Judicial Favoritism of Politicians: Evidence from Small Claims Courts

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Abstract

TBU

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1 Introduction

Suppose a case involving a politician is brought before an independent, high-quality court system; judges make their decision uniquely based on case merits. Further, assume a random distribution of lawyer skills and case merits across plaintiffs and defendants. Under these simplifying conditions, we should expect uniform win rates at trial regardless of who is appearing before the court. Powerful litigants, such as politicians, would be equally likely to win a case as other citizens. Surprisingly, however, there are not many studies measuring judicial independence in cases involving politicians in developing countries. This paper is one of the first attempts at measuring judicial independence and predicting court outcomes when politicians are before judges.

There is extensive evidence supporting other discrimination effects. Shayo and Zussman (2011) document a positive in-group bias, or preferential treatment, of 17 to 20 percentage points when the judge and litigants have the same ethnicity. Abrams et al. (2012) find that African American defendants are 18 percentage points more likely to be incarcerated than white defendants. Lu et al. (2015) show that politically connected firms are more likely to have favorable rulings in property rights cases in China. Several additional discrimination cases are reported in Rachlinski and Wistrich (2017), and though there are multiple studies on the political ideology of judges, there are no studies on how supposedly independent judges behave when members of co-equal branches of power are being challenged in court.

In recent years, there has been growing interest in the relationship between judicial decisions and politics in developing countries. Using data on employment claims filed in Venezuela between 2006 and 2017, Sanchez-Martinez (2018) looks at whether defendant employers are more likely to see a favorable outcome when they are affiliated with the United Socialist Party of Venezuela (PSUV), in power since 2007. The author finds that employers who share the same party affiliation as judges are 20 percent more successful at trial. In Lambais and Sigstad (2018), the authors identify a 50 percentage point advantage in the win rate at trial for elected versus non-elected candidates when both are defendants in corruption cases filed after election day has passed in Brazil. This project supplements the recent literature by investigating whether favoritism persists in cases where judges and politicians have less at stake (e.g., small claims cases), testing a theory of power collusion across branches of government.

Besides the theoretical component, this paper makes a series of data analysis contributions to the literature in law and politics. In order to measure the effect of political bias, we scrape and code judicial decisions from the São Paulo State Court System in Brazil for all mayors and city councilors since 2008 in small claims courts (*Special Civil Tribunals*) cases. We then apply the methodology in Abrams et al. (2012) to evaluate whether politicians have the upper hand in small claims cases. To further investigate the direction and magnitude of bias, we employ a regression discontinuity strategy comparing court outcomes across politicians who have barely won and lost a municipal election in the state. Finally, we implement various machine learning classification algorithms to predict court outcomes and identify the most critical factors driving judges' decisions. To our knowledge, this is the first paper proposing such comprehensive analysis of judicial favoritism of

politicians in developing countries.

TODO: Results

TODO: How results contribute to the literature

The remainder of this proposal is as follows. Section 2 presents the institutional environment of Brazil's State Court Systems. Section 3 summarizes the test dataset used for analysis; the theoretical framework is presented in section 4; section 5 discusses the analytical strategy, and section 6 predicts court outcomes for our sample of politicians. We conclude in section 7.

2   Institutional Background

Brazil's judiciary system is divided into general and limited jurisdiction courts. Federal and State Courts form the general system and Electoral, Military, and Labor Courts form the limited jurisdiction system. There are up to three instances of judicial review in either system, and the court of last resort is the Federal Supreme Court (STF). It takes up cases under its jurisdiction as set out by the Brazilian Constitution, cases in which there are conflicting norms or jurisprudence issued by lower courts, and cases where there is a direct violation of constitutional norms. To limit the sources of heterogeneity, this paper focuses on cases heard in state court systems. In particular, we focus on the state of São Paulo, the most economically and politically important state in the country.

