Gerald W. Scully

Law, Liberty and Economic Growth

Introduction

Every society has a legal system. Broadly, legal systems may be classified into three types: common law, civil law and socialist law. Other legal traditions influence these systems: for example, African tribal law, Oriental law, Hindu law and Muslim law. Among these only Muslim law is sufficiently influential and widespread to be addressed in this study.[1]

The grand issue in the structuring of a legal system is whether law should be based on common, fairly applied rules or on the will of the ruler. .The debate over "rule of law" versus "rule of men" is with us as much today as it was in the distant past.[2] In the Institutes of Justinian (533 A.D.), this sharp dichotomy of views on justice, law and the rights of man was recognized. Translating from the Latin: "Is justice a constant and perpetual aim granting everyone his own rights, or is it that which is pleasing to the person in power [that] has the force of law?"

Earlier studies have shown that there is a positive relationship between various measures of liberty and economic growth.[3] The issue we examine here is the extent to which the characteristics of legal systems influence liberty. Based on a survey of legal systems in 167 countries, we conclude that the degree of individual freedom is greater under common law than under civil law and that freedom under Marxist-Leninist law and Islamic law is less than under civil law.[4]

Three Types of Legal Systems

The legal systems of the West, its former colonies and many non-colonized countries are subdivided into two major

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categories: those derived from Roman law plus codified statutes, and those derived from English common law. A third legal system, Marxist-Leninist law, has also been important in the 20th century, although it is being gradually dismantled in many formerly socialist countries. These three legal systems can be further characterized by religious influence (Muslim or non-Muslim) and by whether or not an independent judiciary exists. [See Table I.] Let's briefly review these systems.

Civil Law. Codified law governs non-English-speaking Europeans, their former colonies and many historically independent non-European countries. Among the latter, the German civil code was popular in Asia and adopted by a number of nations in the late 19th and early 20th centuries. More than half of the 167 countries in the sample analyzed in this study have a civil law system. Such law has a long history, with roots traceable to 450 B.C., the date of the Twelve Tablets of Rome. Roman law reached coherence in its first codification under Justinian, in 533 A.D.

TABLE I
Types of Legal Systems
(number of countries)

	Rule of Law Independent Judiciary	Muslim	Non-Muslim No Rule of Law
Common Law	6	9	39
Civil Law	11	32	51
Socialist	0	0	19
Total	17	41	109

In contrast to common law, which arose spontaneously and evolves continuously, codified law emerged discretely. The *Justinian Code* nullified all prior law in the interest of preserving the "purity" of Roman law. After the code was prepared, the use of any other commentaries was forbidden. Similarly, the Code Napoleon (1804) nullified prior law in the interest of the new bourgeois and revolutionary order. French law derives its validity not from prior legal tradition but from the act of codification. Under such a legal system, the legislature has a monopoly on the creation of law and individual rights. The protection of rights in a legal regime in which those who govern, even if they are of good will, have the power to grant, deny or modify rights typically is weaker than in a legal system in which the individual stands equal to the state before an independent judiciary.

The separation of powers doctrine exists in civil law countries. But judicial independence is much less meaningful. Judgeships in pre-Revolutionary France were private property. Montesquieu inherited, held for a decade and then sold a judgeship. The thrust of codified law has been to make it as "judge-proof" as possible. The Code Napoleon contains 2,281 articles. Frederick the Great's distaste for judicial latitude was so great that the Prussian *Landrecht* of 1794 contains some 16,000 provisions.

Completeness and coherence, which give a legal system certainty, are illusions in a codified system of law. Human inventiveness erodes the legislative will expressed in the code. Ultimately, someone must interpret the code and fill in the gaps. France, followed by Italy and other nations, was inundated by requests for legislative (political) interpretation of

the code and created the Tribunal of Cassation to quash incorrect court interpretations. The tribunal, a legislative body, evolved into the Supreme Court of Cassation, a judicial entity, whose function is to divine legislative intent behind statutes.

Codified law is only part of the legal system in countries following continental legal practices. Commerce, patents, copyrights, bankruptcy, insurance and other branches of law were omitted from the early codes. In fact, continental law is a hodgepodge of private law (civil and commercial) and public law (administrative and constitutional), each with its own courts, procedures and tribunal hierarchies. Disputes with the state are heard in administrative courts, where those who govern and administer judge their own conduct. In France, the review of the legality of an administrative act is the Council of State, an organ first established to advise monarchs.

In civil law traditions, statutes are not subject to independent judicial review. What guarantees individual rights in such political systems? Constitutions and the good will of the legislature are supposed to do so. Yet constitutions vary in the strength of their limitation on legislative power, and there is no provision for enforcing the limitation. Unlike the United States where, since *Marbury v. Madison*, the review of legislation is a judicial prerogative, constitutional review in civil law countries may be a non-judicial process. In France, constitutional questions are settled by the Constitutional Council, a body composed of the former presidents of France and members chosen by the French president, the president of the Chamber of Deputies and the president of the Senate. While the authority for constitutional review rests differently in other civil law countries, the constraints on legislative power are much weaker than where constitutional questions are a judicial prerogative. Ultimately, in civil law countries liberty is at the sufferance of the legislature.

