

Updated: Legal Systems and Individual Freedom

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November 30, 2024

Abstract

This paper tries to explain the relationship between public and private law and offer a new approach in defining the abstract political situations of voluntaryism and totalitarianism by tying them to legal systems. It offers a set of economic and political data to support the claim that the relationship between totalitarianism and voluntaryism and that of public and private law can be conceptualized in a single dimensional model. Further, it compares different major legal systems from all around the globe from economic and political liberty aspects by using renowned indexes.

Keywords: public law, private law, totalitarianism, voluntaryism, voluntarism, economic freedom, social liberty, legal systems, common law, civil law, secularism, theocracy

Update

There appeared three caveats in the original version of this paper. First is that the linear regressions between different indexes contributed neither to an understanding of causality nor served as a descriptive way to discriminate the distribution of index scores of different legal systems. The second is that comparing means, medians, inter-quartile and full ranges of the distribution of index scores of different legal systems did not take into account the variations of the given distributions, and thus did not say anything towards the significance of the differences. Lastly, the combination of different indexes into another index might have caused a loss of information that was manifest in the original indexes. This updated version aims to improve the paper in the given aspects by utilising scatter plots for the index scores of countries coloured based on their legal systems and running an ordinary least squares regression with dummies for legal systems for each original index.

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1 Public Law and Private Law

1.1 Public Law

A Dictionary of Law, published by the Oxford University Press defines public law as "the part of the law that deals with the constitution and functions of the organs of central and local government, the relationship between individuals and the state, and relationships between individuals that are of direct concern to the state." (Law, n.d.-b). Therefore, it is plausible to say that public law is the social framework which finds its source in government laws and regulations. It is, by definition, a top-down, imposed scheme that guides the arbitration of matters related to the "monopoly of the legitimate use of physical force". (Weber, 1958)

1.2 Private Law

The same resource above defines private law as "the part of the law that deals with such aspects of relationships between individuals that are of no direct concern to the state. It includes the law of property and of trusts, family law, the law of contract, mercantile law, and the law of tort." (Law, n.d.-a). Thus, private law is, historically, the structure of social norms that govern people's lives. It has its source directly in self-governing principles that have come to existence through the struggles and disputes that happened in a given society.

1.3 Public vs. Private Law

Even though a somewhat clear contrast as to what the fields of public and private law each encompass exists, it was not the case before. For example, in early twentieth century, A. V. Dicey claims that the distinction between legislative and pre-existing law (referring to the common law tradition which this paper argues to be closer to private law) was not around (Dicey, 2014). The division between the two and the supremacy of public law over the private, as argued by Hans-Hermann Hoppe, is indeed a very contemporary one (Hoppe, 2018). Also, it is sensible to define legal terms, as is done with private law above, without a government or state monopoly. This is so as it was the case during the Middle Ages (Berkeley Law, 2017).

2 Totalitarianism and Voluntaryism

2.1 Totalitarianism

A Dictionary of Contemporary World History, by the OUP, briefly states that totalitarianism is "A term often used as an antonym to pluralism to describe a state in which politics, society, and economy are all subject to the control of an elite or a party" (Riches & Palmowski, n.d.).

However, this definition misses the spirit of the system itself. Theoretically, the great majority of the people can give total power to their representatives under a pluralist democracy in regulating their and the others' lives. Thus, the definition by the Encyclopaedia Britannica, "a form of government that attempts to assert total control over the lives of its citizens." is more suitable (The Editors of Encyclopaedia, 2022).

2.2 Voluntaryism

Contrary to totalitarianism, which was first observed and then defined by social scientists, voluntaryism was structured before an intellectual ideal. Thus, different thinkers

of different fields defined voluntarism separately in separate contexts. Two of those contexts that are linked to the notion this paper discusses are political economy and sociology. On the political economy side, Auberon Herbert, the thinker who coined the term voluntarism, defines it by claiming that "Under voluntarism the state employs force only to repel force—to protect the person and the property of the individual against force and fraud; under voluntarism the state would defend the rights of liberty, never aggress upon them." (Herbert, 1978). And on the sociology side, Talcott Parsons, who formulated the theory of voluntaristic action named it such because "choices are voluntary rather than coerced or predetermined." (Dillon, 2010). Hence, it is sensible to define voluntarism as a system where every non-coercive decision is made voluntarily by individual actors.

