Article

Corporate governance in South Africa: from ‘Old Boys Club’ to ‘Ubuntu’?

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Abstract
Padayachee examines developments in the culture and practice of corporate governance largely within the private sector in South Africa. His analysis reveals the dominance of powerful individuals, family trusts and groups sharing common social, cultural, and linguistic norms, bound together outside the boardrooms through old school, club, societal, political, church, sports and other such networks. A sound corporate governance culture based on transparency and disclosure hardly existed before and during the apartheid era. Since 1994 and as South Africa opened up to global economic circuits and institutional rules and practices, there has been a much stronger commitment, at least nominally, to compliance with developments in global corporate governance. The King codes of corporate governance (now into version 3) are the strongest indication of this. South African companies have over the last 18 years shifted from an initial state (a management controlled, ‘social club’ approach to corporate governance) towards an Anglo-American corporate governance model, practising what is widely referred to as ‘shareholder wealth maximization’. But Padayachee argues that the practice of this approach remains uneven, as large family networks (both old and new) still exercise significant influences in boardrooms.

Introduction
One of several important strands in the literature on varieties or models of capitalism is to be found in the comparative analysis of corporate governance models. Two broad systems of corporate governance are usually contrasted: an Anglo-American model that emphasises shareholder rights, wealth maximisation and outsider control, and a German and Japanese model that incorporates different stakeholders’ interests, and relies on insider control.
Much of the debate centres on the dominant Anglo-American model and its virtues and relevance to different contexts. How much effective control shareholders have over management and boards of directors in this model is not a question that has been interrogated in the formal literature, except perhaps anecdotally.

The appropriateness of the dominant Anglo-American system to transitional and developing economies has been questioned, and analysts have made the case for greater diversity in governance arrangements and have argued that progress in achieving more democratic forms of governance in all societies will be set back if it is not understood that standards and measures of efficiency are value-laden, politically contentious and invariably socially negotiated. Aglietta and Reberioux (2005) contest the ‘end of history’ thesis which sees the pursuit of shareholder value as the optimal form of corporate governance. In making the case for a more thorough-going economic democracy they defend what some call an obsolete governance model – one in which supervisory boards and boards of directors are open to employee representatives with rights equal to shareholder representatives, as one way to develop adequate checks and balances of power (see also Clarke 2009).

Corporate governance in the Anglo-American model means that firms should strive to maximise shareholder wealth or value. This requires effective boards, with an adequate number of appropriately qualified and experienced outside directors (non-executive, independent) and management compensation aligned to shareholder interests, and a market for corporate control, among other mechanisms. This model, the dominant literature asserts, assures corporate success. Even the corporate scandals such as that at Enron, WorldCom and Exxon (usually explained away as greed or moral fallibility) have not seriously dented the dominance of the Anglo-American model. But as Franklin Allen (2005) and Masuru Toshimori (2005) have pointed out, the Anglo-American model with a majority of outside directors is not the only means to corporate success. Toyota’s board of directors has 60 members but only one is external to the company. Toyota’s management is paid less than they would be in the US, and traditionally do not have stock options. And there are no hostile takeovers to speak of. Yoshimori’s study of the ten year performance of Toyota and Canon demonstrates their superior performance compared to their US rivals. He proposes that corporate values, culture and strategy are vital ingredients of corporate success. Allen’s conclusion is that ‘in an imperfect world,
stakeholder capitalism can do better than Anglo-Saxon capitalism. J-mode firms are based on consensus’ (2005: unnumbered). Consensus in turn requires decision making for the long run. An important characteristic of the Japanese system is lifetime employment in an inflexible labour market. In the case of a shock, J-mode firms (those with horizontal co-ordination among operating units) maintain wages and employment at high levels even if this means cutting returns to shareholders.

Lilian Miles (2010) has studied the challenges of implementing Anglo-American corporate governance models in Japan, Korea, China, and Malaysia, where the objective of reform was to improve corporate performance. The outcomes were mixed and contingent and Miles argues that such reform was influenced by a variety of factors: culturalist, institutionalist and historical political. She concludes that:

It is only possible to determine the optimal regime for companies through first understanding how individual cultures, institutions and political environments have influenced the way they have developed. …the challenge for Asian countries is not to implement all or several of the aspects of the Anglo-American corporate governance model, but to be selective and shape them as appropriate to their individual environments if their effectiveness as a tool of economic development is to be realised. (2010: 50)

Despite changes brought about by recent corporate scandals and by the internationalisation of French capitalism, France’s ‘financial network economy’ (cf an Anglo-Saxon ‘financial market economy’) remains largely intact. This system, also referred to in the literature as ‘protected capitalism’ is one in which the Chief Executive wields enormous power: Clift characterises this graphically as ‘Napoleonic boardroom power relations’, where boards tend to be rubber stamps for the largely autonomous actions and decisions of the CEO. The French system is also characterised by ‘small groups of investors, drawn from the same elite, [who] control one another through interlocking shareholding. Building upon the elite’s informal networks, such close relations between firms, boards and large shareholders provide a degree of coherence and direction to France’s … economy’ (Clift: 2003:93).

The literature on corporate governance distinguishes between broad and narrow corporate governance. The former refers to the external regulation of corporate activity and practice. In South Africa, such external regulation is divided between the South African Reserve Bank through the Registrar of Banks (covering mainly the banking sector) and the Financial Services Board
(covering other financial institutions such as insurance companies, mutual funds, unit trusts etc). The rest of this paper focuses almost exclusively on governance ‘within companies’

**Corporate governance in South Africa before 1994**

Debating, let alone implementing, international best practice in corporate governance during the apartheid era was not high on the agenda of the captains of South African industry. Liberty Life’s Roy Alpine has observed that ‘Shareholder apathy in South Africa is [still] endemic….Maybe it goes back to the bad old days when there was an old boys network. You had the mining houses and the banks and everybody owned shares in each other and they all met at the Rand Club, and nobody rocked the boat’ (*Sunday Times, Business Times* May 29, 2011: 6). Respected black businesswoman and serial non-executive director Wendy Luhabe makes two points (one about the ‘boys club’ nature of a management-led governance, and a second about a lack of diversity) as she describes her experience on boards around the time of the transition to democracy as follows: ‘most boards are defined by the ‘Boys Club culture’ which is quite subliminal but very effective at sub-optimal engagement with diversity…’ (http:www.20-first.com).

