

What Did They Leave Behind?
Legal Systems, Colonial Legacies, and Human Rights Practices

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Abstract: Common law states may have better human rights practices on average than civil law or Islamic law states because common law states tend to have stronger, more independent judiciaries, more powerful lawyers, and more detailed constitutions, all of which create more effective checks against government repression. In this paper, we argue that the relationship between characteristics of domestic legal systems and government repression varies depending on a state's colonial legacy. Using a global cross-national analysis from 1976-2006, we find that among states with colonial legacies, the common law legal system consistently leads to better human rights practices than other legal systems, even when controlling for standard explanations for states' human rights practices. Additionally, although the civil law system can also lead to better human rights practices, its effect is strongest in the subset of states with no colonial legacy.

Human rights scholarship has made great strides in recent decades in seeking to explain variance in states' human rights practices. Political factors, such as regime type and state involvement in interstate/civil war, and economic factors, such as GDP per capita and economic inequality, have been shown to significantly influence states' willingness to employ political terror (Mitchell and McCormick 1988; Henderson 1991; Poe and Tate 1994; Davenport 1995; Poe, Tate, and Keith 1999).¹ Recent human rights research has also begun to explore domestic legal explanations of state repression, focusing on differences across types of domestic legal systems (e.g. civil law, common law, and Islamic law), the extent to which the rule of law operates domestically, and the level of judicial independence (Cross 1999; Keith & Ogundele 2007; Peerenboom 2004). This relates to a broader research agenda that links the characteristics of domestic legal systems to economic and political outcomes, such as economic growth, rule of law, institutional quality, corruption, democracy, and bureaucratic effectiveness (Chong and Zanforlin 2000; Joireman 2001; Lange 2004; La Porta et al 1997, 1998, 1999, 2004; Levine 2005).

A typical domestic legal explanation of human rights behavior posits that common law states will on average have better human rights practices than civil law or Islamic law states. Common law is often touted as a superior legal system because it creates a stronger, more independent judiciary, resulting in more effective restraints against government repression (Keith and Ogundele 2007). Common law is designed to protect individuals from the state, while civil law systems treat the state as supreme and citizens subservient to the state, an artifact of the development of civil law in the context of the Roman Empire (Joireman 2001, 573-574).

Lawyers are more powerful and proactive in common law systems relative to other legal systems

¹ We define violations of human rights more explicitly in the research design section. We focus on states' violations of personal integrity rights, including freedom from extrajudicial killing, disappearance, torture, and political imprisonment at the hands of their governments. This is why we often talk about state repression and violations of human rights interchangeably.

due to the adversarial nature of litigation; this provides an additional check on the power of the state. Many common law systems, especially former British colonies, developed lengthy and in-depth constitutions at independence, which curbed the power of the executive further (Keith and Ogundele 2007, 1071). In short, there are many features of common law that provide checks and balances in the political system and place limits on the ability of a government to repress its citizens.

Interestingly, however, initial empirical results do not strongly support the theoretical claims that common law systems experience less repression, at least in the context of Sub-Saharan Africa (Keith & Ogundele 2007). In fact, Keith and Ogundele (2007) find little difference between civil and common law states with respect to human rights practices, and when differences are found, they push in the direction of civil law states having superior records on torture and repression. These results are puzzling because they stand at odds with a variety of other empirical studies that find positive effects of common law broadly speaking. La Porta and his colleagues (1997, 1998, 1999, 2004) demonstrate that common law countries have better economic freedoms, stronger investor protections, and more developed capital markets than countries with French legal origins. Chong and Zanforlin (2000) find states with French civil law traditions to have less bureaucratic development, more corruption, and weaker contractual enforcement. Levine (2005) shows that states with French legal origins have fewer property rights protections than states with British legal origins. Scully (1987) finds that common law states have significantly better political and civil liberties than civil law, Marxist-Leninist law, and Muslim law states. Even when focusing explicitly on Africa, Joireman (2001) finds that common law countries have superior records in maintaining the rule of law and protecting civil liberties, especially in the post-Cold War era.

In this paper, we seek to explain these puzzling results by replicating the findings of Keith and Ogundele (2007) in all regions of the world and by exploring more carefully how colonial legacies intervene in the relationship between legal systems and human rights. We argue that legal systems imposed via colonial rule are in general weaker than non-colonial legal systems, which leads to an expectation that countries with colonial legacies will have worse records of repression than states without them. Thus by focusing on a region with extensive colonization, Keith and Ogundele (2007) inadvertently selected a set of cases in which legal systems might have weak influences on leaders' decisions to repress. Our empirical analyses of state-year data from 1976-2006 show that common law states have superior repression records to civil law states, even in the subset of states with colonial legacies. However, the data also suggest that civil law countries have better human rights records than Islamic law or mixed law countries in the non-colonial context. We conclude that the legal framework of a state is an important indicator of human rights practices, especially in states in which legal systems did not develop organically, but were imposed by a colonial power. Our analyses also show that in some circumstances, civil legal traditions can be equally effective as common legal traditions in the realm of human rights.

Why do States Respect Human Rights?

The very fact that human rights are an issue in contemporary international relations is a puzzle: why do states respect human rights when the norm of sovereignty, a foundation of the Westphalian state system, clearly specifies the ability for states to handle their domestic affairs as they see fit? A state's opportunity and willingness to repress its citizens is contingent on various political, economic, and cultural factors (Poe 2002; Schmitz and Sikkink 2002; Davenport and Armstrong 2004). With respect to political factors, extant research has shown

that non-democratic countries are more repressive than democratic countries. State involvement in interstate wars increases the likelihood that personal integrity rights will be violated (Poe and Tate 1994; Poe, Tate, and Keith 1999). Civil wars have also been shown to significantly increase repression (Poe and Tate 1994). Economic factors also have significant effects on states' human rights practices. Empirical analyses suggest that repression is more likely to occur in poor countries with high degrees of economic inequality (Mitchell and McCormick 1988; Henderson 1991; Poe and Tate 1994; Poe, Tate, and Keith 1999).

Recent research on human rights has focused more explicitly on ways in which the international community can help to improve human rights, including through international treaties, international courts, and the active roles taken by non-governmental organizations and transnational advocacy networks (Keck and Sikkink 1998). Many studies have examined the increasing numbers of important human rights treaties and their influence on personal integrity rights. Initial empirical analyses are not very optimistic, however, as they show that these treaties either have no effect on states' human rights behavior (Keith 1999), that they *worsen* states' human rights practices (Hathaway 2002), or that the treaties' effects are contingent on other factors, such as membership in preferential trade agreements (Hafner-Burton 2005). Yet we have seen the development of ad hoc tribunals and international courts to punish perpetrators of genocide and crimes against humanity, including the creation of the International Criminal Court (ICC), arguably one of the most important developments in human rights since the Universal Declaration of Human Rights (Schabas 2007).

The increasing legalization of human rights issues, as reflected both in the emergence of powerful international courts to try crimes against humanity and in the rise of cases being heard by regional human rights courts, points to the need for greater emphases on legal explanations

for human rights behavior.² Just as states' legal backgrounds condition their preferences over the institutional design of international courts (Powell and Mitchell 2007), these same legal characteristics influence governments' decisions to repress or not repress their civilian population. As we show in the next two sections, these decisions are influenced both by the characteristics of the legal systems and by the historical context within which they emerged. Legal traditions adapted from former colonizers have been much weaker in their ability to place checks on executive power.

Legal Explanations of States' Human Rights Practices

When we think about human rights broadly as “a set of principled ideas about the treatment to which all individuals are entitled by virtue of being human” (Schmitz & Sikkink 2002, 517), it is not surprising that courts, judges, and lawyers play an essential role in upholding those principles. In domestic legal systems, courts play multiple roles including dispute adjudication, administrative review, criminal enforcement, and constitutional review (Alter 2008, 37). Courts and judges serve as overseers of the entire political system, providing important checks on executive and legislative powers. However, legal systems vary considerably across countries, which create different expectations about the effectiveness of legal institutions in protecting basic human rights.

