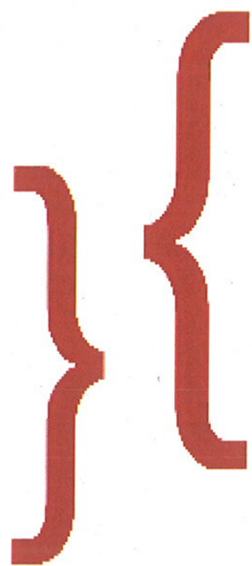
A DISCUSSION PAPER



Legislating for Responsible Capitalism

What it means in practice

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policy network paper

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Abstract

The financial crisis has exposed some fundamental flaws in the modern market economy. In Britain, and elsewhere a consensus has emerged around the need for a more resilient and stable capitalist system. The primary task for the centre-left is to map out a new political economy that helps foster better business practices and tackles unfairness while still producing long-term growth. In this paper, Stephen Hockman proposes a series of legal amendments which can be made to improve the monitoring, transparency and accountability of corporate power. Central to his argument is a focus on the reform of the ownership and structure of limited companies, corporate governance and executive remuneration; as well as a proposal for a more pro-active role for government in public procurement, fiscal policy and criminal justice policy. A "Standing Commission on Responsible Capitalism" is proposed which could carry forward such proposals. These measures, he argues, will help prevent the worst excesses of unrestrained capitalism, while also encouraging greater competitiveness, and thus a more productive economy for all.

About the author

Stephen Hockman QC is a senior lawyer specialising in regulatory law.

Introduction

The financial crisis has exposed some basic weaknesses in the modern market economy. In Britain, and elsewhere a consensus has emerged around the need for a more responsible form of capitalism, not only as an end in itself but as a means to achieving a more successful economy. The aim for progressives is to set out a distinctive centre-left political economy that helps foster better business practices and tackles unfairness while still providing an attractive environment for growth, innovation and entrepreneurial dynamism in a more competitive global era.

This paper examines what the concept of responsible capitalism could mean in practice, in other words, in what way could the structure and practice of capitalism be made more responsible and what means are available to achieve this. The paper is written on the basis that whilst capitalism will continue to be the foundation of growth and prosperity, both generally and in particular in the financial sector, it is precisely the importance of achieving such growth and prosperity that mandates the following discussion.

The paper will begin with a description of the existing capitalist system in the UK and a review of current reform proposals, it will then analyse potential policy objectives, and conclude by putting forward policy proposals for the future.

The existing system

Ever since the 18th century, business under the capitalist system has generally been carried out through the limited company. The essence of this system is that the company has a corporate legal personality of its own and is distinct from both its shareholders and its directors. The shareholders are the owners of the company (sometimes called its members), but that does not mean that they automatically control the way the company is run. Their powers are usually defined (in a quite limited way) in the company's articles of association. On the other hand, the actual management and day to day control of the company is in the hands of the directors. Whilst directors have a range of legal responsibilities, some created by the general law and some created by the articles of association, they owe their duties to the company itself, not to the shareholders or to the customers of the company, let alone to the public at large.

The last UK Labour government, in the Companies Act 2006, introduced a provision in section 172, whereby a director must act in the way he considers would be most likely to promote the success of the company for the benefit of its members, and in doing so the director must have regard to various factors, including the impact of the company's operations on the community and the environment. Moreover, under section 417 of the Companies Act 2006, the directors' report contained in the company's annual report must, in the case of a quoted company, include information about the impact of the company's business on the environment and about social and community issues.

It would however be a mistake to assume that these provisions in the Companies Act 2006 changed the basic legal position of individual companies or of their directors. The duties mentioned in section 172 continue to be duties owed to the company itself, which it would be for the company (generally controlled by the directors) to enforce. The requirement in section 417 for information in the directors' report, an obligation imposed on the company, is not readily enforceable by any third party.

In 2010, ClientEarth, an environmental NGO of which the author is a trustee, sought to complain to the Financial Reporting Review Panel (FRRP) about alleged non-compliance with section 417 on the

part of two major multi-nationals in the oil sector. The somewhat limited results of this complaints procedure were that in one case, after discussions with the FRRP, the company agreed to include further information about environmental matters, social and community issues and related reputational risk in its 2010 business review. However, the FRRP refused to make an explicit public statement that these new details were required to be included in the report by law – instead taking a consensual approach with the company. This failed to clarify the law, or set a precedent that could influence how other companies interpret their reporting obligations. In the other case, the Panel Group that was set up to investigate the matter did not directly address the complaint that the company's 2009 report failed to comply with the requirements of s417. Instead they cited a subsequent report released by the company and decided not to take any further action.

