Accountability and Corporate Governance

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ABSTRACT

This paper explores the relations between accountability and corporate governance. Although it is a pivotal concept in many fields, accountability remains an elusive concept—close to but different from responsibility. Accountability is best understood as a norm of governance, stipulating particular modes of wielding power and of responses to power in the Hohfeldian sense of this term. Societies that endorse accountability norms in the public or private sphere expect power holders to provide full disclosure and be liable for misdeeds. Accountability is not a universal norm, however. Differences exist between Western and non-Western countries in cultural value preferences compatible with democratic accountability. Within the West, differences in corporate governance paradigms—specifically, the prevalence of shareholder- versus stakeholder-interest norms—are consistent with prevailing value preferences, in line with political theories of corporate governance.

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1   INTRODUCTION

A standard—and, it must be admitted, somewhat worn-out—starting point for discussing

accountability and corporate governance is Milton Friedman's famous statement that "the social

responsibility of business is to increase its profits".[1] It may be easy to criticize Friedman's statement as

an extreme exposition of the shareholder primacy paradigm. But advancing an alternative paradigm—

say, a corporate stakeholder paradigm—that would also be viable in today's global financial markets

appears to be a daunting task, if not an altogether losing strategy. This debate is often cast in terms of

accountability and the constituencies that corporations or corporate officers should be accountable to. I

will call such constituencies "accountees". Those owing them accountability duties will therefore be

called "accountables".

The goal of this paper is to provide an in-depth analysis of the concept of accountability and to

advance a new approach for discussing accountability and corporate governance, which builds on the

study of social norms. It will become evident that many of the concepts that are so often used by

commentators—first and foremost is "accountability"—are actually rather poorly defined. To

overcome this unsatisfactory situation, this paper engages in several definitional discussions. Even if

they appear technical, I consider these discussions essential for discerning the core controversies

regarding this subject.

Part 2 briefly reviews the common contexts in which accountability and corporate governance

are discussed. Part 3 distills a conceptual definition of accountability in light of various sources,

ranging from linguistics, to political science, to social psychology. Part 4 argues that accountability is

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[1] Milton Friedman, *The Social Responsibility of Business is to Increase Its Profits*, N.Y. TIMES MAGAZINE, Sept. 13, 1970, at 32.

best perceived as a social norm of governance, namely, a social norm that prescribes legitimate mode of exerting power and responding to power. "Power" is interpreted in light of the theory proposed by Wesley Hohfeld in the early 20th century. This part then argues that thus understood, accountability in general is not likely to be a universal norm. Part 5 introduces basic concepts of value dimensions theories in cross-cultural psychology and demonstrates how particular cases of accountability relate to value dimensions under these theories. The discussion culminates with a value dimension analysis of the stockholder/stakeholder paradigm debate in corporate governance analysis.

2   TRENDS IN CORPORATE ACCOUNTABILITY

A great deal of effort has been dedicated to designating the "right" corporate accountees. In the days of the classic debate between Adolf Berle and Merrick Dodd during the early 1930s, the question had been formulated as "For whom are corporate managers trustees?".[2] This debate took place against the backdrop of the famous 1919 ruling in *Dodge v. Ford*,[3] which squarely pointed out shareholders as the sole beneficiaries of the corporation, and hence, as accountees of corporate officers. Characterizing the relationship between shareholders and corporate officers as one of trust has undergone several revisions over time in the United States and in other common law jurisdictions.[4] These revisions mainly concerned the relationship between shareholders and management, however. In widely-held corporations that are common in these jurisdictions, the separation between ownership and control in

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[2] *See* Adolf Berle, *Corporate Powers as Powers in Trust*, 44 HARV. L. REV. 1049 (1931); Merrick Dodd, *For Whom Are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145 (1932); Adolf Berle, *For Whom Corporate Managers Are Trustees: A Note*, 45 HARV. L. REV. 1365 (1932); E. Merrick Dodd, Jr., *Is Effective Enforcement of the Fiduciary Duties of Corporate Managers Practicable?*, 2 U. CHI. L. REV. 194 (1935). For a review, *see* A. A. Sommer, Jr., *Whom Should the Corporation Serve? The Berle-Dodd Debate Revisited Sixty Years Later*, 16 DEL. J. CORP. L. 33 (1991).

[3] 204 Mich 459, 170 NW 668 (1919).

[4] *See* Jennifer Hill, *Visions and Revisions of the Shareholder*, 48 AM. J. COMP. L. 101 (2000).

the corporation—also identified in the 1930s by Berle and Means[5]—was perceived as a primary cause

of concern. The original Berle-Dodd debate was settled as a scholarly matter in favor of Dodd's

position, which approved of limited social responsibility of corporations and corporate managers.[6]

Modern manifestations of this disposition include corporate philanthropy, which is allowed within

reasonable limits. The board of directors also has authority, under certain "other constituency" state

laws, to consider interests other than the shareholders' in the face of hostile—and supposedly

disruptive—takeovers.

Arguments supporting a stakeholder orientation of corporate governance were associated in the

early 1990s with progressive corporate law views,[7] and, more generally, with communitarian

positions.[8] In contrast, the shareholder primacy paradigm was associated with Chicago-school legal

economists such as Easterbrook and Fischell.[9] Today, however, the dividing line is blurring.

Importation of insights from behavioral economics into standard law-and-economics analyses is giving

a new spin to the stakeholder paradigm.[10] It remains to be seen whether this line of research will be

able to bridge mainstream economic analyses, that are mostly engaged with agency problems between

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[5] ADOLF A. BERLE & GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY (rev. ed. 1991). This book has had a tremendous impact on the corporate law and corporate governance literature. For a recent review, *see* William W. Bratton, *Berle and Means Reconsidered at the Century's Turn*, 26 IOWA J. CORP. L. 737 (2001).

[6] ADOLPH A. BERLE, JR., POWER WITHOUT PROPERTY: A NEW DEVELOPMENT IN AMERICAN POLITICAL ECONOMY 107-10 (1959).

[7] *See*, e.g., LAWRENCE A. MITCHELL, ED., PROGRESSIVE CORPORATE LAW (1995).

[8] *See* AMITAI ETZIONI, MACRO SOCIO-ECONOMICS: FROM THEORY TO ACTIVISM (1996). For a review, *see* Michael Bradley, Cindy A. Schipani, Anant K. Sundaram, & James P. Walsh, *The Purposes and Accountability of the Corporation in Contemporary Society: Corporate Governance at a Crossroads*, 62 LAW & CONTEMP. PROB. 9 (1999).

[9] FRANK H. EASTERBROOK AND DANIEL R. FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW (1991).

[10] *See*, e.g., Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA L. REV. 247 (1999); Margaret M. Blair & Lynn A. Stout, *Director Accountability and the Mediating Role of the Corporate Board*, 76 WASH. U. L.Q. 403 (2001) (hereinafter *Mediating Role*); Donald C. Langevoort, *The Human Nature of Corporate Boards: Law, Norms, and the Unintended Consequences of Independence and Accountability*, 89 GEO. L. REV. 797 (2001).

insiders and shareholders, with more radical views that focus on relationships with other

constituencies.[11]

Today, the shareholder primacy paradigm appears to be the dominant paradigm as a matter of

law as well as of practice.[12] But the competing paradigm of stakeholder interests refuses to disappear as

a normatively relevant alternative. Indeed, it may be gaining momentum. In June 1999, the

Organization for Economic Co-operation and Development (OECD) published its Principles of

Corporate Governance.[13] The OECD Principles highlight the protection of the rights of shareholders

and call for ensuring equitable treatment of all shareholders, but they also stress the importance of other

stakeholders, including employees, environmental interests, and societal interests of the communities in

which corporations operate. The OECD Principles were adopted by the World Bank and the

International Monetary Fund and also by large institutional investors such as CalPERS.[14] Finally, the

language of corporate accountability today extends to global instruments on corporate responsibility

intended for multinational corporations.[15]

3 THE MEANING(S) OF ACCOUNTABILITY

Political scientist Robert Behn opens his book-length discussion of democratic accountability in

the United States with the following questions:

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[11] *See* David Millon, *New Game Plan or Business as Usual? A Critique of the Team Production Model of Corporate Law*, 86 VA L. REV. 1001 (2000), who argues that Blair and Stout do not go far enough in acknowledging stakeholders' interests.

[12] For a strong exposition of this view, *see* Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L.J. 439 (2001).

[13] AD HOC TASK FORCE ON CORPORATE GOVERNANCE, OECD PRINCIPLES OF CORPORATE GOVERNANCE, Document SG/CG (99) (1999).

[14] For a review, *see* Amir N. Licht, *The Mother of All Path Dependencies: Toward a Cross-Cultural Theory of Corporate Governance Systems*, 26 DELAWARE J. CORP. L. 147 (2001).

[15] OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES (2000).

"What do we mean by 'accountability'? What exactly do we mean when we say that that we want 'to hold people accountable'? We talk this way all the time. We are always talking about holding someone accountable. Yet, when we say it—'we are going to hold people accountable'—what do we really mean?"[16]

Behn's rhetoric questions resonate with a noticeable sense of frustration. Behn acknowledges his inability to offer a good definition and conjectures that neither the "accountability holders—the politicians, the stakeholders, the auditors, the scholars, the lawyers, or the journalists—know exactly what it means to 'hold someone accountable.'"[17] Behn concludes that "[a]ccountability remains an elusive concept"[18]. Yet, unfazed, he argues that for people who might be held accountable, "[a]ccountability means punishment."[19] Thus, in the wake of the Enron-WorldCom scandals, President George W. Bush promised that there would be consequences for those engaged in wrongdoing. "Our Justice Department will hold people accountable," Mr. Bush said.[20]

Accountability is not necessarily about punishment. It is more about special types of mutual relationships. In Biblical sources—especially in the New Testament—accountability features highly as a desirable mode of social life. People are encouraged to engage in mutual correction and rebuke: "As iron sharpens iron, so one man sharpens another."[21] People are called to hold each other accountable for their sins: "Brothers, if someone is caught in a sin, you who are spiritual should restore him

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[16] ROBERT D. BEHN, RETHINKING DEMOCRATIC ACCOUNTABILITY 1 (2001).

