

Legal Tradition and Human Rights

A Quantitative Comparative Analysis of Developing Countries

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Abstract

This analysis examines the relationship between legal tradition and constitutional human rights. It experiments with a quantitative comparative methodology to compare economic rights, social and family rights, and civil and political rights between countries with common law, civil law and mixed law legal traditions. The results show that developing countries with a civil law legal tradition provide more constitutional human rights than their counterparts with a common law legal tradition. Although preliminary and imperfect, the results challenge the notion of superiority of the common law legal tradition and human rights. The quantitative comparative framework used offers a new methodological frontier for comparative constitutional law researchers to examine relationships between legal traditions.

Keywords: comparative law, comparative constitutional analysis, human rights, legal traditions, quantitative constitutional analysis, economic rights, social and family rights, civil and political rights.

A Introduction

Over the last 40 years, a growing body of empirical work suggests that domestic legal characteristics are linked to economic, social and political outcomes such as economic growth, the quality of democracy, corruption, the quality of institutions

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and bureaucratic effectiveness.^{1, 2, 3, 4, 5, 6, 7} The most notable of these researches is a series of publications from La Porta and his colleagues who argue that common law states have better economic freedoms, stronger investors protections and more developed capital markets than states with a French civil law legal system. La Porta and others concluded that judicial independence is an important source of economic freedom and attributed greater economic freedom to common law countries.⁸ Similarly, Scully argues that subjective political and civil rights are greater under common law than civil or codified law.⁹ Consistent with Scully's contention, Chong and Zanforlin find some evidence linking legal tradition to the quality of institutions.¹⁰ Levine (2005) also found that inherited legal systems matter for property rights.¹¹

Empirical research in human rights scholarship has also examined domestic legal explanations of states' human rights practices focusing on differences in legal traditions, domestic operation of the rule of law and judicial independence.^{12, 13} Some of these also support the contention that common law states have better human rights than states with other legal traditions. The general contention is that common law states have superior human rights practices because of stronger and more independent judiciaries which keep government repression in check.¹⁴ Joireman went even further arguing that common law is designed to protect individuals from the state whereas civil law treats the state as superior to citizens resulting in poorer human rights practices.¹⁵ Using global state-year data from 1976 to 2006, Mitchell and others also conclude that common law states have superior human rights records relative to civil law, Islamic law and mixed law

- 1 Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer and Robert W. Vishny, 'Legal Determinants of External Finance' [1997] 52(3) *Journal of Finance* 1131.
- 2 Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer and Robert W. Vishny, 'Law and Finance' [1998] 106(6) *Journal of Political Economy* 1113.
- 3 Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer and Robert W. Vishny, 'The Quality of Government' [1999] 15(1) *Journal of Law, Economics, and Organization* 222.
- 4 Rafael La Porta, Florencio Lopez-de-Silanes, Cristian Pop-Eleches and Andrei Shleifer, 'Judicial Checks and Balances' [2004] 111(2) *Journal of Political Economy* 445.
- 5 Alberto Chong and Luisa Zanforlin, 'Law Tradition and Institutional Quality' [2000] 12(8) *Journal of International Development* 1057.
- 6 Ross Levine, 'Law, Endowments, and Property Rights' [2005] 19(3) *Journal of Economic Perspectives* 61.
- 7 Gerald W. Scully, 'The Choice of Law and the Extent of Liberty' [1987] 143 *Journal of Institutional and Theoretical Economics* 595.
- 8 La Porta et al. (n 4).
- 9 Scully (n 7).
- 10 Chong and Zanforlin (n 5).
- 11 Levine (n 6).
- 12 Frank B. Cross, 'The Relevance of Law in Human Rights Protection' [1999] 19(1) *International Review of Law and Economics* 87.
- 13 Randall P. Peerenboom, 'Human Rights and the Rule of Law' [2004] *Bepress Legal Series, Working Paper* 355.
- 14 Linda Camp Keith and Ayo Ogundele, 'Legal Systems and Constitutionalism in Sub-Saharan Africa' [2007] 29(4) *Human Rights Quarterly* 1065.
- 15 Sandra F. Joireman, 'Inherited Legal Systems and Effective Rule of Law' [2001] 39(4) *Journal of Modern African Studies* 571.

states.¹⁶ They argue that procedural features of the common law system including the adversarial trial system and stare decisis provide citizens with greater security and human rights protection.

The differences between common law and civil law legal traditions as it relates to human rights are multiple. According to Joireman, there is an assumed social contract between citizens and the state in common law tradition that places an obligation on the state to protect citizens as opposed to citizens being subservient to the state in civil law tradition.¹⁷ A stronger executive authority also tends to be more common in civil law and religious law traditions but is inconsistent with the development of common law, Joireman concludes. Mitchell and others went further and posit that 'human rights' as a concept is arguably more consistent with common laws than civil and other laws because of their emphasis on protecting individual rights.¹⁸ Other researchers including Opolot, Darbyshire and Mahoney also argue that the doctrine of stare decisis or judicial precedent that operates only in common law systems and the hierarchy of judicial decision-making in common law states provide a superior mechanism for the protection of human rights.^{19, 20, 21}

The contention that common law states have superior human rights than states with other legal traditions, however, is not without empirical opposition. Keith and Ogundele find no solid evidence that common law states in sub-Saharan Africa have better human rights behaviour than civil law states. They also find no evidence that former French colonies would have fewer constitutional provisions for judicial independence and checks against executive powers during emergencies than common law states.²² On the contrary, they find evidence of civil law states having superior records on torture and repression. Using the Toronto Initiative for Economic and Social Rights (TIESR) dataset, Jung and Rosevear find that constitutions of common law countries are significantly less likely to include economic and social rights, and to identify them as justiciable, than those of civil law countries.²³ The TIESR dataset measures presence, absence and justiciability of 17 separate economic and social rights in 136 constitutions in Asia, Africa, Europe and Latin America.

Using the same TIESR dataset, Jung, Hirschl and Rosevear find that whether a country has a tradition of civil, common, Islamic or customary law significantly impacts whether its constitution will have economic and social rights and whether those rights will be justiciable.²⁴ In all of these studies, those supporting and

16 Sara Mitchell, Jonathan J. Ring and Mary K. Spellman, 'Domestic Legal Traditions and States' Human Rights Practices' [2013] 50 *Journal of Peace Research* 189.

17 Joireman (n 15).

18 Mitchell et al. (n 16).

19 James S.E. Opolot, *An Analysis of World Legal Traditions* (Jonesboro, TN, Pilgrimage, 1980).

20 Penny Darbyshire, *Eddey on the English Legal System* (7th edn, London, Sweet & Maxwell, 2001).

21 Paul G. Mahoney, 'The Common Law and Economic Growth' [2001] 30(2) *Journal of Legal Studies* 503.

22 Camp Keith and Ogundele (n 14).

23 C. Jung and E. Rosevear, 'Economic and Social Rights across Time, Regions, and Legal Traditions' [2012] 30 *Nordic Journal of Human Rights* 372.

24 C. Jung, R. Hirschl and E. Rosevear, 'Economic and Social Rights in National Constitutions' [2014] 62 *American Journal of Comparative Law* 1043.

opposing the contention of the superiority of the common law legal tradition, there is an emerging consensus that a country's legal tradition matters significantly with respect to its human rights experience and the extent to which human rights are enshrined in its constitution. There is no consensus, however, on the question of whether states with a common law legal tradition have better human rights experiences than states with other legal traditions. This is partly because while scholars have hypothesized about the source of variation in rights for over centuries, researchers have only recently begun testing these theories empirically. Indeed, researchers have made enormous strides in empirically assessing different theories of the determinants of various rights, but these investigations are in their nascent stages, particularly in the field of human rights.

Understanding the relationship between legal tradition and human rights is important not only for academic purposes but because more than a third of the world's population of about 2.6 billion people live in states and territories gripped by repression, corruption and human rights abuses.²⁵ In 2020, nearly 75% of the world's population lived in a country that faced deterioration of democratic values including the rule of law, freedom of speech and a free press. What is worse is that 2020 marked the 15th consecutive year decline of global freedom further deepening the protracted democratic depression.²⁶ If we are to stop and reverse this trend and build on past progress to strengthen democracy to give more people the opportunity to live and enjoy basic human rights, freedoms and privileges, we must arrive at a consensus on how legal tradition influences human rights. Governments, advocates and watchdog organizations in developing countries, which are home to about 70% of the world's population, can all benefit immensely from an improved understanding of this relationship which can inform their actions and efforts to expand human rights for more people.

This analysis tests the fundamental premise that on average countries with a common law legal tradition provide more human rights than countries with other legal traditions. The provision of human rights refers to the number of human rights that are guaranteed by a state's constitution. This should not be confused with human rights enjoyed by citizens in practice, although some reference to human rights practices will be made. The analysis experiments with a quantitative constitutional comparison methodology that compares a large number of constitutional materials relating to the provision of human rights. It utilizes two common statistical models – analysis of variance (ANOVA) and Student's t-test – to test for any statistical difference in the provision of human rights in the constitution of states with different legal traditions, namely common law, civil law and mixed laws. It uses recently released (2021 update) data from the most comprehensive dataset that includes quantitative information on every national

25 Ellen Wulforst, 'A Third of World Population Lives in Nations Without Freedoms – Rights Group' [2016] Thomas Reuters Foundation, www.reuters.com/article/global-rights/a-third-of-world-population-lives-in-nations-without-freedoms-rights-group-idUSKCN0V50HH (accessed 10 July 2021).

