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Salaries, Appelate Jurisdiction and Judges´Performance: The Case of Mexican Administrative Courts

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Abstract

In Mexico up to this day there is a debate on whether administrative judges should earn more money; or whether administrative courts should incorporate appellate jurisdiction to better guarantee accountability of the administration. The answer to these questions has not been accompanied by any empirical evidence on whether these variables influence in some manner Mexican administrative judges' performance. In this paper we try to answer the questions of whether judge's salaries or the existence of appellate jurisdiction influence judges' performance. As a federation with federal jurisdiction and local jurisdiction, Mexico has 29 state administrative courts. The design of each one of these courts varies depending on the State to which they pertain. Among these variations it can be identified a variety of salary ranges and procedural designs. There has been a long and complex debate on the ideal wage for judges. On the one hand there are scholars that have found no relationship between salaries and judges' performance. On the other hand judges, as rational agents, might prefer to work less when earning low wages and more when earning high wages. Regarding appellate jurisdiction there are also opposite views on the subject. There are opinions that maintain that appellate jurisdiction on administrative courts is a waste of resources because judges' performance is not affected by the review of their decisions. On the contrary, there are some other opinions that identify in appellate jurisdiction a way of constraining judges' performance. Again, judges as rational agents might work less when having no direct monitoring of their decisions than when having it. With the data used in this paper, the conclusion is that these two variables do affect judges' performance. Specifically we found that the decision on whether to review or not an administrative act when litigated is a function of judge's wages and the existence of appellate review on judges' decisions.

Resumen

En México ha existido durante mucho tiempo un debate acerca de si los jueces deben ganar más dinero o acerca de si las cortes deben contar con una instancia de apelación. Ninguna de las respuestas dadas a estas preguntas ha sido acompañada por un análisis empírico del problema. En el presente documento tratamos de responder a la pregunta de si estas variables afectan el desempeño de los jueces de carácter administrativo en México. México se organiza como una federación en la que existen materias federales y materias locales. La jurisdicción administrativa local corresponde a cada una de las entidades federativas y cada una decide la constitución y el correspondiente diseño de su órgano jurisdiccional administrativo. En el sistema local mexicano existen una variedad de rangos de salarios para los jueces administrativos y existen algunas cortes con instancia de apelación incluida y otras sin instancia de apelación. Con los datos analizados en este trabajo concluimos que aquellos jueces que ganan un mayor salario tienden a trabajar más que aquellos jueces que ganan un menor salario. Asimismo, aquellos jueces que trabajan en cortes con instancia de apelación tienden a trabajar más que aquellos que jueces que trabajan en cortes sin instancia de apelación.

Introduction

A historical development of the administrative justice system in Mexico has been accompanied by a controversy as to whether administrative courts should include appellate judges; or whether administrative judges should earn higher salaries. The fact that the government is always a party in the administrative courts' trials intensifies this controversy. Several factors influence the way in which judges' work is performed, but the factors that sway judicial behavior are less straightforward than for other economic agents. The effects of changes in remuneration are ambiguous. Increasing judicial salaries does not generally lead to an increase effort. Reputation and shaming are two issues that may factor highly in judges' considerations and can encourage them to make a better effort, but their utility depends on the social value of establishing a reputation and the costs of being shamed.

Whether salary increases improve the performance of judges, and the quality of the people who become judges, is an empirical question.[1] Although the answer is an empirical one the answer to these questions has not been accompanied by any empirical evidence on whether these variables influence in some manner administrative judges' performance.

There have been studies trying to determine the effects of salaries on judges' performance. None of them have found a significant relation between judges' salaries and judges' performance. "An empirical study of the high court judges of the fifty states provides little evidence that raising salaries would improve judicial performance".[2]

The administrative justice structure in Mexico includes a Federal level administrative court and local administrative courts that are in jurisdictions of 29 states. According to the Federal Constitution, states decide whether to have administrative courts; whether to establish appellate jurisdiction and the salaries of judges. The diversity on design and salaries permitted us to compare equal outcomes with a variation in judges' wages and the existence of appellate courts as in a natural experiment.

The objective of this paper is to analyze the influence of judges' wages and the existence of appellate jurisdiction in administrative judges' performance. We are not trying to use the attitudinal model to imply that administrative judges solve cases according to their believes. The objective is just to look for a change in outcomes when changing the judicial environment. Assuming that judges are rational and that they care for their jobs and salaries the prediction of the economic model is that judges should maximize their time and efforts according to their expected costs.

[1] J. S. Choi, G. M. Gulati & Eric Posner, Are Judges Overpaid?, J.L.A. (2009).
[2] *Op. cit.*

We hypothesize that judges earning higher salaries and being under the supervision of appellate courts should work more than judges that don't. The measure we used to indicate that a judge works more is the decision on whether a plaintiff has standing or not. After a proceeding which includes a hearing and the opportunity of showing evidence, the trail can be resolved by the court in three different ways:

1. *Declaration of no standing.* In this case the act is not reviewed by the court because of the lack of standing; the standing requirements are established in specific statutes and are referred to matters of procedural requirements.
2. *Declaration of the legality of the act* in which the government authority "wins" the trial. Administrative judges are obliged to answer every objection of the plaintiff to the administrative act.
3. *Declaration of the unlawfulness of the act* in which the government authority "looses" the trial. This declaration can have two different effects: *(a)* the administrative act/decision is reversed and returned to the authority for further consideration; or *(b)* the administrative act/decision is reversed and the court substitutes the authority's decision with its own judgment.

From a cost-benefit analysis in the judge's perspective the decision that creates the lowest costs is the no standing decision, since the judge is not obliged to analyze the whole case and decide on whether the administrative act was lawful or not. Factors hypothesized to influence the likelihood of declaring the no standing of a plaintiff are the salaries of the judges and the existence of appellate jurisdiction.

