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Members' Debrief

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By George Dallas

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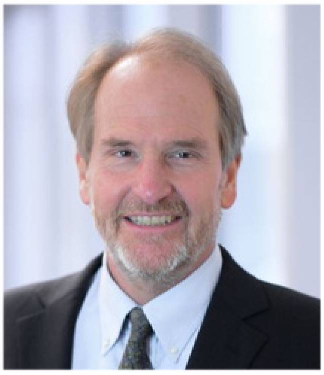

Greetings,

I'm George Dallas and I am a longstanding governance professional and one of the original practitioner members of ECGI since its launch in 2002. ECGI has been useful throughout my professional career in credit ratings at Standard & Poor's, asset management at F&C Investments and as a policy director of the global investor body, the International Corporate Governance Network. Though not an academic, I have authored dozens of professional publications, including two books, and have taught an MSc class in corporate governance at Bayes Business School.

I now divide my professional time between supporting ECGI with its content strategy and working in executive education in governance and stewardship, including at the Cambridge Institute for Sustainability Leadership and as a member of the Advisory Council of the Corporate Governance Institute of the Frankfurt School of Management and Finance. This competes for attention with my membership in a London Renaissance chamber choir and playing the five-string banjo in a local bluegrass band.

ECGI is a cherished part of this mix. Throughout my professional journey, academic research in governance has always been an important resource and source of guidance for me— to keep track with current thinking, to support my conceptual understanding of governance issues and to have a better sense of what we do and do not know about governance empirically. As a practitioner I have found ECGI to serve as a high quality, convenient and efficient filter to focus on the leading governance research that is coming out.

The ECGI Members' Debrief

In February 2024, we introduced a resource exclusively for ECGI members called The ECGI Members' Debrief, this monthly newsletter was created to provide a timely, digestible overview of the latest developments in corporate governance and ECGI content. Each edition brings to your attention the past month's working papers from the ECGI Research Members, an update on key market and regulatory developments, along with a focus on three recent working papers that catch my eye— and which I approach critically as a practitioner discussant.

While the monthly newsletter is a benefit of ECGI membership, we now offer this bi-annual compilation to all of the members of our community. It includes a review of selected research papers that featured in the newsletters, leaving out the monthly round-up of news and events, which are more time-specific. For non-members who enjoy the content of this report, we encourage you to consider ECGI membership (very affordable, great value!) so that you can receive the full report every month, along with the update on key market and regulatory developments.

We hope you enjoy the discussions!

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Best wishes,
George Dallas
Head of Content
Editor of The ECGI Members' Debrief

Culture and Economics

Paper: **Embedded Culture as a Source of Comparative Advantage**
Authors: **Luigi Guiso** (Einaudi Institute for Economics and Finance and CEPR); **Paola Sapienza** (Stanford University - Hoover Institution, NBER, CEPR and ECGI); **Luigi Zingales** (University of Chicago, NBER, CEPR and ECGI)
ECGI Working paper Finance series #1027/2024

In this very interesting finance paper there is not an equation or regression table to be found. But that may be part of the message. In this paper Luigi Guiso, Paola Sapienza and Luigi Zingales make use of their shared Italian identity to reflect upon how the Anglo-American influenced concept of homo economicus universalis contrasts/conflicts with what they term 'embedded culture'— namely, how sociological, ethical, anthropological and psychological norms can influence economic thinking and behaviour.

The authors remind us that economics as originally conceived, at least by Adam Smith and John Stuart Mill, had foundations in moral philosophy. But post-World War II they observe how 'the embrace of mathematical formulation' began to dominate the economics profession, effectively squeezing out cultural considerations in lieu of the rational elegance of establishing equilibria and maximising utility. Factors such as beliefs, values, ethics, trust, social cohesion and the like were effectively regarded as too gooey in nature to fit into rigorous quantitative models.

Yet redolent of Goethe's transformative Italian trip in the early 19th century, where he learned to see the world in ways that fundamentally changed his own thinking, the authors share their reverse journeys out of Italy to live abroad in the US to explain how their 'lived experiences' as Italians prompted them to question the economic orthodoxy of homo economicus and to consider the role of culture in economic thinking. Specifically, they employ the term 'embedded culture' from the Stanford sociologist Mark Granovetter which posits that economic rationality operates within — or is embedded in — cultural dynamics and that the economic decisions of individuals are not made in a social vacuum.

Using the concepts of social capital and trust, the authors make an interesting intra-Italian contrast to illustrate the difference in economic performance between Northern and Southern Italy. They suggest that the northern Italian cities that achieved self-government in the Middle Ages developed higher levels of social capital relative to southern Italy— which, in turn has led to higher levels of trust and stronger economic performance. In this context, culture is positioned a determinant of regional comparative advantage.

The authors then review the academic literature on culture, beginning with what they call the 'functional' corporate culture, in which cultural factors are employed as a means to the end of profit maximisation.

But they also explore wider theories of corporate culture that go beyond its role in maximising shareholder value. They ultimately conclude that the 'time has come to accept the idea of embedded culture as an important initial endowment that individuals or nations share'.

They also 'highlight the need for economic models to incorporate these cultural factors to better understand and predict economic behaviour across different scales'. Among other things, the authors suggest that the concept of shareholder welfare maximisation (however potentially subjective in terms of measurement) may offer a more robust conceptual approach to economics than the narrower shareholder value model.

Ultimately, the authors are effectively putting the homo economicus in its place. In the real world, economics is part of a wider social system and not an end unto itself. Cultural factors cannot be ignored, even if it may be inconvenient or difficult to do so with mathematical rigour. The authors also differ 'embedded economics' from the field of behavioural economics on the basis that the embedded approach challenges the universality assumption of economic reality and recognises the impact that culture has in shaping an individual's or a firm's economic rationality.

The paper is rich and thoughtful, containing many fun nuggets— including the political differences between Wrangler and Levi's blue jeans, the adoption of Greenwich Mean Time, and the observation that in the Italian educational system cheating on tests seems to be socially acceptable. In many ways the paper complements Amir Licht's paper on culture and law, which I reviewed in 2024.

From my own professional experience, I have had the benefit of analysing companies and meeting with management in many corners of the world and have borne witness to different cultures of capitalism. So the paper resonated with me. I am impressed with the authors' analysis and sympathetic to its conclusions— and can happily recommend this paper as a stimulating read.

Read the paper: https://www.ecgi.global/publications/working-papers/embedded-culture-as-a-source-of-comparative-advantage

EU Sustainability Reporting

Paper: **How the EU's Sustainability Due Diligence Directive Could Reshape Corporate America**
Authors: **Luca Enriques** (University of Oxford, European Banking Institute and ECGI); **Matteo Gatti** (Rutgers University and ECGI); **Roy Shapira** (Reichman University (IDC), University of California at Berkeley and ECGI)
ECGI Working paper Law series #817/2025

Can the combined cocktail of the 'Brussels Effect' and the 'Delaware Effect' change the behaviour and attitudes of American companies regarding sustainability? Luca Enriques, Matteo Gatti and Roy Shapira explore this question in their paper about the potential impact of the EU Corporate Sustainability Due Diligence Directive (CS3D) on US firms and the fiduciary duties of directors.

The authors begin by noting the 'growing divide' between the EU and the US regarding corporate governance and corporate social responsibility. The paper addresses the EU's sustainability agenda and serves as a useful primer on the CS3D, which was put into law in 2024— as the latest, and arguably the most far reaching, of the EU's regulatory initiatives to promote sustainable development. While there are many facets of CS3D, a key distinguishing feature focused on in the paper is the fact that CS3D goes beyond reporting and disclosure and more prescriptively requires companies to actively 'identify, prevent, mitigate, and account for the adverse effects that they create on human rights and the environment'. Moreover, the scope of this requirement extends through a company's entire global supply chain.

The other key feature of CS3D focused upon in the paper is its extraterritorial reach. The authors focus in particular on how large US companies with large European operations will be affected, not only within Europe, but also globally. They go so far to say that how the CS3D impacts US companies 'is one of the most important corporate governance issues of our times.' As the authors note, CS3D is a 'glaring example' of the EU's aspiration to be the global standard setter with regard to sustainability and sustainable corporate governance.

To leverage the potential impact of CS3D in the US the authors invoke the Caremarkoversight standard stemming from a 1996 derivative lawsuit relating to a Delaware-incorporated company. The standard establishes conditions in which directors face personal liability if they demonstrate a conscious disregard for their oversight responsibilities.

Importantly, the Caremark standard goes beyond disclosures and more prescriptively requires companies to have in place an appropriate monitoring system relating to social and environment factors, as well as a requirement to respond appropriately to 'red flags'. The authors argue that the one-two punch of CS3D requirements and the Delaware Caremark standard increases the scope and exposure of US company directors to derivative lawsuits relating to social and environmental performance— if these factors are judged to be insufficiently monitored or acted upon. The authors also address the additional scope of Delaware's 'Massey doctrine' which requires directors to consider if their business plan is predicated on breaking the law. They speak to the 2019 Marchand decision in which the Delaware court ruled that the company's directors were in breach of their oversight duties, a ruling that may stand to underscore the urgency for greater monitoring and action vis-à-vis sustainability risks.

Hence, the aggressive nature of CS3D is introducing an agenda which, in tandem with the Caremark standard, has the potential to hardwire the consideration of sustainability factors into director fiduciary duty in the US— and potentially influence board behaviour, composition and agendas regarding sustainability. All thanks to the EU's global sustainability leadership the CS3D can help to bridge the Transatlantic 'growing divide' in corporate governance. But will it?

As a red-blooded American I have my doubts. Not because I disagree with the endgame of greater board oversight over sustainability matters. Boards should be doing this as a matter of good practice in any event, without legislative fiat. But I do question if this EU legislation can truly catalyse a change in US corporate culture. Other Americans whose blood is redder than mine are likely to dismiss CS3D as an unwelcome foreign political intervention to foist leftist and ‘woke’ principles into the governance of US companies. Particularly in Donald Trump’s America this may well surface as a political clash of incompatible corporate cultures.

While the nature of CS3D is not such that it can be ignored by US companies, the authors recognise the potential for what they call ‘cosmetic compliance’ to CS3D — one which might give a compliance department more to do but would not involve capturing hearts and minds of US corporate boards. The sceptic in me suggests that will be the general outcome— though there is the possibility there may be some sustainability converts, particularly in the event that the CS3D/Caremark cocktail scores a high-profile plaintiff victory.

If the CS3D/Caremark dynamic duo does enjoy ‘success’ of this nature I wonder if other US companies might ‘pull a Musk’ and reincorporate in jurisdictions, presumably like Texas, that are not weighed down by Delaware’s Caremark standard.

Read the paper: https://www.ecgi.global/publications/working-papers/how-the-eu-sustainability-due-diligence-directive-could-reshape

Sustainable Investment

Paper: **Sustainable Investing: Evidence from the Field**
Authors: **Alex Edmans** (London Business School, CEPR and ECGI); **Tom Gosling** (London Business School and ECGI); **Dirk Jenter** (London School of Economics and Political Science, CEPR and ECGI)
ECGI Working paper Finance series #1028/2025

In a 2023 Harvard Law School blog discussing the fiduciary duties of public pension funds, Matt Cole, CEO of Strive Investment Management (erstwhile colleague of Trump crony Vivek Ramaswamy), defined ESG as a ‘set of loosely-defined but highly influential non-pecuniary criteria that purport to assess the extent to which companies are achieving certain social and political objectives with which many citizens disagree.' This is a ridiculous definition. But it does help to set the context for the paper *Sustainable Investing: Evidence From the Field*, authored by Alex Edmans, Tom Gosling and Dirk Jenter. What is going through the minds of institutional investors who factor sustainability factors into their investment analysis? Is this a collective conspiracy to exploit the wealth of fund beneficiaries to achieve ‘non-pecuniary’ political objectives (presumably left wing), or is something else going on? To spoil the surprise, something else is indeed going on.