2.3 Totalitarianism vs. Voluntarism

Were each regime be defined in a way that they contrast as much as possible, totalitarianism would be defined as a system where the relationships in a given society are all governed by the state, and voluntarism as a system where all relationships are governed by those who take part in them. From there, it is possible to draw parallels with the distinction regarding public and private law. While public law encompasses the relationships governed by the state, private law does the other side. In that sense, assuming that every action in a society can be attributed either to a public or private legal scheme apart from state monopoly on dispute resolution, totalitarianism is the regime where law is totally public and voluntarism is the one where it is totally private.

3 Correlative Data

3.1 Economic Indexes

This paper has utilised two indexes of economic freedom. One of them is Economic Freedom of the World Annual Report (Gwartney et al., 2022) published by Fraser Institute. This ranking is base 10. The other is the Index of Economic Freedom (Miller, Kim, & Roberts, 2022) published by the Heritage Foundation. This index is base 100. Both indexes are publicly available online and highly referenced in their respective domains. For both indexes, a higher score indicates a freer political system.

3.2 Social Indexes

Like their economic counterparts, there will be two indexes cited in this paper. One is the Human Freedom Index (Vásquez, McMahon, Murphy, & Schneider, 2022), co-published by the Cato Institute and the Fraser Institute. This ranking is base 10 and a higher score indicates a freer political system. The other is the State of World Liberty Index (Rhamey, 2022). No scoring is available for this index, but the ordinal ranking is used. A higher ranking (lower number) is an indication of a freer society. They are publicly available online and highly referenced works.

3.3 Scatter Plots of Indexes

One can see how countries of different legal systems are distributed with regards to every possible combination of the 4 indexes subject to this study with the graphs below.

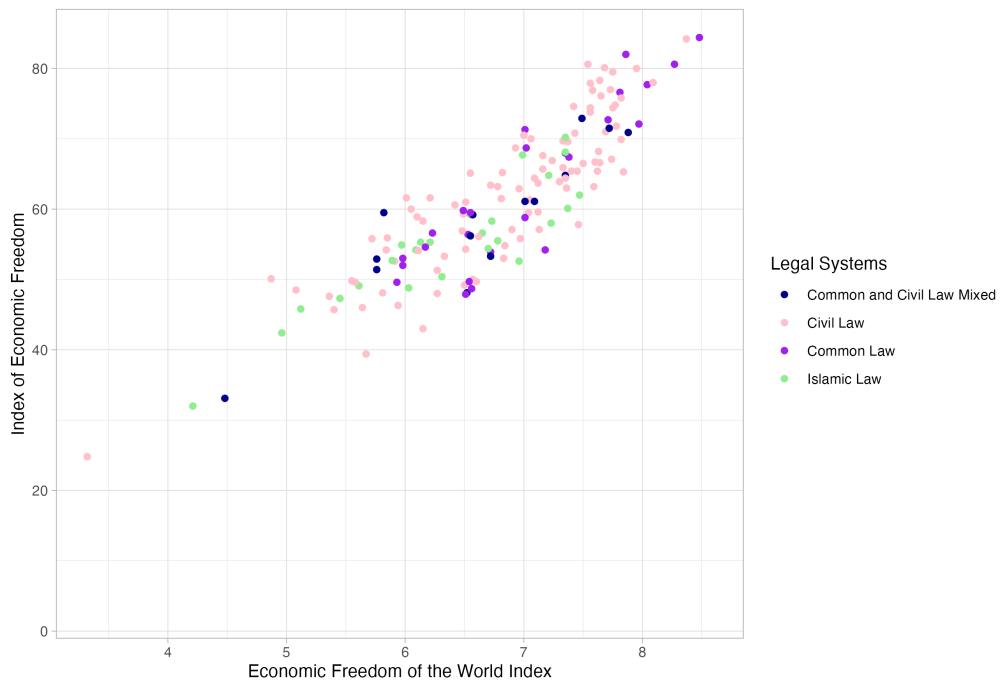


Figure 1: Scatter plot of Economic Freedom of the World Index and Index of Economic Freedom

