

Gone and almost entirely forgotten: the Watkinson Report

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Introduction

The aims of this paper are twofold. First I want to extol the virtue of Hadden's *Company Law and Capitalism* because it was a hugely inspiring text on a subject which was routinely seen as "technical, difficult and dull" and without "an intellectual tradition which place[d] . . . rules and doctrines within a broader theoretical framework which g[a]ve meaning and coherence".¹ Second, as the paper's title suggests, I want to consider the Watkinson Report or, as it is more properly described, *The Responsibilities of the British Public Company*, which was issued by the CBI Council in 1973. These two aims complement each other as much of Hadden's commentary reflects the ideas of public interest and non-adversarial industrial relations which are also to the fore in the Watkinson Report. I will consider why some at least of the key responsibilities it identified are no longer seen as part of the remit of corporate responsibility and the consequences of those changes in the areas of economic democracy and occupational pensions. Alongside this, I will also give some thought to why these responsibilities have been replaced with others such as the huge voluntary commitment to corporate social responsibility that now exists in the corporate sector.

At the time the suggestion was made for this special issue, the Watkinson Report was almost exactly 35 years old. It has virtually disappeared from the memory of company law,² it appears. However, at a time when the form, role and, ultimately, the responsibility of public companies and their managers, particularly in the financial sector, are being questioned by wider society, there is a certain topicality to looking at how public companies saw themselves in 1973 in relation to that wider society in which they were located. It provides us with a unique set of benchmarks against which the trends in corporate behaviour that have followed, such as the adoption of shareholder value as the predominant credo of corporate existence, and the changes required by transitions to post-fordism and

1 M Stokes "Company law and legal theory" in W Twining (ed.), *Legal Theory and Common Law* (Oxford: Blackwell 1986), p. 155.

2 Although as Geoffrey Chandler, a long-standing proponent of corporate responsibility and human rights pointed out in a letter to *The Times* in November 1996, the *Tomorrow's Company* document produced by the Royal Society for the Encouragement of Arts, Manufacturers and Commerce (RSA) in 1995 had something of the same flavour about it. Chandler accurately predicted that the fate of the RSA document would be the same as that of the Watkinson Report.

then financialisation, facilitated to a certain extent by states in thrall to the power of mobile multinational capital,³ can be examined.

The picture that the Watkinson Report paints of the views held by the business elite of the relationship between the corporate sector and the society within which it subsists holds little resemblance with the actuality of corporate practice in 2009. This is not to say, however, that there are not vestiges of the sort of caring paternalism that characterised Watkinson to be found in the years since 1973; the Licence to Operate put forward by the Royal Society of Arts in 1995⁴ is an effective example. The difference, of course, is that the Watkinson Report was prepared by the CBI and not by a pioneering charitable body. The Watkinson Report was firmly of the view that private enterprise was not only capable of working out its “own programme of self-reform” but that it must be left to do so. This idea of “self-reform”⁵ has become the cultural response of successive governments⁶ to failures of corporate governance. There have been relatively few legislative interventions⁷ in the last 36 years, compared with, for example, the US or Australia, into the corporate world that were not the result of either EU directives requiring enactment and operating legislation,⁸ or consolidating legislation.⁹ The credo of the Watkinson Report was that compliance with the demands of legislation and common law was not sufficient for a company to be considered “good”.¹⁰ Law indicated minimum standards only and companies, like citizens, had to take into account the interests of others over and above what was mandated by law.¹¹ The company should supply goods at a price which, while fair to customers, was also able to support the “adequate” and “equitable” reward of employees, investment in company development and a “proper return” for shareholders.¹² I have used here the same order of

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- 3 Inward and outward direct investment figures are available from the UNCTAD World Investment Report which is published annually, see also S Girma et al, “Who benefits from foreign direct investment in the UK?” (2001) 48 *Scottish Journal of Political Economy* 119.
 - 4 See n. 2 above and also note that Tomorrow’s Company is now a freestanding not-for-profit venture that seeks to promote strategic activity by corporations which appeals to all of its stakeholders.
 - 5 See Watkinson Report, paras 10 and 13.
 - 6 See, for example, *The Financial Aspects of Corporate Governance* (the Cadbury Report) December 1992; the *Greenbury Report on Directors’ Remuneration*, 1995; *Committee on Corporate Governance* (the Hampel Committee), April 1998; *Internal Control: Guidance for Directors on the Combined Code* (the Turnbull Report), 1999; *The Review of the Role and Effectiveness of Non-Executive Directors* (the Higgs Report), 2003; *Guidance on Audit Committees* (the Smith Guidance), 2005. All of these reports can be viewed at www.ecgi.org. The Combined Code on Corporate Governance emerged from the Cadbury Report and has been updated regularly by the reports listed above. The code does not have statutory force but any failures to comply must be disclosed and explained in a company’s annual report as a condition of LSE listing (see LR 9.8.6(6)), commonly referred to as the “comply or explain” doctrine.
 - 7 For example, the Insolvency Act 1986, the Company Directors Disqualification Act 1986, the Companies Act 2006, the Corporate Manslaughter and Homicide Act 2007. There are other pieces of legislation, such as the Enterprise Act 2000, but they can be distinguished on the ground that their rationale is not solely to regulate the life of the corporation.
 - 8 In the text below (nn. 33 and 34), there is reference to the legislative structure surrounding the insertion of Works Councils into UK employment relationships and legislation. Another example would be the area of accounting standards, see D Cairns, “The implications of IAS/IFRS for UK Companies” (2004) 1 *International Journal of Disclosure and Governance* 107 and A Haller, “Financial accounting developments in the European Union: past events and future prospects” (2002) 11 *European Accounting Review* 153.
 - 9 Companies Act 1985.
 - 10 Para. 20. This can be seen as an express rejection of the oft-quoted Milton Friedman comment that the only responsibility of business is to make profits while operating within the demands of the law, see “The social responsibility of business is to increase its profits”, *New York Times Magazine*, 13 September 1970.
 - 11 Para. 61.
 - 12 Para. 84.

interests that the report itself uses. There is no mention of shareholder primacy or shareholder value.

Hadden's wind of change

Tom Hadden produced two editions of *Company Law and Capitalism* in 1972 and 1977 respectively. The book was the second volume of the Law in Context series published by Weidenfeld and Nicolson with Robert Stevens and William Twining as series editors. As a text on company law, it was unrivalled both in the topics it selected for detailed coverage¹³ and those which it did not and the avant-garde nature of its politics. The notion of “in context” was fulfilled by the inclusion of empirical data drawn from government sources and the results of academic work undertaken in other disciplines.¹⁴ Admittedly, my view of it was formed in 1984 when as a 20-year-old undergraduate educated in perhaps the bastion of the doctrinal and formalist tradition of legal scholarship I discovered (literally) the second edition (it was absent, perhaps not surprisingly, from the list of “recommended reading” or “further reading” but was lurking on the shelf of the college law library dedicated to company and commercial law). However, the view I held then is not one that I have departed from subsequently.

