LUISS Guido Carli University – School of Economics
Master of Science in Law and Economics
Comparative Law & Economics
Academic Year 2009-2010

Legal Origins, Legal Institutions and Poverty in Sub-Saharan Africa

Federico Baldelli

Supervisors:

Prof. Roberto Pardolesi
Prof. Andrea Renda

TABLE OF CONTENTS

Tables and Graphs

[1] See Fox Louise, Oviedo Ana Maria, Are Skills Rewarded in Sub-Saharan Africa? Determinants of Wages and Productivity in the Manufacturing Sector, The World Bank, 2008, page 8.

After climbing a great *hill*, one only finds that there are many more *hills* to climb.
(Nelson *Mandela)*

Abstract

Sub-Saharan Africa is one of the richest regions of the world in terms of diversity, culture, and traditions. During the period of colonization, European countries transplanted their legal systems in the African continent. These legal transplants persisted, and Sub-Saharan Africa's legal origins are today mainly French civil law and British common law.

The first goal of my thesis is to understand which are the differences between the two legal systems, and how the two different legal origins may have contributed to shape, together with traditional African law, legal institutions in Sub-Saharan Africa.

The second and central aspiration of my thesis is to analyze whether countries with a certain legal system in Sub-Saharan Africa are experiencing higher rates of poverty.

By writing my thesis I found out that civil law countries in Sub-Saharan Africa tend to have less efficient regulations concerning access to credit, property registration, contracts, labor, investments, trade etc. that negatively affect markets and the business environment.

Common law countries in Sub-Saharan Africa tend to have more market oriented regulations. They seem to be characterized by the presence of less paternalistic forms of state and more developed markets.

In the final part of the thesis, through the studied theory and an econometric model, I will prove that common law countries in Sub-Saharan Africa tend to have more efficient legal institutions and lower levels of poverty.

Legal origins do matter in the world. Especially in Sub-Saharan Africa.

INTRODUCTION

Every country has its own special identity. By doing a few steps and crossing a border, it is possible to see that there is no nation identical to the other. History, religion, culture, values, geography and several other elements have shaped the laws of every nation in a unique manner.

Even if the African continent is characterized by an immense variety of cultures, ethnic groups, languages and religions, law in Sub-Saharan Africa comes mainly from the following traditions: common law, civil law, Islamic law and customary law.

In the 19th century, the African continent was almost completely occupied by European imperial powers with the exceptions of Ethiopia and Liberia. Each colonial power introduced part of its legal heritage in its occupied territory and, even after the post-colonial era, these legal transplantations continued to persist until today.

Sub-Saharan Africa is the poorest region in the world; among the 49 least developed countries in the world, 34 are located in Sub-Saharan Africa.[2] Dictators, coups d'états, corruption, warlordism and anarchy have contributed to the dramatic impoverishment of the African region.

With diffused tax evasion and corruption, governments in Sub-Saharan Africa have high fiscal deficits[3] and are highly dependent on foreign donations.[4]

I chose to write on legal origins and legal institutions because I am convinced that legal reforms can be the most efficient tool to fight poverty and hunger in the long-run in Sub-Saharan Africa and in the rest of the world.[5]

---

[2] http://www.gfmag.com/tools/the-poorest-countries-in-the-world.html

[3] http://news.bbc.co.uk/2/hi/africa/2265387.stm
See African Debt and its Consequences, Madam G. Singh, available at http://www.kulu.dk/Financing/Regional%20Fact%20Sheets/fact_sheet_on_debt_africa.htm

[4] See Quartapelle Lia, Aid dependence and the challenge of self-reliance in Sub-Saharan Africa, ISPI, see http://www.ispionline.it/it/documents/PB_183_2010.pdf

[5] In fact, according to the available data, 8 percent of total global humanitarian aid reaches the most needy persons. See OEDC. 2003-4. Total DAC Aid at a Glance and Lappe, F.M.,. Schurman R, and Danaher K., 1987.
See also http://povertynewsblog.blogspot.com/2010/03/report-says-half-of-somalia-food-

Legal rules and legal reforms can reach every individual within a nation at a contained cost and, as the recent Brazilian experience has shown us, good legal reforms can have important impacts on poverty reduction.[6]

In my dissertation, I will firstly study how legal origins may have shaped legal institutions in Sub-Saharan Africa; I will analyse whether there are differences between French civil law and English common law countries (in terms of development and poverty).

The first thing I discovered is that French civil law countries have different kinds of legal institutions than English common law countries in Sub-Saharan Africa. The second thing I found out is that legal institutions have significant effects on markets, wages, employment, education, and many other factors that influence the level of human and economic development of countries in Sub-Saharan Africa.

This thesis is based on a *Legal Origins – Legal Institutions – Poverty* structure. This means that in Part I, I will study the legal origins of Sub-Saharan Africa. In Part II, I will analyse the importance of legal institutions in influencing economic and human development. This part will be the most theoretical one. I will analyse all the theories that have been recently developed in order to explain the link between legal origins and economic performance.

In Part III, I will analyse the relationship between legal origins, legal institution and poverty in Sub-Saharan Africa.

This part may defined as the "*in the field-part*". Here, I will study in detail why legal origins and legal institutions may be the cause of specific economic and financial outcomes in Sub-Saharan Africa.

The final goal of my thesis is to understand if legal origins and legal institutions can be a cause of poverty in Africa. I will furthermore try to see whether it may be possible, through the implementation of best practices/best

---

aid.html

[6] See http://news.bbc.co.uk/2/hi/americas/2710797.stm

laws, to foster development and shrink poverty levels in the poorest region of the world. In order to do this, I developed in Part IV an econometric model which shows that there are important differences between civil law and common law in the way they influence poverty in Sub-Saharan Africa.

Writing this thesis has been for me a sort of journey which reserves permanently new personal discoveries. I had to restructure continuously my work through a creativity which I hope won't be perceived by the reader as superficial or naive.

Writing this dissertation has been a real pleasure. I hope that the readers will enjoy it in the same way as I did, and I sincerely apologize for any lack of transparency or mistake I made.

PART I
LEGAL ORIGINS

In Part I of my thesis, I will study the legal origins of Sub-Saharan Africa. The function of Part I is to introduce the reader to the African reality (which is completely different than the European one). Due to its complex history and cultural diversity, the law of Africa is far from being homogeneous.

Generally speaking, the law of Africa is formed by five layers:

1) The traditional layer
2) The religious layer
3) The colonial layer
4) The law of independence-layer
5) The law of today-layer[7]

Each layer belongs to a different epoch that had significant social consequences on the African continent.[8]

In Chapter I, I will start my thesis by studying the traditional layer of Sub-Saharan Africa. I will firstly examine the differences between North Africa and Sub-Saharan Africa in order to give a geographical perspective of the region. Afterwards, I will study the ancient legal origins of Sub-Saharan Africa in order to see how traditional law considers the individual, property and contract. Finally, I will study the religious layer in order to underline the importance that religion had in influencing law in Africa.

In Chapter II, I will focus on the colonial layer in order to comprehend how legal systems have been transplanted from Europe to Sub-Saharan Africa.

[7] See Gambaro Antonio and Sacco Rodolfo, 2008, Sistemi Giuridici Comparati, 3rd edition, pages 413-432.
[8] Ibidem page 11-37.

In Chapter III and IV, I will examine the evolution of African law from the period of independence until today.
In Chapter V, I will study the origins of common law and civil law in order to understand why legal institutions have different structures in Africa.

If Sub-Saharan Africa's legal origins are common law and civil law, why was it necessary to dedicate an entire section to traditional African law?
Because I am convinced that law in Sub-Saharan Africa has a bi-dimensional character; it is constituted by European legal transplants and by its roots, tradition. Only through a deep study, it is possible to understand African law.

CHAPTER I
THE TRADITIONAL & THE RELIGIOUS LAYER[9]

SUMMARY: 1.1 North Africa and Sub-Saharan Africa; 1.2 Ancient Legal Origins of Sub-Saharan Africa; 1.3 Many Legal Systems in One; 1.4 The Individual According to Traditional Law, 1.5 Property According Traditional Law; 1.6 Contract Enforcement According to Traditional Law; 1.7 The Religious Layer

1.1 North Africa and Sub-Saharan Africa

There is an ancient barrier that splits the African continent in different areas. The *wall* between these two regions, the North and the South, is linguistic, anthropological, religious and cultural.
The Northern region of Africa is characterized by the presence of an Afro-asiatic population (Arab, Amharic etc.).[10]

[9] See Gambaro Antonio and Sacco Rodolfo, 2008, Sistemi Giuridici Comparati, 3rd edition, pages 413-432.
[10] The Amhara are located mainly in Ethiopia. In terms of the total Ethiopian population, the Amhara are a numerical minority. The population is around 14 and 22 million.

In Sub-Saharan Africa we can find two important anthropological groups which are a minority: the Pygmies and the Koisans. This area is distinguished by the existence of populations speaking Niger-Kordofanian, Nilo-Saharan and Khoisan languages. These populations were organized in small groups, and the state did not need to develop in the same way as it did in North Africa.[11]

In North Africa, already in ancient history, the state played a central role. In Egypt, the model of state which was founded by Pharaonic dynasties, spread to Sudan and Ethiopia.
In the Maghreb, the state was introduced by the Phoenix, the Alessandrinians and the Romans, and was besides shaped by Arab-Islamic/Turkish influences.

Religion played also an important role in founding different types of governments and institutions. Even if many North African countries continue to have particular traditions and rules, the region is characterized by the presence of Islamic law.
Sub-Saharan Africa is on the other hand characterized by the presence of Christianity, Islam, and traditional religions.[12]

Between North and Sub-Saharan Africa there seems to be a sort of wall that continues to persists since thousands of years.[13] The cultural, historic, religious, and linguistic barriers between the two regions are enormous, and in order to study how legal origin may have shaped legal institutions, I decided to stay on one side. Jumping from one region to the other, from the North to the South, would have been an extremely complex task. For this reason, I preferred to focus primarily on Sub-Saharan Africa and not on the whole African continent.

[11] In North Africa the state had a more complex structure due to the fact the communities lived in a more diversified and complex social structure
[12] See www.foreignpolicy.com/articles/2007/05/13/the_list_the_worlds_fastest_growing_religions
[13] See http://news.bbc.co.uk/2/hi/africa/3421527.stm

1.2 Ancient Legal Origins of Sub-Saharan Africa[14]

The study of the traditional legal systems of Sub-Saharan Africa is very important in order to understand how legal models are structured in the region.
Some cultures in Sub-Saharan Africa are based on hunting and harvesting. In these regions, we cannot find complex rules but only the ones that are really essential for the organization and survival of the group.
In the culture of the Pygmies and Bushmen, for example, we can find only simple legal systems. Individuals are located on a same level of rights, religion plays only a slight role, groups are small, legal institutions are few and structured by basic rules.
These two cultures are very similar to the ones which existed in the Palaeolithic era. The Pygmies and Bushmen who continue to practice their traditional law, continue to do it without the direct presence of the state; even today.

All the other Sub-Saharan African cultures, before getting in touch with external populations were based on sheep farming or agriculture.
Agriculture and farming contributed to the formation of groups that are larger than communities based on hunting, and pushed people to live in more structured groups.
Groups based on agriculture were able to live without being under the control of a central power, and traditional law enabled communities to live under their own particular legal system which better corresponded to their needs.

In order to understand the history of traditional law in Sub-Saharan Africa, it is important to know that in this region, a form of government with a central power which executed all functions, never existed since its birth in Egypt and Mesopotamia.

[14] See Gambaro Antonio and Sacco Rodolfo, Sistemi Giuridici Comparati, 3rd edition, pages 413-432.

In the regions of Africa, especially North Africa, which were characterized by the presence of Niger-Kordofanians and Nilo-Saharans, a complex model of legal system emerged due to the ancient Egyptian culture.
This model was characterized by the presence of a division of labour, craftsmanship, urban centres, and a monarchy which possessed sacred powers in the eyes of normal citizens. Such a complex and organized form of state never came to birth in Sub-Saharan Africa. For this reason, it is important to notice that legal origins are not defined alone by French or British colonial powers which transplanted their legal systems. Legal origins are in this case extremely complex and have millenary roots. What is more, legal origins depend in this case also on the anthropological nature of society. This means that groups/societies with different customs were organized differently and made use of different rules in order to maintain order.

An important element that characterizes traditional African law is the fact that it is not written; the case and the final decision of the judge are both oral.[15]
Sub-Saharan African countries did not use a legal system based on written rules, authorities did not formulate complex laws and individuals specialized in the interpretation of law did not exist.
This is the principal element that distinguishes traditional African law from European law. Traditional law is, furthermore, characterized by the absence of both a technical legal language and of a lawyer (as understood in Europe).

The absence of technical tools allows traditional law to be extremely dynamic if compared to more structured and complex types of law.
Traditional law must be imagined, in this context, as something extremely lively which can change from one day to the other if it contributes to make better off the community (and if it is socially accepted).
Through traditional law, a problem won't be solved through a defined rule; it will be the rule that in the particular case stabilizes the feeling of unity within a social group that will be selected.

[15] The judge in traditional law is just a person, more often an older tribe leader who is considered as a wise figure able to take the final decision.

In history, there was a point in which law evolved in Sub-Saharan Africa. This evolution was caused by legal transplants that occurred during the period of European colonization.
Even if colonization erased a large part of the traditional heritage, in Sub-Saharan Africa traditional law continues to persist and different tribes continue to practice their own traditional law.[16]

Studying and understanding the traditional legal system is the first step that should be done if one wishes to understand which are the legal origins of Sub-Saharan Africa, and why certain elements continue to persist even after colonization.

Law should be imagined in my opinion as a huge travel bag. The one who carries it, travels throughout the world and includes in it new regulations, languages, impressions etc. When he/she arrives to his/her destination, the present, he opens its travel bag and takes out a unique legal system which is constituted by all the things he/she found on his road. In order to understand the nature of the legal system, it is in my view important to travel back and start from the beginning of the journey: traditional Africa.

[16] See http://www.africaguide.com/culture/tribes/index.htm

1.3 Many Legal Systems in One[17]

Sub-Saharan Africa cannot be defined as a region with a single and homogenous legal system.[18] If we look, for example, at today's civil procedure codes existing in Africa,[19]in Senegal we can find a legal system which has been influenced by the French legislature, while in Kenya we can find a system with Anglo-Saxon elements.[20]

If we look at the traditional rules existing in Africa, we can see that there can be important differences between each ethnic group within a single country. In some countries, the concept of family is defined by the maternal side; while in others by the father's side. In some African countries, we can find polygamy; while in others it can be strictly forbidden.

The essence that distinguishes African law from European law is the following: in Sub-Saharan Africa, it is possible for different types and systems of law to coexist in a single country. In Europe, such a phenomenon does not exist and would probably not be able to survive; every country is characterized by the presence of a single legal systems.

European law influenced and designed, as we will see in the next pages, great part of today's Sub-Saharan Africa's legal systems. The constitutional and administrative law of most African countries has, for example, European origins.

In Sub-Saharan Africa, it is possible, however, to find a coexistence of traditional and European laws. The balance between traditional and European law varies depending on each country. [21]

[17] See Gambaro Antonio and Sacco Rodolfo, 2008, Sistemi Giuridici Comparati, 3rd edition, pages 413-420.
[18] See http://www.juriglobe.ca/eng/index.php
[19] Which include investors' protection and contract enforcement
[20] Senegal's and Kenya's civil procedure code:
http://www.juriscope.org/infos_ohada/creance/pdf-fr/RECOUVR.pdf
http://www.kenyalaw.org/kenyalaw/klr_home/
[21] It depends on how strong legal rules were transplanted by European colonial powers and whether traditional culture and laws were repressed or supported by local or foreign

In Sub-Saharan Africa, we will find countries which strongly support their traditional legal system, and others who refuse it and support exclusively European laws.

As we have seen before, uniformity isn't a typical African expression. In the Sub-Saharan African region, it won't be possible to find a single *pure* legal system.

Legal uniformity is a concept that does not exist in Sub-Saharan Africa. In every country we will find a mixture of European, Islamic, customary, and traditional legal systems.

Sub-Saharan Africa is a very unique case due to the fact that legal systems aren't distributed homogenously among different ethnic groups.

A metaphor expressing this cultural and legal variety is the following: in a African family formed by three members, it may be acceptable that one will get married through a governmental ritual, the other through a traditional one, and the other through an Islamic ritual. In most European families, the fact that a Christian family member would get married with an Islamic person\ritual would be perceived as something unusual (or more probably as a sort of danger).

In order to study the legal systems of Sub-Saharan Africa, it is necessary to imagine the entire legal system as a body formed by different layers. The first layer is formed by traditional law; the second one is constituted by religion; the third one was shaped by European law between 1815-1945; the fourth layer is formed by legal measures introduced by African countries after independence,; the fifth and last one, is composed by legal measures introduced only recently, after the beginning of the present century.

Geographically speaking, law in Sub-Saharan Africa varies from region to region; legally speaking, law varies in Sub-Saharan Africa depending on how history influenced each single layer that constitutes today's Sub-Saharan Africa's law. The scenario is very complex and it is necessary to have an open attitude in order to understand it.

---

governments.

1.4 The Individual According to Traditional Law

In most countries of Sub-Saharan Africa, an individual's legal rights depend on his status, the role and position he or she possesses in the group, and in turn on the position of the group in society.
Sub-Saharan Africa is characterized in this sense by the presence of a *right of the group*.
Often, for example, when a single person who is part of a group commits a crime, the whole group is defined as guilty.

In traditional Sub-Saharan Africa, the kingship and the political power are mostly in the hands of a royal family. The individual can be free or slave, and even if he is in this less attractive position, he is still able to play important functions in society.
Very often, a system of castes where ethnic groups, families, age, and the status to which the person belongs, define the rights the individual can exert, can be found in Sub-Saharan Africa
As in India, caste systems in Africa support often discrimination and poverty.[22] Traditions can be very fascinating due to their uniqueness and diversity. However, by studying their economic and social consequences, it may be possible to see that they are, as in this case, an important source of poverty and inequality.

1.5 Property According to Traditional Law

In traditional Africa, *property* is a very different concept if compared to European Law. In North Africa, we can see that individual economic property

[22] See The Caste System in India – A Very Brief Overview: Economic and Social Exclusion, and the Ambedkar principles of employment, see http://www.dsnuk.org/other/Submission%20to%20the%20Trade%20and%20Industry%20Select%20Committee.pdf

is guaranteed thanks to the šarīʿa.[23] In Sub-Saharan Africa, we can find a different system which is based on the group and not on the individual.

In Sub-Saharan Africa, land is seen as something sacred and it cannot be alienated from a group. Individuals have access to land depending on the social position they have in the group, and the political leader together with the *land-priest* are usually responsible for the distribution of land. [24]

This system of distribution of private property is said to be an important cause of poverty in Africa due to the fact that it doesn't facilitate access to credit.
Property law has a very important function in fighting poverty. Access to property and credit is very crucial in African countries in order to guarantee to the poor a revenue.[25]
As in the caste system, also property distribution systems have important consequences on the level of poverty in Sub-Saharan Africa.

Legal reforms, which aim to enhance property rights to the poorest people in the world, can decrease poverty and increase economic growth. Without being able to prove what they own, individuals cannot protect their capital, get credit and develop their business.[26]

For detailed information see also: 1995, Wael B. Hallaq, The Origins and Evolution of Islamic Law, available at: http://books.google.it/books?id=MPCN1yXEdg8C&printsec=frontcover&dq=islamic+law&source=bl&ots=DBjO0Et7w7&sig=TfyY7MX1UfFbJtXqUCrF4xPTZHM&hl=it&ei=VtdzTJe6HtWnnQfisrS7CQ&sa=X&oi=book_result&ct=result&resnum=3&ved=0CDYQ6AEwAg#v=onepage&q&f=false

[24] The "land-priest" is the individual who has the sacred function to distribute land within the tribe.

[25] See Kingwill Rosalie, Cousins Ben, Cousins Tessa, Hornby Donna, Royston Lauren and Smit Warren, 2006, http://www.iied.org/pubs/pdfs/14517IIED.pdf

[26] See Enskog Dorothée, 2009, Property rights, a way to erradicate poverty, available at: http://ild.org.pe/news/credit-suisse

1.6 Contract Enforcement According to Traditional Law

The European meaning of contract is completely different from the African one. In Europe, contract has an economic purpose. In Africa, it includes not only economic functions but a very wide type exchanges. In Sub-Saharan Africa, exchanges take place exclusively between familiar individuals who know each other. Living persons, death persons, the earth, and the gods, are all potential participants in an exchange.[27] In Europe, as we know, contracts are issued mainly between *"foreigners"* in order to guarantee that each part will fulfil its duties. In traditional Sub-Saharan Africa, the concept of contract goes beyond our logic. It is seen as something similar to a ritual, which ties to each other two elements or persons by creating an unbreakable connection between them.

Sub-Saharan Africa is characterized by the presence of difficult contract enforcement. Contract agreements in the African region are influenced by the absence of large hierarchies - both corporate and governmental.[28]
The consequence of this absence is that countries in Sub-Saharan Africa must rely to a larger extent than in further developed economies on social networks and personal trust, making it more difficult for individuals to establish in a transparent way a contract.[29]

All in all, contracts play a different role in traditional Sub-Saharan Africa if compared to European countries. As we will see in the next chapters, the fact that business is based on trust rather than on law, makes it very hard for African countries to attract FDIs.[30]

[27] See Gambaro Antonio and Sacco Rodolfo, 2008, Sistemi Giuridici Comparati, 3rd edition, pages 422.
[28] This implies that also the nature of regulations and laws will be different.
[29] See Fafchamps Marcel, 2004, Market Institutions in Sub-Saharan Africa, Theory and Evidence, pages 49 & 151.
[30] Ibidem Chapter 4.3.

1.7 The Religious Layer

Religion has played a central role in Africa by influencing the structure of legal systems. Catholic, Anglican, and Evangelic Christianity where introduced in Sub-Saharan Africa through European colonization. Christianity had important social effects on the African continent. It contributed, for example, to fuel the fight against slavery and supported the introduction of law protecting basic human rights.[31]

Christianity, however, did not influence legal systems in the same manner as Islam, the most diffused religion in the African continent, did.[32]

Two main waves, one during the XIth century and another during the XIVth - XVIIIth centuries, diffused Islamic law in the continent.

Islamic law always allowed traditional law to persist; traditional rituals, figures, and practices were tolerated by Islam.

Through the introduction of the šarīʿa, Islam shaped a great part of legal institutions in Africa, especially in the North.

[31] See Gambaro Antonio and Sacco Rodolfo, 2008, Sistemi Giuridici Comparati, 3rd edition, pages 426.

[32] Islam is diffused especially in Somalia, Senegal, Gambia, Guinea, Mali, Niger, Nigeria, Ciad.

CHAPTER II
THE COLONIAL LAYER

SUMMARY: 2.1 Colonization; 2.2 European and African Law;
2.3 Colonial Law; 2.4 The Decolonization Process

2.1 Colonization[33]

During the beginning of the XVIth century, and then during the peak of the European economic development of the 1880s, Portugal, Spain, Great Britain, Nederland, France, Belgium, Italy and Germany expanded in Africa and established colonies.

The grade of dependence of each colony was different in each country and depended from case to case.[34]

In most cases, the colony belonged directly to the European country which occupied the region. The colony was, in this case, controlled and governed through the laws which were established by the occupying country. These kind of colonies were called *direct colonies*.

In other cases, colonies were governed not by third countries but by economic organizations, which enabled them to experience a sort of autonomy. This kind of colonies were defined as *autonomous colonies*.

African leaders established also often agreements with the European governments in which they allowed the foreign state to rule the country, requesting protection and international representation.[35]

Among all the existing forms of colonies, direct colonies were the most expensive ones. The reason was that colonial powers had to be permanently present with all their original institutions and personnel.[36]

[33] See Gambaro Antonio and Sacco Rodolfo, 2008, istemi Giuridici Comparati, 3rd edition, pages 429-430.
[34] Ibidem Chapter 5.1.
[35] This form of colony was called protectorate.
[36] See Di Nolfo Ennio, 2009, Storia delle Relazioni Internazionali, Dal 1918 ai Giorni Nostri, Editori Laterza, page 160.

European countries governed in different way their colonies. Some countries tried to include, mostly without positive results, the African and the European citizen in the same legal system.
Even if natives and Europeans were equal in front of law, a complete integration could never take place, and European citizens had different lifestyles from natives.
Other countries governed their colonies through indirect rules which maintained the existing political system. [37]

France was said to make use of direct rules; while Britain of indirect rules. Here, it is very interesting to notice a difference between common law and civil law countries. As we will see in the next chapters, civil law countries tend, in general, to have more interventionist forms of states. This interesting example shows that also in colonies civil law countries had a stronger presence of the state.[38]

According to La Porta, Lopez-De-Silanes, Shleifer and Vishny, the fierceness in which colonies imposed laws without the choice of the local population was, in some sense, a sort of gift for researchers. According to them, legal transplants were a kind of exogenous factor imposed by colonizing powers, which could be an extremely useful index in order to study the effects of legal origin on a country.

According to Michaels, the theory of legal origins presented by La Porta, Lopez-De-Silanes, Shleifer, and Vishny is still incomplete. [39] He affirms that the process of legal transplants is more complex due to the fact that it involves many factors, including the transport of legal expertise. He affirms that it may have been possible that civil law was able to expand more easily abroad due to the fact that it was based on written codes and not on legal expertise. Michaels suggests that common law may be performing better in many former colonies

[37] The power which existed before the establishment of the colonies.
[38] Ibidem Chapter 4.4.
[39] See Michaels Ralf, 2009, Comparative Law by Numbers? Legal Origins Thesis, Doing Business Reports, and the silence of traditional comparative Law, American Journal of Comparative Law, page 11.

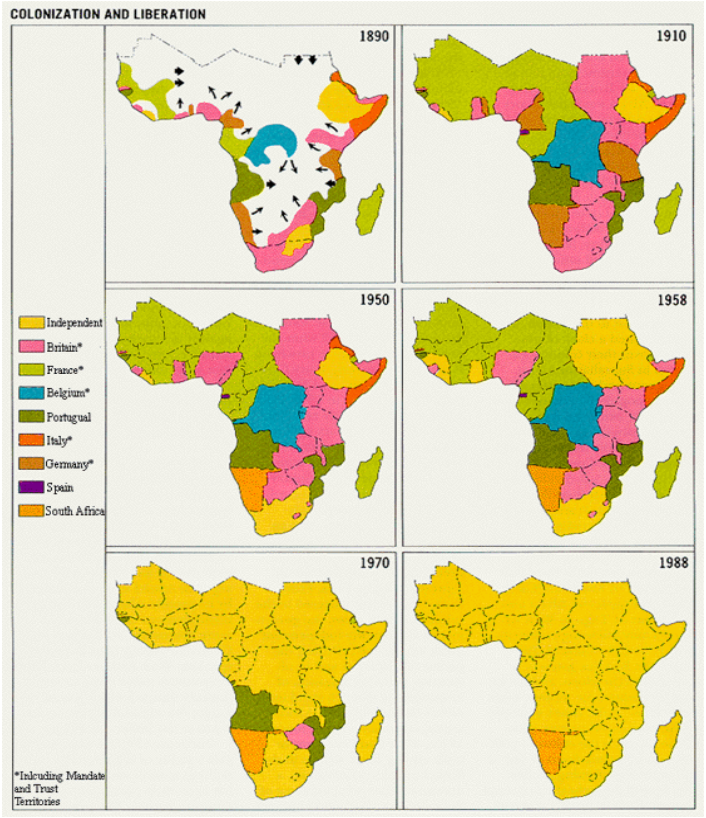
because British colonies empowered local elites; and after independence, local expertise was able to shape legal institutions in a way that better suited local needs.[40]

In order to understand how a colony was operating, different elements have to be considered. Firstly, one has to understand with which weight decisions were taken in Africa and Europe. It is important to comprehend whether a decision was taken by a local or a European person. Furthermore, one has to analyse whether the interests of the colonials or of the Africans are supported by each decision. As we saw in the last pages, British colonies assigned more responsibilities to local professionals. This fact may have contributed to a better integration of natives into the colonial legal system.
The French legal system, as we will see in the next pages, contributed on the other hand to keep Europeans separated from locals, causing often social tensions.

By looking at the system of education, is also very interesting to observe differences between English and French colonies. French colonial education was characterized by the implementation of French textbooks and French teachers. The English colonial education adopted, on the other hand, an educational policy which was more adaptive to local customs.[41]
On the picture below, it is possible to observe the historical evolution that Sub-Saharan Africa experienced form 1890 until 1988, the year in which colonialism came to an end.

[40] Due to the fact that common law is based on case law and involves more the activity of lawyers and judges who interpret law, British colonies had to "train" local elites in order to maintain order. Civil law was on the other hand based on codified law and colonial powers did not have to train natives in the same way.
[41] See Rostowski Jacek, and Bogdan Stacescu, 2006, The Impact of of Legal School and Colonial Institutions on Economic Performance.
According to Rostowski and Bagdan, these differences between the two colonial education systems explain why English colonies perform better than French colonies.

Figure 2.A: Colonization and Independence of Africa[42]



2.2 European and African Law[43]

European colonial powers did not transplant their laws in a complete way since the beginning. European law and African law were very different from each other, and such a transplantation would have been rejected by the local population.

Colonial lawyers chose in this case a twofold system in which traditional law and European law coexisted.

It must be said, however, that European law had a more expansive character and tended to overcome traditional law in the medium-run.[44]

[42] Source: http://maps.unomaha.edu/peterson/funda/MapLinks/Africa-1/Africa_files/image007.gif

[43] See Gambaro Antonio and Sacco Rodolfo, Sistemi Giuridici Comparati, 3rd edition, pages 429-430.

European colonial powers saw in most cases traditional law as a menace and tended to have a more suppressive character towards it.

When European colonies arrived in Africa, they implanted an administrative body with personnel, offices etc., and the law used to organize these elements was necessarily the European one due to the fact that traditional law could not be applied under similar circumstances.[45] Developed commercial activities needed tools as *legal personality, property,* or *credit,* which, as we saw in the first chapter, did not exist according to traditional law.

European and African law were so different from each other that colonials did not accept a great part of the existing traditional law.
The magical element present in the African culture, the fact that traditional law was unwritten, and that professional lawyers, as understood in Europe, did not exist, pushed European governments to control the judicial system in their colonies.

The European legal transplants were in most cases valid for the both colonials and natives. However, one important component which was never fully applied to the colonies is the following: the constitution. The principle of equality[46] which as present in the European constitutions was never fully applied; Africans and Europeans were never treated in an equivalent way. The right of independence which was present in European constitutions was also never guaranteed to colonies until the 1930s and 1960s.

[44] Ibidem Chapter 2.3.
[45] To be clear, traditional African law did not offer legal tools like contract, property rights etc. which were essential for European colonial powers.
[46] Liberté, Égalité, Fraternité – in the French consitution

2.3 Colonial Law[47]

The law introduced by colonial powers in Sub-Saharan Africa cannot be defined neither as European nor as African; but as *colonial law.* This is because the law transplanted by colonial powers was different from the one which was existing in France or Great Britain.
In colonies, the military had a very strong role due to the fact that among the local population there wasn't a strong consensus towards the colonial political body. Political decisions could be taken by colonials only if protected by the force of the military.

The legislative, executive and judicial bodies were not separated as it was usual in Europe, but were a single building block.
Traditional African courts were controlled by governmental employees and the local normative activity was managed by the colonial administration.

Political parties did not have significant powers and in most colonies they did not even exist. Even if the period between 1880-1930 was characterized by European economic liberalism, the same cannot be said happened in the colonies.
A growing range of cultivable land was available in Sub-Saharan Africa and colonial powers planned economic development centrally.

All things considered, colonies may be defined as a reality apart; legally and economically speaking. From an economic perspective, the European liberal principles were not respected, and the economy was centrally planned. From a legal point of view, law in French or British colonies was neither completely French nor British. It was rather a special law, designed to fit the colonial environment.

[47] See Gambaro Antonio and Sacco Rodolfo, 2008, Sistemi Giuridici Comparati, 3rd edition, pages 429-430.

2.4 The Decolonization Process[48]

At the beginning of the 1930s and especially during the 1960s, African colonies experienced a process of decolonization.[49]
This period can be defined as the era of *colonial independence.*
Colonial independence cannot be described as a completely revolutionary process, characterized by a break with the preceding government and history. The independent African countries continued to maintain a connection with countries that had established their colonies before.
The countries that were once under the control of France, continued to stay during the decades in a sort of *Communauté;* the colonies that were once under the control Great Britain, continued to be members of the *Commonwealth.*[50]

The governments that were once colonial powers offered during the period of decolonization technical support in order to offer aid in the field of education, and to diffuse the ex-colonial culture and language in the newly independent countries.

The process of modernization and development of Sub-Saharan Africa needed measures that were not present in the African continent, and European governments offered their support by continuing to have a strong political and economic influence on the countries even after independence.

Through the treaties of Lomé, Yaoundé, and Cotonou, the European Union (EU) has recently created with its former colonial countries agreements that guarantee economic/technical assistance and freedom to export their goods to Europe.
The Lomé treaty is an aid and trade agreement between the EU and 71 African Caribbean and Pacific Group of States (ACP) countries which was signed in 1975 in Lomé, Togo.

[48]See Gambaro Antonio and Sacco Rodolfo, 2008, Sistemi Giuridici Comparati, 3rd edition, pages 429-430.
[49] For some European colonial powers having colonies became a burden due to the high costs necessary to control and maintain the colonies.
[50] See http://news.bbc.co.uk/2/hi/europe/country_profiles/1554175.stm

The first Yaoundé convention which aimed to promote trade and aid between the European Community and Africa was signed in 1963. The Yaoundé convention was an agreement between the European Community and 18 former African colonies which were already independent. The agreement was signed in Yaoundé, Cameroon and entered into force in 1964. The second Yaoundé convention was signed in 1971, and included Madagascar and Mauritius.

