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Succession's Lessons for the UK's Dual Class Shares Debate: Beyond the Founder as the Benign Genius

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Abstract
UK law is currently debating whether companies whose founders have enhanced voting rights, known as a 'dual class share' structure, should be allowed to be listed on the premium list of the London Stock Exchange. This article posits that those arguing for dual class shares argue, ultimately, that founders may be benign geniuses who should be freed from market forces. It argues that the television show *Succession* illustrates that it is not inevitable that a founder be so: the Roy family's misdeeds echo traditional corporate law warnings about the dangers of managerial excess. Law needs to regulate the Roys as well as any benign genius.

Keywords
corporate law; company law; dual class shares; agency costs; founders; law and culture

I. Introduction

It can sometimes seem difficult for corporate law analysis to engage with different methodologies. So much of corporate law analysis is dominated by economic analysis,[1] that it seems there is little conceptual space for engagement elsewhere. Certain fields act as the exception to this rule – for example, the enduring debate as to separate legal

1. For example, Henry G. Manne, "Our Two Corporation Systems: Law and Economics," *Virginia Law Review* 53 (1967), 259; Stephen M. Bainbridge, "Community and Statism: A Conservative Contractarian Critique of Progressive Corporate Law Scholarship," *Cornell Law Review* 82 (1997), 857.

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personality,[2] provides fruitful ground for law and literature methodologies.[3] However, in a number of modern debates no such link has been made. The purpose of this article is to draw a link between corporate law and an aspect of law and culture in respect of a current key debate – whether listed companies on the premium tier of the main market of the UK's stock exchange should be able to issue 'dual class shares'.

Dual class shares buck the traditional 'one share one vote' (or OSOV) approach, in which voting rights must be proportionate to economic interests. Instead, dual class share structures let certain managers of the company have votes in excess of their proportionate economic stake, whilst outside investors have fewer votes than equate to their proportionate economic stake. The argument in favour of permitting dual class shares instead of a mandatory OSOV approach mostly proceeds on the assumption that such managers may be benign geniuses who need to be left alone. It should be noted that whilst US literature assumes that the beneficiary of disproportionate voting rights to their economic stake will be 'founders' of companies under a dual class share structure, this is not necessarily the case – different jurisdictions will have different discourses on the subject.[4] We use 'founders' in this article to refer to such beneficiary solely for ease – the analysis equally applies to any dominant manager who would receive more votes than would be proportionate to their economic interest in a dual class system, and so founder should be read broadly to include all such management. A brief foray into currently popular culture provides that it is not inevitable that a founder is a benign genius. Indeed, watching HBO's television show *Succession* as a corporate lawyer makes it acutely evident that corporate law needs to provide for another type of founder, those like nefarious as the Roys in *Succession*, who dominate their fictional company Waystar/Royco.

Anglo-American corporate law has traditionally valued the OSOV approach to rights attaching to shares listed on stock exchanges – every share must carry with it a voting right proportionate to its economic value.[5] There have long been theoretical challenges to this paradigm.[6] Recently, though, proposals to change this have crystallised within the United

2. Susan M. Watson, "The Corporate Legal Person," *Journal of Corporate Law Studies* 19 (2019), 137; John Dewey, "The Historic Background of Corporate Legal Personality," *Yale Law Journal* 35 (1926), 655.
3. See Penny Crofts, "*Aliens*: Legal Conceptions of the Corporate Invasion," *Law & Literature* (2021), https://doi.org/10.1080/1535685X.2020.1862521; Jeanne Gaakeer, "'Sua cuique persona?' A Note on the Fiction of Legal Personhood and a Reflection on Interdisciplinary Consequences," *Law & Literature* 28 (2016), 287.
4. See discussion in Stephanie Ben-Ishai and Poonam Puri, "Dual Class Shares in Canada: An Historical Analysis," *Dalhousie Law Journal* 29 (2006), 117.
5. For discussion, see David L. Ratner, "The Government of Business Corporations: Critical Reflections on the Rule of 'One Share, One Vote'," *Cornell Law Review* 56 (1970), 1; Manning Gilbert Warren III, "One Share, One Vote: A Perception of Legitimacy," *Journal of Corporation Law* 14 (1989), 89; Grant M. Hayden and Matthew T. Bodie, "One Share, One Vote and the False Promise of Shareholder Homogeity," *Cardozo Law Review* 30 (2008), 445.
6. Henry G. Manne, "Some Theoretical Aspects of Share Voting," *Columbia Law Review* 64 (1964), 1427; Robert C. Clark, "Vote Buying and Corporate Law," *Case Western Reserve Law Review* 29 (1979), 776; Milton Harris and Artur Raviv, "Corporate Governance: Voting Rights and Majority Rules," *Journal of Financial Economics* 20 (1988), 203. Indeed, in the

Kingdom. The United Kingdom has faced recent calls to relax its OSOV requirement to enable companies to list on the premium tier of the main market of the London Stock Exchange with divorced economic and voting rights, primarily to maintain global competitiveness for the London stock market as a place to list shares.[7] Such divorce normally takes the form of dual class shares, where shares held by the founders of the company have advanced voting rights compared to their economic interests, and shares sold to the wider public have fewer voting rights compared to their economic interests.[8] This is particularly the case in fintech industries, where it has been stated that with dual class shares

> founders and other pre-IPO holders can keep hold of shares with enhanced voting rights, and sell a separate type of share to public shareholders. This flexibility can be particularly attractive to founders who wish to raise funds but still retain control and guard against unwelcome takeovers, particularly in the years immediately following an IPO.[9]

It is argued that this also provides benefits to public shareholders, who may be happily uninformed on matters to be voted on and be happy to sacrifice voting rights in exchange for enhanced economic rights.[10] As such, freedom to use dual class share structures on the stock exchange is argued to be merely a product of private bargaining, and so should not be prohibited.[11]

This article argues that implicit within the argumentation structures in current debates for the use of dual class shares is the conception that founders should be protected because they could be benign geniuses who should be left to take the company along with them to their inevitable next great idea. Even where it is conceded that this provides too much power to such founders, mechanisms are provided to mitigate that excess,[12]

United States, it is common to list shares with dual class shares – see Kosmas Papadopoulos, “Dual Class Shares: Governance Risks and Company Performance,” Harvard Law School Forum on Corporate Governance, June 28, 2019, Available at https://corpgov.law.harvard.edu/2019/06/28/dual-class-shares-governance-risks-and-company-performance/.

7. See Lord Hill, UK Listings Review, March 3, 2021, available at https://www.gov.uk/government/publications/uk-listings-review. This is a common reason for such relaxation – see Mary Leung and Rocky Tung, Dual Class Shares: The Good, the Bad, and the Ugly, 2018, available at https://www.cfainstitute.org/-/media/documents/survey/apac-dual-class-shares-survey-report.ashx. See also Min Yan, “Permitting Dual Class Shares in the UK Premium Listing Regime – A Path to Enhance rather than Compromise Investor Protection,” *Legal Studies* 42 (2022), DOI:10.1017/lst.2021.50.
8. See Bobby V. Reddy, “Finding the British Google: Relaxing the Prohibition of Dual-Class Stock from the Premium-Tier of the London Stock Exchange,” *Cambridge Law Journal* 79 (2020), 315.
9. Ron Kalifa, Kalifa Review of UK Fintech, February 26, 2021, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/978396/KalifaReviewofUKFintech01.pdf, p. 65.
10. Dorothy S. Lund, “Nonvoting Shares and Efficient Corporate Governance,” *Stanford Law Review* 71 (2019), 687.
11. Bernard S. Sharfman, “A Private Ordering Defense of a Company’s Right to use Dual Class Share Structures in IPOs,” *Villanova Law Review* 63 (2018), 1.
12. For example Marc T. Moore, “Designing Dual-Class Sunsets: The Case for a Transfer-Centered Approach,” *William & Mary Business Law Review* 12 (2020), 93.

implicitly stating that the overall benefits must outweigh the overall costs. This article then proceeds to challenge these implicit assumptions using the example of HBO's *Succession.*[13]

Succession follows the fortunes of the unsavoury Roy family. The patriarch of the family is Logan Roy, who turns 80 in the first episode of the television show. In that episode, it is noted that it was thought that Logan would retire on his 80th birthday as CEO of the company he founded, Waystar/Royco, but instead he 'shocks his family by announcing he's staying on indefinitely as CEO',[14] before promptly being incapacitated by a stroke. There follows an unseemly scramble for power over Waystar/Royco amongst Logan's children.