The preface to the second edition is used by Hadden to comment on the “triviality” of some topics found on traditional company law courses and to promote his own conception of the organisation of the corpus of company law; a functional account which acknowledges that a number of distinct business types are regulated by the same companies legislation leading to the application of business forms that are not best suited to a substantial number of the commercial entities they regulate. The nature of the book's political ambition should not be underestimated. As a text about company law, it sought to explain capitalism across a variety of different models and socialist conceptions of the market. It mentioned the “M” word which I rather suspect today's undergraduates might think was “M” for market but in fact was “M” for Marxism. Company law texts were simply not like this in the late 1970s and early 1980s – there was no discussion of political or economic models of production that could provide an alternative to the corporate form, there was no discussion of the development of capitalism or of the structure of capitalism as it existed in the UK in the mid-1970s.¹⁵ There were, instead, very large and detailed chapters on the sort of issues that Hadden so rightly regarded as trivial in the grand scheme of the enterprise and an unquestioning assumption that the capitalist status quo was to be

13 For example, there are (rightly so in my view) only six pages devoted to *ultra vires* (*Company Law and Capitalism* (hereafter CLC) 2nd edn (London: Wiedenfeld & Nicholson)), pp. 112–16 and 147–9, the indoor management rules get two pages (pp. 118–20) and corporate personality receives five pages (pp. 142–7).

14 See, for example, CLC, n. 13 above, p. 443, which uses empirical data gathered by J Goldthorpe et al in *The Affluent Worker* (Cambridge: Cambridge University Press 1968).

15 For example, J Charlesworth, *Charlesworth and Cain* (London: Stevens 1977); A Topham, *Topham and Ivamy's Company Law* (London; Butterworths 1974).

described rather than to be challenged.¹⁶ Not until 1990 did this picture begin to change with the publication of the first edition of *Farrar's Company Law*.¹⁷

HADDEN'S MODEL OF THE CORPORATION

In the preface to the second edition, Hadden describes company law as being “tied to a conception of capitalism which is discarded by all but the most ardent free-market economists”. That conception of capitalism now looks positively benign next to the one that emerged over the following 32 years. Free marketers came to the fore and produced an even sharper model which has been on a roller-coaster ride since the arrival of new right politics as a governing force from 1979 or so onwards in terms of the growth of market capitalisation alongside market liberalisation, bubbles, governance reforms and governance failures. To these I will return later in the paper.

The final part of *Company Law and Capitalism*, comprising the last three chapters, looks at possible forward trajectories for the organisation of the company. In this discussion, Hadden is clearly influenced by the political climate and possibilities of the mid to late 1970s.¹⁸ This was a time, probably the last time, when labour as a collective entity enjoyed considerable power and the corporate sector was more aware of its wider responsibilities than it is now.¹⁹

Developed societies had yet to realise that the long boom really was at an end²⁰ (even though the intervention of the International Monetary Fund in the UK at the time of the second edition may have been a clue), that all political parties were going to reject Keynesianism sooner or later²¹ and that financialisation would prove to be the disastrous response to the end of fordist production that recent events would indicate that it is.²² Hadden's emphasis was upon finding a form of the managerial corporation which would admit into the governance paradigm an element of worker participation. It was taken as a given that this should occur; the arguments were around its form not its substance. He was writing, after all, in the wake of the draft 5th Directive with its insistence upon the adoption of the German two-tier board structure²³ and its amended version which called for

16 I suspect that there may have been a rather different picture at the law schools that were purposefully following a rather different mission – Warwick and Kent, for example – see M Chesterman, “Legal Explorations in Different Lands” in G Wilson (ed.), *Frontiers of Legal Scholarship* (Chichester: John Wiley 1995), p. 21, at p. 22; R Folsom and N Roberts, “The Warwick story: being led down the contextual path of law” (1975) 30 *J Legal Education* 166, 176–7; G Wilson “The concept of a law degree: getting on with the job” (1968) 10 *JSPPL* 114. Both of those institutions were connected to Hadden's book through the series and through Hadden's tenure at Kent and William Twining's and Peter Fitzpatrick's at Belfast. For an indication of how company law was taught in many law schools as late as 1990 and what was included in the courses see I Snaith, “Company law on degree courses: survey report” (1990) 11 *Company Lawyer* 177.

17 This effort did not meet with approval in all quarters see I D Campbell, “Adam Smith, Farrar on Company Law and the Economics of the Corporation” (1990) 19 *Anglo-American Law Review* 185–208.

18 Some years earlier Hadden was invited to produce a draft company code for Papua New Guinea. This code included industrial democracy and referred to employees as “partners” (conversation with Hadden).

19 Revisionism at a time when neo-liberal capitalism is in crisis has the potential to become self-indulgent and dewy-eyed but there is something of these ideas in M Blair, *Ownership and Control* (Washington DC: The Brookings Institution 1995), at pp. 208–23. See also N Jackson and P Carter, “Organisational chiaroscuro: throwing light on the concept of corporate governance” (1995) 8 *Human Relations* 875.

20 A Glyn et al, “The rise and fall of the golden age”, in S Marglin and J Schor (eds), *The Golden Age of Capitalism: Reinterpreting the postwar experience* (Oxford: Clarendon Press 1990).

21 P Heelas and P Morris, *Enterprise Culture: Its values and value* (London: Routledge 1992), chs 1–12.

22 Boyer presents an interesting retrospective account, with exceedingly accurate conclusions, of this process, see R Boyer, “Is a finance-led growth regime a viable alternative to Fordism?” (2000) 29 *Economy and Society* 111.

23 OJ 1972 C131/49.

industrial democracy to be accommodated within existing national cultures,²⁴ and the UK response to this in the form of the Bullock Report.²⁵

The demise of economic democracy

Hadden's expectations were not to be realised; the White Paper²⁶ that was issued subsequent to the Bullock Report did not follow its recommendations and opted instead for a two-tier board system that would be adopted voluntarily over time, in order that a flexible and gradual approach to employee participation could be taken. A change of government followed shortly thereafter in 1979 and the CBI opposition to the idea of worker participation that had been evident in its response to the Bullock report²⁷ and, indeed, earlier in the relevant section of the Watkinson Report²⁸ won the day. The idea of worker democracy, in active terms, as part of the governance structure as opposed to, in passive terms, around product quality and development initiatives and worker consultation and information initiatives has never been returned to.²⁹ The 1982 Employment Act and subsequent employment legislation throughout the following decade illustrated the way in which the balance of power between state, corporate sector and labour was beginning to change. The idea of democracy in relation to trade unions became not something that they were fighting to give their members in relation to enterprise owners but something that they were denying to their members in the way in which they conducted their own affairs.³⁰ The 1982 legislation required corporations to include in their Annual Report details of the steps they had taken to introduce and develop arrangements for "communication, consultation, financial partnership and economic awareness" amongst their employees. However, it also restricted the legal basis of the "closed shop" and opened the way for trade unions rather than individual members to be exposed to civil liability for "illegitimate strikes". A very influential view, and quite an apposite one, of participation arrangements in the UK, prior to the eventual incorporation within the UK of the structures required under EU law, was

24 Commission of the European Communities, *Statute for European Companies*, amended proposal for a regulation, Bulletin of the European Communities, Supplement 4/75.

