needed -- two or three investors gathered together can actually have their prayers answered more effectively. In Europe, the lobbying focus is clearly on Brussels: the industry bodies are of course there. Interestingly, in Europe I find private investor bodies, which are more prevalent in Sweden and Germany for example, are being listened to in a way that they are not in the UK.

In terms of engagement, it takes two to tango; attitudes need to be in tune. I see that it is happening in the UK and I think it is going to happen in Europe, but policymakers should pay more attention to communicating objectives on corporate governance. It is they who can wrap their legislation and regulations with encouragement to engage and talk constructively. If they are at the top, they can (in part) set the tone coming down.

Governance, from my perspective, is focusing on governance chains. I have to speak to companies, I have to be accountable and speak to my clients. The governance models themselves are, if not a myth, then something that needs to be disentangled.

Investors (and perhaps we mean shareholders) in some respects, coming back to the point David was making, but I generally mean investors
here), not companies, should control the chains. However, to do that, investors have to be properly resourced, they have to understand what they are doing, and they have to do it in a way that is consistent with their clients’ interests. The spotlight is undoubtedly moving on the chain and investors are feeling the heat more than they have in the past.

Policymakers must be the communication catalysts, particularly in Europe and the US, to help unlock some of the benefits of the chain.
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Discussion

This is an edited version of the conference transcript. The editors apologise for any possible misinterpretations.

Professor Colin Mayer

Again coming back to my examination analogy, faced with the question “which model works best?” we have two responses which are almost diametrically opposed.

We have Antonio’s view, which is that there are essentially three contrasting models of governance (the UK, the US and Continental Europe), with the US market-driven, the UK institutionally-driven and Europe large-shareholder-driven. There may be some advantages in a traditional sense for the Continental European model in terms of stability, but perhaps not in the context of the new economy.

Then we have Guy saying that it is actually a bit of a myth: there are not really such pronounced differences; we should think of governance as chains with investors at the one end and companies on the other, and what really matters is communications. By this rationale, institutions play a critical role as the link between companies and investors.

To help sort out these issues, we have as our discussant Chris Pierce, CEO of Global Governance Services, Ltd., and a former director of Professional Standards at the Institute of Directors, as well as an editor of a handbook on international corporate governance; he is very well placed to adjudicate on this debate.

Chris Pierce
CEO, Global Governance Services Ltd.

The job of discussant, as I see it, is to simplify things. Perhaps to exaggerate things slightly, perhaps to misrepresent the previous speakers for effect, and to create general discussion (and perhaps general confusion). Let’s see if I succeed in that objective.

The first point that I think came out this afternoon was that all of the speakers that we have here are seeming to say that pan-national models do not exist. There is no such thing as an Anglo-US model or a European model. What we seem to be going down to is a national level: “this is how it works in Germany”; “this is how it works in the UK.” In the research community I hear that that people’s application of these models seems to be breaking down because there are more differences than similarities between the US and the UK.

I am aware of the work that the chartered accountants are doing at the moment – Kerrie Waring, who is here, and Tim Bush and others from the ICAEW – identifying at least 30 factors which are different for corporate reporting between the US and the UK. The similarities are breaking down; the people that are looking at it in significant detail are finding more differences than there are similarities.

I look at it from a European perspective. Germany compared to UK compared to Sweden compared to Slovakia, Greece, Turkey, Poland… they all seem to have different company law systems, different codes, different governance structures, board structures, enforcement systems, levels of sophistication on enforcement and so on. I feel that there is more diversity there than there is homogeneity. The idea of these pan-national models being useful for analysing corporate governance for comparative purposes has broken down completely.

The second point that has been looked at: how do we actually know the effectiveness of corporate governance practices? I was rather surprised not to hear any mention, either this afternoon or this morning, of the role of the World Bank and the OECD. The OECD-World Bank have been looking and evaluating corporate governance practices around the world: they are called ROSCS, Reports on the Observance of Standards and Codes. The corporate governance practices in over 30 countries have been explored in this way, and I think it is a very interesting way to evaluate practices against principles. I also heard this morning (from George Dallas) of other criteria to evaluate performance – we saw the Standard & Poor’s criteria being used against much more grounded criteria which are more easily identifiable (as opposed to the principles of the OECD). I have also seen quite a bit of research activity on the impact of corporate governance on the practices themselves; a lot of people in this room have been researching the structures by which companies are actually complying with the split CEOs, the number of independent and non-executive directors on boards, etc.

I have great concerns that the structure (if that is what George Dallas meant by “architecture”) of boards seems unlikely to be proven to have any impact on performance. I see quite a bit of research taking place on corporate governance processes and practices actually being linked to performance in the UK, US, Germany, Korea, Thailand, etc., with a number of interesting research outputs, but I am not seeing clear demonstrations of the link between corporate governance structure and performance.

The other thing that we have not mentioned today is the financial impact of corporate gover-
nance and I would like to point out a recent Korn/Ferry survey where the top 100 companies in the US say that it costs more than $5 million to comply with 404 (the internal controls section of Sarbanes-Oxley). These are significant financial costs and the company community is saying that these costs should be considered if there is to be further regulation.

The question as to whether or not all this corporate governance is working: again, I have my doubts. When you look at what happened with Hollinger in Canada, where $1.7 billion and 97% of revenues can’t be explained, and you wonder what is going on. Today, I was looking at the Financial Times: there is a Japanese director who has just been indicted, one of the best-known industrialists of the last 15 years, for mal-reporting and misreporting his company accounts – not for the last year or two, but for the last 40. I am wondering: where is the enforcement taking place to actually implement the practices we think are desirable.

To finish, an overview from the OECD last year suggested that corporate governance practices were improving. There is still a long way to go, however. The OECD suggest improved transparency and disclosure (because sunlight is an extremely important factor in improving corporate governance) and also suggest that compliance must be monitored far more. There seems to be very little going on around the world in terms of actually evaluating compliance, particularly in the areas where we have comply-or-explain. I take on board Antonio’s comment that, in Europe particularly, we have barriers to capital transfers which must be seriously looked at if European governance is to expand into a credible alternative to corporate governance practices in the US.