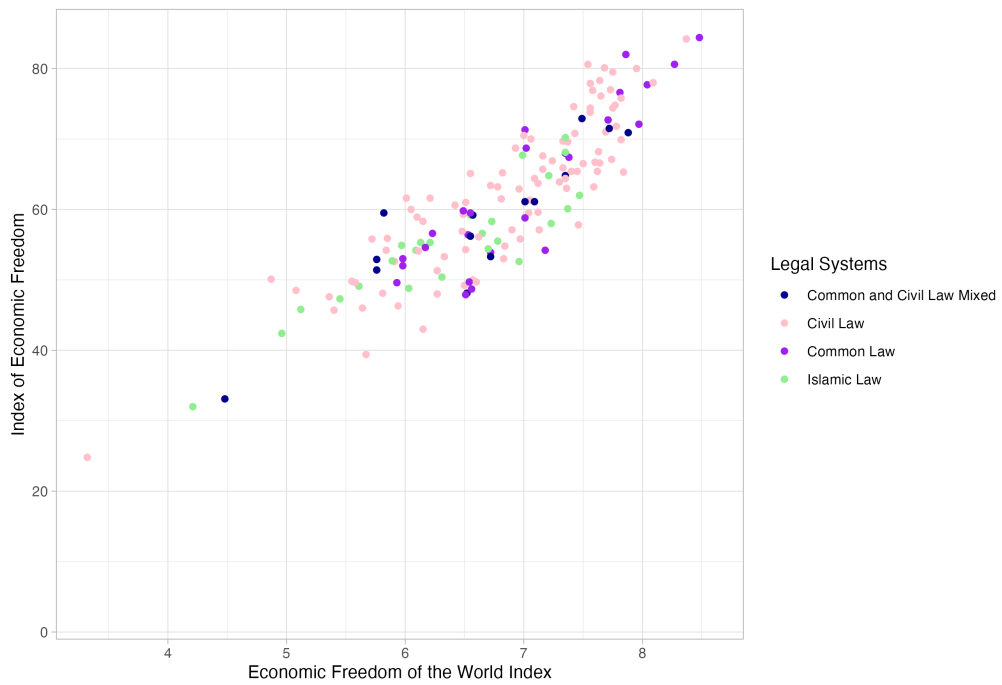


Figure 2: Scatter plot of Economic Freedom of the World Index and Index of Economic Freedom

