Author's note: The purpose of this article is to present a general critique of corporate governance, framed within the context of the King II Report. I am, however, aware that King III will shortly replace King II. If this article is selected and accepted into the programme, I would appreciate it if you could afford me an opportunity to update (and slightly shorten) my argument before the conference so that it reflects the current legislation. Minka Vrba (7 January, 2008)

In governance we trust? Evaluating the extent to which governance policies instill trust in corporate relations between shareholder and stakeholder groups

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Abstract

Governance policies attempt to instill and maintain trust in business dealings by prescribing the responsibilities that corporations have towards their shareholder and stakeholder groups. This paper examines the extent to which corporations can be held accountable for these responsibilities, and consequently, whether governance policies can strengthen the trust relationship between corporations and their shareholder and stakeholder groups. By analysing the structure of trust, it will be shown that governance policies function as a contractual relationship between corporations and their shareholders. Such a contractual relationship heightens shareholder trust in corporations through explicating and protecting the interests of shareholders, and through providing avenues of recourse if these interests are disappointed. However, it will also be demonstrated that governance policies cannot articulate stakeholder interests in terms of the logic of the contract, and therefore, that such policies – when viewed as a contract between corporations and stakeholder groups – fail to engender trust. The argument presented offers a general critique of corporate governance policies. However, the King II report is also analysed in terms of the above structure in order to give context to the argument.

Introduction

There are days when the business section of the newspaper reads like a case study for business ethics, and more often than not, the articles warn us of how not to conduct business unless we wish to face fines, prosecution, and bankruptcy. In fact, the plethora of scandals that continues to hit the corporate landscape has led to an ever-increasing focus on the related notions of Corporate Social Responsibility (CSR) and good governance as a means to restore trust in the business world.

When trust in business dealings in undermined 'lenders and investors lose their appetite for risk, and shareholders offload their equity, resulting in lost value and reduced availability of capital' (Witherell, 2002:8). This in effect, serves to destabilise the economic system. However, on a broader view, the economic system does not function in isolation, but is interrelated with the larger social system, implying that all business decisions also have social consequences (Davis, 1975). Therefore, on this view, when trust in business dealings is breeched, it is not only strictly commercial interests that suffer: the social contract (Anshen, 1970) - which exists between business and society, and which sanctions businesses' license to operate – is also weakened in these circumstances.

Governance policies attempt to instill and maintain trust in business dealings by holding companies responsible for economic, social and environmental practices; and by responding, as effectively as possible, to the diverse needs of shareholders and/or stakeholder groups. In this paper, the extent to which governance policies (particularly the King II Report (2002)) succeed in building trust relationships between corporations and these two groups will be investigated. The investigation will begin with a discussion of the two models of corporate governance as entailing corporate responsibility towards only shareholders, or towards both shareholder and stakeholder groups. Next, a general discussion on the definition of responsibility (with specific applications to the King II Report) will be presented, followed by an analysis of the structure of trust. Such an analysis will show that responsibility and the related notion of accountability are essential structural conditions for a contractual understanding of trust. Both the King II Report and corporate governance policies in general will then be investigated in order to determine whether one can use this contractual understanding of trust to model shareholder and stakeholder interests. In conclusion, an opinion will be formed regarding the effectiveness of viewing corporate governance strategies as contractual trust agreements between corporations and their respective shareholder and stakeholder groups.

Approaches to corporate governance

Corporate governance models can be either more or less inclusive with regard to acknowledging corporate role-players, In addition, how one views the corporate environment affects the way in which one governs the corporation. The two broad approaches to corporate governance are shareholder and stakeholder theory (though both these approaches can be further subdivided into positions that are modest, intermediate or demanding (Hendry, 2001:166-167)). I shall briefly provide an admittedly reductionist account of these two approaches.

