Domestic Legal Traditions and States' Human Rights Practices

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Abstract: Empirical analyses of domestic legal traditions in the social science literature demonstrate that common law states have better economic freedoms, stronger investor protection, more developed capital markets, and better property rights protection than states with civil law, Islamic law, or mixed legal traditions. This paper expands upon the literature by examining the relationship between domestic legal traditions and human rights practices. The primary hypothesis is that common law states have better human rights practices on average than civil law, Islamic law, or mixed law states because 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 and protection of individual rights in these legal systems. However, legal systems imposed by colonial powers are weaker than legal traditions that evolved more naturally over time. A global cross-national analysis of state years from 1976-2006 shows that states with common law traditions engage in better human rights practices than states with other legal systems. This result holds when controlling for the quality of the legal system (judicial independence, colonial legacy, and rule of law) and for standard explanations for states' human rights practices (economic growth, regime type, population size, military regime, and war involvement).

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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 & Tate, 1994; Davenport, 1995; Poe, Tate & 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 (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; Peerenboom, 2004; Keith & Ogundele, 2007). 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 (La Porta et al 1997, 1998, 1999, 2004; Chong & Zanforlin, 2000; Joireman, 2001, 2004; Mahoney, 2001; Lange, 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 & 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 state's power. 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 & 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 a government's ability 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 law and common law states with respect to human rights practices. 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 than states with other legal traditions. 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. In contrast to Keith & Ogundele (2007), Joireman (2001) finds that common law countries in Africa 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 examining the relationship between domestic legal traditions and human rights practices in all regions of the world. We argue foremost that common law states should have better human rights practices than states with civil law, Islamic law, or mixed law traditions. We also 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. We also posit that states with more independent judiciaries and a stronger rule of law will experience less repression. By focusing on a region with extensive colonization, weak judiciaries, and weak rule of law, Keith & Ogundele (2007) inadvertently selected a set of cases in which legal systems might have weak influences on leaders' decisions to engage in repression. Our empirical analyses of state-year data from 1976-2006 show that common law states have superior repression records to civil law states. This result holds when controlling for indicators of the quality of the legal system such as judicial independence and freedom from corruption, which significantly reduces political torture, and colonial legacy, which significantly increases torture.

Legal Explanations of States' Human Rights Practices

A state's opportunity and willingness to repress its citizens is contingent on various political, economic, and cultural factors (Poe, 2002; Schmitz & Sikkink, 2002; Davenport & Armstrong, 2004).[2] Interestingly, there are few studies that examine the relationship between domestic legal traditions, states' willingness to ratify human rights treaties or join human rights courts, and

[2] Extant research has shown that non-democratic countries are more repressive than democratic countries. State involvement in interstate and civil wars increases the likelihood that personal integrity rights will be violated (Poe & Tate, 1994; Poe, Tate & Keith, 1999). Repression is also more likely to occur in poor countries with high degrees of economic inequality (Mitchell & McCormick, 1988; Henderson, 1991; Poe & Tate, 1994; Poe, Tate, & Keith, 1999).

states' human rights practices (Cross, 1999; Peerenboom, 2004; Keith & Ogundele, 2007; Simmons, 2009; Mitchell & Powell, forthcoming). This is surprising because if 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 stands to reason that courts, judges, and lawyers play an essential role in upholding these 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. This variation stems from differences in legal traditions (common law, civil law, Islamic law) and differences in the quality of the legal system, such as the extent to which the rule of law holds, the degree to which the judiciary is independent from the state, and the manner in which the legal system was established.

To understand how legal systems influence repression, we focus on the major legal traditions in the world as defined by Badr (1978: 187): civil law, common law, and Islamic law (David & Brierley, 1978; Glenn, 2007). Major legal systems are ones whose 'application extended far beyond the confines of their original birth places and whose influence, through reception of their principles, techniques or specific provisions has been both widespread in space and enduring in time' (Badr, 1978: 187). Systems that incorporate elements of two or more legal traditions are treated as mixed legal systems.[3] In this section, we provide a brief overview of the

[3] Some states combine elements of civil law and common law (Botswana, Cameroon, Malta, Seychelles, South Africa, Sri Lanka, Thailand, and Zimbabwe), others combine civil law and Islamic law (Kenya and Morocco), while some systems incorporate elements from all three major legal traditions (Japan and Somalia). Overall, 10% of countries globally have mixed legal traditions.