The UK Department for Environment, Food and Rural Affairs (Defra) has recently published draft regulations requiring a directors' report to disclose relevant information about emissions of greenhouse gases arising from certain companies' activities. These regulations would be made under the Companies Act 2006 section 416.

There are also non-statutory rules relating to corporate governance, in the form of the UK Corporate Governance Code, published by the Financial Reporting Council (FRC), the last edition of which came out in 2010. The Code is said to consist of principles rather than a rigid set of rules. By way of example, it contains a section entitled "Accountability", but the main principle under this heading goes no further than to state that the board of directors should present a balanced and understandable assessment of the company's position and prospects. Under the heading "Remuneration", the main principle is that levels of remuneration should be sufficient to attract, retain and motivate directors of the quality required to run the company successfully, but a company should avoid paying more than is necessary for this purpose. In a schedule it is suggested that long term incentive schemes should be approved by shareholders. Under the heading "Relations with shareholders", the main principle is that there should be a dialogue with shareholders based on the mutual understanding of objectives. The Code contains an important section headed "Comply or Explain" which makes it clear that there is always the option, as an alternative to following a provision in the Code, of explaining to the shareholders why the provision is not being followed and why it is said that good governance could be achieved by other means.

In addition to the Corporate Governance Code, there is the UK Stewardship Code, also issued by the FRC. This code is addressed primarily to firms who manage assets on behalf of institutional shareholders. Again, the "Explain" option is provided. The Stewardship Code, as its name implies, embodies (but does not define) the concept of "stewardship". It contains, for instance, a principle that institutional investors should publicly disclose their policy on how they will discharge their stewardship responsibilities, but, especially in the absence of a definition, it cannot be assumed that the stewardship role is intended to protect anyone other than the particular beneficiaries of the fund for which those investors have responsibility. The 2010 Labour party election manifesto suggested that the UK Stewardship Code for institutional shareholders should be strengthened, and indicated that Labour would require institutional shareholders "to declare how they vote". However, as pointed out by Brian Cheffins in his article "The Stewardship Code's Achilles Heel" (Modern Law Review 2010, page 1004), there has been a marked shift in share ownership patterns in favour of foreign investors and hedge funds. The fact that the Code is directed towards UK-based asset managers and domestic institutional investors, who own less than one third of the shares in UK quoted companies, means that it is unlikely to have a transformative effect on corporate governance.

In general, these codes seem to be somewhat imprecise, and contain virtually no reference to sanctions for non-compliance. They appear to have had minimal impact upon the course of events leading to the financial crisis. Indeed, as Cheffins (supra) points out, institutional shareholders have arguably been part of the problem rather than the solution, as they were relaxed about banks using leverage to

pursue high returns on equity, tended to deride cautious management, and applied pressure for high dividends and share buy-backs that depleted capital.

An important player, i.e. buyer of goods and services, in the modern capitalist system is of course government itself at all levels, and government procurement arrangements are made subject to a complex and detailed legal regime. However, for present purposes, the rules governing the wider responsibilities of government in procuring goods and/or services are extremely limited in scope. The Public Contract and Utilities Contract Regulations 2006 prohibit a public authority from awarding a contract to a company if it knows that the company has been convicted of a number of serious listed offences, including bribery and fraud. The Social Value Act 2012 requires a public body to consider - in its discretion - how the procurement process might improve "the economic, social and environmental well-being" of the relevant area. There is no other general provision mandating the way in which, or the purposes for which, procurement powers ought to be exercised.

In general, companies and those who run them are bound by the general law, both criminal and civil, not to act so as to cause harm to others, but proof of intentional wrongdoing may raise significant evidential problems. The current investigation into the alleged fixing of the Libor rate will be an interesting litmus test as to the capacity of the law to constrain this kind of errant behaviour, but even in this case it has taken many years and a major regulatory investigation to bring the issues to light. In general, in all such situations it is necessary to prove that there was deliberate dishonesty. A suggestion made earlier this year that the Financial Services Bill, now before parliament, should punish market participants taking investment decisions in an irresponsible manner was not taken up.

