

Corporate Governance from the Perspective of the Share

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CORPORATE GOVERNANCE FROM THE PERSPECTIVE OF THE SHARE

By: Scott Hamilton

The debates which have been raging among corporate governance scholars since the inception of the joint stock company have left a trail of debris in their wake. Shares, the pieces of economic property which form the constituent elements of the corporate structure lay scattered and unattached to any particular theory of the firm and its idyllic role in society. While a number of academics have contributed valuable pieces espousing varying views on what actually *matters* in corporate governance - law, history, politics - the general lack of attention given to the theory and substance of the share itself would seem to imply that it has little importance in explaining purported ideal types of corporate governance. What insight could follow from a renewed attention to the share itself? It is my contention that by drawing on the insights of a body of scholarship which seeks to explain *the social meaning of money*, the share can be understood as a limited purpose currency whose fungibility is derived from social meanings that resonate in particular circuits. An American share is thus something quite different from a German share, a Scandinavian share, a Japanese share, and so on. Following this logic, the exercise of conceptualizing a universally applicable theory of the firm and how best to govern it is futile, as it seeks to extract the corporate form from its social context. This follows from a misunderstanding of American, German, Scandinavian, or Japanese firms as entities of the same type governed differently, better, or worse. By refocusing attention on the share itself we can understand that a *firm is not a firm is not a firm*. At the heart of this asymmetry, lies a theory of the share which can be of great use to the understanding of variety in corporate governance. The share has

devolved into economic property whose form - transferable, corporate issued scrip whose value rises and falls with the perceived potential of a firm's assets and the productive potential of their holdings - is distinct from its function as a membership to an organisation and the attendant benefits of participating in its administration and sharing in the profits of its operations.

This theoretical separation of form and function has implications which ripple across many significant corporate governance debates. With respect to the separation of ownership and control, we can address the issue of how share ownership does not embody a fundamental claim to the company's assets¹ without neglecting the fact that its value is rooted in perceptions of proper economic performance. The notions that the corporate form is merely a legal solution to the joint production problem² or the agent-principle dilemma³ can also be refined as regionally specific bi-products and co-creations of the *hollowing out* of the corporation - the form of the share remained intact throughout this process while its function evolved. Even if we accept the conventional Law and Economics argument that this solution is justified by the supposed scientific efficacy of shareholder primacy, the argument that this represents an "end of history"⁴ for corporate governance ignores the culturally specific character that the functional role of share ownership has taken on and continues to play. The roles and responsibilities of corporations still change as they cross state boundaries and there is little reason to assume these structures will soon collapse onto an even plain. The inclusion of various stakeholder groups in organized market economies is not a deviation from the ideal, a

¹ Ireland, 1999

² Blair, 2003

³ Hansmann and Kraakman, 2001

⁴ Ibid.

result of interest group pressure⁵ but mirrors the wide array of shared interpretations of the relationship between the corporation and society which continue to define its role in a given society. "Convergence,"⁶ where it exists, therefore represents something less than the triumph of an ideal model. Instead, the trend towards an American model of corporate governance could be echoing a wider redefinition of the states, markets, and societies which produce the authoritative roles for shareholders and define their shares. If this is the case, such a redefinition must not necessarily result in the universal application of this so-called "standard model."⁷

The first challenge in this argument is to establish that there is a general lack of academic attention on the share itself. With little else to begin with in the leading corporate governance literature, an attempt is made to extrapolate an accurate description of the share from two normative models of the shareholder on each side of the shareholder/stakeholder primacy debate. This is admittedly an odd methodological approach, but it is taken for two reasons. First, it is a means of stressing the point that the share is given scant attention. Because this literature reflects some of the most prominent corporate governance debates, it would necessarily reflect the significance of the share if it were taken seriously. Second, if a justification for concentrated ownership cannot be derived from a theory of the firm as a "nexus of contracts,"⁸ nor a justification for diffuse ownership from a theory of the firm as a concession, it might suggest that neither starting point accurately accounts for the reality of their mutual existence. The next challenge is to establish that *shares matter* - which is to say that we can actually gain

