Chapter 8

Institutions, Corruption/Prosperity, and Religion (A), (B), (D), (I), (3), (6)

This comprehensive chapter addresses the most crucial aspect of this study: institutions and the institutional influence of religion.

It is divided into four sections. Section 8.1 discusses the importance of institutions concerning transparency/prosperity and the difficulty of differentiating institutions empirically. It also explores other critical issues related to prosperity such as democracy versus hierarchy. Section 8.2 examines the religion-institution nexus and considers the contributions of Roman Catholicism and Protestantism. Section 8.3 analyses the law, the most formal and persistent institution that shapes societies. Referring to the legal traditions in Europe and the Americas, it discusses the pervasive influence of Roman civil and canon law and the role of subsequent Protestant revolutions that sought to counteract that predominance.

8.1 Institutions as Triggers of Corruption/Prosperity (3)¹

The quality of institutions has been theoretically and empirically linked to prosperity (and thus also to transparency) outcomes (Acemoglu et al., 2001; Acemoglu & Johnson, 2005; Acemoglu & Robinson, 2012; La Porta et al., 1999; North, 1990; Williamson, 2000). Such studies have credibly associated empirical evidence and theory. Institutions are therefore widely accepted as playing a determinant (causal)

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role in the prosperity of societies even if alternative interpretations may exist (Woodruff, 2006).

However, several problems arise when considering institutions *inter alia* as triggers of corruption (and prosperity):

1. Scant agreement exists on how to measure formal or informal institutions empirically. Different studies measuring institutions with varied methods measure different things. Sometimes even gauging the outcome in isolation from other factors is challenging (Woodruff, 2006).
2. Endogeneity issues plague the causal approaches of institutions to prosperity, although to a lesser extent the effect of political institutions on corruption. Previous treatments of endogeneity, however, have not been convincing (Kunicová, 2006; Persson & Tabellini, 2003; Woodruff, 2006).
3. It is not entirely clear which institutions are fundamental to prosperity/transparency processes (Woodruff, 2006, p. 106).
4. Formal institutions have little effect on broad prosperity outcomes. However, informal institutions matter and have a more significant effect (Glaeser et al., 2004; Treisman, 2000; Woodruff, 2006).
5. Although quite strong associations often exist, the causal arrow may point in both directions (from corruption to institutional choice and from institutions to corruption) (Rose-Ackerman, 2006, p. xxv).
6. Informal institutions are the most difficult to measure (and change) since they are largely determined by history (Woodruff, 2006, p. 121).

Thus, research on institutions and prosperity/corruption has so far not provided conclusive evidence of causality. The strongest evidence relates to the impact of underlying social structures (informal institutions), which is highly difficult to address, both in prospective and in policy terms (Lambsdorff, 2006; Rose-Ackerman, 2006; Woodruff, 2006).

In practical terms, institutions and transparency/trust may all have coincided with prosperity, as empirical evidence exists for arguing causality in both directions (Armony, 2004; Fukuyama, 1995; Morris, 2003; Uildriks, 2009). Therefore, prosperity, corruption (or its opposite transparency), trust, and institutions are inseparable concepts. One causal cyclical logic that might be expected would be that ethical transparency/trust values promote institutional stability and prosperity (Fukuyama, 1995).

History and culture have shaped current institutional structures (Acemoglu et al., 2001; Acemoglu & Robinson, 2012; Rose-Ackerman, 2006). At the same time, empirical evidence also shows that institutional structures shape cultural values (i.e. trust and civic norms) (Uildriks, 2009, p. 7); (Alesina & Giuliano, 2015). In any event, religion has played a crucial role in corroborating both cultural values and institutions (Arruñada, 2010; Inglehart & Baker, 2000; Manow, 2004; Paldam, 2001; Treisman, 2000).

Acemoglu and Robinson (2012) have explained how inclusive institutions create inclusive markets, incentives, and opportunities for prosperity. Inclusive institutions create positive feedback loops, which prevent an elite's efforts to undermine them.

Throughout its history, Latin America has, however, experienced a negative institutional feedback loop, which has perpetuated corruption, mistrust, and elitist/extractive institutions (Acemoglu & Robinson, 2012; Uildriks, 2009).

If political institutions are key (Acemoglu & Robinson, 2012), who creates them? Lawyers and policy makers have moral and religious backgrounds (i.e. historically, these are predominantly Protestant in North America and Roman Catholic in Latin America). However, Acemoglu and Robinson (2012) neglect the influence of religious values on ruling elites. More importantly, the authors disregard the institutional influence of religion. Instead, they suggest that critical historical junctures (e.g. the death of political leaders, weather conditions) may trigger institutional shifts. However, citing Robert Michels's "iron law of oligarchy", Acemoglu and Robinson (2008, 2012) list countless examples of radical movements and revolutions that simply replaced one tyranny with another without producing positive institutional shifts.

On this evidence, it is therefore essential to recognise *which* revolutions created better institutions. We also need to ask which triggers changed an old regime into a new *status quo*. Thus, countries that had not fully adopted the principles of such revolutions preserved elements of the old regime. These notions are explored below (see especially Sect. 8.3).

8.1.1 Institutions, Hierarchy, and Democracy Vis-à-Vis Prosperity/Transparency

This subsection first considers the relation of democracy, hierarchy, and corruption/prosperity and second their significant correlation with religion.

Weak institutions may cause mistrust and thus impair the quality of democratic institutions (Putnam, 1993). At the same time, robust empirical evidence suggests that stable democracies (democracies older than those that have emerged in the last 70 years) reduce corruption in the long term (Treisman, 2000). In other words, weak and recent democracies with little electoral participation and little competition for office tend to have little or no influence on reducing corruption (Rose-Ackerman, 2006); (Lambsdorff, 2006) (Treisman, 2000).

Other studies have also found significant linkages between democracy and transparency (Goldsmith, 1999; Paldam, 2002; Persson & Tabellini, 2003; Sandholtz & Koetzle, 2000). However, they also report the waning significance of democracy when GDP per capita is included in the models. Chapter 3 and Sect. 8.1 have already discussed the highly intertwined relationship between prosperity and transparency and have suggested that both may be part of the prosperity phenomenon.

Making the case for causal relations between corruption, prosperity, and democracy has proven problematic, theoretically and empirically. The strong associations among these factors, along with unclear directions of causality, suggest that they form part of the same, reinforcing feedback loop. Overcoming such unproductive

factor segregation, my research model considers transparency, prosperity, and stable democracy as part of the same reinforcing feedback phenomenon (Fig. 2.1 and Sect. 8.2.2.1).

Autocratic rulers (and leaders of highly hierarchical organisations) have incentives to extract the maximum possible revenues to satisfy their self-interest as abundant examples and historical evidence show (Olson, 1993). Hierarchical, centralised bureaucracies corrode interpersonal trust, whereas horizontal, locally led organisations induce interpersonal trust (Putnam, 1993). Historically, the Roman Catholic Church-State has epitomised the hierarchical, centralised institution, whereas decentralisation and local control generally characterise Protestant movements (Inglehart & Baker, 2000, p. 35).

Using different methodologies and datasets, La Porta et al. (1999) and Husted (1999) empirically confirmed that hierarchies contribute to corruption. Adserà et al. (2003) estimated the impact of the level of democracy on corruption in a cross-country study. They highlighted the importance of political instability as encouraging actors to appropriate maximum rents in the short term, leading to increased corruption.

In contrast, stable democratic societies usually reflect greater openness and expanded freedom of choice. More competition for political positions should lead societies to oust poorly performing leaders, at least in theory. Thus, politicians focusing solely on increasing private rents would be voted out of power, and opposition candidates would win elections by promising improvements (Rose-Ackerman, 1978).

However, ample evidence suggests that the Latin American experience is quite the opposite. Notwithstanding advancing democratisation in the last century, the relationships between government stakeholders and civil society have largely remained clientelistic. Moreover, democratisation has generally gone hand in hand with low public trust in state institutions and a generalised “irreverence to the rule of law” by either state actors or civil society (Luzzani, 2002, p. 168). Furthermore, a “democratisation of violence” has also accompanied the rise of democracy in Latin America (Kruijt and Koonings as cited in Uildriks, 2009, p. 2).

In line with Olson (1993), La Porta et al. (1999), and Husted (1999), I argue that one of the critical triggers of corruption (and inequality) in Latin America is the continent’s strongly hierarchical (and elitist) societal structure. This structure is part of the legacy of the Roman Catholic Church-State, which has exercised a pervasive influence on formal and informal institutions throughout the region (Levine, 1981).

Empirical Expectation

3. *Given that economic prosperity, democracy, and transparency are part of the same phenomenon, I expect these factors to be highly correlated. My quantitative model on corruption (Sect. 15.3.2) considers proxy variables for all of these variables.*

8.2 Religion and Institutions (6)

8.2.1 *The Roman Catholic Influence on Institutions, Democracy, and Prosperity*

The introductory considerations and the following sections show how the Roman Empire and its inheritor, the Roman Catholic Church-State, have exerted a pervasive historical influence in Europe and the Americas. However, the last five decades have witnessed a reformed discourse in Roman Catholicism following the Second Vatican Council. The following sections explore the relevant background and issues in greater detail.

8.2.1.1 Roman Catholic Political Philosophy

Historically, Roman Catholicism has favoured a monarchical state order as an absolute form of governance ideally suited to governing a large mass of people with a single religion (Cook, 2012, p. 23). This political philosophy descends from Aristotle, who considered the monarchy one of the desirable forms of government, contrary to democracy, one of the worst in his eyes (see his *Politics*). Thomas Aquinas, the single most important philosopher of Catholicism, adopted many Aristotelian political principles and synthesised these with the medieval Catholic ideal of society: “The best regime of a community is government by one person, [...] unity is more congruently the effect of one than of many” (Thomas Aquinas, *C. G.* iv. 76, (fn. 4) as cited in Cook, 2012 p. 23).

Therefore, the Roman Church-State and papal authority saw the monarchical constitution as a model for the constitution of the secular state. Such an archaic model of government is still evident in the Vatican’s monarchical structure (i.e. Roman Catholic Church-State). Only recently has Catholicism begun to support democracy abroad, strategically and discriminately. Democracy, for Romanism, is a “lesser evil” since monarchical governments are no longer dominant worldwide and also given the threats of secularism and Marxism (Cook, 2012, p. 83); (Anderson, 2007).

8.2.1.2 Change of Discourse Towards Democracy after Vatican II

The Roman Church-State, which avoids democratic forms for internal Church governance, is best suited to either monarchical or a mixed form of secular government. Thus, Romanism rejects democratic constitution and popular sovereignty principles as ideals both for the Church-State and for ecclesiastical states (Rommen, 1945 p. 490); (Cook, 2012, p. 24). As *Civiltà Cattolica*, the Jesuit periodical in Rome, stated in the late 1930s: “Fascism is the regime that corresponds most closely to the concepts of the Church of Rome” (as cited in van Paassen, 1939, p. 465).

However, Vatican II (1962–1965) brought about a myriad of transformations. As Agnew (2010) observed:

The Second Vatican Council, while it may not have marked a huge disruption in the beliefs and practices of the Church, did involve the adoption of a novel set of more latitudinarian attitudes towards other religions (not least towards other Christians) and the reinvigoration of an epideictic language emphasising reconciliation rather than the previously dominant patristic form accentuating confrontation and judgement (p. 48).

Vatican II affirmed the religious freedom of the Church and cooperation between Church and State as guiding principles (Ragazzi, 2009, p. 118). It ended the requirement of a Latin mass, relaxed confessional obligations and restrictions, and abandoned the Roman Church's claims to power in secular states (Wilde et al., 2010). There is also empirical evidence that "Catholics brought up after Vatican II are indeed more trusting and tolerant" than before (Guiso et al., 2006, p. 33). However, the Roman See has increased its political activity by signing more than 30 concordats with new states after Vatican II (Corral, 2014; Fumagalli, 2011). Therefore, theological change alone falls short of explaining the post-1965 shift of the Roman Church from its traditional hostile stance towards democracy (Anderson, 2007). Anderson (2007) explained this shift in terms of the Church's efforts to maintain its ideological, political, and social hegemony and to preserve its position in ideological, political, religious, and social markets.

