LEGAL ORIGINS: RECONCILING LAW & FINANCE AND COMPARATIVE LAW

Centre for Business Research, University Of Cambridge
Working Paper No. 321

by

Mathias M. Siems*
Centre for Business Research
The Judge Business School Building
University of Cambridge
Trumpington Street
Cambridge, CB2 1AG
United Kingdom
Tel: +44 (0) 1223 765334
Fax: +44 (0) 1223 765338
Email: m.siems@cbr.cam.ac.uk

March 2006

This working paper forms part of the CBR Research Programme on Corporate Governance.

Abstract
In the last few years law and finance scholars have "discovered" the usefulness of comparative law. Their studies look at the quantifiable effect that legal rules and their enforcement have on financial development in different countries. Moreover, they link their results with the long-standing distinction between Civil Law and Common Law countries. Whether this revival of "legal families" (or "legal origins") is a useful way forward is, however, a matter of debate. The following article challenges these studies, and looks for characteristic features which are more precise and meaningful than the use of legal families as such.

JEL Classification: K00, K20, K22, N20, N40, O10, P51

Keywords: Legal origins, legal families, legal traditions, numerical comparative law, law and finance, law and development, Civil Law, Common Law, legal adaptability, legal transplants, Djankov et. al., La Porta et. al., LLSV.

The comparative lawyer cannot restrict his field narrowly.
More than any other academic, he must be prepared
to find new topics for discussion and research
F. H. Lawson[1]

I. Introduction

It has been said that the 21st century will be an "era of comparative law".[2] The problem is, however, how to do comparative law "properly". In this respect, one may be less optimistic: Allegedly, politicians and judges pay no attention to comparative law because it is regarded as too complicated and theoretical, and can only be understood by a select audience.[3] But, perhaps, there is hope. Recently, law and finance scholars[4] have "discovered" the usefulness of comparative law. Their studies have had an immense impact in academic fields such as comparative corporate governance,[5] and their findings are strongly taken into account by the World Bank in order to assess the quality of law and legal institutions. In substance, law and finance scholars look at the quantifiable effect that legal rules and their enforcement have on financial development. Thus, they ask whether specific legal features, such as a particular legal rule or the effectiveness of courts, correlate with economic data, such as a country's GDP. Moreover, most of these studies link their results with the traditional distinction between Civil Law and Common Law countries. In particular, this revival of "legal families" – or as they call it "legal origins" – may surprise modern comparative lawyers. In the last years comparatists increasingly emphasize that law is becoming international, transnational, or even global, so that looking at legal families is seen as less important.[6] Given these different movements, this article discusses the use of legal families by law and finance scholars. Part II summarizes the reasoning and results of their studies. Part III challenges them. Part IV looks for characteristic features which are more precise than the use of legal families as such, and Part V re-examines the differences between countries according to these identifiers. Part VI concludes.

II. Legal origins in the law and finance literature

Law and finance scholars see the origins of different legal families in 12th and 13th century England and France.[7] Both countries faced the problem of how their legal system could provide protection of law enforcers (such as judges) from coercion by litigants through either violence or bribes. The crucial difference was, according to law and finance scholars, that France was less peaceful than England. In France there was therefore a greater need for protection and

control of law enforcers by the state. Consequently, following the Roman law tradition, it adopted a system of Civil Law, characterized by fact-finding by state-employed judges, automatic review of decisions, and later the reliance on codes rather than judicial discretion. In contrast, England developed a system of Common Law, which could rely on fact-finding by juries, independent judges, infrequent appeals, and judge-made law rather than strict codes.

According to the law and finance literature, this English and French legal tradition spread throughout the world through conquest, colonization, and imitation.[8] Furthermore, there are said to be two other Civil Law traditions: The German legal tradition, whose crucial adoption is seen in the German Civil Code in 1900, is – like its French counterpart – based on the Roman Civil Law and was also exported to other countries.[9] In contrast, the Scandinavian legal tradition, which developed relatively independently in the 17th and 18th centuries, is less closely linked with Roman Civil Law and has not spread throughout the world.[10] Finally, some studies refer to the category of a socialist-transition legal family, which is based on the legal tradition that emerged from the Soviet Union and its breakdown.[11]

How exactly legal families spread and why a particular country belongs to a particular family is usually not explained in detail. Rather, there are often just general references to mainstream comparative law books.[12] As far as explanations are given, they are usually very short so that grouping a particular country does not appear to be very difficult. For example, it is said that "Austrian and Swiss civil codes were developed at the same time as the German civil code and the three influenced each other heavily. In turn, Czechoslovakia, Hungary, Yugoslavia, and Greece relied on German civil law in formulating and modernizing their legal systems in the early part of the 20th century".[13] About Eastern Europe it is said that "we do not apply the Socialist category to countries that have gone back to their pre-Soviet legal systems. Latvia had its laws in the German civil law tradition prior to annexation by the Soviet Union in 1940, and it reverted to these laws in 1991. Lithuania was influenced by French and Dutch law both before its annexation in 1940 and after independence in 1990. It is classified as French legal origin. The remaining former socialist countries in central and Eastern Europe – Bulgaria, Croatia, the Czech Republic, Hungary, Poland, Serbia, the Slovak Republic, and Slovenia – followed the German legal tradition, with the exception of Romania, which followed the French tradition, and Albania, which inherited French legal influences via Italy. These countries are assigned to their pre-war legal systems".[14]

The core of the law and finance studies lies in looking for correlations between law and financial development. This is also applied to legal families. For instance, in one of their first studies La Porta et al. found that the protection of investors, i.e. shareholders and creditors, is not only strongly related with financial development but also that differences can be explained by legal origin. Having examined 49 countries, their result was that Common Law countries protect shareholders and creditors better than Civil Law countries (especially the French ones).[15] Recently, Djankov et al. extended this study to the protection of creditors in 129 countries. Furthermore, in contrast to La Porta al., they not only looked at creditor protection by ex post private dispute resolution but also at the use of public credit registries. Here, differences between legal families were also found, because Common Law countries rely primarily on the former ex post mechanism whereas French Civil Law countries sustain their debt market through the latter ex ante institutions.[16] With respect to investor protection, there is finally a study by La Porta et al. on securities law in 49 countries. Based on various indices their main finding is that there is little evidence that public enforcement is important, but strong evidence that laws mandating disclosure and facilitating private enforcement through liability rules benefit stock markets. This result was also linked to the Common Law-Civil Law distinction. Common Law was said to emphasize market discipline and private litigation. As La Porta et al. found that private monitoring and contracting were more important than public enforcement of securities law, they concluded that these advantages of the Common Law family were decisive for the superior quality of securities laws of these countries.[17] Other studies also confirm the result that Civil Law countries put a stronger emphasis on state involvement. For example, La Porta et al. found that in French legal origin countries state-owned enterprises play a greater role than in Common Law countries,[18] and there is also more government ownership of banks.[19] Djankov et al. analyzed the level of regulation in case of entry by new firms in 85 countries. The result was that (French) Civil Law countries regulate entry more heavily than Common Law countries.[20] Finally, reference can be made to Botero et al.'s study on labor markets in 85 countries, in which it was found that social control of business by labour law is higher in (French) Civil Law than in Common Law countries.[21]

Recently, some studies were also looking for the mechanisms through which legal origin influences financial development. Two possibilities were identified.[22] First, legal families may be explained by the "political channel". This means that differences in giving priority to private property rights or rights of the state could be crucial. As a proxy for this two studies looked at the judicial control of political decisions. They found that, for instance, there is less supreme court power in Civil Law than in Common Law countries.[23] State influence is therefore regarded as higher in the Civil Law legal family. Second, it could be deci-

sive that legal families respond differently to changing socioeconomic circumstances. With respect to this "adaptability channel", the case law approach by the Common Law is seen as more flexible whereas Civil Law is regarded as inherently more formalistic and rigid.[24] A study by Djankov et al. on legal proceedings in 109 countries confirms this result. Djankov et al. looked at various variables, such as the need for legal representation and written documents, statutory justification for a complaint, and limits to the use of evidence. Their result was that Civil Law countries (in particular the French ones) provide a more formalist approach than Common Law countries.[25] Although there are therefore studies which confirm differences both in the "political" and in the "adaptability" channel, this does not mean that both channels are equally important for financial developments. Beck et al. found support for the adaptability channel but not the political channel: The differences in supreme court power were not statistically significant. In contrast the importance of case law was found to be positively associated with financial development.[26]

