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The Legal Origin of Income Inequality

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Abstract: The legal origin movement is implicitly functionalist, while it explicitly prioritizes economic dimensions of development. From this perspective, the empirical findings presented in this paper seem to uncover the existence of a paradox. On the one hand, common law countries are apparently characterized by countless advantages, yet they do not grow faster than civil law countries. On the other hand, common law countries present a more unequal distribution of income, thus suggesting that also from a static perspective there is no *a priori* reason to prefer a common law system. To further investigate this paradox, we analyze if common law countries are at least characterized by a better kind (earned) of inequalities. However, as the economic distinction between inequalities of opportunities and inequalities of effort is either too labile or not helpful in concrete situations, this is an impossible task. We are therefore left with the unsolved riddle of the contradicting results obtained by the legal origins literature. From a more practical perspective, the empirical findings seem to go against the dogma that common law countries are under every condition the perfect benchmark for reforms in developing countries.

Keywords: income inequality, developing countries, legal origins, inequality of opportunity, inequality of effort.

I. Introduction

In the late 1990s the series of papers known as “Legal Origin” from R. La Porta, F. Lopez-de-Silanes, A. Shleifer and R. W. Vishny (LLSV) drastically changed the arena of the comparative law debate¹. The frenetic race to quantify the effects of different legal rules, fueled by the introduction of sophisticated econometric tools, has shaken the very foundations of comparative law². In the process of advocating the superiority of common law, LLSV convinced a large part of the academic world that³

“the economic consequences of legal origins are pervasive. Compared to French civil law, common law is associated with (a) better investor protection, which in turn is associated with improved financial development, better access to finance, and higher ownership dispersion, (b) lighter government ownership and regulation, which are in turn associated with less corruption, better functioning labor markets, and smaller unofficial economies, and (c) less formalized and more independent judicial systems, which are in turn associated with more secure property rights and better contract enforcement”⁴.

At a first glance these results may seem very robust, however two significant problems still persist. On the one hand, no significant correlation has been identified between legal origin and economic growth.⁵ Despite the attempts to downplay this incongruence, it seems rather paradoxical that common law countries cannot outperform their civil law counterparts, given their alleged superiority in all these dimensions. On the other hand, distributive concerns have generally been ignored by the legal origin literature. This methodological approach is in sharp contrast with A. Sen’s compelling claim that efficiency and equity concerns have to be considered simultaneously.⁶ In this paper we will attempt to address these two shortcomings.

Firstly, we try to offer a possible explanation for the missing correlation between legal origin and growth by introducing the distinction between developed and developing countries (thus far incredibly overlooked). In this vein, we hypothesize that the specific advantages of each legal system are more appropriate to foster economic growth at different stages of economic development. If this hypothesis is confirmed, it would explain why correlation between legal system and economic growth cannot be found when all countries are grouped together. Although we find some (weak) evidence that common law is associated to faster growth in developed countries whereas civil law could be more suited to developing countries, we must conclude that the legal origin is not a good predictor for economic growth. Secondly, we

¹ R. La Porta, F. Lopez-de-Silanes, A. Shleifer and R.W. Vishny, *Legal Determinants of External Finance*, 52 *The Journal of Finance*, no. 3 (1997), 1131; Id., *Law and Finance*, 106 *Journal of Political Economy*, no. 6 (1998), 1113-1155; Id., *The Quality of Government*, 15 *Journal of Law, Economics, and Organization*, no.1 (1999), 222-279.

² An interesting perspective on the methodological implications of LLSV works and on the (lack of) reaction of traditional comparative scholars can be found in R. Michaels, *Comparative Law by Numbers? Legal Origins Thesis, Doing Business Reports, and the Silence of Traditional Comparative Law*, 57 *American Journal of Comparative Law*, no. 4 (2009), 765-795.

³ For an overview of the existing literature see R. La Porta, F. Lopez-de-Silanes, and A. Shleifer, *The Economic Consequences of Legal Origins*, 46 *Journal of Economic Literature*, no. 2 (2008), 285-332.

⁴ R. La Porta, F. Lopez-de-Silanes, and A. Shleifer, *supra* note 3, at 298.

⁵ C. J. Milhaupt and K. Pistor, *Law and Capitalism: What Corporate Crises Reveal about Legal Systems and Economic Growth Around the World* (Chicago: University of Chicago Press, 2008). Mahoney claimed the opposite, but its results are not robust as R. La Porta et al. have noticed. See P. G. Mahoney, *The Common Law and Economic Growth: Hayek Might be Right*, 30 *The Journal of Legal Studies*, no. 2 (2001), 503-525; R. La Porta et al., *supra* note 3.