There are 319 judicial districts in the state, and each district has one or more courthouses. These courthouses host at least one judge with either a broad mandate, meaning that they can rule on any issue within the state court system attribution, or a narrow mandate, which means they only oversee certain types of cases within the system, e.g., commercial or family law. Within the state system, there are specialized small claims courts called *Juízados Especiais Cíveis* (Special Civil Tribunals, in free translation, and SCTs henceforth). SCTs replaced the primary small claims courts across Brazil upon the passage of the most recent Brazilian Constitution in 1988.[1] Their goal is to simplify and increase access to justice across states by removing many procedural requirements present in other litigation instruments. SCTs are the primary judicial body for small complexity cases, defined as cases in which claims do not exceed 40 times the minimum wage[2] involving lease breach, consumer rights, debt executions, torts, and others. There is no need for hiring an attorney if claims are under 20 times the minimum wage. SCTs are only open to individual or small company plaintiffs.

An example helps illustrate a typical SCT case. Suppose your mobile phone service provider has been overbilling you for international phone calls that were never made. You, unfortunately, could not resolve this issue with the company's customer service and now want to take legal action and receive financial compensation for the wrongful charges. You walk up to an SCT office, speak to a courthouse clerk, and file your claim along with any supporting documentation. The clerk

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[1]More evidence of this in Lichand and Soares (2014).

[2]There are no state minimum wages in Brazil, so this is the federal, nationwide minimum wage at R$ 954.00 in 2018. This is equivalent to ~$10,500 in current dollars using the 2019 exchange rate average

then provides a court date for a conciliation hearing. At the hearing, you and the phone company will try to reach an agreement; if that fails, the judge sets trial for either later that same day or in the following days. At trial, the judge issues a sentence which can be appealed within ten days; on appeal, a three-judge panel then issues the final ruling. This entire process might take less than three months, representing a substantial improvement when compared to cases in the regular judicial process at state courts, which take up to 38 months on average to conclude (CNJ, 2018).

SCT's structure dramatically reduces the number of dimensions driving judicial decisions. According to the São Paulo State Court website, there are less than 15 types of cases that can be brought before SCTs. It is then easier for judges and lawyers, when hired by the litigants, to specialize and reduce any skill discrepancy that could substantially alter a case outcome. The sentence is also standard across cases: the losing side will pay the claim amount to the winning side, which is capped at 40x the minimum wage. The standard and relatively low salience punishment to litigant removes an additional source of heterogeneity from high-profile cases, such as corruption cases in Lambais and Sigstad (2018) or violent crimes in Lim et al. (2015). In fact, the use of small claims court is an approach first introduced by Shayo and Zussman (2011), that take advantage of the relative homogeneity of small claims cases in Israel to isolate the effect of ethnicity on court outcomes. Lastly, judges have no control over which SCT cases they take. In single-judge benches, all cases are presented before the same judge; in multiple-judge benches, the cases are randomly distributed to judges assigned to each SCT. These distribution rules are again dimension-reducing and prevent that cases are differently distributed to systematically more lenient (or harsher) judges at the state system.[3]

3 Data

We construct a case-level dataset (5,262 observations) with information from two sources. First, we collect SCT case and judge level information from the São Paulo State Court (TJ-SP). The court publishes all judicial decisions on their website, and the information available is the case duration, type (breach of contract, debt execution, and others above), the court where it has been filed, ruling judge, the amount claimed, litigants and their lawyers (if hired), and sentences. Second, we use the information on candidates running for municipal office in the state of São Paulo in 2008, 2012, and 2016 from the Brazilian Electoral Court (TSE). TSE has jurisdiction over the entire electoral process in Brazil, from registering candidates, ruling over breach of electoral law, and overseeing the voting process on election day, to counting votes and authorizing that elected politicians take up office. It collects individual-level data on politicians and publishes everything online. We use TSE electoral results, candidate information, and electoral district data for every elected candidate in the state of São Paulo in the municipal elections of 2008, 2012, and 2016 elections. Table 1 contains a sample of the variables for the universe of elected candidates in the state.

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[3]Yet, for robustness purposes, I replicate the process in Abrams et al. (2012) producing random distributions of court outcomes to serve as a check on the quality of the case assignment system implemented by the state of São Paulo.

