

# **Rethinking Corporate Governance**

## **From Shareholder Value to Stakeholder Value**

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**Roger Blanpain**

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**William Bromwich**

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**ERRATA CORRIGE:** In the *Bulletin of Comparative Labour Relations*, Vol. 73 (2010) on *Labour Productivity, Investment in Human Capital and Youth Employment: Comparative Developments and Global Responses*, the List of Contributors (p.xvii) contained a misprint of the name of Prof. Rosalind Chew, Nanyang Technological University, Singapore. The Editors take this opportunity to correct the error and extend their sincere apologies to Prof. Chew.

## Editorial

This issue of the *Bulletin* contains a selection of papers from the Eighth International Conference in commemoration of Prof. Marco Biagi, on *Rethinking Corporate Governance: from Shareholder Value to Stakeholder Value*, held at the Marco Biagi Foundation in Modena, Italy, on 18–20 March 2010. With contributions from leading experts from all around the world in the fields of labor law, industrial relations, labor economics, labor statistics, human resources management, organization theory and other related subjects, the conference focused on the impact of the global economic crisis and its implications for the future of employment. Against the backdrop of a varieties of capitalism perspective as conceptualized by Hall and Soskice, a key issue under discussion was whether shareholder or stakeholder approaches to management yield the best results in terms of employment outcomes, with a particular focus on employee participation or involvement. As the world economic crisis, or the Great Recession as it is often called in the US, continues to take its toll on employment, pension funds, public services, and living standards, many observers argue that stakeholder-oriented economies, such as Germany, the Nordic countries and Japan, appear to have weathered the storm better than shareholder-oriented economies, such as the USA, the UK and Ireland, where “light-touch” regulation became something of an orthodoxy until the concept was discredited by recent events in the financial markets. These considerations were at the forefront of the discussion as leading scholars from five continents examined national case studies, regulatory models and future scenarios.

In the first chapter, in the section on collective bargaining, **Stefan Zagelmeyer** considers employer perspectives on collective bargaining coverage, the rate of which varies considerably from one country to another. Employers are said to benefit from the standardization of employment contracts, as negotiating costs are reduced. Firms that engage in collective bargaining tend to pay higher wages, and to provide greater job security, with high wages used as a means to

attract more highly motivated individuals. Promotion based on seniority, commonly negotiated under collective agreements, is seen as a way of improving morale within the firm, as management is perceived to be behaving fairly rather than arbitrarily, with an impact on morale and motivation.

Still on the topic of collective bargaining, **Carmen Agut García** considers the efficacy of collective bargaining procedures in Spain, casting light on some of the legal issues arising from the attempt to extend coverage in transnational collective bargaining, that is seen as a means to guarantee a floor of rights across national boundaries.

In another national case study, **John Opute** and **Karl Koch** report on developments in Nigeria, highlighting the key role that unions can play in the transition from a dictatorship to a functioning democracy. Even in cases in which union density is not particularly high, collective agreements can be negotiated that have an impact beyond the union membership. With major oil reserves and a population of over 150 million, the economic outlook of Nigeria is positive, and the country's political development is shown by the higher ranking assigned by the OECD in terms of freedom of association and collective bargaining, though the democratic process is still fragile. In a country with centralized collective wage bargaining, the union focus on nonmonetary issues in bargaining at company level is seen as a way to gain significant advantages for union members.

With reference to Singapore, **Rosalind Chew** and **Chew Soon-Beng** investigate the distinction between adversarial and strategic collective bargaining. The aim of strategic bargaining is to promote employment stability, with a long-term rather than a short-term focus. The authors provide insights into an economy where there has been hardly any industrial action since the 1960s, and where unions manage to extend many of the benefits of union membership to non-members, thanks to the tripartite structure of industrial relations in Singapore.

In the section on participation, **Jacques Rojot** examines employee share ownership plans as a form of employee involvement promoting motivation in the firm. The union response to such plans is often tepid, taking account of the multiple risks for employees, who in the event of bankruptcy are at risk of losing their jobs, their savings, and even their pensions. The author provides an overview of the advantages of employee share ownership, with particular reference to the French case.

Employee motivation is the main focus of the chapter by **Massimo Pilati** and **Laura Innocenti**, with long-term employees included among the most valuable corporate stakeholders due to their firm-specific human capital. Participation in decision-making and sharing in the results of corporate performance is seen as a way to attract, retain, and motivate such employees.

