Introduction

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Do modes of management depend on company ownership? Does macro-economic performance rely on shareholder value? The contributions collected in this book explore these question from economic, historical and legal perspectives. Property rights are considered by most economists to be as fundamental as the concepts of scarcity or rationality; however, the expression of property, as a social construct, differs so much from one legal structure to another that its utilitarian justification only has common meaning in political discourse.

The nature of ownership is revealed in decision-making processes, which bring to light the interests that are protected by property. Les Lumières established the idea that all men enjoy the same right to ownership – whether inherited or acquired – whereas social distinction is merited rather than inherited. It does not matter if systems of inheritance lead to wide variations in the substance of goods owned by different individuals within society: the right to ownership provides an indisputable foundation to the inequality of distribution. In itself ownership cannot concern one isolated individual. It involves at least two persons: the one who owns and the one who does not.

From the perspective of classic civil law – as opposed to common law used notably by the UK and the USA – property rights are characterized by the right to use the property, to appropriate the returns from it and to dispose of it. It is an absolute right, in the sense that it is enforceable against everyone and bounded solely by the principle of the breach of law. The right to ownership is imprescriptible, meaning that failure to use the property does not annul the ownership. There is no doubt then that the shareholders are not the owners of the company’s assets; they have no direct rights over them. Only the company, as a legal entity, can use them, appropriate their returns and dispose of them, according to the decisions made by the managers.

Independent of the contingencies, ownership is expressed differently according to whether the non-owners use, manage or build upon it. This observation appears to be self-evident, but the distinction does not necessarily appear in the vocabulary. In English, for example, the shareholders
are contrasted with stakeholders. French proposes another dichotomy, between the category of ayants droits (literally, ‘those having rights’) – the stakeholders, including employees, managers and shareholders – and the category of shareholders alone. Thus, the inequality of distribution counterbalances the equality of the contracting parties, which is expressed in both discourse and contracts.

In the case of the company, the discretionary power of the legal holders of the interests attached to shares is limited to buying, keeping or selling the shares. The managers’ power is expressed in issuing and acquiring, using and deploying assets. The shareholders have no more than pro forma control over the managers. The formal possession of shares may or may not, therefore, enable the holder to participate in decision making. The legal approach has been poorly adapted by the standard economic analysis, which adopts the utilitarian vision of the firm: the social link in the firm, as elsewhere, is reduced to a game of economic interests. This book challenges this economic axiom. A priori, the shareholders have the simplest utility function: maximizing their returns on investment. Employees, on the other hand, are concerned with job security and working conditions. It is thus not as simple as one might think to establish shareholders’ role in the firm. How do they behave in relation to the management, who make the essential decisions in the company (hiring, firing, layoffs, financing modes, production quotas, prices) without having the right to residual payments or a priori to the interest made on the total value of the company? How does the management ensure the legitimacy of their decisions vis-à-vis the shareholders?

The question of shareholder legitimacy finds different answers in different eras. Since the 1930s, economic theory has been developing the idea that the nature of private ownership varies according to the system in which it finds expression. Adolf Berle and Gardiner Means (1932) showed how the birth of the modern corporation was accompanied by a fundamental change in the nature and locus of private ownership. The centrifugal dispersion of ownership rights occurred at the same time as the centripetal concentration of their control.

Up until the end of the 1970s, the control of company ownership differed widely on either side of the Atlantic, but in both cases it was based on the organized weakness of market mechanisms, especially in the financial markets (Aglietta and Rebérioux, 2005). In the United States, ‘managerial capitalism’, as Berle and Means called it, was characterized by the separation between ownership and control, resulting from the dispersion of ownership and giving managers autonomy in their choices of strategy. The absence of control blocks combined with the fragmentation of financial institutions initiated before the war rendered managers relatively
impervious to the desires of shareholders. The increase in the number of conglomerates was a symptom of this particular configuration. The level of dividends, moreover, remained low throughout the first three post-war decades.

In continental Europe, it was the narrowness of the financial markets that saved companies from stock market control. Ownership concentration and shareholder stability made managers unreceptive to the logic of the capital markets: profits were massively reinvested to the detriment of dividend distributions, and hostile takeovers were very rare. The highly institutionalized nature of labour-relation compromises (such as collective agreements in France or co-determination in Germany) also gave companies more independence from the financial markets. The prevailing form of control was therefore internal, and very few companies were listed on the stock exchange.

The process of liberalization and integration of capital markets that started in the 1980s was accompanied by rising interest rates and tighter monetary policy. Creating a more favourable situation for creditors (shareholders and lenders), institutional reforms began to accumulate, aiming to improve the negotiability of securities and facilitate the transfer of risk. The supply-side dynamics picked up speed in the 1990s, as did the demand for financial securities. It was in this context that the analysis of ‘shareholder value’ quickly became established, as the contributors to this volume each point out. The relationship between those who supply and control credit to the company – seeking to defend the return on their assets – and those who manage it has come to be perceived as the foundation of the company. At the beginning of the 2000s, it was believed that the absence of resistance to these transformations would bring about convergence towards one best structure of control – that of shareholder value. The main problem remained the homogeneity of shareholders. Should all shareholders be favoured equally, whoever they might be, or should minority shareholders be protected against those owning control blocks? What role should the stakeholders who are not shareholders play when they appear in the standard analysis as externalities?

