

Southern “Home Cooking” and the Quality of American State Courts

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Abstract

In this paper, we investigate empirically the determinants of differences in the quality of American state courts. We find that factors aligned with cotton cultivation in the Southern “Black Belt”—namely, the extent of malaria, black population and cotton cultivation in the 1930s—are significantly and negatively correlated with the perceived quality of courts, as measured by a survey of attorneys in large corporations conducted by the US Chamber of Commerce. In contrast with previous works, we also find that, once controlling for *any* one factor relating to the Southern Black Belt, a state’s perceived court quality appears invariant to both the mode of retaining judges and colonial-era legal origins. Finally, we find that, after replacing the attorneys’ subjective evaluations of courts with objective ones based on judges’ productivity, quality and independence, Southern courts rank similarly to those in the rest of the country. An explanation consistent with all of these facts is that the traditional influence of entrenched local elites may have exerted persistent effects on the political and judicial systems of Southern states, resulting in courts that favor within-state over out-of-state interests. As a result, even though southern judges may be as competent and productive as those in the rest of the country, they will tend to be seen as parochial and biased by lawyers in large, out-of-state corporations.

Keywords: Courts, Institutions, Judicial elections, Legal origin, Local interests, South.

JEL codes: K40; N41; N42

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1. Introduction

Every year the US Chamber of Commerce (USCC) surveys lawyers situated in large corporations for their subjective assessments of the quality of American state courts. The resulting index of perceived court quality varies substantially across states, but Southern states—the states that had constituted the Confederacy—routinely occupy the lowest ranks.

In this paper, we investigate the determinants of this dimension of “Southern distinctiveness.” Following Berkowitz and Clay (2006), we accommodate a sequence of two hypotheses. The first is that Southern states developed preferences for subordinate judiciaries. Such preferences may derive, in turn, from two dimensions of states’ institutional heritage: legal origins—specifically, the experience of much of the South in the colonial era with civil law—and the one-party politics that emerged by the early 20th century. The second hypothesis is that the legislatures in states that retain judges by partisan elections—most of which belong to the South—effectively control their judiciaries. In turn, the retention of judges by partisan election should diminish their independence and thus induce lower court quality. We also expand on Berkowitz and Clay (2006) by incorporating into our analysis variables that identify differences in the economic and social development of Southern states and all other states. These variables include, most notably, factors aligned with cotton cultivation in the Southern “Black Belt” as of 1930: the penetration of malaria in the population, the size of each state’s black population, and the proportion of land dedicated to cotton production.

The results are surprising. We find that, even after controlling for contemporary institutions (e.g., the mode of retaining judges), institutional heritage (legal origins and membership in the Confederacy), and climate, intermediate historical features of southern states such as malaria, cotton cultivation and black population in the 1930s are significantly

and negatively correlated with the perceived quality of courts. We also find that, once controlling for *any* one factor relating to Black Belt heritage, perceived court quality appears invariant to both the mode of retaining judges and colonial-era legal origins.

These results highlight the main contribution of our paper: we identify economic and social features of southern states in the mid-twentieth century—as opposed to deeply lagged institutional variables and contemporary political institutions—as robust determinants of the perceived quality of their courts. While available data do not allow to precisely identify the mechanisms that drive these effects, the results are consistent with a narrative that emphasizes the distinctive role of local interests in the American South, and which may provide a promising basis for further research.

Several authors have noted that local interests exert a disproportionate influence in the politics of southern states (Thomas and Hrebrenar 1991, 1999; Roscigno and Kimble 1995; Shugart *et al.* 2003; Lowery and Gray 2004), and that southern courts tend to exhibit a “home cooking” bias, that is, they tend to favor litigants representing intra-state interests against those representing out-of-state interests (Tabarrok and Helland 1999; Long 2002, p.705; and DeBow *et al.* 2002, p. 400). In the most oft-quoted passage on the “home cooking” bias, retired West Virginia justice Richard Neely observed: “I’m not the only appellate judge in America who wants to sleep at night. As long as I am allowed to redistribute wealth from out-of-state companies to injured in-state plaintiffs, I shall continue to do so.” (Neely 1988, p. 4).

One consequence of the “home cooking” bias is that, insofar as lawyers in the large corporations that participate to the USCC survey of state court quality tend to represent out-of-state defendants, they should perceive southern courts as more incompetent and biased than those in the rest of the country. We further suggest that the dominance of local interests in southern politics—and therefore the “home cooking” bias in judicial decisions—may derive from the fact that the politics of southern states *had* traditionally been dominated by

local interests. Specifically, there is evidence that Southern politics had been dominated by the “Black Belt” economic elites linked to cotton cultivation (Kousser 1974; Alston and Ferrie 1993; Friedman 2008; Acemoglu and Robinson 2008b¹), the strength of whom is well captured by our measures of disease and cotton cultivation in the 1930s. The influence of those specific interests may or may not have persisted to this day. Yet, as documented by several authors, what may have persisted is a politics that sustains itself on the promiscuity between local interests, political agents and judges. Paraphrasing Michels (1962, p. 371): the cruel game may have continued with interest groups, new or old, coopting and exercising the entrenched mechanisms of influence.

