

**NEITHER ROBIN HOOD NOR KING JOHN:
TESTING THE ANTI-CREDITOR AND ANTI-DEBTOR BIAS IN
BRAZILIAN JUDGES**

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Abstract

When judges are believed to be politically biased and judicial decisions are considered to be unpredictable, many nasty consequences may derive from it. The economic literature in Brazil shows some controversies over what is the direction of the bias, but mainly, economists believe that courts tend to favor debtors, leading to high disincentives for investment decisions and credit granting. Oddly, this controversial debate has never been accompanied by empirical data. The main objective of this paper is to test the hypotheses of political bias and uncertainty in Brazilian courts. A population of 1,687 decisions of the STJ (Superior Tribunal de Justiça, one of the highest level courts in the country) over private debts was analyzed case by case, and the variables were regressed in a *logit* model. Results indicate that judges in the higher courts very frequently change the decisions made in lower courts, which may suggest high unpredictability in the Brazilian Judiciary. On the other hand, the existence of judicial bias, in any direction, was not confirmed by the data.

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Keywords: Judges, Bias, Jurisdictional Insecurity, STJ, Debtors

1. Introduction, Motivation and Literature Review

What happens when the judges of a country are believed to consistently favor particular groups in society? For instances, what are the economic impacts if people see judges as tending “naturally” to make judicial decisions which protect debtors against creditors, even when the debt is certain? All sorts of tragedies might derive from this situation: risky business environment, disincentives for investments and, especially, credit granting. Following these, there might be very low rates of economic growth and, ultimately, underdevelopment of the national economy. The scenario is even gloomier if one also considers a high degree of judicial uncertainty, which means judicial decisions over the same matter are not consistent, being susceptible of changes over short periods of time.

This horror picture is believed to be the one dominating Brazilian business and judicial environments. Anecdotal evidence over it has long permeated businessmen’s circles, but it got an academic support in 2005, when three prominent economists Pécio Arida, Edmar Bacha and André Lara-Resende (ABL, 2005) wrote an article in an international publication stating that “*The quality of enforcement of guarantees is poor because both the law and the jurisprudence are biased towards the debtor*” (p. 16). This pro-debtor judicial bias was, according to ABL, the main reason of the absence of a long-term credit market and the presence of very high interest rates in Brazil.

Several academic papers have followed ABL. Some provided further support for the pro-debtor bias by Brazilian judges (e.g., Castelar, 2005); others, denied it (e.g., Gonçalves, Holland e Spacov, 2007). Finally, some research argued that, in fact, Brazilian judges tend to favor creditors and “powerful parts” (Ribeiro, 2006). Therefore, the controversy in the literature seems to be over whether Brazilian judges are more like Robin Hood, or more like King John, as put by Ribeiro (2006). However, surprisingly, none of this discussion has been accompanied by sound empirical evidence, which would require a careful analysis of a significant sample of real judicial case decisions.

In addition to the lack of empirical support, this controversy in the Brazilian economic literature shows another weakness: the inability, or unwillingness, to carefully differentiate the

complex juridical concepts involved in the discussion. For instances, ABL (2005) and their followers discuss judicial uncertainty as the same thing as judicial bias (they call it “jurisdictional uncertainty”), which is not true. High levels of uncertainty means people are never sure how the courts will decide over an issue, even if there are identical cases which were decided in the past. Uncertainty can also be observed when different judges decide differently over the same case. This happens, for instances, when magistrates of higher courts change the decisions made by lower-court judges. Bias, on the other hand, implies that there are some “hidden reasons” leading judges to consistently favor certain groups of individuals, even when evidence shows they should not be favored. If Brazilian judges are, in fact, biased towards debtors, as ABL (2005) indicate, judicial decisions would be consistently in favor of this group of individuals. Oddly, this situation could be of very *low* degree of uncertainty: it would be almost certain that debtors are the winners in any lawsuit over debts.

Therefore, one must carefully address these different concepts, and analyze what are the levels of judicial uncertainty and of judicial bias in an independent manner. In fact, we show later in this article, that uncertainty might be high, while bias might be much lower in Brazilian courts. At the same time, it seems to be that, in Brazil, judges of different levels have different “bias” towards debtors and/or creditors.

