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Jury trial and public trust in the judiciary: evidence from cross-countries comparison

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ABSTRACT

The jury is an institution that has evoked praise and criticism throughout its history. Recently, it has also triggered debate in many countries as they reform their judicial processes.

Gathering data on 111 countries from various sources to analyze the jury as part of the judicial system, we find that public trust in the judiciary is higher in countries with jury trials than in countries without them. Countries that conduct jury trials also tend to have stronger judicial constraints on other sources of governmental power and better-performing criminal adjudication systems. These analyses reveal correlation rather than causation, but they are helpful for challenging conventional wisdom and for better understanding the function of the jury system. The seemingly paradoxical patterns that are identified — namely, that the jury, designed to constrain the judiciary, ends up correlated with stronger judicial power, and that laypeople, supposedly less proficient than professionals in deciding cases, are in fact positively associated with judicial performance — suggest an internal connection between the jury as a judicial body and as a political institution.

I. Introduction

The institution of the jury is ancient, and throughout its history has evoked both praise and condemnation. Trial by jury is frequently criticized as a ‘judicial institution’ for its inaccuracy and redundancy yet widely embraced as a ‘political institution’ for its advocacy of

direct democracy.¹ Over the last decade, this debate has acquired particular pertinency as many countries have attempted to reform their judicial systems through the introduction of jury trials. Russia and Spain incorporated jury trials into their criminal procedures in the 1990s.² South Korea³ and Argentina,⁴ in 2012 and 2015, respectively, reformed their own legal systems by initiating jury systems. In China, promoting public participation through the establishment of a jury system has become a heated topic of discussion.⁵ While many new democracies welcome the jury, controversies have arisen from jury verdicts in high-profile cases in the United Kingdom, the United States (US) and other countries;⁶ and some, including Britain — the supposed birthplace of trial by jury — have called for the reform of existing jury systems.⁷ In their systematic survey, Jackson and Kovalev⁸ show a general decline across Europe in the use of traditional juries in serious criminal cases and a trend towards diminishing its capacity to deliver independent and impartial decisions.

The impact of the jury is both theoretically and practically important, and its costs and benefits have long been discussed, but few empirical studies to date have evaluated its overall effect. Is the jury, in general, a desirable institution? This article studies this question by empirically examining the relationship between the jury and public trust in the judiciary across different jurisdictions.

Empirical studies have addressed the jury's competence and role, but most have focused on criminal and civil juries in the US.⁹ Very few studies have addressed the impact of lay

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¹ This distinction aligns with that in Alexis de Tocqueville, *Democracy in America* (Henry Reeve tr, first published 1835, Cambridge 1862).

² Stephen C Thaman, 'Europe's New Jury Systems: The Cases of Spain and Russia' (1999) 62 *Law and Contemporary Problems* 233, 238–259. The Spanish jury system, though included in the 1978 Constitution, was not put into effect until the Jury Law of 1995.

³ Jae-Hyup Lee, 'Getting Citizens Involved: Civil Participation in Judicial Decision-Making in Korea' (2009) 4 *East Asia Law Review* 177, 189–207; Ryan Y Park, 'The Globalizing Jury Trial: Lessons and Insights from Korea' (2010) 58 *American Journal of Comparative Law* 525, 578–582.

⁴ Bryan Llenas, 'First Jury in History of Buenos Aires, Argentina Finds Defendant "Not Guilty"' *Fox News Latino* (New York, 15 March 2015).

⁵ Yongan Liao and Fangyong Liu, 'Reform of the Lay Assessor System in a Transitional Society' (2012) 3 *China Legal Science* 147, 152 (廖永安、劉方勇, '社會轉型背景下人民陪審員制度改革路徑探析', 《中國法學》2012年第3期, 第159頁).

⁶ Philip A Bower, 'Setting New Standards for Successive Different-Claim Habeas Corpus Petitions: *McCleskey v. Zant* Casenote' (1992) 19 *Ohio Northern University Law Review* 139; Valerie P Hans, 'Juror Bias Is a Special Problem in High-Profile Trials' (2005) Cornell Law Faculty Publications: Paper 306.

⁷ 'The Jury Is Out' (*The Economist*, 12 February 2009) <<http://www.economist.com/node/13109647>> accessed 15 January 2020.

⁸ Gail A Jaquish and James Ware, 'Adopting an Educator Habit of Mind: Modifying What It Means to "Think like a Lawyer"' (1993) 45 *Stanford Law Review* 1713, 1720–1729.

⁹ For a summary, see Valerie P Hans and Neil Vidmar, *American Juries: The Verdict* (Prometheus Books 2007).

participation by conducting large-scale comparative studies. Notably, Jackson and Kovalev¹⁰ surveyed lay adjudication in the 46 countries of the Council of Europe. By sending a questionnaire to legal experts in each country to assess how specific issues were handled for each procedural model, they found five models of lay adjudication. Voigt, in his study, sent questionnaires to experts in 80 countries to collect data on their jury and lay assessor systems, and found that lay participation is *not* significantly correlated with outcome variables such as judicial corruption, judicial independence and governance quality, except that jury systems show a significant positive effect on government effectiveness whereas lay assessor systems do not.

This article builds on the above two studies. We use Voigt's data on whether a country employs a jury system, and supplement it with data collected from the US Department of State's Human Rights Reports (2011, 2013 and 2015), which enable us to provide the most comprehensive data on whether a country has employed the jury system.

We begin with the question that theories contest the most: whether the presence of a jury is associated with people's overall confidence in the judicial system. Political scientists see enhancement of public trust in the judiciary as the jury's most important contribution to the political system. This idea spans political thought from ancient Greece to the founders of the US, from French Revolution theorists to the British lawyers across the strait. The main argument is that juries facilitate public participation in adjudication, allowing those who are ruled to monitor the power of judges, and preventing the state from encroaching upon individuals' rights through criminal adjudication; together, these features increase people's confidence in the courts.¹¹ Moreover, empirical evidence shows that experience serving on a jury directly improves citizens' confidence in judges and judiciaries,¹² which is mentioned by Tocqueville as the educational function of jury trials.¹³ Detractors of the jury system, however, have criticized its untrustworthiness. They view the jury as an incompetent decision-making body for many reasons, including its inconsistency and inaccuracy as well as its bias and discrimination against certain groups. The evidence is both empirical and

¹⁰ Jaquish and Ware (n 8) 1726–1729.

¹¹ Dan M Kahan, David A Hoffman and Donald Braman, 'Whose Eyes Are You Going to Believe? Scott v. Harris and the Perils of Cognitive Illiberalism' (2009) 122 Harvard Law Review 837–906; Hiroshi Fukurai, 'The Rebirth of Japan's Petit Quasi-Jury and Grand Jury Systems: A Cross-National Analysis of Legal Consciousness and the Lay Participatory Experience in Japan and the US' (2007) 40 Cornell International Law Journal 315, 345–354.

¹² John Gastil et al., *The Jury and Democracy: How Jury Deliberation Promotes Civic Engagement and Political Participation* (Oxford University Press 2010).

¹³ Tocqueville (n 1) 337.

anecdotal. High-profile cases such as the OJ Simpson and Rodney King trials have riveted public attention and induced widespread distrust of the system.

Using comparative data, we found that public trust in the judiciary is higher in countries with jury trials than in those without them. This correlation provides suggestive evidence that the jury system indeed consolidates people's trust in the judiciary. We also found that, compared with common law countries, the jury system is associated with a greater increase in public trust in non-common law or civil law countries; that is, when a non-common law country conducts jury trials, people's confidence in the judiciary increases to a greater extent than when a common law country does so. These results are consistent with a traditional understanding of the differences between legal systems, which suggests that common law is per se associated with stronger judicial independence and judicial power, with the jury one of many institutions that protect individual rights, whereas civil law countries generally have more centralized and authoritarian elements in their rulings, with the judiciary instrumental in realizing state authority.¹⁴ Since the jury is an institution that counterbalances state power, it would have influenced the judicial system to a larger extent and thus improved people's trust in the judiciary more significantly than in a civil law country.

Notably, we find correlation rather than causation, although we try to control many independent variables that account for other country-level characteristics in our regression analyses (e.g. the level of judicial independence, the level of judicial corruption, the level of economic development). Readers should bear in mind the limitations of correlation when considering the results, including potential problems with respect to omitted variables, reversed causation, and endogeneity. We discuss these problems in greater detail in Section III and IV. Yet, we believe the finding of correlation is, itself, a contribution to the literature. Like any political or judicial institution, the jury system certainly has its imperfections. What is important to policymakers is the overall effect of the system, and whether there exists any superior and feasible alternative (e.g. a more specialized and expert-oriented system). Using comparative analyses, we provide a unique opportunity to study jury trials on a macro level, and this macro-level analysis sheds new light on those long-debated issues surrounding trial by jury. Future studies can further explore whether this correlation indicates causation; and if it does not, what other factors induce the coexistence of jury trial and stronger trust in the judiciary.

¹⁴ See, for example, Rafael La Porta et al., 'Judicial Checks and Balances' (2004) 112(2) *Journal of Political Economy* 445, 455–470.

