SHAREHOLDER, CREDITOR AND WORKER PROTECTION: TIME SERIES EVIDENCE ABOUT THE DIFFERENCES BETWEEN FRENCH, GERMAN, INDIAN, UK AND US LAW

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by

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Abstract
This paper uses a new quantitative methodology ("numerical comparative law", "leximetrics") in order to answer the questions whether there has been convergence, divergence or persistence of legal rules, and how this relates to the Common Law/Civil Law distinction. It is based on indices for shareholder, creditor, and worker protection which code the legal development of 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 the distinction between Civil Law and Common Law countries because there have been a number of instances where countries of different legal families have converged and countries of the same legal family have diverged.

Keywords: shareholder protection, creditor protection, worker protection, comparative law, legal convergence, numerical comparative law, leximetrics

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

I. Introduction

Has there been convergence of legal systems in recent years? Some voices think that in the modern world legal differences, in particular the distinction between Civil Law and Common Law countries, have become less marked (Markesinis 1994; Örücü 2004; Siems 2007). Others object that path dependencies still play an important role. In particular, this may be the result of different legal mentalities in Common Law and Civil Law (Legrand 1996, 1999, 2005, 2006). Modified positions are also possible. For instance, it could be said that today legal systems do not primarily differ because of different legal families but due to their belonging to the EU, or due to the question whether a country is developed or developing. Another modified view may distinguish between different areas of law, but here it may be objected that institutional complementarities prevent convergence in one area of law only (Ahlering and Deakin 2007). Finally, there is the suggestion of a "weak legal origin" effect, which means that the effect of a belonging to a particular legal family varies over time, depending on the strength of pressures for convergence and for the "endogenisation" of law to local conditions (Armour et al 2008; Deakin et al 2007).

This paper uses a new quantitative methodology (numerical comparative law', 'leximetrics'; see Siems 2005; Lele and Siems 2007a) in order to answer the questions whether Civil Law and Common Law systems still differ or whether there has been convergence of legal rules. It is based on indices for shareholder, creditor, and worker protection which code the legal development of France, Germany, India, the UK and the US from 1970 to 2005. Part II of this paper describes this data and the methodology of this paper. Parts III and IV present its main results. Part V concludes.

The main focus of this paper is on the development of the law. It does not try to answer the "causality problem", namely whether legal convergence (or divergence) are mainly the result of factual changes ("law follows" thesis), or whether law is predominatly a source of factual changes itself ("law matters" thesis). This point is well discussed in the literature (e.g. Siems 2008a: 231-3; Hansmann and Kraakman 2001: 454-5; Heine and Kerber 2002: 53). The present paper will, however, analyse why particular legal changes have taken place. This is not supposed to mean that law merely reacts. Rather, it makes the realistic assumption that at least to some extent the law is influenced by factual changes.

II. Methodology

This paper is based on three indices that code how well countries protect shareholders, creditors and workers. These indices cover a wide range of variables: 60 for shareholder protection, 44 for creditor protection and 40 for worker protection. They are therefore very detailed in their legal coverage, with 144 legal variables coded for each country-year. They also extend over a relatively long time period, 36 years (1970 to 2005). As a limitation, however, only the law for a small number of countries have been coded: France, Germany, the UK, the US and India. These countries are of particular interest because they include three "parent" legal systems, the UK, France and Germany;[i] the world's largest economy, the US; and its largest democracy, India. In total, these three indices code for (60+44+40)*36*5 = 25,920 observations.

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

Table 1: Shareholder protection index (extract)

Variables	*Description*[iii]
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)

	70	*71*	*72*	*73*	*74*	*75*	*76*	*77*	*78*	*79*	*80*	*81*	*82*	*83*	*84*	*85*
I 1	1[iv]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
	1[v]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
	1[vi]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
	0[vii]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	½ viii	½	½	½	½	½	½	½	½	½	½	½	½	½	½	½
	1[ix]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
	1[x]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

……..

Table 3: Shareholder protection United Kingdom (extract)

	70	*71*	*72*	*73*	*74*	*75*	*76*	*77*	*78*	*79*	*80*	*81*	*82*	*83*	*84*	*85*
I 1	1[xi]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1[xii]
	1 xiii	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
	½ xiv	½	½	½	½	½	½	½	½	½	1[xv]	1	1	1	1	1
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1 xvi
	½ xvii	½	½	½	½	½	½	½	½	½	½	½	½	½	½	½
	1 xviii	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
	½ xix	½	½	½	½	½	½	½	½	½	1[xx]	1	1	1	1	1

……

In other papers we have explained our indices and our coding methodology in more detail. In these papers we have also used this data to determine the strength of shareholder, creditor and worker protection in France, Germany, the UK, the US and India (Armour et al. 2008; Deakin et al. 2007; Lele and Siems 2007a, 2007b; Siems 2006). Furthermore, it has been and will be examined whether the strength of legal protection is reflected in a country's financial development (Armour et al. 2007; Deakin and Sarkar 2008). These papers therefore respond to the "law and finance" literature which, based upon cross-sectional studies, claims to have proven that the greater the protection afforded to shareholders and creditors by a country's legal system, the more external financing firms in that jurisdiction will be able to obtain (e.g. La Porta et al. 1998, 2006; Djankov et al. 2008).

