

**UNDERSTANDING HOW ISSUES IN CORPORATE GOVERNANCE
DEVELOP: CADBURY REPORT TO HIGGS REVIEW**

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Abstract

Issues in corporate governance develop according to an identifiable process. Using the influence model of Jones and Pollitt (2002) we compare the conduct of and influences on the investigations leading to the Higgs Review (2003) and the Cadbury Report (1992). We suggest that while there are similarities in the investigations there are important differences arising from the review process adopted, the role of the government, the background of the leaders of the investigations and the influence of academics. These differences have had important implications for the effectiveness of the implementation of the conclusions of the Higgs Review.

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1. Introduction

Issues in corporate governance do not arise in a vacuum but rather from an identifiable process. Over the past 12 years the UK has initiated a series of investigations into ways to improve the corporate governance of UK listed companies. These investigations have been high profile, lead by an experienced individual who has given his name to the final report. Thus we have seen the Cadbury Report (1992), Greenbury Report (1995), Hampel Report (1998) and Turnbull Report (1999) to name but four. Associated with them there have been specialist reviews such as those led by Paul Myners (DTI, 1996, HMT, 2001) into institutional investment. In addition the UK Government subsequently completed a long running investigation associated with the Company Law Review (DTI, 2001). Although this was not headed by a high profile individual it did share many of the detailed characteristics of earlier investigations – a committee structure reflecting diverse stakeholder interests and a process of significant consultation on the way to a set of final recommendations.

Jones and Pollitt (2002a) demonstrated that it is possible to systemically characterise and analyse the process of these investigations in a way which not only identifies who was influencing them but also allows predictions to be made as to their ultimate effectiveness. Our model of influence characterised the different stages of a corporate governance investigation and the influence different groups exert at different stages of the process. We also suggested that there were important ways in which different influences were reflected in the final recommendations and on their eventual effectiveness.

Jones and Pollitt (2002a) examined and compared five important corporate governance investigations since 1990: those that resulted in the Cadbury, Greenbury, Hampel, and Turnbull Reports and the Company Law Review. This paper applies a similar methodology to allow analysis of the influences and hence likely effectiveness of the Higgs Review that was published in January 2003. We do this by directly contrasting the factors behind the development of the Higgs Review and the earlier Cadbury Report.

Our analysis proceeds as follows. First we lay out our earlier model of influences on corporate governance, then we discuss the reasons to use the Cadbury Report as a point of comparison with the Higgs Review. Second we review the conduct of the Higgs Review and the Cadbury Report in turn. Finally, we highlight the key differences in the influences between the two reports and offer some thoughts on the implications of these differences.

2. A model of influence on issues in corporate governance

The UK approach to dealing with issues of corporate governance has been to set up a committee to look into them. This committee operates against a background of a business ethics environment where there are a number of potentially important stakeholders, all or some of whom may take or be offered an interest in the issues. These stakeholders may be labelled as influencers. Jones and Pollitt (2002a) identified four broad groups of influencers: business, authorities, public opinion and exogenous factors.

Business refers to Corporates, Non-financial stakeholders such as trade unions, Financial stakeholders such as major shareholding institutions and professionals such as accountants and lawyers. These business stakeholders may exert their influence via trade bodies such as the Confederation of British Industry, the Institute of Directors or the Institute of Chartered Accountants and the Law Society.

Authorities refers to Government officials and ministers and regulatory bodies such as the Bank of England or the Stock Exchange.

Public Opinion refers to the Media activity, NGOs campaigning on corporate governance such as Pensions and Investment Research Centre (PIRC) and Popular Feeling as represented by the majority popular opinion. Popular feeling, NGOs and Media strongly complement one another.

Exogenous Factors or Events refers to the role of high profile scandals (often related to poor macroeconomic conditions).