Shareholder theory is grounded in the work of Milton Friedman (1962:133), who argues that in a free economy 'there is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits as long as it stays within the rules of the game'. Friedman's justification for this view lies in the promissory relationship that exists between principle/owner and agent/manager, whereby the manager is employed to act in the financial interests of the owner (Shaw, 2005:158). The manager's responsibility is, therefore, solely to maximise profit for shareholders. The normative basis of this position is grounded in a form of limited egoism or enlightened self-interest as the condition for realising the greatest good for all. Such a normative basis is expounded in Adam Smith's 'The Wealth of Nations' (1985:16), which postulates the invisible hand theory supported by the basic premise that humans are self-interested agents. Though the strictly financial underpinnings of this view has been contested and tempered by the ethical considerations and demands of shareholders[1] (see Dunfee's (1998) paper entitled 'Marketplace of Morality'), the basic conception of the individual as *homo economicus* remains uncontested.

In terms of the corporate environment, the Anglo-American model tends towards the shareholder approach, since this environment in characterised by 'a single-tiered board structure which gives almost exclusive primacy to shareholder interests; a dominant role for financial markets; a corresponding weak role for banks; and, little or no policy involving firms cooperating with government agencies (and labour bodies)' (Reed, 2002:230).

In contrast to shareholder theory, stakeholder theory, as advocated by Freeman (2002:171), takes a wider view of the organisation, and acknowledges all the 'groups and individuals who benefit from or are harmed by, and whose rights are violated or respected by, corporate actions'. As such, management's responsibility cannot solely lie with the owner's financial interests: in addition to pursuing profit, management should promote societal welfare (including quality of life, the preservation of the environment and sustainability) (Shaw, 2005:159 – 161). Clearly, on this view, merely 'staying within the rules of the game' is not sufficient to ensure responsible corporate action: corporations must actively strive to refrain from harming their stakeholders, as well as promote their respective (and often divergent) interests. The normative underpinning of this approach is based on system's thinking: business constitutes a sub-system of society, one which wields immense power. The basic proposition (according to Davis (1975:20)) is therefore: 'social responsibility arises from social power'.

In terms of the corporate environment the European model is based on the stakeholder approach, and is characterised by the 'two-board model…; employee co-determination; concentration of shareholding and a less developed share market; [and] dominance of banks and creditor orientation' (Sevic, 2005:252).

According to West (2006:435), the South African corporate environment fits the Anglo-American model. A single-tiered board structure is standard without representation from stakeholders (e.g. employees). Moreover, South Africa has an active stock market and the attitude amongst business and the government is that a free-market economy should be upheld. Banks also maintain arm-length relationships with clients in that they do not seek to control South African companies. However, with regard to industrial policy the evidence is mixed: whilst state assets are being privatised and competition is promoted, there exists intervention in both labour markets (Employment Equity Act (1998)) and economic markets (Broad Based Black Economic Empowerment Act (2003)).

[1] Also see Ryan & Buchholtz (2001)

Given the Anglo-American nature of the corporate environment, one would expect King II to uphold a shareholder model of corporate governance, yet King II describes its approach to corporate governance as inclusive and stakeholder orientated (West, 2006:436). Indeed, King II opens with a quote by Sir Adrian Cadbury (1999), who defines corporate governance as being 'concerned with holding the balance between economic and social goals and between individual and communal goals...' King II explicitly adopts these goals by placing emphasis on South Africa's socio-economic conditions ('...companies in South Africa must recognise that they co-exist in an environment where many of the country's citizens disturbingly remain on the fringes of society's economic benefits' (introduction, para. 36); as well, as traditional African values ('...it would be pertinent to observe and take account of the African worldview and culture in the context of governance of companies in South Africa' including collectiveness, consensus, and co-existence (introduction, para. 38)).

Therefore, despite South Africa's Anglo-American corporate environment, it would seem that South Africa's corporate governance strategy, in proclaiming businesses' responsibility to both shareholder and stakeholder groups, creates the conditions necessary for trust between corporations and all affected role-players.