Corporate governance in twentieth century South Africa I would suggest had the following distinguishing features, mostly still prevalent in the late apartheid years:

- the dominance of powerful individuals (usually the Chair/CEO), family trusts and groups sharing common social, cultural, and linguistic norms, bound together outside the boardrooms thorough old school, club, societal, political, church, sports and other such networks, including secret societies (eg Broederbond, Freemasons).1 ‘Gentlemen’s agreements’, personal relationships and family and social networks mattered more than formal structures, regulations, principles, contracts and rules. Founding families which dominated corporate life in twentieth century South Africa included the Oppenheimer (AngloAmerican and de Beers), Ruperts (Rembrandt), Gordons (Liberty), and Menells and Hersovs (AngloVaal). Sir Ernest Oppenheimer and Harry Oppenheimer; Anton Rupert and Johan Rupert; MS (Tienie) Louw, Andreas Wassenaar and Fred du Plessis (all three of Sanlam) were the powerful men at the helm of their giant corporations. These individuals and families represented elite South African business and maintained powerful traditional values and controlling blocs which stifled more democratic and transparent
decision making within their corporate empires. Many presided over these companies for decades, ruling with an iron first, and over time became indistinguishable from their corporate creations. Non-executive directors were drawn often from those at the end of their working lives (board appointments being a reward for long service elsewhere, eg the state), and they were also mainly white and male. People were nominated onto boards by the chairman or CEO, and they were often chosen because they would represent no challenge to the ‘big man’. While geographical and sectoral considerations were taken into account, little or no attention was placed on the qualities and balance of skills and capabilities on the board, or its structures;

• a strong presence of representatives of major western companies on the boards of South African’s powerful conglomerates or their subsidiaries. Epstein has argued that the families that controlled these large South African businesses had historically close ties to powerful businesses in developed countries and that ‘colonialism and imperialism explain this enduring relationship’ (2005: 114fn). The connection between the Oppenheimer family and the US mining and metals conglomerates controlled by Charles Engelhard Sr and his son is a case in point. Engelhard Jr. maintained a house in South Africa and was on the Board of Anglo. As part of the 1957 takeover of Central Mining, Engelhard and Harry Oppenheimer agreed to a stock swap, each of them taking 10 per cent of the other’s family holding company (Pederson, 2010). In the face of criticism of Engelhard’s support for apartheid South Africa, after the Sharpeville massacre of 1960, Anglo countered that Engelhard played a vital and significant role in helping to bring scare capital from abroad;

• board charters, board sub-committees such as Audit, Remuneration and Risk, shareholder compacts and such like were mostly unknown, and certainly not generally the norm in terms of governance structures. Some South African corporations set up Audit Committees voluntarily only from the late 1980s (Marx 2008). The SA Reserve Bank, which was then a JSE-listed company, only established an Audit Committee and a Remuneration Committee in the early 1990s (personal communication, Dr Jannie Rossouw, ex-SARB Company Secretary);

• Annual General Meetings were perfunctory and predictable gatherings that rubber stamped board (ie the Chairman’s) decisions, and shareholder activism was unheard of. Annual reports and financial statements were not characterised by transparency and disclosure on matters such as
financial sustainability, directors fees and allowances and any moves in this direction were strongly resisted;

• debates over governance reform, eg the value of separating the positions of chair and CEO, issues of board independence or of having two-tier boards (supervisory and management) were not engaged with.

All this is apparent from my interviews with some leading CEOs and chairmen (including Old Mutual and Sanlam), from my own experience on (private and public sector) boards in the mid to late 1990s and early 2000s, from a careful reading of all three King Reports (and their accompanying Codes of Corporate Practice and Conduct) and from articles published in local business journals and newspapers. The first King Report published in the first year of South Africa’s democracy is instructive given that the country was beginning to emerge from its decades-long pariah status and isolation and at a time when the prospect of the ‘emergence of a new class of entrepreneur being members of the disadvantaged communities’ (King Commission:1994: 3) was becoming real. So in many ways, but without being explicit, that report conveyed a sense of the nature and shape of corporate governance before 1994 and the challenges that lay ahead.

Stephan Malherbe and Nick Segal (2001) make the following observations:

By the late 1980s, many of South Africa’s corporations were bloated, unfocused and run by entrenched and complacent managers. These firms were sustained and tolerated by a very different environment from that in advanced economies and capital markets. The mainstay of the South African environment was isolation...Corporate practices fell behind international norms, as did laws and regulations. (2001: 3)

Writers including Stefan Andreasson (2011) observe that as late as the early 1990s a sound corporate governance culture based on transparency and disclosure were muted or stifled.

**Corporate governance in South Africa since 1994:**
South African companies have over the last 18 years shifted unevenly and sometimes only nominally from this initial state (what I call a management controlled, ‘social’ or ‘old boys club’ approach to corporate governance) towards an Anglo-American corporate governance model, practising what Goldstein (1999: 1) calls the ‘new global management mantra of shareholder wealth maximisation’. The pace of formal changes has been rapid, often confusingly so, though the shift to the Anglo-American model, I would argue, while not insignificant, remains incomplete and a number of features
associated with boardroom practice in earlier phases of South African capitalism (such as the power of controlling families and individuals) have not been totally eliminated.

King 1 (1994) and King 2 (2002) set the guiding principles of best corporate governance practice, especially for companies listed on the JSE and large public entities. The King Committee was set up on the cusp of the transition to democracy, and largely at the instigation of the Institute of Directors in Southern Africa (IOD), but with the support of most chambers of business and the Johannesburg Stock Exchange, among other business organisations. The recognition that South Africa was about to become a fully integrated member of the world economy, and the expected emergence of a new class of black entrepreneurs, appears to have been the motivation for its establishment. The King reports advocated an integrated approach to good governance, focussing on the shareholder/management divide, argued for a unitary board, with a strong component of properly composed and well-informed board members including a majority of independent non-executive directors, and stressing the fundamental principles of sound financial, social, ethical and environment practices overseen by a number of relatively independent board sub-committees. In all this South African corporate governance practice has been influenced by developments in the UK (the Combined Code updated in January 2003) and US (where the Sarbanes-Oxley Act passed in July 2002 was passed in order to prevent situations such as the Enron scandal), though with some exceptions to cater for South Africa’s so-called special circumstances. One such exception was that King was soft on the generally accepted western practice that the role of Board Chairman and of CEO be split. While arguing that such a separation is ‘preferable’, it accepted that given the historical role of ‘founding families’, a member of which had always been the CEO and Chairman, a combined role may be acceptable. Nevertheless, there remain large overlaps between UK and South African board practice which both stresses a unitary board, mechanisms to avoid conflicts of interest, avoidance of interlocking and overlapping shareholding and directorships, independence, accountability and transparency.

This is in contrast to the French model. There in 1995, for example, the 300 board seats on France’s top 40 companies were held by just 75 individuals (Clift 2004: 109fn3). A far greater number of non-executive directors are spread across the boardrooms of South Africa’s major corporations – though this has to be qualified to some extent because there is a small elite
group of black and women non-executive directors (the ‘usual suspects’) who serve on a multitude of boards, as previously (white) companies desperately attempt to transform to remain within government empowerment targets, in a context where the number of trained and experienced people available to serve as fully independent non-executive director was limited in the early years of democracy.

This trend is reinforced by the restrictions which some South African corporations place on the number of other boards that executive and non-executive directors may serve on. Old Mutual plc is a typical case: potential non-executive directors have to disclose all other directorships and this factor weighs heavily on the final decision of the Nomination Committee; executive directors may only hold one external (non-group) non-executive directorship (but not a chairmanship) of another listed company, ‘subject to prior clearance by the Board and the directorship concerned not being in conflict or potential conflict with any of the Group’s businesses’ (Old Mutual, Annual Report, 2005: 49). A far cry from the Japanese or French practice!

