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Chapter 10

The fight for basic legal freedoms

Mobilization by the legal complex[1]

Terence C. Halliday

Rights discourse is now global discourse (Hajjar 2004). International organizations such as the United Nations propagate universal human rights (Boyle 2002; Merry 2003, 2005). International courts prosecute military personnel and political leaders for the abrogation of basic human rights (Hagan 2003, 2005; Hagan *et al*. 2005). International financial institutions champion property rights and a rule of law that will uphold them (La Porta *et al*. 1997). National governments appraise other governments against the standard of their fealty to human rights. Citizens claim rights, not only in countries where they are well institutionalized, but in countries where they are regularly abrogated. Indeed, one of the principal ways that citizens or residents of a country now hold their government accountable is by alleging the government's breach of a right thoroughly institutionalized in global normative scripts, such as the UN Universal Declaration of Human Rights.

This chapter focuses on those foundational rights of western political liberalism, variously referred to as core civil rights, basic legal freedoms, or first generation rights. Frequently these rights, which emerged in the seventeenth and eighteenth centuries, are taken for granted as the frontier of rights has successively pushed forward to social, economic and political rights. Nevertheless, in countries where core civil rights have been long established, their persistence cannot be taken for granted (Halliday and Karpik 1998b). And in countries where they have never been institutionalized, struggles remain immanent and widespread.

Understanding how core legal rights are institutionalized, how they are maintained and defended, warrants careful sociological inquiry. Who are the primary bearers of rights, their advocates and defenders? What are the conditions under which they are established, consolidated, and protected? These questions have been broached in an international collective project on lawyers and the fates of political liberalism. For the past 15 years, a collaborative of social scientists, historians and legal academics has examined some 20–30 cases of transitions towards and away from political liberalism. These cases range from Continental and North American states in the eighteenth to nineteenth centuries to countries in Latin America, the Middle East, Asia and Europe in the twentieth century (Halliday and Karpik 1998a; Halliday *et al*. 2007b).

The national case studies establish, first, that in widely varying times and places lawyers mobilize frequently on behalf of political liberalism; second, that in various configurations lawyers are often but not invariably joined by other legal professions, including judges and legal academics, and occasionally prosecutors and state lawyers; and third, that on many occasions this mobilization is associated with the obtaining, consolidating or protecting of basic legal freedoms. In other words, evidence indicates that the presence of or absence of the legal complex in the politics of rights frequently accompany movements towards or away from this aspect of the rule of law.

To identify the re-occurrence of a social phenomenon, however, is not to explain it. Advance towards a theory requires the identification of conditions and factors that distinguish instances of (successful) mobilization from a failure to mobilize (successfully) and that situate the role of the legal complex in a wider matrix of factors that are likely to have causal significance. This chapter provides a re-analysis of case studies from the Americas, East Asia, Europe, and the Middle East, principally in the twentieth century, to isolate factors that recur across cases and will be integral to a theory of lawyers' mobilization for those basic legal freedoms constitutive of the rule of law.

After a brief review of the principal concepts, and an equally succinct overview of mobilization by the legal complex, the chapter identifies sets of factors and some of the observed relations among them that are salient for a comparative and historical theory of the legal complex, political liberalism and the rule of law.

Basic concepts

Transitions to politically liberal regimes that institutionalize some version of the rule of law have been amongst the most notable macro-sociological changes in western countries over the past three centuries. The struggles over liberal politics can be freshly approached from a distinctive angle – the agency of the legal complex.

We define "political liberalism" as a cluster of three attributes (Halliday and Karpik 1998; Halliday *et al*. 2007b).[2] First, at its core lie civil rights or *basic legal freedoms*, expressions we use interchangeably. These core rights of citizenship include (a) negative freedoms from arbitrary and unrestrained state power, such as habeas corpus, due process, representation by counsel, and freedom from arbitrary arrest, detention, torture and death; (b) positive rights, including freedoms of speech, religion, association, and movement, and (c) property rights. Second, the matrix of political liberalism core rights is nested within a *moderate state* which we define both in terms of a fragmenting of internal state power and some counter-balance to the state from outside it. Third, core civil rights and the moderate state are sustained by *civil society*, which comprises both voluntary associations and a public sphere.

Because many of the core civil rights are basic *legal* freedoms, and have a strongly juridical flavor, it is not surprising that lawyers are heavily implicated

in their creation, reproduction and defense. Earlier historical research demonstrates that in eighteenth and nineteenth century Britain (Pue 1998), nineteenth-century Germany (Rueschemeyer 1998), seventeenth- and eighteenth-century France (Bell 1998; Karpik 1998), and nineteenth- and twentieth-century United States (Halliday 1987), individual lawyers and often their collective associations fought for rights which are now part of the civil rights canon. The historical case studies produced what should not have been an unexpected finding. The likelihood that lawyers would mobilize on behalf of rights, and their efficacy in doing so, frequently depended on their relationships with the judiciary. This opens up the proposition that lawyers' relationships with other legally trained occupations might offer more complete explanations of the rise and fall of political liberalism, with civil rights at its core. The concept of the *legal complex* therefore seeks to capture the set of relationships among all legally trained occupations that are practicing law.[3] These may include (a) private lawyers, (b) public lawyers, who serve in ministries of justice or regulatory agencies of government, (c) judges, (d) prosecutors, a particular genus of public lawyers, and (e) legal academics (Halliday *et al*. 2007b).

When the legal complex fights for political liberalism, it is also fighting for elements of the rule of law. It will be seen that the specification of one aspect of political liberalism, basic legal freedoms, as a combination of negative rights against state tyranny, positive rights to political speech and expression, and property rights coincides with narrow formal and substantive renderings of the rule of law where (a) law is applied equally, with certainty, and prospectively, and (b) where individual rights to privacy, property and protection of a person's dignity are maintained against arbitrary state incursions (Tamanaha 2004). For purposes of this chapter, therefore, reference to basic legal freedoms, core civil rights, or first general rights should also be understood as constitutive of basic substantive rights in philosophical renderings of the rule of law.

Three moments in struggles for basic legal freedoms

The fight for core civil rights reveals itself in three moments across a diverse array of circumstances (Table 10.1).

Obtaining freedom

The first involves the legal complex in fights to *obtain* freedom. These struggles sometimes are to advance towards a political society that has never existed before (e.g. China, Egypt, Korea, Taiwan);[4] at other times they are to regain a political society that has been lost to illiberal politics in an intermission of fascism (e.g. Nazi Germany, 1933–45), military dictatorship (Chile, 1973–80s), or totalitarianism (e.g. Poland, Hungary, 1945–89), among others.

Table 10.1

Moments of Transition	Country (source)	Episode	Action of Legal Complex	Actions on Behalf of Basic Legal Freedoms/Legal Rights
Obtaining Basic Legal Freedoms	Egypt (Moustafa 2007a)	1990s–2000s	Against Mubarak's assault on human rights, suppression of civil society and freedoms of speech	Legal rights: Human rights groups documenting abuses, bringing cases, monitoring detention, torture, prison conditions. Problem of recurrent detention. Championing right of defense by lawyers Political freedoms: Supreme Constitutional Court (SCC) enabling political life, legalization of opposition parties; SCC striking down provisions in criminal law that limited freedom of press and ability of press to unmask government corruption and inefficiency; limiting prosecutions of opposition leaders via libel law; championing right of defense. SCC acting as a "shield" for opposition parties, human rights groups, etc.
	Hong Kong (Jones 2007)	1970s–1980s	Against colonial arbitrariness	Legal rights: legal accountability of government, legal redress for citizens, legal transparency. Bill of Rights. Full political rights excluded but political rights advocated
	Korea (Ginsburg 2007)	1980s–1990s	Against military dictatorship	Political rights: formation of initially secret, later public lawyers' association (Minbyeon).
	Spain (Hilbink 2007)	1960s–1970s	Against Franco's authoritarianism	Legal rights: *Judicia Democratica* rights for detainees, against extended preventive detention, for due process and *habeas corpus*. Political rights— *Judicia Democratica* fights for liberty of expression, assembly
	Taiwan (Ginsburg 2007)	1970s–1990s	Against Kuomingtang one-party rule	Political rights: lawyers' struggles for freedom of speech & association; defense of detainees against treason charges; monitoring of treatment in detention; advocacy for aboriginal rights.

Table 10.1 (continued)

Moments of Transition	Country (source)	Episode	Action of Legal Complex	Actions on Behalf of Basic Legal Freedoms/Legal Rights
	China (Halliday and Liu 2007)	2002–2006	Against arbitrary repression in criminal justice system	Legal rights: criminal defense lawyers providing lawyer representation (meeting suspects, collecting evidence, protection from prosecution), defending due process (extended detention, confession by torture, sentence before trial) Political rights: lawyer advocacy for autonomous lawyers' associations
	Japan (Feeley and Miyazawa 2007)	1886-1920s	Against arbitrary state administration	Legal rights: lawyer defense of labor and party leaders; challenges to illegal land seizures; human rights protection; Political rights, e.g., Japan Civil Liberties Union established in 1946 to defend freedom of speech and other basic rights.
Maintaining Basic Legal Freedoms	United States (Abel 2007)	2000-2006	Against executive assaults on international conventions, basic legal freedoms	Legal rights: lawyer representation, access to civil courts, protection from torture, *habeas corpus*, against extended detention
	Brazil (Brinks 2007)	1990s-2000s	Against police killings	Legal rights: lawyer representation; prosecution of unlawful police homicides
	Argentina (Brinks 2007)	1990s-2000s	Against police killings	Legal rights: lawyer representation; prosecution of unlawful police homicides
	Italy (Guarnieri 2007)	1970s	Against domestic terrorism & organized crime	Legal rights: representation by lawyers, due process
Losing Basic Legal Freedoms	Argentina (Brinks 2007)	1990s	Failure to mobilize against police killings	Legal rights: due process, arbitrary police power, police killings

Table 10.1 (continued)

Moments of Transition	Country (source)	Episode	Action of Legal Complex	Actions on Behalf of Basic Legal Freedoms/Legal Rights
	Brazil (Brinks 2007)	1990s	Failure to mobilize against police killings	Legal rights: due process, arbitrary police power, police killings
	Israel (Barzilai 2007)	1990s–2000s	Failure to mobilize against torture, arbitrary arrests & killings of Palestinians	Legal rights: extra-judicial targeted killings; torture; extended detention Political rights: freedom of movement by Palestinians
	Chile (Couso 2007)	1980s	Complicity with Pinochet's military Junta and loss of basic legal freedoms	Legal rights: arbitrary detention, torture, extra-judicial killings, due process, legal representation Political rights: freedom of speech, association, movement
	Fascist Italy (Guarnieri 2007)	1920s–1930s	Complicity with fascist domestication of the judiciary and attacks on basic legal freedoms	Legal rights: arbitrary detention, torture, extra-judicial killings, due process, legal representation Political rights: freedom of speech, association, movement
	Militaristic Japan (Feeley and Miyazawa 2007)	1920s–1930s	Complicity with national repression of legal rights and civil society	Legal rights: arbitrary detention, torture, extra-judicial killings, due process, legal representation Political rights: freedom of speech, association, movement
	Venezuela (Perdomo 2007)	2000s	Failure to forestall retreat from political liberalism	Legal rights: due process; legal representation Political rights: freedom of political expression
	Hong Kong (Jones 2007)	1998–2000s	Limits to defense of rule of law	Legal rights: legal accountability of government, legal redress, legal transparency, Bill of Rights. Political rights: freedom of political expression, association.

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Consolidating and maintaining freedom

The inception of a politically liberal regime protective of the rule of law does not ensure its continuity. The consolidation and maintenance of core civil rights occur in the face of challenges to one or more of its elements – challenges to narrow the gap between constitutional aspirations and everyday defense of basic liberties (e.g. Brazil, Argentina), challenges from internationally sponsored threats to security (e.g. US), challenges from domestic threats to security (e.g. Italy, Brazil, Argentina), challenges from threats to territorial integrity (e.g. Turkey), challenges that result from the conflict of one set of freedoms (e.g. religious expression, political speech) with sanctified principles of state constitutionalism (e.g. secularism, national integrity in Turkey), challenges from the expansiveness or entrenchment of an administrative state (e.g. Japan).

Losing freedom

A third moment of transition concerns the readiness or ability of the legal complex to fight against a dramatic *loss* of basic legal freedoms. This takes many forms, such as a military coup (Chile, 1973), the systematic dismantling of liberalism's institutions (Venezuela, 2005), or the progressive consolidation of a one-party state (e.g. Zimbabwe), among others. Freedom can be lost decisively across all dimensions of political liberalism. Assaults upon freedom come from military takeovers and civil war (Brazil, Argentina, Chile, China, Spain), or a regressive slide into authoritarianism or totalitarianism by an elected government (Italy, Venezuela, Japan), or by the consolidation of a one-party regime by a dominant leader (Kenya), among others. Ultimately, in all cases, the legal complex is compelled to surrender most or all of its defensive powers. We are compelled to ask, however, could it have been different? How do the attributes of the legal complex come to capitulation, with a fight or without?

Conditions of mobilization

To identify explanatory factors from the great diversity of case studies I isolate factors that recur across cases, consider relations among these, and thereby begin to explicate what appear as conditions under which the legal complex may be causally and constitutively implicated in those conditions.

Elements of the legal complex

The politics within the legal complex itself, its structure and dynamics, clearly affect the probability that the legal complex as a whole or in part will mobilize, just as they affect the probable effectiveness of that action.

Private bar

Considerable evidence supports the proposition that the development of an autonomous bar in recent decades depends upon the emergence of a private market for legal services (China, Venezuela, Kenya, Israel, Korea, Spain) or, relatedly, the construction of a legal system that will at least deliver the minima of the rule of law for legal certainty in the market. While we return to the politics of lawyers and markets in more detail below, the significance of the market for the politics of lawyers contrasts contemporary bases of lawyers' mobilization from the early modern period where, for instance, in France, Karpik finds that a decision to define themselves against the market permitted lawyers to lead movements for political/legal reform (1988). The size and resources of the private bar also determine the depth of the pool from which lawyer activists can be drawn, the financial independence of individual lawyers from state control, and the potential financial resources available for their collection action.

Collective action in turn varies markedly across countries: by the type of association that can collectively aggregate professional interests; by internal divisions within the profession; and by the differential powers of regulatory organizations to monopolize public expression of professional interests.

Typically, lawyers organize themselves in three ways. Most commonly, every profession has official associations, sometimes local (e.g. US, Venezuela, Turkey), usually national (e.g. Egypt, Turkey, Israel, Korea, Taiwan, Italy) that purport to represent and sometimes regulate the profession as a whole. Less commonly, but integral to mobilization, many professions also form voluntary, alternative or even clandestine associations that are sharply focused on advocacy or defense of political freedom (e.g. Japan, Korea, Taiwan, US, Spain). Not infrequently, informal networks of lawyers or invisible groupings come together around a shared cause although repression requires them to maintain a low organizational profile (e.g. Spain, China, Korea).

Structural and temporal permutations of these three forms of organization provide the infrastructures around which mobilization can occur. In cases of severe repression, the informal relationships grow outside (e.g. Spain, Korea) and occasionally inside (e.g. China) formal structures which provide infrastructures for dissident lawyers; some subsequently formalize as interest groups on behalf of political liberalism (e.g. Spain, Korea, Taiwan, Japan); and, on occasion, the rump groups come to overtake the formal associations that represent the entire profession (e.g. Taiwan). In many countries (e.g. Chile, Venezuela, Italy, China), the official associations seek to choke off any appearance of potential rivals. In these settings the official associations are more susceptible to state incursions on their autonomy.

Moreover, in the later twentieth and twenty-first centuries, leadership on behalf of core legal rights more often arises not from the center of the profession, which can be co-opted or controlled by the state, but from the periphery

of the organized bar. Hence the organized bar finds itself in a quandary: as a national entity of all practitioners its associational strength might better ward off incursions on lawyers' responsibilities but at the risk of co-optation by the state, or inertia and divisiveness from within; by taking the route of organizing as marginal rump groups of lawyers dedicated to well-defined causes, ideological purity and focused energy may render the group more vulnerable to state attacks and to opposition from professional peers less convinced or less committed.

An explanatory theory must therefore incorporate the following factors: (1) size of the private market for legal services, (2) the unity or diversity of bar associations, (3) the degree of assimilation of bar associations by the state, (4) opportunities for professional organization outside state-approved or mandated associations, and (5) the prospect of a progressive movement of political lawyers from the from margins to the center of the profession. Several national studies support the hypotheses that (a) the greater the number of private lawyers with financial resources independent of the state, the greater the pool of potential activists for restraint of arbitrary state power; (b) the more freely lawyers can organize, the more likely that a minority of political lawyers[5] will form informal or formal associations potentially committed to activism on behalf of basic legal freedoms; and (c) if repression prevents the national organization of private lawyers from acting on behalf of basic legal freedoms, then rump lawyers will find clandestine means to meet and mobilize.

Judiciary

Judges bear an ambivalent relationship to political liberalism. In numbers of cases judges aligned themselves with the state apparatus, sometimes aiding and abetting their repression (e.g. Chile), and sometimes defining their calling so narrowly that they carried on business as usual while turning a blind eye to incursions on liberal ideals (e.g. Chile, Italy, Egypt). The cases of Egypt, Spain and Italy support the hypothesis that courts are less likely to defend basic legal freedoms when: a positivist jurisprudence insulates courts from substantive standards of justice and rights; a hierarchical structure of organization rigidifies this insulation through the court system such that dissident judges obtain few degrees of freedom to deviate from the "apoliticism" of positivist jurisprudence.[6] Ironically, some of the most complicit courts were also the most independent. Autonomy of courts does not guarantee either the ability or willingness to act as a check on executive power.

