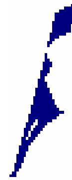
РАЗДЕЛ 1
НАУЧНЫЕ ИССЛЕДОВАНИЯ И КОНЦЕПЦИИ

SECTION 1
ACADEMIC INVESTIGATIONS & CONCEPTS



TOWARDS A CONVERGENCE OF THE SHAREHOLDER AND STAKEHOLDER MODELS

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Abstract

A new hybrid model of corporate governance seems to be emerging as a mixture of the shareholder and the stakeholder models. Its two main characteristics consist in an increased control of corporate executives by strong minority shareholders: this strengthened financial control is balanced by the rise of the social and environmental responsibilities of firms. This paper elaborates on this hypothesis and reviews the forces at work in this emerging process.

Keywords: models of corporate governance, convergence

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The evolution of corporate government models has been a controversial question over the last decade. While researchers in law, sociology or economics consider that national models will probably keep their distinctive characteristics (e.g. Roe, 1990, 1994), others conclude that national models are in the process of converging towards the American model of corporate governance (Berger and Dore, 1991, Useem, 1993, 1998, Morin, 1998, Streeck and Höpner, 2003).

In this paper, we argue that national models may converge on an alternative model of corporate governance, the characteristics of which may be seen as a hybrid of traditional stakeholders and shareholders models.

On one hand, strong minority shareholders have been able to better control the decisions and behaviours of firm executives on key corporate governance dimensions. This closer monitoring of managerial action is more likely to develop in the stakeholder model. However, minority shareholders remain external constituencies to the firm, which also characterises their position in the shareholder model. On the other hand, we hypothesise that firms

will increasingly have to accommodate multi-dimensional objectives, such as social and environmental considerations, as compared to the alignment on the sole objective of shareholder value maximisation. Multiple objectives are more likely to be found in the stakeholder model of corporate governance. However, today these objectives are mainly imposed on firms by external actors, through a process of sunshine regulation, which also characterises regulation processes in the traditional shareholder model.

The first section summarises the main characteristics of the two traditional models of corporate governance and points out the main dimensions of convergence.

The second section deals with the practical effectiveness of the control exerted over executives in countries characterised either by the shareholder model of corporate governance (the United States or Great-Britain) or by the stakeholder model (Germany and France). In these countries, the failure of traditional corporate governance systems has paved the way for the emergence of a new model.

The third section discusses the two main characteristics of the proposed hybrid model of corporate governance. In the fourth section, it is argued that three factors contribute to the emergence of this hybrid model: the internationalisation of financial markets, the globalisation of firms and the rise of a new system of international regulation. The concluding section identifies potential moderating factors.

Traditional Models of Corporate Governance

The Governance of the Managerial Firm

The prospect of benefiting from economies of scale and scope leads to increasing the size of companies, the capital needs of which could not be met by a small number of investors. Financial markets thus developed to channel savings from individual investors to companies. The control of companies is handed over to professional executives likely to possess the managerial and technical skills to run these companies (Chandler, 1977). A separation between ownership and control is thus instituted (Berle and Means, 1932). In the absence of regulating systems this separation paves the way for managerial discretion.

In this context, the governance of the managerial firm is traditionally conceptualised through two distinctive models. In the shareholder model, control is exerted externally by active financial markets, whereas in the stakeholder model control is exerted internally through a process of negotiations between different constituencies like banks, insurance companies, public institutions, other industrial firms, employees and trade-unions.

The Shareholder Model of Corporate Governance

The shareholder model of corporate governance traditionally characterises the control exerted over managerial action in countries like the USA or Great-Britain. The institutions of corporate governance defined in corporate law, such as the board of directors or shareholders meetings, do not play an important role in the monitoring of executives. The intervention of individual shareholders during shareholders meetings raises problems of collective action (Olson, 1965). External members on boards of directors are frequently nominated after proposition by the executives of the company. Thus, board members and company executives often belong to the same social or professional networks.

