



# Political Culture and the Imprint of Civil Law

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# History and Contemporary Institutions

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- La Porta et al (survey forthcoming in JEL) – legal origins predict contemporary finance, courts, regulation, labor markets, etc!!
- Open Question - Why do common and civil law origins which were transplanted as far back as the 18<sup>th</sup> century still matter?



# Legal Origins and Persistence

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- Events in England and France in 12<sup>th</sup> and 13<sup>th</sup> century are formative (Glaeser and Shleifer, 2002);
- French Revolution and Glorious Revolution in England and France are formative (Mahoney, 2001);
- Political events in early 20<sup>th</sup> century are formative (Roe, 2007 and 2008).



# Climate and Institutions

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- Engerman and Sokoloff (1997, 2000) – climate at time of settlement predicts quality of contemporary political institutions;
- Why? Climate  $\Rightarrow$  initial wealth distribution of settlers  $\Rightarrow$  quality of political institutions  $\Rightarrow$  elite wealth distribution and political institutions have a persistent feedback effect on each other.

# Early Settler Mortality and Institutions

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- Acemoglu et. al. (2001) – Disease environment at time of settlement is formative;
- Harsh disease environment => extractive institutions emerge;
- Livable environment => institutions that protect property rights emerge;
- These early institutions persist.



# Book Project with Karen Clay of Carnegie Mellon University

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Understand Why History Matters for Institutions in  
USA;

Other within country studies of institutions (partial list)

Brazil – Soares (2007);

India – Banarjee, Besley, Burgess, Chemieu, Iyer,  
Pande;

Japan - Ramseyer et al;

Russia - Zhuravskaya et al;

Vietnam – McMillan and Woodruff, Miguel and  
Roland.

# Civil Law in the American States

	Approximate Date of First Permanent Settlement	Approximate End of Civil Law	Duration of Civil Law
Alabama	1702	1813	111
Arizona	1700	1848	148
Arkansas	1686	1803	117
California	1769	1848	79
Florida	1565	1821	256
Illinois	1700	1790	90
Indiana	1732	1790	58
Louisiana	1715	1803	88
Michigan	1668	1790	122
Mississippi	1699	1813	112
Missouri	1735	1803	68
New Mexico	1700	1848	148
Texas	1718	1836	118

# Legal Origins

	Civil Law - Means	Common Law - Means	Differences in means
Annual Judicial Removals per mln, 1990-2001	1.02 (0.34)	0.44 (0.12)	0.60** (0.28)
Annual Deflated Judicial Budget per capita, 1970-90	\$2.13 (\$0.14)	\$2.55 (\$0.10)	-\$0.42** (\$0.08)
Partisan Elections for Judges, share of state years during 1970-90	41.3% (13.2%)	11.4% (5.1%)	29.8%** (11.5%)
Quality of State Courts, 2002-2007 (scale of 0-100)	51.0 (2.6)	61.2 (1.1)	-10.2*** (2.4)





# Legal Origins Hypothesis

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- Civil and common law legislatures have different preferences for judicial independence;
- Civil law systems that were replaced at least 160 years ago leave their imprint on state courts because political culture in state legislatures is persistent.

# Chapter 3-Initial Conditions and Politics

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- Chapters 3&4 shows political culture in state legislatures is persistent during 1866-2000;
- Climate and access to water transportation in 1860s has a persistent influence on the evolution of state legislative politics during 1866-2000.



