

Comments on Berkowitz and Clay:

- 1. "Legal Origins and the Evolution of Institutions:
Evidence from American State Courts"**
- 2. Chapter 3: "Initial Conditions and State Legislatures"**

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"Legal Origins and the Evolution of Institutions: Evidence from American State Courts"

- Paper's significant value added, in particular w.r.t. Berkowitz and Clay (2006 JLS)
 - scrutiny of how intrinsic legislature attitudes lead to a more independent judiciary in "always common-law states" in comparison with "formerly civil-law states"
 - alternative to the Landes-Posner-Ramseyer-Hanssen view on judicial independence
 - elaboration on mechanism of persistence of initial legal conditions in American states
- Suggested title
 - "Legal Origins, Legislatures' Preferences, and Judicial Independence: Evidence from American States"

- Fact: Removal of elections as judicial retention method slower in formerly civil-law states
 - may, or may not, have to do with legislature preferences
 - e.g., ABA, lobbying for removal of elections, historically stronger in common-law states
 - indication that common-law legislatures prefer strong legal profession, part of which is judiciary (👍)
 - state legislature captured by a powerful interest group (🤔)
 - Further remark: *If* Rajan and Zingales (2003) were correct, and *if* there was indeed persistence of civil-law heritage, then, given strong lobbies, we could expect faster elimination of elections in once civil-law states (👍)
- Theoretical framework
 - key assumption: common-law legislature receives a higher payoff from an appointed judge's socially efficient ruling than does civil-law legislature

- Can we really argue that some legislatures have a stronger intrinsic preference for efficiency than others?
- The observed variation of legislatures' attitudes toward the judiciary may be an equilibrium outcome of a game in which self-interested politicians are subject to constraints, one of which is the structure of the legal system. (See e.g. Grajzl and Murrell (2006))
- Mechanisms of persistence
 - missing some anecdotal evidence on how the "state political culture" got transmitted from generation to generation
- Minor note on the empirics
 - removal of elections as judicial retention method in Southern states actually *increased* the judicial budget -- Why?

Chapter 3: "Initial Conditions and State Legislatures"

- The book (?) is an ambitious and stimulating project attempting to quantify the significance of different initial conditions for different measures of the state political system in the U.S.
- A variety of empirical results raises interesting "*Why?*" questions, e.g.
 - "[T]he influence of climate on voting based political competition is significantly different than its influence on the Ranney index of political competition in state legislatures" (p.21).
 - Legal origin does not have a significant effect on state legislatures through political competition (pp.18, 21).
 - The states with a civil law origin seem to be less conducive for legislation that allows for voter initiatives. (p.26)
 - "The climate is...positively associated with the length of a state's first constitution and positively associated with the total number of constitutions" (p.29).