III. Problems in distinguishing legal families

In discussing these law and finance studies, one could first of all doubt the explanatory force of legal families. Indeed there are scholars who emphasize that other aspects, such as politics, culture, religion, and geography, are considerably more important than the belonging to a particular legal family.[27] If one disregarded these other aspects, one could easily come to absurd results. This was made very clear in a paper by West, which correlates legal families with success in the football World Cup![28] His result was that there was a statistically significant positive correlation between World Cup success and French legal origin. Thus he concluded: "Perhaps teams from countries with systems based on the French model (such as 1998 champion France and 2002 champion Brazil) perform well due to the remaining vestiges of the Napoleonic Code that somehow remove discretion from coaches and managers in the same manner that the civil law system curtails judicial activism. Or maybe – just maybe – some other forces are at work." This is indeed the usual reaction to strange statistical correlations, because robustness checks may expose omitted variable biases.[29]

However, the problem of legal families and law and finance lies somewhere else. Before you contemplate different channels and check the robustness of your results, you have to find out which legal system belongs to which legal family. Yet this is not evident at all. Rather, for instance, for about 80 % of the 129 countries which Djankov et al. examined in their study on creditor rights the categorization into legal families[30] is far from clear. This concerns mainly

the legal systems in Eastern Europe, Asia, Africa and Latin America. The following will illustrate this by a few examples.

First: Eastern Europe. For example, according to Djankov et al. Lithuania belongs to the French legal family and Latvia to the German legal family because "Latvia had its laws in the German civil law tradition prior to annexation by the Soviet Union in 1940, and it reverted to these laws in 1991 (and) Lithuania was influenced by French and Dutch law both before its annexation in 1940 and after independence in 1990".[31] This is, however, hardly obvious. Although the Latvian and Lithuanian civil codes have been influenced by German and French law, they are not at all mere copies. Rather they are drafted in a comparative fashion which takes different models into account. For instance, a German lawyer would see that the Latvian Civil Code[32] bears some resemblance to the German Civil Code but he would have great difficulty determining whether more or less than 50 % of the provisions of the Latvian Civil Code were based on the German model. More generally, it is also the case that not only German and French law influenced Latvian and Lithuanian law. In recent years both legal systems have also been shaped by legal advice from the Nordic countries and the US as well as by the implementation of European directives. Moreover, the notion of legal families is not only – or perhaps not even primarily – about legal rules as such. If one looks at other criteria it becomes clear that Latvia and Lithuania should not be separated by legal classifications. The Djankov et al. categorisation disregards historical similarities between the Baltic countries, namely the occupations by Germany and Russia, the first and second independence after World War I and 1990, and the accession to the EU in 2004. This common history is also reflected in law, legal culture and legal practice. My own experience from teaching students from the three Baltic countries is that when I asked them about their law and legal practice their answers could definitely not be categorized by German and French legal origin. Rather it was the case that distinctions such as EU v. non-EU, Eastern v. Western Europe, and Baltic v. other countries emerged. As a result, it appears strange that according to Djankov et al., for example, Latvia and Taiwan as well as Lithuania and Syria are put into the same legal box, but Latvia and Lithuania are categorized differently. This insight can also be extended to other Eastern European countries because here too there is often a mixture of different influencing factors as well as specific features which are dissimilar to the established Western European legal families.

Second, things may get even more evident if one looks at Asian countries. For instance, according to Djankov et al., China and Japan are treated as being of German legal origin. At least with respect to China this does not make sense at all. Djankov et al. give no reasons for their categorization. Probably it was done

because some export of German law to China can be traced. For example, the models for the 1993 Chinese Companies Act were primarily the company laws of Taiwan, France, Germany and Japan. For language reasons, the Taiwanese law in particular was paid close attention to. Yet, Taiwan's company law is itself a hybrid, since it was originally based on German law and after World War II came under US influence.[33] As a result, codified Chinese company law is to a large extent a mixture of various legal systems and definitely not simply of German legal origin. This can also be seen in other areas of law, because, for instance, in contrast to Germany (or France) there is no comprehensive civil code but "just" a codification of Chinese contract law,[34] and its securities law is in principle based on the US model.[35] More difficult is the criticism of Japan's classification as German legal origin. Between 1890 and 1900 Japan did indeed copy large parts of the five major German codes.[36] However, these legal transplants have not necessarily persisted. For example, the Japanese Commercial Code has been substantially changed after World War II, in particular because of American influence. The same is true for other areas of trade and business law.[37] Yet the more fundamental counter-argument is that it is not enough to look at the legal rules only. Considering the deeper structures of legal systems, the mere distinction between French, German, Nordic Civil Law and Common Law becomes very legalistic and Eurocentric.[38] In particular, legal culture is crucial for a meaningful understanding of different legal traditions. Legal culture refers to those elements in law that go beyond the mere content of statutory or case law. For instance, it covers the historical background to a legal system, the emergence of sources of law, the systematization of the law, the style of argument and codification, and the ranking of law in a country's social order.[39] The importance of these factors should not be underestimated. It can even be claimed that "legal transplants" are not possible, because formally identical rules are differently interpreted and applied in different legal systems, so that they do not survive the journey from one legal system to another unchanged.[40] In any case it is necessary to take the characteristics of Asian legal traditions[41] into account in order to avoid misleading results by superimposing European legal families to other continents.

Third, this call for a more tentative approach is confirmed by looking at Africa. Based on the history of colonization, Djankov et al. regard, for example, the former English colonies Botswana and Ghana as English legal origin and the former French colonies Mali and Niger as French legal origin. One misses, however, reference to the former German colonies, such as for instance Namibia and Togo. The reason for this is probably that the German colonization did not last very long (1884-1919) and that therefore law and legal culture in Namibia and Togo may not have changed significantly and permanently. Yet, one can wonder whether this has been fundamentally different in other African coun-

tries. A mere categorization of a system as English Common Law or French Civil Law disregards again deeper legal structures, such as the question how courts work or how new law, old law and customs interact. Thus, the fundamental question how the imposed new legal traditions mixed with chthonic and Islamic legal traditions[42] has to be answered in order to get to a meaningful description of legal families in Africa.[43] This is not merely of conceptual importance. For instance, in Islamic commercial law there are Islamic partnerships but no corporations because concept of separate legal personality is unknown.[44] Thus, for certain questions, such as the shareholder protection in different countries,[45] there is a fundamentally different starting point in comparison with the commercial law of the West. The law and finance categorization is therefore too much focused on European/Western legal traditions. As a result, it can be suggested that a more significant distinction would be between the legal conception of the West, which may be characterized by its Christian roots, its specific form of rationality and its concept of rights, and African legal traditions which despite colonization continue to exist.[46]

Fourth, Latin America may be regarded as less problematic. Law and finance studies treat the Latin American countries as French legal origin. It is indeed correct that via Spain and Portugal almost all of them were influenced by the Civil Law tradition as exemplified by the French Civil Code. Yet even law and finance scholars see differences between the European "parent tradition" and its Latin American "offsprings". In particular – citing Merryman[47] – it is said that the exportation of the Napoleonic Code had more pernicious effects in French, Belgian, Dutch, Spanish and Portuguese colonies than in France itself.[48] Consequently, the fact that in most law and finance studies the French legal family performs worst[49] is mainly a statement about Latin America. Yet, it is doubtful whether this is really linked with the export of French statutory law to these countries. It is likely that legal and economic problems would not be significantly different if they had not copied the French but, for instance, the German Civil Code. This can also be seen by the fact that there has been some German influence on Brazilian law[50] and some US-influence on the commercial law of most Latin American countries without having caused an automatic change for the better. Thus the problems which exist in Latin America seem to be more linked with the impact of colonization as such[51] than with the takeover of pieces of particular foreign statutory laws.[52]

As a result, one cannot escape the conclusion that the law and finance categorization of legal families which aims to cover most countries of the world, is to a large extent just arbitrary. This is also in line with insights of general comparative law. Even comparative lawyers who still apply the notion of legal families emphasize its limits: For instance, legal traditions are said to be just "a loose

conglomeration of data",[53] the idea of legal families "is used purely for explanatory purposes",[54] and even if "we mostly continue to divide the world into civil law, common law, and several other systems, (…) we know that these are ideal types which merely serve our need to maintain a rough overview".[55] Thus the criticism set forth in this section does not mean that one should not talk about comparative law by using legal families. For a textbook on comparative law it makes sense to have chapters about different legal families, such as for instance in Zweigert & Kötz's book[56] about "the Romanistic legal family", "the Germanic legal family", "the Anglo-American legal family", "the Nordic legal family", "the law in the Far East" and "religious legal systems", or in Glenn's book[57] about "a chthonic legal tradition", "a Talmudic legal tradition", "a Civil Law tradition", "an Islamic legal tradition", "a Common Law tradition", "a Hindu legal tradition", and "an Asian legal tradition". In these books the authors can sufficiently address the problems to what extent, first, the spread of a particular legal tradition has really changed previous traditions, second, is not superposed by more recent legal traditions, and, third, secular legal traditions (such as Common and Civil Law) and religiously-inspired legal traditions (such as Islamic, Hindu, and Talmudic law) interact in the same country.[58] However, for an econometric study, such as performed by law and finance scholars, clear criteria are necessary because otherwise measurement errors and biased coefficients come about.

