A Free Market model of a Large Corporation

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Abstract

The high-profile corporate scandals of WorldCom, Enron, Adelphia, Global Crossing, and others in the United States, and Nortel Networks in Canada have sparked significant discussion in investor, gov¬ernment, media, and academic circles about the need for change to corporate governance stan-dards and practice. The United States government has opted for a regulative approach. The OECD pinpoints that corporate governance is regarded as one of the main causes that has resulted in 2008 to the most significant calamity since the Great Depression. The different trend on the philosophy of running organization is presented including the early Berle and Means and the late Manne's theory of corporation that is discussed fully. Manne's model envisioned a corporate system with categorically no guideline other than common law and customary facilitating statutes. Corporate governance in this scheme is a function of the locus of control. The Market for corporate control as a paradigm for regulation of executive opportunism is stressed. The role of disclosure is discussed followed by presenting the Sarbanes-Oxley. The paper discuss as wekk why corporation are in crisis and suggested some solution. The paper concluded that the The model suggested by Mannes, is illegal today. What is needed now is a larger debate on the real costs and benefits of market and regulatory alternatives to corporate governance.

Key words: Corporate governance, free market, OECD, Mannes, disclosure

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Background

Recently there has been a lot of interest in the corporate governance practices ofcurrent firms, especially after the extraordinary profile failures of large companies. The high-profile corporate scandals of WorldCom, Enron, Adelphia, Global Crossing, and others in the United States, and Nortel Networks in Canada have sparked significant discussion in investor, gov¬ernment, media, and academic circles about the need for change to corporate governance stan¬dards and practice. The United States government has opted for a regulative approach. On July 8, 2002, U.S. President George W. Bush introduced the Sarbanes-Oxley Act that envisioned compelling corporate executives and their audit companies to be liable and accountable to shareholders. These raised the issue of the agency difficulties that can happen between management and shareowners. These scandals remind us that even if we adopt an extremely narrow concept of managerial responsibility – such that we recognize no social responsibility beyond the obligation to maximize shareholder value – there may still be very serious difficulties associated with the effective institutionalization of this obligation. It also suggests that if we broaden managerial responsibility, in order to include extensive responsibilities to various other stakeholder groups, we may seriously exacerbate these agency problems, making it even more difficult to impose effective discipline upon managers.

The OECD pinpoints that corporate governance is regarded as one of the main causes that has resulted in 2008 to the most significant calamity since the Great Depression. Recently a number of papers (OECD, 2009; Kirkpatrick, G., 2009; OECD Steering Group on Corporate Governance, 2010), elicit a number of major warnings from the financial crisis on the issue of corporate governance. These are important contributions firstly because so far much of the attention in both the academic and business world was centered on macroeconomic drivers of the economic downturn, while more microeconomic determinants were often neglected; and secondly because corporate governance is considered as one major cause that has lead to the most important crisis since the Great Depression.

This latter point is a radical evolution in global consensual thinking. The public conviction before the financial crash was that the shareowner superiority prototype of governance must be practical to most companies Worldwide. Today, the financial crash seems to play the role of a 'dividing line' between how corporate governance in advanced economies was understood before this event, at a time where good governance was not yet adopted and corporate scandals consequently multiplied, and how current debates at the academic and societal levels develop today, with some increasing criticisms about the adoption of good governance oriented toward the maximization of the shareholder value. The OECD publications assess three different channels through which corporate governance had a negative effect: (i) the failures and weaknesses in corporate governance arrangements which did not serve their purpose to safeguard against excessive risk taking in a number of companies, (ii) the accounting and regulatory requirements that have also proved insufficient in some areas, (iii) the remuneration systems that have not been closely related to the strategy and risk appetite of the company and its longer term interests (Kirkpatrick, 2009).

The Trend on the Philosophy of the Corporation

Berle and Means (1932) dominated the thinking about corporation and found that each individual shareholder in the 200 largest non-financial corporations owned no more than a small fraction of the company's stock. Berle & Means theorized that given such small and scattered holdings, managers could virtually perpetuate themselves by using corporate funds to solicit proxies. Thus, a large chunk of private property in the U.S. was controlled by non-owner managers who had little incentive to use it wisely. Berle & Means thought the solution to what they thought was a problem was to view the corporation as a political institution. In order to make shareholders into better corporate citizens, they should be given enough information to vote intelligently. Business leaders, entrusted like political leaders with large segments of the economy, should act like statesmen. And when managers and shareholders do not act as they are supposed to under this theory, they should be despised as mercenaries and banished from power.