Jim Sutcliffe (then Old Mutual plc CEO) when asked what he would regard as the most significant change in South African capitalism post-1994, pointed to the demise of the group-holding, pyramid structures and extensive cross-holding directorships which characterised capitalism under apartheid (interview, July 30, 2007). Not only have companies unbundled and restructured but the phenomenon of the ‘big man’, the Executive Chairman and CEO rolled into one, who no director or executive manager would dare challenge (people in the mould of Ernest Oppenheimer, Anton Rupert, Harry Oppenheimer and Fred du Plessis; and more recently like Johan Rupert, Brian Gilbertson, Marinus Dalling, Mike Levett, Warren Clewlow) is no longer a dominant feature of South African corporate boardrooms. Many of the new non-executive directors (Sutcliffe argued) also have a very different sense of their fiduciary responsibilities. In general a far greater sense of democracy, participation and consultation over strategic decisions exist (Neville Kerdachi, Interview, May 2007).

Desmond Smith described the post-1994 shift in corporate governance as ‘hugely powerful representing a change from the earlier “autocratic” paternalistic approach to a more collaborative, inclusive, and democratic one’. The previous governance regime, he argued (speaking of his long association at Sanlam going back to 1968), ‘bred a generation of risk evaders’ which would not have served the company well in the new democratic,
competitive and globalised era. The new focus on risk management was an important and very positive feature of post-apartheid governance. He did, however, point to one unintended, unavoidable consequence of all the changes, and that is the amount of time and energy that executives, including the CEO and Boards have to devote to compliance issues – managing regulations, laws, codes, international best practices, standards etc. (Interview, May 11, 2011).

The World Bank (and the Institute for International Finance) have rated South Africa among the top countries in terms of corporate best practice, and King 2 was seen as a benchmark worldwide. (Sunday Times, Business Times June 17, 2007). Mark Mobius of Templeton (one of the largest investors in emerging markets) regards corporate South Africa as ‘one of the best, if not the best governed’ out of all the emerging markets. (Sunday Times Business Times June 17, 2007). The World Economic Forum Global Competitiveness Report for 2011 rates the country a very high ‘2’ on matters related to the ‘efficacy of corporate boards’ (Schwab 2012). However, our research has suggested that while moving somewhat in the direction of the King recommendations the country’s corporates still rate poorly in terms of disclosure and transparency, with many companies adopting a minimalist, even evasive, approach.

King 2 was preceded by a number of major corporate scandals in South Africa including the billion rand corporate failure of the healthcare group MacMed in 1999; the 2001 collapse of Regal Treasury Bank, following exposures of allegedly highly unethical practices by the CEO and Board Chair; the collapse of Saambou Bank Ltd, involving allegations of criminal conduct by some executives, and also questions about the role of the Reserve Bank in bailing out Saambou. The adoption of King 2 in 2002 raised the intensity of the South African debate, and has led to a further improvement in some of these areas in line with Anglo-American style corporate governance. The 2007 scandal at the Cape-Based asset management company Fidentia (in which some R680million of funds mainly those of the Mineworkers Provident Fund, went missing) (Business Report February 2 2007) raised these concerns again, and placed executive and non-executive directors under further scrutiny (Sunday Times, June 17, 2007).

A new corporate governance benchmark, King 3, was accepted in 2009 and a new Companies Act came into effect on May 1, 2011 after a 10-year debate. The Act which aims, among other objectives, to legislate directors’ duties and impose further personal liabilities for company failures, raised
fears that some directors would step down from boards and that a whole host of new, inexperienced directors will take over at the helm of major South African corporations. Mervyn King himself warned that ‘corporate SA was losing its best board members because the new laws held them personally liable for company failures (Sunday Times, Business Times June 17, 2007).

The effect of the Act would be partially to shift along the corporate governance spectrum towards the legislative US framework as compared to the more voluntarist, light-touch UK model. ‘The new Act will legislate certain corporate governance principles, while others (the recommendations of King 111) will apply on a voluntary basis. With the commencement of the new Companies Act, [South Africa] will have a hybrid system of corporate governance, which is partly legislated and partly voluntary’ (Business Report April 1, 2011).

The evidence about whether or not, and how South African companies, are adhering to the King codes is mixed. Anglo-America plc (now with a London primary listing) has integrated corporate governance with social responsibility, and the goal of improving the mining industry’s overall transparency and accountability to its ‘stakeholders’. It would be churlish to deny the corporation’s commitment to fighting the HIV/AIDS pandemic both inside the mining industry and more generally. And as part of its community engagement the corporation launched its Socio-Economic Assessment Toolbox (SEAT) in 2003 (see Anglo-American 2008 Annual Report. Despite all this progressive and forward thinking, Anglo-American CEO Cynthia Carroll was appointed Chair of one its major subsidiaries, Anglo-Platinum. But even worse, in the view of Theo Botha, from the latter position, she influenced a crucial decision on dividend payments to AAC, which impacted on the holding company’s performance (profits), and then on the remuneration package of it’s executives, including Carroll herself! All of this in breach of the King Code (Mail & Guardian May 13-19, 2011, Business supplement: 2).

Others factors that could arguably be said to have broadened the base of decision making beyond maximising shareholder value in South African corporates post-1994 include state policy and legislation around Black Economic Empowerment, the listings requirements of the JSE and the latter’s adoption in 2004 of a Socially Responsible Index, the DTI Code, the Constitution itself (Len Konar, personal communication March 29, 2011).

South African subsidiaries of American companies are already having to comply with stricter, more prescriptive US governance regulations and laws.
Desmond Smith, who was MD of the Reinsurance Group of America (SA) (1999-2005) spoke of the power of the legal counsel and the company secretary in board decision-making processes in the US, as such companies increasingly busy themselves with ensuring that all company decisions and minutes, for example, are water tight in the way they are recorded to protect against legal challenges. The new South African Companies Act (2011) may have a similar effect, leading to situations where executive management could instruct legal counsels and company secretaries to write up minutes before Board meetings, leaving Board members only to make minor amendments or ratify! (Smith, Interview, May 11, 2011).