The methodology and content of the present paper is different from these previous papers. Here, the interest is not on the aggregates of legal protection but on the differences between the five countries. For this purpose, I calculated the differences between each variable in the law of a particular legal system and the same variable in the law of the other countries. Subsequently, the absolute values of these differences were added together. For example, the formula for the differences between shareholder protection in the UK and France is

$$\sum_{x=1}^{x=60} \left| SPUK1970_x - SPFrance1970_x \right|$$

where SPUK1970 and SPFrance1970 stand for the 60 variables on the strength of shareholder protection in 1970. 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 = 1,080 observations which form the basis of the current paper.

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 (see III 1 below), the score of "0" would indicate that the law of a particular country would be identical to French law. Using time-series it can also be traced how the differences between countries have developed in the last few decades. For instance, the downward trend of the curve which displays the differences between shareholder protection in France and the UK (see III 1 below) means that French and UK 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 globalisation of corporate governance trends, a distinction is drawn between formal, functional, contractual, hybrid, normative and institutional convergence. Ronald Gilson (2001: 337 *et seq.*) and John Coffee (1999b: 679) take it that functional convergence is likelier than formal convergence. "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. Furthermore, the dualism between formal and functional convergence is supplemented by Paul Rose (2001: 134-5) with the concept of hybrid convergence. Hybrid convergence concerns the situation where a firm "escapes" domestic law by shifting its registered seat to another country (called

"convergence-by-the-backdoor" by Branson 2000: 691). Outside the legal sphere, one may, with Curtis Milhaupt (2001), raise the question of "normative convergence". "Normative" means here that the viewpoint of convergence is applied to extra-legal norms. Further, David Charny (1998: 165) employs the term "institutional convergence", where *de facto* the structures in firms become more similar. This concerns, for instance, the question 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 the present paper can only show whether there is a formal convergence or divergence of legal rules. However, the question about formal convergence is also relevant for the other types of convergence. As far as there is formal convergence the question becomes obsolete of whether other forms of convergence may step in as substitutes. And as far as there is formal convergence but *de facto* persistence, this can lead to further research whether a "convergence of law and reality" may be expected in the future (see Siems 2008a: 228).

III. Difference analysis of individual countries

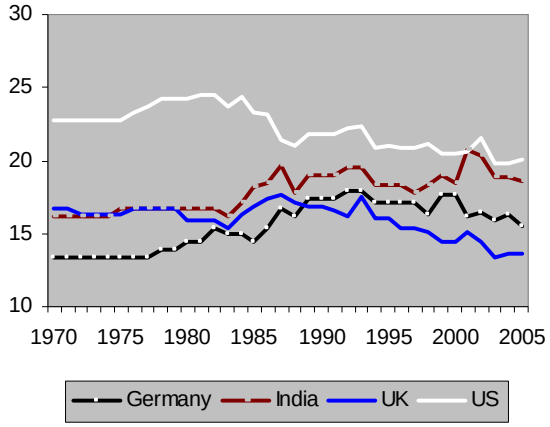
This part uses the new indices for shareholder, creditor and worker protection (see II. above) in order to examine the differences and similarities between the five countries. This will be supplemented by Part IV, which provides a more general analysis on convergence and legal origins. The structure of Part III is as follows: Subsection 1 analyses how much French and German law, French and UK law, French and US law, German and UK law, and German and US law have differed between 1970 and 2005. The differences between US and UK law, as well as the differences from Indian law follow in subsection 2.

1. Differences from French and German Law

The pictures on the left hand sides of Figures 1 and 2 (below) show how different French and German law have been 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 2005 and 1970 scores have been calculated in order to identify whether the other legal 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.

Figures 1: Differences from French Law

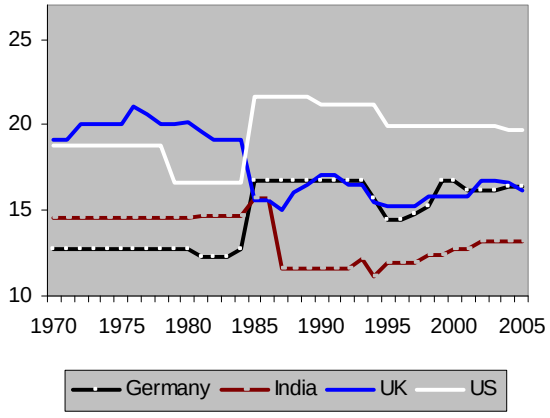
Shareholder Protection (60 variables)



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)