IV. Unbundling legal families: The search for characteristic features

The criticism put forward in Part III does not mean that different legal origins are irrelevant. The general statement that "a country's legal heritage shapes its approach to property rights, private contracting, investor protection, and hence financial development"[59] indeed makes sense. Yet, at least for an econometric study on law and finance one has to find more precise criteria than worldwide distinctions between different legal families. Thus this section will look for characteristic features which are related to but not identical with the notion of legal families.[60]

A. Difficult identifiers

First of all, one could contemplate that the relevance of Roman law in a particular legal system is an appropriate criterion. The reason for this is that Civil Law but not Common Law is said to be based on the Roman law tradition.[61] Yet there are problems. On the one hand, no contemporary legal system is entirely based on Roman law. This concerns even traditional Civil Law countries such as France and Germany. Both France and Germany can be regarded as mixed

legal systems because apart from Roman law the "droit coutumier" of tribes from Northern France and Germanic sources of law influenced their legal systems.[62] On the other hand, in Common Law countries various traces of Roman law may be found. For instance, in Glenn's description of English law there are repeated references to Roman law, starting with the influence by canon law and concluding with the role of the European Union.[63] It would therefore be necessary to set a threshold, such as 50 %, that determines whether a legal system can be called "Roman". However, the problem is how to find out whether a country does contain this "level" of Roman law. As this would be very burdensome (if not impossible), the factor "Roman law" should therefore not be used.

Similarly, it would be difficult to ascertain, for instance, the "Frenchness" or "Germanness" of a country's Civil Code. Although it is true that many countries have been influenced by the French and German Civil Code, probably no country has a code which is identical to the French and German model. Even the codes of countries with close ties may look quite different. For instance, in the German, Austrian, and Swiss Civil Codes there is probably no provision which is exactly the same in two of these countries. Furthermore, the structure, language, and various legal concepts are quite different in these three codes. Even for these countries, it would therefore be a very time-consuming effort to look at the circa 2000 provisions of each code, find out their similarities and differences, and establish a threshold that has to be reached in order to put these three countries in the same box. For non-European countries, whose codes are usually drawn up in a comparative fashion, these problems are multiplied. Thus the closeness to a specific code would also not be a very efficient standard.

Similar problems arise for the criterion whether there is sufficient Common Law influence in a particular legal system. The law, legal culture, and legal practice of countries which are said to belong to the Common Law family can differ significantly. For instance, one can make the claim that it is today far from obvious whether the United States does really belong to the Common Law family because "in many respects US law represents a deliberate rejection of common law principle, with preference being given to more affirmative ideas clearly derived from civil law (…)".[64] For countries in which pre-Common Law traditions are still relevant one can have even more doubts. An example might be India, because despite the relevance of the Common Law traditions older traditions, such as – in Glenn's categorization – chthonic, Islamic, Hindu, and Asian law may be too deeply rooted to be just disregarded.[65] Similarly, it is said about Thailand that it "has had in its modern texture a real mixture of sources such as English Law, German Law, French law, Swiss Law, Japanese Law and American Law (…) alongside historic sources in existence since 1283, such as rules from indigenous culture and tradition, customary laws and Hindu jurispru-

dence, still to be found in some modern enactments."[66] As a result, one would therefore need to establish a specific criterion – such as whether the most important judgments of English case law are regarded as "good law"– in order to determine whether a country belongs to the Common Law family. Once again, this would, however, be very difficult or even impossible in practice.

B. Suitable identifiers

A more fruitful criterion is the European colonization of the 16th-20th century. This is in general a precise criterion, although one has to clarify how to deal with short term colorizations and how to categorize countries which subsequently were colonies of two different colonial powers. It also covers parts of the conventional legal family definition, because colonies of the same country are usually treated as members of the same legal family. Its advantage is, however, that it looks at the impact of colonization on a particular country as a whole and not only at legal transplantations which may have been superficial or temporary only. Yet, the interpretation of its results may still reveal that the particular way how the new law was applied may have influenced the development of this country. For instance, it is said that "English technique generally involved a more hands-off approach" whereas "the French saw a more universal role for a more universal French law".[67] This may explain differences between former English and French colonies.

Another factor which can be used is language. At first sight this may appear strange, because one language is not better than another and therefore does not as such influence financial development. Yet language is a good proxy in order to find out how good ideas "travel" between different countries. This is obvious if you take the view that translations are always imperfect,[68] because in this case even the phenomenon of international languages (first Latin, then French, now English) and the possibility of translations would not enable accurate communication between different native speakers. Yet, even if it is overstated, there is no denying the fact that the commonality of a language is relevant, because a common language facilitates not only the copying of black letter law but also the exchange of information on its philosophical, sociological, and economical background and its application in practice.

In line with the traditional distinction between Civil and Common Law is the criterion that statutory law is more important in the former and courts are more important in the latter countries.[69] As in all countries statutory law and courts coexist, the problem is, of course, how to find out what is "more" important. A possible (though rather formal) standard would be the existence of a comprehensive civil code which covers at least contract, tort, unjust enrichment, fam-

ily, and succession law. This could be seen as an indication of what lawyers of a particular country expect a "proper legal system" to look like, namely extensively codified and logically structured by abstract legal norms. A more material criterion would be, for instance, the independence and power of judges and thus a reduced influence of statutory law. In this respect, law and finance research on the "political channel"[70] can be used in order to classify different countries.

A similar but not identical factor is the formality or flexibility of a legal system. Although it could be suggested that formality is linked with statutory law and flexibility with judge-made law, this is not necessarily the case, because in principle the former can be drafted flexibly and case law can also be rigid. The link of this criterion with legal families is that in particular the French Civil Law is regarded as more formal than those of other legal origins.[71] As a proxy for formality or flexibility the law and finance research on the "adaptability channel"[72] can be used in order to classify different countries.

V. Re-examining the differences

It was argued above that the present use of legal families by law and finance studies is highly problematic. For instance, in the Djankov et al. study on creditor rights in 129 countries the calculation of means by legal origin (see Table 1) is not meaningful, because the way of how the countries are assigned to different legal origins is to a large extent just random (see III., above).

Table 1: Djankov et al.:[73] Creditor Rights by Legal Origin

Legal Origin	*Mean*	
English	2.222	T-Test[74] English v. French: 3.721 (significant at the 1 % level)
French	1.328	
German	2.333	
Nordic	1.750	
Socialist	2.182	
All	1.789	

However, categorizations can indeed be interesting in order to find out why there may be, for instance, differences in creditor protection. Thus, I have used the Djankov et al. data on creditor protection and grouped the 129 countries by "colonization", "language", "importance of statutory and case law" and "formality and flexibility of legal systems" as proxies for legal origin (see Table 2).

The categorization of countries by colonization and language ((see (1) and (2)) contains some countries which are just classified as "Others". This was neces-

sary because they neither had been colonies nor do they belong to one of the seven language groups of this Table. Moreover, some countries (e.g., Togo, Burundi, Rwanda, Tanzania) had been colonies of various colonial powers so that they could not be categorized in this respect. Vis-à-vis languages a slightly different approach was applied. As my main interest is the function of uniform languages as means of communication about law and legal practice, I regarded it as sufficient if, as for instance in the case of India, one of the official languages is English. Only when a double assignment was necessary, has a country been classified as one of the "Others". This rule, however, was not applied in cases where one official language is considerably more influential than another (e.g. English in Canada, German in Switzerland).