The regulation of the behaviour of company executives is thus supposed to occur externally through the market of corporate control (Jensen and Meckling, 1976, Jensen, 1986, Jensen and Fama, 1983). On competitive capital markets, the demand for the shares of poorly performing companies usually shrinks, causing their market prices to drop. Thus, companies that consistently exhibit poor economic performance are likely to become potential targets for hostile takeover bids. A credible threat of hostile takeover should be perceived as such by rational company executives and should induce them to realign operational and strategic actions on the objective of shareholder value creation. In some instances, a hostile takeover can take place. If it succeeds, new dominant shareholders will be willing to implement policies aimed at closing existing value gaps and therefore they will urge the incumbent top management team of the target company to leave. The effect of reputation on the executive labour market reinforces the regulation of executives behaviours through the financial markets and the market for corporate control.

The efficiency of regulating mechanisms in the shareholder model is thus highly conditioned by the efficiency of the market for corporate control, which means that company executives should not be protected from financial market regulation by such measures as hostile takeover barriers, poison pills or golden parachutes. This model also demands high standards of financial information disclosure.

The Stakeholder Model of Corporate Governance

Financial markets in the stakeholder model of corporate governance are less developed than in the shareholder model. Capital needs of companies are financed by dominant shareholders that either individually or collectively own large control blocks in the capital of companies. Traditionally, banks or insurance companies as well as other industrial companies used to play the role of dominant

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shareholders in France, Germany or Japan. In these countries, with some national specificities, dominant shareholders engage in a close monitoring of top management actions (see for instance Vitols, 2001, Kranen and Schmidt, 2003).

In this model, other constituencies, such as employees or trade unions and suppliers, are also likely to monitor managerial action. Therefore, the objectives assigned to companies are often multi-dimensional instead of being only focused on shareholder value maximisation. The process of allocation of scarce financial as well as managerial resources is conducted internally and boards of directors are mandated to preserve the internal balance of control between the various constituencies. The companies themselves are part of exchange networks where they develop relationships based on long term implicit contracts. The traditional German model of capitalism, structured around the relationships between banks and industrial companies, is a typical example of the stakeholder model. Internal communication between employees or trade unions and employers is institutionalised in corporate law.

The effectiveness of this model of regulation depends on two conditions: the existence of a legal framework that precisely defines the functions of each stakeholder and the ability of stakeholder representatives to take actions in the interests of their principals.

The Shortcomings of Traditional Corporate Governance Models

Institutional or sociological analyses have shown that in both traditional corporate governance models company executives have managed to develop their managerial discretion. Neither internal nor external control systems have been effective enough to prevent managers from implementing policies that primarily aimed at satisfying their personal interests.

Shortcomings of the Shareholder Model

The barriers protecting managers from external financial market regulation originate in two distinctive sets of factors.

According to Mark Roe (1994), in the United States, the traditional situation of fragmented shareholding cannot be explained by technical or financial considerations alone, but also by political reasons. In the wake of the 1929 financial crisis, public opinion in the United States became hostile to institutional shareholders such as banks, insurance companies and institutional investment funds. A popular belief attributed the origin of the 1929 financial crisis to the speculative behaviour of banks which, at that time, held large blocks of shares in industrial companies. The pressure of public opinion thus induced elected political representatives to implement a legislative framework that has long organised the fragmentation of shareholding. The opportunity for institutional shareholders to hold shares in industrial companies and to monitor managerial action was extremely limited. The most restrictive federal laws were voted in 1933 and 1934 as part of the "New Deal" policy. They introduced a strict separation between commercial and investment banks, banned commercial banks from holding blocks of control in companies and banned insurance companies from holding stocks.

Moreover, and this applies to other countries as well, company executives also acted as an interest group to oppose any change in company law that would likely shrink their managerial discretion and expose themselves to the pressure of financial markets. They acted in particular to maintain the fragmentation of institutional shareholding and to raise barriers to hostile takeover bids. The effectiveness of this protection from financial market pressure allowed several company executives to engage in free-rider or hold-up strategies when, for example, their incentives as managers were excessively disconnected from the change in the market value of their companies (Rappaport, 1998).