Just for a bit of fun, I did not refer to the World Bank and their people because, as you may know, some of them have been recently fired for fraud! As regards the national versus international governance models, it is true that they are still very national, but business leaders and other authorities realise that things are changing. This is an important point because, to a large extent because of the euro, there is more cross-border investment in Europe than before. There are stock markets that are losing market share while others are gaining due to the higher standards of governance in certain areas. Competition is beginning to emerge, which is precisely what is generating the protectionist response.

Governments and certain business leaders are now demanding protection and new barriers which did not exist before: they are more concerned with competition within Europe. So there is a trend in the right (i.e. pan-national) direction, but it is, unsurprisingly, being resisted.

On the interesting and important issue of governance and performance, I do not have any research that I can quote off the top of my head, but there are two important points: First, in the European model of large block-holders with a very strong influence on the company, it is generally easy to prove that this leads to better decision-making. Many managers at difficult moments in their careers and the lives of their companies will perform better if they can go to someone who is on their side, and is supportive and helpful. It is of course subjective, but I believe it introduces an element of stability – emotional stability, if you like – which delivers better performance. Second, in my view, in the US you have the very opposite of this. You have boards which demand constant performance. Never mind what the stock market is doing – “we supported you a couple of years ago and now we’ll fire you.” No hesitation, no counter-pressure. On the other hand, if someone comes in with a bold approach or gamble – “let’s go, we are with you. We are certain our shareholders know how to deal with that.”

This is, in my view, very much behind the drive for performance and the appetite for risk-taking which characterise the US economy today. These are just two instances of links between the governance model and the performance of the companies under those models.

You mentioned the OECD and the World Bank. From a practical standpoint, those actually do not come into our analysis to any significant degree. We are aware of them in the background – perhaps we should pay more attention to what they are doing – but as things stand at the moment the OECD and the World Bank, whilst very important bodies that have done a lot for the furthering of corporate governance, are not given much attention. We are dealing much more with local and specific issues.

Antonio’s argument that the reason the US governance model is currently the leader – its effectiveness – is due to market scrutiny and the market’s capacity for immediate censure. I would argue that in the UK we actually have much closer and more effective scrutiny via our regulators, but at any rate in the UK I think the existing model is still not proven and depends on the effectiveness of institutional investors.

My worry is: how long will the regulators or legislators wait for investors to gear up to play in
the new economy? What is the sanction that would make the institutions get into action?

**Antonio Borges**

I would like to correct a possible misperception. I would not like to say that the US model is the best in the world for every purpose. I think we have to understand some of its disadvantages, but I would stand by the importance of market scrutiny and how much more powerful it is in the US than in Europe. I am not discounting the quality of the work that has been done, particularly in Britain, on analysis and research of corporations. I am simply saying that the market pays less attention to it.

In the US, if a company’s stock price starts going down, action follows quickly – managers get swept away, or if that does not happen, somebody will take over the company. You might argue that it is knee-jerk, too fast, but it is much more powerful in the sense that managers are more afraid there than anywhere else in the world. In Britain, managers are afraid of the institutional investors, and rightly so; they are not as afraid of the market because it is less powerful.

Indeed, this is a very important difference between the US and Britain. The role of the institutional investors is crucial here, but much less important in the US. In fact, US board members are not supposed to talk to investors, or if we do, we must talk to all of them at the same time. That is the point of fair disclosure. The US market operates on this premise: you are not supposed to give privileged information to anybody. We are not supposed to speak to influential investors in the US, be they institutions or block-holders. They are kept at arm’s length.

**Guy Jubb**

In terms of investment by institutions, I would observe two things. In the short term, when markets are bullish, investors can perhaps lean back and say “everything is going fine” – the problem is when markets start to go bad again, which is what separates the goats from the sheep. It puts real issues at the institutions’ doorstep and, from a political point of view, I suggest institutions are quite easy prey as politicians start to ask “where were the investors all this time?”

**Chris Pierce**

Over the last year, the role of institutions in the US model has significantly changed, due to things like the Disney fiasco and the problems with Warren Buffett. There are real political issues concerning the American institutions – in my last few visits there, the free rider issue is becoming more important and has been played by TIA and others. I am concerned that investors should, at an international level, play the principal part in companies’ operations. I go along to a great extent with what Alastair said on this topic earlier.

**Guy Liu**

To what extent do we combine in European CG both strong institutional investors as well as family shareholdings? How best to incorporate an American-style investment structure onto the traditional family approach which has worked well so far in Europe (not to mention the Far East)?

**Guy Jubb**

When is a family not a family? We have seen that what starts off as a family company (e.g. Morrison’s in the UK) tends to start off with Mr Morrison as the entrepreneur; through trust arrangements it gets into the children’s hands and over the years the trusts become more diverse and the ownership becomes more diverse. In trying to combine what is essentially private equity (i.e. family equity) with public equity, there is always a significant degree of tension: the public equity is always looking to see when the private equity is going to hand over its shares (whether that’s a good thing or a bad thing, the other shareholders are continually waiting around for this to happen).

The boards of companies, in that situation, can be rather comic. Simultaneously, they know that the family has an interest and the board needs to look after it, and the boards can play the family off the other investors. Because the interests get so diversified over time – Sainsbury’s is an interesting case in the UK – the accountability to the family is perhaps a critical issue. This is what I mean by “when is a family not a family.”

In substance, the problem of getting from family-owned to public companies, there is no easy solution.

**Chris Pierce**

I agree that the private business (private equity) is different from public equity and in a public company there are certain duties and responsibilities that the company owes the shareholders. If you don’t like those responsibilities, you should stay within the private arena. I do see that many organisations want access to more finance – but if they want access to this finance they will have to be more transparent and may have to give up the controls.
Even though family firms may not always remain 100% within the family, families will continue to be significant block-holders in many corporations for the foreseeable future. The key here is how to solve the time-consistency problem. It is in their interests to deal with investors, and the market as a whole, in a fair manner. They all stand to gain. The problem is, in the short term, there are all kinds of incentives to do otherwise.