⁶ A. Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999), p. 120.

analyze the effect of different legal systems on income inequality finding robust evidence that civil law is associated to a more uniform income distribution. As we argue that economists have not identified a workable way to discriminate between good and bad inequalities, we see no reason to prefer common law countries as a benchmark for reforms in developing countries. The remainder of this paper is as follows. In section II we investigate the connection between legal origin and growth. In section III we include distributional concerns into the legal origin framework. Section IV shortly summarizes the main findings of the paper.

II. Legal Origin and Growth: Developing and Developed Countries

“Genocide, civil war, oppressive politics and ethnic discrimination have haunted the small African nation, Burundi, since independence in 1962, periodically forcing large numbers of its population to leave the country and live in exile”⁷.

Is a higher degree of investor protection going to ameliorate these problems?

If we adopt the perspective of some influential law and economics scholars, the only goal of lawmakers should be welfare maximization⁸. Beside the philosophical weaknesses of this thesis⁹, the major unresolved riddle is how to quantify the level of welfare reached by an economy. From this perspective, even if the GDP is a grossly imperfect measure, it appears to be the most plausible candidate. We will therefore refer to GDP growth rates in order to assess if there are significant differences in terms of overall efficiency between civil law and common law.

The stereotypical story is that in common law jurisdictions most rules are found in the jurisprudence and statutes complete them; to the contrary, in civil law jurisdictions the important principles are stated in the code, whereas the statutes complete them¹⁰. In other words, the alleged main difference between the two systems is the relative importance of judge made law and statutes, with civil law countries being characterized by a more centralized decision process. The trade-off between *ex ante* regulation at a central level and *ex post* adjudication by the courts is well established in law and economics literature¹¹. It is therefore very puzzling that the potential advantages of statutory laws are often overlooked when an idea of some Hayekian bottom-up efficiencies in the English legal system is advocated¹². As each legal system has its own set of costs and benefits, a statistical study in which all countries

⁷ S. Turner, *The waxing and waning of the political field in Burundi and its diaspora*, 31 *Ethnic and Racial Studies*, no. 4 (2008), 742-765, at 742.

⁸ L. Kaplow and S. Shavell, *Fairness versus Welfare* (Cambridge: Harvard University Press, 2006), p. 3, where the main claim is that “the welfare-based normative approach should be exclusively employed in evaluating legal rules. That is, legal rules should be selected entirely with respect to their effects on the well-being of individuals in society”. As summarized by J. Coleman “the entire point of the Kaplow and Shavell argument is that the *only* considerations that can figure in a rational reform policy are those of human welfare-or efficiency properly construed.”[emphasis original] J. Coleman, *The Grounds of Welfare: Fairness Versus Welfare*. By Louis Kaplow & Steven Shavell, 112 *Yale Law Journal*, no. 6 (2003), 1511-2591, at 1513.

⁹ On this regard J. Coleman describes the argument advanced by L. Kaplow and S. Shavell as “an elaborated tautology offered in support of a non sequitur”, J. Coleman, *supra* note 8, at 1527.

¹⁰ W. Tetley, *Mixed Jurisdictions: Common Law v. Civil Law (Codified and Uncodified)*, 60 *Louisiana Law Review*, no. 3 (2000), 677- 738.

¹¹ D. Wittman, *Prior regulation versus post liability: The choice between input and output monitoring*, 6 *Journal of Legal Studies*, no. 1 (1977), 193-211; S. Shavell, *Liability for Harm versus Regulation of Safety*, 13 *Journal of Legal Studies*, (1984), 357-374.

¹² N. M. Garoupa and L. C. Gómez, *The Efficiency of the Common Law: The Puzzle of Mixed Legal Families*, 25 *Wisconsin International Law Journal*, (2011), 671-833.

are grouped together is clearly too simplistic. It seems unreasonable to assume *a priori* that a more decentralized law making process is systematically superior, regardless of the fact that the country in question might be dealing with civil war, or it might be trying to limit the sophistication of its financial system. Any statistician would admit that to obtain meaningful results it is essential to minimize the variance within the clusters considered and to maximize the variance between them. To include in the same cluster U.S. and Uganda implies that a certain legal system ought to be better, regardless of the level of development of a country and its macro characteristics.

Asserting that every nuance is significant would paralyze the study of comparative law, however the differences between least developed, developing, and developed countries are so sharp that they cannot be overlooked. In this section we try to understand if it is possible to identify a legal system that is more appropriate to address the different problems faced respectively by developing and developed countries.

A. Two competing hypotheses

If we accept that there is a grain of truth in the stereotypical story sketched above, then the question is under which conditions the legislator can create better rules than the courts.