Despite the multitude of differences existing between legal systems in the world, we can identify major legal families or traditions (David and Brierley 1978; Glenn 2007). In this paper, we adopt Badr's (1978) definition of a major legal tradition, a typology that identifies three primary legal traditions: civil law, common law, and Islamic law. Systems that incorporate

² As Alter (2008, 38) notes, much of the increased activity in regional human rights courts is heavily concentrated in the recent decade and a half: “seventy-five percent of the total IC output of decisions, opinions, and rulings (24,863 out of 33,057) have come since 1990.”

elements of two or more legal traditions are treated as “mixed” legal systems. In this section, we provide a brief overview of the three major legal traditions. This is followed by a comparison of how the varying structures in these legal systems influence states’ human rights practices.

Civil Law, Common Law, and Islamic Law

The civil legal tradition or Roman legal tradition originated in Rome, but very quickly spread to continental Europe and beyond. The legal tradition developed as Roman jurists (*jurisconsulti*) gave advice (*responsa*) with respect to particular cases and disputes between Roman citizens (Glenn 2007). *Responsa* and other forms of law were slowly incorporated into scholarly commentaries and imperial legal pronouncements (Shapiro 1986). After the split of the Roman Empire, Roman law was eventually codified in the eastern part of the Empire governed from Constantinople, where under the rule of the Emperor Justinian (527-565), the *Corpus Juris Civilis* was created (Author 2009, 30). Civil law was rejuvenated in Europe in the 11th to 13th centuries by legal scholars, culminating in the famous codes established in France and Germany by Napoleon and Bismarck (David and Brierley 1978). Civil law became the dominant legal tradition in Western Europe and spread throughout the French, Spanish, Portuguese, German, and Italian colonial empires. Approximately 53% of countries in the world today have civil law systems.³

Common law arose following the military conquest of England by the Normans (Glenn 2007). The Battle of Hastings in 1066, won by the Norman invaders, destroyed the existing feudal system. Written sources equivalent to the codes that were developed elsewhere in Continental Europe were unavailable, thus the practice of *stare decisis* developed and became stronger over time (Seagle 1946). Common law relied much more on oral argumentation and

³ Our legal system typology comes from Powell and Mitchell (2007). We describe this data in more detail in the research design section. This percentage is reported for the last year of our dataset, 2006.

less on written procedural rules. English judges came to be bound by the precedents established by previous judgments. Britain actively sought to spread its legal system throughout its colonial empire, which is why a large majority of former British colonies currently practice common law. Around 24% of countries in the world today have common law systems.

Islamic law is based on the religion of Islam and the revelations of Muhammad. Islam arose in the seventh century A.D. in the Arabian Peninsula and in the lower part of Mesopotamia (Badr 1978, 187). Like common law, Islamic law is not written law. In fact, there is usually no written record of any judicial proceedings or decisions in Islamic law; Islamic judges are not required to justify their decisions in writing (Glenn 2007). The four primary sources of Islamic law include the Koran, the Sunna, judicial consensus, and analogical reasoning (Vago 2000). In Islamic law, the Koran (divine revelation) is the primary source of law. Unlike the elaborate codes established under civil law, only 190 of the 6,237 verses in the Koran (3%) contain legal provisions (Badr 1978). If the Koran does not explicitly give direction for a particular case, the Sunna is consulted, which is a compilation of sayings from the Prophet, collected by reliable sources in the Hadith (tradition). Finally, judicial consensus by historical legal scholars is the third source of Islamic law, along with analogical reasoning. The Islamic legal tradition spread throughout territories occupied by the Arabs and in parts of Southeast Asia and Africa (Badr 1978, 188). Approximately 13% of states can be characterized as Islamic law states.

Legal Traditions and Human Rights Practices

It is interesting to consider how these varying legal traditions influence states' human rights practices. Broadly speaking, one defining difference between civil law and common law is apparent in the assumed social contract between individuals and the state. According to Joireman (2001, 573), civil law systems "begin with the idea of the state as supreme and the role

of individual in obedience to it. Alternatively, common law systems have developed with the idea of the protection of individual rights from the state as a primary goal”. As noted earlier, this feature of civil law reflects its historical development in the context of the Roman Empire, where the law was utilized “as an instrument for expanding and administering the empire. It was, in effect, a tool used by the state to regulate its citizens rather than to protect them from the encroachment of the state” (Joireman 2001, 574). Islamic law systems are similar to civil law systems in the sense that the law is closely integrated to the state’s power. “The entire judicial structure is an instrument of state, which is designed to promote conformity to the will of those who govern” (Scully 1987, 602). Human rights as a concept are arguably more consistent with the underlying social relationship defining common law systems because they emphasize the rights of the individual with respect to the state.

Another important difference between the major legal traditions relates to the doctrine of *stare decisis* or judicial precedent, which operates in common law systems, but is absent in civil law and Islamic law systems (Opolot 1980; Darbyshire 2001). Stated in a general form, *stare decisis* signifies that when a point of law has been settled by a judicial decision, it forms a precedent, which is not to be departed from afterward. Thus, judges in common law systems are constrained by past decisions, whereas judges in civil law systems face no such constraints. The main advantage of the doctrine of judicial precedent is that it leads to consistency in the application and creation of principles in each branch of law. Judicial precedent requires that like cases are treated alike. This creates a mechanism for the protection of human rights in common law systems because anyone who faces a similar legal problem, such as mistreatment by the state, can expect a similar response from the courts (Keith and Ogundele 2007).⁴ Civil law

⁴ Of course, if the courts are in collusion with the other branches of the government, this mechanism is ineffective. Consistency in the application of the law does not provide protection against repression if the laws being applied are

judges, on the other hand, are not legally bound by prior judgments, although deference to the written law of statutes and codes creates some legal predictability as well. As noted above, there is no written record of Islamic law, which results in the absence of *stare decisis*. While Islamic law judges are constrained by written religious texts, their ability to render judgments without explanation creates greater potential for mistreatment of individuals by the system.⁵

Another, related distinction between the major legal systems is evident in their application of law. Due to key differences between the roles of judges in each system, civil systems are considered “inquisitorial” (the judge is the main actor, who gathers evidence and asks the questions), while common law systems are deemed “adversarial” (opposing parties are pitted against each other). In the adversarial system, judges are considered to be neutral arbiters between the plaintiff and defendant in civil trials, or between the defendant and the state in criminal trials (Carey 2002, 6). In contrast, the inquisitorial system is defined by a lack of separation of powers; judges represent the interests of the government (Scully 1987). A civil law judge supervises the compilation of necessary evidence and asks most of the questions during the trial, while the role of the attorneys is to “argue the interpretation that the court should give to those facts” (Reichel 2008, 171). Because civil law systems are designed as instruments of the state, judges in these inquisitorial systems are less able to provide legal protection of individuals’ human rights from the government. Similarly in Islamic law, the legal system is strongly controlled by the state through top-down judicial appointments: “Throughout its history Muslim judges have served those who govern. The theory of separation of powers is alien to Muslim

repressive and remain unchallenged by the higher courts. Thus, this effectiveness of this mechanism is strongly contingent on judicial independence.

⁵ Scully (1987, 601) argues that any theologically rooted legal system will be “indifferent to subjective rights”. Peerenboom (2004) makes a similar argument that Islamic fundamentalism constitutes the most radical theoretical and practical challenge to the international human rights regime today. He notes the difficulty of reconciling Islam with contemporary human rights, including Shari’a-based punishments, which the international human rights regime condemns as cruel and inhumane.

tradition” (Scully 1987, 602). This implies that Islamic law countries will be freer to engage in repression in comparison to common law countries.

One consequence of the adversarial system employed by common law states is the establishment of stronger, more independent judiciaries.⁶ Because judges are able to shape the law through their judicial decisions and because they are often granted the power of constitutional review, they stand in a stronger position vis-à-vis the executive and legislative branches. In many civil law and Islamic law systems, statutes are not subject to judicial review, which results in citizens depending on the good will of the state to protect their interests (Scully 1987, 599). “In principle, judicial independence promotes both economic and political freedom, the former by resisting the state’s attempts to take property, the latter by resisting its attempts to suppress dissent” (La Porta et al 2004, 447; see also Powell and Staton 2009).

