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# PART 1

# BASIC CONCEPTS, BOARD STRUCTURES AND COMPANY OFFICERS

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# 1

# THE CONCEPTS OF 'CORPORATE GOVERNANCE' AND 'ESSENTIAL' PRINCIPLES OF CORPORATE GOVERNANCE



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**It is necessary only for the good man to do nothing for evil to triumph.**

Attributed to Edmund Burke (18th century English political philosopher) – *The Australian*, 6 December 2004, 4, reporting on the most favoured phrase of quotation-lovers, as determined by an Oxford University Press poll

**Many companies today no longer accept the maxim that the business of business is business. Their premise is simple: Corporations, because they are the dominant institution on the planet, must squarely address social justice and environmental issues that afflict humankind.**

Paul Hawken, *The Ecology of Commerce* (Harper Business, revised edn, 2010), xi

# 1.1 The meaning of corporate governance

## 1.1.1 Generally

Corporate governance is as old as the corporate form itself.[1] However, the phrase 'corporate governance' was scarcely used until the 1980s.[2] Issues of corporate governance first gained international prominence in the late 1990s and early 2000s in the wake of a series of corporate accounting scandals, most notably Enron in the US and HIH in Australia.[3] The focus on corporate governance increased after 2008, in the aftermath of the Global Financial Crisis.[4] Inasmuch as a discussion of the principles of contemporary governance requires a closer description of 'corporate governance', the concept remains one that does not lend itself to a single,[5] specific or narrow definition. Corporate governance, by its very nature, is organic and flexible, constantly evolving in response to a changing corporate environment.[6]

1 Jean J du Plessis, 'Corporate law and corporate governance lessons from the past: Ebbs and flows, but far from "The end of history . . .: Part 1"' (2009) 30 *Company Lawyer* 43, 44; H Wells, 'The birth of corporate governance' (2010) 33 *Seattle University Law Review* 1247–92.

2 Bob Tricker, *Corporate Governance: Principles, Policies and Practices* (Oxford University Press [OUP], 2nd edn, 2012) 4. See Corina Gavrea and Roxana Stegerean, 'Comparative study on corporate governance' (2011) 20 *Annals of the University of Oradea, Economic Science Series* 674 for a literature review and an analysis of the concept of 'corporate governance'. Note, however, that Cheffins points out that in the US, the term came into vogue during the 1970s. See Brian R Cheffins, 'The History of Corporate Governance' in Mike Wright, Donald S. Siegel, Kevin Keasey and Igor Filatotchev (eds), *The Oxford Handbook of Corporate Governance* (OUP, 2013) <www.oxfordhandbooks.com.ezproxy-f.deakin.edu.au/view/10.1093/oxfordhb/9780199642007.001.0001/oxfordhb-9780199642007-e-3>.

3 Du Plessis, 'Corporate law and corporate governance lessons from the past' 43. See also Gerry H Grant, 'The evolution of corporate governance and its impact on modern corporate America' (2003) 41 *Management Decision* 923–4.

4 Iilia Lupu, 'The indirect relation between corporate governance and financial stability' (2015) 22 *Procedia Economics and Finance* 538.

5 See generally Janet Dine and Marios Koutsias, *The Nature of Corporate Governance: The Significance of National Cultural Identity* (Edward Elgar, 2013) 67–70.

6 The discussion of different corporate governance theories in Section 1.1.2 illustrates how changed perceptions and expectations of corporations impact on the concept and, ultimately, on how we define 'corporate governance'. For an insightful review of the history of corporate governance that underscores the evolutionary nature of corporate governance, see Cheffins, 'The History of Corporate Governance'

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A comparison of older definitions or descriptions of corporate governance, such as those used in the South African King Report (King I) in 1994, and more recent definitions, such as those used in the G20/OECD *Principles of Corporate Governance* and the King IV (2016) Report reveals how the focus has shifted from a narrow, inward-looking approach that primarily addresses internal director-related rules within the corporation to an outward-looking, more inclusive and multifaceted approach that recognises that corporate governance is about much more than managing the manner in which directors exercise and control authority in corporations.[7]

Early attempts at a definition focused on 'corporate governance' as a 'system': the UK Cadbury Report (1992)[8] and King I[9] both defined 'corporate governance' as 'the system by which companies are directed and controlled'.