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 (*jurisconsulta*) 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 (Mitchell & Powell, forthcoming: 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 & 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.[4]

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 less on written procedural rules. English judges came to be bound by the precedents established

[4] Our legal system typology comes from Powell & 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.

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 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 globally 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'. 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; Merryman & Clark, 1978). This also produced a sharp distinction between private law (governing relations between citizens) and public law (governing relations between the citizen and state) in civil law systems (Mahoney, 2001: 512). 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). Yet Islamic law takes one additional step, eschewing distinctions between the individual and the state; because the individual is part of the state and the Islamic community, there is no need to delineate individual rights (Arzt, 1990: 206).

The French civil law system provides a good example of the primacy of the state, as the French revolution was driven in part by conflict between Louis XVI and the *parlements,* courts that had partial veto power over royal legislation. A post-revolutionary law of 1790 prohibited the judiciary from reviewing executive acts (Mahoney, 2001: 509-510). Bismarck followed a similar path in Germany, unifying private law into a single code in 1900, a move which strengthened the position of the state in the legal system (Beck, Demirgüç-Kunt & Levine, 2003).[5] The Ottoman Empire also privileged the role of the state through the creation of hierarchical and codified legal rules called the *majalla* between 1869 and 1877. While these rules were Islamic in content and consistent with *shari'a*, they were based in form on the

[5] However, Beck, Demirgüç-Kunt & Levine (2003: 659) point out that the German code was much more flexible than the French code. The rigidity of the French system became extremely problematic in French colonies because it created great tension between civil law and customary law, it brought a norm of antagonism towards judges to the colonies, the clerk-like role of judges made the legal profession less attractive, and it failed to provide a culture for dealing with inconsistencies in the law.

Napoleonic Code (Brown, 1997: 2). These moves towards stronger executive authority in civil and Islamic law systems stand in sharp contrast to the historical development of common law in England, whereby the Stuart kings' attempts to seize property fueled the land owners' conflict against the crown in the English Civil War and Glorious Revolution (Mahoney, 2001: 508-509). Thus, 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 and Islamic 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. Appellate courts, which have the power to reverse the legal judgments of lower courts, are also strong in common law systems. Legislatures, which generate the codes of civil law systems, are not bound by precedent (Mahoney, 2001). The use of precedent and the hierarchy of judicial decision making create 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 & Ogundele, 2007).[6] Civil law and Islamic law judges, on the

[6] 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 repressive and remain unchallenged by the higher courts. Thus, this effectiveness of this mechanism is strongly contingent on judicial independence and an effective rule of law.

other hand, are not legally bound by prior judgments, although deference to the written law of statutes and codes in civil law creates some legal predictability. 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.[7]

The application of law also varies across legal traditions. 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 trails, 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 tradition' (Scully, 1987: 602).

[7] 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.

One consequence of the adversarial system employed by common law states is the establishment of stronger, more independent judiciaries.[8] 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; Powell & Staton, 2009).

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.

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 may experience the highest levels of repression given that the

[8] 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).

legal structure is intimately linked to the state and the Islamic religion, giving judges very few discretionary powers for protecting human rights.[9] Basic descriptive statistics on political terror scores (Gibney & Dalton, 1996) from 1976-2006 confirm these predicted differences in repression. The mean repression score on a scale from 1 to 5 is lowest for common law states (2.45) and highest for Islamic law states (3.10).[10] This is our first hypothesis.