Ironically, in many situations, the cause of political liberalism advances only when judges in a regular court system are prepared to co-exist with special courts that lie outside the jurisdiction of conventional courts. Special courts contrast sharply in their significance for political liberalism. On the one hand, repressive regimes regularly create security courts to remove troublesome political agitators from the public view, suspend or abrogate procedural rights,

substitute regular judges by military officers, and insulate their detainees from the jurisdiction of regular appellate courts (cf. Italy, Spain, Egypt, Chile, China) (Ginsburg and Moustafa 2008). This enables these countries to project from their regular courts a patina of legalism to their populations and the world while engaging in arbitrary, brutal, cruel and often murderous treatment far from the public eye. On the other hand, the protection of basic legal freedoms frequently relies on the existence of a constitutional court. As Egypt in the 1990s dramatically exemplified (cf. also Korea, Taiwan, Italy), the formation of a powerful constitutional court with a capacity to hold state actions accountable to the local formulation of universal standards can constructively unsettle a reactionary established judicial system. It offers a forum in which grievances can be aired; it permits styled argumentation that might otherwise be censored; it provides a counterpoint to the executive; and thus offers a stage for lawyer-leaders to address and even crystallize publics. Its disruptive functions can extend to the lower courts in the regular judiciary insofar as it sends signals about cases and arguments that it will accept on appeal (cf. Korea, Taiwan, Egypt). Nevertheless, constitutional courts within repressive regimes are particularly vulnerable. Their viability depends upon an acute sensitivity about the balance between their perceived legitimacy and support in relation to the scope and expansiveness of their powers. Excessively muscular decisions (cf. Egypt) or premature over-reaching (e.g. Mongolia) can lead to sudden dismemberment or partial dismantlement (Ginsburg 2003). Constitutional courts, themselves, also rely on political and market demand for legal institutions that facilitate investment and economic growth.

Repeatedly, the case studies show that the potential of judiciaries for political liberalism depends upon their social embeddedness. In relation to the executive arms of the state, too few benefits to state administration or reputation render them dispensable; too great an affinity with state politics renders them impotent. In relation to political parties, too distant a position from the policy ideals of parties renders courts irrelevant; too deep an immersion of judges in party politics converts courts into yet another arena of politics and subverts justice from within. In relation to the bar, too attenuated a relationship leaves courts vulnerable; too integral a relationship with lawyers diminishes courts' authority. In relation to the public, too little public support denies judiciaries a primary source of legitimation; too much sensitivity to public opinion makes courts manipulable. In these respects, courts face a three-fold problem of autonomy: from the state, from markets (e.g. corruption), from publics.

An explanatory theory of the legal complex and political liberalism will therefore include the following factors related to judiciaries: (1) the jurisprudence and ideology of the judiciary vis-à-vis basic legal freedoms; (2) the extent of control over lower courts exerted by higher courts and the judicial administration; (3) the extent of court differentiation or autonomy from the state; (4) relations of general courts with special or parallel security courts; (5)

the prestige of judges in the legal complex and social order; (6) the methods and terms of judicial appointment; (7) financing of the judiciary, and (8) the extent of legitimacy and support accorded the courts by the public.

We can hypothesize that judiciaries are not likely to fight for basic legal freedoms when (a) the judiciary subscribes to a positivist jurisprudence which restricts its authority to positive law, (b) is recruited for its political fealty, (c) is controlled hierarchically by judicial elites that eschew engagement on behalf of universal juridical rights, and (d) historically is regarded as an arm of state administration.

Legal academics

We can observe three stances of the *legal academy* in fights for political liberalism. First, when not fully professionalized, when steeped in a positivist jurisprudence, and when riven by partisan political factionalism, a legal academy, even if quite prestigious, offers no leadership for political liberalism (cf. Chile, 1973; Italy during fascism). Second, a professionalized and prestigious legal academy whose jurisprudence is responsive to juridical, religious and philosophical ideals celebratory of political liberalism, and institutionalized within a university, will frequently obtain some autonomy from the state. Many of its members will craft the ideologies for mobilization of the legal complex, academics will provide intellectual legitimacy and support for reformist courts and lawyers, and the legal academy can offer a cosmopolitanism and internationalism less pervasive in other parts of the legal complex (cf. China, Spain, Korea, Venezuela, Hong Kong). Third, the legal academy appears never to act as a collectivity. It mobilizes through congeries of like-minded individuals who share networks or orientations (cf. Deans in Venezuela). In this respect it is the least susceptible to collective mobilization as a social organization.

Whether legal academics will mobilize on behalf of basic legal freedoms will therefore depend on: (1) whether there is a full-time professionalized legal academy, (2) whether the dominant jurisprudence of legal academics is conducive to mobilization for core rights beyond the limits of positive law, (3) whether the legal academy is permeated and riven by party politics, (4) whether the academy is exposed and integrated into international liberal legal networks, and (5) whether legal academics have the opportunity and willingness to act as leaders of professional and public opinion.

Prosecutors

In principle state prosecutors stand closest to the exercise of executive power by the state. Their natural allies are the police – who frequently are subversive of basic legal freedoms (cf. China, Brazil, Argentina, Hong Kong, Italy). Most commonly they are the unspoken or designated agents of repression either through zealous prosecution on behalf of repressive states (cf. China, Chile,

Venezuela) or through failure to hold accountable actors in a justice system that threaten basic rights (e.g. Brazil, Argentina). On occasion, some prosecutors did align themselves eventually with the forces for liberalism, as Hilbink (2007b) shows in Francoist Spain and Ginsburg (2007) discovers in democratizing Korea. Or they may be seen in the guise of protecting the state and society from threats to the social and political fabric without abrogating core rights. Guarnieri (2007) demonstrates that examining prosecutors took leadership in the legal complex in the fights against terror, organized crime and political corruption, thus strengthening the power and legitimacy of the judicial-prosecutorial system.

But in many countries, the story of prosecutors is caught up in the dynamics of differentiation and coordination. In China, it is the differentiation of prosecutors from the Party, police, and courts that marks a current struggle for a re-equilibration of power in criminal defense (Halliday and Liu 2007). In Brazil and Spain, it is the differentiation of the prosecutors from police. In Korea, it was the differentiation of prosecutors from administrative guidance by an imperative state (Ginsburg 2007). For liberalism, differentiation must be complemented by coordination, not least with the practicing bar where liberalism usually finds its natural affinity. Effective societal response to threats requires sufficient coordination to protect social order within the ideals of core rights but sufficient differentiation from a sometimes brutal arm of state enforcement.

Hence a theory of political liberalism will attend to attributes of public prosecutors that includes: (1) their ideology (e.g. a broader commitment to the rule of law versus a narrower focus on striking crime); (2) the professionalization and differentiation of prosecutors from political control, and (3) the proclivity of prosecutors to align with liberal segments of the legal complex.

A distinctive variant of prosecutors can be found in the Latin American *private prosecutor*. Here the corrective for a failure of state prosecutors to differentiate themselves appropriately from the police, courts or demagogic politicians comes from private lawyers whose clients are the victims of police brutality and homicides. This straddling of the private/public divide, or the legal complex and civil society, has the effect of compelling a retributive justice system to conform to the constitutional ideals of political liberalism. The necessity for this kind of mobilization on behalf of justice suggests that the re-equilibration of power within the legal complex, thereby moderating the state, will not infrequently result from a common cause being found between the margins of the legal complex and the margins of civil society against the inertia of the state apparatus (Brinks 2007, 2008).

Government lawyers

Three studies yield intriguing results about government officials whose commitment to ideals of legality result in the championing of the rule of law. Hilbink (2007b) finds that in the last years of Franco's rule, as he opened Spain

to Europe's market by invigorating the economy, a group of conservative technocrats (lawyers and economists) decided that a rule of law regime, complete with courts independent of political interference, would provide the institutional preconditions for market development. They advocated an *Estato de Derecho* with a reinvigorated Council of State and revitalized administrative courts.

Jones (2007) makes the unexpected discovery that the hidden heroes of Hong Kong's political development were "in-house" legal and political advisors whose interventions ranged from the restraints on highly repressive anti-Chinese regulations in the mid-nineteenth century through the exercise of leadership in moderating the government's repressive tendencies in the 1950s and 1960s. When Hong Kong took its rapid strides towards political liberalism in the 1970s, it was the government lawyers who were integral to its design and implementation, though by now they were joined by individuals from various other fragments of the legal complex.

Abel (2007) also shows that much resistance to the Bush Administration's cavalier disregard for rights of detainees came from inside the military – from the judge advocate's corps, and from others lawyers farther removed from the ideological heights of the Justice Department and Pentagon. In this resistance they were joined by distinguished retired military lawyers who can now speak with less restraint about the abrogation of fundamental protections. These three instances indicate that the structure of the legal complex may embrace government lawyers and that explanations of activism by the legal complex require investigation of their mobilization.

Factors salient for theory construction therefore include: (1) whether government lawyers are professionalized as lawyers qua lawyers; (2) whether they subscribe to principles of the rule of law that transcend bureaucratic loyalties, and (3) whether they maintain a professional identity independent of their bureaucratic positions.

Properties of the legal complex

The more capable the legal complex of mobilizing collectively across its various segments, the greater its probable impact for legal and political liberalism. To understand the capacity of the legal complex to produce and protect judicial power, it is critical to know when and how the legal complex itself divides and combines.

Eighteenth- and nineteenth-century reforms towards political liberalism support the proposition that an alliance between the bar and courts significantly increases the willingness and impact of either the bar or courts on basic legal freedoms (Halliday and Karpik 1998). The case studies indicate that the obverse also follows – when the bench and bar join forces in reactionary support of a repressive state, or indeed, both independently decline to uphold basic legal freedoms, state moderation is doomed, as Argentina and Chile demonstrate during their military dictatorships and as Korea, Taiwan and

Japan experienced during their respective years of illiberal politics. Nonetheless, in several instances neither the entire bar nor the entire bench is necessary to enable a liberal opening: in Egypt, a vanguard of human rights lawyers appearing before the Constitutional Court was sufficient to arrest and even reverse some of the government's authoritarian actions; in Korea and Taiwan, small voluntary cause-oriented associations found that a responsive constitutional court sufficed to add momentum towards liberalization. Here there is a sense of powerful human agency from groups whose formation came from the edges of the profession.

In fact, actual patterns of alliance and division across the legal complex are quite complex. A cohesive autonomous bar joining forces with a unified independent judiciary is rare in the case studies. Rather, the legal complex mobilizes for political liberalism in fragmentary patchworks of association, at least in the earlier phases of obtaining freedom. Later, as the pace quickens, a transition occurs, and consolidation begins, the bar and bench as a whole may coalesce around the ascendant standards of liberalism. And later still, if regression from political liberalism begins, it will again be a concomitant or coordinated coalition of fragments rather than entire segments of the profession that join forces. We are therefore confronted with a formidable explanatory task for predicting which course of action is likely in varying circumstances.

Hints of that explanation occurs in several places as scholars trace the historical institutionalization of their respective legal complexes. In one development sequence, both Chile and Venezuela exemplify cases in which historically separate fragments of the legal complex, founded at different historical moments and following distinctive historical trajectories, have begun to cohere in the last several decades. In a second developmental sequence, a contrary dynamic may be in motion – historically fused fractions of the legal complex in China (judges, prosecutors, lawyers) are beginning to differentiate. In a third developmental sequence, there has been a moving equilibrium in the North East Asian legal complex in which a small, independent bar and independent but constrained judiciary, both under the shadow of a powerful state administration, are transformed over two decades into larger, more activist legal professions which find receptive and bolder courts ready to hold state bureaucracies accountable. In a fourth developmental sequence, the US legal complex has grown up together, with lawyers, judges and legal academics merging and mixing for the past century. This presents many opportunities for parts of each fragment to combine with others for and against basic legal freedoms. Other patterns will also emerge as research depends. It can be hypothesized that the more historically entrenched are patterns of differentiation and integration, the more fraught will be transitions towards mutually supportive mobilization on behalf of political liberalism.

The probability of coordinated mobilization will also turn on the education of legally trained professions, their mobility among different branches of practice, and the inclusiveness of their professional associations.

Hence intra-structural and dynamic factors that affect mobilization by the legal complex include: (1) whether professionals in different segments of the legal complex are recruited from similar social classes and educational and professional pools; (2) the frequency of career mobility that takes place among segments of the legal complex (e.g. from private practice or academia to the bench); (3) whether professionals across the legal complex share a legal ideology; (4) whether that ideology is conducive to the defense of core rights; (5) whether segments of the legal complex have a history or precedent for alliances for mutual protection or mobilization; (6) whether the legal complex has a heroic tradition or a collective memory on which it can draw in situations of crisis, siege or repression; (7) whether one or more segments of the legal complex obtain foreign or international support for advocacy of core rights.

Civil society

At once lawyers themselves partially constitute civil society and have an unusual capacity to lead it. In the case studies no account of lawyers, the legal complex, and hence of judicial activism, proceeds without relying on the mutual reliance among the legal complex and civil society.

We distinguish between organized civil society, and its manifestation in associations and networks, and unorganized civil society, and its expression in amorphous publics (Halliday *et al.* 2007b). In country after country, at each moment of transition, non-government organizations (NGOs) feature as partners of the legal complex. Most common are justice-related NGOs, such as generalist human rights groups (e.g. Egypt, Venezuela, Israel) or indigenous NGOs that are focused on a specific problem within the justice system, such as CORREPI in Argentina on the victims of police homicides. NGOs monitor judicial decisions and prisons (cf. Egypt), monitor the police (cf. Brazil, Argentina), mount demonstrations and hunger strikes (cf. Egypt), formulate legal reform manifestoes (cf. Korea), mobilize the public for vocal criticism of deficiencies in the justice system (cf. Brazil, Argentina), submit amicus briefs to courts (cf. US), and create links with international organizations. Most justice-related NGOs straddle the legal complex/society divide for they are led by lawyers or depend heavily on lawyers for advice and expertise. Not infrequently, lawyers exasperated with the inertia of their colleagues reach into civil society to form associations that will lend force and sometimes protections for their advocacy (cf. Korea).

The importance of NGOs relates to the phase of political liberalism. Where they are banned or rigidly controlled, as in authoritarian countries, then loose informal networks or underground groups function in their stead (cf. China). As authoritarianism begins to break down, civil associations accompany the political spring and quicken the thaw. A consolidated politically liberal regime opens the terrain for an increasing density of associational life, although, as Japan demonstrates, strictures on the formation of NGOs can retard their

growth even in a supposedly mature democracy. When a slide begins away from political freedom, an indicator of its danger can be found in the volume of protest generated from outside the state. In 1930s Japan, 1970s Chile, and 1990s Venezuela, the quietude from organized groups outside the state indicates the limited brakes on regressive momentum. In Hong Kong since 1997, however, the success of civil society groups, often led by lawyers, to bring hundreds of thousands of citizens into the streets, signaled to the Hong Kong government, and even more to Beijing, that the retraction of rights will be a very public, very contested, and very vocal enterprise, with hefty political cost.

Karpik (1998) showed that the political force of the eighteenth-century French bar relied upon its ability to convince the Crown that it spoke on behalf of a public, at that time more fictive than real. In twentieth and twenty-first century struggles for freedom, the public, as a diffuse force outside the state, appears in numbers of our cases. But its currents flow in contradictory tides. From one vantage point the public is a latent ally that can be mobilized by organized civil society and the legal complex. In Uruguay it demands that police function within constitutional limits; in Brazil and Argentina sections of the public can pressure prosecutors and judges to check police homicides; in Hong Kong its vast numbers forced Beijing to back down; in Italy it supported the magistracy's bold steps to strike aggressively against organized crime and to root out political corruption (Brinks 2007; Guarnieri 2007; Jones 2007). From another vantage point the public is a fickle force easily manipulated by demagogic leaders or aroused to hysteria by fear and threat. Police killings of suspects occur with impunity in Brazil and Argentina because the public at large permits its fears to be intensified by law-and-order politicians. Confession by torture and attacks on criminal defense lawyers continue unchecked in China because the masses fear disorder more than they fear apparently mild abrogations of unfamiliar rights. Brinks is surely correct, however, that the rule of law, institutionalized in a moderate state and defended by an active bar, cannot be sustained without a broad-based public belief that arbitrary and excessive state action must be checked by procedural and substantive rights (Brinks 2007). Political liberalism cannot be institutionalized on the basis of leadership by the legal complex alone.

In sum, civil society's capacity to ally with the legal complex on behalf of basic legal freedoms will depend upon: (1) the ability and willingness of civil society groups to form within a country; (2) the resources available to civil society groups – material, ideal and organizational; (3) the ideological inclinations of civil society groups to tackle basic rights; (4) the openness of civil society groups to legal complex leadership, membership, or alliance; (5) the availability and opening of public spaces for public discourse on rights; and (6) the availability of lawyers, judges or legal academics as spokesmen for the public and interlocutors with the publics.

What evidence do the case studies provide for a causal relationship between the legal complex and civil society? In fact, they appear synergistic, feeding off

each other in potential virtuous or vicious cycles. Almost always lawyers and judges precede civil society: whether or not any space exists for association and discourse outside the state, there will always be lawyers and judges in service of the state or market, except in the most rare of cases, such as Mao's Cultural Revolution. In one sense lawyers may constitute civil society, often because lawyers are accustomed to representing others, because they have an affinity with the formalization of association, and because their use of rules to constitute social groups is a natural lawyerly adaptation to a collective expression of interest. Indeed, lawyers' associations themselves, when formed outside the state, express an impulse of civil society and thus emblemize it. Moreover, lawyers have a special capacity to lead publics even if publics themselves are not aggregated or congealed in continuing associations. When the French bar in the eighteenth century took advantage of the stage offered political speech in the courtroom, it spoke and published *memoires* designed to reach the ears of listeners open to persuasion and eventually concertation. Moreover, lawyers' groups occasionally are among the few or only survivors when repressive regimes crush associations outside the state. Instances as dispersed as the eighteenth-century Paris bar, the Brazilian bar association in the 1980s, the Kenyan Law Society under Moi's authoritarian one-party regime, and the Malaysian bar in the 1980s and 1990s all survived, albeit under siege, when all other groups, excepting on occasion the church, are crushed.