Following an examination of other types of business ethics issues in addition to corporate governance Jones and Pollitt (2002b) further divide influencers into two types: Type A and Type B. Type A influencers are those with the ability to make issues an issue. They are proactive in getting the debate started. Type A influencers include:

- Events
- NGOs
- Media
- Popular Feeling
- Politicians

Type B influencers, on the other hand, are those who rarely initiate debates but are forced to respond to debates initiated by the Type A influencers. Type B influencers include:

- the government executive
- International Institutions
- Regulators
- Professions
- Investment Analysts
- Investment Institutions
- Corporates
- Non-financial business stakeholders

For each of the investigations into corporate governance they examine, Jones and Pollitt (2002a) characterise the key stages in the development of the final report and assess the size of the influence (high, medium or low) of each of the influencers on each stage. They suggest that the stages of the investigation are:

- initial interest
- the formation of the committee
- the writing of the terms of reference
- the deliberation of the committee (including how comments were handled)
- the compilation of the report
- the presentation of findings
- the subsequent debate
- the implementation phase

For the five investigations examined, Jones and Pollitt (2002a) found that the quality of the process of the investigation had a very significant effect on the outcome, both in terms of the content of the report and the subsequent effectiveness of its implementation. In common with other business ethics issues, three phases in the development of the issues in corporate governance can be identified:

1. an *awareness* phase during which people become aware of a problem to be addressed;
2. an *education* phase during which the problem is analysed and solutions are investigated; and
3. an *implementation* phase during which chosen solutions are implemented.

Type A influencers are very influential in the awareness phase and much less involved in education and implementation, whereas Type B influencers are not involved much in awareness, somewhat involved in education and very involved in implementation. For instance in the Greenbury Report investigation into executive pay, the Media (and not Corporates) were a prime influence in the awareness phase but the implementation phase had nothing to do with the media and relied heavily on corporate reporting.

Our earlier investigation highlighted the importance of the Cadbury Committee investigation and Report as a model of how to manage a Corporate Governance investigation. The Cadbury Report stands out among its successors as having a high quality process of investigation in the face of varied and strong influencer interest and in coming to and implementing radical yet realistic proposals. The quality of the Cadbury Report's conclusions and implementations lies in the fact that the report is internationally recognised as having been seminal in the development of corporate governance in the UK and elsewhere. It originated the self-regulation approach whereby reporting of compliance was part of the listing requirements for public companies. The emphasis on the board as a focal decision point could be said to be led by Cadbury, as could be the emphasis on appropriately constituted board sub-committees (remuneration, audit and nomination), independent non-executive directors and the separation of chairman and chief executive positions. Many of the recommendations of the Cadbury Code have been incorporated into the OECD Principles of Corporate Governance (OECD, 1999) and into other national Corporate Governance Codes (Cadbury, 2000).

Jones and Pollitt (2002a) find some clear differences between the influences on, and the process of, Company Law Review and the earlier Cadbury Report. The Labour government (reflecting its concerns while in Opposition) was much more involved in the initiation of the Review. The process was slow and deliberate in its consultations. The outcome was consensual. While the Cadbury Report initiated an era of self-regulation the impact of the Company Law Review seems likely to be a detailed piece of legislation that will significantly change the substance of the law towards corporate governance. However the outcome of the review was significantly less radical than originally thought due to the consensual nature of the way it was conducted. In particular the ultimate legal accountability of firms to shareholders rather than a wider group of stakeholders – in line with Cadbury - was affirmed. The major impact may well be the legal requirement to produce an Operating and Financial Report (OFR) which will include corporate governance and social responsibility compliance information (Parkinson, 2002).

3. The conduct of the Higgs Review

After a period of quiet in the media and popular interest in corporate governance issues (which Jones and Pollitt (2002a) date from 1997 in the UK), the subject has once again become a hotly debated one. This renewed interest dates from summer 2001 when there began a series of high profile scandals – Enron, WorldCom, Tyco - of large US based companies in which poor corporate governance seemed to be a factor. Media comment and the loss of public trust in companies and the desire by governments to be seen to take action created pressure for a review, if only to check in the UK that all had been done to reduce the risk of ‘it happening here’.

In the US there was swift government action via the Sarbanes-Oxley legislation¹ in mid 2002 and the new NYSE listing rules also in mid 2002, and there have been prosecutions of many of those operating at top levels in the failed companies such as Enron, starting in November 2001. In this environment the UK Government has wanted to be seen to react quickly to the crisis but also to head-off the potential consequences of US regulation and legislation for companies of British origin that are listed on the NYSE. It seems probable that there has been behind the scenes negotiation at an inter-governmental level to determine the extent to which the US measures should apply to the UK and other foreign owned companies.