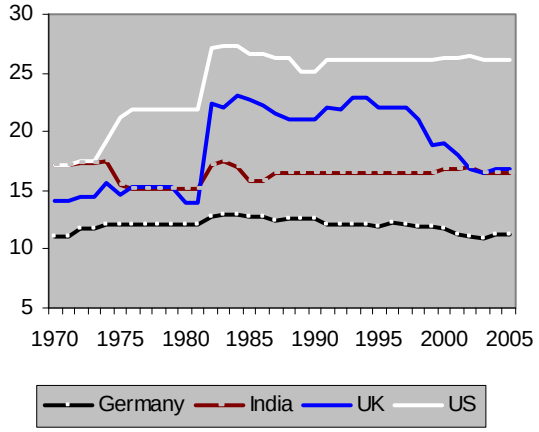
Creditor Protection (44 variables)



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)

Worker Protection (40 variables)

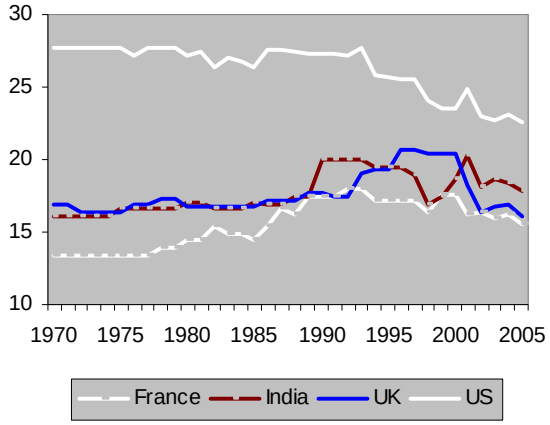


Summary data for 1970 to 2005

- 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)

Figures 2: Differences from German Law

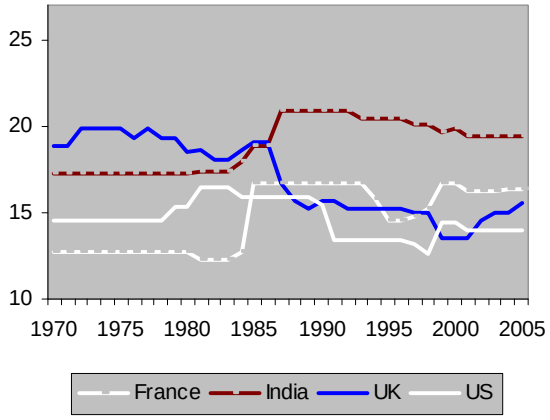
Shareholder Protection (60 variables)



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)

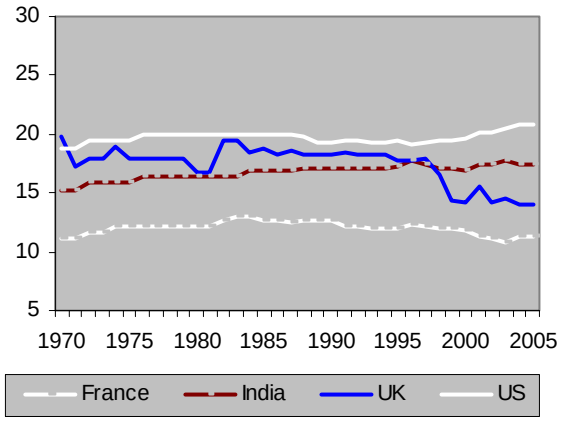
Creditor Protection (44 variables)



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 (-6.48; new -5.88); (2) France (0.08); (3) US (1.99); (4) India (2.33)

a) Observations

French and German law shared some similarities until the mid 1980s. With respect to worker protection, this has also not changed until 2005. However, there has been divergence in the two other 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.

A different picture emerges for the relationship of German and French law to UK law. German and UK law have converged in all three areas of law. Similarly, there has been some convergence of the French and UK law on shareholder and creditor protection. Conversely, the French and UK 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 US law is most different from French and German law. Minor convergence of French and US law can be found for 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 US has further diverged in the last three decades. The relationship between Germany and US 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/late 1980s.

India has mainly intermediate scores in the pictures above. Thus, despite the fact that it is a Common Law country and the only developing country of our sample, it is not 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 and French and Indian law converged.

b) 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 of similarities in the industrialisation of the nineteenth century.[xxi] The development of the last 35 years 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 shareholder protection in the 1980s and early 1990s, for instance in the area of takeover law.[xxii]

The 1985 insolvency reform was also the main cause for the convergence of the French and UK law on creditor protection. The divergence of French and UK labour law in the 1980s is a consequence of the weakening of worker protection by the conservative government in the UK and the strengthening of worker protection by the socialist government in France. Apart from that, however, German and French law have become more similar to UK law. This is partly a result of EU law, for instance, of the directives on working time, and fixed term and part time work.[xxiii] Furthermore, since the early 2000s there has been some reduction in the level of worker protection in France, which has led to convergence with the UK (Deakin et al 2007: 146). Finally, for shareholder protection there has been "convergence from below". This means that the convergence is not mainly a result of international conventions (such as the OECD Principles of Corporate Governance) or regional legislation (such as EU Directives). Rather we can observe an evolutionary process in which national legislators aim to improve the quality of shareholder protection in a global economy (Siems 2008a: 373-91; see also Part IV below)

