FRIEDRICH-ALEXANDER-UNIVERSITÄT ERLANGEN-NÜRNBERG

Lehrstuhl für VWL, insbes. Arbeitsmarkt- und Regionalpolitik
Professor Dr. Claus Schnabel

Diskussionspapiere
Discussion Papers

NO. 6

Labour's Law?

ELKE J. JAHN AND THOMAS WAGNER

JUNE 2001

ISSN: 1615-5831

Editor: Prof. Dr. Claus Schnabel, Friedrich-Alexander-Universität Erlangen-Nürnberg

Labour's Law?*

Elke J. Jahn[a] and Thomas Wagner[b]

ABSTRACT: A cross section analysis of 23 OECD members shows that there is an „antagonistic" relationship between the legal protection of investor interests on the one hand and labour interests on the other: the stronger the legal protection of investor rights in a country, the less developed are the individual and collective rights of labour and *vice versa*. A main cause for a country's position with respect to this trade off is its type of legal system, specifically whether it belongs to the common law or the civil law family. The established procedures of lawmaking and litigation in civil law countries decrease the organisation and influence costs of large interest groups, and increase their chances of institutionalising the income and protection goals of their members in the form of codified statutes.

ZUSAMMENFASSUNG: Eine Querschnittsanalyse der Rechtsordnungen von 23 Mitgliedern der OECD zeigt, dass eine „antagonistische" Beziehung zwischen dem Schutz der Kapitalgeberinteressen (KI) auf der einen und der Arbeitnehmerinteressen (AI) auf der anderen Seite besteht: Je ausgeprägter der Schutz der KI in einem Land ist, desto schwächer ausgebildet sind die Individual- und die kollektiven Organisationsrechte der Arbeitnehmer und umgekehrt. Ein Grund für diese Tendenzen des Rechts scheint vom Grad der Autonomie des Rechtssystems und der Gewaltenteilung eines Landes bestimmt, speziell von seiner Zugehörigkeit zur Familie des Civil oder des Common Law. Die Verfahren der Rechtschöpfung und Rechtsprechung in den Civil Law Ländern senken die Kosten der Einführung regulierender Spezialgesetze ebenso wie die Organisations- und Einflusskosten großer Interessengruppen und erhöhen deren Chance, die Einkommens- und Schutzziele ihrer Mitglieder zu institutionalisieren.

KEY-WORDS: Labour Law, Legal Origin, Separation of Powers, Industrial Relations

JEL-CODE: K 31, J 53

* This paper benefits from comments received at the conference of the EALE/SOLE 2000, Milan, Italy and the conference of the Verein für Socialpolitik 2000, Berlin, Germany.

[a] Friedrich-Alexander-Universität Erlangen-Nürnberg, Lehrstuhl für Arbeitsmarkt- und Regionalpolitik, Lange Gasse 20, 90403 Nürnberg, Germany, Elke.Jahn@wiso.uni-erlangen.de.

[b] University of Applied Sciences Nürnberg, Hastverstr. 31, 90408 Nürnberg, Germany, Thomas.Wagner@fh-nuernberg.de.

1. Introduction

The legal approach to corporate governance maintains that the stakeholders of a firm – investors, managers, workers, suppliers – cannot sufficiently protect their interests in the cash flow, assets and location of the firm through private agreements and contracts alone. Neither are job, credit and supply contracts self-enforcing, nor are customs, reputation capital, private orderings or private arbitration sufficient to guarantee compliance and to provide for an efficient exchange between the stakeholders. The interests of the stakeholders must be, or at least are in most countries, protected additionally through special legislation (e.g. corporate law, labour law, consumer law) which determine a network of factor-specific rights and duties. Even comprehensive contracts do not seem to be sufficient to prompt factor owners to long-run capital investments or firm-specific „self-investments" (Teulings and Hartog 1998) in an amount and a quality sufficient to maximise the expected transactional rents and to distribute them according to accepted rules. Thus the firm is neither a sequence of „Walrasian auction markets" nor a „nexus of neoclassical or relational contracts" between private autonomous actors alone. Instead, it is a legal entity restrained by special legislation which regulates the exchange of capital, labour services, intermediate products, and infrastructure against rights to the cash flow, information rights, as well as decision and residual control rights.

On a general level the reasons why agreements and contracts between private autonomous actors are not sufficient to generate the desired transaction rent and to protect it against the interference of other stakeholders may be found in the opportunism and the bounded rationality of the players as well as in the transaction costs which would have to be incurred in order to write and verify complete, transaction-specific contracts. Asymmetrically distributed information and incomplete contracts open up opportunities for the ex ante and ex post opportunism of those involved in a transaction or – due to the agency costs of adverse selection and moral hazard – even prevent an advantageous exchange altogether. Laws which define the specific rights and obligations of the stakeholders and a sanctioning apparatus which enforces compliance are meant to reduce those efficiency losses. The protection of vested legal claims and interests, however, generates immobility, an entitlement mentality, and rent seeking behaviour. Many economists view, for instance, the labour law in Continental Europe as being one of the main causes of the persistent European mass unemployment. This paper, instead of discussing once again the well-known institutional rigidities of the European labour markets, elaborates

on some of the causes responsible for the evolution of the European labour market institutions.

In Section 2 we present a cross section analysis for 23 OECD member countries and show that within this group of nations there is indeed a trade-off between the strength of the legal rights capital and labour enjoy in the respective countries. As the statistical analysis demonstrates, the distribution of rights seems to depend significantly on whether a country's legal system belongs to the common law or of civil law family. Next we summarise some important explanations for the relative legal position of capital and labour and the relative strength of that position, depending on the system of law. First, we develop the argument of La Porta et al. (LLSV 1999a) – the main contributors to revitalising the legal approach (LLSV 1999b, 1998) – who explained why the legal rights of investors are so remarkably strong in common law countries in comparison to the relatively weak position of investors under civil law. Second, we recapitulate the „structural explanation" advanced by Max Weber (1978) in his sociology of law. This theses demonstrated why capital enjoys above-average legal protection under common law while labour's interests are only weakly embodied in the stock of common law precedents, if at all. In Section 3 we first summarise the widespread and well-known political explanation for the strong legal position of labour as opposed to the weak legal support for investors' interests in the European civil law countries (Roe 1999). Second, we develop the hypothesis that the allocation of constitutional rights to control the procedures of lawmaking, litigation, and the recruitment of judges is decisive for the observed distribution of the *individual* rights of workers and investors. As is shown in Section 4, the allocation of these constitutional control rights to the legislature, the executive, the judiciary, the citizens, and the groups of organised interests has consequences not only on the level of individual rights. It also has an effect on the level of *collective* rights and the legal, and therefore economic role collective agreements play in a society.

2. The Legal Approach

1. If, for the moment, we ignore the costs of incentive effects of strong legal protection, costs which are by nature zero in a society built on unlimited private autonomy, it is interesting to analyse the *de facto* relationship between the rights of the different stakeholders of a firm and the protection which they enjoy within the respective legal system. Does strengthening of the cash-flow and control rights of investors of equity capital, who, as recipients of the residual income, *ceteris paribus,* prefer projects with a higher risk, not at the same time weaken the creditors who are less well-informed and, with riskier proj-

ects, must incur a greater financial risk? Does a system that concedes extensive control rights to creditors during a liquidity crisis hurt the interests of investors of equity capital who, through a temporary shortage of liquid funds caused by a bank, can lose their capital to the creditors? The comparative *statistical* analyses of LLSV (1998, 1999a, b) show that, in opposition to the above conjecture, a strong *complementarity* of the legal positions of both types of outside investors exists. Legal systems that protect the claims of minority shareholders against intruding strategies of major shareholders, or managers and other insiders often also endow creditors with strong legal rights and *vice versa*. Thus, from the viewpoint of corporate governance of outside capital, the difference between the legal systems of the countries examined by LLSV (1999a, 8) can be characterised by the proposition „that some countries protect all outside investors better than others, and not by the proposition that some countries protect shareholders and others protect creditors".

2. A cross-sectional analysis of legal investor rights on the one hand and those of workers on the other does not show a similar complementarity. On the contrary it confirms the proposition „that some countries protect investors and others protect workers": the better a country's legal system protects investors against exploitation from managers, major shareholders, the government, and other insiders like employees, the weaker the legal rights of the labour force, and *vice versa*. The vertical axis of Fig. 1 measures for 23 OECD member countries the legal protection of the minority investors, the horizontal axis measures the protection of employees' rights. The ordinate represents the index of „anti-director rights" (ADR) used by LLSV (1998) to measure the protection which shareholders enjoy within the respective countries. The index takes on values between 0 and 6 and increases with the strength of their rights.[1] The abscissa measures the strictness of the employment protection legislation (EPL) with which a country protects workers with regular or temporary job contracts against individual or collective dismissals (OECD 1999).[2] The correlation between ADR and EPL is negative and the correlation coefficient, $r = -0.55$, is significant (p value = 0.7%). What are the causes for this „antagonism" between the legal rights of capital and of labour?

---

[1] The index is formed by adding 1 when: (1) the country allows shareholders to mail their proxy vote; (2) shareholders are not required to deposit their shares prior to the General Shareholders' Meeting; (3) cumulative voting or proportional representation of minorities in the board of directors is allowed; (4) an oppressed minorities mechanism is in place; (5) the minimum percentage of share capital that entitles a shareholder to call for an Extraordinary Shareholders' Meeting is less than or equal to 10 percent; or (6) shareholders have preemptive rights that can only be waved by a shareholder's vote (LLSV 1998, Table 1).

[2] EPL is the weighted mean of the indicators for regular and temporary contracts for the late 90s (OECD 1999, Chapter 2, Table 2.5).

3. In Figure 1 the countries in the sample are grouped according to the prevailing type of legal system. Obviously the six common law countries[3] form a relatively homogeneous group with a stronger-than-average ADR and weaker-than-average EPL, while the seventeen civil law countries have stronger-than-average EPL and relatively weak ADR (see Table A1 in the Appendix).

[Fig. 1 and Fig. 2 about here]

Legal systems – the creation of laws, the processing of legal rules, the litigation and the organisation of the courts and procedures, the training and selection of the judges, and the legal philosophy and doctrines – are public goods with high development and provision costs. Therefore, legal systems which have proven effective are often copied. War, colonisation, and the administration by victorious powers are other channels through which foreign legal rules can spread within or be imposed upon the legal culture of a country. As with languages, occidental legal systems also have what comparative legal research has identified as family trees deriving from a handful of primary historical sources (David and Brierley 1985, Reynolds and Flores 1989, Glendon et al. 1994, Zweigert and Koetz 1998). One of these sources of modern law is common law which in England has developed „spontaneously“ and without any greater interruption since the early Middle Ages. The second most important family of legal systems is French civil law,[4] which with its *Code Civil* of 1804 is considered the model of all modern codifications including German law[5] with its *Bürgerliches Gesetzbuch (BGB)* of 1900. The fourth family is that of Scandinavian law[6] which does not go back to a central codification with comparable symbolic value. Yet its development is independent of common and Continental law with its Roman origins as emphasised by comparative law (Zweigert and Koetz 1998) and confirmed by the following statistical analysis of individual and collective labour law. As can easily be seen from Figure 2, the four families of legal systems show a strong negative correlation between the two dimensions ADR and EPL. Despite the small number of only four observations and the deviation from a strict linear pattern due to the German civil law countries[7], the correlation coefficient is $r = -0{,}92$ with a p value of less than ten percent.

