EXPLICATING MEDIA, GOVERNANCE, AND CAPITALISM: A CRITICAL COMPARATIVE ANALYSIS OF HISTORICAL CASES

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Abstract

Ample literature argues that media is vital for the functioning of democratic public discourse and helps other firms comply with effective governance. While scholars have focused on understanding media's impact on corporate governance, they have not thoroughly investigated how media companies are governed. Accordingly, we adopt a qualitative and comparative historical case narrative approach for investigating and analyzing corporate governance in commercial media firms. The paper contributes nuanced and critical insights into governance practices in the context of institutional change. Our evidence suggests that commercial media, suffering from firm governance challenges, may not have the collective capacity to effectively function as meaningful discursive components in capitalist systems. The paper concludes with a critical discussion and additional areas for future research.

Keywords: Media, Historical Cases, Corporate Governance

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1 Introduction

This comparative historical case analysis provides new information and insights surrounding governance issues in media organizations. Conceivably more than any other institution or industry, media plays a decidedly social if not moral role in that it provides the unique and critical service of informing the public. Given this institutional obligation to nourish the public's appetite for information, media has historically been referred to as the *Fourth Estate* (Carlyle, 1840: para 17). Media is vital for the proper functioning of democracies since citizens need information if they are to meaningfully engage in public discourse. In more recent years, media researchers and theorists (Bagdikian, 2004, Herman and Chomsky, 2002, McChesney, 2004, McChesney and Cockburn, 2005, Moyers, 2007, Nichols et al., 2005, Bednar, 2012, Liu and McConnell, 2013) have increasingly framed democracy and the media within the boundaries of Habermas's (1991) *public sphere*. This concept of a "marketplace of ideas" refers to the fundamental right of citizens, regardless of power and position, to engage in a free exchange of ideas, informed debates, and expression of political views (Baran, 2004). Normative acts by major political entities, such as UNESCO's 1993 establishment of an annual World Press Freedom Day, echo this view (UNESCO, 2005).

Furthermore, economists and financial market researchers (Baron, 2013, Djankov et al., 2001, Skeel, 2001, Zingales, 2000, Dyck et al., 2008, Liu and McConnell, 2013, Peress, 2008) argue that media has had an important lever function that helps firms comply with public expectations of good governance. Media's position as the essential ingredient for healthy democracies and capitalist economies fundamentally differentiates its organizations from other commercial entities. Given media's institutionalized role as the *Fourth Estate*, the public often has normative expectations for trustworthy information that is either bias free or has explicit editorial bias disclaimers.

Accordingly, social debates about corporate governance may include important discourse about the role of media. For instance, Zingales (2000) mentions media as a crucial and positive force in corporate finance. Certain scholars explore how media influences or shames other firms' leaders (Zyglidopoulos et al., 2012, Engelberg and Parsons, 2011, Skeel, 2001, Peress, 2008, Liu and McConnell, 2013). Baron (2013) analyzes the role of media in lobbying efforts. Djankov et al. (2001) investigates the social effects arising from the ownership of media firms. In economic terms, the media selectively reduces the cost of acquiring and verifying information. This "transparency" is crucial since it gives owners and other stakeholders access to information and shapes the reputation of board directors who determine corporate policy. Directors' concerns about their public images arguably explain, in part, their responsiveness to media pressure (Dyck and Zingales, 2002, Chih et al., 2010).

While scholars and others have focused on understanding how media impacts corporate governance in non-media firms, they have not thoroughly investigated how media companies are governed (Ingenhoff and Koelling, 2012). This is even more surprising given the sensitive role the various media play in forming public opinion. This position fundamentally differentiates media firms from other organizations. Research suggests that the public normatively expects media companies to meet high standards of ethical conduct and corporate governance (Baron, 2013). However, because of this prominent discursive position in the public opinion forming process, media firms may be at inherent risk of capture by special interest groups (Khan, 2003). Accordingly, media companies' corporate governance standards, approaches, and performances are crucial contributing factors to a sound economic system. However, few academics have fully researched this interesting view of media, especially in the context of national cultures (Ingenhoff and Koelling, 2012). Given this gap, our research aims to deepen insight into media firms' governance practices. We are guided by two central questions: *Do media companies comply with widely accepted corporate governance best practices and norms?* And *how do media companies' corporate governance practices and norms vary by national cultures?* To better understand the relationships among national culture, governance, and media, we have constructed two historical narratives of firms. One firm was situated in the United States (US) and the other firm in China. To begin our study, we first review relevant governance literature to gain important contextual grounding.

2 Literature review

Considerable literature indicates that effective corporate governance is valuable (Aggarwal et al., 2011, Aguilera et al., 2006, Brown and Caylor, 2006). The two most common contemporary governance models used across geopolitical entities are referred to as "contractual" and "stakeholder" (Aguilera and Jackson, 2003, Larcker and Tayan, 2008). Firms chartered and operating within common law countries often operate with contractual models that optimize shareholder returns by minimizing agency costs (Aguilera et al., 2006, Conroy, 2002, Larcker and Tayan, 2008). In contrast, firms in civil law countries typically deploy stakeholder models that include firm-external linkages as components of the firm. Stakeholder models aim to mediate between the objectives of all constituents and usually are not solely driven by owner interests such as wealth maximization (Aguilera et al., 2006).

