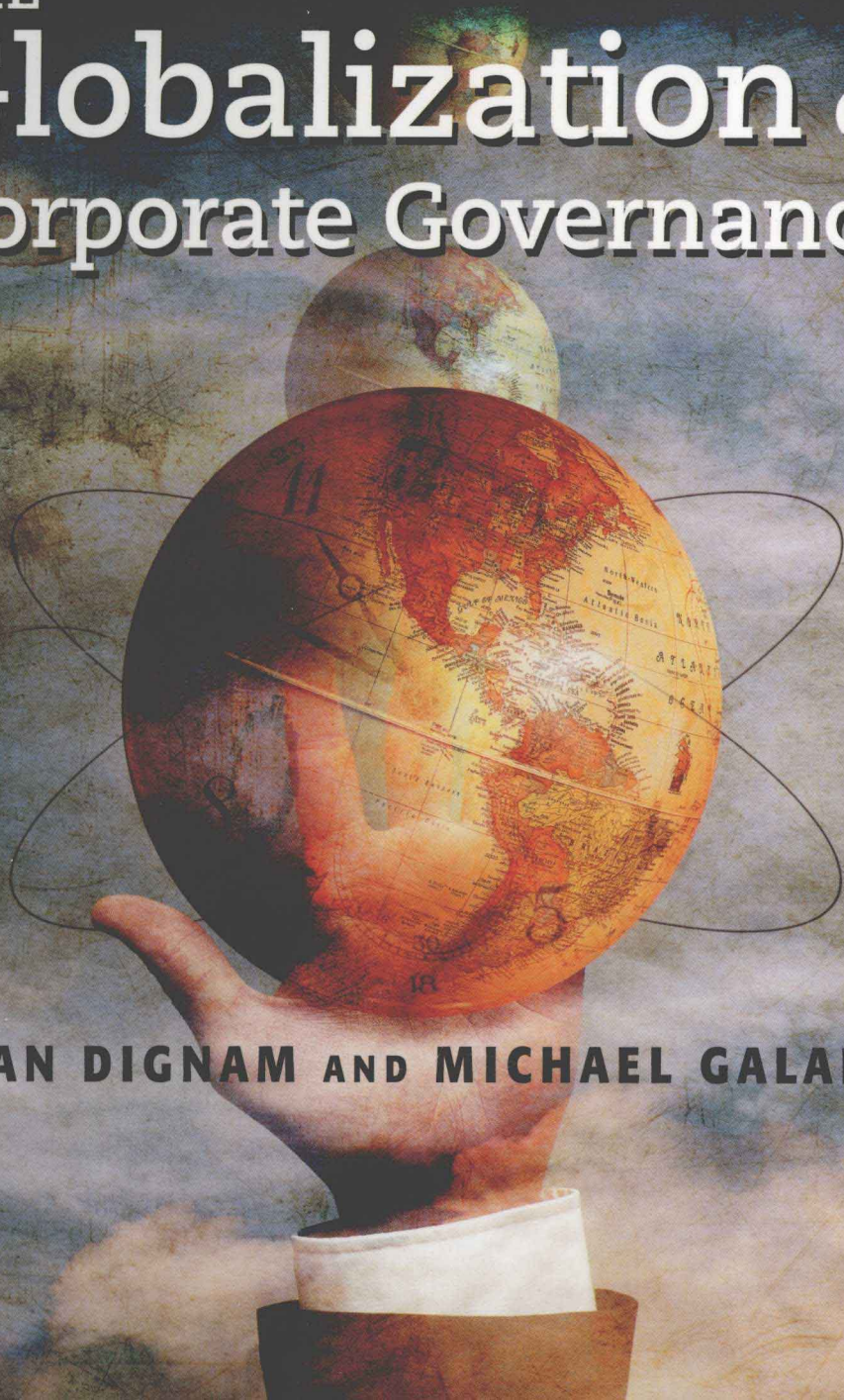


# THE Globalization of Corporate Governance

**ALAN DIGNAM AND MICHAEL GALANIS**



# The Globalization of Corporate Governance

ALAN DIGNAM

*Queen Mary, University of London, UK*

MICHAEL GALANIS

*University of Leeds, UK*

ASHGATE

© Alan Dignam and Michael Galanis 2009

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the publisher.

