THE CONVERGENCE AND DIVERGENCE DEBATE: A REGULATORY CONVERSATIONS PERSPECTIVE

Ulf Larsson-Olaison*

Abstract

A frequent starting point when the developments of the world's corporate governance systems are discussed is whether those systems will converge (see e.g. Hansmann & Kraakman, 2004) or continue on their path of divergence (se e.g. Roe, 2000). The empirical evidence used in that discussion could be referred to as "anecdotic" (Coffee, 2001). Given the weight of the theoretical arguments on convergence or divergence and the weaknesses in their empirical support, one could argue that these two concepts co-vary rather than mutely exclude and can thus help to account for the findings of simultaneous convergence and divergence in e.g. Collier & Zaman (2005) and Jonnergård & Larsson (2007). In this paper the processes leading up to the Swedish corporate governance code being issued are used to shed some light on how divergence in convergence and convergence in divergence are produced in the regulatory discourse (Black, 2002).

Keywords: convergence, divergence, corporate governance system

*Linnaeus University, SE-351 95 Växjö, Sweden
0046 (0)470 708220 Phone
0046 (0)470 845 23 Fax
ulf.larsson@lnu.se
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1. Background

The aim of this paper is to deepen the debate about the convergence or divergence of corporate governance systems prevailing in the literature. This paper thus concerns the development of international corporate governance regulation and its pressure for the reform of local corporate governance practices. By utilizing the concept of regulatory conversation among local regulatory elites in the creation of the Swedish corporate governance code, a more thorough understanding of the concepts of convergence and divergence is proposed.

A simple search in Google Scholar for the words "convergence" and "corporate governance" results in approximately 28 300 hits. This may function as a proxy for how extensive the debate has been regarding the convergence or divergence of the world's corporate governance systems. The two concepts are used in such disparate disciplines as mathematics, medicine and economics; the universal meaning of convergence is, however, "a movement directed toward or terminating in the same point[11]" and for divergence "moving off in different directions[12]". In the economic discipline it seems reasonable to add the efficiency aspect, that is, with a phenomenon of economic interest the inefficient will converge on the efficient, otherwise, in competition the efficient will triumph over the inefficient. Hence it might not be so strange that, for instance, Black & Coffee (1994) worried about why the USA did not seem to converge on corporate control with the then perceived more efficient (production) economies of Germany and Japan in the 1980s and early 1990s. Neither is it strange that convergence on Anglo-Saxon corporate governance principles is regarded as the only possible outcome by most scholars today.

Thus, the normative issue at hand - Which is the most efficient corporate governance system? - has supposedly been solved (see, for instance, Oxelheim & Randoy, 2003; O'Sullivan, 2000). The consensus of this also becomes clear according to the academic debate, where the only topic discussed is whether the corporate governance systems of continental Europe will change to become more similar to the Anglo-Saxon corporate governance systems or not[13]. What is also important for this paper is that there are two distinctly separate parties: one arguing that the world's corporate governance systems will converge

[11] Oxford English Dictionary
[12] Oxford English Dictionary
[13] For notable exceptions see Ponssard et al., (2005) on the convergence on a hybrid form of the shareholder and stakeholder models.

(e.g. Hansmann & Kraakman, 2004; Braendle & Noll, 2007) and one arguing for continued divergence (e.g. Roe, 2000; Guillén, 2000). In spite of the totally dichotomous opinions both parties are united by their strong theoretical argumentation and, as also argued by Coffee (2001), their weak empirical support. This implies that both supporters and opponents would have a hard time recognizing a convergence, or a divergence, if they saw one. This situation leaves us with the possibility to account for the rather strange occurrence of both convergence and divergence in different corporate governance reforms, reported in e.g. Collier & Zaman (2005) and Jonnergård & Larsson (2007).

Regulation is one of the most important areas that would be affected by global trends of converging corporate governance (Coffee, 2001; Hansmann & Kraakman, 2004; Braendle & Noll, 2007). Nation states must reform their corporate governance systems by for instance dissolving ownership arrangements protecting management from the control markets (e.g. implementing one-share, one-vote; e.g. Bebchuck et al., 2001), increased outside minority investor protection (e.g. La Porta et al., 1999) and issuing a corporate governance code (e.g. Aguilera & Cuervo-Cazura, 2004). However, regulation is not drafted and implemented by international markets or global trends and, as argued by McCann (2007), this is not a process of automatic response, since the regulatory process is very much in the hands of local elites who are not interested in diluting their own influence (Fligstein, 2001; North, 1990). It is therefore reasonable to suspect that it is in these regulatory processes that convergence and divergence, as discussed above, are created simultaneously. Therefore, in this paper, the intention is to follow the regulatory conversations (Black, 2002) leading up to one such corporate governance change, namely the issuing of the Swedish corporate governance code. To follow a regulatory conversation, according to Black, is to follow the “discursive practices in a regulatory process” (p. 171). Thus, this paper will attempt an investigation into the interpretative communities amongst those local elites that create the local regulation that is the result of international corporate governance developments.

