

**SHAREHOLDER PROTECTION AROUND THE WORLD  
("LEXIMETRIC II")**

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## **Abstract**

This article analyzes how shareholder protection has developed in 20 countries from 1995 to 2005. In contrast to traditional legal research, it draws on a quantitative methodology to law (“leximetrics”, “numerical comparative law”). Some of its results are that in most countries shareholder protection has improved in the last years; that developed countries perform better than developing countries in protecting shareholders; that shareholder protection in common law countries is relatively similar whereas there is no comparable similarity within the German and French civil law families; that German corporate law is “more mainstream” and US corporate law is “more eccentric” than the law of the other countries; and that in general there has been convergence in the last decade. In order to explain these results, the distinction between origin and transplant countries can be useful. However, in contrast to previous studies, this does not mean that all depends on the distinction between English, French and German origin and transplant countries. Rather it is decisive (a) which “version” of the corporate law the transplant country copied, (b) whether transplant countries continue to take developments in the origin countries into account and (c) whether transplant countries have left the path of their (former) origin countries.

**JEL Codes:** G00, G30, G38, K00, K22, N20, N40, P50

**Keywords:** Shareholder protection, leximetrics, numerical comparative law, law and finance, La Porta et al., LLSV, comparative company law, comparative corporate law, comparative corporate governance, legal origins, legal families, legal transplants, legal development, convergence, civil law, common law.

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## I. INTRODUCTION

Recently, the question whether and how shareholders should be protected has been intensively debated. Lucian Bebchuk found that shareholders hardly ever use the power to challenge directors.<sup>1</sup> He suggested that this should be remedied by reducing impediments to replace directors and by improving shareholders power to change the company's charter.<sup>2</sup> This has evoked many critical comments. These critics bring forward that shareholders lack proper incentives to act for the corporation as a whole,<sup>3</sup> that board control is beneficial to the shareholders<sup>4</sup> and that the director primacy of US law has worked well in the last decades.<sup>5</sup> However, there has also been some support for a strengthening of shareholder rights. For instance, it has been said that the existing rights have to be made more effective<sup>6</sup> and that "shareholders would enjoy greater, longer-lasting happiness by using their shares to have a participatory role".<sup>7</sup>

Outside the US, the protection of shareholders is also topical. In the EU, the European Parliament has just approved a Directive on Shareholder Rights.<sup>8</sup> Here, critics object that this Directive addresses topics which should better be left to the companies themselves, such as, for example, the use of the new media in the run-up and at the general meeting.<sup>9</sup> Furthermore, this Directive may also be an unnecessary irritant to national corporate laws, which may already protect shareholders sufficiently.<sup>10</sup> Internationally, the OECD Principles of Corporate Governance emphasize that "the corporate governance framework should protect and facilitate the exercise of shareholders' rights".<sup>11</sup> These principles are important because IMF and World Bank as well as investors use them as a benchmark for good corporate governance.<sup>12</sup> However, critics may here refer to the fact that these principles are based on a Western model of corporate law which may not be suitable in other parts of the world.<sup>13</sup>

This article will analyze how these discussions relate to the legal development of shareholder protection of 20 countries. This will be done with a quantitative methodology ("leximetrics",<sup>14</sup> "numerical comparative law"<sup>15</sup>), which will be explained in Part II of this article. Part III presents the results of this leximetric approach. In particular, it will be examined whether there are profound differences between different groups of countries (such as, for instance, between common law and civil law countries; developed and developing countries). Part IV provides possible explanations for these differences. Part V concludes.

## II. LEXIMETRICS: CHOICE AND CODING VARIABLES FOR SHAREHOLDER PROTECTION

### *A. Previous research*

Usually lawyers follow a qualitative approach because, apart from citation to statutes or cases, they do not use numbers and do not make calculations. In contrast to this, leximetrics refers to every quantitative measurement of law. With respect to shareholder protection, the most famous attempt to quantify the law is the study by La Porta et al. on Law and Finance.<sup>16</sup> La Porta et al. used eight variables as proxies for shareholder protection in 49 countries. These variables coded the law for “one share one vote”, “proxy by mail allowed”, “shares not blocked before the meeting”, “cumulative voting”, “oppressed minorities mechanism”, “pre-emptive rights to new issues”, “share capital required to call an extraordinary shareholder meeting” and “mandatory dividend”. In a second step, they draw on these numbers as independent variables for statistical regressions. Their main finding was that good shareholder protection leads to more dispersed shareholder ownership, which can be seen as a proxy for developed capital markets.

However, it is doubtful whether the findings of La Porta et al. are accurate. Various studies have identified many coding errors.<sup>17</sup> A further problem is that La Porta et al.’s choice of variables does not provide a meaningful picture of the legal protection of shareholders. La Porta et al.’s variables not only suffer from a US bias but are also a poor proxy for shareholder protection in general, because their variables do not capture the most significant aspects of the law.<sup>18</sup>

Lele and Siems made a fresh start for a quantification of shareholder protection (“Leximetric I”).<sup>19</sup> We built a new shareholder protection index for five countries (Germany, France, UK, US and India) and coded the development of the law over three decades. In particular, we took into account that different legal instruments can be used to achieve a similar function. We also extended the number of variables to 60. Furthermore, we addressed the various problems related to the coding of legal provisions. For instance, we made clear how we dealt with ambiguous legal provisions and to what extent we coded non-mandatory and soft law. Further, our article gave examples of the interesting possibilities that diligent quantification of legal rules provides for comparing variations across time and across legal systems. For instance, it was found: that shareholder protection has been improving in the last three decades; that the protection of minority against majority shareholders is considerably stronger in blockholder countries; and that convergence in shareholder protection has been taking place since 1993 and has been increasing since 2001.

This article (“Leximetric II”) ties in with Lele and Siems’s coding of shareholder protection. However, on the one hand, it is more extensive because it deals with not 5 but 20 countries. On the other hand, it is narrower because it only uses ten variables and looks at the years 1995-2005. This reduction was partly based on pragmatic reasons because the compilation and coding of legal rules across time is very complex and time-consuming. Furthermore, it has to be borne in mind that an index cannot take all aspects of shareholder protection into account. As the company law of most countries consists of several hundred sections or articles, the coding of all the details would lead to an unworkable index of several hundred (or thousand) variables. Thus, it was necessary to construct a limited number of core variables, which can function as a proxy for shareholder protection in general. This led to the following list:

### *B. Variables on shareholder protection*

<i>Variables</i>	<i>Description and Coding</i>
1. Powers of the general meeting for de facto changes	If the sale of more than 50 % of the company’s assets requires approval of the general meeting it equals 1; if the sale of more than 80 % of the assets requires approval it equals 0.5; otherwise 0.
2. Agenda setting power <sup>20</sup>	Equals 1 if shareholders who hold 1 % or less of the capital can put an item on the agenda; equals 0.75 if there is a hurdle of more than 1 % but not more than 3%; equals 0.5 if there is a hurdle of more than 3 % but not more than 5%; equals 0.25 if there is a hurdle of more than 5% but not more than 10 %; equals 0 otherwise.
3. Anticipation of shareholder decision facilitated	Equals 1 if (1) postal voting is possible or (2) proxy solicitation with two-way voting proxy form <sup>21</sup> has to be provided by the company ( <i>i.e.</i> the directors or managers); equals 0.5 if (1) postal voting is possible if provided in the articles or allowed by the directors, or (2) the company has to provide a two-way proxy form but not proxy solicitation; equals 0 otherwise.
4. Prohibition of multiple voting rights (super voting rights) <sup>22</sup>	Equals 1 if there is a prohibition of multiple voting rights; equals 2/3 if only companies which already have multiple voting rights can keep them; equals 1/3 if state approval is necessary; equals 0 otherwise.
5. Independent board members <sup>23</sup>	Equals 1 if at least half of the board members <sup>24</sup> must be independent; equals 0.5 if 25 % of them must be independent; <sup>25</sup> equals 0 otherwise
6. Feasibility of director’s dismissal	Equals 0 if good reason is required for the dismissal of directors; <sup>26</sup> equals 0.25 if directors can always be dismissed but are always compensated for dismissal without good reason; <sup>27</sup> equals 0.5 if directors are not always compensated for dismissal without good reason but they could have concluded a non-fixed-term contract with the company; <sup>28</sup> equals 0.75 if in cases of dismissal without good reason directors are only compensated if compensation is specifically contractually agreed; equals 1 if there are no special requirements for dismissal and no compensation has to be paid.

	Note: If there is a statutory limit on the amount of compensation, this can lead to a higher score.
7. Private enforcement of directors duties (derivative suit) <sup>29</sup>	Equals 0 if this is typically excluded ( <i>e.g.</i> , because of strict subsidiarity requirement, hurdle which is at least 20 %); equals 0.5 if there are some restrictions ( <i>e.g.</i> , certain percentage of share capital, <sup>30</sup> demand requirement); equals 1 if private enforcement of directors duties is readily possible.
8. Shareholder action against resolutions of the general meeting <sup>29</sup>	Equals 1 if every shareholder can file a claim against a resolution by the general meeting; <sup>31</sup> equals 0.5 if there is a threshold of 10 % voting rights; <sup>32</sup> equals 0 if this kind of shareholder action does not exist.
9. Mandatory bid	Equals 1 if there is a mandatory public bid for the entirety of shares in case of purchase of 30% or 1/3 of the shares; equals 0.5 if the mandatory bid is triggered at a higher percentage (such as 40 or 50 %); further, it equals 0.5 if there is a mandatory bid but the bidder is only required to buy part of the shares; equals 0 if there is no mandatory bid at all.
10. Disclosure of major share ownership	Equals 1 if shareholders who acquire at least 3 % of the companies capital have to disclose it; equals 0.75 if this concerns 5 % of the capital; equals 0.5 if this concerns 10 %; equals 0.25 if this concerns 25 %; equals 0 otherwise

The choice of these variables was, first, based on the aim to get a representative mixture of legal rules. Thus, the index includes: variables on the power of the general meeting and on who decides about its topics (variables 1 and 2); on how voting takes place (variables 3 and 4); on whether directors take the shareholders interests into account (variables 5 and 6); on which legal actions shareholders can file (variables 7 and 8), and on how shareholders are protected in the event of a change of corporate control (variables 9 and 10). Second, it had to be decided which specific legal questions to code. Here, it may be seen as a surprise that, for instance, the index includes the “powers of the general meeting for de facto changes” (variable 1) but not the more ordinary powers to elect the directors, amend the articles or decide about mergers. However, as it is the aim of this index to examine differences, variables had to be chosen where differences could be expected. This can also be seen in other variables. For example, it was examined whether the ability of shareholders to anticipate a decision of the directors was facilitated (variable 3). Conversely, it would have been uninteresting just to examine whether anticipation is “possible” because some kind of proxy voting is admissible in all countries. Third, not all legal questions are codeable. For instance, it is difficult to code case law on fiduciary duties because this crucially depends on the facts of the specific cases. Thus, variables were chosen for which consistent coding could best be achieved.

It may be objected that some of the variables do not really protect shareholders. For instance, the mandatory bid (variable 9) protects shareholders because it gives them an opportunity to exit the company for compensation; but indirectly it may be harmful because it may discourage takeover activity.<sup>33</sup> However, that is not a relevant point here. The purpose of the index is “just” to provide a description of the legal rules on shareholder protection and not to answer the normative question whether and how shareholders *should* be protected.<sup>34</sup> This will, however, be examined in the future as this index will constitute a basis for an econometric study to find statistical relationships between legal and economic data.<sup>35</sup>

