corruption and exercises regulations which prevent the evasion of compliance. A further line of argumentation suggests that governments with a leftist political ideology observing collective social consciousness would encourage CSR, though critics have lamented the paradoxical effect of neoliberalism. Assessing the impact of a country’s financial and industrial set-up, the practice of CSR has been shown to be increasingly prominent where socially responsible investments are made and in nations with strong labour unions to promote policies. Moreover, taking a cultural perspective, it can be argued that a societal structure characterised by high levels of individualism will also prompt autonomous strategic decisions.

Through the analysis of managerial values and attitudes towards CSR, it becomes evident that the global convergence of business practices has prompted senior management teams to be heavily influenced by cross-national issues while making decisions. Traditional, national and cultural beliefs are progressively being abandoned a part of the internationalisation process because firms seek to gain a comparative advantage in the market. However, an alternate argument suggests that the emergence of managerial motivations provides a further challenge to Friedman’s neoclassical critique of profit maximisation. Finally, increasing cross-national CSR and the integration of business and ethics have rendered Friedman’s neo-classical economic critique of the CSR model largely irrelevant.

Dear Editor,

In December 2015, Unite – Britain’s largest trade union – called on the UK government to investigate the ‘secretive machinations of private equity firms’ following the near-collapse of Fairline Boats, a Northamptonshire yacht-builder employing well over 400 people. Unite’s demands were not new: as the economic influence of private equity firms has increased in Europe over the last few decades, so have the calls from unions, politicians and the media for regulators to intervene.

But it is not entirely clear what private equity’s critics want the regulators to do.

More transparency perhaps? Voluntary guidelines – adopted in 2007 by the UK’s private equity trade association, the British Private Equity and Venture Capital Association (BVCA) – already mandate listed company-like disclosures for the largest private equity-owned companies, but for smaller businesses (like Fairline Boats) it is far from obvious why companies owned by private equity should be treated any differently to any other privately-owned company, all of whom are already subject to statutory public disclosures.

Meanwhile, private equity’s critics in the UK and, probably more importantly, other parts of Europe, have given impetus to the European Commission who, as part of its response to the financial crisis, introduced far
reaching EU-wide regulation of the ‘alternative investment funds’ industry.\(^3\)

Taking up the cause of transparency, the Commission required greater disclosure by buyout houses taking over larger EU companies, and outlawed some types of ‘asset stripping’ in the two years following the acquisition.\(^4\) How effective these changes turn out to be, remains to be seen, but there certainly does not seem to have been much background work by policy-makers to justify the new rules or assess their impact.

That may not be surprising, given the perceived need for ‘quick fixes’ after the Financial Crisis (even though there was no convincing evidence that private equity played any part in causing the crisis, or adding to the systemic risks which exacerbated it). But it is also notable that regulators had little home-grown corporate governance law scholarship to draw upon in designing their regulatory response.\(^5\)

It is true that there is considerable research on the economic impact of private equity, including from the LSE’s own Abraaj Group Professor in Finance and Private Equity, Ulf Axelson.\(^6\) On the whole, academics have concluded that private equity-backed companies are more efficient than their publicly listed counterparts, and perhaps also than their privately-owned peers.\(^7\) Their impact on wages and employment remains somewhat controversial, although there is no convincing academic support for the short-term asset stripping accusations often levelled at the industry.\(^8\)

6 For Ulf's details and selected publications list see <http://personal.lse.ac.uk/axelson/> accessed 9 February 2016.
12 For a thought-provoking contemporary view, arguing that directors should pursue a societal purpose, insulated from profit maximising shareholders, see W Hutton, How Good We Can Be (Little Brown 2015) 137-142.
However, the UK’s corporate governance framework, especially as it applies to private companies, is muddled. On the one hand, it pays attention to the ‘freedom to contract’ paradigm implied by the theory described above; but it is also peppered with apparently mandatory rules. It is not always clear who these rules are designed to protect, and many of them turn out to be contractible in any event. Justifications for mandatory rules in widely-held companies may not apply to closely-held companies, with the consequence that designing optimal corporate governance frameworks in this environment may be more costly than it needs to be, and efficient outcomes may be thwarted.

On the other hand, if there is a case for mandatory rules designed to protect other stakeholders who do not have a seat at the table when private company constitutions are written, that case needs to be articulated on a sound theoretical footing. If the case is made, the mandatory rules which it implies will, no doubt, be quite different to the ones we have. But if that case fails, it certainly does not undermine the case for protecting those stakeholders in other ways: through, for example, enhanced employment protection rights, or tougher regulations prohibiting pollution or other actions giving rise to externalities which rational shareholders would not internalise. That is, after all, the more usual way in which we protect third parties.

In the end Fairline Boats (now renamed Fairline Yachts) seems to have been saved, although with significant job losses. That may or may not have been the best available outcome for society at large, but it is not clear what legal changes, if any, could have led to a better one. If any part of the answer to that question lies with the UK’s corporate governance laws (and, perhaps just as importantly, if it does not), then legal academics should step up to the plate.

Yours,
Simon Witney
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15 Perhaps the most famous example is the House of Lords decision in Bushell v Faith [1970] AC 1099, in which it was held that the contractual nature of company law (allowing the company’s constitution to decide which shares get to vote on any particular resolution) allowed directors to entrench themselves with weighted voting rights even though a mandatory rule says that they will always be removable by ordinary resolution.