Despite differences in both models, governance is enacted through varying combinations of mechanisms. Of these, boards are most critical, especially for diffuse ownership situations common to publicly listed firms, since directors determine executive remuneration and monitor senior management performance. Although directors should act as fiduciaries (Baron, 2013), recent empirical research reveals that directors may pursue their own self-interests at the expense of stakeholders' interests (McDonald and Westphal, 2010, Westphal and Stern, 2007). This conflict of interest may be a systemic and persistent feature primarily of unitary board structures in which senior managers, such as CEOs, are permitted to participate in or dominate board activities (Westphal and Stern, 2007, Westphal and Zajac, 2013). Directors who actively engage in critical and effective monitoring might risk garnering negative reputations among board peers which then might be transmitted through network links to nominating directors at other firms (McDonald and Westphal, 2010).

2.1 National cultures, media, and governance

During the review period, mainland China was a transitional economy where the Communist Party and the government exercise significant influence on economic life. Although Hong Kong had for centuries been culturally Chinese, it was during the last century governed by the British. As a result, firms situated in Hong Kong used approaches that differed from those located in mainland China. Whereas the Chinese corporate governance system had its origins in the direct state control of collectively owned enterprises, Hong Kong's corporate governance approaches were much closer to those used in other Anglo-American geopolitical entities (Cheng and Firth, 2005). During the review period, the country operated under a "one land, two systems" political arrangement wherein Hong Kong was permitted to continue practicing capitalism while mainland China officially remained socialist (Wong, 2004).

Historically in mainland China, all firms were state or collectively owned. As such, the Party (i.e., government) directly or indirectly made key decisions about firms' strategic directions and policies (Dahya et al., 2002: 121). Traditional state owned firms operated with three governance bodies: the company's party committee, the worker's council, and the trade union (Xiao et al., 2004: 41). These bodies were referred to as the "old three boards." However, the Chinese Company Law of 1993 (Howson, 1997) required all modern listed firms as well as non-listed joint-stock companies to adopt dual board structures similar to those of stakeholder models, consisting of supervisory boards (SB) and management boards (MB) with annual owner meetings. These bodies were called the "new three boards" (Xiao et al., 2004).

During the early 2000s, mainland China's governance systems for listed companies differed not only from the Anglo-American unitary board models, but also, to a lesser degree, from European dual board systems. Although a conceptual variant of the stakeholder model, the then Chinese model did not empower the SB to appoint or dismiss directors and executives, as was the case with SBs in European firms. According to the Company Law, the roles of SB directors included supervising financial concerns, performing due diligence on directors and senior management, safeguarding firm assets, managing operational and financial risks, and last but not least, protecting shareholders' interests (Yang et al., 2011).

However, the law did not prescribe legal liability for the SB. Xiao et al. (2004: 44) distinguished between three different roles that SB directors then performed. The first role was that of an "honored guest." SB directors of this passive type would feign engagement and compliance with basic legal requirements, but in reality did little more than maintain a mere physical presence at meetings. The second role was that of a "friendly advisor." This type of SB director provided consultancy and advice, but did not actively engage in monitoring, critically questioning, or confronting other directors or senior managers. The third role was that of an active "watchdog" of which there were two types. "Censored watchdog" directors were careful to not disseminate important information for fear of other directors including those on MBs, CEOs, or dominant shareholders. "Independent watchdogs" performed monitoring duties mostly without fear of interference from other SB directors, MB directors, CEOs, or main shareholders. In most Chinese firms during the review period, SBs were commonly dominated by directors who might be characterized as either "honoured guests" or "friendly advisors." Accordingly, SBs were often regarded as "tigers without teeth" (Dahya et al., 2002: 124). Reasons for this SB phenomena included directors' lack of legal power and clearly defined legal responsibilities, lack of independence, lack of technical expertise, lack of information (asymmetry), and lack of incentives (Dahya et al., 2002: 133). In addition, SB directors commonly had low perceived status since Chinese law did not provide SBs with legal authority or standing (Dahya et al., 2002: 133).

Turning to the United States (US), according to corporate law during the review period, unitary boards had legal responsibility for monitoring senior management and its strategic decisions. Directors typically had six legally mandated responsibilities: approving major corporate decisions; providing counsel; overseeing the performance of management and being responsible for selecting CEOs; ensuring effective auditing procedures; ensuring that stakeholders are given recognition; and monitoring the firm's investments (Conger et al., 2001: 7). To fulfill these roles, board members engaged in a series of activities including: giving strategic advice; monitoring strategy implementation and financial performance; developing and evaluating the CEO; developing human capital; scrutinizing legal and ethical performance; and procuring resources (Conger et al., 2001: 9).

US law gave clear responsibilities to the board and held its members accountable, especially after ratification of the Sarbanes-Oxley Act of 2002, for effectively discharging their roles (Perino, 2012). Differing from the Chinese categories, US board members were considered to be either passive ("rubberstamping") or active ("watchdogs") in relation to senior management actions (Guerrero and Seguin, 2012). When active, directors engaged in acts such as evaluating CEOs. For example, approximately two-thirds of Fortune 1000 firms then employed formal CEO evaluations (Conger et al., 2001: 88). However, US directors also exhibited passive behaviors as was the situation with Disney who had initially restricted its subsidiary, Miramax, from distributing a film, "Fahrenheit 911" (Rutenberg, 2004). Disney's board passively allowed senior management to place the monetary expectations of key owners above the informational needs of other constituents such as audiences and citizens.

