

Three Essays on Sanctions of Politicians in Brazil

A proposal submitted in partial fulfillment of the requirements for the Degree of Doctor of
Philosophy in Public Policy

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November 26, 2018

Abstract

This dissertation project will investigate the relationship between legal sanctions and politics in Brazil. In the first paper, I look at the effect of convictions for electoral infractions on electoral performance in four municipal elections between 2004 and 2016. The second paper tests whether State Court judges significantly rule in favor of politicians involved in small claim court cases. Finally, the last paper investigates whether active and passive transparency simultaneously improve government performance and increase the number of legal sanctions for government wrongdoing. These papers contribute significantly to the literature in political science, economics, and law by exploring the relationship between legal sanctions and local political dynamics in developing countries. In addition, I also contribute new data sources in the form of judicial decisions and innovative identification strategies using institutional features of Brazilian electoral and judicial systems.

Keywords: political economy of development; electoral politics; judicial politics; transparency; economics of crime.

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Summary

1 Electoral Crime Under Democratic Rule: Evidence from Brazil

1.1 Introduction

In democratic regimes, office-seeking politicians employ various tactics to get elected. They might promise more resources to increase the provision of local public goods, such as schools, hospitals, or roads; they can run ads on TV and, more recently, on social media to promote their candidacy; they could even meet with their constituents and gain their vote by establishing a personal connection with them. While these tactics are different, sometimes complementary means a politician could deploy to win an election, they all characterize *play-by-the-rules* strategies. Governments generally allow such practices because they are fair electoral weapons which make electoral systems competitive. In this paper, however, I focus on forbidden, and less understood, ways to win an election by *breaking the rules* and deploying illegal tactics to shape election results.

Scholars have not ignored the various forms in which politicians break electoral rules to win elections. Lehoucq (2003) offers a comprehensive account of electoral fraud, which takes up a variety of forms such as procedural rule-breaking, illegal campaigning, violence, and even unequivocal vote buying. In a more recent study, Gans-Morse et al. (2013) design a theoretical framework encompassing four types of clientelism practices (vote, turnout, and abstention buying, and double persuasion) and their adoption under five different institutional designs. Their key insight is that the electoral system shapes the type of clientelism employed for electoral gain.

Indeed, most recent studies looking into illegal electoral tactics have two common characteristics: first, they are largely concerned with coercive threats that prevent free and fair elections, as suggested by Mares and Young (2016); second, they focus heavily on non or partially democratic regimes, evidenced by the vast literature on electoral authoritarianism (Gandhi and Lust-Okar, 2009; Levitsky and Way, 2002; Schedler, 2015; Ichino and Schündeln, 2012; Asunka et al., 2017). Despite the richness of this literature, I address two unexplored issues that are supplemental to our understanding of how individuals might break the rules in order to get elected.

The first contribution is uncovering the effect of electoral infractions that are harder to detect or whose relationship with electoral outcomes is less known or well understood. For instance, politicians might use illegal forms of advertising or slush funds to spend beyond their campaign limits in order to win an election. Likewise, candidates and political parties might not meet all requirements for submitting candidacies, such as been cleared of previous crime accusations – which is a special provision in Brazilian electoral law. The second contribution is precisely understanding how electoral infractions shape electoral outcomes in one of the top five largest democracies in the world. Despite a recent fallback, Brazil consistently ranked in the top 10% countries in the V-Dem Electoral Democracy Index for the period under study (Coppedge et al., 2018).

The present study also contributes to the broader literature of political economy of development. Brazil has an unique institutional design in which the judiciary branch has an entire system of state (TRE) and federal (TSE) electoral courts resolving electoral claims. Their mandate is to guarantee free and fair competition for public office, enforcing the Brazilian Electoral Code of

1965 and subsequent legislation. To the extent that the Electoral Courts are successful in rooting out wrongdoing, we should expect more electoral accountability from office-holding politicians. In addition, this paper investigates another source of judiciary power beyond setting legal disputes between economic agents; since every political candidate in Brazil needs a judicial approval when running for office, the Electoral Court holds an enormous amount of power in deciding who is or is not authorized to take up office.

