Are Judges Like Umpires?
Political Affiliation and Corporate Prosecutions

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Motivation

- Outcomes of corporate criminal prosecutions can be quite important
  - Ex. #1 – *Hudson River v. US* in 1909
  - Ex. #2 – Arthur Andersen in 2002
- And sentencing fines, which increased 9-fold in recent years, can shift firms' priorities

Question = Does political affiliation of appointing president influence case outcomes?

Idea is widely discussed, but…

- Judges [e.g., Chief Justice Roberts] push back
  - *"[Judges] don't work as Democrats or Republicans"* – 2016
  - *"[W]e do not have Obama judges or Trump judges…"* – 2018
- And current discussion ignores potential impact on corporate prosecutions, which could matter
  - E.g., if expected punishment for violating environmental regulations goes up, firms might adjust their investments

Data on corporate prosecutions

- **Corporate Prosecutions Registry**
  - Includes list of prosecutions from 2000 to 2018, resulting in a total of 3,372 cases
  - For each case, provides the following:
    - Company name and docket number
    - Crime code (i.e., type of crime)
    - Outcome (e.g., plea, trial conviction, acquittal, etc.) and amount of monetary damages (if any)

Types of prosecution outcomes

- **Six possible prosecution outcomes**
  - Acquittal (0.39%)
  - Trial conviction (0.43%)
  - Plea deal (79.1%)
  - DP/NP agreement (15.47%)
  - Declination (0.69%)
  - Dismissal (3.89%)

Firm pleads guilty;
punishment set by judge

Gov't drops case in exchange for firm meeting certain conditions;
judge has no direct say

- **Avg. fine** = $20mm.; **std. dev.** = $103mm.

Types of crimes

- **24 possible crime types; e.g.,**
  - Fraud – General (18.32%)
  - Environmental (15.78%)
  - False statements (4.54%)
  - Immigration (4.47%)
  - Money laundering (2.50%)
  - OSHA / Workplace Safety / Mine Safety (0.86%)

2nd most common crime

9th most common crime

20th most common crime

Data on judge names & affiliations

- Extract judge name from official case dockets *[available at www.pacer.gov]* using Python
- Identify political party of appointing president using biographies on US Courts' website

Identification strategy

- Exploit random assignment of federal judges to cases originating in their jurisdiction
  - 94 US District Court jurisdictions; 700+ judges
  - Evidence supports randomization *[see paper]*
- Estimate a diff-in-diffs-type regression
  - **Diff #1** – Democrat *vs.* Republican judge
  - **Diff #2** – Partisan tilt of underlying crime

I.e., does crime involve political issue where Democrats and Republicans exhibit sharply different views?

Define partisan tilt ***[DemTilt]*** as **=**

1	if crime involved violating environment or labor regulations
0	if crime has no clear association to partisan issue *[e.g., fraud, money laundering, etc.]*
-1	if crime involved immigration violations and hiring illegal workers

Our main specification

$$Y_{ijklt} = \beta Democrat_j \times DemTilt_k + \alpha_j + \gamma_k + \delta_t + \varepsilon_{ijklt}$$

- Y_{ijklt} = outcome for case *i* assigned to judge *j* involving crime type *k* in jurisdiction *l* and year *t*
- $Democrat_j$ = indicator that judge was nominated by Democrat president
- $DemTilt_k$ = political tilt of crime type *k*
- Judge, crime, and year fixed effects

β captures average change in case outcome for one-unit increase in *DemTilt* of crime when the judge is a *Democrat*

No shift in proportion of outcomes

Point estimates all economically small at < 1.6 percentage points

	Plea	*NP/DP*	*Dismissal*	*Declination*	*Conviction*	*Acquittal*
Democrat×DemTilt	-0.016	0.00	0.00	0.012	-0.001	0.004
	[0.035]	[0.028]	[0.013]	[0.011]	[0.010]	[0.004]
Obs.	2,560	2,560	2,560	2,560	2,560	2,560
R-squared	0.377	0.361	0.268	0.11	0.058	0.173
Judge FE	Y	Y	Y	Y	Y	Y
Year FE	Y	Y	Y	Y	Y	Y
Crime FE	Y	Y	Y	Y	Y	Y

But big shift in monetary penalty

Dep. Var = *Ln(Fine)*

188% increase in avg. fine when *DemTilt* increases by one unit <u>and</u> have Democrat judge

Democrat×DemTilt	1.060***	1.047***
	[0.313]	[0.303]
Public Firm		2.269***
		[0.503]
Criminal History		-0.024
		[0.230]
Obs.	1,404	1,404
R-squared	0.538	0.572
Judge FE	Y	Y
Case Year FE	Y	Y
Crime Type FE	Y	Y

Driven by **both** types of crimes

Dep. Var = *Ln(Fine)*

Democrat×Labor&Environmental	0.859***	0.866***
	[0.297]	[0.291]
Democrat×Immigration	-2.495**	-2.340**
	[1.050]	[1.059]
Public Firm		2.263***
		[0.505]
Criminal History		-0.025
		[0.231]
Obs.	1,404	1,404
R-squared	0.539	0.572
Judge FE	Y	Y
Case Year FE	Y	Y
Crime Type FE	Y	Y

Labor & environmental fines are 137% larger when assigned to Democrat judge

Immigration fines are 90% smaller when assigned to Democrat judge

Larger when more partisanship

- If findings driven by partisanship, might expect amplification during time periods of greater political polarization
  - **Results only exist in periods of high polarization**

Larger prior to elections

Dep. Var = Ln(Fine)

Democrat×DemTilt×Election	1.918**
	[0.832]
Democrat×DemTilt	1.090***
	[0.305]
DemTilt×Election	0.274
	[0.344]
Democrat×Election	-0.429
	[0.290]
Obs.	1,365
R-squared	0.603
Judge FE	Y
Case Year-Month FE	Y
Crime Type FE	Y
Firm-level controls	Y

Indicator for July, Aug., Sept., and Oct. in year with Congressional election

Avg. penalty is 483% larger in months prior to an election if assigned to a Democrat

Within-judge estimates indicate findings are <u>not</u> driven by fixed ideological differences

Larger during high-court vacancies

Dep. Var = Ln(Fine)

Vacancy	-0.035
	[0.484]
Democrat	-0.136
	[0.113]
Democrat x Vacancy	-0.385
	[0.644]
DemocratTilt x Vacancy	-0.332
	[0.551]
Democrat x DemocratTilt	0.490***
	[0.169]
Democrat x DemocratTilt x Vacancy	1.373*
	[0.769]
Observations	1,880
R-squared	0.541
Jurisdiction FE	Y
Year-Month FE	Y
Crime Type FE	Y

Fines are 293% higher during vacancy periods

Additional findings & robustness

- **Results are robust to:**
  - Controlling for interactions of *DemTilt* and other judge characteristics (age, experience, etc.)
  - Dropping the largest 5% of fines each year
  - Dropping jurisdictions with greater than 75% judges from the same party

Concluding remarks

- Findings suggest novel channel by which partisanship might influence economic behavior

Many potential implications for firms…

- E.g., shifts in expected penalties [e.g., surge in 'Trump' judges] might shift companies' priorities

E.g., our estimates suggest Trump's 2016 election will result in average immigration fine being 31% higher by end of 2020 than if Clinton had won