In 2003, the Report of the HIH Royal Commission on the collapse of HIH Insurance Ltd (the Owen Report), one of Australia's largest corporate collapses, emphasised that 'corporate governance' extends beyond mere models and systems and includes the 'practices by which that exercise and control of authority is in fact effected'.[10]

The Australian Securities Exchange's (ASX) Corporate Governance Council continued the trend to define 'corporate governance' more precisely by including references to the setting and achieving of objectives, the monitoring of risk and the optimisation of performance in the 2003 ASX *Principles of Good Corporate Governance and Best Practice Recommendations*.[11] The description used in the 2014 version of the ASX *CG Principles and Recommendations* broadened the concept even further to add another layer: accountability:

> The phrase 'corporate governance' is 'the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in corporations. It encompasses the mechanisms by which companies, and those in control, *are held to account*' (emphasis added).[12]

(2013). Gilson argues that the manner and degree to which we complicate the inquiry into the (legal) structures that bear on corporate decision-making and performance have informed the manner in which corporate governance has developed. See Ronald J Gilson, 'From Corporate Law to Corporate Governance' (2016) in *Oxford Handbook of Corporate Law and Governance* (forthcoming); European Corporate Governance Institute (ECGI), Law Research Paper No. 324/2016; Stanford Law and Economics, Olin Working Paper No. 497, 5 <https://ssrn.com/abstract=2819128>.

7 King IV defines 'corporate governance' as 'the exercise of ethical and effective leadership by the governing body towards the achievement of the following governance outcomes: ethical culture, good performance, effective control and legitimacy': King IV 11.

8 *Report of the Committee on the Financial Aspects of Corporate Governance* (hereafter Cadbury Report (1992)) (Committee on the Financial Aspects of Corporate Governance, 1992).

9 *The King Report on Corporate Governance* (hereafter King (1994)) (Institute of Directors in Southern Africa, 1994).

10 Report of the HIH Royal Commission (Owen Report), *The Failure of HIH Insurance – Volume I: A Corporate Collapse and its Lessons* (Commonwealth of Australia, 2003) xxxiii.

11 ASX, *Principles of Good Corporate Governance and Best Practice Recommendations* (March 2003) 3 <www.asx.com.au/documents/asx-compliance/principles-and-recommendations-march-2003.pdf>.

12 ASX, *CG Principles and Recommendations* (3rd edn, 2014) 3 <www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf>.

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More recently, the G20/OECD *Principles of Corporate Governance* specifically included a reference to the relationships between the parties involved and described corporate governance as:

> a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.[13]

As will be seen below, we attempt to define 'corporate governance' in wide terms. However, in an approach similar to the recent OECD definition, we incorporate some specific aspects – in particular, the interests of all parties involved and the relational nature of corporate governance[14] – to give the definition some substance.

Before we attempt to give our own definition, it is important to consider the origins of both the corporate governance and the stakeholder debates.

### 1.1.2 Origins of the corporate governance debate and some corporate governance and corporate law theories

It is difficult to determine exactly when the corporate governance debate started.[15] However, there is little doubt that there were many factors that brought the debate to prominence: the separation of ownership and control (so pertinently illustrated in 1932 by Berle and Means in their book, *The Modern Corporation and Private Property*), which resulted in the so-called managerial revolution,[16] or 'managerialism';[17] the pivotal role of the corporate form in

13 G20/OECD, *Principles of Corporate Governance* (2015) 9 <http://dx.doi.org/10.1787/9789264236882-en>. The 2015 revision commenced in 2014. In 2013 the OECD launched an inclusive review of the *Principles*, with all G20 countries invited to participate on an equal footing. The review also benefited from extensive public consultations and the participation of key international institutions such as the Basel Committee, the FSB and the World Bank. The updated *Principles* were adopted by the OECD in July 2015, launched at the meeting of G20 Finance Ministers and Central Bank Governors in Ankara on 4–5 September 2015 and subsequently endorsed at the G20 Leaders' Summit in Antalya on 15–16 November 2015. The *Principles* have been adopted as one of the Financial Stability Board's key standards for sound financial systems, and have been used by the World Bank Group in more than 60 country reviews. They also serve as the basis for the guidelines on corporate governance of banks issued by the Basel Committee on Banking Supervision. The OECD *Principles of Corporate Governance* are discussed in more detail in Chapter 12.3.

14 Increasingly, corporate governance discussions reflect a growing consensus that compliance and security best practices should extend beyond directors and senior management. See Brian Stafford, 'The evolution of corporate governance' (2015) *The Corporate Board* 10.