Corporate responsibility and accountability

King II (introduction, para. 18.5) states that '[w]ith regard to management, responsibility pertains to behaviour that allows for corrective action and for penalising mismanagement.' This definition is compatible with the first sense of moral responsibility, defined by Shaw (2005:153), as 'holding people accountable for some past action.' Shaw (154) goes on to cite two further senses of moral responsibility, respectively referring to 'one's accountability...for the care, welfare, or treatment of other people on things as derived from the specific social role that one plays'; and to 'one's capacity for making moral or rational decisions on one's own'. Shaw (154) argues that unless one is morally responsible in this latter sense (i.e. have capacity for moral or rational decisions), one cannot be held responsible for one's past actions (first sense) or for the well-being of others (second sense).

In placing moral responsibility in the hands of management (and not in the impersonal corporate internal decision structures), one can argue that King II allows for responsibility in the third sense, in that management have the capacity for making rational decisions. Furthermore, King II directly refers to holding management accountable (in terms of corrective action and penalising mismanagement) due to (past) actions, thus conceding to moral responsibility in the first sense. In terms of responsibility in the second sense (i.e. being accountable for the welfare of others due to one's social position), one could argue that in following the inclusive, stakeholder approach, King II recognises corporations' 'responsibility concerning the interests of other stakeholders in the company', further quoting Wolfensohn as saying '[t]hat the proper governance of companies will become as crucial to the world economy as the proper governing of countries.' (introduction, para. 7.2). Thus, one can conclude that a corporation's management is constituted by rational and intentional agents, capable of taking responsibility for both the corporation's past actions and for the corporation's impact upon the society in which it functions.

Thus far it would seem that the sense of responsibility for which management can be held accountable by both its shareholders and stakeholders, is enough to create the conditions for a relationship of trust between corporations and these two groups. However, though King II seems to advocate a strong sense of responsibility, we see that the corresponding notion of accountability - whereby managers follow through on their moral responsibilities by providing an 'account of an action done either for [them]selves or as agents for others' (De George, 2006:118) – is unfortunately weak when it comes to accounting to stakeholder groups.

King II openly rejects 'the stakeholder concept of being accountable to all legitimate stakeholders' and justifies this rejection by stating, quite ambiguously, 'that to ask boards to be accountable to everyone would result in their being accountable to no one' (introduction, para. 5.1). West (2006, 437) argues that this narrow conception of accountability, along with 'the traditional accounting paradigm of reporting to shareholders [which] is maintained throughout the report' constitutes a strong shareholder turn, and he concludes by saying that 'it seems [as if] the good principle of accountability is only applicable to shareholders.' (437).

In the sections to follow, the structure of trust will be investigated. It will be demonstrated that the essential characteristics that define a certain understanding of the trust relationship have a direct effect on the level of accountability in such a relationship. Lastly, the ability of King II specifically, and corporate governance policies in general, to promote accountability and engender trust in shareholder and stakeholder groups will be evaluated.

The structure of trust

Baier (1986) opens her frequently cited article on 'Trust and Antitrust' with the quote by Bok (1978:31): '*Whatever* matters to human beings, trust is the atmosphere in which it thrives.' This opening quote seems fitting to start an analysis of the trust inspired by good governance, as it seems obvious that our respective economic, social and environmental well-being (espoused by Triple-Bottom line reporting) would constitute some of the more weighty matters that concern us. However, Baier (231-232) qualifies this quote by reminding us that not all things that thrive within a trusting environment should necessarily be encouraged (e.g. exploitation) and thus we should undertake a critical analysis of exactly what it is that we place our trust in, and how this trust relationship is structured.

Baier defines trust as 'the trustor's expectation of being the recipient of the trusted party's good will' (paraphrase of Baier in Koehn, 2001:184). Such a definition introduces a certain level of vulnerability on behalf of the trustor with regard to the extent of the trusted's good will. However, as Baier (1986:235;236) points out, such vulnerability is inevitable since, following two simple Socratic truths, we need the help of other in creating, and - as is proper to the soul's activity - caring for the things that we value, and therefore have no choice but to place ourselves in a position where others can harm us.