We advance the following competing hypotheses:

- 1) The economies of developing countries are less sophisticated and transactions might be regarded as more homogeneous. In other words, because it could be easier to identify *ex-ante* rules for homogeneous transactions, the greater flexibility of common law might be less valuable. Conversely, the extreme level of sophistication reached by some of the most advanced economies, especially combined with the incredible speed at which new kinds of transactions are conceived, might suggest that *a priori* regulation through legislative body is bound to be extremely imperfect. Moreover, given the lower level of education characterizing developing countries, there might not be a sufficient supply of skilled judges. The possible effect is an increase in the error cost connected with their law making. Lastly, the limited stock of human resources might exacerbate the difficulties encountered in understanding judge-made law in developing countries.

Thus, we hypothesize that common law could be superior for developed countries, whereas civil law could be more growth conducive for developing countries. If this line of reasoning is correct we expect to observe a higher growth rate of developing countries belonging to civil law families. Conversely, an opposite result would hold for developed countries. This hypothesis is coherent with the observation that in extremely complex fields (*e.g.* Antitrust law) the *de facto* power of rule formation is not within the parliament, even in those countries that are traditionally considered as the purest examples of civil law regimes. If confirmed, this hypothesis would also explain why it is not possible to observe correlation between legal origin and economic growth when all countries are studied together.

- 2) In a recent book D. Acemoglu and J. Robinson¹³ offer a very detailed and persuasive picture of the enormous influence of institutions. According to the authors, sustainable economic growth can be achieved only in presence of inclusive and pluralistic institutions. Contrariwise, by concentrating the power in the hands of narrow elites,

¹³ D. Acemoglu and J. Robinson, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty* (New York: Crown Business, 2012).

extractive political institutions tend to generate equally extractive economic institutions. In turn, extractive economic institutions prevent economic development.¹⁴ We hypothesize that in presence of extractive institutions the legislative body is more likely to be under the direct control of these elite than a decentralized court system; therefore a decentralized law making process would be superior.¹⁵ In fact, a decentralized system of law making might persuade people that rules will not change overnight, thus incentivizing the long term investments that are so crucial to the development of a country¹⁶.

This advantage might be less relevant in developed countries where stronger constraints on the exercise of power from the elites exist. If this hypothesis is confirmed we expect to observe better performances from developing countries that belong to the common law family.

B. The empirical analysis

We employ World Bank data on GDP growth-rate for the countries considered in our analysis. We divide each legal system (as defined by LLSV) in two clusters: developing and developed countries. Table 1 shows summary statistics for our sample, describing GDP per capita growth for common law and civil law system (in the civil law cluster we include German, French, and Scandinavian families) over the three time intervals considered: the whole period (1990-2011), pre-crisis (1990-2007), and crisis (2007-2011).

Table 1.a: Summary statistics for GDP per capita rate of growth, clustered by Legal family and economic development

Variable	Common law & Developed				
	Obs	Mean	Std. Dev.	Min	Max
Crisis gdp per capita	18	2.77	3.66	-0.90	12.07
Precisis gdp per capita	18	4.50	1.75	1.80	7.73
Average gdp per capita	18	4.17	2.07	1.38	8.76

Variable	Common Law & Developing				
	Obs	Mean	Std. Dev.	Min	Max
Crisis gdp per capita	39	3.60	2.84	-3.03	8.26
Precisis gdp per capita	40	3.73	1.60	-1.28	6.86
Average gdp per capita	40	3.70	1.58	-0.80	6.99

¹⁴ *Ibid.*, p. 97. D. Acemoglu and J. Robinson note that “the politics of some societies lead to inclusive institutions that foster economic growth, while the politics of the vast majority of societies throughout history has led, and still leads today, to extractive institutions that hamper economic growth”.

¹⁵ We are not referring to countries like Sierra Leone where the problem is that there is no central power at all. It would be a heroic claim to state that in Sierra Leone the legal system plays a role of any kind.

¹⁶ F.A. Hayek, *The constitution of liberty* (Chicago: University of Chicago Press, 1960); B. Leoni, *Freedom and the Law* (Los Angeles: Nash Publishing, 1961).

Table 1.b: Summary statistics for GDP per capita rate of growth, clustered by Legal family and economic development

Civil Law & Developed					
Variable	Obs	Mean	Std. Dev.	Min	Max
Crisis gdp per capita	23	1.41	3.09	-2.37	13.4
Precisis gdp per capita	24	2.90	1.26	1.19	6.37
Average gdp per capita	24	2.57	1.53	0.77	8.06

Civil Law & Developing					
Crisis gdp per capita	67	4.69	2.61	-1.41	12.15
Precisis gdp per capita	67	3.51	3.27	-3.11	22.32
Average gdp per capita	67	3.79	2.73	-1.50	19.10

Following the classification of the World Bank, we consider a country as developed if yearly GDP per capita is larger or equal to \$12,476. Because of data availability the analysis is conducted on the period 1991-2011. We averaged the GDP growth rate by legal family and economic conditions, obtaining average growth for the four clusters previously identified: Common Law-developed, Civil Law-developed, Common Law-developing, Civil Law-developing.