### *C. Coding*

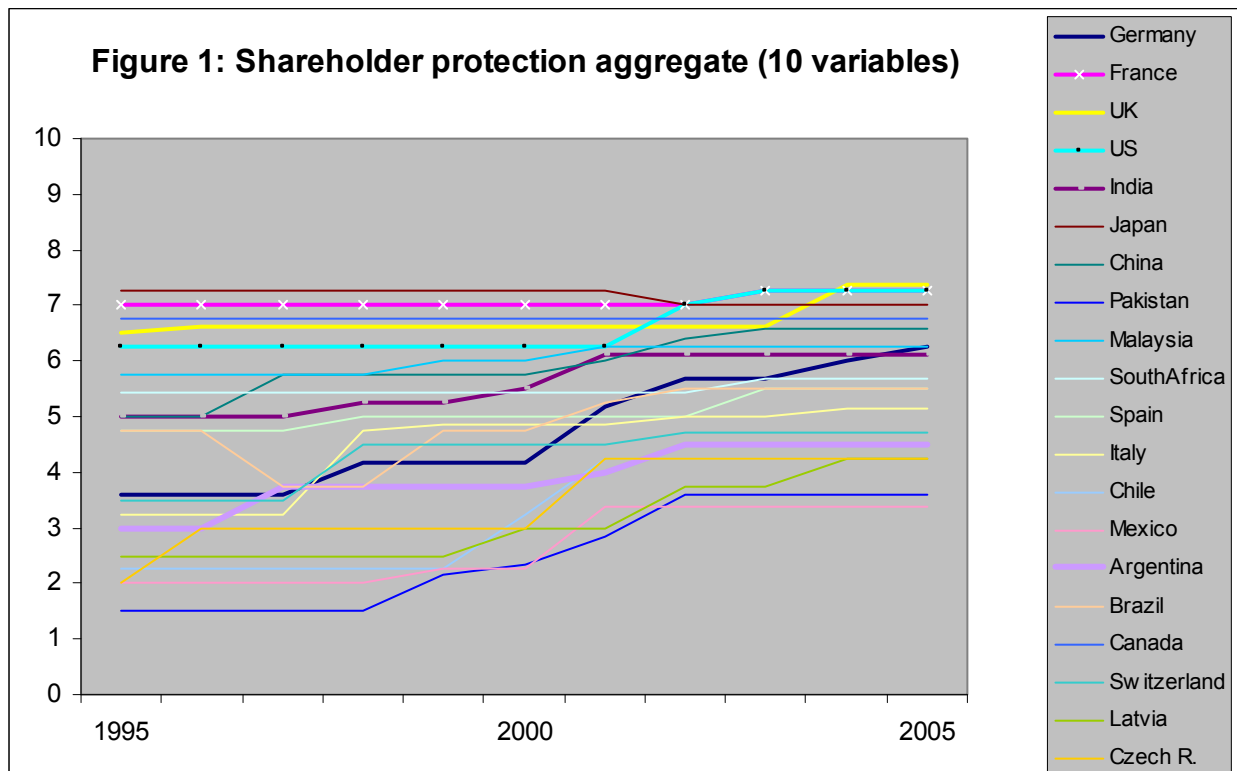
The description of the variables<sup>36</sup> contains some explanation of how the variables have been coded. In other respect, the coding follows the methodology developed in Lele and Siems.<sup>37</sup> The main points are as follows. The index coded the law applicable to listed companies. Mandatory as well as default rules, and statutory as well as case law were taken into account. Listing rules, takeover codes and corporate governance codes were also considered.<sup>38</sup> The US coding was based on Delaware corporate law and the Canadian coding was based on federal corporate law. Finally, non-binary coding ( $\frac{1}{2}$ ,  $\frac{1}{4}$ ,  $\frac{3}{8}$ ,  $\frac{3}{4}$  etc.) was allowed if this was necessary to provide an accurate picture of the law.<sup>39</sup>

The full text of the index (10 variables, 11 years, 20 countries = 2200 observations) plus the explanations have led to a document of 104 pages which will be published on the Internet.<sup>40</sup> Thus, only four brief points are highlighted here. First, the variables on independent board members and on mandatory bid (variables 5 and 9) have improved most significantly in most countries.<sup>41</sup> Second, the variables on feasibility of directors’ dismissal and on shareholder action against the general meeting (variables 6 and 8) have, by contrast, hardly changed in any of the countries.<sup>42</sup> Third, the variables on shareholder action against the general meeting and on disclosure of major shareholder ownership (variables 8 and 10) display the best scores in most of the countries.<sup>43</sup> Fourth, by contrast, the variables on anticipation of shareholder decision facilitated and on independent board members (variables 3 and 5) are on average the weakest variables.<sup>44</sup>

### III. LEXIMETRIC RESULTS

#### A. Shareholder protection aggregate

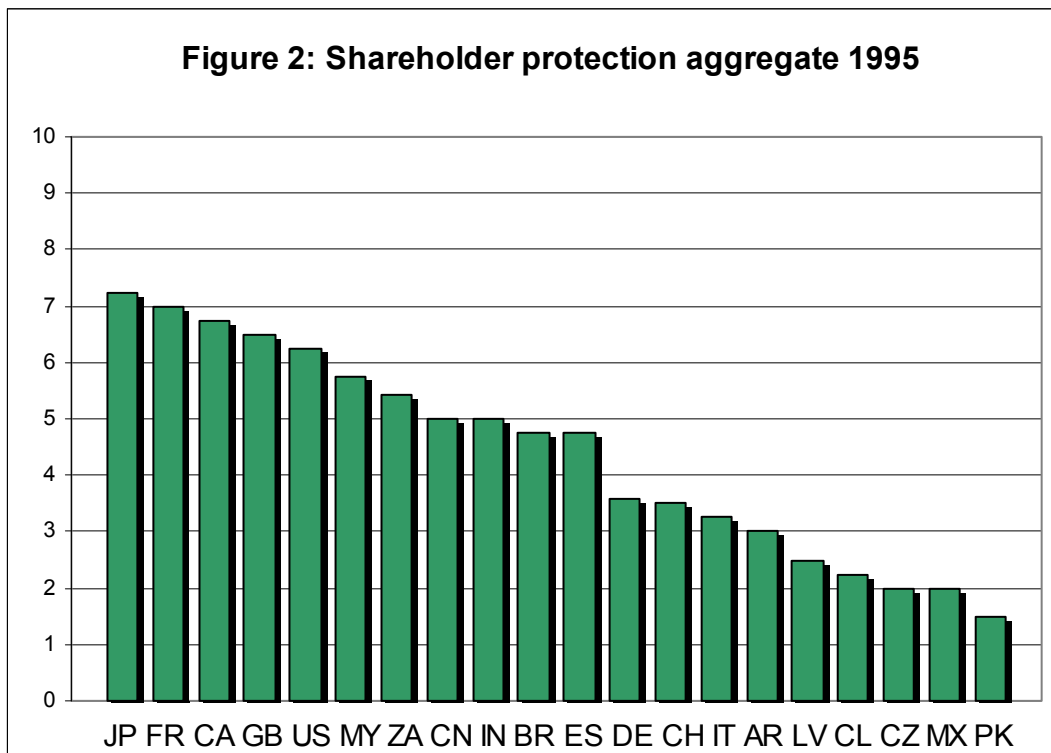
An aggregate of all ten variables for all countries leads to twenty curves which indicate the protection of shareholders from 1995 to 2005:



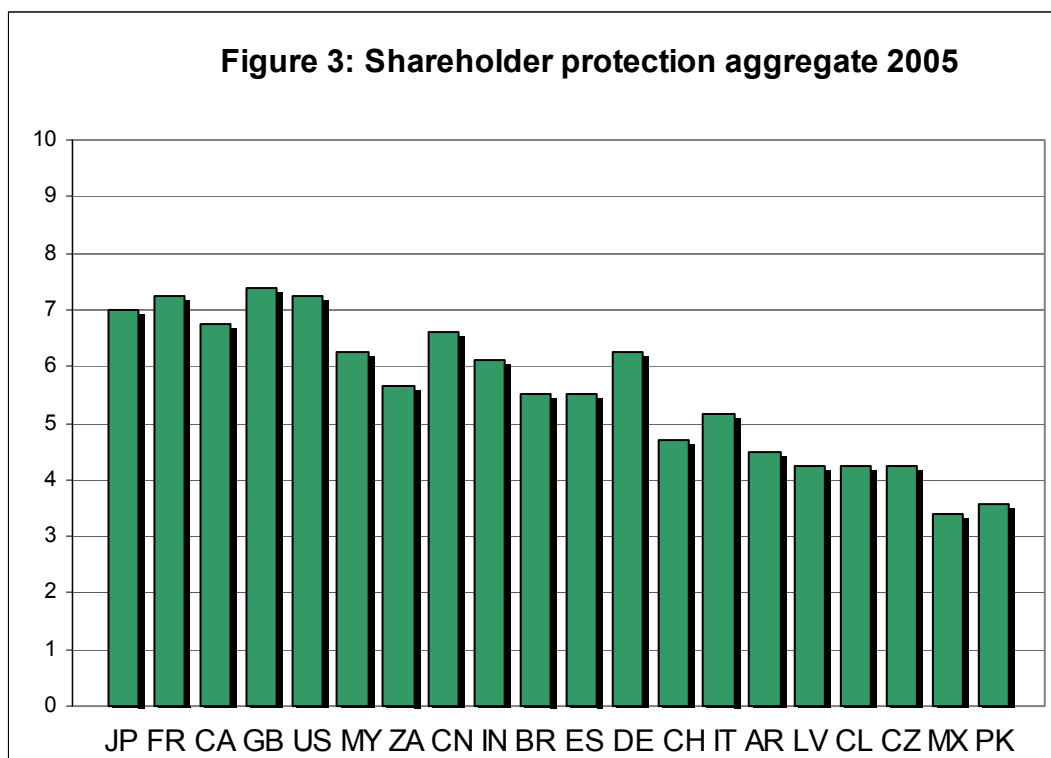
One can observe that the countries at the bottom of the figure have slightly improved their scoring. In 1995 the lowest score was 1.8 while in 2005 it was 3.4. Similarly, most other countries move constantly upwards. Exceptionally, Brazil's score first dropped and then improved again. Furthermore, the best countries have not managed to rise higher. Thus, there appears to be an upper limit at ca. 7.5. The explanation for this can be that too much shareholder protection can work as overkill because it excessively restricts companies.<sup>45</sup> Thus, it could be the case that 7.5 is some kind of optimum of shareholder protection and countries would be ill advised to go beyond it.



For more specific observations on particular countries it is useful to present the aggregate in a different format:<sup>46</sup>



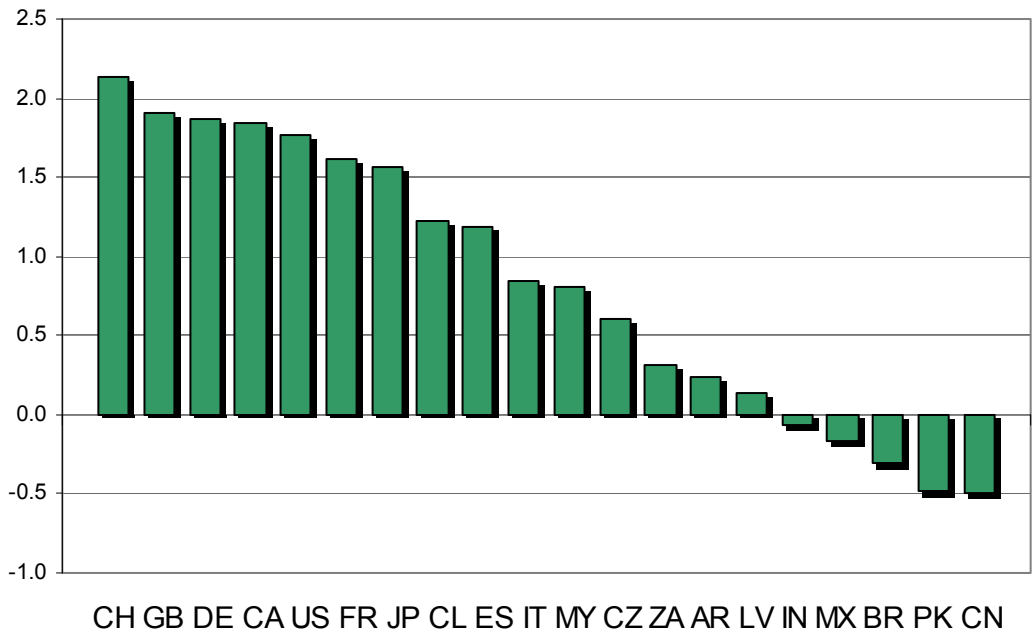
According to Figure 2, most developed countries perform better than developing countries. This is no surprise because either developed countries tend to have better law-making institutions or it may be because their advanced legal system promotes economic development.<sup>47</sup> Apart from that, generalizations are difficult. In particular, there is no clear division between legal families, since one of the best three and one of the worst three countries is a common law country (Canada and Pakistan). A conclusion which one may draw however is that countries whose corporate law is influenced by different traditions may profit from this (regarding Japan: German and US law;<sup>48</sup> regarding Canada: UK and US law; regarding the UK: its own tradition and EU law; regarding France: its own tradition and Anglo-Saxon traditions<sup>49</sup>). Finally, the bottom of the “list” appears to be dominated, apart from Pakistan, by countries from Eastern Europe and Latin America.<sup>50</sup>



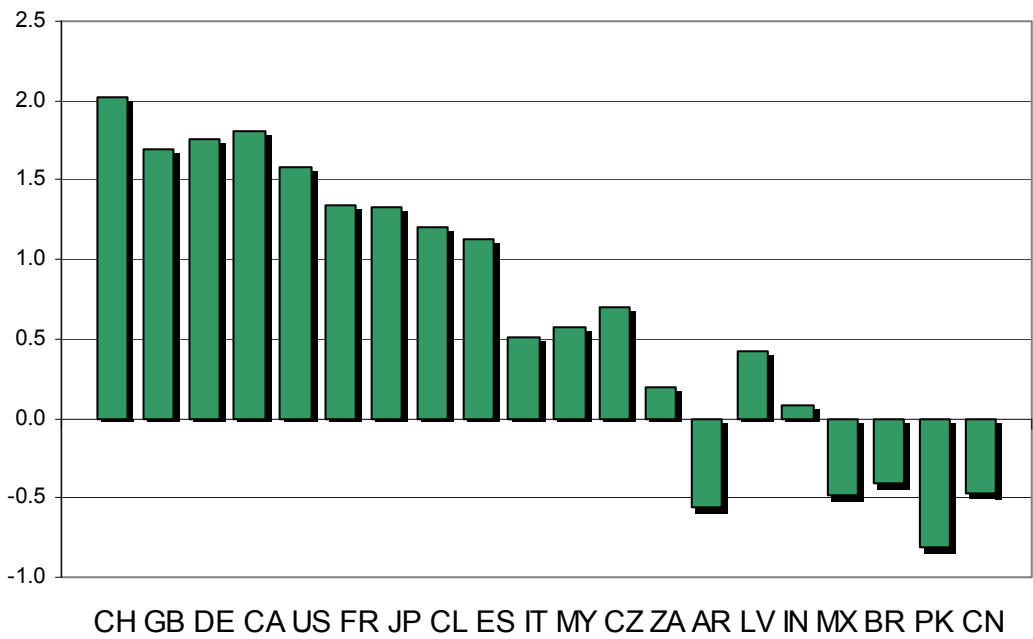
Comparing 1995 and 2005 one can observe first, that most countries have improved their scoring. This concerns above all some of the transition and developing countries who are now catching up with the developed world. For instance, the scores of Pakistan, Mexico, the Czech Republic and Latvia have improved slightly. Significant progress has also been made by China. Second, however, the overall “ranking” of the countries and thus the lead of developed countries has remained relatively untouched. The top five countries of 1995 – all of them developed countries (Japan, France, Canada, UK, US) – are also at the top in 2005. Germany and Italy have also made some progress. Third, some countries have not changed or have even dropped a little bit. Apart from the top-performers Japan and Canada, this concerns in particular Switzerland.

