

# MIXED SYSTEMS IN LEGAL ORIGINS ANALYSIS

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## ABSTRACT

*A “hybrid” or “mixed” country can be defined as having substantial common and civil elements in its legal system. Hybrid countries have been an overlooked aspect of legal origins literature. This study’s comparative analysis finds that most hybrids have experienced moderate to high economic growth rates, began as civil law countries, and maintained predominantly civil law–based property and contract law, while uniformly adopting common law–based corporate and securities law.*

## I. INTRODUCTION

Over the past decade, economists and legal scholars have produced a considerable and influential body of work suggesting that a country’s legal origin is correlated with legal institutions and economic outcomes. The theory goes that legal origin—whether a country’s legal system is based on common law or civil law—can help explain a variety of legal rules and institutions, which in turn have independently been shown to affect economic outcomes. The idea emerged from a 1997 work by economists Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, and Robert Vishny on the relationship between legal origins and investor protection,<sup>1</sup> but the theory has since greatly broadened to include government

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1. Rafael La Porta et al., *Legal Determinants of External Finance*, 52 J. FIN. 1131 (1997) [hereinafter LLSV 1997].

ownership of banks, entry regulations, judicial independence, labor laws, procedural formalism, and many other areas.<sup>2</sup> In general, over ten years of literature have found that countries derived from common law systems have better legal rules, regulations, and institutions, and thus, the “legal origins” theory concludes that common law systems are associated with better economic outcomes.

Withstanding several criticisms, the legal origins literature, “coupled with economic studies on the contribution of financial development to economic growth, has been taken by many scholars and policymakers” as a definitive explanation of “why common law countries grow faster than civil law countries.”<sup>3</sup> And as global poverty continues to be an important issue in the international arena, the link between legal origin and economic growth has already been highlighted by organizations such as the World Bank in terms of best practices and other development strategies.<sup>4</sup>

One area in this important and influential discourse that has often been overlooked deals with countries that do not neatly fit into one of the square categories defined in the previous literature. There is a group of countries whose legal systems are actually a hybrid or mixture<sup>5</sup> of both civil and common law roots. Despite more than ten years of prolific discourse, legal origins literature has rather ignored this group. Further, even though the idea of mixed legal systems is already more than a century old,<sup>6</sup> it was not until the past ten years that interest in these systems led to a real burgeoning in comparative law literature as well.<sup>7</sup> However, there are still very few major works in this area.<sup>8</sup>

This Note seeks to help fill the gap in the literature by taking a comprehensive approach to this group of mixed countries and attempting to draw some useful comparisons across countries. If there are patterns of influence by common law or civil law on specific areas of law, or

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2. Rafael La Porta, Florencio Lopez-de-Silanes & Andrei Shleifer, *The Economic Consequences of Legal Origins*, 46 J. ECON. LITERATURE 285, 285–87, 291–98 (2008) [hereinafter LLS 2008].

3. Kenneth W. Dam, *Legal Institutions, Legal Origins, and Governance* 10 (Univ. of Chi., John M. Olin Law & Econ. Working Paper No. 303, 2006).

4. In 2004, the World Bank released its annual “Doing Business” report, which highlighted the significant impact of a country’s legal origin on its regulatory scheme and, ultimately, its economic development. It suggested that civil law systems present a handicap for developing countries when compared to common law systems. Emma Phillips, *The War on Civil Law? The Common Law as a Proxy for the Global Ambition of Law and Economics*, 24 WIS. INT’L L.J. 915, 942–43 (2007).

5. This Note will use the terms “hybrid” system and “mixed” system interchangeably.

6. See Kenneth G. C. Reid, *The Idea of Mixed Legal Systems*, 78 TUL. L. REV. 5, 11 (2003).

7. See *id.* at 16.

8. See *infra* Part II.B.

similarities between hybrids that have experienced high or low levels of growth, there could be significant implications pulled from such findings about legal origins theory with respect to these countries, or about legal origins theory in general.<sup>9</sup>

This Note first identifies a group of fourteen hybrid countries based on available data and a narrow definition of hybridity. It discusses the historical forces that produced these hybrid legal systems and then analyzes the character of specific areas of the law found in each. This Note looks at property law, contract law, corporate law, securities law, and procedure.<sup>10</sup> A comparative analysis is then conducted in light of the countries' average gross domestic product ("GDP") growth rate during the period from 1970 to 2003. This study asks: Are there any general patterns across countries in terms of areas of law? Are there any qualities or commonalities that link hybrid countries together in ways other than being considered a hybrid? Are there any patterns across countries that have had stronger economic performance or patterns across countries that have had poorer performance? What are the implications, if any, on economic development theories or legal origin theories?

This Note makes several interesting findings. First, it finds that this group of hybrids in general has performed notably well economically when compared to ninety-eight countries around the world during a similar time period. Second, it finds that all hybrids uniformly began as civil law systems and then became hybrid as a result of differing levels of common law influence. These influences have been rather systematic, with private law remaining overwhelmingly tied to civil law and public law, and corporate and securities law experiencing the most common law influence. Third, this study finds that there was little difference in economic growth or the amount of common law influence on corporate and securities law whether the civil law was coded or uncoded, despite previous literature that suggested otherwise. These findings yield important implications in the legal origins debate, as they suggest that it is inaccurate to code these countries as simply either common or civil law. This group of countries that are part civil law and part common law in form have performed exceptionally well relative to even other purely common law countries, implying that legal origin alone may not be the best predictor of economic performance. Another possible implication is that only the legal origin of

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9. See *infra* Part IV.B–C (discussing such findings and implications).

10. See *infra* text accompanying notes 93–97 (further discussing the link between these areas of law and economic outcomes).

the most recent colonizer matters, or that legal origin does in fact matter, but only through its influence on corporate and securities law.

Part II of this Note provides an overview of the beginning and of the current state of the legal origins debate and describes the void in the literature attributable to this difficult-to-categorize group of mixed jurisdiction countries. Part III discusses the general characteristics of hybrids and their histories. Part IV presents this study's methodology, data, and analysis. Additionally, this part discusses the implications and limitations of this kind of study. Finally, Part V makes some concluding remarks about hybrid legal systems in the context of the legal origins debate and about areas for future study.

## II. LITERATURE: HYBRIDS AND THE LEGAL ORIGINS DEBATE

### A. AN INTRODUCTION TO LEGAL ORIGINS THEORY AND ITS IMPLICATIONS FOR ECONOMIC DEVELOPMENT POLICIES

A legal system is defined as “an operating set of legal institutions, procedures, and rules” regulating a given society.<sup>11</sup> Legal systems can be grouped into legal “families”—groups of legal systems that share “deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system, and about the way law is or should be made, applied, studied, perfected, and taught.”<sup>12</sup>

Different sources identify different factors for “coding” legal systems as having either common law or civil law origin. One of the most prominent works on comparative law, written by Konrad Zweigert and Hein Kötz, lists the following factors: “(1) its historical background and development, (2) its predominant and characteristic mode of thought in legal matters, (3) especially distinctive institutions, (4) the kind of legal sources it acknowledges and the way it handles them, and (5) its ideology.”<sup>13</sup> These factors are then used to group legal systems of common “style” or family, of which Zweigert and Kötz identify six: Romanistic (French), Germanic (Germanic, Swiss), Anglo-American (English,

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11. William Tetley, *Mixed Jurisdictions: Common Law v. Civil Law (Codified and Uncodified)*, 60 LA. L. REV. 677, 681 (2000) (citing JOHN HENRY MERRYMAN, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATIN AMERICA* 1 (2d ed. 1985)).

12. *Id.* at 682.

13. KONRAD ZWIEGERT & HEIN KÖTZ, *AN INTRODUCTION TO COMPARATIVE LAW* 68 (Tony Weir trans., Oxford Univ. Press 1998) (1977).

American), Nordic (Scandinavian), Far East (Chinese, Japanese), and Religious (Islamic, Hindu).<sup>14</sup> In the legal origins discourse, most scholars have consistently identified two main secular legal traditions (common law and civil law) and several main subtraditions within civil law (French, German, socialist, and Scandinavian).<sup>15</sup>

Comparative law has garnered growing attention in recent years due to studies suggesting a statistically significant connection between legal systems and the strength of legal rules and institutions—and thus, a suggested connection between legal systems and economic development. Over the past dozen years, economists and legal scholars have produced a considerable and influential body of work suggesting that a country’s legal origin is correlated with legal institutions and economic outcomes. This body of work centers on the idea that a country’s legal origin can help explain things like investor protection; government ownership of banks; entry regulations; regulation of labor markets; levels of judicial formalism and judicial independence; and many other legal rules, which in turn have independently been shown to affect economic outcomes.<sup>16</sup> In general, more than ten years of literature have found that countries derived from common law systems have better legal rules, regulations, and institutions than those derived from civil law systems,<sup>17</sup> and the evidence “suggests that common law is associated with better economic outcomes.”<sup>18</sup>

This theory originated in 1997 with *Legal Determinants of External Finance*, published by Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, and Robert Vishny (“LLSV”).<sup>19</sup> This paper (“LLSV 1997”) found significant correlation between a country’s legal origin and the strength of its investor protection laws. This finding, coupled with previous scholarship demonstrating that stronger financial institutions led to “more

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14. See generally *id.*

15. LLS 2008, *supra* note 2, at 288.

16. *Id.* at 285–87, 291–98.

17. *Id.* at 298.

18. *Id.* at 302. Note, though, that LLS 2008 is careful to qualify that there is no proof of direct causation between legal origins and higher rates of economic growth. See *id.* at 309 (“Crucially, the Legal Origins Theory does not say that common law always works better for the economy.”). There are only a handful of papers that actually address the direct connection between legal origins and economic growth rates, see, e.g., Daniel Klerman et al., *Legal Origin and Economic Growth* (forthcoming) (on file with author); Paul G. Mahoney, *The Common Law and Economic Growth: Hayek Might Be Right*, 30 J. LEGAL STUD. 503 (2001); Jacek Rostowski & Bogdan Stacescu, *The Wig and the Pith Helmut—the Impact of “Legal School” Versus Colonial Institutions on Economic Performance* (Ctr. for Soc. & Econ. Research, Working Paper No. 300, 2006), including this Note.

19. LLSV 1997, *supra* note 1.

rapid economic growth in the economy as a whole,”<sup>20</sup> suggests a connection between legal origins and outcomes. Subsequent research showed that the influence of legal origins on laws and regulations was not restricted to the area of finance and financial institutions, but could also influence the size of investor protection, labor regulation, government ownership of banks, unemployment, the size of capital markets, procedural formalism, judicial independence, regulation of entry, corporate and securities laws, and bankruptcy law.<sup>21</sup> Since then, “more than 100 papers have used legal origin as an explanatory variable, and LLSV’s papers have been cited more than 2500 times.”<sup>22</sup>

In 2008, three of the original LLSV authors published *The Economic Consequences of Legal Origins* (“LLS 2008”), an article that summarized the evidence found in the past decade of legal origins literature and attempted a unified interpretation of the data.<sup>23</sup> According to LLS 2008, the available studies in legal origins theory have followed a similar pattern, shown in table 1 below: “They first consider the effect of legal origins on particular laws and regulations, and then the effects of these laws and regulations on the economic outcomes that they might influence most directly.”<sup>24</sup> These studies can be divided into three categories. The first category of papers follows LLSV 1997 by examining legal origins’ effects on investor protection, and investor protection’s effects on different aspects of financial development, including stock markets, creditor rights, and size of debt markets.<sup>25</sup> The second category deals with the effect of legal origin on government regulation and ownership of economic activities and institutions.<sup>26</sup> The third category deals with the effects of legal origin on “security of property rights and contract enforcement.”<sup>27</sup>

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20. Dam, *supra* note 3, at 7–8.

