

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

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Abstract: Legal factors, such as domestic legal system type, the rule of law, and judicial independence have garnered more attention in the human rights literature in recent years. Yet there is an interesting puzzle that emerges in recent studies of the legal dimension of human rights. Theoretically, common law states might be expected to 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. However, some empirical analyses are at odds with this theoretical prediction, showing that civil law states have better human rights practices than common law states, at least in some contexts such as Sub-Saharan Africa (Keith and Ogundele 2007). In this paper, we seek to uncover more carefully the relationship between domestic legal systems, colonial legacies, and human rights. 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. We also find that states with French colonial legacies have better human rights records than states with other or no colonial legacies.

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. Consistent with the legal explanations posited above, we show that common law states have superior repression records to civil law states, even in the subset of states with colonial legacies. Our empirical analyses of state-year data from 1976-2006 also suggest that civil law countries have better human rights records than Islamic law or mixed law countries, but only in the non-colonial context.

Interestingly, when controlling for legal system and colonial legacies jointly, we find that states with French colonial legacies have better human rights practices than states with other or no colonial legacies. 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.

Our paper is organized as follows. We begin with a short review of the human rights literature. This is followed by a discussion relating domestic legal systems to states' human rights practices. We then discuss how colonial legacies influence the relationship between legal systems and human rights practices, with an emphasis on British and French colonial traditions. This is followed by a description of our research design and empirical analyses. We conclude

the paper by considering the broader policy implications of our findings and we identify avenues for further research on this topic.

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? Posing the underlying question of this research as “why do states respect human rights?” leads to a very different analysis than its alternative, phrased in the negative, “why do states violate human rights?”² When states violate human rights, we assume they choose to do so because it is in their self-interest (Poe 2002; Davenport and Armstrong 2004). Davenport and Armstrong (2004, 539) identify three dimensions affecting the likelihood for repression: the capacity to repress, factors that compel repression, and factors that hinder repression. In other words, governments violate the human rights of their citizens when they have the opportunity and the willingness to do so. While it is generally assumed that all states have the capacity to repress, the desire and opportunity to repress varies considerably. Davenport and Armstrong (2004) cite political dissent as the primary factor compelling states to repress, and economic development and democracy as the primary factors that hinder repression. A government will violate human rights when repression maximizes its utility over its possible policy alternatives.

The opportunity and willingness to repress are contingent on various political, economic, and cultural factors (Schmitz and Sikkink 2002). With respect to political factors, extant

² For example, Cardenas (2004) orients her research with respect to the latter (221). Consequently, she describes the puzzle as “why states sometimes persist in violating international human rights norms” (219). In other words, the baseline behavior of a state is expected to be consistent with the norms specified in various international human rights treaties, and repression is a deviation from normal behavior. We take the opposite approach; given the presence of compelling factors, the baseline behavior of a state is expected to be repressive in nature.

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. The ad hoc tribunals in Rwanda and Yugoslavia contributed to 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. Signed in Rome in June 1998, the Statute came into force on July 1, 2002, when 60 state parties had ratified the treaty, a figure that has grown to over 50% (105 countries) of all states today (Schabas 2007). The court is currently prosecuting cases in Sudan, Uganda, the Central

African Republic, and the Democratic Republic of the Congo. The outcomes of these prosecution efforts remains to be seen, but the independent nature of the ICC's prosecutor represented a watershed design element in international efforts to combat crimes against humanity.³

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.⁴ 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

³ The ICC's prosecutor is independent in the sense of being able to initiate proceedings against individuals without any prior approval from member states or the UN Security Council.

⁴ 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."

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 as one 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" (1978, 187). Three legal traditions qualify as major traditions according to this definition: civil law, common law, and Islamic law. All other legal systems that incorporate 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 (*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 and Powell 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.⁵

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 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

⁵ 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.

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).⁶ Civil law 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.⁷

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

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.

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.

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 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.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,

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).

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).⁹

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:

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

⁹ For an in-depth discussion of how judicial independence influences human rights practices, see Powell and Staton (2009). They argue that independent judiciaries may reduce human rights violations, but at the same time, such governments might be reluctant to sign human rights treaties.