There are two subsidiary questions relevant to the relationship between jury trials and public trust. One is whether the presence of the jury system, by improving public trust, also enhances judicial power as a check against abuses of government or executive power. Theorists have stressed that, lacking the sword or the purse, the judiciary's power depends ultimately on the trust of the people.¹⁵ It follows that when the people possess greater faith in the judiciary, that institution eventually becomes more powerful in fending off government intervention. Consistent with this theory, we find that judiciaries in countries that conduct jury trials are associated with a stronger capability for constraining the powers of government.

The other question relevant to trust concerns the jury's association with judicial performance. Despite debate among legal scholars and political scientists, there seems to be a widely accepted perception that jury trials are inefficient, indeed ludicrously so, and that their only redeeming quality may be in the noneconomic values that such a system protects. We provide suggestive evidence that challenges this conventional wisdom. Employing quantitative analysis to compare judicial performance in criminal justice between countries that use jury trials and countries that do not, we find that judiciaries with jury trials are associated with better-performing criminal justice systems, with respect to the timeliness and effectiveness of criminal adjudication, whether the criminal system is free of corruption, free of improper government influence, and whether there is due process of law and rights of the accused.

Taken together, using cross-countries data, our analyses reveal two seemingly paradoxical patterns. The jury, which is designed to constrain the judiciary, ends up associated with stronger judicial power; moreover, laypeople, supposedly less proficient than professionals in deciding cases, are in fact linked with better judicial performance. In contrast to previous theories that separate the jury's judicial and political functions, the results of this article indicate that the two functions are by their very nature symbiotic. Neither cheap nor highly accurate, the jury system is imperfect as an adjudicative body; however, by bringing more democracy and trustworthiness into the judicial process, the jury has irreplaceable merits. For legal reformers in regimes that are debating whether to adopt a jury system, the findings of this study provide a better understanding of the institution's costs and benefits. For readers in countries that have adopted jury trials, a comparative examination of the jury

¹⁵ Gregory A Caldeira, 'Neither the Purse nor the Sword: Dynamics of Public Confidence in the Supreme Court' (1986) 80 *American Political Science Review* 1209–1226; Gregory A Caldeira and James L Gibson 'The Etiology of Public Support for the Supreme Court' (1992) 36 *American Journal of Political Science* 635–664.

will clarify the importance of public participation in court. Thus, a comparative study brings new insights for both judicial systems.

II. The literature and hypothesis

A. The jury and trust in the judiciary

Theories have long suggested that the jury, as probably the only democratic element of the judicial process, should promote people's trust in the judicial system. These theories come from different strands of thought and methodologies focusing on different aspects of the jury, but they point to a similar direction — there is an internal link between the jury and the public's confidence in the courts.

Juries allow public participation in courts, and assuming a role in the judicial decision-making process directly increases participants' confidence in the judicial system. Jury service moves citizens from private life into a public role, engages them in a careful deliberative process with their peers, and requires them to render a judgment with real consequences for others and perhaps the larger community. The experience of jury decision-making is for many a transformative event, granting a stronger sense of their capacities as citizens. This sense of civic responsibility and capacity in turn contributes to a stronger sense of affinity with the judicial procedure, and eventually leads to stronger trust in the judiciary as a whole. As suggested by Tyler's famous studies on institutional trust, people trust the judiciary not because they believe the courts always make correct decisions but because they think the procedures that generate such decisions are just and fair.¹⁶ In other words, perceived procedural justice is the main predictor of trust in the courts, particularly for those with prior personal court experience. In this regard, participation, by bringing citizens into the courtrooms and letting them decide cases, increases their sense of procedural justice, and improves their confidence in the judiciary. In fact, along this line of thought, Gastil et al¹⁷ in their survey study of jury service documented that experience serving on a jury significantly improved citizens' subsequent levels of civic engagement, together with their confidence in state and local judges and judiciaries.¹⁸

The jury not only involves laypeople in the administration of justice by giving them a 'judicial' role in passing judgment on their peers but also entrusts them with an important

¹⁶ Tom R Tyler, *Why People Obey the Law* (Princeton University Press 2006) 10–19.

¹⁷ Gastil et al. (n 12).

¹⁸ *Ibid.*

‘legislative’ role whereby they can cast judgment on unpopular and oppressive laws. A judge may feel obliged to enforce repressive laws because he is accountable, first and foremost, to the legal system. Jurors, on the other hand, can consider the merit of such laws and decide whether to follow them. Jury nullification occurs when members of the jury disagree with the law a defendant has been charged with breaking, and so avoid applying the law in passing their verdict. In this regard, the jury system gives citizens a chance to express the values and judgments of their community,¹⁹ thereby improving confidence in the political system as a whole. One of the most famous expressions of this aspect of the jury’s role can be found in Tocqueville’s *Democracy in America*. Under the title ‘Trial by Jury in the United States Considered as a Political Institution’, Tocqueville²⁰ wrote that ‘[the jury] places the real direction of society in the hands of the governed, or of a portion of the governed, and not in that of the government.’ Tocqueville was certainly not the first to support the idea of public participation in adjudication. Centuries earlier in Athens, the popular courts, or dicasteries, while centres of controversy, were also defended as bulwarks of democracy.²¹ It is hard to find many modern examples of juries prompting laws to be changed, but this is not to say that juries have lacked influence. Indeed, lawmakers have been said to engage in a kind of ‘imaginary’ dialogue with jurors in order to make laws acceptable to potential members of a jury trial.²²

The jury system is one that defends individual liberties and human rights. The jury shifts power away from the state structure and into the hands of citizens, and is largely seen as a system that counterbalances judges and, beyond them, the state’s power, to safeguard individual rights and freedoms.²³ In the birthplace of the modern jury system, Sir William Blackstone wrote of the jury as ‘the glory of English law’ and claimed that it placed ‘a strong ... barrier between the liberties of the people and the prerogatives of the Crown’.²⁴ This notion was shared by the founders of the US. The Declaration of Independence denounced George III’s abuse of power and improper interference with judicial administration. As a result, Article III of the US Constitution specifically confirms the role of

¹⁹ Hans and Vidmar (n 9) 350–289.

²⁰ Tocqueville (n 1) 361.

²¹ Glenn R Morrow, ‘Plato and the Rule of Law’ (1940) 50 *The Philosophical Review* 105–126.

²² Thom Brooks, ‘The Right to Trial by Jury’ (2004) 21 *Journal of Applied Philosophy* 197–212; Mike Redmayne, ‘Theorizing Jury Reform’ in Antony Duff et al., (eds), *The Trial on Trial: Volume 2 Judgment and Calling to Account* (Bloomsbury 2006); John D Jackson and Nikolay P Kovalev, ‘Lay Adjudication in Europe: The Rise and Fall of the Traditional Jury’ (2016) 6 *Oñati Socio-Legal Series* 2.

²³ Baron Partrick Devlin, *Trial by Jury* (Stevens 1966) 164.

²⁴ William Blackstone, *Commentaries on the Laws of England* (first published 1791, Dawsons of Pall Mall 1966).

the jury system in criminal justice: every involved party should be judged by jury.²⁵ The jury is the handbrake on the abuse of power.²⁶ What naturally follows is that the public will have more confidence in the judiciary because juries have become a safeguard of the rights of the public, rather than a tool of repressive governments.

A minor and easily neglected factor is that jury trials may improve rather than reduce the level of professionalism of judges and other legal establishments, especially with respect to their communication skills. Legal education trains lawyers to think and express themselves in an abstract hypothetical-deductive style, with the help of specialized terminology and theoretical constructs. This style of thinking and communication is an efficient way to convey ideas and reasons within the legal community, in which people share a similar educational background and legal training. Yet, the presence of a jury requires additional communication skills. Few jurors have experienced the intellectual and socialization processes of attending law school or legal training. All types of lawyers — judges, prosecutors, and attorneys — need to communicate the law and its application to these nonlawyers, so that they can make informed decisions. In countries with jury trials, lawyers must equip themselves with first-rate communication skills. They need to play the role of educators, beginning the process of communicating information by pondering how the subject matter can be delivered to ensure comprehension.²⁷ Sometimes, a better strategy is to make oneself more credible in order to be more persuasive.²⁸ It is no surprise that many trial tactic manuals and handbooks, written by eminent litigators, offer extensive advice on trial advocacy and jury communication. It is also no surprise that with lawyers striving to become more persuasive and credible, the whole judicial procedure has become more trustworthy. In other words, the jury system helps improve the skills of the legal profession, which in turn contributes to the trustworthiness of the judiciary.

In sum, as a democratic institution that promotes public participation and defends individual liberty, the jury can reinforce people's confidence in the judicial system. Viewing these theories from a comparative perspective, we should also presume that public trust in the judiciary is higher in countries with jury trials than in countries without them (Hypothesis #1).

²⁵ Fleming James Jr, 'Right to a Jury Trial in Civil Actions' (1963) 72 Yale Law Journal 655, 688–693.

²⁶ Hans and Vidmar (n 9) 377–402.

²⁷ Jaquish and Ware (n 8) 1333–1349.