Figure 1: GDP rate of growth per capita by legal system and economic development

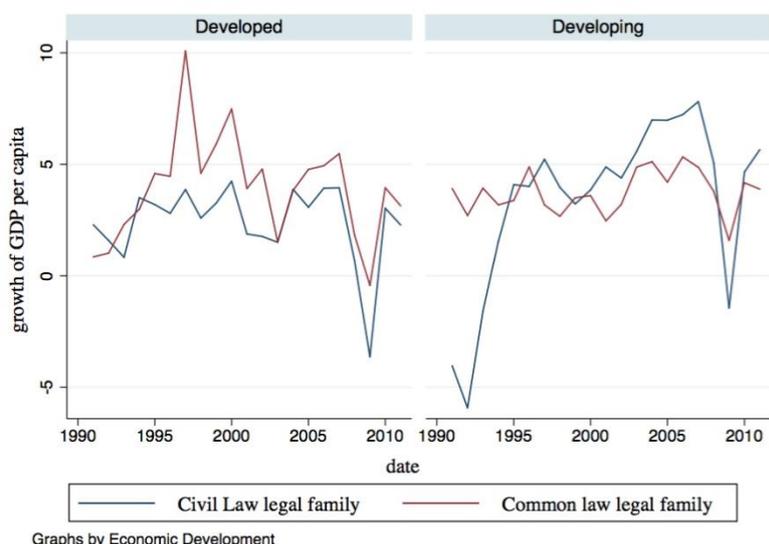


Table 1.a-1.b and Figure 1 show that on average terms developing countries with French legal system performed slightly better than common law developing countries, whereas results of the beginning of the 90s seem to be driven by the fall of socialist regimes. The opposite result holds when we consider developed countries. At a first glance, our findings seem to support hypothesis 1, thus establishing a relative advantage for each legal system depending on the level of economic development. Nevertheless, no robust correlation can be established, and therefore the poor empirical evidence is certainly not enough to support the drastic policy implication that could be derived (i.e. the shift from one legal system to another depending on per capita income level). A more modest inference regards the

existence of a positive correlation between the level of complexity of an economy and the need for decentralized decision making and rule formation. As stated above, this is coherent with the fact that in many complex areas the *de facto* power of rule formation is not within the parliament, even in countries generally portrayed as the purest examples of civil law.

These conclusions are strengthened if- following Mahoney – we regress GDP growth rate on average population growth, average investment, initial rate of growth, and the civil law dummy.

Table 2: OLS estimation of Civil Law effect on GDP per capita rate of growth by economic development

Dependent variable: GDP per capita rate of growth

Variable	All sample	Developed	Developing
Civil Law	-0.1357 [.3338]	-0.3505 [.5367]	-0.0474 [.4202]
Population growth	.9150*** [.1369]	0.8012*** [.1900]	0.8278*** [.1859]
Initial rate of growth	.04292** [.2093]	-0.0053 [.0233]	0.0806*** [.0296]
Log of Investment	.01024*** [.01716]	0.0995*** [.0233]	0.1098*** [.0224]
N	150	36	114
R2	0.7916	0.8586	0.7913

Homoscedastic standard errors in parentheses

*Significant at 10% **Significant at 5% ***Significant at 1%

While classical control variables have a statistically significant effect on the rate of growth, the civil-law dummy is not significant. Both in overall sample and when we cluster according to the level of economic development, the legal system is a poor predictor of economic growth, denoting once more how this kind of analysis are highly influenced by the sample construction.

In concluding this section it is important to stress that to falsify hypothesis 2 is not equal to falsify the theory developed by D. Acemoglu and J. Robinson. In fact, our findings seems to support their idea that there are better approaches to explain economic performances of countries than drawing simplistic and arbitrary lines between English, French, German, and Scandinavian legal systems.

III. Inequality and Growth: a Dynamic Perspective

Following A. Sen,¹⁷ we consider that growth in itself has little relevance, and hence we analyze the relationship between the legal system and the level of (economic) inequalities within societies.

Although the terms equality and equity are often used as synonymous, they are supposed to capture two very different concepts. A society based on the concept of equality presupposes the elimination of all differences among individuals, whereas a society based on equity would still allow for differences, provided that they are earned fairly¹⁸. In this vein, inequities have been defined as “systematic, socially produced (and therefore modifiable) and unfair”¹⁹.

