

Book Review

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Regulating Corporate Governance in the EU: Towards a Marketization of Corporate Control

by Laura Horn

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Corporations are created as legal persons by the laws and regulations of particular jurisdictions and they are directed and controlled by the system referred to as 'corporate governance'. Corporate governance determines the way in which rights and responsibilities are distributed among different participants, like managers, shareholders, as well as workers and other stakeholders in corporations, and also specifies the rules and procedures for making decisions in corporate affairs. In this sense, it is closely related to "those practices that define and reflect the power relations within the corporation and the way, and to which purpose, it is run" (p.32). Therefore, corporate governance provides the structure for corporations to set and pursue their objectives within the context of economic, social and regulatory environment in which they are incorporated or run their business. It is one of the key elements in improving economic efficiency and growth as well as enhancing investor confidence. However, the high-profile collapse of several large corporations in 2001 and 2002 and the recent financial crisis have revealed serious shortcomings in corporate governance.

In this book, the author gives a broad perspective on the historical and theoretical basis of corporate governance and its transformation at the national and EU levels, the development of company law and its role in European integration, as well as the construction and extension of the capitalist market and its mechanism. It is also easy to read and understand as the author explains very complicated issues in a very simple way without affecting its academic value. This important book therefore provides a valuable resource for economists, EU experts, legal practitioners and academics, who are interested in corporate governance.

The book consists of eight chapters, opening with an introductory chapter which sets out a range of perspectives on corporate governance and discusses the key concepts applied in the book. The author's theoretical framework, analysing the transformation of corporate governance and its regulation from the critical political economy point of view is the subject of Chapter Two. Here, she also examines the role of the capitalist state and regulation in the social construction of markets and the configuration of power relations in the modern corporations, together with the internal and external dimensions of corporate governance. In the third chapter, global capitalist restructuring and corporate governance regulation in the European political economy is analysed in both the national and EU contexts. Regulatory developments after the corporate scandals of 2001-2 are covered. Here too, different corporate governance regimes in the EU, including those of the UK, France and Germany in are compared alongside the USA from the perspective of financial market integration. Chapter Four focuses on company law in the EU. It is wide-ranging, dealing with the initiation of and legal base for the company law and harmonisation programme, historical developments in company law and corporate governance in the light of directives, as well as the European Company Statute and workers participation. Here, the author discusses how the objective, as well as the subject, of company law has changed with respect to worker participation and why

worker rights have been consigned to the area of labour law whilst the company law, and corporate governance regulation have become increasingly focused on the rights of shareholders.

These early chapters provide the basis for Chapter Five and its subject matter, corporate governance in the EU with a detailed analysis of the integration of financial markets through the Financial Services Action Plan, the Take Over Directive, the role of the High Level Group of Company Law Experts (HLG) and other expert groups in the policymaking process. In this chapter, the author also examines those corporate scandals that emerged in the early 2000s as a result of auditing and accounting failures. It looks too at the other regulatory shortcomings in corporate governance and the Commission's Company Law Action Plan designed to re-establish investors' confidence, to strengthen shareholders' rights and to foster the efficiency and competitiveness of business. The role of the European Court of Justice through its rulings on the freedom of establishment and golden shares forms another significant part of this chapter. Chapter Six moves us to the question raised in the title, delivering an analysis of the marketization of corporate control as a political project. In this chapter, the author discusses the marked shift in the relationship between company law, labour law and capital market and securities law, which are the main constituents of the regulatory framework for the modern corporation. She particularly emphasises the change in the social purpose of company law, briefly touching upon corporate social responsibility in connection with workers' rights. Here, she explains how various aspects of corporate control, for instance with regard to worker participation, were excluded from the perception of corporate governance and now it is perceived merely to include internal and external control mechanisms between shareholders and managers. Other matters covered here are the role of external control in corporate governance regulation, the changing form of regulation, social forces in the making of the marketization project and its European dimension and, the transnational politics of corporate governance. The seventh chapter deals with the global financial crisis that started in 2006-7 and those regulatory responses to it that have emerged in both the USA and the EU since then. The final, concluding chapter places a particular emphasis on the role of the state in creating the legal and political preconditions for the modern corporation, and in encouraging the development of a particular form of corporate governance.

In this well-structured and stimulating book, the author provides answers to a number of topical questions as well as identifying new questions for further studies. Particularly, the author's approach to the social aspects of the corporate governance makes this book very significant and distinguishes it from the other books about corporate governance. In this fast-moving area, however, the book would already benefit from some updating, especially with regard to certain articles renewed in the EU Treaties.