15 See John Farrar, *Corporate Governance: Theories, Principles and Practice* (OUP, 3rd edn, 2008) 8–20. Gilson traces it back to the mid 1970s, when Jensen and Meckling reframed corporate law into something far broader than disputes over statutory language. See Michael C Jensen and William H Meckling, 'Theory of the firm: Managerial behavior, agency costs and the theory of the firm' (1976) 3 *Journal of Financial Economy* 305 in Gilson, 'From Corporate Law to Corporate Governance' (2016) 6 <https://ssrn.com/abstract=2819128>.

16 See, for example, Klaus J Hopt, 'Preface' in Theodor Baums, Richard M Buxbaum and Klaus J Hopt (eds) *Institutional Investors and Corporate Governance* (W de Gruyter, 1994) I; and OECD, *Principles of Corporate Governance* (April 2004) 12 <www.oecd.org/dataoecd/32/18/31557724.pdf>.

17 Stephen M Bainbridge, *The New Corporate Governance in Theory and Practice* (OUP, 2008) 9, 19–20, 155 *et seq*.

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generating wealth for nations; the huge powers of corporations,[18] and the effects of these on our daily lives; the enormous consequences that flow from collapses of large public corporations;[19] and the practical reality of the almost unfettered powers of boards of directors, or what Stephen Bainbridge identified as 'the director primacy model of corporate governance' (see discussion below and in Chapter 3). We are, indeed, as Allan Hutchinson describes it so appropriately, living in an age of *corpocracy*.[20]

It is also beyond dispute that the corporate governance debate became particularly prominent when the basic perception of the company changed. At first the only real concern of a company was the maximisation of profits.[21] Profits for whom? – the shareholders.[22] This was confirmed in 1919 in the US case of *Dodge v Ford Motor*,[23] and is a view many commentators adhered to for a considerable period of time; a further confirmation of the Dodge theory occurred in 1986 in another US case, *Katz v Oak Industries*.[24] According to this view, the shareholders are the 'owners of the company',[25] the primary stakeholders and most importantly, the providers of capital to enable the company to conduct business. This is called the shareholder primacy theory,[26] although it was hardly ever mentioned that in fact nobody can 'own' the company, as it is a separate 'legal person' and it is just as unfitting to talk about 'ownership' here as it is to say (after the eradication of slavery) that one or more 'natural persons' can 'own' another 'natural person'.

Gradually the 'shareholder supremacy'[27] view changed, and the company, especially the large public company, came to be seen in a different light. It was observed more pertinently that there were other stakeholders in a company; that if the only purpose of a company was 'the maximisation of profits for the shareholders', society could suffer tremendously – poor

18 Kent Greenfield, *The Failure of Corporate Law* (University of Chicago Press, 2006) 4–5.

19 See, generally, Roberta Romano, *The Genius of American Corporate Law* (AEI Press, 1993); and David SR Leighton and Donald H Thain, *Making Boards Work* (McGraw-Hill Ryerson, 1997) 9–10.

20 Allan C Hutchinson, *The Companies We Keep* (Irwin Law, 2005) 8.

21 Adolf A Berle, 'The Impact of the Corporation on Classical Theory' in Thomas Clarke (ed.), *Theories of Corporate Governance: The Philosophical Foundations of Corporate Governance* (Routledge, 2004) 45, 49 *et seq.*

22 Margaret M Blair, 'Ownership and Control: Rethinking Corporate Governance for the Twenty-First Century' in Clarke (ed.), *Theories of Corporate Governance* (2004) 175, 181. See also Bainbridge, *The New Corporate Governance in Theory and Practice* (2008) 53.

23 *Dodge v Ford Motor Company*, 170 N.W. 668 (Mich. 1919) at 684; (1919) 204 Mich. 459 at 507: 'A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end, and does not extend to the change of the end itself, to the reduction of profits, or to the nondistribution of profits among stockholders in order to devote them to other purposes.' For an overview of the *Dodge* case, see Leonard I Rothman, 'Re-evaluating the Basis of Corporate Governance in the Post-Enron Era' in PB Vasudev and Susan Watson (eds), *Corporate Governance after the Financial Crisis* (Edward Elgar, 2012) 101, 110–12.

24 *Katz v Oak Industries Inc.*, 508 A 2d 873, 879 (Del. Ch. 1986).