How can we adapt the model to make it more compatible with long-term objectives? 1) Let us not allow families or block-holders to leverage their position beyond their legitimate influence. This is of course a very difficult point in Europe because people have built positions of control through all kinds of schemes which cost a fortune, and they are not ready to give these positions up without a fight.

Anything that improves shareholder sovereignty, one-share-one-vote, should be welcomed. In the same way, a reduction of government intervention, golden shares and so forth should be welcomed.

In my view, the way to make the two models compatible with each other is to accept, defend, even recommend block-holders, on condition that they remain a minority, and/or if things go wrong, a takeover is possible and they can be removed. Experience shows, and there is plenty of research about this, that family firms usually do very well but they have one major problem: they have no regeneration mechanism if things go wrong. There is no natural way of removing or changing what does not work. If families are better at long-term strategies and long-term management of a firm, translating to higher performance, the other investors should be happy with that, so long as they still have a say. Block-holders with 30-40% should be an interesting model.

There are good and bad features in the three models mentioned by Antonio. Can you see any convergence, and if so, where would you like to see more?

There is no doubt that people in Europe see what is happening; they see the competition across financial markets and the first steps of cross-border investment, like the Santander-Abbey National story. This brings up an important issue: are the UK investors ready to trust Spanish corporate governance? Apparently they did.

People are still afraid of this, and want more protection, but at the same time we are all aware what direction things are going. To quote Colin Mayer’s research on 19th Century Britain, when 15 or 16 different stock markets actually became consolidated in London, investors that typically only invested in their own region learned how to trust firms that were further away and less well-known. This all happened without government regulation and without a great deal of intervention, but it also happened because it was a successful process – if there had been a lot of scandals along the way, perhaps things would not have evolved the same way. The path to integration is always dependent upon a great many variables, that may or may not lead to successful convergence in the creation of a European capital market.

In terms of EU convergence, I would certainly like to see improvement of corporate reporting. There are quite considerable divergences between Sarbanes-Oxley, IAS, GAAP and other areas of national corporate reporting, and if that area was tidied up I think the world would be a better place.
**GROUP A: Do some regulatory codes perform better than others?**

In general, principle-based code will work better than mandatory rules; one of the reasons is that in the latter case there is a danger that Board may comply with them without any reflection on their performance. Principle-based codes allow for some diversification, resulting in a healthy competition between companies and systems. This already illustrates that a well-developed market may be a prerequisite for principle-based code to work. In earlier stages of development, formal rules might be more important. The value of rules may also depend on particular cultures, traditions, the various positions of employees, trade unions, shareholders etc. In some societies, people are more likely to respond to written rules than in others.

Combined codes, in varying proportions, may be the best answer, but they should never be over-prescriptive. It may be safely assumed that company boards generally will treat codes as written rules if they are forced to explain why they do not comply with those codes. Formal rules have the drawback that they may be difficult to change, e.g. because of lack of time in Government and Parliament.

**What are the right overall policies for Europe?**

The answer to this question is partly in the above. Policy, however, should allow for a considerable diversity of regimes, consistent with the principle of equivalence, to stimulate competition. The regulatory impact should be assessed, and appropriate cost-benefit analyses should be made.

**Should Sarbanes-Oxley apply to European businesses?**

Yes, in principle, but ...” USA culture is very regulatory and lawyer-driven, and Americans tend to believe that rules and complying with rules is crucial. Therefore, US models are not directly applicable to other continents and countries. Furthermore, the USA has a strongly developed market system, where the rules of the New York Stock Exchange are at least as important as government regulations. The situation elsewhere is usually not exactly the same, and indeed often very different. Sarbanes-Oxley deals with some problems, although it is not a complete governance model, but is over-prescriptive and does not allow for a larger variety of circumstances than exist in the US.

A strong point of Sarbanes-Oxley is that management never has the excuse that it didn’t know what was going on. It should be clear who is ultimately responsible. In Europe, it is often easier to manipulate information, even within the rules, to present reality in a more positive way. A weak point of Sarbanes-Oxley may be that it is over-prescriptive, and does not easily accommodate various circumstances. Sarbanes-Oxley strengthens internal information and control, which should be considered a positive effect.

**GROUP B: Should institutions be more active in governing firms?**

Yes, to avoid regulation. However, an argument can be made that taking ownership rights is sufficient.

**Are still-tougher rules required?**

Generally speaking, regulations are sufficient. However, they need to be better-enforced and stronger disclosure rules would be desirable.

**What are the costs of regulation?**

If regulation were sensible, the costs would probably have been incurred without the regulation. So, are the costs too high? The emergence of the private equity market suggests yes. The companies from emerging markets that want to be listed in London, Frankfurt or New York suggest no.
GROUP C: Has regulation after perceived failures been justified?

Regulation was inevitable; historically, it has been the natural reaction to crashes, as society and investors demand something be done to prevent repetition of mistakes. Current regulation has helped restore trust among larger funds, but has not necessarily had an impact on small private investors.

Historically, reform has a strong element of periodicity: fraud is discovered, new codes and regulations are created, contraventions become more sophisticated, and public interest in the topic falls.

Are these reforms appropriate?

The answer to this question depends on how the codes are judged. Essentially, they will be considered to have “worked” if they prevent another Enron and improve shareholder value over the long term – it is too soon to say whether this is the case.

It seems that the reaction has been broadly appropriate, as minimum standards of disclosure, etc., are prerequisites for allowing shareholders to monitor their companies (particularly if the governance will rely on codes rather than direct regulation). However, Sarbanes-Oxley may prove to have been a bit too ambitious.

How much bureaucratic interference comes from codes?

If a code is addressing a market failure, it must be of some benefit. Properly designed codes are worth the extra bureaucratic effort. Problems arise when separate board committees are created to deal with regulation, as they must learn to work together.

GROUP D: Is active institutional involvement always a good thing?

Yes, when stock is underperforming, or institutional shareholders cannot sell. They must intervene where there is a high risk of underperformance or fraud. However, factors that promote effective institutions vary depending on context (political culture, sector, etc.). From management’s point of view, some underperformance is normal. Shareholders should be notified (and should be entitled to act) regarding election/re-election, major transactions, audits, and remuneration.

