Introduction: governance regimes and their political, legal, and economic foundations

INTRODUCTION: GOVERNANCE, A MATTER OF JOINT CONCERN

Coffee and Palia (2016) examine how hedge fund managers, holding larger stakes and focused holdings, have an incentive to actively discipline managers and directors in corporations to take a short-term view of their operations and to maximize their return. Economic short-termism here denotes "decisions and outcomes that pursue a course of action that is best for the short term but suboptimal over the long run" (Laverty, 1996: 826. Original emphasis omitted). While hedge fund managers are economically compensated and rewarded on the basis of their ability to maximize short-term rents, what is good for themselves in the short-term perspective may not of necessity be good for the corporate system and the stakeholders dependent on carefully and responsibly managed corporations for their economic welfare, Coffee and Palia (2016) claim. "[W]e are concerned that hedge fund activism is associated with a pattern involving three key changes at the target firm: (1) increased leverage, (2) increased shareholder payout (through either dividends or stock buybacks), and (3) reduced long-term investment in research and development (R&D)," Coffee and Palia (2016: 550) argue. Dallas (2011), in turn, is concerned with how short-termism has become widely endorsed within corporate governance:

> A 2005 survey of 401 financial executives demonstrates the pervasiveness of shorttermism. Financial executives confirmed that they would take an action that is value decreasing for their firms to meet earnings expectations. Over 80% of financial executives said they would decrease discretionary spending, such as advertising expenses, maintenance expenses, and research and development expenses, to meet earnings targets. Over 50% of financial executives said that they would delay starting a new project even if this entailed a small sacrifice in value to meet earnings expectations or to smooth earnings. (Dallas, 2011: 280)

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According to Dallas (2011), there are many weaknesses with the short-term governance model, but it is not accurately priced by unregulated markets as short-termism is overpriced, i.e., the efficient market hypothesis does not stand up well against empirical evidence:

> Contrary to the efficient market hypothesis, the study found that markets do not accurately value firms at the time they engage in myopic behavior; the stock market did not value myopic firms less, that is, stock prices did not penalize firms for myopic behavior at the time of their myopic behavior. (Dallas, 2011: 280)

The role played by hedge fund managers in Coffee and Palia's (2016) case, to put pressure on managers and directors to "divest and return" firm-specific resources to shareholders, is based on a long-standing free-market theory model that renders managers as self-serving actors prone to opportunistic behaviour. However, as Coffee and Palia (2016: 550) repeat, "[the] assumption that managements typically engage in inefficient empire building is out of date today and ignores the impact of major changes in executive compensation." However, changes in governance regimes since the 1970s have served to alter the corporate system in fundamental ways, and in ways that are conducive to economic inequality as certain stakeholders (e.g., shareholders, i.e., finance capital owners) have advanced their positions vis-à-vis other stakeholders.

First, Coffee and Palia (2016: 603) argue, corporate governance is "moving from a 'board-centric' system towards a 'shareholder-centric' system"; second, public corporations are increasingly under pressure to "incur debt and apply earnings to fund payouts to shareholders, rather than to make long-term investments" (Coffee and Palia, 2016: 603). This means that shareholder activists such as hedge fund managers are incentivized to discipline managers, endowed with so-called "real" power in corporate legislation, and directors, granted "formal" power, to shift their focus from strategies that balanced short-term gains and performance with long-term goals and investments, ultimately securing the stipulated goal equally for managers and directors, to make the firm survive over time and over economic cycles. The implications from this new regime, rooted in legislation, regulatory control, law enforcement, and day-to-day management and not the least in accounting practices, are considerable: it means that the firm is no longer instituted, as corporate law prescribes, as a team production venture, protected from both outside and inside stakeholders who have an incentive to dissolve and liquidify the firm as soon as they foresee other investment opportunities. Instead, the firm is treated as a bundle of financial assets, formally

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a set of contracts, whose principal function is to generate a return being paid out to the firm's investors, i.e., the shareholders. This represents an entirely new finance industry-sponsored corporate system that arguably has contributed in substantial ways to raise the well-documented economic inequality in the contemporary competitive capitalism.

As corporate governance practices have shifted gears and deviated from corporate legislation as it is written and intended by the legislators, it is also important to survey the wider field of governance wherein the corporate system is embedded. In the scenario sketched above, the finance industry today executes a considerable real power in determining how corporations invest their so-called residual cash flow and how they manage their assets. Governance as a scholarly and political term, subject to legislation, implementation, and law enforcement, influences and shapes a series of industries and social institutions and should also be examined on the industry level. In addition, trends and tendencies in, e.g., corporate governance carry the seed of coercive, mimetic, and normative isomorphism (DiMaggio and Powell, 1983: 150), i.e., governance practices and devices developed and applied in the corporate system are likely to be imitated and implemented in, e.g., the university system. Kleinman and Vallas (2001) point at such processes:

> Much of the commercialization of the academy is due not to direct corporate investment, but to an array of indirect factors, including the growing and ongoing interaction between the two institutional domains (e.g., the exchange of personnel and pressures from university overseers to model organizational rules and practices along private sector lines), *inducing the university to become isomorphic with its corporate environment*. (Kleinman and Vallas, 2001: 465–466, emphasis added)

This means that studies of corporate governance need to be complemented by a wider understanding of governance as a social and political tool in the hands of policy makers and finance capital investors. More specifically, today, by the end of the second decade of the first millennium, when the economy is increasingly globalized, and where advancement in digital media and the development of transnational governance regimes influence how political accountability can be ensured and inform the polity, governance is becoming a key analytical term for the study of economic activities on the micro, meso, and macro scale. Says Omarova (2011):

> The concept of governance in our polycentric world embodies a collaborative, cooperative enterprise of shaping social outcomes through negotiation among numerous public and private actors with stakes in those outcomes: non-governmental organizations, business and trade associations, labor unions,

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> technical standard-setting bodies, professional groups, and so on. (Omarova, 2011: 427–428)

In this view, a limited focus on corporate governance per se, a most complex field of scholarly inquiry comprising legal theory, economic theory, management studies, political science, and economic sociology, is insufficient if the objective is to explain how the micro, meso, and macro levels of governance practice are co-produced and entangled, and, not the least, how these entanglements are dependent on the imbrication of theory, practices, and politics, making their constitutive elements most difficult to separate from one another. Thus an analysis of changes in corporate governance theory and practice remains an unfinished business unless embedded in a wider view of governance as an economic–political tool determining standards for political accountability, performance, and resource allocation.

More specifically, the soaring levels of economic inequality,[1] a puzzling phenomenon in the midst of a bountiful economy, spitting out products and innovations (while at the same time being at risk to deplete natural resources, sustainability researchers and activists rightly point out) and raising the standard of living for billions of people, needs to be connected to changes in governance and the mechanisms of governance regimes now put to work in the contemporary economy. This volume therefore examines how governance has been modified over the last four to five decades, beginning in the 1970s and the decline of the managerialist corporate model and the shift to the finance industry-based corporate model and governance regime, and how new ideas regarding governance developing over time has been conducive to increased efficiency in the economy, but also, as an unintended consequence or as a politically designed programme—two complementary views propose—significant growth in economic inequality.

Orthodox economists have claimed over the period that the question of distribution is irrelevant in economic theory and therefore, by implication, also irrelevant for political entities—what matters is exclusively the capacity to generate the largest possible output given the input resources and thus to maximize the efficiency of the transformation of input material into output products. Such economic doctrines may prove their value in analytical models devoid of human beings that respond to, e.g., perceived unfair dealings, but in a real-world economy the question of economic inequality is indeed of great political and economic relevance. For instance, entrepreneurship researchers have shown that entrepreneurs—widely treated as the primus motor of competitive capitalism, following Joseph Schumpeter's intellectual lead—are primarily

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recruited from a middle to "lower upper class" background where reasonable economic stability and security was assumed, leading to a more pronounced risk-appetite than presumptive entrepreneurs from a less economically privileged class (Valdez, 2015). As a consequence, an economy that is guided by a political system that demonstrates a commitment to promote economic equality (as in, e.g., the Scandinavian welfare state economies) is likely to generate more entrepreneurs and thus become more dynamic. In other words, economic inequality is a key economic and political issue, and it is related to governance regimes in ways that should be examined on the basis of scholarly inquiry (Tsui, Enderle, and Jiang, 2018).

