FROM SHAREHOLDER PRIMACY TOWARDS STAKEHOLDER PRIMACY:

WHY CORPORATE GOVERNANCE NEEDS TO CHANGE ITS FOCUS IN ORDER TO SURVIVE IN THE MODERN BUSINESS ENVIRONMENT

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PRACTICE AREA: CORPORATE GOVERNANCE

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ABBREVIATIONS

EU – European Union

IFC – International Finance Corporation

IMF – International Monetary Fund

NASDAQ - National Association of Securities Dealers Automated Quotations

NYSE – New York Stock Exchange

OECD – Organisation for Economic Cooperation and Development

S.E.C. - Federal Securities and Exchange Commission

UN – United Nations

UNCTAD – United Nations Conference on Trade and Development

UNGC – United Nations Global Compact

WB – World Bank

I. INTRODUCTION

1. THE PROBLEM

Thursday, February 22, 2018 – In the matter of mere hours Snap Inc., the publicly traded company behind Snapchat, one of the most influential and revolutionary social media platforms in the world, lost a total of $1.5 billion in market value[1]. The company's shares plummeted 6.1% just minutes after one of the platform's most influential members commented she no longer uses the app[2]. The perceived effect of this one spontaneous and unplanned post launched a wave of articles and studies aiming to understand how the single action of one, however influential Snapchat user could be able to inflict such real damage (from which Snapchat is still to recover) to a brand in such a short span of time.

Further study into the surrounding reasons behind the company's plummeting numbers and loss of users traced Snap Inc.'s issues back to its ill-fated redesign earlier in the year, which the company's co-founder and CEO Evan Spiegel greenlighted almost unilaterally in order to try and boost the App's competitiveness with its rival Facebook's Instagram[3]. The move's main purpose had been to outdo its competition in order to boost profits, which were suffering from the increasing pressure from Facebook. The redesign of Snapchat however ended up disappointing and alienating consumers, advertisers and company partners alike[4]. They had not been consulted or even polled for their opinion and as a result, the new design was making personal relationships more cumbersome and driving advertising results down for everyone[5]. Inside the company employees were highlighting the fact that company management had not consulted them either or given any guidance on the new design leaving them in the dark about their own work and the possible effects on the business[6]. The outrage was so big that is resulted in a petition, signed by more than one million users asking for the return of the old App interface, to which the company CEO Spiegel responded by ignoring the concern and advising everyone that they just need to get used to it[7].

However, financial and business numbers continued plummeting. As a result of the company's choice to ignore customer concerns it lost its most influential celebrity users who moved on to its competitor Instagram overnight. Overall, Snapchat's use dropped by 50% and new subscriber

[1] (Vasquez, 2018)
[2] (Levin, We are watching a company explode: Is Snapchat becoming irrelevant?, 2018)
[3] (Duprey, 2018)
[4] (Kosoff, 2018)
[5] Ibid
[6] Ibid
[7] (Perez, 2018)

numbers plummeted[8]. Simultaneously, Snapchat advertisers saw their marketing metrics decrease at lightning speed[9]. Sap Inc.'s response to what they thought would be a quick storm but turned out to be a slow fall from grace, was to try and publicly reassure its users that their voice is heard[10]. The company promised to redesign the redesign and conducted belated personal meetings with key customers and advertisers aimed to ensure they understand the new features and to reaffirm to them that their voice matters[11]. All these efforts were however, too little too late. Snapchat had lost the trust of the masses who felt like the company had not just failed to hear them but had deliberately chosen to ignore their view. Even worse, the App's all important celebrity fans who had help build it had departed on to rival platforms and as a result had taken Snapchat's relevance with them[12].

The fall of Snapchat was one of the most visible high-profile instances of a shifting power distribution between various interest groups with influence over a business. More recent examples include the failure of the Uber IPO in May of 2019[13], which had been hailed as the most anticipated launch since Facebook had gone public almost a decade prior[14]. Much like with Snap Inc. the Uber failure was contributed largely to the toxic corporate culture of the company and its numerous issues with its driver base, which had staged US public protests in the days leading up to the IPO asking for Uber to stop cutting driver profits in order to boost company financials and share price[15]. Regardless of what triggered them however, both cases have one element in common. Uber and Snap Inc. had chosen to ignore the voice of their stakeholders and had gone on to take key corporate decisions led by the sole aim of driving share prices up. In a new world, dominated by instant information availability and opinion sharing however, where company performance is no longer solely measured on stock price this decision had cost them their success.

But how does the story of the recent fall from grace of two of the world's most innovative and disruptive companies relate to a legal discussion on changing corporate governance models? The following thesis aims to connect the dots by examining the relationship between stakeholder interests' consideration in corporate governance and company health as opposed to the entrenched traditional model of shareholder primacy in corporate governance.

We put forward the argument that as information technology innovations in recent decades fundamentally change social interactions and grant new ways for society to distribute information and express opinions established stakeholder groups, which have traditionally been ignored by the classical shareholder approach to corporate governance are gaining enough

[8] (Kosoff, 2018)
[9] Ibid
[10] (Perez, 2018)
[11] (Levin, We are watching a company explode: Is Snapchat becoming irrelevant?, 2018)
[12] (The Orchard, 2018)
[13] (Gurdus, 2019)
[14] (Bort, 2019)
[15] (Ghaffary, 2019)

power to have a decisive influence over corporate business decisions[16]. As technology facilitates a new type of instant, information-driven social connection coupled with a greater brand exposure interested groups such as customers, employees, business partners, local communities, directly affected by the behaviour of a business have new tools at their disposal to make their view seen[17]. Thus, the very real impact these stakeholder groups are having upon the success of a business[18], such as the example of Snap Inc., is putting into question the viability of a shareholder-dominated corporate governance model.

Shareholder primacy, which is still the dominant model of corporate governance across the Anglo-Saxon legal systems[19] favours short-term value maximisation for the benefit of stockholders while ignoring greater stakeholder views in corporate decision-making[20]. However, this winning combination in a world of weak stakeholder groups with limited participation options is arguably setting up businesses to fail in the new, shifting global business world of empowered stakeholders and reduced information asymmetries[21]. Avoiding corporate failure within the new realities requires adjustments of the existing models to factor in the growing stakeholder influences to the business. So how can corporate governance evolve in order to keep its relevance and support companies into a changing business world? We argue that one way is by adopting the broader view of the stakeholder primacy model in corporate governance, which requires businesses to account for the views of all interested stakeholder groups in decision-making. This could be the natural next step to help companies adjust for new influences and expectations as well as support positive business results within the increasingly volatile environment where they operate.

2. Historic Background

Before we are able to understand the shift between corporate governance models, we need to understand the roots of the phenomena first.

We perceive Corporate Governance as a collection of rules, practices and policies governing corporations in their decision-making process and dictating the internal relationships between different corporate actors, responsible for establishing the overall company direction[22].

Historically, corporate governance has been predominantly viewed as the main vehicle for achieving an increase of shareholder value for corporate investors, which coincides with the ultimate goal behind the creation of the modern firm, namely the realization of profit. This

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[16] (Ghobadi & Clegg, 2015) (Spellman & Chaher, 2012)
[17] (Ghobadi & Clegg, 2015)
[18] (Cava, 2017) (Ghaffary, 2019) (International Finance Corporation, 2019)
[19] (Bainbridge, 2002)
[20] (Friedman, A Friedman Doctrine: The Social Responsibility of Business is to increase its Profit, 1970)
[21] (Denning, 2011)
[22] (Kraakman & Hansmann, 2001)

accepted view on the corporation's purpose consequently encapsulated in the shareholder primacy model would become the established principle leading corporate actors in their behaviour and decision making process especially across the Anglo-Saxon legal systems. In contrast of shareholder primacy, stakeholder primacy considers that there is wider group of interested parties whose positions need to be taken into consideration by corporate governance in order to ensure the successful operation of the company.

The phenomena of corporate governance can trace its origins back to the birth of the first corporations – The Dutch East India and English East India companies with their separation of ownership and control[23]. The speedy rise of corporations and the growth of the US stock market in the US across the 20th century prompted the further development of corporate governance as the issues of separation of ownership and control within expanding companies became sharper[24]. The aim to create adequate protections for shareholder interests combined with the notion that companies existed primarily to maximise the value for their stockholders became the predominant view on corporate governance across the US and coincidentally shaped the core of what would eventually evolve into the shareholder primacy model[25]. However, as the US corporations amassed power, this led to a departure from the traditional postulates of shareholder primacy into a broader view of the corporate purpose[26]. This idea of companies having broader responsibilities to society and making socially conscious business decisions would in turn become the heart of the stakeholder primacy model in corporate governance[27]. However, the view of corporate governance would continue to be driven by the ideas of shareholder primacy through the entire second half of the 20th century until the first major US corporate failures in 2001 and 2002 and the Economic Recession of 2008 put shareholder value maximisation driven models in question[28].

Today, the new empowerment of traditional stakeholder groups attributed to technological innovation, changing information availability and fundamental social shifts is pushing corporations to implement a more stakeholder centric model of corporate governance in order to avoid corporate failures and capitalise on exploding social engagement[29].

In these interesting and dynamic conditions, corporate governance is finding itself in flux between a classical shareholder primacy model losing relevance and a rising stakeholder primacy model gaining momentum as well as support from international organisations and across the global business world.

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[23] (Smith A. , 1776 (2007))
[24] (Berle & Means, The Modern Corporation And Private Property , 1932)
[25] (Ripley, 1927)
[26] (Wells, The Birth of Corporate Governance, 2010)
[27] (Freeman E. , Strategic Management: A Stakeholder Approach, 1984)
[28] (Cheffins B. R., 2013)
[29] (Adnan & Tandigalla, 2017) (Ghobadi & Clegg, 2015) (Spellman & Chaher, 2012)

3. REVIEWING THE LITERATURE

The corporate governance phenomena with the relationships between its various models is one of the most widely discussed topics in Company Law today and benefits from a large body of literature. Although the term corporate governance came into official use only in the late 1920s with the work of Bearle & Means[30] the discussion on corporate governance's main postulates in literature dates back to Adam Smith's 1776 work "The Wealth of Nations", which discussed shareholder activism in the Dutch East India Company[31]. The big expansion of literature on corporate governance from the late 1920s and early 1930s started with the work of William Z. Ripley in the US and his article "Main Street and Wall Street" from 1927, which represented a discussion on the functioning of US corporations and the protections shareholder interests required[32]. This paved the way for the seminal work by Adolf A.Berle and Gardiner Means's - "The Modern Corporation and Private Property" widely celebrated as the birth of the modern corporate governance debate by highlighting the problems of separation of ownership and control[33]. However, even more notable for the present thesis Bearle and Means's work laid the foundation of both the stakeholder and the shareholder theories[34]. Ultimately, the notion of shareholder primacy crystalized within the work of Milton Friedman in 1962 who argued for the social responsibility of businesses to increase shareholder value in his book "Capitalism and Freedom"[35]. In parallel, Edward Freeman with his 1984 book "Strategic Management: A Stakeholder Approach" did the stakeholder theory's first official outline[36].

The Friedman doctrine postulates that a company is compelled to make money in order to satisfy its shareholders, who are the only stakeholder group, which matters in company relationships and decision-making[37]. In contrast, the Freeman approach argues that stakeholders are "groups without whose support the organization would cease to exist"[38] and garnering their buy-in by giving their interests equal consideration in decision-making is vital to corporate health and longevity. Revisiting his theory in 2004, Freeman along with Andrew C. Wicks and Bidhan Parmar would go on to argue that factoring stakeholder interests in company strategies and moving towards a stakeholder led corporate governance model is a key requirement for business survival in the modern world[39]. Companies who choose to modernize their views go on to

[30] (Berle & Means, The Modern Corporation And Private Property , 1932)
[31] (Smith A. , 1776 (2007))
[32] (Ripley, 1927)
[33] (Berle & Means, The Modern Corporation And Private Property , 1932)
[34] (Wells, The Birth of Corporate Governance, 2010)
[35] (Friedman, Capitalism and Freedom, 1962)
[36] (Freeman E. , Strategic Management: A Stakeholder Approach, 1984)
[37] (Friedman, Capitalism and Freedom, 1962) (Friedman, A Friedman Doctrine: The Social Responsibility of Business is to increase its Profit, 1970)
[38] (Freeman E. , Strategic Management: A Stakeholder Approach, 1984)
[39] (Freeman, Wicks, & Parmar, 2004)

improve corporate health and profit margins. However, Freeman warns that failure to consider stakeholder interests results in climatic corporate failures such as Enron in 2002[40].

The exclusionary character of Friedman's view compared to Freeman's inclusivity of interests set shareholder primacy and stakeholder primacy at odds in literature[41]. Modern literary work on the relationship between shareholder primacy and stakeholder primacy is abundant with a multitude of academic articles and books published on the subject. However, academic writings on the opposing dynamics between shareholder and stakeholder primacy models have been accused of a significant shortcoming. Namely, that they are departing from business realities in their claims that the two models are at sharp odds with each other when in reality they have found a way to co-exist[42].

Moreover, there is a surprising lack of literature dedicated to the view expressed in this thesis of the correlation between technological innovations, social changes and stakeholder empowerment. Thus, building this thesis's argumentation required to extract, analyze and illustrate the correlation via the multitude of real-life business cases, legal, business, management, economic, marketing and social sciences written works dedicated to shareholder primacy, stakeholder primacy and their elements.

4. The Research Question and its Significance

As already mentioned the following thesis will focus on a question, which has not been directly and fully examined by any other previous works in the field of Law. We pose the question whether migrating corporate governance models towards stakeholder primacy will enable companies to survive the modern business environment marked by information technology innovation, social changes, stakeholder empowerment and new interest groups' influence over companies worldwide. In order to respond to the question we will aim to examine the core postulates and evolution of corporate governance and its leading models to better understand its stake in corporate health as well as the possible impact of a model shift in ensuring business longevity. After we answer the question of the provenance of corporate governance's leading models we will turn to examining key technological and social changes and question how they have changed modern business and if the purported changes are enough to amount to a change in the current dominating corporate governance models as well as what should the change be.

