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Nuno Garoupa
ngaroup@gmu.edu

Carlos Gomez Liguerra

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THE EFFICIENCY OF THE COMMON LAW: THE PUZZLE OF MIXED LEGAL FAMILIES¹

NUNO GAROUPA^{*}
CARLOS GÓMEZ LIGÜERRE^{**}

ABSTRACT

Many legal economists suggest that the common law system spurs more economic growth than the civil law system. The legal origins movement popularized this theory. From the perspective of such literature, the existence of hybrid, pluralist or mixed legal jurisdictions is a puzzle. Why has civil law persisted while common law is more efficient?

This paper discusses the efficiency of the common law hypothesis from the perspective of hybrid jurisdictions. We argue that the complexities of legal systems require a more nuanced analysis. The consequence is that there is no single efficient outcome, thus undermining the “one-size-fits-all” theory of the legal origins literature.

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• Professor and H. Ross and Helen Workman Research Scholar, UIUC College of Law; BA (Econ), Universidade Nova de Lisboa (Portugal), MSc (Econ), University of London (UK), DPhil (Econ), University of York (UK), LLM, University of London (UK).

• Associate Professor of Private Law, Universitat Pompeu Fabra (Spain); BA (Management), LLB, PhD (Law) Universitat Pompeu Fabra (Spain).

I. INTRODUCTION

Legal economists in the last decade have popularized the legal origins literature.¹ They have emphasized the superiority of the common law system over French civil law (while absolving German and Scandinavian civil law from a similar fate).² This perspective has become popular in legal scholarship as well as in legal policy making.³

This new literature contends that legal institutions descended from English common law have superior institutions for economic growth and development as compared to those of French civil law.⁴ Legal economists give two arguments. First, common law provides more adequate institutions for financial markets and business transactions more generally, and that, in turn, fuels more economic growth.⁵ Second, French civil law presupposes a greater role for state intervention and that intervention is detrimental for economic freedom and market efficiency.⁶

Some legal economists have traced the alleged superiority of the common law to the Posnerian hypothesis of the efficiency of the common law.⁷ Judge Posner introduced this controversial thesis in the first edition of his seminal book.⁸ He posited that the common law contained an implicit economic logic.⁹ In his view, the doctrines in common law provide a coherent and consistent system of incentives

¹ See generally Paul G. Mahoney, *The Common Law and Economic Growth: Hayek Might Be Right*, 30 J. LEGAL STUD. 503 (2001); see generally Rafael La Porta, Florencio Lopez-de-Silanes & Andrei Shleifer, *The Economic Consequences of Legal Origins*, 46 J. ECON. LITERATURE 285 (2008); see generally Gani Aldashev, *Legal Institutions, Political Economy, and Development*, 25 OXFORD REV. ECON. POL'Y 257 (2009). A more recent paper finds the opposite result when focusing on the quality of the court system. See Frank B. Cross & Dain C. Donelson, *Creating Quality Courts*, 7 J. EMPIRICAL LEGAL STUD. 490, 490 (2010) (concluding common law is negatively correlated to the quality of courts in Europe).

² See Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer & Robert W. Vishny, *Law and Finance*, 106 J. POL. ECON. 1113, 1116 (1998).

³ In particular, under the auspices of some programs associated with the World Bank. See, e.g., Vivian Grosswald Curran, *Comparative Law and the Legal Origins Thesis: "[N]on scholae sed vitae discimus"*, 57 AM. J. COMP. L. 863, 863–864, 875 (2009).

⁴ See KENNETH W. DAM, *THE LAW-GROWTH NEXUS: THE RULE OF LAW AND ECONOMIC DEVELOPMENT* 32–34 (2006); see also Mark J. Roe & Jordan I. Siegel, *Finance and Politics: A Review Essay Based on Kenneth Dam's Analysis of Legal Traditions in The Law-Growth Nexus*, 47 J. ECON. LITERATURE 781, 797–98 (2009).

⁵ See La Porta et al., *supra* note 1, at 298.

⁶ See Mahoney, *supra* note 1, at 521.

⁷ See Nuno Garoupa & Carlos Gómez Ligüerre, *The Syndrome of the Efficiency of the Common Law*, 29 B.U. INT'L L.J. 287, 293 (2011).

⁸ See RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* 98–101 (1st ed. 1972).

⁹ *Id.* at 98.

which induce efficient behavior, not merely in explicit markets, but in all social contexts (the so-called implicit markets).¹⁰ For example, common law reduces transaction costs to favor market transactions when appropriate.¹¹

Previous work has debunked the relationship between the Posnerian hypothesis and the legal origins movement.¹² We have argued that even if the common law is efficient in the Posnerian sense, further underlying assumptions are needed to conclude that civil law is less conducive to economic growth than common law.¹³ We have also highlighted that given the significant variations within the common law world, it is unclear what we mean by evolution to an efficient outcome.¹⁴

The main concern with the legal origins theory is the implicit assumption of a “one-size-fits-all” solution to institutional design. Previously, we identified the methodological problem with such an approach. In our view, such theory is based on a selected “cherry-picking” of legal doctrines and macro-generalizations that lack a serious theoretical framework.¹⁵ We have articulated our skepticism concerning the possibility of a sophisticated theory to sustain the superiority of the common law legal family.¹⁶

Legal systems are not randomly distributed around the world.¹⁷ Most jurisdictions inherit their legal system from an invader, an occupier, or a colonial power.¹⁸ Few countries have actually chosen their legal system as the outcome of a conscious debate over the existing possibilities.¹⁹ The standard examples are Japan, Thailand and the Ottoman Empire, countries that by the end of the nineteenth century, favored civil law (German in the first case and French in the last two

¹⁰ See *id.* at 98–100.

¹¹ *Id.* at 99.

¹² See Garoupa & Gómez Ligüerre, *supra* note 7, at 288.

¹³ *Id.*

¹⁴ Nuno Garoupa & Carlos Gómez Ligüerre, *The Evolution of the Common Law and Efficiency*, 40 GA. J. INT'L & COMP. L. (forthcoming 2012) (manuscript at 15) (on file with authors).

¹⁵ See Garoupa & Gómez Ligüerre, *supra* note 7, at 288.

¹⁶ Garoupa & Gómez Ligüerre, *supra* note 14, at 19; see also JAN SMITS, *Introduction: Mixed Legal Systems and European Private Law*, in SYSTEMS TO EUROPEAN PRIVATE LAW 1, 5 (2001).

