From critics of corporate governance to critical corporate governance

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“Orthodoxy, meaning incapable of thinking a bad thought”
George Orwell Nineteen Eighty-Four (Secker, 1949)

Challenging orthodoxies would require firstly to explain what ‘orthodoxy’ is. One should think of it as a common knowledge or as a kuhnian paradigm: if so, to tell orthodoxy from non-orthodoxy would be only a matter of accuracy or even of truth – but therefore challenging orthodoxies would be off the scientific field. But alternatively many social sciences tell us that we should think of orthodoxy as the attractive stake of the field and the standard way of acting and thinking under the domination of a group over a social field (a scientific field — economics for that matter — or a professional one — management): who holds the key professional functions, who are the gate keepers, what kind of group rules the field, who is best awarded in the field, etc.? Hence the orthodoxy is the mainstream behaviour mastered and regulated by this ruling group¹— not to say these behaviour and ideas are wrong or bad, but that the selection also depends on non moral or non scientific criteria. As a result, one should challenge scientific orthodoxies by searching a different method, a different behaviour rather than searching just a contradictory conclusion — unless you want to become the next orthodoxy by being a mere reverse of the current one. This is the guideline of this article.

It discusses the theories of the corporate governance by addressing three stakes with regard to the issue of the governance — so we assume it to be relevant and useful to distinguish the notion of governance and the notion of government—:

i) which rule of access to the decisional authority upon the firm (corporate government)?

ii) which rule of implementation of the decisional authority (corporate management)?

iii) which rule of influence upon the corporate management (corporate governance)?

Along these bottom lines, the article draws out the pattern of the mainstream theory of the corporate governance (section A), then (section B), from both the theory of regulatory systems and the Fraser’s theory of social justice, argues for the critical theory to be an institutional political economy of the corporate governance: we eventually stresses three power-laden stakes (market power, rule power, value power) of the corporate governance. Hence a genuine critical theory of the corporate governance is non technically prescriptive but politically prescriptive, which is to say: it doesn’t tell who is entitled to handle the government of the firm, but who is entitled to debate of “three levels of rules” upon the corporate governance, management and government. Which is a democratic prescription, shifting the corporate from a private space into a public space – even if it remains a private property.

¹ As illustrated by the answer to the Queen of England who asked the audience of economics professors while visiting the London School of Economics in November 2008: “Why did nobody notice it?” One of the professors was reported as replying: “At every stage, someone was relying on somebody else and everyone thought they were doing the right thing.” (Daily Telegraph, 5 November 2008).
A/ What the mainstream theory of the corporate governance tells the society

A/1 The ‘one best way’ of the hierarchic shareholder regime of governance

The mainstream economics theory of the corporate governance is based on two statements:

i) the design of the corporate governance must be shaped by the norm over the interactions between the labor and the capital ; either the standard interaction is a free choice, and, as a mere market of labor and of capital, the corporate would be a ‘black box’; or the norm is the right of property which states that the corporate is owned by its shareholders who therefore are the ones who have the right to access the government of the firm.

This statement, which refers to the imperfect competition hypothesis, is nowadays the mainstream theory of corporate governance both through the theory of agency [Jensen, Meckling: 1976 ; Shleifer, Vishny: 1986] and the incomplete contracts theory [Hart, Moore: 1990]. It has shaped the model of the corporate governance upon the only criterion of economic efficiency, and most often narrowed it down to the stake of the financial value served to the shareholders.

ii) The shareholder government is assumed to be the only one best because:

—either the decision making process of this design would be the most rational (perfect or strategic) one to achieve the best assignment of labor and capital and their most efficient combination (production function). Which led Friedman [1970] to deny the ‘corporate social responsibility’ to become the standard guideline of management as it induces costs —and therefore a loss— to the company, which only shareholders have the right to decide of.

—or the free competition would work for this best governance pattern to be selected, as a ‘natural selection’ would eliminate the weakest ones (those companies which have the least, or even negative, returns to their investments) and reward the wealthiest ones. Which implies that any alternative patterns of governance are assumed to be less efficient, unfair (to workers as to capitalists whose incomes would be lower according to the Pareto criterion of justice) and somehow illegal (for it would violate the right of property).