Yet the Paris bar did not invent the salons of Parisian intellectuals. Civil society emerges from other impetuses, sometimes led by intellectuals. Most frequently in the west and many of its former colonies, it is the church that has a resilience possibly exceeding the bar itself. While religious groups are not invariably supporters of liberal legal ideals, when they do they are among the most critical potential allies of the bar, as lawyers' groups discovered in Brazil and Kenya.

There appears, then, a reciprocal causality in which civil society groups and publics offer places of association, arenas of discourse, and potential alliances for liberal segments of the legal complex. Yet at the same time the very existence, leadership and survival of those groups relies upon the machinery of law and its practitioners.

Civil society: media

The media offer great potential to spearhead and to amplify the campaigns of other groups for the rule of law. In principle, they can broadcast points of view, call to arms, mobilize publics and mediate public exchanges among the legal complex, civil society and publics. In the case studies media can be observed aiding the push to obtain freedom in Spain, where Madrid's nationally circulated *El País* eventually took the bold step to publicize Judicia Democratica's reports. In Mubarak's Egypt during the 1990s NGOs and lawyers gained much media leverage through publicity over their fights to keep the

Supreme Constitutional Court's powers of judicial review, not to mention attention to public demonstrations and hunger strikes. Even in the heavily censored Chinese media, some papers and some journalists take risks in the "gray zone" of journalism (Lin 2008) to publicize egregious abuses of lawyers, such as arresting and harassing defense attorneys, and suspects, such as use of "confession by torture," by the police and procuracy. In the struggles over the loss of liberalism in Venezuela, those fragments of the legal complex that have taken a stand have leveraged their impact through public statements to media outlets, opinion/editorial articles, press conferences, and invitations of journalists to notable trials.

Yet the media may be compromised. When the state controls the media, the selective permission to publicize certain events amounts to systematic bias of news by state authorities. When the media must survive in a market, they are subject to manipulation by large corporate advertisers, by vocal reader groups, or by the consumption habits of readers. Moreover, the media themselves are often associated with a particular political party, religious group, or similar source of systematic bias. While a powerful potential channel for the legal complex to reach its public constituencies, therefore, the media is a vulnerable and scarcely neutral conduit into the public arena.

The proliferation of electronic media may herald new opportunities and capabilities for insurgent groups on behalf of rule of law. In contemporary China the Internet, public bulletin boards, and "private" electronic forums are often given much more freedom by government censors than public print or electronic newspapers and magazines. They also have more opportunities to evade censors. This new technological capability, for example, has enabled activist lawyers across China to find each other by means that otherwise would have been impossible before the electronic age (Halliday and Liu 2007). It also provides lawyers the capacity to lead publics and to amplify the impact of civil society groups.

A theory of mobilization of the legal complex must take account of: (1) the varieties of media available for political speech; (2) the degree of control exercised directly (e.g. through ownership of state or private media) or indirectly (e.g. through regulation) over the media (state, commercial, party); (3) the access of the public to media; (4) the access of the legal complex to the media; and (5) the affinity of media for the causes and campaigns of the legal complex.

Again a reciprocal causal relationship appears between the media and the legal complex. On the one hand, the print and electronic media *precede* the mobilization. Their existence can leverage the impact of the legal complex, even help protect legal activism on behalf of basic legal freedoms. On the other hand, it is the legal complex itself – lawyers and judges – who are primary actors in securing the freedom of speech required for the media to be effective allies of legal actors. As fights demonstrate in the Egyptian courts during the 1990s, the ability of some newspapers to advocate the cause of political

liberalism depended on the efficacy of political liberals to secure that latitude through law. Again, therefore, the legal complex and media exist in a mutually constructive or destructive relationship, each ratcheting up or down the capacity of the other to press liberal causes.

Civil society: religion

The impact of religious beliefs and organizations recurs repeatedly in struggles for political liberalism. Variation across circumstances, religions and historical moments is not sufficient as yet to disentangle when and in what circumstances religious groups will press for defense of basic legal freedoms on their account, or when they will join with segments of the legal complex in common cause. Yet there are enough instances to begin identifying patterns that require more intensive research (Halliday 2008).[7]

In several cases the alliance of progressive elements of the legal complex and with Christian churches are decisive for the obtaining or defending of basic rights. Hilbink (2007b) shows that the liberal wing of the Catholic Church in Spain provided shelter, infrastructure and even protection for dissident churches and lawyers, the famous monastery at Montserrat at one point being the meeting place for clandestine councils and the printing press for its manifestos. Brinks finds that it is an NGO formed by the Roman Catholic diocese of São Paolo that is most effective in bringing private prosecutions against homicidal police. Halliday points to the alliance between the Law Society of Kenya and a mainline church coalition that led the move away from Moi's authoritarian rule. Abel (2007) shows that some Christian and Jewish groups stood with those members of the legal complex who resisted the Bush Administration's cavalier attitudes to the rule of law, although these were in the distinct minority. Other research, most especially on Brazil during the military dictatorship, reveals that the Roman Catholic Church and the Brazilian Bar Association were the only powerful civil society groups left standing in the face of military repression. They drew support from each other (Falcao 1988)

Yet there are numerous cases where the church was either silent or complicit in retreats from defense of core civil rights. In Spain, Chile and Argentina the Roman Catholic Church hierarchies overwhelmingly supported regimes that were hostile to "Communist," "socialist" or left-wing threats purportedly to religion as well as politics. The Chilean Catholic hierarchy greeted Pinochet's coup with a celebratory mass (Couso 2007). Nonetheless, even in Spain and Chile the Roman Catholic Church was a broad tent that contained much dissent. The Cardinal of Santiago, Chile, used his cathedral as a refuge for persecuted dissidents and founded the *Vicariate* to document human rights abuses by security forces. Catalonian and Basque priests found common cause with those lawyers and magistrates brave enough to build resistance against Franco's security measures. In Turkey, Islamic institutions were kept well away from political power by secularist Kemalists. The rise of a moderate, Islamic

politics in recent years, however, has embraced many, if not all, aspects of legal liberalism, even if religious values and the differentiation of state and religion continue as issues of fierce debate inside Turkey (Arslan 2007; Karpik 2007). In Israel, Barzilai (2007) shows that at the point where an otherwise liberal legal complex confronts Palestinian issues its unaccustomed silence on issues of law and justice effectively concurs with conservative Judaism's differential standards of justice for Jews and Palestinians.

Furthermore, religion can transform the bar from within, both for and against political liberalism. Karpik (1988, 1998) shows that it was Jansenist lawyers within the Paris bar that led a fierce assault on the illiberal expression of power by an absolute monarchy which relied upon the authority of the Catholic hierarchy which itself was hostile to the "Protestant" leanings of Jansenist clergy and laity alike. Jansenists inside the church and inside the bar used the Paris Order of Barristers and the courts themselves as stages on which to fight concomitantly religious and legal battles. By contrast, the permeation in the 1990s of the Egyptian bar, as thousands of conservative Muslims poured into a previously secular-leaning Lawyers Syndicate, gave Mubarak's government precisely the excuse it wanted to put the entire troublesome lawyers' organization into receivership as part of its crackdown against the Muslim Brotherhood (Moustafa 2007a, 2007b).

What is common to all these episodes is that Protestant and Roman Catholic Christians, Muslims and Orthodox Jews influenced the trajectory of liberalism and its particular expression at critical historical junctures. While we cannot yet explain when religious groups will align with a liberalizing legal complex and when they will be complicit with the forces against political liberalism, we can identify factors that must be part of any explanation of the rise and defense of political liberalism: (1) whether religious groups exist in a society and how well they are organized; (2) whether religious groups have some autonomy from the state or are subjugated to or co-opted by state power; (3) whether religious groups embrace doctrines that emphasize human dignity and articulate theological affinities with basic legal freedoms; and (4) the proximity of religious groups supportive of legal liberalism to the legal complex, either through (a) the religious views of lawyers, judges and others, or (b) the readiness of religious organizations to ally or to align themselves with an activist legal complex for political liberalism.

In a causal theory the religious and legal streams of advocacy for basic legal freedoms are not readily distinguished, not least because law and religion are fused in Judaism, Christianity and Islam for much of their histories. When law begins to differentiate itself from religion in the west, it brings certain core religious values with it, values emphasized even more strongly in and after the Protestant Reformation. In this sense religion precedes and infuses law with values, even when law itself appears to have secularized and is differentiated structurally from religious institutions. Moreover, religious groups usually can draw upon a longer and visceral basis of organization that has a resilience

seldom matched by any other in civil society. Religion penetrates to the edges of society more completely and comprehensively than law. Thus its entailment in political liberalism cannot be gainsaid. In a sense religion also precedes mobilization by the legal complex as lawyers, judges and others import their religious commitments and affiliations into legal institutions. A structural differentiation of law and religion, in other words, elides within the person of a religious lawyer. Nevertheless, where religion has been co-opted by the state, then secular segments of the legal complex, such as parts of the bar and legal academy, may take the leadership in the defense of rights, knowing that the support from religious institutions will be marginal at best. Yet again there are enough cases – Brazil, Kenya, France – where religious groups and the legal complex have joined forces simultaneously, where the priority of one or another in their respective mobilizations cannot be readily distinguished, to show that an affinity of values and resilience of organization, not to mention an inter-penetration of members, drives both.

Civil society: politics

The legal complex bears an ambiguous relationship to partisan party politics. On the one hand, a mutuality can co-exist between the two. In several countries where oppositional parties are banned, parts of the legal complex served as a shadow opposition in lieu of a developed party system (e.g. Spain, Egypt, Korea, Taiwan). Furthermore, the legal complex has often been a primary agent in the breaking open of a formal competitive party system, breaking bans on previously banned opposition parties (e.g. Egypt, Taiwan). Not infrequently lawyers emerge as the leaders of the new parties, which sometimes go on to assume political power (e.g. Korea, Taiwan). Yet the legal complex can also be co-opted by state partisanship when repressive regimes directly or indirectly ensure that the leadership of parts of the legal complex, especially the organized bar, maintains the line of the ruling party.

On the other hand, in many civil law countries the relationship between the legal complex and political parties appears to diminish the capacity of the organized bar in particular to assert a distinguished authority that is not irreducible to party politics. Where the institutions of the legal complex – bar, bench, legal academy – are themselves internally divided by partisan political affiliations, and leadership contests or orientations to issues of the day follow partisan lines, then the political complex has effectively colonized the legal complex (cf. Chile, Venezuela, Italy, Spain). This forecloses the prospect of a professional solidarity that transcends other social cleavages and it inhibits the emergence of a legal "class." Put another way, the permeation of the legal complex by political parties potentially subverts the capacity of lawyers and other parts of the legal complex to act on singularly legal grounds above the political fray. The effect of close party alliances is to link the fortunes of fractions of the legal complex to the fortunes of the parties. Thus the legal

complex follows the rise and fall of dominant parties and thereby cannot easily act as a counterweight to parties-in-power (e.g. Chile, Italy, Spain). It is not surprising, then, that a legal complex dominated by a political party supportive of Pinochet did not resist his attacks on liberalism. It is perfectly consistent that when an opposition party came to dominate the *collegio*, lawyers began to speak out against political repression. Even in the case of bar associations acting in lieu of opposition parties a similar danger exists – a potentially distinctive lawyers' voice becomes susceptible to attack on grounds it is another political voice in lawyerly disguise.

It follows that an added protection that the legal complex can offer political liberalism, particularly that part located in civil society (lawyers, legal academy), depends upon lawyers' capacity to find a commonality that transcends political partisanship. That commonality rests upon an ideology of legality or constitutionalism that cannot readily be attacked on grounds of its partisanship or reduced to party politics. Procedural justice in a narrow formal and substantive version of the rule of law offers one such option. Lawyers who might otherwise be divided on distributive politics can often find common ground on procedural protections through basic legal rights. This stance elevates lawyers above the arena of interest politics in which the rest of society may be configured. Thereby it provides an ideological basis on which organizational resistance can be mobilized to the programs of any political party when it attains power.

A difficult case is presented by Turkey where Arslan (2007) shows that the secularized legal complex has steadfastly opposed the authorization of religious political parties or Kurdish political parties on grounds that the former would threaten Turkey's commitment to secularism and the latter would potentially foster separatism and ultimately secession. Here fundamental values of political liberalism clash: freedom of speech, association, and religion. Arlsan finds the legal complex on the wrong (illiberal) side: a legal order resists both civil society and the legislative will.

Hence a theory of political liberalism must incorporate factors concerning party politics: (1) the existence of single versus multiple political parties; (2) if a one-party state, the degree to which the ruling party permits freedom of political speech, especially at the margins (e.g. inside "private" associations); (3) the capacity of courts to protect the right and ability of multiple and oppositional political parties to exist; (4) the extent to which lawyers' strategies of mobilization proceed through lawyers' associations or via professional politics; and (5) the degree of penetration of party politics into the legal complex at the expense of a trans-professional unifying *legal* basis of mobilization.

In historical developments of political liberalism the causal sequence runs more often from lawyers to parties than vice versa. Lawyers' organizations can exist in an absolutist, authoritarian or one-party state, albeit often with narrowly circumscribed activities. By definition, multiple parties do not, at least formally. Frequently therefore the advocacy of the legal complex for core

political rights – speech, association, movement – is a condition of the emergence of liberal party politics. The legal complex, especially the bar, often has acted as a party in exile or opposition, in part because courts and the law provide protections that lawyer/oppositionists could not otherwise obtain. Moreover, the legal complex in some situations, notably Egypt, but in numbers of African countries, has been an advocate for the establishment and maintenance of parties, not least in the politics of constitutionalism. To a point, therefore, defenders of multi-party politics and the legal complex have an affinity of beliefs (i.e. freedoms of speech, negative rights) and a commonality of interests. Thus a curvilinear relationship can be hypothesized between the multiplicity of parties and the activism of the legal complex for political liberalism: too little political expression and institutionalized political debate inhibits mobilization by the legal complex, although it may provoke the legal complex to champion the cause of political speech and a multi-party political regime; too much party-political infusion of professional politics may destroy the very distinctiveness of a liberal-legal politics within the legal complex that gives it a singular authority in the defense of a narrow version of the rule of law. When the legal complex helps produce and sustain competitive party politics without those politics producing conflicts within the legal complex itself, then the legal complex has an enhanced capacity to champion political liberalism.

Markets

On the basis of our first wave of studies we initially hypothesized (Halliday and Karpik 1998c) that an orientation towards the market might distract lawyers from politics. Subsequent findings do not permit such a broad conclusion. Several authors (Halliday *et al*. 2007) offer evidence that the expansion of the market for legal services has positive consequences for lawyers and politics. In Venezuela, the opening up of legal services in the market gave lawyers a foothold outside the state and thus some capacity to stand against the regime. It also multiplied the number of lawyers (Perdomo 2007). In Taiwan and Korea, Ginsburg (2007) similarly maintains that liberalization of the market increased numbers of lawyers. This gave them some independence and moved legal professionals out from under the government umbrella into the private sphere. This autonomy at work makes it easier for professionals to brace the government, a view that also appears in Feeley and Miyasawa's (2007) interpretation of legal development in Japan. In the case of Egypt, Moustafa (2007a) goes further to argue that lawyers' relationship to the market significantly affects the numbers, quality and ultimate influence of practitioners drawn into the profession who may subsequently exercise leadership against a repressive government. The Egyptian legal complex was most effective in expanding its liberal project when the free market provided an economic base for an independent legal profession, placed some pressure on the regime to enable

courts to protect property rights, diffused centers of power and reduced regime levers of control, and impelled groups to mobilize if their interests would be threatened by undermining of the judiciary. In a similar vein, Hilbink (2007b) suggests that government technocrats, although politically conservative, believed that a legal regime protective of property rights and committed to the rule of law was a necessary condition for Spain's economic development, a belief that was translated into the building or renovation of legal institutions and the march of administrative law as a protection for business. Brinks (2007) recognizes that the capacity of private prosecutors in Latin America to compel the state to live up to its constitutional commitments depended upon the ability of lawyers to make a living while engaging this kind of law. For many reasons, therefore, the market nurtures capacities for political lawyering.

But markets may also divert lawyers from political engagement and, indeed, may actively dampen activist sentiments in the bar. The overwhelming majority of solicitors in Hong Kong are entirely absorbed with market activities and express some disgruntlement with barristers who stir up trouble on behalf of the rights of workers, or protections of basic rights, or express reservations about intrusive police surveillance and powers (Jones 2007). The shape of the market has affected the nature of representation in China. In the 1980s, before the major expansion of the market, all lawyers had to do some criminal work and therefore were available as counsel. Now many can avoid it, and do. Most of the best lawyers find extraordinary rewards in commercial practice and they distance themselves from the "dirt" of criminal practice. They present mobilization of the profession as a whole for "political" causes rather than allowing business lawyers to keep on making money. Even in criminal law there can be a market distortion as defense lawyers gravitate to those areas of practice that are lucrative, such as corruption cases against officials, rather than those areas where repression is more pronounced, if less well remunerated (Michelson 2003).

Finally, the situation in Singapore demonstrates that it is a hollow hope to suppose that the entrenchment of an independent judiciary for the market, and the establishment of the rule of law in commercial dispute resolution, will spill over into issues that threaten the discretionary powers of the state. It is entirely possible for a liberal market and legal system to exist side by side with an illiberal polity and a legal system that insulates itself from "political" engagement (Silverstein 2008).

Hence the theory of the legal complex and political liberalism requires attention to: (1) the legal conditions that rulers decide are necessary to stimulate their national economy and the course of economic development; (2) the size of the private market for legal services and hence the degree of autonomy this gives at least some lawyers from control by the state; and (3) the willingness and ability of the private bar, together with other segments of the legal complex, to withstand a Singaporean-type assault on any expression of legal liberalism that steps outside market transactions.