²⁸ Valerie P Hans and Krista Sweigart, 'Jurors' Views of Civil Lawyers: Implications for Courtroom Communication' (1993) 63 Indiana Law Journal 1297.

Studies on the capability of juries, however, suggest that this hypothesis is still contested and requires rigorous empirical testing. Although jury research finds that the jury is generally a competent decision-making body,²⁹ there are valid challenges.³⁰ These scholarly challenges, together with some anecdotes involving high-profile cases such as the OJ Simpson and the Rodney King trials, are responsible for ambivalence and even distrust in the jury's overall impact on society. Criticisms focus on the jury's competence. Scholars disagree with one another, but some evidence casts doubt on juries' ability to make sound decisions in areas of special challenges, including passing verdicts of the death penalty,³¹ and understanding evidence in complex or combined criminal trials.³² The situation has been exacerbated by the rise of scientific evidence and expert testimony.³³ In fact, concerns about the possibility of juries' reliance on unsound science underlie a series of 1990s rulings on expert evidence by the US Supreme Court. In these rulings, the courts held that trial judges should serve a gatekeeper role, evaluating the scientific basis of expert testimony before permitting it to be introduced in a trial.³⁴ Another problem with juries is their being inconsistent and prejudiced, which compromises the basic requirement of justice: settled laws that treat similar cases alike. It is not uncommon to have juries decide similar cases differently without good reason.³⁵ Prejudice is a more serious problem, and its forms vary, from barely noticeable instances of discrimination against foreigners,³⁶ to notorious examples of racism in criminal procedures.³⁷

It is important not to exaggerate the problem. These challenges to juries do not alter the general belief that juries are competent and unbiased. Yet, they do suggest that further empirical studies are well warranted — and providing further empirical tests from a new angle is the purpose of our study. Like any political or judicial institution, the jury system is imperfect. What is important here is its overall effect, and whether there is a superior and feasible alternative (e.g. a more specialized and expert-oriented system). This provides

²⁹ Hans and Vidmar (n 9) 179–190.

³⁰ Dannis J Devine, *Jury Decision Making: The State of the Science* (New York University Press 2012).

³¹ John Blume, Theodore Eisenberg and Stephen P Garvey, 'Lessons from the Capital Jury Project' in Stephen P Garvey (ed), *Beyond Repair?: America's Death Penalty* (Duke University Press 2003) 144–177.

³² Sarah Tanford, Steven Penrod and Rebecca Collins, 'Decision Making in Joined Criminal Trials: The Influence of Charge Similarity, Evidence Similarity, and Limiting Instructions' (1985) 9 *Law and Human Behavior* 319.

³³ Hans and Vidmar (n 9) 174–189.

³⁴ *Daubert v Merrell Dow Pharmaceuticals* [1993] 509 US 579; *General Electric Co. v Joiner* [1997] 522 US 136; *Kumho Tire Co. v Carmichael* [1999] 526 US 137.

³⁵ Jeffrey Abramson, *We, the Jury: The Jury System and the Ideal of Democracy* (Harvard University Press 2000) 145–150.

³⁶ *Ibid*, 152.

³⁷ Shamena Anwar, Patrick Bayer and Randi Hjalmarsson, 'The Impact of Jury Race in Criminal Trials' (2012) 127 *Quarterly Journal of Economics* 1017, 1050–1055.

further justification for a comparative study: because it is through comparing judicial systems on a macro level that we can shed new light on long-debated issues.

B. Jury trials in common law and non-common law jurisdictions

Previous theories imply that jury trials would have stronger effects on judicial trustworthiness in non-common law than in common law countries.³⁸ The common law system is usually per se associated with stronger institutions that consolidate judicial power, such as the use of case law, the life tenure of judges, and the division of power inherent in the political structure. The jury, if present, is one of many institutions safeguarding judicial independence and protecting individual rights. By contrast, civil law countries generally have more centralized and authoritarian elements in their rulings, with the judiciaries instrumental in realizing state authority.³⁹ An important strand of literature found that civil law is generally associated with a heavier style of government control and regulation than common law in many spheres, such as government ownership of banks and other enterprises, the burden of entry regulations, regulation of labour markets, incidence of military conscription, and government ownership of media.⁴⁰ In addition, civil law is associated with greater formalism of judicial procedures⁴¹ and weaker judicial independence⁴² than common law, and these indicators are in turn associated with weaker contract enforcement and less security of property rights and human rights.

Against this backdrop, since the jury is an institution that counterbalances state power and promotes judicial independence, it would influence the political system to a greater extent and thus improve people's trust in the judiciary more significantly in civil law countries. In other words, jury trials, once adopted, should be more effective in promoting judicial trustworthiness in civil law jurisdictions than in common law jurisdictions (Hypothesis #2). To test this hypothesis, we also present our results for the common law and non-common law subsamples in the statistical analyses.

C. The jury and judicial power

³⁸ We use the term 'non-common law' instead of 'civil law' because it is inaccurate to put some non-common law countries into the civil law category, especially Scandinavian jurisdictions. Common law has a clearer scope and definition, which refer to its origins in English law.

³⁹ See, for example, La Porta et al. (n 14) 446–449; Lei Chen, 'The Historical Development of the Civil Law Tradition in China: A Private Law Perspective' (2010) 78 *The Legal History Review* 159–168.

⁴⁰ Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer, 'The Economic Consequences of Legal Origins' (2008) 46 *Journal of Economic Literature* 285–332.

⁴¹ Simeon Djankov and others, 'Courts' (2003) 118 *Quarterly Journal of Economics* 453–517.

⁴² La Porta et al. (n 14) 457–462.

A question that follows the question of trust (Hypothesis #1) concerns judicial power: a check –and balance over the executive branch of government.⁴³ Many studies have stressed that, lacking the sword or the purse, judicial power comes ultimately from the trust of the people.⁴⁴ If Hypothesis #1 is true — that is, if a jury is indeed positively associated with people’s trust and confidence in the judiciary — then a judiciary that employs a jury system should also more powerfully constrain the government’s arbitrary power and prevent government from intervening in judicial decision-making. The most direct reason for this is that the jury functions independently from the government, with the commitment to an autonomous body within the courts further emboldening the judiciary to see itself as independent from the executive. In a related vein, the jury channels the power of the people to the judiciary, and this design allows the judiciary to leverage public support and exert influence on government. Again, this is most evident in jury nullification, whereby the judiciary, through its use of a jury, assumes not only a judicial role but also a legislative role in that it can avoid applying the rules made by the legislature or the executive, and make decisions according to the people’s true will. Most importantly, when new laws are drafted by the legislative or executive branch, careful consideration will have to be given to whether such laws will be accepted by jury members expressing local and community values.

Secondly, and perhaps more importantly, people’s trust in the judiciary is the source of judicial esteem and legitimacy, which determine the status of the judiciary in society as well as its ability to compete effectively for resources within the government.⁴⁵ This is especially true when considering that the judiciary lacks the purse to incentivize other government sectors to respect judicial power, and lacks the sword to force other branches to comply with its decisions. Only if the judiciary maintains high esteem will its decisions be respected and complied with. After all, judicial decisions are not self-enforcing. Judicial power ultimately depends on the public’s perceptions and support of the judiciary. Further complicating this situation is the non-elective nature of the judiciary in democracies. Judges are typically not elected by their constituents. Without people’s trust, it is hard if not impossible for a judiciary to legitimately check and balance the power of an elected government.

Taken together, we should expect the jury not only to improve trust in the judiciary but also to enhance judicial power. To view this theory from a comparative perspective, we

⁴³ MJC. Vile, *Constitutionalism and the Separation of Powers* (2nd edn, Liberty Fund 1998).

⁴⁴ Caldeira and Gibson (n 15) 638–643.

⁴⁵ Tom Ginsburg and Nuno Garoupa, ‘Reputation, Information and the Organization of the Judiciary’ (2010) 4 *Journal of Comparative Law* 228.

should expect judicial power to constrain arbitrary government power more in countries with jury trials than in countries without them (Hypothesis #3).

D. The jury and judicial performance

Another question that follows that of trust concerns judicial effectiveness and performance. Scholars have frequently suggested that jury trials are inefficient, as implied in the above discussion of the jury's competency; however, we have reason to believe that juries improve judicial performance. Jury trials involve the public directly observing and participating in the work of the judiciary, a practice with the potential to motivate both the judiciary and the legal establishment to improve their work. In other words, public participation serves as a means of public scrutiny, which in turn improves judicial performance.

Another factor that may link jury trials with better judicial performance is compliance. The impact of trust on organizational performance is an attractive topic for political theorists.⁴⁶ The standard contemporary argument for the importance of trust in government is related to the common view that without normative commitments from its citizens, a government cannot obtain their obedience.⁴⁷ Related to the law, Hart⁴⁸ famously argued that the effectiveness of a legal system depends on the fact that most people will comply willingly, perhaps for normative reasons. Following this line of thought, Tyler shows that trust in the judicial procedure is the most important factor in promoting individuals' compliance with judicial decisions.⁴⁹ As stated above, if jury trials can promote trust in the judiciary, it is natural to think that a judiciary with jury trials can also be more effective in promoting compliance both by individuals and by other state officials. With compliance in place, judges can more effectively accomplish their social functions of resolving disputes, articulating rules, and serving as vehicles for social control.