This convergence in shareholder protection law also emerges from the slight decrease of differences between French and US law, and German and US 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 US law. To give an example, whilst the US law required listed companies to constitute audit committee comprising of independent board members from 1978, the UK, France, Germany, and India adopted similar measures much later.[xxiv] The background of this "Americanisation" of the law is the wish to attract capital. US law is particularly influential here because big foreign companies are often listed on US markets, US institutional investors have special weight, and the USA as a world power can exert political pressure (Hertig 2000: 270 *et seq*.). Moreover, perhaps surprinsingly, the Sarbanes Oxley Act of the US[xxv] has also moved US law closer to the European countries, for instance, with respect to the variables on board division, public enforcement, and shareholder protection being mandatory (see Lele and Siems 2007a: 42).

However, in general, US law is quite different from French and German law. Thus, in contrast to the claim by Hansmann and Kraakman (2001), there is no "end of history" because other countries would now follow the US model. It would be tempting to explain this with the Common Law origins of US law and the different ownership structures of firms in the US and in continental Europe. However, this would not be a sufficient explanation because these reasons would also apply to the UK and (to some extent) India but these legal systems are considerably closer to French and German law.[xxvi] Rather, it is likely that political factors play a decisive role, namely, with respect to shareholder

protection the regulatory competition between US states,[xxvii] and with respect to worker protection a libertarian view which transcends both major political parties. Finally, for creditor protection one can see the impact of comprehensive reforms. These were the introduction of the US Bankruptcy Code in 1978, with the "debtor in possession" reorganisation under Chapter 11, the worker-oriented French bankruptcy law of 1985 and the Indian reform of insolvency law, in force since 1987.[xxviii]

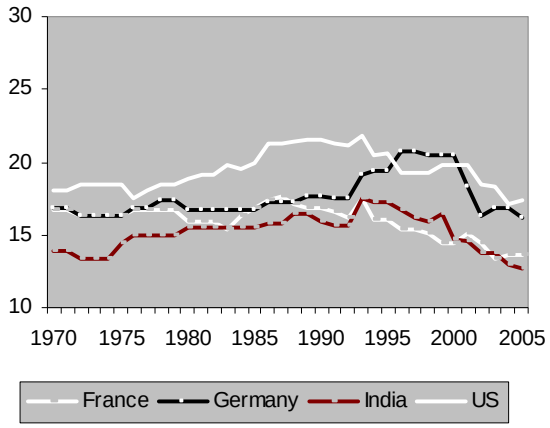
It can be concluded that the growing differences between French and German law and the growing similarities between these two countries and the UK and US illustrate that the ties of legal families have been weakening. This "civilisation of the Common Law" (Glenn 1993) is partly, but not only, based on the influence of the EU. A number of results also indicate the role of politics. Due to its federal structure and a libertarian political ideology the position of the US is that of an outlier. Furthermore, changes in the differences in worker protection have often been driven by political events. Overall, however, the differences across countries have been most stable with respect to worker protection, thus indicating stronger path dependencies.[xxix]

2. Differences from UK, US, 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 between French and US/UK law and German and US/UK law. Based on the new indices (see II. above) 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.

Figures 3: Differences from UK Law

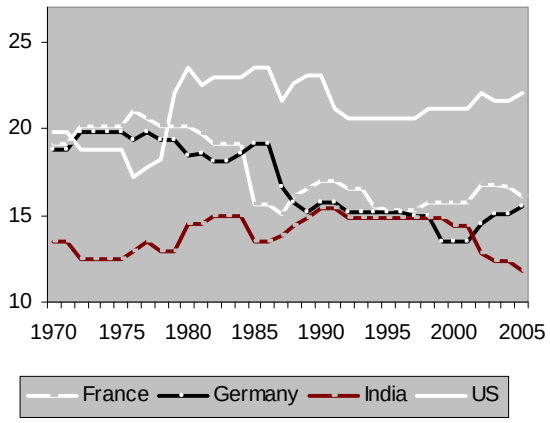
Shareholder Protection (60 variables)



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)

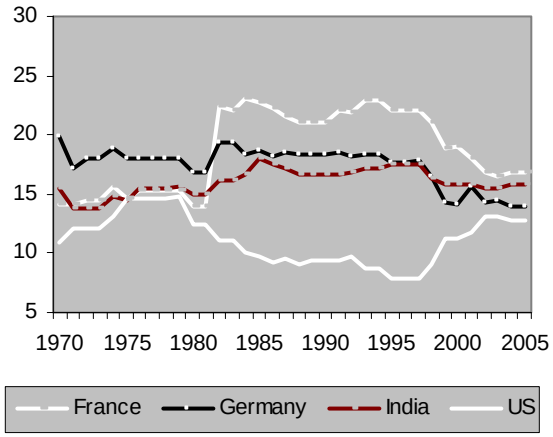
Creditor Protection (44 variables)



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)

Worker Protection (40 variables)