For the former British colonies, including Angola, Congo, Madagascar and further areas, the *Common Market for Eastern and Southern Africa* (COMESA), which was founded in 1994, aimed to promote the rule of law, the uniformity of commercial law and the reduction of economic barriers existing between the countries.[51]

In 1995, the *Organisation pour l'Harmonisation en Afrique du Droit des Affaires* (OHADA) was created.
OHADA includes all the former French colonies present in Africa and its goal is to promote legal convergence and harmonization. It possesses a legislative and a judicial body (*Cour Commune de Justice et d'Arbitrage*, CCJA) and promotes institutes of instruction like the École Régionale Supérieure de Magistrature, ERUSMA) .

The Cotonou Agreement is a treaty between the EU and the ACP countries which was signed in 2000 in Cotonou, Benin. The agreement entered into force in 2003, and its goal is to reduce poverty, promote sustainable development and criminal justice through the International Criminal Court in the ACP countries.[52]

[51] See http://www.comesa.int/
[52] See http://www.acp-eu-trade.org/index.php?loc=faq/ACP-Secretariat-FAQ.php

CHAPTER III
LAW OF INDEPENCE

SUMMARY: 3.1 European Law in Independent Sub-Saharan Africa;
3.2 Socialism in Africa

3.1 European Law in Independent Sub-Saharan Africa

The constitutions which were introduced in the African continent after their independence are based on the European (mainly French), American and British legal models.[53]

During the period of independence, political parties avoided to speak about differences among ethnic groups and tribes.
Unity is what political leaders were primarily struggling for during the period of independence. The reason is that they were afraid that social diversity could treat political stability, and spread into unrest and violence.
Tribalism became illegal during the period of independence, and political groups and manifestations that supported tribalism were declared to be illegitimate.

In order to support unity and stability, African countries adopted a single foreign written legal system guaranteed by the state.
The legal systems in Sub-Saharan Africa continued subsequently their walk on the path which was already established by the colonial powers in the past centuries.

Generally speaking, the changes made by political leaders to the inherited legal system were not dramatic. Before independence, certain laws and procedures

[53] See Gambaro Antonio and Sacco Rodolfo, 2008, Sistemi Giuridici Comparati, 3rd edition, pages 432-435.

were reserved exclusively to Europeans. After independence, African governments extended the application of civil and penal law also to natives.

In order to foster economic development, governments made use of foreign models; they started to important legal tools and perform legal reforms.[54]
Due to the fact that the greatest part of land and natural resources belonged to Europeans, African governments started a process of nationalization, supplying land and resources exclusively to natives. This process brought to a rupture with the Europeans who were living in the African region; it may be defined as the final break between natives and Europeans who were residents in former colonies. The final outcome was a mass-fleeing of Europeans who left from one day to the other their activities and properties.
The European model became Africa's reference point but traditional law never completely disappeared, as it was too deeply rooted in the population's culture and mentality.

3.2 Socialism in Africa

After independence, some African countries decided to follow the political and economic model of the Soviet Union and China. In these countries, political freedom was forbidden. The whole power was in the hands of the head of the state and the socialist party which were strongly supported by the military.
After independence, socialist constitutions were introduced in different African countries and national assemblies were elected. A significant number of companies became state-owned, and governments, who had monopoly, power defined prices.
African socialism was a general reaction political leaders had after independence. Compared to Soviet or Chinese communism, African socialism was not based on definite ideologies developed by influent thinkers. It was

[54] Ibidem Chapeter 4.4.

rather a general reaction, which came to an end in 1989 with the fall of the Berlin wall and the Soviet Union.[55]

The final outcome of African socialism was highly inefficient. The fact that most companies were state-owned contributed to the achievement of large economic inefficiencies. Even if African socialism came to an end more than two decades ago, many years were necessary to start a process of market liberalization which could bring to an end price distortions.[56]

Various countries in Africa made noteworthy progress towards opening up their economies to international trade throughout the 1990s. The amount of countries with open markets in Africa has grown from 7 in the 1980s to 25 in the late 1990s. Nevertheless, Africa has presently the most restrictive tariff regimes and the highest average level of tariffs and tariff revenue as a ratio to GDP.[57]

One of the greatest challenges for Sub-Saharan Africa is to perform reforms that contribute to open markets so that consumers, especially those with the lowest incomes, can have access to goods and services of higher quality at lower prices.[58]

[55] See Firedland William H.and Rosberg Carl G., Jr, 1962, African Socialism, page 2.
[56] For more information see P. Kalonga Stambuli, Developing "free market economies" in Africa, Surrey Institute of Global Econonomics Research, United Kingdom, available at: http://www.unu.edu/africa/papers/development/Stambuli3.pdf
[57] See FAO Corporate Document Repository, Trade Reforms and Food Security, Chapter 12 – Trade and economic reforms in Africa, available at: http://www.fao.org/docrep/005/y4671e/y4671e0i.htm
[58] These are just a couple of examples on the positive effects that market liberalization may have.

CHAPTER IV
LAW IN SUB-SAHARAN AFRICA TODAY

SUMMARY: 4.1 African Democracy; 4.2 Legal Evolution of Sub-Saharan Africa; 4.3 Property Law in Sub-Saharan Africa; 4.4 Modern Legal Transplantations in Sub-Saharan Africa

4.1 African Democracy

In Africa, a system like the one present in Europe, in which different parties with different powers coexist, does not exist easily. The reason is that people tend to accept the fact that only one group or individual can hold power. When, for example, a political party wins the elections, the other parties which dissent with the winning party are forced to stop their activities or are incorporated into the group who won.

With the end of African socialism and all the civil wars that shed blood on Sub-Saharan Africa, an increasing number of African citizens is supporting the existence of a more democratic system. [59]

The problem that continues to persist in Africa is given by the fact that people tend to identify themselves more with their ethnic group rather than with the state.

The state is seen as something non-natural, and the native has problems to identify himself with something external which does not belong to his group or family.

The dilemma is that ethnic groups alone are too small to offer the functions of the state; and they cannot be a substitute of it. The state is not able to offer the necessary services to all the different ethnic groups according to their needs and languages.[60]

[59]The civil wars in Somalia, Liberia and Congo can be defined as the most violent ones in the African region.

[60]The cost of offering to all ethnic groups "tailor-made" laws would be too high for every nation. This may be defined as the greatest dilemma for the African continent; the universal legal system developed in Europe was conceived under different circumstances and it does not

Generally speaking, people in Sub-Saharan Africa do not trust elections. According to most African people, only governments which were elected in an unanimous way can legitimately rule.
This fact does not facilitate the development of a political system in which different groups coexist in a pacific way.

Until recently, *coups d'état* were the regular way through which the power was transferred from one group to the other.
Due to the fact that democracy, as understood in Europe, isn't considered as a legitimate system, the population in Sub-Saharan Africa tends to prefer powerful charismatic leaders which more often reveal themselves to be dictators.

The constitutions of most Sub-Saharan African countries are influenced by these facts, and the head of the state owns usually significant powers. The head of the state, who is usually also the head of the leading political party, is by some means comparable to a king whose origins are divine.

In Sub-Saharan Africa, the military has always played a central role. Many heads of the state acquired power through the support of the military.
The armed forces, which have always been under the control of the head of the state, have tried to fight diversity in Africa.
Different ethnic groups, languages, and traditions were seen as something that could harm the state. Sometimes it also happened that a single ethnic group to which the head of the state belonged used the military in order to control a region.

Sub-Saharan African governments tend to have a tripartite structure based on the president, the military and the leading political party.
The president directs the country; the military fights diversity and maintains the status quo which is defined by the president; the political party is

---

naturally hit the multivariate African culture.

responsible for pushing the population to respect and accept the government's decisions.

4.2 Legal Evolution of Sub-Saharan Africa

During the last decades, the law of Sub-Saharan Africa continued to have a negative attitude towards traditional law. Economic, legal, and political development have contrasted the environment which was necessary for traditional law.

In most African countries, tribal tattoos, sacrifices and behaviors that could contribute to foster ethnic conflict became illegal.

Only recently this trend has changed. Lawyers have understood that it is impossible to fight against traditional law in Africa, and people have started to give more value to tradition. For this reason, new constitutions in which tradition has found a position were recently founded.

During this new phase, law is trying to come closer to traditional law by becoming more dynamic. Written law isn't anymore just a sort of functional measure but has become an ideal which one may be able to find an application in both realities; the traditional and the metropolitan one. Written law has evolved from a static instrument to a more dynamic and interpretative tool, giving law the ability to include also the traditional sphere.[61]

4.3 Property Law in Sub-Saharan Africa

Property law in Sub-Saharan Africa has a very diverse character depending on the region. Even in a single country, property law may be not homogenous.

[61] It is interesting to notice here how civil law in Africa became more interpretative, assuming more and more a character which is closer to the one of common law – which is more based more on interpretation rather than on written codes.

Land belongs in general to the group, and is distributed among families. Property regulations can have a very vast character, depending on whether these rules exist in a village, tribe or family.

The individual who possesses land isn't incentivized to do important investments in order to enhance efficiency. The reason is that he/she won't be allowed to sell his/her land if it becomes unproductive. He/she won't be neither able to use property in order to get access to credit.[62]

Traditional laws have often been accused of being a main cause of poverty, and many countries decided to forbid them.
As an answer to the problem, many African countries decided to register goods. In many countries, unproductive and dispossessed land was registered and owners received documents in order to prove to be the proprietors.
Recently, another important legal reform that aims to increase the efficiency of land use has been done. The land which isn't fully used is expropriated by the state, which first puts into practice plans which aim to increase its value, and then redistributes it.[63]

4.4 Modern Legal Transplants in Sub-Saharan Africa

During the past century, legal transplants took place mainly because of colonization. Between the XVIth century until the XXth century, colonial powers occupied most African countries, importing their legal systems and norms.[64] [65]
Today, most developing countries, including Sub-Saharan Africa, are experiencing another type of legal transplant.

[62] Ibidem Chapter 9.2.
[63] Ibidem Appendix.
[64] See Gambaro Antonio and Sacco Rodolfo, 2008, Sistemi Giuridici Comparati, 3rd edition, page 428.
[65] Ibidem Chapter 2.3.

As Buscaglia affirms, legal transplants are the main cause of trade-related legal changes in the developing world.[66]

Many developing countries have decided to base their economic growth on exports and on FDIs. In order to facilitate trade, many developing countries have been pushed create a more stable environment which conforms to the standards existing in developed markets. As a consequence, in order to increase FDIs and efficiency, many least developed countries (LDC) have been pushed to transplant legal norms from countries that provide FDIs.

Buscaglia and Ulen affirm that legal reforms are in fact the consequence of political circumstances and foreign economic pressures.[67]

The World Trade Organization (WTO) has the function to enforce the standards of protection of intellectual property rights, and to build up a discussion and dispute settlement mechanism in order to supervise the put into practice of the international standards and resolute any government to government disagreement.[68]

Under the direction of the WTO, most LDCs adopted since the 1990s the trade-related intellectual property rights (TRIPS).[69]

In this context, it may be possible to speak about a sort of voluntary legal transplantations that aim to harmonize the legal norms worldwide in order to enhance trade and reduce dispute among nations.

Sub-Saharan African countries are members of the United Nations and are active members of the international community. In order to obtain the assistance of the World Bank and the International Monetary Fund (IMF), African countries were required to respect certain legal standards.[70]

[66] See Buscaglia Edgardo, 1999 Law and Economics of Development, Hoover Institute, Stanford University, page 572-574.
[67] See Buscaglia Edgardo, 1999, Law and Economics of Development, Hoover Institute Stanford University, page 572-574.
[68] For more information see http://www.wto.org/index.htm
[69] For more detailed information see: http://www.wto.org/english/tratop_E/trips_e/trips_e.htm
[70] And as a consequence to transplant legal norms from developed countries.

Legal convergence has been taking place worldwide during last decades. Legal rules are competing worldwide, and very often the strongest rules are transplanted from one legal system to the other.[71] [72]

The way in which an economy is structured is also influencing in a significant way the degree in which foreign legal rules are implanted in Sub-Saharan Africa.

By looking at the export-led model of most LDCs, we can see that it has contributed to an harmonization of legal institutions. The need for a more stable and safe environment for doing business worldwide has pushed governments in LDCs, including Sub-Saharan Africa, to put into practice legal reforms that open markets to foreign investors.

Legal transplants must not be seen as a menace, but as an opportunity for Sub-Saharan Africa to develop and reduce the grade of chronic poverty. Within all the rules that raise the standards of doing business, we can find laws and rights that protect the individual, giving him/her more chances to escape from poverty.

[71] See Garoupa Nuno, Ginsburg Tom, 2009, Economic Analysis and Comparative Law, Illinois law and Economics Research Papers Series, (Mauro Bussani & Ugo Mattei, editors), page 8.
[72] See also Siems MM, 2007, the End of Comparative Law, 2 Journal of Comparative Law

CHAPTER V
COMMON LAW AND CIVIL LAW IN SUB-SAHARAN AFRICA

SUMMARY: 5.1 Common Law; 5.2 Civil Law; 5.3 Common Law and Civil Law in Sub-Saharan Africa

5.1 Common Law[73]

Expressed in a very condensed way, common law is law formed by judges with the support of decisions of courts and tribunals. Law isn't codified, and the system on which common law is founded gives significant importance to past solutions. This means that it is not acceptable to solve similar cases in a different way. Problems have to be solved by taking into consideration the way other similar cases were treated.

In the case in which different parties do not agree on which law should be applied, an idealized court studies the way in which past decisions were affronted and identifies the most suitable solution.[74] If a similar case has been solved in the past in a defined way, the court has to apply the reasoning in which the precedent case was solved.

There is, however, an exception in the case in which a case is new, different from all the other disputes that existed in the past.

Under such circumstances judges have the power to develop law.[75] In this case, the new law becomes a reference point for similar cases in the future.

In general, common law systems are much more complex than described above. The decisions that have been taken are valid only in defined jurisdictions and each court is characterized by a different grade of power.

[73] See Gambaro Antonio and Sacco Rodolfo, 2008, Sistemi Giuridici Comparati, 3rd edition, page 31-33.

[74] The function of the idealized court is to compare all similar cases and verdicts in order to compare all similar precedents in order to discuss which past decision fits better the present case.

[75] The judge has the power to form autonomally new law – from this the typical expression "judge-made law" or "case law".

Common law was originally created in the middle ages in England and spread through British colonialism throughout the world.

In 1154, the King of England Henry II introduced the system of common law by generating a single legal system which was *common* in the whole country. [76]

Through the writ system, and by sending judges from his central court to solve the disputes, Henry II created a central legal system in which local custom was raised to a countrywide level.

The judges, which were sent by the king, used to solve the local disputes by interpreting the local habits and the particular cases. After the dispute resolution, the judges went back to the central court and conferred the way in which the dispute was solved. The decisions were recorded and, in the case in which another similar dispute originated, the judge had to apply the same reasoning which was developed by the precedent judge.

Through the *system of precedent*, the legal system of England was institutionalized and unified in the whole country.[77]

Initially, judge-made law was the principal source of law. Only after centuries, the Parliament acquired the power to form law as we are experiencing today.

There are several theories that have been developed in order to explain the evolution of law. [78]

According to the *Revolutionary Explanations,* English lawyers were on the same side as the winners of England's Glorious Revolution. This means that after the revolution judges were independent from the king and enforced property law in order to protect themselves and the population from the power of the Crown.[79]

According to the *Medieval Explanations* theory, common law finds its origins in the 12th century with the creation of the *Magna Carta,*[80]which states: *"No*

[76] From this the name common law.
[77] From this fact springs the name Common Law.
[78] See, La Porta Rafael, Lopez-De-Silanes Florencio, and Shleifer Andrei, 2008, The Economic Consequences of Legal Origins Journal of Economic Literature .
[79] From this derives the main difference between civil law and common law.
[80]The Magna Carta is a legal document written in 1215 in latin. It is a document that King

freeman shall be taken or imprisoned or disseised or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land."[81]

The Magna Carta was, in this context, the first legal document which recognized and enforced rights of third persons apart from the king.

It is not possible to affirm whether the *Revolutionary* or the *Medieval Explanations* where more influential. What is clear, is that both had important consequences on England's legal evolution.

5.2 Civil Law

Broadly speaking, civil law is a legal system which originated from Roman law. It is a written legal system based on codes; its principal source of law is legislation and the court system is in most cases inquisitorial, and independent from precedent cases.

Judges are not able to interpret cases as in the common law system but have the restricted capacity to interpret law. Their ability consists herewith in defining how codified law can be linked to the particular case.

Civil law systems are based on written rules which are valid for the entire population and which must be respected even by judges when solving a dispute.

The original source of legislation is in civil law systems the legal code (which comprehends different statutes).

John had to formulate in order to favor the barons, who pretended more rights in order to defend their properties. Sources: Coward 1980, pp. 298–302., In testimony before a House of Lords committee in the autumn of 1689 (Schwoerer 2004, p. 3)., "The Glorious Revolution". www.parliament.uk. http://www.parliament.uk/factsheets/factsheets/g04.cfm.

[81] See Paolo Baffi Lecture, 2008, Legal Foundations of Corporate Governance and Market Regulation, Bank of Italy, page. 35.

Law is created through legislature's ratification of a new statute that includes all the former statutes (connected to the topic) and the changes required by court decisions.[82]

Civil law's historical origin is Roman law, in particular the Corpus Juris Civilis developed by Emperor Justinian in the VI century a.C.[83]

The historical context which illustrates better why civil law had success in medieval Europe is explained by the following fact: while England was characterized by political unity, the rest of Europe was fragmentized.[84] The context in which Europe was located did not allow countries to apply a centrally structured system as common law.[85]

French civil law is based on the *Civil Code,* which originated in France during the XIX century through Bonaparte.
The French Revolution influenced in a very significant way civil law; it generated civil law, and political principles like freedom of conscience, equal rights, property and free trade.[86]

In France, according to the *Revolutionary Explanations,* lawyers were on the "*losers"* side of the revolution. The revolutionaries tried to deprive the judges of their independence and, as a consequence, judges became bureaucrats employed and controlled by the state.
Being a judge in France was a low-prestige job, and the power of judges against the state was almost inexistent.

According to the *Medieval Explanations* theory, the French Crown adopted during the 12th and 13th centuries the bureaucratic inquisitorial system of the

[82] See Apple James G. and. Deyling Robert P, 1995, A Primer on the Civil-Law System ; see http://www.fjc.gov/public/pdf.nsf/lookup/CivilLaw.pdf/$file/CivilLaw.pdf
[83]See Apple See James G. and Deyling Robert P., 1995, A Primer on the Civil-Law System, page 5.
see http://www.fjc.gov/public/pdf.nsf/lookup/CivilLaw.pdf/$file/CivilLaw.pdf
[84] Ibidem Chapter 5.1.
[85] See Antonio Gambaro and Rodolfo Sacco, Sistemi Giuridici Comparati, 3rd edition, page 181.
[86] See Catherine Delplanque, Origins and Impacvt of the French Civil Code, page 3; available at: http://www.afhj.fr/ressources/french-code-civil.pdf

Roman Church in order to unify and control the territory.[87] This system was necessary in order to control a fragmentized region in which it would have been impossible to use a flexible system like the one which was implemented in England.

The differences existing between civil law and common law systems are due to their different historical evolutions.[88]

Having a view of the historical origins of the two legal systems may be helpful in order to understand why common law institutions are more independent from the state and more market-oriented than civil law countries.

5.3 Common Law and Civil Law in Sub-Saharan Africa

The African culture and tradition is so rich and diverse that it is almost impossible to find a completely homogenous legal system.

British and French colonial powers transplanted during the past a significant part of their legal tradition which persisted during the decades until today.

Twenty-seven countries in Sub-Saharan Africa have a legal system with French civil law influence; sixteen have a British common law system, two have a bi-juridical law system and one, Sudan, applies the Sharia.[89]

In order to see whether civil law or common law have effects on market development and on poverty, I selected a sample of twenty countries.

These countries are: Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Congo, Dem. Rep., Gambia Guinea, Madagascar, Mali, Mauritania, Rwanda, Senegal, Swaziland, Uganda, Namibia, Botswana, Tanzania, Ghana, and Kenya.[90]

[87] See Paolo Baffi Lecture, Legal Foundations of Corporate Governance and Market Regulation, Bank of Italy, 2008, page. 35.
[88] See Reitz John C., 2009, Legal Origins, Comparative Law, and Political Economy, University of Iowa Legal Studies Research Paper, page 10.
[89] See Table 1.

Francophone countries have been influenced in a more significant way by French civil law while Anglophone countries have been influenced by English common law. In order to study the differences between the two legal systems in Sub-Saharan Africa, I decided to focus on a sample of countries which were used already in different World Bank studies on legal origins in Sub-Saharan Africa. In the next chapters, I will use the listed countries as sample in order to study how regulations in these countries differ from each other and how they influence the economy.

Sample of Francophone and Anglophone Countries in Sub-Saharan Africa[91]

Francophone (Civil Law)	**Anglophone (Common Law)**
Benin	Swaziland
Burkina Faso	Gambia, the
Burundi	Uganda
Cameroon	Namibia
Cape Verde*	Botswana
Congo, Dem. Rep.	Tanzania
Guinea	Ghana
Madagascar	Kenya
Mali	
Mauritania	
Rwanda	
Senegal	

[91] The sample of countries I used is the same which used by Louise Fox and Ana Maria Oviedo in their study on education and wages in Sub-Saharan Africa.
In their sample the two researcher preferred to divide the sample of countries according to their origins which could be Anglophone or Francophone.
As said, pure legal systems in Africa are extremely rare. Only Angola, Benin, Cape Verde and Central African Republic, have a pure civil law system. The other countries have all mixed legal systems. See http://www.juriglobe.ca/eng/pib-rnb/index-alpha.php
See Louise Fox, Ana Maria Oviedo, Are Skills Rewarded in Sub-Saharan Africa? Determinants of Wages and Productivity in the Manufacturing Sector, The World Bank, 2008, page 7.
Djankov et al. used other countries as samples. As English legal origin countries they had Ethiopia, Ghana, Kenya, Lesotho, Malawi, Namibia, Nepal, Nigeria, Sierra Leone, South Africa, Tanzania, Uganda, Zambia, and Zimbabwe; as French legal origin countries he classified: Angola, Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Dem. Rep. of Congo, Congo, Cote d'Ivoire, Guinea, Madagascar, Mali, Mauritania, Mozambique, Niger, Rwanda, Senegal Spain, Togo.
See Siems, Mathias M., 2006, Reconciling Law & Finance and Comparative Law, page 9.

*Cape Verde is not a Francophone country but is still based on French civil law.

PART II
THE ECONOMIC CONSEQUENCES OF LEGAL ORIGINS

Part I was dedicated mainly to the study of African law. In the coming part of my thesis, I will study more in detail how legal origins, civil law and common law, may have influenced legal institutions in Sub-Saharan Africa.
The goal of Part II is not to analyze the structure of legal institutions in detail but to study whether countries with a definite type of legal system are inclined to enforce certain regulations rather than others.

I will start Part II by studying the relationship between legal origins, legal institutions, and economic growth.
In the remaining fraction of Part II, I will show why legal origins and legal institutions do matter by studying differences existing between the two legal systems (creditor rights, investor protections, trade regulation, labor regulation, and further regulations in Sub-Saharan Africa).
In chapter six, I will study how institutions may lead to different outcomes. This chapter will be more theoretical and it won't touch Sub-Saharan Africa directly.

Part II can be described as the backbone of my dissertation. In this section of my thesis, I will start to develop a pattern on which I will build the empirical part of my thesis. I will build a theoretical structure through which I will be able in Part III to analyze the effects of legal origins on Sub-Saharan Africa.

CHAPTER VI
THE CONSEQUENCES OF LEGAL ORIGINS

SUMMARY: 6.1 Theories on Institutions and Regulation; 6.2 Structural Differences between Civil Law and Common Law; 6.3 Legal Origins, Private and Public Enforcement; 6.4 Legal Origins; Financial Development and Economic Growth; 6.5 Legal Origins and Procedural Formalism; 6.6 Legal Origins, Judicial Independence and Property Rights; 6.7 Legal Origins, Legal Institutions and Contract Enforcement; 6.8 Legal Origins, Legal Institutions and Regulation of Entry; 6.9 Legal Origins, Legal Institutions and Labor Regulations; 6.10 Legal Origins, Company Law and Securities Law; 6.11 Legal Origins and Creditor Protection; 6.12 Legal Origins and Government Ownership of Banks

6.1 Theories on Institutions and Regulation

Institutions differ from each other depending on how they operate and on which types of regulations they promote. Many researchers, interested in understanding why institutions differ from each other, developed various theories. In general, there are six main theories that aim to explain why and how institutions work. These are:

1. The development theory
2. The law enforcement theory
3. The political power theory
4. The cultural theory
5. The legal origins theory

According to the *development theory,* during each phase of its

development, a country is characterized by the presence of different institutions which vary according to the level of development that the country is experiencing. This theory sustains that rich economies can afford to have more sophisticated institutions and more labor regulations, while poorer ones have to be satisfied with more inefficient institutions.[92]According to the *development theory*, richer countries are able to have more wide-ranging regulations of labor and social insurance systems than poor countries (which do not possess the resources to finance such policies).

The *law enforcement theory* supports the idea that the structure of institutions depends on the level of development of a country. According to this theory, it is not just the cost that defines whether an institution is founded or not. It is the cost of alternative law enforcement strategies that influences the foundation of institutions. In richer countries, for example, the direct regulation of markets can be less attractive because failures may be solved through private litigation.[93] [94]

The *law enforcement theory* suggests that rich countries have fewer regulations because the cost of enforcing contracts is lower. Poorer countries have to rely on more regulations because the cost of enforcing a contract can be much higher.

An additional theory that aims to explain why institutions are established, is the *political power theory.* This "*Machiavellian*" theory suggests that institutions are created by the groups of individuals that have power in order to advantage themselves and their families.[95] The *political power theory* affirms that institutions and regulations do not exist because they aim to reach more efficient outcomes; they exist because of egoistic reasons. The ones who possess political power obtain, through regulations, the wealth of the ones who

[92] See Botero Juan, Djankov Simeon, La Porta Rafael, Lopez-de-Silanes Florencio, and Shleifer Andrei, 2002, The Regulation of Labour, page 1-38.
[93] See See Botero Juan, Djankov Simeon, La Porta Rafael, Lopez-de-Silanes Florencio, and Shleifer Andrei, 2002, The Regulation of Labour, page 2.
[94] As direct regulation I mean heavy governmental regulation which is not completely market-oriented
[95] See Machievelli, The Prince – Of maintaining a Princedom

do not possess political influence.[96]

Another influential theory, the *cultural theory*, asserts that history and religion shape regulatory institutions, influencing their structure and nature. The *cultural theory* suggests that countries with Catholic religion tend to have a more paternalistic and regulatory form of state. For this reason, according to this theory, countries in which Catholicism plays an important role, tend to have more regulations and a higher degree of social insurance.

Finally, there is the *legal origins theory*. This theory supports the principle according to which legal origins influence the structure of institutions and laws. An example are market and labor regulations which tend to be more regulated in French legal origin countries. The *legal origin theory* affirms that common law countries have less regulations and give more importance to private contract enforcement. According to the theory, the same holds true for the regulation of labor. Common law countries give more weight to private contracts and private litigation in order to regulate the labor market. With the aim of protecting workers, civil law countries' governments tend to regulate the labor market more directly because in its view workers are more vulnerable in front of the power of the employer. Concerning the social security system, common law countries have less charitable systems that protect workers.

Each of the five described theories will surely have significant consequences on how institutions work. Among all the existing theories, we will focus during the next pages only on the *legal origins theory,* as the intention of my thesis is to focus mainly on the legal origins sphere.

[96] See Olson Mancur, 1993, Dictatiorship, Democracy and Prosperity, page 569-575.

6.2 Structural Differences between Civil Law and Common Law

"Judges allegedly make law in civil law systems by interpreting codes, not finding social norms. Compared to common law countries, the codifiers in civil law countries apparently have more influence and the judges allegedly have less influence. Interpreting some codes, however, looks a lot like finding social norms. Comparative lawyers, consequently, debate whether the apparent differences in the two systems are real or illusory."

R. Cooter

According to R. Cooter, there are two main sources of law. The first form of making law has a central structure and is defined as legal centrism. Under legal centrism, high officials in the government form the law and impose it to the population.
The second form of making law is defined by Cooter as legal decentralization. Under this form, law is formed in a decentralized way. This means that there can be different sources of law, and only the most efficient ones will be elected.

A decentralized contract and property law is essential for Cooter; only through the competition of law it is possible to achieve the most efficient results.
Transactional lawyers are, according to Cooter, an example of how legal decentralization can contribute to achieve formidable results. Transactional lawyers are not just responsible for solving technical legal problems for entrepreneurs; they are in charge of developing new forms of contract and property law.
The key success of Silicon Valley was, according to Cooter, the fact that new forms of contract and property law enabled small entrepreneurs and engineers with innovative idea to attract investments.

Common law includes the positive elements that characterize legal decentralization. Through common law, codes like the Uniform Commercial

Code (UCC) and the restatement of law, lawyers are able to make law case by case.[97]

It is exactly this ability to make law case by case that constitutes the legal decentralized system which characterizes common law countries.

Another important structural difference is that common law countries are characterized by a greater flexibility. Common law judges, for example, are able to enforce more flexible financial contracts. This superior elasticity endorses financial development.[98]

Furthermore, common law courts use wide-ranging standards when taking their decisions. Civil law courts use, on the other hand, rules that allow corporate insiders to structure legal transactions in a way that expropriates outside investors.[99]

As stated before, civil law countries tend to be organized differently from common law countries. The degree of centralization is higher in civil law countries, and the function that law plays in supporting the market activity is lower in common law countries if compared to civil law countries.[100]

A good historical example that may help us to understand why civil law and common law are so differently structured is the following:

In France, revolutionaries were afraid in the XIXth century that judges could somehow be tempted to interpret law politically. For this reason, a model based on written abstract codes was the mean which was preferred in order to solve disputes. This system was more centralized because it had to be under the control of the state.

In England, on the contrary, such a necessity did not exist; the important thing that was necessary was political unity.

The differences between common law and civil law are very large. Many differences existing today have ancient origins. It is fascinating to observe how

[97] For the UCC code see: http://www.law.cornell.edu/ucc/ucc.table.html
[98] See Gennaioli Nicola, 2007, Optimal Contracts with Enforcement Risk.
[99] Ibidem
[100] See Mahoney Paul, The Common Law and Economic Growth: Hayek Might be Right, Journal of Legal Studies.

modern rules were influenced by the past.

6.3 Legal Origins, Private and Public Enforcement

An example which describes in a clear way an important difference existing between common law and civil law countries, is given by the different weight that those two legal systems give to private and public enforcement. La Porta et al. stated that the protection of shareholders and creditors are not only interrelated with financial development, but also with legal origins. This means that legal origins play an essential role in shaping a country`s financial system.

By studying forty-nine countries, La Porta et al. found out that common law countries give different weight to private and public enforcement. As example, they found out that common law provides a better protection for shareholders and creditors.

The origins of the superior Anglo-Saxon private enforcement can be found in the past, in the ancient bills in equity, a system of law complementing the regular rules of law where the appliance of these would work unkindly in a particular case.

In the medieval epoch, the sovereign received an increasing number of pleas from individuals who wished an *ex gratia* intervention; they pleased the sovereign to define equity. For this task, the sovereign was helped by the chancellor, who went to analyze the case and define justice.[101]

As we will see, the principle of equity will differentiate strongly the nature of common law from civil law.[102] [103]

Moreover, if we look at the origins of English common law, we can observe

[101] Ibidem Chapter 5.2.
[102] See Gambaro Antonio and Sacco Rodolfo, 2008, Trattato di Diritto Comparato, Sistemi Giuridici Comparati, third edition, pages 71-74
[103] Common Law is based on the principle of equity while civil law is more inquisitorial.

that this legal style expanded for the reason that aristocrats and merchants desired an organization of law that could supply strong protections for contract and property rights, and bound the crown`s capacity to influence the market.

The roots of civil law are, to a certain extent, different from the ones of common law. The origins of civil law can be detected in Roman law, which uses statutes and comprehensive codes in order to sustain its legal system.[104]

Shleifer states that by looking at England and France in the 12th and 13th century, it may be possible to understand why the two countries developed two different legal systems.

He affirms that France was not a peaceful country during this period of time. Nobles were very powerful, and had the power to destabilize decentralized justice. This is why the system was centralized and muscularly controlled by the sovereign.[105]

England, on the other side, was a fairly nonviolent country during this epoch. Common law was structured by a decentralized dispute resolution system based on the testimony before independent juries.

In the 18th and 19th century, European common and civil law countries constituted, influenced by their legal origins, different bodies in order to organize social business.

The superior judicial independence (in the cases of administrative acts affecting individuals), made common law more respectful of contract and private property.

The greater protection of private property and the superior contract enforcement under common law, influenced in different manners the development of financial institutions in each country.

Common law is dispute resolving; civil law policy implementing. This means that in civil law countries the state plays a more central role. It directs the markets in a more paternalistic way. By looking, for example, at how Italy, England and the United States reacted during the Great Depression, we may observe how legal origins influenced the governments to take different political

[104] Ibidem
[105] Ibidem

decisions.

Italy introduced a system of state-controlled capital allocation for its stock market. The United States and England introduced securities regulation and deposit insurance, increasing shareholders` rights.