25 *Committee of Inquiry on Industrial Democracy* (The Bullock Report) Cmnd 6706 (London: HMSO 1977). The Bullock Report recommended that there should be three constituencies represented in unitary company boards: employees and shareholders who together made up two-thirds of the board with the remainder of members being drawn from an independent group agreed upon by a majority of the other two constituencies.

26 *Industrial Democracy* Cmnd 7231 (London: HMSO 1978).

27 J Boswell and J Peters, *Capitalism in Contention* (Cambridge: Cambridge University Press 1997), pp. 132–3.

28 Paras 116–26. I have tried here to give an overview of the chronology of events. The debate between those in favour of participation and those who were not was much more nuanced than this short passage can possibly convey as was the debate among those in favour of participation about the form it should take. The TUC and its member unions did not all share the same position on either of these points. The same is true for employers' organisations. See, for example, the papers from the Symposium debate at Keele University in April 1975 (available from the IR unit there and in most libraries but without a standard catalogue entry as there is no official title or ISSN/ISBN) where Eddie Robertson then chair of the CBI Industrial Relations Committee makes a contribution which by his own admission is at odds with that of the CBI.

29 Unless one counts ESOP (employee share-ownership plan) schemes, always more popular in the US than the UK, see J Wills, "A stake in place? The geography of employee ownership and its implications for a stakeholder society" (1998) 23 *N5 Trans Inst Br Geog* 79; J Gordon "Employee stock ownership in economic transactions: the case of United and the airline industry" in M Blair and M Roe (eds), *Employees and Governance* (Washington: Brookings 1999), p. 317; and A Gamble and G Kelly "The new politics of ownership" (1996) *New Left Review* 62; promoted through tax breaks during the Thatcher years, they were seen as a way of creating loyalty to management through destroying the identity of worker qua worker, see P Riddell, *The Thatcher Era* (Oxford: Blackwell 1991) for both a narrative account and numerical information.

30 S Fredman "The new rights: labour law and ideology in the Thatcher years" (1992) 12 *OJLS* 24.

that expressed by Ramsay.³¹ He suggested that corporate management resorted to participation mechanisms as a way³² of buying off unrest within the corporate structure. This unrest, heralded by worker resistance and challenge, occurred on a cyclical basis within Taylorist-inspired management operations.

Workplace democracy now resides primarily in the care of work councils³³ or joint consultative committees,³⁴ depending upon the size of a given enterprise. These consultation forums allow for the filtering down of information from the board through management to the workforce, with consultation defined as “the exchange of views and establishment of dialogue between employees’ representatives and central management or any appropriate level of management”.³⁵ Areas included within the definition of “consulted upon” are wide ranging, from business development through sales and investment to closures of undertakings. The rather chequered nature of UK participation in EU social policy meant that the mandatory force of this directive was only felt in the UK in 1998 when the Social Chapter opt-out ended, with the terms of the directive not actually being the subject of specific UK legislative intervention until 2004.³⁶ Collective bargaining is now available only to a minority of workers in the UK³⁷ as union membership continues to fall, not least because of the changes in the nature of employment that I explain below. Downstream information disclosure is a long way from participation in governance. While these institutions may create the opportunity for

31 H Ramsay “Cycles of control: worker participation in sociological and historical perspective” (1977) 11 *Sociology* 481. Ramsay refined this thesis in “Phantom participation: patterns of power and conflict” (1980) 11 *IRJ* 46 and “An international participation cycle: variations on a recurring theme”, in S Clegg et al (eds), *The State, Class and the Recession* (Canberra: Croom Helm 1983). For his position on European Works Councils, in particular, see “Fool’s gold? European Works Councils and workplace democracy” (1997) 28 *IRJ* 314.

32 For this view see, for example, H Braverman, *Labour and Monopoly Capital* (New York: Monthly Review Press 1974).

33 Directive 94/45/EC of 22 September 1994 which finally received legislative force in the UK by means of the Transnational Information and Consultation of Employees Regulations (2000) SI 1999/3323 as a result of the power contained in the European Communities Act 1972, s. 2(2). The journey from employee participation in works councils as part of German labour law to pan-European institution is well covered by industrial relations and labour law scholars, for a review of relevant literature see S Wheeler, “Ethics in the workplace” (2007) 18 *Law and Critique* 1 and the references contained therein.

34 A similar directive minus the works council requirement to mirror this level of communication in smaller national level undertakings was introduced in 2002, see Directive 2002/14/EC of the European Parliament and the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community enacted in the UK by means of the Information and Consultation Regulations 2004 (Great Britain) (SI 3426) as a result of the power contained in the Employment Relations Act 2004, s. 42. It is clear from Article 4 of the directive (the so-called practical arrangements) that a structure akin to a works council may be necessary if the undertaking has no other appropriate mechanisms in place to disseminate information.

35 Article 2(f).

36 See nn. 33 and 34 above, and also M Hall, “Assessing the information and consultation of employees regulations” (2005) 34 *ILJ* 103.

37 D Watling and J Snook, “Works councils and trade unions: complimentary or competitive? The case of Sagco” (2003) 34 *IJR* 260.

networking,³⁸ transnational friendships³⁹ and a European identity,⁴⁰ they are far from the sort of participative structures envisaged by Bullock.⁴¹

Little comfort was gained from the Companies Act 2006. This legislation was some 10 years or so in the planning. By the time the government-sponsored but apparently independent Company Law Review⁴² had reported and a White Paper⁴³ was presented it was clear that whatever the much vaunted concept of “stakeholder” – which had been such a prominent rhetoric within Blair’s vision⁴⁴ for a labour administration – actually meant in the corporate setting,⁴⁵ it did not involve workplace democracy. The launch document for the review was the last time that stakeholding was mentioned in a corporate setting.⁴⁶ What transpired was s. 172(1) of the Companies Act (CA) 2006 which imposed a duty on directors to promote the success of their company for the benefit of its members but in doing so they were to have regard to a variety of factors, one of which was the interests of employees. This looks very similar to CA 1985, s. 309,⁴⁷ with its sentiment towards employees as passive recipients of corporate consideration and it is likely to be as ineffective; directors only have to give consideration to the interests enumerated and there is no indication of the weight to be given to the different factors which may well, in practice, conflict with each other. There is no right of enforcement other than as a breach of duty owed to the company.⁴⁸ We should conclude from this that ideas of workplace democracy have indeed disappeared from the economic agenda.

