From Exogenous to Endogenous Property Rights.

Carmine Guerriero (University of Bologna)

EDLE PhD course, Bologna. 07/02/2018.





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- You will be assessed on the basis of a final essay illustrating a possible application to a legal case of your choice of the models discussed in class.





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3 discusses how essays should access avenues for further research.





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- Final Essay: Structure.







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 - lawmaking institutions—i.e., case and statute law—that aggregate the citizens' preferences and the firms' technology into laws;
 - adjudication institutions—i.e., discretion and bright-line rules—that determine the judges' ability to make law.
- ← These rules enhance the reliance on contracts and, thus, are called contracting institutions by Acemoglu and Johnson (2005).



Acemoglu and Johnson (2005).

and Large Transaction Costs.

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 - inalienability rules forbidding the voluntary transfer of the entitlement.
- ← Acemoglu and Johnson (2005) call them property rights institutions, since they protect citizens against expropriation by government/powerful elites. ⋾



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$$Y_c = \alpha F_c + \beta I_c + \mathbf{Z}_i' \gamma_0 + \epsilon_c,$$

where $\mathbf{Z_i}$ gather the controls. Y_c can be the GDP per capita, the investment over GDP, the private credit over GDP, and the stock market capitalization. F_c can be the number of steps necessary to collect an unpaid check, and two proxies for the legal difficulty to collect an unpaid commercial debt. I_c can be the Polity IV constraint on the executive, the Political Risk Services' and Heritage Foundation's subjective measure of private property protection.





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 - $I_c = \delta_2 L_c + \eta_2 M_c + \mathbf{Z}_i' \gamma_2 + u_{2c}$, where M_c is either the log mortality rate of European settlers or the log of the indigenous population density in 1500 ← exogenous allocation of political institutions due to colonialism (Acemoglu, Johnson, and Robinson, 2001, 2002).





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- The instruments enter in a separable way into the first stages (table 3).





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- The results are robust to changing samples, controlling for macroeconomic policies, religion, and latitude, and employing firm-level data.
- ← Individuals can deal with weak contracting institutions by altering their contracts but cannot avoid predation since transaction costs are relevant!!!





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Exogenous Institutions Approach: Inconsistency of ...

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 \leftarrow measurement error might not be an issue if both L_c and M_c are strong, separate and above all excluded. Instead,





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Next, we will first clarify the coercion vs. predation trade-off, and then we will evaluate the role of the other drivers of property rights.





Predation Versus Disincentives.

Towards Endogenous Property Rights: Predation Versus Disincentives.

Towards Endogenous Property Rights.





Endogenous Property Rights: ...

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- Furthermore, strong property rights expand trade and facilitate credit markets, i.e., the de Soto effect (Besley and Ghatak, 2010).





Democracy, Disincentives to Effort, and Resources.

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- Evidence: Figures 1-3 and Tables 2 and 3 in Besley and Ghatak (2010).





Towards Endogenous Property Rights: Inefficient Exclusion From Trade/Innovation Versus Inefficient Expropriation.





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 - Indirect private takings: expropriation mediated by the state, which transfers without consent property from a private party to another private party for profit—and not for public interest—goals.





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Paradigmatic Case of Stolen Goods, ...

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- Stolen-art market "is a looming criminal enterprise with estimated losses running as high as \$6 billion annually" (FBI, 2012).



Double Sale of Real Estate, ...

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40% of private lands in developing countries are invaded and there are roughly two billion squatters in the world (Brueckner and Selod, 2009).





Intellectual Property, ...

— A downstream "B" exploits an idea developed by the upstream "O."





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— A downstream "B" exploits an idea developed by the upstream "O."

— Should the legal system protect "O" or impose the exhaustion of his intellectual property rights or the compulsory licensing of the idea?





Financial Intermediation, ...

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— If an intermediary forges an instrument before transferring it, the current bearer and issuer will hold incompatible rights and obligations.

Similarly, if a debtor pledges an asset as security to two creditors.



Bankruptcy, ...

— Manager "I" tunnels resources out of a firm whose creditor/minority shareholder is "O" and whose majority stockholder is "B."





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— Should the legal system safeguard the rights of "O" or those of "B?"





Segmented Labor, Financial, and Housing Markets.

— "B" offers through agent "T" a contract to "O" at conditions more disadvantageous than those prevailing on the primary market.



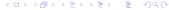


Segmented Labor, Financial, and Housing Markets.

— "B" offers through agent "I" a contract to "O" at conditions more disadvantageous than those prevailing on the primary market.

— Should we protect the contract signed by "B" or "O"'s labor rights?





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e.g., Kelo v. City of New London, 545 U.S. 469, 2005.





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- "The state not only [decides] whom to entitle, but [also] which entitlements are protected and [if] an individual is allowed to [...] trade the entitlement."



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- Inalienability rules:

 "The state intervenes not only to determine who is initially entitled [but also] the compensation that must be paid if the entitlement is taken or destroyed, but also to forbid its sale under some or all circumstances."





Selecting Property Rules: Criteria and ...

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 Three selection criteria: economic efficiency, distributional goals, and nondistributional goals as moralism, self paternalism and paternalism.



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→ Liability rules should be preferred to property rules if transaction costs are large since market frictions and failures impede consensual trade and with the caveat of the choice of compensation [C&M 1971, p. 1095-6], e.g.,





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 - accidents: if a compensation is not set upfront, victims of injuries might be involved in pre-accident negotiations.
- → "When a transaction would create significant [or non measurable] externalities," inalienability rules are the best option.





Final Essay: Structure.





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