26 Sarah Repucci and Amy Slipowitz, *Freedom in the World 2021: Democracy Under Siege* (Washington DC, Freedom House), <https://freedomhouse.org/report/freedom-world/2021/democracy-under-siege> (accessed on 12 July 2021).

constitution written since 1789, the Comparative Constitutional Project (CCP) data, led by researchers Zachary Elkins, Tom Ginsburg and James Melton.²⁷

This analysis experiments with statistical rules of inference, often used in economics, finance, comparative politics and political economy, in comparative constitutional analysis to describe the law and engage in systematic comparisons of legal systems. This approach, if successful, can supplement the rules of persuasion and advocacy that characterize the legal scholarship.²⁸ Leveraging the rise of large-scale constitutional data is at the heart of this new comparative constitutional law tradition.²⁹ The remaining of this analysis is organized as follows: Section B details the comparative evaluation framework, which includes the stratified random sampling process, the test hypotheses and statistical tests; Sections C, D and E compare the constitutional human rights of countries with different legal traditions using statistical models and tests to examine the relationship between legal tradition and economic rights, social and family rights, and civil and political rights, respectively. Section F concludes.

B Comparative Evaluation Framework

I Stratified Random Sampling Process

This analysis focuses on developing countries; thus, the stratified random sampling process begins with the universe of 126 economies classified as developing economies based on the United Nation's World Economic Situation and Prospects 2020 report.³⁰ This list of economies was reduced to 121 to exclude those economies that are not official statehoods and for which data are not available in the CCP dataset. These countries were placed into four groups of legal traditions, namely common law, civil law, mixed law and Muslim law, based on the classification of the World Legal Systems Research Group at the University of Ottawa (JuriGlobe).³¹ Based on this classification, only 7 countries (~ 6%) possess a pure common law legal system; 31 countries (25%) possess a civil law legal system; 80 countries (70%) possess a mixed law legal system; and 3 countries (~ 2%) possess a religious law legal system.

Setting aside countries with religious laws, this strict classification poses two major limitations for the analysis. First, it severely restricts the size of the overall sample of countries that can be used in the analysis given that only 7 countries are classified as having a purely common law legal system and the number of countries

27 Zachary Elkins and Ginsburg Tom, *Characteristics of National Constitutions*, Version 3.0. (Comparative Constitutions Project, Last Modified 20 May 2021), comparativeconstitutionsproject.org (accessed on 10 June 2021).

28 Anne Meuwese and Mila Versteeg, 'Quantitative Methods for Comparative Constitutional Law' in Maurice Adams and Jacco Bornhoff (eds), *Practice and Theory in Comparative Law* (Cambridge University Press 2012).

29 *Ibid.*, p. 239.

30 United Nations, *World Economic Situation and Prospects* (New York, Statistical Annex, Table C, 2020), p. 166.

31 For countries classification by legal systems, see www.juriglobe.ca/eng/sys-juri/index-alpha.php.

that can be used in each sample must be equal.³² In other words, the potential sample size would be a maximum of 21 countries (*i.e.* 7 countries each for the common law, civil law and mixed law legal systems). Second, this strict classification buries a huge portion of the legal practice and experience of the two most common legal traditions, common law and civil law, and could potentially bias the results of the analysis. For example, 26 of the 83 countries identified as having mixed legal systems actually have a common law legal system mixed with some customary laws or religious laws or both, but not including civil laws. Similarly, 40 of the 83 countries with a mixed law legal system actually have a civil law legal system mixed with customary or religious laws or both, but not including common laws.

To overcome these limitations, this analysis experiments with a loosely coupled classification system (LCCS hereafter) which reclassifies the 121 countries in the following four legal tradition groups: common law *plus*, civil law *plus*, mixed law and religious law. The common law *plus* group includes countries with a pure common law legal system as well as countries with a predominantly common law legal system – that is a country with a common law legal system that is mixed with some customary laws, religious laws or both, but not including any civil laws. Likewise, the civil law *plus* group includes countries with a pure civil law legal system as well as countries with a predominantly civil law legal system – that is a country with a civil law legal system that is mixed with some customary laws, religious laws or both, but not including any common laws. The mixed law legal tradition group includes countries that have a mixed legal system with at least two legal traditions including both common laws and civil laws. The religious law group includes countries that have pure religious laws or religious laws mixed with customary laws but not including civil laws, common laws or both.

The LCCS classification system assumes that countries with legal systems that include customary or religious laws and either common laws or civil laws (dominant laws) are substantially influenced by the dominant legal tradition. In other words, it assumes substantial compliance with the principles and practices of the dominant legal tradition and as such is classified as having the dominant legal tradition. For example, Ethiopia is classified as having a civil law system although its legal system is identified by JuriGlobe as having elements of both civil law and customary law; and Ghana is classified as having a common law legal system although its legal system is identified as having elements of both common law and customary law. Under the LCCS classification system, the list of 121 countries is classified as follows: common law *plus* (33), civil law *plus* (70), mixed law (14) and religious law (4). This analysis excludes the group of countries with a pure religious law legal system due to its size.

With countries in the religious law group excluded, the list of countries totals 117. The number of countries in the mixed law legal system group was further reduced to 9, the civil law *plus* group was further reduced to 43 and the common law *plus* group was reduced to 14 bringing the list total to 66. These reductions were made to exclude those countries for which there were no data in the Human Rights Watch World Report (HRW) 2020 which is used to test the robustness of the

32 Sample sizes must be equal when using the ANOVA test.

analysis (see Section IV).³³ The HRW 2020 report provides the most recent account of human rights abuses in most countries of the world. The data provide an excellent check between human rights provided for in law as opposed to human rights practice in countries. The final selection of countries used in the analysis includes all 9 countries in the mixed law group. Of the 14 countries in the common law *plus* group and 43 countries in the civil law *plus* group, 9 countries are randomly selected from each group. Thus, the final sample size is a list of 27 developing countries (see Appendix A for a detailed list).

II Constitutional Human Rights Points Table

The primary data used for this analysis are taken from the most recent update (2021 data) of the CCP dataset. The CCP dataset provides the most comprehensive data that include quantitative information on every national constitution written since 1789.³⁴ It includes data on seven groups of constitutional rights: citizenship, rule of law principles, information, religion, economic, social and family, and civil and political rights. This analysis focuses on three groups of constitutional human rights: economic; social and family; and civil and political rights. For each group of rights, data are available for are several variables associated with different aspects of the group of rights. For example, under economic rights, there are data for 25 variables. Likewise, for social and family rights, and civil and political rights, there are data for 9 and 19 variables respectively (see Appendix B). For each variable, the data provided are in numerical codes, *e.g.* 1, 2, 96, 99, etc., each indicating the presence, absence or partial presence of a particular right in each state's constitution.

For example, under economic rights, the first variable is EXPROP, which looks at whether the government can expropriate private property under at least some conditions. Each code (1, 2, 96 and 99) corresponds to a specific response. For this variable, 1 means 'yes' and 2 means 'no' (see Appendix B for details on each variable and the coding provided).³⁵ For this variable, a code of '2' indicates a superior right compared to a '1' meaning that individuals living in a country where the government can expropriate private property under no circumstances possess a higher level of economic right than individuals living in a country where there are circumstances in which the government can expropriate private property, *ceteris paribus*. In other variables, a code of '1' indicates the presence of a 'right' and '2' indicates the absence of that right, *e.g.* see variable RENUMER in Appendix B. For this variable, a constitution (and by inference the country) that provides the right to just remuneration, fair or equal pay for work provides a higher level of economic right than a constitution (and country) that does not. In other words, for this variable, a code of '1' is preferred to a '2'.

In summary, for some variables, 1 indicates the presence of a right or a superior right whereas in other variables a code of 1 indicates the opposite. This inconsistency poses a computational challenge that must be addressed before the data can be

33 Human Rights Watch, *World Report* (United States, 2020).

34 Elkins and Tom (n 27).

35 See CCP codebook for detail explanation of the variable, methodology and coding used.

used for comparative analysis. To overcome this challenge, a points table was developed to assign points for each response for each variable for each group of human rights used in the analysis. The table allocates more points to those responses that indicate the presence of a right or a superior right consistently across for all variables, groups of rights and for all countries in the analysis. This provides an unbiased and systematic evaluation of each response, for each variable and each group of rights for each country (see Appendix B for a breakdown of the points table). Each variable has a maximum of 1 point and a minimum of 0 points. The points for each variable in each group of rights are tallied to provide a total for each group of rights for each country. These totals are used to compare human rights between the three groups of countries with different legal traditions.

III Statistical Tests and Comparative Analysis

As discussed earlier, each country in the sample is placed in the common law *plus*, civil law *plus* or mixed law legal tradition group using an LCCS classification method. For each country, a total score is calculated for each group of rights that is equivalent to the sum of points for each variable for the respective right. Each group of legal traditions has nine countries. The comparative assessment for each group of rights begins with a summary of the descriptive analysis for each legal tradition, *i.e.* an examination of the mean scores, popular and unpopular rights, and any notable observations in the data for each group. This is followed by an analysis using two statistical tests, the single factor ANOVA test and the Student's t-test. The single factor ANOVA test is used to test whether there is a significant difference between the means score of more than two equal samples (see Appendix C for the mathematical form of the ANOVA test used). The ANOVA is used to test the primary (null) hypothesis (*e.q.1*) that, on average, there is no difference in the provision of certain human rights (economic, social and family, and civil and political) between countries with a common law legal tradition and countries with other legal traditions.

$$\begin{aligned} \text{Null Hypothesis } (H_0): \quad & \mu_{cmlp} = \mu_{cvlp} = \mu_{mxd} \\ \text{Alternative Hypothesis } (H_1): \quad & \mu_{cmlp} \neq \mu_{cvlp} \neq \mu_{mxd} \end{aligned}$$

where μ = sample mean, *cmlp* = common law *plus*, *cvlp* = civil law *plus* and *mxd* = mixed law legal tradition.

