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Corporate Governance

Convergence in Corporate Governance:
A Leximetric Approach

By Mathias M. Siems

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Convergence in Corporate Governance: A Leximetric Approach[*]

Mathias M. Siems

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Abstract: Has there been convergence of corporate governance systems? There has been a great deal of controversy on this issue in the last ten years, and it is likely that this debate is to re-emerge in the context of the current financial crisis. In this article I use a new quantitative methodology ("leximetrics") in order to answer the question of whether there has been convergence, divergence or persistence of the legal rules which shape country-level differences in corporate governance. The article is based on new indices which code the development of shareholder, creditor, and worker protection in France, Germany, India, the UK and the US from 1970 to 2005. The main result is that one has to distinguish between different areas of law: the laws have converged in shareholder protection, they have diverged in worker protection and in creditor protection converging and diverging trends even out. These results do not depend on the distinction between Civil Law and Common Law countries.

Keywords: corporate governance, leximetrics, shareholder protection, creditor protection, worker protection, convergence

JEL Codes: G30, G38, K00, K12, K31, N20, N40, O16, P50

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Convergence in Corporate Governance:

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Mathias M. Siems*

I. INTRODUCTION

Has there been convergence of corporate governance systems? The current debate started with Hansmann and Kraakman. They expect "substantial convergence in the practices of corporate governance as well as in corporate law" because the Anglo-American model of corporate governance has won the day.[1] Others object that historical and cultural differences between countries are likely to persist, reflecting different types of market economies.[2] This debate will re-emerge in the context of the financial crisis of 2007 to 2009. Assuming that corporate governance failures have contributed to the financial crisis,[3]

* Professor of Law, Norwich Law School, University of East Anglia and Research Associate, Centre for Business Research, University of Cambridge. I am grateful for comments received from participants at the Workshop on Corporate Governance held at Copenhagen Business School, Denmark, in June 2009, in particular Niels Mygind and Per-Olof Bjuggren.

1. Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L.J. 439, 443 (2001).

2. *E.g.*, THOMAS CLARKE, INTERNATIONAL CORPORATE GOVERNANCE: A COMPARATIVE APPROACH 266 (2008); Douglas M. Branson, *The Very Uncertain Prospect of "Global" Convergence in Corporate Governance*, 34 CORNELL INT'L L.J. 321 (2001). *See also* CONVERGENCE AND PERSISTENCE IN CORPORATE GOVERNANCE (Jeffrey N. Gordon & Mark J. Roe eds., 2004) (presenting a collection of scholarly works on this topic).

3. For this view see David Erkens et al., *Corporate Governance in the 2007–2008 Financial Crisis: Evidence from Financial Institutions Worldwide* (ECGI Working Paper No. 249/2009, 2009) *available at* http://ssrn.com/abstract=1397685. For the counterview see Brian R. Cheffins, *Did Corporate Governance "Fail" During the 2008 Stock Market Meltdown? The Case of the S&P 500*, 65 BUS. LAW. 1 (2009).

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commentators are likely to use the slogan that we need global solutions to this global problem to justify (further) convergence in corporate governance.[4]

This Article examines whether national laws on corporate governance have become more similar. This focus on legal rules provides a link to the literature on the convergence of legal systems. Here too, some contend that in the modern world, legal differences, in particular the distinction between civil law and common law legal origins, have become less marked,[5] whereas others object that different legal mentalities still play an important role.[6] Modified positions are also possible. For instance, it could be said that today legal systems do not primarily differ because of different legal origins but due to their belonging to the EU, or due to the question of whether a country is developed or developing.[7] Another modification is that there is only a "weak legal origin" effect, which means that the effect of belonging to a particular legal origin varies over time, depending on the strength of pressures for convergence and for the "endogenization" of law to local conditions.[8]

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4. For instance, with respect to financial institutions, see BASEL COMM. ON BANKING SUPERVISION, PRINCIPLES FOR ENHANCING CORPORATE GOVERNANCE (March 2010), *available at* http://www.bis.org/publ/bcbs168.pdf (setting forth principles for sound corporate governance intended to assist governments in improving their corporate governance frameworks).

5. *See generally* B. S. Markesinis, *Learning from Europe and Learning in Europe*, *in* THE GRADUAL CONVERGENCE: FOREIGN IDEAS, FOREIGN INFLUENCES, AND ENGLISH LAW ON THE EVE OF THE 21ST CENTURY 1 (B. S. Markesinis ed., 1994); Esin Örücü, *Family Trees for Legal Systems: Towards a Contemporary Approach* in EPISTEMOLOGY AND METHODOLOGY OF COMPARATIVE LAW 359–75 (Mark Van Hoecke ed., 2004); Mathias M. Siems, *Legal Origins: Reconciling Law & Finance and Comparative Law*, 52 MCGILL L.J. 55 (2007).

6. *See generally* Pierre Legrand, *European Legal Systems Are Not Converging*, 45 INT'L & COMP. L.Q. 52 (1996); PIERRE LEGRAND, FRAGMENTS ON LAW-AS-CULTURE (1999); Pierre Legrand, *Paradoxically, Derrida: For a Comparative Legal Studies*, 27 CARDOZO L. REV. 631 (2005).

7. *See, e.g.*, Ugo Mattei, *Three Patterns of Law: Taxonomy and Change in the World's Legal Systems*, 45 AM. J. COMP. L. 5, 14 (1997) (proposing a taxonomy in which European and other developed countries would be part of a common "rule of professional law" group).

8. *See generally* John Armour et al., *How Do Legal Rules Evolve? Evidence From a Cross-Country Comparison of Shareholder, Creditor, and Worker Protection*, 57 AM. J. COMP. L. 579 (2009); Simon Deakin et al., *The Evolution of Labour Law: Calibrating and Comparing Regulatory Regimes*, 146 INT'L LABOUR REV. 133 (2007).

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A crucial element of corporate governance is how well shareholders, creditors and workers are protected. This Article uses a new quantitative methodology ("leximetrics")[9] in order to answer the question of whether there has been convergence, divergence, or persistence of the rules on shareholder, creditor, and worker protection. In particular, this Article will analyze whether there are deep differences between the Anglo-Saxon countries (common law countries) and Continental Europe (civil law countries). The bases for this Article are three comprehensive indices for shareholder, creditor, and worker protection, which code the legal development of France, Germany, India, the United Kingdom, and the United States from 1970 to 2005. Part II describes these datasets and explains how they can be used to measure convergence or divergence of the law. Part III examines the differences and similarities between the five countries in detail. This will be supplemented by Part IV, which provides a more general analysis on convergence and legal origins. Part V concludes.

Two caveats must be made. First, this Article is mainly interested in the legal rules that determine national differences of corporate governance. This focus on legal rules does not deny that their enforcement may differ between jurisdictions, or that non-legal considerations also determine corporate governance at the firm level. Secondly, this Article does not try to answer the "causality problem," namely whether legal convergence (or divergence) is mainly the result of factual changes (the "law follows" thesis), or whether law is predominately a source of factual changes itself (the "law matters" thesis). This point is well discussed in previous literature.[10] This Article will, however, analyze why particular legal changes have taken place. This does not mean that the law merely reacts. Rather, this analysis makes the realistic assumption that, at least to some extent, the law is influenced by factual changes.

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9. *See generally* Priya P. Lele & Mathias M. Siems, *Shareholder Protection: A Leximetric Approach*, 7 J. CORP. L. STUD. 17 (2007) [hereinafter Lele & Siems, *Leximetric Approach*]; Mathias M. Siems, *Shareholder Protection Around the World (Leximetric II)*, 33 DEL. J. CORP. L. 111 (2008) (expounding upon the leximetric approach to shareholder protection).

10. *E.g.*, Hansmann & Kraakman, *supra* note 1, at 454–55; Klaus Heine & Wolfgang Kerber, *European Corporate Laws, Regulatory Competition and Path Dependence*, 13 EUROP. J. L. & ECON. 47 (2002); MATHIAS M. SIEMS, CONVERGENCE IN SHAREHOLDER LAW 231–33 (2008).

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II. METHODOLOGY

The bases of this Article are three indices that code how well countries protect shareholders, creditors, and workers. These indices cover a wide range of variables: 60 variables for shareholder protection, 44 variables for creditor protection, and 40 variables for worker protection.[11] The indices are therefore very detailed in their legal coverage, with 144 legal variables coded for each country-year. The indices also extend over a relatively long time period: 36 years (1970 to 2005). As a limitation, however, only the laws for a small number of countries have been coded: France, Germany, the United Kingdom, the United States, and India. These countries are of particular interest because they include three "parent" legal systems: the United Kingdom, France, and Germany;[12] the world's largest economy: the United States; and the world's largest democracy: India. Thus, in total, these three indices code for 25,920 observations.[13]

The full text of these indices and data (plus detailed explanations) can be found online.[14] Here, for purposes of illustration, it is sufficient to present extracts of the shareholder protection index (Table 1) and of the French and U.K. codings (Tables 2 and 3).