[17] *Id.*, at 2.

[18] *Id.*, at 221.

[19] *Id.*, at 3.

[20] Elisabeth Bumiller, *Bush Issues Call for Honest in Corporate America*, N.Y. TIMES, June 29, 2002.

[21] Proverbs 27:17.

gently."[22] People are also urged to report their deeds and confess their sins to one another.[23] Such sources are of limited help, however, because they can be construed in fundamentally different ways. The exact form of confession, for instance, varies considerably among Christian denominations. Catholics confess to and receive direction from a priest who is part of a hierarchically organized church; Protestants are supposed to confess to and get advice from their peers.

Reaching a sound analysis of accountability and corporate governance therefore hinges on having a sound understanding of the concept of accountability. *Ad hoc* or colloquial usage is simply not enough. Nor do sacred scriptures suffice for providing a universally applicable definition, although (at least) among English speakers they may invoke strong religious connotations. Students of corporate governance will readily acknowledge, moreover, that in this context, accountability does not revolve on punishment or on religious beliefs; it has to do with relationships between corporations and corporate officers and between various social constituencies. The following sections are therefore dedicated to a conceptual discussion of accountability.

3.1 Linguistic Aspects

One should note from the outset that "accountability" is not a universal concept. In fact, this word is known only in English, such that this particular notion, with all the connotations it entails, prevails primarily in English-speaking countries. When I started working on accountability and governance, I was intrigued by the fact that as a native Hebrew speaker, I was lacking a Hebrew word for accountability. An inquiry with the Academy of Hebrew Language revealed that the Academy had

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[22] Galatians 6:1.

[23] James 5:16.

indeed considered the issue but decided not to adopt a specific translation in light of the fact that a specific term also does not exist in languages such as Russian, German, or Spanish.[24]

Political scientist Melvin Dubnick similarly finds that the English concept is quite distinctive. In most of the romance languages (French, Spanish, Italian, Portuguese), various forms of the term "responsibility" are used in lieu of the English accountability, which he considers an "anglican" term.[25] Northern European languages (Dutch, Danish, German), says Dubnick, use "responsibility" in a way that reflects a duty or obligation, which is at least close in meaning to accountability. Russian, however, uses a distinct term with roots in the concept of "report" through the French root "comptes a rendre".[26] Finally, a Japanese-style strategy—namely, transliterating accountability to "akauntabiritii"—may be helpful in facilitating discourse but only highlights the foreignness of the concept to certain societies.

Now it should be obvious that responsibility, obligation, answerability, and similar terms are close synonyms for accountability in English as well. The Merriam-Webster Dictionary thus stresses the element of "obligation or willingness to accept responsibility or to account for one's actions" in its definition of accountability, and the Oxford Dictionary defines "accountable" as "Liable to be called to answer for responsibilities and conduct; able to be reckoned or explained." According to Black's Law Dictionary, accountability means the "state of being responsible or answerable."[27] At bottom, no linguistic exercise can replace a conceptual, substantive analysis – a task taken up in the following paragraphs.

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[24] Barak Dan, *Academy of Hebrew Language*, Letter to Amir N. Licht, March 22, 2001 (on file with author).

[25] Melvin Dubnick, *Clarifying Accountability,* in PUBLIC SECTOR ETHICS: FINDING AND IMPLEMENTING VALUES 68, 69 (Charles Samford et al., ed. 1998).

[26] *Id.*, at 69-70.

3.2 Political Science

Political scientists deal with the notion of accountability perhaps most extensively. Dubnick traces the roots of the English idea (as opposed to the term) of accountability to the publication of the Domesday Book in 1086 – a watershed event in British political history.[28] The Domesday Book was commissioned in December 1085 by William the Conqueror, who invaded England in 1066. The first draft was completed in August 1086 and contained records for 13,418 settlements in the English counties south of the border with Scotland at the time.[29] Beyond its immediate purpose to assess a tax base, the conduct of the Domesday survey was an exercise in applying massive authority, as it sent a message to all of William's subjects that the conquest was complete and a new ruling order was in place.[30]

Beyond the Domesday surveys themselves, William I took a complementary step in 1086 to forge his royal authority, when he made all the people owning land at the time to submit to him and swear oaths of allegiance to him. The development of the feudal structure of governance in England, argues Dubnick, relied on the establishment of accountability as a mode of wielding power. Henry II, grandson of William I, preserved this system as he left much authority in local hands while tying them to the center through a strong accountability system. With the shifting of power from the Crown to Parliament in later stages, this accountability system was held in place.[31] One could say that only the

[27] BLACK'S LAW DICTIONARY 19 (6th ed. 1990).

[28] Dubnick, *supra* note 25, at 70-71.

[29] Further information on the Domesday Books and searchable text can be found at <http://www.domesdaybook.co.uk/>.

[30] Dubnick, *supra* note 25, at 71.

[31] *Id., id.*

identity of the accountee had changed – first it was the nobility and later still, the entire populace, with the gradual establishment of full democracy and universal suffrage in England.

English scholars' analyses of accountability focus on "ministerial responsibility", namely, accountability of the government to Parliament and the public in general. The British version of democracy relies upon an elected House of Parliament to check, control, and call to account those who exercise the executive power.[32] Accountability in this context includes both the acceptance of the responsibility publicly to explain and justify policies and a willingness to admit to and remedy errors; these obligations cannot be flouted with impunity.[33]

The notion of public sector accountability in the United States carries a meaning largely similar to the English meaning. Romzek and Dubnick provide a representative description of this accountability, as follows:

> "A relationship in which an individual or agency is held to answer for performance that involves some delegation of authority to act… [which performance is] expected by some significant "other"… accountability is a generic form of social relationship found in a variety of contexts… [A]ccountabiltiy does not necessarily imply the existence of democracy; rather, it suggests any form of governance conducted through some delegation of authority."[34]

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[32] Colin Turpin, *Ministerial Responsibility: Myth or Reality?,* in THE CHANGING CONSTITUTION 53, 55 (Jeffrey Jowell & Dawn Oliver eds. 1994).

[33] *Id.*, at 57. *See* also Dawn Oliver, *Law, Politics and Public Accountability: The Search for a New Equilibrium,* PUB. L. 238, 248 (1994); Peter Barberis, *The New Public Management and a New Accountability*, 76 PUB. ADMIN. 451 (1998).

[34] Barbara S. Romzek & Melvin J. Dubnick, *Accountability*, in 1 INTERNATIONAL ENCYCLOPEDIA OF PUBLIC POLICY AND ADMINISTRATION 6 (Jay M. Shafritz, ed. 1998). *See* also KEVIN P. KEARNS, MANAGING FOR ACCOUNTABILITY 35-36 (1996); O. P. Dwivedi & Joseph G. Jabbra, *Public Service Responsibility and Accountability*, in PUBLIC SERVICE ACCOUNTABILITY 5 (O. P. Dwivedi & Joseph G. Jabbra, eds. 1988); Gerald E. Caiden, *The Problem of Ensuring the Public Accountability of Public Officials*, in Dwivedi & Jabbra, *id.*, at 20. For further review, *see* Behn, *supra* note 16.

In an effort better to understand the phenomenon of accountability, writers repeatedly try to distinguish and categorize particular contexts where accountability is observed or is expected. A common classification refers to the identity of the accountable—public officials, elected politicians, etc.—and the identity of the accountee—whether it is Parliament or Congress, the media, the public, and so forth.[35] Another element used for making distinctions is the content of the accountability duty, but this element does not seem to be a critical factor since accountability is now generally understood to be an open-textured obligation with certain core components: promoting the accountee's interests, transparency and reporting, and liability to make amends.

The political science literature is instrumental for assessing the importance, pervasiveness, and complexity of the accountability phenomenon, at least in English-speaking countries.[36] But apart from a historical account of the roots of this phenomenon, these discussions tend to abstract from the reasons that might lead to it, or, more accurately – from the motivations that may engender or hinder a prevalence of accountability in particular countries. Here, Dubnick makes an important contribution in the observation that "the condition of accountability… is ethically relevant because it subjects one to the tensions of moral pull and moral push" as the latter are defined in Robert Nozick's ethical theory.[37] Dubnick expounds a classification of four types of "accountability systems"—namely, legal, organizational, professional, and political—and associates them with "institutions of accountability"

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[35] *See* Turpin, *supra* note 32; Oliver, *supra* note 33; Romzek & Dubnick, *supra* note 34; Rosa M. Lastra & Heba Shams, Accountability: *Ex Ante* or Scrutiny, *Ex Post* or Control and Transparency, working paper, University of London (2000).

[36] For a sample Canadian discussion, *see*, for instance, Office of the Auditor General of Canada & Treasury Board Secretariat, Modernizing Accountability Practices in the Public Sector, discussion paper (1998), available at <http://www.tbs-sct.gc.ca/rma/account/OAGTBS_E.html>. With regard to Australia, numerous publications are available at the site of the Australian National Audit Office, at < http://www.anao.gov.au>.

[37] Dubnick, *supra* note 25, at 75, referring to ROBERT NOZICK, PHILOSOPHICAL EXPLANATIONS (1981).