# Measuring State Political Culture

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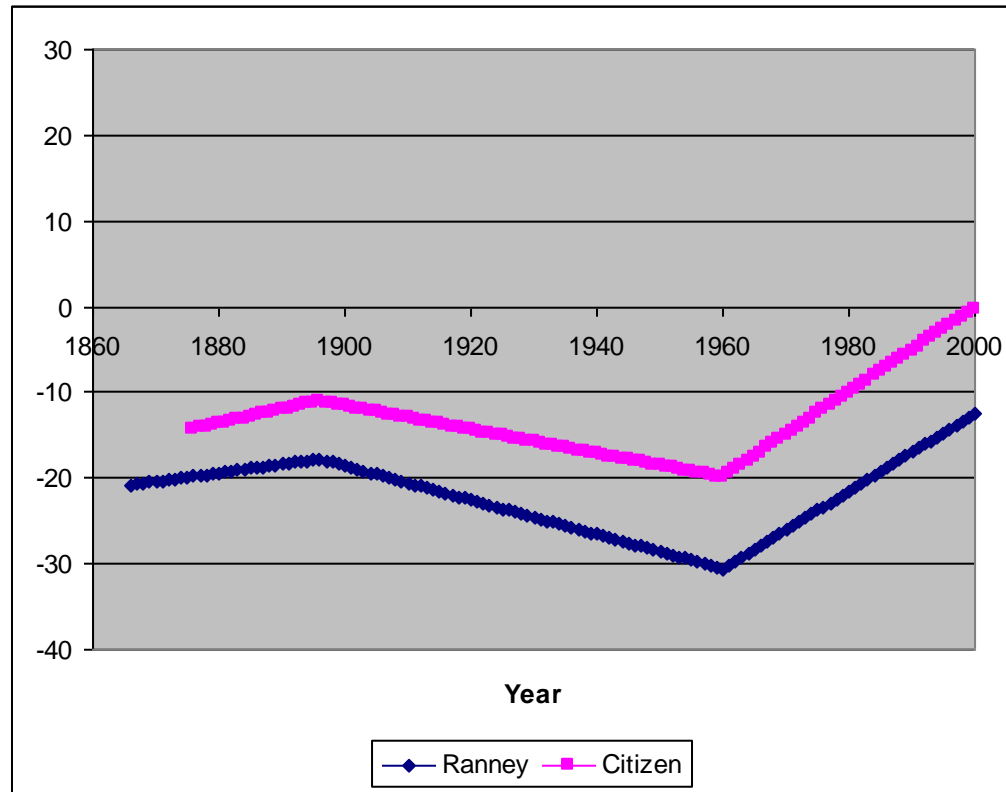
- Political competition in state legislatures (Ranney index), 1866-2000;
- Citizen political competition (Voting), 1876-2000;
- And - size of state legislatures, 1866-2000; legislative professionalism, 1935-2003; voter initiatives, 1890-2000, state constitutions (from beginning of the Union)

