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1 Introduction

Leadership and governance matter in creating organisations that work, especially during times of change. The dilemmas facing organisations are clearly revealed as markets become globally integrated, new forms of competition arise and digital technologies redefine the way that companies operate. In this context, companies can ill afford to stand still. Yet these developments create unprecedented challenges for the corporate practice of organisations and their boards. Routine, predictable approaches and conventional mindsets are unsuited for generating new ways of thinking and acting to deal with the transformations afoot.

For companies to survive and prosper, the importance of context is increasingly recognised as significant in understanding and practicing leadership and governance. Despite the long-standing focus in the areas of leadership and governance on similar phenomena, leadership and governance are rarely discussed together. Each area has evolved into a significant field of interest with developments taking place in parallel. As a result, the academic literature in each area has demonstrated a limited awareness of what is happening in the other area at the same time. What is beguiling about this isolation is that many boards of directors have shown that leadership in governance accords with and complements processes to develop companies that evolve with change.

There are undoubtedly many reasons for this persistent scholarly separation. One reason for such isolation is the disparate philosophical underpinnings which infuse leadership and corporate governance with resulting ways of thinking that shape domains of study and implicitly guide the kinds of questions for research and practice. Leadership is associated with the academic discipline of organisation studies and allied with organisational behaviour, psychology, psychoanalysis, sociology, economics, history and political science. Corporate governance is rooted in economics and law.

Another reason is the different world views or images of organisations that scholars working in different disciplines adopt (Morgan, 1997). The 'cultural view' shows how the image of organisation rests in shared meanings, which is closely allied with leadership and its emphasis on people and their interrelationships. A very different view is typically taken in corporate governance. The 'machine metaphor' focuses on an organisation as the relationship between structures, roles and technology which highlights policies and procedures over other dimensions. The images or world views show how a range of complementary and competing insights about the nature of organisations can be generated and how they can be governed and led.

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It is difficult to put a finger on a single reason for the disciplinary-specific scholarly tradition. An outcome, however, of the separation is that researchers perpetuate ingrained assumptions to shape theoretical and empirical orientations for inquiry. As a result, perspectives and assumptions create, in partial ways, interesting insights that inform an understanding of leadership or governance. To phrase it another way, the foregrounding of ideas and insights by one perspective or theory creates a background. Other insights, ideas and perspectives are consigned to the background, far from clear view. This process has largely precluded scholars from considering how new questions and different theoretical perspectives could mutually complement and build on the work of others to broaden and deepen an understanding of leadership in governance.

The origin of this Element lies within a broader project to reinvigorate the study and practice of corporate governance and leadership by boards. This project is based on the belief that the corporate board plays an underappreciated leadership role in corporations. That the board acts as leader is a notion universally accepted in business and management schools but denied by agency theory and the private law understandings of the corporation.

The inner workings of the board have tended to be a black box to researchers. An impetus for this research arises, in part, from a desire to illustrate board leadership enacted in governance. Listed companies and those seeking to be listed through a partial change in ownership lend themselves to a concise set of empirical and conceptual inquiries for this Element than might otherwise occur. Based on our research, we outline a framework of leadership in governance, illustrating and discussing different aspects of leadership by the board. This Element acknowledges the distinct roots of each field in the disciplines of law and organisational studies that inform the origins of the project and establishes the salient differences that distinguish them. It makes the case that an integration of constructs between leadership and governance offers important opportunities for dialogue, empirical research and theoretical development for scholars interested in understanding the board as a nexus for leadership. The Element does not aim to provide a new theory of board leadership; rather, it is integrative, making the case that there is much to be learned from each discipline. This approach encourages researchers to expand the literature bases from which they draw to further cross-fertilise and advance an understanding of the board as the nexus of leadership and governance.