The authors approach this question through a survey of 509 active portfolio managers (PMs)— as opposed to passive fund managers or investment teams that focus on stewardship without managing money themselves. This is an important differentiation, as PMs tend to make the final decisions in actively managed funds and their performance is clearly and directly measurable in financial outcomes. And from my own experience in asset management PMs are less likely to have drunk the sustainability Kool-Aid as deeply as many stewardship teams, if at all. Though the PMs of what the authors label 'sustainable funds' do seem to have taken at least a few sips.

The survey itself is straightforward and well-structured in terms of PM beliefs, objectives, constraints and actions. Importantly, the survey approach provided not only data points for analysis but also scope for 'free text' elaborations of answers, and these comments offered some of the paper's key insights. And, to the possible surprise of those who expect investors to treat sustainability along the lines of the Matt Cole quote, referenced above, the results of this survey clearly show that investors— or at least active PMs— are motivated in their consideration of environmental and social (E&S) standards by how this may effect sustainable financial returns in line with their fiduciary duty to their end beneficiaries.

The authors take us through the survey results, which yield a range of interesting insights, again enhanced by free text contributions. Firstly, as a long-term value driver PMs rank E&S performance on its own the least important consideration compared with other factors such as strategy, operational performance, governance and culture. But they make the valid point that it can be difficult to 'disentangle' E&S factors from operational performance more generally. It also caught my eye, and jives with my own experience, that E&S risks tend to be regarded asymmetrically. In other words, good E&S performance unto itself may not create value, but bad E&S performance has a greater potential to destroy value.

The survey responses are clearly presented in the Appendix and paint a consistent picture that, even for active PMs who employ E&S analysis to either better understand risk or satisfy investment mandates, there is a clear reluctance to accept tradeoffs that compromise investor returns for E&S considerations. This reflects investor awareness of and respect for their overarching fiduciary duties of care and loyalty to their clients in the investment chain. It was also of note that the PMs of so-called 'sustainable investment funds' did differ from traditional PMs in some areas but were not radically different in their responses. While the authors do not use this term (and may not like it) this amounts to me as an expression of the concept of enlightened shareholder value — a view of the world in which E&S factors are not ends unto themselves, but rather a means to better understand risk in a broader context and in pursuit of stronger and sustainable financial performance.

As the authors note in the title, this paper is 'evidence from the field'. I think it is a very useful exercise to gauge investor sentiment around the important question of sustainable investing. This is a 'field' I laboured in myself for many years in asset management and at ICGN, and it does resonate with my own experience. And to mark my card, I take comfort (and am not surprised) that the investor response prioritises their fiduciary duty to their clients' interests and compliance with investment mandates and seeks to channel investor understanding of E&S factors within the context of sustainable value creation.

As a technical detail I am also pleased to see the focus on 'E&S' that does not tack on the 'G' to create the artificial and unstable molecule called ESG. If nothing else, this separation helps us to understand that the 'G' rates more with PMs than the E&S.

It might have been interesting to have a broader scope to this study to see how the responses of PMs contrast with investment stewardship teams, where individual subject matter expertise sometimes lies more in the realm of sustainability issues, and less so in corporate finance and investment analysis. But this paper does a nice job of capturing the investor (or at least PM) perspective regarding how E&S factors are employed in investment decision making.

The paper should be required reading for those US 'red' state pension fund administrators who politicise and demonise sustainable investment in the anti-woke backlash. Who knows, it could possibly challenge their negative preconceptions about sustainable investing— that is if they could ever stomach a paper with 'sustainable investing' in its title.

Read the paper: https://www.ecgi.global/publications/working-papers/sustainable-investing-in-practice-objectives-constraints-and-limits-to

Shareholder Primacy and Sustainability

Paper: **Reconciling Shareholder Primacy and the Interests of People and Planet**
Authors: **Eilis Ferran** (University of Cambridge and ECGI); **Pedro Schilling de Carvalho** (University College London)
ECGI Working paper Law series #825/2025

In their paper *Reconciling Shareholder Primacy and the Interests of People and Planet*, Eilis Ferran and Pedro Schilling de Carvalho consider the question of how regulation can encourage better sustainability outcomes (for 'people and planet') in the context of a shareholder primacy framework. Their focus is on the UK, home of the well-known Section 172 of the 2006 Companies Act, which enshrined in law the requirement for UK company directors to 'have regard' for key stakeholders and environmental performance. This is sometimes labelled 'enlightened shareholder value' (ESV).

Section 172 has been recognised for the innovative way in which it introduces stakeholder considerations in law as a UK director fiduciary duty— and it was noted that Section 172 has been called a 'well-intentioned moral compass' (possibly damning with faint praise). But the authors observe that this stakeholder requirement is bounded by shareholder self-interest, and that the need to consider stakeholder interests did not displace the primacy of shareholders. They also cite a more recent 2022 BTI v Sequana decision by the UK Supreme Court that reaffirms shareholder primacy and the interests of financial stakeholders (including a proper regard duty to creditors) vis-à-vis non-financial stakeholders— with one opinion calling ESV 'modified shareholder primacy'.

But the authors note that there are limits to ESV and what it can achieve with regard to addressing broad issues of sustainability. Given institutional investor fiduciary duty to prioritise the financial interests of end beneficiaries, the authors further note that stakeholder and shareholder interests will not always coincide, which they label as an ’enforcement gap’.

In terms of what to do about this gap, the authors first consider the merit of amending UK Company Law to provide for more of a stakeholder/shareholder balance. However, they ultimately conclude that shareholder primacy is so deeply entrenched in UK law that it would be hard to displace and not worth the effort.

But the authors don’t simply throw in the towel. They are more encouraging about what they call the ‘duty shaping impact’ of more granular sustainability regulatory requirements and how this can ‘inform the application of directors’ duties’. Specifically, they are looking at a regulatory agenda focusing on the need for company directors to be aware of sustainability impacts within an effective risk management system. This is where they think shareholder interests can be made to converge with stakeholder interests — and where there may be more scope for private litigation to serve as a ‘stick’.

The focus on risk and resilience is consistent with the shareholder primacy framework, but regulation can require more specific disclosures on issues such as business models, climate change transition strategies and scenario analysis. This is much more focused than a general statement of ‘having regard’.

The authors note the rapid pace of the sustainability regulation and reporting, and how the development of international standards such as the TCFD and the ISSB can provide guidance to directors as to their sustainability ‘blind spots’ and how they understand and deal with sustainability-related risks. At the same time, regulation of this nature also provides more ‘hooks’ for both public and private enforcement.

The authors briefly consider the arguably more far-reaching sustainability regulation in the more stakeholder-orientated EU, including the CS3D requirements and the use of double-materiality in mandatory disclosures. But they do not call for further UK regulation in this vein; indeed, the EU itself is reviewing a softening of its regulatory requirements out of competitiveness concerns. Instead, the authors mention less intrusive regulatory disciplines such as taxonomies and greenwashing rules that complement ‘lower order norms’ such as corporate governance codes.

While recognising the need for British companies to raise their game with regard to sustainability matters, the authors do so within the bounds of shareholder primacy, suggesting that a cocktail of Section 172 and more focused sustainability regulation would be more potent than Section 172 on its own— and less intrusive than EU style regulation. In the end, the paper has a British accent, and on the spectrum of American shareholder primacy versus European stakeholderism the UK is predictably somewhere in the middle, though possibly closer to Europe now given the current US Administration.

The authors offer an optimistic conclusion about the positive sustainability impacts that can be achieved within a shareholder primacy framework, but are also pragmatic, reflecting that the UK has its own path dependencies that need to be harnessed constructively rather than replaced. This paper is somewhat technical (for non-economists), but it is an intriguing and impressively detailed modelling exercise and economic analysis. Forsbacka digs deeply into proxy advisory data and illustrates how influential proxy advisors can be, particularly the industry giant ISS. This is true not only for the many institutional investors that simply default to ISS for their proxy votes, but also for those investors with their own nominal voting policies whose votes nonetheless track very closely with ISS recommendations.

Read the paper: https://www.ecgi.global/publications/working-papers/reconciling-shareholder-primacy-and-the-interests-of-people-and-planet

Sustainable Investment

Paper: **Sustainability Preferences of Index Fund Investors: A Discrete Choice Experiment**
Authors: **Rob Bauer** (Maastricht University, ECCE and ECGI); **Bin Dong** (Maastricht University); **Peiran Jiao** (Maastricht University)
ECGI Working paper Finance series #1031/2025

How much are index investors willing to pay for sustainability in their index fund? Rob Bauer, Bin Dong and Peiran Jiao argue that it depends on investor preferences, which are heterogeneous. In their paper *Sustainability Preferences of Index Fund Investors: A Discrete Choice Experiment*, the authors categorise index investors into different groupings based on differing sustainability preferences and then develop a method to calculate what they call Willingness to Pay (WTP). And to jump to one of the paper's more eye-catching headlines, the authors conclude that some types of sustainability investors would sacrifice from 2.2-3.8% in annual returns if their funds match these investors' sustainability preferences.

To take a step back, the authors drew these and other conclusions by conducting an online survey of 457 actual retail index investors who are clients of the Dutch index fund provider Meesman, an asset manager with a strong ESG focus. The survey includes a discrete choice experiment (DCE), which the authors define as 'grounded in random utility theory which posits that an individual's preferences among alternatives can be modeled by assigning a real-value score to each choice that is derived from a parameterized distribution'. The authors apply this using a Likert scale to assess how investors may differ in the tradeoffs between financial returns and sustainability outcomes.

Reflecting Meesman's European roots, the authors employed the ESG intensity attribute groupings used in the EU's Sustainable Finance Disclosure Regulation (SFDR)— grey (Article 6), light green (Article 8) and dark green (Article 9).

To this they add four potential ESG investment strategies: none, negative screening, positive screening and active engagement. They also consider the important parameters relating to the investment management fees and risk return preferences. From this mix they conduct a range of statistical and econometric tests, including rather fun ways to test for participants' financial literacy and attitudes towards ambiguity. Ultimately, they allocate the survey group into four classes of investor, each displaying differing sustainability and financial tradeoff preferences.

The survey outcomes and supporting analysis deserve reading to catch the many individual nuggets and appreciate the approach to the research design and modelling. Some highlights from the survey show the respondents generally have a strong orientation towards sustainability, with only 13% of fund participants placing the most weight on fund's returns (even for 'sustainable' investors, that strikes me as surprisingly low). More broadly, the authors conclude that investors are willing to pay to have their sustainability preferences met, they prefer negative screening to other ESG strategies, and are indifferent to what they call ESG intensity— with a general preference for 'light green' funds.