For the categorization of countries according to the importance of statutory and case law, as well as for the categorization based on formality and flexibility of legal systems, the proxies "supreme court power" and "legal justification" (see (3) and (4)) were used. The data derive from studies by Beck et al. and Djankov et al. and have not been re-examined. The variable "supreme court power" is explained in Table 2. The variable "legal justification" is "formed by the normalized sum of: (i) complaint must be legally justified, (ii) judgment must be legally justified, and (iii) judgment must be on law (not on equity). The index ranges from 0 to 1, where higher values mean a higher use of legal language or justification."

Table 2: Different Criteria

(1) Creditor Rights by Colonization

Countries	*Number*	*Mean*	*Std. dev.*	
Former English colonies	28	2.179	1.219	T-Test Former English v. former French colonies: 4.3853 (significant at the 1 % level)
Former French colonies	24	0.75	1.113	
Former Spanish colonies	18	1.667	1.328	
Former Portuguese colonies	3	1.33	0.577	
Others	59	2.067	0.807	

(2) Creditor Rights by Language

Countries where people speak…	*Number*	*Mean*	*Std. dev.*	
English	27	2.380	1.244	T-Test English v. French: 5.384 (significant at the 1 % level)
French	16	0.5	0.816	
Spanish	19	1.684	1.293	
Portuguese	4	1.25	0.5	
Arabic	14	1.5	1.344	
Scandinavian languages	4	1.75	0.957	
German	3	2.333	1.155	
Others	51	2.059	0.785	

(3) Creditor Rights by Supreme Court Power[75]

Countries with…	*Number*	*Mean*	*Std. dev.*	
control of administrative cases	46	2.086	1.151	T-Test control v. no control: 1.034 (not significant)
no control of administrative cases	14	1.714	1.267	
term of supreme court judges of at least 6 years	49	2	1.137	
term of 2 to 6 years	9	2.111	1.537	
term of less than 2 years	2	1.5	0.707	

(4) Creditor Rights by Legal Justification[76]

Countries with…	*Number*	*Mean*	*Std. dev.*	
flexible legal justification (0)	6	2.5	1.225	T-Test partly flexible v. partly inflexible: 1.827 (significant at the 10 % level)
partly flexible legal justification (0.33)	14	2.5	1.225	
partly inflexible legal justification (0.66)	28	1.821	1.090	
inflexible legal justification (1)	23	1.565	1.121	

The results show that differences between countries can be categorized according to these criteria which are related to legal origins. Thus, legal rules are not only technical tools but still significantly influenced by history and (legal) culture. Yet, it matters which of the four identifiers is used. Looking at their statistical significance, colonization and language appear to be more important. Yet, the high significance of these criteria for credit protection may also just be explained by the fact that the questions which determine the credit protection score were drafted by English-speaking lawyers of one of the former English colonies (namely: the United States).[77] It could therefore simply confirm the expectation that among countries with the same language ideas spread more easily. Thus, the third and fourth criteria are also important because they may reflect deeper levels of legal culture.

In order to understand the results it is useful to look at the overlaps between these four identifiers. The classifications based on colonization and language are similar but not identical. As the former looks at history and the latter at the present situation, some groups of the first identifier have lost some of their members. In this respect, language is more precise because, for instance, it takes into account that in the Arabic-speaking countries the ties with their former occupiers may have weakened. Yet, this is not necessarily the case. Furthermore, the criterion "colonization" can have the advantage that the former colonial powers are not included, and thus it may cover problems that are specific to former colonies.

With respect to supreme court power, it is of interest that all of the former English colonies (and English speaking countries) belong to the 46 countries where there is supreme court control of administrative cases and to the 49 countries where the term of supreme court judges is more than six years. Apart from that, there is a mixed picture for the supreme court control of administrative cases because the 14 "no-control" countries are former French, Spanish and Portuguese colonies as well as French, Portuguese, Spanish, Arabic, German and Scandinavian speaking countries. Regarding the term of supreme court judges, more than 6 of the 11 countries where judges are appointed for less than six years belong to the former Spanish colonies (as well as Spanish speaking countries).

Even more diverse are the results for legal justification. As expected, the English-speaking countries (as well as the former English colonies) are flexible in this respect (mean: 0.42). Yet, the score for the Nordic countries is even slightly better (mean: 0.418). The results for French and Arabic speaking countries (means: 0.668; 0.736) as well as for the former French colonies (mean: 0.716) indicate that these countries are partly inflexible. Finally, German, Spanish, and

Portuguese speaking countries (means: 0.89; 0.903; 1) as well as the former Spanish and Portuguese colonies (means: 0.897; 1) are least flexible.

This article cannot explain in detail why there are differences in these four identifiers. Yet, it is apparent that these differences confirm my criticism on the use of one narrow criterion, such as Common Law and (French, German, Nordic) Civil Law. The results by Djankov et al. and other law and finance scholars who use this criterion (Table 1) are most similar to my results in using the proxies "colonization" and "language" (Table 2). My approach has, however, the advantage that it clearly identifies the basis for my categorizations. If one talks about colonies (and not members of the same legal origin) it becomes clear that the reasons for differences among countries may not only lie in law (including legal culture and practice) but also, for instance, in ongoing political and economical effects of colonization.[78] The same is true for "language" because it does not only foster communication about the law but is also a transmitter for ideas in general ("memes").[79]

Furthermore, in using these criteria it makes sense to classify some countries just as "Others" because they have never been colonies and do not belong to one of the major linguistic families.[80] In contrast, Djankov et al. just bring into play a different decision criterion because, in the case of these other countries, they implicitly look at the transplantation of a particular piece of statutory law.[81] Even if they had done this diligently,[82] it still would have been necessary to identify this transplantation as a separate criterion, such as the "Frenchness" or "Germanness" of a country's Civil Code.[83]

Finally, some law and finance scholars misallocate the answer to the question of how legal thinking affects the law of different countries. They take it as given that countries belong to a particular legal family so that one has to examine the "channel" through which these different legal families shape finance.[84] Yet, the classification of legal families is "not just simply there". Instead, the idea of legal families has different components. One of them is, for instance, whether legal systems follow a formal or flexible way of legal reasoning. The adaptability of legal systems is therefore important but not as adaptability "channel" but as a criterion which can help to identify commonalities and differences in legal thinking, regardless of any preconception about Civil and Common Law countries.

VI. Conclusion

"Comparative law is bound to be superficial."[85] Therefore, the mere use of categorizations which are not one hundred per cent accurate would not be a fair counter-argument against law and finance studies. Furthermore, there are indeed good reasons why the reduction of complexity by this kind of "numerical comparative law" can be a way forward.[86] However, with respect to the specific question of legal origins, these studies are questionable. The world-wide distinction between different legal families, such as Common Law and (French, German, Nordic) Civil Law is not useful for econometric calculations. Instead more precise criteria have to be found. My proposal is that, for instance, the proxies "colonization", "language", "importance of statutory and case law", and "formality and flexibility of legal systems" should be used. This article has already initiated how this new approach may look like, because the legal family distinction in the Djankov et al. study on creditor protection in 129 countries can easily be replaced by more meaningful and more specific criteria. Future research may also apply these criteria for correlations and regressions.[87] Then it could, for instance, be scrutinized how the impact of legal origin on investor protection (or: the success in the football World Cup)[88] would change if these four (or other) proxies were used instead of legal families as such.
[89]

Notes

[*] Visiting Fellow, Centre for Business Research, University of Cambridge, England; Associate Professor, Riga Graduate School of Law, Latvia; *Privatdozent*, Heinrich-Heine University, Düsseldorf, Germany.

[1] F. H. Lawson, *The Field of Comparative Law*, 61 Jurid. Rev. 16 at 36 (1949).

[2] Esin Örücü, The Enigma of Comparative Law 216 (2004).

[3] *See* Basil Markesinis, Comparative Law in the Courtroom and Classroom 61-2 (2003); *see also* Basil Markesinis, *Comparative Law – A Subject in Search of an Audience*, 53 Mod. L. Rev. 1 (1990); Basil Markesinis, Foreign Law and Comparative Methodology 3 (1997).

[4] For references see *infra* notes 7 et seq.

[5] For a recent overview *see* Cally Jordan, *The Conundrum of Corporate Governance*, 30 Brook. J. Int'l L. 983 (2005).