Identifying some of the influences that perpetuate the scholarly isolation of leadership and corporate governance research in this first section helps to explain the interdisciplinary approach taken in this Element. The remaining sections of this Element are organised as follows: Section 2 places the interdisciplinary approach in broad perspective and sets the theoretical and

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analytical foundation for the board as the nexus in which leadership and governance intersect. Section 3 provides an orientation to key theoretical debates through a legal lens that focuses on the nature of the modern corporation as a legal person comprised of a capital fund, arguing that the board must be taken into account for how the company might be governed in a principled way. Section 4 analyses what economic theory does and does not tell us about leadership in the corporation and links the leadership role of the board to its theoretical and empirical underpinnings. Section 5 introduces our integrative model and explains the linkages between organisational studies and legal disciplinary insights that inform our understandings of board leadership in governance. Section 6 provides empirical evidence, illustrating three intersections in which boards enact leadership in governance: team leadership on the board, the chair's leadership of the board and strategic leadership by the board. Section 7 examines recent developments in board leadership research and highlights the role of board leadership in strategy making. The final section, Section 8, draws together the themes of this Element to suggest avenues for future research and implications for practice for those who serve on boards or provide support to them.

2 Our Work of Integrating Knowledge in Researching Boards

The board of directors, as a research topic, has its foundations in the field of corporate governance, dominated by the disciplines of law and economics, and the discipline of organisation studies,[1] which includes the fields of organisational behaviour, strategy and leadership, among others.

Each of these academic perspectives offers a distinct position on the role, tasks and functions of a governing body. Typically, the corporate governance field has focused on a board's formal and structural characteristics, and its governance actors (directors, managers and shareholders) (Adams, Hermalin & Weisbach, 2010). The research in this tradition has mainly investigated governance mechanisms in relation to formal incentives (such as contracts) and monitoring structures (Westphal & Zajac, 2013) which can produce positive organisational performance. According to this view, the company is regarded as a nexus of contracts, and the board of directors is treated as a control mechanism whose main role is to monitor corporate management. Yet theory and practice of

[1] In social science research, organisation studies is considered a discipline (see Clegg & Bailey, 2007; Zahra & Newey, 2009). It has its intellectual roots in economics, sociology, psychology, anthropology and political science and includes fields such as management, organisational theory, organisational behaviour, strategy and leadership, among others.

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corporate governance has undergone significant reforms, recognising the limitations of their own evangelisation.

From the corporate law point of view, there have been major discussions about where the fiduciary obligations of directors rest – with the shareholders or the corporation. Traditionally (and in the economic literature (see Adams, Hermalin & Weisbach, 2010, p. 91)), directors have a duty to protect the interests of the shareholders, but, as Weinstein (2013) has noted, in most of the countries in the Anglo-American legal domain, 'directors must act in the interests of corporation' (p. 52). Hence, this distinction marks two important advancements in the legal understanding of boards. First, it is directors' not managers' responsibility to decide what are the real interests of the corporation. In her widely cited book *The Shareholder Value Myth*, Lynn Stout (2012) clearly emphasised that 'The objective of any particular corporation may be best determined not by regulators, judges, or professors, or even by any individual shareholder or group of shareholders, but by a board of directors' (p. 115).

Second, in directing corporations, directors need to consider and appreciate the interests of various constituencies (stakeholders) who are directly involved in a corporation's economic activity, and whose interests are not always compatible. Thus, directors need not only balance the interests of shareholders and stakeholders but also different groups of non-shareholder stakeholders (see Clarke, 2013). These two arguments have major implications for views on duties and responsibilities of directors in a modern corporation, which we discuss in detail in Sections 3 and 5 of this Element.

Organisation studies scholars have changed their focus of attention from the board composition (Finkelstein & Mooney's (2003) 'four usual suspects') and its traditional consideration from the point of view of agency, stewardship, resource dependence or management hegemony theories, to behavioural aspects of board functioning. The research on boards in the last decade has become directed towards internal board dynamics, board relationships with various stakeholders and board value-adding activities (Huse, 2007, 2009, 2018). Accordingly, conceptual lenses have been broadened to include social network theory (e.g., McDonald, Khanna & Westphal, 2008; Nicholson, Alexander & Kiel, 2004), the team production model (e.g., Huse & Gabrielsson, 2012; Machold et al., 2011) and human and social capital theories (e.g., Khanna, Jones & Boivie, 2014; Kor & Sundaramurthy, 2009), among others, thus providing profound conceptual understandings of the work of boards of directors.

However, one of the critical lenses has surprisingly been neglected – leadership. We, the authors of this Element, are based in fields of corporate governance,

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leadership, organisation theory, corporate law and strategy. At the time when we started our conversations about boards of directors, in 2012, we noticed that there were no significant studies cross-fertilising research efforts between corporate governance and leadership (Erakovic & Jackson, 2012).

