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TRANSPLANTING COMPANY LAW:
SHAREHOLDER PROTECTION IN THE CAPE COLONY

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Working Paper 26-03

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Transplanting Company Law: Shareholder Protection in the Cape Colony*

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Abstract

In this paper, we examine the transplantation of British company law into the Cape Colony in the late nineteenth century. The Cape Colony Companies Act of 1892 was like its British counterpart in that it provided minimal investor protection. This meant that promoters were free to choose the level and types of shareholder safeguards in their company's articles of association. We analyse the shareholder protection offered in the articles of Cape Colony companies established in the decade after 1892. We find that Cape companies offered higher protection than British ones. They were also much more likely to adopt the gold-standard blueprint articles of association from the Act's appendix. We find that companies adopting these blueprint articles had more diffuse ownership but lower survival rates, suggesting trade-offs between investor protection and corporate longevity in the Cape Colony.

Keywords: company law, legal transplant, investor protection, corporate governance, Africa, Cape Colony.

JEL codes: G32, G34, K22, N27, N47.

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1. Introduction

Colonialism involved the transplantation of laws and legal institutions from the colonising power to its colonies (Merry 1991). Given the central importance of company law to the economic and financial success of colonisation, it was much more likely to be transplanted than other types of law (Harris and Crystal, 2009). Indeed, transplanting its commercial laws was central to the British imperial project. There are, of course, perennial questions as to whether this transplantation was primarily to benefit investors in Britain or whether the transplanted law was tailored to the needs of entrepreneurs and businesses in the colony.

British company law in the second half of the nineteenth century and into the twentieth was shaped by the Companies Act of 1862.¹ This legislation allowed businesses to incorporate as limited liability companies through a simple registration process. By the standards of the era and of modern company law, the 1862 Act was very liberal in terms of the protection it offered to investors (Acheson et al., 2019; Coyle et al., 2019). Founders and entrepreneurs were given complete freedom in terms of the amount of protection they gave shareholders in the company's articles of association, i.e., the firm's constitution. In this paper, we examine the effect of the transplantation of this Act into the Cape Colony in 1892. One might be concerned that the complete transplantation of such a liberal piece of legislation was a recipe for failure in that investors would be unwilling to part with funds because they had such little protection. Thus, in this paper we ask two questions. First, how completely was the 1862 Act transplanted into the Cape Colony? Second, were Cape entrepreneurs able to provide adequate protection to shareholders and therefore raise sufficient capital?

The answer to the first question is that the transplanted company legislation was just as liberal as that in Britain because it too offered little in the way of protection to investors. However, like its British equivalent, the Cape Companies Act of 1892 had an appendix which

¹ The Companies Act 1862, 25 & 26 Vict. c.89.

contained a model set of articles of association (known as Table A).² The framers of the 1862 Act regarded Table A as providing a robust set of protections for investors. Founders and entrepreneurs were free either to adopt Table A or produce their own articles. In other words, although the 1892 Act did not mandate high protections for investors, it signalled to both founders and investors what strong protection looked like. This then leads into our second question as to whether founders voluntarily offered high protection to investors.

To answer this question, we collect surviving articles of association for all businesses that were incorporated in the Cape Colony in the decade after the passage of the 1892 Act. We then code these articles and create a shareholder protection index (SPI) for each company to measure the extent of protection it offered investors. We also gather data on the ownership of these companies and their date of termination.

From our sample of 452 companies, we have two chief findings with regards their SPI. First, we find that 28 per cent of Cape companies adopted the Table A articles of association. By comparison, less than 1 per cent of companies in Britain at the time adopted the Table A articles of association. We argue that this difference arises because Table A was regarded as the gold standard of good corporate governance in the Cape's nascent capital market. Notably, Cape companies which may have been perceived to be riskier ventures, e.g., small firms or exploration and mining companies, were more much more likely to adopt Table A.

Second, we find that the SPIs adopted by Cape companies (even when we exclude those that adopt Table A) were higher than those offered by companies in the UK. Moreover, the typical composition of SPIs differed, in that Cape companies adopted different types of shareholder protection from those used by British firms. The protections offered by Cape companies focused more on giving shareholders access to the company's books and on skewing voting rights in favour of small shareholders than their British peers. Cape companies provided

² The full title of the act was The Joint Stock Companies Limited Liability Act No. 25 (1892).

much less protection from dilution but much more protection in terms of self-dealing. We argue that these differences suggest that Cape companies exploited the flexibility of the 1892 Act to tailor investor protections to local conditions. Rather than constraining entrepreneurs, the transplantation of UK company law provided a menu of choices which founders could adapt to their colonial context.

Did SPIs matter for capital raising in Cape companies? And relatedly, did firms with a greater separation of ownership from control have higher SPIs? Although we find no relationship between a firm's ownership structure and its SPI, we find that firms which adopted Table A had much more dispersed ownership, lower director ownership and more shareholders. This is fully consistent with Table A being regarded as the gold standard of corporate governance. This, however, did not translate into firm performance in terms of survivability for firms which selected Table A. We proffer two explanations for this finding. First, firms with concentrated ownership may have been better able to navigate the economic and social upheavals in the Cape and then the Union of South Africa over the long run. Second, Table A came with a short-run benefit of being able to attract capital from a diffuse set of owners, but the dozens of other non-shareholder-protection clauses came at a cost and may have made firms which adopted Table A less dynamic in the long run.

This paper contributes to several strands of literature. First, it advances our understanding of economic institutions in the Cape Colony. While the formal legislative development of limited liability in the Cape and Natal colonies has been outlined by Henning (2015), and the importance of capital mobilisation has been highlighted by Frankel (1938) and Greyling and Verhoef (2017), this paper shows that the institutional framework for corporate governance in the colony was not merely transplanted from the metropolis. Instead, it was transplanted, adapted and actively reconstructed by local actors. These actors reinforced the transplanted legislation with private governance mechanisms to address information

asymmetries and agency problems characteristic of frontier markets. This endogenous process of institution building contributed to the emergence of the Cape's diverse and vibrant private capital market (Maphosa et al. 2021).

The second strand of literature that this paper contributes to is the literature that examines how company law has been transplanted (Harris and Crystal 2009; Spamann 2009). Parts of this literature emphasise that the successful transplantation of legal code depends on enforcement in the colony as well as the presence of effective legal institutions (Berkowitz et al. 2003a,b). Indeed, as Pargendler (2012) argues in the case of Brazil, a careful look at the transplant process reveals that foreign commercial codes were cherry-picked and adapted by local lawmakers to suit the need of Brazilian elites at the time. Other strands of this literature examine whether the transplantation of company law was shaped by the needs of the colony or by the practical requirements of imperial capitalism. Most studies conclude that the latter predominated (Mahy and Ramsay 2014; McQueen 2016; Varotti 2016). Our contribution to this literature is to examine how local entrepreneurs responded to the legal transplant by adapting it to their needs.

Third, this paper contributes to the debate surrounding the law and finance hypothesis. The proponents of this hypothesis suggest that legal origins (i.e., common law or German civil law or French civil law) of a country determine its present-day investor protection laws as well as the shape and size of its financial system (La Porta et al., 1997, 1998, 2000, 2008). Ultimately, the legal origins of many modern countries are the result of them being colonised by either Britain, France or Germany. As part of the colonialisation process, these legal origins were transplanted into the various colonies. Our contribution to this literature is to examine what happens when commercial law which has been shaped by English common law is transplanted into the Cape Colony in the nineteenth century. As such, it is another contribution from an historical perspective to the law and finance debate (Musacchio and Turner 2013).

Finally, this paper also contributes to the literature which examines the ability of private contracting to craft protections for shareholders (Coffee 2001; Guinnane et al. 2017; Acheson et al. 2019). Acheson et al. (2019) find that British firms registered under the very liberal 1862 Companies offered high protections to shareholders and those that had more diffuse ownership offered higher protections than their peers. We find a similar pattern in the Cape Colony, except that the Table A articles of association played a far more prominent role than in Britain. We argue that this reflects local entrepreneurs' efforts to adopt best practice in a nascent corporate economy and capital market.