[6] See, *e.g.*, Mathias Reimann, *Beyond National Systems: A Comparative Law for the International Age*, 75 Tul. L. Rev. 1103 at 1115 (2001); Esin Örücü, *Family Trees for Legal Systems: Towards a Contemporary Approach*, Epistemology and Methodology of Comparative Law 259 at 361 (Mark Van Hoecke ed., 2004); Jaakko Husa, *Classification of Legal Families Today – Is it Time For a Memorial Hymn?*, Rev. int. dr. comp. 11 (2004); James Gordley, *Common law und civil law: eine überholte Unterscheidung*, Zeitschrift für Europäisches Privatrecht 498 (1993); *see* also Stefan Vogenauer, *An Empire of Light? Learning and Lawmaking in the History of German Law*, 64 Camb. L.J. 481 at 483 (2005) (common law/civil law distinction not helpful).

[7] For what follows see, *e.g.*, Edward Glaeser & Andrei Shleifer, *Legal Origins*, 117 Q. J. Econ. 1193 (2002); Simeon Djankov et al., *The New Comparative Economics*, 31 J. Comp. Econ. 595 at 605-6 (2003); somewhat different Thorsten Beck & Ross Levine, *Legal Institutions and Financial Development*, Handbook of New Institutional Economics 251 at 254-8 (Claude Menard & Mary M. Shirley eds., 2005), 251 at 254-8 (15th century for France; 16th and 17th century for England).

[8] Beck & Levine, *supra* note 7, at 258-260.

[9] Beck & Levine, *supra* note 7, at 256, 258-9.

[10] Beck & Levine, *supra* note 7, at 257.

[11] Simeon Djankov et al., *Private Credit in 129 countries* 10 (Working Paper 2005), available at http://www.nber.org/papers/W11078).

[12] Such as: Rene David & John E. C. Brierley, Major Legal Systems in the World Today (2005); Konrad Zweigert & Hein Kötz, Introduction to Compara-

tive Law (3d ed. 1998); Thomas Reynolds & Arturo Flores, Foreign Law: Current Sources of Basic Legislation in Jurisdictions of the World (1989).

[13] Beck & Levine, *supra* note 7, at 258; In reality, however, the Austrian Civil Code (ABGB) was enacted in 1811 and therefore well ahead of the 1900 German Civil Code (BGB). Furthermore, the Swiss Civil Code (ZGB) was also heavily influenced by the French Code Civil (*see* Andrea Bäder, *Einleitung*, Das schweizerische Zivilgesetzbuch 1 (Peter Tuor et. al. eds., 11th ed. 1995).

[14] Djankov et al., *supra* note 11, at 10; *see* also *infra* III.

[15] Rafael La Porta et al., *Law and Finance*, 106 J. Pol. Econ. 1113 (1998); a recent study, which focuses on self dealing, slightly modifies the shareholder index, *see* Simeon Djankov et al., *The Law and Economics of Self-Dealing* (Working Paper 2005), available at

http://ideas.repec.org/p/nbr/nberwo/11883.html

[16] Djankov et al., *supra* note 11, at 22.

[17] Rafael La Porta et al., *What Works in Securities Law?*, 61 J. Fin. 1 (2006).

[18] Rafael La Porta et al., *The Quality of Government*, 15 J.L. Econ. & Org. 222 (1999)

[19] Rafeal La Porta et al., *Government Ownership of Banks*, 57 J. Fin. 265 (2002).

[20] Simeon Djankov et al., *The Regulation of Entry*, 117 Q. J. Econ. 1 (2002).

[21] Juan Botero et al*., The Regulation of Labor*, 119 Q. J. Econ. 1339 (2004).

[22] For a good summary *see* Beck & Levine, *supra* note 7, at 271-3.

[23] Thorsten Beck et al., *Law and Finance. Why Does Legal Origin Matter?*, 31 J. Comp. Econ. 653 (2003); for other criteria *see* Rafael La Porta et al., *Judicial Checks and Balances* (Working Paper 2003), available at

http://www.nber.org/papers/W9775 (*e.g.*: likelihood to grant judges tenure, judicial review of the constitutionality of laws).

[24] Beck & Levine, *supra* note 7, at 261-2.

[25] Simeon Djankov et al., *Courts*, 118 Q. J. Econ. 453 (2003).

[26] Beck et al., *supra* note 23.

[27] Cf. the references in Beck & Levine, *supra* note 7, at 263-6.

[28] Mark West, *Legal Determinants of World Cup Success* (Working Paper, 2002), available at http://ssrn.com/abstract=318940.

[29] Cf. Beck & Levine, *supra* note 7, 268-9.

[30] According to Djankov et al., *supra* note 11, it looks as follows:

English legal origin: Australia, Bangladesh, Botswana, Canada, Ethiopia, Ghana, Hong Kong, India, Iran, Ireland, Israel, Jamaica, Kenya, Lesotho, Ma-

lawi, Malaysia, Namibia, Nepal, New Zealand, Nigeria, Pakistan, Papua New Guinea, Saudi Arabia, Sierra Leone, Singapore, South Africa, Tanzania, Thailand, Uganda, United Arab Emirates, United Kingdom, United States, Yemen, Zambia, Zimbabwe.

French legal origin: Albania, Algeria, Angola, Argentina, Belgium, Benin, Bolivia, Brazil, Burkina Faso, Burundi, Cambodia, Cameroon, Central African Republic, Chad, Chile, Colombia, Congo Democratic Republic, Congo, Republic, Costa Rica, Cote d'Ivoire, Dominican Republic, Ecuador, Egypt, El Salvador, France, Greece, Guatemala, Guinea, Haiti, Honduras, Indonesia, Italy, Jordan, Kuwait, Lao PDR, Lebanon, Lithuania, Madagascar, Mali, Mauritania, Mexico, Morocco, Mozambique, Netherlands, Nicaragua, Niger, Oman, Panama, Paraguay, Peru, Philippines, Portugal, Puerto Rico, Romania, Rwanda, Senegal, Spain, Syria, Togo, Tunisia, Turkey, Uruguay, Venezuela, Vietnam.

German legal origin: Austria, Bosnia and Herzegovina, Bulgaria, China, Croatia, Czech Republic, Germany, Hungary, Japan, Korea Republic, Latvia, Macedonia, Poland, Serbia and Montenegro, Slovak Republic, Slovenia, Switzerland, Taiwan.

Nordic legal origin: Denmark, Finland, Norway, Sweden.

Socialist legal origin: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Mongolia, Russia, Ukraine, Uzbekistan.

[31] Djankov et al., *supra* note 11, at 10-1.

[32] English version available at http://www.ttc.lv/lv/publikacijas/civillikums.pdf.

[33] *See* Mathias M. Siems, Die Konvergenz der Rechtssysteme im Recht der Aktionäre 25 (2005).

[34] English version available at

http://www.cclaw.net/download/contractlawPRC.asp.

[35] *See* Lawrence S. Liu, *Chinese Characteristics Compared: A Legal and Policy Perspective of Corporate Finance and Governance in Taiwan and China* 2 (Working Paper, 2001), available at http://ssrn.com/abstract=273174.

[36] See, *e.g.*, Zweigert & Kötz, *supra* note 12, at 298-9l; but *see* also Msao Ishimoto, *L'influence du Code civil français sur le droit civil japonais*, Rev. int. dr. comp. 744 (1954).

[37] *See* also Daniel R. Kelemen & Eric C. Sibbitt, *The Americanization of Japanese Law*, 23 U. Pa. Int'l. Econ. L. 269 (2002); Curtis Milhaupt, *Creative Norm Destruction: The Evolution of Nonlegal Rules in Japanese Corporate Governance*, 149 U. Pa. L. Rev. 2083 note 131 (2001) (…"the validity of the authors' *classification scheme* used to create the legal origin variable is highly suspect. For example, these studies list Japan as belonging to the German civil law

family. This is partially, but only partially, true of Japan's five major codes. But many subsequent Commercial Code revisions and a number of important economic regulatory statutes bearing on investor protections are of U.S. origin. German law has had only minor influence on postwar Japanese legal developments. Thus, the classification for Japan is only about partially accurate, and no theory is offered to explain why legal origin, as opposed to subsequent legal developments, would be determinative of corporate governance patterns. It would not be surprising if the classifications of legal origin for other countries in the study were subject to similar defects.").

