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German Corporate Governance Regulation
Between Market and Multilevel Governance

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ON THE ROAD TO ANGLO-SAXON CAPITALISM? GERMAN CORPORATE GOVERNANCE REGULATION BETWEEN MARKET AND MULTILEVEL GOVERNANCE

Abstract: Financial internationalization and European regulatory harmonization put the German corporate governance regime under pressure to move towards a market-oriented, Anglo-Saxon model. While International Political Economy approaches expect Anglo-Saxon standards to spread across national borders, Comparative Political Economy predicts persistent diversity. In our paper, we trace the patterns and driving forces of change in two areas of corporate governance regulation, namely internal governance and accounting. In accounting, processes of multilevel coordination entailed a high degree of convergence towards Anglo-Saxon standards and institutions. A much greater stability of the domestic institutional framework can be seen in the case of internal governance. While political economy approaches offer important insights for analyzing these changes, both fail to account for the different patterns of convergence and divergence in the two cases. Therefore, we argue in favor of a policy analysis perspective to capture the sectorally distinct interplay of forces that shape the processes of regulatory change.

Keywords: German corporate governance, Anglo-Saxon corporate governance, international finance, convergence, diversity, harmonization

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ON THE ROAD TO ANGLO-SAXON CAPITALISM? GERMAN CORPORATE GOVERNANCE REGULATION BETWEEN MARKET AND MULTILEVEL GOVERNANCE

Susanne Lütz and Dagmar Eberle [*]

I. INTRODUCTION

Whether distinct national "varieties of capitalism" will survive in an increasingly globalizing economy has become one of the most hotly debated issues in Comparative Political Economy since the early 1990s. The internationalization of business and financial markets, the rise of institutional investors, the harmonization of legal rules in the context of the European single market project and the transformation of businesses practices and strategies pose significant challenges to national corporate governance regimes which are a core element of national political economies. Whereas the liberal model of capitalism and corporate governance is apparently better able to cope with these new challenges, their destabilizing effect on traditional institutions and practices seems to be particularly high in the coordinated market economies of continental Europe.

In this paper, we explore the pressures for change and the responses in the case of German corporate governance regulation. Since the mid-1990s, the German corporate governance regime has experienced a series of statutory and self-regulatory reforms which reflect increasing pressure to move towards the market-oriented, Anglo-Saxon model. We explore to what extent the regulatory framework has been adapted to Anglo-Saxon norms and

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institutional structures in different fields of corporate governance and what the driving forces and mechanisms of convergence were.

While economic approaches narrowly confine corporate governance to the control of managers by shareholders, we prefer a more inclusive perspective. We define corporate governance regulation as the rules that shape the distribution of influence and control over company policy among different groups of stakeholders (Goyer 2001: 135; Streeck and Höpner 2003: 14). Corporate governance research usually distinguishes between internal and external corporate governance mechanisms (cf. Mann 2003: 78-98). The former operate via the institutional framework of the firm. Within the corporation, the board of directors constitutes the main device for monitoring management. External control is exercised by market forces and by outside actors. The main external control mechanism is the capital market in its function as market for corporate control. Located at the interface between internal and external corporate governance, between supplying information on the financial situation of a company to corporate insiders and to outside investors, is accounting (Baetge and Thiele 1998: 722; Schmidt and Tyrell 2005: 495-502). The state shapes the structures and the functioning of the different governance mechanisms primarily through company law and capital market regulations. In the field of accounting, private standard-setters have traditionally played an important role in some jurisdictions.

Following the “Varieties of Capitalism” typology, two ideal types of corporate governance regimes can be distinguished: market-oriented “outsider” systems and network-oriented “insider” systems (Franks and Mayer 1995; Hall and Soskice 2001). They are characterized by systematic variances in the design and the importance of the different corporate governance mechanisms. In the “outsider” systems of Anglo-Saxon countries, share ownership is widely dispersed among a multitude of investors who generally have an arm’s length relationship with the firm and rarely intervene into its affairs. Market-based mechanisms of monitoring

and disciplining management serve to direct corporate strategy towards maximizing shareholder value. Company law tends to be more flexible and enabling while the internal organization of the company, especially the structure and composition of the board, is to a large extent perceived as a matter of private ordering and case law. The one-tier board is generally dominated by the top management, especially the CEO, who typically acts as chairman of the board (Cioffi 2003: 9; Donnelly *et al.* 2001: 11). Reporting rules in the Anglo-Saxon world are geared to the provision of information for the capital market. They provide for unbiased information about the success of a business, its state of affairs and its future prospects, usually reflected in the "true and fair view principle" (Nobes and Parker 2004: 22-23). Common Law systems rely on a limited amount of statute law which is then interpreted by the courts. Accounting rules in such a context are established as recommendations or standards by private accountants.

