

International frontiers

Business



The United States of America (hereafter USA) and the United Kingdom (hereafter UK) continue to feature as friends in all international frontiers. Their policies and their interests more often than not converge. The two nations feature prominently as representative of the world's superpowers. Apart from the partnership and pursuance of future goals together, the UK and the USA share historical and social ties that make them almost inseparable. There is evidence of massive economic interdependence between the countries and there is vast array of examples that portray their similarities in this respect. Furthermore, the two countries are seen as centers of multinational corporations and top financial institutions, with their policies converging largely with only blurred lines remaining in the divergence of some policies. However, the pursuance of corporate governance policies continues to defy this trend, the area stands out as clearly divergent within the two nations. There is continuity in the existence of conspicuous policy dissimilarity, on regulating hostile takeovers. Modern evidence indicates new pressure and requirement demands concerning takeovers, which necessitate critical examination of factors informing current conclusions.

This paper, as such, is a critical analysis of Armour and Skeel's assertions concerning the evident divergence in the two countries regulatory framework. The analysis endeavors to bring out salient issues in their argument and measure the accuracy of their assertions based on other works and assessment considerations. The most fundamental issue in the discourse of corporate governance is the power sharing within a corporation, between its directors and shareholders. This is the base of analysing US's

extreme leniency and favour towards managers, to the disadvantage of the shareholders. Prominent in this discourse is the Delaware State rules, a state renowned for its corporate governance approach. Its rulings are spreading to other states since its landmark decisions in the 1980s.

It can be deduced that Armor and Skeel base their argument of the divergence in US and UK policy on the Delaware rulings in a number of prominent cases. In the case *Unovocal Corp. v Mesa Petroleum* (1985) SC ruling, the court enunciated that managers can in the face of imminent takeovers consider other aspects beyond their duty to shareholders. It can be concluded from the ruling that managers, while analyzing the effects of a takeover, could manoeuvre and consider the effects on others stakeholders, other stakeholders. Consequently, managers get the manoeuvre advantage of deviating from their central obligations to the shareholders.

Another managerial maneuver within the US system was in the case of *Revlon Inc. v MacAndrews and Forbes Inc.* the Delaware court in this ruling, granted the director's freedom to switch their duties depending on the prevailing circumstance. In the event that a takeover is imminent, and unavoidable, managers can change their incumbent role of preservation of the corporation, to maximization of shareholder value through sale. It is clear that directors were no longer defending the corporation from take-over; rather, they were auctioning it at the best price. The third managerial maneuver can also be deduced from *Paramount Communications v Time Inc.* directors get relieved of their obligation to act in the short-term interests of the shareholders; and can, therefore legally pursue long-term corporate

plans unless there are reasons meriting its non-sustenance. In conclusion, all the rulings summarily seem to offer situations in which shareholder's interests are made secondary to those at the director's own discretion. Armour and Skeel Jr. Offer a legitimate ground, for a research to conclude that the US system favours managers. Delaware rules on the other hand, give room for manoeuvres and as such raise issues such as who influences the rules.

Their argument being that making shareholder influence on rules difficult, makes the manager's enjoy a favouring policy. The advantages associated with takeovers, can arise from a consequent advantage of the synergy between the two firms and the ability to keep the managers on tenterhooks. Research also seek answer to the question; who determines and assesses the ensuing advantages of a takeover? In the answer search, two prominent figures in the takeover regulation debate appear; Dan Fischel and Frank Easterbrook who propose that the ultimate decision should be by the shareholders and managers should not have the advantage of resisting a takeover. The evidence from the modern system leads to a deduction that the theory remains theoretical. Delaware rules ruling may be seen as supporting the maxim that the company is in the hands of the directors.

The ruling is legally correct since law recognizes directors as the medium by which, a company exercises the right of a legal person. Through the above stipulation that a company's brain is the directors since it cannot enjoy the rights of the legal person and must act through human agents seem to hold. The assertion of Delaware rules, granting managers and directors rights at the expense of the shareholders derive wisdom from America's traditional corporate governance rules is correct. It is observable that the board of

<https://assignbuster.com/international-frontiers/>

directors consists of individuals chosen by the shareholders and as such is directly responsible to them. They are the ultimate decision making organ of a company; the managers, on the other hand, are directly answerable to the director.