2. Objectives and Research Questions

The two main questions that we pose in this article are:

- (1) Are judicial decisions in Brazil consistently biased towards debtors or towards creditors?
- (2) Are judicial decisions so diverging that they create a high level of uncertainty and unpredictability in the Brazilian Judiciary?

Anecdotal evidence in the literature mostly answers “Yes” to both questions. Pinheiro (2002) argues that judicial bias is one of the most serious drawbacks of Brazilian courts, and that it is one of the main causes of judicial unpredictability and uncertainty. However, as we discussed in the previous section, these two concepts are different and should not be treated as the same problem. Thus, we must split them into different analyses.

3. Hypotheses and Theoretical Foundations

The theoretical foundation behind the argument of the pro-debtor bias is the so-called *judicial activism* apparently very much widespread among Brazilian magistrates. Since Brazil is a country with severe problems of economic inequality, many times, judges feel it is their professional duty to use judicial power to redistribute wealth, and therefore, increase social fairness

and equality. Indeed, for many lawyers, the concepts of “justice” and “social fairness/equality” are still synonyms. As posed by ABL:

This bias [in favor of debtors] may be observed more or less everywhere, but it is particularly acute in Brazil, probably because of the deep social differences and the high levels of income concentration in the country. Cultural and historical factors could also have facilitated the dissemination of this anti-creditor bias (2006, p.9).

Certainly, one of the most concrete evidence of the pro-debtor bias in the Brazilian Judiciary is the movement called Association of the Judges for Democracy. Ballard (1999) explains:

Within [the] context of inequality ... judges in the southern part of the country formed the Association of Judges for Democracy, known as the “movement of alternative judges.” ... This group ... coalesced around the principle of “alternative use of law,” which advocated interpreting laws to serve the interests of oppressed classes ... A shared fundamental principle of the movement was to regard judicial impartiality and neutrality as a myth. A mild interpretation suggests that alternative law advises judges to consider the social and historical context in which they are applying the law ... A more dogmatic interpretation posits that judicial power ought to be rallied to the service of the poor masses in their struggles (pp. 244-5).

How much of this judicial activism is widespread across the Brazilian Judiciary? Are the principles of the Association of the Judges for Democracy prevailing among Brazilian judges? To help us understand these issues, we should try to answer the questions posed in section 2. Thus, we will return to the research questions and try to answer them by testing the following hypotheses:

H1: When deciding a lawsuit, Brazilian judges tend to make decisions which favor the debtors.

H2: Judges in higher courts tend to change the decisions made by lower-court judges.

H3: Justices indicated by Presidents with populist characteristics [DEFINIR] tend to make judicial decisions which favor the debtors.

4. Brief Description of the Brazilian Judicial Structure

Articles 92 to 135 of the Brazilian Constitution rule the Judiciary Power in the country. The main components of this Power are:

- The Federal Supreme Court (Supremo Tribunal Federal, STF)
- The Superior Court of Justice (Superior Tribunal de Justiça, STJ)
- The National Council of Justice (Conselho Nacional de Justiça, CNJ)
- The Federal Regional Courts and their judges
- The State Courts and the Court of the Federal District and their judges
- The Courts of Labor and their judges
- The Electoral Courts and their judges
- The Military Courts and their judges

Since 1891, when the first republican constitution was promulgated, the Federal Justice is separated from the State Justice (except during the period between 1937 and 1965, when the former was abolished). The World Bank (2004) affirms that “all [of Brazil’s Judiciary’s] institutions, including the courts have a very decentralized organization. This is more than a result of the country’s federal structure. Brazil’s corporativist political tradition has served to enhance the independence of organizations which elsewhere in Latin America are rarely accorded this status” (p. 162).

First degree courts originally receive most of the judicial processes, with few exceptions. Usually, decisions are made by individual judges. Appeals to these decisions are directed to the second degree courts, where they are normally decided by “colegiados” (or groups of three judges).