Alan Dignam and Michael Galanis have asserted their moral right under the Copyright, Designs and Patents Act, 1988, to be identified as the authors of this work.

Published by  
Ashgate Publishing Limited  
Wey Court East  
Union Road  
Farnham  
Surrey, GU9 7PT  
England

Ashgate Publishing Company  
Suite 420  
101 Cherry Street  
Burlington  
VT 05401-4405  
USA

[www.ashgate.com](http://www.ashgate.com)

### **British Library Cataloguing in Publication Data**

Dignam, Alan J.

The globalization of corporate governance.

1. Corporate governance. 2. Globalization.

I. Title II. Galanis, Michael.

658.4-dc22

### **Library of Congress Cataloging-in-Publication Data**

Dignam, Alan J.

The globalization of corporate governance / by Alan Dignam and Michael Galanis.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-7546-4625-9

1. Corporate governance--Law and legislation. 2. Corporation law. 3. Globalization. I. Galanis, Michael. II. Title.

K1327.D54 2009

338.6--dc22

2008053461

ISBN 978-0-7546-4625-9

Reprinted 2010



**Mixed Sources**

Product group from well-managed  
forests and other controlled sources  
[www.fsc.org](http://www.fsc.org) Cert no. SA-COC-1565  
© 1996 Forest Stewardship Council

Printed and bound in Great Britain by  
MPG Books Ltd, Bodmin, Cornwall.

# List of Charts and Graphs

## Charts

3.1	Average daily foreign exchange transactions	102
3.2	Value of announced cross-border equity issues	103
3.3	Weighted average US tariff rate after GATT rounds, 1947–1994	110
6.1	UK equity turnover	239
7.1	Stock market capitalization as a percentage of GDP in major economies, 1995	283
7.2	Listed industrial corporations in five major exchanges in 1997	284
8.1	Real GDP growth	307
8.2	Domestic demand	308
8.3	Domestic and foreign demand conditions in Germany	308
8.4	Financial assets of pension funds in 2007	332
8.5	German initial public offerings, 1977–2007	379
8.6	Comparative admissions to listing: Germany, UK, US and Japan	380
9.1	Changing shareholding structure, 1991–2007	411

## Graphs

3.1	Holdings of foreign securities by insurance companies and pension funds	106
3.2	Real growth and real interest rates in the US, 1961–2004	118
6.1	Share ownership patterns in the UK, 1957–2004	248
6.2	Share ownership patterns in the US, 1950–2004	258
8.1	Unemployed persons as a percentage of total workforce	305
8.2	German FDI inward and outward stock, 1980–2004	310
8.3	Households' financial assets by category, 1991–2004	329
8.4	Market capitalization as a percentage of GDP in Germany, 1990–2006	330

# List of Tables

3.1	Total trade as a percentage of GDP for selected developed countries	93
3.2	Capital flows, 1870–1996	95
3.3	Gross purchases and sales of securities between residents and non-residents in six major OECD countries	104
3.4	Total financial assets of institutional investors	105
3.5	Average tariff rates on manufactured products in major economies, 1913–2000	109
3.6	Post-war economic performance	114
3.7	Inward and outward FDI stock	124
3.8	Cross-border M&As with values of over \$1 billion, 1987–2004	136
3.9	M&As as share (percentage) of FDI by country/region, 1990–2001	138
5.1	British imports of American tobacco, 1620–1775	185
5.2	British trade with the US (estimated market value of British imports from the United States, 1770–1775, 1784–1792)	188
5.3	Official value of imports of merchandise into the UK – annual average in each five year period	189
7.1	Significance of blockholders in traditional German governance	278
7.2	Distribution of shareholdings in German listed companies by owner type	279
7.3	Share in voting rights of five largest private banks at their own general meetings in 1992	280
7.4	Voting blocks of banks at shareholder meetings of the largest German companies in 1986	281
7.5	Takeovers, pay and ownership: Germany and the UK	287
8.1	Trade and export performance of Germany, 1988–2004	305
8.2	ESOPs outstanding as a percentage of total shares outstanding of DAX-30 and 30 Dow Jones industrial companies in 2001 and 2002 respectively	349
8.3	Number and percentage of DAX-30 companies using German HGB, IAS/IFRS, and US GAAP in consolidated financial statements	356
8.4	Structural changes in the ownership of German companies – percentages of share ownership by sector from 1990 to 2007	362
9.1	Financing of non financial German corporations, 1991–2006	406

# Preface

The process of economic globalization, as product and capital markets integrate, places huge, and it is argued by some, irresistible pressures,<sup>1</sup> on the worlds 'insider' stakeholder oriented corporate governance systems. Insider corporate governance systems in countries such as Germany and Japan, so the argument goes, should converge or be transformed by global product and capital market pressures to the 'superior' shareholder oriented 'outsider' corporate governance model prevalent in the UK and the US.<sup>2</sup> What these pressures from globalization are, how they manifest themselves and whether they are likely to cause such a convergence/transformation lies at the heart of our exploration in this book.