Cook (2012) analysed Catholic hegemony after 1965 (Vatican II) in Spain, Croatia, Germany, the USA, Mexico, and the Philippines. He found that hegemony involves maintaining the preeminent place of Roman Catholicism among other religious denominations in pluralistic societies grounded in constitutional democracies. He concluded that depending on the political and religious conditions existing in a particular country, the Roman Church-State either maintains or establishes its hegemony over time (Cook, 2012, p. 345).

Wilde et al. (2010) examined the bishops' openness to reform and ecumenical affairs in their votes (i.e. to vote progressively) while at Vatican II. Using data from more than 100 countries obtained from the Vatican Secret Archive, the authors ran logistic regression analyses and tested the Rational Choice (Religious Competition) and Neo-Institutional theories. Wilde et al. found evidence substantiating both theories. The authors have concluded that bishops from countries that enjoy religious freedom were much more inclined to vote progressively than bishops from countries in which the Roman Catholic Church was the state church (Wilde et al., 2010, p. 599).

In countries where the Roman Catholic Church was the state religion, the probability that a bishop voted progressively at Vatican II decreases drastically, from .95 to .21, as the percentage of Catholic population increases from 75 to 100. However, the effect of the proportion of Catholics varies substantially with different state-church relations. In countries with formal religious freedom, the proportion of Catholics has practically no impact on the way in which bishops typically vote. In turn, in countries where the Roman Church or another religion has been established, bishops display more conservative tendencies as the market share of the Church rises

(Wilde et al., 2010, pp. 593–594). These findings confirm the higher importance of the religious institutional settings vis-à-vis the proportion of adherents and, equally importantly, the decisive influence of religious competition in the configuration of the Vatican II outcomes.

Similarly, Gill (1998) studied the contribution of Roman Catholicism to political change in Latin America. He explained why after Vatican II some Catholic hierarchies supported political reform, while others supported authoritarian regimes or stood aside, in order to preserve the *status quo*. He proposed a market explanation based on quantitative and qualitative data analysis (i.e. cross-country comparisons and twelve case studies). After analysing historical and statistical evidence, Gill concluded that to keep parishioners, Catholic Church leaders defended the interests of the poor and opposed totalitarian governments in countries where evangelical Protestants and spiritist movements had gained ground among poor Catholics. In contrast, bishops maintained strong ties with military rulers in areas where the religious competition was limited. Strong religious competition preceded the Catholic hierarchies move to oppose the military in five of the six antiauthoritarian cases analysed by Gill—Chile, Brazil, El Salvador, Panama, and Nicaragua. However, in five of the proauthoritarian or neutral cases analysed by the author—Bolivia, Argentina, Honduras, Uruguay, and Paraguay—the Catholic Church faced limited competition and did not adopt progressive pastoral policies on a large scale. Indeed, the Catholic hierarchy provided insufficient assistance to pastoral agents in these countries, even though some progressive sectors were being attacked (Gill, 1998, pp. 106, 270).

Gill's results are supported by other studies in cases such as Argentina, where the Catholic Church (as a monopolistic player) was supportive of and cooperative with military dictatorships. In turn, the Chilean Catholic hierarchy responded critically and unsupportively towards the dictatorship in the presence of religious pluralism (i.e. the significant presence of Protestantism) (Waldmann, 2012; Zilla, 2020).

Gill also argues that monopolistic churches are comparable to monopolistic companies because both fail to fulfil their consumers' expectations of both quality and quantity (Gill, p. 85). He illustrates this market strategy in the Roman Church by comparing the number of priests per 10,000 Catholics across countries after Vatican II (in the 1970s). Whereas a typical Latin American country had only around two priests per 10,000 Catholics, Protestant countries such as the USA, Great Britain, Australia, or Sweden had nearly five times the number (around ten priests per 10,000 Catholics). Germany, the birthplace of the Reformation, had almost 46 priests per 10,000 Catholics (Barret cited in Gill, 1998). Gill found then a strong inverse correlation between religious monopoly and Catholic clergy per 10,000 Catholics ($r = -0.75$) (Gill, 1998, pp. 85–87). Accordingly, in the presence of religious competition, more clergy per Catholic population typically means a better provision of religious and social services. Therefore, Woodberry observes:

...the Catholic Church provided far more education and created more organizational civil society in countries where it competed with CPs [conversionary Protestants] (e.g. the United States, Ireland, and India), than in places it historically could block competition (e.g. Mexico, Spain, and Italy) (Woodberry, 2012, p. 269).

Thus, Roman Catholic hierarchies have often defended the interests of the poor (e.g. promoting democracy) when facing greater competition from Protestantism (Anderson, 2007; Gill, 1998; Woodberry, 2012). Competition compels the Roman Church-State to break traditional alliances with the ruling elites. Protestant missions have often catalysed Roman Catholic mobilisation, thus expanding education and political resources in Latin America (Smith, 1991; Trejo, 2009; Woodberry, 2012). In Mexico, for instance, Woodberry observes:

in areas with successful Protestant missions, both conservative and liberal bishops expanded education and organized indigenous communities politically; elsewhere they did not. Because the Catholic Church has far more resources and personnel in Mexico than do Protestants, Catholics provided more educational and political resources than Protestants did—but Protestant missions were the catalyst (Trejo, 2009 as cited in Woodberry, 2012, p. 269).

Conversely, in the absence of competition, Catholic hierarchy can easily ignore people's needs and continue its allegiance with abusive political elites (Gill, 1998, 7, 48); (Anderson, 2007, p. 394). Evidently, competition with Protestantism has not been the only factor affecting bishops' decisions to oppose dictatorships, but is, nevertheless, a key component in explaining the variation in institutional responses (Gill, 1998, p. 120).

Nevertheless, a tendency exists to disregard or consider past scholarship as outdated or as non-applicable after the Second Vatican Council. The allegedly altruistic change after millennia of Roman Catholic intransigence has even led the dominant literature to explain modern welfare states as a manifestation of Catholic social doctrine (Boswell, 1993; Esping-Andersen, 1990; Wilensky, 1981). Some authors, however, have found this approach historically inadequate, since it distorts the decisive causes of institutional variance (Manow & van Kersbergen, 2009). In Europe, Manow (2004) notably observes:

...in some of the allegedly 'Catholic' regimes Christian [Catholic] Democracy never emerged as a political party (Spain, Portugal, France), or early welfare state legislation had an explicitly anti-clerical motivation (Italy, France, Belgium) (Manow, 2004, p. 4).

Political Catholicism has typically led to the formation of Catholic Democratic parties in countries where it has faced competition with Protestant or anti-clerical movements (e.g. Switzerland, Germany, Netherlands, Belgium, Italy) (Ercolessi & Hägg, 2012; Manow, 2004). Similarly, Gill (1998) observes that in Latin America, Catholic Democracy was mostly a lay phenomenon with little to no official endorsement from the Church hierarchy. Although the bishops sometimes openly supported the Christian Democrats' goals, Vatican bans on overt political participation in partisan politics restricted their assistance (p. 206).

Such evidence presented by Manow (2004), Ercolessi and Hägg (2012), and Gill (1998) also supports the Religious Competition and Neo-Institutional theories (Sect. 7.2). Having clarified the influence of Roman Catholic ideology on institutions, below I briefly consider the influence of historical Protestantism on institutions.

8.2.2 *Protestant Influence on Institutions and Democracy*

Protestantism not only broke the political (as well as institutional and economic) hegemony of the Roman Catholic Church but also interrupted the growing influence of this belief system in Europe. From these processes emerged the modern state and secular institution (which later also influenced democracy, the American Constitution, and the French and Industrial Revolutions) (Becker et al., 2016; Snyder, 2011; Witte, 2002; Woodberry, 2012) (Sect. 8.2.2.1 and Sect. 8.3.4).

Becker et al. (2016) have provided a comprehensive and conclusive synthesis of the literature on the causes and consequences of the Reformation, including its positive and “dark shadow” (negative) effects. The authors conclude that the Protestant Reformation “ended the ancient hegemony of the Catholic Church in Western Europe” (p.1). Also, they observed that the Reformation connects to positive institutional and economic outcomes in a myriad of empirical studies in which Protestantism encourages:

...a host of variables that are important for economic growth, including human capital, governance, entrepreneurship, social ethic, social networks, and missionary work. [...] Where the Reformation took hold, it fundamentally altered political, legal, and social institutions. This ultimately resulted in the ascendancy of parliaments, the secularization of law, increased emphasis on education, and the precursors of the welfare state (Becker et al., 2016, p. 21).

Becker et al. (2016) found a mostly “positive picture” of “the effects of the Reformation on education, work ethic, and economic development” (Becker et al., p. 20). However, the authors also found a “dark side” of Protestantism in their review of empirical studies. They traced the negative effect of Protestantism back to Weber (1905), who had already noted sinister consequences of the Reformation, as “an ‘iron cage’ of secularization, alienating materialism and narrowly instrumental thinking” (Becker et al., 2016, p. 20). Also, Durkheim (1899) found a higher propensity of Protestants to commit *suicide* than Roman Catholics and Jews across regions and countries. Yet, Roman Catholics exhibit a higher tendency to commit *homicides* than Protestants (Durkheim, 1899, pp. 353–354). The higher suicide likelihood of Protestants in Germany and Switzerland has been corroborated empirically by Becker and Woessmann (2015) and Torgler and Schaltegger (2014), respectively.

Furthermore, the Protestant share of the population also correlates with the rise of anti-Semitism and Nazism in Germany during the Weimar Republic. For instance, Protestants were ultimately polarised, especially where they supported the right ends of the political spectrum in Germany, since Catholics were rooted in the political centre with their own party, the *Zentrumspartei* (Spenkuch as cited in Becker et al., 2016, p. 21). However, other authors (Goldhagen, Browning, as cited in Becker et al., 2016) state that German anti-Semitism might be traced back to “Luther’s nationalism and obsession with the failed effort to convert the Jews to Protestantism” (p. 20). Yet, these and other similar historical claims that link Luther’s ethics and nationalism with Germany being predisposed toward intolerance and

authoritarianism “suffer from being over-generalized, poorly construed and rarely tested using systematic evidence” (Becker et al., 2016, pp. 20–21), (see Sect. 8.3.4.1).

8.2.2.1 Protestantism and Democracy

In historical Protestantism, neither a priest, bishop, or pope dictates morality but every Protestant believer does so based on reading and interpreting the Bible. This, in brief, is Luther’s democratising “universal priesthood of all believers’ principle” (Witte, 2002).

Woodberry’s (2012) influential study demonstrated a consistent linkage between Protestantism and democracy. The latter, as other authors have established, is also firmly associated with prosperity (Morton et al., 2005; World Economic Forum, 2016). Woodberry (2012) provided robust historical and statistical evidence that Protestant missionaries profoundly influenced the rise and spread of stable democracy around the world:

1. Historically, Protestants have spread religious liberty, mass education, mass printing, newspapers, voluntary organisations, and colonial reforms, and thus helped to create the conditions for stable democracies.
2. Statistically, “Protestant missions are significantly and robustly associated with higher levels of printing, education, economic development, organizational civil society, protection of private property, and rule of law and with lower levels of corruption” (Woodberry 2004a, 2004c, 2006c, 2011b, 2011c, as cited in Woodberry, 2012, p. 268). The statistical evidence “demonstrates that the historic prevalence of Protestant missionaries explains the variation in democracy better than either the prevalence of the nonreligious or of generic Protestants. Moreover, Protestant missions predict democracy, whereas Catholic missions do not” (Woodberry p. 247).

Consequently, Protestantism is strongly associated with stable, representative democracy in Western Europe. Also, statistically, “the historic prevalence of Protestant missionaries strongly predicts democracy in 142 non-European societies” (Woodberry, 2012, p. 245). Furthermore, Woodberry (2012) found such a consistent association also among European-settler colonies:

“Protestant-based” United States, Canada, Australia, and New Zealand have been more democratic than “Catholic-based” Argentina, Chile, Uruguay, and Costa Rica. Both sets of countries had similar precolonial conditions (i.e. temperate climates, communal landholding, and small indigenous populations), which weakens theories that climate or pre-Protestant class conditions caused the Protestantism–democracy association (p. 244).

