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## **Values at the crossroads of politics and the market. The Ghosn affair as a test of corporate transparency and accountability**

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### ***Abstract***

*This chapter looks at the “Ghosn affair” in Japan and France, leading to the arrest, imprisonment and dismissal of the chairman of car giant Nissan-Renault-Mitsubishi on suspicion of financial misconduct. This scandal is analysed as revelatory of the values and expectations attached to the public and private responsibilities of big companies, especially as regards transparency and corporate governance norms, in both countries respectively. Public and experts’ perceptions of Carlos Ghosn’s alleged misconduct varied importantly in the two countries, revealing in each the underlying particularities of state-business relations. As for Japan, we present the common-held view of the Ghosn case as a symptom of the low level of transparency in Japanese corporations and confront it with the critics that see this as a simplifying explanation of a story that reflects the underlying particularities of Japanese corporate relations. We propose to interpret the resistance of Japanese firms to adopt Western standards of corporate governance as a part of the Japanese business strategy to adapt to globalisation through change that preserves uniqueness. The French reception of the Ghosn affair reveals, in turn, that what was perceived as transgressive was excess rather than fraud itself – e.g. the former CEO’s astronomic incomes, proximity with French politicians and parties organised at the Versailles palace.*

On November 19, 2018, then chairman of the Renault-Nissan-Mitsubishi Alliance Carlos Ghosn and his deputy chairman Greg Kelly were arrested as they landed at Haneda Airport in Tokyo. Ghosn was accused of understating his income and misuse of corporate funds with the complicity of Kelly. Ghosn was denied bail under the consideration that he was a flight risk. This fear turned out to be more real than even the court probably expected. As is well known, after being finally granted bail on 25 April 2019 under very restrictive surveillance, he fled the country in December 2019. The arrest and the flight were internationally covered by the media and have come to constitute what can be called a transnational scandal. Exactly what is seen as scandalous in the affair, however, differs widely according to the country and the underlying views on the responsibilities of business leaders and big companies towards the society.

The very idea that the public at large may expect and require a CEO to act in a certain way is, of course, far from evident. It was precisely due to important transnational corporate scandals of the 1990s, however, that the idea of a public’s “right to look” (MIRZOEFF, 2011) into the practices of corporations, as well as the idea of the corporations’ accountability for their impacts on society, started making its way both into management curricula and into transnational corporations’ discourse.

Alongside the notion of corporate social responsibility (CSR), transparency and good corporate governance were brought to the fore as normative expectations of the actors involved in corporations. In a number of countries, including France and Japan, this period coincided with a substantial reshuffling of the structural relationship between the state and the economy. Waves of privatisation and market reforms replaced the links of ownership between the state and the companies by links of regulation. The rise of “the regulatory state” (MAJONE, 1996, 1997) in Europe also brought about new accountability mechanisms, with instruments based on transparency playing a lead role (reporting, audits, ...).

A third concomitant development, the financialisation of the world economy, with the rising importance of investors in the running of companies, created renewed mechanisms of control over corporations, with transparency instruments yet again playing the front role as enabling the investors to “see through” the company and make rational decisions on investment or disinvestment.

Together, the three developments – the rise of “business ethics” and CSR as policy areas; the state espousing the role of a regulator and investor to the detriment of company ownership; and the rise of the financial markets’ transparency requirements – transformed the normative expectations placed upon corporations, as well as the ties binding companies to the state and society. Rather than further separating the public and private sectors (in the sense of the state/market divide, WEINTRAUB, KUMAR, 1997), as may sometimes be suggested when the past decades are looked at as a period of the rise of neoliberalism (CROUCH, 2011), the past three decades created avenues for a reconfiguration of the embeddedness of the economy in society (POLANYI, 2001[1944]) that has given rise to renewed calls for a public accountability and control of business actors. In this context, the Ghosn affair can be analysed as revealing the national varieties of the effects of the three developments, by exploring to what extent transparency and corporate governance as normative standards have been incorporated into what the public expects of companies.

### **Transparency and corporate governance, public/private norms and concerns**

Transparency is considered as a deterrent against the abuse of power (FENSTER, 2005), maintaining authority accountable while providing a degree of security to the functioning of the whole system. It has also become a measure of democratic engagement, allowing for further participation of civil society in policymaking, and a disincentive for corruption (BALL, 2009). While it can broadly be identified as linked to “good governance” both in the public and the private sectors, it has different roots and justifications in each of them.