2.2 Governance frameworks

Scholars have identified which factors are the most salient predictors of effective corporate governance and performance for stakeholders (Adams et al., 2010, Edgell and Vogl, 2013, Hilb, 2012, Hilb, 2005). They generally agree that information diversity and, as a result, board composition is an important predictor, followed by director remuneration and critical feedback or reviews. These predictors are consistent with the prescriptive criteria delineated in Hilb's (2005) governance practices framework as follows: selection, composition, feedback, remuneration, development, and transparency.

3 Methodology

Scholars study corporate governance using a variety of qualitative and quantitative methods, some as reviewed above. While many researchers study the development of indices to measure governance variables and outcomes, other investigators criticize the indices approach for being too reductionist and less able to capture important nuance (Kaufmann and Kraay, 2008). Therefore, for our historical case narratives, we adopted a qualitative and comparative analysis approach to corporate governance evaluation as an interesting complement to these other methods (Mahoney and Rueschemeyer, 2003, Schutt, 2011: 387). By focusing on a particular historical episode through case studies, we aim to gain nuanced and critical insight into practices in the context of past institutional changes (Hargadon and Douglas, 2001). Furthermore, historical narratives offer the possibility of distance that might help reveal deeper, less obvious underlying assumptions and emergent path dependencies (Üsdiken and Kipping, 2014, Hargadon and Douglas, 2001, Schreyögg et al., 2011). Lastly, historical views reveal dynamic aspects of shifting organizations. By comparing distinct organizations, we gain insight into the influence of national culture on media and governance.

We concentrated our research on the early 2000s as our review period since it was an interesting global epoch. In the US, this period saw various revelations of corporate fraud cases including Enron (2001), Tyco (2002), Worldcom (2002), Healthsouth (2003), and others (Perino, 2012). Correspondingly, this period also saw the institutional emergence of the Sarbanes-Oxley Act of 2002 (Perino, 2012). In China, that same time period was equally intriguing since it saw the further institutionalization of capitalist markets regimes and tremendous economic growth. These emergent transformations set a path for China to become predominately capitalist with the passing of private property laws in 2007 (Kielsgard and Chen, 2013) and eventually the world's second largest economy in 2010 (Barboza, 2010).

We used a variety of secondary publicly available information to construct robust descriptive case narratives for the time period 2000 to 2004. While we endeavoured to provide reliable and accurate information, we do not warrant the information or financial figures contained herein due to occasional inconsistencies among various secondary source documents. Also, documents written in Chinese were translated to English by one of our co-authors. We limited our sample to a comparison of two media firms situated in differing geopolitical entities with divergent national cultures. To represent arguably the most developed media market especially during the review period, we selected US based Time Warner Inc. (TWX). To glimpse into one of the then fastest emerging markets, we selected Hong Kong based Phoenix Satellite Company Limited (PST). Although launched only eight years earlier in 1996, it had by 2003 become one of the most popular television channels in China with a reported mainland audience of 50 million viewers (Borton, 2004). We did not select a mainland Chinese media organization since all were then state owned, operated, and offered very little publicly available data. During the review period, PST was reasonably comparable, despite revenue and product differences, to TWX in terms of its international board members, commercial business model, unitary board, and global albeit Chinese speaking audience market.

For our study, we applied a best practices framework to analyze governance and board practices of both TWX and PST during the review period. We used Hilb's (2005, 2012) governance practices framework with its seven variables as described in Table 1 below.

Table 1. Corporate Governance Board Practice Variables (Hilb, 2012, Hilb, 2005)

Variable	Defining Questions
Selection	Are directors selected according to objective criteria relevant to the firm's business and industry or rather according to their relationships with existing board members?
Composition	Is the board adequately composed with appropriately skilled and experienced individuals? Is the knowledge and experience well balanced (diversified)? Does it have a constructively open culture that encourages debate and learning? Does it have an effective size and committee structure?
Feedback	Is the performance of the board subject to an adequate review process or are directors considered exempt from feedback?
Remuneration	Does the remuneration policy align directors' interests with those of shareholders and the broader public interest?
Development	Do board members undergo adequate personal development and continuing education?
Transparency	Are important board processes, dates, and decisions transparent (disclosed) to the public and to shareholders?

After constructing narrative characterizations of each firm using the above criteria, we then analyze each firm's practices through the governance lenses of prerequisites and integrative processes. To achieve *composition* and *feedback* objectives as proposed by the governance framework, Hilb (2005) suggests that boards should meet four important prescriptive prerequisites: be well diversified; have constructively open cultures; be effectively structured; and have stakeholder oriented visions. To achieve *selection*, *remuneration*, and *development* objectives, boards should deploy the following three integrative processes: select board directors based on objective criteria relevant to the firm and industry; provide regular individual performance feedback (e.g., personnel reviews) to directors; and remunerate board members based on firm objectives that align director's interests with those of firm owners and other stakeholders. Ultimately, boards become *transparent* by meeting all of the prerequisites and implementing the integrative processes. By comparing the two media companies along these lines, we highlight the major strengths and weaknesses of differing board practices.

4 Results

Below are our constructed case studies and analyses for TWX and PST. First, we delineate the then current governance practices in each firm. Next, guided by the governance framework, we offer analysis and critical commentary.

