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From Cadbury to Kay: discourse, intertextuality and the evolution of UK corporate governance

Michael Price
Charles Harvey
Mairi Maclean
David Campbell

Newcastle University Business School
Barrack Road
Newcastle upon Tyne
NE1 4SE

Michael Price is the corresponding author: michael.price@ncl.ac.uk

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Abstract

Purpose – We aim to answer two main research question. First, we ask to what degree the UK corporate governance code has changed in response to systemic perturbations and subsequent enquiries established to recommend solutions to perceived shortcomings. Second, we ask how the solutions proposed in these landmark governance texts might be explained.

Methodology – We take a critical discourse approach to develop and apply a discourse model of corporate governance reform. We draw together data on popular, corporate-political and technocratic discourses on corporate governance in the UK and analyze these data using content analysis and the discourse-historical approach.

Findings – The UK corporate governance code has changed little despite periodic crises and the enquiries set up to investigate and recommend improvements. *Institutional stasis*, we find, is the product of *discourse capture and control* by elite corporate actors aided by political allies who inhabit the same elite habitus. Review group members draw intertextually on prior technocratic discourse to create new canonical texts that bear the hallmarks of their predecessors. Light touch regulation by corporate insiders thus remains the UK approach.

Originality/value – This is one of the first applications of critical discourse analysis in the accounting literature and the first to have conducted a discursive analysis of corporate governance reports in the UK. We present an original model of discourse transitions to explain how systemic challenges are dissipated.

Keywords Governance, Combined code, Accountability, Disclosure, Trust, Elites, Critical discourse analysis, Discourse-historical approach, Intertextuality

Paper type Research paper

Introduction

This paper examines the evolving tenets of corporate governance in the United Kingdom (UK) over a period of two decades from the publication of the Cadbury report in 1992 to the Kay report in 2012. We take a critical discourse approach*,* a hitherto underutilised methodology in accounting and governance research, to interrogate a corpus of texts that have significantly influenced the evolution of the UK combined code of corporate governance. We address two main research questions. First, we ask to what degree the UK corporate governance code has changed in response to systemic perturbations and subsequent enquiries established to recommend solutions to perceived shortcomings. Secondly, we ask how the solutions proposed in these reports can be explained. In answering these questions we have been inspired by the Lancaster school of critical discourse analysis (CDA) (Fairclough, 1992, 1995, 2003; Weiss and Wodak, 2007; Wodak, 2001), and specifically the *discourse-historical approach* (Wodak, 2001), which seeks to understand "how particular genres of discourse are subject to diachronic change" (Wodak, 2001, p. 65). Yet, within any corpus of texts, while there may be notable discursive changes, there may be equally pronounced continuities in language and argumentation, with later texts building on earlier models in a process of *intertextuality*: the appropriation of substantive content from earlier writings, re-written and adapted to produce new texts (Allen, 2011; Czarniawska, 2008; Kristeva, 1980). As will be demonstrated, the corporate governance texts analysed contain "plots, generic features, aspects of character, images, ways of narrating, even phrases and sentences from previous texts" (Allen, 2011, p. 11). In this regard they are both constitutive and reflective of broader socio-political and historical contexts (Wodak, 2001). Undertaking such analyses is important because the concepts and ideas on which governance is based are so ingrained, so taken for granted, that their origins appear to be natural, deflecting attention from the nexus of power relations in which they are embedded (Clegg, 2013).

Our main contribution to the literature is to explicate the role of different types of discourse in the production of *institutional stasis*, long periods during which little of regulatory substance changes, notwithstanding popular demands for radical revisions to the formal and informal rules governing corporate behaviour. Periodic official and quasi-official reports into various aspects of the practice of corporate governance are, we contend, elite texts, written by elite actors for elite purposes. They exist to give stability and permanence to the ideas of their authors (Allen, 2011), leading members of the governing elite. We build on and expand the work of Jones and Pollitt (2004) and Nordberg and McNulty (2013) in examining how the discourse of corporate governance has evolved and the extent to which language and rhetoric is used discursively in shaping and reinforcing regulatory frameworks and actor expectations. We argue that through successive discursive transitions from popular to technocratic discourse, menacing, anti-establishment arguments are deflated and societal pressures reduced whenever the existing order is seriously under threat, giving rise to new canonical texts little changed from their precursors.

In the discourse of corporate governance, we observe in what follows a pronounced shift from a focus on structures and procedures in early texts to individual behaviours in later texts, echoing Nordberg and McNulty (2013, p. 365) who suggest that "over time, the UK codes become more engaged with behavioural and relational nuances of boards as collective decision making entities" and Sinclair (1995, p. 224) who contends that accountabilities "are revealed in at least two discourses… a structural discourse and a personal discourse". Viewed from an intertextual perspective, however, these seeming discursive discontinuities are lost when embraced by the technocratic discourse manifest in the combined codes, which emphatically reinforces institutional continuity and *ipso facto* legitimizes both pre-existing structures *and* behaviours. Despite regular perturbations and the legitimacy deficit resulting from the financial crisis of 2008 (Whittle *et al.*,

2014), there has been little substantive revision to the UK combined code of corporate governance since 1992. This highlights the enduring power of elite mechanisms of institutional control, of which *discourse capture and control* is pivotal. In the case of corporate governance, populist challenges to the status quo, recognized and responded to by politicians and corporate leaders, have been held in check through proximately critical but ultimately defensive discursive processes.