Shortcomings of the Stakeholder Model

The shortcomings of the stakeholder model have been widely emphasized.

In France, the limitations of control come partially from the close interconnections between political and managerial powers (Bourdieu and Saint-Martin, 1978, Bauer and Bertin-Mourot, 1987). The French educative system for corporate and political elites and the historical weight of the French State as a major shareholder of industrial companies or financial service firms may explain this situation.

In Germany, the presence of employee or trade union representatives on company boards has sometimes led to a narrower scope of questions being discussed in these boards. Major questions tend to be debated and solved outside formal structures, during informal interpersonal meetings between company executives and representatives of dominant shareholders, among which the main bank has a leading position. Since this bank is primarily interested in the financial services activity generated by its close relationship with its affiliated company, there is a risk that the shareholder monitoring of operational or strategic decisions may be, as a result, poorly or badly implemented.

Over the last decade, financial failures like Crédit Lyonnais in France or Philipp Holzmann in Germany are extreme examples of these shortcomings.

Another distinctive characteristic of capitalist countries traditionally depicted through the stakeholder model of corporate governance is the lack of transparency in the communication directed to minority shareholders. This appeared as a major drawback for foreign institutional investment funds,

and in fact as a shortcoming in the internationalisation of countries (e.g. Germany, France, as well as Japan or South Korea) belonging to the stakeholder type of corporate governance. This paved the way for criticisms of the efficiency, on a macro level, of this model of corporate governance.

The Convergence Towards an Hybrid Model of Corporate Governance

This hybrid model presents two distinctive characteristics: (i) strong minority shareholders who are in the position of monitoring the strategic and operational decisions made by company executives, and (ii) multi-dimensional company objectives, as opposed to the single objective of shareholder value maximisation.

This new form of control is implemented through the rising power of institutional investment funds (pension funds and mutual funds), which initially developed in the United States and in the UK, and later in continental Europe, and by other constituencies following recent evolutions in the economic and institutional environments in these countries.

The control exerted by institutional investment funds over corporate behaviour is an external type of control, also characteristic of minority shareholders in the shareholder model of corporate governance. With the exception of hedge funds or corporate raiders, which only represent a minor stake in the total amount of funds managed by institutional investors, the managers of institutional investment funds do not intend to intervene directly in strategic or operational decisions made by the executives of the companies they invested in. Legal and regulatory constraints, as well as the competition between funds in their own industry, induce them into seeking the optimal risk diversification of their portfolios of investment, coupled with the maximisation of the average return of these portfolios. Their expectations towards company executives in terms of best corporate government practices can indeed be understood as necessary conditions to achieve the objective of financial optimisation of the risk and return characteristics of their portfolios of investments. These expectations include: transparency of companies in their financial communication, accountability of company executives for their decisions and performance, equality of treatment between shareholders (the "one share, one vote" principle).

However, institutional investment funds differ from minority shareholders of the traditional shareholder model. Institutional investment funds have both the interest in and the possibility of exerting direct or indirect pressures on company executives. In this respect, their monitoring power can be theoretically analysed as a characteristic of the stakeholder model of corporate governance.

The problem of collective action differs for investment funds from what it is for minority shareholders whose stakes in companies are fragmented in the traditional shareholder model of corporate governance.