We used a comprehensive data set consisting of the outcomes of administrative court decisions to test the hypotheses. We found strong empirical evidence suggesting that administrative courts that have lower wages and no appellate jurisdiction are more likely to declare the no standing of a case than judges with higher wages and appellate jurisdiction authority, which may suggest that judges maximize their utility, including time and effort.

This paper is organized as follows. Section 1 presents an overview of the history, structure and function of administrative justice system in Mexico. Section 2 discusses measures on judges' performance. Section 3 describes data. Section 4 develops an empirical model and a set of testable hypotheses. Section 5 presents the findings. Finally, last section presents a discussion of the empirical findings.

1. Structure and functions of administrative justice system in Mexico

a. Structure

The Mexican State is organized in the form of a federation integrated by the Federal District and 31 States. The federal system is established in the Federal Constitution and specifies that there are powers exclusively of the federation and others that are exclusively of the States. In the case of administrative justice, the Federation (for federal matters) and the States (for local matters) have the power to create their own administrative courts. The Federal Constitution does not require each State to create an administrative court. If a State decides to create this court, it is this State's decision to create it with appellate jurisdiction or not and decide on judges' wages.

For the purpose of this paper the variables above described are referred to the following:

- **Branch**: this variable represents whether the court is incorporated to the executive branch or the judicial branch. The main consequence of this incorporation is the procedure to obtain the budget for the court. When a court is incorporated to the executive branch the budget has to be submitted and approved by the executive branch. When a court is incorporated to the judicial branch the budget has to be submitted and approved by the judicial branch.
- **Appellate jurisdiction:** this variable is referred to the existence of a second instance for the trial. We will classify courts in two categories: those with a second instance within the court and courts without it.
- **Average salary**: this variable is referred to the average amount in pesos that a judge earns. Table 1 describes these differences.

TABLE 1

STATE	BRANCH	APPELLATE JURISDICTION	AVERAGE SALARY	AGE
AGUASCALIENTES	0	0	109329	3
BAJA CALIFORNIA	1	1	83112	19
BAJA CALIFORNIA SUR	0	0	61351.2	4
CAMPECHE	0	1	60750	11
CHIAPAS	0	1	58639.81	1
COLIMA	1	0	91468.6	12
DISTRITO FEDERAL	1	1	143162.8	37
DURANGO	1	1	40614	4
ESTADO DE MEXICO	1	1	129505.8	21
GUANAJUATO	1	1	104175.36	22
HIDALGO	0	1	48000	26
MICHOACÁN	1	0	86402.34	0
MORELOS	0	0	65794.69	8
NAYARIT	1	1	63996.9	6
NUEVO LEÓN	1	1	76098	17
OAXACA	1	1	80911.53	2
QUERÉTARO	1	1	93625	23
SINALOA	1	1	43611.23	15
TABASCO	1	0	47547.9	11
TAMAULIPAS	1	0	38500	57
TLAXCALA	0	0	26830.33	6
YUCATÁN	1	0	31029	21
ZACATECAS	0	0	68564.38	8

As a result, regarding appellate jurisdiction, currently there are two approaches to creating administrative courts in Mexico. The first approach is to create it with appellate jurisdiction. When this happens, administrative judges' decisions can be reviewed by a superior judge. The second approach is to create it without appellate jurisdiction without any review within the court.

The modern structure of administrative justice system in Mexico includes a Federal Administrative Court and 29 local administrative courts. 43.47% of these courts don't have appellate jurisdiction and the rest of them do have it. Regarding salaries the range goes from less than 1,538 dollars to more than 10,770 dollars per month.

b. Functions

Article 133 of the Federal Constitution establishes the principle of constitutional supremacy. This principle assumes that the Constitution is the parameter of measure of the whole normative system. The Federal Constitution establishes general principles that guide the solution of controversies. Regarding the first function, administrative courts, as other courts, are required to solve controversies with impartiality, promptness, independence, completeness and without charging for the service.

An important issue about this specific jurisdiction is that administrative courts have the power to verify the legality of the government actions avoiding abuses of power.[3] Administrative courts are the guardians of the legality because they verify the compliance with the rule of law. The purpose of these courts is particularly important since administrative justice is the mechanism that defends people against arbitrary and unlawful actions of the government, and it is also a mechanism the government uses to monitor its own agents.[4]

Every action of the government has to be ruled by the parameters of legality established in the Constitution and the specific laws that regulate its power. When an authority acts against a citizen, it has to do it within these parameters, otherwise its decisions should not be valid and the authority can be brought to trial. Administrative courts have two main functions: to solve disputes between the government and citizens by verifying the compliance of government acts with the law and to be "fire-alarms" monitoring government agents' acts.

To perform their functions, administrative courts use specific procedures called nullity trials. These trials are similar to civil trials; the main difference is that the government is always one of the parties in the trial. This specific difference results in some prohibitions that won't be explored in this paper but change in an important manner the incentives to sue. The standing required to sue an authority is less strict than the one required suing a citizen, and almost every citizen can sue the government when an authority acts against that citizen. After a proceeding which includes a hearing and the opportunity of showing evidence, the trail can be resolved by the court in three different ways:

1. *Declaration of no standing.* In this case the act is not reviewed by the court because of the lack of standing; the standing requirements are established in specific statutes and are referred to matters of procedural requirements.
2. *Declaration of the legality of the act* in which the government authority "wins" the trial. Administrative judges are obliged to answer every objection of the plaintiff to the administrative act.
3. *Declaration of the unlawfulness of the act* in which the government authority "looses" the trial. This declaration can have two different effects: *(a)* the administrative act/decision is reversed and returned to the authority for further consideration; or *(b)* the administrative act/decision is reversed and the court substitutes the authority's decision with its own judgment.

[3] SCJN, Libro Blanco de la Reforma Judicial, México (2006).