It is interesting to note that in Australia there is much more explicit statutory control affecting the conduct of business. Section 20 of the Australian Consumer Law provides that a person must not, in trade nor commerce, engage in conduct that is unconscionable within the meaning of the 'unwritten law' from time to time, though this does not in itself apply in relation to financial services for which there is another provision. Moreover, it has been said that there can be no finding of unconscionable conduct in this context where the parties are experienced operators accustomed to making commercial judgments and are acutely aware of their own interests and how to advance them. A distinction exists between parties who adopt an opportunist approach to strike a hard bargain and those who act unconscionably.

It is also to be noted that in 2010 the US Congress enacted the Dodd-Frank Act. A formidable tome of over 1500 pages of closely printed text, the Act targets a number of issues related to the financial crisis. These include setting up an agency to protect consumers against abusive lending practices, and regulation of credit rating agencies, trade in derivatives and hedge funds.

The Dodd-Frank Act also extends to corporate governance. The areas selected for reform are shareholder nomination of candidates for director positions and a non-binding shareholder vote on executive compensation, or 'say on pay'. The Securities Exchange Commission (SEC) has framed Rule 14a-11 to implement the directive under the Dodd-Frank Act to provide access to shareholders in nominating directorial candidates. But the rule has come under legal challenge by the US Chamber of Commerce and the Business Roundtable, which have filed an action in the US Court of Appeals for the DC Circuit. These business groups attack the rule on the ground that it does not consider the effects on 'efficiency, competition, and capital formation'. Pending the decision of the court, the SEC has agreed not to implement the rule.

Current reform proposals

Whilst Ed Miliband was the first UK political leader to pitch his stall on the general question of making capitalism more responsible, various bodies have been working on particular aspects of the problem, and these will now be reviewed.

In June 2010, the EU Commission produced a green paper on corporate governance in financial institutions, and in April 2011 another on corporate governance generally. More specific recommendations were made, again in April 2011, by the so-called Reflection Group on the Future of EU Company Law, established by the Commission. For example, the group supported the provisions in the UK Stewardship Code whilst noting that its provisions were often not complied with. The group said that the Commission should be neutral as between member states' systems which have a regime for worker participation at board level and those which do not.

In late 2011, there was published the final report of the High Pay Commission, an independent enquiry into high pay and board room pay across the public and private sectors within the UK. They made a dozen or so recommendations which included the following:

- A radical simplification of executive pay
- Putting employees on remuneration committees
- Publishing the top ten executive pay packages outside the boardroom
- Forcing companies to publish a pay ratio between the highest paid executive and the company median
- Companies to reveal total pay figure earned by the executive
- Establishing a new national body to monitor high pay.

In a speech in January 2012, the Business Secretary Vince Cable MP announced various proposals as regards executive pay, including for more transparent remuneration reports, for binding shareholder votes on future pay policy for the board as a whole, and for companies to report on their boardroom diversity policy. In June, Mr. Cable told parliament that these changes would be enacted through amendments to the Enterprise Bill.

In March 2012, there was published the report of the Ownership Commission, an independent commission set up by the cabinet office with the initial brief of looking at employee and co-operative forms of ownership that might be applied in the public sector. The Commission's recommendations included the need for more plurality of forms of ownership, which would involve "new mechanisms and tax concessions to support the build-up of equity capital in the medium sized family business sector". They also favour the employee-owned company receiving greater support including via the tax system. They consider that shareholders and directors should have the definition of their fiduciary obligations widened to include better stewardship, and for this to be enforced by closer links between the ultimate owners of the company and its managers. They suggest that government should consult as to the extent to which fiduciary duties are too narrowly defined, and should offer a redefinition to include a "duty of stewardship". They say that institutional investors should be required to comply with the Stewardship Code.

In October 2011, the Relationships Foundation produced an interesting report entitled "Transforming capitalism from within", which argued in favour of the "relational company" which would pay greater regard to all its stakeholders' interests.

In April this year, the House of Commons Treasury Select Committee set up a new inquiry into corporate governance in systemically important financial institutions. This inquiry is still ongoing.

It is understood that the UK Labour leader has established a review by Sir George Cox of the factors impeding long termism in the UK economy, and how we might best encourage the long term decision making we need.

Finally, in July, the Kay review of UK equity markets and long term decision making set up by the Business Secretary in 2011 produced its final report. This report recognises that lack of accountability of a company to its shareholders is far from being the only or even a central weakness in our present capitalist system, since many bad corporate decisions in recent years have been supported or even encouraged by a majority of the shareholders.