21. See LLS 2008, *supra* note 2, at 285–86. See generally *id.*

22. Klerman et al., *supra* note 18 (manuscript at 1) (footnote omitted).

23. LLS 2008, *supra* note 2.

24. *Id.* at 292.

25. *Id.* at 292–93.

26. *Id.* at 293.

27. *Id.*

TABLE 1. Framework for Evaluating How Legal Origin Relates to Legal Rules and Institutions and Economic Outcomes

<i>Legal Origin</i>	<i>Institution</i>	<i>Outcomes</i>
Common Law v. Civil Law	Procedural formalism	Time to evict nonpaying tenant, to collect bounced check
	Judicial independence (characteristics of the judiciary—tenure of judges, case law)	Property rights, contract enforcement
	Regulation of entry	Corruption, unofficial economy
	Labor laws	Participation rates, unemployment
	Company law, securities law	Stock market development, firm valuation, ownership structure, control premium
	Bankruptcy law	Private credit
	Government ownership of banks	Interest rate spread

The findings of LLSV and progeny are not without criticism. One objection to the law and finance evidence is that of reverse causality: legal origins could lead to better investor protection as LLSV argued, or it could be that countries improve their laws to protect investors as their financial markets develop.<sup>28</sup> A second objection is that of hidden variables: it may be that legal origin influences financial development through some channel other than legal rules.<sup>29</sup> Further, there is no proof of causation between legal origin and economic growth—the influence on economic outcomes is always done through the intermediary of legal rules and institutions and independent proof that these institutions affect economic growth rates, and

28. *Id.* at 298.

29. *Id.* at 299. *See generally* Mahoney, *supra* note 18 (arguing that common law's association with limited government, not its effect on financial development, explains the faster economic growth of common law countries compared with civil law countries from 1960 to 1992).

LLSV and LLS 2008 are very careful to qualify their results.<sup>30</sup> Finally, the central criticism of research on legal origins is that legal origins are a proxy for other factors influencing legal rules and outcomes, such as culture or history. One persuasive theory is that legal origin does not explain differences in economic outcomes when controlling for colonial policy (such as education) or geographic conditions.<sup>31</sup>

Withstanding these criticisms, the legal origins literature, coupled with economic studies on the contribution of financial development to economic growth, have been taken by many scholars and policymakers as a definitive explanation of why common law countries grow faster than civil law countries.<sup>32</sup> This debate is receiving attention from legal scholars, economists, and international organizations because of the importance and significance of the possible implications on economic development. As global poverty continues to be an important issue in the international arena, the link between legal origin and economic growth has been highlighted by organizations such as the World Bank regarding best practices and other development strategies. For example, in 2004, the World Bank released its annual “Doing Business” report, highlighting the significance of legal origin on a country’s regulatory scheme and ultimately its effects on economic development.<sup>33</sup> It suggested that civil law systems present a handicap for developing countries when compared to common law systems.<sup>34</sup> The “Doing Business” reports, which are “cross-country comparisons including rankings of the attractiveness of different legal systems for doing business,” have the highest circulation numbers of all World Bank publications; even critics admit that the reports have been successful at inciting legal reform in many countries in the world.<sup>35</sup> According to LLS 2008, the reports have “encouraged regulatory reforms in dozens of countries,” and “[t]he pace of legal regulatory reform stimulated by the evidence is quickening.”<sup>36</sup>

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30. See LLS 2008, *supra* note 2, at 302, 309 (“Crucially, the Legal Origins Theory does not say that common law always works better for the economy.”).

31. See Klerman et al., *supra* note 18 (manuscript at 1–4); Rostowski & Stacescu, *supra* note 18, at 16–18.

32. Dam, *supra* note 3, at 10. Though LLSV does not claim that legal origins directly affect economic growth rates, the suggestions and implications of the legal origins research have had profound effects on development efforts and strategies. See *infra* note 33 and accompanying text.

33. Phillips, *supra* note 4, at 942–43.

34. *Id.*

35. Ralf Michaels, *Comparative Law by Numbers? Legal Origins Thesis, Doing Business Reports, and the Silence of Traditional Comparative Law*, 57 AM. J. COMP. L. 765, 766 (2009).

36. LLS 2008, *supra* note 2, at 325.

## B. HYBRID OR MIXED LEGAL SYSTEMS WITHIN THE CONTEXT OF LEGAL ORIGINS THEORY

Notwithstanding the influence of legal origins theory, one aspect of the theory that has often been purposefully overlooked is the fact that some countries do not fit neatly into one of the rigid categories defined in the literature—that is, some countries are a hybrid or mixture of both civil and common law roots. How does one categorize or analyze a country that is not definable as a strictly common law country or civil law country? The response in nearly all of the legal origins literature has been to simply ignore this issue. In running regression analyses, these studies assign a country's legal origin a code to designate it as common law, French civil law, Germanic civil law, or Scandinavian civil law;<sup>37</sup> with few exceptions, no separate code is assigned to hybrid countries.<sup>38</sup> Furthermore, even if one did want to include these countries in the legal origins debate, there is difficulty in defining what a hybrid country is.<sup>39</sup> The range of definitions for hybridity is broad, and these different definitions also lead to very different inclusive lists. For example, the University of Ottawa's JuriGlobe research project defines mixed legal systems in a way that classifies ninety-five countries and political entities as hybrids,<sup>40</sup> while comparative law author Vernon Palmer identifies fourteen.<sup>41</sup> Though there is a consensus amongst comparative law scholars that Louisiana, Quebec, Scotland, and South Africa are the main exponents of the hybrid phenomenon,<sup>42</sup> Zweigert and Kötz present a list that includes the People's Republic of China,<sup>43</sup> while another article lists Togo, Burundi, Rwanda, and Tanzania as

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37. See, e.g., Rafael La Porta, Florencio Lopez-de-Silanes & Andrei Shleifer, *Corporate Ownership Around the World*, 54 J. FIN. 471, 479 (1999); Rafael La Porta et al., *Investor Protection and Corporate Valuation*, 57 J. FIN. 1147, 1156 (2002); Rafael La Porta et al., *Law and Finance*, 106 J. POL. ECON. 1113, 1113 (1998); LLSV 1997, *supra* note 1, at 1139–48. See also Data for LLS 2008, available at [http://www.economics.harvard.edu/faculty/shleifer/files/JEL\\_%20web.xls](http://www.economics.harvard.edu/faculty/shleifer/files/JEL_%20web.xls).

38. One notable exception is Klerman et al., *supra* note 18 (manuscript at 3) (assigning a fifth code to hybrids in their analysis).

39. See Part III for further discussion about defining hybrid countries.

40. JuriGlobe Research Group, University of Ottawa, Mixed Legal Systems, <http://www.juriglobe.ca/eng/sys-juri/class-poli/sys-mixtes.php> (last visited Mar. 20, 2010) [hereinafter JuriGlobe Mixed Legal Systems].

41. See generally MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY (Vernon Valentine Palmer ed., 2001) (focusing his study on seven countries and identifying a total of fourteen in appendix B).

42. Reinhard Zimmermann, "Double Cross": *Comparing Scots and South African Law*, in MIXED LEGAL SYSTEMS IN COMPARATIVE PERSPECTIVE: PROPERTY AND OBLIGATIONS IN SCOTLAND AND SOUTH AFRICA 1, 3 (Reinhard Zimmermann, Daniel Visser & Kenneth Reid eds., 2004).

43. ZWIGERT & KÖTZ, *supra* note 13, at 72.

hybrids.<sup>44</sup> Esin Öricü, Elspeth Attwooll, and Sean Coyle include Australia in their book of essays on mixed and mixing legal systems,<sup>45</sup> though the country is not found on JuriGlobe's extensive list of ninety-five.<sup>46</sup>

For these reasons or perhaps for others, few scholarly works have devoted substantial effort to mixed legal systems. Even though the concept of mixed legal systems is more than a century old,<sup>47</sup> it was not until the late 1900s that a significant interest in mixed countries emerged in the field of comparative law.<sup>48</sup>

The paucity of interest in hybrid systems seen in comparative law is evident in legal origins discourse as well. For example, in LLS 2008, in which the authors survey and harmonize the past decade of data and literature, there are two sentences that speak to the topic of hybrid countries:

Most writers identify two main secular legal traditions: common law and civil law, and several subtraditions—French, German, socialist, and Scandinavian—within civil law. Occasionally, countries adopt some laws from one legal tradition and other laws from another, and researchers need to keep track of such hybrids, but generally a particular tradition dominates in each country.<sup>49</sup>

As one author notes, “It is interesting as well that outside of Europe and such places as Quebec, Louisiana and South Africa, there is little discussion of mixed jurisdictions; in fact the subject is usually met with indifference.”<sup>50</sup>

Though there are few works of legal scholarship devoted to these countries in general, hybrids warrant a closer look, especially in the context of the legal origins debate. It is important to have justification for coding these countries as common law countries, as LLSV and progeny generally have,<sup>51</sup> given the complexity of their legal histories. This has been a further criticism of the LLSV literature and its progeny:

Legal scholars have criticized LLSV's coding of various countries. In

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44. See Mathias M. Siems, *Legal Origins: Reconciling Law and Finance and Comparative Law*, 52 MCGILL L.J. 55, 78 (2007).

45. See Charles Edwards, *Australia: Accommodating Multi-Culturalism in Law*, in *STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING* 53, 53 (Esin Öricü, Elspeth Attwooll & Sean Coyle eds., 1996).

46. See JuriGlobe Mixed Legal Systems, *supra* note 40.

47. See Reid, *supra* note 6, at 11.

48. See *id.* at 16.

49. LLS 2008, *supra* note 2, at 288.

50. Tetley, *supra* note 11, at 680.

51. See Klerman et al., *supra* note 18 (manuscript at 5).

particular, the rigid classification of countries as either common law or civil law ignores the fact that comparative law scholars categorize many countries, including South Africa, Israel and Sri Lanka, as “mixed” or “hybrid” legal systems. Their laws reflect their complex colonial histories and incorporate both civil and common law elements.<sup>52</sup>

Also, conducting research on the complex natures of these systems can yield interesting insights into the legal origins debate. Patterns in the way common law or civil law influenced specific areas of law across countries, or similarities in levels of growth experienced by hybrids, could improve understandings of the applicability of legal origins theory to mixed systems countries, or of legal origins theory in general.

This Note attempts to fill the gap in the legal origins literature by providing a comprehensive look at this group of mixed countries; by coding and then comparing areas of law and the level of common law influence versus civil law resilience; and by drawing comparisons between low growth countries and high growth countries.

Interest in hybrids has been growing in recent years, with an increasing, albeit relatively small, number of major works being produced on the topic.<sup>53</sup> One article gives four reasons for this renewed interest: (1) growing internationalization of law and a growing interest in foreign law, (2) the expansion and growing integration of the European Union and its harmonization of laws and legal systems, (3) the emergence of Africa after the political changes it experienced in 1993, and (4) self-discovery and self-interest (in an effort by mixed nations to understand and preserve the roots of their legal systems).<sup>54</sup>

There is a small amount of current literature available that is devoted to comparative analysis of hybrid and mixed jurisdictions. Some notable works include those edited or authored by: Vernon Palmer;<sup>55</sup> Esin Örüçü, Elspeth Attwooll, and Sean Coyle;<sup>56</sup> Reinhard Zimmermann, Daniel Visser, and Kenneth Reid;<sup>57</sup> William Tetley;<sup>58</sup> and Kenneth Reid.<sup>59</sup> (The University of Ottawa’s JuriGlobe research project, though not technically a

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52. *See id.* (manuscript at 2).

