Cultural Norms and Company Laws in Europe

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Abstract

This article will examine the EU Member States with the largest economies, the UK, Italy, France and Germany. The work will consider the relationship between company law rules and national cultures in these varied systems. It will consider whether the current diversity of laws is likely to endure.

This article examines the four European Union Member States with the largest national economies by GDP, namely Germany, France, the UK and Italy. The work will consider how their company law rules relate to their national cultures. Broadly, two of the countries under consideration here are Southern European and mainly Catholic in culture, namely France and Italy, while the other two, the UK and Germany, are Northern European with mainly Protestant cultures. The countries are diverse in terms of their economic structures, particularly average company size and the use of capital markets by business, even though the sizes of the national economies are similar. This study will seek to explain and explore the diversity of company laws between those nations. It will also consider whether it is likely to endure, in the EU political context and under pressure from increasing economic globalisation.

Explaining the development of business and rules in terms of interaction between culture and law is something of a chicken-and-egg problem. Legal institutions and rules may in themselves become part of the national cultural fabric. They are, however, likely to achieve this status only if they are basically compatible with the underlying values and habits of the people. For de Soto[1], formal legal rules if they are to be effective must develop in accordance with the underlying social contract; that is, understandings that have developed locally about use of property. At the more abstract and larger level of national corporate law, which also governs how assets are to be held, used and exchanged and how value is to be created and distributed, analogous considerations surely apply. The legal arrangements are best built in conformity with local tradition. Of the interplay between rules and culture, Licht refers to culture as an 'old mother': "It knows a lot, but some of this knowledge might be obsolete today; it is sometimes nagging; it will resist change unless absolutely required. Most importantly, it must not be ignored."[2]

Defining culture

Before proceeding to think further about how culture impacts on company laws, it is appropriate first to consider and define 'culture' and relate this to the concept of the nation in Western Europe. The focus will be cultural factors in the business environment.

Bell3 quotes a definition of culture as: "patterns, explicit and implicit, of and for behaviour", "ideas and especially their attached values"4 One can infer culture from the conduct and statements of people, plus perhaps some questioning of the people concerned. Various levels of culture are similarly described by Schein: artefacts (evidence of what people do, including structures and processes); espoused values (what people say, including strategies, goals, philosophies and justifications) and basic underlying assumptions (including unconscious, taken-for-granted beliefs, perceptions, thoughts and feelings).[5] Getting to know a 'culture' has been likened to peeling an onion.[6]

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[1] H. de Soto, *The Mystery of Capital*, Basic Books, 2000.
[2] A. Licht, 'The Mother of all Path Dependencies Towards a Cross-cultural Theory of Corporate Governance Systems', 23 *Delaware Journal of Corporate Law*, 2001, p. 147.
[3] J. Bell, *French Legal Cultures*, 2001, Butterworths, London, p. 3.
[4] A.L. Kroeber and C. Kluckhohn, *Culture: A Critical Review of Concepts and Definitions*, 1952, Chicago, p. 181.
[5] E. Schein, *Organisational Culture and Leadership*, 1992, Jossey-Bass, Chapter 2.
[6] J.W. Salacuse, 'Corporate Governance, Culture and Convergence', 2003, 14(5) *European Business Law Review*, p. 471 at pp. 479-480.

Behaviour is the outer layer of words and actions; next come the basic attitudes; then one finds norms – rules to be followed. Finally at the centre are values – individualist or collectivist, masculine or feminine, risk-taking or risk-averse, egalitarian or hierarchical, for example, as will be further discussed below. Much behaviour is the product not of conscious, rational decisions, but of "'habitus'… ingrained and socially constituted dispositions of social classes that lead actors to make choices and decisions that reproduce existing social structures and status distinctions."[7] These vary considerably between European nations, as the next section will expound. The deepest layers of individual 'habitus' are formed by childhood experience, dependent on nationality and language, class and family. Companies add their own sense for new employees of 'how things are done around here' and common working assumptions.[8]

In a business setting: "Culture – the norms, routines, and shared understandings and expectations of those who participate in the firm's activities – is central because performance demands are often highly ambiguous once basic success has been achieved and the set of routines supporting the firm's basic technology is in place." People (especially in groups) are very often conservative in their assumptions, over-optimistic, slow to admit mistakes ('throwing good – investors' - money after bad' rather than admitting failure) and ultimately self-serving ('seeing what they want to see' in situations). The most visible and easily apprehended features are the formal practices, rules and regulations. These may include the formation and dissolution of companies, the composition of boards of directors and the rules for financial reporting. Conversely, underlying ideologies, assumptions and deeply held values, on which rules and practices draw, are much more difficult to and pin down.[9] In Europe, even fairly brief experience in the field shows that again these features tend to vary between businesses which spring from different national roots.

National cultures, then, show no sign of fading away in Europe in spite of the European Single Market. Nor are nations indifferent to losing either incorporation or location of 'their' major companies. As globalisation presses against traditional national political and social mechanisms, key questions become 'Who should decide the direction, degree and rate of change?' and 'What component elements of a culture should undergo change?' The selected principles that take precedence may vary between nations.[10]

The idea of the nation itself is a complex compromise, perhaps especially in Europe with its factional history. MacCormick suggests that Member States' protection of national interests is on the middle ground between the protection of cultural heritage and the protection of civic society.[11] The combination of the two ideas produces resilient national identities and national institutions, even in the context of a project such as the European Union. It has been noted that: "[T]he more tightly integrated and cohesive the dominant institutions of the home country, the more resistant that nation will be to forms of organising that are regarded as foreign. Similarly, strong interdependencies among dominant political, financial, labor and cultural institutions will deter the spread of non-national forms of organising."[12] The converse connection also seems to be true. The major European nations such as the UK, France, Germany and Italy have had the time to develop integrated and interdependent institutions in terms of their political economies and commercial law and may therefore be expected to be relatively resistant to international and imported models. Rather than convergence, this suggests distinctive strengths and weaknesses as national elements either combine with or fail to articulate key elements of new model of networking and learning.

How does nationality come to exert such an influence on individuals and, through them, on major business organisations? History and tradition, or at least a shared belief in these – are central to nation-building.[13] Many national cultural traditions in Europe may in fact be recent developments. Even so, the major nations discussed in here have had many generations in which to develop.

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7 M. Maclean et al, *Business Elites and Corporate Governance in France and the UK*, Macmillan, 2008, p. 35.

8 E. Schein, *Organisational Culture and Leadership*, 1992, Jossey-Bass, p. 10

9 Maclean, *supra* n. 7, pp. 4-5.

10 J. Kline, *Ethics for International Business*, Routledge 2005, pp. 171-172.

11 Discussed in V. Breda, A European Constitution in a Multinational Europe or a Multinational Constitution for Europe?'12(3) *European Law Journal* 2006, 330 at pp. 336-337.