This volume thus makes the assumption that governance regimes are relatively "impure" frameworks that balance practical interest and theoretical input under the influence of policy making processes, including all its imperfections derived from bounded rationality, akrasia (weakness of will) and similar behavioural conditions pertaining to "human nature," and the political waging orchestrated by participants to benefit their own singular interests. In addition, governance is by definition based on a blend of legal theory and practice, economic theory, management studies literature, and economic sociology frameworks, all adding to the practical legislative and everyday work to make governance what it is. This latter view implies that a "mono-disciplinary view" of governance (e.g., to only reference neoclassical economic theory) is insufficient in explaining how governance is structured and implemented, and how its outcomes are to be determined. Therefore, if Omarova's (2011) claim of a "polycentric world" of governance is accepted as a working hypothesis, a pluralistic and heteroglot (in the literature theorists' phrasing) theoretical framework is advisable. If successfully embarking on such an analytical pursuit, it is possible to demonstrate that governance is an analytical term and a domain of practical work that in fact does have strong implications for economic performance along a variety of measures and parameters. For instance, economic stability, economic efficiency, and economic equality are three such parameters that policy makers and their defined regulators, responsive to what is called "median voter preferences" in a politically resilient system, would be interested in to monitor and to balance in ways that are legitimate in the eyes of the largest possible amounts of stakeholders. This casts governance as a legal–political and economic tool and practice, which in turn justifies the characterization of governance as being "impure." That is, the objective of competent governance is to balance a series of objectives and stakeholder interests within a reasonable horizon of temporality. The objective of this volume, in turn, is to demonstrate how governance is

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today reduced to its economic theory elements and its implied efficiency maximization preference, which tend to underrate the externalities generated by such a one-sided view of governance, burying, e.g., the question of economic inequality, which leads to considerable social and economic costs in the long run.

ECONOMIC INEQUALITY AS A GOVERNANCE PROBLEM

The global economy has been characterized by a sharp growth in economic inequality over the last four decades, by now being back at the level before the Great Depression in the 1930s (Duménil and Lévy, 2004). Despite reforms in the democratic political system to counteract such tendencies, the economic system of competitive capitalism has continued to generate economic wealth that tends to aggregate at the top of the income pyramid (Piketty, 2014). Books such as Saskia Sassen's *Expulsions* (2014), Immanuel Wallerstein et al.'s edited volume *Does capitalism have a future?* (2013), Martin Gilens' *Affluence and influence* (2012), Monica Prasad's *The land of too much* (2012), and Robert H. Frank's *Falling behind* (2007) testify to these changes in competitive capitalism. There is a variety of studies indicating the root causes of this failure to counteract tendencies to amplify economic inequality in the economic system of competitive capitalism. Some studies indicate that the political system, especially in the U.S., has been overtly influenced by campaign donations, lobbyism, and think tank activism, leading to the creation of what Hacker and Pierson (2010) refer to as "winner-take-all politics." Gilens (2012) points at some facts regarding the representation in democratically elected bodies:

> By one recent calculation 44 percent of the members of the U.S. Congress are millionaires. More prosaically, all members of Congress, by dint of their congressional salaries alone, are solidly in the top decile of the American income distribution. Perhaps one reason public policy tends to reflect the preferences of the affluent, then, is simply that policy makers who are themselves affluent pursue policies that reflect their personal values and interests. (Gilen, 2012: 255; see also Carnes, 2013)

Other studies indicate that the institutional restructuring of competitive capitalism (Tabb, 2012) and the increased influence and sheer size of the finance industry has contributed to the present situation (Tomaskovic-Devey, Lin, and Meyers, 2015; Davis and Kim, 2015; Kalleberg, 2015; Lin and Tomaskovic-Devey, 2013; Palley, 2013; Zalewski and

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Whalen, 2010). What economic sociologists and others refer to as "the financialization of the economy" is one of the principal drivers of economic inequality, Kus (2012) demonstrates:

> All four indicators of financialisation that we included in our analysis—namely, total value of stock traded on the stock market exchange as a percentage of GDP, bank profitability measured in terms of bank income before tax as a percentage of GDP, securities under bank assets, as well as the aggregate financialisation index that we used—have displayed a significant positive association with income inequality net of conventional explanations under various model specifications we employed. (Kus, 2012: 492)

When the finance industry grows, other industries are disadvantaged and this translates into lower investment in R&D and other development work and fixed (but unfortunately illiquid) production capital (Van Arnum and Naples, 2013). The medium- to long-term consequence is slower job growth and increased economic inequality (Wodtke, 2016; Weeden and Grusky, 2014). Furthermore, policies and campaigns, orchestrated by free-market protagonists as an attempt to weed out so-called rent-seeking agents to "maximize" market efficiency, have served to impair and mute organized labour (Jacobs and Myers, 2014; Rueda and Pontusson, 2000). Such activism has contributed to a tipping of the balance "toward rentiers and away from workers" (Van Arnum and Naples, 2013: 1177). While the blue-collar worker community took the first hit when the American economy was de-industrialized in the 1980s (Bluestone and Harrison, 1982), today, it is increasingly the middle class that suffers the consequences of institutional changes and corporate restructuring (Davidson, 2014).

A third line of studies indicates that it is the restructuring of the corporate system, justified by the maximization of profit (rather than attending to a more diverse set of corporate objectives) and the return of the so-called residual cash flow to shareholders, that explains a substantial share of growing economic inequality (Lin, 2016; Jung, 2016; Bidwell et al., 2013; Bidwell, 2013; Lazonick, 2010; Useem, 1990). Such changes have benefitted managers at the expense of the wider community of salaried workers:

> [R]estructuring influenced production workers' and managers' wage distributions in different ways—production workers as a group experienced a polarization in which the middle part of the distribution shrunk significantly, whereas managers' wage distribution shifted and spread out at the upper tail after the onset of restructuring. (Dencker and Fang, 2016: 482)

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Apparently, the corporation as a vehicle for enterprising and economic growth as stipulated by corporate law, and carefully balancing various interests while blocking opportunistic behaviour inside as well as outside the corporation, has lost some of its institutional traction. The corporation is no longer, Morgan (2016: 211) argues, an institution that creates "a shared community of fate" (Omarova, 2011) among its participants and stakeholders; today, Morgan (2016: 211) suggests, "actors have become more diverse and their interest in supporting these old institutions has consequently declined." Ivanova (2017: 1) argues that the 2008–2009 recession (in many publications addressed as "The Great Recession" with capital letters) was not followed by "a typical postwar recovery": "While corporate profits quickly returned to, and surpassed, prerecession levels, investment and employment have been unusually slow to recover" (Ivanova, 2017: 1). Ivanova (2017: 9) explains this phenomenon on the basis of the growth of "total saving originating from the corporate sector" in combination with "the decline in the labor share of national income." The "sluggish wage growth" and falling share of labour national income translates into a higher level of indebtedness among lower- and middle-income households,[2] a credit expansion or "debt-fare" that served to maintain private consumption when real wages stagnated or fell: between 1995 and 2013, "average household consumption in the OECD [Organisation for Economic Co-operation and Development] rose by 7.3 percent each year," while wages rose by only an average of 5.7 per annum (Fuller, 2016: 31), representing on average a 1.6 percent of annual growth in debt-based consumption over the 18 years period. The effect is growing economic inequality in the American economy: "Income inequality has been continuously on the rise since the mid-1970s" (Ivanova, 2017: 12); the Gini index for families reached 0.445 in 2013–2014 versus the post-war low of 0.348 in 1968. At the same time, indebtedness and economic inequality do not themselves explain the staggering economic recovery after 2009. Ivanova (2017) argues that growing corporate profits, an immediate effect of lower compensation for labour, "created an overhang of idle money, eager to lend itself to speculative ventures." When this surplus capital was re-invested in the finance industry, the sub-prime housing market bubble and its secondary derivative market was inflated to unsustainable levels (Lysandrou, 2011), and paved the way for the 2008 finance market collapse. In the end, when the bubble burst and the entire economy suffered the consequences of the leveraged systemic risks in the finance industry, there was no willingness to invest in production capital or in job-generating activities, making the Great Recession a new economic phenomenon in the post-war economy, in many ways different from, e.g., the 2001 dot.com

