



**UiO : Faculty of Law**  
University of Oslo

## **Corporate social responsibility**

**A corporate law contribution to the  
ESOP debate, 3 Nov 2016**

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SSRN author page: [ssrn.com/author=375947](https://ssrn.com/author=375947)

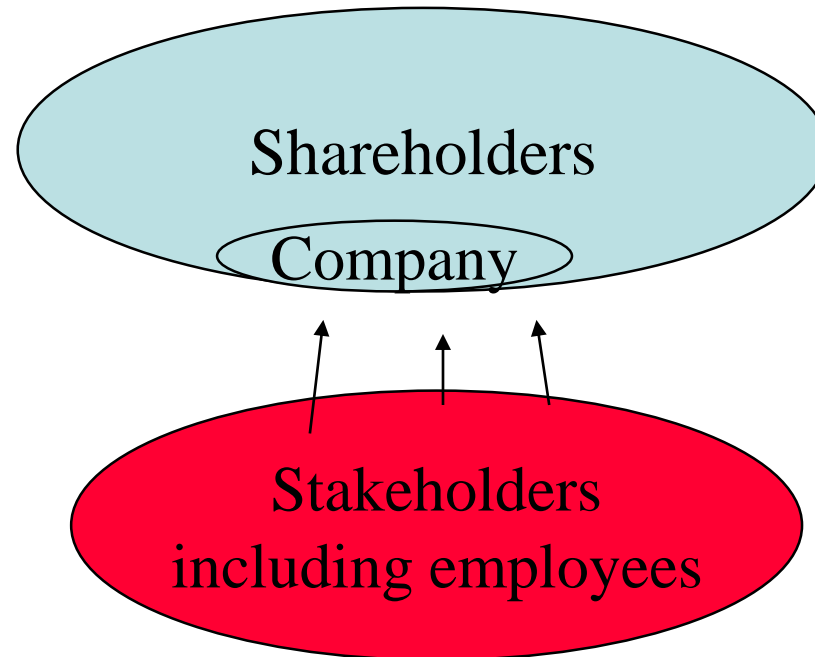


 @BeateSjafjell

