

# The Global ESG Stewardship Ecosystem

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# Introduction

- A growing body of literature examines corporate law through an international or transnational lens. Eg, Pargendler 2021; Halliday & Shaffer, 2015.
- Our paper examines the phenomenon of ESG stewardship, which is underpinned by the “global ESG stewardship ecosystem”.
- “ESG investing is a culture-war battle that both sides might lose” (Duncan Mavin, *Washington Post*, Feb. 20, 2023).



## CULTURE WARS IN AMERICA

A Documentary and Reference Guide

Glenn H. Utter



# Our paper's contribution

- (i) Highlights the ecosystem's scale and its influence in public company governance.
- (ii) Challenges assumptions under the “agency capitalism” paradigm, eg, Gilson & Gordon, 2013; Bebchuk & Hirst 2019.  
  
*Cf* the traditional image of institutional investors (Gilson & Kraakman, 1991).  
  
ExxonMobil activist campaign = the embodiment of the “agency capitalism” paradigm. *Cf* Australian “woke bloke” campaign against AGL + institutional investors acting without a catalyst.
- (iii) Explores whether coordinated, transnational ESG stewardship will lead to greater convergence in ESG norms and practices across global markets. Or will the result be “divergence within convergence”? (Gordon, 2017).

# Traditional image of institutional investors

- “A paper colossus, alternatively greedy and mindless, but in all events a less important corporate constituent than the other kind of investor, the real shareholder”.
- Gilson and Kraakman, “Reinventing the Outside Director” (1991) 43 *Stan L Rev* 863, at 863.



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# Institutional investor stewardship codes

- Stewardship codes are typically non-mandatory codes of conduct
  - Originated in the United Kingdom in 2010 – reflect issues of “problem framing” and “who writes the rules?” Cf Japan and USA.
- Stewardship codes have proliferated globally – now exist in at least 20 jurisdictions.
- A number of codes now specifically emphasise the importance of investors engaging with public companies in relation to ESG issues.
- BlackRock, *BlackRock Investment Stewardship*,  
<https://www.blackrock.com/corporate/about-us/investment-stewardship>.
- Are stewardship codes driving activism or playing catch up?

# However, there is a larger context ...

- There is an important **cross-border (or transnational)** dimension to the growing significance of ESG stewardship.
- Ie, there is a **substantial “ecosystem” of organisations** which acts across national borders and drives developments to enhance corporate accountability for ESG issues.
  - We call it the **Global ESG Stewardship Ecosystem.**
  - It includes international agencies, advocacy organisations, institutional investors, investor associations and networks, and commercial service providers.

# The Global ESG Stewardship Ecosystem

The members of the ecosystem:

- act at a **transnational or cross-border level** with a view to exerting influence across national borders;
- frequently act in a **coordinated and networked manner**; and
- are driving developments in ESG stewardship both at **the normative level** and **“on the ground”**.



# Key Implications

1. Global ESG stewardship ecosystem highlights how **collective action and other synergistic interactions** underpin investor influence-wielding in public company governance.

This insight builds on previous studies which highlight the importance of institutional investor collective action, eg:

- Balp & Strampelli, *Institutional Investor Collective Engagements* (2020)
- Becht et al, *Outsourcing Active Ownership in Japan* (2021)
- Dimson et al, *Coordinated Engagements* (2021)
- Bowley & Hill, *Stewardship and Collective Action: The Australian Experience* (2022)

# Key Implications (cont'd)

2. This suggests the need to revisit the conception of the institutional investor as “rationally reticent” and dependent on the initiatives of others (eg, hedge funds).
3. Will the increasing use of collective action eventually extend beyond traditional E, S and G issues and enable institutional investors to become more proactive across a broad range of commercial and strategic issues affecting investee companies?
  - Or are there limits to the types of issues which, as a practical matter, can be addressed through investor collective action?

# Key Implications (cont'd)

4. The activities of the ecosystem reveal how norms, practices and “on the ground” ESG stewardship/activism are being shaped by **transnational factors**, not just local or regional factors.
  - Important for law makers and regulators to appreciate that corporate accountability expectations and practices in relation to ESG are driven by transnational factors.

How will the interaction between the Global ESG Stewardship Ecosystem and the U.S. “corporate governance machine” play out?

# Rio Tinto Case Study

- The Rio Tinto case study = an interesting example of collective transnational legal ordering, involving the E, S and the G of environmental, social and governance.