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bubble burst. Studies show that the job creation during and after the recession has primarily been in the low-wage services sector, wherein the real wages of the average worker have declined (Bernhardt, 2012: 355); an estimate from the U.S. Bureau of Labor Statistics predicts that 7 out of 10 new jobs will be created in this sector (Bernhardt, 2012: 355). According to Bernhardt's (2012) account, the staggering or declining real wage concern is unlikely to disappear as American employers are now following new "legal and normative standards":

> [T]he main source of America's low-wage problem lies in domestic service industries not impacted by globalization, where the key driver of precariousness is the growing evasion and violation of employers of both legal and normative standards, facilitated by the withdrawal of government's hand in the labor market. (Bernhardt, 2012: 355)

Economic inequality therefore caused by two interrelated corporate decisions, (1) to compensate labour below productivity growth, and (2) to prioritize shareholder value creation and favourable stock market evaluation over long-term investment opportunities. The former tendency in the economy is substantiated by data that reveals that American families are poor not because they fail to find employment, but because they are undercompensated for their work: "61 percent of the officially poor families in the United States contain a worker," Brady, Baker, and Finnigan (2013: 873) report. In fact, Brady, Baker, and Finnigan (2013: 873) continue, "There are more than four times more people in working-poor than unemployed poor households"; between 1974 and 2004, the unemployed poor "averaged only 3.4 percent of the U.S. population," whereas the working poor "averaged 10.4 percent." The second tendency is substantiated by empirical research indicating reduced investment in production capital and in human resources in the corporate system (Gordon, 2015; Stockhammer, 2004). Neither of these two tendencies indicate a very bright future for salaried workers—blue-collar, white-collar, or no-collar.

Regardless of the causes of these changing economic, financial, and institutional conditions, it is questionable whether the present situation with soaring economic inequality is desirable for either stakeholder. Studying the growth of economic inequality in 18 OECD countries over the 1970–2007 period, Perugini, Hölscher and Collie (2016: 251) found "[a] direct causal relationship link between income inequality and debt and thus systemic financial risk." Furthermore, studies indicate that social actors make a distinction between "fair" and "unfair" economic inequality (Osberg and Smeeding, 2006), and that certain degrees of inequality

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can be tolerated, even encouraged, as a legitimate motivation factor and a mechanism for rewarding efforts and investment in human resources (Bonica et al., 2013: 109), but when economic inequality reaches a critical point, it easily leads to grievances and, in the long run, forms of social unrest or a radicalization of certain disfavoured groups (Jung, 2016; Lin, 2016). The problem is that ideological beliefs affect how policy alternatives are assessed, and the outcome from policies are complicated to predict as there is a lack of empirical evidence to support either strategy, Jencks (2002) argues. Concerning ideology, liberals tend to believe that economic inequality is "unjust or socially destructive," and that policy making and reform is justified on such grounds, while conservatives may believe economic inequality is indicative of a functional performance–reward system that benefits those who contribute the most to prosperity, also benefitting those at the bottom of the income hierarchy. In this conservative view, "Inequality may well rise, but the success of a growth strategy makes the sacrifice worthwhile," Galbraith (2002: 14) says. Concerning the most effective policies to be implemented as soon as the ideological disputes have been settled, this is no easy matter either: most thoughtful liberals do recognize that "rewarding people for producing more goods and services will often improve the absolute well-being of the least advantaged," but to identify the best strategy for "improving the position of the least advantaged" requires complex empirical calculations (Jencks, 2002: 51). For instance, rich democracies such as Western democratic states tend to have lower degrees of economic inequality in comparison to, e.g., Mexico or Russia, but whether this bundling of affluence and democracy always leads countries to adopt somewhat egalitarian economic policies, or if the causality runs in the other direction, suggesting that "extreme inequality retards economic growth,"[3] is yet to be determined (Jencks, 2002: 53).

Taken together, all these changes in competitive capitalism and the political system that regulates and monitors economic affairs indicate that economic inequality and other pressing economic concerns (e.g., lower investment in production capital and R&D, slower job growth, instabilities and imbalances in the finance industry, fewer IPOs (initial public offerings) renewing the stock of public corporations) is a matter of governance. For instance, Perugini Hölscher and Collie (2016: 251) suggest that policy makers who wish to make the financial system (and, by implication, the economic system at large) "more robust" need to "cast the net wider than regulatory reforms and monetary policy," and also consider a wider set of policies including reforms that affect "the distribution of income" and "household indebtedness." Needless to say,

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such policy reforms demand foresight, integrity, expertise, detailed know-how, and courage. In addition, as Kennedy (2016) remarks, the present situation and its malaises, which need to be understood within the horizon of the remarkable growth of economic welfare over the last four decades for a majority of median voters in advanced, democratic countries, were not always anticipated at the time when the policies were enacted (see, e.g., Krippner, 2011). As a consequence, what in hindsight and with the grace of historical records now at hand appear as unjust or unqualified policies, leading to undesirable conditions, were in many cases unintended consequences of what seemed a reasonable decision at the time: "The world is uncertain and open to elite management. It is also unjust, and … injustice is a byproduct of technocratic—and often enlightened and humanitarian—management" (Kennedy, 2016: 14).

At the same time as unfortunate policy decisions can be forgiven despite their negative yet unintended consequences, policy makers and scholars need to be aware that policy making is in fact a domain of rent-seeking, with certain actors actively promoting solutions to various political problems that benefit their own interests and competencies (see, e.g., Cooper, Graham, and Himick, 2016; Warner, 2013)—otherwise the quickly expanding lobbying industry would not be as lucrative as it is (Drutman, 2015). This makes policy making and governance more widely key mechanisms in contemporary society, occurring and operating at the intersection between stated and implied interests, perceived possibilities, existing know-how and theoretical frameworks, and ideology. At the end of the day, governance is an analytical term and social practice that is sufficiently abstract and malleable, yet distinct and sufficiently operable to bridge and bond such diverse resources and capacities. Therefore, pressing socio-economic concerns such as soaring economic inequality, the destruction of the biosphere, and the depletion of resources are issues that need to be addressed as matters of governance. Such issues can only be handled through governance and the resource that governance as an operative term assumes and deploys; governance is of the essence of the regulating of socio-economic affairs.

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THE RISE AND DECLINE OF DE-POLITICIZED GOVERNANCE: THE INDEPENDENT CENTRAL BANKS AND THE QUESTION OF POLITICAL ACCOUNTABILITY

Governance is ultimately a matter of establishing systems that balance agency and decision making discretion and regulatory control that enables the political accountability that makes a governance regime legitimate in the eyes of the median voter. In the case of corporate governance and corporate law, the business charters issued by the state are based on a series of mandatory rules and privileges that taken together protect the business venture from both internal and external opportunism, and that grant the board of directors decision making authority. That is, as the firm is an entity *sui juris*, the board of directors is granted certain constitutional rights to execute formal power within the corporate system, including hiring managers. Governance regimes are therefore based on the legal and regulatory distribution of *formal* and *real* power in, e.g., corporate governance. This view of governance assumes that political power and political concerns are always of necessity irreducible elements in any governance regime. This view has been disputed by free-market protagonists who tend to dismiss the concept of "politics" as being a non-economic concept that creates unnecessary but avoidable complications in governance. In this view, market pricing already does the job for political bodies (i.e., to allocate resources optimally) and therefore politics has no legitimate place in economic policy unless—which sounds like a self-contradictory or paradoxical statement—it serves to insulate economic affairs from political influences. In other words, in the free-market model, politics should be kept at an absolute minimum.

