UNIVERSITY OF GOTHENBURG

THE QOG INSTITUTE
QUALITY OF GOVERNMENT

No Law without a State

Nicholas Charron

Carl Dahlström

Victor Lapuente

QoG WORKING PAPER SERIES 2010:12

THE QUALITY OF GOVERNMENT INSTITUTE
Department of Political Science
University of Gothenburg
Box 711
SE 405 30 GÖTEBORG

May 2010

ISSN 1653-8919

© 2010 by Nicholas Charron, Carl Dahlström and Victor Lapuente. All rights reserved.

No Law without a State
Nicholas Charron
Carl Dahlström
Victor Lapuente
QoG Working Paper Series 2010:12
May 2010
ISSN 1653-8919

Abstract:

There is a large and growing interest in the prevailing cross-country differences many well-functioning institutions, such as judicial independence and high quality laws, and desirable social outcomes, such as a low degree of corruption and high economic growth. Influential scholars have claimed that these cross-country differences to a large extent are explained by a country's legal origin (the common law and civil law tradition). It is claimed that through mechanisms of a stronger legal protection of outside investors and less state intervention, common law countries have developed more prosperous economically and socially. This paper proposes an alternative interpretation of the cross-country differences observed. Building on scholarly studies of state formation processes, the basic proposition of this paper is that state formation decisively affects the character of the state infrastructure to be either patrimonial or bureaucratic, which in turn affects institutions and social outcomes. This argument is tested empirically on a set of 31 OECD countries. It is shown that the state infrastructure is indeed more influential than the legal traditions on a set of institutional variables (formalism, judicial independence, regulation of entry and case law) as well as on a set of social outcomes (corruption, rule of law, and property rights).

Nicholas Charron
The Quality of Government Institute
Department of Political Science
University of Gothenburg
nicholas.charron@pol.gu.se

Victor Lapuente
The Quality of Government Institute
Department of Political Science
University of Gothenburg
victor.lapuente@pol.gu.se

Carl Dahlström
The Quality of Government Institute
Department of Political Science
University of Gothenburg
carl.dahlstrom@pol.gu.se

Introduction

There is a growing body of evidence showing that "rule of law" matters for the wellbeing of a society (for a review of the literature, see Holmberg, Rothstein and Nasiritousi 2008). Especially the last decade has seen an explosion of literature on the consequences of belonging to a certain legal tradition. The so-called *Legal Origins Theory* (La Porta, Lopez-de-Silanes and Shleifer 2008) or the *Law View* (Levine 2005) states that the legal traditions established in Europe centuries ago explain contemporary cross-country differences in institutions and socio-economic outcomes.

The Legal Origins Theory divides the world in two main legal traditions: the *common law tradition*, which originates from the English law and covers Great Britain and its former colonies; and the *civil law tradition*, which in turn originates from the Roman law and includes France and its former colonies and also Scandinavia, Germany and countries influenced by the German Law. According to the Legal Origins Theory, common law and civil law countries have distinct styles of governmental control of the economic life in a society, and different institutions supporting these styles. Through the mechanisms of a stronger legal protection of outside investors (mainly property rights) and less state intervention, common law countries have developed more prosperous economically and socially (La Porta, Lopez-de-Silanes and Shleifer 2008). This literature has thus given theoretical and empirical strength to Hayek's (1960) classical argument on the advantage of English legal institutions over the French ones.

This paper proposes an alternative interpretation of the cross country differences uncovered by the Legal Origins Theory. Our argument is historical, and takes its starting point from the insights by scholars regarding the formation of the modern state in Europe. This paper claims that, in order for a legal tradition, or any specific law, to have any impact, an at least semi-functional state is a prerequisite. We take inspiration from Avner Greif's critique of the importance of constitutionalism in economic history, where he writes; "policy choices are nothing but a wish without an administration to implement it"

(Greif 2007, 1). Following Weber's (1978) pioneering analysis of bureaucracies, and as noted by scholars after him (see for example Ertman 1997, 7-8), this paper's main premise is that the development of a specific state infrastructure is the essential feature in the state-building process of a country. That historical moment (between the 16th and 18th century for most European countries) represents the critical juncture of our theory. The main theoretical argument is that, at that crucial period of state-building, the characteristics of the state infrastructure (i.e. directly accountable to the ruler or an autonomous bureaucracy) created a path dependency that have the affected posterior institutional development of the country (i.e. more state interventionism or less, respectively).

As the basis of the empirical analysis, this paper uses the classification suggested by Thomas Ertman (1997, 10), who distinguishes between two groups of state infrastructures: *patrimonial*, such as the one developed in France, Spain, Portugal, Poland, and Hungary; and the *bureaucratic* of the German States, Britain, and Denmark.

The making of the modern state is however contested and this paper does not address the question of why some countries ended up with a specific kind of state infrastructure. This might be because geo-political circumstances (Hintze 1975), the degree of military pressure (Tilly 1985; Mann 1986), the timing of the state building process (Ertman 1997), the relative power of the ruler and the administrative elite (Greif 2007), or some other factor or constellations of factors not explored yet. Our goal is instead to use a common observation from these scholars, namely that while some European countries adopted administrations that were accountable to the ruler in a direct fashion (patrimonial), other developed less directly accountable bureaucracies, populated by meritocraticly appointed (instead of patronage-based) civil servants. We argue that the initial state infrastructure adopted in a country sets a path dependency because it decisively affects the abilities subsequent rulers will have to implement ad hoc opportunistic actions.

It is important to remark here that the paper does not reject the major theoretical mechanisms of the Legal Origins Theory, but their main causal factor. Quite the contrary

we argue that the state infrastructure may affect social outcomes through the same channels as suggested by legal origin scholars (e.g. La Porta et al. 1997, 1998, 1999; La Porta, Lopez-de-Silanes and Shleifer 2008); that is, mainly through protection of the property of non-elites. What this paper claims is that the causal factor is not the legal system, but the state infrastructure created *before* the legal traditions were adopted and expanded through conquest, colonization and imitation during the 19th century.

A Critique of the Legal Origins Theory

In a series of very influential articles, Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer and Robert Vishny (1997, 1998, 1999) have showed a prevailing effect of a country's legal tradition on a large set of desirable institutions, such as judicial independence and high quality laws, and social outcomes, such as a low degree of corruption and high rates of economic growth. La Porta, Lopez-de-Silanes and Shleifer (2008) have later summed up the evidence of those articles – and of the work of many other scholars pointing out the empirical relevance of legal traditions for explaining nowadays cross-country differences – and suggested what they call the Legal Origins Theory.

Following the standard taxonomy in law studies, the Legal Origins Theory establishes a clear separation between two distinct legal traditions. First, the Common Law tradition originated in England and exported to the British colonies. The Common Law tradition relies on legal principles (instead of strictly following codified laws), and on an adversarial and oral dispute resolution (instead of an inquisitorial and written one) (Glaeser and Shleifer 2002, La Porta, Lopez-de-Silanes and Shleifer 2008). Second, the Civil Law tradition – the oldest and most prevailing in the world – is originally inspired from the Roman Law, but usually more identified with Napoleon's codifications of laws in the early 19th century. The goal of the Napoleonic Code was to micro-manage judges' decisions with detailed instructions that eliminated the margin of manoeuvre for judges (Levin 2005, 63). Thus, in Civil Law countries judicial discretion is lower and, in comparison with Common Law countries, there is "more emphasis on the rights of the

state" and "less emphasis on private property rights" (Levine 2005, 65). After Napoleon's codifications, the Civil Law tradition was adopted in all French colonies. Napoleonic armies, through conquest, also exported the Civil Law tradition to most Continental Europe, including the Iberian colonial powers – Portugal and Spain – who, in turn, transplanted to all Latin America and their territories in Africa and Asia.

It is however also important to note that the Civil Law tradition contains several sub traditions: French, German, Scandinavian and Socialist. Yet given that there are few non-French civil law countries and that civil law countries share many structural and procedural characteristics, most of the discussion in the literature compares, on one side, common law countries and, on the other, civil law ones. As Levine (2005, 63) argues, the "sharp distinction" is between these two blocks of countries.[1]

The Legal Origin Theory claims that rules protecting investors and guaranteeing an equal treatment for all economic agents vary systematically among these two legal traditions (La Porta, Lopez-de-Silanes and Shleifer 2008, 307). The economic effects of legal origins have been detected in a large number of dimensions and in a large number of studies. The general finding is that, through the protection of property and private contracts, Common Law "sets the stage for investment and growth" (Mahoney 2001, 27). In one of the most encompassing empirical surveys, La Porta, Lopez-de-Silanes and Shleifer (2008) find that Common Law gives investors better protection (which, in turn, leads to more financial development), limits state interventionism in the economy (which, in turn, leads to lower levels of corruption and smaller unofficial economies), and creates less formalized and more independent judiciaries (which in turn secures property rights).