As an indirect test of the hypothesis that Southern courts have developed a persistent “home cooking” bias, we also look at how the objective measures of court quality proposed by Choi *et al.* (2008b)—namely, judges’ productivity, citations, and propensity to vote against co-partisans in their panel—relate to the states’ Black Belt heritage, and to our other explanatory variables. If Black-Belt heritage reflected objective deficiencies in Southern courts, rather than the historical strength of local interests, we should expect its effect to be independent of whether court quality is subjectively or objectively measured. Instead, and consistent with the “home cooking” hypothesis, we find that, when quality is objectively measured, courts in the Black Belt states do not differ from those in the rest of the country.

The rest of this paper is organized as follows. Section 2 discusses the related literature and highlights the main contributions of our article. Section 3 presents the data. Section 4 discusses the empirical methodology and the results. Section 5 concludes.

¹ See also chapters 24 and 25 in Key (1949).

2. Related literature

This paper belongs to an emerging literature that investigates judicial institutions in the American states. The literature itself belongs to a larger current in research that endeavors to sort out how judicial institutions matter. Do they influence economic outcomes in ways such as those catalogued by La Porta *et al.* (2008)? Do legal origins exert long-persisting effects (La Porta *et al.* 2008)? In contrast, are such institutions amenable to redesign (Glaeser and Shleifer 2002, pp. 1196-1197)? How should reform-minded designers measure judicial inputs and outputs (Glick 1978, pp. 520-521; Choi *et al.* 2008a)?

Research on American state courts has begun to yield results that might yet inform the answers to such questions, and a major strand of this literature has focused on how the mode of selecting and retaining judges influences judicial outputs. Many observers have entertained the hypothesis that selecting or retaining judges by partisan elections favors the selection of judges who are less qualified or more susceptible to political influence (for instance, Pozen 2008; Samuels 2007; Hall and Aspin 1987). In contrast, Kales (1914) argued that well situated parties may be able to manipulate whatever mode of selecting judges was in place and install judges amenable to accommodating their interests. Indeed, manipulation of nomination and appointment processes has historically been a concern (Glick 1978, p. 521), and has motivated the shift in some states from appointment processes to election processes in the first place.

The evidence on the link between judicial elections and outputs is mixed. On one hand, Tabarrok and Helland (1999) find that courts in states that implement partisan elections tend to compel the transfer of disproportionately generous tort awards from defendants representing out-of-state interests to plaintiffs representing within-state interests. On a similar vein, Berkowitz and Clay (2006) find that courts in states that retain judges by

partisan elections receive lower scores in the USCC index of court quality. On the other hand, Choi *et al.* (2008a) find that, while elected judges are less frequently cited than appointed judges in opinions generated in out-of-state courts, these same judges write more opinions and are equally likely to vote independently of co-partisans on judicial panels. As an explanation for this discrepancy, Choi *et al.* (2008a) suggest that their measures reflect objective dimensions of court quality, while the USCC index used by Berkowitz and Clay (2006), which is based on subjective assessments of lawyers in large corporations, reflects corporate interests rather than quality.

Another strand of research has asked why some states—mostly in the South—have implemented and maintained partisan elections to select and retain judges, while other states have adopted different modes. Hanssen (2004a, 2004b), for example, observes that the selection of judges by partisan elections is less likely to be adopted and maintained over time in states featuring robust political competition between the major parties. He takes this as evidence that politicians who are not likely to lose office in the near future prefer to constrain judicial independence, in order to prevent judges from overturning their decisions.

Expanding on that, Berkowitz and Clay (2006) explain the use of partisan elections of judges by appealing to two dimensions of states' institutional heritage. First, they argue that states endowed with a Civil Law colonial heritage—namely, those settled by Holland, France and Spain—maintained a preference for judges “that are subordinated to elected branches” (Berkowitz and Clay 2006, p. 401). Second, they argue that, as a consequence of their slavist past and their membership in the Confederacy during the Civil War, Southern states developed single-party political systems that enabled entrenched political interests to recall or otherwise punish dissenting judges, and consequently favored institutions, such as partisan elections, which were instrumental to achieving that goal. Consistent with that, Berkowitz and Clay (2006) find positive correlations between the states' use of partisan elections of

judges, their Civil Law colonial heritage and their membership in the Confederacy during the Civil War.

Our paper contributes to both of the literatures summarized above. First, we find that, once controlling for historical features of southern states that relate to cotton cultivation in the Southern Black Belt—namely, the extent of malaria, cotton cultivation and black population in 1930—the states’ colonial-era legal origin and slavist past do not affect contemporary court quality neither directly, nor through the adoption of partisan elections of judges. While these results are open to criticism, they cast some doubts on the idea that reforming the mode of selecting and retaining judges may automatically improve court quality.