Though the targeted case duration is three months, we can see that cases will last on average 361 days to conclude, and the average amount claimed by plaintiffs is R$11,830 (∼$3,000). Sixty-one percent of judges are male and have held their position for over ten years. Their income is R$35,110, or $9,000, on average. The average age of candidates involved in SCT cases in the state is 44 years old, 90.1 percent are male, and 24.6 percent have previous political experience, measured as an indicator variable for candidates who have been reelected or have declared their occupation in the TSE form as politician of any kind (city councilor, mayor, governor, member of Congress, senator, president). We have also collected categorical variables for educational attainment and marital status for all elected officials, but they are omitted from the table. The most frequent educational level and marital status are a four-year college degree or equivalent (41.2 percent) and married (70.3 percent), respectively.

4   Theory

Suppose there are three representative agents in Brazil, one for each branch of government: the executive, the legislative, and the judiciary. Though these agents are independent, they interact with one another over time. The executive agent serves on one or two four-year mandates (pending reelection at the end of the first term). They control the majority of government budgets, and have the discretion to set wages and resources allocated to the other branches. The legislative agent serves on a four-year mandate,[4] which is renewable as many times as they are reelected; they have no term limit. They are responsible for passing law and determining budget levels but not its composition. In other words, they approve the amount of money available for other branches of government but do not have a say on how to spend the money. The judiciary agent serves on life-long mandates and yields power in restrictive but steady ways. They have limited control over resources as they only oversee budgets in the courts at which they serve, but resolve disputes between the other two branches of government and other economic agents (individuals, companies, etc). In this simplified model, the judiciary pleases or upsets the executive and legislative by settling their disputes.

We are interested in the behavior of the judiciary with respect to other branches of government. Power collusion could exist if the judiciary were using sentences to please the executive and legislative as a means of buying out those who make the calls on judiciary resources. Under this hypothesis, the representative judiciary agent derives utility in each period t according to equation (1), which describes the benefit f as a function of k observable characteristics $\sum_{x=1}^{k} x_k$, such as their time in post, their wages, their working conditions, and unobservable characteristics ε, such as reputation and their happiness in serving justice; costs c are a function of m_t working conditions, executive and legislative utilities u_e^t and u_l^t; δ_t are exogenous, stochastic shocks that impact judicial

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[4]Senators serve for eight years but this does not change the theoretical predictions in this section.

work. These per-period utilities are computed in perpetuity in accordance with a judge's mandate:

$$u_j^t = \frac{1}{r} \times \sum_{t=1}^{t} \left[f\left(\sum_{x=1}^{k} x_k, \ \varepsilon_t \right) - c\left(\sum_{m=1}^{k} m_t, \ u_e^t(p), \ u_l^t(p), \ \delta_t \right) \right] \tag{1}$$

Since the executive and the legislative agents have primary responsibility for government budget, we can expect the judiciary to strategically maximize future net benefit by pleasing other agents. If the executive and the legislative agents are less likely to lose court cases, their utility increases. This incentive, however, is not uniformly distributed across all types of judicial cases. Because electoral, political, and even legal costs are higher in high salience cases, such as corruption, politicians are more likely to expect and respond to favoritism in such cases than in low salience cases. This makes small claims cases, which are one example of relatively less important court cases, an ideal object of judicial independence research. Any sign of favoritism in these cases is likely to carry over to high profile cases, and indicate a widespread deviation of justice. In addition, small claims cases are more homogeneous, and suffer less from unobservable factors which could drive court outcomes. In the majority of cases, litigants do not need an attorney to file a claim, defendants pay a small monetary compensation if they lose in court, and the duration of cases is shorter than in other courts in the state system. In other words, we are testing whether $\partial u_j^t / \partial u_{e,l}^t = 0$.

5   Empirical Strategy

We analyze judicial favoritism in three steps. First, we test whether the distribution of politician-favorable outcomes resembles a random distribution of court outcomes. Any deviation would indicate judges do vary how they try cases having politicians as litigants. Next, we estimate the direction of the effect using LASSO regressions. Third, we investigate the causal effect of being elected to office on court outcomes using a regression discontinuity design.