Common Law. Common law governs the United Kingdom and its former colonies. About a third of the countries in the sample analyzed have adopted the English common law tradition that can be traced to the Norman conquest of 1066 A.D. and a case casuistry beginning with the Year Books in the 13th century. One hundred fifty years of tyranny followed the Battle of Hastings. The Normans imposed and enforced a truculent penal code on the Saxons to guard Norman privileges. Tax collections on behalf of King John brought the English countryside to penury. Norman rule was broken when John was forced to sign the Magna Carta. Thomas Macaulay dates the English nation from the events at Runnymede in 1215. He wrote in *History of England:*

> *Then it was that the great English people was formed, that the national character began to exhibit those peculiarities which it has ever since retained, and that our fathers became emphatically islanders; islanders not merely in a geographical position, but in their politics, their feelings, and their manners.... Then it was that the House of Commons, the archetype of all the representative assemblies which now meet, either in the Old or in the New World, held its first sittings. Then it was that the common law rose to the dignity of a science, and rapidly*

became a not unworthy rival of the imperial jurisprudence.

What features of the common law promote individual freedom? Equal protection and equal status of the litigants and strict judicial independence limit the coercive power of the state. Under common law, the people's interest is derivative from that of the harmed individual and, by extension, the individual's family, peers and society as a whole. Judicial proceedings are accusatory. (Until modern times, the office of prosecutor did not exist in England; the state hired a lawyer to represent the people's interest, against the defendant, who also hired a lawyer.) Trial by jury is guaranteed in civil as well as criminal proceedings. Trials are open and public.

Under codified systems, by contrast, legal proceedings are inquisitional, partially secret, multi-stage affairs. Those charged with crimes or infractions face the terrible power of the state, not a judge refereeing a contest between the accuser and the accused.

Independence of the judiciary implies more in common-law countries than the separation of powers doctrine implies elsewhere. Common law is broader in scope than civil law. Civil law is confined to the range of legal subjects of the first three books of the Institutes of Justinian (i.e., the law of persons, family, inheritance, torts, property, contracts and unjust enrichment). By contrast, what is lawful under common law rests entirely with the judiciary, whose views evolve slowly and are based on the principle of strict adherence to precedent (*stare decisis*). Where the British state chooses to intervene by statute (e.g., child labor laws, city planning and so on), a tradition of casuistry and precedent tends to result in the statutes being more narrowly construed than on the continent. The British have been disinclined to overthrow 700 years of legal wisdom for a modern, if popular, vision. This evolutionary character of the common law protects and nurtures individual freedoms.

How Different Is Common Law From Civil Law?

Some scholars assert that the differences between these legal systems and their implication for human freedom are more apparent than real, since they mainly share the Christian religion, constitutional government and capitalist, private enterprise economic systems.[5] In this view, the rule of law is such a common cause of concern under both systems that other institutional differences are more curious than meaningful. After all, one is as free in developed countries with a common law tradition as in developed countries with a civil law tradition.

Perhaps! But three concerns about personal liberty are troubling, particularly in Third World nations without a tradition of judge-made law.

First, since the state is the source of all law, individual rights rest ultimately and convincingly with the state (albeit through a representative legislature in the West). Law by legislation can weaken individual rights in several respects. (1) The electoral process requires that politicians be responsive to the popular will. The time horizon of the popular will and those who represent it often is short and respect for individual rights often

fleeting. As a result, the United States in recent times has spent more on public goods and social welfare than citizens are willing to pay in taxes. (2) Enormous opportunities exist for special interests to seek gains at the expense of the general public. These opportunities are enhanced by a legislative process characterized by majority voting, vote trading by legislators and rational political ignorance among voters. Modern government directly controls vast resources, and both resources and rights are increasingly allocated by the political process. (3) Legislation imparts uncertainty about rights, since one legislature is free to alter the law of previous rulemakers. Axiomatically, uncertain prospects are less valuable than certain prospects.

Second, the idea of inalienable rights, particularly regarding private property, seems to have diminished in the West in modern times. Some view rights less as a natural endowment than as legally protected interests. This makes rights subject to periodic legislative review. Rights are especially tenuous when new discoveries and innovations give rise to rights that could either be private or collective. For example, the doctrine of appropriation[6] governed water rights in the western United Sates until the demands of urban development expressed politically through state legislatures led to their socialization.[7] Historically, there were private property rights in the electromagnetic spectrum and case law was evolving to reconcile disputes over the exclusivity of a frequency until the government nationalized the electro-magnetic spectrum in 1927 and politicians began to allocate the rights to specific radio frequencies. Few even questioned this socialization of outer space. Debate is raging over the right to patent genetic changes in plants and animals. Taxpayers are revolting against the notion that the state's right supersedes their right to the fruits of labor. High taxation and the forced substitution of public for private consumption are weakening individual liberty. Examples abound.