12 P. di Maggio, *The Twenty-First-Century Firm*, 2001, Princeton University Press, p. 67.

13 D. Gowland and R. Dunphy,*The European Mosaic*, Pearson, 2006, p. 300.

After childhood, it is extremely difficult for individuals to shake off the effect of the national traditions in which they were raised and their work, management and investment will be impacted accordingly. National laws reflect and in turn may come to shape those traditions.

Among those giving advice to business people who hope to operate successfully in different European business environments, there is a (perhaps surprising) degree of consensus about the striking features of particular countries, broadly confirmed by consultants on culture and etiquette for management. Trompenaars and Hampden-Turner write usefully on very different national attitudes and values in Europe and beyond.[14] Peron and Randlesome write of business cultures within the European Union.[15] They demonstrate that there is much for an investor, executive or anyone involved in a business to learn when crossing national boundaries.

John Mole is instructive on the opportunities and perils of doing business in different European nations. As regards leadership styles and preferences, he observes clear distinctions:

In France, strong leadership is valued: "The PDG (President Directeur General) is expected to be a strong authority figure with a high degree of technical competence."[16] Companies are governed accordingly, with strongly centralised tendencies.

Italy sees leadership in the context of the cultural importance of family: "The traditional [Italian] leadership model derives from the family company: the boss as autocratic father figure, the sons as senior managers with the ear and trust of the boss, the employees as faithful retainers who do as they are told and are well looked after."[17] For outsiders, including investors, it remains difficult to exert influence even in large organisations.

In Germany, the general attitude to leadership is summed up by Mole as follows: "Orders are obeyed out of respect for the boss's functional role and competence."[18] Others like to know their role in a clear project.

There is some uncertainty about the role of 'bosses' in the UK, with efficiency and fairness being valued over personal closeness or professional qualifications. Communication within companies is sometimes indirect and informal.[19]

The histories of the nations count in their conduct of business. In sum, "'hard' (institutional) and 'soft' (cultural) issues work together to determine the divergent behaviour of MNEs from different home countries, as well as the 'behaviour templates' that feature in these home countries."[20] It is difficult to be certain whether legal structures with which directors and senior personnel are most familiar or modes of management (e.g. relations with shareholders, employees and suppliers) have the greatest influence on multinationals, as 'home' legal requirements and relational habits are naturally interrelated. Despite the mobility of their operations, the largest companies are inevitably controlled from particular national bases. These continue to produce organisations that remain distinct in their management styles.[21]

Changes at the level of governance practices (the top, visible layer) are only likely to prove stable if mirrored by parallel changes in the dominant ideology (the bottom, unseen layer). The French have since 1995 largely followed a British lead in broad corporate governance principles and Codes.[22] Beneath the surface, however, managerial structure is still very much the same as before (for example, separation of roles at the top of the company between Chairman and Chief Executive is not prescribed for listed companies). Likewise the German attachment to codetermination with defined roles for management and supervisory boards[23] and the Italian reliance on family networks are unlikely to change soon, whatever the formal structures.

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[14] F. Trompenaars and C. Hampden-Turner, *Riding the Waves of Culture*, Brealey, 1997.
[15] R. Crane, *European Business Cultures*, Financial Times, 1999
[16] J. Mole, *Mind your Manners*, Nicholas Brealey, 200, p. 188.
[17] J. Mole, *op cit*, p. 201.
[18] J. Mole, *op cit*, p. 152.
[19] J. Mole, *op cit*, p. 116.
[20] S. Brakman et al, *Nations and Firms in the Global Economy*, Cambridge University Press, 2006, p. 369.
[21] S. Brakman et al, *op cit*, p. 30.
[22] See e.g. Corporate Governance Code of Listed Corporations (MEDEF), amended April 2010, available at www.ecgi.org.
[23] See e.g. German Corporate Governance Code, amended May 2010, available at www.ecgi.org.

Culture and Law

The interaction of national culture as outlined above with the legal rules of a given jurisdiction is complex. Licht, Goldschmidt and Schwartz ask: "in what ways do the laws on the books in different societies reflect the culture that prevails in those societies? Put another way: are meaningful, measurable elements of the culture found in different countries manifest in the statutory legal rules of those countries?"[24] They look specifically at corporate governance and examine investor rights. They expect strong litigation rights for shareholders to correlate with 'mastery' or 'masculinity' in the culture. They expect investor rights to be stronger where cultural individualism is strong. In general these intuitive approaches are borne out. This is useful work in the still-new field. However, it is limited. Only very broad English-speaking and Western European cultural groupings (relevant to the EU area under consideration) are used. Company structure and regulation affect parties other than shareholders and directors. Perhaps most importantly, however, law 'on the books' is only a part of the complex story of how regulation works in practice.

A superficial attempt at comparison of legal rules between different systems without taking account of the underlying cultures of different jurisdictions risks being limited or at worst misleading: "The reason why the French have the *chanteurs* they have lies somewhere in their history, in their Frenchness, in their identity. Similarly, the reason why the French have the legislative texts or the judicial decisions they have, say, on a matter of sales law, likes somewhere in their history, in their Frenchness, in their identity. "[25] This is surely as true in the sphere of company law as anywhere else. There are two distinct legal mentalities in Europe (the common law and the civil law). To argue that there is real legal convergence because there is now European Union-level legislation and jurisprudence is unconvincing.[26]

As to the question of the direction of causality between law and culture, not surprisingly, Licht et al are not clear. "Prevailing cultural values", more formally, "generate a path dependence dynamic that may slow down or block adaptation to change."[27] To impose new rules that did not fit the prevailing cultural context (for example from the English-speaking world to elsewhere in Western Europe) would be unlikely to be effective. Where cultural values vary, uniform rules even across the EU, may not be appropriate.

As to how the legal rules are likely to be used 'on the ground', Hampden-Turner and Trompenaars posit what they call a dilemma of 'universalism versus particularism'. That is, "When no code, rule or law seems to quite cover an exceptional case, should the relevant rule be imposed, however imperfectly, on that case, or should the case be considered on its unique merits, regardless of the rule?"[28] There was, they argue, "a sharp break between Protestant countries of North America and Northwest Europe [including the UK and Germany] and Catholic countries of Europe [including France and Italy] plus Asia.[29] In the former, upholding general rules was seen as more important, while in the latter supporting a friend or relative might more often come first. Even if what looks like the same framework is put in place, the way it causes directors and managers actually to behave within companies may be quite different.

The issue of enforcement must also be taken into consideration. Action by regulators and litigation by shareholders or stakeholders vary in type and frequency depending on national systems, which are in turn the products of the different attitudes to business. All of the major economies under study now boast what appear to be well-resourced and empowered investigators.[30] As to whether shareholders, employees or the press will uncover the stories for investigation at all, that is more variable.