# Time Trend Model: $t_1 < 1896 \leq t_2 < 1960 \leq t_3 \leq 2000$

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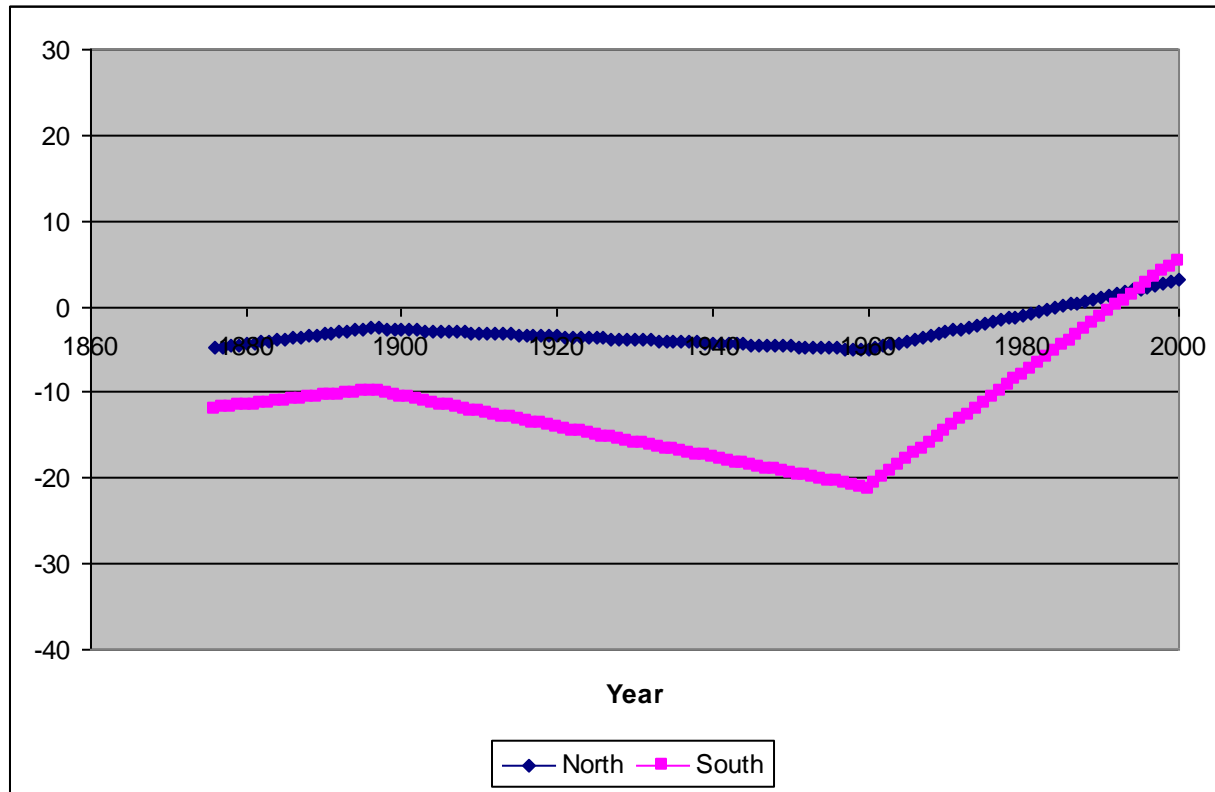
$$\begin{aligned} PC_{it} = & \alpha_0 + \alpha_1 CLIM_i + \alpha_2 CLIM_i * t_1 \\ & + \alpha_3 CLIM_i * t_2 + \alpha_4 CLIM_i * t_3 \\ & + \alpha_5 CIV_i + \alpha_6 CIV_i * t_1 + \alpha_7 CIV_i * t_2 \\ & + \alpha_8 CIV_i * t_3 \\ & + \alpha_9 TRANS_i + \alpha_{10} TRANS_i * t_1 \\ & + \alpha_{11} TRANS_i * t_2 + \alpha_{12} TRANS_i * t_3 \\ & + \alpha_{13} CULT_i + \alpha_{14} CULT_i * t_1 \\ & + \alpha_{15} CULT_i * t_2 + \alpha_{16} CULT_i * t_3 \\ & + \beta_t year_t + u_{it} \end{aligned}$$

