Principals and stewards? An exploration of the role of institutional investors in corporate governance

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Abstract

The role of institutional investors in corporate governance has significantly increased. Many agency theory scholars have even praised the monitoring influence they have or could have on corporations and executive managers. Yet, recently, there have been repeated calls in favour of investor "stewardship". Drawing on a multidisciplinary review and on legal and regulatory materials, this article proposes an exploration of the concept of institutional investor stewardship. We provide a genealogical analysis of institutional investor stewardship that suggests that shareholder stewardship proceeds from the disparity between usual theoretical representations of shareholders and the rising influence of institutional ownership. We make two contributions. First, we contribute to the debate surrounding the role of institutional investors with an analysis of the emergence of renewed standards for institutional investors. Second, we contribute by clarifying the specific representation of shareholders, which was implied in traditional corporate governance models.

Keywords: Institutional investors •Stewardship •Corporate Governance •Agency theory •Monitoring

1. Introduction

Corporate governance research has emphasized the role that institutional investors play in corporate governance (Aggarwal et al. 2011; Gillan and Starks 2003). Institutional investors

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are financial intermediaries who professionally manage capital on behalf of final beneficiaries. In a broad sense, among institutional investors, we count pension funds, mutual funds, insurance companies, asset management companies, some banks, hedge funds and other professional investment managers. Notably, institutional investors have influenced corporate practices and have at times successfully engaged in shareholder activism (Goranova and Ryan 2014; Del Guercio, Seery, and Woidtke 2008). Institutional investors are said to affect CEO compensation (David, Kochhar, and Levitas 1998; Hartzell and Starks 2003), dividends (Grinstein and Michaely 2005), R&D expenditures (Bushee 1998), firm innovation (Kochhar and David 1996) and firm performance (Elyasiani and Jia 2010). As a whole, institutional investor activism has been positively associated with financial performance (Brav et al. 2008; Gillan and Starks 2000; Klein and Zur 2009), CEO turnover (Helwege, Intintoli, and Zhang 2012) and R&D investments (David, Hitt, and Gimeno 2001).

Taking an agency theory perspective, certain scholars have even been promoting institutional shareholder voice for a long time (Black 1992; Shleifer and Vishny 1986). Most works in corporate governance are grounded in agency theory (Daily, Dalton, and Cannella 2003), so are most works on shareholder activism (Goranova and Ryan 2014).

Agency theory asserts that shareholders and managers are in an agency relationship (Jensen and Meckling 1976). As agents, managers act on behalf of shareholders and are tasked with maximising shareholders' best interest. Managers' interests are not always aligned with shareholders' interests though. Agency costs can then surface due to managerial opportunistic behaviours. Yet, shareholders are posited as the corporation's residual claimants (Fama and Jensen 1983a). Agency theory has hence grounded some claims for enhanced managerial monitoring and shareholder power (Bebchuk 2005). Institutional investor proponents however had to take note of the passivity of many institutional investors (Black 1990; Roe 1996).

Recently, commentators have condemned the lack of institutional investor activism and its contribution to the financial crisis of 2007 (Cheffins 2010; Ivanova 2017). There has even been calls for more shareholder "stewardship" (Cheffins 2010; Davis, Lukomnik, and Pitt-Watson 2009; Ivanova 2017). As stewards, institutional investors could play a positive role in disciplining management (Roach 2011). They could also collaboratively engage with management on corporate matters (McNulty and Nordberg 2016). This call was relayed in the public debate. Regulators from many sides have promoted some sort of institutional investor stewardship (European Commission 2010, 2011; Financial Reporting Council 2012; European Parliament 2017).

Commonly, institutional investor stewardship should refer to the fiduciary duties these intermediaries owe to their beneficiaries. Yet in these calls, and maybe more surprisingly in these regulatory attempts, institutional investors are also expected to act as stewards of the corporation, whether the corporation is assimilated with its' shareholders interests (Financial Reporting Council 2012) or with its multiple stakeholder's interests (European Parliament 2017).

In academia, "stewardship" is a conceptual notion that was brought in corporate governance research by organisational and management scholars (Donaldson and Davis 1991). Stewardship theory develops a theoretical framework for self-less and pro-organisational executive managers that seek self-determination (Davis, Schoorman, and Donaldson 1997). Stewardship theory was built in contrast to agency theory, complementary yet exclusive of the opportunist and self-maximizing managers of agency theory (Davis, Schoorman, and Donaldson 1997). Therefore, in an agency perspective, institutional investor stewardship would be counterintuitive. We would expect corporate governance systems to foster stewardship toward shareholders and not the opposite.

Is institutional stewardship compatible with an agency framework? Why are institutional investors expected to be stewards of the corporation and to assume monitoring responsibilities? Are institutional investors a specific kind of shareholders, less principals than stewards? Or is institutional investor stewardship an incoherent proposition?

In this article, we propose to explore the debate around institutional investors' role in corporate governance in order to understand why the expectations have increased toward this specific category of shareholders.

On a methodological point of view, this paper provides a two-level exploration of this debate. Firstly, it relies on a multidisciplinary review of the role of institutional investors in corporate governance. Our analyses draw on managerial, legal and financial scholarly materials on institutional investors. Secondly, we have gathered legal and public policy-making materials such as government reports, regulatory codes and pieces of legislation dealing with institutional investors.

We start by setting the common theoretical background and approaches used for institutional investors. These developments frame what we have christened the separation of ownership from control traditional model of corporate governance. Then, we further investigate shareholder stewardship through an historical and genealogical analysis of this concept. Finally, we confront the separation of ownership from control model with institutional investor stewardship. We argue that institutional investor stewardship was introduced to respond to the shortcomings of the separation of ownership from control model in matters of institutional investors.

Our contributions are twofold. First, our genealogical interpretation of institutional investor stewardship contributes to the understanding of the role of institutional investors in corporate governance. Institutional investor stewardship is meant to fill the theoretical gap that the rise of institutional ownership and influence has created in corporate governance. We exhibit the discrepancy between the common representation theories have of shareholders in corporate governance and institutional investors.

Second, we thus contribute to the broader theoretical discussion surrounding shareholders' role in corporate governance. We clarify the premises shareholders need to verify for the separation of ownership and control model to be applicable. It then helps define an area of validity for this model in relation to the representation it has of corporate ownership.

2. The classical representation of shareholders: some theoretical background

2.1. The separation of ownership and control model

Institutional investors are a specific category of shareholders. As institutions and as professional investors, most institutional investors undergo financial regulations. They have to meet disclosure requirements, they have investment threshold to respect and they have regulatory authorities to which they refer.

Yet, as regards corporate governance matters, they abide by corporate law, which does not discriminate between shareholders. They benefit from shareholder rights and protections. Although the process that led to the UK Stewardship Code did touch upon institutional investors duties, obligations or responsibilities, soft law was always preferred to hard law (Cheffins 2010).

Since the very beginnings of the corporate form, shareholders have had the right to vote and to elect directors (Bris, Goetzmann, and Pouget 2015). During the development of the modern corporation, shareholders did not have many legal protections though. In particular, in the United States, many corporations were dominated by large shareholders to the detriment of many minority shareholders (Hilt 2013).

At the beginning of the 20th century, stock exchanges were developing, publicly traded corporations were growing and shareholders were dispersing. The balance of power turned in favour of managers to the detriment of the smaller but numerous shareholders. In 1932, Berle and Means published their seminal work *The Modern Corporation and Private Property* which theorised the separation of ownership from control (Berle and Means 1932). As corporations grew and stock ownership was democratised, shareholders were losing power to corporate managers who had large discretion over the corporation and business operations. Proxy voting rules of the Securities and Exchange Act in 1934 were to a certain extent designed to answer this imbalance of power between shareholders (Black 1990).