Manne saw that missing from this picture was any appreciation of the role of markets. Berle & Means and their followers did not take account of the fact that, unlike citizens of a political entity, shareholders are not born into corporations. Rather, they willingly exchange their cash for securities at prices set in an active auction market.

These prices depended on the existence of market mechanisms to constrain managers and empower the owners, giving firms a strong incentive to provide such protection. Since the corporation has survived for a long time in free markets, it makes more sense to identify the market devices that contribute to the corporation's survival than to assume that shareholders have for generations given themselves up as sheep to be shorn.

This insight motivated Manne's work throughout the 1960's and early 1970's. However, the existing theory of the firm offered Manne little help in finding the procedures that permit corporations to work suitably. Coase (1937) had described the firm as a device for minimizing transaction costs in which control by a profit-motivated entrepreneur substituted for setting prices in markets. Coase's theory remained truly no more than a sketch that posed additional questions than it answered. For example, what is the source of the profit that the entrepreneur supposedly produces through his or its control? Alchian & Demsetz's (1972) theory of the entrepreneur's role in team production was a decade away when Manne started writing. What if there are many profit-sharers – how can they effectively control the manager? Jensen & Meckling's (1976) theory of agency costs was still a decade and a half away when Manne started writing. In light of these gaps in the theory of the firm, it is no wonder that Berle & Means' handy political analogy continued to dominate the field more than 40 years after these works were published.

Manne's Theory of Corporation

Manne used economic basics to articulate a comprehensive new theory of the corporation. Manne brought people and ideas together, but he also participated actively in the creative destruction of the existing paradigm. By proving that corporations, and by inference other important institutions, are best analyzed in market terms, and by crafting a rational market for these and other economic ideas, Manne altered the approach scholars, judges, regulators and others reason vis-à-vis the function of law in society. In the wake of Enron and Sarbanes-Oxley took the opportunity to challenge extensive regulation of markets just as Congress was enacting the broadest securities laws since 1934. Manne returned to his theories about the market for control and insider trading to show that they could support efficient corporate governance without extensive regulation, that the demand for regulation reflected interest groups rather than public interest. In other words, Manne's lessons are still valid; we have only to learn them.

In his paper on a free market, Manne (2003) stressed the importance of the "crisis in corporate governance" that has appeared in the last eighteen months or so. This included among others the alleged and real abuses of executive stock options, insider trading, misuse of executive loans, deceptive or biased stock analysis and recommendations, dishonest or disingenuous accounting, hidden favoritism in IPO distributions, executives and directors' conflicts of interest, and exorbitant salaries and other perks. The considerable political reactions to these events, notably the Sarbanes-Oxley Act, raise two questions. First, how did all this happen with seventy years and thousands of pages of federal legislation and regulation designed to prevent just such calamities? And, related to this first question is the second: whether more regulation and a higher budget for the SEC represents the best way to respond to all these events (Manne, 2003).

He stressed that the academic world is detached from reality. He described the principal aspects of an ideal, free-market corporate system. He envisages a system of large corporations and a stock market with no regulation and no law other than traditional common law. Attention was rarely paid to the real economic costs of corporate and securities regulation or to the possibility that government failure was at least as likely

to occur as market failure. One might add that once a system of government regulation is in place, there is rarely any constituency to demand a cost accounting of its efforts or even to question whether its continued existence can be justified (Manne, 2003).

Manne looked for things that made markets work rather than to doubt that they did. He applied to corporations and corporate law the same rules that apply to other market organizations. As in all markets, securities markets can be expected to cause assets to flow to their highest and best use, including well-governed and well-managed firms. Business people who fail the market test, including by trying to be statesmen, willbe unemploye d. As we will see, by asking the right questions about what makes the firm work as a market institution, Manne was able to produce answers that were both provocative and plausible.