The purpose of this paper is to increase our understanding of the co-variance of convergence and divergence in corporate governance regulations, using the regulatory conversations of the local elites in the formation of the Swedish corporate governance code as a starting point. Thereby, our understanding is increased with regard to i) how corporate governance codes are created, and ii) how international regulation affects local regulation in a way corresponding to both the convergence and divergence theses. The remainder of this paper is structured as follows: First, the theoretical and empirical concepts of convergence and divergence are discussed; secondly, the research design is displayed; thirdly, a case study of the implementation of the Swedish corporate governance code with the focus on simultaneous convergence and divergence is presented and, finally, the results are discussed and the paper is concluded.

2. The Convergence and Divergence Debate

The following sections are devoted to the ongoing debate on the convergence and divergence of corporate governance systems. The first section searches for the background of the debate in the globalization discourse. Thereafter, the theoretical and empirical parts of the debate are examined, leading to a picture where strong theoretical argumentations paired with weak empirical operationalization leave the research in a vacuum. Finally, the consequences of this vacuum for our understanding of the development of corporate governance regulation are discussed. This is done by the introduction of the concept of regulatory conversation. Regulatory conversation is proposed as a tool to understand the workings of local regulation, the area where both convergence and divergence are evident.

2.1 Background: Globalization and Corporate Governance

Following Giddens (2000), globalization is something discussed everywhere – in science, in media, in politics, in corporate communications and even in fiction – wherever we turn we will be faced with the establishment of the image of us living in a globalized world. For a person without prior understanding of the globalization discourse it seems to be something very fast, which moves across borders as if they did not exist and which reduces the supremacy of the nation states. According to Giddens, the effects of globalization are also very far-reaching, electronic communications reducing the information monopoly of the local elites in power and traditional institutions transformed to mere shell institutions as national economic politics loses influence. Giddens' “Runaway World” was first issued ten years ago, but it has not lost its relevance, at least not if we look at the topics of today's international politics: the questioning of international institutions such as the World Bank or the IMF, the global effect of environmental problems and the streams of migration where millions of people try to leave poverty. Thus, political leaders and regulators of the world still today face the same problems and the same limitations of globalization as they did ten years ago.

One area affected by globalization is corporate governance, even if this almost seems as a truism. Certainly, the governance of the world's largest corporations will be affected by globalization. Outsourcing, off-shoring, foreign subsidiaries and international growth are all natural aspects of their business. For the topic of this paper, however, the assumed global streams of financial capital is the most interesting aspect of globalization. At both ends of a global capital stream there is a local firm in need of corporate governance and thus a country's corporate governance system will be under pressure to handle issues such as cross-listings, foreign ownership of local firms or just the treatment of foreign owners. These global demands on the local corporate governance system must be traded off against the nationalistic and regionalist industrialism often seen in plant closings, mergers and acquisitions. It is also a well known fact from the comparative branch of corporate governance studies that there will be a great many national characteristics distinguishing different corporate governance systems (e.g. Barca & Becht, 2001; Franks et al., 2001). This relationship between national corporate governance systems and globalization is at the heart of this paper.

Thus, the topic of globalization raises a number of new interesting questions. One of the important ones is, according to Guillén (2001), does globalization produce convergence? In this paper this question is discussed with reference to corporate governance. The convergence and divergence discussion in corporate governance, as seen in the introduction, has been both extensive and lively. The concept of convergence has often been discussed solely on its own merit, with the possibility of moving toward a specific point without relating to the opposite. Divergence, on the other hand, is always discussed in polemic with convergence, and therefore it seems reasonable to start with convergence.

2.2 Convergence in theory

Within comparative corporate governance there is consensus on an overall division of the world's corporate governance systems into two large categories, which may be called shareholder vs. stakeholder (Letza et al.., 2004), or network vs. market (Moerland, 1995), or something else. The basic point of these discussions is the attempt to capture the difference between, on one hand, the Anglo-Saxon corporate governance systems (basically the UK and the USA) and the rest (which often includes Germany, France, Japan, but also smaller countries like Sweden), on the other. There is also consensus on the superiority of the Anglo-Saxon corporate governance model (Oxelheim & Randoy, 2003; O'Sullivan, 2000). To sum up comparative corporate governance research, the Anglo-Saxon corporate governance model implies a strong focus on external control markets (managerial labor markets and markets for hostile take-overs), transactions at arms length and, finally, managerial focus on shareholder value; the others would, consequently, imply the opposite. In face of globalization the strong flows of capital will force a convergence on the most efficient corporate governance system; otherwise competition will force inefficient firms out of the market. Among the strongest proponents of convergence are Hansmann & Kraakman (2004), who proclaimed "the end of history for corporate law", a tradition illustrated by the following quote:

..the pressures for further convergence are now rapidly growing. Chief among these pressures is the recent dominance of a shareholder-centered ideology of corporate law among the business, government, and legal elites in key commercial jurisdictions. […] It is only a matter of time before its influence is felt in the reform of corporate law as well (p. 33)

Thus, the logical argument in the convergence thesis is based on there being no alternative.

