

Culture and Corporate Governance Convergence

This paper analyses the link between culture and corporate governance. In particular, it demonstrates the impact of culture in inhibiting convergence of corporate governance.

Overall, the paper provides an appraisal of corporate governance laws in stakeholder-oriented States that have endured market pressure for convergence. It reveals a strong propensity for cultural norms to dictate regulatory reforms. The paper illustrates that alterations towards shareholder-oriented model is mostly in areas where States seek to enhance transparency and accountability to attract capital as oppose to the assertion that shareholder-oriented model is more efficient. It advances the convergence debate by asserting the implications of social institutions on regulatory reform of corporate governance.

Keywords: Corporate governance, regulation, Culture, Convergence.

1. INTRODUCTION

The prominent view in the convergence of corporate governance debate contends that states are altering their corporate governance rules and practices towards the Anglo-American shareholder-oriented model¹ as opposed to a logical system, where the most effective best prevails.² The above view is based on the economic argument that the shareholder-oriented

¹ Mary O'Sullivan, "The Political Economy of Comparative Corporate Governance" Review of International Political Economy 10 (2003).

² Hall and Soskice (2001), *Variety of Capitalism: The Institutional Foundation of Comparative Advantage* (2001) Oxford University Press; P. Milgrom, and J. Roberts (1995) Complementarities and Fit: Structure and Organisational Chang in Manufacturing' (1995)19 Journal of Accounting and Economics 179.

model is most effective at allocating resources to the most efficient use.³ The diffusion of corporate governance codes originating from shareholder-oriented states around the world is also perceived as convergence towards this model.⁴ Furthermore, the fact that many more companies are listed on stock exchanges in the UK and US is viewed as a sign of superiority of their corporate governance system,⁵ though it is strongly argued that those who hold the view that convergence is moving towards the shareholders' model are from the US.⁶

Cultural and institutional factors are also pivotal in the outcome of corporate governance regulation.⁷ As Branson⁸ and Licht⁹ propositioned, diversity in cultural practices amongst states will ensure that corporate governance rules and practices remain divergent. Yet few studies have analyzed its impact on corporate governance convergence. Licht et al for instance examined if the law reflects cultural values, which has some implications for the convergence debate but the paper does not directly analyze the effect of culture on the convergence process.¹⁰ Haxhi and Ees¹¹ and Aguilera and Cuervo-Cazurra¹² studied the cultural and psychological aspects of the global diffusion of codes but not on rules and

³ H.B. Hansmann and R. H. Kraakman , 'The End of History for Corporate Law', (2001) 89 *Georgetown Law Journal* 439; R. Rajan and L. Zingales, 'The Greatest Reversals: The Politics of Financial Development in the 20th Century', (2003) 9 *Journal of Financial Economics* 5.

⁴ I. Haxhi and H.V. Ees, 'Explaining diversity in the worldwide diffusion of codes of good governance', (2010) 41 *Journal of International Business Studies* 710.

⁵ R.J. Gilson, R. J. 'Globalising corporate governance: Convergence of form or function', (2001) 49 *American Journal of Comparative Law* 329.

⁶ D.M. Branson, 'The Very Uncertain Prospect of "Global" Convergence in Corporate Governance' (2001) 34 *Cornell International Law Journal* 324; B.H. McDonnell, 'Convergence in Corporate Governance – Possible But Not Desirable' (2002), 47 *Villanova Law Review* 341.

⁷ J. Groenewegen, 'Who Should Control the Corporation? Insights from New and Original Institutional Economics' (2004) 38 *Journal of Economic Issues* 353; R. Aguilera and G. Jackson, 'The Cross-national Diversity of Corporate Governance: Dimensions and Determinants' (2003)28 *Academy of Management Review* 447.

⁸ Branson, *Op cit.*, n. 6

⁹ A. N. Licht, 'The Mother of All Path Dependencies – Towards a Cross-Cultural Theory of Corporate Governance Systems' (2001) 26 *Delaware Journal of Corporate Law* 147.

¹⁰ A.N. Licht et al., 'Culture, Law and Corporate Governance', (2005) 25 *International Review of Law and Economics* 229.

¹¹ Haxhi and Ees, *Op cit.*, n. 4

¹² R.V. Aguilera and A. Cuervo-Cazurra, 'Codes of good governance worldwide: What is the trigger?' (2004) 25 *Organization Studies* 415.

principles in stakeholders' states that have endured the convergence process and the direct role of culture in the divergence of corporate governance.

This paper is aimed at filling this gap by analyzing the relationship between cultural values and the convergence or divergence of corporate governance regulation in stakeholders-oriented states. As McDonnell states, "*most commentators have focused on efficiency to the exclusion of other values.*"¹³ Its aim is to project the cultural ideologies dictating the convergence or divergence of corporate governance regulation overlooked in the convergence debate. The paper also highlights other channels of influence in the convergence or divergence of corporate governance regulation other than the market and at firm level and illustrates the conscious efforts of states to restrict market forces interfering in their corporate cultural values through the enactment of rules and principles that are concurrent with national cultural norms.

In this regard, the paper analyses the corporate cultural values of six states in three different continents and illustrates the link between their cultural values and their corporate governance laws. For lucidity, we compare rules that have remained unaffected as a result of national cultural norms and rules and principles that have been altered via the market or at firm level as a result of globalization.

To that end, the following two sections examine the definition of culture and the cultural features of the shareholder-oriented model and differentiate them from defining features of the stakeholder-oriented model. The paper then analyses the impact of culture on the convergence of corporate governance in six countries with stakeholder-oriented model of corporate governance. The last section explains the effect that cultural differences amongst states play in the divergence of corporate governance regulation. In conclusion, it is argued that, while the market and foreign managers in stakeholders' states are influencing corporate

¹³ McDonnell, Op cit, n 6, p. 341.

governance rules and principles towards the shareholder-oriented model, the desire of states to maintain their cultural values and corporate ideologies would ensure that there is diversity of corporate governance models. Changes have typically occurred in areas of transparency and accountability where these states seek to attract capital, while rules and principles derived from core cultural features have remained unaltered.

11. Culture and Corporate Governance

1. Culture Defined

Culture is a complex concept with no consensus as to the exact meaning of the term. However, it is agreed to consist of shared values, belief system and behavioral norms by a group of people.¹⁴ It has also been defined as attitudes and practices shared by members of a collective, such as a community or a firm.¹⁵ Culture is also viewed as “*an integrated pattern of basic assumptions, values and artifacts that set the stage for action, belief and policy.*”¹⁶ This paper borrows from Salacuse and Frederick in defining culture as values, attitudes and norms that set the stage for action, belief and policy.¹⁷ This definition emphasizes culture as an institution that lays the ground rules around which state organs function and was chosen for this reason. It is often passed down from generation to generation and is usually easily accepted when it adds value to an organization.¹⁸

¹⁴ J.P. Kotter and J.L. Heskett, *Corporate Culture and Performance* (1992) The Free Press; D.A. Ralston et al., ‘Differences in Managerial Values: A Study of US, Hong Kong and PRC Managers’ (1993) 24 *Journal of International Business Studies* 249.