---

[3] Australia, Canada, Ireland, New Zealand, Great Britain, and the United States.

[4] Belgium, France, Greece, Italy, the Netherlands, Portugal, Spain, and Turkey.

[5] Austria, Germany, Japan, Korea, and Switzerland.

[6] Denmark, Finland, Norway, and Sweden.

[7] These deviations from the trend can be caused by measurement errors. In contrast to the measurement of LLSV (1998), German shareholders, for example, enjoy a weak „preemptive right to new issues“. If we would take into account that for Germany *ADR* = 2 is valid, then we would have a correlation coefficient of r = -0.95 with a p value of five percent.

The Index of Labour Standards (OECD 1994a, Nickell and Layard 1999) in Table A1 confirms the significance of the differences between the legal families concerning their legal regulation of individual employment relationships. The index – ranging from 0 to 10 – increases with the strictness of the legal regulations.[8] The index is the sum of the sub-indices „working time“, „fixed-term contracts“, „employment protection“, „minimum wages“ and „employees' representation rights“, each of which can have a value between 0 and 2. With a *p* value of less than one percent, the legal regulations are significantly lower in the common law than in the civil law countries. Of the latter, the French civil law countries intervene more strongly in the employment relationship than the German or the Scandinavian. The differences between the three civil law families are, however, not significant.[9]

4. Are there technological, institutional or ideological causes which can explain the negative correlation between the legal protection of capital and labour in the sample of common law and civil law countries? There is no definitive answer to this question. LLSV (1998, 1999a, b) give an explanation for the relative strength of ADR under common law which combines hypotheses about economic efficiency with the path-dependency of the history of the common law system. According to LLSV (1999, 7; Bebchuk 1999), mainly empirical observations indicate that private contracts alone, without the framework of legal rights and duties created by commercial law, do not provide a sufficient protection for investors. But why is it that common law offers better protection for investors than civil law? LLSV mention two complementary explanations, one legal and one which refers to the power of the executive branch.

Common law evolved as an *ex post* institution of *dispute settlement*, consisting of an uninterrupted chain of judicial decisions, which dates back to the early Middle Ages. The judges of the superior courts – the „high priests of the system“ (Simpson 1987b, 389) – are at the centre of this legal system. According to the *Stare-Decisis* doctrine, the *ratio decidendi* of „important“ decisions gains the reputation of a legal precedent to which the common law judges of all generations and all lower level courts feel committed when judging similar cases. For at least the last two centuries, this practice has been

---

[8] „This index represents an attempt to combine Secretariat judgements about the extent to which certain labour standards are determined by government regulations as opposed to more decentralised systems such as collective agreements or individual contracts“ (OECD 1994a, 152).

[9] It is the very low index value of Japan, the exception to the rule, which is responsible for the fact that there is no significant difference in the intensity of the legal restriction of private autonomy between the German and the British family of legal systems. Japan is a „notorious outlier” in many of the following comparative statistical analysis, similar more to the group of common law countries than to the civil law regimes.

characteristic for jurisdiction under common law (Simpson 1987a, 359). Judicial precedents, which are not codified and which form (Landes and Posner 1979) a stock of spontaneously growing capital goods from which the decisions of the common law courts result, are given the name of the conflicting parties. The rule that clarifies the conflict is sometimes – at least in the United States – given the name of the judge who first found the famous solution to the case. Precedents evolve as principles of a „low or intermediate level of generality" (Sunstein 1997, 99) built from decisions about single cases and are used by the judges because these rules help to economise on information and decision costs. Picking out similarities and identifying common features of singular cases is the conventional method of analogical reasoning in Anglo-American law. „In this respect, it is quite different from „top-down" theories, which test particular judgments by reference to general theory" (Sunstein 1997, 99).

The *judicial explanation* for the stronger protection of the interests of outside investors in common law countries focuses on the fact that common law courts, guided only by judicial precedents and general principles such as „fiduciary duty" (Masten 1988), are able to reveal and pass sentence on totally new variants of insider opportunism. Thus the insiders' fear of the „expansion of legal precedents to additional violations of fiduciary duty" protects outside investors against the insiders encroaching upon their rights (LLSV 1999, 10). In civil law countries, in contrast, clever corporate insiders who continuously think up new ways to exploit the firm's investors are not threatened by the courts as long as their harmful behaviour is not explicitly prohibited by new laws. However, according to LLSV (1999), this legal explanation is incomplete and must be supplemented. The legal argument does not answer the question why common law judges protect outsiders against insiders, especially against managers, and not *vice versa*. After all, common law judges, in particular, could try to use their authority and their power of interpretation of legal statutes „to sanction expropriation rather than prohibit it" (LLSV 1999, 10).

The *power argument*, which supplements the legal explanation, refers to the history of common and civil law. In civil law countries, the executive branch had more authority to intervene in the economic process and – although the separation of powers became ever more differentiated – never lost this power completely to the legislative and judicial bodies. In England, by contrast, the crown had already lost its authority over the courts at the beginning of the Modern Age. They came under the influence of the British Parliament, and the landowners who dominated the assembly. This shift in power resulted in a relatively powerless executive and a relatively autonomous judiciary whose jurisdiction „evolved to protect private property against the crown" (LLSV 1999, 11). In the course of time, the common law courts, which had first protected

landowners against government, extended their protection to the investors of capital. In the civil law countries France and Germany, on the other hand, the feudal kings with their executives never lost authority over the judiciary and the class of landowners. The French *Code Napoléon* of 1804 and the German *BGB* of 1900 – enacted under Napoleon and Bismarck, the two most powerful statesmen of Continental Europe – and especially the commercial laws of both countries were created primarily in order „to enable the state to better regulate economic activity“ (LLSV 1999, 11). The judiciary of the civil law countries became a class of „functionaries“ (Simpson 1987b) trained by government officials to serve government, who are appointed and paid by the government, and who merely apply the law. For this reason, the judiciary depended (and still depends) on the government and the executive to an extent which made it much more costly and therefore unlikely for courts to decide in favour of a private individual and against their paymaster (Ramseyer and Rasmusen 1999, Glendon et al. 1994, 65 pp).

5. The explanations offered by LLSV, however, do not reveal the reasons why labour interests in common law countries are so weakly embodied in the prevailing legal system and have hardly ever been actively protected by the common law courts. The *structural argument* of Max Weber (1978) provide an explanation for this problem. According to Weber, formal rationality in the forms of rational bureaucratic governance, codification of the law, calculability of market relations, etc., is a precondition for modern capitalism (Silberman 1993). Weber developed his idea of formal rationality with the political, administrative and judicial systems prevailing in Continental Europe, and especially Prussia, in mind. As is well-known, he found it difficult to reconcile these ideas with the fact that history had chosen England and common law as the place for modern capitalism to take off. The spontaneously developing, non-codified „bottom-up” approach of common law, with its legal precedents and its court decisions and procedures suited to individual *ex post* bargaining and dispute settlement, reminded Weber (1978) of the early European developmental stages of the „charismatic legal revelation“ through „law prophets“. He considered this type of legal system as „irrational“ and from the viewpoint of his rationalisation theory as an anomaly (Swedberg 1998). But, according to Weber, there were two circumstances which helped the take-off of capitalism in England and which were specific to British common law. First, the right to control lawmaking, litigation, and the recruitment of judges was (and still is) in the hand of the bar, from which the judges are recruited, i.e., „in the hands of a group which is active in the service of propertied, and particularly capitalistic, private interests and which has to gain its livelihood from them.“ (Weber 1978,

892). The second circumstance gives the answer to the above-mentioned question: why labour interests enjoy only minimal protection in the common law countries. According to Weber (1978), this is because „the concentration of the administration of justice at the central courts in London and its extreme costliness have amounted almost to a denial of access to the courts for those with inadequate means.“ Thus the stock of legal precedents which was used and created by common law judges to pass their sentences imbibed only the preferences and the class situation of the landowners and investors, while labour interests could not leave their traces under this set of rules (Priest 1977).
But why is it that labour interests in civil law countries are so deeply rooted in the legal systems and protected against the opportunism of management and outside investors while the legal position of capital in many of those countries is relatively weak? Why do countries with codified law restrict individual liberty and private autonomous contracting through labour and administrative law so heavily? Why do the civil law systems provide and allow only a small number of legal forms to organise the corporate governance of the employment relationship? In the following section, we discuss the political explanation and develop an economic explanation for the relatively strong labour rights in civil law systems.

3. The Political and Economic Argument

1. There is evidence that social democratic goals and ideologies have a significantly stronger influence on the agenda and strategies of political systems and their actors in civil law countries than in common law countries. In order to test this *political argument* we choose the inequality of a country's income distribution as a measure for the intensity of the influence of social democratic policies on a country’s economic and political condition. The reasoning is that social democratic policies – especially supported in Europe by conservative, often Christian parties and their „labour wings“ – must have been more influential in a country's history the more egalitarian the distribution of income in the respective country is. The Gini coefficients of Table A2 measuring the income inequalities in the countries of the four families of legal systems confirm, with a *p* value of 1.3%, that the social democratic policy bias is significantly higher in the civil law than in the common law countries. For the common law countries the average concentration measure is 34.8% while in the civil law countries the income distributions are much more egalitarian, with the Gini coefficients scattered around an average of 28.9%. Social democratic policies have had the strongest influence on income distribution in the four Scandinavian countries. Not only is the Gini coefficient of the Scandinavian family by far

the lowest, but the variance of the distribution is negligible. The Scandinavian family of legal systems shows how strongly the legal rights of workers and investors can be protected simultaneously by the rule of law under the aegis of social democratic politics (see Fig. 1 and 2). Among all civil law countries, the Scandinavian legal systems give their investors by far the strongest ADR without weakening the legal position of their labour force compared to, for example, the countries which belong to the German legal family. Nevertheless, even in Scandinavia, there is a „natural“ tension between the legal positions of capital and labour. At the boundary of the „legal possibility set“ (see Fig. 1), a stronger protection of labour rights can only be implemented at the expense of the investors' legal rights and *vice versa*.

The hypothesis of the relative dominance of social democratic policy agendas in the civil law countries is supported by two other indices. The index of benefit generosity (OECD 1997) is an aggregate of the benefit entitlements of unemployed workers of different incomes and marital status measured in terms of replacement rates and entitlement periods and can be interpreted as „benefit entitlements before tax as a percentage of previous earnings before tax“ (see Table A2). In the civil law countries benefit generosity at 33.7% is, with a *p* value of less than four percent, significantly higher than in the common law countries (23.4%). The third index measures the share of transfer payments and subsidies in a country's GDP (Gwartney and Lawson 1998). At 21.7% the share of transfer payments and subsidies is, with a *p* value of about one percent, significantly higher in civil law countries than in common law countries (15.8%).