Yet, corporate governance was deemed dysfunctional, managers were too powerful and had too much leverage without being controlled. Whether managers owed fiduciary duties to shareholders only or to a broader class of stakeholders, scholars agreed at that time that control or monitoring was needed (Boatright 1994).

In a prominent article in corporate governance, Jensen and Meckling modelled the relation between corporate managers and shareholders as an agency relationship (Jensen and Meckling 1976). An agency relationship is a contractual one in which a principal – shareholders- delegates some activity, and hence, decision-making to an agent –managers. Yet, as individuals are supposed to be utility maximizers, managers can behave opportunistically and follow self-interested goals to the detriment of principals. Agency costs may occur (Jensen and Meckling 1976). Principals can then reduce agency problems by engaging in monitoring activities. Furthermore, contractual incentive mechanisms, such as performance-based compensation, can align management and shareholders' interests and then reduce agency problems (Jensen and Meckling 1976; Jensen and Murphy 1990).

The corporate form is then defined as a nexus of contract, among which the agency relationship between shareholders and managers incurs agency costs. The separation of ownership and control illustrates then the separation of decision-making and risk-bearing. Shareholders are the corporation's residual claimants.

Contrarily to Berle and Means, agency theorists do not posit though that corporate governance is dysfunctional (Bratton and Wachter 2010). The corporate form, which is characterised by the separation of ownership and control, is an efficient delegation of decision-making. Shareholders are dispersed actors. They are potentially unknowledgeable and unskilled for decision-making. Therefore, it would be costly for them to engage in decision-making and it is more efficient to delegate decision-making to better-informed and better-skilled agents (Fama and Jensen 1983a). Moreover, the corporate form provides for corporate governance mechanisms that can discipline management and reduce agency costs. External mechanisms such as the stock market and the takeover market, as well as decision-control by the board of directors, can monitor efficiently managers (Fama and Jensen 1983a). They only keep "approval rights" through voting rights.

Shareholders are then free from decision-making responsibilities. They are free to specialise in risk-bearing and free to diversify risk by engaging in other similar contracts (Fama and Jensen 1983b).

More generally, information asymmetry leads to agency relationship, which engenders an imbalance of power to the detriment of principals (Eisenhardt 1989). Corporate governance mechanisms are then evaluated in relation to the extent to which they constrain the potential resulting agency costs. Incentives and monitoring systems were in this regard found to be efficient mechanisms (Eisenhardt 1989).

For further analysis, we will call this representation of shareholders in corporate governance, as developed by Berle and Means and enriched by agency theorists, the separation of ownership from control (SOC) model.

2.2. The significance of the SOC model

Although agency theory has been the dominant framework in corporate governance research (Daily, Dalton, and Cannella 2003), the proposed corporate governance mechanisms proved defective.

Executive compensation contracts have not aligned shareholders and managers' interests because of insufficient performance-pay sensitivity (Michael C Jensen and Murphy 1990; Tosi et al. 2000). Moreover, executive compensation appeared to cause more agency problems then it resolved. Executive managers have developed rent-seeking strategies in matters of compensation (Bebchuk and Fried 2003; Bebchuk, Fried, and Walker 2002). A common topic among corporate governance scholars has hence been to deplore managerial misconducts or inefficient strategies. Executive managers for instance hoard cash or engage in suboptimal projects to the detriment of shareholders and cash pay-out policies (Jensen 1986). Moreover, managers tend to entrench themselves (Shleifer and Vishny 1989). Board directors can behave as opportunistically as managers. They also have entrenched themselves (Bebchuk and Cohen 2005) and have conflicted with the interests of shareholders (Gordon 2006).

Furthermore if the takeover waves of the 1980s were praised for their disciplining role (Shleifer and Vishny 1990), the experience of the 1980s also showed that the takeover market could be constrained by antitakeover amendments and legal barriers (Bratton and Wachter 2010).

The incentive and monitoring systems privileged by early agency works did not perform as relevant mechanisms to discipline management. These observations have fuelled the calls for enhanced control mechanisms in order to better discipline management. Shareholders, among which institutional investors, have been believed to be the right means for this purpose (Bebchuk 2005; Black 1992; Dent Jr 1989). Institutional investors in particular appeared as valuable actors for this monitoring role (Black 1991). Indeed, as predicted by agency theory, some individuals or groups could specialise in monitoring activities if they with have competitive advantage in that field (Jensen and Meckling 1976).

However, the resort to institutional investors as watchdogs is only conceived as another corporate governance mechanisms in an invariably relevant SOC model. The concerns over institutional monitoring are indeed overlapping with concerns regarding the role of shareholders in corporate governance, which has been a very disputed issue.

At the opposite end of the spectrum, many scholars have contended that shareholders are not the corporation's owners and therefore have no specific right over the corporation's decision-making (Blair and Stout 1999). Directors are indeed elected by shareholders but it is rather an indirect representation than a direct one (Strine Jr 2010). Moreover, board insulation from shareholder activism should serve the long-term interest of the corporation (Bainbridge 2005; Blair and Stout 1999; Lipton and Savitt 2007). Indeed, board insulation and managerial discretion are a risk to take in order for managers to be able to achieve innovation and firm performance (Jacobs 2011; Segrestin and Hatchuel 2011).

Yet, the SOC model has defined the dominant representation of shareholders. It has notably influenced public policy decisions such as legal protections for shareholders (Armour et al. 2009; Armour, Deakin, and Konzelmann 2003). The SOC model that represent shareholders as powerless in front of self-dealing managers has also contributed to the development of the shareholder primacy norm (Stout 2001, 2007). The shareholder primacy norm has had much significance in corporate governance research and practice. Shareholder value maximisation has been defined as the sole corporate objective (Sundaram and Inkpen 2004). Corporate governance mechanisms and corporate governance regulations have been evaluated in relation to their influence on shareholder wealth, measured by stock prices (Fisch 2005). As a whole, it has led to a US-based shareholder-oriented model, which relies on the shareholder primacy norm with enhanced shareholder rights. This shareholder-oriented model has started to spread internationally (Hansmann and Kraakman 2001), even in more reluctant countries- yet with lesser success (Fiss and Zajac 2004).

Institutional investors and large shareholders benefit from this shareholder-oriented model without any restrictions (Anabtawi and Stout 2008). Institutional investor stewardship is then a relatively new and dissident approach for institutional investors' role in corporate governance. To further our analysis, we will now discuss the historical roots of the investor stewardship concept.

3. Some historical perspectives on institutional investor stewardship

3.1. The rise of institutional investors in corporate governance

Scholars, and especially legal scholars, have started to pay attention to the role of institutional investors in corporate governance since the US takeover waves of the 1980s. From the early era of modern corporations until the 1960s, the United States had known a managerialist period in corporate governance (Cheffins 2015). Institutional investors were minor players of corporate governance. Their stakes in the capital structure of corporations were limited, partly for political reasons (Roe 1996). They remained mostly passive shareholders. Portfolio managers considered activism to be expensive and pointless (Cheffins 2015).

In the 1980s, the market for corporate control stirred up a "shareholder rights agenda" and woke up institutional investors from their silence (Bratton and Wachter 2010; Cheffins 2015; Davis and Thompson 1994).

It is not in the purpose of this article to explain the reasons behind the takeover waves, which have been analysed as a reaction to competition and market efficiency (Shleifer and Vishny 1990) or as a result of a combination of broader macroeconomic reasons, among which globalisation and successive deregulations (Holmstrom and Kaplan 2001). Still, the development of this new market for corporate control with aggressive practices threatened managers and the supportive managerialist model of corporate governance (Cheffins 2015). Managers, helped by courts and state antitakeover laws, replicated by passing antitakeover amendments in order to protect themselves, despite the potential interest for shareholders in accepting the offer and receiving a premium in counterpart (Davis and Thompson 1994).