Each federal state and the Federal District regulate the functioning of their respective State Justice; yet, in all of them, there are first degree and second degree courts.

The Superior Court of Justice, or *Superior Tribunal de Justiça* (STJ), was created by the 1988 Federal Constitution, and it is originated from the former Federal Court of Appeals. Basically, its functions include the decision of ordinary causes: civil, commercial, tributary and administrative issues. Constitutional and specific issues – such as labor, military and electoral – are not part of the STJ’s duties. Its judges, such as those of the Federal Supreme Court (STF), have the status of Ministers, and are therefore called so (the equivalent of the status of “Justice” in the United States). There are 33 Ministers (Justices) at the STJ; decisions may be made in plenary or in smaller sessions of 3 or more members.

The Federal Supreme Court, or *Supremo Tribunal Federal* (STF), is the Supreme Court, or court of last resort in Brazil. By definition, the STF decides over constitutional matters and the Extraordinary Appeals (*Recursos Extraordinários*). Decisions are made in plenary (11 Justices) or in smaller groups of 5 members each. Justices of the STF, similarly to those of the STJ, are nominated by the President, although the political influence in the nomination is stronger in those of the STF. The STF and the STJ are the destination of lawsuits coming either from the Federal Justice or the State Justice.

The National Council of Justice, or *Conselho Nacional de Justiça* (CNJ), was created in late 2004, during the Judiciary Reform. It is an administrative unit, without judicial duties. One of its main duties is to function as the internal auditor of the Brazilian Judiciary, having also punitive powers. It was also responsible for the beginning of the systematic collection of official judicial

data in the country. Finally, there are the courts of specific matters: Labor, Electoral and Military. For each of them there are regional courts and a Supreme Court.

5. The Analytical Model and its Variables

We carry out different models in order to test each of the three hypotheses above. One may observe that, in all cases, the dependent variable is binary (or qualitative) and may be inferred by answering to the following questions:

- Test 1: Does the court decision favor the debtor or the creditor? ($y = 0$ in first case, and $y = 1$ in the second case).
- Test 2: Did the highest court decision change the decision of the lower court? ($y = 0$ if “yes”, and $y = 1$ if “no”).
- Test 3: Does the Justice, indicated by a populist President, decide in favor or against the debtor? ($y = 0$ in first case, and $y = 1$ in the second case).

The models of qualitative dependent variables are the most suited in these cases; thus, we opted to employ the *logit* model.

Independent variables are, most of them also qualitative, and are as follow:

- type of litigants involved in the process (i.e., whether litigants are individuals, firms, or financial institutions);
- type of debt over which there is a judicial conflict (i.e., whether it is a commercial/contractual debt, judicial debt, or others);
- the Justice’s political “affiliation” (which President nominated him or her¹);
- State where the judicial process was originated;
- whether the previous judicial decision (from a lower court) favored the debtor or the creditor;
- amount over which there is a judicial conflict.

To answer the many research questions we will employ different models, which include different sets of independent variables, among those listed above.

6. Data, Population, and Variables Measurement

6.1 Data and Population

The sample used in this article includes real cases decided by the Superior Tribunal de Justiça (STJ). The reports and decisions over these cases are all available electronically on the STJ website.

¹ Brazilian judges, even those in the highest courts, who are nominated by the President, are not officially affiliated to political parties.

The Brazilian procedural law is very detailed, and allows several appeals over merely formal issues. In order to avoid such cases, only the “*Recursos Especiais*” (Special Appeals) were included in the sample. The *Recursos Especiais* deal with issues of content, as opposed to the *embargos* and *agravos*, which are also decided by the STJ, but which may refer merely to formalistic issues. The *recursos especiais* are appeals directed to the STJ against second-degree decisions made by the State Courts and by the Regional Federal Courts.

The sample covers judicial cases in which there was a conflict over a private commercial and/or contractual debt. In other words, only lawsuits involving private litigants are in the sample. One important exception refers to public enterprises – either firms or financial institutions. These were included in the sample, because they have activities more related to private enterprises, and many of them were eventually privatized, becoming private corporations during the time period analyzed.