Within the public realm, the roots of transparency as a value go back at least to the end of the 18<sup>th</sup> century when true knowledge came to be increasingly considered as coming through observation, while obstacles to it came to be seen as potentially hiding vice and dishonesty (BAUME, 2013). In relation to democracy, transparency as a principle of governance goes back to more recent times. Since the 1970s, the right of access to information has been institutionalised in most Western countries. Expectations related to transparency in politics have arisen around at least two types of objects that it is useful to distinguish, as does Jeffrey E. Green (2000): the individuals exercising power, and the processes of public decision-making. On the one hand, then, transparency has come to provide the proof of the candour of political representatives towards those whom they represent (see ex. declarations of interest,

declarations of assets by public officials), and on the other hand, the proof of the fairness and legality of procedures (e.g. the broadcasting of parliamentary debates, full public transcriptions of parliamentary committee debates, open data disclosure of documents).

In the market sector, transparency as a principle rose to prominence in the 1980s, as a driver of efficiency prompted by economic globalisation and the financialisation of the global economy. Investors across the globe needed to assess the performance of a company with a decent degree of reliability, and to compare companies according to defined indicators. International financial institutions started promoting transparent governance as a means of making economic oversight and control feasible. Private sector management standards and their identification of transparency with efficiency also drove state authorities to adopt transparency-based instruments in market regulation, while also having a substantial impact on the understanding of good governance in the public sector (ERKKILÄ, 2012). At the EU level, transparency has been used, among other things, as a tool in “promoting the integration of financial and banking markets” and of controlling and limiting state participation in the economy. That is why Grossman, Luque and Muniesa (2008), as well as Giandomenico Majone before them, see transparency as a part of the contemporary “governmentality”, that is, of the way in which political power is exercised and the political and social order reproduced. In both public and private sectors, transparency-making devices are mobilised as they prompt some kind of visibility, calculability and accountability.

Corporate governance has been, in its own turn, another concept with a widely ascending career in both literature and policy since the 1990s (CLARKE AND BRANSON, 2006). Very much like transparency, it came to be seen as a panacea to crises of trust in the wake of a series of important corporate scandals in the 1980s and 1990s. The responses it offered to the crises of trust in the management of companies oscillated between two poles. Between, on the one side, an understanding of good corporate governance as focusing primarily on issues of control and accountability in the shareholders–managers–board triangle, that is on the “private” side of deficiencies experienced in the performance of companies and oriented at protecting the position of the company on financial markets; and on the other side, a more public-oriented understanding of good corporate governance, stressing that the company also needed to include a regard for “stakeholders” in its governance strategy, making corporate governance into a wide concept close to CSR, encompassing “their [corporations’] ownership and control, the objectives they pursue, the rights they respect, the responsibilities they recognise, and how they distribute the value they create”. (CLARKE AND DELA RAMA, 2006).

Increasingly, also, corporate governance has become an object of legal regulation, and thereby a separate legal discipline. French and Japanese reforms on corporate governance are referred to in this chapter, as they constitute the normative context in which the Ghosn affair erupted. The diffusion of the concept as a normative reference has however also given rise to criticism of its limits in achieving a public control of corporate conduct. Criticism over the persisting blurriness of the concept, often serving to legitimise corporate practices rather than to change them substantially, was brought up early on in the debate and contrasted the insistence of corporate governance theories on openness, integrity and accountability (as in the *The Financial Aspects of Corporate Governance* report, Cadbury, 1992) with its being “an organisational chiaroscuro”, management of light and shadow, making some aspects of corporate practice more visible, while concealing others (JACKSON AND CARTER, 1995).

In this chapter, we show how the validity and salience of transparency and corporate governance transpired in a transnational scandal, the Carlos Ghosn affair. We do so in two

parts, the first one analysing the Japanese context of the affair and the second part the French one. Transparency norms embedded in governmental regulation, corporate self-regulation and even the international standards of fair trial as applied in Japan, were all referred to in accusations and indignation sparked by the case of the Nissan-Renault-Mitsubishi CEO Carlos Ghosn. They are seen as revelatory of the contradictions in the functioning, management and relation of large companies to the state and society, as well as of the ways in which these contradictions play out in different national settings.

### **The Ghosn affair as a test of norms and values**

A scandal such as the Ghosn affair unveils practices that were never supposed to be judged by strangers unfamiliar with the codes and rules of a particular milieu and turns them into a public affair. As such, the practices become an object of collective judgement, and the reactions to the scandal thereby an avenue of examining what counts as a norm in a given society at a particular moment. Scholarship in sociology has theorised the scandal as an object of analysis, conceptualising it as a process with unpredictable outcomes that no single actor controls (THOMPSON, 2000; RAYNER, 2007) and as a test of values and norms seen as valid by the groups mobilised through the scandal (BLIC AND LEMIEUX, 2005; BOLTANSKI AND CLAVERIE, 2007). In a synthesising framework of analysis, we added a third dimension to the two, that of the scandal as a spectacular mode of disclosure, stressing the theatrical and visual dimension of the disclosure provoking a scandal (VARGOVČÍKOVÁ, 2020). Written and narrated accounts of transgressions are much less likely to make it into a scandal, that is a multi-sectorial mobilisation of varied actors of society (political, media, professional, civil society, etc.), than leaked video and audio recordings or original documents. The decisive ingredient here is the illusion of the public to see with their own eyes and hear with their own ears scenes that they could suspect existed, but which in their seemingly real colours, exposed “in the light of day”, strike as extravagant and extraordinary.