---

[1] German and Scandinavian Law become, for Legal Origins Theory scholars, literally "the problem of Germany and Scandinavia" (Mahoney 2001: 17). In a continuum with Civil Law on one extreme and Common Law in the other, German and Scandinavian Law would lie in-between, clearly closer to the Civil Law pole (e.g. the substance of their legal rules is the same), but sharing some characteristics with Common Law countries (e.g. a higher independence of judges). Unfortunately, the comparative literature does not provide any clear guide on where exactly one could locate those two Civil legal sub-traditions. This paper addresses this problem arguing that the "good" characteristics that German and Scandinavian countries share with Common Law one (like a higher independence of judges from the executive power) are in fact the result of all of them to have developed a bureaucratic state infrastructure (and not a patrimonial one) at the moment of state building.

This paper finds there are two major strengths in the Legal Origins Theory. First, it has develop an increasing and systematic body of empirical evidence showing a significant correlation between the legal origin of a country – adopted centuries ago – and a wide array of nowadays economic indicators. Controlling for numerous factors, legal origin still seems to make an important difference for explaining the asymmetric levels of rule of law we see nowadays across countries. Second, legal origins are scientifically appealing because they are predominantly exogenous, since they mostly spread through conquest and colonization. This is one of the reasons why it has been considered as an instrumental variable for explaining cross-country differences in the development of financial markets (Levine 1999, La Porta et al. 1998). In sum, the Legal Origins Theory has undoubtedly advanced our understanding on the impact of institutions. Yet, this paper finds three major shortcomings that it aims to address with the development of the state infrastructure proposition.

First, although legal traditions can be regarded as exogenous for British and French colonies, it is difficult to argue the same for the old world. The countries conquered by Napoleon were so only for a brief period of time after which they could have resorted to their past legal codifications. The Legal Origins Theory must also answer why did the colonies of those briefly Napoleon-dominated countries adopt the Civil Law tradition in the early 19th century? For instance, the former Spanish and Portuguese colonies took advantage of the Napoleon conquest to become partially or completely independent political units. It is a problematic to assume, as the Legal Theory Tradition does, that while many Portuguese and Spanish colonies (e.g. in Latin America) were breaking with their masters, they were compelled to adopt the newly legal system imposed in their metropolises by a foreign power. La Porta, Lopez-de-Silanes and Shleifer (2008, 286) argue that the rulers of the new independent nations looked "mainly the French civil law …for inspiration". But the question is why did they copy the country they had just broken with instead of, let's say, the country they wanted to become (e.g. the US)?

The idea of the legal tradition as exogenous becomes even more problematic in the adoption of the Civil Law in Japan (in its German version) and in Russia and Turkey (in

its French version) in the 19th century. As La Porta, Lopez-de-Silanes and Shleifer (2008, 286) admit, this adoption was "largely voluntary". Similarly, the adoption of Civil Law in the large number of countries that have been occupied, dominated or under the influence of Japan, Russia and Turkey since the mid-19th century is, as Legal Origins Theory authors state, "shaped largely by history", but also "voluntary" (ibid.). All in all, when establishing the foundations of the legal systems of their countries, many (if not most) rulers have had a certain margin of manoeuvre. Therefore, the legal tradition a country has is – at least, partially, and probably significantly – endogenous to the political system and, in particular, to the will of the ruler. It is thus plausible to assume that *certain rulers* (e.g. those with a state interventionist agenda) under *certain, institutional, circumstances* (e.g. lack of checks and balances) may have preferred, for example, the French Civil law over the German version or over the Common Law. This paper aims at developing how these institutional circumstances are connected to the state formation and what consequences this has had for the ulterior institutional evolution of the country.

A second shortcoming of the Legal Origins Theory regards its causal mechanisms. Having a closer look, the Legal Origins Theory appears less "legal" that what its name indicates. It is not the operations of the judiciary system, or particular judicial decisions what seem to mark the key difference between Common Law and Civil Law countries. As La Porta, Lopez-de-Silanes and Shleifer (2008, 286) state, the main problem of civil law is that it is associated with a "heavier hand of government" than common law. In other words, their main theoretical mechanism is not of legal-judicial nature, but of political nature.

Looking at the historical development of legal traditions, one can see how Civil Law was a political tool used by Napoleon to expand state interventionism in the French society. The goal of the Napoleonic Code was to "strengthen the state" (Levine 2005, 63). In codifying laws and procedures and transforming judges into state-employed servants (that is, the essence of the Civil Law tradition), the purpose of Napoleon was "to control judicial decision in all circumstances" (La Porta, Lopez-de-Silanes and Shleifer 2008, 304). Napoleon's Civil Law endeavour was not an isolate reform – or the exogenous

result of other reforms – but part of a larger interventionist enterprise, which included also the creation of a vast and invasive bureaucracy (Woloch 1994; La Porta, Lopez-de-Silanes and Shleifer 2008, 304). The Civil Law was the result of a rulers' political strategy. As Legal Origins Theory scholars acknowledge, it developed "because the revolutionary generation, and Napoleon after it, wished to use the state power to alter property rights and attempted to insure that judges did not interfere" (Mahoney 2001, 505).

Analyzing Napoleon's codification of laws uncovers the political dynamics even more. Napoleon could choose among several options within the Roman law tradition as a source for inspiration. Yet he followed an extreme version – instead of other more private-property friendly ones – known as the "Justinian deviation" after eastern Roman Emperor Justinian (Dawson 1968; Levine 2005). Emperor Justinian shared the same goal with Emperor Napoleon that the state (or, more precisely, the ruler-as-emperor) should have a strong ability to shape their societies. In terms of state interventionism, Napoleon was continuing what was started by his Bourbon predecessors: Louis XIII (1610-43) and specially *le Roi Soleil* Louis XIV (1643-1715) and the *dirigiste* policies of his Finance Minister Colbert. It is these two kings (and not Napoleon) who are generally regarded as the main architects of the strong French state (Berman 2010). Unlike many other rulers within the realm of the former Roman Empire (e.g. Italian city states, pre-Bourbon France, medieval kingdoms of Aragon and Catalonia), Justinian, Louis XIV, Napoleon, and the rulers who voluntarily adopted Civil Law principles, all had a state interventionist agenda and were able to implement it. This is precisely the theoretical puzzle that must be addressed: why did some rulers have the ability to put in place mechanisms for systematic state interventionism while others could not? In order to answer this fundamental question we need a theory closer to these political mechanisms, which takes the institutions shaped in the state formation process into account.

A third shortcoming of the Legal Origins Theory regards the emergence of the sharp distinction between Common and Civil Law countries. There are two main types of explanations why this occurred and both have flaws. To start with, inspired by Hayek

(1960), several authors consider that common law countries may protect private property more than civil law countries as a result of cultural or ideological differences between England and France (La Porta, Lopez-de-Silanes, Shleifer and Vishny 1999, Mahoney 2001, La Porta, Lopez-de-Silanes, Shleifer 2008). According to Hayek (1960), the English worldview has traditionally regarded freedom as the absence of coercion while the French worldview has preferred to emphasize the "attainment of a social purpose" (1960, 58). Therefore, different legal systems would emerge as a result of those distinct philosophies of freedom.

The main problem with this account comes from the fact that it hard to distinguish between cause and consequence. More precisely, is the higher individualism in England the result of a less interventionist state? Or is it the other way around? The scholars who argue that "Hayek might be right" (Mahoney 2001, 1) need to provide a convincing theory on how cultural values (e.g. social purpose vs. individualism) predated the emergence of the English and the French states.

