

Foreword

There is a tension in the way the field of comparative corporate governance appears to be evolving. On the one hand, corporate governance has never been more global. Supranational public institutions, such as the World Bank and OECD, have successfully promoted the idea that there are universal rules and standards which can be used to promote “good” corporate governance around the world.¹ Empirical studies, which convert legal rules and standards into numerical values to facilitate multi-jurisdictional comparisons, have spawned highly influential theories to explain the global evolution of corporate law and governance.² Policymakers around the world have adopted a common lexicon and corporate governance toolbox. Ideas such as “independent directors” have become universal concepts, transcending jurisdictional boundaries.³

On the other hand, with the depth and sophistication of corporate governance research increasing globally, there is an increasing realization that each jurisdiction’s unique local context matters – a lot. A growing body of research illuminates the multiple jurisdiction-specific paths and tools that may lead to good corporate governance.⁴ The recognition that there are diverse varieties of paths and tools to

¹ Jeffrey N. Gordon, *Convergence and Persistence in Corporate Law and Governance* (Columbia Law & Econ., Working Paper No. 574, 2017), <https://ssrn.com/abstract=3037113>.

² Rafael La Porta et al., *Law and Finance*, 106 J. POL. ECON. 1113 (1998); Holger Spamann, *Contemporary Legal Transplants: Legal Families and the Diffusion of (Corporate) Law*, 2009 BYU L. REV. 1813 (2009).

³ See Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265, 280 (2017); Dan W. Puchniak & Kon Sik Kim, *Varieties of Independent Directors in Asia*, in INDEPENDENT DIRECTORS IN ASIA: A HISTORICAL, CONTEXTUAL AND COMPARATIVE APPROACH 511 (Dan W. Puchniak et al. eds., 2017).

⁴ See Ronald J. Gilson, *Controlling Shareholders and Corporate Governance: Complicating the Comparative Taxonomy*, 119 HARV. L. REV. 1641, 1647 (2006); Gordon, *supra* note 1; Dan W. Puchniak, *The Japanization of American Corporate Governance? Evidence of the Never-Ending History for Corporate Law*, 9 ASIAN-PAC. L. & POL’Y J. 7 (2007); Dan W. Puchniak, *Multiple Faces of Shareholder Power in Asia: Complexity Revealed*, in RESEARCH HANDBOOK ON SHAREHOLDER POWER 511 (Jennifer G. Hill & Randall S. Thomas eds., 2015).

produce good corporate governance has become more salient with the shift in global economic power towards Asia – where an abundance of Fortune Global 500 companies and the world’s largest market for IPOs have been built in the absence of stereotypical American Berle-Means type companies.⁵ Instead, state owned enterprises and family firms have been the foundation for much of the remarkable success in China, and now India and ASEAN.⁶ Japan’s lifetime employee management dominated companies have unexpectedly survived decades of economic stagnation and still form the core of Asia’s largest developed economy. Moreover, within Asia’s state and family controlled corporate landscape, unique jurisdiction-specific corporate governance features abound. In this context, the now infamous prediction made at the dawn of the new millennium that there would be a global convergence on the American shareholder primacy model seems like it must have been written in jest.⁷ The “End of History for Corporate Law” is nowhere in sight.

While Asia has been rapidly rising and evolving, the United States and Europe have not stood still. The rise of institutional investors has made the canonical American Berle-Means corporation a historical relic and produced a new corporate governance problem: “the agency costs of agency capitalism”.⁸ Germany, now the economic powerhouse of Europe, is witnessing the erosion of its iconic “Deutschland AG” as shareholder ownership has become more diffuse and international.⁹ These once ostensible endpoint or static corporate governance models have evolved in unpredictable localized ways.

How comparative corporate governance theory and practice will grapple with the tension between global and local forces, and the unique varieties of corporate governance systems that appear to have

⁵ Puchniak, *Multiple Faces of Shareholder Power in Asia: Complexity Revealed*, *supra* note 4.

⁶ *Id.*; Org. for Econ. Co-operation & Dev. [OECD], *OECD Equity Markets Review: Asia 2017* (2017), <http://www.oecd.org/corporate/OECD-Equity-Markets-Review-Asia-2017.pdf>.

⁷ See generally Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L.J. 439, 439 (2001).

⁸ Ronald J. Gilson & Jeffrey N. Gordon, *The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights*, 113 COLUM. L. REV. 863 (2013).

⁹ Wolf-Georg Ringe, *Changing Law and Ownership Patterns in Germany: Corporate Governance and the Erosion of Deutschland AG*, 63 AM. J. COMP. L. 493 (2015).

evolved, will take years to unfold. However, within this context, it is already apparent that an exchange of ideas among experts from multiple jurisdictions – who have a keen awareness of the global trends and in-depth knowledge from a variety of the world’s most important economies – is indispensable. It was in this spirit that UC Berkeley School of Law (Berkeley Law), the Faculty of Law, National University of Singapore (NUS Law), and the School of Law, Singapore Management University (SMU Law) held two conferences on comparative corporate governance on February 24-25, 2017 at Berkeley Law and on January 13-14, 2018 at NUS Law. These conferences were generously funded by the three universities and in particular: the Berkeley Center for Law and Business; the Centre for Asian Legal Studies (CALs) and EW Barker Centre for Law and Business at NUS Law (EWBCLB); and, the Centre for Cross-Border Commercial Law in Asia at SMU Law.

This is the first of two issues of the *Berkeley Business Law Journal* which will publish articles based on papers presented at the conferences. The articles in this Issue examine a variety of corporate governance and related securities regulation issues from several of the world’s most important economies outside of the United States, and with an emphasis on Asia. The unifying feature that runs through the articles in this Issue is that they all drill down into local corporate governance and related issues in important economies, and then connect these local findings to broader comparative corporate governance theory. In this way, this Issue reflects the current state of comparative corporate law and governance.

Many thanks to the *Berkeley Business Law Journal* for their superb editorial work. We hope you enjoy reading the articles as much as we enjoyed writing them.

Stavros Gadinis, Professor, Berkeley Law

Dan W. Puchniak, Director, NUS Law Centre for Asian Legal Studies;
Associate Professor, NUS Law

Umakanth Varottil, Associate Professor, NUS Law

Wai Yee Wan, Associate Professor, SMU Law