For many decades, mainstream economics has neglected this distinction and has portrayed both concepts as the mortal foes of economic growth. Inequalities therefore became the sparkle that induced people to compete and to develop their talents.²⁰ Any attempt to reduce inequalities had to be perceived as poisonous²¹, while words like needs, assistance, and community became taboos²². Nevertheless, the recent trend is drastically different. The seminal works of A. Alesina and D. Rodrick have instilled the doubt that countries characterized by a more equal distribution of income might achieve higher rates of growth²³. Since then a burgeoning literature has tried to analyze the causal relationship between income distribution and growth with contradicting findings²⁴. Although we are still far from having an univocal answer “the pendulum has swung from a rather unambiguous answer that inequality is good for growth to a more nuanced view that favors the opposite conclusion”²⁵. In short, the idea that a high level of inequality is a necessary evil in order to favor economic growth is not supported by empirical evidence.²⁶

¹⁷ A. Sen, *supra* note 6.

¹⁸ On this regard J. Vandemoortele, *Inequality and Gresham's Law-the Bad Drives out The Good*, Background Paper Prepared for the UN Country Team in China, (2013).

¹⁹ M. Whitehead and G. Dahlgren, *Concepts and principles for tackling social inequities in health: Levelling up Part 1*, 2 World Health Organization: Studies on social and economic determinants of population health, (2006), at 2.

²⁰ K. J. Forbes, *A Reassessment of the Relationship between Inequality and Growth*, 90 American economic review, no. 4 (2000), 869-887.

²¹ R.E. Lucas Jr. affirmed that “Of the tendencies that are harmful to sound economics, the most seductive, and in my opinion the most poisonous, is to focus on questions of distribution.” R. E. Lucas Jr., *The industrial revolution: Past and future*, 45 Economic Education Bulletin, no. 8 (2002), 1-8, at 8.

²² An egregious example of this attitude is the influential book A. Rand, *Atlas Shrugged:(Centennial Edition)* (New York: Penguin, 2005).

²³ A. Alesina and D. Rodrik, “Distribution, political conflict, and economic growth: A simple theory and some empirical evidence”, in A. Cukierman, Z. Hercowitz, and L. Leiderman (eds.), *Political Economy, Growth and Business Cycles* (Cambridge: The MIT Press, 1992), pp. 23-50; Id., Distributive politics and economic growth, 109 The Quarterly Journal of Economics, no. 2 (1994), 465-490.

²⁴ G.R.G. Clarke, *More evidence on income distribution and growth*, 47 Journal of development economics, no. 2 (1995), 403-427; S. Kuznets, *Economic growth and income inequality*, 45 The American economic review, no. 1 (1955), 1-28.

²⁵ B. Milanović, *The Haves and the Have-Nots: A brief and idiosyncratic history of global inequality* (New York: Basic Books, 2010). For a symptom of the increased attention on the costs of inequalities we need not go further than the title of Stiglitz’s recent book “The Price of Inequality” (Nobel laureate in Economics) J. E. Stiglitz, *The price of inequality: How today's divided society endangers our future*, (New York: WW Norton & Company, 2012).

²⁶ Note that the opposite claim – more equal societies grow more – is not sufficiently robust either. See C. J. Niggel, *Equality, democracy, institutions, and growth*, 32 Journal of Economic Issues, no. 2 (1998), 523-530.

As over the past decades empirical research has stripped inequality of its traditional economic justification in terms of prospective growth, the need for further investigation arises.

A. Inequality and Welfare Maximization: A Static Perspective

The effects of inequality are not only dynamic, as they also have a relevant static dimension. More precisely, to advocate a *one-size-fits* all solution (as done by LSSV and the Doing Business Project) it is necessary to assume that countries utility functions are identical, or at least very similar. Otherwise, why would we pursue a uniform strategy everywhere, if *desiderata* vary across countries? Although this hypothesis is probably extreme, if some common traits among countries' utility functions have to be assumed, the law of diminishing marginal utility is bound to be one of them.²⁷

Therefore, under the assumption of (quasi) homogeneous utility functions there is one additional reason to study how the wealth is distributed: a lower degree of income inequality *ceteris paribus* (and especially given the same level of wealth) denotes a higher level of total utility.