¹⁷ See UGO A. MATTEI, TEEMU RUSKOLA & ANTONIO GIDI, *SCHLESINGER'S COMPARATIVE LAW* 223–47 (7th ed. 2009).

¹⁸ See generally Daniel Berkowitz, Katharina Pistor & Jean-Francois Richard, *Economic Development, Legality, and the Transplant Effect*, 47 EUR. ECON. REV. 165, 168–69 (2003).

¹⁹ For an overview, see generally KONRAD ZWEIGERT & HEIN KÖTZ, *INTRODUCTION TO COMPARATIVE LAW* 74–319 (Tony Weir trans., Oxford Univ. Press, 3d ed. 2008) (1977).

cases) over available alternatives at the time.²⁰ The reasons for their choice had less to do with economic efficiency, and more to do with the perception of the fast growing French and later German power (military more than economic) and modernization.²¹

However, at the same time, one can hardly think that legal systems are merely correlated with the particular dominant culture.²² In fact, being simplistic but nevertheless informative, Britain colonized the areas of the world that were relevant from the perspective of their economic and military interests²³. The remaining European powers were essentially left with the regions that the British did not want.²⁴ Britain defeated all competing European colonial powers at one stage or another, so common law was developed in places Britain perceived to be important areas of the world.²⁵ Civil law was constrained and limited to regions that were not perceived significant for British interests.²⁶ As a consequence, the distribution of legal systems is necessarily correlated with British imperial perceptions of relevance.²⁷ And these perceptions are inevitably correlated with potential economic growth, thus creating a serious technical problem to the econometric estimations of the legal origins movement.²⁸

Some areas of the world were initially colonized by European countries that have civil law (although in some cases their civil law

²⁰ See HIROSHI ODA, *JAPANESE LAW* 13–20 (3d ed. 2009). The Ottoman Empire slowly shifted to German civil law and adopted a civil code inspired by the Swiss model in 1926. See Ruth A. Miller, *The Ottoman and Islamic Substratum of Turkey's Swiss Civil Code*, 11 J. ISLAMIC STUD. 335, 335 (2000) (Eng.).

²¹ See ODA, *supra* note 20, at 15; see also CARL F. GOODMAN, *THE RULE OF LAW IN JAPAN: A COMPARATIVE ANALYSIS* 20–23 (2d rev. ed., 2008).

²² See Berkowitz et. al., *supra* note 18, at 180.

²³ See generally PHILIPPA LEVINE, *THE BRITISH EMPIRE: SUNRISE TO SUNSET* (2007).

²⁴ See *id.* at 43.

²⁵ The Portuguese and Spanish decline after the 1600s benefited primarily the British. The Dutch empire was largely contained by the British when William III became King (1688). The British defeated the French at the Seven Year's War and the Treaty of Paris (1763) transferred most relevant parts of the French colonial empire to the British. Britain was the major winner of the Berlin conference (1885) where Africa was partitioned among the European powers. The defeat of Germany, Austria and the Ottoman Empire in 1918 benefited the British and the French. See generally PHILIPPA LEVINE, *THE BRITISH EMPIRE: SUNRISE TO SUNSET* (2007); see also LAWRENCE JAMES, *THE RISE AND FALL OF THE BRITISH EMPIRE* 15, 51, 54, 94, 288, 395–397(1995).

²⁶ See generally Levine, *supra* note 23.

²⁷ See Daniel M. Klerman, Paul G. Mahoney, Holger Spamann & Mark Weinstein, *Legal Origin or Colonial History?*, 3 J. LEGAL ANALYSIS (forthcoming 2011)(manuscript at 1) (Eng.).

²⁸ *Id.* at 11.

predates the nineteenth century codification).²⁹ Due to the strategic role they played for the interests of the British Empire, Britain eventually defeated other European powers and acquired these territories.³⁰ Consequently these parts of the globe were subject to common law in a second wave of legal transplants.³¹ In not a single case have we seen common law fully obliterating the civil law past.³² In some jurisdictions, the civil law past has faded with time and is tenuously reflected in current legal institutions, the most obvious examples are the American Southern states.³³ However, in the vast majority of these jurisdictions, the civil law and the common law have coexisted.³⁴ Comparativists loosely refer to these institutional arrangements as mixed jurisdictions.³⁵

In this paper we take a different approach from our previous work. We focus on mixed, pluralist or hybrid jurisdictions. These are jurisdictions that mix elements of civil law and common law (and eventually elements from a third legal system). Given the alleged superiority of the common law system, one should expect the civil law to fade away. Moreover, the common law being the legal system of the later, stronger colonizer or occupier, we should suppose the civil law to be in a difficult position to survive.³⁶ Such predictions are, broadly speaking, inconsistent with reality. We discuss the reasons for that with an economic model.

First, the paper discusses the conceptualization of mixed or hybrid legal systems. Second, we discuss an economic model to explain the sustainability of hybrid solutions. Finally, we conclude with final remarks.

²⁹ See VERNON VALENTINE PALMER, MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY 18–20 (2001).

³⁰ *See id.*

³¹ *Id.* at 19.

³² *See id.* at 19–21.

³³ See Daniel Berkowitz & Karen Clay, *American Civil Law Origins: Implications for State Constitutions*, 7 AM. L. & ECON. REV. 62, 62 (2005); Daniel Berkowitz & Karen Clay, *The Effect of Judicial Independence on Courts: Evidence from the American States*, 35 J. LEGAL STUD. 399, 399 (2006).

³⁴ See PALMER, *supra* note 29, at 18–20.

³⁵ *Id.* at 11.

³⁶ *Id.* at 21–22 (providing a historical characterization of the common law having a stronger position).