Finally, the sample covers cases decided by the STJ in the period between October 6, 1998 and October 5, 2008. These dates were not stipulated in a random fashion: the current Constitution in Brazil was promulgated on October 5, 1988, and the creation of the STJ resulted from it. We decided to start the analysis ten years after the promulgation of the new Constitution, since we understand a time lag is necessary for the new laws and the new Court to be fully consolidated in the country.

Thus, in this ten-year period, a set of 1,687 judicial cases, with the characteristics described above, were decided by the STJ. More precisely, this is the whole population of *recursos especiais* over private debts solved by the STJ in this time period. This is the database used in this article.

6.2 Construction of the Variables

In order to analyze all cases from the database, we created several variables and registered them by filling a form.

Litigants (plaintiffs and defendants) were classified into three distinct groups: individuals ($x = 1$), firms ($x = 2$), and financial institutions ($x = 3$). Private enterprises of any type, public enterprises (such as Petrobrás, the state-run oil company), private associations, professional associations and trade unions, among other things, were classified as “firms”. Private and public commercial banks and credit granting institutions (such as credit card companies, investment banks, credit cooperatives, etc.) were classified as “financial institutions”.

In order to assess the final decision made by the STJ and to verify the other variables, we analyzed each case report and decision from the beginning to the end. In many cases, it was necessary to read the entire report of the case in order to identify the creditor and the debtor in the lawsuit. In some few cases, a third party – neither the creditor nor the debtor – appears as litigant,

and wins the case. If so, the judicial decision was considered to favor “others” and the variable was classified as $y = 1$ in the test “Does the court decision favor the debtor?”

7. Descriptive Statistics

Preliminary results indicate that 746 cases in the database, i.e. 44.2% of the total, were decided in favor of the debtor, and 905 cases, i.e. 53.6%, were decided in favor of the creditor. Thus, at a first sight, there seems to be no evidence of any strong judicial bias in favor of the debtors, as argued by ABL (2005), but also no bias *against* them, as argued, for instances, by Ribeiro (2006).

The second research question – related to the judicial uncertainty and unpredictability – could also be assessed, in a preliminary manner, by the descriptive results. The STJ mended, partially or entirely, 54.3% of the decisions made by second degree courts. In other words, only 45.7% of the decisions made by the State Courts and the Regional Federal Courts was entirely maintained by the Justices at the STJ. Apparently, there seems to be a significant variability in the judicial decisions, at least when they move upwards from the second to the third (highest) level in the courts. Unfortunately, from our database, it was not possible to infer what happens to the decisions when the lawsuits move from the first to the second degree.

Table 1: Frequency of Some Data (n = 1687)

Tipo de Recorrente	Pessoa Física	32,66%
	Pessoa Jurídica	25,90%
	Instituição Financeira	41,43%
Tipo de Recorrido	Pessoa Física	46,12%
	Pessoa Jurídica	29,46%
	Instituição Financeira	24,42%
Tipo de Dívida	Dívida Comercial/Contratual	83,70%
	Danos morais	9,25%
	Outra Responsabilidade Civil	2,19%
	Outros	4,86%

Fonte: STJ e dados trabalhados pela autora.

These are merely the descriptive statistics. In order to assess the econometric significance, we must analyze the regression results of the *logit* models.

8. Econometric Results and Discussion

Table 2 – Y = Does the decision favor the debtor?

	A1	A2	A3
constante	.8427** (.019)	.1871 (.257)	-.1526 (.316)
banco_recorre	-.0696 (.651)	-.1319 (.380)	-.0118 (.933)
firma_recorre	.1914 (.155)	.1670 (.211)	.1803 (.177)
banco_recorrido	.1990 (.217)	.2183 (.172)	.2898** (.048)
firma_recorrida	-.3749*** (.003)	-.3328*** (.007)	-.3833*** (.002)
Sarney	-.1638 (.203)	-.1472 (.249)	-.1901 (.136)
Collor	-.1794 (.366)	-.1607 (.417)	-.1827 (.356)
Itamar	.4163** (.013)	.4370*** (.009)	.3835** (.021)
Lula	.3447 (.223)	.2684 (.339)	.3932 (.160)
hipossuf_dev	-.2942** (.042)	.2360* (.099)	
divida_coml	-.6980*** (.000)	-.6493*** (.000)	
SP	.1716 (.209)		.1248 (.356)
RS	-.3829*** (.005)		-.3790*** (.005)
RJ	-.2088		-.1809

	(.323)		(.387)
MG	-.1185		-.1364
	(.501)		(.436)
pseudo R ²	.0313	.0248	.0232
n	1687	1687	1687

Fonte: STJ e dados trabalhados pela autora.