4.1 Case study: Time Warner

Time Warner Incorporated (TWX), with 2004 revenues of US$42 billion and net income of approximately US$3.4 billion, was the world's largest media conglomerate employing nearly 80,000 employees (TWX, 2004a, TWX, 2003, TWX, 2005). TWX offered a diverse range of consumer-oriented media products and services including filmed entertainment, networks, publishing, cable, and internet services that reached and influenced globally diverse audiences in 200 countries (TWX, 2004a). By late 2004, TWX's shares were trading for approximately US$19, a slight improvement over 2003, but still significantly lower than share prices of the early 2000s (TWX, 2004a, Morningstar, 2004, Yahoo!/Finance, 2015b, TWX, 2005).

In the US during the review period, the communication and media industry was mature, highly consolidated, and competitive, then projected to be a US$738 billion dollar market by 2005 and the seventh largest economic sector (VSMMB, 2001: 35). Given these conditions, TWX faced challenges that included losses from the declining music industry, claims by shareholders of misrepresentation (Vise, 2004), technological developments that threatened core businesses hence management's then recent decision to drop "AOL" from the official company name (Isidore, 2004), and average profitability.

Based on publicly available information for the review period, especially TWX's governance policy (GP) (TWX, 2004b, TWX, 2004c, TWX, 2004d, TWX, 2004e, TWX, 2004f, TWX, 2004g, TWX, 2004h, TWX, 2004i, TWX, 2004j, TWX, 2004k, TWX, 2004l, TWX, 2004m, TWX, 2004n, TWX, 2004o), we delineated board practices through the lens of the governance framework's critical variables. By corporate charter, TWX board's primary aim was to maximize long-term shareholder value by selecting, monitoring, and advising senior management while tracking the company's overall financial performance. To achieve this aim, the board had responsibility for approving long-term strategies, business plans, and operating budgets as well as conducting annual financial planning (TWX, 2004j).

TWX's board met at least six times per year and was comprised of 14 members of whom 12 were "independent". These independent directors each served on one of three standing committees: audit and finance; compensation and human development; and nominating and governance. The nominating and governance (NG) committee was responsible for the initial phases of board member *selection*. However, while the committee identified, reviewed, and recommended candidates, the shareholders voted to approve the nominated members. According to TWX's GP then in force, the NG committee was expected to ensure that nominees met institutional regulatory requirements set forth by the NYSE, SEC, and IRS. Furthermore, the GP called for a majority of the directors to be "independent", to meet specific composition requirements (see discussion below), and to have the qualities expected of directors such as "integrity", "judgment", business insight, and adequate capacity to enable commitment and contribution (TWX, 2004h). TWX defined independent as follows:

> … the director has no material relationship with the Corporation and its consolidated subsidiaries (collectively, the "Company"), and that the director is free of any other relationship (with the Company or otherwise) that would interfere with the exercise of independent judgment by such director. (TWX, 2004c: sec 2, para 5)

Also, the GP set director age constraints at a minimum of 21 and maximum of 72 years old. When considering incumbent directors for re-nomination, the NG committee was encouraged to review past performance in terms of meeting attendance, participation, and contributions.

TWX's GP directly addressed only size and "independence" for board *composition*. While the board was comprised of 14 members during the review period, the NG committee was empowered to determine a new board size, subject to vote by the entire board. However, during the review period, the GP limited membership size to no fewer than 12 or no more than 16 directors. Interestingly, TWX's various businesses served highly heterogeneous audiences in terms of national cultures, ethnicity, and socio-economic factors. Yet TWX's GP did not explicitly define specific diversity or multicultural benchmarks, other than "independent". The GP did oblige the NG committee to nominate directors who would serve current and future needs with appropriate skills, industry experience, age, diversity (undefined) and geographic (undefined) location. Interestingly, the corporation did claim a general commitment to diversity in relation to workforce, suppliers and vendors, investments, philanthropy and outreach, as well as new markets (TWX, 2004n: para 1). This mandate did not specify any particular diversity measures for directors, especially those who were classified as independent. During the review period, the board was 93% male, 71% over the age of 60, and 86% independent. Also, it appeared to be dominated by affluent Caucasian-Americans (TWX, 2004b). However, Richard Parsons, then CEO and Chairman, was African-American and possibly the single most powerful person in media. Only two board directors appeared to have significant media industry expertise while the rest had backgrounds in technology, especially internet and software experience. Regarding functional expertise, many of the members had strong legal, political, or financial orientations (TWX, 2004b). Lastly, the GP did permit the CEO, as Richard Parsons did during his tenure, to simultaneously act as board chairman.

The GP assigned responsibility to the entire board, under the watch of the NG committee, to conduct annual *feedback* reviews. These took the form of self-evaluations in response to performance issues such as "composition, responsibilities, structure, processes, and effectiveness." Furthermore, as noted above, the NG committee was responsible to review other aspects of any incumbent director that it wished to nominate for re-election.

Director *remuneration*, as defined in Article III, Section 14 of the then by-laws, allowed each director to receive fees in cash or stock-based compensation and reimbursement for direct expenses (TWX, 2004c: sec 14). Additionally, directors were permitted to serve the corporation and its subsidiaries in other capacities and to collect fees for those services. The Compensation and Human Resources Development Committee was responsible only for setting executive “C-team” compensation, not board director remuneration. While the 2003 Annual Report did not reveal notes that delineate actual director remuneration, other sources exposed that in 2002 the board met nine times and that each director was granted only non-cash compensation in the form of options on 40,000 shares, down from 52,000 in 2001 (CBMM, 2003, CBMM, 2002).