How to regulate global companies?

Product market competition is preferable to regulation via corporate governance, with notable exceptions: antitrust legislation, international accounting standards, timing of AGMS (spaced to avoid overload), Ratings information should be effectively comparable.

What is the balance between internal and external regulation?

Half and half. Internal regulation should be the first resort, with external regulations dealing primarily with market failures. Additionally, transparency should be enforced for the sake of investors and annual reports should include disclosure of CG activities and expenditure.

OTHER THEMES

Can there be a European regulatory framework, given the obvious variances between codes of conduct, market culture, etc. between the European countries/regions, namely pronounced in the underlying differences between UK and the mainland philosophies of business?

The question of whether regulation undermines performance is a matter of balance. Regulation is not an undermining factor per se, but should not simply be applied “straight out of the box.”

In terms of “good” and “bad,” the latter category applies when regulation gets too politicized and/or too loosely structured. Transparency and compatibility are ideals worth striving for.

Business has not made its voice heard due to bad organization. The corporate lobby is not as well organized as the new governance industry.

There are numerous ways of regulating; market regulation, i.e., through consumer behaviour, might be a way forward.
Thank you for all those enlightening report backs from the roundtable sessions which have produced some interesting insights.

Now, I think I have really had my own say at the beginning of the session IV, and as our discussions have eaten a little into our time, I am going to hand over at once to Paul Flather who has been busy trying to draw out some general threads from our deliberations.

The discussions over the day have thrown up many interesting points, and produced some lively clashes and controversy. As a non-expert I have been intrigued by the many arguments made. But I would like to pick up on five issues that have particularly struck me and seem to me to offer possibilities for future research and analysis. They may perhaps even form the basis of further work to be undertaken by the Europaeum group of universities, as we are currently in discussions with a leading corporate to create and develop a relevant international European research project on new Corporate Governance reforms.

1. Independent Directors

Questions were raised about how could independent directors now have a crucial role to play in the future better governance of our corporations. How will they stand up against the so-called Non-Independent directors, the executives? What will be their specific role? What powers will they have? How much company support should they receive and be able to call on? There are also questions of their appropriate remuneration levels, whether there should be public funding involved. Above all, there are deeper questions of how they can be part of the team, while remaining able to exercise scrutiny independently.

2. Corporate Governance and Economic Performance

A key criticism of corporate governance reform and the raft of proposals that have been set in place following the crisis of company crashes is that they seriously restrict corporate economic performance and success. But there appears to be little research measuring the correlations between the application of compliance with Corporate Governance measures and economic performance. Equally, it can be argued that there is little conclusive proof that good governance produces greater economic benefit to companies. It seems to me that there is much opinion on such relations and relatively little hard research and fact. This would surely be a fruitful area for further, focussed research.

3. Shareholders, Sovereignty and Capital

Shareholders clearly must continue to have influence on their companies. However, it has never been easy for them to accumulate or express their views, even on simple measures such as voting on the membership of the board, or an election of the chairman. This has led to a rise in so-called ‘shareholder activism’, and there have been some significant examples when organised shareholders have turned over company policy, modified plans and strategies, and been seen to have key executives replaced. However, such interventions remains relatively haphazard and debates around such activism often collapse into an all-or-nothing debate, in the form of “do this or else” or “take it or leave it”.

More work should be done on defining more precisely the role of shareholders, the balance of sovereignty, who the ultimate controllers of a company are, how more refined discussion could take place, and the means by which poorly co-ordinated bodies of shareholders can be consulted, better and perhaps more regularly, and involved. This would ameliorate a culture in which confrontational or reckless gestures by either party stand in the way of good governance, as suggested by one contributor to our discussion.
Concluding Remarks

Perhaps we should be asking whether internet technology could be used to allow shareholders to be in closer connection with each other than they are at present, so as to allow them to better identify issues, demonstrate support, and, if necessary, take action.

4. Sunlight and Transparency

The new corporate governance agenda has much to do with transparency and throwing ‘sunlight’ over any murky dealings within companies. But what should be revealed, how often and to whom? Questions of sunlight remain crucial, not least because information is often privileged and companies are very wary of revealing anything that might lose them competitive and commercial advantage. How can such conundrums be solved satisfactorily for both sides?

5. A New European Agenda

We have discussed the nature of corporate governance in America, in Britain and in Europe. We have noted that the corporate structures in Europe and America are different and we have noted significant differences between key European players too. We have also examined a possible convergence between the US and the UK, in particular. What we have not been able to resolve, not surprisingly, is whether we should simply accept that, within a broad framework of CG compliancy and reform, there are be different approaches appropriate to each different nationality and to local democratic and economic goals.

Alternatively, should we be exploring a wider European model and framework, both in contradistinction to specifically American approaches and strategies, taking note of the multinational and international nature of most corporates – particularly their penchant for playing off different approaches, even choosing to set up their headquarters in those countries where compliance regimes most ‘suit’ them, perhaps where they can best avoid restrictions.

Should we be searching for a new, more European agenda from Brussels, or accept that there will be distinct British, French and German approaches? Should it be a more rigid or looser framework? Should it seek convergence or difference with the USA?