¹⁵ G. Hofstede, *Culture’s Consequence: Comparing Values, Behaviour, Institutions, and Organisations Across Nations*, (2003) Newbury Park, CA: Sage Publications.

¹⁶ W.C. Frederick, (1995), *Values Nature and Culture in the American Corporation*, Oxford University Press, p. 88

¹⁷ J.W. Salacuse, (1999), ‘Intercultural Negotiation in International Business’ (1999) 8 *Group Decision and Negotiation* 217; Frederick, *ibid.*

¹⁸ E.H. Schein, *The Corporate Cultural Survival Guide* (2009, New ed.) Wiley.

Values are the foundation of a culture as they shape attitudes and practices and are instrumental in the design of state rules.¹⁹ For instance, individualism and collectivism has been identified as core values affecting societal view of the objective of corporations.²⁰ Leaders, politicians, policy-makers, managers and individuals draw on their cultural values to select, evaluate and justify their actions.²¹

Thus, the paper utilizes the main corporate cultural values identified by scholars in each of the country in the study and examines their influence on corporate governance rules and principles through the creation of laws by the government that reflects these values. In order to contrast the cultural traits of the stakeholder-oriented model with the shareholder-oriented model, we identifying the cultural attributes of both models.

2. Cultural Attributes of the Dominant Models

There are a variety of corporate governance systems and models. Weimer and Pape identify up to four systems; the Anglo-Saxon system, the Germanic system, the Latin system and the Japanese system.²² However, two dominant corporate governance models, the Anglo-American shareholder-oriented model and the stakeholder-oriented model have eroded the rest and studies on convergence of corporate governance clearly indicate that these are the two models competing against each other.²³ In fact, reference to convergence towards the shareholder-oriented model is often an argument of the stakeholder-oriented model being substituted with the shareholder-oriented model. While this paper acknowledges the failure of convergence scholarship to look beyond these two models, for the simple reason that the two models are the most well established, the paper follows the same trend by utilizing

¹⁹ J.W. Salacuse, 'Corporate Governance, Culture and Convergence: Corporations American Style or With a European Touch' (2003) 9 *Law & Business Rev. Am* 33.

²⁰ F. Trompenaars and C. Hampden-Turner, *The Seven Cultures of Capitalisms*, (1993) London: Piatkus.

²¹ Litch et al., *op cit*, n 10.

²² J.Weimer and J.C. Pape, 'A Taxonomy of Systems of Corporate Governance', (1999) 7 *Corporate Governance: An International Review* 152.

²³ Hansmann and Kraakman, *Op cit*, n. 3

persistence of the stakeholder model as illustration of non-convergence towards the shareholder-oriented model. Moreover, cultural features of the stakeholder model are clearly in stark contrast to the shareholder model and illustrate divergence from shareholder model more clearly. Thus, it is pertinent to capture the main cultural features that distinguish shareholder model from the stakeholder model.

One of the main features that distinguish the shareholder model from the stakeholder model is their perceived objective of the firm. States with shareholder-oriented model such as US and UK are individualistic and the firm is managed for the interest of shareholders (Dore 2000).²⁴ As a result, there are robust legal mechanisms to ensure that shareholders' rights are effectively protected.²⁵ Take-overs are very common as underperforming companies are taken-over by more efficient companies. On the contrary, stakeholder-oriented states discourage hostile take-overs and shareholder driven stimulus. The stock market is not as developed and significant as a source of finance. This explains why changes in the corporate law of several stakeholder states towards the development of their stock markets are perceived as a movement towards the shareholder model.²⁶

Furthermore, in countries with stakeholder model, in keeping with their communitarian values where the company is managed for the interest of all stakeholders and not only for the interest of shareholders as in shareholder states,²⁷ employees play a significant role in the management of the firm through their representation on the board as in Germany and Japan.²⁸ The system promotes an equalitarian culture where corporations are managed for the good of all not just the maximization of profit for shareholders.

²⁴ R.P. Dore, *Stock Market Capitalism: Welfare Capitalism: Japan and German Versus the Anglo-Saxon* (2000) Oxford University Press: Oxford.

²⁵ R. La Porta et al, 'Corporate Ownership Around the World', (1999) 54 *Journal of Finance* 471.

²⁶ T. Khanna et al, 'Globalization and dissimilarities in corporate governance: A cross-country analysis' (2006) 88 *The Review of Economics and Statistics* 69.

²⁷ M.A. Witts, 'Convergence 10 Years on: Impact and Further Potential' (2008) 39 *Journal of International Business Studies* 47.

²⁸ Hofstede, op., n. 15

Stakeholders' states are also known to advance the long-term interest of the company as oppose to short term interest maximization synonymous with the shareholder-oriented model.²⁹

Table 1 Cultural Features of the two Dominant Corporate governance models

<i>Shareholder-oriented Model</i>	Cultural Features	<i>Stakeholder Oriented Model</i>
Individualism	Core Values	Communitarianism/ collectivism
Short term profit maximisation	Attitude	Long term value maximisation
No labour representation in decision- making	Norm	Involvement of labour in decision –making
No employees on boards	Action	Employee representatives on boards
Liberalism	Belief	Welfare
Private cupidity	Policy	Social responsibility

111. The Impact of National Culture on the Convergence of Corporate Governance

Regulation

This section of the paper examines the corporate cultural values of each country in the study and their impact on the corporate governance laws of the country. Corporate governance laws are scattered in different parts of a country's corporate law, general commercial codes, bankruptcy codes, financial regulation corporate governance codes and labor law.³⁰ Thus, an examination of corporate governance regulation would involve a dissection of all these

²⁹ T. Randal and J. Nielsen (2002) 'Company performance, corporate governance and CEO compensation in Morway and Sweden' (2002) 6 Journal of Management and Governance 57; K. William, 2000, 'From shareholder Value to present –day capitalism' (2000) 29 Economy and society 80.

³⁰ M. Roe, *Strong Managers, Weak Owners: The Political Roots of American Corporate Finance*. (1994) New Jersey: Princeton University Press.

different laws. An assessment of Germany and France in Europe is provided. As McDonnell asserts, most of the convergence literature has focused on wealthy countries in Europe, North America and part of East Asia.³¹ In this regard, this paper extends the convergence literature by including emerging economies in Africa.

1. *European Model*

Europe is the most studied continent in convergence literature especially Germany. For instance Lane³² analyses convergence in Germany and its effect on labor, while Sullivan examines convergence in France and Germany.³³ Others studies have examine changes in the German capital market and its ramifications for corporate governance in the country.³⁴

A few studies have also examined convergence in France and the many changes of government policies on corporations.³⁵

(a) France

As a socialist state, corporations in France are managed for the interest of all stakeholders, what is commonly known as social interest or '*l'intérêt social*'.³⁶ Traditional features of French corporate culture are: the stronghold of the state in corporate affairs through state ownership of corporate shares, heavy reliance on external debts for finance, elitism and labor

³¹ McDonnell, op cit., n. 6.

