Background

There is a large law & economics and political science literature that attempts to predict how judges will vote in court cases. Much of this focuses on the characteristics of the judge (eg. Gender, political views, religious background) and characteristics of the parties in the case (eg, gender or race of the defendant in criminal cases).

More recently, a small literature has emerged that focuses on how what occurs during the actual hearing can be used to predict outcomes. For example, Epstein et al. (2010) shows that the number of questions that the judges ask counsel for each of the parties during oral argument can predict how they will vote. Another strand of the literature uses audio recordings of court hearings to predict how judges will vote. Specifically, recent studies use audio recordings of US Supreme Court hearings to measure how vocal cues (ie. how counsel’s voice when giving introductory remarks) influence how the judges’ vote (Chen et al., 2016, 2017, 2019; Chen, 2018). These studies focus on how judges respond to cues from counsel. There are, however, no studies that examine whether judges’ emotional demeanour during oral argument predict how they will subsequently vote in the case.

The proposed project

Since 2013, the High Court of Australia has been posting AV of Full Court hearings in Canberra on its website:

Some examples of the footage are here:

<http://www.hcourt.gov.au/cases/recent-av-recordings>

In these cases, the Court typically sits in rotating panels of three, five or seven judges. The outcome of the case may be a unanimous verdict in favour of one of the parties or a majority verdict for one of the parties with one or more judges dissenting. The aim of the project is to ascertain to what extent the outcomes of the hearings can be predicted from the judges' emotions/facial reactions in the hearings. (For most of these AV hearings, except the most recent ones, we know how the judges subsequently voted).

To this point, very little research has employed this AV footage. Tutton et al. (2018) present a qualitative/observational study of judicial behaviour based on watching the audio footage, but do not use the footage to predict case outcomes.

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