

Corporate Law in the Global South: Heterodox Stakeholderism

Comments on a Paper by Mariana Pargendler

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Contents

Key contributions
of the paper



Some thoughts
for consideration

The Paper's Contribution

- ▶ Pioneering work on corporate governance in the Global South
 - Enhancing the role of the Global South into the comparative conversation
- ▶ Recognition of the heft of the Global South
 - Which accounts for 40% of the world's GDP and around 85% of the world's population
 - (The Economist, Apr 12, 2024)
- ▶ Covers hitherto less studied jurisdictions

The Paper's Contribution

- ▶ A novel approach to comparative corporate governance
- ▶ A discussion on Global South provides “distinct intellectual and policy payoffs”
 - “insights into how background economic and social conditions may influence corporate law strategies”

The Paper's Contribution

- ▶ Stakeholderism as a means to address:
 - High inequality
 - Insufficient state capacity
- ▶ Also, a way of dealing with perceptions as to the role of corporations in society
- ▶ Key assertion of “reverse convergence”

Paradigms in Comparative CG

Conventional,
e.g. US/UK/EU

North

North

Country-specific,
e.g. legal
transplants

North

South

Emerging

South

South

Illustrative Approach

Strategy	Examples
Erosion of Limited Liability	Brazil, India, Colombia, Argentina
Mandatory CSR	India, Indonesia, Mauritius
CSR (Social and Ethics) Committees	India, South Africa
Stakeholder Empowerment in Enforcing Directors' Duties	South Africa
Racial Inclusion and Diversity in Corporate Governance	Malaysia, South Africa
Constitutions and Stakeholder Protection	Brazil, India, others

Thoughts for Consideration



1. Global South: The Identity?

- ▶ The concept of Global South
- ▶ Suggestion of common interest and values
 - But considerable heterogeneity in the dynamics of its constituents
 - Lack of a coherent agenda or strategy in corporate governance or stakeholderism
 - Context matters

1. Global South: The Identity?

- ▶ Considerable diversity in the stakeholderism strategies used by countries in the Global South
 - Analysis is admittedly illustrative rather than conceptual or exhaustive
- ▶ Some strategies extend beyond corporate law
 - E.g. constitutionalism