53. *See Reid, supra* note 6, at 16–17.

54. *Id.* at 17–19.

55. *See MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY, supra* note 41.

56. *See STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING, supra* note 45.

57. *See MIXED LEGAL SYSTEMS IN COMPARATIVE PERSPECTIVE: PROPERTY AND OBLIGATIONS IN SCOTLAND AND SOUTH AFRICA, supra* note 42.

58. *See Tetley, supra* note 11.

59. *See Reid, supra* note 6.

book or article, also has very useful comparative data<sup>60</sup>). However, much of the current hybrid literature seems to have a specific or narrow scope, limiting the comparative analysis to a few countries, and examining a wide range of laws in each country in great detail. For example, Zimmermann and his coeditors analyze almost all the major principles in property law and obligations for Scotland vis-a-vis South Africa,<sup>61</sup> and Palmer analyzes nine areas of law in seven countries in great detail.<sup>62</sup> Further, none of these comparative law authors takes into account the economic performance of these hybrid countries.

The scope of this Note presents a departure from those of the previous works. Most notably, this study attempts a broader analysis across fourteen to nineteen countries, rather than a specific and in-depth comparison between two or six countries, like most of the above-mentioned works. Thus, this Note attempts to produce a more comprehensive comparative analysis of the hybrid countries as a whole. Also, this Note identifies five broad areas of law (property, contract, corporate, securities, and procedure) to compare between countries,<sup>63</sup> and instead of examining in detail specific legal principles in these areas, this study simplifies the comparative analysis by coding these areas of law as being predominately borrowed either from common or civil law. Finally, this Note contributes to the current mixed systems discourse (and the legal origins theory discourse) by comparing these hybrid countries in light of their average GDP growth over a thirty-year period. As none of the current comparative law literature takes into account the economic performance of these hybrid countries,<sup>64</sup> this Note attempts to tie together the economic outcomes analysis of legal origins theory with comparative law research on mixed jurisdictions.

### III. HYBRIDS AND THEIR HISTORIES

This study began by identifying an inclusive group of countries with hybrid legal systems. Because the definition of mixed or hybrid legal

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60. JuriGlobe Mixed Legal Systems, *supra* note 40. This resource is not included in the discussion of current literature in the text accompanying notes 13–15.

61. *See generally* MIXED LEGAL SYSTEMS IN COMPARATIVE PERSPECTIVE: PROPERTY AND OBLIGATIONS IN SCOTLAND AND SOUTH AFRICA, *supra* note 42.

62. *See generally* MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY, *supra* note 41.

63. These areas are particularly relevant to economic growth or legal institutions that affect economic outcomes. *See infra* text accompanying notes 93–97.

64. There are few papers that deal directly with economic growth even in legal origins literature, and even then, few deal extensively with hybrid countries. *But see supra* note 18 (discussing notable exceptions including Klerman et al., *supra* note 18).

systems is not firmly established in the academic discourse, the number of countries that fits within this category depends on the looseness of the criteria one chooses to set.<sup>65</sup> For example, the JuriGlobe research project defines mixed legal systems as “political entities where two or more systems apply cumulatively or interactively, but also entities where there is a juxtaposition of systems as a result of more or less clearly defined fields of application.”<sup>66</sup> This broad measure categorizes almost half of the world’s nations (ninety-five<sup>67</sup> out of two hundred forty-six political entities<sup>68</sup>) as having mixed legal systems. More stringent characterization leads to a smaller list.

This study defines “hybrids” as those countries or political entities that have a presence of substantial common and civil law elements in their legal system—in other words, those countries in which we expect to find, “in addition certainly to other mixed elements, that common law and civil law constitute the basic building blocks of the legal edifice.”<sup>69</sup> Thus, a country with a mix of common law, civil law, and customary law (for example, South Africa) is included in this narrower definition of hybrid, but a country with a mix of civil law and customary law (for example, Japan) is not. This definition was applied to the University of Ottawa’s more liberal list of hybrid countries and political entities and resulted in the following list of twenty: Botswana, Cameroon, Cyprus, Guyana, Israel, Lesotho, Louisiana, Malta, Mauritius, Namibia, the Philippines, Puerto Rico, Saint Lucia, Scotland, Seychelles, South Africa, Sri Lanka, Thailand, Vanuatu, and Zimbabwe. In addition, two countries not on the JuriGlobe website were added in accordance with this study’s definition: Jordan and Somalia.<sup>70</sup> This is a comprehensive list of all hybrid countries under this

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65. Most countries in the world could in some way be justifiably called “hybrid,” using the loosest definition of the term. As one scholar describes, “[C]lose inspection invariably reveals that countries firmly at the cores of the common law and civil law ‘families’ have inevitably borrowed legal rules, institutions or practices from outside their family, so that cross-fertilization and hybridization are rampant.” John K. M. Ohnesorge, *China’s Economic Transition and the New Legal Origins Literature*, 14 CHINA ECON. REV. 485, 486 (2003).

66. JuriGlobe Mixed Legal Systems, *supra* note 40.

67. *Id.*

68. JuriGlobe Research Group, University of Ottawa, Alphabetical Index of the Political Entities and Corresponding Legal Systems, <http://www.juriglobe.ca/eng/sys-juri/index-alpha.php> (last visited Mar. 20, 2010). Political entities as defined by JuriGlobe can denote jurisdictions that are not sovereign nations—for example, Quebec, Louisiana, and Northern Ireland. *Id.*

69. Vincent Valentine Palmer, *Introduction to the Mixed Jurisdictions*, in MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY, *supra* note 41, at 3, 7–8 (citation omitted).

70. These countries were added based on descriptions of their legal histories. Jordan was part of the Ottoman Empire and thus had a legal system with strong civil law aspects until the United Kingdom took possession in 1917. LAW AND JUDICIAL SYSTEMS OF NATIONS 270 (The World Jurist Ass’n ed.,

study's narrowed definition.

Next, this study excluded some of these countries for several reasons: (1) regional hybridity, (2) lack of GDP data, or (3) lack of information on sources of law. Following a forthcoming study by Daniel Klerman and others,<sup>71</sup> this study makes a distinction between those countries that are hybrid because they are composites of different regions and those that are hybrid because of multiple colonizers or legal developments after independence. This Note defines “regional hybridity” or “regionally mixed systems” as those countries in which there is both civil law and common law in one country but the legal systems remain rather distinct and have been (or continue to be) applied to two distinct groups of people. Thus, in essence, the country has two concurrently operating legal systems, where civil law applies to one group of people and common law to the other. Cameroon is one such regional hybrid.<sup>72</sup> Cameroon was formed when the former French Cameroon and part of former British Cameroon merged in 1961.<sup>73</sup> Somalia is another example, as British Somaliland merged with Italian Somaliland in 1960.<sup>74</sup> Finally, Vanuatu is unlike Cameroon or Somalia in that two separately controlled territories merged, but both the British and French settled there during the nineteenth century and agreed to an Anglo-French Condominium in 1906. Vanuatu was jointly held by the United Kingdom and France until independence in 1980.<sup>75</sup> Until independence, however, French civil law applied to French citizens and British common law applied to British nationals.<sup>76</sup> Though Vanuatu is now considered a unified country, this pattern of dual legal systems continues.<sup>77</sup>

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4th ed. 2002) [hereinafter *WORLD JURIST*]. The nation of Somalia in its current state was formed when British Somaliland and Italian Somaliland merged to form one country in 1960. CIA World Factbook, Somalia, <https://www.cia.gov/library/publications/the-world-factbook/geos/so.html> (last visited Mar. 20, 2010) (expand “Introduction” bar).

71. “We did not code as ‘mixed’ countries where most of the country had one legal system, but a region (such as Louisiana, Quebec, or Scotland) had a different legal system. Instead, we coded such countries according to the legal system which governed the majority of the country.” Klerman et al., *supra* note 18 (manuscript at 5).

72. “For this reason, Cameroon was coded as of French legal origin. The southwestern part of the country has a common law legal system, but it is a relatively small part of the country, both in terms of population and economic activity.” *See id.* (manuscript at 5 n.8).

73. CIA World Factbook, Cameroon, <https://www.cia.gov/library/publications/the-world-factbook/geos/cm.html> (last visited Mar. 20, 2010) (expand “Introduction” bar).

74. CIA World Factbook, Somalia, *supra* note 70.

75. CIA World Factbook, Vanuatu, <https://www.cia.gov/library/publications/the-world-factbook/geos/nh.html> (last visited Mar. 20, 2010) (expand “Introduction” bar).

76. *See* JENNIFER CORRIN CARE, *CONTRACT LAW IN THE SOUTH PACIFIC* 9 (2001).

77. *See id.* at 9–11. *See also* *WORLD JURIST*, *supra* note 70, at 607–08 (discussing how the issue of whether English law or French law applies depends on whichever is expressly or impliedly chosen, or if neither, how it depends on whether the parties are English or French nationals).

Canada, the United States, and the United Kingdom can also be considered regional hybrids like Cameroon since these countries are mostly governed by one legal system but small regions of them (Quebec, Louisiana, and Scotland) have different legal systems.<sup>78</sup>

Guyana and Seychelles were excluded from the study due to lack of data on their GDP levels.<sup>79</sup> Finally, Lesotho was excluded because there was not enough literature available on its legal system or its sources of law. Excluding these countries, this study focuses on the remaining fourteen countries. This coding of hybridity is a departure from LLSV and LLS 2008, in which most of these hybrids were coded as common law legal systems.<sup>80</sup>

As a group, these twenty-three countries share some very sweeping similarities.<sup>81</sup> Most are independent countries or political entities. In most cases, hybridity was not a choice but rather a compulsion due to colonizing powers that brought in their own legal systems and imposed them onto a preexisting one. Nearly all of the twenty-three hybrids were, during the nineteenth century, civil law countries—former possessions of a great continental power that were transferred via conquest or treaty to Great

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78. See Klerman et al., *supra* note 18 (manuscript at 5).

79. Alan Heston, Robert Summers & Bettina Aten, Ctr. for Int'l Comparisons of Prod., Income & Prices at the Univ. of Pa., Penn World Table Version 6.2 (Sept. 2006), [http://pwt.econ.upenn.edu/php\\_site/pwt62/pwt62\\_form.php](http://pwt.econ.upenn.edu/php_site/pwt62/pwt62_form.php) (last visited Mar. 20, 2010) [hereinafter Penn World Data 6.2]. Scotland, Louisiana, and Quebec also did not have GDP data available. It should be noted, though, that these countries follow the same pattern of common law influence in public and corporate/securities law as the other countries and thus support the main findings of this study. For example, Guyana follows the same pattern of having a Roman-Dutch civil property law as the other hybrids. See ROSE-MARIE BELLE ANTOINE, COMMONWEALTH CARIBBEAN LAW AND LEGAL SYSTEMS 61–62 (2d ed. 2008). Guyana also follows the pattern of having British common law influence in the other areas. See Thomas H. Reynolds & Arturo A. Flores, Foreign Law Guide: Current Sources of Codes and Basic Legislation in Jurisdictions of the World (2000), <http://www.foreignlawguide.com.libproxy.usc.edu/ip/> (last visited Mar. 10, 2010) [hereinafter Foreign Law Guide] (database with limited access) (log in, choose “Guyana” from the dropdown menu). The pattern in Seychelles followed that of the other hybrid countries as well. Seychelles had a coded civil law, with property law and contract law being of civil form with minor British influence. See *id.* (log in, choose “Seychelles” from the dropdown menu). Corporate law and procedure became more common law in nature. See WORLD JURIST, *supra* note 70, at 473. Louisiana also retained civil private law and more common law influence in the public law. See Vincent Valentine Palmer & Matthew Sheynes, *Louisiana*, in MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY, *supra* note 41, at 257, 257. The commercial law largely adopted the U.S. model. See *id.* at 264.

