Shareholder protection at the dawn of modern capitalism in the Cape Colony

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Introduction

Institutional economics suggests that economic growth depends on strong institutions, such as property rights, legal systems, and financial institutions (North, 1990). Wu et al. (2010) argue that stock market development within the EU facilitates economic growth by increasing investment opportunities. Similarly, La Porta et al. (1998, 2000) examine how legal protections influence corporate finance, finding that common-law countries provide stronger investor protections than civil-law countries. However, scholars like Cheffins (2001) and Musacchio and Turner (2013) challenge this view, arguing that strong financial markets existed before legal protections were formalised and that civil-law countries have since improved their shareholder protections.

This paper focuses on the Cape Colony, where Britain extended limited liability laws between 1861 and 1892 (Maphosa et al., 2021), spurring company formation. Did the Cape colony follow Victorian companies that voluntarily offered shareholders protection? (Acheson et al. 2019). While La Porta et al. (2008) include South Africa in their analysis, their focus is on twentieth-century publicly traded firms. They argue that this poses some challenges in their assessment of stock market capitalisation because listed companies in developing countries were subject to shareholder protection rules and often had their primary listings in Europe or the United States of America. This led to the overestimation of the market value of equities subject to national shareholder laws. Thus, this paper avoids this risk by examining the private limited liability companies (PLLCs). Furthermore, Guinnane et al. (2007) argue that the PLLC was a more efficient corporate form due to the advantages it afforded businesses. These combined limited liability with flexible internal organisation and fewer regulatory burdens.

Flexibility of internal organisation is key to this study. It allows for the exploration of the extent to which shareholder protection at the Cape, like in Victorian Britain, was an

outcome of private contracting between companies and investors rather than mandatory provisions legislated by the Company Act (Acheson et al., 2019).

Theoretical Framework

The development of shareholder protection in the Cape Colony must be understood in relation to the British legal framework from which it was derived. The Cape Company Act was an extension of the British Company Act of 1862, which contained minimal mandatory protections for shareholders. Acheson et al. (2019) demonstrate that in late 19th-century Britain, the absence of statutory protections did not hinder financial development because companies established shareholder safeguards through private contracting rather than formal regulation. Their analysis of company articles of association shows that firms voluntarily embedded protections, which were later codified into statutory corporate law.

This paper investigates whether companies in the Cape Colony followed a similar trajectory. Given that its corporate legislation was based on British law, the Cape provides a valuable case study of whether firms in a peripheral economy adopted the same governance mechanisms as those in the metropole. Acheson et al. (2019) further argue that companies with stronger shareholder protections tended to have more diffuse ownership structures, suggesting that voluntary governance measures could enhance investor confidence. By analyzing Cape firms' shareholder agreements and governance structures, this study examines the extent to which private contracting shaped corporate development in the colonial financial market.

Data and methodology

This study systematically examines the articles of association of 457 private limited liability companies in the Cape Colony to quantitatively assess the extent of shareholder protection during the period under review. The research employs the methodological approach outlined by Acheson et al. (2019) to measure the degree to which the Cape Colony followed its metropole, Great Britain, in corporate governance and investor protection provisions.

The introduction of the Company Act in the Cape Colony led to shareholder protection provisions emerging in two phases. The first phase comprised mandatory provisions, which all companies were legally required to adopt. The second phase included optional provisions outlined in Table A, which companies could choose to incorporate into their articles of association. This study systematically analyzes these legal provisions to assess the robustness of shareholder protection within the Cape's corporate framework.

To measure shareholder protection, this paper constructs a Shareholder Protection Index (SPI) based on the approach of Acheson et al. (2019). The SPI consists of 18 distinct protections, categorized into five broad areas of governance and investor security:

1. Information Rights – Measures shareholders' access to credible and transparent financial and operational information about the company, ensuring informed decision-making.

2. Voice Rights – Evaluates the ability of minority shareholders to participate in corporate governance, particularly through voting mechanisms and influence over board decisions.

3. Dilution Protection Rights – Assesses safeguards against dilution of shareholder interests, including pre-emption rights and restrictions on issuing additional shares without existing shareholder approval.