Table 2 tests the so-called pro-debtor bias of the Judiciary (specifically that of the STJ). Dependent variable here is “Does the court’s decision favor the creditor ($y = 0$) or the debtor ($y = 1$)?” Three models were tested in the population: A1, A2, and A3. The basis for comparison (constant) were processes in which: (i) plaintiffs were individuals (“*pessoa_recorre*”), (ii) defendants were individuals (“*pessoa_recorrido*”), (iii) the main Justice responsible for the case was one indicated by President Fernando Henrique Cardoso, (iv) the state where the process was originated was other than São Paulo, Rio Grande do Sul, Rio de Janeiro and Minas Gerais. Taking all this into consideration, Justices of the STJ, indeed, seems to favor the debtor when financial institutions are the defendants of the cases; yet, the coefficient was statistically significant only for the A3 model. When a firm appears as the defendant, Justices of the STJ tend to favor creditors (and be against debtors); the effect is strong and statistically significant in all models.

The “political dummy variables” indicate that only those Justices nominated by President Itamar Franco had strong and statistically significant impacts on the bias of judicial decisions: they tend to favor debtors. It is also noteworthy that Justices nominated by President Lula show a pro-debtor bias, as expected. However, this effect is not statistically significant in none of the models tested. Somehow, the coefficients of these variables are as previously expected: Justices who are nominated by Presidents who are politically conservative (e.g. Sarney) or who are economically liberal (e.g. Collor) tend to favor creditors against debtors; on the other hand, Justices who are nominated by “populist” Presidents tend to favor debtors. There are no doubts that Lula’s two presidential mandates were marked by an emphasis on the poor and socially disadvantaged. President Itamar Franco, on his turn, had also clearly a populist government: he was Fernando Collor’s vice-president and came to power after the former was impeached; his support came from a coalition made up of several political parties, historically known by their populist tradition.

The variable “*divida_coml*” indicates cases in which the debt is a contractual (or commercial) one. It excludes, for instances, debts generated by tort infringements. Taking only contractual debts under consideration, Justices tend to favor creditors – and be against debtors. This result contradicts the common knowledge that judges in Brazil are pro-debtors and protect them to

not comply with their contractual duties. At least in one of the Supreme Courts of the country, Justices tend to decide in favor of the creditors.

We also included an interaction variable, “hipossuf_dev”, which identifies cases where the debtor is also the weaker part of the contractual relationship. The reason to include this variable was to separate those cases in which the stronger litigant may be the debtor. For instances, in cases of moral or material damage the debtor may be a firm or a financial institution, and the creditor may be a poor citizen. In these cases, it is expected that “populist” judges will favor the creditor. However, when this effect is controlled by the interaction variable, coefficient appears as expected only in model A2. In order to test this effect in more details, we decided to run a second group of regressions, as it will be shown on Table 3.

