

# CORPORATE GOVERNANCE: AN INTERNATIONAL OUTLOOK

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名誉

*Meiyo*  
*Honor*  
*Честь*

良心

*Ryoushin*  
*Conscience*  
*Совесть*

高貴

*Kouki*  
*Nobility*  
*Доброе имя*

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Kirova Str. 146/1, 20  
Sumy, 40021  
Ukraine  
[www.virtusinterpress.org](http://www.virtusinterpress.org)

Published in Ukraine by Virtus Interpress  
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ISBN 978-966-96872-2-7

## **A SPECIAL NOTE**

We deliver a word of sorrow to the people of Japan suffering from the terrific consequences of the earthquake and tsunami. Having faced the tragic catastrophe ever happened in Japan the people of the country should not stay alone. The country which made the world rich through sharing its unique culture and history since the 19<sup>th</sup> century, the country which always guarded the principles of honor, conscience and nobility, the country which was the first on the way to the humanity addressing a lot of its help and resources to all those suffering from disasters, needs our help. Now, all humankind are responsible for caring about civilization integrity and its heritage. Now, it is a right time to prove our sincere aspiration to the humanity and stay with the people of Japan in these times testing all of us for humanity and civil integrity.

*The editorial team*

# **INTRODUCTION: A GLOBAL PERSPECTIVE OF CORPORATE GOVERNANCE**

A new area of corporate governance is featured by the corporate governance reforms undertaken worldwide to get through the financial crisis net. Countries, both developed and developing are concerned with the efforts to be taken in the way of enhancing the national markets. Corporate governance plays very important role in these efforts. Academic community makes own contribution.

The new book is devoted exclusively to the international context of corporate governance. Contributors representing many countries of the world were certain about defining the most important, even critical issues of corporate governance for the countries considered. The issues which are considered in details are about ownership structures, corporate control, board of directors, director compensation, corporate law, stock market and corporate governance reforms, etc.

Theoretical essentials are considered too. Conceptual aspects of corporate governance are explored with regard to the impact of corporate governance on firm performance and shareholder rights. Previous literature evidenced in a conflicting manner on the link between corporate governance and firm performance and shareholder rights. We tried to direct the contributors to get inside this link once again and conclude remarkably.

Generally our contributors were successful in developing the agenda for making positive conclusion about the link explored. International comparison of corporate governance practices was quite detailed. Therefore, the book makes its outstanding contribution to development of the importance of corporate governance as a mechanism to improve both firm performance and protect shareholder rights.

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# INTRODUCTION:

## An Academic Outlook

30 years ago, debate in corporate governance seemed to have reached an endpoint. The main battles had been fought. The corporation, this curious ‘artificial being, invisible, intangible, and existing only in contemplation of law’,<sup>1</sup> had long been accepted as a legal person with far-reaching rights and equal protection under the law. It was no longer of concern whether the corporation was more than a *persona ficta*, whether it could be considered ‘a living organism and a real person, with body and members and a will of its own’, as so eloquently expressed by Frederic William Maitland at the end of the 19<sup>th</sup> century.<sup>2</sup> The various theories that had posited different interpretations of the ‘true’ nature of the corporation, fiction and aggregate theory, entity theory and corporate realism, had receded into the shadows. The excitement cause by Adolf Berle and Gardiner Means’ seminal work ‘The Modern Corporation and Private Property’<sup>3</sup> had subsided, and the great debate between Adolf Berle and Harvard Law School professor E. Merick Dodd about the interests and responsibilities of the corporation, with Berle arguing that shareholder value maximisation was the sole objective of the corporation and Dodd advocating a broader, pluralist approach, had been decided in favour of the managerial firm.<sup>4</sup>

However, at first unknown to most lawyers, a new orthodoxy emerged. Originating from the work of Ronald Coase, later refined by Oliver Williamson, Michael Jensen and others, it applied economic principles to corporate law and identified market imperfections, notably transaction costs and informational asymmetries that affected the behaviour of corporate actors and called into question the efficiency of the managerial firm. Corporate governance scholarship began to analyse these market imperfections. The agency problem between management and the shareholders, that is, the difficulty of the shareholders to monitor management and the consequential risk that management will engage in rent seeking, became the focus of attention. It was argued that it was the law’s role to reduce agency costs and protect investors against expropriation by

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<sup>1</sup> Per Chief Justice Marshall in *Dartmouth College v. Woodward*, 17 U.S. 518, 636 (1819).

<sup>2</sup> F W Maitland, *Introduction to O Gierke’s Political Theories of the Middle Age* (CUP 1900), xxvi.

<sup>3</sup> Originally published in 1932 by Harcourt, Brace & World, revised edition in 1968.

<sup>4</sup> See E M Dodd, ‘For Whom Corporate Managers Are Trustees?’ (1932) 45 *Harv. L. Rev.* 1145; A A Berle, ‘For Whom Corporate Managers Are Trustees: A Note’ (1932) 45 *Harv. L. Rev.* 1365.

management.<sup>5</sup> The philosophy of shareholder primacy and the goal of shareholder value maximisation gained predominance in many legal systems, particularly in the Anglo-American world. The reorientation of corporate governance along the lines of transaction cost economics and agency theory went hand in hand with a reinvigorated interest in alternative solutions. Corporate social responsibility came to the fore, and with it views advocating an ‘enlightened shareholder value approach’ or concentrating on the ‘team production problem’ within the corporation.<sup>6</sup> The discussion was no longer confined to the academic realm. Rather, corporate governance failures were at the heart of the biggest corporate scandals of the last decade and contributed to the recent financial crisis.<sup>7</sup> In short, academic debate in corporate governance is thriving again, and the issues it addresses today are as important as ever.