Today, the situation did not change. State influence remains higher in civil law countries. The Italian *Art. 2393-bis c.c*. is an example of this fact.[106] Even if the Italian legislator wished to introduce rules that increase private enforcement, it was not possible to apply them resourcefully. This illustrates that legal origins may cause an *abortion* of a foreign rule in a local legal system, if not properly modified in order to fit the local context.

Italy`s legal origins made it painful to introduce efficiently legal tools like the private attorney action, the class action, the derivative action, the discovery tool etc.

Private enforcement is often in conflict with public enforcement.[107] In civil law countries, public enforcement prevails, and when legislators try to bring in new rules that enhance private enforcement, they become often inefficient because the environment that surrounds them is not complementary.

If we take an old tree and transplant it from a land into the other, it will probably die because the earth that feeds it does not contain the minerals that are essential for life. The same may be true for foreign laws transplanted in national legal systems; as it happened often in the past in Sub-Saharan Africa.[108]

[106] Art 2393-bis c.c. is an Italian law recently introduced which aimed to increase the rights of citizens towards companies. It can be defined as the Italian version of the class action. It never lead to significant positive results.
[107] They tend to support other forms of regulations.
[108] Here I mean that many transplanted rules that were efficient in mother countries, were inefficient in colonies because they did not fit the environment.

6.4 Legal Origins; Financial Development and Economic Growth

"The effect of legal origins on legal rules and financial development is statistically significant and economically large."

A. Shleifer

According to the law and finance scholars, legal traditions differ from each other because they give different weight to private and public enforcement.[109] There are two main theories that aim to explain how legal origins may influence a country's financial system. These theories are:

1) *The political channel theory*
2) *The adaptability channel theory*

According to the *political channel theory*, legal origins explain why certain countries are more developed than others. Countries with a certain type of legal origin seem to have institutions contributing in a different grade to development. For example, according to the *political channel theory*, civil law systems support the creation of state-controlled institutions that influence negatively the economic and financial performance of a country.

Another group of law and finance scholars, which sustains the *adaptability channel theory*, supports the idea that legal systems have a different grade of flexibility when socioeconomic circumstances evolve. If inflexible, a legal system isn't able to develop the necessary legal tools that commerce requires in order to work efficiently. This is an argument which is often used to explain why common law countries seem to work more efficiently than civil law countries.

French legal origin countries are said to have a more rigid structure than British common law or German civil law countries, and their financial performance seems to be less efficient.[110]

[109] Private enforcement: stands for legal policies giving more power to private entities.
Public enforcement: stands for policies relying more on state-intervention.
[110] See Paolo Baffi Lecture, 2008, Bank of Italy, Andrei Shleifer, Harvard University, page 23.

Beck, Demirgüç-Kunt, and Levine studied through econometric models which channel was more credible, and came to the conclusion that the adaptability channel is more influential on the grade of a country's economic and financial development.[111]

The legal environment and the development of the financial sector seem to be strongly linked. This means that there is a relationship between the banking system, capital accumulation, economic growth, productivity enhancements, and the legal environment.[112]

The adaptability and the flexibility of a country seem to be crucial in stimulating financial development. For this reason, it may be important to encourage countries to be flexible when doing legal reforms.

Many civil law countries tend to be legally conservative. Aiding them, especially the poorest countries, to become more flexible, may be an important step. [113]

The World Bank's *Doing Business Rankings* encouraged many developing countries to reform. As a result, countries like Burkina Faso or Rwanda were recently classified as world's top reformers.[114][115]

Efficient legal institutions contribute to the development of financial markets, which in turn enhance economic growth.

As Levine and King demonstrated, countries that have more developed

111 Beck Thorsten, Demirgüç-Kunt Asli and Levine Ross, Law and Finance: Why Does Legal Origin Matter?, page 30-31.

112 See Levine Ross, January 1998, Department of Economics, The Legal Environment, Banks, and Long-Run Economic Growth, , page 21.

113 Through legal assistance, information, and consultancy.

114 See http://blogs.worldbank.org/africacan/rwanda-is-the-worlds-top-reformer-in-doing-business
http://www.doingbusiness.org/features/reformers2010.aspx

115 It is very interesting to notice that Rwanda change recently its legal system from civil law to common law through a long reform programme.

financial markets experience higher growth of GDP.[116]

Through the study of a sample of 102[117]countries, Mahoney found out that between the period of 1960-1992, common law countries experienced higher levels of per capita GDP growth, population growth, school enrolment and investments.[118]

Property rights, transaction costs, and coercion are all elements that define the grade of development of a country, and legal origins/legal institutions tend to give different weight to such elements.[119]

Legal institutions are extremely important in defining the long-run economic performance of a country.[120] As we will see in these chapters, common and civil law countries are characterized by the presence of different types of legal institutions that tend to protect property rights, investments and economic freedom in different ways.

In general, legal origins can have different significant effects on an economy.

If compared to French civil law, English common law countries have a:

1) Superior investor protection; which positively influences financial development, improves access to credit, and lowers ownership concentration.
2) Lower government ownership and intervention; which are in turn linked to lower levels of corruption, better operating markets, and minor unofficial economies.
3) A reduced level of formalization and increased grade of independence of judicial systems – which are related to superior property rights and contract

[116] See King Robert and Levine Ross, Finance and Growth: Schumpeter Might Be Right, 1993
[117] For Sub-Saharan Africa it wasn't easy for Mahoney to find out the correlation between law and growth during the whole period due to the fact that some countries were under socialist rule. Some countries had to be excluded.
[118] See Mahoney Paul G., The Common Law and Economic Growth: Hayek Might be Right, University of Virginia School of Law, January 2000.
[119] See Stephenson Matthew, Harvard University Department of Government and Law School, see:http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/LegalInstitutionsTopicBrief.pdf
[120] See. Milgrom Paul R,. North Douglas C and Weingast Barry R., 1990, The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs, see http://www.economics.pomona.edu/Andrabi/courses/Econ154/Milgrom.pdf

enforcement.[121]

Those three points have important effects on economic growth. It was proven by La Porta et al. that common law countries experience higher degrees of GDP growth because common law is more market oriented than civil law.[122]

Legal institutions and legal rules can contribute to the achievement of different goals. For example, legal rules can determine the level of transaction costs. As Coase demonstrated, transaction costs define the character of economic activity and the distribution income.[123] As a result, the distribution of income (and herewith the level of poverty of a country) can depend on how legal institutions influence the level of transaction costs.

Legal institutions can also determine the efficiency of other elements.

North, for example, has shown that there is a link between property rights enforcement, transaction costs, and economic growth. He has strongly underlined the importance that institutions play in determining such factors.[124]

Legal institutions have also to be able to minimize the gap existing between the economy and law. They have to understand the economy in order to promote the best laws; and they also have to know which are the best laws for their economy.

According to Cooter, if economic law is inadequately adjusted to the economy, expectations diverge, cooperation becomes more difficult, and disputes consume inefficiently wealth. On the contrary, if economic law is adjusted to the economy, then citizens collaborate, bring into line their expectations, and use resources in an efficient and constructive way.

If public institutions malfunction and political circumstances are unstable, private contractual agreements become more expensive and, as risks increase,

[121] See Paolo Baffi Lecture, 2008, Bank of Italy, Andrei Shleifer, Harvard University, page 17.
[122] Here I listed only the effects that in my opinion influence on a very strong way financial and economic development. In the next chapter I will analyze also the other points.
[123] See Coase Ronald H., The Problem of Social Cost, 3rd Journal of Law and Economics, page 1-44, 1960.
[124] See North Douglas, Institutions, Institutional Change and Economic Growth Performance, Cambridge University Press, 1990 and Douglas North, Institutions, 5th Journal of Economic Perspectives, 1991.

investments are harmed.[125]This means that if individuals are not allowed to establish contracts because potential risks are greater than returns, then the development of a market is endangered.

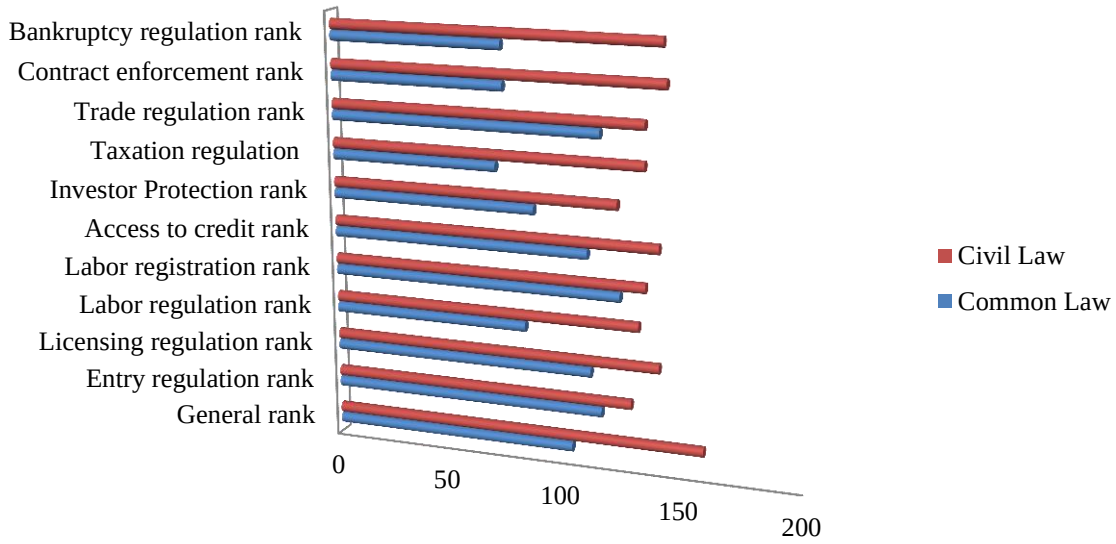
Another example on how legal institutions may influence economic outcomes is expressed by Orr and Ulen. The two researchers argue that if a government defends property rights and contract enforcement, it enables economic partners to trade because now they can trust each other. Contract enforcement increases the trust of citizens in the government, and helps the state to fulfill its duty.[126]

As often said, the legal origin of a country has important consequences how institutions work and influence development. In Sub-Saharan Africa, countries with civil law and common law systems have regulations that differ significantly from each other.
By looking at the World Bank *Doing Business Rankings* for Sub-Saharan Africa,[127] we can see that the following points are superior in common law countries than in civil law countries: [128]

1) Bankruptcy regulation
2) Contract enforcement
3) Trade regulation
4) Taxation regulation
5) Investor protection
6) Access to credit
7) Labor registration and regulation
8) Licensing regulation
9) Entry regulation

[125] See Cooter Robert D. , 1996, Decentralized Law for a Complex Economy: The Structural Approach to Adjudicating the New Law Merchant, page 816-820.
[126] See Orr Daniel and Ulen Thomas S., 1993, "The Role of Trust and the Law of Privatization" page 6.
[127] For the sample of countries I used. See
[128] Common law countries in Sub-Saharan Africa have better rankings.

Figure 6.A: Legal Origins and Regulations in Sub-Saharan Africa[129]



A very good flow chart that explains in a clear and complete way which are the links between legal origins and institutions is Figure 6.B.[130]

The figure represents in a clear and simple way the effects that legal origins may have on legal institutions. Specifically, legal origins may have a direct impact on:

1) Procedural formalism
2) Judicial independence
3) Regulation of entry
4) Government ownership of the media
5) Labor laws
6) Conscription
7) Company law and securities law
8) Bankruptcy law
9) Government ownership of banks

The legal origin of a country has important effects on procedural formalism; which is associated with the time needed to evict a nonpaying tenant and the time needed to collect a bounced check.

[129] Source: http://www.doingbusiness.org/EconomyRankings/
[130] Source Paolo Baffi Lecture, Legal Foundations of Corporate Governance and Market Regulation, page 80.

As we will see in the next pages, French legal origin countries in Sub-Saharan Africa have higher levels of procedural formalism than common law countries. This is partly given by the fact that public enforcement is stronger in civil law countries. This stronger presence of the state increases bureaucracy and formalism.

Legal origins define judicial independence; which is in turn associated with better property rights. This fact is explained by the circumstance that independent judges are able to better protect the interest of private citizens.

Regulation of entry is also influenced by legal origins; which is associated with higher levels of corruption and of unofficial economy

Government ownership of media is also related to legal origin. French civil law countries are characterized by a stronger concentration of ownership of the media.[131]

Legal origins influence, as we will better see in the next pages, labor laws, determining the level of unemployment and participation.

Legal origins influence, furthermore, military conscription. French civil law countries tend to have higher level of military expenses than common law countries.[132]

Concerning company law and securities law, legal origins determine the level of stock market development, firm valuation, ownership structure, and control premium. As we will observe in the next chapters, common law countries in Sub-Saharan Africa tend to have more developed stock markets if compared to French civil law countries.

The ownership structure differs also depending on legal origins. Ownership tends to be more concentrated in French civil law countries, and the level of state-owned companies tends to be higher than in common law countries

Bankruptcy laws are positively associated with higher available levels of private credit. This means that if bankruptcy laws protect creditors, access to private credit will be improved because the risks of not being paid back in case

[131] See La Porta Rafael, Lopez de Silanes Florencio, Shleifer Andrei, 2007, the Economic Consequences of Legal Origins.

[131] It is very interesting to observe that France was a less peaceful country in the past and this fact continues to be evident by looking at the military expenses of civil law countries.

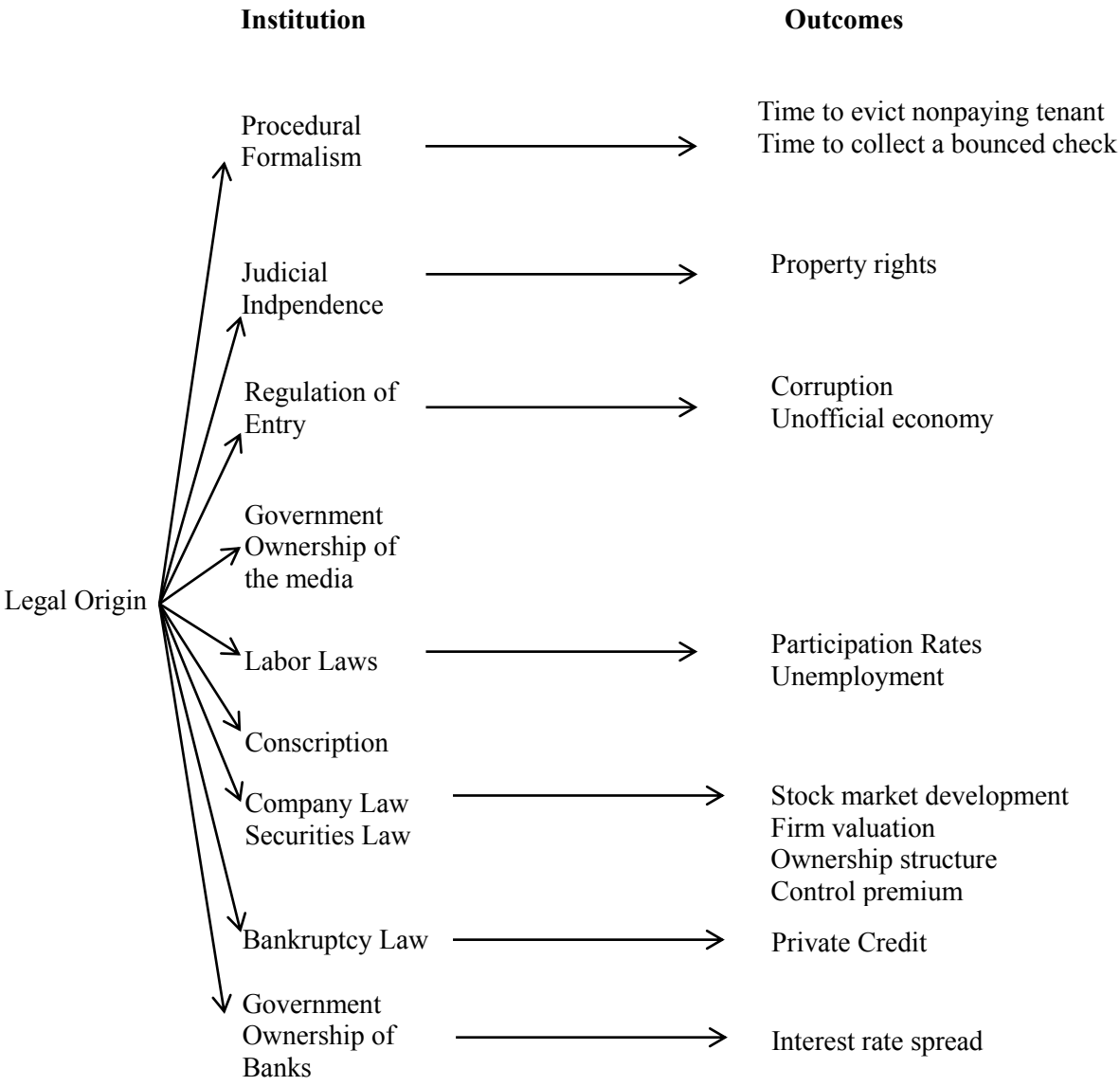
[132] This is an element which shows how in civil law countries the state is more present and interventionist. This link is historic. France was a less peaceful country, and the state invested more in its military system in order to guarantee stability.

of default will be reduced for the creditor. English common law protects creditors in a more efficient way than French civil law and, as a consequence, access to private credit is generally higher in common law countries.[133]
Finally, government ownership of banks, which is linked to the level of interest rate spread, is higher in French legal origins countries.[134]

This chapter was created in order to give a general overview on how legal origins and legal instituions cause different outcomes. In the remaining section of this part of my dissertation, we will go through each point I mentioned in order to study in detail the relationship between legal origins, legal institution s and their economic outcomes.[135]
After having analyzed this relationship, we will have constructed our first milestone on which we will base Part III of the thesis. There, we will go again through each point by studying the Sub-Saharan African reality.

[133] See Sgard Jérome, Do Legal Origins Matter? The case of bankruptcy laws in Europe 1808-191, (2006)
[133] See Orr Daniel and. Ulen Thomas S, 1993, "The Role of Trust and the Law of Privatization".
[133]See Fox Louise, Oviedo Ana Maria, 2008, Are Skills Rewarded in Sub-Saharan Africa? Determinants of Wages and Productivity in the Manufacturing Sector, The World Bank,, page 7.
[133]See Paolo Baffi Lecture, 2008, Legal Foundations of Corporate Governance and Market Regulation, page 60
[134] Due to greater public enforcement
[135] We will exclude from our analysis government ownership of the media and conscription in order to focus primarily on regulations that influence more directly the economy.

Figure 6.B: Legal Origin, Legal Institution, and Outcomes[136]



[136] See Paolo Baffi Lecture, Legal Foundations of Corporate Governance and Market Regulation, 2008, page 60.

6.5 Legal Origins and Procedural Formalism[137]

In order to analyze the dissimilarities amid common law and civil law countries, Djankov, La Porta, Lopez-de-Silanes, and Shleifer created measures of enforcement efficiency.

The four researchers refer to the time needed to collect a bounded check, and the time necessary to evict a delinquent tenant as *legal formalism.*

They find out that legal formalism is meaningfully superior in civil law countries, than in common law countries.

Additionally, procedural formalism is linked to higher expected length of judicial proceedings, further corruption, fewer reliability, fewer righteousness, fewer impartiality in judicial decisions, and lower access to justice.

It will be interesting to see in Part III of my thesis, if also in Sub-Saharan Africa French civil law will be characterized by higher levels of procedural formalism.

6.6 Legal Origins, Judicial Independence and Property Rights

According to the World Bank, the good functioning of the judicial system is among the main sources of development in a country.[138]

Expected results in the courts; ease of access of the courts by the inhabitants, independently on their wealth; sensible time to disposition; and satisfactory remedies, are all elements that may determine whether a judiciary system is efficient or not.[139]

Growing impediments, accumulations, and the insecurity related to court

[137] See Djankov Simeon, La Porta Rafael, Lopez-de-Silanes Florencio, aand Shleifer Andrei, 2002, Courts: the Lex Mundi project, available at: http://www.law.yale.edu/documents/pdf/lopez.pdf

[138] See World Bank, World Development Report 2002, Building Institutions for Markets, page 117-132.

[139] See La Porta Rafael, Florencio Lopez-De-Silanes, Cristian Pop-Eleches, and Andrei Shleifer, Judicial Checks and Balances, Journal of Political Economy, page. 446.

outcomes have reduced the quality of justice in LDCs, including Sub-Saharan Africa.[140]

The independence of the judiciary is a very important factor. It guarantees that in courts, decisions of judges aren't influenced by third parties and that justice is made.

According to a study made by the World Bank,[141]there are three elements that assure judicial independence:

1) The length of appointment of court judges.
2) The level to which administrative criticism of a government performance is practicable.
3) The role of legal precedent in describing in what way disputes are solved.

Furthermore, as we will see in the next pages, judicial independence enhances property rights, contributing to economic growth and poverty reduction.[142]

Compared to French civil law, common law countries have a less formalized contract enforcement, longer constitutional terms of Supreme Court judges, and a superior acknowledgment of case law as a font of law.[143]

Another important difference between the two legal systems has been shown by Ramseyer and Rasmusen. According to the two researchers, econometric evidence showed that in Japan, a country with a civil law system, judges who were members of a leftist organization in the 1960's, were receiving fewer attractive occupations.[144] What is more, judges who supported a large number of cases in opposition to the government at the beginning of their profession ,

[140] See Buscaglia Edgardo, 1999, Law and Economics of Development, Hoover Institute, Stanford University, page 582.
[141] See World Bank, World Development Report 2002, Building Institutions for Markets, page 129.
[142] Ibidem Chapter 8.1.
[143] See La Porta Rafael, Lopez-De-Silanes Florencio, and Shleifer Andrei, 2008, The Economic Consequences of Legal Origins Journal of Economic Literature, page 310.
[144] See also Garoupa Nuno, Ginsburg Tom, 2009, Economic Analysis and Comparative Law, Illinois law and Economics Research Papers Series, (Mauro Bussani & Ugo Mattei, editors), page 6.

were continuing to obtain a smaller amount of attractive jobs if compared to other colleagues who started their career in the 1980s.

Judges who take a position against the state, risk to be punished by the government with less attractive positions.[145]

In common law countries, judges tend to be more free from external pressure; and can take decisions which may not be always appreciated from *above*.

Regarding the length of appointment of court judges, when they are appointed lifelong, then the risk that they are put under political pressure or that they have been chosen by politicians who won recent elections is more reduced, if compared to the case in which judges have only a short-term appointment.[146]

Especially in the case in which there is a dispute between civilians and the state, it is important that judges are independent. Only through judicial independence, it is possible to guarantee that citizens are able to defend their rights.[147]

As we already know, common law is formed by judges with the support of decisions of courts and tribunals. The element that differentiates it mostly from civil law is the fact that is not based on legislative statutes.

Though, another important difference between civil law and common law countries is how professionals enter the judge-career.

In the greatest part of civil law countries, most judges enter the profession through a competitive scrutiny after their degree in law. If selected, admitted lawyers have to experience a training before starting the profession.

In common law countries, judges are usually selected among the most experienced practitioners. The selection of judges can be in this case less transparent, and the selection process can have different natures, contributing to foster a process that may negatively influence the quality of justice.

The outcome of enhanced judicial independence is a greater property rights

[145] See Ramseyer J. Mark and. Rasmusen Eric B, Judicial Independence in Civil Law Regimes: Econometrics from Japan, University of Chicago Law School, Indiana University School of Business

[146] In this case there may be however a problem of moral hazard; lifelong appointed judges may be pushed to misbehave due to the fact that they are conscious that they won't lose their position.

[147] See World Bank, World Development Report 2002, Building Institutions for Markets, page 130.

protection.

According to Coase, the formation of satisfactory entitlements, and the implementation of legal rules that diminish transaction costs will support the required negotiating to internalize externalities, contributing to reach the most efficient outcome.[148] In this sense, an initial assignation of property rights is essential in order to allow two parties to negotiate and reach the most efficient outcome.

There is evidence that the costs of registering private property are higher in civil law countries than in common law countries.

Amin and Haidar discovered through the study of a sample including 121 countries that the cost of registering property in common law countries is by 22 percent lower if compared to civil law countries.[149]

According to a study made by the *World Economic Forum* on judicial systems in LDCs, poor people tend to refuse to bring disputes to courts because they see legal systems as inefficient and costly.

Enabling the poor to have access to justice is the first step that should be done if one wants to protect their rights and give them more chances to escape from exploitation and poverty.[150]

Poor people tend to be the most vulnerable ones. Protecting them by guaranteeing the right level of independency of judges, enabling them to have access to justice is an important step that could be done in many developing countries.

[148] See Coase, R., 1960, The Problem of Social Cost, 3rd Journal of Law and Economics Nr.1,
[149] Amin Mohammad and Haidar Jamal Ibrahim, 2008The World Bank, page 5, see http://www.enterprisesurveys.org/Documents/Cost-Registering-Property.pdf
[150] Ibidem Chapter 8.

6.7 Legal Origins, Legal Institutions and Contract Enforcement

"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."

Douglas North[151]

Contract enforcement is essential in order to guarantee that an economy works properly.[152] In fact, depending on how reliable and accessible contracts are, individuals and companies will decide whether or not to start a business, and to invest in a determined country.

Countries with lower contract enforcement costs are characterized by higher levels of FDIs and economic growth.[153] [154]

Contract enforcement is stronger in common law countries than in French civil law countries.[155] Compared to French civil law, common law is associated with less formalized and more independent judicial systems, which are in turn associated with more secure property rights and better contract enforcement. The main reason why common law countries have superior civil procedure systems, comes from the fact that they offer a stronger contract enforcement than civil law countries.[156]

Furthermore, common law systems, especially Anglo-American legal systems, tend to support monetary damages while civil law systems tend to prefer enactments that may in some cases also be inefficient and costly. There are further important differences between civil law and common law systems which include pre-contractual liability, quasi-contracts, revelation of

[151] See North Douglas, 1990Institutions, Institutional Change and Economic Performance, , page 54.
[152] Ibidem
[153] See. Ahlquist John S and Prakash Aseem, FDI and the costs of contract enforcement in developing countries, see http://www.springerlink.com/content/b67xt1h516378504/fulltext.pdf
[154] Ibidem Chapter 6.6.
[155] See Spamann Holger. Legal Origin, Civil Procedure, and the Quality of Contract Enforcement, Harvard Law School, Public Law & Legal Theory Working Paper Series, page 13.
[156] In common law countries contracts and herewith the power of private entities to claim for their rights is higher. Ibidem

information before contract realization, and the way in which contract formation and penalty clauses are used.[157]

These examples suggest that legal origins have an important influence on the level of contract enforcement. The main explanation for this difference can be found in the different historic background that characterized the evolution of the two legal systems. The fact that in the medieval epoch aristocrats in England needed some legal tools in order to limit the power of the Crown, contributed to delineate a stronger contract enforcement in common law countries. [158] By improving judicial independence, it may be possible to stimulate development and reduce poverty in many least developed countries (LDCs).[159]

6.8 Legal Origins, Legal Institutions and Regulation of Entry

Regulations of entry can have several impacts on markets. Among all of them, they can work as barriers of entry, lowering the level of competition and increasing prices for consumers, causing a huge deadweight loss for society.

According to a study made by Fisman and Sarria-Allende, entry regulations have important consequences on markets; they distort their structure and contribute to increase the level of ownership concentration.[160] [161]

The strength of entry regulations varies significantly worldwide.[162] In order to fulfill all the bureaucratic requirements which are necessary to start a business in Canada, two days are need, two procedures have to be accomplished, and

[157] See Garoupa Nuno, Ginsburg Tom, 2009, Economic Analysis and Comparative Law, Illinois Law and Economics Research Paper Series (Mauro Bussani & Ugo Mattei Editors).
[158] Ibidem Chapte 6.3.
[159] Ibidem Chapter 8.
[160] Fisman Raymond, and Sarria-Allende Virginia, 2004. "Regulation of entry and the distortion of industrial organization." Cambridge, MA: NBER Working Paper No 10929.
[161] Which may be associated to lower competition, growth etc.
[162] E Djankov Simeon, Rafael La Porta, Florencio Lopez-De-Silanes, and Andrei Shleifer, 2002, The Regulation of Entry, Quarterly Journal of Economics.

US$280 in fees have to be paid to the government. In Italy, sixty-two working days are required on mean to obtain the permits to start a business, sixteen procedures have to be completed and US$3,946 in fees have to paid.
In Mozambique, a person who wishes to start a business has to attend one hundred and forty-nine business days, and US$256 in fees are necessary in order to start a business.
As these three examples show, market entry is different in each country of the world. In some countries barriers to enter the markets are greater because of stronger regulation. In others, regulation is reduced at the minimum in order to stimulate entrepreneurship as much as possible.

There are different theories that aim to explain why barriers of entry are established through regulation.
According to Stigler's theory, regulation is implemented by the ones who have monopoly power in order to keep out of the market competitors and enhance earnings.[163] Regulations are issued according to this theory not to increase the well-being of society, but of incumbents.

Another theory, which is called in the literature *tollbooth view,* supports the idea that regulation is supported by politicians so that they can earn profit from the fees and bribes.[164]
The literature suggests that countries with more regulations experience a lower degree of competition, higher levels of corruption, and larger unofficial economies.[165]
Furthermore, there is evidence that higher regulation of entry alone does not contribute to reach more positive results (as it is often hoped). Even if there are good intentions behind regulation, it does not mean that it will always lead to the expected results.[166]

[163] For more info see George J. Stigler, The Theory of Economic Regulation, pge 3-20, 1971
[164] See Andrei Shleifer, Robert W. Vishny, "Corruption", page 599, 1993.
[165] See Djankov Simeon, La Porta Rafael, Lopez Silanes Florencio, Shleifer Andrei, 2001, page 19.
[166] Simeon Djankov suggests that even in the case of environment protection and health, regulation alone does not contribute to reach lower levels of pollution or higher levels of health. He mad w study and found out that compliance with international standards does not improve as the degree of regulations increases.

Djankov, La Porta, Lopez-De-Silanes, and Shleifer affirm that in countries in which it is easier to acquire political power, where there are greater restrictions on the executive, and superior political rights, there tends to be a lower degree of entry regulation.

According to the *theory of legal origins,* countries with French legal origins have heavier regulations if compared to English legal origin countries.[167] [168]
Civil law countries are characterized by a stronger presence of the state, which tends to establish more regulations and have a more interventionist attitude towards market participants.[169] [170]
An excessive regulation of entry can contribute to a growth of the unofficial economy and of the level of corruption.
In order to be able to continue to operate, people may be pushed to offer bribes to governmental officials to enter the market; or in another case, they may prefer to enter the unofficial economy.[171]

6.9 Legal Origins, Legal Institutions and Labor Regulations

Labor regulations have important effects on a country's allocation of resources and economic performance. Lafontaine and Sivadasan analyzed forty-three countries and studied the consequences of employment protections. Their conclusion was that the consequences of employment protections are

[167] Here I nominated only Fench legal origins countries. However, German and Socialist legal origins may also be included.
[168] See La Porta Rafael, Lopez de Silanes Florencio, Shleifer Andrei, Vishny Robert W., "The Quality of Government" page 222.
[169] See La Porta Rafael, Lopez de Silanes Florencio, Shleifer Andrei, Vishny, Robert W. "The Quality of Government" page 222-225.
[170] Ibidem
[171] See Johnson Simon, Kaufmann Daniel and Zoido-Lobatòn Pablo, MIT, The World Bank, page 24, available at http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/wps2169.pdf

labor misallocation, slower market entry, and lower productivity.[172]

The divergence between civil law and common law countries in considering employment and labor law, seems to have important economic consequences. Anglo-American law is labor market-oriented, while civil law has a more strongly regulated attitude towards labor.[173]

As we will see in the next part of my thesis, labor regulations have significant consequences also in Sub-Saharan Africa. For example, in civil law countries in Sub-Saharan Africa it may be more difficult for companies to fire workers.

These differences can have important and economic consequences. In countries with a strong rule of law, for example, higher job security is linked to inferior adjustment to shocks and minor productivity growth.[174]

The explanation for this difference can be found in the past, in the legal origins of common law and civil law.[175]

6.10 Legal Origins, Company Law and Securities Law

Legal origins have significant effects on company law and securities law. Common law countries have a more market-oriented company law. This means that their law is more dynamic and able to adapt more easily to evolving environments. Regarding securities law, it is possible to notice that there are important differences between common law and civil law countries.

Common law countries tend to protect outside investors in a better way, and securities law seems to be of better quality if compared to civil law

[172] See Lafontine Francine, and Jagadeesh Sivadasan. 2007, "The microeconomic implications of input market regulations: cross-country evidence from within the firm." Ross School of Business Paper.
See also Paolo Baffi Lacture, Legal Foundations of Corporate Governance and Market Regulation, page 25.

[173] See Garoupa Nuno, Ginsburg Tom, 2009, Economic Analysis and Comparative Law. (Mauro Bussani & Ugo Mattei, editors) ,

[174] See Caballero Ricardo J, Kevin Lowan, Eduardo Engel, and Alejando Micco, 2004, Effective Labor Regulation and Microeconomic Flexibility.
See also La Porta Rafael, florencio Lopez-De-Silanes, and Andrei Shleifer, What works in Securities Law'

[175] Ibidem Chapter 5.1 and Chapter 6.3.

countries.[176]

As we already saw in Chapter 6.2 (on legal origins, private and public enforcement), common law countries are able to offer a better investor protection.

Ownership concentration, family ownership etc. have been linked to civil law systems and have contributed to lower investor protection, limiting market participation and rights.

6.11 Legal Origins and Creditor Protection

According to the legal origins theory, there is an important difference in the way common law and civil law systems protect creditors through bankruptcy law.