11. *See* University of Cambridge, Centre for Business Research, http://www.cbr.cam.ac.uk/research/programme2/project2-20output.htm (last visited Apr. 14, 2010) (presenting several datasets on creditor protection, labor regulation, and shareholder protection).

12. For the distinction between parent and transplant countries see Siems, *supra* note 9, at 138–44.

13. Since *(60+44+40)*36*5 = 25,920*.

14. *See supra note* 11.

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Table 1: Shareholder protection index (extract)[15]

Variables	*Description*
I. Protection against board and management	
1. Powers of the general meeting	The following variables equal 0 if there is no power of the general meeting and 1 if there is a power of the general meeting. (1) Amendments of articles of association (2) Mergers and divisions (3) Capital measures (4) De facto changes: The decisive thresholds are the sale of substantial assets of the company (e.g., if the sale of more than 50 % requires approval of the general meeting it equals 1; if more than 80 %, it equals 0.5; otherwise 0). (5) Dividend distributions: Equals 1 if the general meeting can effectively influence the amount of dividend (i.e., if it decides about the annual accounts and the annual dividend, and if the board has no significant possibility of 'manipulating' the accounts); equals 0.5 if there is some participation of the general meeting; equals 0 if it is only the board that decides about the dividend. (6) General election of board of directors (7) Directors' self-dealing of substantial transactions …….

Table 2: Shareholder protection France (extract)[16]

Varia.	*Year*															
	70	*71*	*72*	*73*	*74*	*75*	*76*	*77*	*78*	*79*	*80*	*81*	*82*	*83*	*84*	*85*
I 1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	½	½	½	½	½	½	½	½	½	½	½	½	½	½	½	½
	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

……..

15. For the full version see Priya P. Lele & Mathias M. Siems, *Shareholder Protection Index for the UK, the US, Germany, France, and India* (Feb. 2007), *available at* http://www.cbr.cam.ac.uk/pdf/Lele-Siems-Shareholder-Index-Final1.pdf [hereinafter Lele & Siems, *Shareholder Protection Index*] (dataset on shareholder protection in five nations).

16. *See id.*

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Table 3: Shareholder protection United Kingdom (extract)[17]

Varia.	*Year*															
	70	*71*	*72*	*73*	*74*	*75*	*76*	*77*	*78*	*79*	*80*	*81*	*82*	*83*	*84*	*85*
I 1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1[18]
	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
	½	½	½	½	½	½	½	½	½	½	1	1	1	1	1	1
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1[19]
	½	½	½	½	½	½	½	½	½	½	½	½	½	½	½	½
	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
	½	½	½	½	½	½	½	½	½	½	1	1	1	1	1	1

……

We have explained the indices and coding methodology in more detail in other articles, in particular, in which instances we allow intermediate scores and how our indices differ from indices of the previous literature.[20] We have also used these indices to determine the strength of shareholder, creditor, and worker protection in France, Germany, India, the United Kingdom, and the United States.[21] Furthermore, it has been examined whether the strength of legal protection is reflected in a country's financial development.[22] These articles therefore respond to the "law and finance" literature which, based upon cross-sectional studies, claim to have proven that the "greater the protection afforded to shareholders and

17. See *id*.

[18] CA 1985, ss. 9, 17.

[19] As from 25 % of total assets involvement of the general meeting is required (Listing Rules 1984 (in force since 1985), s. 6.3.4; not yet in Listing Rules 1979-83, ch. 4.5): major class 1 transactions; Listing Rules, 1993 para. 10.37: super class 1 transactions).

20. Lele & Siems, *Leximetric Approach*, *supra* note 9, at 18–30; Armour et al., *supra* note 8, at 599–609; John Armour et al., *Law and Financial Development: What We Are Learning from Time-Series Evidence*, 2009 BYU L. REV. 1435, 1435–66.

21. Armour et al., *supra* note 8, at 581; Deakin et al., *supra* note 8, at 153–55; Lele & Siems, *Leximetric Approach*, *supra* note 9, at 43; Siems, *supra* note 9; Mathias M. Siems, *Shareholder Protection Across Countries – Is the EU on the Right Track?*, J. INSTITUTIONAL COMPARISONS 39, 39–42 (2006); Priya P. Lele & Mathias M. Siems, *Diversity in Shareholder Protection in Common Law Countries*, J. INSTITUTIONAL COMPARISONS 3, 4–7 (2007).

22. John Armour et al., *Shareholder Protection and Stock Market Development: An Empirical Test of the Legal Origins Hypothesis*, 6 J. EMPIRICAL LEGAL STUDS. 343 (2009); Simon Deakin & Prabirjit Sarkar, *Assessing the Long-Run Economic Impact of Labour Law Systems: A Theoretical Reappraisal and Analysis of New Time-Series Data*, 39 INDUS. REL. J. 453 (2008).

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creditors by a country's legal system, the more external financing firms in that jurisdiction will be able to obtain."[23]

The methodology and content of this Article is different from these previous ones. Here, the interest is not on the aggregates of legal protection but on the differences between the five countries. For this purpose, research for this Article involved calculating the differences between each variable in the law of a particular legal system, and the same variable in the law of the other countries and adding together the absolute values of these differences. For example, the formula for the differences between shareholder protection in France and the United Kingdom is

$$\sum_{x=1}^{x=60} | \mathrm{SPFrance1970}_x - \mathrm{SPUK1970}_x |$$

where *SPFrance1970* and *SPUK1970* stand for the 60 variables on the strength of shareholder protection in 1970.[24] Equivalent formulas have been used for the other 35 years, the other nine pairs of countries, and the other two indices. All of these mathematical operations therefore lead to *36*10*3 = 1080* observations, which form the basis of this Article.

These observations indicate whether the laws of two legal systems have converged or diverged. For instance, in the first set of diagrams—concerning the differences from French law[25]—the score of "0" would indicate that the law of a particular country would be identical to French law. Using time-series allows tracing differences between countries that have developed in the last three and a half decades. For instance, the downward trend of the

23. Mathias Siems & Simon Deakin, *Comparative Law and Finance: Past, Present and Future Research*, 166 J. INST. & THEORETICAL ECON. 120, 121 (2010) (citing Rafael La Porta et al., *Law and Finance*, 106 J. POL. ECON. 1113 (1998)); *see also* Rafael La Porta et al., *What Works in Securities Laws?*, 61 J. FIN. 1 (2006) (comparing securities laws of 49 countries); Simeon Djankov et al., *The Law and Economics of Self-Dealing*, 88 J. FIN. ECON. 430 (2008) (comparing company laws of 108 countries).

24. Therefore, using the data of Tables 2 and 3, the following calculation has been made: *|1-1| + |1-1| + |1-0.5| + |0-0| + ... = 0 + 0 + 0.5 + 0 ... = 16.75*.

25. *See infra* Part III.A (analyzing the differences from French and German laws).

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curve which displays the differences between shareholder protection in France and the United Kingdom[26] means that French and U.K. law have converged in the last decades.

The past literature has distinguished between various types of convergence. In particular, in the context of the debate on globalization of corporate governance trends, a distinction is drawn between formal, functional, contractual, hybrid, normative, and institutional convergence. Gilson and Coffee assume that functional convergence is likelier than formal convergence.[27] "Functional" in this context means that a comparable result is produced with, say, bad managers being dismissed, but along different statutory paths. Alternatively, according to Gilson there may be contractual convergence, where the formal differences may be functionally relevant, but equivalent effects can also be reached through contractual arrangements.[28] Furthermore, the dualism between formal and functional convergence is supplemented by Rose with the concept of hybrid convergence.[29] Hybrid convergence concerns the situation where a firm "escapes" domestic law by shifting its registered seat to another country.[30] Outside the legal sphere, one may, with Milhaupt, raise the question of "normative convergence."[31] Here, "normative" means that the viewpoint of convergence is applied to extra-legal norms.[32] Further, Charny employs the term "institutional conver-

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26. *See id*.

27. Ronald J. Gilson, *Globalizing Corporate Governance: Convergence of Form or Function*, 49 AM. J. COMP. L. 329, 337–45 (2001); John C. Coffee, *The Future as History: The Prospects for Global Convergence in Corporate Governance and its Implications*, 93 NW. U. L. REV. 641, 679–80 (1999).

28. Gilson, *supra* note 27, at 346–50.

29. Paul Rose, *EU Company Law Convergence Possibilities After* Centros, 11 TRANSNAT'L L. & CONTEMP. PROBS. 121, 134–35 (2001) (explaining "hybrid" convergence in the post-*Centros* landscape).

30. This is also called "convergence-by-the-backdoor." Douglas M. Branson, *Teaching Comparative Corporate Governance: The Significance of 'Soft Law' and International Institutions*, 34 GA. L. REV. 669, 691 (2000).