A mainstay of the UK response to the corporate governance fallout from the US was to set up an independent review – to be led by Derek Higgs - of the role and effectiveness of non-executive directors.² This was initiated by the Secretary of State for Trade and Industry and the Chancellor, in April 2002. At the time Derek Higgs was a non-executive director, executive director and institutional investor. Higgs was an executive director of Prudential plc, and a non-executive director of Allied Irish Bank plc, the British Land Company, Jones Lang La Salle Inc. and Egg. He was also a senior advisor of UBS Warburg Group. He was chairman of Partnerships UK, a now privatised government agency responsible for fostering PPP and PFI. He was also a non-executive member of the London Regional Transport Body, responsible for privatising London Underground. He was a member of the Financial Reporting Council, a Department of Trade and Industry committee to oversee financial reporting and company accounting, and a government advisory committee on business and the environment.

Derek Higgs’ terms of reference (as reviewer) were ‘to build and publish an accurate picture of the status quo; to lead a debate on these issues, especially in the business and financial worlds; and to make any recommendations - to

Government or others - which the reviewer thinks appropriate.’ (DTI Press Release P/2002/234, 15 April 2002).

The detailed terms of reference were to assess:

- ‘the population of non-executive directors in the UK - who are they, how are they appointed, how the pool might be widened, etc;
- their "independence";
- their effectiveness;
- accountability; their relationship - actual and potential – with institutional investors;
- issues relating to non-executive directors' remuneration;
- the role of the Combined Code;
- what, if anything, could be done - by individual boards, by institutional investors, by the Government or otherwise – to strengthen the quality, independence and effectiveness of non-executive directors.’

(DTI Press Release P/2002/234, 15 April 2002)

Alongside the review, the Co-ordinating Group on Audit and Accounting Issues (CGAA) was set up in February 2002 to review the UK audit and accounting regime.³ At its interim report, published in July 2002, the CGAA commissioned a group, chaired by Sir Robert Smith, to develop existing Code guidance for audit committees.

In line with its terms of reference, the Higgs Review commissioned three substantial pieces of primary research.

First, there was a detailed study on the size, composition and membership of the board and committees of 2,200 UK listed companies as at July 2002 and the age and gender of their directors. This study builds a detailed picture of the population of non-executive directors.⁴ The study used data supplied by the Hemscott Group Ltd and was undertaken by the Higgs Review team.

Second, 605 executive directors, non-executive directors, and chairmen of UK listed companies were surveyed in August 2002. This study was conducted by the opinion poll organisation, MORI.⁵

Finally, academics from Leeds University Business School and the Judge Institute at the University of Cambridge reported on in-depth interviews with 40 directors of FTSE 350 boards.⁶ This research analysed the behaviours that

promote effectiveness and looks in detail at behavioural dynamics inside and outside the boardroom.

Higgs launched a consultation exercise on June 7th 2002, which closed on 6th September 2002. During this period 250 responses were received. The Higgs Review was not supported by a conventional committee of stakeholders as such but by two senior civil servants (one from the DTI and one from the Treasury) and a number of more junior civil servants. The Review was co-ordinated from the DTI. During the period of the Review there were calls, among other things, for the number of non-executive directorships held by one individual to be limited⁷, for there to be more training for non-executive directors⁸ and more intervention from shareholders to discipline under-performing boards⁹.

The Higgs Review and the Smith Review reported simultaneously on 20th January 2003 (Higgs, 2003, and Smith, 2003) with the CGAA reporting on 29th January (CGAA, 2003). The final Higgs report contains a large number of recommendations relating to:

- the structure of the board
- the role and other commitments of the chair
- the role of the non-executive director
- the recruitment and appointment procedures to the board
- induction and professional development of directors
- board tenure and time commitment
- remuneration
- resignation procedures
- audit and remuneration committees
- board liability
- relationships with shareholders

Among the more controversial proposals are the limitations which would be placed on the number of chairmanships which could be held by one individual, the tough definition of independence (which would rule out a CEO becoming chair), the specification of senior independent director who would 'be available to shareholders' and the limits on non-executive director tenure.

