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PUBLIC INTEREST AND THE COMPANY IN GERMANY AND BRITAIN

Executive Summary:

- The study 'Public Interest and the Company in Germany and Britain' is principally concerned with public interest agendas in relation to the company and how far these differ in Germany and Britain. It is not concerned with the detail of external corporate regulation, but with how the internal structures of the company are constituted by particular political understandings of the public interest, which become embodied in formal and informal rules.
- We examine factors which shape the politics of the public interest in relation to the company: firstly, the role of political ideas and interests in creating political coalitions which express a particular conception of the public interest; secondly, the extent to which rules and norms embodied in institutions and legal cases shape subsequent expectations of how the company is related to the public interest, and how it should behave; thirdly, how the constraints and opportunities of the global economy shape attitudes towards the boundaries of legitimate interference in company affairs; and fourthly, whether European integration substantially shapes company law in a way that can be distinguished from national legislation.
- Historically, we show how the politics of the public interest in Britain and Germany has defined the public interest in relation to the company differently, and set different limits of legitimate state interference in the structure and behaviour of the company. We contrast the British model of the company as a private association with the German model of the company as a constitutional association, and review the evolution of public interest agendas in the two countries since the introduction of limited liability in Britain in the 1850s and the reform of German corporate law in the 1870s, and how they have shaped the development of company law and regulation in response to changing economic and political circumstances.
- Company law in Britain has tended historically to favour a 'private association' model of the company. In the UK the public interest in relation to the company has historically been identified with the maximisation of profits, the protection of small private investors, and the reluctance of the state to specify particular forms of company structure. Hence, company law has been primarily concerned with issues such as the fiduciary duties of company directors and the obligation imposed on all companies to disclose financial information and hold shareholders' meetings. Corporate law leaves a large scope for shareholders and managers to decide procedures for making decisions by contract. Where the state intervenes, the emphasis has been on protection of minority shareholder rights and on market-making rules such as accounting and disclosure. Other social and economic concerns, such as the treatment of employees and the impact of corporate activity on local communities and the physical environment, have been viewed as issues external to the company and company law. The interests of employees have traditionally been protected through collective bargaining, and legislation aimed at reducing adverse third-party effects assumed until recently an adversarial

relationship between the company and affected groups. Most perceived deficits in the UK system have been addressed by a proliferation of voluntary Codes of Conduct in the 1980s and 1990s and efforts to diffuse best practices through shareholder activism.

- By contrast, a 'constitutional' model of the company predominates in Germany. Constitutionalism is distinguished by the strong use of non-contractual rights and obligations of its members, rooted in public authority. Private actors are often obligated by law to consider 'public' interests in addition to the private interests they represent. For example, works councils and management have the legal obligation in the Works Constitution Act to work together in the interests of the company. The two-tiered board structure also 'constitutionalises' shareholder interests by specifying procedures for shareholder representation and monitoring in a more detailed manner than board systems in most countries. The scope of public interest obligations for Germany companies is also wider than in Britain, incorporating a pluralist structure of interests within company governance. The most prominent example is codetermination (Mitbestimmung) of employees in works councils and the supervisory board (Aufsichtsrat) of companies.
- The report analyses the changing context for public interest agendas toward the company particularly in the 1990s. This has three main aspects: the extent to which a more liberal global economy creates pressures for convergence of institutional arrangements within capitalist economies; new public interest concerns advanced by pressure groups and social movements, particularly concerning the environment and the rights of minorities; and pressure from the EU on member states to adopt uniform European rules and practices. The report analyses the scope of public interest concerns. It shows how Germany and Britain differ in the typical instruments of public policy for pursuing public interest claims against the company. Three main aspects of the company in relation to public interest agendas are analysed for both Britain and Germany: companies and shareholders; companies and employees; and companies and the community.

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notes to the editor

'The Public Interest and the Company in Germany and Britain' by Shawn Donnelly, Andrew Gamble, Gregory Jackson and John Parkinson is published by the Anglo-German Foundation (ISBN 1-900834-24-3). Copies are available from YPS, 64 Hallfield Road, Layerthorpe, York YO31 7ZQ, telephone 01904 431 213, price £12.

notes to editors

1. The Anglo-German Foundation for the Study of Industrial Society was established in 1973. The Foundation is an independent bilateral body which funds comparative research and sponsors British-German events in the economic, industrial and social policy field in both countries.

2. Review and reference copies of the report are available from the Anglo-German Foundation, 17 Bloomsbury Square, London WC1A 2NH, telephone Nina Frentrop on 020 7404 3137 or e-mail nf@agf.org.uk