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

How the Quality of Domestic Legal Traditions Influences Human Rights Practices

While common law states are expected to have better human rights practices on average than civil law, Islamic law, or mixed law states, we also need to consider how other characteristics of legal systems influence leaders' decisions to repress their citizens. Domestic legal traditions are static features that stem from a state's particular historical path. Yet there is considerable variation in the degree to which the rule of law operates inside each state. Common law may provide greater protection to individuals relative to other legal traditions, yet the manner in which the legal system is established is also relevant. Legal systems imposed by colonial powers may exhibit weaker qualities than those that evolved naturally in Europe or elsewhere. There is also variation in the degree to which judges are independent from the state, even within the same legal family. The extent to which the rule of law is upheld in a state will also matter, as executives face fewer checks on their coercive power in corrupt legal systems. In this section of the paper, we describe how these various qualities of legal systems generate different expectations with respect to states' human rights practices.

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[9] However, there is significant variation in the extent of judicial independence across Islamic legal systems (Brown, 1997). The extent to which Islamic state law is consistent with *shari'a* also varies significantly across states with Islamic legal traditions.

[10] The distribution of state year cases across the five values on the political terror scale are as follows: 1 (12.44%-lease repressive), 2 (31.59%), 3 (32.21%), 4 (16.89%), 5 (6.88%-most repressive). 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.

First, we discuss why many legal systems established through the process of colonization are weaker than those that evolved naturally. A majority of states in the world inherited legal systems from former colonial powers, such as Britain, France, Spain, Portugal, and the Ottoman Empire. Many of these colonized states retained 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 reverted to 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, often implementing the colonizers' system of civil law.

Why these "imposed" legal systems are weaker than their colonizers' counterparts stems from a variety of factors including 1) the creation of dual legal systems, 2) the degree to which the metropole retained legal control over the colonies, 3) the lack of legal training provided to colonized peoples, and 4) the degree of bureaucracy necessary to implement the colonizer's legal system. We discuss each of these in turn, providing historical examples.

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). 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.

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; Mamdani, 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 & 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, $t=-10.25$, $p<.0001$).

France also created dual legal systems in its colonies, establishing 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:

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

247). The law was designed to protect expatriate rights over native rights (Keith & 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 was repealed, although not until World War II (Joireman, 2001: 579). It was 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).

Dual legal systems relate to a second problem with legal systems imposed through colonial rule. Colonizing states maintained different practices with respect to the degree of central control over the day to day operations of the colonized territories. One of the most centralized colonial systems was established by Spain, a country which brought the Roman legal tradition to its colonies. As a civil law state, Spain was strongly influenced by the Napoleonic Code in its own legal development, whereby it created legal structures in Spanish colonies similar to French colonial systems (Levine, 2005: 64). At the top of the colonial administrative hierarchy stood the king of Spain and the Council of the Indies, which had supreme jurisdiction over all colonial matters. In the Americas, power was divided among the viceroys, governors, and courts (Phelan, 1960: 50-51). The courts, or the *audiencias*, were 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 & 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. Phelan (1960: 51) describes the strict hierarchy of the Spanish colonial administration:

> Every aspect of colonial life down to the most minute and insignificant details was regulated by a voluminous body of paternalistically inspired legislation issued by the Council. Viceroys and governors were under standing orders to enforce these mandates. These regulations were codified by 1681 in the celebrated *Recopilacion de leyes de las reynos de los Indias*. In matters of policy the viceroys were supposed to refer all decisions to Spain.

Reflecting the hierarchical legal system at home, legal systems established by France in its colonies were also closely tied to the state. 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 & Athow, 2001: 478; Hooker, 1975). As noted earlier, the Ottoman Empire also maintained a very centralized colonial structure, establishing a centralized set of codes in the *majalla* between 1869 and 1877. Centralized forms of colonial rule weakened the development of local bureaucracies, which diminished the capacity of colonized states to deal successfully with post-independence state building (Bernhard, Reenock & Nordstrom, 2004).[12]

Another problem with legal systems established through the process of colonization was the lack of legal training provided to local citizens. State-wide courts established by the British

[12] 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, such as dissent.

in their colonies 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, increasing the chances for autocratic rule (Joireman, 2001: 576-581).

British and French 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). The number of trained lawyers in turn influences states' human rights practices after independence is achieved. Cross (1999) finds that as the relative number of lawyers increases, states are more likely to respect political rights. Access to legal education was also uneven in French colonies, being given to some ethnic groups but not others. This created patterns of inequality that carried over into the post-independence regimes (Blanton, Mason & Athow, 2001: 478-479).