American investment funds, at least on their domestic markets, can no longer afford to show their discontent toward the executives of a company by simply dropping that firm from their investment portfolios. If an investment fund has already invested in the shares of a company that proves to perform poorly, selling these shares would most probably imply the realisation of a loss liable to impact the performance of the fund. This loss would be all the more important that investment fund behaviour usually exhibit strong bandwagon patterns. Furthermore, investment in poorly performing companies is, on the contrary, a favoured investment strategy, since such companies are more likely to recover and increase their market values than better performing companies, whose market prices rarely exhibit value gaps. These elements should thus induce investment funds managers to pressure executives of poorly performing companies. As opposed to individual shareholders, investment funds also find themselves collectively in the position of gathering the social, political or institutional resources needed to influence the behaviour of company executives (Davis and Thompson, 1994). This comprises the creation of organisations, such as the Council of Institutional Investors in the United States, aimed at defending the collective interests of investment funds. The activism of investment funds can take the form of actions that target the executives of some companies. It also comprises actions aimed at altering "the rules of the game", i.e. at fostering the diffusion and adoption of corporate government principles favoured by institutional investment funds. The diffusion and adoption of these principles may either proceed from the self-regulating behaviour of company executives, or be imposed on them by the law. The activism of institutional investment funds is thus developed in the direction of different constituencies: company executives and their professional organisations, political and public institutions, the media and public opinion.

However, the existence of more powerful minority shareholders does not imply that firms will line up behind the objective of shareholder value creation. Our hypothesis is instead that firms will increasingly have to consider multi-dimensional objectives, such as social and environmental goals. The pressure to consider such objectives may come from ethical investment funds, or from the media or public opinion. Since multiple objectives are more likely found in the shareholder model, this characteristic reinforces the convergence hypothesis towards a hybrid model of corporate governance. In addition, in the present case these objectives are mainly imposed on firms by external actors, through

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a process of sunshine regulation, which also characterises regulation processes in the shareholder model. In the traditional stakeholder model, objectives were instead set internally between different constituencies through fuzzy negotiation processes.

The Factors of Convergence of Corporate Governance Models

The process of convergence towards the hybrid corporate governance model that we developed in the previous section is also explained by powerful economic, political and institutional forces.

The Internationalisation of Financial Markets

This factor of convergence is the most publicised one. The conditions that led to this internationalisation may have differed from one country to another (Plihon, 1996) but the deregulation of financial investments is a reality in most countries. This deregulation led to structural changes that could not be reversed easily.

Professionalism in the management of investment funds has been developed even in traditional banks or insurance companies of continental Europe. Most of these institutions have externalised their asset management departments, unbinding the traditional constraints associated with cross-shareholdings in France or bank/industry relationships in Germany. Large insurance groups like Axa or Allianz are particularly illustrative of this policy. Asset management has been clearly separated from the management of insurance contracts and any cross subsidisation between both activities is actively discouraged. Sophisticated techniques, based on risk analyses, have been developed for internal equity allocation and financial return objectives according to the various insurance activities. Those companies which used to play the role of dominant shareholders in other financial or industrial groups have redirected their investment policies in order to strengthen their positions through external acquisitions in their own industry.

The profession of financial analyst has also changed from a geographical specialisation to a specialisation in terms of industries. Buy-side as well as sell-side analysts have developed in-depth knowledge of the industries they analyse. Their analyses comprise the financial performance of companies of the industry, as well as strategic orientations and major acquisition or divestment decisions. Since recommendations published by sell-side analysts fuel the market consensus, company executives have to comply with the standards set by analysts in terms of financial communication. For example, a company whose shares consistently sell at a discount on financial markets runs the risk of becoming the target of a hostile takeover bid or of being constrained in the financing of its own development projects.

Practices of both investment fund managers and analysts have become similar all over the world. Investment fund managers have implemented policies of diversification of their global portfolios of investments by focusing on industrial rather than geographical characteristics of firms. Companies belonging to the same industry are thus in competition as far as the investing decisions of fund managers are concerned, regardless of where they are located.

The Globalisation of the Strategies of Firms

The internationalisation of firms is not a recent phenomenon. However, the first stages in the process showed characteristics different from the current one. The first waves of internationalisation were motivated by strategies for entering local oligopolies (Vernon, 1966, Dunning, 1988). Each national market remained approximately independent from others as far as competitive forces were concerned. Technical norms or regulations, differences in national consumption habits, as well as market power considerations explained the enduring separation between national markets. In Europe, this situation prevailed in some industries until the last decades of the 20th century. However, the constitution of the European market has increasingly pushed companies to move towards more global strategies that have led to major industrial and business restructuring, motivated by the prospect of economies of scales and by late-point product differentiation that makes it possible to benefit from these economies of scales on standardised parts, or by the creation of a European logistic platform.