As noted earlier, civil law systems are characterized by a series of codes, which some scholars have argued are designed to limit judges' power as much as possible (Scully 1987; Levine 2005). For example, the Napoleonic Code contained 2,281 articles, while the Prussian *Landrecht* of 1794 included some 16,000 provisions (Scully 1987, 599). “The Napoleonic Code strove both to eliminate jurisprudence—the law created by judges in interpreting statutes and adjudicating disputes—and to impose strict procedural formalism on court processes to eradicate judicial discretion” (Levine 2005, 63). Napoleon’s goals were similar to Emperor Justinian, who sought to make his proclamations the sole source of the law (Levine 2005). These codes are still reflected in modern civil law systems, which limit judicial independence. The formalism of procedures is problematic for new states seeking to adopt civil law, which is one reason civil law formed through colonial legacy is weaker than its European counterpart:

⁶ This distinction has historical roots, as England was more peaceful when its legal system developed, which allowed for the development of a less centralized system, while France’s more centralized legal system arose under less peaceful circumstances (La Porta et al 2004, 448).

The emphasis on the written argument in the civil law institutions, alongside the bureaucratic demands for written motions and records of interviews, and the necessity of keeping all of these documents in order and safe before a case is brought to trial, demands an efficient bureaucracy for the proper application of law...Many countries in Latin America and the developing world do not have efficient bureaucracies...The common law, with its emphasis on oral argument, is somewhat less dependent on an effective bureaucracy, at least with regard to the proceedings of a case (Joireman 2001, 575-576).

In short, the procedural features of common law such as the adversarial trial system, the reliance on oral argumentation, and *stare decisis* result in greater judicial independence in these legal systems. Judicial independence, in turn, helps to protect individuals against state repression. Islamic law states should experience the highest levels of repression given that the legal structure is intimately linked to the state and the Islamic religion, giving judges very few discretionary powers for protecting human rights. A quick look at some descriptive data from 1976-2006 supports these assertions. The relationship between legal systems and repression is demonstrated in Table 1, where higher values indicate more state repression.⁷ When we examine all regions of the world, common law systems have the best human rights records. Nearly a quarter of the observations with common law legal systems (24%) are in the lowest category of repression compared to 12% of civil law states, 9% of mixed systems, and only 4% of Islamic law states. Civil law systems have better human rights records than Islamic or mixed systems, with a higher percentage of state-year observations in the least repressive categories. An analysis of variance confirms these mean differences as well, with the mean repression scores being lowest for common law states (2.45) and highest for Islamic law states (3.10).⁸

Is judicial independence a key mechanism for explaining this negative correlation between common law and repression? In Figure 1, we plot the percentage of states with

⁷ The data on repression come from the Political Terror Scale (Gibney and Dalton 1996). We describe this data more fully in the research design section.

⁸ The mean for civil law is 2.69 while the mean for mixed law is 3.01. The F statistic is 55.94 with a p-value less than 0.0001.

independent judiciaries by legal system types.⁹ As predicted, common law legal systems have the highest proportion of independent judiciaries with nearly 40% of the observations.¹⁰ However, civil law systems are not much different with around 35% of these states having independent judiciaries. As noted by Scully (1987), Islamic systems do not tend to have independent judiciaries (10%). This relationship is even more pronounced when the legal systems are separated by whether the state has a colonial legacy (Figure 2). While the proportion of independent judiciaries goes down across all legal systems, it is especially acute in civil law states, which are indistinguishable from mixed and Islamic law systems. Less than 20% of states with colonial legacies and civil law, Islamic law, or mixed law systems have independent judiciaries. As we will explain shortly, this difference reflects the weak legal institutions that were typically established by colonizers such as Great Britain, France, and Spain.

The Effect of Colonial Legacies on Human Rights Practices

With the unprecedented number of new states gaining their independence in the 1960's, the international system experienced a dramatic change. By the time many of the postcolonial states had joined the international system, the global human rights regime was already established and was over a decade old. Additionally, as the nascent states were developing, so was the legitimacy of human rights. By the end of the first decade of the postcolonial world, the global human rights regime was actively promoting human rights norms (Donnelly 2003, 129) and Jimmy Carter, the new American president, had begun to actively pursue a foreign policy that

⁹ The data for independent judiciaries come from the Political Constraints Index developed by Henisz (2000); data for legal systems are from Powell and Mitchell (2007); and data for colonial legacy are from Hensel (2009). The research design section contains a more detailed discussion of the data.

¹⁰ With respect to all state-years in our dataset from 1976-2006, civil law states represent 53.3% of the cases, common law states 24.1% of the cases, Islamic law states 13.3% of the cases, and mixed law states 9.2% of the cases.

promoted human rights abroad. Despite a climate of growing legitimacy for human rights norms, when the world's former colonies made the transition to statehood, the repression carried out by the colonial powers continued with the local leaders.

Keith and Ogundele (2007) note that the best predictor for state repression is a previous history of repression, a finding that is robust in the human rights literature. Given the oftentimes brutal relationships between the colonizers and the colonized, it is perhaps unsurprising that repression continued long after the colonizers left or were expelled. Moreover, former colonial states are not merely mimicking repressive behavior for the sake of violence. "Colonialism not only set up a system of exclusion, but also established a pattern of state repression as a tool to deal with popular dissent" (Keith and Ogundele 2007, 1069). When the former colonies gained independence, leaders used the tools of repression they learned from the colonial authorities to deal with their political foes. In many cases, incoming leaders had very little experience with strategies other than repression for dealing with political dissent.

While common law systems are expected to lead to better human rights regardless of the other characteristics of a state, there is an added importance to the checking power of common law systems in states that have a history of colonization. Many states in the world inherited legal systems from colonial powers. Indigenous populations were often ruled by an entirely different legal system than the colonizers. Dual legal systems, like the Algerian *Code de l'indigénat*, stratified the population, reinforcing the power relationship between colonizers and the colonized (Ruedy 2005, 89). In the next section, we describe in more detail the colonial legal legacies left behind by the two most active colonizers, the British and the French. In our data, 61 countries have a British colonial legacy, while 26 have a French colonial legacy. These colonial holdings

are larger than those left behind by Spain (18 countries), Russia (16), the Ottoman Empire (7), Portugal (6), Austria-Hungary (6), and the United States (5).

British and French Colonial Legacies

It is interesting that many colonized countries accepted the metropole's legal system at the time of independence. Arab states in the Middle East were perhaps the greatest exception, especially among former British colonies, as they retained their traditional Islamic law when achieving independence. Most African states, on the other hand, adopted the legal system put in place by the colonizing state (Joireman 2001). Former Spanish and Portuguese colonies in the Americas similarly followed suit, implementing the colonizers' system of civil law.

We begin with a discussion of British colonial administration. Much like the French, the British sought to improve the institutions of their colonies, bringing "civilized" institutions to the indigenous populations. At the same time, the British operated mostly with a policy of *indirect rule*, which recognized local customary law and gave legal power to local chiefs (Hooker 1975, 129-130; Mamdani 1999). The day to day affairs of the colonies were managed by local elites. Many disputes would be heard by the chiefs at the local level, yet at the same time, the British established courts at the state level that would typically supersede the authority of the customary sources of law. Even when introducing common law to indigenous populations, the British allowed for substantial exceptions in procedures and content, in such areas as family law, property law, and criminal law (Hooker 1975, 182). While this approach followed naturally from the precedential and evolving nature of common law, it had some drawbacks for the colonized states. As Chanock (1991) notes, recognition of local customary law had negative effects on some of the indigenous populations, marginalizing women and young men. Furthermore, the state-wide courts established by the British were not well-staffed. The colonial

governments often exacerbated this problem by preventing Africans from receiving scholarships for law training, while at the same time requiring British law degrees for colonial lawyers. The consequence was that only a very small number of indigenous lawyers were well-versed in the British common law system at the time of independence, which allowed the newly established executives to consolidate power, almost ensuring a path towards autocratic rule (Joireman 2001, 576-581).