The accusations raised against Carlos Ghosn in Japan concerned tax fraud, the underestimation of the remuneration received between 2011 and 2018 in the reports to the stock exchange authority, and the use of Nissan’s funds to compensate losses on Ghosn’s personal investments. Indeed, he was accused of having Nissan transfer around 14.7 million dollars to a businessman who vouched for his personal businesses. In June 2019, an internal audit of Renault and Nissan pointed to 11 million euros of suspicious expenses decided by Carlos Ghosn in Renault-Nissan BV, a branch established in the Netherlands and constituted half/half by each of the car constructors.

The transnational dimension of the Ghosn affair was manifest from the very start – the spectacular arrest of Carlos Ghosn at the Haneda airport by the Japanese authorities became global news almost instantly. Consequently, reactions to the scandal in Japan were also partly reported in France and the differences in perceptions between the two countries could be observed “live”. An unusual feature of the affair should be mentioned as well – instead of starting off with revelations of a transgression, the affair started with the arrest of the main protagonist, accusations only coming to be known progressively, especially in France.

In France, the first transgression perceived, in terms of the chronological order, was thus the conduct of the Japanese authorities arresting a “French CEO”, rather than the official accusations of fraud and embezzlement. In the French Parliament, the affair was framed as a

part of commercial wars against French businesses and put in the same category as an earlier case of the arrest of Frédéric Pierucci, manager of Alstom in the United States, on corruption charges, who spent more than two years in prison before his release in September 2018. Indignation over the deeds Ghosn was accused of in Japan was very rare in the reactions of the media and of politicians. In the French Parliament, concerns were raised much more frequently about the impact of the crisis on the number of jobs Renault was providing in the country, than about the actual allegations. This translated a particular history and position of the car constructor in the French model of capitalism as having a public responsibility towards the French economy, an expectation very much in tension with the company's strategy of globalisation initiated in the 1990s. The following two parts of this chapter set the affair in the Japanese and French contexts of corporate governance and transparency norms and together point to the divergence of issues that the affair raised in the two countries.

### **The Ghosn Affair in Japan: corporate governance norms and the Japanese model**

In Japan, the issue of transparency related to corporations and its regulation by government has long been a controversial one due to the particular organisation of private institutions in the country. The way in which Japanese corporations selected their boards of directors, their composition, and the capitalisation of companies were far from the standard in other developed economies. However, corporate structure in Japan, based on control by banks and majority shareholders, resulted in *sui generis*, but equally efficient, control over corporate management. In this case, it could be argued that both dimensions of conformity to conventional practices and security provided by a system that maintained social order and cohesion were at play in the acceptance of these practices that do not fit with transparency and good governance.

#### *General corporate governance model and reforms*

Japanese companies have for long scored very low in classifications of corporate governance (AGGARWAL et al., 2010). Some attempts at measuring its quality, such as the index elaborated by Governance Metrics International (GMI) in 2004, placed Japan second from the last among a set of OECD countries in global performance “when measured by international standards” (BAUER et al., 2008). A measure by Daniel et al. (2012) using subsequent ratings from GMI in 2006 also gave Japan a very low score among developed countries, but ranked above countries such as Greece, Israel, Iceland or South Korea.

During the high-growth years of the post-war period, Japanese corporations developed a financial arrangement that skirted public equity in favour of long-term bank debt. Shareholder rights in the country were very weak and corporate ownership was usually concentrated in a limited number of equity holders. Up to 85% of social capital was held by the top five investors, and capital concentration for companies in this period was often in the range of 70% (OKABE, 2009, 3).

Controlling shareholders could be other companies within the same group, with cross-shareholding a common occurrence among Japanese companies. As opposed to US regulations that ban banks from becoming shareholders of non-financial companies (HAN et al. 2019, 162), until the Japanese Anti-Monopoly Act of 1977 the “main bank” that is associated with a firm in Japan could own up to 10% of its equity. Even now, they are still allowed to hold a 5% stake in non-financial firms. This meant that companies were doubly tied to their main bank through both debt and ownership.