With a view to the three issues we have underlined supra in the foreword, such a mainstream design of the corporate governance —we call it ‘hierarchic regime of (qualified shareholders) governance’ (see also box 2)— can be characterized as follow:

1. Only qualified shareholders can be entitled to take over the corporate government (rules of access to the decisional authority upon the firm): on the one hand there is a need for economic efficiency which requires skills (historically: technical, then managerial, then financial ones) as the key criterion to access the decisional authority upon the firm; but, on the other hand, the law of business association institutes the property of assets as the prerequisite to access the corporate government.

2. Only a hierarchic pattern of the corporate management (rules of implementation of the decisions of the corporate government) guarantees that the decisions of the skilled government are well implemented —and not discarded or distorted— to work out the best possible output and welfare for all stakeholders beyond shareholders.

2 When the theory assumes the competition to be ‘perfect’.

3 This is what we called the « win-win myth », which was a standard managerial rhetoric at least since Taylor [1903, pp.95-96]: “the leading objects which [radical changes toward an improvement in the system of management] aims at, such as, for instance, rendering mutual the interests of employer and employee through “high wages and low labor cost”, the gradual selection and development of a body of first class picked workmen who will work extra hard and receive extra high wages and be dealt with individually instead of in masses. (...) All of this costs money, but (...) in most cases the new system more than pays for itself as it goes along (...).

Then, the men must be brought to see that the new system changes their employers from antagonists to friends who are working as hard as possible side by side with them, all pushing in the same direction and all helping to bring about such an increase in the output and to so cheapen the cost of production that the men will be paid permanently from thirty to one hundred per cent more than they have earned in the past, and that there will still be a good profit left over for the company.”
3. For the same reason, the access to the corporate governance\(^4\) (the rules to get influence over the corporate management) is mastered and to a certain extent controlled by the skilled corporate government: it takes the responsibility to analyze the economic power of each group they think could impact the value added of its firm (generally through the dependency on some natural or financial resources, the risks for the brand image of the firm, etc.); depending on that impact, the government will take into account the interests of effective groups (which therefore qualify as 'effective stakeholders') —and only theirs.

A/2 Some black holes within the mainstream theory of corporate governance

The mainstream theory of the corporate governance faces at least two types of problems, which the core debates about the corporate social responsibility (CSR) —far more than the reforms debate of the corporate government— have pointed out.

A/2.1 The private / public discrepancy

Firstly, the mainstream theory of the corporate governance can hardly enlighten the CSR debate —despite it also addresses the issue of the corporate governance [Post and al.: 2002]. Whatever the explanation is, it cannot tell how to get products and processes more socially or environmentally friendly:

1. the mainstream theory merely relies upon personal ethics [Evan, Freeman: 1993], which indeed took part in some improvements of the capitalism\(^5\), but a thin part indeed:
   - personal ethics of a manager or a shareholder is mostly a mere assertion of principles (ethics of belief) rater than an effective undertaking of the consequences of the violations of these principles or of the compliance with the expected behavioural norm (ethics of liability);
   - personal ethics is a unilateral commitment which only ties the manager down to it —but not the corporate as a body;
   - personal ethics can fit with the exclusion of some stakeholders: note for example that the right of association and the right of negociation are the ILO fundamental conventions are the most often ‘forgotten’ by the corporate codes of conduct [EU parliament inquiries];
   - and, as the average is not a win-win game, some ethical voluntarism can be lethal for the sustainability of the firm [Baumol, Blackman: 1991] (this perhaps would explain why socially responsible investments (SRI) remain marginal despite their growth).

2. or the mainstream theory necessarily leads to the managerial ‘triple bottom line PPP’, which means that the firm may achieve environmental (“Planet”) or social improvements (“People”) only after financial goals (“Profit”) have been reached. This line of management is based on the Porter hypothesis [Porter, Van der Linde : 1995] which assumes that an management operating along the lines of the sustainable development would result in a higher productivity, and therefore in financial gains. Many business cases argue for this hypothesis. But one should not forget that Porter eventually pointed out the passivity of the firms and that the state has to enforce a regulation in order to achieve the expected environmental improvements. And, moreover, the Porter hypothesis is seldom proved [Margolis, Elfenbein : 2008]: in average, econometrics shows no correlation between social or environmental achievements and the financial output\(^6\); if ever, the correlation may be even negative; and positive correlations appear not to be strong ones (Hitchens et alii [2001]; see also the meta-analysis by Orlitzky et alii [2003]; Boyd et alii [2006]; a recent study for the textile and apparel industries: Blais et alii [2009\(^7\)].