How would then convergence be recognized? Since regulation takes place in the driver's seat (Coffee, 2001; Pistor, 2004) a converging corporate governance system must produce a set of rules (e.g. a corporate governance code, Aguilera & Cuervo-Cazurra, 2004), containing certain rules (e.g. an audit committee, Collier & Zaman, 2005) and common vocabulary (shareholder value, Lazonick & O'Sullivan, 2000). The argument of the convergence thesis is that if we can find these concepts at work in different corporate governance systems, what we witness is convergence.

2.3 Divergence in theory

However, there are many who in polemic with the convergence proponents have argued for the alternative, and that is the continued divergence of the world's corporate governance systems. O'Sullivan (2000) argues that the trends that could be called convergence are rather the result of the need to transfer pension resources through generations in industrialized societies characterized by an ageing population. That is, O'Sullivan argues, what seem to be the consequences of economic efficiency following globalization constitute a natural transfer of power to those who gave accumulated a pension capital. Anther common argument for continued divergence is based on the tendency of structures, such as corporate governance systems, to be path dependent (North, 1990; Bebchuck & Roe, 2004); that is, historically chosen paths limit future possibilities.

Finally, another common way to polemically argue against convergence and for divergence is to use local elites as the starting point (Fligstein, 2001; North, 1990; Kahn-Freund, 1974). Regarding the transfer of regulation, which is the topic of this paper, there are two local elites at hand: one from the giving and one from the receiving country. This implies, first, that the solution at hand, that is the regulation, reflects the interests and composition of local elites in the giving country (Kahn-Freund, 1974). Secondly, this implies that the local elites in the receiving country, if their interest and composition are not similar to that of the first country, will work against all changes restricting their influence (Fligstein, 2001; North, 1990) or, if changes are made, de-couple the regulation label from its actual content (Gillespie, 2002; Kanda & Milhaupt, 2003; Larsson-Olaison, 2010). Please keep in mind that none of the divergence explanations contradicts the other, but in this paper the focus will be on the receiving local elite's involvement in the production of convergence and divergence when new regulation is issued.

2.4 Convergence and Divergence in the empirics

How do we then really know when we have observed convergence or divergence? The great problem of operationalization certainly plays a role when testing the theories of convergence and divergence. Coffee (2001) states that there is evidence, even if it tends to be anecdotic, that the world's corporate governance systems are converging. Coffee lists four areas where convergence is evident: i) formal legal reforms, ii) the dispersion of ownership in Europe and Japan, iii) the rise of an international market for corporate control, and iv) the growth of European stock markets. Obviously, legal reforms are taking place, most of which, for instance the corporate governance codes, bear the mark of Anglo-Saxon corporate governance. However, these reforms tend to be the result of EC initiatives rather than of strong market pressure. Besides, there is a trend of ownership dispersion and stock market development in Europe, although it is hard to separate the attempts to lower the capital cost from the cost of pensions for an ageing population (O'Sullivan, 2000). Certainly, there is the development of an international market for corporate control, although it is obvious how sensitive one such market is to political intervention (Davies et al., 1994).

Branson (2001), on the other hand, claims that there is no evidence of convergence whatsoever. Branson's argument is that convergence is a theoretical construct; however, he does not support his claim with empirical evidence. One advocate of divergence who actually makes empirical tests is Guillén (2000). He argues that there is a need for both quantitative and longitudinal data. Guillén, however, searches for convergence and divergence in somewhat different places than Coffee (2001). Guillén's data contains the following dimensions: i) foreign direct investment, ii) institutional ownership of assets, in percent of GDP, iii) institutional ownership of stock, in percent of GDB, iv) the leverage of public firms, v) the existence of long-term incentive plans, and vi) the number of hostile take-overs. Guillén uses longitudinal data from the same 43 countries as those reported in La Porta et al. (e.g.1998; 1999), and he concludes that no convergence is occurring and that globalization rather makes different countries specialize. However, Guillén's claims also prove that convergence and divergence are sought for in many different places. In comparison with Coffee, as reported above, the only corresponding feature is the activity on the market for corporate control. Thus, one might question the value of the empirical evidence backing the divergence thesis as well.