What is more, some authors consider the emergence of the two legal traditions a result of certain historical accidents, or critical junctures, at a particular point in time that created a robust path dependency. The most prevailing explanation of the differences between common law and civil law focuses on the contrast between the political events in 17th century England – and, in particular, in the Glorious Revolution – and those in the 18th century France (Mahoney 2001, Klerman and Mahoney 2007, La Porta, Lopez-de-Silanes and Shleifer 2008). Since English lawyers and judges were on the same (and winning) side as the property owners in the fight against a proto-absolutist monarchy, they forced the Crown to introduce an independent judiciary which could guarantee property rights. Accordingly, common law courts gained the ability to review administrative acts. On the contrary, the French judiciary was largely monarchist and "ended on the wrong side of the French Revolution" (La Porta, Lopez-de-Silanes, Shleifer 2008, 303). The members of the judiciary should merely be, as Napoleon famously put it, automata who would implement codified laws (ibid.). Nevertheless, this standard explanation does not address a previous and more fundamental question: why was the French judiciary so relatively

monarchist and the English so relatively anti-monarchist? Why, using Mahoney's (2001, 11) terms the judges were "heroes" in constitutional development in England and "villains" in France?

Other authors choose previous historical moments to point out the differences between England and France that ended up producing the two distinctive legal traditions. Again, the underlying assumption is that England and France represent the major (and opposite) engines for the legal evolution worldwide. For instance, it is argued that the 12th and 13th centuries were key as to understand English-French differences in their approach to law (Dawson 1960, Glaeser and Shleifer 2002). As a consequence of being a relatively peaceful country, English nobles, unlike their French counterparts, were capable of imposing the Magna Carta (1215) which limited the ability of the Crown and helped preserving the independence of the judiciary. Nonetheless, the historical review of the period by Avner Greif (2007) seriously weakens this conventional view. Greif casts doubts on the ability of Magna Carta to constraint ruler's behaviour in line with the theory presented here. When King John gained enough strength (with the support of the Pope and after gathering his own military forces) he invalidated the original 1215 Magna Carta and the posterior one (confirmed in 1225) imposed less constrains on the Crown. The Magna Carta, like *any other constitutional agreement*, could not be enforced without an external-to-the-king or a weakly-accountable-to-the-king administration. The analysis of Greif shows us that the Magna Carta, despite its appeal for scholars given its symbolism, cannot be considered as a critical juncture establishing a path dependence (i.e. of protection of individual freedoms from Crown's opportunistic interferences). Similar to what is argued in this paper, Greif shows that what prevented English kings from abusing property rights was not Magna Carta, but the fact that English kings lacked large body of loyal state servants who could put in practice their abuses.

In sum, there are three related shortcomings in the Legal Origins Theory that the theory presented in this paper aims to address. In order to build a plausible explanation on the impact of past institutions on social outcomes today, we need a theory that, first, provides us an *historically rooted* explanation; second, that describes the *political* (and not legal)

mechanisms through which a "heavier hand of government" is possible in some polities and not in others; and third, that offer us a convincing *critical juncture* that creates a robust path dependency able to partially remain unaffected by the individual characteristics of posterior rulers and also by the features of different political systems, including higher or lower degrees of democracy.

The State Infrastructure Proposition

Our proposition starts from the premise that the "fundamental dilemma" explaining failure and success of societies (North 1981, 25; see also Weingast 1993) is the conflict between rulers' self-interest and economic efficiency. This means that the main problem a society faces is that of 'constraining the king' (or elected incumbent) to avoid either direct confiscations of wealth, the ad hoc modification of property rights, the favourable treatment of certain interests or any violation of impartiality. Solving, or to be more precise, minimizing that problem is the essence for an efficient operation of markets (Miller and Hammond 1994, 5).

The most effective solution according to the predominant political economy literature, specially after North and Weingast's (1989) path-breaking analysis of the Glorious Revolution, is a constitutionalism that limits the powers of the executive/ruler (e.g. a Parliament such as the one that emerged victorious of the 17th century English civil conflicts). Nevertheless, recent developments in economic history have questioned up to which extent constitutional rules have a real effect on the consolidation of the rule of law in a country. The prevailing constitutional theory (e.g. Weingast 2005) neglects the free rider problem, assuming that citizens will coordinate against governmental transgressions. As Avner Greif (2006, 2007; Gonzalez de Lara, Greif and Jha 2008) has shown using several historical accounts, the separation of powers established in a constitution is not self-enforcing. In order to have an effective constraint of rulers' behavior, rulers must "have limited *physical* capacity to implement policy choices, including abuses" (Gonzalez de Lara, Greif and Jha 2008, 2). All rulers (irrespective of their personal characteristics and of the nature of their rule) need to delegate to

administrators, either to individuals or to organizations, including armies, administrative corps, public agencies or private firms or tax farmers.[2] It is the limited physical capacity of the ruler to control these administrators, and not democratic constitutionalism that prevented English kings from abusing their powers.

Regarding this, it is noticeable how the proponents of constitutionalism (e.g. North and Weingast 1989 and the large scholarship inspired by their work) almost exclusively focus on England, neglecting other less "successful" constitutional monarchies, like Hungary or Poland-Lithuania. All three countries were examples of constitutional monarchies (Ertman 1997; see also Finer 1997), but Hungary – with constant political and military crisis – and Poland – which moved from being the richest Eastern European country in the 16th century to be one of the poorest two centuries afterwards – lagged clearly behind England's political and economic success. More generally, there were 25 constitutional monarchies and Republics in operation in late 15th century Europe (Herb 2003), and with few exceptions (e.g. the Netherlands, England) most of them imploded and were replaced by authoritarian and highly interventionist rulers. In other words, it seems implausible to believe that constitutionalism contains in itself the ability to constraint the despotic trends of rulers.

As we have seen above, Emperor Justinian shared with Napoleon the goal of putting the state above the rule of law and private property rights. It is plausible that the same was the purpose of many other rulers who opted for the Civil Law, as it for all kind of rulers, irrespective of the country or the culture they live in (as the numerous failed absolutist attempts in England's history show). The key difference was that for example the English kings could not implement their interventionist plans. To reveal the mechanisms that separated English (among other few) kings from their mainstream counterparts, Greif (2007) uses narratives from the period of state-building in Europe. As the Spanish ambassador in England admitted to his masters the Spanish "Catholic Kings" (Isabella

[2] As Bendor, Glazer and Hammond (2001, 235) argue, 'even God delegates, having told the Israelites after they left Egypt: "Behold, I send an Angel before thee, to keep thee in the way, and to bring thee into the place which I have prepared. Beware of him, and obey his voice, provoke him not; for he will not pardon your transgressions: for my name is in him"

and Ferdinand), the English king (Henry VII) "would like to govern England in the French fashion but he *cannot (*…) the difference between us [England] and France consists chiefly in this: .. we are [as] remarkable [as they] for good *laws*, but are shamefully neglectful in their *execution*" (ibid: 34). In other words, the difference between England and France did not lay so much in policy-making as in policy-implementation. As Greif (2007) shows, the English kings, unlike their French counterparts, lacked an encompassing and highly accountable administrators ready to undertake their (frequently state interventionist) policies.

We use this historically insight by Greif (2007) to make a proposition on how state building in Early Modern Europe configured two distinct types of state infrastructure. We believe this proposition overcomes many of the problems with the Legal Origins Theory. While we agree with La Porta et al regarding the importance in studying "…fundamental, or at least historically predetermined variables" (La Porta et al 1999, 230), it is our contention that the failure of the Legal Origins Theory to incorporate state formation processes hampers our understanding of what actually drives the relationship between institutional designs, such as the administrative capabilities, and desirable social outcomes, such as low corruption. In sum, we argue that the state formation process affects the character of the state infrastructure (patrimonial or bureaucratic), which in turn affects institutions such as judicial independence or market regulation, and finally social outcomes such as corruption.

Following scholars studying state formations (see for example Ertman 1997; Hinze 1975; Tilly 1975; Mann 1986; Ziblatt 2006), but contrary to the Legal Origins Theory we argue that state formation processes and different trajectories set off by these processes have had far-reaching consequences, which explain the broad cross country patterns that are exposed by La Porta et al (1999; La Porta, Lopez-de-Silanes and Shleifer 2008).

While there is a great deal of controversy regarding what factors that are affecting the state formation process itself – is it geo-political conditions (Hintze 1975), wars (Tilly 1985), the timing and sequencing of the state formation (Ertman 1997) that explains how

these processes play out? – there seems to be reasonably consensus that “state building in medieval and early modern Europe [is] capable of explaining variations in political regime and administrative and financial infrastructure within the dominant form of the territorial state, which account for nearly all of the continent’s polities at the end of the early modern period” (Ertman 1997, 4). This paper leaves the controversy regarding the roots of state formation aside, while building insights o the profound consequences of state formation processes.