Close analysis of the legal system lead to a deduction that US companies appear as a nexus of contracts; contractual relationships with suppliers, managers, directors, contractors and employees. However, the contract between the shareholder and the directors is most critical; their acting on behalf of the company derives legality from the state of incorporation, “ through the internal affairs doctrine”. Studies can subsequently, summarize that Delaware rules through its appreciation that the director powers guarantee managerial freedom. A summation that the US policy offer shareholders no influence on takeover rules is clearly follows; the shareholders have relinquished their rights through electing directors to act for them. The takeover regulation is an indication of leniency towards the managers and support of them.

Featuring prominently in the list of managerial discretion is the use of poison pill. The poison pill dilutes the raider’s stake, upon acquisition beyond a particular amount. The managers may invite all other shareholders to buy the shares at half price or rather buy two shares at the price of one. This makes takeovers almost impossible and gives manager complete discretion over the takeover process. The UK system explicitly makes use of poison pills impossible for three reasons. First, the directors are under obligation to act in the company’s best interest and as such, the managers may lack sufficient reason justifying their adoption of a poison pill.

<https://assignbuster.com/international-frontiers/>

Second is the non-frustration rule, which prohibits the director from acting in a manner against the takeover. The third reason rises from the little appetite in institution of measures that take the share price down or reduce the possibility of a bid. The managerial discretion and manoeuvres clearly stops takeovers; research points out to this, in that, out of the takeovers from 1990-2005, Armour and Skeel note that only 57% of them were hostile; out of which only 24% were successful. The anti-shareholder assertion derives its legitimacy from research indicating that shareholders gain value out of takeovers in many circumstances. In line with Skeel and Armour arguments that despite the likelihood of managerial discussion with raiders, maturing into friendly takeover, it is likely that chances of shareholder's interest topping the list are slim. Their interests would only be central if managers have high remuneration.

It may be right to predict that instances of low managerial shareholding and low monitoring, managers are likely to reject profitable takeover bids and protect their jobs. They may also accept weak takeover that is likely to be unprofitable upon promises of large packages and bribes; both cases being a disadvantage of shareholders. The UK system is clearly pro-shareholder with the law letting them determine the course of a takeover. There may be no means of stopping the bidder from proceeding, but ultimately, the shareholder gains e. g.

through non-frustration rule, mandatory bid or price for bid all favour the shareholder. The US takeover rules are also a court's domain. A raider firm files complaint with Delaware courts if directors are frustrating its takeover. What follows is a court drama of lawyers and judges. On the other hand, the <https://assignbuster.com/international-frontiers/>

UK requires complaints of director frustration to be made with the Takeover Panel. The US system therefore, exhibit strict regulation in contrast to UK's self-regulation.

Wide evidence informs research studies that, European zone nations pursue a market forces policy. In defence to their system, an argument that though the board may be responsible and should act in the best interests of the company, stating that pinning the best interest is cumbersome. There is also the hurdle of attaining a consensus since the corporate structure is different across regions. History of the European Union, its journey towards complete integration and achievement of harmony are central in the corporate governance policy. Individual, national pride and lack of consensus have seen Europe pursue a non-regulated takeover process. The United Kingdom prohibits director's action during takeovers.

England's policy on takeover was evident in its 2001 clash with Germany, in the European parliament, where it made a proposition that, target company boards assume a neutral position during a hostile takeover. Despite the contradictions driven by the clamour for harmony within the European region, England's policy on takeovers remains clear. This paper informs that England's case law is an emphasis of shareholders prerogative in takeover aspects and no private regulation. Section 309 of 1985 Companies Act requires managers to prioritize the shareholder's interests when deciding about takeovers. England's blatant liberality and non-director intervention is glaringly clear UK boasts of 90% of all takeovers in the European region. Almost all takeover bids are successful in the UK.