This paper has no intention to solve the empirical problems associated with the convergence and divergence debate. The reason for the last couple of paragraphs has rather been to demonstrate the confusion with regard to what has been measured, the basic point being that we are looking at an irresolvable debate, since we lack empirical agreement.

2.5 Determining Convergence and Divergence in regulation: Regulatory Conversations

One area that is much easier to build on when trying to capture divergence and convergence is what Coffee (2001) refers to as formal legal reforms. That is also what Hansmann & Kraakman (2004) places at heart of their portrayal of convergence. One such common formal reform is the issuing of a corporate governance code, accounted for as a development of convergence by, for instance, Aguilera & Cuervo-Cazurra (2004). In other words, following the reasoning of convergence theorists, the mere existence of, for instance, a corporate governance code, with rules on, for instance, audit committees, would imply that a country is converging with the international/Anglo-American acceptance of corporate governance practices.

The basic premises of the idea of converging corporate governance systems takes its starting point well above the horizon of the nation state, that is, on an international level. The power of global financial capital will without doubt force, for instance, local rules to converge on the globally accepted regulation. However, that is really not the way regulation takes place in a democratic country. In most democratic countries there is an established process for how this is done. Or, as argued by McCann:

Irrespectively of the power of those pressures, however, the pattern of regulatory reform across states can never wholly be a product of their operation. Fundamental changes in regulatory practice can only be effected through major political reform of legal provisions and related changes in the behaviour of agencies, financial actors and firms themselves (2007, p 73)

This implies that in the real world there will always be local actors carrying the changes triggered by the globalization and internationalization of capital. Thus, the change itself does not happen on the international level, but on a local level, and it is at that level the actors carrying the change must be sought.

This can help us to account for the contradicting results reported in, for instance, Collier & Zaman (2005) and Jonnergård & Larsson (2007). Collier & Zaman found *broad acceptance of the audit committee concept but only gradual convergence in* *recommended audit committee practices* (p 763). This conclusion was further supported in Jonnergård & Larsson (2007), where this pattern was found throughout the Swedish corporate governance code. Thus, in local corporate governance regulation we find that the same rules as the ones found in different countries, signaling convergence, with the exception that those rules actually differ in meaning, signaling divergence. Both Collier & Zaman and Jonnergård & Larsson point in the direction of the local actors drafting the regulation. Therefore, we need a concept to capture the working of these local actors.

One such concept, introduced by Black (2002), is regulatory conversations. Following Black, regulatory conversation comprises the discursive practices amongst the interpretive community that actually creates the regulation and is thus well in line with the prior understanding of McCann (2007), Kahn-Freund (1974) and Fligstein (2001).

In this paper I try to follow the process and trace the discourse surrounding the regulation leading up to the issuing of the Swedish corporate governance code. The actors participating in this regulatory conversation should be the creators of both convergence and divergence.

To sum up this far, in this paper I argue that convergence and divergence are two concepts that may co-vary, rather than mutually exclude. This is due to the loose coupling between the concepts, the operationalization of the concepts and the equivalent of the concepts in empirical materials collected by different scholars. More importantly, however, this is also due to the process where international trends of, in this case, corporate governance regulations transform into local action, that is, when any change that could be understood as either convergence or divergence occurs in a corporate governance system, it is always performed by local actors. This process responds to the regulatory conversations that occur among those local elites that actually have to make the reforms at hand. It is their interpretations, their translations and their methods or, in short, their discourse which forms the actual change, and this change will thereby look as both convergence and divergence, simultaneously.

3. Methodology

This paper is based on a single-case study approach on the implementation of the Swedish corporate governance code. The empirical material is very rich, being both based on personal interviews, an extensive written material of formal regulation and referrals and the lively debate that followed the code development process in the media.

3.1 The material

The personal interviews have been performed with centrally placed actors that were involved in the code development process. The total number of interviews is twelve. There is an overlap between the participants of the governmental "commission of trust" and the "code group" (see below for a presentation of these groups). The interviewed regulators represent the legitimate spheres of the Swedish corporate governance system: the state, the controlling shareholders, the stock exchange and the minority shareholders. Interviews were also made with the regulators supporting the interested parties, e.g. experts in law and accounting.

The participants in the interviews were selected by snowball sampling and, as only two declined participation, the sample is regarded as representative. The focus of the interviews is on issues like: who is perceived as salient in the process, what kind of interests do the salient actors represent, and what roles do they occupy in the process, what kind of arguments are given for different rules during the emergence of the code, and what is the outcome of the process.

As the code was developed within the domain of Swedish public investigations, an extensive written material has also been used to further enrich the case. The written material consists of a proposed code, a final code, a large number of written referrals on the proposed code and also the written investigations including the underlying considerations.