The bank that controlled a company in Japan was actively involved in its governance, compensating or even surpassing the benefits of shareholder accountability in the modern sense, represented by governance indicators (SCHAEDE, 2008, 100). Japanese banks have played an important disciplinary and monitoring role in the firms they controlled through shareholding or were associated with via long-term debt financing (SAKAWA Y WATANABE, 2019). The majority shareholders also seemed to respond more to the stock performance and earnings of the companies. The main bank intervened in a company when results were inadequate, top executives were replaced and the company subsequently stabilised to improve its results (MIYAJIMA AND SAITO, 2018).

The role of the state in the high-growth years between the post-war period and the explosion of the bubble in 1989 has been a matter of dispute. At this point it is widely accepted that it was through the bureaucratic machinery that the Japanese public sector reigned in the corporate world (MURPHY 2014, 140–142). The bureaucracies of the economic and industrial ministries worked closely with private business organisations through practices known as “administrative guidance” (FUKUKAWA et al., 2017). Without formal regulations or open interventionism, Japanese authorities steered the direction and behaviour of corporations by advice and information on which sectors would receive public support (e.g. in the form of favourable currency exchange rates) and which ones were discouraged.

Despite these achievements, the crisis that Japan faced in the nineties, and its extension into a low-growth period that has lasted already three decades, put this particular system into question. Japanese firms started to move away from the bank-debt model after the 1997 Asian financial crisis hardly hit its banking system. Between 1997 and the early 2000s, cross-shareholding quickly diminished and the presence of bank debt was also reduced (BESSLER AND HENRICH, 2019). While some firms evolved to include higher participation of foreign investors, they coexisted with traditional debt-financed ones (MIYAJIMA AND KUROKI, 2007).

Since 2003, a series of amendments to the Commercial Code have increasingly introduced corporate governance regulations in tune with practices in other developed countries. Former stable shareholders have increasingly sold their stakes in firms, and new foreign investors have put more pressure on improving the corporate governance practices of Japanese companies. Furthermore, lower borrowing has decreased the influence of main banks over corporations in shareholding, appointment of directors or other measures (ARIKAWA et al., 2017).

Pressure to increase transparency through improved corporate governance also came from the government. The second Abe administration that entered into power in 2012 introduced the Japanese Stewardship Code (JSC) in 2013 aimed at increasing the participation of institutional investors in corporate management. In 2014 the government also passed the Corporate Governance Code (CGC) to encourage the presence of outside directors in companies and tie compensation to stock performance, along what is internationally considered as best business practices. These reforms succeeded in increasing the share of institutional investors in Japanese companies and their influence on the appointment of external directors. They may also have helped the higher performance of Japanese companies since 2013, while more profits have been awarded to shareholders (MIYAJIMA AND SAITO, 2019).

Nevertheless, such attempts have been met with mixed success. Very few companies are adopting the non-compulsory measures in the Corporate Governance Code (AMAN et al. 2018), and the implementation of corporate governance practices has not proven to have brought about an improvement of the previous system. Miyajima et al. (2018) find a positive

relation between main bank presence and rotation of top executives that is stable throughout the increase in said turnover that commenced in the nineties and continued into the 2000s. Thus traditional corporate governance indicators may have acted as a substitute for, but not an enhancement of, traditional Japanese monitoring by banks.

The case of Nissan has to be seen in this context. It reveals that behind a superficial implementation of international corporate governance standards, relations of loyalty, accountability and control of the traditional Japanese model evolved without disappearing and took the adoption of “foreign” norms of corporate governance as a strategy of integration into globalised economy.

### *The Ghosn affair as a new episode in a series of corporate scandals*

The Ghosn affair case is a good case study on the issue of corporate governance and the behaviour of executives in Japan. Each accusation in the affair echoes more general controversies and dilemmas regarding the public obligations of companies and their transparency. In Japan, this connects with a series of scandals that have rocked the prestige of corporations in recent years, despite the reforms adopted (POZEN, 2018). Among them were the notorious financial frauds of Olympus Corporation in 2011 and Toshiba in 2014, misrepresentations of data from emissions by Mitsubishi in 2016, quality controls by Kobe Steel in 2017 or faulty airbags by Takata also in 2017.

At least 512 accounting frauds were reported in Japan between 2005 and 2015, which often involved auditing companies in concomitance with the audited firms (MIZANUR AND BREMER, 2017, 3). Analysing the ramifications of the Ghosn affair, Kikuzawa (2018) considers that the dreary situation of Japanese banks caused by the “lost decade” of the nineties left them incapable of exercising their control function over corporations, leading to the vacuum of monitoring that has caused the problem.

In the Olympus case, the fraud that had been ongoing for decades, involved USD 1.5 billion in hidden losses plus more in dubious payments awarded ostensibly at least in part to organized crime. It was only uncovered with the appointment of a foreign executive, British director of the European branch of the company Michael Woodford, as president and CEO of the corporation.