The general assumptions of the ANOVA test are: (1) the population from which the samples are drawn are normally distributed, (2) the samples are independent of each other and (3) the variances of the samples are constant (homogeneity of variance). In this analysis, the assumptions seem reasonable; there are no known reasons that suggest that these assumptions are violated.

The Student's t-test is used to supplement the results of the ANOVA test. It is used to further examine any observed differences in the provisions of rights between the groups of countries by testing for differences between any two of the

three groups of countries. Put differently, the Student's t-test will test the null hypothesis between any two groups of countries at a time. For example, it will test the null hypothesis that there is no significant difference in the provision of economic rights between countries with common law and civil law legal traditions. The two-tailed Student's t-test is used since there is no expectation that the average provision of rights for one group of countries is greater or lesser than for another group of countries. Also, the t-test conducted assumes unequal variance among the groups of countries³⁶; this is a stricter version of the t-test which returns more robust results. The t-test is repeated three times to compare common law states with civil law states, common law states with mixed law states and civil law states with mixed law states.

The mathematical form of the t-test used is shown in equation 3 below:³⁷

$$\text{Student } t - \text{test } (T - \text{value}) = \frac{(\bar{x} - \bar{y}) - (\mu_x - \mu_y)}{\sqrt{\frac{S_x^2}{n_x} + \frac{S_y^2}{n_y}}}$$

where \bar{x} and \bar{y} are the sample means and S_x and S_y are the sample standard deviations of two sets of data of size n_x and n_y respectively.

IV Robustness of the Analysis

To ensure robust results, the analysis utilizes multiple best practices. It utilizes a stratified random sample process to ensure that the countries included in the sample are comparable and to avoid potential selection bias. The analysis experiments with a different but clearly defined classification system to place countries into groups based on their legal tradition as per JuriGlobe while accounting for substantial compliance with a dominant legal tradition. The analysis also uses a carefully developed points table to systematically score each country's constitutional human rights provisions using CCP data. This constitutional points table ensures that the constitutional and legal texts are converted into quantitative data to allow for quantitative analysis. Two statistical tests are used to examine differences in the provision of human rights between the groups of countries and to further examine any observed differences. Finally, the hypothesis tests are repeated multiple times using alternative datasets to examine whether the

36 The assumption of constant variance is standard in ANOVA analysis and cannot be changed. For the Student's t-test, the assumption can be modified for equal variance or unequal variance. Choosing the unequal variance assumption does not change the fundamental test. It is simply a stricter version of the t-test when comparing two samples, especially when the variances are not known. As a rule of thumb, when the variances are not known and the assumptions can be modified, it is advisable to use the stricter version.

37 D.M. Lane (ed), *Introduction to Statistics* (University of Houston, 2003), p. 515.

observed relationships are stationary and largely consistent across different data sources to the extent that such inferences are possible given the uniqueness of each data source.

C Legal Traditions and Economic Rights

I Background

Economic rights are often discussed in tandem with other rights such as social, civil and political rights that are enshrined in the 1948 Universal Declaration of Human Rights (UDHR) which, theoretically, binds states to the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, in strict terms, economic rights refer to a specific subset of human rights that centre on the right to subsistence and protections from the economic ills of unemployment and exploitation. Article 25(1) of the UDHR states

everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age and other lack of livelihood in circumstances beyond his control.³⁸

Articles 22-24 also outline multiple other economic rights including the right to work, fair compensation and union representation. The recognition of human rights as the foundation for freedom, justice and peace in the UDHR was a direct response to the ‘barbarous acts which ... outraged the conscience of mankind’ during the Second World War.³⁹

Today, more than two centuries later, almost all new democracies, and several established ones, have included some form of economic rights in their constitutions, committing their governments, at least formally, to the realization of minimum standards of social welfare.⁴⁰ The renaissance of economic and social rights post-1948 is centred on the philosophical foundation of subsistence rights and how the provision of basic needs ought to be addressed through rights protections and constitutional jurisprudence.⁴¹ However, the basic premise of economic rights as human rights dates back to the early industrial age. As Trudeau notes,

As long ago as 1793, the Declaration of Rights voted by *la Convention* stated that ‘society owes subsistence to unfortunate citizens, either by procuring them work or by guaranteeing the livelihood of those who are unable to work.’ The French constitution of 1848 also affirmed the right to work. And by that

38 Universal Declaration of Human Rights (adopted 10 December 1948), UNGA Res 217 A(III) (UDHR), Art. 25.

39 Amnesty International, What is the Universal Declaration of Human Rights and why was it created?

40 C. Jung, R. Hirschl and E. Rosevear, ‘Economic and Social Rights in National Constitutions’ [2014] 62 American Journal of Comparative Law 1043.

41 Jung et al. (n 40).

time, Proudhon had long been preaching the need of 'a 1789' in the economic sphere.⁴²

This was against the backdrop of the industrialization era when more and more people realized that civil rights avail them little against such realities of economic exploitation and massive unemployment.

II Descriptive Analysis

Economic rights in this analysis comprise a total of 25 constitutional rights including the protection of private property, the right to join trade unions and the right to just remuneration, among others. Of the 25 economic rights, the most popular is the right of individuals to own property. Twenty-six of the 27 countries' constitutions provide for this right except for Singapore. The second, third and fourth most popular rights are the right 'to form or to join trade unions', 'to the social security of the society or the nation' and 'to either general or financial support by the government for specific groups of people such as the disabled, children, elderly, and unemployed'. At least 17 of the 27 countries provide these as constitutional rights. Of the 27 countries, 24 have either ratified or acceded to the ICESCR of which only four had done so before it came into force.⁴³ The three countries that have not ratified or acceded to the Convention are all from the common law *plus* group.

The most unpopular economic right is the right to transfer property freely after death. Only Ecuador and Mexico, both civil law states, provide this right as a constitutional right. Equally unpopular is the right to enjoy the benefits of scientific progress. Only Ecuador and the Philippines which have mixed constitutions provide this right explicitly, while Papua New Guinea and Brazil's constitutions contain some languages relating to this right. The third and fourth most unpopular rights are the rights 'to transfer property freely' and 'limitations or conditions on the ability of the government to expropriate private property' respectively. All countries in the civil law *plus* group except Turkey provide some conditions or limitations on the ability of the government to expropriate private property. The constitutions of only three countries in the common law *plus* group and four countries in the mixed law group provide some conditions or limitations on the government's ability to expropriate private property or include some related languages. Of all the countries, Brazil, Ecuador and Lebanon, all civil law states, provide the most conditions or limitations on the government's ability to expropriate private property.

III Comparative Analysis

Of the 27 countries, the overall average economic rights score is about 11 points out of the maximum of 25 points, *i.e.* less than half the points of a country with a

42 Pierre Elliott Trudeau, 'Economic Rights' [1962] 8 McGill Law Journal 121.

43 United Nations, International Covenant on Economic, Social and Cultural Rights (Depositary, Treaty Collection, Depositary Status of Treaties, 2021), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-3&chapter=4#16 (accessed 25 July 2021).

theoretically perfect economic rights score (see Table 1). Based on legal tradition, countries in the civil law *plus* group have an average of 14 points, which is more than the average score of more than 8 points for countries in the common law *plus* group and more than 9 points for countries in the mixed law group. This means, on average, countries in the civil law *plus* group provide more economic rights in their constitutions than countries in the common law *plus* and mixed groups. Of note, the top five countries with the most economic rights, *i.e.* countries with the highest economic rights score, are all civil law states: Ecuador (21.25), Brazil (19.8), Peru (17.2), Mexico (16.85) and Turkey (16.35). Three of the bottom five countries with the least number of economic rights in their constitutions are common law states: Tanzania (5.1), Singapore (0.1) and Myanmar (5.0). The other two countries have civil law and mixed law legal systems, *i.e.* Lebanon (3.25) and Qatar (4.85) respectively. Singapore, an economically well-off state among developing states, provides none of the 25 economic rights in its constitution except for some vaguely related language on the right to financial support.

The differences between the average economic rights score of countries in the civil law *plus*, common law *plus* and mixed law legal tradition groups are both notable and statistically significant. This is confirmed by the results of the ANOVA test which returned an *F-value* of 3.7 which is greater than the *F-critical* value of 3.4 or a *P-value* of 0.0388 which is less than 0.05. Consequently, and consistent with the decision rule governing the ANOVA test, the null hypothesis that, on average, there is no difference in the provision of economic rights between countries with a common law legal tradition and countries with other legal traditions is rejected in favour of the alternative hypothesis. This result is robust as it remains the same even when the ANOVA test is repeated at the 99% confidence level; the *F-value* of 3.7 is still greater than the *F-critical* value of 3.6. This finding is consistent with the findings of other research studies such as Jung and Rosevear, Jung et al, La Porta and others, Chong and Zanforlin and Levine that the origin of a country's legal system or its legal tradition is linked to the quality of its institutions and human right practices.

The Student's t-test was used to further examine the significant differences observed between the average economic rights score of countries in the three groups. The results of the t-tests find that the difference between the average economic rights score of countries in the civil law *plus* and common law *plus* groups is statistically significant at the 95% confidence level, *i.e.* the *P-value* of 0.04 is less than the *P-critical* value of 0.05. Put differently, the results of the t-test suggest that on average countries with a civil law legal system have more economic rights enshrined in their constitutions than countries with a common law legal system. This finding also supports the conclusion of Jung and Rosevear that the constitutions of common law countries are less likely to include economic rights than those of civil law countries. This finding is also consistent with the findings of Keith and Ogundele who found no solid evidence that countries with a common law system have better human rights behaviour than countries with a civil code system.