Woodberry’s conclusions also weaken theories claiming that secularisation causes democracy (e.g. the USA is far more religious than Uruguay). In this respect, the historical prevalence of Protestant missionaries explains about half the statistical variation in democracy in Latin America, Asia, Africa, and Oceania (Woodberry,

2012, p. 244). The robust controls and consistent analyses performed by Woodberry leave little room for an alternative explanation to Protestantism as a democracy trigger.

On this historical and empirical evidence, Woodberry seriously challenges traditional modernisation theory. For instance, traditionally associated factors of democracy and social developments are often endogenous (and not necessarily direct determinants) (i.e. secular rationality, economic growth, urbanisation, industrialisation, the expansion of the state, and the development of new class structures) (Woodberry, 2012, p. 244). Anderson (2007) reached similar conclusions, in particular that the greater the proportion of the Protestant population, the higher the level of democracy (p. 385).

However, on the “dark side”, it is clear that “missionaries committed their own abuses, and some were even racist”, or they often ignored abuses given their concentration on conversion as a primary goal (Woodberry, 2012, p. 255). Also, the typical Protestant translation of texts and education in the vernacular, “may have accentuated ethnic heterogeneity and sometimes fostered violence” (Posner, Ranger as cited in Woodberry, 2012, p. 245). However, as Bradbury (2014) concluded, missionaries have been unfairly depicted as colonial forces, imperial agents, annihilators of local societies, and ideologically motivated manipulators of marginalised natives. Although there were a few missionaries to whom those descriptions could be reasonably attributed, such generalisations wilt under the examination of a more rigorous historical inquiry (Bradbury, 2014, p. 427).

Figure 8.1 shows the historical relations between the religious and institutional factors giving rise to prosperity, transparency, and democracy; or instead to hegemonic oppression and corruption.

8.2.3 Traditional Institutional Influence of Religion in Latin America

The Roman Catholic Church-State legitimated Latin American territories as either Spanish or Portuguese colonies from the fifteenth to the early nineteenth century. Equally, Spanish and Portuguese settlement guaranteed a Catholic monopoly from 1500 to the early 1900s, thus securing the Church’s hegemony and a feudal-like economy (Gill, 2013, p. 117). In essence, the conquest was a religious, political, and military endeavour actively supported by the Church. It made Latin America a unique cultural entity in the world, one largely possessing the same language (Spanish or Portuguese) and the same religion (Roman Catholicism) as solid, unifying elements (Navarro, 2016, p. 111).

By the onset of the colonial period, the Iberian Peninsula had established its hegemony in Europe, which enabled it to bring under its rule the richest territories in the Americas (South and Central). The British took what the Spaniards and Portuguese “left over” (North America). North American lands were desert-poor and

Fig. 8.1 Factors giving rise to prosperity, transparency, and democracy; or conversely to hegemonic oppression and corruption (Source: Author's collection). Based on this study's theoretical framework (among others: Acemoglu et al., 2011; Berman, 2003; Heussi, 1991; La Porta et al., 1999; Miller, 2012; Snyder, 2011; Woodberry, 2012; Witte, 2002). Note: In this figure, some quantitative variables of interest, QCA conditions, or qualitative codes of this study are highlighted in red. This figure does not include the Orthodox hegemony nor the Marxist Revolution

inhabited by modest aborigines. Importantly, these territories lacked the abundance of gold and jewels found in their South and Central American counterparts (i.e. attested to by the Aztec, Maya and Inca civilisations) (Acemoglu & Robinson, 2012, p. 21).

A positive institutional loop inherited from Great Britain allowed a “reversal of fortune,” in which the poorest lands of the Americas (North) became the most powerful country in the world (Acemoglu & Robinson, 2012; Prados de la Escosura, 2004). Acemoglu and Robinson (2012) explain that inclusive institutions permit goods and wealth to be shared more equally. This enabled the British to establish the USA, from the “left-overs” of the Spaniards, and to build the British Empire.

By contrast, the Spaniards took advantage of the indigenous population and built extractive institutions, such as *la mita* (“tax or common service paid by Indians”) or *la encomienda* (“enslavement or Spanish labour system”). These were designed to extract wealth from the people and to perpetuate a powerful elite during the colonial period. This situation persisted after the independence of the Latin American states, whose present-day institutions descend from *la mita* or *la encomienda*. Such social inequality has bred corruption, violence, and political instability (ibid).

Even after independence, the Catholic Church-State has been instrumental to securing a population loyal to government, thus perpetuating the *status quo*, i.e. the hegemony of the Roman Church-State. Protestantism was officially banned, including government prohibitions of Bible distributions and Protestant services in Spanish, among others (Gill, 2013, p. 119). In the mid-twentieth century, the Catholic Church continued to secure for itself favourable positions in countries such as Colombia or Argentina (Gill, 1998, 2013; Levine, 1981; Munevar, 2008).

The colonial legacy that Latin American institutions received from religion is characterised by three facts: first, the religious monopoly of the Roman Catholic Church, i.e. the banning of other religious expressions; second, the replacement of indigenous beliefs for Roman Catholicism giving form to syncretic practices persisting to this date; and third, royal patronage (*Patronato Real*), a quasi-perfect fusion of church and state allowing the Spanish King to appoint bishops in the New World, who would also hold government posts, and to preserve the hierarchy Pope-King-Bishop (Navarro, 2016, p. 112).

Since colonisation, the material and symbolic influence of the Roman Catholic Church has reinforced social arrangements in Latin America (Levine, 1981, p. 29). For Levine, the pervasive fusion of Roman Catholicism and politics in Latin America can assume several forms that may include, among others: (1) the content and form of laws; (2) the approved processes for legitimising authority; (3) the essence of accepted sanctions; (4) processes for resolving social conflicts; and (5) educational structures. These and other expressions reflect a conviction that the ideals that inform institutional structures and orient individuals are inextricably linked to those which connect individuals to the spiritual realm (Levine, 1981, p. 20).

Notwithstanding the imposed restrictions, Protestant missionaries slowly introduced Reformed forms of faith until Protestantism could no longer be ignored in the twentieth-century Latin America (Gill, 2013). As Gill observed,

...Protestant missionaries were able to make their way slowly into various societies and begin converting individuals, including indigenous folk who would then become pastors for these new churches. Once Protestants began indigenizing their churches, it became difficult for governments to prevent their growth. It was one thing to deport foreign missionaries; it was just not possible to deport one's own citizens. Moreover most of these new churches provided valuable social services to communities (e.g. literacy training, food banks for the poor)... (Gill, 2013, p. 119).

Protestant churches also provided the poor with access to medical assistance and other services (Gill, 1998, 2013; Woodberry, 2012). Growing Protestant competition forced many Catholic dignitaries to rethink their strategy with a new “preferential option for the poor” (Gill, 1998, 2013). The Catholic Church promulgated a new social strategy (i.e. *Rerum Novarum* of 1891); Catholic Action; Second Vatican Council of 1965); Medellin Episcopal Conference of 1968). These developments also gave rise to “Liberation Theology” (Büschges, 2018), (see Sect. 10.4.1.4). Regardless of such advances, the Roman Catholic Church still exercises great hegemony in most Latin American countries and traditional intransigent paradigms continue to prevail (Figueroa, 2016; Levine, 1981; Martin, 1999; Munevar, 2008).

The inertia of such institutional legacies and the prevalence of corporatist ideologies (pre-Vatican II) have perpetuated an elitist model of society in Latin America, which continues to be by far the most unequal continent in the world to date (World Bank, 2014).

8.2.4 Summarising the Core Messages of Section 8.2. Religion and Institutions

Regardless of the advances made by Roman Catholicism in the Second Vatican Council (Vatican II: 1962–1965), corporatist ideologies remain prevalent, mostly in Latin America (Figueroa, 2016; Levine, 1981; Martin, 1999; Munevar, 2008). But while Roman Catholic discourse has shifted, the institutional inertia persists and maintains the hierarchical *status quo* and longstanding feudal structures (e.g. through signed concordats).

The Reformation brought forth a wide range of modern institutions. Among these, education and democracy are the most crucial ones for ensuring prosperity/transparency outcomes. Likewise, Protestantism has impacted the secularisation of the state in Protestant countries (and also in Roman Catholics, albeit to a lesser, more indirect extent). Protestantism fosters horizontal power relations and secular-rational attitudes towards authority (Becker et al., 2016; Inglehart & Baker, 2000; Manow & van Kersbergen, 2009; Treisman, 2000; Witte, 2002; Woodberry, 2012). Thus, such egalitarian and secular attitudes are linked to greater transparency and prosperity (Lambsdorff, 2006).

State institutions in Latin America have been closely linked with Roman Catholicism in that they continue feudal-medieval structures. The Protestant Reformation has not been allowed to directly influence institutions in Latin America as it did in

North America or in northern Europe. The following sections expand on these historical relations and concentrate on religion and formal institutions (law) in Europe and the Americas.

Note: The *GCI* index includes an institutional indicator. Therefore, no results of institutions are analysed in the empirical setting, in order to exclude endogeneity (i.e. institutions explaining institutions). However, the next section considers the legal tradition, which may serve as an exogenous proxy of the historical institutional influence of religion (or non-religion).

8.3 Law, Religion, Revolutions, and State Models (B), (D), (6)

8.3.1 Legal Traditions in Europe and the Americas²

Countries in Europe and the Americas have either transplanted or developed their legal systems based on some few legal traditions rather than writing new systems of their own (Watson, 1974; La Porta et al., 1998, p. 1115). Thus, the different legal rules, procedures, and institutions at the national and subnational levels share traditional characteristics that allow classification into groups or families. Along these lines, Merryman and Pérez (2007) defined legal tradition as a collection of profoundly ingrained, socially formed views about the essence of law, its place in society and institutions, the proper organisation and function of a legal system, and how the law is or should be made, enforced, interpreted, refined, studied, and taught. The legal tradition is a connection between the legal system and the society of which it is a part (Merryman & Pérez, 2007, p. 2).

Consequently, the most widespread legal traditions worldwide are: first, *Roman civil law*, which includes French and other European and Latin American systems; second, *common law*, which includes most Anglo-Saxon systems; and third, *socialist law*, which comes from former and current socialist countries (including China and Cuba). The historical dominance of Roman law resulted from Roman imperialism and conquest. Likewise, the current dominance of Roman civil law and of the common law traditions in the modern world is a direct product of earlier centuries of European imperialism (Merryman & Pérez, 2007, p. 5) (Fig. 8.2). Additionally, such traditions have also spread across the world through borrowing or imitation (e.g. Japan voluntarily adopted the German legal tradition) (La Porta et al., 1998, p. 1115). Within the first group of legal traditions (Roman civil law), only three

²Originally published as “Legal Traditions and Prosperity in Europe and the Americas” in: Garcia Portilla, J. (2019). “Ye Shall Know Them by Their Fruits”: Prosperity and Institutional Religion in Europe and the Americas. *Religions*, 10(6), 362. MDPI AG. Retrieved from <https://doi.org/10.3390/rel10060362>

significant families currently exist as its heirs: French, German, and Scandinavian (ibid) (Fig. 8.2 and Sect. 8.3.2).

Typically, Southern (Mediterranean) Europe, and Latin America have French law. Northern Europe has mostly German, Scandinavian, or English common law. North America inherited English common law. Post-Soviet states have a socialist legal tradition, but most of them returned to French civil law after the fall of the Berlin Wall (La Porta et al., 2008, p. 289).

Figure 8.2 presents the most important legal traditions in Europe and the Americas from the Middle Ages to the present. From left to right, Roman and canonical legal traditions chronologically progressed through the centuries. They did not abruptly end after the sixteenth to nineteenth centuries, but percolated down after the various revolutions. All legal traditions incorporate Roman law in some form. From bottom to top, a colour gradient represents the closeness to Roman and canon law traditions (ranging to purple). Those legal traditions that are more distant from Roman and canon law (ranging to green) are shown towards the bottom of the table.