The major scandal to date was the manipulation of results by Toshiba between 2008 and 2014 for over 4 billion dollars of operating profits. The status of the company as a flagship of the Japanese technology sector and a respectable company over 140 years old made this event the more shocking. The scandal uncovered the malpractice of Toshiba’s auditing firm, Ernst & Young ShinNihon. There has not been criminal prosecution of either Toshiba or Ernst & Young ShinNihon. The latter was fined with 17.4 million dollars, or the equivalent of two years of its income from Toshiba, and a three-month suspension from acquiring new projects (MIZANUR AND BREMER, 2017, 14).

The Toshiba scandal indicates that the advances in Anglo-Saxon-inspired corporate governance have not actually prevented the emergence of corporate malfeasance in Japan (AMAN et al., 2018). Most corporate governance observers and the financial press linked the Ghosn scandal with the low corporate governance standards in Japan, particularly the “dismal state of Nissan’s corporate governance” (TRIVERDI, 2019).



Overall, transparency in Japan has been in the crosshairs of foreign commentators due to the particular financial structure of Japanese companies. Changes that have occurred since the Asian financial crisis of 1997 have moved firms towards international standard practices, and further reforms under the second Abe administration (2012–2020) have attempted to institutionalise such practices. However, these have translated into little more than perhaps a push in stock returns. Accounting scandals are pervasive in Japanese corporations and corporate performance doesn't show signs of great improvement compared with the traditional Japanese system of debt financing.

However, authors such as Murphy (2016) contend that transparency in Japan cannot be properly grasped with the tools used to analyse Western liberal democracies. Writing three years before the Ghosn case was unveiled, the author contends that corporate governance is but a set of rules Japanese corporations may abide by as a façade, while maintaining much of the traditional structures that keep shareholders in obscurity about the real state of the companies:

*“The business press today is full of talk of ‘corporate governance’ – a fashionable buzzword from the West that has washed ashore in Japan over the last two years. Behind all the talk lies a recognition that Japan lacks the means that would force corporations that are sitting on piles of cash to do something with their money or face the threat of takeover and/or shareholder revolts. [...] the almost instinctive, visceral reaction of ‘Japan, Inc.’ to a foreign bid demonstrates that for all the talk of corporate governance, Japan’s traditional business and bureaucratic elite are not yet prepared for what it implies in terms of genuine accountability, whether that be to investors or other important stakeholders.”*

Some of the explanations put forward in the press in reaction to the Ghosn affair did resemble the scenario painted by Murphy: News arose that Carlos Ghosn was in the process of further integrating the management of Nissan with Renault (FUJIMOTO et al., 2019). Given the higher participation that Renault has over Nissan stock, such a move would have involved taking control of the group even further away from Nissan into Renault's hands (of which Ghosn was CEO). On the other hand, Nissan had been some time collaborating with prosecutors in building the case against Ghosn before his arrest and Ghosn's family has ostensibly claimed that the reason for such a move was to stop him from going ahead with his plan (CHOZICK, 2018).

Meanwhile others pointed at the lack of transparency in the process that had taken Ghosn to jail. Allegations by the press and commentators that Ghosn's behaviour was an example of bad corporate governance were built on the assumption that the case against him was substantiated and were sometimes expressed publicly even before charges were pressed against him (see for example PEREGRINE, 2019).

However, a number of analysts stressed that the charges against Ghosn were not serious enough to justify the harsh treatment he was being awarded. After all, these charges were based on activities he had carried out in the open, consulting with his board and external auditors (GIVENS, 2019). The actual malfeasance that could have occurred was rather due to technical details than to a clear case of corporate obscurity (TABUCHI AND RICH, 2019). Furthermore, if the activities of Carlos Ghosn for which he has been under investigation had been known and approved by his board of directors, the problems that could arise from misreporting or certain irregularities in the way they were registered could have easily been managed (and fixed) within the company, rather than involving the state prosecution in the process.

A lack of transparency was also reproached to the Japanese judicial system. Unexpectedly, Japanese authorities thus found themselves not only in the role of the accuser, but also in the role of the accused in this transnational scandal, especially concerning the issue of the rights enjoyed by those arrested in the country. In Japan, suspects can, and often are, kept in detention by police by up to twenty-three days while being interrogated and broadly denied access to counsel and their attorneys. If a confession is not obtained, re-arrests are common, extending the period before the suspect actually faces a judge. In Ghosn's case, it took 50 days to be taken to court.

