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Author(s):

Nic Apostolides

Centre for Global Finance

Bristol Business School
University of the West of England
Coldharbour Lane
Bristol BS16 1QY

Telephone: 0117 32 83906

Email: cgf@uwe.ac.uk

Website: <http://www.uwe.ac.uk/bbs/research/cgf/>

**CRYING FOWL: STAKEHOLDER ACTIVISM AND CORPORATE ANNUAL
GENERAL MEETINGS**

Nic APOSTOLIDES*

University of the West of England, UK

* Corresponding author:
Department of Accounting and Finance
Bristol Business School
University of the West of England, Bristol
Frenchay Campus
Coldharbour Lane
Bristol BS16 1QY
United Kingdom
Telephone +44 (0)117 3283410
E-mail: Nicholas.Apostolides@uwe.ac.uk

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ABSTRACT: Hugh Fearnley-Whittingstall's recent campaign to persuade supermarkets to adopt fairer methods for the farming of chickens highlights how the private sector is taking an increasingly central position in our society. State involvement has changed radically from the "cradle to grave" care embodied by the welfare state of the 1940s to the facilitation of free market mechanisms and reduced government interference in the 80s, culminating in the current situation of public-private partnerships. This has created a 'democratic deficit' in that the ethical concerns of citizens nowadays are best directed towards companies rather than the state. The focus of Fearnley-Whittingstall's efforts was the Tesco Annual General Meeting and the role of such gatherings is examined to see whether the interests of stakeholders are represented and upheld.

KEY WORDS: annual general meetings (AGMs), democratic deficit, stakeholders.

1. Introduction

On 27th June 2008 chef, writer, broadcaster and campaigner Hugh Fearnley-Whittingstall stood up at the Tesco annual general meeting (AGM) to protest at the conditions of chickens sold in its supermarkets. Although Fearnley-Whittingstall was not allowed to film inside the gathering, the incident formed the centrepiece of a one-hour Channel 4 programme called "Chickens, Hugh and Tesco Too" aired in January 2009 to publicize the unfortunate treatment given to around 200 million broiler chickens. What might appear as a fairly trivial piece of show business inconsequentiality in fact touches on deeper elements of governance, accountability and stakeholder democracy in today's economic and political environment.

The availability of affordable and nourishing food is a basic aspect of human rights, with frequent instances of food riots (Newman et al, 1990) and legislation (such as the Corn Laws of 1815 and 1846) providing explosive and highly charged instances in national and world history when these freedoms are denied. While this has been true for thousands of years, the last sixty or so years has seen the relationship between the individual and government in society change radically in the UK. As the cosy protection of the welfare state under the philosophy of state socialism immediately following World War Two gave way to the free market forces championed during the 1980s, we are now embarking on a 'third way' of public and private sector co-operation. This is most evident in schemes under the private finance initiative (PFI), whereby major capital projects are provided and funded without recourse to the public purse. But if governance now rests in the hands of a combination of public and private sector bodies, how are the interests of the individual best preserved? Fearnley-Whittingstall's democratic right to protest about the treatment of chickens could be judged to have been complicated by the burdensome and expensive processes laid down by Tesco at their AGM.

This paper explores the role of the AGM as an effective democratic forum for corporate accountability and control. Section 2 examines how the responsibilities of the state have changed in recent years, discussing how corporate self regulation has

evolved to influence the conduct of companies and how a 'democratic deficit' has emerged. Section 3 uses the Tesco/Fearnley-Whittingstall case to illustrate this and how the AGM serves the interests of stakeholders. This is followed by conclusions.

2. Democratic Transformation

The post-war history of the UK has seen a turbulent relationship between the public and private sectors of the economy and how they serve a country's citizens. The birth of the welfare state under Attlee's premiership of 1945-51 heralded a system of intervention characterised by 'cradle to grave' social care (Dean, 1999). This traditional democratic model showed a clear separation of government and private corporations, with the state ensuring the welfare of citizens and undertaking the regulation of corporations. Where legislative action was deemed unnecessary to facilitate appropriate ethical and moral conduct, companies were encouraged to develop procedures to control management activities thereby ensuring objectivity, accountability and integrity, a process which has evolved into what we now call corporate governance. The general public and interest groups (or lobbyists, comprising those who wished to affect government policy such as trade unions, professional bodies or those campaigning for single-issue concerns) exerted influence through electoral preference on the state or consumer choice on corporations, or else they could directly participate in corporate activities by becoming shareholders and voting at AGMs, as shown in the Traditional Democratic Model in Figure 1.