Roman and Roman Catholic canon law traditions have defined the institutional *status quo* or the *ancien régime* in Europe and the Americas. Violent national revolutions directed against the existing legal system gradually interrupted this hegemony in favour of more transcendental views of justice (above all in the last five centuries). Successive national revolutions have reformed and renewed the legal

13	14	15	16	17	18	19	20	21	Century
Roman law									Civil law
Roman Catholic Canon law									
					Latin American legal tradition within the				
					Legal tradition of the French Revolution				
			Legal tradition of the German Revolution, which includes Scandinavian legal tradition						
Orthodox Canon law							Legal tradition of the Socialist Revolution		Socialist law
				Legal tradition of the English Revolution					Common law
					Legal tradition of the American Revolution				

Fig. 8.2 Legal traditions in Europe and the Americas (Amended from Witte, 2002; Berman, 2003; Merryman & Pérez, 2007; La Porta et al., 2008)

traditions (in some countries more than in others) of the still pervasive and surviving Roman and the Catholic canon law regime. Every country in Europe and the Americas traces its legal system back to a revolution (Berman, 2003, pp. 16–17). The following sections explain each of these traditions chronologically.

8.3.2 Legal Traditions and Current Institutional Performance (3)

The long-term persistence of legal traditions affects institutional performance and therefore also prosperity (Volonté, 2015). Figure 8.3 summarises some performance indicators of otherwise distinct legal traditions. French, German, and Scandinavian legal systems belong to the tradition of Roman Civil law (Merryman & Pérez, 2007). And yet they are all different. Germanic, and in particular the Scandinavian, legal systems descend less from Roman law than the French one (Zweigert and Kotz as cited in La Porta et al., 1998, p. 1119). German and especially Scandinavian legal systems were influenced by the Lutheran Reformation, which, to a certain extent, modified the foundational principles of Roman (and particularly of canon) law.

French civil law comes from the French Revolution, which also intended to transform the influence of Roman and canon law. This transformation, however, was not always possible due to the inertia of the tradition of Roman law for French Revolution jurists. Moreover, the transformation of canon law, for example, was not automatically transplanted to most Latin American countries, which adopted French legal principles after gaining independence (Berman, 2003; Merryman & Pérez, 2007). Several Latin American countries signed concordats with the Roman Church-State after their independence, thus subordinating their civil law to canon law and granting explicit privileges to the Church-State (Salinas, 2013).

As explained in further detail below, countries with French legal origins also have Roman Catholicism as their dominant religion, historically. Likewise, countries with a socialist legal origin are more likely to exhibit a significant historical presence of Orthodox religions. French and socialist legal origins are consistently associated with burdensome regulations and lower incomes. In contrast, countries of English, German, or Scandinavian legal origin have been historically linked to Protestantism, regulate less, and are the most prosperous (La Porta et al., 1999, p. 244; World Bank, International Finance Corporation & Oxford University Press, 2004) (See Fig. 8.3).

The countries that regulate the most (i.e. those of socialist or French legal origins) typically exhibit more corruption, more poverty, greater inefficiency of public institutions, and lower quality of private or public goods. Heavier regulation is associated with inequality, fewer checks and balances, and less enforcement capacity. A large amount of heavy regulation descends from the Roman legal tradition (La Porta et al., 1999; World Bank, International Finance Corporation, & Oxford University Press, 2004).

	Socialist Soviet law tradition	Roman Civil law tradition			Common-law tradition
		French-civil- law	German - civil-law	Scandinavian- law	
			Protestant-influenced legal origins		
Examples of countries	Russia, Ukraine (until the 1990s), Cuba	Most Latin America, parts of Europe, Africa, and Asia	Germany, Austria, Switzerland, Japan	Denmark, Finland, Norway, Sweden	United Kingdom, Ireland, United States, Canada
Institutional performance item					
Quality of law enforcement	Low	Lowest	Highest	Highest	High
Protection of property rights and propensity to market	Lowest	Low	High	High	Highest
Government interventionism (intrusive regulation, high tax rates)	Highest	High	Low	High	Low
Overall government efficiency; political freedom; provision of basic goods	Lowest (except for education attainment)	Low	High	Highest	High
Corruption	Highest	High	Low	Lowest	Low
Competitiveness	Lowest	Low	Highest	Highest	High

Fig. 8.3 Comparison of institutional performance between different legal traditions (Amended from Berman, 2003; La Porta et al., 1998, 1999, 2008; Merryman & Pérez, 2007; Transparency International, 2016; World Economic Forum, 2016)

8.3.3 The Roman Civil Law Tradition

The civil law tradition can be traced as far back as the Twelve Tables in ancient Rome (450 B.C). Figures 8.2 and 8.3 show that mostly modern French law and, to a lesser extent, German and Scandinavian law currently represent the tradition of Roman civil law. Today, French civil law is both the most influential and also the most widely distributed system across the world (i.e. it is predominant in Latin America, Southern Europe, and across Asia and Africa). It precedes international law (i.e. the legal developments of the European Union and UN) and even prevails in a few enclaves of the “common law world” (Louisiana, Quebec, and Puerto Rico) (Merryman & Pérez, 2007, pp. 2–3; La Porta et al., 2008, p. 289). La Porta et al. (2008) characterise French civil law as follows:

[...] originates in Roman law, uses statutes and comprehensive codes as a primary means of ordering legal material [...]. Dispute resolution tends to be inquisitorial rather than adversarial. Roman law was rediscovered in the Middle Ages in Italy, adopted by the Catholic Church for its purposes, and from there formed the basis of secular laws in many European countries (La Porta et al., 2008, p. 289).

Different historical successive subtraditions constitute modern civil law: (1) Roman civil law (from the Roman Empire); (2) Canon law (from the Roman Catholic Church-State); (3) Commercial law (where pragmatic Italian merchants serve as judges); (4) the influence of revolutions (i.e. German, French, American); and (5) legal science (descending from the various revolutions) (Merryman & Pérez, 2007); (Berman, 2003).

The first three subtraditions (Roman, canon, and commercial law) are the fundamental historical sources of institutions, concepts, and procedures in “civil law countries”. In such countries, these three subtraditions embody the essential modern codes (typically: civil, commercial, and penal; civil and criminal procedure) (Merryman & Pérez, 2007, p. 14).

Roman and canon law have the highest historical relevance and are directly related to religion, institutions, and prosperity. Below I explain these two crucial subtraditions.

8.3.3.1 Roman Civil Law

Merryman and Pérez (2007) consider Roman law as being Rome’s most significant contribution to Western society. There is no doubt that Roman forms of thought invaded the Western legal system. For the authors, all Western lawyers can be considered Roman lawyers in this respect. Yet, in civil law countries, the prevalence of Roman civil law is much more widespread, prominent, and explicit than in common law countries (Merryman & Pérez, 2007, p. 11).

Roman law was compiled and codified in the sixth century A.D under Justinian in the *Corpus Juris Civilis*. It is the most fundamental part both of the European legal tradition (especially in the Mediterranean Region) and of Latin America’s. Today the civil codes of these countries demonstrate the domination of Roman law, as well as its medieval and contemporary revivals (Merryman & Pérez, 2007, pp. 10–11). Weber (1905) also observed that Roman law “has always retained its supremacy in the Catholic countries of Southern Europe”, while countries such as England were able to overcome it (p. 37–38).

8.3.3.2 Roman Catholic Jurisprudence (Canon Law) (6)

The pan-European Roman Church-State became the first modern state. It established a body of law that was systematised and compiled in Gratian’s *Decretum* (1140), entitled “A Concordance of Discordant Canons” (Berman, 2003, p. 4).

The canonical law of the Roman Catholic Church-State has strongly influenced civil law. For instance, canon law influenced the *jus commune* that the European states received (it was the law generally applicable in Europe). Notably, Roman Catholic canon law includes various forged documents that were regarded as authentic for centuries (Merryman & Pérez, 2007, pp. 11–12). O’Reilly and Chalmers (2014) notably explain that canon law is a legal system that has always

Table 8.1 Examples of medieval canon laws supported by Catholic Sacraments (Amended from Witte, 2002, pp. 169–170)

Catholic sacrament	Associated laws
Baptism and the Eucharist	Liturgy, religious doctrine, catechesis, and discipline
Ordination	Law of the clergy and Church life
Marriage	Law of sex, marriage, and family life
Extreme unction	Law of wills, inheritance, and trusts
Penance	Law of crime, tort, and moral obligation

governed the Catholic Church and “had once been used to govern nations”. However, canon law “is often unfamiliar to those from common law jurisdictions” (p. 316). The authors further observe:

The Catholic Church has its own code of laws worldwide. Those laws are found in the Code of Canon Law as well as in the particular laws created by internal, local, and national Church legislation. While church entities are bound to follow the laws of the civil jurisdiction, where these exist, all members of the Catholic Church, including laity and clergy, are also bound to follow the laws of the Church, or face internal penalties. [...] To understand the Church’s process, one must always keep in mind that the institution does not view itself as some sort of religious corporation; its self-understanding and judicial model is akin to being a state. Thus its disciplinary processes are more akin to the law of a government or state rather than a corporate disciplinary model (O’Reilly & Chalmers, 2014, pp. 7–8; 316–317).

Roman Catholic sacraments inspired medieval Catholic canonists and moralists to devise entire legal systems. The sacraments provided the framework for organising some of the legal institutions of the Church and society in the Middle Ages (Table 8.1). However, not all canon law can be subsumed under the sacraments (Witte, 2002, pp. 169–170).

Moreover, the development of natural law is central to Roman Catholic theology. It was influenced in particular by Greek philosophy and Roman law rather than by the Scriptures (Gula, 2002, pp. 120–121; Selling, 2018, p. 9). Importantly, it is through natural law that the Catholic Church-State claims the rightness or wrongness of human conduct. The Catholic Church-State bases such claims on its trust in the human capacity to discern and to choose between right or wrong regardless of religious affiliation (Gula, 2002, pp. 120–121). Natural law is, for Roman Catholicism, a reflection of divine law and immediately accessible to human reason through the traditions of the Church and sacred texts (Berman, 2003, p. 73). The Roman Church-State has resorted to natural law as the foundation of its teachings on sexual behaviour, freedom of religion, justice, fair societies, human life, medical practice, and the connection between societal morals and civil law (Gula, 2002, pp. 120–121).

Contrary to Gula’s (2002) idealistic appreciation, the application of natural law and the Code of Canon Law have led, among others, to “the very public failures of the Church to listen to victims and to get rid of abusive priests” (O’Reilly & Chalmers, 2014, p. 397). The authors observe, “the canonical penal process is clunky, vague, and inefficient” (p. 269). Among the several reasons that explain the inadequacy of the Canon Law system of justice, O’Reilly and Chalmers mention:

1. The canon law trial processes are slow, hierarchical, and inquisitional. While traditional criminal procedures in common law countries (e.g. the USA) may take a matter of days, the canonical process can take several years. For instance, a canonical tribunal hears a case then “sends it up to an appeal panel, and Vatican review is likely” (p. 353).
2. “‘Due process’ is not a standard term with a recognized content in canon law” (Orsy as cited in O’Reilly & Chalmers, 2014, p. 354). Therefore, canonical procedures do not recognise rights such as the presumption of innocence, trial by an independent court, or the right to confront witnesses (p. 354).
3. No separation of powers (i.e. checks and balances) exists in canon law (canon 331). While the Code of Canon Law distinguishes between executive, legislative, and judicial powers, the authority resides internationally in the pope, who is the supreme executive and primary legislator for the Roman Church-State. Locally, the authority resides with the bishop, who is subordinate to the pope (pp. 208–209).
4. Vatican officials and the pope enjoy sovereign immunity as the Vatican is recognised as a sovereign nation. Sovereign immunity defeats any effort of domestic plaintiff lawyers unless they appeal to specific international law instruments (pp. 163–164).
5. No cross-examination exists in canon law, for which only auditors or judges are allowed to ask questions. Also, “only having clerics judging clerics is patently biased because clearly the notion of solidarity among the brotherhood of priests trumped finding a fellow priest guilty” (pp. 264, 268).
6. Secrecy and the avoidance of scandal are mentioned in 24 different canons of the Code (p. 224). The principle of avoiding scandal to the Church explains, among others, the unwillingness of bishops and clerics to interact and cooperate with secular enforcement authorities. Consequently, “turning the accusations over to the civil authorities was never considered a viable option” (p.277). Numerous examples exist in which the Vatican curia encourages bishops not to cooperate with civil investigations over clergy sexual abuse scandals. For instance, “the Vatican blocked the Irish bishops from adopting a policy of ‘mandatory reporting’ of suspect abusers to the police” (p. 79). Likewise, the Colombian Cardinal Darío Castrillón issued several letters congratulating bishops for not releasing information about the sexual abuse of minors to civil authorities (p. 199).

