

Abstracts (Find the full text here)

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Judicial performance in the American States: The Value of the Merit Plan

This article examines the relative merits of judicial selection methods in the American states. The conventional wisdom holds that appointive judges act differently than elected judges, because they are more independent and are less vulnerable to the public pressure. Existing theories suggest that appointive systems create more uncertainty, therefore, one should expect higher litigation rates in these systems. They also suggest that public pressure forces elected judges to be more productive. Using time series datasets on litigation rates and opinions, I investigate the impact of switching in selection methods on the judicial behavior. I use tests of structural break, with both known and unknown dates, to examine whether switch from elective and appointive systems to a merit selection causes a structural regime change. I evaluate the results using asymptotic results in the literature as well as with Monte Carlo analysis. I evidences do not completely support existing theories. A change in selection method causes a regime change, but the direction of the change is not consistent with the prediction of the theory. Moreover, I find that adopting a merit plan significantly reduces the number of opinions written by the supreme court justices, though some exceptions exist. All together, I conclude that the switch in the selection method affect the behavior of both judges and litigants. The effects on the behavior of the judges are stronger than the impact on the behavior of potential litigants.

Key Terms: Legal Systems, Judicial Selection, Hypothesis Testing, Monte Carlo Simulation.

JEL Classification: K4, C12

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Determinants of Judicial Independence: A Cross-Country Analysis

This paper analyzes the determinants of judicial independence. It investigates empirical evidences for two existing approaches in explaining judicial independence: institutional protection and political competition. Using a new set of indicators for institutional protection from constitutions of countries, I show that there is no evidence for a significant effect of institutional rules on judicial independence. On the other hand, panel data analysis shows a causal effect of political competition on judicial independence. This effect holds after: (a) including country-specific fixed effects, (b) using instrumental variables to address the issue of reverse causality, and (c) controlling for persistence in judicial performance and mean-reverting dynamics. In other words, in explaining the conditions for judicial independence rules do not matter whereas rulers do.

Key Terms: Judicial Independence, Institutional Arrangements, Panel Data Analysis.

JEL Classification: K4, C23, O17

The Impact of Joinder and Severance on Federal Criminal Cases: an Empirical Study With Andrew D. Leipold; Published in: *Vanderbilt Law Review*, Vol. 59, No. 2, March 2006. Available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=847707

It is widely assumed that criminal defendants who face multiple charges in a single trial have a harder time prevailing than those who face several trials of one count each. Conventional wisdom also has it that a defendant who is joined for trial with other suspects is worse off than one who stands trial alone. Until now, these assumptions have never been tested empirically. Looking at nearly 20,000 federal criminal trials over a five-year period, this Article asks if the traditional beliefs are true, and if so, tries to measure the impact on trial outcomes of joining counts and defendants. It turns out that joinder has a significant prejudicial effect on trials, although not quite the same effect that is usually assumed. Using statistical models that control for a range of variables, the authors discovered that trial defendants who face multiple counts are roughly 10% more likely to be convicted of the most serious charge than a defendant who stands trial on a single count. Surprisingly, however, joining co-defendants in a single trial had virtually no impact on the likelihood of conviction, at least in the aggregate. Using the results of the empirical study, the article then reconsiders the competing policy issues that underlie the joinder and severance doctrine, and explores the implications of the empirical findings.