Table 1 *Legal Traditions and Constitution Comparison*

Human Rights: Economic Rights				
CCP Economic Rights Variables Abbreviation	Legal Traditions Score			Total (Out of 27)
	Civil Law +	Common Law +	Mixed	
EXPROP	4.50	3.50	4.00	12.00
EXPRCOM	5.85	3.80	4.75	14.40
EXPCOND	3.25	2.05	3.45	8.75
EXPLIM	2.75	0.90	1.00	4.65
SOCECON	7.00	2.00	0.25	9.25
REMUNER	7.00	3.50	2.25	12.75
JOINTRDE	8.00	5.25	7.25	20.50
STRIKE	7.50	2.00	3.75	13.25
LEISURE	6.00	2.00	2.00	10.00
STANDLIV	2.75	1.50	2.00	6.25
TRANSFER	1.25	1.00	2.00	4.25
TESTATE	2.00	0.25	0.00	2.25
INHERIT	4.25	2.25	3.00	9.50
INTELECTPROP	4.50	6.80	1.00	12.30
BUSINES	4.00	4.25	4.00	12.25
CONRIGHT	6.00	2.00	3.00	11.00
SOCSEC	6.00	4.00	8.00	18.00
FINSUP	6.90	5.00	5.85	17.75
PROPRGHT	9.00	8.00	9.00	26.00
FREECOMP	5.75	0.25	0.25	6.25
SCIFREE	1.25	0.25	1.00	2.50
OCCUPATE	7.00	4.00	6.00	17.00
SAFEWORK	4.00	3.10	3.00	10.10
CHILDWRK	4.20	4.00	4.00	12.20
SHELTER	6.00	3.00	3.50	12.50
TOTAL	126.70	74.65	84.30	
AVERAGE (Out of 25)	14.08	8.29	9.37	

Source: Author's Analysis using CCP Data

When comparing the economic rights scores of countries in the common law *plus* group and the mixed law group and separately, the economic rights scores of countries in the civil law *plus* group and the mixed law group, the t-tests find that the differences are not statistically significant. This suggests that the significant difference in the economic rights scores of countries in the three legal traditions as indicated by the results of the ANOVA test is driven by the considerable difference in the scores of countries with common law and civil law legal systems. In other words, the stark difference in economic rights appears only between countries with a pure common law and civil law legal systems or between countries that are

individually influenced by only one of these two dominant legal systems. This finding questions the way mixed law legal tradition – legal systems with at least two legal traditions including both common law and civil law traditions – are viewed. Countries that have mixed law legal traditions, as defined in this analysis, have comparable economic rights in their constitutions to countries with a civil law legal system and a common law legal system.

From an economic perspective, brain drain refers to the movement of skilled human resources from one country to another in search of better economic opportunities including a better standard of living, higher salaries, access to technologies, etc. Other reasons for such migration include political instability, natural disaster and family unification. Using the ‘human flight and brain drain’ data from the FSI dataset as a proxy measure of economic rights, the ANOVA test and t-tests are repeated. The results of both the ANOVA test and the t-tests find no significant difference between the human flight and brain drain scores of countries across the three groups. One possible explanation for this is that while economic rights written in countries’ constitutions may vary significantly, economic rights in practice may be more congruent among countries with different legal traditions than expected. In support of this view, for example, the economic rights score for Ecuador (civil law) is 21.5, Malaysia (common law) is 5.5 and South Africa (mixed law) is 10.5. However, the same three countries have almost the same human flight and brain drain scores of 4.6, 4.5 and 4.9 respectively.

This raises the question of the benefits of constitutionalizing economic rights. The prevailing view appears to support the notion of constitutional recognition of economic rights. Katherine Aldrich argues that the formal and domestic recognition of economic rights is the quickest and most effective means of implementation. Constitutional provisions can ensure positive action toward fulfilling such rights, protect them from political whims, and provide the most supreme form of justiciability and redress, she argues.⁴⁴ This contrasts with the informal recognition of economic rights, which includes the work of non-state actors and advocates, that may address immediate economic concerns but are merely temporary fixes. The international recognition is also insufficient to guarantee economic rights although it provides some remedies including international condemnation. However, sovereignty often trumps international relations, and the lack of international enforcement renders the international recognition of economic rights to a political process as opposed to a means of redressability. Claire Archbold shares this view: ‘a human rights culture will only really be created in a particular society if human rights are incorporated into its national law’, she argues.⁴⁵ Eric Posner contends that while the constitutionalization of economic rights does not

44 Katherine V. Aldrich, ‘Constitutionalizing Economic, Social, and Cultural Rights in the New Millennium’ [2010] ScholarWorks at University of Montana, Graduate Student Theses, Dissertations, & Professional Papers, p. 18.

45 Claire Archbold, ‘The Incorporation of Civic and Social Rights in Domestic Law’ in Jean-Marc Coicaud et al (eds), *The Globalization of Human Rights* (New York, United Nations Press, 2003), p. 56.

itself guarantee implementation and enforcement, it is the only option for which both are likely⁴⁶ citing the case of *Government of South Africa v Grootboom*.⁴⁷

IV Conclusion

The results of this analysis call into question the claim of superiority of the common law legal system. Not only did the analysis find no evidence of the superiority of the common law system with respect to the provision of constitutional economic rights, it also finds the exact opposite. Countries with a civil law legal system (or more technically countries with at least a predominantly civil law legal system) have more economic rights written into their constitutions than countries with a common law legal system. The countries that have the least number of economic rights in their constitutions are predominantly from the common law *plus* group. These findings suggest that the contention that common law states provide more human rights than countries with other legal traditions is not a foregone conclusion and more rigorous testing and comparative analysis are needed. The results also hint at the possibility that written constitutional economic rights or the lack thereof may not translate the same in practice. Despite this, the constitutionalization of economic rights is seen as the most effective means of recognition and justiciability of economic rights. This underscores the need for future analysis to delineate between the provision of economic rights in the form of written laws and the provision of such rights in the form of a lack of barriers or prohibitions to enjoying the said rights. Quantitative constitutional analysis can aid our efforts to further investigate these relationships.

D Legal Traditions and Social and Family Rights

I Background

Social and family rights relate to the most fundamental of individual preoccupations. These rights go hand in hand with economic rights; however, they refer to a subset of rights relating to social security, housing, healthcare, education, food and water, protection of persons with disabilities and social exclusion.⁴⁸ Granting these rights requires the mobilization and redistribution of substantial material resources, a power generally reserved for the legislature. Social and family rights are not about reducing inequality per se but rather about ensuring that a minimum of basic resources and opportunities are available to all to ensure a life of human dignity and social inclusion.⁴⁹ Social and family rights are primarily private rights requiring government intervention and sacrifice, rather than a negative right that implicates government inaction.⁵⁰ As a result, social and family rights are sometimes referred

46 Eric A. Posner, *The Perils of Global Legalism* (Chicago: University of Chicago Press, 2009), p. 207.

47 *Government of South Africa v. Grootboom*, CCT38/00, 21 September 2000.

48 Malcolm Langford (ed), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge University Press 2009).

49 Ramesh Mishra, 'Social Rights as Human Rights: Globalizing Social Protection' [2005] 48 *International Social Work* 9.

50 Rotem Litinski, 'Economic Rights: Are They Justiciable, and Should They Be?' [2019] 44(3) *Economic Justice* November 2019.

to as second-generation rights protected by the government. Outside of countries' domestic laws and regional laws (such as the European Social Charter), the UDHR includes several provisions that bind states to social and family rights.

Although there has been progress and development in social rights jurisprudence, particularly in the recognition and adoption of social rights, the questions of whether social and family rights are legal rights and whether courts have the legitimacy and capacity to adjudicate them continue to attract debate. This is partly because of the resource-based progressive-achievement duty approach adopted in the ICESCR (Art. 2(1)). This approach resulted in the dilution of social and family rights and questions their justiciability. Despite this, when the inhabitants of the 'New Rust' shacks were evicted to face the Cape's winter rains under plastic sheets, a Constitutional Court was able to rule that the absence of any governmental programme for emergency shelter violated the right to adequate housing.⁵¹ Similarly, the Supreme Court of Venezuela ordered the free provision of antiretroviral drugs, with the necessary programmes and budget reallocation, when the drug nevirapine was unavailable to prevent transmission of HIV from pregnant women to their unborn children, having ruled that their right to healthcare was violated.⁵²

II Descriptive Analysis

Social and family rights in this analysis comprise a total of nine constitutional rights relating to marriage, child protection, healthcare and gender equality, among others. Of these rights, the most popular is the right to guarantee the rights of children. Of the 27 countries, only 16 countries' constitutions guarantee the rights of children, and another 6 countries' constitutions contain some related language. Five countries' constitutions do not guarantee the rights of children, three of which are common law countries. The second and third most popular social and family rights are the 'right to healthcare' and the 'right to found a family' respectively. A total of 16 countries' constitutions provides the right to healthcare with one other containing some related language. Of the remaining 10 countries that do not have a constitutional right to healthcare, five of them are common law countries. With regard to family rights, only nine countries have a constitutional right to found a family with another eight countries' constitutions containing some related language. Of the 10 countries that do not have a constitutional right to found a family, six have common law legal systems.

The most unpopular social and family right is the right 'to same-sex marriage'. No country in the analysis provides same-sex marriage as a constitutional right. In fact, none of the countries' constitutions contain even related language, although Brazil, Ecuador and South Africa recognize same-sex marriage as legal through court decisions.⁵³ The absence of constitutional protection for same-sex marriage could be due to its contemporary nature. Presently, only 29 countries in the world recognize same-sex marriage as legal, none of which is recognized at the

51 *Government of South Africa v. Grootboom* (n 47).

52 *Cru Berlúdez* Case No. 15.789, Decision No. 916, 15 July 1999.

