

Comment:

Investor and Worker Protection in Australia: A Longitudinal Analysis

**Helen Anderson, Peter Gahan, Richard Mitchell, Ian Ramsay
and Michelle Welsh***

Abstract

In this research note, the authors use leximetric analysis, which involves the numerical coding of the strength of legal protections, to document changes in the level of investor (shareholder and creditor) protection and worker protection in Australia for the period 1970–2010. For worker protection, the level of protection in 2010 was similar to the level of protection in 1970, with two abrupt increases and declines. In contrast, investor protection has increased over the 40 years. The statistical analysis of the data indicates that increased protection for investors is not obtained at the expense of protection for workers. Implications of this finding are explored by the authors.

I Introduction

This research note is part of a larger international study examining the relationship between a country's legal origins and the extent and character of business regulation, including labour law and shareholder and creditor protection. The researchers are drawn from the disciplines of law (both corporate law and labour law), and industrial relations and labour economics. In early parts of the project, we have documented and analysed changes in shareholder and creditor protection in six countries — Australia, the United Kingdom, the United States, Germany, France and India.¹ Other publications authored by labour law and labour economics scholars, and which are part of the larger study, examine

* Helen Anderson, Centre for Corporate Law and Securities Regulation, Melbourne Law School, University of Melbourne; Department of Business Law and Taxation, Monash University; Peter Gahan, Department of Management and Marketing, Faculty of Business and Economics, University of Melbourne; Richard Mitchell, Department of Business Law and Taxation, Monash University; Ian Ramsay, Centre for Corporate Law and Securities Regulation, Melbourne Law School, University of Melbourne; and Michelle Welsh, Workplace and Corporate Law Research Group, Department of Business Law and Taxation, Monash University. The authors acknowledge the financial support from the Australian Research Council (Discovery Project Grant No DP1095060) to undertake the research on which this note is based.

¹ H Anderson et al, 'The Evolution of Shareholder and Creditor Protection in Australia: An International Comparison' (2012) 61 *International & Comparative Law Quarterly* 171.

the evolution of labour law in Australia and New Zealand,² and these scholars have placed their findings in an international context.³

In this research note we draw together the results for shareholder and creditor protection (which we call ‘investor protection’) in Australia and the results for labour law protection in Australia. We examine changes in the protections given to investors and workers for the period 1970 to 2010. We are interested in whether there are trade-offs in protection between these two key groups of stakeholders, both of whom have important interests in corporate enterprises. If there are increases in the protection given to investors, does this come at the expense of the protection given to workers? We employ what has become known as a ‘leximetric’ methodology to document changes in the protection of these two groups.

The structure of the research note is as follows. In Part II we summarise some of the existing literature identifying links between corporate law and labour law. In Part III we explain leximetric research and its limitations. This is followed in Part IV by details of our methodology, in particular what our investor and worker indices measure, and the results of our study. Part V concludes.

II Links between Corporate Law and Labour Law

For a considerable period of time, corporate law and labour law were viewed as separate fields of scholarship.⁴ This has changed; there are now a number of studies exploring links between corporate and labour law, how changes in corporate law affect the interests of employees, and how the interests of employees can influence the direction of aspects of corporate law.⁵ In part, this scholarship analyses issues at the level of the company itself; such as how the financial interests of employees can be protected upon the collapse of a company, whether employees should be represented on company boards of directors, the merits of employee share ownership, and whether employees should be consulted in relation to planned corporate restructuring.

In the context of Australian scholarship, researchers have documented how, when protections for unions were eroded as a result of changes to Australian labour law, one of the responses by unions was to turn to the *Corporations Act 2001* (Cth)

² R Mitchell et al, ‘The Evolution of Labour Law in Australia: Measuring the Change’ (2010) 23 *Australian Journal of Labour Law* 61; G Anderson, et al, ‘The Evolution of Labour Law in New Zealand: A Comparative Study of New Zealand, Australia and Five Other Countries, 1970–2010’ (2011) 33 *Comparative Labor Law and Policy Journal* 137.

³ P Gahan et al, ‘Economic Globalisation and Convergence in Labour Market Regulation: An Empirical Assessment’ (2012) 60 *American Journal of Comparative Law* 703.