80. See Klerman, et al., *supra* note 18 (manuscript at 5).

81. To be able to make general statements about these twenty-three hybrid countries as a group, this Note relies on numerous sources for its findings and research. In order to aid an easy comparative analysis, sources are not cited when making general statements about the entire group of hybrid countries. See *infra* notes to table 2 for a complete list of sources and specific citations.

Britain or the United States<sup>82</sup> around the beginning of the twentieth century. The great continental powers at the time were the French, Spanish, and Dutch, and each mother country had a distinct civil law persona.<sup>83</sup> For example, the former French colonies all share a common foundation in the Napoleonic Civil Code, whereas the Dutch group is characterized by uncodified Roman-Dutch law<sup>84</sup> as promulgated in Holland in the mid-fifteenth century.<sup>85</sup> When Great Britain took power over these civil law territories, it allowed for the already entrenched civil legal system to stay in place in most instances, and instead of formally trying to impose its common law legal structure upon the old system in a wholesale manner, it allowed the current civil laws to stay in place unless explicitly repealed. For the most part, then, these hybrid countries were first colonized by a civil power and then, about one hundred years later, were taken over by the British Crown, which allowed the civil law form to remain.

A few notable exceptions to this general narrative are Jordan, Israel, and Thailand. In addition to having legal systems imposed on them by a colonial power, these countries also underwent significant self-imposed changes to their legal systems after independence.

Jordan and Israel were both part of the Ottoman Empire until 1917 when the British took possession of these territories, and British control ended relatively quickly in 1948.<sup>86</sup> Similar to other hybrids, the Ottomans imposed a version of French civil law, after which Jordan and Israel experienced significant common law influence during British control.<sup>87</sup> After independence, however, both countries made efforts to move away from the common law of their own accord. In an effort to promulgate new laws, Jordan adopted a modern codification of civil law after independence that is of the same style and intent as the Syrian civil code (which is itself based on Islamic and French civil law).<sup>88</sup> In Israel, there was an effort to

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82. Palmer, *supra* note 69, at 5.

83. *Id.* Palmer's work compares in depth and great detail seven specific hybrid countries and notes some sweeping characteristics. Many of these generalizations hold true for the broader collection of twenty-three hybrid countries.

84. *Id.* at 5–6.

85. Lynn Berat, *A New South Africa? Prospects for an Africanist Bill of Rights and a Transformed Judiciary*, 13 *LOY. L.A. INT'L & COMP. L. REV.* 467, 484 n.100 (1991) (citing R. LEE, AN INTRODUCTION TO ROMAN-DUTCH LAW 2 (1953)).

86. See *WORLD JURIST*, *supra* note 70, at 270. See also *Foreign Law Guide*, *supra* note 79 (log in, choose "Israel" from the dropdown menu).

87. See *WORLD JURIST*, *supra* note 70, at 270. See also *Foreign Law Guide*, *supra* note 79 (log in, choose "Israel" from the dropdown menu).

88. Issa M. Dallal, *Jordan*, in *LEGAL ASPECTS OF DOING BUSINESS IN THE MIDDLE EAST* 163, 163 (Dennis Campbell & Christian Campbell eds., 2008); *Foreign Law Guide*, *supra* note 79 (log in,

move away from the common law and toward a new codification based on Jewish legal tradition and general legal principles.<sup>89</sup> The legal scholars, professors, and legislators who were the driving force behind promulgating and progressing an Israeli/Talmudic law were trained and educated in the Continental legal tradition in Eastern Europe,<sup>90</sup> and thus modern Israeli law is taking on an increasingly civil law nature.<sup>91</sup> In Thailand, King Rama IV (Mongkut) (1851–1868) and King Rama V (Chulalongkorn) (1868–1910) were motivated to revitalize and modernize Thailand’s legal system. Using the French code as a basis, they sought to make Thailand more commercially compatible with the dominant colonizing powers in order to maintain economic viability of trade and in hopes of avoiding colonization.<sup>92</sup>

Jordan, Israel, and Thailand have both common and civil law elements in their legal systems and, thus, fit within the definition of hybrid countries. However, unlike most of the other countries that became hybrids because of external colonial powers, some of their hybridity is a result of voluntary and deliberate efforts to change aspects of their law. For Jordan and Israel, this self-imposed change took place post independence, and for Thailand, it occurred because the country had never been colonized and in fact believed it would avoid colonization if its legal system reflected the world dominant legal systems. But all three countries were internally motivated by proactive leaders of legal reform.

#### IV. DATA AND ANALYSIS

##### A. METHODOLOGY

The aim of this study is to try to describe the general landscape of a large group of hybrid countries by describing their legal histories,

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choose “Jordan” from the dropdown menu) (“Jordanian law has been substantially altered since independence. The Ottoman civil code was replaced by a modern codification in 1976. It is a version that follows the style and intent of the Syrian code, drafted in 1949 by Abd Al-Sanhuri, which in turn was based on the Egyptian civil code of 1948 . . .”). See also WORLD JURIST, *supra* note 70, at 270; Egypt, Arab Republic of, <http://www.law.emory.edu/ifl/legal/egypt.htm> (last visited Mar. 20, 2010); Foreign Law Guide, *supra* note 79 (log in, choose “Syria” from the dropdown menu).

89. See WORLD JURIST, *supra* note 70, at 248; Gabriela Shalev, *Contract Law*, in INTRODUCTION TO THE LAW OF ISRAEL 111, 112 (Amos Shapira & Keren C. DeWitt-Arar eds., 1995).

90. See Stephen Goldstein, *Israel: Creating a New Legal System from Different Sources by Jurists from Different Backgrounds*, in STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING, *supra* note 45, at 147, 149.

91. See *id.* at 147.

92. See Foreign Law Guide, *supra* note 79 (log in, choose “Thailand” from the dropdown menu).

comparing a few broad areas of law, and examining the effect of their hybrid legal systems on economic performance over time. This examination includes several research questions: Are there any general patterns across countries in terms of areas of law? Are there any qualities or commonalities that link hybrid countries together? What patterns emerge across countries that have experienced stronger economic performance or across countries that have experienced poorer performance? What are the implications, if any, on economic development theories or legal origin theories?

Through these research questions, this study hopes to shed more light on the group of countries that is generally ignored in the legal origins debate and to draw implications from the study for the legal origins theory.

The format of the research is as follows: (1) A group of hybrid countries was defined and identified for comparison. (2) Brief histories were researched for each country. Of particular interest was whether the country had a codified civil law before the period of common law influence began. (3) Five broad areas of law were defined for comparison, and the overall form (common or civil law) from which they were borrowed was identified and coded (common law as 0, civil law as 1). (4) Comparative analysis was done with regards to these findings and the countries' economic performances. These steps are discussed in more detail below.

First, as described in Part III, this study identified an inclusive group of countries with hybrid legal systems, excluding those countries that (1) were regional hybrids, (2) lacked GDP data, or (3) had very little information on sources of law available.

Next, the study identified several broad areas of law to focus on: property, contract, corporate, securities, and procedure.<sup>93</sup> The study chose these areas for several reasons. These are some of the main areas of law that comparative legal scholars traditionally concentrate on.<sup>94</sup> Also, these broad areas were compared because of their direct (and proven)<sup>95</sup>

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93. This study also compared hybrid countries' use of juries and *stare decisis* (which legal origins literature has used as a proxy for judicial formalism and characteristics of the judiciary, which in turn has an effect on the security of property rights and contract enforcement). See LLS 2008, *supra* note 2, at 293. This was not included in table 2 due to the limited scope of this Note, but the coded research is included in table A.1 in the appendix.

94. See generally WORLD JURIST, *supra* note 70 (providing legal history and the current law for various countries); ZWEIGERT & KÖTZ, *supra* note 13 (providing an overview of various legal families and an in-depth analysis of contract law); Foreign Law Guide, *supra* note 79 (providing legal history and sources of current law for various countries).

95. See LLS 2008, *supra* note 2, at 292.

relationship to legal rules and institutions that affect economic outcomes. Corporate and securities law has been shown to be correlated with financial development,<sup>96</sup> and the strength of property law and contract law enforcement has been directly linked with economic development.<sup>97</sup>

Each area of law was researched for each of the fourteen countries<sup>98</sup> and then coded to reflect the overall form it was borrowed from. For example, in Botswana, property law is governed by Roman-Dutch principles (civil law)<sup>99</sup> and thus was coded as 1. Contract law in Botswana, on the other hand, is predominately common law in nature and thus was coded as 0.<sup>100</sup> This data is presented in table 2 below.

Property, corporate, securities, and procedure coding were based on overall form, and the sources were usually unambiguous as to whether a country's laws were based mainly on common or civil law. Contract law was more difficult to code, however, because some principles remained firmly based in civil law while some common law influences were evident as well, especially in areas such as estoppel, the mailbox rule, and quasi-contracts. For example, South African contracts are based on the civil law principle of *causa*, and the South African courts found the concept of consideration to be "wholly foreign" and incompatible.<sup>101</sup> The doctrine of estoppel was imported from English common law but with more strict requirements.<sup>102</sup> Quasi-contract or unjustified enrichment is based on civil law.<sup>103</sup> The mailbox rule was adopted from common law with limitations,

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96. *See id.* (indicating that company law and securities law are correlated with stock market development, firm valuation, ownership structure, and control premium).

97. For property, see generally HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL* (2000) (discussing how enforcement of property rights and the strength of a formal property system has led to the success of capitalism in the West). For contract, Nobel Laureate Douglass North advances the strong claim that "the inability of societies to develop effective, low-cost enforcement of contracts is the most important source of both historical stagnation and contemporary underdevelopment in the Third World." DOUGLASS C. NORTH, *INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE* 54 (1990). *But see* Gillian K. Hadfield, *The Many Legal Institutions That Support Contractual Commitments*, in *HANDBOOK OF NEW INSTITUTIONAL ECONOMICS* 175 (Claude Ménard & Mary M. Shirley eds., 2005) (arguing that the enforcement of contracts is not the only reason for a lack of economic development, as multiple legal institutions are at work to make contract law effective).

98. *See infra* tbl.2, notes b–o.

99. Roman-Dutch law was in force in South Africa at the date of British occupation with little change after British influence. *See* Lubabalo Boo, *Botswana's Legal System and Legal Research*, *GLOBALLEX*, Oct. 2006, <http://www.nyulawglobal.org/Globalex/Botswana.htm>.

100. *See id.*

101. Paul Farlam & Richard Zimmermann, *The Republic of South Africa (Report 1)*, in *MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY*, *supra* note 41, at 83, 128.

102. C. G. van der Merwe, J. E. du Plessis & M. J. de Waal, *The Republic of South Africa (Report 2)*, in *MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY*, *supra* note 41, at 145, 187–88.