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.¹⁰ 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).¹¹

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 independent judiciaries by legal system types.¹² As predicted, common law legal systems have the highest proportion of independent judiciaries with nearly 40% of the observations.¹³ 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

¹⁰ 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.

¹¹ 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.

¹² 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.

¹³ 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.

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. Thus, new states had little to no say in the definition of human rights principles or norms. 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 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.¹⁴

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. A significant portion of the states in the world did not develop legal systems as ideas about law developed. Instead, they inherited legal systems from colonial powers. Considerations of justice did not inform the process by which groups who were aggregated into modern nation states defined their social interactions. Instead, groups were aggregated into foreign entities known as nation-states and the rules that defined their legal interactions were given exogenously. Moreover, legal systems were often established in situations in which the rule of law was completely absent from the interaction between the governing powers and the subjects. In colonies with extensive settlement, 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

¹⁴ Carey offers four ways in which colonial powers created enduring legacies leading to poor human rights practices: 1) hypocritical socialization ("civilizing" the brutes) 2) premature introduction of "quasi-liberal institutions, which were generally undeveloped, whose institutions were designed more for economic exploitation than 'civilizing' the population", 3) colonial induced racial divisions, and 4) economic stratification (2002,65-7).

(18 countries), Russia (16), the Ottoman Empire (7), Portugal (6), Austria-Hungary (6), and the United States (5). After explaining what effects British and French colonial legacies have on states' human rights practices, we present some descriptive analyses relating colonial legacies to repression.

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 (see Appendix). 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. Here we consider what effect these colonial legacies have on subsequent human rights behavior. We focus our attention on the colonial activities of the British and French, although we control for Spanish colonial legacies as well in our multivariate analyses, given that Spain was the next most active colonizing state.

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).¹⁵ 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

¹⁵ Colonies ruled by direct rule had large police forces and courts modeled closely after the British legal system (Lange 2004, 907).

scores (PTS) of these two groups (1976-2006).¹⁶ 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, $t=-10.25$, $p<.0001$).¹⁷ 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.

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, a ‘system which tends to efface all difference between the colonies and the motherland, and which views the colonies simply as a prolongation of the mother country beyond the seas’ (Hooker 1975, 196). France sought to integrate colonial peoples into a ‘Greater France’, going so far as to making colonial subjects French citizens in 1946 (Blanton, Mason, and Athow 2001, 478).

¹⁶ This is a five point scale as coded by Gibney and Dalton (1996), with a value of one representing the lowest level of repression and a value of five representing the highest level of repression.

¹⁷ Lange (2004) provides a number for the extent of indirect rule ranging from 0-100%. We simply categorize any value above zero as a one in this analysis. He identifies the following former British colonies, excluding states with sizable European settlement: Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Cyprus, Fiji, Gambia, Ghana, Guyana, Hong Kong, India, Jamaica, Kenya, Lesotho, Malawi, Malaysia, Mauritius, Myanmar, Nigeria, Pakistan, Sierra Leone, Singapore, Solomon Islands, Sri Lanka, Sudan, Swaziland, Tanzania, Trinidad, Uganda, Zambia, and Zimbabwe.

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.¹⁸ This practice eventually was repealed, although not until World War II (Joireman 2001, 579). It was then replaced by the *code indigène*, “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).¹⁹ 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

¹⁸ In Algeria, for instance, the code de l’indigénat consisted of “thirty-three infractions which were not illegal under the common law of France but which were illegal and punishable in Algeria when committed by Muslims” (Ruedy 2005, 89).

¹⁹ Cross (1999) finds that as the relative number of lawyers increases, states are more likely to respect political rights. Cross uses the relative number of lawyers in a country as “a proxy variable to represent the country’s devotion to enforcing the rule of law” (1999, 91). While we disagree with the author’s use of relative numbers as a proxy for the rule of law, this finding is theoretically interesting given our argument linking colonial practices to weakened legal institutions,

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).²⁰ 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 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

²⁰ On the other hand, the authors use only bivariate analyses and do not control also for legal systems. Our discussion suggests that the legacy of common law institutions is more important than the broader legacy of British colonialism.