The director *development* program, as defined in the GP, called for the Secretary to give each newly elected director an orientation to the board, firm, and operations. New directors met with senior executives, received presentations about the firm, and were eligible to be reimbursed for “reasonable” expenses relating to ongoing education. As required by Section 4.06 of the Sarbanes-Oxley Act (Perino, 2012), TWX had created and issued codes of ethics for both employee and non-employee directors.

The GP required the NG committee to annually review its principles and practices with regard to *transparency*. While TWX did disclose much critical policy information as evident by the information provided herein and appeared to comply with basic regulatory requirements, the written policy did not delineate any specific transparency benchmarks other than “shareholder expectations”. Moreover, the GP did not explicitly include provisions for the dissemination and accessibility of information about specific board decisions, debates, director compensation, accountability, etc. The SEC’s then pending lawsuit alleged that TWX had wrongly recorded US$400 million in advertising revenues from AOL following its January 2001 merger (Vise, 2004). TWX had supposedly misled investors about the financial health of AOL. A SEC ruling against TWX would have further implied that TWX could vastly improve its board practices, especially the disclosure of material information to the public.

4.1.1 Case analysis and discussion

While it is difficult to fully determine if TWX’s board followed or “practiced” its policy, we have turned to other literature to partially verify behavior. By further applying the governance framework to TWX’s board *prerequisites* and *integrative processes*, we analyze and discuss strengths and weaknesses.

4.1.1.1 Prerequisites

Although TWX did declare a commitment to diversity for its stakeholders (i.e., workforce, suppliers, vendors, and others), its board did not appear to be *diversified* as many of the directors shared similar skills, industry experience, age, and socio-economic backgrounds. The board did appear to have been highly homogenous given the lack of socio-economic or nationality diversity that would reflect the highly diverse range of TWX audiences (Henrich et al., 2010, Westphal and Stern, 2007). Furthermore, selection and composition guidelines gave no formal requirements for such diversification.

Although it is difficult to determine the degree to which TWX had a *constructively open board culture*, some clues did suggest that the board lacked a strong “learning orientation.” The GP did not specifically define a development policy. Also, as described above, a highly homogenous composition might have acted as a disincentive for critical discursive practices and learning. The board had 14 members and three committees. The governance practices framework calls for an *effective board structure* that consists of a maximum of seven members and two committees (Hilb, 2012, Hilb, 2005). TWX probably did not have a strong *stakeholder oriented board* vision as evidenced by the board’s robust mandate to maximize long-term *shareholder* value.

4.1.1.2 Process

The *board selection* process, in effect during the review period, seemed to be singularly focused on one quality, independence. However, evidence then indicated that other variables such as director tenure, with higher length of tenure correlating with reduced independence and effectiveness, were perhaps more useful considerations (Vafeas, 2003).

Although some board *feedback* may have been achieved through annual self-evaluations, it seemed that TWX's board lacked a targeted program. We could not find evidence that *board remuneration* was targeted; it seems that compensation was the same for each board member and not directly linked to individual performance. Although TWX had recently implemented a code of ethics for the treatment of third parties and employees (e.g., stakeholders), a balanced and *targeted board development* program might have been more effective.

Overall, TWX did not appear to have a clear strategic direction for growth, other than a vague vision to rebuild investor confidence and improve governance (Leone, 2003). Strategic missteps (i.e., AOL merger, questionable accounting practices, etc.) prior to the review period suggested that TWX needed to make its board practices more effective. The board's decision to increase CEO Parson's base salary by 50% to US$1.5 million and issue a US$8 million cash bonus (CNN/Money, 2004), despite marginally improved firm performance, raised additional doubts about TWX's board processes. The New York Stock Exchange, in response to the Sarbanes-Oxley Act, had issued new standards for corporate governance (NYSE, 2003). From our review, these standards appeared to have been, in some instances, stricter than TWX's GP in force during the review period. Lastly, TWX's GP did not have any particular clauses or procedures that would ensure its then vast and complex media holdings might continue to serve the public's need for unbiased reporting and information on critical issues, especially those that relate to corporate governance monitoring across industries.

4.2 Case study: Phoenix Satellite Television

In 1996, the News Corporation and Huayin Company Limited launched Phoenix Satellite Company Limited. During the review period, PST had 5 channels, including Phoenix Chinese TV, Phoenix Film Channel, Phoenix Satellite InfoNews, Phoenix Satellite European Channel, and American Channel (PST, 2004). It was then listed on the Growth Enterprise Market (GEM) of the Hong Kong Stock Exchange since June 30, 2000. In only eight years, it had grown quickly and, by 2004, had revenues of approximately US$143 million, net income of US$19 million, a share price of around US$0.18, and employed around 600 full time staff (PST, 2004, PST, 2005, Yahoo!/Finance, 2015a). Due to expensive access fees, only a limited number of Chinese government officials, wealthy citizens, and expatriates then had access to satellite TV. Despite this mass market barrier, the immense size of Chinese speaking audiences worldwide, then popularly estimated at one fifth of the world population (Gilmore and Dumont, 2003), coupled with growing disposable income enabled PST's rapid growth.