Higgs recommended that the Financial Reporting Council (FRC) and Financial Services Authority process his review's proposals rapidly. The government endorsed this urgency.¹⁰ The FRC announced that it was to take forward the recommendations of both the Higgs and the Smith reports for changes to the Combined Code on Corporate Governance by 1 July 2003.¹¹

The debate that followed the publication of the Review became extremely heated. Corporate interests such as the Confederation of British Industry (CBI)¹² and the Institute of Directors¹³, supported by numerous company chairmen (in particular those who had been CEOs of the same company)¹⁴, criticised some of the key conclusions of the Review, while the National Association of Pension Funds (NAPF) emerged as a strong advocate for the suggested reforms¹⁵. The critics were supported to some extent by the Financial Services Authority¹⁶ and the Institute of Chartered Accountants for England and Wales (ICEAW)¹⁷ and the Conservative Party¹⁸. The ICEAW noted that while the Cadbury, Greenbury, Hampel and Turnbull reports combined produced 14 principles and 45 code points, the Higgs review added just 1 principle but 37 additional code points, fuelling the claim that the code was unduly prescriptive.¹⁹ A couple of academic researchers even suggested that there was new evidence that boards with more independent directors were less effective than those with less.²⁰ The FRC, the body charged with incorporating the Higgs recommendations into the Combined Code, suggested that changes would only be made if a 'fatal flaw' could be detected in the recommendations.²¹ Their own consultation on the Review was scheduled to end on 14th April 2003, a date that proved so soon that the CBI had not time to get its response submitted by the deadline.²²

Higgs and Smith presented their proposals on many occasions in the months following the publication of their reports. Over the course of the subsequent debate Higgs acknowledged that minor changes should be made, sometimes where there was opaque drafting²³. The role of the senior independent director in meetings with shareholders is an example of where clarification was accepted.

Following the publication of the Review the CBI surveyed the views of chairmen on its conclusions²⁴. Business was uneasy about the prescriptive nature of the proposals, the fact that the Higgs' consultation concentrated on data collection and that there was no consultation on the report in draft form and the time allowed for feedback was limited. The CBI surveyed 61 FTSE100 chairmen, 82% of company chairmen agreed with the proposition that the role of the senior independent director undermined the role the chair and 87% did not think that a non-executive director chairing the nomination committee would strengthen the independence of the board. In addition 56% thought that non-executive directors meeting in the absence of the chair would not be useful for corporate governance and 50% did not think that disallowing the CEO from becoming chairman of the same company would lead to better board performance. The Government announced its support, in principle, for the Higgs proposals and reiterated that support in the face of criticism in March

2003.²⁵ The National Association of Pension Funds (NAPF), representing a significant part of the investment community, expressed its support.²⁶ The NAPF produced its own survey suggesting that only 25% of FTSE350 firms complied with the current Combined Code and hence that corporates had much to do to put their house in order.

The FRC consultation on the Higgs recommendations resulted in 181 submissions.²⁷ On 14th May 2003, in response to the unexpectedly widespread criticism, the FRC set up a working group of FRC members to produce a revised draft of the Combined Code which reflected the criticisms. This working group included Derek Higgs, Robert Smith and representatives from both the ICEAW and the CBI, as well as the investment community. The FRC appeared to have concluded by May 2003 that, contrary to the Higgs Review: the chairman should be allowed to chair the nomination committee; that no limit should be put on re-election of non-executive directors; that companies outside the FTSE350 should not have to have at least half independent directors; and that some of the provisions in the draft were more akin to principles.²⁸ These changes were included in the new Combined Code published on the 23rd July 2003 (FRC, 2003) by the Financial Reporting Council due for implementation in company reports from 1st November 2003.²⁹ After several months of heated debate the FRC's amended proposals were met with widespread acceptance.³⁰

4. The conduct of the Cadbury Report

In May 1991, the Financial Reporting Council, the London Stock Exchange and the accountancy profession set up a committee on the Financial Aspects of Corporate Governance.³¹ The chairman of the Financial Reporting Council, to chair the committee, approached Sir Adrian Cadbury.

Sir Adrian chaired the Cadbury Schweppes from 1965 until 1989, during which he developed a participative corporate management structure and edited one of the first corporate charters of Business Principles. He was a Director of the Bank of England from 1970 to 1994, and founded PRO NED, a Bank of England-backed organization aimed at professionalizing non-executive directors. In 1990 he published a book entitled 'The Company Chairman'.

The terms of reference for this committee, which Sir Adrian Cadbury himself drew up, were:

‘To consider the following issues in relation to the financial reporting and accountability and to make recommendations on good practice:

- a) the responsibilities of executive and non-executive directors for the reviewing and reporting on performance to shareholders and other financially interested parties; and the frequency, clarity and form in which information should be provided;
- b) the case for audit committees of the board, including their composition and role;
- c) the principal responsibilities of auditors and the extent and value of audit;
- d) the links between shareholders, boards, and auditors;
- e) any other relevant matters.’

