

Preface

I am grateful for the opportunity to write this monograph as it enables me to tie together diverse streams of consciousness acquired over the past 30 years of teaching corporate law. When I entered academe as a lecturer in 1978, my focus on Company Law (as the subject was then designated) was essentially parochial. This was no fault of my teachers at the Faculty of Law at the University of Birmingham, who included the visionary Professor Robert Pennington, a scholar all too well aware of how membership of the EEC would change the shape of our national corporate law model. The problem was that for less perceptive individuals like myself, at this stage of evolution in the subject, even the EEC input appeared fairly peripheral. My belated appreciation of a much wider perspective on corporate law came about through a variety of factors. First and foremost, from the mid 1980s I became involved in teaching LL.M. candidates at the University of Manchester on a postgraduate course entitled Corporations in International Business Law. This gave me the opportunity (greatly aided by the insights of generations of students from a range of overseas jurisdictions) to reflect upon the comparative nature of the subject. Why do different jurisdictions adhere to certain basic corporate principles, whilst adopting a diversity of approach in other areas of Company Law? Are there universal core principles of Company Law? Is there an ideal model of Company Law to be located on planet Earth? Will globalisation lead to a state of convergence in Corporate Law?

Subsequently, I became wedded to the already well-established idea that for instructional purposes, the UK system of corporate law might be viewed as a *commodity* to be sold to the international business community, and that in the interests of boosting the invisible earnings of UK plc, it was necessary to develop a product that was commercially competitive. I was not alone in drawing this apparently mercenary conclusion. A perusal of the first publication in the UK Company Law Review (1998–2001) library, *Modern Company Law for a Competitive Economy*, will unearth the following statements from Margaret Beckett, the then Secretary of State for Trade and Industry:

An up-to-date company law framework, based on principles of consistency, predictability and transparency, is particularly important in the context of a glob-

alised economy, in terms both of competing for inward investment, and producing internationally competitive companies. (para 3.8)

Later she states:

In today's increasingly globalised economy, the national framework of company law cannot be considered in isolation. It represents part of the nation's basic infrastructure. This can best be seen in relation to business mobility. Naturally many reasons affect the decisions of internationally mobile businesses as to the country in which to locate, and it is worth emphasising that the UK scores extremely highly in general in this area; surveys repeatedly confirm that a wealth of features make the UK an excellent place in which to do business. But the security and predictability of the business environment is a key element. The Government is determined to ensure that the nation's framework of company law does not through increasing obsolescence become a disincentive to establishing business in the UK. (para 4.4)

Similar sentiments are also apparent in the terms of reference for the Company Law Review – see second bullet point in para 5.1 of those terms. The Irish Company Law Review Group, which produced its First Report in 2001 and consolidated recommendations for reform in 2007, adopted a similar perspective when embarking upon its reform study.

If we want concrete examples of how businesses are prepared to relocate to exploit more favourable corporate laws found in other jurisdictions, I would point to the migration of German businesses to the UK to use our private company format, with its lack of a minimum share capital requirement. Similarly, distressed German firms have been keen to move their base to this country prior to a declaration of insolvency, so as to be entitled to use the company voluntary arrangement model. Both of these phenomena will be discussed in this work.

My awareness of the diversity in national corporate systems, already whetted by interaction with my LL.M. students, was sharpened when I was asked in 1999 by the Company Law Review to lead a team of academics from the Centre for Law and Business at the University of Manchester to produce a study of national corporate law regimes in the EU. This study was made available on the Company Law Review website and is mentioned in the Final Report (see p. 7).

Having moved to Lancaster University in 2005 I was exposed to a new way of looking at the subject of corporate law. Heavy emphasis was given to the social and cultural foundations of corporate law. Whilst not entirely comfortable with an approach exclusively based on such perceptions, I did find a number of insights gleaned from this tradition particularly useful. My conversations with Philip Lawton undoubtedly opened my eyes to a perspective on Company Law that until that stage I had not fully appreciated.

I have taken liberties when defining the parameters of *corporate law*. In

particular, I have included reference to the limited liability partnership where this is deemed appropriate. 'Corporate law' for the purposes of this study encompasses both private companies and public undertakings. The regulation of financial services and corporate insolvency fall within the catchment area. In order to complete this study it has proved necessary to trespass into related fields, such as private international law, though I claim no expertise in that subject.

The project seeks to analyse how a national system of corporate law responds to global trends. My primary goal is to focus on English law, but in order to understand actual and potential developments in that jurisdiction, the experience of other corporate systems can prove enlightening. Although the focus is on factors impelling change in corporate law, it must not be imagined that it is uniquely affected by globalisation; other substantive legal regimes have also felt the pressure of the new world order, most notably fiscal law, competition law and employment law.

The timing of this publication is not ideal. After sitting on the excellent work of the Company Law Review for several years, the government eventually produced a Bill in 2005. That was designated the Company Law Reform Bill. Although most of its reforming provisions were welcomed, many commentators observed that, if enacted, this would leave UK corporate law in a mess, in that most of the Companies Act 1985 would remain in force albeit in amended form. Certainly, the law would not be available in a user-friendly fashion. The government took this criticism on board and the Bill changed its nature to part reform part consolidation. In the process it became the lengthiest Bill on record. The Bill was finally enacted in November 2006 as the Companies Act 2006. However, because of the substantial transitional problems, its full and final implementation has been delayed until October 2009. This book will therefore be published in the period of interregnum, which is hardly ideal. I have attempted to include in an Appendix the latest state of play on implementation, but the position changes regularly here, depending on the latest ministerial announcement.

One other timing issue deserves mention. In the final months of writing up, the world financial system went into meltdown. This has caused a reappraisal of many articles of faith. The idea that free markets are the solution to every regulatory issue is no longer seriously contended. The state clearly has a role to play where markets fail. That is as true in corporate law as in every other regulatory regime.

In completing this monograph, I have been assisted by many individuals and a variety of organisations. Particular thanks go to John Birds, David Burdette, Blanaid Clarke, Phil Lawton, Geoff Morse, Sol Picciotto, David Sugarman, Adrian Walters and Gary Wilson. Former colleagues at the Centre for Law and Business at the University of Manchester have collectively

afforded me a rich vein of insights. Several academics at the Nottingham Law School, where I held a Visiting Professorial Fellowship in 2008, were most helpful. Gratitude is to be extended to all such parties. Responsibility lies firmly at my door.

Generally, the law in England and Wales is stated as it stood at 31 December 2008, though some later developments have been included at proof stage.

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¹ *Modern Company Law for a Competitive Economy* (March 1998).