The next section of the paper section outlines the legal background of the 1892 Cape Companies Act and illustrates how it was a legal transplant of the UK's Companies Act of 1862. Section 3 describes our data and how we constructed an SPI for each company. Section 4 compares the SPI for Cape companies with those from the UK and explores the covariates of the SPI. Section 5 investigates the extent to which shareholder protections were enforced by the colony's legal system. Section 6 tests whether shareholder protection was correlated with the number of investors, ownership dispersion, director ownership, and company survival. Section 7 concludes with the implications for the future study of the development of companies in the Cape Colony and Union of South Africa.

2. Transplanting company law into the Cape

Following the British annexation of the Cape Colony in 1802, there was a rise in the number of businesses seeking incorporation. This period is widely recognised as a transitional phase in South African company law because the legal structures adapted swiftly to the colony's diverse needs and to attract British capital (Meltzer 1989; Oosthuizen 2017). Initially, many Cape companies and banks were established through simple deeds of settlement drafted by notaries. It was not until after 1830 that some joint-stock companies were incorporated via special

ordinances and parliamentary acts (Meltzer 1989). These laws granted companies privileges such as enabling the company's secretary to sue and be sued in the company's name and allowing for separate legal personality.

In the mid-1850s, Britain began to modernise its company law.³ At the core of this reform was the freedom to incorporate as a limited liability company through a process of registration. Meanwhile, entrepreneurs in the Cape grew increasingly frustrated by the lack of limited liability in the colony. In 1858, eager to access the limited liability corporate form, the Cape Town Railway and Dock Company was incorporated in Britain under its Limited Liability Act. However, this was not a complete solution, with the company's directors telling the *South African Commercial Advertiser's* editor that doubts were emerging about whether its Cape shareholders, like those in Britain, were actually protected by limited liability.⁴

The *Cape Argus* in 1861 voiced dissatisfaction from both foreign companies and local entrepreneurs over the slow progress of the reform of the Cape's company law. Implementing free incorporation with limited liability was viewed by many as vital for maintaining economic growth and attracting overseas capital to the Cape's nascent economy. One entrepreneur complained that delays in establishing limited liability companies were so common that many enterprises "dropped through and nothing came out of them".⁵ The colonial administration responded to these calls by passing the Joint Stock Companies Limited Liability Act No. 23 and the Special Partnerships Limited Liability Act No. 24, both of which were modelled after the British Joint Stock Companies Act of 1844 (Rosenthal 1968, p.16).⁶ However, the Cape statutes were not a verbatim transplant of the 1844 Act. For instance, while the latter did not permit limited liability, the Cape Joint Stock Companies Limited Liability Act No. 23

³ The Limited Liability Act (1855), 18&19 Vict., c.113. This Act was repealed, but re-enacted in 1856 (19&20 Vict., c.47).

⁴ *Southern African Commercial Advertiser*, 4 May 1858, 109.

⁵ "Correspondence" *Cape Argus*, 1 June 1861, 15.

⁶ The Joint Stock Companies Registration and Regulation Act (1844), 7/8 Vict., c.110.

introduced it based on the principle “incur the liability first and then register the company” (Van Zyl 1880). Despite these differences, the enactment of these laws eliminated the cumbersome process of obtaining special legislation from the colony’s parliament to establish joint stock companies, adopting a principle already recognised in Britain (Rosenthal 1968, p.16).

However, the Acts had notable limitations stemming from their outdated origins, such as requiring that three-fourths of the company’s nominal capital be subscribed and at least 10 per cent paid up before it could be registered. More importantly, unlike the British principle that stated, “register the company first and then incur liability,” the principle of the 1861 Act did the opposite by requiring companies to “incur the liability first and then register the company” (Van Zyl 1880). While the colony had made an important step towards introducing the modern company to its economy, this rigid approach imposed numerous obstacles to company formation, which discouraged entrepreneurs and curtailed the pooling of capital.

By the late nineteenth century, the Cape had transitioned from an agricultural to a mineral-based economy, creating unprecedented capital needs that existing corporate structures were unable to meet (Feinstein 2005, p.93). Mineral discoveries set off a wave of capital-intensive projects that small diggers and individual mining entrepreneurs were unable to exploit (Worger 1987, p.19). Consequently, in 1892, the Cape Companies Act was enacted. This legislation drew heavily from the British Companies Act of 1862 and is regarded as the first comprehensive legislation to provide for company incorporation at the Cape. It included all the legal features that define a modern company (Burdette 2002). To accommodate companies established under previous laws, the 1892 Act allowed existing companies to register without paying any fees upon the enactment of the new legislation (Tennant 1894). A significant advancement introduced by the new Companies Act was that founders no longer needed to

assume liability for their incorporation; their liability was limited right from the moment of registration.

The 1892 Act, like its British counterpart, and unlike the Companies Act of 1861, made the corporate form much easier to access for businesses. But did the 1892 Act follow the British legislation in that very few protections were given to shareholders? Was the liberal approach of the 1862 Act transplanted into the Cape Colony?

To assess the level of protection offered to shareholders under the 1892 Act, we use the Shareholder Protection Index (SPI) of Acheson et al. (2019), which is very much in the spirit of the leximetric approach of La Porta et al. (1998). This index measures the extent to which small shareholders are protected against expropriation by directors and large shareholders. Any provision that was regarded as being pro-investor rather than pro-insider is included in the index. As can be seen from Table 1, the index has five broad shareholder rights that it attempts to measure. First, there are information rights which measure the ability of shareholders to access accurate and credible information on the company's performance. Second, there are voice rights which assess the ability of small shareholders to have a voice in corporate decisions through voting and calling extraordinary shareholder meetings. Third, there are dilution rights based on the protection afforded shareholders with regards to their rights to profits being diluted by the issuance of new shares or corporate debt. Fourth, there are self-dealing rights which measure the checks on directors to constrain self-dealing, i.e., transactions using the company's resources which directly benefit them, family members, or other firms that they are involved with. Fifth, there are liquidity rights which are based on the ability of shareholders to get their funds out of the company in normal times as well as times of financial distress.

As can be seen from Table 1, the SPI has 18 constituents across these five categories of shareholder rights. Each constituent is scored on a binary scale (1 if it present, 0 otherwise), which means that the SPI has a maximum score of 18. Acheson et al.'s (2019) SPI has several

weaknesses. First, like all leximetric approaches it is additive, but individual constituents might be complements or substitutes (Guinnane et al. 2017). However, Acheson et al. (2019) find little interdependence between constituents. Second, all constituents are equally weighted in the SPI, but in reality, some may play a more important role than others. This is another common issue with leximetrics, but without strong priors or contemporary evidence to the contrary, it is very difficult to put weights on the constituents.

<<INSERT TABLE 1>>

Table 2 shows the extent to which the 1892 Act contained the protections in the Acheson et al. (2019) SPI. For the sake of comparison, we compare it to the British Companies Act of 1862. As can be clearly seen, the 1892 Act provided almost no protection to shareholders. In other words, it was no different from its British counterpart. The only difference was that the 1892 Act had a ban on companies using company funds to repurchase their own shares. However, in 1892, this protection also applied in the UK because a court case in 1888 had made it illegal.⁷ In other words, the protection offered shareholders by company law in the Cape was no different to that in the UK.

<<INSERT TABLE 2>>

As with its British counterpart, the 1892 Act had a boilerplate set of articles of association in the appendix to the Act. This boilerplate was called Table A in both the British and Cape legislation, and it was regarded as the default articles of association if a company did not create their own. Interestingly, as can be seen from Table 2, the SPIs for both Table As are the same – 11 out of 18. Table A for the Cape Colony almost maps on to the Table A in the British legislation. The only differences are to do with the ban on repurchase being in Table A for the Cape, whilst the British Table A had a clause which gave shareholders a pre-emptive right on new share issues. This existed to prevent current shareholders from being diluted.

⁷ Trevor vs. Whitworth 12 App Cos. 409.

Perhaps the reason that the Cape Colony Table A did not contain this clause is that it was envisioned that the majority of companies would not be that large and would therefore not be listed on public markets, making this provision of less relevance to them.