In the following section, we consider the theoretical and ideological foundations of UK corporate governance and propose Wodak's (2001) discourse-historical approach as a method of unmasking the mechanisms at play in containing pressures for change and maintaining the institutional order. In section 3, we model the role of discourse in corporate governance reform and explain our sources and methods. Section 4 comprises a presentation and discussion of the findings emerging from thematic and textual analysis of the corpus of UK corporate governance texts. We conclude in section 5 by summarising the main findings and implications of our research.

Corporate governance in the UK

Agency theory as discursive framing

Berle and Means (1932) first identified the potential for agency problems stemming from the separation of ownership from control in modern corporations. With remote and fragmented ownership came the problem of how owners might protect their interests when executives had the freedom to pursue self-interested goals at corporate expense. Much of contemporary corporate governance theory and practice has been framed as offering solutions to this fundamental problem of agency, leading to the introduction of mechanisms and incentives designed to align the interests of owners and top executives (Shleifer and Vishny, 1997). Such mechanisms and incentives vary between jurisdictions and are attuned to the institutional, cultural and regulatory infrastructures of individual nations (Aguilera and Jackson, 2003; Clarke, 2007). The UK model of corporate governance is predicated on a relatively high degree of separation of ownership and control resulting from widely distributed and transient shareholding. In these circumstances, corporate governance regulations and practices are designed principally to mitigate problems arising from managers taking self-interested actions that might harm the firm (Jensen and Meckling, 1994); for example, empire building without due regard to the cost and quality of acquisitions because executives know that remuneration correlates positively with organisational size (Gregg *et al.*, 2012).

Two broad approaches have been taken to the mitigation of agency problems. On the one hand, economically driven theorists such as Fama and Jensen (1983) and Jensen and Murphy (1990) suggest that principal-agent contracts can be used to align interests when provision is made for extrinsic rewards large enough to ensure appropriate executive behaviours. On the other hand, theorists from a range of other disciplinary backgrounds object that the contractually based tangible rewards approach is founded on pessimistic assumptions about human nature (Rodriguez *et al.*, 2012) and fails to recognize the potentialities for developing trust and co-operation between principal and agent (Fehr and Falk 2002). Indeed, the characterisation of agents as self-serving, opportunistic and deceitful might become self-fulfilling by encouraging the behaviours it seeks to discourage (Donaldson & Davis 1991, 1994). Supporting this position is evidence that high levels of performance related remuneration actually increase the likelihood of financial misrepresentation (Harris and Bromiley, 2007), and is ineffective in controlling executive behaviour (Pepper *et al.*, 2013). Non-pecuniary rewards such as reciprocity and social approval are advocated as potentially powerful means of limiting self-interested behaviour and aligning the interests of owners and managers (Fehr and Falk 2002).

The Berle-Dodd debate of the early 1930s, revisited by Macintosh (1999) and Stout (2002), is relevant here. Berle framed corporate governance narrowly as the means by which executives might be held accountable for their actions by shareholders. Dodd took a wider view suggesting that

corporations have multiple stakeholders and executives have a responsibility not only to serve shareholders but also society at large. The conclusion emerged that in the absence of shareholder control the best protection available for all stakeholders was full *disclosure* of information, a prescription that remains fundamental to corporate governance best practice. The society-wide obligations of business highlighted by Dodd have assumed prominence in the present age of inequality, reflected in the influential works of Stiglitz (2003, 2005), Davis (2008, 2009) and Piketty (2014), encouraging companies to disclose more information on executive remuneration, the environment, risk management and corporate strategy to help legitimize decisions, policies, practices and actions. These disclosures, however, are not compulsory. The UK is a principles based jurisdiction whereby companies are encouraged to comply with the regulations or explain why they are not in compliance. The premise of this *comply or explain* system is based upon the idea that it offers flexibility in the interpretation of rule by allowing directors the opportunity to explain how, or how not, they have complied with the principles. This is in contrast to statutory, rules based approaches, such as the Sarbanes-Oxley Act in the United States. Revisions to the combined code of corporate governance and voluntary increases in the types and amounts of information disclosed in annual reports and financial statements conspicuously often follow in the wake of perturbations that are damaging to both shareholders and society-at-large (Maclean, 1999).

Arguably, since the publication of the Cadbury report in 1992, a landmark in modern corporate governance, the ties between shareholders and executives have weakened further due to *financialization*, the increasing economic domination of finance, financial markets and financial institutions (Davis, 2008, 2009; Davis and Kim, 2015; Stiglitz, 2006), which is characterised by the increased turnover of shares and has discouraged owners from taking an interest in the long term health of companies. In the UK, Hampel (1998, p. 40) reported that over 60% of all UK equities were held by institutions that are more interested in the profits of share trading than the long term obligations of company owners. The implication of this structural change is that the increasing length of investment chains (Kay, 2012) and the prevalence of owners who do not honour their responsibilities as asset owners render the Berle-Means thesis framing of the agency problem "theoretically… no longer valid" (Charkham 2008, p. 13). There has been substantial critique of the "static template of agency theory, and its rigid concern for an outdated conception of property rights" (Clarke, 2005, p. 610). Several UK based studies have found that institutions tend to have little control or interest in controlling executives within the companies in which they hold serious stakes (Faccio and Lasfer, 2000; Jackson, 2008; Tilba and McNulty, 2012).