From the perspective of the outside investors, a social democratic regime steering the economy alongside the frontier of the „legal possibility set“ to enhance the legal protection of the vested interests of labour, causes high agency costs (Roe 1999). A social democratic policy deepens the conflict of interests between outside investors and management, and because these activities are associated with a volatile job and labour turnover, such a policy increases the costs of risky reorganisations and adaptations of the technology as well as the costs of acquiring and establishing new input and output markets. Moreover, social democratic policy often reacts with hostility towards the instruments of corporate governance which are expected to coordinate the motivation and behaviour of management with the goals of outside investors. These instruments include incentives like shares in the company cash-flow, hostile take-overs, a transparent accounting system reflecting the objectives of the outside investors and not of the tax state (like in Germany), active and competent boards of directors, a management education at business schools based on the objective of maximisation of asset returns and not on the goals

of the national state (like in France) or formal principles of bookkeeping and the tax laws (like in Germany). Maximisation of the shareholder value is incompatible with the worldview and welfare state ideologies of the political, legal and economic elite in European civil law countries.

2. Our *economic explanation* for the relative strength of labour rights *and* for the structural bias in favour of social democratic policies in the civil law countries bases on the paradigm of incomplete contracts and on the new economic theory of the constitution (Williamson 1985, Hart 1995, Tirole 1999, Persson and Tabellini 1999). Political constitutions are incomplete contracts. Different constitutions endow different types of interests and their political agenda with a dominating weight in the competition for power by distributing „residual control rights“ in different ways among the population (the voters), organised interest groups, and the branches of government – the executive, the judiciary, and the legislature. From the perspective of the *economic explanation*, the fundamental difference between civil law and common law countries results from the different allocations of control rights over lawmaking, litigation, and the education and recruitment of judges. In common law countries these four functions are to a great extent concentrated and carried out inside the boundaries of the legal system which exchanges its services with the other branches of government through non-hierarchical communication channels. In civil law countries the legal system and its actors are subordinated to the legislature and a constituent part of the executive: the functions of lawmaking, education and recruitment of judges are exercised by monopolistic bureaucracies outside the legal subsystem. Of course a civil law judge is committed to obey „the law and nothing but the law.” Moreover, a constitutionally guaranteed independence of the single judge generally exists to protect his rulings and legal opinions against the influences from politics and the administration. Nevertheless, the law the judge applies – codes, statutes, legal orders, rules and special legislation – is controlled and created by other parties, mostly legislative and executive bodies of the government, and is therefore an exogenous constraint on his decision set.

3. The received political philosophy asserts that western political systems have identical roots and similar attributes characterised by a functional separation of powers with the legislature, the executive and the judiciary as the three branches of government. In our view this paradigm is misleading.
First, there are goods and services monopolised by the „leviathan“ and supplied by its legislative, executive or judicial branches that also could be provided by private markets. Lawmaking and jurisdiction over issues of collective

labour law, for example, could be supplied by profit maximising commercial law firms. In the USA and Canada an expanding market already exists for services of private arbitrators who „in the shadow of the common law“ have accumulated a body of specialised precedents to enforce collective bargaining agreements and to settle disputes between firms and union representatives (Landes and Posner 1979, Williamson 1985, Kotzorek 1987, Bruce 1988, Elkouri and Elkouri 1997, Gruber 1998). The „common law of collective agreements“, which evolves from the rulings of private arbitrators, has never been enacted by an elected legislator or a state administrator. It resembles the spontaneous result of a decentralised market process and it seems impossible that the state could regulate this rulemaking industry without destroying the whole market and its structure. For similar reasons it seems impossible for organised interest groups to influence systematically the making of the common law of collective agreements. In civil law countries, on the other hand, private arbitration courts are either forbidden by law, forced into specialised fields or they are not competitive in comparison with the subsidised adjudication of the state courts.

Second, the degree of autonomy of the judicature and its independence from other government branches varies considerably between civil law and common law countries. In civil law countries the legislature and the executive not only produce the codes and statutes which the judiciary has to apply, but these branches of government also prescribe, in the form of numerous procedural rules, the internal organisation of the court system, its judicial proceedings, the recruitment, income and carrier of its personnel, the roles the different legal actors have to play and the rights and duties of the litigating parties. The procedural aspects of litigation in common law countries, which once by far dominated the substantive aspect of the root common law, are today also codified, although these codifications seem to be very general, to reflect the internal developments of the legal process, and to consist of adaptations to the preferences of the judges and lawyers and in particular to the requirements of the „adversary method“ of proceeding. There have been numerous proposals and attempts to cut back the autonomy of common law jurisdiction through restatements and reform commissions, through codifying the law or by introducing a second judicial system with different procedures, different legal norms and independent courts and legal actors. But the common law system and its independence from the executive and the legislature, as well as from organised interests groups and political parties, has survived all reforms and attacks and even the competition with alternative legal institutions (Weber 1978, 892), although not without exceptions.

Extraordinary, at least by the standards of civil law systems, is the enactment of legal statutes in common law countries with the sole aim of reforming the peculiarities of the uncodified common law and its procedural aspects. In the early 1930s for example, Witte (1932), at that time a well known American industrial relations specialist (Kaufman 1993), stated that the „law governing collective bargaining, labor organizations and labor disputes is in the United States almost entirely a matter of judicial decisions rather than of statutes. The majority of the statutes in this field have had for their object relieving labor from restraints imposed through court decisions…." Until recently one of the main objectives of the protective labour legislation in the United Kingdom, for example, has been either to impose or to repeal the so called „immunities", which protect the labour movement and its federations against the hostile rulings of the common law courts. While the courts in common law countries have adhered to free market ideology and have upheld free trade and the liberty of contract principle at least until the end of the first half of the 20th century, the primary goal of labour legislation has often been, and still is, not the protection of worker interests or the regulation of the employment relationship but instead the enactment of statutes which prevent the courts from ruling against the federations, against strikes and other trade restraining practices of the worker and employer combinations.

Third, there are a variety of peculiarities of common law that lawmaking bodies of the legislature and the executive have to take into account and to adapt to when pursuing their political strategies which have to be effected through new regulatory legislation. The judicial review of the legality of administrative activities and the constitutionality of legislation, for example, is a right and a duty of all common law judges, while in civil law countries a judicial review either does not exist at all or is the task and prerogative of a specialised court with a very small number of politically appointed judges, whose opinions and rulings are relative easy to predict. Moreover, all regulatory activities of the modern government must be expressed and transmitted in the form of a legal code or statute. The legal code is the language through which the welfare state communicates with its citizens. Thus, all regulations have to pass the consistency and constitutionality test of the common law system because statutes become effective only when interpreted by the courts.[10] The lawmak-

[10] With regard to the dependency of the legislature and the executive on the rulings of the common law judges, Glendon et al. (1994, 716) write: „Courts … have significant influence on the post-enactment development of statutory law, since enacted law is only effective when the courts permit it to be applied." Lord Devlin (1981) makes the following statement from the perspective of a common law judge about the relationship between the three powers: „I appreciate that radical reformers may take a fundamentally different view from mine about the function of the judiciary. They may see it not as arbitrating between citizens and as holding the balance between the state and the individual but as one of the three

ing bodies of the executive and the legislature therefore have to anticipate the precedents the common law courts will apply to new legislation and to draft the regulating norms in light of their conjectures about the reactions of the judicature to the new statute. The arguments of the reaction function of the inferior courts include the descriptions of the particular case brought forward by the parties and their legal counsels, moreover the relevant precedents as far as they are known to the judge, but not necessarily the letters and articles or the prevailing academic interpretation of the statute.[11] To make sure that the adjudication of the courts will be in line with their intentions, the legislators in common law countries have to attempt to predict the endogenous level of generality the courts will prefer in their decisions. The drafters have to classify the continuum of facts to which the statute shall be applied with reference to the anticipated stock of precedents the drafters expect to be cited by the higher courts in their interpretations of the new code.[12]

4. Given that the costs of producing and adapting statutes are higher in common law than in civil law systems, then the equilibrium quantity of regulatory

---

branches of the government. They may see the need for social reform as demanding that all three arms of the government should smite in unison for its achievement. Judges should give social leadership, they say. What if they are harnessed to an Act of Parliament? They are still free to gallop with it towards the social millennium, treating the sections that rumble along behind as but the wagons that are packed with fodder for progressive judgements. If judges were men endowed for such a task they would not truly be judges. … The judges are the keepers of the [common] law and the qualities they needed for that task are not those of the creative lawmaker. The creative lawmaker is the squire of the social reformer and the quality they both need is enthusiasm. But enthusiasm is rarely consistent with impartiality and never with the appearance of it.“ (cit. in Glendon et al 1994)

[11] With respect to the British Theft Act of 1968, Simpson (1987a, 385), for example, describes his experience as a judge of a magistrate court as follows: „My own experience as a magistrate makes me doubt whether any of my colleagues (apart from one who was legally trained) had ever read the Theft Act or could give any acceptable account of its provisions; magistrates convict for „stealing“, not for breaches of the Theft Act“.

[12] The effects on the codification of new legal rules of these restrictions in the form of judicial precedents and rules of interpretation which the legislator must take into account in common law countries can be induced indirectly from the following commentary on the Treaty of Rome by Judge Lord Denning (1972): „What a task is thus set before us! The treaty is quite unlike any of the enactments to which we have become accustomed. The draftsmen of our statutes have striven to express themselves with the utmost exactness. They have tried to foresee all possible circumstances that may arise and to provide for them. They have sacrificed style and simplicity. They have foregone brevity. They have become long and involved. In consequence, the judges have followed suit. They interpret a statute as applying only to the circumstances covered by the very words. They give them a literal interpretation. If the words of the statute do not cover a new situation – which was not foreseen – the judges hold that they have no power to fill the gap. To do so would be a 'naked usurpation of the legislative function'.… The gap must remain open until Parliament finds time to fill it.
„How different is this treaty. It lays down general principles. It expresses its aim and purposes. All in sentences of moderate length and commendable style. But it lacks precision. It uses words and phrases without defining what they mean. An English lawyer would look for an interpretation clause, but he would look in vain. There is none. All the way through the treaty there are gaps and lacunae. These have to be filled in by the judges, or by regulations or directives. It is the European way.…“ (cit. in Glendon et al. 1994)

laws passing the parliamentary hurdles, being executed by the administration and finally enforced by the courts, should be higher in civil law countries. To demonstrate that the level of government regulation of product and factor markets in general is indeed significantly higher in the civil law countries of the sample, we employ two indices from Gwartney and Lawson (1998). These indices measure the share of public enterprises in the economy and the share of government-controlled prices. The two indices shown in Table A3 refer to the year 1997 and range between 0 and 10. A higher index value represents a higher share of public enterprises or a higher share of publicly controlled prices, respectively. Measured in terms of the index for the share of public enterprises, Austria is the country with the highest density of regulation, while for New Zealand after the political and economic reforms, the index is null. The authors' estimation of the share of government-controlled prices is especially high for South Korea – the country is given the index value 10 – while Belgium, Italy, and Japan with index values of 5, follow at a great distance. Again, New Zealand is the country with the fewest price controls. The common law members of the OECD in our sample, with the exception of Australia, are characterised by a significantly lower intensity of government regulation than the civil law countries. As the comparison of the country cross-sections show, the regulation intensity in terms of both the share of public enterprises and the share of government-controlled prices is, with a *p* value of less than one percent, significantly higher in the civil law than in the common law countries. Within the group of civil law nations, there are no significant differences in the share of public enterprises between the three legal families. The share of controlled prices is clearly smaller in Scandinavia than in the other countries with codified law. Here, the difference in comparison with the French legal family is especially significant, with a *p* value of 2,2%.