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[24] A. Licht, C. Goldschmidt and S. Schwartz , 'Culture, Law and Corporate Governance', 2005, 25 *International Review of Law and Economics* 229 at p. 231.
[25] P. Legrand, *Fragments on Law-as-Culture*, 1999, WEJ Tjeenk Willink, pp. 5-6.
[26] Legrand, *op cit*, p. 76-77.
[27] A. Licht, C. Goldschmidt and S. Schwartz, *supra* n. 24, p. 252.
[28] F. Trompenaars and C. Hampden-Turner, *Riding the Waves of Culture*, Brealey, 1997, p. 10.
[29] F. Trompenaars and C. Hampden-Turner, *op cit*, p. 23.
[30] Autorite des Marches Financiers (AMF, France), Bundesanstalt fur Finanzdienstleistungsufgericht (BaFin, Germany), Commissione Nazionale per le Societa e la Borsa (CONSOB, Italy) and currently the Financial Services Authority (to be succeeded in 2012 by the Financial Conduct Authority, UK) take the lead on listed companies.

There are complex links[31] between the specifics of company law, wider national legal systems and social preferences. Mandatory rules and the preference for collective enforcement action only are notable in Germany. The UK (similarly to the US) tends to give more room for opt-out from 'rules' by negotiation and more space for individual recourse to the courts when things go wrong in business as in other relationships. Common law countries tend to favour contract-based systems and recourse to courts when necessary by shareholders, which goes with liberal market economics; civil law jurisdictions favour mandatory rules and restrict court involvement, which runs alongside corporatist market systems, as a broad generalisation. This would seem to be in line with fundamental social preferences of those countries.

It is likely that "the rules and regulations that have commonly been identified with the corporatist system (or CMEs), may only be the tail end of norms engrained in formal rules and complementary institutions that govern these economies…" Subsequent change of rules "at least in isolation, is unlikely to change the social preferences that prevail in these economies." The operation of new rules that do not fit culturally may be difficult, though change is of course possible. It may work best if it follows a cultural movement: "Recent changes in procedural ground rules governing corporate law in Germany are a case in point. They reflect a different perception of shareholder rights and as such may be indicative of a more general change in social preferences towards greater recognition of individual rights and procedural powers."[32]

Experience in Germany suggests that legal rules can in turn change culture. Co-determination has become embedded and fostered co-operation between management and labour; pressure for emphasis on shareholder rights may shift corporate priorities as time goes on.[33] Experience in Italy, however, is a reminder that national culture remains important despite changes in rules. Effective compliance with the Italian Corporate Governance Code does not always match formal reports and relies on independent directors and/or active (often institutional) investors.[34] In France, a small corporate elite, tightly networked and more closely linked than elsewhere to those who run the state, enjoys substantial economic and social power.[35] In the UK, similarly, the business culture has shifted towards the shareholder-centred US direction but with different participants.

The key features of company law to sustain major businesses in any jurisdiction are, as Hansmann and Kraakman et al[36] argue, provision of: separate personality, limited liability, transferable shares (this requires decisions about how fungible equities should be and what regulation is needed in takeover markets), board management (it has to be determined what powers directors should have and what the constraints on them should be), and finally investor ownership. The meaning of 'ownership' by shareholders (treated by Hansmann and Kraakman as relatively unproblematic) is perhaps the biggest variable here between cultures within the European Union. The distinct legal entity may be regarded as a nexus of contracts[37] or a social institution[38] in its own right. These differences, connected to national cultures (and particularly their emphasis or otherwise on collectivism and competition), impact on the detail and application of rules.

Formal board committee structures dealing with pay, auditing and sometimes recruitment and/or strategy have been gaining ground under the Codes of best practice, including in all of the four main countries under discussion. The European Commission has addressed these issues albeit at the level of non-binding Recommendations.[39]

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[31] ECGI Working Paper Series in Law, Working Paper N° 30/2005
K. Pistor, *Legal Ground Rules in Coordinated and Liberal*
Market Economies, at http://ssrn.com/abstract=695763

[32] K. Pistor, *op cit*, pp. 43-44.

[33] J. Addison and C. Schnabel, 'Worker Directors: A German Product that did noe Export', 50(2) Industrial Relations 2011, 354.

[34] N. Bianchi et al, 'Comply or explain: investor protection through the Italian Corporate Governance Code' 23(1) *Journal of Applied Corporate Finance* 2001, 107.

[35] M. Maclean et al, 'Dominant Corporate Agents and the Power Elite in France and Britain', 31 *Organization Studies*, 2010, 327.

[36] H. Hansmann and R. Kraakman in R. Kraakman et al, *The Anatomy of Corporate Law*, Oxford University Press, 2nd edn 2009.

[37] e.g. F.H. Easterbrook and D.R. Fischel, *The Economic Structure of Corporate Law*, Harvard University Press, 1991 (new ed 1996); B. Black, 'Is Corporate Law Trivial?: A Political and Economic Analysis', 84 *Nw. U. L. Rev*, 1990, 542.

[38] e.g. L.E. Mitchell, *Corporate Irresponsibility: America's Newest Export*, Yale University Press, 2001; P. Ireland, 'Company Law and the Myth of Shareholder Ownership', 62(1) *Modern Law Review* 1999, 32.

[39] Commission Recommendation 2005/162 on the role of non-executive or supervisory directors and on the committees of the (supervisory) board

Interlocking directorships are a particular issue in Germany (where banks hold sway) and to an extent in France (where the connection with the State remains close). In the continental European systems, there are failings of transparency and of shareholder protection. These are linked to cultures that value ongoing relationships in various ways at the expense of procedural matters.[40] On the other hand, the strengths of what may loosely be called the continental stakeholder model are also related to the cultures, in so far as good relationships between managers, employees and perhaps political representatives can foster research and innovation. The shareholder-centred model, however, also poses difficulties. In such a system, other key stakeholders such as employees, customers and suppliers are not effectively taken into account, let alone the wider social and environmental impacts. Even in terms of its own priority of investor protection, the Anglo-Saxon model has of course experienced very public difficulties.[41] Cultures favouring informality rather than structure, focusing on results rather than processes, no doubt contributed to the failures of this system. The advantages of such governance, however, also stem from its underlying culture: letting managers drive the business forward in directions that will profit investors, if the directors are indeed able and honest, can produce economic dynamism.

It is of course difficult to obtain any comprehensive 'evidence' of something as complex and diffuse as cultures. Nevertheless from the research and advice available it is indeed possible to draw broad pictures that seem to reflect widespread views. It is worth noting here that in consideration of individualism as opposed to collectivism, the greatest continuing divide may be between (geographically and politically) 'core' European countries centred on France and Germany and the 'outer' powers of Italy and the UK. The 'core' is also on the whole more harmony-seeking in business and other social relations than the 'outer' regions, which are more mastery-driven in their approach. A further cultural dimension is short-term versus long-term orientation. There is more 'patient' capital in continental Europe than in the UK, whether from banks, families and associates, and in many industries, this committed investment may be a distinct advantage.