53 Human Rights Campaign Foundation, *Marriage Equality Around the World*, www.hrc.org/resources/marriage-equality-around-the-world (accessed 15 August 2021).

constitutional level.⁵⁴ The second most unpopular social and family right is the constitutional right to 'civil marriage'. Only Brazil's constitution provides civil marriage as a right with two other countries' constitutions containing related language. Of the 27 countries, Ecuador scores the highest (6.1) in terms of social and family rights, guaranteeing all social and family rights in its constitution excepting the right to same-sex marriage and only containing language relating to the right to marry. Brazil, another civil law state, has the second-highest score (5.6) constitutionally guaranteeing five out of the nine social and family rights.

III Comparative Analysis

Of the 27 countries, the overall average social and family rights score is about 2.63 points out of the maximum of 9 points, *i.e.* about a quarter of the points of a country with a theoretically perfect social and family rights score (see Table 2). Based on legal tradition, countries in the civil law *plus* group have an average of 3.67 points, more than double the average score of 1.78 points for countries in the common law *plus* group and more than the average of 2.43 points for countries in the mixed law group. This means, on average, countries in the civil law *plus* group have enshrined more than twice the social and family rights than countries in the common law *plus* group in their constitutions. Of the top five countries with the highest social and family rights score, three are civil law states. In contrast, four of the bottom five countries with the lowest social and family rights score are common law states and only one is a civil law state: Malaysia, Singapore and Tanzania each score 0 points and Pakistan scores 0.25 points. Lebanon, the only civil law state, also scores 0 points. Of note, among the common law *plus* and mixed law groups of countries, only three countries scored 4 or more social and family rights points. In comparison, five of the nine countries in the civil law *plus* group score 4 or more social and family rights points.

The differences between the average social and family rights score of countries in the civil law *plus*, common law *plus* and mixed law legal tradition groups are notable but not statistically significant. This is confirmed by the results of the ANOVA test which returned an *F-value* of 2.8 which is less than the *F-critical* value of 3.4 and a *P-value* of 0.08 which is greater than 0.05. Consequently, and consistent with the decision rule governing the ANOVA test, the null hypothesis that, on average, there is no difference in the provision of social and family rights between countries with a common law legal tradition and countries with other legal traditions is not rejected. This could be, among other reasons, due to the small sample size. However, when the ANOVA test was repeated at the 90% confidence level (a little lower than the standard 95% level), the differences were found to be statistically significant. Thus, there is some evidence that is consistent with the findings of Jung and Rosevear, Jung, Hirschl and Rosevear, La Porta and others, Chong and Zanforlin and Levine that the origin of a country legal system or its legal tradition is linked to the quality of its institutions and human right practices.

The Student's *t*-test was used to further examine the observed differences between the average social and family rights scores of countries in the three legal

54 Ibid.

tradition groups. The results found that the difference between the average social and family rights score of countries in the civil law *plus* and common law *plus* groups are statistically significant at the 95% confidence level – the P-value of 0.04 is less than the P-critical value of 0.05. Although the differences were not found to be statistically significant when all three groups were tested together using the ANOVA test, the result of the t-test, which compares only two groups at a time, suggests that on average countries with a civil law legal system have more social and family rights enshrined in their constitutions than countries with a common law legal system. The result supports the conclusion of Jung and Rosevear that the constitutions of common law countries are less likely to include social and family rights than those of civil law countries. The result is also consistent with the finding of Keith and Ogundele who found no solid evidence that common law system countries have better human rights behaviour than civil code system countries.⁵⁵

Table 2 Legal Traditions and Constitution Comparison

Human Rights: Social and Family Rights				
CCP Social and Family Rights Variables Abbreviation	Legal Traditions Score			Total (Out of 27)
	Civil Law +	Common Law +	Mixed	
MARRIAGE	1.30	1.50	1.85	4.65
SAMESEXM	0.00	0.00	0.00	0.00
FNDFAM	5.50	1.50	4.00	11.00
MATEQUAL	4.50	4.00	1.50	10.00
CHILDPRO	7.25	4.50	5.75	17.50
CIVMAR	1.25	0.00	0.25	1.50
SELFDEF	2.25	1.25	2.25	5.75
HEALTHR	8.00	3.25	5.00	16.25
HEALTHF	3.00	0.00	1.25	4.25
TOTAL	33.05	16.00	21.85	
AVERAGE (Out of 9)	3.67	1.78	2.43	

Source: Author’s Analysis using CCP Data

When comparing the social and family rights scores of countries in the common law *plus* and the mixed law groups, and separately, of countries in the civil law *plus* and the mixed law groups, the t-tests find that the observed differences are not statistically significant. This suggests that except for the significant difference observed between the common law *plus* and civil law *plus* groups, although at the 90% level, the social and family rights scores of countries across the different legal traditions are comparable. In other words, the stark difference in social and family rights appears only between countries with a pure common law and civil law legal systems or between countries that are individually influenced by only one of these two dominant legal systems. This finding also suggests, at least preliminarily, that

55 Camp Keith and Ogundele (n 14).

countries with a mixed legal tradition – a legal system with at least two legal traditions including both common law and civil law traditions – provide comparable constitutional social and family rights to countries with a pure civil or common law legal system.

To test the stability and robustness of these findings, social rights data from the TIESR dataset were used to repeat the statistical tests for significant differences. The dataset contains data on justiciable standard social rights (SSJR).⁵⁶ SSJR are social rights for which the government can be taken to court for failing to guarantee and citizens have legal recourse to ensure the fulfilment of these constitutional rights, usually via a mechanism for judicial review enshrined in the constitution. The average SSJR for civil law states is 5.3, which is more than double the average for common law states of 2.1 and more than triple the average for mixed law states. The ANOVA test finds a significant difference (both at the 95 and 99% levels of confidence) between the average SSJR of countries in the different legal tradition groups. The results of the t-tests also confirm a significant difference between the average SSJR for civil law and common law states and between civil law and mixed law states. These results provide strong support for the notion that on average civil law states provide more social and family rights in their constitutions than common law states.

The stark difference in the practice of constitutionalization of social rights between different legal traditions could be the result of substantive disagreement of its merits. Opinions differ on whether it is a good idea to confer full constitutional-legal status upon ‘social’ rights guarantee of this kind. Objections to the constitutionalization of social rights can be grouped broadly as institutional, contractarian and majoritarian. Some opponents of constitutionalization of social rights argue that it overextends the reach of the judiciary and upset the proper working of the constitutional-democratic political and legal institutions. In defence, proponents argue that judges who know their business can find both proper adjudicative standards for testing claims of social rights violation and proper judicial remedies for violation.⁵⁷ Regardless of judicial involvement in the enforcement of social rights, adding social rights to the constitution constricts democracy unduly, argues Frank Michelman.⁵⁸ Further, adding social rights to the constitution defeats a crucial function of the constitution-as-law, that of providing legitimacy to the coercive political and legal order, Michelman argues. Despite these objections, however, the fact that social rights make budgetary demands, or call for government action and not just forbearance, does not in itself differentiate them radically from the standpoint of justiciability from other constitutionally protection rights to property, equality before the law or so-called negative

56 To understand the differences between these rights and how they are measured, see Toronto Initiative for Economic and Social Rights, www.tiesr.org/ (accessed 1 July 2021).

57 Cass R. Sunstein, ‘Social and Economic Rights? Lessons from South Africa’ [2001] 11 Constitutional Forum 123.

58 Frank Isaac Michelman, ‘The Constitution, Social Rights, and Liberal Political Justification’ [2013] 13 International Journal of Constitutional Law 1, 34.

liberties.⁵⁹ Further, research shows, although preliminary, that enforceable social rights provisions in the constitution are associated with an improvement in social outcomes.⁶⁰

IV Conclusion

These results challenge the notion of the superiority of the common law legal tradition and provide evidence suggesting that the civil law legal tradition is superior in the practice of constitutionalizing social and family rights. Countries with the highest social and family rights score are mostly civil law states while countries with the lowest scores are almost exclusively common law states. Substantive disagreement on the merits of constitutionalization of social rights possibly explain the significant difference in this practice in the common law and civil law legal tradition. Of note, these findings do not concern the extent to which written social and family rights are implemented or enjoyed by citizens. It is possible that while common law states tend to have less written social and family rights, a particular common law state can have a very good record of respecting or not infringing on individuals' social and family rights. Mitchell et al have found that common law states have engaged in better human rights practices than states with other legal systems.⁶¹ But while unwritten social and family rights may be enjoyed in practice, the finding that civil law states are more likely to constitutionalize social and family rights is both remarkable and noteworthy; it is also seen as the most effective means of recognition and justiciability of social rights.⁶²

E Legal Traditions and Civil and Political Rights

I Background

The notion of civil and political rights stems essentially from western liberal philosophies of the seventeenth and eighteenth centuries, in particular, Locke's 'Second Treatise of Government' held that men in a state of nature were born in a state of equality and inherently possessed 'natural rights' such as the right to life, liberty and property.⁶³ Similar ideas informed the French philosopher of the Age of Enlightenment in the eighteenth century, such as Rousseau, Montesquieu and Voltaire, who argued that such rights stem from the inherent rationality and virtue of man, championed over the irrational scientific and religious dogma which had predominated the middle ages.⁶⁴ After the atrocities of the Second World War demonstrated the horrendous consequences of an utter disregard for the rights of the human person, natural rights metamorphosed into internationally recognized

59 Ex Parte Chairperson of the Constitutional Assembly: In Re Certification of the Constitution of the Republic of South Africa [1996] 4 SA 744 (CC).

60 Elizabeth Kaletski, Lanse Minkler, Nishith Prakash and Susan Randolph, 'Does Constitutionalizing Economic and Social Rights Promote Their Fulfillment?' [2015] 15 Journal of Human Rights 433-453.