These strike me as five significant themes which have emerged from our deliberations over the day. I hope you will agree that they leave us plenty of further food for thought. Indeed, I suppose that there are large questions to face – what precisely, for instance, is ‘good governance’? Our use of the term can inevitably be loaded with our assumptions about what we want from corporations in European society. This raises questions of efficacy; but of our values, and ends, as well..
APPENDIX A

List of Participants

PAUL ASKEW, Director, Whetstone Group Ltd
JOOST VAN ASTEN, Director of International Relations, University of Leiden
JANA BAMBIĆ, Doctoral Student, European Law
DEVIKA BANERJEE, Strategy and Communications Consultant
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DR GEORGE BLUMBERG, Oxford Centre for Innovation
PROF ANTONIO BORGES, Vice President, Goldman Sachs
ROBERT BRYAN, Head of Employment Team, Darbys Solicitors
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ALAN CALDER, CEO, IT Governance Ltd
DR ROBERT COELEN, Vice President International, Leiden International Office
TIM CULLEN, Senior Associate Member, St Antony’s College, University of Oxford
GEORGE DALLAS, Managing Director and Global Practice Leader, Standard & Poor’s Governance Services Unit
DENIS H DOBLE, Director, FCO Association
WILLEM AJ VAN DUIN, Member Executive Board, Eureko BV
TIM FEYERABEND, Referent Corporate and Affiliates Governance, T-Systems International GmbH
JUDITH FINCH, Diversity and Equal Opportunities Officer, University of Oxford
DR PAUL FLATHER, Secretary-General, Europaem
KATHERINE FLETCHER, Programme Officer, Europaem
SANDIP GOEL, Consultant, Cghru & Partners, Moscow
PROF HOWARD GOSPEL, Professor, Saïd Business School, University of Oxford
DR PAUL GOWER, Economic Adviser, Department of Trade and Industry
ANDREW GRAHAM, Master, Balliol College, Oxford
SIR RONALD GRIERSON, European Chairman, Blackstone Group, Ltd., and Former Vice President, GEC
BURCU HACIBEDEL, DPhil candidate in Finance, Saïd Business School, University of Oxford
HEATHER HROUSALAS, DPhil candidate, Said Business School, University of Oxford
DAVID JACKSON, Company Secretary, BP
GUY JUBB, Head of Corporate Governance, Standard Life Investments
DR STUART KEWLEY, Managing Director, eurasia-ips
AW KIST, President, University of Leiden
CHRIS Koenig, Business Correspondent, Oxford Times
GUY LIU, Lecturer in Economics, Brunel University and Sichuan University
AJINT MAHAJAN, MBA Student, Said Business School, University of Oxford
PROF COLIN MAYER, Peter Moores Professor of Finance, Said Business School, University of Oxford
PROF TERENCE MCNULTY, Professor of Management and Governance, University of Leeds Business School
PROF JOHN MELLOR, Visiting Professor, Corporate Governance, Bristol Business School; Chairman, Foundation for Independent Directors; and Policy Advisor, All Party Parliamentary Corporate Governance Group
PROF KEES MOUWEN, Vice President and Professor of Strategy, Tilburg University
DR WILSON NG, Roberts Fellow in Corporate Governance, Leeds University Business School
HENRIETTE NOTTEN, Deputy Head Economic Section, Embassy of the Kingdom of the Netherlands
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CHRIS PIERCE, CEO, Global Governance Services Ltd., Former Director of Professional Standards, Institute of Directors
MARKUS PINS, Management Consultant
DR MICHAEL PINTO-DUSCHINSKY, Senior Research Fellow, Brunel University
PROF DAN PRENTICE, Allen & Overy Professor of Corporate Law and Fellow of Pembroke College, University of Oxford
PIER ANDREA RANDONE, PhD Student, Said Business School, University of Oxford
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MARTINS VAN ROOLFEN, Vice President for Institutional Advancement, University of Westminster
ALASTAIR ROSS GOOBEY, Senior Advisor, Morgan Stanley, and Chairman, International Corporate Governance Network
EDWARD ROWE, Assurance Professional, Grant Thornton UK LLP
KEN RUSHTON, Corporate Governance Consultant
PROF JACOB DE SMIT, Professor, Leiden University School of Management
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Antonio Borges is Managing Director & Vice Chairman at Goldman Sachs and Chairman of the European Corporate Governance Institute. Prior to his work with GS, he was Dean of INSEAD between 1993 and 2000. He has also taught at the University of Lisbon, Portuguese Catholic University, and Stanford University. Between 1990 and 1993 Antonio Borges was Vice Governor of Banco de Portugal, where he took a leading role in the liberalisation of Portugal’s financial system. He also worked at European level on the project of Economic and Monetary Union. He is a member of the European Corporate Governance Forum, set up by the European Commission to examine best practices in Member States with a view to enhancing the convergence of national corporate governance codes and providing advice to the Commission. He was an elected member of the London Council in the 1980s (chairing its committee on post-school education 1986-1990), and is currently directing the Europaeum’s research project on the future of European universities.

George S. Dallas is Managing Director and Global Practice Leader of Standard & Poor’s Governance Services unit, based in London. Prior to this assignment Mr. Dallas was head of Global Emerging Markets for Standard & Poor’s, encompassing emerging markets activities of both Standard & Poor’s Credit Market Services and Information Services. He has served as regional head for Standard & Poor’s Ratings Services in Eastern Europe, the Middle East and Africa, and as regional head for Standard & Poor’s European credit rating operations. Mr. Dallas is editor of the book Governance and Risk (McGraw Hill, 2004), and has written numerous articles and several book chapters on themes relating to corporate governance and international finance. He is a member of the European Corporate Governance Institute and a member of the steering committee of the European Corporate Governance Training Network.

Andrew Graham is the Master of Balliol College, Oxford, a non-Executive Director of Channel 4 Television, Chairman of the Advisory Board of the Oxford Internet Institute (which he largely created) and a Trustee of the Esmee Fairbairn Foundation. He advised the Prime Minister, 1967-69 and 1974-76; and, from 1988-94, the Leader of the Labour Party, John Smith. He wrote (with Gavyn Davies) “Broadcasting, Society and Policy in the Multimedia Age,” now part of the standard defence of public service broadcasting. Oxford University has made him an Honorary Doctor of Civil Law. His partner, Peggotty, is Dean of Social Sciences at the Open University. He is a passionate windsurfer.

Sir Ronald Grierson is a banker and industrialist and has on several occasions held full-time appointments in government. His principal business posts were Managing Director of S.G. Warburg (1948-1985) and Vice-Chairman of The General Electric Company (1968-1996). His main government appointments were Deputy Chairman and Managing Director of the UK Industrial Reorganisation Corporation and Director-General for Industry and Technology of the European Commission in Brussels. At various times he also served on the boards of Chrysler Corporation, R.J. Reynolds Nabisco, W.R. Grace & Co., British Aircraft Corporation (now BAE Systems) and International Computers Ltd. He continues to be on boards and advisory boards in Europe and the USA (among others as European Chairman of the Blackstone Group and Chairman of the advi-
sory board of Bain & Co.) and is chairman of several international philanthropic bodies in the fields of medicine, education and music.