Systems by their very nature cannot easily or efficiently be changed piecemeal – the parts are interdependent. In normal circumstances, 'insider' corporate governance systems may in fact be superior in terms of performance. In crisis situations, trust is less certain and implicit contracts are liable to be broken, in which events 'outsider' systems may be best. Convergence in a context of crisis may therefore favour the outsider system (even if the insider system is 'normally' better).[42]

The Dimensions of Culture

Each of the key dimensions of national culture carefully studied by Hofstede[43] across many countries has an impact on companies. The first major variable he discussed, 'power distance' (respect for hierarchies) impacts on worker participation and input from the other stakeholders. The second, 'uncertainty avoidance' (aversion to risk) has consequences for the rigidity of a corporate governance system. The position on the spectrum of 'individualism' versus 'collectivism' underpins the way companies are managed and the view taken of their role in society. Cultural tendency to 'masculinity' or 'femininity' (or ~~-~~preference for 'mastery' of situations versus 'harmony' in relationships) is as important in commercial relations as in other interactions. Different attitudes to timescales, long-erm or short-term orientation, are reflected in key managerial decisions. Not surprisingly, wage differentials in general correlate with power distance – the lower the power distance in the culture, the more consultation is expected at work, the flatter the organisational hierarchies tend to be[44] and the lower is executive pay relative to that of other workers. UK inequality in salaries may be explained by market forces to which UK business is more exposed than its continental counterparts.

Tendencies to uncertainty avoidance correlates quite strongly with the use of legislation in a given nations – low in the UK, but high in Germany for example.[45] In high uncertainty avoidance countries, however, "people more often felt the law was against them and said it was OK to break an unjust rule." "In fact, the proliferation of laws seems to diminish the extent to which the system is trusted."

[40] E. Jeffers, 'Corporate governance: Toward converging models?', *Global Finance Journal* 16 (2005) 221 at p. 226.
[41] *Global Finance Journal* 16 (2005) 221 at pp. 227-228.
[42] R.H. Schmidt and G. Spindler, 'Path Dependence and Complementarity in Corporate Governance', p. 114 at pp. 124-126.
[43] As seen e.g. in G. Hofstede, *Culture and Organisations: Software for the Mind*, McGraw-Hill, 3rd edn, 2010.
[44] G. Hofstede *Culture's Consequences*, Sage, 2nd edn. 2001, p. 107.
[45] G. Hofstede *Culture's Consequences*, p. 174.

In an individualistic (as opposed to collectivist) culture, nepotism is regarded as undesirable and "the relationship between employer and employee is primarily conceived as a business transaction, a calculative relationship between actors on a "labour market" in predominantly individualistic societies. In broad terms all of the European societies are generally individualistic with different emphases perhaps on work as compared with family and friends.[46]

Hofstede argues: "The concerns for relationships and life quality in feminine cultures and for material rewards, performance, and competition in masculine cultures are carried over from family and school to the work environment."[47] Management traditionally "developed in masculine British and American cultures." The same methods may not work so well in continental European societies. Preferences vary, for example between higher pay in more 'masculine' (mastery-orientated) cultures and more time off in more feminine (harmony-seeking) cultures.

The UK, particularly given its cultural ties to the US, is something of an outlier in the European context. Soft law – 'comply or explain' provisions with denial of access to markets as the ultimate penalty for failure – fits well with the UK culture of the City of London: generally a low power distance, low uncertainty avoidance, individualistic culture. Where rules have traditionally been somewhat more defined and perhaps the relationship between government and business more trusting and co-operative, it is less familiar.

In the context of company law, Deakin48 refers to shareholder primacy as "essentially a cultural rather than a legal point of reference". He posits a shift in the reference point so shareholders exercise their powers "not as the representatives of the market, but of agents of society as a whole." The concept of shareholder-as-owner, entitled to cast votes in support of a selfish interest, is in stark contrast to many European legal systems (including in different ways the French and German systems) which explicitly provide for shareholder votes to be cast in the interests of the company as a whole.[49]

Different approaches from this contractualist minimalism also have commercial advantages. The German provision for labour representation on the supervisory board, for example, has been seen to increase communication both upwards and downwards within the company and thereby enhance corporate financial performance. This is arguably even more important in an increasingly knowledge-based economy and in sectors reliant on specialist skills.[50] Work with key suppliers and customers could in principle be equally beneficial.

Convergence or Persistent Diversity?

In many crucial respects, the emphases of the business leaders in the different nations are coming closer together, in part under the influence of global markets: "In the UK, the once single-minded preoccupation with issues of shareholder value has given way to a broader concern for the social responsibilities of the corporation. There is a greater focus in social and environmental matters, sustainability and ethical investment..." Consumer pressure has been influential here. Meanwhile, "[i]n France, far-reaching internationalisation has forced listed companies to provide greater value for shareholders, to acknowledge the importance of investor relations, to focus more resolutely on financial issues and return on capital, and to be more transparent through greater compulsory disclosure."[51] Investors have insisted on high standards of governance. Legal change is not the only route to achieving convergence between companies of diverse European nations and cultures. Functional convergence may occur without changing formal rules (e.g. in ways of replacing underperforming senior management); formal convergence is seen where legislation is required (e.g. encouragement of venture capital); convergence by contract (e.g. by agreements with institutional investors) is also possible in today's markets.[52]

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[46] G. Hofstede, *Culture's Consequences*, p. 237.
[47] G. Hofstede, *Culture's Consequences*, p. 312.
[48] S. Deakin, 'The Coming Transformation of Shareholder Value', 2005, 13(1) *Corporate Governance*, p. 16.
[49] J. Dine, M. Koutsias and M. Blecher, *Company Law in the New Europe*, Edward Elgar, 2007, p. 141.
[50] L. Fauvera and M. Fuerst, 'Does good corporate governance include employee representation? Evidence from German corporate boards', 82 *Journal of Financial Economic* , 2006, 673.
[51] M. Maclean, C. Harvey and J. Press, *Business Elites and Corporate Governance in France and the UK*, Palgrave Macmillan 2006, p. 256.
[52] R.J. Gilson, 'Globalizing Corporate Governance: Convergence of Form or Function', 49 *American Journal of Corporate Law*, 2001, 329.

Choice of stock exchange listing and 'forum shopping' by the largest companies may also favour convergence whatever national governments think. The companies will nevertheless carry with them their cultural 'baggage' from their home countries. Convergence in enforcement systems does not always accompany that of legal rules.[53] For example, harmonisation of insider trading laws has been followed by highly divergent enforcement – implying that a lower degree of substantive convergence would have been accompanied by more comparable enforcement. In the takeover area, on the other hand, the willingness to ensure that substantive law was effectively enforced delayed substantive convergence by many years. If in the European political arena acceptance of particular rules seems to be inevitable, differential effectiveness of government agencies, courts and other mechanisms may aid persistence of diversity in accordance with varied national cultures.[54]

Key issues that all cultures have to address are how people work together and how they approach planning and problems. It is clear there is convergence across the major systems on some structural norms, for listed companies at any rate, that are widely seen to constitute 'good governance' (board committees, role of non-executive - increasingly independent - directors,[55] separation at the head of the company itself, increased reporting to shareholders). The very aim of 'improving corporate governance' is culturally constructed in a way that is reflected in varied national politics. The UK emphasis is on attracting (shareholder) investment while that of German politicians is more on employment, for example.