Finally, there was a public debate in some of the Swedish newspapers, where different actors voiced their opinions. This material has also been taken into account to make this case richer.

3.2 The story and the actors

The case study resulted in an interesting storyline of how the Swedish corporate governance code was produced. This story will follow below in Section 4, but some comments are necessary by way of introduction. All the participants in the interviews were granted anonymity. Even though there will be several actual quotes in the text, it does not claim to represent someone else's story. Thus, the following story should be viewed as the author's representation of the interviewees' stories.

For an easier understanding of the story some of the actors need presentation. They are presented in Table 2 in the order of appearance. This grouping of actors is of course a simplification and does by no means capture the total dynamic of the forces in the Swedish corporate governance system. Nonetheless, it serves a pedagogic purpose and it could be claimed that it captures the overall conflicts.

Table 1. Some actors in the Swedish corporate governance system

Actor	Function
Swedish Shareholder Association, SSA	Organization for small private shareholders in Sweden. Long-time and loud-voiced advocates of corporate governance reform. Cadbury-influenced.
Institutional investors	Very heterogeneous group, sometimes well embedded in the Swedish corporate governance establishment and sometimes a loud voice for reform. A group politically pressed to take larger responsibility in corporate governance issues that today also seems to be more involved than previously. Also participates as a formalized interest group in the Swedish self-regulatory system.
Traditional owners	A rather homogeneous group of inherited and/or entrepreneurial controlling owners of Swedish listed firms. Their power is usually based on voting caps and is usually politically and popularly portrayed as the necessary owners of flesh and blood that outweigh short-sightedness and institutional ownership. At least historically in firm control of the Swedish corporate governance self-regulatory system and through corporatism influential in other regulatory issues
"Firms"	The listed Swedish firms, approximately 300, are extremely heterogeneous, ranging from very small consultancy firms with dispersed ownership to international market leaders in manufacturing with controlling owners. Nonetheless, as they act as mediators or as an arena for different corporate governance interest groups' agendas – most importantly in the big international firms – their role must be taken into account.
The commission of trust	A Swedish state commission formed as a response to perceived mistrust in Swedish business. Formed in a corporatist spirit. Initiated the Swedish corporate governance code and formed the code group, see below, together with the system of Swedish self-regulatory bodies (the traditional and the institutional owners, see above) and the SSA (see above).
The code group	Temporary formation of the regulators behind the corporate governance code studied here. Composed of all major interest groups surrounding the Swedish listed firms.

4. When Sweden obtained a corporate governance code like the rest of the world

In the beginning there was no Swedish corporate governance code, and no single norm – outside the Companies Act – for how good corporate governance should be performed in public firms. Instead there were many different firms, supposedly adapted to their own demands and needs, who were differently controlled (e.g. Larsson-Olaison, 2010). In some cases this implied close correspondence with Anglo-American practice, and in other cases it did not. The Swedish corporate governance system is often characterized as positioned somewhere in between the Anglo-Saxon and Germanic ones (e.g. Angblad et al., 2001; Jonnergård et al., 2003). The financial markets are relatively well developed (Angblad et al., 2001, Stafsudd, 2010), but formal ownership control is in many cases centered into the hands of the business groups rather than dispersed (Collin, 2002). Connected with these business groups there are managerial labor markets (Collin, 2002). However, due to the extensive use of e.g. dual-class shares with different voting caps, the market for control and hostile take-overs is very much circumvented (Angblad et al., 2001). To add up to this, there was also, before the issuing of the code scrutinized here, a rather opaque structure of corporate governance regulation (Jonnergård & Larsson, 2007), with overlapping self-regulation, laws and registration contracts. The following paragraphs describe how this very traditional European corporate governance system, being one of the last in the EC, developed a corporate governance code.

The first Swedish owner policy was issued in 1993; shortly after the Cadbury report was issued in the UK. The content of this policy very much resembled the Cadbury report – e.g. its demand for independent directors and board work in sub-committees – basically involving what would today characterize the usual corporate governance code. Since the issuer was the Swedish Shareholder Association (SSA), which organizes small private shareholders, it was not binding in any sense. The SSA was far from part of the established Swedish corporate governance elite, although they continued to travel from AGM to AGM demanding firm level corporate governance reform. Many of the SSA corporate governance demands were also part of the regulatory conversations regarding a new companies act, but the regulator turned them down, as they where considered to be too Anglo-Saxon and too much oriented towards large companies. However, as time went on and the SSA, sometimes allied with different institutional investors, continued to press for corporate governance reform, a momentum was built up.