⁴ H Hansmann, ‘Worker Participation and Corporate Governance’ (1993) 43 *University of Toronto Law Journal* 589; S Deakin, ‘Workers, Finance and Democracy’ in C Barnard, S Deakin and G Morris (eds), *The Future of Labour Law* (Hart Publishing, 2004), 79; Steven Anderman, ‘Termination of Employment: Whose Property Rights?’ in Barnard, Deakin and Morris, *ibid* 126.

⁵ See, for example, C Bruner, ‘Power and Purpose in the “Anglo-American” Corporation’ (2010) 50 *Virginia Journal of International Law* 579; and P Gourevitch and J Shinn, *Political Power and Corporate Control: The New Global Politics of Corporate Governance* (Princeton University Press, 2005).

and propose resolutions at meetings of shareholders that dealt with issues relevant to the interests of employees.⁶

At a broader level of analysis, researchers have pointed to a coincidence between the growing dominance of a corporate law system intent on delivering 'shareholder value' and more fragmented labour markets, especially regarding job security, work intensification and investment in training and skills.⁷ The extent to which these events and issues are causally related is a matter for debate.⁸ However, their interconnectedness suggests scope for an examination of the ways in which the concerns of corporate law and labour law are related. Indeed, some scholars have explored the idea that there may be a causal relationship or functional complementarity between models of corporate governance and models of labour management, and that these couplings may be classified according to national 'varieties of capitalism'⁹ or 'business systems'.¹⁰

One form, labelled 'co-ordinated market economies' in the literature, is said to be characteristic of countries such as Germany, Sweden, the Netherlands and Japan, and entails a corporate governance system characterised by bank-based debt, an intertwining of debt and equity ownership, and inter-corporate shareholdings. This is said to encourage direct and long-term monitoring of corporate performance by capital providers rather than reliance solely on bottom line, short-term financial indicators. Given this long-term orientation, it is argued that employers and employees are more able to pursue co-operative relations and industrial relations strategies which have a long-term payoff: credible commitments on job security, investment in training and skill formation, and a commitment to employee participation.

By contrast, 'liberal market economies', such as the United States and the United Kingdom, are described as characterised by liquid capital markets, dispersed share ownership, companies' greater vulnerability to hostile takeover bids and the presence of large institutional investors anxious for quarterly improvements in share price, all of which entrench a narrow understanding of 'shareholder value' as the dominant objective of corporate management. This in turn demands flexible employment arrangements which allow for short-term

⁶ K Anderson and I Ramsay, 'From the Picketline to the Boardroom: Union Shareholder Activism in Australia' (2006) 24 *Company and Securities Law Journal* 279; K Anderson et al, 'Union Shareholder Activism in the Context of Declining Labour Law Protection: Four Australian Case Studies' (2007) 15 *Corporate Governance: An International Review* 45.

⁷ See, eg, B Harrison and Bt Bluestone, *The Great U-Turn: Corporate Restructuring and the Polarizing of America* (Basic Books, 1990); M Porter, *Capital Choices: Changing the Way America Invests in Industry* (Harvard Business School, 1992); W Lazonick and M O'Sullivan, 'Corporate Governance and Corporate Employment: Is Prosperity Sustainable?', (Working Paper No 183, Levy Economics Institute, 1997); P Capelli, *The New Deal at Work* (Harvard Business School, 1999); J Froud et al, 'Restructuring for Shareholder Value and Its Implications for Labour' (2000) 24 *Cambridge Journal of Economics* 771; I Watson et al, *Fragmented Futures: New Challenges in Working Life* (Federation Press, 2003).

⁸ See H Gospel and A Pendleton (eds), *Corporate Governance and Labour Management: An International Comparison* (Oxford University Press, 2004).

⁹ P Hall and D Soskice (eds), *Varieties of Capitalism* (Oxford University Press, 2001).

¹⁰ R Whitley, *Divergent Capitalisms: The Social Structuring and Change of Business Systems* (Oxford University Press, 1999).

adjustments in labour costs. Even if managers do not see their primary duty as being toward shareholders, they may still feel constrained from making long-term commitments to employees because their decision-making horizon is shaped by short-term financial indicators. In such economies, mechanisms of employee participation, consultation or collective bargaining are liable to be discounted because they may restrict management's freedom to meet shareholder imperatives. Remuneration schemes that use employee share ownership to link pay to share performance may be favoured as a way of aligning worker and shareholder interests. Further, there is a sense that the growth in shareholding in the wake of privatisations and demutualisations has further entrenched the pursuit of shareholder value within liberal market economies, as has an ageing population concerned with saving for retirement, with retirement savings dependent upon share market performance.

