

The Social Determinants of the Rule of Law: A Comparison of Jamaica and Barbados

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Summary. — This paper examines the social determinants of the rule of law by comparing Jamaica and Barbados, two countries with many similarities, but with divergent outcomes concerning the rule of law. The research takes a comparative historical approach, specifically investigating the origins of the divergence of the rule of law between Jamaica and Barbados by focusing on the late colonial period (1937–1966). Using new data collected from archival research, state legitimacy is identified as the key factor that helps explain the divergent trajectories of the rule of law in Jamaica and Barbados post-independence. Going beyond state-based explanations of the rule of law, the analysis suggests that the rule of law not only depends on characteristics of the state, but also on characteristics of society.

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1. INTRODUCTION

The study of the rule of law has a long history. Hobbes ([1651] 1958) identified the need of a strong state to provide the rule of law to avoid a social order where life would be “solitary, poor, nasty, brutish and short” in a war of “every man against every man” (pp. 106–107). Since Hobbes, issues surrounding the rule of law have continued to be debated by scholars. However, during the last 20 years, there has been a resurgence in academic interest in the rule of law, particularly with respect to effect of the rule of law on development.

There is an emerging consensus that a strong rule of law is an important and robust correlate of development. Numerous studies suggest that the rule of law is linked not only to economic development (Acemoglu, Johnson, & Robinson, 2001; Dam, 2006; North, 1990), but also to human development (i.e. health and education—see Dawson, 2010; Kaufmann, Kraay, & Zoido-Lobaton, 1999), poverty reduction (Tebaldi & Mohan, 2010) and the consolidation of democracy (Diamond, 2008; Fukuyama, 2011; Rigobon & Rodrik, 2005). Over the past two decades, rule of law development assistance has become an increasingly central component of the provision of foreign aid. Billions of aid dollars have been channeled toward strengthening the rule of law in weak states; however, these efforts have met with little success (Kleinfeld, 2012).

The current focus of rule of law development assistance is on getting state and legal institutions “right” (OECD, 2007). That is, most aid has been directed toward modifying and reshaping legal institutions to resemble those of Western countries, with the assumption that a strong rule of law will naturally follow once the proper institutions are in place. Many scholars raise concerns over this strategy, particularly since it has not been very successful. Haggard, MacIntyre, and Tiede (2008) argue that “caution should be exercised in the introduction of an alien legal system... it is a grave error to think of law as a technology that can be readily transferred elsewhere” (p. 221). Carothers (2009) sums up the difficulties in providing rule of law assistance in that:

achieving the rule of law involves far more than getting judges trained, putting modern police equipment in place, and reprinting and distributing legal texts. It is a transformative process that changes how power

is both exercised and distributed in a society... [and] also involves basic changes in how citizens relate to state authority and also to one another. (pp. 59–60)

Given these criticisms of the current approach to rule of law promotion and the calls for a greater emphasis to be placed upon state–society relations, there is a striking absence of scholarly work on the determinants of the rule of law, particularly within the social sciences. This paper directly addresses this issue by investigating the social determinants of the rule of law through a comparative historical analysis of Jamaica and Barbados.

The selection of Jamaica and Barbados as cases must be understood through a conceptual analysis of the rule of law. According to Weber ([1922] 1978), at its most basic, the rule of law can be defined as the extent to which the population obeys the law.¹ Given this basic definition, drawing on Haggard and Tiede (2011) it is useful to distinguish between three general components of the rule of law: the protection of private property and contract enforcement; security of the person (i.e. the absence of unlawful violence); and legal constraints that limit political power.²

The literature examining the effect of the rule of law on development has tended to focus on the protection of private property and contract enforcement (Dam, 2006; North, 1990). However, recent research suggests that the control of violence is “a crucial determinant of economic performance” and that its effects have been underestimated, potentially resulting in the overstatement of the developmental effects of property rights and contract enforcement (Haggard & Tiede, 2011, p. 681). In Latin America and the Caribbean violent crime is not only a serious rule of law concern, but it has become one of the most pressing social problems in the region. Aside from its devastating human, social, and psychological costs, it

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is argued that violence has also significantly hindered economic and social development and democratic consolidation, leading the Pan American Health Organization to label it as “the social pandemic” of the Americas (Chelala, 1997; UNODC, 2007; World Bank, 2011a, 2011c). Indeed, the problem of controlling or managing violence is considered by some to be the most fundamental function of a state (Bates, 2010; North, Wallis, & Weingast, 2009). Accordingly, as the literature is too heavily focused on property rights and contract enforcement, this paper will focus on the personal security aspect of the rule of law (i.e. violence). This is accomplished by controlling for the other two components of the rule of law through case selection—as outlined below, Jamaica and Barbados have similar democratic environments (i.e. similar constraints on political power) and similar levels of contract enforcement and protection of private property, but differ in their capacity to limit violence.