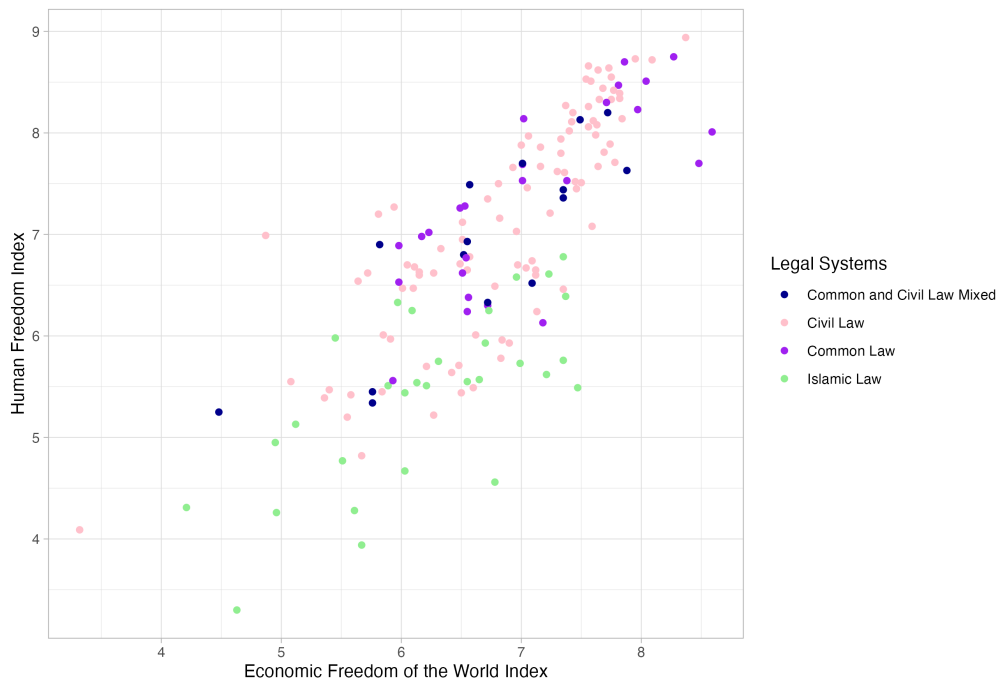


Figure 3: Scatter plot of Economic Freedom of the World Index and Human Freedom Index

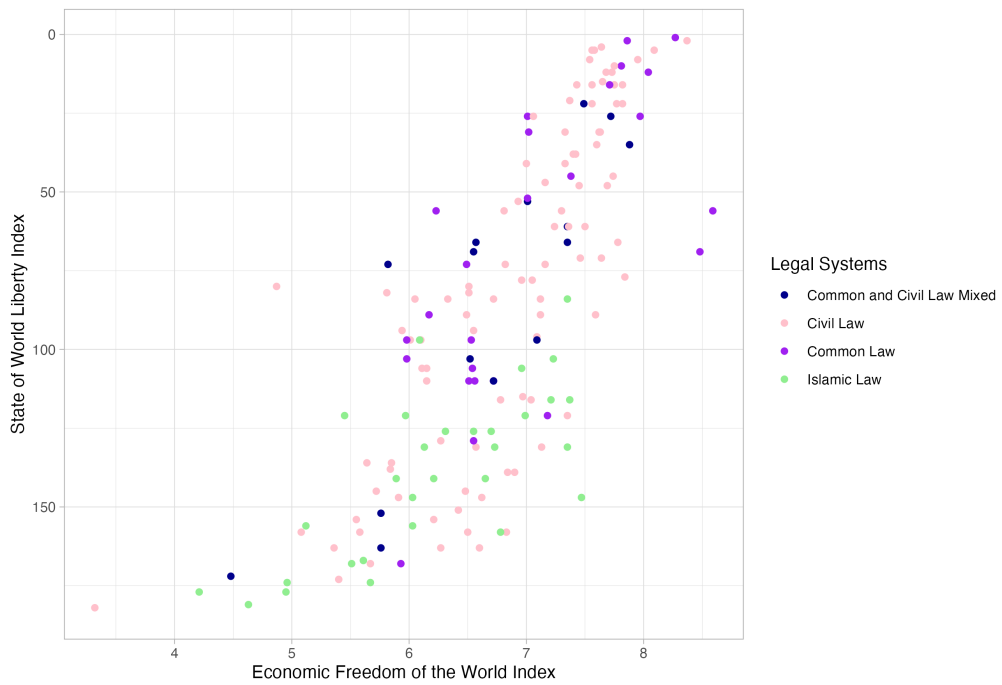


Figure 4: Scatter plot of Economic Freedom of the World Index and State of World Liberty Index