(Cadbury Report, 1992, Appendix 1, p.61)

The committee was formed with members drawn from the CBI, the accountancy profession, finance directors, academia, the Bank of England, the Stock Exchange, the Institute of Directors, institutional investors, and the Law Society. The Department of Trade and Industry provided a secretary to the committee, who acted as their observer.

Cadbury did some personal research into board practice and corporate governance in other countries, particularly those in the United States. The committee published an interim report in May 1992. The interim report attracted various types of criticism. From the business community, there was the charge that the system was too bureaucratic. The committee received more than 200 submissions during the initial consultation phase and the public consultation following the interim report.

The CBI, in particular, fought for the removal of the requirement that compliance with the code should be part of the listing requirements for the Stock Exchange. Cadbury stressed that those who do not understand business well, and who had a more doctrinaire approach, would take action unless companies were seen to do this. Legislation was a real alternative. Although the CBI leadership was critical of the code, Cadbury won the support of the wider CBI membership at the CBI annual conference in November 1992. Eventually, he won the debate with the CBI leadership over the need to report compliance with the code.

The final version of the Cadbury report appeared at the beginning of December 1992. This was similar to the draft report except that the final report responded to CBI concerns about the role of non-executives as policemen, by playing down the distinction between them and executive directors. There was an explicit distancing of the report from its earlier support for two-tier boards. There was widespread, if cautious, support for the report in boardrooms and the City. As one eminent City figure was quoted as saying ‘You can’t be against it, you have to be for it.’³² The Government reaction was positive, with the Corporate Affairs Minister labelling it ‘an authoritative statement of what needs to be done in a crucial area’.³³

The main recommendations of the Cadbury report were:

- a division of responsibilities at the head of the company to ensure that no one individual has powers of decision
- a majority of non-executive directors to be independent
- at least three non-executives on the audit committee
- a majority of non-executives on the remuneration committee
- non-executives should be selected by the whole board

We contrast these directly with the Higgs Review conclusions in Table 1 below.

Table 1. *Summary of key areas recommendations of each investigation*

	CADBURY REPORT	HIGGS REVIEW
Chair	No one person with power of decision	Chair, of only one company, not ex or current CEO
Compliance	Listing rules Comply or explain	Listing rules Comply or explain
Independent Non-exec directors (INEDs)	Majority NEDs to be independent	Narrow definition independent NEDs (INEDs)
Audit and Remuneration Committees	At least 3 NEDs on Audit Committee, majority NEDs on Remuneration Committee	At least 3 INEDs on Remuneration Committee
Nomination Committee	Selection of NEDs matter for whole board	Wider recruitment, chaired by INED, majority INEDs
Process	-	Codes of Best Practice
Relationship with Shareholders	-	Senior independent director
Director development	-	Induction, appraisal, training

Sources: Cadbury Report (1992, pp.58-59), Higgs Review (2003, pp.5-10)

5. Reviewing the influences on each investigation

Here we contrast the Cadbury Report and the Higgs Review based on the theoretical model of Jones and Pollitt (2002a,b) described earlier in the paper. This compares the involvement of Type A and Type B influencers distinguished in that model. The Type A influencers are involved earlier in the awareness phase, whereas the Type B influencers are more important in the subsequent education and implementation phases. We use a list of influencers that include all those identified in Jones and Pollitt (2002b). We specify four levels of influence: - (or none) discernible, low, moderate and high. For each influencer we compare their influence on the Cadbury Report and Higgs Review. Our observations about influence are based on analysis of media reports and interviews with key players.

Table 2. *Comparison between the Type A influencers on Cadbury and Higgs*

	CADBURY REPORT	HIGGS REVIEW
Events	High due to scandals in Awareness	High in Awareness due to scandals and stock prices
NGOs	-	Moderate in Education via Centre for Tomorrow's Company and Transparency International
Media	High in Awareness and Moderate in Implementation	High in Awareness and Low in Implementation?
Popular Feeling	High in Awareness and Low in Implementation	High in Awareness, Low in Implementation?
Politicians	High in Awareness and Low in Implementation	High in Awareness and High in Implementation?