The structure of trust, on the above account, implies A trusting B with a valued object C (236). According to this structure, trust implies entrustment (of an object C in the care of B), discretionary responsibility (B knowing what is entrusted (C) by A), and in some, cases a form of relative power (where A is dependent is some sense upon B's goodwill) (236-244).

In terms of entrustment, Koehn (2001:191) warns that identifying the trustor, trusted and object of trust, and determining when a trusting relationship exists is often difficult to determine, since such identifications are usually either theory-dependent, or, frequently involuntarily created by our actions (and often have complex effects on unknown third parties) (see Koehn, 2001:191-195). Only in explicitly spelled out contractual relationships (Baier, 1986:250) (such as the promissory relationship which might exist between a board and shareholders) could these categories be readily determined, and 'the legal system and other institutional apparatus can be trusted to interpret and enforce these contracts in a way that will not harm us' (187). One could, therefore, deduce that the more implicit and complex the relationship between the trustor, the trusted and the object of trust, the higher the discretionary responsibility of the trusted, where discretionary responsibility is defined as knowing what it is that we have been entrusted with, as well as the levels and limits of our responsibility (Baier, 1986:236-238).

Furthermore, 'the more extensive the discretionary power of the trusted, the less clear-cut will be the answer of when trust is disappointed.' (238). This introduces another level of vulnerability as 'not yet noticed harm' or 'disguised ill will' (239). Koehn (2001:188), paraphrasing Stone (1994), elaborates on this point stating that 'individuals and corporations pursue their private ambitions at public expense by hiding behind claims that they are acting in the public trust' and that as such, 'uncritical reliance on [the subjectively determined goodwill of] another is at best morally neutral and frequently quite pernicious' (Koehn, 2001:189).

This level of vulnerability is heightened in situations where there is a big difference in the two parties' relative power, and where the trustors are in need of 'positive help and substantial intervention in their lives' (Koehn, 2001:187). Baier (1986:241) argues that it is specifically these dependency relationships that cannot 'be grasped by looking at the morality of contract' which, like Fukuyama's (1995:8) code of ethics, 'is designed for those equal in power [offering] an offensive pretense of equality as a substitute for its actuality.' Dependency relations, therefore, do not fit the contract mould - which offers both explicitness and security to the 'cool distanced relations' between the equal, adult members of an 'all-males club' (Baier, 1986:251; 248). This is because in these situations 'trust is maximal, rather than minimal, and because the vulnerable party has very little punitive power' (Koehn, 2001:188 paraphrasing Baier (1985:59).

Given the above analysis, Baier concludes that since modern moral philosophy has concentrated mainly on the trust embedded in contractual relationships, it is not surprising that 'the main form of trust that any attention has been given to is trust in governments, and in parties to voluntary agreements [such as certain governance policies] to do what they have agreed to do' (1986:249-250). However, she contends that the '[c]ontract is a device for traders, entrepreneurs, and capitalists, not for children, servants, indentured wives, and slaves' (247). And, concludes that 'a complete moral philosophy would tell us how and why we should act and feel towards others in relationships of shifting and varying power asymmetry and shifting and varying intimacy' (252). Such a moral philosophy cannot depend on punitive accountability and recourse as defined in the contractual sense, but will have to find a new way of responding to those who place their trust in us.

Governance as a relationship of trust

Given the above analysis of trust, we must ask the following two related questions, namely: do corporate governance policies form contractual relationships between corporations and their shareholders and stakeholders?; and, to what extent can shareholders and stakeholders place their trust in good governance policies, particularly those policies espoused in King II?

i) Governance and shareholder relations

It seems obvious that the normative ground for maintaining trust in the modern economic system is based on the structure of a contractual relationship. Economics rests on concrete matters, where I place my trust in the hands of a self-interested, distant other as long as I can hold them explicitly responsible for their actions, through means of formal complaint and redress if they break my trust (Jones, Parker and Ten Bos, 2005:118). In this context, corporate governance policies are useful in that they set out the rules of engagement. They determine the responsibilities of corporate management and boards towards shareholders, as well as the means in which corporations can be held responsible if they do not live up to these responsibilities.