Another important contribution in this study is the use of court documents as data. I collect and code judicial rulings from TRE and TSE courts on candidacy of politicians running for municipal office in Brazilian elections between 2004 and 2016. From these documents, I extract information on individual judge characteristics and electoral irregularities candidates are accused of, and ultimately convicted for, when running for office. Not only can I provide an estimate for the average treatment effect of electoral infractions on ballot performance but I can also estimate heterogeneous effects by type of violation. This project is part of a recent wave of studies using court documents to measure economic and political outcomes in development settings (Sanchez-Martinez, 2018; Lambais and Sigstad, 2018).

Using these court documents, I recover the causal effect of electoral irregularities adopting an instrumental variable (IV) strategy in which the ruling at the trial stage, issued before election day but endogenous to each electoral race, is instrumented by the decision at the appeals stage after election day has passed, which is uncorrelated with electoral performance beyond its link to the first decision at trial. Thus, for a subsample of candidates running for office who had an untried appeal standing at the time of election, I can identify the causal effect of electoral violations on performance.

The preliminary results are encouraging. First-stage F -statistics are large and significant at 1% for both models including and excluding political characteristics ($F = 1,092$ and $F = 16,356$). OLS and reduced-form parameter estimates are very close in magnitude and significant at 1%, strongly indicating that the instrument is orthogonal to the error term in the first stage. In my preferred IV model including political characteristics as controls, having been convicted of an electoral crime reduces the probability of election and total vote share for mayor and city council candidates by 28.8 and 17.9 percentage points, respectively. Though we should be careful when comparing these results with studies looking at punishment for corruption (Ferraz and Finan, 2008, 2011; Winters and Weitz-Shapiro, 2013), which is a broader but more severe crime, the evidence consistently points to the negative impact on electoral performance when politicians decide to break the rules.

In the remainder of this proposal, I explain the institutional background allowing for causal identification in section 1.2, present the data in section 1.3, and discuss the theoretical mechanism underlying the relationship between electoral crimes and performance in section 1.4. Section 1.5 discusses the empirical strategy and section 1.6 presents preliminary results. Section 1.7 concludes laying out the additional work which will be carried out to fully develop this paper.

1.2 Institutional Background

Brazilian Federal (TSE) and State Electoral Court (TRE) systems have existed intermittently since 1932 but only became institutionally relevant after the country's return to democracy in 1985. Since then, electoral courts have a fundamental role in guaranteeing free and fair elections. Their mandate is to enforce the Electoral Code of 1965 and subsequent legislation, particularly the law establishing conditions for ineligibility to public office (1990), the Law of Political Parties (1995), the Law of Elections (1997), and the Clean Slate Act of 2010.

Despite various attributions, I am mostly interested in the judicial review function of electoral courts. According to Brazilian Law, every individual running for office, at every level, has to submit proper documentation proving that they meet eligibility requirements for the office they are running; for instance, they should be 35 years of age or older to run for president or senator; executive-office holders, if running for any other elected office, must step down from current post six months before election day. Every electoral cycle, the higher-court TSE establishes a schedule for submission of all these documents, which are reviewed at lower-level courts by electoral judges who issue sentences authorizing every single candidacy in the country. This is the main institutional factor that allows for causal identification of electoral irregularities on performance.