Thus, in Manne's theory, the key to the corporation is not law but economic theory, with the federal system providing a mechanism for adapting law to theory. Interestingly, the strongest evidence of Manne's theory has come more than thirty years later with the Sarbanes-Oxley Act. Just as Manne predicted, this increase in disclosure requirements disproportionately hurt smaller firms (Kamar et al, 2005). This may help explain the observed flight of small firms from U.S. public securities markets following the enactment of Sarbanes-Oxley.

Most importantly, Manne formulated a broad economic framework of the corporation that explains the corporation's success and effectively answers Berle & Means, whose criticism of the public corporation had dominated discourse for thirty years. This framework gave Manne a rich opportunity for theorizing that gave rise to several seminal observations:

1. The market for control protects dispersed and passive shareholders from unskilled managers.

2. In the context of this market, shareholders' voting power is essentially exercised in the stock market rather than by voting as in a political election. Thus, efforts to legislate "shareholder democracy" are fundamentally misguided. Individuals or groups make all the important decisions and bear most of the gains or losses from these decisions. Minority shareholders, other than "swing" voters in close votes, have perhaps even less say in operational matters than bondholders. There will be no market for corporate control functioning through stock market transfers. Minority shareholders, vis-à-vis the corporation, will have only the right not to be dealt with fraudulently, and their status as minority shareholders as such will not give rise to any fiduciary duty

3. The efficient stock market plays a key role in the economic theory of the corporation by, among other things, accurately discounting the value of incumbent management and thereby providing the foundation of the market for control. Stock market price changes may signal various kinds of useful information, much of which may be extremely valuable to managers in their day-to-day performance.

4. Given the important role of the market for control in disciplining managers, regulation that increases the costs of takeovers can injure shareholders. Take over can be either hostile or negotiated

5. Publicly traded shares and the market for control provide an economic rationale for many of the details of corporate governance, including the business presiding judgment. There are a variety of reasons why some form of substantial disclosure to the stock market is in the interest of the corporation. No rational person would invest in a publicly traded company's shares when the price of those shares could not be shown to bear some resemblance to the underlying realities of the situation. Another reason for keeping an accurate stock price is that this helps guarantee that the market for corporate control will function effectively. As we have seen, that can be an important value-enhancing characteristic for non-controlling shareholders, because the price carries the necessary signal to potential managers that a takeover might be profitable. A company with publicly traded shares will, therefore, have a very strong and direct financial interest in assuring the market that its shares are correctly priced. The shares of companies which do not have a reputation for assuring reliable pricing will be discounted in the market, usually to the detriment of the shareholders and managers alike. The cost of capital for such a company will be higher, and the cost of a takeover will be lower.

6. This economic framework explains the structure not only of public corporations, but also of closely held firms, where legal rules must adjust for the absence of the public securities markets.

7. Insider trading can be understood as a mechanism of market efficiency and a way to reward entrepreneurial activity by managers of large firms. Insider trading being tantamount to fraud, and full disclosure being the basis of American financial success have probably dulled many observers' senses to both the costs and the failing of our regulatory disclosure system. That insider trading always tends to move the price of shares in the correct direction is probably the most widely agreed upon point in the insider trading debate. The critics of insider trading either implicitly or explicitly contend that the damage resulting from insider trading is greater than the market pricing benefits, and perhaps other benefits, the practice offers (Lawrence, 1990). But these critics have failed to note that insider trading may have been encouraged or positively tolerated by the managers of a large company because it was in the shareholders' interest for them to do so (Manne, 1996).

Insider trading avoids most of the problems with direct public disclosure by the corporation, and indeed the system will work with a precision that is hard to imagine for either a voluntary or a mandated system of explicit disclosure. Insiders will know better than anyone else what the significance of new policies or events is, and they will understand this much earlier than outsiders possibly could. Thus, with a strong interest in maintaining an efficient pricing system for its shares, a company would normally choose insider trading over, or perhaps in addition to, explicit disclosure because it was the cheaper and more efficient device for accomplishing this (Ronald, 1984). The basic point is that insider trading will always have

the tendency to push share prices in the correct direction as measured by the underlying reality. The extent of this effect has been disputed, but not the direction of the vector. Now it can be seen that, whatever the effect, so long as it is in the right direction, companies might well elect to use this device to keep their share price as accurate as possible. In fact, this may well be the strongest argument yet for allowing corporations to elect to allow insider trading and not to have a general law forbidding it.