In January 2003, the Chinese State Administration of Radio, Film and Television (SARFT) granted Phoenix InfoNews Channel "landing rights" or permission to launch in China (Borton, 2004). This action gave Phoenix a pioneering position in the Chinese television (TV) market. Up to the review period, the government had allowed only a limited number of foreign channels to enter the Chinese TV market. Although Phoenix was based in Hong Kong, Phoenix InfoNews used the launching rights as an "overseas" channel instead of a "Chinese" television channel. This was due, in part, to language barriers (e.g., Mandarin versus Cantonese) and political issues (i.e., local Hong Kong people then watched Cantonese speaking channels such as Wu Xian TV and Asia TV). Accordingly, PST's Mandarin content had a relatively greater influence outside of Hong Kong, reaching audiences in mainland China and elsewhere. According to PST, a survey by state-controlled China Central (CCTV) indicated that PST's Chinese Channel (CC) then had the ninth largest audience when compared to 53 nationwide broadcasters (PST, 2004). PST also claimed that viewers ranked CC number two in terms of satisfaction (PST, 2004).

During the review period, PST's culture reflected a hybrid mix of Hong Kong Anglo-style firm values and mainland Chinese beliefs. The News Corporation and Liu Changle each owned approximately a 37.6% stake in PST. The then third-largest single shareholder was the Bank of China with 8.35%, while the remainder was owned publicly and by top management (PST, 2005, PST, 2004). As with TWX, we reviewed the corporate governance practices in terms of the governance framework. Since the largest portion of Phoenix's revenue came from mainland, China was of high strategic importance to Phoenix (PST, 2004). PST's main strategic priority was to establish InfoNews as a major channel in China and improve its position within the burgeoning global Chinese media market. In 2003, shareholders' losses amounted to approximately HK$72 million (PST, 2004: 40). As such, PST also aimed to optimize operational efficiency and, thus, reduce expenses.

PST had a unitary or primarily contractual board structure. The company did not have a separate "supervisory" board as would have been common in mainland China and Europe. However, the board did have two independent non-executive directors. In addition to the two Independent directors, there were two executive directors and six other non-executive directors. Board members served the company for a term of three years typically. After this base term, member contracts continued unless either party gave the other written notice to terminate in three months. We could not find documents that sufficiently explained the *selection* criteria for board members. The two executive directors had worked for the same radio station where they developed necessary relationships with top Chinese officials. Other directors primarily provided financial support for PST. Thus selection seemed to depend on the network connections and financing abilities of various individuals.

The Board was *composed* of executive directors, non-executive directors and independent non-executive directors. The two executive directors were Chinese media experts. Former People's Liberation Army colonel Liu Changle was executive director and CEO. Prior to PST, he had 10 years of experience as a journalist at China Central People's Radio Station (CCPRS). Changle founded PST through Today's Asia Limited, of which he then owned 93.3%, together with Satellite Television Asia Region Limited and China Wise International Limited (Zhang et al., 2011: 99). Changle was also heavily involved in PST's leadership, especially with strategy, market planning, and general management. This "hands on" management approach differed significantly from then prevailing CEO styles in the US. Chui Keung, the other executive director, had a background similar to that of Liu Changle. Keung had also worked at the CCPRS for over 10 years (IRASIA, 2014). Chui was in charge of PST's daily operations and coordinated relationships with Chinese government entities.

All non-executive directors and independent non-executive directors were financial and investment experts. The board's members were, on average, 45 years old and, except for one woman, were all male (PST, 2004). The first female board member was appointed in 2003. Although other board policies were not then disclosed or formalized, each PST board member had a specific position description. STAR Group Limited, owned by News Corporation, had four seats on the board. This included James Rupert Murdoch as Vice Chairman, Yu Leung John Lau, Chun On Daniel Cheung, and Michelle Guthrie (PST, 2004). Their PST responsibilities were limited to financial oversight; they were not directly involved with daily management. PST's annual report did not delineate specific job description for these STAR board members. To a degree, this might have been a localization tactic consistent with the News Corporation's larger globalization strategy as well as Chinese regulatory requirements. Murdoch was reported to have said, "We are very clear, some countries, their people, are very sensitive to their status, they want to see the programs made by their own people." (Qianlong, 2004: 1) As such, Murdoch had given full authority to local media people to run Phoenix. As described earlier, PST developed programming exclusively for Chinese audiences. To some degree this may have been a result of the SARFT's reforms in late 2004 which had increased foreign ownership stakes in entertainment (excluding news) joint ventures up to 49%, but required that two thirds of content be "Chinese themed" (Borton, 2004, Liu, 2010).

Regarding *feedback*, board members were not reviewed individually. We were not able to find public reports on this particular topic. In the annual reports, only evaluations of the entire company were presented. There appears to have been no clear policy for sharing individualized performance or contribution feedback with directors. Given the lack of an actual supervisory board, Changle's performance was not reviewed. While it might have been a function of PST's particular firm culture, it may equally have been a reflection of traditional Chinese cultural values. Collectivist cultures tend to value performance as a function of team effort more so than individual contributions. In this view, individuals' contributions might be neglected or overlooked to a certain degree.

Directors' *remuneration* was not defined in publicly available documents. Furthermore, principles for determining compensation were not publicly disclosed. However, we did find individual director's actual remuneration mentioned in annual reports. Executive Director A received US$680,000 and Executive Director B received US$360,000 as their emoluments in 2003. No emoluments were paid to the other non-executive directors in 2003. Independent non-executive directors were paid approximately US$51,400 each (PST, 2004: 11). The compensation for executive director and independent non-executive directors was then relatively high by Hong Kong standards. Since PST continued to post losses and its stock price continued to decrease during the review period, the high director compensation did not correlate with firm performance. We were unable to find any board director *development* plans or program documents. Directors did have meetings regularly. However, details such as plans, schedules, decisions, and other information were not publicly disclosed.