Much of this makes sense to me. My one real niggle relates to the authors' claim that some sustainable investors would sacrifice from 2.2-3.8% in annual returns if their funds match these investors' sustainability preferences. That is a lot.

If we put this into a longer-term perspective, let's consider a pension pot of €100,000. Since 2000, the average annual return on the MSCI World Index is around 6%. If we project this 6% rate of return going forward, the 25-year future value of this pension pot is around €429,187. And if we take the upper end of the range that respondents would sacrifice (3.8%) this would result in an annual return of 2.2% (=6.0%-3.8%), which would produce a 25-year future value of €172,295. In other words, this suggests that over a 25-year period investors will be willing to sacrifice around 60% of their pension wealth for sustainable financial products.

Admittedly, that's just one way of calculating it. There are others. But something doesn't seem right, or at least there may be a 'Dutch effect' in the demographics that may value sustainability much higher than investors in other jurisdictions. But, as virtuous as the Dutch may be, I don't think that would explain it all. I also note that only 42% of the survey respondents passed the 'financial literacy' test, and I suspect many respondents may not have fully done their sums, for example taking into consideration the impact of compounded returns over time. The willingness of sustainability-focused investors to pay an annual 1.47% management fee for a sustainable product still strikes me as high, but more realistic.

In any event this paper is a very interesting study and offers many insights on sustainable investing and understanding investor preferences. And it might even hint at the need for greater financial literacy for retail investors in sustainable funds.

Read the paper: https://www.ecgi.global/publications/working-papers/sustainability-preferences-of-index-fund-investors-a-discrete-choice

Corporate Purpose and Nonprofits

Paper: **Purpose and Nonprofit Enterprise**
Authors: **Cathy Hwang** (University of Virginia and ECGI); **Dorothy S. Lund** (Columbia University and ECGI)
ECGI Working paper Law series #819/2025

In this paper, law scholars Cathy Hwang and Dorothy S. Lund present a 'purposeful enterprise theory' to explain how nonprofit enterprise can be successful even though nonprofits lack — or, as the authors seem to suggest, because they lack — the influence of shareholder ownership and control to address agency costs. While this paper has nonprofit companies in focus, the authors present corporate purpose as a means to offset managerial control in a way that has relevance for listed for-profit firms as well. Along the way shareholders seem to be generally presented as baddies, whose role is that of distorting or distracting companies from achieving their corporate purpose; I will return to that at the end.

This paper builds on the theory of nonprofit enterprise, in particular Henry Hansmann's influential contract failure theory, which suggests that nonprofits are relevant corporate forms in sectors like education and hospitals where consumers are not in a position to bargain or choose other competing providers. But the authors cite examples of nonprofits operating successfully in more traditional commercial sectors — such as pharmaceuticals, insurance, clothing and brewing— that seem to defy this logic. They suggest that something else may be going on as well. This is what they label 'purposeful enterprise'.

This purposeful enterprise theory builds from behavioural and organisational economics, making the claim that corporate purpose can serve as a substitute for shareholder monitoring. The authors argue that purpose can provide direction and motivation, reduce costs, and align a business for long-term resilience and success. In part this comes from 'eliminating an expensive stakeholder' (e.g. shareholders) and, implicitly, their self-serving, short-term, capital draining influence. Among other things, nonprofits, due to the 'non-distribution' constraint (namely no dividends), will have a leg up over for-profits rivals by having the ability to reinvest all profits back into the business.

The authors also make the strong, and possibly controversial, statement that 'authenticity of purpose depends on the sacrifice of profits'. That could be a good Oxford Union debate topic. At the same time, we do know from other research that a statement of corporate purpose without authenticity can be a hollow exercise. But the authors dismiss calls for mandatory purpose statements, making the good point that turning purpose into a compliance item could undermine the authenticity of purpose within an organisation, particularly vis-à-vis employees and their motivations.

Ownership structure has an important role to play in this discussion, and the authors cite the examples of Carlsberg, Novo Nordisk and Hershey to pay particular attention to how foundation structures or benefit corporations can support a purpose-led organisation even in competitive industries and 'insulate' companies from shareholder interventions. In this sense one of their key conclusions is that corporate purpose and alternative ownership models such as foundations may enhance the profitable performance in some companies.

But they importantly, and realistically, do not advocate that all companies become nonprofits or use purpose as a full substitute for shareholder control, and they speak to a spectrum involving 'blended' models with shareholder influence and control. This is probably most relevant in capital intensive industries where market dynamics may require companies as a strategic imperative to maintain access to new external capital from institutional investors to protect from insolvency or remain competitive.

As mentioned earlier, the role of investors gets a something of a drubbing in this paper. No doubt my own asset manager background contributes to my sensitivity on this point, but I think investors are painted a bit one-dimensionally as negative distorters of corporate purpose to achieve their own short-term financial performance objectives. It belies my own professional experience in a large UK asset management firm and at ICGN, and runs counter to what investors are hoping to achieve, at least aspirationally, through stewardship in terms of promoting sustainable long-term value creation. The role and influence of investors is certainly fair game for scrutiny, and criticism is in many cases warranted. But if companies seek to 'insulate' themselves from investors, we cannot forget that too much insulation makes one fat. lear if the placeholder CEO mechanism is the best way to preserve and create sustainable value.

Nor can we forget that in an entrenched company management influence and private benefits of control run the risk of diverting a company from achieving its purpose and the interests of its shareholders and stakeholders. Accountability mechanisms are needed for any form of business, particularly in important questions relating to management or strategy. Notwithstanding the 'warm glow' that the pursuit of corporate purpose may provide, I question whether corporate purpose alone will always have the teeth to serve as an effective accountability mechanism. This is particularly so in the competitive sector, where I believe that investors and even the market for corporate control can also play an important— and hopefully constructive— role in a way that can complement corporate purpose without eroding it.

This is a thoughtful and well-written paper that stretches our minds with the purposeful enterprise theory. I very much enjoyed this contribution to the literature on corporate purpose and nonprofit enterprise, and it is encouraging to see corporate purpose framed as an important mechanism for business to address agency costs and improve organisational efficiency— and in a way that can improve outcomes for the company, its shareholders and its stakeholders.

Read the paper: https://www.ecgi.global/publications/working-papers/purpose-and-nonprofit-enterprise

Stakeholder Theory and Welfare Economics

Paper: **Stakeholder Theory and the Challenge of Welfare Economics**
Author: **Robert T. Miller** (University of Iowa and ECGI)
ECGI Working paper Law series #828/2025

I was drawn by the title of this paper, and as I read it through, I was not disappointed. In *Stakeholder Theory and the Challenge of Welfare Economics*, Robert T. Miller pulls together law, economics, philosophy and economic history to challenge the intellectual robustness of stakeholder capitalism, using welfare economics as his diagnostic tool.

As a practitioner, I was not previously aware of Miller and his scholarship. But I see a shareholder primacist at work, who finds a clear lack of rigor in stakeholder theory— and possibly a bit of glee — in presenting, if not taunting, stakeholder theorists with the challenge to employ the insights of welfare economics to give stakeholderism more street cred within the Academy. He also walks us through what this might involve and seems to conclude that this cannot easily be done. So does shareholder primacy therefore win? Let's take a step back.

Firstly, the core issue. Notwithstanding the intuitive appeal of stakeholderism, Miller argues that there is limited rigor in one of the key problems that stakeholder capitalism presents: is there a coherent or rational economic theory to guide how a company does what is best for all stakeholders? This is the problem of preference aggregation, and this question takes us on a philosophical journey.

The journey begins with the traditional shareholder centric model, at least as embodied in Delaware law, in which company directors are obliged by fiduciary duty to manage the company for the benefit of shareholders. In this context stakeholders are recognised constituencies whose interests the company may be considered in the process of shareholder value creation. If nothing else, this is a simpler orientation because one set of preferences— that of shareholders— is at the centre of things. It provides an anchor. But in a stakeholder focused company, without a singular anchor, how does one balance or prioritise potentially conflicting stakeholder claims?

This leg of the journey takes us to the world of welfare economics, the study of how to aggregate preferences to make rational decisions that affect a large and disparate population. This is rooted in classical utility theory through the likes of Jeremy Bentham, JS Mill, Pareto and the notion of maximising utility or happiness of a population as a social welfare function. In so doing, Miller employs the concept of preferences, beginning with ordinal individual preferences, e.g. a simple preference of A versus B. Then Miller invokes onto the scene the 20th Century economist Kenneth Arrow and his 1951 'Impossibility Theorem' which demonstrated the mathematical impossibility of rationally resolving multiple ordinal (and potentially conflicting) preferences. Arrow's Theorem, Miller asserts, is 'foundational' to the field of welfare economics.

In this context the arguments of prominent stakeholder theorists Edward Freeman or Marty Lipton for companies to 'consider' or 'take into account' stakeholder interests are presented by Miller as more or less fatuous, as there is 'no coherent way even of explaining what such language means'.

So have we come to a brick wall to establishing stakeholder theory as a respectable discipline? Miller says not necessarily, as this is where he introduces Amartya Sen's extension of Arrow's framework and how the use of cardinal preferences (containing greater information reflecting the intensity of preference) can at least in theory lead to a rational social welfare function in a way that ordinal preferences alone cannot.

With this potential opening, a rather dense discussion ensues about cardinal and ordinal measurability and varieties of social welfare functions. In a nutshell stakeholder theory can potentially be resolved theoretically, but the practical implications can get in the way. Among other things, Miller suggests that company directors would have to make an estimation of how to both measure and balance the welfare of each stakeholder in every decision, something he says as a practical measure will 'virtually always be manifestly impossible.' He also speaks to a logical conclusion of stakeholder theory, which in extremis can lead to 'self-despoliation problem', in which a company balances stakeholder interests so effectively that it becomes 'eleemosynary' (new word for me!) — i.e., a charitable institution for those, like me, with less sesquipedalian predilections.

In the end Miller concludes rather bluntly that stakeholder theory in its current form is 'an inefficient half measure on the road to socialism'. And while he identifies the link between stakeholderism and welfare economics as a way to give this more intellectual muscle, it almost seems that he is doing so as a strawman to blow down. Miller concludes by asserting that stakeholder theory will not be 'intellectually respectable' until it can develop a credible way for directors to aggregate individual stakeholder preferences to reach collective decisions. And there is clear scepticism that this can meaningfully be done. So the gauntlet has been thrown down.

I would be very interested to see how a stakeholder theorist like Edward Freeman (whose work I admire) would respond to this argument. I find there to be much wisdom, and common sense, in Freeman's perspectives and do not think they should be summarily dismissed because it is hard to precisely pin down what 'considering' stakeholder interests might be. You can say the same thing about the UK Company Act Section 172 calling for directors to 'have regard' for stakeholder interests. Is that also incoherent? It may be hard to do, but that's real life for you. There may be a role for human judgement to play.

From a theoretical approach I appreciate Miller's vigorous arguments, and the well-articulated challenge to stakeholder theory. Indeed, given my own professional experience, I put myself on the shareholder primacy side of the line, but in a way which, perhaps aspirationally, recognises the importance of ethics and responsible stakeholder relations as central to long term value creation. My concern about shareholder capitalism is when the 'primacy' tag is taken to an extreme in a way that hurts not only stakeholders and broader society, but ultimately the long-term health and resilience of the company itself. That can happen.