**Guy Jubb** is Head of Corporate Governance at Standard Life Investments, a leading investment manager with 128 billion Euros in assets under management. Guy is responsible for the management of all of Standard Life Investments' corporate governance activities. He has been involved in developing best practice approaches to corporate governance since 1993 and has extensive experience of European governance issues.

**Colin Mayer** is Peter Moores Professor of Management Studies at the Said Business School and Director of the Oxford Financial Research Centre. Professor Mayer has written widely on corporate finance, taxation and governance and on the regulation of financial markets. He has directed the European Science Foundation Network in Financial Markets and the Financial Economics Programme of the Centre for Economic Policy Research. In addition to holding visiting fellowships at Stanford, MIT and Brussels University (ULB), where he was the first Leo Goldschmidt Visiting Professor of Corporate Governance, he is a Delegate of OUP and Chairman of Oxford Economic Research Associates (OXERA) and serves on the boards of several leading academic journals.

**Chris Pierce** is the Managing Director of Global Governance Services Ltd. His work involves developing directors and boards in Europe, Africa, the Middle East, the US, South America and South East Asia. Prior to becoming MD, he was the Director of Professional Standards and Professional Development at the Institute of Directors (IoD). He has also held senior management positions in the Overseas Development Administration, British Airways and Leeds Business School. Chris has written extensively on director and board development issues. His key publications include: The Effective Director: an essential guide to director and board development (Kogan Page, 2001) and The Handbook of International Corporate Governance (IoD, 2004) [co-edited with Kerrie Waring]. He is currently writing a Toolkit on Developing, Crafting and Reviewing Corporate Governance Codes for the Global Corporate Governance Forum (part of the World Bank) to be published in Summer 2005.

**Dan Prentice** is a Professor in the Faculty of Law at the University of Oxford. He teaches Company Law, Corporate Insolvency and Corporate Finance, combining teaching with a mainly advisory practice at Erskine Chambers. He is a member of both the Law Society's Committee on Company Law and the Law Society's Committee on Insolvency Law.

**Lastair Ross Goobey** CBE is currently Chairman of Hermes Focus and John Wainwright and Co.Ltd. He is also Deputy Chairman of GWR Group plc, a Governor of the Wellcome Trust (the UK’s largest medical research charity), and a Senior Advisor to and a member of the European Advisory Board of Morgan Stanley. Between January 1993 and December 2001 he was Chief Executive of Hermes Pensions Management Ltd., the executive arm of the BT Pension Scheme, the UK’s largest. His career prior to that included periods as manager of the Courtaulds Ltd. pension fund, and as Chief Investment Strategist at James Capel. He is Chairman of the International Corporate Governance Network, a member of the European Commission’s 15-member Corporate Governance Forum, an honorary Fellow of the Institute of Actuaries, and an honorary chartered Surveyor.

**Jonathan Rickford** CBE is a solicitor and consultant on regulation and European law and policy, Director of the Company Law Centre at the British Institute of International and Comparative Law, and visiting professor in Comparative Company Law at the London School of Economics. In 2002 he was a member of the EU High Level Group (“Winter Group”) on Corporate Law, and Visiting Professor at the University of Leiden in the Netherlands. He was the Project Director of the Government’s independent Review of Company Law from 1998 to 2001. Mr Rickford was a legal adviser to the DTI from 1972 to 1987 and their chief legal adviser from 1984–1987. He was chief legal adviser, director of regulation and director of corporate strategy with British Telecom plc between 1987 and 1996. He is a member of the City of London Corporation Advisory Panel.
The University of Oxford

Oxford is the oldest university in the English-speaking world and lays claim to nine centuries of continuous existence. Oxford attracts students and scholars from across the globe, with almost a quarter of our students from overseas. More than 130 nationalities are represented among a student population of over 18,000. Oxford is a collegiate university, with 39 self-governing colleges related to the University in a federal system. There are also seven Permanent Private Halls, founded by different Christian denominations. Thirty colleges and all halls admit students for both undergraduate and graduate degrees. Seven other colleges are for graduates only; one has Fellows only, and one specializes in part-time and continuing education.

During the 20th century, Oxford has added to its humanistic core with a major new research capacity in the natural and applied sciences, including medicine. In so doing it has enhanced and strengthened its traditional role as an international focus for learning and a forum for intellectual debate.

The University of Paris I: Panthéon-Sorbonne

This leading French university was founded in 1970 after the student revolution of May 1968, the Sorbonne traces its historic roots back to 1257. It aims to bring together the Humanities, Law and Economics, subjects previously taught in highly distinct and hierarchal Faculties.

Some 40,000 are enrolled in 14 teaching and research departments and five Institutes, which offer top level degree courses in law, political science, economics, management and the humanities. The campus is spread across Paris, notably occupying part of the Sorbonne and other prestigious French university buildings.

Paris I is also at the centre of a rich network of international relations stretching across the five continents and continues to play a major role in the training of researchers, academics, judges, lawyers, senior managers and top French civil servants. It is at the forefront of research and teaching in the fields of European Studies, International Relations, Management and Communications.

Leiden University

Leiden is the oldest university in the Netherlands. It was founded in February 1575, as a gift from William of Orange to the citizens of Leiden after a long siege by the Spaniards. It was the first university in the Netherlands to practice freedom of belief and religion, allowing philosophers like Spinoza and Descartes to develop their ideas. The university has three guiding principles: an international orientation; intensive research; and a high quality of education and research.

The university has approximately 17,000 students and 4,000 staff members and has nine faculties, a School of Management and a School of Education. The faculties offer a varied range of bachelor’s, master’s and PhD programmes. In addition, three other units offer post-academic training: the Institute for Environmental Sciences (CML), the School of Education (ICLON) and Campus The Hague.

