International Corporate Governance: A Select Bibliography

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I. International Corporate Governance

1. Background and Context

Discussion and academic research on corporate governance first began in the United States. Corporate governance was a very American-specific issue to the extent that there was no exact translation of the term in the language of many countries of the world. The concept of corporate governance first appeared in 1932, when Adolf Berle and Gardiner Means wrote the famous book, “The Modern Corporation and Private Property.” Berle and Means talked about the separation of ownership and control in publicly-held companies in the United States as a result of dispersed ownership. With a great increase in the number of shareholders, such dispersion of ownership gave birth to a special group of business people with full authority to run the corporation. In turn, some form of institutionalized mechanism was needed to control this management group. Meanwhile, issues arising from the separation of ownership and control (such as agency costs) became a major research area of corporate governance. It would not be an exaggeration to say

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2) See Timeline: The Evolution of 20th Century Corporate Governance, Directors & Boards 37 (Fall 1997) (presenting the picture of J.P. Morgan and his son walking to the Pujo hearings in 1912).
that U.S. corporate law is the product of the effort to develop organizational principles for solving this agency costs problem.\(^5\)

The corporate governance issue that was born in the U.S. permeated the international arena for five reasons. First, the United States began to pay attention to countries like Japan and Germany where the ownership is, unlike in the United States, highly concentrated, yet whose economies maintain their competitiveness in the world market (at least in the 1980s).\(^6\)

Second, the United States turned its attention to underdeveloped and developing countries, including the East European states and Russia. These countries that had newly adopted capitalism were in need of a standard model as a foundation for their newly formed capital markets. Consequently, U.S. companies, investment bankers, institutional investors and professional money managers who were currently investing or interested in entering the markets in these countries turned their attention to the corporate governance structure of those countries.\(^7\) Recent research showed that reforms in the corporate governance structures of these countries might bring tremendous benefits and corporate value to the countries and investors.\(^8\) This implied that more efficient and stable investment of capital-exporting countries may be possible by reforming the corporate governance structure and capital markets through reformation of the local regulations and laws of developing countries.

Third, the growing trend of cross-listing of foreign companies on U.S. exchanges caused the U.S. regulators, institutional investors and professional money managers to become at least somewhat familiar with the corporate governance and finance issues involving foreign systems.

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5) Robert C. Clark, Corporate Law 34 (1986) (“The overwhelming majority of particular rules, doctrines, and cases in corporate law are simply an explication of this duty [of loyalty] or of the procedural rules and institutional arrangements involved in implementing it. The history of corporate law is largely the history of the development of operational content for the duty of loyalty.”) (emphasis omitted).


Fourth, cross-border mergers and acquisitions involving U.S. companies have been growing significantly. Cross-border mergers and acquisitions regularly involve corporate governance and accounting issues that are sometimes conflicting with the U.S. practice. This is the reason that U.S. firms and investment bankers have become keen to understand the foreign corporate governance. This is even more so when a foreign firm is the surviving entity in a stock-for-stock merger transaction as exemplified in the 1998 Daimler-Chrysler merger.

Fifth, a corporation’s governance is no longer a domestic issue but rather an international one, which may provide a starting point for a domino effect, where weakness in a single national or regional economy can cause a world financial crisis. This is another reason that the United States, possessing extensive knowledge and interest in the world political economy, cannot help but turn its attention to this issue. As a matter of fact, not only the United States, but also any country with a global interest cannot be indifferent to corporate governance issues in foreign jurisdictions. Many non-US multinational firms are developing corporate governance principles, guidelines and codes of ethics. Particularly, the significance of this perspective was further emphasized by research which showed that the 1997 Asian financial crisis was seen to have resulted from a breakdown in local corporate governance rather than other macroeconomic factors. Corporate governance has become an important area of study and made to the central place in the activities of the international lending agencies and development organizations.

The above accounts, however, are not to suggest that the purpose of internationalization of corporate governance discipline was to cultivate and preserve the interest of the Western industrialized nations. Developing countries can learn a great deal from the Western world and by doing so save

9) Cf. Lucian A. Bebchuk & Mark J. Roe, A Theory of Path Dependence in Corporate Governance and Ownership, 52 Stan. L. Rev. 127, 135 note 8 (1999) ("Daimler’s takeover of Chrysler might bring German governance practices in line with American ones (or further spread American governance practices in Germany).")