This is not an easy read, at least for those with limited prior exposure to the conceptually rich field of welfare economics and the philosophical questions that spring from it; but it was very rewarding. And for one of the few times in my 40+ year professional career in finance, I have benefitted directly from having studied philosophy and economic history as an undergraduate. I always learn from ECGI working papers, and I think I have learned more in this one than most I've come across. Even the footnotes are really good, some juicy ones worth reading through!

Read the paper: https://www.ecgi.global/publications/working-papers/stakeholder-theory-and-the-challenge-of-welfare-economics

Generalist CEOs and Corporate Default

Paper: **Do generalist CEOs reduce corporate default risk?**
Authors: **Md Safiullah** (RMIT University); **Ghasan A. Baghdadi** (La Trobe University); **Marc Goergen** (IE Business School and ECGI)
ECGI Working paper Finance series #1037/2025

As a recovering credit rater (24 years at S&P) I confess my interest in this paper was prompted less by the concept of generalist CEOs and more by the consideration of how a governance factor can be demonstrated as relating to credit risk— the risk of default. In their paper *Do generalist CEOs reduce corporate default risk?* Md Safiullah, Ghasan A. Baghdadi and Marc Goergen present us evidence that will be of interest not only to credit analysts, but to companies and boards more broadly: they claim generalist CEOs help to reduce default risk.

This is an empirical study based on a large sample (2087) of US firms from 1993-2016. From this they construct an index of general management ability (GAI) based on a set of five factors: positions held, number of firms, industries, past as a CEO of another company and conglomerate experience. To this they apply an expected default frequency model (EDF) as their main diagnostic. This model, derived from economist Robert Merton's work in the 1970s, makes use of a company's market-based information (equity prices, volatility and liabilities) to produce a 'distance to default' metric. The authors also employ credit default swap (CDS) spreads and credit ratings to support their analysis.

The body of the paper focuses on the analysed data and statistical tests which provide robust for support the authors' conclusion that GAI — general management experience—reduces corporate default risk by, in turn, reducing volatility in stock returns and returns on assets. Why is this so? The authors draw from other research literature to suggest that generalist CEOS bring to the table a broader knowledge base, greater range of skill and breadth of experience and better information processing. In turn they conjecture that generalist CEOs make more prudent investments, resulting in less volatile profits. Finally, they draw the policy conclusion that there is a business case for boards to appoint generalist CEOs.

Overall, this is an impressive empirical analysis with compelling implications. But does it make sense? From my credit rating experience, I'm not so sure. Having been involved with many credit ratings around the world in differing sectors, my starting point would be more agnostic on the relation of general management to default risk. I question whether there really is a generalisable answer to this.

As part of my S&P tour of duty, I was the analytical head of its European corporate ratings, and contributed to authoring its corporate rating criteria. At that time, there was no specific criteria that put generalist CEOs in favour or disfavour from a credit perspective. Having just checked to the present, that still remains the case, though S&P's overall approach to management and governance is now much more granular and nuanced than in my days. If anything, I would probably say that at least in some more technical sectors, such as high tech, engineering, pharma, financial services (not covered in this study),etc, it would probably be a red flag for credit analysts if the CEO were perceived as a generalist without a sufficient understanding of the company's sector (this is consistent with one of the other studies the authors cite).

I started to think about the EDF model the authors employ to lead the analysis. It certainly has a rigorous analytical underpinning, but is really a better mousetrap than credit ratings (which also have well-established correlations with default risk)? I'm not well-positioned to argue with Academicians on the technical merits of the EDF model; I don't question its rigor. But I would observe that credit ratings can carry the benefits of incorporating the output of models into the rating assessment, ideally bringing the best of both worlds — quantitative assessment (where relevant) along with more qualitative assessments, including management meetings, enabling ratings to be possibly less mechanical, and hopefully wiser, by incorporating wider considerations. There is a personal touch in ratings (not foolproof), which can be important in the assessment of CEOs as fellow humans.

So I was glad to see the authors cite a 2021 study by Ma et al, focusing on this exact topic, but from a credit rating angle. And it is very interesting that the Ma et al paper drew pretty much the exact opposite conclusions: generalist managers are associated with lower credit ratings. The virtues of the generalist manager that the authors highlight are flipped on their head by Ma et al, focusing on generalist CEO risk-taking behaviours leading to greater volatility and higher borrowing costs. The authors do comment that they are able to reconcile their results with the Ma et al findings with some statistical adjustments. But to me this was unsatisfying, particularly since the authors do not discuss how the original Ma study could reach such hugely different conclusions— and how their adjustments could reverse these.

Having said that, I find this discussion hugely interesting, but what are we to conclude? After all this, I think I'm still agnostic on the question of generalist CEOs as a guide to default risk, one way or the other. And I don't anticipate that many fixed income investors will use the authors' paper — or the Ma paper for that matter— as a definitive practical guide. While one can develop a plausible method to define whether a CEO is generalist or not, I question its predicting power vis-à-vis default. Assessment of management is inevitably nuanced and subjective, and at least in professional practice I doubt whether the crude binary bucket of generalist/non-generalist CEOs will feature prominently in the analysis of fixed income investors.

However, to make a final positive point regarding the paper, I do think there is merit in considering the attributes of the CEO specifically, and not just the management team. And while generalist versus specialist CEOs may or may not be the right way to approach this, I think the authors are right in focusing more specific attention on CEO qualities as part of an overall management and governance assessment.

Read the paper: https://www.ecgi.global/publications/working-papers/do-generalist-ceos-reduce-corporate-default-risk

Stewardship and Activist Investors

Paper: **The Purpose of Investor Stewardship**
Author: **Dionysia Katelouzou** (Kings College London, University of Cambridge and ECGI)
ECGI Working paper Law series #831/2024

In the world of practitioners, I write and teach about investor stewardship to institutional investors and company directors, and have followed Dionysia Katelouzou's impressive and prolific scholarship in this space. So when her working paper *A Bibliometric Analysis of Four Decades of Shareholder Activism* came out, I made it through all 114 pages, and was preparing to write about that paper in this month's Debrief. It is a very interesting historical study, and not having read a bibliometric based paper before, I found that approach really intriguing.

But then she had the nerve to publish yet another working paper shortly thereafter, this time with the tempting title, *The Purpose of Investor Stewardship*. So I'm afraid the siren song of 'purpose' has shifted my allegiance to reviewing this latter paper, though both are worth the while of those interested in the field of institutional investment. The Purpose paper is much shorter and focuses specifically on the history and evolution of investor stewardship, whereas the bibliometric paper focuses on activist investors as the main protagonists.

To start with, *The Purpose of Investor Stewardship* is an interesting and well spun history of stewardship, in which Katalouzou focuses primarily on the UK Stewardship Code (UKSC) — the world's first, and arguably most influential, code of this nature. She speaks to '1G' and '2G' iterations of the UKSC, tracing its evolution from its 1G roots in 2010 based on 'firm-specific, micro level shareholder engagement'. Reflecting in part growing investor interest in sustainability and systemic risks in the 2010s, the 2G version of the UKSC was launched in 2020 to include broader range of asset classes and a more ambitious social agenda than micro focused stewardship.

Linking this to the evolving purpose of stewardship Katalouzou stresses the broader societal ambitions of creating benefits for the 'economy, the environment.' This perspective incorporates systemic risks relating to natural, social and financial capital. This is a more 'other' serving model, leading to various approaches, ultimately ending up with what she calls 'sustainability stewardship' —and ultimately 'enlightened stewardship' —that extends stewardship to systemic and societal concerns.

This is a rich and thoughtful paper, and I can't give justice here to all the interesting insights; they should simply be read. But it is worth noting Katelouzou's proposed revision of the UKSC's definition of stewardship, calling for investor stewards to 'have regard for broader stakeholders including end investors, investable assets, the economy, environment and society'. This creates a symmetry with UK director duties in section 172 of the UK Companies Act in which directors are required to 'have regard' for stakeholder interests while promoting the success of the company— for the benefit of shareholders.

To me this seems to be a sensible way to look at this, and I like the way it aligns the approach to corporate purpose with the purpose of stewardship. But I would also observe that this brand of stewardship is less ambitious than the UKSC's 2020 formulation, and probably rightly so. Just as the 'enlightened shareholder value' of section 172 focuses a director's regard of stakeholders towards creating benefits to shareholders, Katelouzou's enlightened stewardship formulation faces the similar constraint of institutional investors focusing in the first instance within the traditional investment chain (asset manager-asset owner- end owner) — and considering broader social, environmental or systemic issues in this context, and not necessarily as ends unto themselves.

As Katalouzou notes, institutional investor stewardship in practice is very much constrained by an investor's fiduciary duty to clients and the terms of investment mandates; these factors will tend to put guardrails on the liberties an institutional investor can take based on sustainability issues alone.

It is important to remember that stewardship itself, at least in its 21st Century form, is still a relatively young and dynamic concept. But it is also worthwhile to reflect on its purpose— and how that has evolved and might evolve further. This paper offers both a useful history and a pragmatic formulation of stewardship that finds a legitimate place for the consideration of stakeholder and sustainability factors, particularly with regard to systemic risks. Even though Katelouzou's definition of stewardship is somewhat narrower and more constrained than the UKSC's 2020 formulation, she still may be going against the grain of the current zeitgeist, reflecting in part the anti-ESG backlash with its contagious origins from the US. It is worth noting that the proposed new definition in the most recent UKSC 2024 consultation omits any reference to broader social impact beyond that of clients and beneficiaries. Against this benchmark Katelouzou's articulation of stewardship's purpose and 'sustainability stewardship' remains progressive, ambitious and relevant. Even if it may be swimming against today's tide, tides can shift.

Read the paper: https://www.ecgi.global/publications/working-papers/the-purpose-of-investor-stewardship

Shareholder Activism

Paper: **Adaptive Advocacy: The Reinvention of Shareholder Activism**
Author: **Wolf-Georg Ringe** (University of Hamburg)
ECGI Working paper Law series #835/2025

I must confess that the first thing I did upon downloading Wolf-Georg Ringe's working paper *Adaptive Advocacy: The Reinvention of Shareholder Activism* was to do a search for the word 'locust', thinking that no self-respecting German scholar of activist shareholders could possibly omit the prerogative 'Heuschrecken' characterisation famously uttered by a German politician in the early 2000s. I was gratified not only to see two references, but to see the entire piece conclude by saying that the locust should be replaced with a chameleon. As a German literature buff, I wonder if Kafka's Die Verwandlung (man becomes cockroach…) might be a subliminal germano-cultural influence lurking beneath the surface of the entomological metamorphosis that Ringe proposes.

The key themes of this paper come out immediately in the paper's title, which speaks to the adaptive nature of activist shareholders and their ability to reinvent themselves in line with what Ringe refers to as the prevailing zeitgeist. In so doing he presents us with an interesting and readable history of shareholder activism, and while he does not come out as an advocate for activism, he does present the role of activists in a balanced way and (possibly in contrast with the 'locust' mentality) shows how they can be important, if not constructive, components of the corporate governance ecosystem.

Ringe presents the concept of a shareholder activist very broadly— an 'active, engaging shareholder who does not consider the investment made as purely financial, but as strategic'. While this characterisation has the potential to stretch widely to include traditional institutional investors, his focus is more on the subset of the investment universe who seek to use their influence to bring about fundamental change at a company, in terms of its ownership, its financial structure, its management or its strategy.