[38] Similar: Boaventura de Souza Santos, Towards a New Common Sense: Law, Science and Politics in the Paradigmatic Transition 273 (1995); Mathias Reimann, *The Progress and Failure of Comparative Law in the Second Half of the Twentieth Century*, 50 Am. J. Comp. L. 671 at 685 (2002); Upendra Baxi, *The colonialist heritage*, Comparative Legal Studies: Traditions and Transitions 46 at 49 (Pierre Legrand & Roderick Munday eds., 2003); Günther Frankenberg, *Critical Comparisons, Re-Thinking Comparative Law*, 26 Harv. Int'l L.J. 411 at 422, 442 (1985).

[39] See, *e.g.*, David Nelken, *Disclosing/Invoking Legal Culture: An Introduction,* 4 Social & Legal Studies 435, 438 (1995).

[40] Pierre Legrand, *The Impossibility of Legal Transplants*, 4 Maastricht J. Europ. & Comp. L. 112 (1997).

[41] *See, e.g.,* H. Patrick Glenn, Legal Traditions of the World 301-342 (2d ed., 2004).

[42] *See* Glenn, *supra* note 41, at 59-91 and 170-221.

[43] Similar, in talking about the spread of the Common Law, Zweigert & Kötz, *supra* note 12, at 230: "… this might lead one to the conclusion that in the areas of Africa which were previously under British rule most legal relations today are governed by the rules of English Common Law. This conclusion would be wholly erroneous. The fact is that to much the largest part of the African population the Common Law is almost of no practical significance; the legal relations of Africans, in contract and land matters as well as family and succession matters, are principally governed by the rules of customary African law, and in many regions also by the rules of Islamic law".

[44] *See* Glenn, *supra* note 41, at 183-4.

[45] *See* La Porta et al., *supra* note 15.

[46] Similar Glenn, *supra* note 41, at 166: "So (…) we should start thinking about the common law and the civil law as representing some of the same ideas, compared with other traditions".

[47] John Henry Merryman, *The French Deviation*, 44 Am. J. Comp. L. 109 (1996).

[48] Beck & Levine, *supra* note 7, at 259, 261.

[49] *See supra* II.; this result has led to a counter-reaction by the French Ministry of Justice, *see* http://www.gip-recherche-justice.fr/aed.htm.

[50] *See* Zweigert & Kötz, *supra* note 12, at 115.

[51] For a possible reason *see* Glenn, *supra* note 41, at 265: "(…) in creating large states, large corporate structures, large labour organizations, large legal professions – in short, large institutionalized elites in all directions, western law provides all the disadvantages of a large, wooden house in a warm, humid climate. It may be beautiful, and well-designed, but be subject to many forms of internal rot. To survive, it requires protection beyond the structure itself and if this is neglected, or impossible, the structure will not last".

[52] Similar Glenn, *supra* note 41, at 267-8: "Western development work has thus far been unable to overcome the problem of widespread corruption of western institutions and western law when it has been transplanted abroad (…). There appears to be *little difference* between civil and common law traditions in this regard".

[53] Glenn, *supra* note 41, at 15.

[54] Rene David, Les grands systemes de droit contemporains 22 (9th ed., 1998) (as translated by Zweigert & Kötz, *supra* note 12, at 73); *see* also Rene David & John E. C. Brierley, Major Legal Systems in the World Today 21 (3d ed., 1985) ("it is no more than a didactic device").

[55] Reimann, *supra* note 38, at 677; similar Zweigert & Kötz, *supra* note 12, at 72: "(…) any division of the legal world into families is a rough and ready device. It can be useful for the novice by putting the confusing variety of legal systems into some kind of loose order, but the experienced comparatist will have developed a 'nose' for the distinctive style of national legal systems".

[56] Supra note 12.

[57] Supra note 41.

[58] See, *e.g.*, Glenn, *supra* note 41, at 32-58 ("Between Traditions") and 343-7 ("The Multiplicity of Traditions"); Zweigert & Kötz, *supra* note 12, at 66 ("But the division of the world's legal systems into families, especially the attribution of a system to a particular family, is susceptible to alteration as a result of legislation and other events, and can therefore be *only temporary*"); Ugo Mattei, *Three Patterns of Law: Taxonomy and Change in the World's Legal Systems*, 45 Am. J. Comp. L. 5 at 14 (1997) ("Legal systems never are – they always become.").

[59] Beck & Levine, *supra* note 7, at 254.

[60] This is therefore different from the counter-argument that refers to factors which are not narrowly related to legal families, such as geography, culture or politics (*see supra* III. first paragraph).

[61] See, *e.g.*, Zweigert & Kötz, *supra* note 12, at 75, 100, 133-4; Alan Watson, The Making of Civil Law 4 (1981).

[62] See, *e.g.*, Zweigert & Kötz, *supra* note 12, at 75, 139; *see* also Örücü, *supra* note 6, at 363 ("all European systems can be better understood as overlaps").

[63] Glenn, *supra* note 41, at 222 (canon law), 226 (similarity between Roman and English judiciary), 231-2 (teaching of Roman law in 12th century), 244 (comparative law in England of the 17th century), 246 (Sir Francis Bacon as a middleman), 254 (discussion of the roman origins of trust law); 255 (influence of French commercial law), 256 (civilian lawyers testifying in Common Law courts); 257 (Pothier as formal authority in England); 257-8 note 124 (EU influence; *see* also H. Patrick Glenn, *La civilisation de la common law*, 45 Rev. int. dr. com. 559 (1993)).

[64] Glenn, *supra* note 41, at 248.

[65] *See supra* III (last paragraph), and also Glenn, *supra* note 41, at 296-7; Baxi, *supra* note 38, at 51.

[66] Örücü, *supra* note 6, at 364.

[67] Glenn, *supra* note 41, at 259.

[68] Cf. Glenn, *supra* note 41, at 47-8.

[69] *See* Zweigert & Kötz, *supra* note 12, at 69, 71.

[70] *See supra* II.

[71] Beck & Levine, *supra* note 7, at 259.

[72] *See supra* II.

[73] Djankov et al., *supra* note 11, p. 26, Table II A for 2003.

[74] The T-test examines the hypothesis that the means of two populations (such as English and French legal origin) are equal. The result of this test can be described in terms of significance. For instance, significance at the 1 % level means that the probability that just by chance the means of English and French legal origin are different is lower than 1 %.

[75] Supreme court power based on Beck et al., *supra* note 23.

[76] Legal justification based on Djankov et al., *supra* note 25.

[77] This home bias is also a problem of other law and finance studies; see Mathias M. Siems, *What Does Not Work in Comparing Securities Laws: A Cri-*

tique on La Porta et al.'s Methodology, Int.'l Company & Comparative L.J. 300 (2005).

[78] *See* already *supra* III.

[79] On memes see in particular Richard Dawkins, The Selfish Gene (2d ed., 1989); the inventor of the concept of memes was probably, Richard Semon, Die Mnemische Empfindungen in ihren Beziehungen zu den Originalenempfindungen (1904); see also Simon Deakin, *Evolution for our time: a theory of legal memetics*, 55 Current Legal Problems 1 (2002).

[80] For these countries it is therefore necessary to look at other criteria in order to understand their economic development; similar Dirk A. Zetzsche, *An Ethical Theory of Corporate Governance History* (CBC-RPS Working Paper, 2006), available at http://www.ssrn.com/ (forthcoming).

[81] Examples may be Japan and China; see *supra* III.

[82] *See* already *supra* III.

[83] This would have been possible but difficult; see *supra* IV A.

[84] *See supra* II. (last paragraph).

[85] F. H. Lawson, *supra* note 1, at 16.

[86] *See* Mathias M. Siems, *Numerical Comparative Law – Do We Need Statistical Evidence in Order to Reduce Complexity?*, 13 Cardozo J. Int. Comp. L. 521 (2006).

[87] Taking into account specific econometric problems, such as endogeneity; see, *e.g.*, James H. Stock & Mark W. Watson, Introduction to Econometrics 333 (2003).

[88] *See supra* II and III.

References

Bäder, Andrea, *Einleitung, Das schweizerische Zivilgesetzbuch* (Peter Tuor et. al. eds., 11th ed. 1995).

Baxi, Upendra, *The colonialist heritage*, Comparative Legal Studies: Traditions and Transitions 46 (Pierre Legrand & Roderick Munday eds., 2003).

Beck, Thorsten & Ross Levine, *Legal Institutions and Financial Development*, Handbook of New Institutional Economics 251 (Claude Menard & Mary M. Shirley eds., 2005).