Some scholars have also pointed to differences in transplanting legal traditions due to the structure of the legal system. It is more difficult for colonized states to implement civil law than common or Islamic law (Joireman, 2001). Civil law is a system with very detailed procedures and codes, requiring a strong bureaucratic structure to implement. The procedural nature of common law relies much more on oral proceedings, which requires a less well-developed bureaucracy to operate efficiently, something that hindered the development of civil law in less economically developed colonies (Joireman, 2001: 576). 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:

> 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).

Many states colonized by Spain, France, and Portugal were relatively poor countries with weak bureaucracies. The centralized administration imposed by these colonizing states did little to develop local bureaucratic capacity, which placed limits on the ability of the newly independent states to maintain a functioning legal system. This leads to our second hypothesis.

> H2: States with colonial legacies should engage in repression more frequently than states without colonial legacies.

An initial look at our data supports this hypothesis. 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. 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). Even within the colonial legacy sample, however, common law states still exhibit the lowest average levels of repression, a pattern consistent with our first hypothesis.

One posited mechanism for the superior human rights performance of common law states is the development of strong, independent judiciaries. However, there is considerable variance in

judicial independence across states within the same legal family. Germany's constitution, for example, protects the independence of judges much more strongly than the French constitution, even though both states grew out of the civil law tradition (Mahoney, 2001: 513). Among Islamic law states, some like Egypt and Kuwait have relatively strong, independent judicial branches which limit the authority of the executive (Brown, 1997). Among common law states, some have strong, independent judiciaries (United States, Canada, Australia and New Zealand), while others have relatively weak judiciaries (Liberia, Sierra Leone, Ghana, Bhutan, and Bangladesh).

In many authoritarian states, judges might be afforded independence based on the structure of the domestic legal tradition, but ultimately serve as tools of the ruling regime or operate in fear of the regime (Helmke & Rosenbluth, 2009). In Argentina in the late 1970s, the Supreme Court dismissed writs of habeas corpus. The Chilean Supreme Court refused to challenge the Pinochet government on human rights issues between 1973 and 1980. Even though Taiwan's 1947 constitution established independent judicial review, the Council of Grand Justices had little power under the KMT regime. A similar pattern emerged in Mexico under the PRI's 70-year rule, where judges were denied access to politically salient cases (Helmke & Rosenbluth, 2009: 355-356). This relates to a broader point about the rule of law. In order to understand how domestic legal traditions influence states' human rights practices, we must take into consideration whether the legal system is fully functional and reasonably independent from the ruling executive. This produces two final hypotheses about the quality of the legal system.

> H3: States with more independent judiciaries should engage in repression less frequently than states without colonial legacies.
>
> H4: States with legal systems characterized by strong rule of law should engage in repression less frequently than states without colonial legacies.

Research Design

To test our hypotheses, we employ a sample of state-years from 1976-2006. Consistent with previous human rights research, we are concerned with the subset of rights referred to as personal or physical integrity rights, which can be 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 Political Terror Scale (Gibney & 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 & Mitchell (2007). Because states with Islamic law systems should tend to have the worst human rights records, Islamic law is used as the omitted baseline category.

We use three different variables to capture the quality of the legal system. The first variable captures whether a state has a colonial legacy as coded by Hensel (2009).[13] In our sample, 83% of all cases occur in the colonial legacy context.[14] Our second indicator is a dummy variable capturing whether a state has an independent judiciary (31%) or not (69%). This data is coded by Henisz (2000) and made available as part of the Quality of Government Institute's dataset.[15] The final variable is a measure capturing rule of law. While a variety of measures are employed in the literature, including the ICRG law and order measure and the IMF's Contract Intensive Money (CIM) measure (Powell & Staton, 2009), we employ a measure compiled by the Heritage Foundation that records the extent to which states are free from

[13] This data is available online at http://www.paulhensel.org/icow.html#colonies.
[14] The non-colonial sample is small because one of the few regions where legal systems evolved outside the colonial context is Europe.
[15] This data is available online at http://www.qog.pol.gu.se/.

corruption; this is converted to a 100 point scale (mean = 40.3, standard deviation = 26.4).[16] This indicator is also taken from the Quality of Government dataset. This doubles the number of cases we have for analysis and this indicator is correlated at 0.70 or higher with other rule of law measures, making it a good proxy for the underlying rule of law concept.