The strong Chinese and the weak Swiss performance in the 2005 index may be most surprising. However, this result does not mean that shareholders in Switzerland are more at risk than in China since the efficiency of courts also has to be taken into account. Thus, it is useful to consider a “rule of law” ranking which is based on the World Bank Governance Indicators:<sup>51</sup>

**Figure 4: Rule of Law 1996  
(World Bank Governance Indicators)**



**Figure 5: Rule of Law 2005  
(World Bank Governance Indicators)**



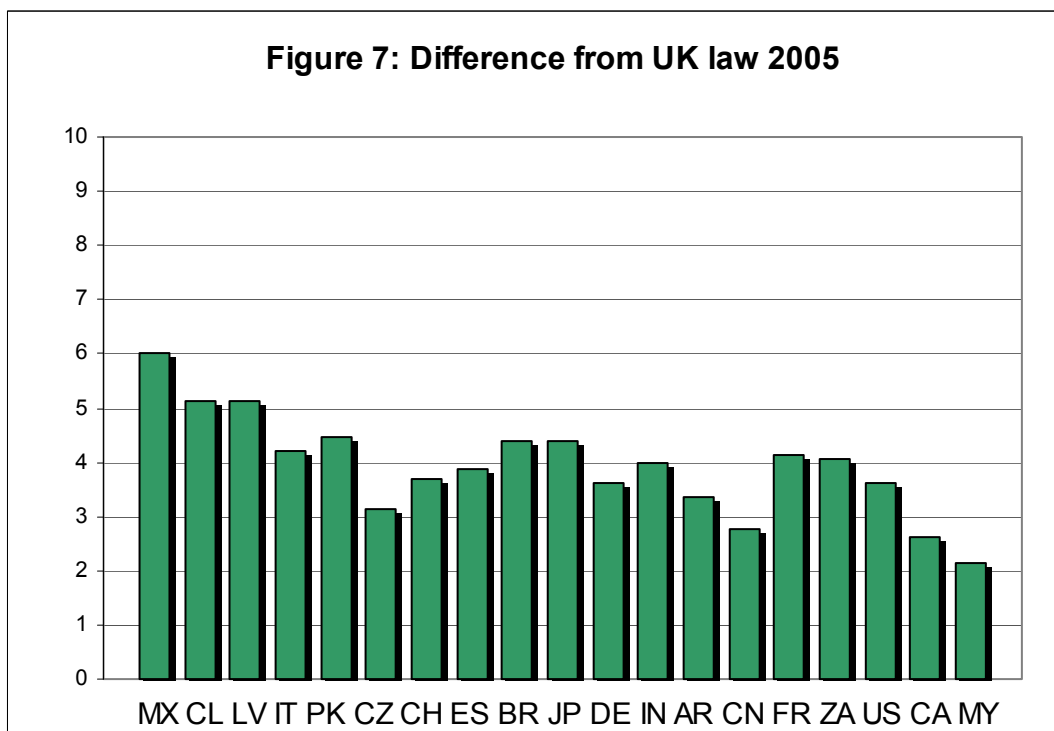
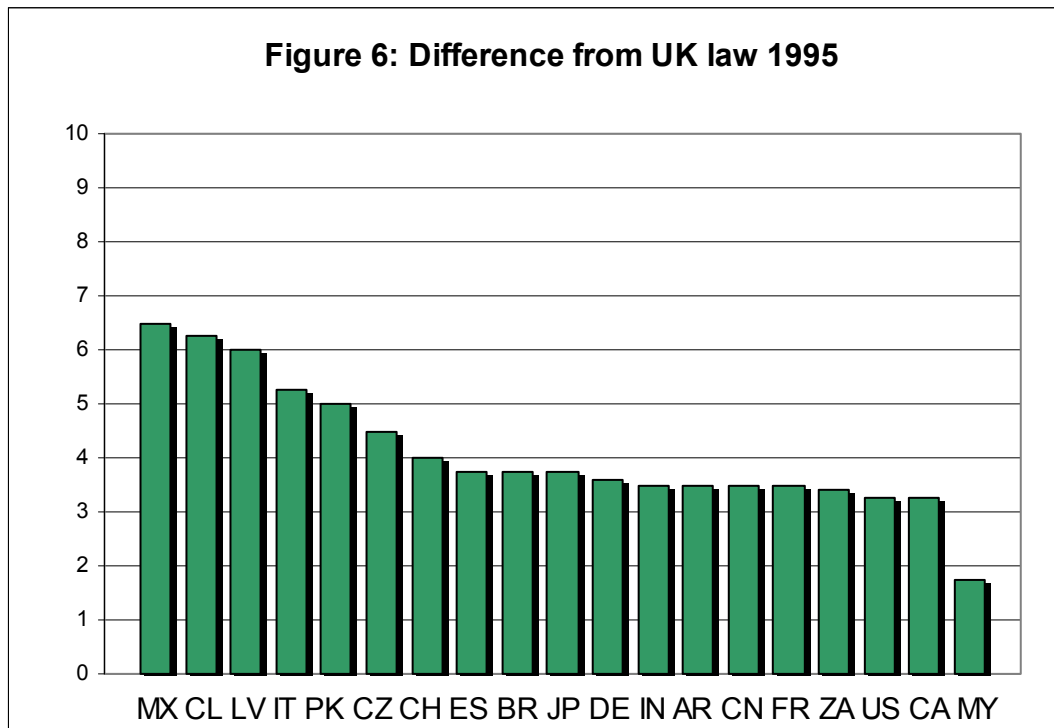
As one would expect, Figures 4 and 5 show that developed countries perform better than developing countries. It is also interesting to see how the countries on the bottom of the table have developed. In contrast to the shareholder index, where most countries have moved up, changes have here not been consistent. Whereas the Indian, Latvian and Czech scores have improved, the Pakistani, Mexican and Argentine scores have got worse. A likely explanation for this is that copying legal rules is easier than addressing the inefficiency of courts.<sup>52</sup>

### *B. Differences and similarities*

At first glance, just looking at the previous figures, one may get the impression that, for instance, in 2005 the US and French law on shareholder protection were identical because both countries had the same score of 7.25 out of 10 variables. This would, however, not be a fair assessment. As the previous figures simply show the aggregate of all the variables, it is perfectly possible, and indeed is the case, that different variables have led to the same scores for the US and France. Therefore to highlight the differences between the countries with a view to identifying trends of convergence or divergence the differences between each variable in the law of a particular legal system and the same variable in the law of the other countries have been calculated. Subsequently, the absolute values of these differences have been added together and represented graphically.<sup>53</sup>

First, this was done for the three so called “origin countries”: UK, France and Germany (*infra* 1-3). If, as it is claimed, the law of these countries has influenced the laws of the other countries of the world,<sup>54</sup> one may expect clear-cut distinctions between English common law, French civil law and German civil law countries. Second, it is interesting to examine the differences and similarities from US law (*infra* 4). This was done because it is sometimes said that there has been a significant “Americanization” of the laws of other countries in recent years.<sup>55</sup> Third, one can calculate the difference between each country and all other countries of our index. This makes it possible to establish the “mainstreamness” or “eccentricity” of each legal system’s approach to shareholder protection as well as the convergence or divergence of shareholder protection in general (*infra* 5, 6).

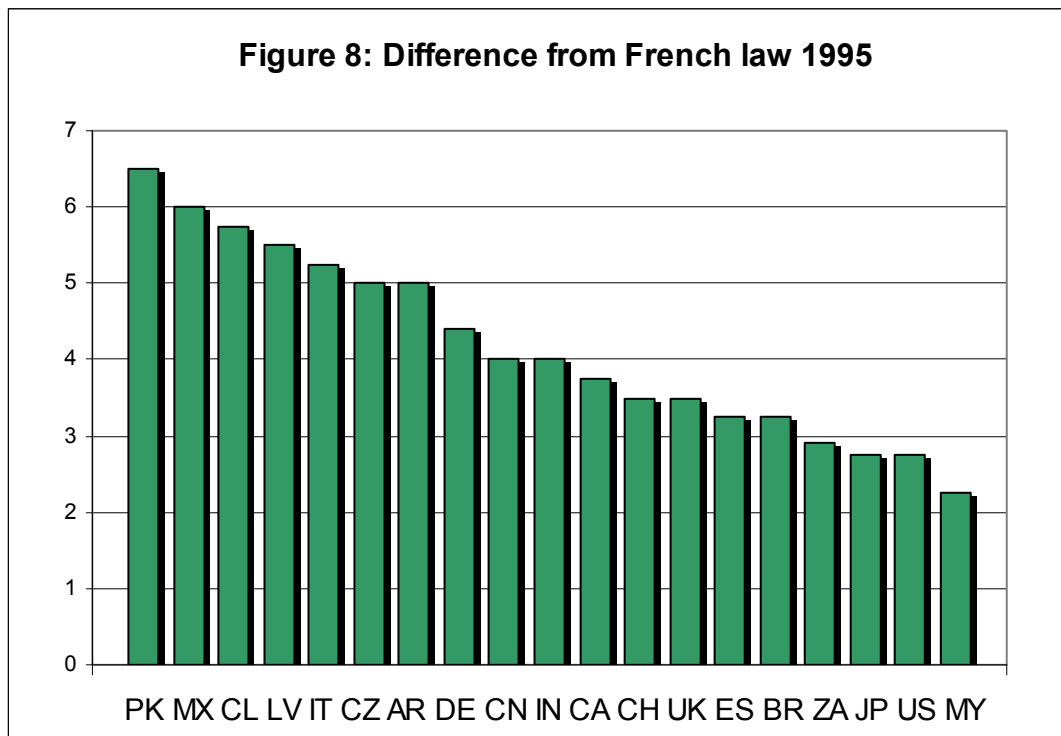
1. Differences from UK law

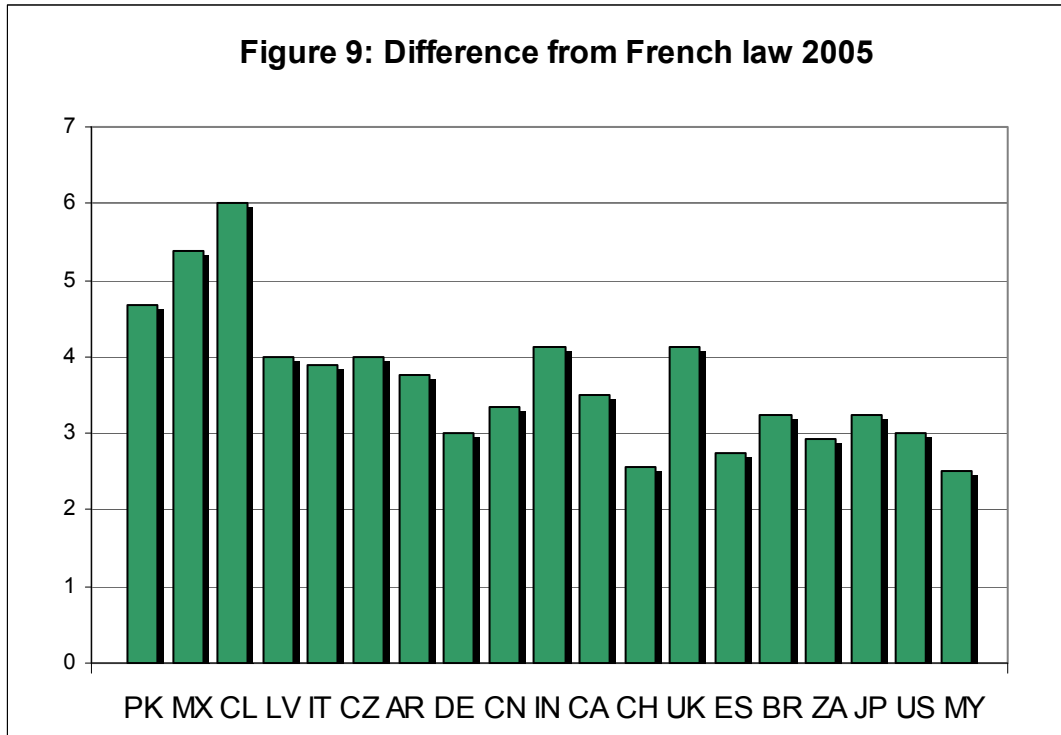


On the one hand, the 1995 figure displays some similarity between the UK and the other common law countries. Malaysia, Canada and the US are most similar to UK law and the scores of South Africa and India – at least mixed legal systems<sup>56</sup> – are also not very different. On the other hand, against a mere explanation by legal origins militates that Pakistan’s law on shareholder protection is very different from UK law. Moreover, France and China may be surprising close to the UK. With respect to Latin America, Chile and Mexico are quite different but the intermediate scores of Argentina and Brazil make it difficult to generalize.