II. MIXED JURISDICTIONS AND MIXED LEGAL FAMILIES

The comparative law literature does not provide for any precise definition of a mixed jurisdiction. The reason is that probably all jurisdictions are mixed in the sense that they are informed by indigenous legal tradition and transplants in relevant areas of the law.³⁷ Jurisdictions interact for multiple reasons and, as a consequence, conscious or not, by statute, by case law, or by legal practice, are influenced by other jurisdictions.³⁸ If every jurisdiction is mixed, then the classification of legal families must be based on a matter of degree.³⁹

The first distinction is between those jurisdictions that mix legal systems in a systematic way and those that do not.⁴⁰ Within the jurisdictions that do not mix legal systems in a systematic way, we include the vast majority of the world that is usually affiliated to a particular legal family. They occasionally and opportunistically transplant laws and legal institutions from a different legal family, but overall they follow a particular dominant tradition.⁴¹ Obviously such classification does not come without problems. Nevertheless, it fits with

³⁷ Jacques Du Plessis, *Comparative Law and the Study of Mixed Legal Systems*, in THE OXFORD HANDBOOK OF COMPARATIVE LAW 478, 478 (Mathias Reimann & Reinhard Zimmermann eds., 2006) (“Legal systems generally are ‘mixed’ in the sense that they have been influenced by a variety of other systems. However, traditionally the term ‘mixed’ is only used to describe a relatively small group of legal systems or jurisdictions which have been shaped so significantly by both the civil law and common law traditions that they cannot be brought home comfortably under either. Thus, as far as their substantive law is concerned, key areas of the private law in many of these systems are predominantly civilian (in some it is even codified), whereas commercial law quite often strongly bears the imprint of the common law. And while public law in general has been strongly influenced by the common law, aspects of the criminal law, and more recently even constitutional law, at times display civilian features. Procedurally, these systems have in turn generally adopted a common law approach to adjudication: the judge is at the forefront of legal development, and precedent is generally regarded as binding and as more authoritative than academic writings.”). See also Esin Örüçü, *What is a Mixed Legal System: Exclusion or Expansion?*, 12 ELEC. J. COMPARATIVE L. 1, 1 (2008) (observing that current European legal systems are better seen as overlaps rather than pure common law or civil law since contamination exists and borrowing has been the practice of legal development).

³⁸ See generally Nuno Garoupa & Anthony Ogus, *A Strategic Interpretation of Legal Transplants*, 35 J. LEGAL STUD. 339, 342 (2006) (Eng.).

³⁹ See Ugo Mattei, *Three Patterns of Law: Taxonomy and Change in the World’s Legal Systems*, 45 AM. J. COMP. L. 5, 8–10 (1997); Andrew Harding, *Global Doctrine and Local Knowledge: Law in South East Asia*, 51 INT’L & COMP. L. Q. 35, 49 (2002) (making the argument that the standard distinction common vs. civil law is inappropriate to understand Asian legal systems); Örüçü, *supra* note 37, at 1 (discussing alternative models of classification).

⁴⁰ See H Patrick Glenn, *Quebec: Mixité and Monism*, in STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING 1, 1 (Esin Örüçü, Elspeth Attwooll & Sean Coyle eds., 1996).

⁴¹ *Id.*

the traditional division between civil and common law legal families.⁴² The focus of our article is on those jurisdictions that combine legal systems in a systematic way and therefore cannot be regarded as either civil or common law.

A second important distinction is between those jurisdictions that have a structured mix and those that have an unstructured mix.⁴³ By unstructured mixed legal system, comparativists understand an overlap of two traditions, with no clear or evident application of one or the other to all legal subjects.⁴⁴ There is no formal articulation or coordination between the two legal traditions. The obvious example is European law and aboriginal law in many African countries.⁴⁵

Contrarily, by structured mixed legal system, there is some coordination.⁴⁶ Such coordination can take different complementary forms. It could be established by conceptual boundaries (such as private and public law).⁴⁷ It could be categorized even within areas where the overlap is unclear (such as commercial law or procedure).⁴⁸ Alternatively, a legal tradition could dominate in certain areas of the law with legislative pockets of the other legal family.⁴⁹ Finally, both legal traditions may coexist under a process of mutual recognition of structured boundaries and sources.⁵⁰

Structured mixed legal systems can be pluralist (usually dualist) or hybrid.⁵¹ By pluralist, we envisage the case where the different legal families operate side by side, in well-defined contained areas of the law.⁵² For example, private law follows the civil law tradition whereas public law follows the common law tradition.⁵³ By hybrid, we consider the possibility of blending together those legal traditions.⁵⁴ A possibility is

⁴² See Mattei, *supra* note 39, at 7–8.

⁴³ GLENN, *supra* note 40, at 5.

⁴⁴ *Id.* at 2–3.

⁴⁵ See generally JEANMARIE FENRICH, PAOLO GALIZZI & TRACY HIGGINS, *THE FUTURE OF AFRICAN CUSTOMARY LAW* (2011); see, e.g., Phil Bartle, *African and European Law in Ghana*, *AKAN STUDIES* (last visited Dec. 6, 2011), <http://www.scn.org/rdi/kw-law.htm>.

⁴⁶ GLENN, *supra* note 40, at 5.

⁴⁷ *Id.* at 2.

⁴⁸ *Id.* at 6.

⁴⁹ *Id.* at 13.

⁵⁰ *Id.* at 15.

⁵¹ See ESIN ÖRÜCÜ, *General Introduction: Mixed Legal Systems at New Frontiers*, in *MIXED LEGAL SYSTEMS AT NEW FRONTIERS* 1,1 (2010).

⁵² *Id.* at 4.

⁵³ *Id.* at 3–4.

⁵⁴ *Id.* at 2–4.

that contract law, or more generally private law, combines both common and civil law doctrines.⁵⁵

The terminology in comparative law is not without problems. In fact, some comparativists have criticized the standard vocabulary. For example, legal scholars refer to “mixed jurisdictions” when they use common and civil law traditions, rather than “mixed legal systems” as would be more appropriate.⁵⁶ The term “mixed jurisdictions” seems to presuppose a degree of hybridism which is usually absent.⁵⁷ The term “mixed legal systems” anticipates legal pluralism which seems more frequent than hybridism.⁵⁸

In this paper we focus on structured mixed legal systems, in particular those that use both the common and the civil law traditions. Table 1 summarizes the jurisdictions we are considering. Notice that some relevant cases have been excluded from Table 1 (based on the work of comparativists) but can be easily framed in the context of our model. They are Japan, Korea, and Taiwan that were pure civil law jurisdictions (all of German tradition) and have now been influenced by the US common law system.⁵⁹ We could add Hong Kong as a common law tradition now under the influence of Chinese law (which loosely speaking could be considered in the civil law tradition).⁶⁰ The European Union is a completely different case that blends the different civil law traditions with some elements of the common law (due to the United Kingdom, Ireland, and more recently Malta and Cyprus).⁶¹

There is no formal model of mixed jurisdiction to the same extent that there is no formal model of common law or civil law.⁶² Any jurisdiction incorporating elements from both legal traditions has developed a particular institutional feature that makes any mixed system unique. In fact, jurisdictions of a mixed legal family were not originally

⁵⁵ See Vernon Valentine Palmer, *Two Rival Theories of Mixed Legal Systems*, in MIXED LEGAL SYSTEMS AT NEW FRONTIERS 19, 45–47 (Esin Öricü ed., 2010).