Institutional investors had not been very interested in other corporate governance debates that were led by traditional shareholder activists (Cheffins 2015)- mainly individuals described as "gadflies"(Marens 2002). Still, they took interest in mergers and tender offers which could promise higher returns (Cheffins 2015).

Since then, institutional investors started to organise themselves and to unite in "shareholder-class" (Hansmann and Kraakman 2001). The development of institutional investor activism was even qualified as a social movement (Davis and Thompson 1994). In 1985, the first association in the United States promoting institutional investor's interest notably in corporate governance -the Council for Institutional Investors- was created. The same year, Robert Monks founded Institutional Shareholder Services (ISS) the first proxy advisor to operate. ISS advises investors on proxy voting issues and gathers corporate governance information in order to help institutional investors understand and defend their interest throughout their many investee companies (Black 1990).

3.2. The promise of institutional investor monitoring

As the takeover waves declined and the market for corporate control decelerated, scholars increasingly look upon institutional investors as potential monitors of corporations and, more importantly, of corporate managers. Before, the market for corporate control was praised for its disciplinary effect on executive managers (Jensen and Ruback 1983). Institutional investors were then deemed promising actors to fill in the gap and discipline management as well as controlling potential managerial inefficiencies (Black 1991). Their former passivity was to be explained by legal (Black 1990) or political barriers (Roe 1991): institutional voice could be enhanced.

The rise of institutional investors in corporate ownership fuelled this position. In 1988, in the United States institutional investors ownership attained 45% of corporate equity compared to 8% in 1950 (Coffee 1991). The successes of German and Japanese economies whose corporate governance was dominated by large monitoring blockholders was also set as an example in favour of more institutional investors monitoring (Roe 1993).

Institutional investors advocates argued that contrarily to retail investors, institutional investors had the financial means to adequately monitor management, they could realise economies of scales and, most of all, they had incentives to improve performance (Black 1991). Indeed some first evidence of institutional activism by pension funds such as CalPERS showed that institutional investors were targeting firms with poor stock performance (Smith 1996).

3.3. Institutional investor monitoring in question

Yet, the case for institutional monitoring quickly underwent criticism by other scholars (Thomas 2008) who contended that collective action problems for institutional investors were real and active investors not always desirable. Institutional investors often had conflicts of interests (Rock 1990), they could act opportunistically to the detriment of other shareholders (Coffee 1991) or push for their own personal agendas (Romano 1993).

The burst of hedge funds in corporate governance revived however the debate during the 2000s (Cheffins 2015). Hedge funds are professional investors, closed-end funds, which operate outside of the investment regulatory framework. They develop aggressive investing strategies to provide higher returns than traditional investors. As institutional investors they also had the financial means and incentives to be active owners, but as independent actors, they did not have the constraints (Bratton and Wachter 2010). They deemed corporate governance to be sufficiently important to actively engage with corporations and push for favourable corporate decisions without risking conflicts of interests (Partnoy and Thomas 2006).

Hedge funds have then been perceived as substitutes for institutional investors monitoring. Some scholars praised their positive influence on corporate governance (Bebchuk 2013) while others signalled the positive correlation of hedge fund activism with stock performance (Brav et al. 2008). Moreover, hedge fund activism influences traditional institutional investors, who have become more willing to vote with shareholder activists such as hedge funds (Gilson and Gordon 2013)

However, the aggressive methods employed by hedge funds has cast come doubt on the desirability of their role in corporate governance. Hedge funds were said to be short-term investors that foster managerial short-termism (Dallas 2011). They resort to financial innovations that decouples economic interest from voting rights (Hu and Black 2007) and that can distort proxy voting outcomes to their advantage (Partnoy and Thomas 2006).

The 2007-2008 financial crisis fuelled both positions in the United States as well as in the European Union. Many considered that corporate governance and the lack of institutional monitoring contributed to the crisis (Birkmose 2014). Others put forward that it were the push for financial performance and share prices that encouraged banks to adopt risky strategies (Bratton and Wachter 2010).

Both of these positions could find some common ground in the new notion of investor stewardship. Institutional investors were not only asked to actively monitor corporations but to discipline management in the interest of the corporation (Cheffins 2010). The UK

Stewardship code in that matter is a good illustration. Institutional investors are asked to engage with corporations as well as to enforce "good" corporate governance practices. Indeed, the 3rd principle of the Code states that "Institutional investors should monitor their investee companies" (Financial Reporting Council 2012: 7) and in particular that "when monitoring companies, institutional investors should seek to […] satisfy themselves that the company's board and committees adhere to the spirit of the UK Corporate Governance Code, including through meetings with the chairman and other board members" (Financial Reporting Council 2012: 7).

3.4. The birth of the "investor stewardship" concept in the UK and its impact

The history behind the UK Stewardship Code is in itself an interesting case. In the early 1990s, voting rates by institutional investors were quite low (Roach 2011). In the wake of the first corporate governance scandals, notably the collapse of Coloroll in 1990 and Polly Peck in 1991, some voices in UK started to raise concerns over corporate governance practices. The Cadbury Committee in 1991 initiated a series of reflexion groups and reports, which led to the issue of the first corporate governance codes. While the Cadbury Committee underlined the important role institutional investors could play in corporate governance, the Cadbury Report did not explicitly referred to institutional investors. Yet in the first revision of the report by the Hampel Committee in 1995, the role of institutional investors, the exercise of their voting rights, and dialogue between investors and management were emphasized and consequently included in the Combined Code of 1998 (Cheffins 2010).

In parallel, in 2001, a report commissioned by the government on institutional investments, the Myners Report condemned the lack of engagement of money managers. This report inspired the Institutional Shareholders Committee (ISC), which unites major institutional investor associations. The ISC then issued a guidance endorsing shareholder activism. It notably supported that institutional investors should closely monitor investee firms and report on their monitoring processes and impacts. Consequently in the next commissioned review of the Hampel Report, the 2003 Higgs Report, it was advocated that institutional investors should follow these ISC guidelines (Cheffins 2010).

Yet, the financial crisis revived criticisms of corporate governance and of institutional investors. These criticisms reached the ISC's role (Roach 2011). In particular, Lord Myners, the author of the Myners Report, who became in the meantime the Financial Services Secretary to the Treasury, called institutional investors "absentee landlords" in an April 2009 speech (Cheffins 2010). In response, the ISC issued a Code on the Responsibilities of Institutional Investors in November 2009. This Code stood behind shareholder activism and institutional monitoring. But it took a long-term orientation encouraging investor to pay close attention to risks that could lead to similar widespread crisis.

Another report, the Walker Report on corporate governance practices in banks praised the ISC Code and named it a "Stewardship Code", to which institutional investors should abide by. The Government followed these recommendations and put the Financial Reporting Council in charge of issuing a UK Stewardship Code for institutional investors, which was to be reviewed regularly by the same FRC (Roach 2011).

Since then, the UK stewardship code has been criticised and commentators have cast some doubt on its efficiency (Cheffins 2010). Yet, it feeds the debate on institutional investor monitoring and it has introduced the notion of Investor Stewardship, not only toward it beneficiaries but toward investee companies as a corollary of the influence and power they get from shareholder rights and protections (Cheffins 2010).

Moreover, it serves as basis for discussion on corporate governance at the European Union level (Birkmose 2014). In the aftermath of the financial crisis, the European Commission issued a 2010 and a 2011 Green Papers on corporate governance which stresses the lack of long-term engagement by institutional investors and its contribution to the crisis (Birkmose 2014). In 2017, the European Parliament passed an amendment the Directive 2007/36/EC regarding "the encouragement of long-term shareholder engagement". It mandates institutional investors and asset managers to disclose their investment and engagement policies, and to explain how they integrate long-term horizons and Environmental, Social and Governance issues in their investment and engagement strategies (European Parliament 2017).