German corporate governance used to be a prototype of the "insider" system. In this model, ownership concentration is generally high, and the relationships among firms are often characterized by cross-shareholdings and cross-directorates. Thus, firms are effectively shielded from hostile takeovers. As "patient capital" is provided by blockholders and long-term bank credits, the market valuation of the firm is less important for corporate policy. German company law lays down strict, mandatory rules which govern the internal structures and procedures of corporate decision-making. This comprehensive body of rules reflects not only Germany's legalistic tradition, but also a pluralistic notion of the "interest of the corporation" which is understood to comprise the interests of shareholders as well as employees, creditors, suppliers, consumers and the general public (Hopt 1998). Correspondingly, internal governance provides stakeholder coalitions with institutionalized mechanisms of voice within the company to influence managerial decision-making. While the day-to-day running of the company is assigned to the management board (*Vorstand*), the supervisory board (*Aufsichtsrat*) is responsible

for the appointment and monitoring of the management board and for approving certain business decisions. Board members typically represent major shareholders, financial and business partners of the company, and also labor. In coal, iron and steel companies with more than 1,000 employees, supervisory boards are organized on a model of paritary co-determination. With the Co-determination Law of 1976, this model was made mandatory for all companies with more than 2,000 employees (Hall and Soskice 2001: 23; Neubürger 2003: 179; Schmidt 2003: 9).

Financial reporting rules are primarily focused on the protection of creditors' interests by stabilizing the company and by providing the firm some autonomy in the composition of its annual account. The German Commercial Code (*Handelsgesetzbuch, HGB*) allows the company to take "hidden reserves" into account and to calculate gains and losses over longer periods (principle of prudence). Moreover, financial statements are also used to determine income and corporate tax. Due to this close linkage of tax assessment and financial reporting the state is equal to any other investor thereby turning into the "silent stakeholder" of the firm. Given that the German legal system has its origins in Roman law, its accounting rules are part of the code law system which means they can only be changed through legislation. Accordingly, decisions on accounting rules in Germany are viewed not only as a technical matter on which a group of accounting experts should be competent but the rule development process is coordinated by public actors, such as administrators in the Federal Ministries of Finance and Justice while only a relatively minor role is ascribed to the audit profession (Mc Leavy *et al.* 2004: 292-294).

The debate in political economy offers two contrary propositions on the likely course of the reforms in German corporate governance regulation. The institutionalist approaches of Comparative Political Economy emphasize the stickiness of national institutional configurations. The most prominent theoretical framework predicting persistent diversity is the "varieties of capitalism"

approach (Hall and Soskice 2001). In this perspective, institutional complementarities and comparative advantages resulting from the specific national institutional arrangements create powerful incentives for national actors to respond to external pressures in path-dependant ways.

In contrast, the International Political Economy literature observes the global diffusion of a neo-liberal version of market capitalism and regulation. This approach would lead us expect a much greater convergence towards a market-oriented "outsider" system. It sees the competition for the most mobile segments of capital as driving force for processes of convergence (e.g. Cerny 1997). IPE studies draw attention to transnational coalitions of political and economic actors, e.g. at the European level, who push for the liberalization of national markets (cf. van Apeldoorn 1999). Globally active private players are accorded an important role in the spread and harmonization of regulatory standards across national borders (cf. Cutler *et al*. 1999, Cutler 2003).

Our paper traces the patterns and driving forces of change in two areas of corporate governance regulation, namely internal governance and accounting. In both cases, we observe a substantial transformation as regulation has been brought more into line with Anglo-Saxon norms and practices. Yet, the comparison of the two regulatory fields reveals significant differences in terms of the outcomes of transformation as well as the driving forces and mechanisms. In accounting, the structural power of Anglo-Saxon actors triggered a process of multilevel coordination leading to a high degree of convergence towards Anglo-Saxon standards and institutions of standard-setting. A much greater stability of the domestic institutional framework can be seen in the case of internal governance, where actors perceived market pressures to adapt regulatory standards to a moderate degree, but not the institutions of internal control. While the two strands of political economy offer important insights for analyzing these changes, both fail to account for the different patterns of convergence and divergence in the two

cases. Therefore, we argue that the political economy approaches have to be combined with a policy analysis perspective so as to capture the sectorally distinct interplay of national and transnational actors which was crucial for shaping the processes and the results of regulatory regime transformation.

The paper proceeds as follows. The following two sections analyze the national regulatory reforms in both fields against the backdrop of international developments. After comparing the transformation processes, the paper concludes with a brief discussion of the theoretical implications of our findings.

II. INTERNAL CORPORATE GOVERNANCE: EMULATION TRIGGERED BY PERCEIVED MARKET PRESSURE

In the post-war era, Germany's constitutionalist and integrationist system of internal corporate governance was largely shielded from any pressures to move towards more market-oriented standards. This changed from the mid-1990s onwards, when state and private actors began to reassess the usefulness of the traditional corporate governance regime in light of the internationalization of financial markets and general concerns about the insufficient dynamics of the German economy (cf. Cioffi 2002). Since then, the regulatory framework for internal corporate governance has undergone a series of statutory and self-regulatory reforms, which brought a moderate degree of convergence to the Anglo-Saxon model. German regulation has moved towards Anglo-Saxon standards on transparency, (supervisory) board independence and accountability to all shareholders, although the German provisions on board independence are considerably less stringent than those applying in the US and the UK. The regulatory system which was traditionally based on mandatory company law has been supplemented by a self-regulatory "Code of Best Practice" modeled on the British example. However, Germany's characteristic internal

governance structures – the two-tier board system and the co-determination regime – have remained fairly stable so far. Hence, we find a mix of institutional stability and (limited) convergence on standards.