[4] Tom Ginsburg and T. Moustafa, Rule by Law: The Politics of Courts in Authoritarian Regimes, United States of America, Cambridge University Press, 2008.

This paper focuses on empirical analysis of type #1 decision.

2. Judges performance

One important question is how to measure judge's performance. Many of the decisions that constitute the output of a court system cannot be shown to be either "good" or "bad", whether in terms of consequences or of other criteria, so it is natural to ask whether there are grounds for confidence in the design of the institution and in the competence and integrity of the judges who operate it.[5]

Judges performance can be measured in quantity and quality. As for the quantity it is easy to measure the amount of cases solved by judges, although this is an imperfect measure because it might be that judges with high rates of solved cases achieve no quality on their decisions. On the other hand quality of resolution of conflicts is very hard to measure since: *1)* there are many cases that can be solved in diverse manners according to the law; *2)* it has to be reviewed on a case by case basis; and *3)* some consequences of the decisions can be known only after some time the decision was issued. Despite these difficulties, "in some judicial systems a judge's reversal rate might be a critical performance criterion, while in another more weight be placed on how often a judge's opinions are cited by other courts or even on the political acumen exhibited by the judge in his opinions."[6]

In this paper our goal is to measure judges' performance by measuring their choice between decisions that imply low efforts and decisions that imply medium or high efforts. As explained, administrative trials can be solved in three main manners. The following table shows the outcomes with the respective clasification on efforts made by judges:

[5] Richard A. Posner, How Judges Think, Harvard University Press, 2008.
[6] *Op. cit.*

TABLE 2

OUTCOME	TIME AND KNOWLEDGE SPENT	LOW / MEDIUM / HIGH EFFORT
DECLARATION OF NO STANDING	S. JUDGES REVIEW THE FORMAL REQUIREMENTS FOR STANDING. MOST OF THIS REQUIREMENT IMPLIES A MERE LEGALIST APPROACH.	LOW EFFORT
DECLARATION OF THE UNLAWFULNESS OF THE ACT	S. JUDGES REVIEW THE FORMAL REQUIREMENTS FOR STANDING. D. ONCE DETERMINED THE STANDING, JUDGES ANALYZE THE CASE AND DECIDE THE UNLAWFULNESS OF THE ACT. SINCE JUDGES ARE NOT OBLIGED TO ANALYZE ALL PLAINTIFFS ARGUMENTS ONCE ESTABLISHED THAT ONE OF THEM IS ENOUGH TO DECLARE THE UNLAWFULNESS, THESE DECISIONS IMPLY FEWER EFFORTS THAN THE LAWFULNESS DECISIONS.	MEDIUM EFFORT
DECLARATION OF THE LEGALITY OF THE ACT	S. JUDGES REVIEW THE FORMAL REQUIREMENTS FOR STANDING. D. ONCE DETERMINED THE STANDING JUDGES ANALYZE THE CASE AND DECIDE THE LAWFULNESS OF THE ACT. SINCE JUDGES ARE OBLIGED TO ANALYZE EVERY ARGUMENT EXPOSED BY THE PLAINTIFF THE TIME AND KNOWLEDGE SPENT IN THESE KINDS OF DECISIONS IS HIGH.	HIGH EFFORT

S: the analysis of standing

The decision on the standing issues can be classified as a legalist decision. The requirements of standing are established in law and are referred to formal requirements on the form of the suit. It is important to notice that there are some cases in which it is not up to the judge's discretion to decide the standing of a specific case, like the cases of extemporaneous suits, although there are some precedents that might permit judges to declare the standing of these cases.

Legalist techniques permit judges to perform their work in a less difficult manner, since no other knowledge is needed to make the decision. It might seem that leisure preference would lead judges to decide as many cases as possible (or more!) by legalist techniques. Not only are those the techniques the judges knows best and is most comfortable with; but by excluding from the decision-making process a range of often recalcitrant material (such as legislative history, public policy, and the consequences of his decision), legalism demands less of the judge in the way of research.[7]

[7] Richard A. Posner, How Judges Think, Harvard University Press, 2008.

D: the decision

Before a judge can decide a case she has to analyze the standing. After deciding that there is standing the judge analyses the administrative act object of the suit. The analysis of the case might imply a legalist analysis or not. In general, it can be said that when deciding the partial unlawfulness of a case judges rely on legalist techniques and when deciding the total unlawfulness judges rely in deeper analysis; although there are examples of the opposite.

For the purpose of this paper we will assume that since No Standing decisions imply just S and the two others S plus D the No standing decision is cheaper than the other decisions:

No Standing= S
Lawfulness/Unlawfulness= S+D
Therefore**:**
No Standing < Lawfulness/Unlawfulness

Therefore we will assume that a judge performs better than other judge when choosing to declare the standing and analyzing the case, since she is choosing to invest more effort in the decision.

Another possible explanation for deciding that Standing decisions accompanied by a decision on whether the act was lawfully emitted or not are better than No Standing decisions can be found on the goal of the administrative jurisdiction. As said before, one of the administrative courts functions is to verify in some manner the Executive branch performance, therefore this monitoring is better achieved when analyzing the government acts. In this sense, the No Standing decisions lower the probability of detecting unlawful acts made by the Executive branch. Citizens expect from administrative courts the highest investment in efforts to review government acts, therefore when deciding not to analyze an act judges are performing in a worse than expected manner.

It is important to notice that the proxy used in this paper to measure judges' performance is not perfect and the decisions here analyzed might be just the reflection of a lack of technique from plaintiffs to initiate administrative trials. This data might just reflect that formal requisites are not being followed by plaintiffs.

Once explained why No Standing decisions can be a proxy measure of judges' performance we will analyze these decisions regarding different ranges of wages and the existence of appellate jurisdiction within the administrative court to which judges pertain.

