

The Role of Mandatory Bid Rules in the Market for Corporate Control: A Perspective of Legal Transplantation and Varieties of Capitalism

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Abstract. Mandatory Bid Rules (MBRs) constitute a pivotal legal mechanism for safeguarding shareholder rights in transactions involving shifts in corporate control. However, their institutional manifestations diverge significantly across jurisdictions. Existing scholarship often overlooks the embeddedness of these rules within distinct varieties of capitalism. This article adopts a comparative legal methodology, focusing on the United Kingdom, the United States, and Japan. By integrating the theoretical lenses of legal transplantation and the Varieties of Capitalism (VoC) framework, the study analyzes the design rationale and operational dynamics of MBRs in each jurisdiction. The findings reveal that MBR regimes reflect divergent governance preferences: liberal market economies tend to rely on market mechanisms and corporate autonomy, whereas coordinated market economies emphasize institutional protection and stakeholder balancing. The efficacy of MBRs is closely tied to their alignment with domestic financial structures and governance cultures. The article contends that MBRs are not universally applicable instruments; rather, their success hinges on institutional compatibility and systemic coherence. For emerging economies, the focus should shift from formal legal transplants to context-sensitive institutional evolution, fostering gradual improvements in governance frameworks.

Keywords: Mandatory Bid Rule, Legal Transplantation, Varieties of Capitalism, Takeover Regulation.

1. Introduction

As global capital markets become increasingly integrated, the frequency of corporate control transactions has made them a crucial variable in shaping governance structures and market order. Such transactions influence not only corporate strategic direction and resource allocation but also the protection of minority shareholder rights [1]. Against this backdrop, institutional mechanisms that regulate control transfers—mitigating information asymmetries and abuse of control—have emerged as focal concerns in corporate law and governance discourse [2].

This study seeks to uncover the structural causes behind the pronounced heterogeneity of MBR regimes. By comparatively examining the UK, US, and Japan, and employing the dual frameworks of legal transplantation and the Varieties of Capitalism (VoC), it systematically explores the rationale and performance of MBRs [3-5]. Legal transplantation theory emphasizes that institutional effectiveness depends on the degree of congruence between transplanted legal norms and domestic institutional environments. Meanwhile, VoC theory asserts that capitalist systems differ structurally in their financial systems, corporate governance models, and stakeholder coordination mechanisms—factors that, in turn, shape legal development. The combined application of these theories offers a robust explanatory framework for analyzing the institutional divergence of MBRs across capitalist economies.

2. Theoretical Framework

2.1. Legal and Economic Foundations of the Mandatory Bid Rule

The Mandatory Bid Rule (MBR) serves as a fundamental normative mechanism in corporate control transactions. Its core rationale lies in requiring an acquirer, upon surpassing a legally defined

threshold of control, to extend an unconditional offer to all remaining shareholders on equivalent terms. This ensures equitable exit opportunities and a fair distribution of control premiums, particularly for minority shareholders [6]. As a procedural obligation, the MBR is designed to mitigate structurally asymmetric power dynamics through rule-based governance.

In governance terms, MBR mitigates typical moral hazards associated with control shifts, such as asset stripping or self-dealing. The mandatory exit mechanism not only secures minority shareholders' rights but also disciplines acquirers by constraining opportunistic behavior and reinforcing the credibility of their post-acquisition governance intentions. Nonetheless, the MBR remains contentious. Critics argue that it may raise barriers to efficient takeovers, deter beneficial transactions, and reduce the disciplining function of the market. Moreover, rigid full-bid obligations may trigger excessive premiums, fuelling price inflation and volatility. Given the variance in how jurisdictions define "control thresholds," significant flexibility exists in applying MBRs, creating potential for strategic circumvention [7].

Ultimately, the MBR represents a governance instrument that integrates legal formalism with economic rationality. Its theoretical and functional understanding is vital for exploring institutional heterogeneity across control markets and assessing the feasibility of legal transplantation in diverse regulatory contexts.

2.2. Legal Transplantation and Institutional Adaptation

Legal transplantation—the process by which legal norms or institutional designs are imported from one jurisdiction and adapted within another—has long been a focal point of comparative legal scholarship [8-11]. Pioneered by Alan Watson, early theories contended that legal rules possess high transferability and internal coherence, enabling their effective integration across distinct legal systems. Under this technocratic view, law is treated as a neutral tool, capable of functioning independently from its sociocultural context.