In corporate governance circles, there are two main approaches regarding corporate accountability namely, the so-called 'comply-or-explain approach' and the 'comply-or-else approach'. The former characterises good governance as a question of ethics, whereas the latter views it as a question of law. The main difference between these approaches rests in the amount of discretionary power awarded to management: in the ethical approach (advocated by Cadbury, King and the International Corporate Governance Network (Bisoux, 2004:34-35; Wilmot, 2007:42)), managers are given more discretionary power in following the principles of corporate governance. In terms of accountability, directors are 'liable to render an account' (King II, introduction, para. 5.1) of why they have chosen not to follow the guidelines (Bisoux, 2004:35). This approach is qualitative in nature and encourages trustees to exercise discretion and display goodwill in maintaining the trust relationship. Koehn (2001: 198; 200) calls this strategy 'office-based trust' and applauds it for simultaneously providing the flexibility necessary to cope with context-dependency 'by maximising the scope for trustee discretion while still giving would-be trustors a good reason to repose in the office-holder.' Perhaps one criticism that one can lodge against this approach in terms of the trust relationship between corporations and their shareholders is that, as stated before, high levels of discretionary power tend to erode a sense of when trust is disappointed. This seems to be compatible with the evidence, as research shows that the prosecution rate under this system is low (Wilmot, 2007:42), hence not guarding against the risk that governance in this sense can also be ‘skin-deep’.

In contrast to the principle-based approach, the legal approach (on which the Sarbanes-Oxley Act (2002) is based) limits discretionary power by laying down quantitative rules and clear prescriptions (Bisoux, 2004:34-35). In terms of accountability, directors who fail to abide by the rules face prosecution. This style of corporate governance, often likened to a set of draconian laws, allows for little flexibility (Wilmot, 2007:42). This strategy is the opposite of office-based trust. According to Koehn (2001:200), the lack of discretionary power in this model can negatively affect the trust relationship because the implementation of a host of rules can leave trustees paralysed and in fear of being sued. The strategy further risks eroding the moral sensibilities of our trustees by encouraging them to do the bear minimum by sticking to the letter of the law, as well as limiting their power to set appropriate standards.

In summary, it appears that a trust relationship between corporations and their shareholders is safeguarded by governance policies, which form a contractual agreement between the two parties. Such an agreement spells out the responsibilities of corporate trustees to their shareholders, and provides avenues for formal complaint and redress in the event that the trust-relationship is broken. Furthermore, it would seem that the mechanisms of accountability could also heighten the levels of trust in such a relationship, and that the principle-based approach, with its emphasis on honest and moral behaviour, comes closer to emulating a structure of trust based on goodwill towards the trusted party.

ii) Governance and stakeholder relations

The next question warranting attention is whether governance policies can instill a trust-relationship between corporations and their stakeholders. Freeman (2002:178), in his influential article entitled ‘A stakeholder theory of the modern corporation’, proposes that we view the issue of stakeholder value-creation in terms of a contractual relationship, where affected stakeholders can engage with corporations under the Rawlsian liberal conditions of autonomy, solidarity and fairness. Such conditions imply equality amongst contractors, rather than preferential financial rights.

Along these lines, Freeman (178-179) proposes that we view the normative core of this contractual relationship as encapsulating the liberal idea of fairness, and consequently puts forward an ideal Rawlsian-like ‘Doctrine of Fair Contracts’ as a standard against which we can measure actual corporations’ commitment to their stakeholders. The six principles of this doctrine, which are decided under a veil of ignorance (see Freeman, 2002:179-180), are to be viewed as a stakeholder guide for devising ‘a corporate constitution or charter’. Freeman (180), however, acknowledges that in order for these principles or guiding rules to have any effect, certain changes must take place in 'the enabling laws of the land'. He proposes three principles, which would lead to such reform, namely:

> *The stakeholder enabling principle:* 'Corporations shall be managed in the interests of its stakeholders, defined as employees, financiers, customers, suppliers and communities.'
>
> *The principle of director responsibility:* 'Directors of a corporation shall have a duty of care to use reasonable judgment to define and direct the affairs of the corporation in accordance with the Stakeholder Enabling Principle.'
>
> *The principle of stakeholder recourse:* 'Stakeholders must bring an action against the directors for failure to perform the required duties of care.'