In a historically contingent theory of rule of law development, it will be necessary to disentangle the relative priority of law and economic activity. On the one hand, it is clear that many markets have thrived without a sophisticated legal apparatus, without reliance on law, and without a developed legal complex, as several of the Asian Tigers (Thailand, Indonesia, Korea) illustrate (Ginsburg 2007; Halliday and Carruthers 2009). Markets, in short, can be antecedent to law. On the other hand, it is commonly believed that large, dispersed markets rely on the rational-legal apparatus of a formal legal system that will permit predictability, certainty and fair treatment of all market players. This may be particularly necessary the further trade expands beyond national boundaries in globalizing markets. Moreover, lawyers and law firms that stand at the apex of professional prestige as commercial lawyers are frequently also vigorous advocates of rights (Dezalay and Garth 2002)

In virtually all cases, success in transitions towards political liberalism was accompanied by a shift of command to market economies or some loosening of national markets from state direction. A theory of political mobilization by the legal complex must test the hypotheses that expanding markets (1) provide more independence and resources for lawyers, (2) attract higher quality, higher prestige classes to legal professions, (3) compel governments to increase the size of the legal profession, (4) increase protection for property rights, and thus (5) strengthen rule of law institutions such as constitutional, administrative and regular courts. But markets can also divert lawyers from "political" activity (cf. France, Hong Kong). And the mere existence of an advanced economy with superb commercial courts does not guarantee full civil rights (cf. Singapore). It is thus a fallacy to imagine that economic development necessarily leads to the institutionalization of basic legal freedoms and political liberalism as a whole. Indeed, the contrary may be so. The conditions under which market professionals turn their back on political mobilization must be a key problem for research.

The state

By definition, political liberalism involves a restructuring of the state. The moderate state is internally divided or counter-balanced by forces outside the state. Civil society exists in counterpoint to the state in its own sphere. First-generation rights frequently are described as rights citizens hold against the state, even if inscribed within it. To get from a politically illiberal state to a state that tolerates or institutionalizes political liberalism must also be a story of state reconstruction.

Although the diverse case studies from four continents do not attempt any typology of states, nor do they focus primarily on attributes of the state itself, nevertheless implicit and sometimes explicit hypotheses arise. A continuing condition that crosses virtually all types of illiberal states requires that rulers provide justice of some sort. No matter how that justice is defined, the

demands on rulers require that forums exist in which citizens or residents can have disputes resolved, where state mechanisms for enforcement of social order can be regularized, and where residents within a state may be assured that rule is not entirely arbitrary, especially as it has an impact on their own survival. The legitimacy of rule depends in no small part on the presence of a justice system.

In short, all states, with very few exceptions (cf. Mao's cultural revolution), require systems of justice and those in turn usually involve lawyers, judges, officials and those who educate them. From this universal of "state-ness" it follows that a legal complex is incipient, however illiberal or segmented it may be. Hence the functional demands of states invariably are accompanied by the structural existence, albeit with many variants, of roles and organizations that valorize law.

To put it more strongly, modern authoritarian rulers require functioning courts to maintain power (Ginsburg and Moustafa 2008) and they adopt strategies to ensure they work sufficiently well to underwrite a legitimacy that cannot be tested in an open vote of the citizenry. In this sense, some differentiation of legal functions already exists in illiberal polities. Hence authoritarian states carry seeds of their own destruction.

The defeat of illiberalism may be hastened by state fragmentation and state incapacity. If rulers cannot control internal divisions between government ministries, within ministries or across levels of government (e.g. from the capital to the provinces, counties and towns), then competing centers of power can emerge within the state. Such fragmentation can include the justice system which itself can be divided internally and from higher to lower organizational entities. Actors outside the state will act strategically to strengthen those elements of government that best match their interests and where their influence is likely to be most effective. Since private lawyers have a close affinity with courts – in many systems they are also "officers of the court" – a synergistic relationship readily can be nurtured between a vanguard of sympathetic judges and like-minded attorneys. Fragmentation within the justice system therefore potentially facilitates a bridgehead for liberally oriented lawyers and judges who draw sustenance from each other.

State fragmentation may produce state incapacity. Authoritarian state centers may have limited ability to control their cadres at the grassroots level. One solution is to give citizens law and courts in which to bring complaints against administrative failures, corruption or arbitrariness, as the Chinese government is haphazardly trying. State incapacity can provide openings for new state actors, such as courts, to step into the breach and assert their power. The judicialization of politics is substantially premised on the inadequacies of legislatures and executives to cope with policy issues that produce political deadlock or dangerous disharmony.

States also vary in their dependence on other states and supra-national institutions. Where states, such as Korea and Taiwan during the 1980s

(Ginsburg 2007), shelter underneath a security umbrella, the power providing the security will influence domestic politics, initially in those cases towards authoritarian anti-Communist regimes, but later indirectly and directly through the diffusion of rights discourses and claims. Where states depend on foreign investment and trade, they are likely to be more susceptible to adopt the legal frameworks that purportedly are institutional foundations for both, as Egypt and Spain both demonstrated. Moreover to legitimate themselves in the wider international community, states may be compelled to adopt international norms, such as UN conventions on rights, initially with no expectation that they will be enforced domestically but subsequently with the discovery that rights-conscious domestic constituencies, frequently led by lawyers, will seize what was intended as a symbolic gesture and make it real.

International influences

National developmental sequences are affected by the international milieux of national legal complexes. A quickening of activism and changing relations between the courts, administrative state and legal profession occurred in Korea and Taiwan in part because their security relationship with the United States brought large numbers of lawyers and judges into contact with their US counterparts who variously valorized separation of powers, use of litigation for social change, and rights consciousness. Spanish judges and lawyers in the frontline of reforms under Franco drew intellectual and moral support from their counterparts in Europe once the borders were opened for the freer flow of people and ideas.

In several countries (cf. Egypt) justice-related NGOs depend heavily on foreign resources – money, advice, access to foreign media, visibility and protection. But the Egyptian case also shows the paradoxical impact of external funding. On the one hand, the vibrancy of the human rights and NGO sector within Egypt depended heavily on overseas funding. On the other hand, when the government became increasingly upset by the success of local NGOs in the SCC, it found it relatively easy to cut them down to size. It painted groups receiving outside money as unpatriotic or even treasonous. On those grounds, it was able to cut overseas funding to a trickle and cut the heart out of the NGO and HRs leadership of civil society. It is a technique well understood by many other repressive regimes or those that are headed in an authoritarian direction, such as Venezuela.

Hence, a theory of political mobilization must treat (1) the type of dependency relationships a nation-state has with other states supportive of political liberalism; (2) the impact of international markets on legal development within a nation-state; (3) the direct resources from non-state and state actors that flow to a liberal legal complex or groups allied with a liberal legal complex.

Ideational forces

States and civil societies exist in a world of discourses, ideologies and beliefs, all of which permeate national orientations to varying degrees and structure domestic politics, including those of the legal complex. The case studies show that political ideologies heavily influence the openness of national elites to liberal politics, whether they take the form of the illiberal manifestations of nationalism (e.g. Japan and Germany, 1930s, China 2000s), fascism (e.g. Germany in the Third Reich, Italy under Mussolini) and Communism (e.g. the former Soviet Union, China), or illiberal responses, such as anti-Communist authoritarian regimes supported by the US and manifested in Latin America and Asia during the Cold War. By contrast, argue world society scholars, in the twentieth century, and especially after World War II, there has emerged a universal culture of individualism, rationality and modernity that has been institutionalized in transnational institutions from the UN to the European Court of Human Rights and that advances a particular version of the rule of law which threatens illiberal politics. This discourse and its claims to universality is conveyed and reinforced by ideologies of professionalism, with its amalgam of commitments to science, neutrality, universals, and autonomy from political control (Boyle and Meyer 2002; Silbey 1997).

The politics of the legal complex, however, also are permeated by juridical theories. Although these are not extensively developed in the national case studies, a contrast is drawn between positivist jurisprudence, which insists upon the fealty of judges to the ascendancy of state-based law, and a liberal legal jurisprudence which argues for the primacy of rights that transcend the constitutions or statutes of any state. The former, it is argued, enables judges and lawyers to lend support to authoritarian regimes so long as those regimes adhere to certain formal modes of lawmaking; the latter, it is maintained, hold rulers and lawmaking of all sorts accountable to higher values than those formalized in statutes or executive orders.

The intersection of legal and economic theory provides a salient ideational context for political liberalism. The extant theory of law and finance currently advocated by international financial institutions directly links rule of law type regimes with the probability that developing and transitional nations will obtain adequate foreign investment for domestic economic growth. Whether or not national leaders believe that stronger and independent courts, expanded private legal professions, and a raft of new statutes and regulatory regimes will stimulate the in-bound flow of capital, they are compelled by a global consensus, and occasionally coerced by IFIs, to conform their domestic institutions to the global models. Even if there is a substantial decoupling between symbolic compliance and implementation, activists in an enhanced legal complex may obtain legitimacy and structural facilities to transform symbolic into actual institutions.

A theory of mobilization by the legal complex, therefore, will integrate three sets of ideational factors: (1) the force of prevailing regional and global ideologies that champion basic legal freedoms, (2) the pervasiveness of jurisprudential theory that valorizes fundamental rights of citizenship over positive law; and (3) the content of market ideology, especially in the ways it links law to economic behavior.

Precipitating factors

While international and national cultural and social institutions may be variably conducive to a move towards or away from the rule of law components of political liberalism, a decisive move frequently is associated with a trigger or *cause célèbre* or precipitating event that stimulates a legal complex and states to act.

Repeatedly we observe that threats to nation-states and their ruling classes trigger a restriction of basic legal freedoms. The threat can be external (Korea, Taiwan, US, Israel, Japan) or internal (e.g. Communism in Spain and Chile, Islamic fundamentalism in Egypt, lawlessness in Argentina, Brazil). Whether the threat is "real" or made to seem real may be immaterial. If publics can be persuaded they are under threat, then leaders obtain support for repression. An exception is Hong Kong in the 1960s and 1970s: the rule of law was expanded by Hong Kong authorities precisely as a counterpoint to the ideology of Communist China.

Events can also trigger a sudden surge in demands for a strengthening of the rule of law, not infrequently led by the legal complex. An especially egregious abrogation of rights by security forces, arbitrary killings, an excessive response to public protests, the sudden collapse or defeat of a repressive government, a severing of foreign aid in response to rights abuses, the public disclosure of torture and assassinations, an obviously rigged election, an assault on the judiciary or attacks on lawyers – each of these in propitious circumstances has been the match that has lit a fire.

Nevertheless, a mutual contingency exists between facilitating factors and precipitating events. A slowly developing conduciveness to basic legal freedoms, inside the legal complex, the state, civil society and the market, may not crystallize until a trigger compels recognition of the incipient developments that are then institutionalized in visible form. Conversely, a spark may stimulate outrage, riots, public statements, foreign condemnations and activism, but without the groundwork, without structures already in place, without templates for action and alliances in place, an opportunity for the assertion of core rights will be lost.

Conclusion

From a large variety of case studies this chapter has extracted sets of factors that are integral to a theory of mobilization by the legal complex on behalf of

political liberalism. It has shown where research finds interactions among those factors that transcend a single historical instance. And it has proceeded inductively towards a causal and constitutive theory of the role of the legal complex in the construction of a liberal politics that protects fundamental freedoms integral to the rule of law.

The limits of this exercise point to further questions and subsequent steps in theory development. First, it has not yet been shown whether the factors that influence mobilization are constant across different types of political transition. For instance, the role of the legal complex, and the significance of factors that shape it, might differ markedly when the legal complex is fighting for a transition to a rule of law society, rather than when it is consolidating such a regime, or defending it against attack or the threat of dissolution. The capacity for mobilization by the legal complex and the conduciveness of civil society, political parties and market-based groups may be much greater in consolidation and defense of the rule of law than in the struggle for its establishment. Correlatively, the impact of international political and juridical ideology, and the influence of international associations, may be proportionately much greater when lawyers and judges are fighting against authoritarian regimes than when a breakthrough to a rule of law regime has already occurred. Hence it is necessary to examine whether the structure and dynamics of the legal complex, and the social forces that influence it, require a theory contingent on type of political transition.

Second, mobilization by the legal complex is not to be confused with success. The case studies are replete with examples of unsuccessful mobilization – when fragments of the legal complex or its coalitions act to obtain or defend the rule of law but are impaired, frustrated or repudiated. Indeed, in country after country the fight for an initial transition from an illiberal to liberal regime may go on for decades, if not centuries, before any breakthrough occurs – and in many cases such a transition never occurs decisively. In the case of state attributes, for instance, there is evidence that success by the legal complex will be associated with a change in state policy to encourage international capital, increased international trade, or international legitimacy (e.g. Spain 1950s, Egypt 1970s, China 1990s), and by a state's establishment or extension of rule of law institutions, such as constitutional and administrative courts, to comply with international pressures. By contrast, in many instances failure has been associated with imperative state-led models of economic development, rampant nationalism, and international conflict.

Third, there are limits to a causal analysis which compound the theoretical problem. The factors we have identified do not array in a simple line of antecedent and subsequent causes. Because the legal complex is partially constitutive of the state and partially constitutive of civil society, at most there is a recursive dynamic of reciprocal cycles of reinforcement or retreat, and at least there is a mutual constitutiveness that renders the parsing out of effects seemingly intractable.

In conclusion, a historical and comparative inductively generated theory of the legal complex, political liberalism, and the rule of law remains a significant challenge. We have shown that the legal complex frequently is implicated in mobilization for basic freedoms in many regions and historical instances. We can parse out structural and dynamic attributes of that mobilization and identify many factors that recur. It remains to develop theory through complementary efforts at intensive case studies and refined comparative research.

Notes

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2 For details on the logic of using this concept and the explication of its elements, see Halliday and Karpik (1998) and Halliday *et al*. (2007b).

3 The stipulation of "practicing law" excludes those large numbers of legally trained graduates of universities in Europe and Latin America who never practice law but go into business, politics or government bureaucracies.

4 Bracketed references to case studies can be cross-referenced to their authors in Table 10.1. It should be emphasized that the references are to studies of specific events, limited by time and territory, and not to any generalized typification of a country or period.

5 By "political lawyers" we refer to those who self-consciously mobilize on behalf of political liberalism in pursuit of the rule of law (Halliday and Karpik 2001; Karpik 2007).

6 Just the contrary argument has been made for the bureaucratic integration of courts – that by coordinating all courts in one coordinated structure that is administered by a court administration, this provides some protection for the incursions on local courts by local politics. See Halliday (1987).

7 For another perspective on the play of religion, see Karpik (2007).

References

Abel, R.L. (2007) "Contesting Legality in the United States after September 11," in L. Karpik, T.C. Halliday, and M.M. Feeley (eds.) *The Legal Complex and Struggles for Political Liberalism*, Oxford: Hart Publishing.

Acemoglu, D. and Johnson, S. (2005) "Unbundling Institutions," *Journal of Political Economy*, 113 (5): 949–95.

Acemoglu, D., Johnson, S., and Robinson, J.A. (2001) "The Colonial Origins of Comparative Development: An Empirical Investigation," *American Economic Review*, 91: 1369–401.

——(2002) "Reversal of Fortune: Geography and Institutions in the Making of the Modern World Income Distribution," *The Quarterly Journal of Economics*, 117: 1231–94.

Adams, J. (2005) *The Familial State: Ruling Families and Merchant Capitalism in Early Modern Europe*, Ithaca, NY: Cornell University Press.

Agell, J. (1999) "On the Benefits from Rigid Labour Markets: Norms, Market Failures, and Social Insurance," *Economic Journal*, 109(453): F143–64.

Ahlquist, J. and Levi, M. (2008) "The Lenin Problem: How Some Organizations Transform Conceptions of Self-Interest," paper presented at University of California, Los Angeles, Department of Political Science, 12 November.

Al-Rasheed, M. (2002) *A History of Saudi Arabia*, New York: Cambridge University Press.

Allen, F. and Qian, J. (2008) "Corruption and Competition," working paper, Boston College, Boston.

Allen, F., Qian, J., and Qian, M. (2005) "Law, Finance, and Economic Growth in China," *Journal of Financial Economics*, 77(1): 57–116.

——(2008) "China's Financial System: Past, Present and Future," in L. Brandt and T. Rawski (eds) *China's Great Economic Transformation*, Cambridge: Cambridge University Press.

Allen, F., Chakrabarti, R., De, S., Qian, J., and Qian, M. (2008) "Financing Firms in India," working paper, Wharton Financial Institutions Center, Philadelphia.

Allouche, A. (1994) *Mamluk Economics: A Study and Translation of Al-Maqrīzī's Ighāthah*, Salt Lake City: University of Utah Press.

Alt, J.E. (2002) "Comparative Political Economy: Credibility, Transparency, Accountability and Institutions," in I. Katznelson and H. Milner (eds) *The State of the Discipline: Power, Choice, and the State*, New York: W.W. Norton.

American Bar Association (2008) *The World Justice Project*. Online. Available HTTP: http://www.worldjusticeproject.org/ (accessed 6 November 2008).

Aoki, M. (2001) *Toward a Comparative Institutional Analysis*, Cambridge, MA: Cambridge University Press.

Appiah, A. (1994) "Identity, Authenticity, Survival: Multicultural Societies and Social Reproduction," in A. Gutman (ed.) *Multiculturalism: Examining the Politics of Recognition*, Princeton: Princeton University Press.

Aristotle (1988) *The Politics*, ed. Stephen Everson, Cambridge: Cambridge University Press.

Arndt, C. and Oman, C. (2006) *Uses and Abuses of Governance Indicators*, Paris: OECD.

Arrow, K. (1951) *Social Choice and Individual Values*, New York: Wiley.

——(1974) *The Limits of Organization*, New York: W.W. Norton.

Arslan, Z. (2007) "Reluctantly Sailing Towards Political Liberalism: The Political Role of the Judiciary in Turkey," in L. Karpik, T.C. Halliday, and M.M. Feeley (eds) *The Legal Complex and Struggles for Political Liberalism*, Oxford: Hart Publishing.