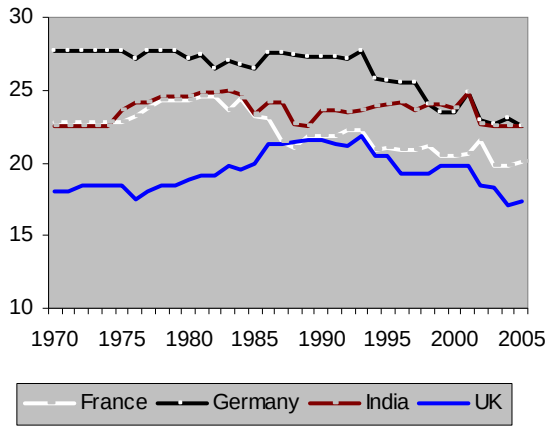


Summary data for 1970 to 2005

- 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 (-5.48); (2) India (0.33); (3) US (1.80); (4) France (2.61)

Figures 4: Differences from US Law

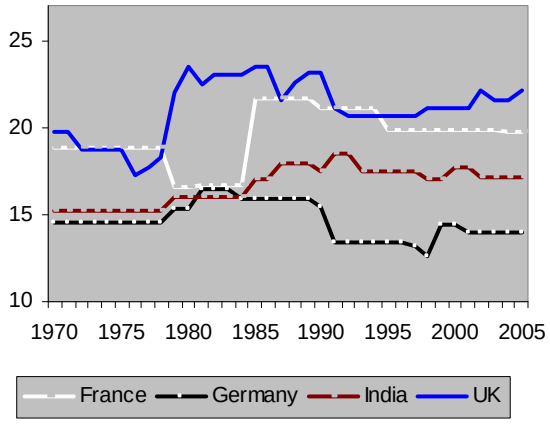
Shareholder Protection (60 variables)



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)

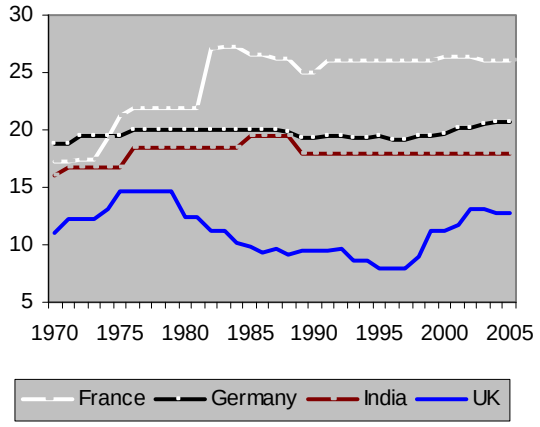
Creditor Protection (44 variables)



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)

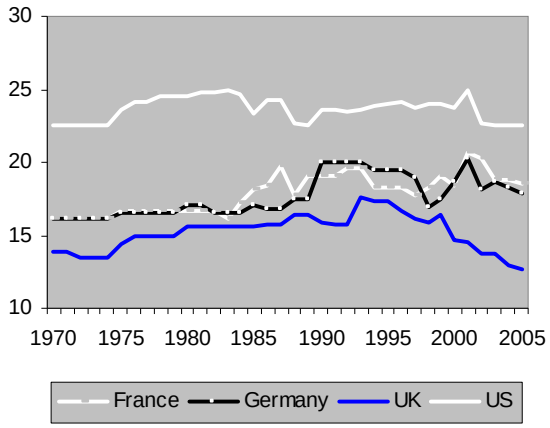


Summary data for 1970 to 2005

- 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)

Figures 5: Differences from Indian Law

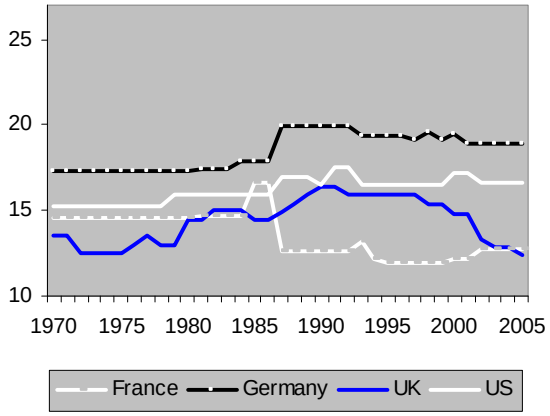
Shareholder Protection (60 variables)



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)

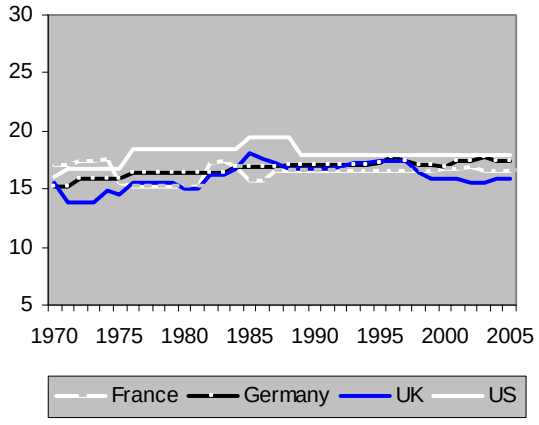
Creditor Protection (44 variables)



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)

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)

a) Observations

Most of the figures display profound differences between US and UK 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 US shareholder protection show that UK law is closer to US law than to the laws of the other four countries. Yet, that is different from a UK perspective because the US law on shareholder protection is more different than the laws of the other four. Finally, there are some similarities in worker protection between the US and the UK with some convergence in the 1980s and early 1990s and some divergence in the last ten years.