Throughout, it is implicit that Waystar/Royco's shares are listed on a stock exchange somewhere. First, references are often made to its 'stock price',[15] which is only of relevance when the company's shares are listed.[16] Second, one episode, set against the backdrop of a shareholder meeting, is called 'Retired Janitors of Idaho'.[17] This is taken from a statement by Roman Roy (one of Logan's sons) complaining that they had failed to obtain sufficient large shareholders to vote with them in order to push their preferred option through a shareholder meeting, and so were in the hands of retired janitors from Idaho. The implication is that the result of the shareholder vote is down to a large number of retail shareholders, each personally holding a small stake: a problem almost exclusive to listed companies.

This is redolent of corporate law's mater problem of research,[18] issues arising from the separation of ownership and control in US public companies between many disperse small shareholders and centralised management.[19] As such, it is heavily implicit that Waystar/Royco's shares are listed. The neglect by the Roys of the interests of shareholders and the wider company – indeed, their neglect of anyone other than themselves – thus provides an alternative paradigm of a founder to the benign genius implicit in the dual class shares debate. It is impossible to tell whether any particular founder will be such a benign genius or whether they will be a Roy. We, therefore, must be careful to avoid regulating only benign geniuses when Roys abound.

The Roys are, of course, fictional. But there are two key reasons why the debate about dual class shares can learn from watching *Succession.* First, a number of the ways in

13. See the official website for *Succession*, at https://www.hbo.com/succession. Citations of facts from *Succession* will be provided by reference to the link to official webpage for the episode in which such fact occurred.
14. https://www.hbo.com/succession/season-1/1-celebration.
15. Plunging stock prices is a recurring trigger for crisis – see, for example, season one episode three – https://www.hbo.com/succession/season-1/3-lifeboats.
16. John A.C. Hetherington and Michael P. Dooley, "Illiquidity and Exploitation: A Proposed Statutory Solution to the Remaining Close Company Problem," *Virginia Law Review* 63 (1977), 1.
17. https://www.hbo.com/succession/season-3/5-retired-janitors-of-idaho.
18. Roberta Romano, "Metapolitics and Corporate Law Reform," *Stanford Law Review* 36 (1984), 923.
19. Adolf A Berle and Gardiner Means, *The Modern Corporation and Private Property*, revised edition (New York: Harcourt, Brace and World, 1967).

which the Roys abuse Waystar/Royco in *Succession* are noted in theoretical corporate law as things that opportunistic insiders *could do*. Thus, the activities of the Roys are very similar to activities that corporate law scholars are concerned could happen and require to be protected against. As such, whilst the Roys may be hyperbolic and at an extreme end of the spectrum, they demonstrate an extreme example that rules will need to adequately govern: if a proposed law would make it easier for the Roys to abuse their position at Waystar/Royco then it is a bad law. The Roys, therefore, act as an illustration as to what a hypothetical founder could do. This evidences the need for any regulation to cater to potential Roys as much as benign geniuses.

Second, the boundaries of corporate law frequently blur with the boundaries of economics.[20] Economic analysis is frequently based upon specific case studies.[21] As such, it is coherent to examine issues in corporate law from the viewpoint of a specific case study.[22] It has been recently argued that comparative law can benefit from comparing with fictional worlds used in literature.[23] Indeed, it has been argued that fictional case studies can be even more illuminating than real-life case studies.[24] As companies themselves are frequently argued to be legal fictions,[25] fictional companies make for strong analysis of corporate issues.[26] This can easily be argued for the Roys: their hyperbolous ills can help us identify the worst ills that we need to protect against as a minimum. As fiction aggregates the worst corporate excesses into one distasteful family, it aids legal anaylsis – regulation should be able to stop the Roys at the very least. As such, a regulatory approach that would fail to stop – or, even worse, exacerbates – the Roys' self-aggrandizement must be flawed. This reflects approaches taken elsewhere within wider cultural legal studies – fiction can help us understand the nature of law, and so inform debates as to its future development.[27] Furthermore,

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20. See discussion in Simon Deakin, David Gindis and Geoffrey Hodgson, "What is a Firm? A Reply to Jean-Philippe Robé," *Journal of Institutional Economics* 17 (2021), 861 and related reply – Jean-Philippe Robé "Firms *versus* Corporations: A Rebuttal of Simon Deakin, David Gindis, and Geoffrey Hodgson," *Journal of Institutional Economics* (2021), DOI:10.1017/S1744137421000771.
21. For example, the study of the interaction between General Motors and Fisher Body is often deployed in analysis of the firm – see Benjamin Klein, "Vertical Integration as Organizational Ownership: The Fisher Body-General Motors Relationship Revisited," *Journal of Law, Economics & Organization* 4 (1988), 199; Benjamin Klein, Robert Crawford and Armen Alchian, "Vertical Integration, Appropriable Rents and Competitive Contracting Process," *Journal of Law & Economics* 21 (1978), 297.
22. See Jonathan Hardman, "Equity for Punks: Conceptual issues with public protections in offerings of shares to the public," *The Company Lawyer* 42 (2021), 322.
23. Jaakko Husa, "Comparative law, literature and imagination: Transplanting law into works of fiction," *Maastricht Journal of European and Comparative Law* 28 (2021), 371.
24. See Conor Casey and David Kenny, "How Liberty Dies in a Galaxy Far, Far Away: *Star Wars*, Democratic Decay, and Weak Executives," *Law & Literature* (2021), DOI: 10.1080/1535685X.2021.1991610, 3.
25. For example, Maximillian Koessler, "The Person in Imagination or Persona Ficta of the Corporation," *Louisiana Law Review* 9 (1949), 435.
26. See Crofts, "Aliens"; Gaakeer, "Note".
27. Husa "Comparative law", 375.

it has been argued that a part of cultural legal studies is to explore 'how texts of popular culture . . . and legal constructions . . . intertwine in our constructions, expectations and perceptions of law'.[28] This is the case even for texts which lack sophistication.[29] As such, we do not need to 'read' *Succession* in too much depth, but can instead take it as a simple allegory[30] of corporate excess: insiders will do all they can to maximise their own profit to the detriment of outsiders, and every feature of corporate law must be designed to minimise the damage so caused.

The rest of this article proceeds as follows: Part II explores the current debate in the United Kingdom as to whether to allow dual class shares and the protection of the benign genius in such debate; Part III explores the misdeeds of the Roys, the implications of considering them an alternative paradigm to that of the benign genius, and how we should regulate the Roys and Part IV concludes.