We began working on this book out of a common concern that there was a misunderstanding in the comparative corporate governance literature about the way pressures to change from the process of globalization, play out into real systemic change. Analysis of a competition between insider and outsider systems in terms of 'triumph' and 'failure', 'superiority' and 'inferiority', comparisons in natural selection terms or descriptions of outsider systems as the 'standard model' or the 'Top', in a race to the 'Top' analysis, seemed to us oddly misplaced given the complexity of the issues at hand. In one sense our aim in writing this book is relatively simple; we aim to show that change within corporate governance systems produces very uncertain outcomes even where the intention is to produce a uniform one. Observing, as much of the literature does, that outsider shareholder oriented rules are being adopted in insider systems does little, as we will demonstrate over the course of this book, to help us understand what effect this will have, as diversity of reaction should, in our view, be regarded as the norm. That does not mean we rule out convergence

---

1 Hansmann, H. and Kraakman, R. (2001) 'The End of History for Corporate Law', *Georgetown Law Journal*, 89, 439 at 468.

2 Corporate governance in this book refers to the product of an institutional balancing process whereby the sometimes conflicting interests of a corporation's stakeholders (shareholders, employees, creditors, government, local community and more recently the environment) are accounted for and/or prioritized in order to produce benefit for society. The insider and outsider models described here represent different institutional balancing processes whereby in outsider systems the process is designed to prioritize shareholders in order to maximize wealth for them and benefit other stakeholders indirectly as shareholders reinvest their wealth to create more jobs etc. Institutional arrangements in insider systems tend to weigh the balance of stakeholder interests differently and choose to benefit stakeholders through direct wealth transfers from the company's activities, for example through enhanced wages, better working conditions and job security for employees. We discuss these differences further in Chapter 1.

occurring, it is a possible outcome, but just one of many that might occur. In essence while we are interested in the cause of change and the effect of change in corporate governance systems, we are also interested in the gap between cause and effect.

Like all good lawyers we also begin with a *caveat*. In exploring the globalization of corporate governance we work across a number of disciplines, primarily – law, finance, economics, economic history and political history – in order to get a broader view of change and transformation related to the process of economic globalization. This has advantages in that it allows us to make links between disciplines that provides additional insight into the process of economic globalization and its outcomes in corporate governance terms. It also has its downside as it means we have to cover a lot of ground without necessarily going into detail everywhere. This is particularly risky where we enter highly contested territory within the five disciplines we cover. We acknowledge these limitations as the price we pay for our aerial view but we think the risk has been worth running. We would hope that those who read it bring to their reading a similar willingness to reach out from the confines of their discipline.

We owe a general debt of gratitude to Peter Alldridge, Cari Batenburg, John Birds, Roger Cotterrell, Giullio Fella, Martin Gelter, Harry Haramis, Yunjoo Lee, Norbert Lieckfeldt, Eva Lomnicka, John Lowry, Harry Mertzanis, Harilaos Metzanis, Charles Mitchell, Paul Mitchell, Chris Riley, Gerhard Sorger, Bob Thompson, David Tomkin, and Dirk Zetzsche for their assistance with parts of this book over the years. We thank the various members of staff at the *Deutsches Aktieninstitut* who were very helpful in responding to data queries. We would also like to thank Henry Hansmann and Ron Gilson for giving up their time to discuss some of the ideas in this book on visits to London and Cambridge in 2002 and 2004 respectively. We owe a specific debt of gratitude to John Armour, Brian Cheffins and Josh Getzler for always being available to discuss ideas. Particular thanks go to Bob Burns for his uncanny ability to find things when all else fails and to Leyanda Cocks for her unceasingly rigorous research assistance in the face of unreasonable deadlines. We also thank the editorial staff at Ashgate Publishing, in particular – Aimée Feenan, Sarah Horsley and Alison Kirk, who commissioned this book, waited patiently while we missed deadline after deadline and then ensured a smooth production process. Our gratitude as well to Joey Johnson, Sheila Shirley, Kaptan Miah and Nerys Evans at the School of Law, Queen Mary, University of London, for their tireless assistance over the years. As always we are indebted to our loved ones, Xanthippe, Liz, Grainne, Iris and Laurence, without whose support none of this would have been possible. We have dedicated the book to the memory of Michael Whincop, who before his untimely death in 2003, persuaded us that Ashgate would be a congenial home for an interdisciplinary work on comparative corporate governance. He was right, as usual, and his fellowship and scholarship are much missed by all who encountered him.