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. Moreover, this relationship is not the product of other factors such as low levels of democracy, poor economic development, or more international or internal conflict. In fully controlled empirical models presented below, colonial legacy remains a strong predictor of increased state repression. This suggests that there is a qualitative difference when it comes to state respect for human rights in states with colonial legacies.

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. This is supported as well in a difference of means test between states with colonial legacies and those without legacies. The mean regression 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.²¹

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

²¹ These estimates for the rule of law come from Kaufmann et al (2006). They define the rule of law as “the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence” (2006, 4). The data used to construct the measure for the rule of law are weighted such that the index of rule of law is normally distributed with a mean of zero and standard deviation of one.

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 expect common law states to have the best human rights records, and we expect states with colonial legacies to engage in repression more frequently. However, given that common law is designed to protect individuals from the state, its negative effect on repression should be observed even in former British colonies. Civil law should work best to promote human rights when the state has existed for a long time, as in France, where inconsistencies in the protection of individual rights could be worked out. More broadly, we seek to determine whether the benefits of common law systems observed in other studies translate into the human rights arena as well. 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. We describe the dependent variable, key independent variables, and control variables utilized in our multivariate models below. As

described in more detail below, we estimate an ordered logit model because the dependent variable is an ordered scale ranging from one to five.

Dependent Variable: Personal Integrity Rights

Consistent with previous human rights research, we are specifically concerned with the subset of rights commonly referred to as personal integrity rights 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. Compared with other conceptualizations of human rights, personal integrity rights have received generous scholarly attention because of their desirable analytic properties. First, because personal integrity rights are understood to be fundamental minimum standards necessary to enjoy a life of dignity, researchers can avoid engaging in the debate concerning cultural subjectivity of rights like personal property or education. In fact, some go so far as to claim that without the protection of personal integrity rights, other rights (including those which are culturally contested) are meaningless (Keith and Ogundele 2007, 1073). Thus, even allowing for a broad range of rights to be culturally contested, personal integrity rights are characterized by their universality.

Second, the expectation that states conform to the international standards guaranteeing personal integrity rights is the most restrictive for any subset of rights. For a state to respect personal integrity rights, it merely has to avoid wrongfully imprisoning, torturing, killing or disappearing its citizens. Other rights, such as the right to education, require the state to actively improve the lives of its citizens, and almost always include social spending. Personal integrity rights have the desirable property of being negative rights—rights that proscribe certain types of state behavior. Furthermore, violations of personal integrity rights rarely happen on accident.

Instead, they are the result of government policy and are thus easily avoidable (Poe and Tate 1994, 854). Finally, personal integrity rights are easier to measure than other types of rights.²² Consequently, much more comparative data on personal integrity rights exists than data for other subsets of rights. Personal integrity rights are analytically attractive because they are universal, negative, and quantifiable.

The political terror scale is a widely used measure for state repression of human rights (Gibney and Dalton 1996). While the Political Terror Scale includes two versions of the measure from different source material, most recent research has opted to use the version based on the Amnesty International country reports rather than the US State Department country reports. The different values of the Political Terror Scale are given as follows:

- Level 1: Countries under a secure rule of law, people are not imprisoned for their views, and torture is rare or exceptional. Political murders are extraordinarily rare.
- Level 2: There is a limited amount of imprisonment for nonviolent political activity. However, few are affected, torture and beatings are exceptional. Political murder is rare.
- Level 3: There is extensive political imprisonment, or a recent history of such imprisonment. Execution or other political murders and brutality may be common. Unlimited detention, with or without trial, for political views is accepted.
- Level 4: The practices of the Level 3 are expanded to larger numbers. Murders, disappearances, and torture are a common part of life. In spite of its generality, on this level violence affects primarily those who interest themselves in politics or ideas.
- Level 5: The violence of Level 4 has been extended to the whole population. The leaders of these societies place no limits on the means or thoroughness with which they pursue personal or ideological goals (Gibney and Dalton 1996, 73-4).