Institutional investors are now closely watched and have to account for their engagement practices with companies. Since then, the institutional investor stewardship has found its audience. Simultaneously to legislative and regulatory initiatives, scholars have called for more investor "stewardship" (Davis, Lukomnik, and Pitt-Watson 2009) as others have proposed models for collaborative and positive institutional engagement (McNulty and Nordberg 2016) or studied challenges faced by steward investors (Ivanova 2017).

Institutional investor stewardship hence historically proceeds from institutional monitoring advocates. How can we account for this evolution from a theoretical point of view? Institutional investor's legitimacy to monitor investee companies has relied on the SOC model. The SOC model draws on agency theory, which does not comprise shareholder responsibilities or stewardship.

We will now argue that the specific nature of institutional investors questions the common representation of shareholders and that this deviation from theory led to the concept of investor stewardship.

4. Institutional investor stewardship: a reinterpretation of the SOC model

Many scholars debating on the role institutional investors should play in corporate governance have agreed that the rise of institutional investors in the ownership structure of corporations has led to a re-concentration of capital (Black 1990; Coffee 1991; Rock 1990; Romano 2001). However, they have observed that this re-concentration of capital - though invalidating the of SOC model's assumption that capital was dispersed- did not lead to major use by institutional investors of this new balance of power with executive managers (Davis 2008). Furthermore, while remarking that the separation of ownership and control model could be obsolete, some authors have deplored the lack of institutional investors activism and praised hedge fund activism (Gilson and Gordon 2013). Yet, the case for shareholder control and empowerment still relies on the SOC representation of shareholders (Bebchuk 2005; Bratton and Wachter 2010; Stout 2007).

Other have already asked if the Berle and Means' ownership representation was a valid framework for corporate governance (Cheffins and Bank 2009; Mizruchi 2004). Beyond the re-concentration phenomena, institutional investors do not meet the premises of this representation.

4.1. Institutional investors and the SOC model

In order to confront the compliance of institutional investors to the SOC model, we build an analysis grid by exposing salient dimensions of the SOC model in relation with shareholders. We then face these salient dimensions with empirical findings on institutional investors behaviours and features.

SOC model posits that the separation of ownership from control has led to dispersed shareholders (Berle and Means 1932), who hence are unknowledgeable and might be unskilled (Fama and Jensen 1983a). They hence renounce to decision-making authority, to decision management but also to decision control. Decision control would be too costly

(Fama and Jensen 1983a) and their control rights are legally limited (Black 1990). Yet, as residual risk-bearer, they are the corporation's residual claimants (Fama and Jensen 1983b).

This description of shareholders allies three kinds of assumptions regarding shareholders. The first kind unites the dispersed and unknowledgeable argument. The SOC model presumes that shareholders lack competence for business matters. They should rather specialise in risk-bearing (Fama and Jensen 1983b).

The second kind deals with access to control. Shareholders are supposed to be financially and legally limited in their pretention to intervene in these business matters for which they lack competence.

Lastly, the third kind of assumptions concerns risk-bearing and residual claims. In the SOC model, risk-bearing and residual claims give shareholder legitimate claims over the corporation (Fama and Jensen 1983a). Since they freely invest and face the risk of loosing their investment without any previous contractual insurance, they are the corporation's residual claimants. They have claims over the corporation's net cash flows (Fama and Jensen 1983a). These claims provide shareholders with legitimacy. Indeed, arguments in favour of shareholder primacy and shareholder control also rely on legitimacy reasoning (Stout 2007).

However, empirical works on institutional investors have casted some doubt on the extent to which institutional investors verify these assumptions.

Competence

Regarding competence, contrarily to individual investors, institutional are professional investment managers.

They are not dispersed. Institutional investments have re-concentrated capital (Davis 2008). In the United States, they own around 70% of US equities (Jacobs 2011). In the United Kingdom, in the 1990s institutions own around 67% of UK equities (Franks and Mayer 1997). The level of institutionalised equity has remained high followed by a greater share of foreign investors, institutions for most of them (Cheffins 2010). In continental Europe, corporate ownership structure have been more concentrated (Franks and Mayer 1997) but it has followed similar trends (Rock 2015).

Moreover, institutional investors are knowledgeable (Dent JR 2010). As professional investment managers, they tend to acquire or produce knowledge on investee companies. In particular, it has been documented that investors compete for information (Akins, Ng, and Verdi 2011). Investors that acquire private information through dialogue with management make better trading predictions (Ke and Petroni 2004). Moreover disclosure requirements reduce the asymmetry of information between investors and managers (Welker 1995). They also reduce the potential information gap between sophisticated investors and non-sophisticated investors. To this regard, many institutional investors either develop sophisticated strategies to obtain knowledge, or they resort to financial analysts, which proved to be valuable intermediaries (Healy and Palepu 2001).

Therefore, institutional investors do not seem to lack competence or at least access to competence.

Although, institutional investors do not have the necessary knowledge to make operational business decisions, but they are sufficiently knowledgeable for control decisions entailed by corporate governance issues (Bebchuk 2005; Dent JR 2010).

Access to control

Regarding access to control, institutional investors have had more means than before. Scholars have explained institutional investors passivity by political decisions and legal barriers (Black 1990; Roe 1996). Since, a few –yet influential- institutional investors have engaged in activism and gathered around common interests and common demands (Davis and Thompson 1994). The shareholder "law-reform agenda" has had victories (Bratton and Wachter 2010). In 1992, the Security and Exchange Commission facilitated proxy rules for shareholders (Anabtawi and Stout 2008). In 2003, mutual funds were mandated to publicly disclose their voting policy in order to free them from potential conflicts of interest with investee companies (Williams and Conley 2005).

Moreover, since corporate law has had some trouble regulating corporate governance, notably in the aftermath of corporate governance scandals, institutional investors have appeared as regulatory agents. Shareholders control rights have been supported for public policy concerns (Hill 2000), in accordance with Boatright's stands on the motives behind shareholder primacy (Boatright 1994). The international diffusion of Say on Pay provisions in corporate law or in soft law codes of governance illustrates this regulatory issue in favour of extended shareholder rights (Hill 2006; Lieder and Fischer 2011).

Additionally, control was supposed to be costly for shareholders (Fama and Jensen 1983a). Although institutional investors happened to have the financial means to assume control costs (Black 1990), they still seemed to lack incentives to engage in these expensive activities (Coffee 1991; Rock 1990). Yet, hedge funds did not seem to lack incentives and at times lead other institutional investors (Kahan and Rock 2007).

Besides, proxy advisors have appeared. Proxy advisors provide institutional investors with voting advice and information on investee companies on corporate governance matters. The two major proxy advisors, ISS and Glass Lewis, have proved to influence votes casted or at least to frame information analysis (Belinfantini 2009; Choi, Fisch, and Kahan 2008; Larcker, McCall, and Ormazabal 2015). Hence institutional investors can outsource monitoring activities to specialised intermediaries (Dent JR 2010).

Thanks to their large portfolios, institutional investors can realise economies of scale in monitoring activities (Black 1991).

Legitimate claims

Regarding legitimate claims, institutional investors appear to be less deprived than what the SOC model assumed. As regards to risk-bearing, as we have argued, institutional investors have capabilities to reduce information asymmetry. Furthermore, they develop specific investment management techniques that reduces the risks shareholders are supposed to take. Following portfolio theory, index funds' risk has been reduced to systemic risk. Actively managed funds seem to produce similar – risk-adjusted- results than index funds (Ippolito 1989). Indeed, the issue for many investment managers has less been how to reduce risk but how to outperform index funds (Elton, Gruber, and Blake 1995). Therefore, risks undertook by institutional investors do not resemble risks individual shareholders have been portrayed to undertake. Historically, the corporate form was a vehicle enabling to protect the corporate constituencies and limited shareholders' risk to capital loss (Blair 2003). Shareholders were betting their capital and entrusting managers with their savings (Berle and Means 1932). Now, small beneficiaries of life insurances or pension funds entrust money managers with their savings expecting high returns without much fear for the eventuality of capital loss.

