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Judicial Independence and Economic Development

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Introduction

- Judicial Independence one crucial trait for judicial performance
- Here: effects of judicial independence for economic development – and a number of follow-up questions
- Frame the issue in broader terms as the *dilemma of the strong state*
- Hobbes already identified the problem: **He who is strong enough to protect all is also strong enough to suppress all.**

Structure of the Talk:

1. Theory: why should Judicial Independence have anything to do with growth?
2. Measurement: how can Judicial Independence be Measured?
3. Results
4. Follow-up questions – and first answers
5. Conclusion and Outlook



1 Theory: why should Judicial Independence have anything to do with growth?

- Highly developed economies depend on decentrally coordinated exchange structured by relying on contracts.
- Contracts as promises.
- Contracts often carried out non-simultaneously.
 - ❖ Increases the overall number of contracts;
 - ❖ But also creates problem of time-inconsistency;
 - ↳ Successful use of contracts often depends on third-party that can credibly threaten and enforce a sanction in case of non-compliance with a contract.
- The judiciary allows contracting parties to transform simple promises into credible commitments, at least potentially.

1 Theory (2)

- Consequence: Number of contracts increases; actors develop longer time horizon, propensity to invest increases \Rightarrow faster growth.
- Now: include government in our considerations
- Governments have a similar problem: simple promises aren't credible either.
- Possibilities to increase credibility of promises:
 - ❖ Separation of powers (e.g. judicial independence);
 - ❖ Delegation of competence beyond the nation state
- *Hypothesis: higher degrees of JI will lead to faster growth.*

2 Measurement: how can Judicial Independence be measured?

- Distinguish between *de jure* and *de facto*; *de jure* judicial independence just another promise (a “meta promise” if you want); the degree to which it is really implemented as *de facto* judicial independence.
- Reduction of complexity necessary: only look at highest courts.
- Basic Idea: Judicial Independence made up of various aspects; they should be included in such an indicator.

2 Measurement (2)

De Jure Judicial Independence

- (1) Court mentioned in Constitution (Competences, Number of Judges etc.)?
- (2) How difficult to amend constitution?
- (3) Appointment procedure of judges
- (4/6) Term lengths; removal from office
- (5) Numerous terms possible?
- (7) Income reduction excluded?
- (8) Level of income?
- (9) Accessibility of the court
- (10) Allocation of cases to judges
- (11) Judicial review?
- (12) Publication requirements

De Facto Judicial Independence

- Not single point in time, but rather long period (e.g. 1960 until 2000).

(1-3) Effective average tenure

(4) Number of judges

(5-6) Real income at least constant? Court budget at least constant?

(7) Number of relevant changes in constitution

(8) Number of cases in which court decision not implemented

3 Results

- Want to explain the differences in per capita income in some 75 countries during the period 1980 until 1998.
- Of course, many other factors beside judicial independence relevant; these need to be controlled for.
- We find that
 - *De jure* Judicial Independence without effect;
 - *De facto* Judicial Independence with robust significant effect: a country with perfect JI grows some 1.9% faster than country with no JI *every single year!*

(Feld und Voigt 2003)

4 Follow-up questions – and first answers

(1) If *de facto* – and not *de jure* – Judicial Independence is driving growth: what factors explain the differences in *de facto* judicial independence?

Next to the level of democracy and the level of press freedom, *de facto* judicial independence is determined by *de jure* judicial independence

↪ Welcome result because *de jure* can be determined by politics

(Hayo and Voigt, IRLE 2007)

4 Follow-up questions - and first answers (2)

(2) What factors determine whether judicial independence is safeguarded via a country's constitution?

Former British colonies and countries in the Caribbean with lower likelihood of including judicial independence into their constitutions.

(Hayo and Voigt, JELS 2014)

4 Follow-up questions – and first answers (3)

(3) What factors explain changes in judicial independence over time?