Therefore, the application of the Code of Canon Law has resulted in a cover-up, whereby the Roman Church-State has left most of the sexual abuse committed by Catholic priests unpunished and uncompensated (Grand Jury of Pennsylvania, 2018). In the USA, O’Reilly and Chalmers (2014) document the quite cumbersome bureaucratic procedure under Catholic Canon Law to suing known or suspected clerics for having committed child abuse:

Offentimes this process literally took years to complete—particularly if the case was appealed to Rome. [...] When an appeal was filed, it went to one of the Vatican courts. The National Review Board [for the Protection of Children and Young People] reports that

bishops knew that “the Vatican courts tended to err on the side of protecting a priest because of a concern that bishops could seek to use canon law to rid themselves of a priest whom they did not like or with whom they disagreed.” [...] American Bishops were very concerned that even if there was a “conviction” in an internal diocesan penal trial that the judgment would eventually get overturned by a Vatican appeals court on a technicality. Then the case would either be sent back to be done correctly, or dismissed completely. Bishops had heard of cases that were overturned by Rome on technicalities, with the appeal being sent back with an order to reinstate the priest—even after a criminal conviction in the local civil jurisdiction (O’Reilly & Chalmers, 2014, p. 262).

Furthermore, some priests and bishops who are abusers, have also invoked the “seal of confessional” under the claim of religious freedom “to refuse to report sex abuse and to rebut the prosecutors’ demand for disclosures” (O’Reilly & Chalmers, 2014, p. 122). In Pennsylvania (USA), thousands of sexual abuse complaints have been kept in “secret archives” that only the responsible bishop could access under the Code of Canon Law. The FBI analysed Diocesan files and found that the Roman Catholic hierarchy followed the same script-like method to “conceal the truth”: (1) uses euphemisms rather than concrete language to describe sexual assaults; (2) does not conduct genuine investigations with properly trained staff; (3) sends priests for “evaluation” at church-run psychiatric treatment centres to create a semblance of integrity; (4) fails to disclose why a priest needs to be removed, or tells his parishioners that he is on “sick leave” or suffering from “nervous exhaustion”; (5) keeps covering the priest’s housing and living expenses even if he continues to abuse children; (6) transfers the priest “to a new location where no one will know he is a child abuser”; and finally and most significantly (7) fails to notify the police (Grand Jury of Pennsylvania, 2018, pp. 2–3).

Evidently, the canonical and civil procedures are entirely separate processes that do not naturally interrelate, although there can be some overlaps. However, the Canon Law system has interfered with civil prosecution processes, so that most cases of abusive clergy remain in impunity (Grand Jury of Pennsylvania, 2018). The Canon Law system has proven to use cumbersome, archaic processes with excessive formalities that make “the removal and punishment process exceedingly difficult to manage” (O’Reilly & Chalmers, 2014, p. 253). Even in prosperous countries such as the USA, the canonical penal system is “unwieldy, inefficient, and almost impossible for many dioceses to maintain the personnel and processes as they are required in the Code”. O’Reilly and Chalmers appropriately ask the question of where the canonical system can possibly run properly, if not in the USA (p. 401). As the Report of the Grand Jury of Pennsylvania (2011) states:

The canonical process does not make the internal investigations any less biased in favor of protecting the institution, or the people who conduct them any more competent at arriving at the truth, or the victims feel any less re-victimized (supra, 86–87).

O’Reilly and Chalmers (2014) also emphasise the pervasiveness of the clergy’s sexual abuse problem, with varied outcomes among virtually all religious organisations, including Protestant faiths. Yet, these denominations do not cover-up their cases with a historical state legal shield such as the Code of Canon Law. Several denominations (e.g. Methodist, Nazarene, Protestant Episcopal Church) have

concurrent that religious doctrines need not be considered in criminal cases such as clergy abuse. However, denominations such as the Presbyterians claim that the presbytery functions as an ecclesiastical court alternate, which is not analogous to civil law (i.e. a similar claim as in the Catholic Canon Law). Mormons and The Jehovah's Witnesses "are noted for their secrecy and intra-faith methods", which "makes it difficult to accurately assess the scope of sexual abuse" (O'Reilly & Chalmers, 2014, p. 406). In any case, secular authorities investigate and prosecute ordinary citizens, including Protestant ministers, who commit sexual abuse or any other crimes, in regular legal processes.

Finally, in common law countries, (which are also historically Protestant, such as the USA) the conflict between Catholic Canon Law and the law of the state is more visible because the latter has pre-eminence. In turn, that conflict is less visible in most Catholic countries, in which Canon Law has often prevailed over civil norms. Furthermore, legal instruments such as concordats have been typically enforced to accept the force of Canon Law in several Catholic countries.

8.3.4 Protestantism, Revolutions, and Law (6')

Despite the critical impact of Protestant reformations on the law and on institutions, the influence of religion has been largely neglected or obscured in the mainstream literature³ (Doe & Sandberg, 2010, p. 9; Berman, 2003, p. 71; Witte, 2002, p. 28; Anderson, 2009, p. 210). The significant contribution that sixteenth-century Lutheran legal theorists made to Western legal thought has been ignored in conventional historical accounts (Berman, 2003, p. 71). As Witte observed, "...some social historians today have dismissed the "Reformation" altogether as a historian's fiction and a historical failure" (pp. 28–29). Thus, a conventional interpretation of the influence of the early Reformers is that:

...they inspired no real reformation. Their ideas had little impact on the beliefs and behaviors of common people. Their policies perpetuated elitism and chauvinism more than they cultivated equality and liberty. Their reforms tended to obstruct nascent movements for democracy and market economy and to inspire new excesses in the patriarchies of family, Church, and state. As the editors of the *Handbook of European History 1400–1600* put it, "the Reformation" must now be viewed as an ideological category of "nineteenth century Protestant historical belief," which served more to defend the self-identity of modern mainline Protestants than to define a cardinal turning point in Western history. Recent historiography, the editors continue, has brought "changes of sensibility" that have now "robbed" the term "Reformation" of any utility and veracity (Witte, 2002, p. 29).

³It does not refer to the Weberian (cultural) influence of Protestantism on the development of capitalism, about which thousands of articles and hundreds of books have been written (see Sect. 7.1). Rather, it refers particularly to the influence of religion on law and institutions as an established research paradigm. Doe and Sandberg (2010) have observed, regarding the latter, that in Law Schools, the relationship between religion and law has been an overlooked topic of study (p. 9).

However, Witte runs “counter to traditional lines of historical analysis” by demonstrating that the theology and law of the Reformation are “sources of ideas and institutions that were much more than simply the totems of the elite of the bludgeons of the powerful”. When viewed through the binocular of law and theology, the author continues, “the Lutheran Reformation is hardly the ideological concept or idle category that some recent historiography suggests” (pp. 29–30).

This section reviews the historical influence of Protestantism, and of the various revolutions that followed in its wake, on the different legal traditions.

8.3.4.1 The Sixteenth-Century German-European Revolution

In 1517, Martin Luther and other Reformers initiated a process that culminated in the abolition of Roman Catholic ecclesiastical jurisdiction in future Protestant countries (i.e. England, Scandinavian countries) (Berman, 2003, p. 6). Luther, a canon law expert, condemned Aquinas’s Aristotelian theology and most of the Catholic sacraments due to their lack of biblical foundations (Berman, 2003); (Witte, 2002). Berman portrayed Martin Luther as someone who honestly reflected his preachings and teachings in both his career and life. For the author, the German people of Luther’s time considered him a new Elijah, John the Baptist, Daniel, Moses, or other prophet sent by the Lord. For Berman, Luther was the brightest and undoubtedly one of the most influential, innovative, and famous theologians of his day. He was intensely passionate, almost as if he was being spurred on by extraneous forces. Yet, the same passion prompted him to denounce vitriolically those who profoundly disagreed with him. He used scatological words in his condemnations without hesitation. In his later years, he engaged in bigoted verbal attacks on Jews who resisted converting to Christianity, paralleled with assaults on Anabaptists, Turks, papists, and others (Berman, 2003, p. 47).

In Luther’s Ninety-five Theses of 1517, and in subsequent debates, he exposed a long list of injustices inherent in canon laws. He also unmasked the “fallacious legal foundation” of papal authority and the “myriad inconsistencies” between the “human laws and traditions” of the Roman Church-State versus the Scriptures (Berman, 2003, p. 74). Luther said that the Roman Church should not be a lawmaking institution and emphasised:

In the entire canon law of the pope there are not even two lines which could instruct a devout Christian, (...) it would be a good thing if canon law were completely blotted out, from the first letter to the last, especially the [papal] decretals. More than enough is written in the Bible about how we should behave in all circumstances. Unless they abolish their laws and ordinances and restore to Christ’s churches their liberty and have it taught among them, they are to blame for all the souls that perish under this miserable captivity, and *the papacy is truly the kingdom of Babylon and of the very Antichrist* (LW 44:179, 202–3 as cited in Witte, 2002, p. 55) (author’s italics).

Moreover, Luther directly attacked the moral authority of the Roman law (and its lawyers) as part of the same Babylonian system:

Jurists are bad Christians (WA TR 3, No. 2809b). Every jurist is an enemy of Christ (WA TR 3, Nos. 2837, 3027). I shit on the law of the pope and of the emperor, and on the law of the jurists as well (WA 49:302 as cited in Witte, 2002, p. 2).

Therefore, what began as a reformation of the Church and theology rapidly expanded into a reformation of the law and the state, in Germany and beyond (i.e. in Northern Europe, and later in North America). The key was to deconstruct canon law for the sake of the Gospel and, on this basis, to reconstruct “civil law on the strength of the Gospel” (Witte, 2002, p. 3).

Accordingly, the Lutheran Reformation initially removed medieval Roman and canon laws in the sixteenth-century Germany. Luther considered this process imperative for various reasons: Roman and canon laws fostered papal tyranny and thus enjoyed unbridled powers of legislation, adjudication, and administration. Second, it was abusive and self-serving, and thereby granted the clergy special benefits, privileges, exemptions, and immunities that elevated it above the laity. Third, it served as an instrument of greed and exploitation to support the luxury and bureaucracy of the Roman Church (LW 31:341⁴ as cited in Witte, 2002, pp. 55–56). Moreover, since Roman Catholic natural law is founded on the human ability to discern good and evil (Selling, 2018); (Gula, 2002), its refutation by Protestantism also had a biblical foundation:

The heart is deceitful above all *things*, and desperately wicked: Who can know it? (King James Bible, 1769, Jeremiah 17:9);

Why should ye be stricken any more? ye will revolt more and more: the whole head is sick, and the whole heart faint (King James Bible, 1769, Isaiah 1:5);

For I know that in me (that is, in my flesh,) dwelleth no good thing: for to will is present with me; but *how* to perform that which is good I find not. For the good that I would, I do not: but the evil which I would not, that I do (King James Bible, 1769, Romans 7:18–19).

Given the explicit scriptural claims of the human inability to discern good from evil, Protestant jurists, therefore, considered the Gospel the best source of natural knowledge (Witte, 2002, p. 169). Luther, but most especially his followers, Melancthon, Eisermann, and Oldendorp considered the Bible the supreme source of law for earthly life. Accordingly, they produced a new jurisprudence, one theologically based on biblical moral principles, upon which they interpreted subordinate species of legal rules (Berman, 2003, p. 8). Consequently, Lutheran jurists laid particular emphasis on the biblical Ten Commandments to ground their jurisprudence, which thus contrasted with the Catholic canonists’ focus on the seven sacraments (Berman, 2003); (Witte, 2002) (compare Tables 8.1 and Fig. 8.4).

However, Lutheran jurists also had to adapt traditional canon laws, which subsequently fell under the control of civil authorities (Witte, 2002, pp. 83–84). Therefore, not all Protestant, positive law can be subsumed under the Ten Commandments, but can also have other biblical, as well as Roman or canonical origins (Witte, 2002, p. 170). However, “self-serving papalist accretions” were eradicated,

⁴*D. Martin Luthers Werke: Kritische Gesamtausgabe*, 78 vols. (Weimar, 1883–1987).

