

Judges, Out-of-Court Rewards, and In-Court Behavior: Evidence from an Italian Legal Reform

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A) DETAILS ON DATA COLLECTION

For the purpose of this article, and because there is no information available regarding the identity of the law firms that appointed judges for arbitrations, we aimed at selecting those law firms that are sufficiently large and influential in the court arena. These law firms: *a*) have a substantial rate of activity in the Council of State and, as such, have more chances to know and appoint judges from this court as arbitrators, and *b*) are more likely to take part in arbitrations (also documented anecdotally)¹ and thus have a greater role in influencing judges' out-of-court compensation.

We started by considering all cases adjudicated by the Sixth Section involving at least one big law firm. Then we used random criteria to skim the population and obtain a manageable sample. Computer text mining was impossible to use due to the format of the documents.

Our case-selection is thus based on the following steps:

- I. According to the legal residence criterion,² we identified all the law firms entitled to practice in the Council of State and collected all the decisions (cases) of the Council involving these law firms (either as the appellant's or appellee's lawyer, or both) between June 1, 2006 – May 31, 2014 (obtaining a massive 48,728 cases, 3,214 law firms);
- II. From the distribution of the selected cases, we retained the law firms with the most substantial activity in terms of decisions pronounced by all sections of the Council, corresponding to the last decile of the case distribution obtained in step I (obtaining 38,000 cases, 314 BLFs);
- III. Among these, we selected those with the largest number of cases decided by the Sixth Section, corresponding to the last decile of the 38,000 case distribution obtained in step II (obtaining 5,400 cases, 31 BLFs operating in the Sixth Section);³

¹ An important press article reported the identity of some BLFs which participated in arbitration disputes (<http://espresso.repubblica.it/palazzo/2008/06/20/news/arbitri-milionari-1.8894>, in particular <http://speciali.espresso.repubblica.it/grafici/arbitrati/arbitrati.html>). This same press article was debated in the Italian Senate (<http://www.senato.it/japp/bgt/showdoc/showText?tipodoc=Sindisp&leg=16&id=467428>). There are several other press articles reporting the identity of the law firms that most frequently participate in arbitration disputes. Besides being confirmed by the press, the law firms selected through our procedure were also finally checked by a former administrative judge at a regional court.

² In judgments before the Council of State each party must be represented by a lawyer entitled to practice in the higher jurisdiction courts (so called *avvocati cassazionisti*) and is required to elect a legal residence in Rome (Art. 22, par. 2, and Art. 25, par. 2, Code of Administrative Procedure). According to this criterion, we collected the names and office addresses of all lawyers in the legal professional association of Rome who can defend in the highest jurisdictions.

³ As each section of the Council of State has different members and jurisdiction, entries for BLFs have been further divided according to the competent section. Specifically, approximately 31% of the total amount of entries have been associated with the Sixth Section.

IV. Starting from the 5,400 cases obtained in step III, we classified cases according to the frequency with which they matched with each Rapporteur in the sample obtained in step III and picked the last decile of this distribution. This gives a dataset consisting of 1,300 judgments, 24 BLFs, and 59 judges (16 of them acted as panel Presidents and 43 of them acted as Rapporteurs in the relevant period)⁴;

V. Finally, we dropped from the sample: a) cases involving special lawyers, as these cases often represent collective issues that give rise to repeated identical outcomes, following the principle of precedent⁵; b) cases before the date of the first arbitration appointment of a panel President if the latter has been involved in arbitrations during the period of analysis. This led to a sample of 710 observations available for the empirical analysis.

Under our assumptions, a higher rate of success of these large law firms before the Council of State should reasonably be interpreted as a benefit that a given judge was providing to *all* large law firms⁶ as a reward for having been engaged in arbitrations (*rewarding explanation*). Similar reasoning may hold for the *soliciting mechanism*, namely higher rates of success were used by judges for increasing the probability of being appointed as an arbiter by an influential law firm. We have used multiple sources to obtain Table 1.⁷

⁴ Due to the high rate of mobility of judges (cf. Table A.2 in Appendix) both within the different sections of the Council of State and to lower administrative courts, some of them took part only in a restricted number of decisions of the Sixth Section. In order to have a sample of decisions involving a critical mass of judges, we selected the most “representative” ones in our sample period (i.e. those more frequently taking part in decisions involving the BLFs). Hence, starting from the 5,400-case distribution obtained in step III, we identified 1,209 combinations of “Rapporteur-big law firm”. We draw the distribution of cases according to all possible combinations and picked the last decile of this distribution. The choice to take the judges recording the highest frequency of matching with Rapporteurs is because our analysis is mainly focused on panel Presidents. To avoid distortions in the sample, we purposefully did not opt for a selection mechanism based on the frequency of “Presidents-big law firm” matching.

