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Law, Institutions, and Economic Development: A Comparative Historical Analysis of Europe and India

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Abstract
This paper examines the connection between law and economic progress in a comparative historical perspective in Europe and India. Based on the principles of institutional economics, legal history and studies of development, it contends that formal legal regimes such as property rules systems, contract enforcement systems and judicial autonomy are determinants of long run economic paths. Its paper tracks the development of mediaeval legal institutions in early modern Europe, examines the transplantation of English law into post-independent India and challenges the continuities and disjunctions of constitutional design post-independence. It also compares the empirical evidence on the manner the quality of institutions has influenced investment regimes and factor markets and distributional performance in the two regions. The analysis finds that though transplantation of the law is seldom a necessary factor of development, path-dependence of the rule of law, and vice versa, are essential complementary factors to capital accumulation and technological change.

Key Words: Legal Institutions, Economic Development, Comparative Law, Colonial Legacy, Rule of Law, India, Europe

Introduction

The nexus is law and economic development has engaged scholars across fields more than 100 years but has been one of the most sensitive landscapes in comparative social science. The most rigorously expressed foundation of institutional economics according to Douglass North is that, institutions are the rules of the game in society, which determine the incentive structures within which the interaction, production and exchange run in society.[1] In this sense, a legal system is much more than a technical tool of the art of dispute resolution: it is the architectonic structure within which the economic actors construct themselves, and on the basis of which, they generate long-term expectations, enter into contractual relations and invest productive resources.

When one contrasts Western Europe, which is widely viewed as the cradle of modern capitalism and the legal forms and practices that accompany it with India, whose legal

[1] Douglass C. North, Institutions, Institutional Change and Economic Performance (Cambridge University Press, 1990) p.3.

tradition can be viewed as a vastly more complex overlay of pre-colonial customary law, Mughal administrative practice, colonial common-law transplantation, and post-independent constitutional innovation. The landmark study of the origins of colonial differences published by Acemoglu, Johnson and Robinson, provided empirical evidence that differences in institutional quality (because of the nature of initial colonial confrontations) can explain a large portion of cross-national income divergences that even continue to exist in such troubled situations, as the twenty-first century.[2]

An influential thesis of Hernando De Soto adds another to this list: the formality of law and the recognition of extralegal property arrangements within the formal system is a precondition to the transformation of dead capital into productive assets, a problem he defines as the most acute in developing economies. God forbid that the post Indian history course of action justifies or complicates these assertions: this is the main empirical question that drives this paper.

This paper proceeds in five parts. Part II surveys the formation of legal institutions in mediaeval and early modern Europe, with particular attention to property rights, mercantile law, and the rise of judicial independence. Part III analyses the architecture of colonial and post-colonial legal institutions in India. Part IV conducts a comparative assessment across three dimensions: property rights, contract enforcement, and political-constitutional constraints on executive power. Part V presents supporting empirical data in tabular and figural form. Part VI concludes with broader theoretical reflections on the relationship between institutional design and developmental outcomes.

2. Legal Institutions and Economic Development in European History

2.1. The Roman law Revival and the Emergence of Commercial Order

Max Weber identified formal legal rationality the application of general, predictable rules by technically trained jurists operating within an autonomous institutional structure as a necessary, if not sufficient, condition for the emergence of modern capitalism.[3] This form of legal rationality was forged in Europe through a complex and gradual process. The rediscovery of Justinian's Corpus Juris Civilis at Bologna in the late eleventh century and its subsequent diffusion through Europe's emergent universities created a pan-continental legal class capable of systematizing commercial relationships in abstract, transferable categories.

Harold Berman's magisterial account of the *papal revolution* and its legal legacy identifies the eleventh and twelfth centuries as the formative period during which canon law, royal law, mercantile law, and urban law began to differentiate and rationalize each developing autonomous institutional carriers courts, guilds, city councils, chanceries — that provided credible commitment mechanisms for contracting parties.[4] The lex mercatoria that developed among merchant communities across the Italian city-states, the Hanseatic League, and the

[2] Daron Acemoglu, Simon Johnson and James A. Robinson, 'The Colonial Origins of Comparative Development: An Empirical Investigation' (2001) 91 American Economic Review 1369, 1370.
[3] Max Weber, Economy and Society (University of California Press, 1978) p.641.
[4] Harold J. Berman, Law and Revolution: The Formation of the Western Legal Tradition (Harvard University Press, 1983) p.10.