This posited link between the increasing pursuit of 'shareholder value' and deteriorating outcomes for labour has become the subject of an increasingly sophisticated international scholarship.¹¹ At the same time, some scholars have questioned the extent to which broad national ideal types of business systems, corporate governance and ownership structure can usefully explain labour management practices as well as corporate governance structures at the individual company level.¹²

III Leximetric Research

There are a number of ways legal change can be identified and analysed. For the purpose of this research, we employ what has been termed a 'leximetric' methodology to measure changes in the level of investor and worker protection. This methodology has been adapted from the pioneering work of La Porta, Lopez-de-Silanes, Shleifer and Vishny in a series of articles dealing with corporate finance and ownership.¹³ Leximetric methodology is a quantitative approach to measuring law and legal evolution. It was developed, in part, to enable scholars to compare the laws of different countries in order to answer important questions. These include whether the legal origins of countries play a role in the subsequent development of their laws and economic institutions, and if so, how.¹⁴ From this analysis may come normative conclusions as to whether

¹¹ See, eg, the country studies in Gospel and Pendleton, above n 8, and G Jackson 'Toward a Comparative Perspective on Corporate Governance and Labour Management' (RIETI Discussion Paper Series 04-E-023, Tokyo, 2004).

¹² R Mitchell et al, *Law, Corporate Governance and Partnerships at Work* (Ashgate, 2011); H Gospel and A Pendleton, 'Finance, Corporate Governance and the Management of Labour: A Conceptual and Comparative Analysis' (2003) 41 *British Journal of Industrial Relations* 557.

¹³ R La Porta et al, 'Law and Finance' (1998) 106 *Journal of Political Economy* 1113. See also R La Porta et al, 'Legal Determinants of External Finance' (1997) 52 *Journal of Finance* 1131; R La Porta, F Lopez-de-Silanes and A Shleifer, 'Corporate Ownership Around the World' (1999) 54 *Journal of Finance* 471.

¹⁴ Legal origins theory posits that the underlying style of regulation that is associated with the originating country will persist over time, despite any changes that may be made. A certain 'path dependency' occurs as a result of the complementarity that exists between legal and economic institutions. This ensures that distinct differences that are associated with the different types of legal systems remain, despite alterations made to take account of local conditions. See further, H Hansmann and R Kraakman, 'The End of History for Corporate Law' (2000) 89 *Georgetown Law Journal* 439;

certain legal systems are 'better' for economic development and growth than others, and why this might be the case.¹⁵

Leximetric methodology can assist other types of research. It reveals trends over time in legal changes and allows insights into the type of regulatory style adopted. The methodology has been employed by researchers in a growing number of legal areas including corporate law¹⁶ and labour law.¹⁷ It has also been used by researchers to examine issues to do with law and financial development,¹⁸ and the provision of private credit.¹⁹

There are, however, limitations to leximetric methodology, albeit that the sophistication of the methodology has advanced significantly in the 15 years since the first studies were published. Siems observes that quantitative legal research can usefully reduce the complexity of legal systems and more readily allows for comparison between countries and over time.²⁰ However, condensing complex laws to a number necessarily involves the exercise of subjective judgment and may result in an arbitrary simplification which can distort reality. Compounding the subjectivity problem is coding done by different people in different countries. The

L Bebchuk and M J Roe, 'A Theory of Path Dependence in Corporate Ownership and Governance' (1999) 52 *Stanford Law Review* 127; R H Schmidt and G Spindler, 'Path Dependence, Corporate Governance and Complementarity' (2002) 5 *International Finance* 311.

¹⁵ R La Porta, F Lopez-de-Silanes and A Shleifer, 'The Economic Consequences of Legal Origins' (2008) 46 *Journal of Economic Literature* 285.