A labour market theory suggests another plausible channel. Studies of judicial behaviour show that professional prestige is one of the main incentives for judges; and, after all, judges'

⁴⁶ See, for example, Robert D Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton University Press 1993); Francis Fukuyama, *Trust: The Social Virtues and the Creation of Prosperity* (Free Press 1995); Tom R Tyler and Yuen J Huo, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts* (Russell Sage Foundation 2002).

⁴⁷ Russell Hardin, 'Trust in Government' in Valerie Braithwaite et al. (eds), *Trust and Governance* (Russell Sage Foundation 1998) 9–27.

⁴⁸ Herbert Lionel Adolphus Hart, *The Concept of Law* (Oxford University Press 2012) 196.

⁴⁹ Tyler (n 16) 5–10.

prestige comes from the trust and respect of the people.⁵⁰ In this regard, as the jury system promotes trust in the judiciary, which in turn fosters esteem for the profession and for individual judges,⁵¹ it can also eventually incentivize judges. More specifically, the building of trust and esteem has both short- and long-term effects. In the short term, jury trials can incentivize judges to work more diligently in order to obtain trust and prestige. In the long run, a judiciary with higher esteem will attract more talented people to become judges, and better judges will further improve the judiciary's performance.

Viewing these analyses from a comparative perspective, we hypothesize that judicial performance in criminal adjudication is better in countries with jury trials than in those without them (Hypothesis #4).

III. Statistical evidence

We use cross-countries data to test the above hypotheses. The dataset combines data from several sources on the jury, public trust in the judiciary, and judicial performance, and it comprises up to 111 jurisdictions, including 39 that have adopted the jury system (see Table 1) (within the dataset, however, the scope of countries we could analyze also depended on the availability of other variables in the models).

To collect data on their jury and lay assessor systems, Voigt⁵² sent questionnaires to the ministries of justice of all countries for which an address could be found. He also sent the same questionnaire to country experts such as judges, law professors, lawyers and activists from non-governmental organizations. In the introduction to the questionnaire, Voigt⁵³ places great emphasis on the distinction between jurors on the one hand and lay assessors on the other. As he cautiously notes, a jury is substantially different from a lay assessor system (or 'mixed court' system), since lay assessors are much less active in court than jurors in asking questions, participating in discussions and delivering verdicts, and they almost never outvote the professional judge(s) with whom they make decisions.⁵⁴ In other words, lay

⁵⁰ Richard A Posner, 'What Do Judges and Justices Maximize? (The Same Thing Everybody Else Does)' (1993) 41 *Supreme Court Economic Review*; Lee Epstein, William M Landes and Richard A Posner, *The Behavior of Federal Judges* (Harvard University Press 2013) 43–44.

⁵¹ Ginsburg and Garoupa (n 45) 230–232; Martin M Shapiro, *Courts: A Comparative and Political Analysis* (University of Chicago Press 2013).

⁵² Stefan Voigt, 'The Effects of Lay Participation in Courts — A Cross-Country Analysis' (2009) 25 *European Journal of Political Economy* 327–339.

⁵³ *Ibid.*

⁵⁴ Thaman (n 2) 250–255.

assessors were subordinates of the judge rather than independent decision-makers.⁵⁵ Voigt⁵⁶ eventually collected data on the jury system from 80 countries. We used his data on whether a country employs a jury system, supplementing it with data coded from the US Department of State’s Human Rights Reports (2011, 2013 and 2015). Like Voigt,⁵⁷ these reports distinguish between jury and lay assessor systems, making the standards of the two data sources consistent. By combining these data sources, we provide the most comprehensive data on whether a country employs the jury system. We also note that countries such as Kazakhstan, Japan, South Korea and Argentina have adopted the jury system in the last decade. These developments are marked in **Table 1** as well.

It is sometimes taken for granted that the jury is a common law institution; however, this is incorrect. **Table 1** shows that many non-common law countries use jury trials in their judicial processes, while many common law countries operate their judicial systems without a jury.

Before proceeding, we should note that jury trials have different meanings and take different forms in different countries. Common law countries such as the US, Australia, Canada, and England and Wales have a traditional jury system; the jury is comprised of laypeople who deliberate and reach a verdict as a group.⁵⁸ Some countries, like Argentina, have traditional juries in some provinces and mixed courts in other provinces.⁵⁹ There are also countries that have an advisory jury. For example, juries in South Korea give verdicts on their own, but their decisions about sentencing are only advisory. Other countries, like Russia, have a jury on the book but not really in practice, because the types of cases that juries hear are extremely limited and juries do not operate free from government intervention — with a variety of tactics used by police and prosecutors as well as judges to subvert the jury’s independence.⁶⁰ Notably, these differences in jury trials may only lead us to underestimate the jury’s impact on the people’s trust. For example, in our dataset, we take Russia as a country that uses the jury system, though its use is limited. When we include

⁵⁵ Nikolai Kovalev, ‘Lay Adjudication of Crimes in the Commonwealth of Independent States: An Independent and Impartial Jury or a “Court of Noddors”’ (2006) 11 *Journal of East European Law* 123–157.

⁵⁶ Voigt (n 52) 330–333.

⁵⁷ *Ibid.*

⁵⁸ Doris Marie Provine, ‘Persistent Anomaly: The Lay Judge in the American Legal System’ (1981) *The Justice System Journal* 28–43; Harry Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (Hawkins Press 2008) 22–31.

⁵⁹ Rebecca Bill Chavez, ‘The Appointment and Removal Process for Judges in Argentina: The Role of Judicial Councils and Impeachment Juries in Promoting Judicial Independence’ (2007) 49 *Latin American Politics & Society* 33–58.

⁶⁰ Jackson and Kovalev (n 22) 2.

Russia in our analysis and still find a positive correlation between jury trials and public trust in the judiciary in the cross-countries comparison, this suggests the jury's impact in other countries is strong. In other words, the inclusion of Russia generates noise for our estimation, making us underestimate the jury's average effect. If we exclude such noise, the jury's effect that we find — i.e. the estimation of the jury's effect in actuality — will be even stronger.

A. The jury system and trust in the judiciary

We first tested Hypothesis #1 and comparatively explored how the presence of a jury system affects people's trust in the judiciary. We obtained data on people's trust in the judiciary from the World Values Survey. From 1989 to 2014, six waves of surveys were conducted around the globe in about 120 countries. The data include both a nation dimension and a year dimension, but these are not strictly 'nation-year' panel data, since although most countries have been surveyed more than once, no country is surveyed repeatedly in all six runs. The survey asks how much confidence participants have in their courts (on a scale of 1–4) and in the government in general (on a scale of 1–4). Political scientists have shown that people from different countries and cultures understand the questions very differently. East Asians are more inclined to report higher government support and confidence, but this does not necessarily suggest that they trust their government more than people in the Western world. For example, the mean confidence in the government given by Chinese people is usually higher than that of US citizens, but this is problematic since it does not capture actual variations in attitudes across the two countries. The true reason for the divergence is that Chinese people tend to give higher scores on questionnaires for cultural reasons, or because they are in the shadow of political pressure, while US citizens have a more critical attitude.⁶¹ This phenomenon undercuts the validity of a direct comparison of numbers given by people from different countries. For example, we found no positive correlation between the absolute level of trust in the judiciary and judicial independence, or the lack of corruption in the judiciary — yet, this contradicts the common sense that judicial independence and judicial integrity should improve people's trust in the judiciary. To solve this problem, we use a relative score instead of an absolute one to document people's trust in the judiciary. To construct the relative score 'trust in the judiciary', we subtract 'confidence in the government in general' from 'confidence in the court', which cancels out the general tendency to be

⁶¹ See, for example, Jan Delhey, Kenneth Newton and Christian Welzel, 'How General Is Trust in "Most People"? Solving the Radius of Trust Problem' (2011) 76 *American Sociological Review* 786–807.

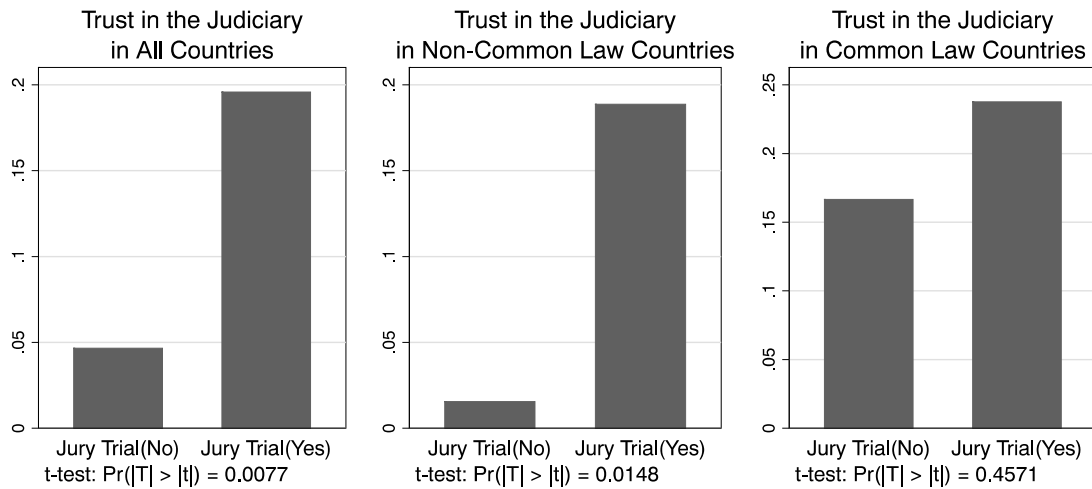
driven by culture or political pressure. This also enables us to directly compare cross-national numbers. Using the relative score, trust in the judiciary is positively correlated with both the level of judicial independence and the lack of corruption in the judiciary in a country (see [Table A2](#), coefficients of judicial independence and judicial integrity).