⁵⁶ See *id.* at 20–21.

⁵⁷ *Id.* at 26–35.

⁵⁸ *Id.* at 35–36.

⁵⁹ See ODA, *supra* note 20, at 1 (discussing the particular case of Japan).

⁶⁰ See Peter Wesley-Smith, *The Content of the Common Law in Hong Kong*, in THE NEW LEGAL ORDER IN HONG KONG 9, 10 (Raymond Wacks ed., 1999); see RANDALL PEERENBOOM, CHINA'S LONG MARCH TOWARD RULE OF LAW 7–8 (2002).

⁶¹ See generally PAUL CRAIG & GRÁINNE DE BÚRCA, EU LAW: TEXT, CASES AND MATERIALS 4 (5th ed. 2011); see also Vernon Valentine Palmer, *Two Rival Theories of Mixed Legal Systems*, in MIXED LEGAL SYSTEMS AT NEW FRONTIERS, *supra* note 56, at 45–47.

⁶² See PALMER, *supra* 29, at 5–6; Hein Kötz, *The Value of Mixed Legal Systems*, 78 TUL. L. REV. 435, 435 (2003).

founded as such.⁶³ Their mixed nature is the product of a later change. Following the insights of a famous legal scholar, we could define these jurisdictions as “basically a civilian system that had been under pressure from the Anglo-American common law and has in part been overlaid by that rival system of jurisprudence.”⁶⁴ The civil law is not necessarily the original legal tradition (since many of these countries had some aboriginal or indigenous law before European colonization), but it was implemented before the arrival of British common law.⁶⁵

All jurisdictions in Table 1 are fundamentally dualist (the first column) or pluralist (the remaining columns).⁶⁶ They have a legal system with a dual foundation. A large proportion of substantive law and procedure can be distinctly traced back to civil or common law systems.⁶⁷ Generally speaking, private law seems to be of civil tradition whereas public law (administrative, criminal, and constitutional) comes from Anglo-American influence.⁶⁸ The main reason is, broadly speaking, the earlier development of private law and later development of public law.⁶⁹

Legal scholars have traced the combination of civil and common law back to two distinct possible historical reasons⁷⁰:

(i) *intercolonial transfer* (losses from France, Spain, the Netherlands, or the Ottoman Empire; gains to Britain or the United States).⁷¹ There is usually little influence of Anglo-American law before the transfer of sovereignty.⁷² The transfer of sovereignty usually results from an event unrelated to the legal system (for example, war).⁷³ The new dominant political actor is established in a strong position but avoids or fails to effectively impose the common law because of a large non-Anglophonic

⁶³ Kotz, *supra* note 62, at 435; PALMER, *supra* note 29, at 4–6.

⁶⁴ PALMER, *supra* note 29, at 7 (providing a general definition by Sir Thomas Smith in 1965 having the case of Scotland in mind); T.B. Smith, *The Preservation of the Civilian Tradition in “Mixed Jurisdictions”*, in CIVIL LAW IN THE MODERN WORLD 2, 2–3 (A.N. Yiannopoulos, ed., 1965).

⁶⁵ See PALMER, *supra* note 29, at 4.

⁶⁶ See *id.* at 7–8.

⁶⁷ *Id.*

⁶⁸ *Id.* at 9–10.

⁶⁹ See *id.* at 55.

⁷⁰ *Id.* at 19.

⁷¹ PALMER, *supra* note 29, at 19; see generally PATRICK BALFOUR KINROSS, THE OTTOMAN CENTURIES: THE RISE AND FALL OF THE TURKISH EMPIRE 595–609 (1979).

⁷² PALMER, *supra* note 29, at 19.

⁷³ See *id.* at 19–20.

community that is socially and economically dominant (but not politically).⁷⁴ The English speaking community initially is a minority that communicates in a different language that does not dominate the life of the jurisdiction.⁷⁵ Still, this English minority shapes the political process.⁷⁶ Not surprisingly, the common law expands due to a well-developed colonial administration and the local (business) interests of the small English speaking community.⁷⁷

For example, consider the case of Malta.⁷⁸ Private law is essentially dominated by the civil law tradition but administrative and constitutional law is inevitably English.⁷⁹ Legal scholars have explained the enactment of Maltese codes in the nineteenth century as a mechanism to achieve consistency between the influence of Italian law and the realities of the political connection to Britain.⁸⁰ As a consequence, the pure civil law tradition has been blended with the practice of English oriented sources. However, even today, the combination of common and civil law is fundamentally more practical than doctrinal and fully theorized.⁸¹

Scholars can also use this model to understand Japan, Korea, and Taiwan. They were initially influenced by German law after the reforms enacted following the Meiji restoration.⁸² The American

⁷⁴ *Id.* at 21–22.

⁷⁵ *Id.* at 41–42.

⁷⁶ *See id.* at 42.

⁷⁷ *See* PALMER, *supra* note 29, at 42–43. Such constraint could explain why Spanish civil law faded away in Florida, Texas or California, Dutch civil law in New York and German (Japanese) civil law in the Mariana Islands, but not in South Africa, Louisiana, Quebec, Puerto Rico, Malta and the Philippines. *See* David Carey Miller, *South Africa: A Mixed System Subject to Transcending Forces*, in *STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING* 165, 165 (Esin Örucü, Elspeth Attwooll & Sean Coyle eds., 1996) (discussing the case pertaining to South Africa).

⁷⁸ *See* Joseph M. Ganado, *Malta: A Microcosm of International Influences*, in *STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING* 225, 225 (Esin Örucü, Elspeth Attwooll & Sean Coyle eds., 1996).

⁷⁹ *Id.* at 229.

⁸⁰ *Id.*

⁸¹ *Id.* at 225.