8. The structure of corporate law could be explained by political as well as throughput thoughts. Competition among the states can erode inefficient mandatory State corporation laws, while interest groups may cause federal regulation of securities markets to diverge from efficiency (Mannes, 2003).

The market for corporate control

Manne's model envisioned a corporate system with categorically no guideline other than common law and customary facilitating statutes. Corporate governance in this scheme is a function of the locus of control. If that is closely held, either by founders, their families, or by investment banks acting either in their own or someone else's behalf, then the corporate governance, even of extremely large enterprises, will not be much different from the governance of a sole proprietorship (Mannes, 2003). Many closely held corporations, in the normal course of events, will become publicly held. It would seem that the market equilibrium pricing argument just made would not be available. But that is not actually the case, because, if the company would be more profitable as a closely held venture, then, in a free market with full information, someone will buy enough of the shares, at the correct price, to make it private again. Therefore, firms that accidentally become publicly held and continue in that situation signify a market resolution that the gains of being publicly held out-weigh the disadvantages (Mannes, 2003).

Market for corporate control as a paradigm for regulation of executive opportunism.

The concept, in brief, is that there is a high positive correlation between corporate managerial efficiency and the market price of that corporation's shares. When there is a fairly unhindered market for corporate control, incompetent and over-compensated management is, usually,dismissed via the method of the hostile takeover. According to Henry G.,"only the takeover scheme provides some assurance of competitive efficiency among corporate managers and thus strong protection to the interests of vast numbers of small, non-controlling shareholders. Compared with this mechanism the benefits of a fiduciary duty concept associated within dependent directors seems small indeed." (Manne, 2003). Nevertheless, whatever one's view of the benefits of a robust "market for corporate control," several developments have imposed severe impediments to this market's effective operation. This includes the Williams Act in 1968 (Pub L), the Delaware court ruling (Delaware 1985), and, by 1992, under intense lobbying from the BRT and other business groups, over two-thirds of the states had enacted highly effective anti-takeover laws. As a consequence of these developments, while hostile takeover activity continues in various forms, by the early 1990s the "market for corporate control" as Manne had envisioned it had effectively ceased to exist (Lipton et al 2001).

This unconstrained market for corporate control, with extreme-form hostile tender offers, delivers an inexpensive and most competent method for handling the managerial self-serving that is inherent in large, publicly held corporations. Whereas alternative measures of monitoring systems, such as shareholder litigation to discipline or expel treacherous managers or a supervisory board of directors or proxy fights or regulatory control will normally flunk. Furthermore, it is not likely that the information essential to efficient management changes will be available to outside regulators. And agency costs of all sorts in these systems are extremely high, and, in some of the cases, especially with proxy fights, free rider and collective-action problems will prevent anything like the efficient number of management displacements. There is good reason to believe that a truly unregulated market for corporate control would be one in which allocation efficiency in managerial services could be readily achieved, often without the need for a hostile tender offer. The board of directors will generally know as much or more about the quality of the company's managers as will outsiders. The managers themselves will, of course, act very differently than if they have a large wall of protection from hostile outsiders. An efficient market for corporate control is consistent with a strong business judgment rule and various procedural barriers to shareholder derivative suits. With the critical assumption of adequate flows of information, there is very little about the governance of publicly held corporations that cannot be left to the marketplace (Manne, 2003).

The rol e of disclosure

There are only two general ways by which information can be integrated into share price (Gilson & Kraakman, 1984). First, the company may actually disclose to the public the information that would affect stock prices, and second, they may allow trading by people who have early or immediate access to relevant information—so called insider trading. The first of these two methods can be very inefficient and costly (Dennis et al 1983), and many companies will make a correct business decision to refrain from explicit disclosure of some information. Companies listed on the New York Stock Exchange in 1932 were already making full disclosure of the main kinds of information subsequently required for all publicly held companies. Thus, it is hardly any wonder that the large-business community did not object to the disclosure requirements of the Securities Act of 1933, and indeed generally welcomed them. The requirements would not cost them much more than they were already spending. But their competitors, especially among smaller companies or companies just going public, might well have found that this additional cost would not result in commensurate returns.