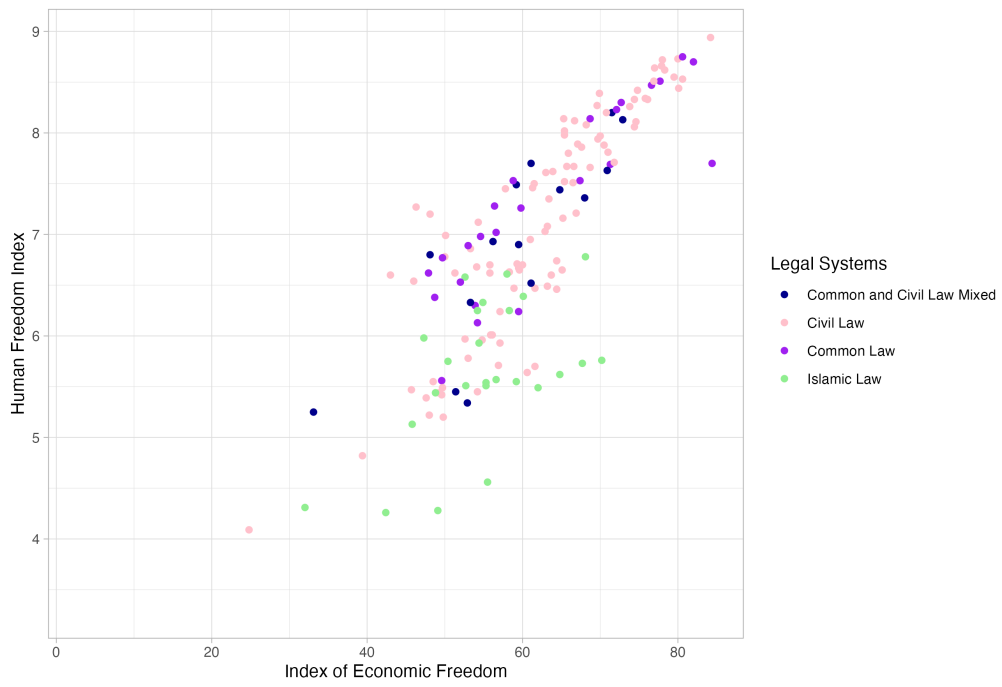


Figure 5: Scatter plot of Index of Economic Freedom and Human Freedom Index

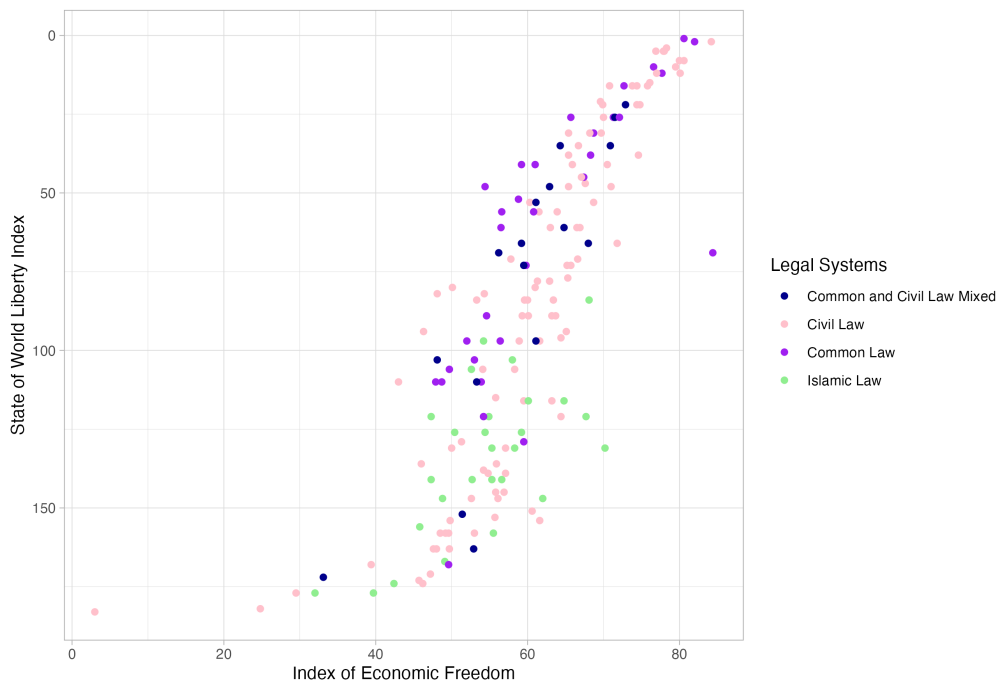


Figure 6: Scatter plot of Index of Economic Freedom and State of World Liberty Index