⁵ Roe, 2005

⁶ See Armour, Deakin, and Konzelmann, 2003; Edwards, 2004; Hansmann and Kraakman, 2001

⁷ Hansmann and Kraakman, 2001

⁸ Frank. H. Easterbrook and Daniel R. Fischel. 'The Corporate Contract'. (1989) 89 *Columbia Law Review* 1416-1448.

some insight into current corporate governance from a renewed interest in the share itself. Drawing on literature from economic sociology and the varieties of capitalism schools of thought, it will be argued that they do - twice. Once as a reflection of a network of users that shares a common understanding of proper economic performance and second as the exclusionary devices which define the boundaries of the corporation's responsibility to that community. Finally, in the third section of this paper, the insights from this approach will be demonstrated with respect to the current debate about the alleged convergence towards the shareholder model.

Part I - Writing off capital

A survey of much of the corporate governance literature of the past decade would suggest that it is difficult to speak of corporate governance without becoming entangled in or accused of obsession with a polarizing taxonomy of corporate governance models.⁹ Whether one is reading of stakeholder vs. shareholder, organized vs. liberal market economies, common law vs. civil law, Anglo-American vs. German-Japanese, or a refined version of the competition consisting of multiple categories on either side of the divide, the pronounced academic stasis can easily overwhelm newcomers to corporate governance with myriad ways of making the same fundamental point: if one wishes to categorize the dominant wisdom on corporate governance into two broad categories, such a feat is possible. The utility of these distinctions can be rooted in a desire to generate testable hypotheses concerning the optimal corporate governance model. If one exists,¹⁰ the results of these tests, and some have indeed

⁹ See Letza, Sun, and Kirkbride, 2004

¹⁰ La Porta, Lopez-de-Silanes, Shelifer. and Veishny, 1998; Roe, 1994

claimed the testing phase to be over,¹¹ are then expected to form the normative underpinnings of a new era of corporate governance. Drawing heavily on Letza, Sun, and Kirkbride (2004), the following analysis seeks to respond to their call to overcome this bifurcating mania by "understand(ing) deeply what corporate reality is, how and why we have constructed it both collectively in history and in different contexts, and what trends and patterns could be most likely to emerge in the uncertain future." Unfortunately, this bold feat is not easily accomplished by beginning with the dominant corporate governance literature which tends towards the reification of dichotomy. This suggests that if such a theory does exist, its roots lie outside the usual parameters of analysis.

The roots of the shareholder/stakeholder divide can be found in two competing theories of the firm which make a claim to either its private or public function. On the shareholder side, the firm is a legal fiction which consists of a "nexus of contracts."¹² The corporation is a vehicle for maximising the wealth of shareholders because they rightly 'own' it. On the stakeholder side, the firm is an "independent legal person" which serves some broader public function because of its legal roots in a "concession" by the state.¹³ Without getting bogged down in the details of the various sub-models on either side we can perhaps adopt the notion that, in accordance with these distinctions, the share could be said to exist either in relation to a private contract, or in relation to the Company Law which authorized its creation. In this paper, the hunt for a theory of the share begins on the shareholder side where the incorporated firm is said to hardly even exist legally and

¹¹ Hansmann and Kraakman, 2001

¹² Easterbrook and Fischel. 1989

¹³ Letza, Sun, and Kirkbride, 2004

the company is made up of its contracting members. It could conceivably begin on the other side and lead to the same degree of incoherence.