5. Given the above-mentioned peculiarities and the high degree of autonomy of the common law courts, the cost of drafting, enacting and enforcing codified statutes should be significantly higher in common law than in civil law countries; the demand for and the number of new regulations passing the parliamentary decision procedures should be significantly lower *ceteris paribus*. However, in parliamentary democracies the production and implementation costs of a statute depend not only on the type of legal system a country has inherited but also on the costs of forming a winning parliamentary majority which is favourable to the proposed legislation. The second kind of costs of enacting a new statute in turn depends on the country's electoral system and the decision procedures employed by the legislative body. The most common procedural rule practised in all sample countries follows the requirement that a

statute must be enacted by a majority of the legislators. However, forming a majority is the more costly and time-consuming, the more political parties are involved in the parliamentary bargain. The number of political parties in parliament is determined by the electoral system and therefore, in view of the sample countries, depends on whether a country employs a majoritarian or a system with proportional representation. Indeed the sample is characterised by a remarkably strong *complementarity* between a country's legal system on the one hand and its electoral system on the other (see Table A3). While common law nearly everywhere coexists with a majoritarian electoral system, almost all civil law systems are subject to legislative bodies that are constituted according to proportional representation. The separation of powers in common law countries is incorporated in a game between the highly autonomous legal system and its actors, the common law judges, on the one hand and a powerful legislature and executive on the other. In civil law countries, by contrast, the checks and balances used to prevent despotism in the government in office are to a great extent internal to the legislative and executive bodies: Multipartism and coalitions of two and more parties forming the government are a typical phenomenon in civil law countries. Following Lijphart (1994), Table A3 presents the number of electoral systems (ES) in force from 1945 to 1990 in the sample countries, the number of effective parties in parliament (ENPP), and the likelihood of one-party parliamentary majorities. Ireland, with an electoral system of proportional representation, is the exception to the majoritarian rule prevailing in the common law countries. And France is the single outlier of the civil law family, because most of the French electoral systems during the post-war period have been of a majoritarian or a mixed proportional-majority type. Civil law countries, with a *p* value equal to 3.9%, have an obvious tendency to overhaul their electoral system much more often than common law countries do, while there is no apparent difference in the reform-intensity among the three civil law families. Moreover, the effective number of parliamentary parties – defined as $\text{ENPP} = 1/\sum s_i^2$, where s_i is the seat share of party *i* in the lower chamber of the respective legislature – is, with an average of 2.27 parties per common law country and a *p* value almost equal to zero, significantly lower than the civil law average with 3.63 parties per country. Finally, the frequency of a one-party parliamentary majority in the common law family is, with 71% and a *p* value of less than one percent, significantly higher than in the civil law countries where the frequency of a parliamentary single-party majority amounts to only 21%, with exceptionally high values in Greece and Japan.

4. Industrial Relations

1. In Freeman and Pelletier (1990) the authors test the influence which labour law has on the costs and chances of organising labour market federations. Industrial relations law affects the organising process through three channels: first, through the legal options the law offers to employers with regard to the recognition of a union; second, through the possibilities it offers workers to join and organise a union; third, through the legal instruments it gives to unions to influence employers' decisions either to recognise the union or not. The authors estimate a reduced-form equation that links 1945-1986 changes of UK union density to an index of favourableness of labour law to the British union movement and control for the influences of cyclical (inflation and unemployment), structural (manufacturing share of aggregate employment) and political variables. The impact of politics is controlled for by a 0-1 dummy for a Conservative parliamentary majority. The index of industrial relations laws in the UK is coded on four sub-indices with an ordinal 1-5 point scale for each. Years with legislation which was most favourable to unions received a '5', and years with new acts and legal orders which where least favourable a '1'. The authors can show that union density increased more when the index of labour law was above average than when it was below. The OLS regression shows furthermore that the index has a significant positive effect on union density, while the party controlling parliament has no measurable impact. Taking the estimated regression equation, Freeman and Pelletier (1990, p. 155) are able to show „that the changes in UK industrial relations law reduced union density by 1 to 1.7 percentage points per year from 1980 to 1986". Cumulating the annual adjustments, the authors find that the legal changes during the Thatcher government „caused density to fall by 9.4 percentage points from 1980 to 1986 – effectively the entire decline in UK density in that period". To our knowledge there are not more than a handful of economic or econometric models which analyse the impact of labour law on union density, union coverage, the centralisation level of the bargaining system or union and employer coordination. Models similar to those of Freeman and Pelletier (1990) reflect the legal system of common law countries. In most civil law countries, for example, the recognition of a union is regulated by law. Individual employers or their associations have neither the choice to recognise nor to oppose the recognition. Through the provisions and the procedural rules of labour law and of labour law adjudication the state defines the fixed costs of registration which a federation has to bear. Usually employers have no legal possibilities to withhold recognition or to oppose unionisation.

That differences of the recognition procedures of the two legal systems have major consequences for the optimal union size and equilibrium union density is made clear indirectly through the regression analyses of Riddell (1993) and Card and Freeman (1993). Between 1920 and 1960 union density in Canada and the US exhibited a similar pattern. The Canadian path to unionisation lagged behind the US development most likely because of the later passage in Canada of key legislation providing workers with the right to organise. The Canadian Order 1003, which is nearly identical to the US National Labor Relations Act of 1935, was passed as a war order in 1944. While the US Congress passed the „Taft-Hartley" amendments to the NLRA in 1947, which reopened several legal channels for employers to oppose unionisation, Canada passed no „repeal" of the Order 1003. During the end phase of the New Deal regime, the US common law courts even prohibited threatening employer statements as coercive. „But since about 1970, with the growth of sophisticated law firms advising employers about how to imply threats within legal boundaries …, and with an increasingly pro-employer bias in the courts …, management have become full adversaries in representation disputes which were originally intended [by the drafters of the NLRA of 1935] to be settled among employees alone" (Rothstein 1997). Card and Freeman (1993) claim with respect to Riddell's (1993) comparative statistical analysis of the US and the Canadian labour market that the diverging pattern of unionisation since the mid sixties is a consequence of differences in the industrial relations laws „that permit U.S. management greater opportunity to deter unionization through hostile actions".

Beside the three ways mentioned by Freeman and Pelletier (1990) on which labour law impacts the organising process of the federations, many civil law systems provide two further important channels through which labour law affects the decisions of workers to join or refrain from a union, of unions to spend resources or to shrink, and of employers and their associations to cooperate and co-ordinate their bargaining strategies on a voluntary basis with the union or to stick to the letter of the provisions of industrial relations law. The first channel is influenced by the degree to which a country's federations are integrated into the labour market administration; the second channel depends on the ability of the federations to exert constitutional control rights directly over lawmaking and other judicial functions. First, in many civil law countries a variant of „administrative corporatism" (Rothstein 1991) has developed since the beginning of the last century. Unions and employer associations take part in the bi- or tripartite governance structures of the social security system, the unemployment insurance, active labour market policy and the public employment service (PES). Moreover, in Belgium, Denmark, Finland

and Sweden unions control the unemployment insurance and the PES. The national variants of the Ghent system are, as Rothstein (1992) and Western (1993, 1997) argue, the main cause for the high union density in these countries. Second, in Scandinavia, Germany and Austria there even exists a form of „constitutional corporatism". The combinations enjoy direct control rights over lawmaking, adjudication and the recruitment of those judges employed by the part of the court system devoted to individual and collective labour law. The German constitution, for example, confers to the federations in Art. IX the irrevocable right and duty to control and organise autonomously the German economy and its labour market. Neither parliament nor the German federal constitutional court could easily interfere with and overrule the terms of a collective contract concluded by the representatives of the recognised labour market coalitions. The provisions of a collective agreement are unconditionally valid and binding law. Finally the local, regional, and federal assemblies in those civil law countries with administrative or constitutional corporatism are strongly influenced or even dominated by representatives of the unions.

2. Given that the costs of drafting new codes, statutes, acts and orders are lower under the governance structure of civil law, that common law courts are more autonomous and independent from other branches of government and the labour market federations, and that common law and its judges are more strongly committed to the principles of individual freedom and private autonomous contracting, then we can expect that, *ceteris paribus*, in civil law countries the

- time that elapses from that moment from when government becomes responsible to the citizens until the unions attain the legal right to organise will be shorter;
- level of industrialisation is lower at the moment the government becomes responsible and the proportion of the labour force in the non-agrarian sector – prepared to strike and to pressure the ruling elites for recognition and the right to organise – is smaller;
- integration of organised labour into the political, administrative and legal system proceeds faster and puts a faster end to the early phase of voluntaristic collective bargaining;
- centralisation of the collective bargaining system and the degree of union and employer co-ordination is higher.

3. Table A4, column one shows the years when the sample countries first tolerated unions; the second column shows the years when the countries endowed their working classes with a constitutional guarantee or legal right to

organise; the third column displays the years when governments became responsible to the citizens; the fourth reports the difference between the second and the third column for each country; the last column exhibits the degree of industrialisation a country had reached at the moment the right to organise was granted to the working class. The modernisation of the economy is measured in terms of the share of the labour force employed outside the agricultural sector.