In order to study the quality of creditor protection, Djankov analyzed the efficiency of debt enforcement by measuring creditor recovery rates in case of an insolvent firm. Djankov came to the conclusion that common law offers a greater creditor protection. He affirms that it is not law alone, but law enforcement which leads to a greater creditor protection.[177]

Enhanced creditor protection can contribute to several positive economic outcomes. For example, Haselmann, Pistor, and Vikrant affirm that with creditor rights, the lending volume increases.

6.12 Legal Origins and Government Ownership of Banks

According to a study made by La Porta, Lopez-De-Silanes, and Shleifer, government ownership of banks is very common in the world. Ownership of banks is, according to them, larger in countries with lower levels of GDP per

[176] See La Porta Rafael, Lopez-de-Silanes Florencio, Shleifer Andrei, The Economic Consequences of Legal Origins.

[177] See Djankov Simeon, Carolee McLiesh, and Andrei Shleifer, Privare Credit in 129 Countries, page 299, available at http://www.economics.harvard.edu/faculty/shleifer/files/priv_credit_jfe.pdf

capita, less developed financial systems, more interventionist governments, and limited property rights. What is more, their research found out that government ownership of banks is linked to slower financial development, lower growth of per capita income, and lower productivity growth.[178]

La Porta et al. divided countries according to the legal origins they belong to, and found out that French civil law countries are inclined to interfere in economic activity in a more significant way than common law countries. The common law average of ownership of banks is 28.2 percent, while the civil law average is equal to 45.5 percent (the German and Scandinavian averages are among French and English ones).

If we look at development banks in the world, we can see that in French civil law countries they prevail. Government ownership of banks can be a sign of larger politicization of economic activity in French legal origin countries.

According to the 1960s *development economics* view, government ownership of banks may be a useful tool in order to foster institutional and financial development in poor countries. [179] However, according to the study made by La Porta, Lopez-De-Silanes, and Shleifer, the view that government ownership of banks may be an efficient tool to foster economic development does not seem to be solid.

As we will see in the next part of the thesis, especially in the case studies, civil law countries in Sub-Saharan Africa tend to have more state-owned companies and banks than common law countries. This fact may be an important element that contributes to slow down economic growth in French legal origin countries in Sub-Saharan Africa.

As in the past examples, also in this case the different historic background influenced in a significant manner the level of government intervention in civil law and common law countries.

[178] See La Porta Rafeal, Lopez-De-Silanes Florencio, and Shleifer Andrei, Government Ownership of Banks.

[179] See McCloskey Donald N., Kinks, tools, spurts, and substitutes: Gerschenkron's rhetoric of relative backwardness, Chapter &, page 82-83

In the remaining pages of my dissertation we will go again through the same points. However, this time we will go *in the field* in order to study whether the same conclusions can be drawn also in Sub-Saharan Africa.

PART III
THE CONSEQUENCES OF LEGAL ORIGINS IN SUB-SAHARAN AFRICA

In Part I and Part II of my thesis, I concentrated my energies on studying the historic evolution of African law and analyzing how civil law and common law may generally influence the nature of regulations and markets.

The goal of Part I and Part II was to build a historic and theoretical background on which one could start to study how legal origins may really have economic consequences on Sub-Saharan Africa.

In the first section of Part III, I will analyze through the help of World Bank's *Doing Business Rankings* and through Andrei Shleifer's data sets,[180] whether countries in Sub-Saharan Africa which have a certain legal origin tend to have different kinds of:[181]

[180] Available at http://www.economics.harvard.edu/faculty/shleifer/dataset

[181] As we will see on the next pages, I will use the sample of countries listed in the first part of my thesis; namely: Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Congo, Gambia, Ghana, Guinea, Kenya, Madagascar, Mali, Mauritania, Namibia, Rwanda, Senegal, Swaziland, Tanzania, and Uganda.

1. Procedural formalism
2. Judicial independence/property rights
3. Regulation of entry
4. Labor regulation
5. Company & securities law/investor protection
6. Bankruptcy law/access to credit
7. Government ownership of banks

As we will see in the next pages, legal origins seem to have a significant effect on the way in which legal institutions work in Sub-Saharan Africa. The seven points I listed before have important consequences on the economy and on society.

In this part of my dissertation, we will see that also in Sub-Saharan Africa legal origins have economic consequences that can affect the level of poverty.

We will start the chapter by studying the Sub-Saharan African economic condition. Afterwards, we will go into detail by comparing each economic outcome caused by legal origin. Finally, we will be able to have a general understanding of how legal origins and legal institutions can influence poverty in Sub-Saharan Africa.

CHAPTER VII
LEGAL ORIGINS AND LEGAL INSTITUTIONS IN SUB-SAHARAN AFRICA

SUMMARY: 7.1 Poverty in Sub-Saharan Africa; 7.2 Economics and Finance in Sub-Saharan Africa; 7.3 Measuring Law; 7.4 Procedural Formalism in Sub-Saharan Africa; 7.5 Legal Origins and Contract Enforcement in Sub-Saharan Africa; 7.6 Legal Origins, Judicial Independence and Property Rights; 7.7 Legal Origins and Market Entry in Sub-Saharan Africa; 7.8 Legal Origins, Wages and Employment in Sub-Saharan Africa; 7.9 Investor Protection in Sub-Saharan Africa; 7.10 Legal Origins and Ownership Structure in Sub-Saharan Africa; 7.11 Legal Origins and Access to Credit in Sub-Saharan Africa; 7.12 Legal Origins and Government Ownership of Banks; 7.13 Suggestions for Policy Reforms

7.1 Poverty in Sub-Saharan Africa

According to the Human Poverty Index (HPI-1), which includes the probability of not surviving at age 40, the percentage of adult literacy (% aged 15 and above), the percentage of the population using improved water source, the percentage of children under weight (% age under 5), and the percent of the population below the income poverty line, Sub-Saharan Africa is at the bottom of the global ranking. [182]

If we look at the Table 4, we can see that one Sub-Saharan African country has a high HPI-1 ranking (Mauritius), nineteen countries have a medium HPI-1 ranking, and twenty-four have a low HPI-1 ranking.

If we sum all the available percentages of people living with $1.25 per day in Sub-Saharan Africa, and divide them by the number of countries in which data is available, then the result will be astonishing: 50,7 percent of the population in Sub-Saharan Africa lives with less than $1,25 per day, 29,6 percent of the population does not survive to age 40, 38 percent of the population aged 15 and

[182] The Human Poverty Index is an indicator of the standard of living in a nation which has been developed by the United Nations. For developed nations the HPI is used. For developing countries the HPI-1 index is used.

above is literate, 26 percent of the children aged under 5 are underweight.[183]

7.2 Economics & Finance in Sub-Saharan Africa

With roughly 922 million inhabitants, Sub-Saharan Africa is the poorest region in the world. Even if during the last decade a few countries experienced economic growth, according to the United Nations, twenty-five countries in Sub-Saharan Africa have the lowest rate of human development in the world.[184]

History was definitively not on the side of Sub-Saharan Africa. The period of decolonization was characterized by permanent instability and clashes. In the last century, bribery, dictatorship, and the cold war have contributed to further depress the African economy.

While the BRICs[185] and further emerging economies were experiencing after long time economic growth during recent times, Sub-Saharan Africa experienced in general a regression in term of FDIs,[186]investment, income and GDP per capita during the last years.[187]

The consequence of poor economic performance have been poverty, which includes stumpy life expectancy, fighting, and political instability.

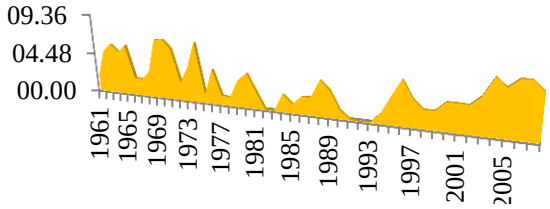
Even if most countries in Sub-Saharan Africa experienced recession during the last decades, a few countries experienced extremely high growth rates.[188] According to the World Bank, countries like Angola, Sudan, Mozambique and Malawi grew at 17,6 % , 9,6 %, 7,9% and 7,8% respectively.[189]

If we look at the percentage of the annual growth of GDP per capita in Sub-

[183] Sources: UN (2009), UNESCO Institute for Statistics (2009a), UNICEF and WHO, World Bank (2009).
[184] See United Nations Human Report 2003, available at www.un.org
[185] BRICs stands for Brazil, Russia, India, and China.
[186]FDIs stands for foreign direct investments.
[187] For further information see http://www.oecd.org/document/61/0,3343,en_2649_15162846_39963489_1_1_1_1,00.html
[188] Here it is important to underline that in those countries there isn't necessarly a link between the economic growth rate and the poverty level; the fact that a country is experiencing hogh growth rates doesn't mean that its povert rate is falling as a consequence.
[189] See www.worldbank.org

Saharan Africa during the last fifty years, we can see that the region experienced violent fluctuations and instable growth.[190]

Figure 7.A: GDP growth in Sub-Saharan Africa (annual %)



Source: World Bank

The economy of Sub-Saharan Africa is based primarily on agriculture. This means that the population is very vulnerable to increases in prices of natural resources and inflation.[191]

The recent crises had very adverse effects on the African economies, and Sub-Saharan Africa needs important institutional reforms in order to develop and avoid that economic instability can further increase in future poverty in the region.[192]

Financial development is a very current factor in Sub-Saharan Africa. The access to external financial resources, in order to finance local investments, is a very recent element in the African region. Until the mid-1980s, Sub-Saharan Africa financed its investments through its very limited domestic public resources. Only during the last two decades, the African continent started to experience a modest increase of the available foreign financial resources.[193]

[190] See World Bank Development Indicators, available at http://data.un.org/Data.aspx?q=gdp&d=WDI&f=Indicator_Code%3aNY.GDP.MKTP.KD.ZG This is due to the fact that most countries in Sub-Saharan Africa depend on natural resources.

[191] As the greatest part of the population depends on agriculture, property rights, contract enforcement etc. are crucial in order to guarantee the fact that individuals have access to credit and land. Ibidem Chapter 8.

[192] For more detailed information see African Development Bank, http://www.afdb.org/en/topics-sectors/topics/financial-crisis/

[193] See Economic Commission for Africa, Eight Session of the ECA Conference of Ministers of Finance, Finance for Development in Africa (2000), http://www.uneca.org/eca_resources/Major_ECA_Websites/conference_of_ministers/eighth/documents/An%20Issue%20Note%20for%20CAMF.pdf

Financial markets have an important role in promoting economic development and reduce poverty; better functioning financial markets and institutions can fuel economic growth, and reduce poverty levels.

Besides, Africa is still a *financially unexplored* continent, and financial development can have encouraging consequences on economic growth.

As microcredit has taught us, the financial sector does not work only in favor of wealthy individuals. A healthy financial system can benefit significantly the whole population of Sub-Saharan Africa, including the ones with the lowest levels of income.

In order to help Sub-Saharan Africa to alleviate poverty, a strategy that includes the development of the financial markets and institutions is imperative.[194]

7.3 Measuring Law

"Die Reduktion aller Qualitaeten auf Quantitaeten ist Unsinn: was sich ergibt, is dass eins und das andere beisammen steht, eine Analogie – the reduction of all qualities to quantities is nonsense; what results is that both stand together; an analogy."

Friedrich Nietzsche

In my thesis, especially in Part III, I will base my conclusions on the World Bank *Doing Business Reports/Rankings* and on Shleifer's data set.

In Shleifer's data set all countries receive the same weight; rich and poor countries, colonies and mother countries are all placed on the same level.[195]

I support Gambaro's and Legrand's arguments against the methodology employed by many researchers who aim to translate a rich and complex field like law into simple numbers, which are often deprived of all those elements

[194] See Ndikumana Léonce, Financial Markets and Economic Development in Africa, Political Economy Research Institute (PERI), University of Massachussetts Amherst, page 30.

[195] La Porta Rafael, Lopez-De-Silanes Florencio, and Shleifer Andrei, 2008, The Economic Consequences of Legal Origins Journal of Economic Literature, page 291.

that characterize reality.[196] I am fully aware of the limits of these rankings, and I support Nietzsche's idea that transforming a quality into a quantity can be often nonsense or erroneous.[197] However, I do believe that if employed judiciously, numbers can be an extremely useful tool; especially in a continent in which legislative sources are not always accessible.

I support Reitz's view that there is no reason to reject the quantitative method while doing a comparative study of law. As Reitz states, *"Comparative law needs to explore the utility of quantitative methods for developing and testing generalities about legal systems…"*[198]

In my case, I aim to study the differences between civil law and common law systems of almost a whole continent whose laws are not always transparent and easily available. I will refer to the World Bank's rankings, conscious about the limits that numbers may have.

In a region like Sub-Saharan Africa, where transparency is very reduced, and access to reliable data is very limited, the *Doing Business Rankings* and Shelifer's data are extremely precious; they are very useful in order to get a general overview of the concrete differences existing between common law and civil law countries in Sub-Saharan Africa.

7.4 Procedural Formalism in Sub-Saharan Africa

As we saw in Part II, procedural formalism is the cause of different outcomes that can vary from the time necessary to evict a nonpaying tenant or to the time required to collect a bounced check.[199] In the previous part of my thesis, we saw that legal origins have an influence on the level of procedural formalism; we argued that civil law countries have a higher grade of procedural

[196] See Gambaro Antonio, 2009, Misurare il Diritto? and Pierre Legrand, Econocentrism, University of Toronto, Law of Journal,.

[197] See Grimm Ruediger, Nietzsche's Theory of Knoledge, see page 177 on Nietzsche's Ontology on Power.

[198] See. Reitz John C, 2009, Legal Origins, Comparative Law, and Political Economy, University of Iowa Legal Studies Research Paper, page 3.

[199] I would like to underline that this time-variable reflects the efficiency of contract enforcement by courts.

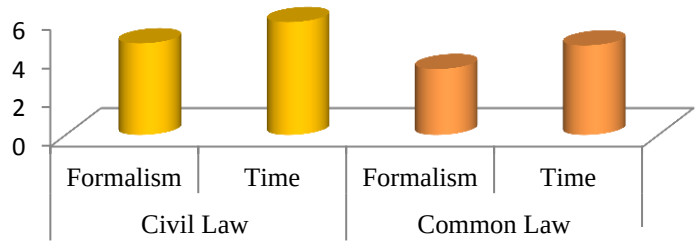
formalism.[200]

In order to see if there are differences between common law and civil law countries in Sub-Saharan Africa, I compared Shleifer's data concerning check collection and time necessary to collect on a bounced check in Sub-Saharan Africa.

Even if data on French legal origin countries was limited, the result is interesting. The French legal origin country, Senegal has an average of formalism equal to 4,719 and of time necessary to collect a bounced check equal to 5,814. The English legal origin countries[201]have, on the other hand, an average of formalism equal to 3,395 and an average of time necessary to collect a bounced check equal to 4,611.

It is interesting to notice that among all the English legal origin countries in Sub-Saharan Africa, there is none with a level of formalism or time (to evict a nonpaying tenant) high as Senegal.

Figure 7.B: Procedural Formalism in Sub-Saharan Africa



Source: World Bank

As Djankov, La Porta, Lopez-De-Silanes, and Shleifer suggested, formalism is linked with higher expected length of judicial proceedings, fewer consistency, fewer honesty, fewer impartiality in judicial decisions, and extra corruption.[202]

Legal origins seem to have a real effect on procedural formalism in Sub-Saharan Africa. Doing reforms that reduce formalism means enhancing the quality of justice and reducing the deadweight-loss caused by corruption

[200] Ibidem Chapter 8.1.
[201] Data on them was completely available
[202] See Courts, Djankov Simeon, La Porta Rafael, Lopez-de-Silanes Florencio, Shleifer, Andrei available at: http://www.doingbusiness.org/documents/LexPaperAug211.pdf

(whose burden is primarily paid by the individuals with the lowest income).[203]

The theory studied in Part II seems to be valid in this case, confirming the fact that legal origins play an important role in Sub-Saharan Africa in determining the quality of justice and the level of corruption (which in turn contributes to an increased level of poverty).[204]

7.5 Legal Origins and Contract Enforcement in Sub-Saharan Africa

According to the theory analyzed in Part II, common law countries in Sub-Saharan Africa should have a greater contract enforcement; common law countries should offer a greater protection of private parties' interests.[205]

By looking at the World Bank data, we can notice that civil law countries in Sub-Saharan Africa are characterized by a larger number of procedures, time, and costs needed in order to enforce contracts.

The data confirms the fact that French legal origin countries have less efficient contract enforcement also in Sub-Saharan Africa.

Shleifer's data set included information exclusively on Kenya, making it impossible to make a comparative study between legal groups.[206]

As we already saw, efficient contracts are vital in defining a country's level of development. Countries which offer a good quality of contracts not only attract a higher percentage of FDIs; they also help small investors to start an economic activity, which in many cases could be an exit from extreme poverty for many people in Sub-Saharan Africa.

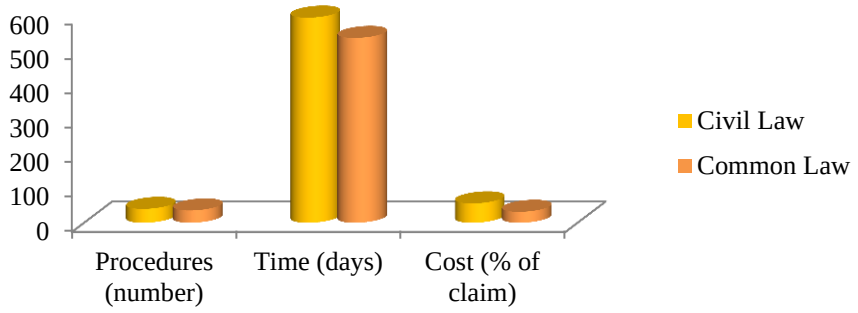
[203] I would like to underline the fact that in my view procedural formalism has also its value. The important thing is in my opinion to find the right balance at which the effects of formalism offer the greatest possible effects. Procedural formalism should in my view be imagined as a growing and then declining utility function. The optimal level should be the one at the highest point of the curve.

[204] Ibidem Chapter 6.3.

[205] Ibidem.

[206] Kenya's grade of enforceability of contracts is equal to 5,025.

Figure 7.C: Contract Enforcement in Sub-Saharan Africa



Source: World Bank

7.6 Legal Origins, Judicial Independence and Property Rights

According to the theory studied in the second part of my dissertation, judicial independence should be greater in common law countries; and it should be associated with better property rights.[207]

I hoped to find out through a linear regression model whether there is a link between legal origin, judicial independence, and quality of property rights in Sub-Saharan Africa. Unfortunately, Shleifer's data set included only two English legal origin countries – Tanzania and Uganda. These countries have a level of judicial independence equal to 0,041 and 0,0319 respectively; a very low level if compared to more developed countries.

The available data was too limited for a comparative study, and I decided to go ahead by comparing the strength of property rights.

French legal origin countries in Sub-Saharan Africa have an average of 2,363 points, while English legal origin countries of 3,125.[208] [209]

The data suggests that English legal origin countries in Sub-Saharan Africa offer better property rights, confirming validity of the theory developed in Part II for Sub-Saharan Africa.

[207] Ibidem Chapter 6.6.
[208] Except of Burundi, all information was available
[209] See Table 15.

As already stated, common law countries in Sub-Saharan Africa are able to offer better property rights. What is interesting to notice, is that private property rights are not only stronger in common law countries in Sub-Saharan Africa; they are also less expensive.

If we look at the graph below, we can see that the number of procedures and the time needed in order to register property seem to be higher in civil law countries in Sub-Saharan Africa.[210]

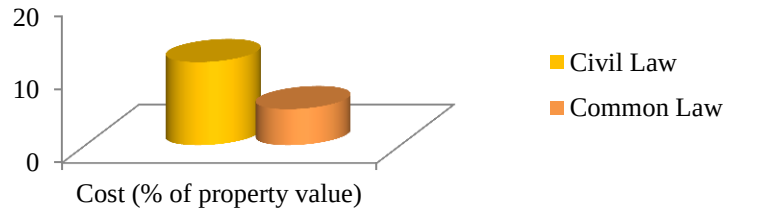
In Part II, we saw that countries with more independent judges tend to have an improved protection of property rights. What results is that the cost of registering property is higher in civil law countries. [211]

Property registration can be described as the milestone of an economy. Without easily registrable property, no rights can be guaranteed to an individual, and no access to private credit can be offered.[212]

The high costs of registering property in Sub-Saharan Africa can be described, under this perspective, as an entry barrier which causes an important deadweight loss for society; especially for low-income individuals wishing to have a chance to improve their social condition. Doing reforms that lower the cost of registering property could contribute to decrease the level of poverty in Sub-Saharan Africa.

Legal origins seem to have also in this case a significant influence on access to credit and the level of poverty in Sub-Saharan Africa.[213]

Figure 7.D: Property Registration in Sub-Saharan Africa



Source: World Bank

[210] The source of data used in order to build the graph is: http://www.doingbusiness.org/ExploreTopics/DealingLicenses/http://www.doingbusiness.org/ExploreTopics/RegisteringProperty/

[211] Ibidem Chapter 6.6.

[212] Ibidem Chapter 6.6.

[213] Ibidem Chapter 6.6.

7.7 Legal Origins and Market Entry in Sub-Saharan Africa

In Part II, we saw that legal origins and regulation of entry are linked. We observed that civil law countries are in general characterized by a stronger presence of the state and by heavier market regulations.[214]

On the graph below, which is composed trough World Bank's *Doing Business Rankings*, it is possible to see whether it is easier in common law or in civil law countries in Sub-Saharan Africa to start an economic activity.[215]

If we look at the cost (percent of income per capital) and at the minimal capital necessary to enter a market (percentage of income per capita), we can see that the gap between common law and civil law countries in Sub-Saharan Africa is enormous.

In civil law countries, the cost of starting a business is almost double than in common law countries. The minimal capital needed to start a business is almost 200 times greater in civil countries.[216]

Legal origins seem to have significant effects on the regulation of entry in Sub-Saharan Africa. Doing reforms that make market entry easier would not only give the chance to poor people to start an economic activity; it could also reduce the size of the unofficial economy, pushing down the level of corruption in Sub-Saharan Africa, one of the regions in the world with the highest levels.[217]

Regarding competition, lower levels of regulation of market entry could benefit consumers in Sub-Saharan Africa by fostering market liberalization and increasing competition. Enabling developing countries, especially the least developed ones, to have lower barriers of entry could contribute to reduce their level of poverty.

---

[214] Ibidem Chapter 6.3.

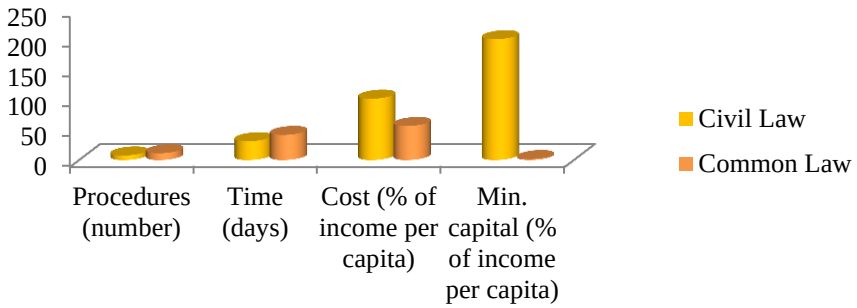
[215] Source: http://www.doingbusiness.org/ExploreTopics/StartingBusiness/

[216] In this chapter I decided not to refer to Shleifer's data set because it did not contain complete information on all countries as World Bank's data; and because the information was basically the same.

[217] See Transparency Internation Report 2009, available at http://www.transparency.org/news_room/in_focus/2010/ar_2009

In conclusion, also in this case legal origins seem to play an important role in influencing poverty in Sub-Saharan Africa. The theory studied in the precedent chapters seems to be valid also in this case, confirming the fact that legal origins do matter.

Figure 7.E: Market Entry in Sub-Saharan Africa



Source: World Bank

7.8 Legal Origins, Wages and Employment in Sub-Saharan Africa

As analyzed in Part II, legal origins influence the way in which countries shape their labor laws.[218] By looking at the level of wages and at the employment regulations present in Sub-Saharan Africa, it is possible to observe that on average wages are higher in civil law countries in Sub-Saharan Africa.

The reasons why there is a difference in the level of wages could be explained by the fact that costs are higher in civil law countries, that the labor market is more internationalized,[219] that there is more supply of educated people in common law countries, and that unions[220] have more power in civil law countries to increase the wages of workers.[221]

[218] Ibidem Chapter 6.9.
[219] As we saw in Chapter VI.
[220] According to the available data, being a member of a union increases in civil law countries in Sub-Saharan Africa the wages by 15 percent. In common law countries being member of a union does not cause benefits in terms of wages.
[221] See Fox Louise, Oviedo Ana Maria, 2008, Are Skills Rewarded in Sub-Saharan Africa? Determinants of Wages and Productivity in the Manufacturing Sector, The World Bank,vpage 13.

Furthermore, according to a study performed by the World Bank, returns to years of education in Sub-Saharan Africa are higher in common law countries than in civil law countries.[222]

By looking at the wages of women in Sub-Saharan Africa, we can see that in common law countries women have wages close to the ones of men. In civil law countries, women earn 8 percent less than men.

Regarding the wages of managers, it is possible to observe that in common law countries managers earn two times more than unskilled workers. In civil law countries, they earn countries only fifty-three percent more.[223]

Even if we look at the relationship between wages and age, we can see that thanks to unions, in civil law countries older workers have higher wages. On the contrary, in Sub-Saharan African common law countries members of unions are treated all in the same manner; not according to their age.[224]

Legal origins seem to have important effects on wages in Sub-Saharan Africa.

On the graph below, we can see the differences concerning the employment of workers in Sub-Saharan Africa.

I selected a sample of countries in Sub-Saharan Africa,[225]divided it according to legal origins, and analyzed through World Bank's data the differences existing in the labor sector. [226]

The result is remarkable: civil law countries have a higher rate of difficulty of hiring, rigidity of hours, difficulty of redundancy, and rigidity of employment. Common law countries have, on the other hand, higher redundancy costs.

The explanation for this divergence could be that, as civil law countries tend to have a more paternalistic attitude towards employees, they tend to have more

[222] See Fox Louise, Oviedo Ana Maria, 2008, Are Skills Rewarded in Sub-Saharan Africa? Determinants of Wages and Productivity in the Manufacturing Sector, The World Bank, page 17.
[223] I did not find a definite conclusion that explains this phenomenon. In my view, civil law countries tend to promote laws that cause greater divergence in terms of wages.
[224] See Louise Fox, Ana Maria Oviedo, 2008, Are Skills Rewarded in Sub-Saharan Africa? Determinants of Wages and Productivity in the Manufacturing Sector, The World Bank, page20.
[225] These countries are: Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Congo, Dem. Rep., Guinea, Madagascar, Mali, Mauritania, Rwanda, Senegal, Swaziland, Gambia, Uganda, Namibia, Botswana, Tanzania, Ghana, Kenya.
[226] For all the data see The World Bank, http://www.doingbusiness.org/

regulations that aim to protect workers from their employers.[227]

The consequences of these heavier regulations could be an increased difficulty of hiring, rigidity of hours, difficulty of redundancy, and rigidity of employment. The circumstance that common law countries have higher redundancy costs, could be explained by the fact that common law countries do not have a system of social protection as civil law countries.[228]

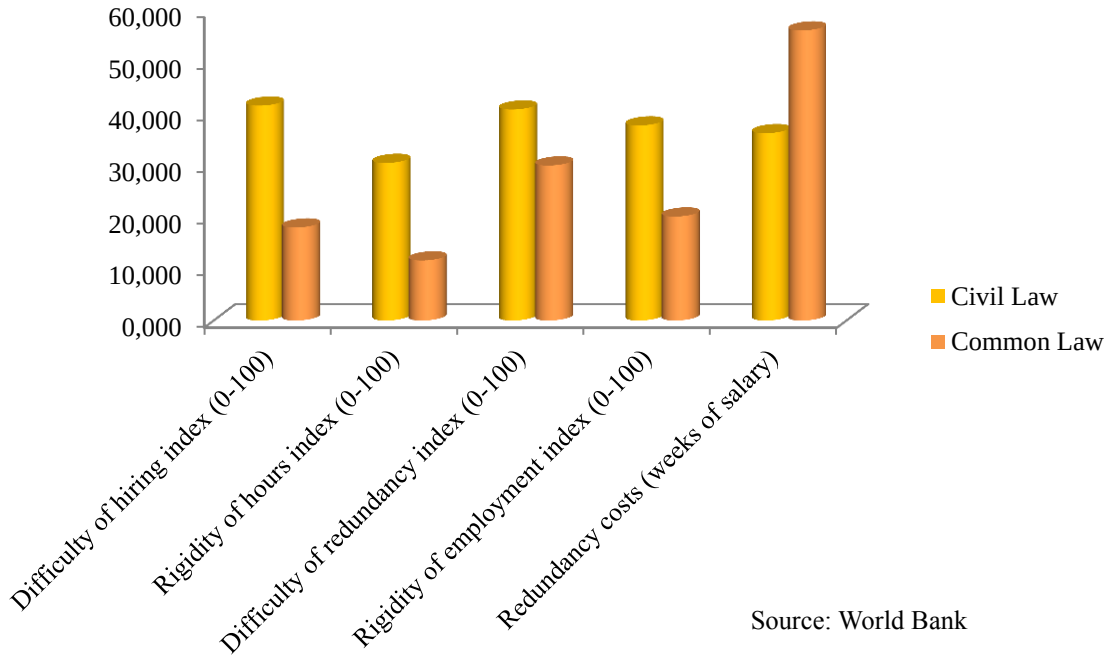
The World Bank *Doing Business Reports* suggest that in civil law countries in Sub-Saharan Africa there are still significant differences regarding gender equality in terms of wage.

This fact is very interesting because women are key in fighting poverty.[229] Understanding why women in civil law countries have lower wages and trying to increase them, could have very positive effects on poverty reduction in Sub-Saharan Africa.

All in all, the data confirms the validity of the theory developed in the precedent chapters. Also in this case legal origins seem to play an important role in Sub-Saharan Africa.

[227] Ibidem Chapter 6.9
[228] Ibidem Chapter 6.9.
[229] See http://www.un.org/apps/news/story.asp?NewsID=21729&Cr=commission&Cr1=women or http://www.wocan.org/files/all/women_and_ntfps_in_cameroon_cifor_1.pdf

Figure 7.F: Legal Origin and Employment in Sub-Saharan Africa



Source: World Bank

7.9 Investor Protection in Sub-Saharan Africa

As we saw in the past chapters, common law countries tend to have a better investor protection than civil law countries.[230]

The reason is primarily given by the fact that in common law countries private enforcement plays a greater role, single individuals have more power to claim a company or any other entity that infringed their rights, and property is less concentrated in the hands of single powerful investors or families.[231] According to the theory studied in the precedent chapters, common law countries should protect small investors better than civil law countries.

According to the World Bank data I collected,[232] civil law countries in Sub-Saharan Africa have a higher degree of disclosure than common law

[230] Ibidem Chapter 6.3.

[231] See Siems Mathias M., 2006, Legal Origins, Reconciling Law & Finance and Comparative Law,
See Gambaro Antonio and Sacco Rodolfo, Trattato di Diritto Comparato, Sistemi Giuridici Comparati, third edition, pages 71-74
See Antion Gidi, Class Action in Brazil – A Model for Civil Law Countries, page 323-24
See Andrei Sheifer, 2008, Legal Foundations of Corporate Governance and Market Regulation, Paolo Baffi Lecture, Bank of Italy, Preliminary Draft, Harvard University.

[232] Source: http://www.doingbusiness.org/ExploreTopics/ProtectingInvestors/

countries.[233]

However, common law countries in Sub-Saharan Africa have a higher extent of director liability, of ease of shareholder suits, and a stronger investor protection.

All in all, the data confirms the fact that in common law countries investor protection is stronger and that legal origins influence the degree in which countries in Sub-Saharan Africa protect investors. [234]

Through the case studies we will go further into detail, analyzing how laws differ in civil law and common law countries.[235]

In 1989, there were in total five stock exchanges in Sub-Saharan Africa. Today, their number increased to sixteen and the financial sector has gained relevant importance in the African continent.[236]

The financial crises which started in 2006 had overwhelming effects on rich and poor countries worldwide.

The aid budgets of developed countries decreased, and will probably continue to do so for the next few years.[237]For Sub-Saharan Africa, this means that aid has to be spent in a much more targeted way. Countries in Sub-Saharan Africa cannot rely anymore on foreign aid, but have to attract private investments and create jobs in order to survive.

Enhancing investor protection is a great step towards poverty reduction in Sub-Saharan Africa. Increasing the protection of investors could increase access to credit and attract FDIs, contributing to boost economic growth and liberalize markets, creating employment and improving the price-quality ratio for consumers.

---

[233] See graph below.

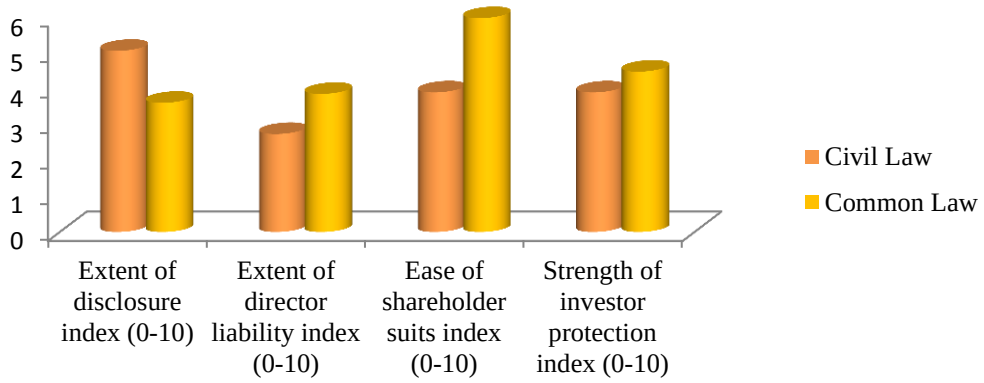
[234] I wished to compare also Shleifer's Anti-Self-Dealing Index and Disclosure Requirement Index but unfortunately there was too limited information in order to make a comparative study. For this reason I had to focus exclusively on investor protection.