Indian and US law have always been very different. From an Indian perspective, US law is even more different than French law in all three categories. By contrast, Indian and UK law share some similarities, in particular 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 labour law there is, however, the peculiar situation that all four curves are flat and almost identical. The Indian law on worker protection has therefore no particular similarities with any of the other countries.

b) Explanations

At least today,[xxx] the Common Law origins of US law matter only to a minor extent. With respect to shareholder protection the likely explanation is that the regulatory competition of US corporate law[xxxi] has led to divergence of US and UK law. 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 (Siems 2008a: 224; for takeover law see also Armour and Skeel 2007). With respect to creditor protection the decisive event was the 1978 reform of US insolvency law[xxxii] which moved US law away from UK law. Although the common origins of the relatively low worker protection in the US and the UK can still be seen today, there has also been some development in the differences between US and UK law. These are mainly attributed to changes in UK law because the conservative government reduced worker protection in the 1980s and early 1990s (and thus it converged with US law), which was to some extent reversed by the labour government in the late 1990s (for details see Deakin et al. 2007).

For the Indian law on shareholder and creditor protection it can still be seen that India's law derived from the UK. However, with respect to shareholder

protection there has been some divergence until the mid 1990s. This was due to the Europeanisation of company law in the UK[xxxiii] and the improvement of shareholder protection in the UK Companis Act 1985 and the corporate governance codes. In recent times, the UK and India have come closer again, mainly due to the introduction of corporate governance norms in India based on the UK codes (see Lele and Siems 2007b). With respect to creditor protection, the formal similarity between the UK and India needs to be treated with caution because qualitative research found that creditors have not been well protected in India (Armour and Lele 2008). In particular, judicial delays seriously impede their protection because on average it takes anything up to 20 years for a case to be resolved (Debroy 2000). Recent reforms, however, aim to improve creditor protection in India, for instance, by empowering banks and financial institutions to enforce security interests extra-judicially.[xxxiv] Worker protection is very different in India and the UK. This is mainly a result of socialist politics in the aftermath of India's independence.

There are no particular similarities between India and the US in all three areas of law. Thus, here, the different political and legal climate supersedes any similarities of their Common Law origins. 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, however, not the case because in almost all of the "differences figures" India displays intermediate scores.

As a result, in some respects, the classification of the UK, the US and India as belonging to the same legal family can still be justified today because there are similarities between the protection of shareholders and creditors in the UK and in India, and between the protection of workers in the UK and in the US. 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 matters. Changes in the differences of worker protection have often been driven by political events and the situation of the US as an outlier can be explained by political factors. A further explanation may be that only in the three origin countries (UK, Germany, and France) there are complementarities between legal institutions and indigenous economic ones which can lead to an "institutional lock-in" that is difficult to shift (Ahlering and Deakin 2007). In contrast to this, there is no reason to expect a similar degree of complementarity in transplant countries which makes fundamental changes of the law more likely.

IV. General analysis on legal origins and convergence

The data on the right hand sides of Figures 1 to 5 (Part III above) can also be used in order 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[xxxv]

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

Table 4 reports whether the means of differences differ between the two Civil Law countries (Germany and/or France) and the three Common Law countries (UK, US and/or India). It confirms the results of the previous parts. There are similarities between German and French law, and UK and Indian law. US law is a clear outlier because in ten out of the twelve categories US law is more different than any of the other pairs of countries. Remarkably, this is not only the case for the differences between US and German/French law but also for the differences between US and UK/Indian law.

Table 5: Convergence or divergence of laws[xxxvi]

	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	1	1	3	*8*	*5*
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 even out.[xxxvii] It can also be seen that convergence is a recent phenomenon. In the 1970s and 1980s even shareholder protection diverged, whereas now there is even some convergence in worker protection. Distinguishing between the five countries, France, Germany and India have fairly balanced figures in all three categories. The UK law on shareholder and creditor protection has converged with most of the other countries. US shareholder protection law has also converged whereas US creditor and worker protection law has diverged from the others.

Why are there these differences between shareholder, creditor and worker protection? Siems (2008a) examined the reasons for convergence shareholder law in detail. It was found that among the causes of convergence a distinction can be drawn between "convergence through congruence" and "convergence through pressure". "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. Convergence forces are,

accordingly, the overall cultural and economic-policy approximations, the internationalisation of the economy and approximations in legal culture and shareholder structures. 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. In terms of consequences, the focal point of convergence is pressure in the case of public companies, since competition for shareholders and international lobbying are the stronger the more firms are dependent on international capital markets and interest groups.