II. Implicit Assumptions in the Current Debate

1. The Theoretical Underpinnings of OSOV

We start, then, by exploring the current debate about dual class shares in the United Kingdom. It should be noted that there is no prohibition on a company issuing dual class shares – private companies frequently issue instruments with limited or no voting rights, with either fixed or variable economic returns.[31] The issue, then, is not the ability to have these share structures. Rather it is the ability to have such structures and obtain external finance from the UK's capital market for equity stocks. Even though this prohibition is not absolute – the United Kingdom's 'alternative investment market', or 'AIM', does not prohibit the use of such structures.[32] The AIM market, though, is targeted at smaller companies, and so Reddy states that 'it is unlikely that AIM would represent a suitable market to promote the levels of liquidity or raise the levels of finance required.'[33] Nevertheless, the issue is not about a company being able to issue dual class shares, but rather about the company's ability to have such shares listed on the UK's premium capital market. In other words, under current UK rules, there is a direct trade-off between retaining control and obtaining external finance from the public at large through an elite trading platform. This could be argued to reflect a clear policy choice: given that dominant forces have an option to either retain control (if they do not seek to raise external capital) or seek external capital, we err on the side of protecting those external investors who may invest in the

28. Crofts, "Aliens", 2.
29. Casey and Kenney, "Liberty dies", 2.
30. See Gaakeer, "Note", 293.
31. See Murray A. Pickering, "The problem of the preference share," *Modern Law Review* 26 (1963), 499. In the United States, see William W. Bratton and Michael L. Wachter, "A theory of preferred stock." *University of Pennsylvania Law Review* 161 (2013), 1815.
32. See London Stock Exchange, AIM Rules for Companies, January 1, 2021 – available at https://docs.londonstockexchange.com/sites/default/files/documents/AIM%20Rules%20for%20Companies%20%2801012021%29_1.pdf.
33. Reddy, "British Google," 325.

company, rather than the dominant investors seeking other people's money. This only applies to the most elite of the UK's markets – those that such investors will trust the most as places that they will invest their funds. As such, the public policy argument for protecting outsiders through the current OSOV rules on the United Kingdom's elite trading platform over protecting founders through a dual class share structure is clear.

The prohibition on dual class shares is also justified from mainstream economic analysis. Parties either have the option to buy goods and services on the open market, or bring them inside the joint control of the firm.[34] Thus, the decision to bring anything within the company[35] involves substituting the risk of market volatility for the certainty of control.[36] The problem, though, is that this control is not perfect – it usually involves the payment of a set amount for variable production outcome, incentivising the controlled party to not work as hard as they can, and so shirk.[37] Shirking constitutes part of a dominant analytical tool within corporate law – that of agency costs.[38] The best party to monitor those under the joint control of the firm, and thus minimise their shirking and agency costs, are those who hold the variable uplift in respect of the firm's joint activities.[39] In the company, this is said to be the shareholders, meaning that the shareholders are the best to monitor the activities of all other constituencies within the company.[40] This is achieved by giving shareholders rights to vote on corporate matters.

The application of this is most evident when faced with the management of the company. Management interests diverge from those of shareholders. Bainbridge uses the example of a company receiving a surprise financial windfall – which will cause each director to think '"I can either spend $100 million on a new corporate jet or I can distribute the $100 million to the shareholders by increasing the size of the dividend" Can anyone doubt that some boards will buy the jet?'[41] Thus whilst company management monitors other stakeholders,[42] that management in a publicly listed company is itself monitored by the shareholders who have voting control over them: shareholders will vote to fire subpar managers, and the market for company executives will prevent such managers from being reemployed in that capacity in other companies.[43]

34. Ronald H. Coase, "The Nature of the Firm," *Economica* 4 (1937), 386.
35. As the operationalisation of the firm – see Deakin, Gindis and Hodgson, "What is a Firm?".
36. For example, Thomas S. Ulen, "The Coasean Firm in Law and Economics," *Journal of Corporation Law* 18 (1993), 301.
37. Armen A. Alchian and Harold Demsetz, "Production, Information Costs, and Economic Organization," *The American Economic Review* 62 (1972), 777.
38. Michael C. Jensen and William H. Meckling, "Theory of the Firm: Managerial Behaviour, Agency Costs, and Ownership Structure," *Journal of Financial Economics* 3 (1976), 305.
39. Alchian and Demsetz, "Production." See also Oliver Hart, "An Economist's Perspective on the Theory of the Firm," *Columbia Law Review* 89 (1989), 1757.
40. Frank H. Easterbrook & Daniel R. Fischel, "Voting in Corporate Law," *Journal of Law and Economics* 26 (1983), 395.
41. Stephen M. Bainbridge, *The New Corporate Governance in Theory and Practice* (Oxford: Oxford University Press, 2008), p. 6.
42. Margaret M. Blair and Lynn A. Stout, "A Team Production Theory of Corporate Law," *Virginia Law Review* 85 (1999), 247.
43. For example, Eugene F. Fama, "Agency Problems and the Theory of the Firm," *Journal of Political Economy* 88 (1980), 288.

Such direct action, though, is considered to be very difficult,[44] and law is generally said to exacerbate this difficulty.[45] Thus shareholders have alternative options: it is often rational for shareholders to not try to engage any of their limited legal rights, and instead merely sell their shares on the public market.[46] This itself has a disciplinary effect on directors – shareholders selling their shares *en mass* drops the share price, which makes it attractive for industry players to buy such cheaper shares, replace the management with more competent management, and benefit from the increased share price arising from better management.[47] This is known as the market for corporate control.[48] The market for corporate control does not rely on the actual operation of this mechanic, but rather the implicit possibility that this can happen. The argument goes that management will behave optimally *to avoid* shareholders selling their shares and so triggering this mechanic. As such, the market for corporate control acts to discipline managers, as to retain their position for the future they curb any excess that could be obtained now from that position. This concept is premised upon, then, shares carrying the ability to ultimately remove management. Without such an ability, there is no market for corporate control. Thus, the one share one vote mechanic provides the means by which outside shareholders can perform this disciplining function. By linking economic interest to voting right, this market for corporate control can operate[49] – it is entirely predicated upon shareholders being able to remove management should they see fit. Ultimately, it assumes that if a rationally apathetic but dissatisfied shareholder sells their shares, the party buying them would be able to exercise voting rights to remove directors.

2. Providing for the Benign Genius in Dual Class Share Arguments

This move us to 'the most important issue in corporate governance today',[50] being the ability to allow dual class shares on stock exchanges. In a UK context, Reddy states:

44. Andrew Keay, "Company Directors Behaving Poorly: Disciplinary Options for Shareholder," *Journal of Business Law* (2007), 656.
45. Bernard S. Black, "Shareholder Passivity Reexamined," *Michigan Law Review* 89 (1990), 520.
46. For example, Anat R. Admati and Paul Pfleiderer, "The 'Wall Street Walk' and Shareholder Activism: Exit as a Form of Voice," *The Review of Financial Studies* 22 (2009), 2645.
47. Henry G. Manne, "Mergers and the Market for Corporate Control," *Journal of Political Economy* 73 (1965), 110.
48. Ibid; William J. Carney, "The Legacy of 'The Market for Corporate Control' and the Origins of the Theory of the Firm," *Case Western Reserve Law Review* 50 (1999), 215; Fred S. McChesney, "Manne, Mergers, and the Market for Corporate Control," *Case Western Reserve Law Review* 50 (1999), 245.
49. Michael C. Jensen & Jerold B. Warner, "The Distribution of Power Among Corporate Managers, Shareholders, and Directors," *Journal of Financial Economics* 20 (1988), 3; Robert C. Clark, "Vote Buying and Corporate Law," *Case Western Reserve Law Review* 29 (1979), 776.
50. John C. Coffee Jnr, "Dual Class Stock: The Shades of Sunset," CLS Blue Sky Blog, November 19, 2018 – http://clsbluesky.law.columbia.edu/2018/11/19/dual-class-stock-the-shades-of-sunset/.