We compared the trust level between countries that use the jury system and countries that do not. Results are summarized in [Figure 1](#) and [Table 2 Panel A](#). In countries that use the jury system, the mean of the indicator for trust in the judiciary is 0.20, whereas it is 0.05 for countries without jury trial. Using a t-test to test the difference between the trust levels in these two types of countries, we find that the difference is statistically significant at the 0.01 level. The p-value is 0.0077. This suggests that the difference in trust would have been obtained by random chance only with a probability of 0.0077 — a very small chance. Combined with the theories we articulate above, this statistical test helps to confirm the link between the jury system and trust in the judiciary.

We have separately analyzed the difference between common law and non-common law countries. As shown in [Figure 1](#), for those non-common law countries that use the jury system, the mean of the indicator for trust in the judiciary is 0.19, whereas it is 0.02 for countries without jury trial. The differences are both statistically significant at the 0.05 level. For those common law countries that use the jury system, the mean of the indicator for trust in the judiciary is 0.24, whereas it is 0.17 for countries without jury trial. Importantly, the difference is not statistically significant. These statistics reveal that, compared to non-common law countries, the jury is less effective in promoting public trust in common law countries; that is, when a non-common law country conducts jury trials, people's confidence in the judiciary increases to a greater extent than when a common law country does so. These results are consistent with our Hypothesis #2 — that is, our previous understanding of legal origins. The common law system was per se associated with stronger judicial independence and judicial power, and the jury was one of many institutions that protected individual rights, whereas civil law countries generally had more centralized and authoritarian elements in their rulings, with the judiciary instrumental in realizing state authority.⁶² Since the jury is an institution that counterbalances state power, it would have influenced the system to a greater extent and thus improved people's trust in the judiciary more significantly in a civil law country.

⁶² See, for example, La Porta et al. (n 14) 468–472.

Figure 1



One question that immediately follows the statistical analysis above is whether any causal relation between the jury and trust can be inferred from these statistical results. One preliminary concern is an omitted variable problem — namely, whether there is a factor that is responsible for both the existence of a jury system and higher public trust in the judiciary. For example, as shown by previous studies, judicial performance is generally of a better quality in common law countries, so a common law origin (often associated with a jury system) rather than the jury per se could be a determining factor in increasing trust. To address this problem, we control for legal origin, GDP per capita, GDP, judicial corruption, judicial independence index, and level of democracy in an OLS regression analysis.⁶³ Our regression results suggest that the jury’s effect is significant even after these factors have been taken into account. For example, controlling for legal origin (i.e. whether a country is a civil or common law country) implies that a jury system is positively correlated with trust in the judiciary after we rule out the confounding factor of legal origin. Controlling for GDP per capita suggests that after considering the level of economic development, the positive association between the jury and trust is still robust. We believe these results provide suggestive evidence that the jury functions as a political institution that has certain spillover effects and improves people’s confidence in the whole judicial system.

Another concern is reversed causation. That is, the statistical correlation can also be explained as being due to the possibility that when people in a country trust their judiciary relatively strongly, they urge the judiciary to reform and adopt a jury system. A related challenge is endogeneity. Countries may have converted to or transplanted the jury system

⁶³ Results are in the Appendix of this article.

precisely because they knew the jury would fit especially well with their judicial system. These concerns can be reduced (but not eliminated), however, if we look closely at the history of jury systems across jurisdictions. For most countries, the jury is a relatively mature institution that was adopted with colonization.⁶⁴ This means that public trust in the judiciary today has no direct influence on whether a country has a jury system. Spain and Russia are the only two countries in the dataset (namely, within our study period) that reformed to a jury system. The aim of the reforms was to improve trust in their respective judiciaries. In Spain, the right to a trial by jury was legislated by the Spanish Constitution of 1978, a furtherance of the country's transition to democracy.⁶⁵ In Russia, the adoption of the jury system was associated with the political reform that followed the Soviet Union's dissolution. These observations suggest that the adoption of the jury system is a rather exogenous variable to trust, from which we infer that it is the jury that improves public trust in the judiciary rather than the other way round. Conversely, the examples of Russia and Spain suggest that the endogeneity problem cannot be eliminated, because while these countries chose to convert to the jury system proactively at some point in their histories, we lack precise information on the origins of the jury system in every country, and cannot take this factor into account in our regression analysis. At this stage, we take the origins of the jury system in different countries and their relationship with public confidence in courts as an empirical question that calls for future analysis.

B. The jury system and judicial balancing power over the government

We have also studied the relationship between whether a country has a jury system and judicial balancing power over the government (Hypothesis #3). The data for judicial balancing power (or judicial constraints on government powers) come from the subfactor 'government powers are effectively limited by the judiciary' in the World Justice Project 2012–2013.

By way of background, this project conducted surveys in 97 countries and developed a measure for countries' adherence to the rule of law in practice. More specifically, it developed a conceptual framework for the rule of law, summarized in nine factors — limited government powers; absence of corruption; order and security; fundamental rights; open government; regulatory enforcement; civil justice; criminal justice; and informal justice. The

⁶⁴ Ryan Y Park, 'The Globalizing Jury Trial: Lessons and Insights from Korea' (2010) 58 *American Journal of Comparative Law* 525–582.

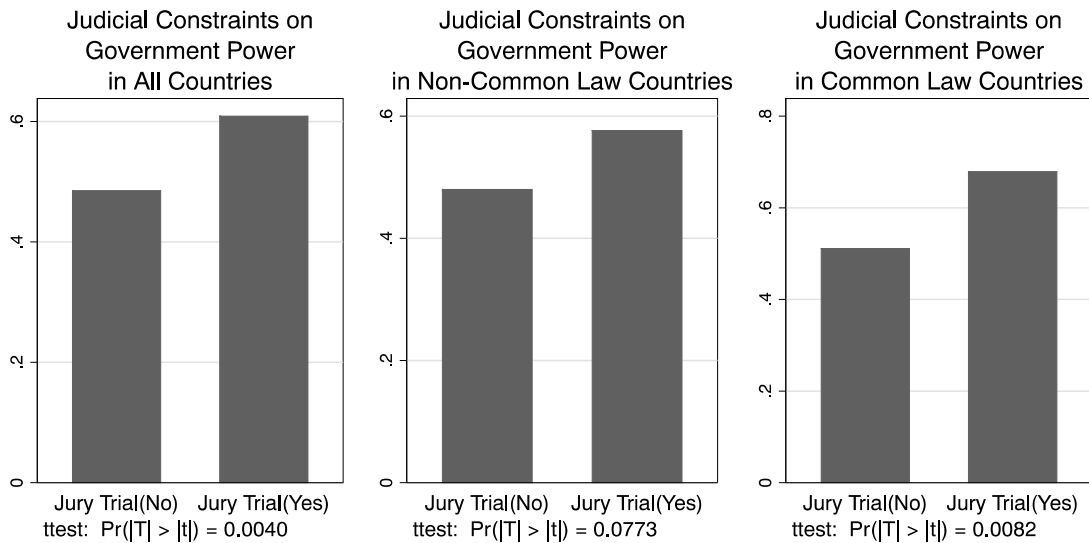
⁶⁵ The jury system was not put into effect, however, until the passing of the Jury Law in 1995.

World Justice Project further disaggregated these nine general factors into 48 specific indicators, developed questionnaires based on these indicators, surveyed about 97,000 people and 2,500 experts in the 97 countries, and constructed the final scores by codifying the questionnaire items as numeric values and normalizing the raw scores. The project stressed that its index assesses a nation's adherence to the rule of law from the perspective of ordinary people directly affected by the degree of adherence in society; that is, in everyday life and in practice. This statement is consistent with the fact that they surveyed laypeople on their perceptions of the rule of law in practice.

We have combined our data on jury trial and the data from the World Justice Project, and compared the judicial balancing power between countries that use the jury system and countries that do not. The results are summarized in [Figure 2](#) and [Table 2 Panel B](#). In countries that use the jury system, the mean of the indicator for judicial balancing power is 0.61, whereas it is 0.49 for countries without jury trial. Using a t-test to test the difference between the indicators for these two types of countries, we find that the difference is statistically significant at the 0.01 level. The p-value is 0.0040. This suggests that the difference in judicial balancing power would have been obtained by random chance only with a probability of 0.0040 — a very small chance.