The present study is situated at the intersection of Law, Technology and Social Science aiming to establish the connection between revolutionary tech innovations, their role in fundamentally changing social interactions, the effect over global business and in turn over individual companies. Thus, it is of great significance to the progress of International Business Law,

[40] (Freeman E. , Stakeholder Theory: the state of the Art , 2009)
[41] (Clark & Steckler, 2016)
[42] Ibid

Company Law and Corporate Governance in general as its goal is to illustrate the need for modernization of corporate governance, to determine the key influences conditioning the governance changes, and present an argumentation for the best fitting model on the basis of its overall conclusions. As this thesis notes the continuous struggle of corporate governance to stay relevant in the modern business environment the significance of the research stems from helping the evolution of the governance models, and consequently strengthening company performance and health worldwide.

5. Thesis Methodology

In preparing the current topic this thesis will aim to utilize the traditional doctrinal legal research approach and use primarily doctrinal and empirical as well as mixed research methods. A literature review of the main academic sources containing the basis of corporate governance and its models will be conducted. Further, the thesis will make use of comparative studies for the purposes of a side-by-side review of the different legal regimes on corporate governance and the business environments they help create. The focus will be on evaluating the viability of such systems through case studies of their most notable corporate failures and the connection of these cases to corporate governance as well as on understanding the attractiveness of the systems for national legislators and investors overall.

Lastly, the thesis will utilize case studies and literature review to trace the evolution of information technologies, their social, business impacts, and the ultimate effects these occurrences have over corporate governance at the state and individual company level. Ultimately, the thesis will apply case studies to illustrate the need for a shift in the corporate governance models and make suggestions as to where this shift should lead.

6. Overview of the Chapters

The Thesis consists of 7 Parts with Chapters 1 and 7 focusing respectively on introducing the thesis premise and containing the thesis conclusions. Further, Chapter 2 will dive into the historic emergence of corporate governance, the shareholder primacy model and the stakeholder primacy model as the main objects of examination in this work. Upon establishing the provenance of corporate governance and its leading models, the Thesis will move on to reviewing the status of the phenomena in law and practice in order to reveal the current state of play and power distribution between shareholder and stakeholder primacy. Further, the Thesis will leverage the knowledge gained from this research into its next two chapters as it notes the effect of revolutionary innovations in information technology over information distribution and accessibility, social interaction and activism and ultimately power distribution across social groups with stake and interest in the operation of companies. The review of tech and social changes will help to better grasp stakeholder empowerment through Chapter 5 and consequently understand how the entrenched corporate governance models are failing in the new business environment. Lastly, 6^{th} Chapter will focus on arguing the best way for corporate governance to move forward by adopting stakeholder primacy driven models. This Thesis will endeavour to quantify the positive impacts of stakeholder primacy on corporate development and highlight the potential of stakeholder-driven corporate governance models for company success, health and the long-term sustainability of businesses.

II. CORPORATE GOVERNANCE AND ITS VARYING MODELS - HISTORIC OVERVIEW

1. DEFINITION AND HISTORIC OVERVIEW OF CORPORATE GOVERNANCE

In order for this work to be able to accurately examine the changes in corporate governance models in recent years and defend its position for the need to shift between said models, it first needs to establish the meaning of the term "corporate governance" and the historic evolution of the phenomenon behind it. However, as will be elaborated below although the underlining ideas or corporate governance have been around since the Roman Empire[43], and under constant rigorous discussion since the 17th century[44] the term itself did not make its way into common business and legal vocabulary until the 20th century[45]. Thus, before we undertake an examination of corporate governance's rise to prominence and the reasons behind its undeniable importance for modern companies, we will endeavour to study the varying definitions of the word.

1.1 DEFINING CORPORATE GOVERNANCE

In the context of international companies, corporate governance has been establishing itself as one of the most prominent and easily recognisable terms in use[46]. What is more, the topic of corporate governance is arguably amongst the most rigorously developing areas of academic study in the context of international business, management and law[47] to name a few. Regardless of its wide use however, the term has been proving surprisingly difficult to pinpoint[48] and consequently has a variety of definitions[49].

One of the earliest attempts by a non-governmental body to outline the content of corporate governance was undertaken in 1990 in the US. The Business Round Table – an organisation of CEOs committed to improving public policy established corporate governance generally as a system of control over the operation of the company[50]. Another early attempt at defining corporate governance at a non-governmental level is the Cadbury Report of 1992[51] in the UK, under which the term was defined broadly as a "system by which companies are directed and controlled". Later, the World Bank would establish corporate governance as a "set of

[43] (L'huillier, 2014)
[44] (Smith A. , 1776 (2007)) (de Jongh, 2011)
[45] (Wells, The Birth of Corporate Governance, 2010)
[46] (Strange & Jackson, 2008)
[47] (Adnan & Tandigalla, 2017)
[48] (McRitchie, 2019)
[49] (Solomon, 2013)
[50] (The Business Roundtable, 1990)
[51] (The Committee on the Financial Aspects of Corporate Governance and Gee and Co, 1992)

arrangements internal to the corporation that define the relationships between managers and shareholders."[52]. Going further, the World Bank viewed corporate governance from two perspectives. Observed from the internal corporate point of view the term revolved around the maximisation of value while balancing the interests of the company shareholders and other stakeholders with interests in the firm[53]. From the public policy perspective, corporate governance was defined as the process of "nurturing"[54] the firm, while also ensuring the responsible exercise of its power.

Another definition, this time coming from an international organization - the OECD in 1999 identified corporate governance as "…the internal means by which corporations are operated and controlled"[55]. This general notion of corporate governance as established by international institutions has remained the same through the last two decades after the outlined initial attempts for its definition were made. However, beyond the overall steadiness of the meaning behind corporate governance we should note that every cited attempt in articulating the term could be characterised as very general. This has been attributed to the very nature of corporate governance, the meaning and form of which are strongly influenced by individual country specifics, local customs and state views on what the institute actually entails. The deeply individual character of the phenomenon of corporate governance has been recognised by international organisations as well[56] and is thus often cited as the main reason impeding the drafting and acceptance of one unified definition on corporate governance at a global institutional level.

In contrast to the very cautious attempts by various national and international organizations to outline corporate governance, the term has been the subject of a number of academic works. Expressly defining corporate governance in academic theory however is still a recent development starting at the end of the 20th century[57], even though written works on the various aspects of the phenomenon have been around for much longer. This is due to the fact that through literature when discussing corporate governance authors have consistently avoided committing to a view[58] and have rather relied on a general non-spoken meaning of the words, which they presumed to be shared with the readers[59]. Nonetheless, the very first attempts in openly defining corporate governance viewed it as a system of control - "the whole set of legal, cultural, and institutional arrangements that determine what public corporations can do, who controls them, how that control is exercised"[60]. Further definitions have focused on the characteristic of corporate governance as an incentive mechanism for improving managerial

52 (The World Bank Group, 2000)
53 Ibid
54 Ibid
55 (OECD, 1999)
56 Ibid
57 (Smith A. , 1776 (2007))
58 (L'huillier, 2014)
59 Ibid
60 (Blair, 1995)

performance[61] or as a process through which "suppliers of finance to corporations assure themselves of getting a return on their investment"[62]. In more recent years the notion of corporate governance has been defined as "both the structure and the relationships which determine corporate direction and performance"[63]. This latest view can be accepted as a synthesis of the varying notions of the phenomenon as both theory and practice agree on the lack of a single definition for corporate governance[64] and the difficulty of providing one[65]. As this thesis does not endeavour to dive into great detail on the individual rules of corporate governance but instead wishes to focus on its overall character as a the system of control and direction responsible for the overall behaviour of the corporation it will adopt the general notion of corporate governance as elaborated by the numerous sources above.

1.2 Historic overview of Corporate Governance

Regardless of the recent introduction of the term into wide circulation[66], corporate governance has existed as a phenomenon since the birth of the corporation[67]. Moreover, its core ideas have been under rigorous discussion since the 17th century[68] initially brought on in Europe by the arising conflicts between shareholders and directors in the Dutch East India Company[69]. In the US, corporate governance ideas came into sharp focus in the beginning of the 20th century with the speedy rise of corporations and the development of the US stock market. The rapidly growing phenomenon of dispersed shareholder ownership, the lack of adequate legal regulation on public disclosure, shareholder rights and representation as well as corporate responsibility of management shaped the overarching debate on the separation between ownership and control[70] and corporate responsibility. At this early stage the notion of modern corporate governance was shaped by the aim of ensuring shareholder value maximization by company management[71] which was considered the main purpose of the corporation[72].

The understanding of corporate governance continued to evolve through the 1920s and 30s. Its role as an instrument for shareholder protection continued to increase dramatically as corporations amassed power and resources through a wave of consolidations predominantly in the US. However, by the end of the period, as company power grew, scholars and practitioners

[61] (Mathiesen, 2002)
[62] (Shleifer & Vishny, 1997)
[63] (McRitchie, 2019)
[64] (Solomon, 2013)
[65] (L'huillier, 2014)
[66] SEC 1976
[67] (Wells, 'The Birth of Corporate Governance' , 2010)
[68] (Smith A. , 1776 (2007))
[69] (de Jongh, 2011)
[70] (Berle & Means, The Modern Corporation And Private Property , 1932)
[71] Ibid
[72] (Wells, The Birth of Corporate Governance, 2010)

had started arguing to shift the focus of corporate governance as a system of control and direction from the shareholder interests[73] to a balance of a broad set of priorities coming from the wider community within which companies existed[74].

The notion of corporate governance continued to develop through the 20th century. The end of World War II marked a decline in its importance as economies around the world recovered from the damage. US corporations, which were prospering on the international market focused on shareholder value maximization through robust management leadership. Consequently, with so much rapid growth corporate governance was not a concern.

However, the notion gained its relevance back in the 1970s when the Federal Securities and Exchange Commission (S.E.C.) in the US[75] made it part of its agenda. As a result, the term "corporate governance" came into official use for the first time in 1976[76] as the S.E.C. started referring to it as encompassing managerial and corporate accountability and viewing it as part of its jurisdiction[77]. Looking even further, due to the growing influence and size of the US stock market and American-based corporations, within two decades the phenomenon of corporate governance would spread from the States to the rest of the world[78]. As various issues on accountability and corporate responsibilities distribution came into light through the practice of the S.E.C in the 1980s, the examination of corporate governance shifted to focus on ensuring wider representation and interest protection for shareholders[79]. This coincided with large institutional types of shareholders gaining ownership and positions in big companies.

Corporate governance continued to develop and be identified as a system for shareholder value maximization through the 1980s and 90s as mechanisms of for shareholder protection increased. This historic development of the phenomenon was mirrored by its early definitions[80], which also focused on shareholders' interests[81]. As the US economy experienced a mild recession in the 1990 attributed to new monetary policies by the US Federal Government[82] other countries gained prominence in the development of corporate governance. The UK was the first to step in with an in depth examination of the notion of corporate governance in the early 90s, undertaken with the Cadbury Report of 1992. The economic recession in the country through the rest of the decade prompted a new view on corporate governance as a vehicle for managerial accountability. Similarly, countries like Germany and Japan where corporate governance regimes were focused on long-term gains[83] became more prominent in international business as the

[73] Ibid
[74] (Berle & Means, The Modern Corporation And Private Property , 1932)
[75] (Cheffins B. R., 2013)
[76] Ibid
[77] (Ocasio & Joseph, 2005)
[78] Ibid
[79] (Cheffins B. R., 2013)
[80] (Shleifer & Vishny, 1997)
[81] Ibid
[82] (Gardner, 1994)
[83] (Shleifer & Vishny, 1997)

shortcomings of the US shareholder value maximisation model came to light. However, the development of corporate governance eventually returned to its US roots. By the end of the decade with European and Asian economies in crisis and US based corporations thriving the shareholder-oriented US model was considered the essence of corporate governance once more closing a full cycle in its progression. By the end of the period the 1990s were declared as "the decade of corporate governance"[84].

Corporate governance entered a new era with the turn of the 21st century as its importance as a mark of a good company and a solid investment grew exponentially[85]. The large amount of research and discussions on the topic in the decades before allowed for a crystallization of the notion, as corporate governance became a unanimously accepted umbrella term for shareholder involvement and protection, managerial accountability and company policies[86]. By the end of the 2010s the idea of corporate governance has reached a level of maturity in the consideration of its core elements.

1.3 Corporate Governance in The Modern World

Modern developments on corporate governance are examining its applicability to new types of company organisations with the rise of unconventional corporate giants like AirBNB, Uber and Amazon. In the environment of the non-traditional "platform"-based firm corporate governance's relevance and ability to adjust are under question[87]. Moreover, new technologies are shifting the way we distribute information, communicate and influence each other ultimately resulting in dramatic changes in consumer and social behaviour in recent decades[88]. The ripples of social change are strong enough to influence global markets and bring on new types of questions to how corporate governance is conducted. As traditional stakeholder groups find new ways to connect and express opinions and expectations the widely accepted, shareholder interests driven corporate model is coming under question and a broader stakeholder primacy model is coming into view[89]. However, neither of these corporate governance models is new. On the contrary, they have been under development for more than three decades.

2. The Shareholder Primacy Model

As already elaborated corporate governance emerged in the context of shareholder-manager conflicts and was viewed as the main tool for protecting shareholder interests while steering the

[84] (Cheffins B. R., 2013)
[85] (Shleifer & Vishny, 1997)
[86] Ibid
[87] (Fenwick, McCahery, & Vermeulen, 2018)
[88] (Boitnott, 2015)
[89] (Adnan & Tandigalla, 2017)

company towards its main goal of maximising shareholder profits. Coincidentally, these are the general ideas underlining the emergence of the shareholder primacy theory and model of corporate governance.

2.1 EMERGENCE

The cornerstone of shareholder primacy was placed in the US with the Dodge vs. Ford Motor Corp case of 1919 where the Supreme Court of the State of Michigan explicitly stated that the "business corporation is organised and carried on primarily for the profit of the stockholders". Thus, by individualising the main purpose of the company the Court expressed the view that maximizing shareholder value should be the underlining principle guiding corporate decision-making. This idea remained at the core of US theory and practice on corporate governance through the rest of the 20th century with prominent scholars[90] developing it into the guiding company management and leadership principle in the States. However, the first explicit translation of this idea into a theory of shareholder primacy came in the 1960s with the work of Milton Friedman[91] and was widely developed and discussed since then. In its modern development shareholder primacy has gone out of its corporate social responsibility context and been extended into a general model of doing business for corporations.