103. *Id.* at 178.

and discharge by breach was not.<sup>104</sup>

Because of these variations in common law influence on contract law, this study narrowed the main consideration for coding a country to principles of contract formation. If the country still employed the civil law principle of *causa* instead of the common law principle of consideration, it was coded as civil, even if there were limited amounts of other common law influences (for example, adoption of the doctrine of estoppel, the mailbox rule, and common law influences in quasi-contract).<sup>105</sup> This study was stringent on the codification based on *causa* or consideration because these concepts represent one of the fundamental principles in establishing contractual liability.<sup>106</sup>

Further, by “contract law,” this study refers to general contract principles and excludes commercial law (which was grouped together with corporate law). Commercial law was grouped with corporate law because, though there is a clear distinction between these areas of law in common law, the line is more blurred in civil law systems where commercial laws, agency, and partnerships are often governed by the civil commercial code.<sup>107</sup>

This study also combined corporate law and securities law into one category, as the distinction between the two is not often easily discernable.<sup>108</sup> Though in the United States the division between corporate

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104. Farlam & Zimmermann, *supra* note 101, at 128–29.

105. *See id.* at 127; Vernon Valentine Palmer, *A Descriptive and Comparative Overview*, in *MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY*, *supra* note 41, at 17, 58.

106. *See* Martin Hogg & Gerhard Lubbe, *Formation of Contract*, in *MIXED LEGAL SYSTEMS IN COMPARATIVE PERSPECTIVE: PROPERTY AND OBLIGATIONS IN SCOTLAND AND SOUTH AFRICA*, *supra* note 42, at 34, 37 (stating that the issue of contract formation concerns not only whether an agreement has been reached, but also whether the agreement amounted to a contract at all). This study used a single-factor test to code overall form of contract law (*causa* versus consideration), but using a multifactor test to code may be a much more insightful method and would be a useful area of future study.

107. *See, e.g.*, Foreign Law Guide, *supra* note 79 (log in, choose “Jordan” and “Malta,” respectively, from the dropdown menu). *See also* Joseph M. Ganado, *Malta: A Microcosm of International Influences*, in *STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING*, *supra* note 45, at 225, 232, 243; Foreign Law Guide, *supra* note 79 (log in, choose “Seychelles” from the dropdown menu). Conducting a more systematic study of legal origins in commercial law versus corporate law in these hybrids would be a useful area of future study.

108. *See, e.g.*, Arthur R. Pinto, *The European Union’s Shareholder Voting Rights Directive from an American Perspective: Some Comparisons and Observations*, 32 *FORDHAM INT’L L.J.* 587, 588 (2009) (“In looking at company law issues both in the United States and the EU, it is not always clear what law is company law as opposed to securities law.”); Detlev F. Vagts, *Securities Regulation—An Introduction*, in 13 *INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW* 3 (Alfred Conard & Detlev Vagts eds., 2006) (“Thus one can think of securities regulation as being next door to company law. In fact the division of the overall subject matter between the two fields is sometimes rather puzzling.”).

laws and securities laws is clear, this is mainly a function of federalism—corporate laws are under the purview of the individual states, while securities laws are enforced by the federal government and its administrative bodies, such as the Securities and Exchange Commission.<sup>109</sup> This division is much less clear in many other countries. For example, Sri Lanka’s various securities laws are found in the Securities and Exchange Commission Act, in a Fair Trade Commission law, in the general Companies Act, and in a separate act for payment and settlement systems.<sup>110</sup> In Thailand, the governing laws are found in various texts including its banking laws, the Agricultural Futures Trading Act, and the Stock Exchange Act, among many others.<sup>111</sup> In France, the securities laws are found in the commercial law texts, while in Germany, the securities laws are spread between marketable share companies acts, banking law, and stock exchange law.<sup>112</sup> Thus, this study coded according to the overall form of a country’s corporate laws but found that the overall form of securities laws tracked the same origin.<sup>113</sup>

By “procedure,” this study refers to both criminal and civil procedure, as a common law influence in one almost always coincided in a common law influence in the other. With regard to the use of juries, this study coded liberally to include those countries that use juries even though it is not a constitutional right and to include those that use juries for only certain offenses.<sup>114</sup>

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109. See Pinto, *supra* note 108, at 599; Vagts, *supra* note 108, at 3.

110. Foreign Law Guide, *supra* note 79 (log in, choose “Sri Lanka” from the dropdown menu).

111. *Id.* (log in, choose “Thailand” from the dropdown menu).

112. Vagts, *supra* note 108, at 3.

113. This is true for all countries except for Saint Lucia (where the corporate law was coded as common law, but securities laws information was difficult to locate) and for Thailand (where private companies are governed by the civil and commercial code, and public companies are governed by the Public Companies Act, and as it was difficult to determine one overall form because of this division, this study focused on public companies and securities regulation). See also *infra* tbl.2, notes b–o. Further study in this area by authors with more expertise in corporate and securities laws will yield much more sophisticated analysis.

114. See, e.g., ANTOINE, *supra* note 79, at 376. Saint Lucia has no constitutional right to a jury, and a jury is only available for indictable offenses. See Country Studies: Seychelles, <http://www.country-studies.com/seychelles/legal-system-and-civil-rights.html> (last visited Mar. 20, 2010) (stating that in Seychelles juries are only called for murder or treason). This data was not included in table 2 but can be found in table A.1 in the appendix.

## B. FINDINGS

TABLE 2. Overall Coding with GDP Rate

Country	GDP Rate <sup>a</sup>	Codified/ Uncodified	Property	Contract	Corporate/ Securities	Procedure
Under-Performing						
Zimbabwe <sup>b</sup>	-0.505	0	1	1	0	n/a
Jordan <sup>c</sup>	-0.385	1	1	1	0	1
Namibia <sup>d</sup>	0.177	0	n/a	1	0	0
Performing						
South Africa <sup>e</sup>	0.975	0	1	1	0	0
Philippines <sup>f</sup>	1.174	1	1	0	0	0
Israel <sup>g</sup>	1.795	1	1	1	0	0
Saint.Lucia <sup>h</sup>	2.563	1	1	0	0	0
Puerto Rico <sup>i</sup>	2.943	1	1	1	0	0
Over-Performing						
Sri Lanka <sup>j</sup>	3.747	0	1	1	0	0
Mauritius <sup>k</sup>	4.123	1	1	1	0	true mix
Cyprus <sup>l</sup>	4.304	1	1	0	0	0
Thailand <sup>m</sup>	4.321	1	1	1	0	1
Malta <sup>n</sup>	5.543	1	1	1	0	1
Botswana <sup>o</sup>	5.809	0	1	0	0	0
Totals	World average.: 1.9 <sup>p</sup>	9 codified 5 uncodified	13 civil 0 common 1 n/a	10 civil 4 common	0 civil 12 common 2 n/a	3 civil 9 common 1 true mix

Note: 0 = common law, 1 = civil law; 0 = uncodified civil law, 1 = codified civil law.

<sup>a</sup>Penn World Data 6.2, *supra* note 79, calculated using real GDP per capita (Laspeyres).

<sup>b</sup>See UNIT FOR CORP. GOVERNANCE IN AFR., UNIV. OF STELLENBOSCH BUS. SCH., CORPORATE GOVERNANCE IN AFRICA CASE STUDY SERIES: NO. 6, at 2 (2009), available at [http://www.governance.usb.ac.za/downloads/No.6\\_Zimbabwe\\_case%20study%202009.pdf](http://www.governance.usb.ac.za/downloads/No.6_Zimbabwe_case%20study%202009.pdf); William E. Kovacic, *Designing and Implementing Competition and Consumer Protection Reforms in Transitional Economies: Perspectives from Mongolia, Nepal, Ukraine, and Zimbabwe*, 44 DEPAUL L. REV. 1197, 1211 (1995); Gino J. Naldi, *Land Reform in Zimbabwe: Some Legal Aspects*, 31 J. MODERN AFR. STUD. 585, 585–600 (1993); John McClung Nading, Comment, *Property Under Siege: The Legality of Land Reform in Zimbabwe*, 16 EMORY INT'L L. REV. 737, 765–74, 771 n.164 (citing Derek van der Merwe, *Property in Mixed Legal Systems: South Africa*, in PROPERTY LAW ON THE THRESHOLD OF THE 21ST CENTURY 355, 360 (G. E. van Maanen & A. J. van der Walt eds., 1996)); CIA World Factbook, Zimbabwe, <https://www.cia.gov/library/publications/the-world-factbook/geos/zi.html> (last visited Mar. 20, 2010) (expand “Economy” bar); Foreign Law Guide, *supra* note 79 (log in, choose “Zimbabwe” from the dropdown menu); Otto Saki & Tatenda Chiware, *The Law in Zimbabwe*, GLOBALEX, Feb. 2007, [http://www.nyulawglobal.org/globalex/zimbabwe.htm#\\_Sources\\_of\\_Zimbabwean\\_Law](http://www.nyulawglobal.org/globalex/zimbabwe.htm#_Sources_of_Zimbabwean_Law). See generally WORLD BANK, REPORT ON THE

OBSERVANCE OF STANDARDS AND CODES (ROSC): CORPORATE GOVERNANCE COUNTRY ASSESSMENT AND ROSC MODULE, ZIMBABWE, available at [http://www.worldbank.org/ifa/rosc\\_cg\\_zimbabwe.html](http://www.worldbank.org/ifa/rosc_cg_zimbabwe.html) (discussing the main characteristics of Zimbabwe's stock market and regulatory framework).

<sup>c</sup>See WORLD BANK, REPORT ON THE OBSERVANCE OF STANDARDS AND CODES (ROSC): CORPORATE GOVERNANCE COUNTRY ASSESSMENT, JORDAN 2 (2004), available at [http://www.worldbank.org/ifa/jor\\_rosc\\_cg.pdf](http://www.worldbank.org/ifa/jor_rosc_cg.pdf); WORLD JURIST, *supra* note 70, at 270; Dallal, *supra* note 88, at 163–64; Bashar H. Malkawi & Haitham A. Haloush, *Reflections on the Securities Law of Jordan*, 23 AM. U. INT'L L. REV. 763, 804 (2008); Mohamed Olwan, *The Three Most Important Features of Jordan's Legal System*, in IALS CONF., LEARNING FROM EACH OTHER: ENRICHING THE LAW SCHOOL CURRICULUM IN AN INTERRELATED WORLD 137 (2007), available at <http://www.ialsnet.org/meetings/enriching/olwan.pdf>; CIA World Factbook, Jordan, <https://www.cia.gov/library/publications/the-world-factbook/geos/jo.html> (last visited Mar. 20, 2010) (expand "Economy" bar); Country Studies: Jordan, <http://www.country-studies.com/jordan/the-judiciary.html> (last visited Mar. 20, 2010); Foreign Law Guide, *supra* note 79 (log in, choose "Jordan" from the dropdown menu). See also Egypt, Arab Republic of, <http://www.law.emory.edu/ifl/legal/egypt.htm> (last visited Mar. 20, 2010) (stating that the laws of Egypt are based on Islamic and civil law, particularly French codes); Foreign Law Guide, *supra* note 79 (log in, choose "Syria" from the dropdown menu) (stating that the laws of Syria are based on French civil influence; Lebanese civil, commercial, and criminal codes; and Egyptian law on evidence, contracts, and civil procedure); *supra* note 88.