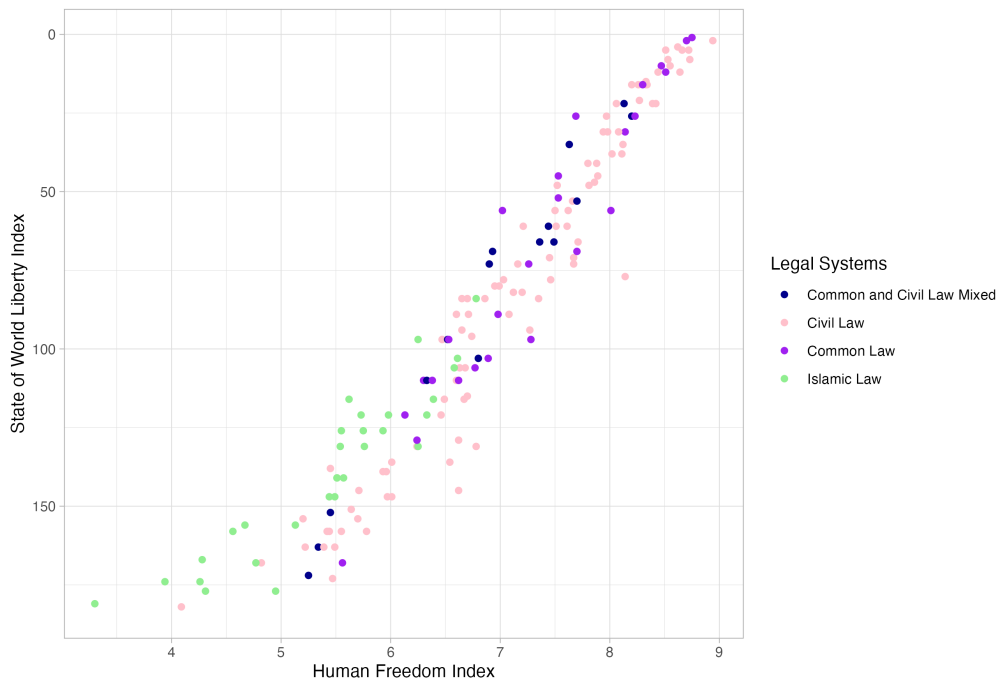


Figure 7: Scatter plot of Human Freedom Index and State of World Liberty Index

4 The Model

4.1 Proposition

As it can be seen from the previous correlations, a positive relationship between economic and social-political freedom exists. Despite the possible fit of non-linear regression models over linear ones in the data above, one may, to simplify the model, account for the non-linearity in a linear model with variations in the distances between given points in different places on the line. Thus, this paper proposes a linear model which has an abstract entity (may be a country, territory, system, etc.) in which every relationship is voluntary (a voluntarist entity or 100% private law) on its one hand and another in which every relationship is determined by the political authority (a totalitarian entity or 100% public law) on the other. A visual representation of the model can be seen below.

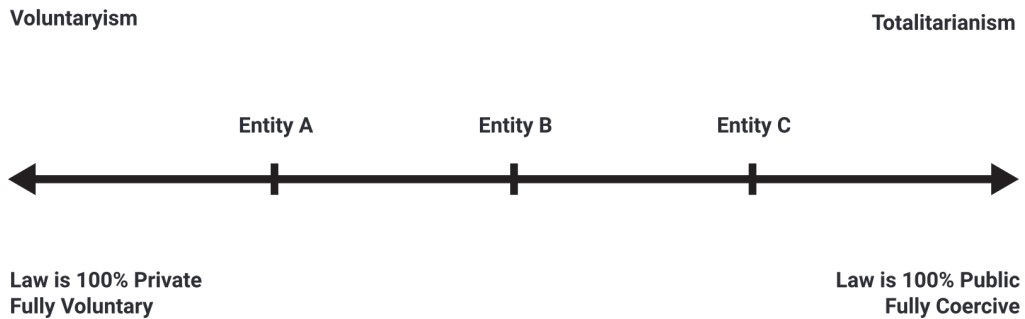


Figure 8: Proposed Model

4.2 Possible Inferences

From the available data, it is reasonable to conclude that from the relative positions of different entities the differences between the general freedom people living under them experience can be inferred. The correlations shown before especially support this idea for economic and social-political liberties. One caveat would be that which other correlation studies also share: one country might be different than the other in the unexpected direction because political and legal systems are complex and encompass many fields of their own. Knowing that, the model is still intellectually enjoyable, showcasing the correlation between different freedoms and the difference between entities.