This instrumentalist paradigm has been extensively challenged. Pierre Legrand posits that legal systems are embedded within culturally specific epistemologies, rendering legal norms effectively "untranslatable" across jurisdictions. Even identical textual provisions may operate differently under divergent institutional logics. Building on this, Gunther Teubner's theory of "institutional embeddedness" argues that transplanted legal norms must achieve structural coupling with the recipient's economic, judicial, and social systems to become functionally viable. This conceptual framework is illustrated in Figure 1.

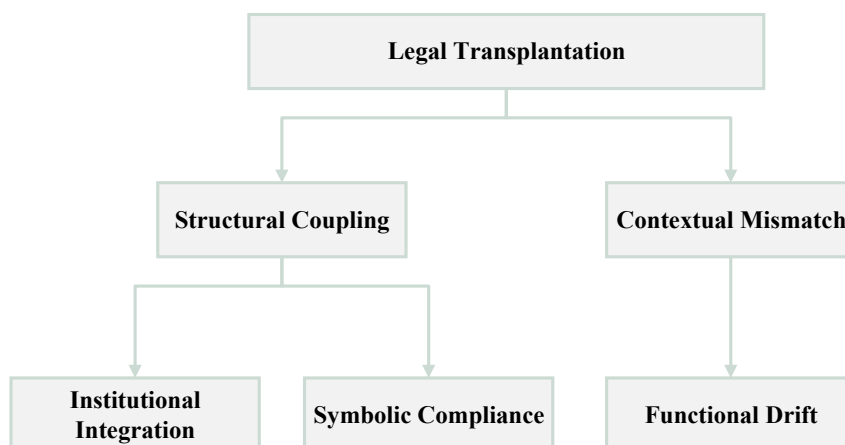


Figure 1. Outcomes of Legal Transplantation: From Structural Coupling to Functional Drift

Transplanted rules may also suffer from "contextual drift," wherein their functions are reinterpreted in ways that deviate from original intentions. For instance, MBRs designed to protect minority shareholders in their country of origin may be repurposed by host governments as instruments of administrative intervention, thereby undermining their market-enhancing role. Evaluating the efficacy of transplanted MBRs thus requires more than textual comparison; it

necessitates an in-depth assessment of institutional compatibility and operational coherence. Without genuine institutional embeddedness, legal transplantation risks degenerating into formalistic mimicry, devoid of substantive reform impact.

2.3. Varieties of Capitalism and the Divergence of Institutional Forms

Understanding the divergence of MBR regimes across jurisdictions cannot rest solely on textual analysis or technical legal distinctions. Institutional design and functional outcomes are deeply contingent upon each country's political economy and historical path dependencies. The Varieties of Capitalism (VoC) framework offers a powerful analytical lens to examine such embedded institutional variation.

Formulated by Hall and Soskice, the VoC typology distinguishes between two predominant capitalist models: Liberal Market Economies (LMEs) and Coordinated Market Economies (CMEs). In LMEs, typified by the United States and the United Kingdom, market-based coordination prevails. Corporate governance emphasizes shareholder primacy, capital mobility, and transparency, rendering MBRs either absent (as in the US) or structured with procedural flexibility (as in the UK). In contrast, CMEs such as Germany and Japan rely on non-market coordination through mechanisms like inter-firm networks, bank-led finance, and long-term employment relations. Here, MBRs tend to be more rigid and protective, reinforcing control stability and internal governance continuity.

The French Regulation School further complements the VoC approach by focusing on the interaction between accumulation regimes and regulatory modes. It posits that institutional coherence arises from the interplay between macroeconomic structures and normative-cultural configurations. A transplanted rule functions effectively only if it complements the host country's broader regulatory matrix. For instance, Germany's bank-centric financial model enhances the stabilizing function of MBRs, while Japan's layered bid thresholds and loyalty-share mechanisms reflect a coordinated system aimed at balancing control continuity with minority protection. These institutional configurations are mapped along two dimensions—Market Orientation and Stakeholder Coordination—in the VoC Institutional Positioning Map (Figure 2).