The fact that corporate structures (for example establishment of board committees, the roles of Chairman and possibly Chief Executive or equivalent) appear on paper to be comparable between the nations does not mean that individuals will react in the same way when it comes to making decisions. For example, where power distance and uncertainty avoidance are low, robust challenges to management ideas are likely but new ventures and new financial structures or production methods are unlikely to be long delayed (as in the UK listed sector). Where power distance and uncertainty avoidance are both noticeably higher (for example in France), there is far more likely to be stand-off and resistance to change. Somewhat more constructive engagement but a cautious approach to change could be expected in Germany, where power distance is lower but there is considerable uncertainty avoidance. In Italy, with high power distance and also higher acceptance of uncertainty, radical change may be agreed with less resistance but leadership is needed. In brief, what sounds a similar job description for directors may be understood in different ways by individuals from different cultural backgrounds.

Hofstede's other two key cultural dimensions of mastery/ harmony and individualism/ collectivism also have fairly obvious impacts on the working of board structures. More individualistic and 'mastery'-orientated cultures such as the UK and to an extent Italy are more likely to task individuals with important work and have them report back later. More collectivist and 'harmony'-seeking cultures such as France and to an extent Germany tend to work in groups to seek consensus. As to the substance of the directorial debates, the more harmony-seeking and collectivist the social and political context, it may be expected that the stakeholders will be considered. In an individualistic, mastery-orientated context, returns to shareholders as the measure would rank more highly.[56] Law can be expected to facilitate culturally preferred methods of working.

Company Law Characteristics in Germany, France, Italy and the UK

In the German case, the structure for the larger companies (AktienGesellschaften) has long been prescribed, there is relatively little protection for shareholders distinct from the decisions of the company itself and executive directors are constrained by a supervisory board. Seeking finance by public equity sale tends to come later in a company's life than in the UK and efforts to increase openness to takeovers of large companies have met with resistance.[57] Employees are an integral part of the system and suppliers are often closely networked with the major manufacturers, though perhaps customer focus has come more recently.

[53] G. Hertig, 'Convergence of Substantive Law and Convergence of Enforcement: a Comparison', in M.J. Roe (ed), *Convergence and Persistence in Corporate Governance*. Cambridge University Press, 2004, 328 at p. 346.

[54] M. Maclean et al, *supra* n. 51.

[55] e.g. European Commission Recommendation 2005/162 on the role of non-executive or supervisory directors and on the committees of the (supervisory) board

[56] C. Marinas and M. Condruz-Bacescu, 'Cultural Diversity and Human Resources Management in Europe', 10 *Review of International Comparative Management* 176 analyses the various dimensions.

[57] In April 2011 a new Federal 'Investor Protection and Capital Markets Improvements Act' was passed increasing disclosure to hinder 'stealth takeovers'.

The culture is egalitarian but with relatively high uncertainty avoidance, which makes the focus on organic growth and slow development of a shareowning culture unsurprising. As far as France is concerned, there is a history of more confrontational relationships between management and employees, with shareholders generally prepared to acknowledge PDG management rights and participate with the State and other stakeholders in major business development for the national benefit. There is a more diversified and flexible approach ranging from privatised companies and other 'national champions' with increased political intervention again since the 2007 financial crisis.[58] The manner of working is hierarchical and generally uncertainty-avoiding, so it is unsurprising that change comes from the top and cautiously. Once again the wider social space and economy (albeit with vigorous debate) are valued, which constrains market orientation.

Recent German company law developments include: provision for one vote per share, disclosure of individual remuneration of directors, introduction of supervisory board specialist committees for monitoring purposes and non-competition by board members – now on a basis of 'comply-or-explain', backed by legislation. Even so, Germany remains typified by "its productionist, long-term, consensus orientation and its low involvement of shareholders"59 in major corporate decisions. There is still a very strong bank orientation. Relatively little use is made of stock markets for business finance or personal investment.

France offers a choice of models for companies in one or two tiers of directors. There is still something of a structural and cultural divide between those organisations that originate from the public sector and purely private business. As rules change what is likely to be the effect? Privatisation and increased openness to takeovers, and indeed overseas investment, are arguably altering the business dynamic but gradually. Italy has a small number of board supervisors and little use is made of stock markets for finance, relative to the size of the economy. Bank importance and the spreading of risk beyond family and associates are major issues for industry. Niche markets are the destination without large-scale investment at an early stage. Global competition is making markets tough, hence the priority to firming of shareholder rights to reassure potential investors.

The UK recently aimed to make its somewhat Byzantine company law structures more user-friendly. The focus in terms of the Companies Act 2006 is on small companies, save where increased formality and disclosure are used to increase accountability (mainly to shareholders but also arguably to other key stakeholders). There is more direct access to the courts for shareholders[60] and a broader duty for directors to 'have regard to' the interests of stakeholders.[61] Nevertheless, the likelihood for directors of being held to account in court is low.

The diversity in the European Union is not simply a matter of a continental European model pitted against the UK 'Anglo-Saxon' model. Labour law and the participation of employees are particularly distinctive, even between neighbouring France and Germany.[62] Governmental involvement and strategies also vary. In accordance with a centralised and bureaucratic culture, the French government is willing to support sizeable national champions and to defend the place of small business in social contexts. Germany with a more federal political approach sees its role as a co-ordinator between the various interest groups. In Italy, without strong central state tradition, the approach to companies is more laissez-faire, with moves to being consciously facilitative, and blockholders (particularly families) are influential. The UK in the last few years has concentrated on trying to help markets function better (in particular by disclosure).

What have been the economic outcomes of the various models? Over the twentieth century, the largest "British companies have consistently generated higher profits than their French and German counterparts, and they have achieved higher rates of return on their shareholders' equity… The major weaknesses in the performance of big business have been a slower growth rate in a few sectors and, especially, a few spectacular failures [such as in motor car manufacturing] with no real equivalent in [France and Germany]."[63]

[58] 'Dirigisme de Regeur', The Economist, 30th December 2009.
[59] E. Kuhne and J. Fuss, 'Corporate Governance in Germany' in October 2003 *Business Law Review*, p. 226.
[60] Companies Act 2006 Part 11.
[61] Companies Act 2006 s. 172.
[62] M. Andenas and F. Wooldridge, *European Comparative Company Law*, Cambridge University Press, 2009, pp. 417-435 summarises the varying positions.
[63] Y. Cassis, *Big Business*, Oxford University Press, 1997, p. 223.

There are arguable links between levels of profit as returned to shareholders (perhaps at the expense of pay and protection for workers) and decline in manufacturing (where Britain had more confrontational relationships between management and workers and less motivated shopfloors than its continental neighbours). It does not follow from past performance in one location that the UK model is inevitably 'best' for the future across the European Union.