Toyota South Africa (TSA or TSAM) offers a fascinating example of the influence of multiple corporate governance rules, laws and customs in this major ‘South African’ entity. Toyota South Africa Motors was established under the leadership of Afrikaans business leader, Dr Albert Wessels, in 1961. TSAM was initially a private company importing Toyotas under licence from Toyota Motor Corporation (TMC, Japan). The company listed on the JSE as Wesco in 1970 with the Wessels family and Johannesburg Consolidated Investments (JCI) as the major shareholders. It remained independent of TMC, Japan, in all respects and in terms of corporate governance complied with all JSE listing requirements and the Companies Act. Dr Wessels remained President and CEO until his death in 1989, after which the company CEO was his son Bert Wessels (until his death in 2002). Since then the President and CEO has been Dr Johan van Zyl (interview, Dr van Zyl, July 5, 2011). TMC first expressed an interest in acquiring the 25 per cent of Wesco owned by JCI in the mid-1980s, provided that the company delisted. Over the following decades, TMC bought out the remaining shares becoming the only (100 per cent) shareholder by 2008. TSAM now complies with (what to an outsider) appears to be a bewildering array of corporate governance codes, regulations, norms and customs. These include South Africa’s King 2 and 3 Reports and the Companies Act; Sarbannes-Oxley (as TMC has a major presence in the USA); and internal codes of conducts such as Hoshin Kanri (a strategic planning methodology of internal communication and accountability). In 2007, all TSAM managers were trained in the application of Sarbannes-Oxley. TSAM is subject to an annual Sarbannes-Oxley audit, as well as an annual TMC audit. Van Zyl does not see these as confusing, believing rather that they strengthen corporate governance, corporate values and practice.
Despite being 100 per cent wholly owned by TMC the parent company believes that TSA, like other subsidiaries also has to be embedded in local histories, customs, regulations, codes etc. Apart from compliance with local codes (such as King) and local laws (such as the Companies Act), and US laws (such as Sarbannes-Oxley), the local company represents some significant departures from Japanese corporate governance practice. Thus, for example, the local board is relatively small (13 compared to the TMC Board of about 70) and it includes three non-executive directors (compared to none in the case of TMC). So while TSAM has some non-executive directors, this is still a minority on the Board. All non-executive directors are black-african, two of whom are women. There are no worker representatives on the TSAM Board, though van Zyl argues that the relations with the unions are effectively structured through various internal organisational structures of workers and management. The system of ‘Nemawashi’ is in place within TSAM’s Board, in which the non-executive directors of TSA meet the Vice-President for Corporate Affairs on a one-to-one basis prior to each Board meeting in order to enable non-executive directors to interrogate any Board matter with the objective of strengthening their capacity to meet their fiduciary responsibilities (van Zyl, Interview, July 5, 2011.)

It would have been useful to assess the extent to which sound corporate governance corresponds with profitability or return on investments in the South African case over a long historical period. However, no local data can be found that would allow such an analysis, neither have the results from the few studies conducted been particularly strong, as a result of methodological problems related to endogeneity, reporting bias etc. Thus, for example, firms in some developing countries may experience high returns on investment because growth opportunities there are much better, even though they have weak corporate governance systems. Clearly, however, some South African corporate moguls see little or no correlation. Johan Rupert, the Chairman of luxury goods giant, Remgro, said as much in a reply to a question at the company’s 2008 AGM by prominent share-holder activist Theo Botha. Referring to studies conducted at Stanford, NYU and MIT, Rupert stressed that while he believed in sound corporate governance, he told his shareholders that ‘a formulaic response to the principle should not be allowed to replace the trusted instincts of experience’ (Business Report August 22, 2008). Botha admits that corporate governance in South Africa has improved, but argues for a better balance between the adherence to King 2 or 3 and the drive for profit. In his view companies, after King 3, appear ‘too afraid to say that
they don’t adhere and we are coming down to a tick-box scenario’ (*Mail & Guardian* May 13-19, 2011, Business supplement: 2). Liberty Life’s Roy Alpine agrees: ‘a company can tick all the right corporate governance boxes in the world and still end up making the most terrible wrong-headed and damaging decisions’. He also appeared to long for the old days when he commented, at retirement: ‘Stricter standards of corporate governance were inevitable … but if our great entrepreneurs of the past had been held to them there would have been no Liberty, no Pick and Pay, no Altech…..The entrepreneurs who start these [companies] would never have been permitted the freedom of choice and decision-making they needed to build up these companies’ (*Sunday Times, Business Times* May 29, 2011:6).

Building on international literature, largely within the VOC framework, Stefan Andreasson (2011) has developed a very useful framework for understanding corporate-governance reform in South Africa, post-1990. This argument reflects much of the discussion above, and I concur with his view that if one disaggregates what some writers lump together as the ‘Anglo-American model’ (liberal market economy, shareholder-value based, stock market capitalism, market-centred, insider approach), then one can distinguish inside this two variants: 1) the light touch, less intrusive, flexible, regulatory regime of the UK approach and 2) a more hard-nosed legal and litiganous regime in the US, especially following Sarbannes-Oxley (SOX) (2011:651-653). Andreasson (2011) sees South African corporate governance as more in line with the UK approach, again a view I would endorse.

Surprisingly though, Andreasson sees elements of a new hybrid or African model based on principles of Ubuntu and African value systems emerging already in the post-apartheid South African corporate governance landscape. ‘Ubuntu’ he defines as denoting ‘an African humanism emphasising empathy, understanding, reciprocity, harmony and co-operation and it constitutes a potential guiding principle for determining how to organise African societies and measure well-being’ (2011:660). He cites some work on African management and business practices, and some general texts on the concept of ‘Ubuntu’ (including Vale and Maseko, 1998) as evidence of this, but does not himself appear to try to find evidence or support for this claim from his own quite extensive interviews.

Of course, some have argued that various imperatives characterising the transition have impacted upon corporate-boardroom behaviour and decisions in ways which have constrained the single-minded pursuit of maximising shareholder value. King 2, for example, introduced the notion of triple-
bottom line reporting, expecting companies to report on the environmental and social aspects of a company’s sustainability, in addition to traditional reporting on financial sustainability only.

However, without direct evidence about how corporates, including new black-owned and controlled enterprises, are actually governed, a strong interpretation of Andreasson’s claim may represent no more than a hope that values that may widely and deeply exist in South African society now (itself questionable) may penetrate its boardrooms. Certainly Desmond Smith, who chairs Sanlam and serves on many South African boards, sees no evidence of the emergence of any African value system in our corporate boardrooms. (interview, May 11, 2011). Wendy Luhabe, who has served on many boards since the beginning of the transition, observes that in the end ‘company boards have a habitual way of working which is preoccupied with shareholder returns and financial performance to the exclusion of other equally legitimate issues in business…’ (http: www.20-first.com).

Extending corporate democracy?

Post-apartheid South Africa’s high score in terms of corporate governance, as argued by the World Bank and others, appears to be based on an Anglo-American benchmark of best practice, albeit of a UK variety. A more thorough-going ‘democratic South African capitalism’, even for the benefit of shareholders, let alone a broader community of stakeholders, and in line with Ubuntu and African value systems, is still some way off, as the following developments and factors suggest.

First, Southall (2006: 180ff), among others, has pointed to the rise in influence and power (and pay) of South African executive directors and senior managers, in line with international trends after the ‘Big Bang’ of October 1986. This, despite boardroom changes that have seen a nominal increase in the fiduciary responsibility and role of non-executive directors. For Southall ‘Although their actions are supposedly constrained by the presence of non-executive directors who are meant to represent the interests of shareholders, many [non-executive directors] are chosen by corporate chairs and few have the expertise or inclination to rock the boat’ (Southall 2006:183, citing Sampson 2004). Sadly, even King 2 did not assist here by laying down stronger guidelines for the nomination process, the composition of the nominations committee, etc, key elements in ensuring the independence of non-executive directors from management (Malherbe and Segal 2001: 51). Neither did King 1 or 2 advise unambiguously or strongly on the requirement
that the chairman be non-executive: King 1 states weakly that ‘it would be preferable that the chair should be a non-executive director…’, and King 2 says the same inserting only ‘independent’ to non-executive director (King 2, 2002: chapter 2: 53).