Independent Variables

²² Of course, this does not imply they are easy to measure. Numerous issues make measurement difficult, most notably states' desire to hide violations. For a critique on the ability for researchers to measure human rights cross-culturally, see Barsh (1993). For a discussion of issues concerning the measurement of physical integrity rights see Cingranelli and Richards (1999). For a general sense of how researchers have addressed measurement issues, see Landman (2004). For a sense of how measurement has improved in the last twenty years, compare Cingranelli and Richards (1999) and Landman (2004) to Goldstein (1986).

The relevance of the different legal systems as they relate to respect for human rights was discussed above. 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).²³ Given that Britain and France were the primary advocates of the common law and civil law systems, respectively, and the two largest colonizers, we think it makes sense to start with an analysis of these legacies.

A number of important control variables have been identified in the human rights literature. These controls 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). "The democratic process, with its emphasis on bargaining and compromise, offers a meaningful alternative for handling conflict if leaders choose to use it" (Henderson 1991, 123-4). To capture the notion of procedural democracy, we employ the Polity

²³ This data is available online at <http://www.paulhensel.org/icow.html#colonies>. See the appendix for 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.

IV *POLITY2* composite index which ranges from -10 to 10.²⁴ Increases along this scale should be negatively related to repression.

The role of economic development has also received much attention in the literature. Though recent work has cast some doubt on the process of development, the level of economic development is strongly associated with repression. Generally, scholars argue one of two things with respect to 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 wider base of individuals whose economic interests are vested in the status quo, the less likely dissent will spread. 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 level of economic development is measured as the gross domestic product per capita. Skewness in this variable

²⁴ We employ *POLITY2*, a modified version of the combined Polity score, *POLITY*, created for use in time-series analyses (Marshall and Jaggers 2007, 15). *POLITY2* is made by subtracting the autocracy score (*AUTO*) from the democracy score (*DEMOC*). Marshall and Jaggers identify three "essential, interdependent elements" of democracy: "the presence of institutions and procedures through which citizens can express effective preferences about alternative policies and leaders, ... the existence of institutionalized constraints on the exercise of power by the executive, [and] ... the guarantee of civil liberties to all citizens" (2007, 13). However, only the first two elements are included in the measure; civil liberties are omitted. Autocracies, on the other hand, "sharply restrict or suppress competitive political participation. Their chief executives are chosen in a regularized process of selection within the political elite, and once in office they exercise power with few institutional constraints" (Marshall and Jaggers 2007, 14). Using these conceptualizations for democracy and autocracy, *DEMOC* and *AUTO* are additive indexes comprised of six expert-coded indicators: regulation of chief executive recruitment (*XRREG*), competitiveness of executive recruitment (*XRCOMP*), openness of executive recruitment (*XROPEN*), executive constraints (*XCONST*), regulation of participation (*PARREG*), and competitiveness of participation (*PARCOMP*). For the specific coding rules, see Marshall and Jaggers (2007).

leads us to take the natural log, a common practice in the literature. This variable should also be negatively related to repression.

Population is a standard control in the personal integrity rights model. 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). Poe and Tate make a more pragmatic argument, “a large number of people increases the number of occasions on which such coercive acts can occur” (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. Surprisingly, 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. It is measured with a dummy variable indicating whether or not the chief executive is a military officer.

As discussed above, dissent is generally argued to be the most fundamental reason a government decides to repress. 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. The link between international war and domestic repression is less obvious than with civil war, but a similar dynamic is thought to be in play. 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). The existence of an international or civil war can be understood as a threat to a government's survival. A government facing an existential threat is often unwilling to tolerate any form of dissent and repress human rights.

Due to the nature of the data being analyzed, it is necessary to include lagged repression as a statistical control. As with most other studies, 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 standards errors clustered on the state. Many analyses which use the five-value Political Terror Scale as the dependent variable estimate the repression model with Ordinary Least Squares (OLS) (e.g. Poe and Tate 1994, Keith and Ogundele 2007). Estimating the model with OLS is desirable due to the straightforward interpretation of the coefficients. However, these models violate the assumption "that the dependent variable be quantitative, continuous, and unbounded" because of the ordinal nature of the dependent variable (Berry 1993, 45). While it may be reasonable to assume that an ordinal variable approximates a continuous variable in some cases, "it is clearly inappropriate to treat any ordered discrete variable with a small number of values (say, five or fewer) as continuous" (Berry 1993, 47). Although the substantive results of OLS and ordered logit methods are often relatively similar, especially as the number of values in the ordinal variable increases, we opt to use the ordered logit model in order to follow methodological best practices.