4. Self-Dealing Prevention Rights – Focuses on regulatory mechanisms designed to prevent directors from engaging in transactions that unduly benefit themselves at the expense of other shareholders.

5. Liquidity Rights – Examines the ability of shareholders to liquidate their holdings under normal operational circumstances and in cases of financial distress.

Table 1: Shareholder protection index, including companies under the British and the Cape Company Acts.

		Britain				Cape Colony	
		Mandatory 1862	**Table A 1862**	**Mandatory 1900**	**Table A 1906**	**Mandatory 1892**	**Table A 1892**
Information	Accounts audited	0	1	1	1	1	1
	Accounts mailed before AGM	0	1	1	1	0	1
	Access to company books	0	1	0	0	0	1
	Auditor is shareholder	0	0	0	0	0	0
Voice	10%, or less, capital needed for EGM	0	1	1	1	1	1
	Proxy voting	0	1	0	1	1	1
	5, or less, shareholders to force poll	0	0	0	1	1	1
	Graduated voting	0	0	0	0	0	1
	An upper limit on votes	0	0	0	0	0	0
	More than one AGM	0	0	0	0	0	0
Dilution	Pre-emptive rights on a new share issue	0	1	0	1	0	0
	Limits on directors' borrowing powers	0	0	0	1	0	0
Self-dealing	A director cannot vote if any conflict	0	1	0	1	0	1
	A director cannot profit directly from contracts	0	1	0	1	0	1
	Ban on repurchases	0	0	1	1	1	1
Liquidity	No approval of transfer	0	1	0	1	1	1
	Transfer books not closed	0	0	0	0	0	0
	Capital loss triggers AGM to liquidate	0	0	0	0	0	0
	Overall	**0**	**11**	**4**	**11**	**6**	**11**

Source: Cape Archive Deport (CAD) Cape Archive Department, LC 1–LC 467, 1892–1902, and Acheson et al. (2019).

Table 1 provides a comparative aspect of this study, highlighting differences between the Cape Colony and Britain. While the British Company Act contained four mandatory shareholder protections, the Cape Company Act had six. Additionally, both jurisdictions offered 11 optional provisions in Table A, allowing firms flexibility in their governance structures.

Through this structured quantitative approach, the study systematically evaluates shareholder protections at the Cape, revealing the extent to which company law in the colony mirrored or diverged from British practices. The findings contribute to broader discussions on corporate governance evolution in colonial economies and the transplantation of legal norms across imperial settings.

Key findings

The findings of this study indicate that shareholder protection in Cape private companies closely resembled the practices observed in British companies. This suggests that, despite operating in a colonial setting, firms in the Cape Colony voluntarily adhered to shareholder protection norms comparable to those in the metropole. However, this alignment did not necessarily mean that most firms adopted Table A in its entirety. Only 36 out of 457 companies fully adopted Table A, while the majority incorporated only selected provisions, tailoring their articles of association to their specific needs.

One of the most striking findings is that companies that did not adopt Table A often provided more shareholder protection provisions than those that did. This challenges the assumption that firms relying on the default provisions of Table A automatically ensure a higher level of shareholder protection.