Rather, the report opines – and this is of great importance - that the effectiveness of modern equity markets depends almost entirely on their effectiveness in promoting goals such as better stewardship and governance. The report includes "Good Practice Statements" for Asset Managers, Asset Holders and Company Directors, though these are once again very general, and the concept of stewardship is used in a very loose way. The report suggests that the law as to the fiduciary duty of asset holders to beneficiaries is ill-defined, which the present writer suspects to be a confusion between the law itself and the way it has sometimes been applied. However, the report rightly recommends that asset management firms should structure managers' remuneration to take account of this principal/agency issue by better aligning managers' interests with those of their clients, so as to provide a long term performance incentive in the form of an interest in the relevant fund - either directly or via the firm - to be held at least until the manager ceases to be responsible for that fund. The report also confirms that in general, long-term performance incentives should be provided only in the form of company shares to be held at least until the executive retires from the business.

Policy objectives

In reviewing the efficacy of existing arrangements and of current reform proposals, it is necessary to be clear as to one's policy objectives. There is a range of potential policy aims which proposals for more responsible capitalism might seek to achieve. These will now be reviewed.

One group of aims relates to the way in which companies are structured. On this approach, it is assumed that if appropriate requirements are imposed as to the way in which a company is structured, then the company is more likely to behave in a socially responsible way. Under this heading will be included proposals for spreading ownership more widely and for increasing the powers of owners/shareholders.

Another group of policies would bear upon the way in which a company is run by those who manage its affairs. Here policy might involve regulating the identity of board members as well as their behaviour, as for instance by requiring the inclusion of employees as board members. In general, policy aims in this area have focused upon the need for greater long termism as regards the aims of the company itself, though there are wider potential aims (see below).

A specific issue arising in the context of the management of the company's affairs concerns executive pay, the extent to which executives should be rewarded by percentage based remuneration and/or by share options, and the extent to which aggregate remuneration should be subject to control, whether in absolute terms or at least by comparison with the earnings of others within the company.

More generally, there is a group of aims which would seek to impose on companies and/or their owners and/or directors explicit obligations towards the wider community. Among the relevant policy aims here one could include such matters as increasing diversity, protecting the environment, reviving manufacturing industry and maintaining a sound financial system.

The way forward

It is worth recognising at the outset that the difficulty in achieving a more responsible capitalism lies partly in the inherent nature of the capitalist system itself. The main purpose of establishing a limited company with its own separate corporate identity is to limit the liability of the individuals involved, whether as shareholders, directors or otherwise. The system rests on the assumption that even if those involved in the ownership and management of companies act for their own selfish ends, nonetheless the net result will be for the benefit of the community as a whole. It is this assumption which the events of recent years have once again called into question. Indeed, it is an assumption which Keynes himself showed to be fallacious, as Larry Summers memorably reminded us in a recent Policy Network pamphlet.

It seems clear, however, that the way forward cannot be to return to the pre-industrial era, when those involved in business remained personally responsible throughout. The way forward must be to develop mechanisms (if necessary imposed by legislation, or at least by non-statutory codes of guidance) which will prevent the harmful consequences of unrestrained business activity, whilst at the same time allowing such activity to continue to benefit the community through the production and distribution of goods, services, jobs etc.

It seems logical to start by discussing mechanisms relating to the way in which companies are structured. On this, the work of the Ownership Commission seems of greatest interest and relevance. However, greater clarity is required as to the mechanisms/tax incentives which might achieve its objectives. A call for a duty of stewardship means little until this concept is defined and enforced. Also worthy of note is the suggestion by Ferdinand Mount in "The New Few" (Simon and Schuster, 2012) that all companies above a certain size should have a "supervisory" board, though one might question why non-executive directors do not always fulfill such a supervisory role.

The powers and responsibilities of shareholders need to be considered as a separate topic. In some respects there can be little doubt that the powers of shareholders need to be increased, so as to enable shareholders to control more effectively the composition and remuneration of the board of directors. However, by itself, a measure conferring greater control on shareholders is likely to be insufficient, since shareholders, particularly those who have invested in more substantial and profitable companies, are themselves likely to be motivated primarily by the profitability of their own investment, and will not necessarily promote the long term success of the company, let alone the benefit of the community generally. Consideration should therefore be given to imposing a minimum period between the acquisition and disposal of shares, though research is needed to evaluate what the effect of such a measure is likely to be. As an alternative, Lord Myners proposed in 2009 that there should be a two-tier share register, with long term investors monopolising voting rights.