In *Birth of Leviathan*, Thomas Ertman (1997) uses the term *state infrastructure* as one of two dimensions to describe the outcome of the state formation process in the 18th-Century Europe (Ziblatt 2006 uses “infrastructural power” to describe a similar phenomenon; see also Mann 1986). Following Weber (1978), Ertman (1997) dichotomizes the state infrastructure dimension in one patrimonial and one bureaucratic category. In patrimonial states positions were filled with patronage-based candidates, selected according to their loyalty to the Crown. The officials tended to own their administrative positions, and local elites controlled the economy. As the literature on state-building points out, patrimonial infrastructures are private and informal patron-client based, but are also easily accountable to the ruler (Silberman 1995, Lapuente 2007). In the bureaucratic states, the administrative apparatus is “paradoxically, much less accountable in a direct fashion” (Silberman 1993, 5) because “principals” (i.e. rulers) are clearly limited to choose the “agents” (i.e. civil servants) (Lapuente 2007, 2). Positions in the administration were not personal, but filled “with candidates possessing special educational qualifications” (Ertman 1997, 9).

As mentioned, there is a lot of controversy in the literature on why some rulers chose (or were forced) to work with less directly accountable administrators. Despite that these explanations are subject to debate, most authors agree (and this paper with them) on two main premises which represent the backbone of our proposition. First, that two distinct types of state infrastructure emerged that would fit into the classical division of administrations established by Weber: patronage-based or patrimonial and merit-based or bureaucratic. Second, that these state infrastructures acquired at the critical moment of

state formation create a path dependency difficult to change. The mechanism for that robust path dependency would be the following. Once established a patrimonial administration, subsequent rulers will not experience many constraints to, in turn, appoint core supporters to high, middle, or even low, managerial positions all throughout the administrative apparatus (including sometimes the army). On the contrary, once a bureaucratic autonomous structure – with selection, promotions and firings meritocratically decided – is put in place, it is more difficult for future rulers to bypass it or trying to dominate via widespread replacements of civil servants. As Shefter (1977) argues, a large "coalition in favour of bureaucratic autonomy" of civil servants and army officials (in occasions with external support from social interests groups such as professional organizations of business associations) becomes an insurmountable obstacle for subsequent rulers aiming at overturn it and make it "directly accountable".

In those countries where these coalitions of bureaucrats became entrenched, there was a fast consolidation of an impersonal law which limits the possibilities for arbitrary interventions by the ruler, as noted by the scholars of that period (Ertman 1997, 9). The fundamental importance of "impartiality" of government institutions for the quality of government (Rothstein and Teorell 2008, 169-173), and of "impersonality" for the creation of a social order necessary for the modern state (North, Wallis and Weingast 2009, 21-27) has been noted by distinguished scholars. Building on there insights it seems reasonable that if a state infrastructure has a more "impartial", or "impersonal" character it is not far-fetched to believe that this also affects the institutions and social outcomes.

Following Weber (1978) and Ertman (1997), this paper argues that if a state is in a patrimonial or a bureaucratic trajectory directly effects the institutions that limit the interventions of the ruler and in the second stage the social outcomes. In relation to the Legal Origin Theory it is important to note that the mediating variables through which legal traditions and state formation should effect institutions and social outcomes are basically the same; namely that one type of states with institutions where the ruler have a more direct control of the state apparatus (in our case the patrimonial state infrastructure,

and for La Porta et al the Civil Law legal tradition) create less judicial independence, more procedural formalism, and more controlled economy, which in turn creates weaker property rights and more corruption; while in the other type of state (in our case the bureaucratic state infrastructure, and for La Porta et al the Common law tradition) rulers' possibilities to intervene are limited by a more autonomous state apparatus which leads to more judicial independence, less procedural formalism, and a less controlled economy, and therefore stronger property rights and less corruption.

We also note that La Porta et al admit that the state infrastructure should affect government efficiency, and thereby the desirable institutions and outcomes, but they fail to see the full consequences of this insight (1999, 232). Similar as well to the Economic Historians who have described how rulers depend on their administrators, this paper agrees that "the rule of law can therefore be a manifestation of equlibria with administrators sufficiently powerful to constrain rulers" (González De Lara, Greif and Jha 2008, 105). This paper thinks of the relationship between the state infrastructure (a historically rooted manifestation of the equilibrium between the ruler and the administrators) and institutions and social outcomes in the same way.

Sample, Methods and Data

In the empirical section we investigate if there is a relationship between the state infrastructure (as categorized by Ertman 1997), and on the one hand a set of institutions capturing state intervention (procedural formalism, judicial independence, regulation of entry, case law), and on the other hand a set of social outcomes closely related to the quality of government (corruption, rule of law, and property rights).

Our selection of these two type of variables are based on the following reasons: As we have argued in the previous section the Legal Origin Theory and the State Infrastructure Proposition both assume that institutions supporting or limiting state interventionism is of key importance. According to both theories, it is mainly through "the heavier hand of government" that the causal mechanism could be observed (La Porta, Lopez-de-Silanes

and Shleifer 2008, 286). Consequently, the first group of variables represents the four variables most obviously related to this “heavier hand”. The second group of variables more directly represents the social outcomes of fundamental importance for a society (for the importance of property rights see North 1981; for an overview of the impact of quality of government see Holmberg, Rothstein and Nasiritousi 2009). Obviously these outcomes are inter-related and non-mutually exclusive, yet they cover enough distinct conceptual area that we argue it is important to test all three. A full description of the dependent variables by source and descriptive statics can be located in the appendix 2.

We analyse the impact of the legal origins and the state infrastructure on the two types of variables just described on a stratified sample of OECD countries. It should be noted that this is a more limited sample than the sample used by La Porta et al (1997, 1998, 1999; La Porta, Lopez-de-Silanes and Shleifer 2008). There are two reasons for using the OECD sample only. First, we maintain that it is within this group of countries that legal and state origins matter most, and we thus believe that limiting the sample to this groups serves as the most apt test between the legal origins models and our theory. Second, based on the information provided by Ertman (1997) it is not possible for us to code the countries outside the OECD.

A brief note should also be made regarding the coding. As mentioned in the theoretical section we use the character of state infrastructure as suggested by Ertman (1997) to capture our main independent variable. This variable is dichotomized and the two categories are: (0) the patrimonial state infrastructure; and (1) the bureaucratic infrastructure. This variable serves the purpose of this paper well, as Ertman’s categorization refers to the situation in the 18th-Century, and thus are contemporary to the early stage of the industrial revolution and just before the modern state in many OECD countries. (A full list of countries, along with their coding can be located in the appendix 1).

We divide the tests into three different models. The first essentially replicates the La Porta, Lopez-de-Silanes and Shleifer (2008) design by dividing the sample into four

groups of legal origin – Common, Civil (French), Germanic and Scandinavian. The key difference is of course we take only OECD countries, whereas they included a number of former colonies in most of their analyses. In the second group, we condense the coding of La Porta et al into the more typical Common Law/Civil Law dichotomy. Therefore we include and show two different types of coding for the Legal Origins Theory. The third model represents a test of our theory – the State Infrastructure Proposition. Thus we demonstrate side by side the impact of the two different theoretical arrangements in the empirical analysis.

In following the design of the La Porta, Lopez-de-Silanes and Shleifer (2008) article, we employ a parsimonious empirical design, employing a very straightforward method. We follow their format by employing cross-section OLS with robust standard errors with a minimum amount of control variables taken from their analyses. With a stratified sample such as the OECD there are obviously a number of factors that one has naturally controlled for such as a certain level of development and strength of democratic institutions. We thus begin with a simple baseline model regressing only GDP per capita (log) on all models. In the second set of dependent variables (the so called 'outcomes') we then extend each baseline model by including three additional control variables. The first is a control for 'union density' from Botero et al (2004). Next we control for 'proportional representation' which is taken from the Database of Political Institutions (Beck et al 2006). Finally, as La Porta, Lopez-de-Silanes and Shleifer (2008) do, we also test the relevance of 'left power', which is taken from Botero et al (2001).

Empirical results

We test the effects of legal traditions and state infrastructure on the institutions indicating state interventionism in Table 1. In models 1-3 we test the our hypothesis on one aspect of government regulation, namely 'regulation of entry', which measure the number of steps (log) it takes to start a new business (from Djankov et al 2002), which is measured in our sample from .65 (Canada) to 2.71 (Mexico), with higher numbers equating to more regulation. In model 1, the control group is Common law countries, as coded by La

Porta, Lopez-de-Silanes and Shleifer (2008). Thus French civil law countries have 1.27 more steps on average than common law countries, while Germanic Law and Scandinavian Law countries have roughly '1'and 0.24 steps greater than the control group respectively. In model 2 we use the condensed version of the Legal Origins theory and employ a dummy variable with Common Law countries equalling '1'. We thus find that Common Law countries have roughly 0.9 steps less than Civil Law countries and the difference is significant at the 95% level of confidence.