2.2 CONTENT AND PROMINENT FEATURES

Shareholder primacy rests heavily upon the ideas of shareholder value maximisation as the main purpose of the company[92]. It also traditionally views shareholder interest prioritization in the context of corporate social responsibility[93]. Thus, shareholder primacy dictates that a company should work primarily for the benefit of its stockholders and therefore every company decision should be guided by this imperative[94], while wider stakeholder interests should be ignored[95]. In the traditional work of Friedman the core of this corporate governance model translated into the company stepping away from social responsibility driven activity[96] in order to avoid damaging the possible interests and benefits of the shareholders. Instead, the decision if and how the company should tackle its social responsibilities should rest with the shareholders[97], whose potential profits are in question. In this way, shareholder primacy paints itself as a narrow, shareholder-only driven model, which explicitly views profit realisation and stakeholder consideration as two opposing ideas. Thus, they cannot co-exist in the same governance model

[90] (Berle & Means, The Modern Corporation And Private Property , 1932) (Ripley, 1927)
[91] (Friedman, Capitalism and Freedom, 1962)
[92] (Rhee, 2017)
[93] (Friedman, Capitalism and Freedom, 1962)
[94] Ibid.
[95] Ibid.
[96] (Friedman, A Friedman Doctrine: The Social Responsibility of Business is to increase its Profit, 1970)
[97] Ibid.

and need to be treated separately and individually by necessity[98], which puts shareholder primacy as an opposite view to the shareholder, stakeholder and profit inclusivity of stakeholder primacy[99].

3. The Stakeholder Primacy Model

Contrary to shareholder primacy, stakeholder primacy stipulates that a modern corporation's responsibilities are not limited solely to its shareholders[100]. On the contrary, there is a wider group of interested parties whose positions need to be taken into consideration by corporate governance in order to ensure the successful operation of the company without necessarily sacrificing the importance of profits as a company priority[101]. Similarly to shareholder primacy, the underlining ideas of stakeholder primacy have been under discussion since the beginning of the 20th century[102].

3.1 Emergence

The core stipulations of stakeholder primacy can be traced back to the work of Berle & Means, and the corporate developments of the 1920s, and 30s in the US[103]. The rapid growth of a number of companies through a wave of mergers and acquisitions and the inherent political and economic power they obtained prompted scholars to postulate that the role of big corporations is bound to change to match their newfound influence[104]. These changes would lead to the displacement of the traditional shareholder oriented model in favour of representation of wider stakeholder interests as corporations gain new responsibilities with their newfound power, influence and wealth[105]. These ideas were placed at the core of stakeholder primacy, which was formulated as a corporate governance model by Edward Freeman in 1984[106].

[98] (Freeman, Wicks, & Parmar, 2004)
[99] Ibid
[100] (Freeman E. , Strategic Management: A Stakeholder Approach, 1984) (Freeman, Wicks, & Parmar, 2004)
[101] (Merrick Dodd, 1932) (Freeman E. , Strategic Management: A Stakeholder Approach, 1984) (Freeman, Wicks, & Parmar, 2004) (Freeman E. , Stakeholder Theory: the state of the Art , 2009)
[102] Ibid
[103] (Berle & Means, The Modern Corporation And Private Property , 1932)
[104] (Stout, 2013)
[105] Ibid
[106] (Freeman E. , Strategic Management: A Stakeholder Approach, 1984)

3.2 CONTENT AND PROMINENT FEATURES

As formulated by Freeman stakeholder primacy stipulates that corporate management should not limit itself solely to shareholder interests as its guiding principle in decision-making. Instead, companies should recognise the presence of a wider group of interested parties capable of influencing the way business is conducted[107]. Subsequently, business decisions should be taken with account to the interests of all stakeholders, of which the shareholders are only one group[108]. As a result, the stakeholder primacy model has an inclusive character with regard to shareholder interests as compared to shareholder primacy's exclusionary vision. Moreover, stakeholder primacy explicitly views the economic benefit realisation and social awareness of businesses as connected features. Thus, it embraces the idea of a business's purpose to realise profits. However, it specifically stipulates that "profitability should not be the fundamental driver" of what companies do[109].

Stakeholder primacy views all entities capable of influencing and being influenced by the business as possible stakeholders with valid interests. Thus, the model is perceived as a way to insert moral values in business practices. It must be noted that while the model has a long history its postulations strongly resonate with the current state of play in global business[110] as new technologies are changing the power of influence of stakeholder groups and lead to new models of social behaviour.

4. COMPARATIVE HISTORIC OVERVIEW – ARE WE FACING CYCLICAL CHANGES IN GOVERNANCE MODELS

In examining the ongoing relationship between shareholder and stakeholder primacy we cannot help but notice its cyclical character as with geopolitical, market and business changes power and influence shifts between the models[111].

As observed through the iconic Dodge v. Ford case in 1919[112] the dominant view on corporate governance was associated with the shareholder primacy model. However, a process of slow shift towards wider stakeholder interest representation started in the 1930s[113] with the advent of the so-called "Managerialism"[114] in the US, which dominated the view of corporate governance for the next 40 years. However, the promulgation of stakeholder oriented company behaviour was

[107] Ibid
[108] (Freeman E. , Stakeholder Theory: the state of the Art , 2009)
[109] (Freeman, Wicks, & Parmar, 2004)
[110] Ibid
[111] (Stout, 2013)
[112] (Dodge v. Ford Motor Co., 170 N.W. 668, 1919)
[113] (Berle & Means, The Modern Corporation And Private Property , 1932)
[114] Ibid, (Stout, 2013), p. 1171; (Chandler, 1984)

again replaced by firm shareholder primacy[115] in the second half of the 1970s after the Dow Jones Index in the US experienced a serious destabilisation[116]. Shareholder primacy continued to ascend in the US during the 1990s and early 2000s as theory and practice embraced it wholeheartedly[117].

However, on continental Europe and Asia countries like Germany, France, Japan implemented their own form of stakeholder-centric corporate governance[118] proving that cyclical changes were now happening predominantly in the US[119] as the leading jurisdiction for the Anglo-American legal model[120]. Modern corporate developments are seeing shareholder primacy come under attack in the US[121] with shifting ideas of corporate governance and new business models taking over global markets, proving once again that the relationship between shareholder and stakeholder primacy is more reminiscent of a balancing act than anything else[122].

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[115] (Jensen & Meckling, 1976)
[116] (Stout, 2013)
[117] (Kraakman & Hansmann, 2001)
[118] (Cheffins B. R., 2012)
[119] Ibid
[120] (Bainbridge, 2002)
[121] (Denning, 2011) (Guerrera, 2009)
[122] (Stout, 2013)

III. CORPORATE GOVERNANCE MODELS IN MODERN LAW AND PRACTICE

So far this paper has focused on examining the emergence and evolution of the corporate governance concept and its two leading primacy models through a series of historic events and their impact on legal, economic and finance theory. Having established the historical and theoretical provenance of the corporate governance phenomenon, shareholder and stakeholder primacy, we will now focus on analysing the current place and interpretation of the various primacy models in law and practice. We will firstly examine the role and impact of influential international organisations in shaping the leading models of corporate governance. Then we will turn to analysing the development of national legal regimes and practices adopting one of the two models or choosing to combine features of both as their leading approach to corporate governance[123].

1. ANALYZING THE CONTRIBUTION OF INTERNATIONAL ORGANIZATIONS IN SHAPING CURRENT CORPORATE GOVERNANCE

International organisations such as the OECD, the World Bank, the IMF and the UN play an increasingly crucial role in shaping the current dominating models of corporate governance[124] across national jurisdictions around the world. However, due to the decisive influence of individual legal systems and specifics[125] over the exact outlook of their local corporate governance international organisations, such as the ones mentioned above usually aim to shape governance models through legal recommendations and advice[126], presented in the form of explicitly non-binding and voluntary documents[127]. Still, due to the wide membership and political influence of such organisations as well as the fact that they rest their advice on the already established legal approaches and experience across legal systems, their work on corporate governance has a large impact[128] of shaping national legal regimes and the practices of international and national corporations.

[123] (Clark & Steckler, 2016)
[124] (UN Global Compact, 2019)
[125] (OECD, OECD Principles of Corporate Governance, 2015) (International Monetary Fund, 2016)
[126] (OECD, OECD Principles of Corporate Governance, 2015), p. 11; (ISAR - International standards on Accounting and Reporting, 2006)
[127] Ibid.
[128] (World Bank, Reports on the Observance of Standards and Codes, 2019)

1.1 SHAREHOLDER PRIMACY IN THE WORK OF INTERNATIONAL ORGANIZATIONS

With its Principles on Corporate Governance, published in 1999 and most recently updated in 2015[129] the Organisation for Economic Co-operation and Development (OECD) made the earliest attempt in shaping corporate governance models across different national jurisdictions. While the organisation itself boasts a relatively low number of participants (only 35 member countries and 5 partner countries), they embody 80% of the world's trade and investment[130], which serves to demonstrate the OECD's significant influence over questions of business, finance and notably corporate governance. Further, the credibility of the OECD Principles in enhanced by the close collaboration with local governments, other international bodies, private businesses and trade unions etc.[131], which supported and shaped their drafting.

The Principles rest on the OECD's analysis of the most common corporate governance practices across a number of jurisdictions,[132] and benefit from the advice of a number of large international corporations. Furthermore, upon detailed examination we can conclude that they reflect the very well established in theory model of shareholder primacy[133]. We can observe this through a number of texts specifically referring to the shareholders as the owners of the company[134], establishing accountability of corporations to their shareholders[135] and entrenching the explicit requirement for company Boards to primarily aim to protect shareholder interests[136] and ensure the return of shareholder investments[137]. Admittedly, the Principles do allude to stakeholder involvement[138] by prompting the consideration of various stakeholder viewpoints when making corporate decisions[139]. However, overall stakeholder participation and consideration is severely limited[140] to what local country legislation has already entrenched as stakeholder related company obligations[141]. Overall, there are no specific requirements for companies to dedicate any additional attention or efforts to other non-legally binding interests[142] apart from those of the shareholders.

As already elaborated, due to the nature of their drafting the OECD Principles on Corporate Governance notably reflect the predominant approach towards corporate governance models

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[129] (OECD, OECD Principles of Corporate Governance, 2015)
[130] (OECD, OECD History, 2019)
[131] (OECD, OECD Principles of Corporate Governance, 2015)
[132] Ibid
[133] (Rhee, 2017)
[134] (OECD, OECD Principles of Corporate Governance, 2015)
[135] Ibid
[136] Ibid
[137] ibid
[138] Ibid
[139] Ibid
[140] Ibid
[141] Ibid (Paige Morrow, 2014)
[142] (Paige Morrow, 2014)

across the world's biggest and most influential economies[143]. However, the Principles have an even wider reach as they are the basis for the work of the World Bank[144] in assisting countries on strengthening their local corporate governance frameworks[145]. Through its Reports on the Observance of Standards and Codes (ROSC) initiative[146] the World Bank actively undertakes to benchmark local governance schemes and company practices against the OECD Principles[147] and builds recommendations for improvements and changes specifically tailored to individual state systems[148]. However, upon examining the structure of the ROSC reporting we can conclude that the main focus of the World Bank falls on shareholder rights and interests[149] such as equal voting opportunities[150], treatment and access to information[151]. Further attention is given to the role and structure of company Boards[152] but even though the reports mention the need for equal treatment of shareholders and stakeholders[153] there is notably little to no detailed reference to the different stakeholder groups and their diverse interests. Furthermore, there are no recommendations specifically aimed at ensuring that local policies account for diverse stakeholder representation and prompting governments and companies to account for wider interests, other than those of the shareholders[154].

Ultimately, even though the OECD Principles of Corporate Governance are explicitly non-binding and voluntary in nature we cannot overlook their great impact on shaping world economies and corporate governance models. Due to the large influence of both the OECD and the World Bank through their assessment and supportive work with individual countries the core ideas of the shareholder primacy model receives a wide adoption across multiple corporate governance systems.

Further, an emphasis for shareholder interests can be detected in the work of the International Monetary Fund (the IMF), which undertook to clarify the meaning and priorities of corporate governance in 2016 through its annual Global Financial Stability Report[155]. Even though the IMF

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[143] (OECD, OECD Principles of Corporate Governance, 2015), Preamble
[144] (World Bank, Reports on the Observance of Standards and Codes, 2019)
[145] ibid
[146] Ibid
[147] Ibid
[148] Ibid
[149] (World Bank, Report on the Observance of Standards and Codes (ROSC) Corporate Governance Country Assessment - Vietnam, 2012); (World Bank, Report on the Observance of Standards and Codes (ROSC) Corporate Governance Country Assessment - Malaysia, 2012); (World Bank, World Bank, Report on the Observance of Standards and Codes (ROSC) Corporate Governance Country Assessment - Brazil, 2012)
[150] Ibid
[151] Ibid
[152] Ibid
[153] Ibid
[154] Ibid
[155] (International Monetary Fund, Stronger Emerging Market Corporate Governance Enhances Financial Resilience, 2019); (International Monetary Fund, Global Financial Stability Report, 2016)

does not seek to create any rules on corporate governance [156] its analysis depicts the phenomenon as a value maximisation mechanism for shareholders[157], which is in line with the shareholder primacy model on corporate governance. Further, the IMF puts a strong emphasis on enhancing shareholder rights and participation mechanisms as ways to improve corporate governance across emerging markets[158]. Even though the Report draws considerable attention to the role of outside investors for raising company capital [159] and very strongly calls for an increased level of protection for them [160] there is overall no reference to larger stakeholder interests and their place among good corporate governance practices.

Thus, when taking a global view over the work of some of the most influential international organisations in the field of corporate governance we can conclude that the shareholder primacy model is well entrenched across the number of non-binding but hugely influential reports and recommendations they produce in their practice.