Secondly, despite the powerful role played by the union movement in the transition to democracy in South Africa, and the continuing alliance between COSATU, the most powerful trade union federation, and the ANC, the governing party, the issue that Aglietta and Reberioux (2005) raise, that of employee representativity on the Boards of South African companies is surprisingly not on the agenda of local debate, either from the side of companies in some voluntary way or from the union side; nothing remotely like the Swedish, or German, or Danish, or Dutch approach (let alone Japanese or French ones) has been on the cards in post-apartheid South Africa. An exception was the then state-utility Eskom which for a short period through the early years of the political transition did have a type of supervisory board, the Eskom Electricity Council, and who appointed Frans Baleni of the National Union of Mine Workers (NUM) onto its Council as a representative of organised labour in terms of the Eskom Act No 40, 1987 (Khoza and Adam 2006: 300). He appears to have been retained on the unitary board for a while even after the commercialisation of Eskom and the scrapping of the Council.

Some would argue (the DTI and even King 2 appears to share this view) that worker representation is contradictory to good governance, by carrying vested interests rather than company-wide interest into the Board. The DTI view is that two-tiered boards are ‘too costly’ or inefficient, or will deter investment or is otherwise ‘undesirable’ (in Spisto 2005: 95). This in contrast to the checks and balance of power argument put forward by Aglietta and Reberioux or the improved economic argument advanced by Spisto to support greater representativity. Spisto concludes his detailed analysis with the argument that:

Ultimately … if South Africa is firmly intent on turning its economy into one that is stronger and better, corporations will have to introduce the two-tiered board model of corporate governance into their business practices. (2005: 96)

However, taking a lead from the DTI, South African companies have resisted such a change and remain firmly within the dominant Anglo-American regime as opposed to a continental European one on this matter.
But this could have been different had some of the changes around co-determination initially proposed for inclusion in the Labour Relations Act, been accepted. Calls for a consideration of Japanese, German, Swedish and Austrian models of co-operation between labour and capital in production at shop-floor level (to complement corporatist arrangements at a national level) were made even before the new government was elected in April 1994. (see, for example the ANC’s Tito Mboweni’s arguments on the role of trade unions, 1992: 24-29). The leading progressive labour journal, The South African Labour Bulletin ran a series of articles in its July/August issue in 1993 on the topic of co-determination. In that issue, the South African Clothing and Textile Workers Union (SACTWU) proposed the idea (based on its 1993 Congress) of a social-market economy instead of a strategy of nationalisation, which implied at factory levels ‘an empowerment of workers and shop-stewards to take part in decision-making in production, and in factory restructuring’ (SACTWU in SALB, Jul/Aug 1993: 30). Ultimately, these tentative arrangements around co-determination were opposed by the majority of unions (some feared that their relative lack of resources, capacity and time vis-à-vis corporates would mean that there would not be equality between the parties and could lead to co-option or collapse; others argued that this kind of arrangement would become something of a ‘cosy cartel of powerful interest groups (capital, state, unions) which would marginalise or exclude rural workers, those employed in small, un-unionised sectors etc). So these ideas, that may well, and through further struggles, have led to some significant changes in corporate governance and in the very nature of South African capitalism never got into the statute books, along with the other progressive reforms in the 1995 Labour Relations Act.

King 2 does support and endorse a social dimension to corporate governance in South Africa, as does King 3. But it is not clear that corporate South Africa is in practice at all committed to any move in this direction. A clear indication of a shift to articulate broader stakeholder rights in decision-making would be evidence of more and more companies creating supervisory boards in addition to management boards. There is little evidence that this is happening. Despite its nominal commitment to a broader stakeholder approach to corporate governance, even King 2 (section 5.1) appears in the end to accept that shareholder interests would and should prevail. Note their remarkably strong statement that ‘the [s]takeholder concept of being accountable to all legitimate stakeholders must be rejected for the simple
reason that to ask boards to be accountable to everyone would result in their being accountable to no-one’ (in King 2, 2002, Section 5.1).

Thirdly, the dramatic growth of the private equity industry in South Africa in the past decade may well narrow the magnitude and character of the beneficiaries of capitalism in post-apartheid South Africa, and potentially erode the gains made through the introduction of corporate governance codes. Globally private equity firms are relatively new: the world’s largest, Warburg Pincus, was formed in the US only in the late 1960s. Private equity firms specialise, among other things, in buying out (and later selling) businesses which, after careful professional research, they identify as offering opportunities for adding considerable value through focused strategies not readily apparent to, or not easily taken by, shareholders and non-executive directors of public companies. These latter are a mix of individual and institutional investors with (potentially) a range of different knowledge and diverse objectives, and generally tend to be conservative and risk-averse. Their activities target listed, unlisted and family-owned businesses. Foreign private equity firms have been highly successful in Europe and the US: Ernst and Young’s 2005 survey of 100 businesses owned by private equity firms showed that the average enterprise value doubled at exit after an average ownership period of three and a half years, clearly outperforming public companies (Ernst and Young, 2006:1). In 2007 the 11 billion pound (R156 billion) sale of pharmacy chain Alliance Boots was the largest in European history, and the first of a company in the FTSE-100 index (Business Report June 12, 2007).

Before 1994 the major takeovers on the JSE were led by South Africa’s giant corporations such as Anglo-American, Rembrandt, and Sanlam. After 1994, private equity (PE) firms have stepped into this type of investment activity, though their total value remains below 30 per cent of the JSE market capitalisation. Their existence was strengthened by the opening up of the economy and the opportunities created as conglomerates unbundled and refocussed on their core business and some left to seek primary listings in London. Though there are many new South Africa players (Brait, Ethos, AMB Private Equity, etc), most of the ones with real financial clout are foreign-owned, such as Bain (US). As the Institute of Directors (SA) puts it ‘out of nowhere, foreign private equity firms have descended into South Africa in recent months. Should we be worried?’ (Directorship, 4th Quarter, 2006). The value of assets under management by private equity firms in South Africa stood at over R55 billion at end 2006, compared with R44 billion.
one year earlier, a significant growth, and one not expected to ease off. The number of PE buy-outs for 2006 alone stood at 761! (business.iafrica.com).

South Africa’s private equity industry held R86.6 billion under management as of December 31, 2007, compared to December 31, 2006 at R59.3 billion. This is a 46 per cent boost in the industry, a major jump that brought the percentage of South Africa’s GDP from private equity funds under management up from 1.7 to 2.8 per cent in the same period.

However, like other asset classes, private equity investment growth all over the world, including in South Africa, eased back during the financial crisis of 2008-10. Despite the slow-down, however, private equity investment reached R100billion by end 2008 (boostprivateequity.gg) and R107billion at end 2009 and South African private equities outperformed even the US and UK private equity markets. (privateequityblogger.com/2008/11southafrica.)