(respectively, liability, answerability, responsibility, and responsiveness), where each institution plays a role as both a moral pull and a moral push.

Dubnick's elaborate model yields interesting insights and surely deserves greater attention from the legal community. It fails, however, to point out the factors that cause accountability systems to take particular forms. This he does with full awareness. Having briefly reviewed various psychological approaches to motivation for human behavior, Dubnick highlights reflexive action theories such as Bourdieu's and Giddens's.[38] These theories focus on the regulation of human behavior through cultural values and social norms, and are therefore compatible with implementing an ethical theory of accountability based on Nozick's theory. But Dubnick does not pursue this avenue, as he states that

> "the goal here is not to find the essence of accountability, but to develop a potential conceptual tool that might enhance our understanding of – and ability to systematically study – the role accountability plays in government in general and public administration in particular… How such a condition [of accountability] gets established remains an empirical question."[39]

The goal of the present paper is to address precisely the issues which Dubnick leaves open both explicitly and implicitly. The next parts will put forward a conceptualization of accountability in a social norms framework that is sensitive to international cultural diversity. In addition, I will extend this conceptualization beyond the public sector sphere to the private sphere and in particular to the issue of corporate governance.

3.3   Social Psychology

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[38] PIERRE BOURDIEU, OUTLINE OF A THEORY OF PRACTICE (1977); ANTHONY GIDDENS, CENTRAL PROBLEMS IN SOCIAL THEORY: ACTION, STRUCTURE AND CONTRADICTION IN SOCIAL ANALYSIS (1979). *See*, generally, JAMES S. COLEMAN, FOUNDATIONS OF SOCIAL THEORY (1990).

[39] Dubnick, *supra* note , at 76.

In social psychology, "[a]ccountability refers to the implicit or explicit expectation of decision makers that they may be called upon to justify their beliefs, feelings, and actions to others… [It is] a universal feature of social life that inevitably arises from the norm-enforcement needs of groups and organizations."[40] According to Semin and Manstead, societies establish accountability systems in order to cope with common problems in groups life; accountability practices are crucial for establishing social order as they serve in rule and norm enforcement. In other words, accountability is the "social psychological link between individual decision makers on the one hand and social systems on the other."[41] As used by Semin and Manstead and later by Philip Tetlock and his colleagues, however, the term "accountability" mainly reflects a blend of ethical responsibility, either moral or professional. This usage does not seem to imply—at least not with the same force—the element of potential sanctions that political scientists highlight.

Relying on these premises and on general assumptions about human motivations and cognitive capacities, much of the research on accountability in social psychology revolves around the strategies that people adopt to cope with accountability. Studies by Tetlock, with various colleagues,[42] confirm a social contingency model of judgment and choice proposed by Tetlock.[43] In a nutshell, people behave differently—indeed, they seem even to think differently—depending on whether they expect to be held

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[40] Jennifer S. Lerner & Philip E. Tetlock, *Accountability and Social Cognition,* in 1 ENCYCLOPEDIA OF HUMAN BEHAVIOR 1, 1 (1994).

[41] G. R. SEMIN & A.S.R. MANSTEAD, THE ACCOUNTABILITY OF CONDUCT: A SOCIAL PSYCHOLOGICAL ANALYSIS (1983), cited by Lerner & Tetlock, *supra* note 40, at 1-2.

[42] *See*, e.g., Philip E. Tetlock, L. Skitka, & R. Boettger, *Social and Cognitive Strategies for Coping with Accountability: Conformity, Complexity, and Bolstering*, 57 J. PERSONALITY & SOC'L PSYCHOL. 632 (1989); Philip E. Tetlock & R. Boettger, *Accountability: A Social Magnifier of the Dilution Effect*, 57 J. PERSONALITY & SOC'L PSYCHOL. 388 (1989); M.F.Weigold & B.R. Schlenker, *Accountability and Risk Taki*ng, 17 PERSONALITY & SOC'L PSYCHOL. BUL. 25 (1991). For a detailed analysis and further references, *see* Philip E. Tetlock & Jennifer S. Lerner, *The Social Contingency Model: Identifying Empirical and Normative Boundary Conditions on the Error-and-Bias Portrait of Human Nature*, in DUAL PROCESS THEORIES IN SOCIAL PSYCHOLOGY 571 (Shelly Chaiken & Yaacov Trope, Eds. 1999).

accountable for their decisions. People are likely to adjust their public attitudes toward the views of the anticipated audience; they try to anticipate objections that reasonable critics might raise; they are likely to engage in self-justifying thinking about past actions that are now irreversible and implausible to deny; and they may engage in decision-evasion tactics when faced with conflicting views of potential accountees.[44]

The elaborate treatment of the behavioral manifestations of accountability in current social psychological research underscores the relative terseness with which contemporary writers deal with the social contexts that might engender such manifestations. That is, when do people consider accountability an effective factor that they need to adjust to? In this respect, Lerner and Tetlock point out two (necessary and sufficient) conditions for accountability systems to arise:

1. One group member acts in a manner that harms others.

2. Those harmed are sufficiently alarmed to incur the costs of monitoring and censuring.[45]

These conditions define a partial set of social settings in which accountability is anticipated by both parties and may therefore affect behavior. The first condition clearly dominates the second one: absent potential harm there is no expectation for potential monitoring and censuring. Moreover, one may question the relevance of the second condition altogether in light of Tetlock and Lerner's assertion that self-accountability could also be considered.[46] Current psychological analyses do not deal with several implications of accountability which political science highlight – primarily the issue of constant

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[43] Philip E. Tetlock, *The impact of Accountability on Judgment and Choice: Toward a Social Contingency Model*, in 25 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 331 (Mark P. Zanna, Ed. 1992).

[44] *See* Tetlock & Lerner, *supra* note 42.

[45] Lerner & Tetlock, *supra* note 40, at 2.

[46] Tetlock & Lerner, *supra* note 42.

disclosure and liability to make amends. Finally, little is known about the factors that cause accountability rules and conventions to "vary dramatically from one culture and time to another."[47]

4   ACCOUNTABILITY AS A SOCIAL NORM OF GOVERNANCE

Accountability emerges as a pervasive concept with a rich history – from Biblical injunctions to the evolution of democratic institutions.[48] Particularly because different disciplines define and analyze accountability in different ways, it is essential that we do articulate what we mean when we talk about accountability and corporate governance. Any further discussion—especially of international diversity aspects—cannot proceed based on colloquial and vague terminology. Instead of attempting to provide yet another definition of this elusive concept, this paper posits, as a matter of substance, that accountability is a social norm of governance – to wit, that it prescribes certain legitimate modes of wielding power. Conceptualizing accountability as a norm of governance enables one to advance concrete arguments about its relations with national culture – a task undertaken in Part 5. To this end, the present Part explains this conceptualization.

4.1   *Accountability as a Social Norm*

Readers will not be surprised to learn at this point that like "accountability", the term "social norms" also has different definitions in different disciplines. So much so, that Dean Scott recently argued that "the academic debate [on social norms] currently suffers from conceptual pluralism and terminological disarray. Indeed, we lack even a basic consensus on the proper definition of a social norm. This tower of Babel quality is, in part, a reflection of the complexity of the social phenomena

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[47] Lerner & Tetlock, *supra* note 40, at 2, 10.

[48] JAMES CUTT & VIC MURRAY, ACCOUNTABILITY AND EFFECTIVENESS EVALUATION IN NON-PROFIT ORGANIZATIONS 1 (2000).

that we are seeking to understand."[49] Law and economics scholars differ on the nature and source of

social norms, although they seem to agree that social norms can have profound implications on the

legal system.[50] Economists may be more skeptical.[51] Economists in general find difficulties in

grappling with the notion of social norms because, as Jean Tirole put it, norm behavior need not be in

one's self-interest.[52] Amartya Sen notes in this regard that "we [economists] cannot easily invoke some

immediate notion of society's 'preferences', or some transparent properties of 'social utility'…"[53]

Of the various approaches to social norms, the definition adopted by social psychologists

appears most useful. A standard definition considers social norms as understood rules for accepted and

expected behavior.[54] Sherif's work on conformity is often cited as an early demonstration of the

potency of social pressure to engender conformity.[55] Contemporary discussions distinguish between

two major categories of norms: *Descriptive norms*, which describe what most others do in a situation;

and *injunctive norms*, which describe what most others approve or disapprove there. A series of studies

on littering in public places done by Cialdini et al. have demonstrated the power of injunctive norms to

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[49] Robert E. Scott, *The Limits of Behavioral Theories of Law And Social Norms*, 86 VA L. REV. 1603 (2000).

[50] For a review of various approaches to social norms, *see* Amir N. Licht, The Pyramid of Social Norms, working paper (2001). *See*, for instance, Robert D. Cooter, *Expressive Law and Economics*, 27 J. LEGAL STUD. 585 (1998); Robert C. Ellickson, *Law and Economics Discovers Social Norms,* 27 J. LEGAL STUD. 537 (1998); Dan M. Kahan, *Social Meaning and the Economic Analysis of Crime*, 27 J. LEGAL STUD. 609 (1998); Amitai Etzioni, *Social Norms: Internalization, Persuasion, and History*, 34 L. & SOC'Y REV. 157 (2000); Lawrence Lessig, *Social Meaning and Social Norms*, 144 U. PA. L. REV. 2181 (1996); Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338 (1997); Lawrence E. Mitchell, *Understanding Norms*, 49 U. TORONTO L.J. 177 (1999); ERIC POSNER, LAW AND SOCIAL NORMS (2000); Richard A. Posner, *Social Norms and the Law: An Economic Approach*, 87 AM. ECON. REV. 365 (1997); Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUM. L. REV. 903 (1996).