10) For the current international merger wave, see Bernard S. Black, The First International Merger Wave (and the Fifth and Last U.S. Wave), 54 U. Miami L. Rev. 799 (2000).

unnecessary and costly experiments. In fact, the developing economies have reaped many benefits from the products of Western corporate governance scholarship and practice. Government officials, scholars and practitioners of the developing countries have learned how to improve the corporate governance system and capital markets, and how to draft better laws and regulations.12)

2. Questions and Methodology

It should be noted that the ideas and corporate governance practices developed in the United States and within U.S. multinational corporations and financial institutions may take quite different forms and paths when they are transplanted into emerging markets. Here come very important questions: Does it make sense to talk about universal problems, as well as solutions, in corporate governance? How are globalization and cultural diversity on this planet relevant to the question? How do we best explain East Asian countries’ subscription to the OECD Principles of Corporate Governance?

Is the U.S.-style governance structure more efficient than that of other countries? Should other countries adopt the U.S.-style governance structure? Will the market drive other countries to the U.S. model? How should other countries adopt the U.S.-style governance structure if they wish to do so? Does law matter, and how much?13) Are the inefficiencies in corporate governance of developing country firms the result of bad law? What determines the current structure in the U.S.? Should developing countries copy the U.S. corporate and securities laws? Should they train their managers, investment professionals, scholars, lawyers and government officials further in the U.S.? Should firms in developing countries adopt the U.S.-style governance structure and practice even though their country’s law does not require such? What should they do if they want to follow the U.S. rules, which is not

12) See Bernard Black et al., Corporate Governance in Korea at the Millennium: Enhancing International Competitiveness, 26 J. Corp. L. 537, 544 (2001) (“[M]any of the core problems of corporate governance are universal, and … the range of reasonable solutions is finite.”) But see also Bernard S. Black, The Core Fiduciary Duties of Outside Directors, Asia Bus. L. Rev. 13, 27 (July 2001) (“[I] would not wish for another country to copy our confused [takeover] case law.”)

reasonably feasible in their own country? Should international lending agencies and development organizations require the recipient of their funds a reform toward the U.S. system? Should such global investment organization as CalPERS keep requiring the foreign companies corporate governance practice by the U.S. standard? For corporate law scholars, is there an “analytical framework for corporate law that transcends particular jurisdictions”? 14)

International Corporate Governance is a new discipline of legal and finance scholarships in the United States and other countries, which studies the ongoing convergence of the corporate and capital market laws of various jurisdictions, and the role of international law and organizations in that process. It tries to answer the questions posed above. The “convergence-from-competition hypothesis” is the focus of the studies and the divergent approaches of the contemporary corporate governance theories, including market, political, cultural and historical approaches, are utilized. The cross-country empirical studies on the corporate ownership and capital market structure as well as materials drawn from the actual practice of corporate governance and finance are crucial for research and teaching in international corporate governance. The study of theory and practice of cross-listing and cross-border mergers acquisitions, together with the issues of international regulatory competition and arbitrage, cross-listing and bonding hypothesis, and international implications of the US Sarbanes-Oxley Act, is particularly useful to understand the major forces of global convergence of corporate governance and finance. The role of the global investment banking institutions and investment professionals in corporate governance and finance must also be singled out. Of particular importance are also case studies on corporate governance systems of leading European industrial nations and Asian emerging market economies, as well as such representative global firms as Volkswagen, Gazprom, News Corporation, Samsung, and Toyota. Last, but not least, some important international norms of corporate governance and their implications on globalization of corporate governance must be studied and the relevance to corporate governance of the international capital market.

integration and international prudential rules must be fairly evaluated. The role of international (soft) law in the making of a global standard of corporate governance with universal applicability should be one of the focuses in the next phase of the studies in international corporate governance.