3. Data

Having had a very *laissez-faire* company law transplanted into their colony, how did entrepreneurs in the Cape respond? Did they adopt the Table A articles of association, or did they craft articles which had a high level of protection embedded, i.e., articles with a high SPI? To address these questions, we examine joint-stock companies incorporated under the 1892 Cape Companies Act between 1892 and 1902, and whose records are preserved in the Western Cape Archives and Records Service (WCARS). Under the 1892 Act, companies were required to lodge copies of their Memorandum of Association (MOA), Articles of Association (AOA), annual shareholder lists, annual balance sheets, and liquidation records with the Registrar of Companies. The MOA stated the purpose or objectives of the company, and the AOA was its constitution, stating the rights and obligations of shareholders and directors. The information in the AOA is needed to construct an SPI for each company. Our sample ends in 1902 because there were substantial social and legal transformations that followed the South African War (Marks and Trapido 1979). The cessation of the war marked a watershed moment; the economic restructuring that accompanied the move toward the 1910 Union of South Africa fundamentally altered the business environment.

According to the records at WCARS, there were 457 companies incorporated in the Cape Colony between 1892 and 1902. Of this population, legible records exists for 452 of them. Under the Cape Companies Act, firms that did not submit their own AOAs were deemed to have automatically adopted Table A, the model set of articles appended to the Act. Among

the 452 companies, 326 had an MOA and an AOA, and 126 had a MOA but no AOA, which reflected their voluntary adoption of the default governance template.

For the purposes of methodological consistency and comparability, we limit our analysis to records from the year of incorporation, as this provides the most accurate reflection of the governance structure envisaged at the firm's foundation. This approach minimises distortions arising from subsequent amendments to company constitutions. It also aligns with the principle, applied by Acheson et al. (2019), that articles examined should represent firms at the point when contractual relationships between promoters and shareholders were first established.

As can be seen from Table 3, the companies in our dataset represent a broad cross-section of the colonial economy, encompassing important sectors in the Cape's emerging private capital market such as agriculture, mining, finance, transport, and manufacturing. This industry classification was primarily derived from the MOA, which explicitly outlined the nature of each company's business activities. The MOA also served as a crucial source for several other variables used in our analysis, including company birth and establishment dates, registered location, and principal place of operations. In some cases, particularly within the mining sector, companies' head offices and sites of operation differed, often reflecting the concentration of administrative functions in urban centres such as Cape Town and Port Elizabeth, while extraction or production occurred inland including in neighbouring territories.

<<INSERT TABLE 3>>

We distinguish between company birth (the founding of the enterprise) and establishment (its legal incorporation) because some firms predated the 1892 Cape Companies Act but later sought limited liability under its provisions. For example, the Port Elizabeth Boating Company stated in its MOA that one of its objectives was to "acquire as a going concern the business at Port Elizabeth known as the Port Elizabeth Boating Company"

(WCARS, LC 10, 1893). Although the MOA does not specify under which statute this earlier business was registered, it is reasonable to infer that such entities were incorporated under the 1861 Joint Stock Companies Act. The MOA further provides data on nominal capital, which we use as a proxy for company size.

Because we want to see whether shareholder protection is correlated with the ownership structure of companies, we use shareholder lists which have survived in the archives. These documents, which were typically annexed to company records or filed annually with the Registrar of Companies, provided detailed personal information on each investor and the number of shares held by them, which forms the basis for determining the ownership concentration of each company. The AOA oftentimes listed the names of directors. We then matched these names with shareholder lists to assess the extent of managerial control and insider ownership. Comparing directors' shareholdings with the overall capital enables us to gauge the degree of control exercised by insiders and the balance between managerial and outsider owners. Unfortunately, only 153 of our sample companies have shareholder lists which have survived. There were 9,359 investors in these 153 companies.⁸ In most cases, town of residence was reported on these lists, which enables us to see whether shareholders came from outside the Cape Colony.

To examine whether companies with higher shareholder protections survive longer, we use liquidation records to analyse the fate of these companies. This data was available for circa 60 per cent of our sample. It is unclear why some companies' files lacked these records. Possible explanations include that the records were either mishandled, damaged, weeded out by archivists or that some of these companies continued operations well into the twentieth century and were therefore not filed in these archives. We create two survival measures. The

⁸ This included people who were investing in more than one company, which means that there is some double counting of investors here.

first measure uses the official liquidation records to date the year of the firm's demise, but we only have this for a subset of our sample. This is our strict measure of survivability. The second measure uses the date of the last official document in the company's archive at WCARS as its year of demise. We term this our broad measure of survivability.

Appendix Table 1 defines the variables used in this study as well as the data sources for each variable. Summary statistics of our covariates and outcome variables are in Table 3. There are several things worthy of comment about our covariates. First, the sample size varies for our outcome variables depending on data availability. Second, on average, Cape companies were new start-ups, whereas others had existed either as partnerships or family businesses prior to incorporating under the 1892 Act. Third, a considerable number of companies in our sample had operations and their headquarters outside Cape Town. A small number even operated outside the colony in the British territories of Natal, Swaziland, Bechuanaland and Rhodesia, as well as non-British regions like the South African Republic, the Orange Free State, German West Africa, and Portuguese East Africa. Fourth, firms which adopted Table A were smaller, slightly older, and less likely to have headquarters in Cape Town. Notably, companies adopting Table A predominantly operated in the mining industry. This finding is consistent with the heightened risk and capital intensity of mining ventures, which likely increased the demand for robust governance arrangements and credible investor protection in order to attract external finance.

4. Shareholder protection index

Given that the Cape Colony's company law offered little protection for shareholders, what level of protection did company founders offer shareholders in their company's articles of association? Or did founders simply adopt the boilerplate articles as outlined in Table A?

Out of our sample of 452 companies, 126 of them (28 per cent) adopted Table A. This is remarkable when compared to the UK, where only 1 per cent of companies adopted Table A in the decades after the passage of the 1862 Companies Act (Acheson et al. 2019; Campbell and Turner 2011; Edwards and Webb 1985). Why such a difference? One possibility is that British companies were much larger than their Cape Colony counterparts, and as a result, they had the means and incentives to devise their own articles. Notably, the framers of the 1862 Companies Act saw one of the purposes of Table A as providing an off-the-shelf set of articles that saved founders the expense of paying lawyers to draft their own articles (Acheson, et al. 2019, p.4163). Another possibility is that the adoption of Table A was a strong signal that a company was very serious about protecting shareholders. Indeed, the framers of the 1862 Companies Act also saw Table A as a pattern of good protection or what the government thought was good practice (Acheson et al. 2019, p.4163). Perhaps in the Cape's undeveloped corporate economy, company founders believed that this was the best way to attract capital and investors.

How many protections did companies in the Cape offer to investors? The first thing that we observe from Figure 1 is that very few firms had an SPI greater than 11, which was that offered by Table A. The second item of note is that when we look at those companies which did not adopt Table A, they typically had an SPI score in the 7 to 10 range. The third thing we observe, based on these unconditional patterns, is that newly established firms, i.e., businesses which incorporated from scratch and that did not pre-exist in any shape or form, typically had a very high SPI. New businesses without a track record may have had to offer investors higher protection either by adopting Table A or by freely adopting a high SPI in order to attract investors.

<<INSERT FIGURE 1>>

How did the protection offered by Cape Colony companies compare to that offered by companies in the UK? Table 4 compares the SPI for the Cape companies with companies established in the UK between 1862 and 1899 and with those established in the UK in the 1890s. The first thing worthy of note from Table 4 is that Cape companies offered much higher protections to shareholders than their UK peers. There are four possible explanations for this finding. First, the UK companies were all publicly listed companies and therefore they were subject to more scrutiny as well as requirements imposed by the stock exchange. However, Acheson et al. (2019) did not find this to be the case: the stock exchange requirements at the time were minimal and simply reflected the normal practice of companies. Second, the UK companies are much larger than those in the Cape Colony. One could hypothesise that smaller firms need higher protections because there is greater asymmetric information with being small. Acheson et al. (2019), however, do not find a correlation between firm size and its SPI. Third, industry composition may be driving this difference between the Cape Colony and the UK. The chief difference in composition was that the UK had more financial companies and the Cape Colony had more mining companies. Acheson et al. (2019) find that the SPI of financial companies was similar to that of other companies and we show in Figure 2 that the SPI of mining companies was similar to that of others. Fourth, the greater agency costs present in a nascent capital market explain why the SPI was much higher in the Cape Colony.