[51] *See* Oliver Hart, *Norms and the Theory of the Firm*, 149 U. PA. L. REV. 1701 (2001) (advocating a norm-free theory of corporate governance).

[52] Jean Tirole, *A Theory of Collective Reputations (with Applications to the Persistence of Corruption and to Firm Quality)*, 63 REV. ECON. STUD. 1, 4 (1996).

[53] Amartya Sen, *Internal Consistency of Choice,* 61 ECONOMETRICA 495, 498 (1993).

[54] DAVID G. MYERS, SOCIAL PSYCHOLOGY (1999).

[55] Muzafir Sherif, *An Experimental Approach to the Study of Attitudes,* 1 SCOIOMETRY 90 (1937).

affect individual behavior.[56] The sources of social norms vary from general societal expectations for one's behavior to one's own expectations for one's behavior.[57]

Policy makers and lawyers are more concerned with injunctive norms than with descriptive norms: The former norms actually carry a "normative bite" in that they guide human behavior. In other words, injunctive norms are conceptually equivalent to what legal scholars refer to as "ought" statements.[58] Perceiving accountability as a social norm therefore means that societal members share the view that certain people should be held accountable to others. Where a social norm of accountability prevails, the accountables, the accountees, and society at large all expect the former to behave accountably – namely, to promote the accountees' interests, to fully disclose their personal interests, to be responsible for wrongdoings, and so forth. In line with Bob Ellickson definition of social norms, the rules of accountability would be "governing an individual's behavior [such] that third parties other than state agents diffusely enforce [them] by means of social sanctions".[59]

The social-norm conceptualization of accountability explicates that we are not dealing with a legal issue but rather with an issue of societal preferences. Perceiving accountability as a social norm

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[56] *See* Robert B. Cialdini, Raymond R. Reno, & Carl A. Kallgren, *A focus theory of normative conduct: Recycling the concept of norms to reduce littering in public places*, 58 J. PERSONALITY & SOC'L PSYCHOL. 1015 (1990); Robert B. Cialdini, Raymond R. Reno, & Carl A. Kallgren, *A Focus Theory of Normative Conduct: A Theoretical Refinement and Reevaluation of the Role of Norms in Human Behavior*, in ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 201 (Mark P. Zanna ed., 1991); Raymond R. Reno, Robert B. Cialdini, & Carl A. Kallgren, *The transsituational influence of social norms*, 64 J. PERSONALITY & SOC'L PSYCHOL. 104 (1993).

[57] *See*, respectively, Albert Pepitone, Toward a Normative and Comparative Biocultural Social Psychology, 34 J. PERSONALITY & SOC'L PSYCHOL. 641 (1976); Shalom H. Schwartz, *Normative Influence on Altruism*, in 10 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 221 (L. Berkowitz ed. 1977). For a review *see* Robert B. Cialdini & Melanie R. Trost, *Social influence: Social norms, conformity and compliance*, in 2 THE HANDBOOK OF SOCIAL PSYCHOLOGY 151 (Daniel T. Gilbert et al. Eds. 4th ed. 1998).

[58] *See* Mitchell, *supra* note 50, at 180 ("The key to understanding norms – the process of their formation, their content, and their stability – is to understand that norms are 'ought' statements."); Cooter, *supra* note 50, at 588 ("a person will pay a net price to uphold an *internal* obligation."); Etzioni, *supra* note 50, at 161 ("[S]ocial norms are not merely part of the actors' environment but also affect their intrinsic predispositions…These predispositions reflect a combination of people's biological urges and their cultural imprinting.")

further entails that it is not necessarily a universal norm, prevailing in a every society. Quite the contrary. Certain societies may not consider accountability a desirable social norm, while other societies may uphold it only in a limited set of social settings. Consider the United States. The picture portrayed by Robert Behn is of a society deeply engaged in holding people in the public service accountable: "Being in the accountability-holding business can be fun…The accountability holders themselves don't have to do anything particularly right… What a wonderful profession!"[60] At the same time, the debate over whether corporations and corporate officers should be accountable to non-shareholder constituencies has been raging for decades without showing signs that it is about to get settled.

4.2   Accountability as a Norm of Governance

Accountability belongs to an important category of social norms that may collectively be called "norms of governance".[61] Norms of governance prescribe legitimate modes of wielding power—that is, they deal with use and abuse of power. As a norm of governance, accountability implies that accountables hold positions of power and accountees are subject to the use of that power. Because accountability is not a universal norm, only societies that subscribe to this norm expect people in power positions to follow the norm's basic rules. Other societies may regulate the wielding of power through different social norms.

The preceding set of arguments calls for a precise explication of the notion of power. Such explication may be obtained by turning to Wesley Hohfeld's seminal analysis of fundamental legal

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[59] Ellickson, *supra* note 50, at 3.

[60] Behn, *supra* note 16, at 5.

[61] *See* Licht, *supra* note 50.

conceptions.[62] Writing in the 1910s, Hohfeld was frustrated with the inadequacy of contemporary legal discussions of legal rights, especially with respect to trusts. His primary endeavor was "to 'think straight' in relation to all legal problems" and to analyze "the basic conceptions of the law,—the legal elements that enter into all types of jural interests."[63] Hohfeld advanced an elegant diagrammatic model of relationships between legal statuses, mostly famous among them are rights, duties, and privileges. This model also specifies a dyadic relationship between "power" and "liability" that can shed light on the present discussion.

The "person (or persons)", states Hohfeld, "whose volitional control is paramount may be said to have the (legal) power to affect the particular change of legal relations that is involved in the problem."[64] "Liability" is simply a correlative concept of power, denoting the status of the other party as subject to the first party's power ("subjection" might have thus been a better title). "Disability" denotes lack of power; while "immunity" denotes the opposite sense of liability—namely, being immune to the exercise of power.[65] When one strips Hohfeld's definition of the "legal" adjectives (something that Hohfeld himself alludes to in the above excerpt) and generalizes it to all social relationships, this model in my mind holds the key for understanding the notion of power, and hence, the notions of governance and accountability.

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[62] Wesley N. Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning,* 23 YALE L.J. 16 (1913) (hereinafter Hohfeld 1913). Hohfeld further developed his classification of legal conceptions in Wesley N. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 26 YALE L.J. 710 (1917), and later consolidated it in WESLEY N. HOHFELD, FUNDAMENTAL LEGAL CONCEPTIONS AS APPLIED IN JUDICIAL REASONING, (W.W. Cook, ed. 1919; reprint 1964). For a general analysis of Hohfled's framework, *see*, e.g., ANDREW HALPIN, RIGHTS AND LAW: ANALYSIS AND THEORY (1997).

[63] Hohfled 1913, *id*, at 18, 20.

[64] *Id.*, at 44.

[65] *Id.*, at 53.

To illustrate the working of his model, Hohfeld provides two telling examples of legal powers. The first example concerns an agency relationship. "The creation of an agency relation involves, *inter alia*, the grant of legal powers to the so-called agent, and the creation of correlative liabilities in the principal."[66] Once the agency relationship is created, the agent has the power to convey the principal's property, assume or discharge debt to be paid from the principal's property, and so forth. However, Hohfeld carefully notes that the agent's power in fact stems from the principal's power to create agency power in the agent in the first place. The second example concerns the common law liabilities of persons engaged in "public callings"—the old, private predecessors of public service providers—such as innkeepers and common carriers. These people have a liability toward the general public – a liability they can extinguish, together with the correlative powers of the public, only by going out of business. Once again, the reason for this seemingly harsh arrangement lies in these people having a reciprocal holding-out power over members of the public.[67]

Against this backdrop, consider now the notion of governance. "Governance" is a relatively recent term that has become popular since the mid-1990s, *inter alia*, as a result of "good governance" programs sponsored by the United Nations, the World Bank, and the International Monetary Fund. These bodies share an operational agenda on promoting the rule of law and accountability and fighting corruption with a view to fostering economic development. The definition adopted for governance is thus compatible with this agenda:

> "We define governance as the traditions and institutions by which authority in a country is
> exercised for the common good. This includes (i) the process by which those in authority are selected,
> monitored and replaced, (ii) the capacity of the government to effectively manage its resources and

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[66] *Id.*, at 46.

implement sound policies, and (iii) the respect of citizens and the state for the institutions that govern economic and social interactions among them." [68]

For these international bodies, governance is a feature characterizing the public sector and the public sphere in general. Limiting the definition of governance to the public sphere, however, renders it unnecessarily narrow. [69] Governance comprises all the arrangements that regulate the wielding of power. In the private sphere—as in "corporate governance"—governance also consists of rules and structures for wielding power over other people's interests—that is, for tackling agency problem. [70] Recall that Hohfeld had treated both agency and public callings as relationships involving power and subjection to power (liability). Hohfeld's approach underscores the seamlessness between public and private interactions that involve exercise of power. "In passing," notes Hohfeld, "it may be well to observe that the term "authority," so frequently used in agency cases, is very ambiguous and slippery in its connotation." [71]

Returning to the social norm of accountability, such a norm calls for and establishes feedback channels between parties to power relationships. As already noted, these channels include the obligation to give an account of decisions or actions, to explain or justify them, and so forth. A closer analysis of this norm reveals that it implies two reciprocal power relationships, in accord with

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[67] *Id.*, at 52.