Turning to the responsibilities of directors, in this area some progress was made by Labour in the Companies Act 2006, but there must be scope for greater progress in this area. It may be that the most promising approach for the foreseeable future will be to work on the development of codes of conduct such as the Corporate Governance Code. The Labour leader has in particular suggested that those in business, particularly in banking, ought to be bound by similar codes of conduct to those who work in teaching, medicine and the law. As he pointed out: "those professions have clear rules, codes of conduct which lay down what is expected. We need the same for banking, anyone who breaks the rules should be struck off".

Turning to executive pay, the decision-making on this has historically been in the hands of the directors themselves. It now seems to be widely accepted that there should be greater involvement

by the company's owners/shareholders and by its employees, not least because they have an obvious financial stake in the way which the company's available resources are applied. Steps to ensure greater transparency in relation to remuneration arrangements are already in hand. However, the time has surely come for society to take a more active role in relation to systems of payment. As the Labour leader has also pointed out, even the European parliament is proposing that if your bonus is doubling your annual salary, that should be enough. Moreover, Ferdinand Mount (supra) proposes that the normal ratio of chief executive salary to average shop floor salary should not exceed 20 to 1 in a medium size company and 40 to 1 in a large one, that no cash bonus should exceed 20% of salary, and that any bonus paid in shares should be barred from being cashed in for 3 years. In addition, performance based remuneration should as far as possible be retained pending longer term review of performance, perhaps for several years or even until retirement.

The central point is that performance based remuneration should not generally be based on the paper value of transactions without any attempt to correlate that paper value with the true underlying value of the transaction to the company concerned.

It is also worth noting the proposals made in a perhaps not well noticed speech delivered on 14th April 2012 at the Institute for New Economic Thinking in Berlin by Andrew Haldane, Executive Director, Financial Stability at the Bank of England. Mr. Haldane said this:

......with hindsight, it is not difficult to identify instruments which might have slowed the pre-crisis race for excessive returns in banking. The most direct and effective would have been to place tighter constraints on banks' leverage. This would have defused the return on equity race at source. The Financial Policy Committee (FPC) has prioritised the leverage ratio as a macro-prudential instrument in its recommendations to date. A complementary approach would have been to require banks to adopt performance metrics which did a better job of adjusting for risk.

At the end of last year, the FPC raised concerns about the use of return on equity metrics by banks which generate incentives to shrink equity to hit return targets. Some institutional investors have raised similar concerns – and are showing encouraging signs of acting on those concerns. After all, it is not difficult to devise performance metrics which would do a better job of adjusting for risk, such as return on bank assets.

Races in financial sector pay can also be tackled, albeit indirectly, by placing restrictions on leverage and by avoiding linking remuneration to return on equity targets. Restrictions on cash distributions by banks to shareholders and staff can also help. This has been a favoured recommendation of the FPC over the past six months, as a means of bolstering UK banks' capital defences against risks in the euro-area. In response, there is some evidence of UK banks having modestly reduced cash distributions to staff in 2011.

A more direct approach to tackling pay races would be to set remuneration costs. This can be justified as a regulatory means of leaning against excessive risk-taking incentives – incentives which might be fanned by remunerating in equity. These have already been developed by the Financial Stability Board internationally and by the FSA in the UK. They specify, for example, maximum ratios of cash distribution and minimum periods of pay deferral. Yet whether these codes go far enough in aligning pay and performance, in equating risk and return, is an open question. For example, consider the issue of pay horizons. Bonuses are typically set on an annual cycle, with deferral or claw back for maybe three or four years if guidelines are followed. But this return cycle is materially shorter than the typical risk cycle. The risk cycle might last perhaps 20 years. This duration mismatch means it is more likely than not that risk and reward may get out of kilter in the financial sector. The current environment is evidence of such a mismatch: while bank performance has fallen off a cliff, executive pay remains close to pre-crisis Himalayan heights. Lengthening deferral or claw-back periods, say to 10 years or more on an internationally co-ordinated basis, would help close this gap in horizons, between risk and return. It would elongate the period of liability bank managers face when they take on risk. This would better align firm-level risk-taking incentives with the societal optimum. Avoiding

relative benchmarks in the setting of remuneration would also reduce the risk of an upwards-only pay escalator.

There is scope, too, for a reconsideration of the instruments used for remuneration. The focus to date has been on non-cash distributions, often in equity. But paying in equity appears in some pre-crisis cases to have exacerbated risk-taking incentives, acting as a disincentive to raising new equity and encouraging gambles for resurrection. Remunerating in long-maturity debt or contingent capital instruments, may do a better job of aligning risk-taking incentives with the public good than either cash or equity.