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Champagne fairs constituted a transnational legal order that preceded and in many respects shaped the commercial jurisprudence of early modern states.

2.2. Property Rights, Enclosure, and Capital Formation

The English common law, and in particular its treatment of real property, has attracted special attention in the political economy literature. The gradual clarification and securitization of freehold tenure particularly the doctrines of seisin, livery, and the action of ejectment created a system within which landowners could credibly commit long-term improvements, raise capital on the security of land, and transfer interests through a relatively transparent convincing system.[5] Rajan and Zingales have further shown how financial development in early modern Europe was deeply correlated with the legal protection of investor rights and the existence of independent courts capable of enforcing contracts against sovereign debtors.[6]

The famous enclosure movement of the fifteenth through nineteenth centuries illustrates the double-edged character of propitiation: while it generated the efficiency gains associated with internalizing externalities in land use, it simultaneously displaced customary users, accelerating the formation of a wage-labour force that fuelled early industrialization.[7] Braudel's long-run analysis of European capitalism underscores that legal security of commercial contracts, backed by independent courts, was the essential institutional substrate enabling the accumulation of mercantile and eventually industrial capital.

2.3. Constitutionalism and the Constraint of Executive Discretion

Perhaps the single most consequential institutional development in European legal history from a developmental perspective was the gradual subordination of sovereign authority to constitutional constraint. The English constitutional settlement of 1688-89, analyzed by North and Weingast as a credible commitment device, is paradigmatic: by vesting appropriation rights in Parliament and securing judicial independence through the Act of Settlement 1701, the post-revolutionary settlement dramatically reduced the perceived sovereign risk on public debt, enabling the government to borrow at markedly reduced rates.[8] This fiscal-military advantage over continental rivals, combined with the property-rights security it signaled to private investors, generated a virtuous cycle of capital formation and technological investment that underpinned British industrialization.

3. Colonial Transplantation and Post-Colonial Institutional Design in India

3.1. Pre-Colonial Legal Orders: Diversity and Complexity

It would be a fundamental error to approach pre-colonial India as an institutional tabula rasa awaiting the imposition of rational-legal order. The subcontinent harbored an extraordinary plurality of legal traditions: the Dharmashastras literature provided normative frameworks for personal law and social ordering; customary law governed the vast majority of agricultural and

[5] Charles Donahue Jr, 'Laelius Discusses Property Rights' (2008) 56 American Journal of Comparative Law 289, 292.
[6] Raghuram G. Rajan and Luigi Zingales, 'The Great Reversals: The Politics of Financial Development in the Twentieth Century' (2003) 69 Journal of Financial Economics 5, 8.
[7] Fernand Braudel, The Wheels of Commerce: Civilisation and Capitalism (Harper & Row, 1979) p.400.
[8] Philip Hoffman, Why Did Europe Conquer the World? (Princeton University Press, 2015) p.15.

commercial transactions at the village level; and mercantile communities such as the Marwaris, Chettiars, and Banias maintained sophisticated credit networks, dispute resolution mechanisms, and forms of commercial paper (hundis) whose institutional infrastructure was entirely endogenous.[9]

Marc Galanter's foundational work on *competing equalities* in Indian legal history demonstrates the deep embeddedness of caste as an ordering principle of economic life not merely as a social hierarchy but as a structure of occupational specialisation, credit allocation, and contract enforcement a structure whose interaction with colonial and post-colonial law would prove both persistent and productive of inequality.[10] Ambedkar's radical challenge to this order, ultimately institutionalized in the abolition of untouchability and the constitutional guarantee of equal protection, represented precisely the kind of foundational institutional rupture that developmental economists identify as transformative.[11]

3.2. The Colonial Legal Transformation: The Permanent Settlement and Beyond

The East India Company's gradual transformation from a commercial enterprise into a territorial sovereign inaugurated a process of legal transformation whose consequences proved more durable than its architects anticipated. The most consequential single intervention was the Permanent Settlement of Bengal in 1793, by which Governor-General Cornwallis vested permanent, heritable, and alienable property rights in the zamindars, fixing their revenue obligations to the colonial state in perpetuity.[12] This represented a deliberate attempt to create, by juridical fiat, a class of improving landlords analogous to the English gentry and thereby stimulate the kind of property-rights-driven agricultural investment that Lockean theory and English empirical experience suggested would follow from secure title.