The chapter by **Luisa Ficari** examines workers' voice and participation in the restructuring of undertakings, with particular reference to the provisions in the EU Directive regulating employee involvement in the *Societas Europaea*. The author considers in particular the question of job continuity and redundancies in the case of the insolvency of an undertaking, and how this can be regulated by collective agreement. She also discusses collective agreements regulating the reduction in working hours in response to the economic crisis. Employee involvement,

information and consultation are therefore seen as playing an essential role in the definition of exit strategies in the event of insolvency.

Starting from an historical overview of the Statute for the European Company, that allows for a one-tier or a two-tier structure of employee participation, **Dagmara Skupień** discusses the Polish model of employee involvement. In the past two decades Poland has undergone a major transformation, with state-owned companies going through partial or total privatization, and this process has had an impact on participation. In the view of the author, employee involvement should be a requirement before company registration takes place, but the compromise reached at EU level does not include this provision.

**Inger Marie Hagen** examines the role of employee-elected directors on company boards in Norway, a country with a tradition of strong co-determination rights. She uses empirical data from company surveys to determine the perceived degree of influence of employee-elected directors, and identifies an interesting process by which such directors tend to have greater influence outside the boardroom, as the CEO of the company seeks to establish his/her authority by submitting proposals to the board that have been subject to prior negotiation with the employee representatives. Key issues appear to be dealt with more effectively in direct, informal communication, rather than in the formal boardroom setting, where confrontation between the CEO and the employee representatives tends to be avoided. Employee representatives in Norway are said to reflect a labor-oriented rather than a stakeholder-oriented concept of corporate governance.

Still with reference to employee participation, **Monray Marsellus Botha** considers the South African case, drawing a distinction between three corporate governance models: authoritarian management, collective bargaining, and employee involvement. Unlike Germany, South Africa adopts a unitary board structure, and employees do not sit on company boards. Participation has developed slowly, with unions showing a reluctance to set up workplace forums due to a fear of erosion of collective bargaining. Some South African unions have also expressed opposition to Employee Share Ownership Plans, though they form part of the Black Economic Empowerment (BEE) strategy. In spite of enacting sophisticated legislation, South Africa still faces fundamental problems relating to decent work, housing, and clean water. Training programs and life-long training are seen as key to the transformation of the skills base of the South African workforce, that would enable employees not only to be more productive, but also to negotiate more effectively with management.

In the section on corporate social responsibility, the chapter by **Eric Ogilvie-Brown** casts light on the origins of limited liability, that was initially a privilege granted only to investors in large infrastructure projects, extended to manufacturing companies only at a later date. The author sees the granting of this privilege as a justification for extending benefits to society as a whole, as otherwise it would be a one-sided trade. He examines the case of the Ford Pinto in the 1970s to illustrate the dangers arising from a lack of corporate social responsibility, a case that resulted in lawsuits against the manufacturer in the US courts, in particular *Grimshaw v. Ford Motor Company*. The single-minded focus on “the bottom line” was

evidently a disastrous mistake by the Ford management. Whereas Milton Friedman treated limited liability as a right, the author argues that it is a privilege rather than a right, and that corporate social responsibility is the corollary of this privilege.

The link between labor law and corporate social responsibility is the focus of the chapter by **Attila Kun** and **József Hajdú**, who highlight the four dimensions of corporate social responsibility: economic, legal, ethical, and philanthropic. Legal compliance by itself appears to be insufficient for an evaluation of corporate performance. The authors identify a number of parallelisms between labor law and corporate social responsibility, representing respectively a “hard law” and a “soft law” approach to labor market regulation, and point to the need to avoid the use of corporate social responsibility as a means to reinterpret or evade labor law.

In the Bulgarian context, **Ekaterina Ribarova** examines a series of factors to explain why corporate social responsibility has so far had such a limited impact on the labor market and industrial relations. The author argues that it is perceived as an imported concept, and is mainly adopted in the subsidiaries of foreign-owned multinationals. Human resources policies that go beyond the basic provisions of the law and collective agreements are to be found only in a minority of firms in Bulgaria.