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-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. 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.

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).²⁵ 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 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.

The global human rights regime has made human rights an issue in international relations. However, international human rights norms are still relatively recent developments and are not yet strong enough to change states' behavior independent of domestic enforcement mechanisms. This is especially true given the continued strength of the sovereignty norm, which justifies states' decision to retain repression as a viable policy alternative. Thus, it is important to focus on the domestic mechanisms that lead to greater respect for human rights. Until repression

²⁵ 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).

has been removed from the menu of policy choices (or at least made more costly), it makes sense to focus on the domestic level when studying human rights repression. Future research should seek to more explicitly link domestic enforcement mechanisms with international human rights norms.

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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

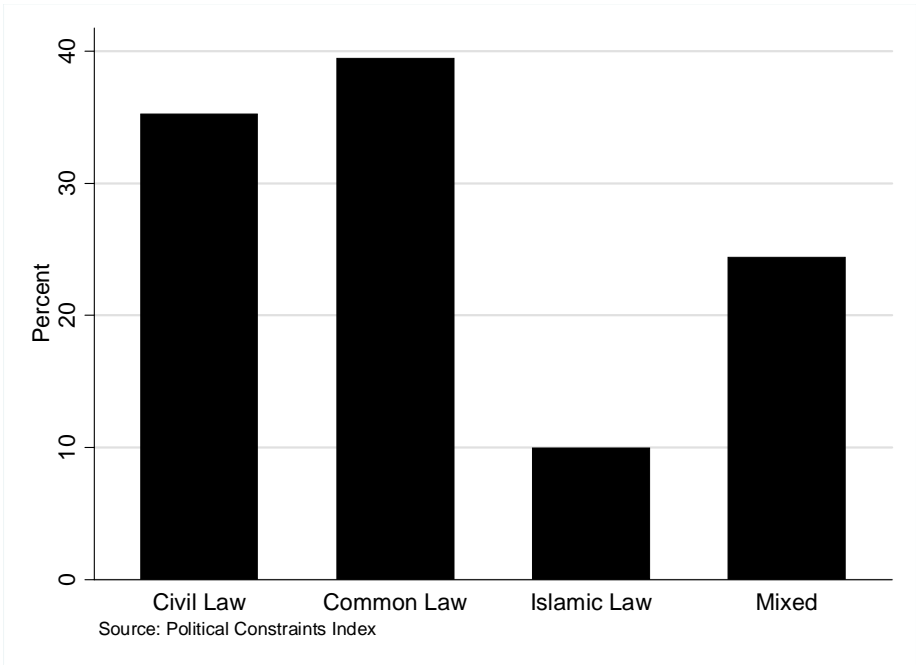


Figure 2: Percent of States with Independent Judiciaries by Legal System

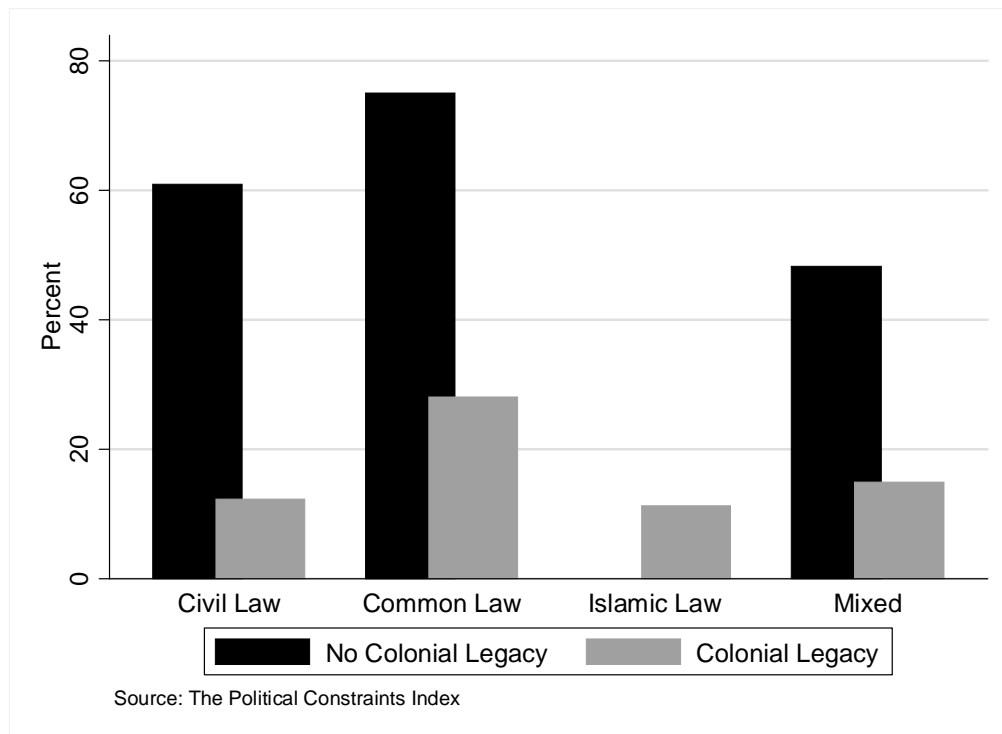
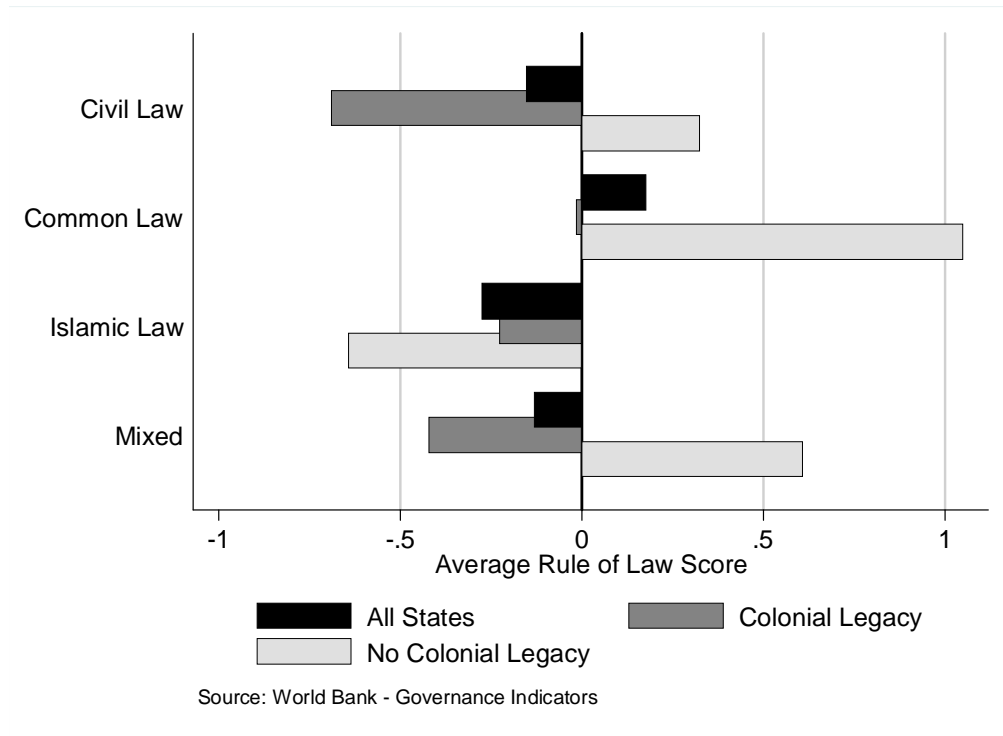