Guha's classic analysis demonstrates that the Permanent Settlement was based on a fundamental misreading of Bengali agrarian social structure. Rather than creating improving landlords, it generated a class of rent-extracting intermediaries with little incentive for productive investment and strong incentives for sub-letting and rack-renting. Banerjee and Iyer's subsequent econometric work found that districts subject to landlord-based systems of land tenure under colonial rule consistently exhibited lower agricultural investment, lower rural literacy, and higher levels of rural conflict in the post-independence period relative to districts where peasant proprietorship was the norm a striking illustration of institutional path-dependence extending across more than a century.[13]

Bernard Cohn's analysis of colonial *forms of knowledge* illuminates the epistemological dimension of legal transplantation: colonial law functioned not merely as a system of regulation but as an instrument of legibility a means by which the colonial state converted the multitudinous and locally variable forms of Indian land use, customary right, and social obligation into uniform, documentary, and above all, taxable categories.[14] The creation of

[9] Jawaharlal Nehru, The Discovery of India (Oxford University Press, 1946) p.290.
[10] Marc Galanter, Law and Society in Modern India (Oxford University Press, 1989) p.17.
[11] B.R. Ambedkar, 'Annihilation of Caste' in Vasant Moon (ed), Dr Babasaheb Ambedkar: Writings and Speeches, Vol 1 (Government of Maharashtra, 1979) p.23.
[12] Ranajit Guha, A Rule of Property for Bengal: An Essay on the Idea of Permanent Settlement (Orient Longman, 1963) p.5.
[13] Abhijit Banerjee and Lakshmi Iyer, 'History, Institutions, and Economic Performance: The Legacy of Colonial Land Tenure Systems in India' (2005) 95 American Economic Review 1190.
[14] Bernard S. Cohn, Colonialism and Its Forms of Knowledge (Princeton University Press, 1996) p.57.

cadastral surveys, settlement registers, and title deeds thus simultaneously extended state power and restructured the landscape of economic opportunity.

3.3. The Post-Independence Constitutional Settlement and Developmental Law

The Constitution of India, adopted in 1950, represents one of the most ambitious exercises in transformative constitutionalism in the post-war world. Its architects, led by Ambedkar, consciously sought to deploy legal-constitutional instruments to accomplish a social revolution that the market, left to it, would not deliver. The Directive Principles of State Policy, while non-justiciable, articulated a developmental programme land redistribution, minimum wage legislation, cooperative economic organisation that shaped the legislative agenda of the Nehruvian state for three decades.

Yet the interaction between this transformative constitutional ambition and the inherited colonial legal infrastructure generated significant tensions. The right to property, originally included in the fundamental rights chapter, was subjected to progressive restrictions through a succession of constitutional amendments aimed at enabling land reform, before being finally demoted to a mere constitutional right (rather than a fundamental right) by the Forty-Fourth Amendment in 1978.[15] This trajectory stands in stark contrast to the European consolidation of property rights and illustrates the distinctive developmental challenges faced by post-colonial states seeking to reconcile redistributive justice with the investment security demands of capital markets.

4. Comparative Assessment: Three Institutional Dimensions

4.1. Property Rights and Investment Security

La Porta, Lopez-de-Silanes and Shleifer's *legal origins* thesis posits that common-law systems including India provide systematically stronger protections for private investors than French civil-law systems, due to the common law's historical emphasis on judicial protection of property and contract rights against legislative encroachment.[16] On this account, India's common-law heritage should confer a persistent institutional advantage relative to civil-law developing countries. The empirical record is, however, considerably more ambiguous.

The World Bank's Doing Business indicators have consistently recorded significant weaknesses in India's property registration and contract enforcement systems: as of 2020, registering property required eleven procedures and an average of forty-seven days, while enforcing a contract required 1,445 days and 31 percent of the claim value in costs among the highest in any major economy.[17]

4.2. Contract Enforcement and Financial Development

[15] Upendra Baxi, 'The Avatars of Indian Legal Studies' in Rajeev Dhavan and Alice Jacob (eds), Indian Constitution: Trends and Issues (Tripathi, 1978) p.40.
[16] Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer, 'The Economic Consequences of Legal Origins' (2008) 46 Journal of Economic Literature 285.
[17] World Bank, Doing Business 2020: Comparing Business Regulation in 190 Economies (World Bank, 2020) p.11.