<<INSERT TABLE 4>>

The second thing worthy of note is that the constituents of the five sub-components of the SPIs differed substantially between the UK and the Cape, apart from liquidity rights which were broadly similar. In terms of information rights, the main difference was that companies in the Cape were much more likely to give shareholders access to the company's books. This right had been common in the UK but had largely disappeared by the 1890s and was viewed as archaic by 1900 (Acheson et al. 2019). Firms in the Cape were smaller and not publicly

listed on a stock market which made granting this right much easier. It also potentially generated trust among investors.

With regards to the rights of shareholders to exercise voice, there were two main differences between the Cape and UK. First, it was much more common for Cape companies to give shareholders the right to force a poll with 5 or fewer shareholders. However, this difference could be a function of size. The average number of shareholders in Cape companies was 61, whereas it was about 400 in Acheson et al.'s (2019) UK sample. Five shareholders in the Cape would likely control much more of their company than the typical five shareholders in the UK. Second, it was much more common in the Cape for companies to have graduated voting scales. These scales skewed voting in favour of small shareholders and placed relatively more power in the hands of minority shareholders.

In the case of dilution rights, Cape firms did not offer much in the way of protection compared to their UK peers. The reason for this is probably the relative lack of development of the Cape's financial market compared to that of the UK. The numerous stock exchanges around the UK meant that it was relatively easy by the 1890s to issue new shares and debentures (Rogers et al. 2020). The ease with which this could be done meant that checks and balances were needed on company directors to prevent them diluting existing shareholders. This was not required in the Cape Colony because raising capital was much more complex and difficult.

When it came to self-dealing restrictions, Cape companies were much more likely to adopt very stringent provisions that directors could not benefit directly from contracts with other businesses where they were owners or part-owners. As self-dealing is one of the primary ways that directors expropriate shareholders, Cape companies were very keen to offer this protection to shareholders. Notably, concerns about self-dealing were prominent at the time. An example of this arose when shareholders in De Beers suspected C. J. Rhodes, the then Prime Minister of the Cape Colony, of self-dealing. They alleged that his dual role as a politician and

company director enabled him to secure contracts and concessions that benefited himself or his associates rather than the broader shareholder body.⁹ Rhodes was also reported to have used company funds to influence elections.¹⁰

Overall, companies in the Cape offered more protections than their UK counterparts but different types of protection. The differences suggest that company founders were cognisant of their different economic environment and offered protections to investors that were important in the Cape colony context.

Did companies choose different levels of shareholder protection depending on their characteristics? In Figure 2 we show the results of a regression analysis of the covariates of shareholder protection. We do two things in this analysis. First, we run a logit analysis conditional on other covariates where firms that adopt Table A receive a 1, 0 otherwise. Second, we run an ordered logit analysis conditional on other covariates where the SPI index is the dependent variable. We run a separate analysis for companies that did not adopt Table A to see if their covariates are different. For the sake of robustness, we repeat this analysis for these companies using an OLS model.¹¹

As can be seen from Figure 2, companies in the mining and prospecting industry were much more likely to adopt Table A than companies in other sectors. The inherent riskiness of this sector meant that investors needed more protection. Given what we said above about the connection between firm size and Table A adoption, we see that relative to the smallest quintile, companies in the third, fourth and particularly the fifth quintiles were much less likely to adopt Table A. That is, Table A was primarily adopted by small firms. This suggests that these firms

⁹ “Arrival of the Mail” *Cape Times*, 6 May 1892, 3; “The New Charters: Financial Criticism of the Underwriting” *Cape Times*, 9 August 1895, 7.

¹⁰ “The New Charters: Financial Criticism of the Underwriting” *Cape Times*, 9 August 1895, 7.

¹¹ As the SPI is ordinal, our preferred specification is an ordered logit model. However, as a robustness check, we also estimate OLS models, which produce qualitatively similar results and thus do not substantively alter our conclusions.

were either saving on costs by adopting Table A or believed that they had to offer higher protection afforded by Table A to attract investors.

When examining other covariates, we find that firms established between 1892 and 1897 exhibited lower SPIs than those founded after 1897. This may reflect learning effects over time or, alternatively, increased competition for capital in later years that required firms to offer stronger investor protections. Interestingly, newly established firms, that is, those created from scratch, also displayed slightly lower SPIs than their peers.

<<INSERT FIGURE 2>>

In Table 5, we report the results of a multivariate analysis of the determinants of the SPI. We then look at those firms which did not adopt Table A, and we also look at the proportion of Table A components that those firms adopted to ascertain if Table A nudged companies to offer high standards of shareholder protection. The results for firm size and those companies established before 1897 are consistent with what we have already found. Notably, the results suggest that where a company's headquarters or operations were located mattered. Firms with operations outside the Cape Town and which did not adopt Table A had a higher SPI than their peers. This is consistent with the idea that those companies operating further afield had higher agency costs. However, firms headquartered in Cape Town adopted more Table A components than their peers. If Table A was a gold standard for good governance, then this suggests that the greater competition for investors in Cape Town drove firms to adopt more of the Table A components.

<<INSERT TABLE 5>>

5. Were shareholder protections enforced?

Under the Cape Companies Act, a company's articles of association were prescribed as the instrument defining the duties, rights, and powers of individual company governing bodies.

Every subscriber was to sign this document, and upon company registration, it became legally binding. This meant that if a company director or officer performed an action that departed from the company's articles, shareholders and other directors had legal recourse to bring a case before the Cape Colony courts.

As in most organisations, disputes were often settled internally. However, unresolved disputes and shareholders' discontent about actions which potentially contravened the articles were addressed in court. For example, the case of the *Mercantile Mutual Building and Savings Society v. the Shareholders' Protection Committee and Others* sheds light on how minority shareholders formed a committee to challenge the directors in court because they had contravened the company's articles.¹² At the Supreme Court, it was alleged that the directors had bought property from, sold property to, and borrowed from the society on favourable terms, which contravened its articles of association. Despite their counterclaims, evidence presented in court showed that the managers voted down any attempts by the Shareholder Protection Committee to investigate irregularities in the company. The judge presiding on the case stressed that this was "not to be in accordance with public policy to stifle such investigations as shareholders wish in their protection to make".¹³ He stated that shareholders often invested in companies with vague knowledge about the powers of the directors. Therefore, the articles of association, and especially the courts, ought to support them in instances like these when their rights were potentially being violated.

This enforcement of articles of association by Cape Colony courts was strongly underpinned by UK case law (Acheson et al. 2019). In the UK, it was widely accepted that common law courts would rigorously enforce articles of association and that shareholders had an immediate legal remedy if a company departed from them (Davies 2010, p. 245).

¹² "Supreme Court: Second Division" *Cape Times*, 25 April 1910, 10.

¹³ "The Judgement" *Cape Times*, 14 June 1910, 8.

It is also important to note that by the late nineteenth century, the Cape Colony possessed a court system capable of handling disputes arising from private companies. For instance, Circuit courts, formalised by the Charters of Justice, were designed to bring superior civil and criminal justice closer to residents, and they functioned as courts of record with the same jurisdiction and powers as the Supreme Court (Erasmus 2013, pp.266-274). Over time, this arrangement diffused English-style procedure into the districts and reinforced open justice, “bringing home” that the courts were “open to all the people of the colony” and that their protection extended to them (Erasmus 2013, p.299). This institutional capacity was enhanced by a growing and more accessible collection of commercial case law. According to van Niekerk (2013, pp.106-7), precedent relies on decisions being documented and accessible, and in the Cape, this was made possible by published law reports. In addition, there was full public disclosure of cases in the Cape thanks to the *Cape Times Law Reports*, which reprinted daily proceedings and often included details about evidence, counsel’s arguments, and judgments (van Niekerk 2013, pp. 121-122).¹⁴

How easy was it for directors to change articles in a way that was detrimental to shareholders? The Cape Companies Act in sections 109 and 110 permitted the alteration of AOA by special resolution passed by three-fourths of the shareholders (Tennant 1894). Thus, if company’s shareholders became dissatisfied with any of the company’s articles, changes could be made. However, a supermajority of shareholders (not shares) was required to pass such a resolution. This made it very difficult for directors to alter articles in a direction that hurt shareholders.