Ringe's journey starts in the 1980s, in the era of big hair and swashbuckling corporate raiders who would seek to acquire companies, implement change and exit— often for a tidy profit. Self-serving opportunism certainly, but of the sort that carries the potentially positive side effect of catalysing challenges to embedded managers seeking private benefits, implementing poor strategies or other fundamental obstacles— and to build value for all shareholders in a way that small shareholders or large diversified asset managers cannot.

The geography of Ringe's paper focuses on the US and Europe, but the US has arguably the greatest influence given that it is the birthplace of modern activism and its 'diversified shareholder structures are the natural habitat for shareholder activism to flourish'.

But he does pay much attention to the differing cultural environment in Europe, in part reflecting different ownership structures— and probably attitudes towards capitalism more broadly. This can affect approaches to activism, including in the challenging cases of controlled companies. Ringe does note that the ownership of many European companies, including in Germany, is becoming more dispersed; he also notes that in the US dual class share structures have the effect of turning a widely held company into a controlled company. These situations are complex and call for more nuanced approaches to activism.

Ringe's history includes regulatory and legal challenges to activism (including the creation of the poison pill) as the evolution of activists shifted from the 1980s style LBO firm to today's predominant form: the hedge fund. Unlike the corporate raider, the hedge fund leverages a relatively small investment with the use of derivative contracts, and a key component of its strategy is to build alliances with larger institutional investors who can bring the votes and investment capital. In some ways this is where activism can be seen as a form of collective stewardship, one in which the more informed activist investor serves as a 'governance intermediary' in a way that can also benefit the interests of institutional investors.

Themes of activism traditionally have focused on creating financial value for shareholders, but Ringe notes that activists can also go with the times, noting the recent ESG wave and the example of Engine No. 1's 2022 campaign to place directors on the board of Exxon to promote a more robust climate strategy. And since the Trump era seems to have shifted the tide away from corporate sustainability, Ringe expresses confidence that shareholder activists will adapt themselves to today's more rootin' tootin' cowboy capitalist ethos. At least until the next cultural wave comes along and catalyses the chameleon into yet another opportunistic metamorphosis.

The shareholder activist that is Ringe's chameleon may not be a force for evil; nor is it a force for good. It is a resilient, amoral and adaptive species, possibly like Kafka's cockroach, which is a force most fundamentally for itself. But it has its place in today's governance ecosystem and can serve to be a constructive discipline in market economies to protect the interests of minority shareholders and wealth creation more broadly.

Read the paper: https://www.ecgi.global/publications/working-papers/adaptive-advocacy-the-reinvention-of-shareholder-activism

Financial Economics and Modern Financial Theory

Paper: **The Lessons of Michael C. Jensen**
Author: **René M. Stulz** (The Ohio State University, ABFER, NBER, Wharton Financial Institutions Center and ECGI)
ECGI Working paper Finance series #1045/2025

Having seen Michael Jensen speak in the past (inevitably at an ECGI event), I was aware of his prominence as a scholar in the governance community. So when I saw René Stulz' paper *The Lessons of Michael C. Jensen* I knew that I would read it for my own benefit, to better understand Jensen's work and impact. But I first thought this might be a bit arcane to include in a Debrief review for a general audience. Then, in the paper's introduction, Stulz tells us that Jensen had been labelled as a '[Gordon] Gekko with a doctorate.' My brain's ears perked up. I thought this might be interesting for others after all.

And it was. Stulz presents Jensen as a giant in the field of financial economics, whose 1976 paper on the theory of the firm, co-written with his colleague William Meckling, is the most highly cited paper of all time in corporate finance. This paper, with its focus on agency theory, formed a grounding for much subsequent scholarship in corporate governance, including the role of boards to address agency costs and conflicts between managers and shareholders. Stulz refers to law scholar Jennifer Hill's observation that Jensen's agency theory became the 'dominant theory of modern corporate law'. At the same time, Jensen, unlike many of his colleagues, never received the ultimate recognition of a Nobel Prize for his work. This provides a 'hook' for Stulz' analysis.

In developing his arguments, Stulz takes us on a nicely written short history of modern financial economics, starting with Harry Markowitz' seminal work on portfolio theory, published in 1952, before financial economics was considered a legitimate economic topic by scholars such as Milton Friedman. The names then come fast and thick, like the posting of an All-Star roster: Markowitz, Modigliani, Miller, Sharpe, Tobin, Scholes. All pioneers, like Jensen; unlike Jensen, all Nobelists. Yet in the telling of this tale, Jensen is omnipresent in the development of what we now call financial economics. Jensen seems to crop up everywhere at critical junctures in the development of modern finance and its application, almost like Forrest Gump or Woody Allen's Zelig. And the list of his achievements is hugely impressive, extending far beyond the Jensen/Meckling 1976 paper, and including his work relating to the market for corporate control—which greatly influenced (and sought to justify) the 1980s takeover boom, and which led to the unkind and unfair comparison of Jensen to the fictional bad guy Gordon 'Greed is Good' Gekko.

Jensen's work has had considerable practical impact. His work on mutual funds contributed to the formation of index tracking, then at Wells Fargo— now at BlackRock— and he developed what is known as 'Jensen's alpha' as a metric to measure the performance of mutual funds. More entrepreneurially, Jensen created the Journal of Financial Economics and also was a co-founder of the hugely influential Social Science Research Network (SSRN). And in contrast to his market-focused shareholder primacist reputation, Jensen's later work focused on corporate integrity and the principle of 'enlightened value maximisation', which brings stakeholder welfare into consideration— and invites comparisons with the more recent Hart/Zingales theoretical work on shareholder welfare.

That is quite a career. Is there anything Jensen did not do? Well, maybe. Stulz suggests that Jensen could have played the academic game with greater savvy, or at least with greater regard for its protocols.

Perhaps Jensen was seen as too much as a maverick focused on his own formulation of financial economics and on the impact of his ideas measured (rightly or wrongly) by citations— and did not pay enough attention to more established traditions of academia, such as submitting his key papers for peer review in journals such as the Journal of Finance.

So did Jensen deserve to be a Nobel Prize winner? I respectfully pass on that question and leave it to more informed scholars who may wish to bandy this around, much like music fans might argue about the top three rock guitarists or sports nerds parsing through career statistics in supporting or refuting Hall of Fame selections. Since Nobel Prizes are not awarded posthumously, Jensen will never receive this award, so the question is moot. But in this paper, which is more of an ode than a hagiography, Stulz ably pays tribute to Jensen's great influence — and in so doing, may also be making a dig at how modern academia recognises scholarship. I am happy to leave that for others more qualified to judge.

Read the paper: https://www.ecgi.global/publications/working-papers/the-lessons-of-michael-c-jensen

Insolvency Law in the Global South

Paper: **Insolvency Law in the Global South: Lessons for the Global North**
Author: **Aurelio Gurrea-Martínez** (Singapore Management University and ECGI)
ECGI Working paper Law series #838/2025

In our current age of geopolitical turbulence, it is important to be aware that the developed countries of the 'Global North' have traditionally dominated policy debates relating to corporate governance, law and finance vis-à-vis the poorer, less developed economies of the 'Global South'. The knowledge transfer has tended to be in one direction, — from north to south— with the Global South sometimes seeking to adapt practices from the 'more developed' Global North that may be inappropriate for their own market, legal and institutional environments. Is it time to look for leadership in other jurisdictions?

In his paper *Insolvency Law in the Global South: Lessons for the Global North*, Aurelio Gurrea-Martínez brings this discussion to the specific field of insolvency law. Before getting to the detail, the author's overarching point is that solutions created to address market or legal challenges in the Global South are often best home-made and not 'imported' from the Global North as one-size-fits-all solutions. Gurrea-Martínez also suggests that the Global South may not be taken seriously enough and that their innovations in insolvency practices may even prove useful as solutions in more developed northern economies. Gurrea-Martínez' paper in many ways builds from an earlier piece reviewed in this Debrief by the Brazilian legal scholar Marina Pargendler, who spoke more generally to the concept of 'heterodox stakeholderism' in governance arrangements in the Global South. Pargendler's premise, which Gurrea-Martínez applies to insolvency law, is that many countries in the Global South which suffer from inequality and insufficient state capacity, require solutions which address these weaknesses. And the Global North is not the 'paradise' that contains all the answers.

The body of the paper is something of an exotic traveller's guide to insolvency law in emerging markets, and the author provides numerous and detailed references to insolvency law innovations in the likes of Malaysia, the Philippines, Thailand, Uruguay, Colombia, Chile, India, China and even Myanmar. He addresses a range of specific insolvency topics including workouts, financings in insolvency proceedings, and even touches on the topic of how the stigma of insolvency can differ by jurisdiction. As a specific example Gurrea-Martínez discusses how Malaysia and other Asian countries more actively promote out of court workout restructuring, given the inefficiencies in their judicial systems— and he suggests this may have relevance in some northern hemisphere countries with inefficient judicial systems. In this regard Gurrea-Martínez seems to have named Italy and Greece as honorary members of the Global South.

In other cases, such as with regard in finding new financing in insolvency proceedings, Gurrea-Martínez argues that some jurisdictions in the Global North (mostly in Europe) are less practiced than the Global South in applying the US-pioneered techniques, such as its DIP system which addresses the need of companies in insolvency proceedings to raise new funding. Here he compares the Global South favourably in terms of being a faster mover on adopting innovative solutions than many more developed countries.

For those of you out there (relatively few, I suspect) who are seriously into comparative insolvency law, this paper is right up your alley. For the rest of us, the specific insolvency law points may be interesting, but the broader interest may lie in Gurrea-Martínez' challenge to consider that not only can the Global South develop its own solutions that better meet their needs— and that these solutions might in turn form the basis of a useful reverse knowledge transfer from south to north. One glaring omission (at least to me) from this otherwise thorough review of insolvency law in the Global South was no discussion at all of Africa— the world's second most populated continent after Asia. I think it would have further strengthened the paper to find relevant examples from Africa's own insolvency experiences, and I am curious about its omission.

It is important that we consider governance problems globally, and we cannot forget that the Global South that Gurrea-Martínez is concerned with represents around 85% of the world's population. He has a fair point that 'autochthonous' innovations from the Global South (I can tell he is on the same faculty as Dan Puchniak…) deserve more awareness and consideration in the global governance community of scholars and practitioners.

Read the paper: https://www.ecgi.global/publications/working-papers/insolvency-law-in-the-global-south-lessons-for-the-global-north

Dual Class Firms

Paper: **CEO Turnover at Dual-Class Firms**
Authors: **Yifat Aran** (University of Haifa), **Brian Broughman** (Vanderbilt University and ECGI), **Elizabeth Pollman** (University of Pennsylvania and ECGI)
ECGI Working paper Law series #839/2025

The debate on the merits, or demerits, of dual class firms seems to be one of those evergreen topics attracting polarised points of view, often depending on where one sits. Entrepreneurs who take their companies public tend to like them. Institutional investors who buy the shares tend to dislike them. And many academics seem to be agnostic on the issue, especially the 'contractarians' who would prefer to simply leave it to the markets to sort out.