Business and industrial strategies are no longer rooted in national boundaries but in much wider geographical areas that encompass the world market in some cases. Large traditional multinational companies have changed to constitute a world-wide network of firms. The interdependencies between firms which result from this evolution create flows of goods, financial flows as well as flows of information and competencies. One of the major characteristics of this evolution is the refocusing of firms on their core industrial competencies. French firms like Danone or Alcatel are good examples of this point. Both companies used to own highly diversified business portfolios, which resulted partly from opportunistic acquisitions. Both have refocused their portfolios on a small set of closely related businesses, with the prospect of becoming the leading company world-wide in these activities. These strategies could not have been implemented without the support and consent of financial markets, since the financing of major acquisitions abroad have frequently been based on exchanges of shares between shareholders.

Companies thus increasingly develop an internal culture that erases any national specificity: boards of directors include international representatives, executive committees no longer depend on national recruitment channels, and compensation policies are based on company-wide standards emphasizing a universal value creation approach (Mottis and Ponssard, 2001-2002).

By their behaviour, company executives are thus likely to reinforce financial market control of their companies. This hypothesis has notably been developed concerning leading German company executives (Vitols, 2000). Financial market pressure might even be used by company executives to internally reinforce their own power, even if they would therefore bear the risk of dismissal. Greater power would mean, for instance, the ability to engage in more offensive strategies, which could provide more personal rewards and higher financial compensation prospects than more conservative strategies. These converging interests of company executives thus seem to be determined by the environment of generalised international competition between firms. External demands thus seem to enable company executives to develop rhetorical arguments justifying unpopular measures of industrial restructuring.

These two factors, if left alone, might lead to potential failures: both financial markets and company executives trying to outbid each other with financial objectives that might eventually prove to be unsustainable. The Internet financial bubble illustrates such a risk. Financial analysts adopted bandwagon investment behaviours on Internet companies while, at the same time, acknowledging their inability to assess the economic value of the activities of these firms. Enron provides another striking example of such failure: there an escalation of spurious “business models” between financial markets and company executives led to a complete lack of control to the eventual detriment of shareholders, including the pension funds of Enron employees. In such an uncertain environment, generous stock options plans generate opportunistic behaviour and a severe backlash.

Such failures have been an encouragement for the empowerment of other constituencies, through a new form of regulation, and eventually have played a role in the emergence of the more balanced hybrid model.

The Progressive Rise of a New International Regulation

States and governments can choose between two types of behaviors when faced with this evolution: intervening directly at the national level or trying to reconstruct themselves as regulating bodies at an international level. This second behavior is bound to become the most favored one since strictly national regulations prove increasingly ineffective in face of the global strategies adopted by the leading private, financial or industrial, actors. However, steps in this direction are still hesitating. For example, highly publicised problems, such as the Mannesmann syndrome in Germany, in the wake of the first successful hostile takeover of a German company by a foreign firm (Mannesmann and Vodafone, respectively) had a mixed impact on the rise of a common view on corporate control at the European level (Höpner and Jackson, 2001). The failure of the European Commission to pass the Takeover Directive, which was inspired from corporate law in the United Kingdom, suggests the difficulties raised by the harmonization of corporate legislation due to the diverse nature of ownership and control patterns of European companies (Becht & Mayer, 2004). The debate about the Takeover Directive shows that most Continental European countries are not ready to accept all the standards coming from the UK.

However, social and political forces may be able to organise internationally to counteract pure market forces. The failure of the WTO at Seattle in December 1999, following the failure of the Multilateral Agreement on Investments (MAI) in 1998, balanced by the success of the 2003 agreement on generic drugs could thus be constructive steps towards the recognition of new dimensions and new forms of regulation that would finally consolidate the on-going process of internationalisation.

