Brazilian Corporate Sustainability Regulation in the Green Transition: Missing the Forest for the Trees

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ABSTRACT: The article describes and analyses new regulatory and governance rules regarding corporate sustainability regulation in Brazil, including the new provisions by the capital markets, the financial authorities, and private frameworks. This is done through the theoretical lens of a critical approach to socio-ecological transformation, shedding light on the broader context in which the institutional innovations take place: the political project of relying on finance to guide the transformation and the current transformations (i.e., the dismantling) of the traditional apparatus for environmental protection. In so doing, the contributions are twofold: on an empirical level, the article presents an overview of new rules regarding corporate governance and climate change in Brazil, serving as a useful source for comparison with other jurisdictions and a critical analysis of trends and differences in Northern and Southern Countries. On the theoretical level, we argue in favour of the need for a holistic approach that considers the broader regulatory context including the political agenda boosting the reforms in internal corporate governance and the circumstances of external environmental regulation. As such, we stress the interplay between extra-corporate and intra corporate governance tools in fostering corporate sustainability.

I. Introduction

In the last decade, the ecological crisis has been politicized with calls to promote a green transition towards a more sustainable economy. In the wake of the economic crisis caused by the COVID-19 pandemic, there has been a resurgence in the idea of a green recovery along with calls to reset capitalism and reinvent the corporation. In response, several institutional transformations have been taking place around the world aimed at addressing corporate responsibility with regard to the ecological crisis and, specifically, climate change.

Many of these innovations instrumentalize corporate law and governance to incorporate social and environmental aims, in what has been described as "sustainable corporate governance regulation"[1]. These innovations have been analysed by a growing body of literature on sustainability related studies of corporate law and corporate governance,[2] that has helped "to illuminate how corporate law and governance affect the pursuit of corporate sustainability in a number of perspectives"[3]. In so doing,

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1 D. Monciardini, "Conflicts and Coalitions: The Drivers of European Corporate Sustainability Reforms," in The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability, ed. Beate Sjåfjell and Christopher M. Bruner (Cambridge University Press, 2020), 611 (citing the objectives of ensuring ecosystems stability resilience and the promotion of human rights).

2 B. Sjåfjell and C. M. Bruner, "Corporations and Sustainability," in The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability, ed. Beate Sjåfjell and Christopher M. Bruner (Cambridge University Press, 2020), 3 (introducing the book with 50 contributions ranging from conceptual discussions to several country-specific case studies).

3 C. M. Bruner and B. Sjåfjell, "Corporate Law, Corporate Governance and the Pursuit of Sustainability," in The Cambridge