A number of important control variables have been consistently shown to have a significant impact on repression in the human rights literature. Factors that improve human rights practices include democracy and economic development; factors that hinder good human rights practices include a large population, military regime, internal and external conflict, and prior experience with repression (Davenport & Armstrong, 2004). To capture the notion of procedural democracy, we employ the Polity IV composite index (Marshall & Jaggers, 2007) which ranges from -10 to 10 (mean = 0.6, standard deviation = 7.5). The level of economic development is measured as the natural log of gross domestic product per capita (mean = 8.4, standard deviation = 1.1); this taken from Gleditsch's (2002) dataset.[17] Data on population size comes from the Correlates of War project; in its raw form, the variable is highly skewed, so we employ a natural log transformation (mean = 1.4, standard deviation = 2.2). A measure for 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 (21%). State involvement in interstate wars (4%) or civil wars (16%) is taken from the Uppsala/PRIO Armed Conflict Dataset.[18]

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

[16] The Quality of Government Institute obtains this information from the Transparency International's Corruption Perceptions Index (CPI), converting the original 0-10 scale into a 0-100 scale.
[17] This data is available online at http://privatewww.essex.ac.uk/~ksg/exptradegdp.html.
[18] This data is available online at http://www.prio.no/CSCW/Datasets/Armed-Conflict/.

reasons for inclusion, Keith & Ogundele (2007) argue that lagged repression is substantively important; repression begets more repression.[19]

The model is estimated using an ordered logit with robust standards 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 several ordered logit models are presented in Table I. 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.

Table I in here

[19] Given that we treat the lagged dependent variable as ordinal, this could raise some concerns about distinct forms for these measures. We also estimated our models with ordinary least squares and obtained similar results to those reported in Table I.

The analyses provide strong support for Hypothesis 1. Model 1 demonstrates the negative effect of common law on state repression relative to Islamic law systems. Civil law states also experience less repression than Islamic law states, although the size of the effect is smaller; mixed law states are no different in repressive behavior than Islamic law states. These results hold even when controlling for colonial legacy (Model 1), judicial independence (Model 1), and the rule of law (Model 2). We calculate the first difference substantive effects for all independent variables at each category of the Political Terror Scale in Table II.[20] The baseline model for Islamic law states shows the probability of cases being in each category of the Political Terror Scale. All values below that are reported as first differences, thus positive values indicate increases above the baseline value, while negative values show drops from the baseline; we include asterisks to show if the first difference is statistically significant at the 95% level.

Civil war has the largest effect of any variable in the model, increasing the chances for being in the most repressive categories (4 or 5) by 1/3. Population size is also substantively important, with the most populous states being 1/3 less likely to be in the least repressive categories (1 and 2). Domestic legal traditions are also substantively important. Common law states are 0.13 more likely to exhibit the best human rights practices (values of 1 and 2 on the Political Terror Scale), while reducing the probability of the most repressive behavior by 0.05. Thus the effect of the common law tradition is 1/3 as large as the factor most likely to alter repression, a sizable effect. Civil law states also have significantly better human rights practices than Islamic law states, although the substantive effect is much smaller than for common law. Civil law states are 0.04 more likely to exhibit the best human rights practices (values of 1 and 2) than Islamic law states.

[20] These values are calculated with Clarify (King, Tomz & Wittenberg, 2000), setting each variable at its mean or median while varying the variable of interest.