In coming years, the University intends to make major contributions to society in the areas of prosperity, well-being and culture. To this end, the University is committed to both recruiting and developing talent. This will involve secondary school pupils, university students, and young researchers and academics.

The University of Bonn

Bonn has a tradition going back almost 200 years, a student body numbering 30,000 and an excellent reputation at home and abroad. It is of the leading universities in
Germany. The University is shaped by the people who teach, learn and research here, all of whom benefit from a working in a research university that operates internationally while remaining conscious of its traditions; cooperates with numerous universities and research establishments all over the world; and has developed teaching and research methods that enjoy world-wide recognition.

Living up to its long tradition as a classic University with a full range of courses, Bonn offers nearly a 100 different first degree programmes. Students can choose from a wide and modern range of subjects that allow a multiplicity of combinations. The university provides numerous continuing education courses for mature students, which enjoy great popularity. Alongside the classic subjects, the University of Bonn also developed novel concepts for interdisciplinary and international study. In addition, it maintains partnerships with universities in Europe, America, Asia and Australia, and almost a sixth of the student body is made up of international students.

The Graduate Institute of International Studies (HEI)

The HEI was created in 1927, as an institution providing students of all nations the means of undertaking and pursuing international studies, through multi- and trans-disciplinary approaches, developed since its creation.

It was setup alongside the other development, international and intergovernmental institutions established in Geneva. For a long time it was one of the only academic institutions in the world to deal solely with the study of international relations.

It represents a special interface between the theory and practice of international relations and responds to the growing importance of international relations in the world today. The Institute’s research activities benefit both students, the international community in Geneva, as well as international relations professionals from the diplomatic and private sectors.
Goldman Sachs

Goldman Sachs are leading global investment banking, securities and investment management firm, provides a wide range of services worldwide to a substantial and diversified client base that includes corporations, financial institutions, governments and high net-worth individuals. Founded in 1869, it is one of the oldest and largest investment banking firms. The headquarters are in New York, and the firm maintains offices in London, Frankfurt, Tokyo, Hong Kong, and other major financial centres worldwide. The firm is committed to placing client interests first and emphasise integrity, commitment to excellence, innovation and teamwork. In 2005, the net revenue was a recorded $24 Billion, with an $8 Billion increase since 2003.

The Blackstone Group

The Group opened its first small office in 1985, four staff and a balance sheet of $400,000. Today it comprises diverse companies such as Allied Waste, Celanese, CineWorld, Graham Packaging, Houghton Mifflin, Nalco, Southern Cross/NHP, Spirit Group, TRW Automotive, Texas Genco, and Universal Orlando. The total enterprise value of all transactions to June 30, 2006, was over $158 billion.

The founders hold certain core beliefs from the outset. They believe that in a world of giant organisations there is room for a small firm with the highest levels of professionalism and integrity, and senior-level attention to clients and relationships. They remain committed to investing only in strictly friendly situations, and supporting strong management teams. They invite gifted, entrepreneurial professionals from large firms to join Blackstone in creating affiliated businesses in their areas of expertise. The firm always put significant amounts of its own money into investments and provides entirely objective advice with no pressure from alternative agendas. Its success in pursuing its goals and beliefs is reflected today in the firm’s outstanding reputation and its acknowledged role as a major global player.

British Petroleum

BP is one of Britain’s largest companies and one of the world’s largest oil and petrochemicals groups. It is an international company, with operations in more than 70 countries. Its revenues rose 23 percent to $285.1 billion, and its profits soared 50 percent last year. Its key strengths are in oil and gas exploration and production; the refining, marketing and supply of petroleum products; and the manufacturing and marketing of chemicals. It supports all its businesses with high quality research and technology. BP runs its business on the principles of strong corporate governance, a clear system of delegating accountability and a set of values and policies that guide our behaviour.

Standard Life Investments

Standard Life has been looking after its customers for over 180 years and currently have a client base of over seven million people. They are an investment company focused on delivering consistently leading investment results by working as an integrated global team using an investment style that focuses on change and processes that are both robust and repeatable. Its global investment network, enhanced by our presence on the ground in key markets, gives us a clear understanding of worldwide investment issues. They have operations in Edinburgh, London, Montreal, Boston, Hong Kong and Dublin and representative offices in Beijing and Seoul. Gross sales increased from £125m to £463m last year, representing a 270% increase.

Allen and Overy

Allen and Overy is an international legal practice, with some 452 partners working in 25 major centres worldwide. Its London office was established in 1930 and has over 2,100 staff. The firm puts clients at the heart of their vision by focusing on developing expert knowledge; understanding the uniqueness of clients; managing risk and developing opportunity; integrating across practices; and professionalism.
Global Governance Services Ltd

This firm advises governments, non-governmental organizations and business leaders on governance development around the world, and work with global directors to achieve good practice standards and support them to embody responsibility, fairness, accountability, and transparency.

British Institute of International and Comparative Law

The institute was founded in 1895 and continues its mission of advancing the understanding of international and comparative law; promoting the rule of law in international affairs; and their application through research, publications and discussion. As an independent legal research institute, unaffiliated to any university, it is the only body of its sort in the UK. The Institute creates a diverse community of scholars and practitioners and serves as an unrivalled focal point for its substantial membership base.

The European Corporate Governance Network

This is an unincorporated, not-for-profit association under the laws of England and Wales. It provides an investor-led network for the exchange of views and information about corporate governance issues internationally; examines corporate governance principles and practices; develops and encourages adherence to corporate governance standards and guidelines; and generally promotes good corporate governance.

Morgan Stanley

Morgan Stanley has combined the complementary skills and resources of two powerful organizations: Morgan Stanley, established in New York in 1935, and Dean Witter, established in 1924 in San Francisco since 1997. Their distinguished pedigrees encompass a record of historic firsts: in national and international expansion, in the use of technology, and in the development of new financial tools and techniques that have redefined the meaning of financial services for individual, institutional and investment banking clients.