31. Curtis J. Milhaupt, *Creative Norm Destruction: The Evolution of Nonlegal Rules in Japanese Corporate Governance*, 149 U. PA. L. REV. 2083, 2125–28 (2001).

32. *Id.*

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gence," where de facto the structures in firms become more similar.[33] This point concerns, for instance, the question of whether the shareholder ownership structure of firms changes, or firms are more frequently exposed to market influences (such as the possibility of hostile takeovers).

The methodology of this Article can show only whether there is a formal convergence, persistence, or divergence of legal rules. However, the question about formal convergence is also relevant for the other types of convergence. As long as there is formal convergence, the question of whether other forms of convergence may step in as substitutes becomes obsolete. Also, as long as there is formal convergence but de facto persistence, this can lead to further research regarding whether a "convergence of law and reality" may be expected in the future.[34]

III. DIFFERENCE ANALYSIS OF INDIVIDUAL COUNTRIES

This Part uses the new indices for shareholder, creditor, and worker protection in order to examine the differences and similarities between the five countries. This will be supplemented by Part IV, which provides a more general analysis on convergence and legal origins. Section III.A analyzes how much French and German law, French and U.K. law, French and U.S. law, German and U.K. law, and German and U.S. law have differed from one another between 1970 and 2005. The differences between U.S. and U.K. law, as well as the differences from Indian law, follow in Section III.B.

A. Differences Between French and German Law

The graphs on the left hand sides of Figures 1 and 2 show the extent to which French and German law differs from the other legal systems. On the right hand side, the mean of differences from French and German law is reported. Moreover, the differences between the 1970 and 2005 scores have been calculated in order to identify whether the other legal

33. David Charny, *The German Corporate Governance System*, 1998 COLUM. BUS. L. REV. 145, 165 (1998).

34. *See* SIEMS, *supra* note 10, at 228 (discussing convergence and artificial convergence).

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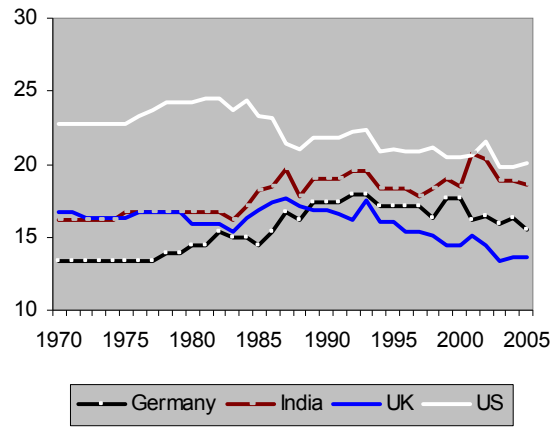
systems have converged with, or diverged from, French or German law—a negative sign indicates convergence with French or German law and a positive sign divergence from French or German law.

Figure 1: Differences from French Law[35]

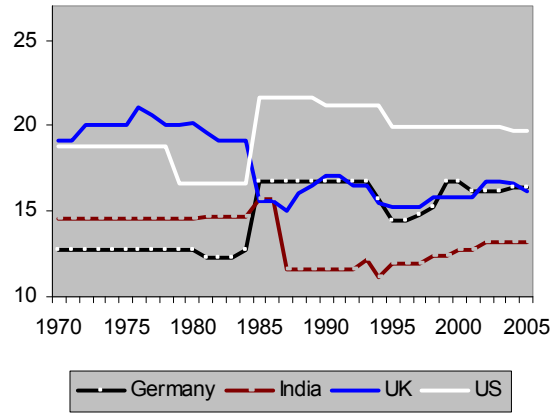
Shareholder Protection (60 variables)



Summary data for 1970 to 2005

- Mean of difference from French law (ranked from least to most different country): (1) Germany (15.57), (2) UK (15.96), (3) India (17.87), (4) US (22.21)
- Extent of change from French law (ranked from converging to diverging countries): (1) UK (-3.13), (2) US (-2.71), (3) Germany (2.08), (4) India (2.41)

Creditor Protection (44 variables)



Summary data for 1970 to 2005

- Mean of difference from French law (ranked from least to most different country): (1) India (13.40); (2) Germany (14.70); (3) UK (17.62); (4) US (19.48)
- Extent of change from French law (ranked from converging to diverging countries): (1) UK (-2.95); (2) India (-1.39); (3) US (0.90); (4) Germany (3.66)

35. *See supra* Part II (explaining the author's own calculation for determining the differences between creditor, shareholder, and worker protection among nations).

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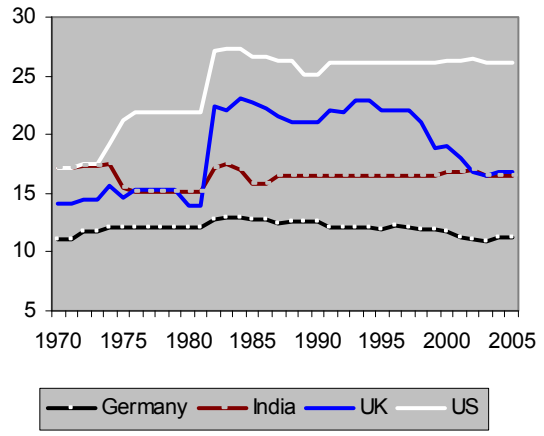
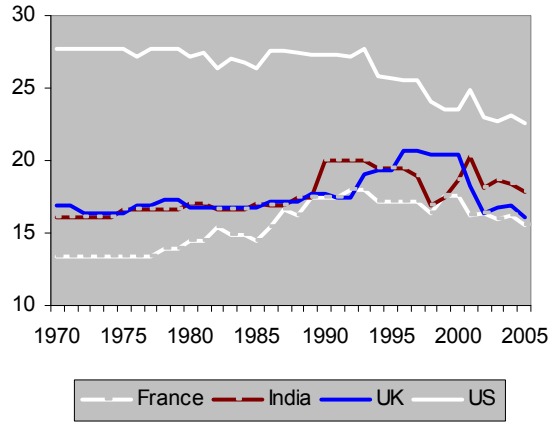
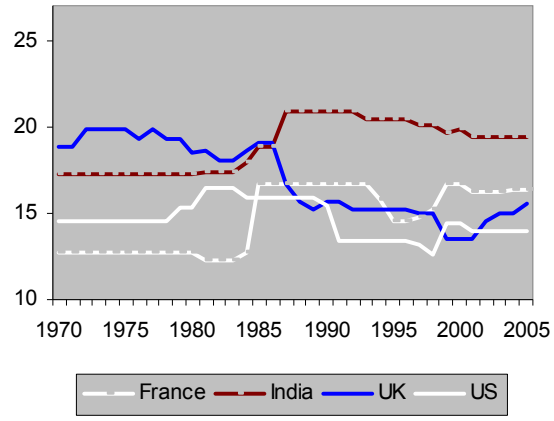
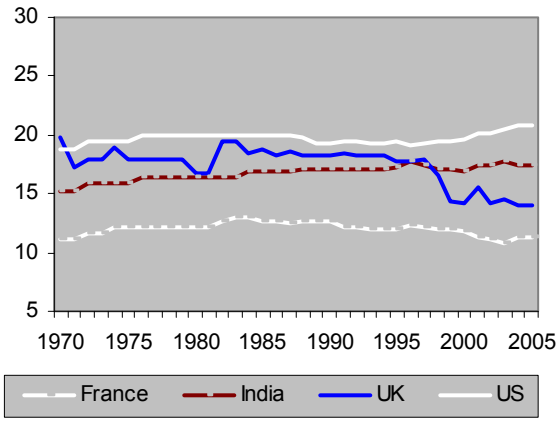
Worker Protection (40 variables)	
	Summary data for 1970 to 2005 ● Mean of difference from French law (ranked from least to most different country): (1) Germany (12.04); (2) India (16.45); (3) UK (18.69); (4) US (24.17) ● Extent of change from French law (ranked from converging to diverging countries): (1) India (-0.58); (2) Germany (0.08); (3) UK (2.61); (4) US (8.87)

Figure 2: Differences from German Law[36]

Shareholder Protection (60 variables)	
	Summary data for 1970 to 2005 ● Mean of difference from German law (ranked from least to most different country): (1) France (15.57); (2) UK (17.62); (3) India (17.68); (4) US (26.29) ● Extent of change from German law (ranked from converging to diverging countries): (1) US (-5.13); (2) UK (-0.71); (3) India (1.74); (4) France (2.08)

36. *Id.*

Creditor Protection (44 variables)	
	Summary data for 1970 to 2005 ● Mean of difference from German law (ranked from least to most different country): (1) US (14.63); (2) France (14.70); (3) UK (16.95); (4) India (18.94) ● Extent of change from German law (ranked from converging to diverging countries): (1) UK (-3.28); (2) US (-0.61); (3) India (2.13); (4) France (3.66)

Worker Protection (40 variables)	
	Summary data for 1970 to 2005 ● Mean of difference from German law (ranked from least to most different country): (1) France (12.04); (2) India (16.75); (3) UK (17.41); (4) US (19.73) ● Extent of change from German law (ranked from converging to diverging countries): (1) UK (-5.88); (2) France (0.08); (3) US (1.99); (4) India (2.33)

1. Observations

French and German law shared some similarities until the mid-1980s. With respect to worker protection, this also remained similar until 2005. However, there has been divergence in the other two areas of law. With respect to shareholder protection, this divergence has been gradual and modest; whereas with respect to creditor protection, the countries' laws diverged significantly in 1985.[37]

37. *See supra* figs. 1, 2. For explanations see *infra* Part III.A.2.