The tolerance of local customary law led to a bifurcated legal system based on patrimonialism. “Two separate and incompatible forms of rule existed—one dominated by the colonial administration, the other by numerous chiefs” (Lange 2004, 907). Lange (2004) finds negative empirical effects of the indirect rule colonial legacy. In colonies where the British relied more heavily on indirect rule, the resulting legacy was worsened political stability, a weakened rule of law, diminished bureaucratic effectiveness, and more government corruption (Lange 2004; see also Mamdami 1999).¹¹ This seems to have a negative effect on human rights practices as well. Taking Lange’s list of British colonies (2004, 921) and creating a dummy variable for direct or indirect rule, we find a significant difference in the average political terror scores (Gibney and Dalton 1996) of these two groups (1976-2006). States that were ruled *directly* by the British, such as the Bahamas, Guyana, Jamaica, and Singapore, have a much lower average repression score (2.1) than those colonies ruled *indirectly* (2.95), such as Botswana, Fiji, Gambia, Ghana, and Nigeria (difference of means, $t=-10.25$, $p<.0001$). Given that a majority of these former colonies are common law states, the economic and political advantages of the common law system described earlier were tempered by the particular manner in which the legal system was established in British colonies.

¹¹ Colonies ruled by direct rule had large police forces and courts modeled closely after the British legal system (Lange 2004, 907).

The legal system established by France in its colonies was much more closely tied to the state, which is to be expected given the strength of the Napoleonic Code in France. Only the government in Paris had the power to enact legislation for the colonies and Parliament always held a veto power over colonial legislation (Hooker 1975, 201). Administration of the colonies was carried out through the Ministry of the Colonies which dealt with specific subject matters, such as land. The Ministry was assisted by other agencies in dealing with economic and legal matters (Hooker 1975, 200). The French adopted primarily an assimilation approach when dealing with their colonies, integrating colonial peoples into a “Greater France”, and making colonial subjects French citizens in 1946 (Blanton, Mason, and Athow 2001, 478; Hooker 1975).

However, the “unity” approach to colonization was more talk than actual policy, as France created separate laws for French citizens (*statut civil français*) and colonial subjects (*statut personnel*). This occurred in part because it was difficult for French law to allow the coexistence of multiple legal systems in their colonies without “running the risk of a denigration of national sovereignty” (Hooker 1975, 247). The law was designed to protect expatriate rights over native rights (Keith and Ogundele 2007, 1068). The French also implemented the *indigénat*, which gave colonial officials the right to punish subjects on the spot, with cash penalties and up to two weeks jail time (Ruedy 2005). This practice eventually was repealed, although not until World War II (Joireman 2001, 579). It was then replaced by the *code indigene*, “which was supposed to protect African customs while promoting the advancement of ‘evolution’ of the African legal system” (Joireman 2001, 580-581). The reality, however, was that the centralized structure of the French colonial administration continued to be enforced.

What are the overall effects of British and French colonial legacies on the human rights practices of the former colonized states? It should be clear that both colonial legacies put into

place weak legal institutions, which in turn empowered the elites that took control of the states after independence. The British refusal to provide legal training resulted in a lack of lawyers to counteract the power of the new elites. This also resulted in weak judicial systems due to the lack of trained specialists to implement the law (Joireman 2001, 581).¹² The indirect rule employed by the British tolerated local legal traditions, which in some cases led to a reversion to traditional law, such as in many Middle Eastern states. In other cases, the British system of common law took hold and was successful in establishing a strong legal system and rule of law (e.g. Australia, New Zealand, and the United States). Given these countervailing forces, it is not clear what the overall effect of British colonial legacies will be for human rights. The sheer numbers of common law states emerging from British colonialism suggest that the relationship with human rights protections will be positive, a pattern observed by Mitchell and McCormick (1988). However, the large number of Islamic law states with British legacies could mitigate this relationship.

French colonial legacy is also associated with countervailing forces. On one hand, some have argued that France's centralized approach to colonization helped to link subjects directly to the colonial state, diminishing some of the traditional bonds of community. The colonial experience with centralized governance may have assisted in providing local support to the newly established regimes, potentially undermining factors that compel repression (i.e. dissent). On the other hand, the uneven provision of education by the French to some ethnic groups but not others, created patterns of inequality that carried over into the post-independence regimes (Blanton, Mason, and Athow 2001, 478-479). The biggest weakness resulted from the implementation of civil law, a system with very detailed procedures and codes that was difficult

¹² Cross (1999) finds that as the relative number of lawyers increases, states are more likely to respect political rights.

to establish in poor countries with weak bureaucracies. By controlling for both legal systems and colonial legacies in our analyses, we are able to parse out these differences more carefully.

Given the primary emphasis in the quality of government literature on civil and common law, it is only natural that we focus empirically on British and French colonial legacies. For example, we do not analyze Spanish or Portuguese colonial legacies as distinct categories. These two civil law states were strongly influenced by the Napoleonic Code in their own legal development, whereby they created legal structures in their colonies similar to French colonial systems (Levine 2005, 64). One good example of this is the *audiencias* or courts created by the Spanish king in the 16th century. There were nine courts of appeal with jurisdiction in Spanish colonies in the Americas that allowed the king to maintain control. In fact, the *audiencias* were governed by a series of codes that limited the power of the courts' judges (Merryman and Clark 1978, 154-156). This structure is very similar to the Napoleonic Code, which also served to maintain the state's control over the legal system. We do run additional models with Spanish colonial legacy, and as we show shortly, this inclusion does not alter our results.

Initial Empirical Evidence

There is a consistent difference in state repressive practices between states that have a colonial legacy and those that do not. In all years included in this analysis (1976 – 2006), states with a colonial legacy score significantly higher on measures of state repression than states with no colonial legacy. Table 2 is a replication of Table 1, but limited only to states that have a colonial legacy. The pattern observed in Table 1, in which common law systems outperform the other systems with respect to human rights, is again observed in Table 2. Common law systems have nearly 15% in the lowest category of repression compared to around 4-5% in all other legal systems. In other words, while common law systems appear to mitigate the problems associated

with colonial legacies, civil law countries that emerged via colonialism have repression records much more in line with Islamic and mixed law systems. The mean repression level is 2.35 in the non-colonial group and 2.82 in the colonial group (Difference = -0.46 (0.05), $t=-9.98$). The effectiveness of common law in the colonial legacy context can be attributed in part to the procedural nature of common law which relies much more on oral proceedings, which requires a less well-developed bureaucracy to operate efficiently, something that would have hindered the development of civil law in less economically developed colonies (Joireman 2001, 576).

Furthermore, the relationship between common law or civil law legal systems and the rule of law is different in countries that have experienced colonization than in countries that have not (Joireman 2004, 328). Given the historical use of the political and legal institutions in the formerly colonized states by the colonial powers, it seems quite plausible that different processes are operating with respect to legal systems. Moreover, as Joireman suggests, it seems plausible that the characteristics of judicial review and greater judicial independence in common law systems allowed for greater protection of the rule of law, especially with respect to colonization (see also Apodaca 2004). An initial look at the data using the World Bank governance indicator estimate for the rule of law supports Joireman's expectation.

Figure 3 demonstrates the relationship between the rule of law and legal systems, broken down by colonial legacy. Importantly, the rule of law is highest in common law systems, regardless of colonial legacy. With the exception of Islamic law states, colonial legacy leads to a significant reduction in the overall rule of law, which helps to explain the observed higher levels of repression in these states. Islamic law states with some colonial legacy actually have better human rights practices than those without a legacy, which might be explained by the predominance of Islamic law in the latter group. Another interesting observation is that the rule

of law in civil law systems with a colonial legacy is the lowest among any subgroup of states, even worse than the Islamic law system. Colonial legacy also seems to have a negative effect on rule of law for mixed law states. In short, these data demonstrate the contingent relationships between legal traditions, colonial legacies, and human rights.

We test the relationships between legal systems, colonial legacies, and repression more carefully in multivariate models below. We test two primary hypotheses:

H1: States with common law systems should engage in repression less frequently than states with civil law, Islamic law, or mixed law systems.

H2: The effect of legal systems on human rights practices will be weaker in states with colonial legacies.