Reed Elsevier

Reed Elsevier is a leading provider of global information driven services and solutions, employing 36,000 people in over 200 locations worldwide. In February 2006, it reported revenues for 2005 of just over £5bn (£7bn). It serves Customers in the science, medical, legal, educations and business communities. In 2005, it published more than 15,000 different journals, books and reference works, as well as more than 500 online information services and organised more than 430 trade exhibitions.

British Telecom

BT is one of the world’s leading providers of communications solutions serving customers in Europe, the Americas and Asia Pacific. Its principal activities include networked IT services, local, national and international telecommunications services, and higher-value broadband and internet products and services.

In the UK, BT serves more than 20 million business and residential customers with more than 30 million exchange lines, as well as providing network services to other licensed operators.

Standard & Poors

A division of The McGraw-Hill Companies (NYSE:MHP), Standard and Poors is the world’s foremost provider of financial market intelligence, including independent credit ratings, indices, risk evaluation, investment research and data. With approximately 7,500 employees, including wholly owned affiliates, located in 21 countries, Standard & Poor’s is an essential part of the world’s financial infrastructure and has played a leading role for more than 140 years in providing investors with the independent benchmarks they need to feel more confident about their investment and financial decisions.

The McGraw-Hill Corporation

McGraw-Hill have more than 290 offices in 38 countries. Sales in 2005 were $6 billion.

Hermes Focus Asset Management and Hermes Focus Asset Management Europe

Established in 1983 HFAME take a unique approach to investment management. They Both invested in over 250 companies that are fundamentally sound but whose shares are discounted by the market as a result of strategic, governance or financial structuring weaknesses and where shareholder involvement can be the catalyst for change and result in improved performance.

The approach is based on the fundamental belief, shared throughout Hermes, that companies with concerned and involved shareholders are more likely to achieve superior long-term returns than those without. The funds managed by HFAM and HFAME are the logical extension of the corporate governance, voting and shareholder engagement activities of Hermes. It has £62.7bn under management with 311 employees.
As the pace of European integration accelerates, decision-makers, opinion-formers, politicians and citizens in European countries increasingly need to ‘think European’, to transcend national perspectives and empathise with a European mix of national and international cultures.

To meet that challenge, 10 leading European university institutions – Oxford, Leiden, Bologna, Bonn, Paris I, Geneva (Graduate Institute of International Studies), Prague (Charles), Madrid (Complutense), Helsinki and Krakow (Jagiellonian) – have jointly set up an association designed to serve as an ‘international university without walls’, in which future scholars and leaders of our new Europe will have an opportunity to share common learning and confront common concerns together, from a formative age and throughout their active lives.

The Europaeum exists to foster collaborative research and teaching, to provide opportunities for scholars, leaders, academics and graduates, to stage conferences, summer schools and colloquia, and to enable leading figures from the worlds of business, politics and culture to take part in transnational and interdisciplinary dialogue with the world of scholarship.

Recent themed programmes have been on The Future of the European University; A TransAtlantic Dialogue; Culture, Humanities and New Technology, and Islam-in-Europe.

The association operates flexibly, responsibly and simply – with a minimum of bureaucracy and complexity. Small internal grants promote the mission of the association.

All events aim to include professors from three or more partner institutions, while remaining open and ready to work alongside any other bodies or experts. The Europaeum now encompasses all those in Social Sciences and the Humanities, and more recently, experts in Science History and Science Policy.

Longer-terms aims encompass jointly-offered teaching programmes, developing capacity for policy-related work, an internet-based knowledge centre promoting international academic collaboration, as well as new linked scholarship and visiting professorship schemes.

Above all the Europaeum aims to add to the sum knowledge about – and for – the new Europe, to help prepare the future citizens and leaders of – and for – Europe, ensure that all partner universities are fully engaged in both explaining and making Europe’s future, and to leave all those involved in the Europaeum with an enlarged ‘sense of Europe’.

View further details about the Europaeum online at www.europaeum.org

To receive regular updates on the activities of the Europaeum, please subscribe free to the association’s monthly e-bulletin, by visiting the website or contacting euroinfo@europaeum.ox.ac.uk
"If we’re not careful, compliance could be form without substance, and we all need to be alert to the risk of window-dressing and gaming the system, because any time you establish rules you are going to find people who will try to make it look good on the surface when there is rot within. Good corporate governance is not something that can be instituted simply by regulatory fiat."
– George Dallas, Global Practice Leader, Corporate Governance, Standard & Poor’s

“Training non-executive directors in order to make them “fit for the job” seems to be very ill-conceived because I cannot actually see a non-executive director of a large company, for instance GEC in the old days, mastering the intricacies of every single part of the business. Why should he attempt to do something which is patently impossible? He should be what the law calls a “reasonable man” and he should have reasonable instincts, and that is about as far as one could go on the subject of who is and who is not suitable be a non-executive director”
– Sir Ronald Grierson, European Chairman, Blackstone Group, and former Vice President, GEC

“Corporate governance is more about chains, and the chains can be extremely complex – like playing threedimensional chess at times. Investors, not companies, should control the chains. However, to do that, investors have to be properly resourced, they have to understand what they are doing, and they have to do it in a way that is consistent with their clients’ interests.”
– Guy Jubb, Head of Corporate Governance, Standard Life

“I think there is a resistance to accountability. This is OK when the company is going well, but if things don’t do well, the spotlight will be that much harsher. Trust has moved away from companies and I am not sure that companies actually see now that they have role in getting that trust back.”
– David Jackson, Company Secretary, BP

“When it comes to it, most people put their hands up and say: “If the shareholders are against this sufficiently, we will go quietly rather than make a fuss.” Institutional investors can be a catalyst for change and a catalyst for improved performance in companies, as the board themselves can be too blinkered to see that change is necessary.”
– Alastair Ross Goobey, Chairman, International Corporate Governance Network, and Senior Advisor, Morgan Stanley

“As we try to put better models in place for Europe, I think our first priority, and our best goal, would be to eliminate those differences that create significant barriers to a European capital market and discourage investors from one country to invest in another. Having a proper market the size of this Continent would allow us to rely on the market, going beyond a simple theoretical model and seeing it actually work in practice.”
– Professor Antonio Borges, Vice President, Goldman Sachs

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