25 See, generally, Greenfield, *The Failure of Corporate Law* (2006) 43, but also see his arguments dispelling this 'myth' (44–7).

26 See generally, on the theory of 'shareholder primacy', Irene-marié Esser, *Recognition of Various Stakeholder Interests in the Company Management: Corporate Social Responsibility and Directors' Duties* (VDM Verlag Dr Müller, 2009) 19–23.

27 See, generally, Greenfield, *The Failure of Corporate Law* (2006) 2 and 44–6.

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working conditions for workers, exploitation of the environment, pollution and so on.[28] Then came the realisation that:

> enterprise, private as well as public, because it both contributes to and benefits from society (local, national and larger), can be said to have rights and duties vis-à-vis that society in somewhat the same way as has an individual;[29]

and

> [t]he limited liability company does not simply represent one interest. It represents an arena in which there is a potential clash of many interests. We may identify the interests underlying it as: (1) investors – share capital/loan capital; (2) outside creditors – commercial finance/trade creditors; (3) employees; (4) consumers; (5) the public.[30]

The concept of 'managing the corporation' then came to be expressed in terms of these other interests:

> The balancing of the company's responsibilities – to workers as members of the company, to consumers of the goods and services it provides, and to the community of which it is a citizen – with its primary one of operating at maximum efficiency and lowest cost, so as to make profits and discharge its obligations to its shareholders, represents the full scope of management.[31]

Thus the concept of 'corporate governance' began to adopt this new articulation of 'managing the corporation', with a central focus on the interrelationship among internal groups and individuals such as the board of directors, the shareholders in general meetings, the employees, the managing directors, the executive directors, the non-executive directors, the managers, the audit committees and other committees of the board. However, the profit motive was still dominant. Furthermore, it should be realised that outside interests are also at stake; for example, those of creditors, potential investors, consumers and the public or community at large (so-called stakeholders).

Other interests started to be recognised judicially. For instance, in *Westpac Banking Corporation v Bell Group Ltd (in liq) (No 3)* Drummond AJA pointed out as follows:

> The impacts of corporate decision-making on a wider range of interests than shareholders are now being given more recognition. The need to ensure protection of those interests also I think serves to explain why modern company courts have become more interventionist, in reviewing the activities of directors, than was traditionally the case.[32]

28 See also Kent H Baker and John R Nofsinger, 'Socially Responsible Finance and Investing: An Overview' in Kent H Baker and John R Nofsinger (eds), *Socially Responsible Finance and Investing: Financial Institutions, Corporations, Investors, and Activists – Robert W. Kolb Series in Finance* (John Wiley & Sons, 2010–12) Vol. 612, 2.

29 Charles de Hoghton (ed.), *The Company: Law, Structure and Reform in Eleven Countries* (Allen & Unwin, 1970) 7.

30 John J Farrar et al., *Farrar's Company Law* (Butterworths, 1991) 13.

31 George Goyder, *The Responsible Company* (Blackwell, 1961) 45.

32 *Westpac Banking Corporation v Bell Group Ltd (in liq)* (2012) WAR 1 (*Westpac v Bell No 3*), [2049], [2051]: 'Owen J was correct, in my opinion, when he said at [4438] and [4439] that when a company is in an insolvency context the interests of creditors are not in all circumstances paramount, to the exclusion of other interests including that of the shareholders. His conclusion at [4440] was that

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One of the most recent judicial recognitions that there are several interests that can be harmed by the acts or omissions of directors is the case of *Australian Securities and Investments Commission v Cassimatis (No 8)*, where Justice Edelman refers specifically to several interests, including the interest in a company's reputation.[33] There are some commentators now arguing for the recognition of a corporate social responsibility duty for directors, based on 'contemporary community expectations'.[34]

Traditional wisdom regarding shareholder primacy[35] began to be challenged more forcefully from at least the early 1990s, with statements such as 'managerial accountability to shareholders is corporate law's central problem';[36] 'corporate law is currently in the midst of crisis, because of the exhaustion of the shareholder primacy model';[37] 'shareholder dominance should be questioned';[38] 'shareholder primacy theory is suffering a crisis of confidence';[39] and most recently even stronger calls for urgent change to the shareholder primacy model, arguing that shareholder primacy may be 'the main barrier to sustainable companies'.[40] Although there is little doubt that the shareholder primacy theory of corporate law still underpins the corporate law models of many countries, including Australia,[41] calls ring loud for a rethinking of the