The first two chapters in this book take stock of the debate and assess the insights developed so far. In Chapter 1, *Simona Zambelli* asks whether corporate governance still matters. This question refers to a recent line of scholarship that used quantitative methods to analyse legal rules. It was pioneered by four US economists, Rafael La Porta, Florencio Lope-de-Silanes, Andrei Shleifer, and Robert Vishny (LLSV), who identified a statistically significant correlation between investor protection and capital markets development. Somewhat more controversially, they argued that US style corporate governance regimes provided for a higher level of investor protection, which, in turn, was a causal factor in explaining that securities markets in the US were more developed. LLSV’s research proved highly influential, in academia as well as in practice. It informed the development policies of the World Bank and the IMF and triggered an enormous amount of scholarly contributions, ranging from enthusiastically supportive to almost acrimoniously critical. *Zambelli* reviews the literature, discusses how we can measure good corporate governance, and addresses the most problematic question in this context: whether LLSV’s data and the corporate governance indices computed by researchers following in their wake allow for an assessment of causality. Does better corporate governance lead to better firm performance, or do firms that perform well adopt more shareholder-friendly governance structures?

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<sup>5</sup> The second agency problem that was discussed widely in the legal literature and that informed policy-makers was that between majority and minority shareholders.

<sup>6</sup> M M Blair and L A Stout, ‘A Team Production Theory of Corporate Law’ (1999) 85 Va. L. Rev. 247; A Keay, ‘Ascertaining the Corporate Objective: An Entity Maximisation and Sustainability Model’ (2008) 71 Modern Law Review 663.

<sup>7</sup> See for example OECD Steering Group on Corporate Governance, *The Corporate Governance Lessons from the Financial Crisis* (February 2009), available at <http://www.oecd.org/dataoecd/32/1/42229620.pdf>.

Chapter 2 by *Nicos Scordis* complements the first chapter on corporate governance theory. He focuses on the two paradigmatic views of the interests of the corporation and the goals that corporate governance should pursue: agency vs. stewardship theory. The agency view of corporate governance is concerned with minimising agency costs arising from the separation of ownership and control. Consequently, it equates the interests of the corporation with those of its owners, the shareholders, and expects directors and managers to act strictly in line with the goal of maximising the value of the shareholders' investment. The stewardship paradigm supports a more inclusive view of the corporation with a longer term horizon and grants the managers more independence from the owners to achieve the long-term objectives. *Scordis* considers structural differences between firms following the two models, for example timing-related performance perspectives, strategic flexibility, or attitudes to operational risk. He gathers data from the US insurance industry to test correlation between the performance and operational risk measures and the qualification of the firm as agency or stewardship oriented, thus helping to quantify the effect that the governance models have on firm performance.

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# **INTRODUCTION:**

## **An Academic Outlook**

To all intents and purposes, Corporate Governance is a thriving subject. If we looked either for an empirical evidence or theoretical contribution upon which the former statement could be laid, this book would successfully meet both realms of enquiry.

As time passes by, there are two strong reasons for the fact that Corporate Governance will become as topical as business administration itself: firstly, because it raises the standards for ownership, control, transparency and better management of firms in the global economy and, secondly, because it accounts for innovative architectures in any kind of organizations.

In one of the earliest issues of the journal *Corporate Ownership and Control*, it came out a humble contribution of mine devoted to the Semantics of Corporate Governance<sup>8</sup>. I highlighted there several governance variables of analysis, among which we can single out the following.

The founding charter of organizations and the structure of ownership, the fiduciary role of the Board of Directors and the Management, covenants on behalf of creditors, Furthermore, accountability and transparency, the handling of conflicts of interests, compliance risks, incentives and rewards for the senior management and Directors, and the avoidance of deviant behavior lurking just below the surface of any organization: rent-seeking, soft-budget constraints, and tunneling.

Therefore, Corporate Governance should be regarded not only as a matter of concern to big corporations, but also a task and fiduciary duty for every kind of organization, being in the private or in the public realm. Therefore, it becomes an essential issue for cooperatives of any sort, mutual funds and financial institutions, angels and foundations, limited partnerships and venture capital, state-owned banks, pyramids, closed family owned companies up to multinationals.

It does not come as a surprise that Corporate Governance has spread overwhelmingly around the planet, albeit with a focus on country characteristics, and different law enforcement contexts, as well business practices arising from

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<sup>8</sup> Apreda, R. The Semantics of Governance. *Corporate Ownership and Control*, volume 3, issue 2, Winter 2005-2006, pp. 45-53.



fruitful historical developments and cultural constraints. At variance with conventional wisdom, the study of national styles of governance has brought into light not only a magnificent diversity but a contesting trend for some convergence dynamics still in the making.

The reader will find this book as a manifold attempt to survey both theory and practice, with an agnostic and scientific mind, coupling well-known case studies of highly developed countries with less developed ones, the latter rather being neglected in former books on this subject.

At last, but not least, I wish to pay homage and do justice to Professor Alexander Kostyuk. Those of us that carry out academic research, teaching duties, or consultancy tasks in Corporate Governance, are truly indebted to him, because of his editorial commitments to the journal “Corporate Ownership and Control”, as well as several books already published, even with a forthcoming and challenging journal on governance risks. His scholarship has been providing us with distinguished outlets for the diffusion of lines of research, daring proposals, and timely debates.

This book comes out as his latest editorial craftsmanship, gathering an amazing group of experts to deepen our understanding of Corporate Governance. But knowing Kostyuk’s restless search for excellence, we all feel that there must be other good projects in the pipeline. In the meantime, dear reader, enjoy this liveliest academic achievement.

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