Third, the West is not all of mankind. Much of the Third World has adopted, through colonization or domestic effort, common law or civil law systems. How well do these legal systems travel? Common law with its reliance on case law and custom and on judicial independence in the former British colonies likely is more protective of rights than is codified law in the former European colonies. But this remains to be shown.

Marxist-Leninist Law. While Communism has collapsed in Eastern Europe and the former Soviet Union, the legal system remains Communist. Marxist-Leninist legal tradition began with the Russian Revolution, when the substantive rights of the Russian peoples ended. There are 19 Communist bloc countries in the sample. During the Communist era, these nations viewed political and civil rights and justice as bourgeois precepts, designed to suppress and exploit the working class. Marx, Engels and Lenin wrote of socialist law as a system of rules of conduct made and enforced by the state. They recognized politics as a feature of the legal system and of legal processes. Hence, it was quite natural for the Communist party to view law as an instrument of state. In the former Soviet Union, a majority of the defense counsels, judges, assessors and procurators were members of the Communist Party. All institutions and organs of government were party-

controlled, as was law-making. Presumably, this contributed to the extraordinarily high criminal conviction rate in the Soviet Union.

Muslim Law. About a billion people in 69 countries are Muslims. About a quarter of the countries in the sample have a Muslim majority and an Islamic constitution in which the word of Allah is law. Theologically rooted legal systems are notoriously indifferent to subjective rights. While the vast majority of Muslim countries retain common or civil law traditions from their days as European colonies, Muslim law has lately modified these foreign traditions, in some cases beyond recognition. The trend is exacerbated by Islamic fundamentalism.

The Muslim legal tradition has its roots in the 23-year period of Islamic legislative activity from 609-10 A.D., the time of the Revelation, to 632 A.D., the year of the Prophet's death. For Muslims, law is what God wishes it to be, as revealed to Mohammed.

The four principal sources of Muslim law, in descending order of importance, are the Koran, *Sunna, idjma* and *kiyas* or *'akl.* The Koran is the word of God as revealed to Mohammed and is the ultimate source of Muslim law. Composed of 114 Suras, the divine commands, obligations and duties are contained in some 500 verses, about of 80 which constitute a codified law. The *Sunna* is the traditions or precedents of Islam, whose validity is based on its transmittal by someone who heard it in an unbroken chain from the Prophet, if a Sunni Muslim, or the Imam, if a Shiite.[8] The *idjma* is a body of doctrine or custom upon which all Muslims agree. For example, only males may initiate divorce. The *kiyas* are analogical deductions or juridical reasonings, a source of law to Sunni Muslims but not to Shiites. The Koran and the *Sunna* are unimpeachable. The *kiyas* and even the *idjma* are tainted.

An article of faith to a Muslim is that justice is an attribute of God. The *mudjtahid* is the legal expert. He is trained in the four sources of law with particular emphasis on the 500 verses and on "correctly" solving controversial points. Independent thinking is not admired. Islamic criminal law is inflexible even in sentencing. There is no system of appeal from either the verdict or the sentence, unless the decision is contrary to the Koran or the *Sunna.* Muslim civil and commercial law is more narrowly construed and religiously flavored than is Western practice.

Judicial independence is not a characteristic of the Muslim political system. Throughout history, Muslim judges have served those who govern. The theory of the separation of powers is alien to Muslim tradition. Judges of the highest rank are appointed by those in power and serve at their pleasure. Judges of lesser rank are appointed by judges of higher rank and serve at their pleasure. The entire judicial structure is an instrument of the state, designed to promote conformity to the will of those who govern. What is the standing of individual liberty and subjective rights (*hakk*) under Muslim law? Muslims do have certain inalienable rights, such as the right of a husband over his wife and a father over his child. But the range of personal free- doms taken as a matter of course in the West is unknown to Muslims. The Koran expressly requires obedience to those who govern.

Measuring Liberty

In *Freedom in the World* (1973), Raymond D. Gastil defined two measures of liberty: political liberty and civil liberty. Since then, he has updated his assessments each year. To do so, he mainly uses newspaper reports, journals, Amnesty International and other human rights reports, State Department papers, reports to Congress on the human rights of nations receiving American assistance and other public sources.

Gastil ranks countries by the degree to which they respect political rights. His rankings range from 1 (the highest degree of liberty) to 7 (the lowest), and are based on the degree to which individuals have control over those who govern. Specifically:

- A rank of 1 describes a political system in which the vast majority of the polity is enfranchised with the right and opportunity to vote, and political parties may be freely formed to compete for public office.