⁸² *See* Hideki Kanda & Curtis J. Milhaupt, *Reexamining Legal Transplants: The Director's Fiduciary Duty in Japanese Corporate Law*, in *LAW IN JAPAN: A TURNING POINT* 437, 437 (Daniel H. Foote, ed., 2007). Japan influenced legal reforms in Korea since the 1870s. Korea was

occupation after WWII promoted important legal reforms in Japan and Korea (the anti-monopoly laws being the standard example).⁸³ Taiwan's history after 1949 induced an approximation to the United States that had consequences in later legal reforms.⁸⁴ These jurisdictions combine an important civil law tradition of German influence with fundamental reforms of American origin.⁸⁵ There is no formal intercolonial transfer, but these countries were under the sphere of a civil law jurisdiction in the first stage of legal reform and, due to later political changes, came under the sphere of a common law jurisdiction.⁸⁶

Israel provides another example of this approach.⁸⁷ The Ottoman influence explains the prevalence of German civil law in the region.⁸⁸ The British Mandate for Palestine established in the early 1920s brought the common law to this area of the world.⁸⁹ The coexistence of civil and common law was noticeable by the time Israel became independent in 1948.⁹⁰ Waves of immigration with lawyers who transferred from different legal origins reflected different experiences.⁹¹ The intercolonial transfer was reinforced by a significant change of the composition of the population, in particular lawyers.⁹²

(ii) *merger of sovereignties* (mainly Scotland): the Act of Union of 1707 keeps strict separation between Scottish and English

formally annexed by Japan in 1910. Taiwan was ceded to Japan in 1895. See generally W. G. BEASLEY, *JAPANESE IMPERIALISM 1894–1945* 43–44, 90, 142 (1991).

⁸³ See ODA, *supra* note 20, at 20–21; see also YVES DEZALAY & BRYANT G. GARTH, *ASIAN LEGAL REVIVALS: LAWYERS IN THE SHADOW OF THE EMPIRE*, 49–61, 102–04 (2010).

⁸⁴ See TOM GINSBURG, *JUDICIAL REVIEW IN NEW DEMOCRACIES: CONSTITUTIONAL COURTS IN ASIAN CASES* 106–57 (2003).

⁸⁵ See, e.g., Kanda & Milhaupt, *supra* note 82, at 437.

⁸⁶ *Id.*

⁸⁷ See Yoram Shachar, *History and Sources of Israeli Law*, in *INTRODUCTION TO THE LAW OF ISRAEL* 1, 1 (Amos Shapira, ed. & Keren C. DeWitt-Arac assoc. ed., 1995); see generally MENACHEM MAUTNER, *LAW AND CULTURE OF ISRAEL* (2011).

⁸⁸ See Shachar, *supra* note 87, at 1.

⁸⁹ *Id.* at 4.

⁹⁰ *Id.* at 5.

⁹¹ *Id.* at 2.

⁹² *Id.*

law.⁹³ Scottish private law is respected but the Union effectively merges public law and public institutions.⁹⁴ The new political and judicial institutions promoted the reception of English law, although it is debatable if the combination of legal traditions was already there before the Union due to trade, political and economic influence.⁹⁵

The importance of precedent with binding effect even in areas of traditional civil law has been recognized as the main source to combine substantive civil law with a common law approach in Scotland.⁹⁶ However, some areas have been largely immune to legislative incursion from English law unless absolutely necessary (such as criminal or family law).⁹⁷ Legal scholars mention the Scottish examples as a unique voluntarily combination of civil and common law that struggles for legal consistency.⁹⁸

The European Union can be discussed in the context of this model. Strictly speaking, the European Union created a new legal order independent of the Member-states.⁹⁹ However, the law of the European Union has to be enforced and applied by national courts subject to a complex institutional framework (including the principle of supremacy of European Union law).¹⁰⁰ Inevitably, these national courts reflect their own traditions and practices.¹⁰¹ Therefore, European Union law combines elements of common law and civil law in response to the ongoing need of improving and balancing a new legal order.¹⁰² The European Union is not,

⁹³ PALMER, *supra* note 29, at 29; *see* ROBIN M. WHITE & IAN D. WILLOCK, *THE SCOTTISH LEGAL SYSTEM* 26–28 (4th ed., 2006); BRYAN CLARK, *SCOTTISH LEGAL SYSTEM* 4–6 (2d ed., 2009).

⁹⁴ PALMER, *supra* note 29, at 29.

⁹⁵ *See also* PALMER, *supra* note 29, at 29; SMITS, *supra* note 16, at 12–13 (making the point that it is unclear if Scottish law is a consistent mix or a confusing interaction of common and civil law while, for example, South African law is more consistent. Furthermore, according to the author, it is unclear if Scottish courts improve the mix or dilute the internal structure of some areas of the law).

⁹⁶ *See* Elspeth Attwooll, *Scotland: A Multi-Dimensional Jigsaw*, in *STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING* 17, 27 (Esin Örtücü, Elspeth Attwooll, & Sean Coyle eds., 1996).

⁹⁷ PALMER, *supra* note 29, at 29.

⁹⁸ *Id.*

⁹⁹ *See* CRAIG & BÜRCA, *supra* note 61.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

strictly speaking, a merger of sovereignties, but the institutional arrangement reflects a similar process due to the impeding incompleteness of a recent legal order that requires the cooperation of national courts.¹⁰³

As noted by legal scholars, when coded, the incumbent civil law is likely to be more resistant to common law influence.¹⁰⁴ We can use the French or Spanish experiences when compared to the Dutch group to provide an illustration.¹⁰⁵

In most cases of mixed legal systems around the world, there are significant common elements that have been identified by comparativists to explain the patterns of development of a mixed legal family.¹⁰⁶ The most immediate is language as we have already mentioned. Usually there is a linguistic factor that requires, at least in early stages, that the law be in a language different from English.¹⁰⁷

A second aspect is the influence of Anglo-American law on legal institutions and procedure which is usually determined by the political power of the English-speaking community.¹⁰⁸ Examples include powerful courts, influential judges, some form of *stare decisis* where judicial decisions are accepted as a source of law (*de facto* or *de jure*) and bind inferior courts (in a much less flexible way than the Spanish *doctrina jurisprudencial* or the French *jurisprudence constante*), and assimilation of common law rules of civil procedure (although usually with no formal separation between common law and equity).¹⁰⁹

A third element is the slow penetration of common law in the context of private law. According to legal scholars, the patterns of common law influence in private law are usually the following: some in torts, less so in contracts, even less in quasi-contracts and unjust enrichment, very little to none in property.¹¹⁰ Commercial law tends to

¹⁰³ *Id.*

¹⁰⁴ See PALMER, *supra* note 29, at 6.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 41.

¹⁰⁸ See *id.* at 21–22.