****Table 1 about here****

However, looking at model 3 we find that difference between patrimonial and bureaucratic countries is even greater, with the latter group of countries having a full one-step less for new entrepreneurs to start a business than in patrimonial countries.

Moving to models 4-12, we examine the impact of the two theories on judicial institutions. Beginning with models 4-6, we find again that both legal traditions and state infrastructure have strong and statistically significant explanatory power with respect to their impact on formalism of courts. This variable ranges in our data from 1.57 (New Zeland) to 5.24 (Spain). Common Law countries have significantly lower formalism of their courts on average relative to French, German and Scandinavian Law countries (Model 1) as well as in model 4, when the three groups are collapsed into one in model 5. We find strong evidence for bureaucratic states having lower formalism of the courts as well, with the .95 coefficient being significant at the 99% level of confidence.

'Tenure of Judges' and 'Case Law' range from 0.5-1 and 0-1 respectively in our data. As is the case in Models 1-6, we find that both the Legal Origins Theory and the state infrastructure have strong and statistically significant explanatory power on these two judicial institutions. However, like models 1-3, the dummy variable representing state infrastructure is larger than the Common Law coefficient and the variance explained in Models 9 and 12 is almost twice that of the variance explained in models 8 and 11, using the Common Law dummy variable.

****Table 2 about here****

Next we move over to Table 2, where we examine of the impact of state and legal institutions on so called 'quality of government' (QoG) outcome variables, namely corruption, rule of law, and property rights. Here we begin each test with a simple baseline model as we did in Table 1, using GDP to capture differences in development. Yet for each baseline model, we also include a series of controls, as described in the previous section. Models 1-6 in Table 2 elucidate the effects of legal traditions and state infrastructure on the World Bank's 'control of corruption' variable. Models 1-4 show the impact of legal origins on corruption, and we find that French civil law countries are significantly more corrupt than common law ones, yet there is no statistically meaningful difference between Germanic, Scandinavian and Common Law countries as defined by LPLV with respect to corruption (see Model 2). Models 3 and 4 show that Common Law countries are less corrupt by 0.4 and 0.7 standard deviations of the dependent variable and the difference is 95% and 99% statistically significant respectively in the two models. However, when looking at state infrastructure, we find that bureaucratic countries are almost a full standard deviation less corrupt on average (see model 6) than their patrimonial counterparts.

In models 7-12, we find the evidence for the Legal Origins Theory much weaker than in previous models. In models 1 and 2, only the French civil law countries are significantly less than Common Law countries, and the coefficient is only significant at the 90% level of confidence when all control variables are included. Likewise for the Common Law dummy variable in Model 4. However, we find relatively large coefficients along with strong statistical significance in models 11 and 12, testing the difference between patrimonial and bureaucratic states with respect to property rights.

Looking at a broader indicator of the rule of law (from the World Bank's Governance Indicators), we find even stronger evidence of the superior explanatory power of the State Infrastructure proposition relative to the Legal Origins Theory. While French civil law

systems exhibit significantly lower levels of the rule of law than Common Law, by roughly one third and one half of a standard deviation in the dependent variable, we find no evidence to suggest that the other two groupings in the La Porta, Lopez-de-Silanes and Shleifer (2008) design have any meaningful difference with Common Law countries. Moreover, in models 15 and 16 when we examine the dichotomous relationship between Common Law and non-Common law, we find no difference in the rule of law at all in either model. Yet models 17 and 18 demonstrate again that bureaucratic states one again significantly outperform the patrimonial countries with respect to outcomes, by roughly 0.5 standard deviations of the dependent variable.

Up to this point, we have done separate tests of the State and Legal Origins hypotheses on a number of institutional and outcome variables. This is due to a significant level of multicollinearity between our 'bureaucratic' dummy variable and some of the coding for legal traditions. Table 3 shows our state origin's correlation with the legal tradition variables.

****Table 3 about here****

We find as expected that our 'bureaucratic' variable is significantly correlated with the UK Common variable, along with the LPLS French and Scandinavian Law countries. The correlations with the Common law and LPLS French countries are both over 0.5, which in a relatively small sample, may seriously cloud the relationship of one or more of the variables in any given OLS regression. However, we run just a set of simple tests using only the outcome variables of the greatest interest in this analysis, the QoG outcome variables.

****Table 4 About here****

Table 4 shows the head to head comparison of the affect on QoG variables between the state and legal origins variables. Based on the consistently poor significant levels of the

other three control variables in Table 2, we include only GDP per capita (Log) in models 1-6 in Table 4. We run two models with each dependent variable, one which runs the bureaucratic variables against the standard common law dummy variable used to indicate legal systems, and then a second model which runs the bureaucratic variables against the more detailed LPLS coding from their 2008 publication. Here we find that in each model, the state origins variables remain significant at the 99% level of confidence in each of the six models with coefficients all in the expected (positive) direction. However, none of the legal origins variables remain significant in any of the 6 models, suggesting a stronger explanatory power in the state origins explanation empirically.

****Figure 1 about here****

In figures 1-3, we take a closer look at the differences between the Common/Civil and patrimonial/bureaucratic groups with respect to quality of government outcomes. In Figure 1, we examine relative gaps between the two groups as regards to corruption. Again, the World Bank variables are standardized, with a standard deviation of '1'. Looking at the simple bi-variate averages, we thus that the gap between Common and Civil is 0.7 standard deviations, in favour of Common law countries as the Legal Origins Theory would predict. However, the gap between bureaucratic and patrimonial countries is roughly 1.3 standard deviations in the data, demonstrating stronger explanatory power in accounting for variance in corruption within the OECD sample.

****Figure 2 about here****

****Figure 3 about here****

Figure 2 shows us similar results in that we find that Common outperforms Civil with respect to property rights and that the difference is roughly full standard deviation in the data (0.79), however the gap is approximately 50% wider between patrimonial and bureaucratic countries, with the latter group having a an average property rights score of about 1.5 standard deviations higher than the former. Figure 3 again shows the same pattern, with the gap between bureaucratic and patrimonial (roughly 0.9 standard

deviations of the rule of law variable) being almost twice as large as the gap between Civil and Common Law countries (about 0.5 standard deviations).

Conclusions

This paper has suggested an alternative and historically rooted interpretation of the empirical patterns observed by La Porta et al. (La Porta et al 1997, 1998, 1999; La Porta, Lopez-de-Silanes and Shleifer 2008, 302). While their Legal Origins Theory consider well-functioning institutions, such as judicial independence, and desirable social outcomes, such as low corruption, to be the result of a country's legal tradition, this paper has claimed that they are affected instead by the type of state infrastructure established during the crucial period of state formation process.

This paper has pointed out three shortcomings in the Legal Origins Theory. First, one can question how historically well rooted their explanation is, and, in particular, up to which extent the dynamics of legal adoption were exogenous to state-builders' self-interest. Second, the basic causal mechanism of the Legal Origins Theory is political, rather than legal, and thus the theoretically relevant issue is to explain why certain rulers opted for certain versions within long-lasting wide legal frameworks. Third, the Legal Origins Theory does not offer a clear convincing critical juncture that creates a path dependency.

We believe these shortcomings have been addressed in this paper. Building on scholarly studies of state formation processes (Ertman 1997; Greif 2007; Mann 1986; Tilly1985; Weber 1978), the basic idea of the state infrastructure proposition posed here is that state formation process decisively affects the character of the state infrastructure (patrimonial or bureaucratic), which in turn affects institutions and social outcomes. Our empirical analysis demonstrates that the state infrastructure is indeed more influential than the legal traditions on a set of institutional variables (formalism, judicial independence, regulation of entry and case law) as well as on a set of social outcomes (corruption, rule of law, and property rights).