³² C. Lane, 'Changes in corporate governance of German corporations: Convergence to the Anglo-Saxon model?' (2003) 7 *Competition and Change* 79.

³³ O'Sullivan, op cit., n. 1.

³⁴ T, Edwards, 'Corporate governance, industrial relations and trends in company-level restructuring in Europe: Convergence towards the Anglo-American model?' (2004) 33 *Industrial Relations Journal* 518; G. Jackson and A. Moerke, 'Continuity and change in corporate governance: Comparing Germany and Japan' (2005) 3 *Corporate Governance: An International Review* 351.

³⁵ O'Sullivan, op cit., n.1; Edwards, op cit., n. 33; M. Goyer, 002. *The transformation of corporate governance in France and Germany: The role of workplace institutions*. (2002) MPIfG Working paper, No. 02/10. <http://hdl.handle.net/10419/44262>

³⁶ A. Couret, 'Interet social et responsabilite penale des dirigeants' (1996) 111 *Revue Francaise de Gestion* 76. A.J. Fanto, 'The transformation of French corporate governance and United States institutional investors' (1997) 21 *Brooklyn Journal of International Law* 1.

representation.³⁷ These features developed from the French ethics of collectivism, respect for authority and reinforcement of norms which are core values long implanted in French corporate culture and tradition.³⁸

Consequently, successive French rulers such as Louis XIV, Napoleon and leaders after the Second World War, instituted a centralized administration based on personal relationships and appointed leaders to carry out their policies in different areas including the corporate realm especially as most corporations were state-owned.³⁹ State ownership of firms also provided a medium for socialization and buttressing of French cultural values outlined by the government. The French generally do not trust private individuals to provide for public goods and the Jacobins had long instilled a tradition where the state caters for the general interest of society.⁴⁰ This explains the state's tight grip on ownership of corporations and the use of directors appointed from a close circle of elites to implement government policies.

Family ownership is also prevalent as well as block ownership and cross-shareholdings between firms owned by the same group of elites.⁴¹ Generally, family finance, the state and banks were the traditional sources of capital for large corporation. As a result the capital market was underdeveloped and was not a primary source of capital.⁴² It also developed an elite class consisting of former students of the two top universities in France often referred to as '*grandes ecoles*.'⁴³ They make up a majority of board members and are usually appointed through their affiliation with the president-directeur general (PDG) or their

³⁷ A.B. Antal and A. Sobczak, 'Corporate social responsibility in France: A mix of national traditions and international influences' (2007) 46 *Business and Society* 9-32; O'Sullivan, op cit., n. 1.

³⁸ H.M. Lubatkin et al, 'Origins of corporate governance in USA, Sweden and France' (2005) 26 *Organization Studies* 867.

³⁹ J. Barsoux, J. and P. Lawrence, *Management in France*, (1990) London: Cassell; G. Duby, 'L'Urbanisation dans l'histoire' (1973) 49 *Etudes Rurales* 10.

⁴⁰ B. Halba, 2003. Les facettes de la responsabilité sociale: Le cas du mécénat en France. Paper presented at the conference on *La Responsabilité Globale de l'Entreprise: Un Nouveau Modèle de Régulation?*, Audencia Nantes Ecole de Management, Nantes, France

⁴¹ A.J. Fanto 'Persuasion and resistance: The use of psychology by Anglo-American corporate governance advocates in France' (2002) 35 *Vanderbilt Journal of Transnational Law* 1041.

⁴² Ibid.

⁴³ J. Dupaquier and K. Kessler, *La Société Française au XIXe Siècle: Tradition, transition, transformation*. (1992) Paris: Fayard.

political leaning rather than their competence.⁴⁴ For instance in 1987, of the 20 largest corporations in France, members from the 'grandes ecoles' held chairmanship in 14 of them.⁴⁵

Furthermore, in line with the country's collective principle, post-war laws had traditionally involved employees in corporate management through the work council in private corporations with 50 or more employees. Successive governments have equally sort to preserve the stakeholder focus of corporations by active involvement of employees in management. Thus, in 1982, a law was passed that strengthened the rights of employees to be consulted in major restructuring of corporations. For instance, in the event of an eminent take-over, the "comite d'entreprise" must be consulted before the public is informed. Though in effect, elitism has prevented effective social dialogue between employees and management.⁴⁶ Corporations are equally required since 1977 to submit a social report (bilan social) to the government, to enable the state to monitor the standard of care provided by corporations to employees.⁴⁷

Major changes in French corporations that led to tendencies towards the shareholder model commenced in mid-1990s with the privatization of large state-owned enterprises and a reduction in state ownership of firms.⁴⁸ Before privatization, the state was the majority shareholder in firms and also had close connections with top corporate executives.⁴⁹ Other changes include the reorganization of the stock market and an increase in foreign institutional

⁴⁴ Lubatkin et al, op cit., n. 37.

⁴⁵ M. Bauer and B. Bertin-Mouro, *Les 200: Comment devient-on un grand patron?* (1987) Paris:Seuil.

⁴⁶ F. Chesnais, F. 1993. The French national system of innovation. In Nelson, R (ed.), *National innovation system: A comparative analysis* (1993) Oxford: OUP; J. Rogers and W. Streeck, *Works councils: Consultation, representation, and cooperation in industrial relations.* (1995) Chicago: University of Chicago Press.

⁴⁷ M. Urminsky, 'Rapports publics d'entreprises sur l'impact social de leurs activités' [Public reports of companies on the social impact of their activities]. (2003) *Education Ouvrière* 57.

⁴⁸ M. Goyer and B. Hancke, 2004. Labour in French corporate governance: The missing link. In Gospel, H. & Pendleton, A. (Eds.), *Corporate and labour management: An international comparison:* (2004) 173-196. Oxford: Oxford University Press.

⁴⁹ Edwards, Op cit., n. 34

investors.⁵⁰ There was also the reduction in corporate debt which transformed French corporations to one of the strongest financial firms in the G5.⁵¹

Vienot 1 and 11 Reports of 1995 and 1999 respectively equally recommended corporate governance principles similar to those in shareholders' states, such as the creation of the nomination, audit and remuneration committees. Vienot 11 also recommended that the conventional role of president directeur general (PDG) be held by different persons in companies with a unitary board and for independent directors to be included on boards.⁵²

Though, the above alterations indicate some element of regulatory convergence toward the shareholders' model, there are strong evidence to suggest that much of the cultural aspect of French corporate governance have been preserved. Changes have endured the government stronghold in corporations, conventional stable block of shareholders, employees' participation and elitism. For instance, to maintain government stronghold in corporations, and prevent corporate invasion by foreign firms, the privatization scheme allocated approximately 25% of shares to 10 larger shareholders.⁵³ These were mostly sold to a tight-knit group of French firms with same cross-shareholdings and interlocking boards made up of board members belonging to the "grandes ecoles."⁵⁴ According to Lubatkin et al, senior managers, directors and shareholders as well as government officials are all members of the same small group of elites controlling businesses and "as such it is difficult to see where national policy ends and firm strategies begin."⁵⁵

Moreover, though the stock market is more developed than it was in 1990 when corporate reforms commenced and there is diversification of sources of finance, ownership is

⁵⁰ Morin, F. 2000. 'A transformation in the French model of shareholding and management' (2000) 29 *Economy and Society* 36.