[68] The World Bank Group, Governance, Finance and Regulation, available on-line at <www.worldbank.org/wbi/wbigf/governance.html> (visited Apr. 24, 2001). *See also* Kofi Annan, *The Quiet Revolution*, 4 GLOBAL GOVERNANCE 123, 123 (1998); The World Bank, Governance: The World Bank's Experience vii (1994); International Monetary Fund, Declaration of Partnership for Sustainable Global Growth (1996). For a general critique, *see* Charles Polidano & David Hulme, *No Magic Wands: Accountability and Governance in Developing Countries*, 18 REGIONAL DEVELOPMENT DIALOGUE 1 (1997).

[69] *See* Licht, *supra* note 50.

[70] *See* Andrei Shleifer & Robert W. Vishny, *A Survey of Corporate Governance*, 52 J. FIN. 737 (1997); Luigi Zingales & Reghuram G. Rajan, *Power in a Theory of the Firm,* 113 Q. J. Econ. 387 (1998). For a review, see Luigi Zingales, *Corporate Governance, in* 1 THE NEW PALGRAVE DICTIONARY OF ECONOMICS AND THE LAW 495 (Peter Newman ed., 1998).

Hohfeld's model. First, there exists the more obvious power held by the party who is consequently held accountable. Second, it is also assumed, implicitly, that an inverse power/authority relationship had existed and that that power had been delegated to, or entrusted with, the current power holder. Hence the strict accountability duties of trustees in Anglo-American law and the frequent depictions of holders of public office as trustees of the public, or of executives as trustees of shareholders or corporations.[72]

Depicting accountability as a norm of governance is consistent with the central elements of accountability as these elements are identified by political scientists and social psychologists. Recall that in political science, accountability is discussed primarily with regard to the public sector. Accountables presumably hold a public office, have public authority, and control public funds that need to be used for the benefit of the general public or some other general interest. They therefore have the power to affect the prospects of these public interests either beneficially or adversely. Similarly, the pivotal element in Lerner and Tetlock's definition of accountability systems is the ability of the accountable to harm other members of the group. To be able to harm someone is to have power over that person's interests. Having distilled a conceptual definition of governance and accountability, the present analysis thus integrates the various disciplinary approaches to these notions.

Accountability constitutes part of a large repertoire of governance norms. The types of power covered by norms of governance vary greatly. They range from long-term positions of power held by the state itself or state organs, to holding a public office. This continuum goes on to holding an executive office in a corporation and to short-term, fleeting situations that allow for opportunistic behavior. Typical short-term situations occur, for instance, during sequential performance of

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[71] Hohfeld 1913, *supra* note 62, at 46.

contractual obligations, or when performance is unobservable or unverifiable—the core feature of the agency relationship. Accountability differs, however, from more general norms in that the actual content of this norm—to wit, the exact obligations owed by the accountable party—may vary considerably with the circumstances even within the same country. Although similar in principle, the accountability of elected politicians differs from that of civil servants. These types of accountability differ from the accountability of corporate executives, and so forth.

4.3 The Non-Universality of Accountability

To conclude the conceptual analysis in the present and preceding parts, let us revisit the question whether, or in what sense, is accountability a universal norm of governance. The uniqueness of the term "accountability" to the English language indirectly suggests that it may not be universal. Prominent students of accountability agree that diversity in accountability norms and practices among nations is at least as common as it is within nations – seemingly in tension with the notion that accountability is a universal phenomenon. As noted above, Lerner and Tetlock contend that accountability rules and conventions "vary dramatically from one culture and time to another". Yet these writers also argue that accountability is "a universal feature of social life that inevitably arises from the norm-enforcement needs of groups and organizations" and that it constrains "virtually every decision people make."[73]

Semin and Manstead—on whom Lerner and Tetlock rely in their argument about the universality of accountability—concede:

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[72] For a review and discussion *see*, for instance, Blair & Stout, *Mediating Role*, *supra* note 10.

[73] Lerner & Tetlock, *supra* note 40, at 2, 10.

"All the work that we have presented under the rubric 'accountability of conduct' is subject to the limitation that it is conducted and presented within the confines of a predominantly Anglo-Saxon culture and is strongly influenced by that cultural context… The culture-boundedness of this research enterprise raises the question of the extent to which claims for the generality of the relevant theories or models can be made, if at all."[74]

Nevertheless, following a critical discussion of literature, Semin and Manstead conclude that "[s]ocial order and social control rest largely on the accountability of conduct, and irrespective of the particular socio-historical or cross-cultural conventions and rules for behaviour, accountability of conduct remains a transhistorical and transcultural feature of human sociality."[75] I do not aspire to offer a comprehensive critique of Semin and Manstead's work,[76] but I would argue that instead of "Accountability of Conduct" a better title for it might have been "Responsibility for Conduct". The latter title reflects the authors' basic proposition that social order hinges on human behavior being subject to value-based judgment which could engender self- and social regulation. Accountability fits this proposition only in the ways suggested by the general Biblical sources. "Accountability", as it is used in English, and as it manifests itself in transparency norms and other and practices, remains a culturally-contingent norm of governance.

Virtually the same difficulty can be observed in Romzek and Dubnick's analysis, which practically identifies "accountability" with "governance": "[Accountability] suggests any form of governance conducted through some delegation of authority."[77] Moreover, while Dubnick separately

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[74] Semin & Manstead, *supra* note 41, at 156-57.

[75] *Id.*, at 175.

[76] Among other things, there have been considerable advances in psychological research since Semin and Manstead's literature review.

[77] Romzek & Dubnick, *supra* note 34, at 6.

makes a compelling case for the cultural contingency of accountability, as noted above, Romzek and Dubnick, in an attempt to advance a general model of accountability, extend the boundaries of "accountability" such that it essentially overlaps with "responsibility."[78] In my view, any treatment of accountability that goes beyond using it as a catch-all phrase and focuses on its core duties must acknowledge the possibility that it is not a universal norm of governance.

5   CULTURAL DIMENSIONS OF ACCOUNTABILITY

In what way is accountability associated with national culture? How might these associations affect corporate governance? This Part draws on theories of cultural value dimensions in cross-cultural psychology to suggest answers to these questions. In general, I will argue that societies, that emphasize pursuit of individual preferences and view individual persons as equal, are more to likely to uphold norms of accountability because these norms establish a more transparent environment such that societal members would be able to better plan their independent moves. In contrast, societies that put less emphasis on these values will accommodate power wielding in ways that compromise interests of individual persons.

5.1   The Cultural Value Dimension Framework

During the last two decades, values have emerged as a major focus of cross-cultural research such that most of the currently popular models of cultural variation rest upon analyses of value

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[78] *Id., id.* ("The answers to those questions [how to delegate authority] have varied from society to society over time. The common thread running through all societies is the development of institutionalized accountability relationships that focus on what is expected of the agent who is given assigned tasks and how the agent's actions are overseen. These relationships are found in tribal societies and ancient empires, in Eastern civilizations and in the West, and in modern democratic regimes as well as in totalitarian ones.")

differences.[79] Thus, culture is understood as the values, orientations and underlying assumptions that are prevalent among the members of a society.[80] Values are the essence of culture seen this way. Values are conceptions of the desirable that guide the ways social actors (e.g., organizational leaders, policy-makers, individual persons) select actions, evaluate people and events, and explain or justify their actions and evaluations.[81] In this view, values are trans-situational criteria or goals (e.g. security, wealth, justice), ordered by importance as guiding principles in life.

Cross-cultural research on values takes place at two distinct levels of analysis: individual and cultural. For individual persons, values represent the motivational goals that serve as guiding principles in their lives.[82] When values are used to characterize cultures, what is sought are the socially shared, abstract ideas about what is good, right, and desirable in a society or other bounded cultural group.[83] These cultural values (e.g., freedom, prosperity, security) are the bases for the specific norms that tell people what is appropriate in various situations. The ways that societal institutions (e.g., the family, education, economic, political, religious systems) function, their goals and their modes of operation,

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[79] *See* Peter B. Smith & Shalom H. Schwartz, *Values*, *in* 3 HANDBOOK OF CROSS-CULTURAL PSYCHOLOGY 77, 79 (2nd ed., J.W. Berry *et al*., eds 1997). *See also* Shalom H. Schwartz, *Cultural Value Differences and Some Implications for Work,* 48 APPL'D PSYCH. INT'L REV. 23 (1999); PETER B. SMITH & MICHAEL H. BOND, SOCIAL PSYCHOLOGY ACROSS CULTURES: ANALYSIS AND PERSPECTIVES 38-69 (2nd ed. 1998); Michael Harris Bond & Peter B. Smith, *Cross-Cultural Social and Organizational Psychology,* 47 ANNU. REV. PSYCHOL. 205 (1996). For a more detailed introduction to these and other aspects of cross-cultural psychology, *see* Licht, *supra* note 14, at 166-80.

[80] This definition is similar to that adopted in studies of the effects of societal development, e.g., CULTURE MATTERS: HOW VALUES SHAPE HUMAN PROGRESS (Lawrence E. Harrison & Samuel P. Huntington, eds., 2000), and widespread in cross-cultural psychology, e.g., HANDBOOK OF CROSS-CULTURAL PSYCHOLOGY (J.W. Berry, M.H. Segall & C. Kagitcibasi, eds. 2nd Ed. 1997).

[81] Compare Clyde Kluckhohn, *Value and Value Orientations in the Theory of Action*, in TOWARD A GENERAL THEORY OF ACTION (T. Parsons & E. Shils, eds. 1951); MILTON ROKEACH, THE NATURE OF HUMAN VALUES (1973); Shalom H. Schwartz, *Universals in the Content and Structure of Values: Theoretical Advances and Empirical Tests in 20 Countries,* in ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY (M. Zanna ed. 1992).