<sup>d</sup>See WORLD JURIST, *supra* note 70, at 376; Foreign Law Guide, *supra* note 79 (log in, choose "Namibia" from the dropdown menu) ("We have suggested in several instances that an in-force Namibian law inherits, succeeds to, or closely approximates a South African law of the same name. In such instances, the researcher would want to seek out a copy of the South African law as of 1990."); Geraldine Mwanza Geraldo & Isabella Skeffers, *Researching Namibian Law and the Namibian Legal System*, GLOBALEX, Dec. 2007, <http://www.nyulawglobal.org/globalex/Namibia.htm>. See also CIA World Factbook, Namibia, <https://www.cia.gov/library/publications/the-world-factbook/geos/wa.html> (last visited Mar. 20, 2010) (expand "Economy" bar); *infra* tbl.2, note e (sources for South Africa).

<sup>e</sup>See WORLD BANK, REPORT ON THE OBSERVANCE OF STANDARDS AND CODES (ROSC): CORPORATE GOVERNANCE COUNTRY ASSESSMENT, REPUBLIC OF SOUTH AFRICA 2 (2003), available at <http://www.worldbank.org/ifa/SouthAfricaCG.pdf>; WORLD JURIST, *supra* note 70, at 500; ZWEIGERT & KÖTZ, *supra* note 13, at 234; Philip C. Aka, *Corporate Governance in South Africa: Analyzing the Dynamics of Corporate Governance Reforms in the "Rainbow Nation,"* 33 N.C. J. INT'L L. & COM. REG. 219, 239–41 (2007); Jacques du Plessis, *Common Law Influences on the Law of Contract and Unjustified Enrichment in Some Mixed Legal Systems*, 78 TUL. L. REV. 219 (2003); Li-Wen Lin, *Corporate Social and Environmental Disclosure in Emerging Securities Markets*, 35 N.C. J. INT'L L. & COM. REG. 1, 15–16 (2009); Van der Merwe, *supra* tbl.2, note b, at 360 ("In South Africa . . . the foundations of property law were laid by the institutional writers (the so-called 'old authorities') of the Roman-Dutch law, itself a hybrid of Roman law, canon law and Germanic customary law."); Zimmermann, *supra* note 42, at 5–6; CIA World Factbook, South Africa, <https://www.cia.gov/library/publications/the-world-factbook/geos/sf.html> (last visited Mar. 20, 2010) (expand "Economy" bar); Country Studies: South Africa, <http://www.country-studies.com/south-africa/the-legal-system.html> (last visited Mar. 20, 2010); Foreign Law Guide, *supra* note 79 (log in, choose "South Africa" from the dropdown menu).

<sup>f</sup>See WORLD JURIST, *supra* note 70, at 434; Pacifico Agabin, *The Philippines*, in MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY, *supra* note 41, at 425, 427, 433, 438–39, 441 & nn.23–24; Palmer, *supra* note 105, at 72, 433, 439; CIA World Factbook, Philippines, <https://www.cia.gov/library/publications/the-world-factbook/geos/rp.html> (last visited Mar. 20, 2010) (expand “Economy” bar); Foreign Law Guide, *supra* note 79 (log in, choose “Philippines” from the dropdown menu).

<sup>g</sup>See INT’L CAP. MARKETS & SEC. REG. § 59:1 (West 2009); WORLD JURIST, *supra* note 70, at 248; Miguel Deutch, *Property Law*, in INTRODUCTION TO THE LAW OF ISRAEL, *supra* note 89, at 159, 159; Goldstein, *supra* note 91, at 147, 156, 161; Uriel Procaccia, *Corporate Law*, in INTRODUCTION TO THE LAW OF ISRAEL, *supra* note 89, at 193, 193–95, 195 n.12, 312; Shalev, *supra* note 89, at 111–14; CIA World Factbook, Israel, <https://www.cia.gov/library/publications/the-world-factbook/geos/is.html> (last visited Mar. 20, 2010) (expand “Economy” bar); Foreign Law Guide, *supra* note 79 (log in, choose “Israel” from the dropdown menu).

<sup>h</sup>See CIA World Factbook, Saint Lucia, <https://www.cia.gov/library/publications/the-world-factbook/geos/st.html> (last visited Mar. 20, 2010) (expand “Economy” bar); Foreign Law Guide, *supra* note 79 (log in, choose “Saint Lucia” from the dropdown menu). See also ANTOINE, *supra* note 79, at 63, 66, 376; WORLD JURIST, *supra* note 70, at 457; James Edward Hogg, *Partnership Law in the Empire*, 18 J. COMP. LEGIS. & INT’L L. 232, 232 (1918); Neil Vidmar, *The Jury Elsewhere in the World*, in WORLD JURY SYSTEMS 421, 438 (Neil Vidmar ed., 2000).

<sup>i</sup>See Ennio Colón & Associates, *Puerto Rico*, in MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY, *supra* note 41, at 364, 370–71, 377, 382–83, 392, 394, 398–99; Palmer, *supra* note 105, at 73; CIA World Factbook, Puerto Rico, <https://www.cia.gov/library/publications/the-world-factbook/geos/rq.html> (last visited Mar. 20, 2010) (expand “Economy” bar).

<sup>j</sup>See R. LEE, AN INTRODUCTION TO ROMAN-DUTCH LAW 2 (1953); Berat, *supra* note 85, at 484 n.100 (stating that Roman-Dutch law is usually defined as the system of law which prevailed in the Netherlands (specifically the province of Holland) from the middle of the fifteenth century until the age of codification); Anton Cooray, *Sri Lanka: Oriental and Occidental Laws in Harmony*, in STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING, *supra* note 45, at 71, 75, 78, 88; LJM Cooray, *The Reception of Roman-Dutch Law in Sri Lanka*, 7 COMP. & INT’L L.J. S. AFR. 295 (1974) (explaining that the substantive private law of the Netherlands was codified in 1838, but in those overseas territories which the Dutch lost prior to 1838 (including the former Dutch possessions of the Cape of Good Hope, Ceylon (now Sri Lanka), and British Guiana (now Guyana)), the nineteenth-century codified Dutch codes were never introduced, and that to the extent that the new sovereign colonizer retained the prior law in those territories, it was preserved in the form of uncodified Roman-Dutch law; also explaining that today, in Sri Lanka and to a greater extent in Guyana, the common law has widely replaced the former Roman-Dutch system); David Carey Miller, *South Africa: A Mixed System Subject to Transcending Forces*, in STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING, *supra* note 45, at 165, 171; Vidmar, *supra* tbl.2, note h, at 435–36; Sanvada, New Companies Act No. 07 of 2007, at 1, available at <http://sanvada.org/policyanalysis/sanvadaComAct6/Executive%20Summary%20%20Companies%20Act.pdf>; CIA World Factbook, Sri Lanka, <https://www.cia.gov/library/publications/the-world-factbook/geos/ce.html> (last visited Mar. 20, 2010) (expand “Economy” bar); Country Studies: Sri Lanka, <http://www.country-studies.com/sri-lanka/judiciary.html> (last visited Mar. 20, 2010); Foreign Law Guide, *supra* note 79 (log in, choose “Sri Lanka” from the dropdown menu). Also to note, the 1860 and 1955 New Zealand Companies Acts were based on United Kingdom Companies Acts 1856 and 1948, respectively, but the New

Zealand Companies Act of 1993 represents a major break with the British model. See 1 ACCOUNTING AND BUSINESS IN ASIA 464–65 (Ronald Ma ed., 1997).

<sup>k</sup>See WORLD JURIST, *supra* note 70, at 348; L. Neville Brown, *Mauritius: Mixed Laws in a Mini-Jurisdiction*, in STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING, *supra* note 45, at 209, 211–14, 218; Muhammad Uteem, *Mauritius: Corporate Finance Legislation—An Overview*, INT'L FIN. L. REV. 1000, at 621 (2007 ed.), available at <http://www.iflr1000.com/pdfs/Directories/3/Mauritius.pdf>; Stefan Voigt, *The (Economic) Effects of Lay Participation in Courts—A Cross-Country Analysis* 33 (CESifo Working Paper No. 2365, 2008); CIA World Factbook, Mauritius, <https://www.cia.gov/library/publications/the-world-factbook/geos/mp.html> (last visited Mar. 20, 2010) (expand “Economy” bar); Foreign Law Guide, *supra* note 79 (log in, choose “Mauritius” from the dropdown menu).

<sup>l</sup>See ANDREAS NEOCLEOUS & CO., INTRODUCTION TO CYPRUS LAW 12, 84, 317, 353–54, 373, 459–60, 465, 575–76 (2000); Vidmar, *supra* tbl.2, note h, at 435; Voigt, *supra* tbl.2, note k, at 34; CIA World Factbook, Cyprus, <https://www.cia.gov/library/publications/the-world-factbook/geos/cy.html> (last visited Mar. 20, 2010) (expand “Economy” bar); Foreign Law Guide, *supra* note 79 (log in, choose “Cyprus” from the dropdown menu).

<sup>m</sup>See WORLD JURIST, *supra* note 70, at 545; John Fagan, *The Role of Securities Regulation in the Development of the Thai Stock Market*, 16 COLUM. J. ASIAN L. 303, 307, 328 (2003); Yut Sangoudhai, *Thailand*, in 1 INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW, NATIONAL REPORTS T9, T9–T15 (Viktor Knapp ed., 1973); Pises Sethsathira, *Securities Regulation in Thailand: Laws and Policies*, 4 PAC. RIM L. & POL'Y J. 783, 784–85 (1995); Philip von Mehren & Tim Sawers, *Revitalizing the Law and Development Movement: A Case Study of Title in Thailand*, 33 HARV. INT'L L.J. 67 (1992); *Business and Company Registration in Thailand*, ASEAN CO-OPERATION, Nov. 22, 2009, <http://aseancooperation.com/business-and-company-registration-in-thailand/261/>; CIA World Factbook, Thailand, <https://www.cia.gov/library/publications/the-world-factbook/geos/th.html> (last visited Mar. 20, 2010) (expand “Economy” bar); Cornell University Law School, News Story: Expanding International Legal Dialogue with Thailand, <http://www.lawschool.cornell.edu/newsstory.cfm?pageid=155045> (last visited Mar. 20, 2010); Foreign Law Guide, *supra* note 79 (log in, choose “Thailand” from the dropdown menu); Joe Leeds, *Introduction to the Legal System and Legal Research of the Kingdom of Thailand*, GLOBALEX, Nov.–Dec. 2008, <http://www.nyulawglobal.org/Globalex/Thailand.htm>; Thailand Board of Investment, Company Establishment, [http://www.boi.go.th/english/how/company\\_establishing.asp](http://www.boi.go.th/english/how/company_establishing.asp) (last visited Mar. 20, 2010); Thailand.com, Doing Business in Thailand, [http://www.thailand.com/exports/html/law\\_business\\_01.htm](http://www.thailand.com/exports/html/law_business_01.htm) (last visited Mar. 20, 2010).

<sup>n</sup>See WORLD JURIST, *supra* note 70, at 341; Ganado, *supra* note 107, at 225–32, 241, 243–47; CIA World Factbook, Malta, <https://www.cia.gov/library/publications/the-world-factbook/geos/mt.html> (last visited Mar. 20, 2010) (expand “Economy” bar); Foreign Law Guide, *supra* note 79 (log in, choose “Malta” from the dropdown menu).