National Histories, Culture and Company Law

The modern (nineteenth Century) company started in the UK as the subject of the shareholders in sovereign general meeting, with directors as servants of investors. In Germany and subsequently in Italy, the directors gained more independence in practice as other interests were recognised too.64 However, the waning power of organised labour and increasing mobility of capital have changed the balance of power already.[65]

The historical background to the adoption of company laws in the various countries may be relevant to their place in national cultures. The French were early adopters of limited liability and separate legal personality. The British wanted to maintain a competitive advantage and law was early (by the mid-nineteenth Century) seen as a tool for business. The Germans came from the early background of social insurance and large-scale manufacturing specialisation.[66] The Italians came late to ideas of markets and diffuse share ownership. Current Italian and German systems came much later, after fracture of the political systems. Paradoxically perhaps, the nations that had a system virtually imposed on them (whether by political fiat, as in the case of Germany, or by capital flows, as in the case of Italy) and whose underlying cultures are having to adopt, may have ended up with systems better adapted to modern conditions than the older players.

All of the four legal systems under discussion would broadly agree that: "the supreme interest within the company is that of the 'company as a whole' and the attainment of the purposes of the company as a whole and of the company contract… while prejudice to the individual shareholder is allowed and allowable in the interests of the company as a whole, a concept which arguably embodies continuing interests (at least of shareholders and employees), it is ensured that such prejudice is not wanton or malicious but fair and justifiable by reference to reasonable necessity in those interests."67 What is considered 'reasonable' here, as ever, depends on cultural perspective. All of the major European systems are concerned with the protection of property rights, including those of shareholders. It is the proper sphere and scope of those rights and claims that may cause differences of view. Again the nature and objects of the 'company as a whole' still need to be worked out even if the form of words is one that lawyers from all the states concerned could broadly agree upon.

This more complex view of individuals operating within organisations has been supported by findings from recent identity research. It is also supported by more recent theoretical and empirical diversity research that goes beyond the visible differences of gender, race, and age to acknowledge that differences based on shared cognitive traits such as educational background and profession also exist.68 As the professional and managerial classes are mobile for education and work, their views may indeed come to be closer and to varying degrees they may, in turn, have influence on governments. Again, France and Germany are probably at the heart of these exchanges with British and Italian nationals far less likely to gain experience outside their home environments.

As noted, the key common features of corporate forms in all developed legal systems are taken by Hansmann and Kraakman to be: legal personality, limited liability, transferable shares and delegated management by a board of directors.[69] All of these characteristics effectively establish some distance between the investors and 'their' enterprise. The final shared characteristic is then stated by the authors as being investor 'ownership', in the sense of "the right to control the firm, and the right to receive the firm's net earnings."

[64] F. Galgano, 'The Allocation of Power and the Public Company in Europe' in Drury and Xuereb (eds.), *European Company Laws: A Comparative Approach*, Dartmouth, 1991, p. 90.
[65] F Galgano, *op cit*, p. 96.
[66] D. Milman, *National Company Law in a Globalized Market*, Edward Elgar, 2009.
[67] P. Xuereb 'Shareholder Rights, the Interests of the Enterprise and 'Reasonable Necessity' – A Comparative Review of French, Italian and English Law in Drury and Xuereb (eds.) n. 63 *supra*, p. 141 at p. 166.
[68] M. Phillips and S. Sackmann, 'Managing in an era of multiple cultures', 5(4) *Grazaidio Business Report*, 2002.
[69] H. Hansmann and R. Kraakman in R. Kraakman et al, *The Anatomy of Corporate Law*, Oxford University Press, 2nd edn 2009.

In fact shareholder rights of control are highly attenuated in the listed companies of every system we are examining. It is perhaps the shares of control and profit and the acceptance or otherwise of strong shareholder primacy that divide different systems most deeply.

Diverse strategies are of course possible for the reduction of agency costs (whether between directors and investors, or the majority and other shareholders). Regulation by rules or standards is only one possibility. Information on entry to the company and freedom of exit for shareholders is also important. Who can put the directors in place and remove them and who can start or stop the key decisions are other important issues. Some of the biggest remaining divergences are arguably in the spheres of remuneration as an incentive for directors and trusteeship, particularly of independent directors, for shareholders. Neither of these seems to have been particularly influential ideas in continental Europe compared with the UK. The European Union has recently 'nudged' with recommendations on corporate governance[70] but has no prescribed a process on remuneration let alone a uniform set of duties for directors in the EU.

Within a particular system, there is no need to use all of the possible strategies if one or two are effective to obtain the result that is politically and socially desired. Where use of absolute rules is quite weak, information and open markets may lead to the same kind of outcome (functional equivalence). Germany and the UK may be said to be the extreme examples of reliance on rules, at one end of the spectrum, and dependence on markets, at the other. The choice of strategy may well have developed in accordance with relevant cultural characteristics (e.g. avoidance or otherwise of uncertainty, preference for 'harmony' versus 'mastery'). The balance of acceptance of regulation in order to gain security, as against allowing choice on an informed basis, is variable. Where there is an element of protectionism the European Union is challenging this.

Adaptation and Change to Company Law

Relationships between business and government and other social actors shape the development of law to reflect business practice. The pace of change and its general direction (whether facilitative or constraining) is likely to be affected by these factors, which in turn are shaped by cultural dimensions. Where the culture is one of large power distance and strong uncertainty avoidance (as for example in France), one would expect change to be driven from the centre of government and cautious. Where there is large power distance and somewhat weaker uncertainty avoidance (as in Italy), one would expect developments to be largely top-down and somewhat quicker. Where there is smaller power distance and weak uncertainty avoidance (in the UK for example), one might expect change to be more consultative between business and government. In a culture of small power distance and stronger uncertainty avoidance (Germany is one such), the government and other actors may be expected to stall dramatic change. In general, these predictions are borne out by what has happened over the past 20 years or so. Corporate governance arrangements, particularly, have shifted quite slowly in France in response to initiatives of government; later but perhaps more noticeably for some companies in Italy; they moved relatively little in Germany save that shareholders are more empowered to take action in respect of directors.[71]

The attitudes of investors themselves to management and to investment choices are also shaped by their national cultures. Using once looking at the most sharply- differentiated cultural features within the EU, power distance and uncertainty avoidance, a few broad observations may be useful. With low power distance and low uncertainty avoidance, one might anticipate more short-term orientation of shareholders and faster ownership change. With high power distance and high uncertainty avoidance, less involvement and less risk-taking might be anticipated. UK investors and French investors respectively on the whole fit those patterns. In Germany, with low power distance and low uncertainty avoidance, it is perhaps to be expected that investors would co-operate with other stakeholders to secure unspectacular but sustained development. The Italian case of distance, but more flexibility, leaves open discretion for the management.[72]

[70] Including European Commission Recommendation Com 2004/913/EC and 2005/162/EC on remuneration of directors in listed companies supplemented by Com 2009/384/EC and Com 2009/3177.