To investigate income inequality we create a cross-country dataset where we combine data from R. La Porta et al.²⁸ and the Standardized World Income Inequality database, from which we extract historical data for the GDP Gini-net coefficients for nearly all the countries of the first dataset. The Gini coefficient is an increasing measure of statistical dispersion (or inequality) that assumes percentage values between 0 and 100. It is commonly used in the economic literature in order to classify countries according to their income distribution. A lower Gini coefficient indicates a more uniform income distribution; conversely higher values of the Gini coefficient denote greater inequality. By grouping countries in low income, middle income, and high-income level, we identify income distribution of common law and civil law countries for each level of income:

Table 3: Gini-net coefficients by Law family and income level for the period 1990-2007 and 1960-2010

Gini index	Common Law Family			Civil Law Family		
	Low-income	Mid-income	High-income	Low-income	Mid-income	High-income
Gini precrisis	45.25	45.21	35.42	41.42	39.37	30.32
Gini average	45.78	45.58	34.06	40.78	38.58	30.89

Table 2 suggests that civil law countries show a more uniform income distribution in comparison to common law countries, for any level of income. The difference is particularly remarkable if we look at mid-income countries as its value is around 5.9%. The Results of the OLS model reported in Table 4 show that the difference between civil law and common law is significant at 1% level²⁹.

²⁷ The law of marginal utility states that the utility derived from an additional dollar depends on how many dollars we have. The less dollars we have the more utility we will derive from an extra dollar.

²⁸ R. LaPorta, F. Lopez-de-Silanes, and A. Shleifer, *supra* note 3.

²⁹ We tested the same model clustering for different levels of income, or allowing for heteroscedasticity and the result is robust and statistically significant.

Table 4: OLS estimation of Civil Law effect on GDP income inequality by economic development

Dependent variable: Gini net coefficient index

Dependent variable: Gini inequality index

civil law	-4.14*** (-1.61)	-4.76*** (1.41)
high income		-9.22*** (1.72)
low income		1.5 (1.48)
R ²	0.04	0.26

Homoscedastic standard errors in parentheses

*Significant at 10% **Significant at 5% ***Significant at 1%

Combining these results with the one presented in the previous section it is possible to offer another conjecture for the superior performances of developing civil law countries. As stated above, a more uniform distribution of wealth is starting to be considered as an engine to accelerate economic growth; since we have observed that low/mid countries belonging to civil law present a lower Gini, income distribution might be a channel through which civil law favors economic development.

In any case, the paradoxical result is that the group of countries that apparently are sharply more interventionist (have worse regulation, less secure property rights, and higher top rates) that also have less efficient governments, that are worse providers of public goods than common law countries, and that have higher infant mortality, lower school attainment, higher illiteracy rates, and lower infrastructure quality³⁰, have a higher level of overall utility (under the assumption of homogeneous utility functions and decreasing marginal utility). A more reasonable conclusion is that no inferences can be made with regards to overall utility of countries, as there is no reason to suppose that the overall utility functions are identical among different countries. The problem is that admitting differences in utility functions automatically implies that a *one-size-fit* all approach is not only ineffective, but also unreasonable. As stated above, if the *desiderata* vary among countries, it is illogic to seek a single best strategy.

Furthermore, the advantages of equal societies seem to stretch way beyond economic indicators, as more unequal countries systematically have worse performances according to almost every quality of life indicator.³¹ Interestingly, it has been noted that mortality and health are more strictly connected to how evenly resources are distributed within a country than to the level of aggregate wealth.³² At the same time, “there is quite a lot of evidence that

³⁰ R. La Porta et al., *supra* note 1, (*The Quality of Government*., at 261)

³¹ R. G. Wilkinson and K. E. Pickett, *Income inequality and social dysfunction*, 35 Annual Review of Sociology, (2009), 493-511; J. Vandemoortele, *supra* note 18.

³² R. Smith, *Editor’s Choice: The Big Idea*, 312 British Medical Journal, (1996).

people trust other people more if they have a lot in common with them: not just religion or language but also income”³³. To put it differently, income inequality threatens social cohesion and leads to insecurity and chronic stress even among the richest, thus affecting the perceived quality of life of the whole population.³⁴

B Do Good Inequalities Exist?

Although many attempts have been performed, economists are still far from determining which inequalities foster economic growth³⁵. Drawing on the enormous philosophical literature on the point,³⁶ a great relevance is being placed on the distinction between inequalities of effort (IE) and inequalities of opportunities (IO).

According to economists, IE are *within* human control, whereas IO are *beyond* human control³⁷. The former are considered to be morally acceptable and growth conducive, while the latter are assumed to hinder economic development and to pose serious ethical problems. In this vein, it would be interesting to analyze if common law countries are characterized by a ‘better’ kind of inequalities (IE).

The line between the two categories however, is not as bright as it might seem, and discriminating between exogenous and endogenous factors is an extremely hard task.

From this perspective, many scientists and philosophers have advocated the idea of genetic determinism and the strictly related idea of causal determinism³⁸. According to the strong version of this theory, we are compelled to make the choices that we make by our genes; thus

³³ T. Judt, *Ill Fares the Land: A Treatise On Our Present Discontent*, (New York: Penguin Press, 2010), p. 66.

³⁴ J. Vandemoortele, *supra* note 18; R. G. Wilkinson and K. E. Pickett, *supra* note 31.