⁵¹ O'Sullivan, Op cit., n. 1.

⁵² M. Rubinstein, 'Le debat sur le gouvernement d'entreprise en France: n etat des lieux' (2002) 98 *Revue d'economie Industrielle*, 7.

⁵³ O'Sullivan, Op cit., n.1.

⁵⁴ Lubatkin et al, op cit. n. 37.

⁵⁵ *Ibid*, p.882.

still concentrated and the capital market is relatively underdeveloped compared to those in the UK and US.⁵⁶ In addition, the take-over law is more rigid compared to take-over laws in shareholders' states. A party launching a takeover bid must consult the workers' committee of the targeted firm for employees to comment if the takeover is hostile to them.⁵⁷ Though a negative report from the employees cannot legally prevent a takeover, negative publicity from labor may result in government intervention in the takeover.⁵⁸

Furthermore, the law continues to provide employees with mechanism to curtail shareholders' powers and participate in decision-making. For instance, labor law empowers employees' representatives to convene a shareholders' meeting and table resolutions if necessary. They can also appoint employees' representatives to attend shareholders meeting. Another point which equally suggests reluctance of the states to adopt shareholder-oriented rules and principles is the Veinot report. Though it recommends that boards should have at least three independent directors and separate the role of chairman and CEO, it points out very clearly that, French firms are already implementing these principles by themselves and the current corporate governance framework in France is working well for the country.⁵⁹ As Fanto mentions, the report is simple "*a continuation of the French law and tradition.*"⁶⁰ The only aspect of French traditional corporate governance feature that has been revamped is reliance on debt, where the stock market has been developed to serve as a source of finance to reduce reliance on debt capital. Thus, in order to attract external capital, rules on transparency and accountability were strengthened. For instance, the Besson Report calls for disclosure of individual executive remuneration as oppose to global disclosure. But even so, corporate governance reforms such as Vienot and Marini Reports advocate for reforms to reflect

⁵⁶ Fanto, Op cit., n. 36.

⁵⁷ Fanto, Op cit., no. 41.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid, p. 1070.

cultural values rather than replicating global trend. In fact, Vienot Report praised French firms for considering all stakeholders' interest.

Hence, alteration of French corporate governance laws towards the shareholders' model is improbable as successive government policies tend to preserve 'l'intérêt social' enshrined in French corporate culture.

(b) Germany

Germany, like France, is a prototype of a stakeholder-oriented model with a collective orientation towards profit maximization and strategic decision making to ensure the long term survival of the company. The collective nature of German corporate culture is reflected in its co-determination law. Co-determination restricts outsiders' control prevalent in shareholders' states by allocating seats to employees on the supervisory board.⁶¹ Consequently, co-determination is a strong part of Germany's corporate culture as a collective society as it ensures the protection of public interest.⁶² State intervention in addressing the agency problem is also emblematic of the German corporate governance model.

The collective nature of the German system also restricts excessive risk taking and high executive remuneration and promotes stability and long term survival of the corporation. The German corporate governance model also encourages a system of live employment and employees' dedication. Promotion to top positions within the ranks of the company is therefore a common feature of the German system.

A further traditional trait of the German corporate governance is the relative underdevelopment of its capital market compared to stock markets in shareholders' states. Hence, the market for corporate control is weak and takeovers rare.

⁶¹ C. Lane, *Industry and Society in Europe: Stability and Change in Britain, Germany and France* (1995) Aldershot: Edward Elgar; T. Heinze, 'Transformation des Deutschen Unternehmenskontroll-System?' (2001) 53 *Koelner Zeitschrift f. Soziologie und Sozialpsychologie* 641.

⁶² Jackson and Moerke, *Op cit.*, n. 34.

Ownership structure is also concentrated, while family ownership is very common in both medium and large firms. Cross-shareholding of non-financial firms is prevalent as is interlocking directorships.⁶³ Large national banks hold substantial shares in corporations and banks also exercise voting rights for smaller shareholders.⁶⁴

Internationalization of capital in Germany orchestrated changes towards the shareholders' model in certain areas. Lane identified similarities with the shareholders' model in the reorganization of the capital market and the increase in emphasis on maximizing shareholders' value.⁶⁵ The stock market has also been unified and privatized to create the Frankfurt stock market. A single regulatory body the Federal Authority was also created to supervise the financial market and rules on transparency and accountability were improved. There was also the adoption of international accounting standard and issuing of quarterly report.⁶⁶ In 2000, sixty-four of the top 100 companies had adopted international accounting standard.⁶⁷ In addition, rules restricting takeovers were removed.⁶⁸ Further, UK style self-regulatory corporate governance code was introduced in 2002 with recommendations for the creation of committees, in particular the audit and nomination committees.⁶⁹

Apart from the above changes signifying a shift towards shareholders' model, most of the defining cultural features of the German corporate governance system remain unaltered. This includes co-determination, the two-tier board system and collectivism as the principal objective of corporate enterprise. The government is also reluctant in instituting shareholders-

⁶³ P. Windolf, *Corporate networks in Europe and the United States*. (2002) Oxford: Oxford University Press.

⁶⁴ U. Juegens et al, 'Shareholder value in an adverse environment: The German case' (2000) 29 *Economy and Society* 54.

⁶⁵ Lane, *Op cit.*, n. 32.

⁶⁶ A. Ferner and M. Varul, *The Germany way, report for the Anglo-German foundation*. (1999) London: Anglo-German Foundation.

⁶⁷ M. Goyer, 'The transformation of corporate governance in France and Germany: The role of workplace institutions' (2002) MPIfG Working paper, No. 02/10. <http://hdl.handle.net/10419/44262>.

⁶⁸ Lane, *Op cit.*, n. 32.

⁶⁹ J.K. Hopt and P. Leyens, 'Board models in Europe – Recent developments of internal corporate governance structures in Germany, the United Kingdom, France and Italy' (2004) 1 *European Company and Financial Law* 135.

oriented rules. A case in point is the takeover law applicable from 2002, which allows target managers to set up anti-takeover defenses if it receives the support of 75% of shareholders or authorized in advance by the supervisory board. In synergy with German tradition, labor market reforms are pro-labor and the government is of the view that reforms must be consensual.

Despite the fact that Lane identifies ideological changes on the path of management towards Anglo-American model as a result of more managers being trained in the US and UK,⁷⁰ the state is reluctant to institute a cultural and ideological change. Historical accounts of the collective nature of German corporate governance traced as far back as the 1930s, indicates reluctance on the part of German governments to dismantle the collective system.⁷¹ During the crisis of 1931 and after the Second World War, the state was instrumental in directing corporate objectives and strategies and the outcome was the preservation of traditional values alongside modernization to protect public interest.⁷² For instance, the state in the past intervened in Gerling to preserve traditional company structure, in continental to prevent a takeover, in Allianz investment to speed up reconstruction and in Holzmann AEG to prevent bankruptcy.⁷³ As a result, German organized capitalism is a blend of market practices and state intervention.⁷⁴ As Hopner states, “traditional and modern, liberal and non-liberal elements always co-exist.”⁷⁵

Considering that the German system is inflexible and resistant to change, regulation instigating convergence towards the shareholder model is highly questionable. Core German

⁷⁰ Lane, Op cit., n. 32.