directors could not properly commit their company to a transaction if the circumstances were such that "the only reasonable conclusion to draw, once the interests of creditors have been taken into account, is that a contemplated transaction will be so prejudicial to creditors that it could not be in the interests of the company as a whole". I would prefer to say that if the circumstances of the particular case are such that there is a real risk that the creditors of a company in an insolvency context would suffer significant prejudice if the directors undertook a certain course of action, that is sufficient to show that the contemplated course of action is not in the interests of the company.' For a critical analysis of the majority decision of the Court of Appeal, see Jason Harris and Anil Hargovan, 'For whom the bell tolls: Directors' duties to creditors after *Bell*' (2013) 35 *Sydney Law Review* 433.

33 *Australian Securities and Investments Commission v Cassimatis (No 8)* (2016) 336 ALR 209 at [480]–[483].

34 See Jean J du Plessis, 'Corporate social responsibility and "contemporary community expectations"' (2017) 35 *Company & Securities Law Journal (C&SLJ)* 30, 37–9.

35 See again Esser, *Recognition of Various Stakeholder Interests in the Company Management* (2009) 19–23.

36 David Millon, 'New directions in corporate law: communitarians, contractarians, and the crisis in corporate law' (1993) 50 *Washington & Lee Law Review* 1373, 1374.

37 Ibid. 1390.

38 Morten Huse, *Boards, Governance and Value Creation: The Human Side of Corporate Governance* (Cambridge University Press [CUP], 2007) 29.

39 Lynn A Stout, 'The Shareholder Value Myth', *European Financial Review*, 1 April 2013 <http://ssrn.com/abstract=2277141>. Despite these statements, the shareholder primacy model remains prominent in the UK and continues to be supported by a shareholder-centric company law framework. See Marc Moore, 'Shareholder primacy, labour and the historic ambivalence of UK company law' (September 2016) 5 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2835990>. However, Moore suggests that although most directors and senior managers of UK companies would likely regard shareholder supremacy as underpinning the current UK company law model, the notion of shareholder supremacy will increasingly be challenged in the future.

40 Beate Sjåfjell, 'Corporate Governance for Sustainability: The Necessary Reform of EU Company Law' in Beate Sjåfjell and Anja Wiesbrock (eds), *The Greening of European Business under EU Law: Taking Article 11 TFEU Seriously* (Routledge, 2015) 97–117.

41 See Jean J du Plessis, 'Shareholder primacy and other stakeholder interests' (2016) 34 *C&SLJ* 238, 241; and Jean J du Plessis 'Corporate social responsibility and "contemporary community expectations"' (2017) 35 *C&SLJ* 30.

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traditional Western notion of the company, which still relies on 18th and 19th century principles, concepts and notions.[42]

From all this a slightly different theory has emerged, one moving away from 'shareholder primacy' theory to what is called an 'enlightened shareholder value' theory. We discuss this theory in greater detail in Chapter 2, but will touch upon it briefly here as well. The 'enlightened shareholder value' theory, very generally, holds that productive relationships (with other stakeholders) can be achieved within the framework of existing corporate law and corporate governance concepts, in fact maintaining 'shareholder supremacy', but ensuring that directors pursue shareholders' interests in an enlightened and inclusive way, meaning *having regard* to the interests of other stakeholders, *but no more than that*.[43] The principal manifestation of this theory is found in s 172 of the UK *Companies Act 2006*:

> 172 **Duty to promote the success of the company**
>
> (1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to –
> (a) the likely consequences of any decision in the long term,
> (b) the interests of the company's employees,
> (c) the need to foster the company's business relationships with suppliers, customers and others,
> (d) the impact of the company's operations on the community and the environment,
> (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
> (f) the need to act fairly as between members of the company.
>
> (2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.
>
> (3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.[44]

There is no space in this book to discuss this in detail, but just reflecting on the approach generally will reveal how difficult it seems to break with the 'shareholder-dominance

42 See in particular Tricker, *Corporate Governance* (2012) 164–5 and 488.

43 See, generally, David Millon, 'Enlightened Shareholder Value, Social Responsibility and the Redefinition of Corporate Purpose Without Law' in Vasudev and Watson (eds), *Corporate Governance after the Financial Crisis* (2012) 68 and 79–80; Andrew Keay, 'Tackling the issue of corporate objective: An analysis of the United Kingdom's "enlightened shareholder value approach"' (2007) 29 *Sydney Law Review* 577, 589–90; I Esser and Jean J du Plessis, 'The stakeholder debate and directors' fiduciary duties' (2007) 19 *South African Mercantile Law Journal* 346, 351–2.