One remedy for the problem of arm's length, transient ownership has been to strengthen the position and mandate of non-executive directors on corporate boards. In theory, non-executive directors might limit or even eliminate self-interested executive behaviour by monitoring, challenging and testing recommendations put to the board. Building on the original Cadbury model, the Higgs report (2003, p. 31) recommended the appointment of a senior *independent* non-executive director (someone without a history of employment or other significant involvement with the firm) to help breach the gap between owners and managers. The recommendation was incorporated into the combined code of corporate governance in 2006, placing the notion of independence at the heart of corporate governance in the UK. The ideal is that non-executive directors, led by the senior independent director, should have the power, influence and will to recognize and minimize pursuit of executive self-interest, ensuring that management acts in the best interests of shareholders. Independence from the executive team might be expected to lead to lower levels of nepotism, corruption and cronyism. Higgs' definition of independence included not only structural features such as absence of organizational and social ties that might compromise non-executive directors, but also the presence of personal traits such as independence "in character and judgement" (Higgs, 2003, p. 37). However, while the notion of independence is now commonly accepted as a desirable feature of non-executive board members, the term remains contested given

the myriad of connections, visible and invisible, ideological and tangible, that connect people within the wider social world. Disparate critical research on interlocking directorates (Scott, 1991; Windolf, 2002; Yeo, 2003), elites (Clegg *et al.*, 2006; Maclean *et al.* 2005; Maclean *et al.* 2010, Maclean *et al.* 2014; Mills 1953; Pettigrew, 1992; Stokes *et al.* 2014; Useem 1984), mechanisms of accountability (Roberts 1991, 2009; Roberts *et al.*, 2005), financial performance (Bhagat and Black 1999; Weir and Laing 2001) and social class (Robinson and Harris 2000; Zeitlin, 1974) all question whether a high degree of independence can be achieved in practice between people judged by self-referential groups as qualified to serve as a non-executive member of a corporate board.

Corporate governance as collective discourse

In what follows we present a longitudinal analysis of the primary texts impacting on the UK corporate governance code between 1992 and 2012 using the discourse-historical methodology championed by Wodak (2001). By 'texts', we mean the landmark reports commissioned to review and make recommendations on corporate governance regulation and practice in the UK. The main recommendations made in these texts are summarized for ease of reference in Table 1.

[INSERT TABLE 1 HERE]

Most corporate governance initiatives in the UK have arisen directly as a result of events that have caused perturbations within the existing system, resulting in legitimacy crises marked by public and shareholder condemnation of corporate practices and conduct (Charkham, 2008). It is widely accepted, for example, that Cadbury and Greenbury were relatively rapid regulatory responses to perceived crises: Cadbury (1992) to public outrage over the theft of the Mirror Group pension fund by Robert Maxwell; Greenbury (1995) to the scandal surrounding the pay rise given to British Gas CEO Cedric Brown following privatization. Later initiatives, notably Hampel (1998) and Higgs (2003), were in turn intended to get companies to conduct their affairs in a more consistent and defensible manner following public criticism. The combined code, incorporating and bringing together many of the provisions in these reports, has been added to over time as regulators have deemed necessary.

The financial crisis of 2007/8 further demonstrated the cataclysmic problems that could be occasioned by wayward management, prompting further scrutiny of governance and industry-specific failings, especially in banking (Walker Report, 2009; Turner Report, 2009). Over the period covered by our study there have been a number of revisions to the UK corporate governance code – in 1998 following the Hampel report, in 2003 following the Higgs report, in 2006, 2010, 2012, and most recently in 2014 following the Kay report. The landmark texts which form the corpus therefore are not reports explicitly directed at rewriting the combined code, but rather are positioned as authoritative enquiries into recent crises with recommendations for improvements that might help restore confidence in the corporate sector. The reports tend to have similar antecedents: a series of damaging events leading to the some form of government or quango intervention. For example, the Financial Reporting Council (FRC) commissioned the Cadbury, Hampel, Turner reports, while the UK government directly intervened to commission the Higgs, Walker and Kay reports. The 1995 Greenbury committee was also unofficially initiated by the UK government, under the agency of the Confederation of British Industry (CBI).

Fairclough (1992, 2001, 2003) has explored the relationships between texts, discourse and context and concludes that texts enable sensemaking by contextualizing specific logics of action and function to legitimate behaviours. He (1992) proposes that the relationship between discourse and social structure is dialectic and mutually constitutive. Here we build on this insight and follow Hardy and Phillips (2004) in recognizing that "discourse lays down the 'conditions of possibility' that determine what can be said, by whom and when." In other words, discourse is far more than just talk, it is formative in the proposal and acceptance of social and political outcomes. Policies are formed

through discursive processes and then as a result, the actual practices that take place are a direct output. In other words, there is an inseparability between how policy is formed and the policy itself. Questions of ownership, inclusion and control of discourse are objects of analytical interest because they relate directly to the exercise of power in society.