⁷¹ M. Hopner, ‘What connects industrial relations and corporate governance?. Explaining institutional complementarity’ (2005) 3 Socio-Economic Review 331; S. Vitols, The origins of bank-based financial systems: Germany, Japan ,and the United States. In Streech W. and Yamamura K. (Eds.), *The origins of nonliberal capitalism, Germany and Japan in comparison (2001)* 171-199. Ithaca and London: Cornell University Press.

⁷² W. Streeck, *The transformation of corporate organisation in Europe: An overview.* (2001) MPIfG Working Paper 2001-08, Cologne, Max Planck Institute for the Study of Societies.

⁷³ J. Beyer, J. 2002, ‘Deutschland aga.D. deutsche bank, allianz und das verflechtungszentrum grober deutscher unternehmen’ (2002) MPIfG Working Paper 2002-4, Cologne, Max-Planck-Institute for the Study of Societies.

⁷⁴ Ibid.

⁷⁵ Hopner, Op cit., n. 71, p. 343.

distinguishing corporate cultural values such as co-determination, consensus decision making, employee participation and collectivism continue to define corporate governance laws in Germany.

2. Asian Model

In Asia, Japan is the most studied country in convergence literature for the obvious reason that it is an archetype of the stakeholder model. Japan is also the World's third largest economy having just been surpassed by China in 2010. As the two countries seek to maintain their superior economic status and in the case of China integrate into the World economic order, these two countries are good testing grounds for the effect of culture on the convergence or divergence of corporate governance.

(a) Japan

The core value of communitarianism in Japan has shaped its corporate governance rules for almost a century and continues to be a major factor in Japan's corporate governance reform. As a collective nation, the ideology of the firm as a family unit for the benefit of the community rather than the maximization of profits for individual shareholders is a hallmark of Japan's corporate governance model.⁷⁶ Unlike in shareholders' states where the law is designed to coerce performance of contracts, in Japan, the use of legal mechanisms in enforcing contracts is noticeably absent as the system has built a strong reputation of

⁷⁶ J. Sarra and M. Nakahigashi 'Balancing Social and Corporate Culture in the Global Economy: The Evolution of Japanese Corporate Structure and Norms' (2002) 24 Law and Policy 299.

cooperation and trust.⁷⁷ Cooperation and harmony in Japan's economic dealings is associated with Confucius beliefs shared by the Japanese people.⁷⁸

Banks as the main source of capital rather than the stock market is also an important facet of Japan's corporate governance model. The Keiretsu system where interlocking web of banks act as lenders and monitors and often intervene to prevent corporate collapse is entrenched in Japanese corporate cultural.

Equally, in order to guarantee the protection of different stakeholders in the corporation, the culture of lifetime employment and employees participation through board membership is a strong corporate practice in Japan.⁷⁹ In concurrence with the norm of rewarding loyalty of employees, Board members were selected from within the company amongst senior managers who have served in the corporation for long periods.⁸⁰ Life-time employment which developed following unrest after the Second World War is a strong feature Japan's corporate culture, which values human capital as much as equity capital.⁸¹ In return, employees feel valued and motivated to improve performance as they consider themselves to be equal partners and residual claimants of the corporation.

In the past decade, Japan has revised its Commercial Code which became applicable in 2003. The Code provides firms with the option of adopting an Anglo-American model of corporate governance with increase use of outside directors and the creation of the role of executive officer. It also reviewed its Audit Special Exception Code (ASEC) of 2002, which codified corporate law in the country. The ASEC allows firms to opt for Anglo-American

⁷⁷ D. Broiles, 'When myths collide: An analysis of conflicting U.S.-Japanese views on economics, law and values' (1994) 1 Tex. Wesleyan Law Review 109.

⁷⁸ J.C. Milhaupt, 'A relational theory of Japanese corporate governance: Contracts, culture, and the rule of law' (1996) 37 Harvard International Law Journal 3; R. Dore, 'Goodwill and the Spirit of Market Capitalism' (1983) 34 The British Journal of Sociology 459.

⁷⁹ Sarra and Nakahigashi, Op cit., n. 76

⁸⁰ R.J. Gilson and C.J. Milhaupt, 'Choice as regulatory reform: The case of Japanese corporate governance' (2005) 53 The American Journal of Comparative Law 343.

⁸¹ Z. Shishido, 'Japanese corporate governance: The hidden problems of corporate law and their solution' (2000) 25 Delaware Journal of Corporate Law 189.

style boards with the nomination, audit and remuneration committees. Nevertheless, Japan has retained most of its cultural values and attributes. For instance, the ideology of the firm as a family unit for the benefit of the community still persists.⁸² Even in instances where shareholder-oriented style of governance is being instituted, it is done within the framework of Japanese culture. As an illustration, the Commercial Code skillfully incorporated employee's interest as the Act on the Continuance of Employment Contract provides employees with a voice in decision making to ensure that their rights are firmly protected.⁸³

In addition, the law does not require the inclusion of independent directors on the board as recommended by most codes on corporate governance. Equally, unlike in shareholders' state, independence is widely defined, to permit executive directors to seat on the board and the three committees, to protect the interest of employees.⁸⁴

Furthermore, the dual role of the board as a mechanism in charge of management and oversight is retained by the Commercial code in line with the Japanese corporate culture. It did not recommend a clear separation of the two roles as in shareholder-oriented states. In sum, Japan is creating a hybrid that incorporates certain shareholder-oriented principles they believe would enhance investment, but vividly illustrate their reluctance to embrace the shareholder culture. The commercial Code was drafted to accommodate their cultural beliefs of communitarianism and protecting employees' interest. If the argument by Shishido⁸⁵ that corporate governance changes in Japan is more as a result of "policy push" than "demand pull" continues to hold true, then the advantages of shareholder-oriented system against preserving the statusquo must be shown to be beneficial to all stakeholders and not just the market before it is imbedded into the corporate law of Japan.

⁸² Sarra and Nakahigashi, *Op cit.*, n. 76.

⁸³ Sarra and Nakahigashi, *Op cit.*, n. 76.

⁸⁴ W. McCarty, and M. Todo, 'Corporate governance in Japan: Can you see the changes? (2005) 2 The Josai Journal of Business Administration 1.

⁸⁵ Z. Shishido, 'Reform in Japanese corporate law and corporate governance: Current changes in historical perspective' (1999) 49 *American Journal of Comparative Law* 653.