> Google is a case-in-point – the founders, Larry Page and Sergey Brin, as of 31 December 2018, owned 51% of the voting rights of the company, but only 11.3% of the cash-flow rights. In the UK, on the most prestigious tier of the LSE's Main Market – the premium-tier – dual-class stock is prohibited, and the concept of one-share-one-vote (OSOV) is effectively prescribed. A company with the capital structure of Google would not be admitted to a listing on the premium-tier.[51]

The argument is usually advanced that this is putting off high tech companies from listing in London. Reddy argues that listing in the United Kingdom involves the founder giving up control[52] – and thus losing the ability to control director appointment and risking being ousted by the market for corporate control.[53] A company adopting a dual class share structure would tame the market for corporate control, protecting the company from opportunistic takeover, and freeing management to concentrate on long term value rather than being at the whim of shareholders who may push for short term share price gains.[54] Indeed, it is likely that shareholders may lack skill or competence to perform this disciplinary role ascribed to them fully.[55] Thus we see an inversion of the theoretical underpinnings of the market for corporate control: the disciplinary function of shareholders can be used for their personal gain, thus punishing management who do not maximise the share price immediately. Instead of greedy management needing to be held in check by shareholders (the arguments for OSOV), we have law needing to hold greedy shareholders in check. In the market for corporate control literature, every director could financially benefit at the expense of the company and shareholders exist as white knights to save the company; in dual class share literature, every founder just needs the time and space to make long-term investments for the company, and will do so as long as they are given protection and freedom to do so.

It is easy to see how the ability to list with dual class shares will benefit founders, who can raise finance for the company and personally without losing control over the company. Indeed, this may be more than personal control – the majority of these shares tend to be held by the family of founders, who also appear as paid executives.[56] Whether dual class share structures benefit non-founder co-investors is less clear cut.[57] Investors are likely to generate good returns if the founder has a good reputation and is talented as an implementer of a successful long term-project.[58] An entrepreneurial founder may have an 'idiosyncratic vision' for

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51. Reddy, "British Google," 317.
52. This is the issue arising in all IPOs – see Noam Wasserman, 'The Founder's Dilemma' (2008) Harvard Business Review, https://hbr.org/2008/02/the-founders-dilemma.
53. Reddy, "British Google," 323–4.
54. Reddy, "British Google," 328–9.
55. See Zahar Goshen and Richard Squire, "Principal Costs: A New Theory for Corporate Law and Governance," *Columbia Law Review* 117 (2017), 767.
56. Harry DeAngelo and Linda DeAngelo, "Managerial Ownership of Voting Rights: A Study of Public Corporations with Dual Classes of Common Stock," *Journal of Financial Economics* 14 (1985), 33.
57. See Daniel R. Fischel, "Organized Exchanges and the Regulation of Dual Class Common Stock," *University of Chicago Law Review* 54 (1987), 119.
58. Thomas J. Chemmanur & Yawen Jiao, "Dual Class IPOs: A Theoretical Analysis," *Journal of Banking & Finance* 36 (2012), 305.

the company.[59] Of course, they may not, or their idiosyncratic vision may not result in financial success. Thus, there is a difference between dual class shares with a talented founder and dual class shares without one. With dual class shares in the former, the talents of the founder will be unimpeded by the market for corporate control. However, with dual class shares in the latter, the subpar performance of a founder will not be able to be disciplined, as shareholders will not be able to vote to remove the founder from management of the company. Dual class shares thus limit the market for corporate control by limiting the power of shareholders to discipline managers. Whether this is good or not depends on the nature of the managers and the nature of the shareholders: if both are good or both are poor, the balance will not matter – but good shareholders and poor managers will require the market for corporate control; good managers and poor shareholders will require the protection of dual class shares.

It has long been argued that given the potential benefits of dual class shares and their risks, some middle way is needed in order to provide a balance.[60] This is usually provided by allowing dual class shares with some form of ‘sunset’ model to eventually end the founder’s dominance.[61] Different types of sunsets are proposed – sunsets that expire after a prescribed period of time,[62] sunsets which expire if the founder drops below a certain level of share ownership,[63] and sunsets that expire on transfer from the founder to a third party.[64] This is said to limit the ‘idiot heir’ situation, whereby the founder’s successors are less talented than the founder.[65] Of course, this assumes that idiot children were not granted advanced voting rights in the first place by being treated as founders with their own shares.

The issue with these protections, though, is that they are over-inclusive on two levels. First, they allow dual class shares for all types of companies, whether the company has a talented founder or not. As such, some companies which should be filtered out of the regime (i.e. those without founders who are special) are included. Second, they stop dual class shares for all types of companies, whether the party holding the shares is talented or not. Thus, even the transfer-based sunset option removes enhanced voting rights whether or not the founder’s successor is an idiot heir or an even more talented entrepreneur. This is because the filtering technique used is on the wrong plane – an ideal regulatory system would filter based on whether the nature of the founder made dual class-shares appropriate or not, rather than allowing for all and then removing them for all.

Corporate law normally argues that the fact that investors are willing to put money in such ventures is evidence that they must perceive the founders to be good.[66] However,

59. Zahar Goshen and Assaf Hamdani, “Corporate Control and Idiosyncratic Vision,” *Yale Law Journal* 125 (2016), 560.
60. For example, George W. Dent, “Dual Class Capitalization: A Reply to Professor Seligman,” *The George Washington Law Review* 54 (1986), 725.
61. See overview in Moore, “Designing Dual-Class Sunsets.”
62. See Lucian A. Bebchuk and Kobi Kastiel, “The Untenable Case for Perpetual Dual Class Stock,” *Virginia Law Review* 103 (2017), 585; Jill E. Fisch and Steven D. Solomon, “The Problem of Sunsets,” *Boston University Law Review* 99 (2019), 1057.
63. Sharfman, “Private Ordering.”
64. See Moore, “Designing Dual-Class Sunsets,” 141–65.
65. Bebchuk and Kastiel, “Untenable Case,” 605.
66. For example, Frank H. Easterbrook & Daniel R. Fischel, *The Economic Structure of Corporate Law* (Harvard: Harvard University Press, 1991), 6.

there are a number of reasons to doubt this.[67] Primarily, there is a likelihood of overconfidence in the investor's own decision making, meaning that they are more likely to believe in those founders who they have decided to invest in.[68] More generally, investors are unlikely to be purely rational in all of their decisions.[69] As such, we cannot rely on market forces themselves to provide such a filter between good and bad founders, and regulators will be similarly unable to ascertain *ex ante* whether a founder will be good or bad. In the United Kingdom, one attempt to resolve this focuses on market segments – particularly high-tech industries.[70] There is no guarantee, though, that a tech entrepreneur is inherently going to be good – indeed, there is an even higher risk that investors do not understand the sector, causing further market issues.[71]

At its heart, then, the dual class shares debate is about whether we should err on the side of ensuring that good investors are able to discipline bad managers, or whether we should err on the side of ensuring that good managers are able to be free from bad investors. Proponents of dual class shares, with whatever sunsets may be applicable, are arguing ultimately for the latter. Thus, the whole argument in favour of dual class shares is, at its core, that a founder could be a benign genius and thus should be protected. The argument about appropriate sunsets is, then, about when this protection should fall away for bad managers. The removal of such protection will, by its nature, be overinclusive for good managers (who should be protected longer) and underinclusive for bad managers (who never should have had such protections).