¹⁶ See, for example, J Armour et al, 'How Do Legal Rules Evolve? Evidence from a Cross-Country Comparison of Shareholder, Creditor, and Worker Protection' (2009) 57 *American Journal of Comparative Law* 579; M Siems, 'Convergence in Corporate Governance: A Leximetric Approach' (2010) 35 *Journal of Corporation Law* 729; P Lele and M Siems, 'Shareholder Protection: A Leximetric Approach' (2007) 7 *Journal of Corporate Law Studies* 17; M Siems 'Shareholder Protection Around the World ("Leximetric II")' (2008) 33 *Delaware Journal of Corporate Law* 111; J Armour et al, 'Shareholder Protection and Stock Market Development: An Empirical Test of the Legal Origins Hypothesis' (2009) 6 *Journal of Empirical Legal Studies* 343; P Lele and M Siems, 'Diversity in Shareholder Protection in Common Law Countries' (2007) 5 *Journal for Institutional Comparisons* 3; M Siems, 'Shareholder Protection Across Countries — Is the EU on the Right Track?' (2006) 4 *Journal for Institutional Comparisons* 39; S Deakin et al, 'Legal Origin, Shareholder Protection and the Stock Market: New Challenges from Time Series Analysis' in K Gugler and B Yurtoglu (eds), *The Economics of Corporate Governance and Mergers* (Edward Elgar, 2008); M Siems, *Convergence in Shareholder Law* (Cambridge University Press, 2008).

¹⁷ See, for example, S Deakin and P Sarkar, 'Assessing the Long-Run Economic Impact of Labour Law Systems: A Theoretical Reappraisal and Analysis of New Time-Series Data' (2008) 39 *Industrial Relations Journal* 453; S Deakin, P Lele and M Siems, 'The Evolution of Labour Law: Calibrating and Comparing Regulatory Regimes' (2007) 146 *International Labour Review* 133; Mitchell et al, above n 2; Gahan et al, above n 3.

¹⁸ P Sarkar and A Singh, 'Law, Finance and Development: Further Analyses of Longitudinal Data' (2010) 34 *Cambridge Journal of Economics* 325; D Berkowitz, K Pistor and J Richard, 'Economic Development, Legality, and the Transplant Effect' (2003) 47 *European Economic Review* 165; D Berkowitz, K Pistor and J Richard, 'The Transplant Effect' (2003) 51 *American Journal of Comparative Law* 163; K Pistor, M Raiser and S Gelfer, 'Law and Finance in Transition Economies' (2000) 8 *Economics of Transition* 325; J Armour et al, 'Law and Financial Development: What we are Learning from Time Series Evidence' [2009] *Brigham Young University Law Review* 1435; M Siems and S Deakin, 'Comparative Law and Finance: Past, Present and Future Research' (2010) 166 *Journal of Institutional and Theoretical Economics* 120.

¹⁹ S Djankov, C McLeish and A Shleifer, 'Private Credit in 129 Countries' (2007) 84 *Journal of Financial Economics* 299.

²⁰ M Siems, 'Numerical Comparative Law — Do We Need Statistical Evidence in Order to Reduce Complexity?' (2006) 13 *Cardozo Journal of International Comparative Law* 521.

original choice of the items to measure the law is also a subjective matter which may result in some aspects of the system being overlooked, and an incorrect judgment being made of its relative strength or weakness.²¹ Moreover, the items and coding process may fail to capture the impact of the ‘law in practice’ or fail to account for the fact that some other mechanism may compensate for a missing piece of legal protection.²²

Despite these limitations, we suggest that using a leximetric methodology allows us to gain new insights into the Australian regulatory style in the case of investor and worker protection, to identify trends over time in this protection, and to detect any relationship or correlation between changes in the two forms of protection.

IV The Evolution of Investor and Worker Protection

A Methodology

1 Investor protection

Investor protection is made up of two separate indices — a shareholder protection index and a creditor protection index. The shareholder protection index that we employ was devised by Lele and Siems.²³ The creditor protection index was devised by Armour, Deakin, Lele and Siems.²⁴ The indices adopt a functional approach to shareholder and creditor rights rather than focusing on strict legal rights. Therefore the coding includes a broad range of rules affecting shareholders and creditors. The rules include not only statutes but also judgments of courts and ‘self-regulatory’ rules such as the Australian Securities Exchange Corporate Governance Council’s *Corporate Governance Principles and Recommendations*.²⁵ This means that our focus is on companies whose securities are listed on the Australian Securities Exchange.