5 Comparison of Legal Systems

5.1 Classification

The primary data source used for determining the main legal framework of countries are from The World Factbook published by the Central Intelligence Agency of the United States (Central Intelligence Agency, 2021). When in doubt, Juriglobe's respective list was also consulted (Juriglobe, n.d.). For countries including customary law inside their systems among others, the customary legal system was ignored. As those laws are based on customs which can change from one country to the other (Garner & Black, 2017), such a classification would be faulty.

5.2 Differences by Legal Systems

The bar and box plots below may help one in visually inspecting the differences between the distribution of index scores of different legal systems.

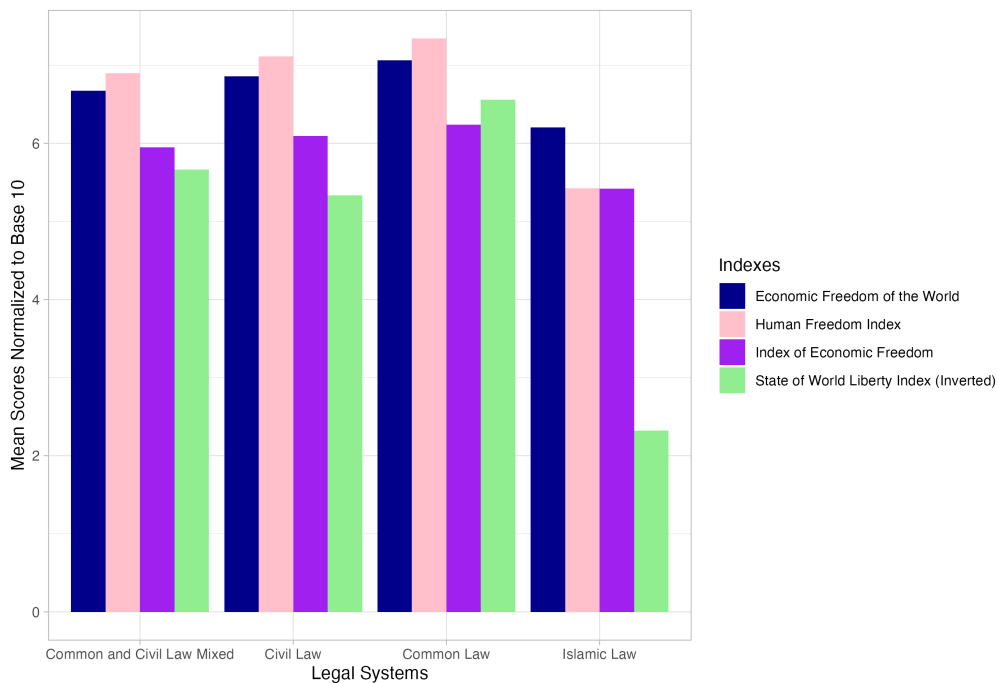


Figure 9: Bar plot of index means by legal system

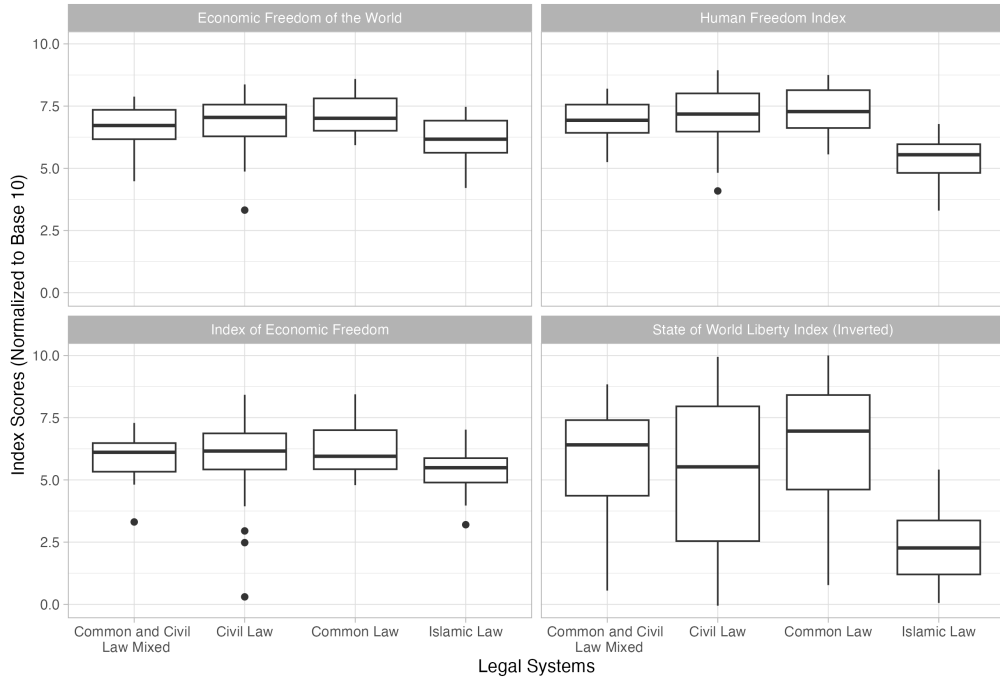


Figure 10: Box plot of index means by legal system

5.3 Regressions by Legal Systems

The regression and statistical test results for each index subject to this study based on legal systems are as follows in the tables below.

Index	Adjusted R-squared
Economic Freedom of the World Index	0.08
Index of Economic Freedom	0.03
Human Freedom Index	0.30
State of World Liberty Index	0.20

Table 1: Adjusted R-squared values of regressions

Index	Civil Law = Common and Civil Law Mixed
Economic Freedom of the World Index	0.43
Index of Economic Freedom	0.63
Human Freedom Index	0.45
State of World Liberty Index	0.63

Table 2: p-values for the equality of coefficients of Civil Law and Common and Civil Law Mixed

Index	Common Law = Common and Civil Law Mixed
Economic Freedom of the World Index	0.17
Index of Economic Freedom	0.40
Human Freedom Index	0.18
State of World Liberty Index	0.26

Table 3: p-values for the equality of coefficients of Common Law and Common and Civil Law Mixed

Index	Islamic Law = Common and Civil Law Mixed
Economic Freedom of the World Index	0.09
Index of Economic Freedom	0.14
Human Freedom Index	0.00
State of World Liberty Index	0.00

Table 4: p-values for the equality of coefficients of Islamic Law and Common and Civil Law Mixed

Index	Common Law = Civil Law
Economic Freedom of the World Index	0.30
Index of Economic Freedom	0.54
Human Freedom Index	0.31