[82] Individual-level analysis of values and value dimensions appears equally valuable in terms of its potential contribution to modeling of preferences and social norms. Further discussion of this aspect is deferred to a later stage, however.

[83] ROBIN M. WILLIAMS, AMERICAN SOCIETY: A SOCIOLOGICAL INTERPRETATION (3rd ed. 1970).

express cultural value priorities. Consequently, the members of each cultural group share many value-relevant social experiences and they come to accept similar values.[84]

There are numerous values on which societies could be compared. In order usefully to organize these values, theorists have developed models of value dimensions that correspond to basic societal problems. A common postulate in cross-cultural psychology is that all societies confront similar basic issues or problems when they come to regulate human activity. Notwithstanding the similarity of the fundamental challenges, each society may opt to emphasize a certain array of values while giving lesser weight to other values. Societies' response strategies—that is, the particular set of value priorities at the societal level—can be represented as scores on a set of bipolar value dimensions. Each culture's stance about a certain dimension can be measured and ranked. The remainder of this section outlines models of value dimensions advanced by two leading cross-cultural scholars, Geert Hofstede and Shalom Schwartz.

Hofstede has identified four value dimensions that correspond to basic societal problems, such that each dimension represents a range of possible positions between two polar stances:[85]

1. *Individualism/Collectivism:* This dimension refers to the relationship between individual and group. Individualism reflects valuing loosely knit social relations in which individuals are expected to care only for themselves and their immediate families, while Collectivism

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[84] Smith & Schwartz, *supra* note 79, at 82-83, 95; Shalom H. Schwartz, *Values and Culture,* in MOTIVATION AND CULTURE 69 (Donald Munro et al., eds., 1996).

[85] *See* GEERT HOFSTEDE, CULTURE'S CONSEQUENCES: COMPARING VALUES, BEHAVIORS, INSTITUTIONS, AND ORGANIZATIONS ACROSS NATIONS (2d ed. 2001) (hereinafter "HOFSTEDE, CULTURE'S CONSEQUENCES"); GEERT H. HOFSTEDE, CULTURES AND ORGANIZATIONS: SOFTWARE OF THE MIND (1991) (hereinafter "HOFSTEDE, SOFTWARE OF THE MIND"). Hofstede defines a fifth dimension—dubbed Long-term Orientation or Confucian work dynamism. This value dimension was not included in Hofstede's original study. It was added later, in HOFSTEDE, SOFTWARE OF THE MIND, *id.*, in light of a study led by Michael Bond. Chinese Cultural Connection, *Chinese Values and the Search for Culture-Free*

emphasized tightly knit relations in which they can expect their wider in-group (e.g., extended family, clan) to look after them in exchange for unquestioning loyalty.

2. *Power Distance:* This dimension refers to social inequality, including the relationship with authority. It reflects accepting an unequal distribution of power in institutions as legitimate or illegitimate.

3. *Uncertainty Avoidance:* This dimension refers to dealing with uncertainty. It reflects feeling uncomfortable or comfortable with uncertainty and ambiguity and therefore valuing or devaluing beliefs and institutions that provide certainty and conformity.

4. *Masculinity/Femininity:* This dimension refers to concepts of masculinity and femininity— the social implications of gender. It reflects valuing achievement, heroism, assertiveness, and material success versus relationships, modesty, caring for the weak, and interpersonal harmony.[86]

Schwartz postulated three basic societal problems and corresponding value dimensions:[87]

1. *Embeddedness/Autonomy:* This dimension addresses the relation between the individual and the group. Embeddedness represents a cultural emphasis on maintenance of the status quo, propriety, and restraint of actions or inclinations that might disrupt the solidary group or the

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Dimensions of Culture, 18 J. CROSS-CULTURAL PSYCHOL. 143 (1987). Data for this dimension cover a smaller set of countries and it is not commonly used in the literature.

[86] Writing originally in 1980, Hofstede was well aware of the problematic of attributing such qualities to particular genders. He nonetheless kept this dimension, arguing that it reflects a positive reality that is independent of its normative undesirability. GEERT H. HOFSTEDE, CULTURE'S CONSEQUENCES: INTERNATIONAL DIFFERENCES IN WORK-RELATED VALUES 189-90 (1980, abridged ed. 1984). In the 2001 edition, Hofstede follows the modern distinction between *sex* and *gender* and uses the latter tern when referring to social function. CULTURE'S CONSEQUENCES, *supra* note , at 280. For further discussion, *see* GEERT H. HOFSTEDE & WILLEM A. ARRINDELL, MASCULINITY AND FEMININITY: THE TABOO DIMENSION OF NATIONAL CULTURES (1998).

traditional order. The opposite pole describes cultures in which the person is viewed as an autonomous, bounded entity who finds meaning in his or her own uniqueness. It is possible to further distinguish between Intellectual Autonomy and Affective Autonomy.

2. *Hierarchy/Egalitarianism:* This dimension refers to guaranteeing responsible behavior that will preserve the social fabric. Hierarchy represents a cultural emphasis on obeying role obligations within a legitimately unequal distribution of power, roles, and resources. Egalitarianism represents an emphasis on transcendence of selfish interests in favor of voluntary commitment to promoting the welfare of others.

3. *Mastery/Harmony:* This dimension refers to the relation of humankind to the natural and social world. Mastery stands for a cultural emphasis on getting ahead through active self-assertion whereas Harmony represents an emphasis on fitting harmoniously into the environment.[88]

5.2 Accountability in General

The cultural value dimension framework provides means for a systematic comparative analysis of various phenomena and their relations with national culture. Elsewhere I have argued that this framework appears promising for comparative analysis of corporate governance systems and of social norms, including norms of governance.[89] The "ought" statements expressed by social norms in every society are unlikely to vary randomly with regard to one another. A more plausible view of social norms considers them an ordered system—that is, a set of interrelated and interactive elements that

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[87] Schwartz, *supra* note 79, at 26-28. Schwartz theorizes further about the relations between these value types. *See id.,* at 28-30.

[88] Schwartz notes that in modern societies Harmony may be better conceptualized as referring to non-assertiveness in social relations as submission to the environment is uncommon in contemporary national cultures. *Id.*, at 28 n. 4.

work together to accomplish specific purposes.[90] A convenient depiction of the interrelations among social norms is one of a pyramidal structure, analogous to Hans Kelsen's theory on the pyramid of legal norms.[91] In this view, each society upholds a limited number of fundamental, deeply rooted social norms. These norms serve as the foundation, or backbone, for a large body of normative prescriptions – both legal and non-legal norms (i.e., social norms).

Norms of governance, I submit, constitute a significant part of societies' pyramids of social norms. Relationships of power and subjection are ubiquitous in every society. Such relationships often have economic implications. One can therefore expect to find a common thread running through norms that regulate various setting of power wielding. Although such norms are unlikely to be identical, the systems view of social norms implies that they should have common features. The value dimension framework allows one to articulate in well-defined terms hypotheses about cultural stances on wielding of power. Societal preferences can be associated with relative emphases on value dimensions. As a first-cut approximation, norms of governance that prevail in societies high on Autonomy (or Individualism) are likely to differ systematically from norms that prevail in societies whose dominant values belong to the Embeddedness (or Collectivism) value types.

The core duties of accountability—candid reporting and liability to make amends—mostly resonate with values of Autonomy. Prevailing norms of accountability establish feedback channels between the people in power positions and those subject to this power—namely, the accountables and

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[89] *See*, respectively, Licht, *supra* note 14; Licht, *supra* note 50.

[90] *See* MICHAEL L. GIBSON & CARY T. HUGHES, SYSTEMS ANALYSIS AND DESIGN 5 (1994). For a brief background on general systems theory *see* Kathryn R. Heidt, *Book Review: Taking a New Look at Secured Transactions Secured Credit*, 96 COLUM. L. REV. 759, 762-64 (1996); *see also* Lynn M. LoPucki, *The Systems Approach to Law*, 82 CORNELL L. REV. 479 (1997). From a positive point of view, the attribution of goals to systems is merely shorthand for the proposition that the goals of a system are the results that the system in fact produces. LoPucky, *id.*, at 485.

[91] HANS KELSEN, PURE THEORY OF LAW (1942).

the accountees. Egalitarianism too reflects a general view that both parties stand on equal footing and deserve consideration. Egalitarianism further manifests itself in societal emphasis on responsibility, a close (albeit partial) synonym for accountability, although it does not indicate how such responsibility is to be discharged. Hierarchy, however, may have ambiguous implications. Societies high on Hierarchy encourage people to respect (or pursue) authority and respond to it with humility. On the one hand, Hierarchy could connote disregard toward people on the liability side of power relationships; on the other hand, recall that accountability characterizes power relationships that are sometimes perceived as bilateral, such that an emphasis on Hierarchy could lead to mutual respect between the parties.

It should be emphasized at this point that accountability is not a "nice" style of governance. As Robert Behn lucidly illustrates, it is not fun to be on the receiving end of accountability, i.e., to be accountable. Dubnick's historiography of this concept suggests why this is the case: Accountability originated as an exercise in applying massive authority. Power in accountability-governed relationships is respected, but it comes with strings attached.

In Hofstede's model, accountability is compatible with emphasizing Individualism because societal members in individualist societies are not expected to care for one another beyond their close ingroup. The challenge for clusters of such nearly-atomistic, self-serving (some would say rational) agents is to avoid deterioration to a state of nature. Norms of accountability contribute to the establishment of social order as they provide a counter-measure required to relieve the healthy dose of suspicion that people are expected to use in their interactions with one another. Recall that according to the definition of the Individualism/Collectivism dimension, loyalty within wide ingroups in collectivist societies is, in principle, unquestioning and unquestioned. In contrast, loyalty in individualist societies *rests* on questioning and on answerability—namely, on accountability. Accountables expect to be

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questioned and accountees expect accounts. Accountability is further compatible with a low emphasis on Power Distance. In low Power Distance societies, hierarchy means an inequality of roles established for convenience and power holders are not seen as superior persons.[92] Power holders are therefore expected to be accountable for their deeds.

