

# Judicial Favoritism of Politicians: Evidence from Small Claim Courts

Andre Assumpcao\*

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## Abstract

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\*PhD Student, Department of Public Policy, The University of North Carolina at Chapel Hill. Contact details: [aassumpcao@unc.edu](mailto: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 impartiality 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 increase 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 *Juizados 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.<sup>1</sup> 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<sup>2</sup> 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

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<sup>1</sup>More evidence of this in Lichand and Soares (2014).

<sup>2</sup>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 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 1<sup>st</sup>.

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.<sup>3</sup> 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.

<sup>3</sup>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, one for each branch of government: the executive, the legislative, and the judiciary. These agents are independent and yield power in different ways but, fundamentally, under different term-limits. The executive agent serves on a time-limited mandate, averaging four to six years in most Western democracies. In some countries, they can run for office for a second term and, when elected, serve for double the original time. Their power is concentrated in those years and they have great discretion over resources and policy implementation. The legislative agent is not generally term-limited, with mandates averaging two to six years, and they have control over certain resources conditional on the type of representation in each electoral system: winner-takes-all has more discretion than proportional representation (*pork barrel* being the exemplary case). Finally, the judiciary agent generally serves on a life-long mandate and yields power in restrictive but steady ways. They have jurisdiction over the issues that are brought to their courts, mostly over concrete, well-defined cases, and only control the resources necessary to the administration of courts.

In this set-up, these three agents would maximize their utility over different time horizons. The executive agent computes individual welfare for up to two consecutive mandates, the legislative agent does so for as many mandates to which as they are elected, and the judiciary agent calculates welfare in perpetuity. All three discount future utility at the same constant rate (for simplicity purposes). I can then state their utility functions as follows:

$$u_{\text{exec}} = u_1\left(\sum_{x=1}^k x_k, u_{\text{legis}}, u_{\text{jud}}\right) + u_2\left(\sum_{x=1}^k x_k, u_{\text{legis}}, u_{\text{jud}}\right) \times \frac{1}{(1+r)} \times f_2(\text{reelected}) \quad (1)$$

$$u_{\text{legis}} = u_1\left(\sum_{x=1}^k x_k, u_{\text{exec}}, u_{\text{jud}}\right) + \sum_{t=2}^t \left[ u_t\left(\sum_{x=1}^k x_k, u_{\text{exec}}, u_{\text{jud}}\right) \times \frac{1}{(1+r)^{t-1}} \times f_t(\text{reelected}) \right] \quad (2)$$

$$u_{\text{jud}} = \sum_{t=1}^t \left[ u_t\left(\sum_{x=1}^k x_k, u_{\text{exec}}, u_{\text{legis}}\right) \times \frac{1}{(1+r)^{t-1}} \right] \quad (3)$$

I am interested in the relationship developed between agents of different branches of government. Their utilities are conditional on  $k$  observable factors, the other branches utility  $u_i$  where  $i = \{\text{exec}, \text{legis}, \text{jud}\}$ , which computed over two time periods  $t$  for executive agents, undefined periods for legislative, and in perpetuity for judiciary. Executive and legislative agents only sum future utility if reelection function  $f_t$  is equal to one each time they get elected (period two for executive and many consecutive periods for legislative). These are essentially the same utility functions under different term-limits. If a legislator is reelected just once, then their utility function is symmetric to that of the executive; if they are reelected multiple times, their utility is symmetric to that of

the judiciary.

There are a number of ways these agents interact. The executive chooses funding levels for the judiciary, the legislative approves bills in the interest of the executive, and the judiciary rules on allegations of misuse of public office by the executive and the legislative. There is a substantial difference, however, in how these utilities are distributed over time. While the executive and the legislative are not certain whether they will serve on another mandate(s), the judiciary is certain its utility from holding office extends into perpetuity. It faces differential incentives for yielding power. Since the executive and the legislative agents have primary responsibility over government budget, we can thus expect the judiciary to strategically rule in expectation of future benefits. Indeed, this incentive is particularly strong in low-salience cases, such as those filed in small claim courts. First, the penalties are limited to resources that are privately held by the defendant and that are being claimed in court. There is no impact on government budget. 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 (e.g. corruption).

## **5 Analytical Strategy**

## **6 Further Development**

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