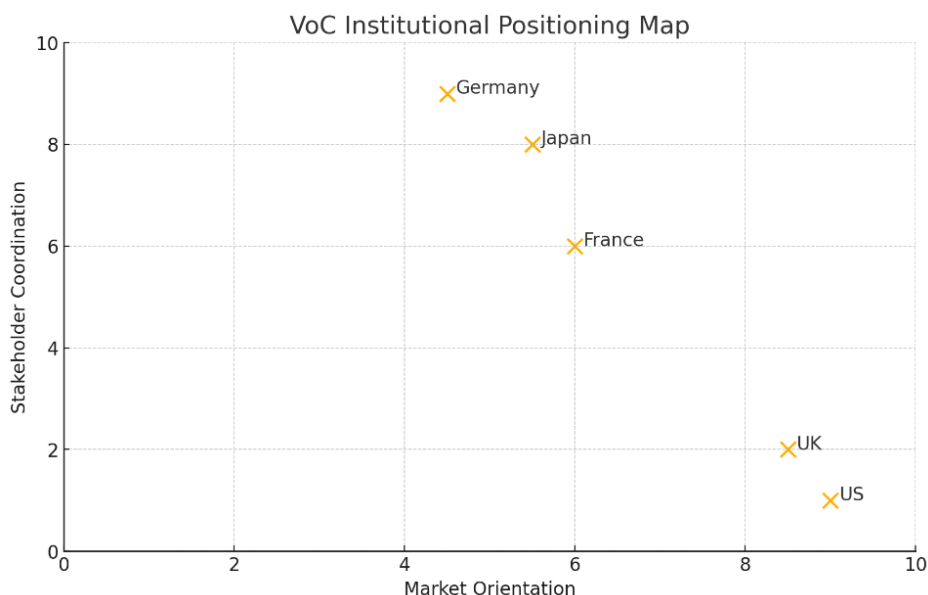


Figure 2. VoC Institutional Positioning Map

3. Comparative Analysis of MBR Regimes

3.1. United Kingdom: A Rule-Based, Shareholder-Centric Model

The United Kingdom's mandatory bid regime represents one of the most institutionalized models of MBR globally, with its core provision enshrined in the City Code on Takeovers and Mergers.

Under Rule 9, an acquirer surpassing a 30% ownership threshold is obligated to extend a mandatory offer to all remaining shareholders on equivalent terms. This mechanism seeks to ensure equitable exit opportunities for minority shareholders during changes in corporate control, embodying the principle of equal treatment.

The regime is administered by the Takeover Panel, a self-regulatory authority that provides real-time oversight and adjudication. Although the Code is not codified statute, it carries binding authority in practice, exemplifying the UK's model of "soft law with hard enforcement." Emphasizing principled flexibility over rigid formalism, the system is designed to deter opportunistic behavior and manipulation in takeover processes. The UK's MBR framework reflects the core tenets of liberal market capitalism—market transparency, investor protection, and allocative efficiency—reinforced by dispersed shareholding and a highly developed financial market. It achieves regulatory efficacy through a hybrid of rule-based governance and industry self-regulation, avoiding excessive state intervention while ensuring predictable transaction environments.

Functionally, the MBR constrains tunneling and other abusive behaviors by controlling shareholders through its price parity and compulsory offer requirements. The Takeover Panel's expedited review procedures further enhance procedural certainty and enforceability. Nonetheless, scholars have raised concerns regarding the Panel's non-judicial nature, questioning its sufficiency in safeguarding minority shareholders in complex or high-stakes disputes.

In sum, the UK's MBR regime—characterized by regulatory clarity, operational efficiency, and adaptive supervision—is widely regarded as a paradigmatic model. Its institutional configuration exemplifies the deep congruence between liberal market governance and shareholder-centric legal infrastructure.

3.2. United States: A Market-Autonomous Governance Model without MBR

The United States does not incorporate a mandatory bid rule within its corporate legal framework. Instead, control transactions are governed by a combination of market mechanisms and post hoc judicial review, reflecting a foundational commitment to corporate autonomy and minimal regulatory interference. As corporate law is state-based, Delaware—renowned for its flexible governance structures and specialized judiciary—has emerged as the de facto standard-setter for takeover regulation.

U.S. corporations typically deploy antitakeover devices, most notably the poison pill, which enables the board to issue dilutive shares to thwart hostile acquisitions. While these mechanisms grant boards significant discretionary authority, their legitimacy is subject to judicial scrutiny. The landmark *Unocal* decision established a reasonableness and proportionality test, while *Revlon* clarified that, once a company is effectively for sale, the board's fiduciary duty shifts toward maximizing shareholder value. These rulings underpin a governance architecture rooted in the balance between board discretion and judicial oversight—a hallmark of liberal market economies.

Although this framework fosters transactional flexibility and emphasizes market discipline, it has been critiqued for insufficient minority shareholder protection. Acquirers may circumvent public shareholders via private control deals, and defensive strategies risk entrenching incumbent management. Thus, while the absence of MBR is not a regulatory void, it reflects a deliberate institutional choice privileging competition and corporate self-governance.

