Introduction

- Importance of possibility for shareholders to remove directors
- Definition of “ad nutum revocability” (ANR)
- Claim: Part of Europe’s Ius Commune
  - Universality in European Civil Law
  - Absence in Traditional Common Law
  - Historical origins
I. Universality in European Civil Law (1)

- Strict Adherence to ANR in One-Tier Boards, e.g.:
  - Belgium
  - France
  - Netherlands
  - Italy
I. Universality in European Civil Law (2)

- Moderate Application in Two-Tier Boards
  - Especially when mandatory, e.g.:
    - Germany
    - Austria
    - The Netherlands (structure regime)
  - Less so when optional, e.g.:
    - France
    - Italy
    - The Netherlands (ordinary regime)
I. Universality in European Civil Law (3)

- European Community Law on the Sidelines
  - Non-Member State, but Civil Law: Switzerland
  - Member State, but Common Law: United Kingdom
II. Absence in Traditional Common Law

- United Kingdom
  - Does have ANR now
  - But not part of old common law

- United States
  - Delaware: ANR only in exceptional cases
III. Historical origins of ANR (1)

- Development in France
  - Stock corporations in Ancien Régime
  - Napoleon’s Codifications
    - Example of Art. 2004 Code Civil 1804
    - Art. 31 Code de Commerce 1807: the société anonyme is governed by “temporary, revocable agents”
  - Maintained until today
III. Historical origins of ANR (2)

☐ Spreading around Continental Europe
  ■ Belgium
    ☐ Directly applicable, maintained upon independence
  ■ The Netherlands
    ☐ Direct source of inspiration for *Wetboek van Koophandel* 1838
  ■ Germany
    ☐ Indirect source of inspiration for *ADHGB* 1861 and *HGB* 1897
Conclusion

- Characteristic of civil law rather than of European law
- Questions for further research
- Paper with more details will be on SSRN soon.
- Comments welcome at scools@sjd.law.harvard.edu