The convergence on Anglo-Saxon standards was mainly driven by perceived market pressure emanating from the internationalizing capital markets and, in particular, the rising power of Anglo-Saxon institutional investors. The adaptation process was conducted by a national "modernization coalition" which included company law experts, government officials and globally oriented financial institutions and companies. Foreign institutional investors were, by and large, not directly involved in the national reform process and, until recently, have tended not to adopt a strong activist approach vis-à-vis German companies in terms of governance (Interviews D2, D29, D37). With the exception of one prominent representative, domestic institutional investors were largely inactive in the reform efforts, although some large German institutional investors have begun to emulate Anglo-Saxon investor activism (Handelsblatt, 5 May 2004; Interviews D4, D21). The two national associations of private shareholders have been actively engaged in the debates, but they were too weak to propel reforms by themselves. The beneficiaries of the old insider model, the business community and labor unions, constituted the most important veto players, obstructing reforms which they saw as detrimental to their vital interests. The two-tier board structure has not been questioned by any player.

The first phase of reforms was triggered in the mid-1990s by a proposal for a far-reaching company law reform drafted by Theodor Baums, a professor for company law, and Hans-Martin Bury, a young MP from the Social Democratic Party (SPD) (Cioffi 2002: 14-18). Against the backdrop of several spectacular cases of financial mismanagement at German companies (e.g. the cases of Metallgesellschaft, Balsam and the Schneider property development group), the governing CDU-CSU/FDP coalition

responded by developing a – more moderate – reform bill which was passed in 1998. Rather than severely curtailing the role of banks and corporate networks in internal corporate governance, as envisaged in SPD draft legislation, the so-called "Control and Transparency Act" (KonTraG) provided only for modest limitations on the power of these traditional "insiders", although it introduced the principle of "one share, one vote". The law chiefly sought to increase the professionalism and the transparency of the supervisory board (Ziegler 2000: 203-206).

The KonTraG represents the first step to move the German regulatory framework closer to the Anglo-Saxon outsider model. By improving transparency, accountability and efficiency of oversight, the drafters of the KonTraG sought to make the shares of German companies more attractive for domestic private investors and for foreign institutional investors whose growing importance was explicitly underlined (Interviews D11, D18, D21; Ziegler 2000: 203-204). However, the move towards a more capital market-driven regime was to be achieved within the traditional institutional framework. The reformers saw no need to change to a one-tier board (Interview D 11). While no political force or interest group was willing to challenge the fundamentals of the co-determination regime, the first draft of the KonTraG had proposed to reduce the size of the supervisory board (and thus the number of union representatives). This provision was removed after protests by the trade unions, social democrats and the trade union wing of the CDU (Cioffi 2002: 18-19; Handelsblatt, 22 April 1997).

The passage of the KonTraG was facilitated by the changing strategic interests of large banks and of globally oriented German companies. The major private banks had already started to extract themselves from the close personal and capital ties of "Germany Inc." as they were reorienting their business strategy from close lending relationships towards investment banking services. Large German companies were also increasing their financial autonomy from banks. From the mid-1990s onwards, more and more globally

oriented firms espoused shareholder value philosophies, a trend certainly reflecting the growing foreign investment in blue chip companies (Beyer and Höpner 2003; Lütz 2005). Due to these changes, bank and industry associations came to accept the broad lines of the government's moderate reform bill, while opposing the more radical SPD proposal (Cioffi 2002: 17; Interview D21).

In contrast to the KonTraG which originated in the political realm, the initiative for the second round of reforms, the formulation of a German corporate governance code, came from the private sector. The introduction of an official code for the German market in 2002 can be seen as milestone for the convergence towards Anglo-Saxon standards on internal corporate governance, as the code explicitly emulated practices promoted by Anglo-Saxon investors in terms of form and content. While the KonTraG was also geared to national investors as its drafters sought to promote an equity culture in Germany, the code's central target group were foreign institutional investors.

A self-regulatory "code of best practice" which is to be enforced by market forces was first adopted in Great Britain in 1992. The Cadbury Code laid down a set of corporate governance recommendations for companies. While the provisions of the code were not mandatory, companies were required to state whether they complied with the rules and to explain any deviations. This concept was copied in many other markets. Most codes focus on questions of transparency and the role and responsibilities of the board, calling for boards to include a number of "independent" non-executive directors without close ties to top managers and/or the company so as to ensure effective and objective oversight (Cadbury 2000: 9-11). In the US, activist public and union pension funds who issued their own corporate governance guidelines began to urge companies to appoint a majority of independent directors in the 1990s (Monks and Minow 2004:167).

In Germany, two private ad-hoc commissions presented – more or less competing – corporate governance codes in 2000. The first group which included company law experts and industry leaders had been assembled by Christian Strenger, the former head of the investment fund DWS and public "figurehead" of the investor scene. Strenger saw corporate governance guidelines not only as necessary to prevent undesirable developments in companies. He argued that the lack of a set of internationally acceptable principles which would allow investors to systematically evaluate the practices of individual companies put German companies at a disadvantage in the international financial markets (Schneider and Strenger 2000: 106-109). Like Strenger, a number of global players in German finance and industry had become concerned that international investors perceived Germany as a "developing country" in terms of corporate governance and were therefore suspicious of the German market (Interviews D6, D31). Foreign investors, most prominently CalPERS, had called for a German code (CalPERS 1998). In line with international examples, the code developed by the Strenger group emphasized the oversight function of the (supervisory) board. The second code, which was drafted by a group of company directors and consultants around Axel von Werder, an economics professor, centered more on the management board (Berliner Initiativkreis German Code of Corporate Governance 2000).

