Has the Worldwide Convergence on the Anglo-American Style Shareholder Model of Corporate Law Yet been Assured?

Cagman Palmer

Abstract

It has become increasingly mainstream for corporate law scholars to recognise that the world has dichotomised itself into two patterns of share ownership: dispersed ownership of shares and concentrated ownership of shares. In substance, the differences in ownership patterns beget different background systems of corporate governance. In general, the US and UK corporate governance system adopts the former which is more aligned with a shareholder-oriented model, whereas the corporate governance systems of most European and Asian countries adopt the latter which is more in alignment with a stakeholder-oriented model. Over time, the academic debate has revolved round the question of whether there can or will be global convergence on a single type of share ownership and resultant global convergence in corporate governance. This debate has simmered concomitantly with Hansmann and Kraakman’s hypothesis put forward in their seminal scholarship of 2001 that it is only a matter of time that the emergent consensus on the supremacy of the shareholder-oriented model might propel judiciaries in countries with a non-shareholder-oriented model to make corresponding changes in their corporate laws towards a shareholder-model. Influenced by the above discussion, this article enquires into the soundness of their hypothesis. This article ultimately shows that the worldwide convergence is not necessarily a straightforward exercise in practice due not only to the persistent differences in the world’s corporate ownership structures, also to several other reasons.

Keywords

corporate governance; shareholding

Full Text:
PDF

PDF | This paper questions the existence of an Anglo-American model of corporate governance and capitalism. Significant differences between the UK and US models of corporate governance are identified. The UK is a principles orientated system based more on voluntary codes operated... but full convergence has by no means been achieved. Further, France has enhanced the protection of large debtors by introducing additional protection against creditors modelled on ‘Chapter 11’ in the US. aim was to adopt the British Company Law model, but this could not be imposed at Federal level by Congress and significant parts of the legislation had to be enacted at State level; resulting in the ‘Delaware Law’, which offers comparatively weak shareholder rights. As a result Since the mid-1990s, there has been much talk of the convergence of corporate governance systems to Anglo-American standards, and several trends have pointed in this direction. In this paper Support for the mutual convergence hypothesis is found in a statistical study on the evolution of ownership concentration in 2,238 companies during the 1989–1998 period. Ownership concentration, which is substantially higher in Continental Europe than in the United States and the United Kingdom, has been increasing in the United States and the United Kingdom and decreasing in Europe. However, the process is slow, and even if the observed trends were to persist, differences in corporate governance between Europe and the United States would persist for decades. It has become increasingly mainstream for corporate law scholars to recognise that the world has dichotomised itself into two patterns of share ownership: dispersed ownership of shares and concentrated ownership of shares. In substance, the differences in ownership patterns beget different background systems of corporate governance. This article ultimately shows that the worldwide convergence is not necessarily a straightforward exercise in practice due not only to the persistent differences in the world’s corporate ownership structures, also to several other reasons.