5.1   Are Cases Assigned at Random?

To reasonably compare court outcomes across judges, our first concern is establishing that judges cannot select into cases. This is guaranteed by the design of the state court system in general and SCTs in particular. Plaintiffs can file small claims lawsuits where the wrongful act has happened or where they (or the defendant) live. In addition, judges do not choose whether to hear the case. Plaintiffs walk up to the court, speak to clerks and are instructed on how to proceed. State judges come in only when the case has been opened and cannot choose which case to hear. Second, in districts where there are more than one judge trying cases, the allocation of lawsuits by judge is random; the distribution of cases across judges happens immediately after the case has been included in the caseload management system. Together, these two legal features indicate limited, if any, control of case allocation across judges. Still, we provide an empirical test of case assignment.

We follow the strategy in Abrams et al. (2012), who analyze racial bias in felony cases sentencing across judges in Cook County, IL. They suggest that random assignment can be tested regressing

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a case characteristic (e.g., age) on multiple control variables, as below:

$$\text{Age}_{ijc} = \alpha + \sum_{k=1}^{k} \beta x_{kijc} + \sum_{n=1}^{n} \Gamma D_n + \sum_{c=1}^{c} \lambda_c + \varepsilon_{ijc} \qquad (2)$$

Where Age_{ijc} is the politician age, x_k are k control variables, D_n is a matrix of n judge fixed-effects, λ_c is a matrix of court fixed-effects, and subscripts i, j, c are indexing plaintiff i, judge j, and court c. Under random assignment, the F-test on the joint distribution of judge fixed-effects should fail to reject the null (i.e. fixed-effects are equal). However, such direct F-test regression leads to the overrejection of the null for the same reasons as Abrams et al. (2012). Since the number of judges per SCT court is relatively small, the F-test does not meet its asymptotic properties and suffers from finite-sample bias (the judge variability within courts is small), over-rejecting the null effect of judge fixed-effects.

The solution to the overrejection problem is the construction of simulated datasets where the assignment of cases is indeed random, and the subsequent comparison of statistical moments in the empirical distribution versus the simulated moments provides an unbiased test of favoritism. The process is as follows. First, the researcher should group the actual (empirical) sample into the randomization units, which are the many SCTs in this case. Within these units, the researcher creates simulated observations, for each judge, from random draws (with replacement) of each of the variables in the empirical sample unit. Suppose there are 20 observed cases heard by four judges (five cases each) in a given SCT in the state of São Paulo. Each case has a set of observed characteristics, e.g. plaintiff gender, whether plaintiff was a politician at the time the case was heard, claim amount, etc. The researcher then creates 20 simulated cases, five per judge (keeping the same proportion as in the original data), where each case characteristic is randomly drawn from the sample of 20 observed cases in the empirical dataset. Once this process is replicated for all randomization units (SCTs), a simulated dataset of the same size as the empirical dataset has been created. This process is then repeated so that there are 1,000 simulated datasets.

Armed with these datasets, we compare the statistical moments in the actual and simulated datasets without fearing overrejection. Similarly to Abrams et al. (2012), we compute means of politician ages for all cases tried by any judge and compute the 25-75 interquartile range (IQR) for the entire distribution of judges. We report the results in figure 1. The empirical IQR is 7.73, which corresponds to a p-value of .065 in the simulated distribution. Due to the small number of judges in the dataset (518) and the average case by judge (10.15), the p-value of empirical distribution is close to overrejection at 5 percent level. However, when taken together with the design of case assignment in SCTs in São Paulo, we can confidently say that there is little evidence of case selection.

References

Abrams, D. S., Bertrand, M., and Mullainathan, S. (2012). Do Judges Vary in Their Treatment of Race? *The Journal of Legal Studies*, 41(2):347–383.

CNJ (2018). Justiça Em Números. Technical report.

Lambais, G. and Sigstad, H. (2018). *Judicial Subversion: Evidence from Brazil.* Mimeo, Harvard University.