³⁵ In a very recent article G.A. Marrero and J.G. Rodriguez write that “A surge of literature on the effect of income inequality on growth suggests many channels through which inequality can affect growth... However, the vast empirical literature does not indicate that any of these channels has a predominant influence. As a result, the empirical relationship between inequality and growth is also ambiguous G.A. Marrero and J.G. Rodríguez, *Inequality of opportunity and growth*, 104 *Journal of Development Economics*, (2013), 107-122, at 107. See also C. Ehrhart, *The effects of inequality on growth: a survey of the theoretical and empirical literature*, 107 *ECINEQ Working Papers Society for the Study of Economic Inequality*, (2009).

³⁶ For an overview of the debate on equality of opportunity see J.E. Roemer and A. Trannoy, *Equality of opportunity*, Cowles Foundation for Research in Economics, Yale University, no. 1921 (2013). Among the most influential contribution on the topic see A. Sen, *Equality of what?*, *The Tanner lectures on human values*, no. 1 (1980), 353-369; R. Dworkin, *What is equality? Part 1: Equality of welfare*, 10 *Philosophy & Public Affairs*, no. 3 (1981), 185-246; Id., *What is equality? Part 2: Equality of resources*, 10 *Philosophy & Public Affairs*, no. 4 (1981), 283-345; G.A. Cohen, *On the currency of egalitarian justice*, 99 *Ethics*, no. 4 (1989), 906-944.

³⁷ See G.A. Marrero and J. Rodriguez, *supra* note 35. See also J.E. Roemer, *A pragmatic approach to responsibility for the egalitarian planner*, 22 *Philosophy & Public Affairs*, no. 2 (1993), 146-166; D. Van de Gaer, *Equality of Opportunity and Investment in Human Capital* (Leuven: Kath. Univ., no. 92, 1993).

³⁸ The stoics were among the first to embrace this perspective. See S. Bobzien, *Determinism and freedom in Stoic philosophy* (Oxford: Oxford University Press, 1998); S. Botros, *Freedom, causality, fatalism and Early stoic Philosophy*, 30 *Phronesis*, no. 3 (1985), 274-304. The most famous formulation of causal determinism is probably the one offered by Laplace “We ought to regard the present state of the universe as the effect of its antecedent state and as the cause of the state that is to follow. An intelligence knowing all the forces acting in nature at a given instant, as well as the momentary positions of all things in the universe, would be able to comprehend in one single formula the motions of the largest bodies as well as the lightest atoms, in the world, provided that its intellect were sufficiently powerful to subject all data to analysis; to it nothing would be uncertain, the future as well as the past would be present to its eyes”. P.S. Laplace, *Philosophical essay on probabilities*. (preface) (1820). Translation from Nagel (1961) pp. 281-282. Some authors argued that there are weaker versions of genetic determinism that do not imply absolute causal determinism. For a discussion on this point, see D.B. Resnik and D.B. Vorhaus, *Genetic modification and genetic determinism*, 1 *Philosophy, ethics, and humanities in medicine*, no. 1 (2006), 9.

we are mere ‘puppets’ with no free will.³⁹ The implications of this theory have long been understood by criminal law scholars, as it is paradoxical to ascribe moral responsibility to a puppet!⁴⁰ The other side of the medal is that no reward should be admissible for our choices in life, simply because we do not make any. If genes are the only determinants of humans’ behavior then good inequalities simply do not exist, as genes are by definition not earned by the individual who carries them. If everything is predetermined by the genetic lottery then outcomes are not within our control, for the simple reason that we do not make choices.

The mirror image of genetic determinism is to attribute a dominant influence to the environment.⁴¹ Not surprisingly, also if we adopt this perspective we are induced to negate the existence of good inequalities. By affirming that all our actions are determined by the environment in which we live, we negate the existence of endogenous factors that drive our behavior. Once again, if good inequalities are the ones earned through individual merit, we must conclude that no good inequalities exist.

The influential literature on genotype – environment (G x E) effect takes a more sophisticated position in between these extremes.⁴² To oversimplify the extremely complex literature – and ignoring the internal nuances⁴³ – it can be affirmed that *both* genotypes and the environment drive experience and behavior.⁴⁴ Although more sophisticated, this strand of literature offers little relief to the advocates of the distinction between IO and IE. On the one hand, both genotypes and environment are not strictly chosen. On the other hand, it has been noted that “genetic and environmental influences do not represent independent sources of influence. This also makes it difficult to determine whether the genes or the environment is the causal agent.”⁴⁵ The obvious corollary is that even if we postulate the existence of factors within our control, it is practically impossible to isolate their contribution to the choices made by the individual.