II. The Evolution of the Corporate Form

______, The Essential Role of Organizational Law, 110 Yale L.J. 387 (2000)

III. Corporate Governance

1. In General

Bainbridge, Stephen, The New Corporate Governance in Theory and Practice

______, *The Case for Increasing Shareholder Power*, 118 Harv. L. Rev. 833 (2005)\(^{16}\)


2. Market for Corporate Control


Gilson, Ronald, *Unocal Fifteen Years Later (and What We Can Do About It)*, 26 Del. J. Corp. L. 491 (2001)


Lipton, Martin, *Twenty-Five Years After Takeover Bids in the Target’s Boardroom: Old Battles, New Attacks and the Continuing War*, 60 Bus. Law. 1369 (2005)


No. 1: 2008

International Corporate Governance | 209


3. Investment Bankers and Gatekeepers


Coffee, John C., Jr., *Gatekeepers: The Professions and Corporate Governance* (Oxford University Press, 2006)


IV. Comparative Corporate Governance in General


Becht, Marco et al., *Corporate Governance and Control* (ECGI Working Paper, 2005)

Black, Bernard et al., *Legal Liability of Directors and Company Officials Part 2: Court
Procedures, Indemnification and Insurance, and Administrative and Criminal Liability, 2008 Colum. Bus. L. Rev. 1


Bratton, William W. & Joseph A. McCahery, Incomplete Contracts Theories of the Firm and Comparative Corporate Governance, 2 Theoretical Inquiries in Law 745 (2001)


Cheffins, Brian & Bernard Black, Outside Director Liability Across Countries, 84 Tex. L. Rev. 1385 (2006)

Clarke, Thomas, International Corporate Governance: A Comparative Approach (Routledge, 2007)


Enriques, Luca & Paolo Volpin, Corporate Governance Reforms in Continental Europe, 21 J. Econ. Persp. 117 (2007)


Gibson, Ronald J., Controlling Family Shareholders in Developing Countries: Anchoring Relational Exchange, 60 Stan. L. Rev. 633 (2007)

_____., Controlling Shareholders and Corporate Governance: Complicating the Comparative Taxonomy, 119 Harv. L. Rev. 1641 (2006)


Hopt, Klaus J. et al. eds., Corporate Governance in Context: Corporations, States, and Markets in Europe, Japan, and the US (Oxford University Press, 2005)

_____., Comparative Corporate Governance: The State of the Art and Emerging Research (Oxford University Press, 1998)

Hopt, Klaus J. & Patrick C. Leyens, Board Models in Europe: Recent Developments of Internal Corporate Governance Structures in Germany, the United Kingdom, France, and Italy (ECGI Working Paper, 2004)


Kanda, Hideki et al., eds., Transforming Corporate Governance in East Asia (Routledge, 2008)


McCahey, Joseph A. et al. eds., *Corporate Governance Regimes: Convergence and Diversity* (Oxford University Press, 2002)


\(^{19}\) Cf. David A. Skeel, Jr., *Corporate Anatomy Lessons*, 113 Yale L. J. 1519 (2004).

V. Cross-Country Empirical Studies


La Porta, Rafael et al. (LLS&V), *Investor Protection and Corporate Governance*, 58 J. Fin. Econ. 3 (2000)

La Porta, Rafael et al., *Corporate Ownership Around the World*, 54 J. Fin. 471 (1999)


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VI. Convergence Discussions


Gilson, Ronald J., Globalizing Corporate Governance: Convergence of Form or Function, 49 Am. J. Comp. L. 329 (2001)


McDonnell, Brett H., Convergence in Corporate Governance – Possible, but not Desirable, 47 Vill. L. Rev. 341 (2002)


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22) There exist at least three German Habilitationsschriften that extensively cover this topic. For the convergence discussions in general, see Mathias M. Siems, Die Konvergenz der Rechtssysteme im Recht der Aktionäre (Mohr Siebeck, 2005); for the reception of U.S. corporate law in general in Germany, see Jan von Hein, Die Rezeption US-amerikanischen Gesellschaftsrechts in Deutschland (Mohr Siebeck, 2008) (1,089 pages); and for the reception of the business judgment rule in Germany, see Andrea Lohse, Unternehmerisches Ermessen (Mohr Siebeck, 2005).
VII. Cross-Listing and Cross-Border Mergers and Acquisitions


Gordon, Jeffrey N., Pathways to Corporate Convergence?: Two Steps on the Road to Shareholder Capitalism in Germany: Deutsche Telekom and Daimler Chrysler, 5 Colum. J. Eur. L. 219 (1999)


Huddart, Steven et al., Disclosure Requirements and Stock Exchange Listing Choice in an International Context, 26 J. Acct. & Econ. 237 (1999)