The first and perhaps most serious problem that a company faces when it decides to make explicit disclosure to the public is knowing just how much and which information to disclose. It is clearly not recommended that a business operate fully in a goldfish bowl so that each change is directly identified (Oesterle,1988). Together with the difficult situation that this

would lead to, there would be a huge amount of information accessible to the public and that the information at best would become insignificant (Goshen & Parchomovsky, 2001).

Nonetheless periodic public disclosure of financial results of the preceding period, untimely as it may be for trading purposes, served an extremely important function. It tended to confirm that the price of the company's shares did in fact accurately evaluate the company's prospects for future cash flow or earnings. Thus, while we would anticipate explicit disclosure of financial results at the end of some stated period, we would not expect corporations to make immediate disclosure of every significant event that occurred.

Since direct disclosure of information cannot be relied upon to keep a share price accurate, all companies, large and small, would find that the second means for integrating new information into share price, insider trading, was both cheaper and more accurate. As long as the trading accurately integrated information into share prices, managers might care less about who benefited from early access to such information.

Sarbanes-Oxley

In the case of Sarbanes-Oxley the press mainly concentrated on its formation of a new Public Company Accounting Board and its instituting of new standards of auditor independence. One title of the Act, however, is titled "Corporate Responsibility," and several attributes of Sarbanes-Oxley's method to corporate governance need vigilant attention.

First, as we pointed out above, the only part of the "consensus" view of corporate governance that Sarbanes- Oxley enacted into federal law concerns the composition and authority of the audit committee (American Bar Association, 2002). To an extent, this limited federalization of corporate structure of Sarbanes-Oxley prohibits outright any publicly held corporation from making a loan to any of its directors or officers; 197 (2) it forces the CEO and CFO of any publicly held corporation that is required to file a financial restatement "due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws" to reimburse the corporation for any bonuses received or profits from stock sales realized during the 12- months following the filing of the inaccurate financial report; (3) it requires CEOs and CFOs to certify that all financial statements filed by their corporations with the SEC "fairly present in all material respects the financial conditions and results of operations of the issuer…" and makes it a federal crime to do so "knowing" that the financial statements do not; (4) it prohibits directors and executive officers from selling company stock during benefit plan "blackout periods;" and (5) it makes it unlawful for any officer or director to take any action "to fraudulently influence, coerce, manipulate, or mislead" the corporation's auditor. In the "consensus" view, a strong independent board can and will protect stockholders from management's temptation, in Berle and Means' words, to "direct profits into their own pockets [and fail to run] the corporation…primarily in the interest of the stockholders." Berle and Means (1991), at least in the five areas identified above, Sarbanes-Oxley reflects the Congress's serious doubts about the ability of the board of directors, however independent, effectively to perform that function (Public Company Accounting Reform and Investor Protection Act of 2002).

Second, in the audit committee area, Sarbanes-Oxley does follow the "consensus" model of corporate governance by requiring every publicly listed corporation to have an audit committee composed entirely of "independent" directors, defined as individuals who are not in any way "affiliated" with the corporation or receive "any compensatory fee" from the corporation other than for serving on the board of directors. The audit committee must be "directly responsible for the appointment, compensation, and oversight" of the corporation's outside auditor, and pre-approve any "nonaudit services" that the outside auditor provides to the corporation. The audit committee is required to receive from the outside auditor reports as to "all critical accounting policies and all alternative treatments of financial information discussed with management" And the audit committee must have "the authority to engage independent counsel and other advisers." and to compensate these advisers through such corporate funding as it determines appropriate.

Third, the method by which the Congress chose to impose the new audit committee obligations on publicly "listed" corporations are exactly that suggested by the Task Force. The importance of this clearly intricate method has largely left unnoticed, but by arranging the audit committee obligations in this way, corporations, their boards of directors, and their audit committee members are not faced with liability in the event the audit committee requirements, for whatever reason, are not adhered to. Indeed, as noted above, even an interventional breach of the new audit committee requirements will not be actionable because those requirements will be imposed by self-regulatory organization rules (Report, 2002).