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A different picture emerges for the relationship of German and French law to U.K. law. German and U.K. law have converged in all three areas of law. Similarly, there has been some convergence of the French and U.K. law on shareholder and creditor protection. Conversely, French and U.K. law on worker protection have diverged significantly in the early 1980s, which has then however been followed by some convergence.

In five out of six categories, U.S. law is most different from French and German law. Minor convergence of French and U.S. law can be found in the protection of shareholders. With respect to creditor protection, differences were most pronounced in the early 1980s. The already quite different protection of workers in France and the United States has further diverged in the last three decades. The relationship between German and U.S. law is less unstable. There has not been a major change in the differences in worker protection, but with respect to creditor and shareholder protection, some convergence can be identified since the mid- to late-1980s.

India has mainly intermediate scores in the figures above. Thus, despite the fact that it is a common law country and the only developing country of the sample, it is no more different from German and French law than the other legal systems. A major change can be observed for creditor protection in 1987 because German and Indian law diverged, while French and Indian law converged.

2. Explanations

The initial similarities between French and German law in all three areas of law are likely to be a result of the civil law origins of both countries, as well as similarities in the countries' industrialization in the nineteenth century.[38] The development of the law shows, however, that these historical ties have become weaker. This is mainly the result of changes in French law—namely, the insolvency reform of 1985—and gradual improvements of

38. For the latter point, see Simon Deakin, *Legal Origin, Juridical Form and Industrialization in Historical Perspective: The Case of the Employment Contract and the Joint-Stock Company*, 7 SOCIO-ECON. REV. 35 (2009) and Deakin et al., *supra* note 8, at 139–41.

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shareholder protection in the 1980s and early 1990s, for instance in the area of takeover law.[39]

The 1985 insolvency reform was also the main cause for the convergence of the French and U.K. law on creditor protection.[40] The divergence of French and U.K. labor law in the 1980s is a consequence of the weakening of worker protection by the conservative government in the United Kingdom, and the strengthening of worker protection by the socialist government in France.[41] Apart from that, however, German and French law have become more similar to U.K. law. This is partly a result of EU law, for instance, regarding directives on working time and fixed-term and part-time work.[42] Furthermore, since the early twenty-first century there has been some reduction in the level of worker protection in France, which has led to convergence with the United Kingdom.[43] Finally, the laws on shareholder protection show some "convergence from below."[44] This means that the convergence is not mainly a result of international or regional laws (such as the OECD Princi-

39. For insolvency law see Law No. 85-98 of Jan. 25, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Jan. 26 1985, p. 5(relating to the recovery and judicial liquidation of enterprises); Paul J. Omar, *French Insolvency Law and the 2005 Reforms*, 16 INT'L. COMPANY & COM. L. REV. 490 (2005) (for a summary in English). For shareholder protection see Lele & Siems, *Leximetric Approach*, *supra* note 9, at 32, and the detailed explanations in Lele & Siems, *Shareholder Protection Index*, *supra* note 15.

40. *See supra* fig.1.

41. Deakin et al., *supra* note 8, at 145–55 (providing a multi-variable analysis of the relationships between worker, shareholder, and creditor protection across five industrialized countries).

42. *See generally* Directive 2003/88/EC of the European Parliament and the Council, 2003 O.J. (L 299) 9 (as amended) (concerning certain aspects of the organization of working time); Council Directive 93/104/EC, 1993 O.J. (L 307), 18 (concerning certain aspects of the organization of working time); Council Directive 1999/70/EC, 1999 O.J. (L 175) 43 (concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP; Council Directive 97/81/EC, 1997 O.J. (L 14) 9 (concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC); Council Directive 98/23/EC, 1998 O.J. (L 131) 10 (concerning the extension of Directive 97/81/EC on the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC to the United Kingdom of Great Britain and Northern Ireland).

43. Deakin et al., *supra* note 8, at 146.

44. SIEMS, *supra* note 10, at 381–91.

ples of Corporate Governance or EU Directives).[45] Rather, we can observe an evolutionary process in which national legislators aim to improve the quality of shareholder protection in a global economy.[46]

This convergence in shareholder protection law also emerges from the slight decrease in differences between French and U.S. law, and German and U.S. law, since the early 1990s. This is mainly a result of the fact that France and Germany (as well as other countries) have copied a number of provisions from U.S. law.[47] To give an example, while U.S. law from 1978 required listed companies to form committees comprised of independent board members, France and Germany (as well as the United Kingdom and India) adopted similar measures later.[48] The purpose behind this "Americanization" of the law is the wish to attract capital.[49] U.S. law is particularly influential here, because big foreign companies are often listed on U.S. markets; U.S. institutional investors have special weight; and the United States, as a world power, can exert political pressure.[50] Moreover, perhaps surpris-

45. *Id.* at 373–75 (explaining that convergence "from above" can be achieved through international or regional organizations, but that political realities make this difficult).

46. *Id.* at 373–91. *See also infra* Part IV.

47. *See* Lele & Siems, *Leximetric Approach*, *supra* note 9, at 41–42 (explaining that, especially since 2000, "in some respects the law of other countries has become more similar to" U.S. law); SIEMS, *supra* note 10, at 226.

48. The U.K., with the Code of Best Practice 1992, s. 4.3; France because of its Principes de gouvernement d'entreprise résultant de la consolidation des rapports conjoints de l'AFEP (Association Française des Entreprises Privées) et du MEDEF (Mouvement des Entreprises de France) [Principles of corporate governance resulting from the consolidation of joint reports of the AFEP and MEDEF] 2003, no. 8.2; Germany because of the German Corporate Governance Code 2002, no. 5.4.2; India with the insertion of a new Section 292A in the Companies Act 1956 by the Amendment Act of 2000.

49. SIEMS, *supra* note 10, at 226–27 (explaining that convergence in corporate finance laws evidences that "[l]aw-makers in other countries thus wish to improve the ability of their companies to attract capital").

50. A prime example is the recent changes to Japanese corporate law. *See, e.g.*, R. Daniel Kelemen & Eric C. Sibbitt, *The Americanization of Japanese Law*, 23 U. PA. J. INT'L ECON. L. 269, 272, 308–10 (2002) (arguing that "two factors, economic liberalization and the fragmentation of political authority, are the primary drivers of the spread of American legal style" and that economic liberalization is driven by demands from U.S. firms and government agencies); Kenichi Osugi, *Americanization of Stock Corporation Laws Around the World, and Shareholders' Derivative Suits as a For-*

ingly, the Sarbanes–Oxley Act[51] has also moved U.S. law closer to that of European countries.[52] Specifically, Sarbanes–Oxley has made U.S. law more similar to European law by making the variables on board division, public enforcement, and shareholder protection mandatory.[53]

However, in general, U.S. law is quite different from French and German law. Thus, in contrast to the claim by Hansmann and Kraakman,[54] there is no "end of history" because other countries would now follow the U.S. model. It would be tempting to explain this with the common law origins of U.S. law and the different ownership structures of firms in the United States and in continental Europe. However, this would not be a sufficient explanation because these reasons would also apply to the United Kingdom and (to some extent) India, but the legal systems of these countries are considerably closer to French and German law.[55] Rather, it is likely that a decisive role is played by the following political factors: with respect to shareholder protection, the regulatory competition between U.S. states;[56] with respect to worker protection, a libertarian view that transcends both major political parties.[57] Finally, concerning creditor protection, one can see the impact of com-

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gotten Element Therein: A Caveat to Discussions on the Convergence of Corporate Laws, 13 ZEITSCHRIFT FÜR JAPANISCHES RECHT 29 (2002).

51. Sarbanes–Oxley Act of 2002 § 302, 15 U.S.C. § 7241 (2006).

52. *See supra* figs.1, 2.

53. *See* Lele & Siems, *Leximetric Approach*, *supra* note 9, at 42 (attributing changes in board division, public enforcement, and mandatory shareholder protection to Sarbanes–Oxley).

54. *See* Hansmann & Kraakman, *supra* note 1.