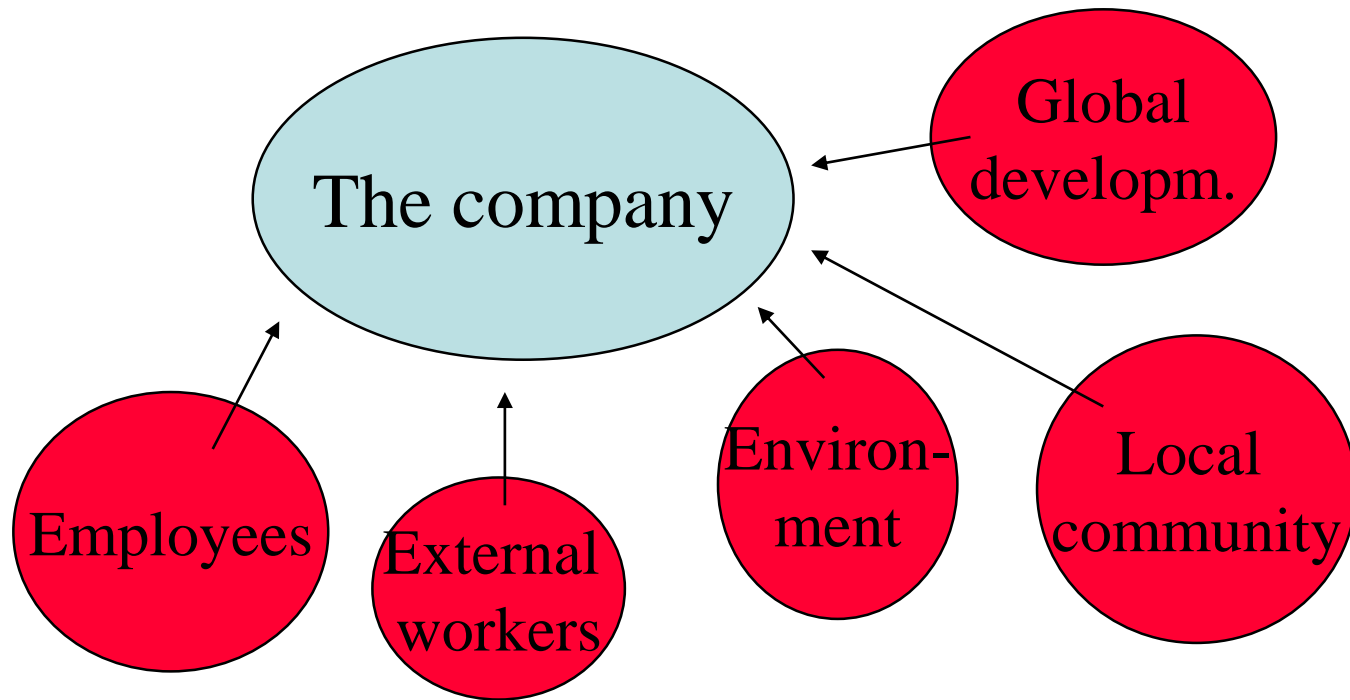
# Overview of my presentation

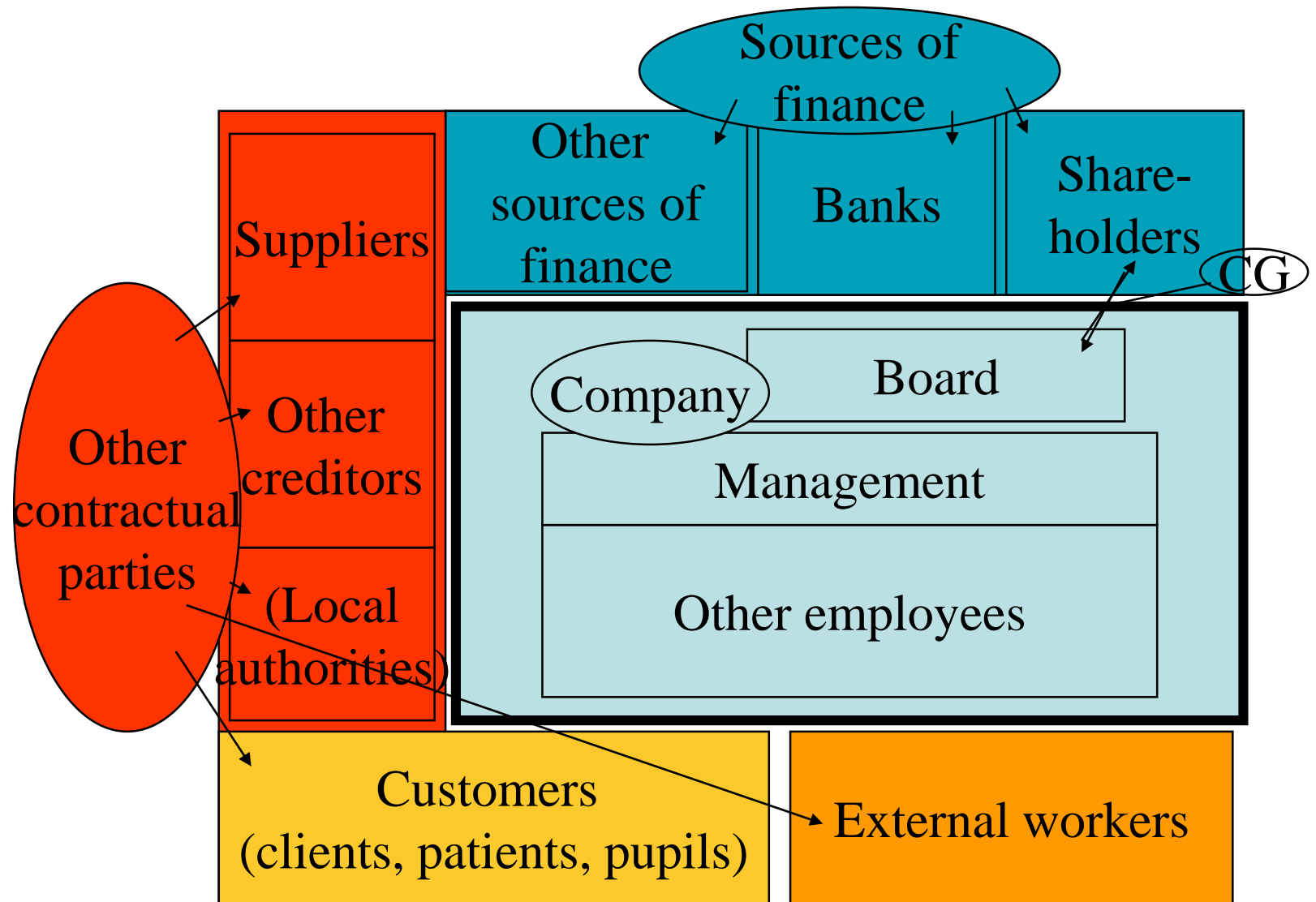
- Different perspectives on the company (or corporation)
- Corporate governance & CSR: is there a connection?
- What regulates corporate behaviour?
- What do corporations do? Why?
- Is corporate social responsibility an answer?