<sup>o</sup>See Booi, *supra* note 99; S. K. Date-Bah, *The Developments of Securities Regulation in Emerging African Capital Markets*, in NEW DEVELOPMENTS IN INTERNATIONAL COMMERCIAL AND CONSUMER LAW 347, 362 (Jacob S. Ziegel & Shalom Lerner eds., 1998); Simon Roberts, *Botswana*, in 1 INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW, NATIONAL REPORTS, *supra* tbl.2, note m, at B39, B39–B40; Vidmar, *supra* tbl.2, note h, at 421–47; CIA World Factbook, Botswana, <https://www.cia.gov/library/publications/the-world-factbook/geos/bc.html> (last visited Mar. 20, 2010) (expand “Economy” bar); Foreign Law Guide, *supra* note 79 (log in, choose “Botswana” from the dropdown menu). To note, the 1860 and 1955 New Zealand Companies Acts were based on United Kingdom Companies Acts 1856 and 1948, respectively, but the New Zealand Companies Act of 1993 represents a major break with the British model. See 1 ACCOUNTING AND BUSINESS IN ASIA, *supra* tbl.2, note j, at 464–65.

<sup>p</sup>Klerman et al., *supra* note 18, tbl.3.

The second column of table 2 is the annualized percent growth of real per capita GDP adjusted for price between the years 1970 and 2003.<sup>115</sup> These values are compared with the world average growth rate, which was 1.9 percent for ninety-eight countries between the years 1960 and 2003.<sup>116</sup> The world average at the time was a mean of 1.89 (rounded up in this study to 1.9 percent) with standard deviation of 1.53.<sup>117</sup> Countries whose GDP growth rate was more than one standard deviation away from the average were categorized as “underperforming” or “overperforming.” That is, countries with growth rates less than 0.36 percent were categorized as underperforming, while those with growth rates above 3.42 percent were categorized as overperforming. This group of underperforming countries includes Jordan, Namibia, and Zimbabwe. Countries in the overperforming group include Botswana, Cyprus, Malta, Mauritius, Sri Lanka, and Thailand.

It is surprising to find that so many of these hybrid countries were high growth countries. Eleven of the fourteen hybrids studied here were at the world mean or above it.<sup>118</sup> Further, of the three underperformers, two had long periods of civil war in their recent histories, which could account for the low growth levels.<sup>119</sup>

The third column of table 2 describes whether the civil law (which was the initial legal system in all the hybrid countries) was codified before the period of common law influence began. This codification was usually modeled after the French Napoleonic Code or some version of it—the Ottoman Empire’s civil code, the Majallah, was based significantly on the French code.<sup>120</sup> The countries that were not modeled after the Napoleonic Code were of Roman-Dutch origin, which is characterized by its uncodified civil form. These were coded as 1 (codified) and 0 (uncodified). This aspect is demonstrated in table 3 and discussed in Part IV.B.2.

Columns four through seven code the different areas of law as either

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115. Penn World Data Version 6.2, *supra* note 79. This value was calculated using GDP per capita rates, the Laspeyres method using the following formula:  $[100 \times \ln(\text{GDP per capita 2003} / \text{GDP per capita 1970})] / 33$ .

116. See Klerman et al., *supra* note 18 (manuscript at 2). Note that comparing hybrid GDP data to a world mean calculated for 1970–2003 may yield a more accurate comparison.

117. *Id.* (manuscript at 10, tbl.3).

118. Of the eighteen hybrid countries for which data was available, fourteen performed or overperformed compared to the mean, and only three underperformed.

119. See CIA World Factbook, Namibia, *supra* tbl.2, note d (expand “Introduction” bar); CIA World Factbook, Zimbabwe, *supra* tbl.2, note b (expand “Introduction” bar).

120. See Foreign Law Guide, *supra* note 79 (log in, choose “Israel” and “Jordan,” respectively, from the dropdown menu).

civil or common law based. This table shows that property law uniformly remained unchanged from the civil tradition, despite British control and imposition of common law on the legal system. General contract law principles also remained resistant to common law influence, but some countries experienced overall change of form. What is surprising is that uniformly, all fourteen countries' corporate and securities laws were based on the British or American common law system.

TABLE 3. Codified v. Uncodified Civil Law Hybrids

	<i>Codified</i>	<i>Uncodified</i>
Overperforming	Malta 5.543	Botswana 5.809
	Mauritius 4.123	Sri Lanka 3.747
	Cyprus 4.304	
	Thailand 4.321	
Performing	Puerto Rico 2.943	South Africa 0.975
	Saint Lucia 2.563	
	Israel 1.795	
	Philippines 1.174	
Underperforming	Jordan -0.385	Namibia 0.177
		Zimbabwe -0.505

Code law is widely thought to be “tough law,” which is more highly resistant to common law penetration than an uncodified system such as in Scotland and South Africa. The Dutch group (Sri Lanka, South Africa, and three other African states) is characterized by uncodified Roman-Dutch law.<sup>121</sup> This idea was first expressed by Dorcas White, who observed that codification “confers a certain enduring quality on law and codified law is ‘tough law.’”<sup>122</sup> This would imply that codified civil law hybrids should be more resistant to common law influences than those countries that did not codify their laws. This seems to be only partly true according to table 2. Codification seems to have made the biggest difference in the area of procedure. The three countries that retained their civil law form of procedure after common law influence were all codified civil law

121. Palmer, *supra* note 69, at 6.

122. Dorcas White, *Some Problems of a Hybrid Legal System: A Case Study of St. Lucia*, 30 INT'L. & COMP. L.Q., Oct. 1981, at 862, 881 (emphasis omitted).

countries.<sup>123</sup> Codified versus uncoded had no effect on corporate and securities laws, which all became uniformly influenced by British and U.S. common law–based laws. In contract law, it seemed there was likewise no effect. As shown in table 2, nearly all those countries that did not have codified civil law retained a civil law form for their contract law principles.

Note that there may be a restricted sample issue, and when accounting for this, the above comparisons may not be completely fair. Some countries, such as Jamaica (Spanish colony), Singapore (Dutch), and Malaysia (Dutch), were originally uncoded civil law countries but were so thoroughly influenced by the common law that they are not considered hybrids today.<sup>124</sup> This is also true for some countries in the Caribbean islands<sup>125</sup> and some former German colonies—Tanzania has little trace left of German civil law.<sup>126</sup> These countries were all uncoded, which would support Dorcas White’s hypothesis—that the uncoded civil law was ineffective in resisting common law influence such that now there is little civil law left in their legal systems. One must note too, however, that this analysis is confounded by the fact that the British took control of these countries relatively early, so there was less time for the civil law to become entrenched and more time for British law to become dominant. Also, perhaps a distinction can be drawn in that the common law is not as powerful an influence in independence as it is in colonialism.

### C. ANALYSIS

Tables 2 and 3 taken together support Palmer’s argument that hybrid countries experience common law influence in a rather systematic and uniform way—civil law remained resilient in the realm of private law, and common law influence was more pervasive in the realm of public law.<sup>127</sup>

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123. Louisiana’s experience also tends to support this finding. Though excluded from the main analysis for lack of GDP data, Louisiana also had a coded civil law before the United States’ common law influence and has since retained its civil law–based civil procedure, though its criminal procedure has now adopted a U.S. common law form. See Palmer & Sheynes, *supra* note 79, at 266–67.

124. That is, not according to this study’s definition of having significant common and civil law elements. See Foreign Law Guide, *supra* note 79 (log in, choose “Jamaica,” “Singapore,” and “Malaysia,” respectively, from the dropdown menu). See also JuriGlobe Mixed Legal Systems, *supra* note 40.

125. An example is Trinidad and Tobago. See Foreign Law Guide, *supra* note 79 (log in, choose “Trinidad and Tobago,” “Antigua and Barbuda,” and “Jamaica,” respectively, from the dropdown menu).

126. See *id.* (log in, choose “Tanzania” from the dropdown menu).

127. This analysis would hold true if considering securities and corporate law to be part of the public law. See Palmer, *supra* note 69, at 9 (defining private law as the law of persons, family law, property, succession, obligations, and contracts). But even taking corporate and securities law out of the

The fact that private law is less susceptible to common law influence is not a new concept, and the results for many of the hybrid countries in this study reaffirm that theory.

Also affirmed is that even in the private sphere, property law is least susceptible to common law influence, and contract law somewhat less susceptible. As Palmer notes, civil law regulates property with much greater specificity than it covers contracts.<sup>128</sup> Secondly, in property, civil and common law rules are found not only to be more specific, but also often “patently opposed to one another.”<sup>129</sup> Property has been described as “the most unassailable stronghold of civilian jurisprudence.”<sup>130</sup> An alternative explanation for the resilience of property law is because of the duration of property rights.<sup>131</sup> The legal regime for property becomes too difficult to change if these changes must be applied retroactively and invasively to rights over land that have gone back for long periods of time, especially if title goes back to a pre-common law date.<sup>132</sup> Thus, a legal system is forced to take into account the preexisting property regime. Changing contract law, on the other hand, is much easier because contract law is more malleable and very few contracts have rights or obligations that go as far back as property rights.<sup>133</sup> Changes in contract law can also be implemented without substantial disruption (for example, all contracts formed after this date must be governed by common law) in a way that is not easily implementable for property law.<sup>134</sup> Property rights are thus uniquely long lasting.

In terms of contract law, it is more susceptible to common law influence than property law, especially in certain areas such as estoppel, the mailbox rule, and quasi-contract.<sup>135</sup> However, the civil law principle of *causa* has proven to be very resilient to common law influence—*causa* is alive and well, and consideration has not been able to make headway. This is true in almost every hybrid country studied. For example, a legal expert

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analysis, most of these countries experienced strong resilience of civil law in property and contract, and much more common law influence in procedure.

128. *Id.* at 59.

129. *Id.*

130. *Id.* at 57.

131. Telephone Interview with Daniel M. Klerman, Charles L. & Ramona I. Hilliard Professor of Law & History, Univ. of S. Cal. Gould Sch. of Law (Mar. 24, 2009).

132. *Id.*

133. *Id.*

134. *Id.* The option would be to engage in expropriation and then reassign property rights.

135. See Palmer, *supra* note 105, at 57–58 (discussing how consideration not being accepted prevents the overturn of the civil law principle of *causa*, but that other common law notions and principles are adopted in limited fashion (for example, mailbox rule and unjust enrichment)).

in Puerto Rico stated that “all contracts must have a cause, an object, and consent. Others must also present a special form defined by our Civil Code to validate the contract.”<sup>136</sup> Additionally,

[a]s a result of our relations with the United States, there was an inclination in the first half of the century in Puerto Rico to substitute our civil concept of cause with the concept of consideration from common law. This change has been impossible because our concept of cause is not similar to the concept of consideration . . . .<sup>137</sup>

This sentiment is expressed in many other country reports.<sup>138</sup>

One departure from Palmer’s argument is that public law is systematically influenced by common law.<sup>139</sup> This is not the case for some of the hybrid countries. Three countries maintained a civil law form for their procedural codes, as described in paragraphs above, and thus perhaps the public law is not so easily influenced by common law as Palmer assumes.

One significant finding of the study is that for all countries, whether codified or uncoded, civil law was uniformly resilient in property law and corporate and securities law was uniformly common law in nature for all hybrids studied.

Another surprising finding is that, as a whole, this group of hybrid countries has performed extremely well regarding GDP growth when compared to the world GDP mean for a similar time period—eleven out of fourteen hybrids performed at or above the world mean. This result implies that having major areas of law remain civil law based did not hinder the economic performance of those countries. More surprising is that many more codified civil law hybrids overperformed economically during the given time period than uncoded hybrids did. There were actually higher GDP rates in codified civil countries than in uncoded. There were, of course, more codified civil law countries in the sample than uncoded, but that there seemed to be no difference in economic performance whether the country had codified or uncoded civil laws is worth noting. This finding supports the proposition that whether a country had codified or uncoded civil law may not matter to economic growth; if it mattered, we would expect that more uncoded countries would perform better than codified countries, since the law is more flexible, more susceptible to change, and

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136. Colón & Associates, *supra* tbl.2 note i, at 398–99.