38 W Lecher et al, *European Works Councils: Developments, types and networks* (Aldershot: Gower 2001).

39 J Stirling and I Fitzgerald, “European Works Councils: representing workers on the periphery” (2001) 23 *Employee Relations* 13–25.

40 M Whittall et al, *Towards a European Labour Identity* (London: Routledge 2007). The break-up of the Rover Group, i.e. the sale of the Longbridge plant by BMW in 2000, caused considerable debate about the usefulness of works councils as opposed to more traditional organisation through domestic trade unions. Whittall’s chapter in this book (pp. 55–73) is a defence of the role of the BMW works council. It is easy to remain unconvinced, however.

41 D Komo and C Villiers, “Are trends in European company law threatening industrial democracy?” (2009) *ELR* 175.

42 DTI, *Modern Company Law for a Competitive Economy* (London: DTI 1998).

43 *Modernising Company Law* Cmnd 5553 (London: HMSO (16 July) 2002).

44 T Blair, *The Third Way* (London: Fabian Society 1998); *Spectator* Lecture, 22 March 1995, Queen Elizabeth Conference Centre; Tokyo Speech, January 1996; Civil Service Conference Speech, Whitehall London, 13 October 1998.

45 Stakeholding in a corporate setting usually has two possible meanings – a wide meaning and a narrow meaning. The narrow meaning confines stakeholders to those who are necessary for the corporation’s survival viz. shareholders, state and customers, see, for example, E Sternberg, “Stakeholder theory exposed” (1996) 2 *Corporate Governance Quarterly* 4 at 6. The more expansive meaning traditionally includes the immediate community and employees, see R Edward Freeman, *Strategic Management: A stakeholder approach* (Boston: Pitman 1984), pp. 31–42. Exactly which of these meanings was meant was never explained. In any event, stakeholding is a status label – it does not include within its meaning an operational mechanism by which this status can be given life to.

46 I Jones and M Pollitt, “Who influences debates in business ethics? An investigation into the development of corporate governance in the UK since 1990” in I Jones and M Pollitt (eds), *Understanding How Issues in Business Ethics Develop* (Basingstoke: Palgrave 2002), pp. 42–66.

47 CA 1985, s. 309 was introduced eventually by the Companies Act 1980, having been suggested in a similar formulation by the Companies Bill 1973 and the Industrial Democracy Bill 1975. It was also recommended by the Bullock Report, n. 25 above, p. 84 or ch. 8, para. 38. It thus has the distinction of being a recommendation of the Bullock Report that actually made it to the statute book.

48 These issues are discussed in much more detail than is possible here in A Keay, “Tackling the issue of the corporate objective: an analysis of the United Kingdom’s ‘enlightened shareholder value’ approach” (2007) 29 *Sydney LR* 577, at pp. 592ff.

They have also disappeared from the academic agenda. Fascination with a law and economic analysis of corporate law that centres on a notion of efficiency as being the creation and maintenance of shareholder value⁴⁹ sees employees relegated to the role of fixed claimants for their wages within the firm that employs them. They are also viewed as likely to have no other claims of immediate substance outside this firm. This is somewhat ironic given the rush by corporations to end final salary pension schemes and replace them with defined contribution schemes.⁵⁰ This places employees in the position of holding a diversified portfolio dependent on market performance. If this does not ultimately recreate interest in the possibilities offered by economic democracy then it would be surprising. The final part of this paper deals in more detail with this move from defined benefit pension provision to defined contribution provision.

The rise of corporate social responsibility

Corporate social responsibility (CSR) has replaced economic democracy as the topic catching most attention in discussions of corporate policy. CSR is not mentioned in the Watkinson Report expressly, although one could argue that the sentiments of the Watkinson Report on the duties of the public company were an extremely accurate portent of what was to come. Nor is a discussion of it present in either of Hadden's two editions, as it was simply not a contemporary issue then. CSR has been since the late 1990s the most discussed topic in the area of corporate power and existence. Entire monographs are devoted to definitions of CSR. The one given here will necessarily be rather shorter; it is the recognition that there should be a deliberate inclusion of public interest into decision making within corporations in a manner which is befitting the "triple bottom line" approach to business self-regulation.⁵¹ As McBarnet⁵² explains, CSR has become in a very short space of time an institutionalised facet of corporate business practice with cross-sector participation. For example, by 2001, 73 per cent of FTSE 100 listed companies had a code of conduct or a statement of business conduct practice and by 2005 this had risen to 91 per cent.⁵³

CSR was, until comparatively recently, located in the realm of "otherness" in the UK. It was certainly not seen as a central feature of corporate policy. It was presented during those years and also now, in retrospect, as being the province of non-conformists such as Congregationalists and Quakers. It is certainly true that the leading examples of corporate social responsibility came, in the first instance, from employers who had these religious beliefs and displayed a paternalism towards their workforces which involved the provision of housing, leisure facilities and pension and savings schemes. Some even created financial participation schemes.⁵⁴ However, this has become an easy and over-generalised model

49 D Campbell, "The role of monitoring and morality in company law: a criticism of the direction of present regulation" (1997) 7 *Aus J of Corp Law* 343.

50 These propositions are explained in more detail in S Wheeler, "Labour and the corporation" (2006) 6 *J Corp Law Studies* 361.

51 J Elkington, *Cannibals with Forks: The triple bottom line of 21st century business* (Oxford: Capstone 1998). For an in-depth history of CSR, see C Vurro, "The evolutionary path of the concept of CSR" in F Perrini et al, *Developing CSR* (Cheltenham: Edward Elgar 2006), p. 54, and A Carroll, "Corporate social responsibility – evolution of a definitional construct" (1999) 38 *Business and Society* 268.

52 D McBarnet, "Corporate social responsibility beyond law, through law, for law: the new corporate accountability" in D McBarnet et al (eds), *The New Corporate Accountability* (Cambridge: Cambridge University Press 2007), p. 9.

53 *Ibid.* at p. 10.

54 See B Alford, *W D and H O Wills and the Development of the UK Tobacco Industry 1786–1965* (London: Methuen 1973), pp. 279–93 and T Corley, *Quaker Enterprise in Biscuits: Huntley and Palmers of Reading 1882–1972* (London: Hutchinson & Co 1972), pp. 103–11.

which has ignored or certainly marginalised evidence to the contrary. The cocoa plantations scandal in which the Cadbury family became embroiled in the early part of the last century illustrates cultural relativism at its best.⁵⁵ These religious beliefs did not always result in altruistic behaviour.⁵⁶ On occasions when they did, the corporations concerned were not necessarily behaving in this way out of a religiously driven altruism only. They saw a link to the greater levels of productivity and employee loyalty that such behaviour might generate,⁵⁷ although unlike their American counterparts this was not used as an advertising feature.