Ashton, R. (1960) *The Crown and the Money Market, 1603–1640*, Oxford: Clarendon Press.

Ashtor, E. (1976) *A Social and Economic History of the Near East in the Middle Ages*, London: Collins.

Bank for International Settlements (2008) *Statistics on Payment and Settlement Systems in Selected Countries: Figures for 2006*. Online. Available HTTP: http://www.bis.org/publ/cpss82.pdf (accessed 23 November 2008).

Barnard, C.I. (1938) *The Functions of the Executive*, Cambridge, MA: Harvard University Press.

Barraclough, S. (1998) "Al-Azhar: Between the Government and the Islamists," *Middle East Journal*, 52: 236–49.

Barros, R. (2003) "Dictatorship and the Rule of Law: Rules and Military Power in Pinochet's Chile," in J.M. Maravall and A. Przeworski (eds) *Democracy and the Rule of Law*, New York: Cambridge University Press.

Barzilai, G. (2007) "The Ambivalent Language of Lawyers: Between Liberal Politics, Economic Liberalism, Silence, and Dissent," in L. Karpik, T.C. Halliday, and M.M. Feeley (eds) *The Legal Complex and Struggles for Political Liberalism*, Oxford: Hart Publishing.

Bates, R.H. (1983) "The Nature and Origins of Agricultural Policies in Africa," in Robert H. Bates (ed.) *Essays on the Political Economy of Rural Africa*, Cambridge: Cambridge University Press.

——(2008) *Why States Fail*, New York: Cambridge.

Bearak, B. (2000) "In India, the Wheels of Justice Hardly Move," *New York Times*, World section, 1 June: A1.

Beck, T. and Levine, R. (2005) "Legal Institutions and Financial Development," in C. Menard and M.M. Shirley (eds) *Handbook for New Institutional Economics*, Dordrecht: Springer.

Beck, T., Demirguc-Kunt, A. and Levine, R. (2003) "Law and Finance: Why Does Legal Origin Matter?" *Journal of Comparative Economics*, 31: 653–75.

Behdad, S. (1994) "A Disputed Utopia: Islamic Economics in Revolutionary Iran," *Comparative Studies in Society and History*, 36: 775–813.

Bell, D.A. (1998) "Barristers, Politics, and the Failure of Civil Society in Old Regime France," in T.C. Halliday and L. Karpik (eds) *Lawyers and the Rise of Western*

Political Liberalism: Europe and North America from the Eighteenth to Twentieth Centuries, Oxford: Oxford University Press.

Berkowitz, D. and Clay, K. (2005) "Initial Conditions, Institutional Dynamics and Economic Performance: Evidence from the American States," *American Law and Economics Review*, 7: 62–84.

Berkowitz, D., Pistor, K., and Richard, J.F. (2003a) "Economic Development, Legality, and the Transplant Effect," *European Economic Review*, 47: 165–95.

——(2003b) "The Transplant Effect," *American Journal of Comparative Law*, 51: 163–203.

Berman, S. (2007a) "Lessons from Europe," *Journal of Democracy*, 18(1): 28–41.

——(2007b) "The Vain Hope for 'Correct' Timing," *Journal of Democracy*, 18(3): 14–17.

Berns, W. (1988) "The Making of the Constitution of the United States," in R.A. Goodwin and A. Kaufman (eds) *Constitution Makers on Constitution Making*, Washington, DC: American Enterprise Institute.

Bernstein, L. (1992) "Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry," *Journal of Legal Studies*, 21: 115–57.

Bessen, J. and Meurer, M.J. (2008) *Patent Failure: How Judges, Bureaucrats, and Lawyers Put Innovators at Risk*, Princeton: Princeton University Press.

Bhadra, M. (ed.) (1999) *Girl Child in Indian Society*, Jaipur: Rawat Publications.

Blanchard, O. and Wolfers, J. (2000) "The Role of Shocks and Institutions in the Rise of Ruropean Unemployment: The Aggregate Evidence," *Economic Journal*, 110(462): C1–33.

Blitt, R.C. (2007) *Babushka Said Two Things – It Will Either Rain or Snow; It Either Will or Will Not: An Analysis of the Provisions and Human Rights Implications of Russia's New Law on Nongovernmental Organizations as Told Through Eleven Russian Proverbs*, University of Tennessee Legal Studies Research Paper No. 2. Online. Available HTTP: http://ssrn.com/abstract=1009400 (accessed 25 October 2008).

Board of Governors of the Federal Reserve System (2008) "94th Annual Report 2007," Washington, DC: The Federal Reserve Board.

Bolt, W., Humphrey, D., and Uittenbogaard, R. (2005) "The Effects of Transaction Pricing on the Adoption of Electronic Payments: A Cross-country Comparison," working paper, Federal Reserve Bank of Philadelphia, Philadelphia.

Bovenberg, A.L., Hansen, M.I., and Sørensen, P.B. (2008) "Individual Savings Accounts for Social Insurance: Rationale and Alternative Designs," *International Tax and Public Finance*, 15(1): 67–86.

Boyd, M. (2004) *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion.* Online. Available HTTP: http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/boyd/ (accessed 19 October 2008).

Boyle, E.H. (2002) *Female Genital Cutting: Cultural Conflict in the Global Community*, Baltimore: Johns Hopkins University Press.

Boyle, E.H. and Meyer, J. (2002) "Modern Law as a Secularized and Global Model: Implications for the Sociology of Law," in Y. Dezalay and B. Garth (eds) *Global Prescriptions: The Production, Exportation, and Importation of a New Legal Orthodoxy*, Ann Arbor: University of Michigan Press.

Braddick, M. J. (1996) *The Nerves of State: Taxation and the Financing of the English State, 1558–1714*, New York: Manchester University Press.

Brandt, L. and Rawski, T. (2008) *China's Great Economic Transformation*, Cambridge: Cambridge University Press.

Braudel, F. (1982) *The Wheels of Commerce*, New York: Harper and Row.

Brewer, J. (1988) "The English State and Fiscal Appropriation: Taxes and Public Finance in England, 1688–1789," *Politics and Society*, 16: 335–85.

——(1990) *The Sinews of Power: War, Money and the English State, 1688–1783*, Cambridge, MA: Harvard University Press.

Brinks, D.M. (2007) "Of Gulliver and the State: The Legal Complex and the Response to Police Violence in South America," in L. Karpik, T.C. Halliday, and M.M. Feeley (eds) *The Legal Complex and Struggles for Political Liberalism*, Oxford: Hart Publishing.

——(2008) *The Judicial Response to Police Killings in Latin America*, New York: Cambridge University Press.

Brubaker, R. (1996) *Citizenship and Nationhood in France and Germany*, Cambridge, MA: Harvard University Press.

Carothers, T. (1998) "The Rule of Law Revival," *Foreign Affairs*, 77(2): 95–106.

——(2001) "The Many Agendas of Rule-of-Law Reform in Latin America," in P. Domingo and Rachel Sieder (eds) *Rule of Law in Latin America: The International Promotion of Judicial Reform*, London: Institute of Latin American Studies.

——(2007a) "The 'Sequencing' Fallacy," *Journal of Democracy*, 18(1): 12–27.

——(2007b) "Misunderstanding Gradualism," *Journal of Democracy*, 18(3): 18–22.

Chancellor, E. (1999) *Devil Take the Hindmost: A History of Financial Speculation*, Basingstoke: Macmillan.

Chaudhuri, K.N. (1965) *The English East India Company: The Study of an Early Joint-Stock Company, 1600–1640*, New York: A.M. Kelley.

Chaudhury, S. and Morineau, M. (1999) *Merchants, Companies, and Trade: Europe and Asia in the Early Modern Era*, New York: Cambridge University Press.

China, Government of (1904) Company Law.

China, People's Republic of (2007) Enterprise Bankruptcy Law of People's Republic of China.

Clark, G. (1996) "The Political Foundations of Modern Economic Growth," *Journal of Interdisciplinary History*, 26: 563–88.

Clarke, D., Murrell, P., and Whiting, S. (2008) "The Role of Law in China's Economic Development," in L. Brandt and T. Rawski (eds) *China's Great Economic Transformation*, Cambridge: Cambridge University Press.

Coase, R.H. (1937) "The Nature of the Firm," *Economica*, 4: 386–405.

Collier, P. (2007) *The Bottom Billion: Why the Poorest Countries are Failing and What Can be Done About It*, Oxford: Oxford University Press.

Cook, K.S., Hardin, R., and Levi, M. (2005) *Cooperation Without Trust?* New York: Russell Sage Foundation.

Cooter, R.D. and Rubenfeld, D.L. (1990) "Trial Courts: An Economic Perspective," *Law and Society Review*, 24: 533–46.

Coşgel, M., Ahmed, R., and Miceli, T. (2009) "Law, State Power, and Taxation in Islamic History," *Journal of Economic Behavior and Organization*, forthcoming.

Coulson, N.J. (1971) *Succession in the Muslim Family*, Cambridge: Cambridge University Press.

Couso, J. (2003) "The Politics of Judicial Review in Chile in the Era of Democratic Transition 1990–2002," *Democratization*, 10(4): 70–91.

——(2006) "The Changing Role of Law and Courts in Latin America: From an Obstacle to Social Change to a Tool of Social Inquiry," in R. Gargarella, P. Domingo, and T. Roix (eds) *Courts and Social Transformation in New Democracies: An Institutional Voice for the Poor?* Aldershot: Ashgate Publishing.

——(2007) "The Role of Chile's Legal Complex in the Configuration of a Moderate State," in L. Karpik, T.C. Halliday, and M.M. Feeley (eds) *The Legal Complex and Struggles for Political Liberalism*, Oxford: Hart Publishing.

Creswell, J. (2006) "So Small a Town, So Many Patent Suits," *New York Times*, Technology section (24 September).

Dam, K.W. (2006) *The Law–Growth Nexus: The Rule of Law and Economic Development*, Washington, DC: Brookings Institution Press.

Darling, L. (1996) *Revenue-Raising and Legitimacy: Tax Collection and Finance in the Ottoman Empire, 1560–1660*, Leiden: E.J. Brill.

Davis, S.J. and Henrekson, M. (2006) "Economic Performance and Work Activity in Sweden After the Crisis of the Early 1990s," working paper 12768, National Bureau of Economic Research.

——(2008) "Economic Performance and Work Activity in Sweden after the Crisis of the Early 1990s," in R.B. Freeman, B. Swedenborg, and R. Topel (eds) *Reforming the Welfare State: Recovery and Beyond in Sweden*, Chicago: University of Chicago Press.

de Condorcet, M. (1785) *Essai sur l'Application de l'Analyse a la Probabilite des Decisions rendues a la Pluralite des Voix*, Paris: L'Imprimerie Royale.

de Vries, J. and van der Woude, A. (1997) *The First Modern Economy: Success, Failure, and Perseverance of the Dutch Economy, 1500–1815*, Cambridge: Cambridge University Press.

den Heijer, H.J. (2005) *De geoctrooieerde companie: De VOC en de WIC als voorlopers van de naamloze vennootschap*, Deventer, Netherlands: Kluwer Legal Publishers.

Dewan, V.K. (2000) *Law Relating to Offences Against Women*, New Delhi: Orient Law House.

Dewatripont, M. and Legros, P. (2007) "Essential Patents, FRAND Royalties and Technological Standards," working paper, European Center for Advanced Research in Economics and Statistics, Brussels.

Dezalay, Y. and Garth, B.G. (2002) *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States* (Chicago Series in Law and Society), Chicago: University of Chicago Press.

Diaz-Cayeros, A., Magaloni, B., and Weingast, B.R. (2008) "Tragic Brilliance: Equilibrium Party Hegemony in Mexico," working paper, Hoover Institution.

Dickson, P.G.M. (1967) *The Financial Revolution in England: A Study in the Development of Public Credit, 1688–1756*, London: Macmillan.

Dixit, A. (2004) *Lawlessness and Economics*, Princeton: Princeton University Press.

Djankov, S. and Murrell, P. (2002) "Enterprise Restructuring in Transition: A Quantitative Survey," *Journal of Economic Literature*, 40: 739–92.

Djankov, S., La Porta, R., Lopez-de-Silanes, F. and Shleifer, A. (2002) "The Regulation of Entry," *Quarterly Journal of Economics*, 117(1): 1–37.

Doyle, M.W. and Sambanis, N. (2006) *Making War and Building Peace*, Princeton: Princeton University Press.

Dubey, A. and Verschoor, A. (2007) "Does Intra-household Discrimination Account for the Bulk of India's 'Missing Women'?" *Journal of South Asian Development*, 2(1): 1–18.

Dugard, J. and Roix, T. (2006) "The Record of the South African Constitutional Court in Providing an Institutional Voice for the Poor: 1005–2004," in R. Gargarella, P. Domingo, and T. Roix (eds) *Courts and Social Transformation in New Democracies: An Institutional Voice for the Poor?* Aldershot: Ashgate Publishing.

Dyzenhaus, D. (1991) *Hard Cases in Wicked Legal Systems*, New York: Clarendon Press.

Easterly, W. (2001) *The Elusive Quest for Growth: Economists' Adventures and Misadventures in the Tropics*, Cambridge, MA: MIT Press.

Economist (2007) "Home and Away," 15 September: 31–3.

——(2008) "Order in the Jungle," 13 March 2008. Online. Available HTTP: http://www.economist.com/displaystory.cfm?story_id = 10849115 (accessed 11 May 2008).

Edelman, M. (1994) *Courts, Politics and Culture in Israel*, Charlottesville: University of Virginia Press.

EIC Charter (1600) reprinted in John Shaw (ed.) (1887) *Charters Relating to the East India Company from 1600 to 1761*, Madras: Government Press.

Engerman, S.L. and Sokoloff, K.L. (2008) "Debating the Role of Institutions in Political and Economic Development: Theory, History, and Findings," *Annual Review of Political Science*, 11: 119–35.

Engerman, S.L., Sokoloff, K.L., and Haber, S. (1997) "Factor Endowments, Institutions, and Differential Paths of Growth Among New World Economies: A View from Economic Historians of the United States," in S. Haber (ed.) *Economic Growth and Latin American Economic Historiography*, Cambridge, MA: MIT Press.

European Values Study Foundation and World Values Survey Association (2006) *European and World Values Surveys Four-Wave Integrated Data File, 1981–2004, v.20060423*. Online. Available HTTP: http://www.worldvaluessurvey.org/ (accessed 14 October 2008).

Falcao, J. (1988) "Lawyers in Brazil," in R.L. Abel and P.S.C. Lewis (eds) *Lawyers in Society: Civil Law Countries*, Berkeley: University of California Press.

Fallon, R.H. Jr (1997) "'The Rule of Law' as a Concept in Constitutional Discourse," *Columbia Law Review*, 97: 1–56.

Feeley, M.M. and Miyazawa, S. (2007) "The State, Civil Society, and the Legal Complex in Modern Japan: Continuity and Change," in L. Karpik, T.C. Halliday, and M. M. Feeley (eds) *The Legal Complex and Struggles for Political Liberalism*, Oxford: Hart Publishing.

Feldman, N. (2008) *The Fall and Rise of the Islamic State*, Princeton: Princeton University Press.

Ferejohn, J. (1999) "Accountability and Authority: Toward a Theory of Political Accountability," in A. Przeworski, S.C. Stokes, and B. Manin (eds) *Democracy, Accountability and Representation*, New York: Cambridge University Press.

Fish, M.S. (2005) *Democracy Derailed in Russia: the Failure of Open Politics*, New York: Cambridge University Press.

Fisher, M. (2007) "Download Uproar: Record Industry Goes After Personal Use," *Washington Post*, Sunday Arts: M5 (30 December).

Flinn, C.J. (2002) "Labour Market Structure and Inequality: A Comparison of Italy and the US," *Review of Economic Studies*, 69(3): 611–45.

Forslund, A. and Krueger, A.B. (2008) "Did Active Labour Market Policies Help Sweden Rebound from the Depression of the Early 1990s?" in R.B. Freeman, B. Swedenborg, and R. Topel (eds) *Reforming the Welfare State: Recovery and Beyond in Sweden*, Chicago: University of Chicago Press.

Freeman, R.B. (2002) "Institutional Differences and Economic Performance among OECD Countries," CEP discussion paper, Centre for Economic Performance, London School of Economics.

Freeman, R.B., Swedenborg, B., and Topel, R. (eds) (2006) *Att Reformera Välfärdsstaten: Amerikanskt Perspektiv på den svenska modellen*, Stockholm. Studieförbundet Näringsliv och samhälle.

Fritschy, W. (2003) "A 'Financial Revolution' Reconsidered: Public Finance in Holland During the Dutch Revolt, 1568–1648," *Economic History Review*, 56: 57–89.

Fukuyama, F. (2007) "Liberalism Versus State-Building," *Journal of Democracy*, 18(3): 10–13.

Furber, H. (1976) *Rival Empires of Trade in the Orient, 1600–1800*, Minneapolis: University of Minnesota Press.

Fyzee, A.A.A. (1964) *Outlines of Muhammadan Law*, third edn, London: Oxford University Press.

Gaastra, F.S. (2008) *VOC – Organization*, Netherlands. Online. Available HTTP: http://www.tanap.net/content/voc/organization/organization_intro.htm (accessed 25 November 2008).

Ganz, M. (2000) "Resources and Resourcefulness: Strategic Capacity in the Unionization of California Agriculture, 1959–66," *American Journal of Sociology*, 105: 1003–62.

Garber, P.M. (2000) *Famous First Bubbles: The Fundamentals of Early Manias*, Cambridge, MA: MIT Press.

Geertz, C. (1963) *Old Societies and New States: The Quest for Modernity in Asia and Africa*, New York: Free Press.

Gelderblom, O. and Jonker, J. (2004) "Completing a Financial Revolution: The Finance of the Dutch East India Trade and the Rise of the Amsterdam Capital Market, 1595–1612," *Journal of Economic History*, 64: 641–72.