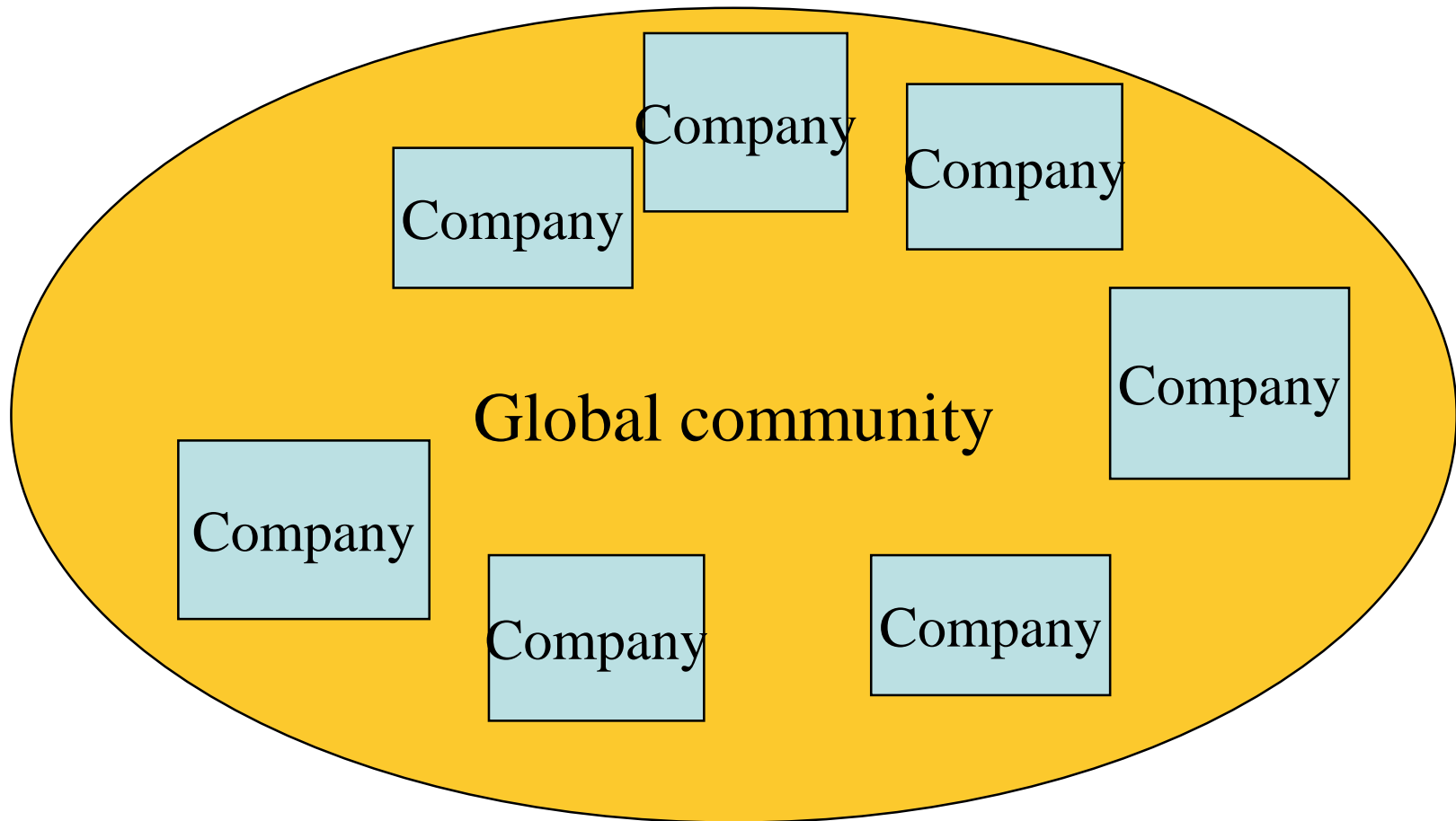
# Companies from a typical corporate governance perspective