Second, we find that the peculiar economic and social model developed by southern states through the first half of the XX century, as captured by our Black-Belt variables, plays an important role in explaining contemporary court quality. As we note in the Introduction, this is consistent with a narrative that emphasizes the historical strength of entrenched interest groups in Southern states, particularly those linked to large plantations in the Black Belt (Kay 1949; Kousser 1974; Alston and Ferrie 1993; Friedman 2008; Acemoglu and Robinson 2008b), and the contemporary persistence in those states of political systems based on a promiscuity between local interests, political institutions and judges (Michels 1962; Thomas and Hrebrenar 1991, 1999; Roscigno and Kimble 1995; Shugart *et al.* 2003; Lowery and Gray 2004).

Third, and consistent with Choi *et al.* (2008a), we find that this Southern distinctiveness is highly sensitive to how one measures contemporary court quality. Specifically, while the old Black-Belt states receive exceptionally low scores in the *subjective* USCC index of court quality, which is likely to reflect the preferences of lawyers in large corporations, they score similarly to states in the rest of the country with respect to *objective* dimensions of court

quality such as the judges' productivity and propensity to vote against co-partisans in their panel.

3. Data

Our main dependent variable is the logarithm of the USCC index of court quality, averaged across the 2005-2008 period. The index ranges from a minimum of 39.23 in West Virginia to a maximum of 74.00 in Delaware, the score of the average state being 60.82. The index is based on the responses of lawyers in corporations with a turnover greater than #100# million, who are asked to rate judges in state courts they are familiar with across several dimensions, such as professionalism, willingness to admit scientific evidence in court, independence, timeliness, and the like. While the USCC index is, literally speaking, a measure of how favorable courts are to large firms, it is usually interpreted as a measure of state courts' quality. To check the robustness of this interpretation, we include as additional dependent variables the objective measures of court performance proposed by Choi *et al.* (2008b), who rank state courts on the basis of the number of opinions per judge (productivity), the number of out-of-state citations per judge (quality), and the propensity of judges to vote against co-partisans in their panel (independence).

Our main independent variables include the state's legal origin, whether the state selects and retains judges through partisan elections, and intermediate historical features that identify differences in the economic and social development of Southern states and all other states. We measure legal origin through a dummy variable that takes value 1 if a state had Civil Law before joining the Union, and 0 otherwise. In classifying Civil Law and Common Law states, we follow the criteria used by Berkowitz and Clay (2006). We also follow Berkowitz and Clay (2006) in constructing dummies for whether a state held partisan elections of judges in each year between 1970 and 1990, and taking the average as an overall

index of the state's preference for partisan elections. Finally, we measure the comparative development of southern states through variables aligned with cotton cultivation in the Southern "Black Belt" as of 1930: the penetration of malaria in the population, the size of each state's black population, and the proportion of land dedicated to cotton production. As explained in the introduction, malaria was tightly linked to large-scale cotton cultivation (Breedon (1991), Duffy (1991), Humphreys (2001)) before the mechanization of cotton harvesting after World War II. As an alternative measure of Southern distinctiveness, we also include a dummy for whether a state joined the Confederacy during the Civil War.

As explained in section 4, we also allow for interactions between the structure of a state's economy and the way corporate lawyers surveyed in the USCC index perceive that state's courts. Specifically, we hypothesize that states specialized in certain industries may demand less sophisticated courts, and firms in those industries may influence courts in a way that runs against the preferences of the USCC respondents. To take that into account, we include as independent variables the portions of a state's GSP (gross state product) generated by industries that arguably involve simpler, standardized litigations, and that are underrepresented in the sample of large corporations on which the USCC index is based. In the econometric analysis that follows, we use mining & extraction (oil and gas). In unreported specifications, available upon request, we have also used water transportation, accommodation, textiles and garment manufacturing, obtaining consistent results.

As control variables, we include states' GSP per capita; population density; climate, measured by average humidity throughout the year and the maximum temperature in January; the degree of income inequality, alternatively measured by the 1949 and 1989 Gini coefficients; and the dominance of the Democratic party in state house and gubernatorial

elections, measured by the average unfolded Ranney index between 2000 and 2007.² Controlling for income inequality and Democratic political preferences is especially important, because they may be correlated with both our measures of southern development—the extent of malaria, cotton cultivation and black population in 1930—and with the USCC ranking of state courts. For instance, southern states used to be malarious due to their agricultural economy based on cotton cultivation; at the same time, one might expect that they maintained a more unequal income distribution than northern states, partly because of the heritage of slavery and *de jure* segregation, and a political system historically dominated by the Democratic Party. In turn, Democratic states may be less pro-business, and, therefore, their courts may be perceived as less appealing to the corporate lawyers surveyed in the USCC index. Similarly, politicians and courts in states with unequal income distributions may be more pressed to redistribute income, and this may negatively affect the way they are perceived by the corporate lawyers surveyed in the USCC index.