Research Design

Our unit of analysis is the state-year from 1976-2006. Consistent with previous human rights research, we are specifically concerned with the subset of rights commonly referred to as personal (or physical) integrity rights, which can be broadly defined as the rights individuals possess to be free from extrajudicial killing or disappearance, torture, and political imprisonment at the hands of their governments. The dependent variable comes from the ordinal political terror scale (Gibney and Dalton 1996), which ranges from 1 (little to no political terror) to 5 (large-scale political terror).

We operationalize states' legal systems with four indicator variables: common law, civil law, Islamic law, and mixed system. These data are taken from Powell and Mitchell (2007). Because states with Islamic law systems should tend to have the worst human rights records, Islamic law will be used as the baseline category.

As we suggest, human rights processes in states with colonial legacies may be different than in non-legacy states. Thus we separate the empirical models based on whether a state has

had a colonial legacy or not. Additionally, we include variables for British and French colonial legacies, treating all others as a reference group (USA, Netherlands, Belgium, Spain, Portugal, Austria-Hungary, Italy, Russia, South Africa, Ottoman Empire, India, China, Japan, Australia, New Zealand). These data are taken from Hensel (2009).¹³

A number of important control variables have been consistently shown to have a significant impact on repression. Relating broadly to Davenport and Armstrong's (2004) classification of compelling and hindering factors, these variables include democracy, economic development, population, military regime, internal and external conflict, and lagged repression.

The positive effect of democracy on respect for human rights is robust in the literature (Davenport 1996, 1997, 2007; Henderson 1991). To capture the notion of procedural democracy, we employ the Polity IV composite index which ranges from -10 to 10. Increases along this scale should be negatively related to repression.

Generally, scholars argue one of two things with respect to economic development. First, dissent is much less common in wealthy states because it is relatively easy to improve one's economic condition within the existing social and political framework. When dissent does arise in wealthy states, the challengers are often faced with extensive societal resistance as they seek to provoke further opposition. The opposite is true in poor states, "as underdeveloped economies have a much more difficult time providing basic human needs, if conflict does take place, then the latent hostility felt towards the regime has a potential for escalating" (Davenport 1995, 692). Alternatively, some argue that leaders in wealthier states have a wider range of policy options to deal with political challenges, making repression a less viable strategy. These alternatives can take many forms, from simply paying-off the opposition to actually making concessions. The

¹³ This data is available online at <http://www.paulhensel.org/icow.html#colonies>. We have an online appendix with a list of each colonized state by legal system type and former colonizer. We should note that Hensel records the most recent colonizer prior to independence for states that were colonized by multiple metropolises.

level of economic development is measured as the natural log of gross domestic product per capita, which should be negatively related to repression.

For some, population is a classic example of a factor that compels repression: “A burdensome population can create an anxiety in society over whether or not the economy and government can meet the needs and wants of large numbers of people that are increasing” (Henderson 1993, 322-3). Furthermore, “a large number of people increases the number of occasions on which such coercive acts can occur” (Poe and Tate 1994, 857). As with the level of economic development, population in its raw form is highly skewed, so we employ a natural log transformation. The effect of population on repression should be positive.

Military regimes arise through a decision to use force or the threat of force to deal with political issues. Thus, it is straightforward to expect that military regimes will be especially prone to using repression when faced with domestic challenges, although support for this expectation has been mixed (Poe and Tate 1994; Poe, Tate, and Keith 1999). Military regime is taken from the World Bank’s Database of Political Institutions, with a dummy variable indicating whether or not the chief executive is a military officer.

Since civil war is the most extreme form of domestic dissent, it is unsurprising that governments opt to repress in the context of a civil war. International war has also received general support as a condition compelling repression. Gates, Knutson, and Moses note that governments frequently curtail basic rights during international wars; they also point out that the argument extends to all regime types, even democracies (1996, 5). Our measures for interstate and civil war are taken from the Correlates of War project.

Due to the nature of the data being analyzed, it is necessary to include lagged repression as a statistical control; a one year time-lag is included. In addition to the important statistical

reasons for inclusion, Keith and Ogundele (2007) argue that lagged repression is substantively important; repression begets more repression.

The model employs the same variables used by Poe and Tate (1994), adding legal systems and colonial legacies. The model is estimated using an ordered logit with robust standard errors clustered on the state. The ordered logit assumes that the categories of the variable are ranked from low to high, but it does not assume that the distance between the categories is equal. The ordered logit model can be thought of as a latent variable model in which an unobserved latent interval level variable links the independent variables and the dependent variable. The latent variable can take on any value according to the independent variables. The latent variable is then translated into the ordinal variable by a series of cut points, or threshold values. The ordered logit model estimates these cut-points, as well as the coefficients of the independent variables, such that the values of the parameters maximize the likelihood of observing the data (Long 1997).

Empirical Results

The results of the ordered logit estimation of several versions of the repression model are reported in Table 3. The first thing to note is that the standard variables found in the human rights literature perform as expected. A history of repression, a large population, and civil war create further repression, while democracy and wealth inhibit violations of physical integrity rights. Only the military regime and international war variables are insignificant.

The analyses provide support for Hypothesis 1. Model 1, which examines all states, demonstrates the negative effect of common law and civil law systems relative to Islamic systems on state repression. The results of model 1 conform to the bivariate relationship

examined in Table 1; this relationship holds even controlling for the standard explanations for human rights violations across several different model specifications. This size of the common law coefficient is over three times as large as the civil law coefficient, which is consistent with our hypothesis that common law states will have the best human rights practices.

Model 2 demonstrates that while civil law systems are sometimes distinguishable from the baseline, their impact on repression is less robust. In states with a colonial legacy, only the common law system has a negative relationship with repression relative to the baseline. Civil law systems no longer appear to be a mechanism to reduce repression. The impact of civil law and mixed systems is statistically indistinguishable from Islamic systems when limited to states with colonial legacies. This is similar to what we observed in Figure 2, where the number of independent judiciaries dropped considerably in the group of states with colonial legacies and civil law. These results also provide support to hypothesis 2, showing that the effects of legal systems are reduced in the colonial context. However, common law systems appear to be relatively immune, showing similar reductions in repression in Model 2 to the effects observed in Model 1. In model 3, which is limited to states with no colonial legacy, all legal systems reduce repression with respect to Islamic law systems. This demonstrates that Britain, France, and other colonizers left behind weak legal institutions in comparison to states whose legal systems developed naturally. Mixed law countries show very sharp differential effects in these two contexts, with one of the best human rights records in the non-colonial legacy environment, and the second to worst record in the colonial environment.

Models 4 and 5 are similar to Models 2 and 3, but we add the variables for colonial legacies. Both models demonstrate that the effect of common law systems is not an artifact of British colonial influence. Common law systems reduce repression even when controlling for

British colonial legacy. Institutions related to the British colonial experience may have left former British colonies better able to respect human rights than other colonial experiences; however, the common law legal institution has an effect independent of those institutions. This effect does not hold for civil law systems. While common law systems have an independent effect on repression in former colonies controlling for British colonial legacy, civil law systems do not have a distinguishable effect from French colonial influence. In fact, as we see in Model 5, states with French colonial legacies actually have better human rights practices than states with British or other colonial legacies. The null result for the British legacy may be an artifact of multicollinearity between British colonies and common law (0.53) or caused by the lower average values of human rights in Britain's former Middle East colonies. The negative effect that common law systems have on a repression is robust across the various domains examined in this analysis; the negative effect that civil law systems have on repression does not extend to former colonies.

We checked the robustness of our findings in two ways. First, we utilized a different coding of the physical integrity index from the Cingranelli-Richards (CIRI) Human Right Database (Cingranelli and Richards 2008). Like the political terror scale, this is also an ordinal index (0-8), although higher values indicate better human rights practices. These results (available from the authors) are quite similar to the findings reported in Table 3. Consistent with hypothesis 1, common law states have better human rights practices than civil law, mixed law, and Islamic law states. This holds in both colonial and non-colonial contexts. Civil law best promotes better human rights practices in the non-colonial context. We also find the French colonial legacy to leave behind better human rights practices, which is consistent with our results in Table 3.