In addition to the public policy and economic arguments outlined above, there are further analytical arguments for erring on the side of protecting good investors. Whilst any dual class structure is in place, the investors will be unable to change the voting structure, as voting about the voting structure will be carried out under its existing terms.[72] Even worse, when shares are allocated with different classes in the United Kingdom,[73] the rights of one class of shares can only be amended with the consent of that

67. See overview in Jonathan Hardman, "The Plight of the UK Private Company Minority Shareholder," *European Business Law Review* 33 (2022), 87.
68. For example, J. Bradford De Long, Andrei Shleifer, Lawrence H. Summers and Robert J. Waldmann, "The Survival of Noise Traders in Financial Markets," *Journal of Business* 64 (1991), 1.
69. For example, Russell B. Korobkin and Thomas S. Ulen, "Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics," *California Law Review* 88 (2000), 1051.
70. Reddy, "British Google"; Kalifa, "Kalifa Review."
71. See discussion of the dot-com bubble crash in Alexander Ljungqvist and William J. Wilhelm Jr, "IPO Pricing in the Dot-Com Bubble," *The Journal of Finance* 58 (2003), 723. This justifies more regulatory restriction on founder activity rather than less – see Nathan J. Sherman, "A Behavioral Economics Approach to Regulating Initial Coin Offerings," *Geogetown Law Journal Online* 107 (2018), 17.
72. UK shareholders can amend articles of association by special resolution – Companies Act 2006 s.21 – but whether this passes or not is calculated by reference to existing voting rights – Companies Act 2006 s. 283. Thus, shareholders not only will have fewer voting rights, but also less of an ability to change these voting rights should they be dissatisfied with them.
73. Companies Act 2006 s.629.

class.[74] Thus, even if shareholders were able to amend the articles, they would not be able to take away rights from the holders of dual class shares. There is a difference between the right itself and the enjoyment of those rights – thus when one class of shares had a right to one vote per share and another had one vote per share, the former's rights were held to be unaffected when the latter elected to subdivide each share into five, thus giving them five votes for every one that they previously held.[75] Thus exactly how protected the founder would be under UK class rights rules will depend on the wording within the company's constitution. Such wording is likely to be dictated by the most powerful constituency within the company[76] – that is, the founder. As such, allowing a dual class share structure will provide the ability for founders to not just enjoy enhanced rights, but also entrench those enhanced rights pending the application of any sunsets required by law. This would leave non-founders without any meaningful remedy against founders in the meantime – even an exit would not be as disciplinary for bad management. As such, arguments exist in favour of erring on the side of protecting shareholders over protecting managers.

It would be hoped that bad managers self-filter by not attempting to adopt dual class share structures. This, however, assumes a degree of self-awareness that a bad manager may not have. It also assumes that such a bad manager is interested in achieving the optimal result rather than caring about themselves. Fiction demonstrates the dangers that can arise if this is not the case.

III. Succession and Its Lessons

Thus, we have seen that proponents of dual class share structures on listed markets aim to protect founders, in case they prove to be good, at risk of over-protecting bad founders. By exploring the misdeeds undertaken in *Succession*, we can see the lacuna this would risk creating. Any law in respect of dual class shares would have to restrain the nefarious activities of the Roys as much as protecting any benign genius. Indeed, a number of the Roy's misdeeds tie directly in to risks identified if founders or directors have too much power.

1. The Roy's Misdeeds: Exemplars of Risks of Control

There are five activities of the Roys that tie in neatly to concerns that have historically been raised in corporate law. First, it is noted above that an aspect of the important concept

74. Companies Act 2006 s.630. See discussion in Barney Reynolds, "Shareholders' Class Rights: A New Approach," *Journal of Business Law* (1996), 554; Kenneth Polack, "Company Law – Class Rights," *Cambridge Law Journal* 45 (1986), 399.
75. *White v Bristol Aeropleane Co Ltd* (1953) Ch 65. The logic was that the first shareholder retained the same right to the share – each share retained one vote – it was simply that the exercise of that right no longer mattered as much. See discussion in Brenda Hannigan, "Altering the Articles to Allow for Compulsory Transfer – Dragging Minority Shareholders to a Reluctant Exit," *Journal of Business Law* (2007), 471.
76. Jonathan Hardman, "Articles of Association in UK Private Companies: An Empirical Leximetric Study," *European Business Organization Law Review* 22 (2021), 517.

of agency costs[77] within company law[78] was concern that directors may feather their own nests rather than provide benefits to shareholders, with the exact example being that of a corporate jet. The Roy family's use of corporate jets is prolific in *Succession.*[79] In one deal struck with a large shareholder to retain corporate control, the family agree to give up their private jets.[80] Thus we have an immediate example of the Roys undertaking activity that has been warned by academics as a manifestation of an agency cost in which directors (the Roys) advantage themselves to the detriment of shareholders. That they only gave up their jets to secure the votes of a major shareholder and avoid a vote going against them demonstrates how valuable the threat of the operation of the market for corporate control can be, in practice, when faced with recalcitrant management.

Second, it is noted above that the first season of *Succession* commences with an 80-year-old Logan Roy announcing that he is to stay on permanently before suffering a stroke.[81] This, as the show's name indicates, triggers a succession war amongst Logan's children.[82] As Logan slowly recovers, his attention is fixed on maintaining his own position, even if he has to sacrifice other family members and strike deals with shareholders to retain his position.[83] This continues despite the fact that his lucidity is frequently questionable and questioned.[84] As such, there are questions about Logan's capacity to undertake his role, and yet he remains in post. This ties in to previous UK concerns that entrenched directors can be bad for the company.

The United Kingdom allowed for the creation of a company by registration in 1844,[85] and the report that preceded the statutory introduction cautioned against directors remaining in post for too long, stating:

> securing to particular individuals offices for life . . . is to be found sometimes in concerns that prove to be *bona fide* and successful; but it is a common characteristic of the worst kind of cases, and is always liable to the disadvantage of inducing a want of care and attention on the part of the person in whose favour it is made.[86]

To avoid precisely Logan's unwillingness to voluntarily step down, the 1844 act mandated the triennial retirement of directors.[87] The UK regime has slowly become more

77. For further discussion of agency costs, see Stephen A. Ross, "The Economic Theory of Agency: The Principal's Problem," *American Economic Review* 62 (1973), 134.
78. See discussion in Reinier Kraakman et al., *The Anatomy of Corporate Law: A Comparative and Functional Approach*, 3rd edition (Oxford: Oxford University Press, 2017), ch. 2.
79. A number of episodes feature the family on their private jets, for example, https://www.hbo.com/succession/season-3/1-secession.
80. https://www.hbo.com/succession/season-3/5-retired-janitors-of-idaho. See discussion in Michael Hogan, "Succession recap: series three, episode five – catastrophe strikes as Logan loses his grip." November 15, 2021, The Guardian.
81. https://www.hbo.com/succession/season-1/1-celebration.
82. https://www.hbo.com/succession/season-1/2-sh-t-show-at-the-f-k-factory.
83. https://www.hbo.com/succession/season-2/10-this-is-not-for-tears.
84. For example, https://www.hbo.com/succession/season-3/5-retired-janitors-of-idaho.
85. Joint Stock Companies Act 1844.
86. Select Committee on Joint Stock Companies, First Report, Vol VII, viii (1844).
87. Joint Stock Companies Act 1844 s12.