Corporation in crisis

Business corporations are significant players in the modern economy. Big Corporations act as an effective counterweight to Big Government (or vice versa). But there are also times when the two of them weigh heavily on the freedom of non-artificial persons. Both are social organizations, mainly concerned in removing "the human factor," in "socializing" human beings into corporate creatures, docile citizens, and ditto workers. Both rest their claim for legitimacy on the purported fact that they can satisfy our needs better than we can ourselves (Rechtswetenschappen, 1983). The corporate system of business association has established itself an extremely useful method for rallying capital and labor. It has led to much accomplishment. However, there is a downside of those successes (Hessen, 1979; Barry, 1998).

Over the year there is a major change on the opinion of the role of the board of directors. At the beginning of this decade, boards of directors were perceived as working most suitably by consensus, not conflict, and the outside directors' principal value was assumed to be that of experienced, positive advisors to the CEO, offering knowledgeable and objective

perspectives on the company's competitive challenges. Gradually, academic and regulatory worries were progressively articulated that such friendly, conflict evading boards were mainly rubber stamps for CEOs. As corporate "scandals and abuses" sustained throughout the 80s and 90s, this "consensus" view of the monitoring board as "best practice"spread and sharpened, leading finally to Sarbanes-Oxley's audit committee requirements and the NYSE's novel listing standards. All these developments are based on the idea that upsurges in director independence and enablement will result in reductions in occurrences of management abuse. This is at best debatable as to whether the public can rely on such measures to assure good corporate governance (Bhagat &Black, 1999).

To start with it is known that in 1990s and early 2000s the boards of directors were certainly extremely more independent than those in the early 1970s. However, certainly no one would contend that the managerial misdemeanours causing the enactment of the FCPA were inferior to those causing the passage of Sarbanes-Oxley. Enron, WorldCom, Adelphia, Tyco, and Global Crossing were all listed on the NYSE or NASDAQ. These companies were in full compliance, formally at least, with all applicable requirements for board and audit committee independence, yet it would be hard to find any corporation in the 1970s whose management behaved with comparable piracy.

Second, if independent directors are to perform an effective monitoring role, they need "to bring a high degree of rigor and skeptical objectivity to the evaluation of company management and its plans and proposals." But these characteristics are likely to be far different from the characteristics of directors valued by a CEO for their strategic insights and business acumen. Third, if the principle of the monitoring board is correct, that is, if the stockholders are, in fact, to trust the independent directors to stop management opportunism, then one would anticipate that when such a board fails to stop such opportunism, through negligence or worse, it should be possible to call the board to account for its failure. However, this is not the situation (Langevoort, 2001). On the contrary many prominent features of corporate law are designed for the express purpose of making it difficult for shareholders to hold the board legally responsible, except in the most provocative circumstances and it would be dangerously optimistic to assume that the level of judicial supervision of business can be dramatically increased without unforeseeable and incalculable consequences for the efficiency with which businesses make necessary adaptive decisions. When more scandals and flagrant abuses occur, the consensus recommends even more independence, and then when scandals and flagrant abuses continue, it recommends yet more independence, and so on and so on.

In Sarbanes-Oxley, the Congress displayed its annoyance with this recurrent ratcheting up of the standards for, and powers of, the independent directors by enforcing federal prohibitions on such issues as corporate loans to executives and forced executive repayments of bonuses and stock gains before corporate restatements. Nevertheless, after observing independence and empowerment ratcheted up and up and up for 30 years, our deduction is that enough is now enough. It is time to recognize that other best practice models of corporate governance need to be evaluated. First, the costs and benefits of allowing an efficient market for corporate control to develop needs to be re-evaluated. Second, members of the consensus and particularly the establishment business community need to think seriously about the trade-offs between boards that counsel and boards monitor. And third, attention needs to be paid to other approaches to controlling management opportunism.