- A rank of 2 is accorded to countries with an open political process that works imperfectly because of poverty, backwardness, ignorance, violence or other structural limitations; yet in such countries those who govern can be voted out of office.

- Countries ranked at 3 have political systems in which elections occur but in which coups d'etat, ballot-stuffing, vote-buying and other non-democratic irregularities are frequent.

- A rank of 4 describes political regimes in which free elections are blocked constitutionally or in which the outcome of the electoral process does not determine the configuration of power.

- A rank of 5 describes a political process that is tightly controlled by those in power and produces electoral results without significance.

- Political regimes that do not hold elections or states that offer a single list of candidates to whom voters pay ritual tribute are ranked with 6.

- A rank of 7 is reserved for regimes that are tyrannical and illegitimate.

Gastil also ranks countries by the degree to which they respect civil rights. In the broadest sense, Gastil's ranking of civil rights purports to measure the rights of the individual relative to the state. In a narrower sense, it measures the independence of the judiciary and the freedom of the press.

- Countries with political systems that adhere scrupulously to the rule of law and constitutionally protect and enforce freedom of expression are ranked as 1.

- A rank of 2 describes political systems with similar aspirations but an inability to achieve them because of internal strife and violence, ignorance, limitations on freedom of the media or restrictive laws.

- A rank of 3 is accorded to political systems that appear to support civil liberties, that experience unresolvable political deadlocks and resort to martial law, jailing for sedition and suppression of the media but that can be successfully opposed in the courts.

- In political systems ranked as 4, broad areas of freedom coexist with areas in which rights are proscribed or circumscribed.

- In regimes ranked as 5, civil rights are denied arbitrarily and the media is state-controlled and censored.

- In countries ranked 6, the rights of the state take precedence over the rights of the individual, although the occasional political complaint is permitted.

- A rank of 7 is bestowed on regimes in which citizens have no rights relative to the state .

The Relationship Between Law and Liberty

We can use the measures of liberty to help us answer the central question of this study: What difference does the legal system make? As noted above, other studies have documented a statistically significant relationship between political and civil liberty and economic growth, finding that freer societies grow faster.[9] Therefore, if some legal systems are more consistent with individual liberty than others, the finding has implications for economic development as well.

Socialist Law, Muslim Law and Independent Judiciaries. The Appendix describes the statistical techniques this study uses to compare countries with different legal systems. The evidence supports the following conclusions, as Figures I and II show:

- Non-socialist countries are significantly freer, in terms of both civil rights and the enjoyment of democracy, than socialist (Marxist) countries.

- Non-Muslim countries are significantly freer than Muslim countries.

- Countries with an independent judiciary (rule of law) have substantially more liberty than those without such a judiciary.

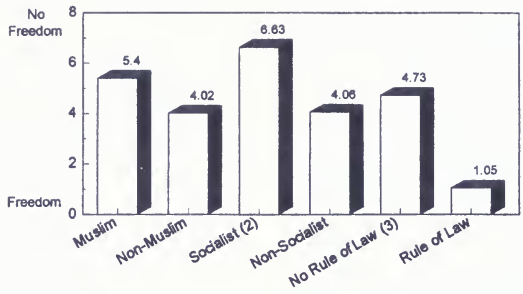
Common Law vs. Civil Law. Table A-2 in the Appendix shows that common-law countries have significantly more freedom than countries that do not have common law. However, there is not a statistically significant difference between countries with civil law and those without it. To get a more accurate understanding of the difference between these two legal systems, we removed the Muslim and Communist countries. The results of this experiment are depicted in Figures III and IV. As the figures show:

- After we removed the Muslim and communist countries, we found that common law is associated with significantly more political freedom than civil law (a ranking of 2.99 vs. 4.05).

- We also found that common law countries are associated with significantly more civil liberty (a ranking of 3.00 vs. 3.85).

Figure 1

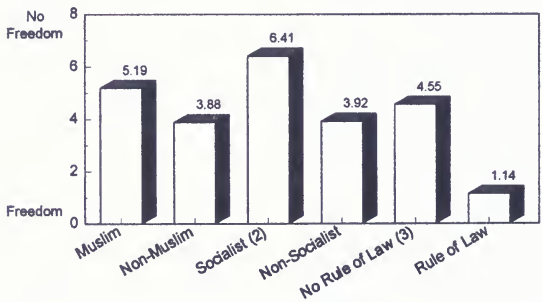
Lack of Political Liberty[1]



1) Lack of political liberty is measured on a scale of 1 to 7, where a rank of 1 is given to countries in which the vast majority of people have the right to vote and political parties may be freely formed, and a rank of 7 is given to tyrannical regimes with no legitimacy.
2) Marxist-Leninist law.
3) Independent judiciary.