(b) China

As in the case of Japan, core corporate values is embedded in Chinese socialist principles. Socialist traditions and values direct government's economic policy and formal rules.⁸⁶ Chinese socialism is also inexplicably bounded in Confucianism. Confucianism places individuals into a family order and everyone under the control of the state.⁸⁷ Its hallmark is developing a harmonious social structure where morality and relationship (guanxi) strives.⁸⁸ Managers are expected to be exemplary (Junzi) and epitomize honesty, hard work, respect for others, loyalty, fairness, modesty and frugality.⁸⁹ Also, empirical research suggests that collectivist values are part of Chinese corporate culture and a value shared by companies.⁹⁰ In concurrence with its socialist policy, companies are state-owned and controlled by the government.⁹¹ State-owned enterprises (SOE) are managed to maximize wealth for the state as oppose to profits for the company itself.

However, China's quest for global economic dominance led to economic transformation in the last two decades. In 2001 China became a member of the World Trade Organization. In August 2001, the Chinese Securities Regulatory Commission issued a Guidance Opinions on the Establishment of an Independent Directors System in Listed Companies regulating the internal affairs of firms listed on Chinese stock exchanges and provides for independent directors. The law is viewed as originating from the US corporate

⁸⁶ X. Pan, et al, 'Performance of domestic and foreign-invested enterprises in China' (2006) 41 *Journal of World Business* 261.

⁸⁷ G.G. Hamilton, 'Patriarchy, patrimonialism, and filial piety: A comparison with China and Western Europe' (1999) 41 *British Journal of Sociology* 77.

⁸⁸ P. K Ip, 2009 'Is confucianism good for business ethics in China?' (2009) 88 *Journal of Business Ethics*, 463.
⁸⁹ Ibid.

⁹⁰ D. A. Ralston et al., 'The cosmopolitan Chinese manager: Findings of a study on management values across the six regions of China' (1996) 2 *Journal of International Management* 79.

⁹¹ D. C. Clarke, 'Corporate Governance in China: An Overview' (2003) 14 *China Economic Review* 494.

governance law and perceived by some researcher as convergence towards Anglo-Saxon principles.⁹²

SOE have also been partial privatized and the economy is moving away from a centrally planned economy to a market economy. The stock market was reorganized to attract capital. Modernization reforms also permitted some SOE to introduce western-style corporate structure and management system.⁹³

While the above changes have ushered in certain shareholder-oriented principles such as recommendation for independent directors to be appointed on boards, modernization and the pursuit of profits is balanced with Chinese socialist and Confucianism principles. For instance, the government preferred a two-tier board system akin to the social norms of the state rather than a one-tier board system common in the shareholders' states. A supervisory board similar to the supervisory board in Germany is mandatory for all JSCs (Article 126 of the Company Law). Further evidence of non-convergence is reflected in the 2005 report of the Assets Supervision and Administration Commission of the States Council (SASAC) which put forward guidelines (Guiding Opinion on strengthening the Building of Corporate Culture in Centrally Controlled Corporations) on corporate culture that SOE should follow.⁹⁴ The text echoes the need to strengthen socialism and build loyal Chinese citizens. Equally, companies are still predominantly state-owned or collectively owned by villages and townships even with the burgeoning of the stock market.⁹⁵

⁹² I. MacNeil, 'Adaptation and convergence on corporate governance: The case of Chinese listed companies' (2002) 2 *Journal of Corporate Law Studies* 290.

⁹³ D. Xu et al, 2006. 'Performance of domestic and foreign-invested enterprises in China' (2006) 41 *Journal of World Business* 261.

⁹⁴ C. Hawes, 'Representing corporate culture in China: Official, academic and corporate perspectives' (2008) 59 *The China Journal* 33.

⁹⁵ D.A. Ralston et al, 'The impact of national culture and economic ideology on managerial work values: A study of the United States, Russia, Japan and China' (2008) 39 *Journal of International Business Studies* 8.

Considering that China is a nation where the state is suspicious of organized activities not monitored by the government⁹⁶ and is distrustful of wealth accumulation by individuals for fear of opposition from a powerful capitalist class,⁹⁷ it is questionable that they will adopt a system that is highly individualistic and create wealthy powerful men who can influence the people.

Events elsewhere also indicate that China is less likely to easily dismantle Confucianism values. Like the US government effort to spread neo-liberal policies, Chinese government is also spreading Confucianism through branches of Confucius Institutes present in all major universities in the World. Some scholars have openly expressed worries over the 350 Confucianist centres around the World in the past eight years. In 2012, the Chinese Ambassador to London responded to a comment made by Professor Christopher Hughes, of the London School of Economics expressing worries about the spread of Confucianism by stating that: *“I think the evidence is overwhelming that the Confucius Institute does not measure up [to the new ethics code], because it is openly declared to be a propaganda organisation by the Chinese government.”*⁹⁸

It is therefore evident that economic modernization and corporate governance regulation would continue to be implemented within the framework of Confucian values of collectivism and relationship, thus impeding convergence.

⁹⁶ A. Saich, 'Negotiating the state: The development of social organization in China' (2000) 161 *The China Quarterly* 124.

⁹⁷ B. Dickson, *Capitalists in China: The arty, private entrepreneurs, and prospects for political change*. (2003) Cambridge: Cambridge University Press.

⁹⁸ T. Branigan, 'Chinese Ambassador Attacks 'Cold War Fears over Confucius Institute', , *The Guardian* at [guardian.co.uk](http://www.guardian.co.uk), Friday, 15 June, 2012 at SOAS website at <http://www.soas.ac.uk/lci/>. Last accessed on the 16th of May 2013.

3. *AFRICAN Model*

In the case of Africa, the paper examines South Africa and Nigeria. South Africa because it initiated corporate governance reforms in Africa with the King's Report in 1994 and Nigeria because it is the emerging giant of Africa with a growing stock market and its quest of global recognition.

(a) South Africa

South African culture recognizes the imperative of working together in developing the community as oppose to individual gain. The 'ubuntu' belief system guides the attitude and behavior of South Africans and is the measuring rod for standard practice and policy.⁹⁹ Ubuntu embodies the values of caring, harmony, hospitality, respect and responsiveness.¹⁰⁰ It envisages a community where there is solidarity and caring for one another. A society where there is reciprocity and subjection of self and the virtue of symbiosis.¹⁰¹ Employees are expected to treat each other as brothers and sisters rather than colleagues (Ahiazu, 1986).¹⁰² Relation is therefore very important as a tool for team building and effective communication in the workplace. Decisions are reached through a consensus as oppose to an individual making decisions for the group.¹⁰³ Consultation, consensus and consent are the hallmark in decision-making to keep the peace and maintain stability in corporations.¹⁰⁴ South African culture therefore promotes an inclusive approach and abhors exclusion.¹⁰⁵

⁹⁹ P.M. Mangaliso, 'Building competitive advantage from ubuntu: Management lessons from South Africa' (2001) 15 *Academy of Management Executive* 23.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² A.I. Ahiazu, 'The African thought-system and the work behaviour of the African industrial man' (1986) 16 *International Studies of Management and Organizations* 37.