The historical explanation of the origin of financial institutions in Europe by Ferguson highlights the centrality of the process of contract enforcement in the development of capital market: to the transformation of debt into a tradable instrument, to the securitization of streams of future income, and to the evolution of insurance and joint-stock organization all presuppose a legal system capable of giving effective effect to complex, long-term, multiparty obligations.[18] The lead Europe had in this regard, was acquired over centuries of institutional co-evolution among commercial practice, courts of mercantile and codification of law a process which the colonial courts of India partially applied, but never fully achieved.

The cross-country analysis by Commander and Svejnar shows that the business environment with legal institutions has an independent and significant influence on firm's performance and competitiveness in export as well as these of other factors, as over and above factor endowments and macroeconomic conditions.[19] The pending commercial litigation backlog of approximately over 40 million cases at all court levels awaiting litigation as of 2023 is a structural institutional constraint with macroeconomic costs, though in truth difficult to measure, widely regarded as substantial.

4.3. Judicial Independence and Constitutional Constraints

Acemoglu, Johnson and Robinson's *reversal of fortune* thesis identifies the quality of institutions, rather than geography or culture, as the primary determinant of why previously prosperous colonial territories experienced relative economic decline.[20] Their instrumental variable strategy exploits variation in settler mortality to identify exogenous variation in institutional quality finding that once institutions are properly instrumented, their effect on income per capita is large and statistically robust.

India's Supreme Court has developed a distinctive jurisprudence of judicial review, including the celebrated doctrine of the basic structure of the Constitution enunciated in Kesavananda Bharati v. State of Kerala (1973) which limits the amendment power of Parliament and thereby entrenches certain constitutional essentials against temporary legislative majorities.[21] Chief Justice Bhagwati's development of public interest litigation in the 1980s further expanded judicial access for marginalised citizens, though critics have questioned the developmental coherence of some consequent interventions.

Amartya Sen's capabilities approach provides a normative framework that transcends the narrow efficiency metrics of mainstream institutional economics: development, on this account, is the expansion of substantive freedoms, and legal institutions are to be evaluated not merely by their contribution to aggregate output but by their role in expanding the capabilities of all citizens, particularly the most disadvantaged.[22] This framework captures dimensions of India's institutional experience constitutional untouchability abolition, forest

[18] Niall Ferguson, The Ascent of Money: A Financial History of the World (Penguin Press, 2008) p.72.

[19] Simon Commander and Jan Svejnar, 'Business Environment, Exports, Ownership, and Firm Performance' (2011) 57 Review of Economics and Statistics 921.

[20] Acemoglu, Johnson and Robinson, 'Reversal of Fortune: Geography and Institutions in the Making of the Modern World Income Distribution' (2002) 117 Quarterly Journal of Economics 1231.

[21] P.N. Bhagwati, 'Judicial Activism and Public Interest Litigation' (1984) 23 Columbia Journal of Transnational Law 561, 562.

[22] Amartya Sen, Development as Freedom (Oxford University Press, 1999) p.40.

rights legislation, the right to information, the Mahatma Gandhi National Rural Employment Guarantee Act that remain invisible to purely growth-focused analyses.

5. Empirical Data: Comparative Institutional Indicators

The following figures present comparative institutional and developmental data for select European economies and India, illustrating the empirical correlates of the theoretical and historical analysis presented above.

Indicator	United Kingdom	Germany	France	India
Rule of Law Index (0–1)	0.91	0.88	0.82	0.56
Property Rights Score (0–100)	83.4	81.2	76.8	54.6
Days to Enforce Contract	437	499	395	1,445
Cost to Enforce Contract (% claim)	43.5%	14.4%	17.4%	31.0%
Starting a Business (Days)	4	7	4	18
Judicial Independence Score (0–7)	5.9	6.1	5.6	4.3
Control of Corruption (–2.5 to 2.5)	1.87	1.72	1.36	–0.14
Legal Rights Index (0–12)	9	8	6	6

Figure 1: Comparative Institutional Quality Indicators: Europe vs. India (2022)

Figure 1 reveals a consistent pattern: European economies and the United Kingdom in particular, whose legal system most directly shaped Indian common law score substantially higher on all dimensions of institutional quality. The contract enforcement gap is especially striking: Indian courts require more than three times as many days to resolve commercial disputes as UK courts, and at comparable cost as a share of claim value despite far lower average incomes.