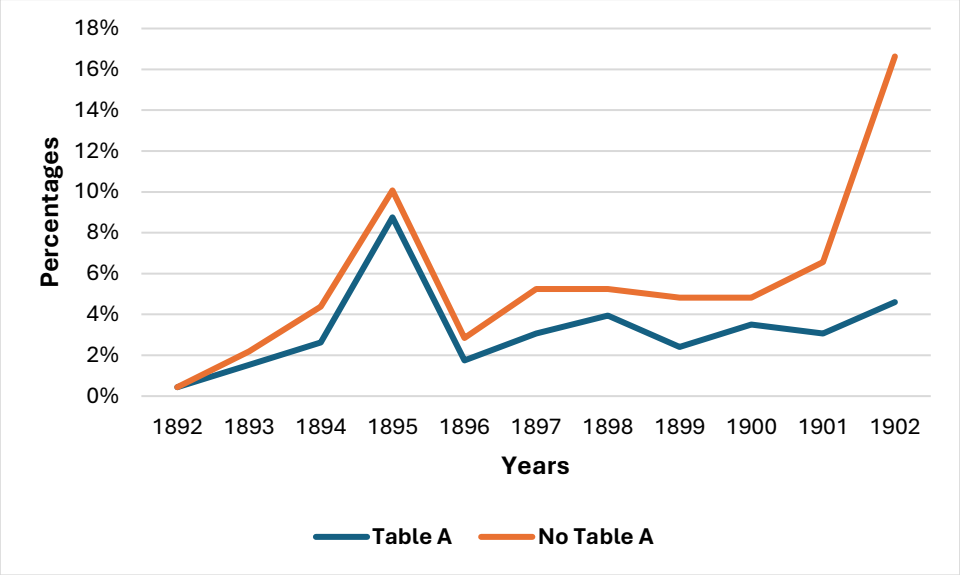

Figure 1: The adopted of Table A by Cape companies between 1892 and 1902.

Source: CAD, LC 1–LC 467, 1892-1902.

Figure 1 illustrates the adoption of Table A during the period under review, showing how, in the immediate aftermath of the promulgation of the Company Act, the gap between companies adopting and not adopting Table A was relatively small. However, this gap widened between 1896 and 1902. A potential explanation for this shift lies in the impact of the South African War, which disrupted business operations and likely influenced

companies to draft more tailored articles of association, particularly for firms operating at a distance from their corporate headquarters.

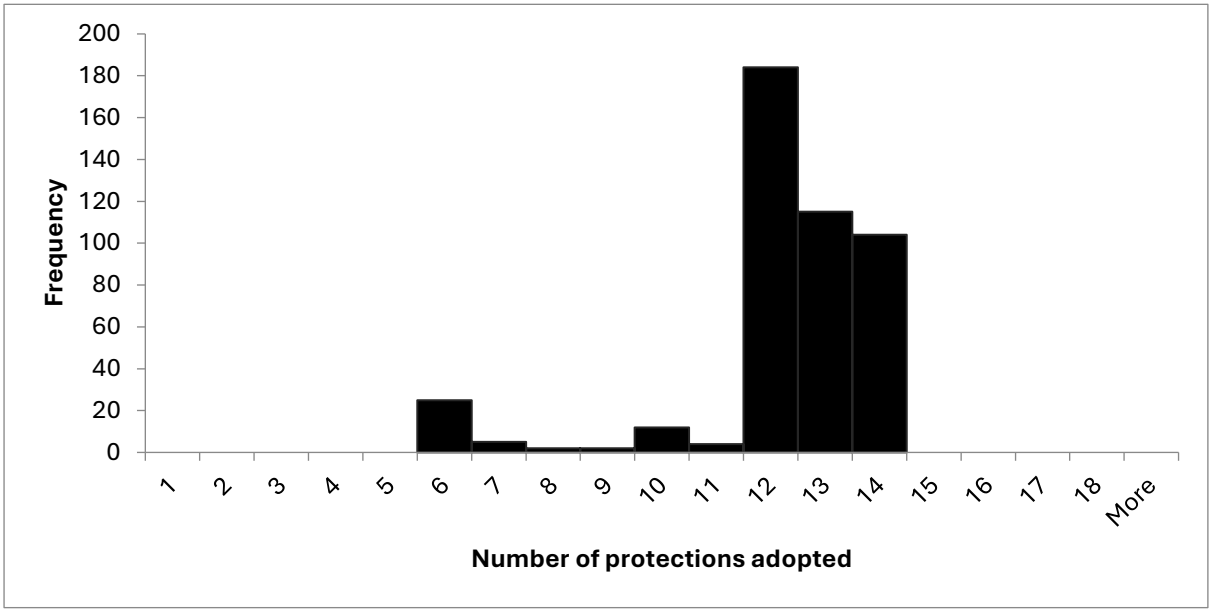

Figure 2: The distribution of the number of shareholder protections adopted by Cape companies.