We have also separately analyzed the difference in common law countries and non-common law countries. As shown by [Figure 2](#) and [Table 2 Panel B](#), for non-common law countries that use the jury system, the mean of the indicator for judicial balancing power is 0.58, whereas it is 0.48 for countries without jury trial. For common law countries that use the jury system, the mean of the indicator for judicial balancing power is 0.68, whereas the number is 0.51 for countries without jury trial. The differences are both statistically significant. These statistics indicate that the jury is effective in promoting judicial balancing power in both common law and non-common law countries.

Figure 2



C. The jury system and judicial performance

Hypothesis #4 suggests that judiciaries with jury trials perform more effectively. As the jury is used in criminal trials only in most of the countries (except, notably, the US and Canada), we studied the jury’s association with the effectiveness of criminal trials.

Statistical evidence suggests that judicial performance in criminal adjudication is higher in countries with jury trials than in those without them. Data for the dependent variables in the regressions are from the World Justice Project Rule of Law Index 2012–2013. As stated earlier, the project surveyed laypeople and experts to collect their perceptions of different indicators. Each indicator is constructed from several variables. Under ‘Factor 8: Criminal Justice’, there are seven indicators: 8.1 Criminal investigation system is effective; 8.2 Criminal adjudication system is timely and effective; 8.3 Correctional system is effective in reducing criminal behaviour; 8.4 Criminal system is impartial; 8.5 Criminal system is free of corruption; 8.6 Criminal system is free of improper government influence; and 8.7 Due process of law and rights of the accused. We tested the jury’s correlation with Factors 8 (criminal justice in general), 8.2, 8.4, 8.5, 8.6 and 8.7. Factors 8.1 (regarding the criminal investigation system) and 8.3 (regarding the correctional system) are not directly related to the performance of the judicial system, but we have analyzed them as a robustness check.

We have compared judicial performance in criminal justice between countries that use the jury system and those that do not. **Figure 3** and **Table 2 Panel C** summarize the results. The statistics suggest that countries which adopt the jury system score significantly higher

with respect to indicators for criminal justice in general, ‘the criminal adjudication system is timely and effective’, ‘the criminal system is free of corruption’, ‘the criminal system is free of improper government influence’, and ‘due process of law and rights of the accused’. Yet, we do not find a similar pattern with respect to the indicator for the criminal justice system being impartial.

Figure 3

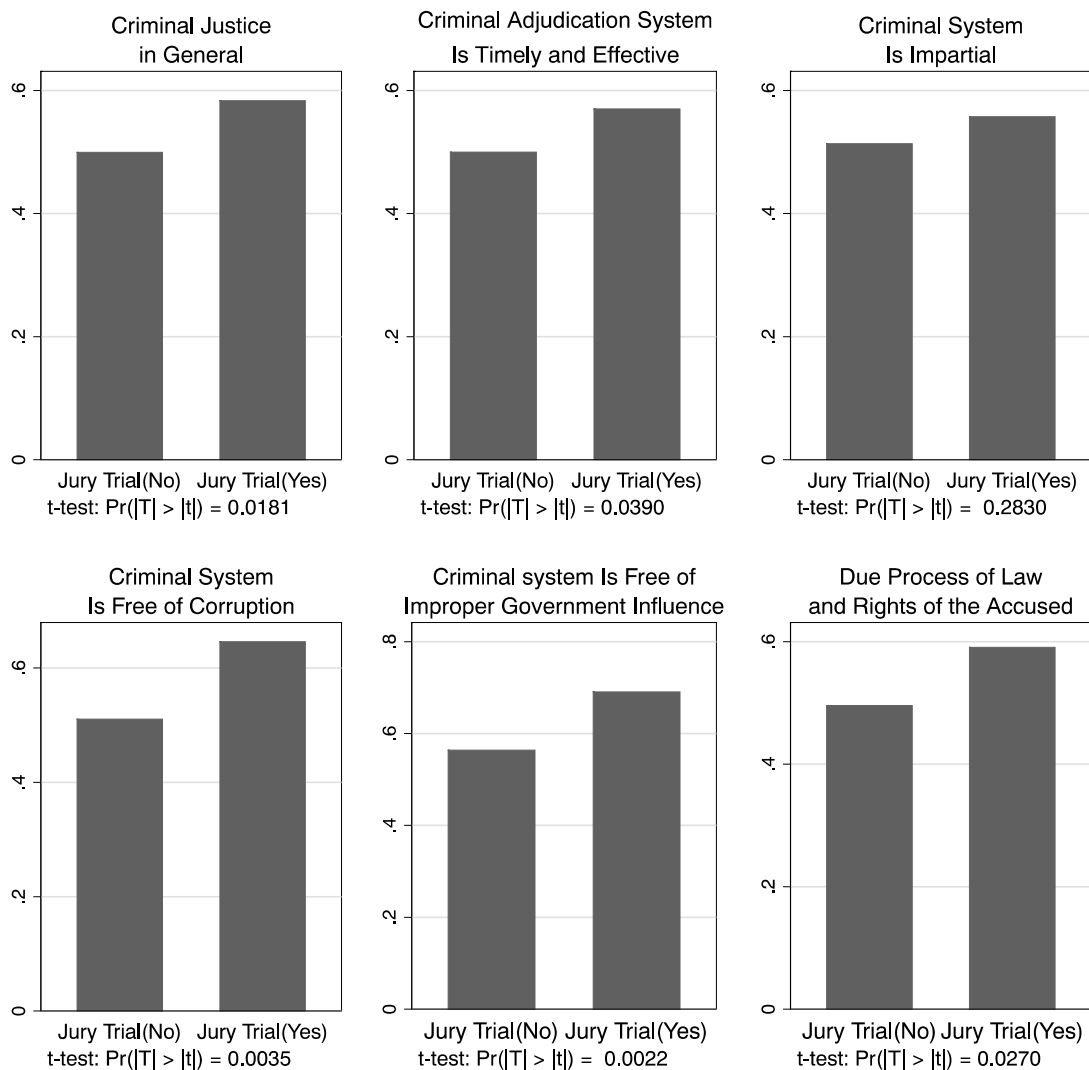
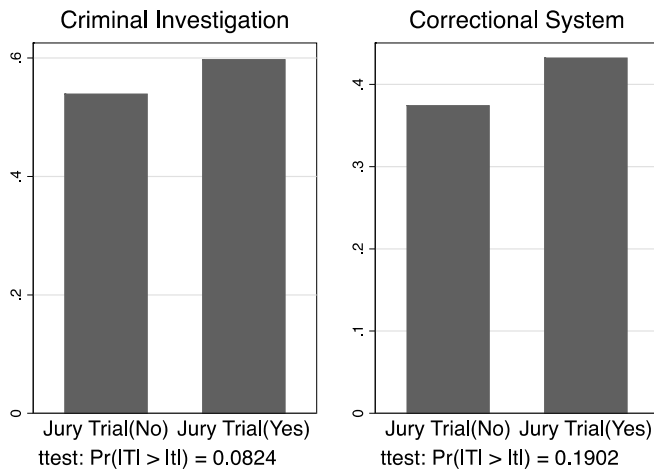


Figure 4 and Table 2D show the results for Factors 8.1 (regarding the criminal investigation system) and 8.3 (regarding the correctional system) as our robustness check. Countries with jury trials seem to perform better in their criminal investigation system, but the difference between the two types of countries does not reach the conventional statistical level of significance (five per cent). Nor do we find any statistically indistinguishable difference regarding the scores of the correctional system in the two types of countries. The results are consistent with the concept that jury trials should not have any substantial impact

on the criminal investigation system or correctional system, in which the jury is certainly not directly involved.

Figure 4



IV. Discussion and conclusion

We acknowledge our research limits as the first part of our discussion and conclusion. First, we conducted a cross-countries comparison using statistical evidence. This research approach has the advantage of employing data to implement the kind of large-scale comparison rarely seen in previous studies. This approach has provided a unique opportunity to study jury trials on a macro level and estimate the overall effect of the jury. Yet, our method runs the risk of downplaying the context of individual jurisdictions in real life. Our assessment of the jury's role and effectiveness in its own ecological context has been minimal, and we will inevitably overlook many details of jury trials in different countries. For example, most jurisdictions we examined in this research have a criminal jury trial system, while the US and Canada have jury trials for civil cases. We have also been limited in our ability to determine certain institutional details, such as whether juries have access to previous convictions of the accused, and whether they follow a unanimous decision or a supermajority verdict rule. Nor have we been able to draw distinctions between the traditional juries of 12 laypeople, used in some countries, and juries with six to eight persons, used for less serious criminal charges in others. In some countries, judges exercise greater influence over jury deliberations and decision-making. Some, like Russia, have jury trials on the book, but hardly in practice. To summarise, the concept of jury trial is more complex than the data points in our sample suggest, and we have been unable to completely take this complexity into account when conducting our study.

Secondly, we find correlation rather than causation. In the above sections, we discussed potential problems around inference with respect to correlation, such as omitted variables, reversed causation, and endogeneity; obviously, these problems lie beyond this study's scope. Readers should keep in mind these limitations of a finding about correlation when considering the applicability of our results in real-world judicial policymaking.