# Marginal Impact of Climate is Persistent in State Legislatures

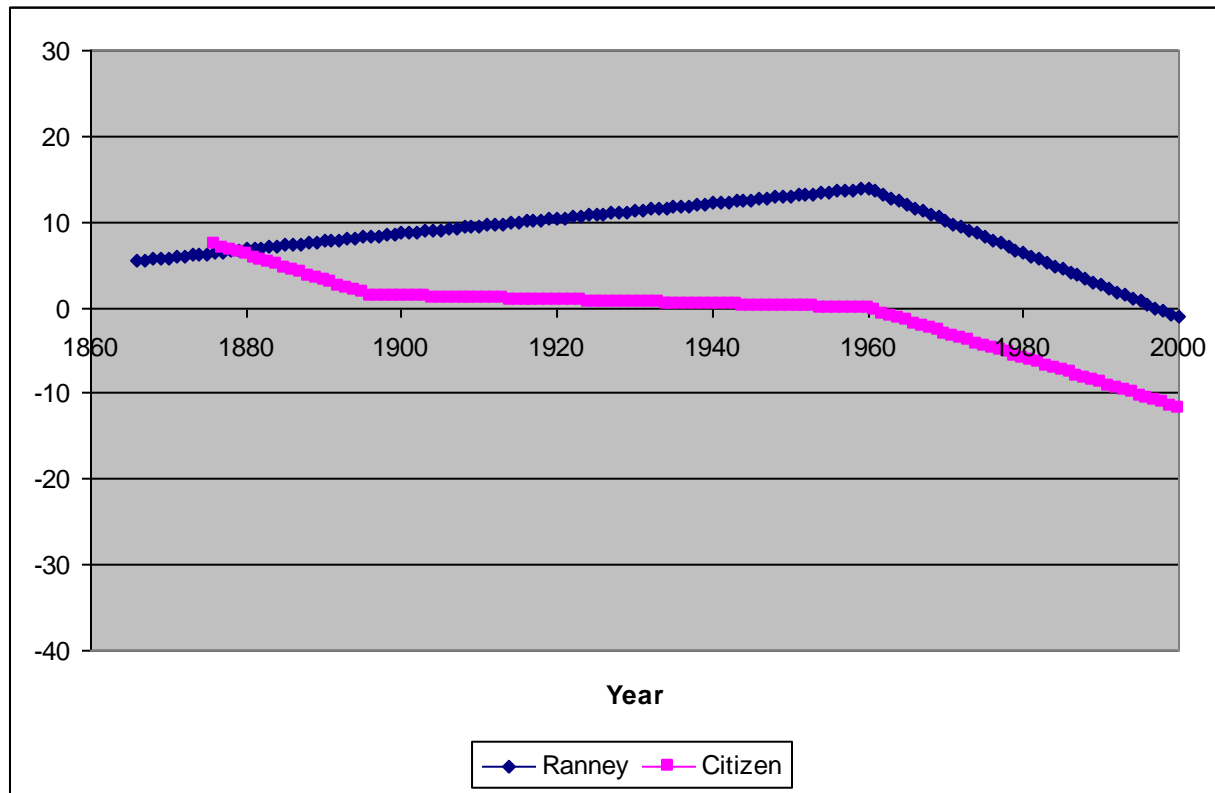


# Persistence of Climate Holds Within North & South!

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# Marginal Impact of Water Access is Persistent in Legislatures





## Chapter 4 – Persistence Mechanism

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- Occupational composition of the state elite in 1860s is a mechanism through which climate and water transportation act on politics;
- More rainfall, higher temperatures, deeper soil, etc. in 1860s => state elites in 1860s derive their wealth mainly from farming-related enterprises;
- Less rainfall, colder temperatures, shallower soil, etc. in 1860s => state elites in 1860s are farmers, bankers, traders, manufacturers, etc.



# Chapter 4 - continued

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- Better access to water in 1860s => more elites derive wealth outside of farming and in trade, banking, insurance, etc;
- Climate & Transport => Homogeneous elite in 1860s => weak political competition;
- Climate & Transport => Heterogeneous elite in 1860s => robust political competition;
- Character of state legislatures persists since 1860s.



## Chapters 5&6 -Imprint of Civil Law

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- Do civil and common law legislatures respond differently to swings in political competition and to growing judicial independence during the 20<sup>th</sup> century?
- Theory: Legislatures Promote Judicial Independence when Political Competition is Robust (Landes and Posner, 1975; Hanssen, 2004; Ramseyer and colleagues);

# Reforms Promoting Judicial Independence

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- During the 20<sup>th</sup> century states conduct reforms that promote judicial independence including:
- Removal of elections for judges;
- Introduction of merit system for judges;
- Establishing intermediate appellate courts.

# Estimate Reform Model

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- $REF_{id}$  is reform in state  $i$  in decade  $d$  (1912-1920, 1921-30... 1991-2000);
- $PC_{id}$  is political competition;
- $CIV_i$  is civil law:

$$REF_{id} = \alpha_0 + \alpha_1 PC_{id} + \alpha_2 PC_{id} * CIV_i + \alpha_3 CIV_i + \beta_t decade_d + u_{it}$$

# Political Competition and Reform

## Estimates for decades during 1912-2000

Dependent Variable	(1) No partisan elections	(2) No Elections
Political Competition	0.031 (0.061)	0.000 (0.074)
Political Competition x Civil	0.146* (0.077)	0.131 (0.079)
Additional Controls	Decadal time effects, and decadal time effect x civil, Population, Population x Civil	
Observations	403	403
R <sup>2</sup>	0.338	0.176

# Reform - continued

<b>Linear estimates for decades during 1912-2000</b>		
Dependent Variable	(3) Merit Plan	(4) Intermediate Appellate Courts
Political Competition	0.015 (0.037)	0.020 (0.054)
Political Competition x Civil	0.145** (0.067)	0.012 (0.076)
Additional Controls	Decadal time effects, and decadal time effect x civil, Population, Population x Civil	
Observations	403	403
R <sup>2</sup>	0.155	0.562



# Conclusions

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- Common law legislatures do not need strong political competition to make reforms;
- Civil law legislatures need this pressure;
- North versus South split does not pick up these differences in state politics.