Into this debate step Yifat Aran, Brian Broughman and Elizabeth Pollman with their paper *CEO Turnover at Dual-Class Firms*. In this law paper, which reads more like a finance paper, the authors don't really pick a side here. But they do provide evidence relating to CEO tenure that challenges the conventional investor concern that dual class firms entrench their owner/managers and shield them from accountability. As a spoiler alert, given my investor perspective and experience, I still don't like dual class firm structures even after reading the paper. But evidence is evidence. Even though the authors themselves do not provide an answer to the question of whether shareholders benefit from dual class share structures, their results do suggest that these structures do not necessarily promote unduly lengthy CEO tenure or management entrenchment, as many investors may fear.

The paper begins with a fair presentation of the 'conventional' investor view that dual class shares are a form of entrenchment that disenfranchises minority shareholders and removes accountability from underperforming managers. And on the flip side, the advocates of a dual class structure are presented as seeing this as a way to protect a founder's 'idiosyncratic' vision and insulate the company from the animal spirits of the marketplace, and their inevitable short-term pressures. The authors explore this tension by focusing on CEO tenure between single class and dual class firms. The premise is that CEO tenure in dual class firms might be expected to be longer than in the case of single class directors— as an indicator of entrenchment.

The empirical analysis of the paper is a study of 1009 US firms (199 dual class/890 single class) that completed an IPO between 2002 and 2020. The results showed that dual class firms did have a lower CEO turnover probability of 10.5% relative to 14.8% for single class firms— an outcome that would support the concerns about management entrenchment. But perhaps the main headline of the paper comes when the authors exclude acquisitions from the analysis to focus on internal turnover for more like-to-like comparisons. In this case the annual probability of turnover drops to 7.3% for dual class firms and 9.1% for single class firms.

The authors conclude that they ‘could not reject the null hypothesis that dual and single-class firms have the same internal survivor function’. Importantly, the directors conclude that poorly performing CEOs at dual class firms are not shielded from market accountability as compared with single class firms. And dual class CEOs have more ‘skin in the game’, holding roughly 16% of equity cash flow rights, as compared with around 8% for single class CEOs.

The paper also tests for other issues, including CEO vote power, the ‘wedge’ between CEO voting rights and cash flow rights and the use of sunset clauses as a time-based mechanism to trigger the conversion of a dual class company to a single share structure. In the case of CEO voting power, even a large wedge does not seem to result in a lower degree of CEO turnover. Similarly, the authors call into question the existence of sunset provisions by noting that most dual class CEO turnovers occur before sunset clauses are triggered. This potentially raises public policy considerations about whether regulatory intervention is needed, or not, to address CEO voting power or mandate required sunset clauses in dual class listing.

The authors ultimately call into question the idea that dual class structures remove market accountability for underperformance. Perhaps for those investors who oppose dual class share these results may not be what they want to hear. But rather than turn a blind eye it is important to be aware of and examine the evidence. Even if the data may challenge some of the conventional anti-dual class arguments relating to CEO entrenchment or the impact of sunset provisions, this does not mean that dual class shares are a good idea or that investors should dispense with seeking remedies such as sunset clauses. But it may challenge investors to review and sharpen their logic about their normative opposition to dual class share structures.

Read the paper: https://www.ecgi.global/publications/working-papers/ceo-turnover-at-dual-class-firms

ESG Investing

Paper: **ESG Choice with Polarized Investors**
Authors: **Enrichetta Ravina** (Northwestern University, CEPR and ECGI), **Nicola Persico** (Northwestern University)
ECGI Working paper Finance series #1051/2025

Particularly in the US, the polarisation of the electorate is a challenging political reality. It is also challenging in finance and economics, as institutional investors have seen in the context of ESG (environment, social and governance) based investment. In their paper *ESG Choice with Polarized Investors*, Enrichetta Ravina and Nicola Persico develop a model to explore how political polarisation affects institutional investor voting by larger investors vis-à-vis smaller investors — with one of the key differences being that larger investors cater to a greater extent to investment clients on both sides of the political divide. For the authors this helps to explain why the voting policies of large institutional investors (including the Big Three of Blackrock, Vanguard and State Street) are more moderate and centrist. And, to the extent that investor input on ESG can influence company management on ESG related decisions, the authors suggest that companies can find themselves 'stuck in the middle' at an ESG level which may not maximize the welfare of individual investors, or of society at large (including non-investors).

The authors ground their model with several 'stylised facts', one of which is that large mutual funds such as the Big Three seek to maximise the value of assets under management (and hence their fees) by providing investment offerings that appeal to the most customers, which in a polarised world includes both ESG advocates and sceptics. I suspect this is not how the marketing departments of the Big Three would frame their product offerings on ESG. But it is fair to assume that out of self-interest they don't want to lose customers by alienating them. From this emerges what the authors call 'moderate ESG' as an optimisation mechanism that may be palatable to both poles — or at least be least offensive or least worst.

While this approach may serve to optimise large investor revenues, the authors suggest that the practical outcome is that investor constituencies from both poles may be left unsatisfied by a moderate/neutral ESG approach. Moreover, for companies influenced by the large voting power of the Big Three, there is the risk that this watered down/neutralised approach to ESG is taken by companies as their baseline investor guidance. 'Taking an average', which is what the authors suggest that large investors effectively do, can lead to distorted outcomes when extreme populations are pitted against one another.

On the other hand, smaller investors on both sides of the political divide may prefer to invest in funds that are most compatible with their own ESG/political agendas. From this the authors conclude that smaller investment funds are more likely to have more extreme governance policies than the larger index-dominated asset managers as relates to ESG matters. The authors consider how end-investor preferences might be served in large investment firms through 'transfer mechanisms' such as pass through voting. But they argue that the current system of choosing between a predefined set of voting policies (which can be rather dense) does not properly enable end-investors to express their ESG preferences effectively. The authors posit the notion of 'political entrepreneurs' as a new agent that individual investors can choose to represent their interests in voting. That is an interesting idea though I personally cringe at labelling this a 'political' role. This general concept exists already to some extent in 'overlay' voting and engagement services, such as those provided by Hermes EOS.

There is an intuitive logic to the authors' arguments that they support with a rigorous quantitative framework. For those of you who like reading economic modelling, the body of the paper develops the quantitative approach relating to finding equilibria and optimising how institutional investors deal with polarised customer bases. And for the hard core this is supplemented in the Appendix by detailed proofs.

While I don't disagree with the authors' basic conclusions, I could offer a possibly provocative or complicating counterproposal relating to the more 'moderate' policies of the Big Three and other large investors.

It relates to the law of large numbers and real-world impact. As the authors note, the large passive funds account for roughly 30-35% of total market capitalisation. Small investors (including some medium/large sized institutional investors) typically have fractional holdings, often less than 1% of a company's shares. These smaller investors are arguably more positioned to make symbolic 'protest' votes to express a general ESG preference, because the impact on the vote's aggregate outcome is marginal. But at an aggregate level of 30-35% of the market capitalisation, large investor votes can have concrete practical economic outcomes for a company. Symbolic protests on shareholder proposals or director elections that may be driven by political agendas are arguably inappropriate for larger investors. But the big index investors are not firing blanks. Their impact means their vote is 'live ammunition'. Given that these votes really do make a difference I wonder if there may be a behavioural tendency to make more considered or more moderate voting decisions — for better or for worse.

Read the paper: https://www.ecgi.global/publications/working-papers/esg-choice-with-polarized-investors

Culture and Corporate Purpose

Paper: **Shareholderism around the World: Corporate Purpose, Culture, and Law**
Authors: **Renée Adams** (University of Oxford ABFER, FIRN and ECGI), **Amir N. Licht** (Reichman University and ECGI)
ECGI Working paper Finance series #1061/2025

Is *homo economicus* to be replaced by *homo culturae*?

'Shareholderism' is a word that generates a red-squiggled line in my spellcheck. It is not in the Oxford English Dictionary. But in their paper *Shareholderism around the World: Corporate Purpose, Culture, and Law*, Renée Adams and Amir Licht employ this as a term of art to indicate an individual board director's attitudes towards shareholders vis-à-vis a company's stakeholders. They develop an analytical framework that links a director's shareholderism to individual and institutional factors and then test this theory through survey responses from 1109 directors from 55 countries serving on boards in 23 countries. The headline result is that a predilection to favour shareholders over stakeholders (or vice versa) is driven less by law, but more by the values and culture that individual directors bring to the table.

The authors build from their earlier research 2011 paper with Lilach Sagiv about the role that personal values play in shaping directors' attitudes towards shareholders and stakeholders. And, in turn, a director's personal values will be strongly influenced by his or her cultural heritage. The authors also draw from other theorists and concepts in the culture literature, including the social psychologist Shalom Schwartz's three cultural dimensions of egalitarianism vs. hierarchy, harmony vs. mastery and embeddedness vs. autonomy. The authors propose that directors from countries that stress egalitarianism, harmony and embeddedness are more likely to endorse a stakeholderist position, as compared with shareholder primacy.

To test this hypothesis, Adams and Licht developed a 40 item Portrait Values Questionnaire, building from Schwartz's framework. They add to this various proxies for legal variables, including both common and civil law regimes. The body of the paper is a discussion of a range of statistical tests, and to greatly simplify the authors' conclusions, the results suggest that the influence of culture and values trumps that of law or institutional factors in determining directors' attitudes towards shareholderism. There are other interesting nuggets of insight, such as directors whose psychological attributes are 'other-regarding' tend to have a stakeholder orientation, as do expat directors. Also, in testing for the often-debated difference between common and civil law regimes, this distinction does not emerge as material in the Adams and Licht analysis. Finally, even though law itself does not seem to be a driver in shareholder/stakeholder attitudes, it seems the country where the company is headquartered does matter.

As a policy takeaway from this, the authors call for 'humility' (a wonderful way to put it) in designing corporate governance legal reforms, such as a requirement to publish a corporate purpose statement. Human nature, embodied in culture and personal values, seems to be such that laws cannot be passed to change it.

As a professional who has had the experience in travelling the globe meeting with companies, I have seen first-hand how the purpose of companies differs from jurisdiction to jurisdiction. I don't know if this form of cultural analysis is regarded as 'fuzzy' by hard core neoclassical economists. But it resonates with me and I think it is not only interesting, but also enlightening, to explore corporate governance through the cultural lens.

Read the paper: https://www.ecgi.global/publications/working-papers/shareholderism-around-the-world-corporate-purpose-culture-and-law

Institutional Investment and Public Pension Funds

Paper: **The Singular Role of Public Pension Funds in Corporate Governance**
Authors: **Jill E. Fisch** (University of Pennsylvania and ECGI), **Jeff Schwartz** (University of Utah and ECGI)
ECGI Working paper Law series #847/2025

My experience in asset management instilled in me a strong sense of fiduciary duty— serving one's client. And when our client was a pension fund it seemed implicit, at least to me, that the fund beneficiaries, not the pension fund itself, were the ultimate clients we were serving.

But this orthodoxy has been challenged, at least in the case of public pension funds, by Jill Fisch and Jeff Schwartz in their paper *The Singular Role of Public Pension Funds in Corporate Governance*.

To cut to the quick, Fisch and Schwartz argue that what they call 'beneficiary primacy' is an inappropriate framework for public fund beneficiaries receiving a defined benefit (which is paid regardless of the fund's performance). They contend that the public pension fund is inherently political in nature ('a feature, not a bug') and should be regarded legally as serving as a 'principal' with a wider public mission than the narrow interests of the fund beneficiaries alone; this mission is also informed by public employees, taxpayers, governments and wider stakeholders. The authors suggest that public pension fund managers should take these wider interests into consideration in investment and engagement, including 'dimensions of both economic value and societal values'.