Beck, Thorsten, et al., *Law and Finance. Why Does Legal Origin Matter?*, 31 J. Comp. Econ. 653 (2003)

Botero, Juan et al*., The Regulation of Labor*, Q. J. Econ. 1339 (2004).

David, Rene & John E. C. Brierley, *Major Legal Systems in the World Today* (2005).

David, Rene & John E. C. Brierley, *Major Legal Systems in the World Today* (3d ed., 1985).

David, Rene, *Les grands systemes de droit contemporains* (9th ed., 1998).

Dawkins, Richard, *The Selfish Gene* (2d ed., 1989).

de Souza Santos, Boaventura, *Towards a New Common Sense: Law, Science and Politics in the Paradigmatic Transition* (1995).

Deakin, Simon, *Evolution for our time: a theory of legal memetics*, 55 Current Legal Problems 1 (2002).

Djankov, Simeon et al., *The Regulation of Entry*, 117 Q. J. Econ. 1 (2002).

Djankov, Simeon et al., *Courts*, 118 Q. J. Econ. 453 (2003).

Djankov, Simeon et al., *Private Credit in 129 countries* (Working Paper 2005), available at http://www.nber.org/papers/W11078).

Djankov, Simeon et al., *The Law and Economics of Self-Dealing* (Working Paper 2005), available at http://ideas.repec.org/p/nbr/nberwo/11883.html.

Djankov, Simeon et al., *The New Comparative Economics*, 31 J. Comp. Econ. 595 (2003)

Frankenberg, Günther, *Critical Comparisons, Re-Thinking Comparative Law*, 26 Harv. Int'l L.J. 411 (1985).

Glaeser, Edward & Andrei Shleifer, *Legal Origins*, 117 Q. J. Econ. 1193 (2002)

Glenn, H. Patrick, *La civilisation de la common law*, 45 Rev. int. dr. com. 559 (1993).

Glenn, H. Patrick, *Legal Traditions of the World* (2d ed., 2004).

Gordley, James, *Common law und civil law: eine überholte Unterscheidung*, Zeitschrift für Europäisches Privatrecht 498 (1993).

Husa, Jaakko, *Classification of Legal Families Today – Is it Time For a Memorial Hymn?*, Rev. int. dr. comp. 11 (2004).

Ishimoto, Msao, *L'influence du Code civil français sur le droit civil japonais*, Rev. int. dr. comp. 744 (1954).

Jordan, Cally, *The Conundrum of Corporate Governance*, 30 Brook. J. Int'l L. 983 (2005).

Kelemen, Daniel R. & Eric C. Sibbitt, *The Americanization of Japanese Law*, 23 U. Pa. Int'l. Econ. L. 269 (2002).

La Porta, Rafael et al., *Government Ownership of Banks*, 57 J. Fin. 265 (2002).

La Porta, Rafael et al., *Judicial Checks and Balances* (Working Paper 2003), available at http://www.nber.org/papers/W9775

La Porta, Rafael et al., *Law and Finance*, 106 J. Pol. Econ. 1113 (1998).

La Porta, Rafael et al., *The Quality of Government*, 15 J.L. Econ. & Org. 222 (1999).

La Porta, Rafael et al., *What Works in Securities Law?*, 61 J. Fin. 1 (2006).

Lawson, F.H. *The Field of Comparative Law*, 61 Jurid. Rev. 16 (1949).

Legrand, Pierre, *The Impossibility of Legal Transplants*, 4 Maastricht J. Europ. & Comp. L. 112 (1997).

Liu, Lawrence S., *Chinese Characteristics Compared: A Legal and Policy Perspective of Corporate Finance and Governance in Taiwan and China* (Working Paper, 2001), available at http://ssrn.com/abstract=273174.

Markesinis, Basil, *Comparative Law – A Subject in Search of an Audience*, 53 Mod. L. Rev. 1 (1990).

Markesinis, Basil, Comparative Law in the Courtroom and Classroom (2003).

Markesinis, Basil, Foreign Law and Comparative Methodology (1997).

Mattei, Ugo, *Three Patterns of Law: Taxonomy and Change in the World's Legal Systems*, 45 Am. J. Comp. L. 5 (1997).

Merryman, John Henry, *The French Deviation*, 44 Am. J. Comp. L. 109 (1996).

Milhaupt, Curtis, *Creative Norm Destruction: The Evolution of Nonlegal Rules in Japanese Corporate Governance*, 149 U. Pa. L. Rev. 2083 (2001).

Nelken, David, *Disclosing/Invoking Legal Culture: An Introduction,* 4 Social & Legal Studies 435 (1995).

Örücü, Esin, *Family Trees for Legal Systems: Towards a Contemporary Approach*, *Epistemology and Methodology of Comparative Law* (Mark Van Hoecke ed., 2004).

Örücü, Esin, *The Enigma of Comparative Law* (2004).

Reimann, Mathias *The Progress and Failure of Comparative Law in the Second Half of the Twentieth Century*, 50 Am. J. Comp. L. 671 (2002).

Reimann, Mathias, *Beyond National Systems: A Comparative Law for the International Age*, 75 Tul. L. Rev. 1103 (2001).

Reynolds, Thomas & Arturo Flores, Foreign Law: *Current Sources of Basic Legislation in Jurisdictions of the World* (1989).

Semon, Richard, *Die Mnemische Empfindungen in ihren Beziehungen zu den Originalenempfindungen* (1904).

Siems, Mathias M., *Die Konvergenz der Rechtssysteme im Recht der Aktionäre* (2005).

Siems, Mathias M., *Numerical Comparative Law – Do We Need Statistical Evidence in Order to Reduce Complexity?*, 13 Cardozo J. Int. Comp. L. 521 (2006).

Siems, Mathias M., *What Does Not Work in Comparing Securities Laws: A Critique on La Porta et al.'s Methodology*, Int.'l Company & Comparative L.J. 300 (2005).

Stock, James H. & Mark W. Watson, *Introduction to Econometrics* (2003).

Vogenauer, Stefan, *An Empire of Light? Learning and Lawmaking in the History of German Law*, 64 Camb. L.J. 481 (2005).

Watson, Alan, *The Making of Civil Law* (1981).

West, Mark *Legal Determinants of World Cup Success* (Working Paper, 2002), available at http://ssrn.com/abstract=318940.

Zetzsche, Dirk A., *An Ethical Theory of Corporate Governance History* (CBC-RPS Working Paper, 2006), available at http://www.ssrn.com/ (forthcoming).

Zweigert, Konrad & Hein Kötz, *Introduction to Comparative Law* (3d ed. 1998).

Annex: Countries

Definitions: CR = creditor rights according to Djankov et al. (supra note 11); EC = former English colonies; FC = former French colonies; SC = former Spanish colonies; PC = former Portuguese colonies; E= English speaking countries; Sp = Spanish speaking countries; F = French speaking countries; G = German speaking countries; Sc = Countries where one of the Scandinavian languages is spoken; A = Arabic speaking countries; P = Portuguese speaking countries

	CR	EC	FC	SC	PC	E	Sp	F	G	Sc	A	P
Albania	3	0	0	0	0	0	0	0	0	0	0	0
Algeria	1	0	1	0	0	0	0	0	0	0	1	0
Angola	1	0	0	0	1	0	0	0	0	0	0	1
Argentina	1	0	0	1	0	0	1	0	0	0	0	0
Armenia	2	0	0	0	0	0	0	0	0	0	0	0
Australia	3	1	0	0	0	1	0	0	0	0	0	0
Austria	3	0	0	0	0	0	0	0	1	0	0	0
Azerbaijan	3	0	0	0	0	0	0	0	0	0	0	0
Bangladesh	2	1	0	0	0	0	0	0	0	0	0	0
Belarus	2	0	0	0	0	0	0	0	0	0	0	0
Belgium	2	0	0	0	0	0	0	1	0	0	0	0
Benin	0	0	1	0	0	0	0	1	0	0	0	0
Bolivia	2	0	0	1	0	0	1	0	0	0	0	0
Bosnia & Herz	3	0	0	0	0	0	0	0	0	0	0	0
Botswana	3	1	0	0	0	1	0	0	0	0	0	0
Brazil	1	0	0	0	1	0	0	0	0	0	0	1
Bulgaria	2	0	0	0	0	0	0	0	0	0	0	0
Burkina Faso	0	0	1	0	0	0	0	1	0	0	0	0
Burundi	1	0	1	0	0	0	0	1	0	0	0	0
Cambodia	2	0	1	0	0	0	0	0	0	0	0	0
Cameroon	0	0	1	0	0	0	0	1	0	0	0	0
Canada	1	1	0	0	0	0	0	0	0	0	0	0
Central Africa	0	0	1	0	0	0	0	1	0	0	0	0
Chad	0	0	1	0	0	0	0	0	0	0	1	0
Chile	2	0	0	1	0	0	1	0	0	0	0	0
China	2	0	0	0	0	0	0	0	0	0	0	0
Colombia	0	0	0	1	0	0	1	0	0	0	0	0