The index of shareholder rights consists of 60 items in total. It has been divided into two sub-indices —the first measures shareholder protection from various forms of expropriation by boards of directors and management, and the second measures the protection shareholders have from other shareholders. Each item is coded by its absence or presence, with a score between 0 and 1 (including fractions such as 0.25, 0.5 and 0.75 where appropriate), to reflect the strength of the law. In addition, each item is given an equal weight in the aggregate index measure.

The first sub-index consists of 42 items that measure the power of shareholders in the general meeting to amend the company constitution and

²¹ These limitations and others are noted by Armour et al, ‘How Do Legal Rules Evolve?’, above n 16.

²² M Siems, *The Web of Creditor and Shareholder Protection in 25 Countries: A Comparative Legal Network Analysis* (September 2010) <<http://ssrn.com/abstract=1537564>>.

²³ Lele and Siems, ‘Shareholder Protection...’, above n 16.

²⁴ Armour et al, ‘How Do Legal Rules Evolve?’, above n 16.

²⁵ Australian Securities Exchange Corporate Governance Council, *Corporate Governance Principles and Recommendations with 2010 Amendments* (2010) <<http://www.asx.com.au/governance/corporate-governance.htm>>.

approve or disapprove of mergers, divisions, increases or decreases in share capital, the sale of substantial assets of the company and the payment of dividends. The sub-index also measures whether shareholders have pre-emptive rights in relation to new share issues, whether they are required to approve directors' remuneration, and whether they have the ability to appoint and remove directors, demand extraordinary general meetings, put items on the agenda for meetings of shareholders, appoint proxies, obtain information, and communicate with other shareholders. It also measures the division of power between the board and shareholders, the duration of director's appointments, the imposition of directors' duties, the applicability of corporate governance codes, and the level of public enforcement of corporate law.

The second sub-index in the shareholder protection index measures the protection that shareholders have against other shareholders. It contains 18 items that measure a number of matters relating to meetings of shareholders including shareholder's rights to vote, quorums, supermajority requirements, and cumulative voting rights. The items also measure whether shareholders are required to disclose major share ownership, whether minority shareholders are able to be squeezed out by majority shareholders, whether appraisal rights exist following mergers or alterations of the company constitution, and if there is a remedy available for oppressed minority shareholders. The index also measures whether shareholder protection is mandatory (for example, whether it is possible to exclude the duty of care owed by directors).

Creditor protection is addressed by coding 44 items across three discrete sub-indices. The first sub-index relating to creditor protection measures the extent to which rules restrict or deter debtor companies from entering into transactions that might harm creditors' interests while the company is a going concern. It has 15 items and these include minimum capital, dividend restrictions, equitable subordination, piercing the corporate veil, transaction avoidance, directors' liability and public enforcement.

The second index measures creditor contract rules. It has 10 items and these include set-off, enforcement of contracts, the availability of security interests, and retention of title.

The third index measures the extent to which creditor rights are protected in insolvency, and considers both liquidation and rehabilitation. It consists of 19 items, including structure (i.e., whether the law provides for both liquidation and rehabilitation), trigger mechanisms, the parties in control, voting on exit, and the subordination of priorities.

2 *Worker Protection*

The worker protection index we use is derived from the index developed by Deakin, Lele and Siems.²⁶ It contains 40 items and covers five areas of labour law as follows.

²⁶ Deakin, Lele and Siems, above n 17.

The first is the regulation of forms of labour contracting other than the standard employment relationship (including matters such as the extent to which the law, as opposed to the contracting parties, determines the legal status of the worker; the extent to which part-time and casual workers have the right to equal treatment with full-time workers; and the extent to which the law constrains the conclusion of a fixed term contract).

The second is the regulation of working time (including matters such as the normal length of paid annual leave guaranteed by law or collective agreement; the normal number of paid public holidays guaranteed by law or collective agreement; the normal premium for overtime work and weekend work set by law or by collective agreements that are generally applicable; and the maximum duration of the normal working week exclusive of overtime).

