

# Comments on Pargendler & Pollman, Engines of External Governance

Gen Goto

University of Tokyo

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東京大学  
大学院法学政治学研究科・法学部  
GRADUATE SCHOOLS FOR LAW AND POLITICS  
FACULTY OF LAW  
THE UNIVERSITY OF TOKYO

# Summary of Pargendler & Pollman

- Why nonprofits
  - In comparison to individuals and for-profits
- Variety of nonprofits
  - Timing of creation; purpose; focus on CG; domestic/international
- Nonprofits' playbook
  - Lobbying; litigation; shareholder proposals; standard setting; shaming
- Implications
  - Chain reactions since 1960s/70s
  - Hydraulic effect
  - New wave of convergence

# Pargendler & Pollman's contributions

- First to look straightly at the involvement of nonprofits in corporate governance, not as an anomaly
- Covering both pro-ESG and anti-ESG in one framework
- Groundwork for further analysis on the roles of nonprofits in corporate governance

# Is there any attribute that makes nonprofits influential or long-lasting?

- Timing of creation
  - Having a long history and nice track record would contribute to stronger influence
- Purpose
  - General/specific
  - Climate/human rights/DEI/others
- Geographic
  - Domestic/international
  - US/Europe/others
- Cf. Kabunushi Ombudsman (Puchniak & Nakahigashi 2012, cited in Fn115) dissolved in 2019 due to the passing/aging of core members
  - Having a legal personality may not guarantee durability

# More analysis on lawsuits by nonprofits?

- Some lawsuits by nonprofits are successful, while others are not
  - What made the difference? Type of the claim? Its validity?
- Courts in some jurisdictions may not be completely reluctant to allow lawsuits by nonprofits
  - Reluctant in UK/US: Client Earth v. Shell; NCPPR v. Schultz
    - Singapore, too? (Lan & Wang 2024)
  - Not in Poland: Court of Appeals of Poznan (p.21)
  - Not in Japan: e.g. In re TEPCO (Goto 2024)
    - Courts generally permit a derivative suit by a nonprofit with its own social agenda, as there is no requirement that the plaintiff adequately represent shareholders as a class

# The rise of anti-ESG nonprofits

- Why don't anti-ESG nonprofits just leave it to companies and management to fight back?
- Is this a purely American phenomenon, or do the authors see similar developments in other parts of the world?
  - There are extreme rights, but are they involved in corporate governance?
- Does the analysis in Part I.A.2 apply similarly to anti-ESG nonprofits?

# How strong is the hydraulic effect?

- “regulatory responses may be more effective if they acknowledge the inevitability of these pressures and seek to integrate them into coherent corporate governance frameworks rather than attempting to eliminate them” (p.39)
- If one strategy is more effective than the others, suppressing that strategy would not eliminate, but could weaken the influence of nonprofits
- Any suggestion on how to integrate?

# Divergence within new convergence?

- “Nonprofits have contributed not to persistence but to a new wave of global convergence toward broader conceptions of corporate governance” (p.40)
- Different approaches to ESG among jurisdictions
- How active and influential are nonprofits in Asia and Latin America?
  - Some in Japan, but not in the scale of the US
- How strong are the anti-ESG nonprofits outside of the US? Has the right wing got involved in corporate governance?

# Some minor issues

- Polish case invalidating a shareholders' meeting decision (p.21)
  - What was considered as a violation of the division of powers?
- Exxon v. Arjuna Capital (p.22)
  - Why did AC agree to refrain from submitting future proposals? Litigation costs?