Moral Biblical Law (King James Bible, 1769)					Some Lutheran and positive laws under the Ten Commandments* (Witte, 2002); (Berman, 2003).
Great Commandment in the New Testament (NT)	Old Testament (OT)	The Great Commandment in OT terms	The Ten Commandments (King James Bible, 1769, Exodus 20, 1-17)	Some curses of disobedience (OT & NT)	
Matthew 22, 34-40 The Great Commandment Master, which is the great commandment in the law? Jesus said unto him, Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the first and great commandment.	Deuteronomy 6, 4-5 Hear, O Israel: The Lord our God is one Lord: the Lord thy God with all thine heart, and with all thy soul, and with all thy might.	And God spake all these words, saying, I am the Lord thy God, which have brought thee out of the land of Egypt, out of the house of bondage. 1. Thou shalt have no other gods before me. 2. Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth: thou shalt not bow down thyself to them, nor serve them: for I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me; and showing mercy unto thousands of them that love me, and keep my commandments. 3. Thou shalt not take the name of the Lord thy God in vain: for the Lord will not hold him guiltless that taketh his name in vain.	Deuteronomy 28 [Verses 15-68 are dedicated to " <i>The Consequences of Disobedience</i> ", for example:] 15: But it shall come to pass, if thou wilt not hearken unto the voice of the Lord thy God, to observe to do all his commandments and his statutes which I command thee this day, that all these curses shall come upon thee, and overtake thee: 33: The fruit of thy land, and all thy labors, shall a nation which thou knowest not eat up; <i>and thou shalt be only oppressed and crushed alway.</i> Revelation 21,8 But the fearful, and unbelieving, and the abominable, and murderers, and whoremongers, and	Deuteronomy 29, 9 Keep therefore the words of this covenant, and do them, that ye may prosper in all that ye do. "Deuteronomy 28, 1-2 <i>The Blessings of Obedience</i> And it shall come to pass, if thou shalt hearken diligently unto the voice of the Lord thy God, to observe and to do all his commandments which I command thee this day, that <i>the Lord thy God will set thee on high above all nations of the earth:</i> come on thee, and overtake thee, if thou shalt hearken unto the voice of the Lord thy God. Deuteronomy 30, 16 in that I command thee this day to love the Lord thy God, to walk in his ways, and to keep his commandments, and his statutes, and his judgments, that thou mayest live and multiply: <i>and the Lord thy</i>	Religious laws of Lutheran communities. Laws governing orthodox doctrine and liturgy, ecclesiastical polity and property, local clergy and Church administrators.

Fig. 8.4 Moral biblical law associated with prosperity (when obeyed) or with misfortunes (when disobeyed) and its legal application in Protestant countries (Amended from The Holy Bible (King James Version); Witte, 2002; Berman, 2003)

Moral Biblical Law (King James Bible, 1769)					Some blessings of obedience (OT & NT)	Some curses of disobedience (OT & NT)	Some Lutheran and positive laws under the Ten Commandments* (Witte, 2002; (Berman, 2003).
Great Commandment in the New Testament (NT)	Old Testament (OT)	The Great Commandment in OT terms	The Ten Commandments (King James Bible, 1769, Exodus 20, 1-17)				
Matthew 22, 39-40 And the second is like unto it, Thou shalt love thy neighbor as thyself.	Leviticus 19, 17-18 Thou shalt not hate thy brother in thine heart; thou shalt in any wise rebuke thy neighbor, and not suffer sin upon him. Thou shalt not avenge, nor bear any grudge against the children of thy people; but thou shalt love thy neighbor as thyself: I am the Lord.	Thou shalt not hate thy brother in thine heart; thou shalt in any wise rebuke thy neighbor, and not suffer sin upon him. Thou shalt not avenge, nor bear any grudge against the children of thy people; but thou shalt love thy neighbor as thyself: I am the Lord.	5. Honor thy father and thy mother: that thy days may be long upon the land which the Lord thy God giveth thee. 6. Thou shalt not kill. 7. Thou shalt not commit adultery. 8. Thou shalt not steal. 9. Thou shalt not bear false witness against thy neighbor. 10. Thou shalt not covet thy neighbor's house, thou shalt not covet thy neighbor's wife, nor his manservant, nor his maidservant, nor his ox, nor his ass, nor any thing that is thy neighbor's.		God shall bless thee in the land whither thou goest to possess it. Revelation 22, 14: Blessed are they that do his commandments, that they may have right to the tree of life, and may enter in through the gates into the city.		Ibid Civil law of sex, marriage, and family Criminal law Civil law of sex, marriage, and family Law of property, criminal law Law of contract and delict. Law of civil procedure, evidence, and defamation Law of contract and delict. Laws of crimes and civil offences
On these two commandments hang all the law and the prophets.							

* Legislation influencing Protestant countries (e.g. the United States, United Kingdom, Scandinavian countries)
Note: Author's italics and emphases

Fig. 8.4 (Continued)

and canon law in Germany now returned “to its core interpretations and applications of biblical and natural norms” (ibid). In this way, German law was transformed and still largely influences modern Western laws of education, social welfare, and marriage, for instance (Witte, 2002, p. 295). Moreover, “the Ten Commandments provided the Evangelical jurists with a useful framework for organising some of the legal institutions of the state” (Witte, 2002, p. 170) (Fig. 8.4).

Successively, all Europe (and later also other regions) felt the repercussions of the Protestant revolt against the canon-law-based and hierarchical Roman Church-State. The sixteenth-century German Lutheran Revolution of theology, law, and institutions took diverse forms in several European countries. It facilitated the creation of national legal systems that encompassed the complete continuum of jurisdictions (Berman, 2003, p. 8) and generally exalted monarchies over the Roman Church-State (Berman, 2003, pp. 72, 208). In fact, after the Lutheran Reformation,

the idea of the Pope and Emperor as parallel and universal powers disappears, and the independent jurisdictions of the *sacerdotium* are handed over to the secular authorities’ (Skinner, 1978, p. 353).⁵

Consequently, the Lutheran Reformation extended across Europe. Even in the remaining Roman Catholic countries, such as Spain, France, or Austria, royal powers significantly increased over the Roman Church-State within the kingdoms (Berman, 2003, p. 8).

However, as with any revolution, the German Reformation also had a “dark side”. Witte notes the acute crisis that reigned in Germany following the rapid deconstruction of law, politics, and society immediately after the Reformation. The bloody peasants’ revolt in Germany in 1525, and the widespread confusion over sacraments, preaching, funerals, prayers, holidays, and pastoral duties, exemplifies the chaos at the time. Also, the excesses that occurred at the dawn of the Reformation are well known, as Witte observes:

They [the Reformers] simply took over hundreds of Church properties, endowments, foundations, charities, almshouses, schools, cathedrals, cemeteries, Church courts, and other properties and institutions that were part of the canon law administration—often ostracizing and occasionally killing former occupants in the process (although Luther repeatedly counselled against violent ejection of monks and nuns, preferring instead to prohibit the enrolment of any new monks. . .) (Witte, 2002, p. 84)

8.3.4.1.1 Lutheran Influence on Scandinavian Countries

The Lutheran Reformation influenced in particular the Scandinavian pattern of church-state relations (Anderson, 2009, p. 211). The Lutheran influence was more intense and took hold faster in Scandinavian countries than in Germany, which remained partly Roman Catholic. The monarchies of Denmark (and countries under its influence, i.e. Norway and Iceland) and Sweden (and thus also Finland) firmly

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embraced Lutheranism already in the 1520s. These countries also imposed severe criminal penalties on openly non-Lutheran adherents (Berman, 2003, p. 58).

Swedish and Danish monarchs seized the influence and wealth of the Catholic Church-State and assumed the welfare functions previously performed by the Church (e.g. hospital care and relief of the poor) (Anderson, 2009, p. 211). As such, Lutheran state churches “positively contributed to the early introduction of social protection programs and to subsequent welfare state development” (Manow & van Kersbergen, 2009, p. 4).

8.3.4.2 The Seventeenth-Century English-European Revolution

Under the influence of the German sixteenth-century revolution, England also instituted a Protestant state-church to which all citizens had to belong and fell under the authority of the monarch. Later, dissenting Calvinists and other oppressed classes initiated the English or Glorious Revolution (1640–1689), which curbed the influence of the state-church, and established the supremacy of Parliament over the Crown. Subsequently, the English Revolution resulted in a body of legislation based on Calvinist beliefs (Berman, 2003, p. 10). This “*reformation of the Reformation*” fundamentally and lastingly transformed the English legal system, including checks and balances of political power. Likewise, the English Revolution also became a European revolution, succeeding the previous one in Germany (Berman, 2003, p. 201).

Akin to the German Lutheran Reformation, the Ten Commandments are the foundation for a plural system of law in England (Doe & Sandberg, 2010). Notably, the general principle “*Thou shalt love thy neighbour as thyself*” (second part of the Decalogue that Jesus summarised in Matthew 22:37–39, King James Bible, 1769) is a touchstone of civil behaviour (p.163) (See Fig. 8.4).

Likewise, the Protestant Reformation in England and Wales banned the teaching of canon law at universities (Doe & Sandberg, 2010, p. 9). Equally, in the courts of Westminster Hall, invoking canon law was increasingly deplored (Helmoz, 1987); (Pearce, 2010). As Wilcox and Field wrote in their Admonition to Parliament in 1572: “the Canon law is Antichristian and devilishe, and contrarye to the scriptures” (p. 30). However, similarly to Germany, not all canon law was eliminated as an authoritative source. In fact, some ordinances were adapted to ongoing developments in English common law.

The expansion of the British Empire resulted in a wide distribution of common law in the British colonies. This law is therefore still in force in Great Britain, Ireland, the USA, Canada, Australia, and New Zealand (Merryman & Pérez, 2007, p. 4).

8.3.4.3 The Eighteenth-Century United States Revolution

The successive Protestant Reformations brought along progressive legal steps towards democracy and thus increasingly distanced societies from the power of the Roman Church. Each dissenting Protestant revolution built on the developments and achievements of the previous one. The sixteenth-century German-European Reformation had generally increased the royal powers as a means of overthrowing the Roman Church-State. The seventeenth-century English-European Revolution then made further advances by introducing checks and balances for monarchical powers and by limiting the power of the Church-States. Such developments paved the way for the world's first-ever democratic constitution: the eighteenth century American Bill of Rights. In the USA, once again, a dissenting Protestant view based on the previous reformatory advances became dominant and denied the establishment of a State-Church.

Furthermore, the American constitution expanded the democratic rights and liberties of citizens (thus advancing English legislation, which had already guaranteed rights to the aristocracy over the monarchy) (Miller, 2012); (Berman, 2003); (Witte, 2002).

The eighteenth-century French-European revolution also helped to nurture its counterpart in the USA. However, the latter implemented a different system of checks and balances in government powers than those proposed by the French Revolution, for instance (Merryman & Pérez, 2007); (Berman, 2003).

8.3.4.4 The Influence of Protestant Revolutions on Secularism

The Protestant reformations initiated a rapid secularisation process, which decreased the public role of the Roman Church-State and broke down the imperial hierarchy (Philpott, 2001; Snyder, 2011). Moreover, the Protestant reformations and their associated progressive weakening of the Roman Church-State ultimately resulted in the modern sovereign state system in the seventeenth-century (i.e. the Peace of Westphalia in 1648) (Agnew, 2010; Gregory, 2012; Philpott, 2001; Shah & Philpott, 2011; Snyder, 2011).

Much liberal Enlightenment thought was grounded in Protestant secularism (Snyder, 2011, p. 17). Therefore, the laic rejection of Roman Catholicism in revolutionary France resulted from the influence of Protestantism, in particular Calvinism. Most Enlightenment democratic theorists came from a Calvinist background, even if they were not religious (e.g. Locke, Rousseau, Grotius, Franklin, Adams, Henry, Madison, and Hamilton) (Woodberry, 2012, p. 248). Enlightenment theorists secularised ideas previously expressed by Calvinist jurists and theologians (e.g. Nonconformist and Puritan covenants formed the basis of the secular Hobbes's and Locke's social contracts) (Hutson, 1998; Nelson, 2010; Witte, 2007; Lutz, 1980, 1988 as cited in Woodberry, 2012, p. 248).

