



SHAREHOLDER PROTECTION RECONSIDERED

DERIVATIVE ACTION IN THE UK, GERMANY AND GREECE

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the causality issue





• Our framework must reflect the challenges of modern capital markets in which business and investment decisions are increasingly determined by global conditions ... investors can choose where to put their money



• Many countries nowadays, European or not, realizing the importance of the global competition of laws, care to modernize their laws on public limited companies, so that they advertise their national market and render it more welcoming for foreign investment

The 'law matters' position

- *LLSV: 'legal protection of outside investors limits the extent of expropriation of such investors by corporate insiders, and thereby promotes financial development'. Endorsed by World Bank in 'Doing Business'
- the better the protection afforded to investors, the more developed the respective debt and equity market
- ➤ low shareholder protection comes concentrated ownership
- countries showcasing diffuse ownership structures, also exhibit thriving financial markets

Critics: variables used by LLSV did not address all aspects of shareholder protection variables were not weighed correlation might not mean causal relationship

Proposed alternatives (?)

- 'law follows' thesis by Professor John Coffee Jr: 'private institutions most notably, stock exchange rules and bonding mechanisms by which investment bankers pledged their reputational capital probably played a greater role than mandatory legal rules in the early rise of dispersed ownership'
- 'path dependencies' by Lucian Bebchuk and Mark Roe: As long as corporate rules and practices arise, whether efficient or not, they stand a chance of becoming persistent

Law as the coordinator

law expresses political will, being its main 'tool'

policy may be influenced by the pressure enacted by shareholder groups

mandatory rights are important for investment decisions

Fluctuations in share value following legislation on derivative actions

Year	Fluctuation in stock market turnover ratio compared to previous year * where statutory derivative actions came into force	Mean fluctuation of stock market turnover ratio in 18 richest economies **	Median fluctuation in stock market turnover ratio in 18 richest economies
2005	0.235783 Germany***	0.034078	0.062213
1998	0.534044 Italy	0.003046	0.028888
2007****	1.094210 United Kingdom	0.207825	0.131012



Derivative actions

- * 'in cases where a wrong is suffered by the company, a (group of minority) shareholder(s) may be allowed to seek remedy on behalf of the company '
- >The management-shareholders agency problem
- The minority shareholders—majority shareholders agency problem
- Compensation and deterrence
- monitoring costs, bonding costs, residual loss

Thank you for your attention

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