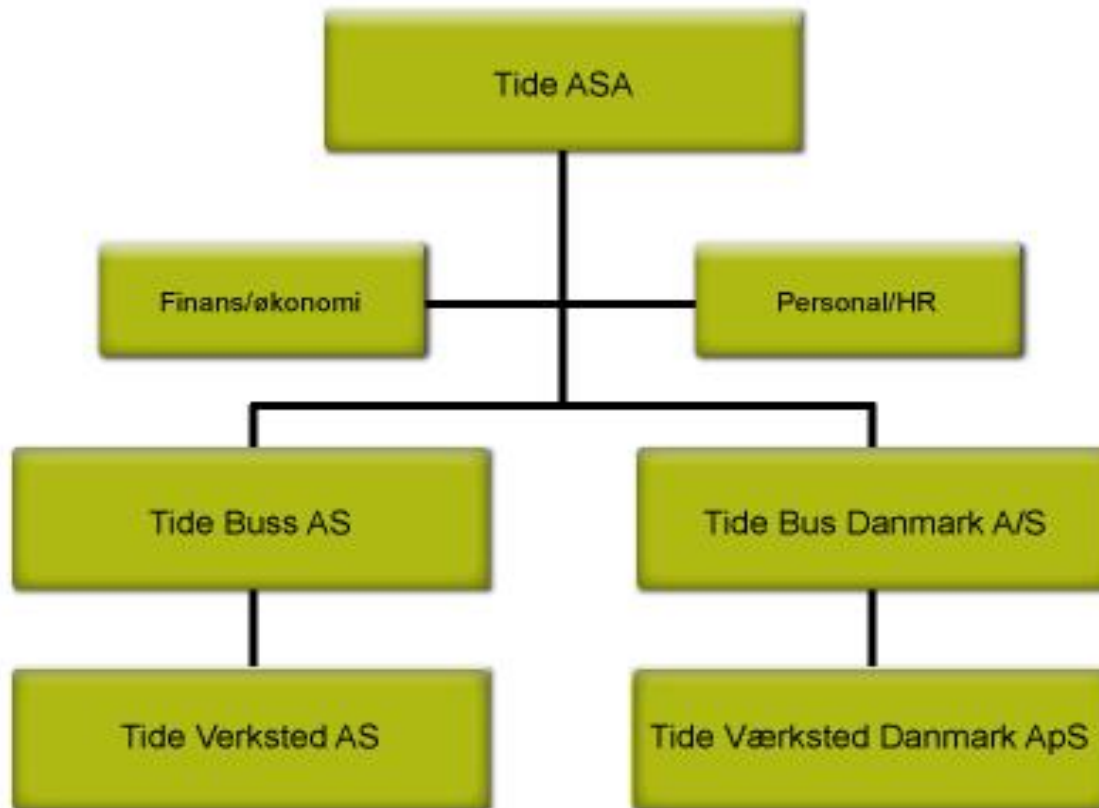
# Companies from a typical CSR perspective