Figure 3: Rule of Law and Domestic Legal Systems, 1996-2005



Appendix: States with Colonial Legacy by Domestic Legal System Type

Note: Colonizers in parentheses include USA (United States), UK (United Kingdom), Netherlands, Belgium, France, Spain, Portugal, AH (Austria-Hungary), Italy, Russia, South Africa, OE (Ottoman Empire), India, China, Japan, Australia, New Zealand

Common Law Countries

United States of America (UK), Canada (UK), Bahamas (UK), Jamaica (UK), Trinidad and Tobago (UK), Barbados (UK), Dominica (UK), Grenada (UK), St. Lucia (UK), St. Vincent and Grenadines (UK), Antigua & Barbuda (UK), St. Kitts-Nevis (UK), Belize (UK), Guyana (UK), Cyprus (UK), Sierra Leone (UK), Ghana (UK), Uganda (UK), Tanzania (UK), Zambia (UK), Zimbabwe (UK), Malawi (UK), Lesotho (UK), India (UK), Bhutan (India), Bangladesh (UK), Malaysia (UK), Singapore (UK), Philippines (USA), Australia (UK), Papua New Guinea (Australia), New Zealand (UK), Solomon Islands (UK), Kiribati (UK), Tuvalu (UK), Fiji (UK), Tonga (UK), Nauru (Australia), Marshall Islands (USA), Palau (USA), Federated States of Micronesia (USA), Samoa (New Zealand)

Civil Law Countries

Cuba (USA), Haiti (France), Dominican Republic (Spain), Mexico (Spain), Guatemala (Spain), Honduras (Spain), El Salvador (Spain), Nicaragua (Spain), Costa Rica (Spain), Panama (Spain), Colombia (Spain), Venezuela (Spain), Surinam (Netherlands), Ecuador (Spain), Peru (Spain), Brazil (Portugal), Bolivia (Spain), Paraguay (Spain), Chile (Spain), Argentina (Spain), Uruguay (Spain), Poland (Russia), Czech Republic (AH), Slovakia (AH), Albania (OE), Macedonia (AH), Croatia (AH), Yugoslavia (OE), Bosnia-Herzegovina (AH), Slovenia (AH), Greece (OE), Bulgaria (OE), Moldova (Russia), Romania (OE), Estonia (Russia), Latvia (Russia), Lithuania (Russia), Ukraine (Russia), Belarus (Russia), Armenia (Russia), Georgia (Russia), Azerbaijan (Russia), Finland (Russia), Cape Verde (Portugal), Sao Tome and Principe (Portugal), Guinea-Bissau (Portugal), Equatorial Guinea (Spain), Mali (France), Benin (France), Ivory Coast (France), Guinea (France), Burkina Faso (France), Togo (France), Gabon (France), Central African Republic (France), Chad (France), Congo (France), Democratic Republic of the Congo (Belgium), Burundi (Belgium), Djibouti (France), Angola (Portugal), Mozambique (Portugal), Swaziland (UK), Madagascar (France), Mauritius (UK), Turkmenistan (Russia), Tajikistan (Russia), Kyrgyzstan (Russia), Uzbekistan (Russia), Kazakhstan (Russia), Mongolia (China), North Korea (Japan), South Korea (Japan), Cambodia (France), Laos (France), Vietnam (France), Indonesia (Netherlands)

Islamic Law Countries

Gambia (UK), Mauritania (France), Nigeria (UK), Namibia (South Africa), Comoros (France), Morocco (France), Algeria (France), Tunisia (France), Libya (UK), Sudan (UK), Iraq (UK), Egypt (UK), Syria (France), Lebanon (France), Jordan (UK), Saudi Arabia (OE), Yemen (UK), Kuwait (UK), Bahrain (UK), Qatar (UK), United Arab Emirates (UK), Oman (OE), Afghanistan (UK), Pakistan (UK), Maldives (UK)

Mixed Law Countries

Malta (UK), Senegal (France), Niger (France), Cameroon (France), Kenya (UK), Rwanda (Belgium), Somalia (Italy), Eritrea (UK), South Africa (UK), Botswana (UK), Seychelles (UK), Israel (UK), Sri Lanka (UK), Brunei (UK), Vanuatu (UK)