One such domain where the rejection of political influences from economic affairs has become the dominant idea is in monetary policy wherein central bank independence has been ensured. Central banks are widely regarded as one of the key regulatory mechanisms in a national economy, and to protect the decision making authority from being shaped by interest in the political system, central banks have been granted the status of a sovereign economic actor with significant degrees of formal and real power. The idea of an independent central bank is still itself a political or ideological idea associated with the monetarist doctrine that inflation, a particularly troubling economic phenomenon in the 1970s and 1980s, is exclusively a matter of monetary supply (and not premised on any macroeconomic policies and conditions) and that inflation is to be

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defeated on the basis of the central bank's control of the monetary supply. This idea of inflation being a primary target in economic policy was also largely beneficial for the finance industry as price stability served its interests:

> Since the 1980s, reducing inflationary pressures on the economy has remained a key concern for monetarist economists running the central banks of advanced nations. Since inflation undermined banks' ability for borrowing money from customers and lending it to investors, and ultimately decreased bank profitability, these inflation targeting policies proved favourable to banks and were welcomed by the larger finance community. (Kus, 2012: 485–486)

Polillo and Guillén (2005) claim that the "war on inflation" in the mid-1970s was in fact part of a wider neoliberal doctrine and political programme being rolled out by free-market intellectuals and pro-business activists in the period, i.e., the doctrine of central bank independence was justified by its technocratic ethos and "its purportedly objective, non-partisan, disinterested and depoliticized approach to policy making" (Polillo and Guillén, 2005: 1768). In fact, the new policy was a centerpiece of a new economic regime.

More specifically, the dominant doctrine in the 1970s in leading economic agencies such as OECD, International Monetary Fund (IMF), and the World Bank was that inflation was propelled by excessive demands made by organized labour. To fight inflation was, therefore, indirectly, and concealed under its veil of technocratic disinterestedness, to undermine organized labour and trade unions. To many heterodox economists, Hung and Thompson (2016: 461) remark, "the great monetary tightening in the early 1980s was nothing but part of a war against workers waged by financial capital, which exercised covert power over apparently independent central banks." Central bank independence provided many benefits and managed, in the end, to push down inflation. Still, critics of the long-term war on inflation have pointed at the wider socio-economic consequences of making inflation control the only legitimate economic policy and how this allegedly technocratic policy has benefitted, e.g., the finance industry at the expense of, e.g., organized labour. Regardless of this critique, articulated already in the 1970s, the so-called Washington Consensus, a set of predefined doctrines and policies conducive to greater "economic freedom"—the *cri de guerre* of free-market theorists—including central bank independence, was part of the "terms and conditions" that the World Bank and IMF included in their standard agreements to provide credit to countries in a state of economic distress in, e.g., Latin and South America (Polillo and Guillén, 2005: 1774). What was first advocated as a technocratic policy was

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suddenly part of a broader political project, thinly justified on the basis of economic doctrines and deeply entrenched ideologies.

In the 1990s, when inflation was no longer a major economic policy concern, central banks "changed tactics," Major (2014: 127) argues, and "began to set explicit targets for the rate of inflation as a guide for monetary policy." Now *some* inflation was good for the economy as a "natural" growth of prices, say in the range of 2 to 3 percent, supposedly created a good balance between price stability and economic growth. Under all conditions, the doctrine that central banks should be independent and that price stability is one of the primary goals has been a policy that has been adopted and enforced across the world of developed economies. Still the central question regarding the role of politics in economic policy, partisan or technocratic in orientation, remains unsolved; should key economic issues be handled by agencies that are insulated from political accountability, or is such a policy to overstate the virtues of the technocratic regulation of the economy? "Moving regulatory and monetary policy-making authority to central banks and financial ministries insulates monetary policy making from mass political pressure," Major (2014: 207) claims. The idea of the prudential and self-disciplined technocratic agency being at the helm during travels in stormy seas as well as in calm waters is per se a politicized view of governance and regulatory control, not least the implicit assumption that technocrats bestowed with great decision making authority are themselves capable of separating polity and wider social beliefs and trends. Zelner, Henisz, and Holburn's study (2009: 405) of economic policy reform in the global electric power industry in the 1989–2001 period indicates that there is no such "political economy policy" devoid of politics, but, in fact, institutions and their political entanglements do matter in decisive and profound ways when new economic policies are implemented:

> Though these agencies [reforming the energy industry] may have as their ultimate goal the implementation of 'pure' neoliberal reforms rooted in neoclassical efficiency criteria, our findings suggest that the long-term success of such reforms requires careful attention not only to economic influences but also to the domestic and global institutional context in which policymaking occurs. (Zelner, Henisz, and Holburn, 2009: 405)

In addition to factual evidence of how politics matter in all domains of economic policy and their positive or negative consequences for economic growth and performance, the normative question whether politics *should* be able to influence economic policies, affecting millions or even

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billions of citizens and voters, remains unsolved. For some commentators, such as Major (2014), examining the austerity policy being the foremost consequence of the Great Recession, it is clearly beneficial if, e.g., the finance industry was given less authority to regulate itself as suits their interests and instead re-connects economic policy and political accountability: “Finance needs to follow, not write, the economic policy script” (Major, 2014: 208).

After the great financial crisis of 2008, many commentators, pundits, and laymen would agree with such statements, but as a legal and economic matter, governance is not easily determined given the heterogeneity of stakeholders and the various time horizons that need to be balanced in prescribing legal and regulatory frameworks. Nevertheless, there seems to be an emerging consensus or a new conventional wisdom that governance needs to be accompanied by political accountability to a higher extent; the allegedly “blind” but ultimately “fair” mechanism of market pricing did not provide the self-regulatory and self-correcting benefits its proponents claimed it would, and the great debacle of 2008 is indicative of the decline of an economic doctrine wherein market pricing was the indisputably principal regulatory mechanism. What should come in its place remains far from clear, but political accountability is back on the policy agenda anew, as is always the case when governance regimes fail in spectacular ways (Gerding, 2005).

Corporate Governance as Regulatory Licence

Pargendler (2016: 361) argues that corporate governance is now advanced as the solution to “a vast array of economic and social problems,” spanning from “economic development,” “systemic risk,” to “rising inequality.” At the same time, the bulk of corporate governance scholarship focuses primarily on “internal governance,” which relates to “the balance of power among shareholders, boards of directors, and managers” (Pargendler, 2016: 362). In Pargendler’s (2016: 364) account, sketching an intellectual and politico-economic history of the awakened interest in corporate governance since the 1970s, the upsurge in corporate governance advocacy “did not result from the invisible hand of the market.” Instead, this shift towards corporate governance “resulted from the visible hand and voice of policy entrepreneurs,” constituting an emerging “corporate governance industry” that promoted corporate governance reform (Pargendler, 2016: 364). The neoconservative and pro-business political and economic mobilization of the 1970s, crowned by Ronald Reagan’s presidency beginning in January 1981, was unified in its disregard of government, and instead declared that “the cure for

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economic woes had to lie in the private sector" (Pargendler, 2016: 365). However, as Pargendler (2016: 365) notices, in the case where markets fail and governments offer no better alternative, corporate governance may appear as an attractive alternative for a heterogeneous group of social actors, but in this "hydraulic system," governance may "partly substitute for government, at least in the level of discourse." That is, seemingly paradoxical and in conflict with the free-market credo of many of the neoconservative and libertarian economic advisors and functionaries, the corporation was now expected to act like a government but on the corporate scale. Pargendler (2016) can be cited at length here:

> [T]he growing concern with corporate governance partly compensates for the misgivings about government intervention in the policy arena. Ironically, it does so by treating the corporation as a metaphor for government in two ways. First, it transposes to the corporate form the same traditional formulas for controlling and legitimizing power in the political sphere—"checks-and-balances" through strong independent boards and (shareholder) democracy—in the hope of tackling numerous economic and social problems. Second, the internal workings of the corporation become the focal point of public debate, as well as the presumptive remedy. Indeed, a key promise of the corporate governance movement is that, once the proper decision-making processes internal to the corporation are in place, external substantive regulation of corporate action will become increasingly superfluous, as corporations will be in the position to govern themselves. (Pargendler, 2016: 365–366)

This corporate governance agenda is palatable to political entities, as it combines a private sector focus with "a reformist overtone" (Pargendler, 2016: 366); as such, Pargendler (2016: 366) continues, "corporate governance change appeals to progressives as a path for social and economic change in the face of political resistance to greater state intervention, while pleasing conservative forces as an acceptable concession to deflect growing governmental intrusion in private affairs."