¹⁴ For the Cape Times Law Reports, see Rowson (1906).

6. Did shareholder protection matter?

One of the reasons that companies may have selected a higher SPI is that they wanted to attract more investors and capital. They may even have wanted to attract capital from outside the Cape Colony. Another reason that they may have had a higher SPI is that their capital needs were such that ownership separated from control, with the result that there were high agency costs (La Porta et al. 1999). Notably, Acheson et al. (2019) find that UK companies with higher shareholder protections had more diffuse ownership and a greater separation of ownership and control.

As well as looking at the relationship between SPIs, capital and ownership, it is also interesting to ask if adopting a higher SPI contributed towards a company having a higher survival probability. In the Darwinian competition to survive as a business, a higher SPI or adopting Table A may have been a characteristic that meant a company outlived its peers because it was better able to attract capital and address agency problems (Alchian 1950).

To explore the relationship between the SPI, survival probability, capital and ownership, we estimate OLS regressions using as our dependent variables survival probability, number of shareholders, shareholder dispersion, the ownership of the largest and three largest shareholders, director ownership, and proportion of capital raised from outside the Cape as dependent variables. In all these regressions, we have fixed effects for size, industry, year of establishment, newly established, and location of headquarters and operation.

Table 3 reports the summary statistics of our outcome variables. The main takeaway is that ownership in the average company was highly concentrated, with the largest shareholder holding 39.8 per cent of the capital and the three largest shareholders together holding 61.1 per cent. There was also little separation between ownership and control, as directors owned an average of 39.2 per cent of the firm's capital. By contrast, director ownership was markedly

lower among firms that adopted Table A. Notably, the average firm raised very little capital from outside the Cape Colony.

<<INSERT TABLE 6>>

The results in panel A of Table 6 reveal that there is no relationship between a company's SPI and the structure of its ownership. This is unsurprising given that there is very little in the way of separation of ownership and control in the sample. Using our broad measure of survival, there is evidence which suggests that companies with higher SPIs have lower survival probabilities. This result, however, disappears when we run the analysis (not tabulated) for firms which did not adopt Table A.

As can be seen from panel B of Table 6, when the adoption of Table A or otherwise is the focus of our analysis, we see that companies which adopt Table A have much lower survival probabilities. However, firms adopting Table A attracted more shareholders, exhibited greater ownership dispersion, and had markedly lower director ownership. This suggests that firms seeking to broaden their shareholder base and accommodate greater separation of ownership from control adopted Table A because it was perceived as the gold standard of shareholder protection.

This raises a puzzle as to why Table A companies had lower survival rates. There are at least two non-mutually-exclusive possible explanations. The first possibility is that the adoption of Table A brought short-run benefits to companies in terms of having dispersed capital, but that the separation of ownership and control eventually created agency problems that resulted in poor managerial performance. In other words, closely held companies were better able to navigate the Cape's corporate economy and societal upheavals over the long run.

The second possibility is that there was a cost to adopting Table A that in the long run outweighed its short-run benefits. The Table A articles of association contained 96 clauses, the majority of which had nothing directly to do with shareholder protection. These clauses may

have hamstrung companies and made them less dynamic than their competitors over the long run. Although firms could move away from the Table A articles, this was a costly and slow process which required a supermajority of shareholders to vote to do so.

7. Conclusions

Britain's Companies Act of 1862 was the apogee of the country's laissez-faire economic policy in the nineteenth century. It gave company founders and promoters a lot of latitude when it came to offering protections to investors. The philosophy was that of freedom of contract: company founders and investors were free to make whatever type of contract they wanted, and they knew better than the government or legal scholars what types of governance rules suited their particular business and the type of environment that their firm operated in. Nevertheless, the paternalistic instinct, which was a hangover from a past era, was still there when the law provided a default set of articles of association which were regarded as the gold standard of corporate governance. This is the law and legal philosophy that was transplanted into the Cape Colony in 1892. This suggests that it was ideology dominant in Britain rather than any nefarious imperial reasons that resulted in the 1862 Companies Act being transplanted almost in its entirety into the Cape Colony.

Did this mean that the legal transplant was unsuitable for its host? Our evidence suggest that Cape Colony companies embraced the freedom offered by the Act to give their investors a large degree of protection either by adopting Table A or inserting a large degree of protection into their articles of association. However, our evidence also suggests that there were issues with the more diffuse ownership that Table A adoption facilitated. The companies that adopted Table A had more diffuse ownership but had lower rates of survivorship, which suggest that they had traits which made them ill-suited to the economic environment of the Cape and then the Union of South Africa. The companies formed in Britain under the 1862 Act all had very

diffuse ownership, but Britain had very mature capital markets and well-honed systems and norms of corporate governance which kept managers in check (Turner 2025). Perhaps the Cape Colony was not ready at this stage of its economic development for the diffusely owned company. This insight opens avenues for future research, particularly into the institutional and market conditions under which diffusely owned firms can successfully emerge and survive in nascent capital markets.