In terms of *transparency*, PST did satisfy the then GEM requirements and disclosed key data to the shareholders regularly, especially financial information. However, PST's human resource policy seemed to be either highly confidential or not formally delineated. For instance, PST did not disclose any policies for director selection and promotion.

4.2.1 Case analysis and discussion

As a satellite TV operator based in Hong Kong, PST wanted to promote an integrated and modern view of Chinese culture that would be accepted by a diverse worldwide Chinese audience. Its governance approach was unique perhaps representing a hybrid of practices common in both the traditional Anglo-American contractual model and the European stakeholder model. However, the governance approach also exhibited qualities associated with family owned firm models, especially given Changle's board dominance, ownership stake, and direct involvement in managing PST.

4.2.1.1 Prerequisites

While the board of Phoenix was diversified in terms of nationality, most directors came from the News Corporation and shared similar skills and experience. Their age and gender were not *diversified* since most board members were middle-aged males. The company lacked a process for evaluating the CEO's performance. Furthermore, the CEO played a triadic role as a major owner, board leader, and senior manager. In this manner, Phoenix was similar to a family owned firm. Furthermore, there were also similarities to the politically powerful senior managers at Chinese state-owned broadcasters who take a very hands-on approach to managing stations. According to China News Service, Changle had told CNN's Talk Asia (translated), "I manage Phoenix in every detail. This kind of management is my biggest interest." (CNS, 2004: 1) Given Changle's dominant management style, we suspectthat PST might have lacked a "learning orientation" and a *constructively open board culture*. PST had 10 board members which exceed the effective board count proposed by the governance practices framework.

Another interesting issue was programming development and editorial control. Although PST did not appoint an official censor to the board, it used a team of professionals to constantly review and edit programming for material that might be deemed sensitive or offensive by the Chinese government. In fact, this team essentially functioned in a capacity similar to that of the government or censors in other Chinese state-owned broadcasters. To enter the Chinese market, Phoenix had to "… put together programming politically acceptable to mainland officials while also adventurous enough to viewers and advertisers to become financially successful." (Cheng, 2001: 1) Strategic business concerns may have led to an editorial programming profile in which news and entertainment where blended. Murdoch had tried ambitiously to enter the Chinese market during the early 1990s and failed due to his bold public statements. However, through Phoenix, Murdoch had strategically gained entry by granting local Chinese partners authority to independently manage Phoenix.

In China, the government then tightly controlled broadcasting by owning and managing all mainland television stations. Overseas foreign broadcasters who wished to enter Chinese markets were limited to less than 50% ownership, not allowed to own news outlets, and required to apply for and be granted a special license (Liu, 2010). Prior to being granted official rights, the Chinese government reportedly allowed PST to unofficially broadcast into mainland China for five years due to Changle's party connections (CNN, 2002). Also, it seemed that the government allowed PST to operate given that, in part, PST carefully avoided labelling content as "news", preferring to use the amalgam, "InfoNews" to infer entertainment. The Chinese government then had a less critical view of entertainment content. Also, PST limited its reach of mainland audience by charging expensive satellite TV fees. This naturally excluded low income Chinese from viewing material or news that may not have been politically acceptable to the then presiding governmental regime. As such, Phoenix attracted advertisers for luxury goods and, thus, had the financial means to create interesting programming. By relying on unique geographic conditions and cultural backgrounds along with a clever packing of content, PST reported on news and information, to a degree, that otherwise would not have been possible in mainland China. Although foreigners had called Phoenix InfoNews Channel (PIC) the "Chinese CNN", Changle saw it as being similar to the Middle East Broadcasting Corporation, especially since PIC reported on a wider range of news than

CCTV did, especially on topics relating to Hong Kong and Taiwan (Xia and Huang, 2004). This made PIC the most popular foreign broadcaster in China, especially since it offered an alternative choice to CCTV for wealthy Chinese and foreigners.

4.2.1.2 Process

The Phoenix independent non-executive directors were not empowered to appoint or dismiss directors and executives. They were essentially "honoured guests" who give advice on financial issues only. While directors received relatively high salaries from PST, they did not evaluate each other's performance or have a clear director *selection process*. PST's CEO directly controlled human resource functions. The lack of separation between dominant owners and management might have been problematic since it could lead to potential conflicts of interest, especially if the interests of other minority shareholders and non-owning stakeholders were to conflict with those of the majority owners. PST's unitary board structure, with little genuine independence, yielded a more monistic representation of interests when compared to TWX's board. Also, we could not find evidence that *board remuneration* was targeted for paid directors.

Regarding return on investment during the review period, PST's performance was weak. This sluggish performance implied that overall corporate governance might have been problematic (Brown and Caylor, 2006). Accordingly, PST's then board might not have been effective at objective monitoring. Nevertheless, it seemed that CEO Changle strongly believed in PST's approach to governance. Changle helped Phoenix to acquire the necessary landing rights (i.e., launching rights) in China despite Murdoch's past failures. However, that may have been only a short-term success. The firm relied on a few key people to manage the company and on a temporary market niche advantage. This strategy was very risky. If China were to increasingly open its satellite TV market to foreign firms, PST might easily lose its competitive advantage. During the review period, market analysts had predicted that Chinese audiences would eventually have hundreds of channel choices within a decade. PST's market penetration during the review period was probably most attributable to the limited availability of entertainment and news alternatives for affluent Chinese and expatriate audiences and, as such, might not have been sustainable.