Table II in here

The variables capturing the quality of the domestic legal tradition are also statistically significant. Hypothesis 2 finds support in Model 1, as states with colonial legacies have significantly higher levels of torture than states without colonial legacies. Colonial legacy reduces the probability of being in the least repressive categories (1 and 2) by 0.10, while increasing the chances for high levels of torture (categories 4 and 5) by 0.04. Hypothesis 3 is supported as well, with judicial independence having a negative and statistically significant effect on repression. States with independent judiciaries are 0.12 more likely to exhibit best human rights practices (categories 1 and 2) in comparison to states without independent judiciaries.

Hypothesis 4 relating to the rule of law is evaluated in Table I, Model 2. We include the freedom of corruption measure from the Heritage Foundation, which reduces our estimation sample by 1/3 (from 3,083 cases to 1,224 cases). Yet even in this reduced sample, common law states still show significantly better human rights practices than Islamic law states. Colonial legacy also has a positive effect on repression. States that experience more freedom from corruption are significantly less likely to engage in torture. The effect of judicial independence is insignificant in this model, although this reflects the high bivariate correlation between these quality of legal system indicators (0.54).

We checked the robustness of our findings in several ways. First, we utilized a different coding of the physical integrity index from the Cingranelli-Richards (CIRI) Human Rights Database (Cingranelli & 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 I. Consistent with Hypothesis 1, common law states have better human rights practices than civil law, mixed law, and Islamic law states. States with colonial legacies are more likely to violate their citizens' human rights, while states with independent judiciaries and better rule of law exhibit improved practices.

Second, we estimated Model 1 including a squared term for democracy. This specification better reflects arguments in the human rights literature about the non-linear relationship between regime type and repression (Regan & Henderson, 2002; Davenport & Armstrong, 2004), with extremely democratic or extremely autocratic states repressing citizens less often than states in the middle of the democracy scale. We see that results supporting all four theoretical hypotheses hold. There is indeed evidence for a non-linear relationship, as indicated by the negative sign and statistical significance for the squared democracy variable.

Finally, we control for state age in Table I, Model 4. This is a measure taken from the Powell & Mitchell (2007) study. Older states engage in higher levels of repression than newer states. Inclusion of this variable does not alter the findings for other variables. Taken together, all of the empirical results show that legal traditions, colonial legacies, and the quality of legal institutions have important effects on states' human rights behavior.

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 Islamic law or mixed law states. We also show that the quality of the legal system is important as well. Legal traditions imposed through colonization are weaker than those that evolved naturally. States with stronger judicial independence and rule of law also exhibit systematically better human rights behavior than states with more coercive, corrupt executives.

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. Future work could 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 & 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 & 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 & Viljoen, 2001: 488).[21] 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. Common law states are better suited to this task than countries with other legal systems because common law systems are more effective at checking government power with respect to individual rights. Due to their institutional design, common law 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 degree to which the judicial branch is allowed adequate independence and the degree to which the rule of law is upheld. 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.

[21] Heyns & 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).

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Table I: Ordered Logit Estimates, Political Terror Scale

Variable	Model 1 Baseline Model	Model 2 With Corruption	Model 3 With Democracy^2	Model 4 With State Age
Legal Traditions				
Common Law	-0.63 (0.13)***	-0.59 (0.23)**	-0.63 (0.13)***	-0.65 (0.14)***
Civil Law	-0.21 (0.11)**	-0.55 (0.20)***	-0.22 (0.11)**	-0.25 (0.11)**
Mixed Law	-0.18 (0.16)	-0.09 (0.29)	-0.19 (0.17)	-0.24 (0.17)
Other Legal Characteristics				
Colonial Legacy	0.46 (0.12)***	0.39 (0.20)*	0.42 (0.12)***	0.79 (0.13)***
Judicial Independence	-0.56 (0.11)***	-0.22 (0.15)	-0.55 (0.11)***	-0.52 (0.12)***
Control Variables				
Repression_{t-1}	2.00 (0.06)***	1.74 (0.10)***	1.97 (0.06)***	1.98 (0.07)***
Democracy	-0.02 (0.01)**	-0.03 (0.01)**	-0.02 (0.01)**	-0.03 (0.007)***
ln GDP Per Capita	-0.22 (0.04)***	-0.12 (0.08)	-0.15 (0.04)***	-0.25 (0.05)***
ln Population	0.19 (0.03)***	0.29 (0.05)***	0.19 (0.03)***	0.15 (0.03)***
Military Regime	-0.03 (0.10)	-0.27 (0.20)	-0.06 (0.10)	-0.06 (0.10)
International War	0.02 (0.09)	0.06 (0.29)	0.05 (0.09)	-0.002 (0.09)
Civil War	0.63 (0.05)***	0.80 (0.10)***	0.62 (0.05)***	0.66 (0.05)***
Freedom from Corruption	----	-0.015 (0.003)***	----	----
Democracy^2	----	----	-0.007 (0.001)***	----
ln State Age	----	----	----	0.21 (0.04)***
Cut Points				
τ_1	0.20 (0.47)	-0.12 (0.80)	0.23 (0.47)	0.82 (0.49)
τ_2	3.73 (0.47)	3.41 (0.80)	3.81 (0.47)	4.41 (0.50)
τ_3	6.83 (0.50)	6.26 (0.83)	6.91 (0.50)	7.54 (0.53)
τ_4	9.70 (0.52)	9.54 (0.86)	9.77 (0.52)	10.42 (0.58)
Sample Size	3083	1224	3083	2829
Proportion Reduction in Error	52.06%	50.98%	51.94%	53.52%