In order to judge the extent to which King II has brought about the requisite changes in South African law in order to allow for governance in terms of stakeholder interests, it is necessary to evaluate our current governance strategy in terms of these enabling conditions:

The stakeholder enabling principle: King II explicitly states that '[t]he inclusive approach recognises that stakeholders such as the community in which the company operates, its customers, its employees, and its suppliers need to be considered when developing the strategy of the company' (introduction, para. 5.3). However, as West (2006:438) argues, the stakeholder turn in King II is unfortunately only skin-deep, and for the most part, it is 'business as usual' within a structure that implicitly accepts shareholder dominance, thereby reinforcing the conditions of contracts as 'cool distanced relations between more or less free and equal adult strangers.' (Baier, 1987:241).

The principle of director responsibility: King II states that companies are responsible to 'stakeholders identified as relevant to the business of a company' (introduction, para. 5.1). However, we see that the notion of responsibility, though defined as allowing 'for corrective action and for penalising mismanagement' (introduction, para. 18.5), is substantially wreaked given the explicit qualification that management is not accountable to stakeholders (introduction, para. 5.1). As such, this notion of responsibility seems 'to trade on the positive connotation of the word, but only loosely engages with anything that could be called responsibility in a stronger sense' (Jones, Parker and Ten Bos, 2005:123).

The principle of stakeholder recourse: If management is not accountable to stakeholders (introduction, 5.1), it seems unclear as to how stakeholders can bring actions against directors. It is especially with regard to this last principle that South Africa's current corporate governance strategy fails to instill trust. Governance policies are designed to serve as a contract between corporations and their stakeholders for safeguarding common goods and instilling trust. However, if such policies do not offer the functional excellences of certainty and security (Baier, 1986:251) – as guaranteed by the principle of accountability – it is unclear how stakeholders have any true stakes in organisations that still deem their financial goals and objectives as central, and that view stakeholders as being 'a nuisance or opportunity that ha[ve] to be managed' (Jones, Parker and Ten Bos, 2005:123).

However, more generally, I would argue that the ideal of a 'Doctrine of fair contracts' is not viable as a measurement for judging governance relationships in the real world. The reason for this is that I believe that stakeholder relations cannot be modeled according to the logic of the contract. Even if one were to extend the principle of accountability to all stakeholders, this would not be enough to assure trust in governance policies for the following reasons:

Objects of trust are difficult for stakeholders to identify, especially given the pervasive effects of large corporations on society: Despite the praiseworthy attempts in King II to enforce triple-bottom line reporting as a means for ensuring corporate sustainability and protection of common goods, that which is entrusted to corporations – especially by distant, unseen or more abstract stakeholders (such as communities) – cannot be sufficiently circumscribed in contracts. The reason for this is that societies are complex constructions and systems within societies have unanticipated effects and repercussions within society – most of which can only be defined retrospectively. As such, it is difficult for stakeholders to clearly define the 'entry, exit and renegotiation conditions'[2] of corporations, and to determine when these conditions are breeched and trust disappointed.

