

Editorial: Reforming Corporate Governance: News Rules or New Culture?

ARAD REISBERG,¹ STELIOS ANDREADAKIS² AND
FRANCESCO DE PASCALIS³

On 08 June 2018 Brunel Law School, London hosted the inaugural conference ‘Reforming Corporate Governance: News Rules or New Culture?’ a timely, yet controversial and divisive topic.

In the morning session, aptly titled ‘Culture in Corporate Governance and Good Governance Culture’ contributors addressed the role of culture which has been widely recognised as critical to the effectiveness of corporate governance frameworks around the world. Concerns about the regulatory involvement in corporate culture continuously straddle the balance between regulatory intervention and a robust business culture. A beneficial culture within an organisation include board diversity, executive remuneration, accountability, shareholder empowerment and stakeholder engagement. The second panel titled ‘Behavioural risk, culture and regulation in the financial services industry’ offered fresh perspectives on the current state of play on regulating conduct and culture in the financial services industry, with particular focus on the banking sector as the epicentre of noteworthy scandals. To conclude with, the roundtable discussion ‘Culture and Regulation: The Way Forward’ which Professor Arad Reisberg chaired evaluated the impact that regulation has had so far on influencing and shaping culture. It included contributions from Vanessa Knapp (Oxford, Queen Mary, Brunel Law School), Anthony Fitzsimmons (Reliability UK) and Dr Paola Manes (University of Bologna). The provocative discussion touched on plausible answers to questions varying from whether changes in culture are necessary for improving corporate governance to whether we need to change the rules of the game or the role of the players, including regulators and executives. Unsurprisingly, the discussion raised more questions than answers.

This Special Issue of the *European Business Law Review* brings together beautifully the variety of contributions and aspects discussed at the Brunel Law School’s June 2018 conference. The papers compiled in this issue cover the two realms of the conference, namely, the role of culture in Corporate Governance and behavioural risk, culture and regulation in the financial services industry. They make a fascinating mix, both in terms of their topics as well as the perspectives.

¹ Arad Reisberg is Professor of Corporate Law and Finance and Head of the Brunel Law School, London.

² Stelios Andreadakis is Senior Lecturer in Corporate and Financial Law and Director of Postgraduate Programmes in Brunel Law School, London.

³ Francesco De Pascalis is Lecturer in Financial Law at Brunel Law School, London.

Stelios Andreadakis' (Brunel Law School) paper 'Enhancing Whistleblower protection: It's all about the Culture' touches on the unresolved problem of whistleblower protection. It argues that, since law and policies currently in place internationally do not offer sufficient assurances to potential whistleblowers, it is essential to reinforce these rules and policies and make them more focused on corporate culture. In particular, Andreadakis argues that whistleblower policies can contribute towards the creation of a culture of openness and honesty, by reason of whistleblowing being not only an instrument of good governance but also a manifestation of a more open culture.

Marios Koutsias' (University of Essex) paper argues that national company laws are deeply rooted in national culture. Corporate governance evolved into an arena where fierce corporate culture wars were fought for decades. Interestingly, the paper argues that Brexit will probably provide a great impetus for convergence at the EU level and that the prospect of a single European company will become more realistic. It concludes that Brexit will decisively tip the balance towards a stakeholder model of corporate governance. It would be fascinating to observe if, indeed, the company that is now only nominally a "European Company" can be transformed to a European one within the next decade or so.

Ioannis Gkliatis (University of Hertfordshire), Dimitrios Koufopoulos (University of London) and Aspa Pastra's (World Maritime University, Sweden) paper aims to explore the control role that board directors undertake and understand the impact of several board characteristics on these roles. Building on existing literature the paper develops a model to test the hypothesised relationships – i.e. directors' control role with board characteristics based on 115 responses received by directors in the UK. The analysis suggests some impact of the board characteristics on what directors do, extending the limited empirical evidence found in the literature.

Finally, David Gibbs' (UEA) and David Gindis' (University of Hertfordshire) paper suggests that despite convergence of the UK system towards the US model, each system continues to diverge as regards levels of shareholder enforcement. It argues that this divergence can be explained by the way the courts implement the derivative procedure *de facto*. A compelling comparative assessment implementation in the US and the UK is conducted which reveals that while courts in both systems are reluctant to interfere with the business judgment of the board, the US courts are willing to analyse whether board decisions were substantively reached, contributing to the levels of enforcement. Conversely, UK courts place a high evidentiary burden on the shareholder, which they are unlikely to meet. Furthermore, costs continue to serve as a strong disincentive for private shareholder enforcement and good governance.

Moving to the second theme of the conference, i.e. behavioural risk, culture and regulation in the financial services industry, it is vital to remember that identifying, analysing and tackling this risk has become essential in making financial firms take proactive steps against a common problem: the way misconduct risk is understood determines the ways for dealing with it properly. Francesco De Pascalis' (Brunel Law School) paper addresses the question of whether regulators' and policymaker' inter-

pretation of the term ‘conduct risk’ constitutes a solid, clear and consistent basis for financial institution proper understanding and management. As De Pascalis explains, conduct risk is a new concept that emerged in the wake of collective conduct failures in the financial services industry. As such, it lacks a specific definition as a one-size-fits approach in its management is not possible because firms have different conduct risk profiles. That said, definitions are essential to stimulate discussions and create convergence on meanings. The paper concludes that the way conduct risk is interpreted by regulators is far from clear. This has some devastating ramifications, as the paper reveals.

Alan Brener’s (Banking Standard Board) paper considers aspects of the role of the compliance department and its leader: the Compliance Officer. It suggests that the traditional role for the compliance functions is insufficient to meet the increased expectations placed on the role. Limiting its operations to advising, monitoring and reporting is no-longer enough. Therefore, it is not surprising that Brener suggests that going forward the compliance office is likely to be a focal point of regulatory attention.

Paola Manes’ (University of Bologna) paper addresses the assessment and management of conduct risk within financial institutions. Beginning from the crisis of trust in the financial industry generated by the last global crisis, it revisits the attempts by governments and regulators to fix the main deficiencies in the existing regulatory framework, with reference in particular to the field of corporate governance. It would be interesting to bring to life some of the possible future actions for financial institutions skillfully suggested by Manes, including the introduction of internal models tailored to assess and understand the various aspects of organisational conduct.

This excellent collection makes for an intriguing read and timely contribution to current debates. It won’t be too far-fetched to conclude that the topics explored and analysed in this Special Issues will remain on the agenda of the European legislator for the foreseeable future. Valuable conclusions with a view to the current, and possibly future, state of affairs might also be drawn from the contributions to this Special Issue.