FIGURE 1 HERE

Later on in the 20th century the philosophy of state guardianship and involvement was challenged by the Thatcher/Major regimes of 1979-97 on the grounds of excessive cost and wastage in the public sector, and the erosion of freedom and choice for the individual (Rose, 1996). This gave rise to a movement towards free market forces, with state interference and government regulation reduced and citizens encouraged to exercise their individual freedoms by taking responsibility for their social and economic choices. Another aspect of the market-led policies of this administration was the privatisation of twenty state controlled companies, including British Telecom and British Gas, in a bid to initiate share ownership for all. The proportion of private individuals holding shares increased dramatically between 1984 and 1988, rising from 6 per cent to over 20 per cent (Norris, 1990).

Blair's 'New Labour' administration (1997-2007) was influenced by the 'Third Way', as articulated by Giddens (1998), and adopted its 'progressive centre-left' politics whereby the purpose of the public sector is largely regarded as facilitation of the private. The partnership of public and private organisations to run parts of institutions is a feature of this rationale, with examples such as Sodexo, Bernard Matthews, Compass and Initial supplying catering facilities to schools, Securicor, Group 4 and Premier Prisons supplementing the prison service, Metronet, Balfour Beatty and Tube Lines maintaining the London Underground, Virgin, Network Rail and Jarvis looking after the railways, Mapeley transferring the ownership and management of the Inland Revenue's estates and various PFI initiatives by construction companies involved in the building of hospitals, facilities for the forthcoming Olympics, and so on. The move towards Public Private Partnership, as shown in Figure 2, has given rise to a democratic deficit in that although the electorate's ultimate sanction of the vote can

still be applied to government when concerns are perceived, this is made much harder when their complaints are chiefly directed at private sector organisations. Lobby group efforts are also dispersed, as complaints can be made either to government or to the corporation involved. Direct redress in the private sector other than by consumer choice is often rendered ineffective, as the Tesco case outlined in Section 3 will demonstrate.

FIGURE 2 HERE

With the disintegration of pre-existing public-private boundaries as the state seeks to harness and direct social, economic, cultural, natural, technological and human resources for the development of private capital, corporations have become ever more extensively involved in providing what were previously regarded as core functions such as defence, education, incarceration, health and social care (Rose, 1999; Dean, 1999). Despite the safeguards of self-regulation, corporate codes of governance, claims of corporate social responsibility (CSR), external regulators, auditors and company law to provide a degree of public protection, the escalating corporatisation of civil society entails the emergence of a democratic and accountability deficit. Government may not regard itself as directly accountable for the conduct of firms to whom they have outsourced state functions and may not even be sufficiently powerful to call them to account. At the same time, the traditional AGM formally addresses the interests of shareholders, rather than wider stakeholders affected by corporate behaviour. This latter deficit has parallels in arguments on the formulation of financial reports and accounts in the UK: that is, it is unlikely that shareholders can be taken as good proxies for wider stakeholder groups. For instance, with increasing globalisation employees, customers and citizens may feel that their interests are not best served by decisions made by a remote forum in a different country with a different culture. AGMs have increasingly become an opportunity for innovative and effective protest by employees, unions and campaigners (Apostolides and Boden, 2005) and such groups gain access to shareholder status by buying a minimal shareholding, or utilise the media presence to simply protest on the pavement outside the meeting.

3. The Tesco AGM

In the context of this democratic deficit, Hugh Fearnley-Whittingstall's attempt to influence Tesco's treatment of animals at the 2008 AGM takes on a new significance. In the Channel 4 television programme he launches a campaign for the welfare of chickens according to the "Five Freedoms" (as advocated by the Farm Animal Welfare Council, an independent advisory body established by the UK Government in 1979). These freedoms apply to animals whether on a farm, in transit, at market or at a place of slaughter, and include freedom: from hunger and thirst; from discomfort; from pain, injury and disease; to express normal behaviour; and from fear and distress. By garnering the support of various figures such as his colleague, chef Jamie Oliver, the chairman of the poultry board of the National Farmers Union, Charles Bourns, various budget-conscious consumers, and the supermarket chains of the Co-operative, Waitrose, Marks and Spencer and Sainsbury, Fearnley-Whittingstall advanced his cause. However his complaint with Tesco is that they claim to uphold the five freedoms while continuing to sell chickens reared in overcrowded conditions.