[235] Ibidem Appendix.

[236] See http://www.tonyblairoffice.org/africa/news-entry/president-koroma-its-time-for-africa-to-get-serious-about-investment

[237] See Frot Emmanuel, Aid and the Financial Crisis: Shall We Expect Development Aid to Fall? Stockholm School of Economics – Stockholm Institute of Transition Economics (SITE), available at : http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1402788

Figure 7.G: Investors Protection in Sub-Saharan Africa



Source: World Bank

7.10 Legal Origins and Ownership Structure in Sub-Saharan Africa

As already discussed, legal origins and legal institutions have important effects on FDIs in Sub-Saharan Africa.

What is more, legal origins seem to have important effects also on the ownership structure of firms in Sub-Saharan Africa.

In fact, nineteen percent of civil law countries in Sub-Saharan Africa resulted to be fully foreign owned, compared to eleven percent in common law countries.[238] Twenty-four percent of civil law countries' enterprises in Sub-Saharan Africa resulted to be partly foreign owned; compared to thirteen percent in common law countries.

Even if investments are less attractive in civil law countries, it seems that Francophone countries are characterized by higher levels of FDIs. One possible reason for this fact may be that Francophone countries continue to have stronger economic ties with former colonial countries.

If we look at the percentage of privatized firms in Sub-Saharan Africa, it is interesting to notice that common law countries have three-times more

[238] Considering only the sample of countries I used.

privatized firms than Francophone countries. The reason for this event may be that because civil law countries have a heavier presence of the state, companies tend to be more under its control. In common law countries, private enforcement prevails over public enforcement, and the percentage of privatized firms is higher than in civil law countries.

During the initial phase of development, state-owned companies (or banks) may be helpful in order to stimulate development. In the long-run, however, they may become a costly burden which may be hard to get rid of.

According to the theory studied in Part II, the percentage of privatized companies in Sub-Saharan Africa should be higher in common law countries.[239] In this case, the theory seems to be coherent with the African reality. Legal origins seem to have a real influence on the ownership structure in Sub-Saharan Africa. This demonstrate that also in Sub-Saharan African civil law countries the state has a greater role in the economy.[240]

Figure 7.H: Ownership Structure of Firms in Sub-Saharan Africa[241]

	Exporter (%)	Privatized (%)	Foreign owned (%)	Part. foreign owned (%)
Common Law	25	9	11	13
Civil Law	25	3	19	24

Source: World Bank

[239] Ibidem Chapter 6.3.

[240] In the sense that the state owns a higher percentage of companies.

[241] See Fox Louise, Oviedo Ana Maria, Are Skills Rewarded in Sub-Saharan Africa? Determinants of Wages and Productivity in the Manufacturing Sector, The World Bank, 2008, page 8.

7.11 Legal Origins and Credit in Sub-Saharan Africa

According to La Porta et al., legal origins have a strong influence on the level of creditor rights.[242] In order to study the level of creditor protection, they looked at the real efficiency of debt enforcement, as measured by creditor recovery rates in a hypothetical case of an insolvent firm. In other words, they looked at the nature of bankruptcy laws in order to see how strong creditor protection was. The final conclusion to which they arrived is that common law countries are able to offer a greater creditor protection, contributing to a greater development of the financial sector.

In order to see if creditor protection is greater in common law or civil law countries in Sub-Saharan Africa, I decided to refer to World Bank's *Doing Business Rankings* and Shleifer's data.

Creditor rights, especially access to credit, have important effects on poverty. As micro-credit has shown us, hard access to credit is the main source of poverty in developing countries. The fact that people do not possess a home or other goods that can guarantee them access to credit can be considered as a poverty trap from which it may be impossible to escape.[243]

The greatest part of poor people living in Sub-Saharan Africa operates deprived of access to conventional banking and financial services. These barriers do not allow individuals to effectively contribute to their countries' social and economic development through entrepreneurship, and can very often be defined as real poverty traps.[244]

As the World Bank data shows, common law countries in Sub-Saharan Africa have a higher strength of legal rights and a greater depth of credit information. This fact enables individuals to have greater access to credit, and contribute through private investment to foster development and reduce poverty.

Shleifer's data suggests that the creditor rights aggregate score in Sub-Saharan Africa is equal to 0,5 in French legal origin countries, and to 2,3 in English

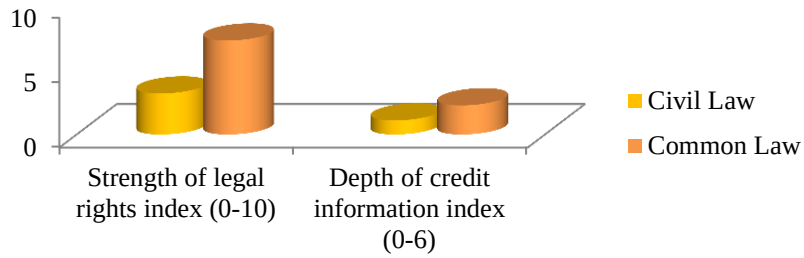
[242] Ibidem Chapter 6.5.
[243] Ibidem Chapter 8.
[244] See: http://www.theeastafrican.co.ke/news/Access%20to%20credit%20is%20key%20to%20Africas%20growth/-/2558/896754/-/v7k7m5z/-/index.html

legal origin countries.[245] The gap between legal groups seems to be very significant, demonstrating that creditor rights are superior in common law countries in Sub-Saharan Africa.

According to Qian and Strahan, better creditor protection lowers interest rates that lenders charge.[246]Lower interest rates could in this sense make the cost of borrowing money less costly, helping individuals to start an economic activity.

Legal origins seem to have important consequences on creditor rights and access to credit in Sub-Saharan Africa. The theory which suggested that common law countries are able to guarantee a better creditor rights, seems to be valid also in Sub-Saharan Africa.

Figure 7.I: Credit in Sub-Saharan Africa



Source: World Bank

7.12 Legal Origins and Government Ownership of Banks

Legal origins have an important influence on the grade of state-involvement in an economy. In Part II, we saw that, in general, countries with French legal origin are inclined to have more state-owned companies and banks.[247]

In order to see whether this is true also for Sub-Saharan Africa, I referred to

[245] See Table 16.
[246] See Qian Jun and Strahan Philip E., 2007, How Laws and Institutions Shape Financial Contracts: The Case of Bank Loans, The Journal of Finance, , available at http://www2.bc.edu/~qianju/JF_Bank_Loans_122007.pdf
[247] Ibidem Chapter 6.6.

Shleifer's data.[248]

Information concerning the percentage of state-owned banks in Sub-Saharan Africa was very limited. However, there was precious data regarding one French legal origin country (Senegal) and two British legal origin countries (Kenya and Tanzania).

By looking at the main information regarding state-ownership of banks in Sub-Saharan Africa, we can notice that it is impossible to come to coherent conclusions. [249]

Kenya and Senegal have similar percentages of state-controlled banks. Tanzania, a British legal origin country, has an extraordinary high percentage of state-owned banks; almost hundred percent of Tanzania's banks seem to be government-owned.

Even if it is not possible to prove that banks in French legal origin countries in Sub-Saharan Africa are more state-owned, it is very interesting to observe the economic consequences that higher levels of government ownership of banks may have.

In Part II, we saw that the level government-owned banks has an influence on the grade of the interest rate spread.[250]In this case it is interesting to notice that Tanzania, a country with an extremely high percentage of state-owned banks, has almost a three times higher interest rate spread than Kenya, a country with a medium percentage of state-owned banks.

The interest rate spread reflect the difference between a company's cost of borrowing and the interest rate it can earn from its money. In general, interest rate spreads are also increased by: a) *a greater market power;* b) *poorly developed banking sectors*; c) *high reserve requirements*; and d) *inefficiency of the legal systems and high corruption.*[251]

Higher interest rates increase the cost of borrowing money and can have negative effects on growth. Legal origins may have an influence on higher interest spreads, but in this case there are many other elements that have an influence on interest rate spreads, and it seems to be impossible to come to a

[248] Available at http://www.economics.harvard.edu/faculty/shleifer

[249] The remaining information can be seen at the end of my thesis at Table X

[250] Ibidem Figure 6.B.

[251] See Abiodun O. Folawewo, David Tennant, Determinants of Interest Rate Spreads in Sub-Saharan African Countries: A dynamic Panel Analysis, page 8.

coherent conclusion.

Figure 7.J: Government Ownership of Banks in Sub-Saharan Africa

Country	Legal Origin	GovControlBks at 20%	GovControlBks at 50%	GovControlBks at 90%	Lend-dep.rateSpread
Kenya	Common law	0,4874037	0,222983	0,085681	-
Senegal	Civil law	0,3668425	0,2186195	0,1972708	13,6025
Tanzania	Common law	0,9522856	0,9522856	0,9394404	37,16666

Source: A. Shleifer

7.13 Suggestions for Policy Reforms

The legal origins theory may help governments to understand inefficiencies, and perform legal reforms which increase efficiency and foster economic development.

According to the legal origins theory, there are three ways in which regulations can be inefficient.[252]

In the first case, it may happen that a country in which a legal tradition prevails, continues to implement certain types of rules that are ill-suited for the local environment.

In the second case it may happen that a country, due to its underdevelopment, decides to introduce special rules and regulations which were typically designed for different kinds of economies and societies. In this case, it may be hard to dismantle such rules once they aren't necessary anymore.

If we look, for example, at the state-owned banks of many developing countries, we can see that initially they may stimulate growth.[253] In the long-run, however, they tend to become a burden for the development of the financial sector.[254]

[252] See Paolo Baffi Lecture, 2008, Legal Foundations of Corporate Governance and Market Regulation, page 60.
[253] By channeling funds to companies.
[254] See Paolo Baffi Lecture, 2008, Legal Foundations of Corporate Governance and Market Regulation, page 60.

The third type of inefficiency may take place in the case in which certain regulations or rules that are efficient in developed countries are transplanted in developing countries. Under certain circumstances, it may happen that the rule which was useful for the developed country, may be harmful for the developing country, leading to higher levels of corruption.

In my view, it is important to consider these three inefficiencies while doing legal reforms in Sub-Saharan Africa. Legal origins can be a good way to organize and classify legal practices. They can be useful in order to compare legal systems, and exchange the legal rules that may be more efficient under each particular circumstance.

Another important element that may help to encourage legal reforms may be an increased transparency and accountability.

World Bank's *Doing Business Project* has been criticized often for applying too general criteria, and for attempting to measure something which is hardly measurable, law. This measurability of law contributed, in my opinion, to an increased transparency and accountability.

In 2010, for the first time, a country in Sub-Saharan Africa, Rwanda, has been appointed as world's top reformer of business regulation. The country reformed its laws regarding business regulation, property registration, investor protection, trade across borders, and access to credit.[255]

Thanks to World Bank's *Doing Business Reports,* developing countries have the opportunity to reform their laws and let investors know what is going on.

Globalization has contributed in the last decades to an extraordinarily high level of international market integration. We are, in my view, in front of an era in international legal convergence. The recent global financial crisis had one positive consequence: nations worldwide are trying to converge. They are comparing their laws, and contributing to the development of a more transparent, sober, and hopefully more efficient international economy.

[255] http://www.doingbusiness.org/features/Highlights2010.aspx

To sum up, the pattern described in Part II[256]seems to be valid also for Sub-Saharan Africa. Civil law countries in Sub-Saharan Africa have a higher rate of procedural formalism which lead to higher inefficiencies and costs. [257] [258]Regarding the regulations of entry, their number is greater in civil law countries in Sub-Saharan Africa. Their outcome is seemingly a higher level of corruption and larger unofficial economy.[259]

By looking at the labor laws of Sub-Saharan Africa, we could see that civil law countries have more regulations protecting employees, stronger worker unions (which are able to set a higher level of wages), and an inferior access to employment for women.[260]

Concerning company and securities law, it can be said that common law countries in Sub-Saharan Africa have more developed financial markets, greater investor protection, and more privately owned companies. [261]

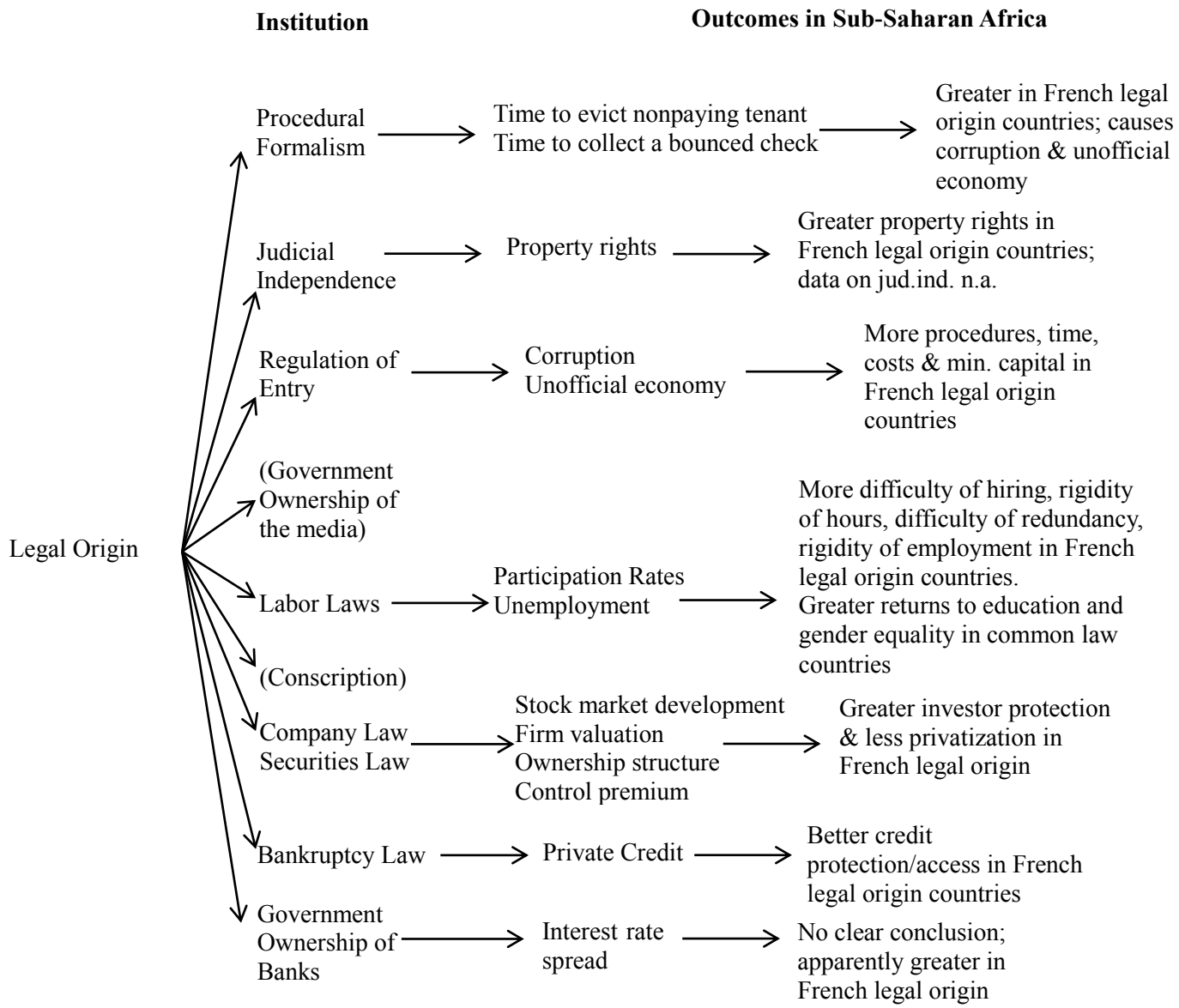
Regarding private credit, the analyzed data suggested that common law countries in Sub-Saharan Africa have a greater strength of legal rights, and a greater depth of credit information.[262]

By looking at the available information regarding government ownership of banks in Sub-Saharan Africa it was not possible to make a general conclusion. If we look, however, at the case studies in the Appendix, it seems that Francophone countries have a higher degree of state involvement also in the banking sector.

Figure 7.M summarizes my general findings in Sub-Saharan Africa. The chart is based on La Porta et al.'s work. It was. However, slightly modified in order to include the Sub-Saharan African reality.

[256] Ibidem Figure 6.B.
[257] Ibidem Chapter 7.4.
[258] This fact may also contribute to a larger unofficial economy and a higher level of corruption. Ibidem Chapter 8.
[259] Ibidem Chapter 7.7.
[260] Ibidem Chapter 7.8.
[261] Information concerning the Anti-self-dealing Index in Sub-Saharan Africa was too limited.
[262] With the term "better quality" I mean that it offers better protection of the creditor and it offers a higher level of information disclosure.

Figure 7.K: Legal Origin, Legal Institution, and Outcomes in Sub-Saharan Africa[263]



[263] See Paolo Baffi Lecture, Legal Foundations of Corporate Governance and Market Regulation, 2008, page 60.

PART IV
LEGAL ORIGINS AND POVERTY IN SUB-SAHARAN AFRICA

Part IV can be described as the *hands-on* part of my dissertation. In this part of my thesis, I will study through the theory and an econometric model, whether there is a relationship between legal origins and poverty in Sub-Saharan Africa. In my econometric models, I used as variables the Human Poverty Index[264], the Corruption Index[265], the World Bank rankings regarding the ease of starting a business and of trading across borders, the cost of starting a business, the cost of registering property, the cost of dealing with construction permits, the cost of taxes, the cost of enforcing contracts, and the cost of getting credit.[266]

The sample of countries in Sub-Saharan Africa that I decided to select always the same and it includes the following countries: Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Congo,[267] Cote d'Ivoire, Gambia, Ghana, Kenya, Madagascar, Mali, Mauritania, Namibia, Rwanda, Senegal, Swaziland, Tanzania, and Uganda.

[264] See: http://hdr.undp.org/en/statistics/indices/hpi/
[265] Available at http://www.economics.harvard.edu/faculty/shleifer
[266] This data is available at http://www.doingbusiness.org/
[267] Democratic Republic of Congo

In order to better see whether there could be a relation between all these variables, I decided to develop two econometric models.
In the first one, I will analyse whether there could be a link between legal origins and the ease of doing business. In the second model, I will study the relationship between legal origins and poverty.

As we will see in the next pages, there seems to be econometric evidence that supports the theory discussed in the first parts of my thesis. The models suggests that the more there is common law, the easier it is to do business in Sub-Saharan Africa.
Concerning poverty, the element on which I mostly tried to focus throughout my thesis, the second model suggests that the more there is common law in Sub-Saharan Africa, the more the level of poverty is reduced.
In the next pages we will go systematically through each model by interpreting firstly the data, and then by linking the results with the theory studied in the initial chapters of my thesis.

CHAPTER IIX
LEGAL ORIGINS AND POVERTY IN SUB-SAHARAN AFRICA

SUMMARY: 8.1 Legal Origins and Poverty; 8.2 Legal Origins and Ease of Doing Business in Sub-Saharan Africa; 8.3 Legal Origins and Ease of Doing Business in Sub-Saharan Africa; 8.4 Legal Origins and Poverty in Sub-Saharan Africa

8.1 Legal Origins and Poverty

In the first sections if my thesis, we studied in detail what types of economic outcomes legal origins may cause in Sub-Saharan Africa.

However, how do these outcomes affect poverty?

In this chapter, we will go quickly through each point we studied previously in order to understand how poverty may be influenced by legal origin.

On the diagram depicted on the next page, it is possible to see how the outcomes caused by legal origins influence poverty.

There are several ways in which legal origins may indirectly influence poverty. Generally speaking, legal origins cause the following outcomes that strongly impact poverty: a) Corruption; b) Justice; d) Property rights/Access to credit; e) Employment; and f) Financial development/Economic Growth

This five points were in my opinion the most significant elements that have a direct impact on poverty in Sub-Saharan Africa.

As we will see in the next chapters, there will be also several other elements that determine the level of poverty; entry barriers, low competition, low investor protection etc. are all components that indirectly define the level of economic growth within a country.

8.2 Corruption and Poverty

The connection between corruption and poverty is extremely strong. Corruption is a main source of poverty, since it stimulates unfair distribution of income and unproductive employment of resources.

Corruption can be defined as an elite activity which aggravates already severe levels of poverty and economic inequality. This is partially because in the economies where such elites are very diffused, the governance institutions are fragile and members of the elite are practically external to law. As a consequence, the corrupted or willing to corrupt individual does not have to pay the same level of taxes like everyone else etc.

Hence, it is the poor and the fragile stratus of society that bears the true burden of corruption. The link between corruption and poverty is very strong; especially in Sub-Saharan Africa countries, where corruption increases poverty, and intensifies inequalities.[268]

Corruption, by itself, does not cause poverty directly. It has rather an indirect effect on poverty; it has direct consequences on *"economic and governance factors, intermediaries that in turn produce poverty."*[269]

There are two models that explain how corruption and poverty are linked. The first one, the *Economic Mode,* affirms that corruption negatively affects poverty by depressing economic growth and increasing income inequality.

According to Chetwynd and Spector, corruption depresses economic growth by *"discouraging foreign and domestic investment, taxing and dampering entrepreneurship, lowering the quality of public infrastructure, decreasing tax revenues, diverting public talent into rent-seeking, and distorting the composition of public expenditure."*[270]

The second model, the *Governance Model*, asserts that corruption affects poverty by influencing governance issues, which in turn, increase poverty.

[268] See The African Centre for Economic Growth , 2000, The Link Between Corruption and Poverty: Lessons from Kenya Case Studies

[269] See Chetwynd Eric, Chetwynd Frances, Bertram Spector, 2003, Corruption and Poverty: A Review of Recent Literature

[270] See Chetwynd Eric, Chetwynd Frances, Bertram Spector, 2003, Corruption and Poverty: A Review of Recent Literature

Corruption weakens political institutions and citizen participation, causing a disproportionate damage to poor people. When, for example, the quality of public services like health or education decreases because of corruption, low-income individuals will be the first ones who won't possess the resources necessary to find an alternative/private service.

Corruption is linked to higher infant mortality and school dropouts. When citizens do not trust in institutions , they are not incentivized to invest in productive economic activities.

In the past sections of my thesis, we saw that French legal origins is linked to higher levels of corruption. Causing different level of corruption, legal origins have an important effect on poverty.

8.3 Justice and Poverty

Poor people, predominantly women, are the most exposed to crime and civil conflict, and in many circumstances, formal justice systems fail to protect them. In order to reduce poverty, it is necessary for governments to be able to guarantee safety and access to justice for everyone.

In the developed world, the cost of crime is equal to 5 percent of GDP; in developing countries the cost rises to fourteen percent. Poor people are damaged more seriously by crime. In South Africa, for example, the victims of crimes of violence are mainly low-income individuals.

The effect of crime on poor people is very strong because for a person who already possess very little, losing what she/he has can be considered as real tragedy. The robbery of a bicycle can represent the loss of employment for the owner. Poor people have also more difficulties to find the protection of the state. Courts are in most cases distant, costly, and difficult to be understood by poor people.

Poor farmers in Sub-Saharan Africa are not able invest in agriculture if there is a high probability that their animals will be stolen. Farmers won't invest in their land if there is no way to resolved land disputed in a fair way.

States with poorly working legal systems and reduced crime control do not attract high levels of FDIs and economic growth is also injured.[271]

8.4 Property Rights, Access to Credit, and Poverty

Land is an extremely important asset for poor people. It offers the possibility to farmers to survive through the production and sale of crops and further agricultural products. For both poor and rich people, property rights are necessary in order to survive and accumulate resources. If one is deprived of private property, then he/she is not incentivized to invest in the land on which he is working.

Very often, land can be used by farmers in order to obtain the credit necessary to invest in an economic activity. Poor people, who are in most cases landless, are excluded from these chances. Furthermore, the literature suggests that land ownership increases investment in the human development of children. For this reason, land rights are not only essential for producing food; they may also be a mean to breakdown the intergenerational transmission of poverty. During shocks and times of crises, land provides an increased stability to people, which allows them to maintain the normal levels of consumption.[272]

Capital does not always flow to the ones who have the best ideas and projects. In order to offer credit, banks need assurance that the loan will be repaid back in future. As a consequence, banks do not lend to individuals who are poor and do not possess land or a house. Poor individuals are excluded from financial markets and unable to obtain the resources need to invest in their economic activity.

Due to the fact that the poor are not allowed to borrow against their future, they will under-invest in land, small economic activities, education, and health. The consequence of this under-investment will be poverty.[273]

[271] See http://www.gsdrc.org/docs/open/SSAJ35.pdf

[272] See Meinzen-Dick Ruth, 2009, Property Rights for Poverty Reduction?DESA Working paper No.91, page 2.

[273] See Armendáriz de Aghion Beatriz, Ashok S. Rai, Sjöström Tomas, 2002, Poverty Reducing

8.5 Employment and Poverty

Unemployment is among the primary causes of poverty in Sub-Saharan Africa. For the poor, labor is habitually the single asset they can use in order to improve their social condition.

The creation of employment opportunities is indispensable for achieving poverty reduction. It is central to deliver jobs that offer a safe income for the poor, particularly for women and young individuals.

Fast economic growth can theoretically contribute to reach an increase of remunerative and productive employment, in a way that reduces the level of poverty. Nonetheless, the influence of economic growth on poverty reduction does not depend only on the rate of economic growth. It depends also on the capacity to adapt to the growing demand for labor in the most productive sectors.

Due to the fact that employment is essential for poverty reduction, the creation of employment should occupy a central place in national poverty reduction policies.[274]

8.6 Financial Development, Economic Growth and Poverty

The literature suggests that there is a strong link between financial development and economic growth. There is no doubt that economic growth contributes to reduce poverty. Nonetheless, it is probable that in certain countries the benefit of economic growth for the poor is injured or even offset by the intensifications in inequality that may complement growth.[275]In the long-run, however, economic growth reduces the levels of poverty, giving individuals new opportunities, and increasing the assistance that the state is able to offer to the poorest stratus of society.

Credit Policies.

[274] See http://huwu.org/esa/socdev/social/poverty/poverty_and_employment.html

[275] See Guillaumont Jeanneney Sylviane, Kdodar Kangni,Financial Development and Poverty Reduction: can there Be a Benefit Without a Cost? IMF Working Paper

Economic growth represents a significant means for reducing poverty in Sub-Saharan Africa. According to a study made by Adams, a 10 percentage point increase in economic growth will cause a 25,9 percent reduction in the proportion of people living in poverty.[276]

8.7 Traditional Law and Poverty

Even if traditions must be considered as extremely precious due to their uniqueness and history, in many cases they can be a source of poverty, if not in harmony with the legal and economic environment.

In the first part of my thesis, we saw that traditional African law considers *property* and the *individual* in a special way.[277]According to traditional African law, in most cases, private property does not exist; it belongs to the *group* or *tribe*. As we already saw, traditional African law considers the individual as an entity which is part of a group and cannot be separated from it.[278]

Contract has also a very different function according to traditional law. It is not considered exclusively as a commercial mean, but includes several other functions (which for us could seem distant from reality).

In part II and III, we studied the importance that property rights and contract enforcement play in fostering development. Without private property, individuals do not have access to credit; and in many cases they are not incentivized to invest in their land in order to increase its efficiency. Without proper contracts, individuals are not able to trade and distribute entitlements in the most efficient way. Even if fascinating, similar traditions can contrast economic growth and negatively affect poverty.

Studying in depth traditional law could be very useful in order to discover, through a comparative study with modern/European laws, the points that diverge from each other. By finding these differences, it may be possible to eliminate different sources of poverty; and by introducing new regulations, it may

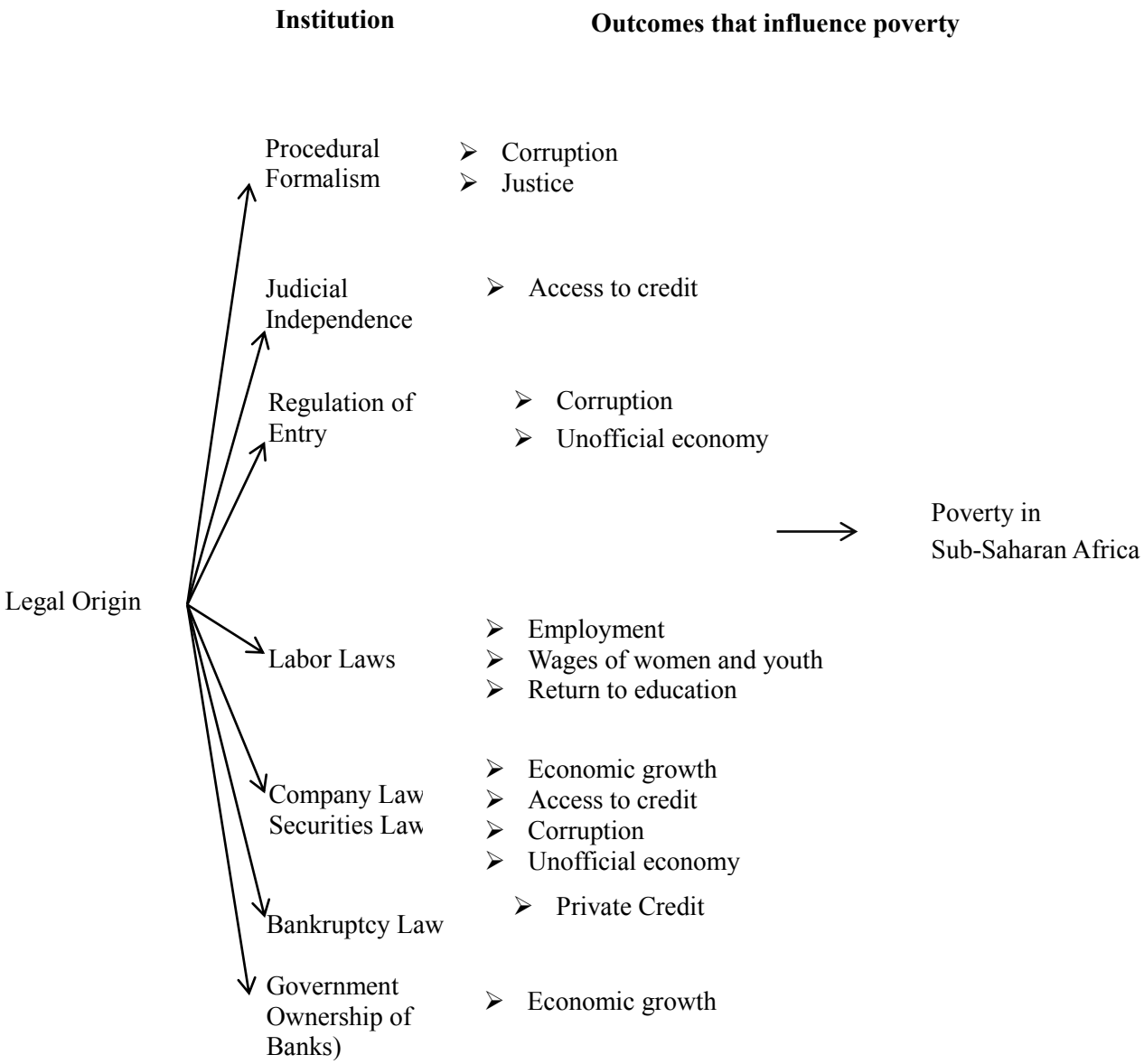
[276] See Adams Richard H. Jr., Economic Growth, Inequality, and Poverty: Findings from a new data set, IDEAS.
[277] Ibidem p.18
[278] Ibidem p. 17

be possible to increase the well-being of several poor people in Sub-Saharan Africa.

In conclusion, legal origins have a strong impact on corruption, justice, property rights, access to credit, employment, and economic growth. The listed elements are strongly linked to poverty.
Regulations that improve the listed points can decrease the level of poverty in Sub-Saharan Africa. This is the real link between legal origins and poverty.
Studying the selected sample of countries by dividing them according to their legal origin has been extremely useful for me. Only by comparing two different legal systems, I was able to detect small differences. Only by comparing the outcomes of single legal institutions, I was able to understand how important legal institutions and regulations are for humanity; they can have positive outcomes that improve the life of millions. This is the *magic* of comparative law.

On the figure below, it is possible to have an overview of how legal origins affect poverty. The figure is based on La Porta et al.'s work and was modified in order to illustrate the consequences of legal origin on poverty in Sub-Saharan Africa.

Figure 8.A:Legal Origin, Legal Institution, and Poverty in Sub-Saharan Africa



CHAPTER IX
AN ECONOMETRIC MODEL

SUMMARY: 9.1 Legal Origins and Ease of Doing Business in Sub-Saharan Africa;
8.4: Legal Origins and Poverty in Sub-Saharan Africa

9.1 Legal Origins and Ease of Doing Business in Sub-Saharan Africa

In Part II and Part III of my thesis, we saw that there are important differences between civil law and common law countries in Sub-Saharan Africa.[279]

The more market oriented character of common law regulations contributed to a greater liberalization of markets and a better business environment for companies and individuals.