On the nexus of contracts side of the debate, shareholders are said to be the owners of the corporation separated from its controllers. In *Borlands Trustee v. Steel Brothers and Co Ltd (1900)* Justice Farwell reasons that the share must be a measure of rights and liabilities according to what appears to be a nexus of contracts theory:

The interest of the shareholder in the company, measured, for the purposes of liability and dividend, by a sum of money, but consisting of a series of mutual covenants entered into by all the shareholders... and made up of various rights and liabilities contained in the contract, including the right to a certain sum of money.¹⁴

The share itself is said to consist of a transferable property right, while conspicuously failing to take on the form of property itself. It exists as a functional instrument whose purpose is to measure liability and dividends rendering it roughly analogous to the numbers on a ruler detached from the ruler itself. Share ownership is attractive to a potential shareholder who is interested in receiving dividends. The associated liability and the lack of a controlling function (unless these are specifically stated in the "various rights and liabilities contained in the contract") should imply to a risk adverse investor the need for a diversified portfolio. There is little to be gained from concentrated ownership here.

When the corporation is said to actually have its own legal identity, as in Kay and Silbertson's Trusteeship model, shareholder's ownership of the corporation is brought into question.¹⁵ The corporation is thought of as a creation of Company Law rather than private contract, and shareholders are characterized as "Residual

¹⁴ 1 Ch. 279 [1900 B. 1253.]

¹⁵ Letza, Sun, and Kirkbride, 2004

Claimants.¹⁶ As residual claimants, their shares will provide them whatever rights and liabilities are ascribed to them through that Company Law. In this case, it is difficult to see the initial allure of share ownership without an attractive incentive in Company Law. Beginning as the owner of a fixed sum of money (the sale price of the share) the potential shareholder is said to transfer it to a new legal subject, forfeit their claim to it, and assume the new title of 'residual claimant.' Unless Company Law guarantees the potential shareholder some degree of control or over the assets one has just forfeited, all investment would be high risk. If this guarantee existed, the prudent investor would pool their assets so as to maximise control over them.

Perhaps not surprisingly, then, working backwards from the competing descriptions of the shareholder does not provide a conception of the share which accurately reflects the degree of diversity in shareholder concentration that is visible in the world today.¹⁷ The most useful conclusion which can be drawn from this analysis is a relatively simple one: shareholders are behaving universally as neither residual claimants, nor as owners without control. A second observation about the predicted behaviour is that, were it accurate, it would seem far more relevant at the initial public offering stage than throughout the lifetime of the share on the vast financial markets which have emerged to facilitate its trading.¹⁸ This is to say that after the rights and liabilities of all initial investors have been measured, the ruler itself is broken into pieces, their original scale is erased, and they are traded according to a separate register which has less to do with the initial liability than it does a conception of economic *fundamentals* which exist in the minds of would-be purchasers. That is, shares - generally

¹⁶ Quoting Warren, 2000, Ibid

¹⁷ Hall and Gingerich, 2001

¹⁸ Ireland, 1999

characterized as bundles of rights - are traded post-incorporation in a manner not unlike pieces of tangible property.

Part 2 - Shares Matter¹⁹

Finding little else to begin with in the corporate governance literature, itself, this paper now turns to approach the theory of the share from a different angle. The idea of focusing on the share is rooted in the fundamental claim of economic sociology that any economic action cannot be distinguished from its basis as a social action.²⁰ The analysis therefore begins in this body of literature before proceeding back into the world of corporate governance. The idea that share purchases can be considered purely economic transactions based on perceptions of risk and reward is cast aside in favour a more holistic view which seeks to bridge this understanding with the social purpose of the share. This section responds to an invitation extended by Viviana Zelizer in the conclusion of her ground breaking *The Social Meaning of Money* to look for wider examples of "social earmarking."²¹

In her seminal text, Zelizer analyzed patterns of moneyed relationships in household economics and found evidence that refutes George Simmel's century-old hostile worlds argument that money paints everything it comes into contact with in an