Second, we estimated Models 4 and 5 by including a dummy variable for Spanish colonial legacy. The coefficient was positive and highly significant ($p < .001$) in both models, suggesting that Spain left behind weak legal and political institutions, perhaps even more so than the British or French. Our key results for legal systems and the other two colonial legacies are unaltered by the inclusion of this variable. It would be interesting in future work to examine the administrative practices of the Spanish and Portuguese colonial empires in more detail.¹⁴ Yet, we are confident that our analyses provide strong support for our hypotheses linking domestic legal systems, colonial legacies, and human rights.

Concluding Remarks

A burgeoning empirical literature extols the virtues of the common law legal tradition relative to its civil law and Islamic law counterparts. Common law states appear to enjoy higher levels of economic growth, greater protection of property rights and investments, as well as superior protections of individual political and civil liberties. These differences are often attributed to stronger, more independent judiciaries that serve to check the power of the state in common law systems. In this paper, we examine the effect of domestic legal traditions on another important indicator of government quality, human rights practices. Using a global state-year sample from 1976-2006, we show that common law states are significantly less likely to engage in repression than civil law and Islamic law states. On the other hand, we also show that the effects of legal traditions are mitigated by colonial legacies. Legal systems imposed via colonization are much weaker overall. Yet even within the set of colonized states, those with common law practices have better human rights records.

¹⁴ When we included the Spanish colonial legacy variable, it was positive and statistically significant, indicating that states with Spanish colonial legacies engage in more repression than other states. This distinction between two civil law colonizers, Spain and France, opens up an interesting avenue for future research.

The results of this analysis suggest that legal systems are important with respect to levels of repression. These results may have important implications in the human rights regime and compliance literature. As the compliance literature suggests, the enforcement mechanisms of human rights treaties are too weak to affect state behavior on their own; thus, the final decision to repress is most likely a function of domestic processes. We seek to supplement the well-developed political and economic explanations for the respect of human rights with a legal explanation. Due to the lack of effective enforcement mechanisms within the global human rights regime, international human rights norms will only be effective in constraining governments in cases where domestic agents take on the role of enforcer (Schmitz and Sikkink 2002, 529). Given that a state's legal system is "the primary enforcement mechanism for legal obligations," it has a central role in domestic human rights practices (Powell and Staton 2009, 150). Thus, a state's legal system provides the context within which international human rights norms can develop into a greater respect for human rights at the domestic level.

Compliance scholars suggest that one way to improve human rights practices is to strengthen the enforcement mechanisms of human rights treaties. However, they also argue that those efforts "must be supplemented by creative efforts to ensure that treaty norms are internalized in the domestic legal and cultural system, and that they are enforced on that level" (Heyns and Viljoen 2001, 488).¹⁵ Given the findings of this analysis, we expect the ability of domestic legal systems to internalize international human rights norms to vary by system type. Specifically, we argue that common law legal systems are better suited to this task than other legal systems because common law systems are more effective at checking government power

¹⁵ Heyns and Viljoen (2001) have the dual role of offering prescriptive advice to INGOs as well as reporting the results of a study of the efficacy of human rights treaties initiated in conjunction with the Office of the High Commissioner for Human Rights (OHCHR).

with respect to individual rights. Due to their institutional design, common law legal systems are relatively effective producers of independent judiciaries and, ultimately, the rule of law.

It is not easy for states to change their domestic legal systems or their colonial legacy histories. However, states do have control over the rule of law. Once states reach the highest level of the rule of law, differences among legal systems may become less acute, as civil liberties can be protected equally well in common law and civil law systems. The negative influence of colonial legacies on human rights practices can also be overcome with time, as states can actively strengthen legal institutions left in place by the colonizers. In short, while the differences we observe across legal systems and colonial legacy environments are consistent, their effects could be mitigated as all states more fully embrace strong judicial institutions and protect citizens' rights. The extent to which international courts and human rights regimes can assist in this process remains to be seen.

References

- Alter, Karen J. 2008. "Delegating to International Courts: Self-Binding vs. Other-Binding Delegation." *Law and Contemporary Problems* 71(1): 37-76.
- Apodaca, Clair. 2004. "The Rule of Law and Human Rights." *Judicature* 87(6): 292-299.
- Badr, Gamal Moursi. 1978. "Islamic Law: Its Relation to Other Legal Systems." *The American Journal of Comparative Law* 26(2): 187-198.
- Barsh, Russel Lawrence. 1993. "Measuring Human Rights: Problems of Methodology and Purpose." *Human Rights Quarterly* 15(1): 87-121.
- Berry, William D. 1993. *Understanding Regression Assumptions. Sage University Paper series on Quantitative Applications in the Social Sciences, 07-092*. Newberry Park, CA: Sage.
- Blanton, Robert, T. David Mason, and Brian Athow. 2001. "Colonial Style and Post-Colonial Ethnic Conflict in Africa." *Journal of Peace Research* 38(4): 473-491.
- Cardenas, Sonia. 2004. "Norm Collision: Explaining the Effects of International Human Rights Pressure on State Behavior." *International Studies Review* 6(2): 213-231.
- Carey, Henry F. 2002. "The Postcolonial State and the Protection of Human Rights." *Comparative Studies of South Asia, Africa and the Middle East* 22(1-2): 59-75.
- Chanock, Martin. 1991. "Paradigms, Policies, and Property: A Review of the Customary Law of Land Tenure," in Kristin Mann and Richard Roberts (eds.), *Law in Colonial Africa*. Portsmouth, NH: Heinemann.
- Chong, Alberto and Luisa Zanforlin. 2000. "Law Tradition and Institutional Quality: Some Empirical Evidence." *Journal of International Development* 12(8): 1057-1068.
- Cingranelli, David L. and David L. Richards. 1999. "Measuring the Level, Pattern, and Sequence of Government Respect for Physical Integrity Rights." *International Studies Quarterly* 43(2): 407-417.
- Cross, Frank B. 1999. "The Relevance of Law in Human Rights Protection." *International Review of Law and Economics* 19(1): 87-98.
- Darbyshire, Penny. 2001. *Eddey on the English Legal System, 7th edition*. London: Sweet and Maxwell.
- David, Rene, and John E.C. Brierley. 1978. *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law, Second Edition*. New York, NY: The Free Press.
- Davenport, Christian. 1995. "Multi-Dimensional Threat Perception and State Repression: An Inquiry into Why States Apply Negative Sanctions." *American Journal of Political Science* 39(3): 683-713.
- Davenport, Christian. 1996. "Constitutional Promises' and Repressive Reality: A Cross-National Time-Series Investigation of Why Political and Civil Liberties are Suppressed." *Journal of Politics* 58(3): 627-654.
- Davenport, Christian. 1999. "Human Rights and the Democratic Proposition." *The Journal of Conflict Resolution* 43(1): 92-116.
- Davenport, Christian. 2007. "State Repression and the Tyrannical Peace." *Journal of Peace Research* 44(4): 485-504.
- Davenport, Christian and David A. Armstrong II. 2004. "Democracy and the Violation of Human Rights: A Statistical Analysis from 1976 to 1996." *American Journal of Political Science* 48(3): 538-554.

