Judicial Favoritism of Politicians: Evidence from Small Claim Courts

Andre Assumpcao*

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Abstract

TBU.

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*PhD Student, Department of Public Policy, The University of North Carolina at Chapel Hill. Contact details: aassumpcao@unc.edu

1 Introduction

Suppose a court case involving a politician is brought before an independent, high-quality judicial system. Judges make their decision uniquely based on case merits. Assume further that lawyer skills and case merits are randomly distributed across plaintiffs and defendants. Under these simplifying conditions, politicians should not expect a higher win rate at trial than ordinary citizens. Surprisingly, however, there is not much evidence on judicial independence in cases involving politicians. This paper is one of the first attempts at measuring judicial impartially and predicting court outcomes when politicians are before judges.

There is comprehensive evidence for other discrimination effects. Shayo and Zussman (2011) document a positive in-group bias, or the preferential treatment, of 17 to 20 percentage points when 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 judicial rulings in property rights cases. There are a number of additional cases reported in Rachlinski and Wistrich (2017).

Isolating the effect of judicial favoritism on court outcomes is not easy. Court cases are filled with sources of heterogeneity. Judges, plaintiffs, and claimants have individual traits that could influence a court outcome, such as their gender, ethnicity, religion, wealth, and so on. Litigants might also have access to heterogeneous pools of lawyers; any minimal discrepancy in skills might be the deciding factor driving the outcome of a case. Finally, case circumstances and merits change substantially and can determine how any single judge will rule. For instance, Lim et al. (2015) evaluate whether judicial decisions are influenced by media coverage and find that nonpartisan U.S. State Court judges increases sentence length in violent crimes by 3.4 percent (equivalent to six months of extra jail time). The combination of these factors make it hard for the isolation of a single effect on court outcomes.

In recent years, however, there has been growing interest in the relationship between judicial decisions and politics. 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 court for elected versus non-elected candidates when both are defendants in corruption cases filed only after election day has passed. This project supplements the recent literature by investigating whether favoritism persists in cases where judges and politicians have less at stake (e.g. small claim cases), testing a theory of personal ties across members of each branch of government.

Besides the theoretical component, this paper makes a series of data analyses contributions to the literature in law and politics. In order to measure the effect of political bias, I scrape and code judicial decisions in the São Paulo State Court System (Brazil) for all elected mayors and city

councilors since 2008. I then apply the methodology in Abrams et al. (2012) to evaluate whether politicians have an upper hand in small claims cases. I construct a random distribution of court outcomes against which I compare the observed outcomes in the data scraped from the web. Finally, I employ text analysis to extract additional information from judicial decisions and construct supervised machine learning (ML) predictions of court outcomes based on case and politician characteristics for the entire distribution of elected politicians in the State of São Paulo between 2008 and 2018. The web scraper, the simulations, and the ML algorithms are made available as free software for researchers conducting similar research projects using judiciary data in other countries.

The remainder of this paper is as follows. Section 2 presents the institutional environment of Brazil's State Court System. Section 3 summarizes the test dataset used for analysis; theoretical framework is presented in section 4; section 5 discusses the analytical strategy and, finally, section 6 lays out the necessary steps for completion of this project.

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 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 in 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 at state court systems. In particular, I 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 broad attribution, meaning that they can rule on any issue within the state court system jurisdiction, or specialized attribution, 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 latest Brazilian Constitution in 1988.[1] Their goal is to simplify and increase access to justice across states by means of removing many procedural requirements present in the 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 breach of lease contract, consumer rights, debt execution, tort, and so on. There is no need for 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

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

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

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 would like to take legal action and receive financial compensation for the wrongful charges to your bill. You walk up to an SCT office, speak to a courthouse clerk and file your claim along with any supporting documentation. The clerk 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 10 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 other state courts.

SCT structure greatly 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 easier for judges and lawyers, when hired by the parts, to specialize and reduce any skill discrepancy that could substantially alter a case outcome. In addition, the sentence is 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 litigants 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. 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.

3 Data

The data come from two sources. First, I use 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. Though TSE is a permanent court, the busiest period in the electoral process occurs between August and December every two years, and politicians begin mandates on Jan 1st.