3. Data

The data used in this paper to study performance of administrative judges was collected as a result of a large scale survey of administrative court decisions conducted by a group of Mexican researchers in the "*Diagnóstico del Funcionamiento del Sistema de Impartición de Justicia en Materia Administrativa a Nivel Nacional.*"[8] The purpose of this study was to collect data of the local administrative courts in Mexico. The Federal District and 22 States participated in this study. They allowed the researchers to analyze a sample of cases in each court. The data collected from each case included: dates, subjects, parties of the trial, amounts (if there were), decisions and appeals.

The sample of cases reviewed was different in each court and it was based on the total number of cases concluded in the years 2006, 2007 and 2008.[9] It is important to notice that not every court had cases which concluded in these three years because some of the courts were created after the years 2006 or 2007. The total number of cases reviewed was 5,400.

The survey of states' constitutions was conducted to develop variables representing the court, the existence of appellate jurisdiction and judges' salaries (Table 2).

This study develops the following proxy for the performance of the Mexican Administrative Courts. We measure judges' performance using a binary variable which indicates whether a particular government decision/act is analyzed by the administrative court or not. This proxy will be used as a dependent variable in the regression analysis to be discussed below. Furthermore, using this proxy we calculated the percentage of cases in which the court has not analyzed government decisions (=No Standing). Table 1 presents the distribution of this percentage across 22 states and Federal District.

As can be seen there is a wide variation in these percentages. For example, the percentage is less than 20% in 6 out of 29 states (Baja California, Colima, Distrito Federal, Estado de Mexico, Hidalgo, and Nuevo Leon), and the percentage is higher than 50% in 6 out of 29 states (Baja California Sur, Chiapas, Michoacan, Morelos, Oaxaca and Tamaulipas). The hypothesis is that administrative courts are likely to declare more no standings in the states where the wages are lower. In the first group of states where the percentage of no standings is less than 20%, the two courts with high wages are present and there is only one state with low wages. In contrast, in the second group of states, where the percentage of no standings

[8] http://justiciaadministrativa.cide.edu/.

[9] The methodology used is explained on page 13 of the Diagnóstico del Funcionamiento del Sistema de Impartición de Justicia en Materia Administrativa a Nivel Nacional (unpublished manuscript).

is higher than 50%, there are four states with low wages present and two with medium wages. However, this has to be more carefully analyzed by controlling for various court characteristics as suggested by the existing empirical literature. A summary of the court characteristics used in this study is presented in Table 3. These are the minimum wage, the Human Development Index (HDI), the age of the court, the branch to which it is assigned (executive or judicial), the number of cases per judge, and whether there is an appeals court.

TABLE 3. SUMMARY STATISTICS

STATE	NO STANDING	MINIMUM WAGE	HDI	AGE	BRANCH	CASES PER JUDGE	APPEAL COURT	REAL WAGES	WAGE RANGES
AGUASCALIENTES	24%	47.60	0.8271	3	0	1346	0	2310.92	MEDIUM
BAJA CALIFORNIA	18%	50.57	0.8391	19	1	408	1	1384.22	MEDIUM
BAJA CALIFORNIA SUR	51%	50.57	0.8332	4	0	42	0	988.73	LOW
CAMPECHE	38%	47.60	0.8263	11	0	18	1	1050.42	LOW
CHIAPAS	92%	47.60	0.7185	1	0	45	1	1050.42	LOW
COLIMA	4%	47.60	0.8097	12	1	334	0	1890.76	MEDIUM
DISTRITO FEDERAL	9%	50.57	0.8837	37	1	390	1	2966.19	HIGH
DURANGO	22%	47.60	0.8045	4	1	171	1	630.25	LOW
ESTADO DE MEXICO	16%	47.60	0.7871	21	1	557	1	2731.09	HIGH
GUANAJUATO	31%	47.60	0.7782	22	1	149	1	2310.92	MEDIUM
HIDALGO	7%	47.60	0.7645	26	0	210	1	630.25	LOW
MICHOACÁN	84%	47.60	0.7575	0	1	109	0	1890.76	MEDIUM
MORELOS	56%	47.60	0.8011	8	0	66	0	1470.59	MEDIUM
NAYARIT	37%	47.60	0.7149	6	1	210	1	630.25	LOW
NUEVO LEON	18%	49.00	0.8513	17	1	293	1	1428.57	MEDIUM
OAXACA	75%	47.60	0.7336	2	1	194	1	1050.42	LOW
QUERETARO	29%	47.60	0.8087	23	1	609	1	1890.76	MEDIUM
SINALOA	26%	47.60	0.7959	15	1	598	1	630.25	LOW
TABASCO	35%	47.60	0.7800	11	1	106	0	210.08	LOW
TAMAULIPAS	64%	47.60	0.8246	57	1	85	0	630.25	LOW
TLAXCALA	41%	47.60	0.7746	6	0	72	0	630.25	LOW
YUCATAN	43%	47.60	0.7831	21	1	178	0	210.08	LOW
ZACATECAS	21%	47.60	0.7720	8	0	224	0	1470.59	MEDIUM

In the next section we present an econometric model that proposes a causational relation between the probability of declaring no standing and a number of factors representing administrative courts' characteristics and state-effect control variables.

4. Empirical Model and Hypotheses

a. Empirical Model

It was specified the following empirical model:

$$\frac{e^{NoStanding}}{e^{NoStanding}+1} = \beta_0 + \beta_1 MediumWages + \beta_2 HighWages + \beta_3 AppelateCourt + \beta_4 MinimumWage + \beta_5 HDI + \beta_6 Age + \beta_7 Branch + \beta_8 CasesPerJudge$$

The dependent variable is a court decision outcome (No Standing). It is equal to 1 if the administrative court final decision declares there is No Standing, and it is equal to 0 otherwise. A number of explanatory variables included in the model that are hypothesized to explain some of the variation in the decision outcome. These are the range of wages to which the judges pertain belong (Low, Medium and High) and the existence of appellate jurisdiction (Appellate Court). The empirical model includes a set of other variables that intend to control for the state-specific differences. Within the control variables used to control for State effects there are: Human Development Index (HDI), Minimum Wage of each State, Age of the Court, Branch to which it pertains and the Number of Cases per Judge.