¹⁰⁹ See PALMER, *supra* note 29, at 45–48. See WILLIAM M. ROBINSON, JUSTICE IN GREY: A HISTORY OF THE JUDICIAL SYSTEM OF THE CONFEDERATE STATES OF AMERICA 45, 80–81 (1941) (explaining that the distinction between common law and equity was eliminated in the Confederate States of America, in 1861, because it was considered unjustified given the civil law tradition of many Southern states).

¹¹⁰ PALMER, *supra* note 29, at 57–59.

adhere to common law more easily, generally not by imposition but due to self-interested economic reasons and the inadequacy of the old civil law.¹¹¹

III. THE ECONOMIC MODEL

As we discussed in the previous section, comparative law has identified general patterns of development of a mixed legal family. Civil law arrives first due to the initial colonization or political influence (in the case of Scotland).¹¹² Common law follows after some transfer of sovereignty.¹¹³ Common law is not developed because the local community is unsatisfied with civil law, but due to political and military reasons.¹¹⁴ Not surprisingly, common law dominates legal institutions, procedure and public law.¹¹⁵ However, common law does not easily penetrate private law.¹¹⁶

Public law depends mostly on political or constitutional decisions.¹¹⁷ Often a mixed system follows a common law pattern in criminal law, judicial proceedings, or administrative matters.¹¹⁸ This is the case of mixed jurisdictions within a constitutional framework based on common law such as the American Southern states, Puerto Rico, Israel, or Scotland.¹¹⁹ The opposite tends to happen within the European Union, where the United Kingdom and Ireland are subject to legislative proceedings drafted according to the civilian tradition.¹²⁰

Public law responds less immediately to individual incentives and decisions, but more to the political arrangements.¹²¹ From this perspective, the imposition of common law structures has less to do with the evolution to efficiency resulting from the competition of different

¹¹¹ *Id.* at 66-67.

¹¹² *Id.* at 5.

¹¹³ *Id.* at 18-19.

¹¹⁴ *See id.* at 20-22.

¹¹⁵ *See id.* at 62-67.

¹¹⁶ *See id.* at 67.

¹¹⁷ *Id.* at 9-10.

¹¹⁸ *Id.*

¹¹⁹ *See id.* at 25-31.

¹²⁰ *See* Jan Smits, *A European Private Law as Mixed Legal System*, 5 MAASTRICHT J. EUR. & COMP. L. 328, 329 (1998); *see* Mathias Reimann, *Towards a European Civil Code: Why Continental Jurists Should Consult Their Transatlantic Colleagues*, 73 TUL. L. REV. 1337, 1337 (1999).

¹²¹ *See* PALMER, *supra* note 29, at 9-10.

legal systems; it is more easily explained by the political influence of the legal tradition of the dominant power.¹²²

The challenge comes from private law. We wonder why civil law survives when the legislature as well as the judiciary follow common law principles. According to the legal origins literature¹²³, transition to common law should follow mature economic growth.¹²⁴ In fact, the legal origins literature strongly recommends adopting common law principles in private law in order to enhance economic growth.¹²⁵ It seems that the mixed jurisdictions remain under civilian tradition for two possible reasons. One explanation is due to their current poor economic progress. Therefore, there is no pressure to change their legal system in the area of private law. A second reason is the limitations derived from their rigid civilian framework which precludes change. If the legal origins thesis is correct, mixed jurisdictions governed by common law principles should opt into the common law at a particular stage of economic growth.¹²⁶ Additionally, such mixed jurisdictions are embedded in a common law institutional framework, as a consequence of common law governing public institutions and their proceedings, and therefore are expected to recognize the importance of judicial precedent (unknown in pure civil law systems).¹²⁷

An immediate explanation for the observed pattern could be mere path dependence.¹²⁸ In other words, mixed legal families are still in a process of transformation.¹²⁹ Common law will eliminate civil law in some distant future much the same way it has happened in some American Southern states.¹³⁰ The reason for this delay would be the codification of civil law principles in many of those jurisdictions described in Table 1. Codification bolsters civil law and therefore reinforces path dependence.¹³¹ The problem with this explanation is that

¹²² *Id.* at 20.

¹²³ See La Porta et al., *supra* note 1, at 285.

¹²⁴ See *id.* at 286.

¹²⁵ See *id.* at 286, 310, 321.

¹²⁶ See *id.* at 327.

¹²⁷ See PALMER, *supra* note 29, at 45–50.

¹²⁸ See generally Garoupa & Gómez Ligüerre, *supra* note 7, at 296; Garoupa & Gómez Ligüerre, *supra* note 14, at 16.

¹²⁹ See JOHN HENRY MERRYMAN & ROGELIO PÉREZ-PERDOMO, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF EUROPE AND LATIN AMERICAN* 152 (3d ed., 2007).

¹³⁰ See PALMER, *supra* note 29, at 21–22;

¹³¹ See PALMER, *supra* note 29, at 88, 208, 260–61, 331, 371, 428–29.

legal scholars do not detect such a trend in those jurisdictions. Civil law seems to be there permanently.

Absent mere path dependence, if we take literally the legal origins movement, common law should replace civil law in the areas of private law.¹³² Common law is more efficient. Common law is better for business interests and conducive to economic growth.¹³³ The persistence and survival of civil law is, therefore, puzzling. Why would a second-best legal tradition persist in private law when a first-best legal alternative is already available in public law?

A possible explanation is that mixed legal families are locked into an inefficient institutional arrangement and cannot move out.¹³⁴ There is some market failure that inhibits the common law's ability to take over civil law in the areas of tort, contracts and property.¹³⁵ The costs of switching are so immensely large that mixed legal families cannot easily abandon the old civil law and adhere to common law.¹³⁶

It is difficult to see what these significant costs could be. Legal economists have recognized that changing legal regimes has important disadvantages, but they do not seem to be as significant in this context as they are in the economic literature of transplants.¹³⁷

Following the economic literature on the subject, the list of possible costs from replacing civil law by common law should include:

- (i) Direct cost from acquiring information, importing new rules and introducing new practices, interpreting and applying them.¹³⁸ These costs seem less significant when common law has prevailed already in public law and in procedure.
- (ii) Rent-seeking or entrenchment costs from those who plausibly lose from changing legal rules (long-entrenched interests) and are willing to waste resources to avoid those

¹³² See La Porta et al., *supra* note 1, at 286, 310.