The legally or constitutionally guaranteed freedom of association is introduced in the common law countries on average seven years later (1899) than in the civil law countries where the workers get the right to organise, on average, in 1892. Governments became responsible to the citizens in the common law countries on average as early as 1847, and therefore more than forty years earlier than in the civil law countries; and toleration arrived in common law countries on average twelve years earlier than in civil law nations. The differences between the averages of the time of toleration and the year of the right to organise are not significant. The difference between the averages of the two law families with respect to the first time governments became responsible seems to be significant with a *p* value equal to 7.8%. While more than half a century passed in the common law world from government responsibility until the allowance to combine, in the civil law domain it took, on average, just 3.5 years. The difference between the sample averages is significant with a *p* value of 15.1%. One of the reasons for this large time lag between the two law families is the fact that, with the exception of Finland, all other Scandinavian countries introduced the freedom to organise very early, on average in 1868, and on the other hand, entertained the first steps to political democracy very late, on average only in 1905. An explanation for this inverse order in a time where the right to organise is granted first and political responsibility follows at a distance of 37 years is offered by the history of codified law and statutes. The primary function of codified law in civil law societies has never been *ex post* dispute settlement between the private autonomous parties of a contract. Instead, written law was the central means for the *ex ante* regulation through the sovereign of the behaviour of subordinates. The origin of legal policy as an administrative technique for regulating society was the desire of the absolute sovereign to expand and smooth the income stream of the palace. He also wanted to organise the dominion in such way that the investments from the country's assets became calculable for his counsels and his subordinates, who, after all, were the sources of the sovereign's wealth. The Scandinavian monarchies integrated the different professions and classes rather early into the rulemaking bodies of the central administration. For example, in the case of Sweden, as Rothstein (1991) argues, the state at the end of the 19th cen-

tury resembled the „classic Weberian type of nationally unified ‘recht-staat’" (p. 155) and the „corporatist solutions for political representation found legitimacy almost two decades before democracy was established" (p. 168). There seems to be no parallel in common law countries to this type of law-centred, in Weber's (1978) terminology, „legal domination" or, in Rothstein's words, for this type of „administrative corporatism". Australia is the only common law country where the right to organise preceded the establishment of government responsibility. The simple reason for this inverse order was that freedom of association was given to the workers at a time when no federal government existed in Australia. In Australia and New Zealand the freedom of association was granted at the moment the union movement was first tolerated. In the US, however, it took ninety years – from the first toleration in 1842 until the Norris-La Guardia Act (1932) and the National Industrial Recovery Act (1933) – to break the domination of common law in the field of labour law. The freedom of forming coalitions in Australia and New Zealand in 1876 and 1878 was preceded by the British Trade Union Act of 1871, which established the first legal „immunities" and ensured that British common law courts could no longer treat the unions as criminal organisations. Australia and New Zealand adapted the 1871 Trade Union Act, which liberated the unions in those countries from their illegal status and confirmed the right to collective bargaining.

In France, during the early phase of the French Revolution, coalitions were prohibited by the *Loi Le Chapelier* of 1791, supplemented by the *Code Penal* of 1810 which threatened union members with imprisonment up to five years. In 1884 the French Republicans were finally forced to give in to the workers' demands and to grant freedom of coalition and freedom to strike in the *Loi Waldeck-Rousseau*. Italy did not follow the French example until 1890. Workers' coalitions were subject to penalty and in 1864 were explicitly prohibited in the whole kingdom. The new Italian criminal code of 1890 gave the workers the right to combine, six years later than in France. In Switzerland the *Loi Le Chapelier* of 1791 was valid until 1847. It was repealed after the *Sonderbund* War in 1847, in which the liberal cantons asserted themselves against the Catholic-conservative secessionists through the new federal constitution that granted the right to organise. In other civil law countries there is a shorter or longer time lag between toleration and complete freedom of coalition, a transition time in which the medieval local labour market regulations were gradually replaced by modern regional or even national labour market regulations based on universally valid statutory law. Everywhere on the Continent since the Middle Ages, labour markets had been strongly regulated by locally organised interest groups, by the municipal and – to a lesser extent – the central executive. Free labour markets populated with regionally and socially mobile work-

ers and profit maximising firms interacting under the voluntaristic governance structure of private autonomous contracting and private orderings never existed in the Continental and Northern parts of Europe.
At the time workers attained the legal right to combine in unions, the industrialisation process was – with a *p* value of less than one percent – much more advanced in the common law than in the civil law countries. While the common law countries were forced to grant freedom of coalition only at an industrialisation level equal to 71.6%, on average, in the civil law countries the transition took place earlier as well as at a lower level of modernisation of only 49.7%. With the stubborn resistance of the common law courts, Great Britain was able to withhold the legal right to combine until the share of the non-agrarian labour force had reached 83%; in the US it was 78%.

4. Table A5 tracks the history of the collective bargaining systems of the sample countries and reports the time lag between the early voluntarism of industrial relations and the later period of administrative or constitutional corporatism. There is no western society whose political and economic elites did not oppose the rise of the modern labour market associations and resist the transformation process which destroyed the local labour market organisations of the guilds and the municipalities. During the first phase of this transition process which lifted the local labour market regulation to the sectoral or national level, the voluntaristic „method of collective bargaining" (S. and B. Webb 1897) dominated. Many if not all union movements at first declined on public conciliation, on the „judicialisation" of employment relations, on the governance structure of contract law and the rulings of the commercial and common law courts. But in civil law countries the developing parliamentary democracy opened up the chance to political parties from the left as well as the right to use the approved „methods of legal enactment" (S. and D. Webb 1897) to produce protective labour law. They also took the opportunity to regulate industrial and individual employment relations with regard to the preferences of the quickly growing class of industrial workers. During the second phase of the judicialisation of employment relations, the individual labour contract, the governance of liberal contract law from the 19th century and the voluntarism of the original methods of collective bargaining were successively displaced by comprehensive special labour legislation. In civil law countries, this phase reached a zenith in the decade after World War II. By contrast, the character of industrial relations in the UK and the US today is still dominated by voluntaristic elements. The collective bargaining systems and the methods of dispute settlement in civil law and in common law countries seem to diverge. To test this hypothesis of diverging collective bargaining systems under civil and common

law we follow Armingeon (1994, Crouch 1994), who constructs an ordinal measure for the judicialisation of the collective bargaining system and the degree of administrative corporatism. The aggregate index, which is shown in Table A5, equals the sum of the following four sub-indices: (1) toleration and methods of recognition of independent unions, (2) permission and degree of legal regulation of industrial actions, (3) union coverage, and (4) worker co-determination on the shop-floor and in corporate decision making. Each sub-index is an aggregation of four binary criteria and takes on values between 0 and 4. Thus, the values of the overall index range from 0 to 16. The index increases with growing judicialisation and regulation of the collective bargaining system and its organisations. At index values between 8 and 10, Armingeon (1994, 140) speaks of voluntaristic regulation – collective bargaining and its protagonists, the labour market combinations, are accepted, but the unions are not more than interest organisations solely dependent on the mobilisation of members and on the voluntaristic collective agreements they are able to conclude with the representatives of management and the political elites. Table A5 displays the index for 1919, 1946 and 1990. In 1919, voluntarism is the prevailing integration pattern in all legal families, with no significant difference between the common and civil law countries. Nevertheless, the systems of industrial relations diverge. In 1946, in the common law countries, the judicialisation and the degree of regulation of the collective bargaining systems seem to have progressed compared to the situation at the beginning of the century. In fact, however, the test of the means of the sample distributions shows no significant change. The issuance of the National Labor Relations Act in 1935 in the US increases the value of the sub-index (2) from two to three points, but contrary to many other expert observers' assessments, Armingeon (1994) does not reduce the value again for the period after the introduction of the Labor-Management Relations Act in 1947. The Canadian provinces adapted through similar legal enactments the US-American NLRA but did not follow the Taft-Hartley Act and, quite to the contrary, strengthened instead the legal position of the Canadian unions. On the other hand, the judicialisation of employment relations as well as administrative and constitutional corporatism develop in the decades between 1919 and 1946 very fast in the civil law countries. The difference between the values of the overall index of the two law families has increased. The null hypothesis of identical means – which in 1946 take on the average value of 11 for common law and 13 for civil law countries – can be rejected with a *p* value equal to 13.1%. In 1990, finally, the difference between the index value of the common law countries (10.8) and those of the civil law countries (13.5) is significant, with a *p* value of not more than 1.8%.

Finally we test the hypothesis of the „political explanation", namely, that the development of the collective bargaining systems mirrors only the fact that interest groups, mainly the unions, influenced the legislature of the sample countries through campaign contributions or labour party representatives sitting in the assemblies. The „economic explanation", on the other hand, hypothesizes that the „method of legal enactment" on behalf of the working class, which represents not only a large part of the constituency but most likely includes the decisive voters, is in civil law societies with a heteronomous judiciary one of the most favourable political instruments for maximising the chance of winning elections. Therefore legal policy on behalf of the median voter becomes a necessary condition for the survival of all types of political parties in civil law societies. Consequently, from the viewpoint of the „economic explanation", periods of intense labour legislation should not correlate very strongly with periods during which partisans of the labour movement are selected for office. If we count the „major reforms" of labour and collective bargaining law in the sample countries after the respective issuance of the right to combine (Table A5), the average number of major institutional reforms between the end of the 19th century and 1990 is, with 6.7 reforms per country, greater in the civil law than in the common law family (4.8), but the difference is not significant, and the null hypothesis of identical means cannot be rejected. An analysis of the number of labour market reforms brought about by partisan governments with the participation of social democratic or labour parties yields similar results. Table A5 once more confirms that welfare-state oriented policy or seemingly social democratic agendas and strategies do not require the participation of left wing parties of the social democratic or the labour type. More than 50% of all reforms were carried out without the participation of left wing parties – 58.6% in the common law countries and 55% in the civil law countries. In Germany, according to Armingeon's (1994) count, the conservative (CDU) and liberal (FDP) parties were responsible for exactly 50% of all major labour market reforms. Yet this figure understates the contribution of those political actors to Germany's present labour market condition and the evolution of the German type of constitutional corporatism.[13]

5. Table A6 exhibits some well-known recent measures of unionisation and centralisation as well as union and employer co-ordination. If the hypothesis of

[13] Of course there are many thousands of valid labour market rules and provisions in a civil law country like Germany, but if we rank the major labour laws according to the degree of their contribution to the inflexibility of the German labour market, which today is deplored especially by politicians of the CDU and the FDP, then nearly 100% of these reforms (of the Collective Agreements Law, the Industrial Constitution Law, the Law on Co-determination etc.) were enacted by the CDU and the FDP during the decades of their coalition governments in the post-war era and later under Chancellor Helmut Kohl.

the „economic explanation“ is correct, a comparison of the systems of collective wage determination between the common law and the civil law countries should corroborate that the federations and employers' associations are larger, have more market power and are more deeply integrated in the administrative and judicial activities of the labour market administrations in the civil law than in the common law countries. Instead of the number of members, we compare the degree of unionisation and the degree of centralisation of wage bargaining (Nickell and Layard 1999, OECD 1994b, Calmfors and Driffill 1988). While the degree of unionisation can be high, even in a country with many small and medium-sized competitive company unions, the degree of centralisation of bargaining should be positively correlated with the size of the individual unions and its market power. As Table A6 shows, the average degree of unionisation is higher in the civil law countries (41.5%) than in the common law countries (37.6%), yet the difference is not significant, and the null hypothesis of identical means cannot be rejected. However, there are large and significant differences between the individual families of legal systems. The Scandinavian legal systems have, for example, with a probability of committing a Type I error of less than one percent, a higher degree of unionisation than the three other families of legal systems.