So, in average, this argument appears to be a stalemate: both the three goals of the PPP bottom line are

\(^{4}\) “Corporate governance is the set of processes, customs, policies, laws, and institutions affecting the way a corporation (or company) is directed, administered or controlled. Corporate governance also includes the relationships among the many stakeholders involved and the goals for which the corporation is governed. The principal stakeholders are the shareholders, the board of directors, customers, users, creditors, suppliers, and the community at large” [Wikipedia]

\(^{5}\) Among others, see Arnsperger and Van Parijs [2000], Salmon [2002] or Mercier [2004].


\(^{7}\) L’étude porte sur 19 entreprises, à partir d’un échantillon initial de 253 firmes, ayant adopté un code de conduite. Elle suggère un effet non significatif, sauf dans le secteur cuir-chaussure et une corrélation négative avec la taille de l’entreprise.
most often conflicting [Margolis, Elfenbein: 2008] while the shareholders are entitled to favor their financial interest; while, whatsoever, the externalities generated by the business of the firm must be regulated in the very view of the mainstream theory itself that nonetheless often disputes the assignment of private resources to the collective bodies required to achieve an effective regulation.

One should not be surprised that the mainstream theory has been often used to serve the sole interests of the shareholder: the theory of agency is often referred to to favour the primacy of the shareholder’s interests over any other stakeholder’s interest (see the numerous ‘reforms’ of the corporate government in many countries since 1995: Cadbury, Sarbane-Oxley, Vienot…).

A/2.2 The democratic issue at stake in economic life and institutions

The second problem with the mainstream theory of corporate governance comes from its utilitarian philosophy: the primacy of ‘efficiency’ imposes upon any other goal, and allows the manager to:

i) to establish as stakeholders the groups to whom he recognizes an economic power on profitability of its firm;
ii) to ignore any group who doesn’t hold such a power. As a result, the sustainable development goals that an enterprise assigns to itself may be irrelevant from the point of view of some stakeholders; and the ignored stakeholders can have the feeling of a misrecognition, or even to be excluded from the social field.

For example, the incomplete contracts theory easily extends the commitment of the firm to stakeholders other than shareholders by way of its contracts (still voluntary moral or economic commitments) each time such commitments result in increasing or preserving the value added of the firm (while the financial sustainability of the firm itself is assumed to be the first step toward the sustainable development). Or the commitment of the firm is extended by way of the generalized theory of agency [Hill, Jones: 1992]. Therefore, the mainstream stakeholder theory [Freeman: 1994], though it states that the firm must take into account the interests of all stakeholders, doesn’t qualify for a critical theory of the corporate governance, as it faces the same sort of problems as the mainstream theory of corporate governance: who has selected the stakeholders? how to harmonize the conflicting interests among them? and, besides, what would lead the firm to serve all the stakeholders? The stakeholder theory mostly displays utilitarian answers: to be a stakeholder requires some resources of power upon the firm, because the firm needs your natural resources, because you can hurt its brand image, etc.

Hence some non-profit organizations, as Amnesty International among others, argue against such a CSR concept which primarily sustains a managerial and shareholder conception of liability. Instead, they argue for the notion of “corporate responsibility for the human rights” as “the notion of human rights turns people into entitled bodies in law; the frame of the human rights is a steady and universal one, which is made of inseparable interacting rights generated by the international sources of the law (primarily ILO and UNO); and this provides a ground of negotiation for social players and a resource for the victims to subject to trial.