We consider administrative courts to be more likely to declare No Standing (not analyzing the case) if they are within the low wage range and have no appellate jurisdiction. Since we are dealing with a binary dependant variable we used the Logit estimation procedure to estimate the empirical model. Table 4 presents a description of explanatory variables, and it summarizes the expected signs for the estimated coefficients based on the hypotheses discussed below.

TABLE 4. VARIABLES AND EXPECTED SIGNS

VARIABLE	DEFINITION	EXPECTED SIGN
DEPENDENT VARIABLE		
NO STANDING	BINARY VARIABLE	
	=1 IF A JUDGE DECIDES NOT TO ANALYZE A GOVERNMENTAL ACT	
	=0 IF A JUDGE DECIDES TO ANALYZE A GOVERNMENTAL ACT TO ESTABLISH THE LAWFULLNESS OR UNLAWFULLNESS OF THE ACT	
INDEPENDENT VARIABLES		
	A BINARY VARIABLE REPRESENTING THE SUPERVISING AUTHORITY	
APPELATE COURT	=1 IF A COURT HAS APPELATE JURISDICTION	-
	=0 IF A COURT DOES NOT HAVE APPELATE JURISDICTION	*REFERENCE*
	A SET OF BINARY VARIABLES REPRESENTING THE RANGE OF WAGES	
LOW WAGES	=1 IF THE JUDGES SALRAY IS BETWEEN 10,000 AND 60,000 PESOS; =0 OTHERWISE	*REFERENCE*
MEDIUM WAGES	=1 IF THE JUDGES SALRAY IS BETWEEN 60,000 AND 120,000 PESOS; =0 OTHERWISE	-
HIGH WAGES	=1 IF THE JUDGES SALRAY IS HIGHER THAN 120,000 PESOS; =0 OTHERWISE	--*
	STATE SPECIFIC VARIABLES	
HDI	CONTROL VARIABLE FOR HUMAN DEVELOPMENT INDEX PER STATE	-
MINIMUM WAGE	CONTROL VARIABLE FOR THE MINIMUM WAGE IN EACH STATE	+,-
AGE OF THE COURT	CONTROL VARIABLE FOR NUMBER OF YEARS THE COURT HAS PERFORMED	-
BRANCH	=1 IF A COURT BELONGS TO THE EXECUTIVE BRANCH; =0 OTHERWISE	+,-

* a number of "-" in the case of categorical variables modeled using a set of binary variables indicates the degree of expected magnitude relative to the reference group. **+,- means that we are uncertain about the sign of the estimated coefficient. The minimum wage, branch, age of the court and state-specific binary variables are used to control for time- and state-specific variation rather than to test any specific hypothesis.

b. Hypotheses

Existence of an appellate jurisdiction within the court (supervising authority). It is expected that the existence of appellate jurisdiction to influence the probability of deciding not to analyze a case (NO STANDING). We hypothesize that administrative courts not having appellate jurisdiction are more likely to choose the cheapest decision than courts that do. Therefore, a court having appellate jurisdiction is more likely to analyze government acts than a court that doesn´t have appellate jurisdiction. The expected sign for the estimated coefficient for APPELATE COURT is expected to be negative ($b_3 < 0$).

Range of wages. The judges' salaries differ across states. A binary variable LOW WAGES represents the states where the judge's wages are between 10,000 and 60,000 pesos. A binary variable MEDIUM WAGES represents the states where the judge's wages are between 60,000 and 120,000 pesos. And a binary variable HIGH WAGES represents states where the judge's wages are between 120,000 and 160,000 pesos. The LOW WAGES variable is excluded from the regression so it will be used as the reference case.

We hypothesize that the probability of not analyzing government acts (NO STANDING) is higher in decisions made by courts within the LOW WAGES range; as compared to the reference group (LOW WAGES), the estimated coefficients for a set of binary variables representing the rest of the wages range, MEDIUM WAGES and HIGH WAGES, are expected to be negative. In addition, we expect the magnitude of these coefficients to increase as we move from the MEDIUM WAGE range to the HIGH WAGE range ($b_2 < b_1 < 0$)($\beta_5 \geq \beta_4 \geq \beta_3 \geq \beta_2 \geq 0$).

State Specific Variables. The data set includes court decisions representing 22 states. We used a set of state-specific variables to control for the variation in the decision outcomes across these states.

HDI. The Human Development Index is a United Nations measure of well-being. We chose this variable to control for specific states characteristics because this variable reflects the general well-being of the state. We hypothesesize that the higher the HDI the less the probability of No Standing decisions. This is because the more developed a State is the more educated, therefore it is expected that better educated judges include in their utility function other variables such as the completion of the goal of their jobs (reviewing Executive Branch acts). It can also be argued that on more developed States there will be less true No Standings.

Minimum Wage. This variable reflects the variety in salaries among the Mexican States. There are three different minimum wages assigned to three regions of the country. This variable was included to control for living costs in states. Since wages are measured in a nominal basis the fact that costs of life are different among states should be taken into account; although the amount of the wage might already include this effect. We do not have an expected hypothesis of the sign of the coefficient for this variable. We tried to include real wages in the analysis but we didn't find price information of the cost of living for every individual State.

Age of the Court. This variable controls for the number of years the analyzed court has been performing. Our hypothesis is that the younger a court is the higher the probability of No Standing decisions because plaintiffs might be learning how to initiate trials in that court.

Branch. As said before administrative courts can be part of the Executive branch or the Judicial Branch. This variable controls for the branch to which the analyzed court pertains. The hypothesis regarding this variable is that those courts pertaining to the Executive Branch might use more the No Standing decision because of their possible dependence on the Executive Branch.