Some… big names on the Johannesburg Stock Exchange have fallen prey to private equity deals, including Alexander Forbes, a hybrid insurance broker and pension consultant; Primedia, which owns radio stations, cinemas and magazines; and Pepkor, which sells clothes to South Africa’s still vast pool of low-paid workers. Another has been Consol, the leading producer of glass bottles in the region. (http://www.ft.com/cms)

A few other mega deals initiated around 2005-2007, however, were not concluded rapidly enough and the world economic crisis which hit South Africa most acutely from early 2009, saw many deals falling by the wayside.

But the growth of this industry does pose a few problems from the point of view of economic democracy and corporate governance. One index of their potential effect on the economy (as reported in the IOD’s magazine Directorship) is that ‘some of the JSE’s top 40 companies could disappear from the exchange and into the portfolios of private equity funds, both local, but especially foreign pe firms. That will reduce investor choice, deprive existing shareholders of future earnings growth and transfer ownership abroad’ (Directorship, 4th Quarter, 2006:6).

Despite the obvious benefits to the firms that are bought out, to investors in private equity firms, to the professional fund managers themselves, and to the country itself (through capital inflows where the private equity firm is foreign owned) the model appears to be driven by the opportunity to circumvent corporate governance guidelines and other regulatory obligations that apply to public companies. As JP Fourie, CEO of the South African Venture Capital and Private Equity Association puts it, one of the reasons
for the growth of the PE industry may be the ‘regulatory burden’ around corporate governance (business.iafrica.com). Critics have pointed to the fierce resistance that PE firms have adopted towards greater transparency and public scrutiny. In response to the Bain buy-out of Edcon, which the Public Investment Commission opposed, the PIC’s Brian Molefe argued that [PE] ‘opens the way for corruption. It flouts fundamental corporate governance rules. That’s my concern – the way it’s being done… Once the company is de-listed and becomes private, there’s no accountability and standards for them to reveal anything. This is a big problem’ (Sunday Times June 10, 2007).

The industry has argued that greater transparency will ‘rob them of their magic’ (Economist Survey November 27, 2004:5). They have also argued that despite the benefits to shareholders deriving from various corporate-governance codes, it is public companies, like Enron, that have been at the centre of corporate governance scandals, adding that ‘with their hands on corporate governance – from close but un-bureaucratic monitoring at board level to carefully designed incentives for the bosses – they reckon they can steer clear of [corporate governance] scandals’ (Economist Survey November 27, 2004: 15).

In contrast to the critics, Millson and Ward (2005: 81) conclude from their survey of 27 practitioners in the local private equity industry that investors in private equity firms expect greater transparency, demand direct permanent representation on boards, and on key sub-committees such as Audit and Remuneration. Corporate governance guru, Mervyn King, himself a director of one of the country’s top private equity firms, Brait, would concur: he contrasts the often ‘mindless box-ticking’ variety of compliance in some listed companies, with private equity, where ‘reporting to investors has to be quick and transparent’ (Sunday Times, Business Times June 17, 2007).

South Africa is not yet characterised by high levels of shareholder or stakeholder activism in a way that has developed in the US and UK, especially after the corporate scandals and financial crises of the late 1990s and early 2000s. As Goldstein puts it: ‘In South Africa, stakeholder activism is still rarely practised…. Individual shareholders, for their part, are far from approaching the critical mass that is necessary to surmount the usual collective action problems’ (1999: 36). The private equity industry, like hedge funds before it, has the potential to further retard this space and they create a real danger that they may reverse the expectation of policy makers and others in South Africa of spreading the benefits of corporate capitalism
to broader and wider sectors of society. And the lack of transparency and accountability intrinsic to the model may also set back the goal of greater economic democracy that many both in South Africa and globally hold dear.

Fourthly, one may surmise that corporate governance within South Africa’s powerful state-owned enterprises (SOEs) would be more developmentalist than a narrow pursuit of profit. That is, that it would be more stakeholder driven. However, corporate governance in South Africa’s public sector is set by the Protocol on Corporate Governance in the Public Sector (Department of Public Enterprises, 2002), which, as Benjamin Marx confirms (2008:178) aims to ‘maximize shareholder value and provide guidance on corporate governance issues in the public and SOE sector’. The first objective is rather strange, and despite the clarity of the guidance set out, corporate governance in South Africa’s public sector, has been characterised by one major scandal or other over the last ten years. SOEs in South Africa comprise some 270 entities with a turnover in excess of R15 billion per year. The six major ones, including Eskom, Transnet, Denel, fall under the political control of the Department of Public Enterprises. Others are controlled by the National Treasury (World Bank 2006). However, the state’s interests in some have been privatised (eg Telkom, Acsa) and some SOEs have been corporatised (run along commercial lines, eg Eskom, Transnet). The international buyers in the case of Telkom and Acsa, were given management control, so diluting board oversight to some extent. In other cases, the requirement to become less dependent on state funding (eg. the national and provincial development finance corporations) has driven their management and governance logic into highly confusing territory. Powerful SOEs such as Eskom, Transnet and the SABC, have been in the news regularly over the last few years for one or other corporate scandal (involving either allegations or proven instances of bribery and corruption at board and top management level, ineffectual or incompetent leadership, state interference, secret deals, and the like).

Finally, the issue of the transformation of governing boards and executive management, and the related issue of the racial and gender changes in the ownership of corporate South Africa at various levels needs to be assessed. By February 2007, black people held 180 out of a total 603 directorships on the boards of the top 40 companies listed on the JSE, but about a third of these are held by just 22 individuals (Mail & Guardian February 7, 2007). Cyril Ramaphosa, Khaya Nkhulu and Reuel Khoza are among the most active
of this pool of blacks serving on a large number of boards (the ‘usual suspects’ as they are often referred to).

There is evidence that even some of the country’s largest global corporations have changed little at the top, remaining overwhelming white and male. But the internationalisation of these companies has also contributed to this situation. Anglo-American plc has just two black non-executives (one appointed only in 2011) and one woman executive on its main board (Anglo-American plc, *Annual Reviews*). Canadian-born CEO Cynthia Carroll broke the mould somewhat when she took over at the helm of Anglo-American plc, by becoming the first female CEO of a top 40 company. BHP Billiton (no longer strictly a South African company, but with a long history in South Africa and with significant South African business interests) has no black persons and just two (white) women on its Board (BHP Billiton *Annual Review* 2006). Richemont has no black directors, Liberty International has just one non-executive director who is not white. SAB Miller has a Board of 16, of whom two are (white) women and one, Cyril Ramaphosa, being the only black (non-executive) director (SAB Miller Website). Old Mutual plc had just two black people on its 11 member Board as of December 2005: these were Wiseman Nkuhlu, a former economic advisor to President Thabo Mbeki and Rueul Khoza (Old Mutual, *Annual Report* 2005).

The South African subsidiaries of some of these global giants clearly reflect a somewhat better representation. Thus Anglo-America (South Africa) has a better representation of both blacks and women on its Board, as does Liberty Holdings (SA) with five black non-executive directors, two of whom are women.