Another approach, competing with that of shareholder value, focuses on the relationship between the company, its owners, its activities and the institutions that frame it, arguing that there are at least as many forms of ownership as there are activities. This approach studies the complementarities between institutions and analyses the co-evolution of specialization and forms of ownership. The first contribution, by Wendy Carlin (Chapter 1), presents a statistical and econometric test of the two theories of the company that have become firmly established in economics. She finds that the mode of control does, indeed, only have a second-order influence on
economic performance. There was no convergence in ownership structures between 1995 and 2005; what was striking was the increasing divergence. Ownership structures in France, for example, continued to move further away from those of the Organization for Economic Cooperation and Development (OECD). There were a few convergences, notably related to bond appreciation in the Eurozone or the correlation between foreign shareholdings and greater financial transparency, but not in the raising of obstacles against takeover bids. The persistence of control blocks helped to maintain the variety in management structures and, in return, in forms of ownership. In any case, the macroeconomic situation dominated all these transformations.

In Chapter 2, Donatella Gatti extends Carlin’s analysis by studying the macroeconomic impact of each corporate capital structure: how does a company’s capital structure and forms of employment affect the economic performance of a country? Her analysis does not stop with the consequences of market deregulation, supposed to accelerate growth and sustain employment, because the capital structure of a given company is partly dependent on the structure of the markets (for labour and for goods and services), and vice versa. From this point of view, the regulation of markets and the structure of capital are interdependent institutional characteristics. The problem is then to determine the influence of these different factors on economic performance according to their interdependencies and their development over time. It remains for us to understand the endogenous evolution of these institutional arrangements, which tends to be overlooked in the broad consensus about the decisive role of institutions in determining the relative economic performance of different countries.

In Chapter 3, Jean-Louis Beffa and Xavier Ragot study the different types of shareholders, with particular focus on company ownership in France. Their typology of shareholders in large companies confirms the interdependence between the factors responsible for changes in French shareholding: French regulations, the European framework, position in the division of labour, and national and international financial markets. The authors note that the shareholding structure can equally well contribute to improving the management of companies as it can hinder their medium-term development. Their analysis concludes with the presentation of measures that could favour the long-term development of companies. Whatever the economic climate, they show that state action can facilitate the emergence of strategies that are in line with the long-term interests of the company and its stakeholders.

Christophe Clerc challenges the question of the legal foundations of the shareholder. He opens Chapter 4 with the commonsensical statement
that shareholders – as owners – have a legitimate say in the running of the company. This is a central argument used by its proponents to have shareholders’ power in listed companies constantly increased. Clerc thus investigates the foundations of this ‘shareholder primacy’ movement. What gives the shareholder the right to occupy a pre-eminent position in the institutional architecture of the company? He shows that the theoretical foundations of shareholder primacy are shaky, and empirical proof of its benefits is inconclusive. How, then, can we find the appropriate means to safeguard the interests of the other stakeholders while protecting the company from the consequences of the moral hazard resulting from the non-liability of the shareholder?

In their comparative analysis of the British and French cases (Chapter 5), Simon Deakin and Antoine Rebérioux illustrate in their own way the arguments put forward in the preceding contributions. The convergence between the two systems is only partial, at least in terms of law and formal regulations. France has adopted a legal regime that is more favourable to shareholders over the last decade, and the structure of French shareholdings has been subject to the growing influence of foreign investors as stock market activity intensifies. Nevertheless, the dynamics of French shareholdings remain far removed from the British trajectory, sustained by dispersed shareholdings in a highly liquid stock market. The determining factor in these two countries is labour law. In the UK, labour legislation is weak, although it is moving closer to the continental European model as far as information and consultation rights are concerned. In France, labour legislation acts as a ‘beneficial constraint’ on company management, so that the dominant model is that of negotiated shareholder value, based on the sharing of the economic rent between shareholders and stable employees.

Taking the abstraction of labour relations in the company as his point of departure, in Chapter 6 Lorenzo Sacconi presents an original study of the coordination between the different stakeholders. The aim is to make a case for corporate social responsibility within the framework of game theory. His approach is based on a revision of the classic objective function of the firm in terms of profit maximization, to bring it into line with the social contract of the firm, in which managers and directors cannot dictate actions arbitrarily. His study leads him to a model of social responsibility that gives meaning to the institutional nature of the company, operating to the mutual advantage of its stakeholders.

The round table discussion (Chapter 7) that concludes this work brought together Robert Solow, Margaret Blair, Jean-Paul Fitoussi and Gregory Jackson to discuss the reasons for the changes that have affected listed companies. Around the table, theoretical hypotheses – largely advanced
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by the contributors of the conference and this volume – were put to the test of experience. In the case of shareholder primacy, for example, there is no proof that the intervention of shareholder activists creates any value for the shareholders themselves, let alone anything in the way of social value. The attempt to align the interests of directors and managers with those of the shareholders by means of a practice that is widespread in the United States and is beginning to spread abroad – consisting in paying managers stock options – does not appear to have prevented managerial delinquency. On the contrary, a mechanism has appeared by which managers appropriate a larger share of the rents and succeed in substantially increasing their total pay. A strongly supported argument in favour of shareholder primacy is that the share price constitutes a practical, constantly available instrument for evaluating the performance of the managerial team and beyond that, of the company itself. The statistical results, however, are univocal: increasing shareholder rights appears to have little, if any, positive impact on growth, markets – through mergers and acquisitions, for example – or employment.

REFERENCES
