

Comments on “The Relevance of Judicial Procedure for Economic Growth” by Bernd Hayo and Stefan Voigt

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- The paper studies the impact of legal procedures on economic growth.
- The authors propose to measure the effects of some characteristics (right to counsel, right to present a defense, presumption of innocence, right to appeal,...).
- The empirical model yields many other insights and is useful for debating some issues such as the importance of legal formalism that has been investigated by Djankov, La Porta, Lopez de Silanes and Shleifer (2003).

- Timeliness, written procedures and right to counsel have a robust positive effect on growth.
- Number of independent procedural actions and (surprisingly!) presumption of innocence have a negative effect on growth.
- Difference with the results of former studies based on the Lex Mundi dataset.

- The basic idea of the paper is that judicial procedures are formal steps that judges need to follow to produce binding decisions.
- They contribute to solidify state's promise to enforce privately entered contracts (→ positive effect on number of contracts) and to assure the credibility of the state commitment (→ positive effect on foreign and domestic investment)
- Djankov et al: more formalized procedures (in civil law countries) do not serve to protect conflicting parties but to secure government influence on courts decisions (→ potential negative effect on economic activity ?).

- Empirical analysis (Solow growth model). 15 years, 60 countries.
- Proxies: elements of judicial procedures based on the index of Fair Trial built by Hathaway (2002)
- Advantage compared to Lex Mundi: the index reflects experiences with thousands of court cases that really took place.
- Impossible to test a general model → general to specific modeling approach based on Hendry and Krolzig (1999) → OLS estimation possible
- Only few of the initially variables survive the testing-down process (7/22)!

- This is a nice piece of work that draws the attention to the importance of procedural rules that are usually neglected in most of economic papers that focus on substantive law. It is quite clear that procedures are decisive to appreciate correctly the economic outcomes of the legal systems.
- For instance, the same rules in contract law could have different effects according to the organization of the courts (active or passive judge, nature of the standard of proof, existence of a discovery procedure...).

- Some references are missing.
- The critic by Tullock of the accusatory system in *common law*
 - “On the efficient organization of trials”, *Kyklos*, 1975
 - “Defending the Napoleonic code against the common law”, *Research in Law and Policy Studies*, 1988
 - *The Case Against the Common Law*, 1996
- → Excessive resources used in the judicial process.
- See also the recent papers by Fluet (2003), Fluet and Demougin (2005) or Fluet and Emons (2006) about the standards of proof used by the courts.

- The opposition between inquisitorial and adversarial procedures is not explored.
- Following, it could be interesting to test the importance of other dimensions of judicial procedures:
 - active or passive judge,
 - nature of the standard of proof,
 - existence of a discovery procedure
 - costs of the procedure...

- The Hathaway index is biased: it concerns mainly criminal law!.
- Is it possible to assume that compliance in criminal law should be highly correlated with compliance in public and private law?

- The general to specific modeling approach is a "black box"!
- It seems quite complicated to justify finally an OLS estimation
- In Table 1, values tending to zero mean that procedures are "good" and values tending to one are "bad" (for instance "independent and impartial judiciary" presents the higher value). Perhaps, it could be easier for the reader of the paper to change the presentation.
- The result concerning the presumption of innocence is really amazing (even if one can admit it leads to an extension of court processes).

Thanks to all!