According to Phillips, Lawrence and Hardy (2004, p. 236) "discourse analysis… involves analysis of collections of text, the ways they are made meaningful through their links to other texts , the ways in which they draw on different discourses, how and to whom they are disseminated, [and] the methods of their production." Phillips, Courpasson and Clegg (2006, p. 305) highlight the key role that texts play in creating "concepts [that] exist solely in the realm of ideas," and, in turn, the important role concepts play in intermediating the meaning of contestable issues in the realm of corporate governance and more generally in society. Hardy and Phillips (2004, p. 308) argue that the relationship between a series of texts is important because, "a text is more likely to influence discourse if it evokes other texts, either explicitly or implicitly", one of the defining features of intertextuality (Allen 2011; Czarniawska, 2008; Kristeva, 1980). Therefore, insofar as corporate governance texts relate to one another, implicitly and explicitly, they can be interpreted as a collective discourse of overlapping and mutually-reinforcing themes, embracing a set of rules within which power is embedded (Clegg, 1989). The texts contain powerful statements relating to how businesses should be governed and embrace often conflicting logics current in the public realm (Purdy and Gray, 2009). They are rendered more or less powerful by the perceived legitimacy of the authors and commissioning organisations. In this way, they are accretions of influence that may be analysed individually, sequentially or as a corpus.

Corporate governance texts in essence constitute a technocratic discourse of elite actors to serve elite ends. The authors and their principal collaborators on review bodies and committees are *dominant corporate agents* (Maclean Harvey & Press 2006, Maclean, Harvey & Chia 2010), individuals with an established position of control within an organisational field stemming from their *command over resources* (Clegg *et al.*, 2011; Maclean, Harvey and Press, 2006). According to Clegg, Courpasson & Phillips (2006, p. 342) these actors form "the missing link between studies of power and studies of democracy" as individuals uniquely placed to make field shaping changes to corporate governance regulation. In analysing discourse, it matters not only what is said but who is saying it. Wodak (2001, p. 10) argues that, "language is not powerful on its own – it gains power by the use powerful people make of it." In this vein, we argue that the historical corpus of reports on UK corporate governance should be seen as illustrative of *capture and control of discourse* by dominant corporate agents with a strong vested interest in maintaining existing institutional arrangements. Discourse-historical analysis seeks to explore "dominance, discrimination, power and control … as it is expressed, signalled, constituted, and legitimised … by language use" (Wodak, 2001, p. 2). In the analysis that follows it is also important to recognise the inseparability of *what is conveyed* and *by whom* in corporate governance texts.

Model, sources and methods

We began our research by undertaking a critical reading of the literature and texts of UK corporate governance from a Bourdieusian perspective (Bourdieu, 1985, 1990; Maclean *et al.*, 2006), with the intention of better understanding the role of discourse in the evolution of corporate governance in the UK (Charkham, 2008; Jones and Pollitt, 2004; Maclean, 1999; Nordberg and McNulty, 2013). Examination of the context in which corporate governance reforms have been initiated points to perturbations that threaten to undermine the legitimacy of existing institutional arrangements as the proximate cause of institutional change (Jones and Pollitt, 2004). In response to dramatic events that have unleashed public concerns, the media takes up the cudgel for reform. Events such as the Maxwell pension fund theft highlight perceived faults in corporate governance and public distaste at the self-interested behaviour of business elites. The emerging *popular discourse* typically is one of

unconstrained power leading to public detriment (Maclean, 1999). In response, politicians are urged to prevent further abuse and corporate leaders come under pressure to improve corporate governance. The ensuing *corporate-political discourse* of power brokers united by inhabiting a common habitus and having similar dispositions (Bourdieu, 1985) is less strident than the counterpart popular discourse, but nevertheless accepting of the need for change. This second type of discourse is used to frame the remits of the expert review bodies set up to examine the problems brought to light by perturbations. These bodies, made up primarily of corporate leaders supported by professional experts report findings and make recommendations in formal *technocratic discourse* informed by existing institutions, practices and theoretical perspectives. In turn, the discourse, captured in landmark corporate governance texts, is fed back into the system with the intention of restoring stakeholder confidence and management legitimacy. This set of relationships and associated discursive processes are modelled in Figure 1.

[INSERT FIGURE 1 HERE]

The next step in our research was to gather data on each of the three discursive processes identified in our model. We collected articles on the popular discourse of corporate governance from the archives of the UK news media, using the database Nexis as a search engine. Texts on the corporate-political discourse of corporate governance were drawn from political memoirs and institutional sources such as political parties, parliamentary debates and the CBI. The corpus of landmark texts on the technocratic discourse of corporate governance are listed in Table 1. We created a text repository in NVIVO to enable structured interrogation of the texts, identification of key themes and constructs within and across texts and the discursive strategies employed by authors.

In analysing the texts, we undertook three main analyses. First, we ran a word frequency report in NVIVO for key governance themes and constructs, enabling us to identify their prominence over time. Second, through the creation of a node framework we were able to organize text extracts thematically over the period, for example accountability, independence, transparency and trust. Third, following Wodak (2001), we conducted a textual analysis to identify the discursive strategies employed in landmark governance texts. These strategies, defined in Table 2, are intended "to achieve a particular social, political, psychological or linguistic aim", lending force and persuasiveness to the arguments of their authors (Wodak, 2001, p. 73). The method deployed is a form of deconstruction which, according to Derrida (1983, p. 40), "is a strategic device, opening its own abyss, an unclosed, unenclosable, not wholly formalizable ensemble of rules for reading, interpretation and writing." The objective is to critically assess the evolution of meaning in the texts, as it provides authority to those that use them as an instrument of legitimacy. Deconstruction revisits a text to find other meanings and detect acts of communication used for persuasive strategy and "as a reading activity, deconstruction reveals veiled hypothetical foundations" (Chabrak, 2012, p. 458). In order to more fully understand the temporal context of each text and therefore disinter the ongoing evolution of the discourse, the socio-historical and institutional background of each text needs to be understood in the context of its time, since events shape the beliefs, values and attitudes of authors (Chabrak, 2012; Fairclough 1992). Consistent with Wodak's approach, we examined the micro discursive strategies present within texts and how these were deployed to support the ideas and arguments of their authors.