Taking into account the 2005 figure, the situation does not become considerably clearer. French, Indian, South African, Japanese and Brazilian law have diverged from UK law whilst Chinese, Canadian, Czech, Chilean and Italian law have converged to it. It must also be noted that some of the changes are relatively small and thus should not be overrated. But at least the fact that a number of changes have taken place shows that not only the origins of a particular law but also (or even primarily) later developments matter.<sup>57</sup>

## 2. Differences from French law

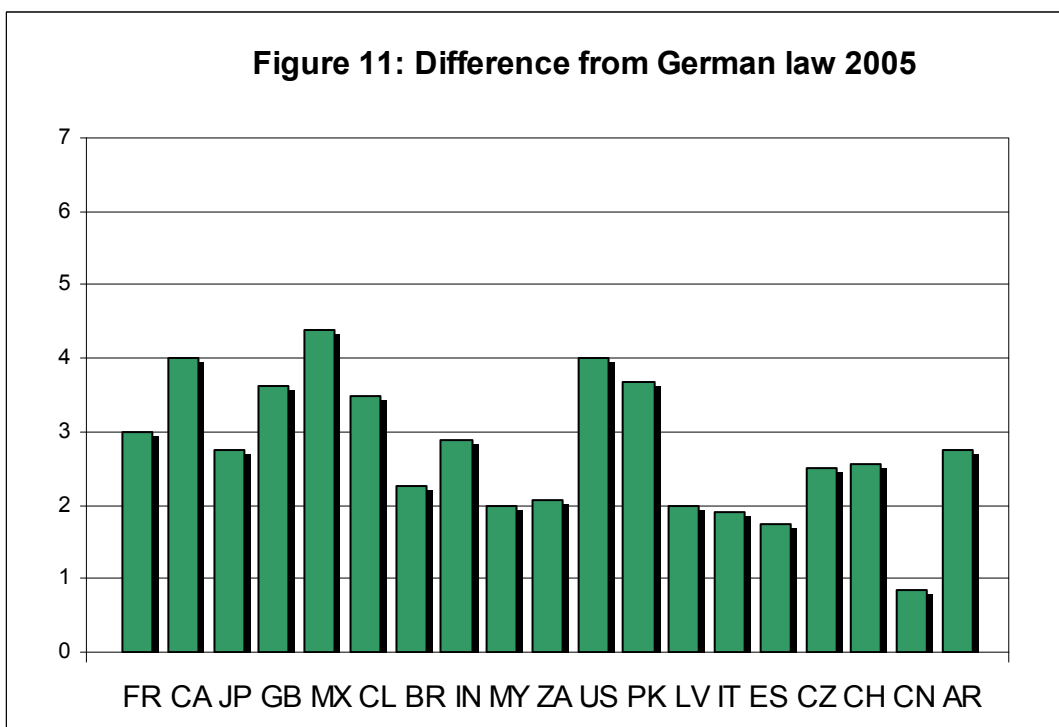
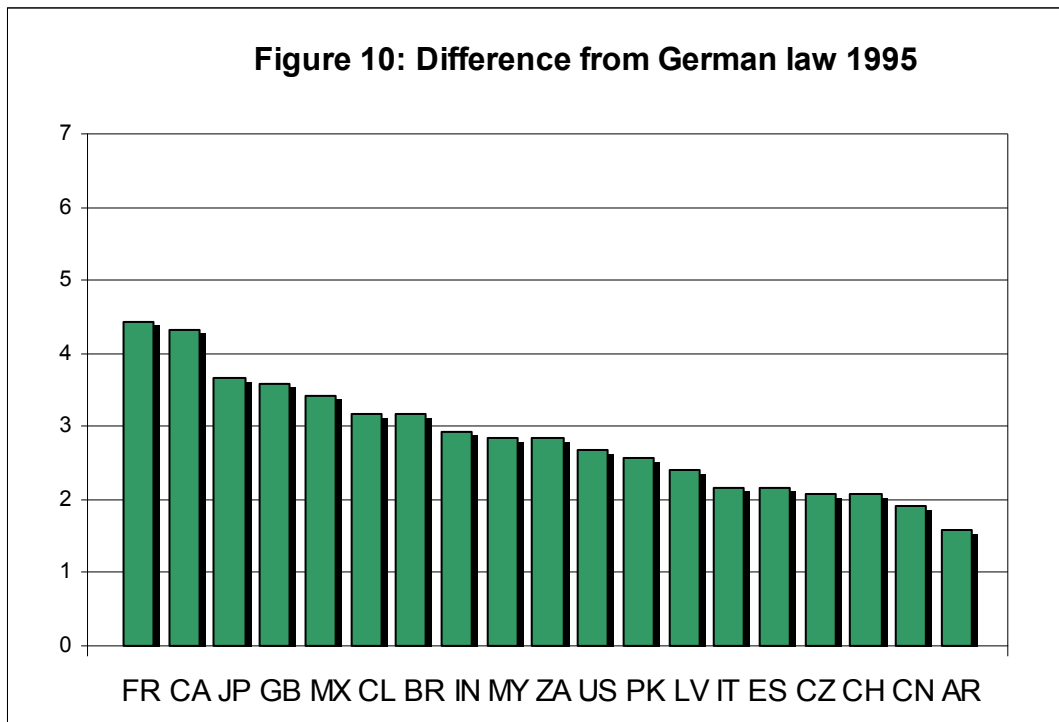




The 1995 figure confirms that categorizations are difficult. The other (allegedly) French legal origin countries (Brazil, Spain, Argentina, Italy, Chile and Mexico)<sup>58</sup> occupy very different positions in the list. The European countries mainly have intermediate scores. Given the European directives on corporate law,<sup>59</sup> this may be seen as a surprise. Yet, the explanation for this could be that in the 1980s French law was already influenced by Anglo-Saxon concepts, such as with respect to takeover regulation and financial disclosure.<sup>60</sup> This is also confirmed by the fact that in 1995 US law was remarkably similar to French law.

However, in 2005 the laws of other continental European countries have also converged with French law. The reason for this is that now these countries too have incorporated some Anglo-Saxon concepts into their law.<sup>61</sup> Apart from that, generalizations according to different legal origins are once again difficult. Pakistan has converged whereas the UK and the US have slightly diverged. Chile has diverged, Argentina and Mexico have converged and Brazil remained relatively unchanged.

### 3. Differences from German law



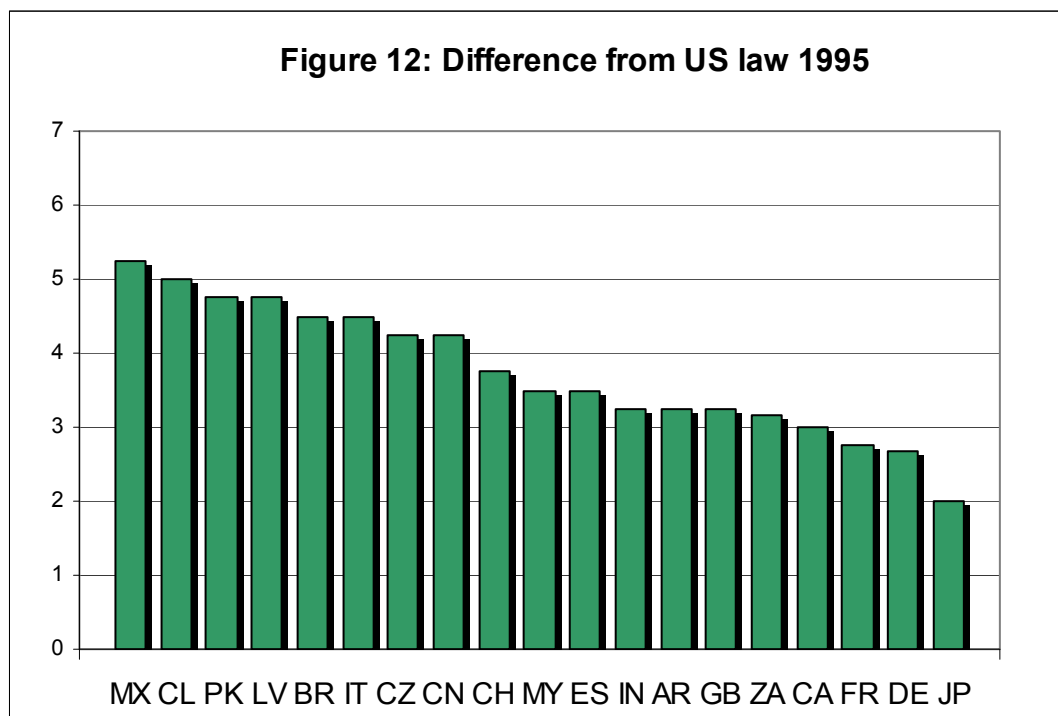
The general striking feature about the 1995 figure is that the differences between Germany and the other countries are relatively small. Only Canada and France differ more than four points from Germany. This contrasts with the previous figures because in 1995 there were six countries which differed more than

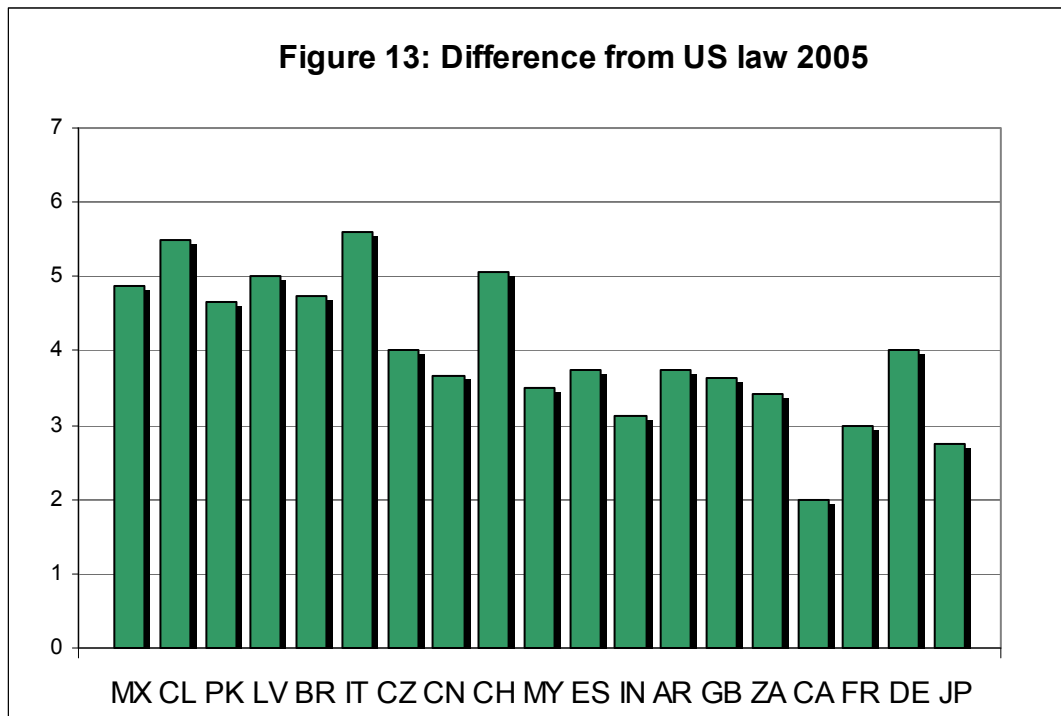


four points from UK law and seven countries which differed more than four points from French law.<sup>62</sup> Thus, German corporate law is “more mainstream” than the law of the UK and France.