The third is the regulation of dismissals (including matters such as the extent to which the law imposes procedural and substantive constraints on dismissal; the length of notice, in weeks, that has to be given to a worker with three years' employment; the amount of redundancy compensation payable to a worker made redundant after three years of employment, measured in weeks of pay; and the period of service required before a worker qualifies for general protection against unjust dismissal).

The fourth is the regulation of employee representation and participation at the workplace (including matters such as the extent to which the employer has a legal duty to bargain with employee representatives and the extent to which the law provides workers with rights to information sharing, consultation or co-determination).

The fifth is the regulation of industrial action (including matters such as whether strikes are not unlawful merely by reason of being unofficial or 'wildcat' strikes; the extent to which secondary or sympathy strike action is constrained; whether lockouts of workers are prohibited; the extent to which there is protection for the right to industrial action (ie strike, go-slow or work-to-rule); and whether there is a mandatory waiting period or notification requirement before strikes can occur).

B *Results*

Figure 1 shows movements in the aggregate indices measuring worker, shareholder and creditor protection. To enable comparison of the three indices, we have graphed the *z*-score for each index, which measures each of them in a standard (equivalent) way.²⁷

Figure 1 indicates that the level of worker protection in 2010 was similar to the level of protection in 1970. The data convey a sense of stability for worker protection with two exceptions. The first was in 1994 when the Labor government's

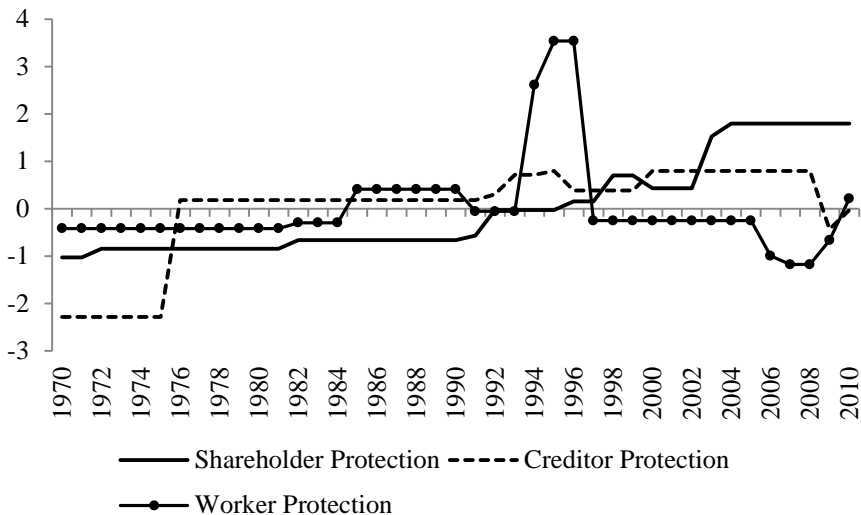
²⁷ The *z*-score represents the distance between the raw score and the population mean in units of the standard deviation and is calculated as $z = \frac{(x-\mu)}{\sigma}$, where *x* is the raw index value for an individual year, μ is the mean value of the index number of all years, and σ is the standard deviation of the index number over all years for which data are observed. A negative *z*-score means the raw score is below the mean, and positive when above.

Industrial Relations Reform Act 1993 (Cth) took effect. This legislation created a right for unions and workers to engage in industrial action where none had previously existed under the law, and it also mandated procedural fairness in worker dismissal decisions. Mainly as a consequence of these two changes, Figure 1 registers a fairly abrupt increase in the level of worker protection taken as a whole. The equally abrupt decline in the level of protection after 1996 was the result of the Liberal/National Party's reforms embodied in the *Workplace Relations Act* (Cth) of that year, which, among other things, altered the application of the unfair dismissal laws to the disadvantage of workers and severely curtailed trade union representation rights through the implementation of freedom of association provisions. The decline in worker protection from 2005 through to 2007 reflects the introduction of the Liberal/National Party's *Workplace Relations Amendment (Work Choices) Act 2005* (Cth) which reduced the rights of trade unions even further, and also further restricted the operation of the unfair dismissal laws. The subsequent increase in worker protection after 2007 captures the return to power of a Labor government, the implementation of that government's 'Forward with Fairness' policies and its subsequent enactment of the *Fair Work Act 2009* (Cth).²⁸

When we turn to consider investor protection we observe that over the 40-year period of study, both shareholder and creditor protection have increased. However, if we ignore the substantial increase in creditor protection that occurred in 1975, and a less substantial decline in 2008, then for the period from 1976 to 2008 the picture for creditor protection is one of stability rather than significant change.