These limitations, while significant, do not substantially undermine the contributions of our study, we believe. As stated in Section III, the complexity in the concept of jury trial will only lead us to underestimate the effect of the jury rather than exaggerating it. To address the problem of real-world complexity, we have also controlled for a rich set of independent variables that account for country characteristics. Our main results still hold.

Most importantly, the results we find through large-scale comparison are consistent with other historical evidence and well-established theories. Our results suggest a positive association between the jury and trust in the judiciary. This echoes the historical perspective in which people see the jury as a natural safeguard against governmental oppression. It is no coincidence that jury systems, which spread throughout continental Europe after the French Revolution, disappeared in countries like Spain, Germany and Russia when those countries came under authoritarian control. Spanish history has repeatedly seen the jury emerge under liberal regimes and disappear under authoritarian ones.⁶⁶ In France, Napoleon advocated the jury system for the republic and then crippled it after his coronation.⁶⁷ In Japan, jury law was enacted in 1923 and used most extensively in the late 1920s, a pre-war period when democratic freedom seemed to be increasing in Japan. As more militaristic elements came to dominate the Japanese government, the use of juries in Japan diminished substantially, so that by the time they were suspended during the Second World War, they were hardly being used at all.⁶⁸ The data in this article extend the historical narrative to a broader empirical regularity. From a comparative standpoint, people see the judiciary as more trustworthy in countries that use jury trials. Moreover, the results we present show that jury trials are more effective at improving public trust in the judiciary in civil law countries than in common law countries. This is consistent with the fact that people have less leverage to defend themselves through the law in civil law (usually more centralized) regimes.

For legal reformers in many countries, the effect size of the jury system is another important question. Sceptics of the jury's efficacy certainly overlook its value, but given that

⁶⁶ Carmen Gleadow, *History of Trial by Jury in the Spanish Legal System* (Edwin Mellen Press 2000) 11–25.

⁶⁷ James M Donovan, 'Magistrates and Juries in France, 1791-1952' (1999) *French Historical Studies* 379–420.

⁶⁸ Richard Lempert, 'A Jury for Japan?' (1992) 40 *American Journal of Comparative Law* 37–71.

the jury bears a real cost in implementation, what is the relative weight of the jury's impact? According to the regression analyses reported in the Appendix of this article, the adoption of a jury system is associated with an increase in trust in the judiciary of about 6.2–7.3 per cent. For comparison, improving from the lowest judicial independence level (country) to the highest is associated with an increase in trust of 28.1 per cent; improving from the most corrupt level (country) to the least improves trust by 26.6 per cent, *ceteris paribus*. Comparing the jury's number with these most important factors shows that the effect associated with the jury is considerably large. It is still worth noting that the above analysis does not offer a thorough cost-benefit evaluation of the jury, as we have no way of translating the jury's effect into monetary return and comparing that with the implementation costs incurred. Nevertheless, these results show that the benefits of the jury are substantial, especially when we consider that improving judicial independence and fighting corruption are seldom easy for transitional societies.⁶⁹

To conclude, this article responds to the long debate among lawyers and political scientists about the overall effect of the jury. Using comparative data from varied sources in 111 countries, we provide evidence that judiciaries in countries that conduct jury trials enjoy higher levels of public trust and stronger balancing power over the government, and perform more effectively in criminal adjudication. For legal reformers in many regimes, this article's findings offer a better understanding of the potential benefits of the jury. Nearly two centuries ago, Tocqueville contended that the jury served a larger civic function and brought greater benefits outside the courtroom. He wrote: '[T]he jury ... which seems to restrict the rights of the judiciary, does in reality consolidate its power; and in no country are the judges so powerful as where the people share their privileges.'⁷⁰ This wisdom still applies today.

Acknowledgements

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⁶⁹ See China's example: Benjamin L Liebman and Tim Wu, 'China's Network Justice' (2007) 8 *Chicago Journal of International Law* 257.

⁷⁰ Tocqueville (n 1) 160–168.

Tables

Table 1: Legal Origins and Jury Trial

Common Law Jurisdictions		Non-Common Law Jurisdictions		
Jury Trial		Jury Trial		
Yes	No	Yes	No	
Australia	Banglades h	Algeria	Albania	Kuwait
Canada	Cyprus	Austria	Argentina (before n 2015)	Kyrgyzsta
Ghana	Kenya	Belgium	Armenia	Latvia
Jamaica	India	Brazil	Azerbaija n	Lebanon
Liberia	Israel	Burkina Faso	Belarus	Lithuania
Ireland	Malaysia	Cote d'Ivoire	Bosnia a	Macedoni
Malawi	Nepal	Denmark	Bulgaria	Mexico
New Zealand	Nigeria	Dominica n Republic	Cambodi a	Moldova
Sierra Leone	Pakistan	El Salvador	Cameroo n	Mongolia
Sri Lanka	Singapore	Finland	Chile	Morocco
Trinidad and Tobago	South Africa	France	China ds	Netherlan
United Kingdom	Tanzania	Georgia	Colombia	Peru
United States	Thailand	Greece	Croatia	Philippine s
	Uganda	Libya	Czech Republic	Poland
	Zambia	Madagasc	Ecuador	Romania
	ar			

Zimbabwe	Mali	Egypt	Rwanda
	Nicaragua	Estonia	Senegal
	Norway	Ethiopia	Slovakia
	Panama	Germany	Slovenia
	Portugal	Guatemal	South
	a		Korea (before 2012)
	Qatar	Hungary	Switzerla nd
	Russia	Indonesia	Taiwan
	Spain	Iran	Turkey
	Sweden	Iraq	Uruguay
	Tunisia	Italy	Uzbekista n
	Ukraine	Japan (before 2009)	Venezuel a
		Jordan	Vietnam
		Kazakhst an (before 2008)	Yemen

Note: Data sources are Voigt (2009) and the US Department of State's Human Rights Report (2011, 2013, and 2015).

Table 2 Panel A: The Jury System and Trust in the Judiciary

	Jury Trial			t-statistic
	No	Yes	Yes – No	
Trust in the Judiciary	0.05	0.20	0.15	2.76***
	(0.26)	(0.33)	(0.05)	
for non-common law countries	0.02	0.19	0.17	2.55**
	(0.28)	(0.24)	(0.07)	
for common law countries	0.17	0.24	0.07	0.77
	(0.17)	(0.20)	(0.09)	

Note: Standard deviation in parentheses. Significance levels: *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.

Table 2 Panel B: The Jury System and Judicial Balancing Power Over the Government

	Jury Trial			t-statistic
	No	Yes	Yes – No	
Judicial Constraints of Governmental Power	0.49	0.61	0.12	3.01***
	(0.16)	(0.21)	(0.04)	
for non-common law countries	0.48	0.58	0.10	1.82*
	(0.17)	(0.23)	(0.05)	
for common law countries	0.51	0.68	0.17	2.98***
	(0.12)	(0.16)	(0.06)	

Note: Standard deviation in parentheses. Significance levels: *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.

Table 2 Panel C: The Jury and Criminal Justice

	Jury Trial			t-statistic
	No	Yes	Yes – No	
Criminal Justice in General	0.50	0.58	0.08	2.43**
	(0.12)	(0.18)	(0.03)	
Timely and Effective	0.50	0.57	0.07	2.10**
	(0.14)	(0.16)	(0.03)	
Impartial	0.51	0.56	0.05	1.08
	(0.16)	(0.20)	(0.04)	
Free of Corruption	0.51	0.65	0.14	3.04***

	(0.18)	(0.22)	(0.04)	
Free of Improper Government Influence	0.56	0.69	0.13	3.19***
	(0.18)	(0.19)	(0.04)	
Due Process	0.50	0.59	0.09	2.27**
	(0.17)	(0.21)	(0.04)	

Note: Standard deviation in parentheses. Significance levels: *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.

**Table 2 Panel D: The Jury and Criminal Investigation and Correctional System
(Robustness Test)**

	Jury Trial			t-statistic
	No	Yes	Yes - No	
Criminal Investigation	0.54 (0.02)	0.60 (0.03)	0.06 (0.02)	1.76*
Correctional system	0.37 (0.02)	0.43 (0.04)	0.06 (0.04)	1.32

Note: Standard deviation in parentheses. Significance levels: *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.