In order to see whether it is really easier in Sub-Saharan African common law countries to operate in a market, I took World Bank's *Ease Doing Business Index* as independent variable.[280] As dependent variables, I chose to introduce the *Common Law* variable, [281] the *Corruption Perceptions Index (CPI)* variable, [282] the World Bank's *Starting a Business* variable, [283] the *Ease of*

[279] Ibidem

[280] "*The Ease of Doing Business Index is an index created by the World Bank. Higher rankings indicate better, usually simpler, regulations for businesses and stronger protections of property rights. Empirical research funded by the World Bank to justify their work claims to show that the effect of improving these regulations on economic growth is strong." Source: http://en.wikipedia.org/wiki/Ease_of_Doing_Business_Index*

[281] *Which simply says which country a common law system or not*

[282] *"Since 1995, Transparency International has published an annual Corruption Perceptions Index (CPI) ordering the countries of the world according to "the degree to which corruption is perceived to exist among public officials and politicians." The organization defines corruption as "the abuse of entrusted power for private gain."*
"The 2003 poll covered 133 countries; the 2007 survey, 180. A higher score means less (perceived) corruption. The results show seven out of every ten countries (and nine out of every ten developing countries) with an index of less than 5 points out of 10". Source: http://www.transparency.org/

[283] Which says in which country it is easier to start a business.

Registering Property variable,[284] the *Dealing with Construction Permits* variable,[285] the *Paying Taxes variable*,[286] the *Enforcing Contracts* variable and the *Ease of Getting Credit* variable.[287]

By looking at the following model, it is possible to observe that the data suggest that where there is common law, there it is easier to do business in Sub-Saharan Africa. As we can see, the level of R^2 is very high in this case (0,92), reflecting the fact that the relationship between the independent and the dependent variables is almost perfectly linear.

The quality of this statistical test seems to be extraordinarily high. The data suggests that where it is more difficult registering property, there it is more difficult doing business; where it is more difficult obtaining credit, there it is harder to do business.[288]

This model does not show directly the link between legal origin and poverty (the second model does). However, it shows that access to credit has an important effect on the business environment in Sub-Saharan Africa; the countries with better access to credit seem to favour business activities for individuals and companies.

In the past chapters, we saw that the selected common law countries in Sub-Saharan Africa offer a better access to credit.[289] The reason may be that common law countries tend to have less regulated markets and a weaker procedural formalism, which is linked to the grade of judicial independence.[290]

Furthermore, we saw in the past chapters that in common law countries in Sub-Saharan Africa it is easier to register property.[291] This fact may influence also the ability of an individual to have access to credit. A person who is not able to guarantee that he/she will be able to pay back the debt, won't have access to

[284] Which says in which country it is easier to register property.
[285] Which says in which country is easier to get the necessary permits in order to start a construction project.
[286] Which expresses the level of taxes that an average citizen pay within a country.
[287] Which says in which country it is easier to get credit.
[288] The data suggest also that where it is more difficult to start a business, there it is also more difficult to do business.
[289] Ibidem Chapter 7.11.
[290] Ibidem Chapter 6.6.
[291] Ibidem Chapter 7.11.

credit and will be more likely continue to be blocked in the poverty trap, if already poor.[292]

These examples confirm the fact that in common law countries in Sub-Saharan Africa it is easier to do business.

In conclusion, the econometric model suggests that the theory analysed in the first parts of my thesis are also valid for Sub-Saharan Africa. In order to see whether there is a link between legal origin and poverty in Sub-Saharan Africa, please let's go ahead and look at the next econometric model.

Model 1: Ease of Doing Business in Sub-Saharan Africa

				Number of obs	20
				F(8,11)	30,29
Source	**ss**	**df**	**MS**	**Prob > F**	**0**
Model	30507,4997	8	3813,4375	**R-squared**	1
Residual	1385,0503	11	125,913664	**Adj R-squared**	0,925
Total	31892,55	19	1678,55526		

Ease of doing business	**Coef.**	**Std. Err.**	**t**	**P > |t|**	**[95% Conf. Interval]**	
Common Law	-15,83073	9,050345	-1,75	0,108	-357.504	4,088947
Corruption	-8,366158	6,611024	-1,27	0,232	-22,91692	6,184608
Starting a business	0,1938406	0,0751962	2,58	0,026	0,0281349	0,3591463
Registering property	0,184253	0,0804836	2,29	0,043	0,0071099	0,3613961
Dealing with permits	0,022513	0,0741347	0,3	0,767	-0,1406564	0,1856825
Paying taxes	0,1373481	0,0847013	1,62	0,133	-0,0490782	0,3237743
Enforcing contracts	0,238481	0,0762661	0,31	0,76	-0,1440125	0,1917087
Getting credit	0,3451933	0,0846628	4,08	0,002	0,1588517	0,5315349

Variable	**VIF**	**1/VIF**
Getting credit	3,15	0,317381
Common Law	3,12	0,320259
Corruption	2,71	0,369121
Paying taxes	2,69	0,371611
Enforcing contracts	2,32	0,430372
Dealing with permits	1,88	0,532016
registering property	1,68	0,593592
starting a business	1,68	0,596648

[292] Ibidem Chapter 8.

9.2 Legal Origins and Poverty in Sub-Saharan Africa

In order to study the relation between legal origins and poverty in Sub-Saharan Africa, I introduced in this second econometric model the *Human Poverty Index (HPI-1)* as independent variable. As dependent variables, I decided to introduce the *Common Law* variable and the *Corruption Perceptions Index (CPI*).

By looking at this econometric model, it seems that the common law variable is negatively correlated with the *Human Poverty Index*. This means that to higher levels of common law, lower degrees of poverty are associated.

Furthermore, if we look at the relation between corruption and poverty in this model, we can see that corruption and poverty are correlated. This means that with higher levels of corruption, also the level of poverty increases.[293]

All the statistical diagnosis' have been done and the model suggests that where there is common law, there are lower levels of poverty; where there is more corruption, there are higher levels of poverty.

The reason why in the econometric model greater levels of common law are associated to lower levels of poverty in Sub-Saharan Africa, could be explained by the fact that the nature of common law regulations has a positive impact on poverty. This means that regulations that offer an easier access to credit or a greater and less expensive enforcement of contracts,[294] have an indirect influence on variables like the percentage of the population living below the poverty line, a variables included in the *HPI-1 Index*.[295]

The model suggests also that in Sub-Saharan African countries, corruption is related to higher levels of poverty.

The reason for this occurrence is that the negative externalities of corruption have significant consequences on the poorest stratus of society. In fact, the

[293]The fact that R square is low is justified by the fact that the number of observations is limited(20) and it is generally acceptable in literature for such types of analysis.
The VIF level is good; the significance level is equal to 10% for common law countries and 5% for civil law countries.

[294] As in the case of common law countries in Sub-Saharan Africa.

[295] These are just a couple of exampkes on which effects those regulations could have on poverty.

consequence of corruption is a deadweight loss whose burden is primarily carried by low-income citizens.[296]

In general, corruption can have a direct and an indirect impact on the poor. As a direct impact, corruption increases for example the cost of public services, decreasing their quality and limiting to poor people the access to basic services like water, health, and education. Indirect effects of corruption that negatively impact the poor can be the diversion on public resources away from social sectors, and the efficient allocation of resources necessary for economic growth and poverty reduction. Poor individuals are also more vulnerable because they can be easy targets for extorters and intimidators.[297]

As we saw in the Part II of my thesis, there is evidence that in civil law countries in the world there are higher levels of corruption. Heavier state-controlled and more bureaucratized regulations incentivize people to operate in the unofficial economy or to offer bribes to governmental officials.[298]

All in all, the econometric model suggests that legal origins have an important impact on the level of poverty in Sub-Saharan African countries.

Model 2: Legal Origins and Poverty in Sub-Saharan Africa

				Number of obs	20
				F(8,11)	7,24
Source	**ss**	**df**	**MS**	**Prob > F**	**0,0053**
Model	971,8968	2	485,9484	**R-squared**	0,4601
Residual	1149,4327	17	67,084277	**Adj R-squared**	0,3966
Total	2112,33	19	111,17524	**Root MSE**	8,1905

HPI-1	**Coef.**	**Std. Err.**	**t**	**P > |t|**	**[95% Conf. Interval]**
Common Law	-7,450228	3,836642	-1,94	0,069	0,644378
Corruption	-8,284088	3,008765	-2,75	0,014	-1,936148
_Cons	34,49134	2,850484	12,10	0	40,50533

Variable	**VIF**	**1/VIF**
Common Law	1,05	0,949461
Corruption	1,05	0,949461
Mean VIF	1,05	

[296] For information on the consequences of corruption on the poor see: http://www.u4.no/helpdesk/helpdesk/queries/query44.cfm

[297] Ibidem Chapter 8.2.

[298] Ibidem Chapter 8.2.

CONCLUSIONS

Legal Origins have important economic consequences that affect the level of poverty in Sub-Saharan Africa. The common law and civil law systems transplanted by European powers during the period of colonization had important consequences on the way in which legal institutions operate in Sub-Saharan Africa.

By studying the nature of common law and civil law systems, we saw that there are important differences that distinguish the two systems from each other. These differences, whose origin can be found in history, have influenced in a very important way the manner in which legal institutions operate in the world, including Sub-Saharan Africa.

Common law was originally created in the middle ages in England and spread through British colonialism throughout the world. In the 12th century, Henry II introduced the system of common law by generating a single legal system which was common to the whole country. Through the writ system, Henry II created a central legal system in which local customs were raised to a country-wide level.

According to the *Revolutionary Explanations*, English lawyers were on the same side as the winners of England's *Glorious Revolution*. This means that after the revolution judges were independent from the king, and enforced property law in order to protect themselves and the population from the power of the Crown. According to the *Medieval Explanations* theory, common law finds its origins in the 12th century with the creation of the Magna Carta, the first legal document which recognized and enforced rights of third persons apart from the king.

Civil law's historical origin is Roman law, in particular the Corpus Juris Civilis developed by Emperor Justinian in the VI century a.C.

French civil law is based on the Civil Code, which originated in France during the XIX century through Bonaparte. The French Revolution influenced in a very significant way civil law; it generated principles like freedom of conscience, equal rights, property and free trade. According to the Revolutionary Explanations, French lawyers were on the losers' side of the revolution. The revolutionaries tried to deprive judges of their independence and, as a consequence, judges became bureaucrats controlled by the state.
According to the *Medieval Explanations* theory, the French Crown adopted during the 12th and 13th centuries the bureaucratic inquisitorial system of the Roman Church in order to unify and control the territory. This system was necessary in order to control a fragmentized region in which it would have been impossible to use a flexible system like the one which was implemented in England.

While England was characterized by political unity, the rest of Europe was fragmentized and less peaceful. The context in which Europe was located did not allow governments to adopt a legal system like common law.
These historic divergences contributed to the constitution of legal institutions that work differently. As we read throughout my thesis, these divergences persisted and can be considered among the causes that explain why governments in French legal origin countries are organized differently form English legal origin countries.

In general, the main differences between the two legal systems are that common law is more dispute resolving, while civil law is more policy implementing; civil law is based on codified law, common law on case law; civil law gives more weight to public enforcement, common law to private enforcement.

Civil law systems tend to have a more policy implementing character. This means that in civil law countries the state has a stronger influence on legal institutions and regulations. Common law systems are, on the other hand, more dispute solving. This means that the state does not interfere strongly with the economy; it rather empowers private parties in order to reach an optimal outcome.

For these reasons, common law countries tend in general to have a) a lower level of procedural formalism; b) a lower level of market entry regulations; c) less labor regulations; d) a company and securities law that protects small investors better;[299] e) a bankruptcy law that offers higher protection to creditors; f) a lower ownership concentration; and g) a lower degree of state-owned banks.

By studying the link between legal origins, legal institutions, and poverty in Sub-Saharan Africa, I was able to observe several differences between common law and civil law countries. Common law countries in Sub-Saharan Africa resulted, according to the World Bank *Doing Business Rankings*, to have a more efficient a) bankruptcy regulation; b) contract enforcement; c) trade regulation; d) taxation regulation; e) investor protection; f) access to credit; g) labor registration/regulation; h) licensing regulation; and i) entry regulation.

By dividing a selected sample of Sub-Saharan African countries according to their legal origin, it was possible to notice that, in most cases, legal origins may be the source of such outcomes. Legal origins influence Sub-Saharan Africa's level of procedural formalism, judicial independence, regulation of entry, labor laws, company/securities law, bankruptcy law, and government ownership of banks.

According to the research I have done, procedural formalism resulted to be greater in French legal origin Sub-Saharan African countries. Data on judicial independence in Sub-Saharan Africa was very limited, but the quality of property rights resulted to be greater in English legal origin countries. Regulations of market entry in Sub-Saharan Africa resulted to be heavier in French legal origin countries; more procedures, time, costs, and capital were necessary to start an economic activity. Regarding labor laws, Sub-Saharan Africa French civil law countries resulted to have a greater rigidity of employment. Common law countries, on the other hand, demonstrated to have greater returns to education and greater gender equality. Concerning companies and securities law, it

[299] and have a lower ownership concentration.

was possible to observe that common law countries in Sub-Saharan Africa have a greater investor protection and less publicly owned companies. Common law countries resulted to have better access to credit and greater creditor protection. The portion of government-owned banks seemed to be greater in common law countries. However, sufficient data for Sub-Saharan Africa was not available and it was not possible to come to a coherent conclusion.

These outcomes caused by legal origins have several economic and social consequences in Sub-Saharan Africa. Among all of them, I concluded that corruption, justice, property rights, access to credit, employment, and economic growth have very strong consequences on poverty levels in Sub-Saharan Africa.

Corruption is a main source of poverty because it stimulates unfair distribution of income and unproductive employment of resources. Furthermore, corruption negatively affects poverty by depressing economic growth and increasing income inequality. It depresses investment, dampers entrepreneurship, lowers the value of public infrastructure, shrinks tax revenues, diverts public talent into rent-seeking, and misleads the alignment of public expenditure. Corruption affects poverty by influencing governance issues, which in turn, increase poverty. It weakens political institutions and citizen participation, causing a disproportionate damage to poor people.

Justice is also another outcome that significantly influences poverty. Poor farmers in Sub-Saharan Africa are not able invest in agriculture if there is a high probability that their animals will be stolen. Farmers won't invest in their land if there is no way to resolve land disputes in a fair way.
States with poorly working legal systems and reduced crime control do not attract high levels of FDIS and economic growth is also injured.[300]

Access to credit is also very important in order to fight poverty. In order to offer credit, banks need assurance that the loan will be repaid back in future. As a

[300] See http://www.gsdrc.org/docs/open/SSAJ35.pdf

consequence, banks do not lend to individuals who are poor and do not possess land or a house. Poor individuals are excluded from financial markets and unable to obtain the resources needed to invest in their economic activity.
Due to the fact that the poor are not allowed to borrow against their future, they will under-invest in land, small economic activities, education, and health. The consequence of this under-investment will be poverty.[301]

Unemployment is among the primary causes of poverty in Sub-Saharan Africa. For the poor, labor is habitually the single asset they can use in order to improve their social condition. The creation of employment opportunities is indispensable for achieving poverty reduction. It is central to deliver jobs that offer a safe income for the poor, particularly for women and young individuals.

Economic growth, which is strongly influenced by legal origins, represents a significant means for reducing poverty in Sub-Saharan Africa. According to a study made by Adams, a 10 percentage point increase in economic growth will cause a 25,9 percent reduction in the proportion of people living in poverty.[302]

Finally, traditional law can be also in many cases a source of poverty, if not in harmony with the legal and economic environment. We saw that traditional African law considers the individual as an entity which is part of a group (and cannot be separated from it). Contract has also a very different function according to traditional law. It is not considered exclusively as a commercial mean, but includes several other functions which for us could seem distant from reality.
Without private property, individuals do not have access to credit; and in many cases they are not incentivized to invest in their land in order to increase its efficiency. Without proper contracts, individuals are not able to trade and distribute entitlements in the most efficient way. Even if fascinating, similar traditions can contrast economic growth and negatively affect poverty in Sub-Saharan Africa.

[301] See Armendáriz de Aghion Beatriz, Ashok S. Rai, Sjöström Tomas, 2002, Poverty Reducing Credit Policies.
[302] See Adams Richard H. Jr., Economic Growth, Inequality, and Poverty: Findings from a new data set, IDEAS.

Legal origins affect, through the intermediation of legal institutions, poverty in Sub-Saharan Africa.
Even if apparently distant from the low-income population, regulations that support the business environment have a strong influence on the quality of life of poor people.

By writing this thesis, I learned that the best means to solve a problem are often those that apparently do not produce significant outcomes at first sight. Very often, we tend to believe exclusively in what we see; we are tempted to think that the only way that exists in order to alleviate poverty consists in sending humanitarian aid and assistance to LDCs. Doing reforms, that at first sight may seem only a drop into the ocean, may have positive consequences on the life of millions.
Rwanda, originally a civil law country, demonstrated how a country with a civil law tradition can move toward a common law system, improving the quality of life of great part of the population.[303]

The legal origins theory offers a unique opportunity; it enables governments to compare regulations and promote the ones that deliver the best outcomes.
Comparative law has been an extremely useful tool that enabled me to understand the complexity of law. Law isn't simply composed by norms. Law is shaped by history, geography, tradition, religion, culture, values, the economy etc.
Comparative law enabled me to understand this complexity, and made me aware that there is a strong link between legal origins and poverty in Sub-Saharan Africa.
"Legal origins, legal institutions, and hope." It is with this final vision that I would like to end my thesis. By understanding the link between legal origins, legal institutions, and poverty in Sub-Saharan Africa, it may be possible to understand why certain problems arise in some countries more than others.

[303] See Business Climated & Institutional Reform (BIZCLIR), 2007, Overhauling Contract Enforcement: Lessons from Rwanda, available at: http://www.bizclir.com/galleries/bestpractices/01.128.08BP17_Rwanda.pdf

APPENDIX

CASE STUDIES

In this part of my thesis, I will study some case studies in order to go further into detail. I will firstly analyze two countries; a French and a British legal origin country. As civil law country I chose to examine Senegal, a former French colony. Kenya, a former British colony, will be the common law country I will study.

I will start the case studies by giving a general historic and economic overview of each country. Afterwards, I will study some regulations in order to understand how they differ from each other, and whether the theory analyzed in the precedent part of my thesis is coherent with the reality present in these countries.

In the first case study, I will go through all previously studied points in order to understand whether legal origins may have shaped a country's institutions, determining the levels of market development and of poverty.

I will refer basically to Shleifer's and World Bank's data[304] in order to analyze whether procedural formalism, judicial independence, regulation of entry, labor laws, company & securities law, bankruptcy law; and government ownership of banks are different in each country.

Afterwards, I will study Uganda's and Burkina Faso's, ratio of government ownership of banks, strength of property rights, and investor protection.

The conclusion of this section of my thesis can be considered in part as personal. It is hard to define whether legal origins may be the consequences of all the

[304] Available at http://www.economics.harvard.edu/faculty/shleifer

listed differences existing between common law and civil law countries in Sub-Saharan Africa.

More often it is rather the level of development that may have pushed countries to adopt different kinds of regulations.[305] It is however interesting to analyze these differences in order to understand how the economy and the regulations in these countries are structured.

CHAPTER X
CASE STUDY: KENYA & SENEGAL, ENGLISH VS. FRENCH LEGAL ORIGIN

SUMMARY: 10.1 Kenya and Senegal at a Glance; 10.2 Procedural Formalism: Kenya vs. Senegal; 10.3 Judicial Independence & Property Rights: Kenya vs. Senegal; 10.4 Market Entry: Kenya vs. Senegal; 10.5 Labor Laws: Kenya vs. Senegal; 10.6 Company & Securities Law: Kenya vs. Senegal; 10.7 Government Ownership of Banks: Kenya vs. Senegal

10.1 Kenya and Senegal at a Glance

The history of Kenya is very interesting and full of adversities. In 1920, Kenya, formerly named *Colony and Protectorate of Kenya,* became a British crown colony. In 1963, the country became independent and changed its name to Kenya.[306]

From 1963 until 1978, Kenya was governed by President Kenyatta and in 1978, power passed through constitutional succession to President Moi.

From 1969 until 1982, Kenya was characterized by the presence of a single party system; the Kenya African National Union (KANU) was the only political party with ruling power until 1991, when political parties were free to compete for power.

[305] Ibidem

[306] http://www.britishempire.co.uk/maproom/kenya.htm

The period between 1992 and 1997 was characterized by the presence of President Kanu and by violence caused by contestants.

In 2002, after President Kanu, it was the turn of President Kibaki, member of the opposition party *National Rainbow Coalition*.

In 2007, when Kibaki was reelected, he was accused of having illegitimately won the elections by stealing Odinga's, his competitor, votes. Violence spread through the country for two months and 1,500 people died. Through the mediation of the United Nations, Odinga was nominated prime minister of Kenya and could continue his mandate.[307]

Even if continuously characterized by political instability and high levels of corruption, Kenya can be defined as the center for finance and trade in East Africa.[308]

In 1999 and 2000, a drought caused several damages in Kenya, reducing GDP growth by 0,2 percent.

The violence in 2008, caused by political elections, together with the negative effects of the global financial crises kept GDP growth at 2 percent per year.[309]

Concerning poverty, Kenya is among the medium human developed countries.[310]

The probability of not surviving to age forty is equal to 30,3 percent, the level of adult literacy is 26,4 percent, the percentage of the population not using improved water sources, and the quantity of children underweight is twenty percent. Regarding the national level of poverty, 19,7 percent of the population lives with $1,25 a day and 39,9 percent with $2 a day.

From 1988 to 2008, GDP growth declined steadily. In 1998, it was equal to 2,2 percent and ten years later, in 2008, to 1,7 percent. Total debt/GDP decreased significantly, passing from 69,5 percent in 1988 to 24,5 in 2008.

[307] https://www.cia.gov/library/publications/the-world-factbook/geos/ke.html
[308] http://www.tikenya.org/
In 1997, the IMF suspended Kenya's Enhanced Structural Adjustment Program due to the government's failure to maintain reforms and curb corruption
[309] https://www.cia.gov/library/publications/the-world-factbook/geos/ke.html
[310] Kenya ranks eleventh in Sub-Saharan Afica and 92nd worldwide.

The French colonies of Senegal and Sudan were fused in 1959 and became independent in 1960 as the *Mali Federation*. The unification dissolved, however, after a short time. In 1982, Senegal unified with The Gambia and constituted the confederation of Senegambia. Also in this case, the two countries were never able to coexis*t* and the unification broke up in 1989.

Since the 1980s, the Movement of Democratic Forces in the Casamance (MFDC) has led a separatist rebellion, and numerous peace agreements have not contributed to resolve the existing divergences. Nonetheless, Senegal can be considered as one of the most stable democracies in Africa.

For forty years, Senegal was governed by a Socialist Party, until present President Abdoulaye Wade was chosen through elections in 2000.

President Wade has often been criticized for having increased the power of the executive in order to prevail over the opposition.

In 1994, Senegal commenced a striving economic reform program. The program commenced with a fifty percent devaluation of the local currency which was linked at a fixed rate to the French franc.

Government interference with the market has been progressively dismantled. Subsequent to a period of economic downturn in the early nineties, Senegal made, thanks to its reform program, a significant turnaround. Between 1995 and 2008, the country experienced on average a real growth in GDP of over 5 percent per year.

Senegal is a member of the West African Economic and Monetary Union (WAEMU), and is contributing to the achievement of a greater regional integration through a unified external tariff and a more steady monetary policy.

In 2007, Senegal signed contracts with foreign firms for new mining allowances for, zircon, iron and gold.

Senegal still depends significantly on external donor assistance. Thanks to IMF's Highly Indebted Poor Countries (HIPC) debt relief program, Senegal was able to cut a large portion of its debt.

In 2009, Senegal signed an agreement with the U.S. agency *Millennium Challenge Corporation*, in order to stimulate development within the country.[311]

[311] a US government agency created to reduce poverty through sustainable economic growth.

Senegal is among the low human development countries. It has a Human Poverty Index equal to 41,6 percent, a probability of not surviving to age forty equal to 22,4 percent, an adult illiteracy rate equal to 58,1 percent, a quantity of the population not using an improved water source equal to 23 perecent, a fraction of children under weight equal to 17 percent, and a proportion of population living with $1,25 per day equal to 33,5 percent.
The difference between Kenya and Senegal is very significant. Kenya is ranked 12th in Sub-Saharan Africa, while Senegal 28th.[312]

By looking at Senegal's economic data, we can see that during the last ten years GDP increased by more than hundred percent, passing from a level of 5,1 US$ billion in 1998, to 13,2 US$ billion in 2008. Concerning the level of exports, we can see that they did not increase significantly during the last years thanks to the Highly Indebted Poor Countries (HIPC) debt relief program.

By comparing the economies of Kenya's and Senegal's, we can observe that both economies have similar structures. Both countries are based on the services industry and agriculture.

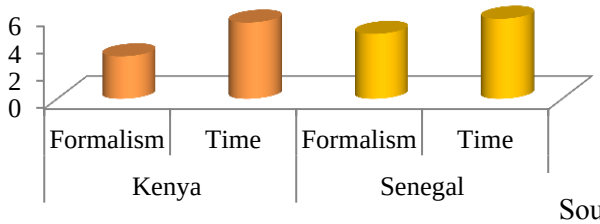
10.2 Procedural Formalism: Kenya vs. Senegal

In order to compare Kenya's and Senegal's levels of procedural formalism, I decided to refer to Shleifer's data set.[313] The result is very interesting; Kenya has a level of procedural formalism equal to 3,087 and a level of time necessary to collect a bounced check equal to 5,541. Senegal has a level of formalism equal to 4,719 and a level of time pair to 5,814. By looking at the graph below we can see that Senegal has slightly higher levels of procedural formalism and of time necessary to collect a bounced check. Even if the difference is very

See http://www.mcc.gov/
[312] For this reason I would like to underline the fact that it is very hard to study in this cases whether legal origins or rather other economic variables are responsible for the differences we will observe.
[313] Available at http://www.economics.harvard.edu/faculty/shleifer

small, the data suggests that legal origins may have an influence on the level of procedural formalism in the two studied countries.

Figure 10.A: Procedural Formalism in Kenya and Senegal



Source: A. Shleifer

10.3 Judicial Independence & Property Rights: Kenya vs. Senegal

In Part II and III of my thesis, I argued that judicial independence influences the quality and strength of property rights. I argued that French legal origins countries in Sub-Saharan Africa tend to have a greater quality of property rights because of greater judicial independence (information regarding judicial independence was not available).

By looking at Shleifer's data regarding property rights in Kenya and Senegal, it is possible to observe that both countries have the same quality of property rights. By looking, however, at World Bank's *Doing Business Rankings*, we can see that on a global scale Kenya ranks 125th and Senegal 166th.

The rankings seem to suggest that in Kenya it is easier to register property than in Senegal. Even if it was not possible to compare the data regarding judicial independence and property rights, it is possible to affirm that Kenya has more efficient regulations regarding property registration.

Even if the situation is too complex to come to a general conclusion, it seems that legal origins may have an influence on Kenya's and Senegal's quality of property rights.

10.4 Market Entry: Kenya vs. Senegal

According to the World Bank data, in Kenya twelve procedures and thirty-four days are necessary to start a business. In Senegal, four procedures and only eight days are needed on average to start a business.

If we look at the cost of starting a business, expressed as percentage of income per capita, it is possible to see that in Kenya it is equal to 36,5 percent and in Senegal it is equal to 63,7 percent.

In this case, we can observe that the number of procedures and the days needed in order to start a business are much lower in Senegal.

However, it is also possible to state that the cost of starting a business is much higher in Senegal.

It seems to be impossible to formulate a clear conclusion. However, the higher cost of starting a business in Senegal seems to suggest that legal origins may play a role in defining the level of costs necessary to start a business.

10.5 Labor Laws: Kenya vs. Senegal

If we look at the nature of labor laws in Kenya and Senegal, we can see that they differ significantly from each other. Senegal has a more than three times higher difficulty of hiring index, a five times higher rigidity of hours index, and a circa three times higher rigidity of employment index. The data suggests that legal origins have an influence on the two countries' labor laws.

Senegal, being a French legal origin country, seems to have inherited a much more rigid system of labor laws.

Figure 10.B: Legal Origins and Labor Laws in Kenya and Senegal

Country	Legal Origin	Difficulty of hiring index (0-100)	Rigidity of hours index (0-100)	Difficulty of redundancy index (0-100)	Rigidity of employment index (0-100)	Redundancy costs (weeks of salary)
Kenya	Common Law	22	0	30	17	47
Senegal	Civil law	72	53	50	59	38

Source: World Bank

10.6 Company & Securities Law: Kenya vs. Senegal

Using Shleifer's data regarding ownership concentration, anti-self-dealing etc., was not possible in this case due to their limited availability. In order to see whether there is a difference between the two countries regarding investor protection, I referred to World Bank's *Doing Business Rankings.*

The result is very thought-provoking; Senegal has a two times higher extent of disclosure than Kenya. Kenya has a two times greater extent of director liability, and a five times greater ease of shareholder suits index. Kenya has a strength of investor protection equal to five and Senegal to three.

All things considered, Kenya seems to have a stronger investor protection, suggesting that also in this case legal origins may play an important role.

Figure 10.C: Investor Protection in Kenya and Senegal

Country	Legal Origin	Extent of disclosure index (0-10)	Extent of director liability index (0-10)	Ease of shareholder suits index (0-10)	Strength of investor protection index (0-10)
Kenya	Common law	3	2	10	5
Senegal	Civil law	6	1	2	3

Source: World Bank

10.7 Government Ownership of Banks: Kenya vs. Senegal

By looking at Shleifer's data regarding government ownership of banks, it is possible to notice that both countries experience similar levels of government intervention. In this case, it is not possible to come to a clear conclusion on whether legal origins may have contributed to different levels of government intervention in the banking sector of the two countries.

Figure 10.D: Government Ownerships of Banks in Kenya and Senegal

Country	GovOwnershipBanks70	GovOwnDev'tBks95	GovOwnershipBanks95	GovOwnComBks	lend-dep.rateSpread
Kenya	0,4509	0,153161	0,2993759	0,1920167	-
Senegal	0,4943	0,240175	0,2797886	0,0586615	13,6025

Country	GovControlBks@20%	GovControlBks@50%	GovControlBks@90%	GovInterventionIndex
Kenya	0,4874037	0,222983	0,085681	4
Senegal	0,3668425	0,2186195	0,1972708	4

Source: A. Shleifer

In order to go further into detail, I analyzed the ownership structure of banks in Kenya and Senegal.

If compared to Senegal, Kenya's financial system is much more complex and developed. The country has in total forty-five banks, including development banks, commercial banks, and investment banks.[314]

Ownership transparency of banks is very limited in Kenya. However, four banks are clearly state-owned:

1) The Bank of Africa
2) The Development Bank of Kenya
3) The National Bank of Kenya
4) The Consolidated Bank

On forty-five banks in Kenya, only 4 are owned or partly owned by the state.[315] Senegal is characterized by the presence of 28 major banks.[316]Most of them seem to be privately owned. Unfortunately, information on their ownership

[314] These banks are:
ABC Bank, Bank of Africa, Bank of Baroda, Bank of India, Barclays Bank, CFC-Stanbic Bank, Charterhouse Bank, Chase Bank, Citibank, City Finance Bank, Co-operative Bank of Kenya, Commercial Bank of Africa, Consolidated Bank of Kenya, Credit Bank, Development Bank of Kenya, Diamond Trust Bank, Dubai Bank, Dubai Bank, Ecobank, Equatorial Commercial Bank, Equity Bank, Family Bank, Fidelty Commercial Bank, Fina Bank, Giro Commercial Bank, Guardian Bank, Habib Bank A.G. Zurich, Habib Bank, Housing Finance, Imperial Bank, Investment & Mortgages Bank, K-Rep Bank, Kenya Commercial Bank, Middle East Bank, National Bank of Kenya, NIC Bank, Oriental Commercial Bank, Paramount Universal Bank, Prime Bank, Prime Capital and Credit Finance Bank, Southern Credit Banking Corporation, Standard Chartered Bank, Transnational Bank, United Bank for Africa, Victoria Commercial Bank.

[315] The Consolidated Bank is owned only by 51 percent of the state.

[316] Bank of AfricaBanque Habitat du SénégalBanque Internationale pour le Commerce & l'Industrie du Sénégal (BICIS), Banque Islamique du Sénégal (BIS), Banque Régionale de Solidarité – Senegal, Banque Sahélo-Saharienne pour l'Investissement et le Commerce, Banque Senegalo – Tunisienne (BST), Banque de l'Habitat du Sénégal, BMCE Capital, Caisse d'Epargne, Caisse d'Epargne et de Credit Populaire, Caisse Nationale de Credit, Caisse Nationale de Crédit Agricole du Sénégal (CNCAS), Compagnie Bancaire de l'Afrique

structure seems to be very limited and it is not possible in this case to come to a clear conclusion.

Conclusions

By looking at the case study, it is possible to affirm that between Kenya and Senegal there are several differences regarding their economies and regulations. The data available was very limited and it is very difficult to find a clear conclusion. The first thing we observed was that Kenya is a more developed country with lower levels of poverty and more developed financial markets.

The second thing we noticed is that procedural formalism is greater in Senegal and property rights are greater in Kenya.

We also observed that market entry seemed to be more costly in Senegal. Concerning labor laws, we saw that Senegal has a greater difficulty of hiring index, of rigidity of hours index, of difficulty of redundancy index, and of rigidity of employment index.

Regarding company and securities law, we observed that Kenya had a much higher ease of shareholder suits index and a greater investor protection index.

In the final part, I studied whether the government was involved differently in the banking sector. In that case the information was too limited, and it was unfortunately impossible to find a satisficing conclusion.

All in all, the theory studied in the previous parts of my thesis seem to be valid also for Kenya and Senegal.

Occidentale (CBAO), Compagnie Financière de l'Ouest Africain (CFAO), Citigroup, Crédit Mutuel du Sénégal, CNCA CNCAS, Crédit Lyonnais, Ecobank, EMS, International Commercial Bank, LocAfrique, NDIAYE Société Générale de Banques au Sénégal (SGBS),SNR, United Bank for Africa.