Table 2 summarises our observations on the influences on the Cadbury and Higgs investigations. There are some clear similarities. High profile corporate failures are important triggers for both of the investigations. As a result media interest, popular feeling and individual politicians are influential in raising the issues that bring about the investigations. The discernible differences are that while the Cadbury Report had no identifiable influence from NGOs (including no representation on the Cadbury Committee) there was some input to the Higgs Review from some specialist NGOs in the corporate governance area. This probably reflects the fact that in the aftermath of Cadbury and the interest it generated in the area there has been the development of some sophisticated NGOs. The Centre for Tomorrow's Company began in 1996³⁴, while Transparency International began in 1993.³⁵

Table 3. *Comparison between the Type B influencers on Cadbury and Higgs*

	CADBURY REPORT	HIGGS REVIEW
Government Executive	Low	High, strong Treasury and DTI influence
International Institutions	-	High, US Legislation, International Accounting Conventions
Regulators	High via Financial Reporting Council and Stock Exchange	High, via co-ordination with Financial Reporting Council Smith Review
Professions	High, represented on committee	Moderate, made submissions
Investment analysts	-	-
Investing Institutions	High initially but not important in Implementation	High, via Higgs background and submissions
Corporates	Low in Education, High in Implementation	Low initially, made submissions, High in reaction to Review
Non financial stakeholders	-	Moderate, Academics produce supporting report

Table 3 summarises the Type B influencers impact on the two investigations. The interesting observation about Type B influence is the marked difference in the influence pattern between the two investigations. The government had little to do with the Cadbury Report whereas there was strong government interest in the Higgs Review. This may well reflect the fact that the Labour Party has more of an ideological commitment to corporate governance reform than the Conservative Party did in government in 1991-92 and the spur of the perceived need for a UK government response to the Sarbanes-Oxley legislation in the US. There is also a strong international element to corporate governance in the Higgs Review that probably reflects the growing reality of the interrelationship between national regulatory regimes. There is also much less of a formal role for the accountancy and law professions under the Higgs Review (though Higgs himself is a Chartered Accountant).

Differences exist in the role of corporates and investing institutions. Corporates were relatively unimportant in the education phase of the Cadbury Report but very important in its implementation, while the reverse was true for investing institutions. However the Higgs Review relies much more heavily on encouraging an active role for financial institutions (via their use of the senior independent director) for effective implementation. Non-financial stakeholders exert no discernible influence on the Cadbury Report while they did actively make submissions to the Higgs Review.³⁶ We should also note that the publication of three associated papers with the Higgs Review (there was no supporting material published with the Cadbury Report) indicates additional

influences. In particular it suggests that there is now a role for academic research in corporate governance investigations.

6. Conclusions

The Cadbury Report was a model of how to conduct a corporate governance investigation. The process of investigation had a number of desirable features:

1. a visionary chair who energetically promoted his recommendations;
2. a committee which reflected the main stakeholders;
3. a draft report and process of consultation; and
4. a final report whose recommendations were widely accepted.

It seems clear that the Higgs Review did not feature 2 and 3 and that it was almost inevitable that there would be problems achieving 4. The reasons for these differences in process were probably to do with the sense of urgency associated with the problem and the experience with the long drawn out Company Law Review which lasted three and a half years. The Review was largely conducted by Higgs himself, supported by two senior civil servants. Higgs is credited as the author while the Cadbury Report is authored by the Cadbury Committee. Clearly something is lost if reviews are not subject to review by other members of a committee. Many of the specific recommendations of the Review are extremely similar to those already published by the Institute of Chartered Secretaries and Administrators (ICSA), the Hermes Asset Management and the Institute of Directors. This may well reflect the academic approach to the investigation, drawing systematically on other sources, rather than the reflections of experience represented by the Cadbury Committee. Such an approach, while valid, requires a period of post-investigation consultation before implementation.

A major feature is the pervasive influence of government in the awareness, education and (potentially in the) implementation phases of the debate around the Higgs Review. The Review findings were endorsed by the Chancellor, and the government stated that it saw no reason for making substantial changes. Indeed the threat of legislation was explicit if the government was not happy with the outcome of the FRC review of the Combined Code.³⁷ It is not clear that it is desirable or efficient for the government (a natural Type B actor) to be so involved. The distinctive feature of the Cadbury Report was the low-key way that the government was involved. The threat of legislation if the process failed was quasi-explicit and Cadbury alluded to it often. One consequence of

government involvement in the Higgs Review seems to have been a rushed review with insufficient consultation.