restrictive as to the contractual freedom to dictate bespoke rules for the removal of directors, culminating in a statutory right for shareholders to remove directors by resolution in 1948.[88] Provisions in the company's constitution providing weighted votes for directors in the event of such an attempt to remove them have been upheld, so that when there were three equal shareholders who were directors, an article which provided that upon a shareholder vote to remove a director, that director's votes had three times their usual voting rights was valid.[89] Thus, as a matter of UK company law, it would be fully valid for Logan to have enhanced rights upon a vote for his removal under the articles of association.[90]

It is not currently possible, though, for a company's founder to have this entrenchment ability and have the company's shares listed on the premium segment of the London Stock Exchange. Allowing dual class shares to be listed on this segment would enable Logan to fully entrench himself. Thus, if Waystar/Royco was listed on the premium list of the main market of the London Stock Exchange following the permission of dual class share structures, there would be no need for Logan to strike deals with dominant shareholders to retain his position – he would be able to retain his private jets, free from the fear of removal. It is up to the company's constitution as to when directors have to retire,[91] meaning that absent OSOV protections there is further space for constitutional manipulation by the dominant parties – the Roys. The UK's Corporate Governance Code provides for annual re-election of directors,[92] however, these only bind on a 'comply or explain' basis, which is open to abuse by inadequate explanation[93] – meaning that the OSOV mechanism is needed to discipline directors. In a world of dual class shares and Waystar/Royco listed on the premium tier of the main market of the London Stock Exchange, Logan Roy goes nowhere and has to provide no promises in exchange for retaining control following his incapacitation.

Third, the Roys delay disclosure of bad information wherever possible to the public market. Thus, when it comes to light that one division of the company had a historical problem with abuse and covering up wrongdoing, the family's main concern is to limit

88. Companies Act 1948 s185. See discussion of the trajectory in Hardman, 'Plight', 111–4.
89. *Bushell v Faith* [1970] AC 1099. See criticism of this judgment in Dan D. Prentice, "Removal of Directors from Office," *Modern Law Review* 32 (1969), 693.
90. It is worth reiterating that the constitution of the company is normally set by the dominant constituency within the company – see Hardman, 'Articles'.
91. See The Companies (Model Articles) Regulations 2008 (SI 2008/3229) Sch 1 para 18 for private companies and Sch 3 para 22 for public companies. It has been noted that the United Kingdom leaves significant amount of its corporate law to its constitution – see Susan M. Watson, "The Significance of the Source of the Powers of Boards of Directors in UK Company Law," *Journal of Business Law* [2011], 120.
92. UK Corporate Governance Code 2018, available at https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf, Provisions 17-23.
93. See discussion in Andrew Keay, "Comply or Explain in Corporate Governance Codes: In Need of Greater Regulatory Oversight?" *Legal Studies* 34 (2014), 279; Marc T. Moore, "Whispering Sweet Nothings: The Limitations of Informal Conformance in UK Corporate Governance," *Journal of Corporate Law Studies* 9 (2009), 95.

the information as much as possible.[94] It is usual for managers to want to delay the disclosure of bad information whilst expediting the disclosure of good information to boost the share price of the company.[95] So noted is this that regimes exist to make companies disclose matters to the financial market,[96] to mitigate the information asymmetry that exists between shareholders and directors.[97] In part, it could be argued that such an incentive to hide bad news arises from the market for corporate control, and as such, dual class shares could mitigate this risk.

However, disclosure of private information about the company's performance is seen as being vital to the overall functioning of the capital market,[98] and so failure to promptly disclose market information is a matter for public enforcement rather than private enforcement, with the UK's regulator able to impose an unlimited fine.[99] This demonstrates the need to ensure that a regulatory framework is consistent and coherent at protecting both individual investors and the workings of the market as a whole. As such, the Roy's conduct in delaying disclosure of bad news would (rightly) already be punishable if Waystar/Royco were a UK listed company on the premium tier of the LSE's main market. This demonstrates how legal regulation is required to mitigate certain incentives that management may have, including to avoid disclosing information that may risk lowering the company's share price.[100] We can look to the law's strong crackdown on the delay of disclosure as a mechanism to protect those harmed by the excessive actions of managers: capital market regulation is required and deployed to protect against managerial action.

Fourth, the checks and balances that corporate governance mandates for Waystar/Royco have been captured by the Roys. In particular, corporate lawyers are intended to be 'gatekeepers'[101] in corporate governance.[102] Lawyers are frequently seen as facilitators of corporate

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94. https://www.hbo.com/succession/season-2/6-argestes; https://www.hbo.com/succession/season-2/9-dc.
95. S.P. Kothari, Susan Shu & Peter D. Wysocki, "Do Managers Withhold Bad News," *Journal of Accounting Research* 47 (2009), 241.
96. For example, John C. Coffee, "Market Failure and the Economic Case for a Mandatory Disclosure System," *Virginia Law Review* 70 (1984), 717; Paul G. Mahoney, "Mandatory Disclosure as a Solution to Agency Problems," *University of Chicago Law Review* 62 (1995), 1047.
97. P. Ormrod & K.C. Cleaver, "Financial Reporting and Corporate Accountability," Accounting and Business Research 23 (1993), 431.
98. Ronald J. Gilson & Reinier H. Kraakman, "The Mechanisms of Market Efficiency," *Virginia Law Review* 70 (1984), 549.
99. Financial Services and Markets Act 2000, s123.
100. See the discussion in Emilios Avgouleas, *The Mechanics and Regulation of Market Abuse* (Oxford: Oxford University Press, 2005).
101. See discussion in Jonathan Hardman, "The Butterfly Effect: Theoretical Implications of an Apparently Minor Corporate Transparency Proposal," *Common Law World Review* (2021), https://doi.org/10.1177/14737795211037701.
102. See John C. Coffee Jnr, "Understanding Enron: It's About the Gatekeepers, Stupid!" *The Business Lawyer* 57 (2002), 1403; John C. Coffee Jnr, "The Attorney as Gatekeeper: an Agenda for the SEC," *Columbia Law Review* 103 (2003), 1293; Donald Langevoort, "Where were the lawyers? A behavioural inquiry into lawyers' responsibility for client's fraud," *Vanderbilt Law Review* 46 (1993), 75.

wrongdoing,[103] but it is argued that they should have a role in acting to ensure that executive directors do not commit any unlawful or unethical acts.[104] Whether they normally fulfil this role is a matter for debate.[105] However, the in-house lawyer in *Succession*, Gerri Kellman, acts mostly as the family's personal advisor – advising activity to help Logan's public image,[106] actively helping the family cover up and deal with the media fallout of a wrongful death caused by a family member,[107] acting to silence whistleblowers,[108] and assisting in the personal protection of a family member when faced with a spaceship explosion caused by that family member's actions.[109] It is variously revealed that Gerri is the godmother of one of the Roy children,[110] and there are recurring indications that she is involved in a sexual relationship with one of the other Roy children.[111] Shall also acts as Logan's choice for interim CEO of the company, demonstrating how in hoc she is to management and the Roys generally. Thus, there is no possibility that Gerri could be seen as a neutral principled gatekeeper for the company against the Roy family excesses, but instead it is evident that she, and the role that she holds, have been captured by them as a facilitator of personal control.