- Donnelly, Jack. 2003. *Universal Human Rights in Theory & Practice, Second Edition*. Ithaca, NY: Cornell University Press.
- Gates, Scott, Torbjorn Knutsen and Jonathon Moses. 1996. "Democracy and Peace: A More Skeptical View." *Journal of Peace Research* 33(1): 1-10.
- Gibney, Mark and Dalton, Matthew. 1996. "The Political Terror Scale." *Policy Studies and Developing Nations* 4(1): 73-84.
- Glenn, H. Patrick. 2007. *Legal Traditions of the World: Sustainable Diversity in Law*. Oxford, UK: Oxford University Press.
- Goldstein, Robert Justin. 1986. "The Limitations of Using Quantitative Data in Studying Human Rights Abuses." *Human Rights Quarterly* 8(4): 607-627.
- Hafner-Burton, Emilie M. 2005. "Trading Human Rights: How Preferential Trade Agreements Influence Government Repression." *International Organization* 59(3): 593-629.
- Hathaway, Oona A. 2002. "Do Human Rights Treaties Make a Difference?" *The Yale Law Journal* 111(8):1935-2042.
- Henderson, Conway W. 1991. "Conditions Affecting the Use of Political Repression." *Journal of Conflict Resolution* 35(1): 120-42.
- Henderson, Conway W. 1993. "Population Pressures and Political Repression." *Social Science Quarterly* 74(2): 322-333.
- Henisz, W. J. 2000. "The Institutional Environment for Economic Growth." *Economics and Politics* 12(1): 1-31.
- Hensel, Paul R. 2009. "ICOW Colonial History Data Set, Version 0.4". Available at <http://www.paulhensel.org/icowdata.html#colonies>.
- Heyns, Christof and Frans Viljoen. 2001. "The Impact of United Nations Human Rights Treaties on the Domestic Level." *Human Rights Quarterly* 23(3): 483-535.
- Hooker, M.B. 1975. *Legal Pluralism: An Introduction to Colonial and Neo-colonial Laws*. Oxford, UK: Clarendon Press.
- Joireman, Sandra F. 2001. "Inherited Legal Systems and Effective Rule of Law." *Journal of Modern African Studies* 39(4): 571-596.
- Joireman, Sandra F. 2004. "Colonization and the Rule of Law: Comparing the Effectiveness of Common Law and Civil Law Countries." *Constitutional Political Economy* 15(4): 315-338.
- Kaufmann, Daniel, Aart Kraay, and Massimo Mastruzzi. 2006. "Governance Matters V: Aggregate and Individual Governance Indicators for 1996-2005." World Bank Policy Research Working Paper 4012.
- Keck, Margaret E. and Kathryn Sikkink. 1998. *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca, NY: Cornell University Press.
- Keith, Linda Camp. 1999. "The United Nations International Covenant on Civil and Political Rights: Does It Make a Difference in Human Rights Behavior?" *Journal of Peace Research* 36(1): 95-118.
- Keith, Linda Camp and Ogundele, Ayo. 2007. "Legal Systems and Constitutionalism in Sub-Saharan Africa: An Empirical Examination of Colonial Influences on Human Rights." *Human Rights Quarterly* 29(4): 1065-1097.
- La Porta, Rafael, Florencio Lopez-de-Silanes, Andrei Schleifer, and Robert W. Vishny. 1997. "Legal Determinants of External Finance." *Journal of Finance* 52(3): 1131-1150.
- La Porta, Rafael, Florencio Lopez-de-Silanes, Andrei Schleifer, and Robert W. Vishny. 1998. "Law and Finance." *Journal of Political Economy* 106(6): 1113-1155.

- La Porta, Rafael, Florencio Lopez-de-Silanes, Andrei Schleifer, and Robert W. Vishny. 1999. "The Quality of Government." *Journal of Law, Economics, and Organization* 15(1): 222-279.
- La Porta, Rafael, Florencio Lopez-de-Silanes, Cristian Pop-Eleches, and Andrei Schleifer. 2004. "Judicial Checks and Balances." *Journal of Political Economy* 111(2): 445-470.
- Landman, Todd. 2004. "Measuring Human Rights: Principle, Practice, and Policy." *Human Rights Quarterly* 26(4): 906-931.
- Lange, Matthew K. 2004. "British Colonial Legacies and Political Development." *World Development* 32(6): 905-922.
- Levine, Ross. 2005. "Law, Endowments, and Property Rights." *Journal of Economic Perspectives* 19(3): 61-88.
- Long, J. Scott. 1997. *Regression Models for Categorical and Limited Dependent Variables*. Thousand Oaks, CA: Sage.
- Mamdani, Mahmood. 1999. "Historicizing Power and Responses to Power: Indirect Rule and its Reform." *Social Research* 66(3): 859-886.
- Marshall, Monty G. and Keith Jagers. 2007. "Polity IV Project: Political Regime Characteristics and Transitions, 1800- 2006. Dataset Users' Manual." Retrieved from <<http://www.systemicpeace.org/inscr/p4manualv2006.pdf> >
- Merryman, John Henry and David S. Clark. 1978. *Comparative Law: Western European and Latin American Legal Systems*. Indianapolis, IN: Bobbs-Merrill Co., Inc.
- Mitchell, Neil J. and McCormick, James M, 1988. "Economic and Political Explanations of Human Rights Violations." *World Politics* 40(4): 476-498.
- Opolot, James S.E. 1980. *An Analysis of World Legal Traditions*. Jonesboro, TN: Pilgrimage Press.
- Peerenboom, Randall P. 2004. "Human Rights and the Rule of Law: What's the Relationship?" *Bepress Legal Series*. Working Paper 355.
- Poe, Steven C. 2002. "The Decision to Repress: An Integrative Theoretical Approach to the Research on Human Rights and Repression." Paper presented at the Workshop on The Systematic Study of Human Rights Violations at the ECPR, Turin, Italy, March 22-27.
- Poe, Steven C. and Neal Tate. 1994. "Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis." *American Political Science Review* 88(4): 853-872.
- Poe, Steven C., Neal Tate, and Linda Camp Keith. 1999. "Repression of the Human Right to Personal Integrity Revisited: A Global Cross-National Study Covering the Years 1976-1993." *International Studies Quarterly* 43(2): 291-313.
- Powell, Emilia Justyna and Mitchell, Sara McLaughlin. 2007. "The International Court of Justice and the World's Three Legal Systems." *Journal of Politics* 69(2): 397-415.
- Powell, Emilia Justyna and Jeffrey K. Staton. 2009. "Domestic Judicial Institutions and Human Rights Treaty Violation." *International Studies Quarterly* 53(1): 149-174.
- Reichel, Philip L. 2008. *Comparative Criminal Justice Systems*. Upper Saddle River, NJ: Prentice Hall.
- Ruedy, John. 2005. *Modern Algeria: The Origins and Development of a Nation, Second Edition*. Bloomington, IN: Indiana University Press.
- Schabas, William A. 2007. *An Introduction to the International Criminal Court, Third Edition*. New York, NY: Cambridge University Press.

- Schmitz, Hans Peter and Kathryn Sikkink. 2002. "International Human Rights." In Walter Carlsnaes, Thomas Risse, and Beth A. Simmons (eds.), *Handbook of International Relations*. Thousand Oaks, CA: Sage, pages 517-537.
- Scully, Gerald W. 1987. "The Choice of Law and the Extent of Liberty." *Journal of Institutional and Theoretical Economics* 143(1987): 595-615.
- Seagle, William. 1946. *The History of Law*. New York, NY: Tudor Publishing Co.
- Shapiro, Martin M. 1986. *Courts: A Comparative and Political Analysis*. Chicago, IL: University of Chicago Press.
- Vago, Steven. 2000. *Law and Society*. Upper Saddle River, NJ: Prentice Hall.

Table 1: State Repression and Legal Systems, 1976-2006

| Amnesty PTS Score | Civil Law | Common Law | Islamic Law | Mixed |
|----------------------|-----------------|-----------------|-----------------|-----------------|
| 1 | 11.52% (244) | 24.23% (196) | 3.71% (25) | 8.89% (36) |
| 2 | 35.32% (748) | 30.28% (245) | 24.78% (167) | 25.93% (105) |
| 3 | 32.20% (682) | 25.96% (210) | 40.06% (270) | 30.12% (122) |
| 4 | 14.97% (317) | 15.20% (123) | 20.47% (138) | 24.94% (101) |
| 5 | 6.00% (127) | 4.33% (35) | 10.98% (74) | 10.12% (41) |
| Total | 100% (2118) | 100% (809) | 100% (676) | 100% (402) |

Table 2: State Repression for States with Colonial Legacies, 1976-2006

| Amnesty PTS Score | Civil Law | Common Law | Islamic Law | Mixed |
|----------------------|-----------------|-----------------|-----------------|----------------|
| 1 | 7.36% (126) | 22.69% (157) | 3.88% (25) | 4.76% (15) |
| 2 | 33.39% (572) | 31.79% (220) | 25.93% (167) | 26.67% (84) |
| 3 | 36.95% (633) | 26.01% (180) | 40.68% (262) | 31.11% (98) |
| 4 | 15.41% (264) | 16.04% (111) | 19.25% (124) | 25.40% (80) |
| 5 | 6.89% (118) | 3.47% (24) | 10.25% (66) | 12.06% (38) |
| Total | 100% (1713) | 100% (692) | 100% (644) | 100% (315) |