He sought to either persuade them to phase out this practice or to stop them asserting that they espouse the five freedoms. His efforts to meet on-camera with someone at Tesco who can influence strategy were thwarted, and in the end he is confronted by a media spokesperson, Ms Dharshini David, who he feels provides only “corporate welfare wash”.

In order to drive policy in this area, Fearnley-Whittingstall bought a single share in the company, for £3.98. He declared his intention to table a resolution at the meeting, but was met with a number of obstacles laid down by Tesco. First he had to gain the support of 100 shareholders, representing 200,000 shares. Tesco then charged him £86,888 (payable within a week) for the costs of amending the agenda and notifying shareholders. Both these constraints were overcome by appealing to sympathetic organisations like Friends of the Earth, Compassion in World Farming, Tescopoly and the Merseyside Pension Fund. With this success, the resolution was added to Tesco’s agenda at number 17, stating that “the Company sets a commitment within a fair time frame to take appropriate measures to ensure that chickens purchased for sale by the Company are produced in systems capable of providing the five freedoms”. The leaflet circulated by Tesco to inform shareholders of this addition to the agenda (presumably at Fearnley-Whittingstall’s expense) also includes a six-page plea by the board urging them to vote against the “Requisitionists’ Resolution”¹. A further hindrance was provided by Tesco deeming it a Special Resolution, thereby requiring 75% of the vote rather than the normal 50%.

On the day of the AGM the Channel 4 cameras were disbarred from inside the meeting. Fearnley-Whittingstall, gave several press conferences in the morning, then was allowed into the venue, the conference hall of the National Motorcycle Museum in Solihull, Birmingham. Half an hour into the meeting, after the non-executive chairman, David Reid, and the chief executive, Sir Terry Leahy, have given their review of Tesco’s performance over the year, the floor was opened to members for questions. Hugh Fearnley-Whittingstall was the fourth to rise, speaking for three or four minutes. The gist of his contribution is: “Tesco is failing in its duty of care to animals for food, hence Resolution 17 at today’s meeting. 75% of the chickens sold at Tesco are reared without upholding the five freedoms, against Defra² guidelines. Will Tesco upgrade or accept failure on the 5Fs?” The shareholders applauded.

David Reid, leading the meeting, responded by cutting Fearnley-Whittingstall short and deferring to James Hook, one of Tesco’s chicken producers. He assured the 500-strong audience that the five freedoms were being upheld and audited by Tesco and commended Fearnley-Whittingstall’s campaign, but warned that total compliance cannot happen overnight, to applause. Another (unnamed) chicken producer continued to speak up for Tesco, acknowledging the 5Fs but at the same time advocating the need for consumer choice. Finally, David Reid stated that Tesco meet all the legislative requirements, but concedes that a forum outside the AGM is needed involving interested bodies such as Defra and the National Farmers’ Union. As a cautionary, bottom-line climax he disclosed that the cost difference of changing farming methods as advocated by the campaign is about 3 times, from £2.90 per kg for the cheapest chicken to £8.99.

¹ Members of a public company are entitled to move a resolution at the AGM under the provisions of Section 338 of the Companies Act 2006

² The UK government department for Environment, Food and Rural Affairs.

A further seventeen points were raised by shareholders at the meeting, four in support of Fearnley-Whittingstall's case and two supporting the board on the same issue. Other speakers voiced concerns about the sale of turtles in Tesco's Japanese stores, the denial of union rights in North America, various local property ventures, directors' remuneration, tax avoidance and the effect of sales of cheap alcohol on irresponsible drinking behaviour.