Table 6: Convergence forces [xxxviii]

	Specific reasons	*Legislative responses*
Convergence through congruence	• General cultural and economic-policy approximation • Convergence of legal cultures • Internationalisation of the economy: international economic law; internationalisation through "new media"; the internationalisation of private institutions; the internationalisation of undertakings (international 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) path dependencies: weak path dependencies; semi-strong path dependencies; 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 organisations 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 of Siems (2008a) are summarised in Table 6. In general, analogous forces may also be work for creditor and worker protection. Here too, it might be the case that due to advancing globalisation 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 direction of the law. Thus, as far as, say, 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, it may play a role that creditors operate less internationally than shareholders. Regardless of international project finance contracts and debt securities, debtor and creditor of a normal loan are usually based in the same country. Secondly, countries prefer different forms of creditor protection. In a related paper (Armour et al. 2008) the creditor protection index is decomposed into (i) rules which take effect by limiting the freedom of the debtor firm to engage in activities that may harm creditors; (ii) rules which take effect by facilitating creditor contracting for greater protection; and (iii) rules which take effect by facilitating creditor power in bankruptcy proceedings. It follows that, for example, a country with high standards of minimum capital (which falls under (i)) may not see why it should change its approach to creditor protection. And even it realises 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 its benefits.[xxxix] Thirdly, the conflict between creditor and debtor interests is more contentious than the one between shareholders and directors. Empirical cross-country data show that shareholder interests are increasingly regarded as worth protecting (Lele and Siems 2007a, Siems 2008b), whereas countries strongly differ in the question whether insolvency law should be more debtor or creditor friendly (Armour et al. 2008). Fourthly, insolvency law has been the subject of comprehensive reforms all of the five countries.[xl] In contrast to this, shareholder protection has been adapted in smaller, more frequent steps which has led to a gradual convergence of legal systems in shareholder law.

With respect to worker protection, one can also identify four factors which are different from shareholder protection. First, workers are less mobile than investors, with the consequence that differences of preferences can lead to differences between labour law systems. Secondly, there is usually only “type A” regulatory competition in labour law. “Type A” regulatory competition

means that persons can only choose a particular legal system if they also take residence in this place. Thus, there is a "bundling effect" because the residence decision has to balance all relevant legal and non-legal factors. Conversely, "type B" regulatory competition is stronger because persons can engage in "cherry picking" by taking residence in one state and choosing the law of another one (see Heine and Kerber 2002: 51; Siems 2008a: 303). In labour 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*). Thirdly, the conflict between workers and firms is more contentious than the one between shareholders and directors. Thus, conflicting factors of pressure may steer the laws of different countries into different directions. Fourthly, there can be strong path dependencies in labour law which may hold legislators back from an internationally uniform mode of proceeding. Labour law is often "endogenised" by the economic and political contexts of a particular country (Deakin et al 2007: 155). Moreover, different ideologies and law making procedures play a greater role than in the law on shareholder and creditor protection. As an example it may just be referred to the issue of employee-co-determination which has been a major point of disagreement among the Member States of the EU (see e.g. High Level Group of Company Law Experts 2002: 105).

V. Conclusion

This paper has used a new quantitative methodology in order to answer the question whether there has been convergence, divergence or persistence of legal rules. 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.

It has also been examined how this relates to the Common Law/Civil Law distinction. In the relationship between Germany and France, and the UK and India the belonging of countries to one legal family 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 family have increased significantly. These changes have, for instance, been a result of EU law and political developments. Moreover, it has been found that the position of the US 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 within Civil Law countries have been found for the protection of workers. However, there has also been some divergence of French and German labour law, and US and UK labour law. Furthermore, Indian labour law is not particularly close to UK or US labour law. With respect to the protection of shareholder and creditors, German and French law used to be relatively close; however, this has changed in the course of the last few decades. In contrast to this, UK and US law on these issues were already relatively dissimilar in 1970, whereas the similarities in the protection of shareholders and creditors in the UK and India have mainly persisted.

Notes

[i] For the distinction between parent and transplant countries see Siems (2008b: 138-144).

[ii] At http://www.cbr.cam.ac.uk/research/programme2/project2-20.htm.

[iii] Even where the description of the variables does not mention it specifically, we have given intermediate scores wherever necessary.

[iv] Loi 1966, art. 153; Code de Commerce 2000, art. L. 225-96.

[v] Loi 1966, art. 376; Code de Commerce 2000, art. L. 236-9.

[vi] Loi 1966, arts. 180, 215; Code de Commerce 2000, arts. L. 225-129, 225-204.

[vii] There is no explicit provision on sale of major parts of company assets. It is debated whether a *de facto* measure constitutes a change in the object of business (as indicated in the articles), for which the general meeting is competent, or whether the major assets can be equated with the whole assets (Loi 1966, art. 396 (no.4); Code de Commerce 2000, art. L. 237-8(no.4)). Since these cases are rare exceptions, deviation from the "0" score would, however, not be justified.