Given that a board sits at the apex of governance in any corporation directing (i.e., leading) an overall corporate strategy, this discovery surprised us. In learning about the preoccupations and approaches of each other's fields, we stressed the importance of 'crossing the boundaries' and integrating the work between the fields of corporate governance and leadership in order to gain a more comprehensive understanding of the work of boards of directors.

The strengths and weaknesses of these two fields, we argued (Erakovic & Jackson, 2012), complement each other when the work of the board is concerned. Corporate governance scholars have developed a sophisticated legal understanding of organisational relationships and have considerable experience working at its upper echelons. They have, however, tended to be constrained by an obsession with formal, static and impersonal conceptual models. Leadership, on the other hand, has traditionally been strong in casting light on significant informal, interpersonal dynamic processes within the middle and lower ranks of the organisation, but has tended to exclude boards from its conceptual and empirical focus. Therefore, crossing boundaries and creating a theoretical rapprochement between the two fields will have positive repercussions not only in terms of fresh empirical insights and comprehensive understanding but also in terms of improving and energising the everyday practice of corporate governance.

In terms of practice, corporate governance provides a formal structure for the relationships among organisational core constituencies, whereas leadership provides the energy and determination to make corporate governance effective in the achievement of the organisation's purpose and goals (Davies, 2006). Corporate governance sets the stage for leadership at the apex of the organisation and has an indirect but significant impact upon leadership processes at other levels within the organisation. In this respect, good leadership can revitalise corporate governance arrangements, while good governance can serve to sustain corporate leadership.

One feature that corporate governance and leadership have in common is their elusive nature when it comes to deciding on a common definition that can explain their scope and intent. It is arguable, though, that leadership holds a clear edge over governance in terms of its ambiguity and lack of agreement (Bryman et al., 2011). For the purpose of this Element, we define leadership as 'an influence relationship among leaders and followers who intend real changes

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that reflect their mutual purposes' (Rost, 1993, p. 10) and corporate governance as 'the process whereby people in power direct, monitor and lead corporations, and thereby either create, modify or destroy the structures and systems under which they operate' (McGregor, 2000, p. 11).[2]

In summary, this Element represents an attempt to encourage scholars from different fields and different parts of the world to look with new eyes at corporate governance concepts and take the next step in a research agenda that asks stimulating research questions, such as: 'What is the nature of a company in modern society?' and 'How is the board's work influenced in light of the previous question?' The 'nature of a company' is a conceptual area of law, whereas the 'work of the board' or 'board functioning' belongs more to organisation studies. The remaining sections of this Element analyse these conceptual issues that are fundamental to an improved understanding of the board as the nexus of corporate participants in greater detail and examine empirical evidence gained from those who are practicing governance in real organisations. The significance of our interdisciplinary approach is confirmed by a persistent call by businesses, professional associations and the academic community for a holistic (and more accurate) picture of governance practices.

3 What Is a Company? A View through a Legal Lens

What is a company and how should a company be governed, led and managed? These wicked questions sit at the centre of the study of the modern company. The answer to the first question should determine the answer to the secondary questions; it is only when we have a shared understanding of the essential nature of the company that we can hope to determine its governance in a principled way. In this section, we will set out our shared understanding of the structure of the modern company and, in doing so, explain why we have identified the board as the nexus of the company.

3.1 Theoretical Underpinnings

Two theories about the ultimate objective of the governance of the company currently compete: shareholder primacy theory, where it is argued that the company should be operated in the interests of shareholders, and stakeholder theory. Stakeholder theory advocates adopt an institutional position, arguing that the interests of all stakeholders should be balanced and accommodated

[2] We chose a definition which, for the purpose of our research and our arguments, stresses three important aspects of corporate governance: people (in power), leadership and outcomes (positive and negative). In our opinion, structures, mechanisms and processes emphasised in common corporate governance definitions are structural elements, not the core corporate governance function.