There is a divergence here in the homogeneity of Anglo-American capitalism. In the US, corporate social responsibility as a practice developed very much earlier and as a general phenomenon⁵⁸ amongst large corporations. American corporations consciously cultivated the image of caring establishments in which workers and customers were held in high esteem. The dominant image was of the pioneer⁵⁹ sending his new found wealth back home to those less fortunate. Two ideas have been put forward as underlying the need for the creation of this image of self-advancement and caring. One is that through it the proponents of strict competition regulation⁶⁰ would be bought off as they would see “Big Business” as desirable.⁶¹ The second is that it was a marketing device; products produced in an atmosphere of care and concern were apparently less likely to have defects and, as this kept production costs low, such products would be available to the consumer at a lower price.⁶² The reality is probably a mixture of both of these explanations.⁶³ This is not to say that American practice was, from the beginning of the development of large-scale industry, characterised by massive generosity and underpinned by clear structures within corporations. In fact, these did not begin to emerge until comparatively recently.

55 The Cadbury family sued the *Standard* newspaper for its assertion that the family knowingly purchased cocoa from plantations in Portuguese Africa where slave labour conditions persisted. They won their action on the ground that the *Standard* falsely asserted that the Cadbury family had chosen to ignore what was happening. However, their preventative efforts were judged to be such that they were awarded nominal damages. The story is complicated by the fact that the Cadbury family were owners of a rival newspaper, *The Daily News*, and had used its editorial columns to complain about working conditions in the mines of South Africa, see L Satre, *Chocolate on Trial: Slavery, politics and the ethics of business* (Athens: Ohio University Press 2005).

56 C Dellheim, “The creation of a company culture: Cadburys 1861–1931” (1987) 92 *Am Hist Rev* 13, at 15 esp. n. 9, but cf. J Walvin, *The Quakers: Money and morals* (London: John Murray 1997), ch. 11.

57 J Baddon et al, *People’s Capitalism* (London: Routledge 1989), p. 152. Despite the current interest in corporate social conscience and the search that is being undertaken in various academic disciplines for a new approach to business enterprise there has been little critical examination of this movement. M Rowlinson, “Quaker employers” (1998) 6 *Historical Studies in Industrial Relations* 163 is a welcome exception.

58 F Emerson Andrews, *Corporation Giving* (New York: Russell Sage 1952).

59 A Wicks et al, “A feminist reinterpretation of the stakeholder concept” (1996) 4 *Bus Ethics Quart* 475 at 479

60 See B Thomas, *American Literary Realism and the Failed Promise of Contract* (Berkeley: University of California Press 1998), p. 246, and, in particular, the material Thomas cites at n. 32 in ch. 8. References to specifically legal history as opposed to literary history can be found in H Hovenkamp, *Enterprise and American Law* (Cambridge: Harvard University Press 1991).

61 R Marchand, *Creating the Corporate Soul: The rise of public relations and corporate imagery in American big business* (Berkeley: University of California Press 1998).

62 A Tone, *The Business of Benevolence* (Ithaca: Cornell University Press 1997), pp. 99–139, see, in particular, pp. 130–5.

63 C Harwell Wells, “The cycles of corporate social responsibility: an historical retrospective for the twenty-first century” (2002) 51 *U Kan LR* 78, see, in particular, p. 81 where Harwell Wells comments that “Corporate social responsibility is not a novel solution to an unchanging problem . . . it is an unchanging solution to an ever-new problem.”

THE REALITY OF CORPORATE SOCIAL RESPONSIBILITY

The link between economic democracy and CSR can be found in Ramsay's cycles of control point which were referred to above to explain the focus on economic democracy as a topic of discussion within and without the corporation. Ramsey's model needs to be refined to emphasise that what corporate CSR policies and interventions are designed to do is not to buy off internal discord but to buy off a wider external general discomfort about the role particularly of large-scale business within society. A decade of legislation post-1979 saw the power of unions largely emasculated and privatisations on a huge scale of formerly publicly held utilities and services. This brought individuals face to face with corporate power in a way not experienced before. Add to this the corporate governance scandals of the early 1990s and the revelation of the size of bonuses being paid to the chief executives of these newly privatised enterprises and what results is a massive decline in trust in business,⁶⁴ a real legitimacy crisis for the corporation.⁶⁵ Other drivers have been added over the years; globalisation and internet technology make it both harder to hide undesirable business practices and easier to expose them. NGOs have flourished in both these spaces and there is a much bigger story to be told about their emergence, capture and re-emergence.⁶⁶ Anti-capitalist protests such as those in Seattle and Genoa can be assembled relatively easily due to cheap travel and easy communications.

The corporate response has been to produce a plethora of initiatives and reports all designed to re-brand corporate activity. This has occurred on an entirely voluntary basis without statutory intervention. What has slowly emerged is competition in the delivery of CSR⁶⁷ and to this end larger corporations would presumably not resist the imposition of statutory regulation on CSR as it would give them a further opportunity to drive up expectations and force out competitors for whom the cost of compliance was too great. In addition to competing in areas such as product development, production costs and ultimately price, corporations compete over their social awareness and responsiveness.⁶⁸ In some areas, corporations have skilfully managed to link the two; ethical investment and ethical purchasing are growing areas that corporate innovation has created in effect by recognising that an appetite for these products had been created. Advertising of products is now not confined to the sponsorship of glamorous sporting events and advertising hoardings but takes place through links with charities. The idea is that consumers will have faith in the values of the charity and then, through the link with the charity, transfer that faith to the merits of the product or the producer depending on how narrowly the link is focused.⁶⁹ Cause-related marketing, as it is known, has resulted in leading supermarket chains, for example, competing over the donations, such as books and computers, that they will make to schools as an incentive to would-be customers to patronise their establishments rather than those of their competitors.⁷⁰ These campaigns have gradually moved from one-off short events to long-term relationships in which the identification of the corporation, their charity partner and

64 See M Moran, "The lost legitimacy: property, business power and the constitution" (2001) 79 *Public Administration* 277 and the empirical information that he cites therein.

65 L Rayman-Bacchus, "Assessing trust in, and legitimacy of, the corporate" in D Crowther and L Rayman-Bacchus (eds), *Perspectives on Corporate Social Responsibility* (Aldershot: Ashgate 2004), p. 21.