5. Findings

We decided to maintain in the model only those variables that were significant at the 99% confidence level.

The first regression we ran included the following variables: Dependent variable: No Standing; Independent variables: Medium Wages, High Wages, Minimum Wage, HDI, Age, Branch, Cases per Judge and Appeal Court. Table 5 presents the results:

TABLE 5

NO STANDING	COEF.	STD. ERR.	Z	P>|Z|	[95% CONF.	INTERVAL]
MEDIUM_WAGES	-0.201060	0.079328	-2.53	0.011	-0.356539	-0.045581
HIGH_WAGES	-0.680518	0.131043	-5.19	0.000	-0.937357	-0.423679
MINIMUM_WAGE	0.104386	0.052887	1.97	0.048	0.000730	0.208042
HDI	-12.691710	1.421373	-8.93	0.000	-15.477550	-9.905873
AGE	-0.001421	0.003607	-0.39	0.694	-0.008490	0.005648
BRANCH	-0.212850	0.075354	-2.82	0.005	-0.360541	-0.065159
CASES_PER_JUDGE	-0.000664	0.000130	-5.12	0.000	-0.000919	-0.000410
APPEAL_COURT	-0.310236	0.076302	-4.07	0.000	-0.459786	-0.160687
_CONS	5.040627	2.031241	2.48	0.013	1.059467	9.021787

From this regression the least significant variable was Age with a p-value of 0.694, therefore we ran another regression without this variable. Table 6 presents the results of the second regression:

TABLE 6

NO STANDING	COEF.	STD. ERR.	Z	P>|Z|	[95% CONF.	INTERVAL]
MEDIUM_WAGES	-0.194813	0.077706	-2.51	0.012	-0.347113	-0.042512
HIGH_WAGES	-0.690393	0.128625	-5.37	0.000	-0.942493	-0.438293
MINIMUM_WAGE	0.107250	0.052385	2.05	0.041	0.004576	0.209923
HDI	-12.951990	1.260590	-10.27	0.000	-15.422700	-10.481270
BRANCH	-0.220437	0.072878	-3.02	0.002	-0.363276	-0.077598
CASES_PER_JUDGE	-0.000652	0.000126	-5.16	0.000	-0.000900	-0.000405
APPEAL_COURT	-0.311862	0.076206	-4.09	0.000	-0.461222	-0.162502
_CONS	5.090387	2.026174	2.51	0.012	1.119159	9.061615

From this second regression Minimum wage was not significant at the 99% confidence level so we decided to eliminate it from the analysis and ran a third regression without it. Table 7 shows the results:

TABLE 7

NO STANDING	COEF.	STD. ERR.	Z	P>|Z|	[95% CONF. INTERVAL]	
MEDIUM_WAGES	-0.177945	0.077067	-2.31	0.021	-0.328993	-0.026896
HIGH_WAGES	-0.662344	0.127486	-5.20	0.000	-0.912211	-0.412476
HDI	-11.378390	0.990395	-11.49	0.000	-13.319530	-9.437253
BRANCH	-0.216855	0.072584	-2.99	0.003	-0.359118	-0.074592
CASES_PER_JUDGE	-0.000717	0.000122	-5.87	0.000	-0.000956	-0.000477
APPEAL_COURT	-0.257687	0.071124	-3.62	0.000	-0.397087	-0.118286
_CONS	8.958866	0.764894	11.71	0.000	7.459701	10.458030

Wald Test:

H_0: Medium_Wages = 0
High_Wages = 0

chi2(2) = 27.25
Prob > chi2 = 0.0000

It is important to notice that since the Medium and High Wages variables are dummies that measure the same variable the correct way to analyze their significance is through a Wald Test that tests the hypothesis that the coefficient of both variables are simultaneously equal to cero. As expected the Medium Wages and the High Wages variables were both negative with the High Wages coefficient with a bigger magnitude. Both variables were significant at the 99% confidence level. This means the higher the wage of the judges the less the use the No Standing decisions as a manner to solve cases, therefore the hypothesis was confirmed.

The coefficient of the HDI variable was negative and significant at the 99% confidence level. This means that the higher the HDI of the State to which the court pertains the less the probability of a No Standing decisions. This result makes sense since one would expect that the more developed the society is the less use of No Standing decisions would be used.

The coefficient of the Branch variable was negative and significant at the 99% confidence level. This means that when a court pertains to the Executive Branch it is less likely to decide No Standing resolutions than when being part of the Judicial Branch. This result is contra intuitive because since the Executive Branch is the defendant in all these kinds of cases the expected sign would be the opposite. We decided not to analyze further this variable since the influence of the Branch might be better explained by the other two possible outcomes of administrative trials.

The coefficient of Cases per Judge was negative and significant at the 99% level of confidence. This means that the higher the number of cases per judge the less the probability of No Standing decisions. The result again is contra intuitive. One would expect that judges with high quantities of cases would

decide to solve them in the less expensive manner. Since this variable was not explained by the model we decided to analyze it further in this paper.

The coefficient of Appeal Court was negative and statistically significant at the 99% confidence level. This means that the probability of choosing No Standing as a decision decreases when the administrative court has appellate jurisdiction. This confirms the hypothesis.

Cases per Judge

Since the result of the analysis of the Cases per Judge Variable was not as expected we decided to run a linear regression using this as a dependent variable explained by Wages. Table 8 shows the results.