We included a group of dummy variables of the states where the processes were originated. Of the 27 states and the Federal District in the country, only four states had specific variables: São Paulo (“SP”), Rio Grande do Sul (“RS”), Rio de Janeiro (“RJ”) and Minas Gerais (“MG”). These states add up to 65.86% of all the cases of our database. From the variables one may observe that the Justices tend to favor debtors in those processes originated in São Paulo, as compared to those originated in other states. The contrary seems to happen in those processes originated in Rio de Janeiro and Minas Gerais: Justices tend to favor the creditors in these cases. Yet, none of these coefficients were statistically significant. The only state of which the dummy variable had a significant coefficient was Rio Grande do Sul, and it shows that Justices tend to favor creditors in the processes coming from this southern state. This result becomes particularly interesting when one considers two facts: (i) This is traditionally the most litigious state in Brazil: although it is only the 5th largest state in population size (2010 Census), it is the 1st in number of new cases in State Courts, according to the official report of the National Council of Justice of 2010. In our database, it was also the state with the largest number of cases (406) surpassing that of São Paulo, the largest (in terms of population) and most economically active state of the country (405). (ii) The second reason why the dummy variable of Rio Grande do Sul is important relates to its judicial history. As discussed above, judicial activism, and more specifically, the movement of the “Association of the Judges for Democracy”, has traditionally been very strong in the southern region of Brazil, and specifically in Rio Grande do Sul.² Even though it has left them most active days behind, *gaucho* judges are still “models” for more “leftist” and “socialist” magistrates all over the country. Having this in mind, the negative coefficient in the dummy variable of Rio Grande do Sul seems to indicate

² According to some observer, one of the main reasons why Rio Grande do Sul is the most litigious state in the country is related to this social view of the judicial power by the magistrates: citizens know about it, and therefore have more incentives to fight for their rights, since they believe judges will protect them against more powerful agents.

that Justices at STJ are aware of this “socialist” trend among the judges from that state and, somehow, try to “correct” this bias by consistently making decisions *against* the debtors in cases coming from that state (remember that all cases decided by the STJ are appeals of decisions made by local state courts). This result is even more interesting when one analyses the results of the next set of regressions, related to the probability of amendments made by the STJ over lower court decisions (Table 4). Results there show that cases coming from Rio Grande do Sul tend to be reversed by the STJ Justices. This means that the Justices tend to change the decisions made by *gaúcho* judges, and these changes tend to be in favor of creditors.

Results of Table 2 show that the discussion of a pro-debtor or a pro-creditor bias is more complex and less crystal clear as implied by the Brazilian literature.

Next, we try to control for the “contractual weakness” of the litigants. Dependent variable here is “Does the decision favor the debtor who is also the weak part in the contractual relationship?” R-squares in this set of regressions were higher than those found in the previous table.

Table 3 – Y = Does the decision favor the debtor who is also the weaker part of the relationship?

	A2	A2
constante	-3.9336*** (.000)	-3.9018*** (.000)
banco_recorre	.9740*** (.000)	.8912*** (.000)
firma_recorre	.3246** (.044)	.3001* (.062)
banco_recorrido	1.5170*** (.000)	1.4905*** (.000)
firma_recorrida	-.1082 (.455)	-.0820 (.567)
Sarney	-.1172 (.423)	-.1068 (.463)
Collor	.0439 (.843)	.0720 (.745)
Itamar	.5019*** (.006)	.5206*** (.004)
Lula	.8052**	.7268**

	(.012)	(.023)
divida_coml	2.3346***	2.3406***
	(.000)	(.000)
SP	.2507	
	(.105)	
RS	-.1483	
	(.332)	
RJ	-.1562	
	(.555)	
MG	-.1727	
	(.398)	
pseudo R ²	.1190	.1154
n	1687	1687

Fonte: STJ e dados trabalhados pela autora.

Results indicate that in cases in which financial institutions or firms are plaintiffs, Justices tend to favor the debtors (who are also the weakest contractual part), as compared to those in which individuals are plaintiffs; coefficients in these cases are high and statistically significant in both models. The same occurs in cases where financial institutions are defendants: coefficients here are even higher in favor of debtors.

The set of dummy variables related to the political nomination of Justices followed the same trend as observed in the previous table. Yet, statistical significance here was higher and observed in more variables: Justices nominated either by President Itamar Franco or by President Lula tend to make decisions that favor debtors who are also the weakest part of the relationship. Interestingly in this case, Justices nominated by Lula had higher coefficients than those nominated by Itamar.

Coefficients for the state-dummies followed the same direction as in the previous table; however, the effect of Rio Grande do Sul now is no more significant.