German companies perceived the existence of two codes as problematic (Interviews D 24, D 30). In this situation, the government stepped in and eventually took on the task to coordinate the code formulation. Spurred into action by the near-collapse of Philipp Holzmann, a leading German building company, the new SPD-Green government put Baums in charge of a government commission which was to review the German regulatory framework in terms of terms of potential weaknesses and the expectations of the international capital markets (Interviews D16, D21, D26). The so-called Baums Commission which comprised representatives of all stakeholders strongly

endorsed the idea of a formal German code. Following its recommendations, the government set up a standing commission which drew up a comprehensive code. The industry and its association, the BDI, had warmed to the introduction of a code as it was made clear that the code would not be purely regulatory, but that a major function of this instrument would be to explain the existing legal framework to foreign investors (Interview D21). German experts and market players felt that the bad international reputation of the German regime stemmed to a significant extent from the lack of knowledge about the German two-tier system and its peculiarities (Interviews D2, D6).

The code sought to address the main criticisms voiced by Anglo-Saxon investors, inter alia by promoting transparency of the company and its governance and by introducing independence provisions for the supervisory board (Cromme 2001). However, the code did not give a general definition of independence. It recommended that supervisory board members should not hold parallel board mandates in competitor firms, that no more than two of the members should be former members of the management board of the respective company and that the audit committee should not be chaired by a former executive. Also, supervisory board members were advised to disclose conflicts of interest which may result from an affiliation with lenders or other business partners of the company. In the case of material and permanent conflicts of interest, the respective board member should terminate his mandate. Compared to Anglo-Saxon standards, the code applied a rather cautious and selective approach towards independence (Hopt and Leyens 2004: 7).

In effect, the code stopped short of fundamentally challenging the position of traditional "insiders" in the board who represent large shareholders and business relationships, which had been decried by foreign investors (CalPERS 1998). This reflects mainly the strong position of company representatives in the multi-stakeholder code commission. Furthermore, reformers like Strenger pursued a

relatively moderate, incrementalist approach. However, there are also structural constraints, as paritary co-determination hinders far-reaching independence requirements (Interviews D2, D30, D31; Strenger 2001: 59-60).

Not surprisingly, subsequent initiatives to achieve tighter rules in sensitive areas proved to be controversial. In 2003, the code commission had, under pressure from shareholder representatives and the government, introduced a rule prescribing individualized disclosure of managers' pay (Handelsblatt, 22 May 2003) Yet, compliance with this rule remained sketchy, so that the government took legislative action in 2005 (Interview D26). In the same year, the issue of board independence was once more put on the agenda of the code commission by the EU Commission which had, in the previous year, issued a recommendation aimed at strengthening the role of independent directors (European Commission 2005; Interview EU8). While the final recommendation was considerably softened due to protests from industry and some member states, and its far-reaching independence requirements were shifted to an annex, its full implementation would have meant significant changes to the German code. But the code commission used the latitude provided by the text of the recommendation and its non-binding character and opted for a minimalist interpretation.

The code commission followed the broad lines of the EU recommendation by calling for "an adequate number" of independent supervisory board members and by adopting a general definition of independence as "no business or personal relations with the company or its management". But, unlike the EU proposal, this definition left out relations to a controlling shareholder (Spindler 2005). Moreover, it was decided not to adopt a set of detailed independence criteria as outlined in the EU recommendation's annex. Business representatives in the commission stated, for once, that the code already addressed the problem in its sections on conflicts of interest. Also, it was felt that the advantages of the traditional function of the supervisory board

as "relationship board" (Hopt 1998: 234) should not be easily disregarded. A formalistic approach towards independence would mean that the knowledge brought to the board by a client or supplier would be lost. More generally, commission members argued that the stringent and formalistic Anglo-Saxon independence standards respond to specific problems of one-tier boards, whereas a two-tier board model already provides for certain checks and balances (Interviews D6, D31, D32). Another controversial aspect which the EU recommendation sought to restrict was the practice of appointing an outgoing CEO as supervisory board chairman. This had become more and more common in Germany, but was strongly criticized by domestic private and institutional investors. The confluence of these influences prompted the code commission to introduce a provision that it should not be the rule for former top executives to become chair of the supervisory board (Interview D 20).

Besides the code, the German regulatory framework saw further legislative changes. This third round of reforms also goes back to recommendations of the Baums Commission. Under the impression of recent scandals in Germany, the Baums Commission had advised to move the liability regime closer to the Anglo-Saxon model in terms of scope and enforcement of shareholders' claims (Regierungskommission Corporate Governance 2001). A comprehensive and effective liability regime was perceived to be a constitutive element of a developed capital market. Thus, by tightening the rules for the liability of directors, the government sought to strengthen the confidence of all investors in the German market and to further the global "marketing" of the German system (BMF 2004; Interviews D21, D24, D29). Most of the proposed changes were implemented by two laws passed in 2005. As these bills also addressed concerns of the business community, they were not very controversial. However, the most significant reform bill which would have made board members personally liable for false and misleading information to the capital market, met with fierce

resistance by the business community and was withdrawn by the government (Süddeutsche Zeitung, 4 January 2005).