This paper also maintains that even if both legal traditions and the state infrastructure are affecting institutions and social outcomes it is probable that the state infrastructure is more fundamental. To get some sense of what we should expect to come first in time, we can consider the policy implications from the Legal Origins Theory and what we call the state infrastructure proposition for states in the making, such as today's Afghanistan or Iraq. There is an increasing consensus that the mere importation of Western constitutional and legal rules, including democratic institutions, has fell short of the initial expectations. A growing number of analysts point out towards state building – and, in particular, towards the enactment of a merit-based non-corrupt bureaucracy – as the key reform that should have gained much more pre-eminence in the process of rebuilding both countries from the very beginning. It should be self evident that the mere introduction of common law (like the adoption of a democratic constitution) without a state building process before it would not have the desired consequences for the economic and social life in Afghanistan. As Sheri Berman (2010) notes, it is not so much Western countries' adoption of constitutional or legal rules what should inspire the current efforts to rebuild Afghanistan, but it is "Early modern Europe, for example – the birthplace of the modern state – [which] offers numerous lessons for contemporary policymakers to ponder". In line with this argument it is the contention of this paper that the creation of a bureaucratic state infrastructure – which in itself might be hard or even impossible to accomplish – is of primary importance also today.

Tables and figures

Table 1: The Impact of State Infrastructure and Legal Origins on Government regulation & Judicial Institutions

	Government Regulation - ***Regulation of Entry***			**Judicial Institutions** - ***Formalism Check Collection***		
	1	2	3	4	5	6
French	1.27***			1.44***		
	(7.36)			(4.43)		
German	1.04***			1.33***		
	(7.15)			(4.62)		
Scandinavian	0.24*			0.94**		
	(1.71)			(2.90)		
Common		-0.89***			-1.27***	
		(-5.40)			(-5.19)	
Bureaucracy			-0.99***			-0.95***
			(-5.87)			(-2.99)
GDP(log)	-0.18	-0.45	0.06	-0.24	-0.35	-0.02
	(-1.46)	(-2.89)	0.39	(-.59)	(-.92)	(-0.03)
Obs.	29	29	29	30	30	30
Rsq.	0.83	0.59	0.65	0.48	0.45	0.32

	Judicial Institutions - ***Tenure of Judges***			**Judicial Institutions** - ***Case Law***		
	7	8	9	10	11	12
French	-0.13			-0.92***		
	(-1.41)			(-8.75)		
German	-0.31**			-0.19		
	(-2.49)			(-1.01)		
Scandinavian	-0.01			0.03		
	(-0.49)			(0.74)		
Common		0.14**			0.41***	
		-2.48			(3.27)	
Bureaucracy			0.23**			0.59**
			-2.14			-2.76
GDP(log)	0.09	0.1	-0.04	-0.41*	0.05	-0.28
	(0.62)	(0.68)	(-0.25)	(-1.87)	(0.19)	(-1.01)
Obs.	25	25	25	25	25	25
Rsq.	0.32	0.13	0.25	0.65	0.15	0.28

Note: Sample limited to OECD countries only. Robust t-statistics in parentheses.
*** p<.01, **p<.05, *p<.10

Table 2: Quality of Government Outcome Variables

	Corruption					
	1	2	3	4	5	6
French	-0.63**	-0.88***				
	(-2.96)	(-3.69)				
German	-0.55**	-0.75				
	(-2.75)	(-2.91)				
Scandinavian	0.13	-0.09				
	(0.66)	(0.22)				
Common			0.40**	0.73***		
			(2.09)	(3.24)		
Bureaucracy					0.85***	0.95***
					(6.74)	(5.62)
GDP(log)	1.24***	1.28***	1.44***	1.54***	0.98***	0.85***
	(7.80)	(4.33)	(9.04)	(7.36)	(6.84)	(3.91)
Left Power		-0.09		0.38		-0.16
		(-0.22)		(1.25)		(-0.67)
Prop. Rep.		0.17		0.18**		0.03
		(1.68)		(2.11)		(0.38)
Union Density		-0.58		0.18		0.07
		(-1.19)		(0.44)		(0.22)
Obs.	31	28	31	28	31	28
Rsq.	0.81	0.83	0.72	0.79	0.87	0.88

	Property Rights					
	7	8	9	10	11	12
French	-0.62***	-0.59*				
	(-3.02)	(-1.83)				
German	-0.53**	-0.45				
	(-2.44)	(-1.63)				
Scandinavian	-0.02	-0.25				
	(-0.18)	(-0.57)				
Common			0.42**	0.48*		
			(2.60)	(1.82)		
Bureaucracy					0.83***	0.81***
					(6.11)	(4.33)
GDP(log)	1.22***	1.32***	1.37***	1.42***	0.98***	0.80***
	(6.77)	(4.34)	(6.98)	(5.89)	(8.01)	(4.76)
Left Power		-0.003		0.19		-0.26
		(-0.01)		(0.56)		(-0.99)
Prop. Rep.		0.04		0.04		-0.04
		(0.36)		(0.40)		(-1.03)
Union Density		0.26		0.48		0.38
		(0.48)		(1.28)		(1.24)
Obs.	31	28	31	28	31	28

Rsq.	0.73	0.77	0.68	0.77	0.84	0.87
			Rule of Law			
	13	14	15	16	17	18
French	-0.35**	-0.46**				
	(-2.14)	(-2.04)				
German	-0.15	-0.20				
	(-0.94)	(-0.91)				
Scandinavian	0.15	0.29				
	(1.15)	(0.86)				
Common			0.14	0.23		
			(0.95)	(1.06)		
Bureaucracy					0.50***	0.53***
					(6.36)	(4.18)
GDP(log)	1.13***	1.13***	1.23***	1.35***	0.97***	0.94***
	(8.58)	(5.49)	(7.92)	(7.22)	(8.51)	(4.58)
Left Power		-0.26		0.15		-0.15
		(-0.85)		(0.67)		(-0.68)
Prop. Rep.		0.08		0.08		0.04
		(1.09)		(1.04)		(0.70)
Union Density		-0.46		0.04		-0.04
		(-1.46)		(0.14)		(-0.15)
Obs.	31	28	31	28	31	28
Rsq.	0.84	0.87	0.78	0.81	0.89	0.89

Note: corruption is an average of the World Bank score from 1996-200 (taken from LPSV 2008), property rights is an index from the Heritage Foundation (1-5) from 2004, and rule of law is the average from the World Bank (between 2002-2006). All QoG dependent variables are coded so that higher values equal better QoG. Sample limited to OECD countries only. Robust t-statistics in parentheses.
**** p<.01, **p<.05, *p<.10*

Table 3: Correlations Among Legal and State Origins Coding: OECD Sample

	Common Law (0/1)	*LPLS Ukcommon*	*LPLS French*	*LPLS German*	*LPLS Scandinavian*
Bureaucratic (0/1)	**0.51**	**0.51**	**-0.53**	-0.26	**0.45**

note: bold numbers represent a significant correlation of 95% or greater.

Table 4: Legal vs. State Origins and Quality of Government Outcomes

	Corruption		Rule of Law		Property rights	
	1	2	3	4	5	6
Bureaucracy	0.91***	0.83***	0.77***	0.79***	0.51***	0.42***
	(7.70)	(6.39)	(5.76)	(5.23)	(7.08)	(6.13)
Common	-0.07		0.06		-0.08	
	(-0.42)		(0.73)		(-0.78)	
French		0.03		-0.02		-0.05
		(0.12)		(-0.11)		(-0.43)
German		-0.06		-0.05		0.09
		(-0.33)		(-0.66)		(0.78)
Scandinavian		0.16		-0.06		0.11
		(0.87)		(-0.68)		(0.86)
GDP(log)	0.90***	0.94***	0.98***	0.97***	0.97***	1.01***
	(7.86)	(6.37)	(7.60)	(8.26)	(8.05)	(8.06)
Obs.	31	31	31	31	31	31
Rsq.	0.88	0.88	0.85	0.85	0.89	0.90

Note: corruption is an average of the World Bank score from 1996-200 (taken from LPSV 2008), property rights is an index from the Heritage Foundation (1-5) from 2004, and rule of law is the average from the World Bank (between 2002-2006). All QoG dependent variables are coded so that higher values equal better QoG. Sample limited to OECD countries only. Robust t-statistics in parentheses.
**** p<.01, **p<.05, *p<.10*