55. Moreover, U.S. law is also very different from U.K. law. *See supra* figs. 3, 4.

56. *See, e.g.*, SIEMS, *supra* note 10, at 297–307, 318–23 (laying out comparative accounts); Martin Gelter, *The Structure of Regulatory Competition in European Corporate Law*, 5 J. CORP. L. STUD. 247 (2005); Tobias Tröger, *Choice of Jurisdiction in European Corporate Law—Perspectives of European Corporate Governance*, 6 EUROP. BUS. ORG. L. REV. 3 (2005). For the EU see Simon Deakin, *Legal Diversity and Regulatory Competition: Which Model for Europe?*, 12 EUROP. L. J. 440 (2006) and John Armour, *Who Should Make Corporate Law? EC Legislation versus Regulatory Competition*, 58 CURRENT LEGAL PROBS. 369, 375–79 (2005).

57. For the distinction between European- and United States-style capitalism see MICHEL ALBERT, CAPITALISM AGAINST CAPITALISM (1993) (contrasting the "neo-American" and "Rhine" models of capitalism, representing individualism and collectivism, respectively) and VARIETIES OF

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prehensive reforms. These reforms were the introduction of the U.S. Bankruptcy Code in 1978, with the "debtor in possession" reorganization under Chapter 11; the worker-oriented French bankruptcy law of 1985; and the Indian reform of insolvency law, in force since 1987.[58]

One can conclude that the growing differences between French and German law, and the growing similarities between these two countries and the United Kingdom and United States, illustrate that the ties of legal origins have been weakening. This "civilization of the common law" is partly, but not only, based on the influence of the EU.[59] A number of results also indicate the role of politics.[60] Due to its federal structure and a libertarian political ideology, the position of the United States is that of an outlier. Furthermore, changes in the differences in worker protection have often been driven by political events.[61] Overall, however, the differences across countries have been most stable with respect to worker protection, thus indicating stronger path dependencies.[62]

B. Differences Between U.K., U.S., and Indian Law

It may be expected that the legal rules of the three common law countries would be particularly close to each other, and quite different from French and German law. This subsection examines whether this is accurate, without restating the results about the differences

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CAPITALISM: THE INSTITUTIONAL FOUNDATIONS OF COMPARATIVE ADVANTAGE (Peter A. Hall & David Soskice eds., 2001) (outlining differences in policy between countries and grounding the analysis in the distinction between liberal- and coordinated-market economies).

58. Bankruptcy Reform Act of 1978, 11 U.S.C. § 101 (2006), et seq.; Law No. 85-98 of Jan. 25, Journal of Officiel de la République Française [J.O.] [Official Gazette of France], Jan. 26 1985, p. 5, 1985; The Sick Industrial Companies Act 1985, No. 1 of 1985 (in force since Jan. 12, 1987).

59. H. Patrick Glenn, *La civilisation de la common law [The civilization of the common law]*, 45 REVUE INTERNATIONALE DE DROIT COMPARÉ 559 (1993).

60. *See supra* notes 56–57 (providing authority for the proposition that U.S. political factors—regulatory competition between U.S. states and a libertarian view towards worker protection—explain the United States' legal divergence from France and Germany).

61. *See* Deakin et al., *supra* note 8, at 145 (explaining the considerable change in U.K. and French labor law and noting that "[t]he events triggering these changes were political").

62. For further discussion of the differences between different areas of law see *infra* Part IV.

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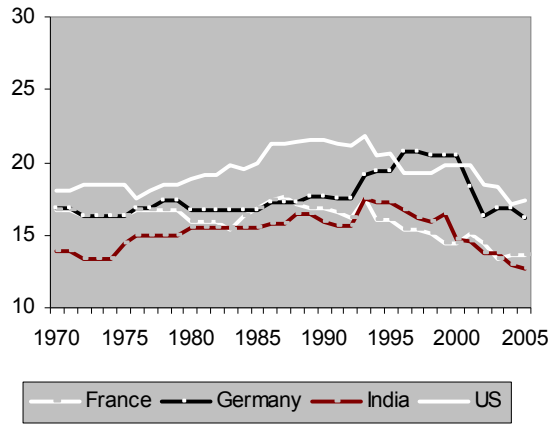
between French and U.S. or U.K. law, and German and U.S. or U.K. law. Based on the new indices[63] the following figures have been created. Moreover, as in the previous part, the mean of differences and the convergence or divergence of the law are reported.

Figure 3: Differences from U.K. Law[64]

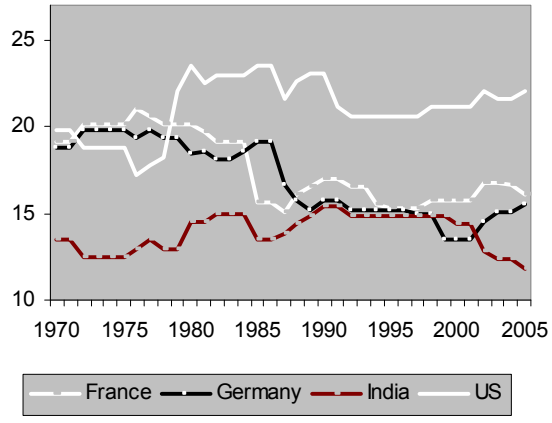
Shareholder Protection (60 variables)



Summary data for 1970 to 2005

- Mean of difference from UK law (ranked from least to most different country): (1) India (15.19); (2) France (15.96); (3) Germany (17.62); (4) US (19.42)
- Extent of change from UK law (ranked from converging to diverging countries): (1) France (-3.13); (2) India (-1.22); (3) Germany (-0.71); (4) US (-0.67)

Creditor Protection (44 variables)



Summary data for 1970 to 2005

- Mean of difference from UK law (ranked from least to most different country): (1) India (13.92); (2) Germany (16.95); (3) France (17.62); (4) US (21.07)
- Extent of change from UK law (ranked from converging to diverging countries): (1) Germany (-3.28); (2) France (-2.95); (3) India (-1.64); (4) US (2.35)

63. *See supra* Part II (discussing the data and methodology used).

64. *Id.*

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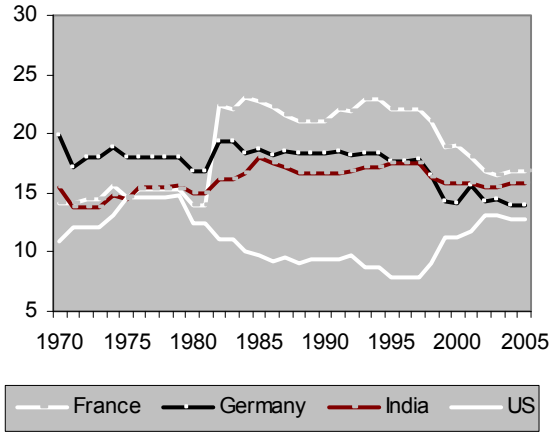
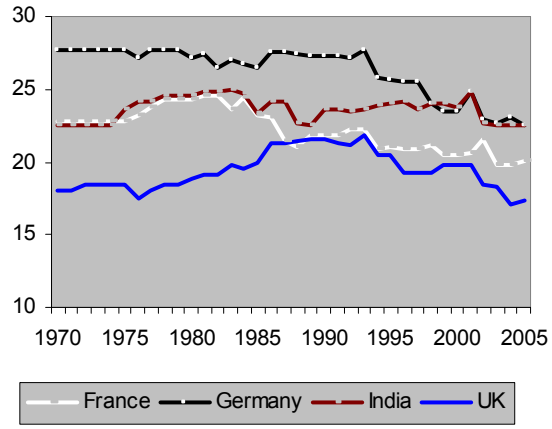
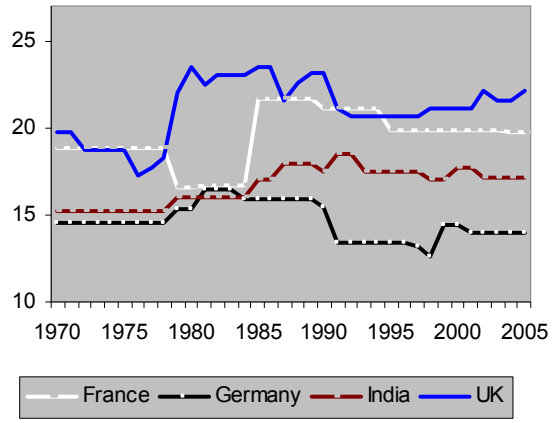
Worker Protection (40 variables)	
	Summary data for 1970 to 2005 ● Mean of difference from UK law (ranked from least to most different country): (1) US (11.20); (2) India (16.03); (3) Germany (17.41); (4) France (18.69) ● Extent of change from UK law (ranked from converging to diverging countries): (1) Germany (-5.88); (2) India (0.33); (3) US (1.80); (4) France (2.61)

Figure 4: Differences from U.S. Law[65]

Shareholder Protection (60 variables)	
	Summary data for 1970 to 2005 ● Mean of difference from US law (ranked from least to most different country): (1) UK (19.42); (2) France (22.21); (3) India (23.65); (4) Germany (26.29) ● Extent of change from US law (ranked from converging to diverging countries): (1) Germany (- 5.13); (2) France (-2.71); (3) UK (-0.67); (4) India (-0.05)