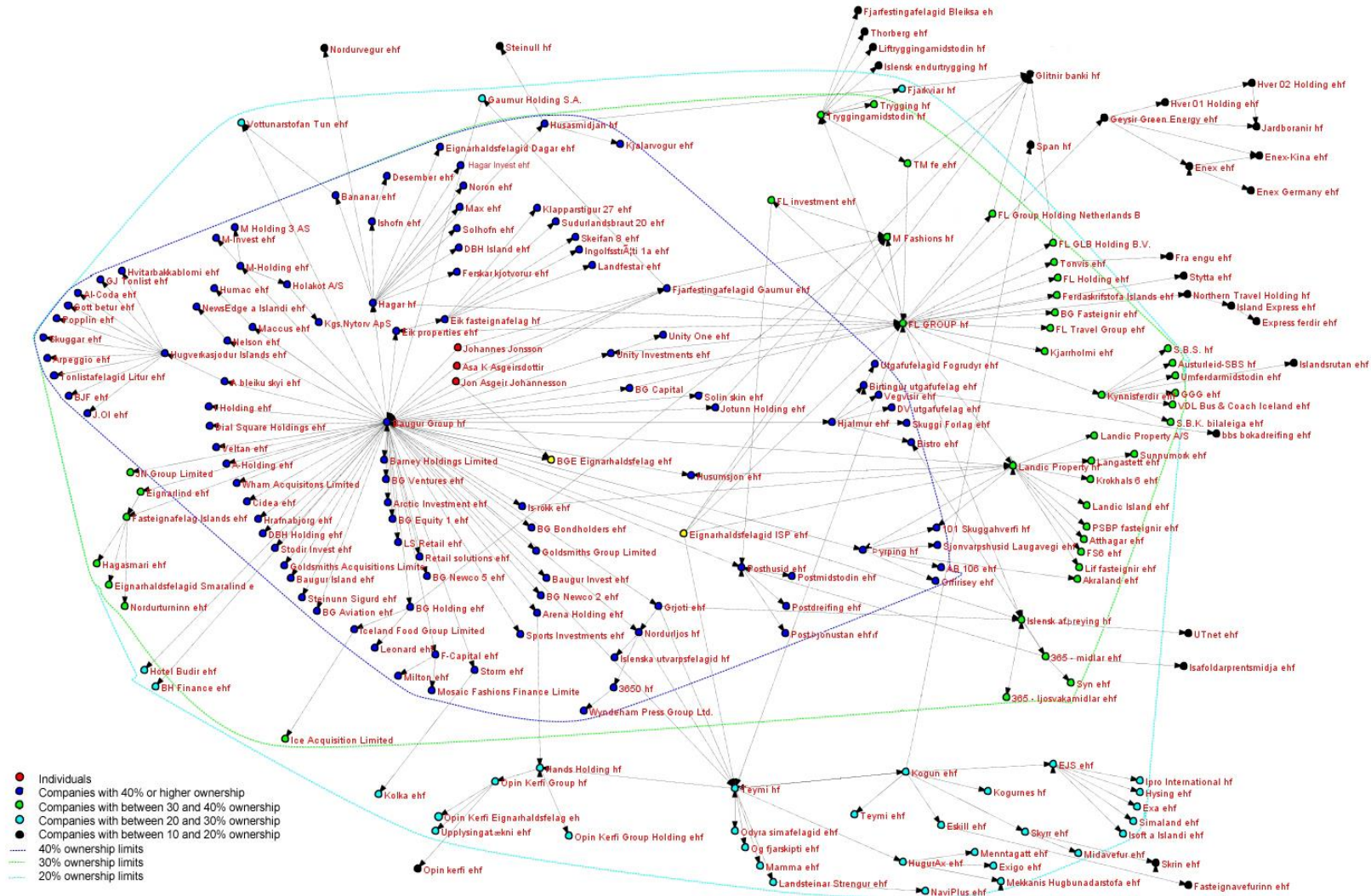




# Companies can be organised in groups

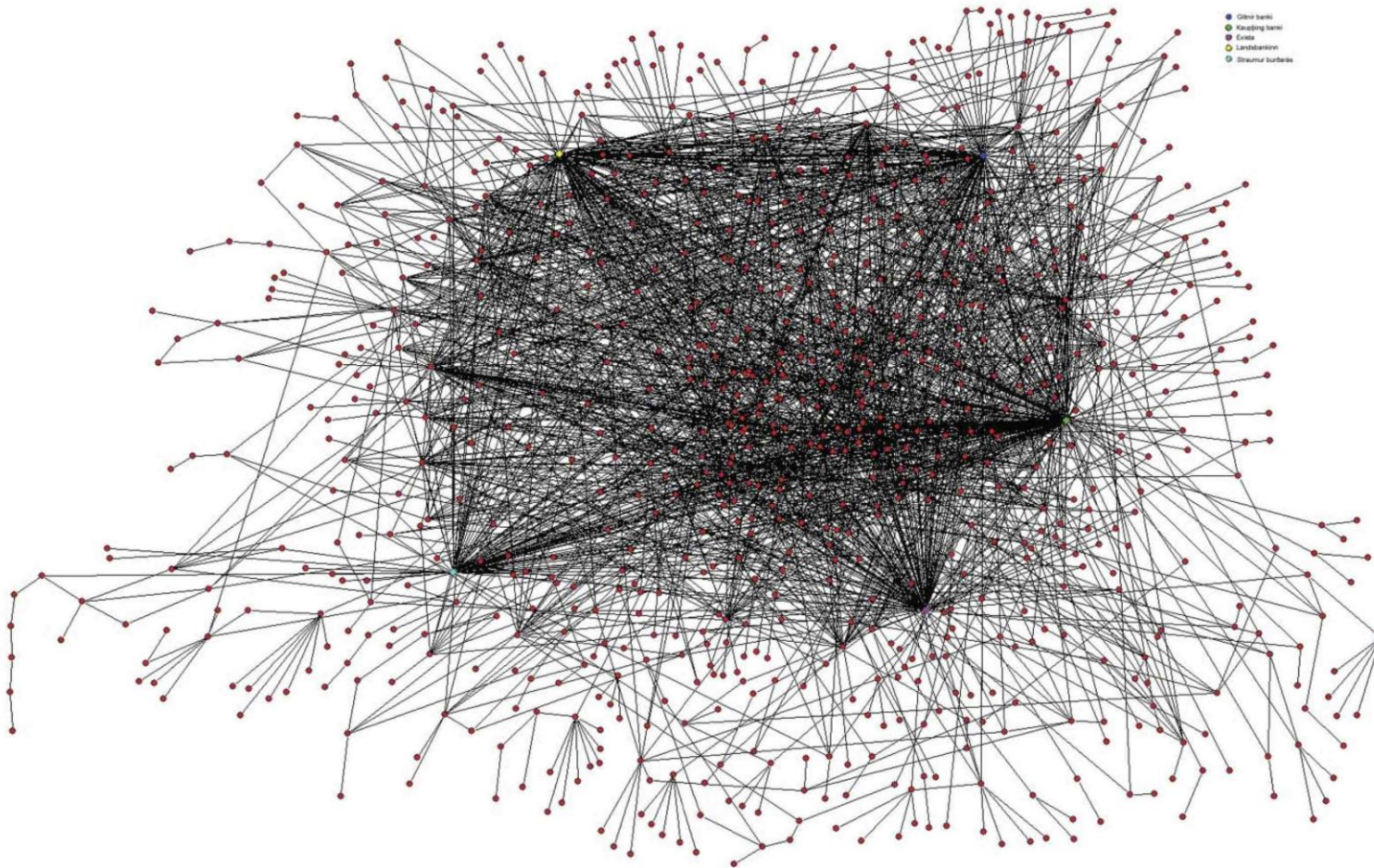


# Who controls companies?





# ... may be difficult to unravel



Bjarnadottir, Margret and Hansen, Gudmundur Axel, 2010, SIC report, Vol. 9, Appendix 2, pp. 23 - and Johnsen, G., 2014, Bringing Down the Banking System: Lessons from Iceland, Palgrave-Macmillan.

# Corporate Governance & CSR

- Corporate Governance:
  - Concerns control, management & accountability
  - Relevant internally for how the corporation is run
  - Relevant externally for impact of corporations on society
- Corporate social responsibility (CSR)
  - An abused and watered-out term
  - Taken seriously, it concerns responsibility of business for impact on society

# Connection between corporate governance and CSR?

- Two debates with a slight convergence tendency
- If both are taken seriously, they would overlap to a great extent (but they aren't)

# What regulates corporate behaviour?

- Broadly speaking: four modalities of regulation
  - Law: corporations are creatures of (national) law
  - Social norms: can complement or undermine the law
  - Markets: regulating through price
  - ‘Architecture’: the regulatory effect of the physical world

# The role of law

- Legal infrastructure for business and finance
  - The constitutive role of law
  - Companies as ‘creatures of national law’
- Framework: generally and sector-specific
  - International law, EU law, national law
- Regulating interests, rights and duties
- The norm-changing role of law

# What do corporations do?

- The backbone of our economies