This is a bold proposition that may strike many readers as provocative or possibly as an attempt to give currently beleaguered ESG investing more legitimacy. But Fisch and Schwartz build their case carefully, beginning with an overview of public pension funds and their legal and public policy underpinnings. They note that pension funds are a dimension of public policy, whose governance and institutional design include elected officials and civil servants. Investment policies are shaped both by legislation and legislators, which can include targeting investments supporting local businesses or infrastructure projects.

As a former credit rater, I took interest in the point that a defined benefit beneficiary is cushioned from the day-to-day performance of the pension fund as a whole. It is not unakin to looking at a creditor's position vis-à-vis shareholders in a capital structure. The beneficiary receives a contracted fixed benefit with no other upside or downside (as long as the fund itself remains solvent!). And as the authors note, governments typically serve as a second line of defence in cases of shortfalls.

So I think there is merit in their argument, even though I suspect many will find it hard to shake the 'Beneficiary First' mindset. But even if this does free up public pension funds to invest based on broader considerations– including social and environmental factors that extend beyond short term value maximisation— I wonder where that leaves us in practice. How does one do this well? There seems to be a conceptual connection here with the concept of 'shareholder welfare maximisation' as articulated in the 2022 paper by Hart and Zingales.

Like Hart and Zingales, the authors present a conceptually coherent invitation for public pension funds to address 'welfare' in a broader way than simply monetary terms. But also like Hart and Zingales this leads to challenging practical issues of defining and measuring welfare and aggregating preferences in the context of differing end beneficiaries and jurisdictions. As the authors remind us, California is not Texas, and the question of what is 'welfare' and the relevance of sustainability considerations is likely to differ, often along political lines.

So while the paper argues for public pension funds to serve as principals, with greater flexibility to invest on their own perceptions of welfare as informed by the electorate and public policy, one wonders if the logical extrapolation leads to the formalisation or codification of some form of competing Red State/Blue State investment models. I hope not, and don't think that is the authors' intent. And that would certainly be confusing for companies.

But even though I sense the authors were in part motivated to provide support and legitimacy to greater inclusion of sustainability considerations in public pension fund investment decisions (at least in 'blue states'), in many 'red' jurisdictions I suspect that differing interpretations of welfare will continue to make it hard to move the dial in the direction of more sustainable investment in all US public pension funds.

Read the paper: https://www.ecgi.global/publications/working-papers/the-singular-role-of-public-pension-funds-in-corporate-governance

Shareholder Primacy

Paper: **What are the Costs of Weakening Shareholder Primacy? Evidence from a U.S. Quasi-Natural Experiment**
Authors: **Benjamin Bennett** (Tulane University), **René M. Stulz** (The Ohio State University, ABFER, NBER, Wharton Financial Institutions Center and ECGI), **Zexi Wang** (Lancaster University)
ECGI Working paper Finance series #1064/2025

For apologists of shareholder primacy and proponents of law over markets, you now have new evidence to support your convictions. In the paper **What are the Costs of Weakening Shareholder Primacy? Evidence from a U.S. Quasi-Natural Experiment**, the authors Benjamin Bennett, René Stulz and Zexi Wang make use of a legislative change in Nevada corporate law as an event study to explore what happens to companies when they are relieved from the 'onus' of shareholder primacy. And from their evidence it doesn't look good, either for shareholders or stakeholders. Moreover, I suspect the Nevada Chamber of Commerce will not be commissioning the authors to write promotional material to attract investor interest in companies incorporated in Nevada.

The paper is focused on what the authors call a 'quasi-natural' experiment on how the absence of a shareholder primacy regime might affect company performance. The event triggering the study was the 2017 passage of Senate Bill 203 in the state of Nevada—the second most popular state for public firm incorporation apart from Delaware. While Delaware is well-known for its shareholder primacy orientation, Nevada law does not operate under this doctrine, and Bill 203 'strengthened the autonomy of corporate directors and officers to pursue other objectives than shareholder wealth maximization and reduced their vulnerability to shareholder litigation.'

This sets the stage for a difference-in-differences analysis to observe a test group of Nevada companies vis-à-vis a control group of US companies incorporated in other jurisdictions (including Delaware) with a stronger shareholder primacy focus. The main sample consisted of 151 Nevada incorporated companies and 3041 firms incorporated in other states, observing this sample's performance for two years, both before and following the passage of the 2017 legislation. This study lasted only two years, to avoid complications relating to COVID-19 and its impact.

To assess the governance impacts the authors make use of a wide list of governance indicators, reflecting both internal governance and external monitoring, such as the Bebchuk, Cohen and Ferrell entrenchment index, board independence, director 'busyness', director attendance, accounting restatements, measures of pay versus performance, institutional ownership, analyst coverage, investment policies, R&D, ESG metrics — and ultimately firm value, as measured by Tobin's Q. It is striking that across the board these variables for Nevada test companies reflected a deterioration in governance standards following the law's passage, as compared with the control group. In short, the authors conclude that 'weakening shareholder primacy leads to a significant reduction in firm value.'

I note that the authors took care to present the stated intent of Bill 203 as to allow for a greater stakeholder focus and a 'governance model distinct from Delaware, emphasizing managerial discretion and a broader stakeholder perspective.' Noble words indeed. When I first read that I didn't really buy that and still don't. I suspect the authors don't either. Sounds too much like marketing schtick with a coat of greenwash. Nevada, is, after all, Nevada— with its own distinctive libertarian culture and the inspiration behind the proverb that 'what happens in Vegas, stays in Vegas'. This doesn't exactly exude harmony with the normative social and ethical motivations of stakeholder capitalism. Indeed, the results of the study with regard to ESG metrics confirmed my scepticism, as both stakeholders and shareholders seem to suffer.

My more cynical suspicion is that while this legislation may have been 'sold' to the public on the basis of promoting greater stakeholderism, its more pragmatic intent— consistent with the 'race to the bottom' concept– was to promote more Nevada incorporations through offering fewer protections to shareholders and greater flexibility for executive managers. Nobody seems to win by abandoning shareholder primacy— with the possible exception of company managers and the Nevada state coffers as well.

So does shareholder primacy therefore win out in the end for investors and stakeholders? Well, it seems to have won this round. From this 'experiment' we see that the impact of law— in this case through its absence— can indeed affect governance quality. And, in turn, markets penalise weaker governance through lower valuations. But before we award the prize to shareholder primacy, I would be interested in a more recent update to see if those patterns that prevailed within the first two years of the passage of the new law are still in place.

Read the paper: https://www.ecgi.global/publications/working-papers/what-are-the-costs-of-weakening-shareholder-primacy-evidence-from-a-us

Legal Heterodoxy in the Global South

Paper: **Legal Heterodoxy in the Global South: Priority of Workers versus Secured Creditors in Insolvency**
Authors: **Kevin E. Davis** (New York University), **Mariana Pargendler** (Harvard University and ECGI), **Maria Eduarda Lessa** (University of São Paulo)
ECGI Working paper Law series #843/2025

Having reviewed two US-focused working papers, it is both healthy and appropriate to consider wider jurisdictions with differing perspectives on corporate governance. The law paper *Legal Heterodoxy in the Global South: Priority of Workers versus Secured Creditors in Insolvency* by authors Kevin Davis, Mariana Pargendler and Maria Eduarda Lessa addresses this gap with the interesting and important message that emerging economies (the Global South) can provide their own 'heterodox' solutions to corporate governance which best suit their underlying economic, legal and cultural traditions.

This paper builds from an earlier ECGI working paper by Pargendler 'The Global South in Comparative Corporate Governance', in which Pargendler more generally discusses 'heterodox' approaches to corporate governance by emerging economies vis-à-vis the more 'orthodox' developed countries. In this paper the concept is applied to the granular, but important, issue of how insolvency law considers the interests of workers' claims versus those of secured creditors. The authors frame this as a question of labour versus capital. To generalise, in the Global North, the dominant model is creditor friendly, whereas the Global South generally favours workers' claims.

The core of the paper is a survey of this creditor/worker dynamic in the five largest economies of the Global North (France, Germany, Japan, UK, US) and the Global South (Brazil, China, India, Indonesia, Mexico). Perhaps inevitably, each jurisdiction brings its own historical context to this question in a way that may defy an overarching grand narrative. In particular, the countries of the Global North do not fit into a tidy pro-creditor bucket, and the authors distinguish between the more creditor-focused US, Japan and Germany on one extreme and the more socially focused orientation in France at the other end. The UK is noted for having a hybrid model, differentiated between fixed and floating claims. But an important detail here is the existence of wage guarantee funds which are common in the Global North— and their relative absence in the Global South. To add to this, key multilaterals such as the World Bank or the United Nations Commission on International Trade Law are characterised by the authors as bringing a 'neoliberal' US-oriented creditors' bias through their conditional lending practices.

The review of the largest Global South countries also reflected some disparate approaches relating to insolvency law, but for the most part did show that the claims of workers ranked higher or pari passu (in the case of India). And as an interesting cultural tidbit, the anthropologist in me took note that in the case of Indonesia a 2015 decision by its Supreme Court to prioritise workers' claims was in part inspired by the indigenous philosophy of Pancasila and its five principles relating to belief in God, humanity, the unity of Indonesia, democracy and social justice. Only China's Enterprise Bankruptcy Law stood out as having followed the conventional Global North norm of favouring the claims of secured creditors— though the authors note that Chinese courts have supported workers' claims in some cases.

Mexico plays a particularly important role in this analysis, with an Article in its Constitution of 1917 (labelled by the authors as avant garde) providing for the clear priority of workers' claims over secured claims by creditors. In so doing, Mexico was influenced by French law but took an even stronger position in supporting the 'pro-labour philosophy' that was motivated by the Mexican Revolution that began in 1910. Not only did Mexico's Constitutional provision influence subsequent French legislation on this question, but it also motivated 'South-South transplants' in several other Central and South American countries.

In pulling this together, the authors offer a logical premise to explain this Global South 'heterodoxy', which is supported with their comparative analysis. The high levels of economic inequality among these countries' populations, coupled with a limited capacity of state institutions to address this imbalance, has given rise to an alternative approach in the Global South that differs from its relatively wealthier Global North peers. Reflecting a greater sensitivity to inequality, the outcome is a strong social orientation in private law in these jurisdictions.

This seems to me to be a generally sensible conclusion to an interesting and readable paper. If I have a possible quibble, it is that while Asian and Latin American countries were widely researched in this review, this assessment on the Global South was silent on Africa— the world's most populous continent after Asia. Even though Africa seems to have flown under the radar because none of its economies ranked in the top five of the Global South, I think its inclusion would have made for a more complete paper.

I'll leave it for the authors to fight it out with another prominent Asian governance scholar, Dan Puchniak, as to whether 'heterodox', 'autochthonous' or some other polysyllabic competitor emerges as the dominant descriptor for emerging countries to develop their own distinctive approaches to governance that build from their indigenous roots and path dependencies. But in our current era, where globalisation is facing a backlash, it is important and useful for both scholars and practitioners to build awareness of corporate governance dynamics in differing global jurisdictions — and to better understand the roots of these differences. If nothing else, this is another reminder that one size does not fit all in corporate governance.