Lichand, G. and Soares, R. R. (2014). Access to Justice and Entrepreneurship: Evidence from Brazil's Special Civil Tribunals. *The Journal of Law and Economics*, 57(2):459–499.

Lim, C. S. H., Snyder, J. M., and Strömberg, D. (2015). The Judge, the Politician, and the Press: Newspaper Coverage and Criminal Sentencing across Electoral Systems. *American Economic Journal: Applied Economics*, 7(4):103–135.

Lu, H., Pan, H., and Zhang, C. (2015). Political Connectedness and Court Outcomes: Evidence from Chinese Corporate Lawsuits. *The Journal of Law and Economics*, 58(4):829–861.

Rachlinski, J. J. and Wistrich, A. J. (2017). Judging the Judiciary by the Numbers: Empirical Research on Judges. *Annual Review of Law and Social Science*, 13(1):203–229.

Sanchez-Martinez, C. (2018). *Dismantling Institutions: Court Politicization and Discrimination in Public Employment Lawsuits.* PhD Dissertation, Stanford University.

Shayo, M. and Zussman, A. (2011). Judicial Ingroup Bias in the Shadow of Terrorism. *The Quarterly Journal of Economics*, 126(3):1447–1484.

Tables and Figures

Table 1: Descriptive Statistics

	N	Mean	St. Dev.	Min	Max
Case Level					
Case Duration (in days)	5,262	361	433	1	5,416
Amount Claimed (in R$)	5,262	11,830	10,671	35	40,000
Judge Level					
Male	518	.610	.488	0	1
Tenure (in days)	518	4,378	2,882	13	12,987
Wage (in R$)	518	35,110	10,772	13,156	145,616
Candidate Level					
Age	2,969	44	10.3	18	78
Male	2,969	.901	.298	0	1
Political Experience	2,969	.246	.430	0	1
Elected to Office	2,969	.486	.500	0	1
Campaign Expenditures (in R$)	2,969	54,963	621,757	11	29,958,454

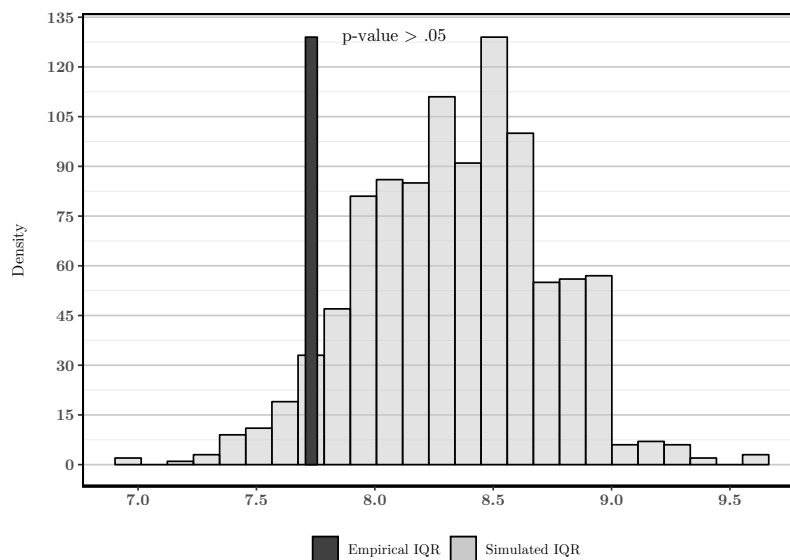Figure 1: Interquartile Range of Candidate Age by Judge

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Figure 2: Interquartile Range of Favorable Ruling by Judge