⁵ Special lawyers represent and are permanently employed by public bodies (e.g., general hospitals and social security and welfare bodies).

⁶ Although the identity of the *specific* law firm that appoints a judge in arbitration is not known, the average rate of success observed when the aggregate set of judges with previous arbitration experience are associated to the BLFs (compared to that of the other smaller law firms and to decisions involving judges without arbitration experience) must be indicative of the effects of having external tasks on the decision outcome.

⁷ Data on arbitrations have been collected for a different time span (January 2000 – November 2012) compared to the relevant period of our analysis. They start in January 2000 in order to gather sufficient evidence on past compensation, and end at the time the *Legge Anticorruzione* was passed. The list of the authorizations and honoraria obtained by judges is publicly available on the website of the Council of State (<https://www.giustizia-amministrativa.it/web/guest/incarichi-extraistituzionali-del-personale-di-magistratura>). In order to get an idea of the magnitude of the honoraria, consider that the gross annual wage of judge of the Council of State is equal to € 95,406 (after 5 years of seniority), € 157,147 (after 20 years), and € 172,034 (after 28 years). Source: Dossier by ANM (the National Association of Magistrates), 2008 (<https://rm.coe.int/le-verita-dell-europa-sui-magistrati-italiani-dossier-a-cura-dell-anm-/1680790b9d>). Arbitration honoraria are normally based on the value of the claim (source: <http://www.giustizia-amministrativa.it/>). For instance, the Chambers of Arbitration of Rome and Milan provide rate tables that set the minimum and maximum values of the honorarium according to classes of claim values:

- http://www.cameraarbitraleidiroma.it/pagina34_quanto-costa-una-procedura-arbitrale.html;
- <http://www.camera-arbitrale.it/it/Arbitrato/Costi/Tariffe+in+euro.php?id=88>.

Hence, assuming a rather stable share between judges’ compensation and the total value of the claim (in our dataset, the average ratio was computed based on cases in which both were known) in case of missing information regarding the individual compensation we reconstructed it from the value of the claim.

B) ADDITIONAL TABLES

Table A.1: Estimation of the rate of success of big law firms – DID – Panel presidents excluded one at a time
Treated set: decisions with Panel presidents who participated in arbitration – Initial date of treatment: May 31, 2010

Baseline model presidents excluded one at a time	(1) Excluding Pres. 1	(2) Excluding Pres. 2	(3) Excluding Pres. 3	(4) Excluding Pres. 4	(5) Excluding Pres. 5	(6) Excluding Pres. 6	(7) Excluding Pres. 7	(8) Excluding Pres. 8	(9) Excluding Pres. 9	(10) Excluding Pres. 10	(11) Excluding Pres. 11	(12) Excluding Pres. 12	(13) Excluding Pres. 13	(14) Excluding Pres. 14	(15) Excluding Pres. 15	(16) Excluding Pres. 16
Post×Pres_Arb	-0.109* (0.0588)	-0.113* (0.0547)	-0.115* (0.0557)	-0.101* (0.0536)	-0.124* (0.0586)	-0.092** (0.0413)	-0.121* (0.0564)	-0.19*** (0.0424)	-0.12** (0.0569)	-0.13** (0.0602)	-0.125* (0.0582)	-0.123* (0.0580)	-0.205** (0.0850)	-0.107* (0.0499)	-0.129* (0.0613)	-0.113* (0.0566)
Post	-0.159** (0.0722)	-0.178** (0.0703)	-0.231*** (0.0699)	-0.165** (0.0740)	-0.150* (0.0716)	-0.108 (0.101)	-0.152* (0.0711)	-0.141* (0.0679)	-0.155** (0.0696)	-0.160** (0.0697)	-0.132* (0.0693)	-0.151* (0.0714)	-0.0965 (0.0702)	-0.121* (0.0625)	-0.166* (0.0918)	-0.149* (0.0701)
Pres_Arb	0.132*** (0.0413)	0.143*** (0.0415)	0.111*** (0.0355)	0.133*** (0.0416)	0.130*** (0.0422)	0.105** (0.0463)	0.129*** (0.0414)	0.129*** (0.0416)	0.133*** (0.0414)	0.154*** (0.0386)	0.141*** (0.0422)	0.130*** (0.0421)	0.153*** (0.0510)	0.092*** (0.0305)	0.149** (0.0539)	0.126*** (0.0417)
Constant	0.198 (0.123)	0.179 (0.113)	0.133 (0.119)	0.187 (0.123)	0.208 (0.124)	0.355* (0.190)	0.213 (0.126)	0.229* (0.127)	0.201 (0.120)	0.153* (0.0856)	0.263* (0.147)	0.209 (0.124)	0.173 (0.123)	0.214* (0.117)	0.209 (0.156)	0.210 (0.124)
Observations	680	434	612	679	697	689	707	636	706	619	707	699	639	624	618	693
R-squared	0.019	0.021	0.023	0.019	0.018	0.009	0.018	0.021	0.019	0.025	0.019	0.018	0.020	0.013	0.019	0.017