Furthermore, Locke's principle of equality for all people descends explicitly from Protestant ideals (Waldron; Woodberry and Shah; as cited in Woodberry, 2012, p. 248). Moreover, Protestant dissenters in Protestant liberal democracies spearheaded egalitarian movements such as the abolition of slavery, free trade, and peace (Kaufmann & Pape, 1999; Snyder, 2011; Woodberry, 2012). In this sense, without the Reformation, no liberal peace would exist (Hurd, 2011; Snyder, 2011, p. 17; Gregory, 2012).

Consequently, Protestantism was a vital historical precursor to secularisation (Berger, 1990, p. 113; Gregory, 2012). In its wake, religion has since lost much of its past influence (Norris & Inglehart, 2004) in specific contexts (e.g. Europe, the academia). However, the rest of the world is as religious as ever, and some regions (e.g. the Middle East) are even more religious than before (Berger, 1999).

8.3.4.5 The Eighteenth and Nineteenth-Century French-European Revolution

The successive Protestant reformations inspired or initiated transformations from which arose secular, anti-clerical revolutions, which further decreased the power of the Roman Church-State and expanded civil power. The most notable revolution, the French Revolution, utterly suppressed the monarchy in France and extended to most papal states (e.g. Pope Pius VI was taken prisoner until his eventual death). Some of these states were, however, later restored. The Italian nationalism and anti-clericalism remaining after the French Revolution resulted in the nineteenth-century annexation of Rome and the papal states to the former Italian Kingdom. It was not until 1929 that the current Vatican State was created through the Lateran Treaty with Mussolini's National Fascist Party (Gross, 2004; Hanlon, 2008; Roessler & Miklos, 2003).

Rousseau's *Social Contract* (1762) and the French Revolution (1789) openly identified Roman Catholicism (and Christianity in general) as opposed to any free republic. In such a Manichean conflict between the Church and the Republican state, the Republic ended up radically subordinating the Church. Consequently, the French Republic eliminated the Church's control over education, its ownership of large estates and its right to perform marriage ceremonies (Shah & Philpott, 2011, p. 38).

The new French legal philosophy of rationalism, individualism, utilitarianism, as well as the rejection of orthodox Christian doctrines, were also linked to deism (the belief in a Creator's gift of reason and freewill in exercising that gift (Berman, 2003, p. 10).

French rationalist natural secular jurists considered it possible to abolish the old (i.e. Roman-canonical) legal system altogether and to create an entirely new one. However, the jurists drafting the new system were trained in the old one, of which a significant part was preserved as a result (Merryman & Pérez, 2015).

Eighteenth and nineteenth-century revolutions (i.e. the French and American revolutions, the Italian *Risorgimento* and Latin American independence wars) gave rise to administrative and constitutional law under civil law. Equally important was

that the French Revolution also brought forth “secular natural law” (based on deism). Montesquieu and Rousseau promoted the importance of separating government powers (judicial, executive, and legislative), as initiated by the French Revolution. After the nineteenth century, the authority of Roman (and canonical) laws gradually declined. The Revolution meant that nationalist ideologies replaced religious ideologies. Feudal institutions were incompatible with such developments (Merryman & Pérez, 2015).

The French imposed civil codes, abolished guilds and feudal remnants, and undermined aristocratic privileges, thus boosting prosperity in the territories they conquered in Europe (Acemoglu et al., 2011). Consequently, the principal states of Western Europe adopted civil codes, whose archetype is the French Code Napoléon of 1804 (Merryman & Pérez, 2007, p. 10).

An especially explosive revolutionary development occurred in education. French republicans and liberals repeatedly pushed for a state-supervised, compulsory, educational system. In Belgium, the Liberal Party implemented a programme in the 1870s to significantly restrict the role of the Roman Catholic Church in education (Shah & Philpott, 2011, pp. 39–40).

However, even after an age determined by reason and revolution, feudalism survived in Latin America and certain parts of Europe (especially in the South). Feudalism has kept alive the social injustices inherent in its origins. This is understandable because when it came to exporting their methods, the French did not introduce a roadmap for how their model truly worked and left out any guidelines for how it did (Merryman, 1996, p. 116).

For example, the *laïcité* or separation of church and state rooted in the French Revolution was not automatically transplanted to Latin America. In contrast, feudal legal institutions in the British colonies of North America were deprived of their pernicious socio-economic influence already early on (Merryman & Pérez, 2015).

8.3.4.6 Maintaining the Roman Catholic *Status Quo* after Independence

8.3.4.6.1 The Adoption of French Civil Law in Latin American Countries

Most Latin American countries bypassed the (Protestant) European revolutionary processes and directly adopted the French Revolution’s legal tradition (La Porta et al., 2008; Merryman & Pérez, 2015). Therefore, the French legal tradition profoundly influenced all former Spanish and Portuguese colonies in Latin America. Exceptionally, Cuba adopted a socialist legal tradition later in the 1960s. In turn, some former British colonies in the Caribbean have correspondingly English common law (La Porta et al., 2008).

The influence of the Protestant Reformation on the law and on institutions in Latin America has been minimal or indirect, and has resulted from US-American influence, for instance (i.e. constitutionalism) (Merryman & Pérez, 2015). More importantly, the pervasive influence of the Roman Catholic Church-State meant that Latin American countries adopted the legal tradition of the French Revolution

without, however, embracing anti-clerical movements (or with fragile anti-clerical components) (La Porta et al., 2008; Salinas, 2013). Exceptions include Uruguay, Chile, and Cuba, as these countries have had successful anti-clerical or laic movements and because their legal systems have long reflected a clear separation of Church and State. Moreover, these three countries have never signed a concordat with the Roman Church-State (Da Costa, 2009; Ramírez, 2009; Salinas, 2013).

8.3.4.6.2 Concordats with the Roman Catholic Church-State

Concordats are international treaties between the Roman See (the so-called “Holy” See) and the states. In the past, concordats have been criticised as mutual concessions of privileges between Church and State. The three most important and controversial concordats signed by the Catholic Church in the twentieth century were with the Nazi *Reich* in Germany, with Franco in Spain, and with Fascist Italy (Fumagalli, 2011, pp. 438–439).

The term “concordat” refers to the more comprehensive agreements between the states and the Roman See but also identifies a wide variety of instruments (e.g. treaty, convention, accord, protocol, exchange of notes, *modus vivendi*) (Ragazzi, 2009, 114). A historical treaty-making power allows the Roman Church to sign concordats and ensures its accession to major multilateral treaties (Ryngaert, 2011, 844).

Eleven Latin American countries have in force a concordat with the Roman Catholic Church-State (Argentina, Bolivia, Brazil, Colombia, Ecuador, El Salvador, Haiti, Paraguay, Peru, Dominican Republic, and Venezuela). Such states are called “concordatarian” and the extent to which those agreements grant privileges to the Roman Church varies from country to country (Corral, 2014). The scope of these rights and privileges depends on the negotiating power of the Roman See *vis-à-vis* the contracting state (Ryngaert, 2011, 845). The other Latin American countries maintain fewer diplomatic relations with the Vatican (some less, some more), for instance, through formal agreements or the exchange of letters (Corral, 2014). Concordats may cover diverse affairs, ranging from tax exemptions for the Roman Church to permitting its intervention in military, educational, and real estate issues (Brownlie, 1979; Corral & Petschen, 2004; Figueroa, 2016; Forrest et al., 2006; Levine, 1981).

The template used by the Vatican in most concordats with Latin American countries was introduced by Pope Pio IX (1846–1878) (Salinas, 2013). It accords extraordinarily extensive rights to the Catholic Church-State, for instance, in educational affairs:

Education in universities, public and private schools and further educational establishments should be under the doctrine of the Catholic Religion. [...] the bishops and other local ordinaries would have the free direction of the theology chairs, of canon law, [and] of all the branches of ecclesiastical teaching. [...] in addition to the influence they will exert through the strength of their ministry over the religious education of youth, they will ensure that in the teaching of any other branch there is nothing contrary to [the Roman Catholic] religion and morality (article 2). Besides, the bishops retain their right of censure over all books and

writings related to dogma and discipline of the Church and public morals (Bolivian concordat model, cited in Salinas, 2013, p. 217).⁶

These concordats are all similar (or in many cases identical) in Latin America. As such, they attest to the Vatican's influence on their wording rather than to the interests of the various diverse states (Salinas, 2013).

As a rule, the concordats ensure religious education in public schools. The conference of bishops, in agreement with the responsible government authorities, approves the curriculum for the teaching of Roman Catholic religion in schools (Schanda, 2004).

The concordats also imply state recognition of the sovereignty of the Roman Catholic Church-State. Consequently, Roman Catholicism is the only religion to possess legal personality under international public law. The other religious denominations are only entitled to have agreements under domestic public law as they have no international legal personality. This privilege of the Roman Catholic Church-State has sometimes been used to the detriment of other religious denominations (Fumagalli, 2011, p. 444).

Therefore, EU institutions, such as the European Court of Human Rights, have indirectly challenged Roman Catholic concordats for introducing legislation not aligned with international standards into domestic law (Fumagalli, 2011, pp. 445–446). In Europe, at least two objections have been levelled at concordats (or treaties and bilateral relations with the Roman Church-State): first, they limit the sovereignty of the state; and second, they promote the denominational inequality due to the privileges of the Roman Catholic Church-State (Cook, 2012; Schanda, 2004).

8.3.4.7 The Twentieth-Century Russian Revolution

In the eleventh and twelfth centuries, Eastern Orthodox Russia opposed the papal Roman Church-State and canon law and established its own hierarchy and canon law. However, Russia maintained its tsarish autocracy and its supreme secular and spiritual authority until 1917. The successive Lutheran, Calvinist, dissenting Protestant and deist revolutions all bypassed Russia. Thus, Russia never experienced an evolutive process from an autocracy to a monarchical high magistracy, to an aristocratic Parliament, and then to a democratic separation of powers. Instead, Russia underwent abrupt transformation through the Bolshevik revolution, inspired in part by the eighteenth-century French Enlightenment, and later proclaimed atheism. Moreover, the Russian Revolution ended up in a totalitarian state that distorted the ideals of social democracy (Berman, 2003, p. 18); (Miller, 2012).

One of the ideal postulates of the atheistic foundations of Soviet law is the “goodness of humankind.” This involves the acceptance of an inherent human nature, which is itself capable of establishing a fair and just society (Berman, 2003, p. 18). Such a postulate is opposed to the biblical principle that “nothing

⁶ Author's translation of the original Spanish text.

good can be found in humankind,” which forms the basis of the Protestant Revolutions (see Sect. 8.3.4 and Fig. 8.4). The atheistic, Soviet legal principle of the “goodness of humankind” resembles Roman Catholic natural law in that it trusts the human capacity to discern good from evil (Selling, 2018, p. 9; Gula, 2002, pp. 120–121). In fact, socialist legal traditions only ever became apparent in countries with an Orthodox or Roman Catholic background but never in countries under Protestant influence. As Andreski (as cited in Grier, 1997) argued, by fostering prosperity, freedom, and equality, Protestantism inhibits the formation of a social environment conducive to the propagation of militant subversion ideologies (p. 49).

Significant differences exist between Soviet, Western European, and American legal systems. Features differentiating Soviet law from other systems include the dictatorship of the Communist Party and the absence of a law higher than that of the state; the repression of basic civil liberties such as the freedom of religion, speech, and press; and the absence of private land ownership (Berman, 2003, p. 19). However, the Russian Revolution’s elevation of the parental role of the law, and of the social and economic role of the state, have had repercussions throughout the world (ibid). Interestingly, after the dissolution of the Soviet Union in 1991, most former Soviet countries reinstated the legal tradition of the French Revolution (Merryman & Pérez, 2015); (La Porta et al., 2008).