Appendix

Table A1: Sources of Data

Factors	Variables	Explanations	Sources
Trust	Public trust in the judiciary	Confidence in the courts. Answers to “[H]ow much confidence do you have in the courts (in your country)?”	The World Value Survey
	Public trust in the government in general	Confidence in the government. Answers to “[H]ow much confidence do you have in the government in general (in your country)?”	The World Value Survey
Politics	Judicial constraints on government power	Government powers are effectively limited by the judiciary.	The World Justice Project
	Judicial integrity (absence of judicial corruption)	Government officials in the judicial branch do not use public office for private gain.	The World Justice Project
	Judicial independence index	An index combining both <i>de facto</i> and <i>de jure</i> judicial independence.	Ríos-Figueroa and Staton (2014)
	Democracy index	The latest version of the Polity index.	The Polity IV Project
Judicial performance	Criminal justice system	An indicator showing the effectiveness of the criminal adjudication system in a country in 2012. The indicator is constructed from a set of variables drawn from two original sources of data	The World Justice Project Rule of Law Index 2012–2013

		collected from independent sources in each country: a General Population Poll and a series of Qualified Respondents' Questionnaires (experts' questionnaires).	
Institutions	Jury system	Whether a country has adopted jury trials in its criminal procedure.	Voigt (2009); The US Department of State's Human Rights Report (2011, 2013 and 2015).
	Legal origins	Divided into common law countries and non-common law countries for the purposes of this article.	La Porta et al. (2008)
Economy	GDP/GDP per capita		The World Bank

Table A2: The Jury System and Public Trust in the Judiciary: Cross-Country Comparison

	(1)	(2)	(3)	(4)	(5)
	OLS	OLS	OLS	OLS	OLS
Variables	Trust in	Trust in	Trust in	Trust in	Trust in
	the	the	the	the	the
	Judiciary	Judiciary	Judiciary	Judiciary	Judiciary
	y	y	y	y	y
Jury System	0.124**	0.122**	0.110*	0.106**	0.107**
	(0.0492)	(0.0500)	(0.0568)	(0.0499)	(0.0508)
Common Law	0.148*	0.154*	0.165*	0.143*	0.140
	(0.0825)	(0.0917)	(0.0927)	(0.0841)	(0.0931)
Jury System × Common Law	-0.263***	-0.267**	-0.266**	-0.261**	-0.259**
	(0.0992)	(0.103)	(0.107)	(0.101)	(0.102)
Judicial Independence	0.385**	0.369**	0.499**	0.503**	0.514**
	(0.0935)	(0.124)	(0.163)	(0.119)	(0.166)
Judicial Integrity	0.464*	0.460*	0.434*	0.474*	0.476*
	(0.244)	(0.240)	(0.246)	(0.245)	(0.241)
Democracy			-0.00655	-0.00574	-0.00593
			(0.0089)	(0.0090)	(0.0095)

		8)	3)	5)	
Ln GDP	0.0200 (0.0137)	0.0186 (0.0161)		0.0193 (0.0136)	0.0199 (0.0168)
Ln GDP per capita		0.00545 (0.0238)	0.0175 (0.0197)		- 0.00272 (0.0249)
Constant	-0.529 (0.377)	-0.527 (0.382)	-0.177 (0.160)	-0.545 (0.383)	-0.545 (0.385)
Year Fixed Effects	YES	YES	YES	YES	YES
Observatio ns	131	131	128	128	128
R-squared	0.516	0.517	0.528	0.538	0.538

Notes: 1. Robust Standard Errors in parentheses, clustered by countries. Significance levels:
*** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.

2. Settings (1) and (2) each cover 68 countries in the regressions; settings (3), (4) and (5) each cover 65 countries. The difference is due to the different availabilities of variables.

3. Sources of data, see Table A1.

Table A3: The Jury System and the Judiciary's Power Balancing Against the Other Branches of Government

	(1)	(2)	(3)	(4)
	OLS	OLS	OLS	OLS
VARIABLES	Balancing	Balancing	Balancing	Balancing
	Power	Power	Power	Power
Jury System	0.0458*	0.0470	0.0304	0.0345
	(0.0247)	(0.0284)	(0.0282)	(0.0320)
Common Law		0.0792**	0.0931***	0.0738*
		(0.0363)	(0.0341)	(0.0402)
Jury System × Common Law		-0.0257	0.000137	0.0533
		(0.0529)	(0.0526)	(0.0587)
Judicial Independence	0.550***	0.524***	0.349***	
	(0.0982)	(0.101)	(0.0612)	
Judicial Integrity	0.269***	0.187*		0.281**
	(0.0977)	(0.101)		(0.117)
Democracy	-	-		
	0.00888**	0.00892**		
	(0.00401)	(0.00405)		
Ln GDP	0.00951	0.0242	0.0375**	0.0796***
	(0.0144)	(0.0154)	(0.0143)	(0.0134)
Ln GDP per capita	0.0145*	0.0104	0.0120	0.00274
	(0.00846)	(0.00848)	(0.00846)	(0.00954)
Constant	-0.211	-0.236	-0.340**	-0.281
	(0.164)	(0.161)	(0.159)	(0.186)
Observations	91	91	93	93
R-squared	0.699	0.719	0.685	0.594

Notes: 1. Standard Errors in parentheses. Significance levels: *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.

2. The regressions cover 91 or 93 countries, depending on the availability of the control variables.
3. Sources of data, see Table A1.

Table A4: The Jury System and Criminal Justice System (1)

	(1)	(2)	(3)	(4)	(5)	(6)
	OLS	OLS	OLS	OLS	OLS	OLS
VARIABLES	Criminal Justice System in General		Criminal Adjudication System Is Timely and Effective		Criminal System Is Impartial	
Jury System	0.036 (0.022)	0.062 (0.026)	0.057 (0.028)	0.082 (0.032)	0.012 (0.03)	0.058 (0.04)
Common Law		0.079 (0.033)		0.093 (0.041)		0.057 (0.05)
Jury System × Common Law		-0.103** (0.048)		-0.103* (0.060)		-0.160** (0.07)
Judicial Independence	0.384*** (0.090)	0.417*** (0.093)	0.333*** (0.113)	0.358*** (0.117)	0.299** (0.14)	0.390** (0.15)
Judicial Integrity	0.024 (0.089)	-0.0274 (0.093)	-0.121 (0.112)	-0.189 (0.117)	-0.0963 (0.14)	-0.0977 (0.15)
Democracy	-0.0127*** (0.003)	-0.0144*** (0.003)	-0.0179*** (0.004)	-0.0196*** (0.004)	-0.0104* (0.00)	-0.0135** (0.00)

	69)	71)	60)	66)	594)	606)
Ln GDP	-	-	-	-	-	-
	0.00697	0.0111	0.00964	0.0145	0.0112	0.0142
	(0.007	(0.007	(0.009	(0.009	(0.01	(0.01
	78)	78)	70)	77)	25)	27)
Ln GDP	0.052	0.059	0.046	0.056	0.049	0.046
per capita	3***	7***	4***	8***	5**	6**
	(0.013	(0.014	(0.016	(0.017	(0.02	(0.02
	2)	1)	5)	7)	13)	30)
Constant	0.088	0.102	0.258	0.266	0.266	0.319
	3					
	(0.151	(0.148	(0.188	(0.186	(0.24	(0.24
))))	3)	2)
Observat	91	91	91	91	91	91
ions						
R-	0.627	0.654	0.398	0.434	0.279	0.313
squared						

Notes: 1. Standard errors in parentheses. Significance levels: *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.

2. The regressions cover 91 countries.

3. Sources of data, see Table A1.

Table A5: The Jury System and Criminal Justice System (2)

	(1)	(2)	(3)	(4)	(5)	(6)
	OLS	OLS	OLS	OLS	OLS	OLS
VARIABLES	Criminal System		Criminal System		Due Process of	
	Is Free of		Is Free of Improper		Law and Rights of the	
	Corruption		Government Influence		Accused	
Jury System	0.057 8** (0.026 8)	0.084 6*** (0.030 8)	0.036 2 (0.02 90)	0.041 1 (0.03 40)	0.014 0 (0.023 2)	0.033 9 (0.027 3)
Common Law		0.094 6** (0.039 4)		0.070 5 (0.04 34)		0.034 7 (0.034 9)
Jury System × Common Law		- 0.111* (0.057 3)		- 0.0347 (0.06 32)		- 0.0724 (0.050 8)
Judicial Independence	0.460 *** (0.107)	0.491 *** (0.110)	0.402 *** (0.11 5)	0.387 *** (0.12 1)	0.393 *** (0.092 3)	0.429 *** (0.097 6)
Judicial Integrity	0.118 1 (0.106)	0.052 1 (0.110)	0.300 ** (0.11 5)	0.232 * (0.12 1)	0.003 86 (0.091 8)	- 0.00702 (0.097 4)
Democracy	- 0.0140*** (0.004 35)	- 0.0158*** (0.004 39)	0.002 20 (0.00 471)	0.001 91 (0.00 484)	- 0.00776** (0.003 77)	- 0.00910** (0.003 89)

Ln GDP	-	-	-	-	-	-
	0.00804	0.0130	0.00203	0.00569	0.0133*	0.0151*
	(0.009	(0.009	(0.00	(0.01	(0.007	(0.008
	18)	19)	994)	01)	95)	16)
Ln GDP	0.077	0.087	0.014	0.026	0.079	0.080
per capita	9***	8***	5	4	6***	2***
	(0.015	(0.016	(0.01	(0.01	(0.013	(0.014
	6)	6)	69)	84)	5)	8)
Constant	-0.124	-0.113	0.273	0.257	-	0.005
					0.0146	63
	(0.178	(0.175	(0.19	(0.19	(0.154	(0.155
))	2)	3)))
Observat	91	91	91	91	91	91
ions						
R-	0.716	0.735	0.603	0.617	0.740	0.746
squared						

Notes: 1. Standard errors in parentheses. Significance levels: *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.

2. The regressions cover 91 countries.

3. Sources of data, see Table A1.