[INSERT TABLE 2 HERE]

Findings and analysis

We argue that corporate governance in the UK, as proposed in Figure 1, has evolved progressively through a sedimentary process in which one thin layer of reforms is built upon another, reinforcing founding principles and resulting in institutional stasis. Episodic perturbations lead to reports,

recommendations and ultimately revisions to the combined code, while reinforcing the dominant logic of the field (Nordberg & McNulty 2013). Popular discourse about governance failings is sufficiently disquieting to stir the ruling elite into action, but insufficient to break the system. Rather, politicians and corporate leaders enter a familiar defensive routine of self-examination, in which poachers turned gamekeepers use the technocratic discourse of corporate governance texts to propose improvements to the existing model, averting radical reform. In the UK, at its most fundamental, this means defending the principle that the corporate world, not government, is responsible for keeping its own house in order. Capture and control of the discursive process is thus critical to the "maintenance of the social world, including those social relations that involve unequal relations of power" (Jørgensen and Phillips, 2002, p. 63). The landmark corporate governance texts have been pivotal to maintaining control over subjects (shareholders, the public, institutions, etc.) by the mobilisation of embedded elite power (Clegg, 1989). Power relations are constituted in technocratic discourse and "form a cage in which only certain actions are possible" (Hardy and Phillips, 2004 p. 303).

The study of texts and language is important because it is primarily through the discourses conveyed in texts that influence is gained and traction over behaviours attained (Phillips *et al.*, 2004). Accordingly, control of discourse is of central importance in the process of change (Golant *et al.*, 2014; Maclean *et al.*, 2014; Suddaby and Greenwood, 2005). The authors of landmark texts, building one on another, are able to demonstrate "their credentials as guardians of a shared heritage, thus claiming their legitimate right to direct and manage" (Maclean *et al.*, 2014, p. 558). This is illustrated in Table 3 through the juxtaposition of the popular, corporate-political and technocratic discourses called into play by the systemic perturbations leading to the publication of the Cadbury (1992), Greenbury (1995), Hempel (1998) and Kay (2012) reports. In each case, popular expressions of outrage are followed by a sympathetic but measured corporate-political response and then issue of a decisive, controlling technocratic solution. In the case of Greenbury, for example, the public anger following revelations that "the snouts of British bosses were too deeply or too blatantly in the trough" (Basset, 1995, p34) led to corporate-political expressions of concern but affirmation that "pay in the private sector is a matter for companies and their shareholders" (Lang, 1995) [Parliamentary debate] and the technocratic solution of "full disclosure of Directors' remuneration as a means of ensuring accountability to shareholders and reassuring the public." (Greenbury, 1995, p26). We argue that through completion of the discursive cycle, the pressure for reform caused by the original perturbation is dissipated, fending off the systemic challenge and calls for government regulation of top pay while maintaining the legitimacy of the system and its actors. In effect, a new practice (disclosure) was embraced as a small adjustment to the established UK model of corporate governance and the assumptions, stemming from the economic view of the principal agent problem, on which it is based.

[INSERT TABLE 3 HERE]

More detailed exploration of the corpus of landmark corporate governance texts helps further illuminate how over two decades corporate governance in the UK has progressively adapted to meet the challenges it has faced. Our analysis is focused on the key corporate governance concepts that underpin the system. First, we discuss the framing of *accountability* and changing nuances in what it means to be accountable within the corpus of texts. We then move to examine the role of *independence*, before examining significant discursive changes post-2007, where the technocratic discourse has become focused on individual behaviours rather than governance structures. After the watershed, blame for perturbations has been attributed variously to the greed, incompetence and ethical failings of individuals rather than systemic problems. We argue that despite this discursive shift, institutional stasis has been maintained and popular discourse negated through the continued refinement of the UK combined code, which remains fundamentally unchanged.