On the self-regulation level, however, the Swedish business society subsequently refused all Cadbury-influenced governance reform in the years from 1993 until 2002 claiming that there was no need for nominations committees, audit committees or independent directors. This implies that the traditional Swedish owners and their organizations did not want any change, often using arguments implying that these Anglo-Saxon solutions do not suit the traditional Swedish corporate governance system as they not correspond with the Swedish regulatory cornerstone of facilitating active ownership by physical owners. This was contrary to the development on the firm level, where many corporate governance reforms were implemented (see, for instance, Larsson-Olaison, 2010, on the situation of nomination committees). Thus, the situation at hand was a strange kind of deadlock where, on one hand, the business society elite continuously refused any corporate governance reform and, on the other, the firms' experiments showed a great diversity of corporate governance solutions and more fringe groups pressed for change.

Regardless of the growing momentum, the usual trigger for corporate governance reform was, as always, corporate scandals. In this case the international developments of Enron and WorldCom did not pass unnoticed. Meanwhile, in Sweden the maverick management of the Skandia insurance company, remuneration problems in ABB and, more importantly, the wipe-out of billions in firm value in the Swedish business crown jewel, telecom manufacturer Ericsson, made politicians react:

And then the politicians went: someone has to pay for this!

The Swedish political reaction was to initiate a governmental "Commission of Trust". Although the scope of the commission was broadly defined from the beginning, the commission turned the issuing of a corporate governance code into the solution to most of their problems. At approximately the same time, the traditional Swedish business society realized that the pressure was too large, and that there was a need for a corporate governance code. For a short while, it looked as if Sweden was going to go from no formal codes whatsoever to two in a very short time. However, for many reasons – which would merit their own paper –the business society decided to cooperate with the governmental commission on the issuing of a corporate governance code, and thus the so-called "code group" was formed.

Given that the general content of a corporate governance code is deemed to be very Anglo-American-inspired and that this could not be unknown to the business society, there must have been a very rapid shift amongst those who dominate the business society. Instead of the previous reaction of fighting this development, they made these corporate governance topics into their own and expressed their wish to participate in this development.

The members of the code group have many different interpretations of why there was suddenly such a large need for a corporate governance code. Among other things, there was a growing discontent with the workings, or perhaps non-workings, of the old rather opaque self-regulation system. The self-regulatory system was claimed to be controlled by the traditional owners, and the institutional investors wanted more influence. Since a corporate governance code needs future development, the formation of a new self-regulatory body was assumed from the beginning, and that was also what finally happened. Simultaneously, there was what could be referred to as a pedagogic demand to explain the workings of the Swedish corporate governance system to foreign institutional investors:

Partly, this is also to increase the transparency;, there are many who don't understand the Companies Act, we still see that

Thus, the code group was not primarily driving for harmonization per se. They very often tended to emphasize the individual character of the Swedish corporate governance system and also the superior workings of this system. They claimed that Sweden had a companies act which was "better than most" and which, among other things, permitted a large influence from owners, and therefore a strong focus on shareholder value. The problem then was how to get loud foreign investors to understand this.

However, after stating the usual rational reasons as seen above, in the end, when it comes to the development of a corporate governance code, it seems to reflect much of the "zeitgeist":

…by then, such codes were under development in almost every western European country….. Sweden was the last country out on the field; even Norway was before us…

or formal legislative pressures:

Meanwhile, we knew that the EC was about to demand that all countries should issue a corporate governance code and that certain rules should be included in that code.

Consequently, we might say that by 2002 a situation has arisen that everybody assumed the existence of a corporate governance code in a European country. If this was not the case, such a code must be presented.

The code group was formed with a very traditional Swedish interest group representation, comprising governmental representatives (the chairman being a former Swedish minister of finance and including a former CEO from one of the state-dominated firms) and the rest representing different interests such as the Stockholm stock exchange, institutional investors, traditional private owners and small owners. Tied to the code group were also a number of experts, mostly from law and auditing. All of this was held together by the secretary of the code group, considered by some of the members as the “primus motor”, who fed the group with texts to discuss. The work of the group is characterized, by the members themselves, as a striving for the lowest common denominator and consensus.

One can say that it was very “Swedish”; in this case however, that’s in a very good sense, as anchoring in different constituencies is necessary; it is good to consult and to spread the word and talk about things. Thereby, when everything is done nothing really happens, it becomes a non-event, because nobody sees the reason to complain anymore.

What is also very important in this kind of process is the need to get support among other important constituencies, which was done by incorporating more people in the group and by arranging different consultations. The work could be described as follows:

..it was a dynamic process, we tried look at what there was in foreign codes and what was going to happen in the law book; so, of course, it was not only a codification of practice, even if it was so in most cases;, in some cases however, where we felt that it was a good idea to push the front line ahead.