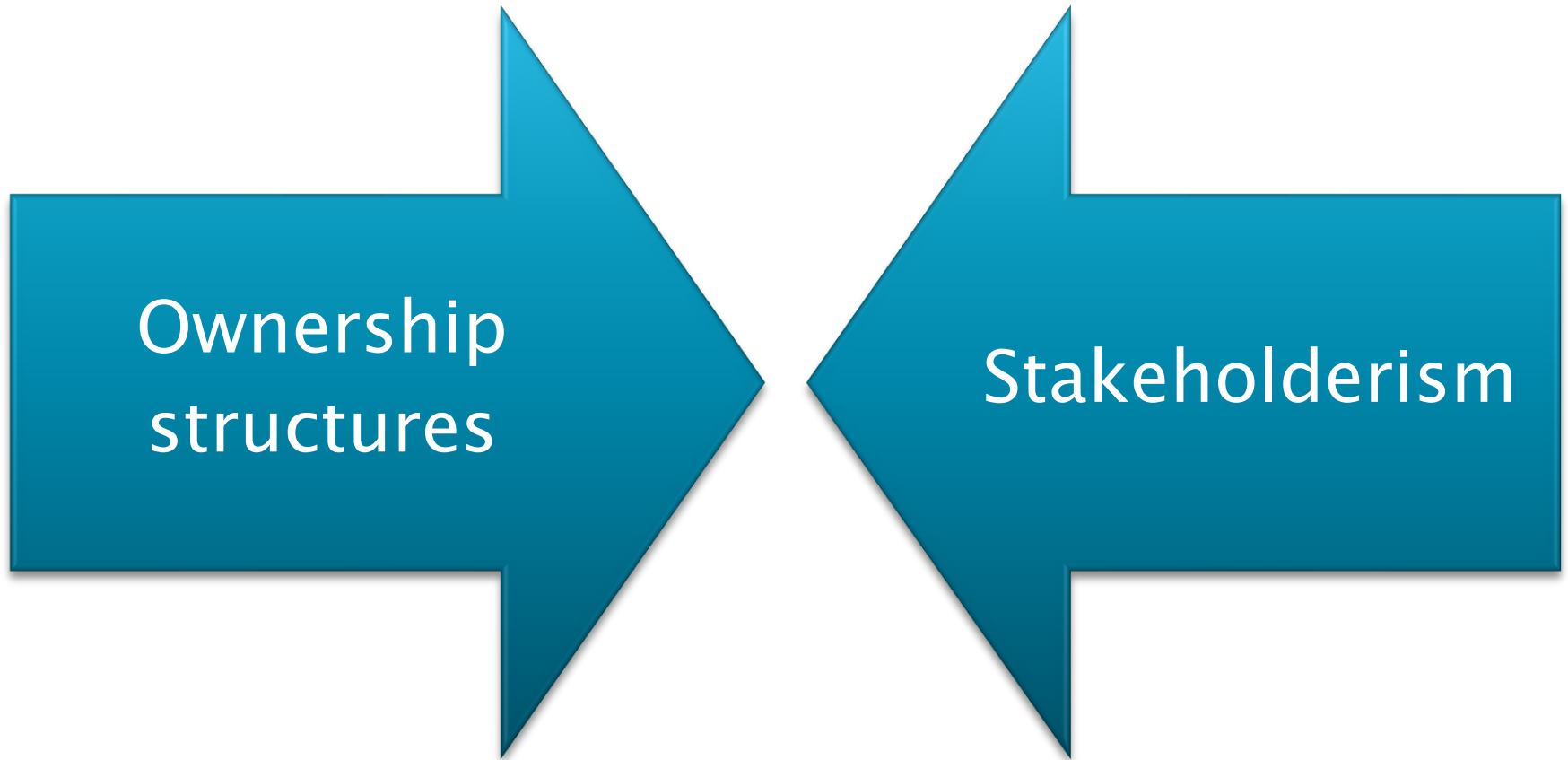
2. Stakeholderism: Static or Dynamic?

- ▶ Stakeholderism in the Global South as a unitary phenomenon?
- ▶ However, consistent with the Global North, there has been an oscillation between shareholder primacy and stakeholderism
 - E.g., China (Lin 2019), India (Varottil, 2016)

2. Stakeholderism: Static or Dynamic?

- ▶ Gilson & Milhaupt (2022)
 - View stakeholderism along a “continuum”
 - Corporate governance is the result of interaction between two central influences
 - Capital market completeness
 - Policy channeling

2. Stakeholderism: Static or Dynamic?



3. “Reverse Convergence”: The Evidence?

- ▶ Is there an ideal end point?
- ▶ Conventional understanding of convergence involves:
 - Cross-referencing during the corporate governance reform process
 - Legal transplants: whether efficient or inefficient

3. “Reverse Convergence”: The Evidence?

- ▶ Reverse convergence by default, not design
- ▶ At the same time, some aspects of stakeholderism continue to witness convergence in the conventional form
- ▶ Or even supranational convergence, e.g.:
 - Sustainability reporting, double materiality
 - The role of TCFD, IFRS

4. Heterodoxy: Its Components?

- ▶ Some further aspects to consider:
 - Directors' duties under corporate law
 - E.g., Indian Companies Act, 2013, s. 166(2)
 - *A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment*

4. Heterodoxy: Its Components?

- ▶ Corporate charter provisions (e.g., Lin 2019)
- ▶ Board diversity requirements
- ▶ The transition from CSR to ESG
 - The role of shareholder stewardship initiatives
- ▶ The absence of implementation and enforcement mechanisms
 - A case of “virtue signaling”

5. Jurisdictional Coverage?

- ▶ The exclusion of China
- ▶ Though it is the largest economy in the Global South
- ▶ The role of political dispensation in corporate governance
- ▶ Single country-analysis vs. comparative trends

Conclusion

- ▶ Important piece of work in comparative corporate governance
- ▶ Potential to spawn a whole new generation of scholarship involving South–South comparisons

THANK YOU