65. *Id.*

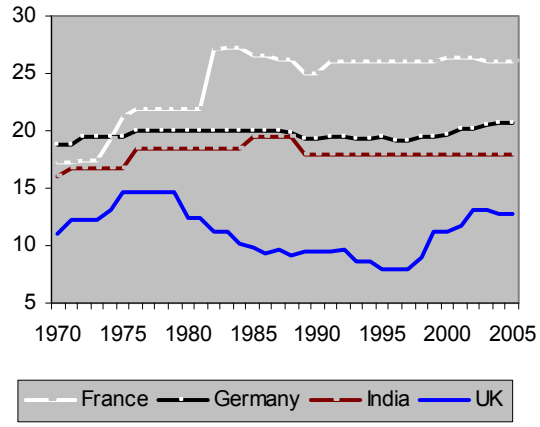
Creditor Protection (44 variables)



Summary data for 1970 to 2005

- Mean of difference from US law (ranked from least to most different country): (1) Germany (14.63); (2) India (16.68); (3) France (19.48); (4) UK (21.07)
- Extent of change from US law (ranked from converging to diverging countries): (1) Germany (-0.61); (2) France (0.90); (3) India (1.93) (4) UK (2.35)

Worker Protection (40 variables)

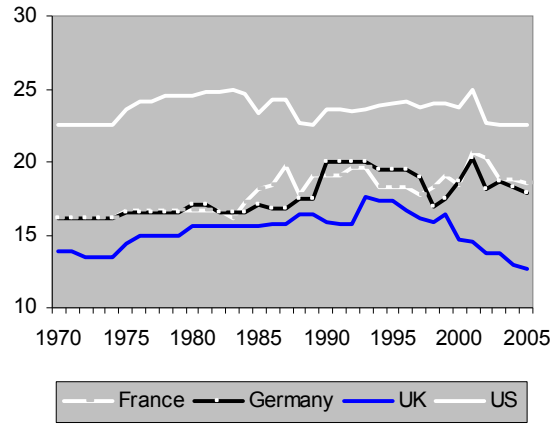


Summary data for 1970 to 2005

- Mean of difference from US law (ranked from least to most different country): (1) UK (11.20); (2) India (15.05); (3) Germany (19.76); (4) France (24.18)
- Extent of change from US law (ranked from converging to diverging countries): (1) India (1.85); (2) UK (1.80); (3) Germany (1.99); (4) France (8.87)

Figure 5: Differences from Indian Law[66]

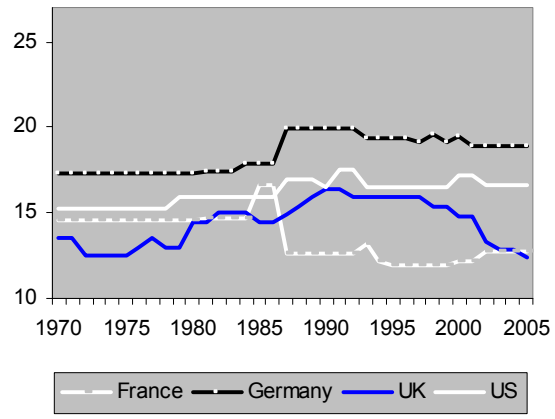
Shareholder Protection (60 variables)



Summary data for 1970 to 2005

- Mean of difference from Indian law (ranked from least to most different country): (1) UK (15.19); (2) Germany (17.70); (3) France (17.87); (4) US (23.65)
- Extent of change from Indian law (ranked from converging to diverging countries): (1) UK (-1.22); (2) US (-0.05); (3) Germany (1.74); (4) France (2.41)

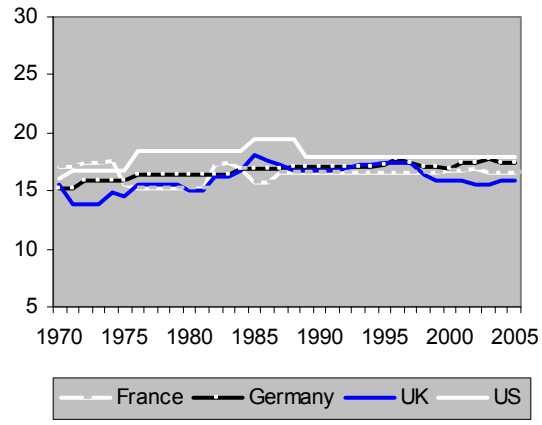
Creditor Protection (44 variables)



Summary data for 1970 to 2005

- Mean of difference from Indian law (ranked from least to most different country): (1) France (13.40); (2) UK (13.92); (3) US (16.68); (4) Germany (18.94)
- Extent of change from Indian law (ranked from converging to diverging countries): (1) UK (-1.64); (2) France (-1.39); (3) US (1.93); (4) Germany (2.13)

66. *Id.*

Worker Protection (40 variables)	
	Summary data for 1970 to 2005 ● Mean of difference from Indian law (ranked from least to most different country): (1) UK (16.03); (2) France (16.45); (3) Germany (16.75); (4) US (18.05) ● Extent of change from Indian law (ranked from converging to diverging countries): (1) France (-0.58); (2) UK (0.33); (3) US (1.85); (4) Germany (2.33)

1. Observations

Most of the figures display profound differences between U.S. and U.K. law. This is unambiguous for creditor protection. With respect to shareholder protection, the result depends on the perspective one takes. The figures on the differences from U.S. shareholder protection show that U.K. law is closer to U.S. law than it is to the laws of the other four countries. Yet, a different result emerges from a U.K. perspective, because the U.S. law on shareholder protection is different than the laws of the other four countries. Finally, there are some similarities in worker protection between the United States and the United Kingdom, with some convergence in the 1980s and early 1990s, and some divergence in the last ten years.

Indian and U.S. law have always been very different. From an Indian perspective, U.S. law is even more different from Indian law than French law in all three categories. By contrast, Indian and U.K. law share some similarities, particularly with respect to shareholder and creditor protection; and for shareholder protection there has even been some further convergence since the early 1990s. With respect to the differences from Indian labor law there is, however, the peculiar situation that all four curves are flat and almost identical.

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The Indian law on worker protection has therefore no particular similarities with any of the other countries.

2. Explanations

At least today, the common law origins of U.S. law matter only to a minor extent.[67] With respect to shareholder protection, the likely explanation is that the regulatory competition of U.S. corporate law has led to divergence of U.S. and U.K. law.[68] For instance, there are differences in the powers of their regulatory authorities, the extent of mandatory law, the availability of appraisal rights, the rules on derivative suits, and the regulation of takeovers.[69] With respect to creditor protection, the decisive event was the 1978 reform of U.S. insolvency law,[70] which moved U.S. law away from U.K. law. Although the common origins of the relatively low worker protection in the United States and the United Kingdom can still be seen today, there has also been some development in the differences between U.S. and U.K. law. These are mainly attributed to changes in U.K. law, because the conservative government reduced worker protection in the 1980s and early 1990s (and thus it converged with U.S. law), which was to some extent reversed by the Labor government in the late 1990s.[71]

For the Indian law on shareholder and creditor protection, it can still be seen that India's modern law derived from the United Kingdom.[72] However, with respect to share-

67. *But see* M. H. Hoeflich, *Transatlantic Friendships and the German Influence on American Law in the First Half of the Nineteenth Centur*y, 35 AM. J. COMP. L. 599, 611 (1987) (noting strong ties to German law); Stefan Riesenfeld, *The Influence of German Legal Theory on American Law: The Heritage of Savigny and His Disciples*, 37 AM. J. COMP. L. 1, 6–7 (1989) (highlighting effect of German common law on American law).

68. *See supra* note 56 (marshalling sources that assert that regulatory competition between U.S. states is likely responsible for differences in shareholder protection laws).

69. SIEMS, *supra* note 10, at 224–28. For a discussion of takeover law see also John Armour & David A. Skeel, *Who Writes the Rules for Hostile Takeovers, and Why? The Peculiar Divergence of U.S. and U.K. Takeover Regulation*, 95 GEO. L.J. 1727, 1733–45 (2007).

70. Bankruptcy Reform Act of 1978, 11 U.S.C. § 101 (2006).

71. *See* Deakin et al., *supra* note 8, at 147–51 (highlighting changes in U.K. law).

72. *See generally* MOTILAL CHIMANLAL SETALVAD, THE COMMON LAW IN INDIA (1960).