Similarly, many commentators have observed that institutional investors were not always "pure" residual claimants. They can invest in equity derivatives such as options, equity default swap or forward contracts that decouple a vote from the economic interests of a share (Martin and Partnoy 2005). Scholars have christened these practices as "empty voting". They have thus highlighted that shareholders do not always share an unrestricted residual risk or economic interest whereas they still benefit from voting approval rights (Hu and Black 2007). As a whole, the unity of a corporation's interests has been challenged by institutional investor's heterogeneous demands (Connelly et al. 2010) and by the possibility of investor opportunism to the detriment of other shareholders (Anabtawi and Stout 2008).

In sum, institutional investors do not meet all the premises of the SOC model. They have competences or access to competences. They have legal and financial access to control. And their claims are not as legitimate as the common representation of shareholders assumes. Yet, institutional investors, who have enhanced capabilities, benefit from the same corporate governance privileges –and even enhanced control means- as traditional shareholders. This observation entails firm-level implications that have questioned the role of institutional investors in corporate governance.

4.2. Institutional investors: from criticisms to stewardship responsibilities

The specific features of institutional investors as shareholders have undergone serious criticisms for their influence on corporate strategy and corporate practices.

First, institutional investors have been accused of short-termism, which could foster managerial myopia and harm sustainable corporate strategy (Graves and Waddock 1990). Empirical studies have shown mixed results. Some studies have find no evidence supporting the short-termism hypothesis (Callen and Fang 2013; Wahal and McConnell 2000). In particular, regarding corporate strategy, some found that institutional ownership was even positively correlated with firm innovation (Kochhar and David 1996). Indeed, institutional ownership was positively associated with R&D expenditures (Hansen and Hill 1991). Moreover, institutional ownership (Bange and De Bondt 1998) and monitoring (Chung, Firth, and Kim 2002) was found negatively correlated with earning management practices. Yet, scholars discriminate between institutional investors and have found that transient, short-term, investors were negatively associated with R&D expenditures (Bushee 1998), positively associated with near-term earning management (Bushee 2001) and positively associated with short-term tactical business policy to the detriment of long-term strategic business policy (Connelly et al. 2010).

Although, the short-termism hypothesis remains to be empirically attested, scholars have recently generally agreed that institutional investor activism and monitoring achieves effective impact on corporate governance (Gillan and Starks 2003; Goranova and Ryan 2014). Institutional investors seem to value voting rights (Aggarwal, Saffi, and Sturgess 2015) and proposals as well as voting outcomes increasingly influence corporate governance's "rules of the game" (Thomas and Cotter 2007). For instance, "against" votes on directors were positively correlated with director turnover (Iliev et al. 2015). Institutional investors monitoring has strengthened the pay-performance sensitivity of CEO compensation schemes (Ertimur, Ferri, and Muslu 2011; Hartzell and Starks 2003). Institutional activism hence seems successful at disciplining executive managers and directors (Brav et al. 2008; Del Guercio, Seery, and Woidtke 2008).

At operational-level, the influence of institutional investor ownership and monitoring can also be tracked down. The rise of institutional ownership and the institutional investor social movement have contributed to diffuse the shareholder primacy norm (Hansmann and Kraakman 2001; Karmel 2004). Since the takeover waves and shareholder upsurges, executive managers started paying close attention to stock prices (Dallas 2001). Now, managers are even more attentive to institutional investors' expectations and behaviours (Ryan 2000). Institutional investors engage in many successful private negotiations with management (Carleton, Nelson, and Weisbach 1998). Notably, investor relations department have developed partly in response to institutional investors' increasing power and demands (Bushee and Miller 2012; Rao and Sivakumar 1999). Institutional investors have direct influence on strategic and managerial decisions (Connelly et al. 2010).

Therefore, the balance of power between institutional investors on one hand and directors and executive managers on the other hand has found a new equilibrium, more favourable to investors. Yet, institutional investors can have conflicts of interests (Hayward and Boeker

1998; Ingley and Van Der Walt 2004; Monks 2002), they can be self-dealing (Anabtawi and Stout 2008; Stout 2007), they have heterogeneous demands (Connelly et al. 2010) and, as intermediaries – and powerful ones- they add agency costs because of a longer chain of investment (Gilson and Gordon 2013; Wong n.d.). Moreover, they enforce and promote a shareholder primacy ideology, whose narrow and potentially harmful representation of the corporate objective has been widely criticised (Fisch 2005; Lazonick and O'sullivan 2000; Stout 2012).

Institutional investor stewardship has in part been developed to answer these new and significant challenges institutional investor poses to corporate governance (Heineman Jr and Davis 2011). Corporate governance commentators and legislators ask more than institutional investor monitoring, they ask for a "stewardship" feature of institutional monitoring (Cheffins 2010; Davis, Lukomnik, and Pitt-Watson 2009; Roach 2011; Wong n.d.).

Institutional investor stewardship has also been linked to responsible investment and corporate social responsibility (Ivanova 2017). Indeed, some have promoted a third-way between agency theory and stakeholder theory that was found in the "enlightened shareholder value" concept (Harper Ho 2010). In this perspective, institutional investor have been asked to disclose their environmental and social policies (Williams and Conley 2005). Institutional engagement as defined by the European Parliament should integrate extra-financial monitoring (European Parliament, 2017). These reflexions also echoes the propositions in favour of fiduciary duties toward the corporation for institutional investors with means of control (Anabtawi and Stout 2008; Karmel 2004).

All in all, the need for stewardship behaviours from institutional investors answers the implicit observation that institutional investors dodge the common framework used for shareholders. Investor stewardship is thought as means to discipline managers as well as means to discipline investors (Cheffins 2010). The trend in favour of investor stewardship hence reveals that institutional investors are indeed part of the problem (Heineman Jr and Davis 2011). Although institutional investors have a monitoring role, they also need to be monitored.

Institutional investor stewardship stands then as a reinterpretation of the SOC model because it includes within the SOC framework both monitoring and stewardship responsibilities for institutional investors. Yet this reinterpretation of the SOC model partly eludes that institutional investors do not comply with its classic premises.

5. Conclusion

Institutional investors have renewed the debate surrounding corporate governance and the role shareholders could and should play in corporate governance.

Recently, many have advocated that this role should be enhanced. The institutional investor stewardship hypothesis was proposed to frame the ins and outs for their specific role (Davis, Lukomnik, and Pitt-Watson 2009; Roach 2011).

In this article, we have analysed the institutional investor stewardship hypothesis through theoretical, historical and empirical lenses. From an historical angle, institutional investor stewardship has been brought up to answer many dysfunctions or assumed dysfunctions corporate governance practices have experienced. However, this hypothesis draws on a specific theoretical model. The separation and ownership model as first developed by Berle and Means, and then, enriched by agency theorist, outlines a specific representation of shareholders. This representation assumes that shareholders lack competence, access to control while they have legitimate claims over the corporation. We contend that these assumptions do not fit with institutional investors' characteristics. Institutional investors have sufficient capabilities to destabilise the model's equilibrium between managers and shareholders. Furthermore, they tend to make use of these capabilities. Intricately, institutional investor stewardship which foundations seem precarious was proposed to answer these challenges and constrain the role of institutional investors in corporate governance. Institutional investor stewardship intends both to enhance the monitoring of managers and the monitoring of investors.

This paper's contribution is then twofold.