The descriptive statistics for our dependent and independent variables are displayed in Table 1. Hawaii and the District of Columbia are not represented in the USCC index, so these two states are excluded from the empirical analysis. Moreover, the number of observations varies across variables for various reasons. First, Nebraska maintains a non-partisan legislature and therefore Ranney Index figures cannot be computed for it. Second, malaria reports were not available for Kentucky and North Carolina in 1930. Finally, the Gini coefficient for 1949 was not available for Alaska.

² The unfolded Ranney index (Ranney (1965)) constitutes a measure of how much state politics is dominated by the Democratic party. The index equally weights four dimensions: (1) the proportion of state senate seats occupied by the Democratic party; (2) the proportion of lower house seats in a given state occupied by the Democratic party; (3) the proportion of votes in gubernatorial elections secured by the Democratic candidates; (4) the proportion of years both houses of a state's congress were controlled by the Democratic party. The index varies between 0 and 1 with 0 indicating dominance by the Republican party, 1 indicating dominance by the Democratic party, and 0.5 indicating vigorous political competition between the two parties. We calculated each of these four dimensions for the interval 2000 – 2007. Note that the unfolded Ranney index, which we use as a measure of Democratic dominance, is not to be confused with the folded Ranney index, which is given by $1 - |\text{Ranney Index} - 0.5|$, and is commonly used in Political Science as a measure of intra-state political competition between the two major parties.

<TABLE 1 HERE>

4. Empirical model and results

As a tractable econometric model of the determinants of states' court quality, we pose a simple structural system of linear equations, representing the supply and demand of judicial outputs, and the mode of selecting and retaining judges. Let Q indicate a state's court quality, P its propensity to select and retain judges by partisan elections, L its legal origin, and M a vector of historical economic and social characteristics that distinguish southern states from the rest of the country—such as disease, cotton-based agriculture and membership in the Confederacy during the Civil War. Also, let N indicate the share of a state's GSP occupied by “endogenous” industries, such as financial services, which have the option to locate in and out of a state, and let X indicate the share of GSP occupied by “exogenous” industries, such as mining or oil extraction, which are more likely to be tied to locations with certain physical endowments. Finally, let Z indicate a vector of additional state characteristics, such as climate, GSP and population density.

The demand and supply of judicial decisions, and the mode of selecting judges, are then given by the following three equations:

$$\text{Supply:} \quad Q = \alpha_Q + \beta_{PQ}P + \gamma_{XQ}X + \gamma_{MQ}M + \gamma_{ZQ}Z + \varepsilon_Q$$

$$\text{Demand:} \quad N = \alpha_N + \beta_{QN}C + \gamma_{XN}X + \gamma_{ZN}Z + \varepsilon_N$$

$$\text{Judicial Selection:} \quad P = \alpha_P + \beta_{NP}N + \gamma_{XP}X + \gamma_{MP}M + \gamma_{LP}L + \gamma_{ZP}Z + \varepsilon_P$$

where the ε_i terms indicate error processes.

For instance, specific industrial interests, as captured by X and N , may affect judicial decisions, and consequently the ranking of state courts in the index, by lobbying in favor (or against) maintaining partisan elections of judges, and also through other, unobserved

institutional channels. Similarly, a state’s legal origin may affect its preference for independent courts through the partisan election of judges, and possibly through other unobserved channels. Finally, the choice of firms in an “endogenous” industry to locate in a given state may be affected by the perceived quality of that state’s courts: for instance, a large financial corporation may choose not to locate in a state whose courts are unprofessional, anti-business, or parochial.

The structural system yields the following reduced-form equations:

$$Q = b_1 + b_2X + b_3M + b_4L + b_5Z + u$$

$$P = d_1 + d_2X + d_3M + d_4L + d_5Z + w$$

where the formulas for the b_i and d_i coefficients are given in the appendix. We begin our analysis by estimating the reduced-form equations above as OLS regressions. We subsequently present estimates based on the assumption that $\beta_{NP} = 0$, implying that firms that have the option of locating in and out of a state cannot easily influence the mode of selecting and retaining judges. In the appendix we show that, under this assumption, the system is triangular, and one can obtain unbiased and efficient estimates of the structural coefficients in the judicial election equation by OLS. Applying OLS to the triangular system also yields unbiased estimates of the structural coefficients in the supply equation, allowing to assess the effect of partisan elections of judges on the ranking of state courts. Estimates for the determinants of perceived court quality, as measured by the USCC Index, and for the states’ propensity to hold partisan elections of judges are displayed in tables 2 and 3, respectively. In unreported regressions, available from the authors upon request, we substitute Malaria, alternatively, with the proportion of arable land that was dedicated to cotton cultivation in 1930, the proportion of state population that was black in 1930, and a dummy for whether states were part of the Confederacy during the Civil War. The coefficients for Cotton

cultivation and Black population are consistent with those of Malaria, although regressions featuring Malaria yield the highest R-squares. The coefficient for the Confederate membership dummy are insignificantly different from zero.

