

Oceans apart on the rights and wrongs of control

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A roundtable meeting held in London last week by the Institute of Chartered Accountants in England & Wales on emerging issues in Anglo-American corporate governance revealed yet again how far apart the two countries are. Distinguished contributors from both sides of the Atlantic, sometimes unwittingly, showed how wide the gulf still is.

The roundtable was part of an initiative launched by the ICAEW last year, dubbed "Beyond the myth of Anglo-American corporate governance" and marked the publication of a paper on "emerging issues".

This paper provides a useful compilation of where the differences lie. But it was down to Tim Bush, director at Hermes UK Focus Fund, at a dinner on the eve of the roundtable, to mark out the territory. His original research on the different financial reporting models, which sparked much of the debate, was published by the ICAEW last year.

He spoke of how Enron provided good examples of the issues. "It used 'mark-to-market accounting', which, in plain English, is counting chickens before they are hatched. Second, it used 'off-balance sheet' financing, which, in plain English, is not showing your shareholders how much debt you've got behind your income, and third, it privately pledged unissued Enron stock as collateral for these hidden loans, instead of taking a visible charge on Enron's assets."

As he pointed out: "None of these things, separately or together, were permissible under UK company law. Yet Enron's accounting had passed the tests of US Generally Accepted Accounting Principles on these things."

This was the starting point. So how did the US business culture foster this difference? Lady Barbara Judge suggested some answers. She is deputy chairman of the Financial Reporting Council, the UK's accounting regulator, and was, in her time, the youngest ever commissioner of the US Securities and Exchange Commission. She had no doubts: "Directors are used to having their own unfettered way in the US, whereas in the UK there is greater pressure from shareholders."

Then there are the lawyers: "Corporate governance in the UK has surpassed the US because it doesn't have class action lawyers sitting around waiting to bring an action," she added.

This fostered a different system in the UK. "CEOs are less imperial," said Mr Bush, "and boards are more collegiate. There is also collegiate representation in all of the market-regulating bodies, making the regulatory system work. Nationality is not a bar, nor is being a securities lawyer the key requirement for being a regulator. The accountancy profession is altogether more confident."

Another Anglo-American speaker backed up this thesis. Mark Anson was chief investment officer for Calpers, California's state retirement system, and is now chief executive of Hermes Pension Management in London. "Somewhere along the line the US forgot to extend its democratic principles to the capital markets," he said.

He described a comment by an amazed US CEO on learning how corporate governance works in the UK: "What a concept - shareholders could elect their own directors."

But it fell to Ethiopis Tafara, director of the office of international affairs at the SEC, to make plain the real differences when it comes to regulation of the capital markets. His comments reminded participants how far US regulation is dictated by its local markets whereas London had a much more outward-looking focus. Mr Tafara emphasised that "the UK market attracts sophisticated capital" whereas "the US market attracts retail investors".

He made an analogy to motoring regulations. In the US they were dealing with "public roadways" whereas the UK was dealing with "Formula One". "Our system has to go with the 50mph speed limit," he said. "We cannot move to a driver-led 'comply or explain' approach." He emphasised the SEC's constraints. "It would be very difficult for us to drive faster within the 50 mph speed limit. It provides the optimal protection."

Mr Tafara conceded that, when it came to the competitiveness of the US markets, "the landscape has changed dramatically". He suggested they were not less competitive but simply faced greater competition. "There is greater liquidity and choice for global investors," he said. For example, he thought Chinese companies could prefer a Hong Kong listing as they might get better analyst coverage there.

Sir Christopher Hogg, chairman of the FRC, concluded the discussions with the thought that: "UK shareholders have enviable rights compared with the US. The long-term benefits of this are clear."