*** p<0.01, ** p<0.05, * p<0.1; Robust standard errors in parentheses

Table II: Substantive Effects for Model 1[22]

	Best Human Rights Practices	→	→	→	Worst Human Rights Practices
% of All Cases	12.44%	31.59%	32.21%	16.89%	6.88%
Baseline Model	Pr(Y=1 | X)	Pr(Y=2 | X)	Pr(Y=3 | X)	Pr(Y=4 | X)	Pr(Y=5 | X)
Islamic Law	.0103 (.0016)	.2496 (.0204)	.6256 (.0159)	.1072 (.0114)	.0073 (.0012)
First Differences: Change from Baseline					
Common Law	.0088 (.0021)*	.1273 (.0269)*	-.0863 (.0195)*	-.0464 (.0106)*	-.0034 (.0009)*
Civil Law	.0023 (.0011)*	.0401 (.0186)*	-.0224 (.0100)*	-.0186 (.0093)*	-.0014 (.0007)*
Mixed Law	.0021 (.0020)	.0357 (.0316)	-.0205 (.0186)	-.0161 (.0143)	-.0012 (.0011)
Colonial Legacy	-.0062 (.0020)*	-.0936 (.0243)*	.0606 (.0196)*	.0365 (.0083)*	.0027 (.0007)*
Judicial Independence	.0077 (.0020)*	.1137 (.0248)*	-.0758 (.0195)*	-.0425 (.0092)*	-.0031 (.0008)*
Democracy	.0036 (.0018)*	.0627 (.0276)*	-.0320 (.0171)*	-.0318 (.0128)*	-.0025 (.0010)*
Ln GDP Per Capita	.0105 (.0025)*	.1790 (.0344)*	-.0844 (.0215)*	-.0973 (.0238)*	-.0078 (.0024)*
Ln Population	-.0185 (.0039)*	-.2940 (.0395)*	.1252 (.0305)*	.1725 (.0327)*	.0147 (.0038)*
Military Regime	.0004 (.0011)	.0065 (.0182)	-.0034 (.0095)	-.0032 (.0092)	-.0002 (.0007)
International War	-.0003 (.0027)	-.0081 (.0464)	.0002 (.0226)	.0076 (.0260)	.0006 (.0021)
Civil War	-.0088 (.0013)*	-.2008 (.0183)*	-.1358 (.0406)*	.3059 (.0332)*	.0394 (.0078)*

[22] Predicted probabilities for the ordered logit model are generated with Clarify, version 2.1 (King, Tomz & Wittenberg, 2000). Values in parentheses are standard errors; * indicates the first difference is statistically significant at the 95% level. The baseline model sets all continuous variables at their mean and all discrete variables at their median. Islamic law is the baseline domestic legal system. First differences are calculated by changing discrete values from 0 to 1 or by increasing a variable from its minimum to maximum value.