44 See Andrew Keay, 'Section 172(1) of the Companies Act 2006: An interpretation and assessment' (2007) 28 *The Company Lawyer* 106; Millon, 'Enlightened shareholder value, social responsibility and the redefinition of corporate purpose without law' (2012) 69 and 79–80.

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indoctrination' that has been so strong over so many years.[45] Clinging to the past, and even seeing the interests of other stakeholders in an 'enlightened' way, still makes other non-shareholder interests peripheral – as Janet Dine and Marios Koutsias put it, this approach is simply 'a fig leaf for stakeholders other than shareholders'.[46] The 'enlightened shareholder value' theory could be described as the interim stop, buying more time to reflect further on the flaws in the 'shareholder primacy' theory and the merits of a proper 'all-inclusive stakeholder' theory – one that is emerging fast, as will be seen in the discussion that follows.

That the days of the 'shareholder primacy' theory are numbered is strikingly illustrated by Lynn Stout in her 2012 essay, 'New thinking on "shareholder primacy"'.[47] Note that we briefly discuss a new theory, called the 'director primacy' theory, in Chapter 3, in the context of the powers of boards of directors.

Nowadays, it is fairly generally accepted that 'in future the development of loyal, inclusive stakeholder relationships will become one of the most important determinants of commercial viability and business success';[48] that 'recognition of stakeholder concern is not only good business, but politically expedient and morally and ethically just, even if in the strict legal sense [corporations] remain directly accountable only to shareholders';[49] and that 'the corporation as a legal entity grew out of its ability to protect not only the shareholders but also other stakeholders'.[50]

Before we discuss the 'stakeholder model'[51] in greater detail in Chapter 2 and before we comment on some broader views on what the ultimate aims of corporations, especially large public corporations, should be, we first need to mention a few other issues that dominated corporate governance debates for several years. They are 'corporate social responsibility' (CSR)[52] and the concept of 'corporate citizenship' – we discuss these in greater detail in Chapter 2.[53]

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45 See Marc Moore's comments on the lasting prominence of shareholder primacy in the UK, in 'Shareholder primacy, labour and the historic ambivalence of UK company law' (September 2016).

46 Janet Dine and Marios Koutsias, *The Nature of Corporate Governance* (Edward Elgar, 2013) viii.

47 Lynn Stout, 'New Thinking on "Shareholder Primacy"' in Vasudev and Watson (eds), *Corporate Governance after the Financial Crisis* (2012) 25.

48 David Wheeler and Maria Sillanpää, *The Stakeholder Corporation* (Pitmann, 1997) ix. See further James E Post, Lee E Preston and Sybille Sach, *Redefining the Corporation: Stakeholder Management and Organizational Wealth* (Stanford Business Books, 2002) 1–3; and Mark J Roe, 'Preface' in Margaret M Blair and Mark J Roe (eds), *Employees & Corporate Governance* (Brookings Institute, 1999) v.

49 Leighton and Thain, *Making Boards Work* (1997) 23.

50 Huse, *Boards, Governance and Value Creation* (2007) 29. Gilson argues that corporate governance models or theories that focus on single elements in the corporate governance mix, i.e. shareholder primacy or director primacy, are too simple to explain the real-world dynamics. He states that there is no one 'right' governance model, that governance models should be contextual and dynamic. See Gilson, 'From Corporate Law to Corporate Governance' (2016) 36.

51 See generally PM Vasudev, 'Corporate Stakeholders in New Zealand – the Present, and Possibilities for the Future' in Vasudev and Watson (eds), *Corporate Governance after the Financial Crisis* (2012) 120.

52 For a good explanation of the relationship between corporate governance and corporate social responsibility (CSR), see Andreas Rühmkorf, 'The promotion of corporate social responsibility in English private law', PhD thesis, University of Sheffield (2013) 58–62.

53 For an informative review of the history of CSR and the meaning of CSR, see Ray Broomhill, 'Corporate social responsibility: Key issues and debates' (2007) 1 *Dunstan Papers* 9; Ina Freeman and Amir Hasnaouvi, 'The meaning of corporate social responsibility: The vision of four nations' (2011) 100 *Journal of Business Ethics* 419.

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