  - Providing jobs, tax revenues, goods and services, welfare
- Yet: «Business as usual» is not an alternative
  - A very certain path towards a very uncertain future
  - Safe and just operating space requires fundamental change
  - Voluntary shift towards sustainability too slow
  - Competitive advantage for *unsustainable* business
- Finance in the era of financialisation:
  - Finance for business or finance for the financiers?
  - Financial crises just the tip of the iceberg
  - What Panama Papers reveals

# Why do corporations act unsustainably?

- The starting point for the debate:
  - Corporate governance
  - Corporate social responsibility
  - ‘Maximising shareholder value’
- But what about the law?

# The Sustainable Companies Project (2010-2014)

- We investigated legal infrastructure of the company: core company law; corporate groups; reporting
- Why the company (*aksjeselskap*)?
- The company is an ingenious invention
  - Channelling capital to entrepreneurs
  - Creating value for investors, employees and society
- And it is a dominant form of business



# Main results of the SC analysis

- Unrealised potential in company law
  - Possibilities for change in company law
  - Shareholder value vs shareholder primacy
  - Short-term, narrowing effect of shareholder primacy
- Inadequate reporting requirements
  - ‘Non-financial’ reporting not treated seriously
  - Reporting often neither relevant nor reliable
  - Missing link between reporting & corporate duties
- Corporate groups: gap control & responsibility
  - Shareholder primacy exacerbated