While Japan prides itself in the low proportion of inmates, absence of riots and scarcity of fights inside its prisons, international human rights organisations have denounced the practices of the Japanese penal system and its lack of transparency. Japan never publishes the numerous Standing Orders that supplement its Prison Law (dating back to 1908), and "as a result, large portions of the Japanese prison regulations are inaccessible to the public" (VIZE, 2002, 331).

Conditions under detention have been equated to torture for a long time by groups such as Amnesty International (AI 1998), that have denounced how the long detention periods and interrogation techniques geared at obtaining confessions result in an abnormal 99.9% conviction rate, with a 90% of confessions obtained from the accused. The UN Working Group on Arbitrary Detention adopted an opinion in November 2020 regarding the case of Carlos Ghosn after his lawyers filed a petition with the working group, stating that his detention in Japan could be considered as an arbitrary detention.

### **The Ghosn affair in France: excess rather than fraud as a transgression**

In reaction to Japanese tax fraud allegations, French authorities started in their own turn to look into Ghosn's tax declarations to verify whether similar deeds were committed in France. The focus, however, quickly concentrated on other payments and actions of the former CEO – the French authorities found that suspicious payments were realised in favour of Rachida Dati, a former Minister of Justice of the right-wing party *Les Républicains*, officially through a contract on consultancy concluded while she was exercising her mandate as a member of the European Parliament. Also, leaked videos of wedding and birthday parties paid for by Renault-Nissan BV and organised by Carlos Ghosn at the Versailles palace raised public indignation that took precedence over the accusations raised in Japan.

#### *Transparency and corporate governance reforms against the background of state-business proximity in the French model of capitalism*

When looking into the diffusion of transparency as a norm of governance in Europe, the case of France is quite paradigmatic of the rising tensions between private and public governance. A number of companies and banks, now partially or fully privatised (ex. Société générale, BNP Paribas, Orange), carry with them an image and a history of state-owned companies and thus of strong overlaps between the public and the private sector, with public service elites managing big companies controlled by the state. This makes the expectations of the public from the behaviour of these companies often stronger than from their competitors, as regards the pursuit of public policy goals and of public interest.

Even in the fully private sector, however, substantial reforms on transparency and corporate governance have institutionalised the public's "right to look" into corporate affairs over the

past decade. Transparency was already enhanced in 2003, when the publication of an annual report of the chairman of a company on the internal control framework was imposed upon all listed companies, alongside a section on social responsibility in the annual report. In 2005, chief executives' salaries were also subject to transparency measures – fixed, variable, and outstanding compensation were all to be included in annual reports (GOMEZ, 2010). Major recent reforms pushed this framework much further. In 2016, the Sapin II law introduced binding “say on pay” shareholder votes on the remuneration of executive directors of listed companies (in reaction to then criticism of Carlos Ghosn’s remuneration), as well as compulsory “non-financial reporting” on the impacts of the company’s activities on the society, human rights and the environment (compulsory for listed and some other big companies). This also included reporting on internal anti-corruption measures. In 2017, another law came to complete this framework by explicitly introducing an obligation of due diligence, and thereby strategies of due diligence to be elaborated in cooperation with stakeholders, for the biggest French companies (around 150 of them concerned by the measure at the time of its introduction). The 2019 Pacte law then developed upon some of these provisions, introducing into French law a principle according to which a company should be managed not only in the corporate interest but also with regard to social and environmental concerns.

Renault is emblematic of the tensions in competing answers to the question of what a company owes to the state and what power the state should have over its governance, since the state still owns 15 per cent of the company. When Renault is called to take public interests into account, it is both in reference to its historical public-private character, and as a contemporary multinational operating in a global competitive economy. This “hybrid” character of Renault explains why it has been, perhaps more strongly than other companies also carrying out offshoring and downsizing in Europe, held accountable for its impacts on society.

Renault can indeed be seen as typical of the 20th century shifts in the French state-economy relationships. Originally a private company founded in 1899, it enlarged its production towards military equipment, aeronautics and trains during the First World War and in its aftermath. Since the head of the company, Louis Renault, produced cars and warfare for the Nazi Wehrmacht during the Second World War, he was imprisoned after the liberation of France from Nazi occupation and the company was nationalised in 1945 under the name *Régie Nationale des Usines Renault* (Public company of the Renault factories). In 1968, the company’s factories became one of the sites of massive workers’ strikes and sit-ins claiming more social rights, alongside other public companies’ sites, such as that of the national rail company or of Air France. The company thus became inscribed in the history of the workers’ rights movements.