The index for the centralisation of wage bargaining constructed by Calmfors and Driffill (1988) takes on values between 1 and 20, where 1 denotes the highest degree of centralisation. With a *p* value of just about two percent, the degree of centralisation of collective bargaining is significantly higher in countries with codified law (7.9) than in common law countries (12.7). Again, the Scandinavian law family accounts for this difference. Because of the large variance within the group of countries with German law, the great span of 3.7 index points to the common law group is not significant, although the distances to Austria and Germany are obvious. The smaller difference between the means of the common law countries and the group of countries with French law, which is equal to 2.5 index points, is significant with a *p* value of 15.1%. Union coverage is, with a *p* value equal to 2.5%, significantly higher in the countries with codified law. If we look at the individual legal families, it is especially the differences between the common law countries and the French and Scandinavian law families that are significant at *p* values of 1.5% and 1.8%, respectively. That administrative and constitutional corporatism generates extraordinary high coverage rates is confirmed by the examples of the Scandinavian countries, Austria, Germany and Belgium, where the organisation of the PES is rooted in the historical Gent-system (Western 1997, 1993).

Generally, a voluntaristic bargaining agreement between unions and employers' associations – such as, for example, in the model of efficient wage bar-

gaining – is not a Nash equilibrium without the threat of industrial actions and additional governance structures possibly erected by law, which reduce the attractiveness for the federations to deviate from the bargained stipulations. In civil law countries the terms of a collective agreement are binding law and the federations are able to enforce the provisions of the agreement through litigation. Moreover, unions and employer associations meet on a regular basis in hundreds of boards of the administrative and the legislative government bureaucracies. Consequently the combinations have a huge sanctioning potential at their disposal to deter deviant behaviour, and in civil law countries the degree of coordination between the unions and the employers associations should be higher than in common law countries. Table A6 shows that the data confirm this hypothesis. Union-employer co-ordination is indeed significantly higher in the civil law than in the common law countries of the sample.[14]

SUMMARY

The paper shows that there is a trade off between the legal protection of the labour force on the one hand and the legal rights of minority shareholders on the other. In our view the data do not support the hypotheses of stronger preferences of European workers for employment protection or of a social democratic bias of European politics. The stronger protection of either the rights of labour or the rights of minority shareholders seems to depend on whether a country belongs to the common law or the civil law family. We argue that the allocation of constitutional rights in common law and civil law countries to control the procedures of lawmaking, litigation, and the recruitment of judges is decisive for the observed distribution of the individual rights of workers and investors. The separation of powers and the codification procedures in civil law countries reduce the organisation and influence costs of labour market associations and increase their chances to codify the income and protection goals of their members through legal entitlements and special legislation. Interest groups are therefore enabled to appropriate competencies of the labour market administration and constitutional control rights and thus not only adopt functions of but become a part of the executive, legislative and the judiciary powers of the civil law societies.

[14] If we exclude the nations with Scandinavian law and treat the countries with French and German law as one group, then the tests of the means yield the following t-statistics (*p* values): Centralisation Ranking: 1.58 (0.1374); Union Coverage Rate: -2.59 (0.0322); Union+Employer Coordination: -6.78 (0.0000). Thus the differences in the Centralisation Ranking, the Union Coverage Rate and the Union+Employer Coordination are significant even without the influence of the Scandinavian family of legal systems, although in the first case the *p* value amounts to 13.7%.

APPENDIX

Figure 1:

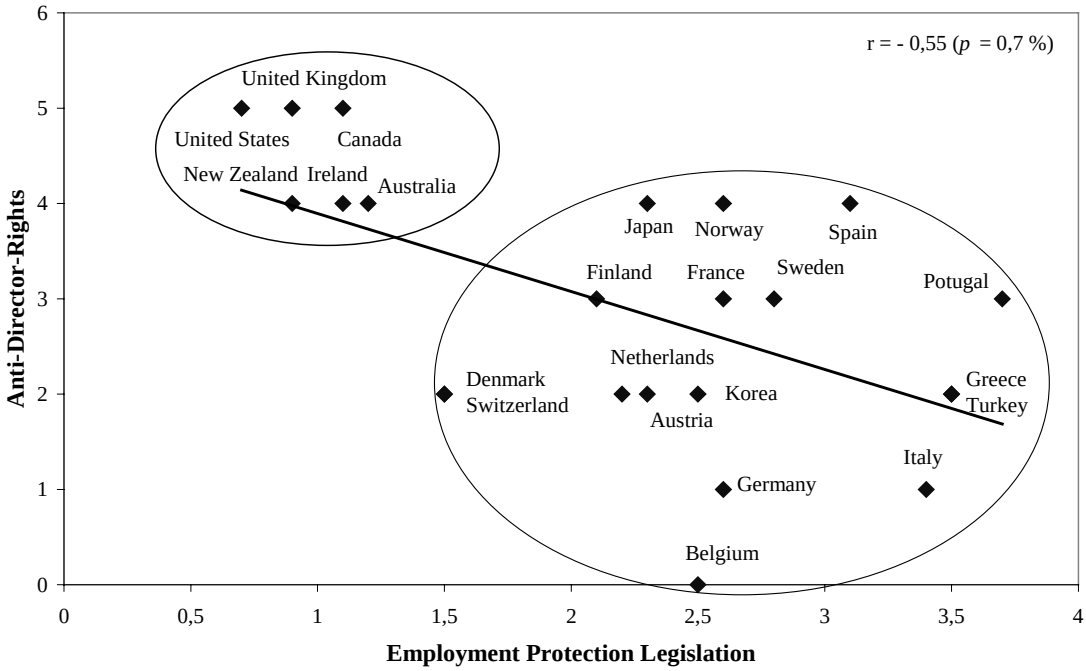

Figure 2:

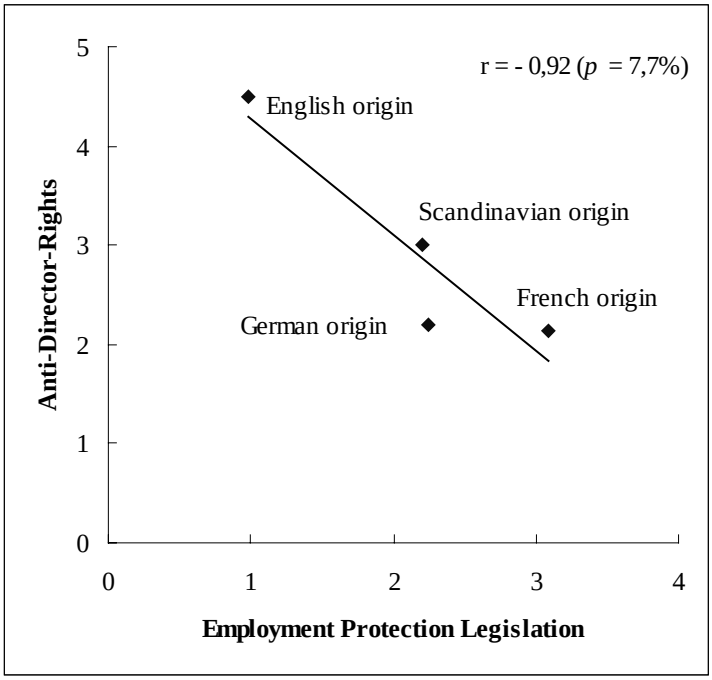

Table A1: Anti-director rights (ADR) and strictness of employment protection (EPL)

Country	Legal origin[1]	ADR[2]	EPL[3]	Labour Standards[4]
Australia	1	4	1,2	3
Canada	1	5	1,1	2
Ireland	1	4	1,1	4
New Zealand	1	4	0,9	3
UK	1	5	0,9	0
US	1	5	0,7	0
English origin avg.		**4,50**	**0,98**	**2,00**
Belgium	2	0	2,5	4
France	2	3	2,8	6
Greece	2	2	3,5	n.a.
Italy	2	1	3,4	7
Netherlands	2	2	2,2	5
Portugal	2	3	3,7	4
Spain	2	4	3,1	7
Turkey	2	2	3,5	n.a.
French origin avg.		**2,13**	**3,09**	**5,50**
Austria	2	2	2,3	5
Germany	2	1	2,6	6
Japan	2	4	2,3	1
Korea	2	2	2,5	n.a.
Switzerland	2	2	1,5	3
German origin avg.		**2,20**	**2,24**	**3,75**
Denmark	2	2	1,5	2
Finland	2	3	2,1	5
Norway	2	4	2,6	5
Sweden	2	3	2,6	7
Scandinavian origin avg.		**3,00**	**2,20**	**4,75**
Civil law average		**2,35**	**2,63**	**4,79**
Sample average		**2,91**	**2,20**	**3,95**
		Test of means: t-statistics (*p* value)		
Common vs. civil law		6,12 (0,0000)	-9,42 (0,0000)	-3,31 (0,0079)
English vs. French origin		4,81 (0,0007)	-10,29 (0,0000)	-3,95 (0,0027)
English vs. German origin		4,27 (0,0053)	-6,05 (0,0018)	-1,34 (0,2368)
English vs. Scand. origin		3,22 (0,0234)	-4,47 (0,0208)	-2,22 (0,0678)
French vs. German origin		-0,11 (0,9116)	3,12 (0,0109)	1,41 (0,2183)
French vs. Scand. origin		-1,46 (0,1792)	2,74 (0,0335)	0,64 (0,5512)
German vs. Scand. origin		-1,25 (0,2499)	0,12 (0,9062)	-0,66 (0,5334)

[1] 1 denotes common law origin and 2 civil law origin.
[2] LLSV (1998), Table 2.
[3] OECD (1999), Table 2.5.
[4] OECD (1994), Table 4.8.; Nickell and Layard (1999), Table 2.

Table A2: Political orientation and interventionism

Country	Gini coef-fizient[1] (%)	Benefit generosity[2] 1995	Transfers and Subsidies[3] 1997	Government Enterprises[4] 1997	Price Controls[4] 1997
Australia	33,7	27,3	14,4	3	3
Canada	31,5	27,3	17,7	2	1
Ireland	35,9	26,1	18,8	2	1
New Zealand	n.a.	29,8	12,0	0	0
UK	32,6	18,1	17,7	2	1
US	40,1	11,8	14,1	2	1
English origin avg.	**34,76**	**23,40**	**15,78**	**1,83**	**1,17**
Belgium	25,0	41,6	26,3	4	5
France	32,7	37,5	28,4	6	2
Greece	n.a.	22,1	24,6	6	4
Italy	31,2	19,7	29,4	4	5
Netherlands	31,5	45,9	29,1	4	2
Portugal	n.a.	35,2	13,4	4	4
Spain	32,5	31,7	18,9	6	4
Turkey	n.a.	n.a.	13,0	4	3
French origin avg.	**30,58**	**33,39**	**22,89**	**4,75**	**3,63**
Austria	23,1	25,8	25,2	8	3
Germany	28,1	26,4	21,3	4	2
Japan	35,0	9,9	12,2	4	5
Korea	n.a.	n.a.	3,6	4	10
Switzerland	36,1	29,5	18,9	2	4
German origin avg.	**30,58**	**22,90**	**16,24**	**4,40**	**4,80**
Denmark	24,7	70,3	26,5	3	1
Finland	25,6	43,2	22,8	4	2
Norway	25,2	38,8	21,8	6	2
Sweden	25,0	27,3	32,8	6	3
Scandinavian origin avg.	**25,13**	**44,90**	**25,98**	**4,75**	**2,00**
Civil law average	**28,90**	**33,66**	**21,66**	**4,65**	**3,59**
Sample average	**30,53**	**30,73**	**20,13**	**3,91**	**2,96**
	Tests of means: t-statistics (*p* value)			**t-statistics (*p* value)**	
Common vs. civil law	3,00 (0,0134)	-2,23 (0,0388)	-2,74 (0,0122)	-5,26 (0,0002)	-3,77 (0,0013)
English vs. French origin	2,01 (0,0797)	-2,16 (0,0539)	-2,67 (0,0234)	-5,37 (0,0002)	-4,23 (0,0012)
English vs. German origin	1,23 (0,2875)	0,10 (0,9277)	-0,12 (0,9126)	-2,42 (0,0598)	-2,51 (0,0541)
English vs. Scand. origin	6,29 (0,0033)	-2,25 (0,0872)	-3,75 (0,0199)	-3,43 (0,0187)	-1,46 (0,1889)
French vs. German origin	0,00 (0,9989)	1,83 (0,1099)	1,47 (0,1840)	0,33 (0,7515)	-0,81 (0,4560)
French vs. Scand. origin	3,80 (0,0191)	-1,17 (0,3057)	-0,89 (0,4004)	0 (1,0000)	2,77 (0,0216)
German vs. Scand. origin	1,78 (0,1732)	-2,17 (0,0953)	-2,14 (0,0694)	-0,28 (0,7849)	1,93 (0,1116)