1.2 STAKEHOLDER PRIMACY IN THE WORK OF INTERNATIONAL ORGANIZATIONS

Even though it is notably less represented in international documents than the shareholder primacy model, stakeholder primacy is increasingly gaining recognition through the recommendations of organisations such as the United Nations (the UN[161]). Moreover, as part of its bid towards ensuring sustainability in international business and its profits[162] in 1999 the UN created the UN Global Compact (UNGC[163]) specifically tasked with ensuring that a wider range of interests finds its place onto the agenda of global businesses[164].

The UNGC is promoting its goals through the adoption of the UNGC Ten Principles on Corporate Sustainability[165], which are specifically tailored to ensure that environmental sustainability[166], basic human rights[167] and labour rights[168] receive a special consideration by state governments and private companies alike. Furthermore, the UNGC endeavours to explicitly promote long-term goals for companies and points out the need for businesses to deliver social, environmental and

[156] (International Monetary Fund, Stronger Emerging Market Corporate Governance Enhances Financial Resilience, 2019)
[157] (International Monetary Fund, Global Financial Stability Report, 2016)
[158] Ibid
[159] Ibid
[160] Ibid
[161] (United Nations, The Ten Principles of the UN Global Compact, 2019)
[162] (UN Global Compact, 2019)
[163] (Wikipedia, United Nations Global Compact, 2019)
[164] (UN Global Compact, 2019)
[165] (United Nations, United Nations Global Compact - the Ten Principles)
[166] Ibid, Principle 7, 8, 9
[167] Ibid, Principle 1, 2
[168] Ibid, Principle 3, 4, 5

economic value for society as a whole[169], instead of only exclusively focusing on short-term profitability. Moreover, throughout is work the UNGC repeatedly emphasizes the importance of considering stakeholder interests[170] and the leading role this wider group of values plays for delivering long-term success for companies[171]. Thus, through its work the UNGC is effectively promoting the core ideas of stakeholder primacy to international business and country governments.

Further, the UN actively embraces the core postulates of stakeholder primacy through the work of the UN Conference on Trade and Development, (UNCTAD)[172] the 2006 edition of which specifically focused on the question of good corporate governance practices[173]. As a result of its research on the issue the UNCTAD explicitly points out that even though traditional corporate governance focuses on shareholder value maximisation as its main objective[174] state legislators and private companies, though not excluding the realisation of profits, should turn towards a wider range of objectives[175]. Further, they should factor in the interests of a multitude of stakeholders in order to insure the long-term value and sustainability of the enterprise[176]. Thus, using the UNCTAD as a platform the UN consistently embraces the idea of stakeholder primacy as a way to promote long-term corporate goals and business consideration for environmental, social and economic interests alike.

2. Corporate Governance Models Across Individual State Legislation And Practice

As already emphasized, the numerous legal documents produced by international organisations on corporate governance models use as their basis the regimes of different state jurisdictions and company practices around the world. Thus, we will now examine the development of shareholder and stakeholder primacy from the prism of individual states and businesses by paying a closer attention to existing state legislation, judicial practice and company behaviour.

[169] (UNGC, 2009)
[170] Ibid
[171] Ibid
[172] (UNCTAD, Brief History of UNCTAD, 2019)
[173] (UNCTAD, Corporate Governance Disclosure, 2019)
[174] (ISAR - International standards on Accounting and Reporting, 2006)
[175] Ibid
[176] Ibid

2.1 THE SHAREHOLDER PRIMACY MODEL IN STATE LAW AND PRACTICE

As also reiterated by the UNCTAD the shareholder primacy model is by far the most wide spread view on corporate governance across national jurisdictions[177]. Furthermore, the most prominent representatives of the model are notably legal systems belonging to the Anglo-Saxon legal family[178]. Amongst them the US legal system has historically been the most keen supporter of shareholder primacy since the initial development of its core ideas in the beginning of the 20th century[179].

However, when attempting to locate the legal basis for shareholder primacy in the US an issue becomes apparent[180]. Shareholder primacy is extremely well entrenched and developed in theory[181]; however, it is difficult to locate the actual rule of law imposing it on legal subjects[182]. The corporate governance model of the US rests on a number of federal rules and regulations[183], individual state laws[184], rules promulgated by various federal agencies, most notably the S.E.C[185] and self-regulating organisations such as the New York Stock Exchange[186] and the NASDAQ. Thus, shareholder primacy in the US can be found in a number of different legal rules on strengthening shareholder rights[187] and shareholder protection mechanisms[188], information disclosure and transparency[189], structure and objectives of corporate Boards.

Further, shareholder primacy permeates US case law by promulgating shareholder value maximisation as the main corporate objective. This was firstly done in the iconic *Dodge v. Ford case* of 1919[190], but much more recently in the *eBay Domestic Holdings, Inc. v. Newmark* case of 2010[191] where the court expressed the opinion that a for-profit organisation should be "…acting to promote the value of the corporation for the benefit of its stockholders". Further, shareholder primacy dominates US court decisions through the prioritisation of common shareholder rights and value maximisation for owners of common stock. This facet of shareholder primacy is well entrenched in cases such as *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.* of 1986[192] and

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[177] Ibid
[178] (Rhee, 2017)
[179] (Wells, The Birth of Corporate Governance, 2010)
[180] (Rhee, 2017)
[181] (Grant Hayden & Bodie, 2009), pp.1218, 1219; (Douglas & Cole, 2001)
[182] (Rhee, 2017)
[183] (Congress, Securities Act, 1933); (Congress, Securities Exchange Act, 1934); (Congress, Sarbanes–Oxley Act, 2002); (Congress, Dodd–Frank Wall Street Reform and Consumer Protection Act, 2010)
[184] (Delaware, 2019) (Michigan, 1973)
[185] (Securities Exchange Commission, 2016)
[186] (NYSE, NYSE: Corporate Governance Guide, 2014) (NYSE, Listed Companies Manual, 2013), Section 303A
[187] (Rhee, 2017) (Congress, Securities Act, 1933); (Congress, Securities Exchange Act, 1934); (Congress, Sarbanes–Oxley Act, 2002); (Congress, Dodd–Frank Wall Street Reform and Consumer Protection Act, 2010)
[188] Ibid
[189] Ibid
[190] (Dodge v. Ford Motor Co., 170 N.W. 668, 1919)
[191] (eBay Domestic Holdings, Inc. v. Newmark, 2010)
[192] (Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc. , 1986)

Katz v. Oak Industries Inc. of 1986[193] where the Court of Chancery of Delaware explicitly stated that corporate Directors have the obligation "to attempt, within the law, to maximize the long-run interests of the corporation's stockholders"[194]. Moreover, the Court stated that even if "… they may sometimes do so "at the expense"of others", this should not be a reason for Directors to be sanctioned[195], thereby cementing the core postulates of shareholder primacy. Further case law examples include *Equity-Linked Investors, L.P. v. Adams* of 1997[196], *In re Trados Inc. Shareholder Litigation* of 2010[197], *LC Capital Master Fund, Ltd. v. James* of 2010[198]. Even though with the exception of *Dodge v. Ford* (Michigan Supreme Court) all of the above cases come from Delaware court practice they showcase the clear embrace of shareholder primacy by the courts. As Delaware is the most preferred state for company incorporation in the US, we can consider its case law to be hugely influential when it comes to determining the US corporate governance model. Even though recent years have seen Institutional Investors[199] and State Senators[200] pushing towards more stakeholder aware, long-term driven corporate goals for business the widely accepted company approach in the US is still shareholder primacy[201].

However, shareholder primacy is not the dominant approach to corporate governance only in the US. The UK is another prime example of the model in real life. Furthermore, much like in the US, the regime of corporate governance in the UK rests on a combination of official state legislation, rules and prescriptions conceived by a number of state agencies and self-regulating bodies.

The first comprehensive attempt in analysing the UK corporate governance model was made with the Cadbury Report of 1992[202]. The Report was the result of the work of the Committee on the Financial Aspects of Corporate Governance created by the London Stock Exchange, the Financial Reporting Council and the Accountancy profession[203] and had as its core a compilation of rules and recommendations on corporate governance practices referred to as the Code on Best Practices[204]. As the Report itself was not commissioned by any official state institution in the UK its findings and recommendations were in no way binding on private companies[205]. However, the London Stock Exchange elected to make the Code's observance obligatory for any company wishing to be listed on the Exchange[206] thereby significantly amplifying the Report's impact.

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[193] (Katz v. Oak Industries, Inc, 1986) (Fink, Larry Fink's annual Letter to CIOs. A sence of purpose, 2017)
[194] Ibid
[195] Ibid; (Rhee, 2017)
[196] (Equity-Linked Investors, L.P. v. Adams, 1997)
[197] (In re Trados Inc. Shareholder Litigation , 2013)
[198] (LC Capital Master Fund, Ltd. v. James , 2010)
[199] (Fink, Larry Fink's Annual Letter to CIOs. A sence of Purpose, 2017)
[200] (Accountable Capitalism Act, 2017-2018)
[201] (Bainbridge, 2002)
[202] (The Committee on the Financial Aspects of Corporate Governance, 1992)
[203] Ibid, Section 2.1
[204] Ibid; (Cadbury, 1993)
[205] (The Committee on the Financial Aspects of Corporate Governance, 1992), Preface
[206] Ibid, Section 1.3

Moreover, even though the Report does not attempt to explicitly define the purpose of the corporation and does not refer to shareholder value maximisation anywhere it repeatedly and clearly states the notion that shareholders are the owners of the company[207]. Based on this, the Report views Boards of Directors as stewards for the shareholders[208], who are accountable to the latter with regard to the company's direction and priorities as established by the shareholders themselves as part of their owner's prerogative[209]. At the same time the Report makes no reference to stakeholder interests and wider stakeholder representation. Thus, we can conclude that even though Sir Adrian Cadbury was a known proponent of balancing economic and social goals in corporate leadership[210] and called for aligning "…as nearly as possible the interest of individuals, corporations, and society"[211] the Cadbury Report takes a more shareholder primacy centric view.

Further, shareholder primacy in the UK received a more recent reaffirming with the Companies Act of 2006, which specifically endeavoured to answer the question of corporate purpose[212]. The creation of the Act was preceded by the Companies Law Review initiative[213] in the UK, as part of which the place of shareholder value maximisation in corporate law was examined. The result of the review established shareholder primacy as the way forward for UK corporate governance[214], although the 2006 Companies Act does specifically point out to the need for company Directors to also factor in the interests of "…employees, the community and the environment"[215] when making decisions. Still, we can conclude that the overall emphasis in the Act falls on shareholder representation and satisfaction of interests in line with shareholder primacy[216].

2.2 The Stakeholder Primacy Model in State Law and Practice

The stakeholder primacy model has been gaining an increasing recognition across state legislations[217] worldwide. Most notably, stakeholder primacy is the leading model embraced by the European Union[218] through its legislative work on corporate governance. The EU works to promote its agenda through a series of research, communications and advisory actions to foster a dialogue amongst stakeholders on sustainable corporate value creation and governance. Most notably the European Multi-Stakeholder Forum initiative creates a common platform promoting "…voluntary social and environmental practices of business, linked to their core activities, which

[207] Ibid, Section 2.5, 3.4, 4.2
[208] Ibid, Section 2.5
[209] Ibid
[210] (Johannesburg: Institute of Directors, 2002) (Rossouw, 2008), p.28 (Paige Morrow, 2014)
[211] ibid
[212] (Collison, Cross, Ferguson, Power, & Stevenson, 2011) (Parliament of the United Kingdom, 2006)
[213] (Collison, Cross, Ferguson, Power, & Stevenson, 2011) (Company Law Review Group, 2001)
[214] (Parliament of the United Kingdom, 2006), Ch. 2, Pt 10, 172 (1))
[215] Ibid; (Collison, Cross, Ferguson, Power, & Stevenson, 2011)
[216] Ibid
[217] (SustainAbility, International Finance Corporation and Ethos, 2002)
[218] (International Finance Corporation, 2015) (European Commission, 2001); (European Commission, 2011)

go beyond their existing legal obligations"[219] – an approach which differentiates it from the OECD Principles focusing on stakeholder interests only in so far as they are already established by law. The initiative was set up as a result of the 2002 Communication on Corporate Social Responsibility, which addressed the environmental and social implications of businesses in a globalising world[220]. Further, in 2003 the EU Commission took another step forward in promoting stakeholder primacy with its Plan on Modernising Company Law and Enhancing Corporate Governance in the EU[221]. The Plan emphasised the Commission's view that a market, which supports companies with a robust corporate governance mechanism and environmentally and socially sensitive business goals is poised to outperform its competition and survive long term[222]. In accordance with this view, the Commission announced its firm intention to work towards a corporate governance model, which would strengthen shareholder rights but also guarantee wider stakeholder protection[223]. Moreover, in 2006 the Commission launched the European Alliance for Corporate Social Responsibility designed to develop dedicated initiatives between businesses and their stakeholders centred on corporate social responsibility. In 2011, the Commission published the Corporate Social Responsibility Strategy of the EU[224] thereby fully cementing the EU's view on a stakeholder primacy centred model.

Further, the EU engages in active rule creation in the field of corporate governance through a series of Directives and Regulations aimed at creating a unified general regime of good corporate governance across the member states. The most notable piece of legislation in this field related to stakeholder protection is the Directive on disclosure of non-financial and diversity information[225] enacted by the Council of the EU in 2014. The Directive aims to guarantee a higher level of disclosure and transparency of social and environmental information by corporate enterprises[226].

However, apart from the initiatives of the EU, which due to the very nature of the Law of the European Union are reflected in the legislation of all of its member states, some European country jurisdictions take additional steps to guarantee stakeholder rights and interests mainly through the development of their own sustainability standards. A leading document in this regard is Germany's Sustainability Code of 2014[227] developed by the German Council on Sustainable Development, which is serving as a blueprint for other European jurisdictions to draft their own similar documents[228]. An example for this trend is Greece where based on the "Sustainable

[219] (European Commission, 2002) (European Commission, 2003)
[220] (European Commission, 2002)
[221] (European Commission, 2003)
[222] Ibid
[223] Ibid
[224] (European Commission, 2011)
[225] (Council of the European Union, 2014)
[226] (Council of the European Union, 2014), Preamble
[227] (German Parilament, 2014); (German Council for Sustainable Development, 2011)
[228] (International Finance Corporation, 2015)

Greece 2020" strategy we seeing the creation of a sustainability index for the Athens Stock Exchange by the Greek QualityNet Foundation[229].