Accountability

Accountability is locus of discussion throughout the corpus of texts. It is the major thematic of the Cadbury report. The technocratic discourse in Cadbury is predicated on the agency based logic of Berle and Means (1932) and more recently Fama & Jensen (1983) and Jensen and Murphy (1990). Cadbury notes from the outset that the effectiveness of corporate governance is predicated on a "framework of effective accountability" (1992, p. 1). He goes on to say that "by adhering to the Code, listed companies will strengthen both their control over their businesses and their public accountability" (Cadbury 1992, p. 2). This conflation of compliance with accountability runs throughout the Cadbury, Greenbury and Hampel reports. Likewise, the same reports deploy similar architectural and infrastructural metaphors. These are examples of discursively *referential* strategies (Wodak, 2001). References to robustness, frameworks and other allusions to construction are common. In the formative texts, particularly in Cadbury but also in the 1998 combined code and later revisions, there are similar uses of words in describing tangible structures. Cadbury (1992, p. 1) spoke of "freedom within a framework of effective accountability" and the importance of "appropriate governance structure[s]" (1992, p.5). Cadbury asserted that "the effectiveness of a board is buttressed by its structures and procedures" (Cadbury, 1992, p. 25). The word 'framework' is employed particularly frequently in the Cadbury and Hampel reports in relation to issues of regulation and agency. Cadbury (1992, p. 36), for example, in relation to the work of auditors, refers to "the framework in which auditors operate". Nordberg and McNulty (2013, p. 359) make similar observations and refer to the "quiet symbolism" of the report's emphasis on revised structures. The purpose served by repeated use of structural language is to communicate the idea that if companies have in place the prescribed governance arrangements then the potential for major strategic mistakes will be greatly reduced.

Kay (2012) builds on this idea. He acknowledges that robust frameworks and procedures are essential to good governance and the management of risks, but there is more to the story: "respect cannot be established by regulation. Regulation can, however, establish a framework that encourages trust and punishes those whose behaviour constitutes abuse of trust" (Kay, 2012, p. 47). In other words, good governance is not merely about having sound structures and procedures, it is also about top executives behaving in a responsible and trustworthy fashion. In his view, this cannot be guaranteed by formal contractual arrangements intended to reconcile the interests of owners and managers: "regulation should not be based on the assumption that markets will achieve efficient outcomes if supplied with sufficient information" (Kay, 2012, p. 82). The 2014 revision of the UK code echoed this sentiment in proposing "culture, values and ethics" and "good standards of behaviour" (FRC, 2014, p. 2) as critical to effective corporate governance.

More broadly, the assumptions made about human nature by agency theorists (Fama & Jensen, 1983; Jensen and Meckling, 1994; Jensen and Murphy, 1990) seem increasingly questionable as the underpinning of contractual arrangements with top executives (Davis 2008, 2009; Stiglitz, 2006). In similar vein, a steam of accounting research over the last 20 years has questioned the efficacy of accounting practices and audit in limiting abuse (Messner, 2009; Roberts, 1991, 1996, 2001, 2001b, 2010; Shearer, 2002; Young, 2006; Sikka, 2009). In different ways, these works have noted changes in nuances to the way that accountability should be understood in moving from a system of audit and compliance to more individual and behavioural forms of governance. This literature "confronts questions of the origin and extent of collective moral agency" (Shearer, 2002, p. 543) and recognises that the economic viewpoint is flawed by its narrow definition of accountability at the expense of broader social obligations. This trend in the research literature is coincidental with the declining use of the word accountability in corporate governance texts with 20 invocations in Cadbury but just 3 in Kay. Yet despite these currents of opinion there has been little substantive revision to the way in which accountability is positioned in the UK corporate governance code.

One of the key instruments by which accountabilities are discharged is through *disclosure*. The link between disclosure and performance is certainly one of the underlying theories of the 1995 Greenbury report, which built securely on Cadbury report. The idea that remuneration levels might be controlled and linked to performance through disclosure has proved ill-founded. For instance, the ratio of an average worker's salary to that of a FTSE 100 director has increased from 57:1 in 1998 to 177:1 in 2012 (High Pay Commission, 2013), while there is mounting empirical evidence of a long-run disconnect between pay and financial performance (Gregg *et al.*, 2012; Hall and Murphy, 2002; Pepper and Gore, 2013; Pepper *et al.*, 2013). Bertrand and Mullainathan (2001, p. 904) have coined this phenomenon "pay for luck" because the impact of CEO's on performance is becoming increasingly hard to measure. Large margins for error mean that it has become "something close to a pure ideological construct" and simply "a justification for higher status" (Piketty, 2014, p. 331). Greenbury (1995, p. 26) argued for "a new philosophy of full transparency" that would help in setting appropriate levels of remuneration. There are a number of discursive strategies in the technocratic discourse, principally the use of *predication* (Wodak, 2001), conflating disclosure with levels of remuneration. The issue of remuneration has not disappeared from the popular discourse; with every new scandal there has been strong condemnation of the beneficiary. In 1995 the popular discourse was vitriolic towards the British Gas CEO Cedric Brown. He was portrayed as having his *snout in the trough*. The *Daily Mirror* had photographs of Brown and a pig side by side under the headline "which Cedric has his nose in the trough?" (Knott, 1995) and the Communication Workers' Union had a live pig shipped to the company's AGM to reinforce the point (Maitland, 2008). In much the same way, just prior to the publication of the Kay report of 2012, there was a series of high profile shareholder revolts against executive pay packages at Aviva, Barclays and UBS (Burgess and McCrum, 2012) as part of the perturbation known as 'the shareholder spring'. Like others before it, the accompanying popular discourse led to government action, but in its official response to the Kay Review (2012), the Secretary of State for Business Information and Skills, Vince Cable, brushed the possibility of radical reform aside, remarking that "many of Professor Kay's recommendations, principles and directions are not for government but for market participants" (BIS, 2012, p. 3).