66 A Hoffman, "Shades of green" (2009) 7 *Stanford Social Innovation Review* 40.

67 C Smith, "The new corporate philanthropy" (1994) *Harv Bus Rev* 105.

68 K Keilbach, *Global Warming is Good for Business* (CA: Quill Driver Books 2009).

69 M Stork, "Brand aid: cause effective" (1999) 40 *Brandweek* 20.

70 S Wheeler, "Inclusive communities and dialogical stakeholders: a methodology for an authentic corporate citizenship" (1998) 9 *Aust J of Corporate Law* 1, at pp. 13ff. and T Mescon and D Tilson, "Corporate philanthropy: a strategic approach to the bottom-line" (1987) 29 *Calif Manag Review* 49.

their shared values is key.⁷¹ An effective CSR policy for a corporation is a way of developing market reputation and being seen as identifying with current debates in society.⁷²

CSR is a way of protecting the interests of shareholders and executives from the disapproval of society at large. It is dominated by the need to produce a win-win situation for both the corporation and the recipient of its largesse. Despite the voluntary honour pledges undertaken by graduating MBA students at Columbia and Harvard Business Schools⁷³ to “refrain from advancing their own narrow interests at the expense of others”, no-one could seriously suggest that the corporation could be an effective agent for social change or a redistributive mechanism⁷⁴ any more than a serious suggestion could be made that substantive change could be brought to the lives of employees by consultation mechanisms. Corporations are not best placed to do this as they have a fundamental conflict of interest between those with a property stake denoted by possession of a share and those who do not, a tension that Hadden recognised.⁷⁵ There is still a huge information asymmetry between those who provide and then account for CSR policies in glossy brochures and those who would question them. There is a large gap between the presentation of CSR ventures and the disclosure of all corporate policies and practices. The extraction industry giants such as Shell and BP are easy targets in this respect because of the nature of their core business but when the same dissonance⁷⁶ can be found in relation to Coca Cola, a soft drink manufacturer, clearly something is awry.

The demise of defined benefit occupational pension schemes

If the adoption of CSR policies and their subsequent adaption to fit into a competitive structure represents a race to the top for the corporate sector then the demise of defined benefit occupational pension schemes represents a race to the bottom. Just over 10 years ago, occupational pension schemes were acclaimed as one of the “great welfare success stories of [the 20th] century”.⁷⁷ For both the Watkinson Report and Tom Hadden the existence of occupational pension schemes would have been an absolute given. They would have been seen as a labour management device rather than a provision of social justice but, nevertheless, their existence provided retirement security to a huge number of employees. Now the system is in crisis,⁷⁸ lurching from the news of one high profile closure to another, for example, in the last few months Royal Mail, Morrisons, British Telecom and Barclays have all made large changes to their pension schemes. Many schemes are now closed to new employees and some even to existing employees. The legislative structure surrounding occupational pensions allows corporations to do this without any recourse from their employees. Once labour is replaced as the dominant force within corporations by the claims of shareholder value, corporations move to compete over who can provide the best

71 S King, *Pink Ribbons Inc* (Minneapolis: University of Minnesota 2006), pp. 9–28.

72 R Gray, “Developing a tight fit is crucial to CRM”, *Marketing*, 4 May 2000, p. 37. Gray’s article cites Dean Sanders (founder of Good Brand Works, a social marketing consultancy, as saying “I wonder how history will judge cause related marketing . . . My instinct is that it will be seen as a catalyst in the wider move to the socialisation of business.”

73 L Wayne, “A promise to be ethical in an era of immortality”, *New York Times*, 29 May 2009.

74 S Banerjee, *Corporate Social Responsibility* (Cheltenham: Edward Elgar 2007), pp. 144ff.

75 CLC, n. 14 above, pp. 25–30.

76 See M Thomas, *Belching Out the Devil* (London: Ebury Press 2008), www.killercoke.org: cf. www.cokefacts.com and www.coca-cola.co.uk.

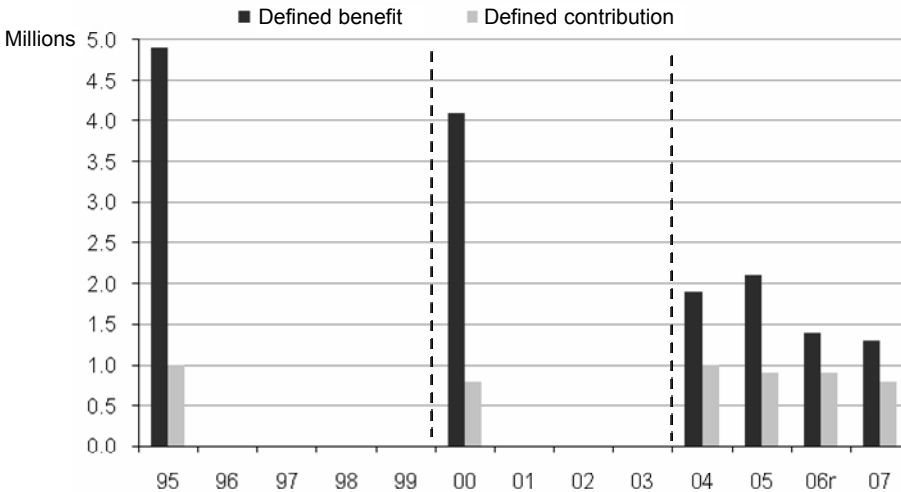
77 *A New Contract for Welfare: Partnership in pensions* Cm 4179 (London: HMSO 1998), pp. 18 and 65.

78 G Clark, “The UK occupational pension system in crisis” in H Pemberton et al (eds), *Britain’s Pensions Crisis: History and policy* (London: Oxford University Press/British Academy 2006), p. 145.

percentage return on capital. Removing the cost of a defined benefit occupational pension scheme boosts this return considerably and so pension funds found themselves starved of investment. Unsurprisingly, they are now severely underfunded.

What is happening here is the death throes of defined benefit (DB) pension schemes. These schemes are being replaced by defined contribution (DC) schemes. In short this move involves a transfer of risk from employer to employee. Employees are moving, through no choice of their own, from the certainty of a final salary scheme to the uncertainty of individualised market return. In simple terms, in a DB scheme the risk of losses and surpluses accrues to the scheme sponsor, the employer: in a DC scheme the amount that has to be saved to achieve a particular income on retirement has to be decided upon by the individual. DB schemes are not risk-free for the employee. There is a possibility of underfunding or of firm insolvency⁷⁹ and the consequences of these are often catastrophic for the individual.⁸⁰ However, these risks pale considerably when placed next to the decisions that an individual has to make when in a DC scheme. There are two decisions. First what income will be necessary on retirement to attain the desired standard of living and second what investment pattern to choose in order to generate this income.

Figure 1: Number of active members of open private sector occupational pension schemes: by benefit structure, 1995 to 2007 (United Kingdom)* † ‡



* Due to changes in definition of the private and public sector, estimates for 2000 onwards differ from earlier years. From 2000 organisations such as the Post Office and the BBC were reclassified from public to private sector.

† 1995 and 2000 excludes hybrid schemes.

‡ Figures for 2006 have been revised and are shown as “2006r”. Changes to methodology for 2006 (revised) onwards mean that comparisons with 2005 and earlier should be treated with caution.