In the light of these theories, we can reconsider the distinction between IE and IO. As paradigmatic examples of the former let us consider talent and effort, whereas as examples of the latter we refer to parents’ wealth and to the parents’ level of education.

³⁹ C.F. Koch, *Consciousness and neuroscience*, 8 *Cerebral Cortex*, no. 2 (1998), 92-107; D. Wegner *The Illusion of Conscious Will* (Cambridge: The MIT Press, 2002); G. Lakoff, *Don’t Think of an Elephant! Know Your Values and Frame the Debate* (White River Junction: Chelsea Green Publishing Company, 2004).

⁴⁰ Among the others J.R. Botkin (ed.), W.M. McMahon (ed.) and L.P. Francis (ed.), *Genetics and criminality: The potential misuse of scientific information in court* (Washington: American Psychological Association, 1999).

⁴¹ S. Scarr and K. McCartney, *How people make their own environments: A theory of genotype→ environment effects*, 54 *Child development*, no. 2 (1983), 424-435.

⁴² Among the others R. Plomin, J.C. DeFries and J.C. Loehlin, *Genotype-environment interaction and correlation in the analysis of human behavior*, 84 *Psychological bulletin*, no. 2 (1977), 309-322. R.E. Comstock and R.H. Moll, “Genotype-environment interactions”, in W.D. Hanson and H.F. Robinson (eds.), *Statistical genetics and plant breeding* (Washington: National Academy of Sciences-National Research Council, 1963), pp. 164-196; S. Via and R. Lande, *Evolution of genetic variability in a spatially heterogeneous environment: effects of genotype–environment interaction*, 49 *Genetical research*, no. 2 (1987), 147-156.

⁴³ Not every author has the same opinion on how environment and genes interact. S.B. Muck and J.M. McCaffrey write that “Universally acknowledged in principle, gene – environment (G x E) interaction presently appears to divide scientists as much as it binds duality of nature and nurture. S.B. Manuck and J.M. McCaffery, *Gene-Environment Interaction*, 65 *Annual review of psychology*, (2014), 41-70, at 42.

⁴⁴ P.J. Richerson and R. Boyd, *Not by genes alone: How culture transformed human evolution* (Chicago: University of Chicago Press, 2008). M. McGue and T.J. Bouchard Jr., *Genetic and environmental influences on human behavioral differences*, 21 *Annual review of neuroscience*, no. 1 (1998), 1-24.

⁴⁵ D.M. Dick, *Gene-environment interaction in psychological traits and disorders*, 7 *Annual review of clinical psychology*, (2011), 383-409, at 385.

According to a genetic determinist, no difference exist among these factors. Talent and effort are simply a predetermined outcome of the genotypes possessed. To have good genes can be attributed to luck or to destiny, yet by definition it is something beyond our control. Exactly like having rich and well educated parents! If talent and effort are a sufficient ground for inequalities so must be the wealth and the level of education of the parents.

A similar conclusion is reached if we place all the emphasis on the environment. Talent and effort will be the result of the environment in which the individual has lived, that in turn is formed in large part by its parents. If living in a more stimulating environment is a sufficient ground to justify inequalities, so must be the status of the parents.

Lastly, if we assume that the behavior is determined by G x E, talent and effort will be a combination of genes and environment, which in turn are influenced by parents' characteristics. As stated above, even postulating that G x E only determines a fraction of human's behavior, it is very hard (if not impossible) to determine the exact influence of free will. Once again, we must conclude that either parents' status is a relevant factor to justify inequalities, or that no special relevance should be assigned to talent and effort.

In other words, if the path advocated by economists is followed, under any of these theories either no inequalities should be tolerated or they should all simply be perceived as a fact of life. In both cases, it is not possible to discriminate between 'good' and 'bad' causes of inequalities on the grounds suggested by economists.

IV. Legal Origin, Growth, Welfare, and Inequality

The legal origin movement is implicitly functionalist, while it explicitly prioritizes economic dimensions of development. From this perspective, the empirical findings presented in this paper seem to uncover the existence of a paradox. On the one hand, common law countries are apparently characterized by countless advantages. On the other hand, from a dynamic perspective they cannot outperform civil law countries(at least in purely economic terms). Moreover, common law countries present a more unequal distribution of income, thus suggesting that also from a static perspective there is no *a priori* reason to prefer a common law system. To further investigate this paradox, we analyzed if common law countries are at least characterized by a better kind (earned) of inequalities. However, as the traditional economic distinction between inequalities *within* human control and inequalities *beyond* human control is either too labile or not helpful in concrete situations, we had to abandon this quest. We are therefore left with the unsolved riddle of the contradicting results obtained by the legal origins literature. From a more practical perspective, the empirical findings seem to go against the dogma that common law countries are under every condition the perfect benchmark for reforms in developing countries.

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