<TABLE 2 HERE>

<TABLE 3 HERE>

The empirical analysis suggests three main observations. First, partisan elections of judges do not seem to affect the USCC index of court quality. Model (8) in Table 2 provides OLS estimates for the effect of partisan elections on the USCC index, which are insignificant both statistically and in magnitude. Second, legal origins do not appear to have any discernible effect on the USCC index of court quality. The coefficient corresponding to the Civil origin dummy appears significant only in model (1) in Table 2, where court quality is regressed on Malaria, Civil, and a constant term. Once adding Democratic Dominance and the 1989 Gini coefficient as controls, the effect of Civil legal origin is markedly diminished and statistically insignificant. Similar results obtain in model (4), which features the weight of mining and extraction in a state's economy as an additional control, and in model (5), where the 1949 Gini coefficient replaces the 1989 one. Note that that legal origins do not even seem to affect court quality indirectly, through the mode of selecting and retaining judges: As shown in Table 3, the positive effect of Civil Code heritage on a state's propensity to hold partisan elections of judges disappears after controlling for income inequality and Democratic Dominance.

All together, these results do not support the hypothesis advanced in Berkowitz and Clay (2006), according to which the civil law heritage of some states persistently induced them to constrain judicial independence through institutions such as the partisan election of judges, thus "condemning" them to receive low scores in the USCC ranking.

A third observation suggested by the data is that factors identifying the Southern “Black Belt” in 1930 exert a robust negative influence on the USCC ranking of state courts. Models (1) through (10) in Table 2 test the direct effect of the Black Belt factor on the USCC index. The coefficient corresponding to Malaria is negative and significant at the 1% level in all models. The coefficient is also significant in magnitude. For instance, in model (3), the estimates imply a difference of 12.54 points in the USCC index between a hypothetical state of average quality and no malaria cases and a state with the highest proportion of cases. The data also suggest that the effect of Malaria on perceived court quality does not work through the partisan election of judges: the coefficient corresponding to Malaria becomes insignificant both statistically and in magnitude after controlling for the dominance of the Democratic Party and the degree of income inequality (models (2) through (8) in Table 3). Indeed, it is the control variables, and not the presence of entrenched interest groups, what seems to influence the use of judicial elections.

These results are puzzling: why are courts in states that formed the Southern Black Belt in the 1930s perceived to have poorer quality? A hypothesis advanced in previous works is that southern courts tend to exhibit a “home cooking” bias—that is, they tend to favor litigants representing intra-state interests against litigants representing out-of-state interests (Neely 1988; Tabarrok and Helland 1999; Long 2002, p.705; and DeBow *et al.* 2002, p. 400). One consequence of the “home cooking” bias is that, insofar as lawyers in the large corporations that participate to the USCC survey of state court quality tend to represent out-of-state defendants, they should perceive southern courts as more incompetent and biased than those in the rest of the country.

We further suggest that the dominance of local interests in southern politics—and therefore the “home cooking” bias in judicial performance—may derive from the fact that the politics of southern states *had* traditionally been dominated by local interests. Specifically,

there is evidence that Southern politics had been dominated by the “Black Belt” economic elites linked to cotton cultivation (Kousser 1974; Alston and Ferrie 1993; Friedman 2008; Acemoglu and Robinson 2008b³), the strength of whom is well captured by our measures of disease and cotton cultivation in the 1930s. The influence of those specific interests may or may not have persisted to this day. Yet, as documented by several authors, what may have persisted is a politics that sustains itself on the promiscuity between local interests, political agents and judges.

The existence of a “home cooking” bias in southern courts can also explain why, in contrast with the conventional wisdom, partisan elections of judges do not have a direct effect on perceived court quality. If southern states are characterized by a disproportionate promiscuity between local interests, political agents and judges, the fact that judges are elected should not matter *per se* because, as some authors have suggested (e.g., Kales 1914, Glick 1978) local interests may be able to game allegedly meritocratic selection and retention systems, and act through state governors and legislatures, or directly on judges, in order to obtain favorable rulings.

As an indirect test of the hypothesis that Southern courts have developed a persistent “home cooking” bias, we look at how objective measures of court quality, as opposed to the subjective USCC Index, relate to the states’ Black Belt heritage, and to our other explanatory variables. If Black-Belt heritage, as proxied by our Malaria variable, reflected objective deficiencies in Southern courts rather than the strength of local interests, we should expect its effect to be independent of whether court quality is subjectively or objectively measured. In the OLS regressions in table 4, we replace the USCC index as a dependent variable with the objective measures of court outputs proposed by Choi *et al.* (2008b), who rank state courts on the basis of the number of opinions per judge (productivity), the number of out-of-state

³ See also chapters 24 and 25 in Key (1949).

citations per judge (quality), and the propensity of judges to vote against co-partisans in their panel (independence).

<TABLE 4 HERE>

The results are striking: none of the three R-squares exceed 12.5%, and neither the Black Belt variables, nor income inequality, nor the strength of the Democratic Party exert robust effects, if any effects, on judges' productivity, on how often they are cited, and on their autonomy from co-partisans. That is, a state's Black Belt heritage is an important determinant of contemporary court quality only if quality is measured by the perceptions of lawyers in large corporations—the USCC survey respondents.