——(2005) "Amsterdam as the Cradle of Modern Futures and Options Trading, 1550–1650," in W.N. Goetzmann and K.G. Rouwenhorst (eds) *The Origins of Value: The Financial Innovations that Created Modern Capital Markets*, Oxford: Oxford University Press.

Gepken-Jager, E. (2005) "The Dutch East India Company (VOC)," in E. Gepken-Jager, G. Van Solinge, and L. Timmerman (eds) *VOC 1602–2002 – 400 Years of Company Law*, Deventer, Netherlands: Kluwer Legal Publishers.

Ghai, Y. (1994) *Human Rights and Governance: The Asia Debate*, San Francisco: The Asia Foundation.

——(2000) "Universalism and Relativism: Human Rights as a Framework for Negotiating Interethnic Claims," *Cardozo Law Review*, 21: 1095–140.

——(2001; rev. edn 2003) *Public Participation and Minorities*, London: Minority Rights Group.

——(2002) "Constitutional Asymmetries: Communal Representation, Federalism, and Cultural Autonomy," in A. Reynolds (ed.) *The Architecture of Democracy*, Oxford: Oxford University Press.

——(2005) "A Journey around Constitutions: Reflections on Contemporary Constitutions," *South African Law Journal*, 4: 804–31.

——(forthcoming) "Understanding Human Rights in Asia," in M. Scheinin and M. Suksi (eds) *Human Rights: A Textbook* (tentative title).

Ghai, Y. and Cottrell, J. (2009) *Marginalized Communities and Access to Justice*, Abingdon: Routledge-Cavendish.

Ghias, S. (2008) "Miscarriage of Chief Justice: The Rise and Fall of Judicial Power in Pakistan," manuscript, University of California at Berkeley, JSP Program.

Ginsburg, T. (2003) *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*, New York: Cambridge University Press.

——(2007) "Law and the Liberal Transformation of the Northeast Asian Legal Complex in Korea and Taiwan," in L. Karpik, T.C. Halliday, and M.M. Feeley (eds.) *The Legal Complex and Struggles for Political Liberalism*, Oxford: Hart Publishing.

Ginsburg, T. and Moustafa, T. (eds) (2008) *Rule By Law: The Politics of Courts in Authoritarian Regimes*, New York: Cambridge University Press.

Ginsburg, T., Elkins, Z., and Melton, J. (2008) "The Lifespan of Written Constitutions," working paper. Online. Available HTTP: http://www.americanbarfoundation.org/research/World_Justice_Project0/Papers.html (accessed 21 October 2008).

Glaeser, E.L. and Shleifer, A. (2002) "Legal Origins," *Quarterly Journal of Economics*, 117(4): 1193–229.

Glaeser, E.L., La Porta, R., Lopez-de-Silanes, F., and Shleifer, A. (2004) "Do Institutions Cause Growth?" *Journal of Economic Growth*, 9(3): 271–303.

Greif, A. (1989) "Reputation and Coalitions in Medieval Trade: Evidence on the Maghribi Traders," *Journal of Economic History*, 49: 857–82.

——(1993) "Contract Enforceability and Economic Institutions in Early Trade: The Maghribi Traders' Coalition," *American Economic Review*, 83: 525–48.

——(2006) *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade* (Political Economy of Institutions and Decisions), Cambridge: Cambridge University Press.

——(2007) *The Impact of Administrative Power on Political and Economic Development: Toward Political Economy of Implementation*. Online. Available HTTP: http://ssrn.com/abstract=1004394 (accessed 21 October 2008).

Guarnieri, C. (2003) "Courts as an Instrument of Horizontal Accountability: The Case of Latin Europe," in A. Przeworski and J.M. Maravall (eds) *Democracy and the Rule of Law*, New York: Cambridge University Press.

——(2007) "Lawyers and Statist Liberalisms in Italy," in L. Karpik, T.C. Halliday, and M.M. Feeley (eds) *The Legal Complex and Struggles for Political Liberalism*, Oxford: Hart Publishing.

Haber, S.H., Klein, H.S., Maurer, N., and Middlebrook, K.J. (2008) *The Second Mexican Revolution: Economic, Political, and Social Change in Mexico since 1980*, Cambridge: Cambridge University Press.

Hagan, J. (2003) *Justice in the Balkans: Prosecuting War Crimes in the Hague Tribunal*, Chicago: University of Chicago Press.

——(2005) "Crimes of War and the Force of Law," *Social Forces*, 83(4): 1499–534.

Hagan, J., Rymond-Richmond, W., and Parker, P. (2005) "The Criminology of Genocide: The Death and Rape of Darfur," *Criminology*, 43(3): 525–61.

Haggard, S., MacIntyre, A., and Tiede, L. (2008) "The Rule of Law and Economic Development," *Annual Review of Political Science*, 11: 205–34.

Hajjar, L. (2004) "Human Rights," in A. Sarat (ed.) *The Blackwell Companion to Law and Society*, Malden, MA: Blackwell Publishing.

Halliday, T.C. (1987) *Beyond Monopoly: Lawyers, State Crises, and Professional Empowerment*, Chicago: University of Chicago Press.

——(2008) "The Legal Complex, Religion, and the Fates of Political Liberalism," invited lecture presented to MacMillan Center Initiative on Religion, Politics and Society, Yale University, 11 February 2008.

Halliday, T.C. and Carruthers, B.G. (2009) *Bankrupt: Global Lawmaking and Systemic Financial Crisis*, Palo Alto: Stanford University Press.

Halliday, T.C. and Karpik, L. (eds) (1998a) *Lawyers and the Rise of Western Political Liberalism: Europe and North America from the Eighteenth to Twentieth Centuries*, Oxford: Oxford University Press.

——(1998b) "Politics Matter: A Comparative Theory of Lawyers in the Making of Political Liberalism," in T.C. Halliday and L. Karpik (eds) *Lawyers and the Rise of Western Political Liberalism: Europe and North America from the Eighteenth to Twentieth Centuries*, Oxford: Oxford University Press.

——(1998c) "Postscript: Lawyers and the Globalization of Liberal Politics," in T.C. Halliday and L. Karpik (eds) *Lawyers and the Rise of Western Political Liberalism: Legal Professions and the Constitution of Modern Politics*, Oxford: Oxford University Press.

——(2001) "Political Lawyering," in N.J. Smelser and P.B. Baltes (eds) *International Encyclopedia of Social and Behavioral Sciences*, Oxford: Elsevier.

Halliday, T.C. and Liu, S. (2007) "Birth of a Liberal Moment? Looking Through a One-Way Mirror at Lawyers' Defense of Criminal Defendants in China," in L. Karpik, T.C. Halliday, and M.M. Feeley (eds) *The Legal Complex and Struggles for Political Liberalism*, Oxford: Hart Publishing.

Halliday, T.C., Karpik, L., and Feeley, M.M. (eds) (2007a) *Fighting for Political Freedom: Comparative Studies of the Legal Complex for Political Change*, Oxford: Hart Publishing.

——(2007b) "The Legal Complex and Struggles for Political Liberalism," in T.C. Halliday, L. Karpik, and M.M. Feeley (eds) *Fighting for Political Freedom: Comparative Studies of the Legal Complex for Political Change,* Oxford: Hart Publishing.

Hamermesh, D.S. (2004) "Labor Demand in Latin America and the Caribbean: What Does It Tell Us?" in J.J. Heckman and C. Pagés (eds) *Law and Employment: Lessons from Latin America and the Caribbean*, Chicago: University of Chicago Press.

Haneef, M.A. (1995) *Contemporary Islamic Economic Thought: A Selected Comparative Analysis*, Petaling Jaya, Malaysia: Ikraq.

Hardin, R. (2002) *Trust and Trustworthiness*, New York: Russell Sage Foundation.

Harris, R. (2000) *Industrializing English Law: Entrepreneurship and Business Organization, 1720–1844*, New York: Cambridge University Press.

——(2004) "Government and the Economy, 1688–1850," *The Cambridge Economic History of Modern Britain*, 1: 204–37.

——(2005a) "The English East India Company and the History of Company Law," in E. Gepken-Jager, G. Van Solinge, and L. Timmerman (eds) *VOC 1602–2002 – 400 Years of Company Law*, Deventer, Netherlands: Kluwer Legal Publishers.

——(2005b) "The Formation of the East India Company as a Cooperation-Enhancing Institution," unpublished thesis, Tel Aviv University. Online. Available HTTP: http://papers.ssrn.com/sol3/papers.cfm?abstract_id = 874406 (accessed 25 November 2008).

Hart, H.L.A. (1973) "Rawls on Liberty and Its Priority," *University of Chicago Law Review*, 40: 534–55.

Hausmann, R., Tyson, L.D., and Zahidi, S. (2007) *The Global Gender Gap Report 2007*, Geneva: World Economic Forum. Online. Available HTTP: http://www.weforum.org/pdf/gendergap/report2007.pdf (accessed 14 November 2008).

Hayek, F.A. (1960) *The Constitution of Liberty*, Chicago: Chicago University Press.

——(1973) *Law, Legislation and Liberty – Rules and Order*, Chicago: University of Chicago Press.

——(1973–9) *Law, Legislation and Liberty*, 3 vols, Chicago: University of Chicago Press.

Hechter, M. (1987) *Principles of Group Solidarity*, Berkeley: University of California Press.

Heckman, J.J. and Pagés, C. (eds) (2004) *Law and Employment: Lessons from Latin America and the Caribbean*, Chicago: University of Chicago Press.

Heckman, J.J., LaLonde, R.J., and Smith, J.A. (1999) "The Economics and Econometrics of Active Labor Market Programs," in O. Ashenfelter and D. Card (eds) *Handbook of Labor Economics*, Volume 3A, New York: North-Holland.

Heckman, J.J., Ljunge, M., and Ragan, K. (2006) "What are the Key Employment Challenges and Policy Priorities for OECD Countries?" paper presented at "Boosting Jobs and Incomes", Toronto, Ontario, Canada, 15 June 2006.

Heckman, J.J., Nelson, R. and Neukom, W. (2007) "Relationship between the Rule of Law and Social and Economic Development," *The World Justice Project Research Program*. Online. Available HTTP: http://jenni.uchicago.edu/WJP/more.html (accessed 6 October 2008).

Helmke, G. (2005) *Courts under Constraints: Judges, Generals and Presidents in Argentina*, New York: Cambridge University Press.

Henisz, W.J. (2000) "The Institutional Environment for Economic Growth," *Economics and Politics*, 12: 1–31.

——(2005) *Political Constraint Index (PolCon) Dataset*, Philadelphia: The Wharton School of the University of Pennsylvania. Online. Available HTTP: http://www-management.wharton.upenn.edu/henisz/POLCON/ContactInfo.html (accessed 14 November 2008).

Hermalin, B.E. (1998) "Toward an Economic Theory of Leadership," *American Economic Review*, 88: 1188–206.

——(2007) "Leading for the Long Term," *Journal of Economic Behavior and Organization*, 62: 1–19.

Heston, A. (2008) "The 2005 Global Report on PPPs: A Preliminary Review," working paper, University of Pennsylvania, Philadelphia.

Hilbink, L. (2007a) *The Politics of Judicial Apoliticism: Chile in Comparative Perspective*, New York: Cambridge University Press.

——(2007b) "Politicising Law to Liberalise Politics: Anti-Francoist Judges and Prosecutors in Spain's Democratic Transition," in T.C. Halliday, L. Karpik, and M.M. Feeley (eds) *Fighting for Political Freedom: Comparative Studies of the Legal Complex for Political Change*, Oxford: Hart Publishing.

Hirschl, R. (2000) "The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolutions," *Law and Social Inquiry*, 25: 91–147.

——(2004) *Towards Juristocracy*, Cambridge, MA: Harvard University Press.

——(2005) "Preserving Hegemony? Assessing the Political Origins of the EU Constitution," *International Journal of Constitutional Law*, 3: 269–91.

Hirschman, A. (1984) "Against Parsimony: Three Easy Ways of Complicating Some Categories of Economic Discourse," *American Economic Review*, 74: 89–96.

Hirst, D. (1986) *Authority and Conflict: England 1603–58*, New York: Cambridge University Press.

Hofstadter, R. (1969) *The Idea of a Party System*, Berkeley: University of California Press.

Holmstrom, B. (1982) "Moral Hazard in Teams," *Bell Journal of Economics*, 13: 324–40.

Hume, D. (1966) *An Enquiry Concerning the Principles of Morals*, La Salle, IL: Open Court.

Humphrey, D., Pulley, L., and Vesala, J. (1996) "Cash, Paper, and Electronic Payments: A Cross-country Analysis," *Journal of Money, Credit, and Banking*, 28: 914–39.

Hussin, I. (2007) "The Politics of Islamic Law: Local Elites and Colonial Authority in India, Malaya and Egypt," dissertation, Department of Political Science, University of Washington.

Ibn Khaldun (1359/1958) *The Muqaddimah: An Introduction to History*, 3 vols, trans. F. Rosenthal, New York: Pantheon.

Imber, C. (1997) *Ebu's-Su'ud: The Islamic Legal Tradition*, Stanford: Stanford University Press.

İnalcık, H. (1970) "The Ottoman Economic Mind and Aspects of the Ottoman Economy," in M.A. Cook (ed.) *Studies in the Economic History of the Middle East*, London: Oxford University Press.

——(1994) "The Ottoman State: Economy and Society, 1300–1600," in H. İnalcık with D. Quataert (ed.) *An Economic and Social History of the Ottoman Empire, 1300–1914*, New York: Cambridge University Press.

India, Government of (1976) "Equal Remuneration Act, No. 25 of 1976."

——(1990) "The National Commission for Women Act, 1990: No. 20 of 1990."

——(2005) "II and III Periodic Report on the Convention on the Elimination of All Forms of Discrimination Against Women."

India, Ministry of Home Affairs (2008) *Human Rights Division*. Online. Available HTTP: http://mha.gov.in/uniquepage.asp?ID_PK = 235 (accessed 14 November 2008).

India, National Crime Records Bureau (NCRB) (2006) *Annual Report (2004–5)*, New Delhi: National Crime Records Bureau.

International Monetary Fund (IMF) (2008) *World Economic Outlook Database*. Online. Available HTTP: http://www.imf.org/external/pubs/ft/weo/2008/01/weodata/index.aspx (accessed 23 November 2008).

Israel, J. (1989) *Dutch Primacy in World Trade, 1585–1740*, Oxford: Clarendon Press.

Iyer, S. (1999) *The Struggle to be Human: Women's Human Rights*, Bangalore: Books for Change.

Jacobsohn, J. (1993) *Apple of Gold: Constitutionalism in Israel*, Princeton, NJ: Princeton University Press.

Joga Rao, S.V. (ed.) (2002) *Dowry and the Law*, Bangalore: LexisNexis.

Jones, C. (2007) "'Dissolving the People': Capitalism, Law and Democracy in Hong Kong," in T.C. Halliday, L. Karpik, and M.M. Feeley (eds) *Fighting for Political Freedom: Comparative Studies of the Legal Complex for Political Change*, Oxford: Hart Publishing.

Jones, J.R. (1972) *The Revolution of 1688 in England*, New York: W.W. Norton.

Jütting, J.P., Morrison, C., Dayton-Johnson, J., and Dreschler, D. (2006) "Measuring Gender (In)Equality: Introducing the Gender, Institutions and Development Data Base (GID)," working paper, OECD, Paris.

Kahn-Freund, O. (1974) "On Uses and Misuses of Comparative Law," *Modern Law Review*, 37: 1–27.

Kant, A. (2003) *Women and the Law*, New Delhi: APH Publishing Corporation.

Karaman, K. (2009, forthcoming) "Decentralized Coercion and Self-restraint in Provincial Taxation: The Ottoman Empire, 15th–16th Centuries," *Journal of Economic Behavior and Organization*.

Karpik, L. (1988) "Lawyers and Politics in France, 1814–1950: the State, the Market, and the Public," *Law and Social Inquiry*, 13(4): 707–36.

——(1997) *French Lawyers: A Study in Collective Action, 1274 to 1994*, Oxford: Oxford University Press.

——(1998) "Builders of Liberal Society: French Lawyers and Politics," in T.C. Halliday and L. Karpik (eds) *Lawyers and the Rise of Western Political Liberalism: Europe and North America from the Eighteenth to Twentieth Centuries*, Oxford: Oxford University Press.

——(2007) "Postscript: Political Lawyering," in L. Karpik, T.C. Halliday, and M.M. Feeley (eds) *The Legal Complex and Struggles for Political Liberalism*, Oxford: Hart Publishing.

Kaufmann, D., Kraay, A., and Zoido-Lobaton, P. (1999) "Aggregating Governance Indicators," Washington DC: World Bank.

Kaufmann, D., Kraay, D., and Mastruzzi, M. (2005) "Governance Matters IV: Governance Indicators for 1996–2004," in World Bank (ed.) *Policy Research Working Papers*, Washington, DC: World Bank.

——(2007a) *Governance Matters VI: Governance Indicators for 1996–2006*, World Bank Policy Research Working Paper No. 4280. Online. Available HTTP: http://ssrn.com/abstract=999979.

——(2007b) *The Worldwide Governance Indicator's Project: Answering the Critics*, Washington, DC: World Bank.

Kaushal, R. (2000) *Women and Human Rights in India*, New Delhi: Kaveri Books.

Kedourie, E. (1993) *Nationalism*, Oxford: Blackwell.

Khadduri, M. (1984) *The Islamic Conception of Justice*, Baltimore: Johns Hopkins University Press.

Khan, Z. (2005) *The Democratization of Invention: Patents and Copyrights in American Economic Development, 1790–1920*, Cambridge: Cambridge University Press.

Kimes, Mina (2008) "Cars: 6 Chinese Knock-offs," *CNNMoney.com*. Online. Available HTTP: http://money.cnn.com/galleries/2008/fortune/0810/gallery.china_cars.fortune/ (accessed 8 December 2008).