# Natural Experiment to Test if Civil Law Has Left an Imprint

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- During 1966-2000, judicial elections removed in 5 civil law states and 9 common law states;
- Hypothesis: if civil law legislatures prefer weak judges, we would expect that they provide relatively smaller budgets to their judges once elections are removed.



# Reform in Civil Law States

State	Year	Remove elections	Remove partisan elections
Arizona	1974	Yes	No
Florida	1972	Yes	Yes
Illinois	1971	Yes	Yes
Indiana	1968	Yes	Yes
Louisiana	1976	No	Yes
Mississippi	1994	No	Yes
New Mexico	1989	Yes	Yes

# Model developing this idea

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- A world contains a legislature, judges and voters;
- There are three periods:  $t = 0, 1$  and  $2$ ;
- When  $t = 0$ , legislatures commit to a judicial budget,  $c$ , that is fixed during  $t = 1, 2$ .
- During  $t = 1, 2$  a judge makes one of two possible rulings, denoted  $r = a, b$ .

# Model - continued

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- In  $t = 1, 2$  either  $a$  or  $b$  is the socially efficient ruling; and the popular ruling is always  $a$ ;
- The efficient and inefficient rulings generate 1 and 0 units of social welfare.
- Parameter  $p$  = probability the popular ruling  $a$  is efficient (where  $p$  is common knowledge);

# Model parameters

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- *Parameter  $\pi$  = probability that a judge is capable of making the efficient ruling, where ,*
- *where  $\pi = \pi(c)$  and  $\pi' > 0$  and  $\pi'' < 0$ ;*
- *Populace is reasonably informed:  $p > 0.5$ ;*
- *Judges are sufficiently capable:  $\pi > 0.5$ .*

# Judges

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- Let  $G > 0$  and  $0$  denote the judge's payoff from the preferred and least preferred rulings in  $t = 1$ ;
- Let  $\delta(G + R)$  denotes the judge's payoff from her most preferred ruling in  $t=2$ , where
- $\delta > 0$  is the discount factor and  $R \geq 0$  are rents from holding office.

# Appointed Judges

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- When there are no elections, a judge remains in office periods 1 and 2 and makes her preferred ruling in each period.
- A capable judge makes the efficient ruling and an incapable judge makes the inefficient ruling;
- Thus, expected welfare is  $2\pi(c)$

# Elected Judges

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- Consensus is elected judges often make popular rulings even if they are not efficient;
- To capture this, assume  $\delta > 1$ ;
- Maskin and Tirole (2004): if  $\delta > 1$ , judges make popular ruling in  $t=1$ , get re-elected, and make most preferred ruling in  $t=2$ ;  $\Rightarrow$
- Expected welfare w/elections is  $p + \pi(c)$ .

# Common Law Legislatures

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- Common Law – choose  $c$  to maximize social welfare net of resource costs;
- When Judges are appointed,  $\max 2 \pi(c) - c$ ;
- When judges are elected,  $\max \pi(c) + p - c$ .