Source: CAD, LC 1–LC 467, 1892-1902.

Figure 2 presents the distribution of the number of shareholder protections adopted by Cape companies. On average, firms incorporated 12 shareholder protection provisions into their articles of association. The lowest recorded number of provisions in a company's articles was six, and these firms were predominantly those that had fully adopted Table A. A plausible explanation is that businesses adopting Table A may have done so primarily due to financial constraints that prevented them from hiring solicitors to draft bespoke articles of association. Under the Company Act, companies that failed to submit articles of association to the Company Registrar automatically adopted Table A, meaning their shareholder protection provisions were limited to those outlined in the standardised regulations.

Table 2: Average scores showing the total number of protection provisions adopted by companies in Victorian Britain and the Cape Colony.

Averages		
	Britain 1862-1890s	**Cape Colony 1892-1902**
Information rights		
Accounts Audited	0.97	1
Accounts mailed before AGM	0.54	0.36
Access to company books	0.25	0.31
Auditor a shareholder	0.07	0.01
Voice		
10%, or less, capital needed for EGM	0.60	0.16
Proxy voting	0.97	1
5, or less, shareholders to force poll	0.54	1
Graduated voting	0.35	0.53
Upper limit on votes	0.17	0.06
More than one AGM	0.10	0.01
Dilution		
Pre-emptive rights on new share issues	0.63	0.23
Limits on directors' borrowing powers	0.65	0.12
Self-dealing		
Director cannot vote if any conflict	0.71	0.79
Director cannot profit directly from contracts	0.27	0.57
Ban on repurchases	0.49	1
Liquidity		
No approval of transfer	0.53	1
Transfer books not closed	0.19	0.04
Capital loss triggers	0.14	0
Total	**483**	**457**

Source: CAD, LC 1–LC 467, 1892-1902.

Table 2 presents the SPI results based on Acheson et al.'s (2019) framework. While Victorian British companies generally scored higher across the five categories of shareholder protection provisions, Cape companies were not significantly behind in information rights, voice rights, and self-dealing prevention. This finding demonstrates the robustness of Cape private companies' commitment to investor protection, despite the colony's peripheral status within the British Empire.

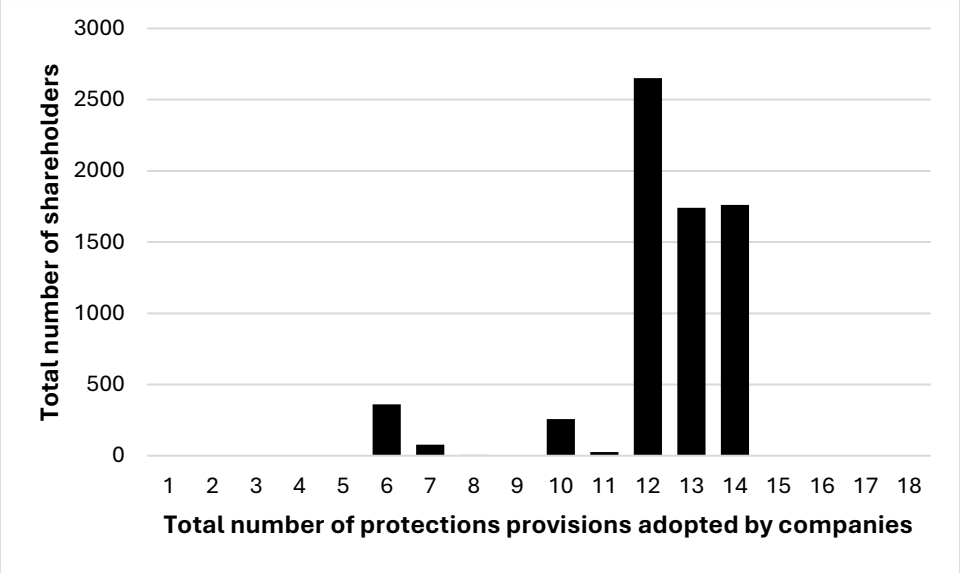

Figure 3: The relationship between the shareholder protection provisions implemented and the overall number of investors attracted to companies.