Thus, this work included a couple of very different but yet important parts. First, there was the codification of practice, secondly, to somewhat press the Swedish corporate governance practice ahead and, finally, to fend off or prepare for new laws. The codification of practice was seen in many cases as a way to bring the deviant firms back into line but, of course, this implies at the same time the protection of status quo. The improvement could very much be seen as the introduction of many Anglo-Saxon solutions, such as the demand for remuneration committees and written assurances from some key staff. Another step ahead was the development and formalization of the Swedish form of nomination committee (or election committee, as the code group came to call it), which is seen by some of the group members as an invention that should be exported to other countries. The nomination committee was also one of the two major areas of disagreement in the group (the other one concerning the independence of directors, on similar grounds), the two positions being very much for or against an Anglo-Saxon solution, however:

We were a majority - including me - who said we cannot use the British method, where the owners don’t decide upon who should be a director of the board…we followed the Swedish model...

This conflict also came into the open when one of the proponents of the Anglo-Saxon solution made a special statement of disagreement along with the code proposal. The third dimension, the relationship with other regulations, basically concerned adaptations to what was considered as upcoming EC demands (an audit committee was considered as such) or fending off demands from the Swedish government (e.g. proposed gender quota system on the boards).

As the code group was initiated in cooperation with the governmental commission, the work of the group was treated as such. In Sweden this implies that the code had to go through a written formal process of referrals, implying an open process where every citizen or interest group has the possibility to speak their mind. This is of course another way to anchor the new regulation with important stakeholders; however, it also produced a massive number of different opinions that had to be taken into account. Therefore, the code group reappeared with some minor changes in personnel and set about to create the final code.

At this stage of the process it became obvious to the members of the code group that they had gone too far in many of their proposals. It was not only the private owners of what could be called the deviant firms that reacted strongly; so did also many institutional owners, stock-brokers and bankers, for instance. Of course, when such important constituencies of the Swedish corporate governance system opposed, the code group had to fall back. After the very ambitious proposed code a smoother code was handed over to the Swedish business community, which involved that the Swedish corporate governance code more or less came to resemble standard practice among the largest firms instead. The final code also lost much of what was considered too detailed regulations and areas where the code came into conflict with the legislation in place.

The members of the code group saw their mission as creating the best, or the most efficient, code. This implies that they did not regard themselves as takers of regulations, the formation of the Swedish corporate governance code being a national Swedish issue:

…every country has its own tradition, its own Companies Act, and that implies that one has to have an adopted corporate governance code...

This is also mirrored in the rather inconsiderate treatment of the opinions voiced by large British pension funds in the process of referrals:

No, we were not that attentive to either American or English viewpoints in this case. This was because it was the Swedish model of ownership that should be represented in this code. Thereby most foreign ideas fell flat on the ground.

The final result of this development process could be said to be an internationally accepted corporate governance code, but with Swedish rules. This implies that the Swedish corporate governance code contains all the relevant and taken-for-granted words: audit committee, remuneration committee, nomination committee and independent director. On the other hand, actual rules bear the trademark of Swedish corporate governance practice: an audit committee and a remuneration committee can be composed of the whole board; such a committee should also perform different task than, for instance, a British counterpart; a Swedish nomination committee is not composed of independent directors but of direct owner representatives; a Swedish independent director is always independent of management, like the British counterpart, but only exceptionally independent of the firms' owners, and that is very unlike the British.

In sum, from the perspective of a regulator we might say that this is a corporate governance code dilemma, as shown in the contrast between the following two citations:

Then of course, let's pretend that Sweden actually would not be bothered about independence directors, audit committees, and nomination committees and all the other ideas that constitute the core of the international development, then certainly, I can say that much, that we would not be credible on the international market, that's for sure

In contrast to:

Why the hell should we have nomination committees then, and what should they do, because we don't have that problem. The board of directors and management - the CEO - is separated here, so we don't have that problem, typically, management is not part of the board.

Thus, in dealing with this code dilemma – international credibility and legitimization versus the decoupling felt to exist between national corporate governance problems and international solutions – the Swedish regulators were pragmatic. Thus, everything considered, we might say that Sweden by this process has got a corporate governance code with the structure and the rules that one might expect in an internationally accepted corporate governance code, and consequently it implies convergence. Meanwhile, the process and the regulatory conversation where the code was made part of the Swedish corporate governance regulation transformed the meaning of the rules, implying continued divergence.

5. Discussion and Conclusions

Convergence and divergence, two words that per definition are totally separate appear together as one, in the reformation of the Swedish corporate governance system. This is the result of the extremely complex workings of globalization; hereby action on the local level (that is in the jurisdiction of the nation state) is connected to actions on the international level. How financial capital is formed and moved on both global and local levels is important, just as how political ideas and ideologies are constructed and exchanged on both these levels. We might not have any models that can account for these complex processes, neither can we lean on easy answers like the efficiency of the market (see O'Sullivan, 2000). What we do know is that globalization causes changes, or at least creates agendas for different actors to act. In these changes, or opportunities for changes, complex patterns are found in the relationship between internationally predestined solutions and effective local agency. The following paragraphs are some reflections on the relationship of convergence and divergence in corporate governance change.