Similarly, independent non-executive directors (iNEDs) are silent and silenced. iNEDs are outsiders who are appointed on the board to oversee company activity and are seen as important monitors of executive directors.[112] Thus, they provide a check and balance on those running the company[113] – like the Roys – and can discipline them.[114] This should reduce agency costs arising within the company.[115]

103. For example, Stephen M. Bainbridge, *Corporate Governance after the Financial Crisis* (New York: Oxford University Press, 2011), ch. 6.
104. For example, Deborah L. Rhode and Paul D. Paton, "Lawyers, Ethics, and Enron," *Stanford Journal of Law, Business & Finance* 8 (2002), 9.
105. Richard W. Painter, "Transaction Cost Engineers, Loophole Engineers or Gatekeepers: The Role of Business Lawyers after the Financial Meltdown" in Claire A. Hill et al., ed., *Research Handbook on the Economics of Corporate Law* (Cheltenham: Elgar, 2012).
106. https://www.hbo.com/succession/season-1/7-austerlitz.
107. https://www.hbo.com/succession/season-2/7-return.
108. https://www.hbo.com/succession/season-2/8-dundee.
109. https://www.hbo.com/succession/season-1/10-nobody-is-ever-missing.
110. https://www.hbo.com/succession/season-1/9-pre-nuptial.
111. See https://www.hbo.com/succession/season-2/4-safe-room; https://www.hbo.com/succession/season-3/1-secession.
112. See Donald C. Clarke, "Three Concepts of Independent Directors," *Delaware Journal of Corporate Law* 32 (2007), 73; María Gutierrez & Maribel Saez, "Deconstructing Independent Directors," *Journal of Corporate Law Studies* 13 (2013), 63. See overall discussion in Jonathan Hardman and Nicholas Rowell, "The UK's Director Daisy Chain: Empirical Evidence of the Interconnectivity of UK Publicly Traded Companies," *European Business Law Review* (2023), (forthcoming).
113. Jeffrey N. Gordon, "The Rise of Independent Directors in the United States 1950–2005: Of Shareholder Value and Stock Market Prices," *Stanford Law Review* 59 (2007), 1465.
114. For example, Wolf-Georg Ringe, "Independent Directors: After the Crisis," *European Business Organization Law Review* 14 (2013), 401.
115. For example, Eugene F. Fama, "Agency Problems and Theories of the Firm," *Journal of Political Economy* 88 (1980), 288. This can include removing executives who otherwise would be reticent to leave – Andrei Shleifer and Robert W. Vishny, "Management Entrenchment: The Case for Manager-Specific Investment," *Journal of Financial Economics* 25 (1989), 123.

The technical term, iNEDs, is not used in *Succession*. Indeed, there seemed to be no strong outside voices on the board of directors able and willing to monitor the Roys. However, when Logan faces a vote of no confidence at board level whilst ailing, one of his sons visits a 'neutral' board member who lives elsewhere, Ilona Shinoy, to try to sway her vote. Given that most directors seem to be Roys or executives who report to the Roys, it would follow that such neutrality arose because Ilona was an iNED. She votes against Logan, but he wins the vote, and he fires Ilona from the board.[116] Thus, the Roys tame another element of corporate governance regimes in place to restrain them. As all these restraining devices fail in turn under assault from a 'bad' founder, the merits of the market power unleashed by OSOV become evident. Similarly, the risks to the other shareholders of Waystar/Royco under a dual class share structure become more pronounced.

These case studies of corporate failure all fall into the wider final fifth category, being that of a lack of care for the interests of the company. Waystar/Royco is its own separate person in law.[117] It is therefore its own separate entity, with its own set of obligations and rights, and its assets are divorced from the Roys.[118] By going through the 'mysterious rite' of incorporation,[119] any interests held by the Roys in the operation of the Waystar/Royco business were transferred to that separate legal person. The company, of course, needs humans to act through – and thus, the Roys may have taken on particular roles within the company – particularly those of directors and shareholders. The former owe duties to the company and so are restrained in respect of how they must act.[120] Shareholders are restricted as to what they can withdraw from the company[121] in that capacity.[122] Thus, by using an incorporated company, they swapped utmost control over the business for constituencies with key decision-making powers in the company. For so long as they retain the majority of each of those constituencies, they are able to mostly exercise dominant control over each of those constituencies (including their votes on company matters).[123] However, the company remains a separate person. The advantage of the OSOV mechanic is that the Roys would lose control over shareholder decision making proportionately to their lack of economic control.[124] The Roys care about neither

116. https://www.hbo.com/succession/season-1/6-which-side-are-you-on.
117. See Watson, "Corporate Legal Person," 137; Dewey, "Historic Background."
118. For conceptual issues arising as a result of this, see Chris M. V. Clarkson, "Kicking corporate bodies and damning their souls," *Modern Law Review* 59 (1996), 557; Peter A. French, "The corporation as a moral person," *American Philosophical Quarterly* 16 (1979), 207; Ngaire Naffine, "Who are law's persons? From Cheshire cats to responsible subjects," *Modern Law Review* 66 (2003), 346.
119. E. Merrick Dodd, "For Whom as Corporate Managers Trustees?" *Harvard Law Review* 45 (1932), 1145.
120. In the UK context, see Companies Act 2006 s170-187. See discussion in Rosemary T. Langford, "General law and statutory directors' duties: 'unmixed oil and water' or 'integrated parts of the whole law'?" *Law Quarterly Review* 131 (2015), 635.
121. In the UK context, see *Averling Barford Ltd v Perion Ltd* [1989] 4 WLUK 159.
122. See discussion of the UK position in Jonathan Hardman, "Sevilleja v Marex Financial Ltd: Reflective Loss and the Autonomy of Company Law," *Modern Law Review* 85 (2022), 232.
123. See discussion of majority rule in Hardman, "Plight."
124. This clearly raises the question as to whether the Roys should have such power if they did hold the majority, but that is outside the scope of this article.

the interests of the company as a whole nor shareholders more generally. Instead, they primarily care about not losing shareholder votes, because of the market for corporate control. Share price is only cared about because of the market for corporate control. Without OSOV, the Roys may not care about the company at all.

Most of the foregoing are a sign of management abuse. However, such abuse can normally be disciplined by shareholders – OSOV restrains such managers. The issue for Waystar/Royco, though, is that the Roys are dominant shareholders and the managers. It is clear that a number of corporate governance mechanisms designed to avoid such managerial excesses have failed. As such, it is evident that excesses can occur even under OSOV, and so OSOV is not a sufficient deterrence on its own. Nevertheless, the Roys spend a disproportionate amount of *Succession* ensuring that they have the votes of key shareholders[125] and the smaller retail investors – the many retired janitors of Idaho who own a few shares each[126] – in shareholder meetings. Indeed, part of such work is to try to evade a hostile takeover[127] – the instrumentalisation of the market for corporate control.[128] As such, outside shareholders holding votes do provide some protection to moderate the worst excesses that would be are not present under the dual class share approach. If Waystar/Royco moved to a dual class share structure, there would be even fewer restraints on the activity of the Roys, and the limitations on their excesses that the Roys have to agree to over the course of the show – for example, getting rid of their private jets – would not apply. When dominant managers are also dominant shareholders, there is already a risk that the line between company and personal interests blur. This would be exacerbated by dual class shares, as the ultimate disciplinary mechanism is removed. Whilst such structures may work for benign geniuses, they would be abused by the Roys to the detriment of all shareholders in Wayster/Royco not from that family.