Figure 2

Lack of Civil Liberty[1]



1) Lack of civil liberty is measured on a scale of 1 to 7, where a rank of 1 is given to countries in which the vast majority of people have the right to vote and political parties may be freely formed, and a rank of 7 is given to tyrannical regimes with no legitimacy.
2) Marxist-Leninist law.
3) Independent judiciary.

A Probabilistic Approach. Table A-IV in the appendix allows us to calculate the probability that a nation with certain characteristics will be free or unfree. For example:

- The probability that a nation with a common law system will have a completely open political process (a ranking of less than 2.0) is 28 percent, while the probability in a nation with civil law is 16 percent.

- If political freedom is defined as a ranking of less than 3.0, the incidence of freedom in common law nations is 2.3 times greater than in civil law countries.

At the other end of the spectrum of political freedom is tyranny, and:

- The probability of tyranny (a ranking of more than 6.0) in civil law countries is 30 percent, while in common law countries it is 6 percent -- a difference of five to one.

- If a closed political process is defined as one with a ranking of 5.0 or more, then the incidence of oppression is 2.3 times greater under civil law than under common law.

The incidence of political freedom in Marxist-Leninist, Muslim and rule of law nations varies less than in nations with a common or civil law heritage. Communist countries are consistently tyrannical. Rule of law nations are consistently free. Two-thirds of the Muslim countries are tyrannies or near tyrannies, and very few (a probability of 7 percent) are open politically. Islamic nations do not demonstrate a high regard for individual civil rights.

Conclusion

Civilization and the rule of law are synonymous. The source of law crucially fixes the extent of freedom that we observe in the world today. Nations that have chosen judge-made law, or common law, have taken a path by which the law is to be discovered. In this tradition, judicial intervention is at the request of those concerned, is applicable mainly to the parties affected and is constrained by respect for precedent. Freedom has prospered under this arrangement.

Alternatively, law is what those who govern say it is. Representative government is no guarantee that subjective rights will not be traded for a vision of society that is a twinkle in a legislator's eye. Most civil law countries are not representative democracies, and liberty has suffered under this legal tradition. Law by legislation, a sort of trial-and-error legal tinkering in the West, has resulted in a decline of the law and an erosion of liberty in these countries.

TECHNICAL APPENDIX

How descriptive of the actual levels of personal freedom are Gastil's rankings? What freedom do these rankings measure? Their reliability can be verified by comparing them with various rankings in Charles Humana's *World Human Rights Guide*. Humana's benchmark is signatory compliance with the United Nations Declaration of the Rights of Man. Humana codes adherence to 30 more or

Figure 3

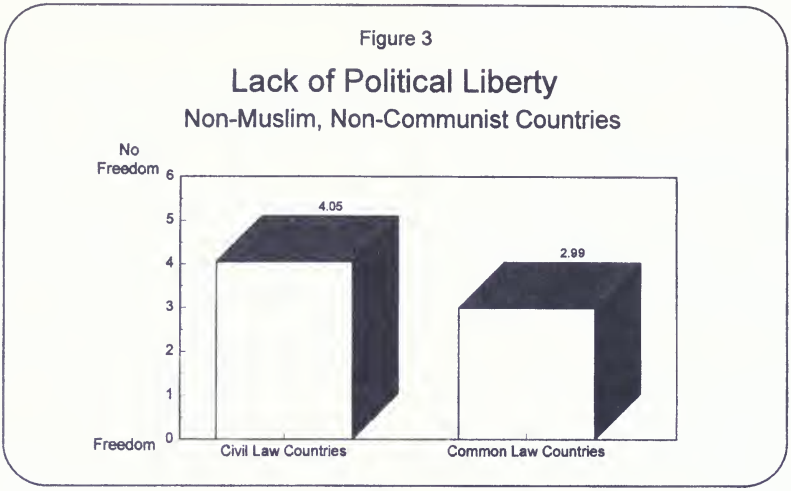
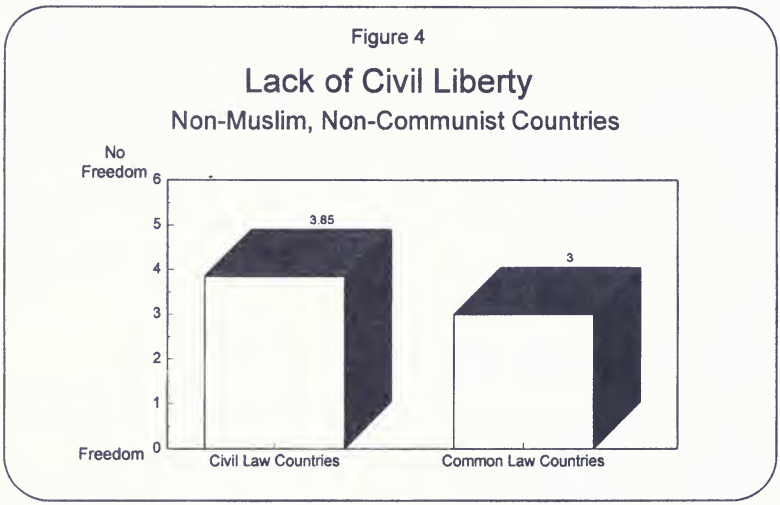


Figure 4



less separate rights on a scale from zero (the lowest level of freedom) to 3 (the highest). These freedoms or rights are listed in Table A-I along with the simple correlation coefficients that compare them to Gastil's rankings of political liberty and civil liberty. The Humana data are available for 63 countries.