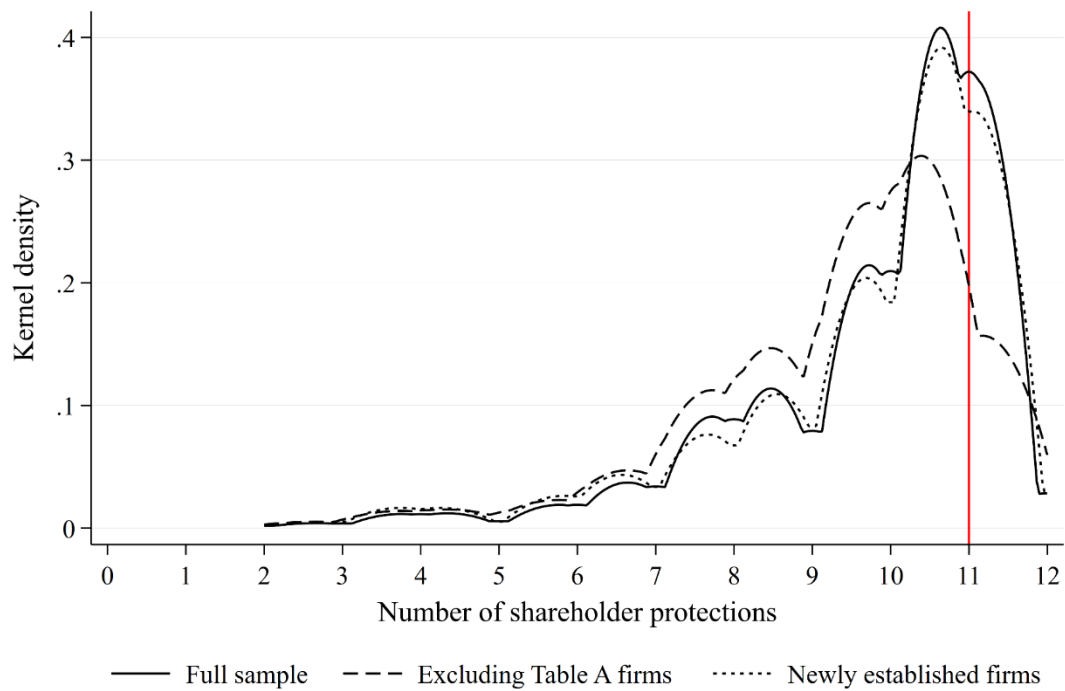
Bibliography

- Acheson, G. G., Campbell, G. and Turner, J. D. "Private Contracting, Law and Finance." *The Review of Financial Studies* 32, no. 11 (2019): 4156-4195.
- Alchian, A. A. "Uncertainty, Evolution, and Economic Theory." *Journal of Political Economy* 58, no. 3 (1950): 211-221.
- Berkowitz, Daniel, Pistor, Katharina, and Richard, Jean-Francois. "The Transplant Effect." *American Journal of Comparative Law* 51, no. 1 (2003a): 163-204
- Berkowitz, D., Pistor, K. and Richard, J. F. "Economic Development, Legality, and the Transplant Effect." *European Economic Review*, 47, no. 1 (2003b), 165-195.
- Burdette, D. "A Framework for Corporate Insolvency Law Reform in South Africa." Ph.D. diss., University of Pretoria, 2002.
- Campbell, G., and Turner, J. D. "Substitutes for Legal Protection: Corporate Governance and Dividends in Victorian Britain." *Economic History Review* 64, no. 2 (2011): 571-97.
- Coffee, J. C. "The Rise of Dispersed Ownership: The Roles of Law and the State in the Separation of Ownership from Control." *Yale Law Journal* 111, no.1 (2001): 1-82.
- Coyle, C., Musacchio, A. and Turner, J.D. "Law and Finance in Britain c. 1900." *Financial History Review*, 26, no. 3 (2019): 267-293.
- Cape Argus*, 1 June 1861.
- Cape Times*, 6 May 1892.
- Cape Times*, 9 August 1895.
- Cape Times*, 25 April 1910.
- Cape Times*, 14 June 1910.
- Davies, P. *Introduction to Company Law*. Oxford: Oxford University Press, 2010.
- Edwards, J. R., and K. M. Webb. "Use of Table A by Companies Registering under the Companies Act 1862." *Accounting and Business Research* 59, (1985):177-95.
- Erasmus, H. J. "Circuit Courts in the Cape Colony during the Nineteenth Century: Hazards and Achievements." *Fundamina* 19, no.2 (2013): 266-299.
- Feinstein, C. H. *An Economic History of South Africa: Conquest, Discrimination and Development*. Cambridge: Cambridge University Press, 2005.
- Frankel, S. H. *Capital Investment in Africa: Its Course and Effects*. London: Oxford University Press, 1938.
- Guinnane, T., R. Harris, and N. R. Lamoreaux. "Contractual Freedom and the Evolution of Corporate Governance in Britain, 1862 to 1929." *Business History Review* 91, no. 2 (2017): 227-277.

- Greyling, L. and G. Verhoef. "Savings and Economic Growth: A Historical Analysis of the Cape Colony Economy, 1850–1909." *Economic History of Developing Regions* 32, no. 2 (2017): 127-176.
- Harris, Ron, and Crystal, Michael. "Some Reflections on the Transplantation of British Company Law in Post-Ottoman Palestine." *Theoretical Inquiries in Law* 10, no.2 (2009): 561-588.
- Henning, J. J. "The Cape and Natal Special Partnerships Limited Liability Acts. A Statutory History." *Fundamina* 21, no. 2 (2015): 251–275.
- La Porta, R., Lopez-de-Silanes, F., Shleifer, A. and Vishny, R. W. "Legal Determinants of External Finance." *The Journal of Finance* 52, no. 3 (1997): 923-1308.
- La Porta, R., Lopez-de-Silanes, F., Shleifer, A. and Vishny, R. W. "Law and Finance." *Journal of Political Economy* 106, no. 6 (1998): 1113-1155.
- La Porta, R., F. Lopez-De-Silanes, and A. Shleifer. "Corporate Ownership around the World." *Journal of Finance* 54, no. 2, (1999):471-517.
- La Porta, R., Lopez-de-Silanes, F., Shleifer, A. and Vishny, R. W. "Investor Protection and Corporate Governance." *Journal of Financial Economics* 58, no. 1 (2000): 3-27.
- La Porta, R., Lopez-de-Silanes, F. and Shleifer, A. "The Economic Consequences of Legal Origins." *Journal of Economic Literature* 46, no. 2 (2008): 285-332.
- Mahy, P. and Ramsay, I. "Legal Transplants and Adaptation in a Colonial Setting: Company Law in British Malaya." *Singapore Journal of Legal Studies* (2014): 123-150.
- Maphosa, L. M., Ehlers, A., Fourie, J. and Kerby, E. "The Growth and Diversity of the Cape Private Capital Market, 1892-1902." *Economic History of Developing Regions* 36, no. 2 (2021), 149-174.
- Marks, S. and Trapido, S. "Lord Milner and the South African State." *History Workshop Journal* 8, no. 1 (1979): 50-81.
- McQueen, Rob. *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*. London: Routledge, 2016.
- Meltzer, J. L. "The Growth of Cape Town Commerce and the Role of John Fairbairn's Advertiser (1835-1859)." MA diss., University of Cape Town, 1989.
- Merry, S. E. "Law and Colonialism." *Law & Society Review* 25, no. 4 (1991): 889-922
- Musacchio, A. and Turner, J. D. "Does the Law and Finance Hypothesis Pass the Test of History?" *Business History* 55, no. 4 (2013): 524-542.
- Pargendler, M. "Politics in the Origins: The Making of Corporate Law in Nineteenth-Century Brazil." *The American Journal of Comparative Law*, 60, no. 3 (2012): 805-850.
- Parliament of the Cape. *Debates in the Legislative Council, Fifth Session of the Third Parliament of the Cape*, 20 May 1868.
- Parliament of the Cape. *Debates in the Legislative Council, Fifth Session of the Third Parliament of the Cape*, 6 June 1868.
- Rogers, M., Campbell, G. and Turner, J. "From Complementary to Competitive: The London and UK Provincial Stock Markets." *The Journal of Economic History*, 80, no. 2 (2020): 501-530.
- Rosenthal, E. *On Change Through the Years: A History of Share Dealings in South Africa*. Cape Town: Flesch Financial Publications, 1968.
- Rowson, S. H. *Cape Times Law Reports of All Cases Decided in the Supreme Court of the Cape of Good Hope, during the Year 1905 (With Index of Cases and Digest)*. Vol. 15. Cape Town: Cape Times Ltd, 1906.
- Spamann, Holger. "Contemporary Legal Transplants: Legal Families and the Diffusion of (Corporate) Law." *Brigham Young University Law Review*, 2009, no. 6 (2009):1813-1878
- Southern African Commercial Advertiser*, 4 May 1858.

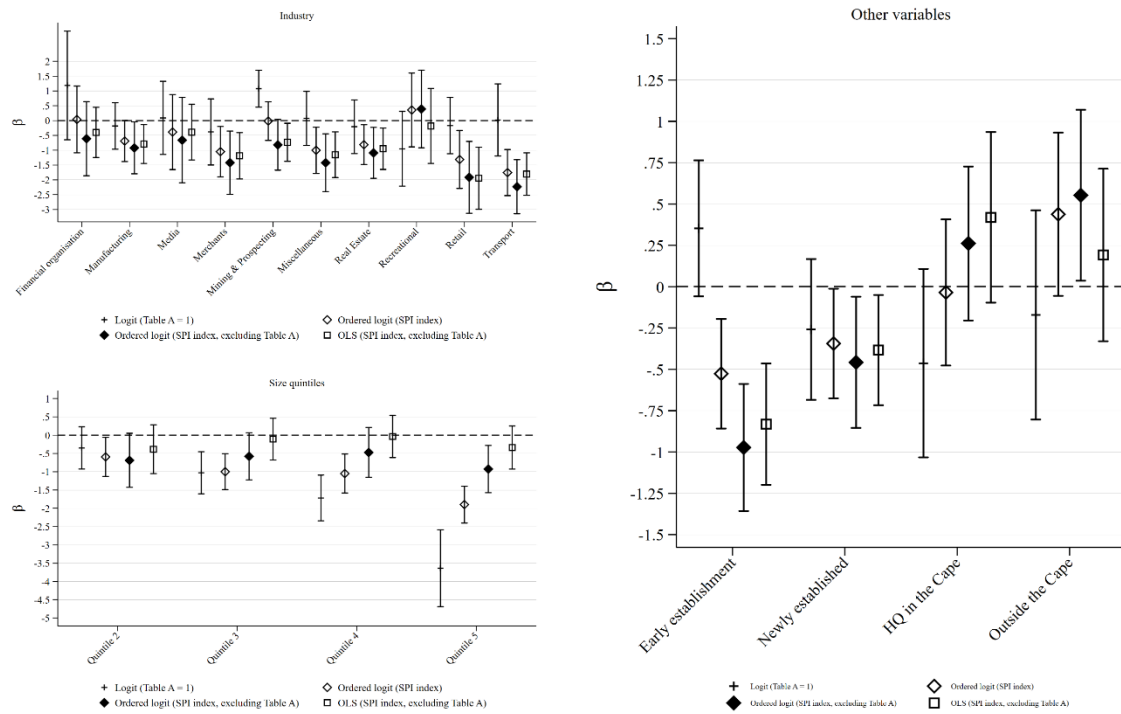
- South Africa. Western Cape Archives and Records Service (WCARS) Limited Companies (LC) Archive LC 1 – LC 467, 1892-1902.
- Tennant, H. *The Companies Act, 1892, with Marginal Reference to the English Statutes*. Cape Town: Juta Press, 1894.
- Turner, J.D. “Three Centuries of Corporate Governance in the United Kingdom.” *The Economic History Review*, 78, no. 1 (2025): 3-29.
- Van Niekerk, J. P. “An Introduction to South African Law Reports and Reporters, 1828 to 1910.” *Fundamina* 19, no.1 (2013): 106-145.
- Van Zyl, C. H. “Joint Stock Company Act.” *The Cape Law Journal* 5, no.13 (1880): 231-239.
- Oosthuizen, S. “The Normative Value System Underpinning the Companies Act 71 of 2008 with Specific Reference to the Protection of Creditors and Employees.” Ph.D. diss., University of Pretoria, 2017.
- Varotti, U. “The Evolution of Corporate Law in Post-Colonial India: From Transplant to Autochthony.” *American University International Law Review* 31, no. 2 (2016): 253-325.
- Worger, W. H. *South Africa’s City of Diamonds: Mine Workers and Monopoly Capitalism in Kimberley 1867-1895*. New Haven: Yale University Press, 1987.