Read the paper: https://www.ecgi.global/publications/working-papers/legal-heterodoxy-in-the-global-south-priority-of-workers-versus-secured

Corporate Culture

Paper: **Accountability For Flawed Corporate Culture**
Authors: **Jennifer G. Hill** (Monash University and ECGI), **Roy Shapira** (Reichman University (IDC), University of California at Berkeley and ECGI)
ECGI Working paper Law series #851/2025

There doesn't seem to be much doubt that corporate culture, though a potentially 'soft' topic to some, can have real world impact on companies— and their successes or failures. It is the negative dimension that is considered by Jennifer Hill and Roy Shapira in their paper Accountability For Flawed Corporate Culture. The authors set the stage with marquee examples of corporate scandals — Wells Fargo's phony accounts, VW's emissions cheating, Boeing's safety lapses and Walmart's tie to the opioid crisis. The authors link all these scandals to deficiencies in corporate culture, which serves as a springboard for their analysis in terms of how to address this. Perhaps the main contribution of this paper is that there is potentially a greater role for civil law to play here, particularly relating to the consideration of individual director duties in Delaware following the Caremark decision in 1996 and the Marchand decision in 2019— something the authors label 'new Caremark'.

To back up, the authors first speak to the intractability of a flawed corporate culture as a challenge for companies and boards to effectively monitor and address. Problems can crop up even in sophisticated companies with elaborate compliance systems. There is indeed a quicksilver element to corporate culture— the moment you think you have a handle on it, it can just slip away or take shape in some other form. To give corporate culture a loose definition, the authors speak to the "unwritten norms of 'how we do things around here'". And specifically, 'how we do things' can differ from what companies profess or say they do. That is the basis of a flawed culture.

In discussing how to address this problem the authors present a 2x2 matrix of 'conduits' for liability: civil or criminal and entity or individual. In first taking us through the criminal dimension for both entities and individuals, the authors conclude that this can be an 'uphill battle' in terms of burdens of proof. But this leads us to their main focus in the paper: the role of corporate law liability relating to directors' duties. Here is where the authors invoke the 1996 Caremark decision, which shifted directors' role from passive to proactive in terms of identifying and acting upon material business issues. Wilful ignorance is no longer an out: directors must implement systems to monitor corporate culture, respond to red flag alerts and review business plans to properly oversee culture.

But the authors note that Caremark was largely regarded as a 'toothless tiger' until the Delaware court's Marchand decision in 2019 relating to a board's ineffective scrutiny of compliance relating to the business-critical issue of food safety at the company. The upshot is that courts can conclude that a board breached its oversight duties if the board cannot demonstrate that it considered a material business risk in its deliberations. The authors also note that in the 'new Caremark era' courts are also increasingly willing to grant inspection rights to shareholders to review internal company documents to investigate potential failure-of-oversight claims. Among other things, the authors observe that this has led to a spate of law firm memos urging their corporate clients to prioritise compliance issues and ensure proper documentation. I would call those 'cover your ass' memos, but the authors, who are more dignified and restrained than I, do not.

While the paper mostly focuses on the US, and Delaware, the authors also conduct a limited comparative review of the UK and Australia to consider how jurisdictions without the 'new Caremark' standard (which could also include Texas…) deal with cultural and compliance oversight. In the UK, where private enforcement actions are 'close to zero', they cite various mechanisms, including corporate governance codes, regulatory sanctions and ultimately 'reputational sanctions', which they suggest may be the most forceful deterrent. In Australia, the main differentiator is not oversight duty per se, but rather how this is monitored and enforced. Here they cite the Australian Securities and Investments Commission (ASIC) and its civil law enforcement efforts against individual directors who are in breach of their fiduciary oversight duties. The authors ultimately suggest this may be the most effective approach, and one that brings to bear a broader social perspective in considering corporate culture, not just the potentially narrow self-interested and short-term perspective of shareholders.

We'll have to wait and see how the 'new Caremark' standard raises the civil liability bar for director duties in the US. The authors note that this may be another 'tool in the box', but they are modest at this point in terms of its practical potential. And though the Australian model may show promise in terms of how flawed culture might be more effectively enforced in practice, I have a hard time seeing something like the ASIC operating in the US to proactively police director malfeasance— at least in 2025 America. The UK and Australian dimensions were helpful in giving this paper an international perspective, though it might have been more complete with some examples from prominent civil law jurisdictions as well.

At the end of the day, flawed corporate culture remains a challenge for companies, shareholders and stakeholders. There is no staff memo that can serve as a quick fix here, but the authors serve us well by keeping this issue front of mind and proposing new mechanisms to motivate improved board oversight over corporate culture.

Read the paper: https://www.ecgi.global/publications/working-papers/accountability-for-flawed-corporate-culture

Stakeholder Activism

Paper: **The Value of NGO Activism**
Authors: **Janja Brendel** (The Chinese University of Hong Kong), **Cai Chen** (The Chinese University of Hong Kong), **Thomas Keusch** (INSEAD), **Zacharias Sautner** (University of Zurich and ECGI)
ECGI Working paper Finance series #1066/2025

NGOs can, and do, play a role in promoting activism to challenge corporate behaviours. And to my thinking, given my prior experience in asset management, NGOs can support sustainability-minded investors with greater subject matter expertise on individual topics than many investors may have in-house. So I welcomed the deep dive on this issue in this short, but focused, finance paper, *The Value of NGO Activism*, by Janja Brendel, Cai Chen, Thomas Keusch and Zacharias Sautner.

To gauge the role of NGO activism the authors focused on NGO allegations of misleading or false corporate claims— otherwise known as greenwashing. They review 1,212 allegations made by 329 NGOs against 287 publicly listed firms from 24 countries between 2011 and 2022. US firms represented 46% of the sample, followed by France (12%) and the UK (6%). The most frequent greenwashing claims related to climate change (30%) and consumer health (22%).

They test their data against a set of hypotheses, finding evidence to support the following claims:

- NGOs are more likely to target visible firms— most notably those that are consumer facing.
- Stock returns react negatively to NGO E&S-washing allegations, though this effect was described as a 'modest' - 0.34% over a three-day window.
- Stock returns decline more after NGO E&S-washing allegations if the allegations are over financially-material issues
- Stock returns decline more after NGO E&S-washing allegations if the allegations originate from influential NGOs.
- The news media react negatively to NGO E&S-washing allegations
- Carbon emissions decline after climate-washing allegations by NGOs.
- Carbon emissions decline more strongly after climate-washing allegations in firms with higher institutional ownership subject to stewardship codes.

At the same time, the evidence did not support the following hypotheses:

- The negative news media reaction to NGO E&S-washing allegations is stronger if the allegations are over financially-material issues.
- The negative news media reaction to NGO E&S-washing allegations is stronger if the allegations originate from influential NGOs.

- The corporate press response to NGO E&S-washing allegations is stronger for financially-material allegations
- The corporate press response to NGO E&S-washing allegations is stronger for allegations by influential NGOs.

So what can we conclude by this? Firstly, the authors make a good case that NGO activism can be effective, in terms of both influencing company behaviour, investor sentiment and ultimately share prices. It was interesting, and not surprising, to see that investors (e.g. the stock market) focus on financially material issues more so than the media, and that the media is less sensitive to the reputations of the NGOs making greenwashing claims. At the same time the study highlighted a potential unintended consequence: while Scope 1 and 2 carbon emissions reduced following NGO allegations, Scope 3 emissions increased, suggesting that targeted companies simply shift emissions into their supply chains.

My one niggle as a former asset manager is that the authors suggest that investors who are stewardship code signatories are somehow intrinsically more 'climate conscious' than other investment firms. I'm not sure that is the case. Though the authors find evidence to support this claim, I am sceptical on this point, and would note that climate matters, if they are mentioned at all, are not prominent features of stewardship codes. If the authors were to test this against investors that are PRI signatories, I think that might be more logical — and fruitful (and there is some overlap with the stewardship code groups).

But the important overarching point is that NGOs can bring subject matter expertise and attention to corporate actions in a way that can assist investors in their own due diligence and can inspire both investor engagement and stock market reactions.

Read the paper: https://www.ecgi.global/publications/working-papers/the-value-of-ngo-activism-evidence-from-sustainability-disclosures

Human Capital

Paper: **Financing Human Capital: A Survey and Synthesis**
Author: **Ernst G. Maug** (University of Mannheim and ECGI)
ECGI Working paper Finance series #1073/2025

While some economists see companies as a nexus of contracts, I prefer to think of companies as a nexus of capitals: financial, natural, social, human and the like. Though it may be tempting, particularly for investors, to focus primarily on a company's financial capital, that can be myopic, as we live in a world of colour, not black and white. A multicapital perspective represents a way to consider environmental and social factors not as just 'woke' E&S metrics, but as forms of a company's wealth that represent value, and which can influence long term value creation— or destruction.

So I was pleased to see the comprehensive review of human capital—and its relationship to corporate finance— by Ernst Maug in his working paper *Financing Human Capital: A Survey and Synthesis*. The paper explores the linkage of human capital and corporate finance, financial contracting and employees, investors and the life cycle of the firm, and human capital in financial markets.

A detailed account of the paper's findings is beyond the purview of this review, given its length and vast scope. But it does start by identifying a firm's employees as 'owners of human capital', whose value is reflected at least in part by the company's intangible assets. The author then presents the tension between investing in human capital as an 'extended trade off' in corporate finance in which firms finance themselves more conservatively— through higher cash positions and lower net debt to compensate for the increased operating leverage that comes with providing greater support and commitment to the company's workforce.

Another important dimension to the paper is its dynamic focus on the lifecycle of the firm, as reflected in how the governance of human capital might evolve with its state of development, from start-up to IPO, to mature company to private equity and M&A. I think this dynamic perspective makes great sense. In each of these phases, the prioritisation of human capital can evolve with the company's own development, with the need to establish a healthy workforce apparently the most critical for young start-ups— and less critical as a company matures and declines. With regard to human capital in financial markets the author's literature survey presents evidence that employee satisfaction and training have positive effects on a firm's financial performance. But Maug notes that we only have a limited understanding of the factors that determine how human capital related information is incorporated in company valuations. This leads to the conclusion that firms may ultimately under-invest in human capital— and points to new areas of research.

In any event the paper does reinforce the importance of human capital as a critical consideration for both companies and investors. The implicit point is that company governance requires awareness of and attention to multiple forms of capital, including the crucial role that human capital plays.

Let me finally say, with full respect to the author, that this was one slog of a read. But I did make it through all 99 pages of sometimes dense text. In some ways this is more of a short book than a working paper. If the reader's goal is to gain a comprehensive understanding and interpretation of the human capital and finance literature, then you are in Hog Heaven. Maug does a very impressive job creating a narrative for his paper by weaving together a vast amount of literature relating to human capital. He also presents a detailed outline which is useful for more general readers wishing to navigate the paper.

I'm sure that no self-respecting ECGI academic would do nothing other than read through the paper in its entirety. But for us, possibly lazier practitioner members, each of the paper's subsections includes useful summary sections. Don't tell anyone I said this.

Read the paper: https://www.ecgi.global/publications/working-papers/financing-human-capital-a-survey-and-synthesis

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