TABLE 8

CASES_PER_JUDGE	COEF.	STD. ERR.	T	P>|T|	[95% CONF. INTERVAL]	
HIGH_WAGES	287.1426	11.756310	24.42	0.000	264.0951	310.1900
MEDIUM_WAGES	245.6451	9.033162	27.19	0.000	227.9362	263.3540
_CONS	186.8250	6.564631	28.46	0.000	173.9554	199.6945

As can be shown there is a positive and statistically significant relation between cases solved by judge and wages. This result makes sense since one would expect judges with higher wages to solve more cases than judges that don't. Since this variable was not part of this paper and performance was measured by the No Standing decisions and not by the number of cases solved by judges we will not do any further analysis of this variable. However, it is worth mentioning that a possible explanation of the fact that the sign of the coefficient for the cases per judge variable was not the expected one could be that it is capturing the effect of wages in an indirect manner.

6. Possible explanations and future improvements

The analysis here done suggests that the variable of No Standing can be explained by the variables of wages and appellate court. When judges earn high wages the probability of No Standing decisions decreases while when judges earn low wages the probability increases. On the other hand, when an administrative court has a supervising authority of judges' performance there seem to be less No Standing decisions than when there is not.

a. Possible explanations

Judges make decisions on whether to analyze or not a specific case in a rational basis. When deciding to analyze it or not judges take into account within the costs of choosing not to analyze a case the expected reversal of an appellate court. If there is collegiality judges will have more monitoring over

their decisions, therefore it might not be rational to choose the cheapest outcome. Reputation might also influence this decision since judges look for their superiors recognition.

The other variable that seems to explain the amount of No Standing decisions is judges' wages. As in the above case, judges act as rational agents, therefore the less they earn the less effort they will be willing to invest in their jobs. As above explained the effort required for a No Standing is significantly lower than the effort required to analyze a case and decide on whether the authority created in a lawful way the act. When deciding which decision to choose judges take into account the expected costs of doing it wrong including the cost of loosing their jobs. Since the cost of loosing the job is directly related to the wage the judge will stop earning the less the wage the less the cost, therefore it is rational for judges with low wages to choose the cheapest decision.

If we consider leisure as consumption good that judges enjoy we can think of higher wages as increasing the opportunity cost of leisure hence a substitution effect from leisure towards more work would occur. However, with higher wages the judges would also have more income to spend amongst all the different goods and services available to them, one of which is leisure, so an income effect towards more leisure and less work would also occur. Which one of these two opposite effects is bigger is an empirical question. The finding of this paper that wages is negatively correlated to No Standings is evidence that in the case of Mexican local administrative judges the substitution effect is bigger than the income effect.

b. Further improvements

As some scholars have recognized tenure is an important characteristic that might influence the issues here analyzed. As with the appellate jurisdiction characteristic, Mexican states differ in terms of the rules relating to the tenure of judges. In all states judges are initially appointed for a certain period of time. In some states, it is possible to re-elect judges and in some states life-time appointments are possible. The reason tenure was not analyzed in this paper is that although the data can be obtained from the Mexican local Constitutions in a formal basis; the important data comes from the tenure or not of the judges that actually decided the cases of the sample.

Other important improvement of this study can be achieved by controlling salaries with a cost of living in each State. In this regard it was not possible to control with this data because the information of prices is presented as an index that was set to 100 at a base year. Therefore a direct comparison of prices between states was not possible.

Finally, controlling for the selection bias that judges' activities might generate would achieve better results. Since no one is forced to become a

judge and the job is not to everyone's liking, there is self-selection-itself reflecting the play of incentives and constraints on behavior-into the judiciary.[10]

[10] Richard A. Posner, How Judges Think, Harvard University Press, 2008.

Conclusions

This paper provides evidence that judges 'wages and appellate design matters. With the results given by this study it seems to be that the discussion on whether administrative courts should have appellate jurisdiction within the court and whether to increase judges' salaries is not useless since it does seem to affect the final decisions of administrative courts in Mexico, hence the performance of these courts.

The purpose of the analysis was to determine if judges' salaries and the existence of appellate jurisdiction influenced administrative courts' outcomes. The result was that each one of the characteristics was significant to the way administrative courts solved cases. The next step would be to make a cost-benefit analysis of these characteristics in order to achieve the objective of improving the efficiency of administrative courts in a cost effective manner, and to try to control for other variables that may also affect the outcome of the trials.

Formal rules that determine the relationship of judges to each other and to the other branches of the states create different incentives and change judges' behavior. Normative design matters. Compensation should be designed so as to give judges incentives to perform their office diligently in the public interest and to attract qualified people to judgeships.[11]

This is not to say that better performance will always be achieved by increasing judges' salaries or including appellate jurisdiction to administrative courts since there might be examples of the opposite. Judges' performance appears to be a very difficult quality to achieve in courts. It seems not to be sufficient but necessary to have the characteristics above mentioned to achieve better performance.

[11] J. S. Choi, G. M. Gulati and Eric Posner, Are Judges Overpaid?, J.L.A., 2009.

Appendix

TABLE 3

. logit No_Standing Medium_Wages High_Wages Minimum_Wage HDI Age Branch Cases_per_Judge Appeal_Court, nolog

Logistic regression — Number of obs= 5070
LR chi2(8) = 541.83
Prob > chi2 = 0.0000
Log likelihood = -2864.1571 — Pseudo R2 = 0.0864

NO STANDING	COEF.	STD. ERR.	z	P>|z|	[95% CONF.	INTERVAL]
MEDIUM_WAGES	-0.201060	0.079328	-2.53	0.011	-0.356539	-0.045581
HIGH_WAGES	-0.680518	0.131043	-5.19	0.000	-0.937357	-0.423679
MINIMUM_WAGE	0.104386	0.052887	1.97	0.048	0.000730	0.208042
HDI	-12.691710	1.421373	-8.93	0.000	-15.477550	-9.905873
AGE	-0.001421	0.003607	-0.39	0.694	-0.008490	0.005648
BRANCH	-0.212850	0.075354	-2.82	0.005	-0.360541	-0.065159
CASES_PER_JUDGE	-0.000664	0.000130	-5.12	0.000	-0.000919	-0.000410
APPEAL_COURT	-0.310236	0.076302	-4.07	0.000	-0.459786	-0.160687
_CONS	5.040627	2.031241	2.48	0.013	1.059467	9.021787