Source: Occupational Pension Schemes Survey, ONS 2008

⁷⁹ The Pensions Act 2004 established the Pension Protection Fund (launched in April 2005) which creates a fund from a levy taken from extant pension schemes to provide assistance to those whose pension scheme becomes insolvent with insufficient funds to pay its members, see D Blake et al, “Financial risks and the Pension Protection Fund: can it survive them?” (2007) 12 *Pensions* 109.

⁸⁰ P Ring, “Security in pension provision: a critical analysis of UK government policy” (2005) *J of Soc Pol* 343 and M Hyde and J Dixon, “Working and saving for retirement: New Labour’s reform of company pensions” (2004) 24 *Critical Social Policy* 270.

EMPLOYMENT MARKET STRUCTURES, THE REGULATORY ENVIRONMENT AND DB PLANS

Post-war nationalised industries, acting as monopolies or near monopolies, used pension entitlements as part of wage negotiations particularly during the era of wage restraint policies. In the private sector, those who benefited most from these schemes were skilled or technical, largely male, workers who had stability of employment. These industries were privatised in the 1980s and so imbued with the profit motive. Heavy industry has given way to primarily service industries and manufacturing industry continues to relocate to production sites overseas with lower cost regimes. Pension scheme entitlement was the province of union collective negotiations; union membership has been in decline through choice and deregulation for some time.⁸¹ Full-time employment, where occupational pension schemes are most likely to exist, while currently enjoying a period of stability, has declined in availability from the position in the 1970s. Firm-specific skills are less important in service industries than heavy industries and so employers no longer see the need to reward employees in the same way.⁸²

For both employee and employer, flexibility of employment is a key concept of post-fordist life. Employment by one employer over a lifetime is much less likely to be possible or even desired as lifestyle choices have expanded.⁸³ Employee mobility is offered as an excuse for the decline in availability of DB schemes.⁸⁴ DB schemes operate off final salary calculations rather than a career average salary so rewarding those who stay with a single employer.⁸⁵ DC schemes, broadly speaking the alternative to defined benefit schemes, require, amongst other decisions to be made, an individual to decide what to do with their vested account balance on any change of employment. So, although it might no longer be the case that an individual's pension fund remains locked into the scheme of a previous employer and frozen at the level of the final salary paid in that employment, an individual requires a particular knowledge of the investment market to be able to decide how to maximise the return for retirement on this lump sum.

The regulatory environment for occupational pension provision has changed from one with little regulatory structure to one where there is considerable regulatory intervention⁸⁶ which brings with it a cost borne by the pension fund. Additionally, there has been a gradual increase in longevity over the last 20 years. However, it is easy to overstate the impact of increased regulation. There is a considerable chance that it did not spark a radical change in behaviour. Research that has looked at the effect of financial regulation on corporate behaviour has shown that corporations invest in developing avoidance tactics and devising evasive compliance strategies.⁸⁷ Anecdotal evidence from Towers Perrin⁸⁸ indicates that the

81 G Gall and S McKay, "Trade union derecognition in Britain, 1988–1994" (1994) 32 *Brit J of Industrial Relations* 433.

82 S Sass, *The Promise of Private Pensions* (Cambridge, Mass: Harvard University Press 1997), p. 238.

83 Wheeler, "Labour and the corporation", n. 50 above.

84 Although this is not a universally accepted factor, see R Disney and C Emmerson, *Choice of Pension Scheme and Job Mobility in Britain*, IFS Working Paper 9 (London: Institute for Fiscal Studies 2002); cf. P Ring, "The implications of the 'new insurance contract' for UK pension provision: rights, responsibilities and risks" (2002) 22 *Critical Social Policy* 551.

85 O Gough and R Hick "Employee evaluations of occupational pensions" (2009) 31 *Employee Relations* 158.

86 Until 1995 there was no regulation of DB pensions, by 2004 there was a levy on all viable schemes and considerable changes in accounting and solvency requirements, for example FRS 17.

87 D McBarnet, "Law and capital: the role of legal form and legal capital" (1984) 12 *Int J of Soc of Law* 231 and D McBarnet and C Whelan, "The elusive spirit of the law: formalism and the struggle for legal control" (1991) 54 *MLR* 848.

88 Towers Perrin Human Resources Services, *Defined Contribution Pension Arrangements* (London: Towers Perrin 2004).

impact of FRS 17 was a factor in switching schemes for only 24 per cent of the employers who responded to a survey they conducted in 2004.

CORPORATE BEHAVIOUR

The move from DB to DC schemes is often presented as being the result of the factors described above. However, a closer examination reveals that a much greater part is played by corporate decision making. As I explained above, the move to DC plans cuts across the traditional law and economics divide between residual claimant and fixed-sum claimant and, yet, pension fund beneficiaries have no say in how their funds are managed. Pension fund trustees took full advantage of the products made available through the onset of financialisation and joined in the takeover and merger boom of the 1990s.⁸⁹ Financialisation represents the final move away from a production-driven economy. Profits are sought through creating and trading financial products.⁹⁰ Put in colloquial terms it is now more important in profit terms to a car manufacturer to sell a customer the finance to buy a car than it is to sell the car itself. Fund managers selected by the trustees see their primary loyalty to the board corporate which has elected the trustees who in turn have chosen them.⁹¹ The consequences of this are that employees are left without even a basic accountability structure

If we add to this the use of supposed pension surpluses to provide generous early retirement provision during the recessions of the early 1980s and early 1990s, the peaks and troughs of the equity market⁹² and the employment of high asset values in the early 1990s to take payment holidays then it looks very much as though the decision to switch scheme types is an informed decision made for sound business reasons. Payment holidays have two effects. They boost share earnings and lower employment costs and, as a consequence of these, short-term competitiveness is increased. However, subsequent low asset returns and falling interest rates made the financial consequences of these holidays impossible to claw back.⁹³ Employers have used the move from defined benefit schemes to defined contribution schemes as an opportunity to reduce their contribution to post-retirement provision thus maximising returns on investment for shareholders.

The race to the bottom in pension provision has largely occurred post-2000 despite the equity market crash of 1987. The clustering of scheme closure post-2000 demonstrates how quickly a market occurs as corporations compete to provide the best return for shareholders and copy from each other the methodology for doing so, just as they did in relation to CSR. Economists term this herd behaviour.⁹⁴ While the actual modelling of herd behaviour may belong within micro-economics, at a conceptual level its tools for understanding imitation in firms are relatively straightforward.⁹⁵ Two broad categories of explanation exist within the literature – information-based theories of imitation and rivalry-based theories of imitation. Information-based theories suggest that firms follow other firms that they perceive, rightly or wrongly, to possess superior information and rivalry-based theories suggest that firms

89 T Ghilarducci, *Labor's Capital* (Cambridge, Mass: Harvard University Press 1992), p. 130.

90 There are many accounts of financialisation and most of them depend for their starting point on G Krippner, "The financialization of the American economy" (2005) 3 *Socio-Economic Review* 173.