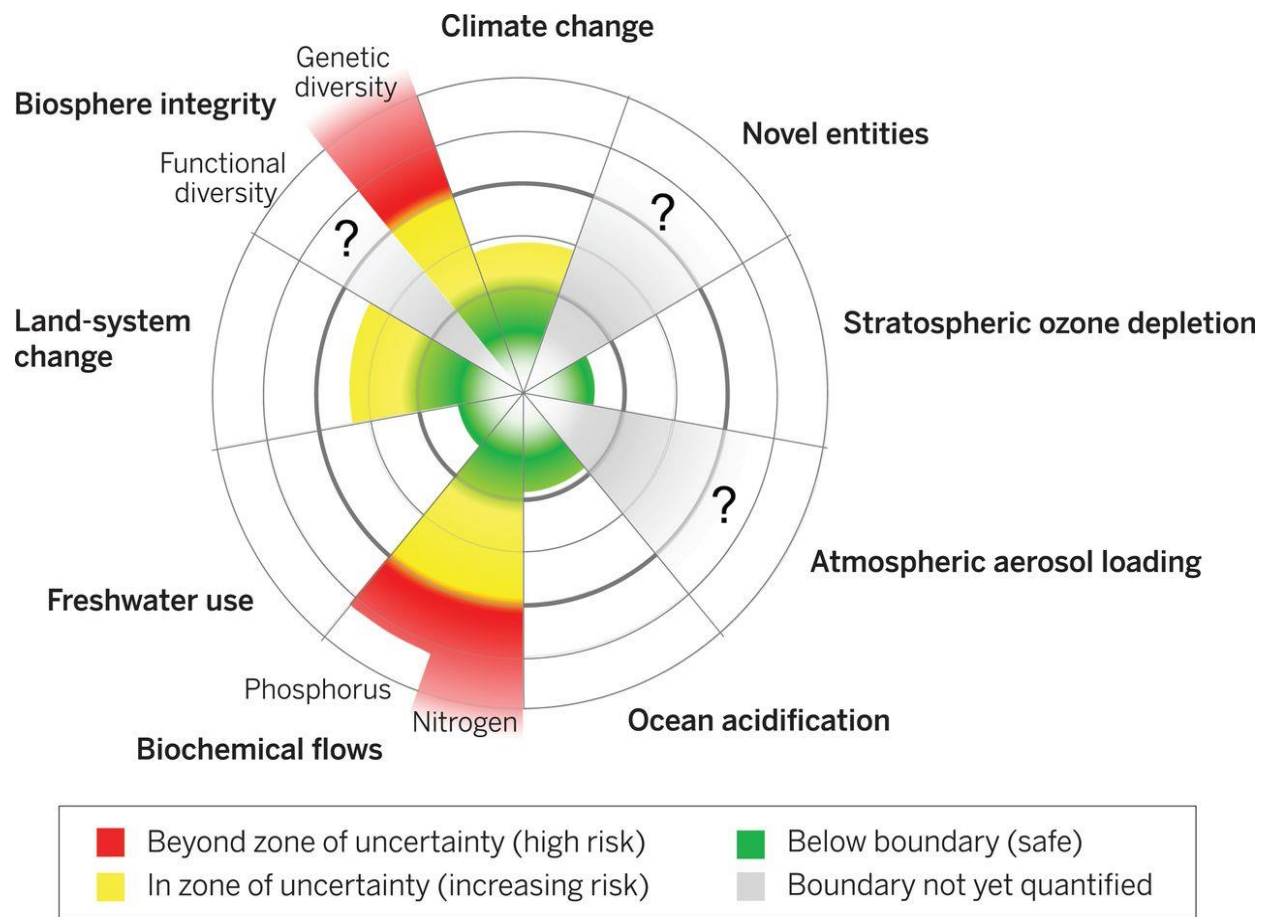
# Is CSR the answer?