Alan Dignam and Michael Galanis  
London and Leeds, March 2009

# Overview

The book is divided into two parts with four chapters in the first and five in the second. In Part 1: *Theorizing Corporate Governance Change*, we set out the theoretical context for our examination of change and transformation in corporate governance systems as a result of globalization. We begin in the first chapter – *Corporate Governance Convergence and Corporate Theory* – by setting the initial corporate theoretical context for the debate, to illustrate the polarization within this context and its link to convergence/transformation scholarship. In doing this we explore the various theories that have been used to explain the nature of the corporation. Over the course of the twentieth century, as the managerial firm emerged, corporate theory focused clearly on the accountability gap created by the separation of ownership from control. As such, two broad conceptions of the corporation emerged in the literature, which we describe as shareholder supremacy and managerialism. The former advocates that the focus of managerial power should be the shareholder, while the latter advocates broader accountability for managers to stakeholders. Although these conceptions of the corporation are highly contested, shareholder supremacy has over the past 30 years come to ascendancy particularly in the United States (US) and the United Kingdom (UK). In turn as the globalization of financial markets has been driven by investors from US/UK Anglo/Saxon ‘outsider’ systems, this has been accompanied by an elevation of the contested theoretical accountability debate and the dominance of shareholder supremacy to the global stage, with some scholars claiming that the convergence of insider systems to a ‘superior’ shareholder oriented outsider system is preordained.

In Chapter 2 – *Institutional Analysis and Corporate Governance Systems* – we introduce institutional analysis as our preferred form of theoretical analysis for a forum in which change in the institutional context, whether national or global, is significant. We argue that managerial behaviour is shaped in an imperfect world, where the bounded rationality of economic agents and uncertainty give rise to positive transaction costs. Therefore, in comparing corporate governance systems at the national and global level, where institutional interactions are crucial to convergence claims, we consider institutional analysis to be more effective rather than other theories based on neoclassical equilibria that assume freedom from institutional interference. Thus in imperfect markets, whether a corporate governance system reflects shareholder supremacy or managerialism or indeed is moving from one to the other, is determined in our view by the institutional structure within which it is embedded. We then go on to identify certain key complimentary institutional sub-systems (corporate law, the financial system, the



industrial relations system, and sub-systems related to the government demand function, particularly competition and effective demand), that are central to corporate governance outcomes and which we emphasize in our exploration of convergence/transformation in Part II of the book. We then continue to examine insider and outsider corporate governance models to demonstrate the coherence of both systems as workable combinations of complementary national institutional sub-systems.

In Chapter 3 – *Globalization and its Impact on Corporate Governance Systems* – we set out our theoretical view of globalization as a process. In doing so we consider that internationalization and regionalization, in so far as they facilitate a decoupling from the national arena, form part of the process of globalization. We then examine the process of globalization and its potential to cause change in corporate governance systems. We argue that through the process of economic globalization led by capital and product market liberalization, conditions that promote securitization of financial systems, externalization of labour markets, promote shareholder corporate law norms and introduce highly competitive product markets, have been created that could, in theory, cause workability problems for insider corporate governance models.

In Chapter 4 – *Theorizing the Possibility of Change in Insider Corporate Governance Systems: Divergence or Convergence?* – we set out the various theoretical approaches to institutional change and how they predict national institutional sets will respond to the pressures of globalization. In doing so we bring together the central elements of the previous three chapters to examine the potential dynamic responses of national corporate governance systems to the pressures from the process of globalization. We begin by discussing claims of a neoclassical origin that emphasize a clear uniform shareholder oriented outcome in response to the forces of globalization. We then examine theories of institutional change that emphasize the role of institutions in either facilitating or blocking change. In all we conclude that institutional dynamics within systems can vary considerably, so that national corporate governance models should be expected to react differently to common stimulants and not uniformly, as neoclassical theories of change and its associated scholarship would predict.