This did not change fundamentally in 2005. Yet, there are movements in different directions. Chinese law has become remarkably similar to German law. Canadian law has also slightly converged, whereas US and UK law have diverged from German law. This illustrates that the notion of legal families is not only about “legal origins” but also about on-going influences on particular countries. Thus, it is not the abstract question of legal origins but the specific question of why particular legal changes take place which is crucial.<sup>63</sup>

#### 4. Differences from US law

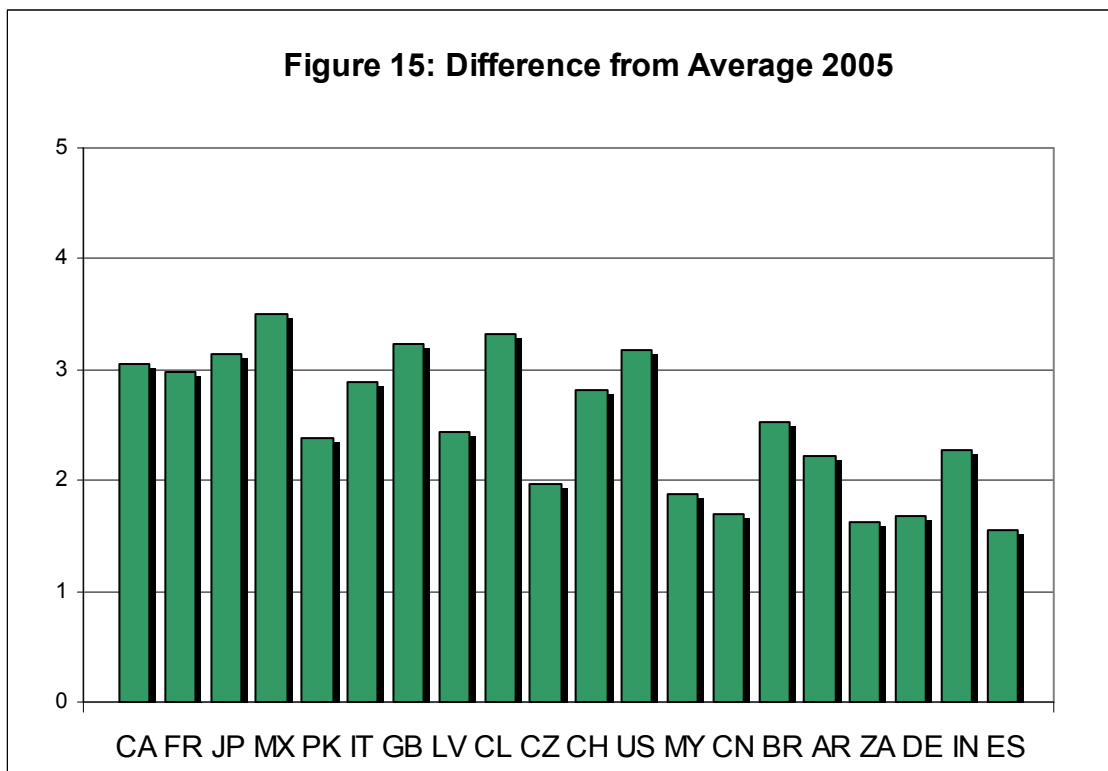
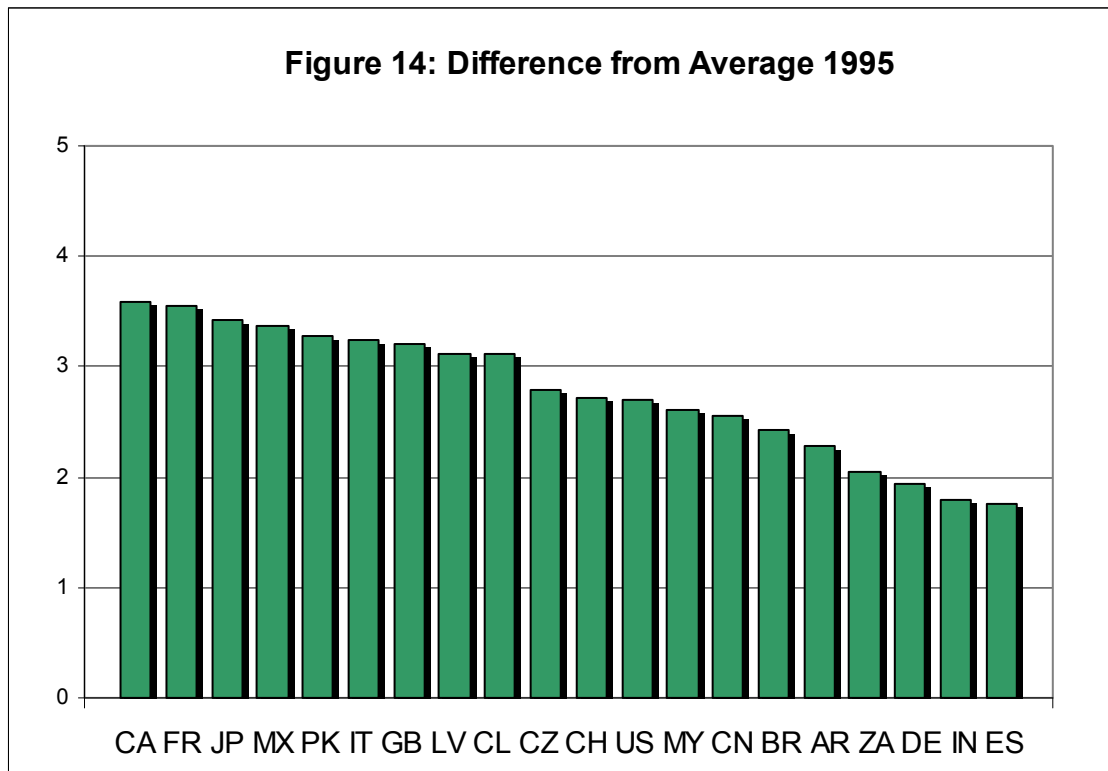




Given the American influence on Japanese and French law,<sup>64</sup> it is no surprise that in 1995 these legal systems were relatively close to the US. There is also some similarity between the US and the common law countries Canada, UK, India and Malaysia. Yet, in general, it is remarkable that US law appears to be quite exceptional.<sup>65</sup> Eight countries differ more than four points from US law, in contrast to the seven, six and four countries with respect to UK, French and German law.<sup>66</sup>

In 2005 this exceptionalism did not change. Thus, the claim that there has been an Americanization of the law of the other countries<sup>67</sup> cannot be confirmed. In particular, the difference of continental European and Latin American countries to US law has not been reduced considerably.

5. Differences from average



It is difficult to say which results one would expect from a calculation of the “differences from average”. On the one hand, one may contemplate that the law of successful countries is special because they have managed to create particularly sophisticated systems of corporate law. On the other hand, it could be emphasized that corporate law has to find a balance between different interests, so that every deviation from the international average (in either direction) could be harmful. Then, one would expect the most economically successful countries to be least similar to the other legal systems. The reality, however, does not confirm either of these theories. In 1995 as well as in 2005 (Figures 14 and 15) there were a assortment of countries which are most similar and most different from average.

### 6. Average of everything

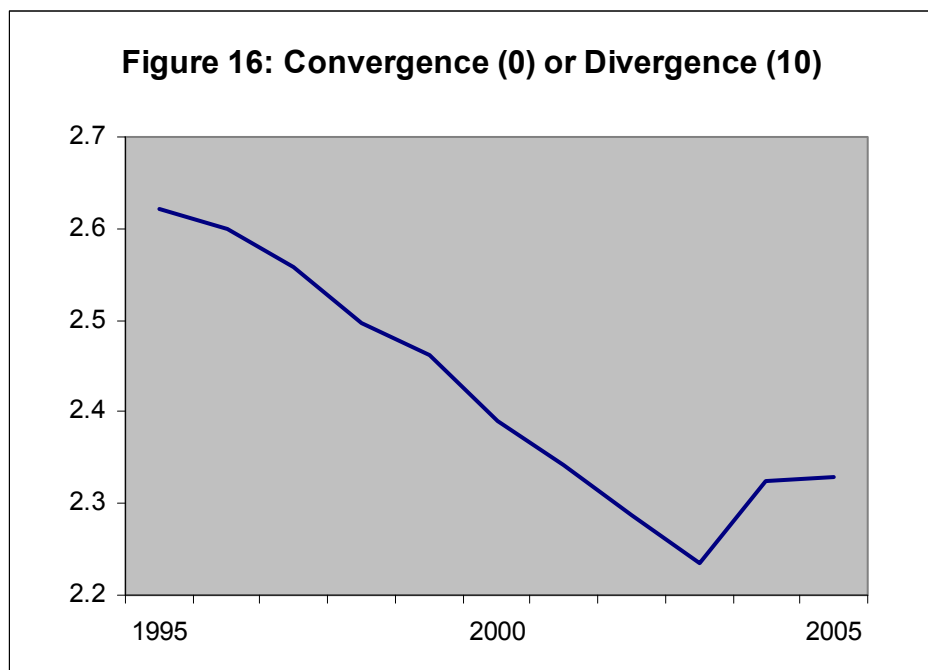
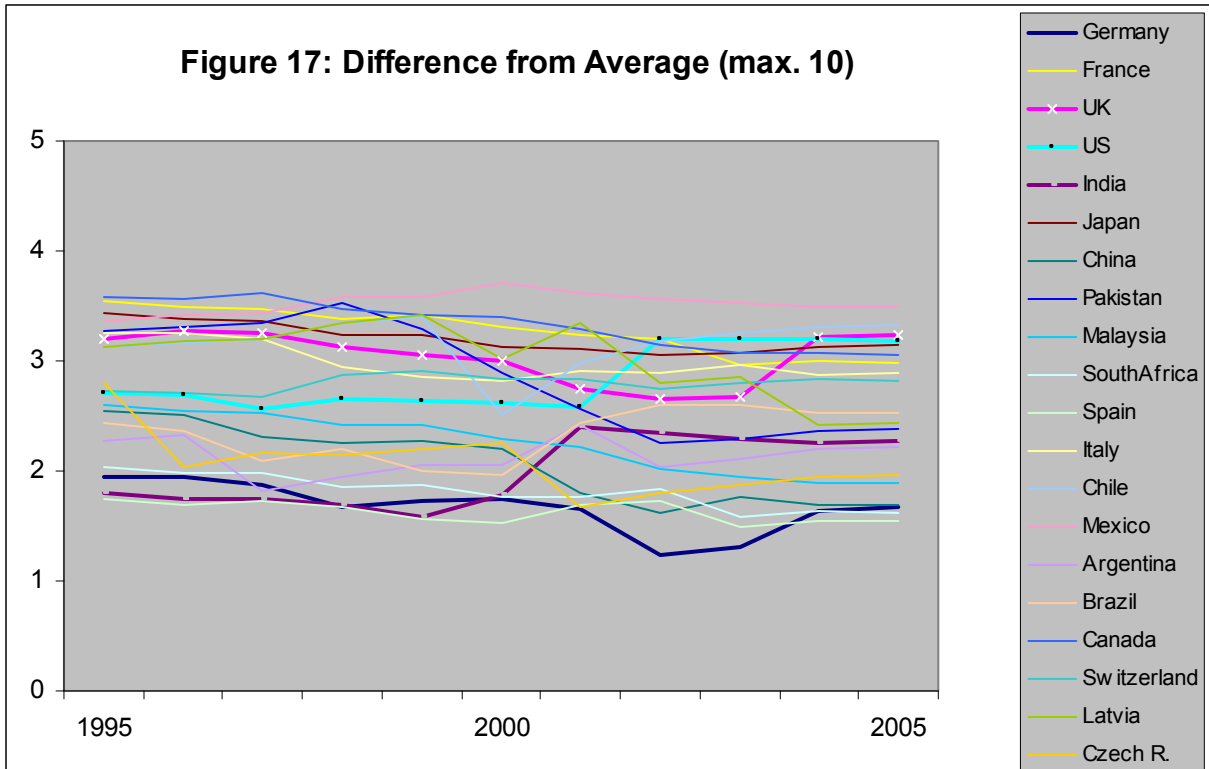


Figure 16 displays the mean of the differences from average,<sup>68</sup> and thus answers the general question of whether shareholder protection in the twenty countries has converged or diverged.<sup>69</sup> The resultant curve indicates constant convergence until 2003. Then, however, it stopped and the law has slightly started to diverge. Why was there divergence in 2004? According to the Figure 17 on the differences from average, German and UK law led to this development because both curves went up, which means that their laws became more different from the laws of the other countries.