91 This clearly creates an accountability vacuum for employees, see T Ghilarducci et al, "Labour's paradoxical interests and the evolution of corporate governance" (1997) 24 *JLS* 26.

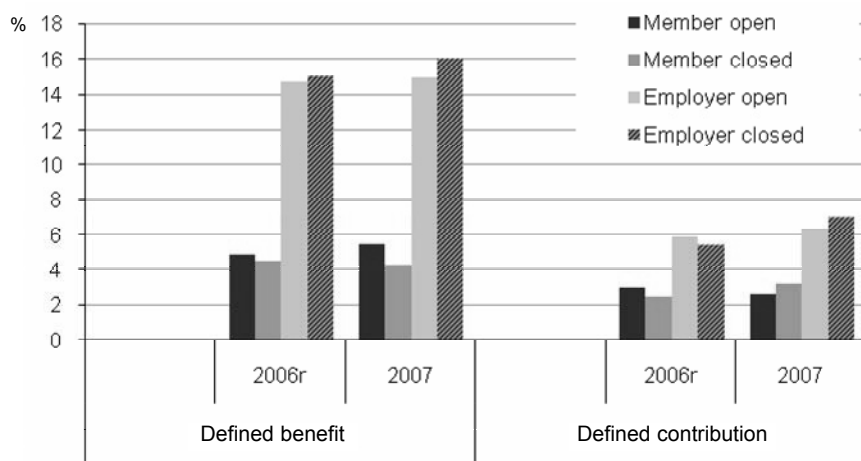
92 P Langley, "In the eye of the 'perfect storm': the final salary pensions crisis and financialisation of Anglo-American Capitalism" (2004) *New Political Economy* 539.

93 For a much more rigorous overview of these issues, see G Clarke and A Monk, "The 'crisis' in defined benefit corporate pension liabilities – Part I: scope of the problem" (2006) 12 *Pensions* 43.

94 A Banerjee, "A simple model of herd behavior" (1992) 107 *Quart J of Economics* 797.

95 M Lieberman and S Asaba, "Why do firms imitate each other" (2006) 31 *Academy of Management Review* 366.

Figure 2: Member plus employer weighted-average contribution rates to private sector occupational pension schemes: by benefit structure, contributor and status, 2006 (revised) and 2007 (United Kingdom)



Source: Occupational Schemes Survey 2007, ONS 2008

follow each other either to respond to or to limit competition. These two categories do not necessarily work in isolation and imitation behaviour may occur as a combination of both information and competition. The rise and fall of the dot.com bubble is a very good example of imitation behaviour that draws on information and rivalry. Many businesses rushed to join the world of internet-based business only to find that this was an innovation that was not suitable for their product. Their enthusiasm was based on following others and competing in innovation. Within this paradigm there are “fashion leaders”; those firms who it is supposed have superior information⁹⁶ based on size or longevity in the market.

If we consider imitation or herd behaviour in relation to pension schemes then emerging as “fashion leaders” are those long-established and large PLCs and other bodies that closed their defined benefit schemes to new entrants in the late 1990s, for example, Sainsburys, the Abbey National and Age Concern. Crucial to imitation are informal contact situations through which information can cascade. Information cascades when fashion is followed without recourse to personally held or acquired information.⁹⁷ Informal networks and contacts between firms could exist in the medium of trade fairs, trade associations and business dinners.⁹⁸ A more significant source of informal contact are investment consultants which in the UK form a very small club.⁹⁹ Just four firms provide investment consultancy advice to 70 per cent plus of funds with assets of over £25 million pounds. The Towers Perrin survey¹⁰⁰ reports that 39 per cent of employers surveyed switched their pension scheme to match trends in the market, i.e. among other firms.

96 S Bikhchandani et al, “Learning from the behavior of others: conformity, fads and information cascades” (1998) 12 *J Economic Perspectives* 151.

97 D Hirshleifer and S Teoh, “Herd behaviour and cascading in capital markets: a review and synthesis” (2003) 9 *European Financial Management* 25.

98 P Bridgen and T Meyer, “When do benevolent capitalists change their mind? Explaining the retrenchment of defined-benefit pensions in Britain?” (2005) 39 *Soc Pol and Admin* 764.

99 N Kakabadse and A Kakabadse, “Pension funds governance: an overview of the role of trustees” (2004) 1 *Int J Business Gov and Ethics* 3 at 4.

100 Towers Perrin, *Defined Contribution*, n. 89 above.

Table 1: Market share for pension advisers, by size of pension scheme (%) 1999

Adviser	Size of fund						
	£1bn+	£250– £999m	£150– £249m	£75– £149m	£25– £74m	£10m– £24m	< £10m
Watson Wyatt	43.3	29.0	21.9	21.2	15.6	13.0	3.8
William Mercer	15.8	23.9	24.8	32.4	27.7	28.5	34.6
Bacon & Woodrow	16.7	15.4	19.0	17.3	12.4	10.6	3.8
Hymans Robertson	9.2	9.7	6.7	2.8	1.5	2.4	0.0
“Big Four”	85.0	78.0	72.4	73.7	57.2	54.5	42.2
Aon	4.2	5.8	4.8	7.3	10.6	9.2	8.7
Lane Clark & Peacock	1.7	3.1	4.8	4.5	2.1	1.9	1.0
Towers Perrin	0.0	1.9	6.7	3.4	2.1	2.4	0.0
KPMG	0.0	0.0	0.0	0.6	0.9	1.9	1.0
PwC	0.0	0.4	0.0	0.6	0.9	1.9	1.9
Subtotal	90.8	89.2	88.6	89.9	73.7	72.0	54.8
Other	9.2	10.8	11.4	10.1	26.3	28.0	45.2
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
HHI	2509	1790	1592	1892	1289	1200	1307

Source: Myners Review (from datamonitor analysis of “Pension funds and their advisers”, AP Information Services: Charles River Associates calculations), at p. 65.¹⁰¹

Conclusion

Benevolent capitalism of the type described by the Watkinson Report and criticised by Hadden as being acceptable only to ardent free marketers is dead, sacrificed on the altar of shareholder value. Its demise demonstrates both the tenacity and the flexibility of the corporate form. It is able to cling to life in moments of pressure such as the move to post-fordism and through to financialisation and it is flexible enough to move between interest groups producing a solution or at least a product (CSR *is* a product, DC pension plans *are* products) to satisfy whichever demand is loudest. The current financial crisis is one in a long line of many and it will produce another solution manufactured by corporations which results in pacification of interest groups until the next crisis.

¹⁰¹ Institutional Investment in the United Kingdom (the Myners Review), 2001.