The preceding assertions remain at a high level of generality because, as indicated above, the content of accountability norms and their manifestations could vary considerably with the context. In the following section I elaborate further on the role of accountability in corporate governance systems. But at this point readers may find interest in empirical evidence that could support the general hypotheses expounded thus far. In a joint study with Chanan Goldschmidt and Shalom Schwartz,[93] we investigate the relations between national scores on value dimensions, under the models of both Schwartz and Hofstede, and national scores on measures of governance constructed by Kaufmann et al. from the World Bank.[94] We use their indices for perceived levels of the rule of law, absence of corruption, and democratic accountability on the assumption that these measures proxy for the prevalence of the corresponding social norms.

Kaufmann et al.'s index of "voice and accountability" centers on accountability in the public sphere, with a clear focus on features of democratic regimes. Respectively, the hypotheses we tested with regard to democratic accountability had to be adopted to typical issues of democracy such as freedom of expression, presence of military in the government, etc. Our findings support the notional model of a pyramid of social norms and confirm the hypothesized relations between the prevalence of

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[92] HOFSTEDE, CULTURE'S CONSEQUENCES, *supra* note 86, at 98, 97.

[93] Amir N. Licht, Chanan Goldschmidt, & Shalom H. Schwartz, Culture Rules: The Foundations of the Rule of Law and Other Norms of Governance, working paper (2002).

[94] Daniel Kaufmann, Aart Kraay, & Pablo Zoido-Lobaton, Governance Matters, working paper, The World Bank (1999).

democratic accountability and cultural value dimensions. These relations are robust, moreover, to the levels of economic development and economic inequality in nations and to the existence or absence of a historical heritage of British rule of any sort (colonial, mandate area, etc.) Taken together, these findings are largely consistent with the general hypotheses about accountability advanced here.

Another interesting finding concerns the relative prevalence of democratic accountability in various cultural regions identified by Schwartz.[95] The findings suggest a trichotomy between cultural regions in terms of their mean scores. Countries in the English-speaking and Western European regions constitute a mega-region with the highest mean scores, distinctly different than all other cultural regions but indistinguishable from one another. In the other extreme, Africa is the lowest scoring region, significantly different than all other regions except the Far East. Eastern Europe, the Far East, and Latin America stand together as a mid-level, medium scoring mega-region, with only the Far East being on the lower borderline with Africa. Controlling for the level of economic development mitigates some of these differences but does not eliminate them.[96]

If one extrapolates from these finding to accountability in general, then they support the notion that in non-Western countries, accountability is not a prevailing norm of governance. This reality, moreover, is associated with the cultural values upheld in these countries. Now it must be stressed that the latter interpretation does not mean that all the non-Western countries necessarily lack norms of governance or any governance institutions at all. Quite likely, at least some of these countries have other types of governance norms. All that can be argued in light of the theory and evidence mentioned

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[95] *See* Schwartz, *supra* note 79.

[96] We repeat these tests for cultural regions identified by Hofstede in 1980. The results are consistent with, albeit somewhat less clear-cut than, the results for Schwartz's regions.

so far is that accountability is a style of governance that appears incompatible with cultural profiles of many countries.

5.3 Accountability and Corporate Governance

Hohfeldian power relationships are inherent to the very nature of business corporations. Corporations are run by agents; corporations aggregate investors' financial capital with employees' human capital and invest them in risky projects, only hoping to generate positive returns; corporations conduct operations that could harm third parties or the environment. Societies all around the world have adopted the legal/conceptual idea of the separate entity of corporations. Even critics of Hansmann and Kraakman's end-of-history thesis will concede to their statement that:

> "We must begin with the recognition that the law of business corporations had already achieved a remarkable degree of worldwide convergence at the end of the nineteenth century. By that time, large-scale business enterprise in every major commercial jurisdiction had come to be organized in the corporate form, and the core functional features of that form were essentially identical across these jurisdictions."[97]

Notwithstanding the consensus on form, a similar consensus had not been reached on issues of substance. Among other issues, La Porta et al. document considerable international diversity among countries in the legal protections granted to shareholders and creditors against corporate insiders' opportunism.[98] Great diversity further exists in the typical shareholding structures prevalent in various

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[97] Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L.J. 439, 439 (2001); *see* also Henry Hansmann & Reinier Kraakman, *The Essential Role of Organizational Law*, 110 YALE L.J. 387 (2000).

[98] *See* Rafael La Porta *et al.*, *Law and Finance,* 106 J. POL. ECON. 1113 (1998); *see* also Rafael La Porta *et al.*, *Agency Problems and Dividend Policies Around the World,* 55 J. Fin. 1 (2000); Rafael La Porta *et al.*, *Investor Protection and Corporate Governance*, 58 J. FIN. ECON. 3 (2000).

countries.[99] In particular, the dispersed ownership structure, which characterizes corporations in the United States and the United Kingdom, is in fact limited mainly to these countries. In most other countries, "controlling shareholders—usually the State or families—are present in most large companies. These shareholders have control rights in firms in excess of the cash flow rights, largely through the use of pyramids… *The power of these controlling shareholders is evidently not checked* by other large shareholders."[100] Separation between cash flow rights and control rights, particularly through stock pyramids, can generate very high agency costs, to the detriment of non-controlling (public) shareholders[101] and, by extension, to the detriment of other constituencies subject to corporations' power.

Where does accountability feature in this not-so-rosy picture? Unfortunately, in many cases, it doesn't. The vast literature on corporate responsibility or the stockholder/stakeholder debate tended to focus either on the United States alone or on comparisons between American and European (and sometimes Japanese) corporations. The rest of the world has been neglected in this regard until recently. This was partially due to lack of data but mostly due to the fact that many non-Western countries (except in Latin America) began to develop market economies only during the last decade or two, especially after the collapse of the Soviet Union.

For non-Western countries—e.g., countries formerly in the Soviet bloc—adopting corporate governance mechanisms that rely on various facets of accountability could prove harder than expected because such a step would go against the grain of the surrounding cultural environment. The magnitude

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[99] *See* Rafael La Porta, Florencio Lopez-de-Silanes, & Andrei Shleifer, *Corporate Ownership around the World,* 54 J. FIN. 471 (1999).

[100] *Id.*, at 474 (italics added).

of the potential difficulties may be evidenced by the failure of the Russian corporate code project.[102] To begin with, the designers of the Russian code realized that it would be imprudent directly to transplant a corporate law from a Western country because such a model would require a sophisticated, functioning infrastructure of legal experts and other professionals (e.g., accountants)—something that Russia lacked. The Russian code instead implemented various measures intended to enable public shareholders easily to enforce their rights when insiders violate them. Russian managers and controlling shareholders proved more resourceful, however. The mass privatization of state-owned corporations was accompanied by massive self-dealing by crooks who "transferred their skimming talents to the enterprises they acquired."[103] Similar episodes of abuse of power by corporate insiders were not uncommon in other formerly-Soviet countries.[104]

Irrespective of how principled they may be, the differences between the United States and West European countries may appear more nuanced against this backdrop. As noted in Part 2, the debate usually revolves around the norm of shareholder wealth maximization in business corporations. While English-speaking countries—most notably, the United States—adhere to the shareholder wealth maximization norm, other countries—mostly in Western Europe—uphold various versions of a multiple stakeholder norm.

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[101] *See* Lucian A. Bebchuk, Reinier Kraakman, & George Triantis, *Stock Pyramids, Cross-Ownership and Dual Class Equity: The Creation and Agency Costs of Separating Control from Cash Flow Rights,* in CONCENTRATED CORPORATE OWNERSHIP 295 (Randall Morck, ed. 2000).

[102] *See* Bernard Black & Reinier Kraakman, *A Self-Enforcing Model of Corporate Law,* 109 HARV. L. REV. 911 (1996).

[103] *See* Bernard Black, Reinier Kraakman, & Anna Tarassova, *Russian Privatization and Corporate Governance: What Went Wrong?* 52 STAN. L. REV. 1731, 1733 (2000).

[104] *See* Simon Johnson, Rafael La Porta, Florencio Lopez-De-Silanes, & Andrei Shleifer, *Tunnelling,* 90 AM. ECON. REV. PAPER AND PROCEEDINGS 22 (2000).

The gist of the shareholder-centered norm is that the corporation is run for the benefit of its shareholders – the investors of equity capital. In Anglo-American legal systems, where this norm prevails, shareholders are protected by a variety of legal measures. Other interested constituencies, such as creditors and employees, often must negotiate their protections contractually. Non-contractual parties have limited standing vis-á-vis the corporation (mainly as tort creditors), if at all. In Western Europe, public corporations are under constant pressure to take other constituencies' interests into account, arguably at the expense of shareholders.[105]

Many commentators have contributed to the stockholder/stakeholder debate in the United States—a comprehensive review of which is beyond the scope of this paper. Most of the contributions, however, have focused on the desirability of either paradigm, sometimes in light of declared political persuasions. The stockholder paradigm is supported by prominent legal economists[106] some of whom take a self-defined conservative approach.[107] Support for the stakeholder paradigm comes primarily from writers identified with the progressive corporate law movement.[108] What has been missing in this debate, however, is treatment of the foundations of each paradigm.