Let us look at Barloworld from other perspectives. The company, has a primary South African share listing. It is one of the 30 largest companies on the JSE, with a market value of R34 billion, a total staff complement of 25,000 and profits of R4.1 billion in 2006. It is one of the country’s truly global corporations with secondary listings in Brussels, Frankfurt, London, Namibia and Switzerland. The company had until recently no black or women executives (and only three black non-executives, including one woman) on its 18 member Board, prompting the Public Investment Commission, which is the largest shareholder with 17.2 per cent of the total, to threaten to exercise its muscle at the company’s 90th AGM on January 25, 2007. It was a strategy the PIC successfully pursued at Sasol in 2005. Despite all the claims about good corporate governance at Barloworld, the PIC was also concerned that the new CEO, Clive Thomson, is the son-in-law of the
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Chairman, Warren Clewlow. Clewlow, according to the PIC, had also reneged on a promise to step down as Chair at the 2007 AGM, and put himself up for re-election (Business Day January 22, 2007, Business Report January 23, 2007, Barloworld website). Plus ca change?

As it happened, under intense pressure, Barloworld made a tentative and limited gesture at transformation and empowerment at the AGM on 25 January 2007. Clewlow stepped down, Dumisa Ntsebeza, formerly a senior official on the Truth and Reconciliation Commission, and Board member for several years, was elected ‘Interim’ Chairman (later confirmed), and the first black executive was appointed – somewhat predictably he will head the company’s Africa Division! But this victory was put into perspective a few months later, when the nominations committee of the Barloworld Board headed by former Old Mutual plc CEO Mike Levett, proposed that a deputy-Chairman be appointed, and the Board accepted the recommendation that former Sasol executive Trevor Munday be appointed to this new position. According to Business Report sources (June 12, 2007) Ntsebeza was only notified of this the day before the Board meeting. Business Report’s Jubulani Sikhakane made the following observation on what he called ‘this sordid mess’. ‘If Ntsebeza, as chairman, is so far away from the levers of power on the Barloworld board, what chance does he have of guiding the company’s board successfully through the transformation process that lies ahead? Which brings me to another issue: The decision to appoint a deputy to Ntsebeza speaks volumes of the nominations committee’s view of him – that he was not up to the task of leading the board. Yes, they wanted a black chairman to placate Brian Molefe, the [then] head of the PIC’ (June 12, 2007).

However, arguably, given the pressure on the company, Barloworld’s Board has changed noticeably. Although Oupa Shongwe remains the only black executive director (with enhanced responsibilities), there are now six black people, including two black women, on their Board.

The most recent and comprehensive study of transformation is arguably that commissioned by Business Unity South Africa (2011). The study was based on an analysis of the 2,835, executive, non-executive and independent directors of 289 companies listed on the main board of the JSE in March 2011. The study showed that white males (who make up just 6.7 per cent of the economically-active population) account for 52 per cent of all board positions, 71.6 per cent of executive directors, 42 per cent of non-executive directors, 43.5 per cent of independent non-executive directors, 51.4 per cent of chairpersons, 76.2 per cent of CEOs, and 75.7 per cent of CFOs.
These numbers fall woefully short of targets set in the BEE codes, though some progress is noticeable, more so among non-executive directors than executive directors (CEOs and CFOs), where change has been painfully slow. The report remarks that JSE-listed companies ‘have taken the path of least resistance, appointing black people to non-executive positions’ (BUSA 2011: 3) There is not much difference in this situation if one looks at the sample of Top 40 companies compared to the total, though there is a slightly better representation of black executives on the boards of the Top 40 companies.

It is worth remarking that the study found that ‘the top 40 JSE companies had a higher percentage of foreign directors (23.1 per cent) than the whole JSE (13.9 per cent). Since black directors are at about 30 percent in both samples, it is clear that the foreign directors have replaced white directors in the JSE top 40’ (2011: 5).

It is difficult, without a proper study, to be definitive about changes in international director representation on the boards of South African companies. Of course the boards of those companies now listed in London or New York will reflect their international profile. Anglo-American plc, for example, in 2010 had non-executive directors from the UK, France, Germany, Hong Kong, Ireland, the US and South Africa. When Nicky Oppenheimer stepped down from the Board on April 21, 2011, it left Mamphele Ramphele as the only South African on the Anglo-American Corporation’s Board, and it was the first time in the history of the company that the Oppenheimer family did not have a member on the Board. This despite a reportedly unsuccessful attempt by Nicky Oppenheimer to have his son, Jonathan, appointed in his place.

Before announcing his decision, Mr Oppenheimer asked Sir John Parker, Anglo chairman, to consider nominating his son, Jonathan Oppenheimer, to replace him on the board. But Sir John said it was impossible for corporate governance reasons, according to James Teeger, managing director of Ernest Oppenheimer and Son, the family investment company. (FT.Com Mining, February 25, 2011)

Though somewhat of a digression here it is worth noting that in November 2011 the Oppenheimer family sold its 40pc stake in global diamond giant de Beers for $5.1 billion, leading the Sunday Times (6 November 2011) to lament: ‘The Oppenheimer name – a byword for wealth and opulence for more than a century and a symbol of capitalism in South Africa – has finally slipped into the shadows’.
The ‘South African’ companies I’ve looked at appear to have international directors from a broader range of countries, not just a concentration from the UK and US as in the past. Thus, for example, Goldfields (which has a primary listing on the JSE) had on its Board a non-executive director from Ghana, one from Peru, one from the Phillipines, and two from the UK. Eskom has three international directors, one each from Sweden, Korea and Rwanda. Sanlam’s only international director, Ian Plenderleith, is British, albeit with strong South African connections (Plenderleith served one term as Deputy Governor of the South African Reserve Bank). Cell-phone empowerment Group MTN has no international directors on its Group Board. Barloworld has three international directors, one each from the UK, US and Spain (Annual Company Reports, latest available on line.)

Acemoglu et al (2007) in their study of black economic empowerment and economic performance, discovered another significant trend, which relates to the increasing number of ANC politicians appointed to JSE- listed company boards:

The evidence so far is definitely that N-BBEE [narrow-based BEE] has dominated. To examine this we collected information from McGregor’s on the board members of all the companies listed on the JSE. We then collected information on all members of the ANC executive committee since 1994 and all elected ANC politicians both at the national and regional level. We then looked for matches in these two sets of names. We found 56 ANC politicians who were on the boards of directors of these firms. [What the analysis shows] is that there are a number of politically connected people who serve on the boards of many JSE listed firms. This evidence certainly seems consistent with the notion that white firms have been trying to match with politically connected people in order to secure their property rights, or influence government policy more generally. The dominance of politically connected people on boards of directors suggests that in-spite of the rhetoric about B-BBEE, the reality is that N-BBEE is the norm. (2007: 17)

Brian Kantor writing a few years after 1994 observed that the South African ‘group system’ had already adapted by finding ways for black entrepreneurs to participate in the ownership and control of South African companies (1998). Recent evidence suggests that this may have been true, but that the rate of growth in this area of corporate reform, may have slowed down. It is worth asking if the entry of black shareholders and the appointment of black directors, has led to any improvements or positive changes in corporate governance in affected companies. Malherbe and Segal (2001:
63ff) discuss this point. Their view is that the logic and financing of typical BEE transactions has reduced the capacity of such new shareholders and directors to make a substantial impact on the nature and style of corporate governance. Because BEE groups or individuals rarely invest their own capital and simply pick up free options in companies seeking BEE deals, such groups and individuals accumulate as many of these options as possible, hoping that at least some come off. This, they argue, leads to a lack of focus by these groups which reduce ‘their ability to contribute to corporate decision-making in any particular investment, or to monitor effectively the managements of the operations they had invested in. Ironically, the broader-based, and therefore more attractive the empowerment group, the less likely they were to participate in the governance of the operating company’ (2001: 63).