Some 25 of Humana's separate rankings of human rights are significantly associated with Gastil's ranking of political liberty, while 27 out of 30 are significantly associated with the ranking of civil liberty. These statistical results support the accuracy of Gastil's description of the actual levels of political

and civil freedoms in various nations. No matter how one ranks the 30 freedoms or weighs them to construct an overall measure, their ranking will relate to Gastil's in a statistically significant way. Thus Gastil has broadly measured what most would agree is freedom.

To test the hypothesis that the choice of law determines the extent of liberty, the Gastil rankings are used in two ways. First, means and variances of Political Liberty and Civil Liberty are calculated by type of legal system, and differences in the means are tested for statistical significance. These results appear in Tables A-II and A-III. Second, the scaling of the Gastil rankings is ordinal. Certainly, it is not correct to say that freedom is half as great in a country with a value of Political Liberty of 2.0 compared to a country with a value of 1.0. To avoid the measurement problem of the Gastil rankings used as a continuous variable, and to shed further light on the question at hand, the Gastil rankings are converted to binary variables, and probabilities of the incidence of liberty are estimated. Table A-IV presents a frequency distribution of the degree of political and civil liberty by type of legal system.

The Gastil data are the average values of the annual indexes of political liberty and civil rights from 1973 to 1984. As mentioned earlier, the sample includes 167 nations. The type of legal system by country was determined as follows: Great Britain and her former colonies and protectorates (n=54) were categorized as common law countries. While some of the former British colonies constitutionally stipulate common law as their legal system, others were less strongly influenced. All other non-Communist countries (n=94) were categorized as civil law countries. There were 19 Marxist-Leninist countries in the sample. Of the 41 countries classified as Muslim, 32 have a tradition of civil law and nine were influenced by the British legal tradition. Thus the variable Muslim, used in conjunction with the variables Common Law and Civil Law, adjusts for the independent effect of Islam on liberty. Additionally, it is desirable to control for the effect that conformity to the rule of law may have on liberty. Certainly this is true for Western Europe, where the effect on liberty of different legal systems is less apparent than elsewhere, but it is also true for North America, Australia and New Zealand (n=19). All of the independent legal variables and the adjustment variables Muslim and Rule of Law are binary: equal to unity, if the characteristic is present, zero otherwise.

Comparison of differences in the mean values of Political Liberty and Civil Liberty are presented in Table A-II. The average value of political liberty in the world as measured by Gastil is 4.4, with two-thirds of the world's nations in the freedom interval 2.4 to 6.4. The average value of civil liberty among the 167 nations in the sample is 4.2, with a standard deviation of 1.9. Political liberty and the protection of the individual under the law are values not widely shared outside a small circle of nations.

The mean values of political liberty is lower in common law countries where freedom is greater than in non-common law countries; these differences are relatively large and are statistically significant. On the other hand, the mean level of political liberty in civil law countries (4.55) and the mean level of civil liberty (4.36) are not statistically

different from non-civil law nations. On average, Marxist-Leninist and Muslim nations have less political and civil freedom than non-Marxist-Leninist and non-Muslim countries, and these differences are statistically significant. Nations with a long tradition of the rule of law have the largest favorable differences in the mean values of Political Liberty and Civil Liberty in the comparisons made in Table A-II.

The differences in the level of political and civil liberty between common law and civil law nations are obscured by the presence of the Islamic tradition and the tradition of the rule of law in some (mainly, developed Western) countries. In Table A-III, adjustments for the Muslim and rule of law traditions are made. In the non-Muslim, common law countries, the mean value of Political Liberty and Civil Liberty is 2.99 in comparison to a value of Political Liberty of 4.05 and Civil Liberty value of 3.85 in the non-Muslim civil law countries. Omitting nations with a tradition of rule of law, the average value of Political Liberty in the common law countries is 3.49 and the value of Civil Liberty is 3.43, compared to 5.02 and 4.77 respectively in the civil law nations. Finally, adjusting for both the effects of the Islamic and the rule of law traditions, the mean value of Political Liberty and Civil Liberty in the common law countries is 3.29 and 3.30 respectively, 4.68 and 4.42 in the civil law nations. These favorable differences in political and civil liberty in common law relative to civil law countries are both substantial and statistically significant.