A value dimension approach might not resolve this debate but it does provide clues for understanding the differences between the United States and Western Europe about it.[109] The more

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[105] *See* Mark J. Roe, *Political Preconditions to Separating Ownership from Corporate Control*, 53 STAN. L. REV. 539, 554-560 (2000).

[106] *See*, e.g., FRANK H. EASTERBROOK & DANIEL R. FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW 38-39 (1991); ROBERT C. CLARK, CORPORATE LAW 20 (1986).

[107] *See*, e.g., Stephen M. Bainbridge, *Book Review: Community and Statism: A Conservative Contractarian Critique of Progressive Corporate Law Scholarship*, 82 CORNELL L. REV. 856 (1997).

[108] *See*, e.g., MITCHELL, *supra* note 7; David Millon, *New Game Plan or Business as Usual? A Critique of the Team Production Model Of Corporate Law,* 86 VA. L. REV. 1001 (2000); Kent Greenfield, *The Place of Workers in Corporate Law*, 39 B.C. L. REV. 283 (1998).

[109] The findings of the Licht-Goldschmidt-Schwartz study of democratic accountability, *supra* note 93, do not provide much guidance about the differences between the United States and Western Europe in the corporate governance

important observation indeed concerns what the two corporate governance paradigms share: both

paradigms reflect respect for people in the liability/subjection side of corporate power relationships. In

Schwartz's model such a societal preference would be reflected in emphasizing Autonomy values. This

value type puts the needs and desires of individual persons at the center, as opposed to preferring

interests of the society at large, such as national security, which expresses Embeddedness.

The two paradigms part ways in what regards the reconciliation of conflicting interests of

individuals who belong to different constituencies. The two extreme positions on this point would be

treating them equally or preferentially with regard to one another. Such stances are captured by the

Hierarchy-Egalitarianism dimension. With "wealth" and "power" being among the values that reflect

societal emphasis on Hierarchy,[110] this value type is particularly relevant for corporate governance.

After all, corporate governance is the framework that defines the division of wealth and power in the

corporation.[111]

In its pure form, the shareholder wealth maximization paradigm—we may call it a social norm

at this point—takes a clear-cut position in giving shareholders the superior accountee status and

subordinating other constituencies' interests to them.[112] Managers' accountability is owed only to

shareholders while other constituencies do not enjoy it. This paradigm therefore reflects a combination

of Autonomy with Hierarchy. In contrast, the stakeholder paradigm requires corporations and their

managements constantly to juggle between conflicting interests in an effort to avoid extreme harm to

any one of them, inevitably at the expense of some constituencies. This paradigm thus reflects a

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context. This is because no difference are observed between the two cultural regions in their scores on democratic accountability – an unsurprising result given that all the countries in both regions have democratic regimes.

[110] *See* Schwartz, *supra* note 79, at 30-31.

[111] *Cf.* Shleifer & Vishny, *supra* note 70, at 751-55.

combination of Autonomy and Egalitarianism. Societies of this type put corporations in parallel multiple accountability relationships, which, almost by necessity, they cannot fulfill.[113]

In addition to shareholder wealth maximization, the combination of Autonomy and Hierarchy values also may lead to greater tolerance toward hostile takeovers—a hallmark of American and English corporate governance.[114] Such tolerance reflects acceptance of pursuit of wealth and power for the benefit of a single constituency or even few individuals. This may be the case even if ensuing layoffs could be more disruptive in comparison to layoffs in egalitarian societies that maintain better social safety nets. Doubtless, tolerance toward the more hostile takeovers also conveys a societal taste for Mastery, a value type that connotes exploitation. This and other typically American norms[115] share an underlying attitude of legitimation – ranging from deference to respect to admiration – of individuals who take advantage of their wealth and/or power. Sometimes, such admiration is mixed with awe. Sometimes, politicians will want to curb extreme manifestations of wealth and power.[116] But the underlying cultural attitude perceives wealth and power as desirable values.

The preceding sketchy portrait of American corporate governance and the equally sketchy comparison to European corporate governance correspond with these regions' cultural profiles under

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[112] Remedial measures could be taken through other legal and economic tools, such as worker safety regulation, consumer protection, social security systems, and so forth.

[113] *See* Philip E. Tetlock, Cognitive Biases and Organizational Correctives: Do Both Disease and Cure Depend on the Political Beholder?, working paper (2000).

[114] *See* Melvin A. Eisenberg, *Corporate Law and Social Norms*, 99 COLUM. L. REV. 1253, 1287-90 (1999) (discussing the emergence of a hostile takeover norm in the United States); *see* generally Robert Cooter & Melvin A. Eisenberg, *Fairness, Character, and Efficiency in Firms*, 149 U. PA. L. REV. 1717 (2001).

[115] Other characteristic norms of American corporate governance include high levels of executive compensation and deference to managerial discretion, as reflected in the (legal) norm of business judgment rule. *See*, respectively, Randall S. Thomas & Kenneth J. Martin, The Effect of Shareholder Proposals on Executive Compensation, 67 U. CIN. L. REV. 1021, 1025-30 (2000); Edward Rock & Michael Wachter, *Islands of Conscious Power: Law, Norms, and the Self-Governing Corporation*, 149 U. PA. L. REV. 1607 (2001).

[116] *See* Mark J. Roe, *A Political Theory of American Corporate Finance,* 91 COLUM. L. REV. 10, 32-37 (1991).

Schwartz's model. In a study of value priorities in Western nations, Schwartz and Ros compare

priorities in eleven West European countries with those in the United States and other English-speaking

countries (Australia, Canada, New Zealand).[117] The authors find that West European nations and

English-speaking nations constitute culturally different regions that cannot simply be characterized as

"individualistic".[118] West European samples attributed greater importance than United States' samples

to Egalitarianism and Harmony while the American samples in particular attributed greater importance

to Hierarchy and Mastery. West European countries also score higher on Intellectual Autonomy (in

some samples), but both regions score higher on the two Autonomy value types relative to other

regions in the world.[119]

Schwartz and Ros argue that the contrast they observe is expressed in core cultural ideals:

"The West European value emphases, built into the motto of the French Revolution—liberté,

egalité, et fraternité … point to the centrality of the individual independence… [and] the voluntary social

responsibility of the autonomous individual… The parallel American ideal, expressed in the Declaration

of Independence… reflects the importance of individual autonomy… [but] legitimates the pursuit of

individual pleasure and success."[120]

Among the socio-historical variables that might help to explain the unique value profiles of

Western Europe and the United States, Schwartz and Ros note that "[i]n Western Europe more than in

the United States, socialist governments that pursue the politics of the welfare state emerged…

[whereas in] the United States, perhaps due to impacts of the frontier experience and of large

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[117] *See* Shalom H. Schwartz & Maria Ros, *Values in the West: A Theoretical and Empirical Challenge to the Individualism-Collectivism Cultural Dimension*, 1 WORLD PSYCHOL. 93 (1995).

[118] *Id.*, *id.*, at 111.

[119] *See* Licht, Goldschmidt, & Schwartz, *supra* note 93, at appendix 2.

corporations on societal developments, welfare socialism did not take root."[121] Schwartz and Ros's

argument therefore suggests the cultural setting for an argument recently advanced by Mark Roe about

the political preconditions to separating ownership from corporate control. According to Roe,

> "[M]anagerial agency costs have been higher in social democracies than elsewhere, and we have
> just found a deeper, richer political explanation not only for the persistence of family ownership in
> France, Germany, Italy, and Scandinavia, but also for the rise of the public firm in the United States.
> Social democracies do not strongly control public firm agency costs because they do not want unbridled
> shareholder-wealth maximization, and, hence, by weakening shareholder-wealth maximization
> institutions, they widen the gap between managers and dispersed stockholders. When the gap is wide
> enough, the large American-style public firm is rendered unstable."[122]

Tempting as it may be, I would advocate avoiding a chicken-or-egg discussion of "which came

first: culture or politics?" With regard to accountability and corporate governance, the two are

obviously interrelated. Social democracy emerged in Western Europe after World War II but builds on

cultural emphases that had developed during the preceding two centuries. In the United States, English

colonizers and settlers probably brought with them basic notions of accountability, but the rise of the

large business corporations, together with the frontier experience and the influence of slavery likely

affected the American cultural profile.[123]

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[120] Schwartz & Ros, *supra* note 117, at 112.

[121] *Id., id.*, at 114.

[122] Roe, *supra* note 105, at 543. This work extends Roe's groundbreaking work on the political roots of American corporate governance. *See* Roe, *supra* note 116; MARK J. ROE, STRONG MANAGERS, WEAK OWNERS: THE POLITICAL ROOTS OF AMERICAN CORPORATE FINANCE (1994).

[123] *See* Schwartz & Ros, *supra* note 117, at 114.

6   CONCLUSION

The goal of this paper was to explore the relations between accountability and corporate governance. To accomplish this task I found it necessary to take the reader through several definitional exercises, which, at the very least, point out the breadth and diversity of the issues. My main goal was to present a well-defined framework that can integrate cultural aspects into current analyses of accountability and corporate governance, as the latter tend to concentrate on economic and political economic analyses. The value dimension framework addresses the somewhat dismissive attitude among certain students of comparative corporate governance toward the role of social norms in this context.[124] The extant research indicates that this framework can yield observations that are compatible with other disciplinary approaches yet shed new light on them.

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[124] *See*, e.g., Hart, *supra* note 51; *see* also John C. Coffee, Jr., *Do Norms Matter? A Cross-Country Evaluation*, 149 U. PA. L. REV. 2151 (2001) ("Although the relevance of norms cannot be denied, the problem with this debate is that it has an ineffable and subjective character").