Firstly, we contribute to the debate regarding the role of institutional investors in corporate governance. We have explored the notion of shareholder stewardship for which we provide a genealogical interpretation. Shareholder stewardship has been developed in response of the growing influence and impacts of institutional investors. Institutional investors have radically changed the environment of corporate governance. The separation of ownership and control hypothesis and model is then not a suitable hypothesis anymore for an institutionalised ownership environment. This disparity explains the emergence of renewed standards such as institutional investor stewardship.

Secondly, we contribute to the theoretical representation of shareholders in corporate governance. Institutional investor stewardship is not a stabilised notion and can be ambiguous. Yet, exploring the concept of shareholder stewardship has sketches other perspectives of the understanding of what characterises shareholders. The separation of ownership and control approach of corporate governance has developed a specific representation of shareholders. Institutional investors do not fit this representation. We have thus specified the area of validity of the separation of ownership and control model through determined premises that ownership-shareholders should verify. In this approach, shareholders lack competence, access to control but hold legitimate claims over the corporation. Our analysis stands then as an effort of theoretical clarification for discussing shareholders in corporate governance.

Future research could further explore the implications of the limits of the separation of ownership from control model. Notably, many theoretical models in corporate governance rely on this approach. Questioning the separation of ownership from control model should question these other models. We might be able to discriminate between cases in which these models are still applicable and the ones in which these models could be invalidated.

Further research could also path the way toward the design of a corporate governance model that could encompass institutional investor stewardship- stemming from the specific characteristics of institutional investors and their implications for corporate governance. Practitioners have shown interest for investor stewardship. Yet empirical studies have underlined the many challenges that they face (Ivanova 2017). Theoretical developments on investor stewardship could answer these challenges by fostering new streams of research and policymaking.

References

Aggarwal, Reena, Isil Erel, Miguel Ferreira, and Pedro Matos, 2011, “Does governance travel around the world? Evidence from institutional investors,” *Journal of Financial Economics*, 100(1):154–81.

———, Pedro AC Saffi, and Jason Sturgess, 2015, “The Role of Institutional Investors in Voting: Evidence from the Securities Lending Market,” *Journal of Finance*, 70(5):2309–46.

Akins, Brian K, Jeffrey Ng, and Rodrigo S Verdi, 2011, “Investor competition over information and the pricing of information asymmetry,” *The Accounting Review*, 87(1):35–58.

Anabtawi, Iman and Lynn Stout, 2008, “Fiduciary duties for activist shareholders,” *Stanford Law Review*, 60:1255–1308.

Armour, John, Simon Deakin, and Suzanne J Konzelmann, 2003, “Shareholder primacy and the trajectory of UK corporate governance," *British Journal of Industrial Relations*, 41(3):531–55.

———, ———, Viviana Mollica, and Mathias Siems, 2009, "Law and financial development: what we are learning from time-series evidence," *BYU L. Rev.*, (6):1435.

Bainbridge, Stephen M, 2005, "Director primacy and shareholder disempowerment," *Harv. L. Rev.*, 119:1735.

Bange, Mary M and Werner FM De Bondt, 1998, "R&D budgets and corporate earnings targets," *Journal of Corporate Finance*, 4(2):153–84.

Bebchuk, Lucian A, 2013, "The myth that insulating boards serves long-term value," *Colum. L. Rev.*, 113(6):1637.

——— and Alma Cohen, 2005, "The costs of entrenched boards," *Journal of Financial Economics*, 78(2):409–33.

Bebchuk, Lucian Arye, 2005, "The case for increasing shareholder power," *Harvard Law Review*, 118:833–914.

——— and Jesse M Fried, 2003, "Executive Compensation as an Agency Problem," *Journal of Economic Perspectives*, 17(3):71–92.

Bebchuk, Lucian, Jesse M Fried, and David I Walker, 2002, "Managerial Power and Rent Extraction in the Design of Executive Compensation," *University of Chicago Law Review*, 69(3):751–846.

Belinfantini, Tamara C, 2009, "The Proxy Advisory and Corporate Governance Industry: The Case for Increased Oversight and Control," *Stanford Journal of Law, Business & Finance*, 14(2):384–439.

Berle, Adolf Augustus and Gardiner Gardiner Coit Means, 1932, *The modern corporation and private property*, New Brunswick: reprint Transaction publishers 1991.

Birkmose, Hanne Søndergaard, 2014, "European challenges for institutional investor engagement–Is mandatory disclosure the way forward," *European Company and Financial Law Review*, 11(2):214–57.

Black, Bernard S, 1990, "Shareholder passivity reexamined," *Michigan Law Review*, 89(3):520–608.

———, 1991, "Agents watching agents: The promise of institutional investor voice," *UClA l. reV.*, 39:811.

———, 1992, "Institutional investors and corporate governance: The case for institutional voice," *Journal of applied corporate finance*, 5(3):19–32.

Blair, Margaret M, 2003, "Locking in capital: What corporate law achieved for business organizers in the nineteenth century," *UClA l. reV.*, 51:387.

——— and Lynn A Stout, 1999, "A team production theory of corporate law," *Virginia Law Review*, 247–328.

Boatright, John R, 1994, "Fiduciary Duties and the Shareholder-Management Relationship, Or , What's so Special about Shareholders?," *Business Ethics Quarterly*, 4(4):393–407.

Bratton, William W and Michael L Wachter, 2010, "The case against shareholder empowerment," *University of Pennsylvania Law Review*, 158(3):653–728.

Brav, Alon, Wei Jiang, Frank Partnoy, and Randall Thomas, 2008, "Hedge fund activism, corporate governance, and firm performance," *The Journal of Finance*, 63(4):1729–75.

Bris, David Le, William N Goetzmann, and Sébastien Pouget, 2015, "The Development of Corporate Governance in Toulouse: 1372-1946," Cambridge, United States: National Bureau of Economic Research.

Bushee, Brian J, 1998, "The influence of institutional investors on myopic R&D investment behavior," *Accounting review*, 73(3):305–33.

———, 2001, "Do institutional investors prefer near-term earnings over long-run value?," *Contemporary Accounting Research*, 18(2):207–46.

——— and Gregory S Miller, 2012, "Investor relations, firm visibility, and investor following," *The Accounting Review*, 87(3):867–97.

Callen, Jeffrey L and Xiaohua Fang, 2013, "Institutional investor stability and crash risk: Monitoring versus short-termism?," *Journal of Banking & Finance*, 37(8):3047–63.

Carleton, Willard T, James M Nelson, and Michael S Weisbach, 1998, "The influence of institutions on corporate governance through private negotiations: Evidence from TIAA-CREF," *The Journal of Finance*, 53(4):1335–62.

Cheffins, Brian, 2015, "Corporate Governance Since the Managerial Capitalism Era," *Business History Review*, 89(4):1–28.

——— and Steven Bank, 2009, "Is Berle and Means really a myth?," *Business History Review*, 83(3):443–74.

Cheffins, Brian R, 2010, "The Stewardship Code's Achilles' Heel," *The Modern Law Review*, 73(6):1004–25.

Choi, Stephen J, Jill E Fisch, and Marcel Kahan, 2008, "Director elections and the role of proxy advisors," *S. Cal. L. Rev.*, 82:649.

Chung, Richard, Michael Firth, and Jeong-Bon Kim, 2002, "Institutional monitoring and opportunistic earnings management," *Journal of corporate finance*, 8(1):29–48.

Coffee, John C, 1991, “Liquidity versus control: The institutional investor as corporate monitor,” *Columbia law review*, 91(6):1277–1368.

Commission, European, 2010, “Corporate governance in financial institutions and remuneration policies,” *Green Paper*, {COM(2010).

———, 2011, “The EU corporate governance framework,” *Green Paper*, {COM(2011).

Connelly, Brian L, Laszlo Tihanyi, S Trevis Certo, and Michael A Hitt, 2010, “Marching to the beat of different drummers: The influence of institutional owners on competitive actions,” *Academy of Management Journal*, 53(4):723–42.