Linear probability model. Standard errors clustered at the President level in parentheses. *** p<0.01, ** p<0.05, * p<0.1

Decisions/observations refer to the period: 1/1/2005- 31/5/2014.

Treated set of decisions (Pres_Arb =1) includes those where Presidents had at least 1 arbitration appointment.

Data on judicial appointments for arbitration have been collected by consulting the lists of external appointments authorized from January 1, 2000.

Table A.2: Composition and mobility of the Sixth Section of the Council of State

<i>Initial date</i>	<i>Final date</i>	<i>Mobility within the Council</i> ⁽²⁾		<i>Extra-Council mobility</i> ⁽³⁾	
		<i>From other sections to the 6th Section</i>	<i>From the 6th Section to other Sections</i>	<i>To the 6th Section</i>	<i>From the 6th Section</i>
Feb. 28, 2007 (16)	Jan. 1, 2011 (15)	3	7	9	6
Jan. 1, 2011 (15)	Oct.15,2013 (15)	3	2	3	4

Source: official roles of seniority for judges of the Council of State and regional courts (February 28, 2007, and January 1, 2011).

(¹) Values in parentheses represent the total number of judges in the Sixth Section as of the relevant date.

(²) 'Mobility within' relates to the transition of judges from other sections of the Council of State to the Sixth Section, and vice versa.

(³) Extra-Council mobility accounts for: i) entries in the Sixth Section of newly appointed judges of the Council of State; and ii) judges of the Sixth Section that left the Council during the relevant period.

Table A.3: Topic of the decision by Panel President (%)

<i>Judge (panel President)</i>	<i>PUBLIC ADMINISTRATION</i>	<i>BUILDING AND URBAN PLANNING</i>	<i>GAMES AND BETTING</i>	<i>PUBLIC EMPLOYMENT</i>	<i>EDUCATION</i>	<i>HEALTH</i>	<i>SAFETY</i>	<i>OTHER</i>
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
1*	0%	0%	0%	0%	0%	0%	0%	100%
2	31%	0%	19%	1%	2%	0%	18%	29%
3	0%	0%	0%	78%	0%	0%	0%	22%
4*	0%	0%	0%	20%	20%	0%	0%	60%
5*	0%	0%	0%	0%	0%	0%	0%	100%
6	8%	42%	0%	0%	0%	0%	0%	50%
7	0%	0%	0%	0%	0%	0%	0%	100%
8*	10%	33%	0%	3%	3%	0%	3%	47%
9	0%	0%	0%	0%	0%	0%	0%	100%
10	17%	5%	2%	3%	0%	1%	0%	72%
11*	0%	0%	0%	0%	0%	0%	0%	100%
12	0%	50%	0%	0%	0%	50%	0%	0%
13*	17%	50%	0%	6%	6%	0%	6%	17%
14*	0%	0%	0%	16%	4%	34%	0%	47%
15*	18%	9%	0%	7%	3%	0%	1%	62%
16*	0%	14%	0%	14%	7%	0%	0%	64%

Decisions/observations refer to the period: 1/1/2005- 31/5/2014.

Percentages are referred to the number of cases decided by panels chaired by each judge President.

* Appointed for arbitration from January 1, 2000, to November 28, 2012.

The categories reported in the table (columns (a)-(g)) are the most representative ones in a range of 37 overall categories referred to the topic of the cases decided by the Council of State. All other topics are grouped in the category "OTHER" (column (h)).