Although the Baums Commission had been given a very broad mandate, Baums and the government had agreed to keep the issue of co-determination out of the discussion, because it was too divisive. But the co-determination regime is coming under pressure by initiatives of the EU to facilitate corporate restructuring and mobility within the common market. Whereas the EU Commission, due to the different varieties of capitalism, had been unable to substantially harmonize company law in the EU, in recent years, it achieved the passage of the European Company Statute and the Directive on cross-border mergers (Donnelly 2005: 2-4; Rhodes and van Apeldoorn 1998: 422-424). These measures and several rulings by the European Court of Justice will fuel open competition between national legal forms. While the German industry had long acquiesced to the co-determination regime, these developments have prompted its large associations to mount a campaign to restrict co-determination (BDA and BDI 2004). Although the incumbent SPD-Green government rejected any fundamental changes, it accepted the need to make the co-determination regime "fit" for the new European context and appointed a corporatist commission to develop a reform concept. But when this commission finished its work at the end of 2006, it was unable to produce a consensual report, as business and trade union representatives could not agree (Handelsblatt, 20 December 2006). However, it remains to be seen how long the trade unions and their allies in the SPD and the trade union wing of the Conservatives will be able to resist change.

Further changes in the German corporate governance regime may also lie ahead due to recent developments in investor activism. There are signs that foreign institutional investors are intervening more forcefully in the governance of German companies. While activist Anglo-Saxon investors have engaged in a dialogue with the management and have also handed over their corporate

governance principles to companies, they have generally refrained from using the same aggressive tactics to shake up companies as in their home markets (Interview D2). However, the events at Deutsche Börse in 2005 where rebellious investors led by hedge funds ousted both the CEO and the chairman of the supervisory board may signal a watershed (Interview D29). Recent protests by Anglo-Saxon – and German – institutional investors against problematic corporate governance arrangements at VW and ThyssenKrupp also seem to indicate that the pressure on German companies is becoming more intense (Financial Times, 2 May 2006, 20 January 2007; Interview D 37).

III. ACCOUNTING: ANGLO-SAXON HEGEMONY AND MULTILEVEL COORDINATION

The German accounting model has to a large extent converged on international financial reporting standards and Anglo-Saxon institutions of standard-setting. In accounting, there has been a movement towards Anglo-Saxon norms of disclosure and investor protection in financial reporting. In 1998, Germany adopted legislation that allowed listed firms to depart from the German commercial code (HGB) and to prepare their consolidated accounts in accordance with U.S. GAAP and the International Financial Reporting Standards (IAS/IFRS) issued by the International Accounting Standards Committee (IASC). From the continental European viewpoint, IFRS is a body of accounting rules firmly rooted in the Anglo-Saxon accounting tradition, by emphasizing the purpose to give useful information to various users (mostly investors) in order to improve their financial decisions. The overall objective is to give a fair presentation of the state of affairs and performance of a business ("true and fair view principle"), so that users of financial statements can make good decisions (Nobes and Parker 2004: 111-112).

The development of accounting standards used to be coordinated by public actors while only a minor role was ascribed to the audit

profession. Since 1998, however, accounting standards are set by the German Accounting Standards Committee (*Deutsches Rechnungslegungs Standards Komitee, DRSC*), a private sector institution. The committee was mandated to advise the Ministry of Justice on changes to accounting law, to adapt German accounting principles to international norms by 2004, and to represent Germany in international standard-setting fora (Ernst 1999: 346-347). The DRSC was modeled on the U.S. standard-setter FASB, in instigating due process for the development of its standards and in being staffed with independent experts – three from industry, two auditors, one financial analyst and one academic (Mc Leavy *et al.* 2004: 312-315).

How can we explain this substantial degree of convergence on the Anglo-Saxon model? In general, we argue that the regulatory transformation here was triggered by the "structural power" (Strange 1994, 1996) of Anglo-Saxon actors in general and the U.S. in particular. Power came about in forms of expert-, market- and political pressure which, by triggering further coordination activities in the European Union, left German actors not much leeway for institutional entrepreneurship. In fact, it was a highly internationalized network of actors, comprising large German companies, large audit networks, U.S. regulators and the European Commission, pushing for a reorganization under Anglo-Saxon auspices, while being confronted with domestic opposition.

Until the mid-1990s, pressures to adapt German accounting rules and institutions to Anglo-Saxon standards were relatively low, given that the European capital market was not far developed and efforts of European harmonization remained relatively stuck. The 4th Company Law Directive (1978) and the 7th Directive on Consolidated Accounts (1983) compromised between conflicting interests and accounting views of the Anglo-Saxon and continental European tradition by incorporation of a considerable number of optional treatments; the resulting vagueness (e.g. various

interpretations of the true and fair view principle) led to diversity in the process of national implementation.

In the meantime, Anglo-Saxon standard-setters began to structure the field and to shift their national model of setting accounting standards by private professionals on to the global level. The UK sought to keep as much freedom as possible from the European harmonization process through cooperation with "leading" Anglo-Saxon standard setters within the so-called Group of 4 (comprising the UK, Canada, U.S., Australia/New Zealand). The Study Group consisted of high profile practitioners from international accounting firms, centered around Sir Henry Benson from the Institute of Chartered Accountants of England and Wales. The aim of the group was to strengthen private standard-setting as an alternative to EU regulation in order to open up new markets for Anglo-Saxon auditing firms in continental Europe. The Study Group was the nucleus of an international private regime of standard setters, constituted in 1973 as International Accounting Standards Committee (IASC). The IASC brought together a small community of private experts from different national backgrounds that became wanderers between the Anglo-Saxon and continental European accounting worlds (e.g. Germany, France, Netherlands). Many of them had worked at the five or six leading auditing companies from the UK or the US that dominate the industry (among them KPMG, PriceWaterhouseCoopers, Ernst&Young and Deloitte and Touche). The IASC enhanced its legitimacy by establishing contacts with national regulators of securities markets like the American Financial Accounting Standards Board (FASB) and entered collaboration with the International Organization of Securities Commissions (IOSCO) with the aim to establish the International Accounting Standards (IAS) as a recognized set of standards for company access to stock exchanges. By transforming the IASC into the International Accounting Standards Board (IASB) in 2001, a full-time independent standard-setter was established. The parallels between the structure of the IASB and the organization structure of the American standard-setter FASB, but