Figure 1

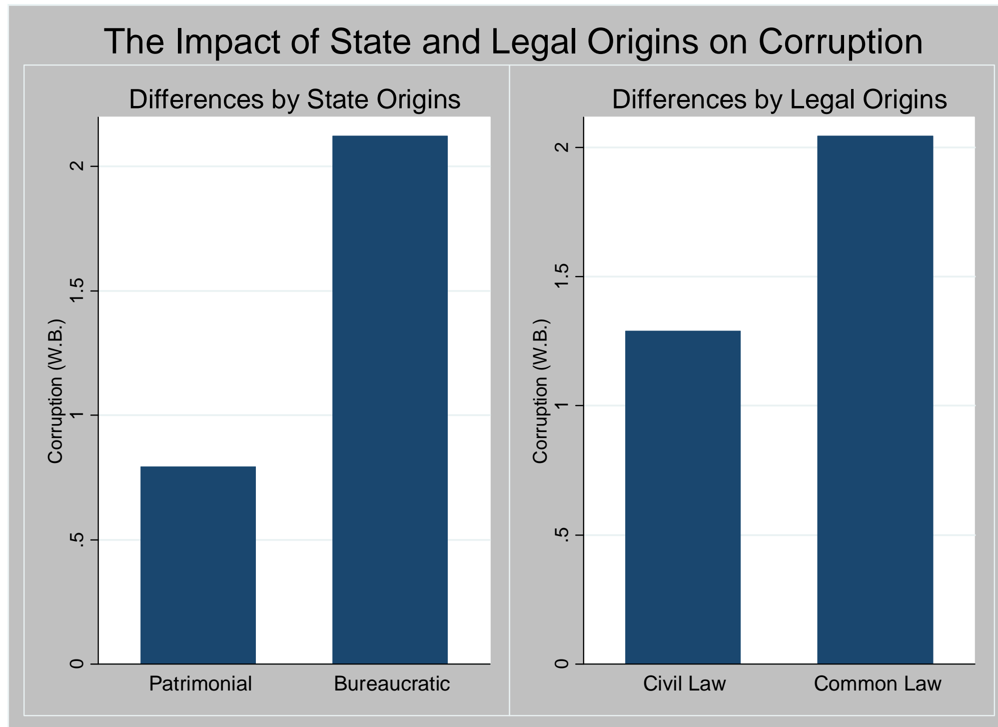


Figure 2

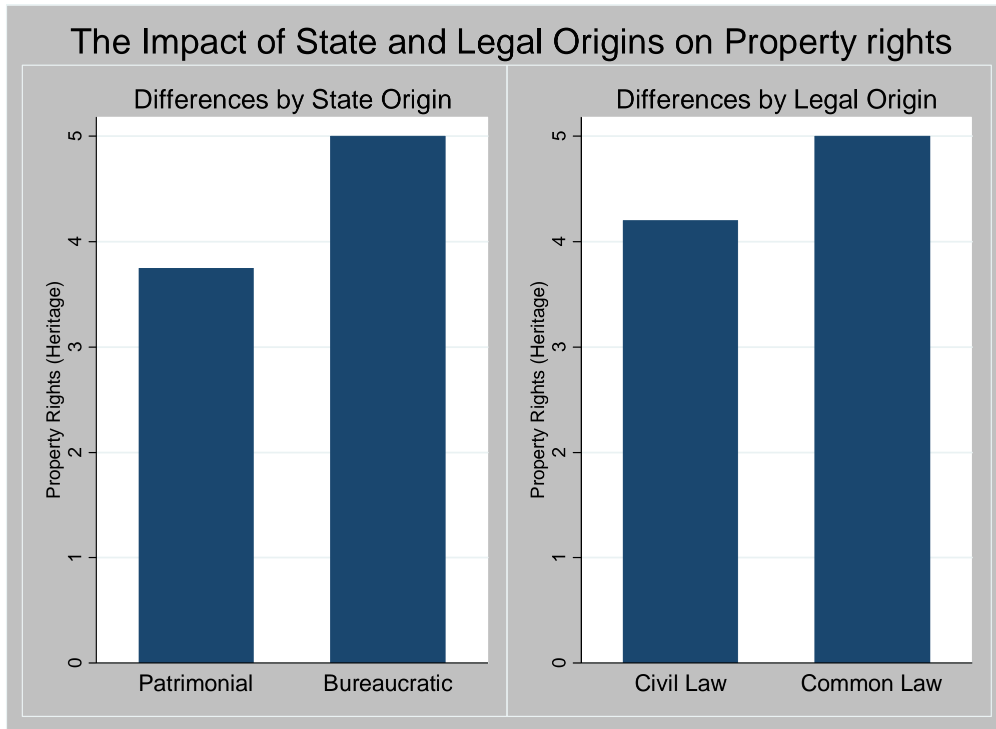
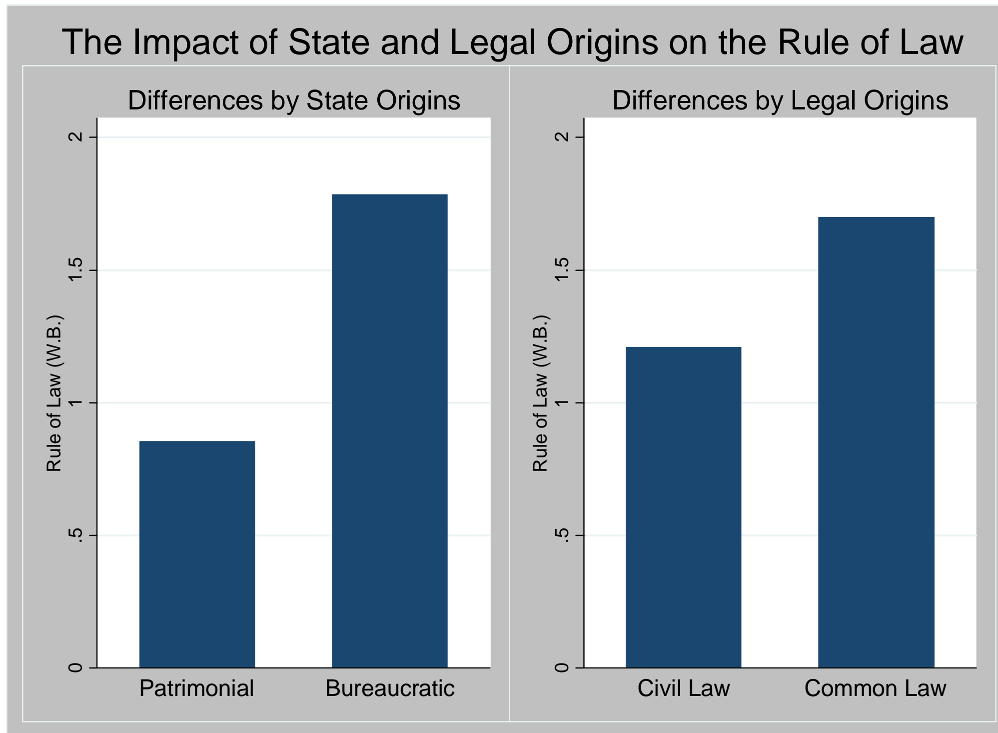


Figure 3



References

Beck, Thorsten, George Clarke, Alberto Groff, Philip Keefer, and Patrick Walsh, 2001. "New tools in comparative political economy: The Database of Political Institutions". *World Bank Economic Review*. 15(1): 165-176

Bendor, Jonathan, Ami Glazer, and Thomas Hammond. 2001. "Theories of Delegation". *Annual Review of Political Science,* 4: 235-269.

Botero, Juan C., Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer. 2004. "The Regulation of Labor." *Quarterly Journal of Economics*, 119(4): 1339–82.

Berman, Sheri. 2010. "From the Sun King to Karzai". *Foreign Affairs* 89: 2-9.

Dawson, John P. 1960. *A History of Lay Judges*. Cambridge and London: Harvard University Press.

Dawson, John P. 1968. *The Oracles of the Law*. Ann Arbor: University of Michigan Press.

Djankov, Simeon, Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer. 2002. "The Regulation of Entry." *Quarterly Journal of Economics*, 117(1): 1–37.

Ertman, Thomas.1997. *Birth of the Leviathan*. Cambridge: Cambridge University Press.

Glaeser, Edward L., and Andrei Shleifer. 2002. "Legal Origins." *Quarterly Journal of Economics*, 117(4):1193–1229.

González De Lara, Yadria, Avner Greif and Saumitra Jha. 2008. "The Administrative Foundations of Self-Enforcing Constitutions". *American Economic Review* 98:105-109.

Greif, Avner. 2006. *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade*. Cambridge University Press.

Greif, Avner. 2007. "The Impact of Administrative Power on Political and Economic Development: Toward political Economy Implementation". Unpublished.

Hayek, Friedrich A. 1960. *The Constitution of Liberty*.Chicago: University of Chicago Press.