Independence

Considerable weight has been placed on independent non-executives directors in UK corporate governance. Cadbury regarded the absence of strong prior ties as a precondition for qualification as a non-executive director, and since then 'independence' has featured all versions of the UK code as essential to good governance. Cadbury (1992, p. 19) recommended that "the majority of non-executives on the board should be independent of the company", a view repeated by Higgs (2003) and included in the 2014 version of the code (p. 11). The crucial test of independence for Cadbury was having had no previous connection with the company, and for Greenbury (1995, p.23) it meant remuneration committees should be composed of "independent members not associated with the board or management" to avoid the possibility of conscious or unconscious bias when making remuneration decisions. The meaning of the term, "not associated" is ambiguous but, in the context of the general thrust of the code (establishing committee structures), is likely to refer, in common with the Cadbury definition, to having no previous association with the company. Hampel (1998, p. 17) subsequently confirmed that "a majority of… [non-executive directors should be] independent and seen to be independent" and that independence meant "independent of management" (Hampel, 1998, p. 25). The report recommended disclosing the extent to which non-executives are materially independent and that these claims could be challenged by shareholders.

The explicit objective of the Hampel report was to "review the implementation" (Hampel, 1998, p. 5) of the previous Cadbury and Greenbury reports in light of disappointing rates of voluntary adoption of their recommendations (Maitland 2008). The report makes interesting use of discursive strategies. For example, *referential* strategy is used, often explicitly, to derive authority from the

Cadbury and Greenbury reports. There are strategies of *intensification* (Wodak, 2001) throughout the text, for instance the principles established in previous reports are used as an illocutionary force. Often this intertextuality is explicit, but more implicitly there is a tendency to focus on "the need for broad principles" and "to substitute principles for detail wherever possible" (Higgs 1998, p. 8). These statements legitimised the voluntary principle of compliance and interpretive freedom in implementing the code, allowing corporate elites to retain control of issues, rather than resorting to standardisation of practice and legal enforcement of the code. By the time of the Higgs review in 2003, a richer conception of independence was in evidence. Now there was a fresh emphasis on "independence of mind" (Higgs 2003, p. 36) and "independent in character and judgement" (Higgs, 2003, p. 37); phrases repeated in the 2014 revision of the code. Independence was also discussed in terms of the quality of "relationships or circumstances that would affect the director's objectivity" (Higgs, 2003, p. 36). Higgs plainly conceived of independence more in terms of the character of the director rather than lack of prior ties definition found in earlier landmark texts.

Post 2007 – Trust and the individualisation of governance failures

There is a marked change in emphasis, tone and tenor between earlier and later governance reports, away from mechanisms and structures toward individual behaviours, as confirmed in Table 4. Earlier reports (Cadbury, Greenbury and Hampel) are notable in their emphasis on formal structures, procedures and committees in governance regimes with correspondingly little discussion of trust. The symbolism of the frequency of use of the word *trust* is particularly stark: Cadbury uses the word just twice in his report, whilst Kay uses it 91 times. Moreover, trust in early discourse related to systems not people, Cadbury (1992, p. 2) believing that "bringing greater clarity to the respective responsibilities of directors, shareholders and auditors will also strengthen *trust in the corporate system* [emphasis added]". In contrast, Kay (2012, p. 45) views "the erosion of trust and respect" as a critical failing brought on by the 2007/8 crisis. The report proposed that "trust and respect cannot be established by regulation" (Kay, 2012, p. 47). Thus, while individuals needed to work harder to re-establish trust in them as actors and in their companies, this is not something properly within the purview of that state. Kay, like his predecessors, turns at this point from critic of the corporate system to conservative defender of the self-regulatory approach to corporate governance, contributing, albeit through novel technocratic discourse, to institutional stasis. In suggesting that individual actors were to blame for the financial crisis, the legitimacy of the system of corporate governance remained intact despite a plethora of evidence of poor practice.

The Kay report was written against a background of an increasingly virulent popular discourse concerning the self-serving behaviours of business elites. Whittle and Mueller (2011, p.135) argue that the establishment responded by pursuing policies that in the "context of the moral transgression-retribution plot constructed by politicians … public anger is directed towards the *individual*. By individualising the responsibility, the ideology of free-market capitalism remains largely unquestioned". This finding corroborates our finding that after 2007 the technocratic discourse of corporate governance placed a much higher degree of emphasis on character and trustworthiness of directors in underpinning sound corporate governance. Analysis of the later reports emphasises that issues of trust, communication and engagement were far more prevalent than in preceding texts. In particular, The Kay report (2012, p. 44) focused on the behaviours of individuals in governance regimes, noting that "trust and respect are key to the role of an honest steward". Trust involves the expectation of ethical behaviours in others and its absence is "deeply corrosive" (Clarke, 2005, p. 606) to systems of corporate governance. Both Kay and Turner explicitly noted that a deterioration of trust was one of the main effects following the governance problems experienced during the financial crisis of 2007/8. Not until 2012, when it was proposed that there was "scope for an increase in trust which could generate a virtuous upward spiral in attitudes to the Code and in its constructive use", was the concept of trust explicitly mentioned in the UK corporate governance code (FRC, 2012, p. 5).