CHAPTER XI
CASE STUDY: BURKINA FASO & UGANDA
ENGLISH VS. FRENCH LEGAL ORIGIN

11.1 Burkina Faso and Uganda at a Glance

Burkina Faso became independent in 1960. The decades between the 1970s and 1980s were characterized by military coups. During the 1990s democratic elections took place for the first time and current President Blaise Compaore, who came to power through a coup d'état, won all elections until present.

With a life expectancy of 53 years, Burkina Faso is among the poorest least developed countries in the world.

Burkina Faso was a French colony until 1958, when it became independent. The country's legal system is primarily French civil law.

The economy of Burkina Faso is mainly based on agriculture; 90 percent of the population operates in the agricultural sector.

Since 1998, Burkina Faso has experienced different legal reforms. Different state-owned companies were privatized, and through a modernization of its investment code, Burkina Faso is trying since 2004 to increase its attractiveness to FDIs. Through legal reforms, the country tried to support especially the mining sector.[317]

Burkina Faso is among the poorest countries in Sub-Saharan Africa. By looking at the *Human Poverty Index*[318], we can see that Burkina Faso is among the low human development countries; 26,9 percent of people survive to 40 years, 28 percent of the population is not using an improved source of water, 37 per-

[317] https://www.cia.gov/library/publications/the-world-factbook/geos/uv.html

[318] The Human Development Index table can be found at the bottom of the thesis. The HPI-1 Index measures poverty taking into account several elements including the probability of not surviving to age 40, percentage of adult literacy, percentage of population using improved water source, and the percentage of the population living below the poverty line.

cent of children under five years of age are underweight, and the greatest part of the total population (around 60 percent), lives under the national poverty line.

The percentage of adult literacy is surprisingly high in Burkina Faso; 71,3 percent of adult aged 15 and above can read.

If we look at the recent economic data, we can see that GDP increased significantly between 1998 and 2008, passing from UD$2,8 billion to US$7,9 billion. The country's total debt decreased by more than 50 percent during the last decade. Burkina Faso's economy is mainly based on agriculture (16,8 percent) and livestock, forestry and fisheries.

Uganda became independent from Britain in 1962, preserving its Commonwealth membership. The first election after independence was won in 1962 by a coalition between the Uganda People's Congress (UPC) and Kabaka Yekka (KY). The two parties formed the first post-independence government with Milton Obote as executive Prime Minister, King Buganda Kabaka Edward Muteesa II as President, and William Wilberforce Nadiope as Vice President.[319]

In 1966, succeeding a power fight between Obote and King Muteesa, the parliament modified the constitution and removed the president and vice president. In 1967, a new constitution which declared Uganda as a republic and abolished the traditional kingdoms was introduced. Obote was confirmed as executive President.[320]

In 1971, Obote was removed from power and, through the support of the military Amin, was able to obtain power and rule Uganda for almost a decade. Amin's regime caused the death of 300,000 Ugandans and ruined the country's economy.[321]

Amin's command came to an end in 1979, after the war between Uganda and Tanzania. The Tanzanian army invaded Uganda and made it possible for Obote

www.parliament.go.ug/index.php?option=com_content&task=view&id=4&Itemid=3
www.buganda.com/crisis66.htm
www.state.gov/r/pa/ei/bgn/2963.htm

[321] He forced the Indian minority which was vital for the economy, to leave the country.

to return to power. In 1985, Obote was overthrown by General Tito Okello, who was deposed shortly after a war led by the National Resistance Army (NRA) and several rebel groups.
In 1986, President Museveni became ruler of the country. He was involved in the civil war in the Democratic Republic of Congo (DRC) and further fights in the Great Lakes region, in addition to the civil war against the Lord's Resistance Army, which has been responsible of several crimes against humanity. Fights in Uganda have displaced millions and murdered thousands.

For several years, Uganda's economy suffered because of the shattering economic policies performed during the last fifty years. Uganda is one of the world's poorest countries in the world, and since the most recent government's reforms, the country is experiencing a strong growth. Regardless of the global downturn in 2008, Uganda recorded a 7 percent growth.

By looking at Uganda's GDP growth during the last decades, we can notice that it has been much higher than in Burkina Faso. While most countries in the world were experiencing stagnation or recession, Uganda grew at 7 percent.
The total debt/GDP ratio has fallen by more than 10 percent during the last decades. The exports of goods and services/GDP has almost doubled during the last years.

Uganda and Burkina Faso have two similar economies. After several years of economic downturn, governments are doing several reforms which have attracted FDIs and stimulated economic growth.

11.2 Private and Public Enforcement in Burkina Faso and Uganda

Government Ownership of Banks in Burkina Faso

Burkina Faso has principally nine main commercial banks:[322]

1) Banque Agricole et Commerciale (BACB)

[322] Source: http://burkinaphonebook.com/en/banking/banks-financial-institutions/

2) Banque Atlantique
3) Societe Generale de Banques au Burkina (SGBB)
4) Banque Internationale du Burkina (BIB)
5) Bank of Africa (BOA)
6) Banque Regionale de Solidarité (BRS)
7) Banque Sahélo-Saharienne pour l'Investissement et le Commerce (BISC)
8) Ecobank
9) United Bank for Africa

The *Banque Agricole et Commerciale*, which was founded in 1980, is an Agricultural development bank under banking law offering banking services like current and saving account facilities, and supplying short-term, medium and long-term loans to individuals, cooperatives and agricultural projects.

The ownership of the bank is structured in the following way: 25 percent of the bank is owned by the government, 21 percent by the West African Central Bank, and the remaining 21 percent are owned by the Banque Ouest Africaine de Développment.[323]

The *Banque Atlantique* is privately owned bank headquartered in France with a strong presence in Africa.[324]The bank is offers several business services, including private banking.[325]

The *Societe Generale de Banques au Burkina*, is a group of banks owned by the Sociéte Genérale (51 percent and by the state of Burkina Faso.[326]The bank offers business services and supplies loans to individuals, cooperatives and agricultural projects.

The *Banque Internationale du Burkina (BIB)*, is owned by UBA group (57,28 percent), COFIPA (20,16) percent, Burkina state (10%) and by individual shareholders (12,54%).[327]

The *Bank of Africa (BOA)*, is group of 12 commercial banks. The Bank present in Burkina Faso is a subsidiary of BMCE Bank, a Moroccan Bank.

[323] See Food and Agriculture Organizagtion (FAO): http://www.fao.org/ag/ags/agsm/banks/banks/burkina.htm
[324] Source: Hoovers, http://premium.hoovers.com/subscribe/indepth/factsheet.xhtml?ID=yscxcrsyj
[325] See http://www.banqueatlantique.net/english/index.php?parcours=produits
[326] See http://www.sgbb.bf/historique.php
[327] See http://www.ubagroup.com/web/group/genericpage/405

The *Banque Regionale de Solidarité* was founded in 2004 by 87 investors including persons, private companies and institutions.[328]Detailed information on the percentages of ownership are not available. However, what seems evident is that it is not a fully state owned bank. The goal of the bank is offering loans to privates and cooperatives in order to foster development in the region.

The *Banque Sahélo-Saharienne pour l'Investissement et le Commerce (BISC)* is a commercial bank operating in different nations in Saharan and Sahelian Africa. *BSIC* is a regional financial institution of the Community of Sahel-Saharan States, founded through a convention signed in 1999 in, Lybia (with capital wholly supplied by the thirteen shareholder states).

Ecobank is a pan-African banking group supplying wholesale and retail customers, with a high presence in the African continent. The bank is privately owned and is headquartered in Lomé, Togo.[329]

United Bank for Africa (UBA) is a private bank headquartered in Nigeria. It operates in 19 African countries and has a presence in New York, London and Paris. The financial institution is quoted on the Nigerian Stock Exchange

Of the nine banks we analyzed, four of them are mainly owned by the state. These banks are mostly development banks aiming to stimulate trade between African countries and offering loans to companies or individuals.

These banks are:

1) Banque Agricole et Commerciale (BACB)
2) Bank of Africa (BOA)
3) Banque Regionale de Solidarité (BRS)
4) Banque Sahélo-Saharienne pour l'Investissement et le Commerce (BISC)

In conclusion , the presence of the state in the banking sector of Burkina Faso is very significant. The financial sector is still very underdeveloped and large amounts of capital are available to investors through state-owned financial institutions.

According to the theory developed in part II of my thesis, French civil law countries have a stronger presence of the state in the banking sector.

[328] See http://www.groupebrs.com/accueil_filiale.php?id=20
[329] http://www.ecobank.com/

In order to have an example of how legal origins may have influence financial institutions, it will be useful to compare the French legal origin country with the British legal origin country and see whether there will be relevant differences.

Investor protection

Regarding investor protection, Burkina Faso is placed according to World Bank's *Doing Business Rankings* at place 147 in the world.

Only recently, the government of Burkina Faso started to realize that legal reforms are necessary in order increase investments.

In order to attract FDIs, the government of Burkina Faso renewed its investment code in 2004. It increased the responsibility of the Enterprise Registration Centers in order to reduce bureaucracy and the time needed to start a business. The investment code guarantees standard legal rights to local and foreign firms.[330]

Concerning taxes, the government of Burkina Faso lowered them significantly during the last five years. In order to increase FDIs, the corporate tax in the mining sector was reduced from 35 to 25 percent.[331]

Regarding the protection of stock traders, it must be said that Burkina Faso does not have yet a local stock exchange.

The government of Burkina Faso established instead a system for "privatization bids". The government publishes announcements in which it declares that it will sell state owned enterprises to local and foreign investors.

Burkina Faso started only in the last five years a period of dramatic reforms and privatization of companies. According to World Bank's *Doing Business Report*, Burkina Faso is among world's top reformers of 2009.

Property Rights

By looking at the expropriation and compensation laws, we can notice that the presence of the state is very strong in the country. Before 2007, the whole land

[330] http://www.state.gov/e/eeb/rls/othr/ics/2009/117417.htm

[331] Preproduction taxes or loyalty fees are an example.

was property of the state (which decided to whom lease it). The state had the power to expropriate land whenever it wanted.
Only in 2007, the government implemented new legal reforms that protect investors of rural and urban stakeholders. It developed, for the first time, a clear legal framework for dispute resolution.

In the case in which a peaceful agreement between a private investor and the state cannot be found, the new investment code requires that the case is solved through international arbitration under the rules present in the Convention of the International Center for Settlement of Investment Disputes (ICSID).[332]

All in all, the government of Burkina Faso seems to have invested incredibly in legal reforms that aim to increase property rights, reduce taxes, and privatize formerly state owned companies.
By looking at the percentage of state-owned banks, we can see that four banks are state-owned. The remaining five are mostly subsidiaries of foreign banks operating in the country.
The fact that Burkina Faso is implementing so many legal reforms since 2004 is a demonstration that it has been recognized that the strong state involvement was slowing down development. By looking at the period before 2004, it is possible to see that the state was "too present". It controlled land and imposed extremely high taxes.
The numerous legal reforms of the last years are, in my view, a reaction of the extremely strong public enforcement performed by the government of Burkina Faso during the last decades.

[332] http://icsid.worldbank.org/ICSID/Index.jsp
For the complete code see:
http://icsid.worldbank.org/ICSID/StaticFiles/basicdoc/CRR_English-final.pdf

Government Ownership of Banks in Uganda

Previous to Uganda's independence in the early 60s, the banking systems was controlled by the state. In 1966, the Bank of Uganda, which was responsible for the monetary policy, became the Central Bank of Uganda.

Uganda Commercial Bank, the country's leading commercial bank was exclusively owned by the government.

The Uganda Development Bank was a state-run institution, which directed international loans into Ugandan companies and managed the development credits made to the country.

In the 1960s, additional commercial banks were established which included Bank of Baroda, Barclays Bank, Bank of India, Grindlays Bank, Standard Chartered Bank and Uganda Cooperative Bank.

In 1970s and early 1980s, the number of commercial banks decreased dramatically. The number of commercial banks fell from 290 units in 1970 to 84 (59 of which were state-led) in 1987.

Since the early 1990s the number of commercial banks has started to increase newly. Today, Uganda is characterized by the presence of 23 banks.[333] Among all of them, 18 are privately owned and 5 are publicly owned.

The public banks present in Uganda are:

1) Bank of Baroda
2) DFCU Bank
3) Ecobank
4) Kenya Commercial Bank
5) Stanbic Bank

Even if publicly owned, these five banks are commercial banks and not development banks. This means that they do not possess social goals as solidarity or development banks may have. They are market oriented and work as if they were private.

[333] ABC Capital Bank, Bank of Africa, Bank of Baroda, Barclays Bank, Cairo International Bank, Centenary Bank, Citibank, Crane Bank, DFCU Bank, Diamond Trust Bank, Ecobank, Equity Bank, Fina Bank, Global Trust Bank, Housing Finance Bank, Kenya Commercial Bank, National Bank of Commerce, Orient Bank, PostBank Uganda, Stanbic Bank, Standard Chartered Bank, Tropical Bank, Untied Bank for Africa.

Investor Protection

In World Bank's global ranking, Uganda is classified at rank 132. It has an extent of disclosure index equal to 2, an extent of director liability index and an ease of shareholder suits index equal to 5, and a strength of investor protection index equal to 4.[334]

In 1991, the *Uganda Investment Authority (UIA*) was created by the Uganda legislature in order to "*promote and facilitate investment projects, provide serviced land, and advocate for a competitive business environment."*

In 1996, the Capital Markets Authority (CMA) was founded in Uganda. It is an independent organization responsible for endorsing and regulating the financial markets industry in Uganda, with the main function of supporting investor protection.[335]

All in all, Uganda seems to have regulations and institutions protecting investors. However, it is not possible to judge their quality. According the World Bank doing business rankings, Uganda is one of the countries in the world which offers the lowest protection of investors.

Property Rights

The law of Uganda recognizes and protects private property according to the Constitution. Under Article 26 (1) of the Constitution it is expressed that *every person has a right to own property either individually or in association with others.*

Article 26 (2) states that *no person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied:*

[334] See http://www.doingbusiness.org/exploreeconomies/?economyid=193

[335] http://www.cmauganda.co.ug/onlinefiles/uploads/CMA/Downloads/about_us_CMA_profile.pdf

1. *the taking of possession or acquisition is necessary for public use or in the interest of defense, public safety, public order, public morality or public health; and*
2. *the compulsory taking of possession or acquisition of property is made under a law which makes provision for*
3. *Prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property ; and*
4. *A right of access to a court of law by any person who has an interest or right over the property.*

Uganda has bilateral trade investment promotion and protection agreements with Kenya, Tanzania, South Africa, The United Kingdom and Italy.

The African country is a countersigner to the Multilateral Investments Guarantee Agency (MIGA) treaty, and a member of the East African Co-operation Initiative.

Uganda is a member of the Common Market of Eastern and Southern African States (COMESA), and its goods enjoy preferential access when exported to the European Union under the Lome Convention and to the United States of America under the Generalized System of Preferences (GSP).[336]

Conclusions

All in all, the main impression I had by studying Burkina Faso and Uganda was that both countries are extremely poor and are facing tremendous difficulties. The main difference I observed was that Burkina Faso is only recently doing reforms; reforms that seem to work well.

Uganda, on the other hand, seems to offer a better investor protection and appear to have less state-owned banks.

It is very hard to state whether legal origins are really responsible for these differences.

336 http://www.cmauganda.co.ug/onlinefiles/uploads/CMA/Downloads/about_us_CMA_profile.pdf

TABLES

TABLE 1: LEGAL SYSTEMS IN SUB-SAHARAN AFRICA

LEGAL SYSTEMS IN SUB-SAHARAN AFRICA	
Country	**Legal System**
Angola	Based on Portuguese civil law system and customary law; modified to accommodate political pluralism and increased use of free markets; has not accepted compulsory ICJ jurisdiction
Benin	Based on French civil law and customary law; has not accepted compulsory ICJ jurisdiction
Botswana	Based on Roman-Dutch law and local customary law; judicial review limited to matters of interpretation; accepts compulsory ICJ jurisdiction with reservations
Burkina Faso	Based on French civil law system and customary law; has not accepted compulsory ICJ jurisdiction
Burundi	Based on German and Belgian civil codes and customary law; has not accepted compulsory ICJ jurisdiction
Cameroon	Based on French civil law system, with common law influence; accepts compulsory ICJ jurisdiction
Central African Republic	Based on French law; has not accepted compulsory ICJ jurisdiction
Cape Verde	Based on the legal system of Portugal; has not accepted compulsory ICJ jurisdiction
Chad	Based on French civil law system and Chadian customary law; has not accepted compulsory ICJ jurisdiction
Comoros	French and Islamic law in a new consolidated code; has not accepted compulsory ICJ jurisdiction
Congo, Democratic Republic of the	Civil law based on Belgian law with Napoleonic Civil Code influence; accepts compulsory ICJ jurisdiction with reservations
Congo, Republic of the	Based on French civil law system and customary law; has not accepted compulsory ICJ jurisdiction
Cote D'Ivoire	Based on French civil law system and customary law; judicial review in the Constitutional Chamber of the Supreme Court; accepts compulsory ICJ jurisdiction with reservations
Equatorial Guinea	Partly based on Spanish civil law and tribal custom; has not accepted compulsory ICJ jurisdiction
Eritrea	Primary basis is the Ethiopian legal code of 1957 with revisions; new civil, commercial, and penal codes have not yet been promulgated; government also issues unilateral proclamations setting laws and policies; also relies on customary and post-independent
Ethiopia	Based on civil law; currently transitional mix of national and regional courts; has not accepted compulsory ICJ jurisdiction
Gabon	Based on French civil law system and customary law; judicial review of legislative acts in Constitutional Chamber of the Supreme Court; has not accepted compulsory ICJ jurisdiction
Gambia, The	Based on a composite of English common law, Islamic law, and customary law; accepts compulsory ICJ jurisdiction with reservations
Ghana	Based on English common law and customary law; has not accepted compulsory ICJ jurisdiction

Guinea	Based on French civil law system, customary law, and decree; accepts compulsory ICJ jurisdiction with reservations
Guinea-Bissau	Based on French civil law; accepts compulsory ICJ jurisdiction
Kenya	Based on Kenyan statutory law, Kenyan and English common law, tribal law, and Islamic law; judicial review in High Court; accepts compulsory ICJ jurisdiction with reservations; constitutional amendment of 1982 making Kenya a de jure one-party state repeal
Lesotho	Based on English common law and Roman-Dutch law; judicial review of legislative acts in High Court and Court of Appeal; accepts compulsory ICJ jurisdiction with reservations
Liberia	Dual system of statutory law based on Anglo-American common law for the modern sector and customary law based on unwritten tribal practices for indigenous sector; accepts compulsory ICJ jurisdiction with reservations
Madagascar	Based on French civil law system and traditional Malagasy law; accepts compulsory ICJ jurisdiction with reservations
Malawi	Based on English common law and customary law; judicial review of legislative acts in the Supreme Court of Appeal; accepts compulsory ICJ jurisdiction with reservations
Mali	Based on French civil law system and customary law; judicial review of legislative acts in Constitutional Court; has not accepted compulsory ICJ jurisdiction
Mauritius	Based on French civil law system with elements of English common law in certain areas; accepts compulsory ICJ jurisdiction with reservations
Mozambique	Based on Portuguese civil law system and customary law; has not accepted compulsory ICJ jurisdiction
Namibia	Based on Roman-Dutch law and 1990 constitution; has not accepted compulsory ICJ jurisdiction
Niger	Based on French civil law system and customary law; has not accepted compulsory ICJ jurisdiction
Nigeria	Based on English common law, Islamic law (in 12 northern states), and traditional law; accepts compulsory ICJ jurisdiction with reservations
Rwanda	Based on German and Belgian civil law systems and customary law; judicial review of legislative acts in the Supreme Court; has not accepted compulsory ICJ jurisdiction
Sao Tome and Principe	Based on Portuguese legal system and customary law; has not accepted compulsory ICJ jurisdiction
Senegal	Based on French civil law system; judicial review of legislative acts in Constitutional Court; the Council of State audits the government's accounting office; accepts compulsory ICJ jurisdiction with reservations
Seychelles	Based on English common law, French civil law, and customary law; has not accepted compulsory ICJ jurisdiction
Sierra Leone	Based on English law and customary laws indigenous to local tribes; has not accepted compulsory ICJ jurisdiction
Somalia	No national system; a mixture of English common law, Italian law, Islamic sharia, and Somali customary law; accepts compulsory ICJ jurisdiction with reservations
South Africa	Based on Roman-Dutch law and English common law; has not accepted compulsory ICJ jurisdiction
Sudan	Based on English common law and Islamic law; as of 20 January 1991, the now defunct Revolutionary Command Council imposed Islamic law in the northern states; Islamic law applies to all residents of the northern states regardless of their religion; however
Swaziland	Based on South African Roman-Dutch law in statutory courts and Swazi traditional law and custom in traditional courts; accepts compulsory ICJ jurisdiction with reservations
Tanzania	Based on English common law; judicial review of legislative acts limited to matters of interpretation; has not accepted compulsory ICJ jurisdiction

Togo	French-based court system; accepts compulsory ICJ jurisdiction with reservations
Uganda	In 1995, the government restored the legal system to one based on English common law and customary law; accepts compulsory ICJ jurisdiction with reservations
Zambia	Based on English common law and customary law; judicial review of legislative acts in an ad hoc constitutional council; has not accepted compulsory ICJ jurisdiction
Zimbabwe	Mixture of Roman-Dutch and English common law; has not accepted compulsory ICJ jurisdiction

TABLE 2: Shareholder Rights Around the World

Source: Law & Finance, La Porta et al

Country	One share - one vote	Proxy by mail al-lowed	Shares blocked before Meeting	Cumulative Voting for dirs	Oppressed Minority	% of Share Capital to call an ESM	Antidirector Rights
Australia	0	1	0	0	1	0.05	4
Canada	0	1	0	0	1	0.10	4
Hong Kong	1	1	0	0	1	0.05	4
India	0	0	0	0	0	0.10	2
Ireland	0	0	0	0	1	0.10	3
Israel	0	0	0	0	1	0.10	3
Kenya	0	0	0	0	1	0.10	3
Malaysia	1	0	0	0	1	0.10	3
New Zealand	0	1	0	0	1	0.10	4
Nigeria	0	0	0	0	1	0.10	3
Pakistan	1	0	0	1	1	0.10	4
Singapore	1	0	0	0	1	0.10	3
South Africa	0	1	0	0	1	0.05	4
Sri Lanka	0	0	0	0	0	0.10	2
Thailand	0	0	0	1	1	0.20	3
UK	0	1	0	0	1	0.10	4
US	0	1	0	1	1	0.01	5
Zimbabwe	0	0	0	0	1	0.10	3
Avg. Eng. Origin	**0.22**	**0.39**	**0.00**	**0.17**	**0,92**	**0.09**	**3.39**
Argentina	0	1	1	1	1	0.05	4
Belgium	0	0	1	0	0	0.20	0
Brazil	1	0	0	0	1	0.05	3
Chile	1	0	0	0	1	0.01	3
Colombia	0	0	0	0	0	0.25	1
Ecuador	0	0	0	0	1	0.25	2
Egypt	0	0	0	0	0	0.10	2
France	0	1	1	0	0	0.10	2
Greece	1	0	1	0	0	0.05	1
Indonesia	0	0	0	0	0	0.10	2
Italy	0	0	1	0	0	0.20	0
Jordan	0	0	0	0	0	0.15	1
Mexico	0	0	1	0	0	0.33	0
Netherlands	0	0	1	1	0	0.10	2
Peru	1	0	0	1	0	0.20	2
Philippines	0	0	0	1	1	0.10	4
Portugal	0	0	0	0	0	0.05	2
Spain	0	0	1	0	1	0.05	2
Turkey	0	0	0	0	1	0.10	2
Uruguay	1	0	1	0	0	0.20	1
Venezuela	0	0	0	0	0	0.20	1
Avg.French Origin	**0.24**	**0.09**	**0.43**	**0.19**	**0.33**	**0.14**	**1,76**
Austria	0	1	1	0	0	0.05	2

Germany	0	0	1	0	0	0.05	1
Japan	1	0	0	0	1	0.03	3
S.Korea	1	0	0	0	0	0.05	2
Switzerland	0	0	1	0	0	0.10	1
Taiwan	0	0	1	1	1	0.03	3
Avg. German Origin	**0.33**	**0.17**	**0,67**	**0.17**	**0.33**	**0.05**	**2.00**
Denmark	0	0	0	0	1	0.10	3
Finland	0	0	0	0	0	0.10	2
Norway	0	1	0	0	0	0.10	3
Sweden	0	0	0	0	0	0.10	2
Avg.Scnd.Origin	**0.00**	**0.25**	**0.00**	**0.00**	**0.25**	**0.10**	**2.50**

TABLE 3: World Bank Doing Business Rankings

Economy	Ease of Doing Business Rank	Starting a Business	Dealing with Construction Permits	Employing Workers	Registering Property	Getting Credit	Protecting Investors	Paying Taxes	Trading Across Borders	Enforcing Contracts	Closing a Business	Total
Botswana	45	83	123	71	44	43	41	18	150	79	27	724
Namibia	66	123	38	43	134	15	73	97	151	41	55	836
Ghana	92	135	153	133	33	113	41	79	83	47	106	1015
Kenya	95	124	34	78	125	4	93	164	147	126	79	1069
Uganda	112	129	84	7	149	113	132	66	145	116	53	1106
Swaziland	115	158	24	55	158	43	180	54	158	130	68	1143
Tanzania	131	120	178	131	145	87	93	120	108	31	113	1257
Gambia, the	140	114	79	85	117	135	172	176	81	67	123	1289
Cape Verde	146	136	83	167	126	150	132	110	58	38	183	1329
Burkina Faso	147	115	80	82	114	150	147	144	176	110	112	1377
Mali	156	139	95	100	99	150	147	158	156	135	117	1452
Senegal	157	102	124	172	166	150	165	172	57	151	80	1496
Cameroon	171	174	163	126	143	135	119	170	149	174	98	1622
Benin	172	155	133	139	126	150	154	167	128	177	133	1634
Guinea	173	179	170	79	163	167	172	171	130	131	111	1646
Burundi	176	130	172	88	118	167	154	116	175	172	183	1651
Congo, Dem. Rep.	182	154	146	174	157	167	154	157	165	172	152	1780
Mauritania	166	149	154	125	74	150	147	175	163	83	150	1536
Rwanda	67	11	90	30	38	61	27	59	170	40	183	776
Madagascar	134	12	107	152	152	167	57	74	111	155	183	1304

Source: World Bank

English Legal Origin

French Legal Origin

TABLE 4: Human Poverty Index for Sub-Saharan Africa

HUMAN POVERTY INDEX IN SUB-SAHARAN AFRICA		Human poverty index (HPI-1)		Probability of not surviving to age 40a,+	Adult illiteracy rateb, +	Population not using an improved water source+	Children under weight for age +	Population below income poverty line (%)		
		Rank	Value	(% of	(%	(%)	(% aged	$1.25 a	$2 a day	National
HDI rank				cohort)	aged 15 and above)		under 5)	day		poverty line
			(%)	2005-2010	1999-2007	2006	2000-2006[c]	2000-2007[c]	2000-2007[c]	2000-2006[c]
HIGH HUMAN DEVELOPMENT										
1	Mauritius	45	9,5	5,8	12,6	0	15	..	..	..
MEDIUM HUMAN DEVELOPMENT										
2	Gabon	72	17,5	22,6	13,8	13	12	4,8	19,6	..
3	Equatorial Guinea	98	31,9	34,5	13,0	57	19	..	..	..
4	Cape Verde	62	14,5	6,4	16,2	20	14	20,6	40,2	..
5	Botswana	81	22,9	31,2	17,1	4	13	31,2	49,4	..
6	Namibia	70	17,1	21,2	12,0	7	24	49,1	62,2	..
7	South Africa	85	25,4	36,1	12,0	7	12	26,2	42,9	..
8	Congo	84	24,3	29,7	18,9	29	14	54,1	74,4	..
9	Swaziland	108	35,1	47,2	20,4	40	10	62,9	81,0	69,2
10	Angola	118	37,2	38,5	32,6	49	31	54,3	70,2	..
11	Madagascar	113	36,1	20,8	29,3	53	42	67,8	89,6	71,3
12	Kenya	92	29,5	30,3	26,4	43	20	19,7	39,9	52,0
13	Sudan	104	34,0	23,9	39,1	30	41	..	..	..
14	Tanzania	93	30,0	28,2	27,7	45	22	88,5	96,6	35,7
15	Ghana	89	28,1	25,8	35,0	20	18	30,0	53,6	28,5
16	Cameroon	95	30,8	34,2	32,1	30	19	32,8	57,7	40,2
17	Mauritania	115	36,2	21,6	44,2	40	32	21,2	44,1	46,3
18	Lesotho	106	34,3	47,4	17,8	22	20	43,4	62,2	68,0
19	Uganda	91	28,8	31,4	26,4	36	20	51,5	75,6	37,7
20	Nigeria	114	36,2	37,4	28,0	53	29	64,4	83,9	34,1
LOW HUMAN DEVELOPMENT										
21	Togo	117	36,6	18,6	46,8	41	26	38,7	69,3	..
22	Malawi	90	28,2	32,6	28,2	24	19	73,9	90,4	65,3
23	Benin	126	43,2	19,2	59,5	35	23	47,3	75,3	29,0
24	Timor-Leste	122	40,8	18,0	49,9	38	46	52,9	77,5	..
25	Côte d'Ivoire	119	37,4	24,6	51,3	19	20	23,3	46,8	..
26	Zambia	110	35,5	42,9	29,4	42	20	64,3	81,5	68,0
27	Eritrea	103	33,7	18,2	35,8	40	40	..	..	53,0
28	Senegal	124	41,6	22,4	58,1	23	17	33,5	60,3	33,4
29	Rwanda	100	32,9	34,2	35,1	35	23	76,6	90,3	60,3
30	Gambia	123	40,9	21,8	..	14	20	34,3	56,7	61,3
31	Liberia	109	35,2	23,2	44,5	36	26	83,7	94,8	..
32	Guinea	129	50,5	23,7	70,5	30	26	70,1	87,2	40,0
33	Ethiopia	130	50,9	27,7	64,1	58	38	39,0	77,5	44,2
34	Mozambique	127	46,8	40,6	55,6	58	24	74,7	90,0	54,1
35	Guinea-Bissau	107	34,9	37,4	35,4	43	19	48,8	77,9	65,7
36	Burundi	116	36,4	33,7	40,7	29	39	81,3	93,4	68,0

37	Chad	132	53,1	35,7	68,2	52	37	61,9	83,3	64,0
38	Congo (DR)	120	38,0	37,3	32,8	54	31	59,2	79,5	..
39	Burkina Faso	131	51,8	26,9	71,3	28	37	56,5	81,2	46,4
40	Mali	133	54,5	32,5	73,8	40	33	51,4	77,1	63,8
41	CAR	125	42,4	39,6	51,4	34	29	62,4	81,9	..
42	Sierra Leone	128	47,7	31,0	61,9	47	30	53,4	76,1	70,2
43	Afghanistan	135	59,8	40,7	72,0	78	39	..	..	..
44	Niger	134	55,8	29,0	71,3	58	44	65,9	85,6	63,0
45	Zimbabwe	105	34,0	48,1	8,8	19	17	..	..	34,9

SOURCES

Column 1: determined on the basis of HPI-1 values.
Column 2: calculated on the basis of data in columns 3-6.
Column 3: UN (2009e).
Column 4: UNESCO Institute for Statistics (2009a).
Columns 5 and 6: UN (2009a) based on a joint effort by UNICEF and WHO.
Columns 7-9: World Bank (2009d).
Column 10: calculated based on HPI-1 values and the income poverty measures.