My findings suggest that state legitimacy is a crucial determinant of the rule of law that helps explain its divergent trajectories in Jamaica and Barbados.³ Moreover, the late colonial period is identified as the critical period that sent the islands on different rule of law trajectories post-independence. The paper is organized as follows. Section 2 provides a detailed comparison of the rule of law in both Jamaica and Barbados, while highlighting the inability of the literature to account for the current differences in the rule of law between the two cases. It also reviews the methodological approach and provides an outline of the overall argument. I then trace the factors that caused differences in state legitimacy between Jamaica and Barbados in Section 3, while Section 4 examines how these differences in state legitimacy led to the divergence in the rule of law. The paper concludes by considering the academic and practical implications of the research surrounding strengthening the rule of law.

2. THE PUZZLE: VARIATIONS IN THE RULE OF LAW IN JAMAICA AND BARBADOS

Jamaica and Barbados are two countries that share many historical, social, cultural, economic, and political similarities. They are both former British colonies that gained independence in the 1960s; in fact, they are the only two former British colonies that were colonized by the British for more than 300 years. Both countries were former sugar plantation colonies with a history of slavery, and both countries have been relatively strong democracies for over 50 years. Their populations have similar ethnic compositions and they are both members of the CARICOM single market. Notwithstanding these

similarities, there is presently a striking difference in the extent of the rule of law in both countries (refer to Table 1).

Looking at the first two measures in Table 1, it is evident that the World Bank ranks the Barbadian state much higher than the Jamaican state with respect to promoting the rule of law (a difference of 55.7 percentile ranks) and controlling corruption (a difference of 50.8 percentile ranks). This difference is echoed by Jamaica’s murder rate per 100,000, as it is nearly seven times higher than that of Barbados. Moreover, in 2008 Jamaica’s homicide rate was the second highest reported rate in the world—that year it was over 11 times higher than the reported rate in the United States (UNODC, 2011). Thus, the data in Table 1 imply that there are stark differences in the rule of law between contemporary Barbados and Jamaica; however, these differences were not always so striking. If one examines available data around the period of independence (1962 for Jamaica; 1966 for Barbados), the picture is much different (refer to Table 2).

Table 2 suggests that differences in the rule of law between the two countries were much less pronounced near independence. As the World Bank percentile ranks in Table 1 are not available prior to the 1990s, other available indicators of the rule of law are presented in Table 2 in addition to the homicide rate. In contrast to the nearly sevenfold difference in the contemporary homicide rate between the two countries, Table 2 shows that there was very little difference in the homicide rates around the time of independence. Although the indicators of reported assaults and rapes in Table 2 are much less reliable than the homicide statistics, they nonetheless paint a similar picture suggesting that both countries had roughly similar levels of the rule of law (i.e. violent crime) near independence.⁴ Furthermore, differences regarding the institutional capacity of the judicial system, law enforcement, and contract enforcement between Jamaica and Barbados were quite minor.⁵ Overall, both Jamaica and Barbados were in quite similar situations regarding the rule of law at independence, but there are stark differences between the two today. These trajectories are best summarized by examining the historical trend of the homicide rate in both countries (refer to Figure 1).

Figure 1 shows that, as expected given their similarities, the rate of homicide was roughly equivalent between the two countries up until the post-independence period. Shortly after independence, there is an abrupt and substantial divergence between the two countries. The homicide rate in Jamaica spikes upward, while in Barbados the post-independence homicide rate roughly follows its historical trend. The literature cannot account for this divergence.

Although there is still much we do not know concerning the determinants of the rule of law, the criminology and state-building literatures provide some insight. The cross-national criminological literature identifies two principal factors that have a consistently robust effect on homicide rates: economic development and economic inequality (LaFree, 1999). The state-building literature also identifies some factors that influence state capacity (where the rule of law is a core function of the state). The literature identifies war/the threat of war (Mann, 1986; Tilly, 1985, 1990), broad and direct taxation

Table 1. *Present values of the rule of law*

| | Rule of law ^a (2007) | Corruption ^a (2007) | Homicide rate ^b (2008)/(2004) |
|----------|------------------------------------|-----------------------------------|---|
| Jamaica | 31.9 | 39.1 | 59.5 |
| Barbados | 87.6 | 89.9 | 8.7 |

Sources:

^aWorld Bank (2008). Percentile ranks relative to all countries, with a higher percentile representing stronger governance. The rule of law index “captures perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.” The corruption index “captures perceptions of the extent to which public power is exercised for private gain.”

^bUNODC (2011). Rates per 100,000 total population.

Table 2. *Independence period values of the rule of law*

| | Homicide rate (1962/1947) | Assault (1970) | Rape (1970) |
|----------|------------------------------|-------------------|----------------|
| Jamaica | 6.1 | 5.1 | 0.2 |
| Barbados | 5.2 | 5.4 | 0.6 |

Source: UNODC (2011). Rates per 1,000 population, except for homicide (per 100,000 population).

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