However, stakeholder primacy's reach is not limited to Europe. Its influence stretches across a number of diverse state jurisdictions most notable example for which is Japan where consideration for diverse stakeholder interests[230], stakeholder representation and participation in corporate decision-making[231] are at the core of Japanese corporate governance. Regardless of the active stance, Japan takes on stakeholder representation there are in fact no laws or regulations governing stakeholder participation. However, in practice, companies consider their diverse groups of stakeholders such as employees, customers, local communities, etc. as an important part of the business and award them considerable attention in decision-making. Examples of such companies are Honda, Toyota, Nihon Denso, Aisin Seiki,[232] the corporate Boards of which are primarily comprised of former employees of the company. Further, in 2015 Japan saw the enactment of the Corporate Governance Code representing a set of principles of good governance including an explicit reference to stakeholder cooperation[233]. While the Code was the result of the work of non-governmental institutions, it has had a notable influence on Japanese business as its postulates have been widely accepted by local companies in their efforts to update their corporate governance regimes[234].

[229] Ibid
[230] (Loewenstein, 2002)
[231] Ibid
[232] Ibid
[233] (Japan: Corporate governance 2018, 2019)
[234] Ibid

IV. A CHANGING GLOBAL ENVIRONMENT

As previously elaborated, when discussing the development of corporate governance we must be mindful that as one of the corner stones of international business the phenomenon does not exist in a vacuum[235]. On the contrary, there is a number of key factors actively influencing the way corporate governance changes in order to support a shifting global business environment[236]. Some of the most decisive such factors correspond to recent technological advancements and the social changes[237] they help foster.

As new revolutionary technologies prompt a profound shift in how society receives information[238], communicates[239], exchanges ideas[240] and influences its surroundings[241] global business experiences more and more pressure to evolve[242] and adapt through changes to its corporate governance models[243]. Thus, in order to understand the shift in corporate governance we will endeavour to examine some of the key factors that prompt and guide it.

1. TECH INNOVATION PROMPTING SOCIAL CHANGE

Social interaction is at the core of human development and the rise of organised society[244]. Moreover, communication is arguably the main reason behind the evolution of entire parts of the human brain[245] and as a core social facilitator underlines every human activity. Therefore, even the most subtle changes in how we communicate with each other, access and transfer information prompt a ripple effect of disruption across every aspect of social life and by extension, to how we conduct business as an inherently human behaviour[246].

Furthermore, the new leap in globalisation prompted by the Internet, the introduction of smart mobile devices and the advent of social media platforms makes new technology the most influential factor facilitating widespread changes in communication, social interaction and behaviours in the last two decades[247].

235 (BusinessBalls, 2019); (Marcus, 2015)
236 Ibid, (AmsourceTechnology, 2019)
237 (AmsourceTechnology, 2019)
238 (Boitnott, 2015)
239 (WPS Marketing, 2016)
240 (Nwazor, 2017)
241 (Boitnott, 2015)
242 (Brooks, Weatherston, & Wilkinson, 2010)
243 (Wahid, 2017)
244 (Dam, 2017)
245 Ibid
246 (Cline, 2019)
247 Ibid

1.1 New Technologies Supporting Better Social Connection

Arguably one of the biggest disruptive innovations of all time The Internet was originally developed as a new type of communication tool, designed to facilitate connection between members of the network, thereby improving knowledge transfer, output and performance[248]. However, the bigger effect of this new type of technology, which would truly start manifesting with the advent of the World Wide Web was a globalisation of interaction channels and a profound change in the type of information we exchange as well as our overall willingness to communicate[249]. People suddenly moved from having more limited options and tools for exchanging information (telephone, regular post, face-to-face interaction) to a state of play where they would benefit from virtually limitless possibilities for transfer of information amongst each other and access of common data pools[250]. Moreover, while previous communication channels presented a number of limitations on the amount and type of information we would share, the World Wide Web allowed for the transfer of larger, more diverse volumes of data simultaneously across various channels.

Globalised social interaction was propelled further by the dawn of the Social Media platform with its vanguards MySpace and Facebook. The availability of the new communication platforms would result in people being more willing to communicate instantaneously upon receiving input, provide information to a greater and more diverse audience and take part in wider conversations[251] in terms of subjects and reach.

However, the current state of play of how modern society connects truly came with the arrival of the smart mobile devices starting with the launch of Apple's IPhone in 2007[252]. The company's founder and CEO Steve Jobs described Apple's creation as a "breakthrough Internet communications device"[253], which ended up revolutionizing human interaction by putting the internet in everybody's pocket[254]. Making the internet mobile and accessible from every location saw the use of social media platforms for communication and social interaction grow exponentially. As an example, the quintessential social media Facebook more than quadrupled its user base in the space of little over a year after the launch of the first smart phone[255]. This resulted in a profound change of social dynamics[256] with people engaging at speed and level never before seen and taking active part in shaping their society from the comfort of their mobile devices[257].

[248] (Fitzpatrick, 2017)
[249] (Boitnott, 2015)
[250] (WPS Marketing, 2016)
[251] (Boitnott, 2015)
[252] (Molla, 2017)
[253] (Lisa Eadicicco - Time Magazine, 2017)
[254] (Molla, 2017)
[255] (Finance Yahoo, 2019)
[256] (Tebbutt, 2015)
[257] Ibid

1.2 LIMITLESS CONNECTIVITY IS PROMPTING MORE SOCIAL ENGAGEMENT

Modern communication technology revolutionised human interaction and connection[258]. As a result, today human beings are more willing to engage and exchange information instantaneously upon receiving input[259]. They stay connected for longer[260] and are more deeply engaged with topics they actively discuss[261].

Furthermore, the internet is becoming a platform for enacting social changes with the use of social media as an amplifier[262]. As a result of the limitless connectivity internet users are becoming more and more engaged with certain topics and aware of them thanks to real-time news access[263]. Moreover, the internet and social media are fostering social life and communities whose members consider them just as important as the real-life communities they are part of[264]. As a result, individuals put as much effort, energy and attention into developing and fostering as well as shaping and defending their online worlds as they would put into their offline existence[265] with the added benefit of accelerated connection and feedback[266]. The internet has grown beyond just a powerful personal and social phenomenon and is no longer a simple source of entertainment and information. Thanks to worldwide access, it has become a powerful tool for social change and communication of ideas. Moreover, engagement in online communities created by social media platforms now leads to actual offline effects and behaviour as more than one-fifth of online community members in the US alone take part at least once a year in offline activism organised and prompted by their communities[267].

Online communities share thoughts and work on projects entirely online. However, their web-based actions lead to broader offline behaviours as community members are more willing to be engaged in new and unknown social movements. Further, they tend to stay more actively involved with their community for longer thanks to instant connectivity. As a result, social activism via social media platforms grows exponentially[268] resulting in real life actions and change. A good example of such online activism with very tangible results was the so called "Ice Bucket Challenge", which first took place in 2014. The activity was a vehicle to raise awareness, and later – funds for the treatment of ALS, a nervous system disorder, which the "Ice Bucket Challenge" initial facilitator - Pete Frates in the US suffered from. The challenge was entirely

[258] (Cline, 2019)
[259] (Rick Nauert PhD, 2018)
[260] Ibid
[261] Ibid; (Jackson S. J., 2018)
[262] (Rick Nauert PhD, 2018)
[263] (Boitnott, 2015)
[264] (USC Annenberg School Center for the Digital Future, 2007)
[265] (USC Annenberg School Center for the Digital Future, 2017)
[266] Ibid
[267] Ibid; (Rick Nauert PhD, 2018)
[268] (USC Annenberg School Center for the Digital Future, 2017)

organised online and subsequently unveiled mostly via the social platforms Twitter and YouTube. Participants, tagged in the challenge or wanting to participate had to douse themselves in a bucket of cold water in order to show support for the victims of the disease and/or choose to donate funds to the ALS cause. Despite its exclusively online origin the initiative ended up gathering more than $5.7 million in a manner of a few months with a total of 100, 000 new donors, who had never taken part in a similar activity before, becoming part of the official records of the American ALS Association. The challenge also garnered huge publicity thanks to a significant number of high profile individuals, who chose to support it and became a recurring event as a result. It presents a good example of the power of online communities and activism capable of producing real-life effects.

Even more importantly, the challenge highlighted social media's capacity as powerful resource for stakeholders, such as labour unions, customers, local communities to achieve independence from company censorship, penetrate corporate organisations, influence them and make their concerns known[269]. An excellent recent example for this are the series of strikes organised by Uber drivers across the US in May 2019 just days ahead of the company's much anticipated IPO[270]. The strikes, entirely orchestrated via online driver communities, protested the lowering driver incomes, which Uber was deliberately cutting to increase its margin ahead of its iconic IPO[271]. The strong online communities, which organised the strikes were hailed as the only way for a dispersed and otherwise very difficult to identify group of individuals sharing similar issues to gather and make an impact on the business of a company, which was overlooking their plight in favour of share price[272]. The subsequent failure of the Uber IPO, although not entirely due to the driver outcry, was none the less attributed to the concerns of its toxic corporate culture among other issues, openly addressed by the express disgruntlement of its key resource – the Uber drivers[273].

2. A New Place to do Business - Emerging Communication Technologies are Changing How Business is Done

New technologies, especially those connected to communication change not only social interaction patterns but disrupt conventional business models as well[274]. As a result businesses have at their disposal new and different ways to connect and engage but also be influenced by their customers as well as their employees[275]. Furthermore, social media platforms allow businesses to reach out to clients across state and social boundaries in order to promote their product and market themselves[276] while making use of a host of innovative engagement

[269] (Ghobadi & Clegg, 2015)
[270] (Ghaffary, 2019)
[271] Ibid
[272] Ibid
[273] (Bort, 2019)
[274] (Cline, 2019)
[275] (AmsourceTechnology, 2019)
[276] (Hoffman, 2018)

strategies. Good examples of this practice include traditional corporate giants such as General Electric in the US, which uses Facebook and YouTube's video capabilities to promote its new products and innovation initiatives as well as to highlight the work of its employees thereby fostering employee community and attracting key talent[277]. The case is similar with General Motors, which uses its Social Media presence to communicate with clients and boost profitability[278]. Going even further, the entire success of newer and smaller companies may rest on their social media coverage and ability to engage their stakeholders[279]. This is particularly true for retailers such as Asos, Desigual, Peel and Blenders Eyewear for example, whose business success resits entirely on a vigorous online social engagement campaign [280.]

Overall, as a result of the rising involvement of social media users companies are experiencing an increased input from potential clients, employees and other interested groups[281] depending on the individual business's impact over their communities. Moreover, as companies choose to promote their brands via social media and thus start an active online presence this facilitates a more direct and frequent connection with their extended stakeholder groups[282].

Due to the high profile and open character of online communication platforms, however individual stakeholder/company interactions are no longer private. On the contrary, they are highly visible for the wider online community[283] and therefore bear a bigger risk of affecting the position of said community towards the brand depending on the communicated message[284]. A recent example of this shifting communication dynamic and the easiness of accessing what used to be hard to get internal corporate information is the publishing of internal corporate emails of Tesla in May of 2019[285]. Ironically, the communication made public pertained to a warning to all Tesla employees not to allow information to slip out of the company under fear of dismissal and even criminal proceedings[286]. However, the warning did not seem to produce the expected effect as it ended up online resulting in a backlash against the company's seemingly toxic corporate culture[287].

Furthermore, corporate behaviour taking place offline is increasingly reported via social media channels[288] prompting an online reaction, which easily results in offline behaviour of community members[289]. Such is the case with the original CEO of Uber Travis Kalanick who was caught on

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[277] (Wise, 2015)
[278] (Petouhoff, 2016)
[279] (Jackson D. , 2018)
[280] Ibid
[281] (AmsourceTechnology, 2019)
[282] Ibid
[283] (Collins, 2018)
[284] (Roohani & Attaran, 2014) (Ghobadi & Clegg, 2015)
[285] (Kolodny, 2019)
[286] Ibid
[287] Ibid
[288] (Ghobadi & Clegg, 2015)
[289] Ibid

camera having a brief exchange with his own Uber driver on driver wages in 2017[290]. The video was a pivotal moment for the company as it highlighted the core of a corporate culture based on lack of any regard for a dedicated workforce[291]. Moreover, the video, forced Uber to end the career of CEO and co-founder Kalanick at the company as he was asked to resign by investors in order to repair the damage to the brand[292].

Finally, increased social awareness and activism combined with new brand and company social media visibility results in stakeholder groups having higher expectations of company brands in social issues engagement and being increasingly vocal when company behaviour does not rise to their expectations[293]. A good example for this is the already referred to in the preceding section case of the series of strikes organised by Uber's US drivers in May, 2019 ahead of the much anticipated company IPO. The protesters were arguably Uber's biggest stakeholder groups – its drivers, who were asking for employee protections from a company, whose main business model rested on functioning as a platform rather than a traditional taxi business[294]. However, due to the nature of the services it was providing and the dedication of the platform users Uber was held to the same employer standards as any other company even though part of the core innovation of its model and cost saving mechanism was precisely the lack of an employer-employee relationship[295].

The sum of communication technology-prompted social changes bears a heavy influence on company behaviour and business. This results in firms having to take into account and operate in an environment of increased stakeholder engagement. Further, more empowered product consumers are capable of easily influencing the wellbeing of a brand via social media. A good recent example for this is Snap Inc., which experienced a $1 billion loss off its value after being criticized by its high profile users for making light of domestic violence with its ads[296]. Further, as already referred in the Introductions to this Thesis the company lost 6% of the value of its shares - a total of $1.3 billion of its market value as a result of a single comment from one of its most high profile users. The comment connected to the failed redesign of the Snapchat App[297] and prompted millions of subscribers - Snapchat's actual clients to leave the App altogether raising the very real suspicion that the company was done for[298]. Even though Snap Inc. ultimately survived it lost much of its previous relevance and is under the danger of never truly recovering its dominance over the Social Media market[299]. This clearly demonstrated that the wide instant visibility of company behaviour even localised to a single branch or one isolated event results in widespread impacts over the business thanks to global connectivity.