Herb, Michael. 2003. "Taxation and Representation," *Studies in Comparative International Development*, 38 (Fall, 3): 3 - 31.

Hintze, Ott. 1975. *The Historical Essays of Otto Hintze*. Ed. Felix Gilbert. Oxford: Oxford university Press.

Holmberg, Rothstein and Nasiritousi 2009. **'**Quality of Government: What You Get'. *Annual Review of Political Science.* 13 (12): 135-161

Klerman, Daniel, and Paul G. Mahoney. 2007. "Legal Origin?" *Journal of Comparative Economics*, 35(2): 278–93.

Kaufmann, Daniel, Kraay, Aart and Mastruzzi, Massimo, 2008. "Governance Matters VI: Governance Indicators for 1996-2006" July. World Bank Policy Research Working Paper No. 428

La Porta, Rafael, Florencio Lopez-de-Silanes and Andrei Shleifer. 2008. "The Economic Consequences of legal Origins". *Journal of Economic Literature* 46: 285-332.

La Porta, Rafael, Florencio Lopez-de-Silanes, Andrei Shleifer, and Robert Vishny. 1997. "Legal Determinants of External Finance". *Journal of Finance*, 52: 1131-1150.

La Porta, Rafael, Florencio Lopez-de-Silanes, Andrei Shleifer, and Robert Vishny. 1998. "Law and Finance". *Journal of Political Economy*, 106: 1113-1155.

La Porta, Rafael, Florencio Lopez-de-Silanes, Andrei Shleifer, and Robert Vishny. 1999. "The Quality of Government". *Journal of Law, Economics, and Organization*, 15: 222-279.

Lapuente, Victor. 2007. *A Political Economy Approach to Bureaucracies*, Doctoral Dissertation, University of Oxford.

Levine, Ross, 1999. "Law, Finance, and Economic Growth," *Journal of Financial Intermediation*, vol. 8(1-2): 8-35

Levine, Ross. 2005. "Law, Endowments and Property Rights." *Journal of Economic Perspectives*, 19(3): 61–88.

Mahoney, Paul G. 2001. "The Common Law and Economic Growth: Hayek Might Be Right." *Journal of Legal Studies*, 30(2): 503–25.

Mann, Michael. 1986. *The Sources of Social Power*. Vol. I. *A History of Power from the Beginning to A.D. 1760*. Cambridge: Cambridge University Press.

Miller, Gary and Thomas Hammond. 1994. "Why Politics is More Fundamental than Economics. *Journal of Theoretical Politics*. 6:5-26.

North, Douglass C. 1981. *Structure and Change in Economic History*. New York: W. W. Norton.

North, Douglass C. and Barry Weingast. 1989. “Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth Century England.” *Journal of Economic History* 49(4):808-832.

North, Douglass, John Wallis and Barry Weingast. 2009. *Violence and Social Orders*. New York: Cambridge University Press.

Rothstein, Bo and Jan Teorell. 2008. “What Is Quality of Government? A Theory of Impartial Government Institutions”. *Governance* 21: 165-190.

Shefter, Martin. 1977. “Party and Patronage: Germany, England, and Italy”. *Politics & Society*. 7: 403-451

Silberman, Bernard S. 1993. *Cages of Reason: The Rise of the Rational State in France, Japan, the United States, and Great Britain*. Chicago: The University of Chicago Press.

Tilly, Charles. 1985. “War Making and State Making as Organized Crime”. In Evans, Peter, Dietrich Rueschmeyer, and Theda Skocpol. Eds. *Brining the State Back In*. Cambridge: Cambridge University Press.

Weber, Max. 1978. *Economy and Society*. Roth, Guenther and Claus Wittich. eds. Berkeley: University of California Press.

Weingast, Barry. 1993. Constitutions as governance structures: The political foundations of secure markets. Journal of Institutional and Theoretical Economics 149:286-311.

Weingast, Barry R. 2005. "Self-Enforcing Constitutions," *Journal of Economic Perspective, Perspectives*, Vol. 19(3, Summer): 89–108.

Woloch, Isser. 1994. *The New Regime: Transformations of the French Civic Order, 1789–1820s*. New York and London: Norton.

Ziblatt, Daniel. 2006. *Structuring the State*. Princeton: Princeton University Press.

Appendix 1

Coding of Sample

OECD country	Original LPLV Coding	Common Law Dummy	State infrastructure Dummy
Australia	Common	1	1
Austria	German	0	1
Belgium	Civil (Fr.)	0	0
Canada	Common	1	1
Switzerland	German	0	1
Czech Republic	German	0	0
Germany	German	0	1
Denmark	Scandinavian	0	1
Spain	Civil (Fr.)	0	0
Finland	Scandinavian	0	1
France	Civil (Fr.)	0	0
United Kingdom	Common	1	1
Greece	Civil (Fr.)	0	0
Hungary	German	0	0
Ireland	Common	1	1
Iceland	Scandinavian	0	1
Italy	Civil (Fr.)	0	0
Japan	German	0	0
Korea, Rep.	German	0	0
Luxembourg	Civil (Fr.)	0	0
Mexico	Civil (Fr.)	0	0
Netherlands	Civil (Fr.)	0	1
New Zealand	Common	1	1
Norway	Scandinavian	0	1
Poland	German	0	0
Portugal	Civil (Fr.)	0	0
Slovak Republic	German	0	0
Slovenia	German	0	0
Sweden	Scandinavian	0	1
Turkey	Civil (Fr.)	0	0
United States	Common	1	1

Appendix 2

Data and Sources

Regulation of Entry (Djankov et al. 2002.) - The number of steps to start a new business (log). Mean: 1.85, St. Dev: 0.65, Min: 0.69, Max: 2.71.

Formalism Check Collection (Djankov et al. 2003) – Based on an index built from data from a survey 109 countries inquiring about legal procedures regarding the eviction of a residential tenant for non-payment of rent and the collection of a check returned for non-payment. Mean: 3.28, St. Dev: 0.83, Min: 1.57, Max: 5.25.

Tenure of Judges (La Porta et al. 2004) - Measures the tenure of judges in the highest court in any country. The variable takes three possible values: 1 if tenure is life-long, 0.5 if tenure is more than six years but not life-long, and 0 if tenure is less than six years. Mean: 0.88, St. Dev: 0.22, Min: 0, Max: 1.

Case Law (La Porta et al. 2004) - A dummy taking value 1 if judicial decisions in a given country are a source of law, 0 otherwise. Mean: 0.68, St. Dev: 0.47, Min: 0, Max: 1.

Corruption (World Bank – Kaufmann et al 2008) – a composite index of international risk assessments, NGO's, IGO's and citizen surveys measuring the extent to which corruption is perceived to be present in a given country. We take the average between 2002 and 2006. Mean: 0, St. Dev: 1, Min: -2.5, Max: 2.5. *OECD sample*: Mean: 1.43, St. Dev: 0.82, Min: --0.39, Max: 2.4.

Property rights (Heritage Foundation 2004) - A rating of property rights in each country in 1997 (on a scale from 1 to 5). The more protection private property receives, the higher the score. The score is based, broadly, on the degree of legal protection of private property, the extent to which the government protects and enforces laws that protect private property, the probability that the government will expropriate private property, and the country's legal protection of private property. Mean: 4.35, St. Dev: .79, Min: 3, Max: 5

Rule of Law (World Bank – Kaufmann et al 2008) - a composite index of international risk assessments, NGO's, IGO's and citizen surveys measuring the strength of the rule of law in a given country by such aspects as independence of courts, trust in police, level of organized crime, strength of property rights and contract enforcement, and human trafficking. . Mean: 0, St. Dev: 1, Min: -2.5, Max: 2.5. *OECD sample*: Mean: 1.30, St. Dev: 0.63, Min: --0.38, Max: 1.97.

GDP per capita (log) (- World Development Indicators) - GDP per capita in Purchasing Power terms. Various years following La Porta et al (2008)

Proportionality (Beck et al 2006) - Index of proportional representation. Equals 2 plus 1 if candidates are elected based on the percent of votes received by their party ("pr") minus 1 if legislators are elected using a winner-take-all / first past the post rule ("pluralty") minus 1 if most seats are plurality ("housesys"). Average of 1975-2000.

Union density (Botero et al. 2004) – Measures the percentage of the total workforce affiliated to labour unions in 1997.

Left Power (Botero et al. 2004) - Chief executive and largest party in congress have left or center political orientation.