An example helps illustrate this point. Municipal elections took place on October 2, 2016. The deadline for submitting all candidacy documents was August 15, 2016. Between August 15 and September 12, electoral courts review and authorize each candidacy for mayor or city councilor. The process starts at the electoral district in which the candidate is running for office, and their trial ruling comes out of the designated electoral judge for that district. These judges are part of the State Court system and, when appointed to the electoral bench, are on leave from their original tenured positions at the state system. They serve on two-year mandates, with one reappointment allowed, so they never oversee the same district for more than one electoral cycle. If either a candidate or someone else files an appeal to the trial ruling, the case is presented before a panel of three judges at the State Electoral Court TRE. There are seven appellate court justices in each state's TRE, serving up to four-year mandates, and they are immune to local politics. In any state, six of these judges are voted in by their fellow tenured judges at the State and Federal Court systems and the last member is appointed by the President of Brazil. If plaintiffs or defendants are unhappy with the appellate court decision, they can appeal their case with the Federal Court TSE, which serves as the third and final instance of judicial review for mayor and city councilor candidates.

The September 12 date is the key institutional feature that allows observing performance for politicians who violate electoral rules. It is the last day for entering candidate information onto electronic voting (EV) machines distributed at every single polling station in the country.¹ All candidates who have untried appeals by this date will have their information loaded, and thus can be voted for, in the EV machines on election day. I can observe the electoral performance of candidates who eventually are convicted of electoral violations and compare to candidates who

¹Fujiwara (2015) describes in detail this technology.

are cleared of accusations to partial out the local average treatment effect of committing electoral crimes.

Exogenous variation in convictions for electoral violation comes from the timing according to which trial and appeals sentences are issued for such candidates. Though their information (picture, name, voting number) is displayed in the EV machine, their votes are computed *sub judice* – their vote count is considered valid only when the TRE or TSE publish their final decision on their candidacy. Effectively, thus, the decisions at the appeals stage cannot affect electoral outcomes, since they are issued only after election day has passed, but they bear a strong relationship to the sentence handed out by the trial judge responsible by the electoral district in which candidates first submitted their documentation. Decisions at trial are mostly endogenous to electoral outcomes, but the use of appeals as instruments leaves out only their exogenous part allowing for causal identification.

The main limitation of this study is that I can only recover causal effects of electoral violations under restrictive special conditions pertaining to municipal elections in Brazil. At any other electoral race, both the trial and appeals stages are tried by the TRE and this might shape the way electoral judges issue rulings in response to the importance of the office whose candidacy. For instance, Senators are much more influential than city councilors and have a direct channel with the President, who is responsible for appointing one judge to each TRE. Second, there are a number of candidates who do not appeal their trial ruling and as such do not appear on the EV machine on election day. Thus, I cannot observe their ballot performance. Though it is likely that they are heterogeneous in many dimensions when compared to candidates who have outstanding appeals, such as their political experience, or they drive to hold elected office, it would still be interesting if I could estimate causal effects for the entire distribution of electoral irregularities instead of the narrow sample at hand. Still, the lack of evidence of the effect of electoral violations on ballot performance for large democracies speaks to the relevance of this project.

1.3 Data

The main data source for electoral performance is TSE’s repository of electoral data. TSE publishes electoral results, vote counts, candidate’s individual characteristics, and their candidacy’s situation on election day for all elections since 1994. I focus on the municipal elections after the introduction of the EV machine in 2002 for even performance measures across elections and municipalities. My sample is composed of 9,469 candidates for mayor or city councilor who appealed, or had third-parties appealing, their trial sentence on whether their candidacy meet all requirements. These candidates have been displayed in the EV device and could have been voted for on election day. Their candidacy remained pending after elections and they have only been allowed to take up office once a final ruling was issued.

Data on the reasons for rejecting candidacies are scraped from the TSE website, which makes all their court documents public. I have developed a web scraper that downloads the case number for each of the 9,469 candidacies and their information in order to recover judge characteristics

and reasons for rejecting a candidacy. For transparency purposes, all programs and data are freely available online.²

I have already collected all data on candidates and electoral performance from the TSE repository. Candidate individual characteristics are age, gender, political experience, education, marital status, and the reported amount of funds they have spent in their campaigns. There are, however, a few data management and transformation tasks remaining. I have coded political experience as a binary variable for when candidates report holding office at the time of elections, but I have yet to include as experience candidates who have run for office multiple times and, when running for city councilor, candidates who belong to the strongest coalition at the time of elections. Second, I need to collect further data on campaign expenditures; I have used their reported spending using the information in TSE dataset on each candidacy, which has many missing values, but the comprehensive data on funding belongs in the TSE dataset on campaign funds.