¹⁹ The notion that shares can be viewed as a limited purpose currency presented in this section builds on research the author conducted for an undergraduate dissertation about the political sociology of money entitled "Boink:, Buzz, Barter, Buy: Sociological Onomatopoeia in Theory and Practice." The argument presented was a vindication of community currency enlightened by a debate which has been taking place in the pages of *Economy and Society* about the sociological origins of money. It drew heavily on Viviana Zelizer, Jane Guyer, and John Davis to create a definition of money as, "performed statement of worth which can only be interpreted as such and circulated in accordance with an authoritative system of valuation." A copy of this paper is hosted online at: http://docs.google.com/View?docid=dfmhs2917_fsasmncn

²⁰ Granovetter 1985

²¹ Zelizer, 1997

"evenly flat and grey tone."²² According to hostile worlds theory, money comes from a "world of impersonal rationality" while family life operates in a "world of intimacy."²³ And the twain shall never meet. Her focus was centred on the interaction between money and the home to search for the way in which household economic decisions were patterned by social relationships in an attempt to refute the notion that these two worlds were distinct and incompatible. "Social earmarking" was the term she used to describe the different permissible uses aligned with different 'types' of money in the household: wages, gifts, bonuses, winnings, inheritance, savings, etc. Zelizer concludes that even at the micro-level, there are multiple moneys whose social meaning is produced by the relations they derive from.²⁴ This argument runs contrary to a Marxist theory of money as the form of value separated from its substance (man's labour), or of a post-Keynesian theory of money as produced by power relations, with the state asserting its dominance by extracting tax revenues solely in denominations of its official currency. Both of these arguments side with Simmel in that they presuppose abstract money-in-general which is then transformed by social relations.²⁵ The chicken vs. egg argument is important to my own inasmuch as I need to establish the share as a form of money produced by a particular social relation and traded in accordance with it in order for my argument of a form/function split to be relevant to the field of corporate governance.

Building on what Collins calls "Zelizer circuits,"²⁶ I have elsewhere argued that money should be understood as a "performed statement of worth that can only be interpreted as such and circulated in accordance with an authoritative system of

²² Quoting Simmel, *Ibid.*

²³ Zelizer, 2004

²⁴ Zelizer, 1997

²⁵ Hamilton, 2005

²⁶ Collins 2000

valuation."²⁷ What I call an authoritative system of valuation also conforms to and builds on a network theory of markets based on Harrison White's work in economic sociology which emphasizes the need for "shared perceptions" among market actors.²⁸ Zelizer distinguishes circuits from networks and elevates them on two main grounds:

First, they consist of dynamic, meaningful, incessantly negotiated interactions among the sites - be those sites of individuals, households, organizations, or other social entities. Second, in addition to dynamic relations, they include distinctive media (for example, legal tender or localized tokens) and an array of organized, differentiated transfers (for example, gifts or compensation) between sites.²⁹

Commercial circuits are the locales of potential moneyed relations. The term authoritative is used to stress the fact there is a common source of shared perception and that it is perceived as relevant to all actors in the market for a given currency - this is what makes dynamic relations possible and meaningful. The emphasis on performance is also important in order to address how Zelizer's "differentiated transfers" are distinguished and communicated among users to establish conformity with a system of valuation by reference to a vast repertoire of transactions.³⁰ The first step in understanding how shares can be thought of as currency is to see how different currencies can be seen as products of circuits of commerce. This paper looks first at federal money and then at one example of a complimentary currency to see how they can be characterized in this way. The second step is to observe how corporate shares follow the same social channels in order to conclude they are, in *form*, operating as a limited purpose currency.

²⁷ Hamilton, 2005

²⁸ White, 1981

²⁹ Zelizer, 2004

³⁰ Davis 1992

If commercial circuits are marked by defined boundaries, distinctive media and transactional repertoires, and shared social meaning,³¹ national economies are their most obvious manifestation, with the authority of the state enforcing the shared perception of value attached to legal tender as well as the repertoire of performances through which we transact (which is far from limited to number-swapping actions denominated in that currency through bank transfers, cash flows, or the extension of credit). Entry and exit are restricted as holders of foreign currencies are required to make additional fiduciary performances which attach a premium to the rendering of foreign currency as a useful and meaningful store of value within this circuit (i.e. an exchange rate). The use of national currency beyond state borders indicates a commercial circuit in which shared perceptions and dynamic relations enable a transactional repertoire which is meaningful beyond a particular geographic zone with reference to the same source of authority.