Period	Western Europe GDP/capita Growth	India GDP/capita Growth	Key Institutional Development
1500–1700	+0.2% p.a.	+0.1% p.a.	Common law courts; lex mercatoria
1700–1820	+0.4% p.a.	+0.0% p.a.	Glorious Revolution; East India Company
1820–1913	+1.2% p.a.	–0.2% p.a.	Industrialisation; Colonial codification
1913–1950	+0.8% p.a.	–0.1% p.a.	World Wars; Indian independence movement
1950–1980	+3.8% p.a.	+1.4% p.a.	Post-war settlement; Indian Constitution
1980–2000	+2.1% p.a.	+3.6% p.a.	Thatcherism; Indian liberalisation (1991)
2000–2022	+1.3% p.a.	+5.8% p.a.	Eurozone; Digital economy; GST reform

Figure 2: Historical GDP Per Capita Growth Rates and Institutional Milestones: Europe and India

Figure 2 illuminates the developmental divergence over the long run. The period 1820–1913 characterised by colonial extraction, deindustrialisation of Indian manufacturing, and the drain of wealth documented by Dadabhai Naoroji corresponds to a century of near-zero or negative income growth in India against sustained European industrialisation. The post-1980 reversal, accelerating dramatically after 1991, coincides with India's transition to a more market-oriented institutional framework.

Institutional Dimension	European Historical Pattern	Indian Historical Pattern	Convergence?
Property Rights	Gradual, secure; enclosure movement	Disrupted by colonial intervention; land reform fragmentation	Partial — titling reforms ongoing
Contract Law	Developed via lex mercatoria & codification	Colonial codes imposed; indigenously adapted	High — shared common law base
Judicial Independence	Embedded via constitutional settlement	Strong formal guarantee; backlog constraint	Moderate — structural reform needed
Corporate Governance	Joint-stock company (17th c. England)	Colonial-era corporate forms inherited	Significant gaps remain
Labour Law	Common law employment + modern statute	Highly fragmented; 40+ central acts pre-2020	Improving — Labour Codes 2020
Land Registration	Cadastral systems (18th–19th c.)	Colonial revenue records; digitalising	Major gap persisting

Figure 3: Comparative Institutional Development: European and Indian Patterns across Key Dimensions

5. Conclusion

The comparative historical analysis, as shown in this paper, has several interconnected conclusions. First, there are legal institutions whose contribution to economic development is not annulled by any factor of historical contingency, social structure, or even specific attitudes of the law enforcing the law. The European experience shows that the consolidation of the self-reinforcing institutional ecosystem of secure property rights, reliable contract enforcement, available financial markets and constitutional protection of executive discretion was not a natural development but a result of certain historical coincidences and was continually contested.

Second, colonial importation of English law into India created hugely paradoxical results. Although it introduced a solid national jurisprudence and single-national law, as well as a sophisticated common-law jurisprudence, it also created a legacy of institutional fragmentation - between the formal and the customary law, between the urban and the rural legal environment, between the legally literate and the legally marginalized - that persists in shaping the developmental trajectory of India.

Third, India's post-independence constitutional experiment represents a distinctive and underappreciated form of institutional innovation. The deployment of constitutional law as an instrument of social transformation the abolition of untouchability, the reservation system,

public interest litigation, the right to information reflects a recognition, embedded in the basic structure of the constitutional order, that legal institutions must address questions of distributive justice if they are to generate the social legitimacy necessary for effective economic governance.

Fourth, the institutional gap between India and its European comparators particularly in contract enforcement land titling, and judicial capacity remains substantial and constitutes a genuine constraint on India's developmental potential. The evidence reviewed here suggests that marginal improvements in institutional quality can generate large economic returns, but that such improvements require deep reforms to judicial infrastructure, land administration, and the relationship between formal and informal economic activity.

Upendra Baxi's vision of a *future of human rights* that transcends the narrow framework of civil and political rights to encompass economic and social justice captures the normative horizon toward which India's legal system must continue to evolve.[23] Sen's capabilities framework reminds us that the ultimate test of legal institutions is not their contribution to GDP growth but their capacity to expand the substantive freedoms of all persons. On both counts, the comparative historical record reviewed in this paper suggests that India has made significant progress and that further progress will depend critically on the deepening and democratization of its legal institutions.

[23] Upendra Baxi, The Future of Human Rights (Oxford University Press, 2002) p.22.