also the disproportionately high number of Anglo-Saxon members in the Board and in its Financial Reporting Interpretations Committee (IFRIC) (eight of 12 in 2006) have provoked criticisms of it for being too attentive to US interests, to the interests of the "Big Four" global accounting firms and to Anglo-Saxon accounting philosophy in general. But despite its active participation in the IASB, the U.S. still does not accept IASC standards as acceptable alternative to their national accounting rules because they view U.S.GAAP as superior in terms of coherence and legitimacy. Moreover, the IFRS reflect the UK's "principle-based approach" of rule making that directs the focus on reporting the substance of economic events whereas the American "rule-based approach" puts more emphasis on detailed rules following the "letter of the law" (Botzem and Quack 2006; Dewing and Russell 2004a, 2004b; Mattli and Büthe 2005; Porter 2004).

At the beginning of the 1990s, Germany became confronted with the reluctance of the U.S. to accept international accounting standards as a ticket to the American capital market. Since the mid-1980s, international equity markets grew, and particularly, U.S. stock exchanges became central for global capital flows and attractive for companies from other countries. In 1993, Daimler-Benz seeking to be listed at the NYSE, faced the difficulty that the U.S. Securities and Exchange Commission (SEC) did not consider financial statements, produced on the basis of the EU accounting directives or on the basis of national legislation, as acceptable. In practice, many global players such as Deutsche Telekom, Hoechst, SAP, Veba or SGL Carbon were asked to prepare a second set of financial statements in accordance with U.S. GAAP.

This move of global players to leave the domestic camp did not only reflect the market power of American regulators, but in turn led to an overhaul of the EU Commission's strategy to harmonize accounting standards. In the view of the European Commission, it was not acceptable that EU firms had to adopt a standard of another jurisdiction to get access to international capital markets. In

November 1995, after lengthy discussions with member states and interested parties the Commission published a Communication (COM 95 (508) in which it suggested to refrain from further efforts of harmonizing accounting standards for consolidated accounts and to put instead its weight behind the international harmonization process already under way in the International Accounting Standards Committee (IASC). Global players should be allowed to prepare only one set of financial statements, preferably in accordance with IAS (van Hulle 2004: 355-357). A new impetus came with the Financial Services Action Plan of 1999, which contained some forty measures, the implementation of which should contribute to the realization of the integrated market for financial services in the EU. In the area of financial reporting, the Action Plan proposed that all listed EU companies report under the same accounting framework and had to prepare their consolidated accounts in accordance with IAS at the latest from 2005 onward. With approval of the European Parliament and the European Council the Commission issued a Regulation on the application of IAS in June 2002 (Regulation (EC) No. 1606/2002) which was directly applicable in all member states. The new standards are endorsed by the EU Commission on the basis of a comitology procedure. The Commission is assisted by the Accounting Regulatory Committee (ARC) comprising member states' representatives and further observers, and by a private sector working group, the European Financial Reporting Advisory Group (EFRAG) that should advise the ARC and contribute to the work of the IASB. A new standard is endorsed if a majority of member states in the ARC is in favor of the proposal, and, once the opinion of the European Parliament is known, the Commission formally issues the appropriate Regulation. Due to a constitutional reform of the comitology system in 2006 however, the European Parliament now may object to the adoption of a standard proposal even if the Commission intends to adopt it (Christiansen and Vaccari 2006; Dewing and Russell 2004a, 2004b). Thus, triggered by U.S. market power and by political pressure of American regulators, a multilevel framework for the endorsement of accounting standards

has been set up in the EU which was also meant to provide for proper representation of "European interests" in the private regime of accounting experts.

Germany adapted the domestic institutions of setting accounting standards to the new private multilevel framework, but the transformation was contested by the political and economic forces involved. Global companies on the one hand pushed policy makers to proceed swiftly with legislation allowing them to depart from the German Commercial Code (HGB). They were interested in saving financial reporting costs by preparing their consolidated accounts according to U.S.GAAP or IAS only. Smaller and mid-sized firms on the other hand defended the HGB and anticipated further pressures on non-listed firms to prepare their annual accounts based on IAS as well. Policy makers of different parties were concerned with the loss of national sovereignty through handing over the task of setting accounting standards for listed firms to a private body that was largely self-controlled. Doing so would not conform to the German tradition of making accounting standards through parliamentary legislation. Moreover, it was not foreseeable if there would be a possible linkage of the commercial account based on U.S.GAAP or IAS and the tax account and its implication for the public tax base – would the state still be able to calculate its revenue? (Interviews D 11, D 18, D 23).