We find this broadly consistent with our narrative on “home cooking” bias and the historical role of interest groups in southern politics. Whether courts are captured by local interests will negatively affect how they are perceived by lawyers in out-of-state corporations, which translates into low scores in the USCC index. However, there are no reasons to expect that captured judges will write fewer opinions or poorer ones. Indeed, the reverse may be true: in order for their decisions in favor of local interests to avoid a US Supreme Court review, captured judges may need to be especially skilled, and to write subtle and sophisticated opinions.

Table 4 is also consistent with Choi *et al.* (2008b), who show that their objective rankings of state courts are uncorrelated with the USCC subjective ranking, which suggests that the two types of rankings measure different court outputs. However, while Choi *et al.* (2008b) take this as evidence that objective rankings of state courts are preferable to subjective ones, our results advise a more cautionary interpretation. It may well be that an objective ranking of courts, based, for instance, on the number out-of-state citations they

secure, fails to reflect the extent to which these courts are captured by local interests, which would be unfortunate, if one assumes impartial courts are preferable.

5. Conclusion

Why do corporate lawyers perceive courts in the American South as worse? And why do court rankings based on these lawyers' perceptions differ from those based on objective measures of court performance, such as productivity? According to the empirical results in this paper, lawyers representing out-of-state defendants dislike courts in the (mostly southern) states where entrenched interest groups have historically been influential. This remains true after controlling for potentially confounding factors, such as industry structure, climate, income distribution, and political preferences. On the other hand, and not surprisingly, the strength of local interest groups does not affect objective rankings of state courts based on judicial productivity or received citations.

In contrast with previous work (Berkowitz and Clay (2006)), the results in this paper also indicate that, controlling for the historical power of interest groups, courts in states that experienced civil law systems before entering the Union are not perceived as worse by corporate lawyers, nor are they more likely to constrain judicial independence by selecting and retaining judges through partisan elections.

Overall, the results in this paper are consistent with an emerging literature that emphasizes institutional persistence (Acemoglu *et al.* (2001), Acemoglu and Robinson (2008a)). In particular, they are consistent with the idea that, in order to maintain a pool of cheap labor, the southern agricultural elites instituted mechanisms for maintaining political control, which survived the decay of the southern agricultural model and the subsequent political liberalization, and persisted to the present (Aston and Ferrie (1992), Thomas and Hrebrenar (1992, 1999), Acemoglu and Robinson (2008b)). While this idea is not new *per*

se, this is, to our knowledge, the first paper that explores its consequences for the differential development of judicial institutions in the United States.

An issue that remains unexplored in this paper is the precise mechanisms through which local interests influence the judiciary in the American South and how these mechanisms have survived political liberalization in the 1960s and the decay of the traditional agricultural elites. We hope to address these questions in future research.

Appendix: A structural model of the supply and demand of judicial decisions

The demand and supply of judicial decisions, and the mode of selecting judges, are given by the following three equations:

$$\text{Supply:} \quad Q = \alpha_Q + \beta_{PQ}P + \gamma_{XQ}X + \gamma_{MQ}M + \gamma_{ZQ}Z + \varepsilon_Q$$

$$\text{Demand:} \quad N = \alpha_N + \beta_{QN}C + \gamma_{XN}X + \gamma_{ZN}Z + \varepsilon_N$$

$$\text{Judicial Selection:} \quad P = \alpha_P + \beta_{NP}N + \gamma_{XP}X + \gamma_{MP}M + \gamma_{LP}L + \gamma_{ZP}Z + \varepsilon_P$$

Given the structural model above, equilibrium court quality corresponds to the reduced form equation

$$Q = b_1 + b_2X + b_3M + b_4L + b_5Z + u$$

$$\text{where } b_1 = \left[\frac{\alpha_Q + \beta_{NP}\beta_{PQ}\alpha_N + \beta_{PQ}\alpha_P}{1 - \beta_{PQ}\beta_{QN}\beta_{NP}} \right], \quad b_2 = \left[\frac{\gamma_{XQ} + \beta_{NP}\beta_{PQ}\gamma_{XN} + \beta_{PQ}\gamma_{XP}}{1 - \beta_{PQ}\beta_{QN}\beta_{NP}} \right],$$

$$b_3 = \left[\frac{\gamma_{MQ} + \beta_{PQ}\gamma_{MP}}{1 - \beta_{PQ}\beta_{QN}\beta_{NP}} \right], \quad b_4 = \left[\frac{\beta_{PQ}\gamma_{LP}}{1 - \beta_{PQ}\beta_{QN}\beta_{NP}} \right], \quad b_5 = \left[\frac{\gamma_{ZQ} + \beta_{PQ}\beta_{NP}\gamma_{ZN} + \beta_{PQ}\gamma_{ZP}}{1 - \beta_{PQ}\beta_{QN}\beta_{NP}} \right], \text{ and}$$

$$u = \left[\frac{\varepsilon_Q + \beta_{NP}\beta_{PQ}\varepsilon_N + \beta_{PQ}\varepsilon_P}{1 - \beta_{PQ}\beta_{QN}\beta_{NP}} \right].$$