- Not as it is today
- CSR could contribute, if taken seriously:
  - It were about legal compliance and beyond
  - It were about the business of the company
  - It had a broader approach than the legal entity
- Transcending the corporate governance and CSR debates: internalising externalities

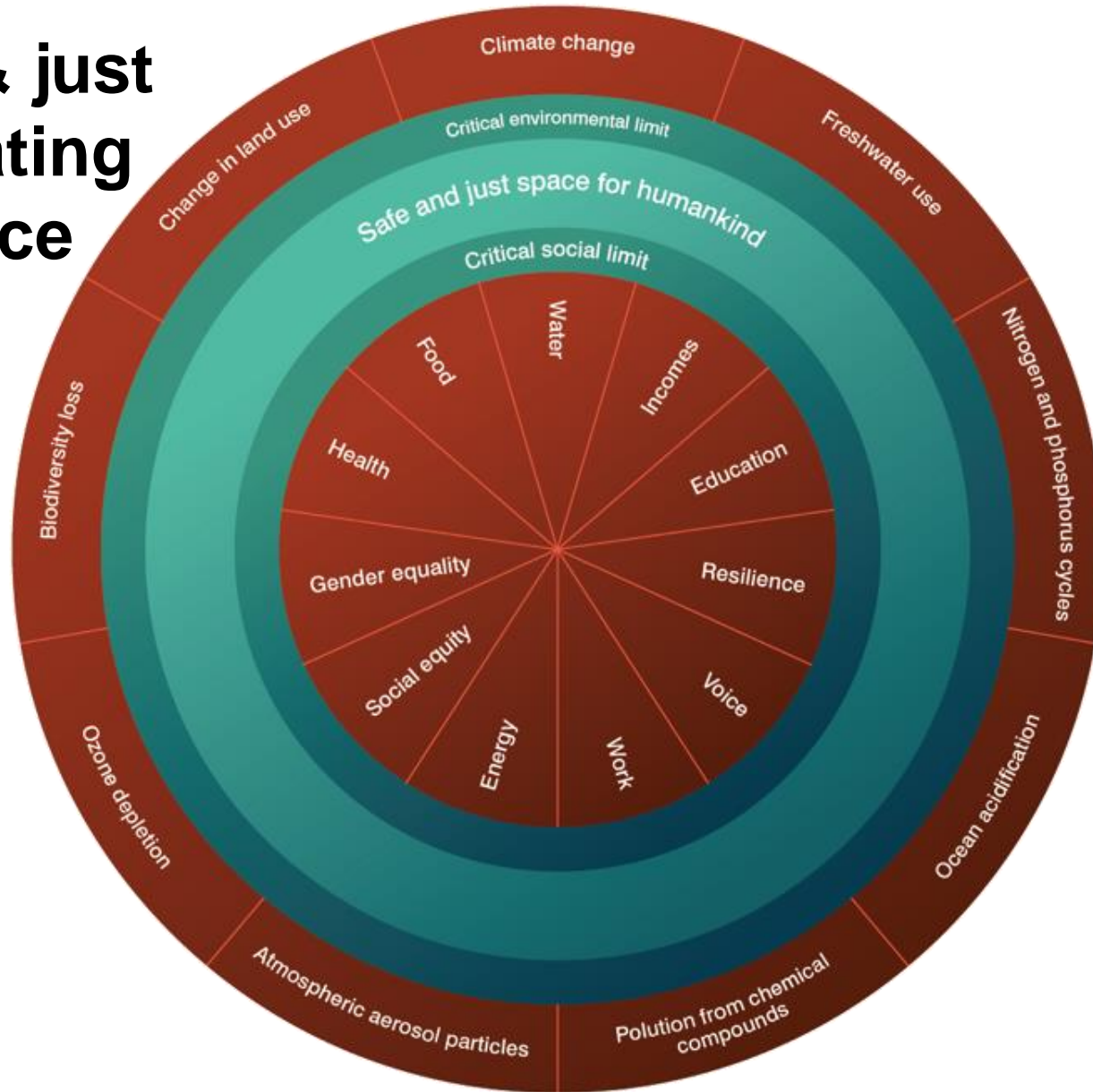
# Internalising externalities: a proposal

- Redefine the corporate purpose:
  - *creating sustainable value within the planetary boundaries while respecting the interests of its investors and other involved parties*
- Redefine the duty of the board:
  - To promote life-cycle-based sustainable value creation
  - Includes group issues & supply chain
- Operationalise through long-term, life-cycle-based business plan; key performance indicators to report on

# The challenge of securing a safe operating space for humanity



# Safe & just operating space



## More information

- **Info on our projects and networks:**  
jus.uio.no/companies (under Projects and Networks)
- **Publications:**
  - A number of papers, including special issues of ECL (under Publ.)
  - [The Greening of European Business under EU Law](#), Sjøfjell & Wiesbrock (eds), Routledge, 2015
  - [Company Law and Sustainability](#), Sjøfjell & Richardson (eds), Cambridge University Press, 2015
  - [Sustainable Public Procurement under EU Law](#), Sjøfjell & Wiesbrock (eds), 2016

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