¹³³ *Id.*

¹³⁴ See generally Garoupa & Gómez Ligüerre, *supra* note 7; see generally Garoupa & Gómez Ligüerre, *supra* note 14.

¹³⁵ See generally Garoupa & Gómez Ligüerre, *supra* note 7; Garoupa & Gómez Ligüerre, *supra* note 14, at 7.

¹³⁶ See generally Garoupa & Gómez Ligüerre, *supra* note 7; see generally Garoupa & Gómez Ligüerre, *supra* note 14.

¹³⁷ See Garoupa & Ogus, *supra* note 38, at 347.

¹³⁸ *Id.* at 345.

changes (e.g., lawyers or the bar association).¹³⁹ These costs could have been relatively high in early stages when the jurisdiction was dominated by a non-Anglophonic community, but surely they must have been reduced as English influence expanded; lawyers are usually educated in both legal traditions, so there is no obvious reason to fear loss of rents to a competing or alternative legal profession.

(iii) Indirect costs due to the potential loss of legal coherence, consistency, network effects and potential development of contradictions and instability within the emergent law.¹⁴⁰ In this context, overall legal coherence increases since common law would dominate both public and private law.

(iv) Private legal order costs by limiting individual benefits from opting-out of the current legal order or developing third-party arrangements, that is, by imposing public adjustment of the law which is an imperfect substitute for private adjustment (assuming that existing arrangements allowed for such adjustment).¹⁴¹ In our analysis, replacing civil law by common law presumably increases flexibility to accommodate private ordering given the alleged superiority of the common law in this respect.¹⁴² Alternatively, the introduction of common law would facilitate the malleability of the legal system given the general perception that case law is more flexible to local preferences.

(v) Lack of innovation costs since systems without local variations are less likely to innovate and adjust to dynamic preferences.¹⁴³ Comparing the current patterns of legal innovation in mixed legal families with the pure common and civil law jurisdictions, this lack of innovation cost does not seem very significant.

¹³⁹ See Garoupa & Ogus, *supra* note 38, at 345; see also Anthony Ogus, *Competition Between National Legal Systems: A Contribution of Economic Analysis to Comparative Law*, 48 INT'L & COMP. L.Q. 405, 411 (1999).

¹⁴⁰ Garoupa & Ogus, *supra* note 38, at 345; see also Anthony Ogus, *The Economic Basis of Legal Culture: Networks and Monopolization*, 22 OXFORD J. LEGAL STUD. 419, 420, 434 (2002).

¹⁴¹ Garoupa & Ogus, *supra* note 38, at 345.

¹⁴² See Garoupa & Gómez Ligüerre, *supra* note 7, at 295–96.

¹⁴³ See Garoupa & Ogus, *supra* note 38, at 346.

(vi) Subsequent costs of adjustment and administrative costs on the production of more law when transplants deviate from indigenous law.¹⁴⁴ Given that a mixed legal system is being replaced by a pure common law system, it is unclear how costs of future adjustments and more law can be significantly increased.

(vii) Potential costs due to coordination failure derived from the presence of strategic externalities or the public good nature of transplanting.¹⁴⁵ This could be a significant problem if the switch from civil law to common law is left to the market. However, in all these jurisdictions, there is a central government that was able to impose common law on areas of legal institutions, public law and procedure. Presumably the same central government could easily internalize these externalities, solve the public good under-provision of legal change, and consequently impose common law in the area of private law.

(viii) Transaction costs resulting from harmonization and legal unification.¹⁴⁶ Although these costs could be relevant given the entrenchment of civil law codification, they should be less significant than in a situation of legal transplanting from a different jurisdiction given the existing pluralism.

After reviewing all the possible costs from switching from civil law to common law, our conclusion can only be that it is unlikely that mixed legal families are merely locked into an inefficient arrangement that cannot easily change. We are not suggesting that these costs are nonexistent or irrelevant. Nevertheless, we are not persuaded that these costs are so significant as to lock in mixed legal jurisdictions and justify their considerable loss of efficiency and economic growth.

¹⁴⁴ See Peter Grajzl & Valentina Dimitrova-Grajzl, *The Choice in the Lawmaking Process: Legal Transplants vs. Indigenous Law*, 5 REV. L. & ECON. 615, 617 (2009), available at <http://www.bepress.com/rle/vol5/iss1/art26>.

¹⁴⁵ See Garoupa & Ogus, *supra* note 38, at 346; Emanuela Carbonara & Francesco Parisi, *Choice of Law and Legal Evolution: Rethinking the Market for Legal Rules*, 139 PUB. CHOICE 461, 462 (2009).

¹⁴⁶ See Garoupa & Ogus, *supra* note 38, at 339; Emanuela Carbonara & Francesco Parisi, *The Paradox of Legal Harmonization*, 132 PUB. CHOICE 367, 367 (2007).

As with the economic literature on transplants, the only reasonable explanation has to be related to preferences. Preferences (understood as legal culture, tradition, and social inclination for a particular legal family) are the standard explanation for the prevalence of different legal systems.¹⁴⁷ In the legal transplant literature, the standard argument is that cultural, political, and social preferences might explain why jurisdictions do not switch their legal regime.¹⁴⁸

In order for the story about preferences to be consistent with the legal origins movement, it has to be the following. Even though the new legal regime (after transplant) is more conducive of economic growth, a particular jurisdiction could be willing to sacrifice (economic) effectiveness in order to maintain a legal regime more consistent with cultural preferences.¹⁴⁹ Therefore, in the absence of significant switching costs, different legal families persist because preferences undermine legal unification in an inefficient way.¹⁵⁰

Sacrificing efficiency (in the sense of an economically better legal regime) due to cultural preferences seems unrealistic in the context of mixed legal families. Presumably initial preferences for a civil law model should be prevailing in private and in public law. Apparently they were not strong enough to deter change in public law, but they were powerful enough to undermine transformation in private law. Yet, several generations later, the same preferences are unchanged and uncontaminated by the observation of a superior legal order in public law.

It seems to us unlikely that the same preferences that support a more efficient legal regime in one area of the law do not support that same efficient legal regime in a different area of the law. Therefore, it seems that preferences are important, but not in the way the legal origins movement would suggest. Mixed legal families persist because, due to cultural preferences, switching legal regimes would be less conducive to economic growth and therefore less efficient. Our argument is that we cannot separate preferences that generate a particular demand for a legal

¹⁴⁷ See, e.g., Pierre Legrand, *European Legal Systems Are Not Converging*, 45 INT'L & COMP. L.Q. 52, 55 (1996); Pierre Legrand, *Against a European Civil Code*, 60 MOD. L. REV. 44, 45–46 (1997); PIERRE LEGRAND, FRAGMENTS ON LAW-AS-CULTURE 133–34 (1999); see also SMITS, *supra* 16, 7–10 (citing Pierre Legrand's work against European codification and his interpretation that such debate reflects the arrogance of common law lawyers convinced of their superiority over continental lawyers).