We then turn in Part 2: *Observing Change and Transformation in the UK, US and Germany*, to examine evidence of institutional change in the UK, the US and Germany. In Chapter 5 – *The Insider Corporate Governance Systems of the UK and the US: From Colony to Cold War* – we examine long-term change in the institutional corporate governance sub-systems of the UK and US in the period from their initial colonial relationship until the early 1970s. We focus on the outsider systems of the UK and US because their outsider status is exceptional within the world's corporate governance systems and so before examining changes to the German insider system, that might be leading to transformation to an outsider system of corporate governance, we need to understand more about how the UK and US came to their exceptional status. In all, the UK, over the time period we analysed in this chapter, did not in our view conform to a shareholder oriented

outsider system of corporate governance. While the stock exchange was a source of finance which increased over time, at almost all points along the way families, banks, government and labour exerted significant influence over managerial discretion. Additionally, competitive pressures were negated by government instigated collusion or tolerance of collusion and from the 1930s protective tariff barriers diminished overseas competition. Similarly, the US did not conform to a shareholder oriented outsider system of corporate governance in this period. In the US, while the stock exchange grew in importance and dispersed ownership of large US companies emerged, managerial discretion was significantly influenced at various points by banks, government and labour, while dispersed shareholders were unable to exert control over management.

Competitive pressures were greater than in the UK, but US companies had much greater protection through tariff barriers than UK companies did prior to the 1930s. In all, the UK and US, conformed to an insider model more than an outsider one over this period. Indeed the economic shock of the Great Depression in the US and of WWII in Britain, caused institutional transformation in both countries to stronger insider systems. However, within the insider paradigm, change was generally constant in both the UK and US and the seeds of future corporate governance transformation were evident by the late 1960s, as institutional investors began to emerge as an influence and the hostile takeover began to squeeze managerial discretion.

In Chapter 6 – *The Emergence of Outsider Corporate Governance Systems in the UK and US: From the End of the Golden Age to Globalization* – we examine how the UK and US were transformed from insider systems to become the two shareholder oriented outsider systems they are today. In both countries the post war consensus between labour, business and government collapsed in the 1970s with the end of the Bretton Woods agreement, increased product market competition, stagflation and successive oil crises. Transformation came in the UK and the US with the introduction of ideologically driven monetarist and deregulatory policies by Margaret Thatcher and Ronald Reagan. At that point a domestic shock induced by these policies further facilitated change by softening up any remaining resistance to systemic transformation. By the end of the 1980s, both the UK and the US had emerged as shareholder oriented outsider systems, as the industrial relations and financial systems of both countries were transformed and the government's role in the marketplace was reduced. Corporate law did not seem to play much of a role in this, as it had a managerial orientation. In the vacuum created by the withdrawal of the state, the diminution of labour power and a deregulated financial market, the institutionalization of shareholding and the emergence of a market for corporate control in both countries allowed shareholders to become the major influence within the corporate governance systems and complete the transformation to outsider systems.

What is noteworthy in our long-term historical analysis of change in the role of government, industrial relations, financial systems and corporate law, is the fluidity of institutional change over time in the UK and US. Rather than static

constellations of institutional systems, they have been engaged in constant rearrangement in response to stimulus. While broadly one would describe the UK and the US as insider systems up until the 1980s, that classification disguises a remarkable amount of change/transformation and diversity in reaction in the institutions affecting corporate governance outcomes over time. At various times up until the 1980s, management, families, labour, banks, competitive pressures and the government or combinations of these elements have been important influences on management discretion. Most of that change indicated diversity of reaction in institutional structure to stimulus until the 1980s, when in reaction to a similar shock both systems reoriented themselves to produce a similar outcome. The experience of the UK and the US may not be transferable generally to analysis of institutional systemic convergence/transformation as their shared institutional history may have played a role in the common response to shock. We explore this further in the final chapter.