Which developments in German and UK law caused this divergence? Remarkably, in both countries it was only one variable that changed. In Germany since 2004 multiple voting rights are excluded in all cases,<sup>70</sup> and thus the value of its variable 4 became “1”. In the UK, since 2004 the Combined Code recommends that at least half of the board members should be independent,<sup>71</sup> and thus the value of its variable 5 became “1”. These maximum scores are special because, with respect to variable 4 the 19 other countries have only the average value 0.58, and with respect to variable 5 the 19 other countries have only the average value 0.33. As a result, one should not over-interpret the 2004 divergence of Figure 16. This caveat is reinforced by the fact that our previous study on 5 countries (but 60 variables) did not find a similar divergence for 2004.<sup>72</sup>

#### IV. POSSIBLE EXPLANATIONS

Various reasons have been offered to explain why countries differ in their protection of shareholders, such as, for instance, the differences between developed and developing countries, different legal families (legal origins), cultural differences, politics, memberships in particular organizations (such as the EU) and geography.<sup>73</sup> The previous figures only confirm some of these reasons. According to these findings, there is, first, a difference between developed and developing countries, with the former countries usually performing better in protect-

ing shareholders.<sup>74</sup> Second, shareholder protection in common law countries is relatively similar.<sup>75</sup> However, this need not to derive from “the common law”. As these countries share similarities in their history and culture whilst also sharing English as a common legal language, it may just be the case that because of these reasons ideas “travel” more easily between these countries.<sup>76</sup> Further, it is worth noting, that there is no comparable similarity within the (allegedly) German and French civil law countries.<sup>77</sup> Third, geographic and political “closeness” may account for some similarities within the European and within the Latin-American countries. However, this too has its limits because there are also various counter-examples, for example, the difference between German and French law in 1995.<sup>78</sup>

In order to provide a deeper understanding of the differences and developments, it is useful to analyze the recent changes in shareholder protection in their wider comparative and historical context.

#### *A. Distinction between origin and transplant countries*

The distinction between origin and transplant countries<sup>79</sup> assumes that, on the one hand in some countries the law has developed endogenously, *i.e.* without copying the laws of other countries. On the other hand, there are countries which have just transplanted the law of one of these origin countries. This leads to different groups of countries which denote different legal families, such as English, French, and German legal origins.

A critical analysis of this view, first, has to address whether in reality there are really different independent origin countries. For instance, it can be objected that the origins of corporate law were very similar in all “origin countries”, namely the establishment of colonial corporations by English, Dutch, and French merchants.<sup>80</sup> Later on, interconnections between the different countries also continued, and thus it is no surprise that by the end of the 19<sup>th</sup> century the most important features of corporate law were relatively uniform across countries.<sup>81</sup> Thus, one could validly make the point that in corporate law there is just one legal origin which only differs in detail. However, this does not mean that the concept of legal origins has to be disregarded completely. Even though these legal origins have not developed independently and are not fundamentally dissimilar, there are still differences between English, French and German corporate law. Within limits, it is therefore feasible to use the didactic notion of different legal origins.<sup>82</sup>

Second the idea of transplant countries can be criticized because countries often do not simply copy the law of a particular origin country. The claim of a mere copying disregards (1) the on-going influence of their pre-transplant law, (2) the

mixtures and modifications at the moment when some copying of foreign law takes place and (3) the post-transplant period, in which the transplanted law may be altered (or at least applied differently from the origin country).<sup>83</sup> However, there is also no denying the fact that, for instance, in corporate law at some point in time many Asian, African and American countries have copied a significant part of their corporate law from one of the origin countries. Thus, although this transplanted law is not completely identical to the corporate law of the origin country, and although it may have changed later on, one can also accept the didactic notion that there are English, French or German legal transplant countries.

### B. Origin countries

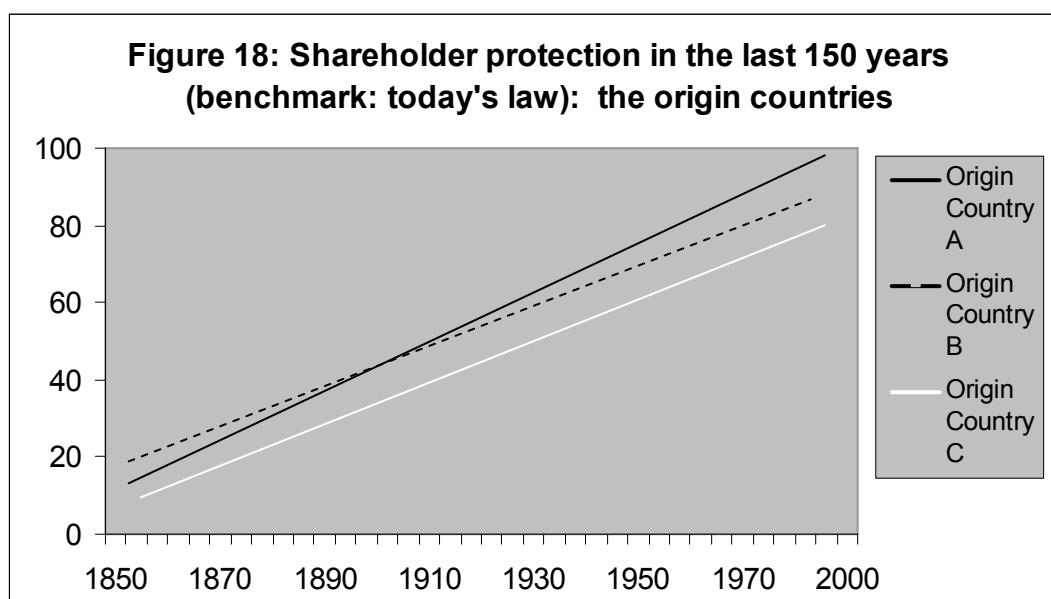
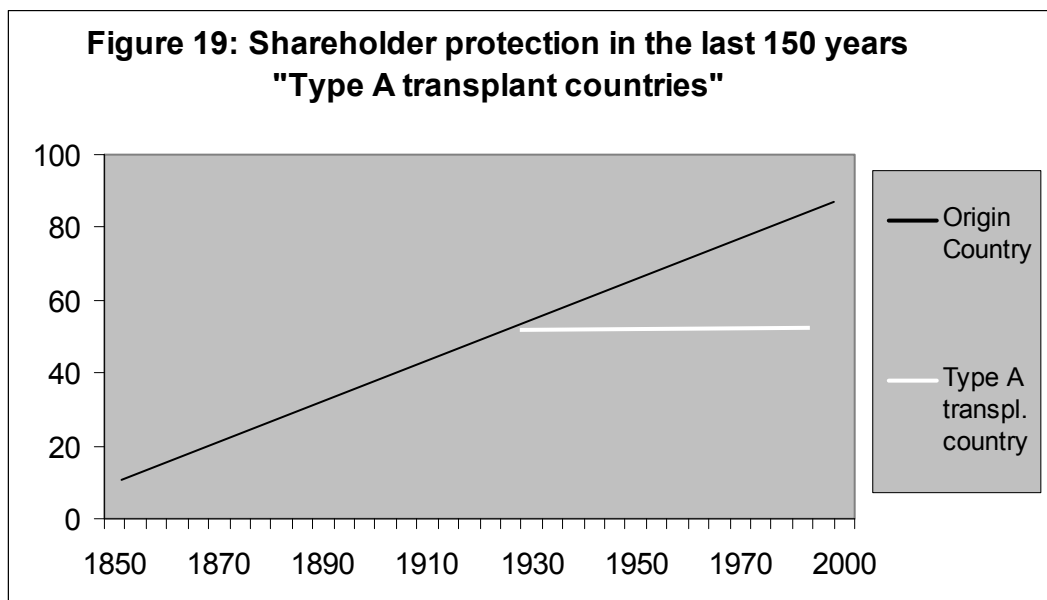


Figure 18 presents a simplified history of shareholder protection in the legal origin countries (*i.e.* the UK, Germany and France). It is based on the fact that shareholder protection has constantly improved in the last two centuries. Initially, the establishment of a company “only” depended on governmental or royal authorization. Thus, in all countries, there were no corporation acts which protected shareholders. This changed in the 19<sup>th</sup> century and thus protection improved.<sup>84</sup> Still, from today’s point of view the early Acts were incomplete and indeed every law reform extended them, and by doing this, shareholder protection has been strengthened as well. For instance, Pistor et al.<sup>85</sup> examined the development of corporate law in the last two centuries and found a gradual improvement of shareholder protection in the UK, Germany and France. Applying a quantitative methodology, this is also the result of Lele and Siems for the period from 1970 to 2005.<sup>86</sup>

### C. Transplant countries

It appears that the way in which shareholder protection develops in transplant countries follows one of the following three templates:

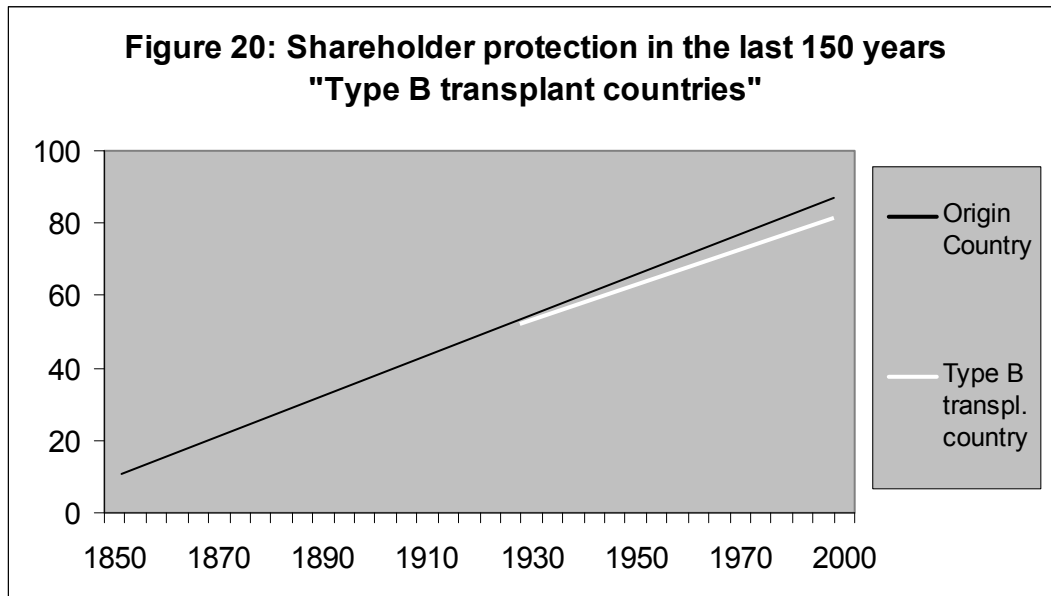


A first group of countries (“Type A transplant countries”) copied the law of one of the origin countries at one point in time and subsequently has not changed it significantly. This can also be seen in the figures above since some of the transplant countries perform worse than their origin countries.<sup>87</sup> The extent of this weaker protection of shareholders depends on the “version” of the transplanted corporate law. For instance, a country which copied a foreign corporate law very recently (such as China<sup>88</sup>) performs better than countries which have copied an older version of the law of their origin country decades or even centuries ago (such as most of the Latin American countries<sup>89</sup>).