¹⁰³ R. Emerson, *From empire to nation: The rise of self-assertion of Asian and African peoples* (1960). Cambridge: Harvard Uni. Press.

¹⁰⁴ A. Adebayor, 1993. *African within the World: beyond dispossession and dependence* (1993) Zed books.

¹⁰⁵ Ibid.

'Ubuntu' also prefers social wellbeing to technical rationality.¹⁰⁶ It seeks to optimize efficiency rather than maximize it. In this respect, corporate objectives supported by all stakeholders are more important than what directors believe would maximize firm value.¹⁰⁷

Major corporate governance reforms in South Africa began with the issue of the King's Report, which is largely an imitation of the UK corporate governance code and thus was more shareholder-oriented. Though the code adopted an inclusive stakeholders approach to complement its communal values and norms, in practice it does not provide mechanisms through which other stakeholders such as employees can exercise control over corporate affairs.¹⁰⁸ For instance, employees are not allocated seats on the unitary board opted for by the code.

The code equally recommends that the board should comprise of executive and non-executive directors and for boards to have specialized committees, akin to the UK corporate governance code. In spite of the fact that the code does not directly make provisions for participation by other stakeholders, the Second King's Report is slowly drifting away from the shareholder-oriented model by urging corporations to permit other stakeholders to participate in decision-making. Corporate affairs in what it refers to in page 7 as a "*participative corporate governance system.*"¹⁰⁹ In this regard, paragraph 2.2 recommends that South African companies should consider the country's demography in the composition of the board. This is to ensure that minority groups such as poor black South Africans and women are represented.¹¹⁰ Therefore, second King's Report extends the inclusive approach in the first King's Report and by the same token recognizes the collective nature of South

¹⁰⁶ Mangaliso, Op cit., n. 99.

¹⁰⁷ Mangaliso, Op cit., n. 99.

¹⁰⁸ M. Vaughn and L.R. Verstgen, 'Corporate Governance in South Africa: A Bellwether for the Continent?', (2006) 14 Corporate Governance: An International Review 504.

¹⁰⁹ G.J. Rossouw, 'Business ethics and corporate governance in the Second King Report: Farsighted or futile?' (2002) 67 Koers 405.

¹¹⁰ N-P Swartz, and S. Firer, 'Board structure and intellectual capital performance in South Africa' (2005) 13 Meditari Accountancy Research 145.

African culture and the need to defend the cultural values of the society above the demands of shareholders.

Second King's report indicates a shift in favor of cultural values and the need for regulation to reflect those values. As the King Report itself admits, cultural values in South Africa play a crucial role in corporate governance and are considered more important than attracting foreign direct investment and converging towards western model.

(b) Nigeria

Traditionally, Nigeria is a communitarian society with strong respect for family and regard for large and extended family.¹¹¹ The country is also made up of devout worshippers of God, irrespective of the inclination towards different religious groups.¹¹² As Amah states, peoples' thought process are mystical, based on the actions of the gods, and the spirits.¹¹³ However, while the local norms reflect a society with the fear of God, in practice, these values have been replaced with greed and corruption and an obsession with wealth. No one questions how wealth is acquired, including the government and everyone aspires to get rich fast.¹¹⁴ This attitude is particularly viewed as permissible because handwork, competence and dedication are not rewarded.¹¹⁵ Individuals seek quick returns and are motivated by money than anything else.¹¹⁶

Corporate governance in Nigeria is regulated by the Companies and Allied Matters Act 1990 and the Nigerian Corporate Governance Code of 2003. Both are modeled on the

¹¹¹ E. Amah, 'Corporate culture and organizational effectiveness: A study of the Nigerian banking industry' (2012) 4 *European Journal of Business and Management* 212.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid,

UK Companies Act of 1948,¹¹⁷ and UK Corporate Governance Code.¹¹⁸ In line with the UK system it is shareholder-oriented with profit maximization as the overriding goal and has evolved to resemble the US contractarian model.¹¹⁹ Nigeria is the only Sub-Saharan African country with a corporate governance code that does not adopt an inclusive approach contrary to strong evidence that it is the most effective approach for African countries.¹²⁰

An empirical study on determinants of corporate governance regulation in Nigeria suggests that neither the old culture of sharing nor the new culture of greed has influenced corporate governance regulation in Nigeria.¹²¹ According to Adegbite et al, external influence from colonial past and pressure from World Bank, IMF and OECD are the main sources influencing convergence of Nigeria's corporate governance rules towards the shareholder model.¹²² External pressure has diluted internal norms and regulators find themselves powerless in the presence of powerful external actors who wield strong economic and political powers as a result of loans granted to Nigeria. As one interviewee in a study by Adegbite et al laments, *"during local conferences organized by the World Bank as well as these American oriented bodies, these guys won't even give one room to query what they say, they would just tell us that these are the best practices and that we must adopt them, in order to attract investments – more or less like a bully."*¹²³ Lack of domestic voice or stakeholders'

¹¹⁷ A. Guobadia 'Protecting minority and public interests in Nigeria company law: The corporate affairs commission as a corporate ombudsman' in F. McMillan (Ed.), *International Company Law Annual* (2000) p. 179-100. Oxford: Hart Publishing.

¹¹⁸ E. Adegbite et al, 'Multiple Influences on Corporate Governance Practice in Nigeria: Agents, Strategies and Implications', (2013) 22 *International Business Review* 524.

¹¹⁹ L.I. Fannon, *Working within two kind of capitalism: Corporate governance and employee stakeholding: US and EU perspectives.*(2003) Oxford-Portland: Hart Publishing; B. Ahunwan, 'Corporate governance in Nigeria' (2002) 37 *Journal of Business Ethics* 269.

¹²⁰ G.J. Roussouw, 'Business ethics and corporate governance in Africa' (2005) 44 *Business and Society* 94; R. Ntongho, 'Self-Regulation of corporate governance in Africa: Following the bandwagon?' (2009) 20 *International Company and Commercial Law Review* 427.

¹²¹ Adegbite, Amaeshi and Nakajima, Op cit., n. 118.

¹²² Ibid.

¹²³ Ibid, p. 8-9.

participation is aggravated by high rate of corruption, political instability, weak judiciary and bad leadership.¹²⁴

Nonetheless, popular opinion from within the country from scholars and businesses indicates a preference for a stakeholder system. For instance, a member of the drafting committee of the 2003 Corporate Governance Code regrets that the code adopts the shareholder-oriented model in this comment: “...*The World Bank, IMF and OECD are very influential in shaping corporate governance in Nigeria. However, some of us wanted it to be more stakeholder-oriented like Japan, which is considered to suit our environment better. In this regard the efforts of the AfDB (African Development Bank) are very welcoming.*”¹²⁵ AfDB is advocating for a stakeholder approach, which it argues is more in turn with the culture and economic environment of Nigeria.