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[290] (Ghaffary, 2019)
[291] Ibid
[292] (Cava, 2017)
[293] (Ghobadi & Clegg, 2015, vol.25)
[294] (Laidre, 2015)
[295] (Ghaffary, 2019)
[296] (Levin & Snapes, Rihanna wipes $1bn off Snapchat after criticising app for making a 'joke' of domestic violence, 2018)
[297] (Levin, We are watching a company explode: Is Snapchat becoming irrelevant?, 2018)
[298] Ibid
[299] (Kosoff, 2018)

Communication technology is giving companies a new voice and a space to amplify their message[300], to widen their customer base and influence[301]. However, technology-promoted social changes go both ways as they translate into an increase in power of stakeholders over businesses health and decision-making[302].

[300] (AmsourceTechnology, 2019)
[301] (Hoffman, 2018)
[302] (Ghobadi & Clegg, 2015)

V. CORPORATE GOVERNANCE IN THE NEW BUSINESS AND SOCIAL ENVIRONMENT

1. FAILING TRADITIONAL MODELS

In the shifting environment companies are striving to understand the new changes to stakeholder power and interests driven by tech innovation and account for them as part of their governance models[303]. Choosing to update the traditional corporate governance models to reflect the new realities of stakeholder involvement and influence can have far-reaching positive effects on companies' performance and overall success. However, despite some attempts corporations and state legislations are overall slow to adapt to the new changes and benefit from them. As a result, shareholder interest prioritization and the notion that a company serves primarily to increase the value for its investors is still the predominant model of governing a business.

Across corporations and state legislature, shareholder primacy manifests itself via its key postulates of shareholder ownership over businesses[304], Board to shareholder accountability[305] and prioritization of shareholder value maximization[306] underlined by an exclusive shareholder interest consideration in corporate decision-making[307]. Our historic overview of the work of prominent international organizations[308], as well as the legislation, judicial work and market practices of key national states[309] across the globe has only served to reinforce these principles as the core embodiment of the dominating model of Corporate Governance since its inception in the US in the 1970s.[310]

However, with the rising number of high profile corporate failures in the US and across the globe starting at the turn of the 21st century[311] the well-entrenched traditional model demonstrated increasing signs of inadequacy[312]. Cases like Enron WorldCom, Tyco, HealthSouth in the US, Parmalat in Italy in the early 2000s were an early indication that corporate governance models based exclusively on shareholder interests' consideration alone are no longer able to sustain a healthy company structure[313] within an environment of increased visibility and easy

[303] (BusinessBalls, 2019)
[304] (Berle & Means, The modern corporation and private property , 1932)
[305] Ibid
[306] (Rhee, 2017)
[307] (Friedman, A Friedman Doctrine: The Social Responsibility of Business is to increase its Profit, 1970)
[308] Ibid
[309] Ibid
[310] (Cheffins B. R., 2012)
[311] (Letza, Kirkbride, Xiuping Sun, & Smallman, 2008)
[312] (Sun, Stewart, & Pollard, 2012)
[313] (Bratton, 2002)

information availability[314]. Furthermore, the numerous failures of banking and corporate institutions across the globe during the 2008 financial crisis[315] served to reaffirm the notion that overlooking stakeholder interests in favor of shareholder driven short-term value maximization is no longer a sustainable corporate governance model[316] within a rapidly globalizing and increasingly interdependent business world. Moreover, the advent of recent innovations in information technologies and their impact over the social and business environment is seeing more and more challenges from newly empowered stakeholder groups clamoring for a seat at the corporate table[317].

1.1 The Declining Sustainability of Shareholder Driven Governance

Within the last 20 years, there has been an unprecedented number of high profile company scandals and failures across some of the most prominent state jurisdictions for corporate business in the world[318]. In the ensuing analysis, corporate governance has always without fail found itself under intense scrutiny as the perceived culprit[319] behind such climatic events. The blame is laid specifically at the doorsteps of exclusive shareholder interests' prioritisation and value maximisation[320] through short-term gains as opposed to long-term sustainability in business decision making[321]. Admittedly, the most visible such cases have taken place in the US as the ultimate stronghold and proponent of shareholder primacy with the Enron and WorldCom corporate scandals drawing international attention between 2001 and 2002[322].

Arguably the most recognizable contemporary company failure of its time was the fall of Enron[323], a global Energy industry giant and a US stock market favorite, which collapsed seemingly out of nowhere in December of 2001. Upon filing under Chapter 11 of the United States Bankruptcy Code, Enron became the largest corporate bankruptcy in US history[324] at the time and held its title until the WorldCom failure overtook it a year later. Enron's collapse owes its overwhelming fame largely to its unexpectedness[325], but it did help to expose a number of problematic yet borderline legal accounting and auditing practices as well as several significant shortcomings of the American corporate governance model[326] at the time.

314 Ibid
315 (Sun, Stewart, & Pollard, 2012)
316 (Bratton, 2002) (Powell, 2007)
317 (Siu, 2019)
318 (Sun, Stewart, & Pollard, 2012)
319 (Bratton, 2002) (Dibra, 2016)
320 (Denning, 2011); (Norman, 2004)
321 (Powell, 2007)
322 Ibid; (Giroux, 2008)
323 (Bratton, 2002)
324 (CNN Library, 2019)
325 Ibid
326 (Culpan & Trussel, 2005); (Sun, Stewart, & Pollard, 2012)

Enron was created in 1985 out of the merger between natural gas utility company Houston Natural Gas and large energy company InterNorth Incorporated with the CEO of Houston Natural Gas Kenneth Lay subsequently becoming the CEO of the new corporation[327]. Using the deregulation on the US energy market the company rebranded as an energy trading and supplying organization[328] thereby expanding beyond its original market of utilities. However, Enron's downfall began after Jeffrey Skilling joined the company in 1990 and transitioned Enron into mark-to-market accounting[329] – a practice that ultimately enabled Enron Executive Management to cover up the rapidly growing financial losses resulting from the company's ever-expanding portfolio of failed projects[330]. The new accounting practice combined with the fostering of a highly competitive, short-term, gain driven corporate culture[331] facilitated Enron's spectacular downfall and subsequent numerous criminal proceedings against the company and its Leadership.

Beyond the pure shock value of the Enron scandal the long term damage its collapse inflicted on company employees, and affected communities prompted an in depth inquiry into the feasibility of the shareholder primacy model[332] and the shareholder value maximization approach towards business leadership and decision making across the world[333]. Analyzing the corporate behavior of Enron's key Executive Managers leading to the ultimate criminal indictment of the company's former and then current CEOs as well as the CFO for accounting, securities, bank fraud, money laundering, insider trading, and conspiracy underlined the inadequacy of the traditional corporate governance checks against abuse of power by Mangers as shareholder Agents[334]. Moreover, it highlighted the inadequacy of a purely short-term value maximization oriented approach by big corporations in maintaining a steady and healthy business capable of realizing sustainable profits[335].

However, beyond the issues of shareholder primacy its worth to note that Enron's ultimate demise came about in large part thanks to its most notable and yet ignored stakeholder group, namely its employees[336]. As the case in point, Sherron Watkins, an Enron Management employee was hailed as the main whistleblower of the case, who flagged the critical issues the company was facing to then CEO Lay and went further to propose specific remedies and resolutions in order to avoid the collapse[337]. However, her advice was not only largely ignored; she was stripped

[327] (New York Financial Times, 2019)
[328] (Wikipedia, Enron, 2019)
[329] Ibid
[330] (Bratton, 2002)
[331] (Wong, 2002)
[332] (Powell, 2007)
[333] (Rampersad, 2014, vol 14)
[334] (Bratton, 2002);
[335] (Rampersad, 2014, vol 14)
[336] (Culpan & Trussel, 2005)
[337] (Arthur Andersen LLP, Petitioner v. United States of America, 2004)

of her responsibilities and benefits[338] and a subsequent inquiry was made by the office of Enron's CEO to the company's legal advisers pertaining to legal defenses for whistleblowers[339]. This combined behavior by Executive Leadership clearly demonstrated that employees as key stakeholders were perceived as enemies to be shut out and down rather than partners and interested parties in the corporation[340].

Ultimately, general consensus by observers concluded that "Enron failed because of its pursuit of immediate shareholder value"[341], which led it to a string of illegal behavior and its ignorance of key stakeholder groups attempting to repair its actions were met with hostility and only served to seal its faith. However, the spectacular demise of the energy giant was not the only example of failing corporate governance models as the WorldCom bankruptcy topped it less than a year later.

Reminiscent of Enron, WorldCom was a corporate giant in its field of telecommunication, second only to AT&T in the US, which build itself into a formidable business through a series of mergers and acquisitions in the 1990s[342]. The company subsequently collapsed in July 2002 when it filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code after corporate whistleblowers tasked with internal audit functions at WorldCom uncovered a series of accounting frauds and corporate malpractice covering up the insolvency of the company[343]. Much like Enron WorldCom's predicament was caused by the value maximization driven behavior of its Executive Management[344]. However, WorldCom's saving grace which allowed it to file for bankruptcy and emerge from the process to become a subsidiary of Verizon Communications in 2005[345] was its ultimate decision to take its stakeholders more seriously. As mentioned the issues at WorldCom were uncovered by a group of internal auditors who investigated the fraud secretly and subsequently reported their findings to the company's Board of Directors and Audit Committee whose members chose to heed the information and take swift action in order to rescue the business[346]. As a result, WorldCom's case demonstrated that the introduction of stakeholder engagement could be critical in the stabilization of a failing business model.

Much like Enron and WorldCom, the Tyco scandal put into question the effectiveness of traditional corporate governance[347]. The company was another example of a US corporate giant this time in the area of investments, which went about gaining power and growth by aggressive company acquisitions developing an exclusively short-term gain driven corporate environment

[338] Ibid
[339] Ibid
[340] (Powell, 2007); (Culpan & Trussel, 2005); (Norman, 2004)
[341] (Bratton, 2002)
[342] (Tran, 2002)
[343] (Wikipedia, MCI Inc., 2019)
[344] (Sun, Stewart, & Pollard, 2012)
[345] (Wikipedia, MCI Inc., 2019)
[346] Ibid
[347] (Thanos, 2015)

along the way[348]. In 2002 the company CEO Dennis Kozlowski and CFO Mark Swartz were both indicted for the alleged theft of more than $600 million from the firm[349]. Even though they pleaded the money transfers had been dully approved by Tyco's Board of Directors both Swartz and Kozlowski were found guilty and sentenced to jail time for their crimes in 2005. The Tyco case, much like Enron, helped provide an unprecedented look into toxic, exclusively profit driven corporate cultures, which were prevalent in US at the time as demonstrated by the sheer number of company failures. Tyco had been a company strongly dominated by the aim to amplify the profits of its shareholders[350], which was a never changing purpose for the organization irrespective of the questionable practices of its Executive Management, which ultimately put it into the spotlight. As with other cases of the period, this previously functional corporate model was proving to be increasingly prone to failure in a changing business environment[351]. The tendency did not stay isolated to the US. Similar cases of corporate failures sprang up across a number of key state jurisdictions with the Parmalat scandal in Italy[352], The Equitable Life Assurance Society's failure in the UK[353] and even the Australian giant HIH Insurance, which collapsed in 2001[354].

Due to the striking similarities between the two the Parmalat case in Italy was dubbed "the Enron of Europe" as it also involved the commitment of a number of accounting fraudulent activities, this time however for the benefit of its majority shareholders to the detriment of minority ones[355]. Parmalat was a clear demonstration of the potential for damage carried by the premise that shareholders are the owners of the company and are therefore owed allegiance by Company Management and Boards as it increasingly led to power abuses and corporate failures[356]. A similar case for this was also the HIH Insurance failure in Australia, which similar to Enron and WorldCom at the time marked the largest corporate collapse in state history[357] and put into question the traditional tenets of corporate governance[358]. Being the second largest insurer in Australia HIH Insurance's collapse had a far-reaching effect across Australian society as it damaged not just the company stockholders, but every single one of its insurance holders and connected entities[359] prompting a vigorous debate about stakeholder protections in corporate governance models[360].

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[348] (Wikipedia, Tyco International, 2019)
[349] Ibid
[350] (Thanos, 2015)
[351] (Sun, Stewart, & Pollard, 2012)
[352] (Dibra, 2016)
[353] (Roberts, 2012)
[354] (Jiangbo, 2010)
[355] (Dibra, 2016)
[356] Ibid
[357] (Jiangbo, 2010)
[358] Ibid; (Mirshekary, Yaftian, & Cross, 2005)
[359] Ibid
[360] (Fox, 2014); (Mirshekary, Yaftian, & Cross, 2005)

1.2 A MODEL RESISTING CHANGE

The string of corporate failures during the early 2000s was so significant it resulted in changes to the law on corporate governance and responsibility, accounting and public disclosure in many jurisdictions around the world[361]. In the US this change was enacted with the Sarbanes-Oxley Act of 2002[362] as well as a number of reforms on the New York Stock Exchange and the NASDAQ[363]. The span of the corporate governance reform wave stretched as far as the UK[364] and the entirety of the EU[365] reflecting the realization of the urgent modification needed to update an already inefficient model[366]. However, the core idea behind the corporate governance model across many of these jurisdictions remained unchanged[367] showing remarkable resistance.

A large driver behind the perseverance of this accepted shareholder primacy model of corporate governance was the historically embraced idea of firm success measured through the price of company stock[368]. Consequently, the higher the market stock price of listed companies was, the more successful they were considered[369]. High share prices were seen to be in a positive correlation with corporate managerial efficiency, where successful management behavior was the one aimed at realizing the highest return for shareholders[370]. In contrast, failing to make as high a return on shareholder investments as possible translated into low management efficiency, which in turn resulted in driving share prices down and created the very real danger of hostile corporate takeovers while also shaping the market of corporate control[371]. As a result of this view on the stock price and management behavior dynamic managers were increasingly pressured to aim for shareholder profit realization to maintain high share prices in order to cement their own position and the safety of their companies – a vicious and highly time-resistant cycle, in which diverse stakeholder interests had no place.

It the years following the Enron and WorldCom failures the escalating race for corporate short-term profits through excessive risk taking and at the expense of key stakeholder groups specifically across the banking industry combined with a rapid financial markets deregulation in the US would resulted in the largest financial corporate crisis the world has ever experienced[372].