A different picture emerges for shareholder protection which has increased over the 40-year period of study with no significant declines evident.

Figure 1: Australian Worker, Shareholder and Creditor Protection, Aggregate Indices, 1970-2010



²⁸ See further Mitchell et al, above n 2.

Tables 1 and 2 report the correlation coefficients between the three indices. Table 1 reports the correlations for all years for which we have data (1970–2010). Table 2 reports the correlations for the period 1970 to 1993 — 1993 being the year in which significant increases to worker protection were enacted in the *Industrial Relations Reform Act 1993* (Cth).

Table 1: Correlations between Worker, Shareholder and Creditor Protection Indices, 1970–2010

	Worker Protection	Shareholder Protection	Creditor Protection
Worker Protection	1.000		
Shareholder Protection	0.089	1.000	
Creditor Protection	0.286*	0.598***	1.000

Notes:

N=36. *** indicates correlation is significant at the p=0.01 level; ** significant at the p=0.05 level, and * significant at the p=0.1 level (two-tailed test).

Table 2: Correlations between Worker, Shareholder and Creditor Protection Indices, 1970–1993

	Worker Protection	Shareholder Protection	Creditor Protection
Worker Protection	1.000		
Shareholder Protection	0.475**	1.000	
Creditor Protection	0.404*	0.528***	1.000

Notes:

N=23. *** indicates correlation is significant at the p=0.01 level; ** significant at the p=0.05 level, and * significant at the p=0.1 level (two-tailed test).

Table 1 shows a positive and significant correlation between the worker protection index and the creditor index, and between the shareholder and creditor indices, although at differing levels of statistical significance. The strongest correlation occurs between shareholder and creditor protection, with the correlation between worker and creditor protection being less significant (at the p=0.1 level).

Table 2, where correlations are calculated for the period to 1993 only, reveals that for this period the correlations between all three indices are positive and statistically significant, suggesting that, generally, an increase in the level of

protection for one group was accompanied by an increase in protection for other stakeholders within the company. As is the case for the period 1970 to 2010, the strongest correlation occurs between shareholder and creditor protection ($r=0.528$, $p<0.01$), with the correlation between worker and creditor protection being less strong ($r=0.404$, $p<0.1$ level). However, there is a statistically significant correlation between worker and shareholder protection for the period 1970 to 1993 and this is not the case for the period 1970 to 2010.²⁹

These findings have important implications for the general argument that the heightened promotion or pursuit of shareholder interests is necessarily, or likely to be, associated with a decrease in the level of protection for workers.³⁰ On the basis of the legal rules included in our indices, our results show that, in the Australian case at least, increased protection for one group of stakeholders has not come at the expense of protection for other groups of stakeholders. If there was in fact such a substitution of one form of protection for the other, we would expect to see statistically negative correlations between, for example, the index of worker protection and the index of shareholder protection. In fact, as noted, we observe several statistically positive correlations. Where there are decreases in worker protection these are not associated with increases in investor protection. The abrupt increases and decreases in worker protection identified in Figure 1 indicate the politically contested nature of worker protection reform, but these are not matched in terms of political contestability where shareholder protection is concerned.

The results correspond, to some degree, with findings in other literature. For example, Christopher Bruner has argued that in some socio-legal systems, comparatively low (high) shareholder protection co-exists with low (high) worker protection, forming part of a quasi-political compromise.³¹ Our data would suggest a similar result for Australia; strong shareholder protection occurs simultaneously with strong worker protection. However, further research is necessary before a settled conclusion is reached as to why, and in what form, this relationship might co-exist.