Several elements directly related to corporate government issues can illustrate this process, like the implementation of standardised rules to limit the risks taken by investors, the diffusion of international accounting standards or attempts to harmonise taxes and company laws. The elaboration of international accounting standards by the International Accounting Standards Board is an interesting example, since the IASB is a private organisation representative of the accounting profession. The elaboration and diffusion of international accounting standards illustrate a process of self-regulation that does not primarily depend on negotiations between governmental bodies.

The process of harmonisation also concerns organisations that regulate the competition on financial or real markets. These organisations reinforce the power of external controls on companies, but they also contribute to the development of principles that set the bases of a sort of “common law” for company regulation. In France, for example, the “Commission des opérations de bourse” was created in 1967 on the model of the American Securities and Exchange Commission in order to regulate transactions in financial markets. In the United-States, the Sarbanes-Oxley act introduces a co-regulation model in many corporate governance issues such as financial information disclosure and auditing, which might be analysed as a further step towards convergence. Mutual evolution on both sides has further reinforced the convergence between such institutions.

Finally, the growing importance of ethical investment funds illustrates the increasing weight of non-financial investment criteria. The international diffusion of these funds is also illustrative of the general process of convergence. Initially, the management of these funds was based on country-specific criteria, such as the fight against "the industry of sin" (alcohol, tobacco, gambling) in the United States, or funds dedicated to the support of employment in France. However, most of these funds have evolved towards using wider criteria encompassing general social problems such as human rights or environmental questions. These criteria are also likely to trigger a wider demand from personal investors. Most leading investment fund companies now offer ethically managed funds, and companies are rated by independent organisations, the practices of which also tend to converge internationally. For example, in June 2000 Vigéo, one of the leading French rating organisation, was one of the co-founders of the SIRI network (Sustainable Investment Research International) which includes 12 rating organisations from Europe, Japan and the United States.

As a result, multi-dimensional objectives are becoming a major stake for both company executives and institutional investors who are forced to implement socially responsible policies. The underlying forces are leading to the development of regulations and to the diffusion of best practices, which increasingly are becoming compelling for company executives, financial analysts and investment funds managers. A growing part of firms' annual reports is now dedicated to their social and environmental responsibilities.

Conclusion: Factors limiting the Convergence Process

Along with the forces that cause the process of convergence towards a hybrid corporate governance model, some factors may slow down or hinder this process. These factors are mostly related to the legal and institutional environment of companies, such as corporate law, tax regulations, or labour regulations. These elements are the result of country-specific history and social preferences. The difficulties encountered by the members of the European Union in the process of harmonisation of their national legal and institutional contexts exemplify the lasting power of national specificity. For example, the text adopted at the European summit in Nice in December 2000 sets the general principles of the "European company", but nonetheless allows firms to refer to national arrangements in terms of company law.

Economic theories postulate that when national spaces enter in competition, only the more efficient institutional forms will eventually remain. However, as far as legal norms and institutions are concerned, the evolution is path-dependant (Roe, 1994, Aoki, 1997). This means that the evolution of corporate governance models may be progressive and vary among countries depending on how their institutions have evolved. In Europe, major changes in corporate governance systems first occurred in France when the privatisation policy allowed foreign investors to enter the capital of some leading French companies. Germany is now catching up, since the fiscal law on capital gains enables major banks and insurance groups to sell much of their financial holdings in industrial companies. Depending on the starting point of each country in terms of corporate governance models, the process of hybridising will probably give different results. The convergence towards some standardised principles and practices does not necessarily mean that corporate governance systems will entirely shift towards a single model (Geoffron, 1999, Boyer, 2003).

Thus, the hypothesis of convergence between corporate governance models should be interpreted cautiously. It seems reasonable to consider that the dominant governance model in companies will be close to the model characterised by strong minority shareholders and multi-dimensional corporate objectives, this configuration being a hybrid type of the traditional shareholder and stakeholder models. However, this hypothesis does not exclude the possibility that the dominant model will present variations because of the national or regional specificities in the legal and institutional environments of companies.

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