Council, Financial Reporting, 2012, “The UK stewardship code,” *Financial Reporting Council, London, Tech. Rep.*

Daily, Catherine M, Dan R Dalton, and Albert A Cannella, 2003, “Corporate governance: Decades of dialogue and data,” *Academy of management review*, 28(3):371–82.

Dallas, Lynne L, 2001, “The new managerialism and diversity on corporate boards of directors,” *Tul. L. Rev.*, 76:1363.

———, 2011, “Short-termism, the financial crisis, and corporate governance,” *J. Corp. L.*, 37:265.

David, Parthiban, Michael A Hitt, and Javier Gimeno, 2001, “The influence of activism by institutional investors on R&D,” *Academy of management Journal*, 44(1):144–57.

———, Rahul Kochhar, and Edward Levitas, 1998, “The effect of institutional investors on the level and mix of CEO compensation,” *Academy of Management Journal*, 41(2):200–208.

Davis, Gerald F, 2008, “A new finance capitalism? Mutual funds and ownership re-concentration in the United States,” *European Management Review*, 5(1):11–21.

Davis, Gerald F and Tracy A Thompson, 1994, “A Social Movement Perspective on Corporate Control,” *Administrative Science Quarterly*, 39(1):141–73.

Davis, James H, F David Schoorman, and Lex Donaldson, 1997, “Toward a stewardship theory of management,” *Academy of Management review*, 22(1):20–47.

Davis, Stephen M, Jon Lukomnik, and David Pitt-Watson, 2009, “Active shareowner stewardship: A new paradigm for capitalism,” *Rotman International Journal of Pension Management*, 2(2).

Dent Jr, George W, 1989, “Toward a Unifying Ownership and Control in the Public Corporation,” *Wis. L. Rev.*, 881.

Dent JR, George W, 2010, “The Essential Unity of Shareholders and the Myth of Investor

Short-Termism," *Delaware Journal of Corporate Law*, 35(1):97.

Donaldson, Lex and James H Davis, 1991, "Stewardship theory or agency theory: CEO governance and shareholder returns," *Australian Journal of management*, 16(1):49–64.

Eisenhardt, Kathleen M, 1989, "Agency theory: An assessment and review," *Academy of management review*, 14(1):57–74.

Elton, Edwin J, Martin J Gruber, and Christopher R Blake, 1995, "The persistence of risk-adjusted mutual fund performance," New York.

Elyasiani, Elyas and Jingyi Jia, 2010, "Distribution of institutional ownership and corporate firm performance," *Journal of banking & finance*, 34(3):606–20.

Ertimur, Yonca, Fabrizio Ferri, and Volkan Muslu, 2011, "Shareholder activism and CEO pay," *Review of Financial Studies*, 24(2):535–92.

Fama, Eugene F and Michael C Jensen, 1983a, "Separation of ownership and control," *The journal of law and Economics*, 26(2):301–25.

——— and ———, 1983b, "Agency problems and residual claims," *The Journal of Law and Economics*, 26(2):327–49.

Fisch, Jill E, 2005, "Measuring efficiency in corporate law: The role of shareholder primacy," *J. Corp. l.*, 31:637.

Fiss, Peer C and Edward J Zajac, 2004, "The diffusion of ideas over contested terrain: The (non) adoption of a shareholder value orientation among German firms," *Administrative Science Quarterly*, 49(4):501–34.

Franks, Julian and Colin Mayer, 1997, "Corporate ownership and control in the UK, Germany, and France," *Journal of Applied Corporate Finance*, 9(4):30–45.

Gillan, Stuart L and Laura T Starks, 2000, "Corporate governance proposals and shareholder activism: The role of institutional investors," *Journal of financial Economics*, 57(2):275–305.

——— and ———, 2003, "Corporate Governance, Corporate Ownership, and the Role of Institutional Investors: A Global Perspective," *Journal of Applied Finance*, 13(2):4.

Gilson, Ronald J and Jeffrey N Gordon, 2013, "The agency costs of agency capitalism: activist investors and the revaluation of governance rights," *Columbia Law Review*, 113(4):863–927.

Goranova, Maria and Lori Verstegen Ryan, 2014, "Shareholder activism: A multidisciplinary review," *Journal of Management*, 40(5):1230–68.

Gordon, Jeffrey N, 2006, "The rise of independent directors in the United States, 1950-2005: Of shareholder value and stock market prices," *Stan. L. Rev.*, 59:1465.

Graves, Samuel B and Sandra A Waddock, 1990, "Institutional ownership and control: Implications for long-term corporate strategy," *The Executive*, 4(1):75–83.

Grinstein, Yaniv and Roni Michaely, 2005, "Institutional holdings and payout policy," *The Journal of Finance*, 60(3):1389–1426.

Del Guercio, Diane, Laura Seery, and Tracie Woidtke, 2008, "Do boards pay attention when institutional investor activists 'just vote no'?," *Journal of Financial Economics*, 90(1):84–103.

Hansen, Gary S and Charles WL Hill, 1991, "Are institutional investors myopic? A time-series study of four technology-driven industries," *Strategic management journal*, 12(1):1–16.

Hansmann, H and R Kraakman, 2001, *The end of history for corporate law*, *Georget. Law J.*

Harper Ho, Virginia E, 2010, "'Enlightened Shareholder Value': Corporate Governance Beyond the Shareholder-Stakeholder Divide," *Journal of Corporation Law*, 36(1):59.

Hartzell, Jay C and Laura T Starks, 2003, "Institutional investors and executive compensation," *The journal of finance*, 58(6):2351–74.

Hayward, Mathew LA and Warren Boeker, 1998, "Power and conflicts of interest in professional firms: Evidence from investment banking," *Administrative Science Quarterly*, 43(1):1–22.

Healy, Paul M and Krishna G Palepu, 2001, "Information asymmetry, corporate disclosure, and the capital markets: A review of the empirical disclosure literature," *Journal of accounting and economics*, 31(1):405–40.

Heineman Jr, Ben W and Stephen Davis, 2011, "Are institutional investors part of the problem or part of the solution," *Millstein Center for Corporate Governance and Performance.*, Washington.

Helwege, Jean, Vincent J Intintoli, and Andrew Zhang, 2012, "Voting with their feet or activism? Institutional investors' impact on CEO turnover," *Journal of Corporate Finance*, 18(1):22–37.

Hill, Jennifer, 2000, "Visions and Revisions of the Shareholder," *The American Journal of Comparative Law*, 48(1):39–79.

———, 2006, "Regulating Executive Remuneration: International Developments in the Post-Scandal Era," *European Company Law*, 3(2):64–74.

Hilt, Eric, 2013, "Shareholder voting rights in early American corporations," *Business History*, 55(4):620–35.

Holmstrom, Bengt and Steven N Kaplan, 2001, “Corporate Governance and Merger Activity in the US: Making Sense of the 1980s and 1990s,” *Journal of Economic Perspectives*, 15(2):121–44.

Hu, Henry TC and Bernard Black, 2007, “Hedge funds, insiders, and the decoupling of economic and voting ownership: Empty voting and hidden (morphable) ownership,” *Journal of Corporate Finance*, 13(2):343–67.

Iliev, Peter, Karl V. Lins, Darius P Miller, and Lukas Roth, 2015, “Shareholder Voting and Corporate Governance Around the World,” *Review of Financial Studies*, 28(8):2167–2202.

Ingley, CB and Nicholas T Van Der Walt, 2004, “Corporate governance, institutional investors and conflicts of interest,” *Corporate Governance: An International Review*, 12(4):534–51.

Ippolito, Richard A, 1989, “Efficiency with costly information: A study of mutual fund performance, 1965–1984,” *The Quarterly Journal of Economics*, 104(1):1–23.