137. *Id.* at 399.

138. See Du Plessis, *supra* tbl.2, note e, at 223–25.

139. Palmer, *supra* note 69, at 8–9.

subject to greater common law influence. In general, the findings in this study are surprising because legal origins theory as applied to hybrid countries would predict that these countries would not perform as well economically given their civil law components when compared to the world mean and that the codified civil law hybrids would perform worse than the uncoded hybrids. The study, however, yielded the opposite of both suppositions.

What are the implications of such findings? Is it that legal origin does not matter for economic growth? For as the decade of legal origins literature implies, civil countries (and especially those more resilient to common law influence) should have worse institutions and thus experience worse economic outcomes than those with more common law influence. Perhaps this study's finding implies that it does not matter if a legal system is civil in origin as long as corporate, commercial, and securities laws are flexible to change to reflect the dominant world economic leader of the time, as Palmer hypothesizes. According to Palmer's in-depth research of seven hybrid countries, they all uniformly adopted what he called the commercial laws of the "dominant economy" (or the dominant world economic power as this Note interprets it).<sup>140</sup> The reasons seem to be based on the requirements of commerce, and on perceptions of economic self-interest, and due to the more value- and culture-neutral nature of commercial laws in comparison to other fields of private law.<sup>141</sup> Further, Reynolds and Flores have stated that some countries adopt certain corporate laws specifically or international corporate laws in order to attract foreign investment.<sup>142</sup> This movement toward common law-based commercial laws may just as likely, and perhaps more plausibly, be attributable to the fact that these countries, with the exception of Thailand, were colonized by Great Britain or the United States and were naturally subject to common law influence, especially in areas of law more easily susceptible to change (such as commercial law as opposed to areas like property law). However, Thailand, Jordan, and Israel are hybrid countries in which the overall form of an area of law is ascribable to the deliberate efforts of lawmakers rather than to the influence of a colonizer.<sup>143</sup>

Alternatively, perhaps legal origins do in fact matter to economic

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140. Palmer, *supra* note 105, at 66–67 (discussing why commercial law has moved toward Anglo-American law).

141. *Id.*

142. *E.g.*, Foreign Law Guide, *supra* note 79 (log in, choose "Vanuatu" from the dropdown menu).

143. *See supra* text accompanying notes 86–92.

outcome and what is seen here is that the most recent legal origin matters most, or that these results support more the idea that common law origin is best for economic development via financial institutions as originally posited by LLSV 1997, as the findings show every hybrid country adopted common law–based corporate and securities laws.

This leads to a question: Which areas of law are the most important to long-term economic growth? Are some more important than others? Perhaps the legal origin of property and contract law does not matter as much as whether institutions supporting enforcement are strong, rights are protected, and obligations upheld.<sup>144</sup> Perhaps corporate and securities laws are the most important—as LLS 2008 has stated, “The most obvious potential channel of influence of legal origins on [economic] growth is financial development, since legal origins have such strong effects on finance.”<sup>145</sup> Because this group of rather high economic growth countries shares a similar backdrop of civil law–based property and contract law and common law–based corporate and securities law, the results perhaps show that as long as basic foundational institutions are strong, economic development does not depend on legal system at all but rather on overall institutional strength and enforcement of rights. This question is a hard one to answer. As one scholar notes:

Some (such as La Porta 1998) have suggested that “common law” systems outperform “civil code” systems but these studies are based on highly simplified notions of the legal institutional differences between “common” and “civil” law; moreover, we do not know what particular features of “common law” institutions matter and whether they are in any way essential to “common law.”<sup>146</sup>

However, this would be an important area for future study, especially in making specific recommendations for legal reform for developing countries.

Another related implication can be drawn from this analysis: as a

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144. De Soto and North, *see supra* note 97, are among some leading scholars who emphasize the importance of property and contract rights enforcement in general, but we do not know what aspects (common or civil or otherwise) affect economic development. *See infra* note 146 and accompanying text.

145. *See* LLS 2008, *supra* note 2, at 302 (citing two studies that find private debt market development is a statistically significant and quantitatively important predictor of growth). However, LLS warns caution with their statement regarding this direct link between financial development and economic growth because “the exclusion restriction is unlikely to be satisfied and because the results are often sensitive to the inclusion of other variables, such as alternative measures of human capital.” *Id.*

146. Hadfield, *supra* note 97, at 200.

policy matter, or as a strategy for economic development, these findings suggest that countries may be able to successfully import corporate and securities law from outside their legal origin. This implication departs from previous literature that suggests imposed legal systems lead to a “transplant effect” that may have a negative, indirect effect on economic development.<sup>147</sup> As the mixed countries in this study had not one, but two, legal systems imposed on them, their relatively high GDP rates are especially surprising in light of the transplant effect theory.

One final finding of this study is that the results affirm the broader notion that legal origin is a form of social control. As one author describes it, “In hybrid legal systems, the civil law is restricted primarily to the private law. In contrast, public law characteristically belongs to the legal tradition of the conquering or acquiring power. It is, essentially, an expression of sovereign power.”<sup>148</sup> Or as LLS 2008 defines this notion, they “adopt a broad conception of legal origin as a style of social control of economic life.”<sup>149</sup> Under this view,

legal origin is not just whether a country has a legal system based on the *Code Napoleon* or on the precedents of the English common law. Nor is legal origin simply about whether the judiciary is a bureaucracy tasked with textual interpretation rather than a high status independent group with *de facto* law making powers. Rather, legal origin stands for “strategies of social control” that either “support private market outcomes” or implement specific state policies.<sup>150</sup>

And as noted previously, Palmer describes legal systems as something that reflects the dominant world economic power.<sup>151</sup>

Perhaps legal origin is a reflection of all of the above. What is most encouraging is that this research shows that economic development may not be fatalistically tied to a country’s legal origin (whatever country it was colonized by and adopted the laws of) but rather that countries can be deliberate about the legal policies they choose to pursue and what laws and legal principles they want their legal systems to imbued with, as evidenced by the countries in this study, and as especially evidenced by countries like

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147. See Daniel Berkowitz, Katharina Pistor & Jean-Francois Richard, *The Transplant Effect*, 51 AM. J. COMP. L. 163, 170–72 (2003). Whether this is an effective strategy for legal reform and increasing economic growth rates is a matter in debate, but it is outside the scope of this paper. See Troy A. Paredes, *A Systems Approach to Corporate Governance Reform: Why Importing US Corporate Law Isn’t the Answer*, 45 WM. & MARY L. REV. 1055, 1070–75 (2004).

148. ANTOINE, *supra* note 79, at 58–59.

149. LLS 2008, *supra* note 2, at 286.

150. Klerman et al., *supra* note 18 (manuscript at 4) (quoting LLS 2008, *supra* note 2, at 286).

151. See Palmer, *supra* note 105, at 66–67.

Jordan, Israel, and Thailand.

There are several limitations to this study that should be noted here. First, this Note attempts to code different areas of law in each of the hybrid countries to see if there were sweeping similarities or generalities between them. This type of approach necessitated a rather shallow inquiry into the various laws that make up the categories this study involved (including property, contract, corporate, securities, and procedure). There is still an enormous amount of research that needs to be done—researching equally deeply into specific areas of law and conducting comparative analysis of this unique group of countries could yield even further implications.

This Note does not take into account the role of language in preserving a legal system. For example, according to Zweigert and Kötz, Roman-Dutch law was unable to “hold on as well in Sri Lanka” as it did in South Africa through the years, mainly because Dutch and Afrikaans are no longer spoken in Sri Lanka; thus, it is more difficult to access Dutch or Roman sources or decisions.<sup>152</sup> This concept is also reflected in a more recent work by William Tetley, who concludes that “the long-term survival of a mixed jurisdiction is greatly facilitated by (and perhaps even contingent upon) the presence of at least two official (or at least widely spoken) languages in that jurisdiction, each mirroring and supporting one of the legal systems there.”<sup>153</sup>

## V. CONCLUSION

This Note makes several notable findings from its research. First, it finds that this group of hybrid countries in general has performed extremely well economically when compared to ninety-eight countries around the world during a similar time period. Secondly, it finds that nearly all hybrids began as civil law systems and then became hybrid with differing levels of common law influence. These influences have been systematic—with property and contract law remaining overwhelmingly civil law based, and with public law, corporate, and securities law experiencing the most

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152. ZWEIGERT & KÖTZ, *supra* note 13, at 232.

153. William Tetley, *Nationalism in a Mixed Jurisdiction and the Importance of Language (South Africa, Israel, and Quebec/Canada)*, 78 TUL. L. REV. 175, 216 (2003). *See also* T. B. Smith, *The Preservation of the Civilian Tradition in “Mixed Jurisdictions,”* in CIVIL LAW IN THE MODERN WORLD 3, 16 (Athanasios N. Yiannopoulos ed., 1965) (compiling the papers presented at the first annual meeting of the Civil Law Section of the Louisiana State Law Institute, held in New Orleans, Louisiana from May 17 through 18, 1963, and noting that “mixed legal systems which use English as the language of the courts are particularly exposed to subversion through imposition or incautious acceptance of technical terms of Anglo-American common lawyers as equivalents to civilian concepts”).

common law influence. Third, this study finds that there was no difference in the amount of common law influence on corporate and securities law based on whether the civil law was codified or uncoded, and no difference in economic growth (or even better performance by codified civil countries) despite previous literature that suggested otherwise.

The surprisingly strong economic performance of these hybrids suggests that a simple application of legal origins theory is not a good predictor of economic growth, at least when applied to these countries, and the findings support the argument that corporate, commercial, and securities laws play an important role in a country's economic development. Whether the legal form of such laws is a reflection of colonial power and influence, external trade and commercial pressures, or internally motivated and deliberate policymaking is a question raised by this study rather than answered by it; however, this Note does show that a closer look at this oft-ignored group of countries may yield meaningful implications for the legal origins debate.

This study aimed to provide an overview or introductory look into this larger group of hybrids, and it barely scratches the surface of their complex legal histories. It is a modest first attempt at comprehensive comparative analysis of these hybrid countries in the context of the legal origins debate, and there is further, more sophisticated research to be done in this area that may yield important findings. Areas of future study include deeper analysis of the laws and principles within each area of law and then comparative study to see if that analysis confirms this study's findings, studies of the effects of language on staying common law influence in light of economic growth rates, and attempts to find which aspects of civil and common law institutions are most important to economic growth.

## APPENDIX

TABLE A.1. Overall Coding with GDP Rate and Aspects of Judicial Formalism

Country	GDP Rate	Codified/ Uncodified	Property	Contract	Corporate/ Securities	Procedure	Use of Juries	Precedent
<b>Under-Performing</b>								
Zimbabwe	-0.505	0	1	1	0	n/a	n/a	1
Jordan	-0.385	1	1	1	0	1	n/a	n/a
Namibia	0.177	0	n/a	1	0	0	n/a	n/a
<b>Performing</b>								
South Africa	0.975	0	1	1	0	0	n/a	1
Philippines	1.174	1	1	0	0	0	0	1
Israel	1.795	1	1	1	0	0	0	1 <sup>a</sup>
Saint Lucia	2.563	1	1	0	0	0	1	n/a
Puerto Rico	2.943	1	1	1	0	0	n/a	1