The differing backgrounds of Cadbury and Higgs seems to be an important determinant of the differences in the recommendations of the two investigations. Cadbury was Chair of PRO NED, an organisation for the promotion of the use of non-executive directors, while Higgs was an Investment Banker based at the Prudential. It should hardly be surprising that the major recommendation of the Cadbury Report was the raising of the importance of non-executive directors on the board while the major recommendation of the Higgs Review is the strengthening of the channels of communication between shareholders and the board via the senior independent director.

Over the course of time between the Cadbury Report and the Higgs Review it is interesting to note how sources of inspiration for the conduct of investigations has changed. Cadbury drew inspiration from US board structures and sub-committees while Higgs drew on academic and survey research and information from specialist NGOs. This partially reflects the growing academic respectability of corporate governance, the more technical nature of the subject and the decline in the attractiveness of the US model.

Notes

- 1 See www.sarbanesoxley.com for details.
- 2 See www.dti.gov.uk/cld/non_exec_review/ for full details and downloads of documents.
- 3 See http://www.dti.gov.uk/cld/post_enron.htm for details.
- 4 'The Current Population of Non-Executive Directors Full Dataset', 20th January 2003, available at www.dti.gov.uk/cld/non_exec_review/
- 5 MORI (2003).
- 6 McNulty, Roberts and Stiles (2003).
- 7 For example: Jean Eaglesham, 'Companies still prefer to have a lord on the board', *Financial Times*, 13th August 2002, p.3.
- 8 See Tony Cassell, 'Think-tank attacks review of directors' roles', *Financial Times*, 3rd September 2002, p.4.
- 9 See Tony Cassell, 'CBI chief attacks business's 'box ticker' critics', *Financial Times*, 18th September 2002, p.2.
- 10 DTI Press Release P/2003/31, 20th January 2003.
- 11 FRC Press Notice 71, 20th January 2003. The Combined Code includes the corporate governance principles which London Stock Exchange listed companies are expected to adhere to as part of their listing rules. 'Listed companies...have to describe how they apply the Code's main and supporting principles and either confirm that they comply with the Code's provisions or provide an explanation to shareholders.' (FRC Press Notice 75, 23rd July, 2003). The Combined Code reflects the principles developed in and following the Cadbury Report.
- 12 See Tony Cassell, 'CBI to assess anger at Higgs proposals', *Financial Times*, 15th February 2003, p.2.
- 13 George Cox, 'Higgs overlooks the way investors behave', *Financial Times*, 11th March 2003, p.19.

- ¹⁴ For example: Norma Cohen, 'Higgs moves dysfunctional, Liberty warns', *Financial Times*, 13th February 2003, p.22.
- ¹⁵ See Tony Cassell, 'Funds attack business for reform opposition', *Financial Times*, 11th March 2003, p.2.
- ¹⁶ See Tony Cassell, 'FSA expert says Higgs review too 'orthodox'', *Financial Times*, 4th March 2003, p.1.
- ¹⁷ See Tony Cassell, 'Call for revisions to boardroom plan', *Financial Times*, 2nd April 2003, p.6.
- ¹⁸ See Andrew Parker, 'Tories to lobby against Higgs plan', *Financial Times*, 4th February 2003, p.2.
- ¹⁹ See Tony Cassell, 'Call for revisions to boardroom plan', *Financial Times*, 2nd April 2003, p.6.
- ²⁰ See Tony Cassell, 'Higgs reforms 'could damage' companies', *Financial Times*, 24th March 2003, p.11 and Herbert and Dulewicz (2003).
- ²¹ George Cox, 'Higgs overlooks the way investors behave', *Financial Times*, 11th March 2003, p.19.
- ²² See 'Late show', *Financial Times*, 16th April 2003, p.20.
- ²³ See Tony Tassell, 'Clumsy wording could stall boardroom reform proposals', *Financial Times*, 14th April 2003, p.7.
- ²⁴ 'Final Results of Higgs Report Questionnaire', CBI Press Release, 10th March 2003, available at www.cbi.org.uk/
- ²⁵ Speech by Ruth Kelly M.P. Financial Secretary to the Treasury, 12th March 2003, available at www.hm-treasury.gov.uk
- ²⁶ See www.napf.co.uk press release on 20th January 2003.
- ²⁷ See 'The Higgs and Smith reports: next steps towards a revised combined code following consultation.', *FRC Press Release*, FRC PN 74, 14th May 2003.