# Civil Law Legislatures

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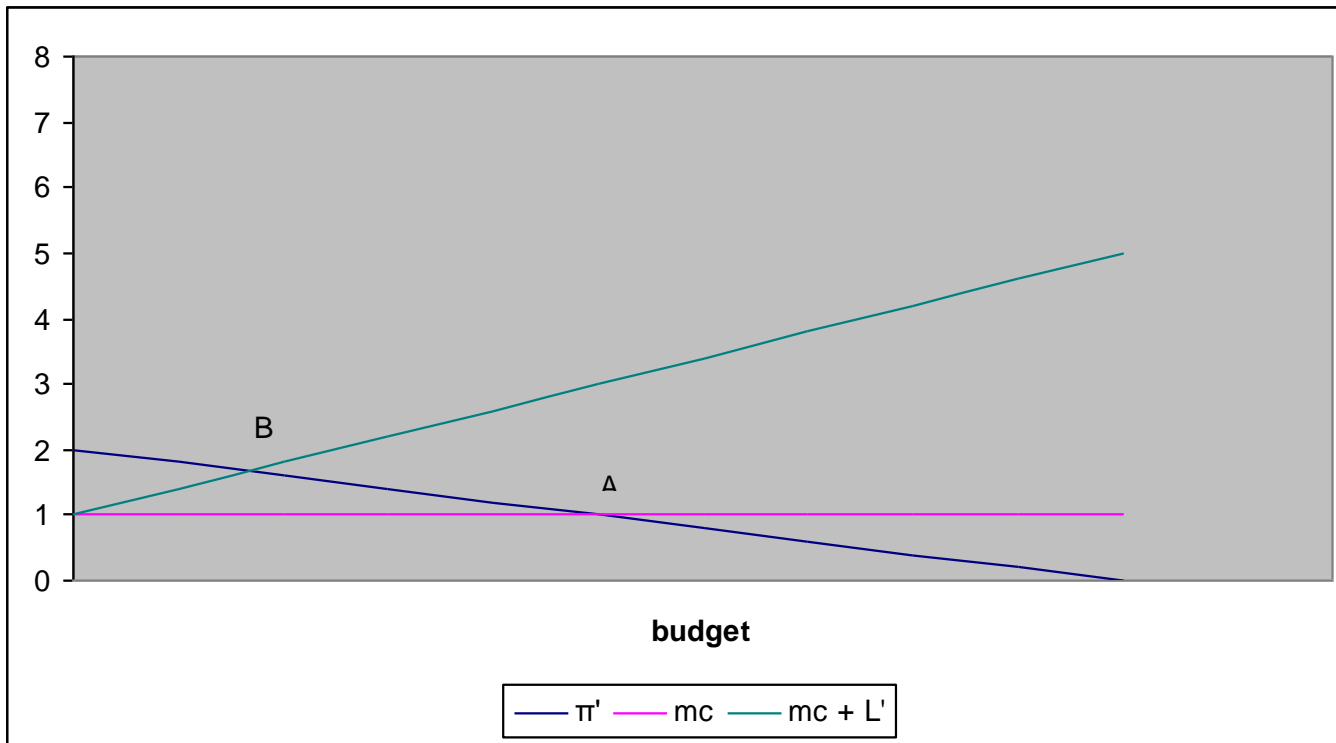
- Civil Law – suffer loss as judges gain independence, where
- $L(c)$  and  $\zeta L(c)$  denote the cost of judicial independence with and without elections:
- $\zeta > 1$  and  $L'(c) > 0$  and  $L''(c) > 0$ .