King, G., Keohane, R.O., and Verba, S. (1994) *Designing Social Inquiry*, Princeton: Princeton University Press.

Kirby, W. (1995) "China Unincorporated: Company Law and Business Enterprise in Twentieth-Century China," *Journal of Asian Studies*, 54: 43–63.

Kiser, E. (1994) "Markets and Hierarchies in Early Modern Tax Systems: A Principal-Agent Analysis," *Politics and Society*, 22: 285–316.

Kiser, E. and Sacks, A. (2008) "African Patrimonialism in Historical Perspective: Assessing Decentralized and Privatized Tax Administration," paper presented at Yale University, Center for Comparative Research Conference, "Lineages of Patrimonial Politics, Then and Now," New Haven, CT, May 2008; published in J. Adams and M.M. Charrad (eds) (forthcoming) *Patrimonialism: Then and Now*.

Klasen, S. and Wink, C. (2003) "'Missing Women': Revisiting the Debate," *Feminist Economics*, 9: 263–99.

Klerman, D. and Mahoney, P. (2005) "The Value of Judicial Independence: Evidence from Eighteenth-Century England," *American Law and Economics Review*, 7: 1–27.

Klug, H. (2000) *Constituting Democracy: Law, Globalism and South Africa's Political Reconstruction*, New York: Cambridge University Press.

Knack, S. and Keefer, P. (1994) "Institutions and Economic Performance: Cross-Country Tests Using Alternative Institutional Measures," *Economics and Politics*, 7: 207–27.

Kohli, A. (1987) *The State and Poverty in India: the Politics of Reform*, New York: Cambridge University Press.

Kohn, M. (1999) "The Capital Market before 1600," working paper, Department of Economics, Dartmouth College, Hanover, NH.

Kondo, J. (2007) "Self-Regulation and Enforcement: Evidence from Investor-Broker Disputes at NASD," working paper, MIT, Boston.

Kopf, E. (1929) "Notes on the Origin and Development of Reinsurance," *Proceedings of the Casualty Actuarial Society*, XVI(33–34): 22–92.

Kothari, R. (1988) "Ethnicity," in R. Kothari, *Rethinking Development: In Search of Humane Alternatives*, Delhi: Ajanta Publications.

Kreps, D.M. (1990) "Corporate Culture and Economic Theory," in J. Alt and K. Shepsle (eds) *Perspectives in Positive Political Economy*, New York: Cambridge University Press.

Kuran, T. (1995) *Private Truths, Public Lies: The Social Consequences of Preference Falsification*, Cambridge, MA: Harvard University Press.

——(2001) "The Provision of Public Goods under Islamic Law: Origins, Impact, and Limitations of the Waqf System," *Law and Society Review*, 35: 841–97.

——(2003) "Islamic Redistribution through *Zakat*: Historical Record and Modern Realities," in M. Bonner, M. Ener, and A. Singer (eds) *Poverty and Chairty in Middle Eastern Contexts*, Albany: State University of New York Press.

——(2004) *Islam and Mammon: the Economic Predicaments of Islamism*, Princeton: Princeton University Press.

Kurtz, M.J. and Schrank, A. (2007a) "Growth and Governance: Models, Measures and Mechanisms," *Journal of Politics*, 69: 538–54.

——(2007b) "Conceptualizing and Measuring Institutions: A View from Political Science," paper presented at second workshop on "Measuring Law and Institutions," Paris, December 2007.

Kymlicka, W. (1989) *Liberalism, Community and Culture*, Oxford: Oxford University Press.

La Porta, R., Lopez-de-Silanes, F., Shleifer, A., and Vishny, R.W. (1997) "Legal Determinants of External Finance," *Journal of Finance*, 52: 1131–50.

——(1998) "Law and Finance," *Journal of Political Economy*, 106: 1113–55.

Landry, P. (2008) "How Weak Institutions Can Produce Strong Regimes: Patents, Lawyers, and the Improbable Creation of an Intellectual Property Regime in China (1985–2007)," paper presented at workshop on "Rule of Law," Yale University, 28–29 March.

Layard, R., Nickell, S., and Jackman, R. (1991) *Unemployment: Macroeconomic Performance and the Labour Market*, Oxford: Oxford University Press.

Lee, T.V. (1993) "Risky Business: Courts, Culture, and the Marketplace," *University of Miami Law Review*, 47: 1335–414.

LegalMetric (2008) *Eastern District of Texas Patent Litigation Study*. Online. Available HTTP:

http://www.legalmetric.com/studies/txed_pat_study.html (accessed 23 November 2008).

Lerner, J. (2002) "150 Years of Patent Protection," *American Economic Review Papers and Proceedings*, 92: 221–5.

——(2005) "150 Years of Patent Office Practice," *American Law and Economics Review*, 7: 112–43.
Levi, M. (1988) *Of Rule and Revenue*, Berkeley: University of California Press.
——(1997) *Consent, Dissent and Patriotism*, New York: Cambridge University Press.
——(2005) "Inducing Preferences within Organizations," in I. Katznelson and B.R. Weingast (eds) *Preferences and Situations: Points of Intersection between Historical and Rational Choice Institutionalism*, New York: Russell Sage Foundation.
——(2006) "Why We Need a New Theory of Government," *Perspectives on Politics*, 4: 5–19.
——(under review) *Staffing the State: Handbook of Rational Choice*, New York: Russell Sage Foundation.
Levi, M. and Sacks, A. (2007) "Legitimating Beliefs: Concepts and Indicators," in *Afrobarometer* (Working Paper No. 74), East Lansing: Michigan State University
Levi, M., Sacks, A., and Tyler, T.R. (forthcoming) "Conceptualizing Legitimacy, Measuring Legitimating Beliefs," *American Behavioral Scientist*.
Levitsky, S. and Way, L. (2002) "The Rise of Competitive Authoritarianism," *Journal of Democracy*, 13(2): 51–65.
Lewis, B. (1988) *The Political Language of Islam*, Chicago: University of Chicago Press.
——(1990) *Race and Slavery in the Middle East: An Historical Enquiry*, New York: Oxford University Press.
Li, S. (2001) "Bankruptcy Law in China: Lessons of the Past Twelve Years," *Harvard Asia Quarterly*, V(1). Available HTTP: http://www.asiaquarterly.com/content/view/95/40/ (accessed 31 March 2009).
Licht, A., Goldschmidt, C., and Schwartz, S.H. (2007) "Culture Rules: The Foundations of the Rule of Law and Other Norms of Governance," *Journal of Comparative Economics*, 35: 659–88.
Lin, F. (2008) "Turning Gray: Transition of Political Communication in China, 1978–2008," PhD dissertation, Department of Sociology, University of Chicago.
Lindbeck, A. and Snower, D. (1989) *The Insider–Outsider Theory of Employment and Unemployment*, Cambridge, MA: MIT Press.
Lindert, P.H. (2005) *Growing Public: Social Spending and Economic Growth since the Eighteenth Century*, Cambridge: Cambridge University Press.
Lipset, S.M. (1959) "Some Social Requisites of Democracy," *American Political Science Review*, 53: 69–105.
Ljunge, M. (2006) "Half the Job Is Showing Up: Returns to Work, Taxes, and Sick Leave Choices," PhD thesis, University of Chicago.
Locke, J. (1980[1690]) *Second Treatise of Government*, ed. C.B. Macpherson, Indianapolis, IN: Hackett.
Løkkegaard, F. (1950) *Islamic Taxation in the Classic Period, with Special Reference to Circumstances in Iraq*, Copenhagen: Branner and Korch.
Lupia, A. and McCubbins, M.D. (1998) *The Democratic Dilemma: Can Citizens Learn What They Need to Know?* New York: Cambridge University Press.
Macaulay, S. (1963) "Non-contractual Relations in Business: A Preliminary Study," *American Sociological Review*, 28(1): 55–67.
McIlwain, C.H. (1947) *Constitutionalism: Ancient and Modern*, Ithaca, NY: Great Seal Books.
Machiavelli, N. (1950) *The Prince and the Discourses*, New York: The Modern Library.

Mahmud, T. (1993) "Praetorianism and Common Law in Post-Colonial Settings: Judicial Responses to Constitutional Breakdowns in Pakistan," *Utah Law Review*, 1225–305.
Manion, M. (2004) *Corruption by Design: Bribery in Chinese Enterprise Licensing*, Cambridge, MA: Harvard University Press.
Mansfield, E.D. and Snyder, J. (2005) *Electing to Fight: Why Emerging Democracies Go to War*, Cambridge, MA: MIT Press.
——(2007) "The Sequencing 'Fallacy,'" *Journal of Democracy*, 18(3): 5–10.
Mansvelt, W.M.F. (1922) *Rechtsvorm en geldelijk beheer bij de Oost-Indische Compagnie*, Amsterdam: Swets and Zeitlinger.
Maravall, J.M. and Przeworski, A. (eds) (2003a) *Democracy and the Rule of Law*, New York: Cambridge University Press.
——(2003b) "Introduction," in J.M. Maravall and A. Przeworski (eds), *Democracy and the Rule of Law*, New York: Cambridge University Press.
Martin, J.P. and Grubb, D. (2001) "What Works and for Whom: A Review of OECD Countries' Experiences with Active Labour Market Policies," *Swedish Economic Policy Review*, 8(2): 9–56.
Mathias, P. and O'Brien, P. (1976) "Taxation in Britain and France, 1715–1810. A Comparison of the Social and Economic Incidence of Taxes Collected for the Central Governments," *Journal of European Economic History*, 5: 601–40.
Mauro, P. (1995) "Corruption and Growth," *Quarterly Journal of Economics*, CX: 681–712.
Mayer, C. (2008) "Trust in Financial Markets," *European Financial Management*, 14: 617–32.
Menski, W. (1998) *South Asians and the Dowry Problem*, New Delhi: Vistaar Publications.
Merry, S.E. (1988) "Legal Pluralism," *Law and Society Review*, 22(5): 869–96.
——(2003) "Rights Talk and the Experience of Law: Implementing Women's Human Rights to Protection from Violence," *Human Rights Quarterly*, 25: 343–81.
——(2005) *Human Rights and Gender Violence: Translating International Law into Local Justice*, Chicago: University of Chicago Press.
Merton, R.K. (1968[1957]) *Social Theory and Social Structure*, Glencoe, IL: Free Press.
Messick, B. (1993) *The Calligraphic State: Textual Domination and History in a Muslim Society*, Berkeley: University of California Press.
Michelson, E. (2003) *Unhooking from the State: Chinese Lawyers in Transition*, PhD dissertation, Department of Sociology, University of Chicago.
Michie, R.C. (1999) *The London Stock Exchange: A History*, Oxford: Oxford University Press.
Miller, G. (1992) *Managerial Dilemmas*, New York: Cambridge University Press.
Miller, W.L., Grodeland, A.B., and Koshechkina, T.Y. (2001) *A Culture of Corruption? Coping with Government in Post-Communist Europe*, Budapest: Central European University Press.
Montesquieu, C.L. (1977) *The Spirit of Laws*, Berkeley: University of California Press.
Morgan, E.V. and Thomas, W.A. (1969) *The Stock Exchange: Its History and Function*, London: Elek.
Moustafa, T. (2007a) "Mobilising the Law in an Authoritarian State: The Legal Complex in Contemporary Egypt," in L. Karpik, T.C. Halliday, and M.M. Feeley (eds) *The Legal Complex and Struggles for Political Liberalism*, Oxford: Hart Publishing.
——(2007b) *The Struggle for Constitutional Power: Law, Politics and Economic Development in Egypt*, New York: Cambridge University Press.

Mullally, L. (2006) "The Social Failure of the European Social Model," in Open Europe (ed.) *Beyond the European Social Model*, London: Open Europe.

Nagel, T. (2005) "The Problem of Global Justice," *Philosophy and Public Affairs*, 33: 113–47.

Nasr, S.V.R. (2001) *Islamic Leviathan: Islam and the Making of State Power*, New York: Oxford University Press.

Neal, L. (1990) *The Rise of Financial Capitalism: International Capital Markets in the Age of Reason*, New York: Cambridge University Press.

Newberg, P. (1995) *Judging the State: Courts and Constitutional Politics in Pakistan*, New York: Cambridge University Press.

Nickell, S., Wadhwani, S., and Wall, M. (1992) "Productivity Growth in UK Companies, 1975–86," *European Economic Review*, 36(5): 1055–85.

Nicoletti, G. and Scarpetta, S. (2001) "Interactions between Product and Labour Market Regulations: Do They Affect Employment? Evidence from OECD Countries," paper presented at the Banco de Portugal conference on "Labour Market Institutions and Economic Outcomes," Cascais, Portugal, 3–4 June.

North, D.C. (1981) *Structure and Change in Economic History*, New York: Norton.

——(1990) *Institutions, Institutional Change, and Economic Performance*, Cambridge: Cambridge University Press.

——(2005) *Understanding the Process of Economic Change*, Princeton: Princeton University Press.

North, D.C. and Weingast, B.R. (1989) "Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in 17th Century England," *Journal of Economic History*, 49: 803–32.

North, D.C., Wallis, J.J., Webb, S.B., and Weingast, B.R. (2007) "Limited Access Orders in the Developing World: A New Approach to the Problems of Development," working paper, World Bank.

North, D.C., Wallis, J.J., and Weingast, B.R. (2009) *Violence and Social Orders: A Conceptual Framework for Understanding Recorded Human History*, Cambridge: Cambridge University Press.

Nussbaum, M.C. and Sen, A. (1993) *The Quality of Life*, Oxford: Clarendon Press.

Oberholzer-Gee, F. and Strumpf, K. (2007) "The Effect of File Sharing on Record Sales: An Empirical Analysis," *Journal of Political Economy*, 115: 1–42.

O'Brien, P.K. (1988) "The Political Economy of British Taxation, 1660–1815," *Economic History Review*, 41: 1–32.

O'Donnell, G.A. (2004) "Why the Rule of Law Matters," *Journal of Democracy*, 15: 32–46.

Olson, M. (1971) *The Logic of Collective Action: Public Goods and the Theory of Groups*, Cambridge, MA: Harvard University Press.

——(1993) "Democracy, Dictatorship, and Development," *American Political Science Review*, 87(3): 567–75.

Open Society Institute (2002) "Monitoring the EU Accession Process: Corruption and Anti-Corruption Policy," New York: Open Society Institute.

Organisation for Economic Co-operation and Development (OECD) (1994) *The OECD Jobs Study: Facts, Analysis, Strategies*, Washington, D.C.: OECD Publications and Information Centre.

——(2005a) *Education at a Glance: OECD Indicators 2005*, Paris: OECD Publishing.

——(2005b) *Society at a Glance: OECD Social Indicators*, Paris: OECD Publishing.

——(2006a) *OECD Economic Outlook*, Paris: OECD Publishing

——(2006b) *OECD Employment Outlook: Boosting Jobs and Incomes*, Paris: OECD Publishing.
——(2007a) *Labour Force Statistics 1986-2006*, Paris: OECD Publishing.
——(2007b) *OECD Factbook 2006*, Paris: OECD Publishing.
——(2008) "Gender, Institutions and Development Data Base (GID): Missing Women," on *OECD.StatExtracts*. Online. Available HTTP: <http://stats.oecd.org/OECD-Stat_Metadata/ShowMetadata.ashx?Dataset = GID&Coords = %5BVARIABLE%5D.%5BPI_3%5D&ShowOnWeb = true&Lang = en> (accessed 14 November 2008).
Organisation for Economic Co-operation and Development (OECD), Directorate for Financial and Enterprise Affairs of the Competition Committee (2005) "Policy Roundtables: Intellectual Property Rights 2004." Online. Available HTTP: <http://www.oecd.org/dataoecd/61/48/34306055.pdf> (accessed 23 November 2008).
Outhwaite, R.B. (1966) "The Trials of Foreign Borrowing: the English Crown and the Antwerp Money Market in the Mid-Sixteenth Century," *Economic History Review*, 19: 289–305.
——(1971) "Royal Borrowing in the Reign of Elizabeth I: The Aftermath of Antwerp," *English Historical Review*, 86: 251–63.
Pakistan, Government of (2007) *Provisional Constitutional Order No. 1.*
Parekh, B. (1997) "Cultural Diversity and the Modern State," in M. Doornbos and S. Kaviraj (eds) *Dynamics of State Formation*, New Delhi: Sage Publications.
Pencavel, J. (1999) "The Appropriate Design of Collective Bargaining Systems: Learning from the Experience of Britain, Australia and New Zealand," *Comparative Labor Law and Policy Journal*, 20(3): 447–82.
——(2004) "The Surprising Retreat of Union Britain," in D.E. Card, R. Blundell, and R.B. Freeman (eds) *Seeking a Premier Economy: The Economic Effects of British Economic Reforms, 1980–2000*, NBER Comparative Labor Markets Series, Chicago: University of Chicago Press.
Perdomo, R.P. (2007) "Lawyers and Political Liberalism in Venezuela," in L. Karpik, T. C. Halliday, and M.M. Feeley (eds) *The Legal Complex and Struggles for Political Liberalism*, Oxford: Hart Publishing.
Pereira, A.W. (2005) *Political (In)Justice: Authoritarianism and the Rule of Law in Brazil, Chile and Argentina*, Pittsburgh: University of Pittsburgh Press.
Pils, E. (2008) "Peasants Struggle for Land in China," paper presented at the meeting on "Access to Justice," American Bar Association, Washington, DC, 2–4 March.
Pistor, K., Keinan, Y., Kleinheisterkamp, J., and West, M.D. (2003) "Evolution of Corporate Law and the Transplant Effect: Lessons from Six Countries," *World Bank Research Observer*, 18: 89–112.
Prakash, O. (1985) *The Dutch East India Company and the Economy of Bengal 1630–1720*, Princeton: Princeton University Press.
Przeworski, A. (1982) *Islam and Modernity: Transformation of an Intellectual Tradition*, Chicago: University of Chicago Press.
——(2004) "Institutions Matter?" *Government and Opposition*, 39: 527–40.
Pue, W.W. (1998) "Lawyers and Political Liberalism in Eighteenth- and Nineteenth-Century England," in T.C. Halliday and L. Karpik (eds) *Lawyers and the Rise of Western Political Liberalism: Europe and North America from the Eighteenth to Twentieth Centuries*, Oxford: Oxford University Press.
Qian, Y. and Weingast, B. (1997) "Federalism as a Commitment to Preserving Market Incentives," *Journal of Economic Perspectives*, 11: 83–92.