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361 (Andreadakis, 2010)
362 (Congress, Sarbanes–Oxley Act, 2002)
363 (NYSE, NYSE: Corporate Governance Guide, 2014)
364 (Parliament of the United Kingdom, 2006)
365 (Andreadakis, 2010)
366 Ibid
367 (Sun, Stewart, & Pollard, 2012)
368 (Manne, 1965)
369 Ibid
370 Ibid
371 Ibid
372 (The Economist, 2013)

Moreover, it demonstrated that the corporate world had learned nothing about the devastating effects of shareholder interest centric models of corporate governance[373].

The 2008 financial crisis saw a total of 25 banks fail in the US alone[374]. Simultaneously, some of the biggest names in financial business suffered significant blows as company giants such as Lehman Brothers, AIG, Merrill Lynch went into restructurings and bankruptcy, while Goldman Sachs and Morgan Stanley faced conversions in order to avoid similar faiths[375]. The devastating consequences to the global economy, which arguably never fully recovered[376] as well as human society as a whole provoked a new evaluation of corporate governance models[377]. What emerged as a finding corresponds with the idea that in a consistently shareholder interests dominated business the pressure to deliver ever growing profits at a fast pace is unavoidable and raises the risk of corporate failures[378]. Ultimately, within a globalised business environment where separate state economies are increasingly interdependent and any negative impacts cause a ripple effect through the entire system short-term, gain driven business models are no longer feasible[379]. However, despite the cataclysmic character of the 2008 events, the realisation was slow to come by and changes are yet to manifest demonstrating the considerable resistance of the shareholder primacy model.

2. SHAREHOLDERS VS. STAKEHOLDERS

As already elaborated, advances in information technology are facilitating a profound change of human communication and interaction prompting a new social uprising as engagement with social issues rises and society finds new ways to organize. Business is heavily impacted by the shift as wider social groups are actively seeking a way to influence the corporate world and its decision-making priorities[380]. At the same time, the significant and recurring corporate failures of recent decades have delivered a series of devastating blows to the traditional value maximization model sparkling a debate around the need to update it to reflect the interdependency of globalized business with society as a whole, specific stakeholder groups and amongst individual businesses and state systems. Reflecting the division in business practice, academics theory is positioning shareholder and stakeholder primacy as opposites[381] with the conflict between them accelerating with new tech and social changes[382].

373 (Spellman & Chaher, 2012)
374 (Mathiason, 2008)
375 Ibid
376 Ibid
377 Ibid
378 (Marin, 2012)
379 Ibid
380 (Spellman & Chaher, 2012)
381 (Clark & Steckler, 2016)
382 (Siu, 2019)

Shareholder primacy explicitly postulates that managers should spend company capital only in the way approved by company investors and should make decisions to benefit the shareholders specifically[383]. On the opposite side of the scale, stakeholder primacy stipulates that a company must act with consideration for all stakeholders influenced by, and capable of influencing it[384] while not excluding the realization pf profits as an inherent core purpose for corporations[385]. The side-by-side comparison reveals that while stakeholder primacy allows for company value maximization and includes shareholders as one of the main stakeholder groups by its very nature, shareholder primacy is far more exclusionary and aims to limit the influences exerted over corporate decision-making and priorities. However, with so many affected interest groups now capable of vocalizing their views on corporate governance and priorities of businesses and as a result able to affect the success of a company, the exclusionary approach of shareholder primacy is facing the question of adequacy, while wide stakeholder consideration in profit realisation is gaining favor. The combination of a rising view on stakeholder consideration and a declining one on exclusive shareholder value maximization has led to the two models being pitted against each other as we strive to find a new way to do business while avoiding the costly mistakes of the past and leveraging the opportunities opened by new tech and social changes.

3. Tech and Social Changes' Influence on Corporate Governance

Today a company's ability to conduct its business and realise profits while safeguarding its increasingly important yet fragile public image is coming under pressure from communication technologies and new social realities[386]. However, these same technologies and channels can also be perceived as an opportunity for companies to bolster their organisation's market position, redefine corporate decision-making, support key stakeholder participation[387] and provide better information transparency[388] thereby mitigating information asymmetries and promoting the company to potential investors.

3.1 Shifting Information Asymmetries

New information technology advances are influencing the distribution of information across social networks[389] thereby shifting the way business players access key information helping them to form corporate and investment decisions[390]. However, tech and social changes are also helping

[383] (Ireland, 2005)
[384] Ibid
[385] (Freeman E. , Strategic Management: A Stakeholder Approach, 1984)
[386] (Spellman & Chaher, 2012)
[387] (International Finance Corporation, 2019)
[388] (Brown, 2015)
[389] (Fong & Yazdanifard, 2014)
[390] (Spellman & Chaher, 2012)

to shift power from corporations and their shareholders towards wider stakeholder groups[391] by providing new channels for information to flow more effectively, rapidly with instantaneous consequences[392].

The classical model of corporate governance resolves the issue of information asymmetries and organisational trust via legally required public disclosure of key information[393] pertaining to the company in a bid to strengthen its market position by creating transparency[394] of its activities. While this mechanism is not rendered completely redundant by social media[395], new information channels are shifting the power of information[396]. Up to this point the control over information rested with the corporation producing and holding it[397] and thus allowed firms to formulate, disguise and overall build the narrative of their information disclosure[398] before releasing it to the public under legal requirements. A good example for such abuse of information control was the information disclosure by Facebook ahead of its IPO in 2012. The Facebook IPO benefitted from a prolonged and deserved hype ahead pf what was considered the most significant IPO in the history of Information Technology by this date. Under US legal requirements[399] the company was obliged to provide information on its financial status[400], business model[401], and future development plans[402], etc. Being a social media company Facebook presented a very specific business and profit realisation model[403]. In line with disclosure requirements, it included key details of its profit realising mechanism via tailored advertising in its publically disclosed documentation for investors[404]. However, being fully aware of the inherent issues it was facing with its advertising mechanism[405] the company chose to use a deliberately vague and misleading language[406] thereby largely downplaying and disguising the significant challenges and issues it had with the scalability and optimisation of its advertisement algorithm. As one of the pioneers of disruptive information technologies and up and coming social media at the time of its IPO Facebook was still benefitting from the old system of information control[407] where it was able to write its narrative singlehandedly with very little exposure to social media visibility[408]. As a result,

[391] Ibid
[392] Ibid
[393] (Congress, Securities Exchange Act, 1934); (Congress, Sarbanes–Oxley Act, 2002)
[394] Ibid
[395] (Baris & Berman, 2017)
[396] (Fong & Yazdanifard, 2014)
[397] (Spellman & Chaher, 2012)
[398] Ibid
[399] (Goldberg & Loeb, 2012-2013)
[400] Ibid
[401] Ibid
[402] Ibid
[403] Ibid
[404] (Cervellati, Sandro, & Piras, 2013)
[405] (Goldberg & Loeb, 2012-2013)
[406] Ibid
[407] (Spellman & Chaher, 2012)
[408] Ibid

upon uncovering the information malpractice after the spectacular failure of the IPO[409] the company was indicted with a number of lawsuits from affected shareholders and stock buyers[410]. The tighter control on information dissemination Facebook benefitted from was the same phenomenon, which had aided Enron's prolonged fraud activities[411]. Going further, we can easily argue that if famous Enron whistle-blower Sharon Watkins or any of the company's disgruntled employees could have benefitted from the use of far-reaching social media platforms such as Twitter today, the corporation's dealings would have possibly come out much sooner.

Modern engagement of corporations with social media and constant brand presence across communication channels makes it increasingly difficult to withhold key pieces of information[412] capable of influencing stakeholder decisions. A good example for this is Tesla, which has had a number of its internal emails to employees as well as CEO communication leak in recent years. This included plans for productions numbers increases[413], threatening dismissals of employees who let key information out[414], etc.

Now modern information technologies are allowing for much faster and more uncontrolled release of information in smaller and much easier to analyse quantities, regardless of whether it is considered secret or not. Thus, companies are increasingly less in control of information flows around them and are as a result no longer able to doctor their narratives. As a consequence, key corporate information, which is decisive in investment, market and consumer decisions, becomes available faster and in a raw format, thereby allowing for decision making by stakeholders based on arguably more authentic facts. However, we must not ignore the fact that easy information transmission has another side and can readily be used to provide misleading or wrong information to key stakeholders prompting decisions based on incorrect facts leading to failures. How do we resolve this issue of information reliability?

3.2 Old Actors, New Influence

The increased use of communication technologies as well as the shifting information asymmetries are helping to change the dynamics between corporations and their stakeholders[415]. Moreover, as various stakeholder groups gain power with the opportunity to express opinions via social media[416] the need for companies to monitor and curate their social media presence grows[417].

[409] (Goldberg & Loeb, 2012-2013)
[410] Ibid
[411] (Ghobadi & Clegg, 2015)
[412] (Collins, 2018)
[413] (Kolodny, 2019)
[414] Ibid
[415] (Roohani & Attaran, 2014)
[416] (Ghobadi & Clegg, 2015)
[417] Ibid

Stakeholder groups with particular increase in influence are employees, end-product consumers and local communities. However, these are not new types of stakeholders but rather actors with a growing role in a company's decision-making process[418].

For employees as an important stakeholder for the company social media serves to increase employee participation in corporate decision-making[419]. It supports employees in building awareness of and trust in their company's business but also increases visibility[420], enables early detection of organisational wrongdoing[421] and facilitates positive changes in the work environment[422]. However, the same social media tools and channels available to happy and satisfied employees can equally be used by disgruntled ones[423]. This could be to promote a negative image of a company's policies and highlight issues with its corporate culture and decision-making processes[424], or even provide false information on company practices for the sake of slandering a brand[425]. It can also produce negative effects for a company's reputation, its attractiveness as an employer for top talent and an as a good choice for investors. Thus, social media access for employees as a vital stakeholder group provides them with a powerful platform to express opinions, thereby increasing employee power over companies exponentially[426].

Moreover, communication technologies and platforms provide consumers as a stakeholder group with a new channel to express opinions of brands and their products[427]. While this could be a powerful promotional tool for companies[428], it can also bring a host of negative impacts in case of issues[429]. Moreover, customer dissatisfaction can have global consequences for a company[430], regardless of it physical location and size of the possible issues[431]. Due to the instantaneous character of social media communications, negative impacts can also escalate in a short period across the entire customer base[432] thereby affecting corporate finances and reputation[433]. However, the same tools capable of shifting corporate agendas[434] have the potential to foster customer loyalty and build a company's market image[435] if managed

[418] Ibid
[419] (Brown, 2015)
[420] (Spellman & Chaher, 2012)
[421] (Arthur Andersen LLP, Petitioner v. United States of America, 2004)
[422] Ibid; (Arslan & Zaman, 2014)
[423] (Ghobadi & Clegg, 2015)
[424] (Spellman & Chaher, 2012)
[425] Ibid
[426] Ibid
[427] Ibid
[428] (Smith K. , 2018)
[429] (Kosoff, 2018); (Levin & Snapes, Rihanna wipes $1bn off Snapchat after criticising app for making a 'joke' of domestic violence, 2018)
[430] Ibid
[431] Ibid
[432] Ibid
[433] (Spellman & Chaher, 2012)
[434] Ibid
[435] (Ghobadi & Clegg, 2015)

effectively by companies. Still, regardless of their type of use social media and communication technologies undisputedly provide a new shift in power for stakeholder groups giving them more influence[436] over corporate decision-making and forcing corporations to shift their governance model[437] towards wider stakeholder interest consideration.

The importance of social media performance and exposure for companies has grown to such an extent that a company's success is no longer judged solely by the well-entrenched metric of stock price[438]. Corporate standing with stakeholder groups, based on social media outreach and response is becoming a key factor in evaluating overall success as it indicates how employees, consumers, interested groups feel about a business and how their respective behaviour modulates based on their views[439]. While this allows companies to use new tools to boost profits and interact with their stakeholders, it also indicates the ultimate shift in power between stakeholders and shareholders in terms of ability to influence a business. Ultimately, as stakeholder groups gain strength and standing consideration for their interests grows, as businesses are able to envision the growing impact of stakeholders over business performance.

[436] Ibid
[437] Ibid
[438] (Manne, 1965)
[439] (Sukhraj, 2017)

VI. Adapt to Survive

Reviewing the changes and recent climatic events reshaping the landscape of global business has led to the observation that traditional corporate governance models are struggling to keep us with the times and ensure the long-term sustainability of companies. This is especially true for corporations choosing to leverage social media and new found social engagement trends to promote their brands as they are heavily exposed to the volatility of modern communication platforms[440]. How can corporate governance help mitigate the risks for companies as new tech and social groups with varying interests demand a change in corporate behaviors and considerations? Will factoring these diverse interests in decision-making help businesses survive and still realize profits?

1. Change to Stay Relevant

Our overview of the string of worldwide high profile corporate failures and their connection to failing corporate governance models has left us with the implication that current governance models focusing on shareholder value maximization and exclusive shareholder interest consideration are unable to adequately support corporate business in a rapidly shifting global environment. However, this raises the question of how we resolve the crisis of priorities. If the shareholder centric model is no longer sustainable, what can we do to mitigate the negative effects and ensure business sustainability? In this case, stakeholder primacy emerges as the natural answer to shareholder primacy. As elaborated earlier in this thesis stakeholder primacy is a highly ambiguous and multi-dimensional construct. However, regardless of its complexity and almost umbrella-like character the model explicitly focuses on requiring corporations to consider the interests of various stakeholder groups equally with those of the company shareholders[441] when taking business decisions as opposed to the shareholder model focusing primarily on shareholders as a group of interest[442].

Just like shareholder primacy, stakeholder primacy is not explicitly named in international or state legislation, court practice and company statutes around the world. It is rather a model, constructed based on observing the effects and priorities established by the combination of the above-mentioned sources upon their application[443]. Furthermore, when looking back on the sum of communication technology advances in recent decades, their social and business implications and the high degree of empowerment they have helped grant to previously low-power interested

[440] (International Finance Corporation, 2019)
[441] (Freeman, Wicks, & Parmar, 2004)
[442] (Friedman, Capitalism and Freedom, 1962)
[443] (Clark & Steckler, 2016)

stakeholder groups in business[444] we can start to see why stakeholder primacy is emerging as the most convenient replacement model[445]. If the main issue ailing shareholder primacy-driven models today is the ignorance of wider stakeholder interests, leading to rapid decline of the business' success rate[446], then stakeholder primacy with its call for equal consideration in decision-making and also safeguarding the profit purpose of a business[447] can serve to close the emerging gap with stakeholder groups as their influence is elevated[448].

