

# Comparative Law and Economics

Methodological considerations, and an application to crime and punishment

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    - Similar to the Trento Project.

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- The method determines the usefulness of the data.
  - In legal work, precision is key.
  - In quantitative work, rough proxies are sufficient.

# Methodological considerations

## Choice of method

Research question determines suitable methods.

- Legal questions require legal methods, e.g.
  - description of (foreign) law
  - parallel description of different countries' laws
  - doctrinal comparative work
- Social science questions require different methods, e.g.
  - identifying general patterns (e.g., legal families)
  - investigating causal effects
    - required by policymakers (e.g., World Bank)
    - go deep, or go broad

# Methodological considerations

## Empirical quantitative methods

Quantitative methods have a number of advantages in empirical work:

- Quantitative methods can process huge amounts of information in complex ways.
  - Amount of information condensed into numerical data.
  - Algebraic/statistical manipulation of these data.
  - Measurement error washes out (within limits).
- Some ostensible weaknesses affect other methods even more
  - Omitted variables
  - Simple functional form
- The inherent generalization can be a strength:
  - Theory (policy advise) requires generalization.
  - A fully individualized story can never be wrong.

# Methodological considerations

## Problems of cross-country regressions

However, cross-country regressions (as used in legal origins research) suffer from important weaknesses:

- Cross-sectional analyses show correlations, not causation.
- The sample is small - at most 220 countries/territories.
- Many relevant data are missing for large subgroups of this sample.

Hence cross-country regressions will never establish causation, or be suitable for analyzing fine details of the law.

# Application: Crime and Punishment

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  - reinforcement by US frontier situation.

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  - to distinguish between all these theories;
  - to determine whether the US is truly special in terms of punitiveness.

# Application: Crime and Punishment

Quantitative approach, data

## Regress

- incarceration rate for 213 countries and territories from International Center for Prison Studies,
- incidence of the death penalty for 188 countries from Amnesty International, and
- crime data
  - homicide rates for 183 countries from the WHO
  - incidence of common crimes in 75 countries from victimization surveys (ICVS)

on a battery of control variables proxying for the theories surveyed in Whitman (2005) and elsewhere, including "legal origin" (as a shorthand for English and other European influences, as well as transition countries (socialist legal origin)).

# Application: Crime and Punishment

## Caveats

- 1 Not all theories are testable in this way - need prediction for cross-section.
  - "static" theories yield cross-sectional predictions (e.g., "common law leads to more prisoners")
  - many "dynamic" theories do not: e.g., theory that "ruling classes use incarceration to limit unemployment and thereby quell social unrest"
- 2 Do other factors need to be held fixed - "*ceteris paribus* theories"?
  - the multivariate regressions *do* hold many factors fixed, but
  - one cannot do it perfectly
    - on the other hand, if a theory only matters once a lot of other factors have been controlled for, it may not be so important after all.

# Application: Crime and Punishment

## Results

- Incarceration rates:
  - only three factors are statistically significantly correlated with higher incarceration rates:
    - English "legal origin" (50% more prisoners!)
    - income inequality
    - GDP per capita (at low levels; at high levels, the effect reverses)
  - full model predicts only 1/3 of actual US inmate count
- Death penalty:
  - variety of factors matter
  - English "legal origin" countries are twice as likely to retain the death penalty
- Crime rates [work in progress]
  - only consistent predictor of higher crime is income inequality

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## Interpretation of the results

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- since the regressions control for social variables like income inequality, the results indicate that English "legal origin" does not operate through social outcomes
- by design, cannot investigate Whitman's claim that the English "legal origin" effect has to do with the historical process of the levelling of status differences
- "legal origin" = *Legal* origin? At least not in the classic sense: dummy variables for the adherence to precedent or the existence of juries do not absorb the effect.

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Future research

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- I am working on econometrically disentangling the effects of the various variables on "latent crime" on the one hand, and "punitiveness" on the other.
- I have no explanation for the English "legal origin" effect, and hope that other researchers will look at this in more detail - qualitatively.