The incidence of political freedom and of civil liberty across legal systems can be gauged from the cumulative frequency (probability) distributions in Table A-IV . The sample has been divided by type of legal system and the fraction of nations in the six intervals of the rankings ranging from 1.0-1.9 to 6.0-7.0 calculated.

TABLE A-I
Correlations Between Gastil and Humana Freedom Measures

Freedom or Right	Political Liberty	Civil Liberty
Of internal migration	-0.49	-0.58
Of emigration	-0.6	-0.69
From nationality removal	-0.35	-0.43
To seek/teach ideas	-0.68	-0.76
From forced labor	-0.56	-0.58
Of political opposition	-0.77	-0.86
Of assembly	-0.71	-0.82
Of gender equality	-0.49	-0.54
From state-directed work	-0.36	-0.34
Of choice in marriage	-0.09	-0.15
Of religion	-0.43	-0.48
From ideology in school	-0.36	-0.42
From press censorship	-0.74	-0.84
From arrest w/o charge	-0.62	-0.75
From search w/o warrant	-0.51	-0.66
From torture/coercion	-0.6	-0.72
Of innocence at trial	-0.55	-0.67
Of speedy trial	-0.68	-0.73

Of independent judiciary	-0.64	-0.72
From secret trials	-0.6	-0.71
For free trade unions	-0.74	-0.85
From mail censorship	-0.61	-0.72
Of ethnic publication	-0.32	-0.36
Of artistic expression	-0.49	-0.51
From military conscription	-0.04	-0.1
To consume alcohol	-0.25	-0.27
Of adult homosexuality	-0.49	-0.5
To use contraception	-0.03	-0.01
Of early abortion	-0.39	-0.44
Of divorce (gender equality)	-0.22	-0.26

TABLE A-II
Differences in Mean Values of Political and Civil Liberty by Type of Legal Systems

Category	Lack of Political Liberty	Lack of Civil Liberty
All nations (n=167)	4.36	4.2
Standard Deviation	2.04	1.85
Non-Common Law (n=113)	4.9	4.7
Common Law (n=54)	3.21	3.16
Difference in Means	-1.69	-1.54
Non-Civil Law (n=73)	4.1	4.01
Civil Law (n=73)	4.55	4.36
Difference in Means	0.45*	0.35*
Non-Marxist-Leninist Law (n=148)	4.06	3.92
Marxist-Leninist Law (n=19)	6.63	6.41
Difference in Means	2.57	2.48
Non-Muslim Law (n=126)	4.02	3.88
Muslim Law (n=41)	5.4	5.19
Difference in Means	1.39	1.31
Non-Rule of Law Nations (n=150)	4.73	4.55
Rule of Law Nations (n=17)	1.05	1.14
Difference in Means	-3.68	-3.41

* Not significantly different from zero at an acceptable level.

TABLE A-III
Differences in Mean Values of Liberty Measures, Adjusting for Muslim and Rule of Law Influences

Category	Lack of Political Liberty	Lack of Civil Liberty
Non-Muslim Common Law (n=46)	2.99	3
All Other Nations (n=121)	4.87	4.66
Difference in Means	-1.88	-1.66
Non-Muslim, Civil Law (n=63)	4.05	3.85
All Other Nations (n=104)	4.54	4.42
Difference in Means	-0.41*	-0.56
Non-Rule of Law Common Law (n=48)	3.49	3.43
All Other Nations (n=119)	4.71	4.52
Difference in Means	-1.22	-1.09
Non-Rule of Law, Civil Law (n=83)	5.02	4.77
All Other Nations (n=84)	3.7	4.77
Difference in Means	1.31	1.14
Non-Muslim, Non-Rule of Law,Common (n=40)	3.29	3.3
All Other Nations (n=127)	4.69	4.49
Difference in Means	-1.4	-1.19
Non-Muslim, Non-Rule of Law, Civil (n=52)	4.68	4.42
All Other Nations (n=115)	4.21	4.11
Difference in Means	0.48*	0.31*

* Not significantly different from zero at an acceptable level.