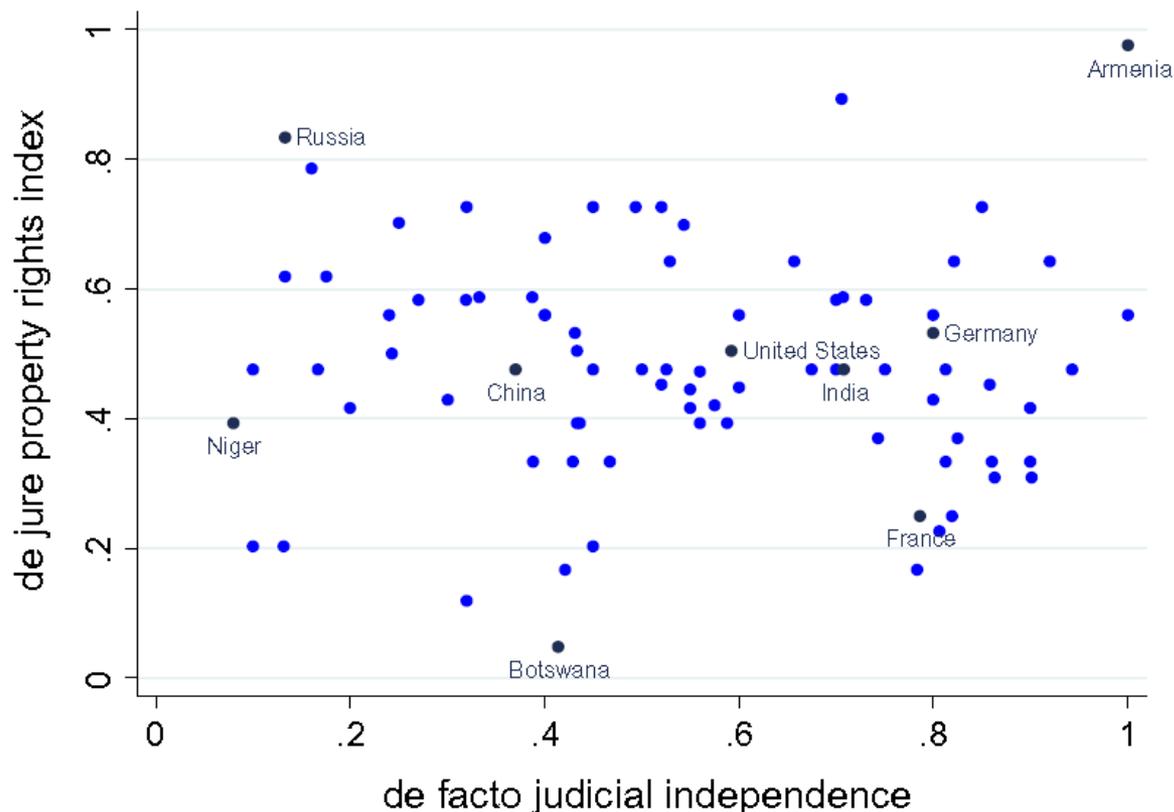
Individual traits of politicians relevant, e.g., how they acquired power, how they lost power, the number of years they were governing, their gender etc.

- ↪ Result can also be interpreted as a contribution to the theory of endogenous constitutions
- ↪ Shows that personal traits are important for the choice of institutions; this has been a largely neglected dimension in research

(Hayo and Voigt, Discussion paper)

4 Follow-up questions – and first answers (4)

(4) Judicial independence is a formal criterion. The protection of private property rights is neither logically nor empirically tied to JI. What is the relationship between the two?



4 Follow-up questions – and first answers (5)

Constitutionally protected property rights have positive effects on growth. These are substantially increased if they are combined with a high level of *de facto* JI.

Countries with a *de facto* JI < 0.37 cannot realize additional growth by improving their property rights protection, in other words: *de facto* JI is a necessary condition for growth!

(Voigt and Gutmann, JCE 2013)

4 Follow-up questions – and first answers (6)

- (5) If *de facto* JI is so important for growth but cannot be realized at the short term, couldn't the promotion of (non-state) arbitration a promising alternative?

Estimating the effects of arbitration very demanding because it presupposes data on its use.

New evidence seems to indicate that (state-run) litigation and (non-state) arbitration function as complements - and not as substitutes. In other words: arbitration is no quick fix.

(Voigt and Park, JDS 2013)

4 Follow-up questions – and first answers (7)

- (6) One possibility to reduce the dilemma of the strong state is to delegate competence to actors beyond the nation-state. Are there any examples for this in the area of courts and do they have the expected effects?

Judicial Committee of the Privy Council the highest court of appeal for all memberstates of the Commonwealth. Some former colonies kept on relying on the Judicial Committee whereas others immediately stopped this practice. Those countries that kept on relying on the JCPC experienced higher growth rates, higher rates of FDI and lower interest rates.

(Voigt et al., JDE 2007)

5 Conclusions and Outlook

- A high degree of JI cannot only reduce the dilemma of the strong state but is also a necessary condition for high rates of economic growth
- Here are a number of follow-up questions that wait to be answered:
 - What are the exact transmission channels through which JI induces additional growth?
 - What organizational structures are conducive to high levels of JI?
 - What interaction effects exist with cooperating organizations (such as the police, the prosecutors, prisons, ...)
 - What are the reasons in terms of political economy that stop governments from implementing higher levels of de facto JI?
 - ...
- It seems that there are many exciting questions for the years to come

Many thanks for your attention