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holder protection there has been some divergence until the mid-1990s. This was due to the Europeanization of company law in the United Kingdom,[73] the improvement of shareholder protection by the U.K. Companies Act 1985,[74] and the corporate governance codes of the 1990s.[75] In recent times, the United Kingdom and India have come closer again, mainly due to the introduction of corporate governance norms in India based on the U.K. codes.[76] With respect to creditor protection, the formal similarity between the United Kingdom and India needs to be treated with caution, because qualitative research has found that creditors have not been well protected in India.[77] In particular, judicial delays seriously impede creditor protection, because on average it takes up to 20 years for a case to be resolved.[78] Recent reforms, however, aim to improve creditor protection in India, for instance, by empowering banks and financial institutions to enforce security interests extra-judicially.[79] Worker protection is very different in India and the United Kingdom. This is mainly a result of socialist politics in the aftermath of India's independence.[80]

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73. In particular the Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards that, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect to the formation of public limited liability companies, and the maintenance and alteration of their capital, with a view to making such safeguards equivalent. Second Council Directive 77/91/EEC, 1977 O.J. (L 026).

74. In particular, the rules on "unfair prejudice" (Sections 459-461 of the Companies Act 1985; now Sections 994-996 of the Companies Act 2006).

75. CADBURY COMMITTEE, CODE OF BEST PRACTICE (1992); GREENBURY COMMITTEE, CODE OF BEST PRACTICE (1995); HAMPEL COMMITTEE, COMBINED CODE OF BEST PRACTICE (1998).

76. *See* Lele & Siems, *Leximetric Approach*, *supra* note 9, at 40 (attributing the convergence of U.K. and Indian shareholder outcomes to Indian adoption of U.K. law).

77. John Armour & Priya P. Lele, *Law, Finance, and Politics: The Case of India*, 43 LAW & SOC'Y REV. 491 (2009).

78. *See generally* Bibek Debroy, *Some Issues in Law Reform in India*, *in* GOVERNANCE, DECENTRALIZATION AND REFORM IN CHINA, INDIA AND RUSSIA 339–68 (Jean-Jacques Dethier ed., 2000).

79. *See* Armour & Lele, *supra* note 77, at 504–05 (citing India's Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act of 2002 as a "major enhancement for creditor rights").

80. *See* Deakin et al., *supra* note 8, at 148–50 (outlining employment data in India from 1970 to 2005).

There are no particular similarities between India and the United States in any of the three areas of law. The different political and legal climates supersede any similarities between their common law origins.[81] Finally, it may have been expected that the law of India, as a developing country, is quite different from the laws of the other four countries. That is not the case however, because in almost all of the "differences figures" India displays intermediate scores.

As a result, in some respects the classification of the United Kingdom, the United States, and India as belonging to the same legal origin can still be justified today. There are similarities between the protection of shareholders and creditors in the United Kingdom and in India, and between the protection of workers in the United Kingdom and in the United States. However, the differences in all other categories make it clear that the ties of the common law family have weakened. A likely reason is that politics matter. Political events have often driven changes in the differences of worker protection, and the situation of the United States as an outlier can be explained by political factors. A further explanation may be that only in the three origin countries (United Kingdom, Germany, and France) are there complementarities between legal institutions and indigenous economic ones, which can lead to an "institutional lock-in" that is difficult to shift.[82] In contrast to this, there is no reason to expect a similar degree of complementarity in transplant countries, which makes fundamental changes in the law more likely.

81. *See* Armour & Lele, *supra* note 77, at 517–19 (citing India's past socialist reforms and heavy-handed state intervention in its financial sector as having "important, and probably unintended, legacies").

82. *See generally* Beth Ahlering & Simon Deakin, *Labour Law, Corporate Governance and Legal Origin: A Case of Institutional Complementarity?*, 41 LAW & SOC'Y REV. 865 (2007).

IV. GENERAL ANALYSIS ON LEGAL ORIGINS AND CONVERGENCE

The data on the right-hand sides of Figures 1 to 5 can also be used to examine the relevance of legal origins and the convergence of legal rules from a more general perspective.

Table 4: Ranks according to mean of differences[83]

Difference from French and/or German Law	*rank 1*	*rank 2*	*rank 3*	*rank 4*	*mean rank*	*median rank*
France	2	1	0	0	1.33	1
Germany	2	1	0	0	1.33	1
India	1	2	2	1	2.50	2.5
UK	0	2	4	0	2.67	3
US	1	0	0	5	3.50	4
Difference from UK, US and/or Indian Law	*rank 1*	*rank 2*	*rank 3*	*rank 4*	*mean rank*	*median rank*
France	1	4	3	1	2.44	2
Germany	1	2	4	2	2.78	3
India	3	2	1	0	1.67	1.5
UK	4	1	0	1	1.67	1
US	0	0	1	5	3.83	4

Table 4 reports whether the means of differences differ between the two civil law countries (Germany and France) and the three common law countries (the United Kingdom, the United States, and India). Table 4 confirms the results of the previous Parts. There are similarities between German and French law, and U.K. and Indian law. U.S. law is a clear outlier, because in ten out of the twelve categories U.S. law is more different than any of the other pairs of countries. Remarkably, this is not only the case for the differences between U.S. and German or French law, but also for the differences between U.S. and U.K. or Indian law.

83. This data is based on first bullet points of *supra* pp. 108–10, 114–18figs.1–5 (ranks only).

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Table 5: Convergence or divergence of laws[84]

	Shareholder protection		*Creditor protection*		*Worker protection*		*Total*	
	conv.	*div.*	*conv.*	*div.*	*conv.*	*div.*	*conv.*	*div.*
France	2	2	2	2	1	3	*5*	*7*
Germany	2	2	2	2	1	3	*5*	*7*
India	2	2	2	2	1	3	*5*	*7*
UK	4	0	3	17	1	3	*8*	*4*
US	4	0	1	3	0	4	*5*	*7*
Total	*14*	*6*	*10*	*10*	*4*	*16*	*28*	*32*

	Shareholder Protection			*Creditor Protection*			*Worker Protection*			*Total*		
	conv	*id*	*div.*	*conv*	*id*	*div.*	*conv*	*Id*	*Div*	*conv*	*id*	*div*
1970 – 1978	0	2	**8**	2	**6**	2	2	0	**8**	*4*	*8*	***18***
1979 – 1987	4	0	**6**	4	0	**6**	1	1	**8**	*9*	*1*	***20***
1988 – 1996	4	0	**6**	**8**	0	2	**6**	1	3	***18***	*1*	*11*
1997 – 2005	**9**	0	1	4	0	**6**	**4**	3	3	***17***	*3*	*10*

Table 5 consolidates the results on the convergence and divergence of legal systems. The total figures of the three categories show that the laws have converged in shareholder protection; that they have diverged in worker protection; and that in creditor protection, converging and diverging trends evened out.[85] Thus, in contrast to Ahlering and Deakin[86] it is not the case that institutional complementarities prevent convergence in one area of law only. Rather we observe that different areas of law are subject to different dynamics.[87] It can also be seen that convergence is a recent phenomenon. In the 1970s and 1980s, shareholder protection diverged, whereas now there is some convergence in worker protection. Among the five countries, France, Germany, and India have fairly balanced figures in all three categories. The U.K. law has converged with most of the other countries in share-

84. *See supra* pp. 108–10, 114–18 figs.1–5 (basing the data on the second bullet points).

85. *See supra* Parts III.A.2 and B.2 (explaining the trends).

86. Ahlering & Deakin, *supra* note 82.

87. *See also* Armour et al., *supra* note 8, at 579 (explaining studies of creditors' rights and labor regulation support the claim that different legal families have different dynamic properties); Siems & Deakin, *supra* note 23, at 166 (explaining that studies of shareholder, creditor, and worker protection law reveals a strong correlation between the three areas of law in most countries—except the United Kingdom).

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holder and creditor protection. U.S. shareholder-protection law has also converged, whereas U.S. creditor- and worker-protection law has diverged from the others.

Why are there these differences between shareholder, creditor, and worker protection? A non-quantitative monograph has examined the reasons for the convergence in shareholder law in detail.[88] Among the causes of convergence, a distinction can be drawn between "convergence through congruence"[89] and "convergence through pressure."[90] "Convergence through congruence" arises where the social, political, and economic bases for shareholder law become similar internationally, and thus the law also becomes more similar.[91] Convergence forces are, accordingly, the overall cultural- and economic-policy approximations, the internationalization of the economy, and approximations in legal culture and shareholder structures.[92] While in terms of consequences, path dependencies may stand in the way of rapidity and content of convergence, since here it is changes in tangible circumstances and not merely pressure from individual interest groups that set convergence going, resistance is likely to be less marked. With "convergence through pressure" it is particularly the regulatory competition for shareholders that makes an approximation of legal systems likely. By contrast, regulatory competition for the seat of a company and national and international lobbying will have less importance.[93] In terms of consequences, the focal point of convergence is pressure in the case of public companies, since competition for shareholders and international lobbying is stronger when more firms are dependent on international capital markets and interest groups.[94]

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88. SIEMS, *supra* note 10.

89. *Id.* at 250–96.

90. *Id.* at 297–316.

91. *Id.* at 250–96.

92. *Id.* at 277–90, 296 ("Cultural, economic and political approximations are increasing, and may thus even be regarded as convergence forces for shareholder law.").