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(Freeman, 1984; Gibson, 2000). The debate about the merits of the two theories is a long-standing one, perhaps epitomised by the exchange of articles on corporate accountability which took place between A. A. Berle and E. Merrick Dodd in the 1930s. It was Berle's view that corporate powers were powers in trust exercisable for the benefit of all the shareholders (Berle, 1931). Berle's early views may form the foundation of shareholder primacy theory (although Berle later resiled from a shareholder primacy conception of the company (Berle, 1965)). The classic Berle and Means corporation was based on a perception of the changed status of shareholders in large corporations where power had shifted to management. This change was characterised as a separation of ownership (by shareholders) from control (in management including directors). It provided the rationale for agency theory (Jensen & Meckling, 1976), which has dominated law-and-economics and to some extent corporate law policy since the 1980s. Dodd (1932), on the other hand, viewed corporations as economic institutions that had responsibilities not only to shareholders but also to employees, customers and the public. Dodd's arguments form the foundation of stakeholder theory (see the discussion in Attenborough, 2006).

These two competing theories about what normatively should be the objective of the company may be underpinned by different conceptions of the company. Many adherents of shareholder primacy conceive of the company as an association of shareholders who combine together and obtain corporate status through an incorporation statute. A logical consequence of this model is that management is perceived to be the agent of the shareholders, charged with acting in the best interests of the shareholders as a whole and as the company. The significance of the role of the board is ignored or downplayed as a monitor for equity investors, with little or no differentiation between directors and managers. Shareholders' interests are assumed to be shareholder wealth maximisation. The role of corporate law seen through this shareholder primacy lens is to minimise the agency problem, that was identified by Berle and Means, which is brought about by the separation of ownership from control (Jensen & Meckling, 1976).

We do not accept that shareholder wealth maximisation is the primary objective of the corporation or corporate law because we reject the conception of the company as being comprised of a contractually based association of shareholders. We also consider that the two key characteristics of the company, corporate legal personality and comprehensive limited liability, can only be derived from the state through the incorporation statute. The reasons for our stance are set out here. But we also do not base our work on a stakeholder conception of the company. In determining the objective of the governance of

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companies, stakeholder theorists generally do not consider that the interests of shareholders should be prioritised, arguing that shareholders are just another stakeholder in the company. Margaret Blair, for example, argued for a shift from contractual, exclusively profit-seeking entities ('property conception') of corporations to conceptualising them as social institutions that need to serve and balance interests of stakeholders beyond just shareholders (Blair, 1995, 1998). Blair asserted that such a shift would have important consequences for corporate governance, especially regarding management's accountability for, and monitoring of, the allocation of corporate resources.

In its broadest sense, 'a stakeholder in an organization is any group or individual who can affect or is affected by the achievement of the organization's objectives' (Freeman, 1984, p. 32). Stakeholder theorists conceive of the company as a type of organisation either surrounded by or comprised of a network of stakeholders. In general terms, scholars discuss normative and instrumental approaches to stakeholder theory (Donaldson & Preston, 1995; Kaler, 2003; Maharaj, 2008). The normative approach to stakeholder theory ('moral stakeholder theory') and corresponding governance orientation emphasise the board's true care for (duty to) all corporate stakeholders. Stakeholders have intrinsic value for the company. Therefore, the board makes true efforts to balance various stakeholders' interests and claims, and the board applies a participative and inclusive approach towards various stakeholder groups. The instrumental approach ('strategic stakeholder theory') stresses the corporate-centred approach (Maharaj, 2008), where the board puts the interest of the company first. These interests might be the interests of survival, profit maximisation, competitive advantage or risk minimisation. Hence, this governance orientation, although it may involve stakeholders' participation, leans towards stakeholder management rather than stakeholder engagement.

In fact, adherents to shareholder primacy also accept the importance of stakeholders while rejecting the argument that the company is an institution comprised of stakeholders. Markets are not frictionless and conflicts between different agents can reduce the value of the firm (Knoll, 2018). In other words, the value of the firm and the maximisation goal are influenced by actions of various internal and external stakeholders (who, with their diverse interests, make the market complex/non-frictionless). Therefore, even in a shareholder primacy model, shareholders will have to bear the agency costs directly associated with the specific governance arrangements employed to 'control' various stakeholder interests. The board's (and firm's) engagement with stakeholders incurs agency costs which, in the long run, influence the value of the firm. Even Michael Jensen, a major critic of stakeholder theory, suggests that 'A firm cannot maximise value if it ignores the interest of its stakeholders' (Jensen,

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2001, p. 298). The interests of stakeholders are taken instrumentally as they need to be managed in order for a company to achieve its strategic objectives.