Stakeholder primacy has the benefit of factoring in the diverse stakeholder groups whose power modern tech has helped grow. However, while calling for including these diverse views in company positions into the decision-making process stakeholder primacy is not mandating that these interests be considered the new imperative or that the company's drive to realize profits is forgotten[449]. The model rather expects that final business decisions be inclusive in their entertainment of the views and argumentation of different players capable of influencing company success in order to ensure proper stakeholder management[450] and well-founded decision-making. Further, as its creator Freeman emphasizes the stakeholder primacy model does not turn its back on profit realization as the purpose of the firm[451]. On the contrary, its main postulate embraces the idea of value creation. However, it supports business decisions centered on long term planning and strategy for profit, as opposed to the often short-term value maximization prone shareholder-led model[452]. As these were all issues connected to the systematic corporate failures of recent decades it seems that implementing a stakeholder-oriented view towards corporate governance is set to have more positives than negatives for businesses in the long term. This would allow for not only the mitigation of past shortcomings of corporate governance models[453]. It will also open the way for the models to evolve with the times as stakeholder primacy has the added value of addressing the power shift amongst stakeholder groups brought about by new tech developments and social changes, while also keeping shareholder interests in mind and accepting the company's profit orientation[454].

2. Legislate for Success

The positive effects of stakeholder primacy on corporate governance models and company performance are being explored increasingly, the more old models fail and new global

[444] (Ghobadi & Clegg, 2015)
[445] (Culpan & Trussel, 2005) (Fink, Larry Fink's annual Letter to CIOs. A sence of purpose, 2017)
[446] (Freeman E. , Stakeholder Theory: the state of the Art , 2009)
[447] (Freeman E. , Strategic Management: A Stakeholder Approach, 1984)
[448] Ibid
[449] (Freeman, Wicks, & Parmar, 2004)
[450] Ibid
[451] (Freeman E. , Strategic Management: A Stakeholder Approach, 1984)
[452] (Denning, 2011)
[453] (Sun, Stewart, & Pollard, 2012)
[454] (Freeman, Wicks, & Parmar, 2004)

developments condition firms to reach for innovation[455]. A recent study by University of Pennsylvania's Wharton School of Economics has demonstrated the positive financial implications of stakeholder engagement for companies[456]. The study focused on examining the policies, behavior and financial results on a sample of 19 publically traded companies within the very volatile gold mining business in Canada, across some 50.000 stakeholder related events and engagements, for a period of 15 years (between 1993 and 2008). It concluded that successful stakeholder participation models and interest groups buy-in for a business's activities lead to between 40% and 60% of an improvement in its net present value[457]. Further, stakeholder representation in decision-making, new product development etc. can increase company profitability in the long term[458], lead to a higher percentage of successfully finished projects, which would result in fewer delays and less additional costs for projects problem solving and overall enhance the company's financial valuation[459]. The study's focus – the gold mining industry, represented stakeholder involvement as a response to the significant shortfalls, which the business experienced from ignoring vested stakeholder interests in its company projects[460]. The result of a number of failed projects due to company conflicts with interested groups was a shift in corporate governance and business models moving towards budgeting for and factoring in stakeholder interests representation, which in turn helped prove the strengths of the stakeholder model as the way forward[461]. Moreover, the study's main premise is that the observations and conclusions on stakeholder involvement's positive effects on business are applicable not only to industry-subjects of the study, but to every business industry in general as companies become increasingly dependent on newly empowered stakeholder groups[462].

However, despite unequivocal empirical evidence supporting stakeholder primacy and global business developments putting shareholder primacy under a question mark its classical idea of shareholder value maximization as the main purpose of the firm is deeply engrained in corporate mindsets[463]. Moreover, the indoctrination is deep enough that even though many countries around the world do not explicitly prevent company Management and Boards from considering wider stakeholder interests in decision-making the lack of a positive norm conditioning them to do so is enough to prevent companies from proactively taking a different approach[464].

[455] (Clark & Steckler, 2016) (Letza, Kirkbride, Xiuping Sun, & Smallman, 2008) (Rossouw, 2008) (Roohani & Attaran, 2014)
[456] (Heisz, Dorobantu, & Nartey, 2014)
[457] Ibid
[458] (A., S., & K., 2003) (Arora & Gangopadhyay, 1995) (Casadesus Masanell, Crooke, Reinhardt, & Vasishth, 2009)
[459] (Heisz, Dorobantu, & Nartey, 2014)
[460] Ibid
[461] Ibid
[462] Ibid
[463] (Stout, 2013) (Styhre, 2017)
[464] (Fox, 2014)

This observation reflects the long established findings of behavioural economics on bounded rationality[465], as human beings conditioned by their cognitive limitations, time constraints and rules in decision-making as well as the nature of the specific problem[466], will most often choose to make a decision based on already positively established and codified practices[467]. This would translate into decisions reflecting what has already been done before and what is explicitly mandated, rather than expanding more time in coining a decision, based on deeper rule interpretation and wider input[468]. In the case of corporate governance, this would translate into further strengthening the model of shareholder primacy as company management and Board directors would be less willing to take decisions diverging from traditional historically established behaviour.

Further, resistance to wider stakeholder based decision making is bound to come from the long-standing understanding of share price as a measure of corporate success and as directly based on shareholder value maximisation oriented managerial behaviour[469]. As already discussed in previous chapters, measuring company success and management performance on the basis of shareholder benefits and stock price has consistently resulted in driving Executive Managers, looking to retain their jobs and avoid legal liability by shareholders, towards short term profit decisions and ignorance of long term sustainability of businesses[470]. An excellent example of these effects was the Enron scandal[471] already reviewed in detail by this thesis.

Ultimately, if Executive Managers and Boards are still willing to only expand their corporate decision-making within the bounds of what is expressly legally mandated, expected by shareholders and based on previous behaviour then one can argue that choosing to support the implementation of a more stakeholder-oriented approach towards corporate governance must start with state efforts. Creating positive obligations for key corporate decision-making bodies to respect stakeholder interests and consider them by drafting explicit, stakeholder-oriented national legislation[472] can be the first step in actively redesigning the established shareholder model.

This idea is also supported by international organizations putting stakeholder representation as one of the requirements towards stable corporate governance legislation around the world. A good example for this is the World Bank Group's International Financial Corporation (IFC), which finances national businesses in developing countries. The IFC sees good corporate governance at the national level as a gateway to improved economic growth, healthy labor market and

[465] (Jolls, Sunstein, & Thaler, 1998)
[466] (Gigerenzer & Selten, 2002)
[467] Ibid (Jolls, Sunstein, & Thaler, 1998)
[468] Ibid
[469] (Manne, 1965)
[470] Ibid
[471] (Freeman, Wicks, & Parmar, 2004)
[472] (Fox, 2014)

ultimately - increased external investments[473]. From the perspective of individual businesses, IFC considers inclusive corporate governance critical for business survival[474]. Moreover, building key stakeholder trust through good corporate governance models is one of the requirements for attracting and retaining business investments as well as maintaining good business health as companies must be increasingly mindful of a broader set of risks and players capable of disrupting their business[475]. As a result, the IFC requires strong and inclusive corporate governance models in place as a prerequisite for its financial support[476].

As examples increase in numbers empirical evidence leads us to believe that stakeholder primacy-driven corporate governance models in state legislation become a prerequisite for attracting external financing for national businesses and supporting a blooming business climate in state[477].

3. Inclusive Models

However, when looking into the shareholder and stakeholder primacy debate we must also ask is there a possibility for the two models to co-exist allowing corporations to prioritize shareholder interest and value while also reconciling stakeholder views in their business strategies. Interestingly, existing empirical evidence demonstrates that, moving away from theoretical debates and corporate governance oriented legislation, individual businesses are increasingly able to benefit from the stakeholder-shareholder interests dynamic by combining features of both doctrines in their individual corporate governance models[478]. Moreover, the study goes on to outline specific strategies created as a result of companies accepting the tension between different models such as hybridization, referring to the practice of adapting an organizational structure within different contexts and combining two possibly contradictory approaches in order to create a new configuration[479]. Such strategic corporate approaches serve to demonstrate that reconciling the two models is possible in practice, regardless of strong opinions in literature[480].

However, going one-step further, when reviewing the core ideas of stakeholder primacy we can conclude that the model is able to aim for and achieve the same ultimate result as its purported adversary, namely shareholder value maximization[481]. However, while shareholder primacy stipulates that this is only possible through putting shareholder interests first,

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[473] (International Finance Corporation, 2015) (International Finance Corporation, 2019)
[474] (International Finance Corporation, 2018) (International Finance Corporation, 2019)
[475] Ibid
[476] (International Finance Corporation, 2019)
[477] Ibid; (Fox, 2014)
[478] (Clark & Steckler, 2016)
[479] (Lee, 2014)
[480] ibid
[481] (Freeman, Wicks, & Parmar, 2004)

stakeholder primacy, supported by new empirical data[482], demonstrates that a business can also realize and even improve its financial profits when considering wider stakeholder interests[483]. This connects to our view, already expressed earlier, that stakeholder primacy has the premise to be shareholder interest inclusive, while shareholder primacy's idea of the most important set of interests has an increasing potential to affect modern businesses negatively.

Ultimately, we can argue that creating inclusive models is indeed possible and widely practiced in business.

[482] (Heisz, Dorobantu, & Nartey, 2014)
[483] Ibid; (Freeman E. , Stakeholder Theory: the state of the Art , 2009)

VII. CONCLUSION

The examination of the dynamics between stakeholder and shareholder primacy in the context of information technology innovation and the new social developments have uncovered two phenomena in a heightened state of flux attempting to adjust to new realities.

Tracing the historic emergence and context of shareholder and stakeholder primacy in corporate governance has helped to understand their origin and key role in the evolution of the modern corporation. Moreover, it has also demonstrated the cyclical nature of the power distribution between them with one model of corporate governance gaining power over the other and vice versa in a cycle, driven by changes to the business environment and power distribution between key corporate actors. Ultimately, the historic overview of the development and dynamics between corporate governance models reveals their susceptibility and vulnerability to shifts in their environment. By examining the recent innovations in information technology, their effect on social interactions and information distribution and their contribution to a rapidly rising empowerment of key corporate stakeholder groups this thesis has identified some of the most important such influences behind the dramatic shifts in the global business environment. Moreover, the conducted research has helped establish a correlation between rising stakeholder empowerment and the increasing failures of the traditional shareholder-driven corporate governance. The conducted examination over shareholder primacy in corporate governance has revealed a model under a significant amount of pressure from newly empowered interest groups with a stake in company decision-making clamoring for a seat on the corporate governance table.

In this progressively stakeholder-dominated business environment, the old model of exclusive shareholder interest consideration and short-term value maximization has gone increasingly inadequate. The examined case-studies of the strings of actual high-profile corporate failures in the early 2000s and in light of the 2008 Economic Crisis have provided grounds to examine the effects of shareholder primacy in corporate governance models in the new world of increasingly influential stakeholder views. The resulting conclusion has helped to highlight the failures and shortcomings of the classical governance model. In parallel, our review of the characteristics of stakeholder primacy with its nature of inclusivity of interests' consideration, heightened mindfulness for the evolving role of the corporation in modern society and awareness of the new key influences over corporate businesses has helped determine it as the most befitting replacement for shareholder primacy. Its replacement value also stems from the fact that the model is capable of incorporating the consideration of shareholder interests while also accounting for diverse stakeholder views in corporate decision-making and not necessarily losing sight of the core purpose of the company – to realize profits.

Ultimately, the collective research and examination of the vastly diverse legal, economic, business and social sources of knowledge, combined with the high number of real-life cases has helped conclude that both shareholder primacy and stakeholder primacy are well established and developed across academia. Further, the two models find a solid representation in legal systems across the world as well as in the corporate statutes of companies. However, the undisputedly predominant model of shareholder primacy is under an increasing amount of pressure thanks to the fundamental shifts in the global business environment caused by a technology-driven social communication revolution, which has most notably resulted in redistribution of power and influence across key corporate stakeholders. The increasing stress over the old model across affected state legislations, combined with the rising view in support of changing the model puts stakeholder primacy in the most suitable position as the approach to replace shareholder primacy in order to help companies survive and thrive in evolving business world.

Going one-step further in these observations, the need for a shift towards stakeholder primacy highlighted by this thesis is becoming a subject for debate at the highest public and private levels with international organizations[484], educational institutions[485] and large institutional investors[486] taking an active stance in support of stakeholder interest representation and long-terminalism in corporate goals. This cements the current position of rising stakeholder primacy as part of the future development tends in corporate governance as more and more research highlights the positive impact of stakeholder interest representation over corporate performance.

But the debate over the focus of corporate governance is far from over. Stakeholder primacy is just one of the many directions the phenomena is being pulled into with rising disruptive technologies creating additional pressure on corporate governance to evolve in the new business world. While this thesis focused exclusively on the social impact of new technology on stakeholder groups and their influence over corporate business practices disruptive innovation through Artificial Intelligence and Blockchain Technology is poised to rework the face of corporate governance in a much more fundamental manner[487].

Today corporate governance models continue to change in order to accommodate a shifting business environment and rising social expectations of an increasingly well-informed stakeholder base. External pressure to change notwithstanding, the phenomena's evolution also depends on the willingness of national legislators to support corporate business in its evolving role by enacting positive legislation. It also requires that companies be willing to take on the risk of transcending their traditional moneymaking role and choosing to develop as stakeholder oriented disruptors in favor of long-terminalism.

[484] (International Finance Corporation, 2019)
[485] (O'Kelley, Goodman, & Martin, 2019)
[486] (Fink, Larry Fink's Annual Letter to CIOs. A sence of Purpose, 2017)
[487] (Fenwick, McCahery, & Vermeulen, 2018)

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