# Civil Law Legislature - continued

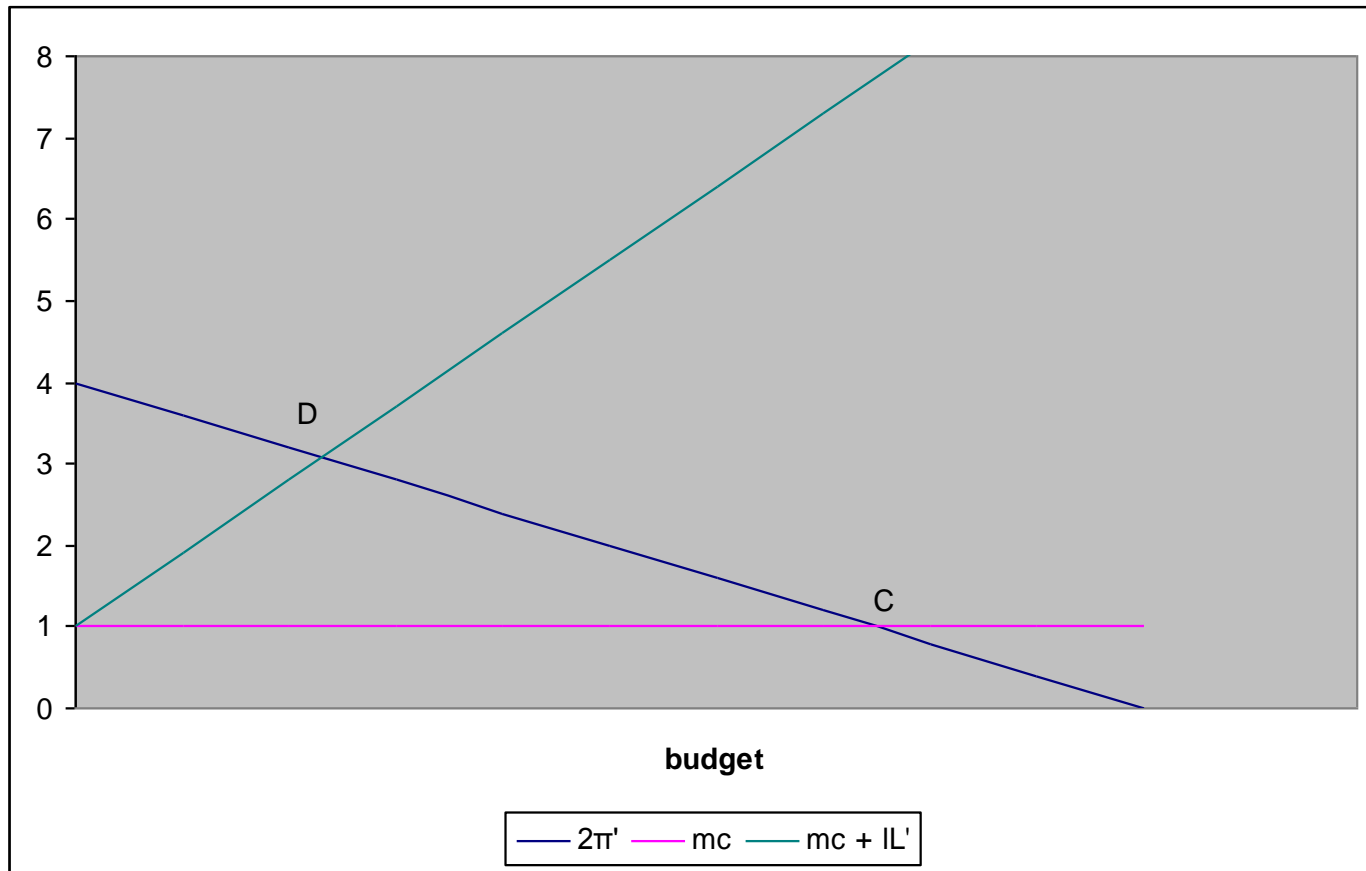
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- If judges are appointed,  $\max 2 \pi(c) - L(c) - c$ ;
- If judges are elected,  $\max \pi(c) + p - \zeta L(c) - c$ .

# Budgets when Judges are Elected



# Budgets when Judges are Appointed





# Predictions

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- The effect of reform in common law states is that judicial budgets increase;
- The effect of reform in common law states on budgets is greater than in civil law states.

# Testing the Predictions with Averages (Before and After Reform)

	Year of reform	$\Delta$ in logged de-trended budget	$\Delta$ in logged de-trended relative budget
Civil average	1974.8*** (3.68)	-0.092 (0.089)	-0.087 (0.221)
Common average	1973.8*** (2.93)	0.214* (0.107)	0.304 (0.178)
Common versus civil	-1.00 (4.70)	0.306*** (0.139)	0.390 (0.298)

# Testing the Predictions – De-trended Logged Judicial Budgets

Column	Full Sample	Drop the 2 Southern States
Ref <sub>it</sub>	0.219 (0.124)	0.207 (0.148)
Ref <sub>it</sub> xCivil	-0.478*** (0.143)	-0.535*** (0.149)
Controls	Population, Population x Civil, State Fixed Effects	
R <sup>2</sup>	0.740	0.743

Standard errors are clustered by state and corrected for heteroskedasticity, \*\*\* denotes significant at the 1-percent level

# De-trended Logged Relative Budgets

Column	Full Sample	Drop the 2 Southern States
$Ref_{it}$	0.265 (0.157)	0.149 (0.148)
$Ref_{it} \times Civil$	-0.696*** (0.194)	-0.702*** (0.152)
Controls	Population, Population x Civil, State Fixed Effects	
$R^2$	0.533	0.572

Standard errors are clustered by state and corrected for heteroskedasticity, \*\*\* denotes significant at the 1-percent level





# Conclusions

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- In Berkowitz and Clay (2006) we present cross-sectional evidence that civil law goes through the judiciary;
- This paper presents time series evidence and a natural experiment that civil law matters for the judiciary



# Conclusions

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- Bigger issue is that political institutions are highly persistent; since defunct civil law systems matter 160-218 years after the common law is transplanted;
- Reforms that involve political institutions must deal with persistent political culture.