The 2012 revision to the UK code of corporate governance was presented "a guide only in general terms to principles, structure and processes" with the caveat "it cannot guarantee effective board behaviour" (FRC, 2012, p. 2). A year earlier, the FRC's 2011 annual report urged that "boards need to think deeply about the way in which they carry out their role and the behaviours that they display, not just about the structures and processes that they put in place" (FRC, 2011, p. 1), emphasizing the importance of "the highest standards of integrity and probity, [with] clear expectations concerning the company's culture, values and behaviours," (FRC, 2011, p. 2). A year earlier the FRC identified a lack of an appropriate *spirit* in governance behaviours, stating that "much more attention needs to be paid to the *spirit of the Code* as well as its letter [emphasis added]" (FRC, 2010, p. 2). Acting in the spirit of the code as well as by the letter was positioned as the crucial to good governance. What the FRC was championing was an ethical revolution whose principles defied ready expression, but are historically embedded in the national consciousness and captured in phrases like 'doing the right thing' and 'playing by the rules' that hark back to Victorian times and the moral code imparted by the public schools (Bayley 2008). This emphasises that playing by the (uncodified) rules of the game is important, reflecting the UK's historical preference for conventions as opposed to statute, particularly in the area of the constitution (Melton, Stuart *et al.*, 2015). Kerr and Robinson (2012, p. 254) highlight these preferences particularly well in their analysis of Scottish banking elites. They illustrate how a culture of *noblesse oblige* based on quasi-Victorian values such as service, honour and prudence evolved from the ethos espoused in public schools that had been swept away by "insurgent modernizers" like George Mathewson and Fred Goodwin at the Royal Bank of Scotland, with unfortunate results not only for the bank but also for the UK's fiscal position.

References to behavioural constructs such as values, probity, integrity and trust have been frequent in the discourse of corporate texts since 2007. The language used in the UK governance code has similarly evolved, with the language of structure and compliance used in 1998 being overlaid by a discourse more concerned with personal characteristics and actions, presaging a greater need for dialogue, conversation and discussion (Nordberg and McNulty 2013). In Cadbury's view, "the most direct method of ensuring companies are accountable for their actions is through open disclosure by boards and through audits carried out against strict accounting standards" (Cadbury, 1992, p. 35). This demonstrates a strong belief in the effectiveness of disclosure as means of underpinning effective governance. However after the 2007/8 financial crisis, the emphasis was less on the system being driven by accounting standards and more on the ethical standards of individual business leaders. This substantive change in tone was captured neatly by Kay in his assertion that "these standards should not require, nor even permit, the agent to depart from generally prevailing standards of decent behaviour. Contractual terms should not claim to override these standards" (Kay, 2012, p.2).

Conclusion

The central argument made of this paper, in answer to our first of our research questions, is that UK code of corporate governance has changed little over the past two decades despite regular systemic perturbations and subsequent enquiries established to recommend solutions to perceived shortcomings. The code is institutionally embedded and subject to *institutional stasis*. The corporate sector is obliged to disclose important information and to have in place governance structures and practices that satisfy the expectations of the FRC and, at arm's length, government. New requirements have been added periodically as the code has been updated following the publication of landmark reports. The emphasis remains within the UK code on compliance with structural requirements, reporting requirements and procedural requirements in pursuit of accountability. Much weight continues to be placed on non-executive directors asserting their independence from top executive teams. In effect, non-executives are expected to perform an independent quasi-regulatory role to limit executive power with the goal of preventing abuse of shareholders and the

public. This tradition of low key, arm's length regulation, which is the hallmark of the system, remains intact despite periodic appeals for stronger interventions following systemic perturbations. Recognition by corporate insiders, government, the media and the public that the formal mechanisms of governance can be subverted by executives and the independence of non-executives compromised has led to appeals for an ethical revolution to restore trust and confidence in the system, but practically such exhortations are of little consequence as the behaviours of executives cannot be readily monitored or controlled. The limitations of the UK code are acknowledged, but there is no appetite for radical change or tougher regulation (Davis 2008, Davis 2009, Jackson 2008 & Tilba and McNulty 2012).

This brings into play our second question. How do we explain why there has been so little substantive change however loud or vitriolic the public discourse that follows in the wake of systemic perturbations? It is in answering this question that we make our principal contribution to the literature. We demonstrate through application of our model of discourse and the processes of corporate governance reform how dominant corporate agents, aided by political allies who inhabit the same elite habitus, capture and control discursive processes. The predicable response of authority to popular discursive challenges is to defuse protest by referring the problem to an expert group to report back and make recommendations. Invariably, as with the landmark corporate governance reports, the composition of such groups is heavily weighted toward elites well versed in existing practices and familiar with earlier reports and canonical texts. An insider group of expert practitioners is thus presented with the opportunity to capture the radical discourse of popular protest and transform it into the moderate technocratic discourse of reform within pre-existing frameworks. Review group members draw intertextually on prior technocratic discourse and employ similar discursive strategies to create new texts that bear the hallmarks of their predecessors, an example of what Maclean *et al.* (2014, p. 543) call the "interpellative power of rhetorical narrative" This explains why change in the UK corporate governance code has been incremental, modestly sedimentary, thin layers of change atop the secure and well defended foundations laid by Cadbury (1992), Greenbury (1995) and Hampel (1998) and codified in 1998. Even after the traumatic corporate failures in the financial sector in 2007/8, which exposed chronic governance failings, the popular discourse of reform has been dissipated by the more powerful technocratic discourse of corporate governance, albeit now adorned by a cloak of ethical rectitude.

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