Congo (Rep.)	0	0	1	0	0	0	0	1	0	0	0	0
Congo (Zaire)	1	0	0	0	0	0	0	1	0	0	0	0
Costa Rica	1	0	0	1	0	0	1	0	0	0	0	0
Cote d'Ivoire	0	0	1	0	0	0	0	1	0	0	0	0
Croatia	3	0	0	0	0	0	0	0	0	0	0	0
Czech Republic	3	0	0	0	0	0	0	0	0	0	0	0
Denmark	3	0	0	0	0	0	0	0	0	1	0	0
Dominican Republic	2	0	0	1	0	0	1	0	0	0	0	0
Ecuador	0	0	0	1	0	0	1	0	0	0	0	0
Egypt	2	1	0	0	0	0	0	0	0	0	1	0
El Salvador	3	0	0	1	0	0	1	0	0	0	0	0
Ethiopia	3	0	0	0	0	0	0	0	0	0	0	0
Finland	1	0	0	0	0	0	0	0	0	1	0	0
France	0	0	1	0	0	0	0	1	0	0	0	0
Georgia	2	0	0	0	0	0	0	0	0	0	0	0
Germany	3	0	0	0	0	0	0	0	1	0	0	0
Ghana	1	1	0	0	0	1	0	0	0	0	0	0
Greece	1	0	0	0	0	0	0	0	0	0	0	0
Guatemala	1	0	0	1	0	0	1	0	0	0	0	0
Guinea	0	0	1	0	0	0	0	1	0	0	0	0
Haiti	2	0	1	0	0	0	0	1	0	0	0	0
Honduras	2	0	0	1	0	0	1	0	0	0	0	0
Hong Kong	4	1	0	0	0	1	0	0	0	0	0	0
Hungary	1	0	0	0	0	0	0	0	0	0	0	0
India	2	1	0	0	0	1	0	0	0	0	0	0
Indonesia	2	0	0	0	0	0	0	0	0	0	0	0
Iran	2	0	0	0	0	0	0	0	0	0	0	0
Ireland	1	0	0	0	0	1	0	0	0	0	0	0
Israel	3	0	0	0	0	0	0	0	0	0	0	0
Italy	2	0	0	0	0	0	0	0	0	0	0	0
Jamaica	2	1	0	0	0	1	0	0	0	0	0	0
Japan	2	0	0	0	0	0	0	0	0	0	0	0
Jordan	1	1	0	0	0	0	0	0	0	0	1	0
Kazakhstan	2	0	0	0	0	0	0	0	0	0	0	0
Kenya	4	1	0	0	0	1	0	0	0	0	0	0
Korea, Rep.	3	0	0	0	0	0	0	0	0	0	0	0
Kuwait	3	1	0	0	0	0	0	0	0	0	1	0

Kyrgyz Republic	3	0	0	0	0	0	0	0	0	0	0	0
Lao, People's Dem	0	0	1	0	0	0	0	0	0	0	0	0
Latvia	3	0	0	0	0	0	0	0	0	0	0	0
Lebanon	4	0	1	0	0	0	0	0	0	0	1	0
Lesotho	1	1	0	0	0	1	0	0	0	0	0	0
Lithuania	2	0	0	0	0	0	0	0	0	0	0	0
Macedonia	3	0	0	0	0	0	0	0	0	0	0	0
Madagascar	2	0	1	0	0	0	0	1	0	0	0	0
Malawi	2	1	0	0	0	1	0	0	0	0	0	0
Malaysia	3	1	0	0	0	0	0	0	0	0	0	0
Mali	0	0	1	0	0	0	0	1	0	0	0	0
Mauritania	1	0	1	0	0	0	0	0	0	0	1	0
Mexico	0	0	0	1	0	0	1	0	0	0	0	0
Moldova	2	0	0	0	0	0	0	0	0	0	0	0
Mongolia	2	0	0	0	0	0	0	0	0	0	0	0
Morocco	1	0	1	0	0	0	0	0	0	0	1	0
Mozambique	2	0	0	0	1	0	0	0	0	0	0	1
Namibia	2	1	0	0	0	1	0	0	0	0	0	0
Nepal	2	0	0	0	0	0	0	0	0	0	0	0
Netherlands	3	0	0	0	0	0	0	0	0	0	0	0
New Zealand	4	1	0	0	0	1	0	0	0	0	0	0
Nicaragua	4	0	0	1	0	0	1	0	0	0	0	0
Niger	0	0	1	0	0	0	0	1	0	0	0	0
Nigeria	4	1	0	0	0	1	0	0	0	0	0	0
Norway	2	0	0	0	0	0	0	0	0	1	0	0
Oman	0	1	0	0	0	0	0	0	0	0	1	0
Pakistan	1	1	0	0	0	1	0	0	0	0	0	0
Panama	4	0	0	1	0	0	1	0	0	0	0	0
Papua New Guinea	1	0	0	0	0	1	0	0	0	0	0	0
Paraguay	1	0	0	1	0	0	1	0	0	0	0	0
Peru	0	0	0	1	0	0	1	0	0	0	0	0
Philippines	1	0	0	0	0	0	0	0	0	0	0	0
Poland	1	0	0	0	0	0	0	0	0	0	0	0
Portugal	1	0	0	0	0	0	0	0	0	0	0	1
Puerto Rico	1	0	0	1	0	0	1	0	0	0	0	0
Romania	1	0	0	0	0	0	0	0	0	0	0	0

Russia	2	0	0	0	0	0	0	0	0	0	0	0
Rwanda	1	0	0	0	0	0	0	0	0	0	0	0
Saudi Arabia	3	0	0	0	0	0	0	0	0	0	1	0
Senegal	0	0	1	0	0	0	0	1	0	0	0	0
Serbia Monte	2	0	0	0	0	0	0	0	0	0	0	0
Sierra Leone	2	1	0	0	0	0	0	0	0	0	0	0
Singapore	3	1	0	0	0	0	0	0	0	0	0	0
Slovak Re-public	2	0	0	0	0	0	0	0	0	0	0	0
Slovenia	3	0	0	0	0	0	0	0	0	0	0	0
South Africa	3	1	0	0	0	1	0	0	0	0	0	0
Spain	2	0	0	0	0	0	1	0	0	0	0	0
Sweden	1	0	0	0	0	0	0	0	0	1	0	0
Switzerland	1	0	0	0	0	0	0	0	1	0	0	0
Syria	3	0	1	0	0	0	0	0	0	0	1	0
Taiwan	2	0	0	0	0	0	0	0	0	0	0	0
Tanzania	2	0	0	0	0	0	0	0	0	0	0	0
Thailand	2	0	0	0	0	0	0	0	0	0	0	0
Togo	0	0	0	0	0	0	0	0	0	0	0	0
Tunisia	0	0	1	0	0	0	0	0	0	0	1	0
Turkey	2	0	0	0	0	0	0	0	0	0	0	0
Uganda	2	1	0	0	0	1	0	0	0	0	0	0
Ukraine	2	0	0	0	0	0	0	0	0	0	0	0
United Arab Emirates	2	0	0	0	0	0	0	0	0	0	1	0
United Kingdom	4	0	0	0	0	1	0	0	0	0	0	0
United States	1	1	0	0	0	1	0	0	0	0	0	0
Uruguay	3	0	0	1	0	0	1	0	0	0	0	0
Uzbekistan	2	0	0	0	0	0	0	0	0	0	0	0
Venezuela	3	0	0	1	0	0	1	0	0	0	0	0
Vietnam	1	0	1	0	0	0	0	0	0	0	0	0
Yemen	0	1	0	0	0	0	0	0	0	0	1	0
Zambia	1	1	0	0	0	1	0	0	0	0	0	0
Zimbabwe	4	1	0	0	0	1	0	0	0	0	0	0