¹⁴⁸ See PALMER, *supra* note 29, at 77.

¹⁴⁹ See Carbonara & Parisi, *supra* note 145, at 461, for a more detailed discussion.

¹⁵⁰ *Id.*

system and the efficiency of that legal system. Under the cultural preferences that dominate a particular jurisdiction within a mixed legal system, civil law is likely to be more efficient than common law in the field of private law.¹⁵¹ That is the only plausible explanation for why civil law has persisted and continues to persist in these jurisdictions.

The argument also sheds light on the Southern American states. The nature of the switching costs is not different between these jurisdictions and the ones described on Table 1. It is a matter of dynamic preferences. The sharp differences concerning legal preferences within the United States have faded away with time, therefore promoting the development of common law in the area of private law.¹⁵² In those other jurisdictions, preferences have not developed in the same way. Most of these jurisdictions are sovereign states and they are not integrated into a federal arrangement that induces a particular cultural, political and social dynamics that favors the prevalence of the Anglo-American elements.¹⁵³ And when they are integrated, such as Quebec or Scotland, distinctive elements of the non-Anglophone community have survived by virtue of a different language and history.¹⁵⁴

If our theory is correct, and in sharp contrast with the legal origins movement, forcing mixed legal families to abandon the civil law aspect in search of the efficiency of the common law would probably be detrimental for economic growth. In fact, our theory is closer to the so-called “grafted transplants,” that is, successful transplants embedded in the local context or fused with local norms.¹⁵⁵ Changing the context could have significant implications for legal reforms that are apparently based on (in our view, obviously misplaced) efficiency grounds.¹⁵⁶

¹⁵¹ See Du Plessis, *Comparative Law and the Study of Mixed Legal Systems*, in THE OXFORD HANDBOOK OF COMPARATIVE LAW, *supra* note 37, at 510 (“[A]s far as the quality of the mixture is concerned, there is no firm indication that the processes of borrowing in mixed jurisdictions have *generally* given rise to law which is particularly good or particularly bad. In assessing the quality of the mixture, care must be taken not to ascribe change to a single factor, such as foreign dominance.”) (emphasis added).

¹⁵² See PALMER, *supra* note 29, at 21–22.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ See KITTY CALAVITA, INVITATION TO LAW AND SOCIETY: AN INTRODUCTION TO THE STUDY OF REAL LAW 92 (2010); see also SMITS, *supra* note 16, at 10–12 (suggesting mixed legal systems are an excellent example to inspire European private law).

¹⁵⁶ See *generally* CALAVITA, *supra* note 155.

IV. CONCLUSIONS

This paper provides for an economic explanation as to why mixed jurisdictions persist. Under the efficiency of the common law hypothesis and the more recent legal origins theory, we should expect mixed jurisdictions to disappear.¹⁵⁷ If common law is universally conducive to economic growth, the existence of jurisdictions that keep a hybrid legal system where private law (that is, the area of the law that more directly deals with business and investment) is of civil law tradition is puzzling.

The combination of civil and common law has two historical reasons: intercolonial transfer (most examples) and merger of sovereignties (few cases).¹⁵⁸ There are a few variations, but generally private law tends to be codified and entrenched while public law follows common law.¹⁵⁹ Legal institutions are usually transplanted from the common law colonial power.¹⁶⁰ Such a broad description makes the existence of mixed jurisdictions more puzzling. They keep an inefficient legal system for private law (precisely the area of law supposedly more relevant for economic growth) embedded in institutional arrangements and public law transplanted from a common law jurisdiction.¹⁶¹

We reject path dependence as a convincing explanation given the political and institutional context. Obviously history is important. We also recognize that codification encroaches civil law in a nontrivial way. However, the institutional setup, including the importance of judicial precedent, is extremely favorable to the development of a common law approach to private law.¹⁶² It seems unrealistic that a significantly inefficient form of law persists in an environment already dominated by the most efficient form of law merely because of some odd path dependency.

Preferences seem to be a better explanation. In order to be consistent with the legal origins story, it must be that social preferences are willing to sacrifice economic growth (induced by the common law) for the sake of some other goals (presumably better defended by civil law). However, this argument also seems problematic when those same

¹⁵⁷ See La Porta et al., *supra* note 1, at 286.

¹⁵⁸ See PALMER, *supra* note 29, at 19, 29–31.

¹⁵⁹ *Id.* at 9–10.

¹⁶⁰ *Id.*

¹⁶¹ *See id.*

¹⁶² *See id.* at 78–79.

preferences have already been sacrificed in the area of public law and legal institutions.

Our explanation does rely on preferences, but with a different insight. Under the cultural and social preferences that dominate a particular demand for a legal system, it could be that the mixed arrangement of civil and common law is more efficient. Therefore, if common law replaces civil law in the area of private law, it could be less conducive to economic growth. Unlike the legal origins theory, there is no single “one-size-fits-all” solution. Mixed legal systems have survived because the complexities of the legal system illustrate that cultural preferences matter.

TABLE 1

Mixed Legal Systems

COMMON & CIVIL LAW	COMMON, CIVIL & CUSTOMARY	COMMON, CIVIL & MUSLIM	COMMON, CIVIL & TALMUDIC
BOTSWANA	CAMEROUN	IRAN	ISRAEL
CYPRUS	DJIBOUTI	JORDAN	
GUYANA	ERITREA	SAUDI ARABIA	
LOUISIANA	INDONESIA	SOMALIA	
MALTA	LESOTHO	YEMEN	
MAURITUS	SRI LANKA		
NAMIBIA	VANATU		
PHILLIPPINES	ZIMBABWE		
PUERTO RICO			
QUEBEC			
SAINT LUCIA			
SCOTLAND			
SEYCHELLES			
SOUTH AFRICA			
THAILAND			

Source: Vernon Valentine Palmer, "Two Rival Theories of Mixed Legal Systems," in Esin Örüçü, *Mixed Legal Systems at New Frontiers*, 2010