Commercial circuits also proliferate on a smaller scale. Throughout the great depression, there was a proliferation of media of exchange that has perhaps only been surpassed recently by a local currency movement which sees upwards of 2500 such monies operating worldwide. The particular challenge in the depression was to create a viable alternative to scarce legal tender which was backed by something more believable than fiat, the legitimacy of which was the subject of widespread scrutiny at the time. One common model involved a company - perhaps a department store or a railway company - that would issue currency through payments to employees, creditors, or suppliers. This currency would then be accepted back as payment in exchange for goods, services, or in the case of the railway company, the use of its rolling stock.

³¹ Zelizer 2004

Grounded in these commodities, the currencies' use then spread into their communities and further enabled third-party transactions.³²

Privately-issued depression-era scrip is of particular relevance as a stylized example which can help bridge the conceptual gap between currency and share. Most notably, the holders of privately issued currency never made a claim to ownership or control of the company itself - just a right to redeem the money up to a specified value of goods. This is logical since they had no basis to make such a claim - it was not part of the original bargain as it is in the case of stock issues. As mentioned above, it is the *legal* claim to some degree of control over the administration of the company's assets which renders the initial bargain worthwhile to the would-be shareholder. The shared perception which attributes value to the share is also different. Whereas in the case of corporate-issued scrip the shared perception of value rests on the inventory of the issuer, the value of the share rests on perceptions of value linked to the solvency of the corporate entity and is patterned by micro-social relations.³³ Paddy Ireland has argued convincingly that the bond which ties the share, shareholder, and corporation together is a bi-product of the incomplete de-personification of the company - he calls this link the "Myth of Shareholder Ownership."³⁴ *Myth*, in this instance, is an apt term in the sense that it captures both the pervasive nature of this fiction in society at large as well as the innocence of the average shareholder in sharing the commonly held belief that their shares constitute some portion of the company.

Ireland traces the history of what I have called the *function* of the corporate share. In the early days of company law, he explains, judges looked to the law of partners. In

³² Weatherford, 1997

³³ Cetina and Bruegger, 2002

³⁴ Ireland, 1999

which the company was "*made of*" rather than "*made by*" a group of investors, when determining the rights of shareholders. This in spite of an early precedent set in *Bligh v Brent 1837* which established that shareholders had no direct interest in the property of the company. His concern is that company law has clung to the perception of shareholders as insiders with concomitant membership rights despite the fact that the shareholder played an increasingly external role similar to that of a debtor, the main difference being the indeterminacy of the reward (dividends vs. fixed return).³⁵ What interests me is that this role was legally prescribed through court decisions, fraught with logical inconsistency as they might have been. As Ireland shows, the legal connection between shareholder and company is irrefutably based on false pretences of ownership and the massive confusion which arose from the existential crisis caused by the creation of a new legal subject. It is the social impact, the legitimation of that link, which remains most relevant. The end result of this evolution is the impression, among shareholders, of being right-bearing members of the corporate club. The context specific nature of the rights, membership, and club are addressed in the next section of this paper.

The *form* of the corporate share, the membership card itself, is what has taken on the role of money, buttressed by this false, but widely perceived, notion of a connection with the issuing company. The original bargain and its legal origins are rendered irrelevant as the shared social meaning which renders interpersonal exchange possible takes over. This highly liquid financial property circulates freely but exclusively among those who share a perception of its value which remains unproven until the moment of liquidation. More interesting still is the manner in which worth is performed among market actors through reference to abstract formulae and statistical analysis, the value of

³⁵ Ibid.

which is obvious to anyone with a shared epistemological outlook but otherwise remains abstruse.³⁶ Perhaps as a result of these evaluation methods, the rate of exchange between shares and national currency fluctuates rapidly and frequently. Yet the *fundamentals* which dictate these changes are no more mysterious and subjective than those which see notional currencies fluctuating against one another on a daily basis.