State of World Liberty Index	0.02

Table 5: p-values for the equality of coefficients of Common Law and Civil Law

Index	Common Law = Islamic Law
Economic Freedom of the World Index	0.00
Index of Economic Freedom	0.01
Human Freedom Index	0.00
State of World Liberty Index	0.00

Table 6: p-values for the equality of coefficients of Common Law and Islamic Law

Index	Civil Law = Islamic Law
Economic Freedom of the World Index	0.00
Index of Economic Freedom	0.01
Human Freedom Index	0.00
State of World Liberty Index	0.00

Table 7: p-values for the equality of coefficients of Civil Law and Islamic Law

5.4 Afterthoughts

Although in some indexes the scores of common law countries, a system which prioritises private legal agreements in general ("Key Features of Common Law or Civil Law

Systems”), looked higher, there was no statistically significant difference observed between civil law, common law and common law and civil law mixed systems. What is of significance is that the range of index scores of civil law systems is far wider than it is for other systems. Civil law countries include some of the highest and lowest scoring countries. In addition, the data for some indexes significantly shows that countries with secular-western systems of law as their main framework are on average freer than those which have religious-Islamic law incorporated into their systems.

6 Summary

From the indexes available at this study, it can be seen that economic and social liberties can be accounted for by a linear model. Similarly, by the definitions given in this paper of public law, private law, voluntarism and totalitarianism, it can be seen that these figures are philosophically idealised as being contrary to each other. Thus, inferring from the correlations and the definitions, a linear model which can be used in speculating the relative freedom levels of different entities have been defined. Using the approach that was applied in generating the model, a comparative study of four major legal systems were carried out. The results showed no significant difference between legal systems other than Islamic law. However, it showed a significant difference of the ranges of index scores of each system and between secular-western and religious-Islamic systems.

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