The U.S. model, in this regard, epitomizes a distinctive liberal capitalist response to corporate control, one that prioritizes flexibility, legal decentralization, and ex post corrective mechanisms over ex ante regulatory mandates.

3.3. Japan: A Hybrid Regime of Coordinated Governance and Regulatory Flexibility

Japan's approach to MBR exemplifies a coordinated capitalist governance model, marked by proportional thresholds and procedural nuance rather than a uniform full-bid requirement. Under the Financial Instruments and Exchange Act, acquirers intending to obtain more than one-third of a company's voting rights through off-market transactions (the "one-third rule") must engage in pre-

transaction disclosure and regulatory review. Should the acquirer’s stake exceed two-thirds (the “two-thirds rule”), a mandatory tender offer and additional procedural obligations are triggered. This tiered structure maintains transparency while mitigating the disruptive effects of abrupt control shifts.

Additionally, Japan employs a loyalty share mechanism granting double voting rights to long-term shareholders, thereby incentivizing stable investment and discouraging short-term speculation. Though not formally part of the MBR regime, this measure complements proportional bid requirements, collectively fostering a more resilient and consensus-oriented control market.

Japanese corporate governance is anchored in stakeholder inclusiveness rather than pure shareholder primacy. Control transactions are often perceived as potentially destabilizing to the "corporate community," prompting regulatory emphasis on dialogue, administrative guidance, and soft law instruments. The regime's reliance on both formal legal norms and informal regulatory practices reflects a broader institutional culture of negotiated order and incremental change.

Japan’s MBR framework, characterized by adaptive thresholds and process-driven oversight, strikes a deliberate balance between transactional efficiency and governance continuity. It embodies the coordinated market logic of institutional compromise and long-termism, underscoring the embedded nature of legal design within broader economic and cultural systems.

3.4. Functional Performance and Institutional Embeddedness of MBR Regimes

From a design perspective, the United Kingdom adopts a “mandatory full bid” model, with a 30% shareholding threshold triggering the obligation to extend an offer to all shareholders, enforced through the self-regulatory Takeover Panel. This structure represents a sophisticated integration of legal formalism and market dynamics, safeguarding minority shareholder rights and ensuring procedural equity. In contrast, the United States does not implement any form of MBR, relying instead on corporate charters, anti-takeover provisions, and judicial precedents to regulate control transactions—emphasizing market autonomy and corporate self-governance. Japan employs a proportion-based threshold system, supplemented by loyalty share mechanisms, reflecting its institutional preference for coordination and governance continuity.

Functionally, the UK’s MBR framework enhances transparency and fairness in takeover markets, particularly suited to environments characterized by dispersed ownership and robust regulatory infrastructure. The U.S. model, grounded in ex post judicial review and defensive strategies, offers flexibility but incurs elevated litigation costs and depends heavily on judicial competency to ensure consistency. Japan’s hybrid regime, centered on procedural layering and disclosure obligations, demonstrates strong institutional resilience, balancing efficiency and stability. However, its highly proceduralized nature may hinder market dynamism.

These institutional divergences stem from foundational differences in capitalist regimes’ conceptions of corporate governance. The UK and U.S., as liberal market economies, prioritize transactional efficiency and regulatory minimalism, whereas Japan, representing coordinated capitalism, favors protective mechanisms and multilateral stakeholder balance. To visualize these structural contrasts, a comparative matrix is presented in Table 1.

Table 1. Comparative Matrix of MBR Regimes Across Different Capitalist Systems

Country	MBR Model	Functional Outcome	Capitalism Type	Institutional Foundation
UK	Mandatory full bid	Strong market fairness	Liberal market economy	Shareholder primacy + efficient self-regulation
US	No MBR	Flexible and efficient but litigation-intensive	Liberal market economy	Market-driven governance
Japan	Rules with proportional thresholds	Control stability and shareholder protection	Coordinated market economy	Long-termism and institutional compromise

4. Discussion and Conclusion

Comparative institutional analysis reveals substantial variation in the adoption and functionality of MBR regimes across different capitalist systems. These differences extend beyond the surface level of statutory design, reflecting deep-rooted divergences in corporate governance paradigms, financial architecture, and regulatory coordination.