As noted above, the market for shares is dominated by trading which occurs long after their creation. Furthermore, a vast body of literature concerning the varieties of capitalism documents empirical findings which evince differentiated patterns of this exchange across national borders. Of particular relevance are variations of shareholder power, dispersion of control, and the size of the stock market.³⁷ In coordinated market economies, shareholders tend to have less power, be less dispersed, and the volume of exchanges on the stock market is limited. In liberal market economies, the opposite is true. In connection with my expansion of Zelizer's circuits of commerce, any market for shares requires performed worth statements circulating and being interpreted according to authoritative systems of valuation. Differentiated patterns of exchange imply differentiated shared perceptions of value.

Furthermore, the empirical evidence documenting the existence of institutional complementarities that is advanced by Varieties of Capitalism (VOC) scholars suggests a link to a wider of understanding of the corporation in a given society.³⁸ Corporate governance models which co-exist with a particular end of the co-ordinated/liberal market economy spectrum are in fact related to the strategic or laissez-faire character of

³⁶ The reader is encouraged to consider the self-fulfilling nature of a shared epistemology among market actors with a common perception of the importance of thresholds in graphical analysis or specific price/earnings ratios, for example.

³⁷ Halt and Gingerich, 2001

³⁸ See, for example, Ahlring and Deakin, 2007

a wide variety of other institutions, from industrial relations and social protection to the structure of the firm and inter-firm relations. The appropriate role of the corporation is thus reified and co-determined by these other institutions.³⁹ For instance, Hall and Gingerich have noted that when "institutions of corporate governance limit the demands on firms to maximize... shareholder value, firms will find it easier to enter into collaborative arrangements with other firms, for the purpose of research, product development, or technology transfer."⁴⁰ The connection can also work in the opposite direction. For instance, a deregulated financial market allows for capital accumulation among investors who have an interest in maintaining a profit-maximizing, shareholder oriented model of corporate governance.⁴¹ Patterns of exchange, differentiated between countries, reflect this variety of inter-institutional relationships.

In arguing that shares matter, three successive claims have been made to suggest a link between legal institutions, commercial circuits, and the differentiated behaviour of market actors. First, the membership function of the share is a role which the courts have ascribed to it. Second, this functional role has created the shared perception of the *right* to control which gives shares their value in commercial circuits. Third, these commercial circuits are differentiated among different societies whose economic and social institutions reflect the different understandings of that right. What remains to be seen is the insight which can be drawn from this re-conceptualization of the share as it is re-injected into the various corporate governance debates. The next section addresses the interaction with one such debate concerning the necessity of convergence onto the shareholder primacy model.

³⁹ Hall and Soskice, 2001

⁴⁰ Hall and Gingerich, 2001

⁴¹ Bonen, 2008

Part 3 - Universal Shareholder Primacy

Hansmann and Kraakman have summoned the forces of logic, example, and competition in an attempt to deal a terminal blow to the ongoing debate between shareholder and stakeholder primacy. Among many other bold statements, they have declared:

There is no longer any serious competitor to the view that corporate law should principally strive to increase long-term shareholder value. This emergent consensus has already profoundly affected corporate governance practices throughout the world. It is only a matter of time before its influence is felt in the reform of corporate law as well.⁴²

Their article posits a competition among varying legal systems that is being won by a model that is theoretically stronger and a proven champion. Without a theory of the share, the suggestion that the world of corporate governance is somehow collapsing onto an even plain - the maximisation of returns to the shareholder - is more threatening than a careless reading of Hansmann and Kraakman suggest. Not only do shares matter, they matter so much that one could claim that all of corporate governance is already oriented towards shareholder primacy.