Rahman, F. (1979) *Islam*, second edn, Chicago: University of Chicago Press.

——(1982) *Islam and Modernity: Transformation of an Intellectual Tradition*, Chicago: University of Chicago Press.

Rahnema, A. and Nomani, F. (1990) *The Secular Miracle: Religion, Politics, and Economic Policy in Iran*, London: Zed Books.

Rajan, R. and Zingales, L. (2003a) "The Great Reversals: The Politics of Financial Development in the Twentieth Century," *Journal of Financial Economics*, 69: 5–50.

——(2003b) *Saving Capitalism from Capitalists: Unleashing the Power of Financial Markets to Create Wealth and Spread Opportunity*, New York: Random House.

Ramseyer, J.M. and Rasmusen, E. (2003) *Measuring Judicial Independence*, Chicago: University of Chicago Press.

Ravallion, M. and Chen, S. (2004) *China's (Uneven) Progress against Poverty*, World Bank Policy Research Working Paper 3408, Washington, DC: World Bank.

Rawls, J. (1971) *A Theory of Justice*, Cambridge, MA: Harvard University Press.

——(1993) *Political Liberalism*, New York: Columbia University Press.

——(1999) *The Law of Peoples*, Cambridge, MA: Harvard University Press.

Rhoodie, E.M. (1989) *Discrimination Against Women: A Global Survey of the Economic, Educational, Social and Political Status of Women*, Jefferson, NC: McFarland.

Riemersma, J.C. (1950) "Oceanic Expansion: Government Influence on Company Organization in Holland and England (1550–1650)," *Journal of Economic History*, 10: 31–9.

——(1952) "Trading and Shipping Associations in 16th Century Holland," *Tijdschrift voor Geschiedenis*, 65: 330–8.

Rodriguez, V.E. (1995) "Municipal Autonomy and the Politics of Inter governmental Finance: Is it Different for the Opposition?" in V.E. Rodriguez and P.M. Ward (eds) *Opposition Government in Mexico*, Albuquerque: University of New Mexico Press.

Rodrik, D. (2004) "Getting Institutions Right," unpublished mimeo, Harvard University. Online. Available HTTP: http://ksghome.harvard.edu/~drodrik/papers.html (accessed 14 October 2008).

Rosen, L. (1989) *The Anthropology of Justice: Law as Culture in Islamic Society*, Cambridge: Cambridge University Press.

Roy, D. (2003) *Taiwan: A Political History*, Ithaca: Cornell University Press.

Rueschemeyer, D. (1998) "State, Capitalism, and the Organization of Legal Counsel: Examining an Extreme Case – the Prussian Bar, 1700–1914," in T.C. Halliday and L. Karpik (eds) *Lawyers and the Rise of Western Political Liberalism: Europe and North America from the Eighteenth to Twentieth Centuries*, Oxford: Oxford University Press.

Saavedra, J. and Torero, M. (2004) "Labor Market Reforms and Their Impact Over Formal Labor Demand and Job Market Turnover: The Case of Peru," in J.J. Heckman and C. Pagés (eds) *Law and Employment: Lessons from Latin America and the Caribbean*, Chicago: University of Chicago Press.

Sachs, J.D. (2006) "Welfare States, Beyond Ideology," *Scientific American*, 295(5): 42.

Sachs, J.D. and Pistor, K. (eds) (1997) *The Rule of Law and Economic Reform in Russia*, Boulder, CO: Westview Press.

Saha, C. (2003) *Gender Equity and Equality: Study of Girl Child in Rajasthan*, Jaipur: Rawat Publications.

Samaniego, R.M. (2006) "Employment Protection and High-Tech Aversion," *Review of Economic Dynamics*, 9(2): 224–41.

Sanchez Urribarri, R. (2007) "News from the Comparative Realm," *Law and Courts Newsletter*, 11–13.
Sanchez-Cuenca, I. (in progress) "Preferences Over Choices," Juan March Institute, Madrid.
Sapir, A. (2006) "Globalization and the Reform of European Social Models," *Journal of Common Market Studies*, 44(2): 369–90.
Schelling, T. (1960) *The Strategy of Conflict*, Cambridge: Harvard University Press.
Schleifer, A. and Glaeser, E.L. (2002) "Legal Origins," *Quarterly Journal of Economics*, 117: 1191–229.
Scott, W.R. (1912) *The Constitution and Finance of English, Scottish, and Irish Joint-Stock Companies to 1720*, Cambridge: Cambridge University Press.
Sen, A. (1970) *Collective Choice and Social Welfare*, San Francisco: Holden-Day; (1979) Amsterdam: North-Holland.
——(1977) "Rational Fools," *Philosophy and Public Affairs*, 6: 317–44.
——(1980) "Equality of What?" in S.M. McMurrin (ed.) *The Tanner Lectures on Human Values*, Volume I, Cambridge: Cambridge University Press.
——(1985) *Commodities and Capabilities*, Amsterdam: North-Holland.
——(1989) "Women's Survival as a Development Problem," *Bulletin of the American Academy of Arts*, 43: 14–29.
——(1990a) "Global Justice: Beyond International Equity," in I. Kaul, I. Grunberg, and M.A. Stern (eds) *Global Public Goods: International Cooperation in the 21st Century*, Oxford: Oxford University Press.
——(1990b) "Justice: Means versus Freedoms," *Philosophy and Public Affairs*, 19(2): 111–21.
——(1993) "Capability and Well-being," in M. Nussbaum and A. Sen (eds) *The Quality of Life*, Oxford: Oxford University Press.
——(1997) "Maximization and the Act of Choice," *Econometrica*, 65: 745–79.
——(1999a) *Development as Freedom*, New York: Random House.
——(1999b) "The Possibility of Social Choice," *American Economic Review*, 89: 349–78.
——(2000) "Consequential Evaluation and Practical Reason," *Journal of Philosophy*, 97: 477–502.
——(2001) "The Many Faces of Gender Inequality," *The New Republic*, 17 September.
——(2002) "Justice across Borders," in P. De Greiff and C. Cronin (eds) *Global Justice and Transnational Politics*, Cambridge, MA: MIT Press.
——(2004a) "Elements of a Theory of Human Rights," *Philosophy and Public Affairs*, 32(4): 315–56.
——(2004b) "Incompleteness and Reasoned Choice," *Synthese*, 140: 43–60.
——(2006a) *Identity and Violence: The Illusion of Destiny*, London: Allen Lane.
——(2006b) "What Do We Want from a Theory of Justice?" *Journal of Philosophy*, 103: 215–38.
——(2009, forthcoming) *The Idea of Justice*, London: Penguin; and Cambridge, MA: Belknap Press.
Sen, S. (coordinator) (2004) *A Report on Trafficking in Women and Children in India, 2002–2003*, New Delhi: Institute of Social Sciences, National Human Rights Commission, and UNIFEM.
Shapiro, M. (1964) *Law and Politics on the Supreme Court*, New York: Free Press.
——(1981) *Courts: A Comparative and Political Analysis*, Chicago: University of Chicago Press.

Silbey, S. (1997) "'Let Them Eat Cake': Globalization, Postmodern Colonialism, and the Possibilities of Justice," *Law and Society Review*, 31: 207–35.

Silverstein, G. (2003) "Globalization and the Rule of Law: A Machine that Runs of Itself?" *I·CON: International Journal of Constitutional Law*, 1(3): 427–45.

——(2008) "Singapore: The Exception that Proves Rules Matter," in T. Ginsburg and T. Moustafa (eds) *Rule by Law: The Politics of Courts in Authoritarian Regimes*, New York: Cambridge University Press.

Simon, H.A. (1947) *Administrative Behavior*, New York: Macmillan.

Sklar, J. (1987) "Political Theory and the Rule of Law," in A.C. Hutcheson and P. Monahan (eds) *The Rule of Law: Ideal or Ideology*, Toronto: Carswell.

Smillie, I., Gberie, L., and Hazleton, R. (2000) *The Heart of the Matter: Sierra Leone, Diamonds, and Human Security*, Ontario: Partnership Africa Canada. Online. Available HTTP: http://pacweb.org/e/index.php?option=content&task=view&id=42&Itemid=65 (accessed 23 November 2008).

Smith, A. (1976) *The Theory of Moral Sentiments*, Oxford: Clarendon Press.

——(1978) *Lectures on Jurisprudence*, ed. R.L. Meek, D.D. Raphael, and P.G. Stein, Oxford: Clarendon Press; reprinted (1982) Indianapolis: Liberty Press.

Smulovitz, C. (2003) "How Can the Rule of Law Rule? Cost Imposition through Decentralized Mechanisms," in A. Przeworski and J.M. Maravall (eds) *Democracy and the Rule of Law*, New York: Cambridge University Press.

Sokoloff, K. and Engerman, S.L. (2008) "Debating the Role of Institutions in Political and Economic Development: Theory, History, and Findings,"*Annual Review of Political Science*, 11: 119–35.

Solomon, P. (1996) *Soviet Criminal Justice under Stalin*, New York: Cambridge University Press.

Statistics Canada (2008) "Canada's Population Estimates," *The Daily*, 29 September. Online. Available HTTP: http://www.statcan.ca/Daily/English/080929/d080929b.htm (accessed 14 November 2008).

Steensgaard, N. (1977) "Dutch East India Company as an Institutional Innovation," in M. Aymard (ed.) *Dutch Capitalism and World Capitalism*, Cambridge: Cambridge University Press.

Steinberg, G. (2005) "The Wahhabi Ulama and the Saudi State: 1745 to the Present," in P. Aarts and G. Nonneman (eds) *Saudi Arabia in the Balance: Political Economy, Society, Foreign Affairs*, New York: New York University Press.

Supreme Court of Canada (1988) *Reference re the Secession of Quebec*, 2 SCR 217.

Supreme Court of India (1985) *Shah Banu*, 2 Sup. Ct. Cases 556.

Sussman, N. and Yafeh, Y. (2006) "Institutional Reforms, Financial Development and Sovereign Debt: Britain 1690 1790," *Journal of Economic History*, 66: 906–35.

't Hart, M.C. (1993) *Making of a Bourgeois State: War, Politics and Finance during the Dutch Revolt*, Manchester: Manchester University Press.

Tamanaha, B.Z. (1993) "The Folly of the 'Social Scientific' Concept of Legal Pluralism," *Journal of Law and Society*, 20: 192–217.

——(1995) "The Lessons of Law-and-Development Studies," *American Journal of International Law*, 89: 470–86.

——(2004) *On the Rule of Law: History, Politics, Theory*, Cambridge: Cambridge University Press.

Taylor, C. (1994) "The Politics of Recognition," in A. Gutman (ed.) *Multiculturalism: Examining the Politics of Recognition*, Princeton: Princeton University Press.

Thomas, M. (2007) "What Do the Worldwide Governance Indicators Measure?" working paper. Online. Available HTTP: http://papers.ssrn.com/sol3/papers.cfm?abstract_id = 1007527 (accessed 13 November 2008).

Tracy, J.D. (1985) *A Financial Revolution in the Habsburg Netherlands: Renten and Renteniers in the County of Holland, 1515–1565*, Berkeley: University of California Press.

Transparency International (2006) *World Corruption Perceptions Index*. Online. Available HTTP: http://www.transparency.org/policy_research/surveys_indices/cpi/2006 (accessed 15 October 2008).

Trochev, A. (2004) "Less Democracy, More Courts: A Puzzle of Judicial Review in Russia," *Law and Society Review*, 38(3): 513–48.

Trubek, D.M. and Galanter, M. (1974) "Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States," *Wisconsin Law Review*, 1062–1102.

Tully, J. (1995) *Strange Multiplicity: Constitutionalism in an Age of Diversity*, Cambridge: Cambridge University Press.

Tully, J. and Chambers, S. (1998) "Contract or Conversation? Theoretical Lessons from the Canadian Constitutional Crisis," *Politics and Society*, 26: 143–72.

Tyan, E. (1960) *Histoire de l'Organisation Judiciaire en Pays d'Islam*, second edn, Leiden: E.J. Brill.

Tyler, T.R. (1990) *Why People Obey the Law*, New Haven, CT: Yale University Press.

——(2006) "Psychological Perspectives on Legitimacy and Legitimation," *Annual Review of Psychology*, 57: 375–400.

Udovitch, A.L. (1985) "Islamic Law and the Social Context of Exchange in the Medieval Middle East," *History and Anthropology*, 1: 445–65.

United Nations, Office on Drugs and Crime (2002) *Eighth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems, covering the period 2001 – 2002*. Online. Available HTTP: http://www.unodc.org/pdf/crime/eighthsurvey/8pv.pdf (accessed 14 November 2008).

United Nations Development Program (2005) *Human Development Report 2005: International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World*, New York: United Nations Development Program.

United States, Government of (2003) *Check Clearing for the 21st Century Act*, Washington, DC: Government Publishing.

Upham, F. (2002) "Mythmaking in the Rule of Law Orthodoxy," working paper, Democracy and Rule of Law Project, Washington, DC: Carnegie Endowment for International Peace.

van Dillen, J.G. (1935) "Isaac Le Maire and the Early Trading in Dutch East India Company Shares," in G. Poitras (ed.) *Pioneers of Financial Economics*, Volume I, Northampton, VT: Edward Elgar.

——(1958) *Het oudste aandeelhoudersregister van de Kamer Amsterdam der Oost-Indische Compagnie*, The Hague: Martinus Nijhoff.

Vasudev, S. and Renuka, M. (2002) "Rape," *India Today*, 9 September.

Vikør, K.S. (2005) *Between God and Sultan: A History of Islamic Law*, Oxford: Oxford University Press.

VOC Charter (2005[1602]) reprinted in E. Gepken-Jager, G. Can Solinge, and L. Timmerman (eds) *VOC 1602–2002 – 400 Years of Company Law*, Deventer, Netherlands: Kluwer Legal Publishers.

Vogel, F.E. (2000) *Islamic Law and Legal System: Studies of Saudi Arabia*, Leiden: E.J. Brill.
Voigt, S. (2008) *How (Not) to Measure Institutions*, Washington, DC: World Bank.
Volcansek, M. (1994) "Political Power and Judicial Review in Italy," *Comparative Political Studies*, 4: 492–509.
Ward, P.M. (1995) "Policymaking and Policy Implementation among Non-PRI Governments: The PAN in Ciudad Juarez and in Chihuahua," in V.E. Rodriguez and P.M. Ward (eds) *Opposition Government in Mexico*, Albuquerque: University of New Mexico Press.
Weber, M. (1968) "Bureaucracy," in G. Roth and C. Wittich (eds) *Economy and Society*, New York: Bedminister Press.
——(1980) *Wirtschaft und Gesellschaft*, Tuebingen: J.C.B. Mohr (Paul Siebeck).
Weingast, B. (1995) "The Economic Role of Political Institutions," *Journal of Law, Economics, and Organization*, 7: 1–31.
——(1997) "The Political Foundations of Democracy and the Rule of Law," *American Political Science Review*, 91: 245–63.
——(2004) "Constructing Self-Enforcing Democracy in Spain," in I.L. Morris, J.A. Oppenheimer, and K. Soltan (eds) *Politics from Anarchy to Democracy: Rational Choice in Political Science*, Stanford: Stanford University Press.
——(2006) "Self-Enforcing Constitutions: With an Application to Democratic Stability in America's First Century," working paper, Hoover Institution.
Weiss, B.G. (1998) *The Spirit of Islamic Law*, Athens, GA: University of Georgia Press.
Wheeler, J.S. (1996) "Navy Finance, 1649–60," *Historical Journal*, 39: 457–66.
Widner, J.A. (2001) *Building the Rule of Law*, New York: W.W. Norton.
——(2008) "Building Judicial Independence in Semi-Democracies: Uganda and Tanzania," in T. Ginsburg and T. Moustafa (eds) *Rule by Law: The Politics of Courts in Authoritarian Regimes*, New York: Cambridge University Press.
Williams, R. (Archbishop of Canterbury) (2008) *Archbishop's Lecture – Civil and Religious Law in England: A Religious Perspective*. Online. Available HTTP: http://www.archbishopofcanterbury.org/1575 (accessed 19 October 2008).
Winn, B. and Davis, E. (2004) "Arbitration of Reinsurance Disputes: Is There a Better Way?" *Dispute Resolution Journal*, 59: 22–5.
World Bank (2005) *Economic Growth in the 1990s: Learning from a Decade of Reform*, Washington, DC: World Bank.
——(2006) *Doing Business 2007: How to Reform*, Washington DC: World Bank.
World Bank Institute (WBI) (2008) *Governance and Anti-Corruption*, Washington, DC: World Bank Group. Online. Available HTTP: www.worldbank.org/wbi/governance (accessed 14 November 2008).
World Justice Project (2007) *What Is the Rule of Law?* Washington, DC: American Bar Association. Online. Available HTTP: http://www.worldjusticeproject.org/ (accessed 14 November 2008).
Zakaria, F. (2003) *The Future of Freedom: Illiberal Democracy at Home and Abroad*, New York: Norton.
Zald, M.N. (1970) *Organizational Change*, Chicago: University of Chicago Press.
Zaman, M.Q. (2002) *The Ulama in Contemporary Islam: Custodians of Change*, Princeton: Princeton University Press.
Zilfi, M.C. (1988) *The Politics of Piety: The Ottoman Ulema in the Postclassical Age (1600–1800)*, Minneapolis: Bibliotheca Islamica.
Zubaida, S. (2003) *Law and Power in the Islamic World*, London: I.B. Tauris.