TSE produces a comprehensive compilation of electoral data every cycle. It collects individual-level data on politicians and publishes results by election section, which is the actual physical

building where electronic voting machines are arranged on election day (there is no early neither mail-in voting in Brazil). I use electoral results, candidate information, and the electoral district in which every candidate in the State of São Paulo registered for the 2008, 2012, and 2016 elections. Table 1 contains a sample of the variables for the universe of candidates in the state.

Table 1: Descriptive Statistics

	N	Mean	St. Dev.	Min	Max
Age	22,171	45.120	10.484	18	89
Male	22,171	.885	.319	0	1
Political Experience	22,171	.388	.487	0	1
Campaign Expenditures (ln)	22,171	9.679	3.453	0	16.1

The average age for candidates in the state is 45 years old, 88.5 percent of all candidates are male and 38.8 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). I 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 four-year college degree or equivalent (36 percent) and married (70.9 percent), respectively.

In the full version of this paper, I search for SCT cases involving these elected politicians in the database of public judicial decisions maintained by the São Paulo State Court (TJ-SP). TJ-SP publishes all judicial decisions since 2008 on their website. The available information are the case date, type (breach of contract, debt execution, and others above), court where it has been filed, ruling judge, amount claimed, litigants and their lawyers (if hired), sentences, and every other case movement through the system. Using these documents, I can recover a rich set of information for each court case involving a politician and pinpoint potential factors driving a judge's decision.

Stepwise data collection is as follows. First, I use a politician's name to find the ongoing court cases they are involved. Second, I filter case hits down to SCT-only hits. Next, I scrape case numbers, which are individual identifiers for every single court case in Brazil.[3] The case numbers are a more stable search criterion than name. Finally, I use the numbers to download all other case information. Though this process seems overwhelming, I have already started writing the programs necessary for scraping the TJ-SP website. In fact, a research collaborator in the Brazilian Association of Jurimetrics has functioning web scrapers written in R which download case data using different search criteria (case number and type, litigant name, court type and location, and so on). I am just translating the R code into Python for more speed and functionality.

[3]The National Council of Justice, the main judicial oversight body, passed legislation in 2006 and fully enacted in 2008, establishing a 20-digit individual identifier for all court cases in Brazil.

4 Theoretical Framework

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 up to two four-year mandates (pending reelection at the end of 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. 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.

I am interested in the behavior of the judiciary with respect to other branches of government. The representative 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, u_l^t, and δ_t are exogenous, stochastic shocks that impact their work. These per-period utilities are computed in perpetuity in accordance with judge's mandates:

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

Since the executive and the legislative agents have primary responsibility over government budget, we can thus expect the judiciary to strategically maximize future net benefits by pleasing other agents and thus reducing costs. Indeed, this incentive is particularly strong in low-salience cases, such as those filed in small claim courts. First, the penalties are limited to a small monetary amount privately held by the defendant. A ruling in SCT does not impact government budget (as it would if it were a corruption case in which the funds might be returned). In addition, these cases are not likely to cause any significant political damage, as they do not imply any government wrongdoing. Most defendant politicians are brought to court under tort allegations and these are perceived as natural in the political process, such that convictions have a weaker informational effect compared to other crimes (again, corruption). To that end, the judiciary agent manipulates the probability they hand out court outcomes involving members of the executive or the legislative branches, summarized by p in their utilities. An increase in the probability of a favorable outcome increases

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

the per-period utility of executive and legislative agents, reducing the cost for the judiciary. This relationship is summarized in equation (2) below:

$$\frac{\partial u_j^t}{\partial p} = \frac{\partial u_j^t}{\partial c} \cdot \frac{\partial c}{\partial u_{e,l}^t} \cdot \frac{\partial u_{e,l}^t}{\partial p} > 0 \tag{2}$$

By manipulating p, the judiciary agent is minimizing cost and maximizing the net (per-period) benefit of holding office. In the absence of the politician bias, equation (1) would not be conditional on the utilities of the executive and the legislative agents such that $\frac{\partial c}{\partial u_{e,l}^t} \cdot \frac{\partial u_{e,l}^t}{\partial p} = 0$ and, consequently, $\frac{\partial u_j^t}{\partial p} = 0$ in equation (2).

5 Empirical Strategy

This paper has two goals. First, I want to test the existence of judicial bias in favor of politicians when a case is presented to judges in SCT, the small claim court in Brazil. Second, I want to predict the court outcome for the entire distribution of politicians in the state of São Paulo, even if they have not been involved in SCT cases. These are two relevant empirical exercises for any country aiming at improvement its *de facto* separation of power.