Table 3: Ordered Logit Results

| | Model 1 All States | Model 2 Col. Legacy | Model 3 No Legacy | Model 4 All States | Model 5 Col. Legacy |
|---------------------------|-------------------------|-------------------------|----------------------|-------------------------|-------------------------|
| Repression _{t-1} | 2.048*** (0.0620) | 1.994*** (0.0678) | 1.812*** (0.169) | 2.031*** (0.0624) | 1.974*** (0.0682) |
| Democracy | -0.0316*** (0.00612) | -0.0263*** (0.00662) | -0.0287 (0.0188) | -0.0338*** (0.00620) | -0.0296*** (0.00672) |
| ln GDP Per Capita | -0.296*** (0.0412) | -0.183*** (0.0443) | -0.925*** (0.151) | -0.348*** (0.0434) | -0.237*** (0.0466) |
| ln Population | 0.136*** (0.0260) | 0.179*** (0.0297) | 0.265*** (0.0987) | 0.126*** (0.0265) | 0.169*** (0.0299) |
| Military Regime | -0.0314 (0.0976) | 0.0346 (0.101) | -0.129 (0.458) | 0.00396 (0.0977) | 0.0712 (0.101) |
| International War | 0.00360 (0.0889) | 0.0699 (0.101) | -0.175 (0.175) | 0.0106 (0.0894) | 0.101 (0.102) |
| Civil War | 0.642*** (0.0516) | 0.674*** (0.0546) | 0.461*** (0.157) | 0.639*** (0.0520) | 0.669*** (0.0549) |
| <i>Legal Systems</i> | | | | | |
| Civil Law | -0.211** (0.105) | -0.116 -0.11 | -1.465*** (0.560) | -0.236* (0.126) | -0.273** (0.135) |
| Common Law | -0.655*** (0.134) | -0.669*** (0.141) | -2.072*** (0.641) | -0.783*** (0.139) | -0.757*** (0.148) |
| Mixed System | -0.213 (0.165) | -0.00448 (0.180) | -2.097*** (0.673) | -0.233 (0.166) | -0.0213 (0.180) |
| <i>Colonial Legacies</i> | | | | | |
| British | | | | 0.00967 (0.121) | -0.218 (0.138) |
| French | | | | -0.444*** (0.122) | -0.508*** (0.128) |
| τ_1 | -0.612 (0.432) | 0.231 (0.453) | -7.663*** (1.716) | -1.223** (0.475) | -0.574 (0.500) |
| τ_2 | 2.808*** (0.439) | 3.696*** (0.461) | -3.861** (1.732) | 2.205*** (0.480) | 2.907*** (0.504) |
| τ_3 | 5.884*** (0.460) | 6.829*** (0.487) | -0.994 (1.721) | 5.285*** (0.500) | 6.047*** (0.529) |
| τ_4 | 8.794*** (0.487) | 9.630*** (0.517) | 2.659 (1.710) | 8.223*** (0.525) | 8.867*** (0.555) |
| N | 3111 | 2592 | 519 | 3111 | 2592 |
| PRE | 51.01 | 46.61 | 62.31 | 51.12 | 46.71 |

*** p<0.01, ** p<0.05, * p<0.1

Robust standard errors in parentheses; PRE: Proportional Reduction in Error

Figure 1: Percent of States with Independent Judiciaries by Legal System

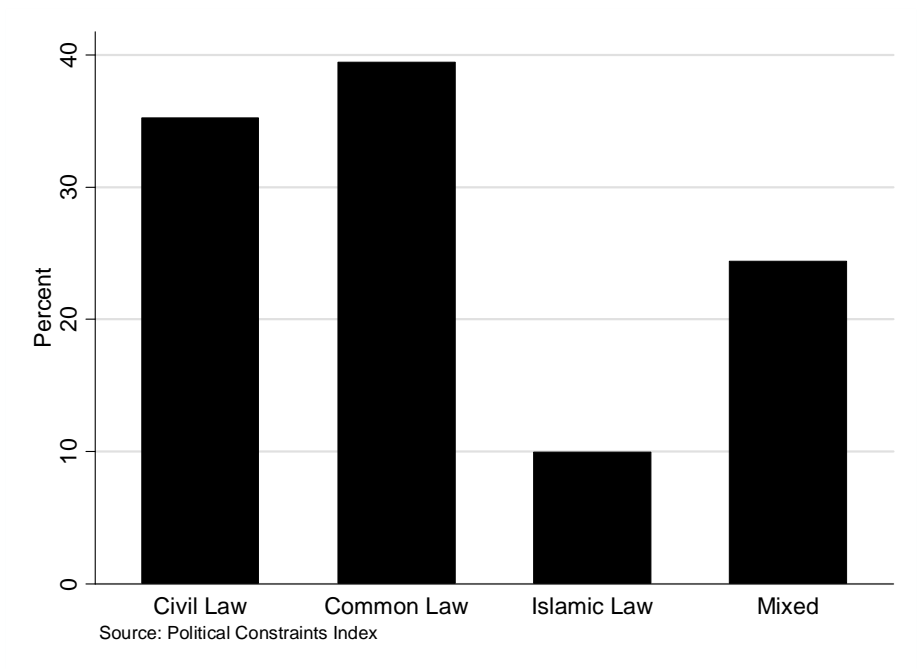


Figure 2: Percent of States with Independent Judiciaries by Legal System

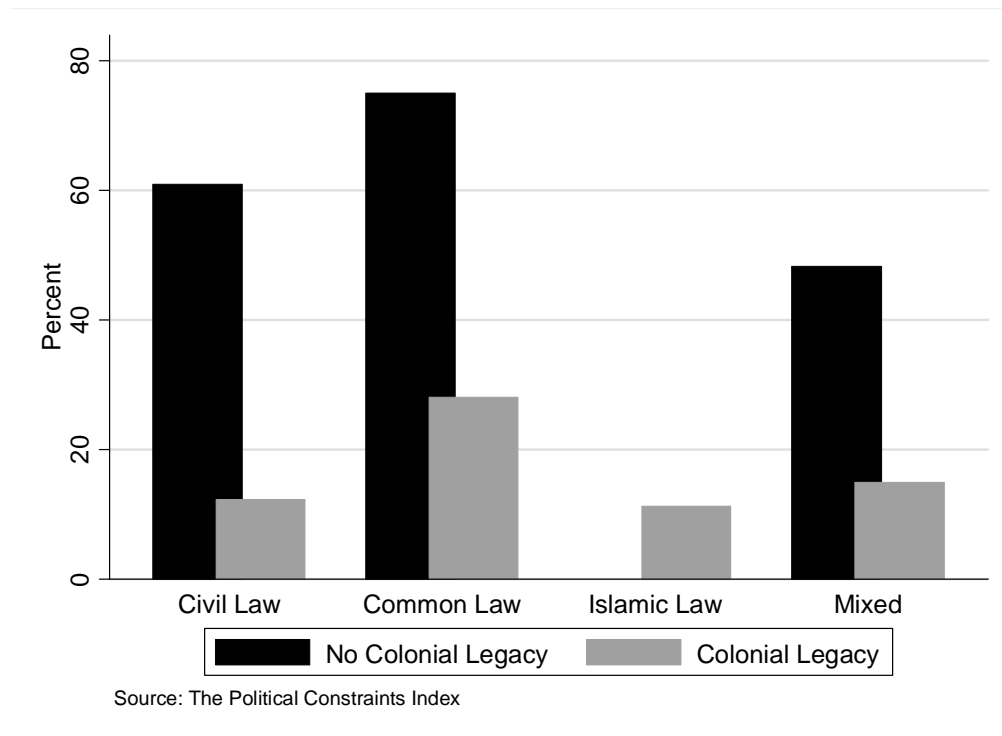


Figure 3: Rule of Law and Domestic Legal Systems, 1996-2005