While seeing merit in both the normative and instrumental stakeholder approach to corporate governance, our stance is that stakeholder theory is based on an institutional model that does not recognise the distinct taxonomy of the modern company. Stakeholder theory does not set out what distinguishes the company from other forms of business organisation or institution. As discussed later, our model of the modern company is of an entity that is a capital fund that is given the status of a legal person.

3.1.1 Pitfalls of Shareholder Primacy

In rejecting a stakeholder conception of the company, we do not accept the alternative of shareholder primacy. Shareholder primacy theory is flawed in several fundamental ways. First, agency theory does not accurately describe company law. Corporate law has a complexity that the shareholder primacy theory does not identify and recognise. One of the precepts of agency theory and law is that the agent is accountable to the principal. Yet, in company law, directors as 'agents' are generally not accountable to shareholders as a 'principal' when acting as part of the board. Most jurisdictions have business judgement rules or principles where business decisions of directors are essentially not reviewable, so long as the directors comply with fiduciary obligations of loyalty and care, and avoid conflicts of interest. Moreover, the scope of the business judgement rule in the United States is so wide that the risk of liability for breach of the duty of care is virtually non-existent. Risk of liability for breach of the duty of care looms somewhat larger in the United Kingdom, Australia and New Zealand, but its application and enforcement are inconsistent. Either through the development and application of the business judgement rule, where courts will not retrospectively examine business decisions made by boards, or through the interpretation of a diverse array of statutory and common law rules from fiduciary duties to the unfair prejudice remedy for shareholders, courts have long avoided being forced to decide whether a particular company action maximises shareholder wealth.

It is clear, also, that shareholders as a class are, in fact, heterogeneous investors. Shareholders have different time horizons and invest for different purposes. Shareholders, directors and managers do not act with the pure and aligned aim of maximising shareholder wealth all of the time. Shareholders may, at times, be more focused on, for example, gaining control or growing the enterprise; directors may have a conflict of interest; management may wish to

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retain control and so forth. Many reasons explain such divergence, including opportunistic behaviour by directors and managers, strategic or personal interests of shareholders, bounded rationality of all participants and satisficing behaviour by all corporate participants, including the board.

Second, shareholder primacy theory fails to distinguish between directors and managers and, in doing so, fails to recognise the legal taxonomy of the company. Directors, when acting as part of the board as a primary organ or body of the company, have a different legal relationship to the company to when directors act as agents on behalf of the company. Directors are not always corporate agents. When directors act as part of the board of directors, their decisions are decisions of the company attributed to the company through the primary rules of attribution (*Meridian Global Funds Management Asia Ltd v. Securities Commission*, 1995 AC 2 (1995)).

Third, the existence of the classic Berle and Means corporation with separation of ownership and control may be the exception rather than the rule. The assumptions that most large firms are run by professional managers and that shareholders have relatively little say in the day-to-day operations or strategic decisions of the firm sit behind the property rights/contractual models of the firm (Burkart, Gromb & Panunzi, 1997). These assumptions do not hold in all or even most cases. The UK and US stock markets are now dominated by institutional investors, with the Australian stock market not too far behind. Individual investors have substantial shareholdings in most listed companies. Tech companies like Facebook and Amazon have founders who retain controlling stakes (see Davis, 2016). In many cases, boards do not act to maximise the wealth of the shareholders; instead, they pursue their own partisan interests or respond to immediate financial and other pressures. The coagulation of shareholdings in many corporations gives empirical weight to the research on boards and corporate governance that views firms as involving political bargaining among stakeholders (Deakin, 2019; Huse & Rindova, 2001). Shifting coalitions can affect corporate decisions and goals.

Fourth, the development of capital maintenance rules by the common law and statute in Commonwealth jurisdictions, as well as the more recent recognition that directors will owe duties to creditors when the company approaches insolvency, show that the equation of the interests of the company with the financial interests of the shareholders as a group was false.

Finally, the modern company is not a nexus of contracts (Eisenberg, 1989) and is not purely a creature of private law. Shareholder primacy is based on an understanding of the company as contractually based. In a shareholder primacy conception, rather than being regarded as the primary characteristic of the company, a corporate legal personality is relegated to no more than a convenient

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