Figure 1. Kernel density of shareholder protection index



Notes: We report kernel density distributions of the shareholder protection index for three groups. The solid line shows the full sample, the dashed line excludes Table A firms, and the dotted line represents newly established firms. The vertical red line marks the SPI of Table A.

Figure 2. Covariates of shareholder protection index



Notes: We report estimated regression coefficients for shareholder protection outcomes across firm characteristics. The lefthand panels report coefficients by industry and firm size quintile, while the righthand panel shows other firm characteristics. Points denote coefficient estimates from logit (Table A = 1, 0 otherwise), ordered logit (SPI index), ordered logit (SPI index, excluding Table A), and OLS (SPI index, excluding Table A) models, in that order; vertical bars indicate 95% confidence intervals. The dashed horizontal line marks zero. All variables are defined in Appendix Table 1.

Table 1. Definition of constituents of shareholder protection index

1. <i>Information rights</i> - <i>Accounts audited</i>: At least once in every year the accounts of the company shall be examined, and the correctness of the balance sheet ascertained, by one or more auditor or auditors. 1 if yes, 0 if no - <i>Accounts mailed before AGM</i>: A printed copy of such balance sheet shall, seven days previously to such meeting, be served on every member. 1 if yes, 0 if no - <i>Access to company books</i>: The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business. 1 if yes, 0 if no - <i>Auditor is a shareholder</i>: An auditor must own shares in the company. 1 if yes, 0 if no
2. <i>Voice rights</i> - <i>10%, or less, of capital needed for EGM</i>: The directors shall upon a requisition made in writing by 20% in number of the members of the company, or by shareholders holding 10% of capital, convene an extraordinary general meeting. 1 if either of these limits or less, 0 otherwise - <i>Proxy voting</i>: Votes may be given either personally or by proxy. 1 if yes, 0 if no - <i>5, or less, shareholders to force poll</i>: The number of shareholders required to force a poll or ballot at general meeting is 5, and there is no requirement in terms of how much capital those shareholders own. 1 if limit is 5 or less, 0 if no. - <i>Graduated voting</i>: Non-linear voting scale which weights voting in favour of minority shareholders, e.g., every member shall have one vote for every share up to ten: he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares. 1 if exists, 0 otherwise - <i>Upper limit on votes</i>: An upper limit on the number of votes for any one shareholder. 1 if exists, 0 otherwise - <i>More than one AGM</i>: If there is a requirement to hold for more than one general meeting each year. 1 if >1, 0 if =1
3. <i>Dilution protection rights</i> - <i>Shareholders have pre-emptive rights on new share issues</i>: all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled. 1 if yes, 0 if no. - <i>Limits on directors' borrowing powers</i>: The amount remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed a certain limit without the sanction of the company in general meeting. 1 if yes, 0 if no
4. <i>Self-dealing prevention rights</i> - <i>Director cannot vote if any conflict</i>: If a directors' meeting, or part of a directors' meeting, is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in that meeting, or part of a meeting, for quorum or voting purposes. 1 if exists, 0 otherwise - <i>Director cannot profit directly from contracts</i>: The office of director shall be vacated if he is concerned in or participates in the profits of any contract with the company. 1 if exists, 0 otherwise - <i>Ban on repurchases</i>: No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares. 1 if it exists, 0 otherwise (after 1887 this was illegal so every company is scored as a 1 after that date)
5. <i>Liquidity rights</i> - <i>No approval of transfer</i>: The directors may not decline transfers of fully paid shares, but may decline to register any transfer of shares not being fully-paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. 1 if yes, 0 if no - <i>Transfer books not closed</i>: The transfer books shall not be closed during the days immediately preceding the ordinary general meeting in each year. 1 if yes, 0 if no - <i>Capital loss triggers AGM to liquidate</i>: If the losses of the firm have exhausted the reserve fund and a specified amount of paid up capital, there shall be an Extraordinary General Meeting to decide whether to liquidate firm. 1 if exists, 0 if not

Source: Acheson et al. (2019, p.4169).

Table 2. Shareholder protection index under the UK and the Cape Companies Acts

	UK Companies Act, 1862		Cape Companies Act, 1892	
	Mandatory	Table A	Mandatory	Table A
Information rights				
Accounts audited	0	1	0	1
Accounts mailed before AGM	0	1	0	1
Access to company books	0	1	0	1
Auditor is shareholder	0	0	0	0
Voice rights				
10%, or less, capital needed for EGM	0	1	0	1
Proxy voting	0	1	0	1
5, or less, shareholders to force poll	0	1	0	1
Graduated voting	0	1	0	1
An upper limit on votes	0	0	0	0
More than one AGM	0	0	0	0
Dilution rights				
Pre-emptive rights on a new share issue	0	1	0	0
Limits on directors' borrowing powers	0	0	0	0
Self-dealing rights				
A director cannot vote if any conflict	0	1	0	1
A director cannot profit directly from contracts	0	1	0	1
Ban on repurchases	0	0	1	1
Liquidity rights				
No approval of transfer	0	1	0	1
Transfer books not closed	0	0	0	0
Capital loss triggers AGM to liquidate	0	0	0	0
Overall	0	11	1	11

Source: Companies Act, 1862 and Cape Companies Act, 1892. See Table 1 for definitions of the shareholder protection index.

Note: see Table 1 for definitions of SPI constituents.

Table 3. Summary statistics of covariates and outcome variables

	Full sample			Table A		
	Mean	Standard deviation	N	Mean	Standard deviation	N
Covariates						
Firm size (£'000)	38.317	73.247	449	11.367	28.025	125
Year of establishment	1898	3.016	452	1897	3.000	126
Established before 1897 [1,0]	0.352	0.478	452	0.492	0.502	126
Newly established [1,0]	0.673	0.470	452	0.667	0.473	126
Operations outside Cape Town [1,0]	0.560	0.497	450	0.437	0.498	126
HQ in Cape Town [1,0]	0.491	0.500	452	0.333	0.473	126
Outcome variables						
Strict survival probability	0.455	0.259	270	0.400	0.199	60
Broad survival probability	0.427	0.243	452	0.320	0.131	126
Number of shareholders	61.420	102.727	174	40.952	52.373	42
Shareholder dispersion	0.827	0.189	174	0.876	0.099	42
Capital of largest owner	0.398	0.293	174	0.428	0.332	42
Capital of three largest owners	0.611	0.285	174	0.639	0.287	42
Director ownership	0.392	0.298	116	0.133	0.059	6
Foreign capital raised	0.023	0.102	174	0.010	0.047	42
Industrial composition						
Agriculture	3%			2%		
Financial	3%			2%		
Manufacturing	15%			10%		
Media	4%			4%		
Merchants	7%			2%		
Mining & Prospecting	37%			60%		
Miscellaneous	7%			5%		
Real estate	10%			6%		
Recreational	3%			2%		
Retail	7%			5%		
Transport	5%			3%		

Notes: based on records of 452 companies in the Western Cape Archives and Records Service.