- ²⁸ See Adam Jones, Andrew Parker and Tony Cassell, ‘Higgs report concessions mooted after backlash by business’, *Financial Times*, 8th May 2003, p.3.
- ²⁹ See www.frc.org.uk Press Release FRC PN 75.
- ³⁰ See Tony Tassell, ‘Shareholders and business sing same tune over board reforms’, *Financial Times*, 24 July 2003, p.5.
- ³¹ See Jones and Pollitt (2002a).
- ³² See Richard Waters, Michael Cassell and Andrew Jack, ‘Reservations underlie welcome for Cadbury’, *Financial Times*, 2nd December 1992, p.12.
- ³³ See Lisa Buckingham, ‘Cadbury drive to rebuild trust in the way business is run relies on market: Final code aims to stop buccaneers becoming pirates and lift earnings – Lack of enforcement agency flawed’, *The Guardian*, 2nd December 1992, p.12.
- ³⁴ www.tomorrowcompany.com/
- ³⁵ www.transparency.org/
- ³⁶ See list of consultation exercises contributions at http://www.dti.gov.uk/cld/non_exec_review/
- ³⁷ See Jean Eaglesham, ‘Openness sought in picking directors’, *Financial Times*, 12th November 2002, p.1.

References

- Cadbury, A. (1990), *The Company Director*, London: Director Books.
- Cadbury, A. (2000), 'The Corporate Governance Agenda', *Corporate Governance*, Vol.8 (1), pp.7-15.
- Committee on Corporate Governance (1998), *Final Report* [Hampel Report], London: Gee Publishing.
- Committee on the Financial Aspects of Corporate Governance (1992) *Report with Code of Best Practice*, [Cadbury Report], London: Gee Publishing.
- Co-ordinating Group on Audit and Accounting Issues [CGAA] (2003), *Final Report*, London: DTI.
- DTI (1996), *Developing a Winning Partnership* [Myners Report], London: DTI.
- DTI (2001), *Modern Company Law for a Competitive Economy: Final Report*, London: DTI.
- FRC (2003), *The Combined Code on Corporate Governance July 2003*, London: Financial Reporting Council.
- Herbert, P. and Dulewicz, V. (2003), *Does the Composition and Practice of UK Boards Bear any Relationship to the Performance of Listed Companies?*, Henley Working Paper 0304.
- Higgs, D. (2003), *Review of the role and effectiveness of non-executive directors*, London: DTI.
- HM Treasury (2001) *Institutional Investment in the United Kingdom: A Review* [Myners Report, 2001], London: HM Treasury.
- ICEAW (1999), *Internal Control – Guidance for Directors on the Combined Code* [Turnbull Report], London: Institute of Chartered Accountants in England and Wales.
- Jones, I.W. and Pollitt, M.G. (2002a), 'Who Influences Debates in Business Ethics? An Investigation into the Development of Corporate Governance in the UK since 1990' in I.W. Jones and M.G.Pollitt (eds.), *Understanding How Issues in Business Ethics Develop*, Basingstoke: Palgrave.
- Jones, I.W. and Pollitt, M.G. (2002b), 'Understanding How Issues in Business Ethics Develop: Lessons for Business' in I.W. Jones and M.G.Pollitt (eds.), *Understanding How Issues in Business Ethics Develop*, Basingstoke: Palgrave.
- McNulty, T., Roberts, J. and Stiles, P. (2003), *Creating Accountability within the board: the work of the effective non-executive director*, London: DTI, Higgs Review.
- MORI (2003), *Review of the role and effectiveness of non-executive directors*, London: DTI, Higgs Review.

- OECD (1999), *OECD Principles of Corporate Governance*, Business Sector Advisory Group on Corporate Governance, Ira Millstein Chairman, Paris: OECD.
- Parkinson, J. (2002), 'Inclusive Company Law', in J. de Lacy (ed.), *The Reform of Company Law in the UK*, London: Cavendish.
- Smith, R. (2003), *Audit Committees Combined Code Guidance* [Smith Report], London: Financial Reporting Council.
- Study Group on Directors' Remuneration (1995), *Directors' Remuneration: Report of a Study Group Chaired by Sir Richard Greenbury*, [Greenbury Report], London: Gee Publishing.