The formal resolutions were then proposed and voted on via electronic handsets issued to each shareholder. The proxy results revealed that all resolutions were passed in favour of the board. The largest contrary vote was Fearnley-Whittingstall's Resolution 17 which received 10% in favour with a further 9% abstentions. In the television programme Peter Montagnon, the director of investment affairs for the Association of British Insurers explained that abstentions can be interpreted as disapproval of the directors without actually overturning the result, and sees the high abstention rate as "a kind of yellow card" to management. Hugh Wheelan, the editor of Responsible Investor.com called the joint outcome of nearly 20% for the resolution "unprecedented". Elizabeth Haigh, the Head of Investments at Rathbone Greenbank said that vote was a "significant level of support and sends a very strong signal to the Tesco board that a substantial number of investors want to see Tesco leading the way on animal welfare issues".

4. Conclusions

Over the last sixty years the relationship between public and private sectors has fundamentally changed. Commercial organisations are now responsible for many of the functions previously undertaken by the state, and so the mechanisms of accountability and public redress have also changed. A democratic deficit has emerged, with citizens being unable to use their electoral voting power to shape various issues of national concern, and so turning to more direct ways of influencing the corporate environment.

As the private sector's role has become more central, the AGM takes on a new significance. However much they may profess to espouse CSR and good causes more generally, companies can still impede the democratic process by placing obstacles in the way of complainants. In the Tesco case the company can be seen to be obstructing Fearnley-Whittingstall's campaign in a number of ways: he is denied access to senior management to discuss his cause, he has to garner support for his resolution at considerable private cost, the voting threshold is raised, the shareholders are urged not to support his resolution and the television cameras are barred from the AGM.

Stakeholders in companies know that, for their views to be heard in a broader context, the ownership of a single share entitles them to gain access to a forum which can capture the attention of a much wider audience than those assembled at the actual AGM gathering itself. Ironically, share ownership is significant not because the loss of electoral power is to some extent replaced by the ability to vote at the AGM. Shareholder-protestors will always be outnumbered by the institutional shareholders who make up over 85% of corporate holdings in the UK (ONS, 2006). Democracy is dependent perhaps more on the publicity generated by activists and taken up by the media, rather than the formal procedures of voting for resolutions. For this reason it is

essential that the AGM is retained in its current form and even strengthened so that the opportunity for members (shareholders) to take the board of directors to task is maintained. The key functions of accountability, interaction between shareholders and directors, and publicity, whether at the AGM itself or by subsequent media reporting, and as demonstrated by Fearnley-Whittingstall's case, contain the essence of the individual's right to tackle the institutions which wield power in today's social, economic and political environment.

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Figure1

Traditional Democratic Model

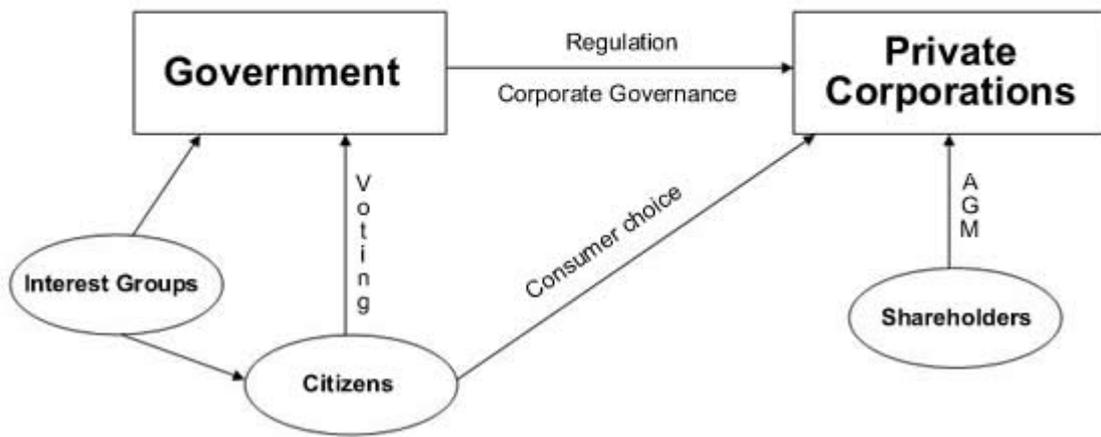


Figure 2

Public Private Partnership