Table 4. Shareholder protection index in Cape Colony and UK

	Average for Cape Colony 1892-1902	Average for the UK 1862-1899	Average for the UK 1890-1899
Shareholder Protection Index	9.83	8.17	8.40
Information rights			
Accounts audited	0.98	0.97	1.00
Accounts mailed before AGM	0.67	0.54	0.74
Access to company books	0.69	0.25	0.03
Auditor is a shareholder	0.01	0.07	0.01
Voice rights			
10%, or less, of capital needed for EGM	0.82	0.60	0.77
Proxy voting	0.99	0.97	1.00
5, or less, shareholders to force poll	0.94	0.54	0.26
Graduated voting	0.53	0.35	0.14
Upper limit on votes	0.08	0.17	0.03
More than one AGM	0.02	0.10	0.03
Dilution rights			
Pre-emptive rights on new share issues	0.18	0.63	0.61
Limits on directors' borrowing powers	0.13	0.65	0.82
Self dealing rights			
Director cannot vote if any conflict	0.88	0.71	0.90
Director cannot profit directly from contracts	0.92	0.27	0.03
Ban on repurchases	1.00	0.49	1.00
Liquidity rights			
No approval of transfer	0.96	0.53	0.77
Transfer books not closed	0.05	0.19	0.24
Capital loss triggers AGM to liquidate	0.00	0.14	0.00
Number of Companies	452	483	88

Notes: see Table 1 for definitions of SPI constituents.

Sources: based on articles of association of Cape companies. The UK scores are from Acheson et al. (2019).

Table 5. Covariates of shareholder protection index

	SPI	SPI (excluding those that adopt Table A)	% Table A components adopted by non-Table A companies
	<i>Ordered logit</i>	<i>Ordered logit</i>	<i>OLS</i>
Firm size (ln)	-0.308*** (-5.311)	-0.102 (-1.479)	-0.016*** (-2.763)
Year of establishment	-0.125** (-2.170)	-0.094 (-1.339)	-0.004 (-0.679)
Established before 1897	-1.182*** (-3.375)	-1.477*** (-3.332)	-0.098*** (-2.731)
Newly established	-0.293 (-1.524)	-0.442* (-1.901)	-0.030 (-1.564)
Operations outside Cape Town	0.420 (1.418)	0.516* (1.671)	0.022 (0.778)
HQ in Cape Town	-0.011 (-0.039)	0.270 (0.976)	0.064** (2.252)
Observations	447	322	322
Industry FE	YES	YES	YES
Pseudo R-squared / R-squared	5%	5%	20%

Notes: The dependent variable in columns (1) and (2) is the Shareholder Protection Index (SPI), estimated using ordered logit models. Column (1) includes all firms, while column (2) excludes firms that adopt Table A. Column (3) reports OLS estimates where the dependent variable is the percentage of Table A components adopted by non-Table A companies. All specifications include industry fixed effects. *t*-statistics (for OLS) and *z*-statistics (for ordered logit) are reported in parentheses. Pseudo R-squared is reported for ordered logit models and R-squared for OLS. Standard errors are clustered at the firm level. ***, **, and * denote statistical significance at the 1%, 5%, and 10% levels, respectively. All variables are defined in Appendix Table 1.

Table 6. Shareholder protection, survival, ownership and capital

	Survival probability (strict)	Survival probability (broad)	Number of shareholders	Shareholder dispersion	Capital of largest owner	Capital of three largest owners	Director ownership	Foreign capital raised
<u>Panel A: SPI (all firms)</u>								
SPI	-0.061 (-0.635)	-0.149** (-2.151)	0.366 (0.724)	-0.008 (-0.196)	0.043 (0.296)	-0.012 (-0.088)	-0.170 (-0.894)	-0.023 (-0.356)
Observations	265	447	172	172	172	172	114	172
Estimator	OLS	OLS	OLS	OLS	OLS	OLS	OLS	OLS
Size quintile FE	YES	YES	YES	YES	YES	YES	YES	YES
Year of establishment & newly established FE	YES	YES	YES	YES	YES	YES	YES	YES
Location & operation FE	YES	YES	YES	YES	YES	YES	YES	YES
Industry FE	YES	YES	YES	YES	YES	YES	YES	YES
R-squared / Pseudo R-squared	22%	19%	35%	20%	22%	26%	27%	8%
<u>Panel B: Table A adoption</u>								
Table A	-0.143*** (-3.906)	-0.261*** (-11.920)	0.328* (1.677)	0.045** (2.021)	-0.034 (-0.524)	-0.048 (-0.841)	-0.361*** (-3.696)	-0.013 (-0.536)
Observations	265	447	172	172	172	172	114	172
Estimator	OLS	OLS	OLS	OLS	OLS	OLS	OLS	OLS
Size quintile FE	YES	YES	YES	YES	YES	YES	YES	YES
Year of establishment & newly established FE	YES	YES	YES	YES	YES	YES	YES	YES
Location & operation FE	YES	YES	YES	YES	YES	YES	YES	YES
Industry FE	YES	YES	YES	YES	YES	YES	YES	YES
R-squared / Pseudo R-squared	26%	35%	36%	22%	22%	26%	32%	8%

Notes: We report OLS estimates for different firm-level outcome variables. All specifications include size quintile, industry fixed effects, location and operation fixed effects. All estimates are controlled for the year of establishment and an indicator if the firm was newly established. In parentheses we report *t*-statistics. Pseudo R-squared is reported for ordered logit models and R-squared for OLS. Standard errors are clustered at the firm level. ***, **, and * denote statistical significance at the 1%, 5%, and 10% levels, respectively. All variables are defined in Appendix Table 1. The results in Panel B column 7 (director ownership) need to be interpreted with caution because of the small number of observations.

Appendix Table 1. Definitions and data sources for covariate and outcome variables

Variable	Data source	Definition
Strict survival probability	LR	Kaplan–Meier estimate of the unconditional survival probability since registration, stratified by Table A status, where failure is dated using official liquidation records.
Broad survival probability	LR	Kaplan–Meier estimate of the unconditional survival probability since registration, stratified by Table A status, where failure is proxied by the firm’s last observed archival report when official liquidation is not recorded.
Number of shareholders	SL	Number of identified shareholders
Shareholder dispersion	SL	One minus the sum of squared ownership shares of all shareholders, where each ownership share is defined as the number of shares held by a shareholder divided by the total number of shares.
Capital of largest owner	SL	% of ownership held by all shareholders tied for first place. If multiple shareholders are tied for the largest stake, all are included.
Capital of three largest owners	SL	% of ownership of all shareholders ranked first, second, or third, including all tied holders within each rank
Director ownership	SL and AOA	% of share capital owned by all directors
Foreign capital raised	SL	% of subscribed capital contributed by foreign investors
Firm size	MOA	Natural logarithm of nominal capital
Year of establishment	MOA	Year of establishment (AoA)
Established before 1897	MOA	Binary indicator if firm was established before 1897
Newly established	MOA	Binary indicator if company had not pre-existed
HQ in Cape Town	MOA	Binary indicator if a firm has its headquarters in Cape Town
Operations outside Cape Town	MOA	Binary indicator if a firm has operations outside Cape Town

Source: Western Cape Archives and Records Service, LC 1 – LC 467, 1892-1902.

Notes: AOA = articles of association; MOA = memorandum of association, LR = liquidation records, SL = shareholders lists.