Stakeholders place their trust in the goodwill of managers and boards who are invested with high levels of discretionary power: Since stakeholders find it difficult to identify objects of entrustment, the 'Agency principle[3]', whereby 'any agent must serve the interests of all stakeholders', is also undermined. This is because when discretionary responsibility is vested in management to not only protect, but also define, the interests of stakeholders, one will find that corporations, who primarily serve financially-minded shareholders, show bias in the interests which they serve to protect. As Koehn (2001:185) points out, the notion of goodwill (which is so crucial to the definition of trust) cannot be measured by any objective standard stipulated within an explicit contract. Therefore, for stakeholders to uncritically place their trust in management's sense of responsibility and goodwill, is, as stated before, 'morally neutral and frequently quite pernicious' (189). This situation does not inspire much trust, and as such, corporate governance policies seem to merely become 'a matter of observing social and political trends' instead of truly encouraging companies to '*respond* to [their] stakeholders' (Parker, Jones and Ten Bos, 2005:123). Response-ability, in this sense, can only truly take place outside of the narrow constraints of the law of contracts (See Derrida (1996)).

Disenfranchised groups do not have the freedom to determine when they enter into contracts: This last point is perhaps the most pertinent regarding stakeholders and contractual agreements of trust. It would seem reasonable to deduce that the founding principles of any contract as stipulated by Rawls (1993) (and appropriated by Freeman

[2] 'The principle of entry and exit' in 'The doctrine of fair contracts' (Freeman, 2002:179)
[3] 'The doctrine of fair contracts' (Freeman, 2002:179)

(2001:178)), namely ‘autonomy, solidarity and freedom’ do not hold in the real world. Indeed, whilst a governance policy like King II refers to a milieu where ‘many of the country’s citizens disturbingly remain on the fringes of society’s economic policy’ (introduction, para. 36), it is not clear how such disenfranchised stakeholder groups have the choice to enter into contracts with business, let alone hold these corporations responsible and accountable for their actions. Furthermore, as stated before, the conditions of trust in such situations are maximal rather than minimal in that these stakeholders groups have no means of redress (in terms of punitive power) (Koehn, 2001:188). This situation is further exasperated when the governance policy does not make provision for corporations to be held explicitly accountable to their stakeholders, and when weak forms of responsibility – as advocating development as a requirement rather than a corporation’s raison d’être – are promoted, such as in the King II report (Reed, 2002:38).

It would therefore seem, that viewed as contracts, corporate governance policies fail, since they do not account for the ‘shifting and varying power asymmetry’ (Baier, 1986:252) which exists between powerful corporations and their stakeholders, and which serve to undermine the logic of the contract.

Conclusion

Corporate governance strategies – as means of explicating the relationship between corporations and their shareholders and stakeholders in order in instill trust in business dealings – appear to be more successful when it comes to shareholders than stakeholder groups.

The argument in support of this conclusion is that governance policies define shareholder relations in a way that is compatible with the structure of a contract. The conditions of engagement and the security in ensuring the fulfillment of these conditions are reasonably explicit, and shareholders have punitive avenues of recourse if these conditions are not fulfilled.

It has been argued in this paper that stakeholder relations cannot be modeled according to the structure of contractually-bound trust due to the fact that (in the King II report at least) accountability – as constituting an essential condition for trust – is not extended to stakeholders. Even if accountability were to be extended to stakeholder groups, it is not clear what accountability would entail in a relationship defined by: (i) an unclear understanding of what is entrusted to corporation by various stakeholder groups, (ii) high levels of discretionary responsibility invested by stakeholders in management’s goodwill, and, (iii) an inability for disenfranchised stakeholder groups to choose under which conditions a contract exists or not.

Thus it seems that Baier’s (1986:247) conclusion that contracts are not devised for those of unequal power holds true in the case of governance policies as well. And, at the most cynical level, we can conclude that participation or representation of stakeholders in such contracts do not heighten the promised levels of trust, but rather amount to mere play

(247). However, perhaps a more productive approach would be to acknowledge the goodwill and efforts of many corporate role-players with regard to considering stakeholder interests, and use this as a basis for rethinking the trust relationship between corporations and their stakeholders. Such a relationship should be based on a sense of true responsibility and accountability, and should serve to promote a form of governance based on more equal and mutually-beneficial interactions between corporations and their stakeholders.

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