Hence there is a need for a critical approach of the corporate governance. But which one? Coming back to the basic Freeman’s principle [1994] to identify a stakeholder (“Who and what really counts?”) leads us to follow the Fraser’s theory of social justice which provides an answer in terms of both redistribution and recognition that involves incomes and status. This comes along with another line of analysis, in terms of capabilities and participation to the economic life, which denies any scientific theory to impose the only ‘one best’ pattern of social institutions—and economic institutions among them.

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8 At least those in the majority, as a matter of fact.
9 “I shall consequently propose an alternative approach: that of treating recognition as a question of social status. From this perspective, what requires recognition is not group-specific identity but the status of individual group members as full partners in social interaction.” [Fraser: 2000]
B/ What institutional economics of the corporate governance tells the society

As a starting point, the institutional theory of regulatory systems (ITR) — which has sometimes be referred to as the ‘French’ theory of regulation [Boyer, Saillard: 2002] — aims at explaining the processes by which a society manages to provide in the long-term for the material needs of its social reproduction, which is also a matter of recognition between incommensurable people: “there is no greater problem than dealing with the problem of re-producing the problem of social belonging” [Aglietta: 1982]. Hence the patterns of the economic activities are mostly shaped by the relationship for social recognition and material efficiency — in the context when individuals deeply desire to expand their life being— for which they engage themselves in many symbolistic exchanges¹⁰, among which economic ones. The feeling of the social justice, as both recognition and redistribution, must also explain the frontier of a firm, the patterns of its governance and the values of the groups involved in a collective action.

The ITR deals with that issue along with the Commons’ theory of institutions (a “collective action in restraint, liberation and expansion of individual actions” [Commons: 1934, p.73]). And though it was initially close to the structuralist and the marxist theory, the ITR nowadays pays more attention to the interactions between existing institutions and acting individuals, always operating on a symbolic¹¹ mode [Godelier: 2007]:

— to be successful in a market economy and to be powerful over a corporation requires, beyond the property of a monetary capital, other non economic resources, noticeably socio-cognitive resources (knowledge, seduction, social networks, etc.)¹².

— every economic institution or resource can be conceptualized as a symbolic action which impacts both the material and the imaginary level of social life: “no change of the conditions of life into new social institutions—or new forms of old institutions— can occur without a work of interpretation in man’s mind to conceive the new conditions of life, and these interpretations give these conditions a meaning and sustain a social work to organize the society to give these conditions an institutional form and structure” [Godelier: 1984]. So every economic action is embedded into a whole set of symbols [Chanteau: 2003].

To underline the symbolic nature of social institutions — including economic organisations, actions, etc. — is no hegelian approach while, on the one hand, “the symbolic or the imagination doesn’t exhaust the content of social realities” as social relationship adresses “stakes that are not only imaginary ones” [Godelier: 2007], and on the other hand because a symbolic value can never impose without economic resources¹³. Meanwhile, this double dimension of the analysis provides a strong connection with the double dimension of Fraser’s theory of social justice, but also casts a fresh light on it by assuming that redistribution and recognition are distinctive but interactive political stakes — as both redistribution and recognition requires material and cultural resources, and therefore interact one with the other.

Besides, this symbolic dimension provides the power of an institution¹⁴ by attracting, channelling, shaping the social representations of economic players. As a result, whatever the balance of power and the relationship between shareholders and employees, the design of the standard corporate governance depends on the work of symbols involving social values (justice, safety, liberty, etc.) which must be embodied into visible organisations, devices, operations which must mean something to the groups who are concerned by:

¹⁰ A symbol always belong to both imaginary and materialistic worlds, and thus also faces constraints of efficiency and utility [Godelier: 2007].
¹¹ “The field of the Symbolic is the means and the processes by which the reality of the imagination is embodied both in material realities and in practices which give them a real, visible and hence social life [...]. The Imagination doesn’t equal the Symbolic, but it cannot really exist and be socially effective without being embodied in signs and symbolic practices which generate institutions (that organize them), spaces, buildings where they can act” [Godelier: 2007, p.39]
¹² Conversely, during crisis, the Financial wealth is not enough to take the right decisions or to adjust well enough to an unforeseeable future [Reich : 1991]...
¹³ For example, this can be applied to the analysis of the norms, such as technical ones or the ISO26000 norm [Chanteau : 2010].
¹⁴ As illustrated by the efforts of managers to give the corporations a political or civic legitimacy by telling the firms to be “citizen”, “responsible”, “ethical”…
Hence there is no reason for the ‘groups who are concerned by’ the corporate governance to be only defined by the manager: they are the groups who claim they are concerned and managed to be entitled [15].