In Chapter 7 – *The Traditional German Corporate Governance Model* – before we consider the evidence of convergence/transformation in Germany caused by the pressures of globalization, we must first establish a base against which we can judge the evidence of such convergence/transformation. In this chapter we set out the traditional German insider corporate governance model. We begin by examining the nineteenth century origins of the German corporate governance model and observe that it has not been based on the idea that managers act solely in the interests of shareholders. Labour co-determination, industry cross-shareholdings, family shareholding, state shareholding and bank shareholding indicate a strong insider bias to the corporate governance system. Externally a weak securities market, bank finance, deficient disclosure and minority shareholder protection rules, the absence of a market for corporate control and collusive relationships between companies are features of the traditional corporate governance system.

In all, managers within the traditional German corporate governance model have significant discretion upon which the major constraint is the interests of employees followed by the interests of families, banks, affiliated companies and the state, all sustained historically by a notion of long term commitment between the company and its various stakeholders. Thus, the German model of corporate governance has been based on the workable complementarity of its institutional components and has provided the foundations for a workable system which performed extremely well for most of the post war era and has achieved and maintained a high level of social welfare and cohesion. However, as the process of economic globalization picked up speed from the late 1980s onwards, greater pressures for change did start to emerge.

In Chapter 8 – *Economic Globalization and the German Insider Corporate Governance Model* – we examine the interaction between the forces of global corporate governance isomorphism and the traditional German corporate governance institutions described in Chapter 7. We examine in the first section how exposure to increased global and regional competition and the globalization of production created simultaneous pressures on management and labour. The

result of this has been a formal protective path dependent reaction in Germany to strengthen co-determination, while at the same time the participants in the reinforced co-determined system have been engaged in introducing functional flexibility to reflect the weakened position of labour. Additionally developments at the EU level in the availability of the *Societas Europaea* (SE), the *Centros* decision and the Lisbon 2010 agenda aimed at facilitating the single European market may have brought some formal erosion of co-determination and the introduction of a more flexible labour market. In all, co-determination has changed to accommodate a consensus in which labour is weaker in an increasingly global workplace. However, the institutions of co-determination, though altered, still remain a central part of the German system of corporate governance and significantly they are still highly valued by workers and the general public.

From the late 1980s onwards considerable reforms have taken place within the German financial system to enhance the role of securities markets in the mobilization of savings. As the liberalization of capital controls progressed over the 1980s the interaction between domestic and foreign financial markets through regulatory arbitrage, as Germany's largest companies and banks began to increasingly operate outside Germany, created a need to attempt a gradual reorienting of the German financial system to a more market oriented model necessary for *Finanzplatz Deutschland* ('Germany as a Financial Centre').

As a result of *Finanzplatz Deutschland*, capital gains tax changes, accountability and disclosure, insider dealing, prospectus requirements, pension reform, corporate law amendments, the introduction of a corporate governance code and accounting reforms have all clearly moved to introduce outsider oriented rules into the German corporate governance system or in the case of tax and shareholder voting changes, actively encourage insider disengagement. However, some of the reforms necessary to alter the German financial system created significant path dependent resistance. Takeover reform at both the EU and domestic level in the aftermath of the Vodafone/Mannesmann hostile takeover in 1999/2000, moved to allow management to protect themselves from hostile bids. Additionally, some of the outsider oriented reforms have not had the intended effect and may have operated to enhance managerial power and insider private rent extraction.

The most significant effects of the exposure of German companies to capital markets and the *Finanzplatz Deutschland* reforms has been on the shareholdings of German companies. The withdrawal of banks as liquidity providers and protectors of management has been a particular feature of the changes since the 1990s as the banks have stopped lending to German companies, sold their shares and given up their board positions. As some insiders have left, German institutional investors and foreign, mostly institutional, investors have taken their places. Private equity and hedge funds from the UK and US have also been buying stakes in medium and large German companies and have been emphasizing a shareholder oriented rather than a stakeholder approach to running those companies. However, a significant reaction by management to enhance their power, as banks have withdrawn, is evident in the increasing number of former managers on the supervisory board

and attempts to find ‘anchor’ shareholders who are long-term investors. The stock market crash in 2001/2002, also seems to have had a damaging effect on an emerging equity culture as German institutional investors have been withdrawing between 2003 and 2007, while other blockholders, even banks, have been increasing their shareholdings. The upsurge in government, bank and non financial corporations’ shareholdings between 2003 and 2007, may partly be a reflection of managers and labour seeking ‘anchor’ long-term shareholders and/or the enhanced ability of insiders to engage in private rent extraction. In all, over the past 20 years both functional and formal outsider norms have been introduced into the traditional German corporate governance model. There have though been significant path dependent reactions to these norms as well.