[viii] The general meeting decides both approval of the annual accounts and the distribution of profits (Loi 1966, arts. 346, 347; Code de Commerce 2000, arts. L. 232-11, 232-12). However, there is some room for manoeuvre due to accounting law. Furthermore, interim dividends are possible (Loi 1966, art. 347; Code de Commerce 2000, arts. L. 232-12, Décret 1967, art. 200).

[ix] Loi 1966, arts. 90, 134; Code de Commerce 2000, arts. L. 225-18, 225-75.

[x] Loi 1966, arts. 101 through 103; Code de Commerce 2000, arts. L. 225-38 through 40 (but exception for agreements on current operations entered under normal terms and conditions).

[xi] CA 1948, ss. 10, 23; CA 1980 Sch. 3 paras 2, 6.

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

[xiii] CA 1948, ss. 206, 209; CA 1985, ss. 425, 427.

[xiv] CA 1948, ss. 61(2), 66(1); CA 1985, 121, 135 for alteration and reduction of capital.

[xv] CA 1980, s. 14; CA 1985 s. 80 for allotment of shares..

[xvi] 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).

[xvii] Table A 1948, art. 114; Table A 1985, art. 102: the general meeting adopts the dividends. Yet, profit distributed by the general meeting may not be higher

than proposed by board. Furthermore, interim dividends are possible (Table A 1948, art. 115; Table A 1985, art. 103).

[xviii] Table A 1948, art. 89; Table A 1985, art. 73.

[xix] Before 1948 there was a rule in Table A that related parties transactions required shareholder approval. The 1948 reform dropped this provision. However, according to the Listing Rules, there was and is the requirement for approval of the general meeting for some transactions with related parties (Listing Rules 1979, ch. 4.8; Listing Rules 1984, s. 6.2: class 4 transactions; Listing Rules 1993, paras. 11.1(a),(b)(ii), 11.4(c).

[xx] CA 1980, s. 48; CA 1985, s. 320 (exceptions in s. 321).

[xxi] For the latter point see Deakin 2009 and Deakin et al. 2007: 139-141.

[xxii] For insolvency law see Loi n° 85-98 du 25 janvier 1985 relative au redressement et à la liquidation judiciaires des enterprises. For shareholder protection see Lele and Siems 1997: 32 and the detailed explanations available at http://www.cbr.cam.ac.uk/pdf/LLele-Siems-Shareholder-Index-Final1.pdf.

[xxiii] Directive 2003/88/EC of the European Parliament and the Council of 4 November 2003 concerning certain aspects of the organisation of working time; Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (as amended); Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP; Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC; Council Directive 98/23/EC of 7 April 1998 on 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.

[xxiv] The UK, in 1992 with the Code of Best Practice 1992, s. 4.3; France in 2003, because of the French corporate governance principles (see Hebert 2004); Germany in 2002 because of the German Corporate Governance Code; India in 2000 with the insertion of a new Section 292A in the Companies Act 1956 by the Amendment Act of 2000. For further examples see Lele and Siems 2007a: 41-2; Siems 2008a: 226.

[xxv] Sarbanes-Oxley Act (Public Company Accounting Reform and Investor Protection Act) (USA) of 30.07.2002, Pub. L. No. 107-204, 116 Stat. 745.

[xxvi] Moreover, US law is also very different from UK law; see Figures 3. and 4., below.

[xxvii] For comparative accounts see, e.g., Siems (2008a: 297-307, 318-23); Gelter (2005); Tröger (2005). For the EU see also Deakin (2006); Armour (2005).

[xxviii] Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, et seq.); Loi n° 85-98 du 25 janvier 1985 relative au redressement et à la liquidation judiciaires des enterprises; Sick Industrial Companies Act 1985 (in force since 1987 vide Notifications No. GSR 24(E) and SO 444(E)).

[xxix] For further discussion between the differences between different areas of law see Part IV below.

[xxx] But see also also Hoeflich (1987) and Riesenfeld (1989) on the previous influence of German law on the American legal system.

[xxxi] See references supra note xxvii.

[xxxii] Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, et seq.).

[xxxiii] In particular the Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, 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 of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent.

[xxxiv] Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act 2002 ("SARFAESI").

[xxxv] Based on first bullet points of Figures 1 to 5, above (ranks only).

[xxxvi] Based on second bullet points of Figures 1 to 5, above (note that a negative sign means convergence and a positive sign means divergence).

[xxxvii] For explanations see IV 1 b and 2 b, above.

[xxxviii] Summary based on headings of Siems 2008a: 250-335.

[xxxix] Thus, it can be argued that legislators have mostly already reached a local optimum; see Schmidt and Spindler (2004: 117-8).

[xl] For France: Loi n° 85-98 du 25 janvier 1985 relative au redressement et à la liquidation judiciaires des enterprises; for Germany: Insolvenzordnung of 5 October 1994 (in force since 1999); for India: Sick Industrial Companies Act 1985 (in force since 1987 vide Notifications No. GSR 24(E) and SO 444(E)); for the UK: Insolvency Act 1986 Enterprise Act 2002 (in foce since 2003); for the US: Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, et seq.).

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