Meanwhile, concerns about the representation of continental European interests in the private multilevel framework have intensified. In May 2005 the Justice Committee of German parliament organized a public hearing to explore further options to politically influence the standard setting process which was considered as intransparent, complex and too speedy to keep up with**.** The IASB is seen to reflect the view of auditors trained in Anglo-Saxon accounting philosophy while showing lacking openness to complaints of users and preparers of financial reports, and to the perspective of small and mid-sized firms in particular. Proposals of European commentators (such as UNICE and EFRAG)

to change the constitution of the International Accounting Standards Foundation (IASCF) in a way to give those parties additional weight that have already adopted or are heading for adoption of IFRS/IAS have not been followed yet (Deutscher Bundestag 2005: 102; 188-189).

Further criticism centers on the European endorsement process of standards issued by the IASB. The European Commission has endorsed virtually all international accounting standards with the exception of IAS 39 that was endorsed after a lengthy debate and discussion subject to "two carve outs". The EC's decision reflected intense lobbying by French and German banks, and even the intervention of President Chirac on this matter. A German Member of the conservative EPP-ED fraction in the European Parliament has announced that, from 2007 onward, the EP would not hesitate to veto the adoption of IFRS standards submitted to it even after a positive opinion from the comitology and the Commission. The IASB should be put under pressure to open its decision making process up to the political arena in general and to European interests in particular (Interview EU 16). So far, the IASB defines its independence as overruling principle allowing to shield the private and technically defined standard setting process against any effort of political intervention (Interviews D7, D 24).

Large companies, auditors, but also EFRAG representatives see the international harmonization process in danger if the endorsement process should produce a European version of IFRS not accepted by the rest of the world. In order to avoid the creation of a "European GAAP", EFRAG considers the non-endorsement of standards and interpretations as "last resort only" and recommends a pro-active European role on the global level which, given the distribution of power within the IASB, is practically difficult (Deutscher Bundestag 2005: 90-96).

Recent struggles center around the latest IASB project to develop a "light version" of IFRS suiting the needs of SMEs. Smaller

companies and German industry associations contest the draft version of the "SMEs Pervasive Principles" submitted in February 2007 because of their complexity and lacking necessity in general. In Germany and also in France the main business model has been the private, not listed, often family-owned company, traditionally not considered accountable to a wider public of investors. Given that the IFRS framework primarily suits the needs of firms seeking capital on international capital markets, the German *Mittelstand* is concerned of growing reporting costs and unknown implications for the companies' own capital base (Handelsblatt, 2 and 7 February 2006; 19 February 2007). The European Commission will not require mandatory application of the SME standard, but leaves the decision to the member states. Nevertheless, larger and more internationalized firms in general (with a turnover of more than 60 mio. Euro per year) and especially subsidiaries of international groups feel increasingly under market pressure by their headquarters, rating agencies, foreign money lenders such as banks or private equity firms to speak an "international language" and to report based on IFRS (DIHK and PWC 2005: 5; 22; Conference Minutes 2006).

IV. COMPARISON

The German model of corporate governance regulation is undergoing substantial transformation in the two regulatory fields studied here. Both cases display a certain amount of convergence on Anglo-Saxon standards with the case of internal governance signifying much more stability of the domestic institutional framework than the field of accounting. By analyzing our cases in more detail however, we find substantial differences with regard to the outcomes of transformation and the driving forces and mechanisms behind them.

The German regulatory framework governing internal corporate governance has moved towards the Anglo-Saxon model in terms of standards and regulatory instruments, but not with regard to the

institutional structure. Internal governance still operates on the basis of a two-tier board system with paritary co-determination for large companies. Following Anglo-Saxon examples, self-regulation via a code of conduct now plays an important role in setting the standards governing corporate behavior. Yet, soft law is still not as prominent as in the Anglo-Saxon world due to the strict statutory framework which has not been deregulated.

While the first initiative in the mid-1990s has come from the political sector, the regulatory reforms have really been driven by a domestic "modernization coalition" comprising the government, global players in finance and industry, company law experts and the public "figurehead" of German institutional investors. The internationalization of financial markets coupled with general concerns about the competitiveness of German companies prompted state and private actors to reassess the traditional corporate governance regime (cf. Cioffi 2002). As the significance of Anglo-Saxon institutional investors and of their expectations in terms of best practice standards increased, the German modernizers felt under pressure to adhere more closely to the concepts espoused by these players. However, foreign investor pressure operated in an indirect fashion, as these investors, by and large, did not participate directly in the national reforms. Their expectations and interests were transmitted into the national reform arena mainly by domestic actors. Domestic investors were too weak to push through reforms by themselves. However, the adaptation to Anglo-Saxon standards proceeded only so far, as the position of traditional corporate insiders was not fundamentally challenged. The business community and the trade unions strongly opposed regulatory changes that would have considerably impaired their interests.

Consequently, market forces emanating from the international capital markets were the dominant mechanism driving regulatory convergence towards the Anglo-Saxon model. The adoption of Anglo-Saxon reform concepts proceeded by way of policy

emulation (cf. Rose 1993). Thus, domestic reformers looked to the British code, the French best practice recommendations and to statements from international organizations which were colored by Anglo-Saxon patterns of thought as sources of inspiration in writing the German code. Vertical mechanisms operating through direct political power exercised by the US or EU harmonization efforts did not play a large role. EU multilevel governance is weak in this field, as the European Commission resorts to instruments of soft law which give national actors broad latitude. EU pressure on national regimes results chiefly from negative, not from positive integration.