[1] ILO (1999), Table 18a; Roe (1999), Table X.
[2] OECD (1997), Table 5.
[3] Gwartney and Lawson (1998), Table 1.
[4] Gwartney and Lawson (1998), Table 2.

Table A3: Electoral and Party Systems 1945 - 1990[1]

Country	ES	ENPP	Parliam. maj.
Australia	3	2,49	0,47
Canada	1	2,37	0,60
Ireland	1	2,79	0,29
New Zealand	1	1,95	1,00
UK	1	2,10	0,92
US	1	1,92	1,00
English origin avg.	**1,33**	**2,27**	**0,71**
Belgium	1	4,63	0,07
France	5	3,99	0,15
Greece	4	2,20	0,57
Italy	3	3,59	0,09
Netherlands	2	4,59	0,00
Portugal	1	3,05	0,43
Spain	1	2,72	0,40
Turkey	n.a.	n.a.	n.a.
French origin avg.	**2,43**	**3,54**	**0,24**
Austria	2	2,32	0,36
Germany	4	3,21	0,00
Japan	2	3,04	0,61
Korea	n.a.	n.a.	n.a.
Switzerland	1	5,10	0,00
German origin avg.	**2,25**	**3,42**	**0,24**
Denmark	3	4,52	0,00
Finland	1	5,03	0,00
Norway	3	3,28	0,33
Sweden	3	3,25	0,07
Scandinavian origin avg.	**2,50**	**4,02**	**0,10**
Civil law average	**2,40**	**3,63**	**0,21**
Sample average	**2,10**	**3,24**	**0,35**
	Tests of means: t-statistics (*p* value)		
Common vs. civil law	-2,26	-4,83	3,73
	(0,0394)	(0,0001)	(0,0074)
English vs. French origin	-1,57	-3,35	3,15
	(0,1503)	(0,0101)	(0,0117)
English vs. German origin	-1,29	-1,88	2,43
	(0,2543)	(0,1562)	(0,0453)
English vs. Scand. origin	-1,94	-3,73	4,19
	(0,1002)	(0,0203)	(0,0030)
French vs. German origin	0,20	0,18	0,01
	(0,8438)	(0,8675)	(0,9921)
French vs. Scand. origin	-0,09	-0,84	1,27
	(0,9299)	(0,4262)	(0,2413)
German vs. Scand. origin	-0,31	-0,81	0,85
	(0,7663)	(0,4486)	(0,4360)

[1] Lijphart, A. (1994), Appendix B.

Table A4: Toleration of worker organisation and the right to organise

Country	Toleration[1] Year (1)	Right to organise[1] Year (2)	Resp. government Year (3)	Duration Year (4) = (2) - (3)	Industriali-sation[2] (%)
Australia	1876	1876	1892	-16	67
Canada	1872	1934	1867	67	65
Ireland	n.a.	n.a.	n.a.	n.a.	n.a.
New Zealand	1878	1878	1856	22	65
UK	1824	1875	1832	43	83
US	1842	1932	1789	143	78
English origin avg.	**1858,4**	**1899,0**	**1847,2**	**51,8**	**71,6**
Belgium	1866	1921	1831	90	79
France	1884	1884	1875	9	53
Greece	n.a.	n.a.	n.a.	n.a.	n.a.
Italy	1890	1890	1848	42	38
Netherlands	1848	1872	1848	24	63
Portugal	1891	1910	1911	-1	43
Spain	1887	1909	1869	40	41
Turkey	n.a.	n.a.	n.a.	n.a.	n.a.
French origin avg.	**1877,7**	**1897,7**	**1863,7**	**34,0**	**52,8**
Austria	1870	1918	1918	0	57
Germany	1869	1918	1918	0	69
Japan	1926	1945	1952	-7	52
Korea	n.a.	n.a.	n.a.	n.a.	n.a.
Switzerland	1848	1848	1848	0	58
German origin avg.	**1878,3**	**1907,3**	**1909,0**	**-1,8**	**59,0**
Denmark	1849	1849	1901	-52	44
Finland	1879	1919	1917	2	26
Norway	1839	1839	1884	-45	35
Sweden	1846	1864	1917	-53	38
Scandinavian origin avg.	**1853,3**	**1867,8**	**1904,8**	**-37,0**	**35,8**
Civil law average	**1870,9**	**1891,9**	**1888,4**	**3,5**	**49,7**
Sample average	**1867,6**	**1893,7**	**1877,5**	**16,2**	**55,5**
	Tests of means: t-statistics (*p* value)				
Common vs. civil law	-0,99	0,43	-2,06	1,69	4,06
	(0,3543)	(0,6758)	(0,0779)	(0,1510)	(0,0014)
English vs. French origin	-1,50	0,08	-0,79	0,60	2,52
	(0,1781)	(0,9356)	(0,4565)	(0,5701)	(0,0358)
English vs. German origin	-1,00	-0,33	-2,21	2,01	2,43
	(0,3641)	(0,7545)	(0,0692)	(0,1146)	(0,0451)
English vs. Scand. origin	0,37	1,38	-3,00	3,00	6,77
	(0,7229)	(0,2162)	(0,0299)	(0,0241)	(0,0003)
French vs. German origin	-0,03	-0,43	-1,84	2,70	-0,84
	(0,9759)	(0,6869)	(0,1258)	(0,0430)	(0,4304)
French vs. Scand. origin	2,17	1,54	-2,95	3,82	2,29
	(0,0736)	(0,1977)	(0,0184)	(0,0051)	(0,0511)
German vs. Scand. origin	1,32	1,44	0,18	2,66	4,48
	(0,2431)	(0,1990)	(0,8637)	(0,0761)	(0,0042)

[1] Armingeon (1994), Tabelle 3.1.
[2] Armingeon (1994), Tabelle 3.2.

Table A5: The collective bargaining system, voluntarism and legal orientation.

Country	Degree of regulation of the unions and of the collective bargaining system[1]			Reforms of the collective bargaining system[2]		
	1919	1946	1990	Total	Particip. of soc. parties	Percent. (%)
Australia	14	14	14	3	2	66,7
Canada	7	10	10	1	0	0,0
Ireland	n.a.	11	11	3	0	0,0
New Zealand	14	14	12	10	6	60,0
UK	8	8	9	9	4	44,4
US	8	9	9	3	0	0,0
English origin avg.	**10,2**	**11,0**	**10,8**	**4,8**	**2,0**	**41,4**
Belgium	9	14	14	8	4	50,0
France	10	10	12	9	4	44,4
Greece	n.a.	n.a.	12	2	2	100,0
Italy	9	11	13	5	2	40,0
Netherlands	9	14	13	10	1	10,0
Portugal	n.a.	n.a.	12	4	3	75,0
Spain	n.a.	n.a.	12	7	3	42,9
Turkey	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
French origin avg.	**9,3**	**12,3**	**12,6**	**6,4**	**2,7**	**42,2**
Austria	12	12	15	6	4	66,7
Germany	14	12	12	6	3	50,0
Japan	n.a.	10	10	1	0	0,0
Korea	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Switzerland	9	13	14	5	2	40,0
German origin avg.	**11,7**	**11,8**	**12,8**	**4,5**	**2,3**	**50,0**
Denmark	13	14	16	9	4	44,4
Finland	8	14	16	8	4	50,0
Norway	12	16	16	12	3	25,0
Sweden	10	16	16	8	6	75,0
Scandinavian origin avg.	**10,8**	**15,0**	**16,0**	**9,3**	**4,3**	**45,9**
Civil law avarage	**10,5**	**13,0**	**13,5**	**6,7**	**3,0**	**45,0**
Sample average	**10,4**	**12,3**	**12,8**	**6,1**	**2,7**	**44,2**
	Tests of means: t-statistics (*p* value)			**t-statistics (*p* value)**		
Common vs. civil law	-0,15 (0,8849)	-1,68 (0,1312)	-2,89 (0,0180)	-1,08 (0,3116)	-0,91 (0,3983)	-1,30 (0,2293)
English vs. French origin	0,60 (0,5805)	-0,86 (0,4166)	-2,05 (0,0858)	-0,19 (0,8567)	-0,64 (0,5422)	—
English vs. German origin	-0,69 (0,5174)	-0,62 (0,5524)	-1,41 (0,2092)	0,17 (0,8669)	-0,19 (0,8567)	—
English vs. Scand. origin	-0,29 (0,7823)	-3,38 (0,0118)	-6,52 (0,0013)	-2,47 (0,0386)	-1,86 (0,0999)	—
French vs. German origin	-1,64 (0,2428)	0,41 (0,6960)	-0,16 (0,8862)	1,20 (0,2706)	0,49 (0,6512)	—
French vs. Scand. origin	-1,32 (0,2786)	-2,33 (0,0674)	-11,53 (0,0000)	-1,96 (0,0821)	-2,03 (0,0888)	—
German vs. Scand. origin	0,50 (0,6423)	-3,81 (0,0089)	-2,93 (0,0609)	-3,12 (0,0205)	-1,89 (0,1083)	—

[1] Armingeon (1994), Tabelle 5.2.
[2] Armingeon (1994), Tabelle A-3.