As far as court documents go, I have already written the web scrapers for obtaining case numbers and information, but have only downloaded case numbers. The remaining steps for completing the data collection task are downloading all case information in HTML format, one per case, and parsing HTML files into human-readable text. Though I am yet to do this for the whole sample, I have completed this entire process for a random sample of 1,000 candidates in the 2016 election as a trial run, so I am extremely familiar with the necessary steps for doing the remaining 9,469 iterations for the sample of candidates used in this paper.

1.4 Theory

1.5 Empirical Strategy

1.6 Preliminary Analysis

As a preview of the final paper, I present in this section some preliminary results establishing the relationship between electoral violations and electoral performance. I collected all electoral outcome data, politician's individual characteristics, candidacy situation for the local average treatment effects of crimes regardless of the type of infraction for which candidates were found guilty or not guilty. Table 1 reports descriptive statistics about the sample of candidates.

There are a certain characteristics that jump to mind in the sample used in this project. The average politician I am looking at in this study is 46 years-old, male (79 percent of the sample), 10 percent were office-holders at the time of election, and have spent R\$ 144,722, on average, on the campaign for office. Sixty-four percent of candidates have been convicted at trial, meaning their candidacies have not been authorized, while the remaining 36 percent have seen their opponents or the Office of Electoral Prosecutions file an appeal against their candidacy with TRE. Approximately 53 percent have had a final ruling against their candidacy issued by the panel of appellate judges.

(ALSO BRING UP CHARACTERISTICS IN QUALITATIVE INFORMATION)

²I maintain a [github](#) repository storing all programs, data, and manuscripts used in this project. For the time being, this page is set to private and the latter link only provides access to the web scraper programs.

Table 1: Descriptive Statistics

	N	Mean	St. Dev.	Min	Max
Age	9,469	46.34	11.02	17	86
Male	9,469	.793	.405	0	1
Political Experience	9,469	.091	.287	0	1
Campaign Expenditures	9,469	144,722	456,532	0	20,000,000
Convicted at Trial	9,469	.641	.480	0	1
Convicted on Appeal	9,469	.537	.499	0	1
Probability of Election	9,441	.191	.393	0	1
Vote Distance to Elected Candidates (in p.p.)	9,441	-4.09	9.55	-92.82	12.83
Total Vote Share (in p.p.)	9,441	10.131	17.983	0	100

Reversal rates at the appeals stage are rare. A simple tabulation shows that only X% of candidates who have had an unfavorable ruling issued by the electoral district judge have seen a reversal on appeals. The opposite is also true. Candidates authorized to run for office have had their candidacies confirmed in X% of all cases. A stronger evidence of this relationship is presented in table 2, where we present the first-stage regressions of convictions on appeals vs. convictions at trial.

Table 2: First Stage Regressions of Convictions at Trial and on Appeal

	Outcome: Convicted on Trial	
	First-Stage	First-Stage
	(1)	(2)
Convicted on Appeal	.766*** (.006)	.757*** (.007)
Individual Controls	-	Yes
Observations	9,469	9,469
R ²	.633	.649
Adjusted R ²	.633	.648
Residual Std. Error	.290	.285
F-Statistic	16,356*** (df = 1; 9467)	1,092*** (df = 16; 9452)

Note: *p<0.1; **p<0.05; ***p<0.01.

Not only the relationship between rulings at both stages are significant at 1%, but the magnitude of the parameters is large. Being convicted by a trial judge increases a politician's probability of an unfavorable ruling on appeal by approximately 76 percentage points, including when controlling for a politician's individual characteristics. In this more restrictive case, the F -statistic is significant at 1% and substantially larger ($F = 1,092$) than industry standards at $F = 10$. Adjusted- R^2 is .648 and also lends support to the use of convictions on appeal as instruments for convictions at trial.