[71] L. Enriques and P. Volpin, 'Corporate Governance Reforms in continental Europe', 21(1) *Journal of Economic Perspectives*, 2007, 117.

[72] See J. Franks, C. Mayer, P. Volpin and H. Wagner, 'The Life Cycle of Family Ownership: International Evidence' 27 October 2010, paper at denning.law.ox.ac/news/events_files/Family_Firm_Paper_27_October_2010.pdf.

Argubaly in continental Europe "institutional investors are increasingly converging on the basic characteristic of good corporate governance encompassing such areas as basic shareholder rights, independence of directors and presence of key board committees."[73] It is acknowledged that: "despite a good governance structure on paper, in practice controlling shareholders may effectively be able to disenfranchise the minority shareholders, and secondly, that in a family owned business, or other business with a controlling shareholder, the option to sell one's shares may not be either attractive or viable"[74] Variations in ownership structure shift the focus of the main company agency problem from that of dealing with shareholder/ management conflicts to one of dealing with conflicts between controlling shareholders and any minority holders. While some slow convergence does seem to be taking place among leading listed companies, the roots of the key differences again are culturally embedded.

In a low power distance, low uncertainty avoidance culture, such as the UK, it may be expected that the possible risks of delegation to management with the possibility of large rewards from success are embraced. With high power distance and high uncertainty avoidance, such as in France, greater concentration of holdings in the hands of families and of elite institutions whose main players are known to one another is unsurprising. Germany with low power distance but high uncertainty avoidance factors, might embrace managerial control but with strict checks and balances. Italy with high power distance but somewhat lower risk aversion might embrace managerial freedom if the people in power were known to investors.

Given the cultural variations, swift acceptance of the market model across the EU is highly improbable. Path dependency within nations is evident, often privileging other factors than economic 'efficiency'. "Patriotism or nationalism and its implications on (sic) the behaviour of government, management and large owners, as in France, or cosy and informal relations within various kinds of national groups and networks, as in Germany and Italy, constitute an obstacle to the full integration of the internal market… The Anglo-Saxon model of corporate governance, with public firms and diffuse ownership, seems more transparent and, for that reason and others, more compatible with the rules governing in principle the internal market than are the continental models."[75] Convergence toward the Anglo-Saxon model of corporate governance on that economic basis seems inevitable. Yet so far, this has not taken place in any dramatic way. European Union Recommendations since 2003 have been influenced by London Stock Exchange standards but there has been little binding legislation. In the substance of management decisions the continental European systems have not internalised the shareholder-ownership, property-maximisation argument.[76]

A cultural tendency towards 'universalism' as Trompenaars and Hampden-Turner term it, predicts that, if there is a clear code of practice in place on corporate governance matters, it will be followed by the vast majority of companies. This is generally more of a Northern European cultural trait. In Southern European nations that are often more 'particularistic' in general approach, unless rules are clear and very precisely enforced, there may be more of a tendency to treat individual cases on their merits. UK and German companies have indeed overwhelmingly fallen into line with expectations in the national codes of governance best practice.

The movement of influences across the English Channel and the North Sea is not one-way. While in continental Europe the ownership of major companies became somewhat more dispersed over the 1990s, UK ownership trends were towards rather greater concentration. On the one side, the Anglicisation of 'European' governance were "the growing power of institutional investors, an increasing number of hostile takeovers, the spread of stock option-based managerial compensation and increases in leverage through share buy-backs and higher dividends." UK governance in other respects has become rather more 'European' over the same period – in particular management has been separated from supervision by use of non-executive directors and the distinct role of the Chairman and the stakeholder perspective has attracted increasing attention in UK (as well as US) academic and practical literature.[77]

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[73] C. Mallin, *Corporate Governance*, Oxford University Press, 2009, p. 143.

[74] C. Mallin, *op cit*, p. 58.

[75] P. Salmon, 'Political Yardstick Competition and Corporate Governance in the European Union', European Public Choice Society paper, 2005, p. 20

[76] Dine, Koutsias and Blecher, *Company Law in the New Europe*, Edward Elgar, 2007, pp. 137-138.

[77] S. Thomsen, 'Convergence of Corporate Governance in the Stock Market Bubble: Towards Anglo-American or European Standards" in A. Grandori (ed) , *Corporate Governance and Firm Organization: Microfoundations and Structural Forms*, 2004, OUP, 297 at 313.

What Thomsen refers to as 'internationalization-by-ideas' has not, contrary to Hansmann and Kraakman's assumed 'logic', flowed only to spread US-style standards. It has rather been an exchange of practice.

Dispersed holdings with little incentive for direct monitoring but liquid capital markets characterise one possible corporate governance system, seen in the UK. Block holdings by banks or families, often networked between themselves, as in continental Europe, may enable shareholders to control management more directly but inhibit the possibility of takeovers.[78] "The efficiency approach [propounded by Profs. Frank Easterbrook and Daniel Fischel et al] tends towards the idea that the two rival systems of corporate governance have, through globalization, been put into competition with each other and the most efficient will ultimately win… former have a developed and liquid market for corporate control… The politics and path dependency approach [as set out by Prof J. Mark Roe et al], stresses that politics and path dependency will constrain convergence and so, broadly, the two systems will continue to exist alongside each other. As regards the legal protection of minority [shareholders] approach [or 'law matters' argument, put forward by Prof John C. Coffee et al], Coffee stresses the need for regulators to address the policy question of whether the Anglo-American approach should be adopted."[79] Voluntary use of facilities oversees by a few large companies does not necessarily justify, let alone compel, fundamental change to national regulatory systems.

Laws governing market capitalism are largely Anglo-American creations. It was the case for the introduction of a new category of shares, preference shares. Following such examples has made French corporate law more flexible. Nevertheless, requirements to bring an action (personal action or derivative action) are higher under the UK than French law. This is based on the common law principle of reluctance of the Courts to become involved in a company's internal management. "French courts consider that the company does not belong to the shareholders in the same way and does not serve only the investor interests. It includes also the interest of the employees, the creditors and consumers. The need to pursue and achieve a composite of all these interests gives a special mission to the judges. It explains the prohibition of the ratification of the wrong by shareholder's meeting and the possibility to bring a derivative action even if the shareholders would like to ratify the wrong."[80] In the UK a more restrictive line is taken if the shareholder majority view is clear. This perhaps sums up varied legal approaches, springing from very different cultural contexts.

Capital flows clash with the needs and desires of other business stakeholders. Greater openness to takeovers and relocations in particular, can have a major impact on local communities. Bauman argues: "Employees are recruited from the local population and - burdened as they might be by family duties, home ownership and the like - could not easily follow the company once it moves elsewhere. Suppliers have to deliver the supplies, and low transport costs give the local suppliers an advantage which disappears once the company changes its location… Among all the named candidates who have a say in the running of a company, only 'people who invest' - the shareholders - are in no way space-tied; they can buy any share in any stock exchange….
"And [on neoliberal arguments] it is to [shareholders], and to them only, that the company 'belongs'. It is up to them, therefore, to move the company wherever they spy out or anticipate a chance of higher dividends, leaving to all others - locally bound as they are - the task of wound-licking, damage-repair and waste disposal."[81] It is no wonder that continental European systems (despite the grave pressures on the nation state of which Bauman writes) resist the idea of shareholder 'ownership' in this untrammelled version. Employee participation and consideration of the social impact are important balancing factors in continental European systems.