Table A6: Trade unions and collective bargaining systems (1988-94) [1]

Country	Union Density (%)	Centralisation Ranking	Union Coverage (%)	Union+Employer Co-ordination
Australia	40,4	10	80	3
Canada	35,8	17	36	2
Ireland	49,7	12	n.a.	2
New Zealand	44,8	9	31	2
UK	39,1	12	47	2
US	15,6	16	18	2
English origin avg.	**37,6**	**12,7**	**42,4**	**2,2**
Belgium	51,2	8	90	4
France	9,8	11	95	4
Greece	n.a.	n.a.	n.a.	n.a.
Italy	38,8	13	82	4
Netherlands	25,5	7	81	4
Portugal	31,8	11	71	4
Spain	11,0	11	78	3
Turkey	n.a.	n.a.	n.a.	n.a.
French origin avg.	**28,0**	**10,2**	**82,8**	**3,8**
Austria	46,2	1	98	6
Germany	32,9	6	92	5
Japan	25,4	14	21	4
Korea	n.a.	n.a.	n.a.	n.a.
Switzerland	26,6	15	50	4
German origin avg.	**32,8**	**9,0**	**65,3**	**4,8**
Denmark	71,4	4	69	6
Finland	72,0	5	95	5
Norway	56,0	2	74	6
Sweden	82,5	3	89	6
Scandinavian origin avg.	**70,5**	**3,5**	**81,8**	**5,8**
Civil law average	**41,5**	**7,9**	**77,5**	**4,6**
Sample average	**40,3**	**9,4**	**68,3**	**3,9**
	Tests of means: t-statistics (*p* value)			
Common vs. civil law	-0,51	2,64	-2,96	-7,82
	(0,6172)	(0,0196)	(0,0254)	(0,0000)
English vs. French origin	1,17	1,57	-3,66	-7,07
	(0,2712)	(0,1511)	(0,0147)	(0,0000)
English vs. German origin	0,71	1,02	-1,09	-5,10
	(0,5000)	(0,3647)	(0,3265)	(0,0070)
English vs. Scand. origin	-4,52	6,28	-3,24	-11,93
	(0,0027)	(0,0004)	(0,0177)	(0,0000)
French vs. German origin	-0,59	0,34	0,95	-1,81
	(0,5740)	(0,7584)	(0,4129)	(0,1448)
French vs. Scand. origin	-4,97	5,98	0,15	-6,38
	(0,0011)	(0,0003)	(0,8840)	(0,0007)
German vs. Scand. origin	-5,20	1,62	-0,86	-1,85
	(0,0020)	(0,2045)	(0,4389)	(0,1233)

[1] Nickell and Layard (1999), Table 3; OECD (1994a), 173 pp.; OECD (1994b), Table 5.8 ; OECD (1997), Table 3.3.

REFERENCES

Armingeon, K. (1994), Staat und Arbeitsbeziehungen. Ein internationaler Vergleich. Westdeutscher Verlag, Opladen.

Bebchuk, L. (1999), A Rent-Protection Theory of Corporate Ownership and Control, Harvard Law School.

Bebchuk, L. and M. Roe (1999), A Theory of Path Dependence in Corporate Governance and Ownership, Columbia Law School.

Bruce, C. (1988), The Adjudication of Labor Disputes as a Private Good, International Review of Law and Economics 8, 3-19.

Calmfors, L. and J. Driffill (1988), Centralisation of Wage Bargaining and Macroeconomic Performance, *Economic Policy* 6, 13 - 61.

Card, D. and R.B. Freeman (1993), Introduction, in: Card, D. and R.B. Freeman, Small Differences That Matter, University of Chicago Press, Chicago.

Crouch, C. (1994), Industrial Relations and European State Traditions. Clarendon Press, Oxford.

David, R. and J.E.C. Brierley (1985), Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law. 3. Ed., Stevens, London.

Elkouri, F. and E. Elkouri (1997), How Arbitration Works. Washington, DC.

Flanagan, R. (1999), Macroeconomic Performance and Collective Bargaining: An International Perspective, Journal of Economic Literature 37, 1150-1175.

Freeman, R.B. and J. Pelletier (1990), The Impact of Industrial Relations Legislation on British Union Density, British Journal of Industrial Relations 28, 141-164.

Glaeser, E.L. and A. Shleifer (2001), Legal Origins.

Glendon, M., M. Gordon and C. Osakwe (1994), Comparative Legal Traditions. West Group, St. Paul, Minn.

Gruber, W. (1998), Die Schiedsgerichtsbarkeit in Arbeitsstreitigkeiten in den USA und in Deutschland. V. Florentz, München.

Gwartney, J. and R. Lawson (1998), Economic Freedom of the World, Fraserinstitute, http://www.fraserinstitute.ca/publications/books/econ_free98/

Hart, O. (1995), Firms, Contracts and Financial Structure. Oxford University Press, Oxford.

ILO (1999), Key Indicators of the Labour Market, International Labour Office, Geneva.

James, P. (1989), Introduction to English Law. 12th Edition, Butterworth, London.

Kaplow, L. (1997), General Characteristics of Rules, in: Encyclopedia of Law and Economics, http://encyclo.findlaw.com/lit/9000art.htm

Kaufman, B.E. (1993), Industrial Relations in the United States. ILR Press, Ithaca.

Kotzorek, A. (1987), Private Gerichte als Alternative zur staatlichen Zivilgerichtsbarkeit. J.C.B. Mohr, Kieler Studien, Tübingen.

Kriele, M. (1994), Einführung in die Staatslehre. Opladen.

La Porta, R., F. Lopez de Silanes, A. Shleifer and R. Vishny (1999a), Investor Protection: Origins, Consequences, Reform, Harvard University.

_____ (1999b), The Quality of Government, Journal of Law, Economics and Organization 15, 222-279.

_____ (1998), Law and Finance, Journal of Political Economy 106, 1113-1155.

Landes, W. and R. Posner (1979), Adjudication as a Private Good, Journal of Legal Studies 8, 235-259.

Lepsius, O. (1997), Verwaltungsrecht unter dem Common Law. Mohr Siebeck, Tübingen.

Lijphart, A. (1994), Electoral Systems and Party Systems. Oxford University Press, Oxford.

Masten, S. (1988), A Legal Basis for the Firm, Journal of Law, Economics, and Organization 4, 181-197.

Nickell, S. and R. Layard (1999), Labour Market Institutions and Economic Performance, in: Ashenfelter, O. and D. Card (eds.), Handbook of Labor Economics, Vol. 3, Elsevier, North Holland, forthcoming.

OECD (1994a), Employment Outlook, Paris.

OECD (1994b), The OECD Jobs Study, Evidence and Explanations, Part II, The Adjustment Potential of the Labour Market, Paris.

OECD (1997), Employment Outlook, Paris.

OECD (1999), Employment Outlook, Paris.

Olsen, M. (1965), The Logic of Collective Action: Public Goods and the Theory of Groups, Cambridge MA.

Persson, T. and G. Tabellini (1999), Political Economics and Public Finance, in: Auerbach, A. and M. Feldstein (eds.), Handbook of Public Economics, Vol. 3, Elsevier, North Holland.

Posner, R. (1992), Economic Analysis of Law. 4th Edition, Little, Brown and Company, Boston, Toronto, London.

Priest, G. (1977), The Common Law Process and the Selecion of Efficient Rules, Journal of Legal Studies 65, 67-82.

Ramseyer, J. and E. Rasmusen (1999), Judicial Independence in Civil Law Regimes: Econometrics from Japan, Chicago Law School.

Reinhard, W. (1999), Geschichte der Staatsgewalt. C.H. Beck, München.

Reynolds, T. and A. Flores (1989), Foreign Law: Current Sources of Codes and Basic Legislation in Jurisdictions of the World. Rothman and Co., Littleton, CO.

Riddell, W.C. (1993), Unionization in Canada and the United States: A Tale of Two Countries, in: Card, D. and R.B. Freeman, Small Differences That Matter, Univerity of Chicago Press, Chicago.

Roe, M. (1999), Political Preconditions to Separating Ownership from Control: The Incompatibility of the American Public Firm with Social Democracy, Columbia Law School.

Rothstein, R. (1997), Union Strength in the United States: Lessons from the UPS Strike, International Labour Review 136.

Rothstein, B. (1991), State Structure and Variations in Corporatism: The Swedish Case, Scandinavian Political Studies 14, 149-171.

_____ (1992), Labor-market institutions and working-class strength, in: Steinmo, S., K. Thelen, and F. Longstreth (eds.), Structuring politics. Cambridge University Press, Cambridge.

Silberman, B.S. (1993), Cages of Reason. The Rise of the Rational State in France, Japan, the United States, and Great Britain. University of Chicago Press, Chicago.

Simpson, A.W.B. (1987a), The Common Law and Legal Theory, in: Simpson, A.W.B., Legal Theory and Legal History. The Hambledon Press, London.

_____ (1987b), The Survival of the Common Law System, in: Simpson, A.W.B., Legal Theory and Legal History. The Hambledon Press, London.

Sunstein, C.R. (1997), Free Markets and Social Justice. Oxford University Press, Oxford.

Swedberg, R. (1998), Max Weber and the Idea of Economic Sociology. Princeton.

Teulings, C. and J. Hartog (1998), Corporatism and Competition?. Cambridge University Press, Cambridge.

Tirole, J. (1999), Incomplete Contracts: Where Do We Stand?, Econometrica 67, 741-781.

Webb, S. and B. Webb (1897), Industrial Democracy, Longmans, London.

Weber, M. (1978), Economy and Society: An Outline of Interpretive Sociology. University of California Press, Berkeley.

Western, B. (1993), Postwar Unionization in Eighteen Advanced Capitalist Countries, American Sociological Review 58, 266-242.

_____ (1997), Between Class and Market. Princeton University Press, Princeton.

Williamson, O. (1985), The Economic Institutions of Capitalism. The Free Press, New York.

Wilson, G. (1996), Understanding Legal Systems-The case of German Law, in: G. Wilson and R. Rogowski, Challenges to European Legal Scholarship. Blackstone Press, London.

Witte, (1932), Labor Legislation, Encyclopaedia of the Social Sciences, 8, 657-667, Macmillan, New York.

Zweigert, K. and Koetz, H. (1998), Introduction to Comparative Law. Oxford University Press, Oxford.

In der Diskussionspapierreihe sind bisher erschienen:

Previously published Discussion Papers:

1	Addison J.T., Schnabel C., Wagner J.	Die *mitbestimmungsfreie Zone* aus ökonomischer Sicht	05/2000
2	Jahn E.J., Wagner T.	Substitution and Crowding-Out Effects of Active Labour Market Policy	06/2000
3	Wegener T.	Institutionelle Aspekte der Regionalisierung von Wirtschafts- und Strukturpolitik	09/2000
4	Kölling, A., Schnabel, C., Wagner, J.	Bremst das Schwerbehindertengesetz die Arbeitsplatzdynamik in Kleinbetrieben ?	01/2001
5	Schnabel, C., Wagner, J.	Verbreitung und Bestimmungsgründe verschiedener Formen der Arbeitnehmerpartizipation in Industriebetrieben	06/2001
6	Jahn E.J., Wagner T.	Labour's Law?	06/2001

An updated list of discussion papers can be found at the homepage:
http://www.wiso.uni-erlangen.de/WiSo/VWI/am/

Eine aktualisierte Liste der Diskussionspapiere findet sich auf der Homepage:
http://www.wiso.uni-erlangen.de/WiSo/VWI/am/