The variable controlling for contractual/commercial debts, “divida_coml”, had high and significant coefficients. This means that, for cases involving only contractual debts, the STJ Justices tend to decide in favor of debtors who are also the weaker part of the relationship.

Broadly speaking, this set of regressions produced results which are more consistent to the arguments provided by ABL (2005). In many cases, judges tend to favor debtors.

Table 4 tests variability in judicial decisions, i.e., it checks the probability that Justices at the STJ change or revert decisions made by judges in lower courts.

Table 4 – Y = Does the STJ decision make amendments to that of the lower court?

	C1	C2
constante	-.5597*** (.000)	-.3713*** (.005)
banco_recorre	.5959*** (.007)	.5437** (.013)
firma_recorre	.4629** (.013)	.4992*** (.007)
banco_recorrido	.3806** (.012)	.3682** (.014)
firma_recorrida	.02937 (.810)	-.0028 (.981)
banc_rec_cred	.2056 (.329)	.3256 (.116)
firma_rec_dev	-.2760 (.179)	-.3287 (.107)
Sarney	-.0484 (.702)	-.0496 (.693)
Collor	-.1001 (.609)	-.0934 (.631)
Itamar	.7265*** (.000)	.7160*** (.000)
Lula	-.4036 (.158)	-.3586 (.205)
SP	.1785 (.189)	
RS	.5926*** (.000)	
RJ	.0950 (.648)	
MG	.0846 (.628)	

pseudo R ²	.0360	.0274
n	1687	1687

Fonte: STJ e dados trabalhados pela autora.

In those cases in which either financial institutions or firms are the plaintiffs, Justices tend to change the decisions made at lower courts, as compared to those in which individuals are plaintiffs. The same occurs in those cases in which financial institutions are defendants.

We created two interaction variables: “banc_rec_cred”, for those cases in which the plaintiff was a financial institution and also creditor, and “firma_rec_dev”, for those in which the plaintiff was a firm but debtor. The first one had positive coefficients, indicating that Justices tend to mend decisions of those cases brought to the STJ by financial institutions who are creditors. On the other hand, the negative coefficients of “firma_rec_dev” indicate that Justices tend to maintain the decisions brought by firms who are debtors. Unfortunately, none of these variables had statistically significant results.

Justices nominated by President Itamar Franco have higher probability to mend decisions coming from lower courts, as compared to those nominated by President Fernando Henrique; coefficients are high and significant.

Among the state dummies, one deserves emphasis: cases originated in Rio Grande do Sul tend to be mended by the Justices at the STJ. It seems that Justices re-interpret judicial cases in a manner which consistently differ from that by gaucho judges; if there is any kind of prevailing political or ideological bias among the magistrates of that state, this bias seems to be somehow “corrected” by the Justices.

Summing up, these results show that there are several factors which increase the probability of amendments by the Justices at the STJ. It is worthy to remember the descriptive statistics which show that 54.3% of the decisions of the database were, somehow, mended. Thus, the variability of judicial decisions in Brazil is, indeed, very high and strong.

9. Conclusions

Arida, Bacha and Lara-Resende (ABL, 2005) launched an academic controversy in the Brazilian economic literature stating that the law and the jurisprudence in Brazil are biased towards the debtor, and that this bias creates high disincentives for investors and credit grantors. Several other authors followed ABL, either agreeing or opposing to their results. Yet, no empirical data based on real judicial decisions has supported the debate.

Our analysis was based on a population of 1,687 decisions made by the STJ during the period of October 1998 to October 2008. The preliminary results do not show any strong judicial bias, either towards the debtor, or towards the creditor. However, the probability of a lawsuit to be decided in favor of the debtor seems to be correlated with the type of the plaintiff who deposited the case at the STJ. Results also show that the STJ very often changes the decisions coming from the lower state courts, and that the state where the lawsuit comes from is an important variable affecting the probability of change by the STJ.

This article was a first attempt to address the controversial debate about judicial bias and judicial unpredictability in Brazil based on analysis of real cases. A possible future exercise would be to compare this result with those of some other countries, with more or less historical “socialist” bias. There is still plenty of room and plenty of data available for research in this literature, where questions still abound.

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