As a practical matter, corporate governance issues are as old as the corporation itself, and probably much older than that if the idea of "agency costs" (an abstract and hard-to-measure construct, yet guiding much of the orthodox corporate governance scholarship grounded in neoclassical economic theory), is understood as a generic administrative concern. The corporate governance is based on the tripartite separation between shareholders, boards of directors, and managers, whereof the last category, the orthodox model suggests, has "gone unchecked" (Pargendler, 2016: 375). To amend this situation, primarily for the benefit of the shareholders who are claimed to suffer the largest losses from undisciplined managers, the directors are to be empowered. The outcome

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is a corporate governance model based on checks and balances to strengthen the role of the board of directors, but also, to afford "a meaningful role to shareholders" (Pargendler, 2016: 375). This generic model proved to be a remarkably resilient recipe put forth during the decades after the 1970s as a candidate for the solution of various economic problems at hand. Proponents of the orthodox corporate governance model claimed that extant corporate legislation and court rulings were inefficient in making real-world directors monitor their managers (a claim rejected out of hand by legal scholars at every single point of inquiry) and, therefore, they argued, directors should not merely serve as "the pawn in the managers' game," but should be more tightly connected to the shareholders to better monitor managerial decision making.

The virulent anti-statism of the 1970s in the U.S., fuelled by economic downturn caused by the oil crises, the political turmoil of the Watergate scandal, the City of New York being on the brink of bankruptcy, and the embarrassing end of the Vietnam War (to list a handful of events), was a seedbed for new corporate experiments deviating from the path laid out by New Deal policies. The wave of hostile takeovers in the 1980s, caused by a high-interest rate policy and great overseas savings flooding into the U.S. economy (Stearns and Allan, 1996) and a de-regulation of the finance industry, enabling the junk-bond financing of takeover and corporate restructuring activities, indicated that shareholder-led governance was not of necessity more efficient than, e.g., governmental regulation—the new model merely distributed economic wealth to the benefit of a few stakeholders at the expense of the many stakeholders—but the 1980s' free-market euphoria failed to contain any self-reflexive thinking in policy making quarters regarding the long-term effects of the new economic and monetary policies. Instead, the wave of hostile takeovers in the mid-1980s was understood by this new conventional wisdom to be the new order of things.

In the 1990s, the "decade of corporate governance" (in Pargendler's, 2016: 379, account), the widespread belief in the free-market based governance model continued uninterruptedly, now further fuelled by the take-off effects from previous investment in computer science technology, digital media, and the introduction of Internet on a broad scale. By the mid-1990s, American scholars and policy makers were convinced that the U.S. could take pride in having the best possible governance model known to mankind, possibly only challenged by the German model (as the Japanese economy, a previous contestant, stagnated in the 1990s and displayed structural problems). The triumphalist American 1990s of the Clinton presidency, marking an end to the Republican 12

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years' reign but certainly not the end to free-market ideology, further cemented the idea of the superiority of the U.S. model. "In the 1990s, as the U.S. economy recovered, the Anglo-Saxon model of corporate governance turned into a blueprint for financial and economic development around the world, particularly in emerging markets and transition economies," Pargendler (2016: 367) writes. The sordid bankruptcies of Enron, WorldCom, and a handful of other companies during the first years in the new millennium thus sent shock-waves across the American policy making and legal communities, as the U.S. was widely understood, not the least in the U.S., as the "international paragon of good corporate governance" (Pargendler, 2016: 383). The greed and corruption of the Enron scandal was particularly daunting, as Enron did everything by the orthodox corporate governance theory book, was the rising star of the new de-regulated finance market, and had ample connections in Washington and other branches of the U.S. political system (Aven, 2015; Dembinski et al., 2006; Watkins, 2003; Gordon, 2003; Coffee, 2003). Only a few years after Enron had wiped out $60 billion in market capitalization and "$2 billion in pension plans" (Pargendler, 2016: 383), the crisis struck anew during the fall of 2008, marking the end of the faith in free-market ideology, but not, as Pargendler (2016) emphasizes, in corporate governance as economic remedy and political tool. Corporate governance was a unifying theme for the full political spectrum, serving as both "the identified culprit for the crisis" and as "a recipe for reform" (Pargendler, 2016: 386). Corporate governance thus rather reinforced its role as a universal remedy after the fall of 2008, serving as a balancing point between increased governmental regulation (with a politically unattractive centralization of the economy) and an increased free-market dependency (on an empirical basis most likely to generate its own intolerable political consequences, in the end being passed on to the tax-payers as indicated by a robust financial crisis track record; Calomiris and Haber, 2014; Pontusson and Raess, 2012; Gerding, 2005):

> [I]t was the financial crisis of 2008—and its immense costs to taxpayers and deleterious implications for macroeconomic performance—that has disseminated growing skepticism of the shareholder primacy norm. At least with respect to financial institutions, the pursuit of shareholder value maximization no longer appears conducive to the promotion of social welfare even to advocates of shareholder primacy. (Pargendler, 2016: 397–398)

Pargendler (2016) here echoes the concern of Berle and Means (1934/1991), being sceptical regarding salaried managers' ability to monitor social welfare, a concern that applies also to directors being recruited by and large from the same pool of professionals deemed qualified for

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corporate governance responsibilities. Therefore, rather than blindly trusting that firms and their boards of directors, especially when joining hands with shareholders, are in the best position to act like governments on the smaller scale, Pargendler (2016: 400) calls for an analysis of how corporate governance fares "compared to alternative mechanisms to further the same objectives," including strengthening government regulation or market forces. "[T]he obsession with corporate governance may still be harmful to the extent that it crowds out more meaningful modes of reform," Pargendler (2016: 400) alerts us.

Pargendler (2016) thus calls for a scholarly programme that at least examines the root causes of this widespread enthusiasm over corporate governance as the assigned and favoured model within a series of domains. Pargendler (2016) also reviews to what extent *the claim* that corporate governance (and, by implication, governance more widely) is in fact capable of solving economic problems where government or markets run short can be substantiated. This volume is located within such a programme, targeting governance as a historically and culturally contingent solution to perceived problems and, therefore, also including the exclusion of equally important problems, not comfortably sitting within the proposed governance model.

DEFINING KEY TERMS

The Concept of Governance

Bevir (2009: 3) defines governance quite generally as "the construction of social orders, social coordination, or social practices." In addition, governance refers to "all patterns of rule," including the "kind of hierarchical state that is often thought to have existed prior to the public sector reforms of the 1980s and 1990s" (Bevir, 2009: 3). Benton (2016: 661–662), in turn, uses a definition of governance that emphasizes the role of the public corporation (i.e., the corporation with dispersed ownership): "Corporate governance refers to the practices and structures within and around public corporations that allocate power among organizational participants, particularly shareholders, directors, and managers." In a more recent publication, Bevir (2012) makes a distinction between *government* and *governance*: the former term is used in the situation wherein "people believe in a unified sovereign state" and in its ability to monitor all economic and political affairs; the latter term is used when analysts "do not believe in the state," and therefore choose to "concentrate more on the complex and messy processes of governance" (Bevir,

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2012: 12): “Governance here differs from government because social organization need not involve oversight and control, let alone the state. Markets and networks might provide governance in the absence of any significant government,” Bevir (2012: 3) argues. More specifically, Bevir (2012: 78) actively discredits and undermines the idea that the sovereign state is capable of being in control of the wide diversity of issues and affairs that fall under its authority:

> The notion of the central state being in control of itself and civil society is a myth. The myth obscures the reality of diverse states practices that escape the control of the centre because they arise from the contingent actions of diverse actors at the boundary of state and civil society. (Bevir, 2012: 78)

This re-locates the state—no longer being “monolithic”—as one actor that negotiates with “networks of organizations” (albeit still an influential and centrally located actor), including actors from the public, private, and voluntary sectors in policy making processes; “the boundaries between state and civil society are blurred,” Bevir (2012: 79) contends. As a consequence, Bevir (2009: 29) is sceptical regarding the ability to define governance in lexical terms that fit any domain of practice: “[T]he term governance can be used at various levels of generality and within various theoretical contexts. The diversity of uses exceeds any attempt to offer a comprehensive account of governance by reference to its properties.” Governance is thus a fluid and malleable concept, by and large contingent on the context wherein the practices are situated.