61 Mitchell et al. (n 16).

62 Aldrich (n 44).

63 J Locke, *The Second Treatise of Government*, reprinted in P. Laslett (ed), *Locke, Two Treatise of Government* (2nd edn, Cambridge University Press, 1988), p. 265ff.

64 B.H. Weston, 'Human Rights' [1984] 3 Human Rights Quarterly 257 (259).

human rights principles with the adoption of the UDHR, and more specifically, the International Covenant on Civil and Political Rights (ICCPR). While the United Nations has always maintained that ‘civil and political rights’ and ‘economic and social rights’ are interdependent and indivisible, in practice, civil and political rights are often seen as superior to economic and social rights in the sense that they are prohibitions on governmental actions as opposed to requiring governments to act in a certain way.

The most common civil and political rights are prohibitions on discrimination based on race, ethnicity, religion and gender; the right to personal security, including protections for persons accused or suspected of crimes; the right to vote and to participate in democratic political processes; and freedom of expression, association and religion. In the second half of the twenty-first century, recognition and enforcement of civil rights, or some assortment of the most fundamental civil rights, is widely understood as a necessary element of freedom, democracy and equality. In other words, civil and political rights became defining traits of democracy.⁶⁵ It is also argued that some states with mature civil and political rights jurisprudence make it easier for courts to adjudicate on economic and social and family rights. While many countries have ratified the ICCPR, its provisions do not automatically become part of domestic law and therefore the full implementation of these rights may be impacted. In many civil law countries, international obligations, once ratified, automatically become part of the legal system of that country.⁶⁶ Common law countries are likely to include individual human rights in their constitutions, and often cite this as a reason for not making treaties such as the ICCPR a part of their domestic legal system.^{67, 68}

II Descriptive Statistics

Civil and political rights in this analysis comprise a total of 19 constitutional rights relating to the right to life, freedom of expression and assembly, and protection from torture, among others. Of these, the most popular is the ‘right of freedom of association’ and is included in the constitution of all 27 countries in the analysis. The second and third most popular civil and political rights are the ‘freedom to assembly’ and ‘freedom of expression’, both of which are included in the constitutions of all but one country. Qatar’s constitution does not provide the right of ‘freedom of expression’ and Yemen’s constitution does not provide the right of ‘freedom of assembly’. The fourth and fifth most popular rights are the ‘freedom of movement’ and ‘freedom of the press’ and are included in the constitutions of at least 23 countries. Of note, the ‘right to life’ and a ‘prohibition on slavery, servitude, and forced labour’ are not among the most popular rights,

65 David Kairys, ‘Civil Rights’ in James D. Wright (eds), *International Encyclopedia of the Social and Behavioral Sciences* (2nd edn, Vol. 3, Oxford Elsevier, 2015).

66 Christopher Harland, ‘The Status of the International Covenant on Civil and Political Rights (ICCPR) in the Domestic Law of State Parties: An Initial Global Survey Through UN Human Rights Committee Documents’ [2000] 22(1) *Human Rights Quarterly* 187.

67 Harland (n 66).

68 Curtis A. Bradley and Jack L. Goldsmith, ‘Pinochet and International Human Rights Litigation’ [1999] 97(7) *Michigan Journal of International Law* 2129.

although there are included, explicitly or implicitly, in the constitutions of at least 19 of the 27 countries.

On the other hand, the most unpopular civil and political right is the 'right to bear arms' and is included in the constitution of only Mexico; Haiti's constitution also has some related language. The second and third most unpopular civil and political rights are the right to 'exemption from military service for conscientious objectors to war or to other groups' and 'to free development of personality'. The right to exemption from military service for conscientious objectors to war or other groups is included in the constitutions of Brazil, Ecuador and Papua New Guinea. The right to self-determination is included in the constitution of only Ecuador and Peru with related languages included in another seven countries. The fourth and fifth most unpopular civil and political rights are the right 'to asylum or the protection of stateless individuals and refugees' and the 'prohibition on censorship'. These rights are included wholly or partly in the constitutions of at least eight countries. Of note, the constitutions of only eight countries in this analysis referred to the UDHR while none referred to the ICCPR.

III Comparative Analysis

Of the 27 countries, the average civil and political rights score is almost 12 out of 19 points, *i.e.* about two-thirds the score of a country with a theoretically perfect civil and political rights score (see Table 3). Based on legal tradition, countries in the civil law *plus* group have the highest average score of over 13 points, followed by countries in the mixed law group with more than 11 points. The average civil and political rights score of countries in the common law *plus* group is a little over 10 points. This suggests that on average civil law states have more civil and political rights enshrined in their constitutions than countries with a common law or mixed law legal systems. Of the top five countries with the highest civil and political rights score, four are civil law states and one is a common law state. In contrast, of the bottom five countries with the lowest civil and political rights score, three are common law states and only one is a civil law state.

The differences between the average civil and political rights scores of countries in the civil law *plus*, common law *plus* and mixed law legal tradition groups are both notable and statistically significant. This is confirmed by the results of the ANOVA test which returned an *F-value* of 3.4 which equals the *F-critical* value or a *P-value* of 0.05 which equals the *P-critical* value. Consequently, and consistent with the decision rule governing the ANOVA test, the null hypothesis that, on average, there is no difference in the provision of civil and political rights between countries with a common law legal tradition and countries with other legal traditions is rejected in favour of the alternative hypothesis. Consistent with the findings of Jung and Rosevear, Jung, Hirschl and Rosevear, Chong and Zanforlin and Levine, the result supports the argument that a country's legal tradition is linked to the quality of its institutions and human right practices.

The Student's *t*-test was used to further examine the observed differences between the average civil and political rights scores of countries in the legal tradition groups. Consistent with the results of the ANOVA, the results of the *t*-tests found that the difference between the average civil and political rights

scores of countries in the civil law *plus* and common law *plus* groups are statistically significant at the 95% confidence level – the *P-value* of 0.04 is less than the *P-critical* value of 0.05. In other words, there is statistical evidence showing that on average countries with a civil law legal system have more civil and political rights enshrined in their constitutions than countries with a common law legal system. The results are consistent with Keith and Ogundele who found no solid evidence that common law system countries have better human rights behaviour than civil code system countries. While they do not contradict Scully's finding that common law states have significantly better political and civil liberties than other legal traditions, they raise the question of the source of such liberties, if they are indeed superior.

When comparing the civil and political rights scores of countries in the common law *plus* and the mixed law groups and, separately, countries in the civil law *plus* and the mixed law group, the t-tests find that the differences are not statistically significant. The tests returned a *P-value* of 0.08 and 0.35, respectively, both of which are greater than the *P-critical* of 0.05. This indicates that the notable difference in the civil and political rights scores of countries in the three legal traditions as indicated by the results of the ANOVA test is driven by the difference in the average scores of countries with common law and civil law legal systems. Again, the results raise serious questions about the overall perception of mixed law legal systems relative to the dominant common and civil law systems. Developing countries that have mixed legal traditions, as defined in this analysis, are likely to have comparable constitutional civil and political rights to countries with civil and common law legal systems. The results also suggest that developing countries with a mixed law legal system can improve the quality of human rights without the need to abandon their present legal tradition.

To further test the robustness and stability of these results, the ANOVA test and t-tests were repeated using Political Terror Scale (PTS) data. Political terror is defined as violations of basic human rights to the physical integrity of the person by agents of the state within the territorial boundaries of the state in question.⁶⁹ Political terror is measured on a 5-point ordinal scale where 1 indicates that the country is under a secure rule of law, people are not imprisoned for their views and torture is rare or exceptional, and 5 indicates that there is no limit on the civil and political rights violations that can be exacted on the population. PTS includes three separate variables (PTS_A, PTS_H and PTS_S) corresponding to data sources from Amnesty International, Human Rights Watch and the U.S. State Department respectively. The average score of the three variables was used to repeat the statistical tests. Data was not available for the Yemen Arabic Republic (mixed law) and as a result, one country was randomly removed from the other two groups reducing the overall sample size to 24 countries.

The results of both the ANOVA and t-tests find that the differences between the average PTS scores are not statistically significant. These results, however, are both unsurprising and understandable since the two datasets (CCP and PTS) are

69 For details on the PTS data, variables, definition and methodology, see the PTS codebook version 1.30. See Mark Gibney, Cornett Linda, Wood Reed, Haschke Peter, Armon Daniel, Pisanò Attilio, Barrett Gray, and Park Baekkwon, *The Political Terror Scale 1976-2019* (Political Terror Scale), <https://www.politicalterrorscale.org/Data/Files/PTS-Codebook-V120.pdf> (accessed on 21 August 2021).

capturing two fundamentally different dimensions of human rights. The CCP data capture whether identified civil and political rights are written into states' constitutions whereas the PTS data capture incidents of actual human rights violations in states. In other words, one reports on the presence of human rights in the supreme law of states while the other reports on human rights in practice. Peru, for example, has significantly more constitutional human rights than Sri Lanka, *i.e.* 16.35 compared to 8.25 out of 19 points respectively, yet both countries have almost the same PTS scores of 2 and 2.33 respectively. But while there can be bad actors in both states, at least theoretically, individuals in Peru where there is constitutional protection of human rights have a stronger petition against such violations than individuals in Sri Lanka where no such constitutional protection exists.