TABLE 5: Procedural Formalism in Sub-Saharan Africa

English Legal Origin				French Legal Origin		
Country	Formalism	Time		Country	Formalism	Time
Botswana	4,081141	4,343805		Senegal	4,719298	5,81413
Ghana	2,649123	4,49981				
Kenya	3,087719	5,541264				
Namibia	3,824562	4,766438				
Swaziland	3,699562	3,688879				
Tanzania	3,822055	4,844187				
Uganda	2,60683	4,59512				

Source: Andrei Shleifer

TABLE 6: Contract Enforcement in Sub-Saharan Africa

Enforcing Contracts				
	Legal Origin	Procedures (number)	Time (days)	Cost (% of claim)
Sub-Saharan Africa	-	39,2	643,9	49,3
Benin	Civil Law	42	825	64,7
Botswana	Common Law	29	687	28
Burkina Faso	Civil Law	37	446	83
Burundi	Civil Law	44	832	38,6
Cameroon	Civil Law	43	800	46,6
Cape Verde	Civil Law	37	425	21,8
Congo, Dem. Rep.	Civil Law	43	625	151,8
Gambia, the	Common Law	32	434	37,9
Ghana	Common Law	36	487	23
Guinea	Civil Law	50	276	45
Kenya	Common Law	40	465	47,2
Madagascar	Civil Law	38	871	42,4
Mali	Civil Law	36	626	52
Mauritania	Civil Law	46	370	23,2
Namibia	Common Law	33	270	35,8
Rwanda	Civil Law	24	260	78,7
Senegal	Civil Law	44	780	26,5
Swaziland	Common Law	40	972	23,1
Tanzania	Common Law	38	462	14,3
Uganda	Common Law	38	510	44,9

Source: World Bank

TABLE 7: Property Registration in Sub-Saharan Africa

Registering Property				
Region or Economy	Legal Origin	Procedures (number)	Time (days)	Cost (% of property value)
Sub-Saharan Africa	-	6,7	80,7	9,9
Benin	Civil Law	4	120	11,8
Botswana	Common Law	5	16	5
Burkina Faso	Civil Law	4	59	13,2
Burundi	Civil Law	5	94	6,3
Cameroon	Civil Law	5	93	17,8
Cape Verde	Civil Law	6	73	7,6
Congo, Dem. Rep.	Civil Law	8	57	9,8
Gambia, the	Common Law	5	371	4,6
Ghana	Common Law	5	34	1,1
Guinea	Civil Law	6	104	13,9
Kenya	Common Law	8	64	4,2
Madagascar	Civil Law	7	74	9,7
Mali	Civil Law	5	29	20
Mauritania	Civil Law	4	49	5,2
Namibia	Common Law	9	23	9,6
Rwanda	Civil Law	4	60	0,5
Senegal	Civil Law	6	124	20,6
Swaziland	Common Law	11	46	7,1
Tanzania	Common Law	9	73	4,4
Uganda	Common Law	13	77	3,5

Source: World Bank

TABLE 8: Market Entry in Sub-Saharan Africa

Starting a Business					
Region or Economy	Legal Origin	Procedures (number)	Time (days)	Cost (% of income per capita)	Min. capital (% of income per capita)
Sub-Saharan Africa	-	9,4	45,6	99,7	144,7
Benin	Civil Law	7	31	155,5	290,8
Botswana	Common Law	10	61	2,1	0
Burkina Faso	Civil Law	4	14	50,3	428,2
Burundi	Civil Law	11	32	151,6	0
Cameroon	Civil Law	12	34	121,1	182,9
Cape Verde	Civil Law	9	24	17	38,9
Congo, Dem. Rep.	Civil Law	13	149	391	0
Gambia, the	Common Law	8	27	215,1	0
Ghana	Common Law	8	33	26,4	13,4
Guinea	Civil Law	13	41	139,2	489,7
Kenya	Common Law	12	34	36,5	0
Madagascar	Civil Law	2	7	7,1	0
Mali	Civil Law	7	15	89,2	334,6
Mauritania	Civil Law	9	19	34,7	450,4
Namibia	Common Law	10	66	20,4	0
Rwanda	Civil Law	2	3	10,1	0
Senegal	Civil Law	4	8	63,7	206,9
Swaziland	Common Law	13	61	33,9	0,5
Tanzania	Common Law	12	29	36,8	0
Uganda	Common Law	18	25	84,4	0

Source: World Bank

TABLE 9: Employment in Sub-Saharan Africa

Employing Workers						
Region or Economy	Legal Origins	Difficulty of hiring index (0-100)	Rigidity of hours index (0-100)	Difficulty of redundancy index (0-100)	Rigidity of employment index (0-100)	Redundancy costs (weeks of salary)
Sub-Saharan Africa	-	37,3	29,3	39,8	35,5	67,6
Benin	Civil Law	39	40	40	40	36
Botswana	Common Law	0	0	40	13	90
Burkina Faso	Civil Law	33	20	10	21	34
Burundi	Civil Law	0	53	30	28	26
Cameroon	Civil Law	28	20	70	39	33
Cape Verde	Civil Law	33	33	70	46	93
Congo, Dem. Rep.	Civil Law	72	47	70	63	31
Gambia, the	Common Law	0	40	40	27	26
Ghana	Common Law	11	20	50	27	178
Guinea	Civil Law	33	20	20	24	26
Kenya	Common Law	22	0	30	17	47
Madagascar	Civil Law	89	40	40	56	30
Mali	Civil Law	33	20	40	31	31
Mauritania	Civil Law	56	20	40	39	31
Namibia	Common Law	0	20	20	13	24
Rwanda	Civil Law	11	0	10	7	26
Senegal	Civil Law	72	53	50	59	38
Swaziland	Common Law	11	0	20	10	53
Tanzania	Common Law	100	13	50	54	18
Uganda	Common Law	0	0	0	0	13

Source: World Bank

TABLE 10: Wages in Sub-Saharan Africa

FIRMS IN SUB-SAHARAN AFRICA						
Median wage in USD - PPP						
		Managers	Professionals	Skilled production	Unskilled Production	Non-production
Anglophone	Botswana (2006)	486	2,149	496	331	453
	Gambia (2006)	761	198	331	228	397
	Ghana (2007)	492	507	213	160	213
	Kenya (2003)	1,119	832	256	166	236
	Namibia (2006)	2,552	939	470	282	494
	Swaziland (2006)	237	395	593	289	441
	Tanzania (2003)	549	442	177	221	148
	Tanzania (2006)	530	606	253	189	202
	Uganda (2003)	288	320	128	112	80
	Uganda (2006)	726	492	258	194	194
	Total	531	485	242	197	167
Francophone	Benin (2004)	289	491	186	124	144
	Burkina Faso (2006)	900	750	490	174	325
	Burundi (2006)	564	146	175	117	146
	Cameroon (2006)	1,215	996	438	319	319
	Cape Verde (2006)	721	1,189	324	231	216
	DR Congo (2006)	317	251	152	164	175
	Guinea (2006)	205	410	164	148	246
	Madagascar (2005)	1,649	1,539	742	536	660
	Mali (2003)	394	315	189	110	132
	Mauritania (2006)	455	909	505	404	313
	Rwanda (2006)	2,151	1,34	645	229	376
	Senegal (2003)	820	601	330	207	270
	Total	505	681	300	239	258

Source: World Bank

Table 11: Investor Protection in Sub-Saharan Africa

Protecting Investors					
Region or Economy	Legal Origin	Extent of disclosure index (0-10)	Extent of director liability index (0-10)	Ease of shareholder suits index (0-10)	Strength of investor protection index (0-10)
Sub-Saharan Africa	-	4,8	3,3	5,1	4,4
Benin	Civil Law	6	1	3	3,3
Botswana	Common Law	7	8	3	6
Burkina Faso	Civil Law	6	1	4	3,7
Burundi	Civil Law	4	1	5	3,3
Cameroon	Civil Law	6	1	6	4,3
Cape Verde	Civil Law	1	5	6	4
Congo, Dem. Rep.	Civil Law	3	3	4	3,3
Gambia, the	Common Law	2	1	5	2,7
Ghana	Common Law	7	5	6	6
Guinea	Civil Law	6	1	1	2,7
Kenya	Common Law	3	2	10	5
Madagascar	Civil Law	5	6	6	5,7
Mali	Civil Law	6	1	4	3,7
Mauritania	Civil Law	5	3	3	3,7
Namibia	Common Law	5	5	6	5,3
Rwanda	Civil Law	7	9	3	6,3
Senegal	Civil Law	6	1	2	3
Swaziland	Common Law	0	1	5	2
Tanzania	Common Law	3	4	8	5
Uganda	Common Law	2	5	5	4

Source: World Bank

Table 12: Legal Origins and Credit in Sub-Saharan Africa

Getting Credit					
Region or Economy	Legal Origin	Strength of legal rights index (0-10)	Depth of credit information index (0-6)	Public registry coverage (% of adults)	Private bureau coverage (% of adults)
Sub-Saharan Africa	-	4,6	1,5	2,4	4,5
Benin	Civil Law	3	1	10,9	0
Botswana	Common Law	7	4	0	51,9
Burkina Faso	Civil Law	3	1	1,9	0
Burundi	Civil Law	2	1	0,2	0
Cameroon	Civil Law	3	2	1,8	0
Cape Verde	Civil Law	2	2	23	0
Congo, Dem. Rep.	Civil Law	3	0	0	0
Gambia, the	Common Law	5	0	0	0
Ghana	Common Law	7	0	0	0
Guinea	Civil Law	3	0	0	0
Kenya	Common Law	10	4	0	2,3
Madagascar	Civil Law	2	1	0,1	0
Mali	Civil Law	3	1	4	0
Mauritania	Civil Law	3	1	0,2	0
Namibia	Common Law	8	5	0	57,7
Rwanda	Civil Law	8	2	0,4	0
Senegal	Civil Law	3	1	4,4	0
Swaziland	Common Law	6	5	0	42,3
Tanzania	Common Law	8	0	0	0
Uganda	Common Law	7	0	0	0

Source: World Bank

Table 13: Government Ownership of Banks in Sub-Saharan Africa

Country	legor_uk	legor_fr	GovOwnershipBanks70	GovOwnDev'tBks95	GovOwnershipBanks95	GovOwnComBks	lend-dep.rateSpread
uganda	1	0					
gambia, the	1	0					
burundi	0	1					
mauritania	0	1					
benin	0	1					
cameroon	0	1					
congo	0	1					
kenya	1	0	0,4509	0,153161	0,2993759	0,1920167	
senegal	0	1	0,4943	0,240175	0,2797886	0,0586615	13,6025
tanzania	1	0	1	0,0799436	0,949471	0,9450806	37,16666
guinea	0	1					
rwanda	0	1					
madagascar	0	1					
namibia	1	0					
swaziland	1	0					
botswana	1	0					
burkina faso	0	1					
ghana	1	0					
mali	0	1					
cape verde	0	1					

Country	legor_uk	legor_fr	GovControlBks@20%	GovControlBks@50%	GovControlBks@90%	GovInterventionIndex
uganda	1	0				
gambia, the	1	0				
burundi	0	1				
mauritania	0	1				
benin	0	1				
cameroon	0	1				
congo	0	1				
kenya	1	0	0,4874037	0,222983	0,085681	4
senegal	0	1	0,3668425	0,2186195	0,1972708	4
tanzania	1	0	0,9522856	0,9522856	0,9394404	2
guinea	0	1				
rwanda	0	1				
madagascar	0	1				
namibia	1	0				
swaziland	1	0				
botswana	1	0				
burkina faso	0	1				
ghana	1	0				
mali	0	1				
cape verde	0	1				

Source: Andrei Shleifer

Table 14: Formalism in Sub-Saharan Africa

French Legal Origin	
Country	**Formalism**
Benin	.
Burkina Faso	.
Cameroon	.
Congo, Rep.	.
Cape Verde	.
Guinea	.
Madagascar	.
Mali	.
Mauritania	.
Rwanda	.
Senegal	4,719298

British Legal Origin	
Country	**Formalism**
Swaziland	3,699562
Gambia, The	.
Uganda	2,60683
Namibia	3,824562
Botswana	4,081141
Tanzania	3,822055
Ghana	2,649123
Kenya	3,087719
Average	3,395856

Source: Andrei Shleifer

Table 15: Property Rights in Sub-Saharan Africa

Fench Legal Origin	
Country	**Property Rights**
Benin	2
Burkina Faso	2
Cameroon	2
Congo, Rep.	2
Cape Verde	3
Guinea	2
Madagascar	3
Mali	3
Mauritania	2
Rwanda	2
Senegal	3
Average	2,363636364

English Legal Origin	
Country	**Property Rights**
Swaziland	3
Gambia, The	3
Uganda	3
Namibia	4
Botswana	4
Tanzania	2
Ghana	3
Kenya	3
Average	3,125

Source: Andrei Shleifer

: Burundi n.a.

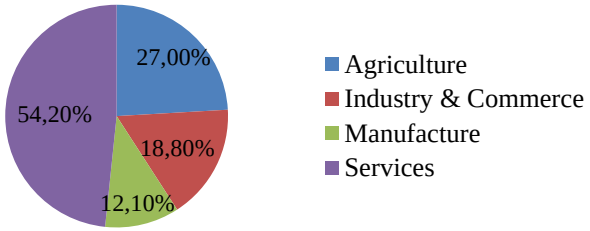
Table 16: Creditor Rights in Sub-Saharan Afa

French Legal Origin	
Country	**Creditor Rights**
Burundi	1
Benin	0
Burkina Faso	0
Cameroon	0
Cape Verde	.
Guinea	0
Madagascar	2
Mali	0
Mauritania	1
Rwanda	1
Senegal	0
Congo, Dem. Rep.	1
Average	0,5

English Legal Origin	
Country	**Creditor Rights**
Botswana	3
Ghana	1
Gambia, The	.
Kenya	4
Namibia	2
Swaziland	.
Tanzania	2
Uganda	2
Average	2,333333333

Source: Andrei Shleifer

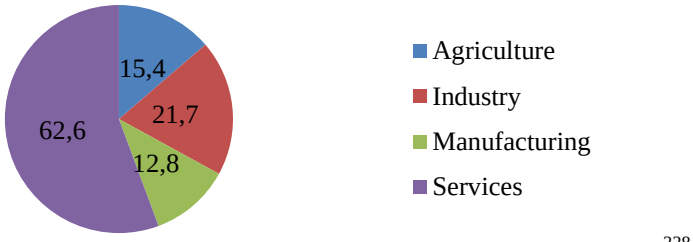
Chart 17: KENYA: KEY ECONOMIC RATIOS[337]



	1988	**1998**	**2007**	**2008**
GDP (US$ billions)	8,4	14,1	27,1	30,4
Exports of goods and services/GDP	22,4	20,2	26	27,3
Total debt/GDP	69,5	48,4	27,2	24,5
(Average annual growth)	**1988-98**	**1998-08**	**2007**	**2008**
GDP	2,2	3,8	7,1	1,7
GDP per capita	-0,9	1,1	4,3	-1
Exports of goods and services	3,8	6,5	5,7	3,6

[337] Source: World Bank. Data available at http://devdata.worldbank.org/AAG/ken_aag.pdf

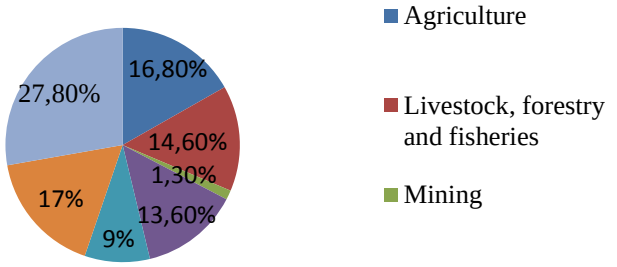
Chart 18: SENEGAL: KEY ECONOMIC RATIOS



OS [338]

	1988	1998	2007	2008
GDP (US$ billions)	5	5,1	11,3	13,2
Exports of goods and services/GDP	22,3	27,7	25,4	25
Total debt/GDP	78,1	81	22,8	21,7
(average annual growth)	**1988-98**	**1998-08**	**2007**	**2008**
GDP	2,1	4,4	4,9	3,3
GDP per capita	-0,6	1,7	2,1	0,6
Exports of goods and services	3,3	3,2	8,1	6,2

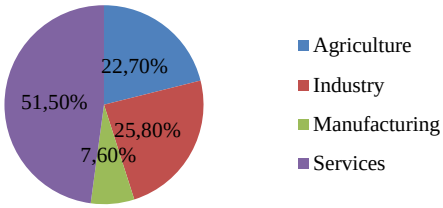
Chart 19: BURKINA FASO: KEY ECONOMIC RATIOS [339]



	1988	1998	2007	2008
GDP (US$ billions)	2,6	2,8	6,8	7,9
Exports of goods and services/GDP	11	12,8	-	-
Total debt/GDP	32,3	52	21,5	21,2
(average annual growth)	**1988-98**	**1998-08**	**2007**	**2008**
GDP	4,4	5,4	3,6	4,5
GDP per capita	1,6	2	0,1	1
Exports of goods and services	4,3	6,6	-	-

[338] Source: World Bank, see http://devdata.worldbank.org/AAG/sen_aag.pdf
[339] Source: World Bank, see http://devdata.worldbank.org/AAG/bfa_aag.pdf, and http://www.africaneconomicoutlook.org/en/countries/west-africa/burkina-faso/#/recent_economic_developments

Chart 20: UGANDA: KEY ECONOMIC RATIOS



	1988	**1998**	**2007**	**2008**
GDP (US$ billions)	6,5	6,6	11,9	14,5
Exports of goods and services/GDP	7,6	9,6	16,7	15,6
Total debt/GDP	29,8	59,9	13,5	15,5
(average annual growth)	**1988-98**	**1998-08**	**2007**	**2008**
GDP	6,9	7,1	9,5	5,7
GDP per capita	3,5	3,7	6	1,2
Exports of goods and services	13	11,3	7,3	12,1

REFERENCES

- Abiodun O. Folawewo, David Tennant, Determinants of Interest Rate Spreads in Sub-Saharan African Countries: A dynamic Panel Analysis, page 8.
- Adams Richard H. Jr., Economic Growth, Inequality, and Poverty: Findings from a new data set, IDEAS.
- African Debt and its Consequences, Madam G. Singh, available at http://www.kulu.dk/Financing/Regional%20Fact%20Sheets/fact_sheet_on_debt_africa.htm
- Ahlquist John S and Prakash Aseem, FDI and the costs of contract enforcement in developing countries, see http://www.springerlink.com/content/b67xt1h516378504/fulltext.pdf
- Amin Mohammad and Haidar Jamal Ibrahim, 2008The World Bank, page 5, see http://www.enterprisesurveys.org/Documents/Cost-Registering-Property.pdf
- Andrei Sheifer, 2008, Legal Foundations of Corporate Governance and Market Regulation, Paolo Baffi Lecture, Bank of Italy, Preliminary Draft, Harvard University.
- Andrei Shleifer, Robert W. Vishny, "Corruption", page 599, 1993.
- Antion Gidi, Class Action in Brazil – A Model for Civil Law Countries, page 323-24
- Apple See James G. and Deyling Robert P., 1995, A Primer on the Civil-Law System,
- Armendáriz de Aghion Beatriz, Ashok S. Rai, Sjöström Tomas, 2002, Poverty Reducing Credit Policies.
- Beck Thorsten, Demirgüç-Kunt Asli and Levine Ross, Law and Finance: Why Does Legal Origin Matter?, page 30-31.
- Botero Juan, Djankov Simeon, La Porta Rafael, Lopez-de-Silanes Florencio, and Shleifer Andrei, 2002, The Regulation of Labour, page 1-38.
- Buscaglia Edgardo, 1999 Law and Economics of Development, Hoover Institute, Stanford University, page 572-574.
- Business Climated & Institutional Reform (BIZCLIR), 2007, Overhauling Contract Enforcement: Lessons from Rwanda, available at: http://www.bizclir.com/galleries/bestpractices/01.128.08BP17_Rwanda.pdf
- Caballero Ricardo J, Kevin Lowan, Eduardo Engel, and Alejando Micco, 2004, Effective Labor Regulation and Microeconomic Flexibility.
- Catherine Delplanque, Origins and Impacvt of the French Civil Code, page 3; available at: http://www.afhj.fr/ressources/french-code-civil.pdf
- Chetwynd Eric, Chetwynd Frances, Bertram Spector, 2003, Corruption and Poverty: A Review of Recent Literature
- Coase Ronald H., The Problem of Social Cost, 3rd Journal of Law and Economics, page 1-44, 1960.
- Cooter Robert D. , 1996, Decentralized Law for a Complex Economy: The Structural Approach to Adjudicating the New Law Merchant, page 816-820.
- Coward 1980, pp. 298–302., In testimony before a House of Lords committee in the autumn of 1689 (Schwoerer 2004, p. 3)., "The Glorious Revolution". www.parliament.uk.
- Di Nolfo Ennio, 2009, Storia delle Relazioni Internazionali, Dal 1918 ai Giorni

Nostri, Editori Laterza, page 160.
- Djankov Simeon, Carolee McLiesh, and Andrei Shleifer, Privare Credit in 129 Countries, page 299, available at http://www.economics.harvard.edu/faculty/shleifer/files/priv_credit_jfe.pdf
- Djankov Simeon, La Porta Rafael, Lopez-de-Silanes Florencio, aand Shleifer Andrei, 2002, Courts: the Lex Mundi project, available at: http://www.law.yale.edu/documents/pdf/lopez.pdf
- Djankov Simeon, Rafael La Porta, Florencio Lopez-De-Silanes, and Andrei Shleifer, 2002, The Regulation of Entry, Quarterly Journal of Economics.
- Economic Commission for Africa, Eight Session of the ECA Conference of Ministers of Finance, Finance for Development in Africa (2000),
- Enskog Dorothée, 2009, Property rights, a way to erradicate poverty, available at: http://ild.org.pe/news/credit-suisse
- Fafchamps Marcel, 2004, Market Institutions in Sub-Saharan Africa, Theory and Evidence, pages 49 & 151.
- Firedland William H.and Rosberg Carl G., Jr, 1962, African Socialism, page 2.
- Fisman Raymond, and Sarria-Allende Virginia, 2004. "Regulation of entry and the distortion of industrial organization." Cambridge, MA: NBER Working Paper No 10929.
- Fox Louise, Oviedo Ana Maria, Are Skills Rewarded in Sub-Saharan Africa? Determinants of Wages and Productivity in the Manufacturing Sector, The World Bank, 2008
- Frot Emmanuel, Aid and the Financial Crisis: Shall We Expect Development Aid to Fall? Stockholm School of Economics – Stockholm Institute of Transition Economics (SITE), available at : http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1402788
- Gambaro Antonio, 2009, Misurare il Diritto? and Pierre Legrand, Econocentrism, University of Toronto, Law of Journal,.
- Garoupa Nuno, Ginsburg Tom, 2009, Economic Analysis and Comparative Law, Illinois law and Economics Research Papers Series, (Mauro Bussani & Ugo Mattei, editors), page 6-8.
- Gennaioli Nicola, 2007, Optimal Contracts with Enforcement Risk.
- George J. Stigler, The Theory of Economic Regulation, pge 3-20, 1971
- Grimm Ruediger, Nietzsche's Theory of Knoledge, see page 177 on Nietzsche's Ontology on Power.
- Guillaumont Jeanneney Sylviane, Kdodar Kangni,Financial Development and Poverty Reduction: can there Be a Benefit Without a Cost? IMF Working Paper
- Johnson Simon, Kaufmann Daniel and Zoido-Lobatòn Pablo, MIT, The World Bank, page 24, available at http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/wps2169.pdf
- Johnson Simon, Kaufmann Daniel and Zoido-Lobatòn Pablo, MIT, The World Bank, page 24, available at http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/wps2169.pdf
- King Robert and Levine Ross, Finance and Growth: Schumpeter Might Be Right, 1993
- Kingwill Rosalie, Cousins Ben, Cousins Tessa, Hornby Donna, Royston Lauren and Smit Warren, 2006, http://www.iied.org/pubs/pdfs/14517IIED.pdf
- La Porta Rafael, florencio Lopez-De-Silanes, and Andrei Shleifer, What works

in Securities Law
- La Porta Rafael, Florencio Lopez-De-Silanes, Cristian Pop-Eleches, and Andrei Shleifer, Judicial Checks and Balances, Journal of Political Economy, page. 446.
- La Porta Rafael, Lopez de Silanes Florencio, Shleifer Andrei, 2007, the Economic Consequences of Legal Origins.
- La Porta Rafael, Lopez de Silanes Florencio, Shleifer Andrei, Vishny, Robert W. "The Quality of Government" page 222-225.
- La Porta Rafeal, Lopez-De-Silanes Florencio, and Shleifer Andrei, Government Ownership of Banks.
- Labor Regulation and Microeconomic Flexibility.
- Lafontine Francine, and Jagadeesh Sivadasan. 2007, "The microeconomic implications of input market regulations: cross-country evidence from within the firm." Ross School of Business Paper.
- Levine Ross, January 1998, Department of Economics, The Legal Environment, Banks, and Long-Run Economic Growth, , page 21.
- Machievelli, The Prince – Of maintaining a Princedom
- Mahoney Paul G., The Common Law and Economic Growth: Hayek Might be Right, Uiversity of Virginia School of Law, January 2000.
- Mahoney Paul, The Common Law and Economic Growth: Hayek Might be Right, Journal of Legal Studies.
- McCloskey Donald N., Kinks, tools, spurts, and substitutes: Gerschenkron's rhetoric of relative backwardness, Chapter &, page 82-83
- Meinzen-Dick Ruth, 2009, Property Rights for Poverty Reduction?DESA Working paper No.91, page 2.
- Michaels Ralf, 2009, Comparative Law by Numbers? Legal Origins Thesis, Doing Business Reports, and the silence of traditional comparative Law, American Journal of Comparative Law, page 11.
- Milgrom Paul R,. North Douglas C and Weingast Barry R., 1990, The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs, see http://www.economics.pomona.edu/Andrabi/courses/Econ154/Milgrom.pdf
- Ndikumana Léonce, Financial Markets and Economic Development in Africa, Political Economy Research Institute (PERI), University of Massachussetts Amherst, page 30.
- North Douglas, Institutions, Institutional Change and Economic Growth Performance, Cambridge University Press, 1990 and Douglas North, Institutions, 5th Journal of Economic Perspectives, 1991.
- OEDC. 2003-4. Total DAC Aid at a Glance and Lappe, F.M.,. Schurman R, and Danaher K., 1987.
- Olson Mancur, 1993, Dictatiorship, Democracy and Prosperity, page 569-575.
- Orr Daniel and Ulen Thomas S., 1993, "The Role of Trust and the Law of Privatization" page 6.
- P. Kalonga Stambuli, Developing "free market economies" in Africa, Surrey Institute of Global Econonomics Research, United Kingdom, available at: http://www.unu.edu/africa/papers/development/Stambuli3.pdf
- Paolo Baffi Lecture, Legal Foundations of Corporate Governance and Market Regulation
- Qian Jun and Strahan Philip E., 2007, How Laws and Institutions Shape Financial Contracts: The Case of Bank Loans, The Journal of Finance,

available at http://www2.bc.edu/~qianju/JF_Bank_Loans_122007.pdf
- Quartapelle Lia, Aid dependence and the challenge of self-reliance in Sub-Saharan Africa, ISPI, see http://www.ispionline.it/it/documents/PB_183_2010.pdf
- Ramseyer J. Mark and. Rasmusen Eric B, Judicial Independence in Civil Law Regimes: Econometrics from Japan, University of Chicago Law School, Indiana University
- Reitz John C., 2009, Legal Origins, Comparative Law, and Political Economy, University of Iowa Legal Studies Research Paper, page 10.
- Rostowski Jacek, and Bogdan Stacescu, 2006, The Impact of of Legal School and Colonial Institutions on Economic Performance.
- Sgard Jérome, Do Legal Origins Matter? The case of bankruptcy laws in Europe 1808-191, (2006)
- Siems, Mathias M., 2006, Reconciling Law & Finance and Comparative Law, page 9.
- Spamann Holger. Legal Origin, Civil Procedure, and the Quality of Contract Enforcement, Harvard Law School, Public Law & Legal Theory Working Paper Series, page 13.
- Stephenson Matthew, Harvard University Department of Government and Law School, see:http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/LegalInstitutionsTopicBrief.pdf
- The African Centre for Economic Growth , 2000, The Link Between Corruption and Poverty: Lessons from Kenya Case Studies
- The Caste System in India – A Very Brief Overview: Economic and Social Exclusion, and the Ambedkar principles of employment, see http://www.dsnuk.org/other/Submission%20to%20the%20Trade%20and%20Industry%20Select%20Committee.pdf
- Transparency Internation Report 2009, available at http://www.transparency.org/news_room/in_focus/2010/ar_2009
- Wael B. Hallaq, The Origins and Evolution of Islamic Law, available at: http://books.google.it/books?id=MPCN1yXEdg8C&printsec=frontcover&dq=islamic+law&source=bl&ots=DBjO0Et7w7&sig=TfyY7MX1UfFbJtXqUCrF4xPTZHM&hl=it&ei=VtdzTJe6HtWnnQfisrS7CQ&sa=X&oi=book_result&ct=result&resnum=3&ved=0CDYQ6AEwAg#v=onepage&q&f=false

United Nations

- FAO Corporate Document Repository, Trade Reforms and Food Security, Chapter 12 – Trade and economic reforms in Africa, available at: www.fao.org/docrep/005/y4671e/y4671e0i.htm
- Food and Agriculture Organizagtion (FAO): http://www.fao.org/ag/ags/agsm/banks/banks/burkina.htm
- http://www.wto.org/index.htm
- UN (2009), UNESCO Institute for Statistics (2009a), UNICEF and WHO, World Bank (2009).
- United Nations Human Report 2003, available at www.un.org
- www.un.org/apps/news/story.asp?NewsID=21729&Cr=commission&Cr1=wo

men or
- www.undata.org
- www.uneca.org/eca_resources/Major_ECA_Websites/conference_of_ministers/eighth/documents/An%20Issue%20Note%20for%20CAMF.pdf
- www.uneca.org/eca_resources/Major_ECA_Websites/conference_of_ministers/eighth/documents/An%20Issue%20Note%20for%20CAMF.pdf
- www.wto.org/english/tratop_E/trips_e/trips_e.htm

World Bank

- Determinants of Wages and Productivity in the Manufacturing Sector, The World Bank, 2008, page 8.
- http://blogs.worldbank.org/africacan/rwanda-is-the-worlds-top-reformer-in-doing-business
- http://devdata.worldbank.org/AAG/bfa_aag.pdf
- http://hdr.undp.org/en/statistics/indices/hpi/
- http://icsid.worldbank.org/ICSID/Index.jsp
- http://icsid.worldbank.org/ICSID/StaticFiles/basicdoc/CRR_English-final.pdf
- World Bank Development Indicators, available at http://data.un.org/Data.aspx?q=gdp&d=WDI&f=Indicator_Code%3aNY.GDP.MKTP.KD.ZG
- World Bank Development Indicators, http://data.un.org/Data.aspx?q=gdp&d=WDI&f=Indicator_Code%3aNY.GDP.MKTP.KD.ZG
- World Bank, see http://devdata.worldbank.org/AAG/bfa_aag.pdf, and www.africaneconomicoutlook.org/en/countries/west-africa/burkina-faso/#/recent_economic_developments Determinants of Wages and Productivity in the Manufacturing Sector, The World Bank, 2008, page 8.
- World Bank, World Development Report 2002, Building Institutions for Markets, page 117-132.
- World Bank. Data available at http://devdata.worldbank.org/AAG/ken_aag.pdf
- www.doingbusiness.org
- www.worldbank.org

African Development Bank

- African Development Bank, http://www.afdb.org/en/topics-sectors/topics/financial-crisis/

Other Sources

- http://burkinaphonebook.com/en/banking/banks-financial-institutions/
- http://en.wikipedia.org/wiki/Sharia
- http://huwu.org/esa/socdev/social/poverty/poverty_and_employment.html

- http://maps.unomaha.edu/peterson/funda/MapLinks/Africa-1/Africa_files/image007.gif
- http://netlaw.samford.edu/Martin/torts1/writhistory.htm
- http://news.bbc.co.uk/2/hi/africa/2265387.stm
- http://news.bbc.co.uk/2/hi/africa/3421527.stm
- http://news.bbc.co.uk/2/hi/americas/2710797.stm
- http://news.bbc.co.uk/2/hi/europe/country_profiles/1554175.stm
- http://povertynewsblog.blogspot.com/2010/03/report-says-half-of-somalia-food-aid.html
- http://premium.hoovers.com/subscribe/indepth/factsheet.xhtml?ID=yscxcrsyj
- http://www.theeastafrican.co.ke/news/Access%20to%20credit%20is%20key%20to%20Africas%20growth/-/2558/896754/-/v7k7m5z/-/index.html
- http://www.theeastafrican.co.ke/news/Access%20to%20credit%20is%20key%20to%20Africas%20growth/-/2558/896754/-/v7k7m5z/-/index.html
- Senegal's and Kenya's civil procedure code: http://www.juriscope.org/infos_ohada/creance/pdf-fr/RECOUVR.pdf
- UCC code see: http://www.law.cornell.edu/ucc/ucc.table.html
- www.acp-eu-trade.org/index.php?loc=faq/ACP-Secretariat-FAQ.php
- www.africaguide.com/culture/tribes/index.htm
- www.africaneconomicoutlook.org/en/countries/west-africa/burkina-faso/#/recent_economic_developments
- www.banqueatlantique.net/english/index.php?parcours=produits
- www.britishempire.co.uk/maproom/kenya.htm
- www.buganda.com/crisis66.htm
- www.cia.gov/library/publications/the-world-factbook/geos/ke.html
- www.cia.gov/library/publications/the-world-factbook/geos/uv.html
- www.cmauganda.co.ug/onlinefiles/uploads/CMA/Downloads/about_us_CMA_profile.pdf
- www.comesa.int
- www.economics.harvard.edu/faculty/shleifer
- www.economics.harvard.edu/faculty/shleifer/dataset
- www.fjc.gov/public/pdf.nsf/lookup/CivilLaw.pdf/$file/CivilLaw.pdf
- www.foreignpolicy.com/articles/2007/05/13/the_list_the_worlds_fastest_growing_religions
- www.gfmag.com/tools/the-poorest-countries-in-the-world.html
- www.gfmag.com/tools/the-poorest-countries-in-the-world.html
- www.groupebrs.com/accueil_filiale.php?id=20
- www.gsdrc.org/docs/open/SSAJ35.pdf
- www.juriglobe.ca/eng/index.php
- www.juriglobe.ca/eng/pib-rnb/index-alpha.php
- www.juriscope.org/infos_ohada/creance/pdf-fr/RECOUVR.pdf
- www.kenyalaw.org/kenyalaw/klr_home/
- www.mcc.gov
- www.oecd.org/document/61/0,3343,en_2649_15162846_39963489_1_1_1_1,00.html
- www.parliament.go.ug/index.php?option=com_content&task=view&id=4&Itemid=3
- www.parliament.uk.
- www.parliament.uk/factsheets/factsheets/g04.cfm.
- www.sgbb.bf/historique.php

- www.state.gov/e/eeb/rls/othr/ics/2009/117417.htm
- www.state.gov/r/pa/ei/bgn/2963.htm
- www.tikenya.org/
- www.tonyblairoffice.org/africa/news-entry/president-koroma-its-time-for-africa-to-get-serious-about-investment
- www.tonyblairoffice.org/africa/news-entry/president-koroma-its-time-for-africa-to-get-serious-about-investment
- www.transparency.org/
- www.u4.no/helpdesk/helpdesk/queries/query44.cfm
- www.ubagroup.com/web/group/genericpage/405
- www.wocan.org/files/all/women_and_ntfps_in_cameroon_cifor_1.pdf4