In a review of the literature on governance, Fukuyama (2016: 90) follows Bevir’s (2009) claim that it is complicated to define governance once and for all, and argues that there is “no consistent understanding of the meaning of the word governance today, which indicates a degree of disarray in the field that purports to study it.” The term is “applied promiscuously,” Fukuyama (2016: 90) says, to a whole range of activities that have in common “the act of steering or regulating social behavior.” Yet, Fukuyama (2016) identifies three basic meanings of the term, including (1) “international cooperation through nonsovereign bodies outside the state system (international governance)”; (2) “governance as public administration”; and (3) “governance as the regulation of social behavior through networks and other nonhierarchical mechanisms,” i.e., what Fukuyama (2016: 90) calls “governing without government.”

Lobel (2004: 344) defines governance as a term that “[s]ignifies the range of activities, functions, and exercise of control by both public and private actors in the promotion of social, political, and economic ends.” Lobel (2004: 343) also introduces the term “the Renew Deal”

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(to paraphrase Franklin D. Roosevelt's New Deal programme) to denote a series of changes in governance in U.S. administrative agencies at federal and state levels, prompted by changing market conditions. These initiatives share the quality of being "outreach programs and issuing nonbinding guidelines," not substituting traditional "top-down rule promulgation, implementation, and enforcement activities" (Lobel, 2004: 343). Lobel continues:

> At the beginning of the twenty-first century, against the backdrop of global competition, changing patterns in market organization, and a declining commitment to direct government intervention, contemporary legal thought and practice are pointing to the emergence of a new paradigm—governance—that ties together recent developments in the political economy with advances in legal and democratic theory. (Lobel, 2004: 344)

In this scenario, governance becomes distributed inasmuch as "multiple stakeholders" (including not least what Lobel refers to as "norm-generating nongovernmental actors") are encouraged to participate in governance activities, serving to transfer responsibilities to the private sector, including private businesses and nonprofit organizations (Lobel, 2004: 344–345). In Lobel's (2004: 345) optimistic view, lawmaking therefore "shifts from a top-down, command-and-control framework to a reflexive approach, which is process oriented and tailored to local circumstances."

Lobel's (2004) vision of a "Renew Deal" governance regime is rooted in free-market ideology and the firm belief in the market as the most efficient arbiter in any economic system. The Renew Deal programme is therefore *reactive*, i.e. is based on the premise that "as the world changes, patterns of law and governance must change with it." Governance is therefore not a matter of being part of a political agenda wherein political entities are granted the authority to influence market behaviour on basis of democratic interests. Lobel (2004: 361) is sceptical towards such an active polity and judiciary system, not the least on the ground of alleged inabilities of such entities to handle practical concerns: "Under the traditional regulatory model, law itself has become so complex and dense that it is inevitably self-defying." In contrast, the Renew Deal is grounded in legal thought that is "adopting a practice patterned after and correlated with the changing American market as an analogous sphere of good practices to be replicated in other spheres of life" (Lobel, 2004: 366). Lobel continues:

> [a]s scholars and reformers increasingly observe private-sector developments, regulatory agencies and public officials are facing heightened pressures to

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> imitate the efficiencies of the private sector. For example, government is urged to become lean and flexible through the reduction of size and costs. One central way to reduce the size of the public sector is through accelerated privatization projects, reducing the size of bureaucracy primarily by contracting out public functions to private parties. (Lobel, 2004: 366)

What Lobel (2004: 361) refers to as the "the thick regulatory state" is thus under pressure to adapt to various market-based conditions, and "the political economy" accompanied by social and legal theory have "motivated these changes in policy aspirations and the techniques for their realization" (Lobel, 2004: 365). In Lobel's view, the new governance model is no longer exclusively bound up with political entities and state-controlled agencies, but governance becomes a form of distributed systems of interrelated activities. Yet, the state is expected to continue to play an active role as a centrally located actor, held responsible for an operable and efficient judiciary system. Furthermore, this Renew Deal agency model undermines governance as a political tool, controlled by democratically elected political entities, as the nature of this governance regime is essentially determined by market conditions: "The model enables practices that dislocate traditional state-produced regulation from its privileged place" (Lobel, 2004: 344). In Lobel's view, governance is an activity or a practice wherein principally all market-based actors can participate; it is a form of libertarian image of governance that challenges many assumptions of traditional governance regimes. The Renew Deal governance regime represents a decisive step towards the vision of "governing without government."

Corporate Governance

The literature on corporate governance offers a variety of concepts and terms that are applicable when examining also governance. Campbell and Lindberg (1990: 636) define governance quite broadly as "[t]he institutionalized economic processes that organize and coordinate activity among a wide variety of economic actors." Campbell and Lindberg (1990: 636) also introduce the term *governance regimes* to denote "combinations of specific organizational forms, including markets, corporate hierarchies, associations, and networks," and that consequently "coordinate economic activity among organizations in an industry or economic sector." To better flesh out the term governance, Kogut (2012: 8), separates "two related but distinct sets": one *set of practices*, including the board of directors and the various governance decision practices such directors make use of, and one *set of institutions*,

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constituting the supportive social and political system, "such as the rule of law or politics." While the legal system (i.e., the second set) dictates and enforces governance rules, the first set (e.g., boards of directors) translates such rules into governance practices and renders abstract law meaningful within an organization's activities (Edelman, Fuller, and Mara-Drita, 2001; Dobbin and Sutton, 1998).

Examining an even more detailed level of analysis, Du Gay, Millo and Tuck (2012: 1085) propose the term *governance devices* to denote a variety of tools and heuristics, including decision protocols, accounting standards, legal strictures translated into an operative and managerial vocabulary, being used in governance work.[4] In Du Gay, Millo and Tuck's (2012) use of the term, such *governance devices* are not passive resources in the hands of governing bodies or individuals, but such tools assume distinct agencies that make corporate governance a matter of blending humans and non-humans (in an actor–network vocabulary; Latour, 2005) into productive *governance assemblages.* These governance assemblages are thus "[c]lusters of people, machines, and institutionalized processes that operate interactively towards an organizationally defined goal," Du Gay, Millo and Tuck (2012: 1085) suggest.

Transnational Governance

A growing body of literature examines how governance is increasingly becoming a transnational activity, with the institutions anchored in the sovereign national state and ultimately granted authority by democratically elected decision making bodies now in some cases only playing a secondary, advisory role (Slaughter, 2004; Büthe and Mattli, 2011). In areas such as environmental regulation (e.g., Bartley, 2007) and finance market monitoring (e.g., Singer, 2007; Abdelal, 2007), much regulatory licence is granted to networks of transnational regulators, sharing information, and establishing international standards and assisting one another in enforcing standards (Bignami, 2005: 809–810). "The state is not disappearing, but it is disaggregating into its components' institutions, which are increasingly interacting principally with their foreign counterparts across borders," Slaughter (2004: 18) writes, pointing at the new governance practices. One primary concern regarding the growth of transnational governance is that the modern understanding and acceptance of legitimate public administration is tied to national democratic institutions, with the persistent critique of "democratic deficit" haunting transnational regulators: "The sharing of powers among national and supranational regulators in networks makes it difficult for national publics and parliaments to hold such regulators accountable," Bignami

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(2005: 811) argues. As also national governments and other local governmental agencies have a hard time keeping track of the advancement of transnational governance activities, it is even more complicated for the general public to monitor and overview these changes. In the end, what is arguably the only meaningful approach to the regulation of transactional markets, that of transnational governance, easily becomes discredited or rendered suspicious as the traditional ties between democratic institutions and their regulating agencies become loosely coupled and tenuous.