Referring to black entrepreneurs in South Africa, Numsa Secretary-General had this to say: ‘We ourselves in South Africa today ... have several African billionaires who are just as brutal to the working class as their white brothers or sisters’ (Numsa national bargaining council meeting, April 4-5, 2011).

If little has changed at executive level and in the boardrooms of South Africa’s large firms (both new or established, black or white), what about the layer below that? – among what has come to be termed the small and medium enterprises sector (SMEs). A striking feature of capitalism under apartheid was the relatively small size and limited sectoral spread of its SMEs, certainly compared to the Asian ‘Miracle’ economies, a point made powerfully, among others by Sanjaya Lall (1993:50). This gap in our corporate structure was recognised in the period of late-apartheid, and in 1981 the state set up the Small Business Development Corporation (SBDC) to support, through finance and marketing, the growth of SMEs, though with minimal success (Padayachee 2002:159). This goal was of course much more central to the democratic government, and both through the DTI and outside of it, new institutions (such as Ntsika and Khula) were set up to promote SME development.

However, data on the number, growth, ownership profiles (race, gender), and sectoral changes in the SME are little short of ‘dismal’ (Rogerson 2004: 768). Thus, for example Rogerson points out that while Ntsika annual reviews put the number of SMMEs at approximately 1.1 to 1.2 million in 2001, 2002, StatsSA research has put the figure for March 2001 at approximately 2.3 million! For any finer detail, one has to turn instead to the results of survey-
based research. A World Bank survey (Chandra et al, 2001, 7/8) conducted in 1999 covered the responses of approximately 800 SMME owners across eight manufacturing and service sectors. On the issue relevant to this paper, they report a strikingly low representation of Africans: while representing 77 per cent of the population, African people account for just 7 per cent of SMME ownership. At the same time 56 per cent of SMME owners are white. Looking only at firms established after 1994, the survey showed that 53 per cent were white-owned and only 13 per cent were black-owned. In a more recent study for the Western Cape government, John Orford and Eric Wood conclude that international evidence shows that rates of entrepreneurial activity in South Africa and the Western Cape are significantly below equivalent rates in other developing countries. This suggests that there is considerable scope to increase the output of the small business sector in South Africa. Furthermore, there within South Africa blacks and women are under-represented amongst small business owner-managers (2010: 15). Clearly neither this sector as a whole, so vital as a driver of growth and employment in many other emerging market economies, nor black ownership within it, shifted significantly in the post-apartheid period.

Conclusion
Corporate governance in South Africa has changed since the advent of democracy in 1994. It has moved along the governance spectrum towards an Anglo-American approach, sharing features of the light-touch, regulatory kind found in the UK. This is evident from the requirements of three codes of corporate governance, King 1 (1994), King 2 (2001) and King 3 (2009) which apply to all JSE listed companies, public entities which have to comply with the Public Finance Management Act, as well as all banks and financial institutions. The King codes stress outsider control, independence and transparency aimed at maximising shareholder wealth. Technical (tick-box) compliance appears on the increase, but whether South African corporates are, in fact, getting right the balance between improved governance and better performance remains unclear. The new Companies Act became law in May 2011 and it requires that directors will be held legally responsible if it can be shown that they did not apply their minds to their fiduciary duties, among other legal sanctions, a move that would nudge the corporate governance framework towards the post-Sarbannes-Oxley US model.

In my assessment there is little substantive evidence that corporate governance in the new South Africa has moved beyond some level of
nominal and technical compliance with King recommendations, and even thus unevenly, embracing a more stakeholder-oriented philosophy. Andreasson’s assertion (2011) that principles of Ubuntu and African values (as defined earlier) are to be found in our corporate governance framework, remains a desirable goal that is still far from current reality. The adoption of triple-bottom line reporting by companies (financial, environmental and social sustainability) as expected by the King codes is being observed more in the breach than in reality, as financial issues override goals of social responsibility and environmental sustainability. A number of features in the country’s governance framework suggest that a more broad-based, socially based corporate governance framework in which the interests of all stakeholders, including workers and their representative organisations, are taken into account, and suggestive or a more caring, humane capitalism is still far off the mark. These features, in summary, include:

- non-executives directors are still drawn from a narrow circle and remain overwhelmingly white and male, and despite BEE imperatives, black share ownership remains a very low percentage of market capitalisation on the JSE;
- moves towards establishing two-tiered boards, with worker and other social-partner representation on its ‘supervisory’ boards, are not on the cards;
- attention to what many consider legitimate business issues outside financial considerations, such as social and environmental concerns, labour standards and safety measures, are exceptions rather than the norm;
- private equity buy-outs of listed companies continue to shrink the possibilities of a more broad-based participation of South Africa’s black majority in corporate ownership and activity;
- governance at South Africa’s powerful state-owned enterprises, which could have been expected to lead the move to more stakeholder models is, with notable exceptions, characterised by incoherence, lack of focus, and corruption scandals

In short, any claims that the country’s corporate governance approach is more stakeholder-oriented, more transparent and democratic, more caring, more harmonious, more Ubuntu-oriented and more connected to society, would appear somewhat exaggerated.
Notes
1. There is a lot of admittedly circumstantial evidence in support of this, the most notable in the public sector being the SABC, which, as Hachten and Giffard observe (1984: 204), was under Broederbond influence for many years. In the private sector, note that Volkskas Bank was established by the Broederbond, and that Bank’s Board Chairman (JC van Rooy) was also the Broederbond chair at the time. The Broederbond also worked closely with Sanlam/Santam to pool Afrikaner savings to channel into investment (O’Meara 1983, Wilkins and Strydom 1980: 425, 426). Rembrandt’s Anton Rupert regularly addressed Bond meetings. As Gilliomee argues, the Broederbond was more directly influential in support of Afrikaner business interests than the NP government (2008: 776). Cecil John Rhodes, one of the imperial architects of the diamond mining industry in South Africa, was a Freemason.

2. Nemawashi (根回し) in Japanese means an informal process of quietly laying the foundation for some proposed change or project, by talking to the people concerned, gathering support and feedback, and so forth. It is considered an important element in any major change, before any formal steps are taken, and successful nemawashi enables changes to be carried out with the consent of all sides.

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**Interviews**: (dates in text)
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- Jim Sutcliffe, then CEO Old Mutual plc
- Johan van Zyl, CEO Sanlam
- Neville Kerdachi, Deputy Chairman, ICB (Pty) Ltd.