Looking at the current corporate governance models from the perspective that shares matter can help us to understand and explain variety. In Germany, the average shareholder is a large institutional investor, who engages in a high degree of cross-shareholding and cares about long-term inter-firm relationships which support this country's understanding of the relationship between the firm and society. The VOC literature on institutional complementarities suggests that laws should support highly regulated labour markets, low levels of anti-trust regulation, and highly developed

⁴² Hansmann and Kraakman, 2001

welfare services to prioritize equality over growth.⁴³ These laws exist to reify and institutionalize the firm's role and the German shareholder benefits. In America, "the vision has always been that of a weak state and powerful private institutions."⁴⁴ The laws correspond by providing weak labour markets, high anti-trust, and weak welfare provisions. The result is a package which gives little or no voice to shareholders and minimal transaction costs upon exit.⁴⁵ Again, the shareholder benefits: in this case it is a diffuse (but still primarily institutional) investor. Of course, this is not to say that there is no danger in the end of history argument. What should be noted is simply that there is no universal concept of a share and hence no universal concept of a shareholder. The shareholder in all of the different models is a compliment to the share, which has been legally enshrined in unique ways across many countries and alongside institutions that are still more unique. German "codetermination" has no place in America, just as the Sarbanes-Oxley Act does not belong in Japan, nor does the Zaibatsu belong in Germany. The danger in Hansmann and Kraakman's argument is that it seeks to uproot institutions, including a particular conception of the share and its holder, from the foundations they are embedded in.

Evidence suggests that what might be characterized as convergence is actually happening in a regionally specific manner. Tony Edwards, in his study of company-level restructuring, industrial relations, and corporate governance, emphasises the fact that existing systems of employee representation continue to alter the nature of the process. He claims, "the pace and direction of change in corporate governance systems is highly

⁴³ Hall and Gingerich, 2001

⁴⁴ Hamilton and Biggart, 1988.

⁴⁵ Hall and Gingerich, 2001

varied and uneven."⁴⁶ Armour, Deakin, and Konzelman suggest that the extent to which the end of history sort of shareholder primacy is prevalent in the UK is highly anomalous and could be a hangover from its peak in the 1980s and 1990s. Moreover, they suggest the possibility of another interpretation of shareholder primacy which, by taking long term considerations into account, might look similar to what is now called stakeholder primacy.⁴⁷ This suggests that as different countries re-interpret the relationship between state, market, and society, they are doing so in an experimental manner - which is not necessarily linear. The danger lies in the normative appeal of analyses which claim to have universal formula for success or efficiency. Letza, Sun, and Kirkbride advise us that "the corporation as a social and legal product is not so entitative and solid in practice over time."⁴⁸ Variety should be a key feature of global approaches to corporate governance.

Conclusion

By focusing on share as a site of meaningful contact between law, society, and the market, this paper has provided an alternative means of analyzing corporate governance debates. While the literature from corporate governance speaks extensively about the role of the shareholder, scholars seem to have forgotten to define this basic building block of the corporate form. By focusing on the scholarship of Viviana Zelizer and a number of Network theorists in economic sociology, the share was described as a membership card to an organization. As a membership card, the share entitles the shareholder whatever rights are associated with that membership in a given society.

⁴⁶ Edwards, 2004

⁴⁷ Armour, Deakin, and Konzelmann

⁴⁸ Letza, Sun, and Kirkbride

These rights will be related to a variety of other complimentary institutions and the appeal of membership will vary among this society based on their form. This functional role of the share is distinct from the way in which it is traded on financial markets. The authoritative and shared meanings which allow these transactions to take place come from a shared sense of rights in the issuing company which is enforced by the courts. Building on this theory that shares matter, a recent debate about convergence was analyzed in an attempt to show that much of current debate revolves around how issues are being framed by a polarizing tendency in the language commonly used to describe the various models of corporate governance.

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