TABLE A-IV
Cumulative Frequency Distribution of the Degree of Political and Civil Liberty by Type of Legal System

Lack of Political Liberty

	1.0-1.9	2.0-2.9	3.0-3.9	4.0-4.9	5.0-5.9	6.0-7.0
Common Law	0.28	0.56	0.57	0.78	0.94	1
Civil Law	0.16	0.24	0.31	0.48	0.7	1
Marxist Law	0	0	0	0	0	1
Muslim Law	0	0.07	0.12	0.32	0.61	1
Rule of Law	1	1	1	1	1	1

Lack of Civil Liberty

	1.0-1.9	2.0-2.9	3.0-3.9	4.0-4.9	5.0-5.9	6.0-7.0
Common Law	0.15	0.54	0.65	0.83	0.96	1
Civil Law	0.15	0.22	0.35	0.53	0.74	1
Marxist Law	0	0	0	0	0.21	1
Muslim Law	0	0.02	0.2	0.39	0.61	1
Rule of Law	1	1	1	1	1	1

NOTES

[1] Discussions in greater detail of these systems of law may be found in Rene David, *Traite Élémentaire de Droit Civil Compare* (Paris: Libraire Générale de Droit et de Jurisprudence, 1950); Friedrich A. Hayek, *Law, Legislation and Liberty*, 3 vols. (Chicago: University of Chicago Press, 1973); Bruno Leoni, *Freedom and the Law* (Princeton: D. Van Nostrand, 1961); T. F. T. Plucknett, *A Concise History of the Common Law*, 5th ed. (London: Butterworth, 1956); J. H. Merryman and David S. Clark, *Comparative Law: Western and Latin American Legal Systems* (Indianapolis: Bobbs-Merrill, 1978); Owen H. Phillips, *A First Book of English Law*, 6th ed. (London: Sweet and Maxwell, 1970); John H. Merryman, *The Civil Law Tradition* (Stanford: Stanford University Press, 1985); N. P. Aghnides, *Mohammedan Theories of Finance* (Lahore, Pakistan: Premiere Book House, 1961); M. Asad, *The Principles of State and Government in Islam* (Berkeley: University of California Press, 1961); William E. Butler, *Soviet Law* (London: Butterworth, 1983); and G. Ripert, *Le Décline du Droit* (Paris: Librairie Générale de Droit et de Jurisprudence, 1949).

[2] There is no better definition of rule of law than that given by the eminent legal scholar A. V. Dicey. He writes that the concept of the rule of law has three meanings. (1) .... "that no man is punishable ... except for a distinct breach of law established in the ordinary legal manner before the ordinary Courts of the land. In this sense the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary or discretionary power of constraint." (2) ".... when we speak of the 'rule of law' as a characteristic of our country, not only that with us no man is above the law, but (what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals." (3) "We may say that the constitution is pervaded by the rule of law on the ground that the general principles of the constitution (as for example the right to personal liberty, or the right of public meeting) are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts; whereas under many foreign constitutions the security (such as it is) given to the rights of individuals results, or appears to result, from the general principles of the constitution." A. V. Dicey, *Introduction to the Study of the Law of the Constitution*. Reprint. Originally published: 8th ed. London: Macmillan, 1915, pp. 110, 114-15.

[3] Gerald W. Scully, "The Institutional Framework and Economic Development," *Journal of Political Economy*, 96 (June 1988): 652-62; K. B. Grier and G. Tallock, "An Empirical Analysis of Cross-National Economic Growth, 1951-80," *Journal of Monetary Economics*, 24 (Sept 1989): 259-76.

[4] I take the historical choice of the type of legal system as a given, since some legal systems were imposed on the population (for religious reasons under Islamic law and political reasons in the codified and Marxist-Leninist traditions) and change is almost impossible. Where change is theoretically possible, as in representative

government, the evolutionary character of common law and the continuous drafting of parliamentary statutes in both common- and civil-law nations may yield continued political acceptance of a system of law chosen centuries before. In Europe's former colonies, pre-colonial legal traditions are modifying the colonial legal tradition, most importantly in Islamic countries.

[5] Concerning the implications for freedom of the radically different sources of law in these legal traditions, Friedrich A. von Hayek in *Law, Legislation and Liberty* notes that: "The freedom of the British which in the 18th century the rest of Europe came so much to admire was thus not, as the British themselves were among the first to believe and as Montesquieu later taught the world, originally the product of the separation of powers between legislature and executive, but rather a result of the fact that the law that governed the decisions of the courts was the common law, a law existing independently of anyone's will and at the same time binding upon and developed by the independent courts; a law with which parliament only rarely interfered with and, when it did, mainly only to clear up doudtful points within a given body of law. One might even say that a sort of separation of powers had grown up on England, not because the 'legislature' alone made law, but because it did not; because the law was determined by courts independent of the power which organized and directed government, the power namely of what was misleadingly called 'the legislature'."

[6] Eastern water rights are riparian. Under a riparian system the state owns the surface water and citizens may use as much as they like on a first come, first served basis.

[7] Most recently, northern Nevada water rights were confiscated by the state legislature to increase the Las Vegas water supply.

[8] The Muslim religion is divided into two sects: Sunni and Shiite. The Shiite arose as a sect in a dispute over who was the rightful successor of the Prophet.

[9] Scully, "The Institutional Framework and Economic Development," and Grier and Tallock, "An Empirical Analysis of Cross-National Economic Growth, 1951-80" (both cited in note 3, *supra*).