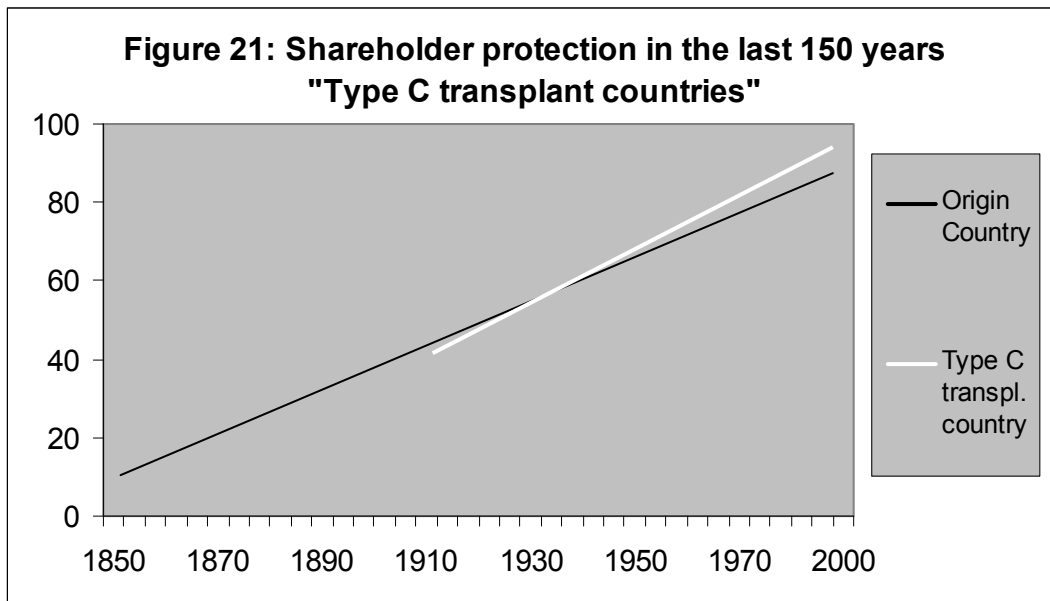
The first and main reason why these countries have been apathetic is weak legal adaptability. This may be based on various factors related to the law-making procedure of a particular country, its political system and its courts.<sup>90</sup> Secondly, the lack of change may also be caused by a weak relationship between the transplant and the origin country. In particular, if language hinders communication with the origin country – which is the case in most German and French legal transplant countries – improvements of the law of the origin country may not have been noticed by the transplant country. Thirdly, legal improvements in shareholder protection are not always necessary. Not only has corporate law to balance different interests, but the legal protection of shareholders is also connected with economic factors. For instance, in a country where there is hardly



any dispersed shareholder ownership, the law on public takeovers only plays a marginal role, and it is also possible that in a particular country a lack of legal shareholder protection may be compensated for by non-legal forms of protection.<sup>91</sup>



A second group of countries (“Type B transplant countries”) follows the path of its origin country and, by doing this, improves its shareholder protection (but does not exceed the origin country in the level of protection). This can be based on its own independent decision but it is also likely that the on-going consideration of the law of the origin country plays an important role. This influence is particularly strong if the origin and transplant country share common values and a common legal language. In the real world, this is the case in some of the common law countries, and thus explains, for example, the on-going (or even increasing) similarity between UK and Canadian, and UK and Malaysian corporate law.<sup>92</sup> However, this development is neither necessary nor restricted to common law countries. Pakistan’s very low score<sup>93</sup> shows that within the common law family there is no “natural” following of the English path. Furthermore, there are also examples of “type B transplant countries” in the civil law world, such as the on-going influence of German corporate law on Austria<sup>94</sup> and the on-going influence of French corporate law on Luxembourg.<sup>95</sup>



The third group of countries may be puzzling because here the transplant country gradually exceeds the level of shareholder protection of its origin country. Given the limited value of the distinction between origin and transplant countries<sup>96</sup> this potential development is, however, not surprising. For instance, the phenomenon of a “Type C transplant country” can be caused by the fact that two foreign countries subsequently influenced the law of this transplant country or that it deliberately decided to improve shareholder protection. A good real-world example is Japan. In 1995 Japanese corporate law exceeded both German and US law<sup>97</sup> – which were transplanted to Japan 100 and 50 years ago respectively.<sup>98</sup> It is also the case that Japan is not a mere transplant country any more. Noticeably, this can be seen in the 2005 reform (in force in 2006),<sup>99</sup> which despite some American influence, strengthens the distinctive features of Japanese corporate law.<sup>100</sup>

## V. CONCLUSION

This article has analyzed how shareholder protection has developed in 20 countries from 1995 to 2005. In contrast to traditional legal research, it has drawn on a quantitative methodology to law (“leximetrics”, “numerical comparative law”). Quantitative methods are no panacea and have inherit limits.<sup>101</sup> However, they can also lead to interesting results. The results of this study concern three levels:

- *Aggregates*: (1) In most countries shareholder protection has improved between 1995 and 2005. However, there appears to be an upper limit which countries do not exceed. (2) Most developed countries perform

better than developing countries in protecting shareholders. However, in recent years developing countries are catching up with the developed world.

- *Differences*: (1) Shareholder protection in common law countries is relatively similar whereas there is no comparable similarity within the German and French civil law families. (2) German corporate law is “more mainstream” than the law of the UK and France. “More eccentric” than these three countries is US corporate law. With respect to the differences from average, there is no clear-cut distinction between developed and developing countries. (3) Shareholder protection converged until 2003. Then, however, convergence appeared to have stopped – although there are conflicting results.
- *Explanations*: (1) The distinction between origin and transplant countries can be used as a didactic device. (2) In the three origin countries (UK, Germany and France) shareholder protection has constantly improved in the last centuries. (3) For the transplant countries, (a) it is decisive which “version” of the corporate law of the origin countries they copied. (b) It also matters whether transplant countries continue to take developments in the origin countries into account and thus improve their law. In this respect common law countries may have the advantage of common values and a common legal language. (c) Sometimes, however, transplant countries can and do leave the path of their (former) origin countries.

## Notes

<sup>1</sup> Lucian A. Bebchuk, *The Myth of Shareholder Franchise*, 93 VA. L. REV. 675 (2007).

<sup>2</sup> Lucian A. Bebchuk, *The Case for Increasing Shareholder Power*, 118 HARV. L. REV. 835 (2005); Lucian A. Bebchuk, *Letting Shareholders Set the Rules*, 119 HARV. L. REV. 1784 (2006). See also Lucian A. Bebchuk, *The Case for Shareholder Access: A Response to the Business Roundtable*, 55 CASE W. RES. L. REV. 557 (2005); LUCIAN A. BEBCHUK & JESSE M. FRIED, *PAY WITHOUT PERFORMANCE: THE UNFULFILLED PROMISE OF EXECUTIVE COMPENSATION* (2004).

<sup>3</sup> See Iman Anabtawi, *Some Skepticism about Increasing Shareholder Power*, 53 UCLA L. REV. 561 (2006); Leo E. Strine, *Towards a True Corporate Republic: A Traditionalist Response to Bebchuk's Solution for Improving Corporate America*, 119 HARV. L. REV. 1759 (2006); Simon Deakin, *Book Review of Bebchuk & Fried, Pay Without Performance*, 44 BRITISH J. INDUSTRIAL RELATIONS 257 (2006).

<sup>4</sup> Lynn A. Stout, *The Mythical Benefits of Shareholder Control*, 93 VA. L. REV. 789 (2007).

<sup>5</sup> Stephen M. Bainbridge, *The Case for Limited Shareholder Voting Rights*, 53 UCLA L. REV. 601 (2006); Stephen M. Bainbridge, *Director Primacy and Shareholder Disempowerment*, 119 HARV. L. REV. 1735 (2006).

<sup>6</sup> Julian Velasco, *Taking Shareholder Rights Seriously* (Notre Dame Legal Studies Paper No. 06-03), available at <http://ssrn.com/abstract=886340>. See also Julian Velasco, *The Fundamental Rights of the Shareholder*, 40 U.C. DAVIES L. REV. 407 (2006).

<sup>7</sup> James A. McConvill, *Shareholder Empowerment as an End in Itself: A New Perspective on Allocation of Power in the Modern Corporation*, OHIO N.U. L. REV. (forthcoming).

<sup>8</sup> Directive 2007/.../EC of the European Parliament and the Council on the exercise of certain rights of shareholders in listed companies, provisional text available at [http://ec.europa.eu/internal\\_market/company/docs/shareholders/dir/draft\\_dir\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/shareholders/dir/draft_dir_en.pdf).

<sup>9</sup> Mathias M. Siems, *The Case Against Harmonisation of Shareholder Rights*, 6 EUR. BUS. ORGANIZATION L. REV. 539 (2005).

<sup>10</sup> For the UK see Richard Nolan, *Shareholder Rights in Britain*, 7 EUR. BUS. ORGANIZATION L. REV. 549 (2006).

<sup>11</sup> For details see OECD Principles of Corporate Governance, pp. 32-39 (2004), available at <http://www.oecd.org/dataoecd/32/18/31557724.pdf>.

<sup>12</sup> OECD-Principles, *supra* note 11, at 9. See also Howard Sherman, *Corporate Governance Ratings*, 12 CORPORATE GOVERNANCE 5 at 7 (2004) (rating-agencies use the OECD Principles in order to rank companies' quality of corpo-

rate governance); Hwa-Jin Kim, *Taking International Soft Law Seriously: Its Implications for Global Convergence in Corporate Governance*, JOURNAL OF KOREAN LAW 1 at 34 (2001) (for the influence on South Korea).

<sup>13</sup> For a related point see Cally Jordan, *The Conundrum of Corporate Governance*, 30 BROOK. J. INT'L L. 983 (2005).

<sup>14</sup> This term was first used in Robert D. Cooter & Tom Ginsburg, *Leximetrics: Why the Same Laws are Longer in Some Countries than Others* (U Illinois Law & Economics Research Paper 2003), available at <http://ssrn.com/abstract=456520>. See also Mathias M. Siems & Priya P. Lele, *Shareholder Protection – A Leximetric Approach*, 7 J. CORPORATE LAW STUDIES 17 (2007).

<sup>15</sup> This term was first used in Mathias M. Siems, *Numerical Comparative Law – Do we Need Statistical Evidence in Order to Reduce Complexity?*, 13 CARDOZO J. INT'L & COMP. L. 521 (2005).

<sup>16</sup> Rafael La Porta et al., *Law and Finance*, 106 J. POLIT. ECONOMY 1113 (1998). See also Simeon Djankov et al, *The Law and Economics of Self-Dealing* (2005), available at <http://ssrn.com/abstract=864645> (and *J. Financial Econ.*, forthcoming, 2008).

<sup>17</sup> See, e.g., Sofie Cools, *The Real Difference in Corporate Law Between the United States and Continental Europe: Distribution of Powers*, 30 DEL. J. CORP. L. 697 (2005); Udo Braendle, *Shareholder Protection in the USA and Germany - 'Law and Finance' Revisited*, 7 GERMAN L.J. 257 (2006); Holger Spamann, *On the Insignificance and/or Endogeneity of La Porta et al.'s 'Anti-Director Rights Index' under Consistent Coding* (Harvard Law School John M. Olin Center Discussion Paper 2006), available at <http://ssrn.com/abstract=894301>.

<sup>18</sup> See Lele & Siems, *supra* note 14, at 19-21; John C. Coffee, *The Rise of Dispersed Ownership: The Roles of Law and the State in the Separation of Ownership and Control*, 111 YALE L.J. 1 at 4 (2001).

<sup>19</sup> Lele & Siems, *supra* note 14. See also Priya P. Lele & Mathias M. Siems, *Diversity in Shareholder Protection in Common Law Countries*, DICE REPORT – J. INSTITUTIONAL COMPARISONS 3 (2007/1) and Mathias M. Siems, *Shareholder Protection Across Countries – Is the EU on the Right Track?*, DICE REPORT – J. INSTITUTIONAL COMPARISONS 39 (2006/3) where we also use this data.

<sup>20</sup> If the law of a country does not provide the right to put an item on the agenda of a general meeting (including the annual general meeting), the right to call an extraordinary general meeting was coded, provided the minority shareholders can utilize this right to discuss any agenda.

<sup>21</sup> A two-way proxy form refers to a form which can be used in favor and against a proposed resolution.

<sup>22</sup> This can also be regulated in securities law (including listing requirements).

<sup>23</sup> This can also be regulated in a corporate governance code. If there is no “comply or explain” requirement, this may, however, justify a lower score.

<sup>24</sup> Notes: (1) In a two-tier system this concerns only member of the supervisory board (not the management board). (2) If the law of a country did not require that a certain percentage of the board must be “independent”, however, if it provided that the members of some special committees of the board needed to be independent (*e.g.*, compensation and audit committee), so that it indirectly prescribed that some of the board members were “independent”, a lower score was assigned.

<sup>25</sup> Other intermediate scores are also possible. They are calculated in the same way, *i.e.* score = percentage of independent board members/2. If the law requires a fixed number of independent directors (*e.g.*, always 2 independent directors), the (estimated) average size of boards was used in order to calculate the score.

<sup>26</sup> For two-tier-systems both the management and the supervisory board were addressed.

<sup>27</sup> This can be based on a specific provision in statutory or case law. It can also be based on contract, for instance, if the company has to conclude an employment contract with the director and this contract cannot be terminated without good reason.

<sup>28</sup> This restricts dismissal because either (1) an immediate unilateral termination of this contract may not be possible or (2) the directors have to be compensated in case of immediate unilateral termination of this contract.

<sup>29</sup> Variables 7 and 8 only concern the law on the books and not the efficiency of courts in general.

<sup>30</sup> We have also given intermediate scores, *e.g.*,  $\frac{3}{4}$  for a 1 % hurdle,  $\frac{1}{4}$  for a 10 or 15 % hurdle. A 5 % hurdle led to the score  $\frac{1}{2}$ .

<sup>31</sup> The substantive requirements for a lawful decision of the general meeting have not been coded.

<sup>32</sup> We have also given intermediate scores, *e.g.*,  $\frac{1}{4}$  for a 33 % hurdle and  $\frac{3}{8}$  for a 20 % hurdle.

<sup>33</sup> See, *e.g.*, Luca Enriques, *The Mandatory Bid Rule in the Takeover Directive: Harmonization Without Foundation?*, EUR. COMPANY & FINANCIAL L. REV. 440 (2004); Lucian A. Bebchuk, *Efficient and Inefficient Sales of Control*, 109 QUART. J. ECON. 957 (1994).

<sup>34</sup> See *supra* A.