Ivanova, Mila R, 2017, “Institutional investors as stewards of the corporation: Exploring the challenges to the monitoring hypothesis,” *Business Ethics: A European Review*, 26(2):175–88.

Jacobs, Jack B, 2011, “‘Patient Capital’: Can Delaware Corporate Law Help Revive It?,” *Wash. & Lee L. Rev.*, 68:1645.

Jensen, Michael C, 1986, “Agency costs of free cash flow, corporate finance, and takeovers,” *The American economic review*, 76(2):323–29.

——— and William H Meckling, 1976, “Theory of the firm: Managerial behavior, agency costs and ownership structure,” *Journal of financial economics*, 3(4):305–60.

Jensen, Michael C and Kevin J Murphy, 1990, “CEO Incentives — It ’ s Not How Much You Pay , But How,” *Harvard Business Review*, May-June(3):138–53.

Jensen, Michael C and Kevin J Murphy, 1990, “Performance Pay and Top-Management Incentives,” *Journal of Political Economy*, 98(2):225–64.

——— and Richard S Ruback, 1983, “The market for corporate control: The scientific evidence,” *Journal of Financial economics*, 11(1–4):5–50.

Kahan, Marcel and Edward B Rock, 2007, “Hedge funds in corporate governance and corporate control,” *University of Pennsylvania Law Review*, 155(5):1021–93.

Karmel, Roberta S, 2004, “Should a duty to the corporation be imposed on institutional shareholders,” *Bus. Law*, 60(1):1–21.

Ke, Bin and Kathy Petroni, 2004, “How informed are actively trading institutional investors?

Evidence from their trading behavior before a break in a string of consecutive earnings increases," *Journal of Accounting Research*, 42(5):895–927.

Klein, April and Emanuel Zur, 2009, "Entrepreneurial shareholder activism: Hedge funds and other private investors," *The Journal of Finance*, 64(1):187–229.

Kochhar, Rahul and Parthiban David, 1996, "Institutional investors and firm innovation: A test of competing hypotheses," *Strategic Management Journal*, 17(1):73–84.

Larcker, David F, Allan L McCall, and Gaizka Ormazabal, 2015, "Outsourcing Shareholder Voting to Proxy Advisory Firms," *The Journal of Law and Economics*, 58(1):173–204.

Lazonick, William and Mary O'sullivan, 2000, "Maximizing shareholder value: a new ideology for corporate governance," *Economy and society*, 29(1):13–35.

Lieder, Jan and Philipp Fischer, 2011, "The Say-on-Pay Movement - Evidence From a Comparative Perspective," *European Company & Financial Law Review*, 8(3):376–421.

Lipton, Martin and William Savitt, 2007, "The many myths of Lucian Bebchuk," *Va. L. Rev.*, 93:733.

Marens, Richard, 2002, "Inventing corporate governance: The mid-century emergence of shareholder activism," *Journal of Business and Management*, 8(4):365.

Martin, Shaun and Frank Partnoy, 2005, "Encumbered shares," *U. Ill. L. Rev.*, 775.

McNulty, Terry and Donald Nordberg, 2016, "Ownership, Activism and Engagement: Institutional Investors as Active Owners," *Corporate Governance: An International Review*, 24(3):346–58.

Mizruchi, Mark S, 2004, "Berle and Means revisited: The governance and power of large US corporations," *Theory and Society*, 33(5):579–617.

Monks, Robert AG, 2002, "Creating Value Through Corporate Governance," *Corporate Governance: An International Review*, 10(3):116–23.

Parliament, European, 2017, *Directive 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement*, L132/1-24.

Partnoy, Frank and Randall S Thomas, 2006, "Gap filling, hedge funds, and financial innovation," Washington.

Rao, Hayagreeva and Kumar Sivakumar, 1999, "Institutional sources of boundary-spanning structures: The establishment of investor relations departments in the Fortune 500 industrials," *Organization Science*, 10(1):27–42.

Roach, Lee, 2011, "The UK Stewardship Code," *Journal of Corporate Law Studies*, 11(2):463–93.

Rock, Edward B, 1990, “The logic and (uncertain) significance of institutional shareholder activism,” *Geo. LJ*, 79:445.

———, 2015, “Institutional Investors in Corporate Governance,” in *The Oxford Handbook of Corporate Law and Governance*, J. N. Gordon and W. Ringe, eds., Oxford: Oxford University Press.

Roe, Mark J, 1991, “A political theory of American corporate finance,” *Columbia Law Review*, 91(1):10–67.

———, 1993, “Some differences in corporate structure in Germany, Japan, and the United States,” *The Yale Law Journal*, 102(8):1927–2003.

———, 1996, *Strong managers, weak owners: The political roots of American corporate finance*, Princeton: Princeton University Press.

Romano, Roberta, 1993, “Public pension fund activism in corporate governance reconsidered,” *Columbia Law Review*, 93(4):795–853.

———, 2001, “Less is more: making institutional investor activism a valuable mechanism of corporate governance,” *Yale J. on reg.*, 18:174.

Ryan, Lori Verstegen, 2000, “Shareholders and the atom of property: Fission or fusion?,” *Business & Society*, 39(1):49–75.

Segrestin, Blanche and Armand Hatchuel, 2011, “Beyond agency theory, a post-crisis view of corporate law,” *British Journal of Management*, 22(3):484–99.

Shleifer, Andrei and Robert W Vishny, 1986, “Large shareholders and corporate control,” *Journal of political economy*, 94(3, Part 1):461–88.

——— and ———, 1989, “Management entrenchment: The case of manager-specific investments,” *Journal of financial economics*, 25(1):123–39.

——— and ———, 1990, “The takeover wave of the 1980s,” *Science*, 249(4970):745.

Smith, Michael P, 1996, “Shareholder activism by institutional investors: Evidence from CalPERS,” *The Journal of Finance*, 51(1):227–52.

Stout, Lynn A, 2001, “Bad and not-so-bad arguments for shareholder primacy,” *S. Cal. L. Rev.*, 75:1189.

———, 2007, “The mythical benefits of shareholder control,” *Virginia Law Review*, 93(3):789–809.

———, 2012, “Toxic Side Effects of Shareholder Primacy, The,” *U. Pa. L. Rev.*, 161:2003.

Strine Jr, Leo E, 2010, “One Fundamental Corporate Governance Question We Face: Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term?,” *The Business Lawyer*, 66(1):1–26.

Sundaram, Anant K and Andrew C Inkpen, 2004, “The corporate objective revisited,” *Organization science*, 15(3):350–63.

Thomas, Randall S, 2008, “The evolving role of institutional investors in corporate governance and corporate litigation,” *Vand. L. Rev.*, 61:299.

——— and James F Cotter, 2007, “Shareholder proposals in the new millennium: Shareholder support, board response, and market reaction,” *Journal of Corporate Finance*, 13(2):368–91.

Tosi, Henry L, Steve Werner, Jeffrey P Katz, and Luis R Gomez-Mejia, 2000, “How Much Does Performance Matter? A Meta-Analysis of CEO Pay Studies,” *Journal of Management*, 26(2):301–39.

Wahal, Sunil and John J McConnell, 2000, “Do institutional investors exacerbate managerial myopia?,” *Journal of corporate Finance*, 6(3):307–29.

Welker, Michael, 1995, “Disclosure policy, information asymmetry, and liquidity in equity markets,” *Contemporary accounting research*, 11(2):801–27.

Williams, Cynthia A and John M Conley, 2005, “An Emerging Third Way-The Erosion of the Anglo-American Shareholder Value Construct,” *Cornell Int’l LJ*, 38:493.

Wong, Simon CY, (n.d.), “Why Stewardship is Proving Elusive for Institutional Investors’(2010),” *Butterworths Journal of International Banking and Financial Law*, 25:406.