OECD and the crisis

The crisis that began in 2008 is the most serious crisis since the Great Depression. At the macroeconomic level, financial policy in developing nations is far too extensive and leads to the drop in interest rates. This creates a prosperous state in asset prices, particularly in the housing sector where borrowing increases quickly. This will lead investors to look for greater returns on investment and incline to disregard the danger in their choice to invest since they think that the fresh financial instruments available intrinsically play the role of risk spreading throughout the whole financial system. The microeconomic reasons for the crisis is fundamentally linked to corporate governance. On the issue of risk, the OECD principles in 2004 stated that "the board should fulfill certain key functions including reviewing and guiding corporate strategy, major plans of action, risk policy" (VI.D.7); while on the issue of remuneration, the recommendation is to align "key executive and board remuneration with the longer term interests of the company and its shareholders" (VI.D.4). Nevertheless in reality, principles of good governance compensate high levels of risk taking, and the incentive systems endorsed by good governance augments the fiascos of risk management. Kirkpatrick (2009) contends that this happens essentially for two reasons: first, since most of the time the information is not automatically accessible to the board; and second, board's lack of banking and financial experience often prevent an appropriate treatment of the information when available. Paradoxically, the deficiency of a low experience in banking and finance at the level of the board is especially predominant in the banking system, where "Bear Sterns was taken over by JPMorgan with the support of the Federal Reserve Bank of New York, and both in the US (e.g. Citibank, Merril Lynch) and in Europe (UBS, Credit Suisse, RBS, HBOS, Barclays, Fortis, Société Générale) were continuing to raise a significant volume of additional capital to finance, inter alia, major realized losses on assets, diluting in a number of cases existing shareholders" (ibid, p. 4).

According to OECD Assessment governance can be regarded as one key cause that has lead in 2008 to the most critical predicament since the Great Depression. The various publications by OECD were mainly advocating the model of shareholders primacy as a key element in the efficiency and performance of the industrial structure in advanced countries. Despite criticisms of the model the conviction was reasonably that principles of good governance were not adequately comprehensive and thorough, and that the sectorial crisis was more principally related to the explosion of a speculative bubble. The subprime crisis appears to propose that this conviction needs to be altered markedly, since to start with the existing world information is never thorough and faultless and agents

have intrinsic difficulties in using efficiently the information; and secondly as shareholder primacy involves short-termism in decision making (Berle, A, 1932). In this context of post crisis, the primary lesson to be drawn is that firms, investors, and policy makers should be aware that scores and measures of corporate governance tend very often to be short-term oriented and will never be complete, with the risk of leading to over- or under- estimates of the actual situation of companies in governance. Therefore corporate governance principles must be more concerned with maintaining a higher constancy of firm performance than towards a higher performance in itself (Buchholz& Rosenthal, 2002).

Conclusion

The idea will be that if good governance improves performance as well as performance volatility, this can lead to higher booms and bursts witnessed in manufacturing and financial sectors in the 2000s. Therefore, the simple implementation of the principles of good governance will most probably have a disturbing impact on performances. At the policy level, this would implicate that if one may contemplate the principles of good governance as generally sufficient, yet application stays a serious issue. The latest legislative and judicial decisions have exposed the Manne model "the market for corporate control" of much, if not all, of its practicality as a management regulator mechanism.

However, what is also apparent is that in a period of crisis, corporate governance may also have negative impacts which are basically that the information used in the organization is not necessarily the most updated, that treatment of the information is also not necessarily the most efficient due to lack of competence of the board, and that short term at the level of risk management and remuneration scheme finally prevail ex post despite more long term orientations defined ex ante.

The model suggested by Mannes, is illegal today. But the fact that we have become familiar with a certain system does not in any sense make it more desirable than this alternative, which, after all did exist for some time with no real evidence of any social or economic harm. Markets, with protection of property rights and contract enforcement, do work as well as implied by this model. In the enormous literature on corporate governance there is little or no evidence that either market failures or monopoly have necessitated anything like the regulatory system we presently have. Defenses of the present or any proposed regulatory system based on nations of wealth redistribution or ethical standards should meet the standards of logical and empirical justification (Manne, 2003). Scholars have for too long been led by events into accepting the status quo and building on it. What is needed now is a larger debate on the real costs and benefits of market and regulatory alternatives to corporate governance.

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