VIII. Global Securities Markets and Regulatory Competition

1. Regulatory Competition in the United States


2. The Global Markets


Choi, Stephen J. & Andrew T. Guzman, Portable Reciprocity: Rethinking the International Reach of Securities Regulation, 71 S. Cal. L. Rev. 903 (1998)


Romano, Roberta, The Need for Competition in International Securities Regulation, 2 Theoretical Inquiries in Law 387 (2001)

IX. Corporate Governance and International Law


X. Select Jurisdictions and Their Firms

1. China


2. Eastern Europe


3. European Union

Becht, Marco, Reciprocity in Takeovers (ECGI Working Paper, 2003)
Fabrizio, Barca & Marco Becht, The Control of Corporate Europe (Oxford University Press, 2003)
Ferrarini, Guido et al. eds., Reforming Company Law and Takeover Law in Europe (Oxford University Press, 2004)

4. France

Tiberghien, Yves, Entrepreneurial States: Reforming Corporate Governance in France, Japan, and Korea (Cornell University Press, 2007)
5. Germany

Börsch, Alexander, Global Pressure, National System: How German Corporate Governance Is Changing (Cornell University Press, 2007)
Dinh, Viet D., Codetermination and Corporate Governance in a Multinational Business Enterprise, 24 J. Corp. L. 975 (1999)
Du Plessis, Jean J. et al., German Corporate Governance in International and European Context (Springer, 2007)
O’Sullivan, Mary, Contests for Corporate Control: Corporate Governance and Economic Performance in the United States and Germany (Oxford University Press 2000)
Roe, Mark J., German Co-Determination and German Securities Markets, 1998 Colum. Bus. L. Rev. 167

6. India

Khanna, Tarun & Krishna Palepu, Is Group Affiliation Profitable in Emerging

7. Israel

Blass, Asher et al., Corporate Governance in an Emerging Market: The Case of Israel, 10 J. App. Corp. Fin. 79 (1998)
Licht, Amir N., David’s Dilemma: A Case Study of Securities Regulation in a Small Open Market, 2 Theoretical Inquiries in Law 673 (2001)

8. Italy

Macey, Jonathan R., Italian Corporate Governance: One American’s Perspective, 1998 Colum. Bus. L. Rev. 121

9. Japan

Aoki, Masahiko & Ronald Dore eds., The Japanese Firm: The Sources of Competitive Strength (Oxford University Press 1996)
Aoki, Masahiko & Gary R. Saxonhouse eds., Finance, Governance, and
Competitiveness in Japan (Oxford University Press 2000)
Aoki, Masahiko, Information, Corporate Governance, and Institutional Diversity: Competitiveness in Japan, the USA, and the Transitional Economies (Oxford University Press 2001)
_____, Understanding the Japanese Keiretsu: Overlaps Between Corporate Governance and Industrial Organization, 102 Yale L. J. 871 (1993)
_____, Japanese Corporate Governance: The Hidden Problems of the Corporate Law and
West, Mark D., Why Shareholders Sue: The Evidence from Japan, 30 J. Leg. Stud. 351 (2001)

10. Korea

Bae, Kee-Hong et al., Tunneling or Value Added? Evidence from Mergers by Korean Business Groups, 57 J. Fin. 2695 (2002)
_____, Predicting Firms’ Corporate Governance Choices: Evidence from Korea, 12 J. Corp. Fin. 660 (2006)
Black, Bernard S. et al., Corporate Governance in Korea at the Millennium: Enhancing International Competitiveness, 26 J. Corp. L. 537 (2001)
Chung, Dae Hwan, Introduction to South Korea’s New Securities-Related Class Action, 30 J. Corp. L. 165 (2004)
Ehrlich, Craig & Dae-Seob Kang, U.S. Style Corporate Governance in Korea’s Largest Companies, 18 UCLA Pacific Basin L. J. 1 (2000)
_____, Toward the “Best Practice” Model in a Globalizing Market: Recent Developments in Korean Corporate Governance, 2 J. Corp. L. Stud. 345 (2002)


_____, *Property Rights in Firms*, 84 Va. L. Rev. 1145 (1998)


11. Russia


McCarthy, Daniel J. et al. eds., *Corporate Governance in Russia* (Edward Elgar Publishing, 2005)


12. Spain


13. Sweden


14. Ukraine


15. United Kingdom


Cadbury, Adrian, *Corporate Governance and Chairmanship: A Personal View* (Oxford University Press, 2002)