Sources: CAD, LC 1–LC 467, 1892-1902.

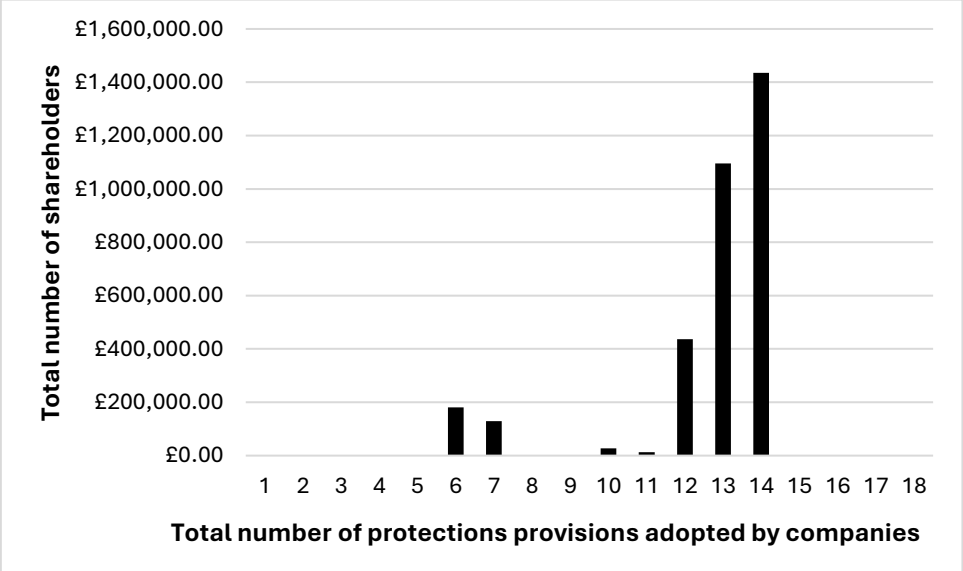

Figure 4: The connection between shareholder protection provisions implemented and the company's capital value.

Sources: CAD, LC 1–LC 467, 1892-1902.

Regarding market performance, firms that adopted between 12 and 14 shareholder protection provisions proved to be the most attractive to investors. As Figures 3 and 4 illustrate, these firms attracted 89% of all investors in the private capital market and accounted for 89% of its total value. This suggests that investors in the Cape Colony placed considerable emphasis on shareholder protection when making investment

decisions. Additionally, firms with greater shareholder protection provisions demonstrated higher survival rates over time compared to those with fewer provisions, reinforcing the argument that strong governance structures contributed to corporate longevity.

Overall, these findings highlight that while the Cape Company Act contained distinct differences from its British counterpart—particularly regarding the number of mandatory and optional provisions—the overarching structure of shareholder protection remained remarkably similar. More importantly, Cape companies exhibited agency in determining the degree of shareholder protection they offered, reflecting a sophisticated and dynamic private capital market that responded to both investor demand and broader economic conditions.

Conclusion

This study demonstrates that shareholder protection provisions in Cape Colony private companies closely resembled those in Victorian Britain, reflecting the colony's integration into broader imperial financial and legal networks. While firms did not universally adopt Table A, many voluntarily implemented strong shareholder protections, often exceeding the default statutory provisions. The selective incorporation of shareholder protections suggests a strategic approach to governance, balancing legal requirements with business needs.

A key finding is that companies that did not fully adopt Table A often provided more extensive protections than those that did, highlighting the flexibility of the legal framework. Firms with stronger shareholder protections attracted more investors and exhibited higher survival rates, demonstrating the role of governance in market performance. External factors, such as the South African War, also influenced corporate decisions, with firms adjusting their governance structures in response to economic uncertainty.

These findings contribute to debates on legal transplantation by showing that Cape firms actively adapted British legal principles to local conditions. The study suggests that

flexible governance frameworks, rather than rigid mandates, can enhance investor confidence and corporate success.

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