Later, in the 1990s, as the process of privatisation began (accomplished in 1996), and with it offshoring strategies reducing the number of jobs Renault provided in France and Belgium, Renault also played an important role in the Europeanisation of the social struggle. The plan of closing down the Belgian Vilvoorde factory spurred strikes and protests in 1993 in all Renault’s European factories, as well as demonstrations in Brussels and Paris. This episode was designated as the first “Euro-strike” relating to a European company. Belgian legislation reacted to the events in 1998 by obliging companies to organise consultations before important closure plans in what is until today referred to as the “Renault law”. The company has thus been perceived as having a particular link to pursuing public goals such as social welfare and employment, alongside its economic goals.

Its ties to the state also used to take another form – that of the profiles of its managers. In this respect, Carlos Ghosn was not a traditional Renault’s CEO. Unlike in Japan, the outlier characteristic was not so much his international origin, but rather his purely business sector profile. Managers in French companies with state participation, especially companies that used to be state-owned, often come from the public administration after graduating from elite academic institutions. For example, Louis Schweitzer, the CEO of Renault whom Carlos Ghosn replaced in 2006 and during whose mandate Renault was privatised, graduated from the prestigious school of public administration, the *École nationale d’administration* (ENA), then worked at the Ministry of the Budget as financial inspector, and later became the head of the Cabinet of the Minister of the Budget Laurent Fabius. When he came into Renault, he was clearly identified as being close to the Socialist Party. After quitting Renault, he went back to public administration and became the President of an independent state agency in a wholly different area, the Authority against discrimination and for equality (*Haute Autorité de lutte contre les discriminations et pour l’égalité*, HALDE).

At this time, the question of what companies owed to the society in the context of the globalised economy was slowly finding its way to the agenda of the public debate in Europe. Multinational enterprises (MNEs) were playing out states against each other in the competition for major investments, while devising still more sophisticated schemes of profit-shifting in order to avoid high tax-rates. Human rights and environmental scandals from around the globe also involved French companies and enlarged the “corporate accountability” debate, as well as the corporate governance regulations (BARRAUD DE LAGERIE, 2019).

### *The heart of the Ghosn affair as seen from France: CEO salaries and the monarchic temptation of the powerful*

When compared to Japan, the outbreak of the scandal in France had a very contrasting logic and indignation was expressed about transgressions different from those put forward in Japan. First, the usual order of the different stages of a scandal was turned “upside down” from the very beginning. The scandal did not erupt around the disclosure of Ghosn’s deeds, but around the conduct of the Japanese authorities when arresting Carlos Ghosn. Secondly, the actual legal allegations against Ghosn did not become the main object of indignation in the public space. Two other issues took the lead: his remuneration as CEO, and the fact that he threw sumptuous parties for friends and business partners at the Versailles palace, paid for by Renault-Nissan BV.

#### CEO salaries

Schemes enabling companies to continue paying CEOs astronomic sums of money, while formally declaring more modest salaries became widespread in the wake of the 2008 financial crisis. The salaries of CEOs have risen significantly in spite of the economic downturn, and ever-larger parts of them have been paid in stock appreciation rights (SAR). These practices have been perceived as outrageous by the public experiencing the negative effects of the economic crisis.

In the case of Renault, the measures that the government put in place in order to be seen as disciplining companies in this respect interestingly reflect the degree of the level of state

control over companies: as for the state-controlled companies, in 2012, the government fixed a limit on yearly salaries of CEOs at a yearly maximum of 450,000 euros, that is almost 10 times less than CEOs of the first 40 listed companies, the CAC 40 companies. Regarding companies with state participation, but no longer controlled by the government, such as Renault, Air France/KLM or Orange, the state asked the companies to “make an effort” and reduce the salaries of their CEOs by 20 to 30 per cent. However, the authorities had little means of enforcing such recommendations, as was the case of Renault and Ghosn’s salary against which the state repeatedly protested over the past years but was overruled in stockholder meetings. When it comes to companies with no state participation, the measures chosen by the government have been built on transparency as a regulatory norm. In 2018, the French Parliament approved a bill proposed by the LREM governing party that made it compulsory for the 700 listed companies to make public on their websites the average and the median salary in the company. This kind of transparency is different from the disclosure of salaries to shareholders already introduced in 2001 as a measure of corporate governance. This measure touches more closely upon public accountability and the value of fairness in how a company functions and makes profit.

These changes come at a time when another type of control of the enrichment of CEOs through transparency policies disappeared along with the state ownership of companies. When some of the first “public ethics” transparency laws were adopted in France, targeting public officials in the 1990s (introducing declarations of assets and interests), CEOs of state-controlled companies found themselves in the same category as elected political representatives and high civil servants. Just as the latter, they had to file their declarations of assets to the Commission for the Financial Transparency of Political Life (CTFVP, established in 1988) to control whether the evolution of their assets over the period of their public mandate did not exceed what was defined as “a usual evolution of normally managed family assets”. Since 1999, however, the commission started pointing out in its annual reports that it did not consider the inclusion of all public company managers in these measures justified. Furthermore, it deemed complicated to enforce the regulations, as the CEOs turned out rather uncooperative. In other words, in a context where public companies were becoming less and less public, the guarantees and controls that had applied to them as public companies were in the process of being discarded by the state itself as inappropriate. The oversight of the ethical conduct of these companies and their managers through transparency obligations modelled on public sector transparency never really took off.