Another concern is that, e.g., global financial governance (see e.g., Abdelal, 2007) is highly technical–legal in character, making it almost impenetrable for laypeople but also to some extent for policy makers and journalists (Riles, 2011: 10), lacking the expertise needed to understand, e.g., highly technical and legally complex domains such as securities market regulation (Keys et al., 2009; McCoy, Pavlov, and Wachter, 2009; Paredes, 2003; Rock, 2001). In such cases, Riles (2011: 232) argues, regulatory policy is enacted as something that is "stipulated in principle," while de facto being "something to be left to lower-tier implementers or even to market participants themselves." In the case of finance market regulation, a long tradition of market actors regulating themselves on the basis of, e.g., credit rating (Naciri, 2015; White, 2013; Bolton, Freixas, and Shapiro, 2012) or reputation-impairing mechanisms ("shaming") (Hunt, 2009; Paredes, 2003; Sikka, 2009), has accomplished little to stabilize global finance markets or to discipline speculative behaviour (Fligstein and Roehrkasse, 2016; Gerding, 2005), making finance market regulation a precarious activity, subject to much criticism from scholars and commentators (Alp, 2013; Crotty, 2009). As consequence, Riles (2011: 246) summarizes, "[l]egal governance is ultimately not so much a matter of grand design as it is a set of lived practices and techniques—techniques that are often disparaged or ignored but in fact are far more interesting, subtle, and full of transformative potential than we habitually recognize."

Yet another concern regarding governance, both on the transnational level and in the corporate setting, is that the governance practices commonly seek the full commitment of the actor subject to governance activities, and such an acceptance of various forms of detailed control demands a tolerance for paternalist governance, i.e., a belief in the efficacy of, e.g., organizational goals and objectives and the means provided by the employer, the sponsor, or the sovereign state (see e.g., Karlsen and Villadsen, 2016). As such paternalism runs counter to, e.g., professional and academic liberties and jurisdictional discretion, the new regime of governance needs to "sell itself" on the basis of both personal

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and societal interests and benefits, a bundling of interests that is beset by tensions and contradictions.

Governance and the Spectre of Paternalism

"Paternalistic policy aims to affect choice either by changing the set of available alternatives among which an agent can choose or by employing non-rational means to influence how the agent chooses among an unchanged set of alternatives," Hausman and Welch (2010: 129) write. Therefore, "paternalistic actions" either "coerce people" or use "imperfections in their deliberative abilities to shape their choices" (Hausman and Welch, 2010: 129). In either case, paternalism is based on the principle that some regulating body or agency is endowed with the legitimate right and intellectual capacity to determine choice alternatives that are favourable for *all* participants. Rizzo and Whitman (2009a: 907) use the term "new paternalism" to examine how academic work in the field of behavioural economics has served to define new governance practices, based on the predefined and theoretical "rational behavior" model dominating economic theory. In behavioural economics, human actors are enacted as autonomous decision making agents, yet suffering from "various cognitive biases, insufficient willpower, and difficulties of information processing" (Rizzo and Whitman, 2009a: 907). To overcome or neutralize such deficiencies of "human nature," behavioural economics seeks to provide standards for paternalist government policies that do not impose choice alternatives "from above," formulated by some external agency, but instead actively identify and formalize the agent's own preferences. In Rizzo and Whitman's (2009a) sceptical view, such a behavioural–economic model of governance is encountering formidable challenges, and many of the elementary research methodologies being used, including the ordinal ordering of stated preferences and slippery slope problems in setting standards, are yet to be handled.

Despite a variety of theoretical and methodological shortcomings and failures, the idea of a new paternalist governance has struck a chord in policy making quarters, and its principal elementary idea, that governance works best when the subject of governance shares objectives, norms, and ideologies with the governing agency, is today conventional wisdom in the governance literature. As will be discussed in the following section, paternalism is today paired with calculative practices and the construction of "lists and algorithms," a set of practices that fashion a halo of scientific respectability around what are in fact governance practices and objectives riddled by controversy. In other words, in order to bury controversies and to mute opposing views,

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governance practices are based on the enactment of supposedly "objective" performance measures that are widely taken for granted and that institute goal congruence among heterogeneous actors and communities, in many cases articulating opposing interests or otherwise sharing few concerns. The use of numerical governance devices such as ranking lists and track record calculations are thus part of what Merry (2016, 2011) refers to as the "politics of measurement" that is supposed to work as an infrastructural system, i.e., it should be peripheral in public debates and be recognized as a natural order of things within the realm of the regulator's jurisdiction.

OUTLINE OF THE VOLUME

This book is structured into three parts and five chapters in addition to this introduction. The first part of the book, "On the theory and practice of governance" consists of the Introduction and Chapter 1, wherein the philosophical and legal roots of governance, and more specifically corporate governance are discussed. Chapter 1 discusses the two legal traditions derived from the writings of the English philosopher John Locke and the German philosopher George Wilhelm Friedrich Hegel as the starting point for the two dominant pathways for governance theory and practice, the free-market based governance model dominating the Anglo-American world of liberal market economies, and the more statist governance model rooted in the continental tradition of coordinated market economies. The first chapter thus emphasizes that the deviations between liberal market economies and embedded market economies need to be traced back to its intellectual roots and the wider institutional structure wherein such governance traditions are anchored.

The second part of the book, "Governing the economy" includes Chapters 2 through 4 and examines governance doctrines and reforms in three separate, yet intertwined practical domains, including corporate governance (Chapter 2), university governance (Chapter 3), and the governance of industry, and more specifically the finance industry (Chapter 4). The three chapters demonstrate that new governance regimes are by no means implemented without unanticipated consequences, externalities, and social and economic costs imposed on various actors. By the end of the day, governance reform and changes in governance practices, intended to accomplish certain economic objectives, are oftentimes accompanied by consequences that were not fully anticipated by the reformers and policy makers. Alternatively, governance reformers who campaign to establish new governance practices and doctrines may

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on purpose understate certain consequences, including the tilting of the balance of power between various stakeholders. The second part of the volume contains the principal empirical cases serving to substantiate the claim that governance remains an unfinished business.

The third part of the volume, "Theoretical and practical implications," includes only one final summary chapter wherein some of the shortcomings of the extant governance regime, operating on the micro (firm or production unit), meso (industry), and macro (transnational) levels of the global economy are examined. The chapter reviews some of the literature that discusses the theoretical doctrines and underlying ideologies that guide governance reform and new legislation in the contemporary period, but also points at some hands-on, practical reforms being advocated by, e.g., legal scholars. In the end, the volume advocates and calls for more scholarly research that examines practical shortcomings and theoretical doctrines that sub-optimize and/or serve to imbalance the delicate distribution of formal and real power between constituencies, accomplished on the basis of legislation, regulatory control, and governance. As governance is politics pursued by other means, governance is, to paraphrase the former French Prime Minister Georges Benjamin Clemenceau, a matter far too important to be left to a small group of insiders, especially when, e.g., changes in corporate governance practices instituted over the last four decades have proved to generate considerable externalities that befall others than the primary benefactors of such reforms. Seen in this view, governance scholarship needs to survey the full consequences of governance reform and not only myopically emphasizes singular measures such as efficiency.