Our findings also add to growing reservations regarding attempts to provide broad multi-country classifications of types of market economies based, at least in part, on general observations about relations between investors and workers.³² To take one example of a scholar who has provided such broad multi-country classifications, Mark Roe has argued that relations between investors and workers can in part explain particular types of corporate governance laws or systems across countries and that such relations are part of defining those countries that are 'social democracies'.³³ He has argued that 'social democracies' (which he defines as

²⁹ Our findings for Australia are consistent with correlations between these three indices for Germany and France reported by Deakin and Sarkar. However, our result runs counter to their expected findings for common law countries. In their study, they find a statistically significant and negative relationship between worker protection and both shareholder and creditor protection for the UK. While these relationship correlations were found to be positive for the US, the results were weak. See Deakin and Sarkar, above n 17.

³⁰ See the references in notes 7 and 11 above.

³¹ See Bruner, above n 5.

³² Mitchell et al, above n 2.

³³ Mark J Roe, 'Political Preconditions to Separating Ownership from Corporate Control' (2000) 53 *Stanford Law Review* 539.

countries committed to private property but whose governments (1) have a large role in the economy, (2) emphasise distributional considerations, and (3) prioritise employees over investors of capital when the two conflict) are typically countries in which the interests of shareholders are downplayed.³⁴ He writes that '[s]trong social democracies raise the pressure on managers to abandon their shareholders and side with employees to do what managers want to do all along: expand, avoid risk, and avoid rapid change' and 'the institutions that would help shareholders — securities laws, corporate laws, and stock exchanges — have not commanded such governments' attention as important to strengthen'.³⁵ In these countries, shareholders have otherwise sought to control managers of companies by block ownership of shares.³⁶

Roe tests his theory by examining data for the world's 16 richest democracies, including Australia, and finds a correlation between the political placement of the countries (on what he terms a left to right scale) and share ownership concentration for the largest 20 public companies in these countries. He finds that left-leaning countries tend to have more concentrated share ownership. However, Roe's political placement of Australia, as well as his assessment of the degree of share ownership concentration in Australia, has been questioned by Cheffins.³⁷

Our research findings indicate another reason for questioning the classification of Australia provided by Roe. Although Roe classifies Australia as 'social democratic' and writes that governments in such countries generally do not view strengthening shareholder protection as important, as our data show, this argument does not fit the Australian case where there has been considerable strengthening of shareholder protection, particularly over the past 20 years. Our research shows that analysis of matters such as styles of regulation and business practices does not lend itself to ready classification of countries in terms of models of capitalism or types of market economies.³⁸ Rather, our findings raise for consideration how the allocation of rights and protections to different stakeholders within the company are determined and how the relationship between them can be best explained.

V Conclusion

We have explored the relationship between worker and investor (shareholder and creditor) protection in Australia for the period 1970 to 2010 using leximetric analysis — a quantitative method of measuring changes in the law. For shareholder protection we measured changes in 60 items, for creditor protection

³⁴ Ibid.

³⁵ Ibid 553 and 560.

³⁶ Ibid 560.

³⁷ B Cheffins, 'Comparative Corporate Governance and the Australian Experience' in I Ramsay (ed), *Key Developments in Corporate Law and Trusts Law: Essays in Honour of Professor Harold Ford* (LexisNexis Butterworths, 2002).

³⁸ See also N Wailes, J Kitay and R Lansbury, 'Varieties of Capitalism, Corporate Governance and Employment Relations Under Globalisation' in S Marshall, R Mitchell and I Ramsay (eds), *Varieties of Capitalism, Corporate Governance and Employees* (Melbourne University Publishing, 2008); M Jones and R Mitchell, 'Legal Origin, Legal Families and the Regulation of Labour in Australia' in Marshall, Mitchell and Ramsay, *ibid*; Mitchell et al, above n 2.

we measured changes in 44 items, and for worker protection we measured changes in 40 items.

We found a positive and significant correlation between worker and creditor protection, and between shareholder and creditor protection with the strongest correlation occurring between shareholder and creditor protection. When we analysed the period 1970 to 1993, there were positive and significant correlations between worker and creditor protection, shareholder and creditor protection, and worker and shareholder protection.

The findings indicate that increased protection for one group of stakeholders is not obtained at the expense of protection for the other groups of stakeholders. The results also add to reservations regarding attempts to provide broad multi-country classifications of types of market economies based, at least in part, on general observations about relations between investors and workers. They also indicate that understanding why different countries allocate different rights to groups of stakeholders within the company remains an important question requiring further research.