Effective European Corporate Governance

As has been seen, similar structures do not necessarily produce comparable results in different settings. For example, where there is a cultural tendency towards high power distance and high uncertainty avoidance, as in France, one can expect the monitoring function of the company board to suffer through reluctance to challenge the PDG. Low power distance and low uncertainty avoidance, as seen for example in the UK, may aid the monitoring as non-executives may challenge decisions more readily.

[78] B. Pettet, *Company Law,* Longman, 2005, p. 55
[79] B. Pettet, *op cit*., p. 57.
[80] V. Leroy, 'Shareholder Rights in France and the UK' *EBLR* 205, pp. 236-237.
[81] Z. Bauman, *Postmodernity and its Discontents*, Polity, 1998, p. 8

Germany's combination of low power distance with high uncertainty avoidance could aid collaborative long term planning in companies, but might inhibit monitoring. Italy's high power distance and low uncertainty avoidance might in some respects be the worst of all worlds, inhibiting effective close monitoring without encouraging effective planning. Information flows are crucial to the success of any independent directors' input, whether in a one-tier or a two-tier system. The UK and Germany with low power distance are perhaps culturally the most open; greater uncertainty avoidance in Germany would indicate that this might be used to block possible moves to change, while in the UK there might be more encouragement to try new methods. Italy and France with culturally higher power distance may be expected to have more difficulty with some information flows. In fact, uncertainty avoidance in France seems to have encouraged moves to broader disclosure, where in Italy significant difficulties remained. European-level expectations on information are likely to assist good performance as well as mobility across the Single Market.

German AG law in addition to rights of the general meeting more specifically lays out the powers and duties of the management and supervisory board. This gives a somewhat more balanced picture of accountabilities than in the UK.[82] In Germany the employees have arguably more powerful information rights than shareholders. The notion that the company is also a public institution is enshrined in the legislation itself. Rights to appoint to the board are crucial and it remains more difficult to remove directors than under the English system. Shareholders have been accustomed to exercise their influence within the company structure, rather than by legal challenge or share sale.

Italian company law is again centred on the general meeting and the presumption is rather that there will be a shareholder or group controlling interest. While there is such a majority supporting management, even a large company is open to relatively little challenge. Employees of and suppliers to large companies expect to be the recipients of, rather than the participants in, major decisions but expect fair treatment. Moreover, third party interests may not be encompassed in the notion of "the interest of the company" but constitute a significant limitation on the discretionary powers of management and directors. A distinct committee of auditors has had a key oversight role in the traditional Italian system.[83] This has not prevented corruption in some major family-dominated businesses, notably Parmalat.

Company law in France has other characteristics that are worth wider European consideration. There is the choice for SAs between single tier and two tier board structures. Shareholders have key roles to play but must not abuse their position or usurp management. This can still lead to a significant concentration of power in the hands of the PDG.[84]

In Germany and Italy and France, a single blockholder controlled the majority of voting rights in over 50% of non-financial listed companies. (Ownership of the companies in the main indexes was unsurprisingly less concentrated). In the UK average largest blocks within companies are smaller: "no individual blockholder in general exerts dominant control; instead it can only come from coalitions of investors… A number of institutional investors hold 3-10% blocks and can jointly exercise a significant degree of voting power."[85] Where uncertainty avoidance and collectivism are strong traits in the national culture, investor involvement and shareholding concentration are predictable. The power they bring can then be wielded for family or associate benefit, or for community or national advantage.

From a political perspective, Gamble and Kelly[86] point out there is great diversity between different national systems and one has not driven out the rest, so far. They note: "One of the main differences in approach of national regimes… is between considering the company as a private association, which requires some regulation to satisfy the public interest, and considering it as a public body which has clearly defined public responsibilities and purposes." [87]

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[82] M. Andenas and F. Wooldridge, *supra* n. 62, pp. 307-320.
[83] M. Andenas and F. Wooldridge, *supra* n. 62, pp. 320-346.
[84] M. Andenas and F. Wooldridge, *supra* n. 62, pp. 286-297.
[85] F. Barca and M. Becht, *The Control of Corporate Europe*, 2001, OUP, p. 20.
[86] A. Gamble and G. Kelly, 'The Politics of the Company' in J. Parkinson, Gamble and Kelly (eds), *The Political Economy of the Company*, 2000, Hart: Oxford, p. 22
[87] A. Gamble and G. Kelly, 'The Politics of the Company' in J. Parkinson, Gamble and Kelly (eds), *The Political Economy of the Company*, 2000, Hart: Oxford, p. 27.

In Britain, the first of these views is clearly dominant. Any new regulatory measures are subject to very detailed scrutiny with much attention to business views. The latter view prevails in Germany and also elsewhere in continental Europe. Labour, management and investors have a fundamentally shared understanding of the connection of business to society.

Since the mid-1990s and earlier there has been convergence of governance arrangements and reporting between major international corporations. Such companies are few in number, if large in wealth and influence: Markarian et al looked at 75 in 1995 and 2002 to establish any changes. They found: "Regarding the convergence of governance practices… non-Anglo-Saxon firms have developed their governance practices towards promoting an independent mechanism of control, namely, smaller boards, more independent directors, less duality between the chairmanship and CEO roles, and more independent audit, nominating, and remuneration committees. This pattern is also observed for Anglo-Saxon firms."[88] In the European Union, focus on shareholder value is inevitable given international market influence. However, the 'social' model of corporate governance is an important 'check' on decisions which might damage capacity.[89]

As the above discussion has emphasised, beneath consideration of the structures, which may formally be alike, attention should be paid to the underlying values which guide decisions, and which remain distinctive in major European nations. If the culture is inherently collectivist or individualistic, high or low on uncertainty avoidance, for example, that will shape political choices which ought to be respected. It will also shape the conduct of individuals, on the shop floor or in the boardroom. The culture may also feed in to particular economic strengths. As the Commission considers responses to its recent Green Paper on the EU Corporate Governance Framework,[90] it should bear in mind all the advantages of the different systems. The paper was promising, in that emphasising engagement with shareholders and requiring detailed explanations for non-compliance with 'best practice' from Codes show a welcome balance between imposing discipline and enabling the pursuit of distinct corporate agendas across Europe.

[88] G. Markarian, A. Parnobetti and G. Previts, 'The Convergence of Governance and Disclosure Practices in the World's Largest Firms' 2007, 15(2) *Corporate Governance* 294 at 295.
[89] Y. Biondi et al, *The Firm as an Entity*, Routledge, 2007, pp. 370-371.
[90] COM2011 (164)