Table 3 *Legal Traditions and Constitution Comparison*

Human Rights: Civil and Political Rights				
CCP Civil and Political Rights Variables Abbreviation	Legal Traditions Score			Total (Out of 27)
	Civil Law +	Common Law +	Mixed	
LIFE	7.00	7.25	5.00	19.25
SLAVE	4.00	6.75	5.50	15.25
TORTURE	8.00	5.50	9.00	22.50
CRUELTY	8.00	6.00	9.00	23.00
PRIVACY	9.00	7.00	7.00	23.00
FREEMOVE	7.25	8.25	9.00	24.50
OPINION	8.00	7.00	7.00	22.00
EXPRESS	9.00	9.00	8.00	26.00
PETITION	9.00	2.00	6.00	17.00
CENSOR	6.25	1.75	0.75	8.75
PRESS	9.00	6.10	8.00	23.10
INTERNTREAT	2.05	1.35	1.35	4.75
ASSEM	9.00	9.00	8.00	26.00
ASSOC	9.00	9.00	9.00	27.00
INARGHT	5.00	3.25	6.25	14.50
DEVLERS	2.50	0.75	0.50	3.75
NOMIL	2.00	1.00	0.00	3.00
ASYLUM	4.25	0.00	3.00	7.25
ARMS	1.25	0.00	0.00	1.25
TOTAL	119.55	90.95	101.35	
AVERAGE (Out of 19)	13.28	10.11	11.26	

Source: Author's Analysis using CCP Data

IV Conclusion

The results of this analysis support the argument that a country's legal tradition is a strong indicator of whether civil and political rights are given constitutional protection. Countries that scored the highest in terms of constitutional civil and political rights are mostly civil law states while countries that scored the lowest are mostly common law states. The source of civil and political rights protection, however, is not self-executing. As shown in the analysis, some countries have significantly more civil and political rights provisions in their constitutions than others but whether these are adequately enforced is a vital but separate question. As Kairys notes, the meaning and interpretation of civil and political rights provisions are usually controversial; and despite the prevalence of civil and political rights aspirations and rhetoric, no country has yet found a reliable method for systematic, consistent protection of civil and political rights.⁷⁰ Nonetheless, these results provide further support of Jung and Rosevear and Keith and Ogundele that the constitutions of common law countries are less likely to include civil and political rights than those of civil law countries.

F Conclusions

This analysis tests the fundamental premise that on average countries with a common law legal tradition provide more human rights than countries with other legal traditions. While the memorialization of human rights in constitutional documents does not guarantee their implementation, it helps cement the importance of protecting rights and fosters greater human rights awareness and sensitivity. Human rights include 'economic rights', 'social and family rights' and 'civil and political rights'. This analysis also experimented with a quantitative constitutional comparison methodology that classifies countries in legal traditions based on a LCCS and compares a large number of constitutional materials relating to the provision of human rights. It utilizes two major statistical tests of significance to test the hypothesis that common law states provide more human rights than countries with other legal traditions. Specifically, the tests were used to analyse the differences between the average number of constitutional human rights of states with a common law, civil law and mixed law legal traditions.

Overall, the analysis finds evidence indicating that legal traditions may affect constitutional norms regarding human rights. Common law countries appear to have more classically liberal constitutions containing fewer human rights provisions and favour civil and political rights over economic and social rights. The results overwhelmingly question the superiority of the common law legal system argument, and more specifically, the contention that common law states provide more human rights than states with other legal traditions. The results show that from the standpoint of written constitutional human rights, developing countries with a civil law legal tradition provide more human rights than common law states. Importantly, the provision of constitutional human rights should not be confused

⁷⁰ Kairys (n 65).

with human rights enjoyed by citizens in practice. Indeed, two states can have similar human rights practices with very different constitutional human rights and legal traditions. This analysis, however, concerns itself solely with the differences between constitutional human rights between states with different legal traditions and not with states' records of implementing such rights.

Notwithstanding this, the results do provide good insights into the relationship between legal traditions and developing countries' approaches to the constitutionalization of human rights. For all three groups of human rights examined – economic rights, social and family rights, and civil and political rights – the constitutions of civil law states overwhelmingly include more of these rights than the constitutions of common law and mixed law states. With few exceptions, the differences were both notable and statistically significant as confirmed by a series of statistical tests using data from multiple sources. These findings support the broad group of social science research that suggests a relationship between legal origin and the quality of state institutions. They provide strong support to the conclusions of Keith and Ogundele and Jung and Rosevear that civil law states are more likely to give constitutional protections to human rights than states with other legal systems.

Admittedly, constitutional status does not guarantee that citizens will enjoy these rights, seek judicial remedy or hold the government accountable for violations. It does, however, help to characterize contemporary constitutional models and identifies where constitutions offer protection of human rights and afford economic and social rights equal status with civil and political rights. Although the results of the analysis are preliminary and far from perfect, they offer good insights on the relationship between legal tradition and human rights that are useful for improving governments, advocates and watchdog organizations' understanding of constitutionalism and human rights. More importantly, they offer some direction and guidance to organizations working to improve human rights in developing countries. The similarities and differences of legal traditions can be better leveraged to address the human rights challenges of individual states. For example, other things equal, efforts to improve human rights in civil law states can focus on implementation and compliance as first steps since they are more likely to have human rights codified in their constitutions, while for common law states, such efforts can focus on the codification of human rights if such efforts are likely to improve human rights in practice.

The analysis also experiments with quantitative methods, often used in the economics, finance, comparative politics and political economy scholarships, in comparative constitutional analysis to better understand the constitutional universe and identify similarities and differences across legal traditions. In this regard and consistent with the findings of Meuwese and Versteeg,⁷¹ the quantitative research designs used fits remarkably well within the disciplinary mould of comparative law and produce insights that are usable beyond the quantitative subfield. The research design allows for using large-scale constitutional data to examine differences across legal traditions and for multiple stability and robustness

71 Meuwese and Versteeg (n 28), p. 256.

validation checks using similar data from other sources – the gold standard in quantitative comparative analysis. The methodology also allows for more targeting while preserving the merits of randomization, which provides opportunities for researchers in comparative legal studies to expand or narrow the scope of future research. Overall, the analytical framework provides a new methodological frontier for comparative constitutional law researchers to examine relationships between legal traditions, without undertaking a full-blown statistical analysis.

Appendices

Appendix A Legal Classification of Countries in the Analysis Countries Used in the Analysis

Country	Region	JuriGlobe Classification	LCCS Classification
1. Brazil	South America	Civil Law	Civil Law <i>Plus</i>
2. Cambodia	East Asia	Civil Law	Civil Law <i>Plus</i>
3. Ecuador	South America	Civil Law	Civil Law <i>Plus</i>
4. Haiti	Mexico and Central America	Civil Law	Civil Law <i>Plus</i>
5. Lebanon	Western Asia	Mixed	Civil Law <i>Plus</i>
6. Mexico	Mexico and Central America	Civil Law	Civil Law <i>Plus</i>
7. Morocco	North Africa	Mixed	Civil Law <i>Plus</i>
8. Peru	South America	Civil Law	Civil Law <i>Plus</i>
9. Turkey	Western Asia	Civil Law	Civil Law <i>Plus</i>
10. Kenya	East Africa	Mixed	Common Law <i>Plus</i>
11. Malaysia	East Asia	Mixed	Common Law <i>Plus</i>
12. Myanmar	East Asia	Mixed	Common Law <i>Plus</i>
13. Nepal	South Asia	Mixed	Common Law <i>Plus</i>
14. Pakistan	South Asia	Mixed	Common Law <i>Plus</i>
15. Papa New Guinea	East Asia	Mixed	Common Law <i>Plus</i>
16. Singapore	East Asia	Mixed	Common Law <i>Plus</i>
17. Tanzania	East Africa	Mixed	Common Law <i>Plus</i>
18. Uganda	East Africa	Mixed	Common Law <i>Plus</i>
19. Bahrain	Western Asia	Mixed	Mixed Law
20. Cameroon	Central Africa	Mixed	Mixed Law
21. Eswatini	Southern Africa	Mixed	Mixed Law
22. Philippines	East Asia	Mixed	Mixed Law
23. Qatar	Western Asia	Mixed	Mixed Law
24. South Africa	Southern Africa	Mixed	Mixed Law
25. Sri Lanka	South Asia	Mixed	Mixed Law
26. Yemen Arab Republic	Western Asia	Mixed	Mixed Law
27. Zimbabwe	Southern Africa	Mixed	Mixed Law

Data Source: University of Ottawa, JuriGlobe World Legal Systems. <http://www.juriglobe.ca/eng/sys-juri/index-alpha.php>

Appendix B Constitutional Human Rights Points Table Constitutional Rights Points Table

CCP_VAR	DETAILS	RESPONSE	POINTS	MAX
ECONOMIC RIGHTS				25.00
EXPROP	Can the government expropriate private property under at least some conditions?	1. Yes 2. No 96. Other 98. Not Specified	0.50 1.00 0.25 0.00	1.00
EXPRCOMP	What is the specified level of compensation for expropriation of private property?	1. Fair/Just 2. Full 3. Appropriate 4. Adequate 90. Left explicitly to non-constitutional law 96. Other 98. Not Specified 99. Not Applicable	0.75 1.00 0.75 0.50 0.15 0.10 0.00 0.00	1.00
EXPCOND	Under what conditions or for what purposes can the state expropriate private property? (Multiple answers possible, see CCP code book)	1. Infrastructure, public works 2. Redistribution to other citizens 3. National Defence 4. Land, natural resource preservation 5. Exploitation of natural resources 6. Land Reform 7. General Public Purpose 90. Left explicitly to non-constitutional law 96. Others 98. Not Specified	0.25 0.25 0.25 0.25 0.25 0.25 0.15 0.10 0.00	1.00

Appendix B (continued)