8.3.5 Religion, Law, and State Models

Significant differences exist between the legal systems (and thus, the state models) of countries in Europe and in the Americas. National legal systems have persisted for decades or even centuries while legal traditions have prevailed for centuries or even millennia. In contrast, political discourses may last for merely a few years or decades. Therefore, the influence of the different legal traditions tends to cluster countries into groups exhibiting affinities between their legal origins and institutional performance. Table 8.2 summarises the various legal revolutions and traditions along with their models of state–church–citizen relations.

The church–state–citizen relationships in Table 8.2 delineate the historical progression from the original medieval model of the *Corpus Christianum*, which was based entirely on Roman and Catholic canon law traditions (Model 1), to modern legal systems.

1. The *Corpus Christianum* is the model of the medieval Pan-European Roman Catholic Church-State. In it, the Roman Church-State is the highest power. As such, it alone may access and interpret the divine and guide its small secular arm: the state. In this conception, both Church and State control and coerce the individual. The individual may access the divine exclusively through the Church and never directly. The entire system of moral and legal codes emanates from the Roman Catholic Church-State in the figure of the pope. Legally speaking, the

Table 8.2 Moral and religious beliefs and models of state-church-citizen relations in the legal systems in Europe and the Americas (Amended from Witte, 2002; Berman, 2003; Miller, 2012; Cook, 2012; Merryman & Pérez, 2007)

Legal system	Religious source	Fundamental moral beliefs inspiring law	Main Influencer	Model of Church-State and citizen relations in each legal system ^a
1. Roman and Catholic canon law (From before Christ and until presently)	Roman Paganism and Roman Catholicism	The sacraments, scholasticism, tradition, selected sacred texts	Thomas Aquinas	
2. German Revolution (sixteenth-century onwards)	Lutheranism	At first only the Holy Scriptures (<i>Sola Scriptura</i>); conceptualism; later also tradition	Martin Luther	
3. English Revolution (seventeenth-century onwards)	Anglo-Calvinism Puritanism	The Holy Scriptures (i.e. the Ten Commandments); empiricism; historical tradition	John Calvin	

4. United States Revolution (eighteenth-century onwards)	Dissenting Protestantism	The Holy Scriptures; core principles of religious freedom and Church/State separationism (i.e. disestablishment of a national religion, liberty of conscience, free exercise of religion, equality of a plurality of faiths before the law)	Milton; Locke	<pre>graph TD; GT([GOD/TRUTH]) --- IND([INDIVIDUAL]); IND --- CH([CHURCHES]); IND --- ST([STATE]);</pre>
5. French Revolution (eighteenth and nineteenth-centuries onwards)	Deism	A Creator's gift of reason and freewill of exercising it. Reason-based natural law and the supremacy of public opinion. Rationalism	Rousseau	<pre>graph TD; TTTG([truth, truth, truth, god]) --- IND([INDIVIDUAL]); IND -.-> CH([churches]); IND --- ST([STATE]); CH -.-> ST;</pre>
6. Russian Revolution (twentieth-century)	Atheism	Soviet Marxist-Leninist atheism advocating for a classless society. Altruistic idealism	Marx; Engels	<pre>graph TD; ST([STATE/truth]) --- IND([INDIVIDUAL]); IND --- GCH([god, churches?]);</pre>

^aThe arrows indicate the direction and relations of coercion

model is currently valid for the Roman Church-State; minor changes were made after the Second Vatican Council (Agnew, 2010; Cook, 2012).

2. The second model (German Revolution) enhances the power of the secular authorities (monarchical states), and thereby substantially reduces the influence of the Church. The State provides universal education. The individual has direct access to the Scriptures and enjoys direct communion with God (Becker & Woessmann, 2009; Berman, 2003; Witte, 2002).
3. In the third model (English Revolution), oppressed groups and other dissenting forms of Protestantism (e.g. Calvinism, Puritanism) decreased the power of the state-church and thus of the monarchy. Such a process pushed towards the separation of Church and State and sought to empower the individual, in a large-scale development towards modern democracy based on the advances of the Lutheran Reformation in Germany and northern Europe (Berman, 2003; Doe & Sandberg, 2010).
4. The fourth model (United States Revolution) further progressed the clear separation of Church and State through a Protestant, dissenting process initiated earlier in England (and even before). The resulting democratisation process progressively and continuously further empowered the individual (Berman, 2003; Miller, 2012).
5. The French Revolution (fifth model) almost coincided with that in the USA and both informed each other. However, unlike the previous revolutions, Protestantism played no direct (and merely an indirect) role in France. Liberal anti-clericalism fiercely opposed Roman Catholicism but was also hostile to Protestantism (e.g. ironically, it destroyed bibles just as Roman Catholicism did). Therefore, the French Revolution encouraged individual, relative truths (instead of Catholic dogmas or Protestant, biblical moral foundations) by promoting deism and reason. In this conception, the individual and the democratic state are also strengthened, like in the model of the United States Revolution. Here, however, the state coerces and controls the churches (Berman, 2003; Merryman & Pérez, 2007; Miller, 2012).
6. The sixth model (the Russian Revolution) goes beyond the principles learned of the French Revolution. The state becomes the most powerful entity and hopes to liberate individuals from religious, “opiate-like” beliefs and from economic, class-based exploitation. Consequently, the state significantly coerces religion and enhances both the parental role of the law and the social and economic role of the state (Berman, 2003; Merryman & Pérez, 2007).

8.3.6 Summarising the Core Messages of Section 8.3. Law, Religion, Revolutions, and State Models

Even if most revolutions were defeated, the influence of the various legal traditions has long persisted. For instance, Eastern schism and in particular the German, English, American and French Revolutions ended the monopoly of Roman canon

law. The Thirty Year War ended the German Revolution, the English Revolution suffered defeat in the early 1800s, the French Revolution in 1870, and the Russian Revolution in the 1990s (Berman, 2003).

And yet, all these revolutions influenced the different legal traditions. Several elements of those revolutions still coexist in some countries more than others. Roman and canon law percolated into the legal systems of those countries that underwent revolutions to a greater or lesser degree. For instance, the French and German revolutions made the jurists re-adopt and adapt principles of the old regime in order to build on the respective basis (Berman, 2003; Merryman & Pérez, 2007; Witte, 2002). However, Roman and canon law exercised less influence in common law countries (e.g. after the English and United States revolutions) (Berman, 2003; Doe & Sandberg, 2010; Merryman & Pérez, 2007).

The Lutheran German Revolution formed the basis of the various later Protestant, dissenting revolutions, and legal traditions (i.e. British and American). Some of its concepts (e.g. separation of state functions from the church; state-sponsored education) permeate all modern legal systems to this day (Berman, 2003; Witte, 2002). The English Revolution marked a crucial step towards modern democracy and limited the power of the monarchies in Europe. Moreover, the British Empire spread common law throughout its colonies across the world (Berman, 2003; La Porta et al., 2008; Merryman & Pérez, 2007).

The revolution in the USA inspired modern constitutionalism and democratic rights all over the world. The French Revolution also transferred its legal model to its colonies and countries under its influence. For example, the USA exerted constitutional influence on Latin American countries while the French Revolution inspired the independence and the creation of the modern Latin American republics. However, the anti-clericalism of those revolutions was not always assimilated. Instead, along with the French code, Roman and Catholic (i.e. canonical) law has been the predominant legal tradition in most Latin American countries to this day. This attests to the pervasive presence (and power) of Roman Catholicism (i.e. concordats, corporatist states, Catholicism as a state religion) (Barro & McCleary, 2005; Berman, 2003; La Porta et al., 2008; Merryman & Pérez, 2007; Salinas, 2013).

Thus, the basic model of church–state–citizen relations in most Latin American countries more closely resembles the medieval *Corpus Christianum*, i.e. a model based on Roman and Catholic canon law traditions (Model 1). This happened although Latin American countries adopted several elements from the French legal tradition. Examples of corporatist states in which concordats are effective include Colombia, Venezuela, and Honduras.

On the other hand, Chile and Uruguay are liberal democracies with explicit anti-clerical movements that never allowed concordats to be signed with the Roman Church-State. Consequently, their basic model of church–state–citizen relations is closer to that of the French Revolution (Model 5). After its revolution, Cuba adopted the Russian model (Model 6).

In Europe, Switzerland (following the 1848 Constitution) was influenced by dissenting Protestantism and by US federalism and constitutionalism, along with French liberalism (Obinger, 2009). The Swiss Confederation has never signed a

concordat with the Roman Church-State, even if agreements exist at the cantonal level.

The anti-clerical, anti-Roman, and anti-canon law sentiments that influenced sixteenth-century Lutheran Germany resembled those of the eighteenth and nineteenth-century post-revolutionary France. In both cases, jurists sought to eliminate the references to Roman and canonical law. Therefore, Germany and France represent the most atypical legal systems in the “civil law world”. Their models have assumed intellectual leadership and have been implemented in several other countries (Merryman & Pérez, 2015).

Nonetheless, in both cases, jurists ended up readapting and reincorporating Roman and canon law to suit their new purposes (e.g. the adoption of biblical principles in Lutheranism and of rationalist deism in the French Revolution) (Merryman & Pérez, 2015; Witte, 2002). Consequently, the Roman influence is still highly significant in both cases notwithstanding the substantial legal contributions of the respective revolutions (Merryman & Pérez, 2007, p. 13).

Common law is a different case because British jurists managed to adapt a legal system after the Reformation with precious little influence of Roman and canon law (Doe & Sandberg, 2010). Thus, common law has no hierarchical source of law and is less rigid, less rigorous, and less systematic than civil law. Likewise, common law jurisprudence is less influenced by the rationalist dogmas of the French Revolution (Merryman & Pérez, 2015).

Legal origins associated with Protestant influence (e.g. English common law, German and Scandinavian legal systems) have proven more sustainable. They also exhibit higher institutional performance and prosperity than legal origins associated with a laic rejection of religion (La Porta et al., 2008). Dissenting Protestant religions paved the way for the Enlightenment and for social emancipation (Miller, 2012; Snyder, 2011; Woodberry, 2012).

In contrast, legal origins associated with a laic rejection of religion (e.g. Soviet) have not proven sustainable over time or the elements crucial to their functioning could not be transferred (e.g. French Revolution). For instance, while French legal origins transmitted anti-clerical sentiments to Southern European countries, they were not automatically transferred to most Latin American countries (Merryman & Pérez, 2007). As a result, Southern European countries materialised the sovereignty of their states over the Roman Church-State and thereby attained certain levels of prosperity and institutional performance (higher than in most Latin American countries, but lower than in historically Protestant countries).

For these reasons, Latin American countries with successful anti-clerical movements (e.g. Uruguay, Chile) reached similar prosperity levels as Southern European countries (e.g. Italy, Spain). However, most Latin American countries have been unable to implement anti-clerical laws and to overcome feudal structures, among other reasons, due to concordats and other political and legal commitments towards the Roman Church-State. As a result, their prosperity and institutional performance are lower.

Therefore, when comparing prosperity and institutional performance (“fruits”), it can be argued: 1) the “people’s opium” described by Marx in the Russian Revolution

applies more to specific types of hierarchical state religions (i.e. Orthodox, Roman Catholicism, Muslim). 2) However, the Marxists' total rejection of any religious expression eventually replaced one type of tyranny (and opium) for another. 3) In contrast, historically dissenting Protestant religions and anti-clerical movements have proven to be the precursors of social emancipation and the "antidote against the opiate" (Berman, 2003; La Porta et al., 2008; Merryman & Pérez, 2007).

The next section explores the relationship between religion, education, and prosperity. Before that, however, I introduce various associated empirical expectations:

Empirical Expectations

4. *I expect higher transparency/prosperity levels in countries with Protestant-influenced legal origins (i.e. German, English, or Scandinavian) than in non-Protestant countries. The Protestant Reformation introduced the Sola Scriptura principle reflected in Protestant-influenced legal origins.*
5. *I expect lower prosperity/transparency levels in countries that have been influenced by the French legal system, in particular when they have strong clerical ties, and thus have been significantly influenced by Roman and canon law (as in Latin America).*
6. *Given the tradition of controversial and restrictive concordats, I expect a negative influence on transparency and prosperity in the respective concordatarian countries.*
7. *I expect a negative influence on prosperity/transparency in countries rooted in Socialist legal origins, in particular on account of the Soviet legal principle of the "goodness of humankind" (similar to Roman Catholic and Orthodox natural law).*

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