One first point to make regards the uncertainty that we face when looking for the empirical equivalent of the theoretical concepts of divergence and convergence. In this case we have seen the implementation of the Swedish corporate governance code. This would constitute a pattern of converging corporate governance systems following Coffee (2001) and Aguilera & Cuervo-Cazurra (2004). Also, we see the actual rules such as independent directors, audit committee and so on, which would definitely fit our prior understanding of a "*shareholder-centered ideology of corporate law*", in Hansmann & Kraakman's (2004, p. 33) terms, as the labels of the rules bring our thoughts to regulation connected with influential Anglo-American regulation such as the Combined Code and Sarbanes Oxley Act. However, these labels are put on other rules, or on rules that gain new meaning in use, making it plausible to also speak of divergence as Fligstein (2001) or Roe (2000) do. As we will see below, this connects to the regulatory conversations (Black, 2002) occurring in the formal rule-making process (McCann, 2007). These observations of divergence and simultaneous convergence are also consistent with prior research results where the same corporate governance rules contains different meanings (Collier & Zaman, 2005) or are adapted to local practice (Jonnergård & Larsson, 2007. What is observed is the local actors' answer to the code paradox of international legitimacy traded off against local efficiency.

To understand this complex connection between convergence and divergence, it becomes extremely important to consider the workings of local democratic regulatory processes (McCann, 2007). Although the Swedish corporate governance code was a result of enforced self-regulation only (Braithwaite, 1982; Jonnergård & Larsson, 2007), and thus not subject to formal legal regulation, the process shows great signs of corporatism and local anchoring among different constituencies, which explains many of the adaptations of the rules. It is obvious that many of the Anglo-American rule ideas failed to address issues important to the local actors. However, as certain rules were deemed necessary, something had to happen. Further, in the different interest groupings where the rules needed to be anchored certain causes where needed to remedy the concerns regarding the rules. This also implies that we need, following McCann (2007), to understand the local workings of the regulatory process to grasp the reform of local corporate governance. When doing this, we will observe the actions taken by the local elites. However, in this paper, these local elites tend to pose in a different way than in many other accounts, as they are far beyond the simple dichotomies of the state capturer or some entrenched focus on status quo, on one hand, or as simple takers of regulation on the other hand. The local elites in this paper are the true agents of change, maybe because they are the only possible agents. However, without them there would be no convergence and, to put it the other way around, no divergence.

Furthermore, the basis for observing this convergence and divergence is following the regulatory conversations (Black, 2002), because only by doing that can we understand how and why this will happen. The local elites' regulatory conversation forms an important part of how we can understand the local regulatory process. In this case the discourse is focused on the sense-making and understanding of foreign rules whose meaning is not well understood.

A second set of observations concerns the workings of the reform agenda for local corporate governance systems in face of globalization in general and of the EC specifically.

Giddens' (2000) formulation of the nation states' problems in face of globalization is that the problems will be simultaneously too big and too small to actually handle. In this paper we can see how a nation state is mobilizing, from government to business society, to face the global trend of issuing corporate governance codes. The participants more or less circumvented the pressure from globalization by adopting the rules and redefining central concepts of international corporate governance. This occurs due to the extensive demand for new regulation that seems to stem from the globalization discourse, keeping in mind that business has been global for a long time, while accountability by international regulation is something more or less new. Then, it may also explain the strong state influence reported in Cioffi (2002) and Jonnergård & Larsson (2007) in the reformation of continental European corporate governance systems – when everybody issues similar regulation nobody will lose in the "race to the bottom" (see Wouster, 2000). However, this raises questions on how market pressure - the basic assumption behind the convergence thesis – is actually exercised. This could be a topic for future research in this area.

Beyond this strong state influence it is obvious that one must consider the EC pressure on local corporate governance reform (see e.g. Ferrarini, 2004). From the so-called Winter report to a vast number of communications from the Commission it is evident that the EC, leaving harmonization behind, is demanding key corporate governance code elements as the existence of at least one national code, with audit committees and remuneration committees based on a comply or explain model. This brings yet another dimension to the concept of enforced self-regulation (Braithwaite, 1982), as local self-regulators are not only pressured by local government but also by supranational governmental organizations, making elements of the international corporate governance development, such as a code, nearly impossible to reject. The workings of supra-national regulators, such as the EC, are largely unknown, but open yet another area for interesting regulatory research.

6. References

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