Compared with the case of internal governance, the German accounting model has been completely overhauled in response to Anglo-Saxon power. On the firm side, the segment of globally oriented preparers of accounts and of auditors (Big Four) has converged on Anglo-Saxon financial reporting standards and has accepted related requirements to regulate accounting business. A "public interest model" of setting accounting standards has been adopted reflecting Anglo-Saxon efforts to distance standard setting bodies from the accountancy profession. Moreover, accounting standards are now set by private actors, a development considered painful by German politicians and small and mid-sized firms. While global players decouple from old practices of insider monitoring and reporting, smaller and mid-sized firms still grapple with the costs that spillovers of rules made for the top tier of large firms may impose on them. To that extent the study exemplifies the *fissures* of the national model of corporate capitalism resulting from worldwide developments that have been studied elsewhere (Lütz 2000, 2005).

None of these changes would have happened without the structural power (Strange 1994, 1996) of Anglo-Saxon actors and of the United States in particular. Anglo-Saxon expert power was crucial in order to shift the model of private standard setting on to the global arena thereby preventing both legislators and lobby

groups from effective intervention. Power based on expertise links up with market power to the extent that the Big Four accounting firms and virtually all other medium sized accounting companies with international practice have strong Anglo-American origins and dominate the market for listed firms. The implication is that Anglo-Saxon accounting practice is commonly regarded without question as "best practice" thus achieving hegemony without having to try very hard (Dewing/Russell 2004a: 24). Moreover, given the attractiveness of the American capital market for foreign companies, US regulators could easily turn domestic market power into political power, by requiring compliance with US accounting standards in order to get listed at the NYSE.

The picture would be incomplete, however, without taking the role of the European Union into account. The EU has stepped up her coordination efforts in response to European companies using the exit option and adopting US GAAP, and to US pressures to impose national law and regulation to European companies. Meanwhile, the EU has set up a multilevel comitology framework to provide input to private standard setting processes within the IASB. To that extent it is not only due to American hegemony, but also to intensified coordination within the EU that national actors are more restricted than ever to shape the rules and structures of the accounting world autonomously. It remains an open question to what extent the potential losers of this process will find a channel for interest representation in this multilevel framework.

Table 1: Internal Governance and Accounting Regulation in Comparison

	Internal Governance	**Accounting**
Outcome of Transformation	Moderate degree of convergence (convergence on codes of conduct, but not on institutions)	High degree of convergence (convergence on standards and on institutions)
Institutional Framework for decision-making	National Arena	International Multilevel System
Actor Constellation	Government, Company Law Experts, Global Players, Financial Institutions, indirect pressure by institutional investors	Global Players, Big Four Auditing Companies, US-Regulators, EU Commission
Dominant Mechanism To Convergence	Emulation triggered by perceived market pressure Emulation	Multilevel coordination triggered by Anglo-Saxon power Coordination

V. CONCLUSION

To conclude, our analysis of the changes in German corporate governance regulation shows that sectoral differences matter. Our findings contradict the predictions of International Political Economy as well as of Comparative Political Economy, as we see neither a uniform trend towards convergence nor highly path-dependant processes of change in the two fields studied here. Both approaches provide important insights for studying the transformation processes. Applying the perspective of International Political Economy allows us to trace the transnational forces that triggered convergence in the area of internal governance and in accounting. Moreover, this approach has a high explanatory power for the field of accounting where harmonization efforts were not only prompted by transnational actors, but also directly coordinated within an international multilevel system. As the confluence of Anglo-Saxon hegemony and legislative activities by the EU left national decision-makers with relatively little leeway, the transnational focus of International Political Economy captures, to a large extent, the dynamics of the transformation process and its outcome.

However, the limits of the International Political Economy approach are obvious in cases of partial adaptation, as it is largely insensitive to national institutional configurations which still create powerful restrictions and opportunity structures for national actors. These national factors filtered and moderated transnational influences in the field of internal governance regulation, where national actors had greater latitude in devising their reform strategies. The Varieties of Capitalism perspective is certainly helpful for identifying such fault lines in externally induced processes of adaptation. The fact that until recently neither political actors nor corporations were willing to initiate a reform of the codetermination regime points to the staying power of institutions deeply rooted in the national political economy. Yet, an approach

focusing on the comparative advantages stemming from traditional institutional arrangements can hardly explain the deliberate insertion of market-oriented norms of transparency and shareholder accountability into the regulatory framework governing internal corporate structures.

Both political economy approaches fail to account for the substantial variance between our two cases. Our analysis leads us to conclude that the sectorally distinct interplay of national and transnational actors was the crucial factor shaping the processes and the outcome of regulatory regime transformation. Evidently, political coordination within a framework of multilevel governance turned out to be a more potent mechanism for convergence than market-driven emulation at the national level. Different actor constellations made for different regulatory arenas. In the case of accounting, the US imposed its standards and regulatory requirements on foreign private issuers, thus coupling market power with direct political pressure. This helped the European Commission to overcome the political conflicts engendered by the national varieties of capitalism and thus to effectively harmonize standards and oversight structures. In contrast, US regulators did not require foreign companies seeking access to their capital markets to comply with the Corporate Governance Listing Standards of the NYSE and the NASDAQ which stipulate independence requirements for boards. This different approach may stem from the traditional emphasis placed on financial disclosure to protect shareholders' interests and the limited jurisdiction of the SEC in the field of internal governance. The European Commission resorted to soft law in this area. In effect, decision-making was left primarily to national actors. Consequently, we need to link the political economy perspectives to a policy analysis approach in order to grasp the specific interplay of markets, actor constellations and institutional arenas in different fields of corporate governance regulation.

NOTES

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