Whether the German insider corporate governance model is moving to or is transforming into an outsider system is a complex question that we consider in the final chapter.

In Chapter 9 – *The End of Globalization?* – we draw together our conclusions from the previous chapters and examine the future of globalization as a continuing agent of change. One of the features of our examination of change in the UK, US and Germany is that, in general, change within corporate governance sub-systems seems to be a constant process of stimuli and reaction within a complementary workable set of institutional sub-systems. However, as we discussed in Chapter 4, sometimes shocks to individual sub-systems or to the systems as a whole can align forces for change in a particular direction removing path dependent reactions and pushing it away from its original course. The interwar years in the UK culminating in the shock of WWII exerted transforming influence while in the US the combined shock of the 1929 crash and the Great Depression similarly caused a transformative reaction in the US. Successive economic shocks in the 1970s and early 1980s, brought about a period of unworkability for the corporate governance systems of the UK and US, as the government, labour and management consensus of the post war years broke down in the face of economic shock. The corporate governance system was then only capable of being transformed as the path dependent forces one would normally expect to resist severe change were overwhelmed by those successive shocks. This leaves us with two general observations which we explore further. First that the similarity of reaction in the UK and US in the 1980s, suggests to us, given our institutional critique, that shared institutions are playing a role in those reactions and second that diversity of reaction to similar economic pressures to change occurred in Germany.

While in a general sense diversity in reaction to change over time was the norm within the UK and the US, shared colonial history played a key role in transferring certain core econo-cultural values such as a mutual central respect for freedom of contract, protection of private property and arms length economic regulation. Over time, while the two countries have developed differing institutional sub-systems, the values upon which they were built were similar and were reinforced over the centuries by the strong trading relationship between the two countries. In terms of explaining why the UK and US react in such similar ways to shocks to their

institutional structure over the course of the 1970s and 1980s, we consider that because these shared values form the background upon which formal institutions are embedded in both countries, economic institutions when faced with similar shocks end up with similar outcomes, because the values underlying the decision making in the realignment process were the same. In other words, the similar reaction of these two systems to shock is not likely to be transferable to the analysis of institutional change/transformation generally, as we consider that their shared institutional history has played a role in the common response to shock.

Indeed, diversity of reaction has been the German experience. In contrast to the UK and US over the 1970s and early 1980s Germany did not experience the dramatic shocks experienced by the UK and US, despite being exposed to the same events. Unemployment rose, but not near the levels of the UK and US and rampant inflation was not present, as the Bundesbank's historic emphasis on price stability was successful and the institutions of co-determination in the German insider model held wages down. By the 1990s as the process of globalization began to impact, co-determination came under severe pressure while securities market reforms and direct exposure by core companies to the global capital markets have introduced outsider norms into the traditional German insider model. The reactions to these changes have been interesting. Formal responses to the threat to co-determination have occurred to reinforce it, fear of hostile takeovers has spurred a formal protection of management and formal and functional reactions have occurred with regard to outsider based management incentives. One of the most significant changes has been the reaction of banks who have withdrawn from their traditional role as supporters of management and suppliers of liquidity, by selling their shares, giving up their board seats and ceasing to lend to client companies. The outsider reforms may not have had their intended effect as managerial power may have been enhanced by the withdrawal of the banks, in that management have been reacting by replacing the banks on the supervisory boards with former management and by seeking out anchor shareholders.

We consider this managerial reaction to be a crucial indicator of the rearrangements occurring within the German corporate governance model. The effects of the process of globalization in the 1990s and early twenty-first century, have weakened labour influence and caused banks to disengage at the same time as outsider shareholders have grown in number but are not yet a significant influence on management discretion. All this has enhanced management discretion. A reengaging of traditional insiders since 2003 also suggests that while the system has changed, the insider system is being reworked according to its internal logic and is not transforming into an outsider one. Of course that still leaves the possibility that the process of globalization could produce a future shock which does destabilize the system and because the system has already borne some of the adaptation costs of change, future transformation may cause less resistance from the forces of path dependent. We have reason to doubt this will occur in this form, as it is more likely that events bringing about the end of the current process of globalization could

cause a destabilizing shock either moving Germany to a stronger insider system or to an outsider one.