Similarly, the reduced-form equation for the states' propensity to retain judges by partisan elections is given by

$$P = d_1 + d_2X + d_3M + d_4L + d_5Z + w$$

where

$$d_1 = \left[\frac{\beta_{QN}\beta_{NP}\alpha_Q + \beta_{NP}\alpha_N + \alpha_P}{1 - \beta_{PQ}\beta_{QN}\beta_{NP}} \right], \quad d_2 = \left[\frac{\beta_{QN}\beta_{NP}\gamma_{XQ} + \beta_{NP}\gamma_{XN} + \gamma_{XP}}{1 - \beta_{PQ}\beta_{QN}\beta_{NP}} \right],$$

$$d_3 = \left[\frac{\beta_{QN}\beta_{NP}\gamma_{MQ} + \gamma_{MP}}{1 - \beta_{PQ}\beta_{QN}\beta_{NP}} \right], \quad d_4 = \left[\frac{\gamma_{34}}{1 - \beta_{PQ}\beta_{QN}\beta_{NP}} \right], \quad d_5 = \left[\frac{\beta_{QN}\beta_{NP}\gamma_{ZQ} + \beta_{NP}\gamma_{ZN} + \gamma_{ZP}}{1 - \beta_{PQ}\beta_{QN}\beta_{NP}} \right], \text{ and}$$

$$w = \left[\frac{\beta_{QN}\beta_{NP}\varepsilon_Q + \beta_{NP}\varepsilon_N + \varepsilon_P}{1 - \beta_{PQ}\beta_{QN}\beta_{NP}} \right].$$

Suppose $\beta_{NP} = 0$, that is, industries that have the option of locating in a given state or elsewhere cannot influence the mode of retaining judges in that state. Under such exclusion restriction, the supply and retention equations correspond to a triangular system of two equations by which retention influences supply, absent feedback from supply. The reduced forms correspond to the structural-form retention and quality equations

$$P = \alpha_P + \beta_{NP}N + \gamma_{XP}X + \gamma_{MP}M + \gamma_{LP}L + \gamma_{ZP}Z + \varepsilon_P \text{ and}$$

$$Q = \left[\alpha_Q + \beta_{PQ}\alpha_P \right] + \left[\gamma_{XQ} + \beta_{PQ}\gamma_{XP} \right]X + \left[\gamma_{MQ} + \beta_{PQ}\gamma_{MP} \right]M \\ + \left[\beta_{PQ}\gamma_{LP} \right]L + \left[\gamma_{ZQ} + \beta_{PQ}\gamma_{ZP} \right]Z + \left[\varepsilon_Q + \beta_{PQ}\varepsilon_P \right]$$

Given $\beta_{NP} = 0$ and absent correlation between the error processes ε_Q and ε_P , the two structural equations constitute a “recursive” structure, and one may directly estimate the structural supply equation by OLS.

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Table 1. Descriptive Statistics

	Obs.	Mean	Std. Dev.	Minimum	Maximum
USCC Index (average USCC index of court quality between 2005 & 2008)	49	60.82	7.16	39.23	74.00
Retention (average likelihood of partisan elections of judges between 1970 & 1990)	49	19.05%	37.19%	0.00%	100.00%
Mining & Extraction (\$millions)	49	\$2,248.82	\$6,278.76	\$5.50	\$42,221.17
Malaria (number of malaria cases per 100,000 people in 1930)	47	99.11	397.99	0.00	2,505.65
Cotton Cultivation (Proportion of arable land dedicated to cotton cultivation in 1930)	49	0.03	0.07	0	0.23
Black Population (Proportion of population in 1930 that was black)	49	0.09	0.14	0	0.50
Confederate State (1 if state belonged to the Confederacy, 0 otherwise)	49	0.22	0.42	0	1
Civil Legal Origin (1 if state's settler was a Civil Law country, 0 otherwise)	49	0.27	0.45	0	1
Democratic Dominance (Unfolded Ranney Index between 2000 & 2007)	48	0.42	0.12	0.20	0.72
Gini Coefficient 1949	48	0.44	0.03	0.40	0.51
Gini Coefficient 1989	49	0.42	0.02	0.38	0.47
Maximum January Temperature (F)	49	40.90	11.65	19.90	70.35
Average Humidity (%)	49	67.15%	8.41%	36.00%	77.00%
Population Density (per square mile in the year 2000)	49	181.76	252.75	1.10	1,134.40
GSP per capita (\$ per capita in the year 2000)	49	\$33,592	\$6,023	\$23,106	\$54,498