(DISCUSS HAUSMAN TEST).

1.7 Further Development

Table 3: The Effect of Electoral Crimes on the Probability of Election

	Outcome: Probability of Election					
	OLS (1)	OLS (2)	Reduced-form (3)	Reduced-form (4)	IV (5)	IV (6)
Convicted at Trial	-.208*** (.009)	-.173*** (.009)			-.272*** (.011)	-.288*** (.010)
Convicted on Appeal			-.209*** (.008)	-.182*** (.008)		
Individual Controls	-	Yes	-	Yes	-	Yes
Observations	9,441	9,441	9,441	9,441	9,441	9,441
R ²	.065	.123	.070	.133	.059	.055
Adjusted R ²	.065	.122	.070	.131	.058	.055
Residual Std. Error	.380	.368	.379	.366	.381	.382
F-Statistic	652.4*** (df = 1; 9439)	82.9*** (df = 16; 9424)	715.4*** (df = 1; 9439)	90.0*** (df = 16; 9424)	-	-

Note: *p<0.1; **p<0.05; ***p<0.01.

Table 4: The Effect of Electoral Crimes on the Vote Distance to Elected Candidates

	Outcome: Vote Distance to Elected Candidates (in p.p.)					
	OLS (1)	OLS (2)	Reduced-form (3)	Reduced-form (4)	IV (5)	IV (6)
Convicted at Trial	-.308 (.199)	-.736*** (.206)			-.519** (.254)	-.315 (.251)
Convicted on Appeal			-.399** (.196)	-.751*** (.200)		
Individual Controls	-	Yes	-	Yes	-	Yes
Observations	9,441	9,441	9,441	9,441	9,441	9,441
R ²	0.000	.028	0.000	.028	0.000	0.000
Adjusted R ²	0.000	.026	0.000	.026	0.000	0.000
Residual Std. Error	9.550	9.426	9.549	9.425	9.551	9.550
F-Statistic	2.3 (df = 1; 9439)	16.7*** (df = 16; 9424)	4.1** (df = 1; 9439)	16.9*** (df = 16; 9424)	-	-

Note: *p<0.1; **p<0.05; ***p<0.01

Table 5: The Effect of Electoral Crimes on the Total Vote Share

	Outcome: Total Vote Share (in p.p.)					
	OLS (1)	OLS (2)	Reduced-form (3)	Reduced-form (4)	IV (5)	IV (6)
Convicted at Trial	-12.935*** (.418)	-10.629*** (.396)			-16.795*** (.478)	-17.865*** (.479)
Convicted on Appeal			-12.924*** (.364)	-11.117*** (.339)		
Individual Controls	-	Yes	-	Yes	-	Yes
Observations	9,441	9,441	9,441	9,441	9,441	9,441
R ²	.119	.237	.128	.253	.109	.102
Adjusted R ²	.119	.236	.128	.252	.108	.102
Residual Std. Error	16.879	15.721	16.790	15.558	16.980	17.044
F-Statistic	1,277*** (df = 1; 9439)	183*** (df = 16; 9424)	1,390*** (df = 1; 9439)	199*** (df = 16; 9424)	-	-

Note: *p<0.1; **p<0.05; ***p<0.01

2 Judicial Favoritism of Politicians: Evidence from Small Claim Courts

2.1 Introduction

2.2 Institutional Background

2.3 Data

2.4 Theory

2.5 Empirical Strategy

2.6 Preliminary Results

2.7 Further Development

3 Active and Passive Transparency in Brazilian Municipalities

3.1 Introduction

3.2 Institutional Background

3.3 Data

3.4 Theory

3.5 Empirical Strategy

3.6 Preliminary Results

3.7 Further Development

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