In coordinated market economies such as Japan and Germany, MBR regimes prioritize stability and stakeholder negotiation, serving as defensive mechanisms against hostile takeovers and preserving long-term governance order. Their design emphasizes threshold-based obligations, disclosure requirements, and loyalty-enhancing provisions, underscoring a structural preference for governance continuity. Conversely, liberal market economies like the UK and U.S. rely more heavily on market mechanisms and corporate discretion. The UK maintains a flexible yet enforceable MBR framework, while the U.S. rejects mandatory bidding altogether, favoring post hoc judicial oversight to ensure fairness.

To further illustrate these governance dynamics, this study introduces an MBR Institutional Embeddedness Map (Figure 3), where the horizontal axis denotes market orientation and the vertical axis indicates stakeholder coordination.

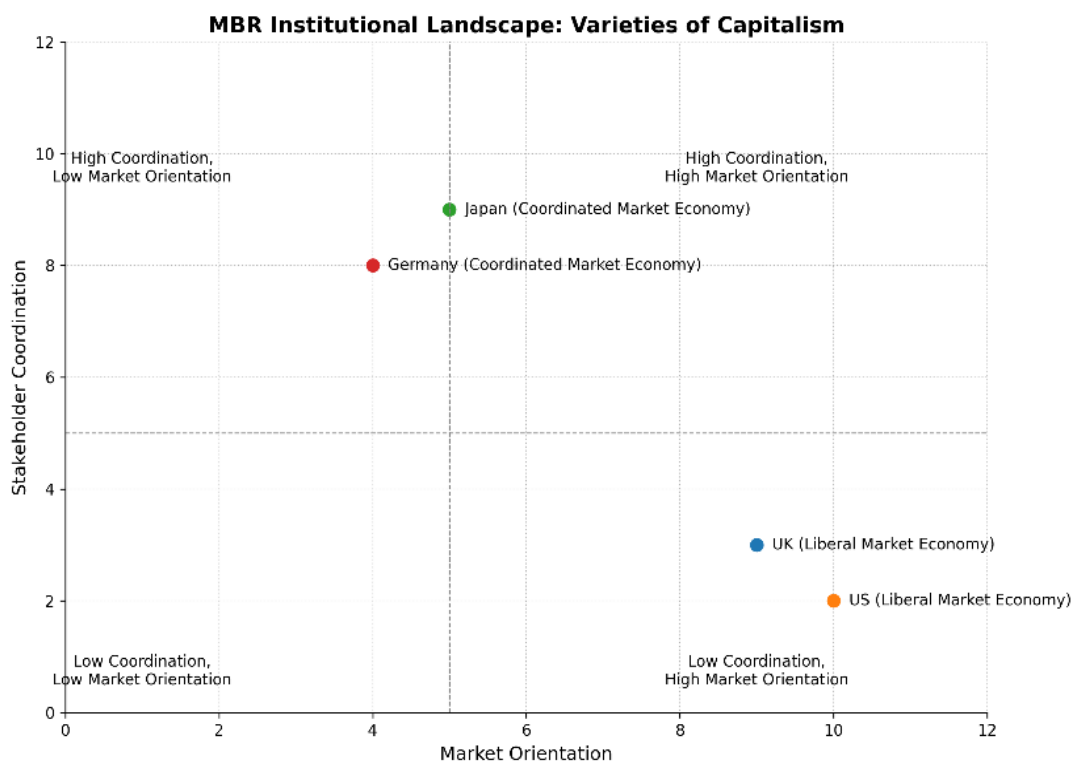


Figure 3. MBR Institutional Embeddedness Map Across Capitalist Systems

This diagram graphically represents how MBR regimes are embedded within distinct institutional logics. The UK occupies a quadrant of high market orientation and low stakeholder coordination, Japan is situated in a zone of high coordination and moderate market orientation, while the U.S. resides in a highly market-driven, low-coordination quadrant.

This distribution highlights a crucial insight: the effectiveness of legal transplants such as MBR depends fundamentally on their compatibility with the host country’s institutional architecture. In the absence of such alignment, transplanted rules risk becoming mere formalities—symbolically present but functionally inert—thereby inviting circumvention and regulatory arbitrage.

In conclusion, this study presents four key findings:

1. The design of MBR regimes must be context-sensitive, grounded in a country’s financial infrastructure and governance paradigm, rather than imitative of foreign models.

2. Legal transplantation should be guided by institutional fit; otherwise, it is prone to functional failure and regulatory disintegration.

3. VoC theory provides a robust analytical framework for interpreting the structural heterogeneity of corporate governance institutions across economies.

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