### Versailles palace festivities

In France, the second major object of indignation in the Ghosn affair were the parties that Ghosn organised at the Versailles palace in 2014 and 2016. The parties became an object of collective judgement when a video shot at one of them was leaked to the French press. The video showed images of a luxurious dinner being served in one of the historical buildings of the Versailles palace, with actors dressed in 18th century costumes dancing and walking among the guests so as to create a true “experience” of the golden era of the palace. Only, that era corresponds to that of absolutist monarchy in France, and the party was paid for by Renault-Nissan BV, officially as a celebration of the 15 years of the Alliance, but also coinciding with Carlos Ghosn’s 60th birthday. Ghosn also used the Versailles location to throw his wedding party later in 2016, and benefited from the location being offered graciously to him and his wife, as a reward for Renault’s sponsorship of the palace as a cultural institution. It is only in relation to this second event that court proceedings were initiated in March 2019.

The resonance that the revelation had in the media and the public opinion is, we argue, due to a great extent to the power of the scandal as a specific mode of disclosure. Had it not been for the leaked video footage, Ghosn's image would have not been harmed by the revelations in the same way. It was the illusion of the contact with the "true reality" of a decadent business elite's conduct that mobilised a part of the public opinion against him. The symbolic side of the location played an important part in the indignation. Ghosn used a national heritage site (and the company's money) for private ends, in addition, deliberately choosing to associate his image with that of the French absolutist monarchy. Seeing Ghosn play the "businessman king" and indulge in performing monarchy for the money of the French, formerly state-owned car maker, struck the French public as a demonstration of excess. The obscenity of the images contrasted with the social prestige enjoyed by the participants and thus attracted wide public attention and indignation. Similarly to the issue of Ghosn's remuneration, it was excess much more than fraud, that was perceived as transgressive and that shaped the morphology of the scandal in the French context.

## **Conclusion**

Transparency has become part of the states' search for new channels of leverage over multinational companies in a globalised economy. The nature of the transparency regime that is being created is a hybrid one. As we saw on the example of the French transparency policies targeting public company CEOs' assets and revolving door practices, this does not mean a straight transfer of transparency policies that apply to public officials and public decision-making to private actors. On the contrary, these policies build on the entrenchment of transparency as a regulating principle in the global economy since the 1980s – as a principle ensuring the efficacy of the financial capitalism – and transform the instruments and tools now familiar to MNEs into levers of state power over these globalised economic actors.

The classical state tools for intervention in corporate governance have been slowly disappearing in Europe, privatisation reducing the share of the state even in strategic sectors, and state subsidies being forbidden as distortions of competition in the common EU market. Up until the COVID crisis caused European and world governments to question these limitations, public authorities found alternatives in becoming "regulators", a dynamic well described as that of the advent of the "regulatory state". Somehow paradoxically, the incorporation of transparency into mainstream economic governance mechanisms points both to a recovery of state power in a globalised economy, and to the institutionalisation of its weakness, by way of its explicit reliance on third actors who confront the conformity and truthfulness of a company's reporting with on-site investigation, for the regulations to be efficient.

At the same time, corporate governance in Japan has always been in the spotlight of western analysts for its low quality and comparative lack of transparency. Closer looks at Japanese corporate structures revealed a traditional model where supervision of firms was carried by the main bank that provided them with loans and by the corporations, financial or otherwise, that were majority shareholders in the companies. However, this system entered a crisis with the long two decades of Japanese economic stagnation. During these years, Japanese companies could no longer rely on the banks to provide them with funding. As a result, they had to turn to markets and foreign investors and start to pay attention to the practices that were expected

of them from shareholders when it comes to corporate governance. However, this strategy of adaptation simultaneously consisted in preserving the specificities of Japanese capitalism.

The Ghosn case has sparked a series of reactions revealing different perceptions of what the main transgressions consisted in. Corporate governance experts interpreted it as the wrongdoings of a too-powerful chairman with little accountability due to the lack of transparency in Japanese corporations. But the case also cast doubts over the prosecution process and issues with public accountability in Japan's penal system. Overall, whereas in Japan, indignation concentrated around allegations of fraud and transparency, in France, it was excess rather than fraud or an alleged lack of transparency that shaped the morphology of the affair.

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