Table 2. Determinants of State Courts' Rankings in the USCC Index

	(1)	(2)	(3)	(4)	(5)
Dependent Variable: USCC Index	Reduced Form (OLS)	Reduced Form (OLS)	Reduced Form (OLS)	Reduced Form (OLS)	Reduced Form (OLS)
Retention					
Mining & Extraction			-0.023*** 0.007	-0.021*** 0.008	-0.028*** 0.008
Malaria	-10.857*** 1.469	-6.042*** 2.069	-8.238*** 1.883	-7.939*** 1.906	-9.767*** 2.203
Civil Legal Origin	-0.120*** 0.040	-0.047 0.037		-0.031 0.038	-0.048 0.039
Democratic Dominance		-0.366** 0.150	-0.445*** 0.143	-0.436*** 0.157	-0.511*** 0.176
Gini Coefficient 1949					-0.109 0.425
Gini Coefficient 1989		-2.697*** 0.873	-1.810** 0.746	-1.594** 0.784	
Log Max January Temp					
Average Humidity					
Log Population Density					
Log Per Capita GSP					
Constant	4.143*** 0.018	5.403*** 0.386	5.194*** 0.288	5.097*** 0.328	4.554*** 0.205
N	47	46	46	46	45
R-squared	0.342	0.628	0.672	0.680	0.654

The notations ***, **, and * indicate significance at the 1%, 5% and 10% levels, respectively.

Table 2 (continued)

	(6)	(7)	(8)
Dependent Variable: USCC Index	Reduced Form (OLS)	Reduced Form (OLS)	Structural Form (OLS)
Retention			-0.044 0.052
Mining & Extraction	-0.025*** 0.008	-0.021*** 0.007	-0.031*** 0.008
Malaria	-7.827*** 1.819	-8.093*** 2.249	-9.980*** 2.130
Civil Legal Origin			
Democratic Dominance	-0.432*** 0.157	-0.485*** 0.170	-0.476*** 0.146
Gini Coefficient 1949			
Gini Coefficient 1989	-1.416* 0.757	-1.857** 0.769	
Log Max January Temp	-0.025 0.051		
Average Humidity	-0.002 0.001		
Log Population Density		0.009 0.009	
Log Per Capita GSP		0.015 0.079	
Constant	5.238*** 0.300	5.025*** 0.943	4.507*** 0.091
N	46	46	46
R-squared	0.681	0.679	0.639

The notations ***, **, and * indicate significance at the 1%, 5% and 10% levels, respectively.

Table 3. Determinants of the States' Propensity to Select and Retain Judges through Partisan Elections

	(1)	(2)	(3)	(4)	(5)
Dependent Variable: Retention	OLS	OLS	OLS	OLS	OLS
Mining & Extraction					
Malaria	25.945*** 7.400	0.064 10.425	12.270* 6.952		
Civil Legal Origin	0.265* 0.133	0.106 0.104	0.061 0.122		
Democratic Dominance		0.913** 0.412	0.841** 0.379	1.074*** 0.382	1.073*** 0.390
Gini Coefficient 1949		6.334*** 1.676		6.645*** 1.361	
Gini Coefficient 1989			8.168*** 2.678		8.707*** 2.396
Log Population Density					
Log Per Capita GSP					
Constant	0.078* 0.046	-2.975*** 0.706	-3.640*** 1.109	-3.147*** 0.537	-3.929*** 0.961
N	47	45	46	47	48
R-squared	0.2374	0.5719	0.5089	0.5473	0.4495

The notations ***, **, and * indicate significance at the 1%, 5% and 10% levels, respectively.

Table 3 (continued)

	(6)	(7)	(8)
	OLS	OLS	OLS
Mining & Extraction	0.034	0.039	0.028
	0.026	0.025	0.028
Malaria	2.546	3.130	2.262
	9.945	10.056	9.345
Civil Legal Origin	0.053		0.063
	0.110		0.112
Democratic Dominance	0.962**	0.985***	1.126**
	0.383	0.355	0.430
Gini Coefficient 1949	5.850***	5.986***	5.605***
	1.655	1.587	1.718
Gini Coefficient 1989			
Log Population Density			-0.034
			0.028
Log Per Capita GSP			0.065
			0.213
Constant	-2.983***	-3.068***	-3.440
	0.740	0.694	2.196
N	45	45	45
R-squared	0.5933	0.59	0.6055

The notations ***, **, and * indicate significance at the 1%, 5% and 10% levels, respectively.

Table 4. Regressions on Objective Measures of Court Quality

	Independence	Quality	Productivity
Mining & Extraction	0.002 0.011	0.203 0.721	-0.120 1.033
Malaria	0.723 2.087	-6.256 91.069	663.351** 289.068
Democratic Dominance	0.218* 0.120	10.046 7.728	-14.609 11.622
Gini Coefficient 1989	0.259 1.110	-80.561 50.569	132.502 106.282
Constant	-0.237 0.401	42.510** 17.150	-23.368 39.386
N	41	46	46
R-squared	0.0874	0.0866	0.1242

The notations ***, **, and * indicate significance at the 1%, 5% and 10% levels, respectively.