More generally on executive pay, it has been pointed out by David Coats in a Fabian Review article in December 2011 that, as the International Monetary Fund (amongst others) have argued, the relative decline in the bargaining power of workers on median earnings and below was one of the causes of the crisis, especially in the United States. High levels of ultimately unsustainable household debt were used to compensate for the stagnation of wages. If we want a better capitalism then there needs to be less income inequality for reasons both of social justice and of economic stability; and wage growth needs to be reconnected with productivity growth. Accordingly, says Coats, there can be no doubt that rebuilding workplace institutions influencing the initial distribution of incomes (before the tax and benefits system intervenes) is an essential element in the policy mix. A shift in bargaining power might impose some constraints on executive pay too, not least because there will be a strong workers' voice demanding that the same principles apply to pay across the organisation.

It is worth reverting to the issue of stewardship. The Stewardship Code was really designed (though there have been some misinterpretations) to address the role of those acting as "stewards" of funds on behalf of others. Hence we are here talking about bodies such as pension funds who have a trusteeship role, and their appointed asset managers whose role is generally defined by their contract. I pointed out above that the Code fails adequately to define the concept of stewardship, and does not make it at all clear to whom it is really directed. Therefore, what is required is for the Code to be amended to make it clear that institutional investors like pension funds, and then subsequently their appointed managers, all have stewardship duties towards the ultimate beneficiaries of the funds. In particular, it should be made clear (which astonishingly at present it seems that it is not) that these beneficiaries are likely require those acting on their behalf to have primary regard to the long term success and share value of the investee company.

Another obvious area for action arises in relation to procurement decisions, and as an example of what is achievable, Labour has said that it would make it a condition that firms winning large government contracts should offer apprenticeships. David Coats in his Fabian Review article observes that another obvious step would be to ratify the International Labour Organisation's convention on labour clauses in public contracts, which requires the government only to do business with those who observe either the wages and conditions negotiated with trade unions or the prevailing wage in a sector.

No one would suggest that issues relating to the conduct of business should be subject to frequent direct legal or judicial intervention, but there are nonetheless legal improvements which can be made, both on the criminal and on the civil side.

By way of example, there seems to be scope for the creation of additional criminal offences, not necessarily involving proof of deliberate dishonesty. Thus the former SFO Director Richard Alderman recommended the creation of an offence of recklessly managing a company. The need for a tighter approach to prosecution in relation to financial crime has now been emphasized by the Treasury Select Committee in its initial report on LIBOR.

On the civil side, the biggest problem remains the funding of litigation, and there is considerable concern that the reforms introduced by the LASPO Act (based on the recommendations of Jackson

LJ), by diminishing the profitability of the conditional fee agreement, will make it very much harder for claimants to pursue civil claims, especially in group litigation.

Another area for greater focus is tax policy. Tax incentives for particular kinds of economic or investment decisions are an obvious example. Some form of tax credit for child-care would be likely to have a positive impact on the diversity of the work force. It has been suggested that all tax proposals should be subject to a "sustainability audit".

The most difficult, but also the most important, area to address concerns the wider policy aims mentioned above. What mechanisms might be available to guarantee that business activity in general works for the benefit of the community, and not to its disadvantage? There is no doubt that greater transparency is a first step in this respect, and measures such as those requiring the directors' report to provide environmental information are to be applauded. However, what is lacking is any co-ordinated monitoring (let alone regulation) of the extent to which this kind of disclosure is made, or as to the longer term results.

Conclusion

This paper has suggested changes in the following areas:

- **the ownership and structure of limited companies** – so as to achieve more varied forms of ownership;
- **the powers and responsibilities of shareholders** – so that more power may be vested in them compared with the board of the directors;
- **executive remuneration** – so that more influence can be exerted by and for the benefit of the community at large;
- **corporate governance and stewardship** – so that the above changes can be implemented and enforced;
- **public procurement** – which should be deployed more pro-actively to promote responsible practice;
- **fiscal policy** – which should also be used more pro-actively to help achieve wider social objectives;
- **criminal justice policy** – which needs more focus to deter irresponsible financial methods; and
- **litigation funding** – without which the courts will be powerless to support all these developments.

Finally and in conclusion, it is increasingly clear that a "**Standing Commission on Responsible Capitalism**", which could carry forward such proposals, and build on the work of the various temporary inquiries referred to above, is what we now urgently need. As Keynes observed, a system which works for the collective benefit also tends to maximise individual profit, but (as we have all observed much more recently) a system which fails to work for the collective benefit risks destroying individual profitability, and thereby destroying the system itself.

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