To make it short, under an economic constraint of which the essence is the ability of the economic entity to pay back its debts, the satisfying pattern of the corporate governance — as any norm on economic action — is the one that is a success in both the material and the imaginary dimension, in both the stakes of redistribution and recognition: its identity (see box 2) must be able to satisfy the imagination of the concerned people (including first of all the representation of their own importance in the group); and it must satisfy their financial interest at stake. For example, to be a salaried employee doesn’t only mean you are paid for the time at work; it also means to dispose of rights and duties related to the labor law, the collective agreements, the contracts — that is to say that the salary relationship is also a status.

What a critical theory tells us is therefore that the corporate governance analysis and practice must address both efficiency and social justice when assigning both wages and status. The CSR debate is a perfect test for these issues as it addresses the issue of access and use of the private property of economic resources: some of the CSR proposals only deals with a “socially responsible behaviour throughout the organization and through its policies and practices” [ISO: 2010] (including sustainable development), while others deal with the fundamental law of the corporate governance: which status can join the board and take part in the authority over the enterprise? Who (and how) rule the limits of clearance of this authority over the management? We can then contrast the mainstream theory of corporate governance against a critical theory:

Box 1. The symbolic dimension of the corporate governance

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Box 2. Axiomatic criteria for a scientific analysis of the corporate governance

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15 Having in mind the definition of “going concern” by Commons [1934, p.69]: “These three types of transaction [bargaining, managerial, rationing transactions] are brought together in a larger unit of economic investigation which is named Going Concerns. It is these going concerns, with the working rules that keep them going [from the family, the corporation… up to the state], that we name institutions”.

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C/ Conclusion: which ‘best’ practices of critical corporate governance?

As a result from how we defined a critical theory (see above), there is no telling which is the best practice except for the criterion of the parity of participation [Fraser: 2005] in the corporate governance. As Fraser defines it as “the social arrangements that permit all to participate as peers in social life” — in economic life for that matter — one could assess the degree of parity of participation through three dimensions of power over an economic entity:

i) the power to be ‘money maker’\(^{16}\), that is to say the ability of a group to increase the monetary value of its income and asset quicker than those of other groups;

ii) the power to be ‘rule maker’, which commands the ‘money maker’ power: it is the ability to change — or to freeze — the rules of the double game with the salary relationship and the financial relationship (how to bring people to accept one principle or another over the value of the labor or of the capital\(^{17}\)) — involving other groups than just salaried workers and capital owners;

iii) the power to be ‘rule maker’ depends on the power to be ‘value maker’, which is the ability to impose, shape or degrade key social values commanding the acceptance or the support of an authority — and the ability to be entitled as the authority —, acceptance that gives the government its effectiveness.

In other words, the economic democracy should be assessed by the right to participate as peers in each of the three dimensions of the power over the economic life and the corporations. At the first level, there is the power to decide how goals (including economic interests) of “others” will be integrated into the strategy and the operating business (this is the common businessmen’s meaning of sustainable development). At the second level, there is the power to decide what goals might be implemented by the subordinate, the affiliate… (this is the arising meaning of the CSR, as referred to in the ISO norm 26000: including non regular stakeholders within the corporate governance). At the third level, this is the power to decide who is entitled to access the authority of the corporation (the corporate government): some examples of such a political type of corporate governance can be found among state-controlled firms or not-for-profit organizations\(^{18}\).

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\(^{16}\) Which is analogical to the economic notion of market power.

\(^{17}\) We underline that it is not only the amount of the wage or of the interest, but also the status linked to the ownership of labor or of capital — and beyond of all kind of qualities — the right to command, the scope of autonomy, any kind of social distinction and reward (protocol, etc.).

\(^{18}\) In France, the SCIC (société coopérative à intérêt collectif) entitles many kind of ‘stakeholders’ to take part in the government.
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