93. SIEMS, *supra* note 10, at 318 (explaining that regulatory competition in the international community will not result in competition for the seat of companies because, unlike in the United States, where a company can easily move its seat, this is "possible only to a limited extent" at the international level).

94. *Id.* at 317–27 (explaining that international lobbying leads to some convergence, but national

Table 6: Convergence forces[95]

	Specific reasons	*Legislative responses*
Convergence through congruence	• General cultural and economic-policy approximation • Convergence of legal cultures • Internationalization of the economy: international economic law; internationalization through "new media"; the internationalization of private institutions; the internationalization of undertakings (cross-border mergers; foreign investors; exchange listings abroad; enterprise culture) • Approximation of shareholder structures: the decline in concentrated shareholder structures; the influence of institutional investors	• Reform and reception: similar solutions in similar circumstances; communication with other countries • (Counter force) weak, semi-strong and strong path dependencies
Convergence through pressure	• Pressure from company founders: regulatory competition; other forms of pressure • Pressure from management • Pressure from shareholders: regulatory competition; other forms of pressure • Pressure from other interest groups • Pressure from international organizations and foreign states	• Communication and path dependencies (see above) • Effect of lobbying: international lobbying; national lobbying • Competition for the seat of companies • Competition for shareholders: the evolutionary position; limits to convergence

The convergence forces are summarized in Table 6. In general, analogous forces may also be at work for creditor and worker protection. Here too, it might be the case that due to advancing globalization, national legal systems would come ever closer together. For instance, it is fair to assume that as far as we can observe an approximation of businesses, legal culture, and economic policy; legal convergence of creditor and worker protection is also likely. Here too, pressure from interest groups and other social forces can influence the

lobbying is not unified enough to create a clear force of convergence).

95. *Id.* at 250–335 (explaining the reasons for and responses to convergence forces).

direction of the law.[96] Thus, as companies or stakeholders become more international, their pressure will also contribute to the convergence of creditor and worker protection.

However, a number of reasons can explain why, overall, we do not observe convergence in these two areas of law. First, with respect to creditor protection, creditors may operate less internationally than shareholders. Notwithstanding international project finance contracts and debt securities, debtors and creditors of a normal loan are usually based in the same country.[97] Second, countries prefer different forms of creditor protection. In a related article, the creditor protection index is decomposed into rules that (i) limit the freedom of the debtor firm to engage in activities that may harm creditors; (ii) facilitate creditor contracting for greater protection; and (iii) facilitate creditor power in bankruptcy proceedings.[98] For example, a country with high standards of minimum capital (which falls under (i)) may see no reason to change its approach to creditor protection. And even if it realizes that other forms of creditor protection are more efficient, it may remain path-dependent because the costs of changing the entire system of creditor protection may be higher than the benefits.[99] Third, the conflict between creditor and debtor interests is more contentious than the conflict between shareholders and directors. Empirical data across countries shows that shareholder interests are increasingly regarded as worth protecting,[100] whereas countries strongly differ over the question of whether insolvency law should be more debtor- or creditor-friendly.[101] Finally, insolvency law has been the subject of comprehensive reforms

96. *See id.* at 314–15 (explaining that pressure from interest groups can lead to convergence).

97. This is even the case in the European Union. *See* EU Commission, Press Release from January 16, 2008, *available at* http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/55.

98. Armour et al., *supra* note 8, at 605–06.

99. Thus, it can be argued that legislators have mostly already reached a local optimum. *See* Reinhard H. Schmidt & Gerald Spindler, *Path Dependence and Complementarity in Corporate Governance*, *in* CONVERGENCE AND PERSISTENCE IN CORPORATE GOVERNANCE 114, 117–18 (Jeffrey N. Gordon & Mark J. Roe eds., 2004) (explaining "path dependence" as it relates to "governance systems").

100. Lele & Siems, *Leximetric Approach*, *supra* note 9, at 43–44; Siems, *supra* note 9, at 144.

101. *See* Armour et al., *supra* note 8, at 623–25, 627 tbl.1 (describing the international divergence in creditor protection law).

in each of the five countries.[102] In contrast, shareholder protection has been adopted in smaller, more frequent steps, which has led to a gradual convergence of legal systems in this area of law.

With respect to worker protection, one can also identify at least four factors that are different from shareholder protection. First, workers are less mobile than investors, with the consequence that different preferences can lead to differences between labor law systems. Second, there is usually only "type A-regulatory competition" in labor law.[103] "Type A-regulatory competition" means that individuals can only choose a particular legal system if they also take residence in that place.[104] Thus, there is a bundling effect because the residence decision has to balance all relevant legal and non-legal factors.[105] Conversely, "type B-regulatory competition" is stronger because individuals can choose legal rules in a piece-by-piece manner by taking residence in one state and choosing the law of another.[106] In labor law, however, the latter is not possible because the applicable law is usually based on the place where the work is performed (*lex loci laboris*).[107] Third, the conflict between workers and firms is more contentious than the one between shareholders and directors.[108] Thus, conflicting factors of pressure steer the laws of different countries in different directions. Fourth, there can be strong path dependencies in labor law, which may hold legisla-

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102. For the United States, France, and India see *supra* note 58; for Germany see Insolvenzordnung [Insolvency Regulation], Oct. 5, 1994, BGBI. I at 2866 (F.R.G.), *translated in* Insolvency Statute (2003), http://www.iuscomp.org/gla/statutes/InsO.htm.

103. Heine & Kerber, *supra* note 10, at 51–53 (describing "type A-regulatory competition" and "type B-regulatory competition").

104. *Id.* at 51.

105. *Id.*

106. *See id.* at 51 (explaining that when firms are allowed a choice between the laws of many jurisdictions, "a much more direct form of competition among these legal rules is possible"); *see also* SIEMS, *supra* note 10, at 303 (describing international regulatory competition).

107. *See, e.g.*, Catherine Barnard, *Employment Rights, Free Movement under the EC Treaty and the Services Directive*, *in* EU INDUSTRIAL RELATIONS V. NATIONAL INDUSTRIAL RELATIONS 137, 139 (Mia Rönnmar ed., 2008).

108. For more information about the shareholder/stakeholder debate see, e.g., SIEMS, *supra* note 10, at 175–90.

tors back from an internationally uniform mode of proceeding—labor law is often endogenized by the economic and political contexts of a particular country.[109] Moreover, different ideologies and law-making procedures play a greater role than in the laws on shareholder and creditor protection.[110]

V. CONCLUSION

This Article has used a new quantitative methodology in order to answer the question of whether there has been convergence, divergence, or persistence of the legal rules that shape country-level differences in corporate governance. The main result is that one must distinguish between different areas of law—the laws have converged in shareholder protection, diverged in worker protection, and evened out in creditor protection.

This Article has also examined how this relates to the common law–civil law distinction. In the relationship between Germany and France, and the United Kingdom and India, the belonging of countries to one legal origin still matters. However, this does not lead to a "lock in" because there have been a number of instances in which the differences between countries of the same legal origin have increased significantly. These changes have, for instance, been a result of EU law and political developments. Moreover, the position of the United States is that of an outlier because its law strongly differs from the other four legal systems.

Finally, one can look at the relationship between both distinctions (the different types of protection and the different countries). Some similarities within common law and civil

109. Deakin et al., *supra* note 8, at 155. *See generally* MARK J. ROE, POLITICAL DETERMINANTS OF CORPORATE GOVERNANCE 134–41 (2002) (explaining that because differing labor markets create competition between nations, European countries cannot politically integrate to implement a more worker-friendly labor policy).

110. For example, see the debate about employee co-determination in the European Union in THE HIGH LEVEL GROUP OF COMPANY LAW EXPERTS, REPORT ON A MODERN REGULATORY FRAMEWORK FOR COMPANY LAW IN EUROPE 105 (2002), *available at* http://ec.europa.eu/internal_market/company/docs/modern/report_en.pdf (discussing whether a company should be required "to comply with the employee participation law of its place of real seat").

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law countries have been found that support the protection of workers. However, there has also been some divergence between French and German, and U.S. and U.K., labor law. Furthermore, Indian labor law is not particularly close to U.K. or U.S. labor law. With respect to the protection of shareholders and creditors, German and French law were relatively close; however, this has changed in the course of the last few decades. In contrast to this, U.K. and U.S. law on these issues were already relatively dissimilar in 1970, whereas the similarities in the protection of shareholders and creditors in the U.K. and India have mainly persisted.

Future research must address how these legal differences relate to corporate governance and finance at the firm level. The current empirical literature usually examines only whether the strength of legal protection (for instance, shareholder protection) is reflected in a country's financial development.[111] The data on differences between countries presented in this Article may, however, also be used for econometric purposes. For instance, one can examine whether the convergence of legal systems in shareholder law has decreased the cost of foreign investment, or one can take the position of investors in a specific country and examine the hypothesis that a legal system that converges with U.S. law attracts more American investors.

111. *Supra* Part II.

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