5 Conclusion

While TWX and PST had differing board policies and practices (see Table 2 below) and served culturally dissimilar audiences under varied market conditions, our analyses reveal that both lacked the necessary robust prerequisites and processes to ensure open, transparent, and effective governance. Theoretically and practically, each firm could have modified their then governance policies and practices to better engage and serve diverse constituents. Moreover, both firms fell short, to varying degrees, of achieving the governance practices prescriptions for fully *integrated, strategic* and *stimulating* boards (Hilb, 2012, Hilb, 2005).

We have summarized our findings in Table 2. Regarding our first research question, we found weak evidence that both firms complied with widely accepted corporate governance best practices and norms. In contrast, both exhibited signs of weak stakeholder engagement, fragmented governance practices, and questionable director integrity. Regarding our second question, although the firms were situated in differing nations, national culture seemed to not be highly relevant. Neither firm seemed to fully engage all diverse stakeholder groups.

Both firms demonstrated questionable, fragmented, and extant governance practices. TWX failed to meaningfully develop directors' multicultural and entrepreneurial competencies necessary for future participation by citizens, especially those from newly emerging markets. Despite this, TWX's board did demonstrate a slightly more "open" orientation by seeming to superficially engage with a greater variety of stakeholders, not just owners. In contrast, PST's board exhibited a more "closed" orientation by favoring a few majority owners over other diverse and less powerful stakeholders. PST was governed by directors including four from Murdoch's News Corporation and STAR Media, which had questionable practices. For example, recent revelations about illegalities in 2002 at Murdoch's News of the World cast doubts on the integrity of PST's board directors (Kellner, 2012: 1170).

Table 2. Board practices comparison for Time Warner and Phoenix Satellite TV

Variable	TWX	PST
Selection	Policy focused on "independence" and failed to mandate any specific performance criteria, other than regulatory requirements. However, it did call for personal integrity.	No documents mentioned selection. The selection policy was not disclosed to the public.
Composition	Board had 14 members of whom 12 are "independent". Policy did not mandate any specific diversity measures. Board composition lacked any significant socio-economic, gender, age, functional, and industry diversity.	Board had 10 board members of whom 2 were Executive Directors and Chinese media experts. Other Directors, including 2 Independent Non-Executive Directors, were financial experts. The composition of the board was not diversified in terms of gender, age, and expertise.
Feedback	Policy called for annual self-evaluations. However, it seemed to not target specific performance benchmarks.	Available information suggested that there were no annual self-evaluations (only evaluation of the whole company annually).
Remuneration	Policy was not targeted or defined (in available documents). Directors received stock based compensation.	Policy was not targeted or defined (in available documents). Executive Directors and Independent Non-Executive Directors received very high salary.
Development	Policy called for and reimbursed director education. However, it did not target specific development goals and means.	No development documents were disclosed to the public.
Transparency	Policy established compliance with regulatory requirements. However, the then pending law suit (regarding disclosure of financial reporting irregularities) indicated that TWX did not fully disclose critical information.	The degree of transparency was low, especially the human resource policy. The company met the criteria of GEM to provide the required documents to the public. It was difficult to find information other than in GEM documents.

However, there had been several attempts by TWX's investors and management to improve board effectiveness. Resulting changes were limited and mostly shaped by shifting market conditions, new laws (e.g., Sarbanes-Oxley Act of 2002, etc.), and shareholders' concerns about senior management's accountability. While TWX's board was superficially more integrated, strategic, stimulating, and policy driven than PST's board, the then pending SEC accounting fraud lawsuit against TWX was eventually settled for $300 million in fines (Fredenburgh et al., 2005). TWX also paid $210 million in penalties to the justice department. By 2005, TWX settled another shareholder lawsuit for $2.6 billion (Fredenburgh et al., 2005).

Although our investigation reveals insights, this research has limitations. Historical case research is challenging due to constraints such as availability of archival information, evolutionary change in language and meaning over time, among others. Comparing firms across national cultures can be difficult due to need for document translation and interpreting of meaning. While exploratory case analyses are useful for generating potential meanings and explanations, additional empirical field research is needed to verify these explanations, to better infer configurational and sequential causation, and to arrive at a generalizable theory. Researchers might want to corroborate our findings and generate hypotheses by conducting detailed interviews with media firm constituents. This might lead to meaning condensation, saturation, theory construction, and hypotheses testing.

Despite these limits, we endeavor to provide useful insight for other researchers, practitioners, and students. Policy makers may find our research useful for stimulating discourse about the institutional regimes that constrain media firms. For example, they might want to debate the need for new levels of scrutiny and for innovative governance standards specifically applicable only to commercial media firms. For practitioners and students, these insights might be useful since they provide a language for discussions and advocacy about governance, media's role in society, and social responsibility. This information sheds light on a previously underexplored area and suggests that commercial media firms may suffer from governance challenges that reduce their collective capacity to effectively function as the much-needed Fourth Estate. We hope our words have the power to sensitize varied constituents so that they become more aware of the complex and nuanced relationships among media firms, governance, and capitalism.

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