p-value < .01

■ Empirical IQR ■ Simulated IQR

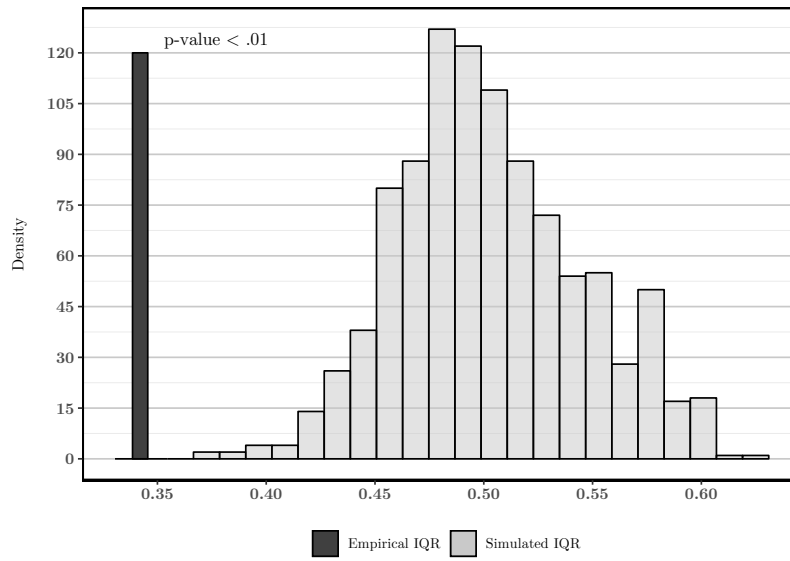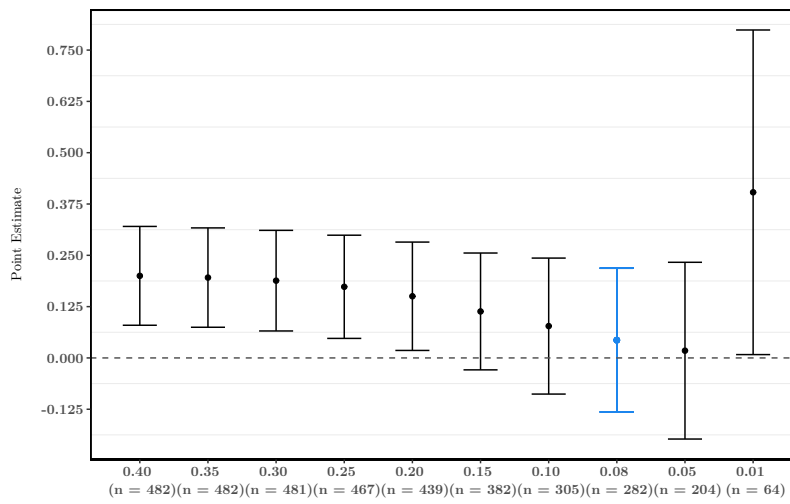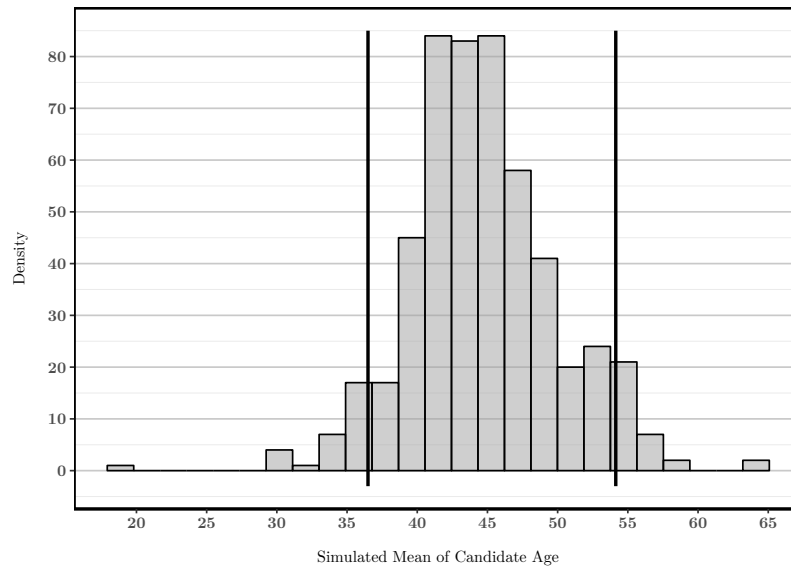Figure 3: RD Point Estimates and 95% CIs

Figure 4: Mean Candidate Age by Judge

Figure 5: Mean Favorable Ruling by Judge