2. Regulating the Roys

Obviously, the Roys are fictional and do not exist. Nevertheless, their misdeeds align too closely with concerns raised by corporate law commentators to dismiss as irrelevant. Indeed, it could be argued that the minimum that corporate law should ensure that it can do is discipline the Roys. The market for corporate control is the ultimate failsafe of corporate law for public companies: it is meant to mitigate the worst possible excesses of managerial abuse within public companies. As such, any dilution of the market for corporate control needs to ensure that it provides equally strong protections.

125. For example, https://www.hbo.com/succession/season-2/1-the-summer-palace; https://www.hbo.com/succession/season-2/7-return; https://www.hbo.com/succession/season-3/2-mass-in-time-of-war; https://www.hbo.com/succession/season-3/4-lion-in-the-meadow.
126. https://www.hbo.com/succession/season-3/5-retired-janitors-of-idaho.
127. https://www.hbo.com/succession/season-1/10-nobody-is-ever-missing.
128. Brian A. Korman, “The Corporate Game of Thrones and the Market for Corporate Control,” *Journal of Business & Technology Law* 12 (2017), 165. Of course, the ease of undertaking such activity can always be improved – see Bernard S. Sharfman and Marc T. Moore, “Liberating the Market for Corporate Control,” *Berkeley Business Law Journal* 18 (2021), 1.

Dual class share structures work well to insulate a benign genius from the abuse of this mechanism by opportunistic shareholders, but they provide a free reign to any potential Roy to abandon the last pretences that they have any interest in the company or fellow shareholders.

Clearly, dual class share structures provide benefits for companies with a benign genius. So how do we regulate both the benign genius and a potential Roy? Well, sunset mechanisms do a part of that. However, all sunset mechanisms have their flaws, which all relate to over-regulating the benign genius or under-regulating a potential Roy. A short time-based sunset provides limited protection for the benign genius, but disciplines a potential Roy; a long time-based sunset lets the potential Roy run loose whilst protecting the benign genius. A sunset based on the transfer protects the benign genius, but gives free reign to the potential Roy – especially if children are allocated shares, or complicated trust or quasi-corporate structures are established for perpetual existence for the vehicle enjoying the benefit of the sunset. A sunset based on owners falling below certain thresholds provides opportunities for the potential Roy to manipulate shareholdings to ensure this never occurs and their supermajority remains.

Life would be simpler if we were able to tell *ex ante* which founders would act as benign geniuses and which would act as a potential Roys, and regulate each differently. For obvious reasons, though, such a filtering mechanism is impractical. So how can we cater for both – providing security for the benign genius and restraint for the potential Roy? A number of options arise. First, the lack of the market for corporate control does not mean that individual shareholders will not want to sell their shares if the company is run badly. Indeed, when we factor in the tendency for managers to want to delay bad news without some form of restraint, the control management can have over various company functions, and the lack of a disciplinary market to force managers to follow shareholder interest, we can see that non-founder shareholders in DCS structures have a claim to be told more about the activities of the company. Thus, it would be easy to increase mandatory disclosure requirements if a company were to adopt a dual class share structure. This would ensure that founder control could not stifle the flow of information (as the potential Roy wants), whilst still protecting a benign genius (who would not be able to be removed or stymied in their activity). Second, we can imagine that DCS status could apply to some matters – such as the core business direction of the company, and any votes to remove directors or change the management team – but not others. Easy examples would be approval of executive pay.[129] Expenditure which benefits founders/managers rather than the company could also fall into this category – a corporate jet, or a particularly expensive office lease, or long-term incentive plan could be carved out of DCS structures. This would provide the benign genius with the stability required whilst allowing other shareholders a veto on potentially self-aggrandising spending. If we remove the background failsafe of the market for corporate control, we need to replace it with some foreground limitations on founder/managerial excess to control the potential Roy. Third, we could cap the voting advantage held by founders, such that they could still be outvoted by, say, unanimity from non-founder shareholders.

129. See discussion in the UK in Betty (H.T.) Wu, Iain MacNeil and Katarzyna Chalaczkiewicz-Ladna, "'Say on pay' regulations and director remuneration: evidence from the UK in the past two decades," *Journal of Corporate Law Studies* 20 (2020), 541.

Fourth, the most dramatic option would be to provide non-founder shareholders with a firebreak option. Thus, if a certain super-majority of non-founders voted to do so, any DCS structures would revert to OSOV. This would provide shareholders with an ultimate nuclear option if they thought that they were investing with a benign genius but found themselves dealing with a Roy. After all, economic analysis tells us that the best constituency to monitor others is the one receiving the residual claim – the economic stake in the company. Thus, any exception to that should be capable of being removed by those with such an economic stake if they are faced with recalcitrant shirkers in their management.

IV. Conclusion

The dual class share debate will continue to rage in the United Kingdom. Those in favour of dual class shares wish to protect each benign genius, and ensure that they can let their company flourish. *Succession* teaches us, though, that we need to regulate not only just for the benign genius but also the potential Roy. Indeed, the Roys provide an alternative paradigm and way of thinking about corporate law reform. Rather than ensuring that our priority is protecting a benign genius, we should ensure that the priority is protecting retail investors against the potential Roy. Hopefully, in most circumstances, both policy goals could be achieved, but the latter seems to be more important.

Following that policy goal, if we allow dual class share structures, then we need to find some way to temper the risks of them. Increasing disclosure, excluding certain matters from dual class decisions, capping the vote disparity, and allowing a firebreak are all options available to mitigate the exacerbation that the dual class share structure would provide for the nefarious activities of the Roys. Of course, there are wider issues at play: such as what the dominance of the Roys say about power dynamics in public markets. These also transcend fiction, as the UK public markets have a history of rewarding the decisions of charismatic but flawed business leaders with a rise in share price divorced from the financial merits of the underlying decisions.[130] Space restrains us from exploring these concepts in further detail – future research is needed to identify the full extent of the role that power dynamics play on the capital market. Suffice for us to note, though, that if and when market sentiment turns against such a dominant person, under an OSOV system, there remains a disciplinary power which is lacking under dual class share systems.

The operation of a company is at the heart of *Succession.* It is not the only work of fiction, though, that portrays corporate life and activity. Writers of such fiction inevitably have very little corporate law training. It is possible to see this as a reason to reject the relevance of fiction in corporate law. It may be more fruitful for the discipline, though, to use these insights to explore how corporate law will react to wrongs that fiction writers imagine *could* happen within the company. If such wrongs prove impossible in real life, then the law has the protective function it needs. If, however, such wrongs could be achieved under the existing regulatory framework, then the law should change. In either

130. Evident examples are Robert Maxwell (in respect of a large business empire, including the Mirror Group) and Asil Nadir (in respect of Polly Peck International) – see discussion in Robert Wearing, *Cases in Corporate Governance* (London: Sage, 2005), Ch 4 and Ch 5.

event, though, it is pertinent that someone outside the field would conceive that such a wrong *could be possible.* If that perception is correct, then the legal landscape needs to change. If that perception is incorrect, though, then corporate law needs to work on its PR machine. Given the high number of non-expert retail investors investing through public markets, corporate law providing required protections that the wider world is not aware of is nearly as bad as corporate law not providing such required protections. For now, though, we should ensure that any future UK regulation on dual class shares works for both benign geniuses and any potential Roys.

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