. test Medium_Wages High_Wages

(1) Medium_Wages = 0
(2) High_Wages = 0

chi2(2) = 27.84
Prob > chi2 = 0.0000

TABLE 4

. logit No_Standing Medium_Wages High_Wages Minimum_Wage HDI Branch Cases_per_Judge Appeal_Court, nolog

Logistic regression — Number of obs= 5070
LR chi2(7) = 541.67
Prob > chi2 = 0.0000
Log likelihood = -2864.2348 — Pseudo R2 = 0.0864

NO STANDING	COEF.	STD. ERR.	z	P>|z|	[95% CONF.	INTERVAL]
MEDIUM_WAGES	-0.194813	0.077706	-2.51	0.012	-0.347113	-0.042512
HIGH_WAGES	-0.690393	0.128625	-5.37	0.000	-0.942493	-0.438293
MINIMUM_WAGE	0.107250	0.052385	2.05	0.041	0.004576	0.209923
HDI	-12.951990	1.260590	-10.27	0.000	-15.422700	-10.481270
BRANCH	-0.220437	0.072878	-3.02	0.002	-0.363276	-0.077598
CASES_PER_JUDGE	-0.000652	0.000126	-5.16	0.000	-0.000900	-0.000405
APPEAL_COURT	-0.311862	0.076206	-4.09	0.000	-0.461222	-0.162502
_CONS	5.090387	2.026174	2.51	0.012	1.119159	9.061615

. test Medium_Wages High_Wages

(1) Medium_Wages = 0
(2) High_Wages = 0

chi2(2) = 29.12
Prob > chi2 = 0.0000

TABLE 5

. logit No_Standing Medium_Wages High_Wages HDI Branch Cases_per_Judge Appeal_Court, nolog

Logistic regression — Number of obs = 5070
LR chi2(6) = 537.53
Prob > chi2 = 0.0000
Log likelihood = -2866.3034 — Pseudo R2 = 0.0857

NO STANDING	COEF.	STD. ERR.	z	P>|z|	[95% CONF. INTERVAL]	
MEDIUM_WAGES	-0.177945	0.077067	-2.31	0.021	-0.328993	-0.026896
HIGH_WAGES	-0.662344	0.127486	-5.20	0.000	-0.912211	-0.412476
HDI	-11.378390	0.990395	-11.49	0.000	-13.319530	-9.437253
BRANCH	-0.216855	0.072584	-2.99	0.003	-0.359118	-0.074592
CASES_PER_JUDGE	-0.000717	0.000122	-5.87	0.000	-0.000956	-0.000477
APPEAL_COURT	-0.257687	0.071124	-3.62	0.000	-0.397087	-0.118286
_CONS	8.958866	0.764894	11.71	0.000	7.459701	10.458030

Odds Ratios: Medium_Wages: EXP(-0.177945) = 0.836989
High_Wages: EXP(-0.662344) = 0.515641
HDI: EXP(-11.378390) = 0.000011
Branch: EXP(-0.216855) = 0.805047
Cases_per_Judge: EXP(-0.000717) = 0.999283
Appeal_Court: EXP(-0.257687) = 0.772837

. test Medium_Wages High_Wages

(1) Medium_Wages = 0
(2) High_Wages = 0

chi2(2) = 27.25
Prob > chi2 = 0.0000

TABLE 6

. regress Cases_per_Judge High_Wages Medium_Wages

SOURCE	SS	DF	MS
MODEL	81041588.2	2	40520794.1
RESIDUAL	430385980	5067	84939.0133
TOTAL	511427568	5069	100893.188

Number of obs = 5070
F(2, 5067) = 477.06
Prob > F = 0.0000
R-squared = 0.1585
Adj R-squared = 0.1581
Root MSE = 291.44

CASES / JUDGE	COEF.	STD. ERR.	T	P>|T|	[95% CONF. INTERVAL]	
HIGH_WAGES	287.1426	11.756310	24.42	0.000	264.0951	310.1900
MEDIUM_WAGES	245.6451	9.033162	27.19	0.000	227.9362	263.3540
_CONS	186.8250	6.564631	28.46	0.000	173.9554	199.6945

. test High_Wages Medium_Wages

(1) High_Wages = 0
(2) Medium_Wages = 0

F(2, 5067) = 477.06
Prob > F = 0.0000

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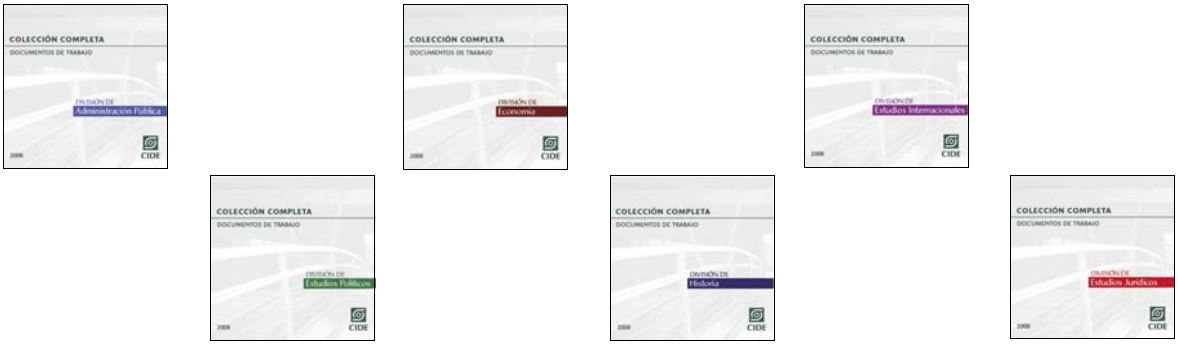

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