Unlike in the cases of the other countries in this study, Nigeria’s experience raises a pertinent issue of the failure of the state in diluting external pressure from donor organization. According to the commentator above, if they could successfully circumvent external pressure, they would have adopted the Japanese system which he felt is more suited to the Nigerian environment. Regulators in Nigeria therefore recognize the need to include local values and beliefs into the corporate governance framework but lack the potency to do so and therefore, unlike in countries with powerful governments, culture does not have any bearing on the corporate governance laws of Nigeria. But despite the current lack of cultural input in corporate governance rules in Nigeria, observations by directors and regulators as indicated by their statements above points to the fact that in future Nigeria may divert from the shareholder model as they become more independence of the World Bank, IMF, and OECD and the role of the AfDB in corporate governance intensifies. Also, the role of South Africa

¹²⁴ E. Adegbite and C. Nakajima, 2011. ‘Institutional determinants of good corporate governance: The case of Nigeria’ in E. Hutson, R. Sinkovics & J. Berrills (Eds.), *Firm-level Institutionalisation, Regionalism and Globalisation* (2011) pp. 379–396 Basingstoke: Palgrave MacMillan.

¹²⁵ Adegbite et al., Op cit., n.118, p. 11.

as the leading economic power in Africa and the fact that all other African countries with a corporate governance code are opting for an inclusive approach may equally induce divergence of Nigeria's corporate governance rules from the shareholders' model. This is evident in the timid move towards stakeholder model in the revised Code of 2011 which urges the board of directors in Part B, Section 2.2 to equally protect and enhance shareholder values as well as to meet the company's obligation towards employees and shareholders.¹²⁶

IV. CULTURE AS AN ANTIDOTE TO CONVERGENCE OF CORPORATE GOVERNANCE REGULATION

The foregoing country studies suggest that culture is a strong determinant of corporate governance regulation and would preserve diversity of corporate governance rules and principles. For instance, changes in corporate governance laws in France indicate reluctance on the part of the government to institute a shift towards shareholder-oriented model. In Germany, though the stock market is growing and there is a substantial shift in intercompany shareholdings and bank-industry relationship, the traditional co-determination system remains unaltered. China and Japan are equally maintaining their communitarian values which are inhibiting convergence towards shareholder-oriented model. In Africa, the pressure for the shareholders' system is gradually being resisted by South Africa and in Nigeria; domestic support for shareholder-oriented model is weak.

In terms of legal reform, alteration of corporate governance regulation can be observed in similar areas. These are areas where states seek greater accountability and transparency to enhance foreign direct investment such as the stock market, board composition, disclosure and auditing rules. This conclusion is supported by Yoshikawa and Rasheed who argue that

¹²⁶ Adegbite and Nakajima, Op cit, n. 124.

corporate governance changes are attributable to the quest for greater efficiency and legitimacy in the capital markets.¹²⁷

It is also worth noting that the efficiency arguments in support of convergence towards shareholders' model were written during the boom years in the US and UK, when the World was fascinated with the free market. The recent financial crisis exposed some of the drawbacks of the shareholders' model and gave rise to its re-examination. The shareholders' model is therefore less attractive than it was before 2008 when the crisis began as the negative impact of the crisis was more severe in shareholders' states such as the UK and US than stakeholders' states such as Germany. Thus, stakeholders' states would very cautious in adopting certain aspect of the shareholders' model as they did in the past. The recent cap of executive remuneration by the EU is an illustration of a shift towards stakeholders' model. The UK was alone in opposing the cap. The EU cap instigates an acknowledgment of the some of the weaknesses of the shareholders' model.

Conversely, laws on the core cultural defining aspects of corporate governance such as objectives of the firm, employee participation in decision-making and internal selection mechanisms have remained unchanged.

Considering that a combination of economic, socio-cultural and political factors influence the design of corporate governance regulation, without political authority for convergence by individual states, convergence to any one particular model is improbable.

In addition, studies on cultural evolution in East-Central Europe and the World Values Survey on several countries around the World indicate that culture changes very slowly and would often do so only after a phenomenal set of events.¹²⁸ In other to compete for global

¹²⁷ T. Yoshikawa and A.A. Rasheed, 'Convergence of Corporate Governance: Critical Review and Future Directions' (2009) 17 *Corporate Governance: An International Review* 388.

¹²⁸ S.Schwartz et al, 'Value Adaptation to the Impossible and Collapse of Communist Regimes in East-Central Europe' in A.R. Stanley and J. Duckitt, (Eds.) *Political Psychology: Cultural and Cross-Cultural Foundations* (2000). New York University Press; R. Inglehart and W. Baker, 2000. 'Modernization, cultural change, and the persistence of traditional values' (2000) 65 *American Sociological Review* 19.

capital, states have restructured their rules on transparency, accountability and securities. However, the desire to maintain their cherished cultural values is impeding corporate governance convergence. Therefore, cultural differences amongst states may prove to be the antidote towards convergence.

Culture has largely been overlooked in convergence literature in concluding that convergence towards the shareholder model is eminent. This paper argues that contrary to the view that the shareholder model would usurp all other models of corporate governance, cultural differences amongst states would prevent such an eventuality. States are resisting change in corporate regulation that contradicts their corporate culture and are inclined to preserve the status quo. Political authority for convergence is weak vis-à-vis market forces as policy makers are not only influenced by market forces but equally take into consideration domestic realities.

Furthermore, the firm is not solely an economic entity, and is often defined based on cultural values. For instance Redding and Whitley view the firm in Asian culture as a “socially contextual phenomenon varying across cultures and historical periods.”¹²⁹

Thus, this paper highlights lack of political will for convergence. With the exception of Nigeria, successive governments in our selected country studies are taking measures to preserve their corporate culture and ideology, indicating lack of support from national governments for complete alteration of national corporate governance principles.

The paper also supports the assertion that convergence of corporate governance is more functional than formal. At firm level, the study indicates the importance of recognizing respective cultural norms of individual states by multinational companies as oppose to

¹²⁹ G. Redding and R. Whitley, ‘Beyond bureaucracy: Towards a comparative analysis of forms of economic resource co-ordination and control’ in Clegg, S.R. (Ed.), *Capitalism in Contrasting Cultures* (1990) pp. 79-104 at 101. New York: De Gruyter.

allowing the market to be the sole vehicle of firm practices as laws are embedded in cultural practices of states.

V. CONCLUSION

This paper demonstrates the link between cultural differences amongst states and its impact on divergence and convergence of corporate governance. It provides valuable theoretical contribution in understanding the effects of national cultural differences on the divergence of corporate governance regulation. It illustrates the desire of states to develop an effective corporate governance system within an already established social institution that would preserve domestic cultural values.

Cultural differences amongst states also provide us with an understanding of why convergence may be functional (similar practical rules) rather than formal (similar legal system being used) as states are willing to regulate the market in line with recent developments but not prepared to amend their economic philosophy. And while cultures change overtime (Ajiferunke and Boddeewyn, 1970), it will requires a phenomenal set of events or circumstances for a culture that has been enshrined and developed for generations to be uprooted and replaced by a model that is disputable to be more efficient.

History has indicated that economic consideration is not the only factor in influencing corporate governance regulation as political and cultural factors are equally pivotal and culture is proving to be a major mitigating factor against convergence of corporate governance rules and principles.