<sup>35</sup> This article is part of the project on Law, Finance and Development at the Centre for Business Research, University of Cambridge, UK. For further information see <http://www.cbr.cam.ac.uk/research/programme2/project2-20.htm>.

<sup>36</sup> *Supra* B.

<sup>37</sup> Lele & Siems, *supra* note 14.

<sup>38</sup> But *see supra* note 23.

<sup>39</sup> See also the examples in the description of the index above.

<sup>40</sup> At <http://www.cbr.cam.ac.uk/research/programme2/project2-20output.htm>.

<sup>41</sup> For variable 5 *see* for China: Donald C. Clarke, *The Independent Director in Chinese Corporate Governance*, 36 DELAWARE JOURNAL OF CORPORATE LAW 125 (2006); for France: French Corporate Governance Principles, no. 8.2; for Germany: German Corporate Governance Code, no. 5.4.2; for India: Clause 49.I (A) of the Listing Agreement (since 2000); for Malaysia: Listing Requirement 3.14 of the Kuala Lumpur Stock Exchange (KLSE); for Mexico: Article 14.bis.3.IV of the former 1975 SMA, introduced in 2001; for South-Africa: King Report II 2001, no. 2.2; for Spain: 1998 Olivencia Code, no. 2.2; for the UK: Combined Code 2003, s. A.3.2; for the US: NYSE Manual, § 303A.01 (since 2002).

For variable 9 *see* for Argentina: regulation 401/2002 (following the general mandate established in the article 23 of the 677/2001 Decree); for Brazil: CVM Instruction 299/1999 and art. 354 A introduced by Law 10303/01; for Chile: 19705/2000 Act, article 2.18 which led to new article 69ter of the 18046/1981 Act; for the Czech Republic: Commercial Code, s. 183b(1) (since 1996); for Germany: §§ 35(1), 29(2) WpÜG (since 2001); for Italy: Art. 106 d. lgs. n. 58/1998 (TUF), and regulated by Reg. CONSOB 11520/1998; for Latvia: Law of the Financial Instrument Market, s. 66 (since 2004); for Pakistan: Regulations 5 and 12 of the Listed Companies (Substantial Acquisition of Shares and Takeovers) Regulations, 2000; for Switzerland: Federal Act on Stock Exchanges and Securities Trading (since 1998).

<sup>42</sup> With respect to variable 6 there has only been a minor change in the UK in 1996 due to the Code of Best Practice 1995, s. D2 (applied since 1996), and with respect to variable 8 there has only been a minor change in Mexico in 2001 due to the new article 14.bis.3VI.f of the Stock Markets Act.

<sup>43</sup> With respect to variable 8 (year 2005) only the following countries score 0.5 or less: Brazil (Law 6404/76, arts. 115, 117), Chile (18046/1981 Act, arts. 69, 133), Mexico (*see* previous note), Pakistan (Companies Ordinance, 1984, s. 290 and Ordinance No. C 2002 dated 26 Oct. 2002).

With respect to variable 10 (year 2005) only the following countries score 0.5 or less: Canada (Ontario Securities Act, s. 101), Chile (18045/1981 Act, art. 12), Latvia (Law of the Financial Instrument Market, s. 61), Mexico (Arts. 109-111 of the 2005 Stock Markets Act only came into force in 2006), Pakistan (Listed Companies (Substantial Acquisition of Shares and Takeovers) Regulations, 2000, reg. 4).

<sup>44</sup> A number of countries have even the score 0. For variable 3 these are Argentina, Brazil, Chile, Czech Republic, Latvia, Italy, and Switzerland. For variable 5 these are Argentina, Czech Republic, Japan, Latvia, and Pakistan.

<sup>45</sup> See already Lele & Siems, *supra* note 14, at 34.

<sup>46</sup> These figures use the abbreviations AR (Argentina), BR (Brazil), CA (Canada), CH (Switzerland), CL (Chile), CN (China), CZ (Czech Republic), DE (Germany), ES (Spain), FR (France), GB (United Kingdom), IN (India), IT (Italy), JP (Japan), LV (Latvia), MX (Mexico), MY (Malaysia), PK (Pakistan), US (USA), ZA (South Africa).

<sup>47</sup> For the “causality puzzle” see MATHIAS M. SIEMS, CONVERGENCE IN SHAREHOLDER LAW Ch. 7 I (2007) (forthcoming).

<sup>48</sup> See also Daniel R. Kelemen & Eric C. Sibbitt, *The Americanization of Japanese Law*, 23 U. PA. INT’L. ECON. L. 269 (2002).

<sup>49</sup> For the relatively early reception of Anglo-Saxon concept in French corporate law see already Lele & Siems, *supra* note 14, at 37-8.

<sup>50</sup> For an explanation see *infra* IV.

<sup>51</sup> Available at <http://www.worldbank.org/wbi/governance/govdata/>. Rule of law measures “the extent to which agents have confidence in and abide by the rules of society, in particular the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence”.

<sup>52</sup> For a similar result see Siems, *supra* note 47, at Ch. 6 I and III.

<sup>53</sup> For this methodology see already Lele & Siems, *supra* note 14, at 37.

<sup>54</sup> Edward Glaeser & Andrei Shleifer, *Legal Origins*, 117 Q. J. ECON. 1193 (2002); Simeon Djankov et al., *The New Comparative Economics*, 31 J. COMP. ECON. 595 at 605-6 (2003); Thorsten Beck & Ross Levine, *Legal Institutions and Financial Development*, HANDBOOK OF NEW INSTITUTIONAL ECONOMICS 251 at 254-8 (Claude Menard & Mary M. Shirley eds., 2005).

<sup>55</sup> See, e.g., Brian R. Cheffins & Randall S. Thomas, *The Globalization (Americanization) of Executive Pay*, BERKELEY BUS. L.J. 233 (2004); Edward Greene & Pierre-Marie Boury, *Post-Sarbanes-Oxley corporate governance in Europe and the USA: Americanisation or convergence?*, 1 INT. J. DISCLOSURE & GOVERNANCE 21 (2003); Kelemen & Sibbitt, *supra* note 48; Siems, *supra* note 47, at Ch. 6 II.

<sup>56</sup> For South Africa this is uncontroversial; see REINHARD ZIMMERMANN, KENNETH REID, & DANIEL VISSER (eds.), MIXED LEGAL SYSTEMS IN COMPARATIVE PERSPECTIVE: PROPERTY AND OBLIGATIONS IN SCOTLAND AND SOUTH AFRICA (2005). For India see Mathias M. Siems, *Legal Origins: Reconciling Law & Finance and Comparative Law*, 52 MCGILL L.J. 55, 71-2 (2007).

<sup>57</sup> This will be explained *infra* IV.

<sup>58</sup> See the categorizations in La Porta et al., *supra* note 16; Glaeser & Shleifer, *supra* note 54.

<sup>59</sup> See [http://ec.europa.eu/internal\\_market/company/index\\_en.htm](http://ec.europa.eu/internal_market/company/index_en.htm).

<sup>60</sup> See *supra* note 49.



<sup>61</sup> See, e.g., for Germany the WpÜG (Takeover Act) 2001 and the Corporate Governance Code 2002, and for Italy the lgs. n. 58/1998 (TUF, Testo Unico della Finanza) and the Preda Code 1999.

<sup>62</sup> See *supra* 1 and 2.

<sup>63</sup> See *infra* IV.

<sup>64</sup> See *supra* notes 48, 49.

<sup>65</sup> For a similar result see already Lele & Siems, *supra* note 14, at 41-2.

<sup>66</sup> See *supra* 1-3.

<sup>67</sup> See *supra* note 55.

<sup>68</sup> *Supra* 5.

<sup>69</sup> Non-quantitative research disagrees about this fact; see, e.g., JEFFREY N. GORDON & MARK J. ROE (eds.), CONVERGENCE AND PERSISTENCE IN CORPORATE GOVERNANCE (2004); Brett H. McDonnell, *Convergence in Corporate Governance – Possible, but not Desirable*, 47 VILL. L. REV. 341 (2002); Douglas M. Branson, *The Very Uncertain Prospect of “Global” Convergence in Corporate Governance*, 34 CORNELL INT’L L.J. 321 (2001); Ronald J. Gilson, *Globalizing Corporate Governance: Convergence of Form or Function*, 49 AM. J. COMP. L. 329 (2001); Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 88 GEO. L.J. 439 (2001); Siems, *supra* note 47.

<sup>70</sup> § 12(2) AktG as amended by KonTraG (1998): existing multiple voting rights remained valid until 2003; new multiple voting rights cannot be granted

<sup>71</sup> Combined Code 2003 (applied since 2004), s. A.3.2.

<sup>72</sup> Lele & Siems, *supra* note 14, at 42.

<sup>73</sup> For an overview see Beck & Levine, *supra* note 54; Siems, *supra* note 56, at 60-2. For complementarities between legal and economic institutions see Simon Deakin & Beth Ahlering, *Labor Regulation, Corporate Governance and Legal Origin: A Case of Institutional Complementarity?*, 41 LAW & SOC’Y REV. (forthcoming in 2007).

<sup>74</sup> *Supra* III A.

<sup>75</sup> *Supra* III B 1, 4.

<sup>76</sup> Siems, *supra* note 56, at 72-3.

<sup>77</sup> *Supra* III B 2, 3.

<sup>78</sup> *Supra* III B 3.

<sup>79</sup> See e.g., Glaeser & Shleifer, *supra* note 54; Djankov et al., *supra* note 54; Beck & Levine, *supra* note 54.

<sup>80</sup> Siems, *supra* note 47, Ch. 1 III.

<sup>81</sup> See Hansmann & Kraakman, *supra* note 69, at 439-40; Henry Hansmann & Reinier Kraakman, *What is Corporate Law?*, THE ANATOMY OF CORPORATE LAW 5-15 (Reinier Kraakman et al., eds 2004).

<sup>82</sup> This is also the view of mainstream comparative law. See RENE DAVID & JOHN E. C. BRIERLEY, MAJOR LEGAL SYSTEMS IN THE WORLD TODAY 21 (3d ed.

1995) (“it is no more than a didactic device”); KONRAD ZWEIGERT & HEIN KÖTZ, *INTRODUCTION TO COMPARATIVE LAW* 72 (3d ed. 1998) (“... any division of the legal world into families is a rough and ready device. It can be useful for the novice by putting the confusing variety of legal systems into some kind of loose order, but the experienced comparatist will have developed a ‘nose’ for the distinctive style of national legal systems”).

<sup>83</sup> Siems, *supra* note 56, at 69-70. See also Ugo Mattei, *Three Patterns of Law: Taxonomy and Change in the World’s Legal Systems*, 45 *AM. J. COMP. L.* 5 at 14 (1997) (“Legal systems never are – they always become”).

<sup>84</sup> Siems, *supra* note 47, at Ch. 1 III.

<sup>85</sup> Katharina Pistor et al., *The Evolution of Corporate Law*, 23 *U. PA. J. INT’L ECON L.* 751 (2002).

<sup>86</sup> Lele & Siems, *supra* note 14, at 31.

<sup>87</sup> See *supra* III A.

<sup>88</sup> Companies Act 1993 and now Companies Act 2005

<sup>89</sup> See Pistor et al., *supra* note 85, at 793, 841-6.

<sup>90</sup> See Mathias M. Siems, *Legal Adaptability in Elbonia*, 2 *INT. J. LAW IN CONTEXT* 393 (2006).

<sup>91</sup> For an example see Curtis J. Milhaupt, *Creative Norm Destruction: The Evolution of Nonlegal Rules in Japanese Corporate Governance*, 149 *U. PA. L. REV.* 2083 (2001).

<sup>92</sup> *Supra* III B 1.

<sup>93</sup> *Supra* III A.

<sup>94</sup> See Martin Gelter, *The Structure of Regulatory Competition in European Corporate Law*, 5 *J. CORPORATE LAW STUD.* 247 at 254-255 (2005). But see also Mathias M. Siems, *The Divergence of Austrian and German Commercial Law*, *INT. COMPANY & COMMERCIAL L. REV.* 273 (2004).

<sup>95</sup> See EMILE DENNEWALD, *FONDEMENTS DU DROIT ET DES SOCIETES COMMERCIALES AU LUXEMBOURG* (2<sup>nd</sup> edn., 1994).

<sup>96</sup> *Supra* IV A.

<sup>97</sup> *Supra* III A.

<sup>98</sup> Siems, *supra* note 47, Ch. 1 III.

<sup>99</sup> Thus, this reform was not included in the index which coded the legal development from 1995 to 2005.

<sup>100</sup> See Marc Dernauer, *Die japanische Gesellschaftsrechtsreform 2005/2006*, 10 *ZEITSCHRIFT FÜR JAPANISCHES RECHT* 123 at 158 (2005).

<sup>101</sup> Mathias M. Siems, *Numerical Comparative Law – Do we Need Statistical Evidence in Order to Reduce Complexity?*, 13 *CARDOZO J. INT’L & COMP. L.* 521 (2005).