Within the past decade the process of economic globalization has slowed and in 2008 the two pillars upon which it has been build, the liberalization of trade and capital markets, have been eroded by the collapse of the Doha trade talks and the sub prime and resultant global capital market crisis. Property crashes, runs on banks, nationalization and part nationalization of banks, massive coordinated government funding injecting liquidity into capital markets, IMF loans to fund nations in crisis and stock market crashes have all been features of the global economy since autumn 2008 as government intervention and demand management have swung back into vogue to prevent systemic collapse. Re-regulation of capital markets as a result of this experience with a new form of Bretton Woods Agreement to build a financial architecture to deal with unregulated capital markets seems likely as we write in early 2009. In turn as real introspection is brought to the process of increased liberalization and globalization of trade and capital markets, the legitimacy of the outsider shareholder model, designed by and for this process of globalization, also comes into question. In such a changed environment insider corporate governance models may come to be valued once more.

# List of Abbreviations

ADR	American Depositary Receipts
AG	Aktiengesellschaft (German public corporation)
AGM	Annual General Meeting
AktG	Aktiengesetz (Stock Corporation Act)
AnSVG	Anlegerschutzverbesserungsgesetz (Act Improving the Protection of Investors)
APAG	Abschlussprüferaufsichtsgesetz (Accountants' Supervision Act)
APAK	Abschlussprüferaufsichtskommission (Accounting Supervisory Commission)
ASEAN	Association of Southeast Asian Nations
BA	British Aluminium
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Services Supervisory Institution)
BAWe	Bundesaufsichtsamt für den Wertpapierhandel (Federal Securities Trading Supervisory Office)
BBC	British Broadcasting Corporation
BEIC	British East India Company
BetrVerfReformG	Betriebsverfassungsreformgesetz (Works Council Reform Act)
BetrVG	Betriebsverfassungsgesetz (Enterprise Constitution Act)
BGH	Bundesgerichtshof (Federal Court of Justice)
BilKoG	Bilanzrechtskontrollgesetz (Accounting Control Act)
BilMoG	Bilanzrechtsmodernisierungsgesetz (Accounting Law Reform Act)
BilReG	Bilanzrechtsreformgesetz (Reform Act on Accounting Regulations)
BIS	Bank for International Settlements
BKartA	Bundeskartellamt (Federal Cartel Office)
BSK	Börsensachverständigenkommission (Commission of Stock Exchange Experts)
CalPERS	California Public Employees Retirement System
CDU	Christlich Demokratische Union (Christian Democratic Union)
CEO	Chief Executive Officer
CEPREMAP	Centre pour la recherche économique et ses applications
CME	Coordinated Market Economies
DAI	Deutsche Aktieninstitute



DAX	Deutscher Aktien Index (German stock index)
DCGK	Deutscher Corporate Governance Kodex (German Corporate Governance Code)
DGB	Deutscher Gewerkschaftsbund (German Trade Union Federation)
DM	Deutsch Mark
DSW	Deutsche Schutzvereinigung für Wertpapierbesitz (Shareholder association)
DTB	Deutsche Terminbörse (German derivatives exchange)
EBLR	European Business Law Review
EC	European Community
ECB	European Central Bank
ECJ	European Court of Justice
EEC	European Economic Community
ERISA	Employment Retirement Income Securities Act
ESOP	Employee Stock Option Plan
ESRC	Economic and Social Research Council
EU	European Union
EUREX	European Exchange
FAO	Food Agricultural Organization
FDI	Foreign Direct Investment
GAAP	Generally Accepted Accounting Principles
GASB	German Accounting Standards Board
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GmbH	Gesellschaft mit beschränkter Haftung (Large private limited liability companies in Germany)
GNP	Gross National Product
GWB	Gesetz gegen Wettbewerbsbeschränkungen (Act against Restraints of Competition)
HGB	Handelsgesetzbuch (German commercial code)
IAEA	International Atomic Energy Agency
IAS	International Accounting Standards
IASB	International Accounting Standards Board
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
IFRS	International Financial Reporting Standards
IG	Interessengemeinschaften (Pooling associations)
IMF	International Monetary Fund
IMO	International Maritime Organization
INSEAD	Institut Européen d'Administration des Affaires
IPO	Initial Public Offering
IZA	Institute for the Study of Labor