SUMMARY AND CONCLUSION

The last four decades of governance reforms are entangled with two primary socio-economic changes: the unprecedented growth of the global finance industry and the shift in institutional logic towards finance industry interests, and the ideological discrediting of the sovereign state as a market maker and market regulator, enticing legal reforms and new governance practices increasingly relying on market-based self-regulation. The long-term consequences of these changes in the conventional wisdom and doctrines and ideologies remain disputed, but robust factual evidence indicates growing economic inequality and levels of debt now being at unprecedented levels. Instead of explaining the growth of systemic risk on the basis of microeconomic models, rendering, e.g., soaring household debt a consequence of inadequate decision making, or

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on the basis of “over-regulation” and similar state-led excesses (two favoured explanatory models in the moderate right to libertarian quarters), systemic risks are arguably created on the basis of systemic reforms and changes. Although governance, here defined as a term indicative of a polity substantially reducing the legitimacy of the sovereign state, is a composite term, including a variety of heterogeneous elements and operating within a temporal horizon wherein short- to long-term objectives are not easily reconciled, it is still argued that changes in governance on the micro, meso, and macro scales do deserve a closer scholarly analysis. While governance is, *ex hypothesi*, what is of necessity “unfinished,” i.e., it is creaseless and ongoing, never fully stabilized but always “in the making,” governance traditions and practices can still be examined in terms of their ability to generate economic and social welfare. Expressed differently, governance is neither the remedy nor a poison, but is a potion that can do good or do harm dependent on under what conditions it is applied. Making governance an issue beyond human influence is a form of defeatist fatalism, but to believe that governance is a universal solution to all kinds of social and economic malaises (see e.g., Pargendler, 2016) is not a viable way forward either; only acting with moderation ensures sustainable outcomes.

NOTES

1. The concept of inequality and its implied normative associations, i.e., that inequality is either inducing economic inefficiencies or morally questionable (or both), need to be explained and justified. Frankfurt (1987), a philosopher, is critical of the idea that “economic equality has considerable moral value in itself,” and treats economic inequality not so much as a factual condition (and therefore a policy making matter), as it is a “moral idea” that needs to be examined on such grounds. In contrast to this inherited liberal view, Frankfurt (1987: 21) argues that “economic equality is not, as such, of particular moral importance.” This view is consistent with Jencks’ (2002: 50) claim that “[t]reating inequality as a moral issue does not make the empirical questions go away, because the most common moral arguments for and against inequality rest on claims about its consequences.” In the next stage, if these claims regarding the consequences cannot be supported by evidence, Jencks (2002: 50) continues, “skeptics will find the moral arguments unconvincing,” regarding moralist claims being factually unsubstantiated. What matters is, Frankfurt continues, is that all individuals “have *enough*,” not that all individuals should “have *the same*,” a position that Frankfurt (1987: 22) refers to as “the doctrine of sufficiency.” To assume that all individuals deserve the same is not only an error, but is also a belief that “tends to do significant harm,” Frankfurt (1987: 22) claims. For instance, Frankfurt (1987: 22) argues, “egalitarianism distracts people from measuring the requirements to which their individual natures and their personal circumstances give rise.” Instead, egalitarianism as a “moral idea” encourages people “to insist upon a level of economic support that is determined by a calculation in which the particular features of their own lives are irrelevant” (Frankfurt, 1987: 22). This means that egalitarianism undermines a broader recognition of the various conditions under which a certain level of wealth is generated, but also that the

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question of how to supply sufficient resources to individuals who need them are less prioritized.

While Frankfurt makes a valid point in emphasizing the slippery slope of the egalitarian argument (e.g., how much economic equality is enough, and at what point are enterprising incentives generating the economic resources at hand undermined by egalitarian policies and legislation?) and the is–ought fallacy (Volokh, 2003) inherent to the moral idea of economic equality as a desirable state, Frankfurt's argument is assuming that a call for some economic equality implies that all should "have the same." That is not the case, as most proponents of economic equality recognize the need to discriminate differences in income and entitlements, while the span for such differences of necessity is a political issue; some tolerate and justify larger economic inequality, while others may be more concerned about the consequences. Regardless of Frankfurt's (1987) critique, egalitarianism comes in many versions.

Therefore, when economic inequality is invoked to justify a scholarly analysis of governance regimes in this volume, it is based on the economic idea that excessive economic inequality (i.e., at the point where considerable proportions of accumulated finance capital is excluded from productive circulation, e.g., it is not used for consumption or invested in production capital and human resources, but is saved or re-invested in the finance industry) is harmful for a dynamic economy inasmuch as it undermines the long-term capacity of generating economic welfare for a majority of the stakeholders or citizens. That is, this proposition is consistent with Jencks' (2002: 53) liberal critique of economic inequality that predicts that inequality, above a certain, yet hard-to-define level, "retards" economic growth. In addition, as no economy can be examined in a social, cultural, or historical vacuum, social norms regarding tolerable degrees of economic inequality (see, e.g., Bonica et al., 2013)—very few individuals actually do believe that all should have "the same"—cannot be conspicuously violated without considerable social costs that in turn translate into economic costs. That is, regardless of the idea of economic equality being an economic theory proposition, a "moral idea," or something else, humans tend to construct norms regarding what Frankfurt (1987) calls "enough" economic resources, and as they live according to such norms, violations of the norms may have unanticipated consequences. Economic equality is therefore an actual and legitimate concern pertaining to scholarly inquiry and, more specifically, the question of governance addressed in this volume, despite its inability to provide a waterproof case when being subject to a stern analytical procedure.

2. Karabarbounis and Neiman (2014) report that between 1975 and 2012, in the 59 countries included in the sample, 42 "exhibited downward trends in their labor shares." Brennan (2014) observes a similar tendency in his sample, and points at a divergence between productivity growth and real-wage growth. In the U.S., Haskel et al. (2012: 120) show, there has been "a dramatic acceleration in aggregate labor productivity growth since the mid-1990s," with nonfarm business sector output per hour growth being at 1.4 percent per year over the 1973–1995 period, but thereafter taking a leap to 2.5 percent per year over the 1996–2009 period. Despite this productivity growth, Haskel et al. (2012: 120) speak of "[p]ervasive real-income declines for the large majority of Americans in the past decade." Furthermore, Kristal (2013: 383) reports that U.S. productivity grew 80.4 percent between 1972 and 2011, while the median worker's hourly compensation "grew just by 10,7 percent." Weil (2014: 16) writes that productivity rose by 23 percent between 2000 and 2012, but only 0.5 percent real-wage growth could be secured for the median worker.

   Karabarbounis and Neiman (2014: 62) claim that the decline in labour share cannot be explained on the basis of exogenous factors (e.g., technological shifts or the globalization of the economy), but are instead for most parts "attributable to within-industry changes rather than to changes in industrial composition." Brennan (2014: 249) suggests that "[t]here is a shift in power in the economy away from traditional wage-earning workers and towards those who make money from non-work activities": "[F]rom 1966 to 2001 … the top 10% of wage and salary earners were gaining at the expense of everyone else, including the median workers" (Brennan, 2014: 249–250). Kristal (2013) and Wolff (2003) argue that waning

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unionization has been the main force behind the decline in labour's share: "[A] reasonable presumption might be that an equal division of power between capital and labour should lead to real wages increasing at about the same rate as overall labour productivity. If wages increase more slowly, we might suspect that the balance in power has shifted towards capital," Wolff (2003: 497) argues. Also Karabarbounis and Neiman (2014: 102) stress the trade-off between labour shares of income and business earnings and corporate saving, and suggest that "[t]his large change in the flow of funds between households and firms may have important macroeconomic repercussions."

3. Scheidel's (2017) magisterial overview of economic inequality in historical societies provides a rich number of examples of how excessive economic inequality is caused either by overbearing political crises or natural disasters (such as the plague in the fourteenth century in Europe), or correlates with various sorts of political conflicts or economic crises. In this overview, spanning from the Neolithic age over antiquity and into late-modern competitive capitalism, economic inequality is not a signature of a vital economic and social system. On basis of such historical records, economic inequality should be taken seriously. On the other hand, economic inequality is widely taken as an indicator of a dynamic economy, providing life chances and opportunities for the venturesome or clever, whose acumen and enterprising capacities benefit also, in the end, the poorer income strata. Furthermore, the level of economic inequality (measured in terms of the Gini index) is substantially lower in most democratic, industrialized states than in the historical societies that Scheidel (2017) examines.
4. The literature provides a number of examples of "governance devices" including "managerial ownership" (Bhagat, Bolton, and Romano, 2008: 1838), "the market for corporate control" (Fisch, 2010: 942), and "fiduciary duties" (Macey, 1991: 41).

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