In her analysis of labor regulation in shareholder and stakeholder economies, **Mirella Damiani** considers institutional responses in a varieties of capitalism perspectives. Different levels of regulation between economies can be compared by means of indices comparing employment laws, collective relations laws, and social security. The chapter considers the argument that the higher level of labor regulation in civil law countries can have negative effects, such as higher unemployment, and lower labor force participation. A further argument that is investigated is that the lower level of shareholder protection in the civil law countries leads to underdeveloped capital markets, as in the case of Germany, where total stock market capitalization amounts to 50% of GDP, compared to three times GDP in the US and the UK. The thorny question of executive pay is also given some consideration, along with recent changes in legal protection in the employment field: for example, the author presents statistical findings that the reduction of legal protection for employees in Italy has coincided with a significant decline in productivity. On the other hand, significant productivity gains have been recorded in German companies in recent years, with Germany outperforming the UK. The conclusion of the chapter is that institutional comparative advantage still plays a strategic role, though on specific issues various interpretations have a claim to validity.

In the final section, on corporate governance and regulatory models, the theoretical framework is dealt with by **Hélio Zylberstajn**, who compares the neoclassical approach, in particular shareholder or stockholder theory, with the corporate social responsibility approach, in other words, stakeholder theory. He also provides insights into innovative round-table negotiations in various sectors in Brazil, and concludes that there are three sources of workers' rights: labor and employment law, the provisions of collective bargaining, and extended stakeholder bargaining.

In their overview of the social dimension of transatlantic economic relations, **Michele Faioli et al.** examine not just forms of collaboration across the Atlantic, but also forms of competition between the distinct systems, and point out that the subsidiaries of European companies operating in the United States tend to adopt the local employment regulation provisions, resulting in lower levels of protection for their employees. They also cite the case of a US firm importing union-busting tactics such as captive audience meetings in a subsidiary in the UK. In a globalized system, policy decisions on one side of the Atlantic can have significant repercussions on the other side. Impact assessment procedures should be adopted to highlight regulatory conflicts in a timely manner.

Based on labor statistics data, **Raffaella Cascioli** considers investment in vocational training in times of economic crisis, and highlights the decline in investment in this sector that took place in Italy with the onset of the economic downturn. Arguably, investment in human capital is the key to emerging from the crisis in better shape in an increasingly competitive environment.

In connection with employee representation on company boards in the European Union, **Femke Laagland and Ilse Zaai** report on the impact of the Cross-Border Merger Directive in the Netherlands. Until the adoption of the Directive, the Netherlands had one of the strongest systems of employee board-level representation in Europe. However, as a result of the compromise between the various European systems of employee representation (or absence thereof), Dutch employees risk losing their employee participation rights in the event of cross-border mergers.

In his discussion of shareholder versus stakeholder capitalism, **Kees J. Vos** refers to a prescient warning in the *Financial Times* in 1998 that “EMU’s one-size-fits all monetary policy will be such a straightjacket that flexibility will be needed.” The implication was that continental stakeholder capitalism would inevitably give way to US-style shareholder values, and the author partially supports this claim, also considering the impact of cross-border mergers and acquisitions. However, in his view, the economic crisis has led to a partial restoration of the original balance between shareholder/stakeholder values. While recognizing that shareholder capitalism continues to hold sway, he expresses the hope that taxpayers will not be expected to pay for the next market bubble.

In her report on the management of the National Health Service in Scotland, **Alice Belcher** considers top-down and bottom-up approaches to governance. Clearly in this case there are no shareholder interests to consider, but the author underlines the five principles laid down in the White Paper on European Governance: openness, participation, accountability, effectiveness, and coherence. In the current economic climate one more principle might be added: sustainability.

**Sumanjeet Singh** considers the balance of shareholder and stakeholder interests in corporate governance in an Indian perspective. He also provides an overview of the numerous cases of large-scale corporate fraud that have occurred in recent years, particularly in the US, the UK, Italy, Australia and India. Whereas shareholder-value perspectives give priority to profitability, stakeholder-value perspectives underline the importance of responsibility. Albeit in the presence of shifting battle lines, shareholder primacy prevails in the present climate.

Finally, **Olga Rymkevich and Alezandr Zavgorodniy** provide a short report on the employment of executive staff under Russian labor law, underlining the fact that this is a relationship that does not fall entirely within the purview of labor law. As one of the BRIC countries with a growing presence in the global economy, Russia is clearly of strategic interest and is destined to attract further attention in the field of comparative labor relations.

In conclusion, an impressive number of scholars, including not just established academics with an international reputation, but also researchers in the early stages of their career, representing a range of disciplines and many different national backgrounds, bring to bear theoretical arguments and empirical data with a view to gaining insight into major developments in labor markets and the economy as a whole. The spirit of open-minded enquiry in an international and comparative perspective with an emphasis on the practical dimension that characterized the research work of Marco Biagi lives on in this collection of papers.

*William Bromwich  
Olga Rymkevich  
Iacopo Senatori*

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