5.1 Judicial Favoritism

For the judicial favoritism exercise, I build on the methodology put forward by Abrams et al. (2012), who analyze racial bias in felony cases sentencing across judges in Cook County, IL. The authors suggest a two-step process to measure sentencing bias, which is analogous to outcome bias in this project: (i) confirm random assignment of cases, such that outcomes are comparable across judges and not due to any excessive harshness or leniency uncorrelated with plaintiffs or defendants condition as politicians; (ii) test whether any heterogeneity in case outcomes involving politicians are not due to sampling variability driven by other factors (case merits, court conditions, time in which case was tried) or random variability. Abrams et al. (2012) suggests that random assignment can be tested regressing a case characteristic (gender) on multiple control variables, as bellow:

$$\text{Female}_{ijc} = \alpha + \sum_{k=1}^{k} \beta x_{kijc} + \sum_{n=1}^{n} \Gamma D_n + \sum_{c=1}^{c} \lambda_c + \varepsilon_{ijc} \tag{3}$$

Where Female_{ijc} is a female binary indicator for the plaintiff's gender, x_k are control variables, D_n is a matrix of 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). The bias would follow from a similar specification where the dependent variable is the favorable outcome for politicians:

$$\begin{aligned}\text{Pro-Politician}_{ijc} = \alpha + \sum_{k=1}^{k} \beta x_{kijc} + \text{Politician}_{ijc} + \sum_{n=1}^{n} \Gamma D_n \\ + \sum_{n=1}^{n} \Gamma D_n \cdot \text{Politician}_{ijc} + \sum_{c=1}^{c} \lambda_c + \varepsilon_{ijc}\end{aligned} \tag{4}$$

Politician is an indicator variable for plaintiffs who happen to be holding elected office at the time their case is ruled at court c. A second F-test on the interactions between judge-fixed effects and politician plaintiffs is a test on judicial bias. This design suffers from the same problems as Abrams et al. (2012), i.e. the overrejection of the null in the F-test for two reasons: (i) since the number of judges per court is relatively small to number of judges across all sample, either test suffers from finite-sample bias (the judge variability within courts is small); (ii) the conventional F-statistic will overreject the null when errors are not normally distributed, as is the case with a binary outcome such as the pro-politician ruling in this project.

The solution to the overrejection problem is the construction of simulated datasets where assignment of cases is indeed random. The process is as follows. First, the researcher should group the actual (empirical) sample into the randomization units, which are the many state SCTs. 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, the researcher can now compare the statistical moments of the actual, observed distribution against the simulation without fearing the overrejection of the nulls. Abrams et al. (2012) compute the 25-75 percent interquartile range (IQR) for each variable in each simulation to create a random distribution of sentencing against which they compare the empirical IQR. For the case of random assignment, in which control variables should be used,

the expected outcome of is that the empirical IQR will be indistinguishable from the simulated IQR distribution, thus failing to reject the F-test on equality of judge fixed-effects. For the court outcome case, the expected outcomes is that the empirical IQR is statistically different than the simulated IQR distribution and thus the F-test would reject the equality of judge fixed-effects by plaintiff's politician characteristic.

5.2 Court Outcome Prediction

(TBU).

6 Further Development

This paper investigates whether there is differential treatment of politicians in small claim courts in the state of São Paulo, Brazil. To my knowledge, it is the first paper to produce clear evidence on judicial bias in favor of politicians. Similar studies in the literature measure bias in high-salience cases in which there is a clear upside for the judiciary if it favors agents from other branches of government. These initiative are supplemental to each other.

Besides the evidence of judicial favoritism of politicians, this project also makes predictions about the potential court outcomes if more politicians were taken to court. Though I only focus on a small set of cases, those filed in São Paulo's special civil tribunals (SCTs), the predictions should serve as a benchmark for the deviations between an *de facto* and a *de jure* independent judiciary. There are clear policy improvements discussed in the political economy literature when the judiciary branch is independent and able to check the power of the executive and the legislative (CITATION).

The longest task in this paper is data collection. As discussed in section 3, I have a clear roadmap of the next steps necessary for the completion of this project. I will write the web scraping scripts based on existing programs and extract case information once court documents are downloaded. Therefore, this project is feasible within the timeline necessary for completion of the dissertation project.

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