CCP_VAR	DETAILS	RESPONSE	POINTS	MAX
ECONOMIC RIGHTS			25.00	
EXPLIM	What limits/conditions are placed on the ability of the government to expropriate private property? (Multiple answers possible, see CCP code book)	1. Certain types of property 2. Payment must be made within specified time limits 3. Allowed without compensation in times of war/emergency/urgent public need 4. Only allowed through legal process or court decision 90. Left explicitly to non-constitutional law 96. Other 98. Not Specified	0.25 0.25 0.25 0.15 0.10 0.00	1.00
SOCECON	Does the constitution use the words (socio-) economic rights or similar?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
REMUNER	Does the constitution provide the right to just remuneration, fair or equal payment for work?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
JOINTRDE	Does the constitution provide for the right to form or to join trade unions?	1. Yes 2. No 90. Left explicitly to non-constitutional law 96. Other	1.00 0.00 0.25 0.10	1.00
STRIKE	Does the constitution provide for a right to strike?	1. Yes 2. Yes, but with limitations 3. No 90. Left explicitly to non-constitutional law 96. Other	1.00 0.75 0.00 0.25 0.10	1.00
LEISURE	Does the constitution provide for a right of rest and leisure?	1. Yes 2. No 96. Others	1.00 0.00 0.25	1.00

Appendix B (continued)

CCP_VAR	DETAILS	RESPONSE	POINTS	MAX
ECONOMIC RIGHTS				25.00
STANDLIV	Does the constitution provide for a right to an adequate or reasonable standard of living?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
TRANSFER	Does the constitution mention the right to transfer property freely?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
TESTATE	Does the constitution provide for a right of testate, or the right to transfer property freely after death?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
INHERIT	Does the constitution provide for inheritance rights?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
INTPROP	Does the constitution mention any of the following intellectual property rights? <i>(Multiple answers possible, see CCP code book)</i>	1. Patents 2. Copyrights 3. Trademark 4. General reference to intellectual property 90. Left explicitly to non-constitutional law 96. Other 98. Not Specified	0.30 0.30 0.30 1.00 0.15 0.10 0.00	1.00
BUSINES	Does the constitution provide a right to conduct/establish a business?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
CONRIGHT	Does the constitution mention consumer rights or consumer protection?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00

Appendix B (continued)

CCP_VAR	DETAILS	RESPONSE	POINTS	MAX
ECONOMIC RIGHTS				25.00
SOCSEC	Does the constitution refer to the social security of the society or nation?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
FINSUP	Does the constitution provide for either general or financial support by the government for any of the following groups? (Multiple answers possible, see CCP code book)	1. Elderly 2. Unemployed 3. Disabled 4. Children, orphans 90. Left explicitly to non-constitutional law 96. Other 98. Not Specified	0.25 0.25 0.25 0.25 0.15 0.10 0.00	1.00
PROPRGHT	Does the constitution provide for a right to own property?	1. Yes 2. No 90. Left explicitly to non-constitutional law 96. Other	1.00 0.00 0.25 0.10	1.00
FREECOMP	Does the constitution provide the right to a free and/or competitive market?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
SCIFREE	Does the constitution provide for a right to enjoy the benefits of scientific progress?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
OCCUPATE	Does the constitution provide for the right to choose one's occupation?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00

Appendix B (continued)

CCP_VAR	DETAILS	RESPONSE	POINTS	MAX
ECONOMIC RIGHTS				25.00
SAFEWORK	Does the constitution mention the right to safe/ healthy working conditions?	1. Yes 2. No 3. State duty to provide safe working conditions 90. Left explicitly to non-constitutional law 96. Other	1.00 0.00 0.50 0.25 0.10	1.00
CHILDWRK	Does the constitution place limit on child employment?	1. Yes 2. No 90. Left explicitly to non-constitutional law 96. Other	1.00 0.00 0.25 0.10	1.00
SHELTER	Does the constitution provide for the right to shelter or housing?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
SOCIAL AND FAMILY RIGHTS				9.00
MARRIAGE	Does the constitution provide for the right to marry?	1. Yes, general provision 2. Yes, marriage allowed between a man and woman 3. No 90. Left explicitly to non-constitutional law 96. Other	1.00 0.75 0.00 0.25 0.10	1.00
SAMESEXM	Does the constitution provide the right for same-sex marriages?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
FNDFAM	Does the constitution provide the right to found a family?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00

Appendix B (continued)

CCP_VAR	DETAILS	RESPONSE	POINTS	MAX
ECONOMIC RIGHTS				25.00
MATEQUAL	Does the constitution provide for matrimonial equality?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
CHILDPRO	Does the constitution guarantee the rights of children?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
CIVMAR	Is there a constitutional provision for civil marriage?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
SELFDET	Does the constitution provide for a people's right of self-determination?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
HEALTHR	Does the constitution mention the right to healthcare?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
HEALTHF	Does the constitution specify that healthcare should be provided by government free of charge?	1. Yes 2. No 96. Other 99. Not Applicable	1.00 0.00 0.25 0.00	1.00
CIVIL AND POLITICAL RIGHTS				19.00
LIFE	Does the constitution provide for a right to life?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00

Appendix B (continued)

CCP_VAR	DETAILS	RESPONSE	POINTS	MAX
ECONOMIC RIGHTS			25.00	
SLAVE	Does the constitution prohibit slavery, servitude or forced labour?	1. Universally Prohibited	1.00	1.00
		2. Prohibited Except in the Case of War	0.75	
		3. Prohibited with Other Exception(s) Noted	0.50	
		4. Explicitly Allowed	0.00	
		90. Left explicitly to non-constitutional law	0.15	
		96. Other	0.10	
		98. Not Specified	0.00	
TORTURE	Does the constitution prohibit torture?	1. Universally Prohibited	1.00	1.00
		2. Prohibited Except in the Case of War	0.75	
		3. Prohibited for the Purpose of Extracting Confessions	0.50	
		4. Explicitly Allowed	0.00	
		90. Left explicitly to non-constitutional law	0.15	
		96. Other	0.10	
		98. Not Specified	0.00	
CRUELTY	Does the constitution prohibit cruel, inhuman or degrading treatment?	1. Universally Prohibited	1.00	1.00
		2. Prohibited Except in the Case of War	0.75	
		3. Explicitly Allowed	0.00	
		90. Left explicitly to non-constitutional law	0.15	
		96. Other	0.10	
		98. Not Specified	0.00	
PRIVACY	Does the constitution provide for a right of privacy?	1. Yes	1.00	1.00
		2. No	0.00	
		96. Other	0.25	
FREEMOVE	Does the constitution provide for freedom of movement?	1. Yes	1.00	1.00
		2. No	0.00	
		96. Other	0.25	

Appendix B (continued)

CCP_VAR	DETAILS	RESPONSE	POINTS	MAX
ECONOMIC RIGHTS				25.00
OPINION	Does the constitution provide for freedom of opinion, thought and/or conscience?	1. Yes	1.00	1.00
		2. No	0.00	
		96. Other	0.25	
EXPRESS	Does the constitution provide for freedom of expression or speech?	1. Yes	1.00	1.00
		2. No	0.00	
		96. Other	0.25	
PETITION	Does the constitution provide for a right of petition?	1. Yes	1.00	1.00
		2. No	0.00	
		96. Other	0.25	
CENSOR	Does the constitution prohibit censorship?	1. Yes	1.00	1.00
		2. Censorship allowed in exceptional cases	0.75	
		3. No	0.00	
		96. Other	0.10	
PRESS	Does the constitution provide for freedom of the press?	1. Yes	1.00	1.00
		2. No	0.00	
		90. Left explicitly to non-constitutional law	0.15	
		96. Other	0.10	

Appendix B (continued)

CCP_VAR	DETAILS	RESPONSE	POINTS	MAX
ECONOMIC RIGHTS			25.00	
INTRGHT	Does the constitution refer to any of the following international treaties or instruments? (Multiple answers possible, see CCP code book)	1. UN Universal Declaration of Human Rights (1948) 2. 1789 French Declaration of Rights 3. Article 45, UN Charter (1945) 4. European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) 5. International Covenant on Civil and Political Rights (1966) 6. International Covenant on Economic and Social Rights (1966) 7. American Convention on Human Rights (1969) 8. Helsinki Accords (1966) 9. African Charter on Human People's Rights (1981) 96. Other 98. Not Specified	0.25 0.25 0.25 0.25 0.25 0.25 0.10 0.00	1.00
ASSEM	Does the constitution provide for freedom of assembly?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
ASSOC	Does the constitution provide for freedom of association?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
INALRGHT	Does the constitution stipulate that certain rights are inalienable or inviolable?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
DEVLERS	Does the constitution provide for an individual's right to self-determination or the right to free development of personality?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00

Appendix B (continued)

CCP_VAR	DETAILS	RESPONSE	POINTS	MAX
ECONOMIC RIGHTS				25.00
NOMIL	Is there a right to exemption from military service for conscientious objectors to war or other groups?	1. Yes 2. No 96. Left explicitly to non-constitutional law 99. Others	1.00 0.00 0.15 0.10	1.00
ASYLUM	Does the constitution contain provisions for the protection of stateless individuals, refugees from other states or the right to asylum?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00
ARMS	Does the constitution provide for the right to bear arms?	1. Yes 2. No 96. Other	1.00 0.00 0.25	1.00

Notes: For INTRGHT, if a country’s constitution reference any four of these international laws, it receives the full score of 1.

Appendix C Analysis of Variance Test

Source of Variation	Sum of Squares	Degrees of Freedom	Mean Squares	F
Within	$SS_w = \sum_{j=1}^k \sum_{i=1}^l (X_{ij} - \bar{X}_j)^2$	$df_w = k - 1$	$MS_w = \frac{SS_w}{df_w}$	$F = \frac{MS_b}{MS_w}$
Between	$SS_b = \sum_{j=1}^k (\bar{X}_j - \bar{X})^2$	$df_b = n - k$	$MS_b = \frac{SS_b}{df_b}$	
Total	$SS_t = \sum_{j=1}^k (\bar{X}_j - \bar{X})^2$	$df_t = n - 1$		

Source: D.M. Lane (ed), *Introduction to Statistics* (University of Houston, 2003)